

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

GEORGE FRANK SHEPPARD,)
EARL D. SHEPPARD,)
DARLENE M. EDWARDS,)
BRYAN E. SHEPPARD, and)
RICHARD W. BROWN,)

Defendants.)

No. 96-00085-01/05-CR-W-9-8
January 8, 13, 15-17, 1997
Kansas City, Missouri
CRIMINAL

COPY

TRANSCRIPT ON APPEAL
(Pretrial Proceedings)

VOLUME I
(Pages 1 - 311)

BEFORE THE HONORABLE D. BROOK BARTLETT
UNITED STATES DISTRICT JUDGE

Proceedings recorded by electronic stenography
Transcript produced by computer

Kathleen M. Wirt, CCR, RMR
United States Court Reporter
811 Grand, Room 654 * Kansas City, MO 64106
(816) 474-4616

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

FOR THE GOVERNMENT:

MR. PAUL S. BECKER	MR. DANIEL C. MILLER
Assistant U.S. Attorney	Assistant Prosecuting Attorney
1201 Walnut, Suite 2300	415 E. 12th Street, 11th Floor
Kansas City, MO 64106	Kansas City, MO 64106

 ** The Defendants were present at all proceedings
 in the courtroom, except those occurring
 at the bench, and where otherwise noted **

FOR DEFENDANT

GEORGE FRANK SHEPPARD:	MR. PATRICK PETERS
	Attorney at Law
	639 E. 65th Street
	Kansas City, MO 64131

FOR DEFENDANT

EARL D. SHEPPARD:	MS. SUSAN HUNT
	MS. ELENA FRANCO
	Attorneys at Law
	1711 Westport Road
	Kansas City, MO 64111

FOR DEFENDANT

DARLENE M. EDWARDS:	MR. WILLARD B. BUNCH
	Attorney at Law
	310 Armour Road
	North Kansas City, MO 64116

FOR DEFENDANT

BRYAN E. SHEPPARD:	MR. JOHN P. O'CONNOR
	Attorney at Law
	1200 Main Street, Suite 410
	Kansas City, MO 64105-2078

FOR DEFENDANT

RICHARD BROWN:	MR. JOHN R. OSGOOD
	Attorney at Law
	Midland Bank Building
	740 N.W. Blue Parkway, #305
	Lee's Summit, MO 64086

ALSO APPEARING (on 1/17/97):

THE HONORABLE SARAH W. HAYS	MR. JAMES R. WYRSCH
U.S. Magistrate Judge	Attorney at Law
	1101 Walnut, Suite 1300
	Kansas City, MO 64106
	(For John O'Connor)

I N D E X

V O L U M E I
(Pages 1 - 311)

Wednesday, January 8, 1997

Telephone conference call 3

- - -

Monday, January 13, 1997

Argument on Motion to Dismiss 46

- - -

Wednesday, January 15, 1997

Pretrial argument 108

Ex parte proceedings in chambers with Mr. O'Connor
and the Court 140

- - -

Thursday, January 16, 1997

Pretrial argument 150

- - -

Friday, January 17, 1997

In-chambers conference regarding discovery requested
by the Government 196

Ex parte proceedings in chambers with Mr. O'Connor,
Mr. Wyrsh, and the Court 251

Ex parte proceedings concluded and conference resumed . 280

Reporter's Certificate 311

-*-

1
1
3
4
5
6
7
8
9
10 ~
11 ~
12
13
14
15
16 ~
17
18
19
20
21
22
23
24
25

Wednesday, January 8, 1997

(The following proceedings were had by telephone
conference call.)

THE COURT: Would everybody please identify
yourselves?

MR. BECKER: Good afternoon, Judge. Paul Becker.

MR. PETERS: And Pat Peters for George Frank
Sheppard, Judge. Good afternoon.

THE COURT: Good afternoon.

MS. HUNT: Susan Hunt on behalf of Earl Sheppard.

MS. FRANCO: Elena Franco is also here, Judge.

MR. BUNCH: Will Bunch on behalf of Darlene
Edwards. Good afternoon, Judge.

THE COURT: Good afternoon.

MR. OSGOOD: Judge, John Osgood on behalf of
Richard Brown.

MR. O'CONNOR: John O'Connor on behalf of Bryan
Sheppard. Good afternoon, Judge.

THE COURT: Okay. What I want to tell you all is
that I want to have an oral argument on the objections to
Judge Hays' report and recommendation on the statute of
limitations issue. And I, the reason I got you on the phone
wasn't to tell you that, but it was to talk about when we can
do it and then to give you a list of cases that I want you

1 to, you all to be prepared to discuss when we have the
2 argument.

3 The options that I see for scheduling the argument
4 are first thing Monday morning with the panel just having to
5 wait a little longer than normal before we call them up to
6 the courtroom; sometime Monday afternoon or evening,
7 depending on when we finish with the work for the day on
8 selecting the jury on Monday; or postponing the jury panel
9 coming in until Wednesday and have the oral argument on
10 Monday afternoon. And I want to raise -- those are the
11 options that occur to me. Or could postpone the panel to
12 come Tuesday, and then do the argument on Monday afternoon.

13 But those are the options that occur to me, and I
14 wanted to run them by you all and see if any of you have any
15 comments.

16 MR. BECKER: Judge, Paul Becker. I would prefer to
17 do the argument either Monday morning or Monday afternoon.
18 Based upon the continuance granted last week, I have
19 witnesses scheduled for later that week. And so to rearrange
20 the jury selection, and I think it might cause great problems
21 for Sue Kneuen to reschedule the jury for another time.

22 THE COURT: I talked to Sue about it, and I know
23 what the problems are, and it's doable.

24 MR. BECKER: I think we can either delay the start
25 of a general voir dire or the general voir dire won't be so

1 lengthy that we wouldn't have more time available on the
2 13th, Monday.

3 THE COURT: Anybody else have any ideas?

4 MR. PETERS: Judge, this is Pat Peters. My
5 preference would be taking it up on Monday and having the
6 panel come in on Wednesday. We've got -- I think all of the
7 defense attorneys would agree, we're somewhat frantically
8 involved in tracking down witnesses and things of that sort
9 that I think has an impact on the way that we're going to be
10 picking the jury anyway, if nothing else, from a strategy
11 standpoint.

12 And being real candid with you, I'm certainly going
13 to be filing something and doing the oral argument. It's a
14 point I'm interested in, but I think it would be, being
15 candid, I think I could also use the additional two days to
16 have a better idea as to the types of jurors that I'm going
17 to be wanting as I continue to talk to more of the witnesses
18 and get more of the discovery that's being disclosed.

19 So, being candid, the more time the better, and I'd
20 rather have the jury come in on Wednesday.

21 MR. BUNCH: Will Bunch, Judge. Whatever suits you
22 and everybody else. It doesn't make any difference to me.

23 MS. HUNT: Judge, this is Susan Hunt, and I would
24 join in with Pat Peters' request.

25 MR. O'CONNOR: This is John O'Connor. I'm kind of

1 with Will Bunch. One thing I wanted to bring to the Court's
2 attention. I didn't know if the Court had recent filings,
3 but filings have been made this week by Susan Hunt requesting
4 a reconsideration on the continuance request. The only
5 reason I bring that up -- and maybe you don't even want to
6 deal with that now. The only reason I bring that up is if
7 that's something that's going to be really considered by the
8 Court, having to recall the jurors and making all of those
9 calls to change it to Wednesday and maybe the Court
10 considering this motion and granting it, for example, then
11 she would have to call them all back again.

12 I didn't know if you wanted to deal with one
13 problem at a time, but this is something that's been filed
14 that maybe you don't know has been filed, and I'm just
15 bringing that to your attention.

16 THE COURT: No, I didn't know it had been filed.

17 MS. HUNT: It was filed on Monday, Judge.

18 THE COURT: I wasn't aware of that. I was aware of
19 the first request to continue, and it was my decision to put
20 off the beginning of the trial until Tuesday, the 21st.

21 LAW CLERK AIZENBERG: Judge, it's Gabi. I just got
22 the motion now, about a minute before we spoke.

23 THE COURT: Okay. If you all want me to -- if you
24 all want me to consider things that you file, I'd urge you to
25 deliver a copy to my office so that we'll know they've been

1 filed.

2 MS. FRANCO: Judge, this is Elena Franco. I spoke
3 with Judge Hays and hand-delivered a copy to chambers on
4 Monday and was told that that was, that it would come, it
5 would go to her attention. Now, I understand she's gone,
6 too. But we will certainly take anything further to your
7 chambers also.

8 THE COURT: Right. I think it would be helpful to
9 get it to me, too, because I think then, at least in this
10 period from now on, I need to be aware of whites going on, as
11 much as she does. I'm not saying leave her out, I'm just
12 saying let us both know.

13 MR. PETERS: Judge, this is Pat Peters. Joining in
14 on that point, I think that if the Court were to hear some
15 arguments on the motion to reconsider, it would be
16 persuasive. And in addition to that, all the defense
17 attorneys are then advised within the last, my call came at
18 2:30 our time, that we have an additional 184 pages of
19 discovery. And the witness list that Judge Hays has, it was
20 my interpretation that Judge Hays had directed that a witness
21 list with addresses be provided at the close of business last
22 Friday, that that is now available, as well.

23 My belief is that when I get the witness list and
24 when I get the additional pages of discovery that that
25 probably is going to be something that I'll be wanting to

1 bring to the Court's attention in support of the motion to
 2 reconsider the motion to continue. And so, going along with
 3 what Mr. O'Connor said, our belief is that if we have an
 4 opportunity to advise the Court as to what's going on and our
 5 situation, that there's a likelihood that you'd see fit to
 6 grant a continuance of more than the two days that we're
 7 talking about by delaying the start of the trial until that
 8 next Tuesday.

9 MR. BECKER: If I may, Judge the most recent
 10 discovery, the defense attorneys had requested that we update
 11 criminal records on certain individuals. We are doing that.
 12 It is being provided, and we'll continue to do that as I get
 13 updated criminal records on people that I was requested to
 14 do. I'm going to continue to provide it to them. I hope
 15 that's not the basis for further continuance requests.

16 MS. HUNT: Judge, this is Susan Hunt. And in the
 17 motion, it outlines one of -- the most recent basis for the
 18 continuance request is the Government's continued failure to
 19 abide by the Court orders. They were ordered in court on
 20 Friday to produce the addresses. They didn't do it. I
 21 understand they're now doing it today. We've been deprived
 22 of all that time.

23 MR. BECKER: Well, as I understand it from my
 24 witnesses, there's been people out visiting my witnesses on
 25 behalf of defense attorneys, which is certainly what they're

1 entitled to do, but they seem to be able to go ahead -- the
 2 original police reports weren't redacted so that any
 3 addresses that are on the police or ATF reports are there. I
 4 mean, again, we've discussed this matter, providing the
 5 witness list with the addresses. I told you it was going to
 6 take some time to put together. It's put together and it's
 7 available.

8 MR. PETERS: Judge, this is Pat Peters. And as you
 9 know, I'm new to this, but what Susan Hunt has just said, I'm
 10 unclear about that. The court ordered something to be done.
 11 Judge Hays ordered something to be done, and the response
 12 from the government is, well, you could get it another way.

13 MR. BECKER: Again, we could get the transcript,
 14 but I believe it was clearly understood, and I said on the
 15 record when the judge addressed this issue, when the
 16 magistrate addressed this issue, is that it literally was not
 17 physically able to get done on Friday afternoon, and we will
 18 be getting it done as soon this week as possible.

19 MR. BUNCH: Judge, it seems to me, and I apologize
 20 ahead of time if this is inappropriate, but these matters are
 21 going to have to be heard by you on Monday, I think. I don't
 22 think, you don't even have the motion. I can't see you
 23 ruling it here. And this is an argument that needs to be
 24 made in front of you.

25 I don't want a continuance, I'll be ready for

1 trial. That's neither here nor there. I'm just saying that
2 I think the Court ought to have the benefit of Miss Hunt's
3 motion and, frankly, that that matter ought to be heard.

4 THE COURT: Well, I intend to hear the matter, but
5 if it was presented to Judge Hays, it seems to me that she
6 ought to take it up first. But I don't have any -- I mean, I
7 don't want to be intruding in something that is being handled
8 by another judge. But my basic belief is that if a party's
9 ordered to do something, they'd better do it at the time
10 they're ordered to do it. And if they've got an excuse,
11 they'd better present that to the judge and get a continuance
12 or an extension of the time rather than just not do it. I
13 don't care what the excuse is.

14 MR. O'CONNOR: Your Honor, one of the practical
15 problems that this has raised is that we do have the witness
16 addresses in the files, and I've been out talking to people,
17 and some of the addresses are good and some of them aren't.

18 And I'm not complaining so much about that as I
19 would complain about the fact that when we went to see Judge
20 Hays on Friday of last week, it was my understanding that the
21 government was at least going to tell the judge who they
22 probably were going to call.

23 MR. BUNCH: That's my concern.

24 MR. O'CONNOR: So that we would know who was going
25 to be called and that the judge and you would know how long

1 the trial was going to last. And it was clear from Mr.
 2 Becker's -- in court he had some kind of a legal pad that it
 3 appeared that he had pretty much had his case mapped out, as
 4 I know he would in preparing it.
 5 So we have a list of witnesses that's five pages
 6 long, of which I don't know if he's going to call them. I
 7 doubt it. That's the problem. Not only do we not have the
 8 addresses, but I don't know which ones of these to go talk to
 9 or not to go talk to. If I really knew who was going to be
 10 lotted and the list was really pared down to who was really
 11 going to be there, obviously, we could effectively do our
 12 work. That's just a practical part of this.

13 MR. PETERS: For the Court's benefit, the witness
 14 list that we're talking about, and I could be off one, two,
 15 or three names, we're talking about 168 people that are on
 16 this witness list.

17 THE COURT: Well, Paul, why not give them the
 18 people you're going to call?

19 MR. BECKER: Because I believe, Judge, that as of
 20 today, I've told them for quite some time it's going to be
 21 approximately 115, 117 witnesses. And I think based upon the
 22 Jencks material, a statement of every one of those witnesses
 23 -- I mean, they can figure out which witnesses that pertain
 24 to their clients. I mean, there are 24 witnesses who say
 25 Richard Brown told me he did this. And there are

1 approximately seven or eight who say Skip Sheppard told me
2 that he did this.

3 And so if you look through the discovery that
4 they've been provided -- I mean, and the other defendants are
5 somewhere in between in terms of the number of witnesses they
6 admitted this to. If you look through that -- I mean, I'm
7 not the defense here. I've never been a defense attorney,
8 but it seems to me that that's where I would look as to the
9 witnesses that form the key part of the Government's case.

10 THE COURT: Paul, did I ask you for all of that? I
11 just asked you why you don't give them the names of the
12 people you're going to call.

13 MR. BECKER: The answer is I think they can figure
14 it out themselves.

15 THE COURT: Well, they may be able to. And I'll
16 accept that that they could figure it out or figure out part
17 of it. Why don't you give it to them?

18 I mean, and I even have another suggestion, which
19 may be even more to the point, why not give them the first
20 week's witnesses? And then -- so if it's too much of a
21 burden to give them the second week's witnesses right now,
22 you can give them the second week's witnesses by Friday,
23 say.

24 I've had cases that -- I mean, it's not unusual for
25 your office to furnish an order of proof at about this time

1 before trial where you lay out the people that are going to
2 be called, some summary of what they're going to say or what
3 you believe they're going to say, and the order in which
4 you are going to call them, all of which is very helpful to,
5 not only to me in figuring out how to plan the trial
6 schedule, but also it's helpful to the defendants.

7 MR. BECKER: Well, Judge, I agree. It's sort of
8 something in a normal case that we would do, I would do or
9 anybody else would do. This isn't a normal case.

10 THE COURT: And what's abnormal about it?

11 MR. BECKER: Six people are dead because of what
12 these defendants are charged with, six firemen.

13 THE COURT: Yeah, I understand that's what the case
14 is about, but what's that have to do with whether you do
15 this? I mean, that's the issue that the jury is going to
16 have to decide is who, if any, of these folks are
17 responsible. But why not give it to them? I mean, we've got
18 to try to the case. I mean, the fact that six people are
19 dead is a terrible tragedy, but, still, the case has got to
20 be tried.

21 MR. BECKER: I agree, Judge, but I don't see why I
22 should have to give them a road map of my case prior to the
23 trial. I see no reason to make their life easier.

24 MR. O'CONNOR: Judge, in just addressing that from
25 my standpoint, today I delivered my witness list and exhibit

1 list, and who those witnesses are and what they're going to
2 say are known and available.

3 I think the Court's practical approach to this,
4 since the government has taken this as a closed file case -
5 which they have every right to do, I'm not arguing with Mr.
6 Becker's way that he's done his case -- but the practical
7 reality of it is that we didn't get the stuff until 20 days
8 ago. And now trying to -- it took seven days to just
9 assimilate it, for me, my son, an investigator, and my
10 paralegal, just to put it all where I could work with it.
11 Now that I can work with it, you know, I'm doing the work,
12 but it's taking time.

13 And if we -- practically, if we had this
14 information, I wouldn't be requesting a continuance. And I
15 agree with Mr. Becker in some sense, yeah, I can see some of
16 the people he's definitely going to call, and I think he
17 makes a valid point on that. But it just would be simpler
18 for everyone and with constrained time, because we're being
19 paid by the Court to do all of these things, it just makes
20 sense for the orderly presentation of this case. Because
21 we're going to be forced, at least I think on behalf of my
22 client, to ask for more time during the trial to talk to
23 these people who I haven't had the opportunity to talk with.

24 So the practical reality of this thing is what
28 we're now having to deal with. So I think it makes great

1 sense to me that if we had the first week's witnesses or the
2 first two weeks and we could get them a week in advance, with
3 five good lawyers in this case who basically have the same
4 theory of defense, which is attacking the credibility of the
5 government's case, and we all basically have alibi defenses,
6 I think we can shoot through this and not have a problem. I
7 think everyone would agree with that. But I think we are
8 going to have a problem without it.

9 THE COURT: Well, the other side of the coin is, my
10 assessment of the matter has been, as you just said, that
11 there are five defendants with five lawyers, or more, lawyers
12 involved, and it seems to me that the work can be divided up
13 and can be analyzed and there can be a cooperative effort to
14 a certain extent by the defendants, which reduces the load on
15 any one defendant.

16 But all of that is, I mean, that's not news to any
17 of you. What I'm a little uneasy about, I could, I think I
18 could decide this matter pretty quickly, but I'm reluctant to
19 intrude on Judge Hays' -- this matter is in front of Judge
20 Hays, I think it ought to be decided by her first.

21 LAW CLERK BLISS: Judge, this is Suzanne Bliss, I'm
22 Judge Hays' law clerk. I received the motion for a
23 continuance this morning through the clerk's office. If a
24 hand delivery was made, I didn't see it. I've talked to
25 Judge Hays this morning, told her it was filed, but she

1 hasn't yet received a copy of it to look at. I basically
2 just went through the points that I saw. So she at least
3 knows one has been filed, but she has not yet seen the
4 document.

5 THE COURT: Well, I'm really puzzled, frankly, if
6 time is of the essence why something filed Monday doesn't get
7 called to anybody's attention until Wednesday. I know the
8 clerk's office's problem, or at least I've had to wrestle
9 with it before, why it takes them two days to get it to us,
10 or a day, depending on what time on Monday it was filed, is
11 another issue.

12 But I just urge you all -- if things were really as
13 tight as you say they are, it seems to me it's just
14 absolutely imperative that you make certain that you get
15 copies of these things to the judge that you want to consider
16 it and not just deposit them in the clerk's office and hope
17 that they'll finally find their way there. This is not a
18 matter of -- at least this point where it seems to me a delay
19 of this kind sort of argues against the imperativeness of the
20 relief requested. If you can't get them to the judge, it
21 doesn't sound very important.

22 But I'm going to leave it to Judge Hays. It's
23 pending in front of her. It's appropriately pending in front
24 of her, but I'm -- I mean, when I get, when and if I get
25 involved in it, I hope the remarks I made so far today give

1 you some idea of what may happen because I'm interested in
2 this case proceeding as smoothly and as fairly as possible,
3 to all sides.

4 And I'm not suggesting that, therefore, the
5 government has to do something that would irretrievably harm
6 their case if the law doesn't require that they do it. On
7 the other hand, my patience for persistent and consistent
8 legitimate requests for delay during the trial is going to
9 wear pretty thin too.

10 So we've got to, folks, we've got a case to try
11 here. We could quit -- it seems to me you can quit doing the
12 posturing and get on with the matter of trying this case.
13 And that applies to all of you, Paul included.

14 MR. BUNCH: Are you going to give us those
15 citations, Your Honor?

16 THE COURT: Yeah, I am. Let's decide the -- I
17 mean, in view of this matter of the request for a
18 continuance, which I have no idea what the outcome of it's
19 going to be. But in view of it, it needs to be resolved
20 forthwith and immediately. I mean, this is 24 hours too late
21 for it. It should have been done yesterday. And we need to
22 get that motion to Judge Hays, get the government's
23 opposition, if there is any, get it delivered to Judge Hays
24 forthwith, and give Judge Hays a chance to decide it. And
25 then if you need me, you can get ahold of me.

1 MS. HUNT: Judge, this is Susan Hunt. In addition
2 to this continuance, I filed a motion on behalf of Darlene
3 Edwards, Earl Sheppard, and Bryan Sheppard for severance way
4 back in July or August. I filed supplemental suggestions
5 yesterday. That's never been ruled on, which I don't have
6 the 10 days if it's adverse to me to appeal it to you at this
7 point.

8 THE COURT: Well, there's -- I have no -- Susan, I
9 don't know about that. I mean, you need to take that up, if
10 Judge Hays' clerk is there, I guess she is, she can take a
11 look at that. I assume that's where it is. Unless we've got
12 it?

13 LAW CLERK BLISS: I've got it, we're working on it,
14 and Judge Hays will sign it on Monday.

15 THE COURT: Okay.

16 MS. HUNT: Does she have the supplemental that was
17 filed yesterday also?

18 LAW CLERK BLISS: I got a copy of that, Susan. She
19 hasn't yet seen that document either, but I did receive that.

20 THE COURT: Okay. Therefore, what I think we'll do
21 with this, I think the thing that makes the most sense under
22 the circumstances based on what I now know -- and I stress
23 that because, I mean, you all are talking about things that
24 I'm hearing for the first time. And based on what I now
25 know, we'll go ahead with the jury selection on Monday, we'll

1 take this matter up, this motion that I want to have argument
2 on on Monday afternoon when we finish with whatever we're
3 going to do on Monday, and in that time ['11 consider -

4 But by that time, this continuance matter should be
5 resolved. I mean, I -- and, therefore, what I just said is
6 contingent upon the request for a continuance being denied.
7 If it's granted, then, obviously, what I just said is going
8 to be, we're going to have to reassess and we'll have
9 undoubtedly more time to do it. So. Okay?

10 MR. BUNCH: Yes, sir.

11 THE COURT: Now, the cases that I want you all to
12 look at -- and let me make a comment, first of all, on some
13 of the briefing. It's a waste of my time to read, and I
14 think it's a waste of everybody's time to have as much -- I
15 tend to, I don't want to be overly harsh with it, but as much
16 PR type stuff as was in defendants' joint motion filed back
17 in August. The second paragraph begins, "Defendants first
18 wish to make it abundantly clear that they're absolutely and
19 categorically innocent of the charge in this case." Then it
20 goes on to some other stuff.

21 We don't need that. I mean, I don't need to have
22 to wade through all of that. And the other parties don't
23 need to have to wade through all of that either. I mean,
24 they pled not guilty. That's -- they're presumed innocent,
25 but we don't need to put that in a brief that deals with

1 statute of limitations and unreasonable delay. So let's -

2 MR. OSGOOD: Judge, I wrote that, and the reason
3 that was there, quite candidly, was I didn't want the
4 newspaper coming along and saying we're trying to hide behind
5 a technicality.

6 THE COURT: I knew that. I figured that out.

7 MR. OSGOOD: My client was concerned, very
8 honestly, that if that were granted that he wouldn't be able
9 to establish his innocence. So that was the basis for that.
10 That wasn't done without some thought.

11 THE COURT: I knew it had some thought behind it.
12 But on the other hand, when you're wading through a bunch of
13 stuff and to spend a couple of pages talking about that -- I
14 mean, I knew why you did it, John. I mean, I figured that
15 out. I just -- if you have to do it, do it in one
16 paragraph.

17 MR. OSGOOD: I've done it now, so -

18 THE COURT: Okay. Here are the cases. The first
19 one is a decision of the Supreme Court of Florida. I'm only
20 going to give you the citation and the first name rather than
21 go through the whole -- the first name in the caption is
22 Renaldo Reino, R-E-I-N-O, 352 So.2d 883.

23 The next are companion cases out of the Eighth
24 Circuit. Coon, C-O-O-N, is the first-named party. It's Coon
25 I and II. Coon I is at 360 F.2d 550. Coon II is 411 F.2d

1 422.

2 Next one is U.S.A. -- well, Weddell, W-E-D-D-E-L-L,
3 Weddell is the named party other than the United States. And
4 that's at 567 F.2d 767.

5 MR. O'CONNOR: Was that 67, Judge? 67 was the
6 volume?

7 THE COURT: The volume was 567. The next one is
8 Watson. That's the second-named party. It's U.S.A. vs.
9 Watson, 496 F.2d 1125, a decision of the Fourth Circuit Court
10 of Appeals.

11 The next is U.S. vs. Kennedy, decision of the Ninth
12 Circuit Court of Appeals, 618 F.2d 557. And the last one is
13 one you're familiar with, United States vs. Manning,
14 M-A-N-N-I-N-G, 56 F.3d 1188.

15 MR. PETERS: Excuse me, Judge, 56 F.3d and then?

16 THE COURT: 1188. Okay.

17 MR. BUNCH: Yes, sir.

18 THE COURT: And I mean, those cases may well lead
19 you -- oh, and here is another one. United States vs.
20 McNally, M-C N-A-L-L-Y, 485 F.2d 398.

21 Now, these cases are going to expand, I think, the
22 consideration of this point, and expand in the sense that it
23 appears to be additional authority to what's presently been
24 considered in what I've seen. So some of them are familiar
25 to you, I'm sure.

1 But I'd like to have you be prepared to talk about
2 them and their impact on, if any, on the statute of
3 limitations question. I also want you to take a look at and
4 be prepared to talk about the issue that, and at least the
5 statement, the admission that Paul Becker took that the
6 government believes that the death penalty revision act of
7 1994 or whatever the proper name of it is, is really
8 retroactive and that it, but for a Department of Justice
9 policy, the death penalty could have been requested in this
10 case, using the procedures set forth in the new federal death
11 penalty act. So that's a second issue that I'd like to have
12 you take a look at. Okay?

13 MR. O'CONNOR: Your Honor, John O'Connor. Mr.
14 Becker gave -- I got his witness list. It's just been handed
15 to me, and I was going through it, and basically there's
16 about 160 witnesses, of which about 60 of them still say
17 address unknown, and 18 of them incarcerated with no address
18 of where they are. That's somewhat understandable.

19 But, again, that's 80, 78 people with no
20 information on them. The government says that they, they
21 don't have known addresses on them.

22 Just for example, this Kathy Marburger, they state
23 they don't know where she's at. And I found her yesterday
24 myself, and she called Mr. Becker, at least I was told that
25 she called him after I talked with her.

1 I don't know if these names are not being given for
2 their protection or whatever, maybe there's a legitimate
3 reason. I'm listed in the police computer as to where my
4 address is, and I don't have any criminal record but my
5 address is in there. I can't believe of these 68 people or
6 sixty some that says address unknown that that can be a fact.

7 THE COURT: Paul?

8 MR. BECKER: Judge, I've been in the courthouse all
9 day, and we'll go through each individual that doesn't have a
10 listed address. I believe for the most part we have
11 addresses listed for the people we either had an address for
12 before or that we've talked to in the last two weeks
13 preparing for trial.

14 Miss Marburger called in yesterday and talked to my
15 paralegal. I don't know if she left an address. I'm sure,
16 you know, John knows where to find her. He was outside her
17 door yesterday. I'm sure her address was in the reports.
18 But, again, this is something that we'll address
19 immediately. I think if -- there's always going to be one
20 instance that they can point out and say, my goodness, they
21 don't have the address. But if we all would just either open
22 up the reports that have been provided to all parties or open
23 up the phone book, I think perhaps we can make more
24 progress.

25 MR. O'CONNOR: Judge, if I could just speak to

1 that, one of the things I do is go out and try to talk to
2 people. And I have -- and Mr. Becker is right in the sense
3 and wrong in a sense. Is that some of the addresses are good
4 and some of them are not good, and they're -- some of these
5 people were interviewed back in 1989. And I know police
6 computer prints out when people get tickets, updates their
7 address and all of that kind of stuff to give current
8 addresses. But there's 60, I counted 60 people that say
9 address unknown. That cannot be. Almost all of these people
10 have criminal records to start with, so I know they're in the
11 computer. And the ones that are incarcerated, that makes
12 sense not saying where they're at maybe for their
13 protection.

14 But there cannot be 60 that are unknown. Now we've
15 got about the same witness list we had last week with a few
16 more addresses on it. And to go out and check these, he's
17 right, I can open the file. But I can tell you I was out
18 yesterday, I went to ten addresses that were no good, and we
19 didn't find the people. How I found Marburger was I found
20 her daughter, and she told me where she was living, and then
21 we went down there.

22 So I can tell you that I have looked at some of
23 these addresses. Some of them are good, but some of them are
24 not. So I'm spending four hours yesterday going to addresses
25 with a court reporter that are no good. So where I could

1 have been if I had a real address -- I'm sure if you ran some
 2 of these through a police computer right now, they would give
 3 a pretty current address. I don't know if they're allowed to
 4 do that for purposes of witness lists, I'm not sure of that.
 5 But this says enclosed is government's list containing all
 6 known addresses. And I just cannot believe there's been a
 7 good faith basis for these last-known addresses. With the
 8 use of the police computer, there would be an address versus
 9 address unknown.

10 MS. HUNT: Judge, this is Susan Hunt. In addition
 11 to that, the government filed a motion for protective order
 12 to not disclose two witnesses, which Judge Hays denied Friday
 13 in court, ordered him to produce those witnesses. He said he
 14 was going to appeal it to you. We have not, No. 1, seen any
 15 appeal filed, nor do we have those names.

16 MR. BECKER: That was filed on Monday and sent to
 17 Miss Hunt's office, and a copy was delivered to chambers.

18 MR. O'CONNOR: Judge, I got a copy of that motion.

19 MR. BUNCH: I have it too.

20 MS. HUNT: I have not received it.

21 THE COURT: You all, in the modern age, you all are
 22 really having communication problems, aren't you? I mean,
 23 this is 1997, folks, and you all are having all of these
 24 problems communicating with each other.

25 MR. O'CONNOR: Your Honor, this is John O'Connor.

1 I think what's gone on here, everyone is advocating their
2 position to the best of their ability. I'm doing it, Mr.
3 Becker is doing it, I respect him for it.

4 I just think we've reached the point -- and like he
5 said a minute ago, I don't think I have to give them to them
6 because that's their job. I don't mind him taking that
7 position. Maybe I would take that position, too, if I was
8 the prosecutor and had six people who were dead. I see where
9 he's coming from.

10 But the practical reality is we've got to try this
11 case, and we've got to try to go out and try to interview
12 these people on behalf of our clients so that we're not
13 ineffective, so he's not trying this case again because I'm
14 going to have to say, no, I didn't get to talk to these
15 people because he told us address unknown. If he was on the
16 stand later in one of these hearings, I imagine they could
17 make him look pretty foolish by saying, well, wait a minute,
18 did you run the police computer to get these addresses so you
19 could get it to these people?

20 I mean, we're all trying to advocate our positions
21 to the best of our ability. He's doing it, we're doing it.
22 But we need a referee, which is you or Judge Hays, to say,
23 all right, here is the way the rules are going to be and here
24 is what you do.

25 Because I think the practical reality is that

1 you're going to visit us next week either after Judge Hays
2 either rules against us and we're going to be back saying we
3 want the continuance and giving pretty good reasons why. Mr.
4 Becker is probably going to have good reasons why we
5 shouldn't have one. But we're still going to have to deal
6 with this case. And I think we need a referee to say this is
7 the way it's going to be and let us run with it, whatever it

9 MR. PETERS: Judge, this is Pat Peters. Echoing
10 what John said, the defense is put in a position of we don't
11 get something that we think we're entitled to, we file the
12 motion, we have a hearing and the judge says, here is what
13 you're supposed to do, government. You're supposed to do
14 Brady on this date, you're supposed to give all discovery of
15 Jencks Act on this date. You're supposed to give your
16 witness list on this date.
17 And the judge is, we have made the judge aware that
18 these things aren't happening. And so we're in an awkward
19 situation of we have advised Judge Hays that we didn't get a
20 witness list, we didn't get some of the Brady material, and
21 we're in a position now of, as you have heard in this
22 conversation, it's not denied that a witness list was ordered
23 by the omnibus hearing, Judge, for 10 days prior to trial,
24 and the witness list should contain witnesses and addresses.
25 And Friday, 10 days before the hearing, that wasn't

1 done. And attorneys are now getting those witness lists that
2 were ordered at the omnibus hearing, and we have sixty some
3 names without addresses.

4 I guess my question is procedurally, what do I
5 file? What do I file to say, Judge, what you ordered wasn't
6 done and you've ordered them to do it again, and it wasn't
7 done when, at least in the view of the defense attorneys, the
8 Court has been apprised of that. At Friday's hearing, Judge
9 Hays knew that the government had not provided addresses.
10 What do I file?

11 THE COURT: Well, I don't know, but you see, my
12 problem is -- I mean, the thing is, Judge Hays is, I mean,
13 she's the one that ordered this stuff to be done. And if
14 it's not being done, she's the one at the first level that
15 ought to hear the matter, determine what an appropriate
16 resolution is. If a sanction is appropriate, she ought to
17 impose a sanction.

18 But whatever is -- I mean, this is consistent with
19 what I have heard for weeks about this case is that for some
20 reason nobody seems to be able to do what they're supposed to
21 do at the time they're told to do it. And, you know, once
22 she's decided it, if somebody wants to bring it up with me,
23 you don't need to file anything in writing, call Gabi and
24 tell him you need to talk to me, we'll set up a telephone
25 conference, and I'll do it. But in fairness, she should have

1 the first opportunity to decide it. But you all need to get
2 it in front of her.

3 MR. PETERS: Judge, this is Pat Peters again.
4 Because we were so close to trial and there's this -- on
5 three of the issues, we were, as defense and for the
6 government, technically we're supposed to wait for the
7 magistrates recommendation and all of that, and we're
8 running close to time.

9 And at the close of the hearing, it was my
10 understanding, and I could be wrong, and the other attorneys
11 will correct me if I'm wrong, but the way that I thought it
12 had been left on witnesses or objections to her overruling
13 the continuance, and I forget what the third one is, I
14 apologize. But she said, "Judge Bartlett and I are going to
15 be out of town, and thatch something that you will be taking
16 up with Judge Bartlett on Monday."

17 And so that was -- I didn't feel like I should file
18 an objection to the yet-to-be-written recommendation denying
19 the continuance because I was under the impression that it
20 would be something that would be taken up on the 13th. So I
21 apologize if I misunderstood that.

22 THE COURT: Well, again, Pat, I don't know whether
23 you misunderstood it or understood it correctly, I don't
24 know. But all I'm saying is I want the continuance matter
25 resolved immediately because I don't want to bring these

1 folks in, I don't want to disrupt this panels life, 105
2 people, bring them in here, if this case is going to be
3 continued for a substantial length of time. I mean, it's
4 just not fair to them. And I want to do it, I want to get it
5 resolved immediately.

6 Now, if Judge Hays is not available, I'll take the
7 matter, I'll decide it. But in fairness, she ought to have
8 the first crack at it because she's the one that's been
9 handling these things up to now.

10 So that's where I am. Is Judge Hays available to
11 consider this new continuance request?

12 LAW CLERK BLISS: I spoke to her today, Judge. She
13 was -- like I said, she hasn't seen it. I'm going to fax it
14 to her tonight. She did tell me she would be at her hotel
15 all day tomorrow, so I would think she could set something up
16 tomorrow.

17 MS. HUNT: Judge, this is Susan Hunt. Is there any
18 way we could get any kind of hearing on this motion prior to
19 the decision?

20 THE COURT: A hearing? You mean -

21 MS. HUNT: A telephone conference with Judge Hays.

22 THE COURT: Rather than a telephone conference with
23 Judge Hays, or does the hearing include a conference with
24 Judge Hays?

25 MS. HUNT: Either a hearing or a telephone

1 conference.

2 THE COURT: I don't know. If you request it, I
3 don't know what Judge Hays will do. I mean, I would assume
4 if you request it right now, maybe something can be arranged
5 for tomorrow morning. And then as soon thereafter as
6 possible, she could let you all know what her position is on
7 it. And then if you are in disagreement with it, you can set
8 up something with me, and I'll be glad to consider it.

9 MR. O'CONNOR: Judge, when do you have to let the
10 jury person know what we're going to do with the jury next
11 week? When does she have to have her information?

12 THE COURT: An hour from now. Well, actually it
13 may be too late right now. But I mean -- the procedure I
14 talked with her about this morning, which, in order to be
15 able to present various options to you all involved her
16 sending out letters today, or maybe tomorrow would be in
17 time. I'm not too clear about that. And then following up
18 with telephone calls for all hundred and probably four people
19 that are left. One was excused, and I don't know the
20 identity of the person, by Judge Whipple because she's
21 serving on a jury in Jackson County right now.

22 LAW CLERK AIZENBERG: I believe her name is
23 Kathleen Johnson. I'll get the number.

24 THE COURT: We're down to 104, I guess, now. But
25 anyway, the procedure in order to be sure and interrupt these

1 people is going to be a letter followed by a telephone call
2 if that is determined to be the option. So preparing 104
3 letters, making 104 calls, obviously, things need to be
4 decided pretty quickly.

5 MR. PETERS: Your Honor, jumping in again, this is
6 Pat Peters. I think from the discussion that we've had, at
7 least in the minds of those of us on this end of the phone,
8 there are substantial issues that have yet to be resolved,
9 and it seems to me that having the jurors come in on
10 Wednesday at least gives us that added margin of not
11 disrupting them on Monday when issues that on the one hand
12 what you're asking us to brief could be case dispositive and,
13 on the other hand, issues to be taken up with Judge Hays, at
14 the earliest, tomorrow would be decisive on whether or not
15 there would be a continuance.

16 So, again, I make my suggestion that if letters
17 have to go out, rather than run the risk of having them all
18 show up Monday and these issues not having been resolved,
19 that we do it on Wednesday, Judge, for the sake of the jurors
20 not being disrupted.

21 THE COURT: Well, what is the -- I mean, one thing
22 that would be important to me if I were deciding it is what
23 is the, how much time do you think is going to be necessary
24 for individual voir dire?

25 MR. PETERS: This is Pat Peters. Mr. Becker and I

1 talked, and I think among the defense attorneys, we think
2 that the individual voir dire is going to go very fast.
3 We've narrowed it down to publicity. I think there will be
4 very few people other than that. Mr. Becker was given a
5 combined list, and I think it's everybody's opinion that both
6 general and individual will be done in two days and, kind of
7 allowing slop room, into two and a half days. Is that fairly
8 accurate, Paul?

9 MR. BECKER: I believe that's right. There's -
10 Miss Franco added some names on Tuesday after the list was
11 submitted to Judge Hays on Monday. And I think with those
12 additions, we have about 40 individual voir dire. And Judge
13 Hays was going to schedule 15 minutes per person and some 20
14 minutes. But overall, it looks like it's doable in one day,
15 the individual voir dire. The general voir dire, I frankly
16 think we can get done on Monday morning.

17 LAW CLERK BLISS: Judge, this is Susan Bliss again
18 from Judge Hays' chambers. And I've been down to speak with
19 Sue Kneuen right before this meeting. We're now down to so
20 jurors that require individual voir dire. We were going to
21 schedule approximately 20 minutes per juror to give time to
22 make objections and whatever. So that would run roughly two
23 and a half days for the individual.

24 THE COURT: If we bring the jury in -- the problem
25 now, if we bring the jury in on Wednesday, then we're not

1 going to finish the jury selection until we go over the
2 three-day weekend into the next week.

3 LAW CLERK BLISS: If the general were done in the
4 morning, and I'm not sure how much time, we could start the
8 individual Wednesday afternoon, and then it should be done by
6 Friday afternoon.

7 MR. PETERS: Judge, this is Pat Peters again. And
8 I've done, as you have, I've done quite a few of the
9 individual voir dires. Publicity, unlike death
10 qualification, and Mr. Becker and I have talked, I think it's
11 going to go, it's going to go very fast. We've listed people
12 who have read about it, and it's going to be -- on a lot of
13 these people, I honestly think it's going to be a follow-up
14 of can you be fair and impartial.

15 And Mr. Becker and I have talked about that. If
16 the judge is scheduling longer periods, we'll work with that
17 schedule. But this is a case everybody has read about. We
18 expected lots of people to say that, but I think we're going
19 to find that there are very few people who are going to say
20 the "I don't know" or "I'm not sure, question that requires
21 any type of follow-up. And I think that's why the defense
22 attorneys and Mr. Becker believe that the individual
23 questioning is not going to be like a death qualification,
24 but basically what you would ask in a general voir dire, but
28 don't for fear of the three, four, five people who are going

1 to say, yeah, I know who did it.

2 MR. O'CONNOR: This is John O'Connor, Judge. I'm
3 going to give you two case scenarios. Let's say, for
4 example, the case was going to be continued three weeks, for
5 example. Would you still want to get the jury picked and
6 then have the jury selected and sent home, knowing that
7 they're going to come back in three weeks? Or would you
change your whole plan as it related to that aspect of jury
9 selection? Would you have them come in in three weeks?

10 And the only reason I say that is if the motion is
11 going to be granted, we may be, you know, not going to have
12 the jury in. Or are you going to have them in anyway, and
13 then if we get them picked, you'd send them home for three
14 weeks?

15 THE COURT: I haven't thought about it. I mean, I
16 haven't thought about it because I'm dedicated right now to
17 starting the trial on the 21st of January. So I really
18 hadn't thought about what I would do if I -- I mean, I
19 thought we'd crossed the continuance bridge when we dealt
20 with it last week or whenever it was, and Judge Hays and I
21 decided what the schedule would be.

22 But I expected everybody to do what they were
23 ordered to do, and that's, you know, if I find they didn't,
24 they -- I mean, then this is a good example of the disruption
25 that not doing what people are told to do causes. And we're

1 talking about 104 people, folks, whose lives we're
2 disrupting. And not that I'm saying this isn't for a good
3 cause, but it's not for, it's not something that we should be
4 cavalier about and think that we can just intrude on their
5 lives just for the fun of it.

6 And that is why I wanted to, that's why I dealt
7 with, I thought I dealt with the continuance matter last
8 week. As far as I'm concerned, it's dealt with. I mean,
9 it's finished.

10 MS. HUNT: Judge, this is Susan Hunt. I know you
11 have not had an opportunity to read this motion to reconsider
12 the continuance motion, but it does deal with three bases for
13 continuance, and those three things are three court orders
14 the government has totally ignored.

15 THE COURT: Well, if the government has ignored
16 court orders and is causing this problem, then there's,
17 something has got to happen. And I don't know what it's
18 going to be, but something is going to have to happen because
19 this is -- I mean, too much thought, too much effort, too
20 much time has gone into planning this case. And if it's
21 being, if it's being handled in a manner inconsistent with
22 the way it should be handled and the way I am pretty clear
23 it's been communicated to you all it would be handled, then
24 something is going to have to happen. And I have not the
25 foggiest idea of whether anything should happen and,

1 furthermore, I don't have the foggiest idea of what will
2 happen if I determine somebody has not done what they were
3 supposed to.

4 But if there's one thing that I can communicate to
5 you all, and you'd better get doing, is if you're ordered to
6 do something, you'd better do it. And if you can't do it,
7 you go to the judge who ordered you to do it and say, Judge,
8 I can't do it, will you give me more time to do it? But the
9 unacceptable alternative is just not to do it. And that
10 applies to all of you.

11 But that seems to have been the history of this
12 case, I mean, from what I hear. So you all -- right now, I
13 mean, I wish I were free to deal with some of these things
14 because I think we could make some substantial headway, but I
15 want Judge Hays to deal with them. And if Judge Hays can't
16 deal with them tomorrow morning, then I want to hear from you
17 all tomorrow afternoon, and I'll take care of them. Okay?

18 MR. BUNCH: Yes.

19 MS. FRANCO: Judge, before we leave, I commented to
20 you that I had dropped off a copy of that at chambers when we
21 first started the conversation, and I apologize. I looked
22 through my documents that are file-stamped, and what happened
23 is Monday we were anticipating receiving the addresses with
24 the witness list. I spoke with Mr. Becker in the morning,
25 and he said we should not be expecting it on Monday.

1 We went ahead and drafted that motion on Monday,
2 and by the time I got down to the courthouse, I had to leave
3 it with the marshals. I was confused because yesterday I
4 delivered copies to chambers on the other motions that we
filed.

6 So in fairness to Judge Hays, she had not received
7 that, and I gave you some misinformation. We should have
8 faxed it and told them it was coming, but, frankly, we've
9 been shaking our tails so long and so feverishly that it
10 escaped us, frankly.

11 So my apologies for that because I see that that's
12 definitely caused more of an inconvenience now.

13 MR. PETERS: Judge, Pat Peters. Procedurally, with
14 the Court's permission, I know we always file stuff with the
15 court. We filed some things with the clerks office, and my
16 investigator should have hand-delivered, for example, our
17 witness list to your clerk. If he didn't, I'm going to shoot
18 him. I didn't say shoot him.

19 My understanding is at the close of Friday's
20 hearing is that any motion to reconsider the overruling, the
21 denying of the continuance would be taken by you. If we He
22 going to hear this, I would like to put together very
23 succinctly, and if you want me to, I'll limit it to a page,
24 of my reason for reconsideration.

25 Would it be acceptable to fax that to the Court so

1 that both Judge Hays and your clerk could have it, just so
2 that we don't run into this problem? If my investigator
3 hand-delivers it, fine. But it could be done tonight and I
4 could fax it at night, and whatever time, it gets there. But
5 I'm feeling awkward because I thought this was something that
6 I wouldn't be having to do until Monday. But there would be
7 specific things that I'd very briefly like to point out to
8 the Court as to why the motion should be reconsidered.

9 I guess my question is, is faxing something going
10 to be acceptable, provided we also make an effort, you know,
11 to hand-deliver it?

12 THE COURT: Pat, wait a minute. If you fax it, you
13 don't need to hand-deliver it. I mean, I don't -- this isn't
14 an effort on my part to see how unreasonable I can be. If
15 you fax it and then let my office know that you're faxing it
16 so we know to expect it so if there's some problem and we
17 don't get it, we know we haven't gotten something, that's all
18 you have to do.

19 MR. PETERS: I'll take that up with the clerk when
20 we're done because I'll have something tonight for him.

21 THE COURT: But any request to reconsider a ruling
22 on a continuance, it seems to me, has to go to Judge Hays. I
23 mean, I'm -- as far as I know, she's the one that entered the
24 order last week on the continuance, after she and I talked
25 about it. But she entered the order on that, so it's her

1 order you're asking her to reconsider.

2 Now, do you want me to, if for some reason you want
3 me to take a look at what she did last week, then that's
4 another matter. But if you're asking for reconsideration,
5 that's got to go to the judge who made the decision, Judge
6 Hays.

7 But my concern about this and this whole matter of
8 this continuance is it's not helping anybody, it seems to me,
9 to be, to have this issue of a continuance hanging over this
10 case. I mean, the case is either going next week or it's not
11 going next week. And as far as I'm concerned, it's going
12 next week with jury selection, the case starts on January the
13 21st, and that's the way it is. Now, what efforts to get
14 reconsideration, what efforts there are to bring up new
15 reasons for a continuance that have occurred since the
16 original motion was granted or denied is all -- I mean,
17 that's all that would bear, I guess, on reconsideration if
18 there's been further activity.

19 But, Paul, there's no faster way that I can think
20 of to end up with a case being continued than for you to not
21 do what you are ordered to do.

22 MR. BECKER: Judge, I believe I've absolutely done
23 what I've been ordered to do. The Brady information that was
24 produced after the due date of the Brady production was
25 materials I discovered. Brady is an ongoing obligation, and

1 if I find more tomorrow, I'm going to turn it over. I don't
2 think there's more out there, but this isn't a simple case
3 where there's one file. There are 900 files that I plowed
4 through prior to November 26th. But if I find something
5 tomorrow, I'm going to turn it over at the risk of, you know,
6 getting a continuance. You know, I have an ongoing
7 obligation to do that.

8 The materials they're continuing to get are
9 materials they've requested. Mr. Bunch in a timely motion
10 requested that I rerun one of the, all of the criminal
11 background records of the government's witnesses. We are
12 doing that. And in some cases, they contain more information
13 than has already been provided. But we're going ahead and
14 doing that.

15 THE COURT: But, Paul, what about these addresses?
16 I keep coming back to this business on the witnesses and the
17 addresses. Now, I mean, if you were ordered to do it 10 days
18 before trial, are you telling me that you have given the
19 defendants every address that you've got and that all the 65
20 people that are unknown, you don't have any idea how to get
21 ahold of them?

22 MR. BECKER: I'm going to personally go through
23 that after we get off the phone, Judge. I'm comfortable that
24 the majority of them we don't have addresses for them, which
25 may say a lot about their status as witnesses.

1 THE COURT: That's what I was thinking. If you
2 don't know how to get ahold of these people, I mean, if you 3 don't know
how to get ahold of them, how can they be viable 4 witnesses? And it seems to
me that right then and there
5 ought to be a way for you to at the very least, even if you 6 don't buy the
suggestion I tentatively made earlier for you 7 to give the defendants two
lists or a list divided in half, 8 the first group of people are probable
witnesses, likely to 9 be witnesses, not guaranteed, but likely to be
witnesses.

10 And here are the addresses for them, or here is how we get
11 ahold of them. If all you've got is a telephone number, this
12 is how we get ahold of them. We may not know their address,
13 but we do know a telephone number and this is how we contact
14 them.

15 Now, the next group are people that are right now,
16 not restricting you from changing your mind or developing it
17 later, but right now are perceived to be unlikely to be
18 actually called at trial, but are people who you're putting
19 on your witness list in conformance with the requirements so 20 that the
defendants know, have notice that they could be
21 witnesses but you don't think, it's unlikely they're going to 22 be. And
these folks would include, I assume, the people who
23 you don't either have an address or a telephone number for, 24 so if you
don't know how to get ahold of them -- except the 25 people that are in
prison. And that's another situation.

1 Now, why can't you do that for them? That doesn't
2 do much of anything.

3 MR. BECKER: I will do that. I'll work on it
4 tonight. It will be typed and available tomorrow morning.

5 THE COURT: I mean, that seems to me to be a
6 legitimate step to solving some of these problems and helping
7 the defendants now. And what I'd like to have you do, if one
8 of the defendants has a name or names that they're interested
9 in talking to but they don't know whether they're on the
10 likely-to-be-called list or the unlikely-to-be-called list,
11 if they call you and ask you, why don't you just tell them?

12 MR. BECKER: That's fine, Judge, I'll do that.

13 THE COURT: Say, hey, that name is probably going
14 to be on the unlikely list. But, you know, it seems to me
15 that way you help these folks out, and by helping them out,
16 it seems to me, you're not hurting yourself, you're really
17 helping yourself. Because you're, the case, if it goes to
18 trial, these folks are, the defendants are going to probably
19 be asking for time to talk to these people, and all it does
20 is disrupt the presentation of your case if I give them the
21 opportunity to do it, and so your case goes in herky-jerky
22 rather than smoothly, which isn't something that you want to
23 have happen. So the way to guard against that is to try to
24 help these folks a little bit at this point with giving them
28 information.

1 Is that, am I making sense, or are you going to
2 tell me that I'm intruding on prosecutorial prerogatives or
3 something?

4 MR. BECKER: You are doing that, Judge. But I will
8 agree fully to do that. I will make a list of the probable
6 witnesses with their addresses, and I will make a list of the
7 unlikely witnesses with the addresses and provide that. I
8 would believe that would be ready tomorrow morning for the
9 defense attorneys.

10 THE COURT: Okay. No later than noon tomorrow.

11 MR. BECKER: Fine.

12 THE COURT: Okay.

13 MR. OSGOOD: Judge, I have one other question.

14 THE COURT: Yeah.

15 MR. OSGOOD: Are you aware that, or have you picked
16 up on the fact that I had requested in addition as part of
17 the statute of limitations argument, pre-indictment delay
18 phase, I had suggested that the burden shifted to the
19 government, citing a couple of speedy trial cases, quite
20 frankly, and was suggesting the Court should require the
21 government during the course of the trial as an alternative
22 to a hearing to both on the record and/or where necessary off
23 the record, I mean, out of the presence of the jury make an
24 affirmative showing of the absence of prejudice and that the
25 Court should make some kind of a preponderance ruling at the

1 close of this case, much like a Bell ruling? Are you aware
2 that we've taken that position?

3 THE COURT: Well, I remember reading that, yeah.

4 MR. OSGOOD: Well, I take it you're not interested
5 in hearing anything about that now.

6 THE COURT: No.

7 MR. OSGOOD: Okay.

8 THE COURT: I mean, John, I shouldn't say that.

9 MR. OSGOOD: I understand you've only got limited
10 time. I think that issue, obviously, the law is against me
11 on that. And it's a point that I wanted to make. It's a new
12 rule. And as long as it's preserved and you're aware of it,
13 that is fine.

14 THE COURT: I'm aware of it, and in the ranking of
15 things that I'm interested in, I'm most interested in at this
16 point the statute of limitations matter. And my thinking on
17 that had been that we're going to have limited time for the
18 argument, and that's why I got the cases to you all rather
19 than for me to spring these cases on you during the argument
20 and for you to say, either that you'd read them and didn't
21 have them there with you, or that you hadn't had a chance to
22 read them yet, I thought I'd give them to you to try to speed
23 it up.

24 But I didn't mention that other matter because I
25 believed it was not, at least in my mind, in the same

1 category as the statute of limitations matter.

2 MR. OSGOOD: And I agree. Thank you.

3 THE COURT: Okay. Anything else?

4 MR. BUNCH: Not from me.

5 MR. PETERS: Not from me.

6 MR. O'CONNOR: I don't have anything else.

7 MS. HUNT: No, Your Honor.

8 (Phone conference concluded.)

11 **Monday, January 13' 1997**

13 (General voir dire examination was conducted; after
14 which the following proceedings were had in the courtroom in
15 the presence of the defendants, but out of the presence of
16 the jury panel:)

17 THE COURT: Okay. Now let's take up this motion.

18 MR. PETERS: Judge, excuse me. This is a quick
19 one. The Court's several times talked about counsel dividing
20 up workload. This is one where the counsel divided up
21 workload specifically for this purpose. The other counsel
22 and I have discussed, I'm prepared to argue the motion,
23 answer any questions. We've got witnesses to interview and
24 if -- we discussed it amongst ourselves -- some of the
25 attorneys may stay, but the other attorneys joining in the

1 motion will waive objections and whatever we need, but we've
2 got other things that we'd like to do. And for that reason,
3 everybody provided research to me, I wrote the motion,
4 everybody says, argue it. I think maybe one or two of the
8 other attorneys will stay, but they asked me to just say is
6 there a problem with the attorneys not involved with the
7 argument leaving.

8 THE COURT: Is the fear factor so great that they
9 have to put you forward to do that, or could they do it, do
10 you think? I mean -

11 MR. PETERS: You're shaking your head, Judge. I
12 thought you were going to yell at me.

13 THE COURT: There's no, you're not chained in
14 here. If any of you want to go, you know, you don't want to
15 stay around for this argument, just tell me and you're
16 excused.

17 MR. O'CONNOR: I request to be excused.

18 THE COURT: Yes, Mr. O'Connor. Miss Franco, yes.

19 MS. HUNT: I'm requesting to be excused.

20 THE COURT: Miss Hunt, yes. Now, your clients are
21 okay with this, are they? I want to be sure the clients are
22 okay. They have their lawyers walk out and leave them. You
23 know, it's sort of an empty feeling to have your lawyer walk
24 out the door and leave you sitting in the courtroom. But if
25 they're okay with it, I'm all right. I mean, I just -- I

1 mean, this is your opportunity to tell me about this
2 particular motion. Anybody else who would like to go work on
3 investigation rather than sit here?

4 Okay. Now, the history of this matter, as you
5 know, is that the motion was filed, Judge Hays gave her
6 report and recommendation, there was an appeal from the
7 report and recommendation.

8 After Mr. Aizenberg and I have done some research,
9 it was my belief that we needed to bring to all of your
10 attention certain cases that we have found for the purpose of
11 giving you an opportunity to share your comments on those
12 cases as it relates to this motion. That's what this is is
13 an opportunity for you to tell me what your position is with
14 regard to this motion, in light of the cases I gave you or in
15 light of any other cases you found as a result of those
16 cases.

17 Proponents of a motion should probably go first, or
18 the proponents of the objection. So Mr. Peters, are you,
19 you're the, you say you're the elected representative?

20 MR. PETERS: That I am, Judge. And for purposes of
21 this, I'm assuming what we're really doing is almost like if
22 we were in front of the Court of Appeals where if you, if I'm
23 saying something that you have a question about or you
24 disagree with, I would appreciate it if you would interrupt
28 me as opposed to in a regular courtroom setting, post-trial

1 an attorney would say the judge wouldn't let him finish. I'm
2 specifically, if there's any objection, I'm waiving that for
3 all of this. We're viewing this as more like oral arguments
4 in front of the Court.

5 Beginning with, we appreciate the opportunity to
6 address the issue. There was a certain amount of irony in
7 the order of cases that were provided by the Court to counsel
8 because the order of the cases almost spelled out the
9 argument.

10 We began with the Florida case, which I don't know
11 how somebody found because we had not found it. We had
12 researched the issue -

13 THE COURT: See him sitting over there? Mr.
14 Izenberg.

15 MR. PETERS: I'm paying a compliment without
16 directing it that direction.

17 As you know, we're all appointed attorneys. We do
18 have Eighth Circuit -- Susan Hunt has Eighth Circuit
19 Westlaw. None of the rest of us have access to Westlaw, so
20 our searches are limited to the old manual style without
21 getting into the \$150 a minute, or whatever Westlaw is.

22 But the Florida case, which is not cited by any
23 other court in any other jurisdiction in any other opinion,
24 according to Shepard's is, again, hardening back to law
25 school, is on all fours.

1 It's the most -- when I walked into the law school
2 and I pulled the case and I began reading the headnotes, I
3 started kind of shaking, and as you get into the body of it
4 -- and I won't recount. If the Court wants me to recount
5 the cases, I'll be glad to do it.

6 But the core issue facing the Florida Supreme
7 Court, a state that is more pro-death penalty than, perhaps,
8 any state in the country with a very pro-death penalty
9 Supreme Court, a Supreme Court that has been chastised by the
10 federal courts for not providing defendants with sufficient
11 due process rights, that's the Supreme Court we're talking
12 about, in the 1970's they're confronted with the exact same
13 issue as in this case.

14 What happens when you have a statute of limitations
15 that uses, not a general term of art like capital cases, but
16 a specific term of art, capital offense, that the statute
17 defines itself. What do you do in a case like that where by
18 operation of a U.S. Supreme Court case, which is binding
19 precedent on all cases, all jurisdictions, what do you do
20 when Furman comes out and eliminates the possibility of the
21 death penalty?

22 Florida, like the federal government, tied their
23 statute of limitations, not to serious crimes like some
24 states have, not to murder offenses like other states have,
25 not to A class felonies like some states have. They tied the

1 statute of limitations to those offenses punishable by
2 death. The Florida statutory scheme mirrors the federal
3 statutory scheme.

4 What made the Florida case kind of interesting is
5 in Florida they didn't wait 22 years like the United States
6 Congress did to reenact the death penalty. Florida, I think
7 it was two months and two days, they had a new statute on the
8 books, and I'm going from my being on the other side as a
9 prosecutor, a death penalty prosecutor. My recollection is
10 that statute they put on the books that first time was one
11 that was approved ultimately in the Gregg v. Georgia group of
12 cases. Florida has a guided discretion scheme that has been
13 approved.

14 So the issue confronting the Florida Supreme Court
15 was the exact issue confronted by this Court. You have a
16 period of time where Furman, by operation of law, means that
17 you can't put anybody to death, period. And you have a crime
18 committed during that time period, and they're brought to
19 trial at a time after the statute of limitations would apply
20 for a capital offense punishable by death. So the Florida
21 Supreme Court did the analysis that they began where you're
22 always supposed to begin, which is statutory construction.

23 Statutory construction was a no-brainer for them.
24 words mean what words mean, and we're sorry about it. They
25 even, as appellate courts often want to do, said, but even if

1 we're wrong on that, we'll look at legislative history. They
2 look at the legislative history. They conclude that words
3 mean what words mean, statute failed, two-year statute of
4 limitations apply. They even then went behind and looked at
8 the purpose of the legislation.

6 The same thing applies in the case before the
7 Court, and even more so because if we wanted to take the time
8 and expend the effort, this Court knows that in 19 -- I would
9 suggest this Court is aware that in 1972, three, four, five,
10 mid-eighties, all the way to the passage of the 1994 crime
11 bill, any case affecting capital punishment was a hot topic
12 in the United States Congress. Furman was all-consuming in
13 the United States Congress. This case in Florida would have
14 been known by the members of Congress. Congress knew that
15 their statute of limitations was five years. They've known
16 that since 1972. They knew it in 1985. They knew it in 1994
17 when they amended the statute of limitations.

18 So similar to the case in Florida on all fours, we
19 have the core issue being Congress -- and, again, I
20 apologize, but you wanted it brief. The hornbook on
21 statutory construction for our purposes, the most important
22 part, this is the statute, Judge, that you're supposed to
23 construe in the light most favorable to the defendant.

24 THE COURT: Aren't statute of limitations creatures
25 of legislative bodies, and isn't this obviously, Congress

1 intended for there to be an unlimited statute of limitations
2 when death results under this statute. So even though, even
3 though Furman may have said that you could not impose the
4 death penalty, still it's a capital crime, isn't it, in the
8 sense that it is serious enough by legislative fiat to
6 justify an unlimited statute of limitations.

7 MR. PETERS: And I think we're -- it would almost
8 seem a rhetorical question. Congress means what Congress
9 says. Congress was explicit in this statute and, again,
10 we're in an argument. It seems, it seems improper to say,
11 well, what Congress meant was those crimes that are so
12 serious that in some time and place, we might want to execute
13 the person. If that's what they intended, other states have
14 been able to enact statutes of limitations tied to that
15 concept. If they had wanted that, they could have said that,
16 they could have enacted a statute for any crime for which
17 Congress has authorized a punishment of death. Then I think .
18 your argument would be well-taken.

19 But Congress has shown their ability to distinguish
20 between capital offenses and capital crimes, for example. A
21 capital crime, which is the subject of Section 3008, the
22 attorney appointment section, I think would be open to the
23 argument that you're suggesting, which is what they did in
24 Watson. We aren't sure what Congress meant. They might have
25 meant what you're suggesting by your question, serious

1 ~ crimes, serious crimes is what we're talking about.

2 I But -- and as you know, Judge, that helps me on the
3 two-attorney appointment and me getting \$125 an hour. But to
4 get to even the Watson analysis on 3005, you have to break
5 that fundamental rule of statutory construction, and there's
6 no getting around the statute enacted by this Congress and
7 unchanged by this Congress until 1994, and that's something
8 we can talk about, is there is no statute of limitations for
9 a capital offense. And a capital offense is defined within
10 the statute as an offense punishable by death. They didn't
11 say an offense that may be punishable by death, which some
12 states do in their statute of limitations. They didn't say
13 for a murder, they didn't say all of these other words.

14 And I guess that's what struck me as so unusual
15 about the Ninth Circuit Court's opinion is they began their
16 I analysis with what do we think Congress meant. And, you
17 I know, law school was a few years back, and I refreshed my
18 recollection with looking at cases, but we skipped a couple
19 of steps here. And that's when on the written part that I've
20 done, the little hornbook thing, it's like I kind of skipped
21 all of the cases having to do with that.

22 I But you begin with is the language clear. And as
23 you know, Judge, the fundamental rule is if the word is
24 defined in the statute, you're stuck with it.

28 ~ THE COURT: But under your analysis, what do you do

1 if the jury decides no death penalty?

2 I MR. PETERS: Again, a capital offense is one -- and
3 I I'll, again, quote directly from it. An indictment for any
4 offense punishable by death. They can be indicted, they can
5 I be tried, and the jury comes back with life, that doesn't
6 affect the statute of limitations at all.

7 It is a crime at the time it was charged -- in
8 I fact, and I think I put it in here. I would suggest to the
9 I Court that prior to Furman, if somebody was arrested today,
10 1970 for a crime -- I mean, excuse me. If somebody was
11 arrested today for a crime that occurred prior to Furman in
12 I 1970, it would be an unlimited statute of limitations because
13 at the time that the crime was committed, their crime was an
14 I offense punishable by death.

15 Now they couldn't be punished by death. They
16 I couldn't face the death penalty. And that's, if that's
17 something the Court's concerned about, there are a lot of
18 analogies in the state laws where the states have statutes of
19 limitations. There isn't, there is a clear distinction, and
20 I agree with the courts that talk about, hey, you don't get
21 all the rights and remedies if it's clearly not a death
22 I penalty case.

23 I think, on a different issue, I think when you
24 I take away the death penalty part in a statute that doesn't
25 ~ describe capital offenses like statute of limitations, then I

1 would agree with the Court's rulings on you lose the number
2 of peremptory challenges, for example, that you don't get a
3 second attorney, for example.

4 And this is something -- I guess I've never known
5 if it's okay to ask the Court a question, but I think there's
6 an anomaly going on because if capital crimes and capital
7 offenses are synonymous, which is what the Ninth Circuit
8 suggests, we don't know what they meant, then if it's, that
9 it's any serious crime, then those privileges and rights
10 would attach to any serious crime, such as this case.

11 I think one of my favorite parts is where the
12 Florida Supreme Court just says, wait a minute, let's all
13 take a deep breath and look at this conceptually. What the
14 government is suggesting and what has gone on in this case is
15 you lose, the defendant loses all of the procedural
16 benefits. You don't get two attorneys, you don't get bond,
17 You don't get all of those things when they go along with the
18 Ninth Circuit's analogy, but you also lose the substantive
19 right, and that makes no sense whatsoever. You're taking the
20 language that would apply to a word that has been strictly
21 defined.

22 And I guess, backing up. As I've done, as I've
23 one the research on this, I cannot figure a way to get past
24 the explicit statutory language of the federal statute of
25 limitations.

1 THE COURT: Well, two courts of appeals have.
2 Ninth Circuit and the Fourth Circuit.

3 MR. PETERS: Neither circuit -- the Fourth Circuit
4 did not get past the statute of limitations. Which case are
5 you referring to? The Fourth Circuit, Watson case, they were
6 addressing 3005. And this is an important distinction. 3005
7 refers to capital crime. And capital crime, Judge, is never
8 defined in the U.S. Code.

9 So arguably, if you wanted to, and I could go
10 either way on this, and it doesn't affect the question of the
11 statute of limitations, but arguably, capital crime is
12 subject to legislative intent. Dictionary definition of
13 capital is serious or something having to do with death. So
14 the Watson decision, the Fourth Circuit decision is
15 consistent insofar as they're defining something capital
16 crime that is not defined in the U.S. Code.

17 But what the Ninth Circuit did is the Ninth Circuit
18 said, well, let's look at the Fourth Circuit opinion. They
19 did the analysis of the nature of the crime versus the
20 severity of the punishment, which is the most bizarre thing I
21 think I've ever seen. They did this evaluation, gleaning on,
22 or glomming onto the Fourth Circuit. And the first one -
23 and I'm going by memory. And Judge, I'm horrible at
24 remembering case names.

25 But the first Fourth Circuit case that I recall, I

1 think it's Kennedy, and it's the same issue of attorney's
 2 fees, and the Ninth Circuit disagreed, and that's the first
 3 problem. Two circuit courts shouldn't be able to disagree on
 4 the nature of the statute of limitations. This is something
 5 that is supposed to be fundamental that defendants of any,
 6 that any defendant should be put on notice, how long and what
 7 for. It's such an incredibly basic principle. And if you
 8 look at the Ninth Circuit -

9 THE COURT: They were on notice. Anybody is on
 10 notice. You read the statute. You don't -- the notice
 11 argument is -- I mean, it's on the face of the statute. Like
 12 every other law, it's right there. It couldn't be clearer.

13 MR. PETERS: I agree, Judge, it's on the face of
 14 the statute that you do not face unlimited prosecution for
 15 any crime in the federal system that occurred after Furman
 16 because -

17 THE COURT: Where does it say that?

18 MR. PETERS: It says, an indictment for any offense
 19 punishable by death. And since Furman until, with four
 20 exceptions, until 1994, there were no offenses within the
 21 federal system punishable by death.

22 THE COURT: But Congress said there were. Now, the
 23 Supreme Court said you couldn't implement the death penalty,
 24 but Congress said that the death penalty applies.
 25 Congress -- and that, that establishes the statute of

1 limitations, doesn't it? Not what the Supreme Court does
2 later in saying that procedurally, procedurally you can't
3 impose the death penalty. That's an entirely different
4 matter. That Congress said, this is what we say the penalty
5 is, and we say that penalty produces an indeterminate,
6 unlimited statute of limitations, which is perfectly
7 consistent with the history of American law that where an
8 offense is, where death results from certain prohibited
9 behavior, legislators treat that as the most serious kind of
10 offense and frequently extend the statute of limitations as a
11 result.

12 MR. PETERS: And I agree.

13 THE COURT: So Congress did this. Now, what the
14 Supreme Court did, they came along later and said, wait a
15 minute, procedurally the death penalty can't be imposed.
16 That doesn't alter the fact that Congress said it applied,
17 right?

18 MR. PETERS: Well, all of your statements are true,
19 all of your statements are true, but it begs the question.
20 If Congress uses language that is explicit -- if Congress
21 says within 1,000 feet of a school and a Supreme Court
22 opinion comes down and says the school is determined to be
23 the building and not the chain-link fence, a court couldn't
24 say on somebody being prosecuted 1,010 feet away from the
25 building, well, what Congress meant was this. If the law of

1 the United States Supreme Court has a substantive effect, you
2 can't say, well, you know, we know what Congress really
3 meant. Come on, guys. And that is what the Ninth Circuit
4 did. And that's what this argument suggests.

5 THE COURT: There's absolutely no question what
6 Congress intended. You don't need to be -- you don't need to
7 go beyond the face of the statute to know what Congress
8 intended, right? I mean, this is not where you have to go to
9 legislative history and you don't have to muck around in all
10 of that. All you have to do is look at the face of the
11 statute and you know, anybody knows what Congress intended.
12 Congress said somebody who kills somebody as a result of the
13 particular behavior prohibited has an unlimited statute of
14 limitations.

15 MR. PETERS: And in a little bit we can get into a
16 discussion of whether or not that's, in fact, what Congress
17 wanted, but I'm turning it back to you, Judge.

18 THE COURT: You think there's a question that
19 that's what Congress wanted?

20 MR. PETERS: Yes, I do. We can address that in a
21 little bit.

22 THE COURT: Let's address it right now. What do
23 you think there is about that? You think Congress had some
24 esoteric kind of idea about if death results and the Supreme
25 Court hasn't said it's all right, hasn't said it's

1 prohibited; or do you think Congress said, well, if death
2 results and the jury doesn't decide it, then naturally there
3 isn't an unlimited statute of limitations, but if the jury
4 does decide death should be imposed, there would be an
5 unlimited statute of limitations?

6 In all due respect to Congress as an institution, I
7 don't think that's the way you could read, you could fairly
8 read that statute.

9 MR. PETERS: I'm confused because I've heard the
10 Court several times say that if somebody is charged with an
11 offense punishable by death and the jury doesn't impose the
12 death penalty that then there's a five-year statute of
13 limitations. The statute of limitations only applies to the
14 filing of the indictment. The punishment that's actually
15 imposed doesn't matter except for whether or not the offense
16 charged is one for which the person can really be killed.

17 THE COURT: under your argument, it does matter.

18 MR. PETERS: No, not at all.

19 THE COURT: That, in fact, the punishment is
20 imposed.

21 MR. PETERS: No, not at all. I thought I gave an
22 example to the Court that under my argument, somebody who
23 commits a murder in 1970 could be prosecuted today for that
24 murder on an unlimited statute of limitations.

25 THE COURT: I realize that's your argument. I'm

1 just saying, isn't that illogical?

2 MR. PETERS: Not at all, because at the time they
3 committed the crime, an indictment for any offense -- to have
4 an indictment today, it must be an offense punishable by
5 death today. 1970, they committed a murder, and that was an
6 offense punishable by death in 1970. The notice requirement,
7 all the case law and statute of limitations says that's the
8 purpose of the statute of limitations. You let them know,
9 you give them a length of time, and the way that Congress has
10 chosen to do that is by using the language punishable by
11 death.

12 Now, what you're, the first question I have back to
13 the Court is why are you talking about the intent of
14 Congress? Because to get to ask that question, you first
15 have to find that this language is ambiguous, that -

16 THE COURT: No, you don't. I disagree with you
17 entirely about that. Congress's intent -- I mean, the
18 obligation is to read the statute and to apply what Congress
19 said. That's the, that's what the obligation is.

20 Where you get into the problem of intent is if you
21 can't figure out what Congress said looking at the words in
22 the statute, then you need to go behind it to try, or
23 arguably, to attempt to find out what Congress really meant
24 by ambiguous words.

25 MR. PETERS: Am I seriously hearing that you don't

1 have to look to the language of the statute, that a court is
2 free to say I wonder what their intent was and ignore the
3 clear, unambiguous words?

4 THE COURT: No, I don't think so. I think you
5 just -- I'm not communicating or you're not listening.

6 MR. PETERS: That's why I asked.

7 THE COURT: That's exactly what I just said. That
8 you get the intent of Congress from the words Congress uses.

9 MR. PETERS: I guess the part that I'm having
10 trouble with is where can you get any definition of capital
11 offense, other than an offense punishable by death, without
12 saying, well, we don't have any offenses punishable by death
13 now, so I wonder what Congress meant.

14 THE COURT: Well, look at 844(i). "And if death
15 results to any person, including any public safety officer
16 performing duties as a direct or proximate result of conduct
17 prohibited by this subsection, shall also be subject to
18 imprisonment for any term of years, or to the death penalty
19 or to life imprisonment."

20 MR. PETERS: Correct. And all of the cases -- I
21 don't suggest that that statute was rendered inapplicable by
22 Furman. I've never suggested that. What Furman did is it
23 strikes down those parts that Furman strikes down. Furman
24 struck down the death penalty part of that statute.

25 THE COURT: It did not. It struck down the

1 procedure for -- it never said anything about this statute.

2 I It never said -

3 MR. PETERS: It didn't have to.

4 THE COURT: It never said it was unlawful or

5 unconstitutional for Congress to use the death penalty or to

6 say the death penalty was applicable to offenses where loss

7 ~ of life occurred. It said the federal, the procedure for

8 imposing the death penalty was unconstitutional.

9 MR. PETERS: And the substantive execution of a

10 sentence pursuant to a procedurally illegal trial is gone

11 too. You can't -- it doesn't apply to say, well, all Furman

12 really did is eliminate procedural bars to the death

13 penalty. It eliminates the possibility of a death penalty

14 for all of those cases that don't have those procedures. So

15 to have one without the other, you can argue semantics, but

16 the fact is that after Furman, the death penalty provisions

17 of that statute were unenforceable.

18 THE COURT: No, but that's -- but I understand your

19 argument. I mean -

20 MR. PETERS: Your argument is that's still a

21 capital crime.

22 THE COURT: My argument is a new one, which just

23 occurred to me while you were talking. Not new. I mean,

24 it's new for me, it may not be new for you, but it's new for

25 me. That under 844(i), Congress provides for the death

1 penalty. That's all that is necessary to trigger an unlimited
2 statute of limitations, isn't it?

3 MR. PETERS: No, not at all. First of all,
4 Congress provided for the death penalty in that statute, but
5 read the language again as to what the punishment is.

6 THE COURT: Also be subject to imprisonment for any
7 term of years or the death penalty or to life imprisonment.

8 MR. PETERS: And death penalty is defined where
9 else, what did Congress mean by that?

10 What I'm getting at, Judge, is the death penalty by
11 Furman was struck down. But where do you make the logical
12 leap that in striking down the death penalty that the words
13 capital offense -- and I'm switching back to the statute of
14 limitations. Do you agree, Judge, that when Congress shows
15 an ability to use different words in different statutes that
16 it's for a purpose, that they aren't doing it just because
17 they're willy-nilly?

18 Well, maybe we don't want to answer that but -

19 THE COURT: I don't know the answer to that.

20 MR. PETERS: But they chose capital crimes in one
21 statute and very explicitly chose capital offenses in another
22 statute. That's the first point.

23 But more important is when they chose the term
24 capital offenses, they defined it. And so is 844(i) a
25 capital crime? Well, yeah, I think you can argue that it's a

capital crime because a capital crime is a serious crime

2 because capital crime isn't defined in the statute. Is it a
3 capital offense? No, it is not a capital offense because a
4 capital offense must be one in which you can actually be put
5 to death.

6 THE COURT: Go ahead, Mr. Peters.

7 MR. PETERS: And we're just kind of having fun in
8 some ways.

9 I need your help on something. I don't understand
10 where we get past that there is no room for statutory
11 construction when the language of a statute is clear and
12 unambiguous. How do we get to the point of you even saying,
13 well, I think what Congress intended was, on a phrase that is
14 defined in the statute and is unambiguous. So I think it's
15 interesting we can talk about Congressional intent, and I
16 have some thoughts on that, and all kinds of stuff, but I
17 couldn't find any case that allowed you to interpret words
18 that were defined in the statute. If the statute says -

19 THE COURT: What statute are you talking about?

20 MR. PETERS: The statute of limitations, Judge. If
21 the statute of limitations had said an indictment for any
22 capital crime may be found at any time without limitation, we
23 wouldn't have our argument because capital crime is not
24 defined in the U.S. Code. But what the statute says is an
25 indictment for any offense punishable by death. And it

1 defines that in the heading 3281 as a capital offense. What
2 is a capital offense? It is an offense punishable by death.

3 What does 3282 say? Offenses not capital. "No
4 I person shall be prosecuted, tried, or punished for any
5 offense not capital

6 So the problem that I see with what the Court is
7 I facing and what the Ninth Circuit did is how do you, how do
8 I you even talk about statutory intent or legislative intent or
9 statutory construction when the language is defined within
10 I the statute? And I haven't been able to find any case that
11 says that you, that courts are even authorized to do that.

12 I If the statute says cities over 50,000, a judge
13 can't come in and say, well, that was done back in the days
14 I when a city over 50,000 was a big one, and we know that what
15 I they really meant was one of the big cities.

16 A serious crime, we know what they really meant was
17 ~ a serious crime. And come in on my prior example and say,
18 so, it says 10,000 people, but really they meant 50,000
19 I people. You can't do that.

20 And I guess continuing the analogy, if the Supreme
21 I Court had a case that said cities of 10,000 shall have no
22 statutory consideration, statutes that address cities of
23 I 10,000 were used because of bias against minorities, a judge
24 couldn't come back and say, well, but on this statute they
25 ~ really didn't mean that language, so we're going to let the

1 statute stand.

2 There's no escaping the clear meaning of this. "An
3 indictment for any offense punishable by death may be found
4 at any time without limitation." And that offenses not
5 capital -- an offense, "any offense not capital, unless the
6 indictment is found or the Information is instituted within
7 five years."

8 THE COURT: So the response to my argument is,
9 Judge, 844(i) doesn't have anything to do with this, who
10 cares? The statute of limitations is defined by Section
11 3281, and 3281 says, regardless of what Congress said in
12 844(i), Congress has defined the type of offense that has an
13 unlimited statute of limitations, and that is any offense
14 punishable by death. And that at the time this offense was
15 committed, it was not punishable by death because Furman said
16 there was no constitutionally valid death penalty.

17 MR. PETERS: That's correct.

18 THE COURT: Is that right?

19 MR. PETERS: That's completely correct. And
20 continuing on, the concept that the government has argued
21 that, and the Court has suggested that what Congress was
22 really doing is trying to gather together a group of crimes
23 and show that those were the ones that would have unlimited
24 statutes of limitations. Even if that was their intent,
25 you're stuck with the language, is the first thing. But the

1 second thing is there are a whole bunch of states that have
2 that exact concept in their statutes of limitations where
3 they don't limit it, as 844(i) does. But for the language in
4 844(i), it's not a death penalty statute, even though
5 arguably what we're going to say is anybody who commits
6 murder first degree, for example, you want to have an
7 unlimited statute of limitations.

8 Defendants can't be held accountable because
9 Congress chose to define things in a way that didn't carry
10 out their intent following the Furman decision. And courts
11 can't say, Congress, you wrote it this way, we know what you
12 meant, the words are now wrong, and because you intended it,
13 we're going to give you an unlimited statute of limitations.
14 That goes against the rules of statutory construction from A
15 to Z. it goes against the rules of limiting statute of
16 limitations and construing statutes in a light most favorable
17 to the accused.

18 THE COURT: Mr. Peters, I hate to interrupt you,
19 but I've got one more question for you, and then I'd like to
20 hear from Mr. Becker.

21 What has the Eighth Circuit said about this issue?

22 MR. PETERS: Eighth Circuit has addressed the issue
23 in a pattern that is real consistent with -- if T was a
24 betting person, I would bet we're going to have some fun on
25 this if this case ever gets to a point where it's appealed.

1 The Eighth Circuit in Coon I and II are confronted
2 with kind of a fun issue because the guy raises one side of
3 the coin and wins, and then comes back the second time and
4 tries to win again.

5 The applicable part of Coon -- and I'm horrible
6 with case names and I apologize. But -

7 THE COURT: Let me ask you and see if I can shorten
8 this up. The Eighth Circuit's position, is it consistent
9 with the argument you're making, or inconsistent with the
10 argument you're making?

11 MR. PETERS: It's consistent with the argument I'm
12 making, and they specifically addressed this issue by saying
13 something, the Eighth Circuit left open this very issue. And
14 the quotation is because the prosecution in the case of Coon
15 II, which was begun in 1969, was commenced and consummated
16 prior to the Jackson decision. We were not faced with
17 defendant's suggestion that Furman would not time bar
18 prosecution today for a murder committed prior to Furman.
19 So the facts of our case didn't apply in that one,
20 but in 1969, the Eighth Circuit said, like you did on the
21 phone, wait a minute, guys, something here doesn't seem right
22 that you can actually have a case initiated after Furman and
23 claim an unlimited statute of limitations. That wasn't, that
24 wasn't -- the statute of limitations and this Furman argument
25 did not apply in this case because -- actually it's because

1 Jackson is a, Jackson's a precursor to what we're talking
2 about with Furman where it invalidates a number of statutes
3 like Furman invalidates a number, or portions of statutes.

4 But the Eighth Circuit in Coon II says we aren't
5 confronted with the situation in U.S.A. vs. SheDDard, and we
6 aren't, it's one of those times where they're saying we're
7 alerting you people that this is an issue, that after Jackson
8 you bring us a case like this and you're going to have some
9 problems. And if you insert, instead of Jackson you insert
10 Furman, that's what the Florida Supreme Court is saying.
11 We're telling you people that after a legislative decision
12 renders a case no longer within the definition of those
13 crimes covered by a statute of limitations, you run the risk
14 of us telling you the prosecution's time barred.

15 So Coon I was just background information, Coon II
16 supports, as much as it can. They're analyzing Jackson,
17 which is, again, I'm horrible at case names. I think Jackson
18 is an opinion invalidating the kidnapping portion of a death
19 penalty statute. But the concept's there where they're
20 saying, well, wait a minute, if you cannot, in fact, be
21 sentenced to death for this crime anymore, then we're holding
22 up the possibility that it might be a five-year statute of
23 limitations, but we don't have to address that issue in this
24 case, guys, because the crime and the charging took place
25 prior to the invalidation of the death penalty on that

1 statute.

2 So the Eighth Circuit opinion -- and the court is
3 changed considerably since then. This issue, statutory
4 construction has been brought to the forefront again by the
5 united States Supreme Court. We know what the intent of the
6 legislature was when they passed a law regarding handguns in
7 schools, but the Supreme Court struck it down. Everybody
8 knew what the intent was, but the language wasn't right. And
9 what the Supreme Court began with is saying, well, let's see,
10 you're saying it's based on interstate commerce clause,
11 that's just being assumed. We knew if you had wanted to,
12 Congress, if you had worded it differently, you could have
13 done it properly, but you didn't word it properly.

14 The statute of limitations -- and we'll let Mr.
15 Becker go for a while, and if I can, I'm going to go get a
16 little drink of water before my mouth dies. Is that
17 acceptable?

18 THE COURT: Why don't you have somebody else -- I'd
19 hate to have you miss what Mr. Becker has to say.

20 Any of the other defense attorneys want to say
21 anything about this?

22 MR. OSGOOD: Your Honor, I lost it before the
23 magistrate. They won't let me talk.

24 MR. BUNCH: I simply support that argument, and we
25 filed a ten-page memorandum which we believe indicates the

1 Eighth Circuit's headed in that direction.

2 THE COURT: All right. Thank you, Mr. Bunch. I'll
3 tell you, I haven't had a chance to read those yet, but I'm
4 obviously going to before I rule on it. I'll have a chance
5 to read through it. Mr. Becker.

6 MR. BECKER: Thank you, Judge. And, again, Mr.
7 Bunch, if you have an extra copy of that.

8 MR. BUNCH: It was mailed to you. You should have
9 it today. I'm sorry, Paul. I did it Saturday.

10 MR. BECKER: I'll check back in my office. Thank
11 you.

12 Good evening, Judge. There's three points I'd like
13 to make, two of which you've discussed at some length and one
14 of which I think was at the tail end of the Court's inquiry
15 in its telephone conference.

16 What difference does it make that now we have the
17 1994 death penalty act which does, in fact, set forth
18 procedures that would be constitutionally firm applying to
19 the death penalty in this matter, and theoretically this
20 could be a death penalty but for the Department of Justice
21 policy position that we would not seek the death penalty for
22 those events occurring prior to the enactment of that statute
23 in, I believe, September of 1994.

24 First, though, going back to Mr. Peters' points,
25 and they've been covered at some length. I, too, urge a

1 literal reading of the statute. I, too, think that the plain
2 language of the statute sets forth that capital offenses, the
3 limitations is stated quite clearly that an indictment for
4 any offense punishable by death may be found at any time
5 without limitation.

6 As the Court read, 844(i) now and in 1988 was an
7 offense where Congress set forth in clear language that if
8 death results, including death to a public safety officer,
9 that crime would be punishable by death. It doesn't -- I
10 think Mr. Peters and defense counsel want to insert the
11 language of, in the statute of limitations that can be
12 constitutionally punishable by death. I believe that the
13 plain language of the statute of limitations refers to a
14 class of cases that are so serious that law enforcement
15 should be given the opportunity to investigate and prosecute
16 without any time bar.

17 That is the whole notion, as the Court said
18 earlier, behind statutes of limitations, both the normal
19 five-year statute of limitation, and then setting aside those
20 other crimes so serious that they should be without
21 limitation. Thus, I believe that the plain language of the
22 two statutes mirroring each other clearly brings 844(i)
23 within the scope of the no limitations statute.

24 The one example used by Mr. Peters that a 1970
25 murder would now allow a permissible prosecution because it

1 occurred prior to Furman I think misses his point because an
2 offense committed in 1980 had the same unconstitutional
3 penalty provisions that the 1988 offense did. Thus, the 1970
4 offense would be subject to the same line of attack by the
5 defendants that it had a constitutionally infirmed death
6 penalty. Death could not have been, constitutionally be the
7 punishment for that 1970 homicide. The fact that Furman
8 didn't come down until later doesn't somehow make those
9 statutes at that time whole. They're still defective
10 statutes as we've come to know constitutional law.

11 As Mr. Peters said quite often, the language of
12 Congress here is quite clear and, in this statute and in
13 other statutes, uses the language punishable by death in a
14 straightforward, unambiguous fashion that brings them within
15 the no limit of, the no time period of limitations.

16 THE COURT: Well, how do you get around what Coon I
17 says about the definition of offense punishable by death?

18 MR. BECKER: It was my understanding that Coon I
19 rejected that argument by the defendants, that his argument
20 was since it was, the death penalty was not imposed, it was
21 not a capital case.

22 THE COURT: Well, they say the clear and ordinary
23 meaning of the words unquestionably encompasses any offense
24 for which the death penalty may be imposed, Page 554.

25 MR. BECKER: I'm sorry. I don't see the Court Is

1 reference.

2 THE COURT: Look under Headnotes [3,4], left-hand
3 column, the end of the second full paragraph on Page 554.

4 MR. BECKER: [3,4], I have. In assessing -- I
5 believe this to be a different issue, Judge. When Mr. Coon
6 objected to his waiving indictment and pleading to an
7 Information, I don't think the Court here was considering the
8 issue we have now.

9 THE COURT: I agree with that. That's right. But
10 still they said this. And, you know, it's -- I asked Mr.
11 Peters about the Eighth Circuit's position. I mean,
12 certainly I'm obligated to follow what the United States
13 Supreme Court says, but also I'm obligated to follow what the
14 Eighth Circuit Court of Appeals has said. And I'm not
15 obligated to follow the Florida Supreme Court, and I'm not
16 obligated to follow the Ninth Circuit or the Fourth Circuit
17 or the Seventh Circuit, unless they're persuasive. But I
18 mean, I'm clearly obligated to follow the Eighth Circuit
19 Court of Appeals, and that's why you'll notice a number of
20 the cases that I gave you were from the Eighth Circuit Court
21 of Appeals.

22 MR. BECKER: I would respectfully suggest that the
23 Eighth Circuit hasn't considered this issue. As the
24 paragraph that Mr. Peters read in Coon II referred to, they
25 were leaving this type of situation to another day.

1 In McNally, we had the issue of peremptory
2 challenges, and in Weddell, we had the issue of a second
3 attorney. The Eighth Circuit just has not considered a
4 situation such as this where the offense occurred at a time
5 when the death penalty was, provisions of federal statute
6 were not up to constitutional muster. So I think it's an
7 open question in the Eighth Circuit, and I hope we have an
8 opportunity to argue it.

9 THE COURT: Well, undoubtedly you will. What do
10 you make of what the, what the Eighth Circuit Court of
11 Appeals said in Weddell at Page 770? Do you have that?

12 MR. BECKER: Yes, Judge.

13 THE COURT: Do you see -- do you have a two-column
14 deal?

15 MR. BECKER: Yes, but it's a different -

16 THE COURT: Look at the right-hand column, not
17 where you have it highlighted, but the right-hand column on
18 Page 770 where they talk about united States vs. McNally. Do
19 you see that?

20 MR. BECKER: Yes, Judge.

21 THE COURT: And what do you make of that?

22 MR. BECKER: Well, when it says, the quote is,
23 "This Court held that in a case where Furman v. Georgia had
24 precluded the imposition of the death penalty, the case lost
25 its capital nature as charged in the indictment.'"

1 I'm not entirely -- and then it goes on to deny the
2 peremptory challenges. I'm not sure what the phrase capital
3 nature means there. I think the Court is analyzing the issue
4 that it's presented with, and that is in this case, in
5 Weddell, with the number of challenges, peremptory
6 challenges, a defendant would be given, in a case where it
7 had lost its capital character because the death penalty
8 couldn't be constitutionally imposed.

9 THE COURT: That's interesting wording isn't it,
10 what they say there, actually? I hadn't noticed that until
11 just now. That's interesting, the way they phrase that,
12 isn't it? They say, lost its capital nature as charged in
13 the indictment. So there there seems to be some concept that
14 you lose something after it's charged.

15 MR. BECKER: Or it may refer back to the face of
16 the indictment or reading the face of the indictment along
17 with the punishment provisions in the statute that it, the
18 punishment, the maximum punishment for the crime would be
19 death.

20 Again, I would suggest that the Court was deciding
21 the case that was before it. The one court that we do have
22 deciding this issue is the Manning decision that I know the
23 Court's well-aware of, and I understand that the Ninth
24 Circuit is not controlling on this court. However, that case
25 and the other cases from the Ninth Circuit show a degree of

1 analysis of this issue that I believe is sound.

2 THE COURT: It's not consistent with the Eighth
3 Circuit's approach to this matter, is it?

4 MR. BECKER: I don't think the Eighth Circuit has
5 discussed it in terms of gravity of the offense versus the
6 seriousness of the punishment, if that's the Court's
7 question. I wouldn't find it inconsistent. They reached the
8 same results on challenges and two attorneys. They get to
9 the same place. I believe the Ninth Circuit cases do it with
10 a greater degree of analysis of the rationale for those
11 particular provisions of being in separate statutes, separate
12 and apart from the substantive criminal statute.

13 THE COURT: Well, Manning cites Kennedy and Watson
14 in support of its conclusion, right?

15 MR. BECKER: Right.

16 THE COURT: But Watson is not consistent with the
17 authority in the Eighth Circuit, right?

18 MR. BECKER: That's true, although Kennedy doesn't
19 agree with Watson, although it agrees with its rationale. So
20 the Ninth Circuit didn't entirely embrace the Fourth Circuit
21 approach that all provisions still apply. The Ninth Circuit
22 has actually come down the other way but looked at the
23 analysis set forth there of gravity of the offense, the
24 effect on society as opposed to the severity of the
25 punishment.

1 THE COURT: Well, Kennedv cites Watson, Manning
2 cites Watson, but Watson isn't consistent with the authority
3 in the Eighth Circuit.

4 MR. BECKER: Again, the result in Watson isn't
5 consistent with the results in Kennedy, but -

6 THE COURT: Well, they thought it was. I mean, the
7 Ninth Circuit thought it was, thought it was consistent
8 enough to cite it.

9 MR. BECKER: The analysis. They looked at the
10 analysis. They don't come out the same way on the same
11 issue.

12 THE COURT: They didn't have the same issue, did
13 they? Kennedv was a bail case, and Watson was a two-attorney
14 case.

15 MR. BECKER: I'm sorry. There are further Ninth
16 Circuit cases cited in Manning that decide the two-attorney
17 issue contrary to the Fourth Circuit. And that would be
18 Dufur, D-U-F-U-R, 648 F.2d 512, Ninth Circuit, talking about
19 permitting anyone indicted for a capital crime to have two
20 attorneys was based on the severity of the punishment rather
21 than the nature of the offense, and therefore, the
22 elimination of the death penalty eliminated Dufur's right to
23 a second court-appointed attorney.

24 So the Ninth Circuit may adopt Watson in the Fourth
25 Circuit in its analysis, which is the first case to look and

1 set forth this analysis of why is this particular provision
2 here, but it doesn't come out the same way, and thus I don't
3 believe the Ninth Circuit cases are at odds with the Eighth
4 Circuit cases.

5 THE COURT: Let me see if I understand the one
6 argument, or one argument you made.

7 You say that -- or am I correct in summarizing, and
8 stop me if I fall off the trail here. You say, aha, under
9 Section 3281, you'll adopt Mr. Peters' approach to that and
10 say, yes, we look at the words used and look to see if a
11 crime is punishable by death; and we go to 844(i) and we find
12 out, aha, Congress said it's punishable by death, so we don't
13 need to look any further. Is that your argument?

14 MR. BECKER: That's one argument, Judge.

15 THE COURT: I understand. But is that one
16 argument?

17 MR. BECKER: Yes.

18 THE COURT: So, therefore, for that argument it's
19 irrelevant whether it's constitutionally punishable by
20 death. Congress has said it's punishable by death. Death is
21 one of the options in the penalty structure under 844(i)
22 where death results, right?

23 MR. BECKER: Right. And as the Court said earlier
24 and it's stated in Coon II, the limitations provisions are
25 purely creatures of the legislature, and they're not

1 constitutionally based. And, therefore, when the legislature
2 sets forth this scheme, I believe we need to take it
3 literally as it's written.

4 THE COURT: Okay. What's your second argument?

5 MR. BECKER: Well, it was merely a reply to Mr.
6 Peters' 1970 example, but I'm willing to forgo that and get
7 to the Court's final point of can we now, the federal
8 government, if it chose to seek the death penalty in this
9 matter, if it fit all the other criteria for aggravating
10 factors and so forth, but given the sections now in the code
11 for the death penalty, could the United States seek the death
12 penalty in this case, even though at the time the crime was
13 committed, the penalty provisions were unconstitutional. I
14 believe that the Supreme Court has -

15 THE COURT: The penalty provisions weren't
16 unconstitutional, it was the procedure for imposing. If you
17 said the penalty provisions were unconstitutional, then
18 you've just made the defendants' argument for them. You've
19 destroyed your first argument.

20 MR. BECKER: The procedures for implementing the
21 penalty were unconstitutional.

22 THE COURT: Right. Right.

23 MR. BECKER: The Supreme Court in Dobbert,
24 D-O-B-B-E-R-T, vs. Florida, 432 U.S. 282, 97 S.Ct. 2290,
25 found that when the new, when states began implementing new

1 procedures in their codes to enforce the penalties of death,
2 that that was not an ex post facto revision of the law that
3 could be challenged by the defendants.

4 MR. PETERS: What was that cite?

5 MR. BECKER: 432 U.S. 282, 97 S.Ct. 2290.

6 THE COURT: So you say by that that this would be,
7 that the 1994 death penalty act procedures could be, I mean,
8 legally could be retroactive and apply to a crime committed
9 in 1989.

10 MR. BECKER: Yes. Dobbert specifically speaks to
11 the retroactivity of those procedural statutes and finds that
12 when it was to the benefit of the defendant that ameliorated
13 a problem with the prior statutes that it did not violate the
14 ex post facto clause and the defendant could not be heard to
15 complain.

16 THE COURT: I'm sorry. I lost the thread of that.
17 What was beneficial? You mean it was declared
18 unconstitutional and was beneficial to the defendant?

19 MR. BECKER: The new law as enacted was seen as
20 more beneficial to the defendant because it had
21 constitutional safeguards in it to protect against the cruel
22 and unusual implementation of the death penalty or the
23 violation of due process, whatever the particular death
24 penalty infirmity was.

25 And so when the states began to implement new death

1 penalty procedure schemes, they were challenged and said,
 2 wait, when I committed the crime, it was not, there was no
 3 constitutional procedure for implementing the death penalty.
 4 And the Court said, well, now there is and that is to your
 5 benefit and, therefore, the courts can go, the states can go
 6 forward and prosecute individuals and seek the death penalty
 7 using the new statutes, even though at the time of the event
 8 of the crime, there was no constitutional procedure to
 9 implement the death penalty.

10 THE COURT: So you conclude that based on that
 11 that, what, as applicable to this case?

12 MR. BECKER: As applicable to this case, the
 13 Congress has passed a 1994 death penalty act which implements
 14 procedures whereby this Court could constitutionally, we
 15 could seek the death penalty and that that changes to the
 16 benefit, these new laws are to the benefit of the defendant
 17 and, therefore, now this is a capital offense, even though
 18 we've chosen not to seek the death penalty here because of a
 19 Department of Justice policy. It is a crime that now
 20 constitutionally is punishable by death.

21 THE COURT: You mean there's a constitutional
 22 procedure for carrying out Congresses direction in 844(i)
 23 that death is an option?

24 MR. BECKER: Correct.

25 THE COURT: And you say -- but how does that relate

1 to the argument the defendants are making? I don't
2 understand -- you see, their argument is that in 1988 there
3 wasno constitutional death penalty.

4 MR. BECKER: And Dobbert says those events can be
5 prosecuted as capital, as death penalty cases, using the new
6 statutes.

7 THE COURT: Yeah, but at the time the indictment
8 came down, there was no constitutional -

9 MR. BECKER: Yes, they were just indicted in 1996.

10 If I had indicted them, I would still be here arguing, but if
11 thecase had been indicted prior to September of 1994, then
12 thisargument would not be available.

13 THE COURT: So you're saying in 1996 when they were
14 indicted,there was a constitutional death penalty.

15 MR. BECKER: Yes.

16 THE COURT: So the only question, then, is the
17 potentialquestion of ex post facto, or increasing the
18 penalty over what it was at the time the alleged crime was
19 committed, right?

20 MR. BECKER: Right.

21 THE COURT: And you say Dobbert says that -

22 MR. BECKER: If I may, from the majority opinion at
23 Page 2300, therefore, argues petitioner -- well, let me start
24 at the beginning of the paragraph, Headnote [7].

25 "Petitioner's second ex post facto claim is based

1 on the contention that at the time he murdered his children,
2 there was no death penalty in effect in Florida. This is so,
3 he contends, because the earlier statute enacted by the
4 legislature was, after the time he acted, found by the
5 Supreme Court of Florida to be invalid under our decision in
6 Furman. Therefore, argues petitioner, there was no valid
7 death penalty in effect in Florida as of the date of his
8 actions. But the sophistic argument mocks the substance of
9 the Ex Post Facto Clause. Whether or not the old statute
10 would in the future withstand constitutional attack, it
11 clearly indicated Florida's view of the severity of murder
12 and of the degree of punishment which the legislature wished
13 to be imposed upon murderers. The statute was intended to
14 provide maximum deterrence, and its existence on the statute
15 books provided fair warning as to the degree of culpability
16 which the State ascribed to the act of murder."

17 And then it goes on at some length about -- I
18 believe -

19 THE COURT: That's interesting, isn't it?

20 MR. BECKER: I see that in some ways related to the
21 earlier argument, is that this isn't a notice issue at all,
22 that being more the legal concept than anything, but the
23 statute has always provided for a possible punishment of
24 death.

25 Now, the circumstances in this case are the kind

1 that are of the severity that society has a valid interest in
2 allowing law enforcement to continue to investigate and
3 prosecute, as opposed to the other interests of defendants
4 and persons who have to defend a case long after it's
5 committed.

6 I would ask the Court to affirm the decision in the
7 report and recommendation of the magistrate.

8 THE COURT: Thank you. Mr. Osgood, are you
9 stepping up to rescue this matter?

10 MR. OSGOOD: I am. Because the Dobbert aspect of
11 it was what I keyed on most heavily in the brief I wrote,
12 Your Honor.

13 And there's a critical factor in Dobbert that Mr.
14 Becker is ignoring. The critical factor in Dobbert was it
15 was two months, two months, two months. In other words, the
16 statute was declared unconstitutional in Furman. Two months
17 later, the defendant murdered his wife. Two months later,
18 they went right back in and cleaned up the statute.

19 Following the language that Mr. Becker read to you,
20 they key on the fact of notice, and notice is a critical
21 element in Dobbert. Then years later we have Miller, which
22 nobody has mentioned, which is the Supreme Court case dealing
23 with the concept of ex post facto and punishment, as to
24 whether it's procedural or substantive.

25 And in Miller they say that in construing the

1 sentencing guidelines that you cannot change the guidelines
2 and substantially increase the punishment and then come along
3 and say that you can impose the more stringent punishment
4 because there has been no notice. And it keys on notice
5 also.

6 So what you have -- and then you go back and pick
7 up Jackson, the Supreme Court case, which is one of the ones
8 which said, all right, we're going to treat these statutes as
9 severable. And so what happened was in the kidnapping case,
10 Jackson says, all right, we're going to let the statute
11 survive to the extent that it provides for a life sentence as
12 opposed to death. So what you had was you had a 25 or
13 30-year period in which Congress didn't have to worry about
14 any of these statutes because under the Supreme Court
15 authority, they were all going to be treated as severable
16 anyway, so why go back and clean up 10 or 15 statutes in the
17 U.S. Code and eliminate this death penalty language? There
18 wasn't any reason because the statute was going to be
19 construed as being good anyway.

20 So what happened was, and here is my, the basis of
21 my argument. For 20 years anybody who committed a kidnapping
22 or committed air piracy or did any of those things was on
23 notice by the inaction of Congress that there was no federal
24 death penalty that would actually be imposed. So when they
25 enacted 844(i) and brought in this death penalty provision,

1 clearly it's not procedural, it's substantive. It increases
2 dramatically the maximum punishment under 844(i).

3 Therefore, to attempt to argue that he can now
4 indict these people and give them the death penalty just
5 simply flies in the face of Dobbert and Miller, in my view.
6 I think actually Dobbert is in our favor.

7 THE COURT: But the statute says death penalty.
8 It's always said the death penalty. I mean, 844(i) has
9 always said the death penalty.

10 MR. OSGOOD: It has. And until its reenactment and
11 its cleaning up and the enactment of the new Furman type of
12 procedure in 1996, it would have been meaningless. It would
13 have been, under Jackson have been treated as a severable
14 provision under the statute, and the maximum punishment would
15 be life. And that's clear from Jackson and all the cases
16 leading up to that point. You would simply carve out the
17 death part of 844(i) and not give it any meaning. Wouldn't
18 declare the statute unconstitutional, it would merely say
19 that's a severable provision under Jackson.

20 So it's really a notice question, in any mind, it
21 always has been all along. And Congress -- and the proof of
22 the pudding is they fixed the step after the accident, so to
23 speak, to use the old analogy. By enacting these statutes in
24 '96, Congress has clearly said, yes, we acknowledge that our
25 death penalty provisions were no good up until this point

1 when we -- first they did it with the drug kingpin statute.
2 And then along behind the drug kingpin statute is the new
3 provision, I forget the number, which now provides a Furman
4 kind of procedure.

5 And I might add, I have some personal insight into
6 this, and I don't know how much authority this would have,
7 other than the fact that I did it.

8 Back in 1981, we had a very serious stabbing at the
9 prison in El Reno, Oklahoma. I made the argument to the
10 district judge down there that, look, why don't we merely
11 bifurcate these proceedings and do it the way Furman says
12 that it should be done and that the Court has the inherent
13 authority as the trial judge to do that; and, therefore, our
14 procedure will be correct under Furman. And the statute
15 itself provides for death and, therefore, all you've got to
16 do, Judge, is follow Furman and instruct the jury on Furman,
17 and we ought to be able to seek the death penalty in this
18 case. It was a particularly vicious crime, a multiple
19 murder, and the guy had prior convictions for murder.

20 We ran this up the flagpole with the Department of
21 Justice, and the Department of Justice said, nice idea, but,
22 sorry, we're not going to let you do that, we don't think
23 that that's constitutional. And so the Justice Department
24 itself has recognized, up until when they participated in the
25 drafting of this new legislation, that there was no such

1 thing as a federal death penalty. And that is the whole crux
2 of this argument. There was simply no such thing as a
3 federal death penalty until the drug kingpin statute came
4 along, and on the heels of that last year, the new provision
5 which enacts the provisions and requirements of Furman.

6 That's the guts of the argument, at least the last
7 half. I was glad Mr. Becker finally got around to citing
8 Dobbert because I predicted in my original brief that that is
9 the case that they would rely on heavily. And I'm glad to
10 see that he is, because I think it's favorable to us based on
11 the notice concept of that decision and the more recent
12 decision of Miller which talks about notice.

13 THE COURT: Anybody else got anything they want to
14 say?

15 MR. PETERS: Just real briefly. That was Point 3
16 by Mr. Becker. Going back -- and I think the Court picked
17 up, the second point was that my analysis of a 1970 case
18 being unlimited statute of limitations was wrong.

19 I think there's a core dispute, apparently, as to
20 whether the statute of limitations is substantive or
21 procedural. Mr. Becker's arguing it's procedural that
22 today's statute goes back to 1970. My argument in that, my
23 argument is that it's substantive and you've got to apply the
24 substantive law as it applied at the time to the crime when
25 it was charged. So that's the reason I suggest that in a

1 1970 crime you would be able to have a unlimited statute of
2 limitations because the substantive law at the time said it
3 was, the notice requirement and all of that.

4 The final thing, I had saved this in hopes that
5 somebody would bite on it. In 1994 they took out that last
6 sentence, "except for offenses barred by provisions of law
7 existing on August 4th, 1939."

8 What I was hoping somebody would do is say, well,
9 they took that out because Mr. Becker's argument is correct
10 and there is now and always has been an unlimited statute of
11 limitations for all capital crimes, like their position is.
12 And so I was hoping he would nibble on it and say, see, this
13 shows it because now it's unlimited.

14 The reality, and we don't have to go much farther
15 than a couple of weeks ago where a purported Nazi guard was
16 in a gun battle because he didn't want to go back. You can
17 have people who committed a murder in 1938, 1935 who could be
18 prosecuted today. So this section would only be pulled out
19 if, as Mr. Becker suggests, there's always -- and the Court
20 has suggested Congressional intent was to identify crimes
21 that would always have an unlimited statute of limitations.
22 And I was hoping somebody would bite on that and say, well,
23 see, they took this out because there's always been, capital
24 crimes have always been prosecutable with an unlimited time
25 period, never been a time bar.

1 And if it was taken out, however, because from the
2 time of Furman until now, until 1994, there was only a
3 five-year statute of limitations, as we're arguing, then it
4 would be interesting to know why they took that out. They
5 would have taken it out, if my argument is correct, because
6 it was an obsolete provision. Because for 22 years you had a
7 five-year statute of limitations. It's obsolete.

8 And if you go in and you look at the legislative
9 history on this in 1994 -- and I don't know how to do it in
10 the law books. I did it at the U.S. House of Representatives
11 going through their record over the internet, and I've got
12 the cite if we need to give it to you.

13 This wasn't taken out because it was inapplicable.
14 It wasn't taken out because it was irrelevant. It was taken
15 out because Congress in 1994 said, realized they were saying,
16 okay, we're having a death penalty back. We've had a 22-year
17 period where there's a five-year statute of limitations.
18 This provision that we've had in there that would refer to
19 murders that happened in 1939 is obsolete, and that's why
20 they pulled it out.

21 And instead of being pulled out because it's
22 redundant or not necessary or anything, the legislative
23 intent, if we were to actually go that deep, was because it
24 was obsolete. I'm done.

25 THE COURT: Anything else? Anybody else have

1 anything they want to say? Okay. Thank you. What time are
2 we starting tomorrow?

3 LAW CLERK: I think we're starting with the jury at
4 9:00.

5 THE COURT: Is that consistent with all of your
6 understanding is we start at 9:00 with the individual?

7 MR. BECKER: Do we have a list? Do we know who is
8 coming in in the morning and the afternoon?

9 THE COURT: We should have the letters as to who is
10 coming in. You all need to have those.

11 MR. OSGOOD: Your Honor, you were concerned about
12 the questionnaires. I assume the courtroom is going to be
13 locked. Can I leave those here this evening?

14 THE COURT: You're making an assumption. You don't
15 realize it, but you're making an assumption of something that
16 I'm not sure how -- I'm not sure we're going to be here
17 tomorrow. I want to get back upstairs, and we're going to do
18 that if we can, if I can get Judge Clark to agree to move
19 down here. I don't know.

20 I've heard two stories. One is he's planning to
21 come down here tomorrow, and the other story is he thinks
22 he's going to be upstairs all week. So I don't know where we
23 are.

24 But anyway, the answer to your question is the
25 courtroom is going to be locked, yes.

1 MR. OSGOOD: We'll retrieve them in the morning,
2 then, if we need to.

3 (Proceedings were recessed for the day at 7:15
4 p.m.)

5 — — —

7 **Wednesday, January 15, 1997**

9 (Peremptory strikes were made by the parties, a
10 jury was selected, and thereafter the following proceedings
11 were had in the courtroom in the presence of the defendants,
12 but out of the presence of the jury:)

13 THE COURT: All right. The next issue I want to -
14 well, there's one other item. I was visited earlier today by
15 a member of the electronic media asking that I give him and
16 his employer the names of the members of the jury and the
17 alternates before tomorrow morning. I told him I would not
18 do that. I did tell him, however, and he seemed overjoyed
19 with this, that I would tell him how many men and how many
20 women have been selected on the jury. Does anybody object if
21 I tell them that?

22 MR. BECKER: No, Your Honor.

23 MR. PETERS: None of the defendants object.

24 THE COURT: All right. Now, if you all would check
25 me on this, I'm a product of the old math, and I believe that

1 we have six men and six women on the jury and two men and two
2 women as alternates. Does anyone disagree with that? Miss
3 Franco, I'm particularly interested on your view on that
4 since on a couple of occasions I have misread a name and
5 gotten, based on the name alone made an assumption about the
6 sex that was not accurate. So if you could take a look at
7 it.

8 MS. FRANCO: Your Honor, that's my count, too, six
9 and six.

10 THE COURT: That gives me a much higher degree of
11 confidence than what I had before in that regard. Okay.

12 Anything else with regard to the jury, the jury
13 selection process, or the procedure for tomorrow, or at least
14 the first thing we will do tomorrow?

15 All right. Now, the next matter I want to bring up
16 is discussion of when we are going to take up some other
17 matters, or any matter, really, that needs to be taken up
18 before opening statements. Obviously, one of those matters
19 are the opening instructions. The -- Gabi, do you have those
20 for me, the opening instructions?

21 All right. I'll pass out to you all tomorrow
22 morning after we have sent the jury and the alternates home
23 for the weekend a proposed set of opening instructions. If
24 any of you have any comments that you haven't already
25 furnished us on what you think the opening instructions

1 should be, we need them no later than noon -- well, noon is a
2 little unreasonable since that's only 20 minutes from now.
3 No later than 3 o'clock this afternoon.

4 And I said we'll pass out my proposed set of
5 opening instructions tomorrow morning. What I would like to
6 do is have you all take a look at them tomorrow morning, and
7 if you have any problem with them, tell me what that problem
8 is tomorrow morning. In other words, so we can have that all
9 set by Tuesday morning and we don't have to delay things
10 talking about those on Tuesday morning. Is that agreeable
11 with everybody on that subject?

12 MR. BECKER: That's fine with the government,
13 Judge.

14 THE COURT: All right. The next item -

15 MS. FRANCO: Your Honor, I'm sorry. You asked me
16 one question, and I managed to do my own math on it too. We
17 have seven males and five females.

18 THE COURT: Oh, you do? Why don't you tell me who
19 you -

20 MR. BECKER: Judge, I'm informed that we have seven
21 males and five females.

22 THE COURT: okay. Great. Seven and five, and the
23 alternates are two and two, right? Okay. Thank you. A11
24 right.

25 The next item that I know of that we need to talk

1 about before Tuesday is Defendant Darlene Edwards' motion in
2 Limine I'm prepared to talk about that now. I'll be
3 prepared to talk about it, presumably I'll be prepared, if
4 I'm prepared now to talk about it, I should be prepared
5 tomorrow to talk about it after we send the jury home.
6 Therefore, I will listen to anybody who has a preference as
7 to when we talk about it.

8 MR. BECKER: I would prefer tomorrow morning. I
9 did not bring those materials to court. I didn't know we
10 were going to be addressing it. They're on the fifth floor.
11 I mean, I could get them.

12 MR. BUNCH: I concur with Mr. Becker. In addition
13 to that, we would probably like to talk about that amongst
14 ourselves before tomorrow morning.

15 THE COURT: Okay. That's fine. So we'll put that
16 on the agenda for tomorrow morning. Now, is there anything
17 else that anybody would like to put on the agenda for either
18 today or tomorrow morning?

19 MR. OSGOOD: With respect to the motions in limine,
20 Your Honor, I think we made this record in front of
21 Magistrate Hays. I don't know if it was told to you.

22 Mr. Becker agreed that before he would ask any
23 questions that alluded to evidence of other crimes that he
24 would alert the bench, and on the basis of that, we didn't
25 try to go through the records and file 150 motions, or 150

1 incidentsof evidence of other crimes; is that right, Mr.
2 Becker?

3 MR. BECKER: I thought we were specifically looking
4 at what would be 404(b), such as the Darlene Edwards -
5 there's an incident where she burns a car for insurance
6 purposes. Certainly I would alert all parties ahead of time
7 on that.

8 MR. OSGOOD: I had in mind, Witness Smith is on the
9 stand, and he says, yeah, I know Frank Sheppard, I met him
10 down at the Missouri State Penitentiary. Or I know Richard
11 Brown, I met him over at the Jackson County Jail when he was
12 doing time on drunk driving.

13 MR. BECKER: I was not intending to alert anyone of
14 that because that is clearly contained in all the reports of
15 interviewsand/or the grand jury material.

16 MR. OSGOOD: There are probably 200 or 300
17 incidents of that that we would have to flood the court
18 with.

19 MR. BECKER: You have the order of witnesses for
20 the first week. You will have on the day preceding the order
21 of witnesses for the next day so that any of those matters,
22 you should have some idea of when they're coming and in what
23 orderthey're coming, and I believe we could address them as
24 you wish or as the Court determines.

25 MR. OSGOOD: What's the Court's preference, Your

100

1 Honor?

2 THE COURT: My preference is that when the jury is
3 here, the jury is in the courtroom and we're not up here at
4 the bench and we're not back in the conference room. I'll
5 leave it up to you all. I'll be available before the trial
6 day, I'll be available after the trial day, but I will be
7 very impatient if there are matters that are taken up on the
8 jury's time that could have been taken up before or after the
9 trial day.

10 Now, obviously, there are -- in any trial, there
11 are unexpected things that come up that take time, and the
12 jury just has to live with them. But, you know, I'm not
13 going to be very patient with anybody who wants to take time
14 out of the jury's day for things that we should have dealt
15 with earlier. And that's all I can tell you because I don't
16 know what the -- I mean, I don't have any, I don't have much
17 feel for the issue or the, how much of an issue it is or
18 whether one ruling on it can take care of a lot of the
19 situation. It sounds to me like one ruling on the issue, as
20 I understand Mr. Osgood presenting it, ought to take care of,
21 ought to take care of most of these problems.

22 MR. OSGOOD: Well, and my fear is if he preps his
23 witnesses and we get the list ahead of time and he's already
24 prepped the witness, then we've got the problem, too, of the
25 witness, even though Mr. Becker doesn't elicit the answer

1 with a specific question, we have a problem with the witness
2 blurting out the answer.

3 So I'm more concerned about Mr. Becker warning the
4 witness not to blurt that kind of information out until he
5 asks a specific direct question about it. I think Your Honor
6 knows well and good that that's a problem with a witness
7 that's particularly testifying with a prior conviction or
8 something who is trying to curry favor with the government.

9 THE COURT: Well, it's a problem, Mr. Osgood, with
10 everybody's witnesses on both sides all the time. A witness
11 by definition is somebody who does the unexpected. So it's
12 something that I'm not going to buy into, and you can quit
13 trying to sell me some kind of idea that we've got people in
14 this courtroom who aren't going to carry out their
15 responsibilities and make a good faith effort to follow my
16 orders, and I'm not -

17 MR. OSGOOD: I'm not suggesting Mr. Becker would do
18 that.

19 THE COURT: You can just sort of table all that
20 kind of sinister kind of presentation because it's not, it
21 doesn't get points with me.

22 MR. OSGOOD: I didn't say that, Your Honor.

23 THE COURT: You were suggesting that Mr. Becker is
24 the type of person who is going to try to do sneaky little
25 things to get around my orders, and he's not going to do

1 that, and neither are you, and neither is anybody else,
2 unless they want to have trouble with me.

3 MR. OSGOOD: And I did not suggest that, Your
4 Honor. I suggested the witnesses, the character of these
5 witnesses suggest they will do it, even if Mr. Becker -- I'm
6 concerned even when Mr. Becker tells them not to do it that
7 they will do it. It's the character of the witness I'm
8 concerned about.

9 THE COURT: That's the point I'm making, that
10 witnesses by definition will do the unexpected. They'll do
11 exactly, many of them -- and it's understandable, by the
12 way. I'm not being critical because if any of you all have
13 ever been a witness in a courtroom proceeding, you know that
14 you can be cool as a cucumber and be very understanding and
15 appear very rational outside the courtroom when you're
16 talking to the lawyer, but you get in the courtroom and
17 you've got all of these people looking at you, you've got
18 this room, which by itself is imposing. And people will
19 either freeze, or they get nervous when they're, when -- it's
20 a function of their role, not a function of what they're
21 doing.

22 So I mean, but it's not that I -- I mean, I
23 understand what you're saying. All I'm saying is that I
24 don't think anything can be done effectively to guarantee
25 that a witness will not blurt out something, particularly -

1 and this is why, this is what is so difficult about this type
2 of issue, and it's not just in this area, it goes across the
3 board -- particularly if the witness believes it's the truth
4 and the witness has just taken an oath to tell the truth, the
5 whole truth, and nothing but the truth.

6 Now, you put a witness up there and somebody asks a
7 question that you or I might say, hey, doesn't call for that
8 answer. You know, that isn't what's called for by the
9 answer. Mainly because we're not the witness. I mean, ~~~ -e
10 sort of cool and detached from it. But the witness blurts
11 out something. Now, that can happen either because it's
12 planned, or it can happen accidentally.

13 My experience is with the people that practice in
14 this court as lawyers, my belief is that it usually is
15 accidental. Now, occasionally because of the pattern of the
16 behavior or other factors, I've made a determination there
17 may be some question about whether it's entirely accidental,
18 in which case the lawyer involved and the other lawyers in
19 the case and I have a little talk. And I try to make it very
20 clear to them.

21 So I'm taking this occasion to make it very clear
22 to all of you that you are officers of the court, your
23 obligation is to follow the rules of this court, to follow
24 the orders that I hand down. And I expect you to do that.
25 Now, that takes care of that issue, I hope, from now until

1 the end.

2 MR. OSGOOD: Excuse me, Your Honor, but i don't
3 know that it does because I just heard Mr. Becker just tell
4 me that he's not counting on excluding that kind of
5 testimony.

6 THE COURT: No, I'm saying that takes care of the
7 issue of sneaky lawyer syndrome.

8 MR. OSGOOD: I'm not suggesting that he's engaging
9 in sneaky tactics. I've known Mr. Becker a long time. I
10 respect his ability, and I respect him as a lawyer, Your
11 Honor, and he's done nothing in this case that I would
12 consider an ethical violation at this point.

13 But the fact remains he's an aggressive lawyer, and
14 he represents the United States Government, and he wants to
15 put his best case on that he can. And I think, quite
16 candidly, that his best case would be such evidence, for
17 example, as, do you know Mr. Brown? Yes, I do. When did you
18 first meet him? I met him when we were doing time together
19 over in Jackson County on a DWI charge.

20 That's clearly prejudicial and, you know, unless
21 the witness is told how to handle that question, the witness
22 is going to give that answer. And you know full well he
23 will, Your Honor.

24 THE COURT: But, Mr. Osgood, it may well be that
25 the witness's testimony and whether it is believable or not

1 may in part depend upon how the witness happens to know what
2 the witness is testifying about.

3 MR. OSGOOD: I agree.

4 THE COURT: And that is frequently a function of
5 where the event took place, who was present, how much of an
6 opportunity the witness had to be exposed to whatever the
7 event is that being testified about. So frequently, the
8 location of an event is crucial to the finder of fact being
9 able to assess its credibility.

10 MR. OSGOOD: I don't disagree with that. If they
11 were cellmates for 60 days and it was an admission my client
12 made after they were 58 days friends in the cell talking
13 about criminal behavior, certainly I would expect the Court,
14 I would object to it, but I would expect the Court would let
15 it in. But by the same token, if he met him eight years ago
16 in Jackson County while they were both over there doing three
17 days for speeding and now he's talking about an event six
18 years later when he met him at a party, clearly it's
19 irrelevant and it's prejudicial.

20 I don't want to belabor the point. I think the
21 court is aware of it. If you want me to file 150-page
22 pleading citing line by line in these statements, I will do
23 it, Your Honor. I thought the easier way to handle it would
24 be a commitment from the government that they would be
25 sensitive to that issue and that the Court would be sensitive

1 to it and that would be it, it would be a more expeditious
2 way to handle it.

3 THE COURT: I'm all in favor of expeditious.

4 MR. OSGOOD: There's another issue, if I might.

5 THE COURT: Wait a minute. Hold it. Bet's don't
6 go jumping from issue to issue and leave all of these things
7 hanging. Mr. Peters, would you like to say something on that
8 issue?

9 MR. PETERS: All I'm saying is as far as I knew,
10 the issue was hanging so if there's -- there are probably 60
11 witnesses where in their statement, it's going to be
12 something like, yeah, I know so-and-so because we used to do
13 dope together, and then on the night of the explosion, he
14 told me such-and-such.

15 And the issue that I see that's still hanging is,
16 again, I recognize I'm in a different court, but if the
17 statement "we used to do dope together" came out in trial
18 inadvertently, from my background, it would be a mistrial.
19 And so what the judge has said, it seems to be hanging. I
20 think we all agree, if the involvement, being in jail
21 together is where the statement took place, we don't have a
22 dispute as to that. But what I feel like is left hanging is
23 -- what we're asking is that the government instruct their
24 witnesses who have this familiarity with the defendants'
25 criminal background or jail background, and that they're

1 charged with instructing their witnesses that it's not to be
2 mentioned on the witness stand.

3 On the things that touch on something admissible,
4 what I was required to do as a prosecutor is approach the
5 bench before it would be elicited from the witness. What I'm
6 hearing is that it's unresolved. And if the Court -- as Mr.
7 Osgood said, our understanding was this issue was kind of
8 resolved in front of Judge Hays. I'm now hearing -- I don't
9 know if it is resolved. If it's not resolved, then on behalf
10 of my client who spent time in the joint, I'm going to need
11 to go through and carefully file motions in limine so that
12 those witnesses can be put on notice. And if that's what the
13 Court would like, that's fine.

14 That's all I had because I felt like it was left
15 hanging.

16 THE COURT: Well, you all are dealing with
17 something that you're not going to suck me into. Okay?

18 MR. PETERS: I'm sorry. I didn't hear the last of
19 that.

20 THE COURT: You're not going to suck me into doing
21 this. I'm not going to spend any substantial part of my life
22 requiring a lawyer to run through their testimony with me and
23 get it sanitized before they put it on. And I'm not going to
24 require them to do that at your request. So you can forget
25 that.

108

1 I will, however, say this. I expect Mr. Becker,
2 after this discussion and whatever previous discussions you
3 all had on this, which I'm not aware of, to exercise the kind
4 of judgment that he ought to exercise and to avoid the, do
5 everything he can to avoid the inadvertent, irrelevant
6 reference by a witness to uncharged criminal behavior or to
7 the location of an event if that has nothing to do with the
8 testimony that's being presented.

9 On the other side of it, I'm going to demand of
10 defense counsel, if you are aware from all the information
11 you've got that there is a high degree of risk with regard to
12 a witness that they are going to do this, I expect you to
13 bring it to my attention. But I'm not going to get, you're
14 not going to get me into getting into some deal where I
15 require both you and the government to sort of present your
16 witnesses to me so I can stamp them approved or unapproved as
17 to what they're going to say because that's not going to work
18 either. Because when the testimony comes along, there's no
19 guarantee they're going to say it the way they would have
20 said it, even if we did that. So it would be a waste of our
21 time.

22 But the defense counsel are not going to avoid the
23 responsibility of bringing this matter to my attention in a
24 specific way with regard to specific witnesses, and Mr.
25 Becker's not going to avoid his responsibility after this

1 discussion to exercise good judgment in preparing his
2 I witnesses. And despite Mr. Osgood's suggestion to the
3 I contrary, Mr. Becker is not, I'm confident, going to prepare
4 This witnesses in such a manner that they can sort of try to
5 zing the defendants every time they have a chance with
6 irrelevant, immaterial, and possibly unfairly prejudicial
7 information.

8 Now, if that doesn't take care of it for today,
9 then you all better get to work on your 150-page motion
10 because otherwise you're not going to get any relief. Okay.
11 Next.

12 MR. PETERS: Judge, just on that -- and I don't
13 know the procedure, and I apologize. You stated very
14 succinctly about a minute or two ago and then summarized it.
15 Is it possible for me to -- I wrote down as fast as I can.
16 Is it possible for me to get the Court's guidance on that
17 through the court reporter just sometime before Tuesday so
18 that -

19 THE COURT: Do you want me to repeat what I just
20 said? I couldn't do that, I couldn't remember it.

21 MR. PETERS: That's why I asked about using the
22 court reporter.

23 THE COURT: I couldn't do it. I mean, I can give
24 you the outline, if you want me to. Miss Wirt, I'm sure,
25 will be glad to read back what I said. Or if you've got a

1 question about what I said, ask me and I'll try to repeat it.

2 MR. PETERS: I didn't have any question at all. I
3 just wanted to blow it up and put it over my computer to
4 guide me.

5 THE COURT: So you can use it later? Well, you
6 certainly should have that, and I'm sure Miss Wirt will -- in
7 fact, maybe she could mark it right now so she can -- she's
8 done it. She's marked it so she can read it back to you.

9 MR. PETERS: Thank you, Judge.

10 THE COURT: If after you've had it read back to
11 you, if you have some question about what I said, as you can
12 tell, that was extemporaneous. I don't have a script here
13 that I was reading from. If you wonder if I really meant
14 what I said, come and ask me, and I'll -- I mean, I could
15 have used a word that was wrong.

16 My hope, my whole idea is you will all know what
17 your jobs are and I expect you to do it, and I'll try to do
18 my job. But, you know, we can't in a case of this type or
19 any type guarantee people absolutely any particular result
20 when we're dealing with human beings under very stressful
21 situations. And as Mr. Peters points out, and he's exactly
22 right, I mean, just because it's unexpected, unplanned, if it
23 happens, it may well be the basis for a mistrial. I mean, I
24 don't know.

25 I mean, I'm not saying that just because it's

1 unexpected and unplanned that, therefore, it's okay. I'm
2 saying that -- I think we all have to recognize that kind of
3 thing happens and it will be up to you all and to me to
4 decide what to do if something that's improper happens and
5 for me to assess whether it has had any irreparable, adverse
6 effect on anybody's right to a fair trial. If I conclude
7 that and I have a request for a mistrial, you'll get a
8 mistrial.

9 MR. BECKER: I have four points, four issues.

10 THE COURT: Wait just a minute. Just a second
11 here. Remember where we were a minute ago? Mr. Osgood had
12 another issue that he wanted to raise, and I stopped him
13 while we took this matter up. So let's let Mr. Osgood raise
14 his other issue here since I interrupted him.

15 MR. OSGOOD: I think I'll save that one for another
16 day, Your Honor, the next issue.

17 THE COURT: Okay. I mean, as long as it isn't -
18 as long as you're not saving it for first thing Tuesday
19 morning. I mean, if you want to save it until tomorrow or
20 some other time, that's fine.

21 MR. OSGOOD: I will address it, then. This is Mr.
22 Martindale who has confessed to the crime, failed a
23 polygraph.

24 THE COURT: Just a second. Are you going to give
25 me some -- because I don't know who Mr. Martindale is.

1 MR. OSGOOD: I understand. Let me give you some
2 background. Mr. Martindale was an individual that they
3 focused on very heavily and failed a polygraph, I believe.
4 They took him in, and he provided a full confession. There
5 were, we've got photographs which suggest that he told them
6 information that had not been public, and conceivably the
7 only way he knew it was that he was at the scene and must
8 have seen these things. So we feel it's a credible
9 confession. Mr. Becker turned it over to us as Brady
10 material.

11 Now, we asked Mr. Becker, do you have any evidence
12 that would suggest that Mr. Martindale, in fact, was a
13 categorical, unmitigated liar or insane or that he was in
14 Western Missouri Mental Health or something at the time he
15 made this confession? Mr. Becker did not respond to that.

16 Now, if he has that kind of evidence, we contend
17 that that is, in fact, not Brady material, what it is is
18 Jencks material, like any other Jencks material. By
19 characterizing it as Brady material, he is suggesting to us
20 that it is, in fact, a credible, at least on the surface,
21 exculpatory classic statement under Brady. As you'll recall,
22 Brady was, in fact, a confessing defendant. They've gone
23 beyond Brady now with impeachment, but we're dealing now with
24 an individual that actually confessed.

25 We feel that it is unfair to characterize it as

6 One, it's going to save a lot of time. If we go
7 off down a path with this court to suggest that Mr.
8 Martindale, in fact, is the one that is responsible for this
9 crime and we spend a good deal of time developing that point,
10 and then Mr. Becker brings in a surprise witness from the
11 Missouri Western Mental Health and says, no, at the time the
12 explosion occurred, he was an inmate with us, locked up
13 because he's schizophrenic, then we've just wasted a lot of
14 the Court's time.

[illegible]

18 THE COURT: Is that part of your theory, that Mr.
19 Martindale is the guy who did it and not your client?

20 MR. OSGOOD: Well, my client, obviously, has an
21 alibi, and we don't know who did it, other than we've got
22 a -

23 THE COURT: I understand.

24 MR. OSGOOD: Yes, I think Mr. Martindale must have
25 been there based on his confession, absolutely.

1 THE COURT: By himself, or -- I don't know what
2 your theory is. I'm trying to get some idea of what your
3 theory is.

4 MR. OSGOOD: Mr. Martindale confessed to it and
5 made statements that would suggest that only he would have
6 known that by being personally there. Now, Mr. O'Connor has
7 seen the photographs and can address that better than I.

8 MR. O'CONNOR: Your Honor, I had planned to put on
9 as my case -- I guess everyone can put Martindale on, but
10 he's a person that I've endorsed, and I have witnesses that
11 are related to him.

12 Again, it's going to depend on the ruling of the
13 court on whether this evidence even comes in. Martindale is
14 under subpoena currently. Martindale gave a videotape, this
15 is on the TV confession, a video confession to this crime,
16 and the evidence leading up to him giving the confession and
17 statements made to him by interrogating officers and
18 statements he made, which we would contend are against penal
19 interest. And we believe he had certain facts and
20 information that he could never have had unless he had
21 actually been there.

22 The person that he puts himself with -- Martindale
23 is about six foot three or six foot four with long hair. The
24 guy he put himself with, Billy Hardin, is about six foot
25 four, 250 pounds with blond hair. The Riggers, the two

1 security guards who are going to testify in the case, will
2 Isay that they saw two men run across the highway, one with
3 long dark hair, and one with long blond hair. They went up
4 Ito investigate, did not find anybody, they left and went and
5 I had coffee. And when they were having the coffee is when
6 I this fire and explosion started.

7 So we believe that there is -- and again, we'll
8 have to put this proof before the Court at that time. But we
9 believe that there is strong evidence of Martindale's
10 involvement, and if -- we believe that if they have evidence
11 to disprove that, one, we put that evidence forward trying to
12 get some credibility with this jury. Me believing, based on
13 what I've seen, with good reason, with photographs to back up
14 with what he says, seven of them, to be exact. And if you
15 want me to go through each photograph and what's in them and
16 ~ what he says, we can, but that somehow gives up our defense
17 in the case and lets Mr. Becker know where we're coming
18 from.

19 But I believe that if they have evidence -- if they
20 went and talked to Billy Hardin, we have nothing. Obviously,
21 ~ if they didn't put what Billy Hardin -- they took a video
22 confession from him. They told him he was the person
23 responsible for killing the firefighters, they told him he
24 was going to spend the rest of his life in prison, that will
25 ~ be the evidence.

1 And so if they have found Billy Hardin or talked to
2 Billy Hardin and disproved the alibi or, strike that,
3 disproved the confession, then we believe we're entitled to
4 that information. Because we're walking down a blind street.

5 THE COURT: Well, but you mean so that you'll know
6 whether your defense is a good defense or not a good
7 defense?

8 MR. O'CONNOR: Well, Judge, we don't know. If you
9 look at this from a total good faith basis, if you had the
10 confession, you had the photographs, you had the information
11 given at the time of the event, it could lead a reasonable
12 person, not an advocate, but a reasonable person to believe
13 that Martindale did this. Now, if there was evidence to
14 disprove that, I don't know that I would then put that
15 evidence on. And all I'm trying to find out -- I don't know
16 the truth either.

17 THE COURT: But what case says that you're entitled
18 to know ahead of time whether your evidence is good evidence
19 or poor evidence?

20 MR. BECKER: Surprisingly, Judge, that's exactly
21 what the magistrate said at the similar request. If you have
22 some case law on that point, she said she'd like to see it.

23 THE COURT: I'm glad to see that I've foreseen what
24 somebody else said, but I'm still interested in what the case
25 law is that says that you're entitled to have the government

1 tell you whether your defense is a good defense or a poor
2 defense.

3 MR. O'CONNOR: Judge, if it's given to us as Brady
4 material.

5 THE COURT: Why is it Brady material?

6 MR. O'CONNOR: No, no, the confession.

7 THE COURT: So the confession is Brady material.

8 MR. O'CONNOR: They're saying, here is some
9 exculpatory information that proves that your clients may not
10 have done that.

11 THE COURT: It doesn't necessarily say that. I
12 don't think the government is saying it proves that your
13 clients didn't do it; otherwise, they would dismiss the
14 case. If they said that, the case is over. So what they're
15 doing is saying it could, might, I mean, they're complying
16 with what the concept of Brady was.

17 Now, what requires them to give you information to
18 tell you that if you rely on the information they've given
19 you that you've just stuck your foot in a hole? Where is
20 that case? Just give me the case.

21 MR. O'CONNOR: I don't have the case.

22 THE COURT: Okay. Then what's the theory, even?

23 MR. O'CONNOR: The theory is, Judge, if he gives it
24 to me as exculpatory, that's a fraud if there's other
25 evidence that disproves that.

1 THE COURT: It is not a fraud. It's exactly what
 2 you're saying. It might be exculpatory if the jury believed
 3 it. But why does the government have to give you a guarantee
 4 that the jury is going to believe it? And why do they have
 5 to tell you things that aren't exculpatory? I mean, the fact
 6 that this guy may have been in Western Missouri Mental Health
 7 at the time isn't exculpatory, is it? It sounds to me like
 8 it's just the opposite.

9 MR. O'CONNOR: We are not concerned about
 10 Martindale. We're concerned about Billy Hardin. We've
 11 talked to Martindale. Martindale, there's no problem on
 12 Martindale.

13 THE COURT: So you know he wasn't in Western
 14 Missouri Mental -

15 MR. O'CONNOR: We know he was out and about and he
 16 could have committed this crime.

17 THE COURT: Wait a minute. I was just told a
 18 minute ago that you were concerned about the fact, not you,
 19 but Mr. Osgood was concerned about the fact that he was in
 20 Western Missouri Mental Health at the time.

21 MR. O'CONNOR: I think he was using that as an
 22 analogy, if that were the case.

23 THE COURT: But he knew it wasn't.

24 MR. O'CONNOR: I don't know that he knew it wasn't.

25 MR. OSGOOD: I've never talked to the man.

1 MR. O'CONNOR: I've taken his statement, and I
2 haven't got it back from the reporter yet to get it to the
3 other counsel, but they know I've tacked to him.

4 THE COURT: So you're concerned about Hardin?

5 MR. O'CONNOR: I'm concerned about Hardin, exactly.

6 THE COURT: So you're concerned about -- and what
7 are you concerned about with Hardin?

8 MR. O'CONNOR: That they go find Hardin and can
9 prove that Hardin was somewhere at the time.

10 THE COURT: Is Hardin on their witness list?

11 MR. O'CONNOR: No, neither is Martindale.

12 THE COURT: You're suggesting that they've found
13 Hardin and they haven't put him on the witness list because
14 they don't want to call him?

15 MR. O'CONNOR: I'm suggesting that -- not recently,
16 but back at the time -- I'm assuming when a guy confesses and
17 they're telling him he's the guy, I'm assuming they went to
18 find Hardin. I don't know.

19 THE COURT: And they found Hardin -- and let's just
20 hypothesize here. They found Hardin, and Hardin said, yeah,
21 I was with Martindale at the time, and everything Martindale
22 says is correct, that's where we were. Now, that's Brady,
23 isn't it?

24 MR. O'CONNOR: Exactly. So I'm assuming they don't
25 have that.

1 THE COURT: So, now, the next option is they have
2 found Hardin, which I guess is sort of a nothing, right?
3 They never found him. They might have looked for him but
4 never found him. You've looked for him and have not been
5 able to find him.

6 MR. O'CONNOR: I can tell the Court this. I have
7 pretty good sources that they found him, but I couldn't tell
8 you 100 percent.

9 THE COURT: So they found him, and so now I guess
10 the next thing is he doesn't remember, or he says Martindale
11 is full of boloney, I was never with Martindale.

12 MR. O'CONNOR: And if that's the case -

13 THE COURT: Now, why do they have to tell you
14 that?

15 MR. O'CONNOR: I agree with you, they don't.

16 THE COURT: So what are we talking about here?

17 MR. O'CONNOR: If there is some proof of
18 Martindale, in other words, Martindale was in jail at the
19 time, Martindale was in the -- if there's some conclusive
20 proof that could prove, absent his statement, where he was
21 that would disprove Martindale, that's what I think we're
22 entitled to.

23 THE COURT: Okay. And what rule, case, principle
24 gives you the basis for your claim? Because, see, once you
25 give me the rule and the case, then I can turn to Mr. Becker

1 and make the same request of him as to what he's, what he
2 has, and then we'll make some progress here.

3 MR. OSGOOD: Under the omnibus report we
4 characterized discovery as consistent with Rule 16 and go
5 beyond. Rule 16 is very explicit about what you get in terms
6 of tangible documents, statements of the defendants,
7 statements made to a person known to be a law enforcement
8 officer. That's Category A.

9 Category B is Brady material which is disclosed
10 ahead of time, which is either a confession of someone else
11 or impeaching information. We cut impeaching information out
12 under Agurs and those cases that followed. We're really
13 keying on Brady. Brady -

14 THE COURT: You're making your request -- are you
15 interested in Hardin or not?

16 MR. OSGOOD: Let me just summarize here, if I
17 might, briefly.

18 THE COURT: Sure.

19 MR. OSGOOD: So Brady, we know what Brady is. The
20 third major category is Jencks material, 18 U.S.C. 3500,
21 which is a statement of a witness that the government
22 proposes to call at trial.

23 Now, in analyzing Mr. Martindale's confession, we
24 got that very early on in the case specifically characterized
25 as Brady material, not as Jencks material. Under the omnibus

1 report, Mr. Becker was ordered to identify Brady material and
2 turn it over to us. He has turned that over to us as Brady
3 material. If, in fact, he knows it is not Brady material and
4 it is only, at best, Jencks material if he calls the witness,
5 then what we have is a situation which will cause us to waste
6 this Court's time, cause us to go down a path that probably
7 is unproductive. And, under the Court's supervisory power
8 and in enforcing the omnibus report, this Court has the
9 authority and probably should well require Mr. Becker in good
10 faith to state which category it is. That's all we're
11 requesting is that he tell us in straightforward, candid
12 terms, is it Brady material or is it Jencks material.

13 THE COURT: You told me he's always said it was
14 Brady material.

15 MR. OSGOOD: I'm suggesting that if he knows full
16 well that this witness could not possibly under any situation
17 have been there because he was locked up in jail, then he
18 knows it's not Brady material.

19 THE COURT: Mr. Osgood, you know, that's an
20 astonishing concept. You know, I mean, I can just hear what
21 would happen in this case if Mr. Becker ahead of time had
22 made that judgment. You know, if he had said, well, you
23 know, this guy Martindale, he said this, but I don't believe
24 him. And I've got, I've got pretty solid basis for not
25 believing him, so I don't think it's Brady material, I'm not

1 going to turn it over. I would have to ask you to come down
2 from the ceiling up there, you would be so upset, and you
3 would have justification for it. You would be absolutely
4 justified in being upset because -

5 MR. OSGOOD: I agree.

6 THE COURT: -- the determination of Brady material
7 should not be on the government, whether they believe it or
8 not, it's up to you all. You're entitled to it, and so you
9 got it.

10 MR. OSGOOD: And this is not a game, Your Honor.
11 And there's a Supreme Court case that's quoted over and over
12 again about his obligation to seek truth and justice, not to
13 come in here and convict somebody for the sake of convicting
14 them.

15 I'm not suggesting he is. But the point is that
16 obligation would suggest that, yes, you don't hold it back
17 and make the judgment unilaterally. What you do is you give
18 us everything dealing with Mr. Martindale that you have
19 conducted an investigation on, which would be his confession
20 and any collateral statements, whether he's going to call him
21 as a witness or not. That would either eliminate this as an
22 issue or bring it to the forefront. That's all we're
23 asking. We think he's got a good faith obligation to do
24 that.

25 THE COURT: That's a concept that turns the

1 American criminal justice system on its ear. That's not the
2 obligation of the government to tell the defense whether
3 their defense is good or bad or to tell them what's going to
4 happen to them if they rely on a particular defense, unless
5 there is a case or a statute or a rule that requires it. And
6 as soon as you give it to me, then I'm going to turn the
7 spotlight on Mr. Becker and ask him what his response is to
8 that case, rule, or statute.

9 Yes, Mr. O'Connor?

10 MR. O'CONNOR: We're going to research this issue.
11 We wanted to bring it to your attention because this is
12 something -- obviously, I want to get it addressed finally
13 and absolutely before the trial starts because I may be
14 making an opening statement about it.

15 The other thing I want to say about it, just for
16 the Court to take into consideration, because of the fact
17 that we were denied the continuance, because we were trying
18 to do everything else, to try to go back and try to find this
19 guy who the best address he gave in his confession at the
20 time was in the St. Louis area, a report in 1991 with just
21 his name, Charles Jennings, I haven't even addressed that
22 issue with everything else we're trying to address. And
23 that's just another further complication that comes into play
24 here just as a natural event.

25 THE COURT: Well, Mr. O'Connor, let's -- we'll take

1 it up, your authority that you come up with tomorrow after we
2 send the jury home.

3 MR. O'CONNOR: Thank you.

4 THE COURT: Okay. Mr. Becker, do you want to say
5 anything about that issue, or do you want to wait until they
6 get their authority together?

7 MR. BECKER: I have nothing to offer on that issue.

8 THE COURT: Okay. Mr. Osgood, do you have any
9 other issues that you want to raise?

10 MR. OSGOOD: No, Your Honor.

11 THE COURT: Okay. Any of the other defense
12 attorneys have anything you want to raise?

13 MR. O'CONNOR: We reserve the right to caucus when
14 we're done and let you know by 3:00 if we have any issue we
15 want to take up.

16 THE COURT: You don't need to do that. I mean, you
17 do need to do it, but you can let me know tomorrow. unless
18 -- and what I'd like you to do is let Mr. Becker know if
19 there's something you're going to be bringing up tomorrow
20 just so when you bring it up tomorrow he doesn't say, oh,
21 well, I need time to get ready for it, and then we've got to
22 figure out when we're going to meet between Thursday morning
23 and -- we can always do it on Friday, we can do it Saturday,
24 Sunday, or Monday, but I think you all probably have other
25 things that you're going to be wanting to do. And so I just

1 thought since you're all going to be here tomorrow that this
2 would be a time to take care of it at the minimum
3 inconvenience to all of you.

4 MR. O'CONNOR: We'll call him, Judge.

5 THE COURT: Okay. Mr. Peters, do you have anything
6 else you want to raise?

7 MR. PETERS: I don't believe so. I think Mr.
8 Becker may address -

9 THE COURT: And Miss Franco, do you have anything?

10 MS. FRANCO: Not at this time.

11 THE COURT: Mr. Bunch?

12 MR. BUNCH: No, Your Honor.

13 THE COURT: Okay. Mr. Becker?

14 MR. BECKER: Reciprocal discovery, Judge. The
15 thing that brought it to mind is Mr. O'Connor mentioning the
16 Martindale statement. Mr. Martindale is listed as a witness
17 on Defendant Bryan Sheppard's witness list. Mr. O'Connor
18 informed me the middle of last week, I believe, I don't have
19 a date, but that he had taken a stenographic statement from
20 Martindale. He said that it would be in his office in the
21 normal course of events on Monday of this week.

22 I've waited, I think, a number of days to raise
23 this issue because I thought that he would get that
24 transcript and, because it's a statement of a witness that he
25 has on his witness list, he would be providing it to the

1 government.

2 Along those lines, I'm requesting any other
3 stenographic statement he may have of any witness whose name
4 appears on his witness list, or in that broad category he
5 denoted on his witness list all government witnesses. He
6 listed on his witness list, incorporated by reference the
7 government is witness list. Thus, he is obligated under
8 Jencks to provide copies of any statements he may have of
9 those witnesses. And I would ask that those be turned over
10 forthwith.

11 THE COURT: Mr. O'Connor?

12 MR. O'CONNOR: Your Honor, as it relates to Mr.
13 Martindale, I advised Mr. Becker, I had to, that I had the
14 statement from Mr. Martindale. I can tell the Court I do not
15 have that statement back from the court reporter. I would
16 have a further response to this, but I would not want to make
17 it -- I would like to, I would rather make it ex Carte i
18 camera to explain -- if I can explain the circumstances, I
19 think the Court would understand it. But I think if I did it
20 in front of Mr. Becker it would severely take away any trial
21 strategy I had in this case and my investigative efforts in
22 this case.

23 The reason we listed any and all witnesses is I
24 basically called Mr. Becker, and I said, now, do you want me
25 to give you a ten-page list with all the witnesses renamed on

1 it, or is it okay just to say any and all witnesses so we
2 don't have another five-page document to hand around? That's
3 why I put any and all witnesses. That's why I told him I was
4 putting any and all witnesses.

5 Obviously, I'm not going to call -- he's got 13 or
6 14 which I call jail house witnesses that I'm not going to
7 call, don't intend to call.

8 And so he now knows evidently that I've been out
9 talking with these people and I have statements of them, and
10 he's not entitled to get those from me under some ruse that I
11 filed this any and all witness thing to get into my case and
12 my statements that are his witnesses.

13 He knows I have no intent, nor have I had any
14 intent, to call any of these people. I'll be happy if none
15 of them show up. But I was trying to save the Court's time
16 and his time from having to go through a list of 100 people
17 who he knew and I knew I wasn't going to call just for
18 brevity, and now to turn around on me to suggest -

19 MR. BECKER: I don't think I'm turning anything
20 around.

21 THE COURT: Now, wait a minute, darn it. I told
22 you all to file a list of your witnesses, and I take that at
23 face value. If you list all the governments witnesses, then
24 you are endorsing as one of your witnesses all the
25 government's witnesses.

1 You know, there's no, you all don't seem to
2 understand that when we ask you to do something, we mean it.
3 And I take those witness lists -- and you do too, by the way,
4 because, naturally, if you wanted to call somebody, you would
5 say you listed them because you made reference to the
6 government's entire list. So I mean, as far as I'm
7 concerned, that's your witness list.

8 MR. BECKER: I didn't mean to in any way entrap Mr.
9 O'Connor. He said he was going to list all of the names on
10 my list or, conversely, just put all names on the government
11 list. So I didn't mean to, you know, deceive him in any
12 fashion. I said, I don't care if you list all the names or
13 if you put all names, it's the functional equivalent.

14 MR. O'CONNOR: I can tell this Court, my word,
15 whether it means anything or not, when I talked with him, my
16 full intention of that list was just to make sure if someone
17 didn't get called that I wanted called that they were
18 available. I have no intention, and I don't think the Court
19 would believe that I would call witnesses who are going to
20 say that my client was involved in this explosion, that I
21 would really have those witnesses come and testify in this
22 case.

23 THE COURT: Well, Mr. O'Connor, the only thing
24 that's puzzling -- here, let me tell you what has me
25 puzzled. One of you, and I don't remember which one of you,

1 made the following statement to me, was it yesterday? I
2 don't know. The day before, I don't remember. And it was
3 this. Well, now, Judge, you know, the -

4 I know how it came up. It was when we were talking
5 about what witnesses I should read, you know, the names of
6 what witnesses I should read. And the government had split,
7 at my direction, split their witness list into two groups.
8 And the other group, I've forgotten how it was referred to,
9 but the unlikely to call group, and there was a discussion
10 about whether I needed to read the unlikely to call group.
11 And one of the defense attorneys said, well, yes, you've got
12 to, Judge, because if they don't call them, we may. Now -

13 MR. OSGOOD: That was me. And I said that, and I
14 mean that.

15 THE COURT: So I mean, I don't -- that's what has
16 me confused a little bit. The function of witness lists is,
17 at least I thought in part, was to protect a party so that if
18 they wanted to call a witness, it was on their list. And
19 frequently you do that by incorporating the other side's list
20 so that if the other side doesn't call somebody that you
21 hoped they would call so you could get something important to
22 your case, you would be able to call them, because otherwise
23 you would have to struggle a little bit to get permission to
24 call them.

25 Now, so that's where I got -- Mr. O'Connor, that's

1 where I got off the path. And if you say, well, the fact
2 that you referred to all the government's witnesses doesn't
3 mean that they're really on your witness list, then, I mean,
4 I don't know what to make of that.

5 MR. O'CONNOR: If I would have thought of what you
6 just said, I would have never done it that way. I would have
7 went through and picked and chose who I really thought I
8 would have called. That's what I would have done. There's
9 no question about it. There's no question I wouldn't have
10 listed any of these 13 people that they've talked about.
11 There's no question.

12 THE COURT: But you see, that's -- I mean, the
13 function of the witness list -- and, you know, we struggle
14 with it because, on both the civil and the criminal side.
15 But one of our interests, at least one of my interests in the
16 witness list is to try to get some idea of what kind of case
17 I have. You know, I mean, how many people are involved. And
18 as you know, we, based on our telephone conversation, I mean,
19 in an effort to make the witness list more meaningful for you
20 all, I ordered the government to divide it -

21 MR. O'CONNOR: I apologize, Judge.

22 MR. PETERS: I apologize, Judge.

23 THE COURT: I see you all talking and I'm trying to
24 talk, and I don't know whether you're hearing what I'm
25 saying. And maybe that's one of the reasons that this case

1 has so much trouble is that you all -- I mean, you're
2 certainly entitled to talk to each other, but it causes me
3 grave concern that I'm just beating my gums and, you know -

4 MR. O'CONNOR: I was listening, Judge.

5 THE COURT: I've tried to develop that skill, too,
6 of talking to somebody and listening, and I've found it's
7 difficult, but maybe you've been more successful.

8 You know, if you want to talk to somebody, why
9 don't we do this. If you want to talk to somebody and I'm
10 talking, could you just raise your hand and say, "Judge,
11 could you stop a minute while I talk to Mr. Peters?" And
12 then I'll try to pick up again. And if I can't pick up,
13 maybe we've taken a step in the right direction and you've
14 shut me up, you know, and I'm not talking anymore.

15 Now, where were we? We were back on the witness
16 list, weren't we? Yes, that's where we were.

17 So where are we with this matter at this point?
18 Mr. Becker, you say you're entitled to any stenographic
19 statements they've taken of anybody on their witness list or
20 anybody they intend to call as a witness?

21 MR. BECKER: Anybody on their witness list, Judge.
22 That's who they've endorsed.

23 THE COURT: What authority do you have for that?

24 MR. BECKER: Section 3500, I believe.

25 THE COURT: Doesn't that say -- I thought it said

1 that they intend to call as a witness.

2 MR. BECKER: I think that's what the witness list
3 for each party states, that these are the persons that the
4 particular -- the government's witness list says these are
5 the persons that the government intends to call during its
6 case in chief.

7 THE COURT: Okay. Let's see here what 3500 says
8 and then -

9 MR. BECKER: And Mr. Sheppard, Bryan Sheppard~s
10 states that, "Comes now Bryan Sheppard, by and through
11 appointed counsel, and hereby files his list of witnesses who
12 may be called at trial."

13 THE COURT: Would you get Mr. O'Connor's witness
14 list? I just want to see what he says.

15 MR. BECKER: Judge, I just read it.

16 THE COURT: Well, it says, "Comes now Defendant
17 Bryan E. Sheppard, by and through appointed counsel, and
18 hereby files his list of witnesses who may be called at
19 trial.

20 "1. Any or all witnesses previously endorsed by
21 the government." And then there follows after that some 24
22 names.

23 MR. O'CONNOR: Judge, I'm raising my hand, I want
24 to talk to Mr. Osgood a minute.

25 THE COURT: Sure. That's fine. Shut me up. I

I won't say anything.

2 MR. O'CONNOR: Okay. Thank you, Judge.

3 THE COURT: Okay. Well, Mr. O'Connor, do you agree
4 that you have the obligation to furnish any electronic
5 statement you have from a witness that you may call at
6 trial?

7 MR. O'CONNOR: Yes.

8 THE COURT: And, therefore, any witness who is
9 listed on your witness list?

10 MR. O'CONNOR: No.

11 THE COURT: Okay. I didn't think you were going to
12 agree with that part of it. Now, how do we get from, how do
13 we get from the yes answer to the no answer? What happens in
14 between?

15 MR. O'CONNOR: Maybe this is a bad example, but
16 let's say I had a statement from Bryan's mother. She's the
17 alibi witness listed on there. I had a stenographic
18 statement, which I don't, but let's say that I did. And then
19 I decided right before I made my opening statement that I was
20 not going to call -- or right now I've decided I'm not going
21 to call her. I'm not going to use her as a witness. Why do
22 I have to give that statement to Mr. Becker if I wasn't going
23 to use her, even though she's on my list, I had intended to
24 call her, and I'm not going to use her.

25 THE COURT: I don't know. I mean, what's the

1 authority? I mean -

2 MR. O'CONNOR: What I'm saying is I think the
3 obligation that I have to this Court and to Mr. Becker is if
4 I know I have a witness on that list that I'm going to call
5 in this trial, I darn well better give them their statement.

6 THE COURT: Is that the standard you apply to the
7 government?

8 MR. O'CONNOR: Yeah.

9 THE COURT: I mean, does the government get the
10 same standard?

11 MR. O'CONNOR: I believe so.

12 MR. BECKER: The problem with that hypothetical, if
13 I may,- is that there's some delay between, in waiting for the
14 production, when the persons are listed, because the
15 defendant's list wasn't due until shortly before trial,
16 certainly the Jencks material should have been made available
17 at that time.

18 What called this to mind is that Mr. O'Connor has a
19 stenographic statement from Martindale, which he has not
20 provided. Now, I understand he doesn't have a copy of it
21 yet, but there's a -- I'm willing to pay for the rush, if
22 that's a problem. But he doesn't get some grace period of
23 time after endorsing witnesses to decide whether or not to
24 turn over this material. When he lists his names, he's got
25 to do reciprocal discovery. And this would include, the

1 Court mentioned something, any electronic, any electronic or
2 tape recordings that he may have that T would consider to be
3 statements of witnesses. Just because they haven't been
4 reduced to a transcript form, if he has a tape recording,
5 that should be provided to the government.

6 Mr. Osgood just informed me he has a tape recording
7 of an Allen Bethard, and Mr. Bethard is on his witness list
8 and on a number of witness lists, and I haven't gotten that.

9 MR. OSGOOD: It was given to the government when
10 Mr. Bethard was prosecuted. That was the central issue of
11 the case.

12 MR. BECKER: I'm sorry. I thought you went out and
13 you did a statement.

14 MR. OSGOOD: I did, and I turned it over to the
15 defense attorney, and the tape was used in the Bethard
16 prosecution.

17 MR. BECKER: In any event, I would ask for
18 reciprocal discovery in this case.

19 MR. OSGOOD: I'll get it for you. I thought you
20 had it.

21 MR. O'CONNOR: Judge, as I said earlier, I would
22 like to request an ex parte with the Court in camera. I can,
23 I think I can lay out more for the Court to understand where
24 all of this is. I think it will give more perspective that I
25 do not want to give in this courtroom in front of Mr.

1 Becker. I think once I do it, the Court will understand it.
2 There's issues as it relates to Martindale to that same
3 point.

4 Mr. Becker, on face value, it's logical to think
5 that I should have this report of Martindale by now. Very
6 logical. If the Court heard the reason why, it would be very
7 logical why I don't have it. I have not -

8 THE COURT: Why don't you come up and tell me the
9 reason why.

10 MR. BECKER: We've had similar trials, Mr. O'Connor
11 and I, and there tends to be a number of ex parte
12 communications with the Court.

13 THE COURT: Well, there's no ex parte communication
14 with me that's not going to be on the record. And I'll make
15 a judgment after -- and there's no guarantee that something
16 that's ex parte, that's said to be ex parte is going to
17 remain ex parte. If I determine it's an inappropriate
18 communication ex parte, it's going to be revealed to
19 everybody.

20 MR. BECKER: If he -

21 THE COURT: Just a minute. I'm sorry. We have a
22 conference going on here.

23 MR. OSGOOD: Your Honor, while thetas going on.

24 THE COURT: No. We don't want to interrupt them.
25 They won't have a chance to hear what you say.

1 Why don't you all talk about this over lunch, how
2 is that? I've got a meeting with all the other judges in the
3 building that is going on right now that I need to go to. Is
4 there anything else we need, or could we delay it until
5 tomorrow? How about tomorrow? We're all going to be
6 together tomorrow. How about doing it tomorrow?

7 MR. PETERS: That would be acceptable, Your Honor.

8 THE COURT: You all can come, and between now and
9 then Mr. O'Connor can have his ex carte on-the-record
10 conference, with the understanding that if I determine it's
11 an inappropriate ex Carte, then it's going to be revealed to
12 everybody.

13 MR. O'CONNOR: I want to defend myself a minute,
14 what Mr. Becker is saying that there's somehow something with
15 me that I talk ex carte with the judge. All I'm going to say
16 is in the last trial, and I don't remember what the reason
17 was, but evidently Judge Sachs felt it was okay because he
18 put it on the record and he kept it from the government. And
19 if the judge made that determination, I don't make a
20 determination on what's ex Carte or what's not. And I'm
21 going to defend my client to the hilt. And I don't want them
22 to be suggesting to you that I somehow want to ex parte you.
23 I think if I tell you these things, they're legitimate and
24 honest and honorable, period.

25 MR. BECKER: I would suggest a motion for a

1 protective order. I mean, that -

2 THE COURT: Well, now, we've got to get Mr.
3 O'Connor sort of -- Mr. O'Connor, let me tell you. I mean, I
4 heard what Mr. Becker said. It doesn't -- I mean, he said
5 it, I heard it, it doesn't influence me at all. I mean, I'm
6 going to make my judgments in this case. And I've got
7 tremendous respect for Judge Sachs. I've got respect for the
8 other judges here, but I'm going to make my own decisions
9 here. And I just gave you the groundwork. I'll be glad to
10 talk to any of you ex parte if you want to come to me, and as
11 long as there's a public announcement that you're doing it ex
12 parte, as long as we understand that if I believe it is an
13 inappropriate ex parte communication, I will reveal it to
14 everybody. In other words, there's no guarantee of
15 confidentiality, just because some lawyer believes it's ex
16 parte.

17 On the other hand, I don't want to set the other
18 rule either because that's unreasonable. I will talk to any
19 lawyer without everybody else present, although that
20 certainly is my general principle. But I realize that things
21 happen in cases where lawyers have things that they need to
22 communicate that really is not appropriate for anybody else
23 to know.

24 And I'll, but I'll make the judgment. And as long
25 as you understand those are the ground rules, then that's the

1 Way we'll proceed. Now, Mr. Becker?

2 MR. BECKER: The other matters I can take up with
3 counsel directly, and if there's a problem we'll talk about
4 it tomorrow.

5 THE COURT: Do just exactly what I asked Mr.
6 O'Connor or the defense to do. If you have some other
7 matters that you want to bring up tomorrow, will you give
8 them to, will you tell these folks about them right now or as
9 soon as you know about them so they can be prepared too.

10 MR. BECKER: Absolutely.

11 THE COURT: Okay. Anybody else have anything you
12 want to talk about now?

13 MR. PETERS: Nothing from the defense, Your Honor.

14 THE COURT: Okay. Then we'll be in recess until 9
15 o'clock tomorrow.

16 (A recess was taken from 12:42 p.m. to 1:50 p.m.
17 when the following ex parte proceedings were had in chambers
18 with Mr. O'Connor and the Court present.)

19 THE COURT: Yes?

20 MR. O'CONNOR: Your Honor, the issue arose in court
21 as to this Martindale court-reported statement that I took.
22 So I called the court reporter who has worked with me on this
23 case, Theresa Taylor, to get the chronological order so I was
24 correct in what I had.

25 On January, the 7th, Theresa met me, and it's my

1 practice to just go ahead and get people contacted. I don't
2 call and make appointments. We went to Miss Marburger's
3 house twice. She wasn't home on the 7th of January, 1997.
4 She was a blind lady who was a potential witness in this case
5 who got moved to the not-to-be-called list.

6 But she's a critical witness to us because she's
7 blind since birth, she likes Bryan Sheppard, and part of her
8 statements were that Bryan called from the Clay County Jail,
9 was crying on the phone, and she was part of a three-way
10 conversation in which she said Bryan said, "I was there, but
11 I did not intend for anyone to be killed."

12 So she was a critical witness for us. Took her
13 statement in the a.m., was there about two hours. Went back
14 to my office. Theresa went back to whatever she was doing.
15 She has other appointments, obviously, besides working for
16 me.

17 Miss Marburger called back and wanted to see me
18 again that night. Went back out there that night, was out
19 there from 7 to 9 o'clock. That was the 7th.

20 On the 8th we thought we located Martindale -- on
21 the 7th we also thought we located Martindale, so we took
22 Theresa with us after we took Marburger -- this is 9:00 in
23 the evening. We went over with Theresa with us and surveyed
24 this Pizza Hut to see if Martindale came in and out. For
25 about an hour he didn't show. We finally went in and ordered

1 a pizza and asked if Fred was still working there, and they
2 said yes, he's off tonight, he'll be in tomorrow night.

3 So the 8th, the next night, he doesn't come to work
4 until about 7:00. We went over to the Pizza Hut. I got Fred
5 on the phone while my investigator ran in and served him with
6 a subpoena, and he agreed to come outside and talk to us. We
7 went across the street to a McDonald's, talked to him about
8 two and a half hours, and got a court-reported statement.
9 That's on January the 8th.

10 I gave no instructions to Theresa how to handle
11 this case other than normal. I said, we're on a federal
12 case, I was appointed to the case, so I didn't want
13 expedited. And knowing that Martindale wasn't going to
14 testify until 35 days out, there was no need to get it fast,
15 and we had other things to do. Theresa will answer any
16 questions that you may have unanswered. Not that you do not
17 believe me, but if there's any question unanswered.

18 On the 11th -- and this is the part I did not want
19 to mention in court, but obviously Mr. Becker has got wind
20 that I've been to see his witnesses in jail.

21 On the 11th, which I believe was a Saturday,
22 Theresa met us at 7:00 in the morning, we worked until 11:00
23 that night. She was with me for 16 hours. We went to four
24 different jails, took four different court-reported
25 statements, and some of the jails we had to come back to

1 later because we couldn't do it during that day, and we
2 couldn't get into some jails, so she was along for the ride
3 for the day but unable to type statements.

4 On the 12th we met, oh, at 5:30 a.m., which is
5 Sunday, we parked her car, and she rode with us down to
6 Osceola. We were there about six hours. Took court-reported
7 statements from the other two government witnesses, drove
8 back, and that day, I think we spent about ten hours.

9 So that takes us to, that takes through Sunday. So
10 then Monday when, of course, Theresa, the first time ever she
11 has a chance to type anything from any of these things. I
12 then called her and told her, didn't call her and tell her
13 anything. I called her and told her that last night we were
14 going to Cameron-after I got out of court at 7:00 to get the
15 two witnesses in the Cameron facility, which is about an hour
16 and fifteen minutes out, but she couldn't because of other
17 previous appointments.

18 So yesterday when I got the government As witness
19 list I instructed my office to call her because we had
20 statements of Bank, which was about a four-hour statement
21 under oath, which is one of the first week's witnesses;
22 Shepard, who is about a two-hour witness under oath, that she
23 was present. And now I've got the witness list, and I know I
24 need those now. So I asked her to make those, I asked her if
25 she had started on Martindale or the others. She had not. I

1 said please make those a priority, those two.

2 And then last night Bowen sent a reporter with me
3 and, of course, I'll have those two. And one of those two is
4 on the government witness list next week, Elliott. I asked
5 Theresa when she thought she could get Martindale, and she
6 said probably not Sunday or Monday, and she's got
7 appointments between what she's doing for me for other
8 people, so that's why I haven't gotten Martindale. I haven't
9 seen Martindale's.

10 And I told him right after I had it that, I told
11 him that I would give it to him as soon as I got it, which I
12 thought I would get it on Monday. I had no idea that we were
13 going to start hitting these places this quick. And if I
14 said it in court, then obviously Mr. Becker knows I'm up to
15 something. I don't want him to know everything I'm up to.
16 But I'm assuming he's talked to Lank because Lank's the guy
17 that had never met Mr. Becker when I talked to him, and I'm
18 assuming they brought him down here to be debriefed and he's
19 told him that he's talked to me.

20 As it relates to my, the witness list thing, I
21 didn't know if you wanted me to go into this. I'm going to
22 file -- I'm waiting for it to come out here -- an amended
23 witness list taking out any and all government witnesses and
24 just the witnesses that I have on that list to call in the
25 case.

1 I would just bring to the Court's attention that on
2 Wednesday when we had to give our list to the Court under the
3 deadline, Mr. Becker had still not complied with the witness
4 names and addresses until the next day, which was Thursday.
5 So we're getting the witness list, his witness list, the real
6 witness list with the real addresses four days before the
7 start of trial, and now he's complaining about Martindale
8 that's 35 days out.

9 So I believe that to cover myself between the time
10 that we had to file ours and he had to file his real one, you
11 know, I put any and all. And I called him -- and he'll
12 verify this. I just said any and all, quite frankly, just to
13 make sure I didn't miss someone on the list. And, you know,
14 if I was wrong, I was wrong, but the spirit of it is that it
15 would be obvious if he saw these people's statements that I
16 would not be calling them as witnesses. But I'm going to
17 file an amended list, and I hope that that addresses that
18 issue.

19 But my real concern was I did not want to give up
20 my investigative efforts because there's four other people in
21 person. I've got appointments tomorrow in Lansing. I'm
22 going down to Springfield, Tipton, Jeff City for the other
23 three. And if I let him know that I'm out to these prisons
24 after work here, he's going to figure it out and he'll shut
25 us down, and we want get to these people. I don't mean shut

1 us down purposely, just give these people warning.

2 That's my purpose in defending my trial strategy
3 and getting out and getting this stuff without the government
4 knowing what I'm doing.

5 THE COURT: So where are we?

6 MR. O'CONNOR: I don't know.

7 THE COURT: Well, I mean, I guess he's asked for
8 copies of -

9 MR. O'CONNOR: Martindale.

10 THE COURT: Well, of all the, of any statement that
11 you have of anybody who is on your witness list. And if you
12 set aside for a minute the issue of who is on your witness
13 list and who is not on your witness list, which all relates
14 to the issue of whether you have listed as witnesses -- you
15 may call all the witnesses for the government. What are you
16 going to do about his request to furnish any electronic
17 statement or stenographic statement of anyone on your witness
18 list?

19 MR. O'CONNOR: I'm hoping that my filing my amended
20 witness list without the any and all government witnesses and
21 just the witnesses that I intend to call, which should be up
22 here shortly, will remedy that problem.

23 THE COURT: Well, you need to get that to him.

24 MR. O'CONNOR: I'm going to give it to him as soon
25 as I get it.

1 THE COURT: What you've told me -- I mean, I guess
2 the only part of what you've told me that seems to me to be
3 at all necessary to keep from him is that you are
4 interviewing as many of his witnesses as you can that are in
5 jail and that you've taken statements from them. But I
6 can't -- I mean, I'm not sure that information is necessary
7 to resolve this issue, I guess. I mean, if the issue is, if
8 the facts are, and even though you may file the amended list,
9 that you listed these folks as your witnesses, then -- I
10 mean, we don't -- I mean, what I'm getting at is I guess we
11 don't need to run through and have you say who you got, who
12 you don't have. Your obligation would be to produce any
13 statement you have from anybody that you have listed as a
14 witness that you might call.
15 And so I'm not -- I mean, my point is, I guess, the
16 information you've given me is of interest, but I'm not sure
17 that it has much impact on anything until we get over the
18 hurdle that stopped us out there today, which was do you have
19 any -- I mean, what do you have an obligation to turn over,
20 and that is a function of at least two separate issues.
21 First of all, what is the law on the defendant's
22 obligation, either established by statute, rule, or decision,
23 or by order of the court in the omnibus procedure. And then
24 once we get a handle on what the law is, then we get, we need
25 to deal with the issue of who, if anybody, I mean, who is,

1 who fits within the definition of people that the defendants
2 would have an obligation to look at to see if they have any
3 electronic or stenographically created document.

4 That, then, gets into the problem of the witness
5 list. I mean, who is a defense witness, essentially, that is
6 subject to that rule. So we have those two issues, it seems
7 to me, we need to deal with before we get to what you just
8 said as being of much significance. Do you agree?

9 MR. O'CONNOR: Yes.

10 THE COURT: Okay.

11 MR. O'CONNOR: And the only thing I can say, I
12 don't have any case law to back it up, but as you, I think,
13 said earlier in court, you know the spirit of the rule is,
14 one, for there not to be any surprise; two, to give the other
15 side full opportunity to address that witness and any
16 statement that witness has given.

17 And it's pretty obvious, or it would be obvious if
18 you saw what these people have said about our clients, that
19 these are witnesses that we, certainly and absolutely I would
20 never call to the witness stand. So when I gave him my list,
21 I had no intent -- which it says witnesses you intend to
22 call. I never ever intended to call these witnesses, nor
23 would I.

24 So if I even thought that I might, even if there
25 was a possibility that I might, then I think the Court~s

1 right, that I would have to give it, if that possibility
 2 existed. I can tell you as it relates to these witnesses,
 3 there is no possibility that exists that would have me call
 4 any of these witnesses. And I'm hoping the amendment will
 5 address the whole problem, but if it doesn't, I'm just
 6 talking from the standpoint of the intent when the witness
 7 list was filed.

8 THE COURT: We can take that up. I mean, that
 9 doesn't have any -- I mean, that argument, you can make that
 10 argument fully, it seems to me, without running the risk of
 11 revealing anything about your, or inappropriately revealing
 12 anything about your trial strategy. I mean, you can make
 13 your argument about the list. Okay. Anything else?

14 MR. O'CONNOR: I think that's the only thing you
 15 wanted to address, I think.

16 THE COURT: That's the only thing that you wanted
 17 to address ex Carte. Some of the things you've touched upon
 18 are -

19 MR. O'CONNOR: Let me look at my notes real quick.

20 THE COURT: -- are inappropriate for talking about
 21 ex carte. They're more, they ought to be covered with
 22 everybody present.

23 MR. O'CONNOR: Right. I think that's it.

24 THE COURT: Okay. Thank you.

25 (Ex parte conference concluded.)

Thursday, January 16' 1997

3

5 (The jury was seated, and thereafter the following
6 proceedings were had in the courtroom in the presence of the
7 defendants, but out of the presence of the jury:)

8 THE COURT: Anybody have an objection to anything I
9 said to the jury? All right. Apparently not. Somebody

10 probably wants to tell me, Judge, you really didn't know, did
11 you, what the situation was with Mr. Rioad? I will admit,
12 obviously, I didn't because Mr. Riead was there.

13 ALL right. Gabi, would you pass out the
14 instructions? Now, do you want to take a little recess while
15 you look at these and then we can talk about them?

16 MR. OSGOOD: Yes.

17 THE COURT: Mr. Osgood, I see a nod of your head?

18 MR. BECKER: Judge, I think the defendants have
19 been up here since 9 o'clock.

20 THE COURT: Okay. We'll -- I'll tell you what.

21 Why don't you take a look at the instructions. When you're
22 ready to talk about them, just let me know. I mean, we'll -
23 hopefully it won't -- as I said, I don't think it will take
24 you very long, except maybe with regard to one. All right.

25 We'll be in recess.

1 (A recess was taken from 10:36 a.m. to 11:01 a.m.)
2 THE COURT: Okay. Any comment about the
3 instructions?
4 MR. BECKER: Yes, I do. I'm not sure we have -
5 okay. We have everyone.
6 THE COURT: Is everybody here? There seems to be
7 fewer people than there were. Oh, Miss Franco is not here.
8 I guess that's it. There was somebody at the end of that
9 table. Okay.
10 MR. BECKER: The elements as set forth in
11 Instruction 5, I'm having someone bring me a copy, and I'll
12 provide a copy for the Court of Ryab I and not the panel
13 decision. And which obviously was vacated by the en bane
14 decision but did speak at some length about the elements of
15 the offense and whether or not the death was an element.
16 But we can speak for a minute about the
17 instruction. And Element 4 of the actual instruction, it
18 says, "death resulted to somebody as a direct result of the
19 conduct referred to in paragraphs" -- well, it says FIRST,
20 SECOND and THIRD, but 1, 2, or 3.
21 The statute and the indictment charges that as a
22 direct and proximate -- and obviously the jury instruction
23 will be or -- direct or proximate result of the defendant's
24 conduct, death resulted to six particular people who were
25 performing their duties as firefighters.

1 The en bane decision of United States vs. Ryan, 41
2 E.3d 361, Eighth Circuit, 1994, at Page 367, does have a
3 rather useful discussion of the jury instruction regarding
4 proximate cause. And should the Court be inclined to
5 instruct on that element, obviously, the government would be
6 requesting an instruction on proximate cause as set forth in
7 Ryan.

8 MR. OSGOOD: Can we have a minute, Your Honor?

9 THE COURT: Sure.

10 MR. BECKER: Agent True wants me to inform
11 everybody, that was his case, too, so he's very familiar with
12 this point of law.

13 (Counsel conferred off the record.)

14 THE COURT: Anybody else have anything to say? I
15 mean, I trust you all understand the purpose of this. I
16 mean, this isn't all the instructions these folks are going
17 to get. I mean, the instruction tells them that. And I
18 mean, I'll be glad to hear you all after the evidence is
19 completed about whether the word proximate even needs to be
20 in there. I mean, maybe you could educate me on the
21 difference between direct and proximate, but I see no reason
22 to give this jury right now the term proximate when my guess
23 is after we do a cot of huffing and puffing about the
24 definition of proximate, it's going to turn out to be
25 direct.

1 I mean, we've got direct in there. Now, there is
2 that foreseeability aspect that we could get into, but these
3 folks are told in this instruction, this isn't all they're
4 going to get in the way of law. I would just like to give
5 them some idea. It just helps them understand what they're
6 going to be listening to and why they're listening to it.

7 But, Mr. Becker, I just don't -- I mean, is there
8 some reason why we need to get into the proximate cause and
9 the definition of proximate cause?

10 MR. BECKER: I don't think we need to get into a
11 long definition of proximate cause. That's not what I was
12 suggesting, and I apologize. I understand that the Court is
13 merely giving this one instruction and will later fully
14 instruct on the law.

15 However, both the statute, the indictment, and the
16 case law sets forth alternate means of addressing this point
17 of death resulting. And I don't think it's a stretch or a
18 matter of confusion for the jury at this point to hear that
19 death resulted to somebody as a direct or proximate cause of,
20 proximate result of the defendants' conduct.

21 THE COURT: What's the difference between direct
22 and proximate?

23 MR. BECKER: It may be argued in this case that the
24 firefighters did not die as a result of a fire set by these
25 defendants; in fact, they died from an explosion which was

1 caused by the fire set by these defendants.

2 THE COURT: Okay.

3 MR. BECKER: Thus, I think at some point it may be
4 relevant, the issue of proximate cause.

5 THE COURT: Okay. Well, my view is that if we ~ re
6 going to put proximate in, we're going to have to define
7 proximate because proximate is not a word that I have much
8 confidence in that laypeople are going to understand.
9 Direct, I think, is understandable. And assuming there's a
10 difference, and my guess is when this all is said and done,
11 we may well define direct in a way that would include
12 proximate, will include foreseeability, and so on and so
13 forth. But I'm just guessing because I'm not even there
14 yet.

15 MR. BECKER: Again, I would call the Court Is
16 attention to the Ryan decision on this foreseeability issue.
17 It was conclusively ruled in that matter.

18 THE COURT: But did they conclusively rule on it
19 at, the instruction at this point in the trial?

20 MR. BECKER: Well, if the Eighth Circuit says
21 foreseeability is not an issue, I would sense it would apply
22 to the first part of the trial and the last part of the
23 trial.

24 THE COURT: Well, then, nobody is going to be
25 arguing foreseeability because the law says it's not an

1 aspect. So there's not going to be any argument anyway. I
2 mean, the opening statements, folks -- and I trust each of
3 you understands this because if you don't, you'd better get
4 your thinking sort of changed.

5 An opening statement is not an opening argument.
6 The opening statement is the opportunity to tell the jury
7 what you expect the evidence to be, not what your argument is
8 about that evidence. And so don't -- and I'm not -- I mean,
9 I realize other courts do things differently, but here in
10 this courtroom an opening statement is an opening statement.
11 It is what you expect the evidence to be, not what your
12 argument is going to be, not what you think the significance
13 of that evidence is. It's what you expect the evidence to
14 be.

15 So I don't know who is going to be arguing anything
16 about this point up until the end of the case, at which point
17 we will have had an instruction conference, I will have read
18 the final instructions to the jury, the jury will have the
19 final instructions in their hand, and then there will be the
20 closing argument.

21 MR. BECKER: I wasn't concerned, Judge, about
22 opening statements or arguments. You asked us to comment on
23 these instructions. I believe them to be -- I submitted
24 elements at the direction of the Court on the first day of
25 jury selection. Based upon my research and that of my

1 office, Mr. Clark has been working with me on this and the
2 other jury instruction issues that will arise as we go on, I
3 don't believe this to be a correct statement of the
4 elements. That was my only objection, and I didn't mean to
5 infer otherwise.

6 THE COURT: But it would be correct in your mind if
7 "or proximate" was added without a definition of proximate.

8 MR. BECKER: I do want to go back and read Ryan I,
9 which I think I now have, and that's at 9 F.3d 660, Eighth
10 Circuit, 1994. Again, this opinion has been vacated by the
11 en banc decision but is instructive on the issue, on the jury
12 instruction issues for 844(i) where death results to a
13 firefighter.

14 And it's my recollection based upon research prior
15 to this morning that -- and that's why I submitted those
16 elements. I don't believe that there is a fourth element. I
17 mean, that's really the essence of my objection. Now, if the
18 Court is going to instruct on that fourth element, I would
19 ask that proximate cause be inserted. But I'm frankly, I'm
20 not -

21 THE COURT: You don't want the fourth element?

22 MR. BECKER: I want to go back and read this
23 opinion again, Judge.

24 THE COURT: You didn't include it in the
25 instruction you submitted.

1 MR. BECKER: That's right.

2 THE COURT: So I assumed you didn't want it. I
3 read the statute, I read the indictment. I thought there was
4 a reasonable argument it ought to be in there. But if you
5 don't want it -- I mean, it's your theory. It's not my
6 theory. It's your theory. If you don't want it -

7 MR. BECKER: I submitted those instructions to the
8 Court, the elements to the Court, and I believe those to be
9 correct.

10 THE COURT: Anybody else have a comment?

11 MR. BUNCH: No. We neither agree or disagree with
12 Mr. Becker's analysis. We accept the Instruction No. 5 as
13 drafted by the Court.

14 MR. OSGOOD: I would like to make a comment.

15 THE COURT: All right.

16 MR. OSGOOD: I'd like to consult with colleagues
17 first before I put my foot in my mouth.

18 (Counsel conferred off the record.)

19 THE COURT: Mr. Becker, what's the cite of Ryan I?

20 MR. BECKER: 9 F.3d 660.

21 THE COURT: Thank you. Mr. Osgood?

22 MR. OSGOOD: Well, I think the consensus is we
23 accept the instruction the way the Court has drafted it. If
24 the Court is inclined to change it in any way whatsoever, we
25 want a second bite of the apple in terms of the argument as

1 to whether or not the change would require additional defense
2 input.

3 THE COURT: Well, do you -

4 MR. OSGOOD: Or instruction.

5 THE COURT: Do you believe that Ryan I, or Ryan II,
6 for that matter, says that the fourth element as I've
7 expressed it in this proposed instruction is not an element
8 of this offense?

9 MR. OSGOOD: Mr. Becker has pled it, he intends on
10 putting on a substantial amount of evidence to support it,
11 and his theory of the case seems to include it at this
12 point. I don't know how you couldn't instruct the jury on it
13 under the circumstances.

14 THE COURT: That isn't really my question. My
15 question really is does Ryan I or Ryan II say in your -- I
16 mean, in your reading of those cases, do they say that it is
17 not an element of the offense?

18 MR. OSGOOD: I want to read the decision again. I
19 think probably the argument would be it's a punishment
20 enhancement question for the Court. But I want to preserve
21 expressing an opinion on that.

22 THE COURT: Frankly, I haven't read the cases
23 either, but my guess is that must be the argument. I mean,
24 it's like the quantity in a drug case.

25 MR. OSGOOD: Yes.

1 THE COURT: That must be what the situation is.

2 Any other comments?

3 MR. OSGOOD: That, of course, would raise
4 substantial questions about how far the Court should go in
5 letting him go into great detail of autopsy evidence and
6 everything else if he doesn't have to prove that there were
7 dead bodies to the jury.

8 THE COURT: Yeah, it does -- I mean, it may well
9 raise a question as to whether that's a decision that I make.

10 MR. OSGOOD: Yes, sir. And we would fully expect
11 to object vigorously to that kind of evidence if that's taken
12 out.

13 THE COURT: That's -- I would expect you to do
14 that. All right. Any other comments?

15 Okay. How about the other instructions? Any of
16 the other instructions anybody have any comment about?

17 MR. PETERS: Excuse me just a minute, Judge.

18 (Counsel conferred off the record.)

19 MR. BUNCH: Nothing, Your Honor, resulted from that
20 that we need to address the Court about.

21 THE COURT: Okay. So am I correct that other than
22 this issue which we have just been talking about relating to
23 Instruction 5, otherwise the instructions are satisfactory?

24 MR. BUNCH: That is the case.

25 THE COURT: All right. Mr. Becker; is that right?

1 MR. BECKER: Yes, Judge.

2 THE COURT: Okay. Now, as implicit in the
3 instructions -- and I'll just tell you so it won't come as a
4 surprise to you -- on Tuesday morning, we'll pass out to the
5 jury a brown spiral notebook for their use if they choose to
6 take notes. I mean, if a juror chooses to take notes, the
7 brown spiral notebook can be used for the purpose of taking
8 notes. In addition, we will pass out a small yellow ruled
9 pad that they can use for the purpose of asking questions, if
10 anybody chooses to ask any questions. We'll also give them a
11 pencil.

12 Okay. Now, let's turn to the next item on the
13 agenda, which is the motion in limine.

14 Yes, Mr. Bunch?

15 MR. BUNCH: As I stated earlier, Your Honor, I have
16 no reason to take time to argue this motion, based upon the
17 response by the government and the discussion that occurred
18 here yesterday.

19 By way of partial explanation, this case is replete
20 with problems of this sort, which I think in my judgment
21 could not be adequately addressed, even if one had an
22 unbelievable amount of time to do that.

23 Secondly, regardless of the statement made on
24 behalf of this defendant or others, in a case that has five
25 defendants in it, all of which may have some common defenses,

1 some of which may not have common defenses, will result in
2 the, getting before the jury matters which you just can't
3 prevent happening.

4 I'm not trying to ignore what my responsibilities
5 are. I'm simply saying that we filed it because there was a
6 certain day by which it should be filed, and it does ask for
7 some rather esoteric relief which this Court wouldn't grant
8 in any event. And I don't think that based upon the nature
9 of the testimony and evidence that will, mostly testimony in
10 this case and the number of people that are going to
11 cross-examine that it would be possible to keep some of the
12 inflammatory issues out in the long run.

13 So I don't think it's worthwhile for me to take
14 your time and the time of other counsel, including that of
15 the government, to argue something that I've presented and
16 don't feel strongly enough about to argue about it.

17 THE COURT: Well, I was going to ask you, are there
18 any of the matters that -- you raise a number of different
19 matters in here. Are there any of those matters that you
20 would like to have a ruling on at this point, or are you
21 satisfied that you have alerted me to them?

22 MR. BUNCH: The second statement is accurate. I've
23 alerted the Court to them.

24 THE COURT: ALL right. Any reason to talk any more
25 about that?

1 MR. BECKER: The one issue that I do wish the Court
2 I would address either now or sometime prior to testimony is
3 the issue of polygraph examinations. It's the government's
4 position that cross-examination on that basis or examination
5 of any witness on whether or not they took a polygraph and
6 the results of that polygraph would be, or any defendant,
7 would be inappropriate and inadmissible.

8 MR. PETERS: Your Honor.

9 THE COURT: Yes?

10 MR. PETERS: We'll provide the Court with a written
11 memorandum of law prior to anything like that remotely coming
12 up. It won't be mentioned in anyone's opening statement, and
13 we'll alert the Court and counsel long before any witness
14 where it would come up.

15 THE COURT: ALL right. That's fine. And just let
16 me say generally, I would like to see anything -- if the
17 problem, if the matter comes up, I would like to see whatever
18 authority you all have in addition to what is cited in the
19 memorandum that there is some policy of the United States
20 Attorney's Office on that.

21 okay. And on that, I don't mean to be vague, but
22 on the matter of administering polygraph examinations as a
23 prerequisite to accepting or offering or entering into some
24 kind of an agreement with someone to testify for some
25 benefit.

1 Okay. Let's -- Mr. Bunch, do you want to bring the
2 matter up about the investigator at this point?

3 MR. BUNCH: Yes, I do. If I -- may I proceed?

4 THE COURT: Certainly.

5 MR. BUNCH: Yesterday, Mr. Becker advised me -- and
6 I have Mr. John Dawson who has been doing some work for me.
7 Advised me that if Mr. Dawson didn't stop what he was doing
8 with respect to the witness John Atterbury that he would be
9 charged and prosecuted for intimidating a federal witness. I
10 accepted that at face value, which I should, and will
11 continue to. I said, all right, I'll take care of it.

12 I immediately called Mr. Maloney, who is a
13 paralegal who has worked for me for a number of years, and
14 advised him to get ahold of John Dawson and tell him to stop
15 whatever it was he was doing, that he was on the cusp of
16 being charged with a federal crime and so on, as I had been
17 advised.

18 Mr. Dawson is present in the courtroom. Stand up,
19 John. And he immediately took umbrage to all of that, saying
20 -- I further told Mr. Maloney to have him do an immediate
21 report and have it available to me as soon as I got out of
22 court and could get there.

23 Mr. Dawson, I don't think the word outrage is any
24 too strong about the whole thing. He's prepared to take the
25 stand. I don't want to take up time on matters that ought to

1 be handled by counsel, but I have a responsibility, and he
2 has done nothing, but would like to describe to the Court
3 what he's done, that in any way has intimidated anybody.

4 Indeed, he's never spoken to anybody there,
5 according to him. He was a long-time Kansas City, Missouri,
6 police officer, homicide detective. He has been an expert
7 witness for me in this court, I mean, the federal western
8 district court, as well as in a murder case in Ozark,
9 Missouri. He's always conducted himself absolutely
10 appropriately under any instructions I've given him.

11 So I have, he does not want to be intimidated from,
12 and feels intimidated with respect to performing the job
13 duties as outlined by me.

14 I'm here not blaming Mr. Becker or anybody, but in
15 support of somebody who I'm asking to undertake certain
16 duties and who I want to continue to do so and who wants to
17 have an opportunity at least to say, look, I didn't do it, I
18 didn't commit a federal crime.

19 THE COURT: Well, Mr. Bunch, what would you like me
20 o do?

21 MR. BUNCH: I believe the record should permit me
22 to call Mr. Dawson briefly to simply demonstrate that fact.

23 I don't know whether -- maybe I can ask Mr. Becker. Is there
24 a plan to charge Mr. Dawson with an offense?

25 MR. BECKER: No. No. I advised him privately

1 yesterday about this matter, and with the understanding that
2 you'd find out the facts and get it under control if it was
3 happening. If it's not happening, then we have a difference
4 of opinion. I mean, but -

5 MR. BUNCH: I don't want to consume time with this,
6 but, Mr. Becker, what you said to me was, and there were
7 other defense counsel present -

8 MR. BECKER: I don't dispute that. If he persisted
9 in harassing a witness after the witness had, what I was
10 informed, informed him on at least two separate occasions
11 that he did not wish to be interviewed and then thereafter
12 went and banged on his door again, then there was going to be
13 a serious problem with a federal law. But if those aren't
14 the facts, then we have a difference of information about
15 what, in fact, occurred.

16 THE COURT: Folks, do you think that maybe we could
17 all agree on how to deal with situations of this type? I
18 believe that I have an obligation to oversee the procedures
19 leading up to this trial to assure that everybody has a fair
20 opportunity to prepare the case.

21 I do not believe, Mr. Becker, I do not believe that
22 there should be any threats of prosecution against anybody by
23 anybody associated with the government that pertains to the
24 process of getting this case prepared for trial. If you have
25 a problem or if any attorney has a problem with issues of

1 this type, I would expect, I underline expect, expect that
2 the attorneys involved talk to each other and that each
3 attorney expresses him or herself about the matter of concern
4 to the other attorney and there be a full exchange of
5 information between the attorneys so that when the
6 conversation is completed, the attorneys understand the other
7 attorney's position, understand the other attorney's view of
8 what the facts were. And if there is still a problem, I
9 expect you to bring it to my attention. I will take care of
10 it.

11 But to-run around threatening people or even
12 suggesting that they're going to be prosecuted with a federal
13 crime interferes with the efficient preparation of this case
14 for trial, and I want it to stop. Is that clear?

15 MR. BECKER: Yes, Judge.

16 THE COURT: Okay.

17 MR. PETERS: I just wanted to confer, and you had
18 asked us not to talk without first advising the Court.

19 THE COURT: Okay.

20 (Counsel conferred off the record.)

21 MR. BUNCH: Mr. Peters would like to make a
22 statement, brief statement on behalf of other members, other
23 counsel, I think, based upon the core facts involved in this
24 issue.

25 MR. PETERS: Judge, just so I can have my record

1 clear, I was present in court yesterday when this exchange
2 took place. The exchange, by my recollection, was referring
3 to an investigator that was at that time unknown as to who he
4 was working for. He was identified as Mr. Dawson.

5 I recall specific language as to being told that if
6 the investigators did not back off that they would be
7 prosecuted federally. And at the time -- Mr. Bunch has
8 addressed it, ~ don't want argument.

9 At the time, I believed that the discussion was
10 being directed towards all the attorneys and all of the
11 investigators. And for purposes of my record, I just want
12 to, I have an obligation to make that a part -- it's not
13 something I raised with the Court.

14 THE COURT: I mean, you know, when you've got
15 somebody down, do you have to kick them? I've just said what
16 I've said. I don't need to have everybody jump on board now
17 and see if they can get their two cents in to make it look
18 worse.

19 That's -- I've said what I've said. If you all
20 have a problem -- if any of you have a problem with something
21 some other attorney is doing, I want you to talk with them
22 and then bring it to my attention. I assure you I'm going to
23 do everything I can to protect everybody's right to fairly
24 prepare this case for trial, and if I have to, tell the
25 government to not threaten, as I just did. And whether they

168

1 have or haven't, I'm just telling them not to do it.

2 On the other hand, I'll tell you all, if some
3 witness says they don't want to talk to somebody, you'd
4 better not keep pounding on their door or trying to talk with
5 them, you'd better leave them alone. So I mean, I just am -
6 I'm not -- if you've got a problem with that, you can come
7 talk to me. I mean, there may be circumstances -- I don't
8 know. There may be some circumstance.

9 MR. OSGOOD: The problem with that, Your Honor, is
10 that we're being told that through a third party that they
11 don't want to talk to us. And we've interviewed witnesses
12 who deny that they ever made that statement and, in fact,
13 have talked to us. So it's very difficult for us to not
14 persist in knocking on their door and hear it from the
15 horse's mouth because there's a credibility problem with the
16 fact that we're being told that they don't want to talk to
17 us.

18 And so I've -- yes, we've told our investigators,
19 and I'm speaking at least for mine, to be persistent.
20 They're not going to knock their door down. They're not
21 going to call them at 3 o'clock in the morning. They're not
22 going to harass them the way a bill collector does, but I
23 think we've got a right to make a fair attempt. Even if Mr.,
24 some of Mr. Becker's agents tell us they don't want to talk
25 to us, based on prior practice, I think we have, we would

1 like to hear that from the witness's mouth. And that's the
2 problem.

3 MR. BECKER: I have no problem with that. As long
4 as a witness tells them they don't want to talk to them and
5 then they stop. That was the situation yesterday. And
6 that's all I was addressing myself to is when a witness
7 informs them they don't want to talk to them, then I'd like
8 the witness to be left alone.

9 THE COURT: Let me see if I can repeat what I
10 said. If a witness says that he or she does not want to talk
11 to anybody, leave them alone. Persistence or no persistence,
12 instructions or no instructions. Mr. O'Connor?

13 MR. O'CONNOR: Judge, it's hard to define sometimes
14 when someone -- and I can say this sincerely, I can tell you
15 probably 50 percent of the people that I've ever gone to talk
16 to, and in state and federal practice, initially said at
17 first "I don't want to talk to you," and then after I've
18 said, now, can I just explain why I'm here and what I'm doing
19 and who I represent, and I have a court reporter with me and
20 we're going to do all of this, and then they do start talking
21 to me. It's happened a hundred times.

22 If I understand the Court, no, I know what no
23 means. I went to see a witness last week that said, no, she
24 didn't want to talk to me. I knew what no meant. But there
25 are some witnesses who say no at the beginning, and you're

1 not harassing, and so all I'm saying is it's hard to define.
 2 But I think when you see it, you know it. But to just say
 3 when someone says, leave me alone, that means leave them
 4 alone, I would take that as leave me alone. When someone
 5 says, I don't want to talk to you, sometimes that means they
 6 don't know whether they should talk to you.

7 So I don't want to belabor this, but all I'm saying
 8 is sometimes when people say they don't want to talk to you,
 9 sometimes they do want to talk to you, if that makes sense.

10 THE COURT: I've got confidence in all of you to
 11 carry out your responsibilities properly, and I've got
 12 confidence that if you're using investigators that you have
 13 instructed them properly. Why can't we leave it at that at
 14 this point? If you've got a problem, you know, if somebody
 15 thinks that some witness has said they didn't want to talk
 16 and then there's something going on, bring it to my
 17 attention. we'll talk about it. If necessary, we'll have a
 18 hearing on it. You know, I'll, we'll bring everybody in here
 19 and I'll make a finding after hearing evidence.

20 But what I'm trying to get across to you all is,
 21 the basic message is you have, you have an avenue to resolve
 22 your problems rather than calling each other names, rather
 23 than making dramatic accusations against each other, which
 24 interfere with this case, which interfere with the efficient
 25 and proper resolution of this case. You have an alternative,

1 and the alternative is come to me, tell me what the problem
2 is, bringing the, I mean, letting the other side know you're
3 going to come see me.

4 Now, is that, does anybody have any question about
5 that? I mean, is that part, is that part -- is there any
6 mystery about that? And it goes for everybody. If Mr.
7 Becker thinks somebody is doing wrong, he talks to you all
8 and tells you what his concern is, you tell him what you
9 think the situation is. If you can't work it out between
10 yourselves, I'll try, I'll work it out for you one way or the
11 other.

12 Okay. Anything else on that issue? Mr. Bunch, is
13 that satisfactory, or would you like Mr. Dawson to have a
14 chance to tell what he wasn't doing or what he was doing?

15 MR. BUNCH: That's satisfactory.

16 THE COURT: Okay. All right. Let's take up this
17 ex carte matter because it has a, may have a connection with
18 this matter we just talked about. Mr. Becker, what's your
19 position on that?

20 MR. BECKER: Your Honor, I would like to know the
21 basis of the ex carte communication with the Court. I
22 assumed it was relating to what I described as an oral motion
23 for protective order of discovery matters relating to
24 Frederick Martindale. I'm aware of no circumstances that
25 would justify such protective order, and I'm asking that

1 whatever communications were made to the Court, if they were
2 sealed, that they be unsealed.

3 THE COURT: Well, Mr. Becker, Mr. O'Connor and I
4 had a conversation. And, frankly, let me tell you about the
5 part that isn't on the record because there was part of it
6 that wasn't on the record. Part of it dealt with
7 frustrations that he has, has had with this case, and I asked
8 him when the case was over if he would be kind enough,
9 because I would appreciate it, to talk with me more about his
10 frustrations, because this is obviously not the last case
11 that's going to be prosecuted by the government in this
12 district, and I'm interested in attempting to improve
13 procedures to assure, as I've said before, both sides the
14 fairest opportunity to present their positions in accordance
15 with applicable rules, statutes, and controlling decisions.

16 I think he agreed to do that. My recollection is
17 he did. But it was obvious he -- and I entirely understand.
18 I mean, he had other things to do than talk to me about that
19 issue yesterday. So that matter, that is not on the record.
20 But that's, that's essentially what that dealt with. It
21 didn't, it had sort of, his concern was, concerns were
22 procedurally, you know, having to do with this case and some
23 frustrations that he thought flowed from the procedures.

24 And they don't have anything to do with, at least i
25 don't think they have anything to do with the case as it now

1 exists progressing from now forward. It has to do with -
2 and we all have seen those frustrations bubble up at various
3 times during the pretrial processing of this case.

4 And he didn't -- and let me hasten to add. He
5 didn't try to bend my ear about this. I -- you know, when
6 I'm talking to somebody and I sense that there's something
7 that isn't being said, I make an effort to find out what's
8 not being said. And so I was sort of the movant in this
9 thing. He was not coming to me complaining. I really
10 pressed him probably more than he wanted to be pressed. So
11 that ~ s all that part of it.

12 Mr. O'Connor, is that relatively fair?

13 MR. O'CONNOR: Yes, Your Honor.

14 THE COURT: Okay. Now, the other matter, the
15 matter that was on the record, or is on the record, you know,
16 my position is if an attorney comes to me and says they need
17 to talk to me ex parte and when I have the respect for the
18 attorneys that I have for all of the attorneys in this case,
19 I am inclined to talk with them because I know, I know that
20 none of you would ask to talk to me ex parte if you didn't
21 have something which you felt, which you believed was
22 something that needed to be talked to me about and it was not
23 for an improper purpose; in other words, it was not to lobby
24 me to do something, it was not to bring up a contested issue
25 and try to sneak in and secrete a point that they wanted to

1 emphasize or make.

2 Mr. O'Connor did not disappoint me. He did not try
3 anything that I thought was improper. Now, that doesn't mean
4 that I necessarily agreed with him after he and I had talked
5 that what he had to say was, had to be talked to me ex
6 carte. I mean, 95 percent of it, actually, 95 percent of it,
7 I think, could have been talked about one way or another out
8 here. I mean, I don't think it was any kind of secret at
9 all. Five percent of it was, and the 5 percent was why he
10 was talking to me. I mean, the 5 percent was the engine that
11 was driving the train, not the 95 percent. And the 5 percent
12 dealt with a matter of trial strategy that related to the
13 issue that you had raised, and I mean, I entirely understand
14 why he didn't want to talk about it out here.

15 Now, on the other hand, I don't owe any one party
16 in this case the obligation of attempting to provide a fair
17 trial. I owe every party that obligation, and you're
18 included. I mean, the governments included. So I will tell
19 you that if I use or believe that I am influenced in any
20 ruling I make by anything he told me ex carte, I will reveal
21 that to you because I don't think it's fair for me to make
22 decisions that affect other people in this, other parties in
23 this case by relying on things that the other party didn't,
24 the party against whom I'm ruling doesn't have a chance to
25 respond to. I don't think that's fair.

1 But I'm not going to tell you right now the details
2 of the 5 percent, even though I suspect if I did, it wouldn't
3 come as a surprise to you. You would sort of look at me
4 like, what's the big deal, Judge. You know, you think I'm
5 stupid or something? So I don't -- I mean, it's not -- this
6 is not something that I believe is going to influence me at
7 all.

8 MR. BECKER: With all due respect, I would like to
9 harken back to yesterday to the ground rules that the Court
10 set forth is that when an attorney makes an ex Carte
11 communication, that attorney should be prepared that if you
12 don't agree with them, then the matter would not be ex
13 parte.

14 And then secondly, to the substance of what I
15 consider to be a motion for protective order, certainly I
16 think counsel is well-aware that trial strategy is not a
17 basis for a motion for a protective order. So, therefore,
18 that information flowing to the Court, albeit perhaps
19 inconsequential, is not a subject matter that would be
20 protected in this type of motion.

21 THE COURT: Well, he wasn't making a motion for a
22 protective order, as far as I know.

23 MR. BECKER: Well, to not turn over the statement
24 of a witness would seem to be in the nature of a protective
25 order. I thought that was -

1 THE COURT: Well, but he -- that's why I say he
2 wasn't -- had he done that, had he said to me, Judge, this is
3 how I want you to rule on this, or you should rule this way
4 on what Mr. Becker is asking, I would consider that
improper. I mean, that wasn't, but that isn't what he did.

6 MR. BECKER: I wouldn't consider that improper
7 because he's allowed under a protective order to make an ex
8 carte showing to the Court. And then if the motion is
9 denied, then the matter becomes public. That's provided for
10 in the rules.

11 THE COURT: I would have been disappointed if he
12 had tried that. He didn't do that. I mean, he didn't -- he
13 just didn't do that. I mean, that's what I'm saying. If in
14 the issue that you've raised, if you, if I use what he told
15 me in this 5 percent in any way, I'll tell you about it,
16 because I -- as I said, I really don't think that 95 percent
17 of what he told me was necessary to be done ex parse, but I
18 don't think he would have told me the 95 percent if it
19 weren't because of the 5, I mean, because it just doesn't
20 have much to do with anything.

21 Mr. O'Connor, is that fair, or have I
22 misrepresented what we talked about?

23 MR. O'CONNOR: I think that's fair, Judge.

24 THE COURT: Okay. Let's go on to the last item on
25 our agenda, the matter that Mr. Becker raised yesterday of,

1 he characterizes it as reciprocal discovery. Now, the event,
2 the only event I know of that has occurred that has any
3 influence on this matter since yesterday that I assume you
4 all know about it -- if you don't, you need to. It didn't
5 occur ex parte, it occurred on the record. Mr. O'Connor
6 filed an amended witness list.

7 MR. BECKER: I've received copies.

8 THE COURT: I just wanted to be sure. Everybody
9 else got it, I assume. Got a copy of the amended witness
10 list? All right. So where are we?

11 MR. BECKER: There's two points I'd like to make,
12 Judge. First, I do not believe Mr. O'Connor should,
13 Defendant Bryan Sheppard should be able to avoid his
14 discovery obligations merely by filing an amended witness
15 list. The witness list of Defendant Frank Sheppard still
16 contains the listing of all government witnesses. Thus,
17 those witnesses will still be available to Mr. O'Connor
18 should the need arise. Whereas, I suspect that Mr.
19 O'Connor's statements will not be made available to
20 co-counsel to bring them within the purview of proper
21 discovery.

22 The second point is more general, and that is -
23 well, I'll -- that's enough for now, Judge. I still believe
24 that filing an amended witness list does not relieve the
25 defendant of his obligations. I've reviewed the omnibus

1 report. At least my version is silent on the issue of what
2 the defendants intend to do in this case in terms of
3 producing their statements pursuant to Rule 26.2.

4 THE COURT: So you're -- I need to revisit the
5 subject we talked about yesterday with you, Mr. Becker. The
6 authority for your request is what?

7 MR. BECKER: It's Rule 26.2, Judge. And I also
8 believe, now, Rule 26.2, Federal Rules of Criminal Procedure,
9 mirrors the Jencks Act, Section 3500, in that it does not
10 require another party, that is, mostly a defendant, to
11 produce the statement of the particular witness until after
12 that witness has testified.

13 However, it was my understanding, and now when I've
14 gone back and reviewed the omnibus report, it was my
15 understanding that there was reciprocal discovery obligations
16 on the defendants to produce witness statements prior to
17 trial. That's not in writing. It's not, at least in my copy
18 of the omnibus report was not filled out in terms of the
19 defendants making a commitment on their -- now, in subsequent
20 orders of the Court, I imagine they merely address the
21 government's obligation because in terms of discovery, that's
22 the normal process is that we produce Jencks material and
23 defense attorneys don't have any. Now, it just turns out in
24 this case there is some. And the question is if it has to be
25 produced and, if so, when.

1 THE COURT: You say the Jencks act, you believe,
2 and Rule 26.2 covers the statements, or the requirement that
3 they produce the statements?

4 MR. BECKER: It does.

5 THE COURT: Right?

6 MR. BECKER: Yes.

7 THE COURT: So your inquiry is, assuming I would
8 agree with you on that -- which I'm not agreeing or
9 disagreeing with you on it, I'm just talking hypothetically.
10 If I were to agree with you about that, then you say the
11 issue is when should the statements be produced; is that
12 right?

13 MR. BECKER: Right. If, in fact, the pretrial
14 orders of the magistrate don't cover it. And at least in my
15 version, we do not, it's not indicated that they'll produce
16 the -- actually, yes, on Page 10, No. 10, it says Defendants
17 1, 2, 3, 4, and 5 will provide their names and addresses five
18 days prior to trial, together with all statements as defined
19 in 18 U.S.C., Section 3500, made by each witness and the
20 record of felony convictions within the knowledge of counsel
21 of each witness.

22 THE COURT: So doesn't that answer your question?

23 I mean, the omnibus requires it to be done five days before
24 trial. And let's see, we are on Thursday. They should have
25 produced it yesterday. Did they produce it?

1 MR. BECKER: No. They amended their witness list
2 yesterday so they wouldn't have to. And Mr. Peters went on
3 quite eloquently about the start of trial according to the
4 defendants was the first day of jury selection. So it should
5 have been five days prior to that. The government produced
6 its Jencks materials 30 days prior to the start of the -- I
7 should say the bulk of its Jencks material 30 days prior to
8 the beginning of jury selection. So I'm asking that this
9 material covered by the witnesses on defendant's witness list
10 be produced.

11 THE COURT: Any further comment? No comment?

12 MR. O'CONNOR: Yes, I'll make a short comment.
13 Basically we're 35 days out for the defense before I would
14 have the opportunity to present any evidence. So I think the
15 amendment -- I think the spirit, I think the way the rule
16 should be, I did not intend to call those witnesses, and I
17 think I've learned a good lesson by just saying any and all
18 government witnesses. That was not my intention, clearly.
19 The government knows I would not call any of these people,
20 but that's not the issue. I did it.

21 I filed an amendment yesterday. I've given the
22 government every statement I have in my possession or any
23 record I have in my possession regarding my amended filing,
24 except for Martindale, which I've told Mr. Becker again this
25 morning as soon as I had it in my hands, I sent him a letter

1 yesterday that I would hand-deliver it to him, to his house,
2 wherever he was, the minute I had it in my hand.

3 THE COURT: Well, did the defendants file in
4 writing five days prior to trial the names and addresses of
5 witnesses they intend to call at trial?

6 MR. OSGOOD: I was about two days late, Your Honor,
7 simply because I did not, or maybe a day late. I faxed it to
8 Mr. Becker, I think, the day it was due, but I didn't get it
9 filed with the Court until the following day or the next
10 day.

11 My dilemma is I'm still not sure that's my witness
12 list because I'm still going through all of this discovery,
13 and I'm not all the way through it yet. I fully expect I
14 might file an amended list. I did give Mr. Becker two
15 cassette tapes of recorded conversations of witnesses that I
16 have had an investigator interview. He's got those this
17 morning. I've got one more tape that I told him as soon as I
18 review it, I'll give it to him tomorrow or, at the latest,
19 Monday.

20 That's my position on behalf of Mr. Brown. I'll
21 get it to him, I'll get it to him a lot sooner than he got it
22 to me in terms of the volume and the bulk and the ability to
23 review it. I'm doing my best. I'm making a good faith
24 effort. I'm not going to hide anything from him
25 deliberately.

1 MR. BUNCH: On behalf of Darlene Edwards, we did
2 file a witness list, I think, on time and then filed a second
3 one once we knew about the names and addresses of witnesses.

4 Mr. Becker has inquired about the witness Don
5 Wyrick, Donald Wyrick, which would be an expert witness on
6 behalf of the defendant if and when that witness has been
7 approved. And I'm sure Mr. Becker -- and I make that
8 assurance on the record, if Judge Hays approves the retention
9 of Mr. Wyrick, then I will forward to him upon receipt by me
10 those things necessary to be provided to the other side in
11 the event an expert witness is called.

12 The other witnesses on my list are all witnesses
13 that Mr. Becker designated as government witnesses that
14 probably would not be called. I have no statement from any
15 of those, other than what the government has.

16 MS. HUNT: On behalf of Skip Sheppard, we filed our
17 witness list on January 7th, which was the due date. Most of
18 the witnesses were address unknown. That's because the
19 government did not provide the addresses to those people
20 until Wednesday or Thursday. I can file an amended witness
21 list, but the government knows the addresses. I have no
22 statements to provide the government, although I believe the
23 government has statements of some of my witnesses that need
24 to be provided to me at this point.

25 MR. PETERS: Judge, Defendant Frank Sheppard filed

1 his witness list with addresses timely. The one witness that
2 we didn't have a current address on was a retired police
3 captain, Kennedy. I believe that was provided in open
4 court. I don't have any statements to provide, and because
5 the initial hearing was before Judge Hays, I had discussed
6 with Mr. Becker and there was some discussion in court as to
7 whether we needed to worry about duplicating subpoenas for
8 witnesses.

9 And on mine, I have that same caption, any and all
10 government witnesses. The reason I put it on there was to
11 cover the issue that I thought was raised and covered in
12 front of Judge Hays, that that would prevent -- and I
13 discussed, called Mr. Becker to candidly find out if I was
14 out in left field, that that would cover me about not having
15 to worry about, for example, the Riggses being subpoenaed.

16 I'm in compliance with the rule. I don't have any
17 statements to give, and before there would be any issue that
18 I would be concerned about, I would take it up with the
19 Court.

20 THE COURT: Anything else? Folks, I'm left with
21 the situation which, as best I can tell, the only secure
22 anchor is provided by the wording of the omnibus order.
23 Based on the statements of counsel and based on my reading of
24 the omnibus order, and based on the filings that were made, T
25 conclude that the witness lists filed by the defendants were

1 the, were intended to be the witness lists required by
2 Paragraph 10 of the omnibus order.

3 The requirement of the omnibus order was that five
4 days prior to trial, those lists be filed, at least five days
5 prior to trial that those lists be filed, together with all
6 statements made by each witness and the record of prior
7 felony convictions within the knowledge of counsel, if any,
8 of each witness. Those statements were to accompany the
9 witness list.

10 Therefore, each defendant will be required to
11 comply with the terms of the omnibus order and furnish to the
12 government no later than noon tomorrow any statement they
13 have within definition of 18 U.S.C., section 3500, for any
14 witness listed on their witness list that was filed in
15 compliance with Paragraph 10 of the omnibus order.

16 And if a party chose to satisfy the requirement of
17 the omnibus order by incorporating all the witnesses on the
18 government's list, then that party's obligation is to furnish
19 a copy of any statement taken they have complying with
20 section, definitions in Section 3500 for any witness on the
21 government's list.

22 The intent of, I believe, the intent of Paragraph
23 10, as we talked about yesterday, was to attempt to begin the
24 process of narrowing down what kind, what number of witnesses
25 ~ we were going to be dealing with in this case, who they were

1 going to be, and to provide an orderly method of complying
2 with the various discovery requirements under the rules in
3 the statute. So for all those reasons, the defendants will
4 be ordered to do what the magistrate judge ordered in the
5 omnibus order.

6 Now, let's talk about amended witness lists. And
7 let's talk about the situation of, that I'm sure is a
8 possibility, that someone will find a witness or identify a
9 witness at some other time.

10 Miss Franco, you all need to leave? I mean, is
11 noon still the time -- what's your situation?

12 MS. FRANCO: No, Your Honor, that's fine. We don't
13 need to leave any longer. We'll go another time.

14 THE COURT: I'll speed this up so you won't need

15 MS. FRANCO: It's not necessary any longer. Thank
16 you, Your Honor.

17 THE COURT: My recommendation -- and I'm not making
18 any ruling on the effect of this recommendation. But my
19 recommendation is that if anybody has a change in their
20 witness list, they file either an amended witness list or
21 they notify all other counsel as soon as possible that they
22 would like to add a name to a witness list, or if for some
23 reason you want to say you are taking one off. If you want to
24 add a name, you notify everybody as soon as possible and then
25

1 file whatever you believe is appropriate as quickly as
2 possible. The -- that gives you maximum protection.

3 Now, I'm not -- I mean, I'll have to hear if
4 there's any objection, you know, for the lateness of it.
5 I'll hear the argument, but my recommendation is you do it as
6 quickly as possible. Notify everybody as quickly as
7 possible, which would put you in the best position, I think,
8 to be able to use that late discovered witness.

9 And obviously, one of the things that I imagine is
10 going to come up is there may be some inquiry to establish
11 that, in fact, it was somebody that you didn't have any way
12 of discovering earlier, it just happened. Or that there were
13 circumstances you couldn't get around to determining whether
14 that person was somebody you wanted on your witness list
15 I until some later date. So you added them as quickly as you
16 new, and it was reasonable to do so.
17 Okay. Anything else on that issue? Okay.

18 I Anything else we need to talk about?

19 MS. HUNT: Has there been a final ruling on the
20 government's motion for a protective order?

21 THE COURT: No, there's not been a final ruling on
22 the government's motion for protective order. There will be
23 tomorrow. Now, as best you all know -- I mean, is this a
24 fair statement, as best you all know? If we were starting
25 the case tomorrow morning, could we start the case tomorrow

1 morning? I mean, without there being, you know, a bunch of
2 tissues raised? And I'm just saying as best you know right
3 Inow. I'm not, you know, I'm not trying to force you to
4 I predict .

5 MR. BECKER: I think the only matter outstanding is
6 something that counsel -- I provided them this morning with a
7 draft of a stipulation on records and photographs. I think
8 we're very close on that. Counsel wanted to discuss it, but
9 that would not be a pending matter. It would just be a
10 matter of more witnesses. But other than that, the
11 government's ready to open and present evidence.

12 MR. Osgood: Your Honor, I may wish to revisit the
13 pleading, pre-indictment delay issue, and I assume you'll
14 deny that. It's going to have, I could summarize very
15 quickly for you what my theory in that is. As I've gone
16 through this discovery, I've seen a pattern of 1986 police
17 reports where people were interviewed and said things.

18 It would be my argument that some six, eight years
19 later that there is also a consistent pattern of the ATF and
20 the Department of Labor going back to those same witnesses,
21 re-interviewing them, and the testimony then becomes, in our
22 view, embellished.

23 And the argument boils down to the fact that they
24 don't have much different now than they had in the months
25 after the fire. And that, add to that the fact that one of

1 the essential witnesses to my defense, the defendant's
2 I grandfather, has in the interim had strokes that will make it
3 impossible for him to come in and testify because he has aged
4 I by an additional eight years and has health problems.

5 So I would want to revisit again the pre-indictment
6 I delay issue. I suggested that the Court, to avoid a hearing
7 -- and remember, I argued that with the length of the delay
8 I in this case it should be presumptive. To avoid a hearing, I
9 would again suggest the Court merely consider this matter as
10 we go through it. I don't think it will be necessary, quite
11 frankly, to have even off-the-record inquiry about it at any
12 I great length, but consider the pattern that has occurred in
13 this case and make a ruling at the end of the case as to
14 I whether or not there has, in fact, been presumptive prejudice
15 I as a result of the delay in this case and that the
16 I government, for whatever reason, waited six or eight years to
17 bring the case.

18 That obviously dovetails to some extent with our
19 statute of limitations argument, and I think it's important
20 for purposes of appeal, should we lose, those are the two
21 issues that I'm really concerned about in this case are the
22 pre-indictment delay and the statute of limitations
23 question. And I didn't feel at the time, and it's confirmed
24 in my mind now, at the time of motion practice, there wasn't
25 any way that I could file a pre-indictment delay motion and

1 factually carry forward with that motion without the
2 discovery. Now that I've got the discovery, it very well
3 might be possible for me to have an out-of-court hearing
4 under the traditional standards of going forward since I've
5 I got the discovery.

6 I don't suggest we stop and have a four or five-day
7 I pre-indictment delay hearing now. I would suggest that the
8 I Court merely consider that as an alive motion during the
9 course of the trial and make a ruling much like you would in
10 I a Bell conspiracy finding at the close of the Government's
11 I case, that by a preponderance of the evidence they either
12 have or have not engaged in pre-indictment delay. Preserve
13 that issue for me on appeal. And if the Court agrees with
14 that, then at this point I don't even need to file a
15 pleading.

16 THE COURT: Well, Mr. Osgood, I will agree that -
17 I'm not sure I agree with everything you said, but let me
18 tell you what I do, what I do agree with. I'll do one of two
19 things. We'll start one hour and fifteen minutes from now
20 with a hearing and give you an opportunity to present
21 anything you want to present on pre-indictment delay, we'll
22 run it this afternoon, we'll go tomorrow, we'll go Saturday,
23 if necessary, and we'll go Monday, if necessary, which gives
24 us, what, three and a half days, which ought to be enough.

25 Or, or I will do as you just requested. I mean, I

190

1 will stay alert to the matter. I will ask you as part of
2 that, of my being alert to the matter, however, that you take
3 whatever opportunity you believe is presented to you during
4 the case to call my attention to something, hopefully without
5 having to, you know, make an objection or, you know, disrupt
6 it. But just say, you know, at the first convenient
7 opportunity, say, "Judge, do you remember this piece of
8 evidence or this? This I'd like you to take into account in
9 connection with my motion for pre-indictment delay. n

10 That will, I think, in the long run, produce a
11 higher quality decision on my part than spending two or three
12 days on a hearing. But I'll be glad to do the hearing.

13 MR. OSGOOD: I prefer the latter. That's what I
14 suggested to the magistrate. I think it's going to logically
15 come out that way anyway, Your Honor, because in the
16 impeachment process, we'll be going over the police
17 statements in '86 and dovetailing that into the statements
18 taken by the agents and the grand jury. And that will work
19 just fine, and other counsel agrees. That will preserve the
20 motion for appeal.

21 THE COURT: I need to have you, though -

22 MR. OSGOOD: I'll do that. I'll stay alert to
23 that.

24 THE COURT: -- remind me from time to time, and at
25 the end of the case make a request for the ruling. I mean, I

1 may well forget it.

2 MR. OSGOOD: I'll do that.

3 THE COURT: I have no way of knowing what will be
4 going on at the end of the case.

5 MR. OSGOOD: Yes, sir.

6 THE COURT: Okay. Now, anything else that if the
7 case was going to start tomorrow morning that somebody would
8 think they had to bring up in the way of an issue to talk
9 about before we could get started?

10 All right. Now, obviously, we're going to go from
11 roughly noon on Thursday to 9 o'clock on Tuesday, and none of
12 us knows what's going to happen in that intervening period of
13 time. I want to know about problems that arise in that
14 intervening time before 9 o'clock Tuesday. If you wait until
15 9 o'clock Tuesday to raise a problem that could have been
16 raised over the weekend, I am not going to be very patient
17 with it. I mean, I'm not going to be inclined, unless the
18 nature of the problem is one that is so compelling that has
19 to be taken up, to take it up and delay the beginning of the
20 trial.

21 Therefore, I will give each attorney my home
22 telephone number. And you can get it by coming up here
23 afterwards, and I'll give it to you. I invite you, in fact,
24 I do more than invite, I implore you to call me at any hour
25 of the day or night between now and Tuesday at 9 a.m. if you

1 have a problem that you would feel compelled to bring up on
2 Tuesday morning, to let me know about that so that we can
3 attempt to schedule the resolution of that matter prior to
4 Tuesday morning.

5 Now, it may be 7 o'clock Tuesday morning. I mean,
6 that may turn out to be the most convenient, or 7:30 or 8:00,
7 depending on the nature of the problem, but at least we won't
8 wait until 9 o'clock to hear it. Okay?

9 I also would like to have you give Mr. Aizenberg,
10 each of you, a telephone number or some way to reach you over
11 this weekend. Maybe it's multiple numbers, that's fine, but
12 so that if something comes up, I can get ahold of you all. I
13 want you to give that information to the other attorneys,
14 too, so everybody knows how to reach everybody, within
15 I reason, over this weekend.

16 I Okay. Any questions about that? All right.
17 I Anything else? All right.

18 (Court and Law Clerk conferred off the record.)

19 THE COURT: Mr. Aizenberg points out something
20 which is very well-taken. We need to do something about the
21 elements of the offense instruction. And I mean, I need to
22 read the cases, and I think Mr. Osgood said he wanted to read
23 the cases again. When do you all want to take that matter
24 up?

25 MR. OSGOOD: How about 8:30 on the morning of

1 Tuesday?

2 THE COURT: You took the words out of my mouth, Mr.
3 Osgood.

4 MR. OSGOOD: I'm learning, Your Honor.

5 THE COURT: Very good. How about that? How about
6 Tuesday morning? Now -- let's do it at 8 o'clock, and the
7 reason I say that is if out of the discussion comes something
8 which needs to be changed, we're going to have to change it,
9 copy it, and have it ready by 9 o'clock, which is going to be
10 some premium on time.

11 8 o'clock Tuesday morning. Is that all right with
12 everybody?

13 MR. BECKER: That's fine, Judge.

14 THE COURT: Hearing no, and seeing nobody in a
15 state of upset about that, I assume that that's all right.
16 So we're at recess now. Yes, Mr. Becker.

17 MR. BECKER: Mr. Peters, I briefly asked him,
18 inquired regarding opening statements. The government
19 obviously will open. I expect to be approximately an hour.
20 My question is will we fill the morning with opening
21 statements, or should I have a witness ready to go?

22 THE COURT: Mr. Becker, thank you very much for
23 raising that issue. I want to talk about the length of
24 opening statements a little bit. And Mr. Becker's already
25 dealt with that in the statement he just made. An hour or

1 less, Mr. Becker?

2 MR. BECKER: Certainly less. No more than an hour.

3 THE COURT: All right. An hour or less or no more

4 than an hour. Now, does anybody else want to tell me what

5 positionyou're going to be taking on opening statements,

6 because I think Mr. Becker has a legitimate concern about

7 whenhe's got to have his first witness here ready to go. Do

8 you all know yet whether you're going to be making an opening

9 statement or reserving it, or what's your position?

10 MR. PETERS: We've talked about it briefly. We do

11 notknow if we're going to be making an opening statement.

12 As far as I know, nobody knows if -- in candor to the Court,

13 I'm not going to know if I'm making an opening statement

14 until I hear Mr. Becker 's.

15 And we've talked. I think we can anticipate one

16 defendant,at least one defendant making an opening

17 statement. But -

18 MR. OSGOOD: If I do, mine would be 15 or 20

19 minutes, tops, Your Honor. So that's not something thatch

20 criticalin terms of time factor.

21 THE COURT: Thank you, Mr. Osgood.

22 MR. BUNCH: I can tell the Court that Darlene

23 Edwards will reserve opening statement.

24 THE COURT: Okay. Thank you.

25 MR. O'CONNOR: Judge, I'm fifty-fifty on making

1 it.If I did, it would be 20 minutes. If I make a decision
2 over the weekend, I'll call Mr. Becker so he'll know to tell
3 his witnesses.

4 MR. OSGOOD: As will I.

5 THE COURT: How about Miss Franco or Miss Hunt?

6 MS. FRANCO: Same, Your Honor. We'll notify Mr.
7 Becker if we make a decision.

8 THE COURT: Mr. Peters' point, though, it's a
9 legitimate point. If you just don't know and you, you're
10 going to make the decision after you hear Mr. Becker's
11 opening statement, that's fine. What I would request,
12 though, is that what you do is if you would estimate -- I
13 mean, it's sort of hard to do. I guess if you don't know if
14 you're going to make one or not, you don't know how long it's
15 going to take, but try to hypothesize if you were to make
16 one, about how long it would be and tell Mr. Becker that.
17 Mr. Becker, in view of the, of this situation, it
18 doesn't sound to me like if the defendants make, if they all
19 make opening statements, it doesn't sound like it's going to
20 be terribly long. So why don't you -- on the other hand, I'm
21 not -- I don't know who your first witness is, but -

22 MR. BECKER: I'll be ready to go, Judge.

23 THE COURT: Is that enough information?

24 MR. BECKER: That's fine.

25 THE COURT: Okay. And if you all decide over the

1 weekend, would you let Mr. Becker know and everybody else?
2 If you don't, fine, we'll just deal with it Tuesday morning.
3 Okay. Anything else that we need to -- oh, if anybody has
4 any comment about this instruction, the elements, if you
5 could just get it to us sometime tomorrow, that would be
6 great and, naturally, if you send something to us, you send
7 it to everybody else.

8 Okay. Remember, we need to have where we can reach
9 you and where everybody else can reach you over the weekend.
10 And I'll give you my home number so you'll know how to get
11 ahold of me.

12 We'll be in recess until 8 o'clock Tuesday
13 morning.

14 (Hearing adjourned for the day.)

15

16 **Friday, January 17, 1997**

17 (The following proceedings were had in chambers in
18 the presence of Mr. Becker, Mr. Miller, and Mr. O'Connor, but
19 with no defendants present, commencing at 10:43 a.m.):

20 MR. BECKER: The reason I wanted to meet with the
21 Court is apparently there's some disagreement between Mr.
22 O'Connor and I about the Court's ruling yesterday on
23 reciprocal discovery.

1 MR. O'CONNOR: And I guess it's not, it is and it
2 isn't a disagreement. When I left here, I was under the
3 belief that the Court ruled that I did not have to give them
4 to him. That's what I thought, and I went home, and that's
5 what I thought.

6 And then I talked to Pat Peters, and he said, I
7 think that's right, but I'm not sure. So we talked it out,
8 and I said if I was supposed to get them, Paul would have
9 said when am I going to get them because he's been asking me
10 on other stuff, so that's what I thought in court when I
11 left. So Paul asked me this morning and wanted to know about
12 the statements. I said I thought the ruling was I didn't
13 have to give them up.

14 So that's where I was. So it wasn't a
15 disagreement. It was like, it was just that that's what I
16 thought. I would request that the Court reconsider its
17 decision. And the first request I would ask in that regard
18 is to, for the Court to look at the statements in camera.
19 Now, I don't have any statements right now. I have
20 nothing -- if you told me right now to hand it to Mr. Becker,
21 I have none. And I will tell you the history of why I have
22 none, a shorter of history of why I have none.

23 Last night I was supposed to go by Theresa Taylor's
24 place to get the statements, and I couldn't get by there
25 because I was doing other things on this case. Between 10:00

1 and 2:00 in the morning, I was calling every jail to find out
2 where their last two informants were because they moved them,
3 and I think just through the normal course took them down at
4 the prisons. I was going to go down there like at 1:00 in
5 the morning, stay overnight and talk to these people, and
6 come back this morning.

7 I found out they got moved to St. Clair County, so
8 I got up and drove to St. Clair County and had a court
9 reporter meet me there, not Theresa. I've got the other two
10 statements of the other two people in jail this morning down
11 in St. Clair County. I'm driving back from there when I got
12 the page from Paul to say, "Where are the statements?"

13 So I didn't -- so then we've dealt with that, and I
14 didn't realize that the Court had ordered me to give them
15 up. So I haven't been by Theresa's to pick them up. I
16 understand there are two statements that are ready and that
17 the others are being typed as she can get to them. And
18 that's my honest understanding, and I do not have them, nor
19 have I picked them up or anything like that. So I don't have
20 them to give at this minute.

21 But I -- so the one request I'm asking is the Court
22 to reconsider the motion that it entered, look at these
23 statements in camera because I think that this ruling -- and,
24 again, I apologize that I didn't understand it yesterday. I
25 don't have any excuse, other than the real excuse is that I

199

1 was leaving as soon as court got out to go over to Lansing to
2 see other prisoners yesterday, and if I didn't get there by 1
3 o'clock, I wouldn't be able to talk to him. I got over there
4 and talked to him. When I heard the Court say since Mr.
5 O'Connor filed the amended, I thought that meant that I was
6 okay. So that was my mind-set, honest truth.

7 So I believe that this ruling is devastating to my
8 client in many respects. One is obviously I've been pretty
9 ineffective if I file a witness list of any and all, which
10 everyone traditionally has done, to my knowledge, in this
11 district and other practice that I've done, just to cover
12 yourself. I talked to Mr. Becker about it when I did it. It
13 was at a time when Mr. Becker still hadn't even given us his
14 witness list. Let me leave that out. Let me leave that
15 out. It doesn't really matter.

16 At the time that I filed it, I called Mr. Becker
17 and I told him, I asked him if I could do it so I didn't have
18 to waste paper and time because my real witnesses were the
19 real witnesses I was going to call. It's clear I would never
20 ever call any of these witnesses. That was never my intent,
21 never my thought process, never my being, thinking,
22 anything.

23 Then when that happened and I realized that I'd
24 made a mistake, that I shouldn't have done it that way,
25 although it was, I believe, an honest mistake, I then filed

1 the amended, which I then thought clearly meant that I was
2 not going to call any witness for the government, and that
3 ruling when I filed my amended then at that point in time has
4 now precluded me now and forever from ever calling anybody on
5 the government's witness list. And I think that's a proper
6 sanction. For that little mistake, the sanction I think is
7 you don't get to call them, Mr. O'Connor, so if something
8 comes up later and you need one of them, tough, and I would
9 live with that.

10 But these statements are impeachment. That's all
11 they are. They are impeachment. And to now give these to
12 the government so now they could then pick and choose who
13 they now would put before this jury because they won't put
14 half of these people, I don't believe, before this jury if
15 they read these statements, would take away my effective
16 representation of my client, my ability to cross-examine the
17 credibility of the witnesses, to overall show the way this
18 case has proceeded and the way it's been conducted and the
19 fashion with which it's being conducted, has been conducted,
20 which is a theory of the defense in this case.

21 And furthermore, one of my real overall goals, and
22 I've said this to Paul, but my whole overall thought was I
23 had taken all of these statements, I had gathered all the
24 impeachment, I've done all of the work as it relates to these
25 witnesses in the government's case, and I was going to

1 approach Mr. Becker before the end of today. I told him this
2 before we came up here.

3 I was waiting to pick up a couple more items and to
4 talk to him to resolve this case in favor of my client and
5 giving him some of this stuff to, as a give-and-take to get
6 my client out of this case, if it was possible. So now by
7 giving them, there's no way that that could ever happen or I
8 could ever effectively use those in a way of plea
9 bargaining. That's the truth, I told him that this morning,
10 and that's been my thought all along in picking up these
11 witnesses, that I could somehow go to him with everything I
12 had and say, look, you can maybe salvage this thing and do
13 some, and at the same time I can represent my client
14 effectively.

15 So in the context of the -- am I talking too loud?

16 THE COURT: I just don't know who came in out
17 there. I just didn't -

18 MR. O'CONNOR: So I think the Court has to look at
19 the overall way this case has gone on. The closed file, the
20 way that the rules, and I'm not -- maybe we haven't followed
21 the rules too -- it's not pointing a finger or anything, but
22 a lot of the ways things have progressed in this case have
23 not been the normal case.

24 And this was an honest mistake, honest mistake. I
25 had no intention to call all these witnesses. And to now, to

1 use that honest mistake to make me give them witnesses who I
2 would never call, do not want to call, and had I listed the
3 Witnesses, had not said any and all, they would not have even
4 been in those numbers. I was thinking of the Riggses or
5 people that he may not call but would definitely want before
6 this jury, but we would never call any of these people. If
7 The doesn't call any of these people, I would be happy, but
8 giving these over gives him the defense, the
9 cross-examination the theory of the case. It's everything,
10 it is the whole thing, for one mistake that was honest.

11 And I don't -- I'm just asking the Court to
12 reconsider its ruling. I'm sorry that I didn't understand it
13 yesterday. I would have clearly, I don't think I would have
14 sat still like I did. I think -- I missed it, and I -- and
15 I've said this before in front of Mr. Becker and in front of
16 Judge Sachs, I'm not a book lawyer, I'm not a legal lawyer.
17 I can't make these articulate arguments like some of these
18 people make. I can't do what Peters does. I can't file the
19 brief he did. I'm not that kind of lawyer.

20 I think it's important to know what my intent is,
21 what's inside me. I think that has to be important
22 somewhere, fairness, justice has to fit into these rules.
23 Not just, there's a rule so, therefore, you violate it. The
24 real honest intent has to be looked at.

25 And if you looked at the honest intent from the

1 government, does Mr. Becker really want these statements
 2 because he thinks I'm going to call them, or does he want
 3 these statements so he can do damage control with this case?
 4 That's the honest version of this thing. If you look at it
 5 from his end, does he really honestly think I'm going to call
 6 these people? If the Court read these statements in camera
 7 and considered a re-ruling, if the Court would honestly
 8 believe that I was going to call these people, then I would
 9 say, give them to him.

10 That's -- well, I have a couple of other things,
 11 depending on what you say, Judge. But that's my record.

12 MR. BECKER: I don't believe any circumstances have
 13 changed from yesterday. And one of the points I tried to
 14 make yesterday is that there is no sanction because the
 15 Defendant Frank Sheppard through counsel Pat Peters has
 16 listed all the government witnesses, any and all. There's
 17 simply no doubt in my mind that given the working
 18 relationships that I've observed in this case that if Mr.
 19 O'Connor wants anybody called as a witness, Peters will call
 20 them as a witness. And so, thus, there's no sanction at
 21 all.

22 I think it goes back to the mind-set. It's the
 23 mind-set of the defense that they have no discovery
 24 obligations. And so they're not even -- we spent a multitude
 25 of time, hours and hours, in this matter and, frankly, every

1 matter complaining about the government not living up to its
2 discovery obligations. But the defense side of the camp for
3 the most part never has any statements. So there's no
4 thought given to any discovery obligations because they don't
5 comply with Rule 16, they don't comply with Rule 26.2. And
6 that's what called it to mind to me.

7 And I wasn't laying in wait for Mr. O'Connor when
8 he -- when I was informed by detectives that Martindale had
9 been interviewed by John O'Connor, well, I know John. John
10 had a stenographer there. That's Jencks material. So that's
11 what precipitated this, and I asked John for that statement.
12 And we had a reasonable discussion about it. But it then
13 became clear to me, you know, that he, if he's interviewed
14 other government witnesses, there are stenographic statements
15 and I'm entitled to them.

16 MR. O'CONNOR: That's true, there are. And as it
17 relates to Martindale, I don't mind saying that now with us
18 in here, the reason Martindale is not ready is because we
19 were out 14 hours last Saturday, 12 hours last Sunday. She
20 took a statement, she just didn't get it done. And she'll
21 tell you, and I would invite you to call her, that I did not
22 ask her to hold back or not do it.

23 But then when this thing came about, when you
24 endorsed these witnesses, I said, give me these first three
25 people first because they're going to testify for the

1 government next week, and then get me Martindale. And since
2 we've had the further discussion, I said as soon as you get
3 those three done, get Martindale done because I want to get
4 it to Mr. Becker before I ever make an opening statement, so
5 that's the way it's all gone.

6 You can talk about the other lawyers, and I don't
7 blame you, but what I have done in this case, I've complied
8 with the witness list, I've given Mr. Becker -- every single
9 document that I have, I've given to him. I've told him what
10 I had right when I had it. He called me about Martindale,
11 and I told him I had it but didn't have it in my hands. I
12 told him I would get it to him, and I have not not made that
13 promise.

14 There's nothing I have done -- you are to an extent
15 somehow in bed with other defense lawyers, but I'm telling
16 this court, do you think they know that I'm going to be over
17 here this afternoon talking about selling the rest of them
18 out for my client? I'm representing one person here. I
19 don't care about the rest of the four of them as it relates
20 to my client. I have no secret agenda. I had no secret
21 meeting with them, you're going to sneak in and call someone
22 and this will cover me. I've never had a discussion like
23 that. I wouldn't practice law like that, I don't deal that
24 way. If other people operate that way, they operate that
25 way, but I don't operate that way, and I don't intend to

206

1 start to operate that way.

2 All I'm saying is I have no intent of any of them
3 calling someone for me. And yesterday -- Mr. Becker can
4 vouch for this -- when I left and went over, I thought I'd
5 won. In front of Pat Peters, in front of him I said, well,
6 Paul, Pat's not going to get them either because if these
7 other guys have put any and all witnesses and they have an
8 obligation to give them when they have them to Paul, they're
9 not going to get them.

10 And I'm telling you, that's the honest truth. They
11 will not have those. I will not give them to them, period.
12 And I don't have them yet, but I would not violate that rule,
13 period, for any of them.

14 MR. BECKER: There's no reason for you to violate
15 the rule.

16 MR. O'CONNOR: What you're saying is if Pat put any
17 and all, I can hand him the statement, and I'm not going to.

18 MR. BECKER: You can cross.

19 MR. O'CONNOR: You're right, I can cross-examine,
20 sure, exactly, I'm not fighting that issue. But what I'm
21 saying is I've complied with every rule I've had to comply
22 with, witness lists, exhibit lists, statements, until
23 yesterday when this happened, and I didn't realize what
24 happened. Would you agree with that?

25 MR. BECKER: John, no, because frankly, I don't

1 think you would have thought about turning over Martindale's
2 statement. I mean, you know, defense attorneys aren't used
3 to having Jencks material. You're the only one that takes
4 stenographic statements.

5 MR. O'CONNOR: I understand, but remember when I
6 talked to you on the phone and you asked me about it, I said,
7 "I'm going to give it to you, but I'm going to see if
8 there's any legal reason why I don't have to."

9 MR. BECKER: The point is I initiated that. I
10 don't know what you would have done down the road, but -

11 MR. O'CONNOR: Do you want to know what the honest
12 answer is? I don't know that either. What I'm saying to you
13 is once I had it, I would have made a decision whether it
14 was, and I would have told you about it, because I'm not
15 stupid. I know you would have found out. I know -- when I
16 came in the other day and I got the look, I knew you knew I
17 had been out talking to these people. This is the give and
18 take that happens in a case.

19 But all I'm saying is that I have complied with the
20 rule, all the rules at this point. That's my point.

21 MR. BECKER: It's relative. You know, when you
22 file an exhibit list and I say what is this stuff, you say,
23 oh, I'll give it to you. I mean, Rule 16 kicks in at
24 indictment. So that if I were to file my witness list or
25 exhibit list and have a million, whatever it is, ten items

1 that you folks had never seen, we'd never hear the end of it,
2 I'd never hear the end of it. Rule 16 kicks in early and not
3 after you, five days before trial when you file your exhibit
4 list. That's mere background. I mean, that's not the issue.

5 MR. O'CONNOR: What I'm saying is I've never had
6 Martindale to give to you. I've never had it. I don't have
7 it. And I wrote you a letter day before yesterday, I said,
8 Paul, as soon as I have it, I will deliver it to you wherever
9 you're at, did I not, Paul? Paul, again, did I not?

0 MR. BECKER: Absolutely. I received that letter.

11 MR. O'CONNOR: I don't have Martindale, if I had
12 it, you'd have it.

13 MR. BECKER: My only point on Martindale is that
14 that was a process that I initiated. That was not something
15 you were on top of.

16 MR. O'CONNOR: But that addresses a super point
17 here. This is a closed file case in which I've been given
18 2500 pages in 14 days. I've got six witnesses testifying
19 next week that I haven't talked to because I've been running
20 around talking to other people. This is the thing that this
21 thing creates.

22 MR. BECKER: Next week you can cross-examine
23 everybody, but next week you have the list. It's fire
24 personnel and Frank Sheppard. Now -

25 MR. O'CONNOR: You said Frank, Glen.

1 MR. BECKER: No, it's Frank Sheppard. It's the
2 Frank Sheppard witnesses. These folks aren't pointing
3 fingers at Bryan next week. It's Frank Sheppard week.

4 MR. O'CONNOR: Glen Shepard said Bryan Sheppard
5 admitted to him that he did -- I think Elliott says that
6 George talks about doing it with his brother Bryan and
7 that s -

8 MR. BECKER: But that's not admissible and -

9 MR. O'CONNOR: Again, those are things that -

10 MR. BECKER: The things that Frank says are only
11 admissible against Frank, and those people have been all
12 instructed to, as we've discussed many times, that they're
13 not going to talk about other defendants, they're going to
14 talk about the speaker. But be that as it may, we are -

15 MR. O'CONNOR: I made my record of that to this
16 I point.

17 THE COURT: Anything else?

18 MR. O'CONNOR: Other than my request, Judge, is
19 that you look at these in camera. And right now I'm only
20 going to have two that I think, assuming she's home, we can
21 I go pick up. But that's all I know.

22 THE COURT: Well, let me -- let's start with
23 I yesterday, I guess, just because I'm somewhat -- I guess I'm
24 I disappointed in myself that I didn't express myself clearly
25 enough yesterday.

1 MR. O'CONNOR: Judge, I'm sure you did.

2 THE COURT: That Is why I took all the time to talk
3 about it was that I was doing something -- I mean, I was
4 resolving an issue or a dispute in a manner that I felt
5 needed, you know, some explanation as to why I was doing it.

6 But it was certainly my intent yesterday -- maybe
7 it was inartfully expressed, but it was certainly my intent
8 to say that the, under the omnibus order, the witness list
9 which each defendant's attorney told me they had filed in a
10 I timely fashion as required by the omnibus order had to be
11 I accompanied by, at the time by any Jencks, any statements
12 covered by Jencks, by Section 3500, or as described in
13 Section 3500.

14 Now, I mean, that was certainly my intent
15 yesterday. That's what I thought I said. And then I talked
16 about the amended -- I mean, I talked about amended lists and
17 pointed out that an amended list has many purposes, but I
18 believe that it didn't, it didn't relieve a party from an
19 obligation that had been established by the omnibus order to
20 have been done, you know, when it was, when the order said it
21 should have been done. Now, that was what I said
22 yesterday -- I mean, that's what I thought I said yesterday.

23 Now, I will take at face value your statement that
24 it was a mistake, I mean, you now view it as a mistake to
25 have filed the witness list the way you did. Assuming your

1 co-counsel -- though, as I think I also stated out there, it
2 clearly wasn't a mistake. And I pointed either yesterday or
3 at some other time that we were talking about this, pointed
4 to what happened as we prepared for the general voir dire,
5 and we were talking about what witnesses to read.

6 And Mr. Becker, in essence, said, look, my
7 witnesses are going to come from the first group of witnesses
8 on my list on that bifurcated list, and somebody, and one of
9 the defense lawyers, or more of them, said, well, Judge,
10 you've still got to read all the witnesses on his list, even
11 the ones in the second group, the unlikely to call group,
12 because we may call them.

13 So that communicated to me, or that was one thing
14 that communicated to me the belief that, as is typical of
15 many cases, the government's witness list is frequently
16 all-inclusive in the sense that they list everybody who is,
17 or essentially everybody whose name has come up during an
18 investigation to protect themselves because they don't know
19 -- I mean, at the time the witness list is filed, they may
20 be unsure what issues are going to come up at trial that may
21 require calling somebody that they didn't, you know, plan to
22 call before.

23 Well, if they hadn't listed them on the list, as
24 you know, then the defense attorneys say, wait a minute,
25 Judge. You know, they can't call that person because it

1 isn't on their list. So they list everybody. And that is
2 usually, in my understanding, why so many defense attorneys
3 incorporate the government's list is it essentially is 95
4 percent of the people who know anything about the particular
5 dispute.

6 Now, there's frequently some other people that the
7 defense, you know, has found, character witnesses, that kind
8 of thing, that wouldn't be on the government's list that the
9 defendant has to add. But usually the people who know
10 anything about the offense find their names on the
11 government's list.

12 So it was, it was with that kind of background that
13 I approached the decision yesterday. And, I mean, you tell
14 me it was a mistake on your part to do it. I mean, I'll say
15 right now, I don't -- I mean, it may or may not have been a
16 mistake, but it certainly doesn't, in my view, fall anywhere
17 close to being below the standard of a competent attorney
18 representing somebody in a criminal case. If it's a mistake,
19 it's one that is not one that falls into, in my view,
20 anywhere close to being the kind of thing that would be
21 ineffective assistance of counsel.

22 And even, even if I go ahead and take the rest of
23 your argument and consider it, which is, well, Judge, I put
24 people on there who I never would have called. And I might
25 have statements from some of those people and, therefore, it

1 would be, you know, ineffective or it would be, it could be
2 argued to be ineffective, but I put the name on the list and,
3 therefore, had to turn over the statement before I could use
4 it in cross-examination.

5 Now, I mean, I'll be glad to consider the argument
6 you've raised and, I'll tell you, frankly, delay a final
7 ruling on that until you've had a chance to sit down with Mr.
8 Becker and talk about what you said you wanted to talk
9 about. And that is a, and that decision on my part, in other
10 words, to delay your ruling on your request for
11 reconsideration, is a function only of my belief that that
12 aspect of this situation, I mean, that particular aspect
13 which you said you plan to do, you plan to sit down with
14 these statements with Mr. Becker and try to work out
15 something, is an unusual aspect of this situation and one
16 that I think needs to be weighed, along with the literal
17 application of the omnibus order.

18 So I'll -- I mean, I'll consider all of that, but
19 I'm going to -- I mean, you're going to need to arrange your
20 meeting with Mr. Becker pretty soon because I've got to rule
21 on this. I mean, I've got to make my decision about your
22 request that I reconsider in some relatively timely fashion.
23 I can't wait until, you know, Tuesday to do it because then
24 it's, then it's a moot, I mean, the passage of time has
25 mooted out the purpose for the omnibus order's provision.

1 So when do you want to meet with -- I guess the
2 question is when do you want to meet with Mr. Becker and -- I
3 mean, that will tell me when I want to do my, when I'll
4 announce the results of my reconsideration.

5 MR. O'CONNOR: I think we can do it right now or in
6 the next few minutes, but my request for you while that is
7 going on is to try to get ahold of these statements. They
8 are ready, it's my understanding, to be picked up. I was
9 supposed to pick them up at 9 a.m. this morning. And the two
10 that we're talking about picking up that I think are ready
11 are the, would be classic examples. I mean, they would
12 clearly tell the Court, I think, whether or not -- would
13 clearly help the Court in its ruling process.

14 THE COURT: I'll be glad to do that. I mean,
15 people ask me to look at stuff in camera. I'll look at it i
16 camera. I just don't know what I'm going to see by doing it,
17 but I'll be glad to look at them. And then with that
18 knowledge, I'll -- I mean, at least I will have looked at
19 them, as you request. And I'll do that. If you'll get those
20 to me, I'll do that immediately so that you and Mr. Becker
21 can have your meeting, and you can attempt to, I mean,
22 produce whatever result favorable to your client you'd like
23 to try to achieve before I announce the results of my
24 reconsideration.

25 And I don't mean to suggest by that that I've

1 decided yet what the results of the reconsideration are going
2 to be. I mean, I haven't. That's why I'm reconsidering. I
3 mean, that's why I'm considering it. I'm not playing a
4 game. I just -- I'm trying to take into account what you
5 said, and I'll look at the statements for whatever value that
6 may have in my reconsideration. And we'll probably end up
7 talking again about it because, I mean, something may occur
8 to me after I've looked at this that I could ask that
9 wouldn't spill the beans. I mean, I'm not going to spill the
10 beans and ask him a question, but it might be something that
11 I would want to inquire about.

12 MR. O'CONNOR: Three things come to mind, then.
13 I'll go talk to Mr. Becker, one. I'll get on the phone now
14 and see if they're ready and send someone by and get them
15 down here.

16 Secondly, I've obviously tried to be candid. At
17 the same time, I've told Mr. Becker who my court reporter is,
18 and at least until you make a ruling, and I've asked her to
19 be specifically employed by me for this case so she's, the
20 way I look at it, an employee of mine so he can't call her
21 and start getting statements from her.

22 MR. BECKER: That's work product until the Court
23 rules.

24 MR. O'CONNOR: Okay. Third, another consideration,
25 because we need to talk this out. I know we want to go to

1 trial Tuesday, but another consideration that I have to have,
2 if the Court rules, is the possibility of a writ and other
3 remedies that may be available to me.

4 And, again, that's not -- that's not any kind of a
5 threat, but I wouldn't know how to do it to start with, but
6 it's just something, it's there. I've been in contact with
7 Jim Wyrsh, and he's agreed to help me if we get to these
8 Points, so I'll defer to him at that point. So I'm just
9 trying to -- I know time is of the essence. I want to get
10 those statements down there, I want to talk to Mr. Becker,
11 and I want to keep the heat under this.

12 THE COURT: That's even more of a reason -- I mean,
13 I don't take it as a threat, first of all. That's a right
14 you've got. It may be a right you've got, and, therefore,
15 I'll cooperate with you every way I can to make that possible
16 action on your part as timely and easy as possible because it
17 will help all of us. I mean, if the Eighth Circuit would
18 step in and issue some kind of a stop order on this case, I
19 mean, we've got a lot of people to notify. We've got a lot
20 of stuff to do if this case is not going to go on Tuesday
21 because they want to take a look at this, which I guess would
22 be, I assume would be their right to do that.

23 So it's in all of our interests, I think, to set
24 this up as early as possible so as to give you the most
25 time. And obviously, it will be easier for you to do it this

1 afternoon than it will be for you to do it over the weekend.

2 MR. O'CONNOR: I'm going to do it right now because
3 this is the last day that courthouses and things are open to
4 get public records. We've still got stuff we're doing.

5 THE COURT: If you're going to go to the Eighth
6 Circuit, I mean, if you're going to seek a writ, I'm just
7 saying that your life, I think it will just be easier.

8 MR. O'CONNOR: Go ahead, Judge, I'm sorry. He was
9 showing me a note on something.

10 MR. BECKER: There's another point that Mr.
11 O'Connor raised earlier that I wanted to make sure that -

12 MR. O'CONNOR: I didn't know if you wanted me to
13 discuss it.

14 MR. BECKER: Yes, absolutely.

15 MR. O'CONNOR: I will, then. I just thought -- we
16 had a conversation. I want to back up one step here so I get
17 something else out on the record.

18 When I was telling Theresa at first to do these, of
19 course, I was telling her because I talked to Judge Hays
20 about getting copies made at 10 cents a page for all the
21 lawyers, how it was going to get paid. So I was having her
22 make an original and one, and then three scripts because I
23 was going to give them to everybody because at that time
24 until you made the rulings, I assumed I could do that.

25 of course, I never picked them up because if you

1 looked at them, I thought everybody was going to get one,
2 which they were. No one has gotten anything, so I didn't
3 want somebody to go back and say, look, it was his intent at
4 the time. I thought everybody would get them and you
5 wouldn't be asking for them. I never saw that coming.

6 Bradv issues I believe that I have uncovered -- I
7 don't want to say a number. Not that I want to say -- I
8 don't want to say a number and be wrong. More than one, less
9 than five Bradv violations, clear-cut, the way I see it, that
10 I've uncovered as a result of some of these things in talking
11 to some of these people, assuming they're telling me the
12 truth. And these are the government informants, and I don't
13 know if they're telling me the truth, but they seemed like
14 they were. And we've run records down there, and they're
15 right on a couple of them, and we're running some more. So
16 if these hold out to be true, they're there.

17 A couple of them, a couple of them -- see, this is
18 the problem is a couple of them, as I told Mr. Becker this
19 morning, and I don't mind saying this, I don't believe he
20 probably knows about these things. I really don't believe he
21 could because I don't think he would not give these up. I
22 don't believe that he wouldn't do that. And I think when he
23 finds out about it, he'll probably be as surprised as I was
24 to find out, and someone didn't tell him something is the way
25 I'm, that's the way I'm viewing it. I mean, honestly, thaws

1 the way I'm viewing two of these.

2 So it's, but it's kind of like I don't know some
3 things that are tied to this motion that's before the Court,
4 that the two witnesses we're not getting -- and maybe some of
5 this stuff is tied to that, and I'm -- and there's no
6 violation at all. Maybe the Court already knows.

7 MR. BECKER: There's nothing relating to these two
8 witnesses that are the subject matter of the protective order
9 that I could conceive.

10 MR. O'CONNOR: Do they relate to any witness that
11 will testify next week?

12 MR. BECKER: No.

13 MR. O'CONNOR: Okay. Then there would clearly be
14 at least three Brady violations as to witnesses next week, in
15 my opinion, and one Jencks. And maybe the one Jencks could
16 be just an oversight. I don't know. That's not the one I'm
17 talking about as being one that you would know. But that's
18 why the other day we were saying, Judge -- and we weren't
19 trying to sandbag you. In a sense, we were, yet we weren't.
20 We were trying to say, tell us what Brady is because everyone
21 has got a different interpretation of Brady. They just do -
22 when you're advocates, Mr. Becker has an interpretation as an
23 advocate of what he thinks it is or isn't. And we as
24 advocates do. And then I think there's a clear-cut area that
25 is Brady.

1 MR. BECKER: My only concern is when Mr. O'Connor
2 raised this point on the phone this morning is that it not
3 erupt on Tuesday.

4 THE COURT: It better not erupt on Tuesday because
5 if you know it today, we'll do it this afternoon.

6 MR. BECKER: Because I don't know what he's talking
7 about. And I just, it seems to me that there's been, this
8 information has been -- at least the defense have been aware
9 of something for a while because they've hinted at it off and
10 on. And it may have had to do with asking to swear the jury
11 on Thursday because I couldn't conceive of why we would want
12 to swear the jury on Thursday, other than have jeopardy
13 attach, and then have argument about something that I'm not
14 aware of.

15 THE COURT: If they wait until Tuesday -- I can't
16 have been clearer.

17 MR. O'CONNOR: I can tell you, Judge, it would not
18 be raised. I intended it as a trial tactic, as a trial
19 tactic to raise it in front of the jury, not as a tactic for
20 coming to the Court for a Brady violation, because Mr. Becker
21 pointed out to me, quite candidly, so you don't get pretrials
22 on Brady issues. In fact, if I have it, arguably it's not
23 Brady, I guess. But -

24 THE COURT: I don't know how you're going to
25 present it to the jury. How is a jury going to make a

1 determination of whether something is a violation of Brady
2 and I don't want you all talking about that? I mean, if
3 that's what you all plan to do is try to say to this jury,
4 hey, folks, there's been some Brady violations here, and you
5 haven't even given me a chance to rule on whether it is,
6 that's not going to happen.

7 MR. O'CONNOR: The jury, one, would not know what a
8 Brady violation was. Let me see if I could think of a
9 hypothetical that would fit.

10 MR. BECKER: Are you talking about inducements that
11 you've not disclosed?

12 MR. O'CONNOR: Some are inducements, some are
13 threats.

14 THE COURT: You certainly can -- I mean, if what
15 you're saying is, if you plan to bring this information out
16 in front of the jury in order to, you know, to detract from
17 credibility, you know, to try to show government pressure on
18 the -- I mean, if that's what you're saying, obviously,
19 that's, you can do that. But what I'm concerned about is
20 that you not stand up there and say, hey, you know, the
21 government has this violation under Brady, folks, and then we
22 get into a big to-do about what the violation is.

23 MR. O'CONNOR: Let me say this, because T can't
24 predict what four other people are going to do. I'm assuming
25 when they hear some of this that they haven't heard from me

1 that I've kept to myself so I can maybe negotiate with Mr.
2 Becker, when they hear it in open court, they may take a
3 different view to this.

4 THE COURT: Well, but if they do -- yeah, but if
5 they start talking about Brady, I'm going to stop them. I
6 mean, because the jury is not going to know what Brady is.
7 And until I have an opportunity to make a determination about
8 it, it seems to me at the very least it's not an issue to
9 present to the jury about whether somebody is -- I'm not sure
10 it ever is. I mean, I frankly don't know. I think it may be
11 a matter of law and it's not a jury issue. Now, that doesn't
12 mean the facts -- what I'm clearly not saying, however, are
13 that the facts aren't, may well be relevant to other issues.

14 MR. O'CONNOR: For impeachment.

15 THE COURT: Right.

16 MR. O'CONNOR: That's all I'm talking about. I'm
17 not talking about showing up, getting the jury sworn, and
18 saying, hey, wait a minute, Judge, they didn't do that. I'm
19 coming from the standpoint of if certain events happened,
20 threats, then this happened, and then this to show a pattern
21 for purposes of impeachment, for purposes of showing how the
22 government's conducted its case and so on and so forth.

23 THE COURT: Enough of this. I'm not saying enough
24 of this in the sense that I'm terminating this, unless what I
25 say next is, you all agree is appropriate to terminate this

1 particular conference.

2 My suggestion is why don't you all, as soon as
3 you're in a position to do so, John, why don't you get
4 together with Paul and, you know, make your pitch on behalf
5 of your client, whatever, you know, however you want to do
6 it. And in the meantime, if you get those statements to me
7 so I can look at them in camera.

8 I mean, so -- and then what I think we ought to do,
9 I think you all ought to come back this afternoon just as
10 soon as you've had your, you know, as soon as you've
11 accomplished whatever you can along the lines that you said
12 you wanted to do, John. And at that point, we'll see where
13 we are. And at that point, I should be in a position to
14 announce the decision on your request for reconsideration.

15 MR. O'CONNOR: Okay. Can I use your phone a minute
16 to call?

17 THE COURT: Sure. Or you can use one out there.
18 Is that satisfactory with you all?

19 MR. O'CONNOR: Yes.

20 THE COURT: Mr. O'Connor, is that all right with
21 you?

22 MR. O'CONNOR: Yes.

23 MR. BECKER: Yes, Judge.

24 MR. O'CONNOR: We'll come back up when we get done
25 talking.

1 THE COURT: I'm going to be gone. I'm going to be
2 gone from about ten minutes of 12:00 to probably in the
3 neighborhood of 1:30.

4 MR. BECKER: I'm meeting with the victims' families
5 at 1 o'clock.

6 MR. O'CONNOR: So what are you thinking? You and I
7 can meet and talk, and then I guess I'll leave because I want
8 to go get something to eat. And then what time should we
9 regroup?

10 THE COURT: I'll be here this afternoon, so I'll
11 make myself available whenever you all are ready. So you
12 just -- you can come up unannounced, or you can call Mary and
13 tell -

14 MR. BECKER: Let's shoot for 2 o'clock.

15 MR. O'CONNOR: 2 o'clock.

16 (A recess was taken from 11:26 a.m. to 2:11 p.m.)

17 THE COURT: Okay. What can I do for you all this
18 afternoon?

19 MR. O'CONNOR: Judge, we talked, and it wasn't
20 fruitful, but we both made good faith efforts. And in
21 fairness to both sides, you know, you can't give too much
22 because then you give up your side. And Mr. Becker can't go
23 too much because then he gives up his side, so you can't
24 evaluate unless you have it. And then if you have it and you
25 evaluate it against the other person, it's not helpful to

1 you. So we tried and we had a good and nice conversation
2 about it and just couldn't get anywhere.

3 THE COURT: But I'm not interested, as you know,
4 I'm not involved, should not be involved and have no desire
5 to be involved. That isn't why -- I mean, what we're doing,
6 as far as I'm concerned, is I'm trying to give you a fair
7 opportunity to use the information you say that you
8 accumulated to benefit your client without my ruling, or at
9 least without my ruling on your request that I reconsider,
10 possibly changing the dynamics of that. And beyond that, I
11 have absolutely no interest. That's clear, isn't it?

12 MR. O'CONNOR: And I understand that, and that's
13 right.

14 THE COURT: And so my, that's why I asked if you'd
15 had a fair opportunity to explore it because that is the
16 only, my only interest in the subject. And you have had. Is
17 that right?

18 MR. O'CONNOR: The only other point I want to put
19 on the record before the Court ruled was if there was no
20 omnibus, there would be no reverse Jencks requirement under
21 18 U.S.C. 3500, Rule 26, and -

22 THE COURT: Are you suggesting that the omnibus,
23 that part of the omnibus order is, I mean, there's something
24 deficient about it or from a legal point of view
25 inappropriate about it?

1 MR. O'CONNOR: That was the suggested record that I
2 make, and I'm making it, and I don't have any comment to it.

3 THE COURT: Okay.

4 MR. O'CONNOR: Let me see. Let me look at all my
5 notes to make sure I've got all my argument out on the
6 table. I think I do. And it's my understanding the
7 information was delivered to the Court that was delivered to
8 my office, three statements.

9 THE COURT: I've got this information is what I
10 have.

11 MR. O'CONNOR: I told Mr. Becker that I believe
12 it's, because I didn't even see it because someone brought it
13 to you. I haven't seen it yet. I was told by my
14 investigator what it was. I assume it's the same stuff.

15 THE COURT: You check and be sure.

16 MR. O'CONNOR: Okay. And, again, I've not read
17 these, looked at them or anything. I haven't seen them.

18 THE COURT: I'm going to tell you something next as
19 soon as you -- treaty the material you wanted me to look at?

20 MR. O'CONNOR: Again, Judge, there's six more of
21 those, I just don't have them yet. Or seven.

22 THE COURT: But this is what you have available for
23 me to look at.

24 MR. O'CONNOR: Yes. And in looking at that, the
25 other stuff is same, similar stuff.

1 THE COURT: Let me tell you that since you all left
2 here at what, roughly 11:30, Chief Judge Wolle from the
3 Southern District of Iowa was waiting for me. I met with
4 him, then I had a lunch appointment that I had set up and, in
5 fact, the person was sitting out there waiting for me shortly
6 after you all left, so I had to go do that.

7 I came back, Randy from the marshal's office was
8 here to talk about some problems that we need to talk to you
9 all about about the courtroom. And so about ten minutes
10 before you arrived was the first chance I've had to even, to
11 spend any time with this matter since you left.

12 What I would propose, rather than -- I mean, for me
13 to read, what, this is an inch thick, at least?

14 MR. O'CONNOR: I was told the middle one was over
15 170 pages.

16 THE COURT: For me to read those would take
17 probably most of the rest of the afternoon. So what I would
18 prefer to do is to recess here briefly and go in, and you
19 tell me what there is about these that you think bears on
20 this issue so I don't have to -- I mean, not that I don't
21 have to read them, but my concern is if I read them, I'm not
22 going to know what bearing they have on this issue.

23 I mean, I can, I'll know what the person said. You
24 see what I mean? But I'm not sure I'm going to know what
25 significance you think they have for this issue. And I think

1 we could, I could get that information from you very quickly
2 and factor that in without -- or I could read parts of it.
3 You know, if you say now, you know, I don't know exactly the
4 pages, Judge, since I haven't had a chance to read these
5 either, but roughly somewhere in this is the following, or
6 something close to the following, and I want you, I'd like to
7 have you read that. And then I would go read that.

8 But for me to read all of these, I'm fearful as a
9 practical matter it's not going to happen this afternoon.
10 Now, I'm not saying I'm not willing to do it. I'll do it,
11 but if I do it and then don't rule until tomorrow on this and
12 if, if my ruling is adverse to the position you're advocating
13 and you want to go to the Eighth Circuit, you're then faced
14 with having to go to the Eighth Circuit over the weekend,
15 which, as I've said, is probably going to be more complicated
16 than doing it this afternoon.

17 MR. O'CONNOR: Just from in my conversation with
18 Mr. Wyrsh, who has more experience in the Eighth Circuit, is
19 that he thought, assuming the ruling was adverse and wanted
20 to take it up, we couldn't get it before, I think he said it
21 was a two-judge panel until Tuesday morning he said was when
22 this could be heard. I don't know any more about that than
23 what he just told me.

24 THE COURT: Far be it from me to practice or to
25 attempt to practice extraordinary writ law in the Eighth

1 Circuit, but I'll just tell you off the top of my head, and
2 Jim Wyrsh knows 10,000 percent more about this than I do,
3 certainly.

4 But if I were to enter, if I were to reaffirm the
5 previous order, I would order that this be done long before
6 Tuesday morning. So it's going to be academic on Tuesday
7 morning. I mean, that's -- I mean, the function of
8 extraordinary writ, it seems to me, is that it is relief that
9 a superior court can give if it's concerned about something
10 that's happening, when the issue isn't moot.

11 But this one is going to be moot. If I rule
12 against you, it is going to be moot shortly after I issue it
13 because I'm going to require that this be done -- I mean, I
14 previously required it to be done by noon today. So that's
15 my only, that's why my thinking was that if you had the order
16 this afternoon, you could decide whether you wanted to try to
17 get the Eighth Circuit to consider it in the context of it
18 being something that they needed to consider on an emergency
19 basis immediately, because otherwise you are going to be put
20 in the box of either disobeying my order or complying with
21 it. And if you comply with it, then most of the reason, or a
22 lot of the reasons under which you will be arguing to them,
23 you shouldn't have to comply with, it will be moot.

24 Now, maybe my analysis is wrong, but that's my
25 thinking about it.

1 MR. O'CONNOR: Again, I don't want to come across
2 as a whiner, but my thinking isn't real good right now. And
3 it's -- I kind of know what's in those. I mean, obviously, I
4 talked to these people and I remember, and I'm not blowing
5 smoke. This is important, this is the most important issue
6 to me in the case right now, or to my client, and I don't
7 mind going out in court and doing this. But by doing it, I
8 may forget the golden argument that I would have made if I
9 had time to read through it and convince you. Maybe it
10 would.

11 What I would like to do is call Jim, maybe I could
12 talk to him about what's in here, and between the two of us I
13 would feel better about articulating my position from a legal
14 soundness standpoint.

15 THE COURT: Okay. How much time do you want?

16 MR. BECKER: Go ahead, whatever schedule you want.

17 THE COURT: I'll do everything I can to cooperate
18 with your schedule. And naturally, I mean, I want to give
19 Mr. Becker and Mr. Miller a chance to have input. If what
20 you want conflicts with something they're doing, we're going
21 to have to find a different time.

22 MR. O'CONNOR: Jim said he's available. I'm
23 assuming I could call him now and he could come right over.
24 He said, "I will be here if you need me. I'll come over."

25 THE COURT: Why don't you call him, see if he'll

1 come over, you can meet with him, talk the situation over
 2 with him. I'll let Mr. Becker and Mr. Miller go wherever -
 3 I mean, they can do whatever they need to do, and when you're
 4 ready, we'll call them. And if they're in the middle of
 5 something, they may well say, look, could we have half an
 6 hour or so, and that's fine. They'll get their half hour.

7 I'm not going to create a command performance for
 8 them out of this thing. But it does seem -- without taking
 9 into account their position too.

10 MR. O'CONNOR: Exactly. From the ground rules
 11 standpoint, because I don't want to -- and I guess I can talk
 12 it over with Mr. Wyrsh as it relates to this. You're
 13 wanting me to basically tell you all the reasons which may
 14 relate to my trial strategy, all of those kinds of things to
 15 indicate -- I'm not saying you're -- I'm just trying to find
 16 out what you -

17 THE COURT: John, if I knew what I wanted you to
 18 tell me, I probably could ask you. I just want you to have
 19 an opportunity to tell me what you would like me to get
 20 out -- you asked me to read these ex carte. Now, as I've
 21 said, I could sit down and read them from the first page to
 22 the end of each of them, and I would then know what these
 23 witnesses said. But the significance for this, for the
 24 position you're taking on this issue, the issue we're
 25 wrestling with, might well escape me.

1 And I can't very well ask you that, though, in
2 front of Mr. Becker because then you spill the, I mean, the
3 beans are spilled. So what I was thinking was, rather than
4 for me to take the time, which would be essentially the rest
5 of the afternoon, to read these, maybe the more efficient
6 thing and even the higher quality, producing the more
7 likelihood of a -- would you like a pen?

8 The higher quality result, a quicker result could
9 be achieved by your saying, Judge, if you read these, if you
10 were to read these, this is what I think you would find. And
11 I say the significance of what you would find is thus-and-so
12 for the argument I'm making for reconsideration. And then I
13 could have it, bang, and then I could do with it whatever I
14 bought was appropriate. That's all I'm suggesting. If you
15 won't want to tell me anything about it, that's perfectly
16 fine, too.

17 MR. O'CONNOR: And I'm not trying to create
18 problems, I'm just asking. This is three of ten. Okay? I
19 think there are several more. And I guess what I'm trying to
20 say is maybe it's kind of like circumstantial evidence. You
21 say look at one or two things and they don't mean anything,
22 then you see all ten, then you may have a different thought
23 process.

24 THE COURT: You can tell me that. You've talked to
25 these people. What you don't have is the written

1 transcript. But you've talked to them, and I'm sure if the
2 argument is as significant and the situation is as
3 significant as you say, the details aren't what's important,
4 what's important is how this all fits into your argument.
5 And the fact that there are ten rather than three, you can
6 tell me what the significance of that is, too.

7 MR. O'CONNOR: What I'll need to do is call my
8 office because I'll need the ten files which I've separated
9 out. The other logistical problem is that in every one of
10 these, the only statement I had was the statement that I had
11 in discovery. In other words, it was marked as an exhibit,
12 and then I gave it to the reporter. So I no longer have it
13 until I get the deposition back. So I'm going to get those
14 recreated maybe through other counsel.

15 For example, when I interviewed Joe Smith, I had an
16 interview of Joe Smith by the ATF. I showed Joe Smith the
17 ATF. We had it marked. We talked about it at some point. I
18 would give it to the reporter at the end and say, put this
19 with the record. Now I don't have Joe Smith's statement
20 anymore. I'm going to get it back when those come back, but
21 right now I don't have it physically in my hand.

22 THE COURT: Okay. Why don't you, if you'd like to
23 talk to Jim Wyrsh, why don't you call him, ask him to come
24 over, and I'll make a place available where you can meet with
25 him, if you want it to be here, and then Mr. Becker and Mr.

1 Miller will tell us where we can reach them.

2 When you're finished talking to Mr. Wyrsh, then we
3 can call Mr. Becker and Mr. Miller and, if it's convenient
4 for them to come then, or if they need a little break, then
5 we can work it out. Okay?

6 MR. BECKER: One thing I wanted to say as long as
7 we're on the record, I keep forgetting. Yesterday a
8 prisoner, and this is probably one you haven't gotten yet, a
9 fellow by the name of Brian Franklin.

10 MR. O'CONNOR: That's the only one I don't have.

11 MR. BECKER: He was literally bouncing off the
12 walls downstairs and threatened to punch the marshals. More
13 importantly, threatened to punch the judge. And the marshal
14 said it was going to be very difficult to even move him to an
15 interview space, so he's not going to be called as a
16 witness.

17 I don't know if that's Brady material. He never
18 retracted. He never retracted what he said previously, but
19 he just didn't feel like talking to anybody.

20 MR. MILLER: He was adding some colorful metaphors
21 to it, too.

22 MR. O'CONNOR: I feel like I've accomplished my
23 mission. They were done, and he was the last, and I've been
24 looking for him all day. I thought for some reason, not to
25 your, anything you guys were doing, but I called everywhere.

1 I called every jail in this region.

2 MR. BECKER: They brought him down.

3 MR. O'CONNOR: I thought, what's going on with this
4 guy? I called Carol.

5 MR. BECKER: She doesn't work for you.

6 MR. O'CONNOR: No, but she usually calls back.

7 THE COURT: What's he got against me?

8 MR. BECKER: He's doing a lot of time in the state
9 system and didn't want to be a witness. It had nothing to do
10 with you, Judge. He just didn't like the world.

11 MR. O'CONNOR: If it means anything to you, then,
12 I'm done with those people.

13 THE COURT: Okay.

14 MR. O'CONNOR: Thanks, Judge.

15 THE COURT: Why don't we do that and -- I'll wait
16 to hear from you, Mr. O'Connor.

17 MR. O'CONNOR: Thank you, sir.

18 THE COURT: Do you want to take these with you for
19 talking to Jim Wyrsh?

20 MR. O'CONNOR: Yes.

21 (A recess was taken from 2:28 p.m. to 3:56 p.m.
22 when the following proceedings were had in chambers in the
23 presence of Mr. Becker, Mr. Miller, Mr. O'Connor, and Mr.
24 James Wyrsh, but out of the presence of the defendants:)

25 THE COURT: Jim, do you want to enter your

1 appearance?

2 MR. WYRSCH: My name is James Wyrsh, W-Y-R-S-C-H,
3 and I'm an attorney in Kansas City, Missouri, at 1101 Walnut,
4 Kansas City, Missouri, and I'm here representing John
5 O'Connor, who is an attorney for Bryan Sheppard; is that
6 correct, John?

7 MR. O'CONNOR: Yes.

8 MR. WYRSCH: John has asked me to assist him with
9 respect to a discovery motion. So, Your Honor, that's why
10 I'm here today.

11 THE COURT: Okay. Where are we?

12 MR. WYRSCH: Should we go forward?

13 THE COURT: Sure. As far as I'm concerned, unless
14 there's some objection.

15 MR. WYRSCH: Your Honor, on behalf of Mr. O'Connor,
16 I thought I'd make just a brief presentation as to why
17 certain of the statements that he has taken on a motion, as I
18 understand it, to reconsider should not be produced, at least
19 at this point. I'm not familiar with all the names, and I
20 could ask John to supply them, but I believe a witness
21 Martindale is, John is agreeable to produce that, and his
22 name, John has pointed out, is Witness No. 13 on his January
23 15, 1997, witness list, which is Frederick Martindale on
24 Timbercreek Court, Lee's Summit, Missouri. And I take it, do
25 you have the statement ready to proceed today?

1 MR. O'CONNOR: No.

2 MR. WYRSCH: It's being typed, as well?

3 MR. O'CONNOR: Yes.

4 MR. WYRSCH: As far as I know, I would represent to
5 the Court and counsel that the witness statements are, appear
6 to be within the definition of statement as contained in, at
7 least Rule 26.2 and other relevant rules because they appear
8 to be a verbatim -- I mean, there was a court reporter there,
9 I think they've taken their oath, and they're recitals. So
10 they're not his notes, as I understand it. There may be some
11 things that were said that were not on the record that he
12 does not have a statement on that I would not consider to be
13 roducible. I don't think there is much of any of that.

14 Then that would leave about, is it ten witness
15 statements, John, that remain?

16 MR. O'CONNOR: I think I came up with nine. And
17 there are some that aren't under oath, but they're
18 statements, they're verbatim, but not under oath.

19 MR. WYRSCH: Taken by a court reporter?

20 MR. O'CONNOR: Yes.

21 MR. WYRSCH: But they're not under oath, but there
22 are some that are still verbatim statements. So I don't
23 think there's an issue there.

24 So the question is under the circumstances of the
25 case whether they should be produced. I know the Court has

1 been very considerate of listening to further argument on the
2 matter. And I'm not sure I have all the facts, but I will do
3 the best I can on behalf of John.

4 First of all, obviously, we're working under Rule
5 26.2 primarily in terms of production, which is reverse
6 Jencks Act. To some extent the other rules are applicable
7 also

8 On July 1, 1996 -- and if I misstate this, please,
9 someone correct me -- there was an omnibus report, which at
10 least in part, John, on behalf of Bryan Sheppard, agreed to,
11 Bryan Sheppard being Defendant No. 4.

12 Now, part of this, I need, frankly, some help from
13 Paul because I'm not sure I'm going to state it correctly.
14 But in the matter concerning the production of witness
15 statements by the government on Page 8 on No. 4, the
16 government said it did agree to be supplied in writing at
17 least 10 days prior to trial the name and address of each
18 witness whom the attorney for the government intends to call
19 in its presentation of case in chief, together with -- and
20 then it's scratched out as to statements. I'm not sure that
21 I have looked at every other -

22 MR. BECKER: I know -

23 MR. WYRSCH: And I'm not sure I found anyplace else
24 where the government agreed to provide those 10 days before
25 trial. And I don't know, maybe this needs to be made a part

1 of the record at some point, and I'll offer them maybe all at
2 the same time. In the defendant is section -

3 MR. BECKER: It's part of the Court record.

4 MR. WYRSCH: Okay. Fine. We'll just have the
5 Court notice.

6 On No. 11, the defendant in response did agreed to
7 provide to counsel for the government at least five days
8 prior to trial the names and addresses of witnesses intended
9 to be called at trial, together with all statements as
10 defined in 18 U.S.C. 3500, which essentially is Rule 26.2.

11 In sequence, and I guess all of this is a matter of
12 record, the government filed its witness list on January 3,
13 1997. By the way, I think, as I have been informed, the
14 trial is now scheduled to be commenced on, or the trial
15 testimony on the 21st of January, 1997. In that list, as I
16 understand it, there is some 160 or so witnesses, although
17 they're not named by number, and without addresses. And I
18 believe the order required addresses.

19 On January 8, Bryan Sheppard filed his witness list
20 and did provide, I believe, addresses where they were
21 available, which I think is almost in every case. And on No.
22 1, said any and all witnesses previously endorsed by the
23 government. I am told by Mr. O'Connor that on the 8th, he
24 had not yet received the government's -

25 John tells me right before the conference on the

1 8th, he received a witness list from the government with the
2 addresses, and as well as the names. I have a document that
3 says January 9, 1997, but I'm informed by John that that
4 actually occurred on the 8th.

5 Then on, as I understand it, on the 15th, Bryan
6 Sheppard filed an amended witness list, which is essentially
7 the same witness list, but in each case, he said witnesses
8 who may be called; although, I think in fairness it should be
9 read to comply with the omnibus which was the witnesses
10 intended to be called. And that in that particular document
11 on January 15th, he no longer said he was going to call any
12 and all witnesses previously endorsed by the government.

13 I believe at this point, and I'm not a very good
14 counter, but this last list would be some, something within
15 at least the literal provisions of the rule within five days
16 prior to trial.

17 Although I think it's already been a matter of
18 record, I am informed that the government did not provide all
19 of the witness statements that they had within 10 days of the
20 trial. They provided, however, 3400 pages of Jencks Act
21 material on December 24, but then over a period of time there
22 have been other matters, either by defense motion, I'm not
23 sure I have -- I do not have all the detail. Some of the
24 material has not been, was not timely provided. And as I
25 understand it, that's still an issue.

1 It would be our, it's obviously -- and the Court
2 had some informal discussion with counsel, obviously 26.2
3 does not require the production of the documents or the
4 statements until after the witness testifies. It is true,
5 however, that the parties did agree that that, those time
6 provisions would be moved up prior to trial to the mutual
7 benefit of the parties and that that was the reciprocal
8 agreement.

9 We would urge the Court that by reason of the
10 January 15, 1997, amended witness list that they, the
11 statements that Mr. O'Connor took from the government's
12 witnesses, with the exception of Mr. Martindale, not be
13 produced at this time. We say so because we believe that he
14 has literally complied with the January 15 -- I'm sorry, with
15 the July 1, 1996, omnibus report because they're five days
16 before trial.

17 No. 2, he listed any and all witnesses by the
18 government in his first witness list as a matter of
19 precaution, not, I think, as I understand his statements to
20 the Court, for purposes of, in fact, calling them as
21 witnesses. And, in fact, at this point on the ones for which
22 he has taken the verbatim statements, he does not intend to
23 call those witnesses in his case in chief.

24 The next point would be, and I think if the Court
25 -- he has for each of the witnesses why, from the verbatim

1 statements he's taken what he intends to bring out from the
2 witnesses. As John -- I have not myself read the statements,
3 but as indicated by John O'Connor, the things that he intends
4 to bring out are impeaching type material, for every
5 witness. And I cannot state to the Court that the
6 defendants' counsel at the omnibus asked if impeaching
7 aterial was required to be produced, so I can't represent
8 hat to the Court. But I know that in matters that I have
9 een, have participated in in the Western District when I
10 ave asked about an omnibus, I've been told that impeaching
11 aterial did not need to be produced as a statement. Now, in
12 airness, if, in fact, you intended to call the witness, your
13 itness yourself and you had impeaching material, then the
14 tatement would have to be produced.

15 We would urge, strongly urge the Court not to order
16 hese matters to be produced. As I say, John is prepared to
17 o in camera to do detail on each of the statements in a
18 ummary fashion what it is he intends to bring out that is
19 impeaching material of the government's witnesses. Although
20 I think Mr. Becker knows that we have had, we hold he and his
21 ffice in high regard, there is concern here that the
22 overnment has not been timely with, in its compliance with
23 the omnibus. They obviously have made very substantial
24 fforts here, and I know it's a difficult case with many
25 itnesses.

1 But at the same time, I think to some extent, there
2 has been a delay in production. And I think one of the
3 reasons why John O'Connor did list any and all witnesses for
4 the government was out of an abundance of caution. I'm not
5 saying that was the only reason because, in fact, over time,
6 the practice has been by defense counsel in this district to
7 list any and all witnesses called by the government as a
8 matter of precaution. But now that he has eliminated that
9 from his witness list, it would appear that, or at least we
10 would urge the Court that he not have to produce these
11 statements.

12 I would also indicate to the Court that much of
13 what is contained -- and I'm relying on John on this, but
14 I've had two detailed conversations with him today and I
15 think that he's, that this is, in fact, the case based on his
16 statements to me is that he, if he's producing these
17 statements, a good bit of his strategy as defense counsel in
18 terms of cross-examination of these witnesses will be
19 revealed. To some extent, that would be revealed on the
20 cross-examination of, say, the first witness. But on some of
21 these individuals, they're different -- or they're not
22 necessarily, the cross-examination will not necessarily
23 involve common facts. Some of them, they do. And so we feel
24 that that would get into his work product.

25 Now, I recognize under United States vs. Nobles

1 that once you put on a witness that you have waived your work
2 product. And that's what Rule 26.2 is designed to do is to
3 encapsulate in the rule the holding in Nobles, but at the
4 same time I don't think that's the circumstance we find
5 ourselves in.

6 I would also note that the sanction under Rule 26.2
7 appears to be that the witness's testimony would be
8 stricken. I'm not sure myself as I read it today exactly
9 what that means, but it would appear to me that the purpose
10 of that is to enforce the rule with respect to the party
11 calling the witness and not as to a witness that you are, for
12 the government, getting down to the facts of this case, that
13 you intend to impeach with the statement.

14 I really do appreciate the Court ts indulgence. I
15 know how busy the Court is. Mr. O'Connor is prepared to -

16 MR. O'CONNOR: Can I talk to you a second?

17 MR. WYRSCH: Yeah.

18 (Mr. O'Connor and Mr. Wyrsh conferred off the
19 record.)

20 MR. WYRSCH: John makes the point that, his
21 statement is that he may intend to call the witnesses. I
22 think for purposes of this motion, the pleading was made to
23 comply with the omnibus, which called it intended. However,
24 we would like to just ask the Court to consider the fact that
25 he said he may call these people, not necessarily that he was

1 absolutely going to call these people when he used that
2 language. But for the Court's purposes, when he filed the
3 pleading stating that -- I mean, I think he intended to
4 comply. He did intend to comply with the omnibus, which
5 said, file your list of intended witnesses.

6 That's our argument, Your Honor. I appreciate the
7 Court's indulgence on this. He is prepared at some point to
8 go in camera with you in detail.

9 THE COURT: That's my question. Does Mr. O'Connor
10 still want to tell me in camera what it is about these
11 statements that he believes impacts on this particular
12 argument?

13 MR. O'CONNOR: Yes, sir, I'm ready.

14 THE COURT: Well, Mr. Becker, do you want to say
15 anything at this point, or do you want to wait until after
16 I've -

17 MR. BECKER: My only point, I think perhaps Mr.
18 Wyrsh has not had the benefit of being familiar with the
19 timing of the discovery and the volume of discovery in this
20 matter. On the one hand, he thinks that five days before
21 trial is the 16th, yesterday, when defense counsel have urged
22 upon all courts that it was 10 days prior to the 13th, I
23 think, is when we started the jury selection in this matter.
24 It's hard to remember now.

25 But in any event, I have made every effort to

1 produce a large volume of materials, and it seems that when I
2 find a stray piece of paper, I do it at my peril because I
3 hear about it again and again. I believe that these
4 materials should be produced pursuant to the rules.

5 I'll leave a number with your secretary.

6 THE COURT: What do you say about the argument that
7 it's only impeaching material that was, that is developed in
8 these stenographically recorded statements?

9 MR. BECKER: These are so far within the parameters
10 of what's defined as a statement in 26.2 and in Section 3500,
11 it's difficult to, I think, as was urged on the court the
12 other day, find some ambiguity there that would allow them to
13 define these transcripts as anything other than a statement.

14 These are witness statements. Now, they have -
15 witness statements have various purposes, but -- and the
16 purpose may have been for impeachment, but these are witness
17 statements within the rule. And when Mr. O'Connor -- and the
18 issue doesn't arise because defense attorneys don't get
19 statements within the rules. And, therefore, never -- you
20 now, Mr. Wyrsh said in the past he's had these excluded at
21 the omnibus level, or at least discussed it at the omnibus
22 level. I've never run across it in ten years in the district
23 because defense attorneys don't generate statements because
24 they don't want to make discovery. They want to be able to
25 have their impeachment and not produce it. I understand

1 that.

2 But Mr. O'Connor's unique because he very
3 effectively uses these statements. Now, and there's a
4 benefit to having a statement, as he well knows, other than
5 just your investigator's word against the witness. But these
6 transcripts are statements as defined by the rule. They're
7 of witnesses that he's listed on his witness list, and they
8 should be produced. The timing of the production has been
9 moved up pursuant to the omnibus report.

10 The one point that -- you know, the government did
11 reserve its rights on July 1 under the omnibus to wait on
12 production of witness statements until the time of trial.
13 But through the course of this trial, the preliminary matters
14 leading up to trial, eventually, I agreed to produce these
15 statements 30 days in advance of trial. And now because of
16 the delay of the start of testimony, and I don't have any
17 problem with that, it's even more than 30 days from the time .
18 we start taking testimony from when this material was first
19 produced.

20 THE COURT: You produced your 3500 statements on -

21 MR. BECKER: December 24th.

22 THE COURT: December 24th.

23 MR. BECKER: Before the witness lists were even
24 required to be -

25 THE COURT: Which was more than 10 days before

248

1 January 13th, obviously. I can even count that.

2 MR. BECKER: I believe that was 20 days prior to
3 the start of trial, and start of trial being the voir dire
4 that began earlier this week. And then with the delay, eight
5 more days until testimony begins on Tuesday, it will be
6 approximately 28 days prior to the start of testimony that
7 the government produced the Jencks materials.

8 THE COURT: Anything else at this point before I
9 sit down with Mr. O'Connor?

10 MR. WYRSCH: Let me ask for my own clarification,
11 aul. Did you produce that, what you produced on the 24th,
12 as that pursuant to omnibus or just your -

13 MR. BECKER: In the course of a discussion on a
14 continuance in this matter, it was agreed among the parties
15 that they would agree to a continuance off the November
16 docket because the Court had an ongoing capital case.

17 MR. WYRSCH: I didn't want to misrepresent
18 something to the Court. I didn't see it in the omnibus. But
19 anyway, you agreed to do it and have produced -- I know you
20 produced 3400 pages or so of Jencks type material on the 24th
21 of December.

22 MR. BECKER: Right.

23 MR. WYRSCH: But there have been some things that
24 have surfaced after that; is that correct?

25 MR. BECKER: It's fair to say that there have been

1 other things. I think in light of the 3400 pages I would say
2 it wasn't substantial, or duplicative.

3 MR. WYRSCH: We don't need to get into that. I
4 just wanted to make sure that I was -- I will say this, Your
5 Honor, that on behalf of Mr. O'Connor, we would specifically
6 represent to the Court and to the government that the
7 witnesses that he would like to withhold are not going to be
8 called by him. And if they would be, I think we're subject
9 to the sanction under the omnibus and the 26.2. He would
10 intend to use those statements on cross-examination of the
11 witnesses.

12 MR. O'CONNOR: And would intend to, when I got up
13 to address the witness, to give them to Mr. Becker at that
14 time, not after the witness, so to keep the orderly
15 presentation of the trial going, so he would have them while
16 I was up and during cross-examination, would be my thought
17 process, so we wouldn't have to have a long wait while I give
18 it to him and he's got to look at it. And then he would also
19 have it for the purpose of watching to make sure if I asked a
20 question for impeachment from it, he would be able to object
21 to it. That would be my intent, as well.

22 MR. BECKER: If you were impeaching from the
23 document, you would have to show me the document.

24 MR. O'CONNOR: I'm assuming all of these witnesses
25 from my cross-examination are going to be at least an hour,

1 maybe two, and a couple of them maybe three or four.

2 THE COURT: Well, we know as a practical matter
3 what will happen. I mean, looking at those, the length of
4 those, as soon as -- if you wait to give them to Mr. Becker
5 then, he's going to ask for a recess so he can read them.
6 And he would be entitled to it. I mean, I'm not going to
7 force somebody to try to keep track of your cross-examination
8 based on a statement they haven't had a reasonable
9 opportunity to read.

10 So right there we're talking about, just from a
11 practical point of view, we're talking about a delay while he
12 is given an opportunity to read them. So that's -- but, I
13 mean, that's my assessment of what would happen if you did it
14 that way.

15 Now, maybe Mr. Becker reads quickly or maybe he
16 would just hand them to Mr. Miller and say, Mr. Miller, you
17 read these while I try to keep track of this thing. But I
18 mean, most attorneys, I think, would want the opportunity,
19 I'm sure you would, if you were in the same position, you
20 would want the opportunity to read it before you have to sit
21 there and try to protect your witness from the
22 cross-examination. All right. Anything else?

23 MR. O'CONNOR: No, sir.

24 THE COURT: All right. Would you tell Mary where
25 you'll be?

1 MR. BECKER: Yes.

2 THE COURT: And we'll call you.

3 MR. BECKER: All right.

4 (The government as attorneys, Mr. Becker and Mr.
5 Miller, left chambers.)

6 MR. WYRSCH: Rather than have the Court read these,
7 we will just summarize for each one what we fairly believe to
8 be in there.

9 MR. O'CONNOR: I wish I had a better grasp of these
10 dates. I'm just going to go and try to do this the best I
11 can. But basically I'm going to start out with the way I
12 have them listed.

13 Glen Shepard. Glen Shepard is a government witness
14 in this case who gave the ATF two different interviews. One
15 on April the -- well, three different interviews. One on
16 April the lath, one on -- strike that. Let's start over.
17 One on January 10, 1996, one on April 19, 1996, and one on
18 October 30, 1996.

19 Mr. Sheppard was first interviewed by ATF in the
20 Cass County Jail. He did not call them. They showed up
21 there because his name had been flagged as someone who may
22 know something about this case. Mr. Sheppard has eleven
23 prior felony convictions, state; one prior federal
24 conviction. He is, and in his statement he told me about
25 numerous uses of drugs and narcotics and being involved in

1 drugs and narcotics.

2 In his first interview with the agents in which
3 they asked him knowledge and/or information, and I would just
4 short-term it to what he majorly said is that at some point
5 Frank Sheppard, back when he was on the street -- and this, I
6 don't think this has a date, but I don't think it matters.
7 You know, back '94, '95, somewhere in that area, told him
8 that he had been involved in the fire and explosion that had
9 killed the six Kansas City firefighters.

10 On Page 2 of that same interview, he was asked,
11 Shepard, this is Glen Shepard, no relation to our clients,
12 knows Bryan Sheppard. Bryan Sheppard has never made any
13 admissions to Sheppard.

14 Now, I'm about to tell you some, what I believe are
15 Bradv violations and/or Jencks Act violations that he has
16 told me about that I think I have verified. Mr. Shepard
17 tells me the next time he sees the ATF, they're bringing him
18 down to a grand jury, which we have never been made aware
19 of. When he got to the grand jury, he refused to testify,
20 which we've never been told. After he refused to testify
21 that Dave True drove him back to the Cass County Jail and on
22 his way back to the Cass County jail reminded him of a gun
23 charge that he had pending in Blue Springs Municipal Court
24 that could turn into a federal violation of a felon in
25 possession of a firearm. There is a case in Blue Springs.

1 It is still pending. A warrant has been issued on that
2 case. I have verified that.

3 Then two months later Glen Shepard calls the ATF
4 back and tells them, please come and see me, I have a lawyer,
5 and I have new information for you. Now, this is now on
6 April the lath, 1996. They go back and re-interview him, and
7 now he remembers that Bryan Sheppard confessed to him to this
8 crime.

9 Somewhere he's taken back before a federal grand
10 jury, of which we do not have a transcript, and testifies, we
11 don't know when. An indictment is returned on, in June
12 sometime against these men. In October of '96, which we have
13 not been told but I have a transcript from a court in Cass
14 County, Dave True went to a sentencing for Glen Shepard and
15 testified at the sentencing and told a state court judge that
16 Glen Shepard had given substantial assistance, was providing
17 information, was cooperating in all levels, had done
18 everything they'd asked him to do, and that he had given
19 information that both of these defendants, my client and
20 Frank Sheppard, had made admissions.

21 He failed to tell the judge about the first
22 interview with Shepard in which he said my client had no
23 admission. He failed to tell the judge that he refused to
24 testify before a grand jury. He failed to tell the judge
25 that he threatened him with a gun charge to get his

1 cooperation. And then he told the judge, amazingly, and I've
2 got the transcript, I don't have it here. In the transcript
3 he tells the judge, we are attempting, October 31st, 1996, we
4 are attempting to corroborate this witness's evidence.

5 They took him for, before a grand jury without
6 corroborating what he said. They got an indictment against
7 our clients without corroborating, and now in October of '96
8 he's trying to corroborate. And he says if we, if we are
9 able to corroborate what he says -- and the transcript, you
10 just have to read it, it's unbelievable. The judge,
11 Dandurand, says, well, Mr. True, I have a very important
12 decision to make here. I have, basically, a bad guy hear,
13 eleven felony convictions. Did he give you some assistance,
14 little assistance, no assistance, substantial assistance? He
15 gives him like seven categories, and True says, Judge, I
16 would say substantial.

17 Mr. Shepard then received a 13-year sentence for
18 sale of meth, a 12-year sentence for sale of meth to run
19 consecutively, a 7-year sentence, I believe, for one of the
20 other felonies, a 5-year sentence to run concurrently,
21 suspended execution of sentence and five years probation.
22 And then he was given two misdemeanor convictions, a year and
23 a year in the Cass County Jail to run consecutively. But if,
24 in the Judge's final order, if he testifies and gives
25 substantial assistance in this case, he will even cut that

1 sentence and let him out.

2 None of that information was given to us. We went
3 out, ran it down, found it, I've got it, and we have never
4 received any of that information to this date that I'm aware
5 of that was given to me. That's Glen Shepard.

6 In Glen Shepard's interview, he -- I don't have
7 Glen Shepard's here. And, again, I don't have his statement
8 here under oath. But -

9 MR. WYRSCH: It's being typed; is that correct?

10 MR. O'CONNOR: It's being typed. But he basically
11 told me this scenario, which is not in any report, that they
12 took him back, that they threatened him with a gun charge,
13 that him being threatened with a gun charge, he knew that
14 that meant 15 to life. He knew because of his record that he
15 basically had to cooperate and that those kind of things -
16 there's more in his statement, I'm trying to remember, but
17 that's kind of the gist of his statement. We don't have the 18 grand jury,
we don't have the refusal before the grand jury, 19 and we don't have this
-

20 And Dave True testified for the defendant, for the
21 defendant's lawyer. He wasn't there for the prosecution.
22 The defendant's lawyer put him on the witness stand. And if 23 you read the
transcript, it was clear that Judge Dandurand's 24 decision was based on what
Dave True was telling him, of
25 which we've not been told.

1 MR. WYRSCH: That's how you intend to use that
2 transcript?

3 MR. O'CONNOR: Strictly impeachment. Glen Shepard
4 told me about all of his criminal history, all of his drug

5 addiction and the use of drugs, other crimes, bad acts, told
6 me of memory problems that he had as a result of use of drugs
7 over a long period of time, his motivation for testifying in
8 the deal, the threats that were made and the promises made as
9 a result of testimony, the refusal before the grand jury.

10 And this is where I want to start talking about
11 this pattern that is throughout. You can see that these are
12 all interviews of him. None of these are attested, none of
13 these are sworn. None of these are question and answer.
14 They are interviews. And I can't go into explicit because I
15 don't remember Glen Shepard, but there are materials within
16 these exhibits that he said, I've never told these people.
17 And at one point, he told me that he had never even seen
18 these documents, I believe, before I showed them to him.
19 That's Glen Shepard.

20 Ronald Lank. Ronald Lank is a key government
21 witness in this case. He has an admission directly from
22 Frank Sheppard as to his involvement on a statement that he
23 said Frank Sheppard made to him after they knew each other
24 for a short period of time in CCA before he was transferred
25 to Lewisburg Prison.

1 Now, Mr. Lank I talked to for four hours. He took
2 three bathroom breaks, and he was willing to talk. And he
3 talked about his criminal history. In there, there is
4 impeachment that is a lawyers dream. He would tell me; he
5 would just start talking without a question about scams and
6 how he would pull them on people, innocent people. He would
7 go to banks and get checks, he would hold his hands like
8 that, thick checks, and that he would have them made out in
9 other people's names. And then he would leave the bank, and
10 he would go and cash those checks, and then he would buy
11 cars. And then he would sell the cars for cash, and then the
12 people were holding the checks and they were also holding the
13 cars, and he was holding the money.

14 And so at one point in the interview he said, you
15 know, I was watching TV one day, and they came on with this
16 American Express commercial where they said if you lose your
17 traveler's checks anywhere in the United States, call this
18 number. So he went down to the bank, bought some traveler's
19 checks, went to the bank. Right before he walked in the
20 bank, of course, he cashed those traveler's checks and walked
21 in and said, they stole my wallet, stole my traveler's
22 checks, and they gave him new traveler's checks. So he
23 thought that was pretty slick.

24 He's a bank robber. He told me about the banks he
25 robbed. In fact, the case that he has on appeal here for a

1 bank robbery for which he pled not guilty, he confessed to me
2 that he committed. He has a bank robbery conviction out of
3 Texas. He claims to have received letters at the Boone
4 County Jail from John Gotti, who he's never met but who
5 writes him, and from Joe Bonano's (phonetic) brother-in-law
6 or someone like that, who is head of the Bonano crime family
7 in New York.

8 He told me of his drug use, which has been
9 everything and anything, including within the last six months
10 shooting heroin at the prison in Lewisburg. He told me that
11 he received a letter from Mr. Becker in the mail in which he
12 thought the second paragraph of that letter indicated to him
13 that he may be getting a deal. And he has been asking for a
14 deal all along and wants something for his testimony. He has
15 got 26 years out of the federal district, Judge Wright, and
16 he signed an authorization for me to get any and all records,
17 any and all PSI's from him in any state I wished.

18 So we were running records on him in Milwaukee,
19 Texas, Florida, and I hope to file a motion to get his PSI
20 here. He's agreed to let me have all of that information,
21 which I don't have at this time.

22 Again, another pattern. One time he is interviewed
23 in prison, not by the agents here, by agents up in
24 Pennsylvania. He has written Mr. Becker, and he's provided
25 me with those records which he's asking for in these letters

1 -- let me make sure this is the right witness.

2 Basically, I believe he would say he was asking for
3 consideration and even received a letter from his lawyer in
4 which Mr. Becker, which has been provided to us, wrote his
5 lawyer saying that he would consider a Rule, I think it's 35
6 time-cut motion. He had never met Mr. Becker or talked to
7 Mr. Becker. In fact, no one had ever showed him his
8 interview until I did. And he went through his interview
9 and, again -- do I have that?

10 Basically, as we went through the interview, I
11 created impeachment, I believe, from the interview that he
12 gave and statements that he made and things he said were or
13 were not in this interview. And that the first time after he
14 gave this interview on September 30th, 1996, the next thing
15 he hears other than the correspondence of his letters, that
16 he's coming up here to testify.

17 He again told me -- if I said this, Judge, stop me
18 -- about his criminal history, his drug addictions, other
19 crimes, bad acts, motivation for testifying. He was not
20 before the grand jury. That is Ronald Lank. I would say 85
21 percent of this -- I talked to him for, I think, three hours
22 before we ever got to this interview just about his life and
23 things he'd done and scams he'd done and what he had done in
24 his criminal history. In fact, at one point when I was
25 talking to him about drugs, I went to talk to him about

1 something else, and he said, "We're not done with that, are
2 we? I've got more to tell you." And then he told me more
3 about drugs. So it all goes to impeachment.

4 THE COURT: How much of that do you think you'll be
5 able to get into under the federal rules of evidence?

6 MR. O'CONNOR: On the impeachment?

7 THE COURT: Uh-huh.

8 MR. O'CONNOR: I can tell you, Judge, I haven't,
9 quite frankly, thought it through because I just got them to
10 get them back to sit down and figure out what my
11 cross-examination is. I haven't even read them.

12 THE COURT: Okay.

13 MR. O'CONNOR: So that 's Mr. Lank.

14 Mr. Elliott. Mr. Elliott -- I don't have his stuff
15 here, but I remember him very distinctly. Mr. Elliott called
16 the ATF and told them that he had been at the, I think the
17 honor center with Mr. Frank Sheppard, and Mr. Frank Sheppard
18 confessed to him, and what he told the ATF was George
19 Sheppard told me that he and his brother Bryan were
20 responsible for the killing of the four firemen. They
21 interviewed him, an interview which I showed him.

22 THE COURT: Did he say four firemen?

23 MR. O'CONNOR: Yes, sir. When the interview -- I
24 showed it to him. Of course, that's the first time he'd ever
25 seen that, Mr. Elliott. He testified before the grand jury.

1 We have his transcript.

2 I asked him to read his interview, and I said, is
3 there anything that's not in there? Because in almost all of
4 these interviews, they ask these guys why are you coming
5 forward. It is distinctly missing, that question, in Mr.
6 Elliott's interview. And Mr. Elliott said to me, well, I
7 told him why I was coming forward, I wanted the \$50,000
8 reward.

9 So I explored that. He said, well, in 1994, I was
10 in Cameron prison. I've been in prison, I think, again, give
11 or take, 10 of the last 11 years of my life. They had an ATF
12 1-800 number for a \$50,000 reward, I passed it numerous
13 times. In 1995, I was then put in with George Sheppard. And
14 then I called and I told them I wanted to talk, and I told
15 them I wanted the reward money. I've been telling them I've
16 been wanting the reward money, which we were never told.

17 And he said, I came down and I talked to him the
18 day after he'd been interviewed by Dan Miller. And he said,
19 I was down there yesterday, and I asked them for the \$50,000
20 reward, if I was going to get it, and they wouldn't answer my
21 question.

22 But he told me that he told the ATF that, he told
23 me his whole motivation for testifying was the reward money
24 and a time cut. And I said, when you walk off the witness
25 stand, are you going to lay claim to that award? And he said

1 yes.

2 And then I went through with him. He's got a
3 horrible criminal history, drug addiction, I can't remember
4 mental or psychiatric, other crimes, bad acts, promises of
5 reward. We do have grand jury. And it's, again, an
6 interview of which no one had ever showed him until I showed
7 him his interview. And I believe he's also one that went
8 through his interview and said that he didn't say certain
9 things in the interview, but I'm not able to articulate those
10 at this time.

11 William Hand. Basically, William Hand says one
12 thing in his interview. And, again, he had a one-page
13 interview that no one had ever showed him. Let me see if I
14 can find this. I think I can remember this. In which the
15 ATF came out and just got one of these one or two-page
16 interviews with him. And, again, I'm hoping for this record,
17 I want it to be clear that I'm not trying to dodge at all.
18 But I've been up for the last 14, 15 hours without sleep, and
19 I'm trying to, and I'm giving some of this off the top of my
20 head. And I would not mislead the Court in any way. I'm
21 trying to do the best I can, but if I miss, if I misspeak
22 about something, it will be something, hopefully, trivial.
23 Any of the main points I've made -- I don't have it here, but
24 I think that he, I believe -- well, I shouldn't say what I
25 believe because I don't have them here, I don't know.

1 But I know in his interview he told me that he did
2 tell the ATF that Frank Sheppard told him that he, that Frank
3 was at home at the time, which is in the interview, and saw
4 Richard srownts truck drive down the street, and that's all
5 he ever knew about the case. And there's a few impeachment
6 things in his statement because I think he describes Richard
7 Brown's car as maroon and, in fact, at the time his car was
8 black, or black and maroon, vice versa.

9 And, again, some impeachment of him because he's,
10 you know -- I mean, all of these people, I mean, to a person
11 who had numerous -- I mean, it's like in the first five, I
12 didn't meet anybody who didn't have at least ten prior felony
13 convictions. I mean, of the ones I've just now discussed.

14 THE COURT: You weren't given their record?

15 MR. O'CONNOR: Yes, I was. No, no, I was given
16 their rap sheets, yes. And that's another point to address
17 in the sense of these rap sheets. I know they're the rap
18 sheets because they're the ones provided, but sometimes
19 they're really short on these criminal histories. I mean,
20 these guys know their convictions, and you can run through
21 them from A to Z. and they don't always match up with those
22 printouts they give you. Sometimes there's more, and
23 sometimes there's less, and I found that to be the case.
24 That's no reflection on the government because that's what's
25 on the printout.

1 But I think for future reference, I think in my
2 opinion the witnesses prior record needs to be really run to
3 an extent that the defendant is really given all of the
4 information because I think they're lacking because either
5 the records gets closed out or the computer doesn't keep them
6 generated. But these printouts sometimes don't match up with
7 a full felony record of these people.

8 THE COURT: But we, as you know, you find
9 defendants all the time who disagree with what the rap sheet
10 says.

11 MR. O'CONNOR: Sure.

12 THE COURT: They claim they weren't convicted,
13 although there's a certified copy of it. I mean, they have
14 a, frequently there's some kind of dispute about it. But
15 what I'm trying to -- my only interest is, is there some
16 belief that the government didn't give you the rap sheet?

17 MR. O'CONNOR: No.

18 THE COURT: At least, whatever the computer
19 showed.

20 MR. O'CONNOR: They gave me, absolutely no
21 complaint about that.

22 Again, Mr. Hand, huge criminal history, bad drug
23 addiction, huge, long-term, over -- you know, I think he
24 talked about how it had affected his memory. I don't
25 remember his motivation for testifying or if there was one

1 because I just don't have it here. But he just is basically
2 for that one point. Now, the -- so that's Mr. Hand.

3 Mr. Whitelaw. This is the one, Judge, that I did
4 last Saturday. They were the first ones I did on this.

5 THE COURT: Mr. O'Connor, could I interrupt you a
6 second? Is the pattern -- you've now gone through this. Is
7 the, with the other folks, is it essentially the same king of
8 thing?

9 MR. O'CONNOR: Whitelaw was interviewed, one-page
10 interview. No one ever talked to him again. He's off in
11 prison. They're bringing him back up here for the trial.
12 Never appeared before the grand jury. And told me, I
13 believe, his statement wasn't correct. In fact, he says
14 there's an admission in there against one of the defendants
15 which he says he never said, I believe. He was, I think,
16 wanting some consideration, but -

17 It's all the same pattern of this one, sometimes
18 two, interviews, of which they're never shown the statement
19 ever again. I think I showed, I can tell you that Lank had
20 never seen his statement, Elliott had just seen it the day
21 before, I think, when he was debriefed, but had never seen it
22 before that. And I had even some reservation that he even
23 saw it then, but I'll have to look. Hand, I don't believe
24 did; Whitelaw didn't; Dawson didn't.

25 Now, Dawson. In 1993, and I almost have this, but

1 I can tell you what I do have. In 1993, Dave True contacted
2 Dawson and wanted to get cooperation from him against the
3 Sheppards and Richard Brown. He was in the, I believe, the
4 Henry County Jail, get my counties right, on a DWI. And he
5 tells me that Dave True got him out on an ROR bond to start
6 cooperating in this case, which we've never been told.

7 I called Henry County, and the clerk told me that
8 she has a sticky note in the file, Dave True called, a sticky
9 note to call Dave True, a sticky note Dave True called back,
10 a sticky note that she called Dave True, and then there's
11 nothing. So I've asked them to go look at the court file
12 because what he said was that True asked, or tried to help
13 him get an ROR bond on this DWI. I hope I'm saying this
14 right.

15 But eventually Dawson gets in some robbery problems
16 in Clay County, and he tells me True helped him get a \$60,000
17 ROR bond on several armed robberies. And that True had
18 threatened him with other charges.

19 Now, here is a guy, Dave Dawson, who has no, I
20 don't believe he had any prior criminal history before he
21 started this, and now I think he has like 20 years in
22 prison. And Glen Shepard who had 12 convictions and who
23 cooperated got probation. And he basically told me in the
24 statement he was afraid, I believe, now, again, to tell me
25 the truth because he's afraid that it's going to hurt him

1 with the government. Because he, there's another charge
2 pending that he's been reminded of by the ATF.

3 And so when I talked to him, he had never been
4 talked to, and he'd never received or looked at these
5 interviews. And I don't believe he's met Mr. Becker, or had
6 when I talked to him.

7 Nettles. He talked to me briefly. He wasn't real
8 excited about talking to me. He told me a little of his
9 criminal history. He told me they told him they probably
10 weren't going to use him. He's, you know -- and again back
11 to Dawson, you know, prior criminal history, motivation for
12 testifying, fear of the government.

13 And that brings us to Stanley Sanders who I talked
14 to this morning at 5:00 in the morning down at the St. Clair
15 County Jail. And he tells me that he got ahold of the ATF
16 the first time, which we were not told this, or I have no
17 knowledge of it. Called the ATF -- no, process server came
18 to serve him in the county jail after he had been revoked on
19 his probation and had to go serve, I believe, a three-year
20 term. He told the process server, or something like that,
21 contact ATF, I may have some information in the firefighters,
22 case.

23 ATF comes over to see him. They do, I think, a
24 one-page interview, and that was just done this morning. But
25 wait a minute. I think I had my office bring those over

1 because they were still in my briefcase. As I thought I gave
2 the court reporter, that Stanley Sanders, I believe, is a
3 two-page -- let me get my people right.

4 Stanley Sanders. Stanley Sanders says that he
5 called ATF a week before the explosion, before the taping of
6 unsolved Mysteries, and he talked to an agent by the name of
7 Dave True. At the time he did not give Dave True his real
8 name because he was on the run. Do you need to do something,
9 Judge?

10 THE COURT: Yes. Mary is about to leave, and I
11 need to talk to her.

12 (A brief recess was taken.)

13 MR. O'CONNOR: I need to make a correction. I got
14 Gile and Sanders mixed up. So let's strike everything I said
15 about Gile and Sanders and let me start over. These are the
16 guys this morning, and I'm trying to recollect. Gile, first.

17 THE COURT: Could I make a suggestion?

18 MR. O'CONNOR: Yes, sir.

19 THE COURT: You've given me some detail about some
20 of these people. Could you -- would there be some way -
21 we've got people waiting and I want to -- could you just sort
22 of say, if it's correct, I'm not suggesting what to say if it
23 isn't correct. Now, I've also talked with A, B, C, D, and E,
24 and essentially the situation is the same with regard to
25 these people. In each instance I found, or they told me

1 about stuff that fits generally into these categories.

2 Now, if you believe that in some way hurts your
3 presentation, I'll be glad to listen to the rest of it. But
4 I think I've got an idea of what you're talking about. Just
5 a minute.

6 MR. O'CONNOR: Gile's in the Jackson County Jail,
7 gets served with process for a domestic situation with his
8 wife. He's just been violated, got a three-year sentence,
9 tells the process server that he has information, they come
10 and talk to him. He gives them a detailed interview. He
11 does testify before the grand jury.

12 He's advised me that Dave True has told him that
13 after he testified that he will place a letter in his parole
14 jacket. And he told me his parole date, and he would be
15 there when the parole board met next year because of his
16 cooperation, that which we were not told.

17 Stanley Sanders. And, you know, Gile has a
18 criminal history. He told me in his interview, he would not
19 talk to me about his interview, but he said all I want to
20 tell you is that some of the things in there are not correct,
21 but I'm not going to tell you about them because he's
22 basically concerned that he won't get his deal or his letter
23 if he says anything contrary to his statement. To his
24 interview, there was no statement. He did testify before the
25 grand jury.

1 Stanley Sanders claims to have talked to Dave True
2 twice. The first occasion, he called anonymously but gave
3 him information and gave him a name of his sister, that he
4 had overheard a man at a bar talking about killing his sister
5 because of the firefighters explosion.

6 We have no such report. What is significant is
7 when Dave True interviews him, which would appear from our
8 records to be the first time, but from his recollection would
9 have been the second time when he called, he gave his name
10 because now he was in custody and not on the run. True
11 recognized his name, he recognized True's voice. Sanders', I
12 think, sister is somehow connected to the witness list, and
13 there was a concern about her testimony. So if there's two
14 interviews of him, we don't have the first. Or if maybe we
15 don't have the second and we have the first.

16 Patrick Stewart. Patrick Stewart I went over to
17 see yesterday in Lansing. He did not want to give me an
18 interview, did not want to give me an interview on the
19 record. He agreed to talk to me. Did not want the court
20 reporter to type. When he came in the room, he basically, it
21 turned out that he knew my family, my mom, my nephews, and so
22 on, and so, grew up with them. And basically told me, he
23 said, I can only say this because I don't know that I will
24 say this later, but basically a woman told him -- and it's
25 another one of these two-page interview scenarios, no grand

1 jury testimony. Basically a woman who he was running with
2 who was doing drugs had told the ATF that he may have
3 information about the involvement of Sheppard and/or Brown,
4 or both. I don't recall. He gave them an interview. So -
5 strike that.

6 She arranged for the agents to meet him when he
7 went out for his modification in Johnson County because he
8 had two five to twenties in Kansas. She told him that the
9 ATF agents had told her -- and they were helping her with
10 some of her cases, which we have not been told. And I think
11 she's a potential witness, but I don't remember her name, and
12 I haven't got to her as far as my investigation.

13 He said he showed up out in Johnson County court.
14 He thought he was going to court for his modification. He
15 was, but when he got there, Dave True was there, another
16 agent was there. They took him to another room, they got his
17 interview in which he admitted, told them that these guys
18 were involved, and they told him that they were going to go
19 in front of the judge and ask that his time be reduced.

20 He said they did not do that. They left after they
21 told him that the interview was an off-the-record interview,
22 and then the next time he heard about it was last week they
23 called his dad and basically told his dad that they heard
24 that he had a marijuana charge in Lansing in which he could
25 be facing maybe 30 to 40 months, although guys have been

1 pleading in Lansing to eight months, generally, and that he
2 should consider that in determining whether or not he wanted
3 to cooperate and go along with this statement.

4 He told me that he is scared that they're going to
5 come over there. He asked me to call his dad. I didn't do
6 that because I didn't, I just haven't had a chance to because
7 of other things going on. But he said, if he's to be
8 believed, that his dad was also told by the agents that there
9 could be some reward money in it for him, as well. That
10 supposedly happened within the last week, of which we have no
11 knowledge and/or information.

12 Bridget Dornhoffer. I have information that in at
13 least two counties mental exams have been filed, lawyers have
14 filed mental exams on her competence to proceed and/or to
15 stand trial. And as recently as last either March, April, or
16 May of '96, she was charged in federal court in Kansas City,
17 Kansas, in which the government, we have the motion, but I
18 don't have it here, filed a motion to have her examined for
19 competency. We have not been provided any information about
20 any incompetencies or any mental problems that she's had.

21 MR. WYRSCH: Did she say that in the transcript
22 that you have?

23 MR. O'CONNOR: Again, that's a good question,
24 because Dornhoffer was like the last one on my list to talk
25 to. And so with -- let me retract that until I can look at

1 that. I'm glad you said that, Jim, because I can't say for
2 sure. Let me look at that one, but I talked to Mr. Peters in
3 the interim here, and I would like to call him again before I
4 finalize my record to address that, but that's a good point.
5 But nothing was given to us, telling us any history.

6 Now, it may be in the transcript of the grand jury
7 or something. I can't tell the Court that for sure. So if
8 my numbers are right, of the one, two, three, four, five,
9 six, seven, eight, nine, ten, eleven, twelve government
10 witnesses to be called, one, two, three, four have appeared
11 before the grand jury, and one grand jury statement we don't
12 have.

13 In all of those, Gile and Sanders, bad prior
14 criminal record, drugs, violence, bad acts, all matters of
15 impeachment. The only information that I'm aware of that the
16 government has given us regarding inducements or promises are
17 these letters that we got on Lank where Mr. Becker wrote to
18 Mr. Lank in prison and then wrote a letter to Mr. Lank's
19 lawyer down in Jefferson City.

20 Now, if you look at the other discovery in the
21 case, you have these same interviews. And other lawyers are
22 being told by laypeople that the same things are happening,
23 that they're being threatened and told that they have to
24 testify or things will happen to them. And I haven't even
25 got to those people, I can honestly tell the Court, because I

1 haven ~ t had time.

2 But there is a pattern of this, you know, not
3 talking to these people for a long period of time and then
4 bringing them in, and some of them having never met the
5 prosecutor. And so I think for impeachment purposes -- for
6 example, Mr. Lank, and this may mean nothing, but I think it
7 would to a jury. Lank writes these letters. He's asking for
8 promises, he's asking for inducements. He gives a one-page
9 interview which no one has ever gone over with him. Mr.
10 Becker's never met him. He's on the first week's witness
11 list. He's never even been debriefed, and he's put forward
12 as a witness without even evaluating his credibility or what
13 he's about.

14 So when Mr. Becker gets Mr. Lank's testimony here
15 from me, then he may choose not to put him on, which will
16 then affect our presentation of how this case has proceeded.
17 He'll pick and choose the ones that had the least problems,
18 and then he'll make an orderly presentation and he'll get out
19 of the way all the problems with the case by putting it
20 forward first so we can't impeach him. He'll try damage
21 control with these witnesses, and then he may not call some
22 of them. Which to some extent we don't want him to, but to
23 another extent, we would like to show the pattern with all of
24 these people, this consistent pattern of the way this case
25 has been handled through the snitch witnesses, as I call

1 them, which I hope is not an inappropriate word, and the lay
2 witnesses.

3 And there's other information that I cannot tell
4 the Court now that I have that verifies anything, but I'm
5 trying to verify other things that I think are there, but I
6 don't have the verification, so I wouldn't speak them unless
7 I could tell them. I think that's my record.

8 MR. WYRSCH: Your Honor, I would point out under
9 the omnibus, under Section III, the government was required
10 to -- well, I'm sorry, was not required, but says the
11 government will disclose all evidence favorable to the
12 defense at least 10 days prior to trial.

13 THE COURT: I couldn't hear you.

14 MR. WYRSCH: Yes, Your Honor. under No. III(E) it
15 says, "The government states that all evidence now in its
16 possession or hereafter coming into its possession which is
17 favorable to the defense will be disclosed to the defense at
18 least 10 days prior to trial."

19 To what extent the government knows about a lot of
20 this impeaching material and hasn't disclosed it, I don't
21 know. I know that -- which is the one in the eastern
22 district, John, that you found?

23 MR. O'CONNOR: Lank.

24 MR. WYRSCH: The U.S. Government actually filed
25 something on a witness over there?

1 MR. O'CONNOR: I wish I had it here. Kansas City,
2 Kansas. There's a filing by the government asking that the
3 witness be checked. Dornhoffer, and she was sent to Kentucky
4 for evaluation on competency to proceed. She also had the
5 same thing happen previous years in Clay and Platte County,
6 and there are mental exams to show that she has some mental
7 disorders.

8 THE COURT: ALL the stuff about the, that might
9 bear on whether the government has done or has not done what
10 it should, all that arguably relates to the pending motion
11 for sanctions, needs to be brought to my attention during the
12 trial, as Judge Hays, I think, ordered in regard to the
13 motion for sanctions. I mean, I'll do whatever is
14 appropriate and what I'm asked to do at the time if there is,
15 if I believe it's appropriate, to enforce and make certain
16 that the government has complied with its responsibilities.
17 And if it hasn't, an appropriate sanction will have to be
18 considered.

19 But I'm puzzled about what it has to do with this
20 issue. I mean, I understand it has to do with issues in the
21 case, maybe, but what does the fact that the government may
22 not have -- and I stress may because I don't know -- but may
23 not have done something it should have to do with the
24 particular issue we have here?

25 MR. WYRSCH: Well, I don't think it has to do with

1 it directly, Your Honor, but I think what John has indicated
2 to the Court that he's developed this impeaching material,
3 independent of any statements that the government has
4 provided him by the Jencks and that he feels that that is
5 material that he would like to use on cross-examination
6 without revealing that to the government.

7 I recognize the issue of Bradv is somewhat
8 different than the issue that's presented here. There is a
9 little tangential effect of it, and that is that the
10 government was required to live up to the omnibus and, at
11 least in John's view based on his investigation on the Bradv
12 part, they have not, although I don't mean that -- they're
13 not here to answer that, so in fairness to them, I probably
14 shouldn't really even mention it.

15 THE COURT: This issue, I think we need to talk in
16 their presence. I don't think it's an ex carate thing, unless
17 it relates to -- I mean, unless it has something to do with
18 these statements. The reason I'm doing this ex parte with
19 regard to the statements is that I felt it was, the cat's out
20 of the bag if we do it in front of the government, then all
21 we're doing is, you know, we're wasting our time talking
22 about it. So that's why I did that part ex parte.

23 But this other business about the fact of whether
24 the government has or has not complied with what it should,
25 it seems to me to be a matter that can either be talked about

1 in front of them, or if it isn't yet in a position to be
2 talked about in front of them, then it has to be saved for a
3 later date. Because I can't very well consider taking some
4 kind of sanction action against the government for not doing
5 what they're supposed to without giving them a chance to
6 respond.

7 MR. WYRSCH: That's correct, and I really shouldn't
8 have mentioned that, so I agree with the Court.

9 MR. O'CONNOR: Another thing I'd like to say is
10 that one of the reasons that I have not brought the grand
11 jury issue regarding Shepard to the Court, because I kept
12 believing, because I threw a bone to Mr. Becker this morning
13 when I was talking to him. I kept thinking somehow Glen
14 Shepard's grand jury was tied to that protective order and
15 you'd been asked to deal with that. So I said to him this
16 morning, I kept holding out that I can't believe he wouldn't
17 be giving me this after Shepard told me that he testified.
18 of course, maybe he was lying, but then Dave True's testimony
19 out there said that he did.

20 Here is my problem, Judge, as it relates to this
21 issue is that just think of the cross-examination of Shepard
22 and True as to what happened out there and how that whole
23 chain of events happened. Now, if Paul Becker gets this
24 information from me, which I've got to believe he can't have
25 this transcript from Cass County. There's no way he would do

1 that to this Court. And I believe that sincerely. I don't
2 know that Paul knows about that.

3 I would love to cross-examine Dave True, maybe even
4 I'd pass on even asking Glen Shepard about it with the
5 opportunity of asking True why he did not provide all of that
6 information to a judge who was making a decision on the case
7 in order to help this guy.

8 But if he gets this, he's able to do damage control
9 to the extent that we are not able to show what was really
10 going on behind the scenes here, and this pattern has been
11 all through this thing.

12 THE COURT: Yeah, but, you know, that's one of the
13 roles. I mean, in a general sense, that's one of the roles
14 of Jencks. I mean, that's one of the consequences. I mean,
15 it allows the defendants to do damage control. It allows, in
16 reverse aspect, it allows the government to do damage
17 control. But there are policy reasons or, in this case,
18 arguably, the parties agreed to this.

19 So I mean, I don't, the use to which material is
20 put isn't the engine that drives the Jencks train. I mean,
21 it either is a statement under Jencks or it's not a statement
22 under Jencks. And what use it's going to be put to by the
23 party or what uses it could possibly be put to by the party
24 it doesn't seem to me to be the issue.

25 ~ But anyway, I now understand what your position is,

1 and I think we need to get Mr. Becker up here and we can wrap
2 this up. Unless there's something more you want to say to
3 me.

4 MR. WYRSCH: No, I think we've had our full
5 opportunity to make our record, Your Honor, and I appreciate
6 it.

7 THE COURT: Now we need to find Mr. Becker.

8 (A brief recess was taken, after which the
9 following proceedings were had in chambers in the presence of
10 Mr. O'Connor, Mr. Wyrsh, Mr. Becker, Mr. Miller, and Judge
11 Sarah Hays:)

12 THE COURT: Before we finish, you all remind me, I
13 have two orders to give you. I have two orders to give you
14 that I'm going to ask one or both of you to be sure the other
15 attorneys get copies of because, being the hour that it is -
16 and Judge Hays and I are going to have to learn how to use
17 the fax machine here without any instruction, and so we'll -
18 I want you two to remind me, if you would, before you leave.

19 Okay. Now, does anybody have anything else that
20 they want to say about this matter?

21 MR. BECKER: I don't believe anything has changed
22 since yesterday. The Court issued a clear and direct order
23 yesterday that these materials should be provided by noon
24 today, and I ask that the Court, again, order that these
25 materials be turned over.

1 MR. O'CONNOR: My last gasp is that the witnesses I
2 intended to call were the witnesses that I filed an amended
3 five days before trial which deletes the any and all, and
4 that's who I intend to call, and that's who I intended to
5 call and did not intend to call any of these witnesses,
6 specifically, by last name, Shepard, Lank, Elliott, Hand,
7 Whitelaw, Dawson, Sanders, Gile, Dornhoffer, Quiroz.

8 I have had, did not intend, do not intend to call,
9 will not call any of those witnesses. And as, I believe, my
10 punishment I would accept further is that I would not call
11 anyone else other than what is on my amended list for making
12 the mistake of putting any and all on the witness list, of
13 which I had no intent or intend to call. That's all.

14 (An off-the-record discussion was had.)

15 THE COURT: Mr. Becker?

16 MR. BECKER: Nothing further, Judge, thank you.

17 MR. O'CONNOR: I'm done.

18 THE COURT: All right. Now, let's cover some
19 issues that have been raised here, and I may have talked
20 about them yesterday, but I'm going to attempt to be
21 responsive to what has been argued here.

22 First of all, the record of this case persuades me
23 that the five days prior to trial in Paragraph E(10) of the
24 omnibus order meant five days prior to January 13, 1996, and
25 that the parties interpreted it to mean that because on

1 January 8, by January 8th, the defendants had filed their
2 witness lists, which suggests that they believed that that
3 was five days before January, that that was when they had to
4 file them, which was, in fact, five days before January
5 13th.

6 And also I am told, and I had forgotten this, but
7 Judge Hays tells me that Mr. Becker made an argument at one
8 point that the date the trial was beginning was the January
9 21st date, and Judge Hays rejected that and said, no, the
10 trial begins on January 13th, when jury selection begins. So
11 for the purposes of this discussion, the defendants had the
12 obligation to comply with the omnibus order, Paragraph E(10),
13 at least five days prior to January 13, 1996.

14 Now, the witness list filed five days prior to
15 January 13 by Mr. O'Connor stated as, or incorporated by
16 reference all witnesses on the government's list of
17 witnesses. I am now told that this was done because it was
18 perceived as a precaution, which is a precaution that is
19 commonly used by attorneys in this district. The wisdom
20 behind that precaution is apparent from the record some of
21 the defense attorneys have made in this case that if the
22 government doesn't call some of the people on their list that
23 the defendants may well call them in their case. So it is
24 a -

25 (An off-the-record discussion was had, and a brief

1 recess was taken.)

2 THE COURT: We're going to need to get all the
3 lawyers together. I think there's a good chance we're going
4 to have to continue this case.

5 MR. O'CONNOR: Is this something that just
6 happened?

7 THE COURT: Right. Just this minute. So I need to
8 talk to the lawyers. I've got those numbers.

9 JUDGE HAYS: We've got them downstairs, too. I
10 would be glad to start trying to call people. I'll go
11 downstairs.

12 MR. O'CONNOR: Do you want to get them here now?

13 THE COURT: We can talk on the phone, I assume, if
14 we can set it up.

15 JUDGE HAYS: Elena and Susan were going out of
16 town. I don't know if they're back yet or not. Do you know
17 when they'll be back?

18 MR. O'CONNOR: I thought they were coming back
19 today because we talked at one time about conferencing late
20 today, and then we changed it to the weekend. I thought they
21 said they could get back.

22 JUDGE HAYS: I'll go downstairs and pull their
23 numbers and just alert everybody that we want to have a phone
24 conference.

25 MR. O'CONNOR: Can you share it with us?

1 THE COURT: Yeah, I'll share it with you. I mean,
2 I'd just as soon -- I mean, I'll tell you all. I've been
3 having a lot of trouble with my back, and they took some
4 x-rays and did some tests yesterday, and they want to put me
5 in the hospital. So -- and they're recommending that they do
6 it immediately.

7 MR. O'CONNOR: Then why are you standing here?

8 THE COURT: Because I'd rather stand here than sit
9 here, actually. And I just don't think that probably I have
10 much choice but to do what they tell me what they want to
11 do. I could find, try to find another judge to start it on
12 Tuesday, but that would be, I think that would be a big
13 deal. So I think that it's -- I mean, I hope, my hope is
14 that it would not be an extensive continuance. And if it
15 looks like it's going to be, then we'll get another judge
16 involved to go ahead in front of another judge.

17 But I think as a practical matter, it's not going
18 to be possible for me to do it. So I think I want to share
19 that with the others. I mean, there's one or two of the
20 defendants that wanted to go to trial, so I need to hear what
21 they have to say.

22 (An off-the-record discussion was had.)

23 MR. O'CONNOR: In terms of tonight, I'll make every
24 effort to get ahold of them, if for some reason you want to
25 make a record tomorrow?

1 JUDGE HAYS: I'd be happy to get on the phone with
2 them tomorrow and make a record, or whatever Judge Bartlett
3 wants me to do. Both places, I left both the phone number
4 here and I left my home number so that hopefully somebody
5 would be able to get with them.

6 THE COURT: What I'm thinking about is maybe we
7 ought to just re-draw the case and see what the new judge -
8 I mean, the new judge might be willing to, might be able to
9 start on Tuesday, which would then do away with a need for a
10 continuance.

11 On the other hand, my, I mean, my situation could
12 be one that, you know, within a week we could be back.
13 That's the reason I wanted to talk to everybody and see what
14 we, you know, what seems to be the best circumstance, or best
15 result, under the assumption that I'm not going to be able to
16 preside over a trial that starts on Tuesday. But -- well,
17 who do you have? Do you have Peters and -

18 MR. O'CONNOR: And Osgood.

19 JUDGE HAYS: We don't have Mr. Bunch or Susan
20 Hunt.

21 MR. O'CONNOR: I'll try Bunch again while we're
22 waiting to hook something up.

23 (An off-the-record discussion was had.)

24 THE COURT: Well, I guess the question is whether
25 we wait until we can get -- I mean, I'd like to go -- I mean,

1 I'd like Mr. Bunch to be available because he's the one
2 that's taking the position that, you know, his client wanted
3 to go to trial immediately. And I certainly want to give him
4 a chance to express himself. Maybe what we ought to do -

5 Sarah, do you think that you could try to find a
6 time as soon as possible when he was available and these
7 other folks were available?

8 JUDGE HAYS: I can do it later tonight or first
9 thing in the morning. I mean, whatever would work for
10 people.

11 MR. BECKER: I'm available anytime.

12 THE COURT: I'm available anytime, too. So why
13 don't we -- why don't we do that.

14 (An off-the-record discussion was had.)

15 MR. BECKER: I have witnesses flying in. I have
16 victims' families scheduled to be here Tuesday morning. I
17 have 117 witnesses lined up to testify. So with all due
18 respect, we need to, I need to be able to take some action
19 one way or the other, and I know the Court is probably aware
20 of that, but I would prefer there not be a continuance. And
21 more importantly, I think I would oppose any severance of
22 those, some going forward and some not going forward.

23 If Mr. Bunch was insisting that he needed a trial
24 Tuesday morning, that probably would be the worst case
25 scenario for the government, to have to try this thing more

1 than once. So I know the Court is faced with a difficult
2 decision here. And I'm just prepared to meet on it.

3 THE COURT: Before I make a determination of what
4 should happen, I want to talk to all of the lawyers and let
5 them have a chance to tell me. So let's -- I mean, that is
6 where we are on it.

7 MR. BECKER: Are we going to have a ruling on the
8 issue that we originally started on? I know Mr. O'Connor put
9 away all of these things there, perhaps thinking I would
10 forget about it. Or is that held in abeyance at this point?

11 THE COURT: I think we'd probably better continue
12 that and rule it, not knowing what the, you know, what the
13 situation is. The case may well go to trial Tuesday
14 morning. It may be continued for a short period of time.
15 But in any event, I think we need to get this matter
16 resolved.

17 MR. O'CONNOR: Judge, is one of your thoughts that
18 if you went in and came out and you were okay, I mean, okay
19 to go ahead in a week, would we just keep this jury and -

20 THE COURT: Right.

21 MR. O'CONNOR: Okay.

22 THE COURT: Right. I mean, that's one thought.
23 The other thought is that -- I mean, another possibility is
24 to do the, is to have another judge assigned to the case and
25 proceed on Tuesday morning. The -- my concern about that is

1 that -- I mean, about that approach, at least with regard to
2 Tuesday morning, is that I think the reassignment of the case
3 ought to be by random draw and, therefore, who drew the case,
4 whether for any reason that judge would recuse, in other
5 words, wouldn't be able to do it, and then we would have to
6 re-draw it.

7 And I think in fairness, any judge who is, you
8 know, going to preside over this case needs some time to sort
9 of get up to speed. I mean, just to walk in there cold
10 doesn't seem appropriate. The judge would have to make a
11 determination as to whether there was anything that I was,
12 had told you all was going to happen, the judge would then
13 try to do something different. So I'm just fearful that it's
14 not something that is, that can just be dumped in somebody's
15 lap and you all get the kind of high quality judicial
16 presentation that the case deserves.

17 So that's, those are some more things. Therefore,
18 if my situation is one that was of short-term duration, in
19 the long run, I think it would probably be the more efficient
20 thing to do. But on the other hand, it does involve, is
21 going to involve some rescheduling.

22 So those are some of the things that are, that I'm
23 thinking about right now. So I think that the -- I mean, the
24 first step I think is the talk with the lawyers. Now, the
25 next step is for me to decide what's going to happen and tell

1 you all what is going to happen, and then we proceed to do
2 it. So the sooner we can talk, the sooner we can get
3 everybody on the line, the better. So if somebody wants to
4 take over the job of -

5 JUDGE HAYS: You've got a phone call.

6 (A brief recess was taken.)

7 THE COURT: Okay. Now, here is the new
8 development. They have scheduled, they've gotten me
9 scheduled for 9 a.m. Monday morning without having to go into
10 the hospital. So we have a new option, and that is that we
11 continue. We go Tuesday as planned with the possibility that
12 I would have to recess early on Tuesday to meet with the
13 doctor to get the results from the Monday test, so that's a
14 third option, I mean, that's another option. But I want to
15 lay the situation out so, I mean, as best I can so that
16 everybody knows what it is.

17 MR. O'CONNOR: I'm sure there will be a hundred
18 things that come up in your thoughts between now and then,
19 but if the jury was sworn Tuesday and then for some reason
20 after you met with your doctor you had to have other
21 treatment, or hopefully none of that stuff would happen, then
22 bringing a judge in with the jury sworn may create another
23 issue.

24 I'm just wondering if it would be better to
25 continue it until Wednesday, at least, so you know where you

1 stand because, just for the purpose of yourself, forget this
2 trial. But also then we'd know and the jury knows who the
3 judge is.

4 THE COURT: Those are options. I want to talk to
5 everybody about them, give everybody a chance to see what's,
6 what we're going to do. But I think that, we need to talk to
7 people, if we can, tonight so we can make this decision.
8 Okay?

9 MR. BECKER: I, perhaps, misunderstood this time.
10 Did you say you were going to defer ruling on these Jencks
11 statements, or are we going to address that?

12 THE COURT: We're going to address it.

13 MR. BECKER: Okay.

14 JUDGE HAYS: Before you start addressing that,
15 could I just find out -- I mean, should I just continue to
16 try to set this up and then get in touch with everyone?

17 THE COURT: Yeah. Just whenever, whenever you can
18 reach everyone. Yeah, whatever time you can reach
19 everybody. But you get on home, go on home. Your situation
20 is desperate.

21 JUDGE HAYS: Will you be here, then, or at some
22 point should I try to reach you, then, at your residence?

23 THE COURT: I'll be here until we finish this, and
24 then I'm heading for home.

25 JUDGE HAYS: Then maybe I'd better have your

1 number.

2 (An off-the-record discussion was had.)

3 THE COURT: Okay. Now, I think I had commented on
4 the circumstances under which the witness list was filed with
5 the precautionary statement, according to the defendant, to
6 list all of the government's witnesses as witnesses that were
7 on the defendant's witness list; followed that list, the
8 filing of that list by filing by an amended list which
9 deleted and reduced dramatically the number of witnesses that
10 the defendant was going to call or might call.

11 Now, both lists, both the original list and the
12 amended list were, I conclude, intended to comply with the
13 requirement of the omnibus order and, therefore, the
14 difference in wording between the omnibus order, intend to
15 call, and the witness list, may call, is not determinative.
16 I conclude that it was, the lists were intended to comply
17 with the omnibus order. Therefore, any witness listed on the
18 witness list for which the listing party had a statement as
19 defined in Section 3500 was required to be produced.

20 Now, the next thing I want to talk about is the
21 fact that the omnibus order is not an effort to, was not
22 intended to be an effort to place upon the defendants all of
23 the requirements of Section 3500 or the Jencks Act. The
24 omnibus order used the reference to 3500 as a way to define
25 the statements, define what was meant by statements. Because

1 the obligation under the omnibus order was fixed as of at
2 least five days prior to trial, the lists that were filed by
3 the defendants in compliance with that order at least five
4 days prior to trial also fixed the responsibility to furnish
5 statements as defined in Section 3500.

6 Mr. O'Connor and Mr. Wyrsh argue that, well, it
7 was not intended, there was no intent to call some of the
8 people on the government's list and, therefore, compliance
9 with the omnibus order was not necessary in that regard.

10 Because the whole purpose of the omnibus order is
11 to fix at an early stage in a case the responsibilities of
12 the parties that are either agreed to by the parties or
13 ordered by the magistrate, I conclude that the intent as to
14 whether at a given time the person really plans to call the
15 witness or not is irrelevant because the only point in time
16 that is of importance under the omnibus order is the date
17 that the defendant is required to file the witness list.

18 It would certainly be expected that an attorney's
19 view of who they really plan to call or who they will call as
20 witnesses could change one or many times after the witness
21 list is filed, depending on the circumstances having to do
22 with the assessment of discovery and having to do with the
23 progress of the trial, et cetera.

24 Therefore, the omnibus order fixed as the date and
25 circumstances for furnishing the statements the date that the

1 witness list was filed. Therefore, I do not believe that
2 filing an amended witness list affects, after the date set in
3 the omnibus order affects a determination of the parties'
4 responsibility under the omnibus order.

5 Now, the defendant argues that the statements at
6 issue here falling within the definition of statements in
7 Section 3500 are impeaching material. And I accept at this
8 point that characterization of them, that they are, have
9 material that is going to be used, if at all, for
10 impeachment. Without some restriction on the wording of the
11 omnibus order which was agreed to by the parties deleting
12 from the requirement purely impeaching material, I do not see
13 and do not believe it's appropriate to read into the omnibus
14 order and its reciprocal obligations some exclusion or
15 exception for purely, for statements that contain purely
16 impeaching material.

17 I'm confident, I believe, that if this situation
18 were reversed and the government had listed a witness on its
19 witness list that it did not intend to call in its case but
20 for which the witness had, or for which the government had
21 impeaching material in the form of a statement under section,
22 that would fall within the definition of statement under
23 Section 3500 that the defendants would insist that it be
24 furnished and would not accept without protest a statement
25 that it was just impeaching material and we probably weren't

1 going to call that witness anyway, unless the defendant
2 called them, but we listed the person only to protect
3 ourselves in case our assessment of the situation changed and
4 we decided we wanted to call the person because our
5 impeaching material is so good that we could bolster our
6 theory of this case by impeaching this person. Therefore,
7 the, under the wording of the omnibus order, I do not see any
8 exception for material or statements that are primarily or
9 exclusively impeaching in nature.

10 The next argument is that it reveals, to reveal the
11 information would reveal strategy, and I guess any statement
12 taken verbatim and covered by Section 3500 to an extent
13 reveals strategy because there is always the information that
14 can be gleaned from which questions the lawyer chose to ask
15 and the manner in which the lawyer asked them, which can
16 reveal strategy.

17 Another factor that I'm taking into consideration
18 is the problem of changing the ground rules or attempting to
19 change the ground rules after one party has attempted to
20 comply with the omnibus order. In this case, and I realize
21 there's a dispute about it, or at least there seems to be
22 some dispute about it, whether the United States fully
23 complied is challenged by the defendants. But at least the
24 United States attempted to comply in accordance with what T
25 understand to have been an agreed upon addition to the

1 omnibus order that sometime after the omnibus order was
2 entered, the government agreed to, after some debate,
3 apparently, to furnish material covered by Section 3500
4 twenty days before trial. And it seems at this point, it's
5 too late to go back and start engrafting exceptions on what
6 the omnibus order stated and when it was setting forth in a
7 general context the reciprocal obligations of the parties.
8 So that is a, that is another aspect of the situation that I
9 think is important to take into account.

10 I have taken into account in reaching this decision
11 the information that Mr. O'Connor furnished to me, with his
12 attorney, Mr. Wyrsh, present on the content of the
13 statements that were taken, Mr. O'Connor's assessment and
14 summary of the significance of those statements to issues in
15 this case. I don't -- I think all of that was relevant to
16 and was certainly considered by me in determining, in
17 discussing the point about impeaching material. My belief is
18 that based on what Mr. O'Connor said, his belief is that the
19 material is primarily of importance for impeachment. It may
20 have some relevance to other issues, but primarily important
21 for impeachment.

22 For all of those reasons, I believe that the
23 defendant has the obligation to furnish any statement that
24 comes within the definition in Section 3500 for any witness
25 that was listed on the witness list filed five days before

296

1 January 13th in compliance with the omnibus order.

2 Now, I'll be glad to consider what -- I mean, the
3 deadline that I established yesterday was noon today;
4 obviously, a deadline that has gone by. I'll be glad to
5 establish a new deadline if, if there's some, and will take
6 into account if there's some thought about trying to get the
7 Eighth Circuit Court of Appeals to review this order.

8 MR. WYRSCH: Could we request -- I'm not sure we'll
9 do that, but if we could request a deadline, let's say, of
10 Wednesday morning, and we'll try to do it over the weekend.
11 And if we can't find some Eighth Circuit judges, we'll try to
12 have it there first thing Tuesday? We'll try to do it, if we
13 do it, I'm not sure we will, or get back with the Court at
14 the status conference. It could be that we could get ahold
15 of somebody over the weekend.

16 MR. BECKER: Wednesday morning is unacceptable
17 because of the -- I mean, assuming that the trial train
18 leaves the station, the research that Mr. Clark has provided
19 me is that this is a matter within the sound discretion of
20 the district court. So the merits on appeal, at least for an
21 extraordinary writ, seem to me to be less than promising.
22 And I think that a relevant consideration, what has in effect
23 been asked is a request for a stay at this point because the
24 order was entered yesterday to comply by noon today. Now
25 we've had further proceedings on the matter and now we're,

1 there's been an order, and now there's a request for a stay.
2 I believe that they should certainly be given time to
3 evaluate whether or not this appeal has some merit or if they
4 want to pursue it.

5 But Wednesday, I mean, tomorrow or Sunday, but
6 these materials, I think beyond that point it becomes a moot
7 point for the government. Certainly I believe counsel should
8 have an opportunity to review the appellate merits, but
9 beyond that, I think they should comply with the Court's
10 order.

11 MR. WYRSCH: We're not saying to make a decision.
12 We would think the decision ought to be made like tomorrow
13 sometime and run the writ over the weekend, if we can. But
14 if we can't, we'd like to have it there Tuesday morning. I
15 wouldn't request additional time to decide whether we want to
16 do it or not. That could be made fairly quickly. If we run
17 the writ over the weekend, we will. I'm not sure we will do
18 that, okay? If we decide tomorrow we won't do it, then I
19 think that's another issue, but John has indicated some
20 indication that he wants to do this, and he needs to consult,
21 frankly, with other counsel.

22 But I say that that's not a barrier to whatever
23 we're going to do. Okay. He wants to talk with some of the
24 other counsel in the case. But we would certainly try to run
25 it over the weekend. I'm just not sure we can effectively do

1 it, quite frankly. I am aware that in the past where the
2 government has been ordered to produce Jencks Act material
3 and the Court's ruling is a slightly different situation but
4 similar, they've run writs and have been successful in
5 getting writs against judges.

6 So I don't want to quarrel with Bruce or your
7 analysis of the law, but I'm aware of similar circumstances
8 where writs have been granted.

9 THE COURT: I want to give you a fair opportunity
10 to take a look at the issue and to attempt to get some kind
11 of, if you decide to, some kind of relief from the Eighth
12 Circuit.

13 On the other hand, I mean, there was a purpose in
14 the reciprocal obligations, and certainly five days before
15 the trial was in there for some purpose. And so I'm not, I
16 mean, it doesn't seem to me it is fair in light of everything
17 I've said to delay it to a time that is any longer than
18 necessary after the time that it should have been, you know,
19 it should have been done.

20 So I'm not -- I mean, I think the Eighth Circuit
21 has emergency procedures which they can, which can be
22 implemented. And I'm sure if the judges on the particular
23 panel that deal with these things believes that it's a matter
24 that ought to be looked at, they'll issue an order that will,
25 you know, that will stop me. That will relieve temporarily

1 you all from complying with my order while they can take a
2 look at it.

3 So I don't -- why don't we -- what about noon
4 Sunday? I mean, that gives all day tomorrow to make some
5 determination and then to see if you can get the Court of
6 Appeals to do something. Any other suggestion? I'll be glad
7 to consider other suggestions, but I think Tuesday -- I mean,
8 on Tuesday, the opening statements begin, the trial, the
9 evidence begins. I mean, to -- if the three statements that
10 I'm looking at there are any indication, we have nine. I
11 mean, we're talking, you know, full six or eight inches of
12 material. And -

13 MR. WYRSCH: But there's, I should mention, apart
14 from that, there's the issue of getting them typed up even
15 by, I mean, there's that effort to be done. I mean, that's
16 being done as we speak, as I understand it. But there is
17 that issue. Well, we'd like to have as much time as
18 possible. If the Court doesn't like Tuesday morning, it
19 seems to me we ought to have, I don't know, I don't even know
20 if anybody is around on Monday, but it seems to me the
21 government wouldn't be prejudiced if we had noon on Monday.
22 It sounds like I'm negotiating with the Court, which I'm not.

23 THE COURT: I'm inviting you to. That's not a
24 problem. I'm inviting you to -

25 MR. WYRSCH: As much time as we can get over to

1 Tuesday as possible. It's possible that we'll decide not to,
2 Ibut it's also a possibility we will. But to the extent we
3 can get it to Monday or Monday afternoon, I would appreciate
4 it, but that would give us at least Saturday and Sunday and
5 part of Monday to try to do something with the case.

6 MR. O'CONNOR: As it relates to these, if there's
7 something that you want me to do with them, I don't have to
8 go pick the other ones up, so they don't gain any advantage
9 of them in the sense of having them or reviewing them. I'm
10 just saying as a practical matter, I would be willing to do
11 that, as well.

12 MR. BECKER: My only negotiation point is I'd like,
13 you know, if you're going to seek a writ, great, then you
14 should have a little bit of time. But if you're not, if you
15 make a decision you're not seeking a writ and then I still
16 have to wait until noon Tuesday or noon Monday, I've just
17 gotten dragged out another two and a half days when you say,
18 well, in view of the merits of it -

19 MR. WYRSCH: That's a fair comment. I'm just
20 trying to figure out how to implement it. If we decide to,
21 we'll tell you tomorrow morning we're going to. If we decide
22 not to, then there's the physical problem that some of them
23 are already prepared and getting them prepared and over to
24 you.

25 MR. BECKER: I understand the typing problems.

1 John tells me that ts the way it is. I understand it.

2 MR. WYRSCH: Why don't we let you know by noon
3 tomorrow whether we're going to do it or not, and then we'll
4 run a writ. And if we can have, if we decide to run the
5 writ, I think we ought to have until, you know, sometime
6 Monday afternoon. If we decide not to run the writ, I think
7 we can start immediately turning over those that we have
8 sometime tomorrow, maybe by the close of business tomorrow?
9 And the rest of them as we get them from the court reporter.
10 You realize some of them are not yet done by the court
11 reporter.

12 MR. BECKER: You have a xerox machine.

13 MR. O'CONNOR: When you have the court reporter do
14 -- what I've always done traditionally is let the court
15 reporter, let them make their money. I'll ask Theresa about
16 it. I don't know how all of that works.

17 MR. WYRSCH: Let me ask you this because I think
18 it's getting late. You told me a while ago that some of
19 these are not yet typed; is that correct?

20 MR. O'CONNOR: You have what I have.

21 MR. WYRSCH: Pau1, my response to you is some of
22 them are not typed, so even if we said we could turn them
23 over to you tomorrow afternoon, we're not going to have all
24 of them done.

25 MR. BECKER: I understand. And John has made that

1 clear from the earliest moment. I understand that.

2 MR. WYRSCH: The other part that we would like to
3 know, and we just need some kind of an indication from the
4 Court. Under Rule 26.2, Jencks Act, if we don't turn them
5 over -- and this is not meant to quarrel with the Court's
6 ruling, we just need some guidance here, obviously he's got a
7 client that's facing a lot of time -- is the sanction we
8 can't call a witness?

9 My reading of the Court's ruling today in terms of
10 the omnibus is that it imposes different obligations. Or
11 when I say that, I hope I'm not mischaracterizing it, but the
12 Court felt that the reciprocal discovery provisions were
13 excepted to the extent of the definitions of statement were
14 slightly different. So we would need some guidance in that
15 regard.

16 It's not that we won't, but we need to know in
17 terms of advice to the client and that if the sanction is we
18 can't call a witness, then that's an issue. If the sanction
19 is you turn them over regardless, we need to know that too.

20 THE COURT: Well, the sanction, the sanction that
21 you can't call the witness is what the Jencks Act provides.
22 But it is, as I said before, my interpretation of the omnibus
23 order is that it was, it used the reference to 3500, not for
24 the purpose of incorporating the Jencks Act, but for the
25 purpose of defining the statement. And so I think the

1 question of sanction, what would be the result of a failure
2 to abide by my order, would be a matter that would have to be
3 decided after that happened. But it would certainly -- I
4 mean, whatever the sanction is, it seems to me that it is not
5 necessarily restricted by what the Jencks Act says because we
6 have a different -

7 MR. WYRSCH: Bet me ask, and if I'm asking a
8 hypothetical question that the Court feels uncomfortable
9 answering, I will understand. But is a possible sanction
10 that we could not use the witness statement to impeach, at
11 least in your -

12 THE COURT: That would be a possible sanction,
13 yes. That's one option which seems to be, at least arguably
14 could be sort of directed to the, I mean, the appropriately
15 sharp and precise response to it. But I'm not sure. I mean,
16 I don't know if that is where it would end.

17 MR. WYRSCH: We're just trying to assess our
18 position and talk to the client about it.

19 THE COURT: Quite frankly, Jim, I don't have any
20 idea what I would do.

21 MR. WYRSCH: That's an unfair question.

22 THE COURT: I mean, you know, I don't -- my first
23 reaction would be I would be disappointed, just as
24 disappointed that the order was disobeyed after, you know,
25 the effort we all have gone into to try to fully investigate

304

1 it and give everybody an opportunity to state their
2 positions. But beyond that, I don't have any idea at this
3 point.

4 I do think, though, that in the, that implicit in
5 the omnibus order is a, I think a requirement of good faith
6 on behalf of the lawyers who are implementing it, and I would
7 -- you know, I think if a statement has been taken which if
8 transcribed would comply with, I mean, would be within the
9 definition of Section 3500, I think that the transcript ought
10 to be prepared with all due dispatch because there is this
11 requirement, if my interpretation is correct, to furnish that
12 to the other side.

13 So it would be, it seems to me, inconsistent with
14 that obligation to in any way not make every reasonable
15 effort to get prompt transcription of a, of the stenographic
16 notes or the electronic recording or whatever it is of a
17 statement that would otherwise, that would be covered by
18 Section 3500. But that's about all, Jim, I can tell you.

19 MR. WYRSCH: That's fair.

20 THE COURT: You know, I'm just trying to figure
21 out. But anyway, what I would -- let's do this. And let me
22 just, I'll run this by as a possibility and you all can tell
23 me if you don't like it, what's wrong with it, and then I'll
24 decide whether to make it permanent.

25 But my tentative conclusion is that based, after

1 listening to this discussion, that no later than noon
2 tomorrow, Mr. O'Connor and Mr. Wyrsh, you advise Mr. Becker
3 whether you are going to seek extraordinary relief from the
4 Eighth Circuit Court of Appeals or not. If the decision is
5 not to do so, then I would expect that no later than noon
6 tomorrow the statements that have been transcribed would be
7 turned over and that the, as the others are transcribed, they
8 would be turned over immediately.

9 If the decision is made to seek an extraordinary
10 writ and Mr. Becker is advised of that no later than noon
11 tomorrow, then the defendant is ordered to produce those
12 statements falling within the definition of statement under
13 Section 3500 no later than noon on Monday.

14 Now, the reason for that time schedule is I'm
15 trying to accommodate the various interests involved, and
16 that gives a period of time on Monday which, if that's the
17 only time the court can look at this, they can look at it and
18 make a determination. And also, it seems to me, it should
19 help you in getting their, you know, the court to look at it
20 because noon on Monday is the date compliance is ordered. So
21 they realize that they have a true emergency matter.

22 Now, anybody want to comment about that before I
23 decide whether to make that -

24 MR. WYRSCH: That's pretty close to what we
25 requested, Your Honor.

1 MR. BECKER: It's acceptable to the government,
2 Judge.

3 THE COURT: Okay. Then that is the compliance -
4 by that schedule is the compliance I expect from the
5 defendant with my order and the omnibus order.

6 MR. WYRSCH: Your Honor, just for purposes of
7 completing a record, John feels that because of various
8 things, including the fact that he listed that thing, that he
9 felt like he's not done what he should have for his client
10 and, you know, would want to bring that to the attention of
11 the Court. And I'm not sure, I guess the most drastic thing
12 is to withdraw, but I suppose that's a request under the
13 sixth amendment.

14 So we're making our record, and I know the Court's
15 been most tolerant of us today, but John felt that he wanted
16 to make that request. Is that correct, John?

17 MR. O'CONNOR: Yes.

18 THE COURT: I'm sorry, what is the request?

19 MR. WYRSCH: Well, he feels that he's been -- when
20 I say that, he's concerned about the fact that he listed all
21 other witnesses, and that may constitute ineffective
22 assistance. And he feels that under the sixth amendment
23 maybe he should request the Court to withdraw, and so he's
24 asked me to make that request.

25 THE COURT: Well, is he requesting that I allow him

1 to withdraw, or is he considering it?

2 MR. WYRSCH: Is that correct, John?

3 MR. O'CONNOR: Yes.

4 THE COURT: Well, I'm not going to grant the
5 request. I mean, I think I've already said this once
6 already, but I'll say it again. I think that -- I mean, I
7 can't control how Mr. O'Connor views the matter, but I don't
8 view it as a, as a mistake. At the time it was done, I think
9 it was a perfectly reasonable thing to do.

10 Now, it's had consequences which may have been
11 unexpected, of which may not have been foreseen at the time,
12 but I don't think that is, at least based on everything I
13 know, unless there's something I don't know. I don't think
14 that means that Mr. O'Connor has been ineffective or that his
15 performance has been below the standard of other lawyers in
16 similar situations practicing in this court.

17 I mean, I am, as I've already said, I am very
18 impressed by Mr. O'Connor's dedication to the best interests
19 of his client, by the effort he's expended on behalf of his
20 client, by the articulate arguments he has made, and I do not
21 believe that this matter, even though I'm entirely
22 sympathetic with his feelings about it, I mean, I can
23 understand why somebody with his high standards of
24 performance and his dedication to the best interests of his
25 client in hindsight, now, would say that's, that was a

308

1 mistake.

2 But looking at things that lawyers do -- and I'd
3 like to say we lawyers because I consider myself a lawyer.
4 If we looked at our performance with hindsight and allowed
5 ourselves to dwell excessively on what we should have done
6 after we know the result of what we did, most of us would
7 find it very difficult to function because we all constantly,
8 at least I did and I'm sure you all do, too, are constantly
9 assessing after the event whether you could have done
10 anything differently. But it's a little bit of an unfair
11 kind of approach because you know now the result of what
12 appeared to be a reasonable course of action at the time you
13 took it, and it's not very hard at this point with the
14 benefit of that 20/20 vision in hindsight to say, gosh, you
15 know, I should have done something else.

16 But if you look at the time the decision was made
17 and look at it from the considerations then and there known
18 to a lawyer who was making it, it is, it was a perfectly
19 reasonable decision, entirely consistent with practice of
20 lawyers in this court. And so I don't believe that anything
21 has been done here that warrants granting a request to
22 withdraw or, for that matter, would suggest to me that I
23 should agree in any way, shape, or form that something Mr
24 O'Connor has done is legitimately termed ineffective.

25 I mean, the John O'Connor I know performs at the

1

1 highest level of professional excellence, and this doesn't
2 alter my view. He is performing in the very highest way that
3 a lawyer can perform.

4 So again, as my final statement, i fully understand
5 why he would believe differently, and that's a natural result
6 of somebody with his very commendable attitude.

7 MR. WYRSCH: The final, thing, Your Honor, I assume
8 that if, if these are turned over -- when I say if these, I'm
9 sure we will comply with these Court's orders. If we don't
10 seek a writ, I'm sure we'll turn them over.

11 But I assume if the defendants show some additional
12 matters that would, that's caused him prejudice by this
13 circumstance and how the government uses these statements
14 that that, he would feel free to bring them to your attention
15 sometime during the trial if that's acceptable?

16 THE COURT: Certainly. This is -- I mean, it's an
17 open invitation to anybody on anything, that they're free to
18 -- with the only caveat that, I would hope we could find a
19 time to do it that would not interfere or would interfere as
20 little as possible with the orderly presentation of matters
21 in the courtroom. That's not a prohibition against bringing
22 it up. It's just the timing of it. Okay.

23 MR. WYRSCH: I want to know -- the Court has
24 labored under a number of matters today, and I just want to
25 tell you how much we appreciate it. It's now at least 7:30,

1 and I want you to know how much we appreciate the Court's
2 consideration of these matters today. You've been
3 extraordinary in your consideration of these matters. And on
4 behalf of Mr. O'Connor and myself, I want to address that to
5 you.

6 THE COURT: Thank you. But I think it deserved the
7 attention that I tried to give it. Mr. O'Connor felt
8 strongly about it and Mr. Wyrsh felt strongly about it, Mr.
9 Becker feels strongly about it, and that, it seems to me, is
10 something that, therefore, I need to pay attention to and not
11 just sort of ignore.

12 Okay. Thank you.

13 (Hearing adjourned at 7:45 p.m.)

14

1 ,

1997

3 (The following proceeding were had in chambers in
4 the presence of Judge Bartlett, Judge Stevens' and all
5 counsel' but out of the presence of the defendants'
6 commencing at 8:10 a.m.:)

7 JUDGE BARTLETT: All right. My situation is such
8 that I cannot continue with this case. Last night there was
9 a conference with the Court en banc, and a random draw was
10 conducted to see who would take the case over, and Judge
11 Stevens, name was drawn. So Judge Stevens will take over as
12 judge in this case commencing right now.

13 Now, I want to thank you, I've enjoyed working with
14 you. I'm sorry we couldn't complete this together.

15 Okay, Judge, it's your deal.

16 THE COURT: Okay' Brook.

17 MR. OSGOOD: Judge' we wish you the best.

18 JUDGE BARTLETT: Thank you.

19 THE COURT: If you feel disposed to do so' I
20 wouldn't be adverse to you just hanging around with us a
21 little while this morning as we talk about these issues we're
22 going to talk about, simply because I may need some filling
23 in.

24 JUDGE BARTLETT: Why don't you sit up there at the
25 head of the table so everybody will know -

1 THE COURT: That's not really necessary' so I can
2 see everybody. Staffwise' we're going to start out using
3 some of Judge Bartlett's staff who have been in the case, and
4 Kathy from my quarters will be with me on it, and Libby will
5 be up here, eventually be here to do the reporting simply
6 because we're not going to discombobulate Judge Bartlett's
7 chambers completely, but being in chambers we will be.

8 I've only examined very quickly the critically
9 pending issues, of which I see there are two right now, one
10 being this grand jury testimony issue, and the other being
11 the Jencks issue that I understand is, even as we speak, is
12 in St. Louis; is that right?

13 MR. O'CONNOR: We have a runner taking it down
14 there.

15 THE COURT: Being filed, but he isn't making a
16 presentation to the panel or anything?

17 MR. O'CONNOR: No, sir.

18 MS. HUNT: We were going to notify that it was on
19 its way. We couldn't get anybody over the weekend.

20 THE COURT: So we can't expect a hurry-up ruling
21 from the panel down there, you don't think? It's happened,
22 but I don't think it's going to be in this case.

23 All right. We'll proceed until we hear something
24 to the contrary. I'm going to just -- I'm sorry that I don't
25 have more time to puzzle over it, but I don't really think it

1 would make any difference.

2 I'm going to sustain the defendant's motion to
3 compel production of grand jury testimony. It seems to me
4 it's Brady and that just ought to be produced. And I haven't
5 heard from' I haven't seen or heard any really good
6 explanation of why it isn't Brady. Effective relationship
7 doesn't sell me on -- the fact that some lawyer on one side
8 of the case or the other has concluded that it isn't credible
9 doesn't persuade me, so I'm going to, I'm going to allow
10 that. And also give Judge Bartlett's Instruction No. 5.
11 And, frankly, with the backup thought that it is not an
12 irretrievable error. We will ultimately be instructing the
13 jury, and they will ultimately have the elements that we
14 think the evidence has justified. I want that -- before we
15 start, I want that grand jury -- well, the Brady isn't grand
16 jury.

17 MR. BECKER: It was a grand jury transcript of this
18 fellow Larry Baker that was requested by the defense' and
19 I've provided a copy to the Court for in camera review. I
20 will absolutely give it to them if that's the Court's order
21 by, in fifteen minutes. It's five pages or eight pages or
22 something.

23 THE COURT: Before you do that in fifteen minutes,
24 let us look at it, because I haven't looked at it, to make
25 sure that it comports with what we think ought to be

1 included.

2 MR. BECKER: It's a little late to argue, but I
3 think the Court did review my point that when a witness is
4 fully available' as Mr. Baker is, it seems to be a prime
5 example -- accompanying the defendants' family to the grand
6 jury on multiple occasions, at this point living with the
7 defendants' mother -- that is the classic example of a
8 witness who is fully available to the defense and, thus,
9 anything he would have to say that may be in the possession 10
of the government would not be Brady material.

11 THE COURT: Well, I don't think we need to take
12 time right now. To me, that's credibility and weight
13 argument and not Brady argument. I think that under the law 14
they're entitled at least to look at it. So -- but we will, 15
again, before we rule definitively on that, we would like to 16 have
it. You provide it to Kathy here as soon as you can.

17 MS. HUNT: Judge, the motion also, we believe that
18 that was Brady material, but there's other grand jury
19 witnesses, we have no idea who they are or what their
20 testimony is, that has not been produced. We believe that's
21 probably Brady, too, and we would ask the Court to look at
22 that in camera at some point.

23 THE COURT: How have they been designated if they
24 haven't designated them as witnesses?

25 MR. OSGOOD: Example, Your Honor. There's a

1 witness on your list for this week by the name of Jerry
2 Rooks. Jerry Rooks gives a statement which inculpates two or
3 three of the defendants. He names a fellow named Kerr and
4 two other individuals that supposedly overheard this, and a
5 fellow named Young that was beaten up as a result of talking
6 to the police, as a result of Rooks talking to the police.

7 We have no statements whatsoever of any of these
8 people who allegedly overheard these defendants make
9 admissions to this fellow, Rooks. And in going through the
10 file, I could find none of those. There's nothing from
11 Young, there's nothing from Kerr. I've got to believe that
12 somebody interviewed these people because this is a critical
13 piece of evidence. And what I'm wondering is did they not
14 corroborate what this Rooks says. Rooks is the only witness
15 now' and there's a total absence of any reports on these
16 other people that are at all mentioned prominently in these
17 reports as having overheard what Mr. Rooks is going to
18 testify to.

19 MR. PETERS: If I can jump in, and we're all five
20 different people, but this may be something that if we get it
21 now or we get it five hours from now isn't going to make or
22 break us. And it may be fairer to the judge if he's had a
23 chance to listen to opening statements, start to hear the
24 names of people, and have a better idea as to the importance
25 of these people.

1 MR. OSGOOD: Good point.

2 MR. PETERS: We have an ongoing Brady issue that
3 we've advised you of. But in deference to Judge Stevens -

4 THE COURT: I appreciate that. I'm not unaware
5 that it's there. Can we handle it that way, as far as you're
6 concerned?

7 MR. BECKER: Absolutely. I mean, I've reviewed all
8 of these materials. I know exactly what Mr. Osgood is
9 talking about, and it's not Brady material.

10 THE COURT: If he knew Rooks' name, how is it that
11 you said that you don't know who these witnesses are? You
12 just said you don't know who these witnesses are, then he
13 named the name of one of the grand jury witnesses.

14 MS. HUNT: There was 90 witnesses plus one agent
15 testified in front of the grand jury. I think we've gotten
16 75. We don't know who they are. He's just suspecting there
17 might be somebody else. It's just suspicions because we have
18 no idea who the other people are besides the Larry Baker' the
19 issue that we raised in the motion. And if' frankly' if
20 they're witnesses the government is not using' like Larry
21 Baker' then it makes us suspicious that it's Brady material
22 for us.

23 MR. BECKER: Larry Baker was an alibi witness that
24 volunteered to come forward and testify. As the Court knows'
25 we're not obligated to present exculpatory material to the

1 grand jury, but we did so. using Larry Baker as an example
 2 is not a fair example. He's someone who is the
 3 brother-in-law of the defendants, now lives with the
 4 defendants' mother, and volunteered to come forward with sort
 5 of an alibi. The issue is whether or not he actually
 6 testified to an alibi in the grand jury.

7 But that's not a typical witness in this
 8 investigation before the grand jury because he was presented
 9 at the behest of the defendants. I don't believe that
 10 ultimately his testimony is Brady because when he says I
 11 don't remember, it seems to me that's not Brady, and I cited
 12 a couple of cases in my response yesterday to that effect.

13 THE COURT: Because you don't think it's
 14 exculpatory?

15 MR. BECKER: Correct. And also' my earlier
 16 argument that here is a classic example of, in many cases
 17 have talked about where a witness is fully available to the
 18 defense and has been forever' that is not Brady material.

19 THE COURT: What is your response to that?

20 MS. HUNT: It's a prior statement of a witness
 21 that's on my witness list that I think is Brady material. He
 22 told us he was subpoenaed. I don't know because I haven't
 23 seen the transcript. He says he voluntarily came forward.
 24 Mr. Becker tells us he was subpoenaed and forced to testify.

25 MR. BECKER: He was subpoenaed because we were made

1 aware that he had information about the whereabouts of Skip
2 Sheppard on the evening of November 28' 1988. And I knew
3 what that information was. It wasn't something that said, "I
4 knew he was on the top of the hill." It was information that
5 would, say, lead us to believe he was home in bed. But, you
6 know, it was presented and on the record under oath.

7 MS. HUNT: Thatch an alibi statement, from what
8 you're characterizing. I haven't read the transcript. I
9 don't know.

10 MR. BECKER: But you need to look at the cases that
11 talk about witnesses who are fully available to the defense.
12 That information is not Brady within the scope of Brady.

13 THE COURT: All right. We need the material and we
14 need to look at what you've cited to us, neither of which
15 we've been able to do up to this point. But if we can get
16 going' I think it would be -- not right now' but I mean
17 within 30 or 40 minutes' I think it would serve our better
18 purpose to just get started and play this out.

19 I would appreciate' and I realize' as Pat had said'
20 that you have diverse interests, and I don't know to what
21 extent their diversity involves conflicting -- I assume there
22 may be some conflicting interests' I don't know yet. But I
23 would appreciate it if counsel would undertake not to repeat
24 each other one after the other five times on any given
25 objection or any given point being made by the defense.

1 I am disposed, I have had administrative counsel
2 work very effectively, and I realize there's some diversities
3 that might not make it possible to have a full-blown
4 administrative counsel' but I'm going to ask John O'Connor to
5 serve as the quasi administrative counsel here and try to
6 keep this record as abbreviated as possible and try to make
7 it as unconfusing as possible for this jury and for me.

8 MR. O'CONNOR: You haven't been around these guys'
9 then, Judge.

10 THE COURT: Well, I have, and I also know what to
11 do with them if they don't cooperate with me. so I think
12 we'll be able to get along fine. But I just think you all
13 ought to know whenever something comes up that I'm going to
14 be looking at him first. And if he can't handle it for
15 everybody, you all can make your record on that, and we'll go
16 from there.

17 MR. OSGOOD: Your Honor, there's one other issue
18 that's very important to the collective defense that we
19 talked about and you need to be aware of. We originally
20 filed two motions that were somewhat strung together' a
21 motion for pre-indictment delay, and a motion for -

22 THE COURT: Say that again, a motion for?

23 MR. OSGOOD: Pre-indictment delay, dismissal on the
24 basis of pre-indictment delay, and motion to dismiss on, the
25 motion on the statute of limitations.

1 I haven't seen the order denying for statute of
2 limitations. In front of the magistrate we took the position
3 that eight years created a presumptive prejudice and we
4 shouldn't have to put on any evidence. And alternatively' if
5 we did put on evidence, we're candidly going to put on a
6 fishing expedition. And we wanted to put on Agent True and
7 take off and see where it led us because we didn't have any
8 discovery. It was a closed file. She denied both the
9 motions and, candidly, I was citing speedy trial cases that I
10 was grafting onto the pre-indictment delay theory for the
11 presumptive prejudice.

12 The magistrate denied that motion on the basis of
13 existing Eighth Circuit law and Lovasco, the Supreme Court
14 case, and said we have a two-part burden under that, as you
15 recall. It's prejudice, in fact, and purposeful delay on the
16 part of the government. My point was we can't show that
17 because we didn't have any discovery.

18 After that, on December 24th we got about 3,000
19 pages of discovery. In reviewing that discovery, and I'm
20 still reviewing it, we saw a pattern in our mind that there
21 were police interviews in ,88 and '89. Following those
22 police interviews in '88 and '89' Bryan Sheppard was charged
23 but nobody else was charged.

24 The case laid dormant until almost ,94' ,95, ,96
25 when Agent True went back and got those police reports and,

1 in effect, we contend used those police reports to bootstrap
2 his testimony through ATF interviews, DOL interviews, and
3 then less than a month later, or two, in some instances a
4 little longer, grand jury testimony.

5 So my point to Judge Bartlett was that we had
6 never, obviously, abandoned this and we wanted to revisit
7 it. And Judge Bartlett said at that time, well, we can have
8 a hearing on Friday, Saturday, Sunday, and Monday, if
9 necessary.

10 Alternatively, we suggested, and Judge Bartlett
11 agreed tentatively, that what we would do is treat it much
12 like a Bell kind of issue on conspiracy, that we would alert
13 the Court as these witnesses testified, very briefly. And
14 the pattern is going to be repetitive and consistent, and
15 we'll be cross-examining with these original police reports
16 and cross-examining with the statements from the agents and
17 the grand jury and laying a foundation for the dates that
18 those events occurred, so it would be very obvious, the
19 pattern. And that at the close of the government's case we
20 were going to ask the Court to then rule as to whether or not
21 we had established our burden under current law, Lovasco,
22 that there had been pre-indictment delay and that it was
23 prejudicial to the defendant.

24 THE COURT: Do you know the names of the
25 witnesses?

1 MR. OSGOOD: It's virtually every witness that's
2 going to testify in the case that pattern existed' Your
3 Honor.

4 THE COURT: Let's just assume that that running
5 objection had been made' and we'll deal with it at the
6 appropriate time.

7 MR. OSGOOD: The only thing that might occur is
8 there might be some nuance on it' and we suspect Agent True
9 is going to testify as nearly the last witness in the case.
10 It might be necessary at that time out of the presence of the
11 jury to do a little additional inquiry with him to get at the
12 finality of the issue' but it should go very quickly
if we
13 handle it that way. And then at the close of their case' you
14 would make a preponderance of the evidence ruling under the
15 existing law.

16 We're not abandoning our argument that there's
17 presumptive prejudice from eight years, and I want to graft
18 those Supreme Court cases on and say we don't have to show
19 that there was bad motive by the government. If we're
20 prejudiced over the course of this thing substantially, then
21 you ought to dismiss it.

22 THE COURT: Is this an issue that is presented on a
23 unified basis? That is, applies to everybody?

24 MR. OSGOOD: Yes, sir. I think so.

25 MR. PETERS: What we might be able to agree to is,

1 to aid the Court, we'll keep a running total and we'll -
2 what we'll do is we'll do essentially a proposed findings of
3 fact' conclusions of law to aid the Court at the end, and
4 we'll keep that running. How complete it is depends on how
5 much time we have to type and proofread. But we'll take the
6 responsibility for keeping those findings of fact that we
7 think you'd find in relation to this issue.

8 MR. OSGOOD: Okay. And that's essentially it.

9 THE COURT: All right. Let's do it that way, as
10 you suggested, then, and approach it, deal with it at the
11 appropriate time.

12 MR. PETERS: Two other very brief issues. Four of
13 the five defendants will renew their motion for continuance,
14 no argument. The Court is aware of extensive discussions
15 about our request for a continuance. What has been added is
16 also a part of the record. We've now had the issue of the
17 writ that has consumed three counsel, three days. We don't
18 need an argument. We accept that it will be overruled -
19 denied' I keep forgetting.

20 THE COURT: I intend to rule consistently with the
21 way Judge Bartlett ruled it.

22 MR. PETERS: My understanding' and Judge Bartlett
23 can correct me, we had the issue of the two sealed witnesses
24 or grand jury stuff. Judge Hays had ordered that they be
25 produced. My understanding of the status was that it was

1 under advisement.

2 MR. BECKER: If I may, there was a written order
3 that Mr. O'Connor was going to bring over to you.

4 MR. O'CONNOR: I gave those papers out when
5 everyone was there. You may have looked at the statute of
6 limitations and not the other order.

7 MR. BECKER: There's a written order.

8 THE COURT: Okay? All right.

9 MR. BECKER: Judge' two things. One' here is a
10 copy of that grand jury testimony.

11 Secondly' I don't believe you've met Dan Miller'
12 this is Judge Joseph Stevens. Dan is a Special Assistant
13 united States Attorney. He gets paid by the Jackson County
14 Prosecutor's Office' that's what he really does for a living.

15 THE COURT: You work for my friend Claire, huh?

16 MR. BECKER: That's right. And he will be here and
17 helping present the evidence in the case.

18 MR. MILLER: I met you a year or so ago in Judge
19 Wells' chambers once.

20 THE COURT: That's right. I remember that.

21 MR. O'CONNOR: When the witness comes on' the
22 order, we're going to go by order of indictment unless we say
23 otherwise, and it will be the first person and then back to
24 the order of the indictment when you call on us, so there's
25 not a big jumble as to who is going to -

1 THE COURT: Peters, Hunt, Bunch, O'Connor, Osgood,
2 unless otherwise ordered? This is for cross-examination
3 purposes?

4 MR. O'CONNOR: Yes.

5 MR. BECKER: As a part of the pretrial orders' the
6 government was ordered to provide a list of the witnesses for
7 the first week in the order they will be appearing. That is
8 a result of my providing that list sometime' I guess last
9 week. I don't recall.

10 THE COURT: These names are, then' in that order,
11 right?

12 MR. BECKER: Yes. The only change would be to
13 delete some -- there may be a deletion, and I've talked to
14 Mr. O'Connor about that.

15 The government is also under a standing order to
16 provide a list of the next day's witnesses. So' for example,
17 this Friday we'll be providing the list of witnesses for
18 Monday, and then I believe the order is at 9 o'clock in the
19 morning, we're to provide the list for 9 o'clock the next
20 morning. And we'll be doing that as we go along.

21 THE COURT: All right. You might read the order.

22 MR. PETERS: Thank you, Judge. My recollection of
23 the order is that on Friday we would get the witnesses two
24 days in advance. On Monday, Wednesday's witnesses; Tuesday'
25 Thursday's witnesses.

1 THE COURT: You might read the order too. That's a
2 third possibility, but that wasn't what the order said.
3 Neither one of you have hit what the order said. Okay. What
4 time did you have the jury coming in?

5 JUDGE BARTLETT: 9:00.

6 THE COURT: Good. We'll try to be ready to go at
7 that time. No guarantees. But if not' it will be shortly
8 after that. And we appreciate your cooperation in this. I
9 now that you had -- this is not a fun exercise in many
10 respects' but -

11 MR. OSGOOD: Your Honor' what do you propose to
12 tell the jury about the change in judges, and the gallery?
13 I'm sure my client, being a suspicious type, is going to
14 wonder whether or not something is happening to him at the
15 last minute, which I think probably some of the relatives
16 will. So I think we need to at least explain briefly that
17 Judge Bartlett is ill or something.

18 THE COURT: That's a detail I haven't discussed
19 with Judge Bartlett, but I'm going to leave it entirely up to
20 him. And whatever he wants said and however he wants it said
21 is the way it's going to be done.

22 MR. OSGOOD: I think we need to tell them a little
23 something to allay the fears of the defendants because
24 they're comfortable with you, quite candidly, right now my
25 client is, and so we need to tell them a little something.

1 JUDGE BARTLETT: I'm prepared to tell them whatever
2 you all think should be told to make certain that they
3 realize that this is not a matter of my choice or of Judge
4 Stevens, choice. He was enjoying his holidays until this
5 call took place. I'll be glad to make -- I mean' I want to
6 make enough of a statement so that it's clear to everybody
7 that this was done in a' after consideration and done in
8 accordance with procedures that we use traditionally in this
9 court for reassigning the case' if necessary' to another
10 judge. I certainly don't want there to be any reasonable
11 basis for any kind of belief that something sinister is going
12 on.

13 MR. OSGOOD: Which there obviously isn't. But you
14 know how defendants sometimes think.

15 JUDGE BARTLETT: I'm very appreciative of that. I
16 certainly -- they've got enough to worry about. I don't want
17 them worrying about this needlessly. But let me talk to
18 Judge Stevens here' and we'll decide how we're going to
19 handle it. I think the jury also deserves an explanation
20 because they haven't seen a great deal of me, but at least
21 they assume I'm -- I mean, I've told them I was going to be
22 the judge, and now I need to introduce Judge Stevens to them
23 so that they feel comfortable with him.

24 MR. PETERS: Along the jury lines, would you expect
25 that the jury will still be able to take notes?

1 THE COURT: I'm going to do the same thing that
 2 Judge Bartlett has -- I've never done it. I mean, I've done
 3 questions and gotten virtually none. But I've never done
 4 note taking. And I have a concern about that' which is the
 5 reason I've never done it' but I'm willing to try it and see
 6 how it works. Because I think, I think that the taking of
 7 notes gives what that juror remembers was said and puts on it
 8 a certain weight and credibility that it might really not
 9 deserve, particularly if he writes, he or she writes it down
 10 wrong.

11 But we'll go with it. But I do, we will insist
 12 that they leave the -- and this will be something that Kathy
 13 will have to police, but we're going to insist, of course'
 14 that they leave their notes with us each night and not take
 15 them home' and not show them to anybody else during the
 16 course of the trial.

17 MR. O'CONNOR: Judge' Elena Franco is here' and her
 18 and Susan hunt are trying this together.

19 MS. FRANCO: Good morning' Judge.

20 THE COURT: Good morning. Anybody got anything
 21 else?

22 MR. O'CONNOR: The only thing we were going to
 23 discuss among ourselves is Mr. Peters is the only one that's
 24 going to make an opening statement, and we may not want you
 25 to discuss if we intend to make one. We may tell you on the

1 record beforehand that we don't intend to make one so you
2 wouldn't need to call on each one of us to make one as if we
3 were going to. I want to talk to the other lawyers to make
4 sure that's all right. So when Mr. Peters is finished, you
5 can tell Mr. Becker if he's ready to go to call his first
6 witness.

7 THE COURT: All of you, maybe Will, I'm not sure
8 we've ever done a start-to-finish combat, but you've been
9 with me enough to know that I really appreciate very brief
10 speeches in the courtroom. Stand up and say the critical
11 basis for the objection. I've been around
long enough to

12 know whether it's hearsay or opinion or whatever it
is. We

13 don't need to have speeches along those lines.

14 Don't repeat each other, we've been over that. I
15 guess now I'm repeating myself. And I think we'll be all
16 right. So let's try to start as close to 9 o'clock as we can
17 get started. You guys have got some talking to do.

18 The jury is in your jury room, Judge; is that
19 right?

20 JUDGE BARTLETT: Yes. They will be.

21 MR. O'CONNOR: You're saying 'Judge' if we're
22 making an objection to a legal point, if it needs to go
23 beyond that, we need to approach the bench?

24 THE COURT: Yes. The thrust of what I said, too,
25 John' is I want to minimize bench conferences as much as

1 possible because there's nothing more boring than 15 minutes
2 of the lawyers standing around and arguing with the judge and
3 the jury hearing half of what's said. Not enough to know,
4 but enough to know that they want to know the other half.

5 MR. PETERS: Judge, on that point, and I was going
6 to talk to Mr. Becker and Judge Bartlett, I was asked by
7 everybody and was planning in my opening to alert the jury to
8 that component, that we're five individual defendants, but
9 that from time to time to save time, they may see us cluster
10 together to talk, just so that they don't think that we are
11 five, we aren't a solid entity. And I was going to, I was
12 going to say something briefly about that in my opening
13 statement.

14 THE COURT: Make sure it's briefly. They're going
15 to be instructed to that effect in no uncertain terms, both
16 before and after.

17 MR. PETERS: I'll get with Paul and let you know
18 the exact wording of what I was going to do.

19 JUDGE BARTLETT: I've got one more thing. I
20 received a telephone call on Thursday or Friday' and I've
21 forgotten now which day it was, from Judge Whipple. And he
22 was concerned about what he termed as the trashing of his
23 jury room. He believed that it was somebody connected with
24 this case.

25 I told him that I would speak with you all and urge

1 you that if you do use his jury room, you're responsible for
2 keeping it in relatively neat condition.

3 MR. OSGOOD: When was that, Your Honor?

4 MR. O'CONNOR: He came in this morning, Your Honor,
5 and laid down the law just a few minutes ago.

6 THE COURT: He explained that to you?

7 MR. O'CONNOR: Yeah. And then slammed the door and
8 left. We got the picture.

9 JUDGE BARTLETT: I guess he didn't have any
10 confidence that I would get the message to you.

11 MR. O'CONNOR: He did.

12 JUDGE BARTLETT: So you have now gotten it.

13 MR. PETERS: We've contacted Merry Maids.

14 THE COURT: Are all of your clients in custody?

15 MR. OSGOOD: Mine is not, Your Honor.

16 THE COURT: Yours is not.

17 MR. PETERS: Richard Brown.

18 (Court and counsel conferred off the record.)

19 JUDGE BARTLETT: Judge, if I could. This is some
20 information on the jury. First of all, with regard to Dana
21 Holst, Alternate No. 1. As you all recall, she works at
22 Research Medical Center in the radiology area, in billing.
23 Last, was it last week?

24 COURTROOM DEPUTY: Friday.

25 JUDGE BARTLETT: Friday she was at work, and one of

1 her fellow employees came up and said they recognized her
2 from the sketch that was done of the jury, and another
3 employee came up and said the same thing, essentially.

4 She told Miss Duer, Miss Holst told Miss Duer that
5 she declined to admit that it was her. She just said she
6 couldn't talk about it' and that ended that subject.

7 Anybody want to say anything to Judge Stevens' any
8 ore about that?

9 All right. The next matter relates to Marsha Boyd'
10 who is Juror No. 4. She told Miss Duer what' her husband
11 mentioned the name?

12 COURTROOM DEPUTY: Her husband.

13 JUDGE BARTLETT: Her husband mentioned that he knew
14 of Ray Stribbling, one of the witnesses that was called
15 during the general voir dire, and that her husband was a
16 friend of a friend of Ray Stribbling's' if it was the same
17 person, and that she recalls the name, and the connection was
18 about 13 years ago that they knew of each other. And she's
19 -- Miss Boyd said she did not know at this time whether or
20 not she would even recognize Ray Stribbling or if he would
21 recognize her' or if it was even the same person.

22 MR. BECKER: For what it's worth, he is on the,
23 what we would call the reserve list.

24 Judge Stevens should be aware, the government filed
25 a long witness list. It's a long story about that, but be

1 that as it may, following that, the list was divided into two
2 lists: Those that we believe actually are going to testify
3 at trial, and those that are on the reserve list or unlikely
4 list or potential list. And Mr. Stribbling is certainly far
5 down the potential list. It's, it's doubtful he'll be called
6 as a witness. But this is a matter that she mentioned during
7 voir dire. This isn't anything new.

8 THE COURT: She did mention it?

9 MR. BUNCH: I believe she did.

10 MR. BECKER: She said she heard of the name, and it
11 was someone that her husband may have known. So that was
12 explored at the time.

13 THE COURT: Did you get the impression, Tina, that
14 she thought this hadn't come up before?

15 COURTROOM DEPUTY: I think -- no' I did not get
16 that impression' but I think she was so overly concerned
17 about it and wanted to be so cautious of it that she wanted
18 to make sure Judge Bartlett had been told about it.

19 THE COURT: Okay.

20 MR. PETERS: Defendants have no objection or feel
21 no need to question her or make inquiry.

22 THE COURT: Okay. All right. We'll see you in -

23 MR. PETERS: Before we go. Judge' you had said
24 that we did not correctly state the order. We can go pull
25 ours' or you can -

1 JUDGE BARTLETT: Here it is right here. It's
2 entitled Order Affirming and Modifying Magistrate's Orders
3 land Granting in Part and Denying in Part Defendants' Motions
4 for Continuance filed January 17th. Is this our only copy of
5 it' or can we make more copies of it?

6 MR. BECKER: I'm sure we have copies' Judge. I
7 have copies.

8 MR. O'CONNOR: We do' Judge.

9 JUDGE BARTLETT: But what you all were talking
10 about' the time schedule for revealing the' their witness
11 list' which was all, Judge Stevens, which was all part of the
12 rulings on denying the request for continuance. I instituted
13 various procedures, including requiring the government to
14 give the defendants their first week's witnesses, and then
15 after the first week required that the government reveal the
16 names of its witnesses for the next day at some point.
17 Now, I originally told the parties that it would be
18 After the first week that the government would reveal the
19 Inames of their witnesses at 9 o'clock' no later than 9
20 ~o'clock the day before so that there would be a full 24
21 hours.

22 In this order' I changed that to read as follows:
23 After the first week of trial, the United States shall
24 provide defense counsel with a list of the witnesses it
25 ~ expects to call the next trial day no later than an hour

1 after the completion of the previous day's, previous trial
2 day's testimony.

3 The reason I changed that was because I became
4 concerned practically how it was going to work because the
5 pace with which the trial proceeds, how much progress is made
6 in one trial day obviously affects the next trial day. So it
7 seemed to me that the most accurate information could be
8 furnished to defense counsel after the chose of each trial
9 day as to what they were going to do, who they were going to
10 call the next trial day. So that's why that particular
11 alteration was made in what I had previously stated.

12 THE COURT: Everybody got that in mind?

13 MR. O'CONNOR: Yes, sir.

14 MR. PETERS: Thank you.

15 THE COURT: Okay. Thank you.

16 (A recess was taken. Thereafter, the following
17 proceedings were had in chambers in the presence of Court and
18 counsel, but out of the presence of the defendants:)

19 THE COURT: All right. We want to go on the record
20 here. Our question of the first alternate, alternate No. 1,
21 Ms. Holst.

22 COURTROOM DEPUTY: Walker was excused, and Dana
23 Holst is No. 1.

24 THE COURT: All right. So Holst is 1, Baird is 2,
25 Riead is 3, and the fourth alternate should be Charles F.

1 Morrison.

2 It is my proposal that we ask Mr. Morrison into the
3 courtroom, I think it will have to be done there because I
4 believe all of the defendants should be present when this
5 inquiry takes place, and simply tell him that he has been
6 selected as the fourth alternate in the case, and is there
7 any reason why he cannot, any serious reason why he cannot
8 serve.

9 And we'll evaluate his reason, if he has one. I
10 will then give' I will then -- well, I will give him the
11 opportunity to say why he can't serve' and I think that's
12 what we'll do' unless somebody has a problem with this.

13 MR. OSGOOD: The issue that we raised as to when he
14 was contacted, there was an article in Monday's paper, rather
15 big front page -- Monday, yeah, yesterday, a full-page
16 spread. And we were concerned when we discussed this problem
17 that he be instructed not to read the paper, that he was
18 going to continue to be a juror.

19 COURTROOM DEPUTY: I believe that Sue contacted him
20 at some point on Thursday and did suggest to him not to read
21 anything or listen to anything about the case.

22 MR. OSGOOD: That's fine, then.

23 MR. PETERS: And without having a chance to talk to
24 counsel, given we're talking about taking this guy into now a
25 packed courtroom' how about, could we agree that the Court

1 ask him here and we would agree to that, waive our clients
2 hearing it?

3 I'm just thinking this juror is going to be walking
4 out in an environment that's going to be kind of
5 frightening. And we have no reason to think that he's -

6 THE COURT: I don't like that either' but I don't
7 like an examination -- I don't like doing anything important
8 in the case outside the presence of the defendants. That's
9 the reason I -- and this room isn't big enough for everybody
10 to be in here, I don't think. Does anybody think we could
11 squeeze them in here?

12 MS. FRANCO: We had them in here for individual
13 voir dire.

14 MR. O'CONNOR: For as short as it would be' they
15 could sit and we could stand.

16 MR. OSGOOD: Sure.

17 THE COURT: I would rather do that than have that
18 fellow stand in there in front of all of those firemen and
19 family members and whatever. All right. Let's do it that
20 way' then. Get your clients in here.

21 You all' we've got another issue' and I'm not sure
22 whether it was discussed with you last week or not. But we
23 have the question of smokers on the jury and nonsmokers on
24 the jury and concerns with secondhand smoke and that sort of
25 thing. And we're going to have Judge Fenner's jury room

1 available to the smokers and tell them they can take an
2 occasional break with the admonition that' of course, that
3 they do not discuss the case while they're on the breaks and
4 then return and deliberate only when all 12 are there.

5 MR. OSGOOD: Your Honor' it crossed my mind after
6 we left the first session. You said you were going to
7 instruct them not to discuss their notes with anyone. That
8 might be a little ambiguous. They might take that to mean
9 outside the jury room. It's consistent until it's over.

10 THE COURT: That's right. until they've had the
11 full instructions of the Court and they've been instructed
12 that they can talk about the case among themselves.

13 MR. OSGOOD: So their notes should be secured as if
14 they're locked in their memory among themselves.

15 THE COURT: Yes.

16 (The following proceedings were had in chambers in
17 the presence of the defendants:)

18 THE COURT: Do you want to maybe give the -- we've
19 changed our format here and have these folks in here. Do you
20 want to indicate to them what's going to happen' or do you
21 want to still do it out in the courtroom?

22 JUDGE BARTLETT: No, no, this would be fine.

23 Folks, due to a health problem which requires I
24 receive some treatment of an unknown nature and to an unknown
25 extent at this point, which in my judgment would undoubtedly

1 interfere with my ability to preside over this case, I
2 advised as many of the judges on the court as I could find
3 for a telephone conference, which was all but two, three, all
4 but three, of what the situation was.

5 With the unanimous consent of all the judges, a
6 random drawing was conducted in which all the judges' names
7 were put into the pot, and the Clerk of the Court drew out
8 one name' and Judge Stevens, who is the person who was just
9 speaking, his name was drawn. So he is going to be the judge
10 presiding over the case.

11 I wanted you all to know that and to know that
12 absent a very unusual situation, there would not have been a
13 change of judge and that the procedure for doing it, for
14 selecting the judge was the procedure that we use
15 traditionally in this court when a case has been reassigned
16 to another judge. In other words, the cases are assigned at
17 random when the indictment is returned, and if there has to
18 be a change of judge, they are reassigned by random draw, and
19 that's what happened here. Okay. Thank you.

20 If you or your attorneys have any questions, I
21 would be glad to answer.

22 THE COURT: I was going to give them the
23 opportunity -- do you have any record you want to make on
24 that statement by Judge Bartlett?

25 DEFENDANT DARLENE EDWARDS: I wish you well, Judge.

1 MR. PETERS: Judge Bartlett, just so you know,
2 that's what my client just leaned over to tell me.

3 THE COURT: What's that?

4 MR. PETERS: Darlene wished him well' we've been
5 with him quite a bit. My clients were instructed not to
6 speak.

7 JUDGE BARTLETT: Thank you all. And I wish you' I
8 wish you good luck.

9 MR. PETERS: Judge' real briefly because we're
10 going to be out there in a minute. Why don't the five
11 defendants say your name to the judge so he can put a name
12 with a face.

13 DEFENDANT GEORGE FRANK SHEPPARD: Judge Stevens'
14 I'm George Frank Sheppard.

15 DEFENDANT RICHARD BROWN: I'm Richard Brown, Mr.
16 Stevens.

17 DEFENDANT EARL SHEPPARD: I'm Earl Dean Skip
18 Sheppard, Judge.

19 DEFENDANT BRYAN SHEPPARD: Bryan Sheppard.

20 DEFENDANT DARLENE EDWARDS: I'm Darlene, of
21 course. You probably figured that one out.

22 THE COURT: That one wasn't too hard.

23 MR. O'CONNOR: Judge, I have another matter about
24 the opening statements. Since Mr. Peters is making one, I am
25 going to reserve on behalf of Bryan Sheppard my opening

1 statement, so I would request the Court not call on me after
2 Mr. Peters finishes, that we would just go back to Mr. Becker
3 to call his first witness.

4 MR. OSGOOD: Same on behalf of Defendant Brown,
5 Your Honor.

6 MS. HUNT: Again, on behalf of Skip Sheppard, Your
7 Honor.

8 MR. BUNCH: Same on behalf of Darlene Edwards.

9 THE COURT: So the only opening statement we'll
10 have will be by Mr. Peters? That is, at the beginning of the
11 case will be by Mr. Peters on behalf of George Frank
12 Sheppard, and I'll not, I'll simply not say anything about
13 the fact that there's a reservation or a waiver by the other
14 people, and you do what's appropriate at the beginning' then'
15 of the defendant's case as far as your remaining right to
16 make opening statement.

17 MR. O'CONNOR: Yes' sir. And then as to -- I think
18 Mr. Becker may have an exhibit that he's going to refer to on
19 the opening statement which is kind of where we can't see
20 it. And since Mr. Peters is the only one that's going to
21 make an opening, do you mind if he moves over there to look
22 at that while he's talking?

23 THE COURT: Absolutely not. That's fine.

24 MR. O'CONNOR: That's all we have.

25 THE COURT: Mr. Becker, anything?

1 MR. BECKER: No, Judge, we're ready.

2 THE COURT: All right. Let's go to work.

3 (The following proceedings were had in the
4 courtroom out of the presence of the jury' but in the
5 presence of Alternate Juror Charles Morrison.)

6 THE COURT: Hi, Mr. Morrison, I'm Judge Joe
7 Stevens.

8 ALTERNATE JUROR CHARLES MORRISON: Glad to know
9 you, sir.

10 THE COURT: I'm going to be trying this case. You
11 have been selected as the fourth alternate in this case.

12 ALTERNATE juror CHARLES MORRISON: Okay.

13 THE COURT: I'm sure you probably understand this,
14 but I'll tell you' the only responsibility you have is to
15 listen, be here and listen and be prepared to sit as a juror
16 if that becomes necessary. Is that agreeable with you?

17 ALTERNATE juror CHARLES MORRISON: That's fine.

18 THE COURT: Then do you know where the jury room
19 is' do you know where the jurors are?

20 ALTERNATE juror CHARLES MORRISON: Not from here, I
21 don't.

22 THE COURT: Will you show him to where the jurors
23 are? And we'll be calling you all to get started here very
24 promptly. Thank you' Mr. Morrison.

25 ALTERNATE Juror CHARLES MORRISON: Okay. Thank

1 you.

2 MR. PETERS: Do we want to ask any follow-up as to
3 whether or not by chance he's heard anything since he last
4 talked to the Court?

5 THE COURT: We can do that' if you want to. Did
6 you read or see or listen to' hear anything about this case
7 over the weekend?

8 ALTERNATE Juror CHARLES MORRISON: The only thing I
9 heard was they was going to trial today. That was on the
10 news last night' and that was it.

11 THE COURT: And you knew that already.

12 ALTERNATE Juror CHARLES MORRISON: Yeah' I already
13 knew that.

14 THE COURT: Okay. Thank you, Mr. Morrison. If
15 you'll join the jury, we'll call you in a few minutes.

16 (Alternate Juror Charles Morrison left the
17 courtroom.)

18 THE COURT: Okay. Anything else?

19 MR. O'CONNOR: No, sir.

20 THE COURT: Fine. I think we'll get going on
21 this. It's ten to 10:00. We certainly ought to get openings
22 done by noon.

23 And I will tell these people, I didn't while we
24 were in there, but I'll tell these people the schedule

I

25 intend to keep' which is basically the one that Judge

1 Bartlett has already indicated to you: 9:00 to 12:00 with a
2 15-minute break in the morning' and 1:00 or 1:30' depending
3 on what has to be done over the noon hour, until 4:30 or
4 5:00, again, depending on what has to be done in the evening,
5 with a 15-minute break during the afternoon. We will work
6 four-day weeks after this week. This week will be a
7 three-and-a-half-day week. We'll work Friday morning until
8 noon or 1 o'clock, and then break for the rest of the day.
9 And then after this week, we'll work Monday through Thursday
10 and take Friday off. Anybody got any problems with that?

11 DEFENDANT EARL SHEPPARD: No' I think I can make
12 it.

13 THE COURT: We'll look forward to it. Okay. Thank
14 you all.

15 All right. Anything before we bring the jury in,
16 ladies and gentlemen? All right. Bring in the jury, if you
17 would, please.

18 (The following proceedings were had in the
19 courtroom in the presence of the jury:)

20 THE COURT: The explanation I'm about to make has
21 already been made to the members of the jury and to the
22 parties and their counsel.

23 To the rest of you' I say that by reason of health
24 concerns, which must be dealt with immediately, Judge
25 Bartlett has concluded that he would not be able to give an

1 appropriate amount of time and energy to the management of
2 this case and, therefore, has recused himself from it.

3 In a meeting of the court last night' the usual
4 system of drawing' of a random draw for a substitute or
5 successor judge was followed, and my name' and my name is
6 Judge Joe Stevens, my name was drawn, and I will be the judge
7 presiding in this case.

8 of course' we all wish Judge Bartlett well' and we
9 will proceed' being the beneficiaries of his good work up to
10 this point.

11 Now' Miss Duer' would you please swear the jury?

12 COURTROOM DEPUTY: Will the jury please stand and
13 raise your right hand' and I will administer the following
14 oath.

15 (The jury was sworn by Tina Duer' Courtroom
16 Deputy.)

17 THE COURT: I will explain to you that during the
18 case' my staff will be present from time to time and working
19 on the case' and it may very well be that parts or all of
20 Judge Bartlett's staff will also be present during the case.
21 You've seen those functions of Judge Bartlett.

22 Miss Geller is here on the other side of the
23 courtroom. She is my law clerk who will be principally
24 responsible for this case' and eventually Miss Sheehan will
25 be here serving as the courtroom deputy.

1 Now, is the government ready to proceed?

2 MR. BECKER: Yes, Your Honor.

3 THE COURT: Are the defendants ready to proceed?

4 MR. O'CONNOR: Yes, Your Honor.

5 THE COURT: All right, then, Mr. Becker, you may
6 open.

7 MR. BECKER: Judge, I'm ready to open. I thought
8 you were going to give some preliminary instructions to the
9 jury.

10 THE COURT: Well, I guess I should do that prior to
11 opening.

12 All right. I'm going to give you now some initial
13 instructions about this case and about your duties as
14 jurors. At the end of trial' I'll give you further
15 instructions. I may also give you instructions during the
16 trial. Unless I specifically tell you otherwise' all
17 instructions' both those -- Miss Geller is going to pass out
18 the instructions to you as I proceed. And I'm on Page 1 of
19 No. 1.

20 Unless I specifically tell you otherwise, all
21 instructions, both those I give you now and those I give you
22 later, are binding on you and must be followed.

23 (The preliminary instructions were read by the
24 Court.)

25 THE COURT: All right. Mr. Becker, you may open

1 for the government.

2 MR. BECKER: Thank you, Judge.

3 Your Honor, ladies and gentlemen of the jury.

4 THE COURT: Yes.

5 MR. BECKER: Good morning. My name is Paul Becker,
6 this is Dan Miller. We're Assistant United States Attorneys,
7 and it is our privilege to represent the United States of
8 America in this case, The United States of America vs. George
9 Frank Sheppard, Earl Skip Sheppard, Darlene Edwards' Bryan
10 Sheppard' and Richard Brown.

11 We will be presenting the evidence to you over the
12 next two and a half weeks on behalf of the government.
13 Assisting in that and sitting here throughout the trial will
14 be Dave True. He was introduced at' I believe in voir dire,
15 and he is a 28-year veteran of law enforcement and is a
16 special agent with the Bureau of Alcohol' Tobacco' and
17 Firearms. Also assisting is a paralegal in my office, Sharon
18 Hutsler, who will ensure that Dan and I have witnesses to put
19 on the witness stand to keep this process going.

20 The defendants in this case are all related in some
21 regard. The defendants are, second chair over there, that's
22 Frank Sheppard, and then seated behind Agent True is Skip
23 Sheppard' and then at the first table, Darlene Edwards, and
24 over there is Bryan Sheppard, and then finally Richard
25 Brown. Thank you.

1 Frank Sheppard, as he is called -- his name is
2 George Frank Sheppard, but throughout the trial he'll be
3 referred to as Frank Sheppard -- and Skip Sheppard are
4 brothers. Bryan Sheppard is their nephew. He is the son of
5 Jack Sheppard and Virginia Sheppard. Darlene Edwards at the
6 time of this crime in 1988 was the girlfriend of Frank
7 Sheppard. And finally' Richard Brown was the best friend of
8 Bryan Sheppard throughout this time period.

9 The purpose of an opening statement by the
10 government, as briefly referred to by Judge Stevens' is to
11 give me an opportunity to outline the government's case for
12 you, to give you a road map to the government's case so that
13 when you hear testimony from the witness stand, when you see
14 exhibits placed in evidence, you have some idea where that
15 fits in the overall picture of the case. So that's what I
16 will be doing for the next half an hour, I hope, is briefly
17 reviewing the charge against these defendants, reviewing what
18 the evidence will show as to what happened in this case, and
19 then finally outlining for you how the government will prove
20 beyond a reasonable doubt, how they will prove what happened,
21 how we will prove this charge.

22 The charge in the case is a single, one charge
23 against all five defendants, and the Court has gone ahead and
24 given you the elements of that, and I think that will be most
25 helpful to you, and so I won't repeat any of that. You now

1 have what the factors are, what things you have to think
2 about to, what adds up to this charge.

3 And there's two different parts of this charge.
4 Let me read it for you, the one charge in the indictment.

5 On or about November 29, 1988, in the Western
6 District-of Missouri, the defendants' George Frank Sheppard,
7 Earl D. Skip Sheppard, Darlene Edwards, Bryan Sheppard,
8 Richard Brown, and others known and unknown to the grand
9 jury' maliciously damaged and destroyed by means of fire and
10 explosive materials vehicles and other personal property' to
11 wit: tractor trailers containing ammonium nitrate, used in
12 an activity affecting interstate commerce, and, as a direct
13 and proximate result of the defendants' conduct, death
14 resulted to James Kilventon, Robert McKarnin, Michael Oldham,
15 Gerald Halloran, Thomas Fry, and Luther Hurd, who were Kansas
16 City' Missouri' Fire Department firefighters performing their
17 duties. All in violation of Title 18, United States Code,
18 Section 844 and Section 2.

19 And I won't talk any more about Section 2 because
20 the judge gave you that. That is aiding and abetting. And
21 the judge' again' gave you two separate instructions' the
22 instruction about the arson, and then the instruction about
23 what aiding and abetting, assisting one another and the
24 consequences of that in federal law.

25 What happened? What happened that led to us being

1 here in federal court? In the early morning hours of
2 November 29, 1988, somewhere in the vicinity of 3 a.m., these
3 five defendants drove several vehicles to a construction site
4 located on the south side of Kansas City, Missouri. This
5 construction site, as listed here on Government's Exhibit 1,
6 was a federal' a highway project, 71 Highway being extended
7 from the south to the north in Kansas City, Missouri.

8 This particular -- at this particular time in
9 November of 1988, the work was being done in the area where
10 87th Street joined 71 Highway and Blue River Road came
11 across, and the Blue River' just south of the Blue River in
12 Kansas City' Missouri, is where the work was being done in
13 November of 1988.

14 As you can see, the defendants here, and there will
15 be testimony, all lived most of their entire lives in the
16 very close neighborhood nearby. That neighborhood as
17 depicted in this little box down here is the Marlborough
18 section of Kansas City' Missouri' roughly between 75th Street
19 up here and just a little bit south of 85th Street down here'
20 from Troost on the west to over towards 71 Highway on the
21 east. All of the defendants lived in that neighborhood.

22 So in the early morning hours, around 3 o'clock in
23 the morning, these defendants came from their homes in the
24 Marlborough section of Kansas City up to this construction
25 site. Their purpose and their motive at that time was simple

1 and basic. To steal. They were going to steal from the
2 construction site tools, batteries, walkie-talkies, dynamite;
3 frankly, anything that was not nailed down up on that
4 construction site. Their purpose and motive in stealing was
5 to get money to buy drugs. It's no more complex than that.

6 The defendants set fire to a tractor trailer up on
7 that construction site to cover up their crime, and later
8 they will say to serve as a diversion for the security guards
9 who were on the site. The defendants also set that fire, the
10 evidence will be, purely out of meanness, out of being
11 ornery, that they were unsuccessful in their thieving
12 attempts. The defendants also set a separate fire across the
13 highway in the guard's pickup truck that had been left
14 unguarded at that site.

15 The guards, who you will hear testimony from today,
16 were located -- and I'm now referring to Government's Exhibit
17 5 -- were located and on patrol, were supposed to be on
18 patrol here on the east side of the highway, as well as on
19 the west side of the highway guarding construction equipment
20 that was there overnight.

21 Sometime after 3 o'clock at approximately 3:20,
22 3:30, one of the guards saw activity in the area of office
23 trailers that were located between the two sides of 71
24 Highway. The guards pulled out from their, the place where
25 they were sitting on the west side of the highway and

1 proceeded north on 71 Highway, looking for the two people
2 that one of them had seen.

3 When they found no one, they went on up to the
4 QuikTrip that's located just on the other side of the Blue
5 River and got a snack. It was the middle of the night on
6 November 29' and it was cold' and they just got something to
7 eat.

8 While there' they were informed by the manager that
9 someone had spotted a fire down on the construction site.
10 And they raced back' and they saw the guard's pickup truck on
11 fire. Here is where we begin to have exact times because
12 prior to that no one was looking at their watch in order to
13 determine when the ordinary events of that night were.

14 At 3:40, the security guard, Robert Riggs, using a
15 mobile phone, whatever they had back in 1988, called the fire
16 department to report the truck fire. He also reported
17 another fire that was visible on the other side of the
18 construction site; that is, up in this area where it's marked
19 craters.

20 The dispatcher for the fire department called out
21 Pumper 41. Pumper 41 left Bannister Road firehouse with
22 Captain Kilventon, Firefighters Michael Oldham and Robert
23 McKarnin, and arrived on the scene shortly thereafter and
24 started to put out the pickup truck fire.

25 At that time, across the highway flames could be

1 seen coming from the ridge. You'll hear that that ridge
2 because it was raised was not visible from where the guards 3
had previously been sitting for about an hour, leaving that 4
other area here up on the hill unguarded.

5 Another call was sent out, Pumper 30 left the
6 firehouse at 75th and Prospect with Captain Halloran and
7 Firefighters Luther Hurd and Thomas Fry.

8 At approximately 4:02, both of those pumpers were
9 now up on the hill, up on the east side of the construction
10 site, and you'll hear that they were attempting to put out a
11 fire in one of two construction trailers that were on the
12 site, the back side of a tractor trailer, the trailer part, 13
and that those -- and then that the firemen were attempting 14 to
put out a raging fire in one of those trailers.

15 The security guards followed them up the hill and
16 stayed some distance back because the terrain was so rough
17 that their car couldn't advance into the area where the
18 pumpers had gone.

19 At that time, the battalion chief arrived, and he's
20 the man that's responsible for that sector of town, and he
21 arrived on the scene. And as he arrived on the scene and was
22 informed by the guards that those trailers may contain
23 explosives, he tried to pull the men back, but at 4:08 a.m. 24
on November 29, 1988, that trailer exploded. Approximately 25
25,000 pounds of ammonium nitrate/fuel oil, ANFO, exploded.

1 This you will hear was approximately, approximately five
2 times bigger than the explosion in Oklahoma City.

3 That explosion disintegrated Pumper 41. A fire, a
4 huge firetruck was disintegrated. Captain Halloran, Captain
5 Kilventon, Firefighters Luther Hurd, Thomas Fry, Michael
6 Oldham, and Robert McKarnin were killed instantly.

7 All of the firefighters remaining on the scene were
8 pulled back' pulled down south to Bannister Road because now
9 a second trailer was visible and clearly also engulfed in
10 flames.

11 Forty minutes later at 4:48 a.m., the second
12 trailer exploded, this one containing approximately 30,000
13 pounds of ANFO, ammonium nitrate/fuel oil' but no further
14 loss of life or injury was sustained because the fire
15 department and the police department and everyone had pulled
16 back.

17 That's what happened. That's what this tragedy'
18 what happened on the early morning hours of November 29,
19 1988.

20 Now, how will the government prove this to you
21 beyond a reasonable doubt?

22 First of all, as you can see in Government's
23 Exhibit 5 here' this aerial photograph of the scene, the
24 government -- and as I sort of alluded to in voir dire, there
25 are no eye witnesses. No one was out for a stroll that night

1 in this area of woods and construction. No one lived in that
2 area. There were no businesses other than all the way up
3 here at the QuikTrip. So there will not be testimony from
4 any witness that they saw anyone light a match.

5 There is no physical evidence in this case. There
6 were two tremendous explosions, and we have some debris that
7 was a result of those explosions, but no physical evidence
8 that ties these defendants to the crime. There's no
9 fingerprints' there's no blood droplets and DNA. There are
10 no bloody gloves.

11 So what, what are you going to see for the next two
12 and a half weeks? What is the evidence? The primary
13 evidence in this case against these defendants, how the
14 government will prove the case is admissions and confessions
15 by these defendants. This isn't hearsay, this is words, if
16 you will, words right out of the horses, mouths.

17 Each of these defendants over the last eight years
18 has been unable to keep their mouth shut. Each of these
19 defendants told multiple persons on multiple occasions that
20 they did it, that they went up to this site in order to
21 steal, and that when they were frustrated and wanted to cover
22 up their tracks, they set this fire.

23 The first part of the trial, today and I guess
24 tomorrow, will be focusing on the what-happened so that we're
25 all comfortable with the construction, the construction site,

1 the time of these events as testified to by the dispatcher,
2 and also, then, the fire department personnel who, the
3 security guards and the fire department personnel who saw
4 this terrible explosion.

5 You will also hear testimony this week from an
6 expert witness, Cliff Lund from the Bureau of Alcohol'
7 Tobacco' and Firearms, who is an explosives expert and will
8 attempt to explain to me and to all of you why it is a
9 trailer full of ammonium nitrate/fuel oil, why that would
10 explode.

11 Then we will get to the testimony of whodunit. You
12 will hear a dozen witnesses testify that Frank Sheppard told
13 them he did it. These are friends of Frank Sheppard's,
14 friends of his family, criminal associates of Frank
15 Sheppard. They're not all the same, we've got friends, we've
16 got family friends, and we've got criminal associates. They
17 range from people who are ordinary citizens to people who
18 were cellmates of Frank Sheppard.

19 What Frank Sheppard said to all of these
20 individuals is that he did it with other people, they went
21 there to steal, they set the fire, he has no remorse, and
22 that the firemen were stupid for going up there.

23 You will hear testimony from six witnesses who
24 heard Skip Sheppard say he did it. These are six separate
25 witnesses from the twelve who heard Frank Sheppard admit it.

1 Now, you will see, and as obvious from their family
2 relationships, on many of these occasions, when Frank
3 Sheppard is saying, "I did it," Skip Sheppard is also present
4 and is part of that admission. So it's not twelve here' six
5 here. There are twelve here' and six here' but some of them
6 also mention both people.

7 The separate witnesses' again' Skip Sheppard' are
8 the same as the type of people that will testify against
9 Frank Sheppard. Family friends' friends of Skip' people who
10 he's done crimes with' people he shared a jail cell with.

11 There will be eight witnesses who will testify that
12 Darlene Edwards admitted participating in this crime. They
13 are friends of hers from the Marlborough neighborhood, people
14 she sold drugs to in the Marlborough neighborhood, people she
15 shared a jail cell with over the last several years.

16 Importantly with Darlene Edwards and different from
17 the others is that she gave a tape-recorded statement to
18 Agent Harry Lett of the Bureau of Alcohol, Tobacco' and
19 Firearms on February 19, 1995.

20 Now, you will hear that statement, you will hear it
21 played, actually sometime next week, and you will be able to
22 hear that for yourselves.

23 Just briefly, the substance of it is that she gave
24 a ride to other people to get gas at the QuikTrip and that
25 they were going to go up to the site to steal, and using the

1 gas to set fires as a diversion.

2 You will hear ten witnesses testify that Bryan
3 Sheppard told them he did it. Again, there's a similar
4 situation here. These witnesses' many of them, heard Bryan
5 Sheppard admit this when Richard Brown is also present. When
6 Bryan Sheppard is out on the street during this last decade,
7 frankly, he's typically in the company of Richard Brown.

8 The witnesses will testify that Bryan Sheppard said
9 he went up there to steal and to set fires as a diversion for
10 his stealing. These witnesses range from former girlfriends,
11 cellmates' and persons who knew him at Center High School.

12 Finally' you will hear fifteen witnesses' fifteen
13 separate witnesses who heard Richard Brown say he did it,
14 that he set the fire to the trailer with others, while going
15 up on the construction site to steal. He also admitted to an
16 individual that they had set the guard's pickup truck on
17 fire' as well. He said they were going up there to steal and
18 to steal dynamite that they were going to be able to sell to
19 someone else. Again' in many of the admissions that Richard
20 Brown makes' he states we did it, and the we is Bryan and
21 Richard standing right there.

22 Finally' you're going to hear testimony from
23 witnesses' I call them the witnesses to events. They saw
24 something that's significant in this case. Again' it's not
25 somebody lighting a match' but they saw things that are part

1 of this case.

2 You will hear witnesses testify that they heard
3 these five defendants' individually and together' ask them to
4 go steal from construction sites. You will hear witnesses
5 who will testify that they saw the defendants out on the
6 streets of Marlborough well after midnight in the early
7 morning hours of November 29' 1988, the one, in fact, near
8 that 7-Eleven store on Government's Exhibit 1, when the
9 defendants claim they were somewhere else and not out on the
10 streets of Marlborough.

11 You will hear a witness testify that he observed
12 Skip Sheppard being dropped off at his brother-in-law's house
13 here, Larry Baker, by a black pickup truck after the first
14 explosion.

15 We will present testimony of witnesses who saw
16 Bryan Sheppard and Richard Brown together in the early
17 morning hours after this explosion; people who saw, a person
18 who saw the two of them together at Richard Brown's brother's
19 apartment; people who saw them, a woman who saw them together
20 as they visited her at her house, all while the defendants
21 have claimed to be elsewhere.

22 Finally, we will hear testimony from Special Agent
23 True about this investigation, about not so much the crime
24 because you will know all about it by then, but how it is
25 that all of the evidence in this case was examined, gathered,

1 sifted, followed up, over the last eight years. Obviously,
2 this is an unusual case. It's unusual because of the
3 magnitude of the tragedy and unusual because it's taken them
4 so long to come to you.

5 You will hear testimony that the federal
6 government' the Bureau of Alcohol, Tobacco, and Firearms and
7 the Department of Labor, started out in this investigation
8 and that they investigated whether or not organized labor was
9 responsible for this crime. And they spent years doing
10 that.

11 On the other hand, you're going to hear that the
12 Kansas City, Missouri, Police Department focused on persons
13 from the Marlborough area and that Bryan Sheppard was
14 originally charged in 1989 but that charge -

15 MR. O'CONNOR: I'm going to object. Can we
16 approach the bench' please?

17 (Counsel approached the bench and the following
18 proceedings were had:)

19 MR. O'CONNOR: Judge' I would object. Mr. Becker
20 has told this jury that my client was charged in 1989. I
21 think that is highly prejudicial. There's no place in this
22 court for that testimony or that evidence' that I know of.
23 It's so prejudicial I think that the defendant -- on behalf
24 of Bryan Sheppard' I have to move for a mistrial at this
25 time.

1 THE COURT: What's your purpose?

2 MR. BECKER: I was about to say that the charges
3 were soon dismissed for lack of evidence. Mr. O'Connor had
4 earlier indicated that he was going to bring this up in voir
5 dire' and certainly there will be witnesses that refer to it
6 in the context of their conversations with Bryan Sheppard
7 after he is released in that case. It's going to be part of
8 the evidence.

9 THE COURT: Well' you be sure and give the
10 disclaimer' and the motion for a mistrial is denied. The
11 objection is overruled.

12 MR. O'CONNOR: Thank you' sir.

13 (The following proceedings were had in open court:)

14 MR. BECKER: The charges against Bryan Sheppard
15 were soon dismissed for lack of evidence.

16 The investigation continued until by late 1994
17 Agent True' the fire department' the bomb and arson squad are
18 still investigating' but there are no further leads to
19 investigate. They've run out. They've run everything down.

20 At that time, you'll hear that an effort was made
21 to get one more shot at this and that the TV show Unsolved
22 Mysteries presented this case as Kansas City's unsolved
23 mystery, and that after that, which was February of 1995,
24 that generated new information that Agent True and Gene
25 Schram from the Department of Labor and Officer Jerry Ludwig

1 from the Kansas City, Missouri, Police Department followed up
2 on and gathered evidence.

3 And when they talked to individuals, they would
4 seek to corroborate their testimony. So if an inmate said,
5 "I was in jail with one of the defendants," they'd get the
6 records, and you'll see the records that these folks were in
7 jail together at the same time. They have done everything
8 possible to gather that evidence together to present to you.

9 So here we are in federal court in the Western
10 District of Missouri. Over the next two and a half weeks'
11 Dan Miller and I will be presenting the evidence to you' and
12 based on the evidence' you will decide whether or not these
13 five defendants are guilty of this terrible crime.

14 Thank you.

15 THE COURT: All right. Mr. Peters' do you wish to
16 open?

17 MR. PETERS: May it please the Court.

18 THE COURT: Mr. Peters.

19 MR. PETERS: Counsel. Good morning, ladies and
20 gentlemen. We've talked before' I'm Pat Peters representing
21 Frank Sheppard, and we've all heard that in any great
22 controversy' there are two sides to the story. And in this
23 great controversy' it's my honor to present to you the other
24 side of the story.

25 Now' you've heard Judge Stevens instruct you on the

1 law' that the way it's going to work throughout this trial,
2 because the burden is on the government, they're going to go
3 first. They'll call the witnesses. But you also know there
4 are five attorneys, six attorneys representing five clients
5 who will cross-examine those witnesses. You also know that
6 at the conclusion of the government's case' there will be
7 more evidence.

8 The evidence in this case will show you that for
9 each and every defendant' circumstances explain they were not
10 at the scene of the crime, they were not involved with this
11 terrible, terrible tragedy. And that for each of these
12 defendants, those explanations include eye witness
13 testimony. So I trust that as we go through this case,
14 you'll keep your mind open and wait for cross-examination and
15 wait until you've heard at last all of the story.

16 A brief housekeeping thing I want to let you know
17 about. We have five defendants. Each defendant is entitled
18 to be tried and viewed by you separately. But you've noticed
19 we' the attorneys are going to gather together. You now know
20 that all five of the defendants have known each other' some
21 of them are related. So from time to time, you're going to
22 see the attorneys cluster together, and I just want to let
23 you know, it's to try to save time.

24 Instead of -- you just saw an example. All five
25 attorneys could have made an objection. And objections are,

1 you know, an attorney doing his job. But in agreement with
2 Court and counsel, we're going to try to cluster together so
3 that we don't draw this out any longer than it needs to. And
4 we appreciate your understanding that.

5 What I'm going to do in this opening statement is
6 outline for you the evidence that I believe you're going to
7 hear in this case. And as you'll get familiar with me' I
8 usually tell you where I'm going before I go' and I'm going
9 to do it now. I'm going to talk about the Marlborough
10 neighborhood, and then I'm going to talk about this
11 construction site, and then we're going to talk about the
12 explosion, and then we're going to talk about the
13 investigation.

14 As Mr. Becker has shown you with the exhibits -
15 and I'll also tell you that if an is exhibit offered by the
16 government or offered by the defendant, it doesn't matter who
17 offers it. Because the government goes first, almost all the
18 exhibits will be government exhibits.

19 Now, he showed you the diagram of the Marlborough
20 neighborhood, but we know many of you aren't from Kansas
21 City. Marlborough' if you think of Kansas City, I-70 cuts
22 across the middle, and there's a big circle that goes around
23 I-70 called 435. And for the last 20 years, everybody has
24 thought we need a highway to go up the middle so that you
25 don't have to take this loop around the city if you want to

1 go downtown. Those who live here know what we're talking
2 about.

3 This project began in the Marlborough
4 neighborhood. The project that you're going to hear about is
5 the Bruce R. Watkins Memorial Drive' a \$200 million project.
6 And it started at the south end of the city by 435 and Old
7 U.S. 71' and that was where they were going to be doing a lot
8 of blasting. And you'll probably hear testimony' as you
9 drive down the highway and the highway is raised up' where
10 does the rock come from? Well' the rock is going to be
11 coming from this site, and that's why they're going to be
12 doing blasting, and that site is the middle of the
13 Marlborough neighborhood.

14 You'll see in the diagrams that the Marlborough
15 neighborhood is a working class neighborhood, surrounded by
16 Old U.S. Highway 71. Light industry growing up around U.S.
17 71 that largely moves away when we have the interstate
18 system. And as you can imagine, the wealth of the
19 neighborhood begins to go down.

20 This is a neighborhood that we would be more
21 familiar with in days gone by where everybody knows
22 everybody. Policemen, firemen, lawyers, if you lived in
23 Marlborough and you meet somebody in Chicago who knows
24 somebody in Marlborough, you'll hear that it's the kind of
25 neighborhood, yeah, I know Bob. You're going to hear that

1 it's a neighborhood where news travels fast and rumor travels
2 faster. That's the Marlborough neighborhood, and that's
3 where these five defendants all lived. Frank and Darlene, my
4 client and Darlene Edwards lived together in that
5 neighborhood' the Marlborough neighborhood.

6 The construction site. I've told you Bruce R.
7 Watkins Drive' huge project and a huge construction site.
8 And what you're going to learn -- I am shaking' and I will
9 point that out to you.

10 What you're going to learn is that this
11 construction site is being managed by Brown Construction
12 Company. They're the general contractor. And Brown
13 Construction Company, you remember how the diagram Mr. Becker
14 showed you, 71 Highway pretty much goes north and south. So
15 for all purposes of what we're talking about' and I'll turn
16 around so we're doing it this way' it's going north and
17 south' so you've got a west side and an east side of 71
18 Highway.

19 Well, on the west side towards Kansas is where
20 Brown Construction Company was keeping their expensive
21 equipment, the things we see all the time, huge bulldozers
22 and earth movers and graders, the expensive hydraulic
23 equipment.

24 On the east side of the street, Brown Construction
25 had contracted with White Plains Explosives (sic). And I'm

1 horrible at names as we go along, and I apologize in
2 advance. But it's the company doing the blasting.

3 So on the east side of the street is where you're
4 going to hear about the two trailers that are going to
5 explode and kill these six firefighters. That's where the
6 blasting equipment, the drills, are kept.

7 And in addition to these two trailers which
8 contained ammonium nitrate/fuel oil mix, which I'll talk
9 about' there are two bunkers' so that you don't get confused'
10 that are steel that contain the dynamite which is considered
11 a high order explosive, and blasting caps.

12 And you'll hear testimony that the way you make
13 something blow up is you take a blasting cap, you put it in a
14 stick of dynamite, and then this ammonium nitrate/fuel oil is
15 inexpensive. By itself, it's something you can step on,
16 shoot on' light a fire to' but when it's confronted with a
17 stick of dynamite' it creates a chain reaction and results in
18 a very large explosion. In fact' they can take it and
19 determine whether they want to just break the rock and have
20 it crumble down' or if they want to move it away from a wall,
21 or if they want to blow it all over the place.

22 You're going to hear a lot about ANFO. ANFO, which
23 stands for ammonium nitrate/fuel oil. It is used throughout
24 the United States. Components of it are, ammonium nitrate is
25 a fertilizer. It's a fertilizer used in farms all around the

1 world. Millions of tons of ammonium nitrate are used
2 throughout the country. ANFO is used in virtually all
3 blasting operations, and the experts will tell you that the
4 fuel oil added to it gives it, which makes it a better
5 product' a more powerful product for blasting.

6 You're going to find that nobody knew about
7 ammonium nitrate and fuel oil having this explosive
8 capability until a ship carrying ammonium nitrate ran into
9 another ship with fuel oil and exploded. That's the first
10 anybody knew about this combination. You're going to hear
11 that these two trailers housed nothing but ammonium nitrate
12 and fuel oil' 25'000 pounds' we're guessing because it was
13 blown up, in one, 30,000 pounds in the other.

14 And Mr. Becker told you that this is different than
15 Oklahoma City. And it's very different than Oklahoma City,
16 because Oklahoma City was a detonation. Somebody is saying,
17 I want this to blow up. And the evidence from all parties on
18 all sides is that -- the government's theory of the case was
19 this was a burning and an accident. There's a huge
20 distinction. So when you think of Oklahoma City and ANFO,
21 ammonium nitrate/fuel oil, in recent history, don't confuse
22 it with November 29th, 1988.

23 Brown Brothers Construction Company is involved in
24 the largest road construction project in the entire area, and
25 • hey start using nonunion concrete pourers. People pulling

1 up in the concrete trucks are nonunion. The time period
2 we're talking about is summer, moving into the fall of 1988,
3 and as is their right, union members were outraged by this,
4 and union members began to picket the Brown Brothers
5 Construction Company because nonunion trucks were bringing
6 concrete in the largest road-building project in the state.

7 And you're going to hear testimony that this wasn't
8 a friendly situation. You're going to hear testimony that
9 there were many acts of vandalism that started to happen to
10 Brown Brothers Construction Company. So much so that in
11 October -- actually' it's September' they hire a security
12 guard because their equipment keeps being vandalized. Things
13 like sugar poured in the tank which ruins a diesel engine'
14 things of that sort.

15 And they hire a security guard. And at the same
16 time' a name you're going to hear frequently is Robert
17 Riggs. Robert Riggs was hired by Brown Brothers Construction
18 Company to investigate an employee that Brown Brothers had
19 thought had damaged a \$15,000 piece of equipment.

20 Robert and Deborah Riggs. Robert Riggs owns
21 Ameriguard Security, and Deborah Riggs worked for them. What
22 goes on is very shortly after he's hired to investigate the
23 employee, the owner of the company catches the guard working
24 asleep, he fires him, and he hires Ameriguard.

25 We're now talking October, just about a month

1 before this happens. In that time period, what you're going
2 to hear testimony about at this construction site are a
3 number of incidents of what five years later will be
described as being union unrest, union involvement.

5 What you have at the site are fires that are
6 started. There's a bounty hunter who is also a woodcutter
7 part-time, has permission, as it turns out, to cut wood, but
8 he's starting fires up there. You're going to hear Deborah
9 Riggs is concerned because you have these trailers filled
10 with explosives.

11 You're going to hear about incidents in this month
12 where somebody came in with bolt cutters' as someone would do
13 wanting to steal, and popped one of the locks open. This,
14 again, is on the east side of the street, not where the major
15 equipment is.

16 At the time that Robert Riggs was hired' they were
17 only hired to guard the west side of the street. But he
18 keeps noticing these things going on on the east side and is
19 hired by the explosives company to guard that side too. So
20 you're going to hear testimony that one guard is going to
21 work the west side' and one guard is going to work the east
22 side because Robert Riggs has discovered vandalism and
23 dangers going on with the explosives on the east side.

24 Now, you're going to hear that Deborah Riggs was
25 concerned about these events, these acts of vandalism.

1 You're going to hear about another one where one of the
2 trailers was actually opened' the door was opened, and on the
3 ground is the lock, not cut, but opened. And after that, a
4 man by the name of McReynolds, who is the blaster' the person
5 in charge of actually detonating this' changed all the locks
6 and kept all the keys himself.

7 We're now moving into November of 1988' with this
8 ongoing labor unrest' so intense is it that the parties, the
9 union, the company, have gone to courts and said, the company
10 has said, we want this picketing stopped. And we move to
11 November 28th, 1988, the day that a judge said, this
12 picketing must stop now, post this in your union halls.

13 That's the background of this construction site.
14 Heavy construction equipment on the west side, explosive
15 material on the east side. Several incidents of vandalism on
16 both sides. Several incidents of people breaking into the
17 trailers on the east side.

18 Marlborough neighborhood, the construction site,
19 the date, night' leading into the morning of this explosion.
20 As you can tell from this time line, we know sometimes to the
21 minute and, as you'll see in the testimony' to the second
22 when calls happen.

23 But what had gone on earlier that night is that at
24 about 9:30 an Ameriguard security guard named Donna Costanza
25 called and said' "My car has died on me, I can't drive

1 through the construction site and make my rounds," and asked
2 Deborah Riggs to come in early for her.

3 Deborah Riggs comes in early. And when she does,
4 she's told -- and you'll excuse me just a moment. She's told
5 to be on the lookout because the other guard, who is working
6 with Donna Costanza, had seen two men running from the
7 construction site. Deborah Riggs knew that at 9:30; Robert
8 Riggs knew that when he came on at 11 p.m., only four and a
9 half hours before these events unfold.

10 You're going to hear that the way they patrol is
11 one person drives their car on the east side and one drives
12 on the west side. And that about 3:30, the Riggses meet up,
13 and where they're meeting is on the west side of 71 Highway.

14 And with the Court's permission, this exhibit has
15 already been used, but just to point it out.

16 And I'll also tell you, I always get upside down on
17 this. But they're going to have met on the east side of the
18 road in this area. And you can see all of these construction
19 vehicles, earth movers and everything, and we've got
20 incredibly nice equipment that magnifies stuff. But they
21 meet over here.

22 Deborah Riggs, Debbie Riggs is driving a red Toyota
23 pickup. Her brother, Robert Riggs, is driving a Toyota
24 cream-colored station wagon. They pull together, and Deborah
25 Riggs leaves her pickup truck. And in her pickup truck, she

1 leaves her purse and a handgun and gets into this car with
2 her brother.

3 And you'll hear testimony that the brother may have
4 been dozing off, which isn't, nothing being critical. He may
5 have been dozing off, but at one moment, around 3:30, she
6 sees two guys in the median area of 71 Highway. And in this
7 median area here between the two highways are where they had
8 put the office trailers. That's of concern to the guards
9 guarding the equipment.

10 She says it loud enough that her brother responds,
11 and they pull straight across the road, straight across 71
12 Highway in search of these two people. Second sighting of
13 two people.

14 She will tell you that these two people were big,
15 over six foot tall. And as they pulled across, they started
16 shining their spotlight looking for them, and they lost
17 them. The two guys were headed towards these ANFO trailers,
18 and they lost them. They shined their spotlight, and you'll
19 hear the testimony that if there was a fire in the trailer at
20 that time, it would have been visible, and you'll hear
21 testimony that if her truck was on fire, it would have been
22 visible.

23 They then decide that since they can't find these
24 two guys, it's 3:30 in the morning, there's no traffic out,
25 let's go to QuikTrip and talk to Dave Miller, if my memory is

1 right, the night manager of QuikTrip, and see if anything is
2 going on. They hadn't eaten for a while. They'll also grab
3 a quick bite to eat.

4 They pull into QuikTrip, both get out and go in the
5 store. They aren't there for long enough for them to pick up
6 the food that they're going to eat. They're in a big enough
7 rush that you'll hear Deborah say, "I ate everything I bought
8 between the door and the car." Getting in the car. Dave
9 Miller, the manager, hasn't seen anything suspicious. Hasn't
10 seen anything suspicious.

11 They get in their car, and as they're backing out,
12 a woman pulls in and excitedly runs in. Dave, the manager,
13 comes out and says, "There's equipment on fire down by the
14 construction site."

15 They get in their car, they immediately go back
16 south on 71 Highway. You see here is the QuikTrip where they
17 were. They immediately come south, and when they get here,
18 they see Deborah Riggs, truck on fire.

19 From this point, we have the exact times. At 3:40
20 Robert Riggs uses his cell phone and dials 311, the number
21 for cell phones like 911, and he reports a fire. He's
22 speaking on the phone, but on the transcript that we'll play
23 for you, in the background you hear his sister say, "The
24 explosives are on fire."

25 That dispatch is confirmed and radioed out to what

1 we will all agree are these brave firemen going out on their
2 last call. As the tones go out to the station for these
3 firemen, in all likelihood working 24-hour shifts, as those
4 tones go out to alert them, the testimony will be Frank
5 Sheppard, like many other people in Marlborough and Kansas
6 City, was at home, he was asleep, and you're going to know he
7 was probably passed out asleep.

8 You'll learn that he drank some two cases of beer,
9 that he was so drunk he had to be driven home. That he was
10 so drunk that when he got home -- Marlborough is the older
11 kind of neighborhood where you don't have curbs and sewers on
12 the side, but you've got a little drainage ditch. That he
13 was so drunk, as he was let out that he fell in the ditch and
14 couldn't get up, was helped into the house onto the couch.
15 And as these tones went out to the firefighters, he was
16 asleep.

17 The tones go out, the firefighters leave, the first
18 firetruck pulls up, they began fighting the fire in Deborah
19 Riggs, vehicle. That is an arson fire. There is physical
20 evidence we can show you that someone opened the door to her
21 truck, took a rag soaked in gasoline, introduced that into
22 the cab, closed the door, and left. undisputed evidence that
23 we will show that was an arson fire.

24 As they are fighting the first fire, the second
25 pumper arrives. And one of the things you'll listen to

1 carefully is the time frame, the time frame from when Deborah
2 Riggs tells you she sees two people going across the road,
3 two big people, combined with testimony from another person
4 who is going to describe seeing two big people, one with dark
5 hair and one with blond hair, one with blond hair in the
6 area.

7 The pumper arrives, and the testimony is going to
8 begin to conflict. As Mr. Becker told you, you're going to
9 have instances where you have to rely upon your common sense
10 and your evaluation of the credibility of the witnesses.

11 The firefighters go up because there is a trailer
12 on fire. You're going to hear that they believe that if
13 there were explosives, it's already exploded. These men,
14 skilled, five of the six trained in hazardous materials,
15 would have been made to feel secure because the well-marked
16 dynamite bunkers are metal, bright yellow, and away from the
17 trailers. You're going to hear one of the firemen say, "It
18 looks like this thing is already blown," and trying to save
19 some property, trying to do their job, these firefighters
20 began to fight the fire.

21 And you're going to hear a living survivor named
22 Chief Germann who is going to come and talk to you about what
23 he saw, with six of his friends doing their job. And you're
24 going to find from the evidence that Chief Germann can't tell
25 you that Deborah Riggs or anybody else told him, "get the men

1 way from there," and that he has wrestled with that daily
2 since this explosion. He has no memory of that. And we know
3 it wouldn't have mattered because it was too late.

4 This first trailer blew up, and you'll see the
5 pictures, a firetruck is vaporized, the pieces
6 indistinguishable. These men thankfully died instantly, but
7 Chief Germann and his driver are there and watching, and
8 beside them are Deborah Riggs and Robert Riggs. And you're
9 going to hear they were a quarter of a mile away, and the
10 force of this blast blew out the windows in their vehicles,
11 knocked them back as far as 30 feet. The concussion was
12 incredible.

13 At that point, the explosion has occurred. All
14 evidence is gone. We know about the second trailer
15 exploding. All evidence is gone, is blown up. What the
16 experts will tell you is there is no physical evidence to
17 explain what went on. We believe lightning didn't cause it
18 because the weather had a slight overcast, not enough to
19 cause lightning. We believe it wasn't lightning. We believe
20 that it wasn't electrical because as far as we can determine,
21 there were no electrical currents nearby. We don't believe,
22 and can tell you conclusively that in front of this trailer,
23 and you'll refer to the diagram because it's actually the
24 rear of the trailer where you've got double doors on a
25 semitrailer that open up, the construction company parked

1 their work truck in that area. And you're going to hear
2 testimony that that work truck is pointed face-in, and 10 to
3 15 feet away from the trailer.

4 In an arson investigation, you rule out all
5 accidental causes. They'll tell you absolutely, positively
6 that this truck was not the cause of the fire. When they
7 continue to eliminate as best they can accidental and natural
8 causes, they conclude it's an arson fire, that this was
9 something intentionally set. But what the experts are going
10 to tell you is we don't know how or where or why. We can't
11 tell you that this is not an intentional act by somebody with
12 sophisticated skills creating a detonator to go into the
13 trailer.

14 MR. BECKER: Objection. May we approach?

15 (Counsel approached the bench and the following
16 proceedings were had:)

17 MR. BECKER: There's no evidence at all, there's no
18 -- unless there's something that's not been disclosed to the
19 government, there's absolutely no evidence that there's been
20 a sophisticated device secreted into the trailer in order to
21 make it explode. There's absolutely no evidence of that.

22 THE COURT: What are you driving at?

23 MR. PETERS: That their expert is going to say, who
24 I talked to, is going to say I can't tell you whether it was
25 a detonation, a fire, something inside the trailer.

1 THE COURT: You're arguing your case. Just tell
2 them what the evidence and the facts are going to be, or
3 we're going to be in trouble here.

4 (The following proceedings were had in open court:)

5 MR. PETERS: You're going to hear expert testimony
6 of what you can conclude when you have a site that is totally
7 destroyed. You're going to hear testimony that if we take
8 this possibility that a trailer could catch fire and that
9 that would result in an explosion, the theory of the case
10 that you've just heard from the government.

11 The testimony from the leading expert for the
12 Alcohol, Tobacco, and Firearms will be that if you
13 reconstructed that, if you took a trailer out into a field,
14 set fire to the bottom, fully loaded with ammonium
15 nitrate/fuel oil and you did that twelve times, that there's
16 no way to predict what would happen. You may have all twelve
17 explode, you may have none explode. And that is an expert
18 who arrived on the scene at daybreak the next day. That's
19 the explosion.

20 Now the investigation. The investigation in this
21 case began literally at the moment, but for all practical
22 purposes they had to wait until daybreak for fear that there
23 may be other dangers to other people. And at daybreak,
24 you'll hear that the blaster, the guy named McReynolds,
25 actually goes up in a helicopter and helps determine that the

1 dynamite is secured, risks his life, and comes down and says,
2 "Everything is secured, you can go to the crime scene."

3 And the police swarm on the crime scene. And that
4 very day, Dave True and the expert I'm talking about from the
5 ATF, a man by the name of Lund, are also there. Also there
6 are agents from the Department of Labor, Labor Racketeering
7 Section. And their involvement in this case was clear
8 because of this pattern of labor unrest that had gone on.

9 And so you have a local police agency with
10 thousands of man hours, experience in arsons and homicides,
11 Kansas City, Missouri, Police Department, and you have
12 federal agencies, the ATF and the DOL, Department of Labor.

13 And beginning at that moment, you're going to hear
14 that there are two alternate theories of what went on in this
15 case, two alternate investigations that go on. During the
16 course of this testimony, what you're going to find is the
17 Kansas City, Missouri, Police Department conducted a thorough
18 investigation, chasing down each and every lead. If they had
19 somebody who would talk to them, they would take a detailed
20 statement, write a detailed report. If they talked to
21 somebody fifteen minutes, you've got a three-page report from
22 the officer. If they had somebody that they thought had
23 important information, like the Riggses, that they took a
24 videotaped statement to preserve to this day that information
25 for a jury to decide what went on.

1 That the Kansas City, Missouri, Police Department
2 followed every lead that they could, and that you heard a
3 comment and an objection, and I won't' I'm not going to go
4 into it, but the charges came forward in 1989. That somebody
5 was charged, not based upon any of the evidence, any of the
6 statements, but based upon jail house informants.

7 Mr. Becker told you that in recent years great care
8 has been exercised to make sure that when somebody in jail
9 and says somebody else confessed to me that you check to make
10 sure that they were in jail together. That's something that
11 you'll listen to closely in this case.

12 While the Kansas City' Missouri, Police Department
13 is investigating this case and following all the leads, a
14 private investigator develops a theory of the case, and that
15 theory of the case names for the first time the Sheppard
16 family. That theory of the case naming the Sheppard family
17 in the neighborhood of Marlborough had interesting
18 consequences because you're going to see, if you keep careful
19 track of the dates, statements are made in an interesting
20 pattern. You're going to find from the evidence that if, for
21 example, news reports or agents say the people -

22 MR. BECKER: Objection, Your Honor, argument.

23 THE COURT: Yeah, you are arguing. Let's go on
24 with what you anticipate the facts will be right now, Mr.
25 Peters.

1 MR. PETERS: The facts will be that the statements
2 that you've heard Mr. Becker refer to contained errors as to
3 the little bit of physical evidence that we know.

4 The facts will be that the pickup truck was not set
5 on fire, but all kinds of statements are made from all kinds
6 of people, these five defendants and many, many others, that
7 the people that did this set fire to the pickup truck.

8 The next theory of the case was that radios were
9 stolen, as Mr. Becker told you. And you will hear evidence
10 that after that theory is advanced, more witnesses come in
11 and say, I was told that the people that did this took
12 radios. And we have the pictures to show you that radios
13 weren't taken.

14 The next theory was that batteries were taken. We
15 will present you the testimony that no batteries were taken;
16 transits, no transits were taken; acetylene torches, no
17 acetylene torches were taken. And as you listen to these
18 witnesses, those facts will become very important. We have
19 this investigation by the Kansas City, Missouri, Police
20 Department that resulted in charges, that resulted in charges
21 being dismissed, and we have another investigation into
22 organized labor that is ongoing.

23 1988, November 29th, 1988, is the explosion. But
24 you will hear, as Mr. Becker told you about unsolved
25 Mysteries, you will hear on unsolved Mysteries Special Agent

1 Dave True say, "We knew that there was labor unrest,
2 primarily dealing with union versus nonunion companies.
3 We've learned that there were a number of violent acts
4 directed at nonunion companies. They were putting acid in
5 the company equipment, they were putting dirt into the diesel
6 lines, and there were a number of incidents where fire was
7 used to destroy equipment."

8 He said, "If we take away the tragedy of that night
9 of the six firefighters dying, we can look at some of these
10 previous incidents being very similar to what happened that
11 night. You had equipment damaged, and in this instance you
12 had a security guard's truck set on fire also."

13 You're going to hear testimony about the security
14 guard's truck on fire, that if you take away the huge
15 explosion and the death of six firefighters, that a truck
16 being set on fire and another fire 400 yards away would point
17 towards this truck as being the reason for the fires.

18 You're going to learn in this case that the Riggses
19 were identified as suspects, as they are done by experts
20 everywhere. When you have an explosion, the security
21 guards -

22 MR. BECKER: This is argument, Judge.

23 THE COURT: I'm sorry, Mr. Peters, you're going to
24 have to stop that.

25 MR. PETERS: That's fine, Judge.

1 THE COURT: Disregard all of this last that Mr.
2 Peters talked about. He's not supposed to be arguing his
3 case to you at this time. Now, tell them what you anticipate
4 the evidence will be, and if you're through, sit down.

5 MR. PETERS: I'm just about done, Judge. The final
6 point for you to consider, in addition to this parallel
7 investigation, is to keep in mind that we're talking about
8 eight years ago.

9 The defendants did not look like they do now.
10 Bryan Sheppard was 17 years old. Richard Brown was 18 years
11 old. The other three defendants, Skip' Frank' and Darlene,
12 were adults. They were 34 years old, Darlene; Skip, 28 years
13 old; and Frank, 38 years old. And as you listen to this
14 evidence, you will see a distinction drawn within this
15 community between the young kids and the older people.
16 What we ask is that you carefully listen to the
17 evidence and just simply keep an open mind until the
18 conclusion of the case. Thank you very much for your
19 attention.

20 THE COURT: Ladies and gentlemen, we're going to
21 take a short break. It won't be very long. Return to the
22 jury room, if you would' but don't talk about the case or
23 anything you've heard about it during this morning's session,
24 and we'll call you in five or ten minutes to get underway.
25 We'll be in recess.

1 (The following proceedings were had in the
2 courtroom out of the presence of the jury:)

3 THE COURT: We'll be in recess for five or ten
4 minutes.

5 (A recess was taken from 11:35 a.m. to 11:55 a.m.)

6 THE COURT: All right. Let's get the jury.

7 (The following proceedings were had in the
8 courtroom in the presence of the jury and all defendants
9 except Defendant Richard Brown:)

10 MR. MILLER: Your Honor' the united States calls
11 Mr. Phillip Wall.

12 THE COURT: Mr. Wall, would you please come stand
13 by the witness chair and be sworn.

14 Go ahead and swear the witness.

15 (Witness Phillip Wall was sworn by Tina Duer,
16 Courtroom Deputy.)

17 THE COURT: Mr. Osgood, is there someone trying to
18 find your client?

19 MR. OSGOOD: Yes, Your Honor, I sent two people
20 down to get him. It's my understanding he went down to smoke
21 a cigarette and get something to drink. I don't know if they
22 missed him in the elevator or what.

23 THE COURT: We'll proceed. If you want the record
24 read to him, we'll have the -

25 MR. OSGOOD: I have no objection to proceeding' and

1 I'll waive his presence.

2 THE COURT: All right.

3 MR. BECKER: Judge, may I approach?

4 THE COURT: Yes.

5 (Counsel approached the bench and the following
6 proceedings were had:)

7 MR. BECKER: I have grave concerns of proceeding
8 without a defendant present.

9 THE COURT: When he voluntarily absents himself -
10 when he's not in custody and he by his own doing voluntarily
11 absents himself, I don't think that presents a problem.

12 MR. OSGOOD: I don't either, and we'll make a
13 record on that. And I assure you he'll make an appropriate
14 record on that, Your Honor. And I apologize to the Court.

15 MR. BECKER: You can't waive on behalf of your
16 client.

17 MR. OSGOOD: I think I can, and I assure you he
18 will.

19 THE COURT: We'll make everything available to him
20 that has been said and done while he was gone.

21 MR. OSGOOD: He will not object, and it won't
22 happen again.

23 THE COURT: Where the hell is he?

24 MR. OSGOOD: Like I say, he's a smoker and he went
25 downstairs.

1 MR. BECKER: I hope I get to appeal on this case.

2 Do you want to break for lunch, Judge? This witness will be
3 45 minutes.

4 THE COURT: Yeah, we might as well.

5 MR. O'CONNOR: I sent my investigator out to look
6 for him, too, Judge.

7 MS. DUER: He's here.

8 MR. OSGOOD: I would appreciate it if you would
9 have a talk with him right now, if you've got a second right
10 now, up at the bench.

11 THE COURT: We'll break for lunch, and then
I'll
12 talk to him.

13 MR. OSGOOD: We can proceed.

14 THE COURT: It's going to be 45 minutes.

15 (The following proceedings were had in open court:)

16 THE COURT: Ladies and gentlemen' it's come to be
17 right at 12 o'clock, so rather than start this testimony now
18 and obviously have to break sometime during the testimony for
19 lunch, we'll break for lunch now, ask you to be back in the
20 jury room at 1:15. And don't talk about the case during the
21 lunch hour, with anyone or to anyone.

22 Have a good lunch, and we'll see you at 1:15.

23 You're excused. Leave your notebooks and everything on your
24 seat.

25 (The following proceedings were had in the

1 courtroom out of the presence of the jury:)

2 THE COURT: Mr. Brown' don't do that to us again.
3 I don't want anyone causing this court to sit here for five
4 or ten minutes waiting for somebody to finish smoking a
5 cigarette.

6 All right. We're in recess.

7 (A recess was taken from 12:01 p.m. to 1:24 p.m.
8 when the following proceedings were had in chambers with
9 Court and counsel present but out of the presence of the
10 defendants:)

11 MR. O'CONNOR: Judge, I've been advised by my
12 office that the Eighth Circuit has denied the writ' although
13 I don't have the writ in hand. I don't know if there's
14 something that came out in writing yet.

15 THE COURT: They're going to fax it to my office.
16 I hadn't received it, so until I had it in hand, I didn't
17 want to try to guess what's in it. So they're denying it, so
18 we'll just go forward.

19 MR. O'CONNOR: It's my position -- these are my
20 statements on behalf of my client, Bryan Sheppard -- that
21 under the rule that the sanction would be that if I did not,
22 if I continued not to give the statements up that the
23 sanction would be under the rule that I could not call that
24 witness to testify. So obviously, I would be willing to
25 accept that sanction for the obvious reason that I never

1 intended, nor am I going to call the witness anyway. So that
2 is my, that would be my position.

3 MR. BECKER: This issue of what sanction would be
4 imposed if the Eighth Circuit denied the writ and Mr.
5 O'Connor on behalf of his client refused to produce the
6 statements -- which was the subject of some extensive
7 argument by Mr. Wyrsh appearing on behalf of Mr. O'Connor
8 Friday evening and myself and considered by Judge Bartlett.
9 The Court stated that the reference in the omnibus report to
10 Section 3500 was merely to define which statements were
11 subject to production and that it would not limit the Court's
12 power on sanctions.

13 And I believe the Court's -- in response to further
14 inquiry, Mr. Wyrsh inquired of the Court whether or not the
15 sanctions would go as far as barring the use of those
16 statements in any cross-examination. The Court said that he
17 would not be bound by that. It seems something that could be
18 considered, but he believed there would be additional
19 sanctions available.

20 I do not believe that that's the proper remedy
21 here. Mr. O'Connor after this request for reciprocal
22 discovery was made filed an amended witness list deleting
23 these people' so they're not available to him as witnesses
24 anyway because he's already voluntarily deleted them. The
25 whole intent -

1 THE COURT: But if you used them, if you use them
2 as witnesses, then he would not be able to use that statement
3 or document in cross-examination of them as your witnesses.

4 MR. BECKER: But the whole intent of the discovery
5 process and the lengthy arguments we had on Wednesday,
6 Thursday, and Friday of last week were that the defendants
7 were going to be required to live up to their discovery
8 obligations and that those discovery obligations were fixed
9 at the time they said they would produce the discovery
10 material, that is, five days prior to trial.

11 THE COURT: I understand that was Judge Bartlett's
12 ruling, and I'm prepared to agree with that. Where do you
13 suggest we go from there?

14 MR. BECKER: Mr. O'Connor, I want him to say on the
15 record that he's refusing to follow the order of the Court
16 and at that point, as I believe we've been through where in
17 terms of contempt and sanctions, we go one step at a time.
18 So if the Court -- the Court has ordered previously on two
19 occasions that Mr. O'Connor's to turn over these statements
20 at a date certain. The first one was saved by a motion for
21 reconsideration. This next one was extended until today at
22 noon to give counsel a chance to go to the Eighth Circuit.
23 That was extended twice so he could go to the Eighth
24 Circuit.

25 We are now at the point where there is a court

1 order ordering him to turn those materials over. I have
2 asked for those materials, and Mr. O'Connor has not provided
3 those materials. So I'd like him to state on the record that
4 he's refusing to obey the Court's order to provide these
5 materials' and then I'll address sanctions.

6 THE COURT: Well, Kathy, would you get on the phone
7 out there and see if the clerk's office has received the fax
8 of the Eighth Circuit order? until I have -- I mean' I know
9 what it says. But until I have that order in hand, I'm not
10 going to do anything.

11 Now, let me just ask you, Mr. O'Connor, what is
12 your view of what ought to happen now?

13 MR. O'CONNOR: Judge, it's my position that the
14 sanction that's available is that we can't call the witness.
15 That's what we think.

16 THE COURT: How about the sanction that you call
17 any witnesses?

18 MR. O'CONNOR: I assume that's a sanction that the
19 Court could do. I am not here to obstruct or get in an
20 argument with Mr. Becker or the Court' but I think in terms
21 of preservation of this record, my concern is that until we
22 get to the next step, I don't have it preserved. And so in
23 other words, my feeling, this is, my thought process is that
24 I have been ordered to now turn them over, and I say on the
25 record that I'm still refusing. And the Court says the

1 sanctions are thus-and-so. Then I say, now, knowing that's
2 what the sanctions are, I will give them up so that my record
3 is preserved that basically I took every remedy I could to
4 hold on to them in my belief that they should not be given up
5 under all of my arguments that we previously stated, and then
6 I intend to comply.

7 I don't intend to take this into tomorrow or go to
8 jail or anything like that. But I'm just saying for purposes
9 of preservation of my record' we need to have that happen
10 because we feel that the writ as it went up really wasn't
11 ripe for a decision is our feeling. It's somewhat the
12 feeling of all of us in talking about this.

13 THE COURT: Who took it? You? Didn't your client
14 take it up?

15 MR. O'CONNOR: Yes.

16 MR. BECKER: There was an order, and it was taken
17 up by way of a writ.

18 THE COURT: Application for a writ of mandamus?

19 MR. BECKER: Correct. And there was a date certain
20 that made that a ripe issue for the appellate court. There
21 was in terms of appellate -

22 THE COURT: I don't understand that they ruled it
23 as being not an issue or not ripe. I understand they ruled
24 on the merits. Have you seen a copy of it?

25 MR. BECKER: No, I have not. Mr. Marien from my

1 office received a call from the Eighth Circuit saying that
2 the writ was denied, and that's all we found out.

3 MR. O'CONNOR: I think we can get going. The
4 statements aren't here anyway. As part of my promise, I have
5 not looked at them or shared them with counsel. Mr. Becker
6 couldn't do anything with them until the next break anyway.
7 I suggest we take it up at the next break. I do not see it
8 as something that's going to hold up this trial.

9 (Court and Law Clerk conferred off the record.)

10 (The following proceedings were had in the
11 courtroom out of the presence of the jury:)

12 THE COURT: Let's get the jury. Come on up and
13 shave a seat on the witness stand, if you will. You were
14 sworn, weren't you?

15 THE WITNESS: Right.

16 ~ (The following proceedings were had in the
17 courtroom in the presence of the jury:)

18 THE COURT: You'll recall that the witness was
19 sworn just before we took the break for lunch. And Mr. Wall,
20 I'll remind you that you're still under oath.

21 THE WITNESS: I understand.

22 THE COURT: Okay. Proceed, counsel.

23 MR. MILLER: Thank you, Judge.

24 — — —

1
2 having been previously sworn, testified as follows:

3 1 - _ _

4 DIRECT EXAMINATION

5 By Mr. Miller:

6 ~Q. Would you tell the Court your name, please?

7 A. Phillip M. Wall.

8 IQ. And how old are you, sir?

9 A. Forty-four.

10 IQ. And where do you work?

11 IA I am chief fire dispatcher for the Kansas City,
12 Missouri, Fire Department.

13 IQ. And how long have you been the chief dispatcher?

14 A. I've been chief dispatcher since September of 1988.

15 IQ And would you tell the jury what your duties are as the
16 I chief dispatcher?

17 A. Okay. As chief dispatcher, I'm responsible for the full
18 operation of the Kansas City, Missouri, Fire Department
19 Communications Center. I make all the decisions on responses
20 and basic, the strategic operations of the fire department on
21 any given day that I work.

22 THE COURT: Where is that center now?

23 THE WITNESS: It's now at 1111 Locust.

24 Q. (By Mr. Miller:) I want to go to the early morning
25 hours of November the 29th, 1988. And were you on duty those

1 early morning hours?

2 A. Yes, that is correct.

3 Q. And I want to go to 3:40 a.m. on that same date. And
4 did you receive a call?

5 A. That is correct.

6 Q. Would you tell the jury what that call was pertaining

8 A. It was a report of a small pickup truck on fire in the
9 vicinity of 87th and Blue River Road.

10 Q. And was the caller a firefighter?

11 A. No.

12 Q. And who did you give the call to?

13 A. One of the dispatchers on my shift took the call and
14 then relayed the information to myself, at which time I
15 dispatched the call.

16 Q. And to which pumper?

17 A. Pumper 41.

18 Q. And why did you choose Pumper 41?

19 A. Based on the address, that was their first in district,
20 so they were sent.

21 Q. Are these dispatches coming in, and from you going out,
22 are they recorded?

23 A. Yes, that is correct.

24 Q. And were the dispatches and responses recorded back on
25 November the 29th, 1988?

1 A. Yes, that is correct.

2 Q. I want to show you what's been marked as Government's
3 Exhibit No. 16. And can you identify that?

4 A. That is a tape of the events that occurred on November
5 29th in the early morning hours.

6 Q. Is that an edited version?

7 A. Yes' it is.

8 Q. Have you listened to that?

9 A. Yes, I have.

10 Q. Does that fairly and accurately represent what went on
11 in the early morning hours of November 29th, 1988?

12 A. Yes.

13 Q. And does it contain the pertinent information beginning
14 from 3:40 in the morning on, regarding the fire and explosion
15 out at the construction site?

16 A. That is correct.

17 MR. MILLER: At this time, Your Honor, I offer U.S.
18 Exhibit No. 16 into evidence, the tape.

19 MR. PETERS: We have no objection, Your Honor.

20 THE COURT: All right. 16 is admitted without
21 objection.

22 **(Government's Exhibit 16 was admitted into**
23 **evidence.)**

24 Q. (By Mr. Miller:) And now I want to show you what's been
25 marked as Government's Exhibit No. 17. And can you identify

1 that?

2 A. Yes. It is a transcript of the transmissions and
3 proceedings that went on dealing with the explosion and the
4 events that went on at 87th and Blue River Road.

5 Q. Have you read that transcript?

6 A. Yes, I have.

7 Q. Have you compared that transcript -- what I mean by
8 that, did you read that while you were listening to Exhibit
9 No. 16, the tape?

10 A. Yes.

11 Q. Does this transcript fairly and accurately represent
12 what is on Exhibit 16, the tape?

13 A. Yes' it does.

14 THE COURT: What is the number of the transcript?

15 MR. MILLER: No. 17, Your Honor. Your Honor' at
16 this time' we'd like to play Exhibit No. 16; and Exhibit No.
17 17 we'd like to pass to the jury to aid them in listening to
18 the tape and following it.

19 THE COURT: All right. I take it there's no
20 objection to 17; is that right?

21 MR. PETERS: That's correct' Your Honor.

22 THE COURT: Ladies and gentlemen, the government is
23 about to play now the tape which has been identified and
24 admitted as Exhibit 16. You'll have in your hand a
25 transcript of what has been admitted and identified as a

1 transcript of what's on that tape.

2 The evidence is the tape, and what you hear is the
3 evidence. If for some reason there may be a variance between
4 what you hear and what it says on 17, the transcript, what
5 you hear governs. I have no thought that there is any
6 discrepancy that would be major or important' but I want you
7 to understand that what you hear said on the tape is the
8 evidence that is before you.

9 Okay. You can proceed.

10 MR. MILLER: I have a copy for you, Your Honor.

11 THE COURT: Thank you.

12 MR. MILLER: And Judge' right before we play the
13 tape' there's a few things I wanted to clear up with Mr.
14 Wall.

15 THE COURT: All right. Go ahead.

16 MR. PETERS: With the Court's permission' can we
17 have one of the defense counsel move when an exhibit is being
18 used so we can see the exhibit?

19 THE COURT: Oh, sure. I thought we had already had
20 that understanding.

21 MR. PETERS: Thank you.

22 Q. (By Mr. Miller:) Mr. Wall, on the transcript and what
23 the jury will hear on the tape are the two words still
24 alarm. What does that mean?

25 A. Well, still alarm in our terminology is a minimal
fire

1 response that is sent to a, what is considered a fairly
2 minimal incident. It could be anything from a car fire, EMS
3 type call' trash fire, this type thing, as opposed to a
4 structural type fire.

5 IQ And also on the tape is the ten code 10-97. And what
6 does that mean?

7 A. That was the code at the time that was used to denote a
8 fire unit arriving on the scene of an incident.

9 Q. When it says 41 or Pumper 41 and you hear the voice,
10 whose voice is that?

11 A. That was Captain Kilventon's voice.

12 Q. And when you hear Pumper 30, whose voice is that?

13 A. That was Captain Halloran.

14 Q. And when someone identifies themselves as 107, who is
15 that?

16 A. That was the district fire chief whose district the
17 incident occurred in, which was Marion Germann at the time.

18 Q. When the phrase tone is used on the tape, what does that
19 mean?

20 A. That is a tone signal we use in getting everyone's
21 attention, either to a fire response or for pertinent type
22 information. It's a beep type tone.

23 Q. Also, if the phrase quint is used, what's a quint?

24 A. A quint is a particular type fire apparatus that,
25 generally speaking, is a hook and ladder or an aerial type

1 platform truck, but it also has the ability to carry water
2 and also the pump to pump water.

3 Q. And also the phrase is used 107 emergency. What does
4 that mean?

5 A. 107 indicating that he has an emergency situation at
6 hand; in other words, a real priority type situation, that in
7 order to clear the air that he has an emergency.

8 THE COURT: You all should know, there's been an
9 inquiry from one of the jurors. You will have the
10 opportunity to examine the exhibits at a later time and
11 during your deliberations. And if at any time during the
12 course of the trial there's a particular exhibit that you
13 want to see, you let me know that and we'll see to it that
14 that's made available for you to see. We don't have a set of
15 exhibits for all 16 of you, but they will be available if
16 they're needed.

17 MR. MILLER: Your Honor, at this time, may I play
18 the tape?

19 THE COURT: Yes, sir. Yes, you may.

20 (Government's Exhibit No. 16 was played.)

21 Q. (By Mr. Miller:) A few more questions, Mr. Wall. What
22 are those beeps that we kept hearing on the tape?

23 A. That is the beep tone that I was describing earlier.
24 It's to get everyone's attention.

25 Q. And when you called out to mutual aid, what is mutual

1 aid?

2 A. It's a, in this case, it's the radio channel that all
3 area fire departments have and listen to and monitor. And in
4 the event that we need to communicate with another fire
5 department for some reason, we do, it's via radio system
6 rather than telephone or land line.

7 Q. Who is 101 who is referred to on the tape?

8 A. 101 is the on-duty fire chief who is in charge, on any
9 particular shift he's in charge of the fire fighting force.

10 Q. Do you remember his name?

11 A. That was Chief Booth that day.

12 Q. And where did you dispatch Pumper 41 to, the truck or
13 the trailer?

14 A. Pumper 41 was originally sent to the report of a small
15 pickup truck fire.

16 Q. And what time did Pumper 41 arrive at the scene of the
17 pickup truck on fire?

18 A. It was approximately, the best I can recollect, three or
19 four minutes after they were dispatched.

20 Q. If you need to, you can refer to Exhibit No. 17 to
21 refresh your memory.

22 A. Okay. They arrived approximately 3:46, according to
23 this.

24 Q. And when was it transmitted to you that there had been
25 an explosion?

1 A. At 0408 hours.

2 ~ Q. And when was the second explosion reported to you?

3 IA. At 0448 hours.

4 ~ Q. And that s a.m.?

5 I A. Right.

6 IQ After the explosion, how many times did you try to
reach

7 Pumper 30 and Pumper 41?

8 ~ A. I tried twice, two times.

9 IQ. Now, have you heard the entire tape from that
night?

10 IA. Yes, I have.

11 Q. And this is just a pared down version of it,
correct?

12 ~A. That is correct.

13 IQ And once again, does this accurately reflect everything
14 that's in the entire tape that you heard?

15 IA. From 3:40 a.m. up until the time of the second explosion
16 at 4:48, correct.

17 MR. MILLER: No further, Your Honor.

19

CROSS-EXAMINATION

20 By Mr. Peters:

21 Q. Dispatcher Wall, my name is Pat Peters, and I'm
22 representing Frank Sheppard. I just want to ask you a few
23 questions.

24 On the transcript, the printed transcript that the
25 ~ jury has had an opportunity to read and the Court's been

1 provided, there are listed times to the left that are
2 showing, correct me if I'm wrong, hours, minutes, and seconds
3 as the call comes in; is that correct?

4 A. That's correct.

5 Q. And you've had an opportunity to review, so that where
6 we see these times, those are the times taken off of the
7 master tape and exact times as recorded by the dispatch tape;
8 is that correct?

9 A. That's correct.

10 Q. And to save time, the entire tape, you're dispatching
11 for the entire city. So if we had the whole tape here, all
12 that's being left out are calls unrelated to this occurrence;
13 is that a fair statement?

14 A. Yes. One thing I might add, at the time this incident
15 was going on, we had a two-alarm fire that was occurring at
16 Twelfth and Woodland that had broke out at approximately 3:30
17 that morning, approximately ten minutes prior to when we
18 received the call of the vehicle on fire at 87th and 71. So
19 some of the traffic you hear in that tape that is not related
20 to the actual explosion incident is related to the two-alarm
21 fire that we had going at the time.

22 Q. And then for the jury's benefit, because we hear about
23 F1, F2, F3, just for the jury's benefit, would you explain
24 the way the dispatch was working where sometimes if somebody
25 went behind a hill, for example, a tower might not hit them

1 and you have to relay messages, because there's some of that
2 in the transcript. Just in your own words, describe to the
3 jury that.

4 A. Okay. At the time, the radio system we were using, VHF
5 system, F2 was a designated main traffic channel. It was
6 154.13 megahertz. That was the channel where all of our
7 dispatch transmissions went out of. F3 was the mutual aid
8 channel, again, the link to all the area fire departments,
9 operated on 154.28 megahertz. Another frequency we were
10 using at the time was labeled F4, it might have been
11 mentioned in here, it was 154.445. It was a side channel or
12 a fire use, sometimes used as a fire ground frequency at the
13 time.

14 Q. And you mentioned to the jury that these were VHF
15 frequencies. So if somebody is behind a hill, would they
16 sometimes cut out?

17 A. Well, I think some of the cutout was due to a lot of
18 everyone trying to talk on one another, and just interference
19 of everybody trying to talk at once.

20 Q. When we would hear people saying, dispatch, can you get
21 so-and-so, or so-and-so, I'm patching through something from
22 dispatch, why would that be going on?

23 A. That's just normal procedure. Especially when you get a
24 major incident like this. That's just the type of activity
25 that occurs that goes with it.

1 Q. So for the jury's benefit, the times, the judge has
2 instructed them that this transcript, they're to be guided by
3 the tape and what they hear, but these times are exact and
4 accurate; is that correct?

5 A. Yes, it is exact times.

6 THE COURT: Mr. Peters, excuse me. Would you all
7 come up for a minute?

8 (Counsel approached the bench and the following
9 proceedings were had:)

10 THE COURT: I might as well put a stop to this
11 right now. I think that prelude "for the jury's benefit" is
12 currying favor with the jury, and I don't like it.

13 MR. PETERS: I won't do it ever again. Judge,
14 while everybody is up here. I know that the routine practice
15 would be that 17 isn't admitted, the tape controls. But what
16 I'd like, the numerical times are contemporaneous records
17 made at or near the time, qualified under the business
18 records. And because this is an abbreviated tape and because
19 the times are so important, I would like to see if we can -
20 if that's acceptable, if we put the transcript in and waive a
21 hearsay objection, we believe that the times will be
22 beneficial to the jury. If that's not acceptable, we would
23 ask that 17 be admitted for the purpose of the times because
24 we have an abbreviated tape and, as Your Honor has heard
25 listening to it, you might have some long pauses.

1 MR. BECKER: No objection.

2 THE COURT: Okay. Fine. Done.

3 MR. PETERS: Thank you, Judge.

4 (The following proceedings were had in open court:)

5 THE COURT: Okay. Go ahead, counsel.

6 Q. (By Mr. Peters:) Finally, Dispatcher Wall, again, the
7 times that we see to the left are times that are accurate
8 down to the second that correspond to the tape that the jury
9 has now heard?

10 A. Yes. The recorder that we used was set to a device that
11 could pick up world standard time that's broadcast out of
12 Boulder, Colorado, which is a very accurate, it's up to the
13 second as far as times go.

14 MR. PETERS: At this time, Judge, we would move for
15 admission of Plaintiff's 17.

16 MR. MILLER: No objection.

17 MR. PETERS: I have no further questions, thank
18 you.

19 THE COURT: All right. It's admitted without
20 objection.

21 **(Government's Exhibit 17 was admitted into**
22 **evidence.)**

23 THE COURT: What's next? Any redirect?

24 MR. MILLER: Just one question, Your Honor. This
25 slipped my mind.

2

3 BY Mr. Miller:

4 IQ What does hazmat mean that is referred to on the tape?

5 A. That is in reference to a hazmat unit or hazmat type
6 personnel that deal with hazardous materials in such cases,
7 chemicals, explosives, et cetera.

8 Q. And who is, who was the hazmat officer that night that's
9 referred to on the tape?

10 A. That was Car 106, Chief Grote.

11 Q. Logan Grote?

12 A. Right.

13 MR. MILLER: No further, Judge.

14 MR. PETERS: Nothing further, Judge.

15 THE COURT: Anything further from the defense?

16 MR. PETERS: No, Your Honor.

17 THE COURT: Thank you, sir. You may step down.

18 Call your next witness, Mr. Becker.

19 MR. BECKER: united States calls Deborah Riggs.

20 Your Honor, the parties have entered into a stipulation that
21 was filed earlier today regarding photographs and business
22 records in this case. And if I may, I'd just briefly read
23 from that stipulation and then offer some exhibits.

24 THE COURT: That's been filed, and I've examined
25 it, and it seems to be in order, so you may do that. Barring

1 any objection.

2 MR. BECKER: Your Honor, the united States and the
3 defendants and their attorneys agree and stipulate that any
4 party to this case may offer into evidence any photographs
5 listed on the exhibit lists on file without having to call
6 witnesses to testify that the photograph is a fair and
7 accurate representation of the matter portrayed.

8 THE COURT: Mr. Becker, when you talk, would you
9 get on the microphone, please? There are a lot of folks that
10 want to hear what's said.

11 MR. BECKER: usually people tell me that they can
12 hear, but certainly I will, Judge.

13 And all counsel do reserve the right to object on
14 anything other than grounds of authenticity.

15 Based upon that stipulation, I'd offer into
16 evidence, subject to other objections, photographs that are
17 in Government's Exhibits 10 through 275.

18 THE COURT: Who is responding to -

19 MR. PETERS: One moment, Your Honor

20 (Counsel conferred off the record.)

21 MR. O'CONNOR: Can we approach a minute, Mr.
22 Becker?

23 (Counsel approached the bench and the following
24 proceedings were had:)

25 MR. O'CONNOR: Judge, we believe that some of these

1 exhibits contain photographs that are very graphic in nature,
2 and there's no element in this crime that needs to show that,
3 the death of these firefighters. We'd like to have the Court
4 look at the photographs before it rules. These are very
5 graphic photographs that we would have an objection to.

6 THE COURT: Well, let me ask a question before you
7 respond. Have you seen the government's trial memorandum
8 filed today on that issue?

9 MR. O'CONNOR: Yes, sir.

10 MR. BECKER: Your Honor, those photographs are
11 Government's Exhibit 230 through 275. I understand that the
12 defendants have objection to certain of those photos. I
13 don't know if they object to all of them, but none of those
14 photos will be offered this afternoon or will be, none of
15 those photographs will be used this afternoon, and -

16 THE COURT: Why don't we admit 10 through 229 and
17 then deal with the others at a later time.

18 MR. BECKER: That's fine. Thank you.

19 (The following proceedings were had in open court:)

20 THE COURT: By agreement, Exhibits 10 through 229
21 are admitted. Ruling on the remainder of the offered
22 photographs is deferred to a later time. So you may proceed
23 on that basis, counsel.

24 MR. BECKER: Thank you, Judge.

25 **(Government's Exhibits 10 through 229 were
admitted**

1 into
evidence.)

3 DEBORAH RIGGS,
4 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
5 testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Becker:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. Please state your name and spell your last name.

12 A. Deborah Ann Riggs, R-I-G-G-S.

13 Q. Ms. Riggs, how old are you?

14 A. Forty-one.

15 Q. Do you have any children?

16 A. One.

17 Q. A boy or a girl?

18 A. A girl.

19 Q. How old is she?

20 A. Eight years old.

21 Q. Are you employed?

22 A. Yes.

23 Q. How are you employed?

24 A. I'm employed at Ford Motor Company.

25 Q. Where?

1 A. In Claycomo, the Kansas City Assembly Plant.

2 Q. What do you do there?

3 A. I work in the paint department. I do every job. It's
4 called utility.

5 Q. How long have you been employed at the Ford Motor
6 Company Claycomo plant?

7 A. Twenty years in March.

8 Q. Now, during the last ten years, have you ever had any
9 other job?

10 A. Yes. I've worked for my brother Robert Riggs for
11 Ameriguard as a part-time employee for security.

12 Q. okay. How old is your brother? Is he older than you or
13 younger than you?

14 A. I believe he's like 13 months older than me.

15 THE COURT: Your brother's name is Robert Riggs?

16 THE WITNESS: Yes, sir' Robert Riggs.

17 Q. (By Mr. Becker:) And the name of his company is
18 Ameriguard; is that right?

19 A. As far as I know.

20 Q. When did you start working part-time or whatever it was
21 for Ameriguard?

22 A. I was on no work available at Ford Motor Company while I
23 was pregnant.

24 Q. And that was in 1988; is that right?

25 A. Yes.

1 Q. What part of 1988?

2 A. I believe it would be the last part.

3 Q. So the fall' September, October, is that fair to say, or
4 later in the year?

5 A. I really couldn't tell you the date. I didn't work for
6 him for very long, though.

7 Q. Well, in November of 1988, were you working part-time
8 for your brother as a security guard?

9 A. Yes, sir.

10 Q. What was your status at Ford at that time?

11 A. No work available.

12 Q. What does that mean?

13 A. They had no job for me to do in the paint department.

14 Q. Why?

15 A. Because I was pregnant.

16 Q. How far along were you by November of 1988?

17 A. Five months.

18 Q. Do you have any other brothers and sisters?

19 A. Yes. I have one brother, Doral Ray Riggs (phonetic).

20 Q. What does he do for a living?

21 A. He's a detective for the sheriff's department in L.A.

22 He does children homicide deaths, children deaths.

23 . Have you ever been charged or convicted of any crime?

24 . No.

25 . Going back to 1975/,76 when you would have been about 20

1 or 21 years old, where were you working then?

2 A. Ford Motor Company.

3 Q. Did you have an incident with an automobile where you
4 reported it stolen?

5 A. Yes' I did.

6 Q. Could you tell us about that' please?

7 A. I was going -- well, first of all' I had wrecked the
8 vehicle and had gotten it repaired' and it just wasn't
9 working. I mean' everything was going wrong with it. And I
10 was going to go out of town, and my roommate told me that she
11 could arrange to have it stolen for me for like a price. I
12 don't remember how much it was now. And I did do that. I
13 agreed to do that.

14 Q. Was the car stolen, then?

15 A. Yes.

16 Q. And did you put in an insurance claim?

17 A. I'm sure that I did, but I don't remember doing that.

18 Q. That's the only reason to have it stolen, right, is to
19 get the insurance money?

20 A. Right. So I'm sure that I did.

21 Q. At that time, were you drinking quite a bit?

22 A. Yes.

23 Q. Did you have any alcohol treatment after that time?

24 A. Yes, I did.

25 Q. What years are we talking about? When was that?

1 A. I went through five different treatments, and that was
2 probably within a three to four-year span before I quit.

3 Q. Say 1975 through '79' is that -

4 A. Yes, that sounds about right.

5 Q. Now, in November of 1988 -

6 A. Yes.

7 Q. -- you said you were working part-time as a security
8 guard for your brother's company 'Ameriguard' right?

9 A. Correct.

10 Q. What type of security were you doing? Where did that
11 take place?

12 A. I worked a site down by where they have the circuses at.

13 Q. Kemper Arena?

14 A. Yes.

15 Q. Okay.

16 A. Down by the river there was a site that I worked at a
17 few times, and then there was a site by where the dog races
18 are over in Kansas that I worked a few times' and then -

19 THE COURT: I'm sorry. Are you distinguishing the
20 site down by the river' distinguishing it from the Kemper
21 Arena site?

22 THE WITNESS: Yes' it's a different site.

23 THE COURT: So there was Kemper, and then the site
24 down by the river.

25 A. And then there was the one at 87th and 71 Highway.

1 Q. (By Mr. Becker:) Not to belabor the issue, but there's
2 three places we're talking about' one down in the west
3 bottoms near Kemper?

4 A. Right.

5 Q. And one down in Kansas City, Kansas?

6 A. Right.

7 Q. And then the one that this trial is all about, the
8 construction on 71 Highway?

9 A. Correct.

10 Q. Okay. How many, how much training, or did you have any
11 training to be a security guard?

12 A. Yes, I did.

13 Q. Could you tell us about that, please?

14 A. I was trained by my brother and my sister-in-law' and I
15 was able to do all the training' including some classes at
16 Penn Valley' except for I wasn't allowed to test' gun test.

17 Q. Why?

18 A. Because of my pregnancy. The police department wouldn't
19 allow me to test' being pregnant.

20 Q. What was the -- not any great detail' but did you learn
21 about' what' filling out forms or what situations you should
22 deal with and not deal with, what was the training?

23 A. It was more shooting' we would go to shooting ranges'
24 filling out the paperwork' like you said. It's hard to
25 remember now all the things that we trained about' but it was

1 pretty extensive.

2 Q. Do you recall' then, when you first started to work out
3 at the construction site out at 71 Highway at Blue River? Do
4 you remember that, going out there, seeing the site?

5 A. Yes.

6 Q. I want to show you -

7 MR. BECKER: And I guess I can put it up here by
8 this TV monitor' if I may' Judge.

9 THE COURT: Surely. If you could' counsel, move it
10 back just a little bit farther and tilt it a bit and maybe
11 we'll be able to see it.

12 MR. BECKER: How is that, Judge? I'll be using the
13 photographs fairly soon, and I think the Court should be -

14 THE COURT: All right.

15 Q. (By Mr. Becker:) Miss Riggs, briefly, before you
16 testified here today, you and I have had an opportunity to go
17 over this testimony, and we've looked at all of these
18 photographs and all of this business, right?

19 A. Yes.

20 Q. Could you show the members of the jury, please' on
21 Exhibit 5 where the construction activity was occurring that
22 your brother's company was supposed to guard when you were on
23 the scene?

24 A. This area right here.

25 Q. And that would be -- I have to -

1 . On the west side of 71 Highway.

2 Q. Thank you.

3 THE COURT: Counsel, I don't show 5 as having been
4 admitted yet. I don't know that it's critical, but if she's
5 going to testify from it, it better be admitted.

6 Q. (By Mr. Becker:) Do you recall looking at this
7 photograph -

8 MR. BECKER: Actually, based on the stipulation,
9 Judge, I would offer Government's Exhibit 5.

10 THE COURT: That's fine. I'm sure there will be no
11 objection, but I also wanted to make sure it's on the
12 record. So it's admitted?

13 MR. BECKER: I would offer Government's Exhibit -

14 THE COURT: We went from 10 to 229.

15 MR. BECKER: Those are the small photographs, and
16 the aerial photographs that I would offer at this time are
17 Government's Exhibits 3, 4' and 5.

18 THE COURT: Any objections to 3, 4, or 5? All
19 right. They're all admitted' then.

20 **(Government's Exhibits 3, 4, and 5 were admitted**
21 **into evidence.)**

22 MR. BECKER: Thank you, Judge.

23 Q. (By Mr. Becker:) On Government's Exhibit 5, then,
24 you've showed us, what was it in the area on the west
side of
25 the highway that you all were supposed to guard?

1 A. Heavy equipment.

2 Q. So earth-movers, bulldozers, that kind of thing?

3 A. Yes' large, heavy equipment.

4 Q. And were they typically kept overnight in a certain

5 area?

6 A. Yes, sir.

7 Q. Where?

8 A. They were parked along, we call this a haul road.

9 Q. Haul, meaning H-A-u-L, right?

10 A. Right, for the heavy equipment to drive on. And they
11 parked in a line just like this picture, in a line on both
12 sides of that road, dirt road.

13 Q. When you, then, were -- and how about the other side of
14 the site, that would be the east side of the construction
15 site, what was going on over there?

16 A. Well, we had an officer over here. There was a few
17 pieces of heavy equipment up in here, and there was two
18 trailers and two bunkers at the back of the property.

19 MR. BECKER: All right. If you would just have a
20 seat, please.

21 THE COURT: You say there were two trailers and
22 two -

23 THE WITNESS: Bunkers.

24 Q. (By Mr. Becker:) I want to show you what is in evidence
25 as Government's Exhibit 26' and I think if you can see out to

1 this monitor here' is this the construction site, then, that
2 we've been talking about? And over here where I have my pen,
3 is that the heavy equipment that was lined up in the
4 evening?

5 A. Yes, it was.

6 Q. Now, when you started to work on that site, how many
7 guards did your brother's company have on duty, typically?

8 A. When I started working on the site, he would have two.

9 Q. Before you worked there, did you know that it was a
10 one-person operation?

11 A. Yes, sir.

12 Q. When it was a one-person operation, what were you, what
13 was the company guarding?

14 A. All I know is what my brother told me. ~

15 Q. All right. Well, then, we'll ask him when he takes the
16 stand.

17 A. Okay.

18 Q. When you came on the scene and it was a two-person
19 operation, what were your responsibilities?

20 A. To keep people off of the property.

21 Q. And what was the definition of the property? How big an
22 area were we talking about or how small?

23 A. I really couldn't tell you the perimeter of it. It was
24 a very large area.

25 Q. Looking at Government's Exhibit 26, then.

1 A. It's all of that area.

2 Q. It's all of this construction up here?

3 A. Yes.

4 Q. Which would be the east side of the highway' as well as
5 the equipment parked along the west side of the highway; is
6 that right?

7 A. Yes. And we also watched the office trailers.

8 Q. And they're up here in between the two' two sides of 71
9 Highway?

10 A. Yes.

11 MR. O'CONNOR: Your Honor' we're going to object to
12 the leading nature. I mean' it's gone on for a long time
13 now.

14 THE COURT: Well, it's physical facts, Mr.
15 O'Connor. I don't think there's any -- so far there haven't
16 been any judgment calls preempted. Overruled. Go ahead.

17 Q. (By Mr. Becker:) When you or -- now, you said there
18 would be two persons on the site. Typically, where would you
19 and the other guard be located to guard that site?

20 A. One would be on the east side of the property, on the
21 east side of 71, and one would be on the west side.

22 Q. Was there anyplace in particular that you would be on,
23 either east or west? Was there any -

24 A. No.

25 Q. When you were on the east side of the property, could

1 you show us, please, with the Court's permission, on
2 Government's Exhibit 26 where you would be located?

3 A. On either side?

4 Q. Please. That would be helpful.

5 MR. OSGOOD: Your Honor, it might be helpful if she
6 could come down to Mr. Becker's photograph and use a pointer
7 on the monitor so we can see what she's pointing to. Is that
8 permissible?

9 THE COURT: Is that machine an Elmo?

10 MR. BECKER: I don't know what an Elmo is, Judge.

11 THE COURT: If it isn't on there, I guess it
12 wouldn't be. If she can get down to that one, and then she
13 can use a pointer. Can you see that?

14 Q. (By Mr. Becker:) If you could please show us on this
15 photograph if there was any particular position on the east
16 side of the highway near the heavy equipment that you would
17 be posted.

18 A. When I worked the area, I would park my vehicle right
19 down in between the heavy equipment. I would just park it
20 right in between it, right in the middle of the street, right
21 in the middle of the dirt road.

22 Q. Why in that position?

23 A. So I could see the other side, the other officer and see
24 what was going on because I would, I would -- I didn't drive
25 that. I would get out of my vehicle and walk up and down the

1 equipment like every 45 minutes to an hour.

2 Q. So tell us about that. What did you do to patrol when
3 you were on the east side of the highway?

4 A. I would just get out of my vehicle every 45 minutes to
5 an hour and walk up and down the heavy equipment to make sure
6 that there wasn't a windshield broken or someone wasn't
7 trying to sabotage the equipment.

8 Q. Was there any lighting on that side of the highway?

9 A. Yes.

10 Q. What was that?

11 A. The generators.

12 Q. Construction generators?

13 A. Yes.

14 Q. How were the lights? Were there more than one or
15 what -

16 A. It was well-lit. There were more than one. I don't
17 know how many, maybe two to three.

18 Q. And that would be on over -

19 . On the west side.

20 Q. Okay. If you were stationed on the east side of the
21 highway up, I guess as we've been calling on the hill, where
22 would you be located?

23 . I personally would be on the berm right there.

24 . All right. And I'm going to show you some other
25 pictures here.

1 A. Or at times I would even park on the haul road.

2 Q. I'm going to show you what's been marked as Government's

3 Exhibit No. 29. Does that show the ridge where you would

4 pull your vehicle when you did patrol on that side' or

5 security on that side?

6 A. Yes' this ridge right here.

7 Q. Could you describe for us why you were on that ridge?

8 A. I felt like I could see more from the berm and I just' I

9 felt better being above everything. I was right next to the

10 trailers. I could see the other officer' you know' in view.

11 Q. So in the direction towards the highway' did you have a

12 clear view that way?

13 A. Yes. I felt like that was the best place on the

14 property to have a view of everything.

15 Q. What was behind you away from the highway?

16 A. The trailers and the bunkers.

17 Q. At the point you described as the berm where you would

18 have your' where you would be sitting up there?

19 A. Yes.

20 Q. Was that higher than anything on the other sides?

21 A. Oh, yes. It was the highest point.

22 Q. What kind of truck or car did you have when you were

23 doing patrol there?

24 . A Toyota pickup.

25 Q. And were you able to get around this construction site

1 in that pickup?

2 A. Yes, better than most officers could.

3 Q. Okay. If you could, I think, have a seat, please.

4 Thank you.

5 So I'd like to talk a little bit about the days and
6 weeks leading up to the night of the explosion. How often
7 would you work, typically? Every night or was there a
8 certain schedule?

9 A. I worked quite a bit. I can't really say every night
10 because I don't remember if I worked every night, but I
11 worked a lot of hours.

12 Q. What were the hours that you were on duty? When were
13 the guards there?

14 A. During night, the night hours.

15 Q. What did that mean -

16 A. After dark.

17 Q. In November, would that mean 5 o'clock or 6 o'clock?

18 A. I can't tell you if it was 5:00 or 6:00. It was around
19 that time.

20 Q. Until?

21 A. As soon as the workers would get ready to leave, then we
22 would go on the site.

23 Q. How long -- when was quitting time, then?

24 A. I can't tell you now. I'm just thinking that it's like
25 between 5:00 and 6:00.

1 THE COURT: Her quitting time or the quitting time
2 on the job?

3 MR. BECKER: Well, both, but -- when did -

4 A. Morning.

5 Q. (By Mr. Becker:) And is that when all the guards would
6 typically, the workers would come and the guards would -

7 A. When the workers came, we went.

8 Q. Did you usually work the whole shift, or was it broken
9 up into two shifts?

10 A. Sometimes I worked a double shift, and sometimes I would
11 be relieved.

12 Q. What was the normal shift? You talked about a double
13 shift. What's the normal shift?

14 A. I believe it was like six hours or eight hours. It
15 wouldn't be all night long.

16 Q. So, typically, you would have some guards there from
17 6:00 to midnight, and then somebody else would come on
18 midnight to 6:00?

19 A. Right.

20 Q. During the time you were there guarding up to November
21 29, 1988, did you personally have any incidents on the site
22 with trespassers or other people coming onto the property?

23 A. Yes.

24 Q. Could you tell us, what's the first one that you
25 remember?

1 A. I remember four-wheelers would come up there.

2 Q. What does that mean?

3 A. People on four-wheelers. It's a little vehicle that
4 they drive on construction sites and, you know, off road.

5 THE COURT: Not an over-the-road vehicle, right?

6 THE WITNESS: No.

7 Q. (By Mr. Becker:) And they're small type, scooter type
8 affairs, usually?

9 A. Yes.

10 Q. What did you do when they would show up on the site?

11 A. Try to either run them off or call the police and have
12 them ran off.

13 Q. So it was your understanding that they were not allowed,
14 that was part of the job, to get them off the site?

15 A. Correct. It was -- I was told not to let anyone on the
16 property unless they had permission.

17 Q. Are there any other specific incidents you recall prior
18 to November 29, 1988?

19 THE COURT: Before you leave that, as to those
20 four-wheelers that you've testified about, did you understand
21 them to be there just on a lark, just for recreational
22 purposes?

23 THE WITNESS: Yes, but I felt they still didn't
24 belong there.

25 THE COURT: Were they mainly kids, young people?

1 THE WITNESS: I wouldn't call them children, they
2 were young boys.

3 THE COURT: Teenagers?

4 THE WITNESS: Young men, yes.

5 THE COURT: Thank you, counsel. Excuse the
6 interruption.

7 Q. (By Mr. Becker:) Do you remember any other incidents up
8 on the construction site while you were personally on guard?

9 A. I had a few incidents with some woodcutters.

10 THE COURT: Some what?

11 THE WITNESS: Woodcutters.

12 Q. (By Mr. Becker:) Tell us what you remember about that,
13 please.

14 A. They would come up at night and cut wood and have a fire
15 in a 55-gallon barrel, an open fire. And it was sitting next
16 to one of the trailers, and I just had some incidents with
17 them, trying to get them to leave the property.

18 Q. Was this a, just an individual or groups, or what was
19 going on?

20 A. It was only one group. It was like maybe eight people.
21 And one of them was, his name was Massey, I believe, was the
22 one that I always spoke with. He kind of seemed to be the,
23 like the owner of the log splitter and -

24 Q. He was the leader of the woodcutters, huh?

25 A. Yes. He was the leader of the woodcutters.

1 Q. Okay. What happened when you -- how would you see
2 them? I mean, were they just, would they sneak on the
3 property or -

4 A. They would just drive up on the property and get all,
5 with all their equipment and start cutting wood and build a
6 fire.

7 Q. What time of night was this?

8 A. After dark.

9 Q. Well, obviously, you don't get there until after dark,
10 but was it midnight or 3:00 or 6:00 or -

11 A. They came at different times. They -- I don't remember
12 them ever coming after midnight, just showing up after
13 midnight, but they would come at different times. They
14 didn't have a schedule.

15 Q. What did you do then, what did you say to these
16 woodcutters when you would go see them on the property?

17 A. I would ask them to leave the property and not to start
18 any fires on it.

19 Q. I'd like you to look at Government's Exhibit 29 here up
20 on the screen. Can you see the wood that's on the site?

21 A. Yes.

22 Q. Is that -- this picture is from November 29, 1988. Is
23 that pile of wood here typical of what was on the site while
24 you were guarding it?

25 A. Yes.

1 Q. Show you Government's Exhibit 70. Could you describe
2 the size, the various sizes of wood that was there on the
3 property?

4 A. It went from a twig to a full tree uprooted.

5 Q. And this was -- I'll show you Government's Exhibit 71.
6 Is that typical of the wood that was up, piled up on the site
7 during the time you were guarding it in November of 1988?

8 . Yes.

9 Q. How high were those piles?

10 . I couldn't tell you how high they were. They were
11 larger than a -- they were as high as a semi truck or -- I
12 mean, you couldn't see over the wood piles. If you were
13 standing next to them, you couldn't see over it.

14 Q. And they were located on the east side of the
15 construction site near where the trailers had been parked; is
16 that a fair statement?

17 A. Yes.

18 Q. Did you have an incident up on the construction site
19 that you were involved in with a pickup truck?

20 A. Yes, I did.

21 Q. Do you remember when in the month of November of 1988
22 that occurred?

23 A. It was, I believe, within like a week, sometime within
24 like a week. It was real close to the explosion.

25 Q. So what you're saying is maybe a week before the

1 explosion, sometime in that -

2 A. Yes. Or maybe just a few days, but within a week.

3 Q. Tell us what happened.

4 A. I was on the east side of the property guarding that
5 side, and I saw a vehicle come up 87th through the entrance
6 that you could come up on the property because there was two
7 entrances. And I was on one, and he came up the entrance on
8 the other side, and I could just see the outline. He came up
9 with no lights on on his truck. And he went -

10 Q. If I may interrupt for a minute. Looking here at
11 Government's Exhibit 26 at the bottom of this photograph, is
12 that 87th Street, then?

13 A. That's what I think.

14 Q. Okay. Well, that's right. Could you point out to the
15 jury, please, on that photograph, if you can, where the two
16 entrances onto that part of the site were located?

17 A. This is the haul road, and here is the other entrance.

18 Q. Thank you. One just before you get back, where were you
19 on patrol when you first noticed the, someone trying to come
20 on the property?

21 MR. OSGOOD: Excuse me, Mr. Becker. If she wants
22 to stand there, maybe Mr. Becker with his pointer could
23 simultaneously point on the picture and that would solve the
24 problem, Your Honor.

25 THE COURT: That would be good if you can do that,

1 Mr. Becker. I think we need to be able to see what she's
2 pointing to, and I can't see anything that she's pointing to
3 over there.

4 MR. BECKER: All right.

5 Q. (By Mr. Becker:) So if you could point out the two
6 entrances to the property again.

7 A. Right here' right here' and it comes up' and right here.

8 Q. Thank you. And one more. Where were you stationed or
9 located when you saw this vehicle coming onto the property?

10 A. Right here on the haul road.

11 Q. Slightly beyond where that battalion chief's car is
12 there?

13 A. Yes.

14 Q. Okay. If you would have a seat, please.

15 Please tell us, then, was this late at night on
16 that particular day?

17 A. I believe it was before midnight. I don't remember the
18 time.

19 Q. What did you see?

20 A. I saw the outline of the truck come up the hill off of
21 87th and come up on the property, and the property changed
22 daily. I mean -

23 Q. What does that mean?

24 A. Well, they were doing dynamite, and where the heavy
25 equipment would drive would make it impassable at times. And

1 sometimes, like some nights I could cross across the
2 property. That night I couldn't.

3 Q. Meaning that you could go from the haul road over here
4 to the exit on the far side of the property?

5 A. Correct.

6 Q. That would be down and across where the trailers had
7 been located?

8 A. Yes.

9 Q. Okay. On that particular night when you saw activity at
10 the other entrance, were you able to drive across?

11 A. No.

12 Q. Why not?

13 A. I had to go back down because the heavy equipment had
14 been driving back and forth and caused too many ditches. It
15 was just impassable.

16 Q. So what did you do?

17 A. I radioed the other officer. I came back down the haul
18 road, came up 71 Highway, went to 87th Street, and went back
19 up, and by the time I got up there, he was at the trailer.

20 Q. Well, you get up -- where were you on the site when you
21 next saw the person or vehicle, up onto the area of the
22 trailers?

23 A. Yes, right there.

24 Q. All right. What could you see when you got to that
25 point?

1 A. He was at the trailers.

2 Q. So you could see a man?

3 A. Right.

4 Q. Was a person -

5 A. In a pickup truck.

6 Q. Was he out of the truck or in the truck?

7 A. He was just getting back in the truck. And he got back
8 in the truck. I had my lights off. He couldn't see me. He
9 got back into his truck, he backed it up, and he went
10 straight back to the magazine bunker.

11 Q. Now, those are located at the rear of the property; is
12 that -

13 A. Yes.

14 Q. I'm sort of off the chart.

15 A. Yes. And he went to the one. He didn't go to both of
16 them. He went to the one. He got out of his truck.

17 Q. That's if you -- you see my pencil there, or you see
18 that -- what was in those bunkers at the back of the
19 property?

20 A. Dynamite is what I was told.

21 Q. All right. What did you do then?

22 A. I just went real slow with my lights off and followed
23 him, and followed him back to the bunker. He got out of his
24 vehicle, walked over to it, and then went back to his
25 vehicle, and then I shined a spotlight out my, out my window

1 at him, on him, and he jumped back in his truck, turned the
2 truck around, and came back at me head-on.

3 Q. What did you do?

4 A. I got out of his way. He was driving real fast, way too
5 fast to be on that construction site. And I pulled my
6 vehicle over and allowed him to go by me. I radioed the
7 other officer and asked her to cut him off down on 87th
8 Street. And she pulled her vehicle in sideways as I was
9 turning around and chasing him down that hill, but he went
10 right past her.

11 Q. Which way did that pickup truck go, then?

12 A. He went back out on 71 Highway, and he saw that I was
13 chasing him, and he slammed on his brakes, and I ran into the
14 back of him. And when I ran into the back of him, my radio
15 and my gun went on the floorboard. And because of my
16 stomach, I couldn't bend over and pick it up.

17 So I just sat there and he just looked at me. And
18 then he, he was starting to go up the highway wrong or
19 something, the wrong side of the highway. Like instead of
20 going southbound, he had made the turn wrong and he was going
21 to go up the wrong side.

22 And he, I believe then that's when he went back to
23 the correct side. He just kind of curved around and went
24 back. I think that's why maybe he slammed on his brakes.

25 And I pursued him up to 95th Street. He got off on

1 the first exit after 90 -- I mean, he got off on 95th Street,
2 went west, went to the first exit, got off on that and then
3 went back across a bridge and went into a residential area.

4 Q. Were you following, obviously?

5 A. I was following him.

6 Q. What happened when you got back in the residential area?

7 A. He came to a dead end road, and he turned his truck
8 around and came back at me again.

9 Q. What did you do?

10 A. I got out of his way. All I was really, the only reason
11 I was following him was not really to stop him because I
12 didn't feel comfortable in doing that. I only wanted his
13 license number.

14 Q. Did you get that?

15 A. No. I never did see a plate on his vehicle.

16 Q. Now, I'd like to talk about November 28, 1988. Were you
17 scheduled to work that day, which would be the 28th into the
18 29th?

19 A. Yes, I believe so.

20 Q. Did you receive a call to go down to the site earlier
21 than you expected?

22 A. Yes.

23 Q. Could you tell us about that, please?

24 A. Donna Costanza called me and told me that her vehicle,
25 she was on the site guarding it.

1 Q. okay. Do you know who was there at the beginning of the
2 shift on November 28, 1988?

3 A. I believe it was Kevin LeManske and Donna Costanza.

4 Q. Do you recall what time you were scheduled to relieve
5 one of them?

6 A. No. Just approximately between, I believe it was 10:00,
7 but -- around 10:00.

8 Q. You got a call, then, earlier than 10:00?

9 A. Yes.

10 Q. From Donna Costanza. What was that about?

11 A. She wanted me to get down there right now, that this
12 other officer had messed her car up. I guess he had opened
13 up the hood and tried to help her start it or something, and
14 she said that he had messed her car up, and she was just
15 screaming and yelling at him. I could hear that in the
16 background.

17 Q. What did you do?

18 A. I started down there and started calling my brother the
19 whole way down there.

20 Q. So you had a mobile phone in your pickup truck, as well?

21 A. I had my brother's mobile phone.

22 Q. What did you tell your brother? What was that about?

23 A. I told him exactly what had happened, that she had
24 phoned me and that she was very upset and that she was saying
25 that he had destroyed her car and, you know, broken it and

1 that he needed to go down there because she was scheduled to
2 work a double shift.

3 Q. So you were going to replace LeManske, and Ms. Costanza
4 was going to be there the rest of the night?

5 A. Yes.

6 Q. When you drive down there, what do you see when you
7 arrive at the construction site on 71 Highway and Blue River?

8 A. I remember seeing Donna at her car. I don't remember
9 seeing Kevin. I remember I talked to him. I don't remember
10 where he was at or anything like that. I remember Donna ith
11 her car, and I pulled up real close to her car, which was

12 Q. Where was that?

13 A. Right by the heavy equipment on the east side, on the
14 west side of the 71 Highway.

15 Q. So where the Brown Brothers equipment was typically
16 parked?

17 A. Yes.

18 Q. If you were -

19 A. But she was more pulled out. She wasn't sitting in
20 between the equipment, she was pulled out on the road, I
21 mean, on the side of the road.

22 Q. Right near 71 Highway?

23 A. Right.

24 Q. Southbound at that point, right?

25 A. Right.

1 Q. What kind of car, if you remember, what did she have?

2 A. I know that it was a Volkswagen, and I believe it was a
3 Rabbit.

4 Q. What happened then when you arrived on the scene? Was
5 your brother there?

6 A. My brother pulled up almost the same time I did, and so
7 he more or less took care of it, and I went across the
8 street.

9 Q. What does that mean?

10 A. I went to the other side of the property to go ahead
11 and -- I told Kevin that he could go ahead and go home. I
12 just don't remember which side he was on when I told him.

13 Q. So you contacted this other guard, LeManske?

14 A. Yes.

15 Q. And he went home?

16 A. Yes, I told him he could go home a little earlier
17 because I was already there.

18 Q. Did you set up then in your guard post or whatever you
19 want to call it on the east side of the highway?

20 A. Yes.

21 Q. Could you tell us again, if you remember, where you were
22 on, it would have been late on November 28, 1988, on this
23 part of the construction project?

24 A. No. I can only say that I would have been either on the
25 haul road or the berm. I don't remember which one I was on.

1 I didn't stay there that long.

2 IQ So, again, this road that comes up from 71 Highway, or
3 out on this ridge or berm up above the site, right?

4 IA. Right. I don't remember which one.

5 Q. Did you have any means of communicating with the other
6 guards?

7 I A. Yes.

8 Q. What was that?

9 A. By radio, walkie-talkie.

10 Q. Did you have it with you that night?

11 A. Yes, I believe so.

12 Q. So

13 A. Yes, I did.

14 Q. So you said you weren't on that side of the property for
15 long. What happened?

16 A. Well, I saw that a tow truck came and took Donna's car
17 off, and as far as I knew, she went with the vehicle with the
18 tow driver. I don't remember now where she rode, but I knew
19 that she had left. And my brother came over, and he asked me
20 to work the lighted side of the highway.

21 Q. So sure. Robert your brother comes over. Does he
22 take up his position then on the east and you go over to the
23 west?

24 A. Yes.

25 Q. Could you then -- so for the rest of that night, where

1 was your position or station?

2 A For the rest of that night, my position would have been
3 on the west side.

4 Q. And at the risk of belaboring it, it's down here where
5 Brown Brothers has the heavy equipment, and we can see
6 actually a little bit of a red blot there, that would be your
7 pickup truck?

8 A. Right.

9 Q. Where did Robert go?

10 A. He went up the haul road.

11 Q. Do you have any recollection about what time this was
12 when Costanza finally left and you and Robert Riggs took up
13 your positions?

14 A. No. I just remember that it was early because I let
15 Kevin go home early.

16 Q. Did you or Robert conduct any patrols that night?

17 A. Yes.

18 Q. Could you tell us what that was?

19 A. It was just the normal patrol, except for Robert, being
20 my brother, was more protective of me because I was pregnant,
21 and so he would come down and pick me up and let me ride with
22 him like to the office trailers and back up to check with him
23 So I wouldn't be by myself.

24 Q. So what was your typical patrol when let's say you and
25 LeManske or you and Costanza were on the site?

1 A. The same patrol.

2 Q. But solo?

3 A. Right. Or, you know, there were times that we rode
4 together too. But, you know, with Robert being my brother
5 and me being pregnant, I did ride with him on his patrol that
6 night.

7 Q. Do you have any recollection, any memory of how many
8 patrols you made that night before, say, 3 a.m., 2 a.m.?

9 A. We made at least three that I know of.

10 Q. What was your patrol, then, what did you go check that
11 night?

12 A. All the property.

13 Q. What did that mean?

14 A. The whole property. We went up the haul road, checked
15 the heavy equipment at the top, went back down, went to the
16 office trailers, went over to where the heavy equipment was
17 and walked that, but we walked it together. We went back up
18 on the other side. And I don't know how many patrols he made
19 by himself. That was just what I did with him.

20 Q. When you went back on the other side, did you check the
21 explosive bunkers?

22 A. Yes, we always checked the locks.

23 Q. Were they intact?

24 A. Yes.

25 Q. How about the two semitrailers, semi truck trailers that

1 were on the site, did you check them?

2 A. Yes, we always checked the locks.

3 Q. Do you remember, were they intact?

4 A. Yes, except for one lock we couldn't see because they
5 had parked a pickup truck backed up against the back doors.

6 Q. Who is they?

7 A. The people on the construction site that worked it.

8 Q. Did you recognize that as a Mountain Plains Blasting
9 Company pickup truck?

10 A. I can't tell you that I recognized it as a Mountain
11 Plains pickup truck, but I recognized the vehicle from being
12 on the property before, that it wasn't out of -- it was a
13 vehicle that I had seen before up there. It had just been
14 parked at a different location.

15 Q. And this particular night it was backed up against the
16 rear doors of one of the trailers?

17 A. Yes.

18 Q. Did there come a time, then, that you resumed, say,
19 approximately 2 a.m., you resumed your duty position over
20 near the heavy equipment?

21 A. Yes.

22 Q. Did you have a conversation with your brother about
23 dinner or eating?

24 A. Yes.

25 Q. Please tell us about that.

1 A. I radioed my brother and asked him if he wanted to come
2 down and eat a sandwich, I had a meatloaf sandwich that I had
3 made. And I asked him if he was hungry and did he want this
4 sandwich and asked him to come down and get it.

5 Q. Well, did he do that?

6 A. Yes, he came down and parked his vehicle, and he said
7 that he had the schedules. We called them the schedules for
8 the officers to work. And he asked me if I wanted to go over
9 the schedules with him to see what hours -- he sort of gave
10 me my pick of hours.

11 Q. So he had those with him in his vehicle?

12 A. Yes, sir.

13 Q. What was he driving that night, if you remember?

14 A. A station wagon, a foreign station wagon. I don't
15 recall the make.

16 Q. So he drives down and he parks next to you near the
17 heavy equipment; is that right?

18 A. Almost next to me, more in front of me and to the side.

19 Q. Closer to 71 Highway?

20 A. Yes.

21 Q. What did you do? Did he get in your car?

22 A. I got into his vehicle.

23 Q. I assume you got in the front seat, passenger seat?

24 A. Yes.

25 Q. Did you have your sandwich with you?

1 A. Yes.

2 Q. What did you do with the sandwich?

3 A. I gave the sandwich to him, and he ate it. And we had
4 the interior light on. And I looked at the schedules, and
5 then I turned the light off.

6 Q. Did you and Robert do any foot patrol during that time
7 back along the heavy equipment?

8 A. Yes.

9 Q. Tell us about that.

10 A. We got out of the vehicle and walked up and down the
11 heavy equipment and did a patrol. I believe we could have
12 done two.

13 Q. Did you leave anything in your pickup truck?

14 A. Everything except for my dog.

15 Q. You had a dog?

16 A. Yes.

17 Q. What kind of dog?

18 A. A five-inch poodle.

19 Q. Was that normal that you would take your dog with you on
20 guard duty?

21 A. Yes. I usually took a boxer with me too.

22 THE COURT: Did you say a five-inch poodle?

23 THE WITNESS: Yes.

24 Q. (By Mr. Becker:) So typically other nights you would
25 have had two dogs with you?

1 A. Yes. But I was in a rush, and I just didn't bring the
2 other dog.

3 Q. What did you leave in your pickup truck when you got
4 into Robert's car?

5 A. My car keys. I didn't carry a purse because I was
6 afraid if someone would walk by the vehicle sometime and we
7 were out patrolling or something they would notice a purse.
8 So I would just take a plastic grocery bag, you know, sack,
9 and I would put my billfold down in that so that no one could
10 see that it was just a billfold sitting there. And then I
11 had a gun down on the floorboard also.

12 Q. Whose gun was that?

13 A. My brother's.

14 Q. And that's something you used for security while you
15 were on the job; is that right?

16 A. That's what I used.

17 Q. Approximately -- and just your best recollection. How
18 long was Robert over on the area next to you here on 71
19 Highway with the heavy equipment?

20 A. I can only say approximately because I wasn't watching
21 my watch or anything. I would guess anywhere between 20 and
22 40 minutes, or an hour even. I just don't know. I don't
23 know.

24 Q. We've discussed this in the past?

25 A. Right.

1 Q. With the work on the schedules and the patrols and the
2 sandwiches and -

3 A. I'd like to say like 30 minutes, 45 minutes is just my
4 guess because of what we did.

5 Q. Sure. Could you describe for the jury, please, what you
6 could -- if you're parked here near the heavy equipment, what
7 could you see up in the area of the trailers?

8 A. You can't see the trailers. You can only see the
9 entrances.

10 Q. Why?

11 A. Because of the berm.

12 Q. So this, what you've described as your patrol position
13 earlier, this berm is, blocks the view of the trailers?

14 A. Yes.

15 Q. And actually can you see any of the construction site on
16 the east side, right?

17 A. Yes.

18 Q. From the guard position down on the highway?

19 A. No, you couldn't.

20 THE COURT: Counsel, we're going to have to take
21 our afternoon break right quick. Do you want to mark where
22 you are now and do it now?

23 MR. BECKER: That's fine, Judge.

24 THE COURT: We will take our afternoon recess.

25 Fifteen minutes, ladies and gentlemen.

1 For your information, if you haven't discovered
2 this already, the shop on the first floor is opened until
3 3:30. And don't talk about the case, and you may withdraw
4 from the courtroom.

5 (The following proceedings were had in the
6 courtroom out of the presence of the jury:)

7 THE COURT: Gentlemen, come up a minute?

8 (Counsel approached the bench and the following
9 proceedings were had:)

10 THE COURT: We have these two questions from the
11 two different jurors. Take a look at them and tell me what
12 you think.

13 MR. BECKER: The first question is from Rainey.
14 "Can Deborah give a description of the truck size, color,
15 make, and model?"

16 MR. O'CONNOR: That's coming on cross-examination,
17 Judge, unless you want to do it now. Or I'm assuming -

18 MR. BECKER: We can go back and cover it. The
19 other one is any charges against Deborah Riggs for having her
20 truck stolen.

21 MR. PETERS: That will come out on cross too.

22 MR. BECKER: Well, it happened in 1975. Maybe
23 counsel can make a statute of limitations argument for her.

24 MR. PETERS: I think it's, perhaps, already been
25 made for her.

1 THE COURT: Well, I think you might consider
2 remoteness, too. I take it there were no charges?

3 MR. PETERS: We found out about this about an hour
4 ago.

5 MR. O'CONNOR: She just told Paul when she came
6 down to testify.

7 MR. PETERS: If, by chance if it would be
8 considered remote, what we have is there's going to be expert
9 testimony that if you take away the firefighters and the
10 explosion, you have what they would consider an arson of her
11 truck done by her for insurance proceeds.

12 MR. BECKER: I haven't been given any notice of any
13 expert that would testify to that.

14 MR. PETERS: You've provided us the discovery from
15 the experts that say that, the State Fire Marshal's Office.

16 MR. BECKER: He's not on anybody's witness list.

17 THE COURT: We're not talking about that truck.
18 We're not talking about a truck that was involved. This
19 question relates to a long -- wasn't this a long time ago?

20 MR. BECKER: That's in 1975.

21 THE COURT: This is a 1975 incident.

22 MR. O'CONNOR: The question is were there any
23 charges against her. Do we know the answer to that?

24 MR. BECKER: The answer is no, I guess, because
25 she -

1 THE COURT: I don't think I'm going to allow that
2 anyway. I mean' you're talking 21 -- yeah, 21 years ago, for
3 instance, that nobody has any record of there being any
4 charges involved.

5 MR. O'CONNOR: The trouble that I see that it
6 raises, Judge, is, of course, this is not Mr. Becker's fault
7 that this lady just told him this today, but he's now tried
8 to take it up on direct to try to take the blow away. I
9 think this should be somewhat fertile ground for
10 cross-examination.

11 In other words, if he was wanting to limit us
12 before we started, but now he's kind of opened it up
to try
13 to take the blow away from us trying to get into it -- but I
14 don't think we can ask her if she had any charges. I agree
15 with that.

16 THE COURT: That was the question we were dealing
17 with.

18 MR. O'CONNOR: There was no charges. I agree,
19 unless she says there was.

20 THE COURT: You find out the answer to that.

21 MR. BECKER: I know the answer. She said she never
22 got caught. This is the first anyone ever knew of it.

23 THE COURT: Okay.

24 MR. OSGOOD: Which goes to her credibility because
25 she's been asked in numerous depositions and statements have

1 you told us everything now that would have any bearing on
2 this.

3 THE COURT: I don't think that would have any
4 bearing on this, John, for heaven's sake.

5 MR. PETERS: The only part I'm concerned about is
6 we're talking about her being questioned eight years ago, and
7 she is listed as a suspect by Kansas City, Missouri, Police
8 Department.

9 THE COURT: That doesn't mean a thing to me. That
10 doesn't mean anything to me that the Kansas City, Missouri,
11 Police Department might have her on a long list of suspects
12 that they've got to eliminate like for a differential
13 diagnosis. No, sir. We'll not get into that.

14 MR. O'CONNOR: As administrative counsel, what I
15 would say, Judge, let's wait until after we've created some
16 cross-examination of her. If we think it's fertile, we'll
17 come back and ask about it.

18 THE COURT: Okay. That's fine.

19 MR. O'CONNOR: Judge, on this issue of the writ, do
20 you want to do it now or at the end of the day?

21 THE COURT: Did you see the order?

22 MR. O'CONNOR: No.

23 THE COURT: Well, it doesn't say anything. Just
24 denied, period.

25 MR. O'CONNOR: From a logistical standpoint, I
have

1 some of the statements here. More of them should be here
2 before 5:00. I say we take this up at the end of the day.

3 THE COURT: That's fine.

4 MR. BECKER: There's nothing to take up. There's
5 been two and possibly three orders of this Court saying turn
6 them over by a date certain, and every time we get to the
7 date certain, we have to take it up again.

8 MR. O'CONNOR: Judge, the point was what I had made
9 to you earlier, was I wanted to explore whether or not the
10 sanction the Court, what the Court would sanction me, then
11 obviously I fully intend to give them up. No one can use
12 l them over this period of time is all I'm saying. Do you
13 l agree with that?

14 THE COURT: You don't plan on using them between
15 now and the end of this day' do you?

16 l MR. BECKER: No' Judge. I've been down this road
17 three times now, and we get to a point where Judge Bartlett
18 had ordered it turned over -

19 THE COURT: You'll get them by the end of this
20 day. Okay.

21 (A recess was taken from 3:31 p.m. to 3:56 p.m.
22 when the following proceedings were had in the courtroom in
23 the presence of the jury:)

24 THE COURT: I've got to say in my 15 years'
25 experience on the bench, you all have done the quickest job

1 in getting yourselves lined up to get back in here than I've
2 seen. It's wonderful. Thank you. Have a seat.

3 All right. Proceed, counsel.

4 MR. BECKER: Thank you, Judge.

5

6 RESUMES DIRECT EXAMINATION

7 By Mr. Becker:

8 Q. Miss Riggs, I need to back up for a second. We were
9 discussing earlier in your testimony the pickup truck that
10 you chased around the site and then down into a neighborhood
11 off of 95th Street. Were you able to see what kind of truck
12 that was?

13 A. No, I didn't know the make and the model. It was an
14 older truck that used to have the taillights -- you know,
15 they weren't attached to the back, they were like on a pole.

16 Q. Stuck out of the bumper?

17 A. Like in the fifties. They weren't attached to the
18 vehicle.

19 Q. What color, if you could tell?

20 A. I believe it was red.

21 Q. Anything else, was it a full-sized truck or a
22 small-sized truck?

23 A. It was a full-sized truck.

24 Q. By the way, could you give the jury a description of
25 your truck that you had at the time?

1 A. I had a Toyota. I believe it was a '77. It was a late
2 Toyota long-bed with a, it was red with a roll bar. It was
3 higher up than normal. Real sporty looking.

4 Q. Is that work that you had done to that pickup truck?

5 A. Excuse me?

6 Q. Is that work that you had done to your pickup truck, to
7 put on the roll -

8 A. Yes.

9 Q. I think where we left off, then' is you're on duty on
10 the early morning hours now of November 29, 1988. And you
11 and your brother are both at a position on the west side of
12 the highway near the Brown Brothers equipment; is that right?

13 A. That's correct.

14 Q. And you'd both been there for some period of time. You
15 were working on schedules and all of that?

16 A. Correct.

17 Q. Do you recall something happening that caught your
18 attention?

19 A. I had been watching the' there was like a fuel tanker
20 over on the east side where the entrance is off of 87th
21 Street like that you pull behind a semi truck that's loaded
22 with gasoline.

23 Q. And if you would look here' I think it's Government's
24 Exhibit 29' I'm pointing out the bottom of the property
25 here. Is that the tanker that you were describing?

1 A. Yes, it was.

2 Q. All right. And that, again, is at the 87th Street side
3 of the property?

4 A. I can't say that it is. I call it 87th Street.

5 Q. All right. And you were here where the construction
6 vehicles are parked on the west side of the highway?

7 A. True.

8 Q. Okay.

9 A. And I'd been watching over that way, and I just happened
10 to turn and look down towards the trailers, the opposite side
11 of the site. And what caught my eye was two people out in
12 the middle of the highway is when I first looked over there,
13 and they were standing in the middle, or they weren't
14 standing' they were walking. But when I saw them' they were
15 right exactly in the middle of the road.

16 Q. I think we're going to have to have you use the pointer
17 again so everyone can see. Could you come over to the
18 overhead here and point out to the jury' first of all' where
19 you and your brother were located?

20 A. We had both our vehicles right here.

21 Q. Then where are the office trailers that you're talking
22 about?

23 A. Right here.

24 Q. And that's located in the median between the north and
25 the southbound lanes of 71 Highway?

2 Q. You started to tell us what you saw. What did you see'
3 and point out as you're speaking' please.

4 A. I saw two people right here' and they were walking going
5 west' but instead of going down the road' they were cutting
6 in behind the trailers. Which the road is only like maybe
7 20' 25 feet or something from where they were walking' so I
8 didn't really understand why they would be walking in behind
9 the trailers. But, you know, you saw people walk down the
10 highway at 3 o'clock in the morning sometimes.

11 Q. That wasn't completely out of the ordinary?

12 A. No. But I watched them go in behind. There was a stack
13 of hay right here. I watched them go in behind the hay. I
14 watched them -- you know, there was like a little opening,
15 and then they went in behind the trailer. There was' I
16 believe' two trailers there. And they went in behind there'
17 and I can remember just sitting there and thinking' well'
18 that one of them had to stop and tie their shoe. Well' they
19 put their cigarette out. Well' maybe they had to go to the
20 restroom. I was trying to think of why they were taking so
21 long.

22 Q. Taking so long what, with doing what?

23 A. That they hadn't come back out the other side yet. They
24 had walked in behind it' but they weren't coming back out the
25 other side. And I waited and I waited' and I was thinking in

1 my mind' well, tying their shoe and -- and I just waited, and
2 then I ran out of things for them to do. And so I told my
3 brother -

4 Q. What was your brother doing at that point?

5 A. He was leaned back -- his seat' he always drove with his
6 seat even with the B-post.

7 Q. What's the B-post?

8 A. The post that goes in between the front door and the
9 back door' there's a post there. There's one in the front'
10 one in the middle' and one in the back.

11 Q. And that's called -

12 A. A B-post.

13 Q. -- in the auto industry' a B-post?

14 A. Yes.

15 Q. And he had his -

16 A. That's how he drove it. His seat always stays reclined
17 even with the B-post. I don't know why he drives like that'
18 he just always drives like that.

19 I was looking through his window when I saw it.
20 Partially out the windshield.

21 Q. So if your car is facing 71 Highway?

22 A. Yes.

23 Q. You would be looking out towards your left up north; is
24 that right?

25 A. Correct.

1 Q. Was the light on in your car, then?

2 A. No, I had turned it off.

3 Q. What was your brother doing?

4 A. He was resting.

5 Q. Fair to say when you looked over, his eyes were closed?

6 A. I didn't look at his eyes.

7 Q. Did it appear to you as if -

8 A. He wasn't making any noise. I mean, we weren't talking
9 or -- you know, he had been quiet.

10 Q. Okay. What did you do?

11 A. I smacked him on the shoulder and said I'd seen two
12 prowlers or two people or something, that I had seen two
13 something. I don't remember my exact words now.

14 Q. What did you do next? Actually, if it would help you to
15 show us what you did.

16 A. Okay. We were backed in, like I said. He immediately
17 stuck this spotlight out his sunroof. He had his sunroof
18 partially opened. He stuck it out in front of us. There's a
19 dirt road that goes across here, the haul road. He stuck it
20 out and showed his light so he could see where he was going
21 across and then turned it right back off again when he first
22 started the vehicle. And we went across that road.

23 We came across here, turned here with no lights on,
24 drove up here, pulled in beside these trailers. And he took
25 his spotlight, and he did it underneath the trailers to see

1 if we saw anyone, and in behind it, and then he backed back
2 out, pulled up this way and did his spotlight, and by then, I
3 believe he had his lights on but I'm not sure. I know' I
4 remember that he had them off most of the time. And he did a
5 spotlight up this street to see if there was a car parked
6 along the road and then -

7 Q. Did you see anything?

8 A. No' there was no vehicles. And then we came back to
9 here. And he did a spotlight up here. We didn't see any
10 vehicles. He made this turn to where the wooded area is,
11 where the creek is, and he did a spotlight all down in this
12 area. And we just kind of crawled, you know, went real slow
13 across the bridge as he did that.

14 Q. Now, was there any other traffic on 71 Highway when you
15 were running around with your spotlight?

16 A. No. I only saw two vehicles drive by from the time I
17 saw the men and the time we took off. There was a car and
18 then a semi truck. I didn't see any other vehicles after
19 that.

20 Q. If you could just have a seat, please. And I'd like you
21 to look at Government's Exhibit 72 and 73. Are these the
22 trailers that, the office trailers that you were talking
23 about, that you went to check out that vicinity?

24 A. Yes.

25 Q. And I think this Government's Exhibit 73 is a little

1 different view. Can you see over in this area here, there
2 appears to be some hay?

3 A. Yes.

4 Q. Were you able -- you started to talk about when the men
5 left your view. Where did they go when they left your view,
6 if you could show on Government's Exhibit 73, or tell us,
7 describe to us where you saw them go.

8 A. They went in behind the hay, and then there was that
9 little opening before the next trailer, and I saw them walk
10 through that. But I didn't see them go beyond, come back out
11 the other side.

12 l Q. After you and your brother then, you and Robert Riggs
13 pulled out and were going on to see if anyone was in the area
14 of the trailers, in this first section you came across the
15 road here?

16 A. Right.

17 Q. And then headed up to the trailers, correct?

18 A. Correct.

19 Q. In this first section between the haul road and where
20 the trailers were positioned, did you or did your brother use
21 the spotlight at all to check the area on either side of the
22 road there?

23 A. No.

24 Q. Would you -- were you looking out the window at all or
25 out of the vehicle at anything along this side of the road

1 before you reached the trailers?

2 A. No, we didn't even have our lights on.

3 Q. Was the general lighting conditions -- what were the
4 general lighting conditions, then, on that if you didn't have
5 your lights on, or spotlight?

6 A. On that particular night, there was a full moon.

7 Q. Were there any street lights or artificial lights,
8 construction lights along the highway there?

9 A. No. Now, I don't know about street lights. I don't
10 remember there being a street light, but I can't say that for
11 sure. I don't remember there being lighting.

12 Q. Did you find anyone in the area of the trailers?

13 A. No.

14 Q. Then you said you crept along towards the bridge.

15 What is on either side of the highway between the trailers
16 and the bridge?

17 A. A creek with a wooded area.

18 Q. Is there anything, any buildings or structures or
19 anything?

20 A. No. No.

21 Q. So what do you do, then, when you finally reach the
22 bridge crossing the Blue River?

23 A. Our main concern was that they weren't breaking into the
24 trailer. We checked the trailer thoroughly, underneath,
25 behind, all around the trailer. They weren't there. Now, we

1 did check those side streets to see if we saw a car breakdown
2 and didn't.

3 Robert had, you know, we were over the bridge
4 because we were checking the wooded area and the creek. And
5 so he started to turn back down' there was a street right
6 past the wooded area that could come back to the construction
7 site' and he had just started to make the turn, and I asked
8 him if he would go to QuikTrip or 7-Eleven, whichever one it
9 is.

10 Q. All right. If you would look, please, at Government's
11 Exhibit 5 here. Can you see that? If you could come down
12 here, please.

13 Could you just use your finger to show how you went
14 up 71 Highway and where you may have turned?

15 A. Yes. We came up 71 Highway, and he started to make this
16 turn. And I asked him to go to, it's marked QuikTrip. But I
17 don't, looking back, I don't remember if it was a QuikTrip or
18 a 7-Eleven. And I asked him to go there, and then I would
19 run in and ask the manager if he had seen two men on foot.

20 And so we pulled in, we came around the front -
21 the QuikTrip faced going to the south, the doors and
22 everything, and this was the back of QuikTrip, this was the
23 front.

24 We pulled into QuikTrip. We kind of went over to
25 the side right past the front door, and he backed in and I

1 ran into QuikTrip and asked, I believe his name was Dave -

2 Q. All right. If you would have a seat, please. So you

3 talked to the manager. What did you ask him?

4 A. I asked him if he had seen two men on foot.

5 Q. Had he seen anyone?

6 A. No, he said no.

7 Q. What did you do then?

8 A. For me, it was over. You know, they hadn't broken into
9 the trailers. Obviously, they had went down in the wooded
10 area and just walked off somewhere, or I had just missed
11 seeing them come out the other side. But it was over, the
12 excitement was over.

13 I hadn't eaten because I had given him my sandwich,
14 so I hadn't eaten all night or had anything to drink all
15 night. And so I went and got a package of rolls and some
16 milk, and I walked back to the door, and I yelled out to
17 Robert, could I have some money. And I can't remember if he
18 brought it up to the door or brought it up to the counter,
19 but I walked to the back of the store and stuck the rolls in
20 the microwave for like ten seconds and then went back up.

21 I remember going to the counter. I don't remember
22 if the money was already there or if I grabbed it from him at
23 the door. But when I went back out, he was already sitting
24 in the vehicle. I remember that.

25 Q. And that was in Robert's station wagon?

1 A. Yes.

2 Q. I'm sorry. What did you buy, you had rolls and what
3 else?

4 A. Milk.

5 Q. What did you do when you got back out to the car?

6 A. I got back in the passenger seat. I opened up the
7 rolls, and we saw a woman dressed in all black and with short
8 hair, and she was like either in an IROC or a Z-28, you
9 know, Camaro.

10 Q. A type of Camaro?

11 A. Yes. And she went, kind of pulled in real fast and
12 parked her car kind of catty, kind of catty-cornered, not
13 straight. And she went running in the QuikTrip, and I just
14 started opening up the rolls, and then I believe his name is
15 Dave came running out and he yelled through the sunroof -

16 Q. That's the guy from the QuikTrip?

17 A. Yes. He's like the manager or the assistant manager. I
18 know he worked there constantly. Every time I was on duty,
19 he was there.

20 And he yelled down through the sunroof that the
21 equipment was on fire, and so we took off.

22 Q. Okay. Took off in what direction? Where did you go?

23 A. We went southbound 71 Highway. By the time we hit the
24 bridge, we could see the fire. And Robert started dialing, I
25 believe it was 311.

1 Q. He had a mobile phone in his car, as well?

2 A. Yes.

3 Q. Now, we've gone over this before and we've looked at the
4 transcript and the dispatcher's tape, right?

5 A. Yes.

6 Q. okay. And that, based on the dispatcher's tape, was
7 about 3:40 in the morning; is that right? Do you remember
8 that?

9 A. I would have to look at it again.

10 Q. okay. What did you see, then, as you went south on 71
11 Highway across the bridge?

12 A. We could see a fire. We just weren't sure what was on
13 fire.

14 Q. What side of the road?

15 A. On the side where the equipment was, the west side.

16 Q. Was Robert, was the car traveling fast?

17 A. Yes, we were traveling fast.

18 Q. As you got down to where the heavy equipment was
19 located, what did you see?

20 A. My truck was on fire, and the lights were going, it was
21 going on and off and the horn was honking. And Robert was on
22 talking to 311 by then. And I remember saying something to
23 him about I must have left my headlights on.

24 Q. Well, did you have an alarm system or anything like that
25 on the truck that -

1 A. No. I had no alarm system.

2 Q. Let me show you Government's Exhibit 143. As you pulled
3 up, then, along the highway going south, is that roughly
4 where you, your pickup truck was located?

5 A. Yes.

6 Q. And how much of a fire did you see when -

7 A. More fire than I'd ever seen. I mean, I'd seen some
8 vehicles catch fire on the side of the road, but this was
9 like tall shooting flames. I mean, that's why we couldn't
10 tell what it was from the bridge because it was such a big
11 fire.

12 Q. As you got closer, could you tell what part of the truck
13 was on fire, the engine or the back -

14 A. The cab.

15 Q. Did you see any other, any fire on the other side of the
16 road around about that time?

17 A. Well, when he pulled up, I remember I asked him to back
18 his car up because I was afraid that the truck would blow
19 up. So I asked him to back his car up, and he backed it up
20 even with a telephone pole or something, some type of a pole
21 that was on the side of the road like a speed limit or some
22 type of pole. And he backed it up.

23 And he was on the phone talking to 311 telling them
24 about the fire. And I looked over at him, and I could see
25 the flames shooting up off the trailer.

1 Q. Could you see -- now, we talked about this earlier. I
2 show you Government's Exhibit 139. Does that fairly depict
3 the view that you had when you were sitting near the heavy
4 equipment looking back towards where the trailers are
5 located?

6 A. Yes.

7 Q. So were you able -- so you're pulling up near this
8 truck, pickup truck that's on fire, correct?

9 A. Correct.

10 Q. And then you back away. What do you see on this far,
11 far ridge up here?

12 A. The flames.

13 Q. Well, you -

14 THE COURT: I'm sorry, what did you say?

15 THE WITNESS: The flames.

16 Q. (By Mr. Becker:) You testified you saw the trailers on
17 fire. Could you see the trailers at that point?

18 A. No. I knew where the trailers were at. So I just
19 turned to Robert, I saw the flames, and I said, "The
20 explosives are on fire."

21 Q. Now, you were aware, and you've testified, that the
22 explosives, the dynamite and all of that, was located, were
23 located in the bunker, two bunkers at the rear of the
24 property; is that right?

25 A. The dynamite was.

1 Q. What did you, when you said explosives, what did you
2 know to be or think to be in those trailers?

3 A. That's what they used to set the dynamite off. It's the
4 explosives.

5 Q. okay. Is that, and that's what you thought was in those
6 trailers?

7 A. Yes.

8 Q. What happened next, what did you do?

9 A. I just said the explosives were on fire, and then he
10 told them -- I don't know what he said. But he told them
11 too, the dispatch.

12 Q. Did a firetruck -- what did you -- how long did you -
13 well, I won't ask. What did you do until the firetruck
14 arrived?

15 A. It was only -- it wasn't very long. We just sat there
16 and waited for the firetruck.

17 Q. You didn't attempt to put out the fire or do anything
18 like that?

19 A. No.

20 Q. What happened when that firetruck arrived?

21 A. The first pumper pulled up, they pulled in beside my
22 truck, got out, and put my truck out. And then Robert and I
23 went over there to them, and I kept on asking -- the main one
24 that I talked to was a blond-haired fireman that had a
25 moustache. And to me he kind of seemed like the boss or

1 something, and so I spoke to him most of the time. And I
2 told him that I could have left my lights on because when we
3 came back, the lights were on and the horn was honking. And
4 he said, no, that that was common in a fire. And he said the
5 electrical starts to go off. And so I asked him why was he
6 putting my truck out instead of putting the explosives out.

7 Q. How long did it take them to put out the pickup truck
8 fire?

9 A. I don't know. There was a lot of excitement, and I
10 don't know the time.

11 Q. Did a second pumper, firetruck arrive?

12 A. Yes, the second truck came. And instead of pulling in
13 the haul road, because it seemed like they came from the
14 south, and they passed the haul road because I remember
15 thinking they missed the road. And they went down by the
16 office trailers and, you know, cut across there at that Blue
17 River Road, or I call it the Blue River Road.

18 Q. Did you talk to those firemen at all in that second
19 pumper?

20 A. Just briefly. I mean, I ended up meeting all of them,
21 but I didn't really have any discussions with any of them
22 except for a tall fireman that was real tall and a fireman
23 that had a moustache.

24 Q. Did they, did that second firetruck that arrived, did it
25 then go over, across, and up the hill?

1 A. First it parked in the middle of 71 Highway. That's
2 where it first parked. And they got out, and they came over
3 and we all talked. And then they went up on the hill. And
4 then the truck, the pumper that put out my truck asked us to
5 take them up there, to follow them up there.

6 Q. Okay. So then the second firetruck also went up the
7 hill?

8 A. Yes. And we followed them up.

9 Q. I'm going to show you Government's Exhibit 125. Now, is
10 that where the fire, the two firetrucks went is up this hill
11 and towards where the battalion chief's car is now located?

12 A. Yes.

13 Q. And you followed that second pumper up the hill?

14 A. As far as we could go.

15 Q. In what car or -- what were you in?

16 A. We were in the station wagon.

17 Q. When you got to the top of the hill there -- and this
18 is, I'm showing you now Government's Exhibit 126. Did the
19 road, one of the roads go off to the right there towards the
20 trailer?

21 A. Yes.

22 Q. Where did you park, or where did you park and what did
23 you do?

24 A. We couldn't pull in where the pumpers went.

25 Q. Why?

1 A. Because of the trail, the heavy equipment had been
2 driving down through there. It had been muddy. It caused
3 ditches, and his car couldn't go through there.

4 Q. So you -

5 A. We stopped.

6 Q. Where did you stop?

7 A. Right in front of that car.

8 Q. Okay. So on Government's 126, this is the battalion
9 chief's car, this yellow car, right?

10 A. Right.

11 Q. And your brother's station wagon was somewhere in front
12 of that?

13 A. But it was pointed going up the hill.

14 Q. So you weren't pointed towards the trailers?

15 A. No.

16 Q. You were pointed still facing up the hill?

17 A. Yes.

18 Q. The passenger side would have been towards the trailers?

19 A. Right.

20 Q. What do you see?

21 A. When we first pulled up, the other -- you know, they all
22 got out of the truck. The first truck was already there, and
23 they had like a pole, some type of pole. And they had it
24 hooked into that -- I mean, you know, I don't know that they
25 even make a pole. That's just what I saw. It looked like a

1 pole, and they had it with this pickup truck pulling the
2 pickup truck away from the trailer.

3 Q. Let's take it one step at a time. You look out this
4 direction towards the trailers, correct?

5 A. Yes.

6 Q. How many trailers were on fire?

7 A. One.

8 Q. Which trailer, the one closest to the road or the one
9 away from the road?

10 A. The one on the east side of the road.

11 Q. Closer to the brush, the wood?

12 A. Yes.

13 Q. What part or parts of that trailer did you see on fire?

14 Was it the front, the back, the wheels? What was it?

15 A. The pickup truck was on fire.

16 Q. Okay.

17 A. The trailer, I can't really explain. It wasn't a fire.

18 It was a, it was like when you see a fire and there's coals
19 burning real bright orange. The trailer was real bright
20 orange' and it was like transparent. And it was' it wasn't
21 flat anymore' it was sticking up in the air.

22 Q. So one side had lowered to the ground' one end?

23 A. One side was up off the ground.

24 Q. Okay. So one side was off the ground' perhaps?

25 A. It was standing up.

- 1 Q. And it had like charcoal' a glow to it or what?
- 2 A. It was just a bright orange like a' like charcoals. It
- 3 was bright orange, the brightest orange I'd ever seen.
- 4 Q. And then the other trailer' what was -
- 5 A. It was fine. There was no flame on the other trailer or
- 6 anything.
- 7 Q. When you pulled up behind the second' the firetruck you
- 8 followed -
- 9 A. Yes.
- 10 Q. -- where was the firetruck that had first gone up the
- 11 hill?
- 12 A. It was in front of the trailers.
- 13 Q. So the front of meaning -
- 14 A. In between them. It had gone in between the trailers
- 15 and had parked in front of the trailers on the south side of
- 16 the trailers.
- 17 Q. So that' on the property' on the overall aerial view' if
- 18 we could look at Government's 5 here' the trailer' the
- 19 firetruck had gone beyond the two trailers and was up towards
- 20 the 87th Street side; is that fair to say? Right here' this
- 21 would be 87th Street?
- 22 A. Right. On that picture, it looks like the trailers were
- 23 clear over by 87th, but they were closest to us, not 87th.
- 24 Q. Right. Okay.
- 25 A. I don't know if it's the aerial view or what the thing

1 is, but I mean, they were close to us. But the pumper had
2 pulled in front of both trailers, the first one, and the
3 second one had pulled in between them.

4 Q. All right. So the second one, the one that you followed
5 up the hill?

6 A. Yes.

7 Q. Pulled between the two trailers?

8 A. Right.

9 Q. What were the men doing, the firemen, from the firetruck
10 that went up the hill first? When you first go up the hill,
11 what do you see those men doing?

12 A. They were pulling the pickup truck away from the
13 trailer.

14 Q. What did you see the men -- you followed another
15 firetruck up the hill?

16 A. Right.

17 Q. And that truck then pulled on through?

18 A. And they got out, and one of them like joined, helping
19 the other firemen pull the truck away. And then another
20 fireman started walking back towards where we had told him
21 the dynamite was, and he started back there. And then the
22 fireman with the moustache, he went over to the pumper and
23 got the hose and came back over to the trailer with the hose
24 in his hand.

25 Q. Now, we're looking here at the photograph, the battalion

1 chief's car, right?

2 A. Yes.

3 Q. At what point does, then, this yellow car pull up on the
4 scene?

5 A. Almost right after we got there, real close to the time
6 we got there.

7 Q. What did you do -- then that car, where was it in
8 relation to your car?

9 A. They pulled right up against our back bumper with the
10 driver's side against our, the back of our car.

11 Q. Okay.

12 A. Like you're going to block someone off.

13 Q. What did you do? I mean -

14 A. I didn't see them pull up. The driver got out and came
15 up to my window and tapped on my window. And Robert was
16 talking on the phone to the, you know, the man that is over
17 the construction site, either Collins or Brown, and he had
18 called one of them while we were across the street waiting on
19 the firetruck.

20 I had forgotten to tell you that. He did call one
21 of them from over there when we were waiting and spoke with
22 him, and he was on the phone talking to the other one. And
23 the dog was, you know, barking and barking because the guy
24 had tapped on the window. So I got out of the car and stood
25 outside of Robert's car.

1 He asked me what was in the trailer. And I told
2 him ammonium nitrate, diesel fuel, and fertilizer. And he
3 said, would you mind stepping back to the back of the car and
4 telling the chief. So I walked to the back of the car. He
5 kind of leaned in the car.

6 Q. Leaned in what car?

7 A. In his car.

8 Q. In what side of the car?

9 A. In the driver's side.

10 Q. And he had been the driver of that vehicle?

11 A. Yes, he was the driver of the vehicle, and the passenger
12 was still in there who he called the chief.

13 Q. Okay.

14 A. And he leaned in the vehicle, and I was standing at the
15 door kind of in behind the door and was just watching the guy
16 that I had been talking to all along with the moustache and
17 blond hair.

18 Q. Back towards the site, back towards the fire?

19 A. Where the trailer is. And I was watching him because I
20 was waiting for him to start shooting water on it, and I was
21 watching him. And the guy leaned inside the car and said,
22 "She needs to tell you what's in the trailer." So I started
23 to tell him, and I told him, and then I remember he picked
24 up, I don't know what you would call it that they talk into.

25 Q. A microphone?

1 A. Well, I wouldn't have called it that, but I guess it
2 would be a type of microphone, and he picked it up, and I
3 remember him making the cue. And he said something like -- I
4 don't remember his exact words, but he said get out of there
5 or -- you know, like three words, get out of there, or get
6 them out of there or something, and it exploded.

7 Q. Were you watching, what were you looking at when you
8 felt or heard the explosion?

9 A. The fireman that I had been speaking to, with the
10 moustache.

11 Q. Could you see the trailer itself, were you watching -
12 was that in your site when -

13 A. That's what I was watching.

14 Q. What did it look like, the explosion?

15 A. It was real bright. It was like spotlights. Real
16 bright spotlights. And then it got kind of dark and like a
17 real high wind like a tornado and a real roar. And it just,
18 you could see steel flying through the air and boulders. But
19 when the boulders would hit the car, instead of just hitting
20 the car and bouncing off, it would like go through it.

21 Q. What happened to you?

22 A. I remember going up, up in the air and then going back.
23 It blew me up first, and then it blew me back.

24 Q. Where was the battalion chief's driver?

25 A. It blew him up and back. He landed in back of the car

1 too. He just didn't land as far as I did.

2 Q. Were you knocked unconscious at all?

3 A. No.

4 Q. Were you -

5 A. I wasn't knocked unconscious' I was' I just thought I
6 was dead because I had seen what I saw with the firemen' so I
7 figured I had done the same thing to myself. I just thought
8 I was dead.

9 Q. What did you hear or see next?

10 A. All the boulders coming and the steel. And I remember a
11 hand that was laying beside me' and I didn't know if it was
12 my hand or not because I didn't have any feeling in my body.

13 Q. Let me show you next 131. Can you see on this picture
14 at all, can you tell us where you say you were blown up and
15 back, where you went, where you were thrown?

16 A. I remember going up over the car, way up over the car
17 and back by that dirt that's back there.

18 Q. At the rear of this photograph, this pile of dirt and
19 stone?

20 A. I landed right in front of that. And I landed on all
21 fours, but you couldn't see my hands or my knees because they
22 went down into the dirt when I landed.

23 Q. What did you hear next?

24 A. The roar. It was just the roar. And I remember I
25 covered up my head. But I still thought I wasn't alive. I

1 thought' you know, like people talk about out-of-body
2 experiences and they look over, that's what I thought I was
3 doing. Because I remember being up in the air.

4 Q. Did you hear your brother at some point?

5 A. Yes.

6 Q. Tell us about -

7 A. Yes. As soon as I heard my brother' I could hear my
8 brother saying' "Debbie' are you all right' is the baby all
9 right?" And I could hear him saying that somewhere' but you
10 couldn't see. It got real black all of a sudden' and you
11 just couldn't see. And I remember hearing him' just barely
12 hearing him.

13 Q. Did he come back to you?

14 A. Yes.

15 Q. Tell us -

16 A. He got out of his vehicle and came back to me and helped
17 me up. And I could hear moaning' someone moaning. And I
18 told my brother that' I said I was okay because by then' you
19 know' I knew that I was alive. And I asked him to help who
20 was moaning.

21 Q. Who was moaning?

22 A. The driver of the car.

23 Q. Where was he?

24 A. He was in back of the car maybe 10 or 20 feet in front
25 of me, between me and the car.

1 Q. What did you do, or what did you see Robert doing?

2 A. Robert lifted him up and laid him against the back of
3 the trunk, the deck lid. And then he just slid back down the
4 deck lid, and I remember Robert helping him up again. And by
5 then I had gotten to my feet' but we could still hear someone
6 moaning that wasn't him, and so Robert went to the passenger
7 side.

8 And as soon as I got to my feet, I started down the
9 hill, and Robert was saying, you know, we need to get help.
10 But I knew what I had seen, and I knew that they didn't need
11 any help.

12 Q. When you got to your feet, did you look back towards the
13 trailers again?

14 A. As I was leaving.

15 Q. Was there any other -- first of all, did you see the
16 trailer that had been on fire?

17 A. No. No.

18 Q. What was going on, if anything, with the other trailer?

19 A. The other trailer had caught fire, and there was flames
20 coming up out of the roof. That's why I started back down
21 the hill.

22 Q. So I'm showing you Government's Exhibit 32 here. Here
23 is the battalion chief's truck, do you see that -- or car,
24 I'm sorry. And you start walking down the hill, meaning down
25 towards 71 Highway; is that correct?

1 A. That's correct.

2 Q. What happened?

3 A. Robert went to the passenger door when I looked back up
4 the hill because I remember seeing the guy that he called the
5 chief. And he was kind of up underneath the dashboard or
6 something. He was way up in there. It had blown him up in
7 there or something. And then I just continued to walk down
8 the hill. And Robert rolled his car down the hill and picked
9 me up at the bottom of the hill.

10 Q. What did you do, where did you go?

11 A. When we got down to the bottom of the hill and he picked
12 me up' there was a bunch of people over by my truck and out
13 on 71 Highway' and a police car was down there parked sort of
14 in front of my car.

15 Q. Again' in this area where the red pickup had been on
16 fire?

17 A. Right. Right. And so we went ahead and crossed that
18 haul road in between the highways and pulled over by the
19 police car and walked up to the police car. And he said,
20 "You've obviously been in the explosion. Can you wait in
21 behind the heavy equipment until we can take a statement?"

22 So we pulled the car back in behind the heavy
23 equipment, on the west side of the heavy equipment in behind
24 it. And I remember he called my parents, and we both talked
25 to them and said that we were okay. Because I remember he

1 made me talk to them too. And he called his wife and asked
2 her to come pick me up.

3 Q. Did a policeman then eventually come to interview you
4 back there?

5 A. No.

6 Q. What happened?

7 A. I guess they forgot about us and I just -

8 Q. What did you do -- tell us what you did or you saw your
9 brother doing?

10 A. We made the two phone calls, and I remember Robert
11 cleaning glass out of the seat for me. I remember him doing
12 that. And then I remember 'I told him I had to go to the
13 restroom, and I went up by the heavy equipment' and I kind of
14 peeked around the heavy equipment and everyone was gone.

15 Q. What do you mean? You look out towards 71 Highway here?

16 A. Yes. And everybody is gone.

17 Q. Well, who had been there?

18 A. Just people, and the police were there, everyone. I
19 mean 'it was full, there was a crowd there.

20 Q. And then when you looked out, nothing?

21 A. Nothing.

22 Q. What did you do?

23 A. There was no vehicles, no police vehicles' no nothing.

24 Q. What did you do?

25 A. I went back' and I told my brother that they had left us

1 there. And you could see the other, you know, the flames on
2 the other trailer going.

3 Q. All right. So looking back up the hill from where you
4 were' could you see the trailer itself at all?

5 A. It was like -- no, you couldn't see the trailer' but it
6 was an instant replay of what we had seen before. It was
7 just flames shooting high in the air. You could see the
8 flames but not the trailer. But then I looked up the highway
9 towards 95th Street, and I could see a roadblock. It was all
10 blocked off up there, a bunch of police cars with their
11 lights going. And you could see people, you know, I mean, it
12 was like a roadblock.

13 Q. As you looked up the highway, I want to show you
14 Government's Exhibit 13, or across the highway above the
15 ridge, sort of, does that appear the way it was between the
16 two explosions?

17 A. Yes.

18 Q. So no trailer but that -

19 A. Flames, high flames.

20 Q. So you saw something going on up towards Bannister
21 Road. What did you do?

22 A. It looked like a roadblock to me. And my sister-in-law
23 was supposed to pick me up, and so I asked Robert to take me
24 up to the roadblock because she couldn't get through. And I
25 told him that we had been left there and it was -- we knew

1 what would happen if we stayed there. I mean, the other
2 trailer was going to go. So we left.

3 Q. All right. Now, I'm showing you Government's Exhibit 53
4 there. And is this what you saw, the congregation of
5 emergency vehicles up towards Bannister Road and 71 Highway?

6 A. Right. Right.

7 Q. And you would have been, well, down the road across from
8 the site still?

9 A. Right. Where my truck was.

10 Q. What did you do?

11 A. Like I said, I remember him brushing the glass off the
12 passenger side for me. He had been doing that and so -

13 Q. I'm sorry. Obviously, was a window broken out or -

14 A. There was no glass. Everything -- I mean' all glass
15 shattered' anything that was glass. And I just -- I remember
16 the vehicle' like there was holes in it like from the rocks.
17 I couldn't even believe that it was drivable' that we were
18 driving it.

19 But we got back in the vehicle' we started down
20 towards 95th' and we came up to a' like a speed limit sign.
21 And I remember Robert saying to me we forgot the gun in the
22 truck because it was his gun' I was just borrowing it. And
23 he said' "We forgot my gun in your truck." Which had no
24 meaning to me whatsoever because I don't know anything about
25 guns and how much they're worth or -- I'm not, I don't know

1 anything about that.

2 Q. What happened? What did you do?

3 A. He said he wanted to go back and get his gun.

4 Q. What did you say?

5 A. I said no' to let me out. And I asked him to let me out
6 at the speed limit sign so he would know where to pick me
7 back up at' and I told him I would stand there.

8 Q. And would this be on the southbound side of the highway?

9 A. Yes.

10 Q. And then you would have been getting -

11 A. Where I could still see the truck.

12 Q. So you were fairly close to where the pickup truck was
13 still parked?

14 A. Right. But we had already started towards Bannister
15 when he said it.

16 Q. And where did you wait while Robert went back for his
17 gun?

18 A. I waited right at the speed limit sign.

19 Q. Was it down off the road or up on the road?

20 A. It was off the road. He pulled over and let me out' and
21 then I don't remember seeing his car go back. I remember the
22 second explosion because I could see him dive underneath my
23 truck like the truck would crush him or something' I don't
24 know.

25 Q. What happened to you?

1 A. It knocked me back down again.

2 Q. Where?

3 A. Down into a ditch.

4 Q. Were you looking back towards the flames when this
5 happened or down towards -

6 A. No' I was looking at Robert. I saw him dive under the
7 truck' like the back of the truck or something.

8 Q. Did you have any injuries' additional injuries' I should
9 say' from this second explosion?

10 A. I didn't have any injuries' that I was aware of.

11 Q. What happened next?

12 A. He came back up the highway, and I got to my feet, but I
13 remember I was stumbling like I was wandering, stumbling.

14 And I remember he pulled over. I got back in the vehicle.

15 We went up to 95th Street. He got off on 95th Street and
16 made a left' and then there was an on-ramp and an off-ramp'
17 and he kind of pulled to the right' his car' and I saw my
18 sister-in-law.

19 Q. I'm sorry. Did you go over to her car then?

20 A. I don't remember. I remember putting stuff in the trunk
21 of her car' but I don't remember the actual getting in and
22 leaving. After that' everything is pretty vague.

23 Q. Did she take you somewhere?

24 A. She took me to my parents,' I know that. I don't
25 remember the drive there or anything' but I remember I was at

1 my parents, because I remember standing in the kitchen when
2 some detectives came.

3 Q. Right. Sometime that morning did the detectives come
4 and ask you to come downtown and give a statement?

5 A. I don't remember what they asked me. I know that I went
6 downtown with them, but I don't remember being asked or -

7 Q. Do you remember giving a videotaped statement that
8 morning?

9 A. I don't remember it. I've seen it.

10 Q. Right. And -

11 A. But I don't remember it.

12 Q. In preparing for your testimony here today' you've taken
13 a look at that videotape, right?

14 A. Yes.

15 Q. There are a number of things in the videotape I want to
16 ask you about. In the videotape, you talk about on the 28th,
17 not being scheduled for work that night. Is that correct?

18 A. That's correct.

19 Q. Why did you tell the police that?

20 A. Because I was pregnant, I had a good job at Ford Motor
21 Company, and I was scared that I would get fired.

22 Q. Why?

23 A. I didn't know. I just knew I was working another job.

24 I didn't know if it was legal. I just didn't know. But I
25 knew I had a lot of time invested, I was pregnant, and I

1 didn't want to lose my job at Ford Motor Company for working
2 part-time.

3 Q. You also told the detectives that morning that when you
4 saw the two men near the trailers, Robert was on the far side
5 of the highway guarding that area; is that right?

6 A. That's correct.

7 Q. Was that true?

8 A. No.

9 Q. Why did you tell the detectives that?

10 A. Because that's where he was, and that's where as far as
11 I was concerned he should have been. But I was his sister.
12 Like I said before, he was overly protective of me because I
13 was pregnant' and that's where I felt he should have been' so
14 I just didn't tell it all' that he came across right before
15 the explosion.

16 Q. And then also about the gun in the car, did you tell the
17 police that Robert went back to get that gun?

18 A. No.

19 Q. Why not?

20 A. I didn't see why I should. It had nothing to do with
21 the case that we went back and got the gun.

22 Q. Before going down to police headquarters and answering
23 questions, did you and Robert talk about you saying that he
24 was on the other side?

25 A. No. No, not that I, not that I remember. I don't

1 remember talking to Robert about anything, just the gun.

2 Q. He just put you in the car with your sister-in-law
3 land -

4 A Well, I don't remember. I remember going to 95th, and I
5 know that she drove me there, but to say that I remember
6 being in the car and looking over at her, no, I don't
7 remember. It was like things went blank for like almost two
8 weeks.

9 Q. Now, what you've told us and testified to here this
10 afternoon, is that accurate and as you remember it from the
11 events of November of 1988?

12 A. Yes.

13 MR. BECKER: I have no further questions at this
14 time, Judge.

15 THE COURT: Will you all come up a minute, please.

16 (Counsel approached the bench and the following
17 ~ proceedings were had:)

18 THE COURT: I assume that your cross will be more
19 than ten minutes?

20 MR. BUNCH: Yes, Judge, I would ask that this be
21 deferred until tomorrow morning.

22 THE COURT: Mr. Peters said something at one of our
23 bench conferences earlier that alerted me to the possibility
24 that I should talk to you about this. unless there is
25 ~ something more than I know so far that would justify it, I

1 certainly want there to be no mention of the fact that this
2 woman was in any trouble with that incident before.

3 MR. PETERS: I understood, Judge.

4 MR. BUNCH: I heard you, Judge. I was standing
5 over there, and I won't do it.

6 (The following proceedings were had in open court:)

7 THE COURT: I think we've had a full day's work,
8 ladies and gentlemen, and we're going to recess now. I'll
9 ask you to be back in the jury room at 9 o'clock in the
10 morning. If I survive the night with this cold, I'll be with
11 you. We'll work pretty much the same schedule tomorrow.

12 Don't talk about the case. Now, we're into an
13 overnight and we're at the end of the first day of trial, I
14 think you can easily surmise that there was some attention
15 being paid to this trial by the various media, and I'll ask
16 you, I'll urge you, I'll instruct you not to pay any
17 attention to anything that is on the television or the radio
18 or maybe in the paper.

19 By the time this is over, you will know more about
20 this case than any newspaper reporter or TV reporter or
21 camera person or radio reporter, and right now it would be
22 unfair to everybody for you to pay any attention to what they
23 might be putting in their particular segment of the media.

24 So have a good evening, drive carefully, and we'll
25 see you in the morning at 9 o'clock. You're excused.

1 (The following proceedings were had in the
2 courtroom out of the presence of the jury:)

3 THE COURT: All right. We'll be in recess.

4 (A recess was taken from 4:56 p.m. to 5:09 p.m.
5 when the following proceedings were had in chambers out of
6 the presence of the defendants:)

7 THE COURT: All right. It's now 5:08, five hours
8 and eight minutes after the last deadline given by Judge
9 Bartlett for production of these statements. What's your
10 position on this, Mr. O'Connor?

11 MR. O'CONNOR: Is the Court ordering me to give
12 these to Mr. Becker?

13 THE COURT: It is, in a manner consistent with the
14 opinion of the Eighth Circuit, which we received today.

15 MR. PETERS: Sanction?

16 MR. O'CONNOR: Based on the order of the Court, I'm
17 going to give Mr. Becker these. What I have here is
18 Rosemarie Quiroz, Carl Nettles, Michael Whitelaw, Glen
19 Shepard, Ronald Lank, Charles Elliott, William Hand, Frank
20 Gile, Stanley Sanders. I also have Dave Dawson, but it's not
21 been reported yet, or hasn't been typed, and I'm supposed to
22 have that in the morning. And then I have Kathy Marburger
23 who won't be ready until Thursday or Friday, but she's on the
24 reserve government list, and she wouldn't be called, I don't
25 think, in the next two weeks anyway.

1 MR. BECKER: Fair statement.

2 MR. O'CONNOR: That's all the interviews that I
3 have. And just for the record' I just want to incorporate
4 now all the previous arguments I've made in giving up these.
5 But based on the Court ordering me to' I will follow the
6 Court's order.

7 THE COURT: All right. It's done.

8 MR. PETERS: Judge, I think some of us need to make
9 a record. Right now Mr. Becker is getting the joint work
10 product of the defense team prior to the rest of the defense
11 team receiving the work product. We were directed by the
12 judge to share responsibilities. We've done that. Mr.
13 O'Connor has interviewed witnesses, and because of the claim
14 that for the first time in the history of the United States a
15 defense attorney is being ordered to produce statements prior
16 to the witness testifying for the first time -

17 THE COURT: You're thinking the Eighth Circuit
18 opinion is that much of a ground breaker?

19 MR. PETERS: I think the Eighth Circuit has
20 conclusively said that where the government says, Judge, I
21 respect you but I refuse to abide by your omnibus hearing,
22 that the Court can order them to do it. If they refuse, the
23 Court cannot impose sanctions.

24 I think the best worded opinion for the Court is
25 the Algie opinion where the Sixth Circuit praises the judge

1 for trying to move his cases, for trying to get the attorneys
2 to do mutual discovery. It goes to great length praising
3 him. In that case the U.S. Attorney refused to give over
4 statements a day before they testified.

5 THE COURT: I'm sorry. I guess I'm a little lost
6 as to what you're talking about here. We've been talking
7 about O'Connor's, of the defense counsel's, I'm sure,
8 statements from government witnesses, right?

9 MR. PETERS: We're talking about witnesses to be
10 called at trial, right, correct.

11 THE COURT: What is it that Becker hasn't
12 produced?

13 MR. PETERS: I think there's a whole record before
14 Judge Bartlett -- and that's not part of the argument that
15 I'm making now. I think that's an argument that somebody is
16 going to make. If we aren't going by 3500 or Rule 26.2 and
17 that we're going on this agreement of the parties that's not
18 incorporated -

19 THE COURT: In the omnibus hearing, it's in the
20 record of the omnibus hearing?

21 MR. PETERS: Judge Bartlett in his discussions said
22 he was not making his ruling on the omnibus, it was that the
23 parties bilaterally agree to do this.

24 MR. BECKER: Excuse me. Mr. Peters wasn't present
25 for the vast majority of this discussion. Mr. O'Connor was

1 here, Mr. Wyrsh was here, and I was here until, I think, a
2 quarter to 8:00 on Friday night, and we've heard all of these
3 arguments.

4 These are slightly different, but going back to Mr.
5 Peters, original point, if he's worried that I'm getting it
6 first, I'll copy it and in the next 45 minutes you'll have
7 copies. No one will read it, I'll just -

8 THE COURT: You mean this, is that what you were
9 talking about?

10 MR. PETERS: Yes, those statements, Judge.

11 MR. BECKER: I'll copy them and I'll give them to
12 you.

13 MR. O'CONNOR: I've had copies made for all the
14 lawyers and got permission to have them made, the second ones
15 at 10 cents a page. So I've got everything ready out here to
16 disseminate out here to all the lawyers as we walk out of
17 here, Judge. That's not the issue.

18 MR. PETERS: My point is -

19 MR. BECKER: That's the only issue that hasn't been
20 argued ad nauseas so far.

21 MR. PETERS: It may have been argued ad nauseas,
22 but it wasn't argued with my client being represented by me
23 where his work product is being handed over. And it hasn't
24 been argued, Judge, in front of you, and your name will be on
25 the order that -- again, I don't think I'm misstating it, and

1 if I am, somebody can correct me. This has never been done
2 in any reported case where a judge has ordered the defense to
3 turn over statements at all.

4 THE COURT: Now, wait a minute. Statements taken
5 from government witnesses after the names of the government
6 witnesses have been adopted by the party?

7 MR. PETERS: Correct.

8 THE COURT: On their witness list and after the
9 names have been disclosed?

10 MR. PETERS: Correct. In fact, Judge, no judge has
11 been able to order the government to provide the statements
12 on their witness list prior to the witness taking the stand
13 pursuant to 3500.

14 THE COURT: unless there is a different agreement
15 during the omnibus hearing or pretrial proceedings which we
16 have had consistently in this district for a long, long time,
17 since long before you came over from the Jackson County
18 Courthouse, Mr. Peters.

19 MR. BECKER: There are reported cases where the
20 government is required to turn over those materials when it
21 had agreed to do so, just as there has been sanctions against
22 both sides when they failed to live up to their pretrial
23 agreements.

24 MR. O'CONNOR: Again, Judge, you weren't privy, and
25 neither was Mr. Becker, to the in camera where the judge let

1 me espouse the reasons why I thought all of this went to
2 credibility of the witnesses and cross-examination, all of
3 those matters. But that there are, after talking with these
4 people, I've been told certain things that would clearly
5 indicate if they were true, and some of them have been turned
6 out to be true, to be Brady violations, and there would be at
7 least one direct violation of the government not giving us
8 grand jury testimony and giving us information regarding one
9 witness and what happened at grand jury.

10 So all I was trying to emphasize to the Court is
11 that because of this agreement, that is what we're being held
12 to, and I don't have a problem with that, but the agreement
13 is the agreement. If we give, we're supposed to get, too,
14 and we believe that we'll be able to show this at some point,
15 but I don't know when that will be. We may just try to do it
16 with the jury versus bringing it out to Mr. Becker. But,
17 obviously, it's his obligation to give us, if he has things,
18 and I think there would be clearly one violation that I could
19 say for sure based on not only the statement of one of the
20 witnesses, but of David True himself.

21 MR. BECKER: We've heard this now for a number of
22 days' and I've asked over and over again' and I think Judge
23 Bartlett had requested if there's some issue that you want to
24 raise as a Brady violation' we should hear it. Or if you're
25 going to say okay, I want to spring it on the witness now, I

1 guess you can do that.

2 But every time we have a dispute, they say, oh, we
3 know something that you haven't given us, and this goes back
4 months. And when I go back, whatever you call my attention
5 to, I've attempted to run down and provide to you.

6 MR. O'CONNOR: I'm not disputing that, Paul. What
7 I'm saying is that it seems -- I'm not casting aspersions,
8 but we should not have to be asking you for stuff that's
9 Brady, it's my position.

10 THE COURT: Well, yes and no. But if he in good
11 faith believes that he has complied with his obligation under
12 Brady and you have some good faith belief that he has not,
13 then I think in order to even think about getting sanctions,
14 it's up to you or you, if you know what it is, to point it
15 out to him and to me what he hasn't done.

16 MR. O'CONNOR: Absolutely. That's what I did with
17 Judge Bartlett. That's what I did in camera. I pointed all
18 of those things out.

19 THE COURT: He apparently wasn't too impressed.

20 MR. PETERS: In fairness, beginning with Judge
21 Hays, we've had probably seven hearings. And what has been
22 one is the sanctions have been deferred, if there are any
23 sanctions to be deferred. That's what we've been told, and
24 that's what the orders of the court have been. And we have
25 gone over it time and time again.

500

1 The two things I need to make on my record is it
2 does me no good to hear what Mr. Becker and Mr. O'Connor did
3 in their hearing that I wasn't privy to is the first point.
4 And the second point is what the Court is doing is an
5 equitable decision to say, look, guys, you agreed with the
6 Court that you do this, now abide by your darn agreement.

7 And this is, as you pointed out, this is new to me
8 because I come from a jurisdiction where you give them
9 everything and everybody gets everything. But that
10 fundamental rule of an agreement, you just heard for the 30th
11 time that the parties don't even agree about what the terms
12 of the agreement are. Mr. Becker's view of Brady is
13 different than what the defendants, view is.

14 THE COURT: No, perhaps his view of what is or is
15 not Brady material would be different than one of the defense
16 counsel, and I don't find that to be at all bizarre.

17 MR. OSGOOD: If I might jump in, and I haven't been
18 in this Brady fray from the beginning as much as the other
19 lawyers. But I asked Mr. Becker today, and he confirmed the
20 first witness that's going to hurt me is Mr. Rooks. Mr.
21 Rooks will testify something to the effect that my client
22 beat up another fellow and made some admissions at a park to
23 the effect he was involved in this thing. This Mr. Rooks was
24 12 years old at the time. Maybe 13.

25 THE COURT: He's now 21?

1 MR. OSGOOD: Something like that, 20, 21. And Mr.
2 Rooks lists four or five people in his statement who heard
3 all of these admissions supposedly by my client and a couple
4 of the other defendants.

5 There are absolutely no reports whatsoever of the
6 502 witnesses that I got pertaining to interviews of these
7 other five or six people. obviously, it's inconceivable to
8 me that if Mr. Rooks told the police this that they wouldn't
9 have immediately gone to the other five or six people.

10 I asked Mr. Becker today, because I've got 3,000
11 pages and this is the first time I caught this with Rooks, if
12 he had, in fact, interviewed these other people or had them
13 at grand jury. He didn't delineate which, but he confirmed
14 that somebody at the PD talked to one of these five
15 witnesses. I've got to presume that they have this
16 information, and it's not been provided to me.

17 THE COURT: You're taking a big leap there, John,
18 from the fact that they talked to them to the fact that it
19 was favorable to your client or you'd know about it.

20 MR. BECKER: That's a perfect example of this.

21 MR. OSGOOD: I haven't seen it, Paul. If I'm
22 mischaracterizing it, correct me.

23 MR. BECKER: Just the initial part about Rooks and
24 then this fight at the park. You were given the police
25 reports underlying your client's assaulting this fellow, a

1 fellow named Young who was Rooks, godfather, at Marlborough
2 Park. You've been given that report, but we're not going to
3 get into that, and I don't think the Court would let us get
4 into this assault at the park because really it had to do
5 with Young grabbing the bottom of some woman rather than
6 having anything to do with this fire.

7 MR. OSGOOD: That's right.

8 MR. BECKER: So, you know.

9 THE COURT: I think I would be likely to sustain an
10 objection to that.

11 MR. BECKER: So we weren't going to go into that.

12 MR. OSGOOD: The bottom line issue -- pardon the
13 1 pun.

14 MR. BECKER: As you and I discussed, if there were
15 Brady material in those other statements, you would have
16 gotten it by now. I've reviewed 900 ATF files, 14 volumes of
17 Department of Labor, all the PD reports. You've gotten
18 hundreds of pages of Brady material.

19 MR. OSGOOD: This is why we've come around the
20 block here to the judge's point of the definition of Brady.
21 My definition of Brady suggests to me that if a witness is
22 confronted and you ask him, "Now, were you at the park when
23 Mr. Rooks was told by Mr. Brown that Mr. Brown was up on the
24 hill that night?" And he says he was at the park. "Did you
25 hear such a statement?" No, I never heard any such

1 statement, or I don't remember' or I don't think so. That
2 impeaches substantially Mr. Rooks. And if there are four or
3 five witnesses of that vein, I'm entitled to hear about
4 them.

5 MR. O'CONNOR: Let me give you a specific example.
6 I have a specific example.

7 MR. OSGOOD: Am I wrong on that, Judge, is that not
8 Brady?

9 THE COURT: I don't know. I'm not in a position to
10 say whether you're right or wrong.

11 MR. O'CONNOR: This is a specific example. We have
12 Glen Shepard's three interviews. He told me he testified
13 before. The first, he told me he was brought down and
14 refused to testify before the grand jury. I don't have that,
15 I don't know anything about that. Then he said he testified
16 before the grand jury, and I don't have the grand jury
17 testimony.

18 MR. BECKER: You don't have the grand jury from
19 Glen?

20 MR. O'CONNOR: None of us do.

21 MR. BECKER: I produced 3,300 pieces of paper. I
22 will go back through that list, and we can delay his
23 testimony so you have time to review his grand jury
24 testimony.

25 Glen Shepard was there on one occasion and said he

1 Wanted to talk to an attorney, and I said go back to where
2 you came from, and we'll have you back after you talk to your
3 attorney. I seem to recall him testifying.

4 MR. MILLER: He did testify.

5 THE COURT: So you're entitled to that.

6 MR. O'CONNOR: That's the point they're making is
7 that that's the very thing that we would be entitled to under
8 this agreement.

9 MR. BECKER: Absolutely. You should get that. I
10 don't understand why you don't have it. But there's
11 receipts, and if it's not on the receipts, then you don't
12 have it.

13 MR. O'CONNOR: I checked with everyone else, and no
14 one else had it.

15 MS. HUNT: Has there been a final ruling on my
16 motion concerning Larry Baker's grand jury testimony? He was
17 going to provide it under seal to the Court this morning.

18 THE COURT: Larry Baker?

19 MR. BECKER: Your law clerk had the testimony and
20 the response. She was reviewing that.

21 THE COURT: I don't know. I'll have to run it by
22 her and find out.

23 MR. OSGOOD: There's another issue if we're ready

24 THE COURT: Who is your client?

1 MS. HUNT: Skip Sheppard.

2 THE COURT:Is that Earl D.?

3 MR. BECKER: Yes.

4 THE COURT: Yeah. I have that here, and Kathy has
5 a copy of it. I don't know where we are.

6 MR. OSGOOD: Can we cover one other matter right
7 quick?

8 THE COURT: Quick.

9 MR. OSGOOD:I gave Mr. Becker tapes that my
10 investigator made of witnesses. He has those. And there's a
11 logistical problem with one of those. We're working that out
12 among ourselves, we won't bother you with that.

13 I have reports that were provided to me by my
14 private investigator that I have not at this point
endorsed

15 as a witness that I might add to the witness list if these
16 witnesses start substantially changing their testimony, and I
17 contend they're attorney work product. They were not shown
18 to the witnesses. They're synopsis kind of material that he
19 prepared in report form for me, much like an IRS special
20 agent report would be, much like what the ATF, probably that
21 was prepared in this case and presented to you with the
22 chronology of the charges in a little blue binder with a nice
23 seal on it, the chronology of the charges, the -

24 MR. BECKER: So what's the point?

25 MR. OSGOOD: -- anticipated testimony. I'm saying

1 my reports are the same as his ATF report which he's not
2 given to us. And I haven't given it to him, but I don't want
3 to spring this on you later on down the road if it's not a
4 statement, is what I'm getting at, under the law.

5 MR. BECKER: Again, I trust counsel, you know what
6 typically in this jurisdiction what we consider to be a
7 statement. FBI 302's are considered statements, even though
8 they're not signed statements of a witness. And we can
9 produce abundant case law saying we wouldn't have to produce
10 them, but we do, and that's what you've gotten in this case.
11 And I expect that you'll produce anything of similar
12 substance.

13 MR. PETERS: Judge, one other problem for -

14 MR. OSGOOD: Are you going to give me the ATF
15 report? It's a similar kind of report.

16 MR. BECKER: Again, I would assert a work product
17 exception there. You have 3,000 -- and on the one hand, you
18 keep saying you have 3,300 pages that you can't go through.
19 Well, you know as well as I do that ATF report is the 20 or
20 30-page report that boils down sentences from the 3,300. You
21 got the 3,300.

22 MR. OSGOOD: But I'd like to see the report.

23 THE COURT: I think we've quibbled about this
24 enough.

25 MR. PETERS: A real minor point, but now Mr. Osgood

1 has provided a copy of the tape to the government, and none
2 of the other defense counsel have copies of the tape.

3 MR. OSGOOD: That's my fault. I'm making copies.

4 (Court and counsel conferred off the record and the
5 trial adjourned for the evening at 5:45 p.m.)

509

1 WEDNESDAY, JANUARY 22, 1997

2 THE COURT: Good morning, everybody. Miss
3 Riggs is on the stand. And I will remind you, ma'am,
4 you are still under oath. And I believe Mr. Bunch now
5 has the opportunity to cross examine on behalf of the
6 defense.

7 MR. BUNCH: If it please the Court.

8 THE COURT: Yes, sir.

9 DEBORAH RIGGS,
10 having previously been sworn, resumed the stand and
11 testified:

12 CROSS EXAMINATION

13 BY MR. BUNCH:

14 Q Miss Riggs, among other responsibilities that you had
15 as a guard, was one of them writing and supplying an
16 incident report?

17 A: Yes.

18 Q Would you describe for the benefit of the court and
19 jury an incident report, what it is.

20 A: What I can remember of it, it has been a long time
21 since I have written one now.

22 Q I understand.

23 A: I remember we put the time. When we would write it we
24 would write in it, like myself would put Officer Riggs.
25 It was more of a third party documentation.

510

1 Q Do you refer to yourself in the third person?

2 A: Yes.

3 Q Okay.

4 A: And mainly just the time, what we saw, what we did, if
5 we called the police or not. Normally on an incident
6 report the police was called in.

7 Q Prior to the explosion that occurred, had you filed
8 incident reports?

9 A: Yes, sir.

10 Q And recognizing that it is a substantial length of time
11 in the past, do you have any idea how many?

12 A: No. More than a few.

13 Q More than a few.

14 A: Yes.

15 Q You only filed an incident report if there was some
16 occasion to do that; that is, that there was a prowler
17 or if there was somebody on the premises who you
18 thought ought not be there.

19 A: Correct.

20 Q Some incident that occurred that ought to be brought to
21 the attention of the employer.

22 A: Correct.

23 Q Now, can you describe, if you can recall, the nature of
24 most of these incident reports, why were they filed,
25 what were the incidents you were reporting upon?

1 A: People being on the property.

2 Q And that happened frequently.

3 A: No, not really frequently. About the last week to two
4 weeks it happened more frequent than it had before.

5 Q And were these people who were on the property and
6 resulted in your filing an incident report at various
7 places upon the property or the same place?

8 A: The incident reports I filed, if I remember correctly,
9 always were on the east side of the highway. I
10 don't remember ever filing one on the west side.

11 Q And the east side of the highway, so we can recollect,
12 had what on it?

13 A: The explosives.

14 Q Now, did you ever observe an occasion, or more than one
15 occasion, anybody you concluded was casing the place?

16 A: Only once.

17 MR. BECKER: Objection. Speculation.

18 THE COURT: Yes. I don't know how she could
19 conclude that. I will sustain that objection.

20 Q Have you stated under oath you observed a person casing
21 the place?

22 MR. BECKER: Objection.

23 THE COURT: That is the same thing. Whether
24 she stated it before or not, it doesn't make any
25 difference, Mr. Bunch. It is speculation and guesswork

1 what they were doing and it would be her opinion and
2 that is not important here. I will sustain the
3 objection.

4 Q Did you make observations where you saw individuals who
5 were about the place looking at various things and so
6 forth that resulted in an incident report?

7 A: Yes.

8 Q And can you describe to us incidents of that sort?

9 A: The incident that I explained yesterday about the
10 pickup truck, that he went to the trailers and the
11 dynamite, was the only incident that was on the scene.

12 Q You didn't observe any action actually taken by this
13 individual, is that correct?

14 A: No.

15 Q Except he went to these two locations for some purpose.

16 A: That's correct.

17 Q And was it your observation that when he detected you
18 were observing him, he left?

19 A: Yes.

20 Q Now, have you given a description of that person?

21 A: I believe I did then. I don't have a description of
22 him now. Like I wouldn't know him if I saw him now.

23 Q And you don't have a recollection of the description
24 that you gave at that time at this time.

25 A: No face.

1 Q Now after the explosion occurred did you write an
2 incident report?

3 A: Yes, but not immediately after.

4 Q You couldn't hear, had difficulty seeing -

5 A: Yes.

6 Q -- after that occurred.

7 A: To tell you the truth, I really don't remember exactly
8 how I felt. It was like it was blank.

9 Q In any event, the report that you wrote you had to
10 revise as you got better and reflected upon it from
11 time to time, did you not?

12 A: True.

13 Q And you don't recall today how many times that
14 particular report was rewritten, as I understand it.

15 A: It was rewritten several times because of misspelling
16 or I would cross out a word and my brother was real
17 meticulous, you didn't cross out a word in your
18 incident report or you didn't misspell anything.

19 Q The reports were submitted to him, to your brother.

20 A: Yes.

21 Q And for his approval, among other things, and with
22 respect to how they were written, words he thought were
23 inappropriate, that sort of thing, I take it.

24 A: No, he wouldn't tell me what to write. He would only
25 correct my spellings or if I crossed something out, he

1 asked me to rewrite it.

2 Q No, I was not suggesting he told you to change the
3 content but he wanted it in a certain form.

4 A: Yes.

5 Q Is that correct?

6 A: Yes.

7 Q Now can you tell us when you knew what the contents of
8 the trailers contained, what that content was.

9 A: Right after I first started working there.

10 Q Do you know who told you that?

11 A: I never have been able to remember if it was Kevin
12 Lamanske, or this other officer, a male officer. I
13 never have been able to remember which one it was that
14 told me. He worked with a fire department part-time or
15 something and it was an officer that was working for my
16 brother.

17 Q There were how many employees of Ameriguard -- that is
18 the company you worked for that was your brother's
19 company, is it not?

20 A: Yes. I am really not sure. I know they're larger now
21 but this is when he first started the business. This
22 was like his first property that he patrolled. It is
23 when he first started hiring so I really couldn't tell
24 you. I could guess and that's all.

25 Q Well, Melvin Stanton worked there, did he not?

1 A: No.

2 Q Kevin Lamanske.

3 A: Yes.

4 Q Donna Costanza.

5 A: Yes.

6 Q Were you and Miss Costanza roommates?

7 A: Yes, she lived at my house.

8 Q She rented from you or was a roommate or how would you
9 describe that relationship?

10 A: She was just staying at my house. She was in between
11 jobs.

12 Q Now, on the night that the explosion occurred, as I
13 understand it, that is the night she had difficulty
14 with her vehicle.

15 A: Yes.

16 Q And she called you.

17 A: Yes.

18 Q Claiming that or stating that Mr. Lamanske had caused
19 whatever the trouble was with the vehicle.

20 A: Yes.

21 Q In a purported effort to correct something, he actually
22 screwed it up.

23 A: That's what she said.

24 Q And so that vehicle was towed from the premises.

25 A: Yes, it was.

1 Q Now, have you seen Miss Costanza for some time?

2 A: No, I haven't.

3 Q How long after the explosion, when was the last time
4 you saw her after the explosion?

5 A: I can't remember if I saw her before birth. I know she
6 took me to the hospital to have my daughter but I don't
7 remember. I never went back home after the explosion.
8 I went to my parents' house.

9 Q So you did see her at least the time you went and your
10 daughter was born.

11 A: Yes, I did see her. I know she did take me to the
12 hospital. I believe she came out to my mother's a few
13 times while I was out there and she came to my baby
14 shower the night I had my daughter.

15 Q Have you described her as having a severe
16 problem?

17 MR. BECKER: Objection. Relevance.

18 THE COURT: So far that person's credibility
19 isn't an issue here. Unless you are afraid of it
20 affecting her driving while she took her to the
21 hospital, I don't see how it will make much difference.
22 I will sustain the objection.

23 Q On the night that you were called to replace her on the
24 premises because of the car difficulty that you had,
25 did you see her that evening?

1 A: Yes.

2 Q And where was she when you saw her?

3 A: At her vehicle.

4 Q And where was it?

5 A: On the west side of the highway parked on the shoulder.

6 Q Was anybody with her? For example, was Mr. Lamanske
7 there at that time?

8 A: I don't remember if he was with her. I remember her
9 being with her vehicle. I think he was on the other
10 side but I am not sure.

11 Q Prior to the time of your arriving were they the only
12 two guards that were there?

13 A: Yes.

14 Q Before you and your brother came on the premises.

15 A: Yes.

16 Q Now, did, for example, on incident reports and
17 otherwise for purposes of employment, you used your
18 former married name Fiser, did you not?

19 A: Yes, I did.

20 Q That was referred to as a code name or you referred to
21 it as a code name.

22 A: I am not sure what a code name is.

23 Q Did other employees use names other than their actual
24 last names as well?

25 A: No, I did because I didn't want them to know I was a

1 Riggs, the other officers.

2 Q You didn't want somebody to know that you were actually
3 working for your brother.

4 A: Yes, sir.

5 Q With respect to your vehicle that was burned on that
6 occasion, when you left the vehicle, the truck that
7 evening and entered the automobile with your brother,
8 you left the gun in there, a .38 caliber pistol, and
9 you left your checkbook, credit cards, your purse and
10 so forth in there, is that correct?

11 A: I didn't carry a purse. I would put my checkbook with
12 my credit cards in a grocery sack, a plastic sack.

13 Q You left those in the truck when you left.

14 A: With my keys.

15 Q With your keys. So the truck was unattended with the
16 gun in it and the credit cards, your checkbook and the
17 keys.

18 A: Well, I was right in front of the vehicle. It wasn't
19 unattended.

20 Q Well, were the credit cards, the checkbook in your
21 vehicle when it caught on fire?

22 A: Yes.

23 Q And the first time you saw it it was on fire you were
24 at the Quik Trip.

25 A: Excuse me.

1 Q You weren't immediately in front of it when it caught
2 on fire, were you?

3 A: No, I wasn't.

4 Q You were over at the Quik Trip.

5 A: Yes.

6 Q The question I have for you is whether or not anybody
7 stole the pistol, the checkbook, the credit cards and
8 the keys or anything from the cab of the truck.

9 A: No, sir, they were at the police station.

10 Q They were recovered after that.

11 A: Yes.

12 Q Now, you testified on Direct Examination, as I
13 remember, that the .38 caliber pistol belonged to your
14 brother.

15 A: Yes.

16 Q And that you had it in the truck. For what purpose?

17 A: For myself.

18 Q For protection for yourself.

19 A: Yes.

20 Q You were concerned about a fellow by the name of Larry
21 Mellon (phonetics), were you not?

22 A: At that time, no.

23 Q You were not.

24 A: Not at that particular time. He had already been fired
25 from Ford.

1 Q Let me ask you this question. Was he following you at
2 that time?

3 THE COURT: When?

4 MR. BUNCH: At the date of the explosion,
5 on or about.

6 THE COURT: At that sight?

7 MR. BUNCH: Yes.

8 Q Had you told the police you had the pistol because of
9 Mr. Mellon, your concern about him following you, that
10 he was crazy.

11 A: I was stalked by a man for three years and, yes, I was
12 scared of him.

13 Q That is what I was asking you. You said he was crazy.

14 A: Yes. Ford told me he was crazy. He was put into the
15 hospital and had a chemical imbalance.

16 Q You said in your judgment he was crazy enough to do
17 anything.

18 A: Yes.

19 Q You felt in order to protect yourself from this fellow
20 you needed a gun.

21 A: I felt ever since I was stalked by him, I have always
22 had a fear after that.

23 THE COURT: Did the other officers working
24 for your brother carry guns?

25 THE WITNESS: Yes, sir.

1 Q Did you have a permit to carry a gun?

2 A: No, I did not.

3 Q Now, did you have any knowledge, Miss Riggs, about the
4 location of any blasting caps?

5 A: Yes.

6 Q Could you tell us where those may have been located.

7 A: In the trailers was what I call blasting caps.

8 Q In the trailers that exploded.

9 A: To tell you the truth, I don't really know what
10 blasting caps are. I consider blasting caps what they
11 set the dynamite with and that is what I considered in
12 the trailer.

13 Q You, yourself, never saw blasting caps.

14 A: No.

15 Q Nor did anybody tell you where they were, describe them
16 and say that is a blasting cap and that is where it's
17 located.

18 A: No, sir.

19 Q As I understand it, one of your duties as you were
20 doing the rounds is to always check the locks on the
21 explosive magazine, you did that with regularity.

22 A: Yes, sir.

23 Q At any time did you ever find any of those locks
24 removed, undone, disappearing?

25 A: No, sir.

1 Q Did you ever find locks on any others -- were there
2 padlocks, for example, on the trailers?

3 A: Not that I can recall. Just locked doors.

4 Q So there was no necessity nor did you check for locks
5 since there weren't any on there.

6 A: I checked the office trailer doors and I always checked
7 the windows.

8 Q You didn't go in there.

9 A: No, I have never been in there. I just checked to make
10 sure there was no glass broke or the doors were secure.

11 Q Now, on the night this explosion occurred was it an
12 unusually quiet night?

13 A: The night of the explosion it was unusually quiet for
14 me.

15 Q Meaning what, lack of activity around the premises or
16 traffic on the road or what?

17 A: Both.

18 Q Was it just very quiet?

19 A: It just seemed to be a very quiet night.

20 Q Aside from seeing the two people that you have told us
21 about, did you see anybody else?

22 A: No, sir.

23 Q And you had not seen anyone then other than your
24 brother from the time you arrived until you saw those
25 two people.

1 A: I don't remember seeing anyone.

2 Q You have described where they were. You don't know who
3 they were.

4 A: No.

5 Q You did not get a look at their faces.

6 A: No.

7 Q Indeed, I think you have described them as wearing some
8 sort of hoods or something over their heads.

9 A: Yes. Their heads were like (indicating), not like a
10 person's head. It was like they had a hood up.

11 Q They were tall, big people.

12 A: Yes.

13 Q Large people.

14 A: Large frame.

15 Q What is the size of your brother? What was his size
16 then?

17 A: He was probably six foot tall.

18 Q And you do you know what he might have weighed back
19 then?

20 A: No.

21 Q Were the figures that you saw, in your judgment, larger
22 than he?

23 A: Yes.

24 Q Both of them.

25 A: Yes.

1 Q And what was their appearance or demeanor, were they
2 running; were they walking? Did they appear to be
3 heading in a particular direction?

4 A: They were walking fast and they seemed to just be
5 walking in a straight line. I don't know how to
6 explain it. They didn't take the road. They were
7 cutting in behind the trailers.

8 Q They weren't meandering around.

9 A: No.

10 Q They looked to be going in a particular direction and
11 maintained that direction.

12 A: True.

13 Q Were they carrying anything?

14 A: I didn't see them carrying anything. It was just them
15 walking.

16 Q And would you say that your ability to observe them was
17 a good one? Could you see them pretty well?

18 A: Yes.

19 Q What was that, at night?

20 A: There was a full moon and there was light. I don't
21 know why I could see them as well as I could. I know I
22 went back to the site later when it wasn't a full moon.
23 So the full moon is all I can say that made the
24 difference.

25 Q Because somebody questioned about whether you really

1 could see them that well and you went back to confirm
2 that you could.

3 A: Sure.

4 Q Is that correct?

5 A: That's correct.

6 Q They were heading toward the office trailers for
7 purposes, of course, unknown to you.

8 A: If they cut across it, I don't have a problem with
9 that. Just if they stayed on the property.

10 Q Had there been other prowlers or other persons around
11 those office trailers before?

12 A: I had never seen any before. I have seen them walk
13 down the street in front of it but I have never seen
14 them cut in behind it.

15 Q Always before it would have been around the area of the
16 explosives.

17 A: Yes.

18 Q Now, you have described on Direct Examination being
19 advised by this person named Dave at the Quik Trip or
20 7-11, wherever it was, about the fire.

21 A: I believe that was his name.

22 Q And you, of course, immediately proceeded in that
23 direction toward the fire.

24 A: I'm sorry. You lost me.

25 Q You and your brother immediately left and went toward

1 the fire.

2 A: After Dave told us?

3 Q Yes. A: Yes, sir.

4 Q Did you see anybody?

5 A: No.

6 Q Any vehicle. A: No.

7 Q Anything whatever at that time.

8 A No.

9 Q Were you in a position to have observed people if they
10 had been leaving that area by foot, by road, however it
11 may have been, as you proceeded toward the fire?

12 A: I believe that it would have been possible and I would
13 have had the opportunity to have seen someone but I
14 wasn't looking for someone. I was looking at the fire.
15 I wasn't looking for people at that time.

16 Q And is it your testimony that the two individuals you
17 saw going toward the office trailers could not have
18 been -- had time to have reached the area where your
19 truck had been set on fire.

20 MR. BECKER: Objection.

21 MR. BUNCH: I will rephrase it. I will reask
22 it, Judge. It was not a good question.

23 THE COURT: All right.

24 Q How long had it been before you knew about the fire
25 that you had seen the two people around the office

1 trailers?

2 A: I would have to do an approximately. Maybe 10 minutes.

3 Q And how far is it from the office trailers to where
4 your truck was on fire?

5 A: Like a city block or less.

6 Q So there was sufficient time for the two people to have
7 set your car on fire, your truck on fire.

8 A: Are you asking me to speculate?

9 THE COURT: Yes, I think he is.

10 Q In ten minutes could you walk from the office trailers
11 to the truck?

12 A: I couldn't have.

13 Q I think you misunderstood my question. How far was it
14 from the office trailers to where your truck was
15 parked?

16 A: Approximately a city block, maybe less, to my truck.
17 It was further to the trailer.

18 Q I understand that. So you saw the people at the office
19 trailers.

20 A: Behind.

21 Q Behind the office trailers, your truck was parked a
22 city block from there.

23 A: Close.

24 Q And this ten minutes time elapsed when you left and you
25 saw the truck on fire.

528

1 A: Yes.

2 Q So the last thing you actually saw -- or let me ask you
3 this. Was the last thing you actually saw was these
4 two people sort of disappear and not re-emerge on the
5 road and that is why you went to Quik Trip.

6 A: Correct.

7 Q You get to the Quik Trip and you are advised your truck
8 is on fire, you get back and it is.

9 A: Yes.

10 Q Now, the distance between the office trailers
11 themselves and the trailers that contained the
12 explosives was how far?

13 A: Probably like the radius of a block and a half to two
14 blocks of rough terrain.

15 Q Rough terrain but a fairly close distance.

16 A: In my opinion? I don't believe it is very close.

17 THE COURT: You say 'fairly close' as
18 compared to what.

19 MR. BUNCH: I was going to ask her.

20 Q Would you say no more than two blocks?

21 A: It would have been more than two blocks.

22 Q No more than three blocks.

23 A: I don't believe it was more than three.

24 Q Thank you. And as you approached the truck that is on
25 fire, then you see the other fire at the trailers,

1 explosive trailers.

2 A: After we parked and we backed up.

3 Q Taking into account the nature of the terrain from
4 where you parked and backed up, could you see that it
5 was the trailers on fire very clearly?

6 A: No, I just knew it was the trailer on fire because I
7 knew where the trailer was located at.

8 Q Because of the location.

9 A: Yes.

10 Q And as a result of that when your brother dialed 411,
11 that is why you said explosives are on fire.

12 A: Yes, sir.

13 Q Because you knew from that particular location it must
14 be a trailer.

15 A: Yes.

16 Q Again, it is your testimony, as I understand it, you
17 saw nobody, no vehicle, nothing.

18 A: No, sir.

19 Q But the fire.

20 A: No, sir.

21 Q Actually because of the nature of the terrain there is
22 hardly anywhere on the property you could see them,
23 correct?

24 THE COURT: See what?

25 MR. BUNCH: The explosive trailers.

1 Q Because of the nature of the burn and so forth, where
2 they were located.

3 A: From where I was at?

4 Q Yes.

5 A: No, I could not see them.

6 Q Then of course the fire fighters arrived.

7 A: Yes.

8 Q And is it your testimony that you had three or four or
9 more conversations with various, what is it, how many
10 conversations did you have with various fire fighters,
11 one or more, in which you told them it was ammonium
12 nitrate, diesel fuel and fertilizer or do you know?

13 A: I had at least three conversations with the firemen
14 that were on the scene before the car came.

15 Q Let's take the first one and I would ask you to
16 describe what happened and what you had to say and what
17 resulted from what you had to say. When is the first
18 time you talked to some firemen and explained what was
19 in those trailers?

20 A: After my truck was put out.

21 Q The first thing the truck was put out.

22 A: Yes.

23 Q And were they aware of the other fire prior to the time
24 your truck was put out? Were the firemen aware of the
25 other fire, the trailer fire, prior to that time?

1 A: I believe so but I can't answer for them.

2 Q Correct.

3 A: As soon as I got out I asked them why were they putting
4 out my truck instead of the explosives.

5 Q And what was the response to that?

6 A: I don't remember now. I just remember we sat and
7 talked. He wanted to know where everything was located
8 up on the hill, what was up there. Mainly where
9 everything was located.

10 Q And what did you say?

11 A: I remember telling him about the two trailers, what was
12 in them, the two bunkers at the back, what was in them
13 and there was some heavy equipment up on top of the
14 hill.

15 Q Now was there then a second conversation with yet
16 another fire fighter?

17 A: He called over more than -- at first he called over one
18 fire fighter and then he called over several after the
19 second pumper arrived and I spoke with all of them.

20 Q What did you say?

21 A: I told them where everything was located up on the
22 hill, what was up there, I had known to be up here. I
23 had never seen anything. I only knew what I was told
24 by another officer and that's what I told them, that I
25 had never seen anything; it's just what I had been

1 told.

2 Q And can you tell us what you told them was in the
3 trailers.

4 A: Ammonium nitrate, diesel fuel and fertilizer.

5 Q Was there any other time you had conversations during
6 which the contents of the trailers were discussed?

7 A: Up on the hill?

8 Q Yes.

9 A: Yes, I told the driver of the car and he leaned in and
10 I was standing beside the car and I told the chief -

11 THE COURT: Now, I want to make sure I have
12 those in priority. You said you had three
13 conversations before you told the chief, is that right?

14 THE WITNESS: I am not sure if I had three.
15 I had at least three.

16 THE COURT: One of these was after your truck
17 was put out.

18 THE WITNESS: Yes.

19 THE COURT: One of them you spoke with
20 several fire fighters and told them what you had been
21 told was in the trailer.

22 THE WITNESS: I remember calling over one and
23 I talked to him. And he called over when the second
24 pumper arrived, he called over. It was like a group of
25 them.

1 THE COURT: Then you told the driver of the
2 chief's car before you told the chief and then you were
3 telling the chief.

4 THE WITNESS: Yes. I told the driver beside
5 our car and I told the chief at his car.

6 Q Shortly after the last conversation, or immediately
7 before that, the explosion occurred.

8 A: Yes.

9 Q That was the conversation with the chief.

10 A: Yes.

11 Q Now from time to time during your Direct Examination
12 you described a road as the haul road, that is h-a-u-1,
13 road, meaning a road over which these were hauled.

14 A: Yes, sir. It was referred to as a haul road. What did
15 they use it for?

16 A: That was what the heavy equipment drove on to cross the
17 highway.

18 Q Did you express an opinion as to what had happened with
19 respect to these explosions, who did it?

20 MR. BECKER: Objection.

21 THE COURT: Yes, that is pretty vague, Mr.
22 Bunch. When, where, to whom and I trust you are not
23 moving toward what her opinion was.

24 MR. BUNCH: No, I am not.

25 THE COURT: A fortiori. I would say that is

1 not permissible.

2 MR. BUNCH: I don't want to get in trouble
3 with the court. I was not going to ask what her
4 opinion was.

5 Q On February 10th, 1995 to Detective Don Emerson, don't
6 tell me what your opinion was, did you express an
7 opinion as to who was involved in this explosion?

8 MR. BECKER: Objection. Relevance.

9 THE COURT: You better come up.

10 (Conference out of the hearing of the jury.)

11 MR. BUNCH: It is page 2 of 2-10-95.

12 MR. BECKER: She has got it right but you
13 have to insert the name of the defendant.

14 THE COURT: I really don't see -

15 MR. BUNCH: You are not going to let me do
16 it. I can tell it in your eyes.

17 THE COURT: You're right.

18 (Proceedings in the presence of the jury.)

19 THE COURT: I assume the question is
20 withdrawn.

21 MR. BUNCH: Yes. No further questions.

22 THE COURT: Any Redirect?

23 MR. O'CONNOR: We have some further Cross.

24 THE COURT: Okay. Mr. Peters.

25 CROSS EXAMINATION

1 BY MR. PETERS:

2 Q Ma'am, you created, you talked about an incident report
3 you generated and you talked about several revisions,
4 is that correct?

5 A: That's correct.

6 Q At some point did you complete that report and submit
7 it to your brother in an extended detail form?

8 A: Yes.

9 Q Your brother told you to change it and delete out the
10 details, is that correct?

11 A: No, he told me to rewrite it and not to mark out any
12 words and to make sure all my spelling was correct.

13 Q So the report that you submitted ultimately was the
14 same lengthy report you initially submitted to your
15 brother Robert.

16 A: I don't remember the length.

17 Q Regarding the fire fighters, at the time they pulled
18 up, if there has been evidence that the first truck
19 that you saw we are calling pumper 41, do you remember
20 how many men were on that truck?

21 A: No, I just looked at them as a group. I didn't count
22 them.

23 Q There is evidence that there were three people on the
24 truck, would that be different than what you
25 remembered?

1 A: I know what the evidence is but I can't count them,
2 look back and count them.

3 Q When that first truck pulled up, your testimony today
4 is you explicitly told them that there was ammonium
5 nitrate, fuel oil and fertilizer in the trailer.

6 A: Diesel fuel; yes, I did.

7 Q And that was when the first truck was there before the
8 second truck, which would be pumper 30, arrived, is
9 that correct?

10 A: That's correct.

11 Q And of the people that were there at that first truck,
12 can you tell us today how many of those people that you
13 talked to and you are telling us you mentioned
14 specifically ammonium nitrate, diesel fuel and
15 fertilizer?

16 A: Who I mentioned that to, I remember mentioning to was
17 two people from the first truck and it was a man with a
18 mustache that had blonde hair and a real large tall
19 thin fireman.

20 Q And then your testimony is that the second truck pulled
21 up and they again asked you to describe what was in
22 these trailers.

23 A: Yes, sir.

24 Q And the second group of men, your testimony is they
25 clustered around and you related the information again.

1 A: Yes, sir.

2 Q And, in fact, not only did you tell them this but were
3- you corrected in your pronunciation?

4 A: No. No. He had to correct me.

5 Q And who was it that corrected you?

6 A: The man with the mustache.

7 Q What was it you are telling us today he corrected you
8 on?

9 A: Ammonium.

10 Q It was just you were mispronouncing it.

11 A: Yes.

12 Q What was Donna Costanza's experience as a security
13 guard that you knew?

14 MR. BECKER: Objection. Relevance.

15 THE COURT: Sustained.

16 Q Was one of your co-workers Donna Costanza?

17 A: Yes.

18 Q Was one of your roommates Donna Costanza?

19 A: Yes.

20 Q Was Donna Costanza the reason you went to work early
21 that night?

22 A: Yes, sir.

23 Q And when was it that you and Donna Costanza lived
24 together?

25 A: Back in 1974, '75. Just off and on whenever she needed

1 a place to stay I always let her stay at my house.

2 Q And you had stayed in contact with Donna Costanza from
3 '74, '75, up through the time of this explosion.

4 A: No, I hadn't stayed in contact with her. Just every
5 once in a while she would be around.

6 Q Was Donna Costanza hired because you knew her or was it
7 independent of you?

8 A: She was hired because she knew me.

9 Q So let me ask you then, what were the qualifications
10 that you were aware of that made her suitable to be
11 hired as a security guard in your brother's company?

12 MR. BECKER: Objection.

13 THE COURT: I will sustain an objection to
14 that. Trying to second-guess her brother's
15 professional judgment in hiring her. I am not going to
16 let you ask her that.

17 Q Was she hired because she knew you? If she didn't know
18 you would she have been hired?

19 MR. BECKER: Objection.

20 A: I have no idea.

21 THE COURT: Just a minute. Sustained.

22 Q At the time your brother's company was hired were you
23 informed that there had been acts of vandalism
24 attributable to some labor disputes going on at the
25 site?

1 A: No.

2 Q You were unaware of that as a security guard up through
3 the time of November 29th.

4 A: I was aware there had been vandalism by an ex-employee
5 but not by the union.

6 Q Let me ask you, on the night we are talking about -- I
7 am going to try not to skip around -- on November 28th
8 when you went to work early because Donna Costanza's
9 car had stopped working, on that night when you showed
10 up were you advised by another officer -

11 MR. BECKER: Objection.

12 THE COURT: Come up.

13 (Conference out of the hearing of the jury.)

14 MR. BECKER: I believe Mr. Peters is about to
15 ask the witness were you told by another officer that
16 two men had been on the scene, seen on the sight
17 earlier that evening. I believe that calls for hearsay
18 and I would object on that basis.

19 MR. PETERS: Judge, it wouldn't be offered to
20 prove the truth of the matter. This is a security
21 guard having information passed on from one to the
22 other. You would expect her to be told from one to
23 another, from one shift to another.

24 THE COURT: What are you trying to prove?

25 MR. PETERS: She had been advised there were

1 two people in the area and that is part of the reason
2 why she was so alert when she saw two people later on
3 in the night. If she says she didn't know that, we
4 will have that -- if she says she wasn't told that, we
5 will have later testimony.

6 THE COURT: I am not sure she was there to
7 look for people. I am not sure that some specific
8 incident having been reported to her pertains to what
9 she has testified to except as to these specific people
10 she saw.

11 MR. PETERS: We are limited to two unknown
12 males on Lamanske's shift and two unknown males on
13 her shift. In other words, it is a continuing
14 transition that is being broken if we can't make the
15 link Lamanske told her.

16 THE COURT: Do you have some link between the
17 people that had been seen here and the people she saw?

18 MR. PETERS: Throughout this case you are
19 going to hear testimony about two people being seen.
20 Lamanske is going to talk about it. A passing motorist
21 describes them, the two people in greater detail. And
22 this is all what she has testified as an unusually
23 quiet night.

24 MR. BECKER: Who is the passing motorist?

25 MR. PETERS: We have a report regarding a

1 passing motorist.

2 THE COURT: Don't play games.

3 MR. PETERS: I don't know the person's name
4 off the top of my head. We have a report of a passing
5 motorist.

6 THE COURT: The objection is sustained.

7 (Proceedings in the hearing of the jury.)

8 Q Ma' am , you have testified you saw two people down by
9 the office trailers. Was there anything unusual or
10 what drew your attention to two people?

11 A: The two people.

12 Q At that time you were not on the east side of the
13 street, is that correct?

14 A: I was on the west side.

15 Q And the way you have testified, one officer is hired to
16 patrol the west side and one officer is hired to patrol
17 the east side, is that correct?

18 A: As far as I knew.

19 Q Who was it that was on the east side at this time?

20 A: No-one at that time.

21 Q Was any officer from Ameriguard up on this berm you
22 have described by the trailers that gives you a
23 complete view of the trailers, the dynamite bunkers and
24 the construction equipment, was anyone up there?

25 A: No.

1 Q And when you saw these two individuals, you and your
2 brother pull across the 71 highway median, correct?

3 A: Correct.

4 Q And you then proceed north on 71 highway correct?

5 A: Yes, correct.

6 Q You go up what we would call one block to a street that
7 we don't want to pin you down on but the street that is
8 seen on the diagram.

9 A: No, first we went to the trailers.

10 Q How long did you spend at the trailers?

11 A: I have no clue. Approximately a minute, two minutes.

12 Q Only enough time to shine the light underneath the
13 trailers to see if you saw somebody there, correct?

14 A: We were trying to get up behind the trailers as far as
15 we could go and it took a little bit of time. You
16 can't just pull in behind it.

17 Q Did either you or your brother get out of the vehicle?

18 A: No, sir.

19 Q Then you leave the area of the trailers and continue
20 north on 71 highway, correct?

21 A: No.

22 Q Tell us what you did then.

23 A: We then went west on, I believe the name of it is Blue
24 River Road.

25 Q Did you cross over 71 highway completely?

1 A: I believe so.

2 Q Could you have not crossed over 71 highway?

3 A: I believe we did cross over 71 highway.

4 Q How far did you cross over 71 highway?

5 A: I believe there is a bridge that we turned around like
6 in the middle of the street, right past the corner. We
7 didn't go up Blue River going to the east.

8 Q And the bridge you are talking about is a short
9 distance from 71 highway.

10 A: Yes.

11 Q And at that point you turned around and went back to 71
12 highway and turned northbound.

13 A: Yes.

14 Q You then proceeded to the Quik Trip store.

15 A: No, we went real slow over the bridge and then started
16 to take a left-hand turn right before that and I asked
17 him not to.

18 Q But you hadn't seen anybody at the bridge, had you?

19 A: No.

20 Q Then you went to the Quik Trip store.

21 A: Yes.

22 Q So your testimony is that on an unusually quiet night -
23 —

24 A: Yes.

25 Q The only two security guards guarding a construction

1 site had now left the site to go to Quik Trip.

2 A: Yes, we did.

3 Q Regarding the report, how many drafts of this report,
4 your incident report, how many drafts do you think you
5 had?

6 A: Probably about, I know I was getting pretty upset over
7 it. Probably around three.

8 Q And again it is your testimony that that report wasn't
9 edited beyond grammar and spelling.

10 MR. BECKER: Objection. Repetition.

11 THE COURT: Mr. Peters, we have been into
12 this. I have already indicated before we started this
13 trial we aren't going to repeat each cross examination
14 each time. If you have got something different to
15 cross examine her about, please do so. I sustain the
16 objection.

17 Q Ma'am, were you ever told by your brother to change
18 your report and leave out information?

19 A: No, sir.

20 Q Skipping back once again to your discussions with the
21 fire fighters you are telling us about, to the best of
22 your recollection, in the first truck that comes up,
23 you testified that you talked to two of the men about
24 the contents of the trailer.

25 MR. BECKER: Objection. Repetition.

1 THE COURT: It has been covered. Sustained.

2 Q Did you tell four or five of the six fire fighters the
3 contents of the trailer?

4 A: After they all arrived?

5 Q After they arrived and before you talked to Chief
6 Berman.

7 THE COURT: Excuse me but would you include
8 the chief's driver in the four or five?

9 MR. PETERS: Thank you, Judge.

10 Q Before Chief Berman's car arrived, that is when you had
11 the discussions with the two pumper trucks and their
12 crews.

13 A: Yes.

14 Q Of those six individuals how many of them did you tell
15 the contents of the trailer?

16 A: As far as I was concerned, I didn't count how many
17 there was. I had told the whole group.

18 Q The whole group.

19 A: I hadn't counted them.

20 MR. PETERS: I have no further questions.

21 THE COURT: All right. Miss Hunt.

22 MS. HUNT: No questions, Your Honor.

23 THE COURT: Mr. O'Connor.

24 MR. O'CONNOR: Yes. Judge, this is

25 Defendants' Exhibit No. 1.

1 THE COURT: Are we specifying the defendant
2 or just general defendants?

3 MR. O'CONNOR: Exhibit 1.

4 THE COURT: All right, Defendants' 1.

5 MR. O'CONNOR: And I think it is the same as
6 Mr. Becker's -

7 MR. BECKER: It is the same as Government's
8 Exhibit 3.

9 MR. O'CONNOR: That would be a photograph,
10 Judge, taken on 10-28, approximately a month before
11 the explosion, an aerial view.

12 THE COURT: Why do we have to have two?

13 MR. O'CONNOR: Because I want mine marked and
14 he doesn't want his marked on.

15 THE COURT: Fair enough. I assume this is an
16 offer.

17 MR. O'CONNOR: I think it is an offer, sir.

18 MR. BECKER: No objection, Judge.

19 THE COURT: Any objection from any of the
20 defendants?

21 MR. PETERS: No, Your Honor.

22 THE COURT: Hearing none, it is admitted as
23 Defendants' 1.

24 (DEFENDANTS' EXHIBIT NO. 1 WAS RECEIVED IN EVIDENCE.)

25 CROSS EXAMINATION

1 BY MR. O'CONNOR:

2 Q Miss Riggs, I want to show you this Exhibit 1. Take
3 your time and look at it and familiarize yourself.
4 Have you seen this before with Mr. Becker, a photograph
5 taken about a month before the explosion?

6 A: I saw a lot of pictures.

7 Q I don't mind helping you if it is okay. It looks like
8 the trailers are there that blew up in the explosion.

9 A: Yes.

10 Q It looks like your car would be parked over here
11 somewhere.

12 THE COURT: You are not doing anybody any
13 good.

14 MR . O'CONNOR: I am trying to familiarize
15 her so I can take her down and have her write on it.

16 A: I am not sure that's where the trailers were the night
17 of the explosion.

18 Q They're up in that area somewhere (indicating)?

19 A: Yes, that's where they used to be.

20 Q Can you see the Quik Trip down here?

21 A: Yes.

22 Q I am going to ask you, with the Court's permission, to
23 step down here and write on this exhibit so we can put
24 everything where it is.

25 THE COURT: All right.

548

1 Q These are the trailers that exploded. I wish you would
2 write on the trailers "explosion" right in here if you
3 would.

4 A: (Witness complies.) It is not where they were.

5 Q Put them where they were.

6 A: (Witness complies.)

7 Q Write the word ,~trailers~.

8 A: (Witness complies.)

9 Q These would be the trailers that exploded up in this
10 area somewhere, is that correct?

11 A: That's correct.

12 Q Where was your truck parked, if you can find it. Just
13 put Rigg's truck or where you think your truck is.
14 Take your time. Can you put approximately where your
15 truck was.

16 A: Yes.

17 Q Just put "Rigg's truck", if you would.

18 A: (Witness complies.)

19 Q Just put Quik Trip where the Quik Trip is. Just mark
20 it "Q.T."

21 A: (Witness complies.)

22 Q Where you first saw the men walking or whatever they
23 were doing, where did you first see them?

24 A: Right here (indicating).

25 Q Make a drawing when you last saw them, when you went to

1 see what they were up to.

2 A (Witness complies.)

3 Q Thank you. Miss Riggs, your purpose in being there

4 that night was security we have been told, is that

5 correct?

6 A That's correct.

7 Q And the purpose of security guards being at a scene

8 like this is to show thieves, or anybody that wants to

9 come along, you are there out kind of by the highway so

10 people can see you are there.

11 A: That's correct.

12 Q You had a gun there for protection for yourself.

13 A: Yes.

14 Q You had a big spotlight you would put on people if they

15 came into the area that was dark.

16 A: Correct.

17 Q And, in fact, you drove around the site where the

18 trailers later exploded, you went up in this area a

19 couple times that night, as I understand it.

20 A: That's correct.

21 Q And used your spotlight to look around.

22 A: That's correct.

23 Q Then later when you left this area to go down to check

24 on these two men you had observed, you used your

25 spotlight again.

1 A: That's correct. My brother used his spotlight. I
2 didn't.

3 Q Now, I think you told us you had been doing this
4 security guard business for a while, is that correct?

5 A: I hadn't been doing it very long.

6 Q Did you feel you were an experienced security guard?

7 THE WITNESS: Can I ask him what he means
8 by "experienced"?

9 Q Did you know what you were looking for out there if
10 somebody came along?

11 A: Me, personally?

12 Q Yes.

13 A: I am not the best security guard material.

14 Q What I am saying is your job there was to observe and
15 see if you observed anything, either go check it out or
16 you could also call the police to get their assistance.

17 A: That's what I did.

18 Q Did you call the police to get assistance on these two
19 men that you saw?

20 A: No, my brother was with me.

21 Q And tell me how that happened. You were in separate
22 cars and then you joined him in his car or how did that
23 happen?

24 A: We were in separate vehicles. He was on the other
25 side. I asked him to come down and he could have my

1 sandwich.

2 Q Then that is when you guys starting talking a little
3 bit and you observed this action going on down here.

4 A: No, I turned off the light and then that is what
5 happened.

6 Q And the purpose back of this spotlight is to light up
7 areas so you can see if there is criminal activity; the
8 purpose of your spotlight is to light things up so if
9 criminal activity is going on people will run off.

10 A: That's correct.

11 Q Would you agree with me that thieves are kind of like
12 roaches, they come out at night; when it's light they
13 go back in?

14 A: I would agree with that.

15 Q So when you left in your truck to go down and check out
16 these men here, this whole site was dark and
17 unattended.

18 A: I didn't leave in my truck. I left with my brother in
19 his car.

20 Q I misspoke. You left in your brother's car.

21 A: Yes, that's correct.

22 Q You left this whole area unattended.

23 A: That's true.

24 Q It was dark.

25 A: True.

1 Q No security guards were up here to guard it.

2 A: True.

3 Q You left and went down here and looked around, didn't
4 get out of your car.

5 A: True.

6 Q You went to Quik Trip to get something.

7 A: True.

8 Q And before you could leave Quik Trip someone was coming
9 in saying that your truck was on fire.

10 A: T can't tell you that.

11 Q Did someone come in and tell you there was a fire down
12 71 highway?

13 A: No, Dave came out of Quik Trip and told us there was a
14 fire.

15 Q Someone told you between the time you left here and the
16 time you got here there was a fire on 71 highway.

17 A: That's correct.

18 THE COURT: I don't think I understand that.
19 You said someone told them from the time they left here

21 MR. O'CONNOR: That was a bad question,
22 Judge.

23 THE COURT: It was after they got up north,
24 wasn't it, they were told.

25 MR. O'CONNOR: Thank you.

1 Q Basically when you got here at the Quik Trip someone
2 told you here, someone told you there was a fire going
3 on down here on 71 highway.

4 A: Yes, Dave ran out and told us. I believe his name was
5 Dave.

6 Q As soon as you left there and went to check, someone
7 moved in and lit up the area, the thieves came in to
8 light up the area so as to bring you back, is that what
9 happened?

10 A: I am not sure what you are saying. Thieves lit up the
11 area to draw us back?

12 Q What I am saying is this is all dark here to thieves to
13 work.

14 A: Right.

15 Q You are gone. A: Yes.

16 Q And now the thieves, because that is the government's
17 theory, they are lighting this up to bring you back to
18 what they are doing.

19 MR. BECKER: Objection.

20 THE COURT: No, no, that is too much opinion,
21 speculation, conjecture. She is not going to be
22 required to espouse the government's theory.

23 Q Now you left in your car. You got your dog out of the
24 truck, right?

25 A: My dog goes where I go.

1 Q My question, you got your dog out of your truck.
2 A: That's correct.
3 Q You left your purse in your truck.
4 A: Correct.
5 Q And you left a gun in your truck.
6 A: Correct.
7 Q And it was open inside your truck.
8 A: Correct.
9 Q And when you came back the truck was on fire from the
10 inside out, someone had gotten in the truck and burned
11 it from the inside-out.
12 A: I didn't know that at the time and I still don't know
13 that.
14 Q And your purse and your gun -- was there money in that
15 purse?
16 A: I really don't remember.
17 Q Wasn't there about six dollars?
18 A: I don't remember.
19 Q Anyway, the purse and the gun, it all burned in the
20 fire.
21 A: I found out later it didn't.
22 Q But it was there when the fire went out; in other
23 words, no-one stole it.
24 A: No, but I wasn't thinking about my purse being in the
25 truck.

1 Q But it was in there.

2 A: Yes, it was.

3 Q And correct me if I am wrong but I thought you said a
4 minute ago you didn't have a purse in the truck.

5 A: Well, I kept a checkbook with money and credit cards
6 and then I kept as a purse a plastic sack from the
7 grocery store.

8 Q But clearly your keys were there; someone could have
9 driven it if they wanted to.

10 A: Yes, but I wasn't planning on leaving.

11 Q Whoever got in the truck decided to burn it from the
12 inside-out.

13 A: I have no idea.

14 Q Did you make any kind of insurance claim as to your
15 truck?

16 A: I sure did.

17 Q Did you receive money for that?

18 A: Yes.

19 Q Now, you have told us here under oath that you told
20 these firemen -- wait a minute, before I go to that.

21 THE COURT: Before you go to that, check
22 where you are and we will come back to it. I think it
23 is time for us to take our morning break.

24 Don't talk about the case while we are
25 in recess and you may withdraw from the courtroom

1 and please be back in the jury room in 15 minutes.

2 You are excused.

3 RECESS

4 THE COURT: Miss Riggs, I will remind you you
5 are still under oath and you may proceed.

6 MR. O'CONNOR: Thank you, Your Honor.

7 Q The next morning, the same morning, I guess of the
8 explosion is when you went down to the police
9 department.

10 A: Yes, sir.

11 Q About what time did you get down there, approximately?

12 A: I have no idea.

13 Q Before noon or after noon?

14 A: Before noon.

15 Q And is that the day the police told you if you just
16 told them your brother was asleep you could go home?

17 A: Yes.

18 Q Now the next morning after this tragedy had occurred
19 out there you were down at the police department and
20 you were being untruthful to them about certain events
21 that happened there that night, weren't you?

22 A: That is correct.

23 Q And you were willing to tell the police untruths that
24 next morning after these fire fighters had died to
25 serve your own purpose, didn't you?

1 A: That's true.

2 Q Now, the police had talked to you numerous times
3 between 1988, November 29, 1988, the day of the
4 explosion, and to this day, is that correct?

5 A: That's correct.

6 Q And I want you to tell me and this jury whether or not
7 any time between November the 29th, 1988 and October
8 the 4th, 1989 you ever told any police officer, any ATF
9 agent, any government official, that there was ammonium
10 nitrate, diesel fuel in those trailers.

11 THE COURT: Did she tell the police that
12 after the explosion?

13 MR. O'CONNOR: Let me start over, Judge.

14 Q You are telling this Judge you told those firemen that
15 night that there was ammonium nitrate and diesel fuel
16 before they went up there to fight that fire.

17 A: And fertilizer.

18 Q You told them that.

19 A: Yes.

20 Q But those are two things you definitely told them. You
21 told us you told them fertilizer.

22 A: Those are three things I definitely told them.

23 Q Then when the police interviewed you between the day,
24 the 29th, and until October the 4th, did you ever tell
25 any police officers that is what you had told them.

1 A: I have no idea. I don't remember after the explosion.

2 Q Did they do a videotape where they had you in a room,
3 did they video it and take down everything you told
4 them?

5 A: I don't remember the videotape but I have seen it so
6 they did do one.

7 Q I am going to hand you what has been marked as
8 Defendants' 2. This is purported to me to be a
9 videotape statement of you, transcribed the next
10 morning by detectives with the Kansas City Missouri
11 Police Department.

12 A: Okay.

13 Q Have you had a chance to review that before today?

14 A: No, I haven't. I saw the video.

15 Q And from seeing the video can you tell us whether
16 anywhere in that video you told the police about
17 telling the firemen that there was ammonium nitrate and
18 diesel fuel oil?

19 A: I don't remember seeing it in the video.

20 Q Because it is not in the video, is it?

21 MR. BECKER: Objection.

22 (Conference at the bench out of the jury's hearing.)

23 THE COURT: Except for general credibility
24 and general recollection, I don't see what this has to
25 do with what we are doing here.

1 MR. O'CONNOR: I can tell you, Judge, the
2 firemen that are going to testify, the battalion chief
3 is going to say he never remembered her telling it was
4 ammonium nitrate, diesel fuel in there. The fire
5 fighters' families filed a lawsuit against her and her
6 brother on October 4th, 1996 and the charge in that
7 lawsuit was failure to warn the fire fighters of
8 ammonium nitrate and fuel oil.

9 Then in her deposition in October, after
10 never telling anyone, she tells them for the first
11 time there is ammonium nitrate and fuel oil which
12 goes to her credibility.

13 THE COURT: What difference does it make
14 here?

15 MR. O'CONNOR: What I was trying to do -- I
16 didn't want her to stand up and read 13 pages. That
17 is why I was trying to cut to the chase.

18 THE COURT: Even if she does and even if you
19 establish she didn't tell anybody until such and such a
20 time, I guess my point to you, how has she hurt you?
21 She has testified to a terrific explosion. She has
22 testified to some conversations which you have now
23 challenged but actually what are you after?

24 MR. O'CONNOR: My theory is, Judge that she
25 could have set this fire, not knowing the result, what

1 was going to happen. When the firemen came, she
2 panicked. She was trying to stay away, even though
3 she knew and later she claims she knew what was up
4 there.

5 MR. BECKER: You are saying she set both
6 fires?

7 MR. O'CONNOR: I am not saying that. I am
8 saying that is a possibility.

9 THE COURT: I am not going to deal in those
10 possibilities.

11 MR. OSGOOD: I think we are losing sight of
12 the fact ammonium nitrate and fertilizer are the same
13 thing. The point is she picked up the term ammonium
14 nitrate post-incident, well down the line and is now
15 using that term when in reality this was not a term
16 she was familiar with so it goes to her credibility
17 when she first learned that term.

18 THE COURT: What is she going to say about
19 telling them to get the hell out of there?

20 MR. BECKER: The word she says on the
21 transcript, she tells them they're explosives there.

22 THE COURT: Come on. Is that on that
23 transcript?

24 MR. BECKER: It is right here.

25 MR. O'CONNOR: The point I am making, that is

1 what I am going to ask her. She says blasting caps of
2 fertilizer. She doesn't mentioned diesel fuel or
3 ammonium nitrate.

4 THE COURT: Does she use the term explosives?

5 MR. BECKER: The next morning she says we
6 pulled back up and got them and told them, you know,
7 told them again these was explosives in it and we hear
8 on the 911 tape a female voice in the background saying
9 explosives.

10 MR. O'CONNOR: I will move on.

11 THE COURT: The objection is sustained.

12 (Proceedings in the presence of the jury.)

13 Q Now, Miss Riggs, were you a party to a lawsuit filed in
14 October of '89 by the fire fighters' families, you and
15 your brother and Ameriguard?

16 A: That's correct.

17 Q And did you testify in that lawsuit?

18 A: Yes, I did.

19 Q And did you tell them you had warned the fire fighters
20 there was ammonium nitrate and diesel fuel at this
21 scene at the time?

22 A: Yes, I did.

23 Q And the whole purpose of that lawsuit was they were
24 claiming that you and Ameriguard, along with others,
25 had failed to warn the fire fighters of that very

562

1 thing, wasn't that the lawsuit?

2 A: I have no idea. I was just asked to go. I don't know
3 all the particulars about the case.

4 Q But wasn't the theory of the lawsuit filed against you,
5 -- the lawsuit was filed against you, you remember it,
6 I am assuming.

7 A: No, I don't.

8 Q Was the theory behind the fire fighters families'
9 claims you had failed to warn the fire fighters of
10 ammonium nitrate and diesel fuel being at that scene?

11 MR. BECKER: Objection.

12 THE COURT: Asked and answered. Objection
13 sustained.

14 A: If there was, I wasn't aware.

15 MR. O'CONNOR: May we approach.

16 THE COURT: Go ahead but you have asked this
17 question and she said she didn't know.

18 MR. O'CONNOR: If I can ask the next
19 question. That is what I want to ask you.

20 (Conference at the bench out of the hearing of the
21 jury.)

22 MR. O'CONNOR: I don't want to ask an
23 improper question. They settled the lawsuit. I can
24 ask her that.

25 THE COURT: No, you know better than that.

1 Lawsuits aren't settled with any admission of any
2 liability or anything else except the lawsuit existed.

3 MR. O'CONNOR: Thank you.

4 THE COURT: I defended too many of them to
5 allow that, Mr. O'Connor.

6 (Proceedings in the hearing of the jury.)

7 Q Did you have a lawyer in that lawsuit?

8 A: Yes, I did.

9 Q Now, was it common if you saw prowlers or people you
10 were concerned about, you would sometimes summon the
11 Kansas City, Missouri Police Department to come.

12 A: Almost always.

13 Q And on this night you did not.

14 A: I didn't have time.

15 Q And you had a phone there at your disposal, a cellular
16 phone.

17 A: I am not sure. Robert made the phone call to the 411
18 but I didn't have a phone at my disposal.

19 Q But one of you did.

20 A: He did.

21 Q And no-one called the police department.

22 A: No, he didn't but I am not sure he would call anyway.
23 I wouldn't go chase after anyone by myself.

24 Q Again maybe I misunderstood this on Direct. I thought
25 you said you identified someone and put your car so

1 they couldn't get out and chased them.

2 A: I had another officer.

3 Q Your brother, this night your brother was with you.

4 A: Yes, my brother was with me that night of the
5 explosion.

6 MR . O'CONNOR: I believe that is all the
7 questions I have. Thank you very much.

8 THE COURT: Mr. Osgood, anything?

9 MR. OSGOOD: Yes, Your Honor.

10 CROSS EXAMINATION

11 BY MR. OSGOOD:

12 Q Miss Riggs, I am John Osgood and I represent Mr. Brown.

13 A: Hi John.

14 Q We have never met, is that correct?

15 A: That's correct.

16 Q I want to go back and talk a little bit about the
17 incident involving the truck that you observed up
18 there, that you observed going up the outer road and
19 went up and chased it for a while.

20 A: Okay.

21 Q You remember that incident.

22 A: Yes, I do.

23 Q How many days prior to the blast was that?

24 A: I don't remember the days. It was soon before.

25 Q Now, there was a truck backed up to the two trailers

1 that exploded, is that correct?

2 A: The night of the explosion.

3 Q And that was a red pickup, wasn't it?

4 A: Yes.

5 Q Okay. Do you remember what model it was?

6 A: It was something that had been on the construction site
7 for a while. It was an older pickup, like in the
8 seventies, eighties.

9 Q This one that was backed up to the trailer that burned.

10 A: Like in the seventies.

11 Q Do you remember whether it was a Ford or not?

12 A: No.

13 Q But it was red.

14 A: Yes.

15 Q Now you did an incident report on the truck you chased,
16 didn't you?

17 A: Yes, I did.

18 Q And you work at Ford Motor Company don't you?

19 A: Yes.

20 Q And have worked there for twenty some years.

21 A: To this day in March.

22 Q You would have worked at Ford for ten years as of the
23 date of this explosion.

24 A: Yes.

25 Q On this night you chased this pickup you had your

1 spotlight, is that correct, ma ' am?

2 A: Yes.

3 Q You were able to get close enough to this truck to
4 shine your spotlight.

5 A: I ran into the back of it.

6 Q I want to get to that in a minute but first you saw the
7 individual getting out by the dynamite bunker, is that
8 correct?

9 A: No.

10 Q Where did the person get out?

11 A: At the trailer.

12 Q And walked around up to the trailer?

13 A: He walked up to the site of the trailer.

14 Q Now this was in 1988, right, four days before the
15 explosion.

16 A: Possibly. I don't remember what day it was.

17 Q It was several days prior to the explosion.

18 A: It was a few days before. It was within a week.

19 Q How old were you at that time, ma ' am? Presuming it's
20 six years ago, eight years ago, take eight off of your
21 age now; just a ballpark figure.

22 A: In my thirties.

23 Q Can you tell us more precisely. I am not trying to
24 embarrass you. This is an important question.

25 A: In my mid-thirties.

1 Q How old are you now?

2 A: Forty one.

3 Q You testified the person you saw was 35 years old.

4 A: I believe him to have been about that age. He was
5 about my age.

6 Q An adult grown male.

7 A: Yes, not a teenager.

8 Q Not a teenager.

9 A: Correct.

10 Q And did you complete an incident report on that event?

11 A: Yes, I called the police.

12 Q How did you describe the truck in that incident report?

13 A: I don't remember now how I described it in the incident
14 report.

15 Q Let me show you this and ask you if that helps you
16 refresh your memory. Do you recognize that?

17 MR. BECKER: Would you tell me what you are
18 looking at.

19 MR. OSGOOD: The incident report.

20 MR. BECKER: Can I take a look at that,
21 please.

22 A: What is it you want me to look at?

23 THE COURT: Don't read from it, Miss Riggs.

24 After she has read it, take it away from her and do it
25 right, Mr. Osgood.

1 MR. OSGOOD: Yes, sir.

2 Q Have you had a chance to review it or do you need
3 another minute?

4 A: Yes.

5 Q You feel comfortable with it.

6 A Yes.

7 Q How did you describe the pickup?

8 MR. BECKER: May I look at that.

9 THE COURT: Before you answer let him examine
10 and see if he has a problem.

11 MR. BECKER: I need to approach the bench,
12 please.

13 (Proceedings at the bench out of the hearing
14 of the jury.)

15 MR. BECKER: If only Mr. Osgood has these,
16 that's fine. I frankly don't have these incident
17 reports.

18 MR. OSGOOD: This was attached to the
19 deposition you gave me of Miss Riggs as the exhibits
20 to it.

21 MR. BECKER: I will look. Thank you.

22 (Proceedings in the hearing of the jury.)

23 Q Now, having had a chance to review that report, how did
24 you describe that pickup, ma'am?

25 A: As a late model pickup truck.

1 Q Would you describe the color?

2 A: Red.

3 Q And that would be the same description then basically
4 as the truck parked up against the trailers or would it
5 have been a newer truck?

6 A: No, it was an older truck.

7 Q Which was older?

8 A: The one I chased off the property was much older. It
9 didn't have taillights, wasn't attached to the vehicle.
10 It was like on poles like in the fifties.

11 Q Why did you describe it as a late model pickup then in
12 your report?

13 A: I thought that is a late model.

14 THE COURT: I think you and she are inverting
15 the significance of "late".

16 Q How long have you worked at Ford?

17 A: Almost twenty years.

18 Q A late model pickup.

19 A: Yes.

20 Q What name did you use on this report?

21 A: Mr. Fiser.

22 Q Were you married to Mr. Fiser at this time?

23 A: No, I was not.

24 Q Had you divorced?

25 A: Yes.

1 Q Why did you use the name Fiser on the report?

2 A: I used the name Fiser first while working for
3 Ameriguard so the other employees wouldn't know I was
4 Robert's sister and think he was being partial toward

6 Q On this pickup you said you chased and it slammed on
7 its brakes.

8 A: Yes.

9 Q And you rammed it.

10 A: Yes.

11 Q How fast were you going at the time?

12 A: I couldn't tell you. I wasn't going seventy. I was
13 probably going about 20, 25 miles per hour.

14 Q What kind of a vehicle were you driving?

15 A: A pickup truck.

16 Q A Toyota. A: A Toyota.

17 Q What year?

18 A: I don't remember the year, the late seventies.

19 Q Does it have an impact bumper, do you know?

20 A: No, it was lifted up. It was up higher than normal.

21 Q And what did the rear end of the pickup that stopped,
22 you slammed into, look like, ma' am ?

23 A: It had taillights like on a pole instead of being
24 attached to the vehicle. That's how I knew it was a
25 later model.

1 Q And an older model, you mean -- well, did it have a
2 steel bumper?

3 A: I don't know now.

4 Q Did you damage your automobile?

5 A: I believe so.

6 Q Did you turn it into the insurance company?

7 A: No, I don't believe so.

8 Q So on the night of the fire, four nights later you were
9 driving a damaged pickup that had been damaged as a
10 result of this car stopping and you ramming into it.

11 A: Well, it didn't tear it up or knock any lights out of
12 it. I think it just made a dent on the bumper or
13 something. It didn't really damage it. It wasn't
14 extensive damage.

15 Q Now, do you remember being interviewed by Detectives
16 Doug Clark and Zinn(phonetics)?

17 A: No.

18 Q Do you remember being interviewed by the detectives
19 immediately following this incident?

20 A: I was interviewed by a lot of detectives.

21 Q Did you tell one of the detectives your brother was
22 asleep in the car sitting next to you while you had the
23 light on reading these reports?

24 A: I believe that was said in interrogation after I had
25 been there for about seven hours and had been up all

night and was in shock. They told me I could go home if I said my brother was asleep.

Q They were suggesting answers for you.

A: No, I didn't say they suggested an answer. They just told me I could go home, Robert had already said he was asleep and if I wanted to say that, I could go home, too.

Q Did you later in a deposition you gave in one of these civil cases indicate that the police officer had put that down in his report but it wasn't true; in other words, called the police officer a liar?

MR. BECKER: Objection. Speculation and argument.

THE COURT: That is argument. You don't need to do that.

Q Did you at some point in a deposition tell the person asking you questions that what a police officer put down in a report was not correct?

A: Did I tell another detective that?

Q No, another lawyer who was asking you in one of these depositions you gave in 1989, on August 22nd, did you tell the lawyer interrogating you when he asked you about Robert being asleep next to you, that this was in the police report but it wasn't true?

A: I really don't remember if that happened. If you could

1 show me the deposition but I don't want to say it is
2 true.

3 Q Rather than digging it out I will just move on to save
4 some time. Did you ever tell these lawyers you had
5 lied about what Robert was doing while all this was
6 going on that night?

7 A: I told them the morning of the interrogation -

8 MR. BECKER: Objection. Foundation.

9 THE COURT: Are you putting the word lied in
10 quotes?

11 MR. OSGOOD: Yes, I am, Your Honor.

12 MR. BECKER: What page, please?

13 MR. OSGOOD: 22 August, '89.

14 Q Do you remember giving this deposition on 22 August,
15 1989?

16 A No.

17 Q Let me show you a copy. It was involving a civil case,
18 John Deere versus the Missouri Highway Commission.

19 MR. BECKER: What page?

20 MR. OSGOOD: I am going to make reference to
21 page 117.

22 Q You were asked a series of questions about where Robert
23 was, what you had told the police in relationship to
24 where he was, do you remember?

25 A No.

1 Q They were focusing on who was on the east side and who
2 was on the west side.

3 A: Right.

4 Q In that deposition did you tell the lawyer that you had
5 lied about Robert being on the opposite side, "that
6 Robert was on the same side I was and I had lied,
7 Robert was there."

8 A: Yes, I said that all along at the morning of the
9 interrogation. I told them that wasn't truthful and I
10 said that ever since that.

11 Q Do you remember a police report or being confronted
12 with a police report in this deposition -- and I am on
13 page 126 now -- which indicated you had to shake Robert
14 to wake him up and you denied you had ever told
15 Detective Zinn that?

16 MR. BECKER: Objection. No foundation for
17 that.

18 THE COURT: As I understand impeachment, it
19 goes to attacking something that has been said here.
20 Does that relate to something she has testified here or
21 something she said before?

22 Q You had conversations with the detective, right, ma'am?

23 A: Several times.

24 Q He prepared reports. He prepared written reports.

25 A: The detective -

1 THE COURT: Do you know whether he prepared
2 written reports or not?

3 THE WITNESS: I don't know if they made
4 reports every time they talked to me.

5 Q You were shown reports during this deposition, weren't
6 you, they had police reports, the lawyers?

7 A: Yes.

8 Q And one of the questions was concerning whether or not
9 you had to shake your brother. Let me just ask you,
10 did you have to shake your brother on that night to
11 wake him up?

12 A: No, I did not. I slapped him on the shoulder like that
13 (indicating).

14 Q Were you asked in this deposition whether or not you
15 had told Detective Zinn you had to shake your brother
16 to wake him up?

17 MR. BECKER: No prior inconsistency.

18 THE COURT: I was going to say it doesn't
19 sound like you have an inconsistency. Show me and
20 bring it up.

21 (Conference at the bench out of the hearing of
22 the jury.)

23 THE COURT: It says, "You had to shake your
24 brother to wake him up." "That is not true.'" "You
25 never told Detective Zinn that.'" "Never did."

1 MR. OSGOOD: I want to establish she didn't
2 tell Detective Zinn that, the report is wrong. That is
3 all I am trying to get at.

4 THE COURT: The objection is sustained.

5 (Proceedings in the hearing of the jury.)

6 Q Did you get your purse back after a period of time?

7 A: Yes, sir, I did. It wasn't really a purse. It had my
8 checkbook and credit cards in it. It also had an I.D.,
9 my driver's license, everything.

10 Q It was vinyl construction.

11 A: Yes.

12 Q How big was it?

13 A: This big (indicating).

14 Q You are holding your hand.

15 A: Six by three inches; eight by three inches.

16 THE COURT: Was it kind of like a Zip-lock
17 bag?

18 THE WITNESS: No, it was like a plastic
19 grocery bag that you get from the grocery store when
20 you get groceries.

21 THE COURT: All right. I don't think of a
22 grocery bag as being that small.

23 THE WITNESS: No, that was my purse; my
24 checkbook.

25 THE COURT: Okay.

1 Q I am just going to ask you who a couple other people
2 are and then I am going to sit down. Who was Officer
3 Mason?

4 A My brother.

5 Q So that was a false name he was using on these reports?

6 A Yes, sir.

7 Q Who was Officer McDonald?

8 A My sister-in-law.

9 Q Jennie Riggs.

10 A Yes, sir.

11 Q Was she using a false name?

12 A Yes, sir.

13 Q Now, you went to Security Officer School, didn't you,
14 ma ' am?

15 A: I took some classes at Penn Valley.

16 Q Tell us about those, please.

17 THE COURT: What was that?

18 MR. OSGOOD: I asked if she took some
19 security officer classes. I want to know what they
20 were.

21 THE COURT: You didn't ask her that. You
22 said "tell us about those" and we can spend the rest of
23 the day reviewing the classes at Penn Valley. What
24 were the courses?

25 THE WITNESS: I don't remember what they were

1 now.

2 Q Were you taught how to write reports?

3 A: Not that I remember but I could have been but I don't
4 remember that.

5 Q Where did you pick up the technique of referring to
6 yourself as "Reporting Officer Fiser approached a red
7 vehicle"?

8 A: Like in a third person manner, from my brother.

9 Q You used terms like "vehicle".

10 A: Yes.

11 Q And "scene".

12 A: Yes.

13 Q And "exiting the vehicle".

14 A: Yes.

15 Q Those kind of police terms.

16 A: My oldest brother is a police officer and the brother
17 that I was working for, he used to be a police officer
18 so I was familiar with those terms.

19 Q Last question. There were at least two distinct drafts
20 of your incident report about the explosion that were
21 prepared, weren't they?

22 A: There was at least two drafts.

23 Q You wrote a draft of your incident report and showed it
24 to your brother Robert.

25 A: Yes.

1 Q You then wrote a completely separate report.

2 A: Yes.

3 Q From scratch.

4 A: Yes, I turned the other one in. That is why I had to
5 do it from scratch and he said he wouldn't accept it
6 with all the marking on it.

7 Q You said the gun, you went back to get the gun because
8 it had collector value at one point.

9 A: No, sir, I didn't.

10 Q You never said that.

11 A: No, sir.

12 Q It was of special value.

13 A: No, sir.

14 Q Why did you go back to get the gun?

15 A: I didn't, sir.

16 Q Why did your brother go back to get the gun and leave
17 you standing in the middle of the highway?

18 A: I can't answer that. He wanted to go back and get the
19 gun; I didn't. So I asked him to let me out.

20 Q When you reported the fire to the police you did not
21 tell them about the gun being in the truck the first
22 time.

23 A: When I reported the fire to the police?

24 Q Yes, ma'am. When you discussed the fire of your truck,
25 the arson of your truck, you did not tell them there

1 was a gun in the truck, did you?

2 A: I don't remember. It is possible that I didn't.

3 Q Now, that was a crime scene, wasn't it? You knew your
4 truck had been burned in an arson.

5 A: I was also in shock.

6 Q But you had been to these courses. You had been
7 trained as a security officer, correct?

8 A: Correct.

9 Q You knew that immediately when the fire department
10 arrived they told you it was suspected arson, it had
11 burned from the inside.

12 A: That wasn't what was going through my mind, it was a
13 crime scene and it was an arson. I was just excited.
14 I had never seen a truck burn like that before. I was
15 scared. Had I left my headlights on. I didn't know
16 what to expect.

17 Q Let's bracket the incident for a moment, ma'am. You
18 had seen two individuals up the street and I won't
19 belabor that.

20 A: Yes.

21 Q You investigated that.

22 A: Yes.

23 Q Came back and your truck was on fire.

24 A: Yes.

25 Q Then a tremendous explosion occurred up on the hill.

2 Q Then you leave, you and your brother leave.

3 A: No.

4 Q Well, you backed down off the hill -- I am shorting it
5 a little bit -- you stay until the fire department
6 arrives and you talked to them. Then eventually you
7 come down off the hill. Your brother comes down and
8 picked you up and the two of you go down toward 95th
9 Street.

10 A: We went back across the street and was asked to stay
11 there.

12 Q By the police.

13 A: Yes.

14 Q Because they were concerned and were going to conduct
15 an investigation.

16 A: No, they said they wanted to take a statement.

17 Q But by this point you knew the police were involved.

18 A: At that point I didn't know much of anything except I
19 was alive.

20 Q The two of you take off and go down. This is before
21 the second explosion, isn't it?

22 A: Yes.

23 Q You get halfway down 71 highway and your brother wants
24 to go back and get the gun out of the truck, doesn't
25 he?

1 A: It wasn't halfway down.

2 Q By a 55 mile speed limit sign.

3 A: It was by a speed limit sign.

4 Q So he stops and you get out.

5 A: He said he was going to go back and get the gun and I
6 asked him to let me out at the speed limit sign.

7 Q So my question to you is did you tell him at any time
8 we ought to leave the gun in there, that's a crime
9 scene, based on your training?

10 A: No, I didn't. Crime scene didn't enter my mind.

11 Q In your training were you told when there is a crime
12 scene you leave the scene intact and do not disturb it.

13 A: I don't remember being told that.

14 Q As a security officer you never were told if there is a
15 crime scene you secure it.

16 A: That you secure it but I had never imagined I would
17 ever be at a crime scene.

18 Q All right. When you were interviewed that evening the
19 first time with the detectives, did you leave the
20 impression with the detective you weren't even a
21 security officer; you had just gone down there to give
22 your brother a sandwich.

23 THE COURT: Did she leave the impression?

24 MR. OSGOOD: Yes. Deliberately.

25 THE COURT: Wait a minute. I am really

583

1 puzzled by that. Did she leave the impression.

2 MR. OSGOOD: Let me rephrase it then, Your
3 Honor.

4 Q Did they question you and make statements to you that
5 led you to believe they thought you were just there
6 delivering a sandwich?

7 A: No, sir, I told them in the interrogation I was only
8 there to deliver a sandwich and then I told them after
9 that that wasn't true.

10 Q So that was another statement that was a lie.

11 A: I am not going to call it a lie. I didn't lie on
12 purpose.

13 Q You made a number of statements to the police that
14 later you had to go back and say were not accurate.

15 A: I didn't tell all. I didn't tell everything. Then
16 after that it came to me. There were six men dead here
17 and I told them everything and I cooperated with them.

18 Q You told them everything and they went into your
19 background in great detail, didn't they?

20 A: They sure did.

21 Q Anything that would have to do whatsoever with this,
22 didn't they?

23 A: Yes.

24 Q To determine whether or not you were telling the truth
25 and being honest.

1 A: Yes, they sure did.

2 Q They asked you everything in the world.

3 A: Yes.

4 Q Your life history. A: Yes.

5 Q You didn't tell them about your 1970 -

6 MR. BECKER: Objection.

7 THE COURT: Just a minute, Mr. Osgood. You
8 know better than that. The objection is sustained. I
9 told you before not to go into that and I seriously
10 personally object to your going into it.

11 MR. OSGOOD: Can we approach on that?

12 (Conference at the Bench out of the hearing of the
13 jury.)

14 THE COURT: You know you can't do that. I
15 have told you expressly you cannot do that.

16 MR. OSGOOD: I thought Mr. Becker opened it
17 up and I just laid a foundation.

18 THE COURT: He did not. Now that is just
19 dead wrong and you know what that record is and I am
20 not going to tolerate it. Now, let's go on.

21 (Proceedings in the hearing of the jury.)

22 MR. OSGOOD: That's all.

23 THE COURT: Any Redirect, Mr. Becker?

24 MR. BECKER: No Redirect, Your Honor.

25 THE COURT: You may step down. Thank you.

1 MR. BECKER: The United States called Robert
2 Riggs.

3 ROBERT RIGGS,

4 having been sworn, testified:

5 DIRECT EXAMINATION

6 BY MR. BECKER:

7 Q Good morning.

8 A: Good morning.

9 Q If you would please hold the microphone a little bit
10 closer there.

11 A: Mr.Becker, you may need to excuse my voice. I coach
12 wrestling and it's a little bit raspy this morning.

13 Q Please state your name and spell your last name.

14 A: Robert Riggs, R-i-g-g-s.

15 Q How old are you?

16 A: Forty three.

17 Q Are you married? A: Yes.

18 Q Do you have any children?

19 A: Yes.

20 Q What do you do for a living?

21 A: I am a private detective.

22 Q What is the name of your company?

23 A: Ameriguard.

24 Q Where is that located?

25 A: 9233 Ward Parkway.

1 Q Kansas City, Missouri. A Yes.

2 Q Now who owns the company?

3 A: I am the president. It is a corporation; yes, sir.

4 Q How long have you had that company?

5 A: Since 1980 or late '79.

6 Q Briefly could you tell us what type of business that

7 Ameriguard does right now.

8 A: We provide protective services and investigative

9 services.

10 Q What do you mean by "protective services"?

11 A: We have a security division, security officers.

12 Q What do they do?

13 A: They provide a deterrent effect on property to deter

14 illegal or undesirable activity.

15 Q What type of property is your business typically

16 employed to protect or deter?

17 A: Normally a private business, a private property.

18 Q The investigative services, what does that involve,

19 again briefly, please?

20 A: We provide investigative services for government

21 agencies, the state and for the county and also private

22 companies.

23 Q How many employees do you have now?

24 A: Approximately thirty.

25 Q Can you tell us how they are divided between

1 investigative and protective.

2 A: That would be the security division.

3 Q How many in security and how many in investigative?

4 MR. O'CONNOR: I object to the relevance of
5 this. This is now. This happened in 1988.

6 THE COURT: That is probably right. Let's
7 get, as the saying goes, let's cut to the chase.

8 MR. BECKER: Sure.

9 Q In November of 1988 how many employees were in your
10 company?

11 A: I don't remember. I would have to guess.

12 Q What is your best estimate?

13 A: Fifteen.

14 Q How were they divided between, I am going to call it
15 guard duty and investigative duty.

16 A: Probably fifteen security personnel and three
17 investigators.

18 Q Now I would like to call your attention to late October
19 of 1988. During your business, up to that time, had
20 you or your company done security or guard work at
21 construction sites?

22 A: Yes, sir.

23 Q In late October, 1988 were you contacted regarding any
24 work for your business regarding the highway
25 construction project located at 71 highway and Blue

588

1 River Road?

2 A: Yes, I was contacted by Kenny Brown from Brown
3 Construction.

4 Q Was he the owner of that company?

5 A: Yes.

6 Q What was the nature of the contact?

7 A: He suspected that an ex-employee, recently terminated
8 employee, might be doing some sabotage or destruction
9 on his job site to some of his equipment. He really
10 didn't have any evidence. He simply had some equipment
11 that had broken down and he was concerned possibly this
12 ex-employee, disgruntled employee, might be sabotaging
13 some of this equipment so he asked me to look into it
14 for him.

15 Q What were you hired to do then initially?

16 A: Initially we were hired to have a surveillance on this
17 particular individual who he suspected, this ex
18 employee.

19 Q Did you do that?

20 A: Yes, sir.

21 Q How long did that last?

22 A: About three or four days.

23 Q Anything suspicious turn up there?

24 A: No, sir. And we felt like what we may do instead is
25 set up a sting operation. He had some security

589

1 personnel down at the Brown Brothers Construction site,
2 the 71 highway construction site. However, he was
3 displeased with their service and asked if I could
4 provide that service. I suggested to him we set up a
5 sting operation and turn off the lights and hopefully
6 apprehend this individual rather than just scaring him
7 away or having him sneak in and cause destruction of
8 the property and get away with it.

9 Q Did you do that?

10 A: Yes.

11 Q I want to show you Government's Exhibit 5 which is an
12 aerial photograph of the scene. Before today you and I
13 have had an opportunity to go over your testimony and
14 look at all these dozens of pictures, is that correct?

15 A: A couple of times.

16 Q If you would please, with the court's permission, come
17 down here and show the members of the jury initially
18 what was your plan? What did you do on the
19 construction site depicted on Government's 5?

20 A: The equipment that had been damaged was over here on
21 the west side of 71 highway. It was parked along this
22 haul road, similar to what it is here. Although
23 actually it was parked in that location when we first
24 began. Now there is nothing parked here.

25 Q You are pointing north, a little bit north of the haul

1 road.

2 A Yes, where the construction equipment appears to be
3 parked there now, it used to be parked right here
4 (indicating).

5 Q And that again, right here is a little bit north of the
6 haul road.

7 A: Just a tad north; yes, sir.

8 Q What did you do at that location then in I guess late
9 October, the first part of November, 1988.

10 A: Well, there were a couple of us that worked this detail
11 but we were not in uniform. We would dress in a
12 comfortable manner, camouflage overalls or something,
13 because it was getting cool at night. We would hide
14 somewhere in this area and turn off the lights here
15 where the equipment was parked and we would watch for
16 someone to enter the property, hoping to apprehend them
17 in the act of destruction, destroying the property.

18 Q Where would you hide?

19 A: Somewhere in this area over here where we had a clear
20 view of the equipment that was parked just west of 71
21 highway and just north of that little haul way there.

22 Q What were you able to hide in, is it an open area?
23 What is it?

24 A: No, there is an all-wooded area in here.

25 Q You said you turned off the lights, what lights were

1 present on that side of the highway in the area of the
2 equipment?

3 A: Well, I am not sure what the name of the lights are but
4 they're construction-type lights you oftentimes see.
5 They're on a post and they stick 15, 20 feet in the air
6 and they have very bright flood lights.

7 Q If you remember, how many were on that side of the
8 highway or over near that equipment, more than one?

9 A: It's hard to remember because I think there was one and
10 then there was two. I believe there was only one.
11 There may have been two. I don't remember.

12 Q Did you catch anybody in your trap?

13 A: No, sir.

14 Q Did the nature of your employment with Brown then
15 change?

16 A: Yes, sir.

17 Q Tell us about that, please.

18 A: Well, the investigative service and the sting operation
19 cost Mr. Brown more than what a normal security officer
20 on the property deterring would cost. After a few days
21 Mr. Brown decided he would like to lower that expense
22 since nothing was happening and he hired Ameriguard to
23 have security personnel on the property to act as a
24 deterrent.

25 Q How many people did he want on that property for a

1 deterrent function?

2 A: It would be one security officer.

3 Q Where was that officer supposed to be located or what
4 was that officer supposed to do?

5 A: Provide a visible authoritative presence to deter
6 someone from entering the property and possibly causing
7 destruction to his equipment.

8 Q You were in charge then of the security guards that
9 would have been doing the actual duty on this site.

10 A: Yes.

11 Q Looking at Government's Exhibit 5, how much of the site
12 did Mr. Brown, what was the extent of his company's
13 work in that area, the boundaries, if you will.

14 A: It ran from 85th Street -- actually, the Little Blue
15 River was the divide line. Then another construction
16 company picked up from there and it ran from there all
17 the way to 95th Street, probably a mile stretch.

18 Q So on the north side it would be the Little Blue River.

19 A: Yes.

20 Q And then all the way down to 95th Street.

21 A: Yes, Bannister Road.

22 Q How wide was the area that you considered that Mr.
23 Brown was asking you to protect?

24 A: Gosh, it's hard to tell in measurements. It would have
25 been a thousand yards, fifteen hundred yards, a good

lengthy distance. Probably a half distance from Blue River to Bannister Road.

Q Looking at Government's Exhibit 5, if you will, or here on Government's Exhibit 29, were you responsible for a stretch just along the highway or was there other activity across the road that you also were supposed to be looking out for?

A: Well, it is all the Brown Brothers Construction site. We would have been concerned regarding any activity that took place but the main concern was the equipment that Mr. Brown had parked on the haul road because that was equipment where somebody had poured some sugar in the gas tank or sand in the oil or something along that line.

Q I am showing you Government's Exhibit 29. This is the area across the road. Did you also provide security with that one man or one person for this area?

A: Yes.

Q How did you instruct, either for yourself or your guards that work for you, for the one person to guard that whole area?

A: Well, we weren't there to guard anything. We were there to act as a deterrence. His presence was supposed to deter that activity. We weren't there to guard anything.

1 Q How was he going to deter, he or she going to deter
2 persons on both sides of the road?

3 A: By observation. We were there at nighttime hours
4 normally from I believe it was 6:00 P.M. to 6:00 A.M.
5 and we normally ran that in two shifts, six to twelve
6 and twelve to six. It would be nighttime. Normally
7 the first employees would arrive there about 5:30 A.M.
8 just as it would start to begin to get light and then
9 other people would start to come in. So you would look
10 for lights. Otherwise, it's pitch black out there
11 except for that construction light that was set up over
12 there in that small area on the east side -- west side,
13 I'm sorry.

14 Q The area on the east side where ultimately the
15 explosion occurred, what if any lights were up there?

16 A: There were no lights up there. The only light you
17 would have is moonlight if you were fortunate enough to
18 have that.

19 Q Did there come a time that your company's presence
20 there increased to two people, two guards?

21 A: Yes.

22 Q When did that happen?

23 A: Well, we began to have some activity on the property
24 and specifically on the east side of the highway from
25 where the officer normally found it beneficial to be

1 stationary over by the equipment where it was parked.
2 We started to have some activity over on the east side
3 of the highway. And specifically we had a trailer
4 broken into, a lock cut off of a trailer. Prior to
5 that we had an incident with some people horsing around
6 and later they were believed to have been armed and
7 activity started to increase and some of which was
8 occurring on that side of the highway.

9 Q Let's take them one at a time, if you would. Just
10 address the ones you were out there on.

11 A: Yes, sir.

12 Q Were you there at any time when the locks were cut off
13 the trailer?

14 A: Yes, sir, that would have been the second incident.

15 THE COURT: That is confusing. You mean when
16 they were discovered to have been cut off.

17 MR. BECKER: Yes, Judge.

18 Q Let's talk about the first incident then. What was the
19 first incident you personally observed at the site?

20 A: Well, I was over on the west side of the highway, over
21 toward the haul road, and I saw some lights up on top
22 of the east side of the highway. You couldn't see up
23 above because it was up probably thirty, forty yards up
24 above. You had to drive a road to get to it. So you
25 couldn't see anything but you could see some lights.

1 And I saw some light activity. I figured it was maybe
2 spooners or lovers. My mother used that word,
3 . 'spooners". I think it is an older word for lovers.

4 THE COURT: Be careful.

5 THE WITNESS: I'm sorry. That was parked up
6 there because it was a dark area and remote.

7 Q What did you do?

8 A: I noticed the lights appeared to be turned off and
9 turning back on again or possibly they were driving in
10 such a direction the light would aim that way and aim
11 this way which concerned me. They didn't appear to be
12 parked and just staying there like I thought they might
13 have been doing. So I drove over to that area. And
14 when I did they came down off of the hill and toward
15 85th Street which there is an exit right there.

16 Q And I will show you Government's Exhibit 21. Can you
17 see that from where you are sitting?

18 A: Yes, I can see it.

19 Q Is that an entry-exit onto 85th show on Government's
20 Exhibit 21 here?

21 A: Yes, it is.

22 Q And is it fair to say it is down along here where you
23 could come onto the property?

24 A: Yes, there are only two ways to enter or exit that
25 property in a vehicle and that would be where your

1 finger was right there, that haul road right there.

2 And then there was a smaller little haul road that ran
3 around up to the plateau up above, right there
4 (indicating). Sometimes you couldn't use that road;
5 sometimes you could.

6 THE COURT: Because of weather, moisture.

7 THE WITNESS: Weather. Adverse weather would
8 cause us not to be able to climb up that large haul
9 road. We would have to sit on 71 highway when it
10 rained or ice or something, you couldn't get up that
11 haul road in a car, either road. But the one over on
12 85th Street, it was narrow and went up a steep hill and
13 it didn't take too much, just depending on what the
14 condition of the road was itself. There could be
15 rocks, large clods of dirt. Sometimes you couldn't use
16 it. Most normally it was available but that is the
17 road that this truck came down at a very, appeared to
18 be driving at a fast speed.

19 Q Let's take it one step at a time. Where were you
20 parked when you observed this headlight activity?

21 A: Over on the east side, over on the west side of 71
22 highway in the same area I was pointing out on this
23 large diagram here.

24 Q And that would be as you followed the haul road across,
25 all the way past the bottom of this photograph.

1 A: Just below that, what appears to be a white car there,
2 on across. And then there is the southbound 71 and it
3 would have been right there off southbound 71.

4 Q What kind of car were you driving or truck or what did
5 you have?

6 A: I was driving a Maxima station wagon.

7 Q What did you do then when you saw these headlights?

8 A: I drove over there. And when I saw the car, it seemed
9 to be trying to race me. Then I picked up my speed and
10 got over there as quickly as I could and blocked off
11 that exit so I could question their activity.

12 Q So you went south on 71 and then took a left on 87th
13 Street there to the corner of the property, is that
14 right, where I have my pen?

15 A: Yes, sir.

16 Q And that is where there is the little driveway going up
17 onto the site was located.

18 A: Small drive, yes.

19 Q What happened then?

20 A: Well, I parked my car in there (indicating), corner and
21 got out of my vehicle just as the truck was coming down
22 and I put up my hand to stop and they stopped. I was
23 in uniform. And they stopped and I walked up to the
24 car and they appeared to be wrestling around or
25 nervous, something seemed to be -

1 Q A couple questions. What uniform were you in?

2 A: I was in an Ameriguard uniform.

3 Q What did that consist of?

4 A: Blue slacks, gold stripes on the pantleg, blue shirt,
5 blue jacket. It's pretty much a copy of the Dallas
6 P.D., Police Department.

7 Q Any kind of emblem or anything like that that would
8 identify you as a security officer?

9 A: Certainly.

10 Q What?

11 A: There would have been a badge and patches.

12 Q At that point were you able to see the truck as it came
13 down toward you?

14 A: Yes.

15 Q What kind of truck was it?

16 A: It was a black or a very dark-colored Blazer or Bronco,
17 one of the large styles, and it was all jacked up. It
18 had a cow-catcher type bumper on the front of it also
19 and a dim headlight.

20 Q What is a cow-catcher front?

21 A: Like they used on the farms in case you hit deer or
22 cows, keep you from damaging your engine or radiator,
23 big steel bars.

24 Q Could you see how many persons were in that truck?

25 A Yes.

1 Q How many?

2 A: Three.

3 Q Where were they located?

4 A: There was a driver in the front seat, which was a white
5 male, and there was a white female in the, sort of in
6 the, what you would think the console area. She looked
7 to be sitting up on something because she was taller
8 than the other two. And then there was a male in the
9 passenger seat. I don't know what color he was.

10 Q Then you are out of your truck. What happened next?
11 You are out of your station wagon and the truck is
12 coming toward you.

13 A: I asked them what their business was.

14 Q Had they stopped then?

15 A: Yes.

16 Q What happened?

17 A: The driver was uncooperative and acted in a suspicious
18 manner and didn't want to answer my questions and
19 continually tried to coach me into coming up to the
20 truck. And he bent down and he was down along the side
21 panel or he was sort of bent over like this
22 (indicating) and I heard the female in the middle say,
23 "No", she was saying, "No." I figured he was going for
24 a gun.

25 Q But you could observe him leaning down toward -

1 A: Yes, he said, "Why don't you come up here and take a
2 look."

3 Q What did you do?

4 A: I went back to my car and took cover.

5 Q What happened then?

6 A: He drove around my car and over a ditch and out onto
7 87th Street and speed eastbound on 87th.

8 Q And here on Government's Exhibit 21, 87th Street, is
9 that the direction as it curves out here through the
10 woods, that is eastbound on 87th.

11 A: Yes.

12 Q What did you do?

13 A: Well, they didn't have a license plate on the front and
14 I wanted to get a license plate number. So I jumped in
15 my car and took off after him. And I just got a short
16 ways up the road and I guess he figured I was going to
17 catch him or something -- I didn't know what he was
18 figuring, but he turned around, he did a 180 and turned
19 around and came back toward me down the middle of the
20 road.

21 Q What did you do?

22 A: I pulled onto the shoulder and laid in the seat. I
23 thought he might be shooting as he goes by.

24 Q Did you get a license plate?

25 A: No, sir.

1 Q What happened then?

2 A: I called the police.

3 Q Did you report this incident to the police?

4 A: Yes, sir.

5 Q What is the next incident that you observed on the
6 site? I believe we started to talk about that with the
7 padlocks.

8 A: Yes.

9 Q What do you remember about that? Just your
10 involvement, please.

11 A: We had two persons that were chased off the property.
12 And Norm Collins was called and informed. He was the
13 owner of Mountain Plains. Actually Ken Brown was
14 called and told. And he said those aren't my trailers;
15 you need to call Norm Collins.

16 Q Who is Norm Collins?

17 A: He is the president or owner of Mountain Plains
18 Construction who was a subcontractor of Kenny Brown 's.

19 Q What happened next?

20 A: Norm Collins came out and I informed him what had
21 happened. And since that time Officer Lamanske and I
22 went up to check the trailer area, the area which they
23 had run from, and we found a set of lock cutters and a
24 lock cut off of one of the trailers. And we informed
25 Mr. Collins of that. And I had some questions because

1 I could smell gasoline, a heavy scent of gasoline and I
2 asked Mr. Collins if it was gasoline and he said, no,
3 that it was diesel fuel and fertilizer mixture.

4 Q Were you able to see if any of the doors to the trailer
5 were open?

6 A: I don't remember if they were or not. I think it was
7 either ajar a little bit or it could have been open. I
8 really don't remember.

9 Q Do you remember seeing -

10 MR. O'CONNOR: I object to this line of
11 questioning. I don't know what day we are talking
12 about.

13 MR. BECKER: Certainly.

14 Q Do you remember when this incident occurred when you
15 went in and found the locks and the lock cutter, how
16 soon or when was it before the explosion?

17 A: I remember the explosion date and it would have been
18 approximately two weeks prior to that.

19 THE COURT: I would say the objection is now
20 moot and will be overruled.

21 Q That night, about two weeks before the explosion, were
22 you able to see into the trailer? Do you remember
23 seeing into the trailer?

24 A: Yes. The chain was cut and the lock was on the ground.
25 I believe the chain was on the ground also and the lock

1 cutters were there in that vicinity, somewhere closeby.
2 Either we opened the trailer doors or they were already
3 open, whichever, but I remember looking in there
4 because when Norm Collins was there explaining to me
5 what was in the trailer, the trailer doors were open at
6 that time.

7 Q What did you see?

8 A: I saw large rolls, sort of similar to a sand bags that
9 you put in your pickup truck or the trunk of your car
10 for traction on snow, sort of like large sand bags.
11 They were sort of like rolls of coins and they were
12 stacked like you would rolls of coins.

13 Q How high was the stack?

14 A: It seemed like it went to the top or close to the top.
15 The trailer appeared to be full and that is why Norm
16 Collins didn't believe there was anything stolen out of
17 the trailer. He said he was going to inventory the
18 next morning but he didn't think anything was stolen.

19 Q I am going to show you what is marked for
20 identification purposes as Government's Exhibit 299.
21 Does this look similar to the rolls that you saw in
22 that construction trailer about two weeks before the
23 explosion in November of 1988?

24 A Similar.

25 MR. BECKER: I would offer this in evidence

1 as Government's Exhibit 288.

2 MR. PETERS: No objection.

3 THE COURT: All right, it is admitted without
4 objection.

5 (PLAINTIFF'S EXHIBIT NO. 288 WAS RECEIVED IN EVIDENCE.)

6 THE COURT: Having accomplished that, why
7 don't you mark where you are and we will take our noon
8 break.

9 Ladies and gentlemen, again don't talk
10 about the case while you are at lunch. Talk about
11 something else. We will resume at 1:30. Please
12 be back in the jury room before 1:30. All right,
13 you may withdraw.

14 (The jury leaves the courtroom.)

15 THE COURT: Okay, we are in recess.

16 LUNCH RECESS

17 THE COURT: All right, Mr. Riggs, I will
18 remind you you are still under oath and, counsel, you
19 may proceed.

20 MR. BECKER: Thank you, Judge.

21 Q Mr. Riggs, could you tell us, please, generally in your
22 guard services at the 71 highway construction site in
23 November of 1988 where your two guards were generally
24 positioned and I am showing you on the video screen
25 Government's Exhibit 26, could you point out on there -

606

1 - I guess it is easier if you come to the overhead with
2 the Court's permission.

3 THE COURT: Yes. Certainly.

4 Q And point out two things: One, where the patrols were
5 normally located.

6 A: Sure. The officer that was on the west side of the
7 highway, it was most normally, he or she when
8 stationary, would be parked in this area right here.

9 Q Where the equipment is parked.

10 A: Yes, sir, right there, just west of 71 highway.
11 They're at that little haul road where it crosses
12 southbound 71. That is where the officer working the
13 west side would normally sit. The officer working the
14 east side, there was really no-one position we would
15 ever set up in. Again, it would depend on what kind of
16 land movement they were doing that day because they
17 were using explosives and the terrain would change.
18 The condition of the roads would change.

19 Also, there was no one place where you
20 could see all the property. So it wasn't uncommon
21 for us to change positions from time to time.
22 Normally, our routine was when we first arrived on
23 duty was to patrol the perimeter of the property
24 which would be Blue River Road and also 87th
25 Street up both sides all the way to the end of the

1 property. And then normally you would enter the
2 property and try to check certain things like
3 there were two trailers with locks on them and two
4 bunkers with locks on them. We would check those
5 to make sure those were locked.

6 Q At the back of the property could you point out to the
7 Judge and the members of the jury, please, where the
8 bunkers are, do you see them on that photo?

9 A: Yes, I do. This picture does not show the end of the
10 property going eastbound. It continues on past that,
11 but the two bunkers, there is a yellow dot right there
12 which is a bunker and there is also a yellow dot right
13 there which is a bunker. They contain primer caps and
14 dynamite is what I was informed.

15 Q During the course of November of 1988 were you aware of
16 problems or questions about the wood cutters on the
17 property?

18 A: Yes, I was aware of problems with wood cutters on the
19 property.

20 Q Were you ever called out when the wood cutters were
21 there?

22 A: Yes, I was. I was called on a couple of occasions.

23 Q Could you tell us briefly about those, please.

24 A: I could summarize rather than going through each
25 incident separately but there were some wood cutters on

1 the property. There were large piles of wood on the
2 west side of the property, several long piles, or
3 piles, and sometimes it was just a long pile of wood, a
4 pile on top of one another, maybe 15 feet tall,
5 something like that.

6 Q I am looking at Government's Exhibit 26, up on the east
7 side of the property here, is that the wood that is
8 stacked up or piled up on that part of the property?

9 A: Yes, it is hard to tell from here but that orange
10 discoloration in the photo, those are piles of wood.

11 Q I will show you what is Government's Exhibit 71. Does
12 that photograph depict the wood piles as you saw them
13 at about the time of the explosion on November 29,
14 1988?

15 A: Yes. And it also gives an idea what that property
16 looks like up there, how limited your vision is at any
17 time. The rest of the property didn't necessarily have
18 wood on it but there would be piles of rock.

19 Q Showing you Government's Exhibit 70, again what are the
20 various sizes or shapes of the wood that was up there?

21 A: I don't remember. Just by looking at that it looks
22 like sort of trunks and roots and things like that.

23 Q Whole trees.

24 A: A lot of wood, parts of trees is what it was.

25 Q What happened with the wood cutters?

1 A: They were simply up there cutting wood but they didn't
2 have permission, was the problem. And after-hours
3 persons weren't allowed to be on the property other
4 than those that were authorized. The security officers
5 approached the wood cutters. There was one main guy
6 and then his wife and I think four or five or maybe six
7 other people that would cut wood with him. They were
8 simply gathering wood.

9 Q When were you called out?

10 A: One of the security officers, I don't remember who it
11 was, called a supervisor or somehow I got notified of
12 it, and I went down there -- no, what I did was I just
13 called the next day and asked Norm Collins and I also
14 called Kenny Brown to see if he was aware of any wood
15 cutters because the wood cutters claimed to have
16 permission to be on the property.

17 Q What time of day was it that you were contacted the
18 wood cutters were on the property?

19 A: I don't remember but it would have been early in the
20 evening.

21 Q I would like now to call your attention to November 28,
22 1988. Were you called to the construction site that
23 evening?

24 A: Yes.

25 Q Were you scheduled to work that evening?

1 A: No.

2 Q Who called you to the site?

3 A: My sister Debbie. She didn't call me to the site. She
4 paged me and when I returned the page she said there
5 was a problem down at the job site.

6 Q Did she request that you go down there?

7 A: She may have. I don't remember. I think she was
8 mostly informing me and it would have been my decision
9 whether or not it was necessary for me to go down
10 there. She may have requested. I don't remember.

11 Q Did you go down there?

12 A: Yes.

13 Q Do you remember what time of day that was?

14 A: It was close to midnight.

15 Q What happened when you got down there? Who was there?

16 A: Officer Lamanske was there and Officer Riggs, Debbie
17 Riggs was there.

18 Q That is your sister, right?

19 A: Yes.

20 Q What was going on when you arrived at the scene at 71
21 highway?

22 A: One of the officers, Officer Costanza, she just
23 purchased a new vehicle. It wasn't very old at all.
24 And there was some kind of electrical problem with it.
25 And Officer Lamanske had attempted, who was the other

1 officer on duty, we had two officers down there on that
2 job site -

3 Q Who was scheduled to work? You said you had two
4 shifts, the six to midnight shift that night?

5 A: Officer Costanza and Officer Lamanske.

6 Q What happened, the car trouble when you get down there,
7 what do you do?

8 A: Well, there was an argument that was going on. Officer
9 Lamanske tried to repair this vehicle and in the
10 process of it I guess he only made it worse and they
11 were bickering and it had become heated. That was the
12 reason I went down there was to take care of that
13 because Officer Costanza was supposed to stay on duty
14 that night from twelve to six. But when I got down
15 there her car was broken down and I got them
16 straightened out. Officer Lamanske, I sent him
17 somewhere. And Debbie Riggs stayed at one location and
18 Officer Costanza and I went to Quik Trip and used the
19 phone book to get a telephone number for a tow truck.

20 Q Let's stop for a minute. You sent Lamanske over to the
21 other side of the property, the east side of the
22 property to guard.

23 A: I believe so. I forget which I sent. I left the job
24 site with Officer Costanza. The other two officers
25 would have taken care on the job site and I don't

1 remember if I directed one to go one place and one
2 another, but I remember they did.

3 Q You mentioned Officer Fiser, who is that?

4 A: Debbie Riggs.

5 Q Why is she called Fiser?

6 A: It's a name we use for report-writing and with the
7 other officers, since she is my sister, she felt more
8 comfortable. And I think I felt more comfortable with
9 her using a name other than Riggs so they wouldn't feel
10 she was special, she should be treated like anybody
11 else.

12 Q You go to Quik Trip. Did you call a tow truck?

13 A: Yes.

14 Q Where did you go after that?

15 A: Back to her vehicle and waited for the tow truck to
16 arrive.

17 Q Did a tow truck arrive?

18 A: Yes.

19 Q Where did Costanza go then?

20 A: She got in the tow truck with the truck driver and I
21 told her to go on home and I would take care of, see
22 her shift was covered. I told her to go on. With her
23 car all broken down, she wasn't going to stay.

24 Q She wasn't any use without a car.

25 A: Yes, she wasn't any use. She could have done foot

1 patrol but her car was broken down, she was upset. I
2 felt it was best to get her off the job.

3 Q Where was Debbie Riggs when Costanza leaves?

4 A: She would have been on one side of the property or the
5 other. I don't remember which side she was on.

6 Q Did you take up the patrol for what was scheduled to be
7 the rest of the night?

8 A: Yes.

9 Q What side of the road were you on?

10 A: I went over to the east side of the property.

11 Q If you want to refer to it, if it is easier, you can
12 talk about the trailer side or the hill side.

13 A: Okay.

14 Q And the Brown Brothers equipment side, either way.
15 What were you driving that night?

16 A: It was a fairly new vehicle. I believe it was just a
17 year or so old. It was a Maxima station wagon.

18 Q Where did you set up or position yourself over on the
19 trailer side of the highway?

20 A: Well, maybe it would be best to answer it that I didn't
21 set myself anywhere stationary. When we first come to
22 the job normally we will drive the perimeter of those
23 roads, which is 87th Street all the way up to that
24 abandoned house which isn't on that picture. It goes
25 on east beyond the picture. And then also go down

1 southbound -- northbound 71 to Blue River Road and east
2 on Blue River Road to the end of the property looking
3 for parked vehicles where people may park their car and
4 things because they're only two ways to get into that
5 side of the property unless you go on foot. So you
6 look for parked cars.

7 Q I take it then you did some patrols that night.

8 A: Yes, sir.

9 Q Did you do them alone or with your sister?

10 A: Both.

11 Q Did there come a time, sometime after two in the
12 morning -- I'm sorry, were you working on anything else
13 in your car that evening?

14 A: Mr. Brown, Kenny Brown, the owner of the construction
15 company, he had called me that day earlier at the
16 office and told me he wanted to change the hours up
17 there. Our hours were six P.M. to six A.M. and he
18 wanted to take two and a half hours off the front end,
19 instead of starting at six and start at 8:30 instead of
20 six, and we would get off at five A.M. So our hours
21 would be 8:30 P.M. to 5:00 A.M. The schedules were
22 already done for that schedule period. And so I told
23 him I would cause it to be effective immediately. So I
24 was changing, working on the schedules and that was
25 part of my reason for staying down there. I could have

1 called someone else in if I wanted to but I was already
2 down there. It was after midnight. I had those
3 schedule changes to make and so I just figured I could
4 kill two birds with one stone.

5 Q You had the schedules with you in your car.

6 A: Yes.

7 Q While you were on the trailer side of the highway then
8 were you working on those schedules?

9 A: Yes, after I made patrols and checked for, there were a
10 few pieces of equipment down there that had some locks
11 on them. We would drive by and spotlight or walk to
12 those areas you needed to walk to check the locks to
13 make sure they were secure. And we would do those kind
14 of routine things. And then there was really not
15 anything to do other than set stationary, especially on
16 a cold November night.

17 Q Did there come a time that -- could you communicate
18 with the other guard, in this instance your sister,
19 that night?

20 A: Yes.

21 Q How?

22 A: We had two-way radios.

23 Q Did you have later, say 2:00, 2:30 in the morning, did
24 your sister say she had a sandwich for you or something
25 along those lines?

1 A: I don't remember exactly how it came about but I was
2 working on my schedules and I was getting sleepy,
3 getting tired and my head would nod and I would get out
4 and do some push-ups and get back in the car, walk
5 around the car. And I was starting to get tired. I
6 think I radioed that to my sister, I think. And she
7 said she had a sandwich over there. I really wasn't
8 prepared to stay down there and I hadn't brought
9 anything to eat or anything. And she said she had some
10 kind of a sandwich and that I could have it if I wanted
11 it, she would get something later from Quik Trip or
12 something. I said okay. I thought it was a good idea
13 to get to moving around. So I drove over there. And
14 while I was over there I thought it would be a good
15 idea for her to look over the schedule changes I had
16 made that would affect her before I caused them to go
17 into effect. I guess I was just showing her some
18 preference and allowing her to look through the
19 schedules to see if those things worked out okay with
20 her.

21 Q Even though she was Officer Fiser.

22 A: Even though she was Officer Fiser/Riggs.

23 Q Where was Debbie Riggs' truck when you drove over to
24 the equipment side of the highway?

25 A: Just where you pointed your pen, right there

1 (indicating).

2 Q Here.

3 A: Yes, sir.

4 Q Close to 71 highway.

5 A: Yes, just off the road. We would set there because if
6 you got any further down the haul road you couldn't see
7 anything that was going on on the east side of the
8 property and the west side officer did more to watch
9 the east side of the property than what the east side
10 property officer did because you couldn't see diddly
11 squat on that property, you couldn't see very far at
12 all because of the rocks, hill and the dirt and the
13 piles.

14 Q So you get over there. Does she get in your car or do
15 you get in her truck?

16 A: At the time of the radio calls she got into my car. I
17 had been over there earlier and I had gotten into her
18 truck and we made a patrol in her truck earlier in the
19 evening, earlier that night.

20 Q I am talking about the sandwich time.

21 A: The sandwich, I went over there, parked close to her
22 truck. She got out of her truck and got into my
23 vehicle.

24 Q What happened?

25 A: I told her to take a look at the schedule changes and I

1 ate a sandwich. Then I got out and made a foot patrol
2 and used the restroom and then got back into the car.
3 And I was working on some schedules and Debbie said,
4 "Robert".

5 Q Before we get to that point, she had the schedules.
6 Did she make any changes to the schedules?

7 A: I don't remember.

8 Q Did there come a time that that dome light would have
9 been on in the car?

10 A: I don't remember whether it was on or off. I think it
11 was a matter of record. It should have been on.

12 Q Was there some point after your walking around and
13 everything, that you may have rested your eyes for a
14 second or two?

15 A: Not that I remembered. I said no, but Debbie said I
16 was nodding off. It's difficult. I mean I said I was
17 not. I said I was not asleep. Debbie said and has
18 told the police I was nodding off, my head was nodding
19 off.

20 Q Is it fair to say -

21 A: I was sleepy, no doubt about it and I had already eaten
22 my sandwich and gotten out. I was sitting in the
23 passenger seat.

24 MR. O'CONNOR: I object. Not responsive to
25 the question.

1 THE COURT: It is more of an explanation what
2 he said before. Why don't you ask a question.

3 MR. BECKER: Sure.

4 Q Were you behind the wheel of your car then?

5 A: Yes.

6 Q Where was Debbie Riggs?

7 A: She was in the passenger seat.

8 Q Did something happen, that she called your attention to
9 something?

10 A: Yes, she said, "Robert." I said, "What?" And she said
11 there were two guys walking down the road and they went
12 down and she was describing to me where it was, they
13 went down this hill and they didn't come back into
14 view. And I asked her where, and she described it to
15 me.

16 Q Did you see anything?

17 A: No.

18 Q Where did she describe she saw this activity, these men
19 near?

20 A: There is two office trailers down by Blue River Road,
21 in between the middle of southbound and northbound 71
22 highway.

23 Q Do you see Government's Exhibit 26 on the video screen
24 there?

25 A: Yes.

1 Q And again you were parked here in your vehicle, in your
2 station wagon with Debbie Riggs, right?

3 A: That's correct.

4 Q And am I now pointing to the trailers that are located
5 in the median between the two sides of 71 highway?

6 A: Yes.

7 Q Were you familiar with the terrain and the lay of the
8 land there based upon your patrols and your experience
9 in that particular location?

10 A: Yes.

11 Q Please describe the terrain as you walked from one side
12 of 71 highway, I guess southbound towards the
13 northbound lanes.

14 A: On Blue River Road?

15 Q Right.

16 A: The area between the northbound and southbound lanes of
17 71 Highway at Blue River Road, it curves down like that
18 and comes back up. So the highway sets up above and
19 the median curves down a little bit as does the
20 roadway.

21 Q What did you do after your sister called this to your
22 attention?

23 A: Well, I had her describe it to me again, what it was
24 she saw. Then I drove across the median to the
25 northbound side of 71 highway and drove northbound on

1 71 highway over to the office trailers.

2 Q When you say .'across~, that would be on what you
3 described as the haul road here, correct?

4 A: Yes.

5 Q Then northbound on 71 highway.

6 A: Yes.

7 Q Did you have your lights on?

8 A: No.

9 Q Why not?

10 A: Well, if somebody was doing something wrong I was
11 hoping to catch them in the act and I didn't want to
12 alarm them until I got over there.

13 Q What were the traffic conditions at that time?

14 A: There were no vehicles around. Driving without lights
15 on, I wouldn't have done that if there was any traffic.
16 It was three o'clock in the morning or after. I guess
17 it would have been like 3:20 or something like that.

18 Q At what point did you turn on your lights?

19 A: Just before I get to Blue River Road, right there, I
20 hit the headlights and also hit the spotlight.

21 Q Towards what direction?

22 A: Toward the trailers.

23 Q Here in the median.

24 A: Yes.

25 Q When you came across the haul road and went north on 71

1 highway, were you looking for anyone in this area -
2 which would be east of 71 highway -- did you look in
3 that area at all?

4 A: I don't believe so.

5 Q So you didn't have your lights on or your spotlights
6 on.

7 A: That's correct, I did not.

8 Q Do you recall any streetlights or any other artificial
9 light along this area?

10 A: No. Are you asking why I did that?

11 Q I am just asking if you did it.

12 A: No, there is no lights out there and I wasn't concerned
13 about what was over there.

14 MR . PETERS: Objection. That is non
15 responsive. He asks a question and Mr. Becker
16 rephrases the question and "no" and gets an
17 explanation.

18 THE COURT: Overruled.

19 Q What did you do in the area of the trailers?

20 A: Well, from her description, my concern was down by the
21 office trailers down there because that is where she
22 had seen the two guys walking across that median right
23 there and then leaves her vision but not coming back
24 into her vision as they should have if they would have
25 come back on northbound 71 highway. That meant they

1

1 were down there around those office trailers. As I
2 drove down, I hit the spotlight, hit the headlights.

3 As soon as I got close to the office trailer I pulled
4 into that drive in the office trailer area.

5 Q There is a little parking lot area in front of the
6 trailers.

7 A: Yes, you can see it. Sort of that brown discoloration.

8 Q Did you see anyone in that area?

9 A: No.

10 Q Where did you look in that area?

11 A: Well, I was moving pretty fast because I figured two
12 guys on feet you are going to catch them pretty quick.
13 But they weren't there. There was nobody there. I
14 drove around behind the office trailer and I shined my
15 spotlight. There was some equipment and some other
16 stuff, orange barrels, and some other things and I
17 looked back there, not getting out, to search and again
18 I am looking for two persons.

19 Q Did you flash or spotlight the woods at all back here
20 behind the trailers?

21 A: Eventually, yes. I was really concentrating in the
22 office area. That is where she had seen them last and
23 they didn't appear. That would have been my concern if
24 they were down around those office trailers. They have
25 office equipment there and things and I thought that

1 might be a reason for them, some motive for them to
2 break in or steal. As soon as I pulled out of that
3 office trailer area, when I saw they weren't there or
 were hiding -- well, I wasn't able to observe them -- I
5 backed out, back onto 71 highway and shined my light
6 and my spotlight down toward Blue River Road to the
7 east.

8 Q This direction here?

9 A I am sorry, to the east.

10 Q Meaning?

11 A I am sorry.

12 Q I was pointing west, this way toward the landfill.

13 A They were walking -- I guess I can't do it from up
14 here.

15 Q Step down here and demonstrate, if you would.

16 A Yes.

17 Q Why don't you use the pointer. It would be easier for
18 everybody to see.

19 A This is originally where we started from.

20 Q That is not on the map.

21 A This is originally where we started from and I drove
22 across this haul way to northbound 71 and up northbound
23 71. This is where I would have shined my light and
24 spotlight, searching this area in here because where
25 she had described she had seen these two guys walking

1 down Blue River Road, they had left her sight. She
2 continued to watch and they didn't come back into her
3 sight. That is when she was alarmed and that is when
4 she said, "Robert" and pointed out the area where she
5 had seen these two guys. So I spotlighted the area all
6 around the trailers, drove around and pulled back and
7 shined my headlight eastbound on Blue River Road, right
8 in this wooded area. Then I went northbound because I
9 knew they didn't come this way and I knew they didn't
10 come that way because we would have spotted them as
11 they were walking out and they wouldn't have time. So
12 I figured they wouldn't have come toward us, they would
13 have went away in one of these two directions. So I
14 went northbound on 71 highway and I spotlighted this
15 wooded area, thinking if they weren't around the
16 trailer area maybe they ran to the woods and were
17 hiding in the woods. So I drove northbound on 71
18 highway. And You can see the bridge right here and
19 that is the end of the property, right there, the end
20 of Brown Brothers Construction sight on 71 highway
21 northbound. So I spotlighted all the wooded area,
22 still not seeing any persons.

23 Q As you were driving north on 71 from the area of the
24 trailers to the bridge, how fast were you going?

25 A: It would have been slow. Once I started the

626

1 spotlighting I would have been moving slow. I don't
2 know how fast I would have been going, five or ten
3 miles an hour.

4 Q Once you got to the bridge then and crossed the Blue
5 River, what did you do?

6 A: That's our turn-around, right there because that is the
7 end of the property, is Little Blue River and 85th
8 right there where Quik Trip is, and that is our turn
9 around. And we turn around and head southbound on 71
10 highway. It's divided. You have to go to 85th Street.
11 Then you do your turn-around, which we are calling a
12 median, cross to southbound 71 to head back.

13 Q That is what you did that night.

14 A: No, I turned to do our turn-around and you can't tell
15 on that picture but it's a great wide intersection but
16 I started to make the turn left on 85th to make our
17 turn-around to head in the property after we
18 spotlighted the woods along the edge of northbound 71
19 and I believe it was my sister that said "Maybe they
20 came from Quik Trip" and then she said, "Or maybe they
21 went to Quik Trip." Sort or reversed it. I forget
22 which one it was first. So I had already made my turn.
23 It is a great big wide intersection. And I turned back
24 out to northbound 71 and got back on northbound 71 and
25 went to the driveway of Quik Trip because you can't

1 enter Quik Trip from 85th, it has a side exit.

2 Q Did you pull into the Quik Trip parking lot?

3 A: Yes.

4 Q I am going to show you Government's Exhibit 328 and I
5 guess pursuant to our earlier stipulation about
6 authenticity I would offer Government's 328 in
7 evidence.

8 MR . O'CONNOR: No objection.

9 THE COURT: All right, 328 is admitted
10 without objection.

11 (PLAINTIFF'S EXHIBIT 328 WAS RECEIVED IN EVIDENCE.)

12 Q This is a more recent photo of the Quik Trip, can you
13 tell us then what you did. Does that look like the
14 Quik Trip you pulled up to that night, only with the
15 new highway, this is the new road.

16 A: It doesn't look like it.

17 Q What happened when you got to the Quik Trip?

18 A: I pulled into the driveway, pulled up in front of Quik
19 Trip. And I believe I told, I said see if they saw two
20 guys on foot. And so she went into Quik Trip. And she
21 came back out and she said, no. She asked somebody who
22 was in there if they saw two guys on foot. She asked
23 me if I had any money and I said yes.

24 Q What did you do?

25 A: She was going to get something to eat, some breakfast

1 rolls and I think some milk or something like that. So
2 I took the money, I started up there to take the money
3 up there and I remember I had a coffee jug in the back
4 seat. So I got out my coffee jug and I took it in. I
5 put coffee in it. Then I left the money, enough for my
6 coffee and for whatever it was she was buying, on the
7 counter. Then I went back out to the car. She paid
8 for her food and then she came out.

9 Q We talked about your spotlight a little bit. How were
10 you using that spotlight? Do you have it out the
11 window or what do you do with that?

12 A: These aren't patrol vehicles. Just a personal vehicle.
13 And I have a sun roof on the Maxima and I would have
14 the sun roof rolled back and I was shining the
15 spotlight out of the top of the sun roof.

16 Q Was the sun roof still open when you were sitting in
17 the parking lot at the Quik Trip?

18 A: I don't remember. It should have been.

19 Q What happened when you were sitting there?

20 A: Oh, yes, it was open.

21 Q Tell us what happened.

22 A: My sister came out of the store and just as she was
23 coming out, this black Camaro, I-Roc Camaro, pulled up
24 and parked in front of the Quik Trip and a lady got out
25 and walked into the store. And my sister got into the

1 car and I made some comment about the lady's car, the
2 lady or something, made some comment. And just as we
3 were fixing to pull away, or we were in the process of
4 pulling away, someone yelled, they said, "Hey" or
5 something. And I stopped and I looked around and it
6 was the Quik Trip employee. And he said there is
7 equipment on fire down at the job site. I said,
8 "What?" And he said there is equipment on fire down at
9 the job site. I said, oh, heck, or something, and took
10 off.

11 Q You headed south back on 71 highway, is that right?

12 A: Yes.

13 Q How fast were you going, do you recall?

14 A: Very quick.

15 Q What do you see as you cross the bridge over the river?

16 A: When we get to the bridge, almost across the bridge or
17 halfway, we were on the bridge, I saw a piece of
18 equipment on fire.

19 Q What, literally, could you see?

20 A: I could see a fire. It looked like a piece of
21 equipment was on fire. As I got closer I saw it was my
22 sister's truck.

23 Q What did you do then?

24 A: I think as soon as I identified what the fire was, we
25 got up there somewhere close, I started reaching around

1 in the back seat looking for my phone. It was one of
2 those old-fashioned cellular phones, not like they make
3 them these days.

4 Q Used to be in those big battery pack things.

5 A: Yes, one of those big battery type cell phones. That
6 was back before these little cell phones came out.

7 Q Did you call anyone?

8 A: Yes, I remember reaching back, getting the phone -
9 before I ever come to a stop I was looking, reaching
10 back looking for the phone. When I pulled up I guess
11 I got a little too close for my sister's comfort and
12 she said you better back away from it; it might blow
13 up, or something. And I remember backing up a little
14 bit. And all the time I was calling the fire
15 department.

16 Q I would like to show you Government's Exhibit 135.
17 Does that look like the scene as you arrived with the
18 pickup truck on fire?

19 A: Yes, that's what the truck would have looked like and
20 we would have been parked eventually just about where
21 that photo was taken. It is hard to tell where the
22 photo was taken, about that area. When I first drove I
23 drove probably too close and my sister was afraid it
24 might blow up or something. So I backed up about 15 or
25 20 yards.

1 Q Here on this photograph, is that one of the light
2 stands that was there?

3 A: Yes, sir.

4 Q Did you call the fire department? Who did you call?

5 A: We just called the emergency number and they put you to
6 emergency dispatch. And I reported a truck fire. And
7 as I was reporting the truck fire, I am not sure
8 whether I saw it first or whether Debbie saw it first
9 or whether we saw it at the same time, but you could
10 see an orange blaze up on top of the hill over on the
11 east side of the highway.

12 As I was talking to the fire department
13 giving them directions how to get to this truck
14 fire, I said there is another fire on the other
15 side of the highway. And I said the explosive
16 trailers are on fire -- the explosive trailer is
17 on fire, I think is what I said.

18 Q So you pulled back. A short time later the fire truck
19 arrives, right?

20 A: Yes.

21 Q What happened when the fire truck arrives?

22 A: We just sat there until the fire truck arrived. And
23 when they did they got out and put out the truck fire.

24 Q Could you describe the truck fire? I mean was it the
25 front of the truck, the back of the truck, what was

1 going on?

2 A: The cab and the hood. The exterior was on fire, also.

3 It was burning. It was a pretty large fire. The bed
4 wasn't on fire; it was the cab, the inside of the truck
5 and also all the hood area.

6 Q So the fire truck pulls up. Did they talk to you or
7 did they just go right to the truck?

8 A: They just went right to the truck.

9 Q How long did it take them to put that out?

10 A: A minute.

11 Q Just water.

12 A: They used powder, I think.

13 Q What happened then?

14 A: I don't remember what they used. It seemed like it was
15 powder but maybe it was water. It was out really
16 quick. As soon as they started spraying, it was out.

17 Q Did you then talk to the firemen?

18 A: Yeah, the guy that seemed to be in charge, the one that
19 was up there doing most of the work, I walked up to him
20 and told him who I was and told him it was obviously
21 arson, they should notify someone of that.

22 Q The pickup truck, you mean.

23 A: Yes. Well, there was another fire going on across the
24 street.

25 Q Sure. And that other fire, as you looked up there

1 could you see the trailer itself or just -

2 A: Just the top of it.

3 Q You could see flames then.

4 A: Yes.

 Q Did the second pumper truck arrive?

6 A: Yes.

7 Q And how long before that second pumper truck arrived
8 did it head up the hill?

9 A: Ten minutes; 15, 10 minutes. We stood around and
10 talked for quite a while.

11 Q Did you tell them about the explosive bunkers at one
12 point and then the trailers?

13 A: Yes, I described all that property up there, where the
14 bunkers were, what was in them, what they were made out
15 of, the two trailers that were sitting up there that
16 had "Explo" written on them, what was inside those
17 trailers, how it looked, how it was rolled up. I
18 described it all to them.

19 Q In other words, these two.

20 A: Not to all of them but the main one that was listening
21 and there were a couple other firemen that came over
22 also. And then my sister was talking to some of them,
23 also. Probably giving them similar information.

24 Q The second truck that arrived on the scene, it heads up
25 the hill, correct?

1 A: I think they both went up at the same time.

2 Q What did you do?

3 A: I followed them.

4 Q When you get there, how far up did you drive up the
5 haul road to the site?

6 A: As far as I could go.

7 Q How far was that? Looking at Government's Exhibit 26 -
8 - why don't we put No. 5 up there for you. Could you
9 show the members of the jury on Government's Exhibit 5
10 where you went and where you parked your station wagon.

11 A: Yes, sir.

12 THE COURT: Counsel, are you adverse to
13 having marks made on these exhibits?

14 MR. BECKER: Yes, actually, I am, Judge.
15 We have lots of photographs if you want to mark those
16 up.

17 THE COURT: I am just thinking we are going
18 to be here a while and people aren't going to remember
19 too well what that man points out as a spot on a
20 photograph that isn't marked. You might have removable
21 overlays. I just think you might think about dealing
22 with that.

23 A: I drove up this haul road right here. Here is where
24 the truck fire was and the fire truck drove up the haul
25 road. And my sister and I in my car followed them up.

1 This is as far as you can go on this haul road -- that
2 is as far as you can go. The fire trucks, because they
3 are set up high and with large wheels and stuff, they
4 could drive on along this terrain right here which
5 takes you to the trailers, to the two explosive
6 trailers.

7 Q Show you Government's Exhibit 126. You see the
8 battalion chief's car in this photograph.

9 A Yes.

10 Q Could you tell us where it is parked in relation to the
11 battalion chief's car.

12 A: Is that a large boulder sitting up above that?

13 THE COURT: You will have to identify what
14 you see. I am not going to let Mr. Becker testify.

15 A: It would have been somewhere where, whatever that round
16 -- my car would have been parked right in that area,
17 right in there.

18 Q Were you facing toward the trailers or away from the
19 trailers, which direction?

20 A: Up the hill.

21 Q So the passenger side would have faced the trailers?

22 A: That's correct.

23 Q When you get to that location what do you see occurring
24 back toward the trailers?

25 A: The firemen have pulled their fire trucks over there.

1 One fire truck was sort of parked in between the
2 trailers and the other one was on beyond it a ways.

3 Q What were you doing?

4 A: I had called Mountain Plains, Norm Collins from down
5 below, after I called the fire department and I was
6 waiting on the fire department -- while I was waiting
7 on the fire truck to get there I called Norm Collins
8 and informed him what was going on. He is the
9 president of Mountain Plains. When I got on top of the
10 hill, just as I got up there I remembered I hadn't
11 called Kenny Brown, the main man. So I called Kenny
12 Brown while I sat up there. And I was dialing him when
13 a police car pulled up in behind us.

14 Q At the time you thought it was a police car, is it this
15 yellow car?

16 A: Later I found out it was a battalion chief but it had
17 lights on it and I thought it was a police car. I
18 thought it was police officers.

19 Q Where did that car stop in relation to your station
20 wagon?

21 A: In behind my car.

22 Q What happened then?

23 A: I was talking on the phone to Kenny Brown and I was
24 describing to him what had happened and what was going
25 on at the present and that Norm Collins was on his way

1 down. What I thought was a police officer came up to
2 the passenger side of the car and was talking to my
3 sister. And then she got out of the car and went back
4 to what I thought was a police car parked in behind my
5 car.

6 Q Were you still on the phone this whole time?

7 A: I was on the phone with Kenny Brown and I was looking
8 at the trailer, describing to him what it looked like
9 because of its oddity.

10 Q Tell us what you saw, the trailer, itself.

11 A: It was a peculiar fire. A lot of times when something
12 catches on fire -

13 Q Tell us what you saw in this trailer.

14 A: This trailer was, it was like in a fireplace or in a
15 camp fire, an orange ember, the way they glow and they
16 look powerful and one end of the ember is just as
17 powerful as the other end of the ember. That is the
18 way that trailer looked. It glowed. And one end was
19 just as powerful as the other end. There was glowing
20 rather than burning.

21 Q So at that point you didn't see any flames from the
22 trailer.

23 A: That was its appearance. It was actually burning but
24 it had the appearance of energy, of heat and energy
25 like an ember rather than burning trash, a burning

1 fire. It had flames. They weren't noticeable. Either
2 they were invisible or they weren't noticeable. Then
3 every once in a while there would be little popping
4 things that would pop out of the trailer, like in a
5 camp fire. Like you would have things pop every once
6 in a while and it sort of shoots embers or flames. It
7 was sort of similar to that.

8 Q What happened then?

9 A: It blew up. I was talking to Mr. Brown on the phone
10 and I was looking at the trailer and it just blew up.

11 Q What happened to you?

12 A: I was sitting in the car and I guess it stunned me. I
13 was in a head-on collision a few years ago and it was
14 sort of similar to that. When I came to -- or I am not
15 even sure if I was unconscious, I don't know. If I
16 was, it wouldn't have been for very long because I
17 could see the falling rocks and stuff that were coming
18 down. so it would have been momentary. I think it was
19 more like a shock impact, sort of like the head-on
20 collision and I was disorientated. I was confused and
21 it seemed like it took a second for me to realize where
22 I was. and then I started to get out of the car and I
23 stumbled, stumbled to my knees. And I remember all
24 these rocks, these big boulders and rocks coming down.
25 One large boulder -- that is why I thought it was a

1 boulder in the photograph -- hit the rear of my car and
2 damaged it extensively.

3 Q Let me interrupt and show you Government's Exhibit 177.
4 Is that the car you were driving that night?

5 A: Yeah. You can see right on that rear panel right there
6 where something has hit it right there and all the
7 glass is broke out of it, all the way around the car,
8 if I remember right.

9 Q I will show you Government's Exhibit 78, is that a
10 photograph of the front of your car later that morning,
11 I guess.

12 A: It looks like it.

13 Q Were you able to get out of the car?

14 A: Yes. I got out and it was dark and smokey, not smokey
15 but dusty. There was a lot of dust. And ordinary
16 distances you could have seen you weren't able to see
17 as well because of the dust. It just seemed extra
18 dark.

19 Q Did you see your sister at all?

20 A: No.

21 Q Was that battalion chief's car still out behind?

22 A: Yes, it was still in behind the car.

23 Q What did you do next?

24 A: I just went looking for my sister.

25 Q Did you call her name?

640

1 A: Yes.

2 Q Did she respond?

3 A: As I was hollering "Debbie", I just remember hollering,
4 "Debbie" and I stumbled across some person and it ended
5 up being that battalion chief's driver, he was on the
6 ground. And I helped him up and walked him over toward
7 his car. Then I saw my sister moving from over on the
8 other side of the road.

9 Q That was back behind the battalion chief's car
10 somewhere here, is that right?

11 A: Yes.

12 Q Did you walk over to Debbie Riggs?

13 A: Yes. The driver, we were almost at his car and I let
14 him go. And it seemed like he fell or something. And I
15 went over to where my sister was and she was just
16 getting up off the ground. She was okay.

17 Q What did you do then?

18 A: We talked for a couple of minutes. And then I went
19 back over where the chief's car was.

20 Q Did you look inside the yellow battalion chief's car at
21 all?

22 A: The battalion chief came out from inside of his car.
23 The driver, when I went back over to that area, he was
24 yelling, "Chief", he just kept yelling, "Chief". And
25 then the chief came out, opened the door and got out of

1 the car. He seemed to be all right. Then I just said
2 are you all going to be able to get off the hill. I
3 said we are leaving the hill because Debbie had already
4 went down off the hill. and I said we are leaving the
5 hill. And I said are you all going to be able to get
6 down off the hill. And they said yes. Then I got in
7 my car and drove it down the hill.

8 Q As you were standing here, in the brief conversation
9 with the battalion chief or the driver did you look
10 back toward the area of the trailers?

11 A: I don't remember.

12 Q Were you able to start your car and go on down the
13 hill?

14 A: Yes. There was something wrong with it. It messed up
15 the engine or something because it was like it was
16 running on just a few cylinders or something. It was
17 just sort of putting and putting but it drove. I went
18 down to the bottom of the hill and picked up Debbie.

19 Q What happened when you got down to the bottom of the
20 hill?

21 A: We went over to the other side of the haul road. There
22 was a police officer parked over there. We went over
23 to the other side of the haul road and I parked there.
24 And there was a policeman there and I told him who we
25 were. And he said just to stay in that area. I think

1 he said get down or there is another trailer up there
2 or something. And so we just stayed right there. He
3 said somebody will be taking your statement.

4 Q So where did you end up then?

5 A: Right there where Debbie's truck was, where that
6 equipment was parked. Actually, we just went down over
7 the embankment right there and sat down. We just tried
8 to figure things out.

9 Q So behind that equipment that is parked over there
10 there is sort of a drop-off.

11 A: Yes, wherever they build a road to drive on they have
12 to build a road up. Therefore, you have an embankment.

13 THE COURT: Mr. Riggs, before you leave that
14 would you take the pointer and indicate on that picture
15 to what point or spot it was you and your sister went
16 then in your car.

17 THE WITNESS: Certainly.

18 THE COURT: Use his pen and that picture down
19 there.

20 MR. BECKER: If I may, this picture is a
21 little bit better for that, Government's Exhibit 27.

22 THE COURT: All right.

23 THE WITNESS: It looks like a rock right
24 there. So I drove the car back down this direction,
25 over across the haul road and parked my vehicle right

1 close to where my sister's truck was burned and here
2 where the equipment is, here's the embankment. It
3 would have been right in this area where the embankment
4 was, we would have sat right there on that embankment,
5 just on the other side of that first piece of
6 equipment there. It probably would have been that
7 piece of equipment because this picture looks like it
8 was just soon after the explosion.

9 THE COURT: Thank you.

10 Q Do you have any recollection how long you and your
11 sister were sitting there the early morning hours of
12 November 29, 1988?

13 A: Just by sort of going back in my mind, I remember some
14 of the times things happened and we would have been
15 sitting there for approximately -- because after the
16 explosion it took about another 25 or 30 minutes for
17 the next explosion. We would have been sitting there
18 maybe 10 or 15 minutes, 15 minutes.

19 Q What happened then?

20 A: Well, things seemed to be quiet. There was a lot of
21 activity around there. You can imagine all the police
22 cars and the sirens and all that kind of stuff there.
23 It seemed like a lot of activity. And I don't know
24 whether we were just sort of blocking it out or, you
25 know, thinking about all that had taken place or what.

1 It just seemed like everything was quiet. And my
2 sister made a comment, she said, "I don't think anybody
3 is here.~. I said, "Well, of course, they're here."
4 And so I walked up the embankment and there was nobody
5 there. They had evacuated the area.

6 Q What did you do then?

7 A: I think my sister said something directly about leaving
8 the property right now, something along that line. And
9 we got in my car and we left.

10 Q Southbound on 71 highway.

11 A: Yes.

12 Q Did you see any activity down at the next turn-off
13 which is Bannister Road?

14 A: Yes, I sort of evaluated that before we ever left. I
15 looked to see where is everybody. They didn't just
16 disappear. And part of them were up at 95th Street and
17 part of them was, I don't remember what I saw down
18 toward 87th but there was a group of red lights and
19 flashing lights and whatnot way up Bannister Road, up
20 to Bannister Road, 95th Street.

21 Q And I will show you Government's Exhibit 53. Does that
22 show 71 highway there with the group of emergency
23 vehicles parked at the entrance ramp at 95th Street, is
24 that what you saw?

25 A: Yes, it was at night so all I saw were lights.

645

1 Q What did you do then as you headed south towards
2 Bannister Road?

3 A: Well, I got about halfway there and I remembered that
4 my -- I had a pistol in my sister's truck that was
5 somewhat of a collector's edition. I forget how many
6 were made, 2,800 or 2,500 or something, a limited
7 number of these pistols were made. And I remembered it
8 was in her truck. And I asked her about it and she
9 said yes, it was in there. I said I am going to go
10 back. And she said I am not going. I said get out and
11 get in the ditch. She got out of the car. And I
12 turned around and went back to her truck.

13 Q When you went back were you going the wrong way on that
14 road?

15 A: Yes.

16 Q You go back to the truck. What happens when you get
17 back to Debbie Riggs' truck?

18 A: I get the pistol and it seemed like maybe there was
19 something else in there, maybe a purse of hers or
20 something. It seems like I got something else. All I
21 remember getting is the weapon, is the gun though.
22 There may have been something else but I found the gun.

23 Q Where was it, do you remember?

24 A: Well, the car was all messy and stuff and it had broken
25 glass and all that kind of thing. I think it was

1 laying on the floor, just right on the passenger side,
2 just right there on the floor but it was really nasty
3 in there and I had to sort of search around for it.
4 And then I found it. I think her purse was there, too.
5 I think I may have gotten her purse out at the same
6 time.

7 Q What did you do then?

8 A: I got in my car and I drove back up to -

9 Q Was there a second explosion?

10 A: Oh, there was. When I was walking back -- after I got
11 the gun I was walking back around the back of the
12 pickup truck and the other trailer exploded.

13 Q What happened to you?

14 A: It knocked me up against the side of the truck and I
15 went to my knees and then I remembered the rocks.

16 Q What did you do?

17 A: I crawled up underneath the truck and just sort of laid
18 there until all the rocks finished landing. I remember
19 the first time it was sort of raining rocks and
20 boulders. So I was sitting there by that truck I just
21 remembered those rocks. So I crawled up underneath the
22 bed of her truck and waited until the rocks stopped.
23 And then I got back out and got in my car and drove to
24 where Debbie was and picked her up and then drove up to
25 where the police were.

1 Q Had you called, while you were waiting, when the police
2 told you to wait back by the heavy equipment to be
3 interviewed, had you called anyone at that time to make
4 any telephone calls?

5 A I think I made two phone calls. I called my mother who
lived in south Kansas City and told her that Debbie and
7 I were all right but that she needed to take Debbie to
8 the doctor and get her checked because my sister was
9 about five months pregnant and I was worried.

10 Q Did you call your wife as well?

11 A: Yes.

12 Q As you drove down 71 highway and Bannister had you made
13 arrangements for anyone to meet you?

14 A: I had called my mother to tell her we were all right
15 and she needed to take Debbie to get her checked. And
16 so when we got up there to where the police barricades
17 were my mother was either already there or she got
18 there soon. And Debbie got in the car with my mother
19 and they left. And then I went to where the police
20 were right there. They were right there next to us.
21 They weren't paying any attention to us and I told them
22 who I was and told them everything they needed to know,
23 everything they asked.

24 Q Did you then go down to the police department and
25 probably for the next many hours that day of November

1 29, 1988 were you interviewed by the police department?

2 A Yes. You know, they just asked some preliminary kind

3 of questions and then asked me to come down to the

4 station house and make a statement, a formal statement.

5 So I went down and did that. All this took place, this

6 was like, you know, five o'clock in the morning or

7 something. And then I remember I didn't get back until

8 about five o'clock that evening.

9 Q Back to your home.

10 A: Yes, it was all day which was really what concerned me

11 about my sister because I knew once -

12 MR. O'CONNOR: Objection.

13 THE COURT: That is probably not responsive.

14 Ask him a question.

15 Q Was your sister also down at the station house?

16 A: She was and they released her. And the reason I had my

17 mother pick her up to take her to the hospital, I

18 figured with the seriousness of what had happened, with

19 the death of the firemen and everything, that we would

20 be down there all day long and she wouldn't see

21 daylight and I was worried -- I was worried about her.

22 MR. BECKER: I have no further questions at

23 this time, Judge.

24 THE COURT: All right, you might go ahead,

25 Mr. Bunch. It is a little early to take our break.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. BUNCH:

Q Mr. Riggs, I understand from your reaction a moment ago, you were worried about your sister.

A: That's correct.

Q What I don't really understand, Mr. Riggs, is how it was that this collector's item gun caused you to remove her from the truck and go back and get it if you were that worried about her. I am puzzled by that.

A: She was in no harm. Why are you puzzled by that?

Q Well, if you were so worried about her wouldn't you think, I would have thought -

THE COURT: Let's don't argue about this.
Just ask questions.

MR. BUNCH: Yes.

Q I am wondering why you didn't take her immediately to the hospital.

A: Well, we couldn't have left the scene like that. The police needed to know what happened down there. We were the only witnesses. We were the only persons on that property except for the persons that set the fires.

Q How valuable was this gun?

A: It was a collector's item. I was afraid it might not be there the next day or someone may steal it. I

1 didn't know what would happen to it. I knew it was in
2 there and I had no problem with going back to get it.
3 My sister was concerned so I told her to get out of the
4 truck. She was safe getting out of the truck. That
5 was the more cautious thing for her to do, to get out
6 rather than go back down to the scene.

7 Q Do you still have this gun?

8 A: I do.

9 Q Now, out of the fifteen people who were employed by you
10 on the date of the explosion, how many of them worked
11 the site that is the subject matter of this lawsuit and
12 who were they?

13 A: Approximately six. Kevin Lamanske, Jennie McDonald,
14 Debbie Fiser, myself, somebody Richardson and probably
15 three or four, two or three other people and I don't
16 remember their names now.

17 Q Maybe a total of about nine, would that be -

18 A: I think there was only six. We rotated in and out but
19 over a period of time there may have been people come
20 and go. I think Wayne Richardson, he had worked for me
21 and he had quit prior to that incident. And then there
22 was also some other person.

23 Q Well, is the person you named as Jennie McDonald, is
24 that your wife?

25 A: Yes.

1 Q She worked there under that name.

2 A Yes.

3 Q Why was that?

4 A She just went by Officer McDonald, the same as I went
5 by Officer Mason. Just so that people wouldn't
6 recognize our names as the owners of the company.

7 Q So the reports and so on then were under names other
8 than the real names, your actual names.

9 A: We considered them real names. We went by those names.

10 Q Well, they were an alias, weren't they, really?

11 A: That's correct.

12 Q In other words, you didn't vote, have your driver's
13 license or any other document under the name Mason, I
14 take it.

15 A: That's correct. Mason is a family name for me.

16 Q Now did you say in your direct testimony that there was
17 lettering on these trailers, Mr. Riggs?

18 A: Yes.

19 Q And what was that, please?

20 A: It was e-x-p-l-o, explo.

21 Q Was it in large letters?

22 A: No. Large compared to the trailers, no.

23 Q Let me ask you how large it was. Could you give us an
24 idea of the dimensions of the lettering?

25 A: About four or five to six inches.

1 Q Where was that lettering placed on the trailers?

2 A: I don't remember.

3 Q You don't know if it was on the side, rather.

4 A: It was on the side but I don't remember if it was on

5 the rear or on the side. It was on one of the sides.

6 I remember it appeared to be one of those kinds of

7 spray paint kind of lettering things where you put

8 letters up there and spray paint and it leaves the word

9 you want.

10 Q Well, I guess my question to you is was it easily

11 distinguishable or would one have to be around the

12 trailers more than once perhaps to notice it?

13 A: I am not sure how to answer that. If you happened to

14 be there where the letters were written it would have

15 been easily seen, yes.

16 Q Had that been called to your attention? Was the

17 lettering always there, as far as you know, when you

18 were working there?

19 A: Yes.

20 Q And during the course of the events that you have

21 described in detail, may I ask you whether you saw

22 anybody other than the two people which your sister

23 saw, about what you have testified prior to the time of

24 the explosion, discounting of course the fire

25 department.

1 A: I'm sorry. Will you repeat the question?

2 Q Did you see anybody on the premises who were not
3 supposed to be there other than the two people that
4 your sister saw prior to the time you went to Quik
5 Trip?

6 A: You are not saying I saw those people because I didn't
7 see those two.

8 Q But your sister said she saw.

9 A: There were no previous incidents that evening, no.

10 Q You never saw any vehicles that were unauthorized to be
11 there.

12 A: No, it was an uneventful night.

13 Q And up until the time of spotting the fire of her
14 truck, the only thing that either of you had seen is
15 the two people Miss Riggs testified and you have said
16 she told you she saw down on 71 highway.

17 A: I want to answer your question accurately. Of course,
18 we saw a lot of things but there were no incidents that
19 evening.

20 Q I appreciate that. I mean people who were not
21 authorized, prowlers and the like.

22 A: That's correct.

23 Q Didn't see anything.

24 A: That's correct.

25 Q And I take it thereafter, after the explosion, there

654

1 were many people, of course.

2 A: Yes.

3 Q But there were no incident reports about unauthorized
4 people either.

5 A: No, there were not.

6 Q Now, prior to the night of the explosion, Mr. Riggs, do
7 you have any recollection of how many prowlers or
8 attempted thefts you might have been aware of on the
9 east side of the property that you were hired to guard
10 or to surveil or to be present so other people would
11 know you were there?

12 A: Oh, you know, when something happened it was somewhat
13 exciting because it was a slow job site. There wasn't
14 very much activity going on around there. So when
15 something did happen it was pretty exciting. I would
16 say the month preceding from the time we started until
17 the date of the explosion. Then of course we continued
18 to work there for almost a year afterwards or nine
19 months or something like that after the explosion, we
20 continued to provide security on that property.
21 Probably seven to ten incidents. Some of those were
22 unexplained. You didn't know what the person's motive
23 or what his intent was. He drove away. You don't know
24 what their reason was. Maybe it was a worthwhile
25 incident; maybe it wasn't.

1 Q Could have been a mistake, curiosity or whatever.

2 A: It could have been, not to say those persons weren't
3 unauthorized because they would have been but you had
4 some curiosity, you had some people that liked to go up
5 there and do four-wheeling, but they were still
6 unauthorized as were the fire cutters.

7 Q Were there any actual thefts, documented thefts off the
8 property on the east side, or west side for that
9 matter?

10 A: Not that I am aware of. There were attempts but Norm
11 Collins told me he was going to inventory that stuff in
12 that trailer. He described it as diesel fuel and
13 fertilizer and said it was worthless; that it wasn't
14 worth stealing. It was worthless. Had no value. Used
15 in the explosive process and nobody would want to steal
16 it. There is nothing you could do with it. That is
17 the way he described it to me. And other than that he
18 said he was going to take an inventory the next morning
19 and let me know because I told the police department
20 that we didn't know if anything was stolen but if there
21 was I would call them the next day. Norm Collins never
22 called me and our agreement was if he didn't call me it
23 meant that nothing was stolen. So, to answer your
24 question, I am not aware of any theft that took place
25 on the property.

1 Q Now, is it your testimony that both you and your sister
2 were able to advise the firemen who came that evening
3 prior to the explosion those trailers contained
4 ammonium nitrate, diesel fuel and fertilizer?

5 A: I never used the word ammonium nitrate. I didn't learn
6 that word until after the explosion.

7 Q Then can you tell us what words you may have used, sir.

8 A: I described to them exactly what was up there, where
9 the two trailers were located, where the two bunkers
10 were located, what was in the bunkers, what was in the
11 trailers. I described those items. there were lots of
12 other things up there. There were lots of pieces of
13 equipment and cranes and all that kind of stuff but
14 with a fire going on up there, the thing I thought they
15 would be interested in were the two bunkers, their
16 locations in relationship to the trailer that was on
17 fire and the trailer that was sitting right next to it,
18 within maybe twenty yards, that contained the same
19 thing as well as the trailer that was on fire.

20 Q Let me ask it this way. It was clear the contents of
21 those trailers was explosive material, whatever words
22 you may have used, is that a fair statement?

23 THE COURT: Clear to whom, Mr. Bunch?

24 MR. BUNCH: To the individuals to whom he
25 related the contents.

1 A: It was really a little bit confusing because Norm
2 Collins had told me they were worthless and they
3 weren't explosives; that they were used in the
4 explosive process. And he said it was fertilizer and
5 fuel oil powder in a mixture compound in these bags.
6 He wasn't concerned about it. It smelled like gasoline
7 to me. That was a concern. I was concerned about it.
8 But he said it was diesel fuel and fertilizer mixture
9 in a compound and that it wasn't of value. In fact, we
10 made a little joke about it. Since it was fertilizer
11 we used the word shit. He said "It isn't worth shit".
12 Like a little pun out of the fertilizer part. Because
13 it was of little value is what he was describing.

14 THE COURT: This is before the explosion.

15 THE WITNESS: This is before the explosion;
16 yes, sir. And that's my understanding what was in the
17 trailers.

18 Written on the side of the trailer was
19 the word e-x-p-l-o, that's explo. Well, that's
20 real close to explosives.

21 All those things caused me concern. The
22 smell of gasoline, the word explo. We called them
23 explosives trailers. Whether that fit what was
24 really in there, I had no -- I mean I had no
25 understanding of that type of compound. I didn't

1 have a fireman's background. I really didn't know
2 anything about it other than what Norm Collins,
3 the owner of the contents of that trailer, told me
4 was in it.

5 Q I wasn't trying to be confusing. I was simply trying
6 to learn what it is you were able to tell the fire
7 fighters about what was in there.

8 A: I didn't use the word ammonium nitrate. I think you
9 did in describing it and I wanted to point out I did
10 not learn that word or at least I didn't use the word.
11 I think someone has said they mentioned that word
12 around me before but it is not a word I would hang
13 onto.

14 Q It was your recollection you learned it after the
15 explosion, became familiar with that, what that means.

16 A: I will remember it the rest of my life.

17 Q Did I understand or misunderstand the hours on the
18 night of November 28th were still six to six and was it
19 then the following night you were supposed to go seven
20 thirty to five? I am confused. Would you enlighten

22 A: I am, too but Ken Brown called me that day and was just
23 trying to cut back on expenses and stuff. He was
24 trying to save a few dollars. It made sense to me.

25 And he wanted to reduce our hours two and a half in the

1 front and an hour in the back. And I said I would
2 cause it to be effective that day. Now, I don't
3 remember whether I got ahold of Officer Lamanske and
4 Officer Costanza that day or not. But whoever worked
5 the last shift was going to be getting off at five
6 o'clock wherever it was we worked. That's what I would
7 have billed them for. And the next day, I remember I
8 told him I would have it in effect immediately. I was
9 able to do it. Whether or not I got on the phone and
10 made that phone call to the other two, I really don't
11 remember whether they started at six or whether they
12 started at 8:30.

13 Q It turned out to make no difference with all the
14 terrible events that happened anyway. But I was
15 confused when it was supposed to have gone into effect.

16 A: It was effective that day.

17 Q The .30 caliber pistol about which you have testified,
18 was this provided to your sister temporarily on
19 occasion or did she regularly have it for certain
20 purposes?

21 A: Temporarily. And it was a .38 caliber Smith and Wesson
22 and I loaned it to her because she was having some
23 personal problems with someone who was harassing her
24 and someone who was harassing her from her job and she
25 had complained about. I had visited with him and I

660

1 felt him to be potentially dangerous. So I gave her
2 that weapon as a form of protection.

3 Q That fellow, was that Mr. Larry Mellon (phonetics)?

4 A: Yes. I wouldn't have remembered that name.

5 MR. BUNCH: Thank you, sir.

6 CROSS EXAMINATION

7 BY MR. PETERS:

8 Q Mr. Riggs, you have testified quite a while about the
9 work you have done. Can you tell us your training and
10 background that leads up to the events that we are
11 going to be talking about.

12 A: Sure. My education is in law enforcement. I received
13 an Associate's Degree from a local college here,
14 Longview Community College, in Police Science. And
15 then I started a career in law enforcement in Dallas,
16 Texas. I was with the Dallas County Sheriff's
17 Department as a deputy down there.

18 Q What year, about, would we be talking about in Dallas?

19 A: 1975, '76.

20 Q How long were you in Dallas?

21 A: Until December of '79, for about four years.

22 Q Then what did you do after that?

23 A: I opened up Ameriguard, a private business, private
24 practice.

25 Q In addition to the community college training, have you

1 had various training at different times in Dallas and
 2 ~ elsewhere in what we might call continuing education
 3 training on law enforcement.

4 A: Yes, sir.

5 Q Have you had courses in investigation?

6 A: Yes.

7 Q Statement taking.

8 A: Yes.

9 Q Crime scene development.

10 A: Yes.

11 Q Crime scene preservation.

12 A: Well, this is more along the line of public law
 13 enforcement which really doesn't apply to private. The
 14 continuing education courses and seminars I would
 15 attend ow I would want it to be related to work I
 16 actually do. I am not involved in crime scenes and
 17 things like that.

18 Q Were you involved in any crime scenes in Dallas, was it
 19 the Sheriff's Department?

20 A: Yes.

21 Q You underwent training in Dallas?

22 A: Just what they teach in the academy.

23 Q Did they teach about crime scenes?

24 A: Yes.

25 Q Did they teach you to preserve the crime scene?

662

1 A: Yes.

2 Q After you came back and started Ameriguard, have you
3 had any other training or expertise in other areas of
4 law enforcement?

5 A: No. I mean seminars and things like that.

6 Q Anything of particulate note on seminars?

7 A: No.

8 Q When you started Ameriguard -- I am going to skip a
9 little bit -- let's go to the time you first started
10 doing any work for Brown Brothers Construction Company.
11 In the time we are talking about, how far before this
12 explosion was it that you had your first contact with
13 Brown Brothers?

14 A: Will you repeat the question?

15 Q When did you first become employed to do surveillance
16 for Brown Brothers?

17 A: When was I first contacted?

18 Q Okay.

19 A: Mr. Brown would have contacted me, I believe it was,
20 our first day to provide security service on that job,
21 if I can do it this way. Can I talk like this?

22 THE COURT: Go ahead.

23 A: The first day we provided security service on that
24 property was October the 31st.

25 THE COURT: 1988.

1 THE WITNESS: 1988. And going back from
2 there it probably would have been, I would have gotten
3 the phone call from him probably around the week of
4 the 15th, something like that, is the first time I
5 would have had contact with Ken Brown. He called my
6 office and described his problem to me and we talked
7 about it and then got together.

8 Q The reason you were hired is because the guards they
9 had on site had been caught falling asleep, is that
10 correct?

11 A: Negative. No, sir. The reason he called was because
12 he suspected an employee -- did you ask the reason the
13 security division was hired, the reason I was hired?

14 Q You are giving us a date of October 31st.

15 A: That was the first date we put security on that
16 property.

17 Q Why was it that your company was hired to put security
18 on the property when they already had a security
19 company there?

20 A: Well, it was probably dual reasons. One, Kenny Brown
21 wasn't happy with the company he had in there now.
22 Secondly, it was in his best interest to use us to
23 perform that duty since we would be in communication
24 with the investigator that was sitting on the suspected
25 employee and we would have communications back with one

664

1 another where if he was headed down that direction we
2 could inform security personnel and let them know.

3 That was during the sting operation part of it.

4 Q Are you telling us you were never told the reason you
5 were taking over security at the job site beginning
6 October 31st is because the other guard was caught
7 asleep on the job?

8 A: No, I am not saying that. In fact, that was the
9 reason, Kenny Brown was dissatisfied with the security
10 company and I think that's what I said. Mr. Brown was
11 dissatisfied with the security company that was working
12 there then. And it was also to his best interest to
13 employ us for the reasons I gave. The reason he was
14 dissatisfied with the security company because he had
15 been down there a couple of times and the security
16 officer was sitting in his car asleep.

17 Q I am going to go through with as little repetition as I
18 can possibly avoid, some of the incidents prior to
19 these explosions you have talked about. On October
20 31st when you were hired, your company Ameriguard was
21 hired to protect the west side of 71 highway where the
22 heavy construction equipment was located, correct?

23 A: Incorrect. I think where I would object is agreeing to
24 the word "protect".

25 Q Would you describe for the jury in the way you

1 understand it, what you were hired to do by Brown
2 Construction Company, what was your job responsibility?
3 A: To deter illegal or undesirable activities.
4 Q And on your Direct Examination I believe you used the
5 words "to provide an authoritative presence", does that
6 sound right?
7 A: Yes.
8 Q On October 31st your job function was to provide an
9 authoritative presence on the west side of 71 highway
10 which is where the Brown Construction heavy equipment
11 was located.
12 A: That's correct.
13 Q And during the time you were hired to provide that
14 authoritative presence because you were on site, you
15 did see some things going on across the street on the
16 east side.
17 A: That's correct.
18 Q And because of your training in law enforcement,
19 because you are out there doing your job, you went
20 across the street onto the east side to investigate
21 suspicious activity you saw.
22 A: That's correct.
23 Q And one of those you have described as an incident
24 where the lock had been cut off of one of these -- and
25 I am not going to argue, whatever we want to call the

1 contents of the trailers as opposed to the dynamite
2 bunkers -- locks had been cut off one of these
3 trailers.

4 A Correct.

5 Q The way you saw from your vantage point on the west
6 side of the street, you could see lights on the east
7 side of the street, is that correct?

8 A: Yes, that's correct.

9 Q And you went up there -- and again without being
10 repetitive, you find bolt cutters and a cut lock to one
11 of these trailers, correct?

12 A: Yes.

13 Q And it is after you find that that you have a
14 discussion with Mr. Collins about we keep seeing
15 activity over here, and you aren't soliciting business,
16 he says you keep finding stuff, how about we hire your
17 company to take care of the east side of the street as
18 well.

19 A: It may have been something like that.

20 Q In reading other things, nobody knows whether you
21 suggested it or he suggested it, but an arrangement was
22 made you started providing an authoritative presence on
23 both the east and the west side of the highway.

24 A: Actually, what we felt like that it was a two-man job.
25 To allow someone to be pulled off of one side to

1 investigate something may expose the other side. And
2 because there were incidents occurring on the other
3 side, we felt -- and also the size of the property, it
4 was probably at least a two-man job.

5 Q And as far as the contracting goes, on the west side of
6 the street where the equipment was, that was Brown
7 Construction contracting with you, correct?

8 A: It was all Brown Brothers.

9 Q So Brown Brothers agreed to have you be hired to
10 protect the mining company's equipment that was up at
11 the top.

12 THE COURT: Wait a minute, Mr. Peters. I
13 don't want to get into this habit if we can avoid it,
14 you are not the only lawyer in my experience that has
15 done it but you have a habit of making statements and
16 stopping. Let's ask a question and then he can respond
17 to your question. What you just said was a statement,
18 not a question. Ask him a question.

19 Q Did Brown Brothers hire you to protect both the west
20 side and the east side; the east side being the
21 property containing the mining company equipment.

22 A: Yes, the Brown Brothers equipment, I think it was
23 mining, is a word I am not very familiar with. It is
24 sort of vague. I think just construction equipment;
25 tractors, dirt haulers, scrapers, all that heavy

1 equipment, construction heavy equipment is what it was.
2 It was over on the east side; yes, and that was Brown
3 Brothers.

4 THE COURT: Counsel, let me explain to the
5 jury so they won't think I am just nit-picking up here.
6 One of my responsibilities in this proceeding is to
7 protect the record that is made for the sake of both
8 sides of the dispute, to protect the record and make
9 sure when it is written on paper it makes some sense.
10 And a lawyer and a witness sitting and talking back and
11 forth without it being questions and answers sometimes
12 doesn't make any sense on the record. And that is the
13 reason I insist and will do this again I am sure before
14 this thing is through, I insist the lawyers ask
15 questions and the witnesses answer the question.

16 Go ahead, Mr. Peters.

17 Q Sir, I would like to show you a diagram again. This is
18 an enlargement of one of the eight-by-tens I think you
19 have seen. I am going to first show it to you to kind
20 of let you get familiar with it. Do you again
21 recognize the area in this photograph?

22 A Yes.

23 MR. PETERS: With the Court's permission, can
24 we have the witness stand down just for a moment.

25 THE COURT: What is the exhibit number?

1 MR. PETERS: Defendants' 1 which has been
2 admitted into evidence, Your Honor.

3 Q And in my questioning I have been asking you about the
4 area on the east side and the area on the west side.
5 Would you go ahead, using Exhibit NO. 1 so there isn't
6 a question, and show generally the geographic area that
7 you are protecting on the east side of the highway, the
8 trailers and the median and the geographic area on the
9 west side.

10 A: I wish I could but this photograph, the only areas that
11 are on this photograph which terminates the Brown
12 Brothers job site is this river. This photograph
13 doesn't go nearly far enough this direction. It
14 doesn't go nearly far enough this direction by a long
15 ways and it would end. Here's the Blue River right
16 here. Our property line ends right here on this. And
17 it ends right here on this road, this direction and
18 this direction (indicating), you can't see the ends of
19 the property. You are not too far, too awfully far off
20 over here because you have big high cliffs up here.
21 And the picture, if it continued, would be in this area
22 but Bannister Road is way down there.

23 Q Your authoritative presence was to continue all the way
24 down to Bannister Road, 95th Street.

25 A: Yes, because they had construction, there was

1 construction equipment parked all over but he would see
2 that most of the construction was parked.

3 Q This would be the west side, the trailers are located
4 there.

5 MR. BECKER: Is that a question?

6 THE COURT: I don't know. I tell you, I
7 can't imagine how useless this record just made is
8 going to be with the "here's and "there's and the
9 motions and nobody will have any idea what he is
10 talking about when he said what is shown and what isn't
11 shown on the picture. Let's ask him a question and be
12 specific please.

13 A: This photograph for some reason, there is no haul-way,
14 Mr. Peters, there is no haul road.

15 Q That is, for purposes of the record, Defendants'
16 Exhibit 1 which is a photograph taken approximately one
17 month before the explosion. It is taken at a time
18 prior to the explosion because we have two intact
19 trailers here.

20 A: I see.

21 Q Directing your attention to the middle bottom on
22 Defendants' Exhibit 1 where it is written the word
23 Riggs' truck.

24 A: Yes.

25 Q Is this the general area referred to on the bottom of

1 Defendants' Exhibit 1 where Brown Brothers kept their
2 heavy construction equipment?

3 A: Yes. Yes, sir.

4 Q And if I direct your attention to the lower right
5 quadrant of Defendants' Exhibit 1 where you see shadows
6 that appear to be trailers and marked as "trailers" and
7 "trucks", is that generally the area that we are
8 talking about when we talk about the other side of the
9 highway, the east side of the highway with the trailers
10 and the explosive magazines?

11 A: Not at all. The east side of the highway runs all the
12 way from Blue River Road all the way up to the cliffs
13 and all the way down to 87th Street.

14 Q Are these trailers on the east or west side of 71
15 highway?

16 A: They're on the east side. I thought you were talking
17 about this particular area. There is construction
18 equipment. Again, these trailers meant nothing to us.
19 We were already told they were of no value, they
20 contained nothing of value. They're really no concern.
21 We weren't guarding any trailers by any means. He has
22 cranes and equipment parked on this job site that are
23 of great value.

24 Q You can take your seat. Is it correct that those
25 trailers were of no meaning to you, is that what you

1 said?

2 A: Of little.

3 Q Of little meaning to you.

4 A: Yes. No more than what any other trailer or piece of
5 equipment or office trailer or any other piece of
6 equipment would mean. I thought you were implying that
7 was an area of coverage right there that we were
8 guarding where those trailers were.

9 Q Was it an area where there had been prior incidents of
10 break-ins and vandalism?

11 A: There had been one break-in; yes, sir.

12 Q Had there been fires started near those trailers that
13 caused alarm to employees of yours?

14 A: Yes.

15 Q Were those trailers checked by your guards on their
16 hourly rounds each and every night they worked?

17 A: Whatever their routes were. They weren't necessarily
18 on an hourly basis. Oftentimes they were, but normally
19 when we would start the shift, we would check all the
20 locks, whether on a generator trailer, whatever the
21 locks were on, the officer trailers, we would check all
22 locks on the property to make a statement as to them
23 being checked and then being secured. And then at the
24 end of the shift we would do the same thing.

25 Q Was it uncommon for whoever was working on the east

1 side of the road to check them every time they made one
2 of these runs?

3 A: You would simply spotlight the trailers. You wouldn't
4 necessarily check the locks.

5 Q You never directed your employees to check the locks on
6 the trailers.

7 A: When they came onto the shift and when they left the
8 shift. Then when they made their regular rounds you
9 would spotlight anything that was up there, whatever
10 piece of equipment it was. Again, you are in total
11 darkness and the only thing you are going to see is
12 what you are pointing your spotlight at and you would
13 point your spotlight at whatever equipment was up
14 there, regardless of what it was.

15 Q I am going to move forward now to that part of 71
16 highway where you and your sister were seated in the
17 car. Isn't it correct that was an area you would
18 frequently be at because it provided an authoritative
19 presence and a view of much of the equipment on the
20 west side of the street?

21 A: It was. When we couldn't get up onto the east side of
22 the highway due to weather, if it was raining you
23 couldn't get up on those hills, you couldn't drive a
24 car up the haul road, we would simply park down there
25 on the east side of the highway in a similar location

as to where my sister's truck burned and has been shown parked in all the photographs I have seen.

Q And again since the photograph, Defendants' Exhibit No. 1 doesn't cover the entire area, this entire area that we are talking about, you were in charge of providing an authoritative presence, did you feel two security guards were adequate to guard the area that these companies wanted guarded?

A: Well, it is difficult to define. You know, there are all kinds of things to decide how many security personnel you put on a job. "Adequate", it has to be cost effective. Otherwise you don't do business. What would have been adequate obviously after-the-fact is for that property to have been surrounded by police officers. That's what I wish would have been there after-the-fact. At the time it was cost effective. And, in fact, Mr. Brown had called me that day to reduce the hours to save money. So obviously he was a little concerned what he was spending. Was it enough - - obviously not.

Q My question to you was when you entered into the contract did you feel two security guards were adequate to guard the area these companies wanted guarded?

A: I made the decision to do it so I must have come to some terms; if I am forced to used the word "adequate",

1 yes, because we came to terms.

2 Q You never had any doubt two people could provide
3 adequate deterrence to vandalism by presenting an
4 authoritative presence, you thought two was enough.

5 A: I came to a decision two would get the job done because
6 it was cost effective. How many did it need? Well,
7 after the explosion we had as many as six officers down
8 there at a time. Was that enough? It got the job
9 done. It obviously wasn't enough on November the 28th,
10 29th.

11 Q Mr. Riggs, my question was at the time that you entered
12 into the contract you have stated in response to my
13 first question, do you feel two security guards were
14 adequate to guard the area these companies wanted
15 guarded, your answer to that question is yes or no?

16 A: A truthful answer is no, it would not have been
17 adequate. Cost effective, if you need to make a deal
18 with somebody, they're not going to give you everything
19 you want. You have to compromise. I compromised two
20 was better than one. In fact, it was twice as good.
21 But it also cost twice as much. There was an agreement
22 there be two officers on the property which was twice
23 as good. I wasn't complaining. Was it enough? No, it
24 wasn't. Looking at the property you would have to have
25 an army of people to hold that ground.

1 Q Whether two people could provide adequate deterrence to
2 vandalism by presenting an authoritative presence, you
3 did not think two was enough.

4 THE COURT: Just a minute. You just made a
5 statement.

6 Q Did you think two was enough? I understand now -
7 slow. Did you think two was enough?

8 A: We came to an agreement.

9 THE COURT: That has been asked and answered.
10 I remember him saying two was better than one but not
11 as good as a battalion.

12 Q Sir, do you remember giving sworn testimony in relation
13 to some of the civil litigation on March the 13th,
14 1990?

15 A: Yes.

16 Q Do you remember being questioned by Mr. John Turner, an
17 attorney?

18 A Yes.

19 Q This is Volume I, page 155, lines 13 through 22. Do
20 you remember being asked this question, "On the night
21 of November 28th, going into the early morning hours of
22 November 29th and before the explosion occurred, at
23 that period did you feel two security guards were
24 adequate to guard the area that these companies wanted
25 guarded?" Do you recall giving the answer "Yes."

1 A: No, but I wouldn't be surprised.

2 Q Showing you -- and we are starting on line 13 and
3 continuing down.

4 A: I see that. Thank you.

5 Q Having seen that, does that refresh your recollection
6 that was, in fact, your response under oath?

7 A: That was my response, yes.

8 Q The following question was, "You never had any doubts
9 that two people could provide adequate deterrence to
10 vandalism by presenting an authoritative presence, you
11 thought two was enough?" Your answer was, "Never any
12 doubts?" "Question: Right. Never any doubts." And
13 you go on. The answer is, "That's a big question. I
.14 feel like two officers were adequate to deter those
15 kinds of activities. There is no way two officers
16 could stay. It's just the same, we don't have enough
17 police but that's what we have got so that's what we
18 use, the same situation there.~. Do you recall giving
19 that answer?

20 MR. BECKER: Objection.

21 THE COURT: What is the impeachment? The
22 purpose of what you were doing here I thought was to
23 present him with something inconsistent, some prior
24 inconsistent statement. I don't see what impeachment
25 there is in what you just read. It is exactly what he

1 said on the stand here.

2 MR. PETERS: I withdraw it and apologize.

3 MR. O'CONNOR: Judge, could we take our
4 afternoon break?

5 THE COURT: We will take our afternoon break.
6 We will call it the "O'Connor break." Don't talk about
7 the case. Be back in 15 minutes and you may withdraw.

8 (The jury leaves the courtroom.)

9 THE COURT: We will be in recess.

10 RECESS

11 THE COURT: I will remind you, Mr. Riggs, you
12 are still under oath. And you may proceed, Mr.
Peters.

13 Q On November 28th, now into the early morning hours of
14 November 29th, you are in the car with your sister
15 Debbie on the west side of the highway. The time frame
16 we are talking about just so we are both tracking, you
17 know what I am talking about -

18 A: Yes.

19 Q From the west side of the highway could you see the
20 trailers?

21 A: No, sir.

22 Q You were tired that night, weren't you, sir?

23 A: Yes, sir.

24 Q In fact, your sister had told you to get out and move
25 around because you looked tired.

1 A: I don't remember that. She may have. I remember
 2 getting out and making a foot patrol. It was because I
 3 was tired and dozing off but I don't remember if she
 4 suggested it or not. She may have.

5 Q As you were sitting there in the car did you tell
 6 Debbie you were sleepy and tired and concerned about
 7 falling asleep?

8 A: I don't believe so. I mean I wouldn't have said it
 9 like that.

10 Q How would you have said it, sir?

11 A: I don't remember saying anything about it. I remember
 12 telling her over the radio that I was tired and sleepy.

13 Q Do you recall sitting in the car telling her that you
 14 were sleepy and tired?

15 A: I don't remember that.

16 Q Your eyes may have been closed for a second and then
 17 Debbie alerted you that she has seen two people, is
 18 that correct?

19 A: There were a couple of occasions where I was sort of
 20 nodding off where your head sort of pops and you nod
 21 off. I don't know if that would have been at the time
 22 Debbie saw the two persons or not. She said, "Robert".

23 Q I am moving to that time she said, "Robert" and alerts
 24 you she has seen two suspicious people.

25 A: That's correct.

1

1 Q I am trying to move along and stop me if I misstate
2 anything. You pulled out onto 71 highway and began
3 going north in your vehicle, is that correct?

4 A: Yes, I crossed the median to northbound 71 and then
5 headed north on northbound 71.

6 Q Your lights were out and you had the spotlight on, is
7 that correct?

8 A: Incorrect.

9 Q What were you doing then?

10 A: The headlights were off and the spotlights were both
11 off. I drove over there in darkness so as to surprise
12 the two persons.

13 Q And you drove over in darkness north on 71 highway to
14 the area that we have demonstrated is where the office
15 trailers are located in the median strip, is that
16 correct?

17 A: That's correct.

18 Q And you pulled your car in. Did you at any time
19 illuminate your spotlight?

20 A: Eliminate or illuminate?

21 Q Illuminate.

22 A: I turned the spotlight on at the same time I turned on
23 the headlights which was probably 20 to 25 yards short
24 of at this time Blue River Road where the office
25 trailers are located. I drove down there quickly with

1 all the lights off. When I got to the area where I
2 thought the two persons would be, I turned on the
3 headlights, I hit the spotlight and I started searching
4 for two persons.

5 Q After driving quickly down and illuminating your
6 lights, you then pulled into the area where the
7 trailers were on Blue River Road.

8 A: Correct.

9 Q Did you get out of your car?

10 A: I don't believe so.

11 Q You illuminated the area with your spotlight looking
12 under the trailers to see if you could find these two
13 individuals, is that correct?

14 A: Yes. And I know I didn't get out of my vehicle. The
15 answer is no, I didn't get out of my vehicle.

16 Q Then you backed your car up and onto 71 highway and
17 continued to proceed north, is that correct?

18 A: Almost. I backed out. I backed out onto the median
19 which is actually Blue River Road in between northbound
20 and southbound and then pointed my headlights and my
21 spotlight up Blue River Road east in case they took off
22 that direction because they were headed that direction.
23 And when I didn't see anything there, the only way I
24 figured they could have traveled was northbound from
25 the trailers into the wooded area. So that's when I

1 got on northbound 71 and went northbound on 71. I
2 would have been driving slowly since I was spotlighting
3 both sides of the road.

4 Q And so you never on Blue River Road crossed over what
5 would be the southbound lane of 71 and went west on
6 Blue River Road.

7 A: I wasn't interested in that area.

8 Q You didn't go west past that bridge or near the bridge
9 to the west on Blue River Road.

10 THE COURT: Wait a minute. You are doing it
11 again, Mr. Peters. You just said, "You didn't go west
12 past that bridge on Blue River Road."

13 Q Did you?

14 A: I am not sure where the bridge is. I think there is a
15 little small bridge on Blue River Road just west of
16 southbound 71, is that the little bridge. To answer
17 your question, I did not go anywhere over in that
18 direction except on our travel back because they were
19 coming from that area, they were walking from that area
20 headed in completely the opposite direction. So I
21 wouldn't have searched over there.

22 Q Then driving slowly, going a step at a time, you would
23 drive quickly -- you had driven quickly from where you
24 had first been and alerted to the area of the office
25 trailers, correct?

1

1 A: Correct.

2 Q And then from that point continuing north you drove
3 more slowly because you were shining your spotlight
4 around.

5 A Yes, sir.

6 Q You then pulled into the Quik Trip, correct?

7 A: Eventually. You sort of jumped over some things there
8 but, yes, we went to the Quik Trip.

9 Q While you were in the Quik Trip did the thought go
10 through your mind that the job site that you were hired
11 to protect was now left unguarded?

12 A: I don't believe so. The persons weren't down there.
13 We didn't go to Quik Trip for the purpose of buying
14 breakfast or buying drinks. We weren't down there for
15 that reason. We went there to ask, to see if the two
16 persons were on foot. I probably did, because I was
17 anxious enough, I went back out to my car and was
18 waiting. So, to answer the question, yes, the thought
19 probably went through my mind.

20 Q And although you may not remember whether it's Dave or
21 Doug, the person I am going to be referring to as Dave
22 is the Quik Trip manager, is that acceptable? When I
23 say Dave you know I am referring to the Quik Trip
24 manager.

25 A: All right.

1 Q From the time your sister told you that she saw someone
2 that looked like a prowler until the time that Dave
3 came out of the Quik Trip and equipment is on fire, we
4 are talking about a time span of no more than four or
5 five minutes, isn't that correct?

6 A: I figured four to five minutes to get back to the job
7 site. So if you subtract that, maybe 45 seconds, a
8 minute, then it would be more like three or four
9 minutes.

10 Q A best estimate of three or four minutes to get to Quik
11 Trip, a few seconds or a minute or two at most inside
12 Quik Trip and then another 30 seconds to drive back to
13 where you ultimately found the truck on fire, is that
14 correct?

15 A: Yes, I think it was estimated at five minutes for the
16 total trip. So you would have to deduct from that and
17 in the figure I gave you before I was thinking from the
18 time we were told that there was equipment on fire down
19 at the job site.

20 Q So if we now take it from the time your sister first
21 tells you about the prowlers, the trip to Quik Trip and
22 the trip back to the car, is it your testimony that the
23 time period for that is about four or five minutes?

24 A: That's correct.

25 Q When you returned to the site of your sister's pickup,

1 the fire fighters responded, is that correct?

2 A Yes.

3 ~ Q And do you recall telling the fire fighters that they
4 had better call the arson department, that there has
5 been an arson there?

6 A Something along that line.

7 Q And at that point, based on your training, you would
8 have considered that a crime scene, an arson scene, is
9 that correct?

10 A: Yes.

11 Q I am going to move ahead one step to when you are up on
12 the haul road, the fire fighters are up on the haul
13 road and they are engaging the fire, that is the time
14 period. When you were there were you able to see any
15 flames or fire coming from anything other than the
16 trailer?

17 A: Yes, they appeared to be fighting some kind of a
18 smaller fire just to the south of the trailer that was
19 on fire.

20 Q And because of the position of the trailer you weren't
21 able to see what the smaller fire was, is that correct?

22 A: I am not sure why I am not able to tell what that
23 smaller fire is. I just don't know what it was. They
24 appeared to be fighting some kind of smaller fire just
25 south of the trailer but not too much distance. I am

1 not sure why I don't know what that object was. I
2 could only guess.

3 Q You knew from your tour that night that there was a
4 ~ pickup truck parked behind the trailer in the direction
5 we are talking fairly close to the trailer, is that
6 correct?

7 A That's correct.

8 Q The fire you are describing that you saw being engaged
9 by the fire fighters was 20 to 30 yards behind the
10 trailer, isn't that correct?

11 A: Yes, just south of the trailer. And the trailer seemed
12 to be raised up, it seemed to be up in the air. It
13 seemed to be at an angle like that instead of being
14 flat. It was like that (indicating).

15 Q And can you use the dimensions of the courtroom to give
16 us an idea how far a distance you are talking about
17 when you say 20 to 30 yards?

18 A: From here to the end of that wall is about 20 yards.

19 Q One final question.

20 THE COURT: Is that a promise?

21 MR. PETERS: Yes, Judge, I have learned.

22 Q At the time you were employed in Dallas, you were
23 employed as a jailer, isn't that correct?

24 A: Yes, that was our assignment. I also performed other
25 functions. I was assigned to detention.

MR. PETERS: I have no further questions.

CROSS EXAMINATION

BY MR. O'CONNOR:

Q Mr. Riggs, since November 29, 1988 you have testified in some lawsuit, is that correct?

A Yes.

Q And would you agree with me just as a starting point, your memory would have been better back in 1988 and 1999 than it is today?

MR. BECKER: Objection. Argumentative.

THE COURT: Yes, it is. For one thing, you said 1999.

MR. O'CONNOR: Did I say that? That is bad.

THE COURT: I am going to sustain the objection.

Q In 1988 were things fresh in your mind as to what happened out there?

A: Yes, but there are also things that I would have liked to have remembered or noticed that I did not. And again I just do that through memory. Specifically, I can't think of any right here but I remember things I would have liked to help such as what were the positions of the firemen at that time, the fire details. For whatever reason, I just couldn't remember. Either I didn't notice or I was distracted

1 or for whatever reason. My memory then would have been
2 better than what it is now regarding that day for
3 certain.

4 Q You wanted to help the police in their investigation,
5 didn't you?

6 A: Yes. If I can mention, my memory may have been better.

7 Q The question, you wanted to help the police and you
8 said yes.

9 A: I wanted to help the police, yes.

10 Q And you wanted to tell them everything you knew that
11 happened out there that night when they talked to you
12 the next day.

13 MR. BECKER: Objection. Form of the
14 question.

15 THE COURT: Yes. That is the Peters form of
16 the question now, Mr. O'Connor. It is a statement.

17 MR. O'CONNOR: I guess I didn't learn when I
18 was sitting over there, Judge. I will try it again.

19 Q Did you tell the police the truth?

20 A: Yes.

21 Q And give them information about what happened out there
22 that night?

23 A: Yes.

24 Q Did you tell them you were asleep?

25 A No.

689

1 Q Did Debbie tell them you were asleep in your presence?

2 A: No.

3 Q Were you mad at Debbie for talking to the police?

4 A: No. Was I mad at Debbie for talking to the police, no.

5 Q This security company of yours back in 1988, who was
6 the president?

7 A: I was.

8 Q And who were the officers?

9 A: Jennie Riggs.

10 Q Who is that?

11 A: My wife. She is the vice president.

12 Q Are there any shareholders?

13 A: Just myself.

14 Q And would you agree with me back in 1988, the day of
15 that explosion, you only had approximately eight
16 employees working for you, would you agree with that?

17 A: It could be. That would surprise me but if you know
18 that to be accurate, I wouldn't argue with you.

19 Q Do you remember testifying under oath in a deposition
20 that was given in the civil case in which you were
21 asked that very question, "Question: How many
22 employees did you have on or about November 28, 1988?"

23 MR. BECKER: Could I have a date?

24 A: That sounds like the answer I would give to the persons
25 working down at that job site.

690

1 Q Would your answer have been, "I would only be guessing
2 but I would guess around six or seven.~'

3 A Yes.

4 Q And the six or seven would be you, Debbie, your wife,
5 Stanton, Costanza. Who would be the other two or
6 three?

7 A: There was a Richardson that had worked down there also
8 but he had resigned recently. I think he only worked
9 down there for a couple of weeks or maybe a week or so.

10 Q This is basically a mom and pop security guard company
11 at this time.

12 A: Yes, it was.

13 Q And the reason you were using these aliases and these
14 different names was to make Brown Brothers and Mountain
15 Plains believe you had more people you could provide
16 for so they would hire you and your company.

17 A: We were already hired. I didn't have to convince them
18 of it.

19 Q Did you use an alias out there?

20 A: Yes, I went by Officer Mason as I still do.

21 Q How many times would you say you have used an alias?

22 A: Well, I only use Officer Mason in security type work
23 but investigative work I use a number of aliases.

24 Q So you have used a number.

25 A: A number.

1 Q And this is a sight you have told us that you were
2 there for what purpose again? I want to use your words
3 so I don't say them wrong. The reason you were at this
4 site was to have some presence or something you said
5 earlier. What did you say?

6 A You are wanting to provide a presence which will deter
7 illegal or undesirable activities.

8 Q Which means you would wear a uniform.

9 A: Yes.

10 Q Wearing a badge.

11 A: Yes.

12 Q Wearing a name tag.

13 A: Yes.

14 Q What was your name tag?

15 A: I don't have a name tag.

16 Q But the purpose of the uniform is for people to see a
17 person in uniform like a police officer so it would
18 deter people.

19 A: We have a jacket we wear and that covers up any name
20 tag you would have on. It has a badge on it also plus
21 patches but in the wintertime you are not going to see
22 a shirt anyhow.

23 Q The reason you were using these aliases was to try to
24 convince other people that you weren't this mom and pop
25 store; that you had a bunch of people and you had all

1

1 these different names working for you, isn't that a
2 true statement?

3 A That is probably true.

4 Q Now, did you ever file for money from Mountain Plains
5 ~ or from Brown Brothers using those names? In other
6 ~ words, did you send them billings with Fiser and Mason
7 and those other names, send them a bill saying these
8 are people who have worked on your site, to pay us?

9 A: No.

10 Q What did they ask you about when they saw these names
11 on these reports?

12 A: They never asked.

13 Q Did you tell Mountain Plains you were using false names
14 out there?

15 A: I don't remember.

16 Q The very company that was hiring you you were not being
17 honest with them, were you?

18 A: I certainly was.

19 MR. BECKER: Objection.

20 THE COURT: It certainly is. I sustain that.

21 Q Did you tell them you were using an alias?

22 MR. BECKER: Objection. Repetitious.

23 THE COURT: It has been asked and answered.

24 THE WITNESS: I would like to be able to
25 answer his honesty question.

1 THE COURT: Just answer the questions that I
2 let him ask. That will take enough of our time, Mr.
3 Riggs.

4 Q While we are on the honesty question, Mr. Riggs, did
5 your sister Debbie Riggs, was she licensed by the Board
6 of Police Commissioners?

7 A: Yes.

8 Q At the time of the explosion.

9 A: Yes.

10 Q She was? A Yes.

11 Q Did she know that?

12 A: Yes, she had already been through the class. She just
13 hadn't been through the firearms training. We were
14 going to wait until after the delivery of the baby.

15 Q Now how many of these construction sites had you worked
16 security on, your company?

17 MR. BECKER: At what point in time?

18 Q Any time in your security career up until March the
19 31st of 1989, how many construction sites had your
20 company been hired to protect?

21 A: I can only think of one but I believe there were two.

22 Q Now, again, so you understand my question, from the
23 time your company started until March the 30th of 1990

24 —

25 THE COURT: 1990?

1 MR. O'CONNOR: Yes.

2 THE COURT: You said '89 before.

3 MR. O'CONNOR: That is why I am clarifying.

4 I am taking him back so the question is fair.

5 A: I don't know we have worked any construction site since

6 Brown Brothers. In fact, we have not worked any

7 construction sites since Brown Brothers other than

8 Brown Brothers.

9 Q Let me ask the question again so I make sure I have

10 asked it fairly. Did you ever guard any construction

11 site before this Brown Brothers job that you took on?

12 A: I misunderstood your first question. Yes.

13 Q You had.

14 A: Yes.

15 Q What was that?

16 A: Well, it was a couple of different jobs. One was

17 called Villsmeyer Construction and then some

18 construction company that was selling off a bunch of

19 equipment down by Kemper arena, Kemper auditorium that

20 had a lot of construction equipment parked down on an

21 empty lot down by the old cattle rails. I believe two

22 or three construction sites.

23 Q Were you finished?

24 A: I believe so. I believe two or three.

25 Q Now, when the person came in to the Quik Trip and then

1 someone conveyed to you what they had seen, what did
2 they say again to you? What were you told there?

3 A: He just said, hey, and I stopped and he said there is
4 equipment on fire down at the job site. And I said
5 what. And he said there is equipment on fire down at
6 the job site. And then I said, oh. And then I used a
7 curse word and I drove away.

8 Q So you had no idea the truck was on fire, your truck or
9 Debbie's truck, I'm sorry.

10 A: I didn't know what was on fire. The Quik Trip employee
11 said there was equipment on fire down at the job site.
12 I believe those were his words.

13 Q And again a minute ago you said when you gave your
14 videotape, this is where the police department put you
15 on television basically and they took your statement.

16 A: Yes.

17 Q Do you remember that?

18 A: Vaguely.

19 Q Let me show you this and I will let you read it to
20 yourself. Then I am going to ask you a question about
21 this paragraph here (indicating).

22 THE COURT: Just ask him.

23 Q Do you recognize that?

24 A: A certain answer to a certain question.

25 MR. BECKER: Page, please.

MR. O'CONNOR: Page 21. I am going to read the whole thing so it is all in context, Judge. Why don't I get up here and do it with you so I don't misstate anything.

MR. BECKER: I wouldn't mind -- it is quite lengthy -- if counsel just referred to whatever he thinks is consistent there.

Q Okay. You are talking to the officers here. The question is, "Okay, what were your actions then?" You said, "As we were pulling off, the employee at Quik Trip came out and said that our truck was, that a truck was on fire on 71 highway; that he thought it was at the construction site, on the construction site." Is that what you told them the next morning?

A: Yes. And he may have said that, too. He may have said a truck is on fire down at the job site, but I remember him saying equipment is on fire down at the job site. But I am sure the Quik Trip employee could clarify that for you.

Q These are your words, not the Quik Trip employee, that is what you are telling the detective.

THE COURT: You are not testifying, Mr. O'Connor. Just ask him questions.

MR. O'CONNOR: Judge, he is answering without me putting a question to him.

1 THE COURT: Well, put a question to him.

2 Q Would you agree with me the words just read were your
3 words you gave to the police department the next day
4 when they were investigating this case?

5 A: Yes. And could you read it to me again, please?

6 Q Sure can.

7 A: Is the discrepancy I used the word "equipment" and you
8 are using the word "truck"?

9 MR. PETERS: I object to the answer as not
10 being responsive. There is no question pending.

11 THE WITNESS: I would like to be able to
12 answer his question clearly.

13 MR. PETERS: Objection.

14 THE COURT: Mr. Peters, that isn't necessary.
15 Go ahead, Mr. O'Connor.

16 Q All I am asking you, the whole question, is that what
17 you said? That is all I am asking.

18 THE COURT: What is that again?

19 Q I will be happy to read it again. I will read the
20 whole sentence. Maybe it will give it better context.
21 The police were asking what your actions were. "Well,
22 she went up the stairs and just as we were pulling off,
23 the employee at Quik Trip came out" -

24 A: You are not referring to my sister.

25 Q Let me finish and then you can say whatever you want.

1 A: Okay.

2 Q "Well, she went up the stairs and just as we were, just
3 as we were pulling off, the employee at Quik Trip came
4 out and said that our truck was, that a truck was on
5 fire down on 71 highway that he thought was on the
6 construction site." That is all I am asking you.

7 A: Yes.

8 Q That is the only question before you.

9 A: Yes.

10 Q Who did you mean by "she", when you said, "she went up
11 the stairs."

12 A: I was referring to the lady that pulled up in the I-Roc
13 and got out of her car and went into the Quik Trip
14 store.

15 THE COURT: Do you understand she had told a
16 man inside there was a fire on the site?

17 THE WITNESS: Only by deduction. There is no
18 other way he could have found out because there was no
19 one else in the store at the time.

20 Q Did you ever tell the police, you tell me if this
21 happened, did the police come to you and try to give
22 you an account, without saying what they were, were the
23 police coming to you and saying your sister was giving
24 certain accounts of what happened that night.

25 A: Yes.

1 Q Were you saying to them words to the effect she's
2 lying.

3 A: I didn't agree. They were telling me that she said we
4 left the job, that I had left the job site, that I had
5 left her sitting in the car by herself and that I had
6 left the job site, went somewhere, to the movie theater
7 or whatever. They were just fishing. They also said
8 that she said I was asleep in the car, I fell asleep in
9 the car and I said I did not. Well, as it turns out,
10 she didn't say that at all. They were simply saying
11 those things. They told her I said I was asleep in the
12 car. They told her I said I had left the job site,
13 trying to get her, they were just simply fishing.

14 Q So the police were the people that were telling the
15 untruths.

16 A: Yes, those are untruths which you know is used as a
17 technique. They are allowed to do that as long as they
18 don't misstate judicial issues.

19 Q Now, this exhibit you have had a chance to look at,
20 have you not, which is Defendants' 1. I just want to
21 make one point with this, if I could. Would you agree
22 with me that once a fire started, that emergency
23 vehicles started coming down toward this scene, red
24 lights, sirens, noise, all that kind of stuff?

25 A: Yes, there was a period of time.

700

1 Q But at some point -

2 A: After the fire was started?

3 Q Yes.

4 ~ A Yes, after the fires were started.

5 Q And there is only like four routes to get into there
6 for the police, is there not, 87th Street, Blue River,
7 71st east, north and south?

8 A: Of course, there are variations of all of those where
9 you could multiply and maybe have a total of eight to
10 ten different ways depending on which direction.

11 Q This fire was going to bring people from all directions
12 coming to this site, right, would you agree with that?

13 A: Yes, the fire department was on its way. I had no
14 idea. I didn't have any idea where it was coming from.
15 I was just waiting on them to arrive.

16 Q Did you see anybody up there on a bicycle that night?

17 A: Not that night, no.

18 Q Now, had concerns been expressed to by Brown Brothers
19 of sabotage of their equipment?

20 A: Yes.

21 Q And had vandalism been done to their equipment at this
22 site before the explosion?

23 A: Well, we weren't for sure if it was or not. I just
24 sort of suspected.

25 Q But weren't specific things happening to their

1 equipment?

2 A: Well, the mechanics had a different version of what
3 might have happened.

4 Q Had oil been drained from equipment, were you told that
5 by them?

6 A: They said it could have been something else. It could
7 have been, for whatever reason, the equipment drained,
8 the oil was drained out or it leaked or something.

9 Yes, there was suspicion -- there was suspicion.

10 Q And you worked for Brown Brothers and then you started
11 working for Mountain Plains at some point.

12 A: It was all Brown Brothers.

13 Q Was most of the vandalism that was being reported being
14 committed against property of Brown Brothers, would you
15 agree with that?

16 A: While we were there there wasn't any vandalism or
17 damage in a year's time other than the explosion and
18 the attempted break-in to that trailer. There were no
19 other break-ins or vandalism of any kind for a year.

20 Q And so if Mr. Brown brought you in to talk about those
21 kinds of things, he didn't say he was concerned about
22 sabotage, is that what you are telling us?

23 A: He was concerned, yes.

24 Q Why was he concerned if no sabotage ever happened?

25 A: Well, I think he suspected the employee of doing these

1 things more than he suspected the equipment had been
2 ~ done to and he was just putting the two together, if
3 that makes sense. This fellow was pretty disgruntled
4 ~ and Mr. Brown wouldn't be surprised if this guy
5 wouldn't do something to him or to his equipment. Now,
6 when he started to have problems he got suspicious it
7 could be two plus two equals four.

8 Q Now Donna Costanza, did she work for you?

9 A: Yes.

10 Q Do you know where she is today?

11 A: No.

12 Q And so I am clear, again when you left, down here when
13 your sister saw the two men and you drove down to this
14 area and you shined the spotlight, where two men had
15 been seen -

16 A: Yes.

17 Q Right?

18 A: Yes.

19 Q You knew two men were down here somewhere.

20 A: Yes.

21 Q You guys left and went to Quik Trip and she got some
22 donuts or something, as I understand it.

23 A: Could I answer it other than "yes, sir"?

24 Q Did she get donuts?

25 A: While she was at Quik Trip she purchased some breakfast

1 rolls, I believe.

2 Q Now, did you ever see a bunch of copper laying around
3 up on this site, big loads, like copper on this
4 construction site? Were you ever asked to guard any
5 copper?

6 A No.

7 Q Did the police officers that investigated this and
8 talked with you tell you they had gone back out to this
9 site to recreate what you and your sister, what your
10 sister claimed to have seen?

11 MR. BECKER: Objection. The question says
12 here's what the police tell you.

13 THE COURT: He just asked the fact, whether
14 they did tell him. There may be something beyond that
15 we don't want to explore, but he is not asking what
16 they told him.

17 Ask what they said they discovered. You
18 can answer that. Did they tell you that or not?

19 A: Will you repeat the question, please?

20 Q Did they tell you they had gone back out to this site
21 at night and looked down to see if they could see
22 whether two men or you could see two men from this
23 position coming into this area?

24 A: Yes, they performed a dummy run down there.

25 THE COURT: They told you they did.

704

1 THE WITNESS: Yes.

2 Q Isn't it true that neither one of you saw any men down
3 here, that you left the site to go to Quik Trip to get
4 donuts and you were explaining that to your boss later
5 why you were not at the scene when the explosion
6 occurred.

7 MR. BECKER: Objection.

8 THE COURT: It is argumentative. I will
9 sustain that.

10 Q Back at that time was Donna Costanza an employee of
11 yours, at the time of the explosion?

12 THE WITNESS: Judge, do I have a choice as
13 to whether or not I ask a question, even if it is
14 argument? Him saying it implies something and it is
15 not true. I could easily make a statement that would
16 show that's nonsense.

17 THE COURT: Just answer whether Donna
18 Costanza was an employee of yours at the time of this
19 explosion.

20 A: Yes, she was.

21 Q She was one of the people that was replaced that night
22 before the explosion happened the next morning.

23 A: Yes.

24 Q Now a minute ago I asked you and you told me and please
25 correct me if I mistook this, I believe I asked you if

1 you had ever worked on any construction sites or done
2 security or ever guarded a site before this one before
3 1990, March 13 of 1990 and you told me you had, is that
4 right?

5 A: That's correct.

6 Q You remember in a deposition you gave under oath on
7 March the 13th where you were asked this question,
8 "Have you ever guarded a construction site before this
9 one?" "Answer: Good point." Then you say,
10 "Construction site?" The question says, "Yes." And
11 your answer, "No." Did you tell that under oath in the
12 case in which the fire fighters' families were suing
13 you in this case?

14 A: Can I take a look at it?

15 Q Sure.

16 A: Well, construction site. I said "construction site"?
17 "Yes." and I said, "No." And I think what I may have
18 been thinking is that Villsmeyer(phonetics) was not a
19 construction site. They were simply selling
20 construction equipment. I think that is what I might
21 have been referring to. I would not have lied, there
22 wouldn't be any reason for me to do that and I wouldn't
23 have lied to that question. Either it is incorrect or
24 my reasoning was Villsmeyer was not a construction
25 company.

1 Q A lawsuit was filed against Ameriguard by the families
2 of the fire fighters, is that true?

3 A That's correct.

4 MR. BECKER: Objection. Relevance.
5 (Conference at the Bench out of the hearing of the
6 jury.)

7 THE COURT: Let's not go into that.

8 MR. O'CONNOR: That is my only question. It
9 goes to his bias.

10 THE COURT: It's already been testified to.
11 Objection sustained.

12 MR. O'CONNOR: I never said there was a
13 lawsuit filed against you.

14 THE COURT: There isn't any question there
15 was a lawsuit against him and his sister and his
16 company.

17 MR. O'CONNOR: You don't think there is.

18 THE COURT: No.

19 MR. O'CONNOR: I won't ask it. I hate ending
20 on that note, Judge.

21 (Proceedings in the hearing of the jury.)

22 MR. O'CONNOR: I have no further questions.

23 Thank you, sir.

24 CROSS EXAMINATION

25 BY MR. OSGOOD:

1 Q Mr. Riggs, I want to ask you some questions about
2 Government's Exhibit 26 which is on the screen now.

3 You recognize that scene of course, is that correct?

4 A: Yes.

5 Q All right, sir. You previously testified, did you not,
6 that you sister's truck and your car were parked in
7 this vicinity right here where I have the pencil, is
8 that correct?

9 A: yes.

10 Q -- on the evening in question. And you could see
11 across the highway generally and see the entrance down
12 here and the entrance up here from that vantage point,
13 is that correct?

14 A: Yes.

15 Q Would you describe for the jury please the terrain
16 between where your truck was parked and the trailers up
17 here, was it flat, for ex ample?

18 A: Not at all. It was very rocky and hilly and the
19 terrain changed. There was what we call a little
20 plateau up there close to where the trailers were.

21 Q All right, sir. And were there ditches you could step
22 in or fall in?

23 A: I am not sure if ditches describe it very well but it
24 was very hilly and there were cliffs and fall-offs and
25 things like that.

1 Q Had they pulled trees?

2 A They had pulled trees.

3 Q Had they pulled trees, for example, with a caterpillar?

4 A: They must have but if you are asking about a hole left
5 in the ground from the root system, I don't remember
6 seeing anything like that.

7 Q Was it difficult to drive a vehicle, for example,
8 straight across as the crow flies up into the area?

9 A: Impossible.

10 Q Impossible. And that is why you would take these roads
11 down here or this road up here, is that correct?

12 A: Yes, there were only two entrances onto the property.
13 And the reason we would drive those roads as a matter
14 of patrol is because if they were to enter the property
15 by some means other than the two entrances, then they
16 would have to park, unless they walked all the way from
17 where it was they were coming from, they would have to
18 park somewhere to enter the property on foot, to drive
19 those roads looking for parked vehicles.

20 Q And were there obstacles then in this area here if one
21 were walking they would encounter such as rocks, logs,
22 hills?

23 A: Just a large hill, a cliff. There was a cliff, a small
24 cliff. I think it was only like a ten-foot cliff. And
25 then there was a steep embankment with rocks and dirt

1 that was very steep.

2 Q You knew the area well.

3 A: At the time of the explosion, yes.

4 Q So you did not walk a foot patrol, for example, and
5 have any of your officers walk a foot patrol from down
6 here at the truck up through the area up to the
7 trailers?

8 A: Other than in conditions when we couldn't get a car up
9 there sometimes, the officers -- I know I have before -
10 - just put on the good old rubber boots and hiked right
11 on up.

12 Q From where? From down here where my pen is?

13 A: Yes.

14 Q Where you said the trucks -

15 A: The easiest road to get up would be the haul road.

16 Q When you were working would you take the haul road
17 because you had a cliff there you said and the other
18 obstacles.

19 A: Not to say I couldn't do it. I could do it but it
20 wouldn't be prudent. You wouldn't choose to do that.

21 Q Potentially dangerous.

22 A: There are some areas where it would be very dangerous.
23 And that particular area, yes, I would guess a person
24 could walk up it without being injured but why would
25 you want to do it if you had another choice.

1 ~ Q That was one of your reasons and rationale for
 2 basically being concerned about the two vantage points,
 3 the two roads where the obvious entry into the area
 4 would be by vehicle.

5 A Yes, since it was at night we could rely pretty much on
 6 light as a form of suspicion. Someone would have to
 6 have light. You couldn't walk around out there without
 8 light. It would be dangerous.

9 Q If anybody had a flashlight or lantern from where you
 10 were at, you could see that.

11 A: Oh, probably.

12 Q Now from what you have just said I presume there were
 13 no lighted poles like you had down in this area down
 14 here.

15 A: It was pitch dark.

16 Q Pitch dark. A: Pitch dark.

17 Q Now, you stated earlier in the evening you got there
 18 about ten, is that correct, sir?

19 A: I think it was around midnight.

20 Q You came in late after Costanza -

21 A: Yes, they had been working and one of them was going
 22 off shift.

23 Q Did either of them write an incident report about
 24 anything unusual occurring?

25 A: No.

1 Q When you got there everything was quiet.

2 A: No, the reason I was down there was because it wasn't
3 quiet.

4 Q I mean quiet in terms of the job site. Obviously these
5 two people were in a tiff of some kind, is that a fair
6 statement?

7 A: They're all similar to me. When I have to go down like
8 that, it was an incident, I didn't like it. One of
9 them I sent home and the other one was getting off the
10 shift and replaced by Debbie Riggs.

11 Q This was an employee incident as opposed to an external
12 incident.

13 A: That's correct.

14 Q You go down about midnight and you play referee between
15 the two of them a little bit, calm them down.

16 A: It didn't take long to figure out what was going on.
17 One had used harsh enough words I felt that wasn't
18 correct regardless of what had taken place.

19 Q Then you call your sister because you are going to let
20 them both go home.

21 A: No, my sister was already down there, I believe.

22 Q What time did she get there?

23 A: She got down there sometime shortly before I did.

24 Q Where did this incident with the Volkswagen take place?
25 Was it down here in this area by where your truck

1 ultimately was burned or was it up on the hill?

2 A: There is no reason to doubt this was a Volkswagen since
3 that is the term you are using but I don't remember the
4 type of vehicle. Was it a Volkswagen?

5 Q I think so. I don't know either. Somebody can tell
6 us. The car that was having the problems.

7 A: Mechanical problems.

8 THE COURT: It wasn't his truck. You said
9 "your truck". It wasn't his truck.

10 Q Your sister's truck.

11 A: Yes.

12 Q Was that where this car that was having mechanical
13 problems was generally parked down here in this
14 equipment area?

15 A: I don't know where it all started from. That is where
16 it ended up. And I am not sure who was where because
17 they were both down there when I got down there. They
18 were both over there by her vehicle.

19 Q So after you quieted this down and they went on their
20 way, there was just you and your sister there.

21 A: That's correct.

22 Q She had her truck.

23 A: Yes.

24 Q You had your Mazda, that is what it was.

25 A Maxima.

1 Q That is a Honda, is that right?

2 A: No.

3 Q I don't know my cars. Are they Toyotas?

4 A: It's a Nissan Maxima.

5 Q A little wagon, is that correct, from the picture I saw

6 here.

7 A: Yes.

8 Q You have got your little wagon -- by the way, it was

9 not a four-wheel vehicle.

10 A: It was not.

11 Q What about her truck, was it a four-wheel drive

12 vehicle?

13 A: No, sir.

14 Q A little mini truck.

15 A: Yes, it could get around better than what my car could.

16 Q Things had quieted down. It's about midnight. When

17 did you make the first round?

18 A: Soon after they left, I remember getting in the truck

19 with my sister and I think I drove and she was riding

20 in the passenger seat and we made a tour of the entire

21 property.

22 Q Now your property line ran all the way up to the

23 bridge, is that correct, sir?

24 A: Up to slue River, yes.

25 Q And that is the river running along there where my

1 pencil is running, is that correct?

2 A: Yes, sir, that looks correct.

3 Q Now, is it a fair statement that until you get down to
4 87th Street, all of this area in here is cleared with
5 the exception of this clump of trees right here?

6 A: Down around the roadway there are no trees.

7 Q So if you on the southbound lane of 71 you can see cars
8 on the northbound lane. I have got my pencil in the
9 wrong spot. You are on the northbound lane you could
10 see cars on the southbound lane and vice versa, is that
11 correct?

12 A: In the median there were no obstructions other than
13 some piles of construction equipment but that wouldn't
14 obstruct your vision of a car.

15 Q Going back to your first round, sir, you get into the
16 little Toyota pickup, you and your sister, is that
17 correct?

18 A: Yes.

19 Q Where is the dog?

20 A: I don't remember.

21 Q You take off. What direction do you go? You pull out
22 obviously of the parking lot here. You go north,
23 south, across, what do you do?

24 A: Mr. Osgood, I really don't remember what our tour was.
25 Most normally we would tour the perimeter of the

property first looking for parked vehicles, then go to the tall property and check those areas that have locks on them just to make sure whatever it was they wanted locked was locked.

Q The perimeter, would that be 87th Street? Would you consider that the perimeter?

A: It would be for the east side of the property, only for the east side.

Q That is what I am asking about. That would be the perimeter on the east side of the property.

A: Yes.

Q The perimeter on the north end would be Little Blue.

A: Yes, Little Blue Road.

Q If you were to go off the picture there, is there a connecting road back here on this to the east?

A: You know, Santa Fe runs back there but down that road is a Little Blue River public golf course that sits back down Blue River Road.

Q When you toured the perimeter you would have to make an election to go down this road, turn around and go up and go down this road (indicating).

A: That's correct.

Q And then sometimes you would come up, I take it based on your testimony, this entrance road here on the south of the photograph which kind of curves around and comes

1 up in here where we see what looks like a yellow piece
2 of heavy equipment my pencil is on.

3 A: Yes, sir, that was a safe area right there.

4 Q Would you get out and walk around, look around?

5 A: Yes.

6 Q Turn around and go back down this again.

7 A: Yes, because you couldn't drive back to the bunkers
8 which set back in there. You had to walk back in
9 there.

10 Q They were in this area here.

11 A: In that area there, yes.

12 Q So that would be a driving tour of the area accompanied
13 by walking security.

14 A: Yes, most often you could drive, especially in a truck,
15 you could drive back to those trailers from that route
16 that you just described with your pen. You couldn't
17 from the other haul road but you could from that road
18 you just pointed out with your pen.

19 Q Then, of course, entrance into the area for a driving
20 security check would be down the haul road which I am
21 running my pen now and up into maybe this area or on
22 down this way and stop and look around, is that
23 correct?

24 A: Well, you couldn't get very far. You would end up
25 having to stop and walk. Then it goes way up on the

1 hill where they had construction equipment parked on
2 the hill.

3 Q Would that be part of your normal tour?

4 A: Yes.

5 Q I realize it was eight years ago, but you said
6 sometimes you think back and think of things you wanted
7 to think of back then and now you can think of, am I
8 paraphrasing that right? In other words, you have had
9 a lot of time to reflect on this.

10 A: Yes.

11 Q Are you satisfied in your mind today in 1997 that on
12 your first tour you probably did a thorough security
13 check on that side with Debbie?

14 A: Yes.

15 Q Which would have been touching all the bases up in
16 there.

17 A: That's correct.

18 Q And was it not your procedure, sir, to write an
19 incident report and confront any vehicles that you saw
20 in that area at any time after dark?

21 A: No.

22 Q Let me rephrase it then. If there was -

23 A: In what area?

24 Q In the secured area, Brown Brothers area, if you saw a
25 truck -

1 A If someone was up there after hours, yes, we would
2 confront them.

3 Q That was your job.

4 A That's correct.

5 Q Not necessarily arrest them but certainly to say what
6 are you doing.

A: Absolutely, sir.

8 Q They shouldn't have any business unless they were up
9 there cutting wood.

10 A: If they did they would explain it.

11 Q Did you not see any such vehicles on the first tour
12 because there are no incident reports?

13 A: November 28, 29, that's correct.

14 Q So the area was secure as of the first tour.

15 A: That's correct.

16 Q Now, what about if there had been a bunch of teenagers
17 drinking beer and partying and whatnot, have you ever
18 written an incident report about that and run them off
19 the area?

20 A: Yes.

21 Q That did not occur as of the first tour.

22 A: We had that happen at other times but not that night.

23 Q Yes, sir, you did, didn't you?

24 A: There were other times when teenagers would go up there
25 and party and drink beer. We weren't real sure what

1 they were doing. I had different reports.

2 Q There were no fences around the area.

3 A: No, there were no fences.

4 Q And it's somewhat, at least for kids, an attractive
5 nuisance; kids are intrigued by heavy equipment and
6 machinery.

7 A: Not normally late at night.

8 Q I understand that, but teenagers are intrigued where
9 they can go party and have some fun.

10 A: In confronting some persons that were on the property
11 they always had an explanation why they were there. I
12 don't believe I ever approved. My instruction was
13 nobody was to be on the property after hours.

14 Q But it was secure that night at least on the first
15 tour.

16 A: There was no apparent damage or vandalism or theft and
17 the locks that were supposed to be locked on or the
18 locks they used were all locked.

19 Q That tour obviously occurred between the hours of
20 midnight and 3:40 A.M. when the fire department alarm
21 was sent in.

22 A: There were a couple of tours.

23 Q The first tour was after midnight but before 3:40 A.M.

24 A: That's correct.

25 Q What would you put it to, closer to midnight or closer

1 to 3:40 A.M.?

2 A: Soon after I started my duty there at midnight I would
3 have made a patrol in my sister's truck with her in the
4 truck. I believe that's the way it was, rather than by
5 myself, because I think I made two.

6 Q She was pregnant.

7 A: Yes.

8 Q And that was your explanation for perhaps deviating a
9 little bit from procedure that night because you were
10 concerned about your sister and she was five months
11 pregnant.

12 A: I don't remember.

13 THE COURT: You are making a statement again.

14 Q Is that correct?

15 A: I watch out for my sister in any condition.

16 Q You did not assume a second position on your own on the
17 west side that evening, isn't that a fair statement?

18 A: Will you repeat that, please?

19 Q Did you take up a separate lone position yourself on
20 the west side that evening?

21 THE COURT: At any time?

22 Q At any time.

23 A: No, sir.

24 MR. OSGOOD: Thank you, Judge.

25 A: On the west side?

1 Q Yes, sir. A: No, sir.

2 Q And then after the first patrol was completed where did
3 you and your sister go in her pickup?

4 A: Back to the position where the truck would have been
5 parked and later set on fire, right there.

6 Q From that vantage point you could see the entrance and
7 the exit, is that correct? I'm sorry, the two
8 entrances.

9 A: Well, the entrances, the one in the middle there, the
10 haul road, that entrance and then the other entrance is
11 just, your pen is just up a little bit up 87th, right
12 there. That is an entrance. You can see both of
13 those.

14 Q You could see this entrance.

15 A: That is not an entrance.

16 Q All right. You could see the Little Blue Road.

17 A: I would think so. Yes, you should be able to see it.

18 Q From your vantage point if a vehicle hypothetically
19 were to come down the road with its lights on and take
20 a left, you would be on them.

21 A: We would be on them right quick.

22 Q That is the kind of thing you were looking for.

23 A: We were looking for.

24 Q As you were every night.

25 A: Yes.

Q You caught several vehicles on prior occasions.

2 A: Yes, we had.

3 Q You saw no vehicles do any such maneuvers prior to the
4 first patrol, did you?

5 A: Prior to the first patrol, no. I made our first patrol
6 soon after I arrived at the job site.

7 Q You got back and there was some dispute whether you
8 might have closed your eyes, Donna parked the truck
9 here.

10 A: It was my sister's pickup truck and when we returned
11 from that first tour of duty I believe it was soon
12 after I came onto the shift and Donna Costanza left.

13 Q I mean Debbie. I confused you.

14 A: When I parked her truck I got out of it and got into my
15 car and she did some things. The truck wouldn't have
16 been left where I parked it.

17 Q What was the procedure -- I realize it was eight years
18 ago -- what was the standard procedure for parking
19 those vehicles vis-a-vis your visibility of the area?

20 A: There was no policy because the terrain changed on a
21 daily basis. You had to use your own discretion what
22 vantage point would be most advantageous for
23 observation purposes.

24 Q My point, you wouldn't pull in looking west trying to
25 see what is going on in the rear-view mirror.

1 THE COURT: Would you?

2 Q Would you?

3 A: Now it just so happens I happened to be in that very
4 position when I saw my very first vehicle on the hill,
5 I saw out of my rear-view mirror.

6 Q Based on all your experience -

7 A: We normally face the cars around to where we can see
8 the greatest area. And the east side officer
9 oftentimes helped out the west side officer because
10 when you were on the east side in the dark up over you
11 couldn't see anybody driving around down below; whereas
12 the other officer could and they could radio and say,
13 hey, you have got somebody coming up the haul road.

14 Q That wasn't the situation that night because you were
15 both down there.

16 A: At what time?

17 Q You and Debbie were together. There was never another
18 officer up there.

19 A: Yes, I took the position over on the east side.

20 A: You did.

21 A: A stationary position and made foot patrols.

22 Q On the east side.

23 A: On the east side, yes.

24 Q With the heavy equipment on the west side.

25 A: I maintained a stationary position for some time over

1 on the east side; yes, sir.

2 Q I'm sorry. I thought you did not. How did you get
3 over?

4 A: I drove up the haul road as far as I could get and
5 parked my car right there. That is where I did the
6 majority of my paperwork.

7 Q Mr. Becker has a good idea. Let's refer to it as where
8 the explosive trailers were and where the heavy
9 equipment was and then we won't get confused on east
10 and west.

11 A: If you don't mind, call them explosive trailers.

12 Q Whatever you want to call them, you were in the area
13 where the trailer that burned was located at some point
14 in the evening.

15 A: Yes, soon after I came onto the site I believe I got in
16 my sister's truck.

17 Q We covered that. Let's move on.

18 A: We did a patrol of the entire area which included the
19 trailers and the bunkers and the equipment up on top of
20 the hill and all that sort of stuff. Later, after our
21 patrol, I drove up onto the east side of the property.

22 Q That is what I want to talk about.

23 A: And parked on the haul road.

24 Q You go across up the haul road up into this area
25 somewhere.

1 A: I didn't go that far.

2 Q Maybe this far (indicating).

3 A: Somewhere in there, yes.

4 Q You parked your vehicle and do what, a foot patrol, is
5 that correct?

6 A: Well, I know I got out of my car on a couple occasions
7 because I was getting sleepy. I remember some pushups
8 but I was working on paperwork.

9 Q You were in the station wagon.

10 A: Yes.

11 Q It is about that time you get a call about the
12 sandwich.

13 A: Well, if you want to know what time it was it would
14 probably have been about 2:00, 2:30, 2:45, somewhere in
15 that range.

16 Q And so then you get back. Now has there been any
17 incident between the first patrol and the time that you
18 have the conversation with Debbie about the sandwich?

19 A: Nothing.

20 Q No vehicles, no bicycles, no trucks, no people on foot.

21 A: Not on the property. Of course, you have got a public
22 highway down there.

23 Q You are watching for that.

24 A: Yes. And it is not uncommon that people, as odd as it
25 may seem, people down in that area are out walking in

1 the midst of the night.

2 Q But you didn't see any of that during that period, is
3 that correct?

4 A: No, we didn't see anything like that.

5 Q You would have done an incident report.

6 A: Not for someone walking on the road. The strange thing
7 about what my sister saw, they were there and then they
8 weren't there.

9 Q I want to come back to that. So you go down to have a
10 sandwich and you park and who gets in what vehicle?

11 A: My sister got into my vehicle.

12 Q So the two of you see the construction site across over
13 where the trailers were.

14 A: Yes, if you were to ask me, the best vantage point to
15 see the east side of our own construction site, that
16 would be the spot right there.

17 Q This was about, you said 2:00, is that correct, or
18 2:30.

19 A: Let's see. It would have been about 2:45, somewhere in
20 that range.

21 Q Mr. Riggs, then the call goes into the fire department
22 at 3:40. So it was about 40 minutes to an hour you set
23 there in your car, you and your sister, on
24 surveillance.

25 A: Yes and that has changed over some time. I always

1 thought it was a shorter period of time. My sister
2 thought it was a longer period of time. That's what I
3 was saying earlier about the difference between memory
4 and accuracy. What you remember is the truth but what
5 is accurate could be something different. I believe
6 what it was was 30 to 40 minutes I was over there. It
7 could have been an hour.

8 Q From that point, from that vantage point, were you
9 positioned so you could again look for the things you
10 felt were important; that is, anybody entering the area
11 down here to the south or at the haul road.

12 A: Well, you never know what is important until after-the
13 fact. So what you do, you try to give yourself the
14 best percentage and that was the best percentage. You
15 could see the two entrances to that property that
16 someone would have to take if they had a vehicle.

17 Q Excellent. So you were watching.

18 A: That's correct.

19 Q And if you blinked off or closed your eyes for a
20 minute, is it a safe assumption that Debbie, who was
21 also on duty, was watching even if you did close your
22 eyes?

23 A: I was nodding off or at least that's what my sister
24 says and she was watching. Now keep in mind we were
25 also doing paperwork but any time they're lights you

1 are going to see that in a dark area.

2 Q Thank you. It's between 2:30 and 3:30 in the morning.

3 One of the things I presume you were looking for would
4 be just normal traffic coming down or going, coming out
5 going north on the highway, just to see what they were
6 to do or just watch them go by.

7 A: No, I wouldn't do that. I wouldn't give them any
8 attention. People travel up and down the highway all
9 the time.

10 Q But I mean you would see vehicles going up and down the
11 highway.

12 A: It is not something I would even think about. I might
13 see it but I wouldn't give it any attention.

14 Q unless they turned off their lights and turned in.

15 A: There you go.

16 Q That hour, if we are saying it is 40 minutes or an
17 hour, I don't care really, but that bracket of time
18 between the time you got back into there and had the
19 sandwich, from the time you got to Quik Trip, apart
20 from the two people Mr. O'Connor and the other lawyers
21 asked you about, did you see anything else that would
22 have caused you to conduct an investigation, write a
23 report or consider an incident?

24 A: We didn't see anything.

25 Q The area except for these two people, was secure in

1 your mind.

2 A: That's correct.

3 Q So after you see the two people -- by the way, do you
4 remember, was there a full moon?

5 A: Yes, there was.

6 Q You pull out and across the haul road which links the
7 two strips of highway, is that correct -

8 THE COURT: Excuse me, Mr. Osgood, but let's
9 be true to the record. You said "after you see the two
10 people'. and maybe you didn't mean that.

11 MR. OSGOOD: I didn't.

12 THE COURT: I don't know the witness
13 testified he saw the two people.

14 Q After your sister saw the two people, she elbows you,
15 is your recollection or something.

16 A: She said, "Robert".

17 Q I don't want to go over all that again. You pull
18 across with your lights off across the haul road, is
19 that right?

20 A: Well, first I asked her, "What?" And she said there
21 were two people walking down Blue River Road. They
22 went down into a sink area and did not come back up.
23 And once I understood what it was she was talking
24 about, then I was ready to take action.

25 Q Now, when you pulled across the haul road, did you see

1 any vehicles parked on the haul road?

2 A: No, there were no vehicles on the road at all, there
3 was no vehicles. The question was "parked", no, I
4 didn't see any vehicles parked.

5 Q Would you be looking for those out of concern?

6 A: Yes.

7 Q Did you see any along this trip of 71 on the west side
8 part?

9 A: I think where you are pointing is off the camera here.

10 Q Along this road. You didn't see any vehicles parked.

11 A: I don't believe I ever looked over there.

12 Q She elbows you right here.

13 A: Yes.

14 Q Alerts you there is a problem up here.

15 A: Yes.

16 Q I presume you looked north.

17 A: I really wasn't looking for cars. I was looking for
18 two persons and I would have later looked in that area
19 where they came from, but I was looking at the
20 immediate area. My concern was they had to go that
21 way. They couldn't have come this way. They had to go
22 that way. That's the reason I went northbound on 71
23 highway with the spotlight along the wooded area.

24 Q Across the haul road.

25 A Yes.

1 Q North on 71.

2 A: Yes.

3 Q You are going, I believe you said, 15, 20 miles an
4 hour.

5 A: I drove quickly down there.

6 Q Get up here quickly.

7 A: Yes.

8 Q Then you shine your spotlight in these trees. Is that
9 a thick or thin tree stand, do you recall?

10 A: It's thick but that was a little later on. First I was
11 concerned about the trailer areas. That is where she
12 had last seen them. I checked that area and then I
13 checked across the road, up Blue River Road to the
14 east. And then I checked looking northbound and then
15 checked both east and west of northbound 71 driving
16 slowly up northbound 71.

17 Q So you looked to the east and the west along Little
18 Blue.

19 A: No, I didn't look to the west. I looked at the
20 trailers and behind the trailers, pulled back out,
21 looked eastbound on Blue River Road. I only looked for
22 spotlights, headlights, that kind of thing.

23 Q See any parked vehicles.

24 A: Yes and then I drove northbound on 71 checking both
25 sides of east and west of northbound 71 for the wooded

1 area.

2 Q Then you get up to the Quik Trip.

3 A: Yes, where the turn-around is and where the Quik Trip
4 sets.

5 Q I won't go over that again. You come south and back to
6 the area where your vehicle is on fire.

7 A: Yes. And the first words out of my sister's mouth when
8 she got to Quik Trip, "Have you seen two people on
9 foot?"

10 Q Now, the trailers up over this heavy terrain are down
11 in a depression themselves, are they not, where you
12 cannot visibly see them from down here on 71.

13 A: Well, depression from -- you know, there are so many
14 different grades of terrain there. It's a depression
15 from the area next to it but then that is a depression
16 to the area next to it. There is a little plateau that
17 sits up there just to the left of that orange color
18 there, a little plateau that is probably the highest
19 point we used to set up on when we were able to get up
20 there but there is flat areas. There is area there
21 that were flat including where the trailers were
22 parked.

23 Q What was the status of the fire on the truck when you
24 pulled up right at the area, was the truck engulfed in
25 flames or just starting to burn or had it almost

1 finished?

2 A: It looked like the type of fire that had some help. It
3 didn't look like an electrical fire. It didn't look
4 like a normal fire, engine overheating or some kind of
5 mechanical problem. It looked like something that had
6 help because the metal was burning. It's outside, the
7 cab was burning and all the front, all the front end.
8 The fenders were on fire.

9 Q You could see the fire on the trailers up on the hill
10 at that point.

11 A: While I was talking to the fire department on the phone
12 telling them how to get to this location where my
13 sister's truck was set on fire, I saw the fire up on
14 the hill. After listening to the dispatch, at that
15 point it sounded like my sister said it and it may have
16 been as a result of her saying it or we saw it at the
17 same time and she spoke.

18 Q Did you have any sense, impression at this point which
19 fire started first, sir?

20 MR. BECKER: Calls for speculation.

21 THE COURT: Yes, by definition it asks for
22 guesswork. Sustained.

23 Q Did you see anything, any sequence of events which you
24 are able today to see which fire started first?

25 A: You know, I wouldn't have a guess.

1 Q Then at 3:40 the call goes into the fire department, is
2 that correct? Do you remember that time? Have you
3 seen this tape of the call?

4 A: Yes.

5 Q And did you go over that before you testified here
6 today?

7 A: No, sir.

8 Q But you have seen it on prior occasions.

9 A: It has been some years ago. I think where I saw it it
10 was printed in the newspaper.

11 Q Would you agree with me, Mr. Riggs, it indicates, based
12 on Government's Exhibit 17, the call goes in at 3:40?

13 A: Okay.

14 Q And that pumper arrives on the scene at 3:46.

15 A: All right.

16 Q And so that is six minutes.

17 A: Well, I think it said 51 seconds or six or seven
18 minutes.

19 Q Now what are you doing during this six or seven minute
20 period?

21 A: If you add how long it takes for me to make the phone
22 call in and of itself because those old battery-pack
23 phones took forever to get a connection. Back then we
24 used to use 411 to dial 911; dial 411 and then it sent
25 it through and it took some time. So what may look

1 like on paper to be six or seven minutes could actually
2 be seven or eight or nine or ten minutes.

3 Q At what point did you conclude it was arson in your
4 mind?

5 A: I probably suspected it as soon as I pulled up to the
6 truck to start with but I asked my sister, I said,
7 "Debbie, did you" -- and I didn't know what I was
8 asking her, I didn't know what to ask her -- "did you
9 leave something running?" And then it was just
10 apparent the way or I suspected by the way the fire was
11 burning on the truck that it looked like it had some
12 help of some kind.

13 Q Did you then make an effort to determine whether or not
14 since there was a fire going on on the hill there was a
15 fire here, as to whether or not there were any
16 suspicious vehicles or persons in the area?

17 A: No, what I was doing was trying to get to the phone,
18 get the phone call made, get the fire department out
19 there. And once that phone call was made I believe I
20 called Norm Collins soon after that and informed him
21 while I was sitting there waiting on the fire truck.
22 The fire truck got there. I think it took them about
23 ten minutes to get there which was probably close to
24 accurate.

25 Q You did not see any vehicles leave this scene after you

1 got back.

2 A: No. I didn't see anything that was relevant, that
3 appeared to be relevant.

4 Q And I think I asked you earlier, there is no entrance
5 road coming into this area from the east.

6 A: No, I suspected the people came in on foot from the
7 side or rear of the property.

8 Q Where would that be, sir; north, south, east or west?

9 A: Several areas you can come into the property on foot.
10 Many areas.

11 Q You are saying they came in from the east.

12 A: Well, it has been a long ago. I used to try to keep up
13 with the investigation, what little tidbit I could get
14 here and there and some may have been accurate or not.
15 It's probably just as well I don't testify to it but
16 the point is you can get onto that property on foot a
17 number of different ways.

18 Q From the east.

19 A: Yes, because you can drive to the cliffs in a vehicle
20 because we had some four-wheeling going on up there but
21 we didn't have any way of getting to them because those
22 cliffs are probably 200, 300 foot cliffs. Those are
23 really tall cliffs. And up on top you could drive to
24 the back there and then walk down around the cliffs and
25 it was a gradual decline and then enter the property.

1 Q So is it a fair statement you and your team had three
2 sides of this thing pretty well under control up until
3 the truck burned up?

4 A: Oh, I don't know if "control" is the word. I am
5 sitting in the car, you know, working on a schedule.
6 My sister is sitting in the car working on a schedule.
7 I don't know that "control" would be the word.

8 Q You didn't see anybody walk on foot across the area and
9 up over the area we have described that is almost
10 impassable.

11 A: No.

12 Q I asked you that much earlier.

13 A: No. If someone was on foot it would be difficult to
14 see them if they were someplace other than a lighted
15 area such as the office trailers.

16 THE COURT: Are you about through, Mr.
17 Osgood?

18 MR. OSGOOD: Almost. About 10 or 15 minutes.

19 THE WITNESS: I am supposed to go out of town
20 tomorrow morning. It's very important.

21 THE COURT: Take five minutes.

22 Q So you saw no-one on foot going into the area.

23 A: That's correct.

24 Q Now, is there a way to cross Little Blue, do you know
25 if you go down Little Blue Road here?

1 A: I am not very familiar with that. I have been down
2 there a few times but I am not familiar with that area.
3 We did drive down there a time or two when we had an
4 incident, something going on. I forgot. One of the
5 officers saw something, watching them from a distance
6 and then the guy took off running. And I think we
7 drove down that road.

8 Q That concludes what I want to ask about the scene. At
9 this point I want to ask you some other kinds of clean
10 up questions. You said, I believe, your people were
11 contract employees.

12 A: Yes.

13 Q How did you pay them, Mr. Riggs, by check or cash?

14 A: Well, there wasn't a benefit program for them as we
15 have now but they were paid with a check.

16 Q Drawn on what, Ameriguard?

17 A: Yes.

18 Q And when you would pay them by check did you pay them
19 in their working name or in their real names?

20 A: Well, the only persons that used names other than what
21 you are considering to be a legal name to draw off of a
22 check would be my wife, my sister and myself.

23 Q What name did you write on the check?

24 A: Everybody else would have used their names. That's
25 only because our names are Riggs and it is pretty

1 confusing when you have a lot of Riggs and also for the
2 reason that the other attorney mentioned, it gives the
3 appearance of a mom and pop type operation.

4 Q I don't want to belabor this. Did you pay them in
5 Riggs name or other names?

6 A: No, whoever worked the job site and oftentimes I
7 wouldn't be paid at all.

8 Q The gun that you left in the truck was a .38 caliber,
9 is that correct?

10 A: That's correct.

11 Q What model was it?

12 A: You know, I was trying to remember and I can't remember
13 the model number. It's a stainless steel, two inch and
14 adjustable sight. It's a limited item. I bought it
15 from a police officer, a sergeant with the Grandview
16 Police Department.

17 Q When was that?

18 A: I don't remember. I have the receipt and stuff I
19 bought it. His business is called Sergeant of Arms.
20 I don't remember.

21 Q He is a firearms dealer.

22 A: Yes.

23 Q A federal firearms dealer.

24 A: Working for the Grandview Police Department and he has
25 this business on the side.

740

1 Q Do you recollect what you paid for it?

2 A: No, I don't but it is a nice weapon.

3 Q Was it like -- they're commemorative weapons for
4 everything in the world.

5 A: No, it wasn't a collector's item like I went out and
6 paid \$10,000. It was a limited item, one of those
7 items you like to have and hang onto and later they're
8 of value, that's what it was.

9 Q The reason I asked you, you said you went back and got
10 it, I believe, because it had at least some intrinsic
11 value to you.

12 A: More than probably a normal weapon but, gosh, if it
13 would have been a normal weapon sitting there I may
14 have done the same thing. I don't know. Two to
15 three hundred dollars to me. That's quite a bit of
16 money.

17 Q And maybe your answer will be different now but at the
18 time did you consider the fact that if this was an
19 arson scene you were, in fact, removing a gun from
20 a crime scene?

21 A: I never gave it any thought. I am not a public law
22 enforcement officer. It wasn't my job necessarily to
23 preserve that crime scene. Not to say I would want to
24 do anything to ruin it but it didn't have anything to
25 do with the crime scene. It was my weapon and I was

1 afraid it wouldn't be there in a day or two when I
2 went to look for it.

3 Q Did you take anything out of the truck, Mr. Riggs?

4 A: I don't recall. If I did it may have been a purse or
5 billfold or something like that, something personal of
6 my sister's that was there, also.

7 Q Do you know of your own personal knowledge whether or
8 not the gas gage on your truck was bad, not working,
9 dysfunctional?

10 A: I would have had knowledge of, I guess, when I drove
11 the vehicle, maybe I would have noticed but I didn't
12 notice it not working.

13 Q Did your sister ever carry a gas can in that truck
14 because of that?

15 A: I don't know.

16 Q Did you ever see a gas can in the truck?

17 A: No.

18 Q Do you know Richard Brown?

19 A: No.

20 Q Ever meet him in your life?

21 A: No.

22 Q Never ran him off the scene?

23 A: Who is he? Point him out to me.

24 Q Did you ever stop anybody and they showed
25 identification and said they were Richard Brown?

1 A: I don't remember. I wouldn't remember that.

2 Q If he was up there doing something he wasn't supposed
to, you would have written an incident report, wouldn't
4 you?

5 A: Yes, sir but oftentimes you didn't get names. I mean
6 you are up there by yourself, sir, and you want to get
7 them off the property. You don't want a confrontation
8 up there. But if you will point him out to me I will
9 tell you.

10 Q He is my client. Stand up, Mr. Brown.

11 (Mr. Brown stands up.)

12 Do you know Mr. Brown? He is eight years older now,
13 sir.

14 A: No, I don't believe I know him.

15 MR. OSGOOD: Thank you. That is all I have,
16 Your Honor.

17 THE COURT: Any Redirect?

18 MR. BECKER: Nothing, Judge.

19 THE COURT: All right, ladies and gentlemen,
20 we are going to recess for the evening. Remember my
21 admonition about not discussing the case and we will
22 see you in the morning at 9:00. You are excused.

Thursday, January 23, 1997

1

3

4 courtroom out of the presence of the jury:)

5

6 comes in, I have some brief matters I'd like to alert the

7 Court to.

8

9 agreed that the witness rule would be invoked. That is, no

10 witnesses listed by either side would be present in the

11 courtroom. With some exceptions of, I believe, the

12 defendants, mother, and because Defendant Richard Brown and

13 Defendant Bryan Sheppard's counsel has informed me what some

14 of those witnesses are going to testify to, I agreed that

15 they could be present in the courtroom.

16 Defendant Frank Sheppard's mother, Naomi Sheppard,

17 has been present in the courtroom, and I'm informed now that

18 she will not be a witness for the defense, so I have no

19 objection to her remaining in the courtroom. She was listed

20 on the list; is that correct, counsel?

21 MS. HUNT: It may not be correct. I don't know who

22 told you that.

23 MR. BECKER: Okay.

24 MR. PETERS: Judge, I had told him that. And I

25 think to be safe, when we get to witnesses that may have

1 testimony regarding anything that she would be called as a
2 witness, we'll pull her out of the courtroom. But I'm not
3 disputing that -- what the problem is is we have the mother'
4 the mother is the mother of two defendants. I do not plan to
5 call her as a witness and told Mr. Becker and -

6 MR. BECKER: I didn't realize she's on Earl
7 Sheppard's list. She's on Earl Sheppard's list?

8 MS. HUNT: She may be called as rebuttal, depending
9 on how some people testify, and that decision has not been
10 made yet.

11 MR. BECKER: If she's going to be a witness, she
12 shouldn't be here. That's my only point.

13 THE COURT: Of course, it's awful difficult to
14 anticipate who rebuttal witnesses are going to be. And even
15 though the rule has been invoked, there's often an exception
16 made in the instance of rebuttal witnesses. If you all can
17 work that out, that's fine. Otherwise, I'll rule on it.

18 MR. BECKER: We can discuss it during -

19 MS. HUNT: It wouldn't be rebuttal to what's going
20 on this morning.

21 MR. BECKER: Correct. We can discuss that further
22 later on. If we have a problem, we can come back to the
23 Court.

24 MR. OSGOOD: To amplify on what Mr. Becker said, I
25 agreed that -- my client's mother and his grandmother are

1 going to be witnesses, but I would have his mother out of the
2 courtroom when his grandmother testifies, and they've been
3 instructed not to discuss their testimony with each other.
4 So that would be the one reason, obviously, to keep his
5 mother out because she'll be testifying about matters that
6 they both have knowledge of, and I -- obviously, they
7 shouldn't hear each other, in fairness.

8 THE COURT: All right.

9 MR. BECKER: Secondly, this morning I've alerted
10 some of the counsel that crime scene photographs of the
11 victims will be offered. They have earlier noted their
12 objection to these photographs, and perhaps that's something
13 we could take up during the morning break prior to those
14 witnesses taking the stand that we would seek to introduce
15 those photographs. I don't believe -- there's no objection
16 to foundation. It's a 403 objection from defense counsel.

17 Finally, in pretrial interviews of witnesses, John
18 and Peggy Barchers, they've informed me that they have a 1995
19 conviction. That is an SIS conviction under state law and,
20 therefore, not a conviction. But it does not appear on prior
21 criminal sheets given to the defendants, and I'm running
22 updated sheets that hopefully will contain that information.
23 Those witnesses will probably appear tomorrow.

24 THE COURT: You're going to have to enlighten me on
25 what an SIS is. Suspended imposition of sentence?

1 MR. BECKER: Right.

2 THE COURT: And if the probation is satisfactorily
3 served, there is no conviction; is that the way it goes?

4 MR. BECKER: You're exactly correct.

5 THE COURT: So there's nothing to talk about during
6 the SIS.

7 MR . BECKER: Well, that's the government's
8 position, but I want to be able to give out the information
9 that I have when I have it.I did order a request for some
10 people to run more record updates for me, but we haven't
11 received them yet.

12 MR. O'CONNOR: Judge, I think that they're still
13 allowed under the rule and the law to be impeached, not as to
14 conviction, you cannot ask them if they've been convicted,
15 but you can ask if they've entered a plea of guilty to a
16 felony and they received probation as a result of that guilty
17 plea. They can be asked that, but not if they have a felony
18 conviction. If you entered a plea to a felony in a certain
19 jurisdiction at a certain time and a certain date, that can
20 be asked.

21 THE COURT: Even if -- maybe it isn't the case -
22 would that be the case, even if the suspension had been
23 served and there was no, and the record had been expunged?

24 MR. O'CONNOR: Yes, sir.And one of the reasons
25 for that, you can enhance someone in state court as a prior

1 and persistent offender based upon a previous plea of guilty
2 in which they received a suspended imp, so the law works
3 against those people. Even though they don't have a
4 conviction, a prior plea of guilty can be used to enhance
5 punishment in state court.

6 THE COURT: I think that's not quite what we're
7 talking about.

8 MR. O'CONNOR: I understand that, but what I'm
9 saying is that the prior plea of guilty is proper
10 impeachment, and we can get some cases on it if you're
11 concerned about it.

12 THE COURT: Before anyone says anything about this
13 before the jury, I want to see that.

14 MR. O'CONNOR: All right, sir.

15 THE COURT: All right. Ready? Let's get the jury.

16 MR. OSGOOD: I'll file these downstairs, Judge.
17 This is an amended list with a few people added. The same
18 thing, Your Honor, these were people that are on the
19 government's list and, obviously, if they call all of these
20 people -- like, for example, I took off the Riggses because
21 they testified, so I'll update as people come on.

22 THE COURT: Okay.

23 MR. O'Connor: Judge, one other thing. On Mr.,
24 Chief Germann who is testifying, I will go first, and then
25 the order of the indictment.

1 THE COURT: I think I have -

2 MR. O'Connor: I think we had someone else there.

3 THE COURT: They just had order of the indictment.

4 MR. O'Connor: I will go first and then order of
5 the indictment.

6 THE COURT: All right.

7 (The following proceedings were had in the
8 courtroom in the presence of the jury:)

9 THE COURT: All right. You may proceed, counsel.

10 MR. MILLER: Thank you, Your Honor. The government
11 calls chief Marion Germann.

12 THE COURT: Come up and stand by the witness chair,
13 please, Chief, and be sworn.

14 - - -

15 MARION GERMANN,

16 having affirmed under the penalties of perjury, testified as
17 follows:

19 DIRECT EXAMINATION

20 By Mr. Miller:

21 Q. Would you tell us your name, please?

22 A. Marion Germann.

23 Q. And how old are you, sir?

24 A. Pardon me?

25 Q. How old are you, sir?

1 A. Fifty-four.

2 Q. And how are you currently employed?

3 A. I'm an assistant chief with the City of Independence,
4 Missouri, Fire Department.

5 Q. And when were you with the Kansas City, Missouri, Fire
6 Department?

7 A. From 1963 through 1995.

8 Q. And did you retire in ,95?

9 A. Yes, in May of 1995.

10 Q. And what was your rank when you retired from the Kansas
11 City, Missouri, Fire Department?

12 A. Battalion chief.

13 Q. And I want to go back to November of 1988. And what was
14 your rank then?

15 A. Battalion chief.

16 Q. I want to go to the early morning hours of November the
17 29th of 1988. Where were you stationed?

18 A. Stationed at Fire Station No. 36 at approximately 95th
19 and Holmes.

20 Q. And on those early morning hours, were you dispatched to
21 a fire?

22 A. Yes, that's correct.

23 Q. Now, do you respond to all calls?

24 A. No, normally battalion chief would only be responding to
25 calls that someone else called him for, or what we would term

1 a regular alarm building fire or something like that that was
2 larger than, say, a car fire or something like that.

3 Q. What was your number back then?

4 A. I was designated as Battalion 107, B shift.

5 Q. Now, you stated that you didn't respond to all calls
6 unless you were called. Who called you to a fire on the
7 early morning hours of the 29th of November of ,88?

8 A. Captain Jim Kilventon on -

9 Q. What pumper number was he?

10 A. On Pumper 41.

11 Q. Now, how did you arrive at the fire site?

12 A. I was driven there in a city fire department car by a
13 driver, Dean Gentry.

14 THE COURT: I'm sorry, what was the driver's name,
15 Chief?

16 THE WITNESS: Dean Gentry, G-E-N-T-R-Y.

17 THE COURT: Thank you.

18 Q. (By Mr. Miller:) And I want to show you, first of all
19 referring to Government's Exhibit No. 5.

20 MR. MILLER: May he step down, Your Honor?

21 THE COURT: Certainly.

22 Q. If you can step down over here. You need to keep your
23 voice up, though, Chief. And familiarize yourself with the
24 exhibit.

25 Would you tell the jury how you and Dean Gentry

1 arrived' what route you took?

2 A. We would have came in on Bannister Road and 95th Street
3 across and up north on 71 Highway. And Dean' my driver,
4 thought wewould need to get in on 87th Street, so he turned
5 down 87th Street.

6 AndI said, Dean, I think we need to get that, off
7 of that haul road that's up there. I didn't call it a haul
8 road, but I knew there was a road up there.

9 THE COURT: Chief, counsel, let's see if you can
10 detach, take that mike off the stand. Won't it come off?
11 Will that work? I was thinking you could take it out of the
12 stand and just let him hold it in his hand.

13 MR. MILLER:If I break it, if I'm not billed for
14 it. If there's a way, I don't know how to do it.

15 THE COURT:We're going to try to make arrangements
16 for a different mike, but we won't be able to get it until
17 the break.But, yeah, Chief, if you would, do your best at
18 least to make sure you're heard by the jury. There are a lot
19 of folks herethat are interested, and they want to hear what
20 you have to say.

21 THE WITNESS: Certainly, sir.

22 A. We came up across Bannister Road going east and then
23 came northon 71 Highway, turned east on 87th Street. At
24 that time I corrected my driver. We turned around and went
25 back to northbound71 and went back north to this haul road

1 and came in and parked approximately where my finger is
2 located right here.

3 Q. Okay. And we'll have a picture in a minute and I'll ask
4 you to show on that diagram where that picture correlates
5 to. If you would be seated again.

6 As you were going down 87th, what did you see?

7 A. We could see a trailer with what looked like, I've
8 always described it as a giant sparkler. It had just real
9 bright sparks coming off of it and going a considerable
10 distance up in the air.

11 Q. When you arrived at, on the site there as you went down
12 the haul road where you pointed to, and we'll have an exhibit
13 to show more specifically here in a little bit, what pumper
14 trucks were already there?

15 A. Pumper 30 and Pumper 41 would have already been on the
16 scene.

17 Q. And can you tell the jury what a pumper truck is
18 equipped to do?

19 A. A pumper is a piece of fire apparatus that would be
20 equipped with fire hose, a pump to pump water, and a tank to
21 hold the water, as well as various other assortments of fire
22 fighting equipment. They normally would be used to actually
23 put the water on the fire and put the fire out.

24 THE COURT: Was there a tank of water on the pumper
25 truck?

1 THE WITNESS: Yes, that's correct.

2 THE COURT: And is that refilled from city water or
3 hydrant water during the fighting of the fire?

4 THE WITNESS: Well, if it's seen that we needed a
5 hydrant where you had a large amount of fire and a hydrant
6 was right close by, you normally would just connect to the
7 hydrant and pump directly from the hydrant and not use the
8 tank. But if you were in an area where you had a smaller
9 fire or you had a fire where you needed water on it before
10 you could get to the hydrant, you could go ahead and use that
11 tank. It would be used normally on car fires or some small
12 fire, or any fire that you didn't have a hydrant running
13 close by until you could get someone to lay a hydrant to you
14 if you needed that.

15 Q. (By Mr. Miller:) How many firemen are there on a pumper
16 truck?

17 A. That varies, but that particular morning there was
18 three. There's normally three assigned as a minimum in
19 Kansas City at that time, three persons on a pumper as a
20 minimum manning for that piece of apparatus, and that morning
21 both of those apparatus had three on each one.

22 Q. Do each of those three have a specific job to do?

23 A. There's a captain who is in charge of the company, or an
24 acting captain if a captain happens to be off; there's always
25 a driver and, again, there can be an acting driver if the

1 driver happens to be off; and always one firefighter.

2 Q. Do you know which, the names of the three firefighters

3 on Pumper 41?

4 A. Yes, I do.

5 THE COURT: Chief, would you like for us to take a
6 minute?

7 THE WITNESS: No, I'll be all right.

8 Q. (By Mr. Miller:) Could you tell us their names, sir?

9 A. The captain was Jim Kilventon, the driver was Bob
10 McKarnin, and the firefighter was Mike Oldham.

11 Q. Could you tell us who was on Pumper 30?

12 A. Captain Gerald Halloran; firefighter who was acting
13 driver, Tom Fry; and firefighter Gene Hurd.

14 Q. When you arrived at the location where you stopped at as
15 you pointed to on the exhibit, could you see the fire?

16 A. Yes, I could. It really didn't appear to be
much as far

17 as flames that I could see. The trailer was just a glow,
18 just a bright glow. But there was some flame, a small amount
19 visible from what I considered to be the center of the
20 trailer along the east side about halfway down to where it
21 may have had a, it looked like, from the knowledge I had of
22 trailers like that, it might have had a door in the center on
23 one side, and it appeared to have flames coming out of it.
24 But that was the only visible flame, and really not much
25 flame there.

1 Q. You said a trailer. How many trailers could you see on
2 fire, or glowing?

3 A. Just that one.

4 Q. From where you were, could you see where the
5 firefighters were?

6 A. No. I had a berm that kept me from being able to see
7 either of the firetrucks. I was able to see the silhouette
8 of one firefighter with what appeared to be a hose lying in
9 his hand just before the explosion.

10 Q. Could you see any of the pumper trucks?

11 A. No, I could see neither one of the trucks.

12 Q. Did you see the actual explosion?

13 A. No, I did not.

14 Q. What happened to you after the explosion?

15 A. Well, I waited for what seemed like an eternity for
16 debris to quit falling on top of the car. I then radioed for
17 ambulances and more fire equipment.

18 I got out of my car and found my driver, who was on
19 the ground somewhere to the rear of the car with, I believe,
20 both security guards there by him asking him if he was all
21 right. We assisted him to his feet. Some of this gets out
22 of order because I don't know what happened first and -

23 Q. That's fine.

24 A. And some of it's -

25 Q. I'll ask you another question. What condition were you

1 in?

2 A. Well, physically, I didn't feel like I was injured
3 physically from the blast' but I could -- I'm sure that I was
4 in a state of shock. I can listen to the tapes and hear my
5 voice. That certainly doesn't sound like I normally did when
6 I was talking on the radio.

7 Q. What did you see in front of your car?

8 A. I saw someone's hand and part of their arm.

9 Q. How long were you at that location that you pointed out
10 there on the haul road before the explosion?

11 A. I have a hard time for sure knowing' but I radioed on
12 the scene according to the tape' and then within a minute and
13 55 seconds' I believe' somewhat less than two minutes' I
14 radioed for the assistance' that the explosion had happened.
15 If I radioed on the scene when we first pulled up onto 87th
16 Street, by the time we turned around, we couldn't have been
17 up there less than a minute. If I radioed on the scene as we
18 pulled up on that haul road, it would have had to have been
19 something like a minute and a half, possibly, or less.

20 . I'm still talking about after the first explosion. Did
21 you go to the trunk of your car?

22 . To the best of my memory, I went to the trunk of my car
23 and got some of my fire gear out that I didn't have on yet at
24 that time.

25 . Was a command post set up?

1 A. Yes. We left that area and set up a command post at, on
2 the entrance ramp to northbound 71 Highway at 95th Street.

3 Q. Do you recall how you got to the command post?

4 A. No, I don't.

5 Q. While you were at the command post, what happened?

6 A. Well, there was a second explosion some, approximately,
7 I think 40 minutes following the first one.

8 Q. I want to show you some photographs. This is the only
9 one that has not been in evidence yet. Showing you
10 Government's Exhibit No. 378, is this a fair and accurate
11 representation of what it looked like after the first
12 explosion when you looked down there?

13 A. I remember seeing this like this, and my recollection,
14 it would have been after the first explosion, between the two
15 explosions.

16 MR. o'connor: No objection.

17 MR. MILLER: Offer Government's Exhibit 378.

18 THE COURT: Hand it up to the clerk, counsel,
19 please. All right. There being no objection, 378 is
20 admitted.

21 **(Government's Exhibit 378 was admitted into**
22 **evidence.)**

23 Q. (By Mr. Miller:) I want to go to 378 first, Chief. And
24 can you see it from where you're at?

25 A. Yes.

1 Q. And could you describe this to the jury?

2 A. Well, I don't really know what was burning up there, but
3 there was -- after the original explosion, I heard several
4 just little explosions like large fireworks, possibly, and
5 then one that wasn't really that small. This is before the
6 second large explosion. There were several little
7 explosions, what I would term little ones, and then one that
8 wasn't that small. And then something was burning on that
9 hill and I don't know what it was that was burning.

10 Q. And now I want to show you Government's Exhibit No.

11 125. And can you tell the jury what this shows?

12 A. In about the center of the left is the road that comes
13 off of 71 Highway, northbound 71 that goes somewhat easterly
14 up to the top of, almost like a plateau. And that's the road
15 that my driver and I took to go up there. My car is sitting
16 in the upper right hand, just below the horizon. Yes.

17 Q. See where my pen cap is?

18 A. That, I believe, is, from what I can see of it, where my
19 car was parked.

20 Q. That's where your car was parked when the first
21 explosion happened?

22 A. It was parked there and left there and continued there
23 throughout that night, that morning.

24 Q. I want to show you now Government's Exhibit No. 126.
25 you tell the jury what that depicts?

1 A. That would be my car, again, taken from somewhat of a
2 northwesterly direction shooting southeast, if I'm thinking
3 right. And that's where the car was sitting and the road is
4 just, if the car was angled a little more to the right and
5 continued on would be the road that would have gone down to
6 where the trailers were.

7 There's a berm. I don't know whether you can make
8 it out very good. There's a berm that raises -- yeah, right
9 in that area, there's dirt that's raised up. And that, from
10 what I can gather in seeing pictures that we've had since
11 then and aerial photos, is the berm that kept me from seeing 12 either the
second trailer or the firetrucks. They were back 13 behind that.

14 Q. I want to show you now Government's Exhibit No. 127.

15 And can you tell the jury what this depicts?

16 A. That I believe would depict a picture taken apparently 17 down towards
where one of the trailers was shooting back
18 towards the northwest. And my car, again, is seen in the
19 upper center of that picture, and the berm is on the left
20 again. You can see it if you would get -- farther to the
21 left of this picture it would shield you from seeing past
22 it. And that's, to my knowledge, what shielded me again from
23 seeing that trailer, the second trailer and the two
24 firetrucks.

25 THE COURT: Excuse me, counsel. Would you put that

1 back up there, please?

2 Chief, maybe you identified this. There's a
3 vehicle in the upper center part of that picture. Can you
4 tell what that is?

THE WITNESS: Would you point to that? I'm sorry.

6 That's the car that I was in.

7 THE COURT: That was your car?

8 THE WITNESS: Yes.

9 THE COURT: And that's the one that sits there with
10 the trunk lid askew, sprung by the explosion?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: Okay. Thank you.

13 Q. (By Mr. Miller:) Chief, I want to now show you
14 Government's Exhibit 128. And what does this show?

15 A. That appears to be just a closer, a little more close-up
16 picture of the same one we just looked at. Again, taken
17 from, by the trailers shooting back towards the car that I
18 was in.

19 Q. Show you Government's Exhibit No. 129.

20 A. This appears to me to have been taken just somewhat
21 north of where that haul road went back in off of northbound
22 71. There was a set of railroad tracks that we crossed over
23 there. Again, a shot taken almost somewhat directly east.
24 And, again, my car is sitting up on top of that plateau.

25 Q. I want to show you Government's Exhibit No. 130. Can

1 you tell us what this shows?

2 A. That probably would have been, of the pictures I've
3 seen, the one that would have shown the best vantage of what
4 I would have seen from where I was sitting, I think. Again,
5 taken from behind the car down towards the trailer that was
6 burning.

7 The car was very nearly a new car and, I forget, a
8 year or two old, and was totally destroyed. Even at the
9 distance we were at, it wasn't repairable.

10 Q. Show you Government's Exhibit 131. And could you tell
11 the jury what that is?

12 A. That, again, is a close-up. And you can see better what
13 the damage was to the car. This was taken closer from the
14 southeast. The headlights appear to still be on on the car.
15 When we left the car, we left everything like it was and just
16 got away from the area because we didn't know if there was
17 going to be another explosion, which certainly we did find
18 out did happen later.

19 Q. Can you tell us again where in the car were you sitting?

20 A. I would have been sitting in the front seat on the
21 passenger's side. When the explosion happened, it brought
22 the windshield in. To my recollection, it didn't bring it
23 completely in. I believe the second explosion may have taken
24 it completely down like it is there, but it brought it in on
25 us, on myself.

1 Q. And Government's Exhibit No. 132?

2 A. Again, this is a close-up of that car taken in a
3 westerly direction, and you can see the damage to the car.
4 And also in the background there's heavy equipment up in the
5 upper left, especially, but all the way across the upper
6 area. I remember, this kind of refreshes my mind on speaking
7 to my driver that morning as we pulled up, thinking that they
8 were actually working on that site because everything was so
9 lit up. They had all the construction equipment lit up over
10 there with some type of lighting. But it was totally dark
11 over on our side, except for the headlights on the car.

12 MR. MILLER: I have no more questions for this
13 witness, Your Honor.

14 THE COURT: All right. Mr. O'Connor?

16 CROSS-EXAMINATION

17 By Mr. O'Connor:

18 Q. Chief Germann, I'm John O'Connor, and I have a few
19 questions for you, sir.

20 So I understand your direct testimony, you were at
21 the scene before the explosion occurred; is that true?

22 A. That's correct.

23 Q. And were you in radio communication with your men while
24 you were en route to this fire?

25 A. I had some conversation on the radio with Captain

1 Kilventon.

2 Q. All right. And so there was some exchanges between you
3 and him as to what they were facing at this scene; is that
4 correct?

5 A. Well, I don't know that I knew what they were facing at
6 the scene. He radioed for, asking for water to be brought
7 back, another piece of apparatus with water. And he radioed
8 the dispatcher, and the dispatcher apparently was overridden
9 by other radio traffic and appeared to me not to hear him.

10 So I asked him what he wanted, and he stated that
11 he needed something for water. And I asked him if we could
12 use a four-wheel-drive. And, again, I'm paraphrasing. And
13 then I radioed the dispatcher and asked them if they got that
14 message, that they needed a four-wheel-drive for water.

15 Q. Of the six firefighters, would Kilventon have been in
16 charge, basically, or would it have been him and Halloran
17 would have shared those responsibilities?

18 A. Well, as first on scene, as first officer on scene, he
19 really would have been the officer in charge until relieved.

20 Q. So Jim Kilventon, your understanding, his crew was the
21 first on the scene?

22 A. Yes, they were. They were the first on scene, but I
23 don't think they were first up to the trailer.

24 Q. Did you hear any radio communication that morning on the
25 airways about, from Captain Kilventon or any of the men that

1 were talking with you or the dispatcher saying anything about
2 ammonium nitrate, diesel fuel, fertilizer?

3 A. No, I did not.

4 Q. Have you had a chance to look at the transcript that was
5 done that morning of the dispatch?

6 A. Yes, I have.

7 Q. And it appears that there is an exchange between you and
8 Pumper 41 and Captain Kilventon approximately two or three
9 minutes before the actual blast. Is that true?

10 A. I believe that's right. I don't know about the time,
11 but I know there was, he radioed, there was a conversation.
12 And I've discussed this in deposition before about, I believe
13 he said something about, this appeared to have already blown
14 up. It looks like we have magnesium.

15 And I have, I've had some, I don't know whether
16 everybody has been aware, but I've had some major problems
17 with emotional things over this. But I can remember clearly
18 him saying that he thought he had magnesium involved, but my
19 memory of him saying this looks like this has already blown
20 up was never in my mind until I either saw it or heard it on
21 the tape.

22 Q. But the dispatch tape clearly shows that the explosion
23 didn't come until after the conversation; do you agree with
24 that?

25 A. That's true.

1 Q. When Captain Kilventon was talking to you at the scene,
2 he was telling you, he was up there and telling you basically
3 what he thought was going on was magnesium and something
4 burning?

5 MR. MILLER: Excuse me, Your Honor, I'm going to
6 have to object. It's cumulative. The tape is in evidence,
7 and so is the transcript.

8 THE COURT: Yes, and it seems to me he's explained
9 his knowledge of that exchange pretty thoroughly. I'm going
10 to sustain that objection.

11 Q. (By Mr. O'Connor:) Now, I understand that you were
12 close to Jim Kilventon; is that true, Jim Kilventon?

13 A. Close as far as friends, you mean?

14 Q. As fire friends, you'd fought a lot of fires together?

15 A. He had worked with me for a few years, yes.

16 Q. I want to ask you a few questions about him, if I
17 could. How long had you known Captain Kilventon?

18 A. I didn't really have a personal relationship with him.
19 But I'd known him, him and I had been, not in the same
20 district but where we ran fires together probably in 1963 for
21 a year or so. And then as far as seeing him anymore, I
22 didn't work in a district with him again until just before
23 the fire, I think, and I came out there a year or two before
24 that.

25 Q. How long had he been on the fire department,

1 approximately?

2 A. He'd been on somewhat longer than I had. I had been on
3 25 years, and Jim was somewhat senior to me.

4 Q. So he obviously was an experienced firefighter?

5 A. Yes.

6 Q. Did he have hazmat training?

7 A. I don't have those records, but it would be just hearsay
8 if I said whether he did or not.

9 Q. Were you aware of his abilities and his knowledge on a
10 fire scene?

11 A. Yes, I would say so.

12 Q. Do you believe that Captain Kilventon would have
13 subjected himself and his men to that scene had he been told
14 that there was diesel fuel, fertilizer, ammonium nitrate?

15 THE COURT: Sustained. Counsel is on his feet, I
16 assume for purposes of making an objection?

17 MR. MILLER: Yes, Your Honor.

18 THE COURT: Sustained.

19 MR. o'connor: Can we approach a minute?

20 (Counsel approached the bench and the following
21 proceedings were had:)

22 MR. o'connor: Judge, what I would like to do is
23 ask him this hypothetical. I want you to assume, assume
24 facts that are in evidence that there's been testimony that
25 James Kilventon was told that there was ammonium nitrate

1 fertilizer and diesel fuel. I want you to assume that to be
true. I want you to take your knowledge and experience of
3 Captain Kilventon on fire scenes, his ability on fire scenes,
4 and I want you to assume that to be true, as well.

5 Do you have an opinion of whether or not Captain
6 Kilventon, knowing that there was ammonium nitrate, would
7 have gone up to that scene. And the reason -

8 MR. MILLER: He's not qualified to give an opinion
9 about what Kilventon -

10 THE COURT: What are you -- what is your theory,
11 that he committed suicide or something?

12 MR. o'connor: Our theory is that they were never
13 told by the Riggses. The Riggses have testified that they
14 told him there was diesel fuel, ammonium nitrate -- please
15 hear me out.

16 THE COURT: If you're taking that view by way of
17 impeachment of the Riggses, then you're going to have
18 something more definite than somebody's opinion. This guy
19 has not been endorsed as an expert, he was not used as an
20 expert by the government, and I'm not going to allow opinion
21 testimony.

22 MR. o'connor: Let me make another record.

23 MR. PETERS: Judge, for purposes of what we have
24 left, the six people on the scene are dead, this is the
25 person who was in communication, was familiar with the

1 practice and procedure, not only of the Kansas City,
2 Missouri, Fire Department, but of these particular men.
3 Because of the explosion we can't, we don't have the
4 opportunity to ask any of the six people.

5 THE COURT: Look, I'm beginning to get the feeling
6 that we're tilting the windmills, that it doesn't really make
7 a hell of a lot of difference when they knew what, whether
8 the firefighters knew it, whether the Riggses told them or
9 not. The Riggses, testimony doesn't go to whether these men
10 did this or didn't do it. It happened, and they described
11 what happened. Then the question becomes whether these men
12 did it, and his testimony wouldn't relate to whether these
13 men did it or not, it would relate only to the event. And
14 I'm just not going to get into this opinion testimony about
15 what, to me, is collateral.

16 MR. O'CONNOR: So I understand it, you don't want
17 me to ask it and be objected to. I've made my record based
18 on what I've told you here, right?

19 THE COURT: Yes.

20 MR. O'CONNOR: Thank you, sir.

21 (The following proceedings were had in open court:)

22 Q. (By Mr. O'Connor:) Chief Germann, I want to show you
23 what's -- well, I guess I'm going to have to put it back here
24 unless you want to step down here and do it. I guess we can
25 step down here a little bit. And you can just speak up, if

771

1 you would.

2 Have I got this where you can get, you've got a
3 frame of reference on this, the way it's -

4 THE COURT: You've got some jurors that can't see
5 that, Mr. O'Connor.

- MR. O'CONNOR: I'm going to go back and put it on
7 this, Judge, if that's okay.

8 THE COURT: ALL right.

9 Q. (By Mr. O'Connor:) Chief, probably the best is for you
10 to maybe come down here. Do you mind?

11 MR. O'CONNOR: Do you mind, Judge?

12 THE COURT: No, that would be fine.

13 Q. (By Mr. O'Connor:) If you would just kind of project
14 your voice maybe this way so the court reporter can get it.
15 You were down at what station again, sir?

16 A. No. 36 at 95th and Holmes.

17 Q. Okay. So you came in from?

18 A. Would have came from the west on 95th Street, or
19 Bannister Road north on 71 Highway.

20 Q. okay. And do you know what direction, if you know,
21 don't guess, that the Pumper 30 and Pumper 41 came from?

22 A. If they came from their stations as they normally would,
23 41 would have surely came from the south and then north on 71
24 Highway, and 30 would have came from the north south on 71
25 Highway.

1 Q. So would 30 have come across 85th Street and down?

2 A. 30 would have been on Prospect, so they would have come
3 down Prospect to 71 Highway, I assume, but they could have
4 come down 87th, but I don't believe so.

5 Q. So the emergency vehicles were coming from different
6 directions into this scene?

7 A. That would be my thinking that they should have.

8 Q. Okay. Did the police officers come into this scene that
9 you were aware of before the explosion, police cars with
10 lights and sirens?

11 A. Not that I'm aware of. They were there after I was, but
12 I don't know about before.

13 MR. O'CONNOR: Thank you. Have a seat.

14 Q. Now, your driver was Dean Gentry; is that true?

15 A. That's correct.

16 Q. And since this explosion and before today's date,
17 Firefighter Gentry has died of natural causes; is that
18 correct?

19 A. That's correct. He was a fire apparatus operator.

20 Q. And the trailer, as I understand it, when you saw it
21 before the explosion, you said it was glowing?

22 A. That's correct.

23 MR. O'CONNOR: Just briefly. I may be done. I may
24 have a couple other questions here.

25 Q. Your last communication, I believe, with Captain

1 Kilventon appears to have happened around 4:04, somewhere
2 around there; do you agree with that?

3 A. I would have to look at the transcript. I'm not -

4 Q. I would be happy to show that to you.

5 MR. BECKER: I have an extra copy.

6 MR. O'CONNOR: Thank you. Turn back to Page 3 here
7 to pick up the time, and there is where I think you had the
8 conversation with him.

9 Q. (By Mr. O'Connor:) After looking at that, does that
10 refresh your recollection?

11 A. Yes, I believe that this transcript time is right,
12 that's correct.

13 Q. And that would have been the last communication with Jim
14 Kilventon before the explosion occurred at 4:08 or
15 approximately that time?

16 A. Whenever the explosion occurred, yes.

17 Q. And does it show on the transcript on Page 4 there 4:08,
18 the explosion has occurred?

19 A. Yes. That's when I radioed. I don't know what kind of
20 delay there would have been before that, between the time of
21 the explosion and when I radioed. I discussed about the
22 noise that was created by the falling debris, and I don't
23 have any way of knowing what kind of time that took.

24 Q. At that point, did you then take command of the
25 situation and start moving people back and out of there for

1 fear that there may be another explosion?

2 A. Yes. One of the first things I tried to do was keep
3 everyone away from the scene for fear that there was -- it
4 just wasn't known what else was up on that hill, or at least
5 it wasn't known by me.

6 Q. That's when this command post was set up?

7 A. Yes, a few minutes after that.

8 Q. And some time later a second explosion occurred, and no
9 one was injured as a result of that explosion; is that
10 correct?

11 A. That's correct.

12 MR. O'CONNOR: Thank you very much, sir. I have no
13 further questions.

14 MR. OSGOOD: I have some questions, Your Honor.

15 THE COURT: How about Mr. Peters?

16 MR. PETERS: No, Your Honor.

17 THE COURT: Miss Hunt?

18 MS. HUNT: No, Your Honor.

19 THE COURT: Mr. Bunch?

20 MR. BUNCH: No, Your Honor.

21 THE COURT: ALL right, Mr. Osgood.

22 MR. OSGOOD: I want to use the government's time
23 line, Your Honor.

24 -- -- --

1

2 By Mr. Osgood:

3 Q. Chief, this is a time line that's extracted from the -

4 MR. OSGOOD: Does it have a government's exhibit
5 number on it?

6 MR. BECKER: It does not have a number.

7 MR. OSGOOD: Can we make this Defendant's 2 or -

8 MR. BECKER: I would prefer that it be Government's
9 Exhibit 387.

10 MR. OSGOOD: I presume you don't object to it
11 coming into evidence?

12 MR. BECKER: No. I think 387 is in, Your Honor.

13 THE COURT: 387?

14 MR. OSGOOD: Yes' sir.

15 THE COURT: Okay. 387 is admitted.

16 **(Government's Exhibit 387 was admitted into**
17 **evidence.)**

18 Q. (By Mr. Osgood:) Chief' this is a time line that's
19 extracted from the transcript. And if you would' just take a
20 look at it for a few minutes to refresh yourself as to the
21 times' and then I'm going to ask you a couple of questions.
22 You'd been a fireman how long?

23 A. I didn't -- let me look at it longer.

24 Q. I'm sorry. I thought you'd seen it. And I'll put it up
25 where you can see it here in a minute.

1 A. Okay.

2 Q. You'd been a fireman how long' sir, at the time of this?

3 A. At that time approximately 25 years.

4 Q. So you'd seen a lot of car fires in that time?

5 A. Several, yes.

6 Q. All right. Do you remember whether or not, reflecting
7 back, whether or not you actually saw the truck on fire when
8 you arrived at the scene?

9 A. No, I did not.

10 Q. Had it been extinguished, or you were just concerned
11 about what was up on the hill?

12 A. I would assume it would have been extinguished if 41 had
13 been called and was over there. I don't know.

14 Q. All right. The question I want to ask you is looking at
15 the time line here, the call comes in at 3:40; is that
16 correct, Chief?

17 A. Again, I would have to look at the transcript.

18 THE COURT: Well, that's what the time line says.
19 Let's assume that, Mr. Osgood.

20 MR. OSGOOD: All right.

21 THE COURT: He didn't take the call.

22 Q. (By Mr. Osgood:) Would you agree with me, Chief, that
23 between 3:40 when the first call comes in that you've got a
24 truck on fire and a fire on the hill, according to the
25 Riggses, that the explosion occurs at 4:08, that is 28

1 minutes. Would that be correct? Would you agree with me?

2 MR. MILLER: I'm going to object to that. That's
3 misstating exhibits in evidence.

4 THE COURT: It's also beyond the scope of direct.
5 Sustained.

6 MR. OSGOOD: Your Honor, this is -- I'll tie it in,
7 and I think you'll see how it's relevant in a moment. I want
8 to establish a time.

9 THE COURT: Well, the fact that there's 28 minutes
10 between 3:40 and 4:08, without any embellishment on that,
11 let's go on.

12 Q. (By Mr. Osgood:) All right. Now, the second explosion
13 occurs at 4:48, is that correct, according to the transcript?

14 A. I believe that's correct.

15 Q. And that's 40 minutes even?

16 A. You know, according to the time.

17 Q. 4:08 to, 40 minutes even?

18 A. Again, there's time I'm not sure of from my -

19 Q. What is a secondary fire? Let me rephrase that. When
20 you go to a fire and something is on fire, do you have
21 concern about secondary fires starting as a result of the
22 primary fire, the fire you're fighting?

23 A. It's according to what type of fire you're fighting, I
24 presume, but I don't know what your point is.

25 Q. Well, if the wind is blowing and a house is on fire, are

1 you concerned about other houses next-door?

2 A. Yes.

3 Q. All right. Did you see both trailers on fire when you
4 arrived, or only one?

5 A. Only one.

6 Q. Based on your experience as a fireman, then, is it
7 possible that the explosion created a secondary fire in the
8 other trailer which -

9 MR. MILLER: Excuse me. I'm going to object. It
10 calls for him to speculate and reach a conclusion.

11 THE COURT: Sustained.

12 MR. OSGOOD: He's an expert, Your Honor.

13 THE COURT: We've been through that this morning.
14 That objection is sustained.

15 Q. (By Mr. Osgood:) You did not observe the second trailer
16 on fire?

17 A. No, I did not.

18 Q. And after you pulled back down off of the hill after the
19 first explosion was over, was there any point in time, then,
20 when you saw the second trailer flame up?

21 A. No. I saw, we saw a flame, but I didn't know what it
22 was. We were at a distance. You couldn't tell what it was.

23 Q. And were you back down at 95th when the second trailer
24 blew?

25 A. Yes.

1 Q. So you were quite a ways off, you weren't at the scene?

2 A. Yes.

3 Q. Based on your experience, how long does it take a truck
4 or a vehicle with an interior fire to consume that vehicle?

5 MR. MILLER: Excuse me, Mr. Germann. I'm going to
6 object again. It calls for conclusion and speculation.

7 THE COURT: I don't believe that that sort of thing
8 happens by formula, Mr. Osgood. I'm going to sustain the
9 objection.

10 Q. (By Mr. Osgood:) Let me ask you this. Have you been at
11 the scene of vehicle fires?

12 A. Yes.

13 Q. Are they like a house fire that they can go on and
14 smolder and continue to burn for a long period of time, or
15 are they flash fires, more of a flash fire?

16 THE COURT: Or both.

17 Q. Or both.

18 A. I don't know that you can put them in either category.
19 They're going to vary.

20 Q. What typically -- when a vehicle burns, what do you have
21 to worry about, what burns in it?

22 MR. MILLER: I'm going to object to this as to
23 relevance, and also it depends on what's in the truck. He's
24 asking him to speculate.

25 MR. OSGOOD: Your Honor, this goes to the defense's

1 case. They've put on the Riggses and talked about the -

2 MR. MILLER: I'm going to object.

3 THE COURT: Are you -- you're not going to stand
4 out there and make a speech. If you want to make a record,
5 come up. Otherwise, the objection is sustained.

6 MR. OSGOOD: Could we read back the question
7 because I want to ask another similar question, and I don't
8 want to -

9 THE COURT: All right.

10 (The requested portion of the record was read.)

11 MR. MILLER: Again, I'll make the same objection.
12 What's in the vehicle, it's asking him to speculate. There's
13 not enough facts.

14 MR. OSGOOD: It's been sustained. I wanted to hear
15 the question so I could formulate another question.

16 Q. (By Mr. Osgood:) What do you treat a vehicle fire with
17 typically, water or with chemical?

18 A. The vehicle fire normally would be water. Now, you're
19 going to have to give me a definition of vehicle.

20 Q. The interior.

21 A. We're talking about a car fire?

22 Q. Yes, sir, a car or pickup truck.

23 A. This certainly wasn't a car. I'm thinking about these
24 trailers.

25 Q. I'm sorry. I didn't mean to confuse you, Chief. There

1 was a pickup truck that the security guards had that was down
2 over by the heavy equipment. Were you aware of that?

3 A. Yes.

4 Q. That's what I'm talking about, not the trailers. Was
5 it, or would you typically treat a, or react to a fire in a
6 vehicle like that in the cab, interior, with water or with
7 chemical?

8 A. Normally with a water hose.

9 Q. And that will typically handle the situation?

10 A. Normally, yes.

11 Q. Okay. Are seats typically flammable and burn?

12 A. Generally.

13 Q. And what about these dashes in later model cars, the
14 kinds of vinyl stuff, is that flammable or fire resistant?

15 A. According to whether it was a car that had that in it,
16 normally, that type of material in it.

17 Q. Is flammable?

18 A. Yes.

19 Q. And how many, through the years, vehicle fires have you
20 responded to in your lifetime?

21 A. I wouldn't have a guess.

22 Q. Quite a few?

23 A. Yes.

24 Q. Typically when you arrived, had they burned themselves
25 out, or were they still on fire?

1 A. Various stages. Some just smoldering, some just
2 completely burned up, and all areas in between.

3 Q. But from the time you got a call until you arrived at
4 the scene, did you ever arrive at the scene where one was
5 actually engulfed in flames from the time that you took the
6 call until you got there?

7 MR. MILLER: Excuse me. I'm going to object as to
8 relevance.

9 THE COURT: Sustained.

10 MR. OSGOOD: Can we come up, Your Honor?

11 THE COURT: Yes.

12 (Counsel approached the bench and the following
13 proceedings were had:)

14 MR. OSGOOD: I want to show, and I want to argue so
15 I need to put some evidence in, that the truck fire started
16 after the fire on the hill. That's why the flames, the
17 sequence, the times that they burned and everything are
18 important. And that's why the times between the first
19 trailer fire and the second trailer fire are important. You
20 know, I can recall the chief as my witness, if that's
21 necessary. I don't want to do that to this man.

22 THE COURT: So are you saying that it's your theory
23 that the Riggses, truck fire started after the explosive
24 trailer fire?

25 MR. OSGOOD: Yes, sir.

1 THE COURT: Do you have evidence of that?

2 MR. OSGOOD: That's what I'm trying to elicit now.

3 THE COURT: Now, come on, don't play games with
4 me. Do you have evidence of that?

5 MR. OSGOOD: I think there's an inference in this
6 case.

7 THE COURT: That's your argument, it's not
8 evidence. Do you have evidence of that?

9 MR. OSGOOD: That's why I'm asking these questions
10 of the chief. I can recall him in my case, and that's what
11 I'm going to have to do.

12 THE COURT: That's what you're going to have to
13 do. I'm sustaining the objection.

14 MR. OSGOOD: I didn't want to do it to this
15 witness.

16 THE COURT: I'm sustaining the objection.

17 (The following proceedings were had in open court:)

18 MR. OSGOOD: I guess that's all I have of you.

19 Thank you, Chief.

20 THE COURT: All right. Any redirect?

21 MR. MILLER: No redirect, Your Honor.

22 THE COURT: Thanks, Chief. You may step down.

23 THE WITNESS: Thank you, Your Honor.

24 MR. BECKER: United States calls Firefighter Mike
25 Torrey.

MICHAEL TORREY,

2
3 being first duly sworn by Kathy Geller, Law Clerk, testified
4 as follows:

6 DIRECT EXAMINATION

7 By Mr. Becker:

8 Q. Good morning.

9 A. Good morning.

10 Q. Please state your name and spell your last name.

11 A. Michael Torrey, T-O-R-R-E-Y.

12 Q. How old are you?

13 A. Thirty-seven.

14 Q. Are you married?

15 A. Yes.

16 Q. Do you have any children?

17 A. A girl, eleven; and a boy, eight.

18 Q. How are you employed?

19 A. Kansas City Fire Department.

20 Q. How long have you been employed by the Kansas City,
21 Missouri, Fire Department?

22 A. Eleven years.

23 Q. What is your present assignment?

24 A. I'm a driver in District 106. I drive the chief.

25 Q. In November of 1988, where were you assigned?

1 A. Station 42 at 6006 Red Bridge.

2 Q. On the south side of Kansas City, Missouri?

3 A. Yes.

4 THE COURT: What's the station number, please?

5 THE WITNESS: Station 42.

6 Q. (By Mr. Becker:) What were your duties in November of
7 1988?

8 A. I was a firefighter on the squad.

9 Q. What did that -- did you have any particular fire
10 apparatus, truck, that you normally went out on?

11 A. Yes, we did. I was on the squad that had two people on
12 it, the driver and myself. And we carried the tack line and
13 had a small water tank on it, the pump, had first aid
14 equipment, and we were also responsible for a brush buggy
15 which we responded to brush fires and other incidents that
16 were off the road.

17 Q. Can you briefly describe for us what a brush buggy is,
18 what kind of truck or bike or whatever that is?

19 A. Well, this particular one was a late seventies Dodge
20 model. And the front end was like a regular pickup, and it
21 had a heavy frame under it, and the back had box
22 compartments, had a hose on it and a small water tank and a
23 pump, four-wheel-drive, had dual wheels on the rear, and we
24 were able to go off road and up inclines and muddy places.

25 Q. That was what it was designed to do?

1 A. That's what it was designed for, yes.

2 Q. That's a two-man, two-person -

3 A. Right, two people usually man that, yes.

4 Q. On November 28th, into November 29, 1988, were you
5 working that day?

6 A. Yes.

7 Q. What was your shift?

8 A. I work a 24-hour shift. It starts at 7:00 in the
9 morning and ends at 7:00 the next morning.

10 Q. Were you awake at around 3:40, 3:30 on the morning of
11 November 29, 1988?

12 A. Yes, I was in the bunk room, but I was awake.

13 Q. Tell us what was happening, please.

14 A. Well, the bunk room is adjacent to the apparatus bay
15 floor where the speakers are on all night, and you can hear
16 the alarms. Since I was awake, I was listening to the alarms
17 coming in, and I heard 41 Pumper go out on a car fire, and a
18 few minutes later I heard a call for another pumper, and then
19 I heard some more transmissions, and Captain Kilventon said
20 something about they thought they had some fires up in the
21 woods.

22 So as soon as they said that, I knew that we were
23 going to be sent because we had the brush buggy, so I started
24 to get up, to wake up Al Donnelly, my driver.

25 Q. Now, were you, your location down on Red Bridge, was

1 that the, in the same sector or area of responsibility as
2 this, these fires on 71 Highway?

3 A. Yes. It was in District 107, and we responded to car
4 fires and brush fires down there, we had before. And so we'd
5 been there several times and -

6 Q. You'd been where several times?

7 A. Down near the construction site, in that area
8 surrounding it into the woods for different things. We had,
9 several times stolen cars had been dumped there and set on
10 fire, and we would go to assist Pumper 41 with the squad.

11 Q. I'm sorry. So you were saying you got up that night and
12 got your driver up. What was his name?

13 A. Al Donnelly.

14 Q. What did you do after you got up?

15 A. I told him what was going on, and then shortly after
16 that, they bunked us out, which means the bells went out, and
17 they stated the address and who was supposed to respond. And
18 we went and got all of our bunker gear off of our squad that
19 is on the upstairs portion of the station and took it
20 downstairs to put it on the brush buggy, which was in the
21 basement.

22 Q. What's bunker gear?

23 A. Bunker gear is our protective clothing we wear made out
24 of nomax (phonetic). It consists of a bunker coat and bunker
25 pants with suspenders attached to them and rubber boots, our

1 helmet, our gloves, and our nomax hood.

2 Q. So that's the yellow suits that we normally see you
3 fellows wearing at a fire scene?

4 A. At a fire scene, yes.

5 Q. You took them downstairs, then. The brush buggy was
6 downstairs; is that right?

7 A. Yes, it was.

8 Q. What did you do then?

9 A. Well, the brush buggy was parked in the basement garage
10 area, and also where the firemen's cars were parked in there
11 because at that time there was a city hall annex in the
12 basement of the fire station at that location. So we
13 couldn't park on the outside because the customers wouldn't
14 have anywhere to go. So we had to move a couple of cars out
15 of the way of the brush buggy to get it out and move some
16 different equipment out from in front of it to get it ready
17 to go.

18 Q. What did you do then?

19 A. Then we loaded up our bunker gear, started it up. We
20 had to let it warm up a little while because if you took off
21 too soon, it would just keep dying. So we let it warm up for
22 maybe a minute or two, and then we responded onto the call.

23 Q. Can you describe how you got from your firehouse out on
24 Red Bridge to the fire scene on 71 Highway?

25 A. We pulled out on Red Bridge and turned right and

1 proceeded on Red Bridge to Hickman Mills, and at that time
 2 Hickman Mills cut all the way through, and we proceeded on to
 3 95th Street where we stopped at a stop light. We had our
 4 lights and sirens on, but there were still cars coming
 5 through, and they don't always yield to us, so Al stopped at
 6 that intersection.

7 It was at that time that I first knew that
 8 something was happening where 41 Pumper was at. There was a,
 9 I saw a large column of black smoke, just huge. I can't even
 10 describe it. It was so big, and it looked so much different
 11 than anything I'd ever seen, and there were bright-colored
 12 embers in it. And it was just very wide, straight up and
 13 down on the sides going up into the air. And I asked Al what
 14 could that be, and he didn't know.

15 Q. Could you show -- did you hear an explosion?

16 A. We didn't hear anything.

17 Q. This is Government's Exhibit 1, this map. By the way,
 18 you and I have had an opportunity, we discussed your
 19 testimony?

20 A. Yes, we did.

21 Q. And we went through all of these pictures before you
 22 testified?

23 A. Yes, we did.

24 Q. Could you, with the Court's permission, show the jury,
 25 then, where you were just describing here coming up 71 or

1 Hickman Mills back then at 95th?

2 THE COURT: Swing that around, if you would,
3 please.

4 MR. OSGOOD: Excuse me, Your Honor, is that exhibit
5 into evidence?

6 MR. BECKER: Yes, I believe it is.

7 THE COURT: Push it over to the -

8 MR. OSGOOD: Is that in evidence, Your Honor? I
9 don't believe it is.

10 MR. BECKER: It's No. 1.

11 MR. OSGOOD: I'm going to object to it as not being
12 to scale.

13 MR. BECKER: Fine. I'll use a photograph. That's
14 fine. It is to scale, but -

15 THE COURT: Well, if you can demonstrate it is, do
16 so.

17 MR. BECKER: I'll have another witness for that,
18 Judge, that's fine.

19 Q. (By Mr. Becker:) Fireman Torrey, I want to show you
20 Government's Exhibit 53. Can you see that from where you're
21 sitting?

22 A. Yes, I can.

23 Q. And out here at the bottom right corner of this
24 photograph, is that where you were -- tell us, where were
25 you, if this is Bannister Road along the bottom of

1 Government's Exhibit 53?

2 A. We were stopped on Hickman Mills right at Bannister Road
3 waiting for the traffic to clear so we could proceed on,
4 right in there.

5 Q. And where I have my pen, which is in the lower
6 right-hand corner of the photograph, is that roughly where
7 you were?

8 A. I believe Al took the road on the right there, but that
9 goes on up onto 71.

10 Q. The outside road?

11 A. I believe so.

12 Q. When you saw that column of smoke, where did you go
13 after that, what did you do?

14 A. We just proceeded on towards the area that we were
15 dispatched to.

16 Q. Which was the construction site?

17 A. Which was the construction site, yes.

18 Q. Show you Government's Exhibit 5 here. Can you show the
19 jury, please, with the Court's permission, where you went in
20 the early morning hours, then, of November 29, 1988?

21 A. Well, as we were proceeding on down after I saw the
22 column of smoke, Marion Germann came on the radio, and his
23 voice was very shaken, and it just wasn't like him. I knew
24 something terrible had happened. And we pulled up onto this
25 road here, they called it the haul road, because we didn't

1 know exactly where they were at, but we knew that was one of
2 the main entrances into this construction area.

3 As we pulled onto the scene, I told Al not to use
4 his radio since we were on the scene because we heard
5 somewhere that if you're going near a blast site not to use
6 any radios because it may cause an explosion. So we didn't
7 realize exactly what we had, but Chief Germann said there had
8 been an explosion.

9 So we pulled up here, and as we pulled up this haul
10 road and our lights started to shine up the hill, the first
11 thing I saw was Marion Germann coming down the hill
12 staggering back and forth, and he had his bunker pants on,
13 but he didn't have his coat or his helmet on. And as he was
14 coming down the hill, he was waving us back.

15 Q. Were you able to see -- if you would have a seat,
16 please. I want to show you Government's Exhibit 29. Can you
17 see that from where you're sitting?

18 A. Yes, I can.

19 Q. And does that depict, then, do you see the battalion
20 chief's car?

21 A. Yes.

22 Q. Were you able to see that as you pulled up the haul
23 road, the chief's car?

24 A. Well, initially I saw Chief Germann, and I focused my
25 attention on him. And as I went, I got out of the squad and

1 started up the hill to get him. Then I saw the chief's buggy
up on top of the hill.

3 Q. Were the lights on?

4 A. The emergency lights on the top of the car were
5 rotating, and all the lights were on.

6 Q. When you saw Chief Germann walk, I guess, coming down
7 the hill, did you stop?

8 A. Yeah. We stopped momentarily just because it looked so
9 out of character. Anytime we went on any kind of emergency
10 scene with Chief Germann, he always had his full bunker gear
11 on. And he was very, very much a stickler about that. So
12 when we saw him with just his bunker pants on and staggering,
13 we knew something was very wrong.

14 Q. What did you do?

15 A. We stopped for a few seconds, just taking in the scene,
16 maybe five or ten seconds. I told Al, "I'm going to go get
17 him." And so I got out and ran up the hill to where he was
18 at and put my arm around him to support him because he was
19 staggering pretty bad, and the first thing he said was that
20 they were all dead. And I just couldn't believe it. I was
21 trying to assimilate all of this in my mind what could
22 happen, and I thought, well, something terrible has happened,
23 and somebody is hurt and maybe somebody is dead, but they're
24 not all dead. so I took him back down.

25 Q. Where? Where did you take him?

1 A. I took him back down the haul road to where the squad
2 was parked.

3 Q. Okay. What squad?

4 A. Squad, the brush buggy.

5 Q. Now, can you see on Government's 29 here where 71
6 Highway is, I have my pen on in the upper left-hand corner of
7 that photo?

8 A. Yes.

9 Q. Had your driver gone on back down to that point, or
10 where did you -

11 A. No, sir. He stopped. When we pulled up and started
12 pulling up the haul road and our headlights picked up Chief
13 Germann, then he stopped at that point somewhere off of 71
14 Highway.

15 Q. Where did you go with the chief then?

16 A. I took the chief back down to the brush buggy and set
17 him on the tail board. And when I did that, I was still
18 thinking about what he had just said, that everybody was
19 dead. And it came to my mind to ask him where Deano was.
20 Deano Gentry was his driver at the time.

21 Q. Were you friends with Dean Gentry?

22 A. Yeah, I was friends with Dean Gentry, and we had a lawn
23 service and worked together on our days off.

24 Q. So you asked the chief about Dean Gentry, about Deano?

25 A. Yes.

1 Q. What did he say?

2 A. He said, "I don't know." He was still very shaken up.

3 And so when he said that' I turned around and started running

4 back up the hill towards the chief's buggy to see if I could

5 find him.

6 Q. Did you find him?

7 A. Yes' I did.

8 Q. I want to show you a photograph which is Government's

9 Exhibit 351. Where -- does that look like the scene then

10 when you ran back up the hill? Actually it's lighted, right'

11 but when you went up the hill it was dark?

12 A. Yes' it was dark out with -- the lights on the car were

13 on and the light from the fire of the trailer that was

14 burning gave some illumination to it.

15 Q. What did you see' what did you do?

16 A. Well' as I was running towards the chief's buggy

17 initially, I thought it was just parked there and there was

18 no damage. I didn't see it first. And then as I got close

19 to the chief's buggy, I saw the damage, that the windshield

20 was gone out of it and that the hood was popped up, the light

21 bar was pushed back some, the chrome was stripped off of it.

22 And as I started seeing these things, I started slowing down

23 because I just couldn't believe I was seeing that.

24 And as I approached the car, I was walking, and I

25 was kind of looking at the car and I was going around to the

1 other side of the car because the chief -

2 Q. I'm sorry, the front or back?

3 A. The front. I went around the front of the car. And as
4 I was going around the front of the car, I knew the reason I
5 did that was the chief's driver usually keeps his bunker gear
6 in the back seat behind him on the driver's side so when we
7 get to a scene usually we open the back door, and if they're
8 going to need us to go in and help, we put on our bunker gear
9 at that time. So that's where I was going to.

10 As I went around the car and as I was walking
11 around the car, the headlights were shining out, they were
12 still on, and I looked down and I saw a hand laying on the
13 ground, and I just, I just couldn't believe that that's what
14 it was. And I stopped and I looked at it and it had, it was
15 a right hand, and it was laying flat on the ground, and it
16 had the little finger and the next finger bent under, and
17 there was smoke coming off of it. And then I went ahead and
18 traveled on around to the other side of the car, and I saw
19 Deano at that time.

20 Q. Where was he?

21 A. He was by the passenger door behind the driver, and he
22 had his bunker pants, which have the boots in them. And we
23 just step in, take our shoes off, step in our boots, and pull
24 our bunker pants up and put our suspenders on. And that's
25 what he was in the process of doing. He was bent over

1 stepping into his bunkers and getting ready to stand up and
2 pull them on.

3 Q. And that would be on the other side of the photograph
4 here. He was near the rear driver's side?

5 A. Towards the back, yes.

6 Q. Can you describe Dean Gentry, was he a big guy, small
7 guy?

8 A. He was a big guy, I would say he was well over 200
9 pounds.

10 Q. How tall?

11 A. He was probably around six feet tall.

12 Q. Please describe his condition when you first saw him, I
13 guess, putting on his pants?

14 A. He was -- first thing I noticed was that he was bleeding
15 on his head, and the first thing I asked him was if he was
16 all right. And he said he thought he was okay. And he kept
17 putting on his bunker gear. And I said, "Come on, Deano,
18 we've got to go."

19 And he said, "We've got to help those guys."

20 And I said, "Deano, we've got to get out of here."

21 And he said, "No, we've got to help them."

22 Q. Did you look back towards the trailers?

23 A. When he was saying that, that's what I did. I turned
24 around and looked. And it was illuminated somewhat from the
25 fire from the trailer that was burning, and I could see 30

1 Pumper, and I saw that all the hose was off of the bed and
2 gone. The doors were all blown back, the compartments were
3 open, the light bar was gone, there were pieces of metal all
4 over, yellow pieces of metal.

5 Q. Did you see Pumper 41?

6 A. No, I didn't. And I told Dean, I said, "We've got to
7 go, we've got to get out of here." And I just held on to him
8 until he finally quit fighting, and we walked down the hill.

9 Q. Where did you go when you went down the hill?

10 A. I took him down to the brush buggy where Marion Germann
11 and Al Donnelly were.

12 Q. Was that now still on the haul road as depicted on
13 Government's 29 here, or was that back down to Hickman Mills?

14 A. No, he hadn't moved the brush buggy. It was still where
15 we stopped when we initially pulled up, so it was on the haul
16 road.

17 Q. Could you tell us -- I have my pen here on Government's
18 29 on what's been described as the haul road. Between
19 Hickman Mills, or 71 Highway, which is in the upper left-hand
20 corner, and the battalion chief's car, which is in the upper,
21 towards the right corner, on the haul road, where was the
22 brush buggy, halfway?

23 A. I would say less, just a little less than halfway,
24 probably.

25 Q. Now, see where this picture of this man is there?

1 A. uh-huh.

2 Q. Is that how far you were, or further up the road?

3 A. Probably a little bit farther than where that man was,

4 but not up to that pile of rocks there.

5 Q. Not as far as the rocks here?

6 A. No. No.

7 Q. Okay. So what happened with Gentry then when you took

8 him back down that far, and the chief, for that matter? What

9 did you do when you got back to the brush buggy?

10 A. Well, about that time I remember 36 Pumper arriving on

11 the scene. They pulled up somewhere behind the brush buggy,

12 and they were getting, they got off the rig and came around

13 and started talking to us. And Ed Taylor was the first one

14 that I remember talking to me. And I was telling him what

15 had happened and what I saw. And we started discussing what

16 had just transpired.

17 Q. So you and Ed -- did you know Ed Taylor from -

18 A. Yes, I knew Ed Taylor.

19 Q. He was the driver of Pumper 36?

20 A. Yes, he was.

21 Q. What did you and Ed Taylor do then?

22 A. We were talking about how we'd seen a show and it talked

23 about how people who were real close to a blast sometimes

24 survived it, and he asked me if I thought there was a chance

25 that anybody could be alive. And I said I didn't see how,

800

1 but if that's true, if there is that chance that they could
2 have been close enough to where they survived that we had to
3 go up and make sure. So him and I decided that that's what
4 we were going to do.

5 Q. Did you tell Chief Germann that's what you were going to
6 do?

7 A. No, I didn't, because from the onset, he was wanting us
8 to stay away, and he didn't want anybody back up there. And
9 so it was something that Ed Taylor and I decided on our own
10 to do.

11 Q. Show you Government's Exhibit 350. Could you describe
12 what you and Ed Taylor then did?

13 A. We started, we walked off the haul road, kind of angled
14 across going towards where the trailer was that was burning.

15 Q. Now, at the bottom of Government's Exhibit 350 here is
16 what appears to be a different colored line, a ridge. Is
17 that what was present on the site?

18 A. Yes, it was.

19 MR. BECKER: With the Court's permission, could the
20 witness come down and show us on Government's Exhibit 350
21 where he and Firefighter Taylor went that morning?

22 THE COURT: Yes, please do.

23 A. We started out from here, and we angled across. And the
24 squad and the 36 Pumper were parked down in this area here
25 still.

1 Q. Indicating in the lower left-hand corner of the
2 photograph?

3 THE COURT: Mr. . Becker, we've got some housekeeping
4 here. I don't think 350 was in your group that was admitted
5 by agreement and stipulation.

6 MR. BECKER: Your Honor, then I would offer it.

7 MR. O'CONNOR: Judge, we have no objection to it.

8 THE COURT: ALL right. 350 is -

9 MR. BECKER: We'll be using this series.

10 Government would offer 350, 351, 352, 354, and 357.

11 THE COURT: All right. Any objection?

12 MR. O'CONNOR: I have no objection, Judge.

13 THE COURT: Assuming, hearing no other objection,
14 then, those exhibits, 350, 351, 352, 354, and 357, are
15 admitted.

16 MR. BECKER: Thank you, Judge

17 **(Government's Exhibits 350, 351, 352, 354, and 357**
18 **were admitted into evidence.)**

19 Q. (By Mr. Becker:) Please continue.

20 A. So we continued up to this dirt berm here that was piled
21 up several feet above our head, and we thought if we walked
22 along that, if that other one did happen to blow up, it would
23 at least offer a little bit of protection.

24 Q. How high was that ridge above you, or was it above you?

25 A. Just a few feet, I'm estimating. I just remember it was

1 above our heads.

2 Q. All right. What did you do?

3 A. We proceeded on along just the very bottom of this
4 ridge. And as we did, everywhere we looked, there was, there
5 were pieces of metal that we could recognize that were from
6 the firetrucks, some of it was yellow, some of it was the
7 tread plate aluminum that was used on the running boards and
8 the bumpers and different places on the firetrucks.

9 And we proceeded on across the bottom until we got
10 to this bulldozer. And when we got to this bulldozer, I
11 climbed up on the tracks and then on up onto the hood of the
12 bulldozer. And Ed Taylor was there beside me, and he climbed
13 up, I believe, on the tracks, but didn't climb up on the
14 hood.

15 Q. All right. I'll show you a different photograph now,
16 Government's 354. Does that have the Caterpillar bulldozer
17 that you climbed up on?

18 A. Yes, it does. It's this one right here.

19 Q. In the lower right-hand corner of the photograph. What
20 side of the bulldozer did you and Firefighter Taylor climb up
21 on?

22 A. It was this side that my pen is pointing to.

23 Q. So that would be the side away from -

24 A. Away from the construction site.

25 Q. What could you see?

1 A. We could see the trailer that was fully involved in
2 fire, front and back sides, flames well above the top of it.
3 Smoke coming off of it. I saw 31 Pumper much closer, or 30
4 Pumper much closer, and could see the damage more clearly.

5 Q. Please describe the damage on Pumper 30.

6 A. Windshield was gone out of it, there were no light bars
7 on it. All the equipment that was in the hose bed, the hose,
8 the couplings, everything was gone. The doors were ajar. I
9 believe one was broken. The driver was, or the passenger's
10 side door was kind of broken down and off, and the driver's
11 side door was opened. A lot of the control and different
12 things were gone off the front of it. There were things
13 hanging off the back, twisted metal, different parts that I
14 couldn't even identify. And, you know, once again, the
15 trailer that was on fire illuminated the whole area pretty
16 well, especially that distance that we were from it.

17 Q. Did you see any of the men from the two pumper
18 companies?

19 A. No, I didn't. We didn't see anybody.

20 Q. Did you see Pumper 41?

21 A. That was what made it clear in our minds that nobody
22 could have survived that first blast because Pumper 41 wasn't
23 there.

24 Q. If you would just resume your seat, please.

25 Did you talk to Taylor at that point, then? Did

804

1 you discuss this' what you were seeing?

2 A. Yeah. We both looked over the scene for maybe 30

3 seconds and said there's no way anybody could have survived

4 that.

5 Q. What did you do then?

6 A. Got down off the Caterpillar and went back the same way

7 we came, back down to where the 36 Pumper and the brush buggy

8 were. And at that time there were other firetrucks arriving

9 on the scene, and from that point I knew there wasn't

10 anything I could do there to help anybody.

11 So they had Deano loaded up in the ambulance

12 getting ready to take him to St. Joseph's Hospital, so I told

13 Al Donnelly and someone else that I was going to go to the

14 hospital with Deano and that's where I would be at. So I got

15 in the ambulance with Dean, and they left shortly after that.

16 MR. BECKER: Thank you very much. You have to wait

17 for questions.

18 THE COURT: There may be questions from the

19 defense.

21 CROSS-EXAMINATION

22 By Mr. O'Connor:

23 Q. Mr. Torrey, I just have a couple of questions for you,

24 sir. How was it that you were being called to this scene

25 when you were called? Who was summoning you to come to the

1 scene?

2 A. The dispatchers.

3 Q. And you came from 42's -

4 A. Yes, at 6006 Red Bridge.

5 Q. okay. And were you in radio communication while en
6 route with everyone else who was on the radio?

7 A. Yes, we were.

8 Q. Did you hear any communication by Captain Kilventon
9 before the explosion?

10 A. What I recall is him calling for an extra pumper, and
11 then I recall him saying that there were brush fires or fires
12 up in the woods, something to that effect. And I remember
13 getting ready. But on the way there, I don't recall anything
14 being said. I know there was a lot of radio transmission
15 going on, but I don't remember what it was.

16 Q. Were you yourself at that time hazmat trained?

17 A. No, sir.

18 Q. Did you hear any words on the radio that morning before
19 the explosion across the radio like ammonium nitrate, fuel
20 oil, diesel fuel, fertilizer, any of those kind of words
21 being said?

22 A. I don't recall that. I recall them saying that there
23 were explosives on the site, but there always were, and we
24 were familiar with where they were on the site.

25 Q. Now -__

806

1 THE COURT: I'm sorry. You recall who saying there
2 were explosives on the site?

3 THE WITNESS: The dispatchers.

4 THE COURT: Thank you.

5 Q. (By Mr. O'Connor:) Now, can you see 354?

6 A. Yes.

7 Q. This is where you climbed up on to look; is that
8 correct?

9 A. Yes.

10 Q. Did you see any persons up on the hills, anybody moving
11 up on the hills, any cars moving out of that area at that
12 time?

13 A. No, I didn't.

14 Q. And do you see this, what I'm pointing to here?

15 A. Yes.

16 Q. When you were walking up to this area, did that appear,
17 did that red item there appear to be sitting like on a
18 platform?

19 A. I don't recall if it was.

20 Q. Okay.

21 MR. O'CONNOR: That's all I have, thank you, sir.

22 THE COURT: All right. Mr. Peters?

23 MR. PETERS: No questions.

24 THE COURT: Miss Hunt?

25 MS. HUNT: No questions, Your Honor.

807

1 THE COURT: Mr. Bunch?

2 MR. BUNCH: No questions.

3 THE COURT: Mr. Osgood?

4 MR. OSGOOD: No, Your Honor.

5 THE COURT: Redirect?

6 MR. BECKER: Nothing, Judge, thank you.

7 THE COURT: All right. Thank you, sir. You're
8 excused.

9 Ladies and gentlemen, we'll take our morning break
10 now. Don't discuss the case while we're in recess. Please
11 be back in the jury room at ten minutes till 11:00. You are
12 excused and may withdraw.

13 (The following proceedings were had in the
14 courtroom out of the presence of the jury:)

15 THE COURT: We'll be in recess.

16 (A recess was taken from 10:39 a.m. to 11:07 a.m.)

17 THE COURT: Now, did you have something?

18 MR. BECKER: Yes, Your Honor. We have a legal
19 matter we'd like to discuss.

20 THE COURT: Do you have to approach?

21 MR. BECKER: Yes, Judge.

22 THE COURT: Okay.

23 (Counsel approached the bench and the following
24 proceedings were had:)

25 MR. BECKER: Your Honor, the government is going to

808

1 use in the next three witnesses, primarily with the next
2 witness, offering into evidence Government's Exhibit 260,
3 248, 250, 241, 266, and 257. I say them in that order
4 because that's the way they'll be offered. They are
5 photographs of the victims in this case.

6 Counsel has, as long as this case has been around,
7 informed me they will object to the admission of those
8 photographs on 403 grounds, perhaps other grounds. But I
9 will be offering them, and I think in the interest of
10 speeding things along, if we could have a ruling in advance,
11 that's ripe at this time.

12 There is a stipulation as to authenticity and other
13 foundational matters. We would not -- we would not be using
14 the video system for these photographs. We would be doing it
15 the old-fashioned way, showing it to the witness, ask them if
16 they recognize it, offer it into evidence, ultimately pass it
17 to the jury.

18 THE COURT: Mr. O'Connor, have you received -- who
19 is talking to this?

20 MR. O'CONNOR: Mr. Peters is going to address this
21 issue, Judge.

22 THE COURT: Have you seen the government's trial
23 memorandum on this?

24 MR. PETERS: Yes, we have, Your Honor.

25 THE COURT: I've examined that, and also you can

1 assume that as you address the issue.

2 MR. PETERS: Judge, as you look at the photographs,
3 our position is that they're unusually gruesome. The
4 defendants can stipulate that the explosion is what caused
5 the death of the firefighters. We believe that the
6 prejudicial effect of the photographs in a case where there
7 isn't a dispute as to the death outweighs their probative
8 value.

9 We don't have any additional cases for the Court.
10 It's in the discretion of the Court whether you find that the
11 prejudicial effect outweighs their probative value. And
12 that's our argument.

13 THE COURT: Okay. What is your -- you don't have
14 to repeat what you briefed to me. I guess maybe my, the
15 question I have in my mind is in a case in which the charge
16 is what it is here and the proof is otherwise going to be
17 what you know it's going to be, what difference do these
18 pictures make?

19 MR. BECKER: The elements as read to the jury, I
20 have to show that the blast caused the death of these
21 individuals.

22 THE COURT: Well, that's virtually stipulated,
23 isn't it? I mean, is it?

24 MR. BECKER: It's not stipulated to by the
25 government.

1 THE COURT: It isn't?

2 MR. BECKER: I would point out there is some
3 difference in these photographs. There are two photographs
4 of torsos: The one the Court is now looking at, Government's
5 266, and the first photograph in the series.

6 I understand the Court's reservations. The other
7 photographs of the other four firefighters are not terribly
8 unusual. They're fully clothed, they're fully intact.

9 THE COURT: They're fully dead.

10 MR. BECKER: Absolutely. But that's the -

11 THE COURT: There's no dispute about it that that
12 was caused by this explosion.

13 MR. BECKER: That's the consequences of these
14 defendants, actions. I believe the memorandum I submitted -

15 THE COURT: I think I know the case you're going to
16 cite, two or three cases, that it's kind of a
17 it-goes-with-the-territory sort of argument.

18 MR. BECKER: That's part of it, and if the
19 defendants can make this kind of action, this is what happens
20 this is the horrible, these are the horrible consequences of
21 their actions. And we just need not sanitize the evidence so
22 that we spare the jury of the consequences of these
23 defendants, actions.

24 MR. OSGOOD: Your Honor, case law clearly -- I
25 think, obviously, it's discretionary. The case law clearly

1 supports that there is no such thing as a gruesome photo,
 2 practically speaking, if it shows some element of the crime,
 3 such as bullet trajectory, a cut throat which would tie in
 4 that a knife had been used, any manner of reasons to put that
 5 photo in to establish a disputed element of proof. That
 6 photo comes in, and you're not going to find cases reversed
 7 on that ground.

8 But Your Honor is perfectly correct that the charge
 9 here is arson. Mr. Becker has -

10 THE COURT: And homicide resulting from arson.

11 MR. OSGOOD: But he cited the Ryan case suggesting
 12 that Your Honor was wrong in that instruction and will stand
 13 up here and later make an argument that that element should
 14 come out, that that's punishment enhancement. And he's going
 15 to argue to the jury that he only has to prove that there was
 16 an arson and that these defendants started it.

17 So that's even more reason why these photos are
 18 totally irrelevant and obviously prejudicial to the defense.
 19 And certainly they have little or no probative value. Even
 20 if the element is in, they have no probative value because
 21 they do not tend to prove or disprove anything in the case,
 22 with the exception of, perhaps, the one whose face you could
 23 see and say, yes, I recognize the deceased, that is
 24 so-and-so, and he's not going to have a witness testify to
 25 that, I don't think.

1 MR. BECKER: We're going to have witnesses testify
2 that each of these photographs, they were on the scene in
3 those early morning hours, saw these bodies as they're
4 situated, and recognized them. They're going to say that's
5 Luther Hurd, that's Thomas Fry, that's Mikey Oldham, because
6 I recognize his hair, even though he's blown to a pulp.

7 MR. OSGOOD: One of them was a black firefighter,
8 so obviously he was the only black firefighter. I assume
9 that would be a distinguishing way to recognize him. One of
10 them, his face is visible, so that would be a distinguishing
11 way. But fingerprints were taken, as I recall. You had DNA,
12 you had other ways of proving who they were. You've got, and
13 the medical examiner has established conclusively that
14 they're dead and who they were, and that's not an element in
15 the case that we are disputing.

16 It's just in my mind, there's no probative value to
17 them at this point, and the only reason Mr. Becker wants to
18 show them to the jury, quite frankly, is to arouse their
19 passions. And I don't blame him, as a prosecutor, for trying
20 to do that. But the overwhelming impact on them -

21 The acid test was I showed them to my wife as a lay
22 witness, and her reaction, I'm afraid, is going to be the
23 reaction of most of the women on this jury, and it was one of
24 utter revulsion. And my wife has seen this case file and
25 understands my theory and has helped me on it, and when she

1 saw the photos, it literally affected her dramatically, and
2 hat's going to happen to the jury.

3 THE COURT: I don't understand -- really I don't
4 understand 241. For one thing, I suppose in assessing
5 gruesomeness, 266 is too gruesome and will not be displayed
6 to the jury.

7 MR . OSGOOD: Is that the torso, Your Honor?

8 THE COURT: Yes.

9 MR. BECKER: That's Captain Kilventon.

10 THE COURT: You can have a witness look at the
11 picture and describe who it is and what the effect on his
12 body, the observable effect on his body was. I just don't
13 want that picture passed.

14 MR. BECKER: We won't offer it, then.

15 THE COURT: I don't understand what 241 is designed
16 to show.

17 MR. BECKER: That's Captain Halloran. That's the
18 location of the body between two particular pieces of
19 equipment that are located near the trailer. We have, that
20 body is identified by -

21 THE COURT: It's not particularly gruesome, it just
22 doesn't seem to me to demonstrate too much.

23 MR. BECKER: There will be a witness who identifies
24 who that is because he knows that captains wear light blue
25 shirts.

1 THE COURT: All right. I'm going to sustain the
2 objection to 260 and 266 to the extent that -- well, they'll
3 be admitted for the record, and they may be described by the
4 witness if you want to proceed that way, but they're not to
5 be distributed to the jury.

6 The others I think can be fairly accurately
7 characterized as pictures of bodies without too much graphic
8 detail to be offensive or inflammatory. And to the extent
9 that they are inflammatory, I guess I would join the, I think
10 it's the Seventh Circuit. Yeah, the Seventh Circuit in
11 United States v. York in which cert. was denied in 1991 in
12 which the language is used, "The prejudice which inures from
13 the fact," that is, the pictures, "is the natural by-product
14 of the act, and there's nothing unfairly prejudicial about
15 putting that fact before the jury."

16 So I will admit 241, 248, 250, and 257, and they
17 can be distributed to the jury.

18 MR. BECKER: Judge, I would alert the Court that
19 should any members of the news media request these
20 photographs, I'm going to direct them to the Court. I'm not
21 going to release these photographs unless I'm told to do so
22 by the Court. I did research on the issue in other matters,
23 but certainly I'm prepared to have someone in my office
24 interpose an objection to that.

25 THE COURT: There's scary features of that. We

1 tell them not to look at the pictures and then -

2 MR. BECKER: That's why I would -- frankly, if we
3 could use these photographs, 260 and 266, for descriptive
4 purposes but not offer them.

5 THE COURT: That's right. If you don't offer them,
6 they won't be in the record but they can be used by the
7 witnesses to describe -- that's what they accomplish for you
8 is to describe what condition the bodies were in, anyway.

9 MR. BECKER: Right. And for appellate purposes,
10 they have been identified and will be available.

11 THE COURT: All right. Be sure they're marked.

12 MR. BECKER: They're all marked on the back side
13 with stickers. And again, for the record, I have literally
14 hundreds of these photographs, and I have attempted to
15 minimize the number. We have a series of morgue photos of
16 each body that are way beyond anything that is depicted in
17 these photographs.

18 THE COURT: Okay.

19 MR. O'CONNOR: Judge, just for a final record, we
20 were and are willing to stipulate to the cause of death and
21 to what happened to these men, if that would have any effect
22 on the Court's ruling, which I believe it would not, but we
23 are willing and would be willing to do this.

24 And as I said in the voir dire, I think that these
25 pictures, these kind of pictures can cause people, could

816

1 cause someone to be convicted just because of the pictures
2 alone, and I think that this case should be decided by this
3 jury on these facts.

4 The Court has gone that way with the rulings to
5 this point, just cut to the chase and get to the evidence of
6 what's there. All these pictures do at this point is they're
7 just going to raise the passion of this jury, and maybe
8 they'll overlook the facts and circumstances because of these
9 photographs.

10 I accept the Court's ruling, but I want that
11 objection, the Court to consider that in my objection. And
12 then assuming I'm still overruled, we'd like to have a
13 continuing objection so we do not object -

14 THE COURT: That's agreeable.

15 MR. OSGOOD: The ruling applies to all the
16 defendants, Your Honor?

17 THE COURT: Yes, of course. And I assure you that
18 these pictures will not be considered by the Court in making
19 any judgment it has to make on any motion that has come
20 before it at various stages in the proceedings. Because
21 although I see their relevance in the goes-with-the-territory
22 kind of theory, I really don't see that they're necessary to
23 prove any of the essential elements of the case. Okay.

24 (The following proceedings were had in open court:)

25 THE COURT: All right. Give us the four numbers

1 that we're going to use now, Mr. Becker, that Miss Geller
2 didn't get that written down.

3 MR. MILLER: Here they are: 241, 248, 250, and 257
4 Tare in; 260 and 266 are only to describe, the witness to
5 describe and not to be admitted.

6 THE COURT: Okay. Let's get the jury.

7 (The following proceedings were had in the
8 courtroom in the presence of the jury:)

9 THE COURT: It turns out that we had some fairly
10 complicated work to do, and it took longer than I wanted it
11 to, but we appreciate your patience, and now we're ready to
12 get underway.

13 All right. Call your next witness, Mr. Becker.

14 MR. MILLER: Thank you, Your Honor. The government
15 calls Mr. Bill Booth.

16 THE COURT: Mr. Booth, if you would come forward
17 and stand by the witness chair and be sworn.

1 BILL BOOTH,
2 being first duly sworn by Kathy Geller, Law Clerk, testified
3 as follows:
4 MR. MILLER: May it please the Court.
5 THE COURT: Yes, sir.
6 DIRECT EXAMINATION
7
8 By Mr. Miller:
9 Q. Would you tell us your name, please?
10 A. I'm Billy D. Booth.
11 THE COURT: Bill D.?
12 THE WITNESS: Yes.
13 Q. Are you currently employed?
14 A. No, I'm retired.
15 Q. What are you retired from?
16 A. Kansas City, Missouri, Fire Department.
17 Q. And how long were you a fireman?
18 A. Thirty-three and a half years.
19 Q. And what rank did you retire at?
20 A. Deputy chief.
21 Q. When did you retire?
22 A. August of ,93.
23 Q. What was your rank back in November of 1988?
24 A. Deputy chief.
25 Q. Now, were you working November the 28th, 1988, and into

1 November the 29th of 1988?

2 A. Yes, sir.

3 Q. Out of what station?

4 A. Ninth and Paseo, the field headquarters.

5 Q. Now, before the explosion down at 87th and 71 Highway,
6 where had you been?

7 A. Well, we -- let's see, we'd been to two alarms previous
8 to that. One was out on Prospect. I've kind of forgotten,
9 it seems like to me it was sixty something and Prospect, a
10 second alarm out there, and we were just completing a second
11 alarm at Twelfth and Woodland at the time of the explosion.

12 Q. Okay. You say at the time of the explosion. How did
13 you know there had been an explosion?

14 A. We could hear it at that location, or what we thought
15 was an explosion. It was a loud, pretty loud -

16 THE COURT: At which location, Chief?

17 THE WITNESS: Twelfth and Woodland, Your Honor.

18 THE COURT: At the Twelfth and Woodland location?

19 THE WITNESS: Yes, sir.

20 THE COURT: Okay. Thank you.

21 Q. (By Mr. Miller:) After you heard or felt the blast,
22 what did you do?

23 A. Well, we, you know, we were all speculating as to what
24 that was. You know, we were there sort of winding up. This
25 fire was pretty well put out, and we were starting to pick

1 up, and we were speculating as to -- those of us in the fire
2 service, when you hear a loud noise, you start speculating
3 about what it was, you know. So that's primarily what we
4 were doing before we started hearing alarms given.

5 Q. okay. After you started hearing alarms given, what were
6 you told to do?

7 A. Well, we decided on our own, I think, to respond out
8 there. And we had been in contact, I had been in contact
9 with the fire dispatcher, as I recall, seeing, trying to get
10 information, you know, as to what, you know, had exploded.

11 And I'm not, I'm not quite sure whether they -
12 they usually dispatch the deputy chief to alarms of an
13 unusual nature or second alarms or greater. And I'm not
14 quite sure whether I had just responded on my own. I think I
15 may have, and then -- but I was in contact with them before
16 we took off to go out there.

17 Q. What was your number back then?

18 A. 101.

19 Q. And when you decided to respond on your own, where did
20 you go?

21 A. Well, we went out 435. That was about the quickest way
22 to get out there, we felt like, to -- we got off on 87th
23 Street, and then to cut on over to 71 Highway.

24 Q. Now, when you arrived there, you described 87th and 71
25 Highway. At that location, where did you go?

1 A. Well, we wound around, and we were trying to find,
2 trying to find the companies, any companies that were there
3 and, in particular, the battalion chief. We had heard
4 conversations on the radio on the way out there. You know,
5 we could hear conversations going on and attempts to reach
6 the companies that had been sent in there.

7 So my first concern when I, when I got there or at
8 any other scene was to contact the officer in charge and get
9 a briefing on, you know, what was going on. So that's what
10 we were trying to do is find Chief Germann.

11 Q. Did you find Chief Germann?

12 A. Yes.

13 Q. Tell the jury where you found him.

14 A. As I recall, we'd parked down at 71, and we were walking
15 up to the hill, a short hill up to where, you know, we could
16 see the buggy. And if I remember right, I met Chief Germann
17 about halfway between the roadway and up to where his buggy
18 was.

19 THE COURT: The buggy was the chief's car?

20 THE WITNESS: The buggy -- yes, sir, the chief's
21 car.

22 Q. (By Mr. Miller:) Show you Government's Exhibit No. 5.

23 MR. MILLER: May he step down, Your Honor?

24 THE COURT: Surely.

25 Q. Watch out for the water. Now, I want to spin this

1 microphone around for you. And keep your voice up. And if
2 you could show the jury where it was after you -- first of
3 all, where you went and then where you met Chief Germann.

4 A. Okay. We -- let's see, we had come in on 87th Street
5 here, and we made a right-hand turn at this point here. And
6 we stopped about here, as I recall, and we could see Chief
7 Germann's buggy up, we could see some activity up here. And
8 so we started walking up in that direction to meet Chief
9 Germann.

10 Q. Okay. Thank you, sir. If you could have a seat again.
11 And could you spin the microphone back around.

12 Now, you used the term buggy. What do you mean by
13 buggy?

14 A. That's a term we just use for chief's car. It comes
15 from the old days when we used to have horses dragging them
16 around.

17 Q. And how long had you known Chief Germann?

18 A. Oh, several years. He and I had probably been on the
19 job, I believe I had come on just a little earlier than him,
20 but we were contemporaries, we'd known each other for several
21 years.

22 Q. When you met him on that road, what condition did you
23 observe him to be in?

24 A. Well, he was definitely not himself. You know, he
25 was -- I could tell that he was pretty well shook up, and he

1 seemed to be in a state of shock. He just didn't seem
2 right. He seemed a little incoherent, and I was trying to
3 determine if he was hurt. I asked him, you know, Marion, are
4 you okay? Are you hurt? Or what's wrong, you know. And we
5 hadn't gotten clear up to the buggy at that time, so -- but I
6 could tell that he was really pretty shook up.

7 Q. Now, did you yourself immediately go to the scene of the
8 explosion?

9 A. No. No, we didn't. We determined that -- after talking
10 with him and, you know, he told me, he said -- I said, "What
11 happened" or, you know, words to that effect.

12 And he said, oh, my God, he said there had been a
13 terrible explosion. He said, he said, "I don't know whether
14 they're all dead or not." And he said, "There's a hand
15 laying in front of the buggy."

16 And I thought to myself, I don't know how in the
17 world -- I thought he had kind of lost it a little bit, you
18 know. I didn't know for sure what he -- I didn't know for
19 sure what he was talking about, you know.

20 Q. In between the first and the second explosion, where did
21 you go?

22 A. Well, we took, we turned, then -- you know, we didn't
23 know for sure what was left up there. And we had been, or he
24 said there's supposed to be some more explosives in there.
25 So we decided we'd better, you know, move everybody and get

1 them out of there for safety's sake.

2 So I asked him, I said, "Well, where would be a
3 good place to put our companies, Marion?" You know, he knew
4 the area quite a bit better.

5 And he said, "Well, we can go down toward
6 Bannister. We can line them up down there."

7 So at that time we decided to pull everybody out
8 and move all the companies clear back to Bannister Road and
9 get them out of the area until we determine, you know, get a
10 better idea of what was going on and what was left in there.

11 Q. Now, did you know which pumpers were at the scene?

12 A. Yes, yes. No. 41's and No. 30's. We keep pretty close
13 track of our people when they dispatch them. So we didn't
14 have any doubt about who was in there.

15 Q. Did you know who was on Pumper 30?

16 A. Yes.

17 Q. Who?

18 A. Captain Halloran and Fry and Gene Hurd, who had been
19 detailed out there that morning. He was, he was sort of a,
20 well, an extra man -

21 MR. OSGOOD: Your Honor, can we approach the bench
22 for a moment?

23 THE COURT: Yeah.

24 (Counsel approached the bench and the following
25 proceedings were had:)

1 MR. OSGOOD: There's a lot of narrative going on.

2 THE COURT: A lot of what?

3 MR. OSGOOD: A lot of narrative testimony. He asks

4 a question, and then he answers that question and gives

5 several other answers. I would ask that the prosecutor ask

6 him questions and elicit a response. Now he's getting into

7 areas that I'm afraid he's going to start making long

8 narrative statements about, and I want specific questions

9 because we're going to be into these photos, and I would ask

10 the prosecutor ask him questions and get a response.

11 THE COURT: And get to -- if there is testimony

12 from this witness that isn't repetitive or cumulative, let's

13 get to it, because honestly I've said this before and I'm

14 going to start acting on it, I guess. But I don't know

15 really what all of this has to do with -- either these guys

16 did it or didn't. We know it was done, we know the

17 firefighters are gone. Now let's get to whether these folks

18 did it.

19 MR. BECKER: I just wanted to alert the Court, we

20 have basically the remainder of today with crime scene

21 witnesses, and then an expert that talks about ammonium

22 nitrate/fuel oil, and then thereafter we'll have two weeks of

23 who dunit. Now we're just trying to get this part of the

24 trial done.

25 THE COURT: All right. Now, you say an expert on

826

1 ammoniumnitrate/fuel oil?

2 MR. BECKER: He's an expert in explosives.

3 THE COURT: Why?

4 MR. BECKER: Because one of the first questions I
5 had when I took this case over five years ago is why did that
6 trailer blow up. You know, why? Why, you know, when it's
7 set on fire did it explode?

8 THE COURT: Well, but is there any question?

9 MR. OSGOOD: We want that witness. That's an issue
10 in the case.

11 THE COURT: Okay.

12 (The following proceedings were had in open court:)

13 Q. (ByMr. Miller:) And then if you could just tell us the
14 names of who you knew on Pumper 41.

15 A. Okay. Captain Kilventon, and McKarnin was the driver,
16 and Oldhamwas the firefighter.

17 Q. Now,did you go -- I'm sorry.

18 A. Mike Oldham.

19 Q. Okay. Did you go down to the blast?

20 THE COURT: Excuse me. I'm sorry, but I was
21 distracted. Kilventon?

22 THE WITNESS: Yes, sir, Your Honor, he was captain.

23 THE COURT: And then?

24 THE WITNESS: Bob McKarnin was the driver.

25 THE COURT: McKarnin?

1 THE WITNESS: Yes, sir.

2 THE COURT: And Oldham?

3 THE WITNESS: Oldham.

4 THE COURT: Thank you, sir. Excuse me, counsel.

5 Go ahead.

6 Q. (By Mr. Miller:) Now, when did you go to the blast
7 site?

8 A. When did we go the first time, you mean?

9 Q. Okay. How many times did you go down to the blast site?

10 A. Well, we went down the first time, this was about
11 roughly, this was after we'd gone back, and Chief Grote -
12 and there had been an aerial reconnaissance in a helicopter
13 and they couldn't really determine too much from that, and
14 then -

15 MR. OSGOOD: Objection, Your Honor, it's not
16 responsive to the question. He asked him when he went back,
17 how many times.

18 THE COURT: When did you go down to the site?

19 A. It was about 40 minutes after we'd got there.

20 Q. (By Mr. Miller:) And you went, you went down there
21 after the second explosion?

22 A. Yes.

23 Q. And you went down there twice after the second
24 explosion?

25 A. Yes.

1 IQ And then who did you go down there with the first time?

2 A. Me and Logan Grote. He was battalion chief at 106.

3 Q. And then who did you go down there with the second time?

4 A. Well, Chief Grote and myself, we went in with several

5 police officers to show them what we had found earlier.

6 Q. Okay. Now, the first time you went with Chief Grote,

7 was it dark still?

8 A. Yes.

9 Q. I want to show you some pictures.

10 THE COURT: These are pictures other than the ones

11 that we were looking at?

12 MR. MILLER: Yes, these have already been

13 stipulated to, Your Honor.

14 Q. (By Mr. Miller:) Chief, I'm showing you Government's

15 Exhibit No. 216. Can you see it well enough from there?

16 A. Yes.

17 Q. Okay. Could you tell us what that shows?

18 A. Well, this is part of the debris from the machinery, and

19 we learned later that this was what was left of Pumper 41

20 here. There was still some fire burning where the wheels had

21 been, tires.

22 Q. Now, is that what it showed like when you went down

23 there?

24 A. Yes.

25 Q. And is that about how the lighting was when you went

1 down?

2 A. It was a lot darker than that when we went down the
3 first time.

4 Q. Okay. So this is indicative of the second time?

5 A. Yes.

6 Q. Okay. Now, I want to show you Government's Exhibit No.
7 225. What does this show?

8 A. Okay. I believe this is looking back toward the east
9 from the berm over the top of Pumper 30, if you can see right
10 there to the left of that machinery. And this must be
11 standing up, pretty much up on the berm.

12 Q. And that's how it looked that morning to you?

13 A. Yes.

14 Q. Again, No. 226. What do you see in here?

15 A. Okay. This looks like it's, it's looking generally
16 toward the, would be the northwest back toward, over some
17 machinery that was there, construction machinery, looking
18 back toward Pumper 30.

19 Q. Looking back towards Pumper 30?

20 A. Yes.

21 Q. Is this where my pen cap is, is that -

22 A. No, that's some construction machinery. I think there
23 was a truck there or part of a drill apparatus, as near as we
24 can figure out.

25 Q. Where would Pumper 30 be?

830

1 A. It was on over, on over that drill, yes, back behind
2 there. I think I can see part of it.

3 Q. What does 227 show you?

4 A. See, this looks like it's generally looking from the,
5 back toward the east too, I can't -- I see the drill and it
6 looks like maybe the sun is coming up. So that's looking
7 back toward the east.

8 Q. That's how it looked that morning to you?

9 A. Yes.

10 Q. And 228?

11 A. Okay. This is out from the road about where the chief's
12 buggy was, as near as I can tell, looking back toward the
13 explosion site.

14 Q. And as you went through here, did you start to see some
15 of the firemen?

16 A. Yes.

17 Q. Did you see any of the firemen that you knew on sight?

18 A. Well, not at first. We were finding, we were finding
19 body parts going down, going down the road.

20 Q. Did you eventually see some of the firemen that you knew
21 on sight?

22 A. Yes. We found, we found five of the six. It was kind
23 of a process of elimination as to how we more or less
24 determined who they were. And some of them were, you know,
25 recognizable.

1 Q. okay. To clarify for you, I'm going to stick to the
2 firemen that you knew when you saw them.

3 A. Okay.

4 Q. Well, I'll show you a photograph. Could you tell us
5 what Government's Exhibit 222 shows?

6 THE COURT: Excuse me just a minute' Chief. I
7 think it's just a clerical matter, but I'm afraid we're
8 dealing with some exhibits that have not formally been
9 admitted.

10 MR. BECKER: Judge, they should be in through 229.
11 I thought we were through 229.

12 THE COURT: It was through 229. Okay.

13 (Court and Law Clerk conferred off the record.)

14 THE COURT: Okay. Go ahead.

15 Q. (By Mr. Miller:) Chief, on this exhibit down in the
16 front where my pen cap is, who is underneath that tarp that
17 you found?

18 MR. OSGOOD: Objection.

19 A. This is, as near as I can tell -

20 THE COURT: Just a minute, Chief, there seems to be
21 a growing objection over there in the corner.

22 (Counsel approached the bench and the following
23 proceedings were had:)

24 MR. OSGOOD: This is a pattern of questions that he
25 is asking. He says who is underneath that tarp. There's

1 been no testimony that somebody was underneath it.

2 THE COURT: Why are we arguing about things like
3 this?

4 MR. OSGOOD: Because I want him to ask proper
5 questions because he's going to get into these very
6 prejudicial pictures, and we'll have the same pattern of
7 questions.

8 THE COURT: Overruled.

9 (The following proceedings were had in open court:)

10 Q. (By Mr. Miller:) You can answer the question, Chief.
11 Who was under the tarp that you knew?

12 A. As near as I can tell there, that was Captain Halloran,
13 where Captain Halloran's body was.

14 Q. And you knew him when you saw him?

15 A. Yes. We had seen him earlier before the tarp was put on
16 him. We identified him -

17 Q. Excuse me, Chief, I have to ask you a question before
18 you go on. And I'm referring now to Government's Exhibit
19 224. Who was under this tarp?

20 A. This was Captain Halloran's body.

21 Q. And that's how you found it?

22 A. Yes.

23 Q. Chief, I want to show you Government's Exhibit No. 208.
24 Can you see that well enough from where you're at?

25 A. Could you bring it up a little closer here?

1 Q. I'll start in there and then back out.

2 A. That was McKarnin's body.

3 Q. And over here where my pen cap is?

4 A. That was Gene Hurd.

5 Q. And that's where you found them that morning?

6 A. Yes, I -

7 Q. I'll have to ask you a question, Chief, I'm sorry.

8 A. Okay.

9 Q. I'm going to show you Government's Exhibit No. 248.

10 This is in evidence. This is Government's Exhibit No. 248

11 I'm showing to you. And who is in that picture?

12 A. This is Gene Hurd's body.

13 THE COURT: That's H-U-R-D?

14 THE WITNESS: Yes, sir.

15 Q. And, again, Government's Exhibit No. 250?

16 A. Yes, this is Gene Hurd's body looking from the front.

17 Q. Government's Exhibit 248 and 250, is that how you found
18 Mr. Hurd's body?

19 A. Yes.

20 Q. This is Government's Exhibit 260. And who do you
21 recognize in that picture?

22 . That was Mike Oldham's body.

23 Q. And how do you recognize his body?

24 . Well, we -

25 . Just how do you recognize?

1 A. He had blond hair.

2 Q. All right.

3 THE COURT: What was that last number, please?

4 MR. MILLER: 260, Your Honor, but it's not in
5 evidence.

6 THE COURT: You identified that as whose body?

7 THE WITNESS: Oldham's.

8 THE COURT: Oldham?

9 THE WITNESS: Mike Oldham, yes, sir.

10 Q. (By Mr. Miller:) And then I want to show you
11 Government's Exhibit No. 241. And who is that?

12 A. That was Captain Halloran.

13 Q. And how did you know that was Captain Halloran?

14 A. We could tell he had a light blue shirt on, which was a
15 captain's uniform' and also we had seen his hands earlier'
16 and it was obviously the hands of an older man.

17 MR. MILLER: Your Honor' at this time I offer
18 Government's Exhibit 241' 250, and 248 into evidence.

19 MR. O'CONNOR: Other than the previous objections
20 that we've raised, Judge, we have no objection at this time.

21 THE COURT: All right, then, we've made rulings as
22 to those objections, and 241, 250, and 248 are admitted.

23 **(Government's Exhibits 241, 248, and 250 were**
24 **admitted into evidence.)**

25 MR. MILLER: okay. Your Honor, I ask for

1 permission to pass these to the jury.

2 THE COURT: You may do that.

3 (So done.)

4 MR. O'CONNOR: Judge, we don't have any questions
5 of the witness.

6 THE COURT: I'm not sure he's through with him.
7 But maybe just to do this most efficiently, you all on the
8 jury, pass all the way down to the first alternate there and
9 then go back and back down the second row, please.

10 All right. Are you finished?

11 MR. MILLER: I just have one last question.

12 Q. (By Mr. Miller:) While you were there, did you move
13 anything around?

14 A. The only thing I remember doing is I brushed a little
15 dirt off of Gene's face. That's all I touched.

16 MR. MILLER: That's all I have, Judge.

17 THE COURT: All right.

18 MR. O'CONNOR: No questions, Judge.

19 THE COURT: ALL right. Chief, thank you. ALL
20 right. There being no, nothing further on this matter, I
21 think we'll break now, Mr. Becker, and take our lunch break.

22 Ladies and gentlemen, we're going to break for
23 lunch now. We're going to break for lunch now, and I'll ask
24 you to be back in the jury room at 1:30.

25 Don't talk about the case among yourselves or to

836

1 anyone else or let anyone talk about it in your presence.

2 You are excused, and have a good lunch.

3 (The following proceedings were had in the
4 courtroom out of the presence of the jury:)

5 THE COURT: We'll be in recess.

6 (A recess was taken from 11:59 a.m. to 1:37 p.m.)

7 THE COURT: Counsel, can you all come up for a
8 minute?

9 (Counsel approached the bench and the following
10 proceedings were had:)

11 THE COURT: I have your admission by silence trial
12 memorandum. What I don't understand is to what avail -- I
13 mean, isn't this pretty much argument?

14 MR. BECKER: At the end of the case, I intend it to
15 be, there's going to be a proposed instruction on it.

16 THE COURT: I understand that. Okay. It's not
17 anything that will have any effect on what comes in or how it
18 comes in, it's going to come in only as the admission of one
19 of the defendants?

20 MR. BECKER: The who, what, when, where, who else
21 was there will be part and parcel of the evidence.

22 THE COURT: You all have this, don't you?

23 MR. OSGOOD: That's the silence?

24 MR. BECKER: Yes.

25 MR. OSGOOD: I think you have to lay a pretty good

1 foundation on it.

2 THE COURT: I wanted to make sure it was clear in
3 my mind what he proposed to do with it, that's all. We're
4 not going to argue it now. Okay.

5 (The following proceedings were had in open court
6 in the presence of the jury:)

7 THE COURT: You may proceed, counsel.

8 MR . BECKER: Thank you, Judge. The United States
9 calls Logan Grote.

10 THE COURT: Come up and stand by the witness chair
11 and be sworn, please, sir.

12 LOGAN GROTE,
13 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
14 testified as follows:

15 MR. O'CONNOR: Judge, can we approach a minute,
16 please?

17 THE COURT: Yes.

18 (Counsel approached the bench and the following
19 proceedings were had:)

20 MR. O'CONNOR: The witness has his police badge on
21 which has a black band over it. I just think that's highly
22 prejudicial. I don't think anyone should be wearing any kind
23 of insignia or pins.

24 I understand that this is loss of firefighters, but

838

1 this is eight years ago. But I think the pin is very
2 prejudicial to our clients. I don't think anybody should be
3 wearing anything on their clothing.

4 THE COURT: What subtle way do you suggest I deal
5 with that problem?

6 MR. O'CONNOR: I understand the practicality of
7 it.

8 THE COURT: I think future witnesses should be told
9 that -- I mean, I have myself had one picture pin taken off
10 of a spectator who was wandering around the halls with a
11 picture of one of the decedents and, you know, it was an
12 appropriate thing for her to do except when the jurors are
13 wandering around the halls. And this is kind of the same
14 thing. Let's just don't talk about it, and then your other
15 people shouldn't have it.

16 MR. BECKER: I hadn't noticed it, but I'll address
17 that in the future.

18 THE COURT: Okay.

19 (The following proceedings were had in open court:)

21 DIRECT EXAMINATION

22 By Mr. Becker:

23 . Good afternoon.

24 . Good afternoon.

25 . All right. Could you pull that toward you there?

- 1 A. Is that better?
- 2 Q. Much better. Please state your name and spell your last
3 name.
- 4 A. My name is Logan Grote, G-R-O-T-E.
- 5 Q. How old are you?
- 6 A. Fifty-four.
- 7 Q. What do you do for a living?
- 8 A. Battalion Chief of Kansas City Fire Department.
- 9 Q. How long have you been employed by Kansas City,
10 Missouri, Fire Department?
- 11 A. Thirty-one years.
- 12 Q. You said you're a battalion chief?
- 13 A. Yes, sir.
- 14 Q. Briefly, what are your duties as a battalion chief?
- 15 A. We have a district. We have like eight companies that
16 are under our command. We run certain districts of the
17 city. It's cut up into seven districts.
- 18 Q. What's your district?
- 19 A. 106.
- 20 Q. Where is that?
- 21 A. That's located on the Plaza.
- 22 THE COURT: On Main Street?
- 23 THE WITNESS: 50th and Main.
- 24 THE COURT: 50th and Main?
- 25 THE WITNESS: Yes.

1 Q. (By Mr. Becker:) Since 1988, have you had training in
2 the dealings, or dealing with fires and other emergencies
3 with hazardous materials?

4 A. After 1988, the explosion, they started a hazmat team
5 and -

6 Q. What was your role with that?

7 A. I become the first battalion chief of hazmat. They got
8 a full complement of men. They got equipment. They passed a
9 cigarette tax to pay for all of this in the city, and all of
10 the training went with it for the people.

11 Q. And you were the, were you the first chief of that unit,
12 then?

13 A. Yes, I was.

14 Q. How long did you have that position?

15 A. I held it one year.

16 Q. Going back to November 88, 1988, were you working that
17 day into the next day?

18 THE COURT: I'm sorry, maybe we'd better be clear.

19 You said November 88, 1988, I don't think you meant that.

20 Q. (By Mr. Becker:) That's a tough day. November 28th,
21 1988. Were you working that day?

22 A. Yes, I was. I was 106, B shift that day.

23 Q. Same battalion?

24 A. Same battalion where I work now.

25 Q. What does B shift mean?

1 A. There's three shifts, A B. and C. You work 24-hour
2 shifts. The next crew that comes on C shift would relieve us
3 for 24 hours and on and on.

4 Q. Is the normal rotation 24 on, 48 off?

5 I A. Yes, sir.

6 IQ What hours did you work, then, November 28 into November
7 1 29, 1988?

8 A. We come on at 7 o'clock in the morning on the 28th and
9 was supposed to leave at 7 o'clock in the morning on the
10 1 29th.

11 Q. After midnight, that is, into the early morning hours of
12 November 29, were you out responding to any fires?

13 A. Somewhere around midnight -- again, it's been a long
14 time -- we had a second alarm out south. 79th and Troost, I
15 ~ believe. So we were out for probably an hour and a half, two
16 hours on that fire.

17 Q. After that, where did you go?

18 A. Back to the engine house on the Plaza. And probably
19 about 3:30, another second alarm was at Twelfth and Woodland
20 downtown.

21 Q. Did you go out to that?

22 A. Everybody was up. No, we didn't respond to it. I
23 didn't respond to it, but a good part of the inner city
24 companies did respond.

25 ~ Q. Was that in your district, or would that be -

842

1 A. No, that would be, that would be downtown district.

2 Q. At approximately 4:08 a.m. on November 29, 1988, where
3 were you?

4 A. I was at Station 32 on the Plaza at 50th and Main.

5 Q. Did you hear the explosion that occurred?

6 A. The rumble from the shock wave. You could feel it. It
7 was making noise. It was enough that you thought probably
8 something happened right there on the Plaza.

9 Q. What did you do?

10 A. Come out of the, come out of my office. My aid met me
11 on the floor. I asked him, I said, you know, "What do you
12 think, what do you think has happened?"

13 He said, "It's probably something to do out
14 south." So we got in the car and started responding out
15 south.

16 Q. What roads did you take to get from your firehouse on
17 the Plaza down to the 71 Highway construction site?

18 A. We took Brookside to Meyer Boulevard down to Troost, out
19 to 85th, and across over to 71.

20 Q. I want to show you what's been identified as
21 Government's Exhibit 1.

22 THE COURT: Chief, when you started from the
23 station house, at that time did you know that the trouble was
24 out on 71 Highway?

25 THE WITNESS: We wasn't for sure when we left the

1 house, but we knew something had happened bad and somewhere,
2 you know, within the city. It just made such a shock wave
3 and everything that there was no mistaking, something had
4 happened.

5 THE COURT: As you drove, then, did you pick up the
6 site, the location of the site on the way in?

7 THE WITNESS: We got that information from the
8 dispatcher on the way. And we told them that we were
9 responding to that location out south on 71 Highway.

10 THE COURT: All right. Thank you.

11 Q. (By Mr. Becker:) Chief, I'd like you to look at

12 Government's Exhibit 1. Have you previously looked at this

13 map which is depicted on what's identified as Government's
14 Exhibit 1?

15 A. Yes.

16 Q. Does it fairly and accurately represent the streets in

17 the area that you took down to the site on November 29, 1988?

18 A. Yes, it does.

19 MR. BECKER: I would offer it into evidence as
20 Government's Exhibit 1.

21 MR. O'CONNOR: Which one is that, Paul?

22 MR. BECKER: The map.

23 MR. O'CONNOR: Does that have the names on it?

24 MR. BECKER: Yeah, it does.

25 MR. O'CONNOR: Judge, we're not going to have any

1 objection to this eventually, but you're not going to talk to
2 him about any of the clients' names that are on there; is
3 that right?

4 MR. BECKER: I'm just going to ask him how he got
5 down to the site.

6 MR . O'CONNOR: Judge' we would object at this
7 time. I think the other one clearly shows, the other big
8 picture clearly shows how they got to the site, and this has
9 names on it that haven't been addressed before the jury. I
10 think it's confusing at this point. Can you get it with the
11 other map?

12 THE COURT: It's true' there has not been a formal
13 foundation for that. On the other hand' it seems to me that
14 you and your clients can all look at that' and if it is' in
15 fact' inaccurate' then it won't come in. If it's accurate'
16 why go jump through all the hoops just to prove something
17 formalistically.

18 MR. O'CONNOR: We have no objection at this time'
19 then' Judge' overall.

20 THE COURT: All right.

21 MR. BECKER: In evidence?

22 THE COURT: He didn't have any objection' so No. 1
23 is admitted.

24 **(Government's Exhibit 1 was admitted into**
25 **evidence.)**

1 Q. (By Mr. Becker:) You briefly described -- could you
2 show the jury, then, how, if you could step down, please.

3 THE COURT: And I believe we have a mike, don't we,
4 now, that can be, just lift out, Chief.

5 A. This being Troost, we come down Troost. And these
6 streets are not numbered, so I can't really tell you which
7 one. We come over to 85th Street and come across 85th Street
8 up to, and I presume this is the road that went up the hill
9 to the site, where the construction site is.

10 Q. So you came across to where, 85th to where the QuikTrip
11 is listed there, and then down 71 Highway; is that right?

12 A. Yeah. And this is actually two-lane traffic north and
13 south, so we turned right into the median there. We didn't
14 go ahead and cross 71 or go up the hill. We stayed right
15 here in front.

16 Q. Have a seat up here, please.

17 When you got to the construction site, did you see
18 any fire at that time?

19 A. When we pulled in between the highways, there in that
20 short distance to our right as we took a left turn, there was
21 a pickup sitting there that the first responding company had
22 responded to that pickup fire.

23 Q. Was that still on fire when you -

24 A. It was smoldering somewhat, but the fire was out.

25 Q. Where did you go then?

1 A. We were parked there. I got out of the car and couldn't
2 have been out of the car more than a couple of minutes, and
3 someone brought a man up, that they introduced him as a
4 person that worked on the construction site with explosives.

5 Q. I'm going to show you Government's 26 on the TV screen
6 there. Can you see that from where you're sitting?

7 A. Well, I can see that one better.

8 Q. Which one?

9 A. Do you want me to get up here?

10 Q. No, if you could look out here.

11 A. Yeah, I can see that.

12 Q. I'm pointing now on the left of Government's 26. You
13 have the southbound 71 Highway and the northbound 71 Highway
14 with the dirt road across the median.

15 A. We were parked in that dirt road in the median there.

16 Q. What -- so you met with somebody from the -- you're
17 standing there in that dirt road in the median. What do you
18 see -- what, if anything, do you see in this area up on the
19 construction site?

20 A. There's a fire burning up on the hill.

21 Q. I'll show you what's been identified, marked for
22 identification purposes as Government's 378. Do you
23 recognize that?

24 A. Yeah. That's pretty much the way it looked. It was
25 real, real bright. I mean, you know, almost white hot. And

1 that's very close.

2 MR. BECKER: I'd offer that into evidence as, that
3 photograph as Government's Exhibit 378.

4 MR. O'CONNOR: No objection.

5 THE COURT: Admitted.

6 **Government's Exhibit 378 was admitted into**
7 **evidence.)**

8 THE COURT: Chief, you went out there in an
9 automobile, right?

10 THE WITNESS: That's correct, sir.

11 THE COURT: You didn't take the fire wagon out
12 I there?

13 THE WITNESS: No, we went out in what we call a
14 buggy.

15 THE COURT: The chief's car?

16 THE WITNESS: The chief's car, yeah.

17 THE COURT: Thank you.

18 IQ (By Mr. Becker:) From where you were down in that
19 I median strip, then, were you able to see what was on fire up
20 on the hill?

21 A. The fire was so intense, pretty much like what's on the
22 screen there, you couldn't really tell what was burning from
23 down there on the highway.

24 Q What was your plan of action? Who did you talk to
25 ~ besides the construction fellow?

1 A. Actually, I didn't get a chance to talk to anyone else
2 right at the time. We was trying to, I was trying to get him
3 to tell us or tell me what was on the hill, what had been
4 there, what was left, if anything, you know, to try to get a
5 layout of it.

6 Q. Did he tell you if there were any other explosives -
7 and now I'm putting back up Government's 26 -- any other
8 explosives located on that hillside of the construction site?

9 A. He said originally there was two trailers. And I don't
10 recall at this time whether he knew one or both had
11 exploded. I don't know that he knew.

12 Q. What about, did he talk to you about other explosives
13 stored on the site?

14 A. Yes, he did. He said there was a bunker where the
15 dynamite and the caps were stored.

16 Q. What did you do next?

17 A. Well, the deputy, the shift deputy had run the fire
18 about the same time I did. He cleared the fire down at
19 Twelfth and Woodland and started responding, and he come down
20 87th Street. He met with Chief Germann up on the berm, there
21 behind the berm, and they decided to change the command post
22 and move it back up 71 Highway.

23 Q. The deputy, what was his name?

24 A. Bill Booth.

25 Q. So he's the gentleman that just testified before lunch?

1 A. Yes, sir.

2 Q. What did you do then?

3 A. Well, we were still talking -- when he was clearing the
4 rest of the companies and personnel and changing the command
5 post, I was still talking to this gentleman that worked the
6 construction site, trying to get a drawing, a layout on the
7 back of the car. We ended up being the last ones to leave
8 the scene down there to go up to the -- and my aid finally
9 told me, he said, "Chief, we'd better get out of here." So
10 we went to 95th Street.

11 Q. When you pulled back to 95th Street, what was going on
12 back there?

13 A. The rest of the firemen were there, and they were
14 talking and trying to figure out exactly what happened' you
15 know' and it was kind of' you know, everybody going every
16 which way.

17 Q. Did you request a helicopter?

18 A. Yeah. The command people started getting a helicopter,
19 I believe it come from Life Flight. It was sent out there
20 from Life Flight.

21 Q. Did you feel the second explosion or hear it?

22 A. Oh, yeah, we felt it.

23 Q. Where were you when that happened?

24 A. We were at 95th Street. We couldn't have been there
25 very long, maybe ten minutes or so, before the second one

1 exploded.

2 Q. Were you outside your car?

3 A. We was outside, yeah.

4 Q. Did you get knocked down?

5 A. No. No. It was really loud, but, you know, we was far
6 enough away it didn't knock anyone down.

7 Q. After that, did you, did the helicopter arrive at the
8 scene?

9 A. Yes, it did.

10 Q. Did you go up in the helicopter?

11 A. The man from the construction site and I went up in the
12 helicopter, went down and made a recon over the area.

13 THE COURT: He went with you?

14 THE WITNESS: Yes, sir.

15 Q. What lights -- was it daylight yet?

16 A. No, it was still dark.

17 Q. What lights did you use, if any, to do a reconnaissance
18 of the scene?

19 A. The helicopter has a light on the bottom of it. It's
20 real powerful. I don't know what candle power, but it's real
21 strong. It lit up the area pretty good.

22 Q. What were you able to see as you flew over the
23 construction site?

24 A. We could see one pumper company, one pumper intact
25 there, some other scattered equipment, one real heavy piece

1 of equipment, and I remember seeing one bunker.

2 Q. And when you talk about the bunkers, let me show you
3 Government's 26 again. And is that these on the right-hand
4 side of this photograph, is that what we're looking at near
5 my pen?

6 A. Yeah, that's a bunker sitting there. I'm not sure
7 whether that's the one I saw or one behind it.

8 Q. Back there?

9 A. Yeah, there's one.

10 Q. And there's the other?

11 A. And I asked the guy flying the helicopter if he would
12 swing down 87th Street. We were hoping maybe one of the
13 pumpers got away back up 87th Street, got off, beings there
14 was only one sitting there.

15 Q. So you were still -

16 A. So we kind of flew up 87th Street a little bit and then
17 come back over the site.

18 THE COURT: Chief, is the word bunker another way
19 to describe a fortified box?

20 THE WITNESS: That's exactly what it is. It's real
21 heavy steel, probably at least a quarter to a half inch
22 steel.

23 THE COURT: It's not underground?

24 THE WITNESS: No, it's set above ground.

25 THE COURT: All right.

1 Q. (By Mr. Becker:) So you were still looking for, were
2 you still looking for Pumper 41?

3 A. That was the one that was missing, so, yeah, we were
4 looking for it.

5 Q. I'd like to show you what's been marked for
6 identification purposes as Government's 381 and 380. Would
7 you take a look at these and tell us if you recognize them?

8 A. Yeah, the newest pumper here is 30's.

9 Q. Could you look at the back, what number is that one?

10 A. This is 381, 30 Pumper. It was relatively new.

11 Q. That looks like -

12 A. That's not it, but it looked like that.

13 THE COURT: Which pumper looked like that?

14 THE WITNESS: 30's.

15 Q. And that's 281?

16 THE COURT: 381.

17 A. Yeah, picture, 381.

18 Q. And picture 380?

19 A. And 380 would have been 41's.

20 MR. BECKER: I offer those into evidence as 380 and
21 381.

22 MR. PETERS: No objection.

23 THE COURT: All right. They're admitted without
24 objection.

25 **(Government's Exhibits 380 and 381 were admitted**

1 into evidence.)

2 Q. (By Mr. Becker:) So showing you Government's 381 here,
3 this you describe, is this similar to Pumper 30, then?

4 A. Yes, it is.

5 Q. That was the newer of the two?

6 A. Newer of the two.

7 Q. How many gallons of water does one of these things hold?

8 A. Well, actually hold in their tank, they can be from 300
9 to 500 gallon tanks on these, and I'm not sure what the
10 capacity on it was.

11 Q. And I'll show you Government's Exhibit 380. Is this
12 similar, then, to Pumper 41, then, that was sent to the site?

13 A. Yes, it is.

14 Q. After you finished your helicopter flight -

15 A. Right.

16 Q. -- what did you do?

17 A. Flew back to the command post and landed up there, got
18 together with Chief Booth. By that time, 201, which would be
19 the operations deputy, was there. And I'm almost certain
20 that the director was there by then.

21 Q. Were you -

22 A. Got together with them, told them what we actually
23 found, what we could see from the air there, that one of the
24 pumpers was missing. And we weren't really close enough to
25 the ground to pick up much other than that.

1 Q. I guess the question would have been, did you see any
2 victims at all?

3 A. *No*, sir.

4 Q. What did you do next, then?

5 A. Well, I'm almost certain it was Chief Booth, probably
6 the director got all the men together that had responded to
7 this incident and told them pretty much what we had found
8 from the air and trying to settle any, you know, anybody's -
9 you know, just calm them down, more or less.

10 Q. Did you and Booth, then, were ordered or volunteered to
11 go back to the hill?

12 A. Chief Booth volunteered for both of us to go back to the
13 hill. The police had set up their command post by this time,
14 and they really didn't want to let anyone go back up there
15 until it was daylight and you could see what was happening.
16 But they didn't really have anybody up there on the hill
17 either, and we did. And our men were about ready to go on
18 their own if something else wasn't done. So Chief Booth and
19 I went down there.

20 *THE COURT:* Is it fair to say that at that time no
21 actual fire fighting was going on at the site of the fire?

22 *THE WITNESS:* *No*, there was no fire fighting.
23 There was no one down there.

24 Q. (By Mr. Becker:) When you flew over the site, what
25 amount of fire -- was there any fire you observed?

1 A. Smoldering type. There wasn't anything really burning,
2 you know, I mean free burning, but there was a lot of
3 smoldering in different areas.

4 Q. What did you and Deputy Chief Booth do then?

5 A. We got in his car and we drove north on 71 to that first
6 road.

7 Q. And I'm showing you now Government's Exhibit 33?

8 A. Right.

9 Q. And you came northbound on 71 Highway?

10 A. Uh-huh. Yes, sir.

11 Q. What happened as you drove north?

12 A. We almost got to that intersection that you were
13 pointing at, at about where I'd pulled into originally, and
14 the shrapnel on the pavement and everything from the
15 explosion blew at least one of the tires, maybe two of them,
16 but we did get just about to that road, or maybe even in the
17 intersection.

18 Q. What did you do then?

19 A. We got out of the car, took hand lights, and started
20 coming up that hill.

21 Q. How light was it? Was the sun coming up?

22 A. No, it was still dark. We were using our hand lights.

23 What you could pick up was what you could see with a hand
24 light.

25 Q. This has been on Government's 33, then. Is that the

1 road that you walked up?

2 A. Yes, it is.

3 Q. Did you walk as far as the chief's, the battalion
4 chief's, Germann's car?

5 A. We did go to the car. We were probably two thirds of
6 the way up the hill. In the road was a body part.

7 Q. As you walked, then, from the car back towards the
8 trailers, were you able to find any of the victims?

9 A. The first victim we found was Mike Oldham on the berm
10 here.

11 Q. Indicating on Government's 33 sort of the center of the
12 photograph there?

13 A. Yeah. Yeah. That's about right.

14 Q. Then did you walk over in the area of the remains of
15 Pumper 30?

16 A. As I recall, we walked up to the crater first, and we
17 looked around what would be probably the north side of the
18 crater. And right at that time we hadn't seen anybody but
19 Mike Oldham, and we looked at the crater. We started -- and
20 you're looking at the ground too. We didn't know what had,
21 you know, what the blast had thrown out on the ground, so we
22 were being careful. We were using our hand lights to watch
23 where we were walking. Walked around to the other side
24 towards the pumper which was left, which was Pumper 30.

25 Q. Did you find any of the firefighters there?

1 A. Yes. Luther Hurd was laying very close to 30 Pumper.

2 Q. As you moved beyond that point, did you locate Captain
3 Halloran?

4 A. Somewhat right behind him a little bit south behind 30's
5 pumper, there was some equipment there, I don't know whether
6 it was drilling equipment or whatever, and there was a pickup
7 sitting there, and Captain Halloran was draped across the
8 piece of drilling equipment.

9 Q. How could you recognize him at that point?

10 A. He had on a captain's shirt.

11 Q. How is that different from anybody else's?

12 A. Well, it's light blue, and the firefighters and
13 apparatus operators, they have dark blue shirts. We were
14 pretty sure that was Captain Halloran.

15 Q. Did you then move beyond the equipment out towards, as
16 I'm pointing on Government's 33, towards 87th Street?

17 A. Yeah. We walked a little bit south, southeast. And we
18 found Tom Fry. He was the furthest from the site of the
19 explosion, from the craters.

20 Q. I want to show you what's been marked for identification
21 as Government's Exhibit 231 and ask you if you recognize
22 that.

23 A. Yes, sir.

24 Q. What is that a photograph of?

25 A. That's Tom Fry.

1 MR. BECKER: I'd offer -

2 A. The firefighter on Pumper 30.

3 Q. Does that fairly and accurately depict the way you
4 observed him in the early morning hours of November 29, 1988?

5 A. Yes, it is.

6 MR. BECKER: I'd offer it into evidence as
7 Government's Exhibit 231.

8 MR. O'CONNOR: Subject to our earlier objection,
9 Judge, we have no objection.

10 THE COURT: This is in the group that -- well, I
11 don't actually have that number in that group, but this was
12 discussed earlier; is that correct?

13 MR. BECKER: Yes, Judge.

14 THE COURT: All right, then, with that objection
15 noted, the picture is admitted.

16 **(Government's Exhibit 231 was admitted into**
17 **evidence.)**

18 Q. (By Mr. Becker:) Did you then go beyond the body of
19 Firefighter Fry out here on Government's 33 to where you
20 could see the bunkers, the explosive bunkers?

21 A. From where we found Firefighter Fry, we walked on up
22 towards the heavy equipment you see sitting there, the
23 earth-mover or whatever.

24 Q. And that would be in the lower left-hand corner of the
25 exhibit?

1 A. Yeah. And the one bunker was back kind of behind it.

2 Q. I believe is it -- do you see my pen?

3 A. That's it.

4 Q. And that is in the lower left-hand corner of

5 Government's 33?

6 A. Right.

7 Q. What was your purpose in seeing those bunkers, locating

8 those bunkers?

9 A. Basically we were just looking -- I mean, you know, we
10 were looking and trying to see anything on the hill that we
11 wasn't aware of. When we flew over, I could see that bunker,
12 and we just walked back to make sure it was intact, and it
13 was.

14 THE COURT: Was it clear to you then that the
15 explosive devices that were in those bunkers had not
16 exploded?

17 THE WITNESS: Yes. Yes. You could tell. I mean,
18 nothing happened to them.

19 Q. (By Mr. Becker:) Did you observe any fire back in that
20 area?

21 A. No, sir.

22 Q. What did you do next up there?

23 A. It's getting, it's getting about the time that I'm sure
24 that we came off the hill' Chief Booth and I. We came back
25 down off of the corner there by the tanks' walked to that

1 corner' and had someone from the command post pick us up.

2 Q. So you would have left the area not by the way you came
3 in' but sort of down towards 87th Street?

4 A. Right. There's fueling tanks there to fuel the heavy
5 equipment' and we walked out that way.

6 Q. And then someone came and picked you up; is that right?

7 A. Right. And took us back to the command post.

8 Q. Did you report in' then' to the -

9 A. Again, we reported to the director who was there and the
10 operations chief and the police that had their command people
11 and told them what we'd found, et cetera. And then they
12 talked to the rest of the men and told them.

13 MR. BECKER: That's all the questions I have at
14 this time, Judge. I would ask that Government's Exhibit 231
15 be passed to the jury.

16 THE COURT: Yes, it may be. Maybe I'd better look
17 at that first. Thank you, Chief.

18 Okay.

19 (Government's Exhibit 231 was passed to the jury.)

20 MR. OSGOOD: Do you want to wait, Your Honor, until
21 they're done?

22 THE COURT: I don't have you going first. Are you
23 going first on this one?

24 MR. OSGOOD: I'm the only one going.

25 MR. O'CONNOR: He's going to be the only one asking

1 questions, Judge.

2 THE COURT: Okay.

4 CROSS-EXAMINATION

5 By Mr. Osgood:

6 Q. Is it Chief?

7 A. Yes, sir.

8 Q. Okay. Chief Grote, your call sign was 106; is that

9 correct?

10 A. That's correct.

11 Q. We're going to add you here, so it's G-R-O-T-E?

12 A. Yes, sir.

13 MR. OSGOOD: Your Honor, I think by agreement we're

14 going to admit this as Government's Exhibit No. -

15 MR. BECKER: I have no objection.

16 MR. OSGOOD: We'll give it a defense number, if

17 you -

18 THE COURT: What's next?

19 MR. BECKER: It would be 389.

20 Q. (By Mr. Osgood:) I just have a couple of brief

21 questions for you, Chief. When you were up in the

22 helicopter, who was it that went up with you besides the

23 pilot?

24 A. The pilot and the man from the construction site, and I

25 don't recall his name.

1 Q. You don't?

2 A. He said he worked there and worked with the explosives.

3 Q. Did he happen to say whether he was with the Mountain
4 View (sic) outfit or the Brown Brothers, or do you remember?

5 A. If he did, I don't remember.

6 Q. okay. When you were in the helicopter, did it have a
7 spotlight that you used to shine on the area?

8 A. Yes, sir, it did.

9 Q. Did you observe any other vehicles on the site other
10 than the 107's vehicle?

11 A. 107's car was sitting there just above the -- I mean,
12 they got up on the level with the equipment, the construction
13 equipment. And then there was a pumper sitting there, and
14 there was a pickup, and you couldn't tell from the air.
15 There was another piece of equipment, but you couldn't tell
16 what it was.

17 Q. All right. Now, you -- I take it from your testimony
18 you made a conscious effort to check damage on these bunkers
19 and see if they were intact?

20 A. On one of them. I never did see the one until it was
21 daylight that was set on back beyond.

22 Q. But then the next morning you also looked at the second
23 one?

24 A. No. I never did look at the second one.

25 Q. oh, I see. The one that you did see, was the door

1 intact and the lock still on it?

2 A. Yes.

3 Q. So it had not been tampered with?

4 A. No.

5 Q. Did it receive any damage as far as denting or anything
6 like that?

7 A. Not knowing what it looked like before I got there, but
8 not anything really that you could tell.

9 Q. These were painted bright yellow, I believe?

10 A. Yes.

11 Q. And marked as dynamite?

12 A. Yes.

13 Q. Okay. And then how long were you at the scene from
14 start to finish?

15 A. Well, the first time that Chief Booth and I went up
16 there, we were probably up there 25 minutes. And I can't, I
17 can't tell you exactly. We went back with some police
18 personnel and bomb and arson unit and the director and was
19 probably up there another 20 to 25 minutes then, so all told,
20 probably 45 minutes to an hour.

21 Q. Do you remember what time, I guess it was November, what
22 time it would have got light?

23 A. It was probably getting close to 6 o'clock, maybe even
24 after 6:00 before it really started getting light.

25 MR. OSGOOD: Okay. Thank you.

864

1 THE WITNESS: uh-huh.

2 THE COURT: All right. I understand there's no
3 further questions. Anything from the government?

4 MR. BECKER: Nothing, Judge.

5 THE COURT: All right. Chief, thank you for
6 coming.

7 THE WITNESS: Thank you.

8 THE COURT: Come forward, if you would, please,
9 sir, and stand by the witness chair and be sworn.

10 — — —

11 GARY BUCHANON,
12 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
13 testified as follows:

14 — — —

15 DIRECT EXAMINATION

16 By Mr. Miller:

17 Q. Would you tell the Court and the jury your name, please?

18 A. Gary Buchanon.

19 THE COURT: Pull that mike a little closer to you,
20 Detective, if you can. Thank you.

21 Q. And how are you employed?

22 A. I'm not employed, I'm retired.

23 Q. Okay. And where do you live now?

24 A. Riverview, Florida, just south of Tampa.

25 Q. I want to go back to November of ,88. And how were you

1 employed then?

2 A. I was a detective in the Crime Scene Investigations Unit
3 of the Kansas City, Missouri, Police Department.

4 Q. When did you retire?

5 A. 1995.

6 Q. Okay. How many years did you have in?

7 A. Twenty-six and a couple of months.

8 Q. What were your duties as a crime scene detective?

9 A. To respond to scenes of crimes to collect evidence and
10 preserve them for court testimony.

11 Q. Did you ever analyze evidence?

2 A. No, I did not.

3 Q. Well, what would you do with the evidence that you
14 collected?

15 A. It's packaged and sealed and sent to the property room
16 or the Regional Crime Lab for examination.

17 Q. I want to go to the early morning hours of November the
18 29th, 1988. And where were you dispatched to?

19 A. We were called at home approximately 4:30 and requested
20 to respond to 87th and South 71 Highway where there had been
21 an explosion and multiple dead bodies.

22 Q. Do you remember what time you arrived at that scene?

23 A. They had a command post at Bannister and south 71, which
24 is 95th Street. And it was around 5:30 in the morning.

25 Q. Now, you mentioned the command site. Did you ever go

1 right to the blast site?

2 A. No. It was dark. There was still fires burning, and
3 for safety they waited until sunrise.

4 Q. When you arrived at the command site, who did you meet
5 with, do you remember?

6 A. I met with other members of our crime scene unit, the
7 homicide detectives, and the arson detectives.

8 Q. How do you conduct a crime scene investigation?

9 A. In this case, it is a very large area. We have in this
10 case several detectives working a crime scene. We try and
11 coordinate it with the homicide and the arson and in this
12 case the fire department also.

13 We start at usually one location and work through
14 the crime scene toward another location. In this case, it
15 was basically we started on the south side and worked our way
16 north.

17 Q. Okay. Now, with your crime scene investigation unit
18 that you're with, you don't fan out, you stay together, don't
19 you?

20 A. Yeah, we basically stay together as a group going from,
21 you know, through the crime scene together.

22 Q. And as you were together going through this scene, what
23 were you looking for?

24 A. Any kind of evidence relating to the explosion or to the
25 cause of the deaths of the victims.

1 Q. As part of your duties, is a crime scene diagram
2 prepared?

3 A. Yes, there is.

4 Q. And for this one back on November 29, 1988, who prepared
5 the diagram?

6 A. I did.

7 Q. Because of their size, I'm going to keep them down
8 here. I'm showing you Government's Exhibit No. 8,
9 Government's Exhibit No. 7, Government's Exhibit No. 6, and
10 Government's Exhibit No. 9. And do you recognize these?

11 A. Yes, I do. They're enlargements of the diagrams I
12 prepared.

13 Q. And whose name is on them?

14 A. Mine should be on all four of them.

15 Q. And what's the date on them?

16 A. November 29th, 1988.

17 MR. MILLER: I'm going to offer Government's
18 Exhibit 7, 6, 8, and 9.

19 MR. BECKER: There was an objection, and we've, I
20 think, taken care of it.

21 MR. O'CONNOR: We have no objection, Judge, to 6,
22 7, 8, and 9.

23 THE COURT: All right, 6, 7, 8, and 9 are
24 admitted.

25 **(Government's Exhibits 6, 7, 8, and 9 were admitted**

1 **into evidence.)**

2 MR. MILLER: May I have a moment, Your Honor,
3 please, while I try to rig this? The easel is too low and
4 then the diagram -

5 THE COURT: Can you push the monitor back a little
6 bit if we're not going to be using it?

7 MR. BECKER: Let's see how this looks. Can you
8 read that or not? Can you see that?

9 THE WITNESS: I have a copy.

10 MR. MILLER: He has his own copy.

11 THE COURT: Okay. Good.

12 Q. (By Mr. Miller:) Okay. We're going to refer to -- this
13 is Exhibit No. 6, and is this part of your crime scene
14 diagram?

15 A. Yes, it is.

16 Q. And what page of your diagram is this?

17 A. This is page 7 of 13 pages.

18 Q. And up at the top in the left it says Toyota truck.
19 Would you show on the diagram where you denote the Toyota
20 truck?

21 A. Okay. It is in the middle right at the bottom. I can't
22 reach it from here.

23 THE COURT: You can pull the mike off the stand and
24 carry it with you and go on the drawing.

25 A. The Toyota truck was right here on the west side of

869

1 south 71 Highway and just south of this access road that ran
2 into the construction site.

3 MR. OSGOOD: Your Honor, can he use the pointer and
4 picture? This is a little difficult to -

5 MR. O'CONNOR: We don't object to Mr. Miller
6 leading him and pointing it out for him.

7 MR. OSGOOD: It seems to be cumulative.

8 THE COURT: It's been satisfactory up to now, but
9 go ahead and do that. But the trouble is, Detective, they
10 don't know what you're doing over there from this side.

11 THE WITNESS: I guess it's hard to see through me.

12 THE COURT: Well, I'll not comment on that. Why
13 don't you, you go ahead and tell him what it is, what the
14 fact is, and he'll try to demonstrate on the picture.

15 THE WITNESS: Okay.

16 Q. (By Mr. Miller:) So we're down here in the center and A
17 is the Toyota truck, correct?

18 A. Yes, it is.

19 Q. While you're there, I want to show you Exhibit No. 139.
20 Now, is that the truck?

21 A. Yes, it is. And also -

22 Q. Go ahead, I'm sorry.

23 A. Also it shows the access road going back up into the
24 construction site.

25 MR. OSGOOD: Excuse me, Your Honor. We don't

1 object to him going -- if he collected evidence and there's
2 testimony about it, that's fine. We've identified all of
3 this and identified all of this. It's cumulative. If he
4 collected evidence, it's perfectly all right with us if we
5 get right to it.

6 THE COURT: There's really no need to duplicate
7 what we've done. Let's get to that. Go ahead, move to your
8 next point.

9 MR. MILLER: Okay. I'll try to -

10 Q. (By Mr. Miller:) And one more time, though, back on
11 this, H. that's what you pointed to as the battalion chief's
12 truck, correct?

13 A. Yes, on the diagram it's the letter H.

14 Q. Now, is Exhibit No. 6 an overview of your diagram?

15 A. Yes. It shows the entire area between 87th Street and
16 Blue River Road from the south to the north and from 71
17 Highway back into the construction site. Also in my diagram,
18 you will see four areas, or three other areas outlined in
19 dotted lines, and those are the other three diagrams I've
20 prepared to show the enlargement of those areas.

21 Q. I want to stay back on this for a minute. What are -

22 THE COURT: Counsel, see if you can bring your
23 machine into just a little better focus. I don't think the
24 writing on it can quite be read. That's better.

25 Q. (By Mr. Miller:) Okay. Up on evidence where it says 1

1 and 2?

2 A. Yes.

3 Q. ALL right. Where I'm pointing to over here on the left,
4 now it's off the chart. Over here on the -- here we go, over
5 here on the left. That's where you recovered items 1 and 2?

6 A. Yes, it was.

7 Q. And would you tell us what 1 and 2 were?

8 A. They were shoe impressions that we made plaster casts
9 of, and the casts were collected. It was down by a trailer
10 and a truck that was parked down there.

11 Q. And what were the casts then sent to?

12 A. They were packaged and sent to the Regional Crime Lab.

13 Q. Then No. 11 that's back down here by the pickup truck?

14 A. Yes. That was a black billfold.

15 Q. Okay. And do you recall what was in that billfold?

16 A. Yeah. There was identification to Deborah Riggs and six
17 dollars and something in coin and currency.

18 Q. Now I want to go to Exhibit No. 8. That's the other
19 diagram?

20 A. Yes. That's an enlargement. There was a tanker trailer
21 here in the middle and then one and -

22 MR. OSGOOD: Excuse me. We're back at the same
23 problem. I don't know what he's pointing to, Your Honor. If
24 you would point to it on the picture, that would be helpful.

25 Q. This is the tanker trailer?

1 A. Yes. The oblong is the tanker trailer that was parked
2 just off of 87th Street.

3 Q. Can you tell us what items 3 and 4 are, the 3 and 4 at
4 the top?

5 A. 3 and 4 are also plaster casts of shoe impressions.

6 Q. And what are 5 and 6?

7 A. No. 5 was a broken Coors beer bottle, and No. 6 was the
8 bottom of a broken beer bottle.

9 Q. Okay. I want to take this off and show you Exhibit No.
10 87. And what does this show?

11 A. That is a picture with Detective Beverlin pointing to
12 the broken beer bottle, which was item No. 5 in the diagram.

13 Q. And show you Exhibit No. 88.

14 A. That's the same picture, only a close-up of the broken
15 beer bottle, and it had some kind of paper stuck in the neck
16 of it.

17 Q. And did you collect those bottles?

18 A. My job was to delineate the items on the diagrams, and I
19 was there when they were collected, but I did not collect
20 them.

21 Q. But you were there when they were collected?

22 A. Most of the items, yes. There were two or three items
23 that I did collect, but I was there when the others were
24 collected also.

25 Q. Okay. Well, regarding the bottle that we've shown with

1 the picture, you were there when it was collected?

2 ~A. Yes, I was.

3 IQ Okay. And what was that bagged up in?

4 A. We placed those items in brown paper bags and sealed
5 them with evidence tape, marked them with the date and our
6 filing number, and whoever collected them either writes their
7 name or their initials across the tape.

8 Q. I'm showing you two bags that are Exhibits 282 and 283.

9 And what are those?

10 A. The one marked 282 is what I have, is item No. 5 on the
11 diagram and it's a, the broken Coors bottle.

12 Q. And what's the other?

13 A. It looks like that -- there's also, the paper that was
14 in it is in the bottom of the bag.

15 Q. Okay.

16 A. This is the bag marked No. 6 on my diagram, your No.
17 283, and it is the bottom half of the broken beer bottle
18 bottom.

19 Q. And that was No. 6 found underneath the trailer?

20 A. Yes, what we recorded as No. 6. We seal it with the
21 black ink tape and with our initials and names across it.
22 When it goes to the lab and they open it, they use the green
23 tape, and it looks like the Bureau of Alcohol, Tobacco, and
24 Firearms uses red tape.

25 MR. MILLER: Your Honor, I'm going to offer

1 Exhibits 282 and 283 into evidence.

2 MR. O'CONNOR: No objection.

3 THE COURT: All right. Admitted without
4 objection.

5 **(Government's Exhibits 282 and 283 were admitted**
6 **into evidence.)**

7 THE COURT: Did you offer 87 and 88?

8 LAW CLERK: I have that they're admitted by
9 stipulation.

10 THE COURT: Yeah, they are. That's correct. Never
11 mind.

12 MR. MILLER: Your Honor, I offer 282 and 283.

13 MR. O'CONNOR: No objection.

14 THE COURT: Admitted.

15 Q. (By Mr. Miller:) You referred to the tanker there. I'm
16 showing you Government's Exhibit No. 76. Is that the tanker
17 that's depicted in your diagram?

18 A. Yes, it is.

19 Q. Which is Exhibit No. 7?

20 A. Yes.

21 Q. I also want to show you, we're still there at the tanker
22 and we're still on Exhibit No. 7. Government's Exhibit No.
23 85. And could you tell the Court what that's a picture of?

24 A. That is a broken padlock.

25 Q. Okay. And when did you find this padlock?

1 A. December 1, 1988.

2 Q. So two days later?

3 A. Yes, it was.

4 Q. Do you recall why you went back out there two days

5 later?

6 A. I believe we were called back out there by the arson

7 detective to recover that particular lock, and also a gas can

8 that was found.

9 Q. Show you Government's Exhibit No. 86. Is this a picture
10 of the lock depicted close up that was in Exhibit No. 85?

11 A. Yes, it is.

12 Q. What was done with that lock?

13 A. It was placed in a bag and, again, sealed with evidence

14 tape. The date, our filing number and either the signatures

15 or initials across that tape and sent to the Regional Crime

16 Lab.

17 Q. Showing you what's been marked as Government's Exhibit

18 No. 280. And is that the lock?

19 A. Yes. That's, in this case it's No. 1 because it was two

20 days later and it's -- I collected it. It's got my name on

21 it, and also my signature across the tape on the back. And

22 that is the same lock, yes.

23 THE COURT: Gentlemen, would you come up for a

24 minute, please? And ladies.

25 (Counsel approached the bench and the following

1 proceedings were had:)

2 THE COURT: I have a written request from one of
3 the jurors, Miss Boyd. She's No. 4. Says would like to have
4 copy of the diagram crime scene for reference. Difficult to
5 follow where items were found. And then she adds, or perhaps
6 these items could be identified on another map.

7 But is there any reason why you couldn't make
8 copies of those?

9 MR. BECKER: We could take five minutes, and I
10 could get 16 copies of those.

11 MR. O'CONNOR: No objection.

12 MR. OSGOOD: Make some for us, too.

13 MR. BECKER: I could make 25 copies.

14 MR. MILLER: What I had planned to do since we
15 physically can't do it, I was going to have him write on the
16 large diagram where he found the exhibit, a picture of
17 so-and-so, and write it off to the side.

18 MR. BECKER: They can't see it, that's the
19 problem.

20 MR. OSGOOD: Another way might be just to flip-flop
21 that, have him point to where the stuff is on the photo of it
22 on the screen, and you write or put an X on it up there.

23 MR. BECKER: If we take ten minutes or whatever you
24 want to take, we'll get copies of those.

25 THE COURT: We'll go ahead and take our recess

1 now. It's a little earlier than I like to.

2 MR. OSGOOD: We can have two, then, Your Honor.

3 MR. O'CONNOR: I have concern about this lock. The
4 lock was found two days later. There's no one that says that
5 lock comes from anything. It's just a lock he found.
6 They're going to put a lock in evidence that doesn't belong
7 to this case, or they have no one that's going to say that
8 lock was on a trailer, what use it has to this jury.

9 MR. OSGOOD: I don't have any objection to it.

10 THE COURT: That goes to credibility and weight,
11 not admissibility.

12 MR. OSGOOD: It's not been cut, it's been blown
13 apart.

14 MR. MILLER: I'm offering 288.

15 MR. O'CONNOR: I'm objecting, but the judge has
16 overruled it.

17 (The following proceedings were had in open court:)

18 THE COURT: Okay. We're going to do a little
19 clerical work here, ladies and gentlemen, and then that will
20 accelerate our afternoon recess. But I think what we're
21 going to do is get some copies made of some of these diagrams
22 so you all can have them in hand and see them as the
23 witnesses are describing what they did with respect to them.

24 So we'll take our recess. Don't talk about the
25 case, as you're usually instructed, and be back in the jury

878

1 room, if you would, in 15 minutes, at five of 3:00, and you
2 may withdraw from the courtroom at this time.

3 (The following proceedings were had in the
4 courtroom out of the presence of the jury:)

5 THE COURT: All right. We're in recess.

6 (A recess was taken from 2:44 p.m. to 3:08 a.m.)

7 MR. PETERS: Judge, we're going to have one item.

8 THE COURT: Do you have something, Mr. O'Connor, do
9 you have something you want to bring up?

10 MR. O'CONNOR: I think we got it worked out among
11 ourselves. Thank you.

12 THE COURT: That's good. That's the best way.
13 Okay. Let's get the jury.

14 Now, is that diagram that's on the screen here
15 they're going to be looking at when they come in here, is
16 that in evidence?

17 MR. MILLER: Yes, they're all in evidence. And if
18 I may, Judge, we propped one up, and I tested this. One
19 juror said he couldn't see, and I went back there, and he can
20 see now. We made an adjustment. It's on there pretty good.

21 THE COURT: This is a part of your admitted
22 exhibits?

23 MR. MILLER: They're all admitted, all four.

24 (The following proceedings were had in the
25 courtroom in the presence of the jury:)

1 THE COURT: I'll remind you you're still under
2 oath.

3 THE WITNESS: Yes, sir.

5 GARY BUCHANON,
6 having been previously sworn, testified further as follows:

8 RESUMED DIRECT EXAMINATION

9 By Mr. Miller:

10 Q. Okay. Detective, we've propped up one of the blown-up
11 parts of your diagram. We also have it on the television.

12 THE COURT: Now, did you get copies made for
13 everybody?

14 MR. MILLER: Yes, we did.

15 THE COURT: Do they have them?

16 MR. MILLER: Not yet.

17 THE COURT: All right. Let's get them
18 distributed.

19 Okay. Counsel.

20 Q. (By Mr. Miller:) We're referring to Exhibit No. 8,
21 Detective Buchanon. And where my pen is is No. 1 and a
22 circle around it. What does that indicate?

23 A. That is, indicates the Victim No. 1.

24 Q. And No. 2?

25 A. It would be Victim No. 2.

880

1 Q. And No. 3?

2 A. Would be 3; and 4, Victim No. 4.

3 Q. And can you tell by those measurements, let's go to -

4 what's H?

5 A. I'm sorry? H?

6 Q. Yes.

7 . H is a large crater measuring 53 feet across and

8 approximately 8 feet deep.

9 Q. What is I?

10 A. I is a, a smaller crater measuring approximately 40 foot

11 across and also about 8 foot deep.

12 Q. What about J?

13 A. J was the smallest of the three craters, approximately

14 20 feet across and 6 feet deep.

15 Q. Now, let's go to No. 1, Victim No. 1. On your diagram

16 by your measurements, are you able to tell how far away from

17 the largest crater, crater H. body No. 1 is, Victim No. 1 is?

18 A. Yes. The No. 1 was approximately 140 foot.

19 THE COURT: Just a minute. Excuse me. What is the

20 problem?

21 JUROR: H says the battalion chief car.

22 THE WITNESS: That's another diagram.

23 JUROR: Am I looking at the wrong diagram?

24 THE WITNESS: Yes.

25 THE COURT: You want to be looking at Page 7 of

1 13. Isn't that right, counsel?

2 MR. MILLER: No. It's page -

3 THE WITNESS: Should be Page 9.

4 JUROR: Yes, thank you.

5 THE COURT: All right. Page 9. Okay. Page 9 of

6 13. Oh, yeah, that's what I have. The top of the 9 was cut

7 off. All right. Go ahead.

8 Q. (By Mr. Miller:) Okay. Again, could you tell us how

9 far away from crater H Victim No. 1's body was?

10 A. Yes. Let me explain about the measurements. We started
11 at 87th Street. It's not on the television monitor, but over
12 on the right-hand side of the page is 87th Street. There was
13 a power pole approximately even with the center of the
14 crater. We drew a line from the center of the crater to that
15 power pole and used it as a base line to do the measurements
16 from.

17 From the center of the crater to victim No. 1 was
18 approximately 140 feet, and he was approximately 30 feet east
19 of that line.

20 Q. How far away was Victim No. 2 from the large crater H?

21 A. No. 2 was approximately 40 feet north of No. 1, which
22 would put him about 100 feet from the center of the crater
23 and just about 9 feet east of the base line.

24 Q. How far away is Victim No. 3 from crater H?

25 A. No. 3 is approximately 60 feet from the center of the

1 crater, and in this case west of the base line approximately
2 17 feet.

3 Q. And Victim No. 4, how far away is he from crater H?

4 A. No. 4 is about, between 45 and 50 feet from the center
5 of the crater and 21 feet west of the base line.

6 Q. Okay. Now, you had these victims numbered. This
7 doesn't reflect your opinion as to who was killed first, does
8 it?

9 A. No, it does not. It's just a numbering process in this
10 case moving from the south to the north through the crime
11 scene.

12 Q. And Items A through H which we have under items of
13 interest, are those just -- I'm sorry, A through G. were
14 those just destroyed pieces of machinery?

15 A. Some was destroyed pieces of machinery. H. I, and J
16 were the craters. D and F indicate the two firetrucks.
17 There was a red truck and a bulldozer and generator, and then
18 there were two items that we, as police officers, I have no
19 idea what they were.

20 Q. Now, if you could refer to the blowup diagram held up
21 behind you, and there's a black marker in front of you. And
22 I'm going to put on here State's Exhibit No. 205. First of
23 all' who is that in between those two trucks?

24 A. That's a picture of me between the two firetrucks.

25 Q. All right. Now, using your marker and on the blown-up

1 diagram behind you, would you mark where 205 is depicted?

2 A. Okay. That would be over on this side. The defense
3 can't see it. It would be to the bottom on the diagram of
4 the two firetrucks looking back toward the east. And it
5 would be that way.

6 Q. And would you do the same with 208, mark on the blown-up
7 diagram where 208 is depicted from?

8 A. Okay. That would be standing toward the east looking
9 back toward the west toward the firetrucks. The two yellow
10 tarps in the picture on the television would be victims No. 3
11 and 4.

12 Q. And Exhibit No. 220?

13 A. Okay. 220 would be over this way looking toward the
14 north. Again, the two yellow tarps on my farthest right is
15 Victim No. 1. The one back by the firetruck would be Victim
16 No. 3.

17 Q. Now I want to go to No. 9. It's Page 10 of 13. And up
18 to the left, what is marked as A, again? Give us a
19 reference.

20 A. Okay. As you can see in this diagram, you have the same
21 three craters as in the previous exhibit. This diagram
22 depicts everything to the north of those craters as opposed
23 to everything to the south of the other diagram. In this
24 one, A is the battalion chief's car, which is up the access
25 road at the junction of the little driveway that went into

1 the construction site.

2 Q. I want to go to No. 7 on, it says evidence.

3 A. No. 7 is a gas can nozzle. And if you move the diagram
4 down, it's right at the top about where the hole punch is.

5 Q. Right there at the top by the hole punch?

6 A. Right there.

7 Q. All right. I'm going to show you what's been marked as
8 Government's Exhibit No. 285. And if you could open that
9 up. And what's in there?

10 A. Okay. What is in there is a gas nozzle off of some sort
11 of gas can.

12 Q. And is this what you recovered as No. 7 on your diagram?

13 A. Yes, it is.

14 MR. MILLER: Offer Exhibit No. 285.

15 MR. O'CONNOR: No objection, Your Honor.

16 THE COURT: All right. 285 will be admitted
17 without objection.

18 **(Government's Exhibit 285 was admitted into**
19 **evidence.)**

20 THE COURT: That's the whole can; is that right?

21 MR. MILLER: The nozzle is rather oily. I'd like
22 to keep it in the can. Yes, it would be the whole can with
23 the nozzle in it, yes.

24 THE COURT: Okay. Thank you.

25 Q. (By Mr. Miller:) Now, going down back on evidence on

1 No. 8. What did you recover there?

2 A. That was a crystalline powder that the arson detectives
3 told us was ammonium nitrate.

4 . I'm going to show you what's been marked as Government's
5 Exhibit No. 388. And what is that?

6 . That is a can, again, with our evidence tape with the
7 black markings, and our names and date and the file number
8 are on that can.

9 Q. This is what you recovered on the 29th there?

10 A. Yes, it is.

11 Q. And it's depicted as No. 8 on the diagram?

12 A. Yes, it is.

13 MR. O'CONNOR: No objection, Your Honor.

14 THE COURT: All right. 8 is admitted. I'm sorry,
15 388 is admitted.

16 **(Government's Exhibit 388 was admitted into**
17 **evidence.)**

18 Q. (By Mr. Miller:) I want to show you what's been marked
19 as Government's Exhibit No. 82. And what is that?

20 A. That is a gas can.

21 Q. okay. And when did you recover that?

22 A. That was recovered on December 1st, 1988.

23 Q. And is that depicted on any of the diagrams that we
24 have?

25 A. No. That was two days later after the diagrams had

886

1 already been prepared.

2 Q. Still, though, would you be able to show on which one of
3 the diagrams -- let's put No. 9 back on. Could you give the
4 jury an idea of where you found that gas can?

5 A. It would be considerably north of the crater -- I'm
6 sorry, east of the craters. This entire construction site
7 had been bulldozed to get all the trees and bushes and stuff
8 off. And then they were all back on the east side of the
9 construction site, and that's where the gas can was. This
10 top road here made a circle around the back side of the
11 construction site, and the brush was along that road, and the
12 gas can was by the brush piles.

13 Q. Let me show you Government's Exhibit No. 281. And what
14 is this?

15 A. That is a brown paper bag with, again, our filing
16 number, our, the date of December 1st, and my name, and it's
17 also across the black inked tape is my signature.

18 THE COURT: I don't believe you've offered 82, have
19 you?

20 LAW CLERK: It's in the stipulation.

21 THE COURT: I forget the stipulation. All right.
22 I'll mark it.

23 MR. O'CONNOR: Your Honor, may I voir dire the
24 witness in aid of the objection to the gas can?

25 THE COURT: The gas can, is that what's in 281?

887

1 MR. O'CONNOR: Yes, sir.

2 THE COURT:I thought the gas can was 82.

3 MR. OSGOOD: The can is 281, looking at the sticker
4 on it, Your Honor.

5 THE COURT:What is 82, counsel?

6 MR. MILLER: 82 is the photograph of the can, Your
7 Honor.

8 THE COURT:All right.

9

10 VOIR DIRE EXAMINATION

11 By Mr. O'Connor:

12 Q. Mr. Buchanon, you said you recovered this particular gas
13 can on December 1st. That would have been how many days
14 after you had been at that scene?

15 A. Two days.

16 Q. And where you found, where the gas can had been found,
17 had you been over that area before on the 29th?

18 A. No, I had not. As far as I know, none of the crime
19 scene people had either. It was considerably back on the
20 back side of the, back side of the construction site.

21 Q. And had the scene still been preserved, or had the
22 scene -- when was the scene turned back over or opened back
23 over to the public or the construction company, or do you
24 know?

25 A. I have no idea.

888

1 Q. The scene was no longer preserved as of December 1st;
2 would you agree with that?

3 A. I wouldn't know, but I would say, no, it wasn't
4 protected.

5 Q. It wasn't roped off with evidence tape or anything like
6 that?

7 A. No.

8 MR. O'CONNOR: I would object to the admission of
9 this exhibit, Your Honor, at this time.

10 THE COURT: I've already indicated my view on
11 that. That goes to weight and credibility, not
12 admissibility. Overruled.

13 MR. O'CONNOR: Thank you, sir.

14 **(Government's Exhibit 281-was admitted into**
15 **evidence.)**

17 RESUMED DIRECT EXAMINATION

18 By Mr. Miller:

19 Q. Would you take out this exhibit and show this to the
20 jury, hold it up for the jury.

21 (So done.)

22 Q. And if you would place it back in the bag.

23 MR. MILLER: Did I offer 281? If not, I'm offering
24 it now.

25 THE COURT: I think you did, because I think that

889

1 was Mr. O'Connor's objection and I overruled it. So it's in.

2 Q. (By Mr. Miller:) Finally, what was done with the items
3 that you recovered?

4 A. On December 1st?

5 Q. All the items.

6 A. Any items. All right. The items were placed in various
7 containers, either paper bags, or if they were possibly
8 hazardous like the gas can nozzle, they were placed in metal
9 containers, and they were also evidence taped again,
10 initially by whoever claimed them with the date and the
11 number across the tape, and all of it was sent to the
12 Regional Crime Lab.

13 Q. Where were the bodies taken?

14 A. They were sent to Truman Medical Center to the county
15 morgue.

16 Q. There were yellow tarps over the bodies. Do you know
17 who covered the bodies?

18 A. The firefighters covered the bodies with the yellow
19 tarp. And that was because when they went to take aerial
20 photographs of the scene, the placement of the victims was
21 indistinguishable among just the barren ground. So they
22 covered them with tarps, and the bright yellow was readily
23 visible from the helicopter.

24 MR. MILLER: That's all I have of this witness,
25 Your Honor.

1 THE COURT: All right.

2 MR. PETERS: No questions, Judge, for my client.

3 THE COURT: Okay. Miss Hunt?

4 MS. HUNT: I have just a few questions.

5 _____

6 CROSS-EXAMINATION

7 By Ms. Hunt:

8 Q. How long were you out at the crime scene that day?

9 . We were called approximately 4:30 in the morning. We
10 got to the command post at 5:30. I would say we were there
11 about an hour before the sun came up, and we were there, I
12 would say, almost until dusk when the sun started going down,
13 and then we returned to the crime scene unit to work on the
14 paperwork and stuff.

15 Q. So roughly 12 hours that day?

16 A. Yeah.

17 Q. Sunup to sundown?

18 A. I would say 12 to 13.

19 Q. You can have your seat again, I think.

20 How long were you a detective in the crime scene
21 investigation unit?

22 A. I was in crime scenes approximately 13 years.

23 Q. And during that 13 years, did you have training in crime
24 scene investigation?

25 A. Yes, we did.

1 Q. And in that training, they taught you to observe the
2 entire scene; is that right?

3 A. Yes.

4 Q. And you make these diagrams to scale and you try to note
5 everything you see on the scene; isn't that correct?

6 A. As close as possible to scale. We're not architects or
7 draftsmen, but it's as close as we can get it.

8 Q. And you would put the numbers and letters like you've
9 done on these for the items that you see on the scene?

10 A. Yes.

11 Q. Okay. And you're up there, and you looked at the whole
12 scene that day for 12 to 13 hours, right?

13 A. Yes.

14 Q. And how many people were with you?

15 A. There were at least three other crime scene detectives.
16 I would say two to three homicide detectives that were -- I
17 don't know how long they were there. Arson detectives I
18 think were there most of the day; and firefighter personnel,
19 I don't know how many of them were there.

20 Q. And during that 12 to 13-hour period, you observed this
21 entire scene, did you not?

22 A. Yes.

23 Q. And during your observation during that time of this
24 scene, did you see any big copper tubing or any large amounts
25 of copper on the scene?

892

1 A. Not that I know of, no.

2 Q. Did you during that time observe acetylene torches on
3 the scene?

4 A. Not that I remember, no.

5 Q. Did you observe in any of the trailers or bunkers or
6 anywhere on the scene extension cords?

7 A. Not that I remember, no.

8 Q. Did you see a transit or transits on the scene?

9 A. I don't know what that is. What's a transit?

10 Q. From my understanding, it's what the surveyors use on
11 the tripod. Anything that looked like that?

12 A. Not that I know of, no.

13 Q. Did you observe any diamond saws or saw blades, concrete
14 saws, anything of that nature on the scene?

15 A. No.

16 Q. Did you see any drills?

17 A. No.

18 Q. Did you see any big drill bits on the scene?

19 A. Not that I know of.

20 Q. And you looked over this entire scene, and you went back
21 to the scene on December 1st; is that right?

22 A. Yes.

23 Q. Did you do another thorough investigation on that date
24 or just recover certain items?

25 A. Just basically recovered the padlock and the gas can.

893

1 Q. On the 29th for the 12 or 13 hours you basically with a
2 fine tooth comb went over the scene, didn't you?

3 A. I wouldn't go quite that far, but we were as thorough as
4 we could have been, yes.

5 MS. HUNT: All right. That's all I have.

6 MR. BUNCH: No questions.

8 CROSS-EXAMINATION

9 By Mr. O'Connor:

10 Q. I wanted to ask you a few questions, Mr. Buchanon.
11 About how many crime scene people were up there working that
12 day? Was the whole unit there?

13 A. The day shift that was working that day were there. I
14 believe there were three of us.

15 Q. All right.

16 A. Plus one left over from the midnight shift.

17 Q. And were people from the ATF there that you knew about?

18 A. I don't remember if the federal agencies were there that
19 day or not. We were working mainly with the homicide
20 detectives.

21 Q. Was anyone directing you as to what you were to be
22 looking for or what you were to be picking up, or were you
23 just kind of looking and picking up whatever you thought may
24 be relevant?

25 A. Basically whatever was relevant. Some items found by

1 other detectives were pointed out. As the one exhibit we had
2 admitted, the ammonium nitrate, the arson detective told us
3 what that was and how to handle it and package it.

4 Q. Okay. The footprints that were recovered there, or the
5 casts that were recovered there, those are generally
6 recovered, all you do is recover things and then you send
7 them to the lab and they make a determination of whether or
8 not they can match those up with somebody else later; is that
9 correct?

10 A. Yes. We don't make any determination.

11 Q. And this beer bottle that you collected, you don't know
12 if it had anything to do with this scene; is that correct?

13 A. I have no idea.

14 Q. You just collect it, mark it, send it to be
15 fingerprinted and other things that are done at the lab that
16 you don't have anything to do with?

17 A. Right.

18 Q. Now, did you see some what were described to you or told
19 to you were dynamite bunkers that were back behind the site?

20 A. Yes, I believe there were two bunkers. Again, back
21 toward the back of the construction site.

22 Q. Were those bunkers ever opened for you to look into?

23 A. No.

24 Q. Take photographs of?

25 A. No. Well, we took photographs of the outside, I don't

1 believe we took any of the inside.

2 Q. Were those locked and secured that morning?

3 A. As far as I know, yes.

4 . Did you check them to see if they'd been opened or pried

5 r jimmied?

6 . I did not, no.

7 . Would someone with your unit have done that?

8 . Either that or the arson detectives.

9 Q. Did you find any, other than that one padlock that was

10 in evidence, did you find anything that was like a lock or

11 hasp that would have come from the, either of the trailers

12 that had exploded?

13 A. No, I did not.

14 Q. And did you look thoroughly around that area of the

15 actual crime site?

16 A. Yes.

17 Q. Did they call out any of the young recruits from the

18 crime lab to walk abreast like they sometimes do to try to

19 gather evidence?

20 A. Not that I know of, no.

21 Q. But you all divided up the responsibilities, is that

22 true, in certain areas of the crime scene?

23 A. Yes. We had one officer that wrote the reports, I did

24 the diagram, we had one officer taking the photographs, and

25 the fourth one was basically the one that picked everything

1 up and put it in the bags and the cans.

2 Q. And you believe -- do you believe, do you believe that
3 you conducted a thorough exam of this scene?

4 A. Yes, we did.

5 Q. Were there items that had been blown across the highway
6 onto 87th Street and onto 71 Highway?

7 A. Yes, there was.

8 Q. Were you aware of items that were collected either by
9 truckload or something like that that were taken somewhere to
10 be sifted through by people? Were you aware of anything like
11 that?

12 A. No, I'm not.

13 Q. Did you see or observe any bicycle tracks up there?

14 A. No, not that I know of.

15 Q. Were there any underground bunkers up there, something
16 like a door in the ground where things were kept underground
17 that you observed or were told about?

18 A. No, I did not.

19 Q. Did anyone ever tell you that up where the trailers were
20 that a 40,000 pound Japanese hydraulic drill had at one time
21 been there?

22 A. No.

23 Q. Did you find anything that looked like a drill or drill
24 bits or anything from that size of a drill?

25 A. The only thing, around the two firetrucks there was

1 something that looked like some type of construction

2 equipment, but it was so mangled we had no idea what it was.

3 Q. Those were the items that you talked about a minute ago,

4 that you said there were two items that you said you just

5 didn't know what they were?

6 A. Yes. They were some type of construction equipment that

7 were right around the firetrucks, but they were so damaged I

8 didn't know what they were.

9 . Do you know what a union loader is?

10 . I have no idea.

11 Q. As I understand it, there was a big Caterpillar up

12 there; is that true?

13 A. There was a tractor -- I believe I had tractor written

14 down. Bulldozer, I'm sorry. There was a bulldozer and a

15 generator over by Victim No. 1 and 2.

16 MR. O'CONNOR: 1 and 2 is all we have as defense

17 exhibits? 3, 4, 5, and 6, please.

18 THE COURT: It really would be better if you had

19 this done before we came in here, Mr. O'Connor.

20 MR. O'CONNOR: I apologize, Judge, I thought that

21 Mr. Becker -

22 THE COURT: We don't need to stand around and wait

23 for exhibits to be marked.

24 MR. O'CONNOR: My fault.

25 Q. (By Mr. O'Connor:) Mr. Buchanan, I want to hand you

1 what's been marked as Defendants, 3 and ask you if you
2 recognize that photograph, sir.

3 A. No, not right off, but it appears to be back on the
4 south side -- or on the east side of the construction back by
5 the brush piles.

6 Q. Can you tell us whether that's a fair and accurate
7 representation of the Caterpillar there that was at the scene
8 that morning that you were out there?

9 A. Yes.

10 Q. Let me hand you what's been marked Defendants, 4. Is
11 that a picture of the same Caterpillar but taken at a
12 different angle?

13 A. It appears to be, yes.

14 Q. Fair and accurate representation of what you saw out
15 there the morning of the 29th?

16 A. This one shows it a little better on the back side of
17 the, back by the large hill on the east side of the
18 construction site.

19 Q. Let me hand you Defendants, 5. Tell me if you can get a
20 frame of reference of that photograph.

21 A. Yes. That's on Page 10 of 13 on the diagrams. That's
22 the service road. This would be back toward the battalion
23 chief's car looking to the south along the road where all the
24 little letters are on the road.

25 Q. Is that a fair and accurate depiction of what it looked

1 like there the morning of November 29th?

2 A. Yes, it is.

3 Q. I want to hand you lastly Defendants, 6. Is that

4 another photograph of the Caterpillar but from a different

5 angle?

6 A. Yes. It also shows what looks like one of the explosive

7 bunkers way back on the back side of the construction site.

8 . Fair and accurate representation?

9 . Yes, it is.

10 MR. O'CONNOR: At this time, Your Honor, I'd offer

11 Defendants, 3 through 6, inclusive.

12 THE COURT: Gentlemen?

13 MR. MILLER: No objection, Judge.

14 THE COURT: Admitted without objection.

15 **(Defendants, Exhibits 3, 4, 5, and 6 were admitted**
16 **into evidence.)**

17 Q. (By Mr. O'Connor:) Mr. Buchanan, I'm going to show you

18 Defendants, 5. And if you could refer for the jury on your

19 exhibit there where that exhibit is generated from, if you

20 would.

21 A. I'm sorry, could you repeat that?

22 Q. Could you tell us where that would show on your, one of

23 your diagrams?

24 A. Yes. On -

25 Q. Which page? I'll get that for you.

900

1 A. Thank you. Page 10 of 13, enlargement of Inset C.

2 Q. And that's near the service road?

3 A. Yes, it would be what is marked as A, the battalion
4 chief's car in the upper left-hand corner, and it would be
5 looking back to the south along the service road. It also
6 shows the area of standing water on the left part of the
7 picture and on the top of the diagram.

8 Q. Does that kind of look like a little creek running
9 through there?

10 A. Yes. Just standing water. It wasn't running water.

11 Q. Just had a good suggestion from Mr. Osgood to use this.
12 Maybe it would be helpful to the jury, as well.

13 That shows the creek that we were just talking
14 about?

15 A. Yes.

16 THE COURT: That being -

17 MR. O'CONNOR: Exhibit No. 5, Your Honor, thank
18 you.

19 Q. (By Mr. O'Connor:) This is Defendants, 4, I believe.
20 That shows the Caterpillar; is that correct?

21 A. Yes.

22 Q. And it clearly says Caterpillar on the front of it?

23 A. Yes, it does.

24 Q. Does it have straw laying around it?

25 A. Straw bales.

1 Q. And straw laying on the ground?

2 A. Probably.

3 Q. Can you see it from the photograph?

4 A. I can't see the monitor. Yes, there's straw on the
5 ground.

6 Q. And do you see here, you can see my pen. It appears to
7 be a blackened area in there. Did you ever make any
8 determination of whether or not the origin of that, what that
9 was?

10 A. I have no idea.

11 Q. Defendants, 6, one more photograph to show you.

12 Defendants, 3, do you see this cardboard that's laying here
13 on the ground?

14 A. Yes, I did.

15 Q. That was there the morning of the 29th?

16 A. Yes, it was.

17 Q. Were you told what was in the bunkers?

18 A. No, I have no idea, other than they were explosive
19 bunkers, but I have no idea what, if anything, was in them.

20 MR. O'CONNOR: That's all the questions I have.

21 Thank you, sir.

22 THE COURT: All right. Any other defendants with
23 questions? Any redirect?

24 MR. OSGOOD: Your Honor, I had a couple very brief
25 questions.

2

3 By Mr. Osgood:

4 Q. You also examined the pickup truck that had been burned
5 down on the west side of the highway?

6 A. Yes.

7 Q. I believe you collected a purse?

8 A. That was a black billfold.

9 Q. Where was that at when you found it?

10 A. I'm not sure if it was in the front seat or laying just
11 beside the truck.

12 Q. Did you collect any other items from the truck which
13 appeared to have residue of any kind of an accelerant on it?
14 You might tell the folks what you and I mean by accelerant.

15 A. Accelerant is anything that speeds the fire.

16 THE COURT: I haven't heard any testimony about
17 accelerant yet.

18 MR. OSGOOD: I thought there was some testimony,
19 Your Honor, of a rag or something.

20 THE COURT: Did you say anything about
21 accelerants?

22 THE WITNESS: No, I did not.

23 Q. (By Mr. Osgood:) You didn't find anything of that
24 nature in the truck?

25 A. Let me check to see what we took from the truck.

1 Q. If you don't recall, that's fine.

2 A. I don't recall.

3 Q. Okay. Were the keys in the ignition?

4 A. I don't know.

5 Q. All right. What did you ultimately do with the purse?

6 Was it returned at some time?

7 A. What we did with it was we recovered it. And being a
8 non-evidence item, per se, I believe it was, the billfold was
9 sent to the lab. The money in it and I believe something
10 else was sent just to the property owner and probably
11 returned.

12 THE COURT: Mr. Osgood, I don't remember any
13 testimony about a purse. You said purse just now.

14 MR. OSGOOD: Well, I think the witness referred to
15 it as a purse. It was a, I believe described in the record
16 by Miss Riggs as kind of a four-by-six or eight-inch folding
17 vinyl item of some kind.

18 A. I refer to it in mine as a billfold.

19 Q. (By Mr. Osgood:) As a billfold?

20 A. Yes.

21 THE COURT: I didn't think he called it a purse.

22 Q. (By Mr. Osgood:) And it was vinyl as you recall?

23 A. I don't remember. It was black.

24 Q. Was that returned, that item, or just its contents?

25 A. I don't know. We sent it to the Regional Crime Lab. I

1 don't know.

2 Q. Do you handle the return of items, or would that be
3 somebody else's job?

4 A. That would be somebody else.

5 Q. Now, you said some items are returned. What -- for
6 example, what category would a gun be in? Would it be
7 returned later?

8 A. I don't think so, no. It's probably given back to the
9 property owner, yes.

10 Q. If it's not involved in any way in the incident?

11 A. Right.

12 Q. Usually when you find a gun, it's involved in some -

13 MR. MILLER: I'm going to object to the relevance
14 of the gun with this witness. That's not covered by this
15 witness.

16 THE COURT: Yes. And that question calls for
17 speculation and conjecture, too. That's also sustained.

18 Q. (By Mr. Osgood:) Somebody else handle return of items,
19 then?

20 A. Yes, the property room.

21 Q. And I believe, just last question. You used subjective
22 evaluation in terms of what you seized at the scene, based on
23 your training and experience?

24 A. Yes, we did.

25 Q. By the way, was there a Dempsey dumpster or anything of

1 a similar nature anywhere in this construction anywhere that
2 you saw?

3 A. Not on top of the hill where the victims were. There
4 was construction equipment on the west side of 71 Highway and
5 also off Blue River Road. There may or may not have been a
6 Dempsey dumpster with the construction equipment. I don't
7 know.

8 Q. In this kind of an investigation, would it be usual or
9 unusual to look through a Dempsey dumpster if one were
10 there? What would you do?

11 A. I'm sure we would look through it if it was there, but I
12 don't remember seeing one.

13 Q. Did you see anything that resembled what may have at one
14 time been a trash container or dumpster or something up on
15 the hill?

16 A. Not that I know of, no.

17 Q. Okay.

18 MR. OSGOOD: I believe that's all.

19 THE COURT: All right. Any redirect?

20 MR. MILLER: No redirect.

21 THE COURT: All right. Thank you. I appreciate
22 you coming. You're excused. Call your next witness.

23 MR. BECKER: Thank you, Judge. The United States
24 calls Cliff Lund.

25 THE COURT: Come up and stand by the witness stand

1 and be sworn, please, sir.

2

-- --

3

JOSEPH C. LUND. Sr.,

4 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,

5 testified as follows:

7

DIRECT EXAMINATION

8 y Mr. Becker:

9 Q. Good afternoon.

10 . Good afternoon.

11 Q. Get some of this stuff out of your way. Please state

12 our name and spell your last name.

13 . Joseph C. Lund, L-U-N-D, Sr.

14 Q. How old are you?

15 A. Fifty-six.

16 Q. How are you employed?

17 A. I work for the Department of Treasury, Bureau of

18 Alcohol, Tobacco, and Firearms.

19 Q. What is your position there?

20 A. I'm an explosives enforcement officer.

21 Q. Where are you located, where are you based?

22 A. I work out of the forensic scientific laboratory in

23 Rockville, Maryland.

24 THE COURT: You say you are an explosion

25 enforcement officer?

907

1 THE WITNESS: Explosives enforcement officer, yes.

2 THE COURT: Thank you.

3 Q. (By Mr. Becker:) If you could pull that a little
4 closer.

5 A. How is that?

6 Q. Great. Thank you. What does an explosives enforcement
7 officer do?

8 . I give technical assistance to city, state, and other
9 federal agencies in enforcement of explosive rules and
10 regulations, primarily in the area of explosive devices,
11 bombs.

12 Q. Do you have training and experience in the area of
13 explosive devices?

14 A. Yes, sir, I do.

15 Q. How many years have you been working in the area of
16 explosive devices?

17 A. Here for ten years, with the Department of Treasury. I
18 was a police officer for 23 years, and half of that career
19 was in the explosive division.

20 Q. Could you tell us what professional training you've had
21 in the area of explosives?

22 A. I attended the hazardous device school in the United
23 States Army, which was in Huntsville, Alabama, and I've been
24 back to that school approximately seven different times for
25 refreshers.

908

1 I attended the Department of Treasury Schools for
2 Explosive Certification and have been back there four
3 different times to be recertified.

4 I've attended numerous other federal schools
5 throughout my years in explosives, explosive evidence
6 collection, and in many aspects of explosive investigation.

7 Q. Have you attended college courses in the area of
8 explosives or pyrotechnics?

9 A. I took courses in the chemistry of pyrotechnics and the
10 theories of pyrotechnic displays at Washington College and
11 arson courses while at the University of Maryland.

12 Q. Have you participated in any professional organizations
13 relating to explosive devices?

14 A. Yes. I've attended the last fifteen international
15 conferences on explosives. I gave presentations at most of
16 those conferences.

17 Q. Briefly, on what topics?

18 A. Current trends in explosives and improvised explosive
19 devices. Again, that's my specialty.

20 Q. Have you held any position in any professional
21 organization?

22 A. I'm the past International Director of the International
23 Association of Bomb Technicians and Investigators, which
24 encompasses the United States and 58 countries outside the
25 United States.

1 I'm the past president of the Del-Mar-Va Potomac
2 Bomb Techs Association, which was Delaware, Maryland, and
3 Virginia, in that little area.

4 Q. Have you taught or been an instructor at any schools or
5 seminars on explosives and explosive devices?

6 A. I average about 30 days a year teaching in different
7 seminars for local associations and the International
8 Association of Arson Investigators. I'm also a member of
9 bomb squads throughout the United States. I've given
10 presentations at Interpol, Lyon, France for current trends in
11 explosive devices, and in Canberra, Australia, on the same
12 topic, representing the United States government.

13 MR. PETERS: Your Honor, we would be happy to
14 stipulate that Mr. Lund is eminently qualified as an
15 explosive expert.

16 Q. Have you previously testified as an explosives expert in
17 any state, local, or federal court?

18 A. Yes, I have.

19 Q. Approximately how many times?

20 A. Approximately 50 times.

21 MR. BECKER: I offer this witness as an expert in
22 explosives devices.

23 MR. PETERS: No objection.

24 THE COURT: This is no reflection on your witness,
25 but I don't certify experts. I don't make any kind of a

1 ruling on expertise. I will rule on objections if they are
2 made as to his qualification and ability under the law to
3 answer opinion questions. If he is qualified, he'll be able
4 to answer the question. If he isn't, he won't. So let's
5 proceed on that basis.

6 Q. (By Mr. Becker:) Mr. Lund, what is ANFO?

7 A. ANFO is an ammonium nitrate and fuel oil mixture, which
8 is a blasting agent, also qualified as an explosive.

9 Q. What is it used for primarily in the United States?

10 A. Commercial blasting.

11 Q. How is it used?

12 A. ANFO is used either in pure form loose or in bags, or
13 another term is socks, which is tubular, and it's used to
14 break rocks or push dirt.

15 Q. Let me show you what's in evidence as Government's
16 Exhibit 288. Does this look familiar to you?

17 A. Yes.

18 Q. What is this?

19 A. The term is sock, or some people will call it a sausage.

20 THE COURT: The number again?

21 MR. BECKER: 288.

22 THE COURT: Thank you.

23 Q. (By Mr. Becker:) And if it really contained ANFO, how
24 much would one of these weigh?

25 A. Around 30 pounds.

1 Q. Would it have any smell?

2 A. Yes.

3 Q. What would it smell like?

4 A. It would smell like diesel fuel.

5 Q. I'd like to call your attention to Government's Exhibit
6 388, which is previously admitted into evidence, and ask you
7 to open this up and see if you can recognize the contents.

8 Do you recognize the contents of Government's 288?

9 A. This is consistent with the prill size ammonium nitrate
10 and ANFO with the smell of diesel fuel, but it's usually not
11 that dirty.

12 Q. What's prill, what is that?

13 A. That's a rice-shaped formation. The ANFO comes in small
14 pellets that the industry calls prills, and that's the
15 ammonium nitrate, and it's designed to absorb the diesel fuel
16 to make the blasting agent.

17 Q. Does this particular sample, Government's 388, have an
18 odor, aroma?

19 A. Yes.

20 Q. What does it smell like?

21 A. It smells like diesel fuel.

22 MR. BECKER: I would ask that that be passed to the
23 jury, Judge, while we continue with the testimony.

24 THE COURT: All right. I think we ought to maybe
25 make sure that it's clear on the record. Mr. Lund, as it is,

1 that is, in its inert form, that's not dangerous; is that
2 correct?

3 THE WITNESS: That's correct. In the form it's in
4 now, it's not that dangerous.

5 THE COURT: This object is not dangerous?

6 THE WITNESS: No, sir.

7 THE COURT: I still suggest you handle it carefully
8 as you pass it.

9 Q. (By Mr. Becker:) Along those lines, Mr. Lund, you say
10 that these socks, which is Government's 288, are used in the
11 construction industry. Could you describe for us, can you
12 throw these around? How sensitive, how dangerous is a sock
13 full of ANFO?

14 A. In the normal course of blasting, a hole called a bore
15 hole is drilled within a foot or two foot of the side of
16 either rock formation or dirt. Let's say 50 feet deep, ten
17 inches around.

18 Q. And this would be, as you're describing, perhaps a
19 highway project, or is that -

20 A. Yes. If you ever drive down the interstate and you look
21 at the rocks on both sides, you'll notice lines coming
22 straight down. And when you see those lines coming straight
23 down, that's the half of the large hole that was drilled.
24 And when that hole was drilled from the top to the bottom in
25 order to make that move forward to break it -

1 Q. The rock face?

2 A. The rock face, ANFO was used. And it's used in several
3 forms. One is free flowing, that is, a truck with all those
4 prills in that can, with a chute, you just back up and just
5 pour it free-flowing. Second is by using that sock. And I
6 go back to the original question about sensitivity. If that
7 hole is 50 foot down, you just take that tube, put it in the
8 hole, and let it go.

9 Q. That's not going to go off then?

10 A. No, sir.

11 Q. All right. So you'd fill the tube with ANFO in this
12 form or in loose form?

13 A. Or in loose form.

14 Q. How does it do its job?

15 A. The next step would be to initiate the explosives, which
16 would be a cast booster, that's a larger explosive device, a
17 very powerful device. Inserted into this cast booster would
18 be a detonator.

19 Q. So cast, C-A-S-T?

20 A. C-A-S-T.

21 Q. Booster?

22 A. Booster.

23 Q. Where is that placed in the hole along the rock face?

24 A. Several different ways. I guess I'll give them all to
25 you. The first one is to lower the cast booster down first

1 with the detonator facing up.

2 Q. And how sensitive is that? Is that -

3 A. Detonator is the most sensitive of all explosives, but
4 it's cushioned because it's plugged into the cast booster,
5 and now the cast booster is on top. And then by placing
6 several of these bags or free-flowing prills, the second
7 booster would be placed in the middle, and then filling the
8 hole up again to several feet just prior to the top, you can
9 place your third booster.

10 And the next thing would be a stemming. That's to
11 pack that hole full of crushed rock, sand to make sure the
12 explosive work product is pushed forward. In other words,
13 when you fire the explosives, you don't want it all shooting
14 out the hole, that's wasted money. So you just fill that
15 hole up and tamp it down so the explosive force takes that
16 side of the rock formation forward.

17 Q. Typically, then, along a rock face in that highway
18 construction project, how many -- do they do it one hole at a
19 time, or is it -

20 A. It's several. If it's -- if you have a 50-yard run, you
21 would space them out by the amount of explosives that you
22 wanted to use. And then again, because this is cost
23 effective, you would try to get the most bang for your
24 dollar, which would mean as far apart as you can place those
25 devices, the ANFO, and make the rock break, the better off

1 because that's less equipment that you have to buy.

2 Q. How do you mean, set them off? How do you get those
3 holes to go off?

4 A. By using a detonating cord. The detonators are, as
5 previously stated, is hooked up. You would bring the
6 detonating cord out to a location and hook it up to another
7 detonating cord, so you would have one long cord running
8 down. And each cord coming out of the hole would be attached
9 to the long running cord. I mean, in some place safely away
10 you would cause that one long strip of detonating cord to
11 explode.

12 Q. How do you do that?

13 A. With an electric detonator, so now you have a detonating
14 cord exploding. And as soon as it hits the end, which is
15 27,000 feet a second, every cord attached to that transmits
16 the exact same explosive energy to that detonator. And, in
17 fact, they all go up at the same time.

18 Q. Because of the rapid speed of the movement of the signal
19 or charge?

20 A. Correct.

21 Q. Could you, could we back up a minute? You mentioned
22 ammonium nitrate and then fuel oil as two components in this
23 case; is that right?

24 A. That's correct.

25 Q. What's ammonium nitrate?

1 A. Ammonium nitrate is an oxidizer, an oxidizing agent.

2 Q. In explosive terms, what does that mean?

3 A. The original ammonium nitrate was actually designed
4 primarily as a fertilizer. However, 25 percent of it has
5 been allotted for blasting agent.

6 Q. 25 percent of the production nationwide?

7 A. Or eight billion pounds, yes.

8 Q. Okay.

9 A. In the product to be manufactured, there's an addition
10 of diesel fuel added to the ammonium nitrate.

11 Q. Why?

12 A. To give a fuel to the oxidizer because you need a fuel
13 and an oxidizer for explosives.

14 Q. How long has this stuff been around?

15 A. Early 1900's.

16 Q. How is it -

17 MR. PETERS: Your Honor, objection. Just for
18 clarification, how long is this stuff, are we talking about
19 ANFO or ammonium nitrate?

20 THE COURT: I think that's probably a good point.

21 They've been using ANFO for how long now?

22 THE WITNESS: Nineteen hundreds.

23 THE COURT: You mean between 1900 and 1910, is that
24 what you mean?

25 THE WITNESS: I mean from nineteen hundreds to now

1 we've been using ANFO.

2 THE COURT: The 20th century?

3 THE WITNESS: Right.

4 Q. (By Mr. Becker:) We talked a little bit about how
5 sensitive this is. Is there danger in its transportation
6 between the manufacturer and the wholesaler or to the job
7 site?

8 A. Well, it's an explosive product. The biggest danger
9 would be, the No. 1 danger, it's a fire hazard. But as far
10 as shock and friction and bouncing around the truck, that's
11 not a danger.

12 Q. Now, calling your attention to November 29, 1988, did
13 you happen to be in Missouri on that date?

14 A. Yes, sir, I was.

15 Q. Where were you?

16 A. I was in Springfield.

17 Q. What were you doing down there, very briefly?

18 A. Testifying in a court case.

19 Q. In a different matter?

20 A. Yes.

21 Q. Were you along with Agent True called up to the scene of
22 this explosion in Kansas City, Missouri?

23 A. Yes, sir, I was.

24 Q. Did you do an inspection of the scene?

25 A. I arrived at the scene and did a brief walk-around

1 looking at the damage.

2 Q. What were you looking for?

3 A. I was looking for any indicators or things of that
4 nature that would have led me to believe what had occurred.

5 Q. Did you receive information, then, that two trailers had
6 been on that site, one containing approximately 25,000 pounds
7 of ANFO and the other containing approximately 30,000 pounds
8 of ANFO?

9 A. Yes, sir.

10 Q. Since that time, have you reviewed reports of the arson
11 investigators relating to this case?

12 A. Yes, I have.

13 Q. Could you tell, tell us based upon your inspection on
14 the 29th of November, 1988, and your review of the reports
15 how, what happens to a trailer load of ANFO if it's set on
16 fire?

17 A. What occurs is the ANFO starts to burn. And while it's
18 in the trailer, it's piled up, bag upon bag upon bag. It's a
19 pile, or a large amount.

20 Once it starts to burn, the ammonium nitrate
21 particles are an oxidizing agent, produces its own oxygen,
22 doesn't need outside oxygen, and it begins to burn. As the
23 heat rises, temperature rises, and the oxidizing agent, ANFO,
24 continues to burn because it burns very vigorously.

25 So we have a product that wants to burn burning at

1 a high temperature. And because of the pile, the gas is
2 usually trapped inside, so now we have a self-sustaining
3 fire. It's burning, the temperature is going up. It's
4 getting hotter. The flame gets hotter, the temperature goes
5 up, the pressure goes up, it's consuming itself up.

6 One of two things happens. Either it burns itself
7 out, or it gets to the point there's so much pressure, when
8 the pressure lets go, it's like a shock and we have an
9 explosion.

10 Q. Based on your last statement, then, if you put a match
11 to this, if this really had ANFO in it, would it explode?
12 . Like that, not necessarily. It's when you have the
13 large pile.

14 Q. What is it about the pile that -- well, let's stay with
15 this, Government's 288. If you put this out in a field and
16 set it on fire, what would happen?

17 A. While it's burning, it would burn left to right. And
18 because there's nothing on top trapping the gases, it most
19 likely, most likely would just burn.

20 Q. What's different, then, about the pile in a semi truck
21 trailer?

22 A. The pile makes its own confinement. And burning -- and
23 according to the report, it was started underneath the
24 trailer. It's the worst place it could have started because
25 now it's burning up and it's consuming the product, but

1 there's product above that's pressing down, and that's the
2 problem because the gas is trapped inside. Fire burns up and
3 out.

4 Q. So why does it explode?

5 A. Trapped gas, pressure, self-sustaining fire, and the
6 product itself, being an oxidizing agent, burns vigorously.

7 Q. Is there any set amount of time that this would take, or
8 would it depend upon the many variables in each load?

9 A. Each load and each fire. The time, temperature,
10 pressure, and the dynamics of a fire, it's not guaranteed.

11 Q. So in this particular case, based upon your experience
12 and what you've read, if the fire is started at the bottom of
13 that tractor trailer, what caused that pile of ANFO to
14 explode?

15 A. Internal pressure, trapped gas.

16 Q. Now, do you ever burn ANFO?

17 A. Oh, yes, I do.

18 Q. Why?

19 A. I use it in training when I'm training other people as a
20 confidence builder. We burn various types of explosives to
21 show the people in the field that you can burn explosives.

22 Q. Why would, why would a person in the field want to burn
23 up explosives?

24 A. In a training mode? To show that it can be done.

25 Q. Why would somebody want to do it, though?

1 A. It's all part of a training scenario. We teach how to
2 use detonators, how to use explosives, how to do small
3 blasting, and then to show you that explosives can be burned
4 safely.

5 Q. Are they burned safely for disposal purposes, then?

6 A. Burned safely for training. The normal method of
7 destroying explosives would be by explosion, if you have the
8 proper area and that area could take that type of explosion.

9 Q. In your training, then, when you, if you're burning
10 ANFO, what procedures do you use?

11 A. We would -- we'll go back to the sock. We would split
12 the sock open and remotely would use a time fuse to give us
13 time enough to go back to a safe area. We will put
14 accelerant underneath of it, straw or whatever, and then we
15 would burn with the wind coming towards us so it would burn
16 slow and even to the other end. Again, it's just a
17 confidence builder to show people that you can burn
18 explosives.

19 Q. Now, if you burn 12 piles of ANFO in your training,
20 would any of them explode?

21 A. You're talking about 12 piles stacked up?

22 Q. Yes.

23 MR. PETERS: Your Honor, I would object. Just for
24 purposes of this hypothetical, I think we need to give a
25 little bit more parameter, how big of a pile, how much

1 weight, a pile of three versus a pile of 20,000 pounds.

2 THE COURT: Outside, in a container. Let's do
3 that, Mr. Becker.

4 MR . BECKER: Certainly, Judge.

5 Q. (By Mr. Becker:) If you were outside -- you burn this
6 stuff outside, right?

7 A. Yes, sir.

8 Q. If you're outside in your training area and -
9 typically, how big of a pile would you, of ANFO, would you be
10 burning?

11 . One or two of those sausages, and that's all.

12 Q. If you had 12 piles of three sausages each, would any of
13 them explode?

14 A. I would not expect any of them to explode like that. I
15 would not guarantee you that that would occur because we
16 always stand back, you know, waiting for that to explode
17 because it can.

18 Q. In your experience, has that happened?

19 A. I've had explosives explode while I was burning it, yes.

20 MR. PETERS: Your Honor, I would object to the
21 answer as being nonresponsive, in your experience of lighting
22 ANFO, has that ever occurred.

23 THE COURT: Well, you can get into that if you need
24 to.

25 MR. PETERS: Okay.

1 Q. (By Mr. Becker:) When you arrived at -- as an
2 experienced bomb expert, when you arrived at the scene in
3 Kansas City, Missouri, on November 29, 1988, what was the
4 most significant factor that you noticed on the scene?

5 A. The craters were pretty large, but I think the thing
6 that I really remember was there was a missing truck. There
7 was a firetruck that wasn't there.

8 Q. What did that mean to you as a bomb expert?

9 A. I blow things up. I make things go away. And while
10 looking at one truck and looking down and realizing there was
11 a second truck there and it's gone, I mean, I saw no trace of
12 it. That's the thing I looked at. The truck is gone.

13 MR. BECKER: I have no further questions at this
14 time, Judge.

15 THE COURT: All right. Cross?

16 MR. PETERS: May it please the Court.

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 By Mr. Peters:

20 Q. Good afternoon, Mr. Lund.

21 A. Good afternoon, sir.

22 Q. You and I had an opportunity to talk on Sunday. You
23 took time out of your day and let me ask you some questions
24 then; isn't that true
25

924

1 A. That's correct, sir.

2 Q. Okay. First, on the training of burning ANFO, if you're
3 taking the one sock or the two socks or the three socks, 35
4 pounds, 70 pounds, 105 pounds, in your experience of burning
5 that, you've never had one of those explode.

6 A. That's correct, I've never had one.

7 Q. Okay.

8 THE COURT: Have you? You've never had one of
9 those explode, have you?

10 A. No, sir, I have not.

11 Q. I'm going to write that in big print.

12 Now, you were on the scene of this explosion on
13 November 29th approximately 3:30 in the afternoon, give or
14 take a couple of hours; is that correct?

15 A. Yes, sir, that is correct.

16 Q. And the investigation by the Bureau of Alcohol, Tobacco
17 and Firearms effectively began on November 29th, 1988; isn't
18 that correct?

19 A. Yes.

20 Q. And at the scene, is it fair to characterize it in your
21 opinion is this is a massive explosion?

22 A. Yes, sir, that's also correct.

23 Q. And in your experience, had you ever had occasion to
24 visually see an explosion involving what we may have evidence
25 is as much as 25,000 pounds of ANFO?

1 A. I've never seen that much explosive in that much of
2 area, that's correct.

3 Q. But based on your training and expertise, that much ANFO
4 can produce this type of massive destruction; is that
5 correct?

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

7 Q. Now, at the scene, were you called there to provide
8 assistance to the Bureau of Alcohol, Tobacco, and Firearms in
9 whatever way you could?

10 A. Yes. I was asked by Special Agent True to go to the
11 scene because we were together at that point.

12 Q. Okay. And you've given us some background on ammonium
13 nitrate/fuel oil. Would you agree that millions of pounds of
14 ammonium nitrate and fuel oil are transported over the road
15 every year to be used at different construction sites and for
16 blasting?

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

18 Q. And you've explained to the jury that in these sausage
19 rolls, in this format, while we wouldn't say it's safe,
20 vibration isn't going to set it off, is it?

21 A. No, sir.

22 Q. And stacking it, 100 pounds, 200 pounds, 300 pounds, and
23 lighting it with a match isn't going to set it off, is it?

24 A. I'm not sure of that. If you were talking about
25 stacking it from bottom to top, there would always be a

1 possibility that if you burned a large amount of ANFO in a
2 pile that you could have an explosion.

3 Q. And I understand could, but you're aware, for example,
4 of the Royal Canadian Mounted Police taking several hundred
5 pounds, lighting it on fire, and there being no explosion.
6 You're aware of tests such as that being conducted?

7 . Yes.

8 Q. And are you aware of any evidence from any source that
9 says at what weight, what mass, what volume you have to get
10 before when you set it on fire you have this risk of
11 explosion? Is there any data on that at all, to the best of
12 your knowledge?

13 A. No, I have no information to the best of my knowledge of
14 any specifics of that area.

15 Q. As you arrived at the scene on November 29th, 1988,
16 you're looking for any, any sort of evidence that you can
17 find that leads you to a cause and origin of the explosion;
18 is that fair to say?

19 A. Yes.

20 Q. And what you're looking for is to determine whether or
21 not -- and I'm going to give you some categories here,
22 whether or not it is an accidental explosion, an arson, a
23 bombing, an attempted bombing, an accidental explosion with
24 criminal intent. Is that correct?

25 A. That would justify most of our categories.

1 Q. Okay. And what I'm referring to are categories that are
2 used by the Bureau of Alcohol, Tobacco, and Firearms in their
3 explosive incident system report codes. Did I word that
4 right?

5 A. That's correct.

6 Q. okay. And does the Bureau of Alcohol, Tobacco, and
7 Firearms -- since I guess probably -- excuse me, Your Honor.

8 Since at least 1976, has the Bureau of Alcohol,
9 Tobacco, and Firearms kept a database of explosive-related
10 incidents?

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

12 Q. okay. During your direct testimony, you told us that
13 you had reviewed reports that indicated that the fire on this
14 trailer started at the bottom and went up?

15 A. Yes.

16 Q. Can you tell us what report you reviewed that indicated
17 the fire initiated at the bottom of the trailer?

18 A. That was a report from the fire investigator, Chuck
19 Conyers. He said that it was his opinion that there was more
20 fire under the bottom than the top and that it was a set fire
21 from the bottom.

22 Q. Okay. And is Chuck Conyers affiliated with any
23 government agency, ATF, FBI, Kansas City, Missouri, Police
24 Department, Regional Crime Lab?

25 A. I don't know.

1 . Okay. And for each type of incident investigated by the
2 Bureau of Alcohol, Tobacco, and Firearms, is there what is
3 referred to as an incident report filled out? I think the
4 technical language is an explosives incident worksheet. Do
5 you know that, sir?

6 A. Yes.

7 Q. And do you know whether one was filled out in relation
8 to the explosion having to do with the death of the six
9 firefighters on November 29, 1988?

10 A. I saw some data that was filled out on a sheet, yes.

11 Q. okay. I would like to show you two documents which you
12 were kind enough to give to me. I have marked them as
13 Defendants, Exhibit 7 and Defendants, Exhibit 8. And with
14 the Court's permission, I'm going to be showing a portion of
15 them. I don't think we're going to be admitting the entire
16 document. Defendants, Exhibit 7 purports to be and I think
17 you'll say is the explosive incident system codes; is that
18 correct?

19 A. That's correct.

20 Q. And I'm handing you Defendants, Exhibit 7 and asking you
21 if that, that's the, in fact, the facsimile copy that you
22 provided to me, I believe, on -- I think it shows that it was
23 faxed on January 21st. So my question is is that a fair and
24 accurate copy of the EXIS codes used by the Bureau of
25 Alcohol, Tobacco, and Firearms?

1 A. Yes, it is.

2 Q. okay. And now I'm handing you what's been marked as
3 Defendants, Exhibit No. 8' and the cover sheet for the
4 document that you faxed is from the Office of Criminal
5 Enforcement' Arson and Explosives Division, Explosives
6 Technology Branch. And below the cover sheet on Defendants,
7 Exhibit 8 is a listing of different events. And I'm going to
8 first hand you Defendants, Exhibit No. 8 and ask you if
9 that's a fair and accurate copy of what you received by
10 facsimile.

11 THE COURT: What are you calling that? 8-A?

12 MR. PETERS: We'll call it incident reports. Would
13 that be -- and it's Defendants, Exhibit 8, Your Honor.

14 THE COURT: All right. okay. You can answer that
15 question.

16 MR. BECKER: I have it now. Thank you.

17 MR. PETERS: Judge.

18 THE COURT: Go ahead.

19 MR. PETERS: Judge' for purposes of this witness'
20 I'm going to move for admission of Defendants, Exhibit 7 and
21 8. There's a variety of things that aren't relevant in it,
22 and if we pass it or do anything with it, I think we would
23 want to leave that information out.

24 MR. BECKER: May we approach on this, Judge?

25 THE COURT: Yes.

1 (Counsel approached the bench and the following
2 proceedings were had:)

3 MR. BECKER: This material contains, I don't know
4 how many pages. Do you know a total number of pages?

5 MR. PETERS: Probably 25 pages relating to this
6 incident. There would be one page that we'll be moving for
7 admission on, but they need to know what it is.

8 THE COURT: Okay. We'll have the whole thing
9 marked as an exhibit but identify the right page you're going
10 to want to use or let him react to it, and then we'll go
11 forward.

12 MR. BECKER: And my objection is that while
13 obviously we provided this information to counsel at his
14 request, over my better judgment but at his request we
15 provided him this, he's given us no notice until this moment
16 that he's going to seek to introduce this into evidence. I
17 mean, there's no -

18 THE COURT: When did you get this? Talked to him
19 on Monday?

20 MR. PETERS: I talked to him on Sunday. I asked
21 him if he could get it, and he told me he could. On Monday I
22 wasn't able to get it from them. I was told we could get it
23 Tuesday. We were busy in trial. I got it ultimately
24 Wednesday morning.

25 THE COURT: I'm not sure he's really had any

1 opportunity to file any amended exhibit list, but, again,
2 let's just go to the merits, the substance of whatever page
3 he wants to use.

4 MR. BECKER: Well, I guess this -- I'm not entirely
5 clear what's being offered here. Who filled out this
6 information?

7 THE COURT: I'm telling him to designate for you
8 what page or pages he proposes to use, and let's deal with
9 that.

10 MR. PETERS: We've done that, Your Honor.

11 THE COURT: And it will be admitted only for record
12 purposes.

13 MR. BECKER: That I understand it's the page here,
14 and he has pointed out to me that has the coding of a number
15 of items at the bottom, and the top of the next page. I'm
16 just at this time unable to see who provided this information
17 to put in the computer to show up on this report. I don't
18 know the reliability or the source of this information.

19 THE COURT: Well, then, are you saying that it is
20 not, that a foundation has not been laid for its admission as
21 a business record? Is that what you're -- is that the -

22 MR. BECKER: I think it is a business record. If
23 he asks the right questions, it's a business record.

24 THE COURT: If he knows.

25 MR. BECKER: He got it, he knows.

1 THE COURT: All right. Let me see it.

2 MR. BECKER: It would be the bottom here and the
3 top.

4 MR. PETERS: Actually, Your Honor, it's going to be
5 -- what we're going to be referring to is this information
6 on this from here to here. I'll have him explain the codes
7 to the jury. The only purpose of this whole page is this one
8 incident report. Right here. 11/29/88.

9 THE COURT: Just that entry, Mountain Plains,
10 Kansas City, Missouri, explosion?

11 MR. PETERS: Yes. And the codes are taken out of
12 the EXIS codes. He's testified about the report. It's
13 filled out by the local ATF agent. The codes go to
14 Washington. It's entered into the database.

15 THE COURT: What's it say?

16 MR. PETERS: It says right here, Judge, that this
17 is a bombing, that it's not an arson, it's not an accidental
18 fire. It's categorized as a bombing. That's what I'll be
19 going into with him.

20 THE COURT: Well, I think that's probably
21 admissible. You obviously know who made that categorization
22 and how it's displayed.

23 MR. BECKER: I'll certainly find out, won't I?

24 THE COURT: I suspect he knows.

25 MR. OSGOOD: Your Honor, while we're up here, do

933

1 theystill have the crime scene chart that you passed out to
2 help them?

3 MR. BECKER: It was collected again, I believe.

4 MR. OSGOOD: Was it? I didn't know if it was or
5 not. Those pages, has that been collected? If it hasn't, it
6 should be.

7 THE COURT: We'll see to it we get it at the end of
8 the day. Okay.

9 (The following proceedings were had in open court:)

10 MR. PETERS: Was 7 and 8 admitted subject to the
11 discussion?

12 THE COURT: 7 and 8 will be admitted for the
13 limited purpose of being used as designated by counsel. And
14 they're not, the exhibits are not to be published to the jury
15 without further discussion.

16 **(Defendants, Exhibits 7 and 8 were admitted into**
17 **evidence.)**

18 MR. BECKER: Could the Court request that the crime
19 scene diagrams be passed down for collection?

20 THE COURT: Yeah. If any of you still have those
21 crime scene diagrams, pass them in, if you would. Maybe just
22 pass them all in to the No. 1 position here, and then we'll
23 gather all of those up.

24 (So done.)

25 THE COURT: Okay. Let's go.

934

1 Q. (By Mr. Peters:) Mr. Lund, I'm going to come back to
2 this while we're setting up something to write on.

3 After November 29th, 1988, your examination of the
4 explosion site, did you have any other involvement where you
5 were requested in any way to help out in the case after
6 that? Were you?

7 A. Yes.

8 Q. When was your next involvement in the explosion that
9 occurred on November 29th, 1988?

10 A. November of 1994.

11 Q. November of 1994?

12 A. That's correct.

13 Q. And who contacted you in November of 1994?

14 A. Special Agent Dave True.

15 Q. And what was the purpose of that contact in 1994?

16 A. That was the TV program Unsolved Mysteries.

17 Q. And what was your role, or what did you do in regards to
18 the TV program, unsolved Mysteries?

19 A. I acted as a safety coordinator during the filming of
20 the episode for unsolved Mysteries.

21 Q. And in terms of being a safety coordinator, you oversaw,
22 they staged a couple of fires and you were the safety
23 coordinator for that; is that correct?

24 A. That's correct.

25 Q. And then they burnt two trailers; is that correct?

1 A. I'm not sure that there were two, but there were
2 trailers burned, yes.

3 Q. It was more than one trailer that was burned, as best
4 you recall?

5 A. Yes.

6 Q. Okay. And were the trailers that were burned, was part
7 of your role to provide expertise in terms of safety or
8 accuracy of the re-creation?

9 A. Just safety.

10 Q. Safety. From your experience with ammonium nitrate/fuel
11 oil and its transportation thousands of times a year, were
12 the trailers that they used accurate, the types of trailers
13 that would be used to transport ANFO?

14 . They were just trailer bodies, basically the same type
15 of trailer.

16 Q. Would they have had wood floors, do you know?

17 A. No.

18 Q. They would not have had wood floors?

19 A. I don't know.

20 Q. You don't know? And is this something that you
21 routinely do where you provide safety coordination for
22 Hollywood television shows, Unsolved Mysteries?

23 A. This was the first.

24 Q. That was the first? Did everything work safely with you
25 there?

1 . Yes, it worked just fine.

2 . I'm going to jump back now that I have my board, and I'm
3 going to be referring you -- and if you need to refer to the
4 documents that are marked as Defendants, Exhibit 8 and 9, let
5 me know.

6 Are some of the categories -- in fact, I think it
7 may be easier if I hand to you Defendants, Exhibit No. 7.
8 For the record, I'm turning to the second page. Type of
9 Incident is the heading.

10 Mr. Lund, what I'd like to do is on this board down
11 here, I think if I write with this marker on that board I'm
12 going to be in trouble.

13 THE COURT: Well, that's not a paper, is it? Well,
14 you can't write on that board at all, I don't think. Do you
15 have a copy of that document for the Court?

16 MR. PETERS: Of which, Your Honor?

17 THE COURT: What you're using to examine from.

18 MR. PETERS: No, we haven't made any copies since
19 it was received by the defense, by me.

20 THE COURT: All right.

21 Q. (By Mr. Peters:) For maintaining a -

22 THE COURT: Excuse me, but that, you don't need
23 that now, do you?

24 MR. PETERS: No, I don't, Your Honor.

25 THE COURT: Let's get it down. It's directly

1 blocking the view of some of the spectators. You might as
2 well get it out of their way.

3 Q. (By Mr. Peters:) Okay. Mr. Lund, to provide
4 information for the ATF's database, do they list a variety of
5 different types of incidents that would occur involving an
6 explosion?

7 A. Yes.

8 Q. And if you would, what is the first type of explosion,
9 first type of category, first type of incident contained on
10 Page 2 of Defendants, Exhibit 8?

11 A. Accidental explosions, noncriminal.

12 Q. And did you tell us what the code is for that type of
13 incident?

14 A. That's A.

15 Q. What's the next type listed?

16 A. Arson, ATF investigation only.

17 Q. For the record, I'm abbreviating it, investigation
18 only. What's the code for that?

19 A. That's O.

20 Q. This would be an investigation that the ATF was involved
21 in, distinguished from one that Milwaukee Police Department
22 was involved in; is that correct?

23 A. I would have to say I believe so. I am not sure because
24 I've never seen this before.

25 Q. Okay. What is the next category listed?

1 A. Bombings.

2 MR. BECKER: Judge, I would object, then, if the
3 witness hasn't seen or reviewed this before, that he's
4 testifying upon a matter not within his knowledge.

5 THE COURT: Well, are you familiar with these
6 categories or not? Or what goes into the -- I guess what
7 we're really concerned with, concerned with is are you
8 familiar with how entries, how those entries were made on the
9 exhibit before you?

10 THE WITNESS: No, sir. I requested this document
11 at the request for this trial. I'm not in the computer, and
12 I'm not in the area of entering documents, nor do I know
13 anything about these codes, other than I have a copy now I'm
14 reading from. This is not my field.

15 THE COURT: We can all read, Mr. Peters.

16 MR. PETERS: I think we have two more to go, Your
17 Honor, and two more of the -- may we approach?

18 THE COURT: Yeah.

19 (Counsel approached the bench and the following
20 proceedings were had:)

21 MR. PETERS: First, Your Honor, to make my record
22 complete, I didn't say it when we were last up here. At the
23 noon break, to expedite the trial I told Mr. Becker that I
24 would be, I wanted to be able to ask questions about what are
25 now marked as Defendants, 7 and 8, and there was one other

1 unrelated matter I asked if I could talk to his witness
2 about. He agreed.

3 I talked to the witness. These are business
4 records kept in the normal course of business of the ATF.
5 They were provided to me by the ATF agent. As I was standing
6 there, the ATF agent explained that it's always controlled by
7 the ATF agent. It's done by the local person, it goes to
8 Washington. It's now been faxed to us. We have the only
9 expert endorsed by the plaintiff on the stand who can bring
10 this in.

11 MR. BECKER: I'm told that it's likely that the
12 defendants do have listed on their exhibit, on their witness
13 list the person that filled that form out. That would be
14 Special Agent Paul Marquardt, who I believe appears on Mr.
15 O'Connor's witness list. I would object to this witness
16 testifying about something that he's just stated he knows
17 nothing about.

18 THE COURT: He's just reading. I mean, he just
19 said he's really just reading. He can interpret terms
20 because of his expertise and experience, but talking about
21 the significance of these codes and what goes into code
22 determinations and that sort of thing, I don't think he's
23 laid a foundation for it.

24 MR. O'CONNOR: Well, is the exhibit into evidence,
25 this particular page?

1 MR. PETERS: Yes.

2 MR. O'CONNOR: If it is in evidence, Judge, anybody
3 can refer to it, including the witness. He can read the
4 information. It's an exhibit that's now in evidence.

5 THE COURT: Well, that's right.

6 MR. O'CONNOR: So he could tell Mr. Peters bombing
7 is O. something is D, something is F. but he cannot interpret
8 what that means.

9 THE COURT: The difficulty of that is as he started
10 telling him what those things meant, he began qualifying them
11 and saying, well, he didn't really know, he'd never seen this
12 before, he'd never done this, or whatever.

13 MR. PETERS: So if I limit it, Your Honor, to him
14 telling -- after bombings, there's attempted bombings and
15 accidental explosions. That's the extent of his reading from
16 this document. And I won't ask him about how, what those
17 mean or how it was prepared.

18 THE COURT: Who made the entries?

19 MR. PETERS: Judge, what we have is the business
20 records from the ATF.

21 THE COURT: I'm asking, who made the entries?

22 MR. PETERS: We've just now been advised that it
23 was Marquardt at the noon recess.

24 MR. BECKER: That's my information now. As I said
25 at the last bench conference, I'm going to find out who

1 filled out that report.

2 THE COURT: Are you calling Marquardt?

3 MR. BECKER: No, but he's on the defendant's list,
4 and I could easily call him if necessary, if needed.

5 MR. PETERS: My concern, Judge, is this may be my
6 last opportunity without putting the entire document in or
7 those sections that the Court approves, to put it before the
8 jury. And it has significance as to other questions I'm
9 going to be asking him.

10 MR. BECKER: I wouldn't say it was his last
11 opportunity since Mr., Agent Marquardt is a listed witness
12 for one of the defendants. Further, I would certainly make
13 available any ATF agent who, in fact, filled out that
14 incident report.

15 MR. O'CONNOR: I have Marquardt for other reasons,
16 not this. I didn't even know he did this until just now,
17 obviously.

18 Secondly, I think that the burden is on the
19 government. We may not call any witnesses to say that. We
20 may call someone to prove that point, but we don't have to
21 prove anything.

22 THE COURT: That's up to you.

23 MR. O'CONNOR: I understand that. But it's the
24 Government's proof here. They put this witness up as an
25 expert. The exhibit is in evidence. Anyone can read from

2 THE COURT: This is exactly the reason why I don't
3 certify experts because we're into an area where he really
4 isn't an expert. I mean, except for the vocabulary.

5 MR. OSGOOD: Certainly he can testify as to his
6 understanding of what explosion means and what bombing means.

7 THE COURT: No, not necessarily.

8 MR. PETERS: I'm not going to get into that, but
9 r. O'Connor's point is well-taken. This is a business
10 record that is going to come in as a business record. Who
11 prepared it, we have evidence from this witness that these
12 are prepared in the ordinary course of business. If they
13 want to say who prepared it, that's fine. But I have a
14 witness available to us who is from out of town, the exhibits
15 have been admitted. I won't ask him who prepared it or what
16 it means. But we have somebody -- in the length of time
17 we've been discussing it, this particular point would be
18 resolved. It's a business record. These points are
19 contained in a business record provided by the government to
20 me.

21 THE COURT: Well, I guess I don't know where you're
22 going now. Why don't you just ask him what the codes on this
23 document are.

24 MR. PETERS: I'll do that.

25 THE COURT: Do that.

1 MR. BECKER: Are you going to follow up?

2 MR. PETERS: Judge, I would do that. The only
3 thing that I would want to add is in this scenario of
4 November 29th, by it being listed as bombing, it's not being
5 listed as these other codes. I don't intend to go -

6 THE COURT: That's on the document too, isn't it?

7 MR. PETERS: Yes. And if this document is
8 submitted, that's fine.

9 THE COURT: Don't argue your case through him with
10 those other entries.

11 MR. BECKER: I guess it's the same objection. This
12 witness has indicated no familiarity with what this -

13 THE COURT: We'll limit that.

14 MR. BECKER: Okay. That's fine.

15 (The following proceedings were had in open court:)

16 THE COURT: Okay. We're back, ladies and
17 gentlemen.

18 Q. (By Mr. Peters:) Agent Lund, directing your attention
19 to what has been marked -

20 A. That's fine.

21 Q. Oh, that's yours. What has been marked as Defendants,
22 Exhibit No. 8, were you able to find an entry prepared by ATF
23 regarding the November 29th, 1988, incident at Mountain
24 Plains Construction in Kansas City, Missouri?

25 A. Yes, I saw it.

1 Q. And if you would, I am showing you and it's my
2 understanding that my pages may be out of order. So for the
3 record, the facsimile is shown as Page 4 at the top. But
4 it's in alphabetical order.

5 And did you on -- and I'm just going to hand it to
6 you and step away. Did you go through and highlight the
7 incident codes on a variety of things on that exhibit?

8 A. Yes, at your request.

9 Q. And is there an incident listed for the ATF
10 investigation of the explosion of November 29th, 1988,
11 relating to Mountain Plains?

12 A. Yes.

13 Q. And would you tell the members of the jury what the
14 incident code is that is listed?

15 A. B as in boy.

16 Q. B as in boy? From your examination of other documents,
17 have you been able to determine whether or not that code
18 corresponds to a bombing?

19 A. Yes, B stands for bombing.

20 Q. There were no other codes listed on that document as to
21 an accidental explosion or arson, there's only that one code;
22 is that correct?

23 A. That's correct.

24 Q. Now, are you aware of any instance in the history of the
25 United States where a trailer loaded with ammonium nitrate

1 and fuel oil has caught fire where that isn't the subject of
2 question or dispute, where it's documented that it's caught
3 fire and it has exploded?

4 A. The trailer itself?

5 Q. The trailer catching fire and the contents of the
6 trailer high ordering.

7 A. I've never investigated another trailer with ANFO in it
8 exploding.

9 Q. And my question' from your personal investigations'
10 discussions with anyone, any source, have you ever heard of
11 evidence of a trailer catching fire loaded with ANFO and that
12 trailer exploding?

13 A. No.

14 Q. Let me ask you, sir, your area of expertise is
15 explosives enforcement; is that correct?

16 A. That's correct.

17 Q. And we talked about technical abilities to create a
18 detonation; is that correct?

19 A. That's correct.

20 Q. And are you familiar with different ways that a
21 professional explosives engineer could create a detonation
22 that would set off a, whether it's a legal or illegal load of
23 ANFO? Are there a variety of ways that that could be
24 accomplished?

25 A. Yes.

1 Q. And if I were to come to you or someone with your level
2 of expertise and ask you to design for me a detonator to be
3 placed in a trailer where the trailer was going to be set on
4 fire and a timed detonation, is that something that someone
5 with your degree of expertise would be able to create?

6 A. With some modifications, but let me emphasize, the
7 problem that you have in that incident is the tremendous
8 heat. We're talking 2,000 degrees. At that point, nothing
9 survives that that's sensitive, such as a detonator.

10 Q. And my question was, sir, if I came to someone like you
11 with your level of expertise, you could design a detonator
12 that would withstand heat and trigger an explosion at the
13 exact moment that you wanted it to explode, couldn't you do
14 that?

15 A. Not at the exact moment, no, I couldn't do that.

16 Q. Would you be able to create a device that would
17 explode -

18 A. Let me go back to what I said before. You're in a
19 tremendously hot fire. Nothing survives a fire that hot. It
20 would be external triggering.

21 Q. Are you telling me that you would be unable to devise a
22 detonating device that could withstand the heat of an
23 external fire on the trailer, that you could not design such
24 a detonator, that it is not capable of surviving the heat on
25 the outside of a trailer without detonating?

1 A. On the outside?

2 Q. (Mr. Peters nods head.)

3 A. Then the problem would be getting that explosive energy
4 transmitted to the inside. Again, we have that tremendously
5 hot fire. That would be my most concerning part. To blow up
6 the trailers is no problem. To blow up several trailers is
7 no problem. But when we have a tremendous fireball that's
8 pulsating, then we have a problem. We have to keep these
9 explosives cool enough to function when you want them to
10 function.

11 Q. I understand that, Mr. Lund. My question is are you
12 telling us that the technology to create such a detonator
13 does not exist?

14 A. I don't know. That's a pretty advanced area.

15 Q. You've told us that to the best of your knowledge you're
16 never aware in the history of the United States of a fully
17 loaded ANFO trailer catching fire and exploding; is that
18 correct?

19 A. That's correct.

20 Q. Let's go at the other end. Are you aware of instances
21 where a fully loaded ANFO trailer has caught fire, has been
22 heated from the bottom up, the wheels have caught fire, and
23 it has not exploded?

24 A. I have talked to blasters that have advised me that
25 that's occurred, where the trailer burned and they dumped the

1 trailer and moved their tractor out of the way and it did, in
2 fact, burn to the ground.

3 Q. Do you know if anybody checked to determine whether the
4 vents on this trailer were opened or closed?

5 A. No, sir, I don't know that.

6 Q. Do you know if anybody at any time did a burn test to
7 determine whether or not the floor of the trailer could be
8 set on fire in such a way that it would burn through and
9 ignite the ANFO from the bottom up? Have any tests such as
10 that been done?

11 A. I'm not familiar with any tests of that nature.

12 Q. On the scene as an outside company is preparing to burn
13 two trailers, one, more than one trailer at their expense,
14 did anybody request that you conduct tests to see how hot the
15 temperature would become inside the trailer?

16 A. I know of no such test.

17 Q. Did anybody ask you to conduct a test on trailers that
18 were being burned by Unsolved Mysteries to determine how long
19 it would take for fire to burn through the floor of the
20 trailer?

21 A. No, sir.

22 Q. If we were to take thirteen fully loaded trailers of
23 ammonium nitrate and fuel oil in a Maynes Mix pack like this
24 stacked from floor to ceiling, and we were to take those
25 trailers one at a time into an open field and set fire to the

1 tires and create an inferno from the bottom up, can you tell
2 us with any certainty whether any of those trailers would
3 explode?

4 A. I would have to give you a double negative. I couldn't
5 guarantee you that they wouldn't all explode. But then,
6 again, I couldn't guarantee that none of it would explode.
7 It's not a guarantee.

8 Q. But from the history that you're aware of, from the
9 1900's when ANFO first began being used, there is no incident
10 where a trailer load of ANFO has been ignited by fire and has
11 high ordered; isn't that correct?

12 A. I haven't read that, that's correct.

13 MR. PETERS: I have no further questions.

14 THE COURT: All right. Miss Hunt?

15 MS. HUNT: No questions, Your Honor.

16 THE COURT: Mr. Bunch?

17 MR. BUNCH: No questions.

18 MR. O'CONNOR: No further questions, Your Honor.

19 THE COURT: Mr. Osgood?

20 MR. OSGOOD: I don't have any questions at this
21 time, Your Honor.

22 THE COURT: All right.

23 MR. BECKER: I have some redirect, Judge.

24 THE COURT: All right.

950

1 REDIRECT EXAMINATION

2 By Mr. Becker:

3 Q. Mr. Lund, the documents that Mr. Peters introduced into
4 evidence, I believe 7, Defendants, 7 and 8?

5 MR. PETERS: Correct.

6 Q. Did you get those for him at his request from the Bureau
7 of Alcohol, Tobacco, and Firearms?

8 A. Yes, sir, I did.

9 Q. And also, did you meet with Mr. Peters on Sunday or
10 Monday of this week and spend several hours discussing
11 various theories of explosions as they relate to this case?

12 A. Yes, sir, I did.

13 Q. A couple of things that you did discuss was how to
14 create a device that someone could put inside these trailers
15 and then have the trailer burn for at least, at a minimum 28
16 minutes before exploding? Did you discuss that -

17 A. Yes.

18 Q. -- at some length with Mr. Peters?

19 A. Yes.

20 Q. Well, I'd like you to explain in more detail for us,
21 please, about what would happen to a blasting cap -- well,
22 how would you start an explosion inside a trailer filled from
23 floor to ceiling with these tubes?

24 A. Going back to what I previously stated about the
25 function of ANFO, you need a cast booster. And the cast

1 booster would necessarily have to be in proximity to the
2 explosives. That is, into the explosives, touching. It has
3 to be right there.

4 Q. So I don't want to -- I need to interrupt a little bit.
5 So are we talking about if you opened the side door of the
6 semi trailer, for example?

7 A. Yes.

8 Q. And these things are stacked up, would you need to put
9 the cast booster under, just slap it on the side, what would
10 you do?

11 A. I would put it between two or three of the socks of
12 ANFO.

13 Q. So you would sort of insert it?

14 A. Yes, intimate contact.

15 Q. Then what would you do in order to blow up that trailer?

16 A. Then a detonator is required to go inside of the cast
17 booster.

18 Q. What is a detonator? What does it look like and what is
19 it made of?

20 A. It's a quarter inch round aluminum shell with a primary
21 explosive, very sensitive explosive charge. And once you
22 cause that small detonator to function, it then, in fact,
23 causes the cast booster to explode, which transmits a shock
24 wave from the booster into the ammonium nitrate to cause the
25 massive explosion.

1 Q. How would you set off the blasting cap or -

2 A. The blasting cap, well, there's several ways. One, you
3 have a burning time fuse that you would see in the movies
4 where somebody lights the fuse and throws it.

5 The second method is you hook up an electric
6 detonator to an electrical wire and you go back at a
7 prescribed distance, and then you send the electrical energy
8 through that wire into that electric detonator. The
9 detonator function explodes, causes the cast booster to
10 explode, which causes the ANFO to explode.

11 Q. How fast does that happen?

12 A. One ten-thousandths of a second. As soon as the cap
13 goes, everything goes. It goes right now.

14 Q. Well, so how do you blow up the trailer in either of
15 those methods if that trailer is seen on fire at 3:40 a.m.
16 and then explodes at 4:08 a.m.? What device was being
17 constructed hypothetically, I guess, to do that? Is there a
18 timer we're talking about that's inside the trailer?

19 A. No. Because there's such heat in that trailer, I know
20 of no timer that would withstand that heat.

21 Q. And what about the cast, does that survive, if it's
22 inserted, as you described for blasting effect, if there's a
23 fire there, would that survive 28 minutes in a fire
24 environment?

25 A. The cast -

1 MR. PETERS: I object to the form of the question
2 unless we qualify it the fire is outside the trailer. Unless
3 we give him sufficient -

4 THE COURT: Wait a minute. Wait a minute. Why do
5 you assume that?

6 MR. PETERS: I object to the question as not having
7 sufficient foundation.

8 THE COURT: Well, I'm not sure that there is.
9 Rather than pass it in that form, you'd better modify it.
10 I'll sustain the objection.

11 Q. (By Mr. Becker:) If a witness had described seeing that
12 trailer, witnesses described seeing that trailer glowing and
13 not being able to see really the exterior of it anymore but
14 glowing, would that signify to you that these tubes were
15 involved in the fire inside the trailer?

16 A. Yes. They would be involved in the fire.

17 Q. Is that how they would -- well, so what would happen to
18 that cast booster placed on, inserted for the purpose of
19 setting off these tubes?

20 A. It would melt.

21 Q. Melt?

22 A. Melt.

23 Q. How quickly?

24 A. Somewhere around 400 to 500 degrees, it would melt.

25 Q. Just for understanding purposes, what is 400 or 500

1 degrees, how do you produce that much heat?

2 A. That could be heat from a match, cigarette lighter, but
3 we have time and duration now. You just don't put it
4 under -- it has to get hot because that's how you make a cast
5 booster. It's heated and poured into a mold.

6 Q. How long would the cast booster last in an environment
7 of these tubes involved in fire?

8 A. Oh, not long. Because of the oxidation element, they
9 burn very vigorously. It was a very hot fire.

10 Q. What about a blasting cap, the thing that sets off the
11 cast booster? How long would that last involved in the fire
12 I just described?

13 A. The blasting caps are very, very sensitive. Where you
14 can drop the ANFO down a 50-foot tube, if you take the
15 blasting cap and take a lighter and put the lighter under the
16 blasting cap, it can survive about one and a half seconds at
17 500 degrees, and then it's going to explode. They're the
18 dangerous pieces, they're subject to heat, shock, friction
19 and everything else. You don't throw blasting caps around.
20 They're secured in boxes. They do not take rough handling.

21 Q. So to follow through, then, with Mr. Peters, idea -

22 MR. PETERS: Your Honor, I object to it being
23 characterized as Mr. Peters, idea.

24 THE COURT: Do you object to having an idea
25 attributed to you, Mr. Peters?

955

1 MR. PETERS: Only if I get recognition from the
2 Court, Your Honor.

3 THE COURT: Well it's going to be the Peters idea
4 followed up on. Overruled.

5 Q. (By Mr. Becker:) The line of questioning regarding a
6 bomb being placed in what we'll call trailer No. 1, would it
7 have to include this cast booster and a blasting cap to set
8 off the cast booster?

9 A. In order to set it off under normal fashion, it requires
10 a cast booster and a detonator.

11 Q. Would that detonator in your expert opinion survive 28
12 minutes of fire?

13 A. Not that type of fire, no.

14 MR. BECKER: I have no further questions, then,
15 Judge. Thank you.

16 MR. PETERS: Judge, I just have a couple of
17 follow-ups on that.

19 RECROSS-EXAMINATION

20 By Mr. Peters:

21 Q. Mr. Lund, what all of us have been talking about when we
22 talk about a burning time fuse, electrical wire, remote
23 control, we're talking about techniques that lawful blasters
24 would employ to detonate charges; isn't that correct?

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

1 MR. PETERS: I have no further questions, Judge.

2 MR. OSGOOD: I have a couple, Your Honor, if I
3 may.

5 CROSS-EXAMINATION

6 By Mr. Osgood:

7 Q. It's quite plausible -- strike that. A cast booster can
8 be nothing more than a quarter stick of dynamite with a
9 mercury fulminate cap in it, can't it?

10 A. Actually, it's a little larger than that, but you're
11 basically correct.

12 Q. And the, these caps are all mercury fulminate, which is
13 a highly sensitive explosive, isn't it? Dropping a cap can
14 cause it to go off?

15 A. That's correct.

16 Q. And your precursor explosion could actually be in the
17 truck that was backed up next to it, couldn't it, which in
18 turn might or might not blow the entire trailer. But if it
19 didn't, it could set it on fire, couldn't it?

20 A. There could have been an explosion first if someone
21 actually heard an explosion.

22 Q. A small one?

23 A. Right.

24 Q. So you could have had a small explosion in the truck
25 itself, which would set the truck on fire, and the fire would

1 spread to the trailer, wouldn't it?

2 A. You could put a device in the truck to cause it to burn.

3 Q. And you could take an alarm clock, for example, with two

4 hands on it and set them 59 minutes apart, for example, or

5 several hours apart so when the hands came together and made

6 an electrical contact it would blow, wouldn't it, sir?

7 That's a common cheap time bomb, isn't it?

8 A. The part of the clock is correct, but not in this fire

9 because that cheap alarm clock would not stay intact in that

10 massive fire.

11 Q. If there's no fire, if there's nothing, everything is

12 quiet and the full moon is out and you've got your clock and

13 your battery and two hands and a precursor charge of some

14 kind, that clock can run and there are a variety of ways of

15 timing it to go beyond 59 minutes, aren't there?

16 A. That's correct.

17 Q. All you need is some mechanical device that would come

18 together at a specified period of time and a battery and

19 mercury fulminate cap, and you've got a time bomb, don't you?

20 A. Yes.

21 Q. And it could have been set at 5 o'clock in the afternoon

22 and it goes off and sets the truck on fire and the fire

23 spreads to the trailer and the gas builds up in the trailer,

24 and you've got this a tremendous explosion in 28 minutes?

25 A. Where is the explosion?

1 Q. It's in the truck.

2 A. And then a fireball hits the trailer and sets the
3 trailer on fire?

4 Q. There's a small precursor explosion, and the truck is on
5 fire, and it spreads to the trailer and the gas builds up in
6 the trailer. Twenty-eight minutes later, just like you said,
7 it explodes from internal combustion?

8 A. The fire could be set in the truck in various ways.

9 Q. Yes, sir. But it could have been by a time bomb?

10 A. It could have been anything to set that truck on fire.

11 Q. An explosion is nothing more than a controlled burn,
12 isn't it, sir?

13 A. Yes, sir, it is.

14 Q. In other words, when your car engine creates cylinder
15 fires, we think of it as an explosion, but it's actually a
16 rapid burn ignited by a spark plug, which is fueled by a gas
17 fuel mixture, which is a rapid oxidation, isn't it?

18 A. That's correct.

19 Q. And that's what you have is a rapid oxidation in a
20 confined area, which is an explosion, isn't it?

21 A. That's correct.

22 Q. So you cannot sit here and tell us today what the source
23 of the explosion was or the fire that created the explosion
24 by hypotheating, can you?

25 THE COURT: You're arguing with the witness. Don't

1 argue with him. Ask him questions.

2 Q. You do not, you are not able at this point to say
3 whether or not there was a precursor explosion, are you?

4 A. I relied, as I previously stated, on the fire
5 investigators saying that it was set from underneath. There
6 was a fire underneath where there was a fire in the truck,
7 and my testimony is that the fire inside the truck caused the
8 explosion. How that original fire got started underneath of
9 there, that was a call from a fire investigator and not
10 myself.

11 Q. And you don't know that?

12 A. I don't know that.

13 MR. OSGOOD: Okay. Thank you.

14 THE COURT: Okay.

15 — — —

16 FURTHER REDIRECT EXAMINATION

17 By Mr. Becker:

18 Q. In your expert opinion, was this explosion caused by the
19 piling effect of these ANFO socks in that trailer?

20 MR. PETERS: Your Honor, I would object as being
21 beyond the scope of cross-examination.

22 THE COURT: Overruled.

23 A. The intense fire and the way that it was piled inside
24 and the trapping of gas, it was a sudden release of energy.

25 MR. BECKER: Thank you.

960

1 THE COURT: All right, sir. Thank you. You're
2 excused.

3 Ladies and gentlemen, we'll take our break. I'll
4 remind you that we're going to work tomorrow just from 9:00
5 to 12:00 and we'll not work tomorrow afternoon. Don't talk
6 about the case. Don't read or watch anything about it that
7 might appear in the public media.

8 Drive carefully going home, and we'll see you
9 tomorrow morning at 9 o'clock. You're excused.

10 (The trial adjourned for the evening at 5:05 p.m.)

Blank- Page not scanned

Blank- Page not scanned

Blank- Page not scanned

Blank- Page not scanned

Blank- Page not scanned

Blank- Page not scanned

Blank- Page not scanned

Blank- Page not scanned

Blank- Page not scanned

Blank- Page not scanned

Blank- Page not scanned

Blank- Page not scanned

Blank- Page not scanned

Blank- Page not scanned

1 an exhibit and has the other names of the other
2 parties, just print his name out the way the other
3 names are printed out so the jury could have it.

4 MR. BECKER: His initials are on there.

5 THE COURT: We have the initials right now.

6 Q Do you remember hearing the explosion that happened in
7 the early morning hours of November 29, 1988?

8 A Yes, I do.

9 Q What were you doing when this happened?

10 A I was asleep in my bedroom and when the explosion
11 happened it knocked everything off the wall and woke me
12 up.

13 Q Was there any damage to the house you were living in?

14 A Yes, it cracked the foundation from the garage all the
15 way back to our bedroom, all the way across the house
16 length-wise and broke out a couple windows, knocked
17 things off the wall.

18 Q In fact, did you have to evacuate or leave your house
19 for a couple of days?

20 A Yes, we had a gas leak and we were evacuated from our
21 house for a few days while they repaired the leak.

22 Q Now, sometime after the blast do you recall a visit
23 from Frank Sheppard, Skip Sheppard and their sister
24 Didi Sheppard?

25 A: Yes, I do.

1 Q In your best estimate, when did that occur after the
2 blast?

3 A: It wasn't long after. I don't remember exactly how
4 long but it wasn't long after the blast. I would say
5 two weeks to a month.

6 Q Was that nighttime or daytime, when was it?

7 A: It was late night, early morning.

8 Q Where was that visit? Where did they come?

9 A: **They** came to my house at 8500 Hillcrest.

10 THE COURT: Be specific. Who are the "**they**
11 you are referring to.

12 Q Who came during that visit?

13 A: **Frank** Sheppard, Skip Sheppard and DiDi Sheppard.

14 THE COURT: It sounds like a nickname.

15 THE WITNESS: DiDi is known to her friends
16 and everybody as DiDi but her real name is Naomi.

17 THE COURT: Thank you.

18 Q Please tell us about that visit, what happened when
19 they got there? Were you awake or what was going on?

20 A: They knocked on our window, bedroom window, and woke us
21 up. **They** were intoxicated and **they** wanted us to get up
22 and party with them, me and my wife.

23 Q Did you get up and let them in?

24 A: Yes, I did.

25 Q Where did you go? Where did the group go then?

1 A: We were sitting at my kitchen table.

2 Q What happened when you were sitting at your kitchen

3 table, what were you doing?

4 A: We just started talking at first. And then **they** wanted

5 us to **smoke marijuana** with them.

6 Q Did you?

7 A: Yes.

8 Q What happened then?

9 A: Then we just sat up and partied for a little bit and

10 they noticed our house was getting repaired.

11 Q Did you talk about the repairs?

12 A: Yes, we talked that it was from the blast and we asked

13 them if they lived over by it and I asked them if

14 anything happened to their house.

15 Q You know where they lived, right?

16 A: Yes.

17 Q You have been to the Sheppard residence many times.

18 A: Yes.

19 Q And is it right up on Hickman Mills Drive as depicted

20 on that map, as it looks like on that map?

21 A: Yes, sir.

22 Q Did they say they had any damage to their house at all?

23 A: No, they didn't say.

24 Q What happened next?

25 A: To my recollection, Skip told me he was at the blast

964

1 site and he said he was there and I asked him how he
2 was there. And **they** said **they** went to Quik Trip over
3 by the blast site. I asked them why **they** were there
4 and **they** sort of tapped DiDi on the back of her head.

5 Q Who did?

6 A: Skip. And he said if she would have done her job that
7 wouldn't have happened.

8 Q Did **Frank** Sheppard say anything about the explosion?

9 A: **Frank** said that the fire was set as a diversion and
10 that **they** didn't know explosives were in the dump
11 truck.

12 Q Did he say anything about the firemen?

13 A: He said **they** were stupid for rushing in; **they** should
14 have found out what was up there before **they** went up
15 there to put out the fire.

16 Q After you had this conversation with the Sheppards,
17 Skip and **Frank** Sheppard, did you tell anybody about it,
18 friends or the police or anybody like that?

19 A: No, sir.

20 Q Did there come a time you decided to come forward with
21 this information?

22 A: Yes, when the FBI came to my house.

23 Q When they came to see you?

24 A: Yes.

25 Q Do you remember when that was?

1 A: It was a couple years ago; February 19, 1995.

2 Q 1995.

3 A: I believe that's it.

4 Q Do you remember who you talked to when they came to
5 your house, the agents?

6 A: Mr. Schram. And I believe the other one was David
7 True. There were three of them.

8 MR. BECKER: Thank you very much.

9 CROSS EXAMINATION

10 BY MS. HUNT:

11 Q Mr. Barchers, do you have any children?

12 A: Yes, madam.

13 Q What children do you have?

14 A: I have a seven year old son and an eighteen year old
15 son from my wife. He was with my wife when I first met
16 her. He was three.

17 Q Can you see this family free from where you are
18 sitting?

19 A: Yes, ma'am.

20 Q I think you said there was one person of the Sheppard
21 family, the children of Naomi and Earl Sheppard, that
22 is deceased.

23 A: Yes.

24 Q What was his name?

25 A Binky.

980

1 Q Was that a nickname?

2 A: That is all I have known him by.

3 Q How did he die?

4 A: By a gunshot wound.

5 Q Do you know any of the circumstances of that?

6 A: From what I was told by my Aunt Elma, he went over to a
7 friend's house that morning. He was supposed to be
8 going to school and he went over to a friend's house
9 and they were looking at a gun and the gun went off,
10 shot Binky in the head.

11 Q Do you know who the friend was?

12 A: No, ma'am.

13 Q Do you know if Skip Sheppard was in any car wreck, ever
14 had any injuries to him?

15 A: Yes, ma'am.

16 Q What do you know about that?

17 A: He was in a car wreck with his ex girl friend.

18 Q Do you know when, roughly?

19 A: No, ma'am. I was in the Navy at that time.

20 Q You were in the Navy.

21 A: I just heard through Aunt Elma.

22 Q And you were in the Navy from what years?

23 A: August of 1974 until November, 1982.

24 Q So this car wreck occurred before the explosion in '88.

25 A: As far as my recollection, yes.

981

1 Q It occurred while you were in the Navy. You got out of
2 the Navy in 1982, is that right?

3 A: The wreck that he was in might have been after I got
4 out of the Navy. I wasn't sure because I didn't know
5 his girl friend all that well. I know they lived on
6 Wabash at the time.

7 Q After this car wreck Skip Sheppard was in a coma for
8 some time, wasn't he?

9 A: I know Skip Sheppard was injured severely. I don't
10 know what his circumstances was in the hospital.

11 Q He had head injuries.

12 THE COURT: Counsel, when you are referring
13 to Skip Sheppard, you mean Earl.

14 MS. HUNT: Right. That is the nickname he
15 goes by.

16 THE COURT: Is that on that chart?

17 THE WITNESS: Earl.

18 THE COURT: I think we better use Earl, if
19 you don't mind.

20 MR. BECKER: I don't want to wade in here but
21 the indictment does charge and include the name Skip.

22 THE COURT: A/k/a Skip.

23 MR. BECKER: The vast majority will be
24 referring to him as Skip.

25 Q Earl Sheppard has used the name Skip his entire life,

1 hasn't he, the nickname?

2 A: Right.

3 Q I think you said on your Direct Examination you worked

4 at the Bannister Amoco station.

5 A: Yes.

6 Q Isn't it true you were fired two days ago?

7 A: Yes.

8 Q I think you said in 1995 you pled guilty to possession

9 of marijuana?

10 A: Yes.

11 Q Who arrested you on that?

12 A: It was a plea bargain.

13 Q Who was the arresting office?

14 A: The Jackson County **Drug** Enforcement.

15 Q And you cooperated with those people.

16 A: The Jackson County **Drug** Enforcement?

17 Q Yes.

18 A: Really there wasn't no cooperation to it.

19 Q But you ended up with three years probation.

20 A: Right.

21 Q Was anybody else charged in that case besides you?

22 A: My wife.

23 Q What is her name?

24 A: Peggy.

25 Q She was charged with the same offense.

1 A Yes.

2 1 Q Did she also plead guilty?

3 A Yes.

4 ~ Q Do you have any sisters?

5 ~ A Yes.

6 Q What is her name?

7 A Lisa.

8 Q Last name?

9 A Landon.

10 Q Where does she live?

11 MR. BECKER: Objection.

12 Q In the Kansas City area or out of town?

13 A In the Kansas City area.

14 Q And I think you testified on Direct Examination that

15 ~ you have a brother named Al who is roughly the same age

16 as Skip Sheppard?

17 A Yes.

18 Q What does Al do for a living?

19 A He was working at the Jackson County Jail.

20 Q As a jailer.

21 A Yes, ma'am.

22 Q Do you remember testifying in front of the grand jury

23 in this case?

24 A Yes.

25 ~ Q And was Mr. Becker asking you questions concerning what

984

1 your testimony is today?

2 A: Yes.

3 THE COURT: Miss Hunt, would you come up for
4 a minute.

5 (Proceedings out of the hearing of the jury.)

6 THE COURT: Do you intend to use this as
7 impeachment?

8 MS. HUNT: Yes.

9 THE COURT: What impeaches what?

10 MS. HUNT: He said on Direct Examination they
11 came over a month to two months later. Here he said
12 one to two days later.

13 THE COURT: He didn't say a month to two
14 months, for one thing, in his Direct Examination.

15 MS. HUNT: That is what I have in my notes.

16 THE COURT: You noted wrong.

17 MS. HUNT: A couple weeks to a month.

18 THE COURT: He said a couple weeks.

19 MS. HUNT: And he says one to two days. In
20 his Direct he said Skip made the statements. In this
21 he says **Frank** did.

22 MR. BECKER: Okay, but I think his testimony
23 is pretty consistent with his prior statement. That's
24 fine. There are two different statements. **Frank** said
25 certain things and Skip said certain things but if you

1 want to go back into it, he can explain it again.

2 ~ (Proceedings in the hearing of the jury)

3 Q In your Direct Examination you testified the explosion
4 caused a gas leak at your house, is that correct?

5 A: I didn't say at my house.

Q In the area of your neighborhood.

7 A: In the area.

8 Q And you were evacuated from your house.

9 A: Yes.

10 Q You said this purported conversation with my client
11 **Frank** Sheppard occurred two or three weeks to a month
12 after the explosion.

13 A: Right. I can't remember exactly how long after the
14 explosion but it was very shortly.

15 Q Do you remember testifying in the grand jury on
16 September 26th of 1995?

17 A: I remember that, yes.

18 Q You were under oath at that time, is that correct?

19 A: Yes, ma'am.

20 Q I am going to hand you what has been marked Defendant's
21 Exhibit 9 and ask if you can identify that.

22 THE COURT: I am not sure he is really able
23 to identify grand jury testimony. Just ask him if that
24 is what it appears to be and we can move on without
25 taking all that time.

986

1 Q You can look through that exhibit and see if that
2 appears to be a transcript of your testimony on that
3 day.

4 A: Yes.

5 Q Would you turn to page 6 of that transcript and look at
6 line 6 on page 6. Just read that paragraph, that
7 answer to yourself.

8 A: Line six, you said?

9 Q This whole paragraph from line 6 down to line 11.

10 A: (Witness complies.)

11 Q When you were asked in the grand jury when this
12 conversation took place, you said a day or two after
13 the explosion, isn't that correct?

14 A: Yes.

15 Q I want you to look on down from line 11 to lines 12
16 through 20. Have you read that to yourself?

17 A: Yes.

18 Q When you were asked in the grand jury who made the
19 statements about "We went up there and we were there
20 and saw the explosion", it was not Skip Sheppard, was
21 it?

22 THE COURT: You mean at that point in the
23 transcript.

24 MS. HUNT: His answer, when he was asked that
25 question.

1 THE COURT: At that point in the transcript.

2 MS. HUNT: Yes.

3 Q You did not say it was Skip Sheppard, did you?

4 A: I said Skip Sheppard.

5 Q That's correct, but "**They** said **they** were there"; it

6 wasn't Skip that said he was there, was it?

7 A: No, it was **Frank**.

8 Q And you also said that day "DiDi Sheppard was there".

9 A: Yes.

10 Q And DiDi is?

11 A: The sister.

12 Q What is her given name?

13 A: Naomi.

14 Q The same name as the mother, is that correct?

15 A: Yes.

16 Q Her middle name is Earlene.

17 A: Right.

18 Q Do you see DiDi anywhere in this courtroom?

19 A: No, ma'am.

20 Q It is your testimony she was present in this

21 conversation and acted like she was involved.

22 A: She came over to my house with **Frank** and Skip, yes.

23 Q In the grand jury testimony again, this is on page 7

24 now, I want you to read the answer you gave beginning

25 on line 9.

1 THE COURT: Wait a minute. Ask him if he was
2 asked this question and did he give this answer.

3 MS. HUNT: Okay.

4 Q During this conversation you had at your house with the
5 Sheppards did they tell you, allegedly tell you why
6 they were up there that day?

7 A: Yes.

8 Q What was that?

9 A: Go up to the house and get metals out of the houses
10 that **they** evacuated and get construction equipment.

11 Q That is the reason they gave you.

12 THE COURT: Did you say to get construction
13 equipment.

14 THE WITNESS: To steal construction
15 equipment, turn it in for money.

16 Q All right. And according to your testimony here today
17 and your grand jury testimony you previously gave
18 there, they gave this conversation to you shortly after
19 this incident, is that correct?

20 A: Right.

21 Q You learned this information shortly after November
22 29th of 1988, is that correct?

23 A: Right.

24 Q But you didn't come forward.

25 A: Right.

1 Q Until February 19th of 1995, is that right?

2 A: Right.

3 Q You had heard the news account of this terrible

4 incident, hadn't you?

5 A: Yes, ma'am.

6 Q You knew these people had been injured and people were

7 killed out there, didn't you?

8 A: Yes, ma'am.

9 Q But you never came forward to the police with this

10 information.

11 A: No, ma'am.

12 Q And you lived in this town the entire time.

13 A: Yes, ma'am.

14 Q Have you discussed these conversations or this

15 information with anybody except agents of the

16 government and the prosecutor?

17 A: Yes, I have talked to my Aunt Elma about it.

18 Q Did you talk to your wife about this conversation?

19 A: Yes.

20 Q Was your wife present?

21 A: Yes.

22 Q Was anybody else present?

23 A: No.

24 Q Was your sister Lisa Landon, was she present?

25 A: No.

990

1 Q Have you discussed this incident with her or this
2 conversation with her at all?

3 A: No.

4 THE COURT: You referred to your Aunt Naomi
5 as Naomi Sheppard.

6 THE WITNESS: Yes, sir.

7 THE COURT: Is she a blood aunt?

8 THE WITNESS: No, she was just real close to
9 my parents and we were always brought up to call her
10 Aunt Elma because she was so close to the family.

11 THE COURT: Okay. Thank you.

12 THE WITNESS: I love her like an aunt.

13 Q Have you ever seen the Unsolved Mysteries program
14 concerning this event?

15 A: Yes, ma'am.

16 Q Do you know when you saw that?

17 A: I think I saw it one time. I can't remember exactly.
18 They have had it on, from what I have heard, many
19 times.

20 Q Was it before or after you came and talked to the
21 police?

22 A: Before.

23 Q You have a son seven years old, is that correct?

24 A: Yes.

25 Q And he needs surgery, doesn't he?

1 A: No.

2 Q Does he need treatment?

3 MR. BECKER: Relevance.

4 THE COURT: Just a minute. Why is this
5 relevant?

6 MS. HUNT: I can stop.

7 THE COURT: All right. Apparently it isn't.

8 Q Are you aware there is a reward for information leading
9 to the arrest and conviction of individuals in this
10 case?

11 A: Yes.

12 Q When you came home in the summer, when you were a
13 younger person and lived in New York and you came home
14 and spent the summer with the Sheppard family, do you
15 remember that?

16 A: Yes.

17 Q Where did they live then?

18 A: On Wabash. I am really not sure. When you are a kid
19 you really don't pay attention which street they lived
20 on. I believe it was on Wabash.

21 Q What kind of house did they have?

22 A: It was like a ranch-style farm type house. They had a
23 cellar separated from the house. I remember it because
24 it flooded out and we used to go swimming down there.

25 Q How many bedrooms, do you remember?

1 A: I am not sure. I didn't count the bedrooms.

2 Q At that time there were five Sheppard children. Was
3 the other still alive?

4 A: When we first started coming down, my sister wasn't
5 born yet nor my brother Al.

6 Q The Sheppard family had five children.

7 A: No, DiDi wasn't born yet and I am pretty sure Skip
8 wasn't born yet either. It was Binky, **Frank** and
9 Jackie.

10 Q And your whole family came including your parents.

11 A: Yes, ma'am.

12 MS. HUNT: That is all I have.

13 THE COURT: I am sorry I haven't done this
14 yet, but I think it would be efficient if when you all
15 stand up to cross you would identify yourselves and who
16 your client is. Miss Hunt, your client is?

17 MS. HUNT: Skip Sheppard, Earl Sheppard.

18 THE COURT: Mr. Peters.

19 CROSS EXAMINATION

20 BY MR. PETERS:

21 Q Sir, my name is Pat Peters and I represent **Frank**
22 Sheppard and I would like to go over a few things with
23 you. Mr. Barchers, you have given testimony about
24 statements that you have heard and my first question is
25 as to the time that the statements were given, was this

1 a day or two after the explosion as you testified
2 before the grand jury?

3 A: No, it wasn't. I better get a time. It was shortly
4 after the explosion but it could be a day or two after
5 because they evacuated the area for two days after.

Q And your testimony before the grand jury was inaccurate
7 as to the date then.

8 A: Right.

9 Q And your testimony today is this conversation took
10 place how long after the explosion?

11 A: Two weeks to a month.

12 Q Two weeks to a month.

13 A: It wasn't long after the explosion because our house
14 was getting repaired at the time.

15 Q And again in your grand jury testimony you said that
16 the statements that you have testified to were made by
17 **Frank**; in front of the jury you have said they were
18 made by Skip.

19 MR. BECKER: Objection. That is inaccurate.

20 THE COURT: That's right. You are using the
21 assertion made by counsel in her examination as a fact.

22 MR. PETERS: I will rephrase the question.

23 Q Who made the statements to you two weeks to a month
24 after the explosion?

25 THE COURT: Which statement?

994

1 MR. PETERS: The statement as to being at the
2 Quik Trip. And that is my client, the gentleman
3 standing up right now that you are talking about,
4 **Frank** Sheppard.

5 THE WITNESS: Yes, sir.

6 Q Now, this statement that you heard, can we agree if it
7 was two weeks to a month after an explosion and on
8 November 29, 1988, that we are talking about, this
9 conversation would have been in 1988.

10 A: Yeah.

11 Q Did you go to the police or did the police come to you
12 in 1989?

13 A: No, sir.

14 Q '90? A No, sir.

15 Q '91? A No, sir.

16 MR. BECKER: Judge, may we approach?

17 THE COURT: Come up.

18 (Proceedings out of the hearing of the jury.)

19 MR. O'CONNOR: Could we counsel real
20 quick?

21 THE COURT: Yes.

22 (Defense counsel confer.)

23 MR. BECKER: I object to Mr. Peters making
24 contemporaneous notations here as we move along
25 because he selectively puts down what is being said

1 about the testimony. If he wants to capture it somehow
2 and sum up on it, fine, but as it is now, he is not
3 writing down what is being said. He takes a word or
4 whatever is said and then writes it down. I don't
5 think it is an appropriate display for the jury.

6 THE COURT: It is tremendously argumentative.

7 MR. O'CONNOR: I can address this.

8 THE COURT: I think we have too much going
9 on.

10 MR. O'CONNOR: After my discussion with
11 Mr. Peters, the thing we wanted to say, several people
12 would say different individuals are involved so we want
13 to get their names on the board, what they were doing,
14 they were there to steal, because there are so many
15 different stories that are coming out. Just to get it
16 on the board, that's all. We are not going to get
17 everything.

18 THE COURT: You can write on the board. You
19 note on the board during argument by way of summary but
20 you can't create an exhibit out of Peters' or yours or
21 anybody else's interpretation of what somebody has
22 testified to and it is a condensation. It isn't all
23 there and it takes on the imprimatur of being more,
24 being weightier than it is because I saw it written
25 right there on that piece of paper.

996

1 MR. O'CONNOR: Our argument, just from this
2 one witness, this family, you can't keep track of
3 everybody. I am still whirling in my head and I have
4 read this file from '89 as to who is who. So many
5 names will come before this jury and so many theories.
6 I agree with the Court, too much is going on that
7 board right now.

8 THE COURT: I think you can write the names
9 of the people that he has testified came to his house
10 and either made or listened to the statements, and no
11 more words.

12 MR. BECKER: If counsel wants to have
13 something to sum up with, he can make any kind of
14 chart he wants. But to contemporaneously do it in
15 front of the jury, it is just argument. If he wants to
16 make charts, great, they can use it for everybody's
17 summation, but he doesn't need to create them in front
18 of the jury.

19 THE COURT: I think that is better.

20 MR. O'CONNOR: Our argument, Mr. Miller
21 started drawing on the chart right at the beginning.
22 He wanted things on the chart.

23 MR. BECKER: Those were codes relating to
24 a transcript.

25 MR. OSGOOD: The transcript speaks for

1 itself. My point is, Judge, I think the whole purpose
2 of us doing some of the things we are doing is to aid
3 this jury to remember things and remember names and
4 whatever is going on. There are five defendants and
5 we are worried about them getting confused. The Court
6 has already been confused as to who Earl and Skip is
7 and it is easy and the Court has been doing this a long
8 time.

9 MR. BECKER: They have their own note pads.

10 THE COURT: Eliminate that page. If you want
11 to put the names, that ~ s fine.

12 (Proceedings in the hearing of the jury.)

13 Q Mr. Barchers, your testimony is that **Frank** Sheppard
14 made statements, is that correct?

15 A: Yes, sir.

16 Q And is your testimony that the statements that he made
17 were implicating **Frank** Sheppard, Skip Sheppard and DiDi
18 Sheppard?

19 A: Yes, sir.

20 Q Do you also know DiDi to be?

21 A: Naomi.

22 Q And DiDi Baker.

23 A: DiDi Baker, right.

24 Q For clarity, can I put DiDi Baker?

25 A: If you would like.

1 Q And behind it I will in brackets put sister, is that
2 correct?

3 A: Yes, sir.

4 Q Now, your testimony is that you, in fact, never went to
5 the police or government agencies but they came to you,
6 isn't that correct?

7 A: Yes, sir.

8 Q And the statement you are relating to them in February
9 of '95 is the statement that you are describing that
10 occurred in the very end of 1988, correct?

11 A: Yes, sir.

12 Q And you are going by your memory as best you can, is
13 that correct?

14 A: Yes, sir.

15 MR. BECKER: Objection. Argumentative.

16 THE COURT: I don't know where we are going.
17 I think it is argumentative.

18 MR. BECKER: I will withdraw it.

19 Q Sir, isn't what you told Mr. True and Mr. Schram that
20 **Frank** Sheppard told you after the explosion they went
21 to the Quik Trip, isn't that correct?

22 A: **They** told me **they** were there.

23 Q They were there and he didn't tell you when.

24 A: **They** didn't tell me if **they** were at the place.

25 Q He told you at the Quik Trip he talked to a guard,

1 isn't that correct?

2 A: He said the guard was over there eating donuts and
3 drinking coffee.

4 Q He told you the guard said that the guard was at the
5 scene until the firemen showed up, isn't that correct?

6 A: He didn't tell me whether the guard told him that. He
7 just said the guard said. He could have overheard it.
8 I don't know if he overheard it or if he had a
9 conversation with the guard.

10 Q But the conversation you are having in 1988 with **Frank**
11 Sheppard is **Frank** Sheppard telling you what he had
12 heard from the guard at Quik Trip, isn't that correct?

13 A: I don't know if he heard it from the guard or where he
14 heard it but he told me he was at that Quik Trip. He
15 didn't tell me whether he talked to the guard or he
16 overheard it.

17 Q Did you testify before the grand jury that -

18 THE COURT: Don't characterize it. Give him
19 questions and answers.

20 Q Have you said that **Frank** Sheppard told you "We were at
21 the Quik Trip"?

22 A: Right. He told me **they** were there.

23 Q At the Quik Trip.

24 A: Well, I asked him "What do you mean by being there?"

25 And he said **they** were at the Quik Trip.

1000

1 Q The Quik Trip over by where the explosion happened,
2 isn't that correct?

3 A: Yes.

Q He said something as to the fact they were talking to
5 the guard, isn't that what he told you?

6 A: I don't remember if he specified that or not.

7 Q Have you previously testified that he said something as
8 to the fact that **they** were talking to the guard, do you
9 remember giving that testimony before?

10 MR. BECKER: I'm sorry, could we have the
11 page number.

12 MR. PETERS: Page 6.

13 MR. BECKER: Could we have the question and
14 the entire answer.

15 THE COURT: Yes, the question and the answer.

16 Q "Which one said that?" "Answer: **Frank**. And I said,
17 'You were there.' And I said, 'What do you mean by
18 that?' He said, 'We were at that Quik Trip.' And I
19 said, 'The Quik Trip over by where the explosion
20 happened?' And he said, 'Yeah.' He said something to
21 the fact that **they** were talking to the guard, there was
22 a guard on site and he was over at Quik Trip drinking
23 coffee and eating donuts." Do you remember giving that
24 testimony?

25 A: Yes.

1001

1 Q And the question to you was right and you continued,
2 "And he said that he was, he was at the scene until the
3 firemen, until the firemen showed up and then he went
4 over to the Quik Trip with Skip and DiDi", do you
5 remember that answer?

6 A: Yes.

7 Q My question to you, sir, is in 1988 isn't it true that
8 what **Frank** is saying to you is I talked to a guard at
9 the Quik Trip, is that correct?

10 A: Yes.

11 Q And that the guard told him what had gone on the night
12 of the explosion and he was relating that information
13 to you, isn't that what he was telling you?

14 A: He didn't specify thatch what the guard told him. He
15 told me they were there.

16 Q **Frank** Sheppard never told you that he went up to the
17 site prior to the explosion and had anything to do with
18 the explosion, did he?

19 A: No, he didn't.

20 MR. PETERS: I have no further questions.

21 THE COURT: Who is next? Mr. Bunch.

22 MR. BUNCH: No questions.

23 THE COURT: Mr. O'Connor.

24 CROSS EXAMINATION

25 BY MR. O'CONNOR:

1002

1 Q Mr. Barchers, I am John O'Connor. I represent Mr.
2 Bryan Sheppard. You and I have never met, have we?

3 A: No, sir.

4 Q Now when the agents came out to see you, I believe the
5 date on it is February 19, 1995, is that about right?

6 A: Yes, sir.

7 Q And they just kind of showed up at your house.

8 A: Yes, sir.

9 Q Were you on probation at that time?

10 A: No, sir.

11 Q And when they came out there to talk with you did they
12 bring a tape recorder with them?

13 A: No, sir.

14 Q Did they ask to tape record everything they were saying
15 to you and you were saying to them?

16 A: No, I don't believe it was tape recorded.

17 Q And they had you swear after you gave this affidavit,
18 they wanted you to swear to it, is that right?

19 A: They asked me if it was to the best of my knowledge,
20 yes.

21 Q Did that seem important to them, they wanted you to
22 swear to what you were telling them?

23 A: I would say it was important they came to my house.

24 Q Some of the conversations that you had with them you
25 told them that some of the comments **Frank** Sheppard and

1003

1 DiDi Sheppard and Skip Sheppard had made to you were at
2 the time when Bryan Sheppard was in jail by himself
3 charged with this crime, is that true?

4 A: I believe so. Bryan's name was never brought up in the
5 conversation.

6 Q I understand that but do you remember telling the
7 agents that some of the conversations occurred between
8 these three people when Bryan was in jail charged by
9 himself being held without bond?

10 A: Yes, sir.

11 Q Did **Frank** Sheppard, Skip Sheppard and DiDi Sheppard, or
12 DiDi, Naomi Baker, whatever her real name is, did they
13 say something about Bryan Sheppard to you?

14 A: They just said that he had nothing to do with it.

15 MR. BECKER: Objection.

16 THE COURT: It is hearsay.

17 MR. O'CONNOR: Can we approach, Judge?

18 THE COURT: Yes.

19 (Proceedings out of the hearing of the jury.)

20 THE COURT: He wasn't there and it is rank
21 hearsay. How does it have any circumstantial guarantee
22 of trustworthiness?

23 MR. O'CONNOR: Judge, in this statement that
24 the government was relying on -- let me get it.

25 Let me talk real quick. In this affidavit

1004

1 that he did that day, he told the agents in this
2 conversation they were having, they told him that Bryan
3 didn't do this and they know who did, the police were
4 going to railroad him into a guilty verdict.

5 MR. BECKER: Who said that?

6 THE COURT: Railroad who?

7 MR. O'CONNOR: Bryan. In other words, **Frank**
8 Sheppard was telling this guy in this conversation,
9 **Frank** Sheppard is saying to Barchers Bryan didn't do
10 this but the police are going to railroad him into a
11 guilty verdict. "When I heard them say they knew
12 Bryan didn't do that, I asked how they knew. They told
13 me they knew who did it and that Bryan wasn't one of
14 the people." So I think that shows they are using the
15 statement, they are trying to use this statement for
16 one purpose and keep it out for another.

17 MR. OSGOOD: Here's the situation. What
18 would otherwise be hearsay statements by the
19 defendant comes in as a statement against penal
20 interest as an exception to the hearsay rule. He is
21 testifying what **Frank** said.

22 MR. BECKER: It is an admission.

23 MR. OSGOOD: You filed a brief that says
24 where a statement by a party defendant is made in
25 front of another defendant that silence makes that

1005

1 an adopted admission.

2 THE COURT: Bryan wasn't there.

3 MR. OSGOOD: I understand that but under the
4 rule of completeness and under a reliability test, the
5 fact that the charged defendant in this case
6 purportedly admitted his own involvement and at the
7 same time said someone else, who is a charged defendant
8 in this case, was not involved should make it
9 admissible under a reliability test.

10 THE COURT: I don't care what he said about
11 whether Bryan was there because it is the rankest kind
12 of hearsay and there isn't any guarantee to me and,
13 therefore to this jury, that it is worth any more than
14 just somebody's, off the top of their head, opinion. It
15 is an opinion, by the way. It is about the police
16 department trying to railroad Bryan.

17 MR. OSGOOD: I understand that but my point
18 is it is a statement by a charged defendant in this
19 case that exculpates another defendant.

20 THE COURT: It is not a conspiracy case.

21 MR. OSGOOD: You don't have to have a
22 charged conspiracy to make that kind of a statement
23 admissible during the course of and in furtherance of
24 a conspiracy under the rules.

25 MR. BECKER: Perhaps counsel should think

1006

1 about that argument because if these admissions of
2 fact are in furtherance of the conspiracy, then all
3 the admissions where **Frank** says I did it with Skip and
4 Bryan and Richard come in, where he says I did it and
5 named the other people -- and I have sanitized all
6 those because of counsels' objections. All of those
7 admissions were where the other people are named, we
8 have deleted all those names pursuant to the pretrial
9 litigation -- so if counsel is now saying those
10 statements are in furtherance of a conspiracy, then all
11 those statements are going to come in.

12 MR. O'CONNOR: Can we talk? This is a real
13 important issue for me.

14 THE COURT: Why don't we take our morning
15 break.

16 (Proceedings in the hearing of the jury.)

17 THE COURT: As it turns out, the lawyers and
18 I have some work we have to do, ladies and gentlemen.
19 We will do it as quickly as we can. It is about time
20 for our morning break anyway. So you all don't talk
21 about the case while we are at break. You may withdraw
22 to the jury room and wherever else you go during the
23 next 15 minutes. You are excused.

24 (The jury leaves the courtroom.)

25 THE COURT: Go ahead and talk and we will

1007

1 talk about it on the record when we return from recess.

2 RECESS

3 (Proceedings out of the presence of the
4 jury)

5 THE COURT: Are you ready to go?

6 MR. O'CONNOR: I am going to leave that area
7 of inquiry and I had two other questions of the witness
8 and Mr. Becker told me he wanted to make a statement.

9 MR. BECKER: I would ask the Court to rule on
10 my objection. And since the answer came out, I would
11 ask the Court instruct the jury that the question and
12 answer are stricken and that the question was improper
13 and they should not consider the question or the
14 answer.

15 MR. O'CONNOR: What I think would be my
16 response to that is the question was asked and answered
17 without objection. Mr. Becker then said he was too
18 late, it was already in, he was too late with his
19 objection. So I believe that his objection now is too
20 late. That is my position.

21 THE COURT: Remind me of the question and
22 answer.

23 MR. BECKER: As I recall, the question was
24 did **Frank** Sheppard ever tell you that Bryan Sheppard
25 had nothing to do with this. And the answer was yes.

1008

1 THE COURT: I think it happened quickly
2 enough counsel can't be criticized for not objecting.
3 And I must say I would have been surprised if there
4 hadn't been an objection. And I am going to sustain
5 the objection and I will instruct the jury to disregard
6 the question and the answer.

7 (The jury returns to the courtroom.)

8 THE COURT: Have a seat. Now then, ladies
9 and gentlemen, I am instructing you that you are to
10 disregard the last question and answer the witness gave
11 regarding what might have been said to him about
12 someone else's involvement in this matter.

13 All right, let's go.

14 Q (By Mr. Osgood) Just a couple more questions, Mr.
15 Barchers. DiDi Baker, she is someone that you have
16 known since she was little, is that what you told us?

17 A: Yes, sir.

18 Q DiDi, would you stand up. Is this the person you
19 know as DiDi?

20 A: No, sir.

21 MR. O'CONNOR: That is all I have.

22 CROSS EXAMINATION

23 BY MR. OSGOOD:

24 Q Mr. Barchers, my name is John Osgood and I represent
25 Richard Brown. You and I have never met, is that

1009

1 correct?

2 A: No, sir.

3 Q Do you know Richard Brown?

4 A: No, sir.

5 Q Ever been to any home identified to you as belonging to
6 the Browns?

7 MR. BECKER: Objection. Not within the scope
8 of Direct Examination.

9 THE COURT: It is outside the scope.
10 Sustained.

11 Q Do you know Richard Brown?

12 A: No, sir.

13 Q Ever heard his name mentioned by any of these people
14 you were talking about?

15 MR. BECKER: Objection.

16 THE COURT: Sustained.

17 Q What were the names that you heard again? I don't want
18 to go over who said what, That is repetitive. What
19 were the names you are here to testify about?

20 MR. BECKER: Objection.

21 THE COURT: That is sustained. That isn't
22 necessary. The jury heard all the testimony.

23 Q You don't know Mr. Brown.

24 A: No, sir.

25 MR. OSGOOD: That's all.

1010

1 MR. BECKER: I have some Redirect.

2 REDIRECT EXAMINATION

3 BY MR. BECKER:

4 Q Mr. Barchers, I think you were asked about your
5 statements by Miss Hunt and Mr. Peters on behalf of
6 Skip Sheppard and **Frank** Sheppard, do you remember that?

7 A: Yes, sir.

8 Q They talked about certain parts of your statement and
9 they showed you your grand jury testimony, do you
10 remember that?

11 A: Yes.

12 Q Do you remember in the grand jury hearing this question
13 and giving this answer: "Question," page 7, line 5,
14 "Did **they** say anything about going up to put out the
15 fire?" "Answer: Yes, **they** made the statement the
16 firemen were stupid for rushing in."

17 MR. PETERS: Objection. May we approach.

18 (Proceedings out of the hearing of the jury.)

19 MR. PETERS: This has already been testified
20 to. That is the first objection. The second objection
21 is reading back a question without first laying a
22 foundation. It leads to an improper third party "they"
23 meaningless before the jury. Did they tell you. Did
24 they go up there?

25 THE COURT: I think in the context of this

1011

1 man's testimony, that is not true.

2 MR. BECKER: The purpose of my doing it,
3 because counsel left the impression he did not give
4 the complete story to the grand jury.

5 THE COURT: That is all right. If that is an
6 objection, it is overruled.

7 (Proceedings in the hearing of the jury.)

8 Q Do you remember hearing these questions and giving
9 these answers to the grand jury, page 7, line 5:
10 "Question: Did they say anything about the firemen
11 going up to put out the fire?" "Answer: Yes, they
12 made the statement that the firemen were stupid for
13 rushing in to put out the fire without knowing what was
14 up there. And he also said all they wanted to do was
15 collect a little bit of metal that was up there to
16 turn in from houses that they had evacuated."
17 "'Question: Did they say anything about no-one was
18 supposed to be killed?" "Answer: He said Skip reached
19 over and slapped DiDi and he said if she would have
20 done her job, none of the firemen would have been
21 killed." Do you remember hearing those questions and
22 giving those answers?

23 A: Yes.

24 Q Was that accurate?

25 A: Yes, sir.

1012

1 Q In the years between 1988 and 1995 why didn't you come
2 forward with this information?

3 A: I didn't figure that anything I had to say would have
4 helped the police with anything they didn't already
5 have and I was pretty close to the family and I didn't
6 want to make hard feelings between us. I figured if I
7 knew it so did the police.

8 MR. BECKER: Thank you.

9 THE COURT: Hearing no further Cross, you may
10 step down, sir. Thank you.

11 ~ Call your next witness.

12 MR. OSGOOD: Could I ask you one question.

13 THE COURT: You are almost too late.

14 MR. BECKER: Resume the witness stand.

15 MR. OSGOOD: Have you made any inquiry or
16 application for the reward in this case?

17 THE WITNESS: No, sir.

18 MR. OSGOOD: You didn't discuss that with
19 the police.

20 THE WITNESS: No, sir.

21 THE COURT: Now quickly.

22 MR. BECKER: The United States calls Peggy
23 Barchers.

24 PEGGY BARCHERS,

25 having been sworn, testified:

1013

1 DIRECT EXAMINATION

2 BY MR. BECKER:

3 Q Good morning.

4 A: Hi.

5 Q Please state your name and spell your last name.

6 A: Peggy Barchers, B-a-r-c-h-e-r-s.

7 Q How old are you?

8 A: Thirty four.

9 Q Where do you live?

10 A: I live in Adrian, Missouri.

11 Q Are you married to John Barchers?

12 A: Yes, I am.

13 Q Is that the witness who was just in here?

14 A: Yes.

15 Q How long have you been married?

16 A: Around eight years, I believe.

17 Q Do you have any children?

18 A: Yes, two.

19 Q In 1995 did you plead guilty to a crime?

20 A: Yes, I did.

21 Q What was that?

22 A: Possession of marijuana.

23 Q What was your sentence for that?

24 A: Two years probation.

25 Q And in 1996 did you plead guilty to a different crime?

1014

1 A: Yes.

2 Q What was that?

3 A: Larceny.

4 Q What was involved there?

5 A: Stealing cigarettes at a store, Price Chopper.

6 Q What was your sentence on that?

7 A: Two years probation.

8 Q Did you get any deals or help from me or anybody else
9 from the government on those cases?

10 A: No.

11 Q Do you know the Sheppard family from the Marlborough
12 area of Kansas City, Missouri?

13 A: Yes.

14 Q How do you know them?

15 A: I met Skip through a mutual friend about 17 years ago.
16 And then I got to know them more through John and his
17 family.

18 Q Do you see **Frank** Sheppard here in court today?

19 A: Yes, I do.

20 Q Could you tell us where he is sitting? Is he the one
21 that stood up?

22 A: Yes.

23 Q Do you see Skip Sheppard here in court?

24 A: Yes, I do.

25 Q Is that the gentleman who just stood up?

1015

1 A: Yes.

2 Q Do you know their nephew Bryan Sheppard?

3 A: I don't know him personally, no.

4 Q Do you know Darlene Edwards?

5 A: I met her twice through **Frank**.

6 Q Do you see her here in court today?

7 A: No, I don't.

8 Q How did you get to know the Sheppard family then?

9 A: Through John. He was very good friends with them and I
10 met them over there with the family and coming over to
11 John's mother's house and we partied together, went out
12 and partied together and stuff.

13 Q In November of 1988 where were you living?

14 A: I believe at 8500 Hillcrest Road is the address.

15 Q In Kansas City, Missouri?

16 A: Yes.

17 Q Prior to your testimony today did you and I go over
18 your testimony and did I show you that map there?

19 A: Yes.

20 Q Could you show us on that map roughly where you were
21 living at the time of the explosion.

22 A: I was living around in this area. We was living around
23 here, I believe.

24 Q Could you just put a mark and put your initials there,
25 please.

1016

1 A: (Witness complies.)

2 Q Do you remember the explosion that occurred in the
3 early morning hours of November 29, 1988?

4 A: Yes, I do.

5 Q What do you remember?

6 A: I remember it waking us up by knocking wall-hangings
7 off our wall onto our head.

8 Q You got hit in the head from some wall-hangings.

9 A: Yes.

10 Q Was there damage to the house you were living in?

11 A: Yes, there was.

12 Q What was the damage?

13 A: The windows were busted out. It cracked our foundation
14 and they thought there was a gas leak in the area.

15 Q Did you have to move out of the house?

16 A: We was evacuated for a few days.

17 Q Who was living there with you at the time?

18 A: It was me, my husband, my oldest son and John's father
19 in-law. It was John's stepdad, my father-in-law.

20 Q Was there some difficulty getting your father-in-law
21 out of the house?

22 A: Yes, he's an older man and he had a stroke and he
23 didn't want to leave.

24 Q But you all evacuated for a period of time.

25 A: Yes.

1017

- 1 Q Was there insurance on the house?
- 2 A: Through my landlord, he had insurance.
- 3 Q Eventually were repairs made to the house?
- 4 A: Yes.
- 5 Q Do you recall a visit at all after the explosion by
- 6 **Frank** Sheppard, Skip Sheppard and DiDi Sheppard?
- 7 A: Yes.
- 8 Q Who is DiDi Sheppard?
- 9 A: DiDi is their sister.
- 10 Q Is she younger or older?
- 11 A: I believe she is younger.
- 12 Q Tell us about the visit to your house.
- 13 A: Well, the first visit was a few days after we had
- 14 gotten home. Really **they** just came over to party and
- 15 **they** weren't there that long and **they** left.
- 16 Q What do you mean by "party"?
- 17 A: **To get high, smoke a joint.**
- 18 Q Any conversation at that time about the explosion?
- 19 A: I don't believe there was any at that time because **they**
- 20 weren't there that long at that time.
- 21 Q Do you remember any other visits from **Frank** Sheppard,
- 22 Skip Sheppard and DiDi Sheppard?
- 23 A: Yes, a few weeks later **they** returned in the middle of
- 24 the night and knocked on our windows and woke us up and
- 25 came in to party.

1018

1 Q What happened when you got up then?

2 A: Well, we let them in and we just kind of sit around the
3 table and partied a little bit and started talking
4 about, you know, we was getting repairs done on our
5 house at the time and we started talking about the
6 repairs to our house from the explosion.

7 Q Did you ask them if they had any damage or were **Frank**
8 and Skip and DiDi asked if they had any damage to their
9 houses?

10 A: I don't think we asked if they had any damage. We were
11 mostly talking about damages to our home.

12 Q What were the repairs being done at that time?

13 A: The windows were being fixed at that time and I believe
14 they were starting on the foundation.

15 Q Was anything said about the explosion by **Frank**
16 Sheppard, Skip Sheppard or DiDi Sheppard?

17 MS. OSGOOD: Objection unless you lay a
18 foundation where all the parties were and each one
19 would hear the other comments and was, in fact,
20 listening. Otherwise, it is hearsay.

21 THE COURT: She has established they were all
22 there and you may examine in more detail, if you wish,
23 on cross examination. Overruled.

24 Q Where were you in the house?

25 A: We was all sitting at our kitchen table.

1019

1 Q What was said by **Frank** Sheppard? Was anything said by
2 **Frank** Sheppard, Skip Sheppard, DiDi Sheppard about the
3 explosion?

4 A: Yes, Skip said that DiDi didn't do her job and he kind
5 of smacked her in the back of the head slightly,
6 jokingly, you know. And then **they** said that the
7 firemen, **they** were stupid for pushing in the way **they**
8 did.

9 Q Who said that?

10 A: **Frank** said that, the firemen were stupid for rushing
11 in. And then we proceeded to party a little bit. And
12 we was just kind *of* talking about what had happened and
13 everything. And **Frank** said he heard the *f*ire was set
14 for a diversion to get them away from where the metal
15 and copper was being taken.

16 Q Did he say he heard that or did he say the fire was set
17 for diversion and no-one was supposed to get hurt?

18 A: He said the fire was set for a diversion and no-one was
19 supposed to get hurt.

20 Q Now, after they left that night did you discuss this
21 with your husband, with John?

22 A: A little bit. We talked about it a little bit. And
23 John asked me if I thought **they** had something to do
24 with it.

25 MR. PETERS: Objection. Hearsay.

1020

1 THE COURT: Yes. Sustained.

2 Q Did you discuss it with anyone other than your husband?

3 A: No.

4 Q Did you ever come forward with this information to the
5 police or any other law enforcement type after hearing
6 this conversation?

7 A: No.

8 Q In fact, did they come to you to ask you about it?

9 A: Yes, they came to us.

10 Q Do you recall who it was that came out to talk to you?

11 A: I believe it was David True and I think Gene Schram.

12 MR. BECKER: Thank you very much.

13 CROSS EXAMINATION

14 BY MS. HUNT:

15 Q Mrs. Barchers, my name is Susan Hunt. I am
16 representing Skip Sheppard. You said you have known
17 Skip since you were approximately 17.

18 A: Yes, approximately.

19 Q Do you remember the time when Skip was involved in a
20 terrible car accident?

21 A: Yes, I do.

22 Q Were you aware of the fact he was in a coma for
23 approximately 30 days after that accident?

24 A: Yes.

25 Q Are you aware of the fact he suffered head injuries in

1021

1 that accident?

2 A: Yes.

3 Q In fact, he had two car wrecks at some point.

4 A: I met him right after he had the one with his girl
5 friend.

6 Q That occurred before November of 1988, didn't it?

7 A: Yes, I believe it did.

8 Q I think you stated you watched Unsolved Mysteries.

9 A: No.

10 Q Did you give an affidavit to any law enforcement
11 individuals in connection with this case?

12 A: I gave my deposition. I don't know if that is the same
13 thing.

14 Q Was that under oath?

15 A: No, I don't believe it was.

16 Q Did they record the conversation?

17 A: At my home, no.

18 Q What do you term a deposition?

19 A: Where I just wrote down what I knew.

20 Q You wrote it in your own handwriting.

21 A: Yes.

22 Q So you made a statement and signed the statement.

23 A: Yes.

24 Q Did they show you the statement after you had signed
25 it?

1022

1 A: Yes.

2 Q Have you had a chance to review your statement?

3 A: Yes.

4 Q I think you stated in 1995 you pled guilty to
5 I possession of marijuana.

6 A Yes.

7 1 Q Did that case concern your husband John?

8 A Yes.

9 Q And you were put on probation.

10 A Yes.

11 Q What were the terms of the probation?

12 A: I go monthly to report and went to **drug** classes.

13 Q And was one of the terms of your probation not to
14 commit any other crimes?

15 A: Yes.

16 Q I think you said in 1996 you pled guilty to larceny.

17 A: Yes.

18 Q You are now on probation for that.

19 A: Yes.

20 Q You stated earlier on direct examination that the first
21 time Skip and **Frank** and DiDi came to your house was
22 shortly after the explosion.

23 A Yes, a few days after.

24 Q Was your husband John home?

25 A: Yes, he was.

1

1 Q And nothing was said that day about this explosion.

2 A Not really because we was in a hurry. We was getting
3 ready to leave as **they** was coming in.

4 Q Then you said the next time was in the evening hours
5 ~ and they woke you out of bed.

6 ~ A Yes.

7 ~ Q You said you got up and partied with them.

8 A Yes.

9 ~ Q Does that mean you were smoking marijuana, also?

10 A: Yes.

11 Q Were you drinking?

12 A: No, I don't drink.

13 Q Was John smoking marijuana?

14 A: Yes.

15 Q Had you been smoking marijuana earlier that night or
16 was this the first time?

17 A: We probably was earlier that evening but we had been in
18 bed for a few hours.

19 Q You got out of bed and continued to smoke marijuana.

20 A: Yes.

21 Q And how long have you known Didi Baker?

22 A: I have known DiDi for approximately 17 years.

23 Q Do you see DiDi anywhere in this courtroom?

24 A: No.

25 Q But DiDi was present during this conversation, is that

1024

1 correct?

2 A: Yes.

3 Q Besides the marijuana that you were smoking that night
4 were you consuming any other **drugs**?

5 A: No, I don't believe so.

6 Q Have you consumed any other **drugs**?

7 A: Have I?

8 MR. BECKER: Objection. When? Where? Good
9 faith basis.

10 MS. HUNT: During that time.

11 THE COURT: You mean during that visit.

12 MS. HUNT: During that time frame. Shortly
13 after the explosion.

14 THE WITNESS: No.

15 THE COURT: With respect to the ability of
16 the witness and the prior witness to identify certain
17 people in the courtroom, I want the record to reflect
18 that there are some 40 people in the spectator section
19 of the courtroom standing around the courtroom and
20 there are another close to 40 in front of the rails, in
21 front of the spectator section, plus the jury. I think
22 the scenario ought to be clearly described in the
23 record as to what the witness is confronted with when
24 asked do you see so-and-so in the courtroom.

25 Q Let me reask that question. Do you see DiDi Baker

1 anywhere in front of the railing in this courtroom?

2 A: No.

3 Q Did you testify in front of the grand jury?

4 A: Yes.

5 Q And that testimony occurred the 26th of September,
6 1996, is that your recollection?

7 A: Yes.

8 MR. BECKER: Ninety-five.

9 Q Did you testify in front of the grand jury saying that
10 none of these people admitted they were involved?

11 A: Pardon me.

12 Q Did you say words to the effect in front of the grand
13 jury when asked, that none of these people were
14 involved in this explosion.

15 THE COURT: Counsel, I am sorry but I worry
16 about "words to the effect" question. When you are
17 impeaching, use the words; don't characterize them.
18 Use them.

19 Q Let me ask you this question that was asked of you in
20 the grand jury, I believe. "Then it sounds like **they**
21 were sort of putting it on someone else" -

22 MR. BECKER: Where are you reading?

23 MS. HUNT: Page 7, the first question.

24 Q "Then it sounds like **they** were sort of putting it on
25 someone else but did **they** ever come out and say **they**

.1026

1 were involved?" "Answer: No."

2 A: That's correct.

3 Q Do you know Lisa Landon?

4 A: Yes.

5 Q Who is she?

6 A: My sister-in-law.

7 Q Did you discuss any of this testimony with Lisa Landon?

8 A: No.

9 Q When was the last time you saw Lisa Landon?

10 A: This morning.

11 Q In the courthouse.

12 A: Yes.

13 Q And you didn't discuss this with her.

14 A: No.

15 MS. HUNT: That is all I have.

16 CROSS EXAMINATION

17 BY MR. PETERS:

18 Q Good morning, ma'am. My name is Pat Peters and I
19 represent **Frank** Sheppard. How long have you lived in
20 the Marlborough neighborhood?

21 A: When I met her I lived in the Marlborough neighborhood.

22 Q When Mr. Schram and Mr. True came out to talk to you
23 did they ask you if they could tape record their
24 conversation with you?

25 A No.

1027

1 Q You wouldn't have objected if they would have asked,
2 would you?

3 A: No.

4 Q After they had talked to you, do you remember them
5 summarizing your statement in a typewritten form asking
6 you to swear to it and sign it, do you remember that?

7 A: After they talked to me they asked me to write a
8 written statement and sign it.

9 Q And that was important to them, wasn't it?

10 A: I believe so.

11 Q Has anybody at any time ever told you that there is a
12 reward involved in this case?

13 A: They haven't told me but I knew that there was. I have
14 heard that there was.

15 Q Is that something that pretty much everybody that you
16 are aware of knows about the reward?

17 A: I don't think that is at the top of everybody's list.

18 Q The conversation that went on that night you testified
19 present were you and your husband, **Frank** Sheppard, Skip
20 Sheppard and DiDi Baker.

21 A Yes.

22 MR. PETERS: Mr. Bunch, can you have Darlene
23 Edwards stand for a moment.

24 (Ms. Edwards stands.)

25 Q Can you tell the jury whether or not this is DiDi

1028

1 Baker?

2 A: No, that's not.

3 Q Thank you. You can sit down. And so, ma'am, **Frank**
4 Sheppard, Skip Sheppard and DiDi Baker are the names
5 you remember being the people that you remember being
6 present that night, is that correct?

7 A: Yes.

8 Q Is it fair to say this explosion was big news in your
9 neighborhood at that time?

10 A: Yes, it was.

11 Q Does news travel fast?

12 A: Yes.

13 Q Is it fair to say that rumors also travel fast?

14 MR. BECKER: Objection. That is certainly
15 immaterial. It is opinion. Sustained.

16 Q Had you heard rumors about different theories as to
17 what had gone on in relation to the explosion?

18 A: No, not at that time, right afterward.

19 Q Do you remember **Frank** Sheppard talking about hearing
20 information from a guard at the Quik Trip?

21 A: He didn't talk to me about that. My husband told me he
22 said that.

23 Q And after this conversation, the entire time as you are
24 sitting around the table, neither **Frank** nor Skip nor
25 DiDi never came out and said they had involvement with

1

1 this explosion, did they?

2 A No, **they** never said **they** did it.

3 1 MR. PETERS: I have no further questions.

4 1 MR. OSGOOD: Just a couple questions.

5 CROSS EXAMINATION

6 BY MR. OSGOOD:

7 Q Your affidavit you gave, you did by hand and then I
8 guess there has been a typed copy of it, have you seen
9 the typed copy?

10 A: Yes.

11 Q And it is several paragraphs but it all fits on one
12 page, is that right?

13 A: Yes.

14 Q How long did you spend with Agent True at your house
15 when you went over what happened?

16 A: Approximately a couple hours.

17 Q So the two-hour conversation was reduced down to this
18 one page.

19 A: Yes.

20 Q And then this was in 1995.

21 A: I believe so.

22 Q And have you met with Agent True since then?

23 A: No, except for when I came to the grand jury.

24 Q And then that grand jury transcript I think is nine
25 pages, is that right?

1 A: I am not sure.

2 Q Eight pages. How long, if you remember, were you in
3 there from start to finish, in the grand jury?

4 A: I don't remember. I was in there maybe a half hour,
5 forty-five minutes. I am not sure.

6 Q Was it substantially less time than what you spent with
7 Agent True?

8 A: Yes.

9 Q You have been here this morning in I guess a witness
10 room with your husband.

11 A: Yes.

12 Q Before you had an opportunity to testify did you have
13 your grand jury transcript and your statement to go
14 over?

15 A: Not today.

16 Q Did you do that on a prior occasion?

17 A: Yes, sir.

18 Q Who did you do that with?

19 A: I did it with Paul. I looked at it myself.

20 Q You mean with Mr. Becker, the prosecutor.

21 A: Yes, I read it myself in my room.

22 Q Then did you go over your testimony?

23 A: Then I went and talked to Paul, yes, Mr. Becker.

24 Q Kind of take you through the testimony a little bit.

25 A: A little bit.

1

1 1 Q Now, you know Mr. Richard Brown.

2 A No.

3 Q Let me ask you about this chart here. There is a house
4 here, by Darlene Edwards' house and Nancy Romi and
5 Bryan Sheppard's house, have you ever been to that
6 house there?

7 A: No.

8 Q Do you know him or his family?

9 A: No.

10 MR. OSGOOD: Thank you, ma ' am?

11 THE COURT: Any Redirect?

12 MR. BECKER: Yes, Judge.

13 REDIRECT EXAMINATION

14 BY MR. BECKER:

15 Q Mrs. Barchers, I believe Miss Hunt read one sentence of
16 your testimony before the grand jury. I would like to
17 read the two sentences before that. Do you remember
18 being asked these questions and giving these answers:
19 "Question: The other statements like it was a
20 diversion and that kind of thing,
who was saying that?"

21 "Answer: **Frank** had said it was a diversion and none of
22 it was supposed to happen. And then Skip is the one
23 that was, you know, joking with
DiDi and smacked her
24 and said if she had done her job, but **Frank** was doing
25 most of the talking.'"

1032

1 "Question: Did **they** talk about stealing or anything or
2 taking anything?"

3 "Answer: Well, **they** said **they** was, the people that did
4 it was there for the metal or the copper and that's all
5 **they** wanted. That was for them to go to sell for
6 money and that the fire was set so the fire fighters
7 would go to the fire while **they** was doing the
8 stealing."

9 Do you remember giving those answers, hearing those
10 questions and giving those answers?

11 A: Yes.

12 Q Was that an accurate and truthful statement?

13 A: Yes.

14 MR. BECKER: Thank you.

15 THE COURT: You are limited to that Redirect.

16 MS. HUNT: That's fine.

17 RE CROSS EXAMINATION

18 BY MS. HUNT:

19 Q But when you were asked if they ever said they were
20 involved in this you said no.

21 A: Yes.

22 Q And you also said when Skip was making these comments
23 he was joking.

24 A: I don't know if he was joking or not.

25 Q Did you state in your grand jury testimony he was

1033

1 joking?

2 A: I said he smacked DiDi on the back of the head
3 jokingly.

4 Q In a joking manner.

5 A Yeah.

6 MS. HUNT: That is all I have.

7 THE COURT: Anything else?

8 MR. PETERS: No, Your Honor.

9 MR. BECKER: Nothing further.

10 THE COURT: Thank you, ma'am. You may step
11 down. Call your next witness.

12 LISA LANDON.

13 having been sworn, testified:

14 DIRECT EXAMINATION

15 BY MR. BECKER:

16 Q Good morning.

17 A: Good morning.

18 Q Please state your name and spell your last name.

19 A: Lisa Landon, L-a-n-d-o-n.

20 Q Take a deep breath and try and speak slowly so the
21 stenographer can get your words down, okay?

22 A Okay.

23 Q How old are you?

24 A Thirty-four.

25 Q Are you married?

1034

- 1 A: Yes.
- 2 Q Where do you live? Just what city.
- 3 A: Grandview.
- 4 Q What kind of work do you do?
- 5 A: Health insurance.
- 6 Q How long have you been doing that?
- 7 A: About nine years.
- 8 Q Do you have any children?
- 9 A: Yes.
- 10 Q How many?
- 11 A: Three.
- 12 Q Do you know the Sheppard family from the Marlborough
- 13 area of Kansas City, Missouri?
- 14 A: Yes.
- 15 Q How do you know them?
- 16 A: Through my mother, I grew up with them.
- 17 THE COURT: You grew up with them.
- 18 THE WITNESS: Around them.
- 19 Q What was your mother's name?
- 20 A: Sylvia Romi.
- 21 Q Is she still alive?
- 22 A: No.
- 23 Q When did she die?
- 24 A: In 1990.
- 25 Q Your mother, who was she friends with in the Sheppard

1035

1 family?

2 A: Naomi.

3 Q Did Naomi Sheppard have some sons and a daughter?

4 A: Yes.

5 Q Which one of those children was roughly your age?

6 A: DiDi.

7 Q And you have older brothers.

8 A: Yes.

9 Q Was that your brother John who testified here earlier
10 this morning?

11 A: Yes.

12 Q And his wife, Peggy Barchers, right?

13 A: Yes.

14 Q Now, where were you born?

15 A: Kansas City.

16 Q So how long have you known the Sheppard family?

17 A: Ever since I remember which is when I was born.

18 Q So your family had moved back to Kansas City by the
19 time you were born, before you were born.

20 A: Before.

21 Q While you lived here then all your life, did your
22 family get together with the Sheppard family?

23 A: Yes.

24 Q And your mothers would visit and the children would
25 come along, is that right?

- '1036

1 A: Yes.

2 Q In November of 1988 can you recall how old you were
3 then?

4 A: Give me a minute. Twenty-five.

5 Q Where were you living then?

6 A: Belton.

7 Q Do you recall hearing the explosion on November 29,
8 1988 that killed the firemen?

9 A: Yes.

10 Q Sometime after that explosion do you remember visiting
11 the Sheppard family with your mother?

12 A: Yes.

13 Q Do you remember how long that was after the explosion?

14 A: About two weeks.

15 Q Where did you visit them?

16 A: At their house.

17 Q I want to show you what has been marked for
18 identification purposes as Government's Exhibit 318, do
19 you recognize that?

20 A: Yes.

21 Q What is it?

22 A: Naomi's house.

23 Q Is that a photograph of Naomi Sheppard's house?

24 A: Yes.

25 MR. BECKER: I would offer it in evidence as

1037

1 Government's Exhibit 318.

2 MR. O'CONNOR: No objection.

3 MR. PETERS: No objection.

4 THE COURT: All right, 318 is admitted and
5 you may publish it.

6 (PLAINTIFF'S EXHIBIT NO. 318 WAS RECEIVED IN EVIDENCE.)

7 Q Can you see the TV screens now?

8 A: Yes.

9 Q That is the house you lived in with your mother.

10 A: Yes.

11 Q Who was there when you got there?

12 A: Naomi, **Frank**, Skip.

13 Q **Frank** and Skip Sheppard.

14 A: Yes.

15 Q Do you see **Frank** Sheppard here in court today?

16 A: Yes.

17 Q Is he standing now?

18 A: Yes.

19 Q Do you see Skip Sheppard here in court today?

20 A: Yes.

21 Q Is he standing now?

22 A: Yes.

23 MR. BECKER: The record should reflect that
24 the witness has identified the defendant **Frank** Sheppard

1

1 and the defendant Skip Sheppard.

2

THE COURT: Correct.

3 Q Where in the house did you go when you walked in with
4 your mother?

5 A: We went to the dining area.

6 Q Who was in the dining area with you?

7 A: My mom and Naomi.

8 Q Where was **Frank** Sheppard and Skip Sheppard?

9 A: In the front room.

10 Q How far away is that from where you were sitting?

11 A: A few steps.

12 Q So tell us about what happened when you were at the
13 Sheppard house that day.

14 A: We went there to visit Naomi because my mom wanted to
15 see her and **Frank** and Skip were carrying on.

16 Q What do you mean by "carrying on"?

17 A: Laughing, talking. My mom went in there and asked them
18 what was going on.

19 Q What did you do?

20 A: I followed my mom.

21 Q What happened then?

22 A: I don't know which one said, **they** just knew what was in
23 those trailers. **They** wanted to see what would happen
24 to them.

25 Q Did they say where the trailers were?

1 A: No.

2 Q Do you recall being interviewed by an ATF agent in
3 February of 1985?

4 A: Yes.

5 Q I would like for you to take a look -

6 MR. PETERS: Objection. May we approach.

7 THE COURT: Yes.

8 (Proceedings out *of* the hearing of the jury.)

9 MR. BECKER: I asked her *if* she recalls what
10 they said about where the construction trucks were.

11 MR. PETERS: He is getting ready to hand her
12 a document that is not her statement, never seen by
13 her. Never been adopted by her.

14 THE COURT: She doesn't have to adopt a
15 statement if it is a refreshment of recollection.

16 MR. BECKER: It has been produced pursuant
17 to Jencks. If I was only producing sworn statements,
18 we would have far less Jencks material. It is her
19 statement and I can use anything to refresh her
20 recollection.

21 MR. PETERS: A statement of an ATF agent can
22 be used to refresh her recollection?

23 THE COURT: Sure, if it relates.

24 MR. BECKER: It is a recorded interview.

25 (Proceedings in the hearing of the jury.)

1040

1 Q Ma'am, just read this to yourself. Don't read it out
2 loud, this part that is highlighted down there.

3 A: (Witness complies.)

4 Q Have you had a chance to read that?

5 A: Yes.

6 Q Do you recall now a **Frank** Sheppard or Skip Sheppard
7 said anything about where the trailers were located?

8 A: No, I assumed it.

9 Q You assumed it.

10 A: Yes.

11 Q Just what was said when you walked into the living room
12 of the Sheppard house.

13 A: I don't know which one said it, exactly.

14 Q Was there anyone -

15 A: I don't remember.

16 Q Was there anyone else in the room besides **Frank**
17 Sheppard and Skip Sheppard?

18 A: No.

19 Q So those are the ones that did the talking, is that
20 right?

21 A: Right.

22 Q What was said?

23 A: That **they** knew what was in the trailer. **They** just
24 wanted to see what would happen to them.

25 Q Did anyone talk about, see what happened to them if you

~ 1

1 set it on fire?

2 A: I don't recall that but that is what I took it as.

3 Q What was it about the statement that you related to
4 fire or where these trailers were?

5 MR. PETERS: Objection, Your Honor. This
6 is asking her to speculate as to why she did something.

7 THE COURT: No, I don't think so. She is
8 testifying what she concluded and he is just asking for
9 an explanation of that conclusion. I will overrule
10 that.

11 Q Did you think this talk about trailers and see what
12 happened to it, what it would do, did you think that
13 related to the explosion?

14 MS. HUNT: Objection. A leading question,
15 Your Honor.

16 THE COURT: Overruled.

17 A: What does that mean?

18 Q That means you can answer.

19 THE COURT: Go ahead.

20 A: Yes.

21 Q Why did you think it related to the explosion?

22 A: Because I heard about it.

23 MR. PETERS: Objection. Calling for
24 speculation.

25 THE COURT: Overruled. Go ahead with your

1042

1 answer.

2 A: I heard about it on TV so I knew what they meant by it.

3 Q What did you do? What did your mother do?

4 A: Then my mom just turned around and started talking to
5 Naomi and I went with her.

6 Q So you walked out of the room.

7 A: Yes, just to that next room.

8 Q Did you talk to your mother about this afterwards?

9 A: No.

10 Q Did you ever talk to anyone else about this
11 conversation?

12 A: My husband.

13 Q Anyone else besides that?

14 A: No.

15 Q Did you ever report it to the police department or any
16 law enforcement types?

17 A: No.

18 Q Did you ever come forward with this information then in
19 1995?

20 A: Yes.

21 Q Why was that?

22 A: Because I think the families need closure.

23 Q What families?

24 A: The fire fighters.

25 Q What caused you to think about that in 1995?

1043

1 MR. O'CONNOR: Objection. Relevance.

2 THE COURT: I don't know if it is relevant.

3 If you want to come up and make a record, you can.

4 (Proceedings out of the hearing of the jury.)

5 MR. BECKER: I think she is going to
6 testify she saw a TV program and that's why she felt
7 the way she did and came forward. I assumed there was
8 going to be cross examination about why she waited
9 seven years, just as her husband, why did you wait
10 seven years to come forward.

11 MR. O'CONNOR: I think we learned that
12 lesson with the first witness, one. Two, she already
13 said she saw it on TV. It is cumulative. And to allow
14 her to give a statement closure for the families I
15 think is highly prejudicial.

16 THE COURT: She has already said that and
17 without objection. I will let her answer the question.

18 (Proceedings in the hearing of the jury.)

19 THE COURT: Now, Mrs. Shinn, would you read
20 the question back.

21 (The court reporter read the pending question,
22 "What caused you to think about that in 1995?"

23 A: It's been on my mind the whole time. There was a TV
24 show I seen for the second time.

25 Q Why didn't you come forward for seven years with that

1044

1 information?

2 A: Because I was scared.

3 Q Do you remember who interviewed you in 1995 at your
4 house?

5 A: It wasn't at my house.

6 Q Where were you interviewed?

7 A: At a restaurant.

8 Q Did you arrange to meet the agents at a restaurant?

9 A: Yes.

10 Q Do you remember who that was?

11 A: I don't remember his name.

12 MR. BECKER: Thank you very much.

13 MR. PETERS: May it please the Court.

14 THE COURT: Yes, sir.

15 CROSS EXAMINATION

16 BY MR. PETERS:

17 Q Miss Landon, my name is Pat Peters and I represent
18 **Frank** Sheppard. I would like to just ask you a few
19 questions. The house that you are describing, the
20 yellow house here on Government's Exhibit 318, as you
21 walk in this front door where I am pointing and you see
22 the air conditioner, that is where the front room is,
23 right?

24 A: Yes.

25 Q And you walk on through the house into the back and

1045

1 that is where the dining room is, correct?

2 A: Yes.

3 Q To get there you walk past the TV that is pretty much
4 always on at the Sheppard house, isn't that true?

5 A: Yes.

6 Q And the date you were there the TV was on.

7 A: Probably.

8 Q And you are in the dining room and you hear **Frank** and
9 Skip laughing, sitting out in the living room with the
10 TV, isn't that correct?

11 A: I didn't. My mom did.

12 Q And what you heard was something to the effect of they
13 didn't know what was in the trailer.

14 A: No.

15 Q What was it you heard?

16 A: **They** said **they** knew what was in those trailers.

17 Q I'm sorry. What you heard them say they knew what was
18 in the trailers, correct?

19 A: Right.

20 Q And you didn't hear anyone say anything that they went
21 for copper, did you?

22 A: No.

23 Q They went for torches or acetylene torches.

24 A: No.

25 Q They went to steal CB radios.

1
1 A No.
2 Q That they went to steal walkie-talkies.
3 A No.
4 Q That they went to steal to get **drugs**.
5 A: No.
6 Q And then after watching Unsolved Mysteries you called
7 1-800-ATF-Guns, isn't that correct?
8 A: If that's the number they showed.
9 Q Again, I will show you this just to refresh your
10 recollection. Does that refresh your recollection as
11 to how you got in contact with the ATF?
12 A: Yes.
13 Q And it was that you called 1-800-ATF-Guns.
14 A Yes.
15 MR. PETERS: I have no further questions,
16 Judge.
17 THE COURT: All right. Miss Hunt.
18 CROSS EXAMINATION
19 BY MS. HUNT:
20 Q Miss Larson, my name is Susan Hunt. I represent Skip
21 Sheppard. I just have a few questions for you. I
22 think during your direct examination Mr. Becker handed
23 you an interview, do you remember that?
24 A: Yes.
25 Q And that is an interview that occurred of you, am I

--1047

- 1 correct?
- 2 A: Yes.
- 3 Q Which took place on February 12, 1995, is that correct?
- 4 A: Yes.
- 5 Q During the course of that interview did the agents have
- 6 a tape recorder?
- 7 A: I don't believe so.
- 8 Q They did not tape record your interview, as far as you
- 9 remember.
- 10 A: I can't recall.
- 11 Q Did they ever hand write out a statement and sign it?
- 12 A: I don't believe so.
- 13 Q Did they ever have you in front of a court reporter
- 14 where you would take an oath and give a statement in
- 15 question and answer form?
- 16 A: No, not at that time.
- 17 Q When is the first time after February 12th of ,95 that
- 18 you reviewed the statement?
- 19 A: I don't remember.
- 20 Q Did you review the statement?
- 21 A: I did at one time but I don't know when.
- 22 Q Do you think it was six months after February of '95 or
- 23 the next day or a year?
- 24 A: I don't know. I don't remember.
- 25 Q Besides watching Unsolved Mysteries did you watch other

1048

1 news accounts of this explosion on TV?

2 A: Yes.

3 Q And did you read some articles in the newspaper?

4 A: No.

5 Q Never read any articles in the newspaper?

6 A: Not there.

7 Q When this conversation was alleged to have occurred in
8 the living room of the Sheppard residence, where was
9 Naomi Sheppard?

10 A: In the dining room.

11 Q Can you hear from the dining room what is being said in
12 the living room?

13 A: Yeah.

14 Q Was anybody else present?

15 A: Just the five of us.

16 Q Was DiDi Baker present?

17 A: I think -- I don't remember.

18 Q Do you know DiDi Baker?

19 A: Yes.

20 Q Do you know who she is?

21 A: Yes.

22 Q They didn't mention anything in this conversation about
23 DiDi Baker, did they?

24 A: No.

25 Q Do you have a brother John Barchers?

1049

1 A: Yes.

2 Q He testified earlier today, correct?

3 A: Yes.

4 Q Have you discussed any of this information with Mr.
5 Barchers?

6 A: No.

7 Q Did Mr. Barchers at one time live in Grandview,
8 Missouri?

9 A: Yes.

10 Q And you live in Grandview, Missouri, is that right?

11 A: Yes.

12 Q When did he move from Grandview?

13 A: Two to four months ago.

14 Q Did you see Mr. Barchers last evening?

15 A: No.

16 Q Did you see Peggy Barchers?

17 A: No.

18 MS. HUNT: That is all I have.

19 THE COURT: Mr. Bunch.

20 MR. BUNCH: No questions.

21 MR. O'CONNOR: No questions, Your Honor.

22 CROSS EXAMINATION

23 BY MR. OSGOOD:

24 Q Miss Landon, my name is John Osgood and I represent
25 Richard Brown. Do you know Richard Brown?

1 ~ 1050

1 A: No.

2 Q Ever met him?

3 A: No.

4 Q Were you aware that there was a \$50,000 reward that had
5 been offered for information leading to the arrest and
6 prosecution and conviction of people involved in this
7 case?

8 A: I heard about it.

9 Q Did you know that when you made this 1-800 call that
10 was on the television program?

11 A: I knew it but it didn't matter to me.

12 Q It didn't matter. This is 1995. You will have to say
13 yes or no, ma'am, because Mrs. Shinn has to take down
14 what you say.

15 A Okay.

16 THE COURT: Was it in 1995?

17 THE WITNESS: I knew about it, yes.

18 Q And you were interviewed by Agent True on February 12th
19 of 1995, is that correct?

20 A: I didn't know it was him then. It could have been. I
21 don't remember the name.

22 Q Let me show you a report of interview here and just
23 look at that briefly. And then I will take it back
24 from you and ask you a question.

25 A: (Witness complies.)

L051

1 Q Does that copy refresh your memory?

2 A: It says here -

3 THE COURT: Ask a question and let her answer

4 without the document.

5 MR. OSGOOD: Yes.

6 Q Do you remember now when you were interviewed by Agent

7 True?

8 A: It was Mr. Altis.

9 Q Pardon?

10 A: It was Mr. Altis. That was in February, '95.

11 Q Now we are on the same sheet of music. This is the

12 first part of 1997. So that's about two years ago.

13 A: Yes.

14 Q Coming up.

15 A: Yes.

16 Q And I note in response to questions, you said several

17 times in response to questions about this interview you

18 did not remember, is that right?

19 MR. BECKER: Objection. Argumentative. We

20 have offered the testimony.

21 THE COURT: I am not sure I know what you

22 mean.

23 MR. OSGOOD: I am laying a foundation.

24 THE COURT: I don't care whether you are

25 laying a foundation. You have to assume accurate facts

1052

1 in doing anything and I don't remember that several
2 times this witness said that.

3 Q All right. Do you recall in direct testimony whether
4 or not you answered in response to a question by Mr.
5 Becker, you do not remember.

6 THE COURT: A question.

7 MR. OSGOOD: A question.

8 Q Did you use that phrase?

9 A: Yes.

10 Q Are there things about this interview you do not
11 remember?

12 A: About the interview, yes.

13 Q How long was the agent with you during the course of
14 the interview?

15 A: Back on February 12th?

16 Q Yes, ma'am.

17 A: I would say maybe 20 to 30 minutes; maybe a bit longer.

18 Q Where did the interview take place?

19 A: In my car.

20 Q In your car.

21 A: In my car.

22 Q Did you meet at a restaurant?

23 A: Yes.

24 Q Where was the restaurant?

25 A: In Grandview.

1053

1 Q So were you in the parking lot of the restaurant?

2 A: Yes.

3 Q This may have been answered and I didn't hear the
4 answer. It was not tape recorded.

5 A: I don't believe so.

6 THE COURT: It has been asked and answered.

7 Q Then were you shown this statement some time after you
8 had talked to the agent?

9 MR. O'CONNOR: I object. It is not a
10 statement. It is an interview.

11 MR. OSGOOD: Thank you.

12 Q Were you shown the report of interview some time after
13 that?

14 A: It was a while after that, yes.

15 Q Now, you were talking about events that occurred in
16 1988, is that correct?

17 A: Yes.

18 Q Some eight years from today; some eight years ago.

19 A: Yes.

20 Q Was the interview in the car similar to what you and I
21 are doing here where specific questions were asked of
22 you and you responded with specific answers? Was the
23 interview conducted that way?

24 A: Yes.

25 Q In other words, it was an interrogation; it wasn't a

1 conversation.

2 A: No interrogation. Just asking me questions and I
3 answered.

4 Q A normal conversation.

5 A: Not normal. We were at a point, we got to the point
6 what I knew.

7 Q Did you see Unsolved Mysteries twice?

8 A: Yes.

9 Q Do you remember when you saw it the first time?

10 A: No, I don't.

11 MR. OSGOOD: I think that is all I have.

12 THE COURT: Any Redirect?

13 MR. BECKER: Nothing, Judge.

14 THE COURT: Ladies and gentlemen, we are
15 going to take our break now and break this time for the
16 weekend. Longer periods of time in cases like this we
17 are away from each other are always precarious because
18 we have a tendency to forget our instructions, be a bit
19 relaxed about the rules and also have more exposure to
20 more things that might bear on the case and the
21 testimony. So I will have to urge you not to talk to
22 anybody about the case or let anybody talk to you about
23 it. Avoid any conversation. Avoid the TV and radio.
24 That is not a bad idea anyway. Since the Star reporter
25 is sitting here I will say also avoid The Kansas City

2		A P P E A R A N C E S	I
3	FOR THE GOVERNMENT:	MR. PAUL S. BECKER	
4		Assistant U S Attorney	l
		1201 Walnut, Suite 2300	1
5		Kansas City, MO 64106	
6		MR. DANIEL C. MILLER	!
7		Assistant Prosecuting Attorney	I
		415 E. 12th Street, 11th Floor	
		Kansas City, MO 64106	
8	FOR DEFENDANT		
9	GEORGE FRANK SHEPPARD	MR. PATRICK PETERS	I
		Attorney at Law .	
0		639 E 65th Street	!
1			Kansas
City, MO 64131		1	
1	FOR DEFENDANT		
	EARL D. SHEPPARD	MS. SUSAN HUNT	
12		MS. ELENA FRANCO	
13		Attorneys at Law	
		1711 Westport Road	
14		Kansas City, MO 64111	
	FOR DEFENDANT		
15	DARLENE M. EDWARDS	MR. WILLARD B. BUNCH	
		Attorney at Law	
16		310 Armour Road	
17		North Kansas City, MO 64116	
	FOR DEFENDANT		
!	a BRYAN E. SHEPPARD	MR.	
JOHN P. O'CONNOR			
l			
Attorney at Law			
19		1200 Main Street, Suite 410	i
20		Kansas City, MO 64105-2078	
	FOR DEFENDANT		
21	RICHARD BROWN	MR. JOHN R. OSGOOD	
22		Attorney at Law	I
		Midland Bank Building	
2'		740 N.W Blue Parkway, #305	
		Lee's Summit, MO 64086	
24	ALSO APPEARING:	MR. DAVID TRUE	
25	~~		
	Special Agent, ATF		

A

1 1~
2lI N D E X
VOLUME VI

' ,

<u>VIRGIL DAVE WHITT</u>	<u>Page</u>
Direct Examination	1064
Cross Examination	1068
Cross Examination	1070
Cross Examination	1071
Cross Examination	1072

CHARLES EUGENE ELLIOTT

Direct Examination	1073
Cross Examination	1080
Cross Examination	1106
Cross Examination	1110

JERRY ROOKS

Direct Examination	1115
Cross Examination	1125
Cross Examination	1134
Cross Examination	1152

TRACY CAUTHON

Direct Examination	1171
Cross Examination	1179
Redirect Examination . . .	1181
Recross Examination . . .	1182

GARY FUGATE

Direct Examination	1182
Cross Examination	1200
Cross Examination	1213

RONALD L. WILLIAMS

:

~	Direct Examination	1234 ;
~	Cross Examination	1243
~	Cross Examination	1245
~	Cross Examination	1247

-

E X H I B I T S

-

Plaintiff's Received

323 and 324	1176
337	1236

1058

1 JANUARY 28, 1997

2 (Proceedings outside the presence of the jury)

3 THE COURT: Is it all right to call the jury?

4 MR. BECKER: In about 30 seconds, Judge.

5 This morning I conferred with counsel regarding
6 Government's Exhibit 393 which is the laboratory
7 report on samples taken from the pickup truck, the
8 Deborah Riggs' pickup truck, and I believe all
9 counsel has agreed this exhibit, 393, which is the
10 report of analysis of samples of that pickup truck
11 could be admitted without the testimony of Dr. Richard
12 Henderson, the professional chemist who analyzed those
13 samples.

14 In about two weeks when we get to that
15 part of the case, then I will be offering this
16 into evidence and reading it to the jury, if that
17 is acceptable to the defendants.

18 THE COURT: Is that agreeable to the defense?

19 MR. PETERS: Yes, Your Honor. We already
20 discussed this and everybody has already seen the
21 document and agreed.

22 THE COURT: All right.

23 MR. BECKER: And I would note for the court
24 that will save the government considerable expense in
25 bringing Mr. Henderson up from South Carolina to

1 testify regarding this analysis.

2 Other than that, we are ready.

3 MR. PETERS: One other detail. I have
4 already provided Mr. Becker with a motion in
5 limine we have regarding a witness that will
be
6 coming up later today.

7 THE COURT: Okay. Thank you.

8 (The jury enters the courtroom.)

9 THE COURT: Good morning, everybody. Glad
10 you are all here. Have a seat. You may proceed, Mr.
11 Becker.

12 MR. MILLER: The government calls Mr. Dave
13 Whitt.

14 THE COURT: I'm sorry, folks, this other mike
15 that was put on there to make it easier for the
16 witnesses and now it isn't on. It is one thing after
17 another. We will get the technician as soon as we can.
18 I apologize. Don't talk about the case in there and we
19 hope we can call you back in about five minutes. If
20 you will withdraw from the courtroom, we will call you
21 as soon as we are ready.

22 (The jury leaves the courtroom, as does the witness.)

23 THE COURT: Is this motion something you want
24 to take up, Mr. Peters, or is it just for the record?
25 Did you want to say anything about this? I have looked

1 at it. I have seen what you have filed.

2 MR. PETERS: It is really just alerting the
3 Court, after reading and re-reading statements, I
4 haven't been able to find anything that would be
5 relevant or admissible regarding the witness. Rather
6 than have the witness take the stand and go through the
7 introduction and the have defense counsel object to the
8 portions presumably of his testimony that would be
9 elicited, we thought we would just alert the court
10 beforehand.

11 The motion gives the court the
12 background on the witness and we just thought it
13 would be a way of saving time as opposed to
14 waiting to see if, in fact, those types of
15 inadmissible or irrelevant evidence was going to
16 be elicited.

17 THE COURT: All right. Mr. Becker.

18 MR. MILLER: It's me, Your Honor. In the
19 motion regarding the statement no dynamite was stolen,
20 that is not relevant. It is the intent. Was there
21 intent to go and steal the dynamite.

22 There will be witnesses with their
23 statements. There have been admissions against
24 interest by the testimony of witnesses it was
25 their intention to steal dynamite, it was one of

1 their intentions to do that.

2 The fact, the statement no dynamite was
3 stolen is not relevant.

4 THE COURT: Wait a minute. I think that
5 misses the point. There is some reference to Caligna
6 having dynamite in his car.

7 MR. MILLER: Yes, I was going to address
8 that, Judge.

9 THE COURT: All right. Go ahead.

10 MR. MILLER: For the weight this could go to
11 the jury with is that if Caligna comes to **Frank**
12 Sheppard's house and shares with **Frank** Sheppard his
13 concern over blasting caps and explosives in the car
14 and Sheppard shows very overtly his concern about this
15 too, this goes to his knowledge and intent that he is
16 involved with stealing explosives. This links back to
17 his intention, stated intention, admissions against
18 interest, to go to the construction site, one of the
19 purposes is to steal explosives. There is knowledge.
20 And his actions about that show the relevance of it,
21 his actions about Caligna being concerned and coming to
22 **Frank** Sheppard's house with this information and **Frank**
23 Sheppard's very overt reaction to this.

24 MR. PETERS: Your Honor.

25 THE COURT: Yes.

1 MR. PETERS: The Court is well aware of the
2 line of cases, usually in a **drug** environment, where
3 somebody will show up at a defendant's house and make
4 some comment about **drugs**. The cases are divided in
5 that instance as to whether or not it would come in.
6 This is four months after the explosion. Caligna is
7 coming to the house. **Frank** doesn't say anything
8 about any an explosion, dynamite from the construction
9 site or anything. There is absolutely no admission,
10 no implicit admission. Caligna comes to the house and
11 says, **Frank**, I just got stopped by the police. I had
12 dynamite in my car and **Frank** acts concerned. It is
13 irrelevant when, in fact, no dynamite was taken and
14 they are imputing some sort of knowledge to **Frank**
15 Sheppard because of his reaction to somebody telling
16 him that that person, Caligna, can be caught with
17 dynamite.

18 THE COURT: When did the incident with
19 Caligna described here as an individual named Frame
20 came to the house and talked to **Frank** Sheppard about
21 the police stopping Caligna having dynamite in his car.
22 **Frank** Sheppard must be paranoid. When did that happen
23 and when did the police stop take place?

24 MR. PETERS: It happened on or about March
25 31, 1989, four months after the explosion. We have

1063

1 been provided no reports that Caligna had, in fact,
2 been stopped or that the police had, in fact, found
3 dynamite but as the court correctly noted at the
4 beginning, no dynamite was stolen. So it doesn't
5 matter if **Frank** Sheppard or anybody else acts paranoid
6- about a person having dynamite in a case where, in
7 fact, no dynamite was stolen.

8 If this was a robbery of a jewelry store
9 and no jewelry was taken and four months later
10 somebody came to a person's house and said, oh,
11 the police stopped me because I had jewelry in my
12 car, the person could be acting paranoid because
13 they don't want the police coming and looking in
14 their house for the other person who actually
15 stole some jewelry.

16 There is no linkage in this case between
17 dynamite and any of the defendants. And I would
18 suggest to bring a statement that another person,
19 not one of these defendants, had dynamite in their
20 car is irrelevant and immaterial as to who caused
21 this explosion.

22 MR. MILLER: That's true. There is no
23 direct link but it was within four months as Mr.
24 Peters pointed out. And what we are showing with
25 this is again it ties into their admissions against

1064

1 interest, stating their intent. It goes to his
2 knowledge. Why come to **Frank** Sheppard with stolen
3 blasting caps and explosives and why does **Frank**
4 Sheppard get all concerned. It shows he does have
5 knowledge of these things and it does tie into
6 their intentions to go to this place.

7 THE COURT: It isn't this witness.

8 MR. MILLER: No.

9 THE COURT: We will do the best we can when
10 the time comes on that.

11 (The jury and the witness enter the courtroom.)

12 THE COURT: All right, if you will resume
13 your seat. We will have you sworn and get started.

14 VIRGIL DAVE WHITT

15 having been sworn, testified:

16 DIRECT EXAMINATION

17 BY MR. MILLER:

18 Q Sir, would you tell the court and jury your name,
19 please.

20 A: Virgil Dave Whitt.

21 Q How old are you?

22 A: Forty.

23 Q Are you known by any nicknames in the Marlborough area?

24 A: A couple, yeah.

25 Q Are you known as Virgil or what are you known as?

1 A Dave.

2 Q You are known as Dave. Mr. Whitt, do you have any

3 felony convictions?

4 A I have a few.

5 Q Would you tell us what they are.

6 A Burglary, interstate transportation of forged

7 securities and burglary, receiving stolen property and

8 sales in cocaine.

9 Q Do you know how many felony convictions you have?

10 A Three.

11 Q Do you know Mr. **Frank** Sheppard?

12 A Yes.

13 Q Do you see him in the courtroom?

14 A: Yes.

15 Q Could you point him out for the court.

16 A: Over there.

17 Q Is he the one standing?

18 A: Yes, sir.

19 Q How long have you known Mr. Sheppard?

20 A: Several years.

21 Q I want to go back to November the 28th and 29th, 1988.

22 Where did you live?

23 A: At 85th and Wayne.

24 Q Show you what has been marked for identification as

25 Government's Exhibit 335. Is this a picture of your

1 house you lived in?

2 A It wasn't mine. That's where I lived.

3 1 Q That is where you lived in November of '88.

4 A: Yes, sir.

5 Q This is where you stayed.

6 A Yes, sir.

7 Q You didn't own this house.

8 A: No.

9 Q Who owned the house, do you know?

10 A: Karen Bear.

11 Q Where in the house did you live?

12 A: In the basement.

13 Q Who did you live there with?

14 A: Gene West and Katie lived down there, David Bear and
15 her son.

16 Q Do you remember the explosion on November 29th that
17 caused the death of six firefighters?

18 A: Yeah.

19 Q Would you tell the jury how you remember the explosion.

20 A: It woke me up.

21 Q You remember the explosion and you know Mr. Sheppard.

22 Did you ever have any conversations with Mr. Sheppard
23 about the explosion?

24 A: Yeah, on one occasion.

25 Q Would you tell the jury when that occasion was.

1067

1 A: It was after the grand jury had talked to some of the
2 people at Marlborough in front of the Sports Tavern.

3 Q Where is that tavern?

4 A: It is on about 81st and Troost.

5 Q Do you remember what time of the day or evening it was?

6 A: It was at night.

7 Q How did the conversation come up?

8 A: I think I asked him.

9 Q You said "him". Who is him?

10 A: **Frank.**

11 Q What did you ask Mr. Sheppard?

12 A: What's the deal with the firemen, with the explosion.

13 Q What was his response?

14 A: He said wasn't nobody supposed to be hurt.

15 Q Did he say anything about the firemen, whether they
16 were supposed to be there or not?

17 A: Something vaguely, but, you know, something about the
18 security guard wasn't supposed to be there. Nobody was
19 supposed to get hurt.

20 Q How was Mr. Sheppard acting when he was telling you
21 this?

22 A: Pretty sad. I think he was even crying a little bit.
23 He was drunk.

24 Q When did you give this information to the police?

25 A: The last part of 1990.

1068

1 Q Why did you wait until then?

2 A: They came to me. I was in the Clay County Jail.

3 1 Q Now they came to you in the Clay County Jail and you
4 gave them this information, did you get any reduction

5 ~in your sentence for what you did?

6 A: No.

7 Q What were you in jail for at that time?

8 A: Receiving stolen property.

9 Q And what was your sentence at that time?

10 A: One year.

11 Q Have you gotten anything from the government for your
12 testimony today?

13 A: No.

14 MR. MILLER: That is all I have of this
15 witness, Judge.

16 THE COURT: Miss Hunt.

17 CROSS EXAMINATION

18 BY MS. HUNT:

19 Q Mr. Whitt, my name is Susan Hunt and I am representing
20 Skip Sheppard in this case. Isn't it true that there
21 was a lot of rumors concerning this explosion going on
22 in the Marlborough neighborhood?

23 A: Yeah, there has been a lot of rumors.

24 Q Those rumors continued right after the explosion until
25 today.

1

1 A I haven't been in Marlborough for a while.

2 Q When did you leave?

3 A About three years ago, two or three years ago.

4 Q Up until the time you left that neighborhood the rumors
5 were continuing, weren't they?

6 A yeah.

7 Q And did you and your friends discuss these explosions
8 on numerous occasions?

9 A Yes, a few occasions, yes.

10 Q And you and your friends were trying to figure out what
11 happened, weren't you?

12 A Yes.

13 Q So you have heard a lot of speculation and a lot or
14 rumors, haven't you?

15 A: Not a lot but yes.

16 Q What friends did you discuss this with?

17 A: I don't recall. Several different people.

18 Q No names? You can't remember any names.

19 A: No, it has been a while.

20 Q And during those discussions with your various friends
21 and the rumors you have heard, various scenarios have
22 been discussed, haven't they?

23 A: What do you mean by various scenarios?

24 Q You have heard or you have discussed one of the two
25 various ways in which this explosion might have

1070

1 occurred.

2 A: I have heard a few stories, yeah.

3 ~ Q And those stories involve different people, don't they?

4 A: Yes.

5 MS. HUNT: That is all I have.

6 THE COURT: All right.

7 MR. PETERS: May it please the Court.

8 THE COURT: Yes.

9 CROSS EXAMINATION

10 BY MR. PETERS:

11 Q My name is Pat Peters and I represent **Frank** Sheppard.

12 When you talk about what you heard outside the tavern,
13 we are talking about a conversation that happened back
14 in 1990, would that be fair to say?

15 A: Around there, yes.

16 Q and the grand jury that you are talking about was a
17 state grand jury that went on in Jackson County, do you
18 know?

19 A: I don't know whether it was state or what it was but
20 yeah.

21 Q But it was a grand jury that happened back in 1990 or
22 closer to the time of the explosion.

23 A: Yeah.

24 Q What you actually heard from **Frank** Sheppard was that
25 the firemen weren't supposed to be up there, is that

1 correct?

2 A: Wasn't nobody supposed to be hurt. He didn't say the
3 firemen wasn't supposed to be hurt.

4 Q He never said anything to you about he was up there,
5 did he?

6 A: He didn't say that, no.

7 Q And he told you in this brief conversation you had
8 outside the tavern, he mentioned something about guards
9 and Quik Trip, didn't he?

10 A: Yeah.

11 MS. HUNT: No further questions.

12 MR. BUNCH: No questions.

13 CROSS EXAMINATION

14 BY MR. O'CONNOR:

15 Q Mr. Whitt, I am John O'Connor. I represent Bryan
16 Sheppard. The police, as I understand it, came up and
17 talked to you in the Clay County Jail back in, when was
18 that?

19 A: Yeah.

20 Q And was Bryan Sheppard also in the jail up there when
21 you were then when he was charged with this by himself?

22 A: Yes.

23 Q Did you talk to Bryan up there?

24 A: Not very much, no.

25 Q But you were able to talk to him.

1072

1 A: yeah.

2 Q Now, when these agents came out to talk to you about
3 what you knew, you told them everything you knew,
4 right?

5 A: Yeah, what they asked me anyway.

6 Q And they even asked you whether you had any speculation
or speculated on anything that happened.

8 A: Yeah.

9 Q And you told them speculation as well.

10 A: No, only what they asked me.

11 Q And that was the Kansas City police back in '90, is
12 that correct, they were the ones that came up there.

13 A: Yes.

14 MR. O'CONNOR: That is all I have. Thanks.

15 CROSS EXAMINATION

16 BY MR. OSGOOD:

17 Q Mr. Whitt, I am John Osgood. I represent Richard
18 Brown. Do you know a Lonnie Joe Pugh?

19 A: Yes.

20 Q Did you ever hear rumors he was responsible for this?

21 A: There has been a rumor, yeah.

22 Q You don't see Mr. Lonnie Joe Pugh anywhere in front of
23 this rail, do you?

24 A: No.

25 MR. MILLER: Object to the relevance. I ask

1

1 1 the jury be instructed to disregard that question.

2

THE COURT: Yes, you should disregard that question and any answer that was given to it.

3 1

4 1

Any Redirect?

5

MR. MILLER: I think I failed to offer Government's Exhibit 335, Your Honor.

6 1

7 ~

MR. PETERS: No objection.

8 ~

THE COURT: All right, it is admitted without objection.

9 1

10 ~

(PLAINTIFF'S EXHIBIT NO. 335 WAS RECEIVED IN EVIDENCE.)

11

MR. MILLER: No Redirect for this witness.

12

THE COURT: Call your next witness.

13

MR. MILLER: Your Honor, at this time the government calls Charles Elliott.

14 ~

15 ~

CHARLES EUGENE ELLIOTT.

16 ~ having been sworn, testified:

17

DIRECT EXAMINATION

18 BY MR. MILLER:

19 Q Would you tell the Court your name, please.

20 A: Charles Eugene Elliott, Jr.

21 Q How old are you, Mr. Elliott?

22 A: I am 40 years old.

23 Q Judging from your dress would you tell the jury where you reside now.

24

25 A: Western Missouri Correctional Center.

1074

1 Q For how much longer?

2 A: I am supposed to get out tomorrow.

3 Q Would you tell us how many felony convictions you have.

4 A: I have eight.

5 Q Could you tell us what they are.

6 A: Possession of Methamphetamine, possession of a firearm,
7 burglary, stealing over 150, burglary, stealing a motor
8 vehicle and then burglary.

9 Q How long have you been in prison?

10 A: The last ten years off and on.

11 Q And you are getting out tomorrow. Has the government
12 been of any aid in getting you out on that date?

13 A: No, sir.

14 Q Have you been given anything for your testimony?

15 A: *No*, sir.

16 Q *Now*, you have written some letters to the prosecution
17 in this case, haven't you?

18 A: Yes.

19 Q And in the substances of the letters do you ask for any
20 reward money?

21 A: Yes, I have mentioned \$50,000 reward money.

22 Q Have you been promised any?

23 A: *No*, sir.

24 Q Are you going to apply for some?

25 A: Yes, sir.

1075

1 Q And also in the letters did you ask for any kind of
2 leniency or consideration for what they call a time
3 cut?

4 A: Yes, I did.

5 Q Did you get any?

6 A: No, sir.

7 Q How old were you when you got your first conviction,
8 Mr. Elliott?

9 A: I believe I was 29.

10 Q I want to ask you, do you remember the explosion back
11 in November of 1988 that caused the death of six
12 firefighters?

13 A: Yes, vaguely.

14 Q How did you remember the explosion?

15 A: I saw it once on the news and once on the Unsolved
16 Mysteries.

17 Q You say "vaguely", where were you when the explosion
18 happened?

19 A: I was incarcerated at Algoa.

20 Q And Algoa is where?

21 A: Jefferson City,

22 Q Here in Missouri.

23 A: Yes, sir.

24 Q ow in 1988 did you know George and **Frank** Sheppard?

25 A: No, sir, I didn't.

1

1 1 Q Did you know any of this family?

2 A: No, sir.

3 ~ Q Did you ever meet George **Frank** Sheppard?

4 1 A Yes, I did.

5 Q Where did you meet him?

6 A: I met him at the Kansas City Honor Center.

7 Q Where is that?

8 A: Kansas City, Missouri, 919 Oak.

9 Q 919 Oak.

10 A: Yes, sir.

11 Q When did this meeting take place?

12 A: I met him the evening of May 21st, 1995.

13 Q Let me stop you there. Do you see George **Frank**

14 Sheppard in the courtroom?

15 A: Yes, I do.

16 Q Is he the gentleman standing now?

17 A: Yes, sir.

18 Q Why were you at the honor center on May the 21st, 1995?

19 A: At that time I was in the Task Unit waiting to be

20 transported back to the Missouri Department of

21 Corrections.

22 Q Tell the jury what the Task Unit is.

23 A: That is a lock-down unit for when you violate the honor

24 center, you are locked down there until they transfer

25 you back to the Missouri Department of Corrections.

1 Q How did you violate?

2 A: I absconded from the honor center.

3 Q And specifically where at 919 Oak did you meet Mr.

4 Sheppard on the evening of May the 21st, 1995?

A: In the lock-down unit.

6 Q Was he in the same cell?

7 A: Yes, sir.

8 Q What name did he give you that night?

9 A: George Sheppard.

10 Q How long were the two of you in that cell together that

11 night?

12 A: We was in there all that night and until the 25th of

13 May.

14 Q While you were in there with Mr. Sheppard did the

15 subject of the explosion that killed the six

16 firefighters come up?

17 A: yes, it did.

18 Q Who brought up the subject of the fire?

19 A: Mr. Sheppard.

20 Q What did Mr. Sheppard say to you?

21 A: He asked me if I had remember the fire that the firemen

22 had got killed in. And at first I didn't. And then I

23 said, oh, the one that happened out in the Boldine

24 area. And he said, no, the one out on 71 highway., I

25 said, yes, I remember seeing it on the news a little

'~T ATTeoTseq seM geq~ pue panaddeq peq ~T ~eq~ ~MOU~ ~ SZ
 noA 'sMau aq~ uo ueas peq I ~eqM ueq~ ~aq~o 6UTq~oN ~ bZ
 zp.IeddaqS ~ H £Z
 ~am noA a~o~aq uoFsoldxa aq~ Tnoqe MOU~ noA PTP leqM 0 ZZ
 •~Fs '•N ~ TZ
 z~a~uaO 0Z
 ~onoq aq~ ~e mTq ~am noA a~o~aq ~Fq UMOU~ noL pen 0 61
 •~Ts 'ou ~ 81
 ZUMop +~•T UT axaM Ll
 0^1 noI alFqM a~om [ue ~eq~ gnoqe noA q~TM yeads aq pFa • 91
 •puzz aq~ ~o 6uTu~om aq~ seM qI ~ 51
 za~T~ aq~ ~noqe noA q3TM a~ods aq ~T seM ~q6TU q~TqM 0 }1
 ~Ts 'saA ~ El
 •q~sz aql q6no~q~ ~slz Zl
 aq~ ~o 6uTuaAa aq~ uo mTq q~TM a~aM noA Aes noA MoN 0 11
 •dn pa~ool seM ~eq~ Mau~ aM le~ana6 01
 uT aTdoad pue spuaT~;T~T6 ~no ~noqe buT~Te~ ~snF seM aM ~ 6
 zenoTAa~d ~snF ~noqe 6UF~Teg ueaq noA peH 0 8
 O l,uoP I '~Fs '•N ~ L
 zOn ~F ~q6no~q ~eqM MOU~ noA og 0 9
 •uo pue ;;o ~ 5
 zOn ameo uoF~es~aAuoo ~
 sFq~ uaqM 6UF~Te~ ueaq noA ~o OM] aq~ peq 6uoT M•u 0 E
 uama~F; XFs seM ~F 'ou 'pTes aH ZUF PaTTFX Z
 ~o6 uama~F; ~no; aq~ ano aql leql 1,UsF PFes I •1Fq I
 8LOI

1

1 that I knew of.

2 Q Did George **Frank** Sheppard tell you where the fire was
3 set?

4 ~ A He just told me it was the fire that happened out on 71
5 highway.

6 Q What did **Frank** Sheppard, George **Frank** Sheppard, say to
7 you about getting any gasoline?

8 A: He stated that someone had drove him and someone else
9 to get some gas that **they** had used to start the fire
10 with.

11 Q Did he say where they were driven to?

12 A: No, sir.

13 Q Did **Frank** Sheppard say how they started the fire?

14 A: He told me that **they** had been suspects for a log time
15 and that **they** had an alibi. The reason why **they** had an
16 alibi because there was some type of detonating device
17 that was used, that when the fire actually started **they**
18 was someplace else.

19 Q Did George **Frank** Sheppard tell you when the fire was
20 started?

21 A: He stated around two o'clock in the morning.

22 Q Did he tell you what his alibi was?

23 A: No, he didn't.

24 Q From the honor center where did you go?

25 A: I went to Fulton Diagnostic Center.

1 Q Why did you go to the Fulton Diagnostic Center?

2 A That's where the Missouri Department of Corrections
3 houses prisoners until they are re-classified.

4 Q From Fulton Diagnostic Center where were you sent?

5 A: To Tipton Correctional Center.

6 Q Did you again see **Frank** Sheppard?

7 A: Yes, I did.

8 Q And where did you see him?

9 A: At the Tipton Correctional Center.

10 Q While there at the Tipton Correctional Center what else
11 did **Frank** Sheppard tell you about the explosion that
12 killed the six firefighters?

13 A: We had a conversation one day out in the yard and he
14 stated to me that he felt like he shouldn't be blamed
15 for the deaths of the firemen because it was their job
16 to be there and put the fire out.

17 Q What did you do with this information you had from Mr.
18 Sheppard?

19 A: I related it to Detective Sweeney in Independence.

20 Q Why Detective Sweeney?

21 A: I felt like I owed Detective Sweeney a favor and at the
22 time he was the only one that I knew that I could get
23 in contact with about this.

24 Q On account of your giving any information were you
25 released from Tipton?

1081

1 A: No, sir.

2 Q Was anything promised to you by Officer Sweeney?

3 A: No, sir.

4 Q Did you have any hopes of getting anything when you
5 contacted Detective Sweeney?

6 A: Not at the time.

7 MR. MILLER: That is all I have of this
8 witness, Judge.

9 THE COURT: Mr. O'Connor.

10 CROSS EXAMINATION

11 BY MR. O'CONNOR:

12 Q Mr. Elliott, I am John O'Connor. I represent Bryan
13 Sheppard.

14 A: Yes, sir.

15 Q You and I have met previously, have we not?

16 A: Yes, sir.

17 Q I want to go through your prior felony convictions you
18 have told us about. And I want you to begin with your
19 first felony conviction at age 29 and tell me what you
20 were convicted of, in what jurisdiction and what your
21 sentence was, if you would.

22 A: I was convicted for burglary, two years in Ray County.
23 I was convicted of another burglary and sentenced to
24 two years in Clinton County. I was then convicted of
25 receipt of stolen property and sentenced to three years

1

1 ~ in Jackson County. I believe I was sentenced to
2 stealing over \$150 in Jackson County. I was sentenced
3 to sealing a motor vehicle which I was sentenced in
4 ~ Jackson County. I was sentenced to possession of
5 ~ methamphetamine which I was sentenced to three years.
6 ~ I was sentenced to possession of a firearm. I was
7 sentenced to three years and I was sentenced to
8 unlawful use of a weapon and I was sentenced to two
9 years.

10 Q Do you have any misdemeanor convictions?

11 A: Yes, I do.

12 Q How many?

13 A: I couldn't tell you.

14 Q How many do you think?

15 A: Three or four.

16 Q What would those have been for?

17 A: Traffic tickets, possession of a controlled substance.

18 Q Anything else?

19 A: No, sir.

20 Q Have you ever escaped from confinement?

21 A: No, sir.

22 Q Have you ever been on escape status?

23 A: Yes, sir.

24 Q When were you on escape status?

25 A: From the Kansas City honor center.

1083

1 Q This was the same place where you said you met George
2 Sheppard, is that right?

3 A: Yes, sir.

4 Q And would you agree with me you were on escape status
5 there on 5-10 of '95 and returned to custody 5-21 of
6 '95.

7 A: Yes, sir.

8 Q So you were on your honor to come back and you did not.

9 A: yes, sir.

10 Q Now, as I understand it -- and you correct me if I say
11 anything that is incorrect -- as I understand it, you
12 wrote a letter to this Detective Sweeney and then the
13 next thing that happened some agents or officers came
14 and interviewed you in prison.

15 A: Yes, sir.

16 Q And what prison facility were you in when they came to
17 interview you?

18 A: Tipton Correctional Center.

19 Q And did they take an interview of you at that
20 correctional facility?

21 A: Yes, sir.

22 Q Now, at any time did they bring like a tape recorder to
23 tape record what they were saying to you, what you were
24 saying to them?

25 A: I don't recall.

1 Q After you gave this two-page interview did they have
2 you raise your hand and swear to it like an affidavit?

3 A I don't recall.

4 Q Would you have remembered that?

5 A: I believe so.

6 Q Now after you gave this interview, the next thing that
7 happened, as I understand it, you testified before a
8 grand jury. You gave the interview I think on June
9 29th of 1995, does that sound about right?

10 A: Yes, sir.

11 Q And then you testified before a federal grand jury on
12 the 17th of January, 1996, is that correct?

13 A: Yes, sir.

14 Q Now, after you testified before the grand jury on the
15 17th of January, 1996 did you then start writing
16 personal letters to Mr. Becker, the government attorney
17 in this case?

18 A: Yes, I did.

19 Q And the purpose of those letters was to tell him you
20 were interested in the reward money, is that right?

21 A: Yes, sir.

22 Q Now, had you told anyone after you testified before the
23 grand jury you were interested in the reward money.

24 A: Would you repeat the question, sir.

25 Q Sure, I will. Did you ever tell anyone before you

1085

1 wrote this first letter of January 26, 1996, after your
2 grand jury testimony, did you ever tell anyone before
3 that time, this letter, that you were interested in
4 this reward money?

5 A: I had vaguely mentioned it to the detectives that came
6 and seen me.

7 Q How did you vaguely mention it?

8 A: They had asked me if there was anything that I wanted
9 out of this. And at the time I said no, there was
10 nothing that I wanted but there was a question of a
11 \$50,000 reward.

12 Q You told that to the detectives who talked to you on
13 June 29, 1995.

14 A: Yes, sir.

15 Q They asked you at the end of the interview what you
16 wanted or why you were doing this and you said I want
17 the reward money.

18 A: Not in those words.

19 Q I am interested in the reward money.

20 A: yes, sir.

21 Q I want to show you this interview, show you what has
22 been marked as Defendants' Exhibit 10 which appears to
23 be the two-page interview they did of you on June the
24 29th, 1995.

25 THE COURT: Is this a paper signed by this

~

1 witness?

2 MR. O'CONNOR: No, Your Honor, it is an
3 interview.

4 A: Yes, sir.

5 Q Who was the first person who ever showed you this
6 particular interview?

7 A: I don't understand the question.

8 Q When is the first time you ever read this document that
9 I just handed you?

10 A: I can't remember.

11 Q Wasn't it when I came up to talk to you on the 14th of
12 January?

13 A: Yes, sir.

14 Q And you had never seen that document before that day.

15 THE COURT: The 14th of what date?

16 MR. O'CONNOR: 1997.

17 A: Not that I recall.

18 Q Is there anywhere in that report where agents put down
19 you were asking for the reward money?

20 A: No, sir.

21 Q When you went to the grand jury did you tell the grand
22 jury you were interested in the reward money?

23 A: No, sir.

24 Q So in the January 20 letter after the grand jury
25 testimony, you are telling them I want some of the

~

1 reward money.

2 A: Yes, sir.

3 Q Please write me back.

4 ~ A: Yes, sir.

5 Q Did you get any letter back?

6 A: I got a response but it was just a response about the
7 trial. Nothing about anything else.

8 Q Did this letter of January the 20th get answered to
9 your satisfaction?

10 A: No, sir.

11 Q Now, the next letter I have that you sent to the
12 government attorney, Mr. Becker, was February the 22nd,
13 is that correct?

14 A: Yes, sir.

15 Q And you are telling about your money problems and you
16 are telling him again you want the reward money.

17 A: Yes, sir.

18 Q Did you get any answer to that?

19 A: No, sir.

20 Q Then I understand on February the 25th you wrote him
21 another letter, is that right?

22 A: Yes, sir.

23 Q And in this letter you tell him about the sentences you
24 are facing and what your charges are and what the CR
25 numbers are and all that.

1

1 A Yes, sir.

2 Q And you are wanting to see if Mr. Becker can help you

3 ~ get out of jail a little earlier than you were going

4 1 to.

5 1 A Yes, sir.

6 Q And he didn't answer you on that one, did he?

7 A: No, sir.

8 Q Then you sent him another letter on June 11th, 1996,

9 still asking for the reward money.

10 MR. MILLER: At this point I object. If he
11 is testifying from letters that are not in evidence and
12 ask if he is going to use the letters they be put in
13 evidence.

14 THE COURT: Well, I am not sure they are
15 admissible in evidence and you are using the substance
16 of papers that are not in evidence. And I think that
17 is not right.

18 MR. O'CONNOR: I was not going to offer them.
19 I assumed they would not be admissible.

20 THE COURT: You're right.

21 MR. O'CONNOR: He is familiar with the
22 letters. I was trying to save time. I have been over
23 them with him and he knows about this letter.

24 THE COURT: Rather than referring as whatever
25 you are asking about as substance of a paper, just ask

1089

1 him if he, in fact, did make that request of Becker on
2 such and such a date.

3 MR. O'CONNOR: Thank you.

4 Q On June 11th, 1996 did you write another letter to Mr.
5 Becker making similar requests for reward money?

6 A: Yes, sir.

7 Q Now, did you send Mr. Becker another letter on June the
8 21th, 1996?

9 A: Yes, sir.

10 Q And did you remind Mr. Becker that today is the day the
11 indictments came out against these individuals?

12 A: I saw it on the TV.

13 Q And you were wanting to know about your money, the
14 reward money.

15 A: Not necessarily about the money.

16 Q And did you send him another letter on June the 23rd,
17 1996, Mr. Becker?

18 A: I believe so.

19 Q Explaining to him your parole situation.

20 MR. MILLER: I object again as commenting
21 on letters.

22 THE COURT: Yes, I will sustain the
23 objection. And the jury is instructed to disregard it.

24 Q Did you write Mr. Becker again on July the 6th, 1996?

25 A: Yes, I did.

1090

1 Q 8-11 of '96.

2 A: Yes.

3 Q August 5th of '96.

4 A: Yes.

5 Q Ever get any answers to any of your letters about what
6 you were asking for?

7 A: No, sir.

8 Q now, when they took this two-page interview of you, did
9 they have a lady like this there doing this?

10 A: No, sir.

11 Q The January 20th letter you sent to Mr. Becker, you
12 were clearly wanting something for your testimony, were
13 you not?

14 A: I believe so.

15 Q You were clearly asking about the \$50,000 reward.

16 A: Yes.

17 MR. MILLER: Again, I object if he is going
18 to use letters.

19 THE COURT: Sustained. What year is January
20 20th?

21 MR. O'CONNOR: '96.

22 Q Now, you said on direct exam I think you had heard
23 about this case before you met George Sheppard, is that
24 true?

25 A: Yes, sir.

1091

1 Q And you said you had heard about it on news accounts,
2 is that right?

3 A: Yes, sir.

4 Q Did you hear about it any other way?

5 A: No, sir.

6 Q Did you see a reward poster somewhere?

7 A: Yes, I did.

8 Q Where did you see that reward poster?

9 A: They had them posted on the bulletin boards at the
10 Western Missouri Correctional Center.

11 Q In Cameron.

12 A: Yes, sir.

13 Q And that was in 1994, was it not?

14 A: Yes, it was.

15 Q So in 1994 there was a poster that said 550,000 for the
16 arrest of the people responsible for this.

17 A: Or persons.

18 Q Or persons. And you were in that facility at that
19 time.

20 A: Yes, I was.

21 Q How many times do you think you passed that reward sign
22 inn 1995?

23 A: Every day.

24 Q And 550, 000 is a lot of money.

25 A: Yes, sir.

1092

1 Q And this is before you ever met George Sheppard.

2 A: Yes.

3 Q When you called the ATF, when you wrote these letters
4 to Mr. Sweeney, how much money did you have on the
5 books up there?

6 A: A couple hundred dollars.

7 Q And "books" mean so you could spend money in the prison
8 for commissary and those kinds of things.

9 A: yes, sir.

10 Q How much money do you have up there now?

11 A: None.

12 Q And as I understand it, you are going to make a request
13 for this reward money after you leave this witness
14 stand, is that right?

15 A: yes, sir.

16 Q Now, in that interview with the ATF back in June of '95
17 you specifically told them, did you not, you were
18 interested in the \$50,000 reward.

19 A: Yes, I did. I had mentioned it.

20 Q If you told them that in that interview they didn't put
21 it in there, did they?

22 A: Evidently not.

23 Q And you told them that's why you were giving them the
24 statement, the interview you were giving them was for
25 the reward money.

1 A: No, sir.

2 Q Page 38, lines 21 through 25 and 39, lines 1 through 5.

3 "Question:And you
clearly told them" -- let's go

4 back. On the 14th of January, 1997 I visited you in
5 Cameron, is that correct?

6 A: Yes.

7 Q You were under oath when you gave these responses?

8 A: Yes.

9 Q You told me the truth, did you not?

10 A: Yes, I did.

11 THE COURT: Mr. O'Connor, and counsel, come
12 up.

13 (Proceedings outside the hearing of the jury.)

14 THE COURT: What are you impeaching?

15 MR. O'CONNOR: I want to put it in context,
16 the page before. I am impeaching him.

17 THE COURT: That is just what he said.

18 MR. O'CONNOR: I was trying to put it in
19 perspective of this question.

20 THE COURT: I understand that but at the top
21 of 39 you said "That's why you were giving them the
22 statement, the interview you were giving them'".

23 MR. O'CONNOR: He said before that's not -

24 MR. BECKER: Later on in his deposition he
25 says that, too.

1094

1 THE COURT: Yes. I don't like unfair use of
2 these things.

3 MR. O'CONNOR: That is not unfair.

4 THE COURT: If there is something later on
5 that says that, then do a completeness, the whole thing
6 at one time.

7 MR. O'CONNOR: Absolutely. Show it to me.
8 I wasn't aware of it.

9 MR. MILLER: I will get my notes.

10 THE COURT: Are you talking about in the
11 deposition?

12 MR. BECKER: Yes, Judge. Pages 41, line 15.

13 MR. O'CONNOR: That is after having said what
14 he said. That is basically a self-serving statement he
15 is now making after he said a hundred times he is
16 asking for the reward money. I think it is relevant.
17 They can bring it up but I don't think that clearly
18 disputes that.

19 THE COURT: I don't think that is fair. You
20 may use that if you use the rest of it.

21 MR. O'CONNOR: I will go on. It is not that
22 big a point.

23 (Proceedings in the hearing of the jury.)

24 Q At the time you came forward about this case was it
25 your understanding that if the persons were just

1095

1 arrested that you would be entitled to the reward money
2 that was based on information you had given?

3 A: No, sir.

4 Q What was your understanding?

5 A: At the time I sent the Detective Sweeney letter?

6 Q About the reward money.

7 A: At the time there was no motivation at all for the
8 reward money. My motivation was personally for myself.

9 Q What I am saying is when you saw the reward and you
10 said, I think earlier, you were interested in the
11 reward money, what did you think was going to entitle
12 you to that money, what did you have to do?

13 A: I don't understand your question.

14 Q Okay. Did you believe that because you had given a
15 statement against **Frank** Sheppard and he got arrested
16 for that, were you entitled to the reward money?

17 A: Yes, I believe that.

18 THE COURT: Arrested only?

19 Q Yes, do you understand that?

20 A: Yes.

21 Q And that is what you thought, that he only had to be
22 arrested and that you would be entitled to the reward
23 money.

24 A: Yes.

25 Q Now at the time also you were wanting to get out, get

1096

1 your paperwork speeded up to get out a little earlier,
2 were you not?

3 A: Yes, I was.

4 Q You were also making those requests of the prosecutor
5 as well.

6 A: Yes.

7 Q You had two motivations, reward money and getting out
8 early, is that a fair statement?

9 A: Yes, I did at the time.

10 Q Now, would you agree with me at the time you sent this
11 letter to Mr. Becker about helping you with your time,
12 since he didn't answer you back you got a new detainer
13 placed on you that was no longer something he could
14 help you with.

15 MR. MILLER: I object to the form of the
16 question, "Would you agree with me". Further, the
17 rest of the question is argumentative.

18 THE COURT: Sustained.

19 Q At the time you sent the letter to Mr. Becker
20 requesting him to speed up your paperwork did you have
21 any detainers on you?

22 A: No, sir.

23 Q Did you get detainers put on you between the time you
24 sent the letter and you got no response?

25 A: No, sir.

1097

1 Q Did you get a new charge?

2 A: No, sir.

3 Q Had you gone to the parole board and they pulled your
4 house arrest program?

5 A: They took my house arrest because of a new charge that
6 I had.

7 Q That was after you had sent the letter.

8 A: No, sir.

9 Q On June the 20th, 1996.

10 A: No, all charges had been pending prior to that letter.

11 Q Did you see this case premiered on Unsolved Mysteries?

12 A: Yes, I did, briefly.

13 Q Now before you came down here to testify today you have
14 talked with the prosecuting attorneys, before you
15 talked with me, about your testimony, is that correct?

16 A: Yes.

17 Q Did you inform them that you wanted the reward money
18 when you talked with them?

19 A: Yes, I did.

20 Q Do you know what you need to do about getting this
21 reward? Have you been given instructions on how to do
22 that?

23 A: No, I haven't.

24 Q Do you have a prior **drug** history as well, Mr. Elliott?

25 A: Yes, I do.

1098

1 Q What **drugs** have you used in the past?

2 MR. MILLER: I object. Remoteness and
3 relevance.

4 THE COURT: Sustained.

5 Q Has your use of **drugs** in the past had any effect on
6 your memory?

7 A: At times but I have a pretty good memory.

8 Q In this two-page interview you did with the agents you
9 said that Mr. Sheppard identified himself to you.

10 MR. MILLER: Excuse me, Mr. O'Connor.

11 THE COURT: I don't think that is right.

12 MR. O'CONNOR: I keep saying statement.

13 THE COURT: You said interview but either
14 one, it's not signed by him. It is just somebody's
15 report of what he thinks he was told and there is no
16 verification of that. There is no foundation laid for
17 that. It is just a piece of paper.

18 Q You were interviewed by the ATE, is that correct?

19 A: Yes, sir.

20 Q Have you read the interview?

21 A: Yes, I have.

22 Q And do you agree with the contents of the interview?

23 A: Yes, I do.

24 Q And do you need more time to look at it?

25 A: No, sir.

1099

1 Q And is everything that you said in there the truth?

2 A: Yes.

3 ~ THE COURT: Wait a minute. What he said is
4 not transcribed in there. I don't want to mislead him
5 or the jury. I am sure you are not doing that
intentionally but it is a report of what somebody
7 thinks he said, isn't that right, Mr. O'Connor?

8 MR. O'CONNOR: Yes. It is a report of what
9 somebody thinks he said and as such is not usable
10 against him unless he agrees it is accurate and
11 inconsistent with something he has said today.

12 MR. O'CONNOR: I agree.

13 MR. MILLER: There is no foundation for him
14 to use the statement in any questions. And now he is
15 showing it to the witness. There is no need to
16 refresh, no need for impeachment.

17 THE COURT: That is true.

18 Q Did you tell the agents who interviewed you that the
19 person introduced himself to you as George Sheppard?

20 A: Yes, I did.

21 Q And he did not introduce himself as **Frank** Sheppard, is
22 that correct?

23 A: Yes, sir.

24 Q And how long had you talked with him? You never met
25 him before, is that right?

1100

1 A: No, sir.

2 Q You talked to him for how long before he started making
3 these admissions to you?

4 A: Well, he brought him in on the evening of the 21st. We
5 really didn't talk much that night. That next morning
6 when we got up is basically when we started having the
7 conversation.

8 Q And did he tell you that a person by the name of Bryan,
9 who he described as his brother, was with him?

10 MR. MILLER: I object to the relevance of
11 that. That also calls for hearsay.

12 May we approach?

13 THE COURT: Yes.

14 (Proceedings out of the hearing of the jury.)

15 THE COURT: I am not sure about what he
16 described as his brother. As I read this thing, this
17 guy says he assumed it was his brother but he didn't
18 say in the statement to you or in his deposition he
19 described him as his brother, that Bryan is his
20 brother. He said to the agent he assumed he was his
21 brother.

22 MR. O'CONNOR: George told him his brother
23 Bryan had been a suspect for a long time.

24 THE COURT: But it doesn't say George told
25 him that Bryan was his brother and he had been a

1101

1 suspect for a long time.

2 The his brother Bryan is consistent with
3 what he said in here, is part of this man's
4 assumption whether Bryan was his brother. In
5 other words, I think before you do that you have
6 to ask him if, during this whole conversation with
7 Sheppard, he assumed that Bryan was his brother.

8 MR. MILLER: If I may, it goes further. He
9 is trying to get in an exculpatory statement about
10 prior, it is not an admission against **Frank**. Anything
11 about Bryan is hearsay because it is exculpatory.

12 MR. O'CONNOR: It was his grand jury
13 testimony, Judge.

14 THE COURT: That's right. That's the same
15 thing, in addition to which, I don't know why this is
16 admissible. Why is it admissible?

17 MR. O'CONNOR: George Sheppard, one, has
18 never gone by George. He has always gone by **Frank**.
19 We would argue this conversation didn't take place.

20 THE COURT: He has already covered that.

21 MR. O'CONNOR: I am not getting into that.
22 Secondly, when he is saying Bryan is his brother, that
23 is factually incorrect. It goes to the heart of
24 whether the jury wants to believe him from the
25 standpoint of correct when he has the name wrong and

1102

1 he has the facts wrong.

2 THE COURT: You may do this in terms of
3 identifying people or things but you can't use the
4 substance of those statements because as to Bryan that
5 would be exculpatory and is not an admission, is not
6 admissible. In other words, all you can do is deal
7 with what he has testified to here, something he may
8 have said before that is inconsistent with that.

9 MR. O'CONNOR: It is my understanding -
10 maybe Mr. Becker could correct me -- when the FBI or
11 ATF interview people in this format they're considered
12 statements.

13 THE COURT: Not for purposes of this
14 courtroom.

15 MR. OSGOOD: I have a question. This is
16 going to occur again. With respect to the issue of
17 Bryan, for example, presumably if the defendant goes
18 on the stand, we can ask the defendant did you know
19 Mr. X, did you have a conversation with him. Yes.
20 Did you tell him thus and so. No, I never told him
21 that. No, I never said that.

22 THE COURT: If he testified he said that,
23 then you can ask him did you say that because then you
24 are head-on challenging what he said on the stand. But
25 he is just trying to make points here for I guess

1103

1 Bryan.

2 MR. OSGOOD: My point, if **Frank**, for example,
3 hypothetically testifies and **Frank** says I had a
4 conversation with this guy but I never told him
5 anything about Bryan or somebody else.

6 THE COURT: I am not going to let him say
7 what he said about Bryan because it is not an
8 admission. In other words, you can't bootstrap your
9 way into George denying it because he isn't going to be
10 on the record he said it.

11 MR. OSGOOD: Maybe I am missing something.
12 If we assert to you -- I don't know whether he is
13 asserting **Frank** is going to testify or not but if **Frank**
14 is going to testify and deny this conversation, then
15 isn't this a proper question with this witness to say
16 did **Frank** say this?

17 THE COURT: No, only if it is inculpatory or
18 against his interest or an admission or I suppose
19 otherwise relevant, but not something exculpatory to
20 another defendant that doesn't contradict anything he
21 has previously said.

22 MR. OSGOOD: The problem with that is in the
23 total context of this case they are going to present
24 statements purportedly said by each of these defendants
25 and particularly when they start Brutonizing them they

1 are going to be speculating who they were talking
2 about.

3 THE COURT: I will deal with that at the time
4 it comes up. I can't deal with that now.

5 (Proceedings in the hearing of the jury.)

6 Q Mr. Elliott, in this conversation you had with Mr.
7 Sheppard, that was in 1995, is that true?

8 A: Yes, sir.

9 Q Did he identify to you Bryan Sheppard as being his
10 brother?

11 A: We had a conversation. I may have assumed Bryan was
12 his brother.

13 Q And again, this interview was not tape-recorded, is
14 that right?

15 A: No, sir.

16 Q Would you agree with me -

17 MR. MILLER: Excuse me. I object to the
18 form.

19 THE COURT: Yes. Let's don't explore your
20 and
21 his agreement or disagreement.

22 Q You don't like prison, do you?

23 A: No, sir.

24 Q You would like to have been out of prison, in fact, at
25 the time you were writing these letters to Mr. Becker,w

1105

1 wouldn't you?

2 A: Yes, sir.

3 Q Would you have done anything to get out of prison back
4 in 1995?

5 A: Would I have done anything? Almost anything.

6 Q And were you desperate to get out of prison in '95
7 because you had a bad **drug** habit?

8 A: Not because I had a bad **drug** habit.

9 Q Were you desperate to get out of prison just because
10 you wanted out?

11 A: Yes.

12 Q And would you agree with me back in '95 you would have
13 done anything to get out of jail?

14 A: Yes, sir.

15 MR. MILLER: Objection. Repetitious.

16 THE COURT: He answered that yes.

17 Q You have lied to people before, haven't you?

18 A: Yes, I have.

19 Q You don't have any problem lying to people to get
20 things you want, do you?

21 A: No, sir.

22 MR. O'CONNOR: That is all.

23 THE COURT: Ladies and gentlemen, we will
24 take about a 10 minute recess just to give everybody a
25 comfort stop here but not too long. Don't talk about

1106

1 the case while we are in recess. You may withdraw.

2 RECESS

3 THE COURT: Mr. Elliott, I will remind you
4 you are still under oath. And you may proceed.

5 MR. PETERS: May it please the Court.

6 CROSS EXAMINATION

7 BY MR. PETERS:

8 Q Mr. Elliott, my name is Pat Peters and I represent
9 **Frank** Sheppard.

10 A: Yes, sir.

11 Q Briefly, sir, your testimony is that within a day of
12 being housed at the honor center together, that my
13 client introduced himself as George, is that correct?

14 A: Yes, sir.

15 Q Now at the time of this explosion on November 29th,
16 1988 you were in Algoa, is that correct?

17 A: Yes, sir.

18 Q So before this explosion your alibi would be that you
19 are in Algoa, is that correct?

20 MR. MILLER: I object. Argumentative and
21 not relevant what his alibi would be.

22 THE COURT: Why are we talking about an
23 alibi? I will sustain the objection.

24 Q When you talk about an alibi, that's when someone -

25 THE COURT: No, we are not going to get into

1 alibis, Mr. Peters. I sustained the objection. Let's
2 go on to something else. An alibi is for someone who
3 is accused of something pertinent to the inquiry. This
4 ~ man is not a party to this inquiry.

5 MR. PETERS: Your Honor, -

6 THE COURT: If you want to come up and talk
7 about it, you may do so but you are not going to talk
8 about alibis with this witness.

9 (Proceedings out of the hearing of the jury.)

10 THE COURT: Unless you have some clear
11 indication he was involved in this crime we are not
12 going to talk about alibies.

13 MR. PETERS: The only thing I am trying to
14 get, he says **Frank** told him he had an alibi. The word
15 "alibi" is used by him.

16 THE COURT: But not for him. Never mind. It
17 doesn't make any sense.

18 MR. PETERS: My question is when he hears the
19 word "alibi" it just means I want to get out, what he
20 means by alibi. It means you weren't there.

21 THE COURT: No.

22 (Proceedings in the hearing of the jury.)

23 Q Your testimony is that after introducing himself as
24 George in a 15 minute conversation he essentially
25 confessed to you, is that correct?

1 A: He never confessed to me. We just had a conversation
2 of the fire.

3 Q At the time that you first met the man you have
4 identified as George Sheppard, what had you heard about
5 the explosion on November 29th, 1988?

6 A: Just what I had heard on the news, a fire had happened
7 and I thought it was four firemen at the time. You
8 know, that's all I really recall hearing about it.

9 Q And prior to the meeting that you are testifying about,
10 you had been housed at Tipton and had seen the reward
11 poster, correct?

12 A: I saw the reward poster. It wasn't the Missouri
13 Correctional Center.

14 Q But that was prior to this meeting with the person you
15 have identified as George Sheppard.

16 A: Yes.

17 Q And at the time of this meeting isn't it true that you
18 had already seen the Unsolved Mysteries segment?

19 A: Yes, I had.

20 Q Did you tell the agents that interviewed you you had
21 seen the entire Unsolved Mysteries segment?

22 A: I never saw the entire segment.

23 Q Did you tell them you had seen the segment?

24 A: I can't recall if I did or not.

25 Q Did you tell the grand jury that you had seen the

1 Unsolved Mysteries segment?

2 A: I am not sure. I don't remember if I did.

3 Q What you had told the agents and what you had told the
4 grand jury is -

5 MR. MILLER: I object. This is not
6 impeachment and it is hearsay.

7 THE COURT: Yes, and it doesn't sound like a
8 question to me, Mr. Peters. Let's do it again.

9 MR. PETERS: Okay.

10 Q Did you tell the agents that you didn't know anything
11 about the case other than a little bit you had heard on
12 the news?

13 A: Yes.

14 Q Is that what you told the grand jury?

15 A: Yes.

16 Q But, in fact, you had seen the segment on Unsolved
17 Mysteries, isn't that true?

18 A: Yes, I had.

19 Q And you had watched that segment with some interest,
20 isn't that true?

21 A: I just caught a brief glimpse of it. I didn't watch
22 the whole thing.

23 Q Did you see enough of the segment to remember names or
24 details about the segment?

25 A: No, sir.

1

1 Q Do you know the gentleman seated at the table right
2 here at the end, do you know this gentleman?

3 A: I believe he introduced himself to me Saturday.

4 Q Had you ever met him before that time? Let me ask you
5 this. You remembered enough details about the Unsolved
6 Mysteries segment to remember the name Dave True from
7 that segment, didn't you?

8 A: No, sir.

9 Q Do you remember recognizing the name Dave True from
10 seeing him on TV?

11 A: Yes, I saw him on TV once.

12 Q That was in the Unsolved Mysteries segment.

13 A: No, I never saw him on the Unsolved Mysteries.

14 Q You saw Dave True in relationship to this case, is that
15 correct?

16 A: No, sir.

17 MR. PETERS: I think I am done, Judge.

18 THE COURT: Who is next?

19 MS. HUNT: No questions.

20 CROSS EXAMINATION

21 BY MR. OSGOOD:

22 Q Mr. Elliott, my name is John Osgood. I represent
23 Richard Brown. I just have a couple questions. Do you
24 know Mr. Brown?

25 A: No, sir.

1 Q Have you ever heard his name?

2 A: Other than what was on TV.

3 Q When he was charged or indicted.

4 A: Yes, sir.

5 Q When you had you interview with Agent Lobdell, did Mr.
6 Lobdell bring up his name?

7 A: He asked me if I knew him.

8 Q Did he tell you any of the allegations against Mr.
9 Brown?

10 A: No, sir.

11 MR. MILLER: I object. This is hearsay as to
12 what Mr. Lobdell asked him about Mr. Brown. It is not
13 relevant.

14 THE COURT: Sustained.

15 Q How long did you talk to Agent Lobdell?

16 A: I'm not sure, sir. An hour, I would say.

17 Q And would you explain to me what you meant by your
18 answer to the question by previous counsel that you
19 would lie when it's necessary or when it does you some
20 good, am I saying that right?

21 A: I mean there was a time I used to lie.

22 Q When it was convenient.

23 A: For my **drug** addiction.

24 Q I see, which also affected your memory I believe you
25 said.

1 A: I have a very good memory.

2 Q Have you ever attempted to gain favors in the
3 institution by telling things about other inmates?

4 A: No, sir.

5 Q There is no reward available for telling on other
6 inmates in the institution you knew of.

7 A: No, sir.

8 MR. OSGOOD: Thank you.

9 THE COURT: Redirect.

10 (Proceedings out of the hearing of the jury.)

11 MR. BECKER: At this time I would like to
12 offer into evidence -- I think I should show it to
13 you first -- under Rule 901(7), Exhibit 390.

14 MR. OSGOOD: I object. This is not a
15 public record.

16 THE COURT: Why?

17 MR. OSGOOD: It is a letter. It is a letter
18 from the institution directed to Mr. Becker. It is
19 not a business record or public record. It is just a
20 letter. If he wants to call a witness.

21 MR. PETERS: To expedite matters, there are
22 other counsel involved and I think we can work out a
23 stipulation as to the fact they want to adduce.

24 What I would object to is the surplusage
25 of the escape status and they were housed in the

1 administrative segregation confinement area but I am
2 ~ willing to stipulate that they were together at the
3 1 honor center on the dates that are indicated in this
4 1 letter.

5 1 THE COURT: That is all you are going to get
6 1 out of that report anyway.

7 1 MR. BECKER: They were housed together in the
8 1 same unit on the dates.

9 1 MR. PETERS: I have no objection to that.

10 1 My only objection was to the claim of
11 1 escape status and temporary administrative
12 1 segregation confinement.

13 1 THE COURT: You can't get that in. You don't
14 1 want that. Recite the name as used and the date
15 1 recited and they were together in the same unit on
16 1 whatever date it indicates in that statement.

17 1 MR. PETERS: And I have no objection to that.

18 ~ THE COURT: Then you can introduce the
19 1 stipulation in the form of if he would testify from the
20 1 institution, he would testify as follows.

21 1 MR. BECKER: I would point out to the Court
22 1 901(7) indicates that any -

23 1 THE COURT: (b)(7).

24 1 MR. BECKER: (b)(7). "A public record,
25 ! report statement or data compilation, in any form,

1 is from the public office where items of this nature
2 are kept." That is exactly what this is. This is a
3 data compilation from the Department of Corrections
4 under seal from an appropriate official of the
5 Department of Corrections.

6 THE COURT: It may very well be but I think
7 there is, however, extraneous matter in that the
8 escape status, did they flee together?

9 MR. BECKER: No.

10 MR. MILLER: No.

11 THE COURT: Let's just do it this way.

12 MR. PETERS: With the stipulation.

13 THE COURT: Yes. Do you want me to recite
14 it?

15 MR. BECKER: Certainly, Judge.

16 (Proceedings in the hearing of the jury.)

17 THE COURT: Ladies and gentlemen, counsel
18 have agreed and stipulated that were he to testify,
19 Calvin Palmer, the Associate Superintendent of the
20 Kansas City Community Release Center of the Missouri
21 Department of Corrections, he would testify that the
22 records of that institution reflect that George
23 Sheppard arrived at the Kansas City Community Release
24 Center on April 12th, 1995 and went from there to the
25 Fulton Reception and Diagnostic Center on May 25, 1995.

1 He would also testify the records of
2 that institution indicate that Charles Elliott
3 arrived at that center on April 10th, 1995 and was
4 transferred to Fulton on May 25, 1995.

5 He would also testify that both Sheppard
6 and Elliott were housed in the same cell from May
7 22nd, 1995 to May 25, 1995 and then transferred to
8 Fulton.

9 Okay, counsel, you may proceed.

10 MR. MILLER: Nothing further.

11 THE COURT: All right, any other Cross.

12 You may step down, sir.

13 MR. MILLER: The government calls Mr. Jerry
14 Rooks.

15 JERRY ROOKS,
16 having been sworn, testified:

17 DIRECT EXAMINATION

18 BY MR. MILLER:

19 Q Would you tell the court and jury your name, please.

20 A: Jerry Rooks.

21 Q How old are you, sir?

22 A: Twenty-one.

23 Q Back on November the 29th of 1988 how old were you?

24 A: Thirteen.

25 Q And where did you live in November of '88?

1116

2 A: 8303 Wabash

3 Q What area of Kansas City is that?

A: Marlborough.

5 Q Do you remember the explosion in '88 that caused the
6 death of the six fire fighters?

7 A: Yes.

8 Q How do you remember the explosion?

9 A: It woke me up.

10 Q And you were 13 at the time.

11 A: Yes.

12 Q Now do you know Mr. **Frank** Sheppard?

13 A: I met him one time.

14 Q You met him one time. Do you see him in the courtroom
15 today?

16 A: Yes, I do.

17 Q Could you identify him for the court.

18 A: He's standing up.

19 Q The gentleman standing up.

20 A: Yes.

21 Q Do you remember when you met him that one time?

22 A: About six months after the explosion.

23 Q Do you remember where you met him that one time?

24 A: At house on Hickman Mills Drive.

25 Q Now do you know a Richard Brown?

1 A: I met him a few times.

2 Q Do you see him in the courtroom?

3 A: Yeah, leaning back with the sweater. It has been a
4 while.

5 Q If you need to stand up and look. I was asking for
6 Richard Brown.

7 A: Actually no, I don't think he's here.

8 Q Do you know Bryan Sheppard?

9 A: I seen him the same day.

10 Q Can you identify Bryan Sheppard?

11 A: No, I can't.

12 Q Do you have any convictions?

13 A: Yes, I do.

14 Q Would you tell the jury what for.

15 A: Burglary.

16 Q When did you get the conviction?

17 A: December of '95.

18 Q And what was your sentence?

19 A: Three years probation.

20 Q Were you given anything in return for your testimony
21 here?

22 A: No.

23 Q Now you said where you met Mr. Sheppard at. Was that
24 his home, do you know?

25 A: I don't know.

1118

1 Q Why did you go to this house?

A: I was with a friend that wanted to go get cigarettes.

3 Q What is the name of the friend?

4 A: Jeff Kerr.

5 Q And are you and Jeff Kerr still friends?

6 A: No, we are not.

7 Q Before you went there with Mr. Kerr for cigarettes, had
8 you ever met **Frank** Sheppard before?

9 A: No.

10 Q In the room where you met Mr. Sheppard, how many people
11 were in the room?

12 A: Five counting, including me and Jeff.

13 Q Was **Frank** Sheppard one of the five?

14 A: Yes, he was.

15 Q At that house when you went in, who told you that that
16 was **Frank** Sheppard?

17 A: Jeff Kerr.

18 Q By the way, when you came in here were you told where
19 **Frank** Sheppard would be seated?

20 A: No.

21 MR. OSGOOD: Objection to the leading
22 questions, Your Honor.

23 THE COURT: Overruled.

24 Q Your answer.

25 A: No.

1 Q Were you ever shown photographs or a photospread by the
2 police?

3 A: Yes, I was.

4 Q Do you remember when that was?

5 A: February of '95.

6 Q Where were you shown those photographs?

7 A: The Platte County Jail.

8 Q Were you able to pick **Frank** Sheppard out of those
9 photographs?

10 A: No.

11 Q How many years had gone by from when you saw **Frank**
12 Sheppard the first time and when you were shown that
13 photospread?

14 A: Over five.

15 Q In those five years from the meeting until the spread,
16 had you ever seen **Frank** Sheppard again?

17 A: No.

18 MR. PETERS: I object to questions about a
19 photospread. We haven't seen this photospread that
20 is being talked about.

21 THE COURT: Yes, if that hasn't been
22 revealed, I think it is a proper objection.

23 MR. BECKER: May we approach for a moment,
24 please.

25 (Proceedings out of the hearing of the jury.)

1120

1 MR. BECKER: I object to the speaking
2 objections by Mr. Peters.

3 THE COURT: Yes. Don't do that.

4 MR. PETERS: We have had extensive
5 conferences, Mr. O'Connor, Mr. Peters and myself,
6 about this photospread. It doesn't exist. We can't
7 find it but we have discussed this fully. This isn't
8 something that hasn't been revealed.

9 THE COURT: I thought you said you knew
10 nothing about it. Any photographs?

11 MR. O'CONNOR: That's the very point. We
12 don't know what he was shown. Was he shown a recent
13 photograph. Was he shown an '89 photograph.

14 Now they are trying to ask him about
15 photographs we don't even have to cross-examine
16 about to see if they even look like our client.
17 That's our point.

18 MR. PETERS: There is a report that says
19 he was shown photographs and **Frank** Sheppard was in
20 one of the photographs and he didn't point him out.
21 He said it looked like him.

22 THE COURT: What else?

23 MR. BECKER: I object to Mr. Peters
24 standing up and saying he doesn't know anything
25 about the photographs when we have had extensive

1 discussions and I thought the practice of the court
2 was no speaking-objections.

3 THE COURT: That's true. Let's go on.

4 (Proceedings in the hearing of the jury.)

5 Q I want to go back to the meeting when you met Mr.
6 Sheppard. Who met you at the door of this residence?

7 A: It was **Frank** Sheppard.

8 Q Were introductions made?

9 A: Jeff Kerr just said this is **Frank**.

10 Q Did Mr. Sheppard ever correct anyone or deny being
11 **Frank** Sheppard?

12 A: No.

13 Q Could you describe his voice when you heard it that
14 day?

15 A: It was deep and slurred.

16 Q What condition did you observe him to be in?

17 A: He appeared to be drunk.

18 Q Inside the house where was he sitting?

19 A: At an angle across from me.

20 Q And where were you sitting?

21 A: I was sitting close to the front door.

22 Q Was the explosion that caused the death of the six fire
23 fighters talked about?

24 A: Yes, it was.

25 Q Who talked about it?

1 A: **Frank.**

2 Q Who was he talking to?

3 A: To Jeff and a woman that was in there.

4 Q Could you hear what **Frank** Sheppard was saying?

5 A: Yes.

6 Q What did **Frank** Sheppard say about his involvement in
7 the explosion that caused the death of the six fire
8 fighters?

9 A: He said **they** were down there trying to get into the
10 trucks and **they** weren't able to get anything and
11 decided to pour gasoline on them and set them on fire.

12 Q Did **Frank** Sheppard say specifically what was set on
13 fire?

14 A: No.

15 Q Did **Frank** Sheppard say what he did after he set the
16 truck, or trucks, on fire?

17 A: He said **they** left.

18 Q Did **Frank** Sheppard say anything about a door or shed at
19 the construction site?

20 MR. PETERS: I object to the leading form of
21 the question.

22 THE COURT: Yes, I think that is leading.

23 Q What else did **Frank** Sheppard tell you about what they
24 tried to do at the construction site?

25 A: He said there was a door **they** couldn't get into.

1 Q Did he say, where was the truck **Frank** Sheppard set on
2 fire?

3 A: He didn't say.

4 Q What did **Frank** Sheppard say he heard on the way home
5 from the construction site after the fire was set?

6 MR. PETERS: Objection. Leading.

7 THE COURT: It may be but I will allow it.

8 A: He said he could hear sirens on the way home.

9 Q How often was **Frank** Sheppard talking directly to you?

10 A: Not at all.

11 Q Where was **Frank** Sheppard when he heard the first
12 explosion?

13 A: He said he was at home when he heard it.

14 Q What did **Frank** Sheppard say he got from the
15 construction site?

16 A: He didn't say anything.

17 Q How long were you over there listening and hearing Mr.
18 Sheppard talk?

19 A: Thirty to 40 minutes.

20 Q What was going on that **Frank** Sheppard was just talking
21 outloud about his involvement in setting the fire?

22 MR. PETERS: I object to the form of the
23 question.

24 THE COURT: It seems to be a pretty good
25 question. Not leading.

1 MR. PETERS: Then I withdraw my objection.

2 THE COURT: Overruled. You may answer. What
3 was going on.

4 A: **They** were in there talking when we got there and **they**
5 were drinking. I am not sure how it started up.

6 Q When you and Jeff Kerr left the residence, what did
7 **Frank** Sheppard say to you?

A: If we told anybody about it he would kill us, too.

9 Q Now back in 1988 and '89 did you know Richard Brown?

10 A: I had seen him a few times, met him a couple times,
11 yeah.

12 Q Did you ever talk with Richard Brown about the
13 explosion?

14 A: Yes.

15 Q Where did the conversation take place?

16 A: Marlborough Park.

17 Q When did the conversation take place?

18 A: I would say two or three days after I talked to **Frank**.

19 Q What did Richard Brown tell you about his involvement
20 in the explosion that caused the death of the fire
21 fighters.

22 A: Be said he was up there but he left before anything
23 went on.

24 Q When did you ever give this information to the police?

25 A: The day before I talked to Richard.

1 MR. MILLER: That is all I have of this
2 witness, Judge.

3 THE COURT: Mr. O'Connor.

4 CROSS EXAMINATION

5 BY MR. O'CONNOR:

6 Q Mr. Rooks, I am John O'Connor. I represent Bryan
7 Sheppard. I came out the other day to talk with you,
8 did I not?

9 A: Yes.

10 Q And I had a lady like this with me, a court reporter.

11 A: Yes.

12 Q And I asked you if you would answer some questions.

13 MR. MILLER: I object to the relevance of
14 this.

15 THE COURT: Come up.

16 (Proceedings out of the hearing of the jury.)

17 MR. MILLER: I believe what he is getting
18 at, he went to talk to this witness and this witness
19 didn't want to talk to him and he doesn't have to. I
20 don't see the relevance.

21 MR. O'CONNOR: Why would he not be willing
22 to talk to us when he is freely talking to the
23 government.

24 THE COURT: Do you have some indication that
25 is because of bias? You think the fact he wouldn't

1126

1 talk to you or anybody else shows he was bias?

2 MR. O'CONNOR: I believe it does.

3 THE COURT: I don't think it does. He just
4 didn't want to talk to you.

5 MR. O'CONNOR: Could I ask him?

6 TuE COURT: You may say I came out, I asked
7 you to talk to me and you said you didn't want to talk,
8 period.

9 (Proceedings in the hearing of the jury.)

10 Q When I came out I asked you if you would talk to me
11 about this case, did I not?

12 A: Yes.

13 Q And you told me you did not want to talk to me about
14 this case, is that right?

15 A: Yes.

16 Q Now back in, I believe it was March the 23rd of '90, do
17 you remember talking with some police detectives about
18 your knowledge of this case?

19 A: Yes.

20 Q As I understand your direct examination testimony,
21 this conversation that you had with Richard Brown
22 happened after you had this conversation with George
23 **Frank** Sheppard, is that true?

24 A: Yes.

25 Q Now, did **Frank** Sheppard introduce himself to you? Did

1 he say my name is George Sheppard?

2 A: No.

3 Q So when you talked to the detectives back in March of
4 1990 you had already talked with **Frank** Sheppard and had
5 already talked with Richard Brown and knew about both
6 of their involvements in the case, is that true?

7 A: Yes.

8 Q Do you remember whether or not you told Detective
9 Wantland (phonetics) about this conversation that you
10 had with **Frank** Sheppard?

11 A: No.

12 Q You did not tell him.

13 A: I don't know anything about him.

14 Q Do you remember being interviewed by Detective Gary
15 Wantland?

16 A: No.

17 Q And do you remember being interviewed by a detective
18 back in March of 1990?

19 A: Yes, Detective Fraise.

20 Q Do you remember telling Detective Fraise in March of
21 1990 **Frank** Sheppard had told you that he was somehow
22 involved in this explosion?

23 A: I didn't tell him very much. He just wanted to know
24 the names of the people I heard about.

25 Q Back then you had that information and you did not tell

1 him, is that what you are telling us?

2 A: Not everything, no.

3 Q Had you talked with **Frank** Sheppard before you talked to
4 Fraise?

5 A: Yes.

6 Q So did you tell Fraise that **Frank** Sheppard had
7 basically admitted this crime to you?

8 A: I told him, he said he helped in on it and he said he
9 would get back to me later and ask more questions and
10 he never did.

11 Q Let me explore that a little bit. Tell me exactly what
12 you remember telling Detective **Frank** Wantland.

13 A: He asked me the name of the guy I talked to and I told
14 him **Frank** Sheppard. And he asked what he told me. And
15 I said he told me he was involved with the explosion.
16 And he said okay, I will get back with you.

17 Q You are sure of that.

18 A: Yes.

19 Q And that would have been back in 1990.

20 A: Yes.

21 Q And would have been after you had talked with **Frank**
22 Sheppard and Richard Brown.

23 A: Yes.

24 Q Have the police ever taken you back or ATF agents, or
25 anyone, to the house where you claim **Frank** Sheppard

1 made these statements to you?

2 A: No.

3 Q Did you see the case on Unsolved Mysteries?

4 A: No.

5 Q Were you aware of the \$50,000 reward money?

6 A: Not until I was in jail.

7 Q That is when the detectives came to see you, when you
8 were in the Platte County Jail.

9 A: Yes.

10 Q Bow was it the reward money came up?

11 A: He showed me the flyer with the reward money.

12 Q So when they came into the Platte County Jail to see
13 you, the first thing they handed you or showed you was
14 this reward poster.

15 A: Yes.

16 Q And that is before you then gave them this interview of
17 two pages and then they took a videotape of you that
18 same day.

19 A: Yes.

20 Q So they had a tape recording going and they took a tape
21 recorded statement of you.

22 A: Yes.

23 Q They seemed to be able to work the tape recorder all
24 right and get it working.

25 A: Yes.

1130

1 Q Didn't have any problem with it.

2 A: No.

3 Q Did it seem important to them they wanted to tape
4 record what you had to say?

5 MR. MILLER: Objection.

6 TuE COURT: Opinion. Sustained.

7 Q Did they have you swear or verify an affidavit to your
8 taped statement?

9 A: Yes.

10 Q Now they asked you if you knew these men who you were
11 telling them had made these admissions, is that
12 correct?

13 A: Yes.

14 Q You told them you didn't know if you could identify
15 them again, is that correct?

16 A: Yes.

17 Q So they brought you some photographs.

18 A: Yes.

19 Q And basically did they bring you photographs of four
20 men?

21 A: No.

22 Q How many photographs did they bring?

23 A: They brought a few sheets of several photographs on
24 them.

25 Q And were you able to make a positive identification of

1 **Frank** Sheppard?

2 A: No.

3 Q Were you able to make a positive identification of
4 Bryan Sheppard?

5 A: No.

6 Q Did they ever have these men appear in a live lineup so
7 you could go down and look at them and try to make an
8 identification?

9 A: No.

10 Q Now, when the detectives talked to you did you tell
11 them Mr. Sheppard told you they had tried to get into
12 an underground storage.

13 A: Yes.

14 Q Did you tell them they were there to steal CBs or
15 talked about stealing CB radios?

16 A: Yes.

17 Q Jeff Kerr was with you, wasn't he?

18 A: Yes.

19 Q Jeff Kerr heard this entire conversation I am assuming,
20 didn't he?

21 A: Yes.

22 MR. MILLER: I object. That calls for
23 argument and speculation.

24 THE COURT: That is sustained and the jury is
25 instructed to disregard that.

1 Q Was Jeff Kerr standing right there with you when **Frank**
2 Sheppard was saying these things?

3 A: He was sitting next to me.

4 Q Did you call the authorities from the Platte County
5 Jail or did they just show up up there?

6 A: They just showed up.

7 Q And you were in jail for what at the time?

8 A: Probation violation.

9 Q How much time are you serving as a result of that
10 probation violation?

11 A: Three years.

12 Q How much time did you do, after they talked with you
13 and got your interview, how much time did you end up
14 doing on the three years?

15 A: Four months in the penitentiary and one month in the
16 county jail.

17 Q Now before they took you to tape recording they asked
18 you a bunch of questions without the tape recorder
19 running, is that true?

20 A: Yes.

21 Q And then when the tape recording was running they were
22 asking the questions and you were giving the answer.

23 A: Yes.

24 Q So was there anything on the tape recording about them
25 showing you this \$50,000 poster before they ever talked

1 to you?

2 A: No.

3 Q Did you also tell them that Mr. Sheppard, **Frank**
4 Sheppard, had told you they tried to break into a car
5 up at the site?

6 A: No.

7 Q Tell them they tried to break into a truck.

8 A: Yes.

9 Q Did you tell them that **they** basically said **they**
10 couldn't get the truck started?

11 A: Yes.

12 Q In other words, **they** were trying to steal the truck, he
13 was giving the indication **they** were trying to break in
14 or break the steering column or hot wire it or
15 something like that.

16 MR. MILLER: I object to the form of the
17 question as he was giving an indication of what he
18 said, admission.

19 THE COURT: I think the answer is
20 certainly suggestive. I will sustain the objection.
21 Let's move on.

22 Q Mr. Sheppard told you **they** were up there trying to
23 break into a truck.

24 A: Yes.

25 Q And did he say **they** were unsuccessful in doing that?

1134

1 A: Yes.

2 Q Did he give you an indication that the keys were in the
3 truck?

4 A: No.

5 Q Clearly the indication was he was trying to break into
6 the truck to steal it.

7 A: Yes.

8 Q In other words, the truck wasn't open.

9 A: No.

10 MR. O'CONNOR: I think that is all I have.

11 Thank you, sir.

12 THE COURT: Mr. Osgood.

13 CROSS EXAMINATION

14 BY MR. OSGOOD:

15 Q Mr. Rooks, my name is John Osgood and I represent
16 Richard Brown. You and I have never met, have we?

17 A: No.

18 Q Now, you grew up in the Marlborough area.

19 A: No, I didn't.

20 Q Where did you live when you were 13 years old?

21 A: I lived in the Marlborough area at that time.

22 Q Who did you run around with?

23 A: Jeff Kerr, Dale Young.

24 Q What about Billy Burns?

25 A: I knew him from school.

1 Q And Jeff Thomas.

2 A: No.

3 Q Did you know Willy Ares (phonetics)?

4 A: I met him a few times.

5 Q You went to Center School, is that right?

6 A: Yes.

7 Q And where is this park you were talking about at?

8 A: It's right off of Prospect.

9 Q Were you living with your parents at this time?

10 A: Yes, I was.

11 Q And you were 13 and these other boys that you ran
12 around with were similar ages, is that right?

13 A: Yes.

14 Q And I believe you testified you went over to Mr.
15 Sheppard's house to get cigarettes, is that right?

16 A: I don't remember whose house it was but, yes.

17 Q The incident you talked about, you said Mr. Brown made
18 some statements down in the park, is that right?

19 A: Yes.

20 Q And he was up at the site earlier but had left, is that
21 right?

22 A: Yes.

23 Q Now, isn't it a fact, sir, that the day we are talking
24 about is October the 15th, this occurred on October the
25 15th of 1989, didn't it?

1136

- 1 A: I am not sure.
- 2 Q Well, do you know John Young?
- 3 A: Yes, I do.
- 4 Q Who is John Young?
- 5 A: My godfather.
- 6 Q Was Mr. Young there drinking with Mr. Brown and several
- 7 other people?
- 8 A: Yes, he was.
- 9 Q Mike Damaggio (phonetics).
- 10 A: Yes.
- 11 Q How old was John Young at this time?
- 12 A: I don't know.
- 13 Q Was he a young man or an older man?
- 14 A: He was older.
- 15 Q Does he have some relationship to you?
- 16 A: He's my godfather.
- 17 Q All right. And did you observe Mr. Damaggio have some
- 18 conversation with some youth that got a little heated
- 19 at one point?
- 20 A: No.
- 21 Q You don't remember that. Well, at any rate, was Mr.
- 22 Young invited to sit down at a picnic table there and
- 23 socialize with Mr. Brown and Mr. Damaggio?
- 24 A: Yes.
- 25 Q Wasn't it a fact that you, as a 13 year old, and a

1 couple of these other 13 years olds were up in the
2 bushes hiding, watching what was going on?

3 A: Yes.

4 Q From that vantage point you could see them down there
5 kind of partying and having a good time and there were
6 some girls.

7 A: Yes.

8 Q You were kind of spying.

9 A: No, we came down as soon as we got -

10 Q You came down and were sitting in the area.

11 TuE COURT: When was that?

12 MR. OSGOOD: October 15, 1989.

13 Q We know that, don't we, sir?

14 A: I am not sure on the date.

15 Q Well, in fact, ultimately Mr. Brown and Mr. Young got
16 in a fight, didn't they?

17 A: It started out with Michael Damaggio.

18 Q And Michael Damaggio, in fact, beat up Mr. Young pretty
19 bad, didn't he?

20 A: Yes.

21 Q And there was a police report and the police were
22 called and everything, weren't they?

23 A: Yes.

24 Q Now, it was after this that, oh, -- and they weren't
25 arrested on the scene, were they?

1 A: No.

2 Q The police came, looked at it, saw it was kind of a
3 party with beer and drinking and left.

4 A: Everybody left and the cops didn't come by at home
5 until we got home. We called them.

6 Q Do you know whether or not Mr. Young's wife got upset
7 about it and pressed the issue?

8 A: No, I don't.

9 Q And kept calling the police. At any rate, you were
10 called out of school at some point and asked about
11 that, weren't you?

12 A: Yes, I was.

13 Q And that is when you gave the statement about Mr.
14 Sheppard and Mr. Brown, isn't it?

15 A: It may have been.

16 Q And you were mad because they had beaten up John Young
17 in your mind?

18 A: No, I really didn't like him.

19 Q You didn't like Mr. Brown?

20 A: No, I didn't like John Young.

21 Q He was your godfather.

22 A: I still don't have to like him.

23 Q Did you tell the detectives the first time you were
24 interviewed you were down there two different times and
25 that the statements were made by Mr. Brown on a prior

1 occasion?

2 A: I was down there earlier that day.

3 Q Oh, it wasn't a prior week.

4 A: John Young has no knowledge, if that is what you are
5 asking.

6 Q Have you been told I obtained a statement from Mr.
7 Young and were you able to listen to the tape recording
8 I took from Mr. Young, did the prosecutor let you hear
9 that?

10 A: No.

11 Q Did they discuss it with you?

12 A: No.

13 Q Isn't it a fact, sir, that you did not tell the
14 detectives anything about the Sheppards until February
15 the 7th of 1995?

16 A: No, it's not.

17 Q When did you first tell the detectives about Sheppard?

18 A: They came to my school a day or two after I talked to
19 them.

20 Q The detectives did.

21 A: Yes, one detective.

22 Q They came to your school after this fight.

23 A: No, before the fight. After I talked to **Frank**.

24 Q So what you are telling me is then you had been over
25 and talked to **Frank**. **Frank** had threatened you.

1140

1 A: Yes.

2 Q The police came and talked to you at school, is that
3 right?

4 A: Yeah, they talked to me at school.

5 Q You told them at school **Frank** is involved and you
6 mentioned Mr. Brown is involved.

7 A: I didn't mention him at that time.

8 Q Have you had a chance to review the police reports that
9 were prepared in this case?

10 A: Yes, I have.

11 Q And let me ask you this. You were interviewed on March
12 the 19th of 1990.

13 A: Yes, I was.

14 Q Was there a police report then that exists somewhere
15 for this?

16 A: They got the names backwards on one report because they
17 have my name on somebody else's statement so mine must
18 be under another name.

19 Q Have you seen a police report from this October 15th
20 incident?

21 A: No.

22 Q The only police report is the one on March the 19th of
23 1990 that I have seen, is that right.

24 TuE COURT: Wait a minute.

25 MR. OSGOOD: Be said he saw the police

1 report.

2 TuE COURT: Wait a minute. Take that away.
3 You can't use that that way. He can't sit there and
4 testify from a police report.

5 MR. OSGOOD: I don't want him to testify.
6 I want him to look at it and see if that is the one
7 they showed him.

8 TuE COURT: Be has no failure of
9 recollection.

10 MR. OSGOOD: It has to do with the date, the
11 date of this interview.

12 THE COURT: Which interview?

13 MR. OSGOOD: Of this police contact with
14 him.

15 THE COURT: Which is shown on the report to
16 be?

17 MR. OSGOOD: March 19, 1990.

18 MR. MILLER: May we approach.

19 (Proceedings out of the hearing of the jury._

20 MR. MILLER: The report, the dates are
21 fouled up. The date of this is 8303 Wabash, his
22 home, not at the school. He is talking about at the
23 school.

24 MR. OSGOOD: I don't have a report from
25 the school. Is there a report?

1142

1 MR. MILLER: No.

2 THE COURT: Apparently, there isn't.

3 MR. OSGOOD: He tells him at that point
4 about the contact with the Sheppards and about
5 Ron and Damaggio.

6 THE COURT: Which is what he already
7 testified to.

8 (Proceedings in the hearing of the jury.)

9 Q Were you drinking when you were down in the park there
10 with them?

11 A: Yes, I was.

12 Q How long had the drinking been going on?

13 A: I don't know.

14 THE COURT: Wait a minute. Who is drinking -
15 - his drinking, his?

16 Q Was there drinking generally by the people gathered at
17 the park?

18 A: Yes.

19 Q And this was Mr. Damaggio, Mr. Brown, Mr. Young and
20 then you kids.

21 A: Yes.

22 Q How did the subject of the fire come up, sir?

23 A: I am not sure.

24 Q What did Mr. Brown say specifically about that?

25 A: That he and some people were down there and they had

1143

1 left.

2 Q Is that all he said?

3 A: Yeah.

4 Q And they left before anything went on.

5 A: Yes.

6 Q Where was he seated at the table when he said that?

7 A: He was standing at the end of it.

8 Q Where were you?

9 A: I was sitting in the middle on one of the benches.

10 Q How long after this was it before the fight started
11 between Mr. Damaggio and your godfather?

12 A: I'm not sure of the exact time. Forty-five minutes to
13 an hour.

14 Q Is that all you recall that he ever said at the picnic
15 table?

16 A: Yes.

17 TuE COURT: "He" being?

18 MR. OSGOOD: Mr. Brown.

19 Q Do you remember testifying before the grand jury?

20 A: Yes.

21 Q Did you tell the grand jury -

22 THE COURT: Wait a minute. Let's look at
23 that.

24 (Proceedings out of the hearing of the jury.)

25 THE COURT: Let me see it.

1 MR. OSGOOD: They were down there to get
2 radios.

3 TuE COURT: I think you can just do the
4 whole thing. I don't think it is inconsistent. This
5 business of fl

6 ailing around pieces of paper and did he say such and such
7 which is a bunch of Mickey Mouse. That isn't inconsistent
8 with what he testified to. It is exactly what he said. The
9 thrust, they left before anything went on.

10 MR. BECKER: If I may, Judge, if he is
11 looking at line 19, it says they were helping **Frank**
12 and Bryan. We have made every attempt to instruct
13 the witnesses not to get into that. Perhaps co
14 counsel has some thoughts but if that is what Mr.
15 Osgood is going to read -

16 THE COURT: Read the whole thing.

17 MR. OSGOOD: All right.

18 (Proceedings in the hearing of the jury.)

19 Q Mr. Rooks, in searching your memory, is it possible
20 that you heard there was a fight going on down at the
21 park between Mr. Damaggio and your godfather and that
22 is when you came down?

23 A: No, it isn't.

24 MR. MILLER: I object to the form of the
25 question. "Is it possible'.

1145

1 THE COURT: He said no. It's impossible.

2 MR. MILLER: Thank you.

3 Q Could you describe for us the door they were trying to
4 get?

5 A: No, I can't.

6 Q Did you ever describe it on a prior occasion?

7 A: No, I have never seen it.

8 Q Can you describe what **they** said the door looked like?

9 A: **They** said a structure in the ground.

10 Q Did **they** mention anything about a dirt hill and a door
11 in the dirt hill?

12 A: That's a construction in the ground.

13 Q **They** are trying to get this door open in the side of
14 the hill. Who said this about the dirt and the door
15 and the hill?

16 A: **Frank** Sheppard.

17 Q **Frank** Sheppard told you there was a door in the side of
18 the hill and **they** were trying to open it.

19 A: The door was shut in the hill, yes.

20 Q The shed was built into the side of the hill.

21 A: I haven't seen it. I don't know.

22 Q Did you mention the shed in your prior statement or did
23 you just mention the dirt hill?

24 A: I mentioned something about the shed or door in the
25 ground.

1 Q Do you remember giving a taped statement on February
2 the 7th, 1995 to authorities?

3 A: Yes.

4 Q Specifically David True.

5 A: yes.

6 Q And were you asked the question, "Okay, you mentioned"

8 MR. BECKER: Page, please.

9 MR. OSGOOD: Twelve. "You mentioned about
10 some sort of a structure that was into the ground.
11 "Answer: Yeah." Mr. True. "**They** are trying to get
12 something out of it. Describe that to me again,
13 please.' You say, "**They** said it was like a dirt door
14 going into the side of the dirt hill, that **they** were
15 trying to open it. **They** couldn't get it open.' Do you
16 remember those questions and those answers?

17 A: Yes.

18 Q Is that what you said?

19 A: I am sure it is. It is on there.

20 Q Did **they** tell you what **they** thought was inside the
21 structure and the dirt?

22 A: No.

23 Q Did **they** tell you afterwards it was explosives in it?

24 A: Thought it might have been.

25 Q Now, nowhere in that exchange do you mention anything

1 about a building or a structure.

2 THE COURT: It speaks for itself, Mr. Osgood.
3 You read it. And I am sitting here puzzling why it was
4 you read it but you did read it. It isn't inconsistent
5 with anything he has testified to.

6 MR. OSGOOD: It is. Today he said they
7 were trying to get into a structure of some kind or a
8 bunker or a building.

9 THE COURT: That's a bunker. A bunker is the
10 side of the hill.

11 THE WITNESS: There wouldn't be a door or
12 nothing. It has to be some kind of structure. Whether
13 it's built into it or out of it it doesn't matter.

14 Q So a building wasn't mentioned.

15 A: No.

16 Q Just this door going into the ground.

17 A: Yes.

18 Q Okay. Had you ever been up there yourself?

19 A: No.

20 Q Never went up there with the kids and played around.

21 A: No.

22 Q What about another hill at the north end of the Quik
23 Trip, that is kind of a park, is that -

24 A: That's a dump up there. Nobody is allowed up there.

25 Q Kids gather up there.

1148

1 A: Not that I know of.

2 Q Have you ever been up there?

3 A: No.

4 Q How did you know it was a dump?

5 MR. MILLER: I object. This is irrelevant.

6 THE COURT: It is argumentative. Let's go

7 on.

8 Q Do you have a brother?

9 A: I have three brothers.

10 Q What are their names?

11 A: Jonathan -

12 MR. MILLER: Object to the relevance, his
13 brothers' names in this proceeding.

14 MR. OSGOOD: They have given statements.

15 THE COURT: If you want to come up and tell
16 us why it is relevant we will hear you. Otherwise I am
17 going to sustain the objection.

18 (Proceedings were out of the hearing of the jury.)

19 MR. OSGOOD: His brother, one has given a
20 statement. I believe his name is -

21 THE COURT: It doesn't make any difference
22 what his name is. So his brother has given a
23 statement.

24 MR. OSGOOD: That is inconsistent with some
25 of the things. We may call him as a witness.

1 TuE COURT: His brother can't impeach him.

2 MR. OSGOOD: Ask if he discussed any of this
3 with his brother.

4 THE COURT: Does his brother say?

5 MR. OSGOOD: His brother is the one who told
6 the police to contact this man. He said he had
7 discussed it.

8 THE COURT: That is not inconsistent.

9 MR. OSGOOD: I didn't say it was
10 inconsistent. I want to show a relationship.

11 I object. I will move on. Show my
12 objection.

13 (Proceedings in the hearing of the jury.)

14 Q When is the last time you saw Mr. Brown?

15 A: I seen him around, a few times driving by.

16 Q When?

17 A: I would say the last time is probably four years ago.

18 Q And, of course, these events occurred eight years ago,
19 right?

20 A: Yes.

21 Q And you remember them with some detail, is that
22 correct?

23 A: You don't forget when somebody says they are going to
24 kill you.

25 Q And you, I presume, put similar importance on

1150

1 statements by Mr. Brown since you told it to the
2 police.

3 A: I don't understand the question.

4 Q You thought what he said was apparently significant,
5 that he had been up there earlier and left because you
6 told that to the police, didn't you?

7 A: Yes.

8 Q And so you wouldn't forget something like that either,
9 I guess, is that right?

10 A: I guess.

11 Q How is it you can't remember what he looked like?

12 MR. MILLER: I object as argument.

13 THE COURT: It is argument. Sustained.

14 Q The last time you saw him was when, sir?

15 A: About four years ago.

16 Q What did he look like then?

17 A: He had long hair and a mustache.

18 Q Mr. Brown, would you stand up. please. I am going to
19 help you, Mr. Rooks. Is that the Mr. Brown you know?

20 A: Looks similar. I can't say for sure.

21 Q But yet you remember all these details that occurred.

22 THE COURT: Argumentative. Sustain the
23 objection.

24 A: These years ago. Are you under any kind of charges
25 now?

1151

1 A: I am on parole.

2 Q You are on parole.

3 A: Yes.

4 Q Have you been or have you had any violation reports in
5 the last year or two?

6 A: I haven't had any since the time I went into prison.

7 MR. BECKER: May we approach.

8 (Proceedings out of the hearing of the jury.)

9 THE COURT: Is there a good faith basis for
10 any of these questions? What are you talking about?
11 Why did you just him that?

12 MR. OSGOOD: I want to find out whether
13 he has a motive.

14 THE COURT: Why did you ask him about
15 violation? Do you have some indication they're
16 violation reports?

17 MR. OSGOOD: I don't have any in my
18 possession.

19 THE COURT: Stop. Let's stop. That's over.

20 (Proceedings in the hearing of the jury.)

21 THE COURT: The objection to that is
22 sustained and the jury is instructed to disregard any
23 reference to violation reports of anything this young
24 man might have done. All right. Let's go.

25 Q Have you had any discussion with the prosecution about

1152

1 anything they can do for you in terms of getting off
2 parole earlier?

3 A: No.

4 Q Have you asked about that?

5 A: No.

6 Q Where are you living now, sir?

7 MR. MILLER: I object as not relevant where
8 he lives now.

9 THE COURT: Scope, too. Sustained.

10 Mr. Peters.

11 CROSS EXAMINATION

12 BY MR. PETERS?

13 Q Mr. Rooks, you have testified at the time of the
14 statements that you were talking about you were 13
15 years old, is that correct?

16 A: Yes.

17 Q And would you agree that the man I had stand up that
18 you identified as **Frank** Sheppard would have been close
19 to 40, did he appear to be that old at that time?

20 MR. MILLER: I object to the form of the
21 question.

22 THE COURT: Materiality. Sustained.

23 Q How old would you tell this jury, based on your memory
24 today, the person you have identified as **Frank** Sheppard
25 was in 1990?

1 A: About 24 or 25.

2 Q You have never been able to identify a photograph of
3 **Frank** Sheppard, have you?

4 A: No.

5 Q Do you remember talking to a Detective Gary Wantland of
6 the Kansas City, Missouri Police Department?

7 A: No, I don't.

8 Q You did remember talking to a Detective John Fraise, is
9 that correct?

10 A: Yes.

11 Q Is it your testimony, did you tell Detective Fraise
12 that **Frank** Sheppard told you **they** were going to break
13 into an underground storage area, did you tell that to
14 Detective Fraise?

15 A: No.

16 MR. MILLER: He already answered.

17 Q I didn't hear the answer.

18 A: He said no.

19 Q Did you tell Detective Fraise that **they** wanted to steal
20 a truck?

21 A: No.

22 Q Did you tell Detective Fraise **they** wanted to steal CB
23 radios?

24 A: No.

25 Q Did you tell Detective Fraise that **Frank** Sheppard had

1 threatened you, did you tell Detective Fraise that?

2 A: No.

3 Q Did Detective Fraise tell you that he would be back in
4 touch with you?

5 A: Yes.

6 Q The conversation that you had with Detective Fraise was
7 after all of the events you are testifying regarding
8 **Frank** Sheppard and Richard Brown took place, wasn't it?

9 A: No.

10 Q When was the conversation with Detective Fraise?

11 A: The day before I talked to Richard Brown.

12 Q Had you already talked to **Frank** Sheppard?

13 A: Yes.

14 Q So it is after you had talked to **Frank** Sheppard that
15 you talked to Detective Fraise, is that correct?

16 A: Yes.

17 Q And the date they came to the Platte County Jail to
18 interview you was on or about February 7th of 1995.

19 A: Yes.

20 MR. PETERS: I have no further questions.

21 MS. HUNT: No questions.

22 MR. MILLER: No Redirect.

23 THE COURT: Would counsel come up a minute,
24 please.

25 (Proceedings out of the hearing of the jury.)

1 THE COURT: I want to be sure that counsel
2 for none of the defendants is concerned with the vague
3 precedent of his reference to Sheppard saying that they
4 did such and such. Is that of concern to anyone?

5 MR. BUNCH: Not to me, Your Honor.

6 MR. OSGOOD: It is to me.

7 THE COURT: You didn't ask him about it on
8 Cross but you are concerned?

9 MR. OSGOOD: On balance, yes.

10 THE COURT: Do you have any problems?

11 MR. MILLER: No. No.

12 MR. PETERS: No.

13 THE COURT: Susan.

14 MS. HUNT: No.

15 THE COURT: Okay. Thank you. I am going to
16 ask him a question or two.

17 MR. O'CONNOR: Judge, could we send the jury
18 out to talk. We wanted to talk about going Friday.

19 MR. BECKER: To get back to this point -

20 THE COURT: We have Bruton problems.

21 MR. BECKER: What I would contend is the
22 neutral pronoun they. I am not intimately familiar
23 with his statement but I believe it is possible if you
24 ask him what he means by "they", he is going to say
25 me and Bryan or me and so and so.

1 THE COURT: Okay. Let me just ask the
2 question and then we will cover it. I am going to ask
3 him who he meant by they'.

4 MR. BECKER: I think that is going to get us
5 into the Bruton problem because the speaker is **Frank**.

6 THE COURT: He has testified to **Frank** saying
7 "they". I think you have a Bruton problem.

8 MR. BECKER: No. And I have some cases I can
9 direct the Court's attention to as long as it is not
10 specifically pointed to a codefendant a neutral
11 pronoun, even a plural neutral pronoun is appropriate.

12 THE COURT: If you are satisfied with that, I
13 will not pursue it of my own volition.

14 MR. BECKER: I am satisfied with that.

15 THE COURT: Okay.

16 (Proceedings in the hearing of the jury.)

17 THE COURT: We will break now for lunch with
18 the usual instruction not to discuss the case. If you
19 would be back in the jury room at 1:30, or as close as
20 you can get there, we will call you as soon as we are
21 ready to go. you are excused.

22 RECESS

23 THE COURT: I haven't asked the reporter yet
24 to dig out the exact testimony that I am concerned with
25 here but I believe I remember it well enough and have

1 it noted well enough to be able to say that this last
2 witness -- and that was Jerry Rooks -- testified that
3 he heard **Frank** Sheppard say that they were down there
4 trying to get into the trucks and didn't get anything
5 and then set the truck on fire. Is that an accurate
6 reflection of what he said?

7 MR. MILLER: I believe so, yes.

8 MR. O'CONNOR: I am unsure but it sounds
9 like that's right.

10 THE COURT: And there was also some reference
11 to a door which they didn't get into.

12 Now, my concern is -- and I at least
13 implied this to you before the bench conference
14 before lunch -- my concern is the reference to the
15 rather indefinite "they" and no inquiry as to who
16 he meant by "they". Nothing specific on the
17 record as to who he intended to mean by using the
18 word "they", he, the witness. And I am concerned
19 about that because the Bruton considerations,
20 although counsel didn't raise it, move to strike
21 or otherwise cross examine on it. So I am going
22 to give Instruction No. 2.15 out of the Eighth
23 Circuit, Suggested Eighth Circuit Instructions,
24 referencing that testimony.

25 And then I want to know, Mr. Becker, are

1158

1 we going to be able to take steps to prevent that
2 from coming back to haunt us time after time. You
3 have got a lot of people coming in here to testify
4 repeatedly about a lot of statements some of these
5 folks made.

6 MR. BECKER: I have a copy of a case, a very
7 recent December, Eighth Circuit case, that recaps the
8 Bruton issue in this regard. And it would be the
9 government's position the use of a neutral pronoun such
10 as "they", which is not completely referring to any
11 specific codefendant, would be what is permissible as a
12 substitute for what, in fact, was actually said. For
13 example, this last witness, if the "**Frank** Sheppard had
14 said me and Skip and Bryan went and did this", then
15 certainly he would not be able to testify Bryan and
16 Skip -- and this was discussed at some length prior to
17 trial and I had indicated to the court that whenever
18 there is a reference it would either be to a neutral
19 pronoun or to use the me and other people as a
20 substitute to eliminate any possible Bruton problem.

21 THE COURT: Are you saying to me this was
22 taken up before Judge Bartlett and that was worked out
23 in that way?

24 MR. BECKER: I believe it was taken up before
25 Judge Hays when there was some discussion of the Bruton

1 issue.

2 THE COURT: I have talked to Judge Hays about
3 that just now.

4 MR. BECKER: And the possible severance
5 issue, apart from the statement of the law enforcement
6 and that redaction is done, we were all aware, based
7 upon discovery made by the government that, what I
8 call civilian witnesses, heard statements from the
9 defendants individually that would implicate other
10 defendants and references to names other than the
11 speaker are being deleted.

12 THE COURT: What then do you expect will be
13 elicited as an answer if counsel should -- maybe it
14 would be unwise to do so -- but if counsel should say
15 who did you understand he meant by 'they' or did he
16 ever say who 'they' were or something like that?

17 MR. BECKER: Then I would anticipate the
18 witness would answer the question. I have told them.

19 THE COURT: See, this is my concern with this
20 sort of thing. It is like 1984. I think it was called
21 Newsspeak in 1984. You twist things around to say what
22 you want them to say, not what they really are. And
23 that is what we are doing here in a sense, isn't that
24 right?

25 MR. BECKER: Because the law as I have read

1160

1 it and the pretrial discussions we have had indicate
2 that in a joint trial that a witness cannot recite an
3 admission from one defendant that inculcates other
4 defendants.

5 THE COURT: Which is not a conspiracy trial.

6 MR. BECKER: Right. And I am not arguing
7 these statements are in furtherance of a conspiracy.
8 That the substitution of a neutral pronoun is an
9 acceptable solution to the dilemma of do we have
10 joint trials or do we have five separate trials. And
11 that is the basis the government has gone for in
12 preparing its witnesses.

13 MR. OSGOOD: That pre-supposes there could
14 be other persons that it would apply to.

15 The Court, unfortunately, seems to be
16 taking the approach we cannot ask a witness
17 whether or not one of the people who make the
18 statements also included third parties not
19 involved in this trial.

20 Many of these witnesses, for example,
21 are going to testify, let's take a hypothetical
22 witness A. He says, all right, I had a
23 conversation with a defendant. That defendant
24 said he was up at the site and Joe Smith and Bob
25 Jones and Gary Wilson were with him. We want to

1 be able to show when he made that statement he
2 said Bob Smith, Gary Jones.

3 THE COURT: They are not defendants.

4 MR. OSGOOD: They are not defendants.

5 THE COURT: Then I don't see why there would
6 be anything objectionable to that.

7 MR. OSGOOD: We want to do that. That would
8 at least give some legitimacy to Mr. Becker's position
9 he can substitute pronouns. I can get up and say when
10 you said "they", you didn't mean Richard Brown and you
11 told the agent it was Bob Jones and Gary Wilson.

12 THE COURT: you didn't have that with this
13 last witness.

14 MR. OSGOOD: No, we didn't but this is going
15 to occur. If you allow him to use pronouns and don't
16 allow us to take that approach with the defendants, the
17 inescapable conclusion it will be the defendants and we
18 will be severely prejudiced.

19 MR. BECKER: I don't think this situation is
20 different in any other joint trial when these neutral
21 pronouns are substituted and should counsel cross
22 examine to either eliminate their particular defendant
23 or add a name of another person, I think it would be
24 proper redirect to ask which defendants were named and
25 I think we get into troublesome ground there.

1 THE COURT: All right. I am going to give
2 this 2.15 now relating to, as it pertains to the
3 testimony of Jerry Rooks and it may be necessary to do
4 it again later in the trial.

5 The trouble with the redacting business,
6 do you have situations when there will be written
7 statements relied on that name more than one
8 defendant?

9 MR. BECKER: Written?

10 THE COURT: Like this. Well, a statement.
11 Strike written. A statement of one of the defendants
12 saying.

13 MR. BECKER: Many. We have many of them.
14 Most of the witnesses heard statements that the
15 speaker says the speaker and another codefendant did
16 it. We have deleted the reference to a codefendant.

17 THE COURT: That is what I was going to ask
18 next. So we are in essence redacting the codefendants
19 in all those statements.

20 MR. BECKER: Yes.

21 THE COURT: But you are using, apparently you
22 are proposing to use the pronoun they.

23 MR. BECKER: Or where appropriate, other
24 people, myself and other people went up to the hill.

25 THE COURT: If he is quoting the defendant,

1 he would say he and other defendants went up to the
2 hill.

3 MR. BECKER: That is what we would for the
4 most part propose to use.

5 THE COURT: Let's get the jury.

6 MR. PETERS: I think the next witness is
7 Tracy Cauthon and we had filed a motion in limine
8 regarding the proposed testimony.

9 THE COURT: We talked about this. What is
10 your position?

11 MR. MILLER: My position regarding Mr.
12 Cauthon's testimony as to Corry Colinka coming into
13 the house and in the presence of **Frank** Sheppard and
14 expressing concern about some blasting caps, dynamite,
15 words to that effect, in the truck of his car. And
16 **Frank** Sheppard's response, his very overt reaction to
17 that, that is relevant. It goes to the knowledge and
18 their intent they went to the site, even though this
19 happened after the explosion, one of their intentions
20 going to that site was to steal dynamite and
21 explosives. It goes to **Frank** Sheppard's knowledge
22 concerning explosives. It goes to their intent. We
23 have had witnesses testify about their intentions to
24 go and others will testify. Some of the admissions
25 against interest are that they went there to steal

1164

1 explosives.

2 THE COURT: Now is your testimony going to
3 characterize or describe **Frank** Sheppard's reaction to
4 that?

5 MR. MILLER: In the presence of Mr. Cauthon,
6 after Corry Colinka makes the statements they are
7 after me; they are out in the truck, or words to that
8 effect, **Frank** Sheppard gets very nervous, jumps up on
9 the couch. He is drawing the curtains, going around
10 the room and then Darlene Edwards tries to calm him
11 down, calm down, we have to talk about your grand
12 jury testimony. That is the next sequence then, to
13 calm him down. And then the third thing about Mr.
14 Cauthon's testimony, **Frank** Sheppard tells him about
15 six months later, if you say something about what you
16 saw or heard, we will get you; you could be hurt.
17 Another threat, in other words. I don't want to quote
18 what Mr. Cauthon will say. He hasn't testified yet.

19 THE COURT: All right. Mr. Peters.

20 MR. PETERS: Your Honor, I think that is a
21 fair statement of the extent of Mr. Cauthon's testimony
22 which is Mr. Miller wants to introduce this for the
23 purpose of showing motive or knowledge of my client on
24 the explosion that happened four months before. But the
25 way he wants to do that is Corry Colinka comes to the

1 house and says the police are after me because I, Corry
2 Colinka, have dynamite in my truck and my client's
3 reaction is to get up and close the blinds. It doesn't
4 move, -- as the Court is aware, what we are after is
5 ascertainment of the truth -- it doesn't move the jury
6 anywhere toward the dynamite was taken from the site
7 that my client was concerned about being linked to
8 dynamite from the site.

9 THE COURT: Except he is nervous about
10 dynamite after the occasion.

11 MR. PETERS: Exactly and no dynamite was
12 taken from the site. For example, if Corry Colinka had
13 come in and said the cops are after me because I stole
14 the car and my client got up and stole the car, the
15 same argument would apply. No car was stolen from the
16 site. There was no dynamite stolen from the site. And
17 the dynamite Corry Colinka is talking about isn't
18 attributed to my client. Corry Colinka is concerned
19 about the police stopping him with dynamite.

20 THE COURT: One of the things that worries me
21 is your characterizing of your testimony that he was
22 very nervous after this was said. That is pretty much
23 the quintessence of a conclusion, it seems to me, or
24 opinion. Maybe nervous to me is not nervous to Mr.
25 Peters.

1 MR. MILLER: He is going to describe what Mr.
2 Sheppard did. And Mr. Sheppard at first was sitting
3 down and Colinka pulls him aside and tells him this.
4 Then he jumps up on the couch. He is drawing the
5 curtains in an instant. He actually fell off the couch
6 and landed on the floor trying to do this and became
7 very upset about this. He uses the words "lost it" and
8 then it is Darlene Edwards who is calming -- apparently
9 he is so upset over this she is calming him down to say
10 we have to sit down and get our grand jury testimony
11 straight; it's within four months. and the example
12 about the car is not that good an example because we
13 are still talking about explosives.

14 THE COURT: I am concerned enough about that
15 that if there is an objection to that line of testimony
16 I believe I would sustain that. Does this man testify
17 to anything else?

18 MR. MILLER: Yes, he testifies he hears
19 Darlene Edwards after this, after the Colinka
20 statement, calming him down and saying the words, we
21 have to get our grand jury testimony straight. This is
22 before the state grand jury. And five to six months
23 later he is threatened by **Frank** Sheppard to remain
24 quiet about what he heard over there.

25 THE COURT: I am not going to admit just the

1167

1 first part, just the testimony about the dynamite and
2 his being nervous. The rest of what you say you have
3 you may use.

4 MR. PETERS: Just for the record, there is no
5 statement or suggestion by Tracy Cauthon that Darlene
6 Edwards or **Frank** Sheppard made any statement about we
7 need to lie to the grand jury or we need to deceive the
8 grand jury. That is the first point. So it is
9 uncharged conduct that isn't even misconduct. There is
10 nothing wrong in saying to a lay witness we need to get
11 our stories straight before we go into court. That is
12 what attorneys are doing with clients all the time.

13 THE COURT: There is nothing wrong with the
14 trier of fact hearing that is said for whatever it is
15 worth.

16 MR. PETERS: The second point is -

17 THE COURT: I don't accept your attribution
18 of total angelic innocence with the use of a phrase
19 like that.

20 MR. PETERS: Does it matter the grand jury
21 they are talking about is the state grand jury and not
22 in any way connected with this case.

23 THE COURT: But it is connected with this
24 case.

25 MR. PETERS: My client wasn't indicted.

1168

1 THE COURT: Well, I mean was he connected to
2 this event?

3 MR. PETERS: Just to give me guidance, how I
4 will bring out my client was never indicted, charged,
5 no arrest, no suspicion of testifying falsely before
6 the grand jury. We have no transcripts of his
7 testimony. In other words, it is laying something out
8 there, as the Court is correct, it is laying out it is
9 open to interpretation whether they did something
10 wrong, but there is no evidence from any source what
11 soever they, in fact, did anything wrong. So it is
12 making the jury speculate there is something improper
13 for two people who are going before the grand jury
14 saying what are you going to say before the grand jury
15 and, as far as I am aware, there is no prohibition
16 against the lay witnesses saying I thought the light
17 was red; no. Well, let's get our stories straight.

18 THE COURT: What do you mean by this, "let's
19 get our stories straight." You change your testimony,
20 is that it?

21 MR. PETERS: If they said you change your
22 testimony.

23 THE COURT: What do they mean, "get our
24 stories straight". If somebody says it was red; no
25 and somebody says let's get our stories straight,

1169

1 somebody has to change.

2 MR. PETERS: I believe what you are saying,
3 if you had some other initiative getting stories
4 straight; you change yours or I will change mine or
5 let's fabricate in some way. But all that was heard
6 was "Let's get our stories straight" and the
7 interpretation you are assuming is what I think
8 anybody would naturally assume but until you have some
9 sort of nexus of a lie to the grand jury or the
10 example you gave, if they said I am going to say we
11 were home at ten; you tell them we were home at ten
12 also, then I agree it would come in. But what we have
13 now is just a statement by itself which I would view
14 as irrelevant and immaterial.

15 THE COURT: Okay. I think I have indicated
16 how I am going to deal with that.

17 We are going to need to talk at the
18 conclusion of the testimony today about
19 everybody's interpretation of this somewhat
20 modified ruling Judge Bartlett made as to
21 disclosure of the witnesses in the future. There
22 seems to be some confusion what was intended by
23 Judge Bartlett's revision of that rule and all we
24 need to do is just get it straight what it means.

25 (The jury enters the courtroom.)

1 THE COURT: You all have a seat. Sorry to
2 keep you waiting but we have been working on some legal
3 problems out here.

4 I am going to going to instruct you now
5 -- and these are one of the interim trial time
6 instructions that I mentioned would be coming up
7 from time to time at the beginning of the case.

8 You have heard testimony from Jerry
9 Rooks and will probably or may let's say hear
10 testimony from other witnesses at later times in
11 this trial about things said which one of the
12 defendants in this instance, **Frank** Sheppard. You
13 may consider the statement of **Frank** Sheppard only
14 in the case against him and not in the case
15 against the other defendants.

16 What that means is that you may consider
17 the defendant **Frank** Sheppard's statement in the
18 case against him and for that purpose rely on it
19 as much or as little as you think proper. But you
20 may not consider or discuss that statement in any
21 way when you are deciding if the government has
22 proved beyond a reasonable doubt its case against
23 the other defendants.

24 In the summation instructions, I may
25 give that again. I may give it in somewhat

1 modified form but that is the instruction which
2 you should be governed at this time in considering
3 testimony such as that.

4 All right. Let's proceed.

5 MR. MILLER: The government calls Tracy
6 Cauthon.

7 TRACY CAUTHON,

8 having been sworn, testified:

9 DIRECT EXAMINATION

10 BY MR. MILLER:

11 Q Would you tell the court and jury your name, please.

12 A: Tracy Cauthon.

13 Q How old are you, Mr. Cauthon?

14 A: Twenty-six.

15 Q Are you married?

16 A: Yes, I am.

17 Q Do you have any criminal convictions? By that I mean
18 felonies or misdemeanors in state or federal court.

19 A: yes, I do.

20 Q Would you tell us what those are.

21 A: Forgery and burglary.

22 Q What year were you convicted of forgery?

23 A: I believe it was back in '87 and '88. or '87 and '88.
24 I really can't recall.

25 Q What sentence did you receive for the forgery?

1 A: One to two.

2 Q And what sentence did you receive for the burglary?

3 A: A one to five.

4 Q Are you currently on parole or probation?

5 A: No, I am not.

6 Q I want to go to November 29, 1988. Did you hear the
7 explosion that caused the death of the six
8 firefighters?

9 A: No.

10 Q Where were you living at that time?

11 A: I believe I was in Paola or Osowatomie.

12 Q Do you remember the explosion that killed the six
13 firefighters?

14 A: I heard something about it on TV.

15 Q What you heard on TV, did it mention any names?

16 A: No.

17 Q Did you see an episode of Unsolved Mysteries about it?

18 A: yes, I did.

19 Q In that episode did it mention any names?

20 A: I do not recall.

21 Q Do you know a Mr. **Frank** Sheppard?

22 A: Yes, I do.

23 Q Do you see him in the courtroom today?

24 A: Yes, I do.

25 Q And is he the gentleman standing now?

1 A: Yes.

2 Q Did you know the defendant **Frank** Sheppard in November
3 of '88?

4 A: Yes.

5 Q I want to go ow to March of 1989 and where did you
6 live, do you remember?

7 A: No, I do not. I was between the city and Paola.

8 Q In March of 1989 were you ever in Kansas City?

9 A: yes.

10 Q and in March of '89 did you meet Mr. **Frank** Sheppard?

11 A: Yes.

12 Q Do you remember where?

13 A: At his house.

14 Q Show you Government's Exhibits 323 and 324, what are
15 those?

16 A: This is where they used to live, in this house right
17 here. And this is a full picture of it.

18 Q Do both of these pictures, Government's Exhibits 323
19 and 324, give a fair and accurate representation of
20 their house?

21 A: Yes.

22 MR. MILLER: Your Honor, I offer at this time
23 Government's Exhibits 323 and 324.

24 MR. PETERS: Subject to being further
25 clarified, I have an objection. Those photographs were

1 not taken in 1989 to the best of my knowledge.

2 THE COURT: Do you have any indication they
3 do not appropriately or properly represent the
4 condition of the property at the time we are thinking
5 about here?

6 MR. PETERS: Yes.

7 THE COURT: In other words, that is the
8 foundation you are alluding to.

9 MR. PETERS: Yes. Could we approach.

10 THE COURT: Yes.

11 (Hearing outside the hearing of the jury.)

12 MR. MILLER: I am going to clear up the house
13 didn't look that run-down. It's grown up now.

14 MR. PETERS: I am not trying to delay. I
15 don't care that's generally what it looks like. It's
16 run-down. This isn't the testimony of the explosion.
17 It is in the middle of the winter. This is obviously
18 in the middle of the winter. I don't object in terms
19 of having him identify that is the address and that
20 sort of thing but it was the way the question was
21 asked, is this a fair and accurate photograph of the
22 way it looked like. And he said yes. i don't believe
23 it is fair and accurate.

24 Mr. Miller told me he would further
25 clarify. With further clarification I wouldn't

1 object.

2 MR. MILLER: That is what I told him I would
3 do.

4 MR. OSGOOD: This is the house she looked
5 down the street and saw the defendant's truck.

6 MR. MILLER: This is **Frank** and Darlene's
7 house that Tracy Cauthon was in, the white house.

8 MR. OSGOOD: Is the house that TS with the
9 Street Richard Brown lives in?

10 MR. MILLER: You have got me.

11 MR. BECKER: It is not on a corner but, yes,
12 it's on there, that street ends on Brooklyn.

13 MR. OSGOOD: Do you have testimony someone
14 stood in front of this house that Darlene looked down
15 the street.

16 MR. BECKER: That is Darlene's testimony but
17 she is not on the government's witness list.

18 MR. OSGOOD: I don't object to it.

19 (Proceedings in the hearing of the jury.)

20 THE COURT: Are you going to do some more
21 foundation for that?

22 MR. MILLER: Yes.

23 Q These pictures here, the house was in much better shape
24 back when you were there.

25 A: Yes, it was.

1176

1 Q This picture obviously with the green growth, when you
2 were there was it still kind of spring-looking, fall
3 looking?

4 A: It was summertime, yes.

5 Q But the house was in much better condition and the yard
6 was in much better shape.

7 A: Yes, it was.

8 THE COURT: With that additional foundation,
9 Exhibits 323 and 324 are admitted.
10 (PLAINTIFF'S EXHIBIT NOS. 323 AND 324 WERE RECEIVED IN
11 EVIDENCE.)

12 Q Can you see that on the screen there?

13 A: Yes.

14 Q As we said, the house back then was in much better
15 condition. Is this the house you met **Frank** Sheppard
16 in?

17 A: Yes.

18 Q and the same picture here, not so much of the house,
19 again is this the house you met **Frank** Sheppard in?

20 A: Yes.

21 Q Do you know Darlene Edwards?

22 A: Yes.

23 Q Back then did you know her as Darlene Clark or Darlene
24 Edwards?

25 A: I just know her as Darlene.

1 Q Do you see her in the courtroom today?

2 A: Yes, I do.

3 Q Can you point her out for the jury.

4 A: Right there (indicating).

5 Q The lady who is standing now.

6 A: Yes.

7 Q When you were in the room with Darlene Edwards and
8 defendant **Frank** Sheppard what did you over hear Darlene
9 Edwards say to **Frank** Sheppard regarding the grand jury?

10 A: She was calming him down and she told him they needed
11 to get their stories straight for the following
12 morning. they had grand jury the following morning.

13 Q Did you ever see **Frank** Sheppard again after that
14 meeting at their house?

15 A: Yes, I did.

16 Q Do you remember when?

17 A: No, I don't. It was sometime afterwards.

18 Q Can you give us an idea how much time afterwards.

19 A: Anywhere from six months to a year.

20 Q And where did you see him again?

21 A: I seen him at my brother' house.

22 Q What did **Frank** Sheppard say to you at your brother's
23 house?

24 A: He just told me not to repeat nothing I had heard or
25 seen.

1178

1 Q What threats did he make to you?

2 A: Just he told me that I could be hurt; that **they** had a
3 lot of family.

4 Q Were you arrested in April of 1989?

5 A: I believe so, yes.

6 Q Could you tell the jury what you were arrested for.

7 A: I was arrested for forgery.

8 Q And were you interviewed by the Kansas City, Missouri
9 Police Department?

10 A: Yes, I was.

11 Q And is it at that time you came forward with this
12 information?

13 A: Yes, it was.

14 Q And did you mention anything in that statement to the
15 police about a reward, reward money?

16 A: Yes, I did.

17 Q And did you mention that as one of the reasons to give
18 testimony.

19 A: yes, one of the reasons.

20 Q What was the other reason?

21 A: To get out of some trouble I was in.

22 MR. MILLER: That is all I have of this
23 witness.

24 THE COURT: Okay. Mr. Peters.

25 MR. PETERS: Thank you, Judge.

1

2 BY MR. PETERS:

3 Q Mr. Cauthon, my name is Pat Peters and I represent
4 **Frank** Sheppard. I just want to ask you a few
5 questions. First, don't you have two convictions in
6 Kansas and one in Missouri?

7 A: Yes, I do.

8 Q So you actually have three felony convictions.

9 A: Two ran concurrent.

10 Q But you have three felony convictions.

11 A: Yes, I do.

12 Q And what are the two in Kansas for?

13 A: One was for forgery. The other was for burglary,
14 theft.

15 Q What is the one in Missouri for?

16 A: Forgery.

17 Q When you were at the Sheppard house you testified you
18 heard Darlene Edwards say that -- what did you hear
19 Darlene Edwards say?

20 A: I heard her, she was calming down **Frank** and had **Frank**
21 sit down. And she told him to calm down so they could
22 get their stories straight for the grand jury the next
23 day.

24 Q You didn't hear her say anything about you need to lie
25 to the grand jury.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A: No.

Q We need to be untruthful to the grand jury, you didn't hear that.

A: No, I did not.

Q Did you review your testimony with anyone before coming here today?

A: Yes, I did.

Q Now, this is all taking place in March of 1989, is that correct?

A: Yes.

Q And did you know then or have you since learned the grand jury that you are talking about was a state grand jury as opposed to a federal grand jury?

A: No, I didn't know that.

Q And you testified on direct examination that the reason you came forward was for two things. One was the 550,000 reward and the other was to see if they could help you get out of trouble, is that correct?

A: Yes.

Q How did you want them to see if they could help you get out of trouble?

A: On the forgery, perhaps if I gave my testimony perhaps they could get me out of trouble I was in at the time.

Q And it's your testimony you are now not on parole or probation.

1 A: No, I am not.

2 MR. PETERS: I have no further questions,
3 Judge.

4 MS. HUNT: No questions.

5 MR. BUNCH: No questions, Your Honor.

6 MR. OSGOOD: I don't have any.

7 THE COURT: Redirect.

8 MR. MILLER: Yes.

9 REDIRECT EXAMINATION

10 BY MR. MILLER:

11 Q Did you get any help on your cases?

12 A: No, I did not.

13 Q Did you get any reward money?

14 A: No, I did not.

15 Q Did you get any promises from Mr. Becker or me?

16 A: No, I did not.

17 MR. MILLER: Nothing further.

18 MR. PETERS: Your Honor, I have a very brief
19 one following the Redirect Examination.

20 THE COURT: Make sure you have some factual
21 basis for which you are asking.

22 MR. PETERS: Oh, I will.

23 REXCROSS EXAMINATION

24 BY MR. PETERS:

25 Q You just testified that you haven't gotten any reward

1 money, is that correct?

2 A: That's correct.

3 Q But you also understand that none of the reward money
4 is give out until someone is convicted of the crime.

5 A: Yes, I understand that.

6 MR. PETERS: No further questions.

7 THE COURT: You may step down. Call your
8 next witness.

9 MR. BECKER: The United States calls Gary
10 Fugate.

11 GARY FUGATE.

12 having been sworn, testified:

13 DIRECT EXAMINATION

14 BY MR. BECKER:

15 Q Good afternoon. Please state your name and spell your
16 last name.

17 A: Gary L. Fugate, F-u-g-a-t-e.

18 Q How old are you?

19 A: Forty-eight.

20 Q What do you do for a living?

21 A: Carpenter.

22 Q How long have you been doing that?

23 A: Twenty-three years.

24 Q How log have you lived in Kansas City, Missouri?

25 A: All my life.

1183

1 Q Do you know an individual by the name of **Frank**
2 Sheppard?

3 A: I do.

4 Q How do you know him?

5 A: **Frank** and I knew each other from a bar, the Blue Seven
6 Lounge. We sometimes drove motorcycles together.

7 THE COURT: Did you name it?

8 THE WITNESS: The Blue Seven Lounge. It was
9 on Blue Ridge.

10 Q And you also said you did motorcycle together.

11 A: From time to time.

12 Q How long ago was that?

13 A: The early seventies.

14 Q Do you see **Frank** Sheppard in court today?

15 A: I do.

16 Q Could you tell us what he is wearing? Is he the
17 gentleman standing up now?

18 A: That's right.

19 MR. BECKER: Your Honor, indicating the
20 defendant **Frank** Sheppard.

21 THE COURT: Yes, the record may show that.

22 Q Do you know a woman by the name of Darlene Edwards?

23 A: I do.

24 Q How do you know her?

25 A: She was involved with a relationship with **Frank** at the

1 time I met her.

2 Q Do you see her here in court today?

3 A: Yes.

4 Q And could you just tell us what she is wearing and
5 where she is sitting.

6 A: She is sitting next to the gentleman with the gray
7 hair.

8 MR. BECKER: Indicating Darlene Edwards,
9 your Honor, now standing.

10 THE COURT: Yes.

11 Q How long have you known Darlene Edwards?

12 A: Probably twelve years.

13 Q Going back to the summer of 1989, do you recall an
14 occasion of visiting **Frank** Sheppard and Darlene Edwards
15 at the place where they lived?

16 A: Yes, I do.

17 Q And I want to show you up on the TV screen what is now
18 in evidence as Government's Exhibit 323. Can you see
19 that from where you are sitting.

20 A: Yes, sir.

21 Q Is that the way the house looked in the summer of 1989?

22 A: No, it's not.

23 Q Fair to say we have a few weeds.

24 A: It's in disrepair since that time.

25 Q Do you recall when it was that you visited in the

1185

1 summer of 1989?

2 A: The year or the month?

3 Q Month.

4 A: About mid-summer.

5 Q What were you doing there? Why were you visiting?

6 A: I was there to pick up a quarter gram of meth.

7 THE COURT: What?

8 THE WITNESS: Speed, methamphetamine.

9 Q Tell us what happened when you got there.

10 A: Darlene and **Frank** were living in a tent in the rear of
11 the house because the utilities had been shut off. We
12 went to the back of the house and entered the tent.
13 And at that time I purchased the meth.

14 Q When you went in the back yard, who was in the back
15 yard?

16 A: **Frank** and Darlene. Actually, Darlene met me at the
17 front and **Frank** was in the back.

18 Q This is around back.

19 A: Yes, a driveway leading to the back yard.

20 Q Was this -

21 MR. PETERS: Objection. May we approach?

22 THE COURT: There isn't any question pending
23 now. Ask your next question.

24 MR. PETERS: Judge, this has to do with a
25 previous question and answer elicited.

1 THE COURT: To which there was no objection.

2 MR. O'CONNOR: We believe it is so
3 prejudicial we would like to talk to you about it.

4 (Proceedings out of the hearing of the jury.)

5 MR. PETERS: This is our get-even point.
6 Mr. Becker was late out of the gate with his
7 objection. The question about the buying or selling
8 meth is irrelevant and immaterial to any of the
9 facts going on in this case. We had extensive
10 discussions about these sorts of things in hearings
11 with Judge Bartlett.

12 We were under the impression before
13 irrelevant, immaterial uncharged misconduct would
14 be admitted or asked of a witness we would
15 approach the bench; that both sides agreed that is
16 the procedure that would be followed instead of
17 filing a motion in limine on each and every
18 witness.

19 The buying of meth has absolutely
20 nothing to do with any of the facts at issue in
21 this case and it is extremely prejudicial.

22 MR. BECKER: I think counsel will recall
23 when we had this discussion with Judge Bartlett it was
24 indicated, when we were talking about the circumstances
25 of certain admissions, the who, what, when, where and

1187

1 why were relevant questions and admissible questions.

2 It was brought up in the context of jail
3 house statements, and the court instructed me we
4 are not going to get into why; for example, why
5 **Frank** Sheppard was in jail on that particular
6 occasion but that we could go into the where did
7 this conversation take place. The what, where and
8 why and that is all I am doing. This is why he
9 went to visit **Frank** and Darlene that day.

10 MR. PETERS: Using Mr. Becker's example,
11 this is a portion of a hearing in front of Judge
12 Bartlett that we asked be transcribed so we would
13 know what the parameters were.

14 I don't object to him saying he went to
15 a tent. I think that is appropriate, but saying
16 he went to a tent because the utilities had been
17 shut off, I had been led to believe that wouldn't
18 be something that is being talked about.

19 MR. BECKER: I didn't realize that was
20 the objection, about the utilities.

21 MR. PETERS: I wasn't finished. And then
22 to say he went there to buy meth goes directly against
23 what we had been led to believe the parameters were in
24 terms of the scope of direct examination.

25 If we had filed a motion in limine with

1 the court, I would suggest you wouldn't allow
2 examination of it because them buying meth is
3 unconnected with this case in any way whatsoever.
4 It is only evidence of uncharged misconduct, other
5 crimes not charged. It doesn't add to the weight
6 of the testimony. It doesn't do anything other
7 than prejudice the defendants and I would move for
8 a mistrial.

9 MR. BUNCH: There was a brief hearing on a
10 motion in limine I filed and it had to do with this
11 on behalf of Darlene Edwards, but the conclusion of
12 that hearing was simply, one, it was advisory in
13 nature. There really wasn't any way, Judge Stevens,
14 to go through a hundred -- well, I am not saying all
15 of them do that but a number of witnesses -- and deal
16 individually with motions in limine. I plead guilty
17 to being too late to object but I join in Mr. Peters'
18 request.

19 MR. PETERS: I apologize for being late but
20 it goes directly to why we haven't literally buried
21 the Court with motions in limine, is what we were told
22 and I apologize for not having the excerpt from Judge
23 Bartlett but this is clearly irrelevant and immaterial.
24 And those are the words from Judge Bartlett, and before
25 we were to get into anything having to do with that we

1189

1 were supposed to approach the bench.

2 So now, in a direct question asked by
3 the government, yes, I was buying dope from your
4 client, from Darlene and **Frank** Sheppard. It has
5 no bearing on the explosion.

6 Again, if we had buried the Court with
7 motions in limine on these sorts of things on each
8 witness, I think we would have had protection. We
9 thought we had protection based on the
10 conversation with Judge Bartlett.

11 MR. BECKER: I'm sorry to say that very
12 much mischaracterizes the earlier rulings of the Court.
13 And then to say, oh, we should have buried the Court
14 with in limine motions, this material is in the grand
15 jury transcripts Mr. Peters has brought to the bench.
16 This material is no surprise to anyone. If he had a
17 problem with it, he was fully capable of filing a
18 motion in limine on Tracy Cauthon. And this is fully
19 relevant. It gives context to the conversation of why
20 he is there and why these people admit participation in
21 a heinous crime.

22 THE COURT: Well, there have been several
23 references to use of or exposure to addictive
24 substances, legal or illegal, by this group and during
25 this time. I don't think this one reference to meth is

1190

1 that prejudicial. It probably shouldn't be testified
2 to.

3 Now, the question becomes whether it is
4 the kind of thing which is exacerbated by making
5 reference to it or not, and I will be guided by
6 your recommendations on that.

7 MR. BECKER: In order to explain why it is
8 these witnesses are meeting with particularly **Frank**
9 and Darlene, **Frank** Sheppard and Darlene Edwards, the
10 witnesses are going to say why they were over there
11 visiting. And for the most part they are there to
12 either consume **drugs** or purchase **drugs**, or both, with
13 these defendants.

14 THE COURT: You are saying that is generally
15 true and this is not just a discreet single instance of
16 that being the case.

17 MR. BECKER: yes. So that it gives context
18 to all of these conversations. If it was the Fuller
19 Brush man who was visiting, it would be one thing, but
20 it's not. It is people who are engaged in illegal
21 conduct and thus the admission becomes much more
22 believable in that context.

23 MR. PETERS: My concern is exactly what Mr.
24 Becker said. The reason he wants it in, it makes the
25 testimony more believable. It bolsters the credibility

1191

1 of the witness because the defendants are bad people.

2 MR. BECKER: I didn't say that.

3 THE COURT: Witnesses, I think, need to be
4 able to explain why they are where they are or why they
5 are doing what they are doing, not just pull it out of
6 the air and pop them in front of the jury and here it
7 is.

8 MR. PETERS: Isn't it to be balanced, the
9 prejudicial effect versus the probative value?

10 THE COURT: I don't think the effect is all
11 that prejudicial. I mean let's face it, you are not
12 dealing with members of the Church of Jesus Christ of
13 Latter Day Saints in this trial.

14 Now what is the answer to my question,
15 whether you want it mentioned. Do you want me to
16 strike it?

17 MR. PETERS: Yes. And for the record, the
18 reason I would, we are now in the third week of trial.

19 THE COURT: Second week.

20 MR. PETERS: Second week of testimony. And
21 this is the first witness to say our clients are
22 involved with **drugs**.

23 MR. BECKER: No, no. Mr. O'Connor got up
24 on voir dire and told them.

25 THE COURT: I think this is harmless because

1 it has come in so many ways already. No surprise to
2 any of them.

3 MR. PETERS: This is no surprise to the court
4 or the parties but this is the first witness to be
5 elicited testimony of **drug** involvement of these
6 defendants.

7 THE COURT: I don't think so. I can't quote
8 book, chapter and verse specific to you but I don't
9 think so. I think there was reference to meth before.
10 I am sure there was reference to marijuana before and
11 excessive drinking. I don't think you need to worry
12 about this reputation being sullied.

13 MR. PETERS: To complete my record, I would
14 ask that you instruct the jury to disregard that
15 testimony. And after you do that I am technically
16 supposed to ask for a mistrial. I would ask for it to
17 be continuing. And I understand you are overruling the
18 mistrial, to protect my record. But I would ask the
19 Court to instruct the jury to disregard that testimony.

20 MR. BECKER: I would state, Judge, the matter
21 came in without objection and also I further believe
22 also a proper context of what will in a few moments
23 hopefully be an admission by one or more of the
24 defendants.

25 THE COURT: I think the instructing as to it

1 would far outweigh the prejudice that might have been
2 done by the single instance testimony so I am going to
3 let the record stand as it is.

4 MR. OSGOOD: I think one of the things that
5 needs to be noted on the record, Mr. Becker's theory
6 of the prosecution and in his opening statement he
7 said they were stealing items up there to sell to
8 purchase **drugs**, implying they were **drug** users, not **drug**
9 dealers. I never expected and don't expect he is going
10 to elicit testimony my defendant is a **drug** dealer.

11 MR. BECKER: John, you don't have a dog in
12 this fight.

13 MR. OSGOOD: I do to the extent of the bleed
14 over. I object to testimony on behalf of Mr. Brown
15 as to **drug** seller. We haven't said anything about
16 users because there is testimony of using.

17 I think the Court has to distinguish
18 between acts of selling, which is a felony, which
19 I believe the Court did with one witness, versus
20 the act of smoking marijuana which is a
21 misdemeanor use. We just had that.

22 THE COURT: That is overruled.

23 MR. PETERS: So I understand, the Court has
24 held it was improper but you aren't going to instruct
25 the jury so that is something that can't be argued by

1194

1 the government in closing. In other words, the
2 testimony is not part of the evidence, but you aren't
3 going to instruct the jury for fear it would draw undue
4 notice to it.

5 THE COURT: I think it could exacerbate or
6 exaggerate the significance of that one statement "We
7 went there to buy meth" and I am not am not making any
8 bright light rule on the use of it in the future and I
9 am certainly not going to say it is improper but I am
10 just going to ignore it. I don't believe it is
11 erroneously prejudicial, I will put it that way.

12 (Proceedings in the hearing of the jury.)

13 Q Mr. Fugate, so you are in the back yard at **Frank**
14 Sheppard and Darlene's house. Do you go inside the
15 tent?

16 A: yes, we do.

17 Q Did you have a conversation with the defendants **Frank**
18 Sheppard and Darlene Edwards in the tent?

19 A: yes.

20 Q Please tell us about the conversation.

21 A: Darlene began to talk about some things they had been
22 doing with regard to getting access to a warehouse the
23 night before.

24 Q The subject of the explosion that killed the
25 firefighters, did that come up?

1 A: yes, it did.

2 Q now did it come up?

3 A: Darlene just began to discuss some activities **they** were
4 involved in. And **Frank**, in fact, did tell me that **they**
5 had been on the site and that he was attempting to gain
6 access to one of the buildings and the bottom line was
7 he could not gain access, he set it on fire and he got
8 spoofed because he saw headlights coming off the road.

9 Q Now could you describe the scene to us, please. Where
10 were you sitting and the two defendants, where were
11 they sitting?

12 A: Basically I am in the middle of the tent and they are
13 on either side of me.

14 Q This is a big tent or a small tent, what does it look
15 like?

16 A: Perhaps -

17 Q Is it fair to say you are within arm's reach of each
18 other?

19 A: Yes.

20 Q And did **Frank** Sheppard or Darlene Edwards say what they
21 were doing up at that site?

22 A: **They** were attempting to get construction equipment to
23 resell it.

24 Q What was the purpose of reselling it?

25 MR. PETERS: Objection, Your Honor.

1196

1 Q Did **they** tell you what the purpose was of stealing
2 construction equipment?

3 THE COURT: Who is "**they**"?

4 Q **Frank** Sheppard and Darlene Edwards, did either or both
5 of them tell you why **they** wanted to steal construction
6 equipment?

7 A: Yes.

8 Q Why was that?

9 A: For the purchase of **drugs**.

10 Q Which one told you that?

11 A: **Frank**.

12 Q Did **Frank** Sheppard or Darlene Edwards discuss, you
13 mentioned a warehouse, what was said about that and by
14 whom?

15 A: Darlene did most of the talking in the conversation.

16 MR. PETERS: Objection. Relevance.

17 THE COURT: I am sorry, what was the
18 question, Mr. Becker.

19 MR. BECKER: Did **Frank** Sheppard or Darlene
20 Edwards mention -

21 Q You mentioned earlier a warehouse.

22 A: Correct.

23 MR. PETERS: Objection. Relevance.

24 THE COURT: I don't know what the question
25 is. Finish your question please, and then don't

1 answer.

2 Q What was said about the warehouse?

3 TuE COURT: How is that relevant?

4 MR. BECKER: I can tell you exactly. I guess
5 I better do it at the bench.

6 (Proceedings out of the hearing of the jury.)

7 MR. BECKER: He will testify that Darlene
8 Edwards said the day before the explosion **they**
9 attempted to get into a warehouse and steal
10 televisions; **they** were unsuccessful. So the next day
11 **they** went out to the construction site to get
12 construction equipment to steal and get money.

13 MR. PETERS: My objection is relevance. It
14 is uncharged misconduct, unrelated to the instant
15 case.

16 THE COURT: He says it is not unrelated. He
17 says it is related, the unsuccessful effort the day
18 before the robbery, **they** had to make this effort.

19 MR. BUNCH: If that is in the report, I
20 haven't seen it.

21 MR. BECKER: It's in the statements in the
22 grand jury room.

23 MR. PETERS: The nexus being the reason they
24 went to the construction site because they didn't
25 succeed the night before is an inference drawn by this

1198

1 witness.

2 MR. BECKER: No, it is what he was told.

3 THE COURT: I am going to let him testify.

4 (Proceedings in the hearing of the jury.)

5 Q Mr. Fugate, did Darlene Edwards say anything about a
6 warehouse?

7 A: yes, she did.

8 Q What did she say?

9 A: She said specifically that the night before they had
10 gone out and attempted to steal what I understood were
11 some televisions and weren't successful.

12 MR. OSGOOD: I object to the use of the word
13 "they", a date and time.

14 THE COURT: Be specific as to what she said
15 and as to who she was talking about, please.

16 A: She and **Frank** and another party. Should I mention her
17 name?

18 Q No. You can talk about who was present in the tent.

19 A: Okay, Darlene and **Frank** were present in the tent when
20 it was being discussed.

21 Q What did Darlene Edwards say about the warehouse?

22 A: They attempted to gain -- "they", meaning **Frank**
23 specifically -- had attempted to gain access to a
24 warehouse for the purpose of stealing televisions.

25 Q Did Darlene Edwards say whether that was successful?

1 A: She said it was not very successful. I think, as I
2 recall, I believe it was two TVs from what I recall.

3 Q Did that then lead into a discussion of going to the
4 construction site.

5 A: Immediately after.

6 Q Did **Frank** Sheppard or Darlene Edwards talk about what
7 happened at the construction site?

8 A: **Frank** said that they had gained access to, I believe it
9 was one or more buildings, I don't recall exactly.
10 They were successful at getting some devices which I do
11 not recall specifically what the devices were. One
12 trailer in particular he wanted to get into and used a
13 crowbar. He said he tried a crowbar and was unable to
14 get into it. He became angry and set it on fire.
15 There were headlights coming up, he assumed it was the
16 police, and he left the scene.

17 Q Did **Frank** Sheppard tell you where he went?

18 A: Specifically, I cannot tell you from there. I
19 understood he was standing on the crest of a hill when
20 it ignited.

21 Q Is that what **Frank** Sheppard told you?

22 A: Yes. I assumed he was standing on the crest of a hill.

23 Q When did you come forward with this information?

24 A: I am a CI for ATE and the Jackson County **Drug** Task
25 Force and specifically one of the operatives that I

1200

1 have been working with over the course of the last two
2 and a half years I brought it to his attention.

3 Q What is his name?

4 A: Ron Getty.

5 Q That's an ATF agent.

6 A: Yes.

7 Q Have you sought any reward for this information?

8 A: No.

9 MR. BECKER: I have no further questions at
10 this time, Judge.

11 THE COURT: All right. Mr. Bunch.

12 CROSS EXAMINATION

13 BY MR. BUNCH:

14 Q Mr. Fugate, my name is Will Bunch and I represent
15 Darlene Edwards. This conversation about what you have
16 testified occurred in the summer of 1989.

17 A: yes, sir.

18 Q And you say Miss Edwards and Mr. Sheppard were living
19 in a tent.

20 A: Yes, sir.

21 Q Did they tell you why they were living in a tent?

22 A: They had indicated to me that the utilities had been
23 shut off and it was cooler living outside because of
24 the mid-summer heat.

25 Q Their circumstances were such they could not afford to

1201

1 pay the electric bill, is that it?

2 A: I am not completely aware what their financial
3 circumstances were but I assumed that's what it was.

4 Q Was this tent stocked with anything? Could you live in
5 it without utilizing the house; it appeared it had been
6 utilized for some time or how would you describe that
7 for us.

8 A: It appeared they had been living in it for sometime.
9 As I recall, there was a small rack similar to
10 something you would typically go camping with,
11 approximately 16 inches off the ground. As I recall,
12 there were some food items and I believe a bed roll.

13 Q And you had gone there you said because you wanted to
14 buy some methamphetamine.

15 A: That's correct.

16 Q And you purchased this methamphetamine, did you, from
17 them as they were living in this tent.

18 A: yes, sir.

19 Q What did you pay for it?

20 A: Twenty-five dollars.

21 Q How much did you get?

22 A: A quarter pound.

23 Q And is it your testimony then or may I ask you, was
24 that for your own use?

25 A: We split it three ways.

1202

1 Q You bought it and then you divided it among the three
2 of you.

3 A: That's correct.

4 Q Because of why?

5 A: Social, I suppose. The only thing, I liked it at that
6 time.

7 Q Was that your usual manner in dealing with your **drug**
8 purchases to participate as a purchaser with the people
9 from whom you purchased?

10 A: Not typical.

11 Q What did you typically do?

12 A: I typically went home.

13 Q Used it yourself.

14 A: Yes, sir.

15 Q What was the quality of this speed you purchased,
16 that's the street name for it, isn't it, speed?

17 A: I am not a pharmacologist. I couldn't tell you what
18 the purity of it was.

19 Q You were out purchasing methamphetamine and you never
20 heard the word speed when you were buying from people?

21 A: I have heard it called several different things.

22 Q Such as?

23 A: Oh, some of the things I probably couldn't repeat here.

24 Q I am asking you to.

25 A: Speed, yeah, typically called speed.

1203

1 Q What was the quality of this speed?

2 A: As compared to?

3 Q The usual quality purchased from other folks.

4 A: I would say about average.

5 Q How did you administer the use of this speed?

6 A: It was ingested through a straw.

7 Q Then was it then after you had used the speed you were
8 using the speed you got into discussion -

9 A: The discussion -

10 Q Would you be kind enough to let me finish the question.
11 Thank you, sir. -- That you got into a discussion with
12 **Frank** and with Darlene about the explosion.

13 A: No, actually the conversation began prior to that.

14 Q And how did it come up?

15 A: Darlene began to talk about it.

16 Q What did she say?

17 A: As I stated before, she stated they had not been
18 successful in gaining access to a warehouse and only
19 got a couple of TVs the night before and went on from
20 there about the activities that were going on.

21 Q What were the activities? Tell us in detail what she
22 said.

23 A: Well, actually **Frank** broke in at that point and took
24 the conversation over, stating that he had been on the
25 site and that he had gained access to either one or

1204

1 more other buildings on that site and that he had
2 become angry because he was unable to gain access to a
3 particular trailer and that he set it on fire and that
4 he noted the headlights coming up from the road, which
5 road he did not say, but he assumed it was the police
6 and he left and went and hid to see what was going on.

7 Q So it was Miss Edwards who said we didn't have much
8 luck breaking into this warehouse, we only got a couple
9 of TVs.

10 A: Right.

11 Q Where was that supposed to have been?

12 A: I don't know. If they told me, I didn't particularly -
13 - I wasn't interested in where it was taking place.

14 Q But the gist of this conversation, as I understand it,
15 was look here, we didn't have much luck getting a
16 couple of TVs out of the warehouse so we went up on the
17 hill and blew up six firemen, is that how the whole
18 thing developed?

19 A: No, I wasn't saying **they** blew up the firemen. What I
20 am saying **they** were on the site and **Frank** set the fire
21 to the trailer which did blow up the firemen.

22 Q I know but the progress of the conversation was one in
23 which for reasons perhaps you could tell us, that Mrs.
24 Edwards said, look, we tried to get into this warehouse
25 and we only got two TVs. So then we went out and blew

1205

1 up the firemen, the net result was that, wasn't it, Mr.
2 Eugate.

3 A: Basically.

4 Q Can you tell us why it is she and Mr. Sheppard would
5 tell you this in that fashion?

6 A: I think that they had a life style they were into at
7 that particular time it didn't occur to them very
8 seriously, I guess.

9 Q You had a long-time knowledge of those two individuals.

10 A: Yes.

11 Q They were friends of yours.

12 A: They were acquaintances.

13 Q And was your association with them as a result of the
14 **drug** culture?

15 A: Yes, it was.

16 Q Now, when Mr. Sheppard was talking to you about this,
17 you say he said he had been up to the construction site
18 previously.

19 A: That particular evening the explosion occurred was the
20 night he was referring to.

21 Q Not that he had been up there prior to that time.

22 A: He did not say anything about that that I recall.

23 Q And when he was up there that night there were some
24 buildings, one or two buildings, is it, he had located.

25 A: It's my understanding he had gained access to one or

1206

1 more.

2 Q What kind of buildings were they?

3 A: I am assuming they were tool sheds. I think there was
4 a saw they got, like a concrete saw or something.

5 Q You saw that, did you?

6 A: No, sir, I didn't see it. That's what he told me.

7 Q He told you we found one or two tool sheds, we broke
8 into them.

9 A: He didn't say specifically tool shed. He said, as I
10 recall, "sheds .

11 Q And you assumed they were tool sheds because he later
12 told you he had obtained at least a tool from one of
13 them.

14 A: Yes, I believe so.

15 Q And anything else he got?

16 A: No, not that I recall.

17 Q How is it he gained entry into these sheds?

18 A: My understanding, a crow bar is what he told me.

19 Q Was there a padlock or any detail about how he got into
20 these sheds?

21 A: He went into detail. I wasn't storing information.

22 Q Was it difficult to store information when you were
23 sipping this speed through a straw?

24 A: I don't know that it would have made it any easier or
25 any harder.

1207

1 Q In any event, you didn't store it.

2 A: Excuse me.

3 Q In any event, you did not store any particulars other
4 than what you are giving us, is that it?

5 A: Sometimes the activity that goes on, you don't want to
6 know about it.

7 Q Well, I am not asking what it is you didn't want to
8 know. I am asking what they told you.

9 A: Sir, I told you already what it is they told me.

10 Q How large were these sheds?

11 A: He did not explain it, the dimensions of either one of
12 the buildings.

13 Q So far as you know, was the only thing obtained a
14 concrete saw?

15 A: If he went into more detail other than a saw, I do not
16 recall specifically what else **they** got.

17 Q You have absolutely no recollection of anything other
18 than a concrete saw.

19 A: No, I do not recall him saying anything other than
20 that.

21 Q And you do not recall Miss Edwards telling you what
22 **they** obtained up on the hill from the construction
23 site.

24 A: No.

25 Q How did they get up there?

1208

1 A: I don't recall how they got up there.

2 Q How did they get back with the loot?

3 A: I don't know.

4 Q Now, you said then for some reason or other that **Frank**
5 became angry.

6 A: Yes, he told me he got angry because there was one
7 building that he wanted to get into he couldn't gain
8 access to it.

9 Q When you mean "gain access" you mean break in.

10 A: To enter the inside, yes.

11 Q And he didn't have a key that you know of.

12 A: Not that I am aware of.

13 Q He didn't have any accomplices up on the hill that you
14 know of.

15 A: There was mention of at least one other party.

16 THE COURT: Don't mention any other party.

17 MR. BUNCH: I won't.

18 Q Did he talk about any employee that he had some
19 association with who assisted him in this endeavor?

20 A: No.

21 Q And since he couldn't get into this shed, as you called
22 it, to gain access to the shed, he set it on fire.

23 A: That's what he told me.

24 Q And I assume -- and you did, too, I suppose -- that it
25 was a shed that could be set on fire; that is that it

1209

1 was combustible material.

2 A: Actually, I didn't give it any thought whether it was
3 combustible. If he said he set it on fire, I assumed
4 it was combustible.

5 Q How did he go about setting this shed of combustible
6 material on fire?

7 A: I don't recall he went into detail how this was
8 accomplished.

9 Q How is it that led to the explosion?

10 A: I am not aware of how that led to the explosion.

11 Q The only thing then that you were told by Mr. Sheppard
12 that he became angry other than what you have talked
13 about in terms of the saw and what-have-you.

14 A: I told you the best of my recollection exactly what he
15 said, there were details given but I don't recall
16 specifically.

17 Q Let me ask you the question again, Mr. Fugate. The
18 only thing he said with respect to the fire is he
19 couldn't get into this shed and couldn't get access so
20 he set the shed on fire.

21 A: That's correct.

22 Q And that's it.

23 A: Yes, sir.

24 Q And you made no inquiry yourself about anything, you
25 were a pleasant listener.

1210

1 A: As I stated previously, sometimes you don't want to
2 know about some of the activities going on.

3 Q The question I asked you, sir, is whether you made any
4 inquiry.

5 A: No, I did not.

6 Q How long is it you spent there in the tent?

7 A: Maybe 20 minutes. It was pretty hot.

8 Q Cooler than the house according to them but pretty hot
9 anyway.

10 A: Yes, it was.

11 Q What time of day was it?

12 A: Mid-afternoon.

13 Q Now did this explosion knock Mr. Sheppard off the hill?

14 A: That's what I understand.

15 Q Tell us about that.

16 A: Well, I understand that he received some back injuries
17 from being rolled down the hill.

18 Q I am asking you what he told you about what happened.

19 A: **Frank** didn't say anything about the injuries.

20 Q Did he tell you when it exploded it knocked him off the
21 hill?

22 A: Yes.

23 Q Did Miss Edwards say she was up there and when it
24 exploded it knocked her off the hill?

25 A: To the best of my recollection, I think Miss Edwards

1 left prior to the explosion.

2 Q Was there any explanation given in that regard?

3 A: I do not fully recall the reason for her leaving prior
4 to that.

5 Q Do you recall why Mr. Sheppard remained?

6 A: It's my understanding from what **Frank** did say, in fact,
7 that he wanted to see who was coming onto the site. He
8 thought it was the police.

9 Q And how were **they** approaching his whereabouts?

10 A: By vehicle. He said he saw the headlights coming off
11 the road. What road he was talking about, I don't

13 Q Who was it he waited to see, who were **they**?

14 A: It was my understanding it was the security company.

15 Q A security cop.

16 A: I believe it was, yes.

17 Q And did he tell you how he knew that?

18 A: I am assuming because of the configuration of the car.

19 Q Your assumption this was a car that resembled a police
20 type automobile.

21 A: Correct.

22 Q And how did you arrive at that assumption?

23 A: How did he arrive at that assumption?

24 Q How did you.

25 A: Because he has told me.

1 Q He told you it was a police-type vehicle coming up.

2 A: Right. He thought it was the police car and I guess
3 him being around to see it was a security guard was my
4 understanding.

5 Q He thought it was a police car because of lights and
6 that kind of thing.

7 A: I am assuming that, yes.

8 Q I am trying, Mr. Fugate, to get you not to assume and
9 ask you what he said. Did he see lights on the vehicle
10 such as one would see on a police car?

11 A: I don't recall him indicating to me the difference
12 between the security car and the police car, but I do
13 recall him saying it was a security vehicle.

14 Q Did he describe in any way any occupants of this
15 security type vehicle?

16 A: He did not.

17 Q Now, was there any other mention at any time by anybody
18 about any other fires that were set or observed by
19 either Miss Edwards or Mr. Sheppard that evening?

20 A: No, sir.

21 Q you also testified from one or more of the buildings
22 devices were obtained, your words, "got devices".

23 A: Specifically, I remember him speaking about a saw of
24 some kind.

25 Q Any other devices?

1 A: I do not recall.

2 Q Is that pretty much all you know about it, Mr. Fugate?

3 A: Yes, it is, pretty much.

4 MR. BUNCH: Thank you.

5 CROSS EXAMINATION

6 BY MR. PETERS:

7 Q Mr. Fugate, my name is Pat Peters and I represent **Frank**
8 Sheppard. During your direct examination you said
9 something about you were a CI for DEA, ATF.

10 A: ATF and DEA and another agency, General Services
11 Administration special agent.

12 Q What is a CI?

13 A: I obtain information with regard to **drug** trafficking
14 around Kansas City.

15 Q And what services do you perform for the **Drug**
16 Enforcement Agency or **Drug** Enforcement Unit?

17 A: Basically I pass information, do introductions and on
18 occasion I do operations.

19 Q What is an operation, sir?

20 A: A full operation is where you wear recording devices,
21 cameras, et cetera.

22 Q Are you paid for this?

23 A: No, sir, I am not.

24 Q You said you were a CI for ATF, what is ATF?

25 A: Alcohol, Tobacco and Firearms.

1214

1 Q What do you do as a CI agent, a confidential informant
2 for the Alcohol, Tobacco and Firearms?

3 A: Some weapons but mostly **drugs**.

4 Q What do you mean by weapons, mostly **drugs**?

5 A: If there are illegal **drug** activities going on in an
6 area, I gain the confidence of these people and pass
7 this information on.

8 Q And are you paid for being a CI for the ATF?

9 A: No, sir, I am not paid anything.

10 Q You said something about you do work for the General
11 Services and I didn't catch the rest of that.

12 A: That was when I first became involved in any agency,
13 the General Services Administration, and it has to do
14 with government contracts predominantly.

15 Q What did you do as a confidential informant for the
16 General Services Administration?

17 A: There was some documents that were being falsified. I
18 was construction superintendent for a company by the
19 name of Beam Construction. It was their wish for me to
20 falsify some documents on materials being used on some
21 government installations and I wrote a letter to the
22 General Services Administration and turned in my
23 resignation.

24 Q Back in the summer of 1989 when you testified to these
25 statements being made in the tent, how long had you

1 been using methamphetamine at that time?

2 A: Probably off and on for a couple of years.

3 Q Have you sold methamphetamine before?

4 A: No, I have not.

5 Q Was it methamphetamine that brought you to begin
6 working for DEA, Jackson County and the ATF?

7 A: No, it was through some personal loss. My brother was
8 murdered due to **drugs**. My niece was beaten to death,
9 shot in the head and shot in the torso and thrown in
10 the river. My son is HIV positive because of **drugs**.
11 That's a pretty good reason.

12 Q On the summer discussion you are talking about in
13 1989, when was the first time you told anybody
14 associated with ATE, DEA, the Kansas City Missouri
15 Police Department or any other law enforcement agency
16 about this conversation?

17 A: It was probably a couple years ago I spoke with Ron
18 Getty at the unit downtown on Grand.

19 Q Would it be safe to say then that ball park would be
20 1995 that you first brought it up.

21 A: Yes.

22 Q So what you are relating to this jury is the
23 conversation eight years ago now but six years ago from
24 when you first brought it to the attention of the
25 authorities.

1 A: That's correct.

2 Q When you first brought it to the attention of the
3 authorities did you say anything at all about a
4 trailer?

5 A: Yes.

6 Q Did you say anything at all about copper being stolen?

7 A: No, sir.

8 Q Did you say anything at all about saws?

9 A: I don't recall if I said anything at that particular
10 time about a saw.

11 Q Do you remember saying anything about saws to the grand
12 jury when you testified before the grand jury?

13 A: No, sir, I didn't mention it.

14 Q You did not testify about saws before the grand jury.

15 A: No, sir.

16 Q So the first time you think mention of saws -

17 THE COURT: This is one of these tricky
18 questions again that wasn't a question. You said you
19 did not say anything about saws to the grand jury and
20 he said no.

21 MR. PETERS: I forgot my note.

22 THE COURT: I don't know what that means.

23 MR. PETERS: I will reask it.

24 Q You didn't say anything to the grand jury about saws,
25 did you?

1 A: No.

2 Q Have you told anyone anything about transits being
3 stolen?

4 A: No, I did not.

5 MR. BECKER: Objection. Where is the
6 foundation on that? There has been no mention of
7 that.

8 MR. PETERS: Maybe we need to approach.
9 (Proceedings out of the hearing of the jury.)

10 THE COURT: Have you got some prior
11 inconsistent statement?

12 MR. PETERS: The witness just testified
13 saws was mentioned for the first time today and I
14 am seeing if there is anything else.

15 MR. BECKER: He did mention saws.

16 THE COURT: That's right. I will sustain the
17 objection.

18 (Proceedings in the hearing of the jury.)

19 Q Who told you that **Frank** Sheppard had sustained a back
20 injury as a result of an explosion, who made that
21 comment to you?

22 (Proceedings out of the hearing of the jury.)

23 THE COURT: What did you ask him?

24 MR. BECKER: Who told him that **Frank**
25 Sheppard sustained a back injury as a result of this

1

1 explosion.

2 MR. PETERS: He is not going to name any one
3 of the five charged defendants.

4 MR. BECKER: I think the testimony was **Frank**
5 told him he was knocked off the hill at the time of
6 the explosion.

7 MR. BECKER: I will withdraw the objection.

8 (Proceedings in the hearing of the jury.)

9 Q So, sir, who was it that told you that **Frank** Sheppard
10 had received a fairly serious back injury from the
11 blast?

12 A: A lady by the name of Billy, one of their friends.

13 Q What is Billy's last name, if you know?

14 A: I'm sorry. I don't recall at this time.

15 Q At any time when you spoke to an ATE agent, DEA agent,
16 Task Force agents, police officers or anyone involved
17 in law enforcement, did you ever tell them that **Frank**
18 Sheppard had told you that he set the trailer on fire?

19 A: Yes.

20 Q Did you tell the grand jury that **Frank** Sheppard had
21 told you he set the trailer on fire.

22 A: Yes.

23 Q Sir, what I would like to do is show you a copy of your
24 grand jury testimony, direct your attention, it is
25 going to be a log answer so I will direct your

1 attention to the question that begins on page 6, number
2 12 and ask you to read your answer which continues to
3 line 11 on page 7. And I am going to ask you about the
4 very last part.

5 THE COURT: Just read it to yourself, not out
6 loud.

7 A: This is not correct.

8 MR. BECKER: Excuse me. I don't think there
9 is a question posed right now.

10 THE COURT: You read it and then let him ask
11 his questions, please.

12 Q Have you had a chance to read that testimony?

13 A: Yes, I have.

14 Q And has it refreshed your recollection as to the
15 testimony you gave under oath before the grand jury?

16 A: Not precisely.

17 MR. BECKER: He forgets about his testimony
18 before a grand jury.

19 THE COURT: There has been no failure of
20 recollection, Mr. Peters.

21 Q Sir, let me ask you, do you recall telling the grand
22 jury that "**Frank** did not" -

23 MR. BECKER: Can we have the whole question
24 ad the whole answer?

25 Q Do you recall this question being asked, "Did you have

1 a conversation with them about methamphetamine or
2 anything else', do you remember that question?

3 A Yes.

4 Q Your answer, "Actually, we were just talking about
5 things in general and Darlene brought up the incident
6 of the fire fighters and explained **Frank** had been there
7 and **Frank** was going along with the story he had, in
8 fact, been there.

9 I am skipping a paragraph, Judge, if
10 you are tracking.

11 THE COURT: I think in conformance with the
12 government's request, you better not skip anything.

13 MR. PETERS: May we approach.

14 THE COURT: Yes.

15 (Proceedings out of the hearing of the jury.)

16 MR. PETERS: Judge, at the bottom of page 7
17 is where the witness before the grand jury said that
18 **Frank** Sheppard said he didn't, in fact, set the trailer
19 on fire. It is a narrative answer.

20 THE COURT: **Frank** said he didn't?

21 MR. PETERS: Did not.

22 MR. BECKER: The last sentence. He sort of
23 gets caught in mid stream.

24 THE COURT: That is a typo.

25 MR. BECKER: Counsel has chosen to use this

1 as a prior inconsistent statement. Then he gets the
2 whole statement.

3 MR. PETERS: That is not correct, Your Honor.
4 That is not correct. If portions of an answer are
5 relevant and other portions are irrelevant, just like
6 any other document, you use the relevant portions.
7 The court said we aren't supposed to get into his
8 character.

9 THE COURT: That is not the way I understand
10 the rule of completeness or the rule of fairness. I
11 think if you are going to offer this, you have to use
12 the whole shooting match.

13 MR. O'CONNOR: Could we take the afternoon
14 recess now?

15 THE COURT: Yes.

16 (Proceedings in the hearing of the jury.)

17 THE COURT: We are going to take our
18 afternoon recess now. Be back in the jury room about
19 20 to four. Don't talk about the case while you are in
20 recess. You are excused.

21 (The jury leaves the courtroom.)

22 THE COURT: Do you want to use some time to
23 talk about this?

24 MR. O'CONNOR: Yes.

25 MR. BECKER: I have that case, United

1 States versus Jones, 101 f. 3RD 1263, Eighth Circuit.
2 1996.

3 RECESS

4 MR. PETERS: Your Honor, we have two quick
5 issues before we bring the jury in.

6 It is my understanding the Court is
7 saying I have to read the paragraph, "The whole
8 deal was **they** were basically thieves and that's
9 how **they** made their living to buy the dope. If
10 **they** weren't selling dope, **they** were selling stuff
11 to sell dope." It is my understanding that is
12 your ruling.

13 THE COURT: Well, that was his answer to the
14 question, wasn't it?

15 MR. PETERS: But the whole series, I asked
16 him isn't it true that and maybe we should
17 have the witness leave.

18 (The witness leaves the courtroom.)

19 MR. PETERS: The question that
20 started all this was the question of isn't it true that **Frank** never
21 told you he set the trailer on fire. And he said, no,
22 he told me he set the trailer on fire. The specific
23 part I wanted to impeach him with is where in his grand
24 jury testimony he stated he didn't, in fact, say he set
25 the trailer on fire."

1 To lay the foundation I had to ask him
2 if he remembered testifying before the grand jury.
3 I showed him the grand jury testimony and asked
4 him if it refreshed his recollection. Then I
5 started to ask him so did **Frank** tell you he set
6 the trailer on fire. I was instructed by the
7 court to read the question and the answer from the
8 grand jury transcript.

9 It is my position if a portion of a
10 statement is relevant and admissible, that doesn't
11 mean that under a Doctrine of Completeness you
12 introduce irrelevant, immaterial and prejudicial
13 statements. The aside of the whole deal was they
14 were basically thieves has nothing to do with the
15 question I asked, did **Frank** tell you he set it on
16 fire. It has nothing to do with that portion of
17 the transcript. It isn't required to give
18 completeness to his statement he didn't, in fact,
19 say he set the trailer on fire.

20 I am going to do whatever the Court says
21 but I need to make my record.

22 THE COURT: What is the government's position
23 on this?

24 MR. BECKER: Your Honor, I believe if he is
25 going to be impeached with a prior transcript, the

1 method of impeachment is by being asked if he was
2 asked this question and gave this answer. And you
3 can't pick and choose sentences within the answer in
4 order to get the desired result.

5 THE COURT: That was my theory in indicating
6 what my ruling would be in the first instance. You and
7 I can't pick what part of the answer he should be
8 confronted with. Were you asked this question and did
9 you give this answer, that's the answer. Nobody at the
10 grand jury proceedings -- of course, I realize it is
11 not an adversarial proceeding, you do have a problem
12 with him saying it's not right, you understand that.

13 MR. PETERS: I am eagerly awaiting that
14 answer, Your Honor, but I would again disagree with a
15 statement that where a narrative answer talks -

16 THE COURT: Let me ask you this. If you edit
17 that answer, then would I not be forced to allow Mr.
18 Becker to read the rest of the whole answer?

19 MR. PETERS: Only under the Doctrine of
20 Completeness if the edited part gives meaning to the
21 answer. If he was saying that **Frank** didn't say it
22 because he was a thief, that would give meaning to it
23 and you would have to have the precedent part. But
24 this is consistent with what the Court has been kind
25 enough to put up with. A narrative answer given to

1 the grand jury where did you have a conversation
2 with them. That was the question that Mr. Becker
3 asked. And his answer to that you would have stricken
4 as non-responsive where he says, "The whole deal, they
5 were basically thieves and that's how they made their
6 living to buy the dope." That was non-responsive to
7 the question that was asked. It should not have been
8 part of the transcript. And now I am about to get
9 stuck with something that would be inadmissible error
10 and prejudicial if done in an adversarial proceeding as
11 a way of getting at that thing that is in the
12 transcript. It is unquestionable. It doesn't need
13 explanation which is that **Frank** didn't say he set the
14 trailer on fire.

15 So my objection would be -- again I did
16 not begin my questions by saying were you asked
17 this question in the grand jury. I asked him the
18 specific part of did **Frank** tell you he set the
19 trailer on fire and then the Court directed me to
20 read the whole thing.

21 THE COURT: Which, as far as I am concerned
22 is the only appropriate way to impeach with written
23 testimony is to read the testimony.

24 MR. PETERS: I am just making my record,
25 Judge.

1 THE COURT: I understand.

2 MR. PETERS: The Court is directing I read
3 the thing in its entirety.

4 The second issue is I propose to ask him
5 have you ever given false information to the
6 police.

7 THE COURT: Ever?

8 MR. PETERS: Yes. And what I am getting at
9 is, if he says yes, ask him when. If he says no, he
10 has a 1973 municipal court conviction for false
11 information.

12 THE COURT: When is it?

13 MR. PETERS: In 1973, 24 years ago. And it
14 goes to his character as opposed to a specific act of
15 misconduct.

16 THE COURT: How does a misdemeanor or
17 conviction, 23 year old misdemeanor or conviction go to
18 his character?

19 MR. PETERS: Judge, they put me up to this.
20 I am just making my record.

21 THE COURT: I think you have, Mr. Peters.

22 MR. PETERS: My suggestion was I ask you
23 before I ask it in front of the jury. So I have done
24 my part now.

25 THE COURT: What is your position on the

1 grand jury answer?

2 MR. BECKER: I would request the proper
3 cross examination of reading the question and answer,
4 thereby giving the witness an opportunity to fully
5 respond to any possible inconsistencies.

6 THE COURT: Yes, although it may not appear
7 to be relevant and may not even be independently
8 admissible in this proceeding, this is what you have
9 chosen to do. And I think that the witness is entitled
10 to be confronted with his whole answer. And then if he
11 wants to say he didn't say that, he can say he didn't
12 say that.

13 MR. BECKER: Rule 609, felony and then assert
14 time frame.

15 THE COURT: We will not get into 23 year old
16 misdemeanors.

17 MR. BUNCH: It was probably just an ordinance
18 violation. I am not standing up to dispute the
19 Court's ruling. I should, though, for purposes of the
20 record, join with my co-counsel, Mr. Peters, with
21 respect to the statement that he made to the court.

22 THE COURT: Okay, let's get the jury.

23 MR. PETERS: For purposes of continuity, do
24 you want me to go back to my preliminary question or
25 just begin my reading from the grand jury transcript?

1228

1 THE COURT: You better go back so they
2 understand where we are.

3 (The jury enters the courtroom and is seated.)

4 THE COURT: I will remind you, sir, you are
5 still under oath, and you may proceed.

6 MR. PETERS: Thank you, Your Honor.

7 Q Mr. Fugate, I am going to go back to just a little bit
8 before the break and ask you again, in fact, **Frank**
9 Sheppard never told you that he set the trailer on
10 fire, isn't that correct?

11 A: No, that's not correct. He told me, in fact, he had.

12 Q And I have shown to you your grand jury testimony and
13 you had a chance to read that.

14 A: Yes.

15 Q Do you remember this question being asked, "Did you
16 have a conversation with him about methamphetamine or
17 anything else?" Do you remember that question?

18 A: Yes.

19 Q Your answer, "Actually **they**, we were just talking about
20 things in general and Darlene brought up the incident
21 of the firefighters and explained that **Frank** had been
22 there and **Frank** was going along with the story that he
23 had, in fact, been there. The whole deal was **they** were
24 basically thieves and that's how **they** made their living
25 to buy the dope. If **they** weren't selling dope, **they**

1 were stealing stuff to sell dope. **They** had broken into
2 a warehouse the night before and it was my
3 understanding **they** stole some TVs and weren't real
4 successful. And the following day **they** decided to go
5 to this construction site and break in and steal the
6 tools and sell them. I mean it was a way of live for
7 these people and to buy some dope. And **Frank** could not
8 get into the trailer. And he said it made him angry he
9 couldn't break in. **They** tried for a while to break in
10 and that he got a little bit spooked because a car came
11 in. He said he didn't, in fact, set the trailer on
12 fire.. Do you remember that?

13 A: I said he did, in fact, tell me he did.

14 Q So your testimony is -

15 A: I am assuming it was a typo.

16 Q So your testimony is that this grand jury transcript is
17 in error where you said he didn't, in fact, say that he
18 set the trailer on fire?

19 A: I said he did, in fact, say that.

20 Q So you believe this transcript to be in error.

21 A: Yes.

22 THE COURT: That isn't important, whether he
23 thinks it is an error or not. He has told you his
24 recollection. You have the transcript.

25 Q Sir, prior to testifying you have had an opportunity to

1230

1 read your statements and grand jury testimony, haven't
2 you?

3 A: Yes.

4 Q Did you advise anyone that there was this mistake in
5 the grand jury testimony?

6 A: I noticed it only today.

7 Q What time today did you notice it?

8 A: When you originally handed me the transcript in this
9 courtroom.

10 Q When did you start working as a CI for one of the
11 different government agencies. Just a year is fine.
12 You don't have to be specific.

13 A: Actively, very actively, two and a half years ago.

14 Q What year, '94, '95?

15 A: Probably '94.

16 Q And the first statement that you gave regarding this
17 conversation that took place in the summer of 1989,
18 your first statement was on or about February 8, 1995,
19 is that correct?

20 A: That sounds correct, yes.

21 Q You mentioned that you have done body recordings while
22 working as a confidential informant, is that correct?

23 A: Yes, I have.

24 Q Would you tell the members of the jury what a body
25 recording is.

1 A: it is a recording device that is taped to the mid
2 portion of your lower back. You have a wire up the
3 inside of your shirt normally.

4 Q The what does the confidential informant do while
5 wearing this body recording device?

6 A: I let people do what they do best, talk about
7 themselves.

8 Q Did you ever wear a body recording device in a
9 conversation with my client **Frank** Sheppard?

10 A: No, I did not.

11 MR. BECKER: May we approach.

12 THE COURT: There is no question pending.

13 MR. BECKER: I don't believe there is a
14 good faith basis for that question.

15 (Proceedings out of the hearing of the jury.)

16 MR. BECKER: If there were recordings of
17 **Frank** Sheppard, then I would have turned them over.
18 I think this implies somehow we are running around
19 making tapes of these people that counsel doesn't
20 have any idea about. he can't just throw it out
21 there to jabber.

22 THE COURT: That's true.

23 MR. PETERS: He testified he has been
24 wearing wires since 1994. This is Cross Examination.
25 And I haven't created a misimpression with the jury.

1 I asked him did he ever wear one with my client. The
2 answer is no.

3 THE COURT: Leave it.

4 MR. PETERS: The follow-up question I would
5 like to ask, were you ever asked to wear a body
6 recording device with my client. He has been involved
7 in this case since 1994. We still have the ATF agents
8 involved in this case.

9 MR. BECKER: Then I get to come back and say
10 I will check the records. Has **Frank** Sheppard been in
11 jail this whole time? There are reasons he doesn't go
12 out and make a tape with **Frank** Sheppard. **Frank**
13 Sheppard has been in jail. This whole line is purely
14 fishing.

15 MR. O'CONNOR: I don't mean to interrupt.
16 The way you just said, it sounds like that was some
17 consideration to have him do it.

18 MR. BECKER: Just thinking about it as we are
19 up here, if **Frank** Sheppard was out walking around, we
20 would have thought about it but he wasn't out walking
21 around.

22 MR. O'CONNOR: Mr. Peters' question, he can
23 ask were you ever asked to wear a wire? Yes or no.

24 THE COURT: It doesn't make any difference
25 whether he was asked. He wasn't. Let's leave it. PFor

1 the future, counsel should have a good faith basis
2 before asking questions.

3 THE COURT: That is true.

4 MR. PETERS: so my record is clear, when you
5 have a witness who says they have been doing body
6 recordings for ATF since 1994 and you have a client on
7 trial in 1997, it seems to me since we don't get to
8 interview the witnesses, since we can't take
9 depositions, the time to ask were you asked whether or
10 not you would wear a body recording and did you do that
11 is when he is on the stand. And I have a good faith
12 basis on his testimony he has routinely done that.

13 MR. BECKER: If we had recordings of **Frank**
14 Sheppard, counsel would have them. That's what it
15 comes down to.

16 THE COURT: Okay.

17 (Proceedings in the hearing of the jury.)

18 MR. PETERS: Judge, I have no further
19 questions.

20 THE COURT: All right, who is next?

21 MR. O'CONNOR: None of the three of us have
22 any more questions.

23 THE COURT: Do you have any Redirect?

24 MR. BECKER: No Redirect.

25 THE COURT: All right, sir, you may step

1234

1 down. Call your next witness.

2 MR. BECKER: The United States calls Ronald
3 Williams.

4 RONALD L. WILLIAMS,

5 having been sworn, testified:

6 DIRECT EXAMINATION

7 BY MR. BECKER:

8 Q Please state your name and spell your last name.

9 A: Ronald L. Williams, w - i - l - l - i - a - m - ~ .

10 Q Mr. Williams, how old are you?

11 A: Thirty six.

12 Q Where do you live?

13 A: Olathe, Kansas.

14 Q What do you do for a living?

15 A: Construction.

16 Q What do you do in construction?

17 A: Drywall finisher.

18 Q How long have you been doing that?

19 A: Fifteen, sixteen years.

20 Q Have you ever been convicted of any crimes?

21 A: Yes.

22 Q What was that?

23 A: None support of a child.

24 Q Going back, did you serve any time for that?

25 A: Yes, I did.

1235

1 Q When did you get out of jail for that?

2 A June the 26th, 1990.

3 Q Where did you move after that?

4 A: To Olathe, Kansas.

5 Q In 1991 did you move back to the south side of Kansas
6 City, Missouri?

7 A: Yes, I did.,

8 Q Prior to moving into a home were you living anywhere?

9 A: Yes, I was.

10 Q Where was that?

11 A: Four Acres Motel.

12 Q Where is that located?

13 A: South 71 highway where Prospect and Hickman Mills Drive
14 runs into it.

15 Q Who were you living there with?

16 A: My girl friend and two kids.

17 THE COURT: The name is what?

18 THE WITNESS: Tammie Gibson.

19 Q How long a time did you live there?

20 A: Two to three weeks, right around two weeks.

21 Q I want to show you what has been marked for
22 identification purposes as Government's Exhibit
23 337 and ask you to look at that photograph and
24 tell me if you recognize it, please.

25 A: Yes, I do.

1236

1 Q What is it?

2 A: It's the Four Acres Motel.

3 Q Is that a fair ad accurate depiction of the Four Acres
4 Motel where you stayed?

5 A: Yes, it is.

6 MR. BECKER: I would offer that in evidence
7 as Government's 337.

8 MR. PETERS: No objection, Judge.

9 THE COURT: All right. Admitted.

10 (PLAINTIFF'S EXHIBIT NO. 337 WAS RECEIVED IN EVIDENCE.)

11 Q Now, Mr. Williams, can you see the picture there of the
12 Four Acres Motel?

13 A: Yes.

14 Q How big a place is that? Is that a hundred units or
15 ten?

16 A: It's more than ten. Probably closer to a hundred. I
17 am
18 not for sure.

19 Q Where were you staying in those weeks in 1991 you
20 stayed at the Four Acres Motel?

21 A: Around the back. They have got some kitchenettes down
22 on the bottom. Right behind the office there there is
23 an entryway that goes down the stairs.

24 Q When you were living there did you meet an individual
25 by the name of **Frank** Sheppard?

1 A: Yes, I did.

2 Q Do you see him here in court today?

3 A: Yes.

4 Q Could you tell us where he is sitting and what he is
5 wearing over there.

6 A: He is sitting over there wearing the green shirt.

7 MR. BECKER: Indicating the defendant

8 **Frank** Sheppard, Your Honor.

9 THE COURT: He just stood up, right?

10 THE WITNESS: Right.

11 Q Where did you meet **Frank** Sheppard?

12 A: At the motel. We was outside.

13 Q Do you know if **Frank** Sheppard was staying with anyone
14 else?

15 A: yes, there were two other people there.

16 Q You say it was outside that you met **Frank** Sheppard.

17 A: Right.

18 Q What do you mean "outside"?

19 A: There were like little walkways there. Had a little
20 canopy over the whole thing where you can go out and
21 sit outside or whatever you want to do. The car was
22 parked up in the front at the place where we were
23 staying.

24 Q What were you doing out there?

25 A: Just went outside to get some fresh air.

1 Q What was **Frank** Sheppard doing out there?

2 A: Well, he was outside. They was drinking beer.

3 Q Did a conversation come up about you possibly owning a
4 pickup truck?

5 A: Yes, it did.

6 Q Could you tell us about that, please.

7 A: **Frank** had asked me if I knew or if I had a pickup
8 truck. And I said no, I was driving a delivery car.
9 And he asked me if I knew where he could get one.

10 Q What happened after that?

11 A: I said no, I didn't know where to get one.

12 Q What did **Frank** Sheppard say?

13 A: There was off of -

14 MR. PETERS: Objection. Relevancy.

15 THE COURT: I am not sure about relevancy.
16 It may be competence.

17 MR. BECKER: We need to approach again,
18 Judge.

19 (Proceedings out of the hearing of the jury.)

20 MR. BECKER: This would be offered for two
21 reasons. The witness would answer that **Frank**
22 Sheppard asked him to assist in stealing a bob cat
23 bucket or bob cat, I can't remember exactly. There was
24 a lot up the road and **they** needed a pickup truck for
25 that purpose. After that conversation is when **Frank**

1239

1 begins to describe the fire that was started that
2 killed the firefighters.

3 MR. PETERS: This is a conversation after
4 the explosion where **Frank** is asking him about a
5 pickup to go to the site and do stealing. It is
6 completely immaterial as to whether or not he was
7 involved in the explosion.

8 MR. BECKER: It is not immaterial. It is
9 whether or not its prejudicial value outweighs the
10 probative value.

11 TuE COURT: It seems to me you have two
12 things here. You have the request to help steal those
13 bobcats and you have also got the admission that he was
14 at the scene. That seems to me a different basis of
15 admissibility, you can use that. But after-the-fact he
16 was proposing to steal something -

17 MR. BECKER: In terms of 404(b) evidence,
18 events occurring afterwards would be admissible to show
19 common scheme or plan.

20 MR. PETERS: The Court has read 404(b) a lot.
21 The question is does this move us closer to
22 ascertainment of the truth. Does talking about going
23 onto a construction site to steal move you closer to
24 finding out if on November 29th this defendant was
25 up there.

1240

1 THE COURT: And stealing.

2 MR. PETERS: And committed the crime.

3 MR. BECKER: I would say yes. 404(b) is a
4 rule of inclusion unless the prejudice to the defendant
5 outweighs the probative value.

6 THE COURT: This isn't even evidence of
7 another crime.

8 MR. BECKER: It is evidence. It is testimony
9 criminal solicitation was made.

10 THE COURT: That would be another crime.

11 MR. BECKER: That would be another crime or
12 wrong or act.

13 THE COURT: Have you provided the appropriate
14 notice of this testimony?

15 MR. BECKER: Yes.

16 THE COURT: All right, I will allow it and
17 overrule the objection.

18 (Proceedings in the hearing of the jury.)

19 Q Mr. Williams, why did **Frank** Sheppard ask you if you had
20 a pickup truck?

21 A: Because there was a flatbed trailer sitting up the
22 street that had a bobcat sitting on top of it.

23 Q What did that have to do with the pickup truck?

24 A: So we could go up and pull it off of the site.

25 Q What did you say?

1 A: I said, no, I ain't got no pickup and I can't get one.

2 Q Was anyone else present during that conversation?

3 A: A guy that was, it was a brother-in-law, I guess, or
4 something like that.

5 Q Would it be **Frank** Sheppard's brother-in-law?

6 A: Right. Right.

7 Q Could you describe him, what physically he looks like?

8 A: He had a beard and kind of real shaggy-looking hair and
9 everything.

10 Q Do you remember his name at all?

11 A: No, I don't.

12 Q Then did you have any conversation with **Frank** Sheppard
13 about the fire or explosion that killed the six
14 firemen?

15 A: Yes.

16 Q Please tell us about that.

17 A: he said **they** went down to steal some explosives because
18 **they** had it sold, **they** was going to sell it or
19 something, some explosives.

20 Q How did this conversation come up, after the bobcat,
21 why did **Frank** Sheppard say to you anything about -
22 what caused this to be discussed?

23 A: Well, I guess it would be because he had known my
24 brother-in-law.

25 MR. PETERS: Objection.

1 THE COURT: Yes. Don't guess, speculate. If
2 you know, say so. If you don't know, say that.

3 A: He knew my brother-in-law.

4 Q Had they met somewhere else?

5 A: Yes.

6 Q What did **Frank** Sheppard tell you about the explosion?

7 A: **They** went down just to steal some explosives. **They** had
8 it sold and that's what he said about that. But then I
9 guess -- oh, security.

10 Q Did he say anything about a security guard?

11 A: Yes.

12 Q What did **Frank** Sheppard say?

13 A: That **they** had been spotted.

14 Q Did he say anything then about setting a fire?

15 A: He said **they** set a fire for a diversion.

16 MR. O'CONNOR: I object to the reference to
17 they". This is the second time.

18 THE COURT: I will tell the jury the
19 instruction I gave you about the use of that word
20 they" still applies and in this context can be used
21 only as to the person making the statement. All right.

22 Q Did **Frank** Sheppard say where he went after the fire was
23 set?

24 A: Went to the woods and hid out in some weeds or wood,
25 whatever was around there.

1 Q Did **Frank** Sheppard say anything about seeing
2 firefighters?

3 A: yes.

4 Q What did he say?

5 A: He said he didn't mean for anybody to get hurt.

6 Q Did **Frank** Sheppard, do you know if his mother lived
7 anywhere nearby?

8 A: Yes.

9 Q Do you know where?

10 A: I think it is on Hickman Mills Drive.

11 Q How do you know that?

12 A: Because I took him up to his mother's house.

13 MR. BECKER: I have no further questions at
14 this time, Judge.

15 CROSS EXAMINATION

16 BY MR. PETERS:

17 Q Sir, my name is Pat Peters and I represent **Frank**
18 Sheppard. And I have been taking notes so I apologize
19 if this has already been asked. Do you have felony
20 convictions?

21 A: Yes.

22 Q And how many felony convictions do you have?

23 A: Three.

24 Q and what are they for?

25 A: Non-support of child, conspiracy to possess cocaine and

1 delivery of a controlled substance.

2 Q Your testimony today as to a conversation that took
3 place at the Four Acres Motel was in what year?

4 A: 1991.

5 Q When did you first come forward to the police?

6 A: Oh, I don't remember; '92, ,93, I think.

7 Q Your testimony **Frank** Sheppard told you he and his
8 brother-in-law walked to the site, is that correct?

9 A: He didn't say if it was his brother-in-law or not.

10 Q Where does brother-in-law come from?

11 A: I just met him at the motel.

12 Q So you don't know who **Frank** Sheppard is saying he
13 walked to the site with.

14 A: No, I don't.

15 Q And what you have heard was that he walked to the site
16 to steal dynamite, is that correct?

17 A: Yes.

18 Q Did he tell you how he expected to make off with
19 dynamite on foot?

20 A: No.

21 Q and he told you at the time of the explosion he was in
22 the wooded area surrounding the site.

23 A: Yes.

24 Q Did he tell you the explosion caused him any injuries?

25 A: No, he didn't.

1 Q Did he tell you whether the explosion caused him to be
2 knocked off of his feet?

3 A: No, he didn't.

4 Q **Frank** Sheppard never told you that he set a fire, did he?

6 A: No, sir.

7 MR. PETERS: I have no further questions.

8 MS. HUNT: No questions.

9 MR. BUNCH: No questions.

10 CROSS EXAMINATION

11 BY MR. O'CONNOR:

12 Q Mr. Williams, I am John O'Connor. I represent Bryan
13 Sheppard. I believe you just testified on cross for
14 Mr. Peters you believe you came forward or talked to
15 the authorities about this case in '92 or '93, could it
16 have been February of '95?

17 A: It would have been. I don't know for sure when it was.

18 Q To try to refresh your memory of this would this have
19 been when ATE people came to talk to you, a Larry
20 Cooper?

21 A: Yes.

22 Q and did he talk to you and seem to be writing notes?

23 A: Yes, he did.

24 Q Were you ever shown a copy of the interview that he
25 wrote from his notes of his conversations with you?

1 A I have seen them, yes.

2 Q Did you have a chance to review them before you
3 testified?

4 A Yes.

5 Q And that would have been the first person that you
6 talked to about this case, is that correct?

7 A Exactly.

8 Q Now, you know where it was they met you or talked with
9 you about your knowledge of this case?

10 THE COURT: "They" being?

11 Q Where Agent Cooper met you or how he came in contact
12 with you.

13 A He came to my apartment where I was living.

14 Q You did not call him.

15 A Not specifically, no.

16 Q Who did you call?

17 A I don't remember. Just the ATF office, I guess it was.

18 Q Was there a reason for your call?

19 A Well, I just -- it had been on my mind for so many
20 years, a certain length of time and I just decided to
21 say something.

22 Q When you talked to the ATF agent did you advise him
23 back in 1989 you had also been in jail with Bryan
24 Sheppard in Clay County?

25 A Yes, I did.

1 Q Would you recognize Bryan Sheppard?

2 A: Yes, I do.

3 Q And how long were you in jail up in Clay County with
4 Bryan Sheppard?

5 A: Oh, not more than a 180 days. I was there on a
6 Retainer.

7 Q How often would you see Bryan Sheppard where you and
8 him could have a conversation?

9 A: For the first couple weeks, not at all but after that
10 he was put in my population with me, in the tank I was.

11 Q Did you guys talk?

12 A: Yes, yes, we did.

13 Q And listen to my question, please. Did Bryan Sheppard
14 ever admit to you, or anyone in your presence, there at
15 the jail he was involved in this explosion?

16 A: He didn't admit that he was there. He didn't say that
17 he was there.

18 THE COURT: Say that again.

19 THE WITNESS: He said he wasn't there.

20 Q He wasn't bragging to you or other people there that he
21 was involved, was he?

22 A: No.

23 MR. O'CONNOR: That's all I have.

24 CROSS EXAMINATION

25 BY MR. OSGOOD:

1
1 ~ Q I want to go back. Excuse me. My name is John Osgood,
2 Mr. Williams, and I represent Richard Brown who is
3 1 charged in this case. I want to go back to the Four
4 1 Acres Motel for a moment and your conversation you say
5 ~ you had with Mr. **Frank** Sheppard. You met -- you need
6 to answer yes or no, sir, for the record; you shouldn't
7 nod.

8 1 MR. BECKER: There is no question.
9 1 THE COURT: You didn't ask a question.
10 ~ MR. OSGOOD: He was nodding.
11 1 THE COURT: He may have nodded but you didn't
12 1 ask a question. Don't nod if he doesn't ask you
13 anything.

14 1 Q You were outside the motel that evening, is that
15 correct?
16 1 A: Yes.
17 Q And you met a person, were they introduced to you as
18 Mr. Sheppard's brother-in-law?
19 A: Yes, he was.
20 Q And do you know Mr. Larry Barker or Baker.
21 A: I don't know him personally. I don't know that name at
22 all.
23 Q Have you ever heard that name?
24 A: No.
25 Q So you don't know whether Mr. Baker is his brother-in

1

1 law or not.

2 A No, I don't.

3 Q Did Mr. Sheppard tell you that it was he and his

4 brother-in-law that went up to the site?

5 A It was "we". He didn't say it was his brother-in-law

6 or who it was.

7 Q Do you remember when you testified before the grand
8 jury on the 12th day of March of 1996 here in Kansas
9 City?

10 A: Yes.

11 Q Were you asked this question and did you give this
12 answer, sir. Page 6.

13 "Question: Well, did you ever talk to him about these
14 connections you had and your brother-in-law had?" And
15 he is referring to your brother-in-law, I guess, at
16 that point.

17 A: Okay, yes.

18 MR. BECKER: Can we approach.

19 TuE COURT: Yes.

20 (Proceedings out of the hearing of the jury.)

21 MR. BECKER: This particular quote goes on at
22 some length.

23 MR. OSGOOD: It starts here and goes to the
24 next page.

25 MR. BECKER: And I would object to the part

1

1 where **Frank** Sheppard makes an exculpatory statement
2 1 about Bryan Sheppard which is on page 7, lines 8, 9 and
4 1 MR. OSGOOD: I don't care about that either
5 way, but under your previous ruling on completeness, I
6 1 don't know how else to do it. It would be consistent
7 with the previous requirement we have to read the
8 1 testimony.
9 1 MR. BECKER: Your Honor, look at page 8, is
10 what you are looking for, "What did **Frank** say about who
11 1 actually did the fire?" And then you can get the
12 1 brother-in-law.
13 1 MR. OSGOOD: He said it earlier, Mr. Becker.
14 MR. BECKER: This is impeachment, John.
15 1 MR. OSGOOD: Two different times in two
16 1 different places.
17 TuE COURT: Don[t read that testimony he
18 1 mentioned Bryan.
19 ~ MR. OSGOOD: I will skip and try to edit. If
20 you will give me a little bit of latitude.
21 1 TuE COURT: You may use the testimony on page
22 ~ 8, "He didn't actually say who set the fire."
23 1 MR. PETERS: For purposes of my record and I
24 ~ think for Bryan Sheppard as well, the ruling of the
25 ~ court on the last question and answer had us include

1
1 ~ bad acts by the defendants even though it wasn't
2 relevant at the time to the answer.

3 Now, the answer includes exculpatory
4 material and the court's ruling is that that can't
5 be given to the jury and I guess I am just asking
6 for guidance from the Court why would material
7 that is prejudicial to the defendant but part of a
8 complete answer be included with evidence that is
9 exculpatory to the defendants and part of a
10 complete answer be excluded? I am just asking for
11 guidance.

12 THE COURT: For one thing it isn't
13 generically exculpatory.

14 MR. OSGOOD: He has already testified he had
15 a direct conversation with Bryan and Bryan said he
16 wasn't involved so I don't know it prejudices Mr.
17 Becker's case and it is consistent.

18 THE COURT: You are probably right.

19 MR. BECKER: My only objection to page 6 and
20 page 7, it never gets around to saying anything.

21 THE COURT: That's true.

22 MR. BECKER: If you look there are more
23 questions and a whole other page before I finally get
24 to "What did **Frank** say about who did do the fire" which
25 is page 8, line 11. There is never any resolution.

1 MR. PETERS: I would disagree. The answer on
2 page 7 ended up with **Frank** saying **they** had went, him
3 and his brother-in-law, I don't remember his name. The
4 question that was propounded by Mr. Osgood did he ever
5 say that it was **Frank** and his brother-in-law and he
6 said no. And here he is saying it was **Frank** and his
7 brother-in-law that had went.

8 MR. OSGOOD: There will be other witnesses
9 that will say Mr. Baker was, in fact, up at the scene,
10 other of Mr. Becker's witnesses will point to Mr.
11 Baker. z

12 THE COURT: I think I will change my mind.
13 You may use that.

14 (Proceedings in the hearing of the jury.)

15 Q I was about to ask you about a question and answer
16 series from the grand jury concerning whether or not
17 you had at some previous time mentioned Mr. Sheppard's
18 brother-in-law. And the question was asked of you,
19 "Question: Did you ever talk to him about these
20 connections that you had and your brother-in-law had",
21 referring to your brother in law. Your answer, "Well,
22 we started out talking and I told him that after I
23 found out who he was, I told him I met his nephew
24 Bryan. And then we got to talking about things and
25 everything. And he said that we had been drinking a

1 few beers that night and he said we got to talking and
2 he asked me if I knew or he asked me if I knew how to
3 get a pickup because **they** wanted to steal some
4 construction equipment. That's how it all started.
5 And then I got to talking about Bryan and he said,
6 well, Bryan did not see the fire that killed the
7 firefighters because he was at home on the couch
8 asleep.:

9 MR. O'CONNOR: I object to that reading, "did
10 not set".

11 MR. OSGOOD: I'm sorry.
12 "Well, Bryan did not set the fire that killed the
13 firefighters because he was at home on the couch
14 asleep. And so it ended up with **Frank** saying, you
15 know, **they** had went, him and his brother-in-law, I
16 don't remember his name."

17 Do you remember that question and that
18 answer?

19 A: Vaguely, yes.

20 Q So you did mention Mr. Sheppard's brother-in-law at the
21 grand jury.

22 A: I could have but I didn't know his name.

23 Q In your previous testimony here today you did not
24 remember using or mentioning a brother-in-law, is that
25 right?

1

1 ~ MR. BECKER: Objection. I am not sure that
2 1 is a fair characterization.

3 MR. OSGOOD: I will rephrase it, Your Honor.

4 1 Q Did Mr. Sheppard, in fact, tell you that his brother
5 ~ in-law was up there with him, now that you have had a
6 chance to reflect on your grand jury testimony?

7 1 A He said "we".

8 ~ Q But at the grand jury you specifically named his
9 brother-in-law.

10 A I didn't know his brother-in-law's name. I couldn't
11 say it was his brother-in-law.

12 Q All right. I want to ask you if this question and
13 answer was asked of you on page 8 of the transcript:
14 "Question: What did **Frank** say about who actually did
15 do the fire?"

16 "Answer: Well, he didn't actually say who did it but
17 he said that him and his brother-in-law had went there
18 to steal some explosives because **they** had sold it and
19 that security had seen them or had spotted them up
20 there. So **they** had set a small fire and **they** thought
21 that **they** would distract them up there. And **they** were
22 sitting back in, somewhere in the weeds or rocks or
23 something and **they** watched as the security went up
24 there and everything. And then **they** set and watched
25 as the firefighters came up and everything." So thee

1 **they** you were referring to, sir, is, in fact, **Frank**
2 Sheppard and his brother-in-law, isn't it?
3 A: It could be.
4 Q Well, you said it, didn't you, sir? Didn't you say
5 brother-in-law in the grand jury?
6 A: Well, when we were sitting at the motel talking, that's
7 what he said.
8 Q Thank you, sir. Then he did say it was his brother-in
9 law.
10 A: Yes, I guess so.
11 Q Did you know of the reward in this case, sir?
12 A: I had heard about it.
13 Q Did you ever call 1-800-ATF-GUNS and ask about it?
14 A: I don't think so, no.
15 Q Did you see the Unsolved Mysteries episode that was on
16 a couple days before you talked?
17 A: I had heard it was on TV, yes, I did watch it.
18 Q You did see it.
19 A: Yes.
20 Q Do you know Mr. Richard Brown?
21 A: no, I don't.
22 Q Never met him.
23 A: No, I haven't.
24 Q He wasn't at the motel that night.
25 A: No.

MR. OSGOOD: Thank you.

1256

2 TuE COURT: Any Redirect?

3 MR. BECKER: None, Your Honor.

4 THE COURT: All right, sir, you may step

5 down.

6 MR. BECKER: I prefer not to start the next
7 witness at this time. I believe it is going to be far
8 longer than 15 minutes to present his testimony. And,
9 secondly, Mr. Osgood provided me a transcript relating
10 to that witness earlier today I would like an
11 opportunity to review.

12 THE COURT: All right. We will stop now. We
13 will start in the morning at nine o'clock, ladies and
14 gentlemen. Don't discuss the case while you are away
15 from us. Drive carefully and get back to us please in
16 the morning at nine o'clock. Good night. You may
17 withdraw.

18 (The jury leaves the courtroom.)

19 TuE COURT: We will be in recess until
20 tomorrow morning.

I N D E X

V O L U M E V I I

(Pages 1257 - 1377)

Wednesday, January 29, 1997 (morning session)

(Trial)

GOVERNMENT'S WITNESSES:Stephen Kilaore

Direct Examination by Mr. Becker 1262
 Cross-examination by Mr. Peters 1274
 Cross-examination by Ms. Hunt 1282
 Cross-examination by Mr. Osgood 1307
 Redirect Examination by Mr. Becker 1309

Glen ShePard

Direct Examination by Mr. Miller 1315
 Cross-examination by Mr. O'Connor 1333
 Cross-examination by Mr. Peters 1357

Lorena Deardorff

Direct Examination by Mr. Miller 1361
 Cross-examination by Mr. Peters 1370
 Cross-examination by Mr. Osgood 1373
 Cross-examination by Mr. O'Connor 1376

Reporter's Certificate 1377

— * —

Page 1258
E X H I B I T S
VOLUME VII

PLAINTIFF'S EXHIBITS	RECEIVED
385	1366
DEFENDANTS' EXHIBITS	RECEIVED
12	1307

2

6 THE COURT: Good morning, everybody. Ready to go?

11 THE COURT: Okay.Mr. Becker, you can get going.

13 THE COURT: Are we getting him?

16 THE COURT: Well, all right. Fine. I don't want
17 to discombobulate your order of things.

19 THE COURT: Yes, sir.

22 MR. PETERS: The next witness is Van Waite. I have
23 a motion in limine that I haven't had time to get filed.

Page 1259

1 MR. PETERS: We received the witness list last
2 night at 6 o'clock.

3 THE COURT: Come on, now. I've had this list in
4 front of me for the last week. You've had this list, you
5 knew that Van Waite followed Williams and Kilgore and Lank.
6 I'm not going to buy that. What's the motion all about?

7 MR. PETERS: That the extent of his testimony was I
8 was working on a lawn mower, it backfired. **Frank** says he
9 blows things up too. That's his testimony. Oh, and that he
10 likes to steal things.

11 The law cited is the same as in the one yesterday.
12 There's no linkage to this case, and he says he likes to blow
13 things up after standing there and listening to this lawn
14 mower backfire. And this happened sometime in 1989. This
15 entire statement is 73 words long. And, again, I apologize
16 to the Court for not being able to file it.

17 THE COURT: What's your position on this?

18 MR. MILLER: Our position is that it's an admission
19 against interest. It goes to the weight for the jury to
20 consider. And he says, "I like to blow things up, too."
21 This coincides with his statements of lack of remorse and
22 pity for what happened to the firemen. Not that he
23 intentionally blew them up, but if they started a fire and it
24 went off, and then they heard him make a statement, "I like
25 to blow things up, too," making such a statement that close

1 after the explosion.

2 THE COURT: When did he make it?

3 MR. MILLER: He made it in '89. He made it
4 subsequent. I'll have to get the statement real fast.

5 MR. PETERS: Judge, there's no mention of the
6 explosion that killed the firefighters. Van Waite is working
7 on a lawn mower. The lawn mower backfires, and **Frank** says,
8 "I like to blow things up, too," talking about the -

9 THE COURT: In 1989?

10 MR. MILLER: Yeah. It was in 1989. He can't
11 remember the exact month, but he said it was in the
12 summertime, it was warm. So if we put it in the summertime,
13 we're talking anywhere from six to eight months.

14 THE COURT: I really think that's pretty sketchy.
15 I'm going to sustain the objection to that.

16 MR. PETERS: Thank you, Your Honor. And again, I
17 apologize, Your Honor.

18 THE COURT: Let's get them in here more promptly.

19 MR. BECKER: All right. We need a few minutes to
20 find another witness. The one is in the restroom getting
21 sick, and I need to go find out -

22 THE COURT: Do what you can. We'll wait.

23 MR. BECKER: We've just lost our first two. We
24 have a prisoner. We can bring him up.

25 THE COURT: Do it.

1 (The following proceedings were had in open court:)

2 MR. BECKER: He's ready now. We're back to Stephen
3 Kilgore.

4 THE COURT: All right. Stephen Kilgore. Come up,
5 please, Mr. Kilgore, stand at the witness chair, and be
6 sworn.

8 STEPHEN KILGORE,
9 being first duly sworn by Kathy Geller, Law Clerk, testified
10 as follows:

12 DIRECT EXAMINATION

13 By Mr. Becker:

14 Q. All right. Good morning. Please state your name and
15 spell your last name.

16 A. Stephen A. Kilgore, K-I-L-G-O-R-E.

17 Q. Mr. Kilgore, how old are you?

18 A. Forty-one.

19 Q. Where do you live?

20 A. In Raymore.

21 Q. What do you do for a living?

22 A. I'm an electronic engineer.

23 Q. What kind of work do you do as an electronic engineer?

24 A. Satellite communications.

25 Q. Are you married?

- 1 A. Yes, sir.
- 2 Q. Do you have a family?
- 3 A. Yes, sir.
- 4 Q. Do you know the Sheppard family from the Marlborough
5 area of Kansas City?
- 6 A. Yes, sir.
- 7 Q. How do you know them?
- 8 A. I've known them pretty much all of my life.
- 9 Q. How did you first get to know the Sheppard family?
- 10 A. From one of their brothers.
- 11 THE COURT: I'm sorry, Mr. Kilgore. I'm not
12 hearing you.
- 13 A. From one of their brothers.
- 14 Q. Which brother?
- 15 A. Phillip.
- 16 Q. Now, do you know Skip Sheppard?
- 17 A. Yes, sir.
- 18 Q. Do you know **Frank** Sheppard?
- 19 A. Yes, sir.
- 20 Q. How old were you when you first started, I guess when
21 you first knew Phillip Sheppard?
- 22 A. I was five years old.
- 23 Q. And Phillip Sheppard, where does he fit in the list of
24 the Sheppard brothers? Is he the oldest or the youngest?
- 25 A. No, next to the youngest brother.

- 1 Q. So between **Frank** Sheppard and Skip Sheppard?
- 2 A. Yes.
- 3 Q. Now, many years ago, did you, was there an accident with
- 4 Phillip Sheppard?
- 5 A. Yes, sir.
- 6 Q. Could you tell us about that, please? What year was it?
- 7 A. 1971, sir.
- 8 Q. What happened?
- 9 A. I was showing him a gun, the gun went off and struck him
- 10 in the head and killed him.
- 11 Q. How old were you then?
- 12 A. I was 15 years old.
- 13 Q. What grade were you in then?
- 14 A. I was just in the eighth grade.
- 15 Q. Now, for many years, approximately 20 years, did you
- 16 have any contact with the Sheppard family?
- 17 A. No.
- 18 Q. In 1991, did you, were you in contact with the Sheppard
- 19 family?
- 20 A. Yes.
- 21 Q. Could you tell us about that, please?
- 22 A. I'd been going to the grave over the years.
- 23 Q. Whose grave?
- 24 A. Phillip's. And over the years I noticed there never was
- 25 a headstone. This was a young kid that lost his life young.

1 He deserved a headstone. So I wanted to find out about how
2 to go about doing this. When I contacted the funeral home,
3 they told me I had to get the mother's permission.

4 Q. Who is the mother?

5 A. Naomi.

6 Q. What happened next?

7 A. They contacted her, and she had no problem. They gave
8 her my phone number, and she contacted me and we met.

9 Q. Where did you go, or where did you meet?

10 A. We went to her house.

11 Q. I'll show you what's in evidence as Government's Exhibit
12 318. Do you recognize that?

13 A. Yes, sir.

14 THE COURT: The number is what, please?

15 MR. BECKER: 318, Judge.

16 THE COURT: Thank you.

17 Q. (By Mr. Becker:) Is that the Sheppard residence that
18 you visited in 1991?

19 A. Yes, sir.

20 Q. During your first visit there, how long did you stay?

21 A. Several hours.

22 Q. Who was there when you visited?

23 A. When I first got there, it was just Naomi, I think her
24 mother, some of the grandchildren, and Didi.

25 Q. Now, did you visit on later occasions during 1991?

1 A. Oh, yes. Yes. I even had them -- they went to my
2 house.

3 Q. Was there an occasion, then, in the summer of 1991 that
4 you gave skip Sheppard and **Frank** Sheppard a ride somewhere?

5 A. Yes.

6 Q. Could you tell us about that, please?

7 A. I took them down to a yard down the road to, they was
8 going to mow the yard.

9 Q. I'm sorry. Now -

10 A. It was just right down the street.

11 Q. Mr. Kilgore, let me ask a question. This photograph,
12 Government's 318, does that fairly and accurately represent
13 the way the house looked when you visited?

14 A. Yes.

15 MR. BECKER: I'd offer that as Government's Exhibit
16 318. It's in?

17 MR. PETERS: I believe it's already in evidence.
18 If not, we have no objection.

19 THE COURT: It is already in evidence.

20 Q. (By Mr. Becker:) Okay. So you took them, Skip Sheppard
21 and **Frank** Sheppard, where, again? I'm sorry.

22 A. Down the street, down on Hickman Mills Drive.

23 Q. And were they cutting grass then?

24 A. Yes.

25 THE COURT: When was this, please?

1 THE WITNESS: The exact date I -

2 THE COURT: Not the exact date, but at least a
3 year.

4 THE WITNESS: In '91.

5 THE COURT: Thank you.

6 Q. (By Mr. Becker:) Would that be obviously in the summer,
7 then, of 1991?

8 A. It was pretty much getting towards fall, summer, fall.
9 It was still warm outside.

10 Q. What happened, then, later that day?

11 . I took them over to one house. I would say it was
12 robably a mile, mile and a half away from their house. And
13 **Frank** went in for a while, come out. First a lady opened the
14 door, which at the time it was a heavier set woman with kind
15 of blandish curly hair.

16 Q. Were you told who that was?

17 A. At the time I didn't know who it was.

18 Q. Did you later learn who it was?

19 A. Sure, it was that lady sitting right there.

20 MR. BECKER: Indicating defendant Darlene Edwards,
21 Your Honor.

22 THE WITNESS: Yes.

23 THE COURT: Who is now standing; is that correct?

24 THE WITNESS: Yes. Yes, sir.

25 Q. (By Mr. Becker:) After **Frank** Sheppard visited that

1 house, did you drive around some more?

2 A. Yeah.

3 Q. Was there any discussion of the explosion that killed
4 the six firemen?

5 A. The first discussion of it was in the house.

6 Q. All right. Tell me about that, please.

7 A. **Frank** asked me if I heard about what they was trying to
8 put on him. And I said, yeah, I heard a little bit about it.

9 THE COURT: Who asked you, please?

10 THE WITNESS: **Frank**.

11 Q. **Frank**?

12 A. Yeah, at that time I said, yeah, I heard a little bit
13 about it, but I hadn't really heard that much. Really
14 didn't -

15 Q. Had you read about the explosion in the newspaper?

16 A. Sure. It rocked our house.

17 Q. So after you're driving around in the car, was there
18 more discussion?

19 A. Yeah.

20 Q. Who was in the car?

21 A. **Frank** and Skip.

22 Q. Where was **Frank** Sheppard in the car?

23 A. **Frank** was in the front seat.

24 Q. You were driving?

25 A. Yes, sir.

1 Q. Where was skip Sheppard?

2 A. Back seat.

3 Q. What kind of car was it?

4 A. It was an '82 Riviera.

5 Q. Your car; is that right?

6 A. Yes, sir.

7 Q. Was there any more discussion about the explosion while
8 you three, **Frank** Sheppard, Skip Sheppard and yourself, were
9 driving around in the car?

10 A. Sure.

11 Q. Tell us about it, please.

12 A. **They** was telling me how **they**'d been down there stealing,
13 you know, anything that wasn't nailed down. You know, **they**
14 took, because at the time -- actually, right now you're
15 seeing some very clean men, very -

16 MR. PETERS: Your Honor, I'm going to object.

17 Q. Mr. Kilgore -

18 A. I'm trying to explain this the best way I can.

19 MR. PETERS: Objection.

20 THE COURT: What is the objection?

21 MR. PETERS: May we approach?

22 THE COURT: Sure.

23 (Counsel approached the bench and the following
24 proceedings were had:)

25 MR. PETERS: The witness says, actually, now you're

1 seeing some very clean men.

2 THE COURT: Yeah? Why is that objectionable?

3 MR. O'CONNOR: Judge, the implication he's trying
4 to make is they're all cleaned up for court, these are people
5 that steal and do things. It's self-serving. It's making
6 statements not to a question.

MR. BECKER: I think I could properly ask did they
8 look like this back in 1991.

9 MR. O'CONNOR: Yeah, without question, you can ask
10 that.

11 THE COURT: Ask that.

12 MR. BECKER: Sure.

13 (The following proceedings were had in open court:)

14 Q. (By Mr. Becker:) Mr. Kilgore, back in 1991, did **Frank**
15 Sheppard and Skip Sheppard look like this?

16 A. No, sir.

17 Q. How did they, what was the difference between then and
18 now?

19 A. Then -- **Frank** has gained a lot of weight. Skipper is a
20 lot cleaner.

21 THE COURT: He's what?

22 A. **Frank**'s hair is cut, a lot cleaner looking. Actually,
23 he looks very healthy.

24 Q. When you were driving around, then, in your car in 1991
25 in the summer, into the fall of 1991, you told us that Skip

1 Sheppard and **Frank** Sheppard said **they** went to the
2 construction site to steal anything that -

3 A. Yes.

4 Q. What was said after that?

5 A. Also, **they** was going down there -- **they** had a security
6 guard that was allowing them to take things. **They**'d known
7 him for a while. **They** was actually down there to burn the
8 truck and loot the place.

9 Q. Did they tell you, did Skip Sheppard or **Frank** Sheppard
10 tell you what happened when they were at the construction
11 site?

12 A. Sure. **They** set the truck on fire. **They** was just
13 rummaging through things, accidentally set the shed on fire
14 was when **they** left.

15 Q. They set a shed, they said, on fire?

16 A. It was in a shack.

17 Q. Did **Frank** Sheppard or Skip Sheppard say how they got to
18 the site?

19 A. Walked.

20 Q. Did **Frank** Sheppard or Skip Sheppard say if they heard an
21 explosion?

22 A. Yes. When **they** got up to the Four Acres Motel. Because
23 **Frank** kind of laughed how it blew him down to the ground.

24 Q. Did **Frank** Sheppard say anything about the firemen?

25 A. Yes.

1 Q. What did he say?

2 A. His exact words?

3 Q. Yes, please.

4 A. This is their own Fucking fault, they shouldn't have
5 been there.

6 Q. Did you that day, then, go back to the Sheppard
7 residence on Hickman Mills Drive?

8 A. Yes.

9 Q. What happened when you got back to the Sheppard house?

10 A. He was out in the garage, started showing me some
11 equipment.

12 Q. Now, on this photograph, Government's Exhibit 318,
13 there's a garage door here on the left. Is there something
14 other than just a car area there in the -

15 A. Just like a little laundry room in the back, it had a
16 little add-on addition to the back of the house.

17 Q. What happened when you got back to the house, then?

18 A. They started showing me some stuff. He handed me a
19 Motorola radio.

20 Q. Slow down.

21 A. Started showing me all kinds of tools, equipment, he had
22 extension cords.

23 Q. Where was this?

24 A. In the garage, some of it was back in the laundry room.

25 The radio he got from back behind the dryer.

1 Q. Who got it from behind the dryer?

2 A. **Frank** did.

3 Q. Did you, what was the purpose in showing you this stuff?

4 A. I was going to buy it. He wanted to sell it to me. And
5 with the type of radio, being in electronics, I wouldn't
6 touch that radio for anything.

7 Q. Why?

8 A. It was a police radio.

9 Q. Was there a price that you -

10 A. Twenty-five bucks.

11 Q. Now, you told us you've heard about this case, you know,
12 you remember the explosion itself. When did you ever come
13 forward with the information that you testified to here
14 today?

15 A. In '95.

16 Q. Why did you wait?

17 THE COURT: I'm sorry, what did you say, sir?

18 THE WITNESS: '95.

19 Q. That would be 1995?

20 A. Yes.

21 Q. Why did you wait four years before coming forward with
22 this information?

23 A. This is my family. They're all family.

24 THE COURT: What did you say, your family?

25 A. My family, they're my family, you know. It was a little

1 bit of a betrayal factor I had. You know, I love these men,
2 you know. I know they didn't do it intentionally, but if it
3 wasn't for my wife and actually the media showing the little
4 kids, you know, I probably would have kept my mouth shut
5 forever.

6 MR. BECKER: I have no further questions at this
7 time.

8 THE COURT: All right. Go ahead.

9 MR. PETERS: May it please the court?

10 THE COURT: Yes, sir.

11 -- -- --

12 CROSS-EXAMINATION

13 By Mr. Peters:

14 Q. Mr. Kilgore, my name is Pat Peters, and I represent
15 **Frank** Sheppard.

16 A. Yes, sir.

17 Q. Your purpose in going over in 1991, you testified, was
18 because you wanted to get a headstone for their brother
19 Phillip who you had accidentally shot; is that right?

20 A. Yes, sir.

21 Q. Did you ever get that headstone?

22 A. Not yet. I've had kids that's had problems. I have
23 kids that come from a loss of a parent. My niece and nephew,
24 me and my wife adopted them, and they have cost us so much
25 money, especially -- they're at a little bit older age, now

1 that they're teenagers. But, yes, sir, there will be one on
2 there very likely this year.

3 Q. 1991, you didn't look like you do now, did you?

4 A. Basically, yes, sir.

5 Q. Were you using **crack**cocaine at that time, sir?

6 A. No, sir. Never have.

7 Q. Now, your testimony is that, referring to Naomi
8 Sheppard's house on Plaintiff's Exhibit 318, that you went to
9 a, an add-on addition to the back of the garage; is that
10 correct?

11 A. Yes, sir. There's a laundry room added on to the back
12 of the garage.

13 Q. So you walk around?

14 A. No.

15 Q. How do you get to it?

16 A. It's part of it.

17 Q. Describe where it is, sir.

18 A. If you walk straight back through the back of the
19 garage, you'll walk right into it.

20 Q. Where is it in the garage?

21 A. The way the house sits, it would be the east side.

22 Q. And how big of a room is this add-on?

23 A. About big enough for a washer and dryer.

24 Q. And at that time, is it **Frank** Sheppard that is showing
25 you items?

1 A. Yes.

2 Q. That, your testimony is, he told you were stolen from
3 the construction site?

4 A. Yes.

5 Q. And I'd like to go over those items with you. He told
6 you that from this construction site at the explosion they
7 had -

8 A. He didn't say the explosion.

9 Q. He said the construction site?

10 A. Yes.

11 Q. Is your testimony that you had no idea where the
12 equipment came from?

13 A. Technically, I know it come from down there. I don't
14 know if it was before the explosion or after. This wasn't a
15 one-time deal they was down there at the construction site.

16 Q. He showed you Motorola radios from the construction
17 site?

18 A. Yes, sir.

19 Q. Sir, you'll need to wait until I finish my question.

20 A. Oh.

21 Q. He showed you Motorola radios that were stolen from the
22 construction site; is that correct?

23 A. He didn't say stolen from the construction site. They
24 come from the construction site.

25 Q. Was your impression that he had purchased these items

1 from the construction site and that's why he was offering to
2 sell them to you?

3 A. I don't know if he stole them or it was given to him.

4 Q. Did he tell you that he had extension cords from the
5 construction site?

6 A. Yes.

7 Q. How many, how long of extension cords?

8 A. They're hundred foot cords, three or four of them.

9 Q. Did he tell you that he had saws from the construction
10 site?

11 A. Yes.

12 Q. Did he tell you that he had drills from the construction
13 site?

14 A. He had all kinds of equipment from the construction
15 site. Jackhammers.

16 Q. Did he tell you that he had drills from the construction
17 site?

18 A. Yes.

19 Q. Did he specifically show you two Motorola radios from
20 the construction site?

21 A. He showed me one.

22 Q. Did he show you several saws from the construction site?

23 A. No, not several.

24 Q. Did he show you concrete saws from the construction
25 site?

1 A. Yes.

2 Q. Did he show you acetylene torches from the construction
3 site?

4 A. He had a set of torches there.

5 Q. Did he show you hammers from the construction site?

6 A. I don't know if they was from the construction site. A
7 lot of this -- once he said some of it come from the
8 construction site, I figured most of it did.

9 Q. Did he show you sledgehammers from the construction
10 site?

11 A. Yes, he showed me sledgehammers. He had one.

12 Q. How long have you known **Frank** Sheppard?

13 A. Since I've been five years old.

14 Q. Anytime he's introduced himself to you or other people,
15 he introduces himself by **Frank** Sheppard, doesn't he?

16 A. Yes.

17 Q. He doesn't go by George Sheppard, does he?

18 A. No.

19 Q. Your testimony is that **Frank** Sheppard told you they
20 walked to the site; is that correct?

21 A. Yes.

22 MR. PETERS: Excuse me, Your Honor.

23 Q. Your further testimony is that **Frank** Sheppard told you
24 that they had walked down to the Four Acres Motel, and that's
25 where they were -

1 A. **They** got to the Four Acres Motel. **They** hadn't walked
2 down there. **They** ran.

3 Q. They had got to the Four Acres Motel?

4 A. When the blast occurred.

5 Q. And that it knocked **Frank** off his feet; is that correct?

6 A. Yes, sir.

7 Q. I'm going to show you what has been marked as

8 Defendant's Exhibit No. 1, and I doubt that you've seen this
9 before. This is going to be an aerial photograph that -

10 MR. BECKER: Excuse me.

11 MR. O'CONNOR: We suggest that you use the easel so
12 the jury can see it.

13 MR. BECKER: He can ask him if he recognizes it.

14 THE COURT: Let him look at it. If he doesn't
15 recognize it, then it's no good to him. I think this is the
16 situation where the jury, one of the jurors, anyway, had some
17 concern about not being able to see. So I don't know what
18 adjustment you're going to make.

19 A. It shows the blast site.

20 Q. (By Mr. Peters:) And you recognize 71 Highway as shown
21 on this diagram?

22 A. Yes.

23 Q. And the QuikTrip that's on one end of the diagram?

24 A. Yes.

25 Q. And if we use this diagram, will it aid you in

1 describing to the jury where Four Acres Motel is, although
2 it's not pictured on this diagram?

3 A. No, it would be up here more, I would say probably maybe
4 half a mile from there.

5 THE COURT: Let the record reflect that the witness
6 is indicating above and to the left of the edge of the
7 diagram; is that right, counsel?

8 MR. PETERS: That would be correct, Your Honor.
9 And with the Court's permission, I'd like to have him stand
10 down. I'll move this over a little bit.

11 MR. BECKER: Is this in evidence?

12 MR. PETERS: Yes, this is Defendant's Exhibit No.
13 1. Sir, could you stand down?

14 THE COURT: How much cord have you got on that
15 mike? I think there's enough.

16 THE WITNESS: I've got plenty.

17 MR. PETERS: Your Honor, it's -- and if you would
18 stand over on this side, and I'll stand over here out of the
19 way.

20 Q. (By Mr. Peters:) We're going to need to have you keep
21 your voice up. And if you would for the jury indicate where
22 you understand the blast site to have been.

23 A. I would imagine right here, sir.

24 Q. And for the jury's benefit, would you show them, would
25 you show them 71 Highway?

1 A. 71 Highway.

2 Q. And on that picture, can you see a QuikTrip?

3 A. Yes, sir, right here.

4 MR. PETERS: And for the record, witness is
5 indicating the upper left portion of Defendant's Exhibit No.

6 1. Judge, I only have one more question.

7 THE COURT: Okay. Never mind.

8 Q. Further beyond that QuikTrip, can you describe for the
9 jury how much farther north beyond the QuikTrip Four Acres
10 Motel is?

11 A. About 2,000 feet, not even half a mile.

12 Q. About a half a mile?

13 A. Yeah, if that.

14 Q. You can take your seat.

15 A. From this picture, QuikTrip ain't but a half mile from
16 the blast site.

17 Q. And your testimony is that **Frank** Sheppard told you that
18 when they had walked to Four Acres Motel near that location,
19 the blast blew him off his feet; is that correct?

20 A. Yes, **they** didn't walk, **they** ran.

21 Q. **Frank**, your testimony is that **Frank** Sheppard told you
22 that he ran from the blast site to the Four Acres Motel?

23 A. When you actually get down there and run it, it's not
24 that far, sir.

25 Q. My question, sir, was **Frank** Sheppard told you that he

1 ran from the area of the blast site to the Four Acres Motel.

2 A. Yes.

3 THE COURT: That's not a question, counsel.

4 Q. Did **Frank** Sheppard tell you that he ran -

5 A. Yes.

6 Q. Sir, isn't it true that following this discussion
7 sometime in 1991 that you've told the jury about, the first
8 time you had contact with the authorities was in February of
9 1995?

10 A. Yes.

11 Q. Have you seen the Unsolved Mvsteries segment regarding
12 the blast and explosion?

13 A. Yeah.

14 MR. PETERS: I have no further questions.

15 THE COURT: Okay. Miss Hunt?

16 -- -- --

17 CROSS-EXAMINATION

18 By Ms. Hunt:

19 Q. Mr. Kilgore, my name is Susan Hunt, I represent Skip
20 Sheppard.

21 A. Yes.

22 Q. What's your educational background?

23 A. Ma ~ Argo, I have a G. E. D.

24 Q. And what kind of training -- you said you're an
25 electronic engineer?

1 A. Yes, for 15 years.

2 Q. What kind of training did you have to get that career?

3 A. I've been to courses at DeVry and on-the-job training
4 through OEC Communications.

5 Q. Do you remember talking to the authorities on three
6 different occasions about this case?

7 A. I haven't said that. I talked to the ATF, and then to
8 the grand jury.

9 Q. Do you remember talking to an Officer Emerson?

10 A. Yes.

11 Q. Is he with the ATF, as far as your knowledge is?

12 A. Yes.

13 Q. Did you talk to him twice?

14 A. Yes.

15 Q. Once, the first time he called you on the telephone?

16 A. Yes.

17 Q. And then I assume you agreed to meet him later?

18 A. Yes.

19 Q. And you talked to him, I think that first conversation
20 was February 13th, and then the second conversation was
21 February 14th; does that sound right?

22 A. Yes.

23 Q. And then you testified in front of the grand jury? Do
24 you remember talking to a Mark Reeder?

25 A. An investigator?

- 1 Q. Yes.
- 2 A. Yes.
- 3 Q. And you talked to him this year?
- 4 A. Yes.
- 5 Q. In July?
- 6 A. Yes.
- 7 THE COURT: Whose investigator is he?
- 8 Q. (By Ms. Hunt:) Do you know?
- 9 A. I guess for Richard Brown.
- 10 Q. And when Mark Reeder talked to -
- 11 MR. OSGOOD: Your Honor, he works for me as a
- 12 court-appointed investigator.
- 13 Q. (By Ms. Hunt:) When you talked to Mr. Reeder, did he
- 14 have a tape recording device?
- 15 A. Yes.
- 16 Q. And he recorded your conversation?
- 17 A. Yes.
- 18 Q. Okay. And the first time you talked to, or the second
- 19 time you talked to Detective Emerson or Officer Emerson, it
- 20 was a sworn statement, wasn't it?
- 21 A. Yes.
- 22 Q. It was in question and answer format; is that right?
- 23 A. Yes.
- 24 Q. And you signed -- after they had typed it up, you signed
- 25 it?

1 A. Yes.

2 Q. And you reviewed it prior to signing it?

3 A. Yes.

4 Q. Okay. And in that statement, didn't you say, didn't you
5 tell Detective Emerson or Officer Emerson that **Frank** wanted
6 you to take him to buy crack?

7 A. Yes.

8 Q. You didn't tell him he wanted you to take him to mow a
9 yard, did you?

10 A. Yes. Before that, yes, I took him right down to mow
11 this yard right down the street.

12 Q. But you didn't tell Detective Emerson that, did you?

13 A. I really don't remember, but I'm sure I did.

14 Q. I'm going to hand you -- I should mark this.

15 THE COURT: Now, counsel, he's not responsible for
16 what Detective Emerson wrote down.

17 MS. HUNT: It's a signed sworn statement of his.

18 THE COURT: That it includes everything that he
19 told him?

20 MS. HUNT: That's what we're going to find out.
21 That's what I'm going to ask him.

22 (Counsel approached the bench and the following
23 proceedings were had:)

24 THE COURT: What in this statement is inconsistent
25 with what he has said here?

1 MS. HUNT: He doesn't say that Skip was with him,
2 in the statement he doesn't say he went to mow a yard, he
3 said it was **Frank**. Now he's testifying it's **Frank** and Skip.
4 He didn't mention Skip.

5 THE COURT: He's indicated he's not even talking
6 about the same time.

7 MR. BECKER: Out of an abundance of caution, I
8 didn't -- when he said in his direct testimony cutting the
9 lawn and then he takes **Frank** and Skip somewhere else and
10 **Frank** goes into a house and sees Darlene, comes back out,
11 they bought **crack**and, you know, I'm trying to tone it down a
12 little bit.

13 But apparently the defendants are going to get into
14 it anyway, so I don't have any objection to him getting into
15 it. I don't think this is inconsistent.

16 MR. PETERS: I do.

17 THE COURT: What's your objection?

18 MR. BECKER: That's what they did, so -

19 MR. PETERS: My objection is that, eliciting
20 testimony that my client was buying or smoking crack.

21 THE COURT: I thought he said **Frank** went into the
22 **crack**house.

23 MR. BECKER: That's his client.

24 THE COURT: That is your client.

25 MS. HUNT: That's Skip, right.

1 THE COURT: Sometimes you just have to bear up and
2 face reality, Mr. Peters. Maybe that's what's going to come
3 out in the testimony.

4 MR. PETERS: Well, I still have a right to object
5 because it's irrelevant and inadmissible and its prejudicial
6 effect outweighs its probative value, particularly in a case
7 like this where the government didn't elicit it and it's
8 being elicited by a defense counsel with interests adverse to
9 mine.

10 THE COURT: All right. It's overruled.

11 (The following proceedings were had in open court:)

12 Q. (By Ms. Hunt:) I'm going to hand you what's been marked
13 Defendant's Exhibit 3 for identification, ask you to look at
14 that and see if you can identify this.

15 MR. BECKER: I'm sorry, but I think we're well
16 beyond 3.

17 MS. HUNT: I think we are too, but -

18 LAW CLERK: I marked it as 3, Your Honor, because
19 that's the list I'm keeping.

20 MS. HUNT: It's probably more like 13.

21 Q. (By Ms. Hunt:) Have you read this recently?

22 A. Probably about when I come in for an interview once.

23 Q. Do you know when roughly that was?

24 A. Four days ago.

25 Q. So you're probably familiar with this?

1 A. Yes.

2 THE COURT: Is this Exhibit 3? Who said we're
3 beyond 3? What will it be?

4 LAW CLERK: 11.

5 THE COURT: The exhibit will be marked Defendant's
6 Exhibit 11.

7 Q. (By Ms. Hunt:) Mr. Kilgore, in this statement do you
8 say anything about taking **Frank** to go mow a yard? If you'd
9 like to read it, I'll give it to you again.

10 A. No.

11 Q. You don't say that, do you?

12 A. No, because they didn't ask me that. All they asked me
13 was how I got the story. At the first they didn't ask me to
14 sit there and tell them every communication with them, every
15 time I seen them, every time you're with someone.

16 Q. But I believe your testimony on direct was you got the
17 story the day you took **Frank** and Skip to mow a yard; isn't
18 that right?

19 A. Yes.

20 Q. And you don't say anything about mowing the yard in the
21 statement, do you?

22 A. No.

23 Q. Phillip Sheppard is the brother that died; is that
24 correct?

25 A. Yes.

1 Q. And this occurred, you were involved; is that right?

2 A. Yes, ma'am.

3 Q. You were playing with the gun, weren't you?

4 A. Yes.

5 Q. You were holding the gun that shot Phillip in the face,
6 weren't you?

7 A. Yes.

8 Q. And it was at your house, wasn't it?

9 A. Yes.

10 Q. And you didn't see these people for 20 years after that,
11 did you?

12 A. No.

13 Q. You weren't close family, were you?

14 A. At one point we were, ma'am.

15 Q. When you were 15 years old; is that correct?

16 A. Yes.

17 Q. And then after the untimely death of Phillip Sheppard,
18 you didn't see them, did you?

19 A. I was afraid, ma'am.

20 Q. You were afraid of them?

21 A. No.

22 Q. You weren't afraid that they were angry that you were
23 responsible for their brother's death?

24 A. At the time I knew they wasn't angry. It was something
25 that I had to deal with. You know, you take a person's life,

1 it's very traumatic to a little kid. It's something no
2 little kid should have to go through.

3 Q. You were 15, weren't you?

4 A. Yes.

5 Q. You weren't a little kid, were you?

6 A. Yes, ma'am, I was.

7 THE COURT: Don't argue with him about what's a
8 little kid, Miss Hunt.

9 Q. (By Ms. Hunt:) You were 15 years old?

10 A. Ma ~ am, I was a young child.

11 Q. Do you remember talking to Mark Reeder?

12 A. Yes.

13 Q. You do? That was in July of this year; is that correct?

14 A. Could you repeat the question, please?

15 Q. Do you remember talking to Mark Reeder in July of this
16 year?

17 A. Yes.

18 Q. Okay. And he's an investigator, right?

19 A. Yes.

20 Q. And he had a tape recorder, and he recorded your
21 statement, didn't he?

22 A. Yes.

23 Q. And did you tell Mark Reeder that you took **Frank** and
24 Skip to visit Phillip's grave?

25 A. I've taken them and drove by the grave. I've taken

1 Naomi to the grave. I've taken the kids to the grave.

2 Q. My question is did you tell Mark Reeder you took **Frank**
3 and skip to the grave?

4 A. Yes, I did.

5 Q. And did you tell him you took them to the grave the same
6 time that this conversation occurred?

7 A. It was in the same day.

8 Q. The same day in this ride you had with them?

9 A. Yes.

10 Q. Is that correct? And did you say you were afraid to go
11 to the grave with them?

12 A. I didn't tell him I was really afraid. I just said it
13 was an uncomfortable situation.

14 Q. You told Detective -

15 A. Ma ' am, I want to state one thing.

16 THE COURT: Excuse me, sir, just answer questions.

17 THE WITNESS: Okay.

18 Q. (By Ms. Hunt:) You told Detective Emerson or Officer
19 Emerson about the items that you allegedly saw in the
20 Sheppard garage; is that right?

21 A. Yes.

22 Q. We went through that whole list of items earlier?

23 A. Yes.

24 Q. Were those items recovered by a search warrant, to your
25 knowledge?

1 A. Not that I know of.

2 Q. Did anybody ever tell you that?

3 A. No.

4 Q. Did you testify in front of a grand jury that you knew
5 they were recovered by a search warrant?

6 A. I don't remember if I did.

7 Q. Do you remember testifying in the grand jury?

8 A. Yes.

9 Q. And you were under oath; is that correct?

10 A. Yes.

11 Q. I may be wrong. It may be Mark Reeder. Do you remember
12 telling Mark Reeder they were recovered by a search warrant?

13 THE COURT: Now, I'm sorry, what is it you're
14 asking him?

15 MS. HUNT: If he remembers telling Mark Reeder, or
16 the investigator, if those items that he observed allegedly
17 in the Sheppard garage were recovered by a search warrant.

18 THE COURT: How would he know that?

19 MS. HUNT: I'm asking him if he told Mark Reeder
20 that.

21 THE COURT: Just a minute, please. I don't
22 understand the materiality of that, that he thought they were
23 recovered by a search warrant. What difference does it
24 make?

25 MS. HUNT: May we come up?

1 (Counsel approached the bench and the following
2 proceedings were had:)

3 MS. HUNT: Because he said they were, and there was
4 no search warrant. It's false information.

5 MR. BECKER: I think the witness is thoroughly
6 confused now because he's been cross-examined and asked did
7 you tell this to the grand jury.

8 MS. HUNT: I know. And I'm trying to change that,
9 and I will.

10 MR. BECKER: There's nothing in his grand jury
11 testimony about that at all. Now, in this there are some
12 references about the search warrant, but I think it comes
13 more from the investigator than the -

14 THE COURT: What is this?

15 MR. BECKER: This is a transcript of a
16 tape-recorded conversation with this witness done by Mr. -

17 THE COURT: Reeder?

18 MR. BECKER: Yes, on behalf of Mr. Osgood.

19 MS. HUNT: That we just received.

20 MR. OSGOOD: Now -

21 MR. BECKER: And it's my impression, and what I
22 remember about that statement is that somehow between the two
23 of them, they got this search warrant executed, meaning
24 Reeder and this witness, but I'm not sure that this witness
25 comes right out and says, "I know that there was a search

1 warrant and this stuff was recovered." But I mean, it didn't
2 happen, so -

3 THE COURT: Was there a search warrant?

4 MS. HUNT: No.

5 THE COURT: Why are we messing around with that?

6 MS. HUNT: Because he's got information that didn't
7 happen, he supposedly knows things that didn't occur, because
8 I think it impeaches his credibility.

9 THE COURT: Where does the search warrant come
10 from, where does the subject of the search warrant come
11 from?

12 MS. HUNT: It's discussed in that statement.

13 THE COURT: Who brought it up, Reeder?

14 MS. HUNT: I don't have it in front of me.

15 THE COURT: I don't have any confidence in these
16 people like Reeder, so I've got to tell you, I'm going to be
17 very suspicious of anything that generates out of Reeder's
18 contact with this case. I'm really concerned about this
19 reference to a search warrant that he didn't testify to on
20 direct. I think I'll sustain the objection on the grounds
21 that it's beyond the scope.

22 MR. OSGOOD: Your Honor, in defense of Mr. Reeder,
23 he works for me, he's a former Kansas City, Missouri, Police
24 Department -

25 THE COURT: I thought you said he worked for the

1 Court by appointment.

2 MR. OSGOOD: I'm supervising him, the Court is
3 paying him, obviously. He's worked for the Court before. If
4 you look at the statements he's taken in this case, quite
5 frankly, some of them hurt us, and I turned them over, even
6 though they hurt us. He's been objective and fair and, quite
7 frankly, I think the Court's comment about him is unfair.

8 THE COURT: Then why this business about a search
9 warrant that didn't exist?

10 MR. OSGOOD: Mr. Kilgore contacted me on his own by
11 the telephone and asked me to have his investigator come out
12 and talk to him because he was concerned that my client was
13 indicted because he told them at the time that my client
14 didn't have anything to do with it, that it was the
15 Sheppards. That's what generated my interview with him
16 through my detective, and my detective has been doing a good
17 job in this case and has been honorable.

18 THE COURT: I'm concerned about this search warrant
19 reference.

20 MR. OSGOOD: The other point is my investigator was
21 making tapes, and I gave the tapes early on to the
22 prosecution and to the co-counsel. I turned the tapes over
23 to Mr. Bowen's court reporter service. I only got them back
24 day before yesterday. As soon as I got them back, I've given
25 copies of the transcripts.

1 MR. BECKER: That's absolutely accurate.

2 THE COURT: Let's lay off of the search warrant
3 business until it's demonstrated what we're talking about.
4 Did somebody get a search warrant?

5 MS. HUNT: Nobody did, that I'm aware of.

6 THE COURT: Why are they talking about it?

7 MS. HUNT: Because my recollection is, I have to
8 look at this, that he says it was received by a search
9 warrant, and it's not. Well, here.

10 Do you know -- "do you know if they ever recovered
11 the stuff that you're talking about?"

12 "Yes."

13 "And when did they do that?"

14 "I really don't know, just when I testified they
15 asked me about the stuff."

16 "Testified in front of the grand jury?"

17 "Yes."

18 And then it says it later again.

19 THE COURT: Where is the search warrant?

20 MS. HUNT: There are other references in here. I
21 don't have them off the top of my head, the page numbers.

22 MR. BECKER: Again, I don't have it annotated,
23 either. It's my impression that this is consistent with his
24 testimony. They asked me about the property when I came
25 before the grand jury. I mean, was it recovered. I don't

1 know. That's what he says.

2 MS. HUNT: Yes is what he says.

3 THE COURT: Now, do you know if they ever went and
4 recovered this stuff that you're talking about here? If
5 they, who is they, ever went and recovered this stuff. I
6 guess he identifies that that you're talking about here. He
7 answers yes.

8 And when did they do that? Answer, I really don't
9 know. Just when I testified they, I guess, again, they means
10 the grand jury, asked about the stuff.

11 MS. HUNT: I think later on he specifically says
12 Emerson told him. I think later on he specifically says
13 Emerson told him he recovered all of this stuff. Emerson is
14 the officer he talked to.

15 THE COURT: But I don't think -- see, I don't
16 understand what all this has to do with why we're here. So
17 what?

18 MS. HUNT: Because he didn't have a search warrant.

19 THE COURT: But what does that mean?

20 MS. HUNT: In here it says, he says that they
21 recovered the stuff, and that's not true.

22 THE COURT: Well, they could have just gone out and
23 gotten it. Somebody could have just gone out and gotten it.
24 That doesn't mean there was a search warrant.

25 MS. HUNT: There wasn't any stuff, that's our

1 position, so they didn't get it.

2 THE COURT: Well, I think it's immaterial, and I'm
3 going to sustain objection to it. I just don't -- we're
4 getting way far afield here if there's no search warrant.

5 MR. PETERS: Your Honor, very briefly, I'd like
6 some direction from the Court. The Court was pointing at a
7 transcription of a tape recording prepared by an
8 investigator, and the Court said that it had a great deal of
9 trouble with this stuff from these types of people, and I'm
10 curious if you can give any guidance. The statements that
11 the defense has used have been either court reporter
12 statements or tape-recorded statements, and that's balanced
13 against the narrative summary interviews of the government.
14 Can the Court offer any suggestion of what we could do that
15 would not cause the Court -

16 THE COURT: I'll just deal with them one by one.
17 My concern is that these people are not officers of the
18 Court. They're not subject to supervision of the Court as
19 lawyers are. They're not subject to any discipline except
20 what they impose on themselves and is imposed on them by the
21 law generally, and they'll -- I just am suspicious basically
22 of what they produce. They're, there were some errors.

23 MR. PETERS: Does the suspicion -- so that I know,
24 so the same sort of suspicion goes to an investigator that's
25 working for the government that's not under the supervision

1 of the Court?

2 THE COURT: I am concerned about professional
3 investigators generally, that's right, that are not under the
4 constraints that I just mentioned.

5 MR. PETERS: Okay. Okay. Thank you.

6 (The following proceedings were had in open court:)

7 THE COURT: I suppose I should insert the word
8 independent professional.

9 MR. PETERS: May we approach?

10 MR. BECKER: Perhaps we could take this up at a
11 break.

12 MR. PETERS: That would be fine.

13 THE COURT: The word is pretty clear, it seems to
14 me, it doesn't apply to those who are not independent. All
15 right.

16 Q. (By Ms. Hunt:) Mr. Kilgore, when you gave this
17 statement under oath to Detective Emerson in February of '95,
18 do you remember that -

19 A. Yes.

20 Q. -- statement I showed you earlier?

21 A. Yes.

22 Q. When you testified here on direct, you stated that **Frank**
23 told you he was working with the security guard, didn't he?

24 A. He had a deal with the security guard to overlook it.

25 Q. Right. And that security guard -

1 A. Somebody he knew.

2 Q. I have to ask the question first before you answer.

3 He knew a security guard down there who allowed him
4 to go to the property to steal; isn't that what you said?

5 A. Yes.

6 Q. And didn't you also say that he was doing an insurance
7 job on that security guard's truck?

8 A. Yes.

9 Q. And did you identify which security guard it was to the
10 officers when they talked to you?

11 A. Not really. They kept on calling -- **Frank** referred to
12 him as a stupid Polack. Mr. Emerson gave me the name
13 LeManske, if that's what you're referring to. That's where I
14 got the name because I figured, well, yeah, right, that is a
15 Polish name.

16 Q. I'm going to show you your statement again.

17 A. Right. The ski.

18 Q. Which is Defendant's Exhibit 11. And does Detective
19 Emerson ask you a series of names and see if you know those
20 names?

21 MR. BECKER: Again, I don't think counsel -

22 THE COURT: Why are we doing this? There's no
23 failure of recollection, there's no past recollection
24 recorded. Take it back from him.

25 Q. (By Ms. Hunt:) Do you remember telling Officer Emerson

1 that the security guard that **Frank** supposedly had this deal
2 I with was Officer LeManske?

3 A. After he gave me the name, because like I told him, it
4 sounds Polish, so that could be it.

5 Q. And do you remember telling Mark Reeder when he talked
6 to you and took this tape-recorded conversation that the
7 security guard was LeManske?

8 A. Yes, but there was an hour before the recording went on
9 that was not even put in the record what was even talked
10 about.

11 Q. But you're telling about the same person?

12 A. Yes.

13 Q. And you said that this Officer LeManske was in cahoots
14 with **Frank** and would let him come down there and steal, is
15 that right, turn his back?

16 A. Yes. Because actually they kept on giving me the names,
17 Mr. Reeder did, Mr. Emerson did, so that's where I came up
18 with the name LeManske because they kept on referring to him
19 as a Polack, ma'am, so would you think the man's name would
20 be Polish?

21 Q. Listen to my question before you start answering. Did
22 **Frank** allegedly tell you that he was down there that night to
23 do an insurance job on this man's truck?

24 A. Yes, he was to set it on fire.

25 Q. Did he tell you he set it on fire?

- 1 A. Yes, he did.
- 2 IQ And this was security guard LeManske's truck?
- 3 A. Whoever was on duty that night, it was their truck.
- 4 Q. And then he said he went to a shack; is that right?
- 5 A. Yes.
- 6 Q. And in this shack they were going to steal things; is
- 7 that correct?
- 8 A. Yes.
- 9 Q And Skip was with him; is that correct?
- 10 A. Yes.
- 11 Q And they sat in the shack and they watched this Officer
- 12 LeManske's truck burn; is that correct?
- 13 A. **They** wasn't watching it really burn, **they** was trying to
- 14 get anything **they** could get.
- 15 Q. Did they see the truck from the shack?
- 16 A. I really don't know.
- 17 Q. And they had a lantern with them; is that right?
- 18 A. **They** had a lantern, **they** had some type of light.
- 19 Q. What kind of a lantern was it? Did he tell you?
- 20 A. No.
- 21 Q. Was it a lantern that had a flame in it?
- 22 A. Yes.
- 23 Q. And he supposedly told you that skip accidentally
- 24 knocked the lamp over; is that right?
- 25 A. Yes, **they** accidentally knocked it over.

- 1 Q. Tripped over it?
- 2 A. Yes.
- 3 Q. And that lantern was in the shack; is that right?
- 4 A. Yes.
- 5 Q. And so it set the shack on fire; is that correct?
- 6 A. Yes.
- 7 Q. And then they ran; is that correct?
- 8 A. Yes.
- 9 Q. And when they ran, they were carrying these extension
10 cords, these drills, those acetylene torches?
- 11 A. No, **they** had been down there before. As I told you,
12 this wasn't a one-time deal. **They** were trying to get what
13 **they** could carry. At the time when the fire started, **they**
14 just dropped what **they** got and took off.
- 15 Q. So **Frank** said they dropped whatever they were going to
16 steal and left it there?
- 17 A. Ma'am, what would you do if a fire was going on?
- 18 THE COURT: Just answer your question, sir.
- 19 Q. (By Ms. Hunt:) He told you when the fire started and
20 they had to leave, they just dropped what they were going to
21 steal and ran?
- 22 A. Just ran. **They** didn't say what **they** did, if **they**
23 dropped anything. **They** just said **they** ran.
- 24 Q. I believe you testified that they dropped it and ran.
- 25 A. Just a second ago I said dropped it and ran, but what

1 **they** had in her hands, I'm sure **they** dropped it and run.

2 Q. Now, let's talk just for a second about this compartment

3 in the Sheppards' house. Is it an add-on room, does it have

4 like a door and walls?

5 A. It has walls.

6 Q. Okay. Let me draw a little diagram for us on this board

7 down here.

8 A. Sure.

9 Q. Would you step down here, sir?

10 (so done.)

11 Q. Why don't you draw on this a picture of the garage and

12 this room.

13 (So done.)

14 A. Garage doors.

15 THE COURT: Just a minute, please.

16 A. This is the garage.

17 THE COURT: Just a minute, Mr. Kilgore. When you

18 talk back there, use the microphone, please.

19 A. This is the garage right here.

20 Q. (By Ms. Hunt:) Okay. What is this part, label this

21 part.

22 A. This is the inside of the house.

23 Q. Okay. Put on here where the front door is. Okay. Now,

24 where is this added-on room?

25 A. Right back here to the back of the house. Here is the

1 patio and the back yard, and here is the back yard. It's not
2 very big. It's just a small, no wider than this right here.
3 It's just enough for a washer and dryer and all the plumbing
4 and the -

5 Q. So it's not actually in the garage; is that right?

6 A. No, it's an add-on to the house.

7 Q. Behind the garage; is that right?

8 . Yes, the opening goes underneath the house to the crawl
9 space and everything.

10 MS. HUNT: Your Honor, I'm going to mark this
11 diagram as Defendant's Exhibit 12.

12 Q. (By Ms. Hunt:) Do you feel like you helped the police
13 in this investigation by your talking to them?

14 MR. BECKER: Objection, argumentative.

15 THE COURT: Also calls for an opinion and it's
16 immaterial. Sustained.

17 Q. (By Ms. Hunt:) You didn't come forward with this
18 information, the police contacted you; is that correct?

19 A. No. I come forward with it.

20 Q. Who did you talk to?

21 A. Detective Emerson.

22 Q. You called Detective Emerson?

23 A. Yes.

24 Q. How did you find his phone number?

25 A. I called the ATF.

1 Q. Did you watch Unsolved Mysteries?

2 A. Yes, I've watched it.

3 Q. Is that where you got the phone number for ATF?

4 A. No.

5 Q. Are you aware there's an award out for this?

6 A. Yes, I understand there's a reward for it.

7 Q. Did you watch Unsolved MYsteries just within a few days
8 before coming forward?

9 A. No, I don't think I did, not just a few days.

10 Q. A week?

11 A. Probably a month or so.

12 Q. A month or so. You watched that, and then you called
13 ATF and got ahold of Detective Emerson somehow through ATF?

14 A. Ma'am, I had a wife, I had children. If you -

15 Q. Sir.

16 THE COURT: I'm sorry, sir, just answer the
17 question, please.

18 A. Yes.

19 Q. (By Ms. Hunt:) But you knew this information the summer
20 of '91; is that correct?

21 A. Yes.

22 Q. And it was February of '95 when you talked to the ATF;
23 is that correct?

24 A. Yes.

25 MS. HUNT: I'd like to offer Defendant's Exhibit 12

1 into evidence, Your Honor.

2 MR. BECKER: No objection.

3 MS. HUNT: That's all we have.

4 THE COURT: All right. It's admitted. I'm sorry.

5 I should see from the other defense counsel, any objection to
6 12?

7 MR. O'CONNOR: No, sir.

8 MR. PETERS: None, Your Honor.

9 THE COURT: All right.

10 **(Defendants' Exhibit 12 was admitted**
into
11 evidence.)

12 THE COURT: Who is next?

13 MR. O'CONNOR: I have no questions.

14 MR. BUNCH: No questions, Your Honor.

15 MR. OSGOOD: Just a couple, Your Honor.

17 CROSS-EXAMINATION

18 By Mr. Osgood:

19 Q. Mr. Kilgore, I'm John Osgood. I represent Mr. Brown.

20 You and I have spoken on the phone -

21 A. Yes, sir.

22 Q. -- once, maybe twice, but we've never met; is that
23 correct?

24 A. No, sir.

25 Q. How is it that Mr. Reeder came out to interview you?

1 A. I called because, well, **Frank** told me his story. He
2 never mentioned your client's name.

3 Q. Mr. Brown?

4 A. Yes.

5 Q. Okay. And do you know Mr. Brown?

6 A. No, I really don't know him from anybody.

7 Q. And his name never came up?

8 . No.

9 . One other question. In your grand jury transcript, I
10 think they asked you about other people, and you say an
11 Italian fellow was involved. Do you know the name Dimaggio?
12 Have you ever heard that name?

13 . No, I never said an Italian fellow. I said a Polish
14 because they referred to him as a Polack.

15 Q. Well, let me -- Page 11 of your grand jury transcript,
16 maybe if you'll take a look at this, it will refresh your
17 memory a little bit.

18 THE COURT: Just ask him did he give this question
19 and did he give this answer.

20 Q. All right. On page, starting on Page 10, were you asked
21 this question?

22 Did **Frank** say anything about other persons being
23 along besides -- well, I'll withdraw the question.

24 Do you know the name Dimaggio?

25 A. Joe Dimaggio.

1 Q. okay. You do know a Joe Dimaggio?

2 A. The baseball player.

3 Q. Okay. You've never heard the name before, though?

4 A. No.

5 MR. OSGOOD: That's all.

6 THE COURT: All right. Anybody else? Redirect?

7 MR. BECKER: Very briefly, Judge.

8 — — —

9 REDIRECT EXAMINATION

10 By Mr. Becker:

11 Q. Mr. Kilgore, you testified just a few minutes ago that
12 you watched this Unsolved Mysteries thing on TV; is that
13 right?

14 A. Yes.

15 Q. Do you remember in that program, did it mention the
16 names of any of these Sheppard people at all?

17 A. No.

18 MR. BECKER: Thank you.

19 THE COURT: All right. You may step down. Thank
20 you, sir.

21 Call your next witness.

22 MR. BECKER: Judge, I think if we could take a, our
23 morning break now, the next witness is being brought up by
24 the marshals. It may take a few minutes.

25 THE COURT: All right. Folks, we will, then, take

1 our morning break. Don't talk about the case while we're in
2 recess, and you may withdraw at this time.

3 (The following proceedings were had in the
4 courtroom out of the presence of the jury:)

5 THE COURT: All right. We'll be in recess for
6 about 15 minutes.

7 (A recess was taken from 10:11 a.m. to 10:35 a.m.)

8 MR. MILLER: Your Honor, if I may, I wanted to
9 revisit that one motion in limine from this morning, although
10 Mr. Peters isn't here.

11 MR. O'CONNOR: He's coming through the door.

12 THE COURT: Okay.

13 MR. MILLER: Earlier, the defense filed a motion in
14 limine to exclude the testimony of Van D. Waite. I did not
15 have a chance to read that motion. You sustained the motion,
16 and I'd like to revisit it again with you, if I could,
17 regarding Mr. Van D. Waite's testimony.

18 To capsulize it, what he'll say is he was in his
19 yard. He was approached by **Frank** Sheppard. The lawn mower
20 had backfired, and **Frank** Sheppard made a statement to him, "I
21 like to blow things up, too," or, "I like to blow things
22 up."

23 It's no more prejudicial than what we've heard from
24 these other witnesses. It should go to the weight. Why say
25 such a thing six to eight months after the explosion? He

1 says, "I like to blow things up, too," and for that matter,
2 we feel it's somewhat relevant for the jury to give weight

4 THE COURT: Well, what does it pertain to that's
5 probative of an issue in this case, I mean, except a
6 character trait of, or a predilection, a personality
7 predilection of **Frank** Sheppard, and you know that's not
8 admissible.

9 MR. MILLER: One thing it goes to, it does
10 corroborate somewhat the statements about lack of remorse.
11 You know, it's their own fault, it's their own fault, and
12 they're saying that they started a fire, and then there was
13 an explosion about it. It goes to that instead of, you know,
14 why say that if it doesn't go in with the other statements
15 about lack of remorse.

16 THE COURT: Well, I just feel that it's too remote
17 to -- I'm sorry, but we're going to be here too long to risk
18 creating an error in the record that will make us be here
19 again. I don't want to, I'm not going to take that chance.
20 I think it's remote. Also, I think that's something that a
21 jury would maybe, in a 403 kind of situation, where it's
22 given more significance than it warrants. I'm just not going
23 to let it in. I'm sorry.

24 MR. O'CONNOR: Judge, can we approach on another
25 issue real quick?

1 (Counsel approached the bench and the following
2 proceedings were had:)

3 MR. BECKER: Mr. O'Connor is acting as
4 administrative counsel.

5 THE COURT: That's good. I didn't know we had
6 one.

7 MR. BECKER: My wife tells me and other people tell
8 me that there have been quite a few sketches on TV of the
9 jury. I'm uncomfortable with that. I don't like them
10 sketching the witnesses, but there's nothing I can do about
11 that. They're witnesses in a public trial. I am
12 uncomfortable, and I don't know if the jury has, the jury
13 probably hasn't seen them. They've probably followed the
14 Court's direction about not watching TV and not discussing
15 the -

16 THE COURT: See, I wasn't in on the beginning of
17 this. What was Judge Bartlett's original direction about
18 promulgation of the names of the jury and information about
19 the jury?

20 MR. BECKER: He declined a media request to provide
21 the names of the jurors. He did give them a breakdown of -

22 MR. OSGOOD: Sex and race, I think.

23 MR. O'CONNOR: There was a record made by one of
24 the jurors, Judge, that she had gone to work the next day,
25 and before she came back down to actually be selected that

1 two employees came up to her and said that they saw her
2 sketch on television, and then she knew that she had to keep
3 quiet about it.

4 But those are concerns, that they may show people,
5 that that may cause someone to make inquiry. I would join
6 anything the Court or Mr. Becker wanted to do regarding them
7 sketching the jury.

8 THE COURT: I think this is something I would have
9 to do pretty carefully. If you by agreement want to submit
10 something, however you might want to do it. I'm not going to
11 just sit up here and order the young lady back there that
12 draws pictures not to draw pictures of the jury, particularly
13 since there hasn't been any constraint or virtually no
14 constraint up to this point. They're not sequestered. You
15 know, Judge Bartlett didn't enter any other orders.

16 MR. OSGOOD: Maybe if we collectively as defense
17 and prosecution went to her and just bluntly and politely
18 told her.

19 THE COURT: That's an oxymoron, Mr. Osgood. To be
20 blunt and polite, come on.

21 MR. OSGOOD: If we tactfully -

22 THE COURT: There you go.

23 MR. OSGOOD: If we tactfully suggested to her that
24 it would probably be uncomfortable for some of these jurors
25 and maybe she could draw the witnesses and the lawyers and

1 the judge and whatnot, that they would get the same effect
2 out of it.If we tell the lady that some of the jurors
3 themselves are uncomfortable with it, I would think that -

4 MR. BECKER: We'll talk about it.

5 MR. OSGOOD: We'll try it.

6 THE COURT: I'm not going to -- you know, there's
7 more than one.

8 MR. BECKER: Right.

9 (The following proceedings were had in open court:)

10 THE COURT: All right. Let's get the jury.

11 (The following proceedings were had in the
12 courtroom in the presence of the jury:)

13 THE COURT: And we will proceed with your next
14 witness, please.

15 MR. MILLER: Your Honor, the government calls Mr.
16 Glen Shepard.

17 THE COURT: Stand and be sworn, please.

18 -- -- --

1 GLEN SHEPARD,

2 being first duly sworn by Kathy Geller, Law Clerk, testified
3 as follows:

4 - - -

5 DIRECT EXAMINATION

6 By Mr. Miller:

7 Q. Would you tell us your name, please?

8 A. Glen Shepard.

9 Q. How old are you, sir?

10 A. Forty-nine.

11 Q. Okay. Would you spell your last name for us?

12 A. 5-H-E-P-A-R-D.

13 Q. Are you any relation to **Frank** Sheppard or Earl Sheppard,
14 also known as Skip Sheppard?

15 A. No.

16 Q. Do you know **Frank** Sheppard?

17 A. Yes.

18 Q. Do you see him in the courtroom now?

19 A. Yes.

20 Q. Can you point him out?

21 THE COURT: Is he the man standing up?

22 THE WITNESS: Yes.

23 Q. (By Mr. Miller:) Is that **Frank** standing up?

24 A. Yes, sir.

25 THE COURT: All right. Let the record reflect that

1 Mr. Sheppard stood up and the witness identified him.

2 Q. (By Mr. Miller:) Do you know Bryan Sheppard?

3 A. Yes, sir.

4 Q. Do you see him in the courtroom?

5 A. Yes, sir.

6 Q. Where?

7 A. Right there. The next one over, right there.

8 Q. In the sweater?

9 A. Yes.

10 Q. Do you know -

11 THE COURT: Just a minute. Mr. Osgood, would you
12 come up, please?

13 (Counsel approached the bench and the following
14 proceedings were had:)

15 THE COURT: Now, you can tell your client that he
16 came about that far from being held in contempt with what he
17 did over there.

18 MR. OSGOOD: What did he do?

19 THE COURT: He was acting like he was going to
20 stand up when he was asked to identify Bryan Sheppard. He
21 was trying to confuse the witness as to who he was going to
22 identify. It didn't work, and I'm going to come down hard on
23 him if -

24 MR. OSGOOD: I would expect you to, Your Honor. I
25 was typing on the computer. I didn't see what happened.

1 THE COURT: Tell him to knock that stuff off.

2 MR. OSGOOD: All right.

3 (The following proceedings were had in open court:)

4 THE COURT: All right. Go ahead.

5 Q. (By Mr. Miller:) How long have you known **Frank**
6 Sheppard?

7 A. Twenty, twenty-five years.

8 Q. How long have you known Bryan Sheppard?
9 . Since '87.

10 Q. I want to talk about your record. How many felony and
11 misdemeanor convictions do you have, both state and federal?
12 Do you know how many?

13 A. A multitude of them. I don't have exact count. Maybe
14 ten convictions on felonies, maybe more.

15 Q. Well, let me help you out. In 1967, were you convicted
16 of attempted burglary?

17 MR. O'CONNOR: What year?

18 MR. MILLER: I said 1967.

19 A. Yes, sir.

20 Q. (By Mr. Miller:) Was that in Jackson County, do you
21 recall?

22 A. Yes, sir.

23 Q. Do you recall your sentence?

24 A. That sentence was eventually vacated and set aside by
25 the Supreme Court on a -- it was a four-year sentence.

1 Q. Okay. It was four years?

2 A. Right.

3 Q. All right. Were you also convicted in 1967 of burglary
4 in Jackson County and received eight years?

5 A. I served -- yes, sir.

6 Q. In 1967, did you also get a misdemeanor conviction for
7 tampering in the second degree and were given 90 days?

8 A. Yes, sir.

9 Q. In 1967 were you also convicted of burglary and given
10 five years?

11 A. Yes, sir.

12 Q. And in 1967 did you also get a stealing conviction and
13 were given three years?

14 A. Yes, sir.

15 Q. Now, in March of 1973, were you convicted of carrying a
16 concealed weapon and given four years?

17 A. Yes, sir.

18 Q. In May of 1974, were you given a federal conviction for
19 aiding and abetting?

20 A. I believe it was conspiracy for interstate
21 transportation of stolen property, but I was convicted.

22 Q. Were you given five years on that?

23 A. Yes, sir.

24 Q. In June of 1978, were you convicted of stealing in
25 Jackson County and received three years?

1 A. Yes, sir.

2 Q. In October of 1981, were you convicted in Johnson
3 County, Kansas, of manslaughter?

4 A. Involuntary manslaughter, yes, sir.

5 Q. And you received a, in Kansas they call it 10 to 20
6 years; is that right?

7 A. I got a one to five.

8 Q. You got a one to five, all right. In June of 1987, were
9 you given a misdemeanor conviction of trespass in the first
10 degree in Jackson County and received 45 days?

11 A. Yes, sir.

12 THE COURT: The date again, June of?

13 MR. MILLER: '87.

14 THE COURT: Thank you.

15 Q. (By Mr. Miller:) In October of '87 did you also receive
16 a felony conviction of tampering in the first degree in
17 Jackson County and received eight years?

18 A. Yes, sir.

19 Q. In October of 1987, did you, were you convicted of
20 felony stealing in Jackson County and received eight years?

21 A. Yes, I did.

22 Q. Now, you were paroled in, on October the 16th of 1992?

23 A. I was let, I left for house arrest, I think it was in
24 June or July of '92.

25 Q. So you were out in 1992?

1 A. Yes, sir.

2 Q. Now, in March of '93, were you convicted of stealing in
3 Jackson County and received one year?

4 A. Yes, sir.

5 Q. And then you were paroled again in September of '93?

6 A. Yes, sir.

7 Q. Now, just recently on December the 20th of 1995, were
8 you convicted in Cass County of Count I, possession with
9 intent to distribute; Count II, possession with intent to
10 sell; Count III, possession of controlled substance; Count
11 IV, possession of burglar tools; Count V, possession of
12 controlled substance; and Count VI, possession of **drug**
13 paraphernalia?

14 A. Yes, sir.

15 Q. Now, for your sentences on Count I and Count II, did the
16 judge in Cass County give you 13 years on Count I and 12
17 years on Count II?

18 A. Yes, sir.

19 Q. And then he ran them consecutively, he stacked them,
20 meaning one runs under the other for 25, right?

21 A. Yes, sir.

22 Q. But he did what they call a suspended execution of
23 sentence?

24 A. Yes, sir.

25 Q. And that would have placed you on probation, correct?

1 A. Correct.

2 Q. But he sentenced you to seven years for possession of
3 controlled substance, that's Count III?

4 A. Correct.

5 Q. Five years for possession of burglar tools, that's Count
6 IV?

7 A. Correct.

8 Q. Right? And he ran those concurrent?

9 A. Yes.

10 Q. And he also ran those concurrent with the 25, right?

11 A. Yes, sir.

12 Q. And for the possession of a controlled substance and the
13 possession of **drug** paraphernalia, that's Count V and VI, he
14 gave you one year in the county jail, right?

15 A. He gave me two one-year sentences to run consecutively.

16 Q. So he gave you one and one, and he ran it consec. for
17 two?

18 A. Yes.

19 THE COURT: Were they executed?

20 Q. (By Mr. Miller:) Are you currently in the Cass County
21 Jail?

22 A. Yes, I am.

23 Q. I want to go back to 1998, and where were you living in
24 1998?

25 A. '88?

1 Q. I'm sorry, '88.

2 A. I was in prison.

3 Q. Okay. Where?

4 A. Farmington, Missouri.

5 Q. And even though you were in prison, do you recall the
6 explosion in Kansas City in 1988 that killed the six
7 firefighters?

8 A. Yes, I do.

9 Q. How do you remember that explosion?

10 A. From television.

11 Q. Now, you were paroled in 1992?

12 A. Yes.

13 Q. And while you were on parole, did you ever see **Frank**
14 Sheppard?

15 A. Yes, I did.

16 Q. Where were you when you saw **Frank** Sheppard?

17 A. I was going to an ex-girlfriend's house and I was going,
18 I was coming down 71 going west. And I come to the
19 intersection where 71 divides off to go into Prospect and 71
20 goes straight. And there's an intersection there and it was
21 a light, and I was waiting for the light. And it was a red
22 light when I came up to it, and I looked over across the
23 street, and I seen **Frank** Sheppard on the corner over there.

24 Q. Now, after you saw him, what did you do?

25 A. I honked my horn. I rolled down my window and hollered

1 at him, and he waved for me, motioned for me to come over to
2 where he was at.

3 Q. And then what happened?

4 A. I went up the street a ways. I turned around, and I
5 came back over where he was at and parked on, kind of was a
6 side street.

7 Q. Now, did this happen in December of '92, do you recall?

8 A. Yes, sir.

9 Q. And after he motioned you over and you went over there,
10 what happened?

11 A. He asked me if I could give him a ride over to some
12 apartment buildings where his nephew Bryan was at.

13 Q. Okay. Did you give him a ride?

14 A. Yes, I did.

15 Q. All right. Where did you take him?

16 A. I took him to some apartments that was on 87th and
17 Holmes.

18 Q. Do you remember the name of those apartment complexes?

19 A. No, I don't.

20 Q. I'm sorry?

21 A. No, I don't.

22 Q. Did you go into the apartment that **Frank** Sheppard wanted
23 you to?

24 A. Yes, I did.

25 Q. When you went in, who did you see inside the apartment?

1 A. There was a girl, and there was a guy sitting on the
2 divan, and **Frank** asked the girl where Bryan was.

3 Q. Did you see Bryan in there?

4 A. In the kitchen, yes.

5 Q. When you came in, what did, what was Bryan Sheppard's
6 condition when you saw him?

7 A. He had been up for several days, been drinking.

8 Q. What did Bryan Sheppard ask you or **Frank** for?

9 A. Well, he wanted something to drink or some **drugs**.

10 Q. Now, at that point, how close are you to Bryan Sheppard,
11 I mean, physically, I mean, how close are you to Bryan
12 Sheppard?

13 A. Oh, from, maybe from here to the desk right there.

14 Q. What did Bryan Sheppard say at that point?

15 THE COURT: Get some sort of a footage estimate, if
16 you would, counsel. Are you talking, which -- for one thing,
17 which desk are you talking about?

18 THE WITNESS: Okay. six foot.

19 THE COURT: All right.

20 Q. (By Mr. Miller:) At that point, what did Bryan Sheppard
21 say to you or to **Frank** that you heard about the firefighters'
22 deaths?

23 A. Okay. **Frank** wanted Bryan to come with him. And Bryan
24 was, like I said, had been drinking and things, and they was
25 arguing and he wanted to stay. And then Bryan told **Frank**, he

1 said, "I'm not like you and the other guys." He says, "I
2 can't live with myself because of the death of them firemen,
3 and it's eating me up."

4 Q. After Bryan said it's eating him up, what did **Frank** say?

5 A. He told him to shut up.

6 Q. Where did you and **Frank** Sheppard go from there?

7 A. We went to a liquor store to get some liquor for Bryan.

8 Q. After getting some liquor for Bryan, where did you and
9 **Frank** Sheppard go then?

10 A. Back to the apartments.

11 Q. At the apartment, did you see Bryan Sheppard?

12 A. Yes.

13 Q. How did he appear to you then?

14 A. He was passed out on the table.

15 Q. What did you do at that point?

16 A. I asked **Frank** to do, did he want to take him or do you
17 want to leave him there. The girl that was there, she said,
18 she told **Frank** -

19 Q. Hold on, you can't tell what the girl said. The bottom
20 line is, what did you do then after seeing Bryan Sheppard
21 passed out?

22 A. I let **Frank** there and left.

23 Q. When did you see **Frank** Sheppard again?

24 A. This was several days later. I gave **Frank** my pager
25 number to my pager, and several days later **Frank** paged me.

1 Q. When he paged you, where was he?

2 A. Okay. I don't know where he was when he called me. It
3 wasn't -- I met him at Four Acres Motel, but I don't know
4 where he was when he called me.

5 Q. Who instructed you to meet **Frank** Sheppard at the Four
6 Acres?

7 A. **Frank**.

8 Q. When you got to the Four Acres, what did **Frank** want from
9 you?

10 A. He wanted to find some **drugs**.

11 Q. And what did the two of you do?

12 A. We went, and we went to some places that he knew that
13 may have some, and we didn't get any.

14 Q. When you couldn't find any **drugs**, then what did you and
15 **Frank** Sheppard do?

16 A. We went to a liquor store, **Frank** went in and got some
17 liquor. We went back to the motel.

18 THE COURT: Went back where?

19 THE WITNESS: To the motel.

20 Q. (By Mr. Miller:) Is that the Four Acres?

21 A. Yes.

22 Q. There at the Four Acres, did you and **Frank** Sheppard talk
23 about the explosion that caused the death of the
24 firefighters?

25 A. Yes.

1 Q. What did you ask **Frank** Sheppard about his involvement in
2 the deaths of the six firefighters?

3 A. I asked **Frank** what happened up there, and -

4 Q. What did **Frank** say to you after you asked him what
5 happened up there?

6 A. He told me that **they** had got drunk, **they** were drinking,
7 **they** went up there, **they** burglarized the place, and -

8 MR. O'CONNOR: Judge, I'm going to object to the
9 they.

10 Q. (By Mr. Miller:) Narrow it down to what **Frank** said.

11 A. **Frank** said he went up there, **they** had been drinking, and
12 that he had sobered up, and he burned the place.

13 Q. Did he tell you why he set the fire?

14 A. No.

15 Q. What did he tell you he went up there to steal?

16 A. Tools.

17 Q. Anything else?

18 A. That's all that I -

19 Q. Did **Frank** Sheppard tell you where he was when the fire
20 started?

21 A. He told me he was there.

22 Q. What did **Frank** Sheppard say to you about the deaths of
23 the six firefighters?

24 A. He said that it wasn't supposed to have went like that.
25 He said that, you know, that it wasn't anything intentional,

1 that it was just something that just happened.

2 Q. Now, were you ever returned to the penitentiary?

3 A. Yes.

4 Q. Okay.

5 A. No, not to the penitentiary, no.

6 Q. Where were you returned to?

7 A. To Farmington to the **drug** rehab.

8 Q. Okay. And how -- if you could give a time frame, after
9 **Frank** Sheppard had told you about his involvement, when did
10 you go to Farmington again?

11 A. Okay. The first time I went was in, I think, March of
12 '93.

13 Q. Now, did you ever call the police or the authorities
14 with the information that you had?

15 A. No, I didn't.

16 Q. Who contacted you in Farmington, or who contacted you
17 next?

18 A. Okay. Mr. True, Mr. True and several others.

19 Q. How long had you been back in the system when they
20 contacted you?

21 A. Okay. They contacted me in, I think it was December
22 29th or January the 1st of '96. When I was in Cass County,
23 that's when they come, that's when I come in contact with
24 them.

25 Q. Now, I want to go back to the sentence that you received

1 in Cass County in December of '95. I want to talk about
2 Count I and Count II, all right?

3 A. Yes, sir.

4 Q. And that's where you received a total of 25 years and
5 the judge did what they call an SES, a suspended execution of
6 sentence, that's what I want to talk about. Who was there at
7 your sentencing?

8 A. My attorney, Mr. True, Agent True, prosecutor and the
9 judge.

10 Q. On whose behalf did Mr. True testify?

11 A. My behalf.

12 Q. Now, do you feel that you've been given anything for
13 your testimony today?

14 MR. O'CONNOR: Object to that, calls for
15 self-serving hearsay. What he felt isn't relevant. Whether
16 he was given something is what's relevant.

17 MR. MILLER: It goes to his state of mind.

18 THE COURT: That's permissible. He may answer.
19 Overruled.

20 Q. (By Mr. Miller:) I'll rephrase it. Do you believe that
21 you've been given anything for your testimony?

22 A. Yes.

23 Q. What?

24 A. Leniency on the charges that I had received.

25 Q. Now, how many times were you brought down before the

1 federal grand jury?

2 A. Two times.

3 Q. okay. What happened the first time?

4 MR. O'CONNOR: Can we approach, please? I have an
5 objection.

6 THE COURT: All right.

7 (Counsel approached the bench and the following
8 proceedings were had:)

9 MR. O'CONNOR: Your Honor, as part of the Court's
10 order, I had to give up certain statements and interviews
11 that I did with certain individuals, one of those being Glen
12 Shepard. And the purpose that I was to give those up was
13 because those were witnesses that I intended to call. And
14 the government was given those because of my intention of
15 calling them as witnesses. That was the ruling of the
16 Court.

17 Now I believe they're trying to use those
18 statements in their case to now take away, try to take away
19 any force of cross-examination of this witness regarding his
20 appearance before the grand jury and his refusal. We were
21 never told this ever. Until I talked to Mr. Shepard in jail,
22 we were never told that he was, we were never told that he
23 was brought down to be placed before the grand jury.

24 Now, I understand he never did go before the grand
25 jury, but we were never made aware of the fact that he was

1 ever even brought down and then he did not want to talk and
2 he was told, according to him, by Mr. Becker that he could be
3 held in contempt, and then they took him back and brought him
4 back later.

5 Now I think they're attempting to use the
6 statements that I took in their case and using them for the
7 wrong purpose.

8 MR. MILLER: I'm not being flip, but I don't
9 understand the legal objection.

10 THE COURT: I don't either. I mean, it's kind of
11 one of those life is hard situations, you know.

12 MR. PETERS: You can bring it out on your
13 cross-examination.

14 THE COURT: It goes to weight and credibility, it
15 seems to me, not admissibility.

16 MR. BECKER: Perhaps a little bit anticipatory, but
17 Mr. O'Connor was given this guy's grand jury testimony.

18 MR. O'CONNOR: That's right. Exactly. Now, one
19 other thing, Judge, while we're up here. I'm hoping, in
20 light of this man's answers to what he thought he was given
21 and so on, I'm given some leeway with him. Based on what
22 he's told me in his statements, this was contrary to what he
23 said. They tried to put him up here like, you know, he's
24 really not getting anything.

25 THE COURT: Well, I don't understand that. He said

1 he was given something. He said they were more lenient with
2 him because of his cooperation.

3 MR. O'CONNOR: Okay.

4 THE COURT: You do what you will.

5 (The following proceedings were had in open court:)

6 THE COURT: Okay.

7 Q. (By Mr. Miller:) What happened the first time that you
8 came down for the federal grand jury?

9 A. I refused to testify.

10 Q. Okay. And did you speak with Mr. Becker after you
11 refused to testify?

12 A. Yes.

13 Q. Okay. And why did you refuse?

14 A. Well, I didn't want to get involved, No. 1. No. 2, they
15 didn't tell me that I was coming down. That was the main
16 reason.

17 Q. Did you come back a second time for the federal grand
18 jury?

19 A. Yes, I did.

20 Q. Why did you come back the second time?

21 A. After I spoke to my attorney and we reviewed all the
22 options and he, in his best advice he told me that I should
23 cooperate and come in front of the grand jury.

24 MR. MILLER: That's all I have of this witness,
25 Your Honor.

1 THE COURT: All right. Are you first, Mr.
2 O'Connor?

3 MR. O'CONNOR: Yes, Your Honor.

4 -- --

5 CROSS-EXAMINATION

6 By Mr. O'Connor:

7 Q. Mr. Shepard, I'm John O'Connor. I represent Bryan
8 Sheppard. You and I have talked before, have we not?

9 A. Yes, we have.

10 Q. Now, you've talked about your prior criminal record, and
11 you said you thought you had around ten. I think Mr. Miller
12 ran through with you your felony convictions, and I added up
13 16. Does that sound about right?

14 A. That could be very well right, yes.

15 Q. Did you forget about a conviction you had in 1978 in
16 which you got a six-year sentence for aggravated assault?

17 A. Yes, I did.

18 Q. So that's 17 prior felony convictions that you have?

19 A. Okay.

20 Q. Is that correct?

21 A. I'm assuming, yes, that is correct.

22 Q. How much of your adult life have you spent in prison?

23 A. I've spent most of my adult life in prison.

24 Q. Have you gone by other names before?

25 A. Yes.

- 1 Q. How many other names have you gone by?
- 2 A. Several. Dave Draper, Glen Anthony Shepard. I can't
- 3 recall maybe some of the others that -
- 4 Q. Jeffrey Broski?
- 5 A. That's one.
- 6 Q. Anthony Fairchild?
- 7 A. Yes.
- 8 Q. Russell Shepard?
- 9 A. Yes.
- 10 Q. Donald Ballard?
- 11 A. Yes.
- 12 Q. Now, as I understand it, or you tell me, this new charge
- 13 you got in Cass County, the charges that Mr. Miller read off,
- 14 the possession with intent to distribute methamphetamine,
- 15 possession with intent to sell methamphetamine, possession of
- 16 burglar tools, possession of a controlled substance; there
- 17 were two others, what were they?
- 18 A. I believe there was a marijuana, possession of
- 19 misdemeanor marijuana and a **drug** paraphernalia.
- 20 Q. This was in December of 1996; is that correct?
- 21 A. That's correct.
- 22 Q. And then in January -- no -- I'm sorry, it was December
- 23 of '95; is that right?
- 24 A. Right, yeah.
- 25 Q. The authorities then came to see you in the Cass County

- 1 Jail in January of 1996?
- 2 A. Correct.
- 3 Q. And you were sitting in the county jail in Cass County
- 4 with the possession with intent to distribute, which was 10
- 5 to 30 or life; would you agree with that?
- 6 A. It was 15 years maximum.
- 7 Q. And you were a prior and persistent offender, were you
- 8 not?
- 9 A. Yes.
- 10 Q. Does that double your sentence?
- 11 A. I think it goes to 20. I'm not certain on it.
- 12 Q. All right. The other possession charge carried a lot of
- 13 time?
- 14 A. Yes, it did.
- 15 Q. The fact that you were a prior and persistent offender
- 16 under Missouri law would make it that you would have to serve
- 17 80 percent of any sentence that you would be given?
- 18 A. Yes, sir.
- 19 Q. And at that point when they walked into that jail to see
- 20 you, you had at least 13 prior felony convictions?
- 21 A. Yes, sir.
- 22 Q. And six more facing you as they walked in to see you?
- 23 A. Yes, sir.
- 24 Q. And you didn't call them, did you?
- 25 A. No, I didn't.

- 1 Q. They just showed up there?
- 2 A. Yes, sir.
- 3 Q. And they brought a rights waiver form; is that correct?
- 4 A. That's correct.
- 5 Q. And do you know why they had to read you your rights?
- 6 A. Do I know why?
- 7 Q. Yeah.
- 8 A. It's the law.
- 9 Q. Okay. And you hadn't done anything as it related to
- 10 this explosion, had you?
- 11 A. No.
- 12 Q. And they were up there to talk to you unrelated to what
- 13 you were charged in Cass County with, right?
- 14 A. Correct.
- 15 Q. Now, they interviewed you there?
- 16 A. Yes, they did.
- 17 Q. And did you later see the interview that they wrote up
- 18 of the interview they did of you?
- 19 A. The first one, yes.
- 20 Q. okay. You had a chance to read that?
- 21 A. Yes, I did.
- 22 Q. You have a **drug** history?
- 23 A. Yes, I have.
- 24 Q. What is your **drug** history?
- 25 A. I've been off and on **drugs** a great part of my life.

1 Q. What kind of **drugs**?

2 A. Methamphetamine -

3 MR. MILLER: I'm going to object to the relevancy
4 of this. We need a time frame.

5 MR. O'CONNOR: He testified on direct that he had
6 been in **drug** treatment rehab. I think the door has been
7 opened to go into his prior **drug** history.

8 MR. MILLER: Well, certain dates I opened up.

9 THE COURT: It seems to me you brought up -- unless
10 you're going to talk about now or -- well, let's say specific
11 time, just be specific, and then you can go into it.

12 Q. (By Mr. O'Connor:) Okay. When you were out, as I
13 understand it, what years were you out in the nineties where
14 you weren't in prison?

15 A. Okay. '92, '93, '94.

16 Q. What kind of **drugs** were you doing then?

17 A. Methamphetamine.

18 Q. What does methamphetamine do to you?

19 A. Gives me a euphoria feeling, a sense of confidence.

20 Q. All right. And how often would you use it, every day,
21 every other day?

22 A. Well, what part of what time? There's times that I used
23 it every day, and there's times that I used it occasionally.

24 Q. Has it had any effect on your memory or ability to
25 remember things?

1 A. Yes, some, somewhat, yes.

2 Q. Now, let's talk a little bit about the sentences that
3 you received out in Cass County. As I understand it, you
4 went before a judge just a couple of months ago; is that
5 correct?

6 A. Yes, sir.

7 Q. And when you were before that judge, you had 17 prior
8 felony convictions as you stood in the courtroom?

9 A. Yes, sir.

10 Q. And the judge was there and Mr. True was there?

11 A. Yes, sir.

12 Q. And Mr. True was there with the defense lawyer, your
13 lawyer?

14 A. Yes, sir.

15 Q. And he was there to testify for you?

16 A. Yes, sir.

17 Q. And he told the judge how much you'd been cooperating?

18 A. True.

19 Q. And that he wanted the judge to take that into
20 consideration in what he was going to do for you, what the
21 judge was going to do?

22 A. No, he didn't ask that. He didn't, he didn't ask that.

23 Q. Did you hear Agent True testify?

24 A. Yes, I did. The judge asked him what he had to say, and
25 he stated about my cooperation in this, and that was -- I

1 mean, he was, he tried to stay neutral.

2 Q. Well, didn't the judge ask him how much help you'd been,
3 whether you'd been substantial?

4 A. Oh, yes.

5 Q. And he told him that you had?

6 A. Yes, sir.

7 Q. And do you believe that Agent True was there to help you
8 get leniency?

9 A. Yes, sir.

10 Q. That was the whole purpose of him being there, wasn't
11 it?

12 A. Yes, sir.

13 Q. And you believe now, don't you, that the reason that you
14 got leniency was because of your cooperation in this case?

15 A. Yes, sir.

16 Q. And you believe you'd be in prison right now, had you
17 not helped out in this case, don't you?

18 A. Yes, sir.

19 Q. Now, let's go through this sentence that you got as a
20 result of your help in this case. You got one year on Count
21 V, which was possession of a controlled substance, which was
22 a Class A misdemeanor?

23 A. Yes, sir.

24 Q. You got one year on Count VI, which was possession of
25 **drug** paraphernalia, which was a Class A misdemeanor?

- 1 A. Yes, sir.
- 2 Q. Those sentences were to run consecutively?
- 3 A. Yes, sir.
- 4 Q. All right. Consecutively, you understand what that
- 5 means?
- 6 A. Yes, sir.
- 7 Q. Tell the jury what consecutively means.
- 8 A. Consecutive means one after another. I would have to
- 9 serve one year, and then after I completed that one, then I
- 10 would have to serve another.
- 11 Q. So basically it's like a two-year sentence?
- 12 A. Well, he also, he didn't give me my jail time, so
- 13 actually it ran into almost a three-year sentence.
- 14 Q. okay. So that's what you're doing in the county jail,
- 15 two misdemeanors right now?
- 16 A. Yes, sir.
- 17 Q. Then on Count I, which was possession with intent to
- 18 distribute, you received a 13-year sentence?
- 19 A. Yes, sir.
- 20 Q. On Count II, possession with intent to sell, you
- 21 received a 12-year sentence?
- 22 A. Yes, sir.
- 23 Q. Those sentences to run consecutively, meaning you have
- 24 25?
- 25 A. Yes, sir.

1 Q. You pled guilty to Count V -- no, I'm sorry, Count IV,
2 which was possession of burglar tools?

3 A. Yes, sir.

4 Q. And received a five-year sentence?

5 A. Yes, sir.

6 Q. And you pled guilty to another possession of controlled
7 substance and received a seven-year sentence. And those
8 sentences are run concurrently, meaning that they're run
9 together, you don't have to do those five and that seven?

10 A. Correct.

11 THE COURT: After the county jail time?

12 MR. O'CONNOR: Then -- we're getting to the next
13 part, Judge.

14 Q. (By Mr. O'Connor:) Then your sentence is suspended and
15 you are being placed on five years' probation; is that
16 correct?

17 A. That's correct.

18 Q. So you've got 25-year sentence, seven-year sentence, and
19 a five-year sentence, and you're going to walk out of the
20 jail after you serve your time on these misdemeanors, aren't
21 you?

22 A. Yes, sir.

23 Q. On probation?

24 A. Yes, sir.

25 Q. Now, remember when I came up to see you, I asked you if

1 I could talk to you about these interviews that the agents
2 had done with you?

3 A. Yes, sir.

4 Q. I had the interviews with me?

5 A. Yes, sir.

6 Q. I had them marked as exhibits?

7 A. Yes, sir.

8 Q. I handed them to you to let you read them before I asked
9 you any questions about them?

10 A. Yes, sir.

11 Q. And then you told me you didn't want to answer any
12 questions about them?

13 A. After I had answered your questions on my charges and my
14 sentencing and everything on that, that was after that, yes.

15 Q. But what I'm saying is I wanted to ask you questions
16 from these exhibits?

17 A. On the exhibits, okay. Yes.

18 Q. And you didn't want to talk to me about those?

19 A. Correct.

20 Q. But did you tell me as it relates to those, did you say
21 the words to me, "There are some inconsistencies in those"?
22 Did you?

23 A. I'm saying inconsistencies, but I meant -- for instance,
24 I noticed, like it was said that like on the 23rd of December
25 and, you know, I couldn't, I can't actually recall what date

1 that was. That's what I was meaning by inconsistencies. You
2 know, it wasn't -- I can't sit here and say it was exactly
3 the 23rd. It might have been the 22nd or the 20th. It was
4 in that time period.

5 Q. Okay. And so to make this clear, other than just dates
6 and things like that, everything else you told them that was
7 in these interviews that I let you read was basically true?

8 A. Yes.

9 Q. You didn't lie to those agents, did you?

10 A. No.

11 Q. You wouldn't intentionally mislead the agents, would
12 you?

13 A. No.

14 Q. Now, when the agents came in there to see you -

15 A. Yes.

16 Q. -- and they did this rights thing, we're back there now,
17 they're there to see you there before you got this deal, did
18 they mention to you in that first interview that you had a
19 gun charge that was sitting out in Blue Springs, Missouri?

20 A. Yes, they did.

21 Q. And did they indicate to you that a gun charge for a
22 person like you, a felon who would be in possession of a
23 firearm could have pretty serious implications in federal
24 court?

25 A. Yes, they did.

1 Q. And they told you, did they not, that you could be
2 facing fifteen to life for just that gun charge that was
3 sitting out in Independence that they knew about?

4 A. Yes, sir.

5 Q. And there was a gun charge out in Independence, wasn't
6 there, in Blue Springs?

7 A. In Blue Springs, yes.

8 Q. So when they're in there to get this first interview,
9 they're letting you know, Mr. Shepard, not only do you have
10 these problems here in Cass County, but we have this gun
11 charge in Blue Springs that we may take federal, and with a
12 person with your record under the federal sentencing
13 guidelines, you may never get out?

14 A. That's correct.

15 Q. So after they told you that, then they talked to you?

16 A. Correct.

17 Q. They got all of that up front in your mind what you were
18 facing, what was going to happen to you and what was going to
19 go on in your life before they started talking to you about
20 this stuff here; isn't that true?

21 A. They made me aware that I did have the gun charge. They
22 made me aware that possibly they could charge me with that.
23 At that time, that gun charge was the furthest thing from my
24 mind. I've had the charges there in Cass County, I've got
25 all of these possession charges. And the Blue Springs

1 charge, I mean, it was, I thought it was a weak charge in the
2 first place. The State never picked it up. And to be honest
3 with you, I wasn't that worried about it.

4 But, yes -- get back to your question. Yes, they
5 made me aware of it and told me the consequences that, what
6 possibly they could do.

7 Q. And all of your convictions except for one are State
8 convictions, aren't they?

9 A. Yes.

10 Q. Because convicts know that if you commit federal crimes,
11 you serve a lot of time when you do that?

12 MR. MILLER: I'll object to that as argumentative.

13 THE COURT: Yes. I believe that's a bit broad, Mr.
14 O'Connor.

15 Q. (By Mr. O'Connor:) You as a convict knew what
16 possession of a firearm meant when they were there talking to
17 you about it; is that a fair statement?

18 . Yes.

19 Q. Now, in this first interview, you talked to the agents
20 freely after they told you about this stuff?

21 A. Correct.

22 Q. All right.

23 A. Yeah.

24 Q. And did they have a tape recorder with them so we could
25 hear everything they were saying to you and you were saying

1 to them?

2 A. Not that I was aware of.

3 Q. Did they have one of these ladies with them like I had
4 when I came up to talk to you so we could hear everything
5 they were telling you and everything you were telling them?

6 A. No.

7 Q. Did they have note pads where they were taking notes?

8 A. No.

9 Q. You've had a chance to review your interviews before
10 testifying, haven't you?

11 A. No.

12 Q. Did you review them the night -

13 A. With you, I glanced through them, yes.

14 Q. All right. I mean, did I stop and tell you, "Please
15 take time to read them," and we did that?

16 A. Yes.

17 Q. Was I nice to you?

18 A. Yes.

19 MR. MILLER: I'm going to object to this as not
20 relevant at all and just self-serving.

21 MR. O'CONNOR: He just said he glanced at them. I
22 think he can explain whether I was pushing him.

23 THE COURT: Was he nice to you?

24 THE WITNESS: He was courteous.

25 THE COURT: Go ahead. I'll take judicial notice

1 that Mr. O'Connor was nice.

2 Q. (By Mr. O'Connor:) So you at least have had a chance to
3 review what they said that you told them?

4 A. You know, I glanced through them. When you showed them
5 to me, I briefly glanced over them. I didn't sit there and
6 go, you know, and study them or really read them. I did
7 glance through them. I told you I seen some what I call
8 inconsistencies.

9 Q. Now, I think you said on direct exam that you were at
10 some apartment or wherever it was where Bryan Sheppard -
11 stand up, Mr. Sheppard; sit down -- Mr. Sheppard made some
12 admissions to you that he was somehow feeling guilty or had
13 been involved in this fire?

14 A. Not to me, to **Frank**.

15 Q. In your presence?

16 A. In my presence.

17 Q. He was making admissions in front of you to **Frank**?

18 A. Correct.

19 Q. Now, when you talked to the agents, did they ask you
20 that question?

21 A. No.

22 Q. They didn't. Did you tell the agents that you knew
23 Bryan Sheppard?

24 A. Yes.

25 Q. Did you tell the agents the day they talked to you on

1 January the 10th, 1996, "Bryan Sheppard has never made any
2 admissions to me"?

3 A. I don't recall that.

4 Q. Could you have said that?

5 A. I could have. I may have. I didn't want to talk to
6 them in the first place on our first meeting. I didn't
7 really want, I didn't really want to talk to them, no.

8 Q. Question is did you tell those agents on January the
9 10th, 1996, that Bryan Sheppard never made any admissions to
10 you, only **Frank** did?

11 A. Not that I recall.

12 Q. Did you tell them that **Frank** Sheppard had made
13 admissions to you in that interview?

14 A. I may have. I may have. On that -

15 Q. Well, Mr. Shepard -- go ahead.

16 THE COURT: Excuse me. You answer the questions.
17 Ask another question.

18 Q. (By Mr. O'Connor:) After you gave this interview on
19 January the 10th, the next thing that I understood happened
20 was that they brought you down to a grand jury?

21 A. Correct.

22 Q. And do you believe they were bringing you to the grand
23 jury because you had not told them anything?

24 A. No.

25 Q. And they brought you to the grand jury, and they wanted

1 you to testify about what you'd told them on January the
2 10th, didn't they?

3 A. True.

4 Q. And you refused?

5 A. True.

6 Q. And you refused because you didn't have a deal, isn't
7 that why you refused?

8 A. No. Not -- there was a, the deal, it was a, they didn't
9 tell -- I didn't know I was coming. No. 2, I didn't want to
10 get involved in it. And certainly, you know, I'm not -- I
11 wasn't going to testify. And I have to go to prison. You
12 know, my life span isn't going to be very long there.

13 Q. What you're saying is you were refusing because no one
14 had made a deal with you yet for what you were going to say;
15 is that a fair statement?

16 A. I hadn't talked to an attorney. I hadn't talked to
17 anybody else about it.

18 Q. Do you need an attorney to tell the truth?

19 A. No, I don't -- no, I don't need an attorney to tell the
20 truth.

21 Q. That's what they wanted you down there for, just to tell
22 them the truth about what you knew, right?

23 A. Right.

24 Q. Mr. Becker and Mr. True, they just wanted you to tell
25 the truth?

1 A. Sure.

2 Q. Okay. Now, did you meet Mr. Becker when you were down
3 there?

4 A. Yes, I did.

5 Q. And did he tell you some things that could happen to you
6 if you didn't testify?

7 A. No. He didn't tell -- no. No. No, he didn't. He told
8 me that he would call me back, and if I still refused to
9 testify that he would take me and give me, get me immunity.

10 Q. He told you that if you refused to testify, they could
11 get you immunity?

12 A. No. He told me if I went in -- I told Mr. Becker at
13 that time that if I went into the grand jury that I was going
14 to take the Fifth Amendment. And he indicated to me that -
15 okay.

16 He told me that he wasn't going to, I didn't have
17 to testify then, he wasn't going to have me go in there and
18 take the Fifth. But he told me they may call me back, and if
19 they do and that I refuse to testify, he would take me down
20 and grant me immunity where I couldn't take the Fifth
21 Amendment and I would be held in contempt if I didn't answer
22 the questions.

23 Q. So did they do all of that?

24 A. No, they didn't.

25 Q. They took you back to Cass County?

1 A. That's correct.

2 Q. Did Mr. True make any reminders to you while you were on
3 your way back to Cass County about this Blue Springs gun
4 charge that they talked to you about before?

5 A. Not on the way back, Mr. True didn't take me back, but
6 while I was there, you know.

7 Q. While you were there? While you were where, I'm sorry?

8 A. I was still here at the courthouse. Mr. True come and
9 talked to me. I asked him, let me talk to Mr. True. Mr.
10 True came down, and he talked to me. And I simply told Mr.
11 True that I'm not going to, I wasn't going in front of the
12 grand jury for the various reasons that I've said, you know.
13 I'm not going -- if I testify and I went to prison, my life
14 could be, you know, would be worthless. I told him that I
15 wanted to talk to my attorney about it and -

16 Q. Well, Mr. True wasn't happy with you, was he?

17 A. No, he wasn't, no.

18 Q. He was upset with you?

19 A. A little bit, yeah.

20 Q. And he basically told you that they had this gun charge
21 still in Blue Springs and that you ought to think about
22 coming back down here, or words to that effect?

23 A. Some to that effect, yes.

24 Q. What I'm saying is you got the message?

25 A. I got the message, yeah.

1 Q. So then you get a lawyer, and then the lawyer now calls
2 and you want to talk to them again?

3 A. True, correct.

4 Q. And then they come out and interview you again, right?

5 A. Right.

6 THE COURT: **They** being?

7 Q. (By Mr. O'Connor:) Who is **they**?

8 A. Mr. True, Randy, I don't know what, from the ATF. There
9 was, I think, additional -- oh, okay. The second one, on the
10 second of the two was Randy from the ATF, and I don't know
11 the other one, from racketeering. And I don't know the other
12 agent's name.

13 Q. And so now, as I understand it, you're telling them that
14 I have more information for you than I had before, right?

15 A. Okay.

16 Q. And now the lawyers got the deal worked out on what's
17 going to happen for you if now you can give them this new
18 information?

19 A. No.

20 Q. Did it all get worked out in the end?

21 A. Yeah, it worked out in the end, yes, it did.

22 Q. And in the interview that you did then in April, this
23 would have been after you refused the grand jury?

24 A. Right.

25 Q. After you were reminded of the gun charge and after you

1 got your lawyer involved, then they came out and interviewed
2 you, and that's for the first time that you said, oh, yeah,
3 Bryan Sheppard made admissions to me, as well. Isn't that
4 how it happened?

5 A. That's what I told them, yes.

6 Q. You never told them on January 10th, did you, that Bryan
7 Sheppard was involved?

8 . There's a lot of things I didn't tell them January the
9 10th.

10 Q. You were talking to them freely -

11 THE COURT: Just answer his questions. Ask your
12 question again.

13 Q. (By Mr. O'Connor:) You talked to them freely on January
14 the 10th about **Frank** Sheppard's involvement, didn't you?

15 A. I talked some about it, yes.

16 Q. And **Frank** Sheppard you've done time with?

17 A. Yes.

18 Q. You weren't having a problem telling them about **Frank**
19 Sheppard on the lath?

20 A. No.

21 Q. Have you ever heard of anybody with a record that you
22 had getting probation?

23 MR. MILLER: I'm going to object to that.

24 THE COURT: Sustained. Sustained.

25 Q. (By Mr. O'Connor:) As I understand it, back in 1995,

1 you were at the honor center; is that correct?

2 A. No, I haven't. No, I wasn't.

3 Q. Kansas City Community Release center?

4 A. No, I wasn't.

5 Q. You didn't escape from there?

6 A. Oh, Kansas City -

7 Q. Yeah. Let me let you read this and maybe refresh your
8 recollection. Just look at it, don't read it out loud, and
9 see if that refreshes your recollection.

10 A. No, that's not me.

11 Q. Oh, I apologize. It's George Sheppard, Judge, I thought
12 it said Glen, I apologize. I thought it always said Glen.
13 I'm sorry, sir.

14 Now, the Blue Springs gun charge, the one that they
15 kept talking to you about that was pending in Blue Springs?

16 A. Yes, sir.

17 Q. What happened to that?

18 A. I haven't found out what, any final disposition that's
19 gone on in that case yet.

20 Q. I was given a printout of you.

21 MR. MILLER: I'm going to object to that.

22 THE COURT: I don't know what that is, but it
23 doesn't sound very good.

24 MR. O'CONNOR: Can we approach, Judge?

25 (Counsel approached the bench and the following

1 proceedings were had:)

2 MR. O'CONNOR: I apologize. I thought that was
3 Glen all along. I had that in my notes.

4 MR. MILLER: You should apologize to them.

5 MR. O'CONNOR: I'm sorry. Judge, they gave me a
6 printout on him two days ago.

7 THE COURT: Who is they, the government?

8 MR. O'CONNOR: The government. And he still has,
9 the failure to appear is still pending against him. I want
10 to bring that out.

11 MR. MILLER: First of all, it's a city. And if he
12 doesn't have any knowledge of it -

13 MR. O'CONNOR: He does have knowledge of it.

14 THE COURT: It's a city misdemeanor.

15 MR. O'CONNOR: It doesn't matter. They told him
16 they were going to pull it out and take it federal. That's
17 the whole thing, Judge.

18 MR. BECKER: No.

19 MR. O'CONNOR: Absolutely.

20 MR. BECKER: What did you say?

21 MR. O'CONNOR: I said that's the charge that Dave
22 True told him that he was going to take federal, that gun
23 charge.

24 THE COURT: This isn't even a gun charge.

25 MR. O'CONNOR: I can tell you, Judge, that I called

1 that court, the Blue Springs Municipal Court, and there's a
2 weapons charge still pending against Glen Shepard. I called
3 there 10 days ago.

4 I'll ask it another way. I'm just about done.

5 MR. MILLER: I'm going to object to anything about
6 the gun charge.

7 MR. O'CONNOR: I'm not going to use this at all.

8 MR. BECKER: I think Mr. O'Connor explored this at
9 some length in his deposition of Mr. Shepard, and this
10 defendant thinks his own attorney got it taken care of. And
11 whether he, what he understands beyond that is -

12 MR. O'CONNOR: I'm going to explore a couple of
13 questions about what he understands and does he know whether
14 or not -- I won't say it's still pending, I'll say do you
15 know whether it is still pending.

16 MR. BECKER: He's already answered that.

17 MR. O'CONNOR: I don't think he has.

18 THE COURT: He said he thought it was still
19 pending.

20 MR. O'CONNOR: No, he didn't, Judge, he thinks it's
21 been disposed of, I think. I've got two questions.

22 (The following proceedings were had in open court:)

23 Q. (By Mr. O'Connor:) Mr. Shepard, just for reference, the
24 Blue Springs gun charge that we talked about, the one that
25 they kept talking to you about?

1 A. Yes, sir.

2 Q. What is your understanding of the disposition of that
3 case?

4 A. I haven't found, heard of any final disposition in it.
5 My attorney -

6 Q. Just what you know, not what someone has told you. Do
7 you have any knowledge of the final disposition?

8 A. No, I don't.

9 Q. Do you want him to answer? Go ahead and give your
10 answer.

11 MR. MILLER: No, I'm objecting. There's not a
12 question here.

13 MR. O'CONNOR: I didn't want them to think that I
14 was cutting the witness off. I thought maybe they wanted him
15 to answer. That's fine with me.

16 THE COURT: Ask your next question.

17 MR. O'CONNOR: I have no other questions.

18 THE COURT: All right. Any other cross?

19 MR. PETERS: Very briefly, Judge.

20 — — —

21 CROSS-EXAMINATION

22 By Mr. Peters:

23 Q. Mr. Shepard, my name is Pat Peters, and I represent
24 **Frank** Sheppard.

25 When we're talking about the city charge in Blue

1 Springs, that's a municipal charge like a parking ticket, the
2 maximum punishment is what, do you have any idea?

3 A. I think maybe one year in the county jail or maybe six
4 months in the county jail.

5 Q. So a city charge for possession of a firearm is much
6 less severe than if it was taken State, and that's much less
7 severe than if it was taken federal; is that correct?

8 THE COURT: I think -- counsel is on his feet, and
9 I think I anticipate that he's going to make some sort of an
10 objection to that question.

11 Before you answer, I want to intervene here and say
12 that we're not going to call on this witness to analyze the
13 law in that respect. I'll sustain the objection.

14 MR. PETERS: Judge, may we approach?

15 THE COURT: Well, you may if you want to.

16 (Counsel approached the bench and the following
17 proceedings were had:)

18 MR. PETERS: What's been laid out for the jury is
19 he has a Blue Springs charge, and they've talked about having
20 a federal charge.

21 THE COURT: Taking it federal?

22 MR. PETERS: Taking it federal.

23 THE COURT: Sounds pretty ominous.

24 MR. PETERS: It is, but that hasn't been made clear
25 for the jury.

1 THE COURT: I think it's not in question that it's
2 pretty serious and he knew it.

3 MR. PETERS: Until I asked the question, the jury
4 had not been advised that the maximum punishment would be a
5 year.

6 THE COURT: All right. You got that.

7 MR. PETERS: I should be allowed to ask him what
8 his understanding of the maximum punishment would be if it
9 was taken federal.

10 THE COURT: What would the federal charge be? Who
11 would be the prosecutor? Who would write the indictment?
12 You've got all of these things that you can't possibly
13 anticipate in this scenario.

14 MR. PETERS: So my objection, my question was
15 objected to, and the Court is not going to allow me to ask
16 the questions relating to that?

17 THE COURT: I'm not going to hypothesize with you.
18 I'm sustaining the objection.

19 MR. O'CONNOR: Make an offer of proof.

20 MR. BECKER: Do we need another witness? Do we
21 need another witness to be brought up before lunch?

22 THE COURT: Yes. I mean, if you're about through.

23 MR. BECKER: That's my question.

24 MR. PETERS: I have no other questions until I make
25 an offer of proof.

1 THE COURT: Haven't had Osgood.
2 (The following proceedings were had in open court:)
3 THE COURT: All right. Are you through, Mr.
4 Peters? I think he's through, he's sitting down.
5 Mr. Osgood, do you have anything?
6 MR. OSGOOD: No, Your Honor.
7 MR. BUNCH: No questions, Judge.
8 THE COURT: Miss Hunt?
9 MS. HUNT: No, Your Honor.
10 THE COURT: All right. Any redirect?
11 MR. MILLER: No, Your Honor.
12 THE COURT: All right. Mr. Shepard, you are
13 excused. Call your next witness.
14 MR. BECKER: United States calls Lorena Deardorff.
15 THE COURT: While we're getting her, would just one
16 defender and Mr. Becker, would you come up?
17 (Counsel approached the bench and the following
18 proceedings were had:)
19 THE COURT: I'm about to run out of witnesses on
20 your list.
21 MR. BECKER: Well, I have a typewritten copy. I'm
22 sorry, I'll bring it up for the Court. I apologize.
23 MR. O'CONNOR: We'll give you the score card this
24 afternoon.
25 THE COURT: How are we doing?

1 MR. BECKER: We're two and a half witnesses
2 behind. We have two more weeks to go with the government's
3 case beyond this.

4 THE COURT: Well, that's not bad. I'm not asking
5 you to commit, I know you can't and won't commit, but what do
6 you understand about the inclination of the defendants to
7 take the stand?

8 MR. O'CONNOR: I think they're all going to
testify
9 but maybe one, but I think it's going to go pretty quickly,
10 Judge. Don't you?

11 MR. BECKER: Yeah, the cross will be a little more
12 focused, I think.

13 THE COURT: Okay. Thank you.

14 (The following proceedings were had in open court:)

15 THE COURT: Come up and stand by the witness chair,
16 Miss Deardorff, and be sworn, please.

17 — — —

18 LORENA DEARDORFF,
19 being first duly sworn by Kathy Geller, Law Clerk, testified
20 as follows:

22 DIRECT EXAMINATION

23 By Mr. Becker:

24 Q. Good morning.

25 A. Good morning.

1 Q. Please state your name and spell your last name.

2 A. My name is Lorena Deardorff. The last name is spelled
3 D-E -A-R-D-O-R-F-F .

4 Q. Where do you live, what area of town?

5 A. In the Marlborough area.

6 Q. How long have you lived there?

7 A. I don't know exactly how many years, but it's been a
8 few. It was five or six years or more.

9 Q. How old are you?

10 A. I'll be 30 in February.

11 Q. Do you know the Sheppard -

12 THE COURT: You're still 29, Miss Deardorff?

13 THE WITNESS: Twenty-nine.

14 THE COURT: Treasure it.

15 Q. (By Mr. Becker:) Do you know the Sheppard family from
16 the Marlborough area?

17 A. Yes.

18 Q. How do you know them?

19 A. Well, they used to come into the convenience store where
20 I used to work at.

21 Q. What was the name of the convenience store where you
22 worked?

23 A. Carol's Quick Food and Fuel.

24 THE COURT: I'm sorry, I didn't hear what you said.

25 THE WITNESS: Carol's Quick Food and Fuel.

1 THE COURT: Quick Food and Fuel?

2 THE WITNESS: Yes.

3 THE COURT: Thank you.

4 Q. (By Mr. Becker:) Where was that located?

5 A. 8505 Woodland.

6 Q. Is that basically at the corner of Woodland and 85th
7 Street?

8 A. Yes.

9 Q. When did you work there?

10 A. From '88 until '95.

11 Q. I want to show you what's in evidence as Government's
12 Exhibit 1. By the way, before you testified here today, did
13 you and I go over your testimony and I showed you this map?

14 A. Yes.

15 Q. Okay. With the Court's permission, could the witness -
16 everybody see it?

17 Could you point out, if it's on there,
18 approximately where Carol's Quick Food and Fuel would be
19 located on this map? And you could make a little CF on
20 there. Could you do that?

21 A. Can I move?

22 THE COURT: I think you've got enough cord there to
23 move. Check that cord, Kathy. Is this the situation -- you
24 alternate jurors there, is this the situation where it's
25 difficult for you to see? We had a request that that

1 mounting be a little higher. I don't know -- let's work on
2 it over the noon hour, counsel.

3 MR. BECKER: Okay.

4 Q. (By Mr. Becker:) Do you see where 85th Street is on
5 that map here beginning at Hickman Mills and running to the
6 west?

7 A. Yes.

8 Q. Could you put a little mark where Woodland comes across
9 and Carol's Quick Food and Fuel would be?

10 A. I'm trying to think of where, where it would be.

11 MR. OSGOOD: Before she marks on it, I think we
12 would prefer, if Mr. Becker knows where it is to scale, he
13 put it on there, and she works there, rather than having
14 something that's wrong on there become -- I'm testifying.

15 THE COURT: I'm not going to tell Mr. Becker how to
16 conduct his examination.

17 MR. OSGOOD: I understand. But if it's a scaled
18 map, it would be my preference that it remain to scale. And
19 if Mr. Becker knows where it is, that the government should
20 put it on the map. Otherwise, I object to her drawing on the
21 map if she doesn't know how it's scaled and how to read it.

22 THE COURT: I think I'm hearing that there would be
23 no objection, at least from Mr. Osgood, if you indicated to
24 her where it is.

25 MR. BECKER: I think she's got it right, Judge.

1 Q. (By Mr. Becker:) If you would just put OF there,
2 please.

3 (so done.)

4 Q. okay. If you would just have a seat. What corner is it
5 on, the north, south, east, west? I guess it would be,
6 Woodland runs as you have it on that map, right, north and
7 south; is that right?

8 A. Correct.

9 Q. And then 85th is east and west, correct?

10 A. Yes.

11 Q. Which corner is Carol's Quick Food and Fuel on?

12 A. On the southeast corner.

13 Q. And I want to show you what's been marked for
14 identification purposes as Government's Exhibit 385.

15 THE COURT: Let me ask a question just for, a
16 geography question. Does Paseo convert to Woodland at about
17 80 -

18 THE WITNESS: At 85th Street.

19 THE COURT: At 85th Street?

20 THE WITNESS: Yes.

21 THE COURT: Paseo becomes Woodland; is that
22 correct?

23 THE WITNESS: Yes.

24 Q. (By Mr. Becker:) I'll show you what's been marked for
25 identification as Government's Exhibit 385. Do you recognize

1 what's depicted in that photograph?

2 A. Yes, that's the convenience store.

3 Q. Is that where you worked then, from 1988 through 1995?

4 A. Yes.

5 Q. Is there anything different about this photograph,

6 what's depicted in this photograph than when you worked

7 there?

8 A. Well, the colors are different. They've put a new paint

9 job. They've taken the pumps out on the, I guess you would

10 say west side of the building, and redid the pumps on the

11 north side of the building.

12 Q. So is it fair to say this is a more recent photograph?

13 A. Yes.

14 Q. Does the building itself, is that basically the same as

15 depicted?

16 A. Yes.

17 MR. BECKER: I would offer that into evidence as

18 Government's 385.

19 MR. PETERS: No objection.

20 THE COURT: All right. It's admitted without

21 objection.

22 **(Government's Exhibit 3B5 was admitted into**
23 **evidence.)**

24 Q. (By Mr. Becker:) Now, where were you living, if you

25 remember, on November 29, 1988, when the explosion occurred?

1 A. I was living off of 83rd and Park.

2 Q. At that time, then, were you working at Carol's Quick
3 Food & Fuel?

4 A. Yes.

5 Q. What was your shift, when were you working at that
6 particular time in November of 1988?

7 A. I was working the 3:00 to 11:00 shift and the graveyard
8 shift, which is 11 p.m. to 7 a.m.

9 Q. Some days after the explosion, do you recall working the
10 graveyard shift, the 11:00 to 7:00 shift when **Frank** Sheppard
11 came in?

12 A. Yes.

13 Q. Do you see **Frank** Sheppard here in court today?

14 A. Yes, I do.

15 Q. All right. Is he the gentleman that's now standing?

16 A. Yes.

17 MR. BECKER: Indicating the Defendant **Frank**
18 Sheppard, Your Honor?

19 THE COURT: Yes.

20 Q. (By Mr. Becker:) Do you recall having -- how did you
21 know **Frank** Sheppard at that time?

22 A. Well, like I said, he would come into the store as a
23 customer, and his girlfriend at the time was a cousin down
24 the line of mine, now ex-husband.

25 Q. So that would be Darlene Clark?

1 ~ A. Yes.

2 Q. Or Darlene Edwards?

3 A. Uh-huh.

4 Q. What do you remember, then, about **Frank** Sheppard coming
5 in the store some few days after the explosion during the
6 graveyard shift, what happened?

7 A. Well, he came in, he purchased a bottle of beer and a
8 pack of cigarettes and started talking to me. Which, he
9 normally did.

10 Q. Was there anyone else in the store?

11 A. Not at the time, no.

12 Q. Where were you in the store, where was **Frank** Sheppard in
13 the store?

14 A. He was on the outside of the counter, and I was behind
15 the counter behind the register.

16 Q. What were you talking about?

17 A. Well, he started talking about the firemen explosion.
18 And he started telling me how they were there, him and some
19 friends, and **they** were partying and having a good time and
20 getting drunk and just playing around. And then one of the
21 gentlemen or one of the guys decided to go down and see what
22 was in this trailer and came back with a stick of dynamite.
23 And **they** were just playing with it and just drinking and
24 having fun.

25 Q. Well, did he say anything about setting a fire?

1 A. One of them decided to go set a vehicle on fire and just
2 to see what would happen. So **they** set it on fire, **they** were
3 sitting up there on the hill, and the firemen came. **They**
4 were sitting there watching the firemen. One of them
5 decided, well, let's see what would happen if I threw this
6 stick of dynamite down there.

7 Q. This is what **Frank** Sheppard was telling you?

8 A. Yes.

9 Q. Okay. What did **Frank** Sheppard tell you next?

10 A. He said that the person threw the dynamite down, and
11 then there was an explosion, and then a few minutes later
12 there was another explosion, so **they** got scared and **they** ran
13 and **they** took off and went home and started partying some
14 more and just getting drunk more.

15 Q. Now, this conversation happened -- well, did you, did
16 you ask **Frank** Sheppard why he didn't turn himself in?

17 A. I said, well, why didn't you call the police or, you
18 know, turn them in or whatever. And he said, "I can't turn
19 in my family, my friends."

20 Q. Did you ask **Frank** Sheppard why he was telling you this?

21 A. Yes.

22 Q. What was his response?

23 A. "Well, I trust you. I know you, you're part of the
24 family."

25 I asked him, I said, "How do you know I won't, you

1 know, turn you in myself?"

2 And he says, "I just trust you."

3 And I was like, "Are you just feeding me a line of
4 bull or what?"

5 And he just kind of smiled and left, and I was
6 like, whatever.

7 Q. Do people often, when you worked at the store then, come
8 in and spend time talking to you?

9 A. Yes, a lot.

10 Q. Why is that?

11 A. They say that I'm a friend -- I have a friendly smile,
12 I'm a friendly face and I listen very well.

13 MR. BECKER: Thank you.

14 MR. PETERS: May it please the Court.

15 THE COURT: Yes, sir.

16 -- -- --

17 CROSS-EXAMINATION

18 By Mr. Peters:

19 Q. Good morning, ma'am. My name is Pat Peters, and I
20 represent **Frank** Sheppard. So shortly after the fire -
21 shortly after this explosion, **Frank** Sheppard came in your
22 store like he had done on many other occasions, correct?

23 A. Yes.

24 Q. And he had been drinking that day, you could tell; is
25 that correct?

- 1 A. I could smell it on his breath.
- 2 Q. And like he often did, he came and was buying beer,
- 3 correct?
- 4 A. Yes.
- 5 Q. And you two were friendly, he probably would have said,
- 6 "Hi, Lorena," and you would have said, "Hi, **Frank**"?
- 7 A. Oh, as soon as he came in the door, I said, "Hi, **Frank**,
- 8 how are you doing?"
- 9 Q. Did he ever introduce himself to you as George?
- 10 A. No.
- 11 Q. so **Frank** tells you this story, and even as he's telling
- 12 you the story, you think that he's just pulling your leg,
- 13 don't you?
- 14 A. Not at first, I didn't. And then as he kept telling me,
- 15 I thought towards the end, yes, he was just pulling my leg.
- 16 Q. And, in fact, you said to him, you're making this up,
- 17 you're pulling my leg, something to that effect; isn't that
- 18 true?
- 19 A. I asked him if he was feeding me a line of bull.
- 20 Q. And he laughed; is that right?
- 21 A. He laughed at me, yes.
- 22 Q. This happened sometime in 1988 still? If the explosion
- 23 happened November 29th, 1988, are we talking that this
- 24 happened in 1988?
- 25 A. Yes.

1 Q. And you believed that he was joking with you and didn't
2 call the police in 1988, did you?

3 A. No.

4 Q. And, in fact -

5 THE COURT: Now, wait a minute. You did not
6 believe that?

7 THE WITNESS: No, I didn't believe that he was
8 telling me the truth.

9 THE COURT: Okay.

10 MR. PETERS: Thank you, Judge.

11 Q. (By Mr. Peters:) So in 1988 after hearing the
12 conversation, you thought he was pulling your leg, and that's
13 why you didn't call the police; is that correct?

14 A. Correct.

15 Q. Okay. And you didn't make contact with anyone until
16 February 12th of 1995; is that correct?

17 A. Actually, somebody called me.

18 Q. okay. And it was somebody from the Bureau of Alcohol,
19 Tobacco, and Firearms; is that correct?

20 A. I believe so, yes.

21 Q. I'm showing it would be Special Agent Larry Cooper.
22 Does that ring a bell?

23 A. The name does, yes.

24 Q. Okay. And that was the first time that you recounted to
25 anybody this conversation, right, anybody from law

1 enforcement?

2 A. Yes.

3 Q. And when you recounted the conversation, you even told
4 the special agent that you asked **Frank**, are you feeding me a
5 line of bull, and **Frank** just laughed; isn't that correct?

6 A. Yes.

7 MR. PETERS: I have no further questions.

8 MS. HUNT: No questions, Your Honor.

9 MR. BUNCH: No questions.

10 MR. O'CONNOR: No questions.

11 THE COURT: Mr. Osgood?

13 CR055-EXAMINATION

14 By Mr. Osgood:

15 Q. Do you know a Mike Dimaggio?

16 A. Do I know a what?

17 Q. Mike Dimaggio?

18 A. No.

19 Q. All right.

20 A. The name doesn't sound familiar.

21 Q. All right. What about a Johnny Driver?

22 A. No.

23 Q. And what about a King?

24 A. King?

25 Q. Tommy King.

1 A. No.

2 Q. All right. Did you -- when people would come in and
3 talk to you, did you always know their name, or did people
4 just come in that was a regular customer and you would see
5 them and you would recognize them?

6 A. Most of them would be regular customers. Very few of
7 them I knew their name.

8 Q. Were there a lot of kids that hung out up there at that
9 place?

10 A. Yes, teenagers, and they played the video games that we
11 had.

12 Q. That's catty-corner, as I recall, from a school, isn't
13 it, ma ' am?

14 A. Correct.

15 Q. And I think it's now a special ed school or something,
16 but back then was it the same kind of school it is now or -

17 A. I don't know if it's changed or not. I see the same
18 kind of kids coming in and out of there.

19 Q. okay. But it's a, what, would it be fair to call it a
20 junior high, or is it kids younger than that?

21 A. There's some younger children that play in the
22 playground in the back, and then there's some teenagers.

23 Q. Okay. so it's got a -

24 THE COURT: Is it called Center Junior High?

25 THE WITNESS: No, it's not. It's called Center

1 Alternative.

2 Q. (By Mr. Osgood:) Yes, I believe -- it's an alternative
3 school now, but back then, do you know whether or not it was
4 just a junior high, maybe?

5 A. It was called Center Alternative.

6 Q. Back when all of these events occurred?

7 A. Uh-huh.

8 Q. Okay. And so how many customers a day would you get in
9 the store there?

10 A. Sometimes quite a few, sometimes not that many. It
11 varied from day to day.

12 Q. Do you know Richard Brown?

13 A. Yes.

14 Q. By the way, my name is John Osgood, and I represent
15 Richard Brown.

16 A. Yeah, I know Richard Brown.

17 Q. Richard Brown has never made any admissions to you about
18 any of this, has he?

19 A. No.

20 MR. OSGOOD: That's all. Thank you.

21 MR. O'CONNOR: Judge, I do have two questions real
22 briefly.

23

-- --

1 CROSS-EXAMINATION

2 By Mr. O'Connor:

3 Q. In February of '95, so I understand it, the agents came
4 and contacted you?

5 A. A gentleman called me on the phone.

6 Q. Okay. You didn't call them to tell them that you had
7 this information, they contacted you?

8 A. Correct.

9 MR. O'CONNOR: Thank you. That's all I have.

10 THE COURT: All right. Thank you, ma'am. You may
11 step down. If you'll leave the microphone with us.

12 THE WITNESS: Oh, can't I take it with me?

13 THE COURT: No. No. We'll take our break now,
14 ladies and gentlemen. Don't talk about the case during the
15 lunch hour, and please be back in the jury room at 1:30.
16 You're excused.

17 (The following proceedings were had in the
18 courtroom out of the presence of the jury:)

19 THE COURT: Okay. We're in recess.

20 (The lunch recess was taken at 12:02 p.m.)

REPORTER'S CERTIFICATE

I, Kathleen M. Wirt, Registered Merit Reporter, hereby certify that I am an official reporter for the United States District Court, Western Division, at Kansas City; that I was present at the time and place first hereinbefore set forth, and that I reported all of the proceedings by electronic stenography and the transcript was produced by computer.

I further certify that the foregoing is a correct Volume VII transcript (Pages 1257 - 1377) from the record of proceedings in the above-entitled cause.

Transcript completed this day of is",
1997.

~ 6~e

Kathleen M. Wirt, CCR, RMR

United States Court Reporter

Page 1378
IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 vs.) Nos. 96-00085-01/05-CR-W-8
GEORGE FRANK SHEPPARD,)
EARL D. SHEPPARD,)
DARLENE M. EDWARDS,) Wednesday, P.M.
BRYAN E. SHEPPARD, and)
RICHARD W. BROWN,) January 29, 1997
 ~ Kansas City, Missouri
)
 Defendants.)

TRANSCRIPT ON APPEAL
VOLUME VII-A
(Pages 1378-1445)
BEFORE THE HONORABLE JOSEPH E. STEVENS, JR.,
UNITED STATES DISTRICT JUDGE
AND A JURY.
Proceedings recorded by electronic stenograph
Transcript produced by computer

ELIZABETH SHINN, RPR
UNITED STATES COURT REPORTER
811 GRAND AVENUE, ROOM 702
KANSAS CITY, MO 64106

A

1~ I _ D E X

~

2~ VOLUME VII-A

3	<u>DOUGLAS BAYLIFF</u>	Page
4~	Direct Examination	1380
~	Cross Examination	1385
5'	Cross Examination	1402
6~	Cross Examination	1406

TRACY OWNBY

~	Direct Examination	1414
a	Cross Examination	1419
i		
,I	Cross Examination	1424
9	Cross Examination	1425

10 I MEGAN WILLIAMS

i ~	Direct Examination	1427
,	Cross Examination	1430
12	Cross Examination	1435
~	Cross Examination	1437

13

14 - o o o -

15

16

,7

18

19

.0

i

22

23 ~

24

:

2_

1380

1 WEDNESDAY' JANUARY 29, 1997

2 AFTERNOON SESSION

3 THE COURT: All right, have a seat. You may
4 proceed.

5 MR. MILLER: Your Honor, the government
6 calls Mr. Doug Bayliff.

7 DOUGLAS BAYLIFF,

8 having been sworn, testified:

9 DIRECT EXAMINATION

10 BY MR. MILLER:

11 Q Would you tell the court and jury your name, please.

12 A: Douglas Bayliff.

13 Q How old are you, Mr. Bayliff?

14 A: Twenty-six.

15 Q And are you employed?

16 A: Yes.

17 Q Where do you work now?

18 A: HIC, Industrial Cuttings.

19 Q I want to go back to November 28, 1988, where did you
20 live?

21 A: 8110 Wayne.

22 Q Is that in the Marlborough area?

23 A: Yes.

24 Q Do you recall the explosion that occurred in the early
25 morning hours of November 29, 1988?

1 A: Yes.

2 Q Tell the jury how you recall that.

3 A: I was at work.

4 Q And where was work at?

5 A: A hundred and Third and State Line.

6 Q Do you know a Tracy Ownby?

7 A: Yes.

8 Q How do you know her?

9 A: She was my girl friend.

10 Q Do you know Megan Williams?

11 A: Yes.

12 Q How do you know her?

13 A: She was a friend of Tracy's back around the time of the
14 explosion.

15 Q Do you know Earl Skip Sheppard?

16 A: Yes.

17 Q Do you see him in the courtroom today?

18 A: Yes.

19 Q Could you point him out.

20 A: Right there.

21 Q Is he the gentleman standing now?

22 A: Yes.

23 Q How long had you know the defendant Skip Sheppard
24 around the time of the explosion?

25 A: Not very long at all. Three weeks, a month.

1382

1 Q After the explosion that caused the death of the six
2 fire fighters did you ever have a conversation with
3 Skip Sheppard about the explosion?

4 A: No, I heard a conversation.

5 Q Where was it when you heard this conversation, where
6 were you?

7 A: At Lee's house.

8 Q Do you know Lee's last name?

9 A: I can't remember.

10 Q That's all right. When did the conversation take
11 place? Now when I say "when", I mean in relation to
12 the explosion, when did the conversation take place you
13 overheard?

14 A: About a month after it happened or so.

15 Q Are you having trouble remembering?

16 A: Yes, I am not good with dates.

17 Q Did you ever make a statement to the police?

18 A: Yes.

19 Q If I showed you the statement you made to the police
20 would that refresh your memory on the dates?

21 A: It was September of '89. I am confused.

22 Q That's all right. On here is a date and then if you
23 want to look at the top, two of fifteen, the question I
24 am asking you is when did the conversation take place.

25 A: About a month after.

1 Q A month after you gave -- a month before you made the
2 statement.

3 A: Yeah. I am confused still.

4 Q We will do it this way. What date did you give the
5 statement to the police?

6 A: 9-28-89.

7 Q When did the conversation with Skip Sheppard take
8 place?

9 A: It was before, a month before that date.

10 Q Before this?

11 A: Yes.

12 Q The conversation is the latter part of August of 1989.

13 A: Yes.

14 Q Now where was the defendant Skip Sheppard when you
15 overheard him talking about the explosion?

16 A: Sitting next to me.

17 Q Where were the two of you sitting?

18 A: On a couch in Lee's house.

19 Q Do you rememb er what Skip was wearing that day?

20 A: He had on some vanilla slacks and a flannel shirt.

21 Q Do you remember who he was talking to?

22 A: No, I didn't know who he was.

23 Q Who were you over at the house with?

24 A: Me, Tracy, Megan, Skip and some other guy. I believe
25 Lee was there, too.

1 Q What condition did the defendant Skip Sheppard appear
2 to be in?

3 A: He looked **high** but he was coherent.

4 Q What was his tone of voice while he was talking?

5 A: A normal tone of voice, like we are talking.

6 Q Who brought up the subject of the explosion that killed
7 the six fire fighters?

8 A: I believe it was Skip.

9 Q What did you hear him say?

10 A: That "I almost got some dynamite."

11 Q After he said "I almost got some dynamite", what was
12 said?

13 A: **They** had started a fire to distract a security guard
14 and the fire got too big.

15 Q Now did Skip Sheppard say how he got to the site of the
16 fire?

17 A: He drove.

18 Q Did Skip Sheppard say what was set on fire?

19 A: A trailer.

20 Q How many times have you heard Skip Sheppard talking
21 about that?

22 A: That one time.

23 Q When you went down to the police department to give
24 your statement, we have already covered the date that
25 you did, who did you go down there with?

1385

1 A: Myself and a homicide detective.

2 MR. MILLER: That is all I have of this
3 witness.

4 CROSS EXAMINATION

5 BY MS. HUNT:

6 Q Mr. Bayliff, my name is Susan Hunt and I represent Skip
7 Sheppard. As I understand your direct testimony, you
8 gave a statement to the police in September of '89.

9 A: Correct.

10 Q And was that a tape-recorded statement?

11 A: I believe so.

12 Q Was it videotaped, do you remember?

13 A: I believe so.

14 Q Did you at some point after that statement, a couple
15 years later, sit down with the agents again and review
16 the statement?

17 A: Yes.

18 Q And do you know which agent you sat down with at that
19 point?

20 A: No, I don't. I don't remember their names. There was
21 two of them.

22 Q Did you correct anything in the statement?

23 A: Yes.

24 Q What did you correct?

25 A: About the shiny badge.

1 Q In the statement you gave the police you said that Mr.
2 Sheppard, or Skip Sheppard, in this conversation said
3 he ran -

4 MR. MILLER: I object to her reading from
5 the statement.

6 MS. HUNT: I am not reading from the
7 statement.

8 MR. MILLER: Whatever she is reading from, it
9 is not impeachment.

10 MS. HUNT: I am not reading from anything. I
11 am asking a question.

12 THE COURT: You aren't. You are making a
13 statement. You just said "in the statement you said".

14 MS. HUNT: I am asking if that is the
15 statment.

16 THE COURT: Ask it that way, did you say.

17 MS. HUNT: Right.

18 Q In the statement, the videotape statement, the first
19 one you gave, did you say that Skip said he saw the
20 security guard, he saw the badge, the shiny badge, he
21 saw a hat and he ran?

22 A: I said , '**they**, '.

23 Q But this was Skip talking.

24 A: Yes.

25 Q And then you changed that statement, is that right?

1387

1 A: Yes.

2 Q When did you change it?

3 A: When?

4 Q Do you remember roughly the date?

5 A: When the ATF agents came over to my house.

6 Q Did those agents take notes when you talked to them the
7 second time?

8 A: Yes.

9 Q Did you have a chance to review the statement?

10 A: The ATF?

11 Q Right.

12 A: No.

13 Q Do you remember telling them you were not at Lee
14 Ballinger's but you were at your own house.

15 A: That's right.

16 Q You testified a few minutes ago you were at Lee's house
17 and that is not true.

18 A: We were at Lee's house.

19 Q When the ATF agents came to your residence did you then
20 say, "I'm sorry. I was wrong. I was at my house. I
21 wanted to keep the suspicion away from me."

22 A: I would have to look at the statement.

23 Q Would this refresh your recollection. Does that
24 refresh your recollection what you told the ATF?

25 A: No, I can't remember.

1 THE COURT: That is a rather general
2 question, Miss Hunt. Ask him a specific question which
3 might involve a refreshed recollection.
4 Q After reading that statement prepared by the ATF, after
5 talking with you, do you now remember you were not at
6 Lee Ballinger's house but your own house?
7 A: We was at Lee's house when the conversation took place.
8 Q And who all was at Lee's house?
9 A: Me, Megan, Tracy, Skip and some other guy. I believe
10 Lee was there, too.
11 Q What did the other guy look like?
12 A: He was a Mexican guy.
13 Q How tall?
14 A: This was nine years ago.
15 Q Any recollection, tall, short, fat, skinny?
16 A: He was medium build.
17 Q Mexican looking?
18 A: He had dark skin.
19 Q Dark complexion.
20 A: Yes.
21 Q Where was he in the conversation?
22 A: Actually Skip had his back toward me a little bit and
23 he was on the other side of Skip.
24 Q Did you tell the police in your videotape statement
25 that Skip said he went up the hill over the security

1 guard shack?

2 A: Over the security guard shack?

3 Q Yes.

4 A: I don't remember that.

5 THE COURT: Over to the security -

6 MS. HUNT: Above a security guard shack.

7 A: No, I don't remember that.

8 Q Do you remember telling them in this videotape
9 statement that a fire was set in the building?

10 A: Set in a trailer.

11 Q Did you use the word "'building" when you gave the
12 videotape statement?

13 A: I believe I used "trailer''.

14 Q The day in September of '89 when you went to the police
15 station did they talk to you before they did the
16 videotape?

17 A: Yeah, in my house.

18 Q Did you then go to the police station and have a
19 videotape taken?

20 A: Yes.

21 Q They came to your house first.

22 A: They came to the house for a burglary call because we
23 had been robbed and I guess a detective showed up and
24 he asked me and I told him what I knew.

25 Q He asked you about this case.

1

1 A: He asked me first if I knew Skip and I said, yeah. And
2 he asked me if I knew any other ones and I said no -
3 of the Sheppards?

4 Q Right.

5 A: After that he wanted me to come downtown and do the
6 videotape or do the interview.

7 Q Then you sat in a room and there was a video camera.

8 A: I saw a video through a screen. It had like a vent.

9 Q You knew it was a video camera, they told you.

10 A: Yes.

11 Q When you were down there that day you were telling them
12 the truth as you remember this conversation, is that
13 right?

14 A: Yes.

15 Q Do you remember, first of all, who was the detective
16 you talked to?

17 A: I don't remember his name.

18 Q Does the name John Fraise sound familiar?

19 A: No.

20 Q Do you remember this question being asked "So when **they**
21 got down there did Skip tell you where **they** parked the
22 car?" And your answer is, "He said something about he
23 went over from 87th, you know how 71 and then 87th,
24 said he went over this big old hill before **they** tore it
25 out to go in there off, right off 87th Street from

1 where the curve started, it's right down before the
2 first curve. It's like a big hill, it's tore out. He
3 said **they** went over the top of the hill and a security
4 guard -- I don't know where it was but a security guard
5 shack, may have been a little ways, and traveled
6 through the dark and started a fire down in this little
7 building, I guess. When **they** started the fire, you
8 know, this is what, you know, the way I got it from
9 going over the hill right beside 87th Street, like a
10 dirt hill from where **they** first pushed the dirt up to
11 the side to clear it up, you know, when **they** started
12 blowing it, moving the rocks and stuff." Do you
13 remember that answer?

14 A: No, I don't.

15 Q I am going to hand you -

16 THE COURT: You read it so all you can do now
17 is offer it in evidence.

18 MS. HUNT: I would like to have him
19 acknowledge this is his videotape statement.

20 THE COURT: How would he know that unless he
21 read the whole thing, how would he know that? That is
22 a transcript of his videotape.

23 MS. HUNT: I offer Defendants' Exhibit 13
24 into evidence.

25 MR. O'CONNOR: May we approach.

1 (Proceedings out of the hearing of the jury.)

2 THE COURT: Has he ever seen that transcript
3 before?

4 MS. HUNT: Before he testified. I believe he
5 said he reviewed these before he testified.

6 MR. MILLER: He has read the transcript. Let
7 me qualify that. I have given it to him and he told me
8 he read it.

9 THE COURT: That's close enough. That is as
10 close as we can get.

11 MR. O'CONNOR: I don't have any objection but
12 there is an incriminating statement Skip made about
13 Bryan Sheppard the government hasn't gotten into, I
14 don't intend to get into it, so I don't want the whole
15 statement. If certain portions can be offered, that,s
16 fine but I don't want to go through it now. It will
17 take too long.

18 THE COURT: So far it can only be that answer
19 she has read and may or may not contradict what he has
20 already said.

21 (Proceedings in the hearing of the jury.)

22 THE COURT: The document offered is admitted
23 but for the limited purpose now of the admission of the
24 statement read from the transcript.

25 Q I believe you testified on Direct Examination about a

1 Tracy Ownby and who is that?

2 A: She was my girl friend at that time.

3 Q And were you living with her?

4 A: Yes.

5 Q And she was present during this conversation.

6 A: With Skip?

7 Q Correct.

8 A: Yeah.

9 Q Did you discuss with Tracy after this conversation
10 occurred, and before you went to the police, there was
11 about a month-long period, is that right?

12 A: Yes.

13 Q During that month did you and Tracy discuss the reward?

14 A: We just kind of maybe talked about it first, not really
15 sit and discussed it. We mentioned something and that
16 was it.

17 Q Did Tracy say "We could use the money"?

18 A: I don't remember her saying that.

19 Q Did Tracy say "There is a thousand dollar reward out
20 and we could use the money", do you remember that?

21 A: No, but I remember the thousand dollar reward. I
22 didn't hear it from her.

23 Q Let's go back to the same videotape statement that was
24 taken in September of '89, do you remember being asked
25 this question, page 11, ,~Why are you just now coming

1394

1 forward with it?" "Answer: Well, see, me and my girl
2 friend were sitting down talking and we was watching
3 the news and **they** started talking about" -

4 MR. O'CONNOR: Can we approach?

5 THE COURT: Yes.

6 (Proceedings out of the hearing of the jury.)

7 MR. BECKER: They ought to pick their quotes
8 more carefully.

9 THE COURT: Why are we here?

10 MR. O'CONNOR: He is mentioning the nephew;
11 the nephew being Bryan.

12 THE COURT: I really hate this business of
13 rewriting history.

14 MR. MILLER: Also, Judge, this is calling for
15 hearsay what he is saying Tracy said. Tracy Ownby is
16 going to testify and he said he can't recall. Let's
17 see what Tracy says.

18 THE COURT: Tracy is on the list to testify.

19 MS. HUNT: Yes. I can't impeach her with
20 his statement. If she denies it, I can't use his
21 statement to impeach her.

22 MR. BECKER: Go ahead and read it.

23 MR. O'CONNOR: Can't we have a general
24 neutral pronoun instead of the nephew, use something
25 that is neutral.

1 THE COURT: That is what I would rather not
2 have to do. Let me see it again. Who is his little
3 nephew?

4 MR. O'CONNOR: Bryan Sheppard.

5 THE COURT: This is when Bryan dismissed
6 charges.

7 MR. O'CONNOR: When he was in jail.

8 THE COURT: He is referring to Bryan when he
9 said we are going to do such and such to him, the 'him,,
10 is Bryan, is that right?

11 MR. O'CONNOR: Yes, I think so. That is my
12 reading of it.

13 THE COURT: What is your position on that?

14 MR . MILLER: My position, it is hearsay what
15 she is asking him that Tracy Ownby told him. Even
16 though it's in that statement, that's hearsay. We have
17 heard his answer.

18 MS. HUNT: I asked if he discussed it and he
19 basically said no.

20 THE COURT: Well, Tracy is going to come and
21 you will ask her about it. He may be recalled for
22 impeachment but at this point I am going to sustain the
23 objection.

24 (Proceedings in the hearing of the jury.)

25 Q Did this conversation that you overheard that night,

1396

1 did Skip Sheppard say why he was at that site?

2 A: Looking for, wanting to steal some dynamite.

3 Q Did he steal any dynamite?

4 A: No.

5 Q How did he say he knew dynamite was there?

6 A: Repeat that.

7 Q Did Skip give any indication to you how or why he would
8 have known dynamite was there?

9 A: No.

10 Q Do you remember this videotape you took back in '89?

11 A: No.

12 Q You took a videotape back in '89.

13 A: I remember taking the statement. I don't remember
14 everything.

15 Q Back in September of '89.

16 A: Yes.

17 Q And do you remember being asked the question -

18 MR. MILLER: What page?

19 MS. HUNT: Page 7.

20 "When the defendant asked you about dynamite, did he
21 know what dynamite was there?" "Yeah, he knew" -- this
22 is your answer -- "Yeah, he knew. Yeah, he knew
23 because, you know, they seen those signs along the
24 wall explosive area and he knew there was dynamite up
25 there", do you remember giving that answer?

1 A: Yes, I do.

2 MR. MILLER: May we approach?

3 THE COURT: Yes.

4 (Proceedings out of the hearing of the jury.)

5 MR. MILLER: I want her to read what comes
6 afterwards. "Did he tell you that?" And he says,
7 "No." -- I will withdraw the objection.

8 (Proceedings in the hearing of the jury.)

9 Q During this conversation was he talking directly to you
10 or somebody else in the room?

11 A: Somebody else.

12 Q You were just listening to this conversation, is that
13 right?

14 A: Yes.

15 Q You didn't ask any questions of Mr. Sheppard, did you?

16 A: No.

17 Q Did he say how long he was at the site that night?

18 A: No.

19 Q Did he tell you he broke into anything up there?

20 A: No.

21 Q Did he tell you if he started the fire?

22 A: He said we started a fire.

23 Q Did he say he started the fire was the question.

24 A: No.

25 Q Did he say who did?

1 A: No.

2 Q Did he say how the fire was started?

3 A: No.

4 Q When he said he saw the security guards which alarmed
5 him, were the security guards on foot or were they in a
6 vehicle?

7 A: I don't know.

8 Q Do you remember telling the police in '89 what he told
9 you about the security guards' mode of transportation?

10 A: I don't remember.

11 Q Back to your videotape statement.

12 MR. MILLER: What page?

13 MS. HUNT: Page 9.

14 Q "When he mentioned seeing the security guard, did he
15 say he saw the security guard either on foot, in a
16 truck or any other way?" "On foot." "Question: On
17 foot, he did say that?" "Answer: Yeah." Do you
18 remember giving that answer?

19 A: Yes. There is a lot of things I can't remember.

20 Q During this conversation did he at any time say what
21 portion or area of the construction site he set on
22 fire?

23 A: No.

24 Q Did he say if he actually stole anything from the
25 construction site?

1

1 A: No.

2 Q Did he give you any reason why this fire would have
3 started?

4 A: For distraction.

5 Q Do you remember testifying in front of the grand jury?

6 A: Vaguely.

7 Q And that testimony occurred in September, I believe,
8 '95, does that sound right? The 15th of December, '95,
9 does that sound correct to you?

10 A: Yes.

11 Q And did you in front of the grand jury talk about this
12 theory for this statement about distraction or
13 diversion?

14 A: Yeah.

15 Q And didn't you testify in the grand jury that that made
16 no sense to you, that he would set it for a diversion?

17 A: Yes.

18 Q Because a diversion, as you testified, for setting a
19 fire would attract people, not divert them away.

20 A: Exactly.

21 Q And I think you testified earlier on direct that the
22 date you gave this videotape statement to the police
23 was the same day your residence had been broken into,
24 isn't that correct?

25 A: That's correct.

1
1 Q You called the police to report this burglary, is that
2 right?
3 A: Correct.
4 Q You told the police when they came that you believed
5 Skip Sheppard broke into your house, didn't you?
6 A: Yes, I did.
7 Q That is why you started telling them about this
8 conversation you overheard.
9 A: No, I didn't.
10 Q They asked you about Skip Sheppard.
11 A: Yes.
12 Q And you volunteered this information.
13 A: Sure.
14 Q Was anything taken in that burglary?
15 A: Yeah.
16 Q Did you ever discuss any of your testimony, any of the
17 videotape statement, or any statements, you have given
18 with Tracy?
19 A: No.
20 Q Have you ever discussed them with Megan?
21 A: No.
22 Q Did you see Tracy and Megan today?
23 A: No. Well, I seen them. I didn't talk to them.
24 Q Did you ride down here with them today?
25 A No.

1401

1 Q Do you know if Tracy or Meagan listened to this
2 conversation you overheard, did she ever tell you she
3 listened to it?

4 THE COURT: Which one?

5 MS. HUNT: The conversation he overheard with
6 Skip Sheppard.

7 THE COURT: You said did she ever tell you
8 she listened. You mean Tracy or Megan?

9 MS. HUNT: Tracy.

10 MR. MILLER: Whichever, I object as hearsay.

11 THE COURT: No, I think the fact she listened
12 to a conversation is not hearsay. But then if he is
13 asked to testify what she said, what she heard, what he
14 heard, that is hearsay.

15 Q Did she ever tell you she overheard the conversation of
16 Skip Sheppard that night?

17 A: I can't remember if she told me or not. Apparently she
18 did.

19 Q Okay. You did have a brief conversation with her, with
20 Tracy, about the reward money though, didn't you?

21 A: Yes, but it didn't go no further than that.

22 Q The unidentified person in the house looked Mexican to
23 you, you said that.

24 A: Yeah.

25 Q Did Skip during this conversation ever say what he

1 would do with dynamite?

2 A: He would sell it.

3 Q How much did he say he would sell it for?

4 A: Twenty dollars a stick.

5 MS. HUNT: I think that is all I have.

6 MR. PETERS: May it please the Court.

7 THE COURT: Yes, sir.

8 CROSS EXAMINATION

9 BY MR. PETERS:

10 Q Mr. Bayliff, my name is Pat Peters and I represent
11 **Frank** Sheppard and I have a few questions for you. The
12 conversation that you are talking about where you
13 overheard Skip Sheppard saying something, did that
14 conversation take place at the house at 8110 Wayne
15 where you were living with your girl friend or at Lee
16 Ballinger's house?

17 A: At Lee's house.

18 Q Do you remember talking to Gene Schram from the U. S.
19 Department of Labor, Office of Labor Racketeering, do
20 you remember talking with him?

21 A: No.

22 Q You don't have any recollection of a conversation on
23 December 4th, 1995 with anybody from the Department of
24 Labor?

25 A: No.

1403

1 Q Do you recall telling anyone from law enforcement that
2 the location where you heard the statements was 8110
3 Wayne and that you had probably told the police Lee
4 Ballinger's residence to avoid drawing attention to
5 your own residence, do you recall telling anybody that?

6 A: No.

7 Q This conversation that you are talking about hearing,
8 what were you wearing that day?

9 A: Blue jeans and a T shirt. It was a Budweiser T shirt.

10 Q And how many people were there in the house when this
11 conversation was going on?

12 A: Five.

13 Q And was there any noise, or anything like that, to
14 cause you problems with hearing what Skip was talking
15 about?

16 A: No.

17 Q Isn't it true that there were two separate
18 conversations going on between a group of three people
19 and a group of two people and you really weren't
20 involved in either conversation?

21 A: Actually, I wasn't, no.

22 Q And you weren't a part of the start of the conversation
23 when Skip started talking; you just had your ears
24 perked up when something was said about the explosion,
25 is that correct?

1404

1 A: That's correct.

2 Q So you can't tell us today what went on in the
3 conversation before your ears perked up, can you?

4 A: No, I can't.

5 Q You don't know if Skip Sheppard was talking about what
6 he had heard about the explosion from other people.

7 A: No. All I heard is what he said.

8 Q Now, you never heard any mentioned by Skip Sheppard
9 about a trailer, did you?

10 A: Yes, I did.

11 Q The only mention you heard was a security guard shack,
12 isn't that correct?

13 MR. MILLER: I object to these questions as
14 argumentative.

15 THE COURT: Yes, the "isn't" or "didn't" or
16 "wouldn't" form is frequently argumentative and I think
17 it is there. I will sustain the objection.

18 Q In your 15 page video, you have had an opportunity to
19 review the transcript of the videotape statement you
20 gave on 9-29-89 to the Kansas City Missouri Police
21 Department conducted by Detective John Fraise, haven't
22 you?

23 A: Yeah.

24 Q In that videotape statement do you recall telling the
25 officers, telling Detective John Fraise, that it was a

1405

1 security guard shack and little building?

2 MR. BECKER: What page?

3 MR. PETERS: I haven't impeached him with the
4 statement yet.

5 THE COURT: Well, you are reading from it.
6 What page are you reading from?

7 MR. PETERS: It would be a combination of all
8 15 pages. The part I am talking about is on page 7.

9 THE COURT: That is what they wanted to know.

10 Q In your 15 page statement did you ever say that it was
11 a trailer?

12 A: Did I say it was a trailer?

13 Q Yes.

14 A: I don't remember.

15 Q Do you recall describing it as being a security guard
16 shack or a little building?

17 A: No.

18 Q When you gave this video statement did you tell
19 Detective Fraise that your memory of the conversation
20 that you overheard from Skip Sheppard was a little bit
21 blank, that you had difficulty remembering what was
22 said?

23 A: Yeah.

24 Q Did you ever hear any mention of what portion of the
25 site was set on fire?

1406

1 A: No.

2 Q And who was it you had a discussion about the reward
3 money with?

4 A: It wasn't really a discussion but it was Tracy.

5 Q And what was it that you said to Tracy about the
6 reward?

7 A: That there was a thousand dollar reward, that we ought
8 to call and that was it.

9 Q Have you since learned the reward is \$50,000?

10 A: Yeah.

11 MR. PETERS: I have no further questions.

12 THE COURT: All right. Mr. Bunch.

13 MR. BUNCH: No questions, Your Honor.

14 MR. O'CONNOR: No questions, Your Honor.

15 THE COURT: Mr. Osgood.

16 CROSS EXAMINATION

17 BY MR. OSGOOD:

18 Q Mr. Bayliff, my n a m e is John Osgood. You know Mr.
19 Brown, don't you?

20 A: Yes.

21 Q You see him in court here.

22 A: Yes.

23 Q You have used the pronoun **they**.

24 A: Yeah.

25 Q Referring to what **Frank** said and then at one point -

1407

1 MR. PETERS: I have to object when the
2 question says that **Frank** said.

3 MR. OSGOOD: I am sorry. Skip. I apologize.

4 MR. O'CONNOR: Can we approach a minute.

5 (Proceedings out of the hearing of the jury.)

6 MR. O'CONNOR: I love my co-counsel but I am
7 concerned when he says "they". The only other "they,"
8 mentioned in this report of Bayliff is when he says
9 Skip and Bryan. I know John has said he won't get into
10 it. I am concerned about this witness. Can you tell
11 me what your question is.

12 MR. OSGOOD: When you used the term they -
13 actually he was saying "we". I want to clarify the
14 words. He didn't say "they". He said "we". And then
15 I am going to ask him, he did not mention Richard Brown
16 and Richard Brown has never made any admission.

17 MR. O'CONNOR: I really am concerned about
18 the "we". What he said was, "Me and Bryan", he may
19 clarify that.

20 MR. OSGOOD: I will read "him."

21 THE COURT: This is the trouble with
22 Newsspeak. We are trying to rewrite history and trying
23 to get people to testify to things different than the
24 way they were and it is very difficult to do.

25 MR. OSGOOD: I agree. We didn't choose to be

1408

1 filed jointly and we filed motions for severance. I
2 realize the problem of trying them individually. I
3 will be careful.

4 MR. O'CONNOR: I object to any question that
5 may call for an answer about "we". I think John can
6 ask him did he say Richard Brown was one of the persons
7 and it gets you where you want to go and doesn't open
8 up anything.

9 MR. OSGOOD: First, I am going to ask him
10 about other people that the agents asked him about and
11 bring out those names of people he knows. You don't
12 need to worry.

13 THE COURT: That were not there.

14 MR. OSGOOD: No, they asked him that were
15 there and not there. There will be plenty of names by
16 the time I am done, trust me.

17 MR. O'CONNOR: I believe you. My problem, it
18 is like the government has talked to this witness, I am
19 sure, and told him not to answer certain questions and
20 he has lived up to that. I am worried about Osgood
21 asking without us taking a recess to pose the questions
22 outside the hearing of the jury. This is an area that
23 is too dangerous for me.

24 MR. MILLER: This line of questions is
25 constructively exculpatory because if he had anything

1409

1 to say about Richard Brown we would have questioned him
2 what did Richard say. He is here against Skip.
3 Further, you have instructed the jury anything he says
4 just goes to Skip. When he gets up there, was so and
5 so there, did he say anything about so and so, we are
6 getting into exculpatory hearsay. It is constructive
7 exculpatory hearsay and that is what they are trying to
8 get. It is obvious what he is here for; it's just
9 against Skip.

10 MR. OSGOOD: I am entitled to put on a
11 defense and you chose to indict these people all
12 together and you are using the pronoun they to
13 deliberately paint a broad brush but you know under
14 Bruton you can't name them individually. And the way
15 you are trying this case, I am entitled to a defense
16 and I want to show my client wasn't the "they,,.

17 THE COURT: Ask one question. Ask if your
18 client is one of the "they" they referred to and then
19 let's get off of it.

20 (Proceedings in the hearing of the jury.)

21 Q Was Mr. Brown one of the they" they were talking
22 about?

23 A: I don't know.

24 Q Was his name mentioned specifically?

25 A: No.

1 Q Ever? A No.

2 Q All right. Now do you remember the interview you had

3 on December the 4th of 1995 with one of these law

4 enforcement people he was just asking you about?

5 A: One of the ATF agents?

6 Q Actually, I think he was with the Labor Racketeering

7 Strike Force of the Department of Labor, do you

8 remember that?

9 A: Was it that guy right there at the table (indicating)?

10 Q He may have been there. I don't know, sir.

11 A: As far as I knew, it was the ATF.

12 Q Did any of those agents ever ask you if you knew Alan

13 Betterd(phonetics)?

14 A: Yes.

15 Q Do you know Alan Betterd?

16 A: I know him but not close.

17 Q How long have you known him?

18 A: Not very long. I don't really know him. I just know

19 of him.

20 Q Is he about your age?

21 A: I don't know how old he is.

22 Q Is he from the Marlborough area?

23 A: I don't know that either.

24 Q But you do know him.

25 A: Yeah, I have seen him.

1 Q How about a To mm ie Lee King, did they ask you about
 2 that person?
 3 A: Yes, I believe so.
 4 Q You knew him, didn't you?
 5 A: Tommie Lee King?
 6 Q Yes, sir.
 7 A: I don't remember that name.
 8 Q I thought you just told me you knew him.
 9 A: Tommie Lee King?
 10 Q Tommie Lee King.
 11 THE COURT: You told him he knew him. He
 12 didn't say he knew him.
 13 MR. OSGOOD: If I did, I apologize, Your
 14 Honor.
 15 Q Do you know him?
 16 A: No, I don't know him.
 17 Q Okay. Chuck Jennings, do you know him?
 18 A: No, I don't.
 19 Q Correy Colinka (phonetics), do you know him?
 20 A: Of him.
 21 Q And To mm ie Edwards, do you know Tommie Edwards?
 22 A: Yeah, I know To mm ie.
 23 Q What about Johnny Driver?
 24 A: No.
 25 Q Do you remember these names being thrown out to you

1412

1 during the interview?

2 A: Yes.

3 Q Some you said you knew; some you didn't.

4 A: There were pictures to go along with it, too.

5 Q Are these Marlborough people?

6 A: People where I have seen them, that's where I have seen
7 them from.

8 Q How many people were at the party, or the event, where
9 this took place, this conversation you have testified
10 to here day?

11 MR. MILLER: This is repetitious. It has
12 been covered by both attorneys.

13 MR. OSGOOD: I represent Mr. Brown. I don't
14 represent the other two defendants.

15 THE COURT: That has been overruled. Ask
16 your next question.

17 Q Was there a lot of conversation going on by everyone?

18 A: There was two conversations, Skip's and the other one.

19 Q All right. And you were listening to all of them at
20 the same time.

21 A: No, I was listening to Tracy and I heard dynamite,
22 explosion and that caught my attention. That's when I
23 started listening to them.

24 Q But you didn't hear the beginning of the conversation.

25 That's all I have.

1 THE COURT: Any Redirect?

2 MR. MILLER: No Redirect.

3 MR. PETERS: Just between the witnesses we
4 need to approach.

5 THE COURT: You may.

6 (Proceedings out of the hearing of the jury.)

7 MR. PETERS: It is a minor deal. Just for
8 the record, the last witness was asked about various
9 photos he was shown and asked to make identification.
10 And it is my understanding those photos don't exist.
11 There isn't a photospread available for the defense.

12 THE COURT: He wasn't asked about the photos.
13 He volunteered about the photos. He was asked about
14 the names of the people. He said they asked you about
15 them, didn't they and he said "Yes and showed me
16 photos." The witness brought up the photos.

17 MR. PETERS: He was shown photos and for my
18 record, those photos are not currently in existence
19 for the defense to be able to look at the photographs.

20 MR. BECKER: But he hasn't been asked to
21 make a photo identification. No suggestion of an
22 improper in-court I.D. What's the point?

23 MR. MILLER: It has no relevance.

24 THE COURT: Why are you mentioning this?

25 MR. PETERS: Because on the record now we

1414

1 have somebody saying photos and that's in the record.
2 I can't change that. And for purposes of my record,
3 these photos are not photos that have been provided
4 to the defense and I didn't hint anybody is accusing
5 anybody of doing something improper. I just want the
6 record to reflect these are not photos that we have had
7 an opportunity to look at.

8 THE COURT: Okay, it reflects that.

9 (Proceedings in the jury's hearing.)

10 THE COURT: Call your next witness.

11 MR. MILLER: The government calls Tracy
12 Ownby.

13 TRACY OWNBY'

14 having been sworn, testified:

15 DIRECT EXAMINATION

16 BY MR. MILLER:

17 Q Would you tell the court and the jury your name,
18 please.

19 A: Tracy Ownby.

20 Q How old are you, Mrs. Ownby?

21 A: Twenty-six.

22 Q I want to go back to November the 28th of 1998 and did
23 you live in the Marlborough area?

24 A: No.

25 Q Where did you live back then?

1 A: State Line.

2 Q And do you recall the explosion that occurred in the
3 early morning hours of November 29, 1988 that killed
4 six fire fighters?

5 A: Yes.

6 Q How do you recall the explosion?

7 A: Just by the news and hearing from other people.

8 Q Now back in November of 1988 did you know Doug Bayliff?

9 A: Yes.

10 Q How did you know him?

11 A: He was my boy friend.

12 Q Is he still your boy friend?

13 A: No.

14 Q Back around the time of the explosion did you know Skip
15 Sheppard?

16 A No.

17 Q Did you ever come to know Skip Sheppard?

18 A: Yes.

19 Q Do you know about when you met Mr. Sheppard?

20 A: About the summer of '89.

21 Q And do you see him in the courtroom today?

22 A: Yeah.

23 Q Can you point him out?

24 A: Right there (indicating).

25 Q Is that the defendant standing?

1416

1 A: Yeah.

2 Q Do you know a fellow by the name of Lee Ballinger?

3 A: Yes.

4 Q Now some time after the explosion were you over at Lee
5 Ballinger's house?

6 A: Yes.

7 Q And what were you over there for?

8 A: Lee had some lamps because he was moving out and he was
9 going to sell them and I needed some lamps.

10 Q Who did you go over there with?

11 A: Doug and Megan.

12 Q What is Megan's last name?

13 A: Williams.

14 Q When you got there was the defendant Skip Sheppard
15 there?

16 A: Yes.

17 Q So he was already there when you got there.

18 A: Yes.

19 Q Do you recall who else was over there?

20 A: Lee and some other guy I don't know, I never saw.

21 Q Now, over there at Lee Ballinger's house, when was this
22 in relation to the explosion? The explosion happened
23 in November of '88. Do you recall when you were over
24 at Lee Ballinger's house?

25 A: Probably September, '89, the beginning of September,

1 '89.

2 Q Now, Skip Sheppard was there. Where was the defendant
3 Skip Sheppard in the house?

4 A: In the living room sitting on the couch.

5 Q Who was he talking with?

6 A: Doug and another guy.

7 Q Could you overhear any of the conversation?

8 A: Yes.

9 Q How close were you to Skip Sheppard while he was
10 talking?

11 A: Probably ten feet.

12 Q What did you overhear the defendant Skip Sheppard
13 talking?

14 A: He asked Doug if he remembered the explosion. Doug
15 said yes and he said, well, he was there.

16 Q "He", who is saying he was there?

17 A: Skip was there.

18 Q What was Skip Sheppard's tone of voice?

19 A: He was talking kind of low.

20 Q Did you overhear Skip Sheppard say why he was there at
21 the construction site?

22 A: He said **they** went there to steal something. I didn't
23 hear the whole conversation.

24 Q What did Skip Sheppard say happened while he was there
25 at the construction site?

1 A: He just said **they** were -

2 MR. OSGOOD: Objection, Your Honor. I want
3 to know whether or not he said "we" or he said "they,,
4 he is quoting.

5 THE COURT: You have a right of cross
6 examination.

7 Q What did Skip Sheppard say happened while he was there
8 at the construction site?

9 A: He said we were running and it exploded.

10 Q What did he say about a fire, do you recall?

11 A: Nothing.

12 Q How many times have you heard the defendant Skip
13 Sheppard talk about this?

14 A: Once.

15 Q When did you give a statement to the Kansas City,
16 Missouri Police Department?

17 A: Two weeks after I heard it.

18 Q Who did you go down there with?

19 A: Megan Williams.

20 Q Did you and Megan Williams discuss together what you
21 heard that night?

22 A: That night we were talking about it and decided to
23 call.

24 Q Call what?

25 A: 474-TIPS.

1 Q Now, were you present when Megan Williams gave a
2 statement to the police?

3 A: No.

4 Q Was she present when you gave your statement?

5 A: No.

6 Q Was Doug Bayliff there?

7 A: No.

8 Q Did you ever tell Doug you were going down to the
9 police department?

10 A: No.

11 Q When did he learn you had been there?

12 A: Later that day.

13 MR. MILLER: That is all I have of this
14 witness, Judge.

15 THE COURT: Miss Hunt.

16 CROSS EXAMINATION

17 BY MS. HUNT:

18 Q My name is Susan Hunt. I represent Skip Sheppard and
19 you are Miss Ownby.

20 A: Uh-huh.

21 Q I think you stated on your direct examination that
22 the night you overheard this conversation you were at
23 Lee Ballinger's house, is that correct?

24 A: Yes.

25 Q Is Ballinger his last name? Is it Lee Ballinger?

1 A: I guess, yes.

2 Q Do you know his last name?

3 A: He told me it was Ballinger.

4 Q It was at Lee Ballinger's house you were at with your
5 boy friend Doug at that time, is that correct?

6 A: Yes.

7 Q And your girl friend Megan Williams, is that correct?

8 A: Yes.

9 Q And I think you stated on direct examination you were
10 there because Lee had some lamps he wanted to sell you,
11 is that correct?

12 A: Yes.

13 Q Did he call you that day and ask you to come over and
14 look at the lamps?

15 A: Yeah.

16 Q During this conversation when Skip Sheppard was
17 talking, his voice was somewhat low, wasn't it?

18 A: Yeah, his voice was low.

19 Q He wasn't talking in a normal conversational tone?

20 A: No, not outloud but just talking to somebody you would
21 be talking to on the couch.

22 Q Somebody sitting right next to you, would that be
23 right?

24 A: Yes.

25 Q Across the room, you couldn't really hear what he was

1 saying if you were across the room.

2 A: I didn't hear the whole conversation but I could hear
3 what he was saying.

4 Q Part of the time this conversation occurred you were in
5 the hallway, weren't you?

6 A: No, I was in the living room.

7 Q You hadn't gone to the bathroom at one point.

8 A: No.

9 Q During the time this conversation was occurring were
10 you also having your own conversation with Lee
11 Ballinger about these lamps?

12 A: Yes.

13 Q So you were talking to Lee Ballinger at the time, is
14 that correct?

15 A: Yes.

16 Q And trying to hear what this conversation was, is that
17 right?

18 A: Yeah.

19 Q So you really, like you said, you couldn't hear the
20 whole conversation, right?

21 A: Not the whole thing, no.

22 Q Of the part of the conversation you did hear, Skip
23 never said anything about starting a fire up there, did
24 he?

25 A: No.

1422

1 Q And he never mentioned anything about a fire at all,
2 did he?

3 A: No.

4 Q He never mentioned a security guard being present up
5 there, did he?

6 A: I didn't hear him.

7 Q You never heard anything about a security guard at all,
8 is that correct?

9 A: No.

10 Q Did he mention anything at all about dynamite?

11 A: Not that I heard.

12 Q Did you talk to Doug Bayliff about the reward in this
13 case?

14 A: No.

15 Q You didn't have a conversation with him in which you
16 said there is a thousand dollar reward out and we could
17 use the money?

18 A: I know I never talked to Doug about it at all because
19 Doug told me not to say anything to anyone.

20 Q When Doug told you not to say anything, you were
21 obviously talking to him about this incident.

22 A: No, this is when we left the house and I told him what
23 I heard Skip talking and what T heard them talking
24 about, and he told me not to say anything to anyone
25 because these people are dangerous and to just keep

1423

1 quiet and don't ever say nothing. And that's the last
2 I ever talked to Doug about it.

3 Q Were you aware there was, and still is, a reward in
4 this case?

5 A: No, I wasn't.

6 Q There was somebody else present in this house you
7 ~ didn't recognize, is that right?

8 A: Yes.

9 Q And describe him.

10 A: He was, I don't know how tall he was because he was
11 sitting down. He had blondish brown hair, kind of
12 dirty looking.

13 Q Not dark hair.

14 A: No, not dark hair.

15 Q Blondish brown, in that range, is that right?

16 A: Yes.

17 Q Was he Mexican?

18 A: I don't think so, no.

19 Q Was this conversation that you overheard a direct
20 conversation between Skip and Doug?

21 A: Yeah.

22 Q And so Doug was asking questions, is that right? Did
23 Doug ask Skip any questions during that conversation?

24 A: He was answering when Skip said, you know, do you
25 remember the explosion. **They** were turned facing each

1424

1 other.

2 Q **They** were sitting on the couch together.

3 ~ A Just like this (indicating).

4 Q Were you sitting on the couch or were you somewhere
5 else talking to Lee?

6 ~ A I was standing up in the living room.

7 Q By the couch.

8 A: No, probably ten feet.

9 Q Was it a big living room?

10 A: No.

11 Q So you didn't hear the whole conversation but it looked
12 like they were talking directly to each other, is that
13 right?

14 A: Yes.

15 Q Was this a long conversation?

16 A: Not real long.

17 Q Ten minutes.

18 A: Yeah, probably.

19 Q Less than ten or more than ten.

20 A: Around that. Not real long. Short.

21 MISS HUNT: I think that is all I have.

22 CROSS EXAMINATION

23 BY MR. PETERS:

24 Q My name is Pat Peters and I represent **Frank** Sheppard.

25 The conversation that you are describing overhearing

1425

1 with Skip Sheppard, did that conversation take place at
2 8110 Wayne?

3 A: No.

4 Q At the time this conversation was taking place were you
5 under the influence of any sort of illegal **drug**?

6 A: No.

7 Q And your testimony is that you overheard bits and
8 pieces of this conversation, is that a fair
9 characterization?

10 A: Yes.

11 Q So you don't have any idea as to what was said at the
12 beginning of the conversation, for example.

13 A: That was the beginning of the conversation.

14 Q So you heard the entire conversation.

15 A: No.

16 Q You heard bits and pieces of the conversation.

17 A: Yeah.

18 MR. PETERS: I have no further questions.

19 MR. BUNCH: Nothing.

20 MR. O'CONNOR: No questions, Your Honor.

21 CROSS EXAMINATION

22 BY MS. OSGOOD:

23 Q Ms. Ownby, my name is John Osgood and I represent
24 Richard Brown. You know Richard?

25 A Yes.

1426

1 Q You were 19 at the time of these events, I think.

2 A: Yes.

3 ~ Q And Richard was the same age as you.

4 A: Yes.

5 Q And you have described a dark-complected individual -

6 ~ A Not dark complected.

7 Q This third party.

8 A: No, it wasn't dark complected.

9 Q It wasn't Richard Brown.

10 A: No.

11 Q Richard Brown has never made any admissions to you and
12 told you anything, that he had anything to do with
13 this, has he?

14 A: No.

15 MR. OSGOOD: Okay. Thank you.

16 THE COURT: Anything else?

17 MR. MILLER: No Redirect.

18 THE COURT: Thank you, . ma'am. You may step
19 down.

20 MR. BECKER: Can we approach the bench.

21 (Proceedings out of the hearing of the jury.)

22 MR. BECKER: I would like to inquire of
23 counsel for Mr. **Frank** Sheppard if there is any good
24 faith basis for the question about the witness being
25 under the influence of **drugs** when this conversation

1427

1 occurred, to impugn this witness without a good
2 faith basis.

3 MR. PETERS: Yes, we had a good faith basis.
4 We will probably put on rebuttal testimony she was
5 consuming **drugs** that day.

6 MR. BECKER: Okay.

7 (Proceedings in the hearing of the jury.)

8 MR. MILLER: The government calls Megan
9 Williams to the stand.

10 MEGAN WILLIAMS'

11 having been duly sworn, testified:

12 DIRECT EXAMINATION

13 BY MR. MILLER:

14 Q Would you tell the court and jury your name, please.

15 A: Megan Williams.

16 Q How old are you now?

17 A: Twenty-three.

18 Q I want to go back to November the 28th of 1988. Did
19 you live in the Marlborough area?

20 A: Yes, I did.

21 Q And do you recall the explosion in the early morning of
22 November 29, 1988 that killed six fire fighters?

23 A: Yes, I do.

24 Q How do you know about the explosion?

25 A: My house started to shake and some of the windows were

1428

1 blown out of the house.

2 Q Do you know a Doug sayliff?

3 A: Yes.

4 Q And do you know Tracy Ownby?

5 A Yes, I do.

6 Q Did you know Skip Sheppard around the time of the
7 explosion?

8 A: No, I did not.

9 Q Did you ever come to know Skip Sheppard?

10 A: Yes, I did.

11 Q Do you remember when you met him?

12 A: I met him in January of '89.

13 Q Do you see him in the courtroom today?

14 A: Yes.

15 Q Can you point him out?

16 A: The gentleman that just stood up.

17 Q Do you know a fellow by the name of Lee Ballinger?

18 A: No, I do not.

19 Q Some time after the explosion were you over at a house
20 with Doug Bayliff, Tracy Owenby, whom you said you
21 know, and the defendant, Skip Sheppard?

22 A: Yes, I was.

23 Q Now, in relation to the explosion, about when was this,
24 when did this occur?

25 A: I would say probably a year after.

1 Q After the explosion.

2 A: Yes.

3 Q Now, when you got there was the defendant Skip Sheppard
4 already there or did he come in after you got there?

5 A: He was already there.

6 Q Could you see who the defendant Skip Sheppard was
7 talking with, do you remember?

8 A: He was talking to Doug Bayliff.

9 Q Could you overhear any of the conversation?

10 A: Yes, I did.

11 Q How close were you to the defendant Skip Sheppard while
12 he was talking with Doug Bayliff?

13 A: I would say no more than 20 or 30 feet.

14 Q What did you overhear Skip Sheppard say about the
15 explosion on 71 highway?

16 A: That he was there.

17 Q What was his tone of voice?

18 A: To me it was a low, almost a whisper but I wasn't close
19 to him.

20 Q Could you overhear him say anything else other than he
21 was there?

22 A: No, I did not.

23 Q Did you ever take this information to the police?

24 A: yes, I did.

25 Q Do you remember how soon after you heard the

1430

1 conversation you went to the police?

2 A: I would say about a month.

3 Q And who did you go down there with?

A: Tracy Ownby.

5 ~ Q Was Tracy with you when you gave your statement?

6 A: No, she was not.

7 Q Were you with Tracy when she gave hers?

8 A: No, I was not.

9 Q Was Doug Bayliff with you?

10 A: No, he wasn't.

11 MR. MILLER: That is all I have of this
12 witness, Judge.

13 CROSS EXAMINATION

14 BY MS. HUNT:

15 Q My name is Susan Hunt and I represent Skip Sheppard.

16 Did you go to this house with Tracy and Doug?

17 A: Yes, I did.

18 Q And when you walked in the house, who all was present?

19 A: I couldn't say. I am not for sure.

20 Q How many people were present then?

21 A: Probably, about seven or six people, other people there
22 besides us.

23 Q How many men were there?

24 A: I couldn't say.

25 Q You don't know if it was three men, five men.

1 A No, ma'am.

2 Q Were there any women besides the two of you?

3 A Not that I remember, no.

4 Q Was there another person sitting on a couch across from
5 ~Skip when this conversation allegedly took place?

6 A I couldn't say.

7 Q During the conversation were all these seven people i
8 the house?

9 A: I believe so, yes.

10 Q And were they all in the living room listening to this
11 conversation or roaming around the house?

12 A: Roaming around the house.

13 Q When this conversation took place you were in the
14 hallway, is that correct?

15 A: Yes, ma'am.

16 Q You didn't hear the whole conversation, did you?

17 A: No.

18 Q And Tracy was in the hallway with you, wasn't she?

19 A: Yes, she was.

20 Q You two had just gone to the bathroom and were coming
21 out.

22 A: Yes.

23 Q Was Tracy talking to Lee Ballinger?

24 A: She was talking to other people there but I don't know
25 Lee Ballinger so I couldn't say.

1 Q Did this conversation take place at 8110 Wayne?

2 A Not to my knowledge, no.

3 Q Do you know where the conversation did take place?

4 A No, it was in a house in Marlborough, I know that.

5 Q When this conversation was occurring, I believe you

6 testified Skip was almost whispering it was such a low

7 tone.

8 A: From where I was standing, that's what it sounded like

9 to me.

10 Q Did you see any individuals who looked Mexican or had a

11 dark complexion?

12 A: I couldn't say, no, not at this time.

13 Q When this conversation was taking place was it just a

14 conversation between Skip and Doug?

15 A: I believe so, yes.

16 Q Were they sitting side-by-side on the couch?

17 A: yes, they were.

18 Q And how far away was the hallway, your coming out of

19 the bathroom, a hallway into the living room from the

20 bathroom.

21 A: I believe so, yes.

22 Q When you gave your statement to Detective Fraise, do

23 you remember that?

24 A: Yes, I do.

25 Q And when you were down there talking to Detective

1433

1 Fraise, did you talk to him prior to him taking a
2 videotape?

3 A I wasn't videotaped.

4 Q It was a recorded statement.

5 ~ A Yes, ma'am.

6 Q You have read it over and signed it, is that correct?

7 A: Yes, ma'am.

8 Q Did you talk to him prior to doing the recorded
9 statement, however?

10 A: No, I did not.

11 Q Did he tell you during that statement that there was a
12 reward for this?

13 A: No, he did not.

14 Q Did you again talk to officials in this case on October
15 11th of 1996?

16 A: Yes, I did.

17 Q and did you have a chance to review this taped
18 statement you gave at that time?

19 A: That statement was not taped at that time.

20 Q No, the statement in September, '89 was taped.

21 A: Yes.

22 Q and then you reviewed that statement.

23 A: I reviewed my signed statement. I didn't review a
24 tape-recorded statement.

25 Q You reviewed a written statement in a question and

1434

1 answer format.

2 A: Yes.

3 ~ Q You just reviewed that and you said basically that was
4 ~accurate, is that right?

5 A: Yes, ma'am.

6 Q Were you surprised or would you be surprised if someone
7 told you that **Frank** Sheppard, Skip Sheppard and Richard
8 Brown ran around together a lot?

9 MR. MILLER: I object as argumentative. It
10 asks for hearsay and speculation.

11 THE COURT: It is irrelevant. We are not
12 here to determine what would or wouldn't surprise her.

13 MS. HUNT: I will rephrase the question.

14 THE COURT: Please do.

15 Q Did **Frank** Sheppard and Richard Brown, to your
16 knowledge, hang around together, run around together?

17 A: Richard with them, not to my knowledge, no.

18 Q And it is your statement Detective Fraise never told
19 you there was a reward out.

20 A: Not until after my statement.

21 Q But he did tell you at some point that day then.

22 A: Yes, ma'am.

23 Q Are you aware there is still a reward out?

24 A: I wouldn't know.

25 Q How much was the reward, did he tell you the amount of

1 the reward at that time?

2 A: I couldn't recall the amount, no.

3 Q Did you ever discuss this conversation you overheard
4 with other people in the neighborhood?

5 ~ A No, I did not.

6 Q Did you ever tell Ownby?

7 A: Yes.

8 Q You talked to her about it.

9 A: yes, ma'am.

10 Q Do you still see Doug and Tracy?

11 A: No, I have not seen them, except for today, within the
12 last five years.

13 Q You have kind of gone your separate ways.

14 A: Yes.

15 Q But you did see them today.

16 A: Yes, I did.

17 Q Did you talk to them about this situation at all.

18 A: No, it was in passing.

19 Q Did you ride down here with them at all today?

20 A: No.

21 Q Were you in the elevator with them today?

22 A: No, I was not.

23 MS. HUNT: That is all I have.

24 CROSS EXAMINATION

25 BY MR. PETERS:

1 Q Ma'am, my name is Pat Peters and I represent **Frank**
2 Sheppard. Do you remember what Skip Sheppard was
3 wearing that day?

4 A: No, I do not.

5 Q Do you remember what Doug Bayliff was wearing that day?

6 A: No, I do not.

7 Q We are talking about something that happened -

8 A: Almost eight years ago.

9 Q And recognizing that a lot of things have changed, but
10 back when we are talking about, would you agree this is
11 during a period of time in your life when you and your
12 friends would go from house to house partying?

13 A: Yes, it is.

14 MR. MILLER: I object to the form of the
15 question, "would you agree", plus it is not relevant.

16 THE COURT: I will sustain the objection as
17 to form.

18 Q Ma'am, were you going during this time in your life
19 from house to house partying?

20 A: Yes, I was.

21 Q Did that partying include illegal **drugs**?

22 A: Yes, it did.

23 Q And the going from house to house that we are talking
24 about, the reason that you had gone to this particular
25 house that particular day was to do that sort of

1437

1 partying, is that correct?

2 A: I could not say at this time, no.

3 Q It wouldn't be unlikely that illegal **drugs** would have
4 been consumed at that house on that day.

5 MR. MILLER: I object to the form the
6 question. Also, the relevance.

7 THE COURT: I think you have invented
8 compound speculation, Mr. Peters, and I am going to
9 sustain the objection.

10 MR. PETERS: I can't write a note for that
11 one, Judge.

12 Q At the house that we are talking about in the
13 conversation you are talking about overhearing there
14 were, in fact, people consuming illegal **drugs** at that
15 time, weren't there?

16 A: I could not say for sure, no, not to my knowledge.

17 MR. PETERS: I have no further questions.

18 THE COURT: Mr . Bunch.

19 MR. BUNCH: No questions.

20 THE COURT: Mr. O'Connor.

21 MR. O'CONNOR: No questions.

22 THE COURT: Mr. Osgood.

23 MR. OSGOOD: Just a few, Your Honor.

24 CROSS EXAMINATION

25 BY MR. OSGOOD:

1438

1 Q Miss Williams, I am John Osgood and I represent Richard
2 Brown. In 1989 when you gave your statement, you would
3 have been I guess 15 years old, is that right?

4 A: I would say either 15 or 14, yes.

5 Q And you know Richard Brown.

6 A: Yes, I do.

7 Q Do you see him in the courtroom here?

8 A: Yes.

9 Q He was about 18 years old at that time, wasn't he?

10 A: Yes.

11 Q Did he date some of your friends?

12 A: Yes, he did.

13 Q And have you been on double dates with him and other
14 guys and other girls?

15 A: Yes.

16 Q And kind of ran around a group of kids about the same
17 age.

18 A: Yes, I did.

19 Q And, for example, did you know To mm ie Clark?

20 MR. MILLER: I object to the relevance now.

21 THE COURT: Is that relevant?

22 MR. OSGOOD: It is relevant to show my
23 client -

24 THE COURT: Wait a minute. I didn't ask
25 about your client. I asked why is whether she knew

1 Tommie Clark relevant to your inquiry?

2 MR. OSGOOD: Mr. Clark's name will come up in
3 the case, Your Honor. Let me rephrase the question.

4 THE COURT: Let's not go through a whole
5 litany.

6 Q Were you asked about Tommie Clark when you were
7 interviewed by the agents?

8 MR. MILLER: Again I object. It is not
9 relevant.

10 MR. OSGOOD: I assure the court it is
11 relevant and it will be relevant.

12 THE COURT: Come up and tell me why it is
13 relevant.

14 (Proceedings out of the hearing of the jury.)

15 MR. OSGOOD: Mr. Clark is one of the people
16 that their witnesses will say was one of the ones
17 responsible at some point in time as one of the ones
18 that was a suspect and one of the ones they thought
19 had done some of this.

20 MR. MILLER: Not this witness.

21 MR. OSGOOD: I want to asks if he is someone
22 she was familiar with in the neighborhood. The agents
23 asked her that.

24 THE COURT: I will sustain the object.
25 That's way too far.

1 (Proceedings in the hearing of the jury.)

2 Q Back when you were 14 and 15, Mr. Brown was around 18,
3 how old was Skip Sheppard?

4 A: I couldn't say. I don't know his age now.

5 Q Let me ask you this. Did he run around with this group
6 of kids?

7 A: No, he did not.

8 Q Was he an older guy?

9 A: Yes, he was.

10 Q The way young teenage girls talk about older guys.

11 A: Yes.

12 Q Before I became 54 I thought 27 was old. You
13 understand what I am saying.

14 A: Yes.

15 Q And Mr. Brown never ever made any statements or
16 admissions to you to indicate he knew anything about
17 this explosion, did he, ma ' am?

18 A: No.

19 Q And the agents asked you about him, didn't they?

20 A: No, they did not.

21 MR. OSGOOD: Thank you.

22 THE COURT: Any Redirect?

23 MR. MILLER: No Redirect, Your Honor.

24 The government calls Carl Nettles.

25 MR. OSGOOD: Can we approach while we are

1441

1 waiting for him?

2 THE COURT: Yes.

3 (Proceedings out of the hearing of the jury.)

4 MR. OSGOOD: Mr. Nettles, in his statement,
5 indicates that he sold methamphetamine to my client at
6 some point in time. It is totally unrelated to any
7 event in this case and I am concerned he might blurt
8 that out and I would move for a mistrial if he does.
9 My client has no felony convictions. He has never been
10 convicted of any **drug** violations. This man is a jail
11 house witness and I would ask the government, if they
12 haven't instructed him already, they instruct him not
13 to mention any allegation he ever sold methamphetamine
14 to my client.

15 MR. O'CONNOR: We had this discussion with
16 Mr. Becker. I am not worried about it because he said
17 they wouldn't get into it.

18 MS. HUNT: The subject of Nettles'
19 testimony is this report that I don't remember seeing.
20 I am sure I got it but I don't remember seeing it. If
21 we could take a short break.

22 MR. O'CONNOR: You gave it to us.

23 MS. HUNT: I am sure he did. I would like to
24 take a short break so I can read it.

25 MR. O'CONNOR: She is the only one that is

1 going to cross examine.

2 MS. HUNT: It is important to me. I don't
3 remember ever reading it. This is what I thought the
4 subject was going to be.

5 (Proceedings in the hearing of the jury.)

6 THE COURT: All right, ladies and gentlemen,
7 we are going to take a five minute break. Don't talk
8 about the case. We will conclude the testimony for the
9 afternoon probably within the next 30 to 40 minutes
10 after this break. So don't talk about the case and you
11 may withdraw.

12 RECESS

13 (Proceedings out of the presence of the jury.)

14 MR. BECKER: Miss Hunt called to my
15 attention, she had but one short report relating to
16 this next witness, Charles Nettles, and I believed
17 there was two reports. Then she found her two
18 reports but it turns out there are three reports. And,
19 most importantly, the report the government did not
20 provide, although I am still checking my records, but
21 the report of interview deals with the subject matter
22 of his testimony; that is Miss Hunt's client Skip
23 Sheppard. I fully believe at this point it was my
24 fault; that this was not turned over. It should have
25 been turned over. I believe the confusion arises out

1 of the fact we have two reports of interview from
2 July 16, 1996 from Carl Gene Nettles. One of them
3 deals with Bryan Sheppard's **drug** activity and the other
4 deals with Skip Sheppard and this case.

5 The Bryan Sheppard **drug** activity, one
6 was turned over. Right now it is clear to me I
7 did not turn over this report. So I would not
8 oppose any extension of time Miss Hunt needs to
9 proceed to this cross examination.

10 MS. HUNT: I would like to first thing in the
11 morning because there are several statements in the
12 report, I have not seen until now.

13 THE COURT: Do you have somebody else you
14 could put on?

15 MR. BECXER: We do not.

16 THE COURT: Don't you have any papers you can
17 deal with. We are all here ready. Do you have to kill
18 this hour and a half?

19 MR. BECKER: I am sorry, Judge. Papers,
20 there is not a whole lot of documents in this case.
21 We have various and sundry records relating to the fact
22 people are in jail together at the same time but I
23 would rather offer them at the time the witness is
24 testifying so it makes sense who we are talking about.
25 Other than that, we don't have a whole lot of records.

1 The bulk of the exhibits are photographs. All those
2 numbers are photographs and I apologize to the court.
3 I understand that I am the one that asked for more
4 time and now I am not prepared to fill it up.

5 THE COURT: Okay, we will bring them in and
6 we are going to stop now.

7 (The jury returns to the courtroom.)

8 THE COURT: Have a seat, folks. It develops
9 there is some document examination that needs to be
10 done before the next witness is called and examined so
11 we are going to stop this afternoon and pick up in the
12 morning at nine o'clock.

13 Now, I have a question from one of you
14 and we will deal with it first thing in the
15 morning. Don't talk about the case. Don't let
16 anybody talk about the case in your presence.
17 Don't read or listen to anything about it that
18 might come to your attention. And we will see you
19 in the morning at nine o'clock. You are excused.

20 (The jury leaves the courtroom.)

21 THE COURT: This is a question from one of
22 the jurors named Mark Deaton. It is spelled D-e-a-t-o
23 n. It reads, "This question is not about any one
24 witness' testimony. Can this be answered we are
25 viewing all the evidence for/against all the defendants

1445

1 at the same time. What are the charges against each."

2 It reads, "Are the same for a11?"

3 Now, it seems to me we answer that by
4 simply telling them it is a one count indictment.

5 All the defendants are named in the indictment.

6 And I can even read it to them again as far as
7 that is concerned. I have read the indictment.

8 It is short.

9 MR. O'CONNOR: We don't object to you reading
10 it.

11 MR. OSGOOD: Read it.

12 MR. BUNCH: We have no objection.

13 THE COURT: They are all named in the one
14 count. Okay, we will be in recess until tomorrow.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

GEORGE FRANK SHEPPARD,
EARL D. SHEPPARD,
DARLENE M. EDWARDS,
BRYAN E. SHEPPARD, and
RICHARD W. BROWN,
Defendants.

No. 96-00085-01/05-CR-W-9-8
January 30, 1997
Kansas City, Missouri
CRIMINAL

TRANSCRIPT ON APPEAL

V O L U M E V I I I

(Pages 1446 - 1669)

BEFORE THE HONORABLE JOSEPH E. STEVENS, JR.
UNITED STATES DISTRICT JUDGE

AND A JURY

Proceedings recorded by electronic stenography
Transcript produced by computer

Kathleen M. Wirt, CCR, RMR
United States Court Reporter
811 Grand, Room 654 * Kansas City, MO 64106
(816) 474-4616

Page 1447
I N D E X
V O L U M E V I I I
(Pages 1446 - 1669)
Thursday, January 30, 1997
(Trial)

GOVERNMENT'S WITNESSES:

Carl Nettles

Direct Examination by Mr. Miller 1451
Cross-examination by Ms. Hunt 1463
Cross-examination by Mr. Osgood 1472

Patty Smith

Direct Examination by Mr. Becker 1473
Cross-examination by Mr. Peters 1490
Cross-examination by Ms. Hunt 1497
Cross-examination by Mr. O'Connor 1513
Cross-examination by Mr. Osgood 1515
Redirect Examination by Mr. Becker 1521

John White

Direct Examination by Mr. Becker 1527
Cross-examination by Ms. Hunt 1539
Cross-examination by Mr. Peters 1561

Michael Whitelaw

Direct Examination by Mr. Becker 1577
Cross-examination by Ms. Hunt 1590
Cross-examination by Mr. O'Connor 1609
Resumed Cross by Mr. O'Connor 1631
Cross-examination by Mr. Osgood 1632

Lisa Fredrick

Direct Examination by Mr. Miller 1633

Joseph Denver

Direct Examination by Mr. Becker 1639
Cross-examination by Mr. Bunch 1643

Stephen Shawn Furrell

Direct Examination by Mr. Becker 1647
Cross-examination by Mr. O'Connor 1655
Cross-examination by Mr. Osgood 1662

Reporter's Certificate 1669

Thursday, January 30, 1997

1
3 (The following proceedings were had in the
4 courtroom out of the presence of the jury:)
5 THE COURT: All right. All right. I've gotten the
6 order of witnesses and identified the cross-examiners. Any
7 other formal matters before we go forward today?
8 MR. OSGOOD: Nothing formal, Your Honor.
9 Administrative matter. One of the witnesses that the
10 government has subpoenaed was related to my client, Shannon
11 Kerr, is about to go into labor. I'd like to give, with the
12 Court's permission, your phone number in here so she could
13 call and could get a message to us. That way if she goes
14 into labor, just call in your office so I could bring a
15 note.
16 MR. BECKER: What's the point? I think we can make
17 arrangements. We're not going to ask her to testify in the
18 next two days.
19 MR. OSGOOD: My client's mother would like to leave
20 immediately and be with her when she goes into labor, and
21 she's here.
22 THE COURT: Well, you may, you may give her, get
23 the number from one of the law clerks out here in Judge
24 Bartlett's -- 426-7395, I know for a fact -- and then they
25 can just convey the message in here.

1 All right. Now, let's try again with Mr. Nettles.

2 Are we ready to call the jury, gentlemen?

3 MR. BECKER: Yes, Judge.

4 MR. O'CONNOR: Your Honor, while she's getting the
5 jury, I think you were going to reread the indictment this
6 morning. Are you going to do that first thing based on the
7 question that was asked yesterday?

8 THE COURT: Yeah, that's a good idea. I'll do
9 that.

10 (The following proceedings were had in the
11 courtroom in the presence of the jury:)

12 THE COURT: Yesterday we got a note from Mr. Deaton
13 which read, "Because we are viewing all the evidence for or
14 against all the defendants at the same time, what are the
15 charges against each? Are they the same for all?"

16 The answer to, the general answer to the question
17 is yes. There is one charge, and all five defendants are
18 named in the indictment which embodies the one charge. I'm
19 going to read that indictment to you again. I think it's a
20 good idea as we go along in the trial for you to be reminded
21 what the indictment is.

22 And it reads, with the style of United States of
23 America v. George **Frank** Sheppard, also known as **Frank**
24 Sheppard, Earl D. Sheppard, also known as Skip Sheppard,
25 Darlene M. Edwards, Bryan E. Sheppard, Richard W. Brown.

1450

1 The grand jury charges that on or about November
2 29, 1988, in the Western District of Missouri, the defendants
3 George **Frank** Sheppard, also known as **Frank** Sheppard, Earl D.
4 Sheppard, also known as Skip Sheppard, Darlene M. Edwards,
5 Bryan E. Sheppard, Richard W. Brown, and others known and
6 unknown to the Grand Jury, maliciously damaged and destroyed,
7 by means of fire and explosive materials, vehicles and other
8 personal property, to wit: Tractor trailers containing
9 ammonium nitrate, used in an activity affecting interstate
10 commerce, and, as a direct and proximate result of the
11 defendants' conduct, death resulted to James H. Kilventon,
12 Robert D. McKarnin, Michael R. Oldham, Gerald Halloran,
13 Thomas Fry, and Luther E. Hurd, who were Kansas City,
14 Missouri, Fire Department firefighters performing their
15 duties.

16 All in violation of Title 18, United States Code,
17 Sections 844(i) and 2.

18 And that is signed by the foreperson for the grand
19 jury and endorsed by Mr. Becker on behalf of the United
20 States Attorney.

21 That is the charge against all the defendants.

22 All right. You may proceed, Mr. Miller.

23 MR. MILLER: Once again for the record, Your Honor,
24 the government calls Mr. Carl Nettles.

25 THE COURT: All right. You may swear the witness.

1451

2 CARL NETTLES,
3 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
4 testified as follows:

6 DIRECT EXAMINATION

7 By Mr. Miller:

8 Q. Would you tell the Court and the jury your name, please?

9 A. Carl Nettles.

10 Q. How old are you, sir?

11 A. Thirty-four.

12 Q. And where are you currently incarcerated?

13 A. St. Clair County, Osceola.

14 THE COURT: I'm sorry, Mr. Nettles. Talk a little
15 slower, if you would. I didn't understand what you said.

16 THE WITNESS: Osceola, Missouri, St. Clair County
17 Jail.

18 THE COURT: St. Clair County Jail in Osceola; is
19 that right?

20 THE WITNESS: Yes.

21 THE COURT: Thank you.

22 Q. (By Mr. Miller:) How many convictions do you have?

23 A. Three.

24 Q. Three? Would you tell the jury what they are?

25 A. Receiving stolen property, bad checks, and attempt to

1452

1 possess methamphetamines.

2 Q. Let's go back to the first one. And when were you
3 convicted of that?

4 A. 1982.

5 Q. Okay. And do you remember what your sentence was?

6 A. Two years.

7 Q. okay. And then about your second conviction, when was
8 that?

9 A. I think it was '86 or '87.

10 Q. What was that for?

11 A. Bad checks.

12 Q. And what was your sentence for that?

13 A. Five years.

14 Q. okay. And when did you receive your last conviction,
15 the third one?

16 A. I was sentenced November 13th of '96.

17 Q. okay. And what was your sentence?

18 A. six and a half years.

19 Q. Now, do you recall the explosion that caused the death
20 of the six firefighters?

21 A. Yes.

22 Q. And how do you recall that explosion?

23 A. I remember hearing about it in 1988 when I was at the
24 honor center.

25 Q. Okay. Yeah, where were you in November of 1988?

1 A. Kansas City Honor Center at Ninth and oak.

2 Q. Now, did you know Earl Skip Sheppard at the time of the
3 explosion?

4 A. No.

5 Q. Do you now know Earl Skip Sheppard?

6 A. Yes.

7 Q. okay. Do you see him in the courtroom?

8 A. Yes.

9 Q. Could you point him out for the jury?

10 A. There.

11 Q. Standing up in the sweater?

12 A. Yes.

13 Q. When did you meet Defendant Skip Sheppard?

14 A. It was either in April or May of last year.

15 Q. Okay. Where did you meet him?

16 A. St. Clair County.

17 Q. In jail?

18 A. Yes.

19 Q. How did you meet him?

20 A. He came in there, and we just started talking.

21 Q. Were you two in the same cell, cellblock?

22 A. Yes.

23 Q. Would you describe to the jury the setup down there as

24 to how you met him?

25 A. Well, when you come in, they appoint you to a modular or

1454

1 pod, and eight to ten people live in that pod. And he came
2 into the one that I was in.

3 Q. How many of you were in the pod?

4 A. It would have had to have been approximately, I'm not
5 sure exactly how many people was in there at the time.

6 Q. How did the two of you strike up a relationship?

7 A. We just started talking.

8 Q. Did you know anybody mutually?

9 A. Yes.

10 Q. Who?

11 A. Richard Brown and Bryan Sheppard.

12 Q. Okay. Do you see either Richard Brown or Bryan Sheppard
13 in the courtroom?

14 MR. O'CONNOR: I'm going to object to this, Judge,
15 as relevance. Whether he knew them or not, what relevance
16 does that have to this case?

17 THE COURT: Well, I don't know yet. I haven't
18 heard his testimony. I assume that you'll tie it up, and if
19 not, we'll dispose of it.

20 MR. MILLER: It was just used to show as to how
21 these two got to know one another, that's all, Your Honor.

22 THE COURT: Why don't you proceed, then, with his
23 acquaintance with Mr. Sheppard, Skip Sheppard.

24 Q. (By Mr. Miller:) Did conversations about the explosion,
25 the cause of death of the six firefighters come up between

1 the two of you?

2 A. Yes.

3 Q. Who brought up the conversation?

4 A. I don't remember how those came up, but it came up. I
5 mean, I don't know whether I said something that I knew
6 somebody.

7 Q. What did Defendant Skip Sheppard tell you about his
8 involvement in the explosion?

9 A. That **they** had been around the construction site
10 taking -

11 THE COURT: Wait a minute, Mr. Nettles. Start that
12 sentence again, if you would, and speak more slowly. It just
13 isn't coming through.

14 MR. O'CONNOR: Judge, I'm going to have an
15 objection to they. He started out with they.

16 THE COURT: I've already instructed on that, and I
17 think the jury understands.

18 MR. O'CONNOR: Can we approach a minute, Judge,
19 please?

20 THE COURT: Yes.

21 (Counsel approached the bench and the following
22 proceedings were had:)

23 MR. O'CONNOR: Here is my concern. This witness is
24 going to testify to nothing about Bryan Sheppard and Richard
25 Brown. So he asked him, do you know these people. Then the

1 next question is Skip, what did Skip tell you? They -- and
2 who does this jury now think is they?

3 THE COURT: When you get a chance, ask him.

4 MR. O'CONNOR: No, because in the conversation he
5 does talk about it, but they can't get into it because of the
6 problem of fitting into it. He did talk about Bryan
7 Sheppard, but there was no good faith basis for him to ask if
8 he knew these people.

9 THE COURT: How is he supposed to express himself
10 when he wasn't alone and there were other people, and then
11 Sheppard said that he and other people. That's a they.

12 MR. O'CONNOR: But that's the government's
13 problem. They chose to charge it this way, and that problem
14 has been created throughout.

15 MR. OSGOOD: This is another one of those
16 situations where he's pointing to two people other than who
17 he's testifying about. I move for a mistrial on that basis.

18 THE COURT: Come on. That's silly.

19 MR. OSGOOD: It's not, Your Honor.

20 THE COURT: Yes, it is. Have him specify who he
21 means by they.

22 MR. O'CONNOR: No, because that creates the problem
23 that we're talking about, because if he says they, he's going
24 to say Bryan Sheppard, which they're not entitled to get out
25 of him. That's the whole problem here. What has happened

1 is, in my estimation, I don't think it was done on purpose,
2 but my estimation was that he asked him if he knew Bryan and
3 Richard, which he said he did. There's not going to be any
4 testimony from this witness regarding Richard and Bryan at
5 all.

6 THE COURT: Because you won't let him.

7 MR. O'CONNOR: Because he can't under the rules,
8 under the law. And so what I'm saying is that now when he
9 says they, the only logical conclusion for this jury is that
10 they is Richard and Bryan. That's why we asked before that
11 that question be stricken from the record.

12 MR. BECKER: If I may, in the case I earlier
13 provided to the Court, and I believe it was James, summarized
14 the use of neutral pronouns such as they. And even in a
15 two-defendant case when a plural we is used, that's
16 acceptable.

17 So here we have a situation that's much beyond
18 that. There's multiple defendants. It doesn't inextricably
19 lead to these two defendants.

20 THE COURT: That's right.

21 MR. O'CONNOR: Let me make my point here. My point
22 is there was no reason -- I objected to relevance. There was
23 no reason to have this man identify Richard Brown and Bryan
24 Sheppard. There's going to be no testimony from this witness
25 regarding those people. And then when the next question

1458

1 comes, you know, what did he say, and he says they, that it's
2 inescapable, in my opinion, for the jury to believe that.

3 So the relief I'm asking for is that the judge
4 would go back and tell the jury to disregard -

5 THE COURT: The questions and reference to these
6 people?

7 MR. MILLER: The only reason the question was asked
8 is to show that they didn't just sit there and out of the
9 blue start talking about this, they had something that tied
10 them together. That was the reason the question was asked.

11 MR. BECKER: If we don't hear any cross-examination
12 that this witness is making it up, that's fine.

13 MR. PETERS: Judge, the problem I see that's not
14 being addressed, I agree with Mr. Becker's analysis of the
15 case law, except where the prosecutor draws attention to
16 particular defendants.

17 THE COURT: I've got that. I understand that.
18 Let's don't do that again.

19 MR. O'CONNOR: That's the problem. They have
20 created this and now -

21 THE COURT: We'll instruct them. Let's go.

22 MR. O'CONNOR: Can I finish, Judge, please? What
23 I'm saying is we cannot be then punished when, Susan Hunt is
24 going to cross-examine him about whether he made this up.
25 They have created this problem. Had they not created it, we

1 wouldn't be in it.

2 THE COURT: We'll see how the cross-examination
3 goes. I'll instruct them appropriately.

4 MR. OSGOOD: If you're going to do a cleanup
5 instruction, why don't you throw in when you told them the
6 indictment, what the indictment said, remind them it was not
7 evidence, it's merely the charge.

8 THE COURT: Oh, I've already told them that. I'm
9 not going to do that again. Let's go with this.

10 (The following proceedings were had in open court:)

11 THE COURT: Ladies and gentlemen, I'll instruct you
12 that you are to -- the objection to the question was
13 sustained, and you are to disregard any reference in any
14 prior question to any defendant, other than the one who is
15 being quoted by the witness at the time the witness
16 testifies. You are not to infer or assume what may, who or
17 what may be meant by the use of the term "they."

18 All right. You may proceed.

19 Q. (By Mr. Miller:) What did Defendant Skip Sheppard tell
20 you as to why he went to the construction site?

21 A. **They** was stealing tools or equipment from the
22 construction site.

23 Q. What did Defendant Skip Sheppard say was set on fire?

24 A. The trailer.

25 Q. Did the Defendant Skip Sheppard tell you why the trailer

1460

1 was set on fire?

2 A. To cover up the stuff that **they** had taken.

3 Q. Did the Defendant skip Sheppard tell you what was used

4 to start the trailer on fire?

5 A. Gas.

6 Q. Did Defendant Skip Sheppard tell you where the gasoline

7 came from?

8 MR. PETERS: Your Honor, I'm going to object.

9 They're leading questions.

10 THE COURT: Yes, but because of the rules we're

11 constrained with, overruled.

12 Q. (By Mr. Miller:) Did the Defendant Skip Sheppard tell

13 you where the gasoline came from?

14 A. Yes.

15 Q. Where?

16 A. The QuikTrip station that was on 71 Highway there.

17 Q. And would you tell the jury how that conversation about

18 the gasoline came up between you and Defendant Skip Sheppard,

19 and just confine it as to what Defendant Skip Sheppard told

20 you.

21 A. He had said something about having to go to the, to get

22 some gas, and I asked what did **they** do, run out of gas? And

23 he said, no, that **they** used the gas to start the fire.

24 Q. Did Skip Sheppard tell you what his defense to this was

25 going to be?

1461

1 A. I'm not sure what you mean.

2 Q. Okay. Did he tell you what he -

3 MR. OSGOOD: Objection. The question was
4 straightforward.

5 THE COURT: You don't know what his question is.

6 MR. OSGOOD: The question was did he tell you what
7 his defense was, and now he's going to tell him the answer he
8 can't tell the jury.

9 THE COURT: He asked him what he meant by the
10 question. The witness is entitled for the question to be
11 explained. Overruled. Go ahead.

12 Q. (By Mr. Miller:) Did Defendant Skip Sheppard tell you
13 where he was going to say he was?

14 A. At his mother's house asleep in the back room or at a
15 brother-in-law's place.

16 Q. Did he mention the name of his brother-in-law?

17 A. Larry Baker or something like that.

18 Q. After Defendant Skip Sheppard gave you this information,
19 who did you contact?

20 A. My attorney.

21 Q. What do you hope to get for your testimony today?

22 A. Some leniency in my sentencing.

23 Q. What have you received for your testimony?

24 A. Nothing.

25 Q. What have you been promised for your testimony?

1462

1 A. Nothing.

2 Q. Now, did you see the episode regarding the explosion on
3 Unsolved Mvsteries?

4 A. Yes, I did.

5 Q. Was, did you see this episode before or after you had
6 spoken with Defendant Skip Sheppard?

7 A. A long time afterwards.

8 Q. Who is Ms. Vicki Strong?

9 A. She is my fiance.

10 Q. And what is her relationship to one of the slain
11 firefighters?

12 A. She's a second cousin to Thomas Fry.

13 THE COURT: To who, please?

14 THE WITNESS: Thomas Fry.

15 THE COURT: Fry?

16 THE WITNESS: Yes.

17 Q. (By Mr. Miller:) When did you learn this?

18 A. In August of last year.

19 Q. Was this before or after you'd spoken with Defendant
20 Skip Sheppard?

21 A. Afterwards.

22 MR. MILLER: That's all I have of this witness,
23 Your Honor.

24 THE COURT: All right. Cross?

1

2 By Ms. Hunt:

3 Q. Mr. Nettles, my name is Susan Hunt. I represent Skip
4 Sheppard. Let's go back to the beginning of your direct
5 testimony. You were going through your prior convictions.

6 A. Uh-huh.

7 Q. And your last conviction was attempt to possess
8 methamph et am i ne ?

9 A. Yes.

10 Q. Attempt to possess with the intent to distribute or -

11 A. Attempt to possess with the intent to distribute.

12 Q. Okay. Was that conviction in federal court?

13 A. Yes, it was.

14 Q. In this district?

15 A. Yes.

16 Q. And you have been sentenced on that?

17 A. Yes, I have.

18 Q. The sentencing I think you said was November 13th of
19 '96?

20 A. Yes.

21 Q. Have you filed an appeal on that case?

22 A. I don't think we have, no.

23 Q. Okay. So it's a final conviction, as far as you know?

24 A. Yes.

25 Q. Okay. When you claim that Skip Sheppard first began

1 giving you information about this case -

2 A. Uh-huh.

3 Q. -- you contacted your attorney first, didn't you?

4 A. Yes, I did.

5 Q. You didn't call the police first?

6 A. No.

7 Q. And at some point did Detective True come to talk to
8 you?

9 A. Yes.

10 Q. Special Agent True?

11 A. Yes.

12 Q. And he came to talk to you in Osceola; is that right?

13 A. No.

14 Q. Brought you up here and talked to you?

15 A. Yes.

16 Q. Your attorney was present?

17 A. Yes.

18 Q. Did you request your attorney to be present?

19 A. I don't know if I requested him specifically, but he was
20 there.

21 Q. okay. And did you have a conversation with Special
22 Agent True at that time?

23 A. Yes.

24 Q. Did he have a tape recorder?

25 A. Ma'am, I don't remember.

1

1 Q. okay. Did you have a question and answer where you
2 signed question and answers written out?

3 A. I was talking to him, and he was writing stuff down. I
4 remember that.

5 Q. Okay. He was taking notes?

6 A. Yes.

7 Q. Did he have a court reporter and put you under oath or
8 anything that you remember?

9 A. No, ma'am.

10 Q. Okay. You can't remember if there was a tape recorder?

11 A. No, ma'am.

12 Q. Did you ever sign a statement?

13 A. I think I did, or I don't know.

14 Q. You don't remember?

15 A. I don't remember.

16 Q. Did he show you before you testified today, he or
17 somebody in the prosecution, a report of your interview with
18 him?

19 A. Yes.

20 Q. And you've had a chance to read through that?

21 A. Yes.

22 Q. okay. Did John O'Connor come to see you in Osceola?

23 A. Yes.

24 Q. And John O'Connor is a lawyer in this case; is that
25 right?

1 A. I think so.

2 Q. Okay. He told you he was, anyway, didn't he?

3 A. Yes.

4 Q. okay. And did he come down with a court reporter?

5 A. Yes.

6 Q. And did they put you under oath and take a statement?

7 MR. MILLER: I'm going to object to this as there's
8 no relevance.

9 THE COURT: Where are we going with this?

10 MS. HUNT: I'm trying to establish the fact that he
11 gave Mr. O'Connor this statement.

12 THE COURT: And then?

13 MS. HUNT: I'm just trying to establish the fact,
14 Your Honor.

15 THE COURT: Well, can't you agree that he gave
16 O'Connor a statement?

17 MR. MILLER: He didn't.

18 THE COURT: He didn't?

19 MR. MILLER: No.

20 MS. HUNT: That's where I'm going.

21 THE COURT: But so what? I mean, do you then have,
22 do you then intend to use the statement to impeach?

23 MS. HUNT: I'm just going to ask him one question
24 about the statement, and then I'm going to go on.

25 MR. MILLER: There's no relevance to it. It's the

1 fact that he didn't do it, and I guess they want to show
2 something with that. It's not relevant. He doesn't have to.

3 THE COURT: The fact that he didn't do what?

4 MR. MILLER: I guess that he didn't give a
5 statement, I guess. It's not relevant. He didn't have to.
6 That's what they're trying to get out.

7 THE COURT: Well, I think, yes, I think I
8 understand that, and I'm going to sustain that objection.

9 MS. HUNT: But I have the statement.

10 THE COURT: You're trying to incriminate by silence
11 is what it sounds like here.

12 MS. HUNT: No, Your Honor, I'm not. This is the
13 statement he gave Mr. O'Connor, and you've seen this.

14 THE COURT: Well, isn't it a fact that this
15 statement doesn't go into the merits or the substance of this
16 matter? It's a no-statement statement, isn't it?

17 MS. HUNT: That's what I'm going to ask him, that
18 he refused to answer questions about this testimony. That's
19 all I'm going to ask him.

20 THE COURT: All right. Ask him that.

21 Q. (By Ms. Hunt:) When Mr. O'Connor was down there with a
22 court reporter, did you refuse to answer specific questions
23 about this case?

24 A. Yes, I did.

25 Q. Okay. You talked to your attorney and then Special

1 Agent True from the jail; is that right?

2 A. Yes.

3 Q. And this conversation took place after the indictment
4 was returned in this case; isn't that right?

5 A. It was in July of last year. I don't know.

6 Q. Okay. If the indictment was returned in June, it would
7 have been after; is that right?

8 A. Yes.

9 Q. And this case had made the news at that point, hadn't
10 it?

11 A. I don't know.

12 Q. Do you ever watch the news down there?

13 A. We watch the news, but I don't remember exactly when it
14 started coming on, I guess.

15 Q. At the time you talked to Mr. Sheppard in jail, you had
16 not been sentenced on your federal case yet; is that right?

17 A. Correct.

18 Q. But you didn't tell the police that until after you were
19 sentenced; is that right?

20 A. I don't understand what you mean by that.

21 Q. okay. Give me an idea of when Mr. Sheppard supposedly
22 made these statements to you.

23 A. May of last year, April or May, the end of May,
24 something like that.

25 Q. Okay. And you didn't call the police initially, you

1469

1 first called your attorney; is that right?

2 A. Yes.

3 Q. Okay. I think you testified on direct that Skip

4 Sheppard told you **they** had stole jackhammers from this site;

5 is that right?

6 A. Yes.

7 Q. And he told you **they** had stolen generators; is that

8 correct?

9 A. Yes. And, two generators, I don't know, one or two.

10 Q. One or two generators?

11 A. Yes.

12 Q. And he told you he had been there on more than one

13 occasion stealing; is that right?

14 A. Yes.

15 Q. And did he tell you that these items were stolen before

16 or during this?

17 A. He never said.

18 Q. Okay. And you are not sure because he never told you

19 who set the fire, did he?

20 A. No, he never told me.

21 Q. He never said he set the fire, did he?

22 A. No.

23 Q. And he told you that he was going to use his mother as

24 an alibi?

25 A. Yes.

1470

1 Q. What else did he tell you he stole from the construction
2 site?

3 A. Various tools. I mean -

4 Q. Nothing specific, just -

5 A. Nothing specific, yes.

6 Q. Did you get the impression it was a lot of tools and
7 equipment?

8 A. Quite a bit.

9 Q. Quite a bit. More than just the jackhammer and the
10 generator?

11 A. Yes.

12 Q. Those are the only specific things he told you?

13 A. Yes.

14 Q. okay. When you had this interview with Special Agent
15 True, and I think you said you read it before you testified
16 today?

17 A. Uh-huh.

18 Q. Did you read it today or -

19 A. Yesterday.

20 Q. Yesterday?

21 A. Yeah.

22 Q. And is this pretty accurate as to what you said to them?

23 A. Yes.

24 Q. And didn't you say to Detective True that you never
25 heard of Larry Baker?

1 A. No, at that time I hadn't, that's true.

2 Q. When did you hear about Larry Baker?

3 A. I guess probably in August or September of last year.

4 Q. Okay. But you testified here today that Mr. Sheppard is
5 going to tell this jury at some point that he was at home
6 sleeping in his mother's back room; is that right?

7 A. Yes.

8 Q. And you've never heard of Liza Harrigan, have you?

9 A. Who?

10 Q. Liza Harrigan, or Elizabeth?

11 A. No.

12 Q. And you've never heard of Didi Baker, either, have you?

13 A. No.

14 Q. Mr. Sheppard never admitted to you he set this fire and
15 committed this crime, did he?

16 A. No.

17 MS. HUNT: That's all I have.

18 THE COURT: Mr. Peters?

19 MR. PETERS: No questions.

20 MR. BUNCH: No questions.

21 THE COURT: Mr. O'Connor?

22 MR. O'CONNOR: No questions.

23 THE COURT: Mr. Osgood?

24 MR. OSGOOD: I just have two.

1

2 By Mr. Osgood:

3 Q. Do you know Shannon Riemers, R-I-E-M-E-R-S?

4 A. Yes.

5 Q. Did you date her at one time?

6 A. We seen each other, yes.

7 Q. And had an actual physical relationship with her?

8 A. Yes.

9 Q. And she is the Defendant Richard Brown's sister, isn't
10 she?

11 A. Yes.

12 Q. And that's how you met or know Richard Brown, isn't it?

13 A. Yes.

14 MR. OSGOOD: Thank you.

15 THE COURT: Any redirect?

16 MR. MILLER: No redirect, Your Honor.

17 THE COURT: All right, sir, you may step down.

18 Call your next witness.

19 MR. BECKER: United States calls Patty Smith.

20 THE COURT: Come up and stand by the witness chair
21 and be sworn, please.

1 PATTY SMITH,
2 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
3 testified as follows:

4 — — —
5 DIRECT EXAMINATION

6 By Mr. Becker:

7 Q. Good morning.

8 A. Good morning.

9 Q. Please state your name and spell your last name.

10 A. Patty Smith, S-M-I-T-H.

11 Q. How old are you?

12 A. Twenty-eight.

13 Q. Where do you live?

14 A. Grandview, Missouri.

15 Q. How long have you lived out in Grandview, Missouri?

16 A. oh, about five years.

17 Q. Do you know an individual by the name of skip Sheppard?

18 A. Yes, I do.

19 Q. How did you meet skip Sheppard?

20 A. Through Joe Everhart.

21 Q. Who is Joe Everhart?

22 A. I met Joe, he lived up the street from my sister, or his
23 mom lived up the street from my sister.

24 Q. When was this that you met skip Sheppard?

25 A. August 1990.

1 Q. Do you see skip Sheppard here in court today?

2 A. Yes, I do.

3 Q. And could you tell us where he's sitting and what he's
4 wearing?

5 A. He's standing with a burgundy colored sweater.

6 MR. BECKER: Indicating Defendant skip Sheppard,
7 Your Honor?

8 THE COURT: That's correct.

9 Q. (By Mr. Becker:) In August approximately of 1990, where
10 did you meet skip Sheppard?

11 A. At Naomi Sheppard's house on Hickman Mills Drive.

12 Q. How did you get there?

13 A. I drove.

14 Q. Did you go there with anybody else?

15 A. Joe Everhart.

16 Q. I want to show you what's in evidence as Government's
17 Exhibit 318 and ask you if you recognize -- can you see the
18 TV screen there?

19 A. Yeah, yes.

20 Q. And do you recognize that photograph?

21 A. Yes.

22 Q. What is that?

23 A. Naomi Sheppard's house.

24 Q. Is that where you went, then, in August of 1990?

25 A. Yes.

1 Q. What happened when you first went to the Sheppard
2 residence on Hickman Mills Drive with Joe Everhart?

3 A. We talked to Skip, I was introduced to him, and he
4 eventually got in the car, and we went driving around and got
5 some beer and was drinking.

6 Q. Who was in the car then?

7 A. Joe Everhart and Skip, Earl Sheppard.

8 Q. Did you basically call him Skip or Earl?

9 A. Skip.

10 Q. Now, did there come a time, then, after that that you
11 began to see and socialize with Skip Sheppard?

12 A. Yes.

13 Q. How long a period of time was this?

14 A. Well, within a week.

15 Q. Please tell us, then, how this relationship with Skip
16 Sheppard developed.

17 A. I started going over to his house without Joe Everhart,
18 with me visiting, going over, getting him, and we would go
19 out drinking or get some beer and sit at his mom's house and
20 drink.

21 Q. Now, during that time -- and how long a period of time
22 did this go on, until approximately October?

23 A. Yeah, yes.

24 Q. Of 1990?

25 A. Yes.

1 Q. During that time, did the subject of the explosion that
2 killed the firefighters ever come up?

3 A. Yes.

4 Q. Do you remember the first time that it came up with Skip
5 Sheppard?

6 A. The very first time that it, any of it came up, **they**
7 said that **they** didn't know who did it, **they** denied it, that
8 **they** knew who was responsible.

9 Q. Who said that?

10 A. Skip said that.

11 Q. Okay. What did Skip Sheppard say?

12 A. He laughed, and he said, we're stand-up guys, that we
13 don't know who did it. That was the very first conversation
14 that was -

15 THE COURT: He said we're stand-up guys; is that
16 what you said?

17 THE WITNESS: Yes. We're stand-up kind of guys.
18 We don't know -- we didn't do it, but we know who did it, but
19 we wouldn't narc on them, we wouldn't tell.

20 THE COURT: Thank you.

21 Q. (By Mr. Becker:) Was there any other conversations
22 after that about the firefighters explosion?

23 A. Yes. The next one I remember was with him and -- we had
24 just came back from getting beer, and we walked in his house,
25 and his mom was sitting on a truck bench seat.

1 Q. All right. Let's stop for a minute here. Him is Skip
2 Sheppard; is that right?

3 A. Yes.

4 Q. And we're talking about this house here, Government's
5 Exhibit 318, this photograph on Hickman Mills Drive?

6 A. Yes.

7 Q. And what's Skip Sheppard's mother's name?

8 A. Naomi.

9 Q. So where is this seat that she's sitting on in the
10 house?

11 A. Right inside the front door.

12 Q. Please tell us what happened.

13 A. I walked in, and she asked me to sit down, to come sit
14 by her. She -

15 Q. How did she appear to you?

16 A. She was, her words were sluggish like she was drunk, and
17 I could tell she was crying. Her eyes were bloodshot, her
18 face was all wet. She had been crying. She continued to
19 cry, even after talking to us.

20 Q. What was said?

21 A. She started in saying -

22 MS. HUNT: Your Honor, I object. It's hearsay.
23 He's asking her what Mr. Sheppard's mother said.

24 MR. BECKER: May we approach?

25 THE COURT: Yeah.

1 (Counsel approached the bench and the following
2 proceedings were had:)

3 MR. BECKER: I have a feeling that I've been
4 sandbagged here. I talked to Miss Hunt before this witness
5 testified. I alerted her to this particular part of the
6 testimony, and she said she didn't have any objection to me
7 eliciting this. It's being offered not for the truth of the
8 matter asserted, but for the response it elicited from Skip
9 Sheppard. The Skip Sheppard response is to tell his mother
10 to shut up, that it didn't happen that way, that it was an
11 accident.

12 Now, I was prepared to try and work with the
13 witness ahead of time to make more general her testimony
14 about the mother's comments, but Ms. Hunt told me she didn't
15 object to it and that she had a rebuttal witness to say this
16 conversation didn't happen.

17 MS. HUNT: I apparently misunderstood what he said
18 because I was under the impression you were going to talk
19 with her about this alleged dynamite underneath the house,
20 and this was how it was going to come out. I misunderstood
21 what you said, apparently.

22 THE COURT: We'll have to go ahead. You've got
23 your rebuttal witness. You can use your rebuttal witness.
24 Do you have a rebuttal witness that will deny this
25 conversation?

1 MS. HUNT: Yes.

2 MR. BECKER: I do want to alert the Court, I have
3 instructed the witness -- as a further part of the
4 conversation, the mother talks about Skip Sheppard committing
5 another homicide, and she has been instructed not to talk
6 about that.

7 THE COURT: All right.

8 (The following proceedings were had in open court:)

9 THE COURT: I guess maybe I need to ask -- I'm
10 sorry. Miss Hunt, one thing I want to make clear in my mind
11 before I rule.

12 (Counsel approached the bench and the following
13 proceedings were had:)

14 THE COURT: Is it going to be her evidence that
15 Sheppard was present during this conversation?

16 MR. BECKER: Yes.

17 MS. HUNT: He came back in. He didn't hear the
18 initial, the way I read her statement.

19 MR. BECKER: I'll ask her that.

20 MS. HUNT: That's fine.

21 THE COURT: All right.

22 (The following proceedings were had in open court:)

23 Q. (By Mr. Becker:) All right. Miss Smith, you and Skip
24 Sheppard go out to get some beer and you return to the house;
25 is that right?

1480

1 A. Yes.

2 Q. When you walk in the door, you've testified that Naomi
3 Sheppard is sitting there near the entrance; is that right?

4 A. Yes.

5 Q. Where was Skip Sheppard?

6 A. He had walked in to put the beer into the refrigerator
7 and had started to walk back as she was talking.

8 Q. And walked back into?

9 A. Back into the living room with us.

10 Q. Okay. What happened then when the three of you were in
11 the living room?

12 A. She had already started talking. I mean, he was
13 standing up and he had come back in, and she had started to
14 say that, started off by saying, "You don't know who you're
15 dating. You don't know what he's done. You don't know what
16 he's capable of doing, or what he has done. He killed those
17 six firemen. Do you know who the, do you remember the blast
18 that happened down the street from here a couple of years
19 ago?"

20 And I didn't say yes or no. I just stared, looked
21 at her and looked at him. And he looked at me and laughed.
22 And he goes, yeah, and -

23 Q. Did Skip Sheppard say anything to his mother then?

24 A. He told her to shut up. He said that repeatedly. I
25 mean, throughout -- I mean, there was several times he said

1 that on, you know, as she kept saying things.

2 Q. Did he say anything about an accident?

3 A. Yeah. He said it was an accident, it wasn't supposed to
4 happen that way. And then he went on to tell me that he had
5 stole a crate of dynamite and hid it under his mom's house
6 and that every time the police came to search the house that
7 **they** couldn't find it because he had done it and buried it
8 under some dirt and dispersed the dirt out to where you
9 couldn't see, you couldn't tell that anything had been
10 disturbed under the house, and laughed about it.

11 Q. Now, was there a later conversation in which the
12 firefighters explosion was discussed with other people
13 besides Skip Sheppard present?

14 A. Yes. **Frank** Sheppard.

15 Q. When was that after the conversation you've just told us
16 about?

17 A. Maybe a week or two. Maybe not even -- maybe a week
18 after this conversation.

19 Q. Where did this next conversation take place?

20 A. In the house on Hickman Mills Drive.

21 Q. Where in the house?

22 A. In the living room.

23 Q. Who was present?

24 A. Naomi, **Frank**, Joe Everhart, Skip Sheppard, and myself
25 and Nanny.

1

1 Q. Who is Nanny?

2 A. The grandmother, skips grandmother.

3 Q. You said **Frank**. Who is **Frank**?

4 A. **Frank** Sheppard.

5 Q. Do you see **Frank** Sheppard here in court today?

6 A. Yes, I do.

7 Q. Could you tell us where he's sitting and what he's
8 wearing?

9 A. At the end of the long table. He's got on a
10 multicolored sweater and a white shirt.

11 MR. BECKER: Indicating Defendant **Frank** Sheppard,
12 Your Honor.

13 THE COURT: Yes, sir.

14 Q. (By Mr. Becker:) What was going on in the living room
15 when this conversation took place?

16 A. Revolving conversation. I don't remember how it
17 started, but I remember **Frank** was looking in the -- Joe
18 Everhart was sitting at the kitchen table or on a chair in
19 the kitchen. I couldn't see him from where I was sitting. I
20 was sitting on the couch, and Skip was sitting a couple feet,
21 you know, spaces down on the same couch with me.

22 Q. Where was Skip Sheppard?

23 A. skip Sheppard was sitting next, a couple of -- did I say
24 that?

25 Q. Maybe I got confused. Okay. Where were you sitting?

1483

1 A. On the couch.

2 Q. Where was Joe Everhart?

3 A. He was in the kitchen.

4 Q. Where was -

5 A. Or in the dining room. Dining room.

6 Q. Where was Skip Sheppard?

7 A. Sitting next to me on the couch.

8 Q. Finally, where was **Frank** Sheppard?

9 A. He was sitting on the bench seat right inside the front
10 door.

11 Q. Is that far away or is that within -

12 A. No, it's -

13 Q. You could see him and hear him and everything else that
14 takes place in a conversation?

15 A. From about me to you far away.

16 THE COURT: That was **Frank**?

17 THE WITNESS: **Frank**, uh-huh.

18 MR. BECKER: And that would be approximately 10 to
19 15 feet; is that about right, Your Honor?

20 THE COURT: I'm not going to testify.

21 MR. BECKER: You don't have a memory of your
22 courtroom?

23 THE COURT: All I'm sworn to do is judge, not
24 testify.

25 Q. (By Mr. Becker:) Okay. What do you remember about that

1484

1 particular conversation?

2 A. **Frank** was telling Joe Everhart that **they** had been there
3 a couple of nights before the explosion.

4 Q. Had been where?

5 A. To the explosion site, or up there on the hill where the
6 construction was. And **they** were up there. He had stolen
7 some tools, took some tools, and that he went on to say,
8 then, that Skip had taken the crate of dynamite. And he
9 looked at Skip, and then Skip looked at me and said, "Yeah,
10 I've got a crate of dynamite." But he'd already told me
11 that, so he turned around and said that to Joe and laughed
12 about it.

13 Q. Was there anything else said about the explosion during
14 that conversation?

15 A. We had set -- he said, we set -- "That's why we set the
16 fire," he said to Joe. I didn't hear what Joe had asked, but
17 he said -

18 Q. Who said?

19 A. **Frank** said to Joe Everhart, that's why we set the fire,
20 and that's why we sent so-and-so down the hill to light the
21 fire.

22 Q. Finally, do you recall another conversation that
23 happened in an automobile relating to the explosion that
24 killed the firefighters?

25 A. Yes.

1485

1 Q. When did that occur?

2 A. Sometime after that. There was -- not very long even
3 after this, within days after that happening.

4 Q. Tell us what you were doing at that time when this
5 conversation occurred.

6 A. We were driving.

7 Q. Who is we?

8 A. I was driving the car. Skip was next to me. **Frank** was
9 directly behind me, and Joe Everhart was sitting behind Skip
10 in the back seat.

11 THE COURT: When was this, please?

12 THE WITNESS: Just within days after this.

13 THE COURT: You were driving, Skip was with you,
14 **Frank** was with you, who else was there?

15 THE WITNESS: Joe Everhart.

16 THE COURT: Joe Everhart. And this was within
17 days?

18 THE WITNESS: Right.

19 Q. (By Mr. Becker:) Do you know, is Joe Everhart a
20 relative of all of the Sheppard family?

21 A. Yes.

22 Q. Do you know how he's related?

23 A. His sister is married to their brother, Jack Sheppard.

24 Q. So that would be a brother-in-law?

25 A. Yeah, yes.

1 Q. What were you doing in the car that day?

2 A. We were going to take aluminum cans in for recycling to
3 get money out of cans to go buy beer.

4 Q. What happened when you -- do you remember the weather
5 conditions?

6 A. Yeah, it was raining, and we had already been drinking.
7 We had already had some beer, and we drove by a shopping
8 center, some kind of a, like a grocery store of some sort.
9 And Skip turned around to the two in the back seat and said,
10 "Oh, man, you should have seen the truck that we blew up in
11 that parking lot." And I missed out on -

12 MR. PETERS: Objection, Your Honor, relevance.

13 THE COURT: I'm not sure I understand that
14 objection. Come up, I guess.

15 (Counsel approached the bench and the following
16 proceedings were had:)

17 THE COURT: Is it your position that she's talking
18 about sometime other than the explosion at issue?

19 MR. BECKER: Yes, the next sentence will link it
20 up.

21 MR. PETERS: The next sentence will be?

22 MR. BECKER: That they began talking about the
23 explosion that occurred at the site and there is, she looked
24 at this recent report I gave you the other day where it says
25 your client talked about it raining dirt and rock. She said

1 that's an error, that that was Skip Sheppard that said that.

2 MR. PETERS: so the comment is that they blew a

3 truck up in the parking lot, not related to the explosion on

4 November 29th. And he says that's relevant because?

5 MR. BECKER: It brought up, then -- that's what

6 caused the conversation to again turn to the explosion that

7 killed the firefighters.

8 THE COURT: You're going to ask her -- I'm going to

9 instruct the jury to disregard that and you may say

10 regardless of that, what was said next or some such tie into

11 that, but they're going to be instructed to disregard the

12 blowing up the truck in the parking lot. And have you made

13 it clear that that was, that that's not the incident at

14 issue?

15 MR. BECKER: I think so. I can ask her, was that

16 parking lot the construction, the highway construction site.

17 She'll say no, someplace else.

18 THE COURT: All right. Then I'll instruct them to

19 disregard it.

20 (The following proceedings were had in open court:)

21 Q.(By Mr. Becker:) Now, was that parking lot the same

22 place as the 71 Highway construction site?

23 A. No, it wasn't.

24 THE COURT: Ladies and gentlemen, I instruct you

25 now to disregard the testimony regarding a truck in the

1488

1 parking lot at some time and some place after the incident at
2 issue in this case.

3 All right. You may go ahead.

4 Q. What was said next?

5 THE COURT: And it's stricken from the record.

6 Q. What was said next, by Skip Sheppard?

7 A. He said that we had used the dynamite from what **they** had
8 stole from the construction site.

9 Q. Was there any conversation, then, about the actual
10 explosion that killed the firemen?

11 A. **Frank** Sheppard a little bit later -- I mean, there was
12 other words that were said in between. I don't remember what
13 all was said, but he said that you should have seen the night
14 after the, or the night it exploded. He said the dirt and
15 the rocks, he said it rained down, it poured down on them, on
16 top of them, and it hurt as the rocks hit them.

17 Q. After October of 1990, did you have any other contact
18 with the Sheppard family?

19 A. After October of 1990?

20 Q. Did you contact the police in October of 1990 and
21 provide them this information?

22 A. Yes.

23 Q. When you were first interviewed by detectives in 1990,
24 did you tell them everything that you've testified to here
25 today?

1

1 A. No, I didn't.

2 Q. Why not?

3 A. The officer had asked for specific information, if I
4 knew details. And I got -

5 Q. Was this an interview that happened -

6 THE COURT: Wait a minute. I don't think that she
7 finished. And you got what?

8 THE WITNESS: I got startled. I didn't understand
9 what he meant, and I didn't continue. He said that I, if I
10 didn't know details. I didn't know what to say after that.
11 I didn't know -

12 Q. Was this interview, where did this interview take place?

13 A. On the phone at my sister's house.

14 Q. Did anyone come out, then, to talk to you in person
15 right then in October of 1990?

16 A. No. He felt that I didn't have enough information -

17 Q. You can't talk about what he felt.

18 THE COURT: Don't talk about what he felt. Strike
19 that. Disregard it.

20 Q. Did you call again with this information in 1995?

21 A. Yes, I did.

22 Q. At that time did someone come out to interview you?

23 A. Yes.

24 MR. BECKER: I have no further questions at this
25 time. Thank you.

1490

1 THE COURT: All right. Miss Hunt?

2 MR. PETERS: Your Honor, I'm going to start.

3 THE COURT: I'm sorry, Mr. Peters. Yeah, Mr.

4 Peters.

6 CROSS-EXAMINATION

7 By Mr. Peters:

8 Q. Miss Smith, my name is Pat Peters, and I represent **Frank**
9 Sheppard. Who was this officer that you talked to on the
10 phone in October of 1990?

11 A. Officer Zinn.

12 Q. That would be Detective Zinn from the Kansas City,
13 Missouri, Police Department?

14 A. Yes.

15 Q. And your testimony is that you told this officer that
16 Skip Sheppard and **Frank** Sheppard had admitted being at the
17 site, had felt rocks raining down on them after the
18 explosion, and Detective Zinn told you that you didn't have
19 enough information?

20 A. I didn't tell him that then.

21 Q. You didn't tell him that they were at the site; is that
22 correct?

23 A. I didn't tell him that statement about the rocks and the
24 dirt falling from the sky or like rain down on them.

25 Q. Did you tell Detective Zinn that **Frank** Sheppard and Skip

1
2 Sheppard had told you they were at the site at the time of
3 the explosion?

4 A. I had -- no, I did not.

5 Q. Did you tell Detective Zinn in October of 1990 that
6 **Frank** Sheppard or Skip Sheppard had told you they stole a
7 crate of dynamite from the site of the explosion?

8 A. No, I don't believe I did.

9 Q. Did you tell Detective Zinn that this crate of dynamite
10 that **Frank** Sheppard and Skip Sheppard told you they stole
11 from the site of the explosion was hidden underneath the
12 Sheppards' house? Did you tell Detective Zinn that?

13 A. I don't remember.

14 Q. You don't remember whether or not you told him that?

15 MR. BECKER: That was the answer. I don't know if
16 we need to repeat it. Object to the question.

17 MR. PETERS: I withdraw it, Judge.

18 THE COURT: All right. Withdrawn.

19 Q. (By Mr. Peters:) So in talking with Detective Zinn in
20 October of 1990, you did not relate to him any information
21 that Skip Sheppard or **Frank** Sheppard were involved in the
22 explosion; is that correct?

23 A. I got scared. No, I didn't tell him.

24 Q. And, of course, by October of 1990, you were no longer
25 dating or drinking beer with Skip Sheppard; isn't that true?

26 A. Around October 11th or, 10th or 11th of October.

1 Q. And even in 1995 -- in 1995, do you remember talking to
2 Special Agent Dave True?

3 A. Yes, I do.

4 Q. And you've talked to Dave True many times; is that fair
5 to say?

6 A. Several times, yeah.

7 Q. How many times would you estimate, ma ' am?

8 A. Probably four.

9 Q. And in 1995 when you talked to Special Agent True, at
10 that time you couldn't recall whether anybody had told you
11 about a fire being set; isn't that correct?

12 A. In 1995?

13 Q. Yes, ma ' am.

14 A. I don't remember if I told that to them then or not.

15 Q. Can you tell us when it was that you first remembered or
16 spoke to a police officer or a special agent and recollected
17 either **Frank** or Skip saying that they set a fire?

18 THE COURT: Recollected or recounted?

19 MR. PETERS: I'm asking the witness if she can tell
20 us when she first said that to any law enforcement agent.

21 THE COURT: That's not recollected, that's
22 recounted.

23 A. I can't remember when I told them.

24 Q. (By Mr. Peters:) Have you ever told any law enforcement
25 agent that, ma ' am?

1 A. Told them what? Can you say that, state that again,
2 what I told them?

3 Q. Have you ever told anyone from law enforcement that
4 **Frank** or Skip told you that they set a fire at the site of
5 the construction on November 29, 1988?

6 A. **They** said, "That's why we set the fire." I don't
7 understand.

8 Q. Ma'am, who said that? Who said that?

9 A. **Frank** said that.

10 MR. BECKER: I'm going to object. I'd like to
11 approach on this for one second.

12 THE COURT: All right.

13 (Counsel approached the bench and the following
14 proceedings were had:)

15 MR. BECKER: I'm not sure. I don't recall this
16 witness testifying that either one of them expressly said
17 they set the fire, and I think that's the confusion on the
18 part of the witness.

19 THE COURT: He said they stole dynamite.

20 MR. BECKER: Right.

21 THE COURT: He said they were there and dirt and
22 rocks rained down on them. Then there was a conversation
23 with the mother.

24 MR. BECKER: And it was just the mother saying that
25 they were responsible.

1 THE COURT: And he told the mother shut up. He
2 didn't say anything there.

3 MR. PETERS: My question is, what's the objection?

4 MR. BECKER: Because it's mischaracterizing the
5 testimony. He's saying did you ever tell.

6 THE COURT: Yeah, you implied that she said that.

7 MR. PETERS: I'm asking her when she told law
8 enforcement that. I didn't say did you testify to it.

9 MR. BECKER: That's why I was looking through the
10 reports. I don't see that she ever says it in those reports.

11 THE COURT: I think most accurately it would be not
12 when you did, but did you ever. That would be a fair
13 recollection of her own testimony. Okay. Sustained.

14 (The following proceedings were had in open court:)

15 Q. (By Mr. Peters:) Ma'am, did you ever tell anybody from
16 law enforcement, the Kansas City, Missouri, Police
17 Department, Alcohol, Tobacco, and Firearms, that **Frank** or
18 Skip said that a fire was set?

19 A. Yes, I did.

20 Q. When was it that you first told somebody from law
21 enforcement that?

22 A. I don't remember exactly, but I'm sure that it was in
23 1995 when I talked to them when they came out to my house.

24 Q. And are you also sure that that was not something that
25 you said in 1990?

1 A. No, I'm not sure if I said that or not. In 1990, I
2 don't think I did.

3 Q. Can you tell us who -- was it **Frank** or was it Skip who
4 said that he set a fire?

5 A. **Frank** Sheppard said we set a -- that's why we set the
6 fire. That's why we sent so-and-so down the hill.

7 Q. And are you telling us -- who was it, which agent did
8 you tell in 1995 that **Frank** Sheppard told you he set a fire?

9 A. I don't remember which agent.

10 Q. Have you talked to an agent besides Dave True since
11 1995?

12 A. Yes.

13 Q. Have you had a chance to review the statements that
14 you've given?

15 A. Yes.

16 Q. Do you recall in 1995 at that time saying that you
17 weren't sure whether it was Skip or **Frank** who had said that a
18 fire had been set?

19 A. No, I don't recall saying that.

20 Q. And you have had a chance to review your -- they aren't
21 statements, they're reports of interviews, you've had a
22 chance to review those?

23 A. I've had a chance to review three of them.

24 Q. How many have you given, ma ' am?

25 THE COURT: How many whats has she given?

1 lo How many statements have you given?

2 THE COURT: We're using the word statements kind of
3 loosely. What you have, isn't it, is an officer's report of
4 contact with a witness? Isn't the accurate question how many
5 contacts have there been?

6 Q. (By Mr. Peters:) Okay. How many contacts have you had
7 from which you've been able to review a report or a statement
8 from that contact?

9 A. Maybe six.

10 Q. And how many of those have you had an opportunity to
11 review before coming and testifying today?

12 A. Three this morning.

13 Q. Do you remember which three it is that you've had an
14 opportunity to review?

15 A. The very first one in 1990, one in 1995 -- well, there
16 was two from 1995, one was early in the year and one was
17 later, like in November.

18 Q. Okay. Let me ask you if this is one of the statements,
19 or reports, excuse me, Your Honor, if that's one of the
20 reports of an interview that you had a chance to review.

21 A. Not today, I haven't.

22 Q. Okay. In these conversations with either Skip Sheppard
23 or **Frank** Sheppard, were you told that Joe Everhart was
24 involved in the explosion that resulted in the death of six
25 firefighters?

1 A. No.

2 Q. Were you told that Didi Baker was involved?

3 A. No.

4 Q. When you had an opportunity to talk with Agent True, did
5 he bring a tape recorder with him?

6 A. No. No.

7 Q. No? Did he have a court reporter like this lady here
8 who is taking down what you said?

9 A. No.

10 Q. If he had asked you to let him tape record, would you
11 have objected?

12 A. No.

13 Q. Would you have objected if he wanted to use a court
14 reporter?

15 A. No.

16 MR. PETERS: I have no further questions.

17 THE COURT: All right.

18 — — —

19 CROSS-EXAMINATION

20 By Ms. Hunt:

21 Q. Miss Smith, my name is Susan Hunt. I represent Skip
22 Sheppard. We've talked before, haven't we?

23 A. Yes.

24 Q. I think you said on your direct examination you dated
25 Skip for a two or three-week period?

1498

1 A. It was more about, around six weeks.

2 Q. About six weeks in 1990; is that right?

3 A. Yes.

4 Q. And then you had a fight with Skip and Skip assaulted
5 you, didn't he?

6 A. Uh-huh, yes. Yes.

7 Q. And right after that assault is when you came forward to
8 the police; isn't that right?

9 A. Yes.

10 Q. And that's one of the reasons why you called the police,
11 isn't it?

12 A. I don't understand. I called the police the night he
13 beat me up. I didn't tell them about the, nothing about the
14 firemen's explosion that night.

15 Q. When did you call the police? Do you remember the date?

16 A. I do not remember the date. I know it was right around
17 the first of October.

18 Q. Did you just call and report this incident and then
19 somebody called you back?

20 A. Yes, and Detective Zinn is then -

21 THE COURT: I'm confused. Which incident? She
22 said she called the police the night he beat her up. Which
23 incident are you referring to?

24 Q. (By Ms. Hunt:) I'll clear it up. The night he beat you
25 up is when you called the police to report that?

1 A. The night he beat me up.

2 Q. You called the police that night and reported that?

3 A. Yes.

4 Q. And then Detective Zinn called you back; is that right?

5 A. No, not from that phone call.

6 Q. Didn't you tell Detective Zinn the reason you were
7 coming forward is because Skip beat you up?

8 A. No.

9 Q. And that was a telephone conversation with Detective
10 Zinn?

11 A. I talked with Detective Zinn on the telephone.

12 Q. Okay. And that was in 1990; is that right?

13 A. Yes, because I didn't tell Detective Zinn that that's
14 why I had called to report what he had done, what he had
15 admitted to me about the explosion.

16 Q. You said before you took the stand today you had a
17 chance to review the report that was made in 1990; is that
18 correct?

19 A. Yes.

20 Q. And that report was a report of the telephone call with
21 Detective Zinn; isn't that right?

22 A. Yes.

23 . And that report states you told him you were coming
24 forward because Skip beat you up; isn't that correct?

25 . No.

1500

1 MR. BECKER: Objection. That misstates this
2 report.

3 THE COURT: Wait a minute. We can't do it that
4 way, Miss Hunt.

5 MS. HUNT: I'll hand her the report and see if it
6 refreshes her recollection.

7 THE COURT: Is it her report?

8 MS. HUNT: It's a report she reviewed today about
9 Detective Zinn's conversation with her.

10 THE COURT: In your recollection when you reviewed
11 it, did it appear to be accurate to you?

12 THE WITNESS: Can I look it over again?

13 THE COURT: Okay. Hand it to her.

14 A. No, because it starts right off that we dated about
15 three weeks, so there's the first right there. I said it was
16 around six weeks. And there were some -

17 Q. (By Ms. Hunt:) When is the first time you've seen this
18 report?

19 A. This morning.

20 Q. Just this morning?

21 A. Yes.

22 Q. Did you tell anybody that this report is inaccurate?

23 A. No. I hadn't had a chance to.

24 Q. But this report is not accurate of that conversation
25 with Detective Zinn; is that right?

1 A. Like that statement there about the three weeks.

2 Q. There are some inaccuracies in this report; is that
3 right?

4 A. Yes.

5 THE COURT: Wait a minute, counsel. Why do you say
6 some? She's mentioned one inaccuracy.

7 MS. HUNT: She's not read the whole report, but
8 I'll give it to her again.

9 THE COURT: That's right. But some is not
10 correct. All right. Have you looked it over now?

11 THE WITNESS: Yes. There's some -

12 THE COURT: Just a minute. Let her ask the
13 questions.

14 Q. (By Ms. Hunt:) You've read the report now?

15 A. Yes.

16 Q. I'm going to give you this pink highlighter. Would you
17 highlight any inaccuracy you see?

18 MR. BECKER: Objection. This is not in evidence,
19 this report.

20 THE COURT: That's true.

21 Q. (By Ms. Hunt:) As you read this report, do you see any
22 inaccuracies in that report?

23 A. Yes, I do.

24 Q. Can you tell us what those inaccuracies are?

25 A. Where it says that the reason I came forward was because

1502

1 Skip's assaulted her on 10/1, 1990.

2 Q. Anything else?

3 A. That was not why I came forward.

4 Q. Anything else that's inaccurate?

5 A. About the three weeks, where I said I dated him for
6 approximately three weeks.

7 Q. You say it was more like five to six?

8 A. Yes.

9 Q. Anything else that's inaccurate?

10 A. No.

11 Q. But, in fact, you did call the police when Skip
12 assaulted you; is that right?

13 A. Yes.

14 Q. And Detective Zinn called you back after that initial
15 contact; is that right?

16 A. No, I made two different phone calls to the police, one
17 about the assault and one about the confession.

18 Q. Okay. And this is a report of your conversation over
19 the phone with Detective Zinn; is that right?

20 A. Yes.

21 Q. Okay. I'd like to ask you to step down here for a
22 minute and down to this easel down here.

23 A. Do I take this off?

24 THE COURT: For what purpose?

25 MS. HUNT: I want her to draw a diagram of the

1503

1 Sheppard house. We've had a lot of conversation about it.

2 THE COURT: We've already got a diagram. Can you
3 refer to the one that's already been made?

4 MS. HUNT: I'd like to have her draw her
5 interpretation of what the house looks like.

6 THE COURT: Okay. Relieve her of the microphone,
7 would you, Tenilla? And step down. Careful there.

8 Q. (By Ms. Hunt:) You have to talk into this microphone.
9 Okay. You've been to the Sheppard house on numerous
10 occasions; is that right?

11 A. Yes.

12 Q. And you're familiar with the way the house looks; is
13 that right?

14 A. Yes.

15 Q. Just draw a diagram of the Sheppard house and label the
16 rooms as you remember them.

17 (So done.)

18 A. I don't know if it was a two or three-bedroom.

19 Q. But as you remember, that's a diagram of the Sheppard
20 house?

21 A. Yes. Yes.

22 MS. HUNT: We're going to mark that Defendants'
23 Exhibit 14.

24 Q. And, ma'am, could you write on the top of this "Sheppard
25 house" and put your name at the bottom so we know who drew it

1504

1 and what it is?

2 JUROR: We can't see it.

3 THE COURT: All right. All right. Now, to give
4 the whole jury the opportunity to see that diagram, Miss
5 Hunt, move the easel down in the middle of the jury box. Why
6 don't you move it, if you would, please, down in the middle
7 of the jury box so that the folks at this end can see
8 better. Now, I think everybody can probably see that.

9 Q. (By Ms. Hunt:) Okay. I think you testified on your
10 direct that the second conversation you overheard at the
11 Sheppard house was when Naomi Sheppard was sitting in the
12 living room; is that right?

13 A. Yes.

14 Q. And Skip was in the kitchen and on his way back?

15 A. Yes.

16 Q. And you've got in here, the kitchen is behind the living
17 room; is that right?

18 A. Yes.

19 Q. so if someone was here in this part of the kitchen, they
20 can't hear what's going on in the living room, can they?

21 A. He didn't go that far. The refrigerator where I put the
22 two -- should I come back up there?

23 Q. Yeah. And mark it.

24 A. Okay. The refrigerator, and this is the bench seat.

25 Naomi was there, and I was right there. And there's a couch

1505

1 that was right here, and Skip came back and sat right there.
2 He walked, we walked in the front door past Naomi. He walked
3 to the refrigerator and put the beer in and walked back and
4 sat down.

5 Q. And that was the second conversation you supposedly
6 heard; is that right?

7 A. Yes.

8 Q. The first conversation he said, "I didn't do it, I know
9 who did it"?

10 A. Yes.

11 Q. Never admitted anything?

12 A. Right.

13 Q. Okay. How many times were you there with Joe Everhart?

14 A. I couldn't even count. I don't know. Ten times, maybe.

15 Q. So were you at the Sheppard house just ten times, or
16 more than ten times?

17 A. More than ten times.

18 Q. In that five to six-week period?

19 A. About every day.

20 Q. You did not go back over after the incident in 1990 in
21 October when you called the police?

22 A. I did go back one more time after he beat me up.

23 Q. And that's it, you never went back?

24 A. Right.

25 Q. Okay. And I think you said Joe Everhart is married, his

1 sister is married to a Sheppard?

2 A. Yes.

3 Q. Okay. Let's go through that. His sister's name is

4 what?

5 A. Virgie or Virginia.

6 Q. And Virginia is married to who?

7 A. Jack Sheppard.

8 Q. And Jack Sheppard is what to Skip Sheppard?

9 A. His brother.

10 Q. So it's a long relation through a marriage; is that

11 right?

12 A. Yes.

13 Q. He's not blood relation to the Sheppards?

14 A. Joe Everhart?

15 Q. Right.

16 A. Right.

17 Q. Only because his sister married one of Skip's brothers;

18 is that right?

19 A. Right.

20 Q. Did the Sheppards have a kitchen table in the kitchen?

21 A. Yes.

22 Q. Why don't you come down here and mark where the kitchen

23 table was.

24 MR. BECKER: Objection to relevance.

25 MS. HUNT: Conversation took place at the kitchen

1 table.

2 Q. You testified that a conversation took place at the
3 kitchen table; is that right?

4 A. Yeah, he -

5 Q. Which series of conversations was this?

6 A. Do I need to put this back on?

7 THE COURT: Well, just give her the mike so she can
8 speak into it.

9 A. I don't know where Joe was sitting. I could not see him
10 from where I was sitting. I was sitting here and Skip,
11 again, was sitting there. And there's a -- well, I didn't
12 put this walkway right. I put it too big. There was like a
13 dining room table that sat here, and Joe was somewhere in
14 there at the table.

15 Q. so the kitchen table was not in the kitchen, it was in
16 the dining room; is that right?

17 A. Right.

18 Q. This second conversation when you went in -

19 THE COURT: I think she might need some help with
20 that microphone, Tenilla.

21 A. I've got it.

22 Q. Okay. The second conversation, when you walk in with
23 Skip, Mrs. Sheppard is sitting in the living room and you sit
24 down and start talking to her. Do you remember that?

25 A. She started talking to me. I didn't say anything.

~ 1508

1 Q. But she started a conversation?

2 A. Yes.

3 Q. And that's what we're calling the second conversation;

4 is that right?

5 A. Yes.

6 Q. What was she wearing?

7 A. I do not remember what she was wearing.

8 Q. What were you wearing?

9 A. Jeans, I think, and a T-shirt.

10 Q. What was Skip wearing?

11 A. Shorts and a T-shirt.

12 Q. What time of year was this?

13 A. It was like September 1990.

14 Q. Mid-September?

15 A. Yeah, early September, the middle of September. I don't

16 remember.

17 Q. You had the conversation with the police in October; is

18 that right?

19 A. Yes.

20 Q. Do you remember the first day it was you called the

21 police?

22 A. No, I don't remember what day it was.

23 Q. You just know it was in October?

24 A. Yes.

25 Q. Okay. How long had you been dating skip before this

1509

1 second conversation took place?

2 A. About four or five weeks, five weeks, I guess.

3 Q. Okay. So this was toward the end of your dating

4 relationship with Skip, then?

5 A. That I called the police?

6 Q. No. The second conversation we're talking about, that

7 we've labeled the second conversation, that occurred four or

8 five weeks into your dating of Skip; is that right?

9 A. No. That occurred about three weeks into the

10 relationship.

11 Q. So it was roughly three weeks before you called the

12 police in October?

13 A. Yes.

14 Q. okay. Do you remember testifying in front of the grand

15 jury in this case?

16 A. Yes.

17 Q. When you testified in front of the grand jury, did you

18 talk about these conversations we're talking about today?

19 A. Not every one of them.

20 Q. Okay. How many did you talk about?

21 A. I don't remember right offhand. I know that I had left

22 out some about the fire.

23 Q. You were confused in your grand jury testimony and left

24 out things; is that what you're saying?

25 A. I got nervous in front of the -- I didn't know -- I just

1 got nervous.

2 Q. Did you testify in front of the grand jury that during
3 one of these conversations they said they were up there to
4 get dynamite a night or two before?

5 A. That **they** were up there to steal tools and that **they** had
6 gotten -- I think I had left that out. That was when I got
7 nervous.

8 Q. But you're testifying here today that they, that Skip
9 supposedly stole this crate of dynamite; is that right?

10 A. Yes.

11 Q. Before the explosion?

12 A. Yes.

13 Q. Not the night of it?

14 A. No, he said it was a couple of days before the
15 explosion.

16 Q. And he had buried this where?

17 A. Underneath his mom's house.

18 Q. Do you know where?

19 A. No, I don't.

20 Q. Was there a room with a dirt floor in the house?

21 A. In the crawl space in the house.

22 Q. But you've never seen this crate of dynamite, though?

23 A. Right, I never seen it.

24 Q. And he buried it underneath the floor of the house?

25 A. Yes.

- 1 Q. What else did they say they took?
- 2 A. Tools.
- 3 Q. Did they mention specific tools?
- 4 A. No, **they** never said what kind of tools, just tools.
- 5 Q. What else?
- 6 A. Tools and dynamite.
- 7 Q. That's it, that's all they mentioned?
- 8 A. Yes.
- 9 Q. Was Didi Baker present during this conversation?
- 10 A. During the second conversation?
- 11 Q. During any of the conversations?
- 12 A. She had made mention about knowing -
- 13 Q. I'm just asking if she was present in the room.
- 14 A. Yes.
- 15 THE COURT: Was Didi Baker present during any of
- 16 the conversations?
- 17 A. Yes.
- 18 THE COURT: Talk more slowly, please, we're not
- 19 hearing you. I can't hear you, so I'm sure she can't either.
- 20 Q. Didi Baker was present during at least one of these
- 21 conversations; is that right?
- 22 A. Yes.
- 23 Q. And who is she?
- 24 A. Their sister, **Frank** and Skip's sister.
- 25 Q. Okay. Neither **Frank** or Skip said **they** set this fire,

1 though, did **they**?

2 A. **Frank** said we -- "that's why we set the fire" was his
3 statement.

4 Q. But he didn't say how he set a fire?

5 A. No, he didn't.

6 Q. Skip didn't say he set a fire?

7 A. No.

8 Q. Skip didn't say how the fire got set?

9 A. No.

10 Q. Skip didn't admit that he committed this crime, did he?

11 A. Yes, he did.

12 Q. He didn't say he set the fire, though, did he?

13 A. No, he didn't.

14 Q. Now, you said you reviewed three of your statements
15 earlier?

16 A. Yes.

17 Q. Do you know how many statements you've given?

18 A. At least six.

19 Q. But you haven't read all six of them?

20 A. No, I haven't.

21 Q. Ever?

22 A. Yes, I have read them before.

23 Q. And the first time you talked to Detective Zinn over the
24 phone, the 1990 conversation, you didn't tell him everything
25 that you had heard at the Sheppard house?

1 A. No, I didn't.

2 Q. It wasn't until 1995 that you began telling all the
3 details?

4 A. Right.

5 Q. And did they contact you in 1995, or did you contact
6 them?

7 A. I contacted them.

8 Q. Did you know about a reward in this case?

9 A. Yes, I did.

10 Q. Have you applied for the reward?

11 A. No, I didn't. How do you apply for a reward?

12 THE COURT: Rather than ask, just answer, Miss
13 Smith.

14 MS. HUNT: That's all.

15 THE COURT: Are you through?

16 MR. BUNCH: No questions.

17 MR. O'CONNOR: Just one point of clarification.

19 CROSS-EXAMINATION

20 By Mr. O'Connor:

21 Q. When they had talked to you about the two, where they
22 had been up to the construction site, I think you said two
23 days before, is that what you'd said?

24 A. Yes.

25 Q. And the construction site that you meant was where the

1 explosion occurred that killed the firefighters?

2 A. Yes.

3 Q. That's what they were saying?

4 A. Yes.

5 Q. And that that's where they had gotten these crates of
6 dynamite was from that site?

7 A. The one crate of dynamite, that's all.

8 Q. I'm sorry. They had gotten the one crate of dynamite
9 from the site where the firefighters lost their lives?

10 A. Yes.

11 MR. O'CONNOR: Thank you.

12 THE COURT: Can you make this fairly brief, Mr.
13 Osgood?

14 MR. OSGOOD: I hope so, but if you want to break at
15 any time in the middle, that's fine, Your Honor. I can
16 remember where I am. I don't think it will be too long. Is
17 it all right to move this?

18 THE COURT: Yes. I think everyone has seen it.

19 MR. OSGOOD: Miss Smith -

20 THE COURT: Now, excuse me just a minute. Would
21 you all come up a minute?

22 (Counsel approached the bench and the following
23 proceedings were had:)

24 THE COURT: Now, John, she didn't mention your
25 client.

1 MR. OSGOOD: I know, but -

2 THE COURT: And you're here defending your client,
3 and I don't think you have the right to take the time of all
4 of these people and this Court to ask a bunch of questions
5 when your client wasn't implicated.

6 MR. OSGOOD: I have a critical point I want to
7 raise with her that will tie in to Agent True's conduct with
8 witnesses that are testifying.

9 THE COURT: Make it real quick.

10 MR. OSGOOD: Okay.

11 (The following proceedings were had in open court:)

12 — — —

13 CROSS-EXAMINATION

14 By Mr. Osgood:

15 Q. Miss Smith, I represent Richard Brown. He did not come
16 up in this conversation, did he?

17 A. No, he didn't.

18 Q. All right. Now, Mr. Peters asked you a question, and he
19 said did Skip or **Frank** say that Didi was involved, and you
20 said, no. They didn't say that, did they, anything about
21 Didi?

22 A. No, I don't remember them saying that name.

23 Q. All right. Now, you were interviewed by Agent True of
24 the ATF on several occasions, weren't you?

25 A. Yes.

1 Q. And you had information that you were giving him, didn't
2 you?

3 A. Yes.

4 Q. Did he have information that he gave you about what he
5 thought occurred and who he thought the suspects were?

6 A. No, he didn't.

7 Q. Do you remember testifying before the grand jury, ma'am,
8 on the 5th day of December of 1995?

9 A. Yes.

10 Q. Were you asked this question and did you give this
11 answer? Page 6. Question, line 8.

12 "Well, do you remember being interviewed by the
13 ATF agent, maybe half, two or three weeks ago, November 14th,
14 and telling him that either **Frank** or Skip said that a fire
15 was set?"

16 Answer: "No. **They** said something that Didi had
17 went to set it to defer the attention off of them. I
18 don't -- I don't think that was anything that I had ever
19 heard from Skip or **Frank**."

20 So the they there is the ATF, isn't it, ma' am?

21 THE COURT: Now, just a minute, Mr. Osgood. That
22 doesn't say that.

23 MR. OSGOOD: It certainly does, Your Honor. Would
24 you like to see it?

25 THE COURT: Yeah. Let me see it. Come here.

1 MR. OSGOOD: Yes, sir.

2 (Counsel approached the bench and the following
3 proceedings were had:)

4 THE COURT: Do you remember being interviewed by
5 the ATF agent, so forth, telling you that either **Frank** or
6 Skip said that a fire was set? **Frank** or Skip. No. They,
7 **Frank** or Skip, said something that Didi had set it to defer
8 and so forth. The "they" has to refer to **Frank** or Skip.

9 MR. OSGOOD: The "they" refers to ATF. Read it in
10 context. Read on, Your Honor.

11 MR. PETERS: Let me interject.

12 THE COURT: You've got to be fair here.

13 MR. PETERS: If the "they" refers to **Frank** or Skip,
14 it impeaches her statement that she never said it. It
15 impeaches her statement whether it's -

16 MR. OSGOOD: You must read it in context. It says,
17 "I don't think that was anything that I had ever heard from
18 **Frank** or Skip." It has to come from the ATF suggesting Didi
19 was involved. It's the only place it can come from.

20 THE COURT: But the question was the ATF agent, and
21 then she said **Frank** or Skip, and then she said they.

22 MR. OSGOOD: I'm going to ask her if the "they,"
23 the "they" is the ATF she's referring to.

24 THE COURT: Don't get argumentative with her, and
25 let's get on with it. I think there is the core element of

1

1 unfairness in some of this cross-examination with the lay
2 Ipeople that don't know what in the world it is anyway.

3 MR. OSGOOD: Your Honor, there's a core element of
4 unfairness when the ATF goes out and throws out names in 1995
5 About events that occurred six, seven years ago, and then
6 Ithese people blend it all together, and she has blended
7 Itogether in her mind what she knew and what the ATF knew.

8 THE COURT: Is this the grand jury?

9 MR. OSGOOD: Yes, sir.

10 THE COURT: And what she's saying is that Didi had
11 went to set it to defer the attention off of them. I don't
12 think there was anything that -- I don't think that was
13 anything that I'd ever heard said from Skip or **Frank**.

14 MR. OSGOOD: So where does it come from? It comes
15 from the "they."

16 MR. BECKER: There are a multitude of reports on
17 this individual, and if you read them, that information came
18 from Didi Baker. If you look at the report, she said, this
19 is what Didi Baker said.

20 THE COURT: You see, you throw up the -

21 MR. OSGOOD: I want to ask her where she got that
22 Information She didn't get it from Skip or **Frank**. It's in
23 I the transcript, Your Honor.

24 I This is a pattern that's going to continue to
25 repeat in this case. That's the problem with an

1 eight-year-old case.

2 THE COURT: Well, it's not going to repeat in this
3 way because I'm not going to allow witnesses to be taken
4 advantage of by being confused by you flashing the
5 transcripts in front of them.

6 MR. OSGOOD: I'm not. I'm asking her what she
7 said.

8 MR. PETERS: I'm writing.

9 THE COURT: What did you say?

10 MR. PETERS: I didn't say anything, Judge.

11 THE COURT: All right.

12 MR. OSGOOD: I just want to ask her what she meant
13 by that. I just want to get at the facts, Your Honor.

14 THE COURT: Let's take a break.

15 MR. OSGOOD: Can I ask the question? I mean, I'll
16 be done.

17 THE COURT: All right. Ask the question, and then
18 we'll take a break.

19 MR. BECKER: I may have some redirect.

20 THE COURT: All right.

21 (The following proceedings were had in open court:)

22 Q. (By Mr. Osgood:) Do you remember the question and the
23 answer that I just read to you?

24 A. Yes.

25 Q. Where did this conversation or suggestion about Didi

1520

1 Baker going down the hill to set the fire come from in your
2 mind?

3 A. **Frank** Sheppard. I was told that I wasn't supposed to
4 say Didi's name in court because she wasn't here.

5 Q. All right.

6 A. So that's why I said they sent so-and-so down the hill,
7 down the hill to set the fire.

8 Q. Why did you tell the grand jury on that very answer, "I
9 don't think that was anything that I ever heard from Skip or
10 **Frank**"?

11 A. I don't remember.

12 Q. Would you like to see it to refresh your memory? Would
13 you like me to read it again, ma' am?

14 A. No. I just don't remember. If it says it there, I
15 don't remember it.

16 Q. Well, did it come from Skip or **Frank**, or did it come
17 from somebody else?

18 A. It came from **Frank** that I remember.

19 Q. Why did you tell the grand jury it didn't come from Skip
20 and **Frank**, then? You said it came from "they," and the line
21 before you were referring to the ATF.

22 THE COURT: And to Skip and **Frank**.

23 A. I don't remember. I don't know.

24 Q. Would you like me to read the question? I don't want to
25 be unfair to you.

1 THE COURT: Read the whole exchange. Wait a
2 minute. Wait a minute, Mr. Osgood. Read the question and
3 read the whole answer.

4 MR. OSGOOD:I will do that, Your Honor.

5 Q. Question: "Well, do you remember being interviewed by
6 the ATF agent, maybe half, two or three weeks ago, November
7 14, and tellinghim that either **Frank** or Skip said that a
8 fire was set?"

9 Answer: "No. They said something that Didi had
10 went to setit to defer the attention off of them. I don't,
11 I don't think that was anything that I ever heard said from
12 Skip or **Frank**."

13 Who is they?

14 A. Maybe I got confused when I made my statement.

15 MR. OSGOOD:Yes, ma'am. Thank you.

16 THE COURT: All right. Mr. Becker?

17 — — —

18 REDIRECT EXAMINATION

19 By Mr. Becker:

20 Q. Miss Smith, you testified earlier that you were nervous
21 when you testified before the grand jury; is that right?

22 A. Yes.

23 Q. Did you tell the grand jury about the conversation you
24 heard with Naomi Sheppard and Skip Sheppard?

25 A. I don't remember right now.

1 Q. okay. Do you remember telling them about the
2 conversation that you had heard in the living room with **Frank**
3 Sheppard and Skip Sheppard and the others present?

4 A. I think I may have, yes.

5 Q. In October of 1990, were you afraid of Skip Sheppard?

6 A. Yes.

7 Q. Why?

8 A. He beat me up several times, two different times. He
9 threatened me. There was a threat made on my life that we
10 would go fishing and I wouldn't come back.

11 Q. In October of -- on October 2nd, 1990, did you report to
12 the police that he had assaulted you and that you had bruises
13 and red marks and contusions?

14 A. Yes. I walked into the police department on Hickman
15 Mills Drive, and the police officers seen me.

16 MR. BECKER: Thank you.

17 THE COURT: All right. Anything else? All right.
18 Hearing nothing, we'll take our morning recess. Fifteen
19 minutes, ladies and gentlemen. Don't talk about the case
20 while we're in recess, and you may withdraw.

21 (The following proceedings were had in the
22 courtroom out of the presence of the jury:)

23 THE COURT: All right. We're in recess.

24 (A recess was taken from 10:47 a.m. to 11:09 a.m.)

25 THE COURT: All right. I have a jointly filed

1 motion for a mistrial. And it is not well-taken. A couple
2 of things should be pointed out.

3 One is that the Court is not the finder of fact in
4 this case and, therefore, the kind of concern raised by the
5 Court in the comments quoted in the motion have nothing to do
6 with the ultimate disposition of the case. I said then that
7 the investigators are not subject to the supervision of the
8 Supreme Court of Missouri or of this Court. They're not
9 subject to the same constraints of control and professional
10 constraints as lawyers are, and that's the reason for my
11 expressed skepticism. I felt that under the circumstances
12 then being examined there was some possibility the witness
13 had been taken advantage of, and that was the reason for my
14 comment. The motion will be overruled. All right.

15 MR. OSGOOD: Your Honor, to the extent that it
16 affects me, I would like to include in the motion the recent
17 exchange at the bench which I feel is restricting my ability
18 to cross-examine the witnesses, just for the record.

19 THE COURT: You're going to be allowed to
20 cross-examine the witnesses under the rules of
21 cross-examination, and we're not going to have fishing
22 expeditions. We're not going to go flying off in all
23 directions, and we're not going to repeat time after time
24 after time five different times what has already been covered
25 in cross-examination.

1 MR. OSGOOD: I'm last, obviously, and I've
2 consciously attempted to avoid any repetitive questions.

3 THE COURT: I know you're in a difficult position
4 being last. I've taken it into consideration in dealing with
5 your cross-examination.

6 MR. OSGOOD: For example, the point with the last
7 witness that I thought was important to my case and
8 ultimately to my client. I realize the Court doesn't have
9 the reports and doesn't know which direction the government's
10 case is going to go. I do have those, and when I ask a
11 question, I do so because it ties into my case.

12 He's facing life without parole. I respect this
13 Court, and I've practiced in front of it for many years now,
14 and I'm trying to do my job and represent my client the best
15 I can. And if in some way what I'm doing is hurting his
16 opportunity or chances in this case, that's my concern.

17 THE COURT: No. That's not what caused any comment
18 that's been made. It's been the inclination to repetitive
19 cross-examination, and that's what I'm indicating to you will
20 not be allowed.

21 MR. OSGOOD: I understand that. And that's a fair
22 ruling, and I don't intend to be repetitive about it. But I
23 assure the Court when I do get up to ask a question, it's
24 because it has something to do in my mind with my case and
25 it's something different and -

1 THE COURT: We'll measure that each time it comes
2 up.

3 MR. OSGOOD: I'm concerned about -- for example,
4 the last exchange was with the grand jury testimony that's
5 sworn testimony that Mr. Becker took. I've got to be able to
6 cross-examine on that. And to suggest that I'm being unfair
7 to a lay witness, there's no other way to do it, Your Honor.
8 It's a prior sworn statement. I've got to use what I've
9 got. That's all I've got.

10 THE COURT: All right. Let's proceed.

11 (The following proceedings were had in the
12 courtroom in the presence of the jury:)

13 THE COURT: Proceed, Mr. Becker.

14 MR. BECKER: Your Honor, the United States calls
15 John White.

16 THE COURT: Go ahead. Stand by the witness chair,
17 if you would, please, and be sworn. Would counsel come up
18 for a minute, please?

19 (Counsel approached the bench and the following
20 proceedings were had:)

21 THE COURT: I want it immediately to appear on the
22 record how erroneous this filing is that counsel has made in
23 this Motion for Mistrial or, in the Alternative, Recusal of
24 the Trial Judge. Because the clear implication of the
25 material on Page 2 is that what happened happened in the

1526

1 presence of and with the knowledge of the jury, and the
2 transcript also makes it clear that it was not in the
3 presence or in the knowledge of the jury or within the
4 hearing of the jury.

5 I think that's the kind of, that's unfair. And I
6 just want the record to be clear that it was not in the
7 presence of the jury, and it was in conference at the bench
8 between counsel with the amplification turned off with the
9 jury not hearing. All right.

10 MR. PETERS: The transcript is attached, and the
11 transcript speaks for itself as to which parts were in front
12 of the jury and which parts were not.

13 THE COURT: But the discussion says in open court.

14 MR. PETERS: I believe it says at the bench and in
15 open court.

16 THE COURT: In open court is what offends me.

17 MR. PETERS: Does the motion -

18 THE COURT: I'm not going to answer your questions,
19 Mr. Peters. I'm just telling you that the statement in open
20 court gives, leads to the inference that it was in front of
21 and in the hearing of the jury, and that's wrong.

22 MR. OSGOOD: I don't think that was the intent.

23 THE COURT: Okay. Let's go. Okay. Let's go.

24 (The following proceedings were had in open court:)

25 MR. BECKER: Thank you, Judge.

JOHN WHITE,

2

3 having affirmed to tell the truth under the penalties of
4 perjury, testified as follows:

5

— — —

6

DIRECT EXAMINATION

7 By Mr. Becker:

8 Q. Good morning.

9 A. Good morning.

10 Q. Please state your name and spell your last name.

11 A. John **Franklin** White, Jr., W-H-I-T-E.

12 Q. How old are you?

13 A. Forty-seven.

14 Q. Where were you born?

15 A. Memphis, Tennessee.

16 Q. Where did you grow up and live most of your life?

17 A. Springfield, Missouri.

18 Q. What was your employment in Springfield, Missouri?

19 A. I was a realtor for most of my adult life, and then I
20 was a rancher.

21 Q. Have you ever been convicted of a crime?

22 A. Yes, I have.

23 Q. In 1991, were you convicted of mail fraud?

24 A. Yes, I was.

25 Q. Was that related to an insurance fraud?

1528

- 1 A. Yes, it was.
- 2 Q. How much, what was your sentence in that case?
- 3 A. Twenty-seven months.
- 4 Q. Then last year in Springfield, were you convicted of
- 5 threatening a witness?
- 6 A. Not threatening, but talking to a witness.
- 7 Q. Well, talking to them in a way that you got convicted of
- 8 a crime?
- 9 A. Correct.
- 10 Q. okay. What was your sentence on that?
- 11 A. Forty-six months.
- 12 Q. What's your educational background?
- 13 A. I have seven years of college.
- 14 Q. In those seven years, did you get a degree in anything?
- 15 A. I got a BS degree in biology.
- 16 Q. In 1988, November of 1988, where were you living?
- 17 A. I was living in Springfield, Missouri.
- 18 Q. Did you hear or read about the explosion that happened
- 19 in Kansas City, Missouri, that killed six firefighters? I'm
- 20 talking about, now, in 1988.
- 21 A. No, I did not.
- 22 Q. Now, moving ahead to this past year, 1996, were you in
- 23 jail during the second part of 1996?
- 24 A. Yes, I was.
- 25 Q. And where was that?

1 A. St. Clair County, which is Osceola, Missouri.

2 THE COURT: What was your date, what date?

3 MR. BECKER: Well, Judge, I would offer as a public
4 record under seal Government's Exhibit 367.

5 THE COURT: All right. The exhibit has been
6 offered. Is there any objection? Then, hearing none, then,
7 it's admitted without objection.

8 **(Government's Exhibit 367 was admitted into**
9 **evidence.)**

10 MR. BECKER: With the Court's permission, may I
11 read this to the jury?

12 THE COURT: Yes.

13 MR. BECKER: This is a letter from the St. Clair
14 County Sheriff, Osceola, Missouri. To whom it may concern.
15 The St. Clair County Jail records show the following
16 information: Earl Skip Sheppard, date of birth, 4/5/60, was
17 held from June 24, 1996, until December 2, 1996. John F.
18 White, date of birth 7/15/49, was held from June 25, 1996,
19 until August 28, 1996.

20 On or near July 11, 1996, John White was moved into
21 the same cellblock as Earl Skip Sheppard and remained there
22 until transferred on August 28, 1996.

23 Q. (By Mr. Becker:) Does that accurately reflect what you
24 remember of when you and Skip Sheppard were incarcerated
25 together?

1530

1 A. Yes, it does.

2 Q. Do you see skip Sheppard here in court today?

3 A. Yes, I do.

4 Q. Could you just tell us where he's sitting and what he's
5 wearing?

6 A. He's standing up at the present time. He has a maroon
7 sweater on.

8 MR. BECKER: Indicating Defendant Skip Sheppard,
9 Your Honor.

10 THE COURT: Yes.

11 Q. (By Mr. Becker:) Could you describe briefly for us the
12 layout or the arrangement at the St. Clair County Jail?

13 A. It's a one-story building. It has a central area where
14 all the officers sit. It has a lot of plexiglass so that
15 they can always see the prisoners in their day rooms. And
16 there are about five different pods of where they house
17 between six and twelve inmates in a pod. They can directly
18 see us, and we can see them.

19 Q. Now, prior to July 11 when Skip Sheppard was moved into
20 your pod, as you call it -

21 A. I moved into his pod.

22 Q. All right. Prior to that time, had you ever spoken to
23 Skip Sheppard?

24 A. Yes, I had.

25 Q. Could you tell us how that occurred?

1 A. We have a common recreational area. It's approximately
2 a 20-by-30 area that is adjoining the pods. This is where we
3 get out and are able to exercise, walk. And I had
4 conversations with him in this area.

5 Q. Why were you having conversations with Skip Sheppard?

6 Q. Well, generally, the inmates did talk among themselves
7 quite often. That's basically about all we had to do. He
8 needed some specific information or he felt comfortable about
9 asking me certain things about legal issues because I had
10 had, or helped other inmates in the past about their legal
11 work.

12 Q. Did you go make contact with him, or did he come and
13 make contact with you?

14 A. He made contact with me.

15 Q. Did there come a time that Skip Sheppard told you about
16 the explosion that killed six firefighters in Kansas City?

17 A. Yes, he did.

18 Q. How did that occur, why did that occur?

19 A. Well, I assume that the reason of why, again, is that he
20 wanted to know about like, for instance, the statute of
21 limitations, whether or not that statements made by other
22 defense parties would, how that would react with him, those
23 type of ideas.

24 Q. Do you know why it is he sought you out as opposed to
25 anybody else there?

1 A. My codefendant was there in this witness tampering trial
2 that we had just had and indicated to him, I believe, that I
3 had quite a bit of knowledge, and I think that's the reason
4 why.

5 Q. Did Skip Sheppard tell you about what he did?

6 A: Yes he did.

7 Q. If anything?

8 A: Yes he did.

9 Q. Where did that -- was that one conversation or more than
10 one conversation?

11 A: It was more than one conversation.

12 Q. Where did those conversations take place?

13 A: Primarily out in the recreational area.

14 Q. Did -- let's talk about that, then, please.

15 A: Okay.

16 Q. What did Skip Sheppard say about this explosion, how did
17 it, did he say he was at the site?

18 A: Yes he did.

19 Q. What did he say about that?

20 A: He said that he and a brother went there, and it was
21 late. He gave me the date that it occurred.

22 Q. Did Skip Sheppard -

23 MR. PETERS: Your Honor, objection. Can we
24 approach?



25 THE COURT: All right.

1 (Counsel approached the bench and the following
2 proceedings were had:)

3 MR. BECKER: The first educated witness I have, and
4 he doesn't follow directions.

5 MR. PETERS: I ask that the jury be instructed to
6 disregard that comment.

7 THE COURT: About the brother?

8 MR. PETERS: About the brother.

9 MR. BECKER: And if we make -- I don't want to talk
10 to him in front of the jury, but if the Court can instruct
11 him to only tell us what Skip Sheppard said about Skip
12 Sheppard.

13 THE COURT: All right.

14 (The following proceedings were had in open court:)

15 THE COURT: Ladies and gentlemen, I'm instructing
16 you, you are to disregard anything that this witness has just
17 said about Skip Sheppard saying anything about a brother and
18 to regard, or pay regard only to what there may be testimony
19 that skip Sheppard said about himself or about what he, skip
20 Sheppard, did. And that comment or statement about the
21 brother is stricken from the record and will be disregarded.
22 I'll ask you, Mr. White, if you would, please, to
23 address your answers only to things that Skip Sheppard said
24 and said he did and not others.

25 THE WITNESS: Okay.

1 Q. (By Mr. Becker:) Now, what did, did Skip Sheppard say
2 anything about being at that construction site on times
3 before the explosion?

4 A. Yes, he did.

5 Q. What did he say?

6 A. He said that he was there approximately about a month
7 before, that he was around a bulldozer, that he was casing
8 the place, waiting for the guard to leave a specific area
9 that he was going to try to break into. That that went on
10 for some period of time, that he was in and around a
11 bulldozer. And that subsequently time passed, that he got
12 frustrated because he wasn't able to approach the place that
13 he wanted to break into, and that he vandalized a bulldozer.

14 Q. Did he say what he did to the bulldozer?

15 A. He said that he took some rocks and some dirt and put it
16 inside, I believe it was a transmission.

17 Q. Now, in talking about the night of the explosion, did
18 Skip Sheppard say why they were going, why he was going to
19 the construction site?

20 A. Yes, he did. It was to steal some tools.

21 Q. Did he say what, did he describe the weather that night?

22 A. I believe that he said something, you know, it was kind
23 of cold. Other than that, not any great detail.

24 Q. Did he tell you, then, how he got to the construction
25 site?

1 A. He said that he and another person drove to the
2 construction site.

3 Q. Did Skip Sheppard say what they did with the car or
4 vehicle, whatever it was?

5 A. Left it off the site, that **they** hid down around the
6 railroad tracks at first.

7 Q. Now, have you ever been to this construction site here
8 in Kansas City, Missouri, on the south side of 71 Highway?

9 A. No, sir.

10 Q. Have you ever been shown a map by anyone of this
11 construction site at 71 Highway?

12 A. No, sir.

13 THE COURT: I'm sorry, what was your answer?

14 THE WITNESS: No, sir.

15 Q. (By Mr. Becker:) Have you ever seen an aerial
16 photograph of this construction site?

17 A. No, sir.

18 Q. Did Skip Sheppard say what happened, then, when he was
19 near those railroad tracks?

20 A. He said that **they** waited there for a period of time with
21 one other person, and then other people came, and **they** were
22 waiting for the guard to leave the specific area so that **they**
23 could break into a trailer.

24 Q. Did Skip Sheppard say if he could see the guard?

25 A. Yes. He said that he could see this guard. Now, it

1 wasn't all the time that he saw the guard this particular
2 night.

3 Q. Did Skip Sheppard talk about a diversion at all?

4 A. Yes. The guard stayed around the area so much that
5 later on, **they** decided that **they** needed to create a diversion
6 to pull the guard away from the site that **they** wanted to rob,
7 break into.

8 Q. What did Skip Sheppard say happened next?

9 A. That a diversion with two other people was created.

10 Q. Did he say what that diversion was?

11 A. It was burning a pickup truck.

12 Q. Did Skip Sheppard say what he did then?

13 A. He said once a diversion was created, **they** went to the
14 trailer that **they** were trying to break into and attempted to
15 break in.

16 Q. Did Skip Sheppard say how they were trying to do this?

17 A. With a small crowbar was one of the things that **they**
18 had.

19 Q. Did -- what did Skip Sheppard say happened next?

20 A. **They** didn't get into the trailer that **they** were trying
21 to break into.

22 Q. Did he say what happened after that?

23 A. Well, he said he became very, very upset, very mad that
24 they'd spent a lot of time, a lot of effort in doing all of
25 this, and subsequently started a fire.

1 Q. Did he say where the fire was?

2 A. On the trailer.

3 Q. What did skip Sheppard say happened after that?

4 A. He said the fire got going very quickly, and he said
5 that **they** had fled the scene.

6 Q. Did he say anything -- did Skip Sheppard say anything
7 about seeing firemen?

8 A. **They** pulled back to, far enough away from the actual
9 fire, the trailer fire, and that firemen did come to that
10 site to try to put out the fire.

11 Q. Did he say, did Skip Sheppard say if he heard the
12 explosion or saw the explosion?

13 A. Yes, he was there present. **They** were a little bit away
14 from where the explosion went off by that time and definitely
15 heard it, definitely saw it.

16 Q. Is that how he expressed it to you?

17 A. Well, he was, he was fairly graphic about the explosion,
18 a lot of smoke, a lot of fire, a lot of pieces of material
19 going up in the air and coming back down.

20 Q. Did Skip Sheppard say where **they** went after that?

21 A. Went to one of the brothers' homes, I think. That's
22 what he said.

23 Q. Did Skip Sheppard talk about who was to blame for these
24 deaths?

25 A. Yes, he did.

1538

1 Q. What did he say?

2 A. Well, that's what disturbed me is, one of the things,
3 that he didn't feel responsible for their deaths, that he
4 felt the firemen had been stupid and killed themselves,
5 basically.

6 Q. Now, you didn't come forward with this information right
7 away, did you?

8 A. Not, I don't know what you mean by right away, but I
9 came forward about as soon as I could.

10 Q. Did you talk to your own attorney about this?

11 A. I talked to my attorney about this.

12 Q. Did your attorney contact the United States Attorney's
13 Office then?

14 A. Yes, he did.

15 Q. And then after that someone came down to Springfield, I
16 believe, and interviewed you?

17 A. Correct, Dave True.

18 Q. Is that where you're currently incarcerated, serving
19 your sentence?

20 A. Yes, I am.

21 Q. Were you, did you ever ask for anything in exchange for
22 your testimony here today?

23 A. No, I didn't.

24 Q. Were you ever promised anything in exchange for your
25 testimony here today?

1 A. No, I wasn't.

2 Q. Now, did you -- you were in jail in St. Clair, Osceola.

3 Did you read about this case in the newspapers at all?

4 A. No, I didn't.

5 Q. Did you hear it on radio or television down in Osceola?

6 A. There was -- late in my stay, there was a small

7 television instance that talked about the statute of

8 limitations, just ten-second deal.

9 Q. And that would have been really in the last few months;
10 is that right? I guess, August or September?

11 A. That was in August, the latter part of August.

12 Q. So the information you've given us, is that all from
13 what you heard from Skip Sheppard?

14 A. Everything that I've given you is from what I heard out
15 of his mouth.

16 MR. BECKER: I have nothing further at this time.

17 THE COURT: All right. Miss Hunt?

19 CROSS-EXAMINATION

20 By Ms. Hunt:

21 Q. Mr. White, my name is Susan Hunt. I represent Skip
22 Sheppard.

23 A. Yes.

24 Q. Did you just talk to the ATF agents on one occasion?

25 A. I talked to Dave True on one occasion. He had another

1 man that was with him the first time was Eugene. I can't
2 remember the last name. And then I talked to, subsequent to
3 that, latter part of December I talked to another agent that,
4 briefly, her name was Joy, and I can't remember the last
5 name.

6 Q. But all the conversations with the ATF agents occurred
7 in December of last year; is that right?

8 MR. PETERS: Excuse me, Your Honor, may we
9 approach?

10 THE COURT: Yeah.

11 (Counsel approached the bench and the following
12 proceedings were had:)

13 MR. BECKER: What's the objection?

14 MR. PETERS: I just didn't want to ask out there.
15 What is the second report?

16 MS. HUNT: It's one report of both?

17 MR. BECKER: Just one. I can't remember her last
18 name either, frankly. She's an agent in Springfield.

19 THE COURT: Is this Joy?

20 MR. BECKER: What's her name?

21 MR. OSGOOD: Branch, isn't it?

22 MR. BECKER: Could be.

23 MS. HUNT: Joy Branch it says right there.

24 MR. BECKER: There it is.

25 MR. PETERS: So they combined the two?

1 MR. BECKER: No. After it was typed up, Joy took
2 it back and asked him to review it so that it was accurate,
3 and then that's the purpose of her going back. She didn't
4 re-interview.

5 THE COURT: So the second contact he's testified
6 to -

7 MR. BECKER: That's an accurate word, contact. It
8 wasn't a re-interview.

9 MR. OSGOOD: Was Gene Harrison with him.

10 MR. BECKER: No. We don't have Gene Harrison on
11 this case.

12 THE COURT: No comment.

13 (The following proceedings were had in open court:)

14 Q. (By Ms. Hunt:) Let's try to clear this up a little
15 bit. You first talked to Dave True and another agent, you
16 can't remember the name; is that right?

17 A. I said his first name was Eugene.

18 Q. Dave True and Eugene, and Dave True is with the ATF; is
19 that right?

20 A. Yes.

21 Q. And that was early December; is that right?

22 A. I think it was on the 6th of December.

23 Q. 1996, last year?

24 A. '96.

25 Q. Okay. And then a week or two later, did another agent

1 from the ATF contact you in the jail?

2 A. I think it was the 23rd, yes.

3 Q. Okay. And did that agent just show you the report that
4 was prepared of your interview?

5 A. Yes, she did.

6 Q. And did you have a chance to read your report?

7 A. Yes, I did.

8 Q. Did you have a chance to make any changes to the report?

9 A. Some very minor changes.

10 Q. Okay. And you communicated those changes to the agent?

11 A. Yes, I did.

12 Q. Okay. And so if you -- have you read your report again
13 today?

14 A. I read it Saturday.

15 Q. Okay. When the two agents came down the 6th of
16 December -

17 A. Yes.

18 Q. -- did they have a tape recorder with them?

19 A. To my knowledge, they might have. I didn't see one.

20 Q. Did they ever ask you if they could tape record this
21 statement?

22 A. I didn't care that they didn't.

23 Q. But they never asked you to; is that right?

24 A. I know they never asked me.

25 Q. And you didn't care if they would have, right?

1

1 A. I didn't care if they would have, no.

2 Q. Because you were cooperating with the government at that
3 point; isn't that right?

4 A. I would assume that you would phrase it that way.

5 Q. But you were providing information to the government?

6 A. Yes.

7 Q. Okay. And if they had a court reporter with them, like
8 this woman, taking down what you said, that wouldn't have
9 bothered you, would it?

10 A. No, it wouldn't.

11 Q. Did they ever ask you to sign an affidavit?

12 A. No, they didn't.

13 Q. And do you know what an affidavit is, something that you
14 sign under oath that is a true and accurate statement?

15 A. They did ask me if that was, once I saw the documents,
16 if that's the very, exactly what I said, and that is.

17 Q. Okay. And the document you're referring to is the
18 report, three-page report of your initial statement to Agent
19 True?

20 A. If you want to hand me that, then I can verify for sure
21 that that's exactly what I've seen.

22 (So done.)

23 A. That is the statement.

24 Q. Just so the record is clear, you reviewed this statement
25 on December 23rd; is that right?

1544

1 A. Yes, I did.

2 Q. And you had a chance to make, you said, some minor
3 corrections to it; is that right?

4 A. Yes. Just like one word or maybe a plural where it was
5 not a plural at the time.

6 Q. Just minor grammatical corrections, basically?

7 A. Yes.

8 Q. Not the content. And then you were shown this report
9 again yesterday, you said?

10 A. On Saturday.

11 Q. And this is an accurate report of that interview?

12 A. Yes, it is.

13 Q. But they never had you sign an affidavit of this report
14 swearing that it's true?

15 A. Not until today.

16 Q. Okay. And they didn't bring a tape recorder?

17 MR. BECKER: Objection. Repetitious.

18 THE COURT: Yeah. I think we have talked about
19 that.

20 MS. HUNT: Okay.

21 Q. (By Ms. Hunt:) Let me ask just one final question on
22 all of that. We don't have today a reflection of what they
23 asked and what you said to listen to or read, do we?

24 MR. BECKER: Objection.

25 THE COURT: Well, I think that's kind of

1 argumentative. I think you can ask him if he's ever seen a
2 transcript of that conversation.

3 Q. (By Ms. Hunt:) Okay. Have you ever seen a verbatim
4 transcript or listened to a verbatim recording of what the
5 agents asked you and what your responses were?

6 A. That is very close to a verbatim transcript or -
7 everything that they asked me was pretty much down on that
8 piece of paper.

9 Q. Okay. Are you still in jail right now?

10 A. Yes, I am.

11 Q. And in Springfield?

12 A. Springfield, Missouri.

13 Q. Is that the uniform you wear in Springfield?

14 A. No, it's not.

15 Q. Where did you get the clothes to wear to court today?

16 A. My mother provided them for me. They're my clothes.

17 Q. Brought them up here?

18 A. Yes.

19 Q. Okay. Have you ever met John O'Connor?

20 A. Fifteen seconds, he came down Sunday of this week.

21 Q. Where were you on Sunday?

22 A. St. Clair County.

23 Q. Osceola, Missouri?

24 A. Jail, yes.

25 Q. Did Mr. O'Connor ask if you would talk -

1546

1 MR. BECKER: I would object. Can we approach on
2 this?

3 THE COURT: Yeah.

4 (Counsel approached the bench and the following
5 proceedings were had:)

6 MR. BECKER: I think counsel are the first ones to
7 assert the rights of individuals to have attorneys and that
8 no inference should be drawn from a refusal to, you know, for
9 a defendant to say anything. And yet the witnesses who
10 decline under their rights to be interviewed by Mr. O'Connor,
11 they're cross-examined on that fact, and presumably for some
12 inference of bias. And it's not, there's no bias just
13 because they refused to speak to Mr. O'Connor when he shows
14 up on their doorstep.

15 MS. HUNT: Well, first of all, unless he's charged
16 in this case, he has no Fifth Amendment right.

17 THE COURT: He didn't say it was Fifth Amendment
18 rights.

19 MS. HUNT: Well, the defendants have rights.

20 THE COURT: He has right to counsel.

21 MR. BECKER: Witnesses have rights to refuse to
22 speak to people.

23 MS. HUNT: That's fine, but I think it does show
24 bias that he refuses to talk to us. I just want to ask him
25 if he talked to us, and he'll say, no, I didn't want to, and

1 then I'm done.

2 MR. O'CONNOR: The only thing I was going to say
3 is, just for the proper foundation, is when I got up there, I
4 told him who I was and that I wanted to talk to him about the
5 facts of this case, and he said he wouldn't answer any
6 questions. So I asked if in court he would say I told you my
7 purpose of being here, that you knew who I was and what I was
8 about, as opposed to you didn't know who the hell I was. He
9 said he would, and that's the end of the conversation.

10 THE COURT: You may ask him that, and let's go on.

11 (The following proceedings were had in open court:)

12 Q. (By Ms. Hunt:) Mr. O'Connor came to see you Sunday in
13 St. Clair County Jail?

14 A. Yes, he did.

15 Q. Which is in Osceola; is that right?

16 A. 7 o'clock in the morning.

17 Q. Did Mr. O'Connor introduce himself to you?

18 A. Yes, he did.

19 Q. Did he tell you he was there to talk to you about this
20 case?

21 A. Yes, he did.

22 Q. And did you refuse to talk to him?

23 A. I didn't talk to him.

24 Q. Did you say, "I don't want to talk to you"?

25 A. I said that.

1548

1 Q. Okay. Let's go back to the beginning of your direct
2 testimony. You were talking about prior criminal history.

3 A. Okay.

4 Q. I believe you said in 1991 you had a mail fraud
5 conviction; is that correct?

6 A. Correct.

7 Q. And what court was that in?

8 A. It was in the Western District of Missouri at
9 Springfield, Missouri.

10 Q. Okay. Federal court?

11 A. Federal court.

12 Q. Did you plead guilty or did you go to trial?

13 A. I pled guilty.

14 Q. And what sentence did you receive?

15 A. Twenty-seven months.

16 Q. Okay. Then I believe you said in 1996 you had another
17 conviction in federal court?

18 A. Correct.

19 Q. Is that also in Springfield?

20 A. Correct.

21 Q. And that conviction was for tampering with witnesses; is
22 that correct?

23 A. Correct.

24 Q. How many counts of conviction?

25 A. Five.

1549

1 Q. Did you also -- well, did you plead guilty or went to
2 trial on that case?

3 A. We went to trial.

4 Q. And you were convicted by a court and the jury?

5 A. Convicted.

6 Q. And the judge sentenced you to how many months
7 incarceration?

8 A. Forty-six, as I've testified already.

9 THE COURT: Forty-six?

10 THE WITNESS: Forty-six.

11 Q. (By Ms. Hunt:) Isn't it true that he sentenced you to
12 36 months and 10 months for a supervised release violation?

13 A. That's a more technical way of looking at it. I'm
14 serving 46 months.

15 Q. The violation you received a ten-month sentence on was
16 for what?

17 A. The same thing.

18 Q. okay. So it would be another witness tampering charge?

19 A. No. It was because that I had had a previous conviction
20 and that I was still under supervised release.

21 Q. What was the previous conviction?

22 A. The mail fraud.

23 Q. Did you ever have another supervised release revocation?

24 A. Yes, I did.

25 Q. What was that for?

1 A. For helping prostitutes.

2 Q. Promoting prostitution?

3 A. Correct.

4 Q. Did you receive time on that violation?

5 A. Ten months.

6 Q. And that was also in federal court; is that right?

7 A. Correct.

8 Q. Did you have any State convictions?

9 A. Did I have any what?

10 Q. State convictions.

11 A. No, sir. No, ma'am.

12 Q. Did you ever plead guilty to a state charge or went to
13 trial on a state charge?

14 A. That I received a conviction on -

15 MR. BECKER: Objection.

16 MS. HUNT: I want to rephrase the question.

17 THE COURT: The question has been withdrawn, as I
18 understand it; is that right?

19 MS. HUNT: That's correct.

20 MR. O'CONNOR: Judge, I think we need to approach.

21 THE COURT: All right.

22 (Counsel approached the bench and the following
23 proceedings were had:)

24 MR. BECKER: Now, the witness has informed me that
25 he has a prior conviction that was vacated on appeal in the

1 state system. Is that what we're talking about?

2 MS. HUNT: We found a couple of priors.

3 MR. O'CONNOR: The one I had was out of Wright
4 County, was a conviction for -

5 MS. HUNT: It was a bad check.

6 MR. O'CONNOR: We've got the certified copies.
7 We've got some stuff here. There's more than one, I think
8 stealing a motor vehicle out of Wright County, 8/4 of '83,
9 three years. I think this is probably the one that got
10 vacated in Greene County on burglary and assault.

11 MR. BECKER: It was absolutely Greene County that
12 was vacated on appeal.

13 THE COURT: Don't go into the Greene County.

14 MR. BECKER: The other one is 1983, which is more
15 than ten years old; thus, under Rule 609 it's not generally
16 to be inquired about. The rule clearly has a time limit.

17 MR. O'CONNOR: This is the one that was vacated,
18 Paul?

19 MR. BECKER: Correct.

20 THE COURT: 609 you're talking about?

21 MR. BECKER: I believe so, Judge, yes. And (b),
22 Your Honor, I would call your attention to. Ten years.

23 THE COURT: 609(b)? Yeah, I don't think this is
24 one of the exceptional cases. It doesn't seem to be related
25 to this kind of conduct.

1 MR. O'CONNOR: Any others?

2 MS. HUNT: I don't have any others.

3 (The following proceedings were had in open court:)

4 Q. (By Ms. Hunt:) At the time Mr. Sheppard talked to you
5 in the St. Clair County Jail -

6 A. Yes.

7 Q. -- you had been convicted in federal court but had not
8 been sentenced; is that right?

9 A. I was in the process of being sentenced.

10 Q. But the judge had not actually imposed a sentence at
11 that time, had he?

12 A. Yes, he had.

13 Q. When did the judge impose a sentence in your conviction?

14 A. August the 12th.

15 Q. And when did these conversations with Mr. Sheppard
16 occur?

17 A. Well, they comprised themselves basically when I entered
18 the cellblock until the time that I left.

19 Q. And when did you leave?

20 A. It was during that whole time frame.

21 Q. When did you leave the St. Clair County Jail?

22 A. I believe you have the more accurate record of it there
23 that he just read.

24 THE COURT: There's the exhibit, counsel.

25 Q. Do you know when Mr. Sheppard left the St. Clair County

1 Jail?

2 A. I left first, so I wouldn't have any real idea as to
3 when he left.

4 Q. Who is the codefendant that Mr. Sheppard -- strike
5 that. You testified on direct that Mr. Sheppard came to you
6 because your codefendant told him you had some legal
7 knowledge; is that right?

8 . Yes.

9 . And who was that codefendant?

10 . Randy Carter.

11 . Have you had formal training in the law?

12 . I've had a few law courses in college.

13 Q. You've not been to law school?

14 . I have not been to law school.

15 Q. You've not been to a paralegal school, have you?

16 A. No.

17 Q. Did you tell Mr. Sheppard that, when you first talked to
18 him that you don't really have any formal training in the
19 law?

20 A. Yes, I told him that I helped other inmates in their
21 2255's and things like that.

22 Q. So you drafted pro se petitions for other inmates?

23 A. Helped in that.

24 Q. So you're like a jail house lawyer; is that right?

25 A. I wouldn't consider myself that, but I've helped.

1554

1 Q. These 2255's you helped other inmates on, did that occur
2 while you're in jail?

3 A. You have to understand that a lot of inmates help other
4 inmates.

5 Q. Sir, my question was -

6 MR. BECKER: Allow him to answer.

7 THE COURT: I don't think he was really answering
8 the question. She asked when it occurred, and you might
9 rephrase it.

10 Q. (By Ms. Hunt:) Those occasions when you helped other
11 inmates with 2255 petitions or motions occurred while you
12 were also incarcerated; is that correct?

13 A. Correct.

14 Q. okay. Mr. Sheppard told you that he was up at the
15 construction site stealing tools; is that correct?

16 A. Correct.

17 Q. And you told the ATF that he identified some tools that
18 had been stolen previously?

19 A. Correct.

20 Q. And one of those tools you identified specifically was
21 the acetylene torch setup; is that correct?

22 A. Correct.

23 Q. What other tools did he tell you he was stealing?

24 A. There were, they appeared to be mainly hand tools, that
25 type of stuff, whatever they could get their hands on.

1 Q. okay. Did he give you any specific names like hammers,
2 screwdrivers?

3 A. He just said tools at that point.

4 Q. But he specifically said an acetylene torch, though?

5 A. That was one of the things that **they** had taken from one
6 of the construction sites that **they** had burglarized.

7 Q. Did he describe this construction site to you during
8 this conversation?

9 A. Not in any great detail.

10 Q. Did he describe to you where the bulldozers were
11 located?

12 A. You mean the bulldozer on the specific day?

13 Q. Yes.

14 A. Of course, the bulldozer would probably be moved from
15 day to day, so -

16 Q. okay. Did he describe to you where the bulldozer that
17 he put the rocks and the dirt in the transmission, did he
18 describe where that was located on the construction site?

19 A. He didn't -- I didn't have any physical idea whether it
20 was in the center of the construction site, at the edge of
21 the construction site, or what. He just said that that's a
22 place that he was using for a vantage point to look at these
23 trailers, case these trailers.

24 Q. Okay. He said he was standing by or in the close
25 vicinity of the bulldozers to watch these trailers?

1 A. Yes, and he was also on the bulldozer.

2 Q. Okay. And while he was standing by this bulldozer or on
3 it, did he see the security guards? Or security guard, I'm
4 sorry.

5 A. He was looking for them, yes.

6 Q. I think you testified that he observed a security guard;
7 is that correct?

8 A. He felt that he couldn't go to the site that he wanted
9 to break into, and that's what frustrated him. He saw either
10 security guards or other personnel around where he was trying
11 to break into.

12 Q. Okay.

13 A. He didn't say what time of day it was or what time of
14 night it was or anything like that.

15 Q. Did he say that he wanted to break into the trailers to
16 get tools; is that right?

17 A. That's correct.

18 Q. okay. And so I think you testified on direct that he
19 cased the construction site several days before this incident
20 occurred; is that correct?

21 A. Well, one incident that he mentioned in particular was
22 this time frame that he vandalized the bulldozer, yes.

23 Q. Okay. And he was there on other occasions standing by
24 the bulldozer area and looking at these trailers; is that
25 right?

1 A. I believe that to be correct.

2 Q. Okay. Did he tell you on the night of the explosion
3 that he went there specifically to steal a transit?

4 A. That was one of the things that he mentioned that **they**
5 had hoped to be able to steal, yes.

6 Q. Did he tell you that he had seen the transit on that
7 site before that night?

8 A. Yes, he did.

9 Q. Can you describe what a transit is?

10 A. A transit is an optical device to, that's usually on a
11 tripod. It's got like a little telescope.

12 Q. Is it a device that surveyors use quite a bit in their
13 work?

14 A. That's what it's used for.

15 Q. Did he tell you he got the transit that night?

16 A. No, he didn't.

17 Q. And he told you that he thought the tools that he wanted
18 to steal were in the trailer; is that right?

19 A. That's correct.

20 Q. But the transit was not located in the trailer, was it?

21 A. I don't know whether it was or not. He said he didn't
22 get in.

23 Q. Did he tell you he saw, physically observed the transit
24 on the site?

25 . Yes.

1558

1 Q. Okay. Did he say he saw a woman arrive and then left
2 the area at one point?

3 A. She arrived with the guard.

4 Q. And did he tell you he never saw that particular woman
5 before at that site?

6 A. That's correct.

7 Q. And then he tells you that he went up to this trailer;
8 is that right?

9 A. Yes.

10 Q. And he had his small crowbar, I think you said, about
11 eighteen inches long with him?

12 A. Correct.

13 Q. And he began to pry the trailer doors open; is that
14 right?

15 A. Yes.

16 Q. Did he describe the trailer to you in any detail?

17 A. No.

18 Q. He did not tell you what he used to set the fire, did
19 he?

20 A. No.

21 Q. And he told you that he remained in the vicinity and
22 watched the firemen arrive, didn't he?

23 A. He was close enough, yes, to see the firemen arrive.

24 Q. And I think you told the ATF that Mr. Sheppard told you
25 he was only able to escape because of the confusion the

1 explosion caused; isn't that right?

2 A. To avoid detection, he was away from the blast itself.

3 Q. Did he discuss with you his defense in this case?

4 A. To some degree.

5 Q. Did he tell you he was going to present an alibi

6 defense?

7 A. That was one of the things that he asked me about.

8 Q. And he told you that his mother was going to provide his

9 alibi defense, didn't he?

10 A. That was one possibility.

11 Q. He was depending on his mother, wasn't he?

12 THE COURT: I'm sorry, Miss -

13 Q. He was depending on his mother to provide an alibi

14 defense; isn't that correct?

15 A. I don't know whether that was his full defense or not.

16 Q. But he did mention that part to you?

17 A. On one particular day he did.

18 Q. Did he ever describe this trailer, or do you have an

19 understanding of what this trailer looked like from these

20 conversations?

21 A. He never described the trailer in any great detail.

22 Q. Did he describe the location of the trailer in any

23 detail at all?

24 A. On the construction site.

25 Q. Okay. And he told you he drove close to the site that

1 night and parked a vehicle; is that right?

2 A. He didn't use the word close.

3 Q. Did he say he drove to the site?

4 A. He just said **they** drove in an area that was far enough
5 away that I guess the car wouldn't be detected by anyone.

6 Q. So somewhere in the vicinity of the construction site he
7 parked the vehicle?

8 A. Yes.

9 Q. And he told you after this explosion occurred he went to
10 his brother's house; is that correct?

11 A. Correct.

12 Q. I think you testified on direct you had employment as a
13 real estate agent and a rancher?

14 A. Yes, I have.

15 Q. Did you also earn money promoting prostitution?

16 A. No, I didn't.

17 Q. Were you sentenced to ten months for promoting
18 prostitution in Springfield?

19 A. Yes, I was.

20 Q. They have television sets in St. Clair County Jail,
21 don't they?

22 A. Yes, they do.

23 Q. And inmates are allowed to watch the TV, aren't they?

24 A. Yes, they are.

25 Q. Are you aware there's a reward out in this case?

1 A. No, I'm not.

2 MS. HUNT: That's all I have.

3 THE COURT: Mr. Peters?

4 MR. PETERS: May it please the Court.

6 CROSS-EXAMINATION

7 By Mr. Peters:

8 Q. Mr. White, my name is Pat Peters and I represent **Frank**
9 Sheppard. I'd like to ask you some questions about what goes
10 on in a prison or a jail in terms of discussions among
11 inmates. And if at any time my question's wordy or
12 something, stop me and let me know.

13 What I want to ask, we won't use a term like jail
14 house lawyer, but is it fair to say that some people in
15 different institutions attract other defendants towards them
16 because they have a certain degree of expertise in filing
17 motions or giving some sort of advice? Is that fair to say?
18 A. Yes, it is.

19 Q. And in Springfield and St. Clair, you were one of those
20 individuals that because of your education and experience
21 with the system, people would come to you with questions or
22 ask your advice on different legal matters; is that fair to
23 say?

24 A. I would say more it's into a situation of discussions.

25 Q. And it's not at all uncommon in those discussions that

1 you're describing for you to ask or for the other person to
2 say what the evidence is against them in a particular case,
3 what's the government got on you, those sorts of questions,
4 correct?

5 A. Yes.

6 Q. And so what you would routinely hear in these sorts of
7 discussions is, well, the government has these witnesses who
8 are going to say this stuff about what went on regarding the
9 crime; isn't that correct?

10 A. Well, that's speculation, yes. I think it's -- you
11 know, you're not talking in any specifics yet.

12 Q. So isn't the routine practice in a prison system where
13 people are -- strike that.

14 It is not unknown within the prison system that
15 certain individuals will snitch on other individuals in
16 exchange for benefits from the government?

17 MR. BECKER: Objection.

18 THE COURT: I don't think that's material. I'll
19 sustain that objection.

20 Q. (By Mr. Peters:) Sir, from your experience, is it
21 common in prison for people to come up and confess prior to
22 trial to other inmates in the facility?

23 MR. BECKER: Objection as to what's common and not
24 common. He can ask about what happened here or has it
25 happened to him before or -

1563

1 THE COURT: It sounds like you're asking for his
2 opinion, wasn't that unusual, and I don't think that opinion
3 is germane. I'm going to sustain that objection.

4 Q. (By Mr. Peters:) While you were in prison, sir, how
5 many individuals did you have come up to you awaiting trial
6 and confess to you their involvement in a case? How many
7 times has that happened for you?

8 A. It has happened, yes.

9 Q. My question was how many times has that happened?

10 A. Pretrial?

11 Q. Yes.

12 A. Well, that would be more in the county jail situation.
13 I'm going to say about four times.

14 Q. And how many times have you had someone come to you in a
15 jail setting and tell you what the government's evidence is
16 against them without confessing to the crime?

17 A. Again, I think you're relying on too much of whether or
18 not the person is, quote, confessing. I think this is more
19 of the case of discussions as to what happened.

20 Q. How many times have you had someone come to you and
21 carry on a discussion about what the government's evidence is
22 against them?

23 A. Several.

24 Q. Dozens. Would that be fair to say?

25 MR. BECKER: Objection. That mischaracterizes the

1 answer.

2 THE COURT: He didn't say dozens, he said several.

3 I don't think several means dozens.

4 Q. (By Mr. Peters:) Sir, what do you mean, several?

5 A. Five, seven, that range.

6 Q. And what I want to ask you about is the distinction
7 between someone saying "I did it" versus someone saying "here
8 is what the government said I did." Do you understand the
9 distinction I'm going to be drawing here?

10 A. Yes, I do.

11 Q. Okay. Can you tell the jury -- strike that. Is there
12 any way, absent a tape recording or a video statement, for
13 someone to know if what you are recounting today is what
14 **Frank** Sheppard told you he did or what **Frank** Sheppard told
15 you the government's case was?

16 MR. BECKER: Objection.

17 THE COURT: Just a minute, Mr. White.

18 MR. BECKER: I would object. It's argumentative,
19 it calls for speculation.

20 THE COURT: Anyway, it's speculative. I'll sustain
21 that.

22 Q. (By Mr. Peters:) Sir, in the statement that you gave to
23 Dave True -- excuse me. It's not a statement. In this
24 report of interview conducted on December 6, 1996, with
25 Special Agent Dave True, you've told us you've had an

1 opportunity to review this; is that correct?

2 A. Yes, I have.

3 Q. Okay. Now, your discussions with Skip Sheppard began on
4 August 12th, 1996; isn't that correct?

5 A. They didn't actually begin at that point in time. I had
6 other discussions with him. This is one that I took notes
7 on.

8 Q. And you've had a chance to review your interview. Is it
9 correct that for a period of time beginning on August 12th,
10 1996, in the St. Clair County Jail that you had discussions
11 with Skip Sheppard?

12 A. The word beginning is -- I had talked to him at previous
13 times.

14 Q. When you reviewed this statement and made grammatical
15 corrections and corrections between singular and plural, did
16 you make a correction to the statement for a period of time
17 beginning on August 12th, 1996? Did you make that
18 correction?

19 A. I think that the statement reflected the types of
20 conversations that we had. It was a, at this point in time,
21 they were actually talking about his particular case.

22 Q. Did you tell the agents that your conversations began
23 with Skip Sheppard prior to August 12th, 1996?

24 A. Yes.

25 Q. But the discussions of admissions began on August 12th,

1 1996. Is that what -- is that correct?

2 A. I think that what you want is that, the fact that I had
3 talked to Skip Sheppard prior to August the 12th, 1996, I had
4 talked to him. And the discussions started to revolve around
5 his specific case at that time frame until the time that I
6 left the county jail.

7 Q. Sir, did you tell the agents that this was a general
8 time frame, or did you tell the agents that at a time
9 beginning on August 12th, 1996, is when these discussions
10 began?

11 MR. BECKER: objection. May we approach?

12 THE COURT: Yes.

13 (Counsel approached the bench and the following
14 proceedings were had:)

15 MR. BECKER: And it was not accurately read. What
16 the sentence stated is for a period of time, which reflects
17 this witness's -

18 THE COURT: Beginning August 12th.

19 MR. PETERS: Right.

20 MR. BECKER: If counsel would say for a period of
21 time, which I think connotes an ongoing discussion, which is
22 what this witness has testified to, but counsel has stated as
23 on, at a time of August 12, 1996, I mean, saying that it was
24 just specifically that day.

25 THE COURT: Why don't you just read that sentence

1 in the report and say is that accurate.

2 MR. PETERS: Okay. I'll do that.

3 MR. O'CONNOR: Paul, while we're here. I may ask
4 some questions, and I wanted to run them by the Court before
5 I did. I have a motion that was filed in his case by the
6 United States Government to move for upward departure on
7 him. As a result of the sentence that he received in this
8 case, there was an upward departure motion filed by the
9 United States Attorney's Office in Springfield, and they made
10 certain statements in the upward departure motion that I
11 would like to inquire about.

12 For example, the Court has already ruled about the
13 insurance fraud. That was the conviction that Mr. Becker was
14 talking about, that it was reversed for improper venue. But
15 in his sentencing up there, they asked the judge to consider
16 it because it didn't follow the facts or circumstances of the
17 case. So I want to get into that, but you've already ruled
18 that as to the date, so I'm not going to do that.

19 I want to explore with him this prostitution
20 business because I believe that he has not been quite upfront
21 about that. Go ahead.

22 MR. BECKER: I haven't seen this document, but
23 counsel has highlighted portions where he's, the defendant
24 agreed that he was guilty of promoting prostitution. We've
25 covered that.

1568

1 THE COURT: I thought he said that.

2 MR. O'CONNOR: Did he say that to you?

3 THE COURT: He said that.

4 MR. BECKER: Miss Hunt asked him that. He said he
5 did it.

6 MR. O'CONNOR: The next one was that the government
7 said since '83 this defendant has persistently engaged in
8 criminal activity involving fraud and witness tampering.

9 I would like to ask him that, and the reason for
10 that is to show that he has the bias toward the government.
11 He wants to help the government because the government is not
12 happy with him and they filed this downward departure motion.

13 MR. BECKER: It's upward departure motion, not
14 downward departure motion.

15 MR. O'CONNOR: Right. They're mad at him, they
16 moved to upward depart, and he wants to get in the good
17 graces of the government.

18 MR. BECKER: It's already been ruled on.

19 THE COURT: Is that motion pending?

20 MR. O'CONNOR: No. It's been ruled on.

21 THE COURT: Okay. I don't think that's fair.

22 MR. O'CONNOR: Okay. And this part that the
23 defendant poses a significant threat to re-offend and the
24 likelihood that he would commit crimes in the future, I want
25 to get into that area.

1 THE COURT: I don't want you to get into that.

2 MR. O'CONNOR: I've made my record.

3 (The following proceedings were had in open court:)

4 THE COURT: All right. Mr. Peters.

5 MR. PETERS: Thank you, Judge.

6 Q. (By Mr. Peters:) Sir, didn't you tell Special Agent

7 True that you were incarcerated with Skip Sheppard for a
8 period of time beginning on August 12th, 1996, in the St.
9 Clair County Jail at Osceola, Missouri?

10 A. No.

11 Q. So that if that is in the report, that is in error?

12 A. That was part of the time. I was there with him before
13 that time. It's in the records with, the county jail
14 records.

15 Q. Again, sir, I'm going to show you -

16 THE COURT: I'm sorry. Can we see that just a
17 minute? I'm a little confused now myself.

18 (Counsel approached the bench and the following
19 proceedings were had:)

20 THE COURT: Well, you can show him that and see if
21 it's an accurate reflection. That's all we can do with it.

22 MR. BECKER: But he hasn't said -- he doesn't have
23 a bad memory. And he's been read the sentence, and he says
24 it's not accurate.

25 THE COURT: I guess that's right. I guess you'll

1570

1 have to use the officer.

2 (The following proceedings were had in open court:)

3 Q. (By Mr. Peters:) So the part in here that, referring to
4 August 12th, 1996, is inaccurate; is that correct?

5 A. Which part are you referring to?

6 Q. For a period of time beginning on August 12th, 1996, in
7 the St. Clair County Jail, Osceola, Missouri, your testimony
8 is that that is inaccurate, that it's a time period beginning
9 on August 12th?

10 MR. BECKER: Read the whole sentence.

11 THE COURT: No.

12 Q. (By Mr. Peters:) Let me read the whole sentence again.

13 THE COURT: Read the whole sentence and see if it
14 can be -

15 Q. (By Mr. Peters:) Is this sentence accurate? Quote,
16 "White said he was incarcerated with Earl Skip Sheppard for
17 a period of time beginning on August 12th, 1996, in the St.
18 Clair County Jail at Osceola, Missouri." Is that correct?

19 A. Sir, the records of the county jail reflect the time
20 frame that I was in the county jail. I was in there, Skip
21 was in there. We were in there at that time frame. I had
22 been in there previous to that time. What that sentence
23 refers to is that is the beginning of the time frames that we
24 talked of the actual events that happened in 1988.

25 Q. So August 12, 1996, is the beginning of the time frame

1 where Skip Sheppard is telling you about events that happened
2 in 1988; is that correct? August 12th is the beginning of
3 that?

4 A. The beginning of the conversations, yes.

5 Q. And August 12th, 1986, is also the date that you were
6 sentenced on your federal charges; is that correct?

7 A. Now, you're talking about '86? You said '86.

8 Q. I'm sorry, August 12th, 1996. That was the date that
9 you were sentenced on your federal charges; is that correct?

10 A. Yes, that is true.

11 Q. I want to ask you some questions about language. Is it
12 your testimony that this defendant used the word transit in
13 discussions with you?

14 A. Yes, he did.

15 Q. Did he describe a transit as an optical device?

16 A. He used the word transit. It is an optical device.

17 Q. Is it your testimony that this defendant used the word
18 diversion with you?

19 A. Yes, he did.

20 Q. Your testimony -- am I correct that this, what was
21 described to you by Skip Sheppard was a location that had
22 been cased for about a month in advance; is that correct?

23 A. He said that he had been there several different
24 occasions before that, even before the month and right up
25 until the time of this explosion.

1 Q. So for more than a month, Mr. Sheppard is telling you
2 that he was aware of this location and just aware of it?

3 A. He had been on it.

4 THE COURT: Just a minute, Mr. White.

5 MR. PETERS: Let me withdraw that.

6 THE COURT: All right.

7 Q. (By Mr. Peters:) In layman's terms, was Mr. Sheppard
8 telling you that he knew the location or that this was a
9 place that he planned to do some stealing from?

10 A. This was a location that he planned to do some stealing
11 on, from.

12 Q. okay. And your testimony is that Mr. Sheppard then on
13 the night of November 28th, morning of November 29th, 1988,
14 that he went to this location to break into trailers; is that
15 correct?

16 A. Trailer.

17 Q. In the execution of this plan, did he tell you whether
18 or not they took bolt cutters with them?

19 A. Evidently **they** didn't. He didn't mention them.

20 Q. Did they take any devices to break locks open that
21 you're aware of?

22 A. **They** took a crowbar. He might have been able to use
23 that to break this lock. I didn't see that -- I didn't know
24 what type of lock it was, whether it was an easy lock to
25 break or whether it was hard.

1 Q. Did they take gasoline with them, did he tell you that?

2 A. He did not tell me that **they** took gasoline with -- when
3 you mean them, who are you referring to?

4 Q. I'm asking you if Skip Sheppard told you that he or
5 anybody else took gasoline with them that night.

6 A. I've been instructed by the Court to not to talk about
7 other people other than Skip, or Earl Sheppard.

8 Q. I'm asking you whether Skip told you whether he or any
9 other person took gasoline up there that night.

10 THE COURT: All right. Come up, counsel.

11 (Counsel approached the bench and the following
12 proceedings were had:)

13 MR. PETERS: Judge, all he has to say is that he
14 told me that another person did, if that's his answer.

15 THE COURT: All right.

16 MR. O'CONNOR: I'm going to object to that because
17 I don't think he knows that, based on what he just said he
18 said. I thought I wasn't supposed to say, so I think he's
19 getting ready to say a name.

20 THE COURT: I'll tell him not to say a name. If
21 the man said a person, then just use the generic, a person.

22 MR. O'CONNOR: Thank you.

23 MR. BECKER: And I would -

24 THE COURT: This guy may even understand what
25 generic means.

1574

1 MR. O'CONNOR: He would be the only one that does.

2 MR. BECKER: And again, I would object to the
3 cross-examination as repetitious. I know the Court is
4 allowing each counsel to cross-examine, but this witness
5 never said one word about **Frank** Sheppard.

6 THE COURT: That's true.

7 MR. O'CONNOR: We're at the lunch hour too.

8 MR. PETERS: I have about two more questions,
9 Judge.

10 THE COURT: Let's go.

11 (The following proceedings were had in open court:)

12 Q. (By Mr. Peters:) Sir, did Skip Sheppard tell you that a
13 diversion was set by setting fire to a pickup truck across
14 the street?

15 A. Yes, he did.

16 MR. PETERS: I have no further questions.

17 THE COURT: All right. Mr. Bunch?

18 MR. BUNCH: No questions, Your Honor.

19 MR. O'CONNOR: No questions.

20 MR. OSGOOD: No questions.

21 THE COURT: Okay. Any redirect, Mr. Becker?

22 MR. BECKER: No, Your Honor.

23 THE COURT: All right, Mr. White. Thank you.
24 You're excused.

25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: Okay. Folks, we'll take our lunch hour
2 now. I'll ask you to be back in the jury room, please be
3 back in the jury room at 1:45.

4 Don't talk about the case or allow anyone to talk
5 about it in your presence. You're excused.

6 (The following proceedings were had in the
7 courtroom out of the presence of the jury:)

8 THE COURT: We skipped Mr. Whitelaw on your list
9 this morning. Is he not coming?

10 MR. BECKER: He wanted to consult with his
11 attorney.

12 ATTORNEY LANCE HALEY: Your Honor, may I approach
13 the bench?

14 MR. BECKER: That's his attorney. That's Mr.
15 Haley, Lance Haley.

16 ATTORNEY LANCE HALEY: I'm sorry I don't have a tie
17 on, but they summoned me down here from the office this
18 morning, and this is the way I was dressed today.

19 THE COURT: Do you have to make a private record on
20 this?

21 ATTORNEY LANCE HALEY: I probably need to talk to
22 Mr. Becker in respect to something that we're going to
23 request.

24 THE COURT: Why don't you talk with Mr. Becker, and
25 then if you need to take anything up with the Court, we'll do

1576

1 it just before we reconvene after lunch.

2 ATTORNEY LANCE HALEY: Thank you, Your Honor.

3 THE COURT: All right. We'll be in recess.

4 MR. O'CONNOR: Judge, what time are we going to
5 start back?

6 THE COURT: 1:45.

7 MR. O'CONNOR: Thank you.

8 (A recess was taken from 12:25 p.m. to 1:53 p.m.)

9 THE COURT: Okay. Have you discussed, you all
10 discussed with the lawyers who your next witness is, and do
11 you have anything to take up with me before that?

12 MR. BECKER: I think we're ready to go, Judge.

13 THE COURT: I'm sorry. I didn't write down the
14 lawyer's name.

15 MR. BECKER: It was Lance Haley, Mr. Haley, and he
16 informed me that his client is ready to testify.

17 THE COURT: His client is?

18 MR. BECKER: Michael Whitelaw.

19 THE COURT: Okay. Fine. Let's go, then. Get the
20 jury, please.

21 (The following proceedings were had in the
22 courtroom in the presence of the jury:)

23 THE COURT: All right, folks. You may swear the
24 witness.

MICHAEL WHITELAW,

1
2 having been affirmed under the penalties of perjury,
3 testified as follows:
4 THE COURT: Okay.

6 DIRECT EXAMINATION

7 By Mr. Becker:
8 Q. Good afternoon. Please state your name and spell your
9 last name.
10 A. Michael Whitelaw, W-H-I-T-E-L-A-W.
11 Q. How old are you, sir?
12 A. Thirty-four years old.
13 Q. Are you currently incarcerated?
14 A. Yes, I am.
15 Q. Where are you serving your sentence?
16 A. Greenville, Illinois.
17 Q. What are you in jail for?
18 A. Possession with intent to distribute cocaine, and
19 firearms charge.
20 Q. How long is your sentence?
21 A. Twenty-five years.
22 Q. In February -- in 1995, from February through July,
23 where were you?
24 A. I was on bond at Dismas House, which is a federal
25 holding facility in Kansas City.

1 THE COURT: What's your date, again, counsel?

2 MR. BECKER: Sure. It would be February '95
3 through July '95.

4 THE COURT: Thank you. And at that time you were
5 in Dismas House?

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: Where is that?

8 THE WITNESS: 3126 Forest.

9 THE COURT: All right.

10 MR. BECKER: And pursuant to that, Judge, pursuant
11 to the stipulation entered into between the parties regarding
12 business records, I would offer Government's 399 into
13 evidence.

14 MS. HUNT: No objection.

15 THE COURT: Any problem with that? All right.
16 Hearing no objection, 399 is admitted.

17 **(Government's Exhibit 399 was admitted into**
18 **evidence.)**

19 MR. PETERS: No objection.

20 THE COURT: Okay. Hand that up to the clerk, would
21 you, please?

22 All right. Thank you, Anne. You may hand that
23 back to him.

24 MR. BECKER: Thank you, Judge. With the Court's
25 permission, I'd like to read this to the jury.

1 THE COURT: All right.

2 MR. BECKER: It's a letter from Dismas House.

3 To whom it may concern. This letter is to confirm
4 the placement dates at Dismas House of Kansas City for the
5 following: Michael D. Whitelaw, Earl Skip Sheppard.

6 Mr. Whitelaw was a pretrial placement under the
7 supervision of the pretrial division of the U.S. District
8 Court of the Western District of Missouri from February 28,
9 1995, through July 13, 1995.

10 Mr. Sheppard was a pretrial placement under the
11 supervision of the pretrial division of the U.S. District
12 Court of Western Missouri from April 28, 1995, through July
13 4, 1995.

14 Q. (By Mr. Becker:) So Mr. Whitelaw, you would have been
15 at the Dismas House from the end of February through July 13
16 of 1995; is that right?

17 A. Yes, sir.

18 Q. While you were there, did you meet an individual by the
19 name of Skip Sheppard?

20 A. Yes, I did.

21 Q. Do you see him here in court today?

22 A. He's the guy in the burgundy with the sunglasses.

23 Q. Now standing up?

24 A. Yes, he is.

25 MR. BECKER: Okay. Indicating Defendant Skip

1580

1 Sheppard, Your Honor.

2 THE COURT: All right.

3 Q. (By Mr. Becker:) Could you briefly, how big is Dismas
4 House, how many individuals are there?

5 A. It varies. You know, when I was there, it was between
6 probably 85, 90 people. There are three floors: The women
7 on the bottom floor with the office staff; second floor is
8 the guys, the TV room; and the third floor is guys also.

9 Q. How is it that you came to talk to or know Skip Sheppard
10 while you were at Dismas House?

11 A. We were both seeing the same pretrial officer, which was
12 Leigh Anne Howard. And there would be occasions when I would
13 come down to see her and he might be leaving from there.

14 Q. Did you have any conversation with Skip Sheppard about
15 the cases that you were both there for?

16 A. Yes, I have.

17 Q. Now, did there come a time when Skip Sheppard was on
18 restriction at Dismas House?

19 A. Yes, he was.

20 Q. What does that mean?

21 A. Restrictions is like if you have, you know, you have to
22 pay 25 percent of what you make on your job or if you do
23 something against regulations, then you'll be put on
24 restrictions, which means you can't go out to work and you're
25 confined to the halfway house.

1581

1 Q. Did you have a discussion with Skip Sheppard, then, when
2 he was on restriction?

3 A. Yes, I did.

4 Q. Did Skip Sheppard tell you anything about the
5 firefighters explosion?

6 A. Yes, he did.

7 Q. What did he tell you?

8 A. Well, basically when I had came down here for a hearing
9 before, I had seen Skip down here, and we talked about why he
10 was here. And then when we got back to the halfway house,
11 discussion came up about how they were trying to pin this
12 case on him.

13 Q. What did Skip Sheppard say about that?

14 A. He told me that, you know, him and his brother -

15 Q. Don't tell us about anybody else other than Skip
16 Sheppard.



17 MR. PETERS: Objection, Your Honor, may we
18 approach?

19 THE COURT: Well, no mention of any other people.
20 Isn't that what you're concerned about?

21 MR. PETERS: Yes.

22 THE COURT: You're only to testify to what Skip
23 Sheppard might have said to you and not identify anybody else
24 that he talked about.

25 MR. PETERS: I would ask that his last, the jury

1 not consider his last remark of Skip and his brother.

2 THE COURT: That is the instruction to the jury.

3 You're to disregard that reference to his brother.

4 Q. (By Mr. Becker:) What did Skip say about Skip Sheppard?

5 A. He said that more or less he was out that night riding
6 around drinking and that **they** had stopped up on the site
7 where the trailers were. He told me that they were trying to
8 pin it onto him, but they would never have enough evidence to
9 prove it.

10 Q. Why wouldn't they have any evidence?

11 A. Because he said that they could not prove that he was
12 there.

13 Q. Did he say anything about any witnesses to it?

14 A. No, he didn't say anything about witnesses. He just

15 said more or less that him and, of course - 

16 Q. Just tell us what he did.

17 THE COURT: Yeah. Just what he did.

18 A. Just the fact that he was there and with no witnesses.
19 They would never be able to prove it.

20 Q. Did he say anything about any trailers?

21 A. He mentioned the fact that when **they** were up there,
22 there were trailers, but he didn't say, you know, what were
23 in the trailers.

24 Q. Did he say anything about a fire at the construction
25 site?

1 A. He more or less mentioned that while **they** were up there
2 that a fire got started, but he didn't say how.

3 Q. Did he say what happened after the fire was started?

4 A. No. Basically, the fact that a fire got started, and
5 that was it.

6 Q. Did Skip Sheppard talk about being able to get
7 explosives?

8 A. Yes, he did.

9 Q. What did he say?

10 A. Well, when he talked about his case, that he's
11 incarcerated on it now, he talked about how he could get
12 explosives, but I wasn't interested in hearing about no
13 explosives or nothing like that, you know, so I didn't pay no
14 attention to it.

15 Q. Now, then, in October of 1995, you were sentenced to 25
16 years in jail?

17 A. Yes, I was.

18 Q. Did you ever, you know, bring these statements to the
19 attention of the authorities?

20 A. At first I didn't because I didn't believe them, you
21 know, because he was gone from the halfway house and he
22 supposedly said he had fell asleep, that's why he didn't get
23 back on time, and that's why he was on restriction. And just
24 like when you in jail, people will tell you things to more or
25 less build their selves up.

1584

1 You know, I've learned from being in jail some
2 guys, they'll say, well, I've had all of this money and I've
3 done this and done that, but you don't believe them because
4 they're just saying things to make their selves look
5 important. So at the time I didn't mention nothing.

6 Q. And he wasn't in jail on this explosion case, was he?

7 A. No, he wasn't.

8 Q. Did something happen in May of 1996 that you then
9 decided to come forward with this information?

10 A. Yes, it did.

11 Q. What was that?

12 A. Well, basically, you know, I've been reading the paper
13 and, you know, I kept seeing the articles in the paper. And
14 when I seen that they were still pursuing this case, I
15 decided to write to the prosecutor, which was Meiners,
16 William Meiners. And I wrote to the clerk of the court
17 through the district court.

18 Q. okay. I want to show you what's been marked for
19 identification purposes as Government's Exhibit 400 and
20 Exhibit 401. I want to show you what's been marked for
21 identification purposes as Government's Exhibit 400 and 401.
22 Can you take a look at those, please, and ask, do you
23 recognize those?

24 A. Yes, I do.

25 Q. What are they?

1585

1 A. Both of these are letters that, one I wrote to Miss
2 Turner, which is the clerk of the district court, and the
3 other is to William Meiners, which is the prosecutor. Well,
4 the Assistant U.S. Attorney.

5 Q. One of my colleagues, one of the guys I work with?

6 A. Yes.

7 Q. What are the dates, the letter to Mr. Neiners, which is
8 Government's Exhibit 400?

9 A. The date to Mr. Meiners is May 14, 1996.

10 Q. The letter, then, to Mrs. Turner, which is Government's
11 401?

12 A. Is May 28th, 1996.

13 Q. In those letters, you talk about the, a newspaper
14 article that you'd seen the week before; is that right?

15 A. Yes.

16 Q. I want to show you what's been marked for identification
17 purposes as Government's 402. And the date is on the side
18 there. Is that the article that you had seen about the case
19 that caused you to write those letters?

20 A. Yes, it is.

21 Q. What's the date on that particular letter or -

22 A. Thursday, May 9th, 1996.

23 MR. BECKER: I would offer that into evidence as
24 Government's Exhibit 402.

25 MR. OSGOOD: I haven't seen it.

1586

1 (Counsel approached the bench and the following
2 proceedings were had:)

3 MR. OSGOOD: I would object to it on behalf of Mr.
4 Brown as being rank hearsay by a newspaper reporter.

5 MR. BECKER: Well -

6 MR. O'CONNOR: What's your purpose for your offer?

7 MR. BECKER: My purpose is that this witness, I
8 anticipate, will be cross-examined, and he'll be
9 cross-examined about the fact that he just made all of this
10 stuff up because of what he read in the newspapers. And here
11 is what's in the newspaper. It doesn't mention Skip
12 Sheppard, **Frank** Sheppard, any Sheppard. He's the one that
13 said, here is the story about the firefighters explosion.
14 Gee, I have this information about Skip Sheppard, I'm going
15 to come forward with it.

16 See, what we have is a series of cross-examinations
17 that are intended to show that the witnesses are making this
18 up out of the whole cloth, out of Unsolved Mysteries, out of
19 newspaper stories. And I think that at this point I should
20 have the opportunity to show that none of these newspaper
21 stories, none of this Unsolved Mvateries ever said the
22 Sheppards. It's -- and, therefore, counsel can't imply that
23 the information this witness is testifying to came from
24 anything in this story.

25 MR. O'CONNOR: I haven't seen it. Can I see this?

1

1 mean, are you just going to offer portions of this? You're
2 not going to talk about Ross Barber and all of your other
3 prosecutions?

4 MR. BECKER: I lost that one, John, if you'll
5 recall. Once every ten years I lose.

6 MR. O'CONNOR: I don't like those odds right now.
7 I mean, can we enter -- I mean, not -- are you going to ask
8 him about this article?

9 MS. HUNT: The only thing I was going to ask him,
10 he said the article was on Skip Sheppard.

11 MR. O'CONNOR: It wasn't.

12 THE COURT: So?

13 MS. HUNT: I don't have to ask him that if -

14 MR. O'CONNOR: I think that's important to have
15 in. I don't know what the relevance of this is. If he said
16 that he read about Skip Sheppard, how do we know this was the
17 article?

18 MR. BECKER: He just testified it was.

19 THE COURT: See, he didn't say he read Skip
20 Sheppard. Skip Sheppard told him Skip Sheppard.

21 MS. HUNT: In his letter he says he read an article
22 on Skip Sheppard, and that's when he came forward.

23 THE COURT: I haven't seen that.

24 MS. HUNT: Okay. That's the letter he just talked
25 about.

1 THE COURT: See, I don't know that that's the
2 article he's talking about.

3 MR. O'CONNOR: That's what I don't know either.

4 MR. BECKER: He just testified that it was.

5 MS. HUNT: Is that the only article?

6 MR. O'CONNOR: Here is my objection to this
7 exhibit. After it says the investigation, then it says the
8 grand jury has heard testimony on the investigation of former
9 house speaker Robert Griffin, the property trial of Michael
10 Hernandez, and other cases. Officials declined, however, on
11 whether the latest grand jury meeting heard any testimony on
12 the firefighters, and then all of that about Ross Barber.

13 THE COURT: He has testified, as I noted here, he
14 did testify about that article. Why don't you let him answer
15 the question of -- have him look at the article and then ask
16 him if Skip Sheppard was, in fact, mentioned in that
17 article. Because there is a lot of collateral stuff in that
18 article.

19 MR. BECKER: Okay. I'm not sure he can read.

20 THE COURT: Oh, really?

21 MR. BECKER: We'll try it.

22 THE COURT: He just said -

23 MR. BECKER: I shouldn't jump to that conclusion.

24 MR. O'CONNOR: Are you going to move to offer it?

25 THE COURT: It's offered right now. It will be

~ 1589

1 admitted for the limited purpose that I've just explained to
2 counsel in hopes that the area can be gone into without
3 getting into all of this other stuff.

4 **(Government's Exhibit 402 was admitted into**
5 **evidence.)**

6 (The following proceedings were had in open court:)

7 Q. (By Mr. Becker:) Mr. Whitelaw, I want to ask you to
8 just take a minute, please, to read this, what's been marked
9 as Government's Exhibit 402, the story.

10 A. Do you want me to read it out loud?

11 Q. No, no, just read it to yourself, please.

12 Mr. Whitelaw, did you have a chance to read that?

13 A. Yes, I did.

14 Q. Is Skip Sheppard, is any Sheppard name mentioned
15 anywhere in that article?

16 A. No, it isn't.

17 Q. So the information that you had that Skip Sheppard was
18 responsible for this fire, it didn't come from this newspaper
19 story?

20 A. No, it didn't.

21 Q. And then after you read that newspaper story, you wrote
22 the letter to Mr. Meiners and then to Mrs. Turner?

23 A. Yes, I did.

24 Q. Now, after that, then, were you finally interviewed in
25 August by Police Officer Jerry Ludwig at the institution

1 where you were being held?

2 A. Yes, I was.

3 Q. Also, then, several weeks ago, were you interviewed by
4 an attorney in this case, John O'Connor?

5 A. Yes, I was.

6 Q. Where did that take place?

7 A. Belton City Jail.

8 Q. Did he tell you who he represented?

9 A. He said he represented, I believe, **Frank** Sheppard.

10 Q. Do you know **Frank** Sheppard?

11 A. No, I don't.

12 Q. Do you know Bryan Sheppard?

13 A. No, I don't.

14 Q. Do you know anybody in this case except for Skip
15 Sheppard?

16 A. Just Skip.

17 MR. BECKER: I have nothing further, Judge, thank
18 you.

19 THE COURT: Okay. Cross? Who is doing cross?

21 CROSS-EXAMINATION

22 By Ms. Hunt:

23 Q. Mr. Whitelaw, my name is Susan Hunt, I represent Skip
24 Sheppard. Are you represented by an attorney at this time?

25 A. Yes, I am.

1591

1 Q. And is he present in the courtroom today?

2 A. Yes, he is.

3 Q. Is there just, have you seen a statement that is dated
4 August 29, 1996, which purports to be a summary of the
5 information provided to the Kansas City, Missouri, Police
6 Department?

7 . Yes, I believe that's the one that I gave to Jerry
8 Ludwig.

9 Q. And this statement was given on August 29th of 1996; is
10 that right?

11 A. Yes, yes, it was.

12 Q. And that's the only statement that you gave to law
13 enforcement regarding this case?

14 A. To Ludwig, yes, it was.

15 Q. Okay. When officer Ludwig came to talk to you that day,
16 did he tape-record your conversation?

17 A. I don't believe so.

18 Q. Did he ever have you sign an affidavit as to what you're
19 saying is the truth, to swear to it?

20 A. I don't recall if I signed anything that day.

21 Q. Did he bring a court reporter, which is like this woman,
22 who takes down verbatim what he says and what you said?

23 A. No, he didn't.

24 Q. So we don't have anything here that will say what he
25 said to you and your responses to him, do we?

1 A. No, we don't.

2 Q. Now, you said you were in Dismas House with Skip
3 Sheppard?

4 A. Yes, I was.

5 Q. When was your conviction?

6 A. I caught this case in December of '94, and I was out on
7 bond from February to July, and I was convicted July 13th, I
8 believe, 1995.

9 Q. Okay. And you were convicted of distribution of
10 cocaine?

11 . Distribution of cocaine and carrying a concealed weapon.

12 Q. Carrying a gun during a **drug** transaction?

13 A. Yes.

14 Q. And received a 25-year sentence; is that right?

15 . Yes.

16 Q. Did you appeal that sentence?

17 A. Yes, I did.

18 Q. Was the appeal decided by now?

19 A. It was decided in June of, what year is this? '96.

20 Q. Okay. And the Court of Appeals denied your appeal,
21 didn't they?

22 A. Yes, they did.

23 Q. So you got no relief from the Court of Appeals; is that
24 right?

25 A. No, I didn't.

1 Q. And after your appeal was denied and turned down in June
2 of '96, three months later you talked to the police; is that
3 right?

4 A. I believe I did.

5 Q. And I believe you said you started out by sending a
6 letter to a Mr. William Meiners, who was a U.S. Attorney?

7 . Yes, I did.

8 Q. And that letter was dated May 14th, 1996?

9 . Yes.

10 Q. But they didn't talk to you until August; is that right?

11 A. August.

12 Q. End of August; is that right? August 29th?

13 A. I would say the end of August.

14 Q. Have you had a chance to review the letter you sent in
15 May of '96?

16 A. Yes, I have.

17 Q. And doesn't this letter say, "In the last week's paper,
18 I saw an article on Earl Sheppard, AKA Skip"?

19 A. Yes, it does.

20 Q. Does that article that the government had you read say
21 anything about Skip Sheppard?

22 A. No, it doesn't.

23 Q. Doesn't mention his name, does it?

24 A. No.

25 Q. I think you talked on direct exam about how when this

1 alleged conversation with Skip Sheppard occurred you thought
2 he was just bragging; is that right?

3 A. Yes, I did.

4 Q. Is it common for inmates to brag to other inmates with
5 them in jail -- strike that. Is it common in a situation
6 with other people charged with a crime or in jail for people
7 to brag?

8 A. Somewhat they do, but I don't.

9 Q. But I think you said on direct exam it makes them look
10 big; is that right?

11 A. Makes them look big.

12 Q. Makes them look big to other people in the jail or the
13 halfway house; is that right?

14 A. Somewhat.

15 Q. And Skip Sheppard is the only person you've heard
16 bragging in a locked up situation, isn't it?

17 A. Yeah, because I don't know any of the other guys.

18 Q. You're in jail in Greenville, Illinois; is that right?

19 A. Illinois.

20 Q. Is it also common when you're in a halfway house
21 situation with other people whose trials are pending to talk
22 about their cases?

23 A. No. I don't believe so, because I've never been in that
24 situation before, and I don't socialize with very many people
25 because I'm -- you know, even though I've gotten my

1 punishment for my crime, I don't conversate because of my
2 belief I'm, you know, trying to more or less stay away from
3 that type of atmosphere.

4 You know, if I see somebody -- I'm a friendly
5 person, I'll hold a conversation with very few people. But
6 as far as just wanting to hear people brag, you know, I don't
7 get off on stuff like that.

8 Q. And this is the first time you were ever charged with an
9 offense; is that correct?

10 A. Yes, it is.

11 Q. And that's the first time you were ever in a halfway
12 house in your life; is that correct?

13 A. Yes, it is.

14 Q. Did you discuss any of the circumstances about your case
15 with Mr. Sheppard?

16 A. I told him, you know, that I was seeing the same
17 pretrial officer, which was Leigh Anne, and what my situation
18 was. And, you know, basically, you know, we pass -- like I
19 say, when I go see Leigh Anne, he would be there, and maybe
20 some days I would be there and somebody would call from the
21 halfway house inquiring to her about him.

22 Q. So you discussed at least on some basis your -

23 A. Some basis.

24 Q. Your charges with him?

25 A. Yes.

1596

1 Q. And so the ATF or anybody from law enforcement,
2 specifically Jerry Ludwig from the Kansas City, Missouri,
3 Police, came to you because you wrote them; is that right?

4 A. Well, I assume that Meiners had gave the information to
5 Ludwig and, like I say, Ludwig came up and talked to me that
6 day for maybe, say, maybe an hour.

7 Q. okay. During these conversations you supposedly had
8 with Mr. Sheppard, did he ever mention a bulldozer?

9 A. No, he didn't.

10 Q. Did he ever say he burglarized or somehow vandalized a
11 bulldozer at the site?

12 A. No.

13 Q. Did he ever mention that he had gone there to steal a
14 transit?

15 A. I'm not familiar with a transit. What is that?

16 Q. Did you ever hear the word transit from him?

17 A. Yeah, I know. Like you're moving, in movement, like I
18 am. I'm in transit right now.

19 Q. As I understand it, a transit is what a surveyor uses.
20 It's on a tripod. But all I'm asking is did you ever hear
21 him say, "I went to steal a transit"?

22 A. No, because I'm not familiar with it.

23 Q. Okay. Did he mention any security guards when you
24 talked to him?

25 A. No, he didn't.

- 1 Q. Did he mention any acetylene torches?
- 2 A. No.
- 3 Q. Did he mention any dynamite?
- 4 A. No.
- 5 Q. Did he mention any jackhammers?
- 6 A. No, he didn't.
- 7 Q. Did he mention any sledgehammers?
- 8 A. No, he didn't.
- 9 Q. Did he mention any kind of hand tools at all?
- 10 A. No.
- 11 Q. Did he mention he stole anything?
- 12 A. No.
- 13 Q. And he did not tell you in this conversation that you
- 14 had with him supposedly that he knew what was in those
- 15 trailers, right?
- 16 A. No, he didn't know what was in the trailers.
- 17 Q. And he told you he didn't know how the fire got started?
- 18 A. Yes, he did.
- 19 Q. And he told you he didn't start the fire, didn't he?
- 20 A. He said that the fire got started, but he didn't say
- 21 that he started it.
- 22 Q. He never said that he started the fire?
- 23 A. Right.
- 24 Q. And I think on your direct testimony, you said in this
- 25 conversation he told you he was out riding around drinking?

1

1 A. Drinking.

2 Q. And stumbled on the construction site?

3 A. He said while **they** were drinking, **they** rode up to a
4 construction site. **They** went up there, and there were
5 trailers. He said that a fire got started, but he didn't say
6 how the fire got started.

7 Q. But he never told you he'd been to that construction
8 site before, had he?

9 A. Well, when we talked about it previously, he just more
10 or less said that **they** were up there, **they** were trying to
11 charge him and others with the crime, but he said **they** would
12 never be able to pin it on him.

13 Q. That's not my question, Mr. Whitelaw. He never told you
14 he'd been to that construction site before, did he?

15 A. Not until that day we had discussions.

16 Q. And I think you told Officer Ludwig that -

17 THE COURT: I think he misunderstood your question.

18 Q. Do you want to do it again?

19 THE COURT: Did you mean that you didn't tell him
20 before that he had been to the site, or did you tell him he'd
21 been to the site before?

22 Q. I'll rephrase it. He'd never told you that he had been
23 on that site on prior occasions, did he?

24 A. Prior to him discussing this?

25 Q. Prior to the time you claim he admitted being there that

1 night. He didn't say, "I was there a week ago," for
2 instance?

3 A. No, he didn't.

4 Q. Or two weeks ago?

5 A. No.

6 Q. Does your father work at KU?

7 A. Yes, he does.

8 Q. And does he work with Jack Sheppard?

9 A. Yes, he does.

10 Q. And Jack Sheppard is Skip Sheppard's brother, isn't he?

11 A. Yes.

12 Q. So from the conversation that you claim occurred at the
13 Dismas House in '95, the summer of '95, you didn't talk to
14 the authorities until August of '96; is that correct?

15 A. Yes, ma'am.

16 Q. Mr. Sheppard didn't tell you he was there when the
17 explosion occurred, did he?

18 A. He said that he went up there, **they** were drinking, a
19 fire got started. So he had to be there.

20 Q. My question is did he ever tell you he was there when -

21 A. Yes, he did.

22 Q. He never told you he was there when the explosion
23 occurred, did he?

24 A. He said that **they** were there when the fire started.

25 Now, as far as the explosion -- the fire started, I don't

1600

1 know how long before the explosion happened. So he admitted
2 to me that he was out there when the fire started, but as far
3 as when the explosion started, he didn't admit to being
4 there.

5 Q. He didn't talk to you about the explosion?

6 A. No.

7 Q. Did he ever tell you he was up there to steal?

8 . No, he didn't.

9 Q. And he never told you that he was there when the
10 explosion occurred; is that right?

11 A. No.

12 Q. He never admitted to you that he set this fire and did
13 this crime, did he? He personally?

14 A. He said that the fire got started, but he never said if
15 he started it or not.

16 Q. He never told you, "I started the fire," did he?

17 A. No.

18 Q. And he never told you anybody started the fire, never
19 mentioned anybody's name as starting a fire, did he?

20 MR. BECKER: Objection. Argumentative. We've
21 covered this ground.

22 THE COURT: It is argumentative. Sustained.

23 Q. (By Ms. Hunt:) You said your conviction was affirmed by
24 the Court of Appeals in June of '96; is that right?

25 A. Yes, it was.

1 Q. And you have an attorney presently?

2 A. Yes, I do.

3 Q. And has your -- and your attorney has discussed with the
4 government the possibility of a 5K1 or a Rule 35 motion; is
5 that correct?

6 A. No, they haven't. I haven't been offered no type of
7 deal whatsoever.

8 Q. Mr. Whitelaw, that wasn't my question. I didn't say you
9 were offered, but it's been discussed, hasn't it?

10 A. Not to my observation.

11 MR. BECKER: Objection. Can we approach, Judge?

12 THE COURT: Yeah. I'm not sure about that, Miss
13 Hunt.

14 (Counsel approached the bench and the following
15 proceedings were had:)

16 THE COURT: Was he present during the discussions?

17 MS. HUNT: His lawyer told him.

18 MR. BECKER: Let's cut to the chase here. They
19 asked, and I said there's no 5K. He's a sentenced prisoner.
20 There's no Rule 35. It's beyond a year since the time of the
21 sentence. Sure, they asked, and I said no. So I mean -

22 MS. HUNT. But then his lawyer says they would look
23 at his 2255 he's going to file.

24 MR. BECKER: We'll look at the 2255. I'm required
25 to respond to that. You've implied that I'm giving him a 5K

1

1 and a Rule 35. He's not eligible.

2 THE COURT: You can't get into anything about a -

3 MR. BECKER: It's gone.

4 MS. HUNT: They're going to look at the 2255
5 because they can't do the Rule 35.

6 THE COURT: If you think you can get them to
7 believe he's doing this because of a possible 2255, go
8 ahead. I think that would be -

9 MR. BECKER: But the question's about SK and the
10 Rule 35, you know. They imply that something, that they were
11 discussed. I told them they're not eligible.

12 MS. HUNT: My whole point is they discussed it.
13 He's right. He said, "You can't get it, it's out of time,"
14 but then he says, "We'll look at your 2255."

15 MR. BECKER: They said they'll file a 2255.

16 MS. HUNT: The U.S. Attorney in charge of this
17 case, Bill Meiners, I've been told, said he's not really
18 going to oppose it because he thinks he got too much time
19 anyway.

20 THE COURT: Who's the judge on that case?

21 MR. BECKER: Gaitan. Relevant conduct. And that's
22 an issue, his attorney tells me he's got an issue. I said,
23 "We'll look at it."

24 THE COURT: I really think, again, we're getting
25 into these areas that the jury won't understand and they will

1 draw some really improper inferences from the things that we
2 say up here. I think that -- I think if you will lead him
3 into admitting that he knew that nothing could be done about
4 this sentence except -

5 MS. HUNT: That's what I'm getting at.

6 THE COURT: -- except the 2255, and his lawyer and
7 he talked about it. That's all he knows. He can't say here
8 what his lawyer told him.

9 MS. HUNT: What they were talking about today is my
10 understanding.

11 MR. O'CONNOR: How about this question? Have you
12 had discussions with your lawyer about a time reduction
13 motion in this case?

14 MR. BECKER: There's no time reduction motion.

15 MR. O'CONNOR: That's a 2255.

16 MS. HUNT: It was attacking his sentence, though.

17 MR. O'CONNOR: Haley told us, so we know where
18 we're coming from.

19 MR. BECKER: Haley asked me if I could make a 5K
20 for the guy. I said he's been sentenced so long ago it's
21 ridiculous.

22 MR. O'CONNOR: Haley has told us, his lawyer, that
23 if Bill Meiners would agree, because Bill Meiners felt that
24 he got too big of a sentence at the beginning, an upward
25 departure, he got a larger sentence than he should have

1604

1 received, and then they're going to consider looking at that
2 sentence for purpose of reduction, but there's no promises.
3 And I think that's fertile ground for us to at least show
4 that they're considering it.

5 MR. BECKER: The guy told me he was filing a 2255.
6 I said we'd look at the 2255 if he's got an issue.

7 THE COURT: They can prove that, that he's
8 considering filing a 2255, but I really don't see it tied
9 into this.

10 MR. BECKER: If he has an issue.

11 MS. HUNT: It seems like he has, but -

12 THE COURT: Well, whether it's an excessive
13 sentence is not the issue we're talking about. It isn't an
14 issue that ought to be in front of this jury. It sounds
15 excessive to me, too, but -

16 MS. HUNT: It does.

17 MR. O'CONNOR: I think it's unfair, Judge, when the
18 prosecutor puts this witness up and says we're not doing
19 anything for this person at this time, and then later they're
20 going to look at something and then consider it, I think the
21 jury is entitled to know that this guy thinks he may get some
22 consideration.

23 MR. BECKER: It's unlike a Rule 35 or a 5K, John,
24 where I would have to initiate the action. This is something
25 that a defense attorney is going to file.

1605

1 THE COURT: Anybody can file a 2255.

2 MR. O'CONNOR: He's told you he's going to.

3 MR. BECKER: Yeah.

4 MR. O'CONNOR: You know that that motion is going
5 to get filed in this case. We all know that as we stand
6 here, right?

7 MR. BECKER: Right.

8 MR. O'CONNOR: You know right now, based on this
9 guy's testimony, whether you're going to give him
10 consideration. You know that. And I think -- I don't know
11 what the answer to that is. If it's no, then it's no.

12 MR. BECKER: Two things. One, the attorney, Mr.
13 Haley, informed me that a 2255 was in motion long before he
14 ever, you know, showed up on my doorstep.

15 MR. O'CONNOR: That's correct.

16 MR. BECKER: You know, he thinks he's got a valid
17 claim of ineffective assistance, and it was going forward. I
18 told him today, if the guy doesn't want to testify, go ahead,
19 I mean. So I mean, I don't control this 2255, and the
20 Court's going to rule on it. And I can't roll over and play
21 dead on a 2255 if there's no issue.

22 MR. O'CONNOR: I understand that, but what I'm
23 saying is that, I'm just telling you what Haley told us.
24 Haley then said that you basically said he's got nothing to
25 lose by testifying. In other words -

1 MR. BECKER: That's right.

2 THE COURT: That's right.

3 MR. BECKER: That was my point to him. I said, how
4 does the guy hurt himself by testifying?

5 MR. O'CONNOR: This guy, the discussions with his
6 lawyer that have been had today, that he's had with them as
7 it relates to he, he believes right now as he sits there that
8 there's going to be some consideration. He doesn't know
9 what. Maybe none, but there's going to be some consideration
10 of whatever motion he files. And I think that's fertile
11 ground for purposes to show his bias and interest in
12 testifying for the government.

13 THE COURT: What is the source of that belief,
14 though? Is it something that the government has told him?
15 Who told him that?

16 MR. O'CONNOR: We can only get his lawyer up here.
17 We're getting it third-hand here.

18 MR. BECKER: You've accurately related everything.
19 I told him we would consider his 2255.

20 THE COURT: But a 2255, it's a can of worms. It
21 can and probably would be totally unrelated to this case and
22 this testimony. And there's a completely independent basis
23 for a 2255. It's an excessive sentence.

24 MS. HUNT: Haley says that the government told him
25 today if they file a 2255, the government will look closely

1 at it, which he takes -

2 THE COURT: It's kind of like me saying if you file
3 a 2255 in this court I'll read it. I mean, I will.

4 MS. HUNT: I understand, but they believe there's a
5 possibility they'll get some relief on it before it's been
6 filed. I mean, they believe that.

7 MR. BECKER: He told me he's got this meritorious
8 claim. I said, "We'll look at it." It's just something the
9 Court would, you know, the judge is going to rule on it.
10 It's not something that I initiate like a 5K or a Rule 35
11 where if I tell somebody that I'm going to consider a Rule
12 35, then I think you can assume that it's going to be filed
13 because that's something I can do.

14 THE COURT: Well, what do you want your question to
15 be now?

16 MS. HUNT: What I was going to ask was he knows
17 it's out of time for a Rule 35, he can't get any assistance
18 that way. But that his lawyer told him, the Government's
19 going to look closely at your Rule 2255 motion.

20 MR. BECKER: That means nothing to the jury, a Rule
21 2255 motion.

22 MS. HUNT: I would go into what it is.

23 MR. BECKER: It's a motion to set aside his
24 judgment because of some illegal sentence or conviction.
25 It's a claim on the merits. It's not a claim related to his,

1608

1 in exchange for his cooperation, unlike a Rule 35 or a 5K.

2 THE COURT: Will you object to that question?

3 MR. BECKER: Yes. I just objected.

4 THE COURT: I think we're too collateral. I'm
5 going to sustain the objection. Let's go on. We've aired it
6 fairly. I think that's what we have to do.

7 (The following proceedings were had in open court:)

8 Q. (By Ms. Hunt:) Mr. Whitelaw, you're presently in
9 custody; is that right?

10 A. Yes, I am.

11 Q. And were you held before you testified today upstairs in
12 the marshal's facility?

13 A. Yes, I was.

14 Q. In this courthouse?

15 A. Yes.

16 Q. And you at least at some point during this morning or
17 prior to right now shared a cell with Carl Nettles, didn't
18 you?

19 A. It was a couple of guys in there, but I don't know their
20 names.

21 MS. HUNT: That's all I have.

22 THE COURT: I think we ought to give Mr. Bunch a
23 chance.

24 MR. BUNCH: No questions, Your Honor.

25 THE COURT: Thank you, Mr. Bunch.

1 MR. PETERS: Neither do I, Your Honor. I have no
2 uestions.

3 THE COURT: I guess I thought you'd passed
4 already.

5 — — —

6 CROSS-EXAMINATION

7 By Mr. O'Connor:

8 Q. Mr. Whitelaw, I just have a couple of things. On direct
9 examination, I believe that you stated that you believe that
10 when I came up to talk with you in the Belton City Jail that
11 I had told you that I represented either **Frank** or Skip
12 Sheppard. Was that your recollection?

13 A. My recollection was that it was, you were representing
14 **Frank** or one of the Sheppards.

15 Q. All right. And do you remember that I had a lady kind
16 of like this lady with me that took down everything we were
17 talking about?

18 A. Yes, I do.

19 Q. And have you had a chance to review that? Did I give
20 that to your lawyer for you to review over the lunch hour?

21 A. Yes, I did.

22 Q. Did you read the front page of that to see who I
23 identified myself as and who I represented?

24 A. No, I didn't.

25 Q. Would you like to look at that to refresh your

1610

1 recollection?

2 A. Yes, I would.

3 Q. Just read it to yourself, please. Have you had a chance

4 to look at that?

5 A. Yes.

6 Q. Does that refresh your recollection on who I identified

7 myself as representing?

8 A. Yes, it does.

9 Q. And who did I say to you that I was representing?

10 A. Bryan Sheppard.

11 Q. Did I tell you that I was appointed by the court to

12 represent Mr. Sheppard?

13 MR. BECKER: Objection, relevance.

14 THE COURT: Sustained.

15 Q. (By Mr. O'Connor:) Mr. Whitelaw, a minute ago, I think

16 you testified that Mr. Skip Sheppard had made those

17 admissions to you at the Dismas House; is that correct?

18 A. Yes, I did.

19 Q. And as I understand from the record that's in evidence,

20 and if you need to refer to this, please ask me, that this

21 would have occurred between -- hold on a second.

22 so between April the 28th and July the 4th, 1995,

23 would have been when Skip Sheppard would have said these

24 things to you?

25 A. Yes, it is.

1 Q. And how many discussions do you believe you had with
2 him? Was it just one or more than one?

3 A. Maybe two or three discussions.

4 Q. All right. And how many -- when you used the word
5 several, how many does several mean to you?

6 A. Several to me would be like two or three.

7 Q. Okay. And when you talked with Mr. Sheppard, he told
8 you these things, and at the time you never came forward
9 about them; is that a fair statement?

10 A. Yes, it is a fair statement.

11 Q. All right. And one of the reasons you've said you
12 didn't come forward is because you thought that he was
13 kidding or joking or something like that?

14 A. More or less bragging.

15 Q. And then later you said you read something in a
16 newspaper about it?

17 A. Yes, I did.

18 Q. All right. Now, where did you get that newspaper, where
19 were you at the time?

20 A. I was in the law library at the institution.

21 Q. All right. Where was that?

22 A. Greenville, Illinois.

23 Q. Okay. Doing the time that you're doing now?

24 A. Yes.

25 Q. And was that the first time that you had heard about

1 this explosion that had occurred, the firefighters?

2 A. No, it isn't.

3 Q. Didn't you, in fact, know at the time that he allegedly
4 he made these statements to you, you already knew about the
5 explosion, didn't you?

6 A. State that question again.

7 Q. Sure. Did you know about the explosion that killed the
8 six firefighters before he ever started talking to you?

9 A. Yes, I did.

10 Q. And isn't it true that you had a friend or some friend
11 that knew one of the firefighters' family?

12 A. Yes, I did.

13 Q. And so when he was telling you this at this time, you
14 never came forward, even though you knew that the explosion
15 occurred, you even knew people that were close to the case?

16 A. Because I didn't believe him.

17 Q. And at the time, the article that we just referred to
18 there, you said in your letters, did you not, that they
19 talked about earlier, you wrote letters to Mr. Meiners and to
20 this court reporter -- you've had a chance to look at those?

21 A. Yes, I have.

22 Q. If I mistake this, please tell me and I'll bring it up
23 to you for you to look at. That you said in the last week's
24 paper I saw -

25 MR. BECKER: Objection. I'll offer these in

1613

1 evidence if he wants to read from them.

2 THE COURT: What are you talking about, the
3 newspaper clipping?

4 MR. O'CONNOR: He's got the clipping, Judge, he
5 wrote a letter to Mr. Meiners.

6 MR. BECKER: There's two letters.

7 THE COURT: Which was offered, wasn't it?

8 MR. BECKER: I didn't offer them, Judge.

9 , THE COURT: Oh, okay.

10 MR. BECKER: But if counsel wants to read from
11 them, I'll be happy to read from them.

12 MR. O'CONNOR: Judge, one, I can read from them
13 without them being offered. I think it's unfair for Mr.
14 Becker to make an objection and act like I'm trying to keep
15 this out. I have a right to ask about what he said without
16 the exhibit being offered.

17 THE COURT: To the extent that you're going to use
18 them to impeach, they're going to be offered to that extent.

19 MR. O'CONNOR: I agree with that.

20 THE COURT: So he ought to have the opportunity to
21 look at it, and Mr. Becker ought to have the opportunity to
22 use it on redirect.

23 MR. BECKER: 400 and 401.

24 Q. (By Mr. O'Connor:) Thank you. Let me hand you 400 and
25 401. Just take your time. Read those to yourself, and when

1 you're done, I've got a couple of questions.

2 (So done.)

3 Q. Have you had a chance, sir?

4 A. Yes.

5 MR. O'CONNOR: Do you mind if I'm up here with the
6 witness, Judge?

7 THE COURT: That's all right.

8 Q. (By Mr. O'Connor:) Exhibit 400, which is the letter
9 that you wrote to Mr. Meiners on May the 14th; is that
10 correct?

11 A. Yes, it is.

12 Q. And the letter says -

13 MR. BECKER: Same objection, Judge. Is it a prior
14 inconsistent statement we're talking about?

15 THE COURT: Is it inconsistent? I looked at the
16 letter, and I didn't -- never mind what I thought, but -

17 MR. O'CONNOR: I think I can -- I'll do it two ways
18 here. Let me see if I can get it done this way, and then if
19 I'm wrong, we'll try it the other way.

20 Q. (By Mr. O'Connor:) You looked at 402; is that correct?

21 THE COURT: That's the newspaper article?

22 A. Yes.

23 Q. You read the first paragraph of that article?

24 A. Yes, I have.

25 Q. Any mention of Earl Sheppard in that article?

1 A. No, there isn't.

2 Q. Okay. Now, in your letter to Mr. -- is that the only
3 article you read on this case while in prison?

4 A. No, it isn't.

5 Q. Okay. But that, is that the article that you were
6 referring to in terms of writing this letter to Mr. Meiners?

7 A. This is one of the first articles that I read, yes, it

9 Q. And is that the one that you were referring to when you
10 wrote this letter to Mr. Meiners?

11 A. No, it isn't.

12 Q. okay. So there was other articles?

13 A. There was a second article where it talked about the
14 individuals involved and the fire, and this was just one of
15 the stepping stones to me writing the letter because it had
16 that, in the article the indictments before the grand jury.

17 And seeing that he had mentioned it to me, I wrote
18 the letter. And after I seen the second article, I wrote a
19 second letter because I felt they didn't respond to me.
20 Which the letters are 14 days apart.

21 Q. As I understood your direct testimony, and I may have
22 been wrong, so you correct me. I thought when the prosecutor
23 asked you about this article, which shows it's written on May
24 the 9th, 1996, it was the article that you were referring to
25 when you wrote Mr. Meiners' letter on May the 14th.

1 A. The first letter, yes, it was.

2 Q. Okay. You had read no other articles before you sent
3 this letter to Mr. Meiners on the 14th?

4 A. No, just this one.

5 Q. Okay. Now, I don't want there to be any confusion
6 here. Is there any?

7 A. No.

8 Q. Okay. So when you wrote this article to Mr. Meiners on
9 the 14th, you said, "He has spoke to me on several occasions
10 about the fire. In the last week's paper, I saw the article
11 on Earl Sheppard, also known as Skip"?

12 A. Yes.

13 Q. Okay. Is there anything in this article that mentions
14 Earl Sheppard, or Skip?

15 A. No, there isn't.

16 Q. So in -- when did you get sentenced and get the 25-year
17 sentence that you received?

18 A. I was sentenced, I believe, October -- it was October of
19 '95.

20 Q. And so that would have been about three months,
21 approximately three months after you had had no further
22 contact with Skip Sheppard? If you last would have been with
23 him on July the 4th of 1995? That's a bad question. Let me
24 start over.

25 As I understand it, you were with Skip Sheppard

1 from April the 28th of '95 to July the 4th of '95 at this
2 Dismas House?

3 A. Yes.

4 Q. And then I'm assuming you never saw him again?

5 A. Once I was found guilty, I was shipped off to CCA, so
6 that was it.

7 Q. Okay. And so you never came forward up until the time
8 you got your 25 years?

9 A. No, I didn't.

10 Q. Then after you got to prison and your appeals had been
11 denied, is that when you wrote these letters to Bill Meiners?

12 A. No, it isn't.

13 Q. When was your appeal denied?

14 A. My appeal was denied in June of '96.

15 Q. Okay. So this was a month before that denial had come,
16 approximately, if you wrote the letters in May of '96?

17 A. About a month.

18 THE COURT: The witness referred to CCA, and I
19 don't know whether the jury knows what CCA is. What is CCA?

20 THE WITNESS: That's the corrections institute in
21 Leavenworth, Kansas.

22 THE COURT: That is not the U.S. Prison in
23 Leavenworth, it's a private corrections center?

24 THE WITNESS: A privately-owned corrections center.

25 THE COURT: Yes.

1 MR. O'CONNOR: Can we approach? I have one
2 question that I want to ask the Court if I can ask.

3 (Counsel approached the bench and the following
4 proceedings were had:)

5 MR. O'CONNOR: I don't care if we take a recess to
6 formulate this, but I think I want to ask him this question
7 now in light of his testimony about what consideration that
8 he thinks he may receive as a result of his testimony or this
9 discussion. I want to do it properly but not improperly, but
10 I'd like to have some time to formulate the question to
11 propose to you as an offer of proof.

12 THE COURT: All right.

13 MR. BECKER: I have no objection to the delay. I
14 would propose, though, that I'm going to offer these two
15 letters and the article again into evidence. We've been
16 talking about them so much, I would propose -- where is Mr.
17 Peters?

18 MR. O'CONNOR: Right there.

19 THE COURT: I'm sorry. The letters mention the
20 brother. I would propose to delete that. We've talked about
21 these.

22 MR. OSGOOD: Well, why don't you -

23 MR. PETERS: The relevant parts of the letter have
24 been inquired into both by the government and the other
25 defense counsel. And I would be opposed -- I don't know what

1619

1 would be gained further by introducing the letters. And for
2 my client, I don't want a letter introduced that has a
3 blackout mark that jumps out to the jury and says, oh,
4 there's something they don't want us to see. All of the
5 relevant material in the letters has been gone over on direct
6 exam and cross-examination. And my concern is that by
7 submitting the documents to the jury with the blacked out
8 part, the jury is, their attention is drawn to something that
9 we're specifically trying to keep them from not thinking.

10 THE COURT: All the time we're standing up here at
11 the bench, do you think that's a concern by them?

12 MR. O'CONNOR: I think this is something we can
13 work out between ourselves and then figure out what's
14 admissible.

15 THE COURT: Let's take a recess.

16 (The following proceedings were had in open court:)

17 THE COURT: Ladies and gentlemen, the lawyers and I
18 have a little legal work to do, so we're going to take our
19 afternoon recess a little earlier than usual, fifteen
20 minutes. Don't talk about the case, and you may withdraw
21 from the courtroom.

22 (The following proceedings were had in the
23 courtroom out of the presence of the jury:)

24 THE COURT: We'll be in recess.

25 (A recess was taken from 2:51 p.m. to 3:20 p.m.)

1620

1 THE COURT: Do you have any -

2 MR. O'CONNOR: Judge, we probably want to run this
3 question by you.

4 THE COURT: All right.

5 MR. O'CONNOR: I guess we don't have to come up
6 here.

7 THE COURT: Go ahead.

8 MR. O'CONNOR: There's three questions that I would
9 propose.

10 (Counsel approached the bench and the following
11 proceedings were had:)

12 MR. O'CONNOR: In exchange for your testimony, has
13 your lawyer today asked for a reduction in sentence for you.
14 I believe the answer to that is going to be yes. And the
15 next question would be, did -

16 ATTORNEY LANCE HALEY: John, he may be confused by
17 that, though. I'm just informing you.

18 MR. O'CONNOR: Is this something we could get him
19 in here and ask him, you and I talking to him? I don't want
20 him to be confused in front of the jury. Is this something
21 that you and I can talk to him about up here right now?

22 MR. BECKER: If you're allowed.

23 ATTORNEY LANCE HALEY: Excuse me, Your Honor. My
24 only concern is because he was confused about Susan's
25 questions about the 5K whatever. That's what I'm saying, is

1 he may be confused about this.

2 MR. O'CONNOR: Let me tell you the three questions,
3 Judge, and then you tell me what you want me to do. That was
4 the one. The second one was did your lawyer tell you he
5 would, he will file a motion for reconsideration of your
6 sentence. And then, isn't it your understanding that the
7 government has agreed to take a look at a sentence reduction
8 motion to be filed on your behalf, which I'm told by his
9 lawyer that he would answer yes to that.

10 so I think the best way to do this, get him in here
11 and let me and Mr. Becker talk to him together, assuming
12 you're going to let me ask this, so we know what he's going
13 to say so there's no confusion, if you say the questions are
14 fair.

15 I told Mr. Becker, if he wanted to help me write
16 this -- I don't have any agenda here. If there's some other
17 language to use, I'll use it.

18 MR. BECKER: I think the only fair question is are
19 you testifying because you hope you're going to get something
20 in return. You know, the fact that his attorney asked for
21 remedies that aren't available -

22 THE COURT: That's right. We can't talk about
23 things that are outlawed now. The 5K1 and the Rule 35 are
24 out of the question.

25 MR. BECKER: Secondly, the 2255 is not a sentence

1 reduction motion.

2 THE COURT: No, it's a habeas corpus.

3 MR. BECKER: He was going to file it long before
4 the guy ever showed up to see me. I mean, that's what I -

5 THE COURT: I think your best bet is just to ask
6 the way he suggested, just do you hope to get something out
7 of this by testifying favorably to the government today, some
8 benefit.

9 MR. O'CONNOR: Let me write that down real quick,
10 and then I have one other thought. What was that?

11 MR. BECKER: Do you hope to get something, a
12 benefit for your testimony today.

13 MR. O'CONNOR: And if he says no?

14 MR. BECKER: Then he's being truthful.

15 MR. O'CONNOR: I'm just trying to keep from having
16 to explore this further. Here is my concern is that I think
17 that's a fair question, no question about it. My concern is
18 that the government has told him at least they will look at
19 it. Okay?

20 THE COURT: But, John, the government has to look
21 at everything that's filed.

22 MR. O'CONNOR: I understand that, but I think it
23 begs the question to say that they're just going to look at
24 it. I mean, Mr. Becker wouldn't be looking at this motion.
25 Whoever handled this case would be looking at it. Mr. Becker

1623

1 would not look at a motion filed by this man under the -
2 would you?

3 MR. BECKER: You know, Meiners is in, Bill Meiners
4 is the attorney handling the case and most familiar with it,
5 but I'm sure, you know, we would discuss it since he was a
6 witness for me.

7 MR. O'CONNOR: That's my point.

8 MR. BECKER: I'm not opting out of this.

9 MR. O'CONNOR: I understand, but that's my point,
10 and I think it's important. Sure, anybody who testifies,
11 yeah, he would like to get a benefit, but the fact that the
12 government has agreed to look at it, I think, goes to what he
13 believes in terms of his interest, bias, or prejudice to
14 testify in this case, and I think that that should be
15 explored because those things were said.

16 Let me give you the scenario because I know where
17 you're going, just like Mr. Becker said. We all understand
18 that this 2255 isn't a time reduction motion, but if they
19 went to bat for him on the 2255, what they really could do is
20 overturn his sentence because that's what it would be. I
21 mean, in other words, if he wins the 2255, he's back at
22 square one. Is that a fair statement?

23 MR. BECKER: As I understand it, the limited part
24 I'm told by Mr. Haley, his attorney, the witness's attorney,
25 that it's a habeas petition and would be directed towards the

1
1 sentencing proceeding, that the issue was relevant conduct.
2 That's basically what I know, so it wouldn't overturn.

3 THE COURT: Why did Gaitan come down so hard on
4 him?

5 MR. BECKER: I don't know, Judge.

6 MR. O'CONNOR: I didn't pick it up in the file.
7 But my point is I think he's directed us to -- the point now
8 is that the basis of the motion is going to be to take the
9 upward departure -

10 MR. BECKER: It wasn't an upward departure.

11 MR. O'CONNOR: Whatever the sentence was, it was
12 too harsh, and they're going to bring it down.

13 THE COURT: Was it within guideline range?

14 MR. BECKER: It was the relevant conduct, the crack
15 cocaine dealing by a codefendant was taken.

16 THE COURT: It was within the range?

17 MR. O'CONNOR: The other thing I'm talking is if I
18 start talking habeas corpus, I'm trying to put it in plain
19 language. The bottom line, he's going to come back if he
20 files the motion, and the government is going to look at this
21 and the time reduction. That's what it is.

22 THE COURT: Why don't you say do you understand
23 that after you testify here today your lawyer is going to
24 file a motion on your behalf in an effort to get your
25 sentence adjusted downward?

1 MR. O'CONNOR: What was that last part?

2 THE COURT: To get your sentence adjusted downward,
3 and I think that's all you can say because we can't
4 second-guess what the government is going to do with any
5 filing like that.

6 MR. O'CONNOR: But the government has told his
7 lawyer that they're going to look at it. And I understand
8 what look at it -

9 MR. BECKER: Of course, I have to look at it.

10 MR. O'CONNOR: But I think that's superficial in
11 this regard. And then I'll quit, Judge. I think it's
12 superficial in this regard, not that Mr. Becker is being
13 superficial. I think the argument is superficial in that if
14 right now through the normal course of business, had Mr.
15 Whitelaw not testified in this case and he had filed a habeas
16 corpus for time reduction, Paul Becker would have had no
17 involvement with it. He wouldn't have talked to Bill Meiners
18 about any kind of reduction for him or anything. There would
19 have been no discussion. He would have been dealing with
20 Meiners on the issues of the case.

21 But now when he comes back with his habeas corpus,
22 Paul Becker is going to tell Bill Meiners what he's done.
23 Whether that sways him or not, I don't know. There's going
24 to be a communication that would not have happened in the
25 normal course. And I think the jury is entitled to know that

1 they're going to look at it.

2 THE COURT: I guess what I'm trying to do is, it
3 sounds like the government is committed to do something that
4 they aren't committed to do.

5 MR. O'CONNOR: He can get up on recross and say,
6 "Have we made any promises and told you we're going to do
7 anything for your time reduction?" No. And that's the end
8 of it. He can come back and nail it shut for himself, but I
9 think the jury should be able to consider it.

10 THE COURT: But I don't like take a look at it
11 because that says that they don't look at everything. I
12 think you can say will consider your testimony here in making
13 its recommendation to the Court. They don't even decide it.
14 The Court decides it.

15 MR. BECKER: **Frankly**, I thought if we got back to
16 the original question of do you think you're going to get
17 anything of benefit through your testimony today is the
18 fairest way.

19 THE COURT: He may be entitled to a bit more than
20 that.

21 MR. O'CONNOR: Here's the two questions I have.
22 Your lawyer, is it your understanding your lawyer is going to
23 file a motion on your behalf in an effort to get your
24 sentence adjusted downward? I'm assuming he's going to say
25 yes.

1 Next question, then you can -- let me tell the
2 whole story here. Have you been told the government will
3 consider your testimony in making their recommendation to the
4 Court?

5 MR. BECKER: That's never been said.

6 MR. O'CONNOR: That's what the judge just said. I
7 just wrote it down.

8 THE COURT: I thought that he was quoting somebody,
9 either you or Meiners, as saying they would take a look at
10 it.

11 MR. BECKER: We would take a look at his motion, if
12 it's a meritorious motion.

13 THE COURT: You aren't going to tell me that they
14 aren't going to consider what he did here today in taking a
15 look at his motion.

16 MR. BECKER: That's fine, Judge. The first
17 question is somewhat misleading in that this guy apparently 18 had the
2255 planned long before this testimony came up. I 19 mean, Haley tells me
that this is an issue and that he's -20 so it's not -- so there's not some
motion being filed as a
21 result of his testimony here.

22 MR. O'CONNOR: Here is what I think happened,
23 Judge. Mr. Becker can speak, as well, to this. But Mr.
24 Haley is a new practitioner, and when he came in to talk to
25 us this morning, his belief was that he could get a Rule 35;

1 in other words, he could go tell, ask Mr. Becker for a Rule
2 35. He didn't realize he was out of time.

3 Then he thought he could then file a 2255, but we
4 all know that's not a time reduction motion, and the chances
5 of the government, even if he was a star witness like Mr.
6 Shepard where they did what they did for him, that they would
7 overturn his entire testimony, his entire conviction.

8 What I am saying is he's now figured out that his
9 relief is habeas corpus after talking to six lawyers this
10 afternoon, and that's what he's talking about.

11 THE COURT: That's what 2255 is.

12 MR. BECKER: There were legal papers that he was,
13 he already had this, the train was at the station.

14 MR. O'CONNOR: I just think I'm entitled to it.

15 THE COURT: Let's get on with it.

16 MR. BECKER: I figure we'll keep talking because I
17 just had another witness tell me that she wasn't going to
18 testify, so we're losing -

19 MR. BUNCH: Judge, because I don't want to have to
20 get up right after this, and I think the Court will -- and I
21 can deal with this quickly. The next witness that Mr. Becker
22 will call will be a Lisa Fredrick. Or you will call, Dan.

23 MR. MILLER: Right.

24 MR. BUNCH: Who will testify that she was in Clay
25 County Jail, and she said she was in for killing six people.

1629

1 Now, that's the statement. I am saying that I'm making an
2 oral motion for, an in limine motion saying that that,
3 however it sounds, is not an incriminating statement, that
4 she, she wasn't even charged with this offense at the time.

5 THE COURT: Who is she?

6 MR. BUNCH: This Lisa Fredrick who will be this
7 next witness. You rule it, and then I'm going to sit down.
8 I'm making a record, Your Honor.

9 THE COURT: Was she part of this crowd?

10 MR. BUNCH: She was a girl who was in the Clay
11 County Jail when Edwards was in there. They were all in the
12 tank. She came in, and people were saying, what are you in
13 here for? She said, the statement she says is, she said that
14 she was in for killing six people, Miss Edwards said that, my
15 client.

16 So instead of getting up and interrupting this
17 thing again, I'm raising it now because that's the sum and
18 substance of her testimony.

19 MR. MILLER: Correct.

20 MR. BUNCH: Go ahead.

21 MR. MILLER: What are you -

22 MR. BUNCH: You're going to say it's an admission
23 and -

24 MR. MILLER: Yes, it's an admission for the jury to
25 consider the weight of. I mean, it's what she said. "I'm

1630

1 here for killing six people."

2 MR. PETERS: "I'm in for killing six people."

3 MR. BUNCH: So I'm calling it to your attention
4 rather than getting up and asking that that -- that's not -

5 MR. MILLER: That's a pretty good admission.

6 MR. BUNCH: I can argue that it's not.

7 MR. MILLER: Right, I understand that.

8 THE COURT: I think I'll let it in for what it's
9 worth.

10 MR. BUNCH: I'm not surprised, but I didn't want to
11 get up.

12 (The following proceedings were had in open court:)

13 THE COURT: All right. Let's go. Who are we
14 striking, Mr. Becker? Who are we striking?

15 MR. BECKER: Well, Miss Quiroz has indicated she no
16 longer has an attorney by the name of Mr. Ross, and she wants
17 to speak to me about whether or not she's going to testify.
18 We may not get that far anyway. Ross was the attorney's
19 name.

20 MR. O'CONNOR: He was here earlier.

21 MR. BECKER: I know. The message I got is Miss
22 Quiroz isn't sure whether or not she wants to testify. We
23 may not get that far this afternoon.

24 THE COURT: You're lagging behind, here.

25 MR. BECKER: It was ten witnesses today, Judge, and

1 maybe I overestimated.

2 (The following proceedings were had in the
3 courtroom in the presence of the jury:)

4 THE COURT: Mr. Whitelaw, I'll remind you you're
5 still under oath. And counsel, you may proceed.

6 MR. O'CONNOR: Thank you, Your Honor.

8 MICHAEL WHITE LAW,
9 having been previously affirmed, testified further as
10 follows:

12 RESUMED CROSS-EXAMINATION

13 By Mr. O'Connor:

14 Q. Listen, I have two questions left, if you would listen
15 to each one of them, please, before you answer. The first
16 one is, is it your understanding that your lawyer is going to
17 file a motion on your behalf in an effort to get your
18 sentence adjusted downward as a result of your testimony
19 today?

20 A. No, I'm not aware of that. I'm aware that he is doing
21 my 2255, but as far as filing a motion, it hasn't been
22 mentioned.

23 Q. Would it be the purpose of this 2255 to get your
24 sentence adjusted?

25 A. The purpose of the 2255 if I have issues that are to be

1 heard to see if my trial was reasonable or not. But as far
2 as a reduction, no.

3 Q. All right. Is it your understanding that the government
4 will take a look, will consider -- strike that. Is it your
5 understanding that the government will consider your
6 testimony in making a recommendation to the Court at the time
7 that 2255 motion is filed?

8 A. They said that they may look at it, but there was no
9 promise of looking or any reduction whatsoever.

10 Q. And you're hoping that they will look at it?

11 . In my mind, you know, as far as my trial, yes, I'm
12 hoping that they do look at it.

13 MR. O'CONNOR: Okay. Thank you very much. I have
14 no further questions, Your Honor.

15 MR. OSGOOD: I just have one, Your Honor.

17 CROSS-EXAMINATION

18 By Mr. Osgood:

19 Q. Sir, my name is John Osgood, and I represent Richard
20 Brown. In your account of the conversation with Skip
21 Sheppard, and I don't want you to name names, but did he talk
22 about just two people?

23 A. Just two people.

24 Q. Himself and one other person?

25 A. Yes.

1 Q. And you do not know Mr. Richard Brown?

A. No, I don't.

3 Q. And there was no discussion or conversation about other
4 people being up there at that scene that night?

5 A. No.

6 MR. OSGOOD: Thank you, sir.

7 THE COURT: All right. Redirect?

8 MR. BECKER: None, Your Honor. Thank you.

9 THE COURT: All right. You may step down. Thank
10 you, Mr. Whitelaw.

11 All right. Call your next witness.

12 MR. MILLER: Your Honor, the government calls Ms.
13 Lisa Fredrick.

14 THE COURT: Stand by the witness chair and be
15 sworn, please.

16 - - -

17 LISA FREDRICK,

18 being first duly sworn by Anne Guswelle, Law Clerk, testified
19 as follows:

20 THE COURT: Go ahead.

21 - - -

22 DIRECT EXAMINATION

23 By Mr. Miller:

24 Q. Would you tell us your name, please?

25 A. My name is Lisa Fredrick.

1 Q. How old are you, ma ' am?

2 A. I'm 30.

3 Q. Do you recall the explosion that killed the six
4 firefighters back in November of 1988?

5 A. Yes, I do.

6 Q. How do you recall that?

7 A. It awoke me in the middle of the night, the first
8 explosion did. And I was living in Independence at the time.

9 Q. Did the second explosion wake you too?

10 A. I was still awake from the first one.

11 Q. Now, do you know a Miss Darlene Edwards?

12 A. Not really.

13 Q. Do you know any of her family or friends?

14 A. No.

15 Q. Do you remember meeting a Miss Darlene Edwards ever?

16 A. I met her in jail, but I didn't know who she was at the
17 time. I didn't know her name.

18 Q. Okay. When was that, do you remember?

19 A. February 17th, 1995.

20 THE COURT: I'm sorry, what year, ma ' am?

21 THE WITNESS: '95.

22 Q. February 17th, 1995?

23 A. Yes.

24 Q. Okay. Thank you. And you said jail. Where?

25 A. The Clay County Jail.

1 Q. Okay. And why were you up there?

2 A. I had a part-time job, and I went to apply for a credit
3 card, and I had closed the checking account, and I didn't
4 leave enough money in for one check. It was a \$25 bad check,
5 and they had a warrant for my arrest for \$25 bad check.

6 Q. Did you ever receive a conviction for that?

7 A. No.

8 Q. You just took care of it?

9 A. Yes.

10 Q. You said you met her in the Clay County Jail February
11 17, 1995. Specifically where at in the jail did you meet
12 her?

13 A. The holding cell.

14 Q. Describe the holding cell for the jurors.

15 A. It had a glass wall that would face the police officers
16 that processed you. And it was odd-shaped. It wasn't
17 square. It had a wall like this, and then it would come back
18 at a diagonal, and then another wall that went like this.

19 Q. How many of you were in there?

20 A. There was five or six. I think it was five, though.

21 Q. Okay. In the holding cell, was it all women?

22 A. Yes.

23 Q. And what were you all discussing in there?

24 A. The other women, and I included, we were all discussing
25 why we were there.

1 Q. Let me stop you there. Do you see Darlene Edwards in
2 the courtroom, the one that you met in the Clay County Jail?

3 And if you need to stand up and look, you may.

4 A. I can't find her. I don't see her.

5 Q. Okay. Can you describe what she looked like to you
6 then?

7 A. Her hair was shoulder length, and it was kind of
8 stringy, dirty. She had bags under her eyes. She was not -
9 kind of, not fat, but heavyset. Not skinny, not fat, but
10 heavyset.

11 Q. Tall or short?

12 A. Short.

13 Q. Did you ever learn what her name was?

14 A. When I was subpoenaed to appear before the grand jury.

15 Q. What did you hear that lady say in that holding cell?

16 MR. BUNCH: Objection, Your Honor. There's no
17 identification of the defendant. The testimony as to what
18 her name was is hearsay, so I object to the testimony.

19 MR. MILLER: May we approach?

20 THE COURT: Yes.

21 (Counsel approached the bench and the following
22 proceedings were had:)

23 MR. MILLER: We have evidence to tie up later with
24 dates and documents as to this, this Darlene Edwards, that
25 date, in that holding cell with her.

1 THE COURT: I assumed that. All right. Well, that
2 objection will be overruled. Otherwise, it would be
3 well-taken.

4 MR. BUNCH: Thank you, Judge.

5 (The following proceedings were had in open court:)

6 Q. (By Mr. Miller:) Would you tell us what that lady said,
7 whom you later learned to be Darlene Edwards, in the holding
8 cell as to why she was there?

9 A. She said she was in for killing six people.

10 Q. Now, were you ever put in the same cell as Darlene
11 Edwards?

12 A. No.

13 Q. How much longer were you in the Clay County Jail?

14 A. Approximately 15 to 20 minutes.

15 THE COURT: I'm sorry?

16 THE WITNESS: Approximately 15 to 20 minutes.

17 Q. (By Mr. Miller:) And then how did you get out so fast?

18 A. I was bonded out.

19 Q. How soon did you tell someone what Miss Edwards had said
20 to you?

21 A. As soon as I came to the, the officer came to
22 fingerprint me, I asked them not to put me back in the
23 holding cell there. Could you repeat the question?

24 Q. You answered it. Okay. You said you went to a
25 gentleman. Was this an officer in the Clay County Jail?

1638

1 A. Yes.

2 Q. Were you ever contacted by any other officers or agents?

3 A. Yes. An officer with the ATF.

4 Q. Okay. Did he talk to you in person, or how did he talk
5 with you?

6 A. The first time on the telephone.

7 Q. Was a photo of Miss Edwards or a photo, what they call a
8 photo spread or a photo array ever showed to you?

9 A. No.

10 MR. MILLER: That's all I have of this witness,
11 Judge.

12 MR. BUNCH: No questions.

13 THE COURT: Any other questions?

14 MR. PETERS: No, Your Honor.

15 THE COURT: All right. You may step down.

16 MR. BECKER: United States calls Joseph Denyer.

17 THE COURT: All right. Sir, come up to the witness
18 stand and be sworn, please.

1639

1 JOSEPH DENYER,
2 being first duly sworn by Anne Guswelle, Law Clerk, testified
3 as follows:

5 DIRECT EXAMINATION

6 By Mr. Becker:

7 Q. Good afternoon. Please state your name and spell your
8 last name.

9 A. Joseph Denyer, D-E-N-Y-E-R.

10 Q. How old are you?

11 A. Twenty-four.

12 Q. Are you employed?

13 A. Yes.

14 Q. What do you do for a living?

15 A. I sort through garbage.

16 Q. Where were you born?

17 A. Kansas City.

18 Q. Where do you live now?

19 A. Spickard.

20 Q. Where is that?

21 A. It's like north of here.

22 Q. Did you go to school, were you raised in Kansas City,
23 Missouri?

24 A. Yes, I was.

25 Q. What area of Kansas City?

1 A. Marlborough.

2 Q. Up to what age did you live in Marlborough?

3 MR. OSGOOD: Excuse me, Mr. Becker, could we
4 approach for a minute?

5 THE COURT: What's up, why are we doing this? He
6 just asked him where did he live.

7 (Counsel approached the bench and the following
8 proceedings were had:)

9 MR. OSGOOD: I intended to bring it up before he
10 testified. There will be -- are you going to elicit any
11 testimony that he was in this robbery with my client of a
12 homosexual, where they robbed a homosexual? I move to
13 prohibit that testimony. It's totally irrelevant to the
14 case.

15 MR. BECKER: I'm not going to ask him about that.
16 He denies that ever happened, but I'm not going to ask about
17 that.

18 MR. OSGOOD: Okay.

19 THE COURT: All right.

20 (The following proceedings were had in open court:)

21 Q. (By Mr. Becker:) Mr. Denyer, do you know the defendants
22 in this case, **Frank** Sheppard, Skip Sheppard, Darlene Edwards,
23 Bryan Sheppard, Richard Brown?

24 A. Yes.

25 Q. Have you ever been convicted of a crime?

1 A. Yes.

2 Q. What crimes?

3 A. Three burglaries, one stealing over \$150, and aggravated
4 escape.

5 Q. How do you know the defendants in this case?

6 A. Grew up with them, lived in the same neighborhood.

7 Q. Are you friends with any of them?

8 A. Yes.

9 Q. Who?

10 A. Bryan and Richard.

11 Q. Where were you living at the time of the explosion that
12 killed the six firefighters on November 29, 1988?

13 A. Adolescent treatment program, 2918 Tracy, Kansas City,
14 Missouri.

15 Q. Is that -

16 A. It was a juvenile like halfway house treatment center.

17 Q. Were you confined there at the time?

18 A. Yes.

19 Q. Do you remember getting a pass, or a weekend pass
20 shortly after the explosion that occurred on November 29,
21 1988?

22 A. Yes, I do.

23 Q. Do you remember going to **Frank** and Darlene, **Frank**
24 Sheppard and Darlene's house while you had that pass?

25 A. Yes, I do.

1642

1 Q. I want to show you what's in evidence as Government's
2 Exhibit 323. Do you recognize the house in that photograph?

3 A. Yes.

4 Q. Is that the house you visited where **Frank** Sheppard and
5 Darlene Edwards were living?

6 A. Yes.

7 Q. Did it look a little better at the time?

8 A. Yeah.

9 Q. Why were you going there?

10 A. Well, to see if **they** had a joint **they** would smoke with
11 me.

12 Q. When you were there, was there, did Darlene Edwards say
13 anything about where she was at the time of the explosion?

14 A. Yes. She said she was inside of QuikTrip and that it
15 freaked her out because the ceiling tiles and everything came
16 blowing in.

17 Q. Do you know what QuikTrip that was?

18 A. 85th and 71 Highway.

19 Q. Right near the construction site?

20 A. Or close to it.

21 MR. BECKER: I have no further questions at this
22 time, Judge.

1643

1

CROSS-EXAMINATION

2 By Mr. Bunch:

3 Q. Mr. Denyer, I'm Will Bunch, and I represent Darlene

4 Edwards. Now, you have been interviewed a number of times

5 with respect to the testimony you've given here today, have

6 you not?

7 A. Yes.

8 Q. Let me ask you, sir, if on the 8th day of December,

9 1988, when you were at the adolescent center at 2918 Tracy if

10 you were interviewed by Detective William Wilson. Do you

11 recall that?

12 A. A black guy?

13 Q. I'm not sure about his race, but were you interviewed

14 there?

15 A. Yes. Yes, I was.

16 Q. All right. And I'll ask you if on the 8th day of

17 December, 1988, whether or not you told Detective William

18 Wilson you did not know who was involved in causing the

19 explosion?

20 A. Yeah.

21 Q. And you don't?

22 A. And I don't.

23 Q. And do you recall being interviewed on the 13th day of

24 October, 1989, by Detective Zinn while you were being held on

25 burglary and robbery charges in the Jackson County Jail?

1644

1 A. Yes.

2 Q. Did you tell Detective Zinn that you went to Darlene and
3 **Frank's** house two days after the explosion?

4 A. I don't remember.

5 Q. You don't know what date it was or what day of the week
6 it was?

7 A. No.

8 Q. Do you know the address of the house to where you went?

9 A. It's like on 83rd Street, close to Brooklyn.

10 Q. And you've testified on direct examination that you went
11 to that house to see if you could find somebody to smoke a
12 joint with?

13 A. Yeah.

14 Q. You were then -- were you in this adolescent center, how
15 old were you, sir, on the 8th day of December, 19 -

16 A. Sixteen.

17 Q. And they let you out on a pass for Thanksgiving?

18 A. Yeah.

19 Q. And, again, was there any discussion on October the
20 13th, 1989, between you and Detective Zinn; that is, did you
21 tell him whether or not you knew anybody who had been
22 involved in the explosion that resulted in the deaths of the
23 firefighters?

24 A. I don't remember.

25 Q. Okay. Were you again called before the federal grand

1 jury on the 5th day of November, 1993? Do you recall
2 testifying before the grand jury?

3 A. 1993?

4 Q. Well, it would have been 1996, perhaps, I'm sorry. Let
5 me look. 17th day of January, 1996?

6 A. Yes.

7 Q. About a year ago. Did you during the course of that
8 examination before the grand jury advise the grand jury of
9 any knowledge that you had about people who participated in
10 this explosion? Did you tell them that you knew anybody that
11 had anything to do with the firefighters' deaths?

12 A. No. All I told them was that Darlene said she was at
13 QuikTrip when it happened.

14 Q. So you have no knowledge of anybody's participation in
15 the explosion that occurred that resulted in the deaths?

16 A. No, no. No knowledge of it.

17 Q. And your testimony here today comes from the meeting
18 that you had back in December of 1988, or November of 1988,
19 during which you were smoking marijuana; is that correct?

20 A. Yeah.

21 Q. And it is your recollection that during the course of
22 this marijuana smoking, your recollection is that Miss
23 Edwards said she was at QuikTrip when the explosion occurred?

24 A. Yeah.

25 MR. BUNCH: Thank you, sir.

1 THE COURT: Any other questions from the defense?

2 MR. O'CONNOR: No, Your Honor.

3 MR. PETERS: No, Your Honor.

4 MS. HUNT: No, Your Honor.

5 THE COURT: All right.

6 MR. BECKER: No redirect, Judge.

7 THE COURT: You may step down, then.

8 MR. BECKER: Excuse me one second, Judge. Hold on,
9 Mr. Denyer. Wait in the hallway for a second, please.

10 (Counsel approached the bench and the following
11 proceedings were had:)

12 MR. PETERS: Judge, he's somebody that I will be
13 calling in my case, so I just ask that he not be released
14 from the subpoena.

15 THE COURT: I haven't affirmatively done anything
16 to release anybody from subpoenas. I assume that you can
17 stay in touch with Mr. Becker and he'll -

18 MR. BECKER: He's not easy.

19 MR. PETERS: I know. That's why -- I wasn't
20 concerned about anybody other than him.

21 MR. BECKER: He's in Spickard or whatever it is.
22 You've got to pay him mileage and all of that.

23 MR. PETERS: I know that.

24 MR. BECKER: You've got to make sure you've got him
25 covered at the Four Acres Motel.

1 MR. PETERS: If I could have a minute.

2 MR. BECKER: Why don't you have your investigator
3 do that.

4 MR. PETERS: I'll have to do it.

5 MR. BECKER: Okay. That's good.

6 (The following proceedings were had in open court:)

7 THE COURT: Are you getting your next witness?

8 MR. BECKER: United States calls Shawn Furrell.

10 STEPHEN SHAWN FURRELL,

11 being first duly sworn by Anne Guswelle, Law Clerk, testified
12 as follows:

14 DIRECT EXAMINATION

15 By Mr. Becker:

16 Q. Good afternoon. Please state your name and spell your
17 last name.

18 A. Stephen Shawn Furrell, F-U-R-R-E-L-L.

19 Q. Do you commonly go by Shawn Furrell?

20 A. Yes.

21 THE COURT: How do you spell the Shawn, please?

22 THE WITNESS: S-H-A-W-N.

23 THE COURT: Thank you.

24 Q. (By Mr. Becker:) Mr. Furrell, how old are you?

25 A. Twenty-four.

1648

1 Q. Where do you live?

2 A. In Kansas City.

3 Q. How are you employed?

4 A. Sales representative.

5 Q. I'm sorry?

6 A. A sales representative.

7 Q. Were you going to be out of town next week and that's
8 why we moved you back to today?

9 A. I'm transferring.

10 Q. Okay. Do you know an individual by the name of Bryan
11 Sheppard?

12 A. Yes, I do.

13 Q. How do you know him?

14 A. I went to school with him.

15 Q. Where was that?

16 A. Center **High** School.

17 Q. Do you see Bryan Sheppard here in court today?

18 A. Yes.

19 Q. Could you just tell us where he's sitting and what he's
20 wearing?

21 A. Over here in the blue and red -

22 THE COURT: Is he the young man standing up against
23 the wall over there?

24 THE WITNESS: To be honest with you, it's been a
25 long time. I don't remember. It looks like the guy with the

1649

1 blue and gray shirt.

2 THE COURT: I'm sorry. I don't understand what
3 you're saying.

4 THE WITNESS: It looks like the guy in the blue and
5 gray shirt, striped. It looks like him. And it's been
6 several years.

7 Q. (By Mr. Becker:) Well, do you remember going to Center
8 High with a person you knew as Bryan Sheppard?

9 A. Yes.

10 Q. Was that person also known to you as Richard Brown?

11 A. No.

12 Q. He sort of went by the name of Bryan Sheppard, right?

13 A. Yes.

14 Q. And that's who you knew him to be from -- were you ever
15 in a class with him?

16 A. No.

17 Q. In November of 1988 when the explosion occurred that
18 killed the six firemen, were you in Kansas City, Missouri?

19 A. Yes, I was.

20 Q. Where were you living then?

21 A. At my parents' house on 85th Street.

22 Q. I'm sorry?

23 A. At my parents' house on 85th Street

24 Q. 85th and what?

25 A. Paseo.

1 Q. So you grew up in the same neighborhood as Bryan
2 Sheppard; is that right?

3 A. Yes, sir.

4 Q. Your whole life; is that right?

5 A. Since 1980.

6 Q. In the fall of 1989, did you have occasion to make a
7 trip to St. Charles, Missouri?

8 A. Yes.

9 Q. What was your purpose of going there?

10 A. I was trafficking marijuana from st. Charles to Kansas
11 City.

12 Q. When you came back to Kansas City, did you have an
13 appointment to see Bryan Sheppard?

14 A. Yes.

15 Q. Did you go see Bryan Sheppard?

16 A. Yes.

17 Q. Where did you go see Bryan Sheppard?

18 A. At his home. I didn't know exact location. I was taken
19 there by a gentleman by the name of Matthew Wright.

20 Q. When you got to Bryan Sheppard's house, how did you go
21 in that house?

22 A. We went into the back.

23 Q. Please describe that for us.

24 A. It's been a while. I think it was a back window at the
25 back of the house.

1 Q. What did you do to get inside the house?

2 A. We just climbed in. Matthew and I just climbed into the
3 back.

4 THE COURT: Who?

5 THE WITNESS: Matthew Wright.

6 Q. (By Mr. Becker:) Who was there when you climbed in
7 through the window?

8 A. Bryan Sheppard, Aaron Lockman (phonetic), Matt Wright,
9 and Charles Craft (phonetic).

10 Q. What was your purpose, then, of going to see Bryan
11 Sheppard?

12 A. I was selling marijuana.

13 Q. Did you sell him some marijuana that day?

14 A. Yes, I did.

15 MR. O'CONNOR: Objection, relevance.

16 THE COURT: Well, he's answered it. Overruled.

17 Q. (By Mr. Becker:) Did a conversation occur at that time
18 regarding the explosion that killed the six firemen?

19 A. Yes.

20 Q. Did -- what, if anything, did Bryan Sheppard have to say
21 about that explosion?

22 A. He just kind of chuckled and went into talking about it.

23 Q. I'm sorry, you're going to have to speak up.

24 THE COURT: I can't hear you at all, sir. Would
25 you please speak up?

1 A. Yes. He just kind of chuckled and went into talking
2 about it.

3 THE COURT: Went into talking about it, did you
4 say?

5 THE WITNESS: Yes, sir.

6 THE COURT: Please speak up and speak slowly.

7 Q. (By Mr. Becker:) What did he say?

8 . To my recollection, he was talking about -

9 MR. OSGOOD: Excuse me, Your Honor. I don't know
10 if we've identified who was talking, Mr. Craft or Mr.
11 Sheppard.

12 Q. (By Mr. Becker:) What did Bryan Sheppard say?

13 A. He just went into talking about what happened and
14 everything, how he was going up there to steal the blasting
15 caps and he was going to, he was supposed to burn the trailer
16 to get rid of the evidence.

17 Q. This is what Bryan Sheppard told you?

18 A. Yes.

19 Q. Did he say what he set fire to?

20 A. No.

21 Q. Did Bryan Sheppard say anything about knowing whether
22 there was explosives there?

23 A. No.

24 Q. Do you recall testifying before the grand jury?

25 A. Yes, I do.

1 Q. Do you recall Page 8, being asked this question and
2 giving this answer?

3 Question: "Did Bryan Sheppard say anything about
4 whether he knew there were explosives in the trailers?"

5 Answer: "He didn't know there was any explosives
6 in there at all."

7 Question: "That's what he said?"

8 Answer: "Yeah."

9 MR. O'CONNOR: Judge, I object. That's not
10 inconsistent with what he said.

11 THE COURT: I thought he said he didn't know there
12 as explosives.

13 MR. BECKER: It was my understanding that he didn't
14 say anything at all about it, but perhaps I didn't get the
15 answer.

16 THE COURT: Well, what is your understanding? Did
17 he know there were explosives in that trailer?

18 THE WITNESS: No, he didn't know.

19 Q. (By Mr. Becker:) He said that to you?

20 A. Yes.

21 Q. I'm looking for what Bryan Sheppard said to you, okay?

22 A. He said he didn't know.

23 Q. Did Bryan Sheppard say whether or not they got any
24 blasting caps when they were at the construction site?

25 A. Not that I remember.

1654

1 Q. Then did you leave that house?

2 A. Yes, I did.

3 Q. How did you leave that house?

4 A. The same way I came in.

5 Q. Through the window?

6 A. I believe so.

7 Q. Several days later, did you hear Bryan Sheppard talking
8 to your friend Matthew Wright?

9 A. Correct.

10 Q. What did you hear Bryan Sheppard say to Matthew Wright?

11 A. He said that if anything was said about it, the same
12 thing would happen again.

13 Q. You'll have to speak a little slower, please.

14 THE COURT: I didn't understand that at all. Ask
15 the question again, please.

16 Q. (By Mr. Becker:) Sure. What did you hear Bryan
17 Sheppard say to your friend Matthew Wright?

18 A. He said that if anything was said about what we talked
19 about, the same thing would happen again.

20 Q. Now, you didn't come forward with this information to
21 law enforcement for many years; is that right?

22 A. Correct.

23 Q. Why didn't you come forward?

24 A. I had not lived in Kansas City off and on for the past
25 five years, so I wasn't really into Kansas City very long at

1 any one time.

2 Q. Well, did it have anything to do with the threat that
3 you heard?

4 A. I felt that at the time -- that's one of the reasons I
5 wasn't in Kansas City, because I didn't want to be around.

6 MR. BECKER: Thank you very much.

7 THE COURT: Cross?

9 CROSS-EXAMINATION

10 By Mr. O'Connor:

11 Q. Mr. Furrell, I'm John O'Connor. I represent Bryan
12 Sheppard. I'm going to ask you a few questions.

13 As I understand it, the -- somehow you came in
14 contact with the federal agents and the ATF in this case in
15 February of 1995; does that sound about right?

16 A. About right, yes.

17 Q. And how was it that they came in contact with you? Did
18 you call them, or did they just show up looking for you?

19 A. They had been talking to my parents, my minister, and
20 different people looking for me.

21 Q. Now, you said that these statements, admissions by Bryan
22 Sheppard regarding his involvement in this explosion were
23 made to you in the fall of 1989?

24 A. I believe so.

25 Q. And as I understand it from looking at one of the

1 interviews that Agent True did of you, that he noted that you
2 were someone who has like a photographic memory, or you have
3 a real good memory?

4 A. Yes.

5 Q. And one of the reasons you remembered it was the fall of
6 '89 was that you had left town for a while and you were only
7 back in Kansas City during that time?

8 A. Yes.

9 Q. And so when you say fall of '89, what do you mean by
10 fall of '89 so we know what we're talking about here?

11 A. It would be after September.

12 Q. And before December?

13 A. Usually.

14 Q. And when you made this trip down to get the marijuana,
15 was that around that time, as well?

16 A. Yes.

17 Q. All right. Now, using this memory that you have, the
18 good memory that you have, were you able to remember when it
19 was that you went down to do this trafficking of marijuana?

20 A. No, I don't, exact time.

21 Q. But you know it was in the fall of '89?

22 A. Correct.

23 Q. And were you ever arrested or charged for this **drug**
24 trafficking?

25 A. No, I wasn't.

1 Q. And you've admitted in open court today that you have
2 trafficked in marijuana. Do you expect that the U.S.
3 Attorney is going to charge you with anything?

4 A. Due to the fact that it's over five years ago, the
5 statute of limitations have expired.

6 Q. Who has told you that?

7 A. Mr. Becker explained that to me.

8 Q. Now, you climbed through the back window at the Sheppard
9 house. Where do the Sheppards live?

10 A. I don't know exact location.

11 Q. Give us an idea.

12 A. About four or five blocks off of 85th Street.

13 Q. Do you know 85th Street pretty good?

14 A. Yes.

15 Q. How many houses off of 85th Street do they live, if you
16 don't know the street?

17 A. I don't know.

18 Q. Had you ever been to that house before?

19 A. No.

20 Q. You just went by there, just happened to show up that
21 day?

22 A. No. Another person had set it up for me to go there.

23 Q. And the person told you that the way you get entry to
24 Bryan Sheppard's house is to climb through some window, not
25 come to the front door?

1658

1 A. He took me to the back of the house through one. It's
2 been a number of years ago. I cannot say for definite that
3 it was a window or not.

4 Q. And who was this person that was with you?

5 A. Matthew Wright.

6 Q. And he's someone who could also verify this, what you're
7 telling us?

8 A. Yes.

9 Q. And then in the fall of '89, which you say is between
10 September and December?

11 A. Yes.

12 Q. You climbed through the back window at Bryan Sheppard's
13 home, and Bryan Sheppard was there in the flesh?

14 A. Yes.

15 Q. Are you able to show us in the courtroom, the person
16 that you saw in that house on that day in this courtroom?

17 And I'll help you. He's in front of this here, so
it's none

18 of those folks back there. From this -- it would be
19 somewhere in here, from here to there.

20 MR. BECKER: Judge, I think we've -

21 THE COURT: I think it's clear that you don't mean
22 the people in the audience.

23 MR. O'CONNOR: I didn't want him to be looking
24 around and thinking it's some kind of trick.

25 A. As I said before, I believe it's the gentleman over

1 there in the blue and gray striped shirt. But you have to
2 understand that it's been eight years ago.

3 Q. (By Mr. O'Connor:) And when you were interviewed by the
4 agents, you told them that you remembered the date also as
5 being around October of 1989?

6 A. Approximately.

7 Q. Mr. Furrell, can you tell me how you could have seen
8 Bryan Sheppard out at his residence when he was -

9 MR. BECKER: Objection. Can we approach?

10 MR. O'CONNOR: Yes.

11 THE COURT: Yes.

12 (Counsel approached the bench and the following
13 proceedings were had:)

14 MR. BECKER: Mr. O'Connor is attempting to testify
15 about where Bryan Sheppard was, but that's not for you to
16 testify to.

17 THE COURT: That's not for you to say.

18 MR. BECKER: You can sum up on it if you have other
19 evidence, but -

20 THE COURT: I think the only question you can ask
21 -- I guess you've got some indication that he was in jail at
22 that time.

23 MR. O'CONNOR: Exactly.

24 THE COURT: Well, wait a minute. You can't tell
25 them that. You may not tell them that.

1660

1 MR. O'CONNOR: Okay. I know what to do with it.

2 MR. BECKER: Well -

3 MR. O'CONNOR: I know what to do.

4 (The following proceedings were had in open court:)

5 Q. (By Mr. O'Connor:) As I understand it, this

6 photographic memory of yours allowed you to tell the agents

7 exactly what he was wearing back at the time; is that right?

8 A. Yes.

9 Q. And was he wearing any kind of an orange jumpsuit?

10 A. No.

11 Q. Or a yellow jumpsuit?

12 A. No.

13 MR. O'CONNOR: Can we approach a minute?

14 (Counsel approached the bench and the following
15 proceedings were had:)

16 MR. O'CONNOR: I want to ask him if he had any
17 uniform on that had a jail thing written on the back. I
18 don't want to be cute. I'm just trying to -- that's why I
19 came up here.

20 THE COURT: I don't understand. I mean, just ask
21 him if he is, if he is saying that whatever date he's talking
22 about -- and you haven't gotten very specific about the
23 date. What dates have you got this guy in the pokey?

24 MR. O'CONNOR: From July 27th of '89 to December
25 29th of '89.

1 THE COURT: Did you know this?

2 MR. BECKER: Yes. I thought it was earlier that he
3 saw Bryan, earlier that year.

4 MR. O'CONNOR: His whole interview, Judge -- let me
5 get it.

6 MR. PETERS: He's going to be referring to this
7 bottom paragraph.

8 MR. BECKER: Which date, which report?

9 MR. O'CONNOR: I'm referring to the February 21st
10 report. He talks exclusively about seeing him between August
11 and October. And then on examination he has moved the fall
12 from September to December. But even if you move it back to
13 August, he still loses.

14 And the point is if they knew he was in jail, then
15 why would they offer this witness who obviously says, can't
16 even identify him. It's argumentative, but what I'm saying
17 is that if they knew he was in jail from July to September
18 and this guy is saying that he saw him in the fall -

19 MR. BECKER: Two things. One, I thought the kid
20 was going to make an ID of him. But secondly, I missed the
21 date. so he has not -- he's obviously not been prepared on
22 this date, and you've got him. I mean, you can offer it as
23 evidence later on that the guy could never have been seen at
24 home during that time.

25 MR. O'CONNOR: Okay. I'll move on. As my offer of

1 proof, I would like to add since he says he has a
2 photographic memory, since he says all of that stuff, I want
3 to ask him more about the orange jumpsuit.

4 THE COURT: No.

5 MR. O'CONNOR: Thank you.

6 (The following proceedings were had in open court:)

7 MR. O'CONNOR: I don't have any other questions.

8 Thanks.

9 THE COURT: Any other cross?

11 CROSS-EXAMINATION

12 By Mr. Osgood:

13 Q. Mr. Furrell, my name is John Osgood, and I represent
14 Richard Brown.

15 Mr. Brown, would you stand up, please?

16 This is Mr. Richard Brown. Was he at this party
17 this night you were talking about?

18 A. No. Richard Brown was not. You have to understand
19 that, as I said before, this has been over eight years ago
20 now, and faces change over this amount of time.

21 Q. But whoever you knew as Bryan Sheppard -

22 A. Bryan Sheppard at the time was there.

23 Q. It wasn't this Richard Brown -

24 A. No, it wasn't.

25 Q. -- that was there?

1663

1 A. No. No, it wasn't.

2 Q. All right. Now, did you go to school with Richard

3 Brown?

4 A. Not that I remember of.

5 Q. Did you hang around with Richard Brown?

6 A. No.

7 Q. Did you ever hear Richard Brown's name in any of this

8 conversation?

9 A. No.

10 MR. OSGOOD: All right. Thank you, sir.

11 THE COURT: All right. Anything else?

12 MR. O'CONNOR: No, sir.

13 MR. BECKER: No redirect, Judge.

14 THE COURT: All right. You may step down.

15 MR. BECKER: Judge, I have run out of witnesses for
16 today.

17 THE COURT: You have three more on your list. I
18 understand about one, but how about the other two?

19 MR. BECKER: Mr. Davis has taken ill earlier today
20 and had to go to the hospital. And then the other one is
21 basically a records custodian relating to Quiroz.

22 THE COURT: All right. Let's come up a minute and
23 let's -

24 (Counsel approached the bench and the following
25 proceedings were had:)

1664

1 THE COURT: Tell me about this Quiroz.

2 MR. BECKER: She's in jail.

3 THE COURT: She is in jail now?

4 MR. BECKER: Yeah. She's doing time for cocaine
5 trafficking.

6 THE COURT: Is she here?

7 MR. BECKER: She's on the fifth floor.

8 THE COURT: so what is it that she -

9 MR. BECKER: Last Saturday when I prepared her for
10 testimony, she was ready to testify. Thereafter, an attorney
11 contacted me, a Mr. Ross, who said he represents Quiroz, and
12 Quiroz wanted to know if there was, you know, if the
13 government was going to make a motion for her based on her
14 testimony. And I said no, that, you know, the time for a
15 Rule 35 is gone, there's nothing I can do for her. And then
16 Mr. Ross said he'd get back with me. And he did yesterday
17 and said that Quiroz was going to testify.

18 And then today when Miss Quiroz was brought in to
19 the marshal's, Miss Quiroz told the marshals that she either
20 was no longer retaining Mr. Ross or had never retained Mr.
21 Ross and that she wasn't going to testify.

22 THE COURT: Well, bring her down and let's get her
23 to testify. Does she -

24 MR. BECKER: She was not going to testify. That
25 was the last word I had.

1 THE COURT: I understand. What's she in jail for?

2 MR. BECKER: Cocaine trafficking.

3 THE COURT: How long?

4 MR. BECKER: Maybe four years, three and a half
5 years.

6 MS. FRANCO: She has five years.

7 MR. BECKER: She's done some portion of that.

8 THE COURT: Do you represent her?

9 MS. FRANCO: I represented a codefendant.

10 THE COURT: I think it ought to be explained to
11 this lady that we can fix it so that the time she does is not
12 good time, is not countable time until she decides she's
13 going to testify.

14 MR. BECKER: I mean, if need be, you know, she can
15 come up and take the fifth, and I can make a motion.

16 THE COURT: She can't take the fifth.

17 MR. BECKER: Somebody can always take the fifth,
18 Judge. Every time I try and litigate whether somebody has a
19 Fifth Amendment privilege, the Court tells me it's up to the
20 witness, not the prosecutor.

21 THE COURT: Judge Hunter was responsible for some
22 pretty monumental law in the State of Missouri, and you can't
23 just willy-nilly take the fifth just because you don't want
24 to testify.

25 MR. BECKER: We'll take longer talking about this

1666

1 and then bringing her up here than it would be if we just
2 break, I'll go downstairs, and I'm going to find out. I
3 mean, if she's going to testify, she's going to testify. If
4 she's not, she's not. I mean -- and then we can put her on
5 tomorrow morning. I mean, and if she's not going to testify,
6 we're done with her, I'll ship her back.

7 THE COURT: Okay.

8 MR. BECKER: Thank you, Judge.

9 (The following proceedings were had in open court:)

10 THE COURT: We're going to stop now for the night.
11 Tomorrow is our really half day, so we will commence at 9
12 o'clock and stop at noon.

13 While you're apart from us this evening, don't talk
14 about the case or look at anything or pay attention to
15 anything that might appear in the media about this case.

16 Drive carefully. There's still some slick streets
17 out there. We'll see you in the morning. You're excused.

18 (The following proceedings were had in the
19 courtroom out of the presence of the jury:)

20 THE COURT: I realize the witness we're talking
21 about is in custody, but is she also under subpoena?

22 MR. BECKER: She's here on a writ, habeas corpus ad
23 testificandum.

24 THE COURT: Addressed to the superintendent of the
25 institution where she lives?

1 MR. BECKER: Yes.

2 THE COURT: Well, I hope you'll explain to her the
3 advantage of testifying and the disadvantage of not doing so.

4 MR. BECKER: I will, Judge.

5 MR. PETERS: Judge, I believe that she's
6 represented by counsel. There's one thing I think we need

8 THE COURT: I'm told that she fired her lawyer.

9 MR. PETERS: I understand that. I think if we're
10 going to have the attorney for the government advising her of
11 rights and consequences of actions, that creates kind of an
12 awkward situation. And if we're going to do that, I think
13 she should also be advised that if she gives false testimony,
14 she runs the risk of perjury both in the federal court -
15 this is a murder trial. Under state court, if she testifies
16 falsely in this proceeding, she would be facing 10 to 30 or
17 life, that she can't be given immunity from prosecution for
18 perjury.

19 If we're going to advise her of her rights, I think
20 we need to advise her of all of her rights and all of the
21 risks. And I don't -- my point is I'm not sure if the person
22 to be advising a witness of their rights is either party.
23 We've steadfastly avoided conveying that to witnesses who
24 have asked us, what do we do. We give them the name of three
25 attorneys. And I think it creates an awkward situation when

1668

1 a witness has indicated that she's going to refuse to
2 testify, for the Government's attorney to be in a position of
3 essentially becoming a witness in the case.

4 MR. BECKER: Oh, I don't think I'll be a witness in
5 the case. I've done this a number of times, and always
6 somebody else is present so I don't end up being a witness in
7 a case.

8 THE COURT: Well, obviously, the government's
9 counsel is not advising her of her rights. I have no problem
10 with him advising her of her responsibilities under the law.
11 If she is, in fact, put before this court and put under oath
12 and asked questions, she has an obligation to testify. I
13 think he can tell her the consequences of refusing to do so.

14 MR. PETERS: And I don't have a problem with that.
15 The only thing I would add is she has an obligation to
16 testify truthfully.

17 THE COURT: Absolutely. Okay. We'll be in
18 recess.

19 (The trial adjourned for the evening at 4:24 p.m.)

20

--

1 FRIDAY, JANUARY 31, 1997

2 (Proceedings out of the presence of the jury.)

3 THE COURT: Good morning.

4 MR. BECKER: I can't see Darlene Edwards
5 during the proceeding. She is obviously behind me.
6 But I have been told when witnesses are asked to
7 identify her, she goes into the duck mode.

8 THE COURT: I have seen that.

9 MR. BUNCH: Let me say I have had nothing
10 to do with it. I didn't know it.

11 THE COURT: I want you to tell her to sit
12 there and not move.

13 MR. BUNCH: You have got it. It's done.
14 I again had nothing to do with that and I will be
15 sure that doesn't happen again.

16 THE COURT: We have this business of the
17 motion you filed.

18 MR. BECKER: It's not smart to do with the
19 jury.

20 MR. BUNCH: Yes, it's not smart to do.

21 Now Paul and I discussed -- and I am
22 having somebody try to get a hold of Mr. Harris as
23 we speak and haven't reached him and have no
24 complaints about anything. And I acknowledge that
25 the thing was pretty late on my behalf. We are

1 working on it.

2 THE COURT: Judge Lundstrom is the Judge.
3 Harris was the defender, U. S. Attorney.

4 THE COURT: It is okay with Judge Lundstrom.
5 He doesn't care. But I care. I am not going to open
6 it up without the lawyers at least expressing
7 themselves and saying why not, if not.

8 MR. OSGOOD: What is your order?

9 MR. BECKER: It is whatever is on the sheet.

10 MR. OSGOOD: Quiroz is the first witness.

11 MR. BECKER: I will bring up today's list.

12 MR. PETERS: The first two witnesses are
13 going to be Quiroz and Chenier. These are witnesses
14 testifying what Darlene had told them and I am again
15 expressing concern about inadvertent blurting out of
16 "brother , "**Frank** Sheppard" or something like that. So
17 I am just putting the Court on notice.

18 THE COURT: Your concern is the testimony be
19 limited to being against Darlene and not against
20 anybody else.

21 MR. PETERS: As the court has noted, once the
22 cat is out of the bag kind of presents a problem.

23 THE COURT: No unringing the bell syndrome.

24 MR. BECKER: That's what Miller said.

25 THE COURT: That's an Arthur Popham, "You

1 can't unring the bell."

2 THE COURT: What about Dornhoffer. Is it
3 going to be okay to go ahead?

4 MR. BUNCH: We are doing what we can. My
5 job is to do the best I can and it may turn out we are
6 not able to get her in time. We are working on it
7 now, Judge.

8 THE COURT: Judge Lundstrom went ahead and
9 took her plea and sentenced her. So there has to be a
10 presumption she was competent and not a pathological
11 liar.

12 MR. BECKER: I think Mr. O'Connor raised this
13 a while ago, this issue on the -

14 THE COURT: Examination.

15 MR. BECKER: Right. And I said from what I
16 know she was found fit to proceed, to plea and she was
17 sentenced.

18 THE COURT: Now this is kind of another side
19 of it but I don't think that the fact of that
20 examination would be usable. I mean, wasn't there some
21 question of being loony tune?

22 MR. O'CONNOR: That particular examination, I
23 agree.

24 MR. BECKER: There were other ones.

25 MR. O'CONNOR: I don't agree. There were

1 certain findings. In '87 she was found incompetent to
2 proceed at one point, then found competent later and
3 certain findings made by people who evaluated at
4 Western Missouri Health as to things about her.

5 MR. PETERS: Her mental status.

6 MR. BECKER: How are you able to get those
7 privileged records?

8 MR. O'CONNOR: I am going to ask her whether
9 or not she has been treated by a psychiatrist,
10 psychologist. And I have a good faith basis for asking
11 it. And assuming she says yes, I am going to give this
12 person's name, did this person give an evaluation of
13 you and make certain findings. Then I am going to go
14 through them.

15 MR. PETERS: If she jumps it it will be
16 rebuttal but we don't think she will jump it.

17 THE COURT: Getting the record itself in with
18 a proper foundation is going to be difficult.

19 MR. O'CONNOR: I am going to give her the
20 report.

21 THE COURT: I don't think an individual can
22 testify to a doctors scientific opinion.

23 MR. O'CONNOR: Have you been told by a
24 psychiatrist you suffer from.

25 THE COURT: That is unsubstantiated.

1 MR. O'CONNOR: I will approach before I get
2 into that part of it.

3 THE COURT: I am leery of this. Again I
4 think it is a possibility. I don't mean you will do it
5 but there is a possibility people like this will be
6 taken advantage of and I don't want that to happen.
7 That was my same concern about that lady that was
8 confronted with what the private eye had found out.
9 And I think there is a possibility she will be taken
10 advantage of and I just want to play on a level playing
11 field.

12 MR. PETERS: I think before we do that, if
13 there is a problem we can come up. I think we are
14 going to have an exception under 803 on the hearsay
15 rule.

16 THE COURT: 803 what?

17 MR. PETERS: I am just going through it, (3)
18 or (4)

19 MR. BUNCH: Before we leave what is going
20 on, I want it left Mr. Becker has been as cooperative
21 as could be. I have done what I could. The Court
22 has given all the assistance it can. We are just doing
23 the best we can.

24 THE COURT: You should all know that Judge
25 Lungstrum went out of his way to be helpful to us last

1 1 evening after the clerk's office closed and I couldn't
2 get anything but a recording on the telephone. He ran
3 it down. And although he indicated he didn't remember
4 it but he did point out the timing of the exam and the
5 plea, that it looked like it had come out all right.
6 Didn't seem to be too worried. Let's go on.

7 MR. PETERS: 803 (3)(4) and then that (24)
8 catch all.

9 TuE COURT: Wait a minute. (4) is the
10 statement by the patient to the doctor for purposes
11 of medical diagnosis. And then what did you say?

12 MR. PETERS: "Then existing mental,
13 emotional or physical condition. "

14 MR. BECKER: That is present tense.

15 THE COURT: The declarant, not of the report.

16 MR. BECKER: It is just her statement is what
17 we are talking about.

18 THE COURT: I mean again you are talking
19 about having the shrink on the stand and having him or
20 her testify about what this woman told her. Maybe that
21 will work. But I am leery of the other.

22 MR. O'CONNOR: I promise not to get into her
23 mental, as far as findings on her mentally without
24 approaching the bench. In other words, when I get to
25 that point of the examination where I think I can do

1 it, then I will make an offer at that time.

2 THE COURT: Does anybody have a copy of the
3 report?

4 MR. O'CONNOR: I do.

5 THE COURT: You do?

6 MR. O'CONNOR: Yes.

7 THE COURT: Can you show it?

8 MR. O'CONNOR: Yes.

9 THE COURT: I would like to know what I am
10 dealing with. Have you seen it?

11 MR. BECKER: No, it is privileged
12 documents.

 THE COURT: Privileged?

14 MR. BECKER: They're medical records.

15 THE COURT: But it was on a court-ordered
16 examination.

17 MR. BECKER: I think he is talking about a
18 different one. I would be very surprised if he had the
19 federal.

20 THE COURT: I thought he was talking about
21 the report that Lungstrum ordered. Is this the one
22 Lungstrum made?

23 MR. O'CONNOR: No, this is a different one.
24 This is one we got in our own investigation. I think
25 I have a good faith basis and I can show the court a

1 good faith basis. And I will make an offer of proof
2 at that time.

3 THE COURT: We will deal with it when we have
4 to. Let's get the jury.

5 (The jury enters the courtroom and is
6 seated.)

7 THE COURT: Good morning, folks. Have a
8 seat. All right, counsel, you may proceed.

9 MR. BECKER: The United States calls Rosemary
10 Quiroz.

11 ROSEMARY QUIROZ.

12 having been sworn, testified:

13 DIRECT EXAMINATION

14 BY MR. BECKER:

15 Q Good morning. Please state your name and spell your
16 last name.

17 A: My name is Rosemary Quiroz, Q-u-i-r-o-z.

18 Q How old are you?

19 A: I am 39 years old.

20 Q Did you live in the Kansas City area during the last
21 ten years?

22 A: Yes, I did.

23 Q Are you currently serving a prison sentence?

24 A: Yes, I am.

25 Q What are you in jail for?

1 A: I am in jail for distributing cocaine and unlawfully
2 purchasing -

3 THE COURT: I can't hear you.

4 THE WITNESS: Unlawfully purchasing food
5 stamps in the trade of cocaine.

6 Q The charge was a food stamp charge but what really
7 happened was you traded cocaine for food stamps, is
8 that right?

9 A: Right. Yes.

10 Q And you were prosecuted by the United States Attorneys
11 office, is that right?

12 A: Yes.

13 Q Who was the prosecutor in that case?

14 A: Bill Meiners, William Meiners.

15 Q What was your sentence that you are presently serving?

16 A: I have a five year sentence.

17 Q Where are you currently serving that sentence?

18 A: At the federal prison camp, Bryan, Texas.

19 Q In 1995 were you incarcerated at a place known as CCA?

20 A: Yes.

21 Q Where is the Corrections Corporation of America, where
22 is that?

23 A: Leavenworth, Kansas.

24 Q What type of jail facility is that?

25 A: It is for federal inmates.

1 ~ Q And that is pre-trial for the most part.

2 A: Yes.

3 Q Do you recall when you were there?

4 A: I was there in February of '95 to August of '95, August
5 or September, because I was sentenced August the 25th
6 and I was there a few weeks until being transferred to
7 Bryan.

8 Q While you were there did you meet a woman by the name
9 of Darlene Edwards?

10 A: Yes.

11 Q Do you see her here in court today?

12 A: Yes, I do.

13 Q Is she standing now, dressed in black?

14 A: Yes, she is.

15 MR. BECKER: Indicating the defendant Darlene
16 Edwards, Your Honor.

17 THE COURT: It will so indicate.

18 Q How did you meet Darlene Edwards?

19 A: Well, we were just all inmates over there at CCA,
20 Leavenworth, Kansas and we were all brought into the
21 housing unit which is called a pod and we all lived
22 there together. We were all housed together. And that
23 is how I got to know her.

24 Q How many women are in that pod generally?

25 A: Up to 24, 2 to 24, 1 to 24.

- 1 Q Sure, there can be zero to 24, right?
- 2 A: Right.
- 3 Q While you were there did you ever discuss the case that
- 4 you were charged with with Darlene Edwards?
- 5 A: Yes.
- 6 Q Did Darlene Edwards ever discuss the case she was
- 7 charged with in 1995, with you?
- 8 A: Yes.
- 9 Q Was that case, in 1995 the case against Darlene
- 10 Edwards, was that this fire fighters case?
- 11 A: No.
- 12 Q That was another case, right?
- 13 A: Yes.
- 14 Q Did Darlene Edwards ever discuss what we have come to
- 15 call a fire fighters case?
- 16 A: Yes.
- 17 Q How did that topic come up?
- 18 A: Well, as you know, we were all in one room and there
- 19 were so many women and we all discussed our
- 20 indictments, our criminal charges. We just have
- 21 confidence in everybody. And, of course, we have
- 22 plenty of time to talk. And the way she started
- 23 talking about the fire fighters, I guess she seen
- 24 something on television, something with the fire, you
- 25 know, or something came up in the newspapers, I believe

1

1 it was Skip Sheppard, that she said it was just an
2 accident.

3 Q Let's go slowly. Where were you when you had this
4 conversation with Darlene Edwards, where in the pod?

5 A: In the housing unit, not in the pod but in the housing
6 unit out in the open.

7 Q That is a common area.

8 A: Yes, it is a common area.

9 Q Is there a TV table?

10 A: They're four tables and a television and our rooms are
11 on that side, two sides.

12 Q The rooms are on the front and back of the pod and the
13 common area is in the middle, is that right?

14 A: Right.

15 Q Was there anybody else there when Darlene Edwards
16 started talking about the fire fighters case?

17 A: She discussed it with practically everybody. She told
18 everybody she was involved in it. But, yes, there was
19 a Carolyn Woods that was there. There was also
20 Bridgete Dornhoffer and many others.

21 Q I want you to tell us what Darlene Edwards said about
22 the fire fighters case. Did Darlene Edwards talk about
23 any plans to do that event or activity, crime?

24 A: She said that at one time Frank had made plans.

25 MR. PETERS: Objection.

1 THE COURT: We will just instruct the jury to
2 disregard any reference to **Frank**.

3 MR. PETERS: I need to make a brief record.

4 (Proceedings out of the hearing of the jury.)

5 MR. PETERS: I need to move for a mistrial.

6 THE COURT: You are not going to get that.

7 MR. PETERS: I have made my record. 

8 THE COURT: That will be overruled.

9 MS. HUNT: We made a record with Skip
10 Sheppard.

11 (Proceedings in the hearing of the jury.)

12 THE COURT: Any reference to anybody else

13 should be disregarded. She is only permitted to

14 testify about herself and things about herself.

15 Q I would like you to answer the question what Darlene
16 said about that event.

17 A: Okay.

18 Q What did Darlene Edwards say happened about that event;
19 first, with the planning.

20 A: She told me that she was at home and that somehow
21 someone got a flat or something and **they** needed a ride
22 to go get some gas. So she took **them** to go get some
23 gas and she dropped **them** off.

24 Q Did she say where she got the gas?

25 A: She told me she got the gas at Quik Trip right down the

1 street from the construction site.

2 Q Were you living in Kansas City in November of '88?

3 A: Yes.

4 Q Were you familiar with that explosion that occurred
5 then?

6 A: I heard about it.

7 Q Did you ever go down to that construction site or that
8 section of highway in the Quik Trip?

9 A: Never.

10 Q What did Darlene Edwards say then? She dropped **these**
11 people off. Where did she drop **them** off?

12 A: At the construction site.

13 Q Did she say anything about a fire at the construction
14 site?

15 A: She told us about the explosion and how it got out of
16 control and it wasn't supposed to be like that.

17 Q Did she say anything about a diversion?

18 A: She said that **they** created a diversion to cover up what
19 **they** were doing.

20 MR. PETERS: I object.

21 THE COURT: The "**they**" can be referred only
22 to the speaker; that is Darlene Edwards, the defendant.

23 Q Did she tell you that all in one sitting or over the
24 course of time?

25 A: Over the course of time.

1 Q How often did you discuss this?

2 A: Well, we were just talking to our attorneys and we
3 would get back news. So we would cry or whatever and
4 tell each other our problems. So it was quite often.

5 Q Now at one time, particular time, did you make any
6 notes relating to these conversations with Darlene
7 Edwards?

8 A: Yes, I did.

9 Q I want to show you what is marked for identification
10 purposes as Government's Exhibit 386 and ask you to
11 take a look at that. Do you recognize that?

12 A: Yes.

13 Q Is that your handwriting on that piece of paper?

14 A: Definitely.

15 Q And are those the notes that you made about your
16 conversation with Darlene Edwards?

17 A Yes.

18 Q Do you know what happened to those notes? Did you keep
19 them with you until today or where did they come from?

20 A: I wrote these notes at CCA. As Darlene was telling me
21 things I was writing it down. When I was first
22 indicted I was afraid I was going to have to do time in
23 the federal prison so I thought this would help me get
24 out but it didn't. And I wrote this down in case I
25 needed more information to get a plea agreement. And

1 I dropped it.

2 Q Let's talk about that. Has anyone, myself or anyone
3 from the United States Department of Justice or ATF,
4 made any promises to you about getting you out of jail
5 in exchange for your testimony?

6 A: Not that I know of.

7 MR. O'CONNOR: Can we approach, please.

8 (Proceedings out of the hearing of the jury.)

9 MR. O'CONNOR: I was on the phone last night
10 with Dan Ross who represents this lady and Bridgete
11 Dornhoffer. He has advised me two things. One,
12 that Dave True told her back when he interviewed her he
13 would try to get something for her, a Rule 35.
14 Secondly, he said that Mr. Becker used these words -- I
15 am quoting. This is what I wrote down.

16 THE COURT: I think you better ask this
17 witness to leave the stand. Marshal, could she leave,
18 please.

19 (The witness leaves the courtroom.)

20 MR. O'CONNOR: Back at the time she gave her
21 statement Dave True intimated to her he would look into
22 helping her on a time cut.

23 Secondly, yesterday in discussions when
24 she was refusing to testify because they hadn't
25 done what they promised her to do, to start with,

1 Dan Ross reported this to me, I am going to write
2 what he said. I asked him did they say they would
3 look into it. He said -- this was the words he
4 used -- "that the government will recommend a drug
5 program within six months.

6 MR. BECKER: I will ask her about that.

7 THE COURT: That's all right.

8 MR. BECKER: Which she missed by being here
9 for this trial. She was supposed to start a drug
10 program on January 22nd. I told her I would try to
11 get her back into the drug program.

12 THE COURT: Is she at ICC or straight
13 confinement?

14 MR. BECKER: Straight confinement.

15 THE COURT: She didn't get that deal.

16 MR. BECKER: She missed the drug program
17 because she came here.

18 THE COURT: Bring that out.

19 MR. BECKER: I would try to get her in the
20 drug program.

21 MR. O'CONNOR: I need to give you a little
22 more history, Judge. If you get into a drug program
23 you get out one year earlier. That is what she has
24 been told as well.

25 THE COURT: Yes, but that's for everybody.

1 MR. BECKER: She missed that because she came
2 here.

3 MR. O'CONNOR: When she would talk to me to
4 some extent she says True promised her they would do a
5 time cut but they never would do anything for her. And
6 then they bring her up. And she said I ain't
7 testifying unless they give me something.

8 So now she believes in her mind and
9 heart she is getting something for her testimony
10 as a result.

11 THE COURT: She said no. That is your
12 interpretation.

13 MR. BECKER: I will ask her about the drug
14 program.

15 MR. PETERS: One other thing. I have to move
16 for a mistrial on behalf of my client. They have now
17 brought out against the motion in limine, the names of
18 **Frank** and Skip. And she has testified that Darlene
19 took them to Quik Trip.

20 The only inference that can be raised
21 from that in the minds of this jury -- and I have
22 been watching the jury and they are continuing to
23 take notes, when you instruct them to disregard
24 it, they might be writing disregard this but I am
25 advising the Court the only inference has been -



1 THE COURT: One of the clerks reports they
2 are erasing.

3 MR. PETERS: The only inference of things
4 violated by the motion in limine is **Frank** and Skip
5 and the testimony of the witness is it wasn't **Frank** and
6 Skip she took to Quik Trip. And it leads to the
7 conclusion the witness is talking about two jointly
8 charged defendants. And in this case it is made more
9 offensive because the impression who she took, when she
10 took them to the Quik Trip is the only two defendants
11 she has mentioned which is **Frank** and Skip.

12 THE COURT: You have a right of cross
13 examination.

14 MR. PETERS: But I don't have a right.

15 THE COURT: Sure, you do.

16 MR. PETERS: I am making my record.

17 THE COURT: I understand that but we are
18 taking an awful lot of time.

19 MR. PETERS: We are taking an awful lot of
20 time and based upon the representations of the
21 government these witnesses would be Brutonized and the
22 jury would never hear the names of the other
23 defendants. This is now the fifth time that has been
24 violated and it has created the impression of facts
25 that not only are inadmissible but the facts the

1 government knows to be incorrect. She could not take
2 **Frank** and Skip to Quik Trip.

3 MS. HUNT: Based on his argument, we renew
4 our motion for severance that was denied.

5 MR. BECKER: That was the reference to Skip.

6 MS. HUNT: She said before Skip Sheppard.
7 It didn't make any sense.

8 MR. BECKER: That one got by me.

9 THE COURT: I don't know if it had reference
10 to before Skip was charged or before Skip went to jail.

11 MS. HUNT: We don't know.

12 THE COURT: Because she didn't finish the
13 sentence. I don't think she said she took Skip and
14 **Frank** to the Quik Trip to get gas.

15 MR. O'CONNOR: She said "they but Skip and
16 **Frank** had already been mentioned.

17 THE COURT: You guys are a little paranoid
18 about all this.

19 MR. O'CONNOR: We might ask for some kind of
20 limiting instruction relating to that reference.

21 THE COURT: That's fine, we will give that.
22 (The witness resumes the witness stand and the
23 following proceedings were had in the hearing of the
24 jury.)

25 MR. BECKER: At this time, Judge, I would

1 offer Government's 386 in evidence.

2 MR. BUNCH: No objection.

3 THE COURT: All right, it is admitted.

4 (PLAINTIFF'S EXHIBIT 386 WAS RECEIVED IN EVIDENCE.)

5 Q Miss Quiroz, when you were in jail, in the penitentiary
6 in Texas, you are serving your sentence, right, your
7 five year sentence, is that right?

8 A: Yes, I am.

9 Q Were you scheduled to begin a drug treatment program?

10 A: I was scheduled to begin a drug treatment program
11 January the 22nd until the government moved me over
12 here.

13 Q The United States Attorneys office put forth a request,
14 but really it is not a request, you get moved up here
15 so you could testify, is that right?

16 A: Yes.

17 Q As a result of that did you miss going into this drug
18 treatment program?

19 A: Yes, I did. I missed getting a year off and six months
20 in a halfway house to come here. I didn't get nothing
21 for this and I have been drug through hell to get here.

22 Q Did we discuss this before your testimony?

23 A: Yes. I am not getting nothing for this.

24 Q Did I agree I would contact the prison to try to get
25 you back in that drug treatment program?

1 A: Yes, you did.

2 Q Have there been any other promises we would do anything
3 in exchange for your testimony?

4 A: There hasn't been any other promises but Dan Ross said
5 he would file a Rule 35(b) for me but you said you
6 would look at it; you didn't make any promises
7 whatsoever.

8 Q And it was explained to you that has to be within one
9 year of your sentence, is that right?

10 A: Yes, you did.

11 MR. O'CONNOR: May we approach, please.

12 (Proceedings out of the hearing of the jury.)

13 MR. O'CONNOR: It is disturbing when a
14 witness gets on there and says no promises are made
15 and now she has been told -

16 MR. BECKER: By her attorney.

17 MR. O'CONNOR: (Continuing) a Rule 35 will
18 be filed. And Mr. Becker, would he look at it
19 otherwise.

20 THE COURT: It is out of time. You can't do
21 a Rule 35. He has to look at it if it is out of time?
22 What does this have to do with her credibility?

23 MR. O'CONNOR: It has a lot to do with her
24 credibility. If Mr. Becker has told her, just like Mr
25 White yesterday, he will look at it. She was a drug

1 defendant, prosecuted by a drug prosecutor, not Mr.
2 Becker. It is not his case. I think the fact they
3 are going to look at it would allow us to ask the same
4 two questions we asked of White and they have just put
5 before this jury no promises have been made and there
6 have been some promises. They're not grand promises
7 but there are promises we haven't been told about.
8 I think to put her before this jury and now on cross,
9 he basically says have any other things been told and
10 the fourth time we heard from her mouth -

11 MR. BECKER: I don't know what her attorney
12 told her. I can't control what her attorney told her.
13 Miss Hunt argues differently but it is my understanding
14 she is out of time.

15 MS. HUNT: There is a section that allows
16 after a year.

17 MR. BECKER: I am aware of that.

18 MS. HUNT: You keep saying it is out of
19 time.

20 THE COURT: Prima facie is out of time.

21 MR. BECKER: April of '95 is when she got
22 this information. You tell me how that within
23 one year.

24 MS. HUNT: If it is one year after
25 sentencing. I don't know when she was sentenced.

1 That hasn't come up.

2 MR. BECKER: That is information she
3 received after her sentencing. She is talking
4 about information she got in April of '95 when she
5 was in pre-trial detention.

6 THE COURT: Where the defendant's substantial
7 assistance involves information it is not known by the
8 defendant until one year or more after imposing
9 sentence.

10 MR. BECKER: That is my reading. You guys
11 can argue otherwise but that is my reading.

12 MR. OSGOOD: Intent is what is relevant.
13 We may misread it.

14 MR. O'CONNOR: I think the easy answer, Paul,
15 did you tell Dan Ross you would look at a Rule 35(b).
16 It's that simple. You would consider or do something
17 like that.

18 MR. BECKER: If she has any information after
19 a year but I don't know of any.

20 THE COURT: This gets into the complications
21 of who does what in the prosecutor's office and the
22 critical question is whether something has happened
23 that has influenced this woman. Do you have something
24 inconsistent, prior inconsistency by this woman that
25 would indicate something Paul said to her made her

1 change her story?

2 MR. O'CONNOR: That is not the point.

3 THE COURT: Yes, it is.

4 MR. O'CONNOR: It is but it isn't. I went to
5 talk to this lady twice. Once she refused. The second
6 time her lawyer told her I could talk to her because he
7 thought she would talk to me and she refused. Then she
8 came down yesterday. He told Mr. Becker to tell her
9 what the consequences are to people who don't testify.
10 What I am saying is this. That until these discussions
11 happened between her and her lawyer, she was not
12 testifying. And now it has driven her to testify and
13 we are entitled to know what that is.

14 THE COURT: Just ask her.

15 MR. O'CONNOR: All I am saying, Judge, the
16 government has a duty to tell us any promises, anything
17 that they have done for any witness. They have put
18 this witness on and said have we made any promises to
19 you.

20 MR. BECKER: Can I answer the question?

21 MR. O'CONNOR: Sure.

22 MR. BECKER: She wasn't given her clothes
23 yesterday so she didn't want to appear in prison garb.

24 MR. O'CONNOR: I understand that.

25 MR. BECKER: She wanted makeup yesterday and

1 the marshals wouldn't give her the makeup that had
2 been brought to her because they are not allowed to
3 convey makeup back and forth. And she was upset, she
4 had been held, in order to keep the witnesses separated
5 you guys always want, right, she was taken down to a
6 room in the U. S. Attorney's office area. And because
7 she was there she had to remain shackled the whole
8 time. We don't have any facilities down there. So she
9 sat down there by herself with an agent in shackles
10 all day and she was not happy about that.

11 THE COURT: This gets into so many collateral
12 things. Let's go on.

13 MR. O'CONNOR: All right. Thank you, Judge.

14 (Proceedings in the hearing of the jury.)

15 THE COURT: All right. Let's go.

16 Q Miss Quiroz, did you yesterday afternoon state at that
17 time you did not want to testify here?

18 A: Yes, I did.

19 Q Was that related to the fact that -- by the way, you
20 are in jail now, is that right?

21 A: Yes, I am in Clay County.

22 Q Where did you get the clothes you are wearing today?

23 A: My husband brought me these clothes to wear.

24 Q Were you not allowed to change into them yesterday?

25 A: I was not allowed to put these clothes on yesterday.

1 ~ Q Is that one of the reasons why you wouldn't testify?

2 A: Yes.

3 MR. BECKER: I would offer Government's 386
4 in evidence.

5 I have nothing further at this time,
6 Judge. Perhaps at the next bench conference we
7 could pass the note. And that way the jury could
8 do something while we are conferring.

9 THE COURT: Mr. Bunch.

10 MR. BUNCH: If it please the court.

11 CROSS EXAMINATION

12 BY MR. BUNCH:

13 Q Miss Quiroz, I am Will Bunch and I am counsel for
14 Darlene Edwards. First, let me ask you about some of
15 the subject matter of the conversations that you have
16 testified about. Did Miss Edwards tell you that she
17 went to Quik Trip to obtain gasoline?

18 A: Yes, she did.

19 Q And did she tell you how she got there?

20 A: She said she got there in a car.

21 Q Did she say she was driving the car, her car?

22 A: She said she was driving a car.

23 Q And did she tell you how much gas was obtained?

24 A: No, she didn't.

25 Q Did she tell you whether or not she took containers or

1 how the gas was put in the tank of the car, do you
2 know?

3 A: No, she just said she took **them** to get gas.

4 Q So it may have been just to gas up the car.

5 A: She took **them** to get gas.

6 Q Then you testified she told you she drove to the
7 construction site.

8 A: She said she took **them** to get gas. I am sure she
9 drove.

10 Q Then did she tell you that she also drove to the
11 construction site?

12 A: She said she took **them** to get the gas at Quik Trip and
13 took **them** to the construction site and dropped **them**
14 off.

15 Q Then did she say she returned to her house?

16 A: She didn't say.

17 Q And did she tell you she later heard a large explosion?

18 A: Yes, she did.

19 Q You were interviewed, weren't you, on September the
20 25th, 1996 by an officer of the ATF at the federal
21 prison camp in Bryan, Texas.

22 A: Yes.

23 Q Do you recall whether or not you advised at that time
24 that she returned to her house after driving to the
25 construction site?

1 A: At one time she did say -- she told me to many
2 different stories. She did mention she was at the
3 house, yes.

4 Q So rather than telling you a single story, she told you
5 a variety of stories, so many different stories you
6 say.

7 A: Yes, she did.

8 Q And would that be at the same setting or on a different
9 setting she would tell you different versions?

10 A: Different times she would tell me different things.

11 Q And were these stories inconsistent, one with the
12 other?

13 A: Well, she told me bits and pieces which made sense.

14 Q The question is were they inconsistent, one with the
15 other? For example, would she tell you one thing on
16 one day and something different another?

17 A: No.

18 Q So if she told you many different stories, then can you
19 explain to us what you mean by that?

20 A: Well, she would tell us about the gas, how she went to
21 get the gas and different things that she did with the
22 other defendants.

23 MR. PETERS: Objection, Your Honor.

24 MR. BUNCH: I don't believe I elicited that,
25 Judge.



1698

1 1 THE COURT: That will be stricken. I don't
2 think that was responsive to the question. I think
3 your problem is what this lady means by the word
4 "different in the context.

5 MR. BUNCH: I will be more specific if I
6 can.

7 Q I am simply trying to discern from your statement that
8 she told many different stories, whether or not she
9 told you one thing one time and something different
10 another time?

11 A: They were all consistent.

12 Q So she didn't tell you many different stories

13 THE COURT: Counsel, as an old semanticist we
14 better talk about this.

15 (Proceedings out of the hearing of the jury.)

16 THE COURT: If she told her a story about
17 getting gas, then she told her a story about taking
18 them down there, then maybe she told her a story about
19 getting them after the explosion or whatever, these are
20 three different stories.

21 MR. BUNCH: Right.

22 THE COURT: They're not endemically
23 different. They're different from each other. They're
24 just different stories.

25 MR. BUNCH: I agree with that. The only

1 reason I was inquiring, on one occasion she said she
2 returned to the house from this construction site. On
3 another occasion she said she remained at the
4 construction site after the explosion.

5 THE COURT: Prior to today she said these
6 things.

7 MR. BUNCH: Yes.

8 THE COURT: Oh, well, I have not seen that.
9 She so far has been consistent with her use of the word
10 "different." She told different things at different
11 times.

12 MR. BUNCH: I accept that but you understand
13 what I am asking.

14 THE COURT: Sure.

15 MR. PETERS: While we are up here, when she
16 continues to mention the defendants, Skip, Frank or
17 they, I will continue to object. But instead of having
18 to ask in each instance, can I have a continuing
19 request for a mistrial?

20 THE COURT: You can have a continuing
21 objection. You don't have a continuing motion for a
22 mistrial. I am not going to grant a mistrial, at least
23 on the basis of what has happened so far.

24 MR. PETERS: I again ask for a mistrial now.
25 She has said the defendants. What she has repeatedly

1 used in her testimony goes to the defendants
2 inescapably. It was not elicited by any question asked
3 by defense counsel. That is the basis.

4 THE COURT: Overruled.

5 (Proceedings in the hearing of the jury.)

6 Q Miss Quiroz, what I was attempting to ascertain was
7 whether or not she told you that she returned to her
8 home after going to the construction site or whether
9 she told you that she remained at the construction
10 site.

11 A: She told me that she took **them** and dropped **them** off to
12 get the gas. She did tell me at one time that she went
13 home.

14 Q Did she tell you something different at another time?

15 A: No.

16 Q So that is the size of that, she went home.

17 A: Right.

18 Q All right. Thank you. Now, did she tell you whether
19 or not she heard the explosion?

20 A: She said she heard the blast, yes.

21 Q Where was she at the time she heard the blast?

22 A: She said she was at home.

23 MR. BUNCH: May I approach the witness, Your
24 Honor?

25 THE COURT: Yes, sir.

1 MR. BUNCH: I don't see a mark on this,
2 Paul. What is the number?

3 MR. BECKER: 386. It is in evidence. The
4 1 sticker was placed on the back rather than on the
5 note.

6 Q I am handing you what has been admitted into evidence
7 as Government's Exhibit 386. And you are the purported
8 author of that document, as I understand it.

9 A: Yes, I am.

10 Q Is this your signature on this document?

11 A: Yes, it is.

12 MR. BUNCH: May I have this marked as well?

13 Q I show you what has now been marked for purposes of
14 identification as Defendants' Exhibit 15, Miss Quiroz,
15 and ask you if that is not identical to Government's
16 Exhibit No. 386 with the exception your signature
17 appears on the bottom and it is a copy, is that right?

18 A: That's correct.

19 MR. BUNCH: I move the admission of
20 Defendants' Exhibit 15.

21 MR. BECKER: No objection.

22 THE COURT: Admitted.

23 (DEFENDANT'S EXHIBIT NO. 15 WAS RECEIVED IN EVIDENCE.)

24 Q Now referring to the exhibit that you have, if you
25 wish, that is why I left it with you. These are notes

1 that you purportedly made when?

2 A: When I was at CCA holding facility.

3 Q Were they made on one piece of paper or on more than

4 one piece of paper?

5 A: One piece of paper.

6 Q Do you have any other notes, in other words?

7 A: I believe I did.

8 Q Where are they?

9 A: I have them at home with all my property, I believe.

10 Q Where?

11 A: At 806 East 12th Street, Kansas City, Missouri.

12 Q Have you advised the United States Government you have

13 other notes that are pertinent to this?

14 A: Well, I asked my husband if he ever received them.

15 This is the one I was talking about I had and I didn't

16 know I had dropped it at CCA.

17 Q But you have a number of other notes that would be

18 pertinent to this case.

19 A: I have other notes, yes, but I asked my husband if he

20 found them and he said no.

21 Q Have you told the United States you had other notes and

22 you can't find them?

23 A: Yes, I did.

24 Q To whom did you make that revelation?

25 A: I told Mr. Dave True, the ATF agent.

1 Q When?

2 A: On the telephone I had a conversation with him.

3 Q When?

4 A: I don't know exactly what date.

5 Q Recently?

6 A: No.

7 Q About the time you were interviewed on the 25th of

8 September?

9 THE COURT: What year?

10 MR. BUNCH: 1996, 1995.

11 Q Do you know when?

12 A: What was the question again? I'm sorry.

13 Q I am trying to determine when it was you told Mr. True

14 about the notes that now are missing.

15 A: I told Dave True the first time I spoke to him on the

16 phone, I told him I was looking for this note here.

17 And I told him I thought I had other notes. My husband

18 went to look and there was no other notes. Then Dave

19 True sent this with the ATF agent. This is the note I

20 was talking about.

21 Q And where did you get that from, the one you are

22 holding in your hand?

23 A: I just got this from Paul Becker.

24 Q Well, I understand that but did you give it to somebody

25 yourself prior to that?

1

1 A I don't know if I dropped it. I don't know how it got
2 1 here.

3 Q Now, on this note that allegedly has something to do
4 with the case that we are here about, at the top of it,
5 the first line says "blew up the highway", correct?

6 A: Yes.

7 Q And D. then, Miss Edwards, advised you that she some
8 way or other participated in an event which a highway
9 was blown up.

10 A: She told me different things and I have wrote different
11 things every time she talked to me because, like I
12 said, I thought it would help me.

13 Q The question, Miss Quiroz, wasn't that. It is did she
14 tell you she participated in an event in which a
15 highway was blown up?

16 A: She told me that she took **them** to get the gas for the
17 explosion.

18 Q Well, I assume these notes were taken on or about,
19 contemporaneous with the conversations you had with
20 Miss Edwards.

21 A: Yes.

22 Q And then why is it you wrote down blew up the highway"?

23 A: She told me the highway was blew up.

24 Q That is what I was trying to ask you.

25 A: Yes.

1

1 Q Did she tell you she participated in an event in which
2 a highway was blown up?

3 1 A As I said, she told me different things every time.

4 Q The question is did she tell you she participated in an
5 event where a highway was blown up?

6 A: Yes, she did.

7 Q Did she also say they robbed a highway for machinery?

8 A: She told me **they** robbed a construction site for
9 machinery.

10 Q The second line of your note says they robbed a highway
11 for machinery, did Miss Edwards tell you that?

12 A: Yes, she did.

13 Q In this third line, "That is when **they** did the
14 robberies."

15 A: I'm sorry.

16 Q The third line says "That is when they did the
17 robberies", is that correct?

18 A: **They** set fire to construction.

19 Q I am trying to go down this line by line. Will you
20 read it?

21 A: "Set fire to draw distraction.

22 Q That's when **they** did the robberies, correct?

23 A: Yes.

24 Q Is this on the highway?

25 A: She told me that **they** had created a diversion to start

1 ~ this fire and it had gotten out of hand.

2 Q Well, prior to saying **they** set the fire it says **they**

3 1 "blew up the highway, **they** robbed the highway for

4 machinery." And then you go down, "**they** set a fire.

5 ~ That's when **they** did the robberies, when **they** set the

6 fire. The question then is did **they** set the fire on

7 the highway where **they** robbed the machinery?

8 A: **They** set the fire at the construction site.

9 Q Does that say that on there anywhere?

10 A: No, but she told me different, like I said, different

11 stories and it's in my head. These are just notes that

12 I wrote.

13 Q The question then with respect to what is in your head,

14 what does the highway have to do with a construction

15 site, blowing up the highway?

16 A: She told me the construction site was near the highway.

17 A construction site, they were building a highway or

18 something. I have never been there.

19 Q I understand that. And going on down through the notes

20 that you have, "that the firemen got killed. **They** made

21 the fire for a distraction.

22 A: Yes.

23 Q "The fire was accidental."

24 A: Yes, she told me the fire was an accident. It wasn't

25 supposed to get out of hand the way it did.

1 Q "And then she took **them** to" and there is a blank after
2 that, do you recall what that may have had reference
3 to?

4 A: She just kept saying she took **them** to the construction
5 site. These are just notes I took.

6 Q My question, Miss Quiroz, I am not trying to confuse
7 you. I am presently looking at these notes and asking
8 you questions. When it says she took **them** to and
9 blank, I simply am asking what does that refer to?

10 A: I guess she took **them** to get the gas. I guess that's
11 what it means.

12 Q Then the next line says, "Darlene said the walkie
13 talkies set off the transmitters."

14 A: Darlene told me that when the fire trucks pulled in
15 **they** must have talked on the walkie-talkies and set off
16 the explosion. That's what she told me.

17 Q She told you that the transmitters that were used
18 triggered something that set off the explosion.

19 A: That's right.

20 Q Then we have some names and so forth down here.

21 THE COURT: I'm sorry but did you finish your
22 answer?

23 THE WITNESS: No, I will finish it now.

24 Q Go ahead.

25 MR. BUNCH: I didn't mean to cut her off,

1 ~ Judge.

2 A: The rest at the bottom does not pertain to her case.

3 Q That is what I was about to ask. There are names and
4 so on and you are not saying people's names who appear
5 there were involved in any way.

6 A: That has nothing to do with this, no.

7 Q What we have here, if you will count with me is one,
8 two, three, four, five, six, seven, eight, nine lines,
9 adding the word transmitters of notes, is that correct,
10 Miss Quiroz?

11 A: I see ten.

12 Q All right, ten, but you had how many other pages of
13 notes that cannot now be located?

14 A: I don't know. I can't remember.

15 Q Do you know when these notes were made, this particular
16 sheet?

17 A: No, I don't.

18 THE COURT: By that you mean 386 or 15?

19 A: This note was made during the time of February of 1995
20 until maybe August of 1995. Between there is when I
21 was at CCA. I don't know the exact date, no.

22 Q Now, then you have on the government's exhibit that you
23 have in your hand, you have not signed that exhibit.

24 A: No, I didn't.

25 Q But you have signed Defendants' Exhibit 15.

- 1 ~ A Right.
- 2 Q Now, did Miss Edwards advise you that she had
3 participated in stealing equipment from the
4 construction site?
- 5 A: Yes.
- 6 Q And did she tell you what equipment had been stolen?
- 7 A: She said **they** stole machinery and different tools from
8 the construction site before and she sold it in trade
9 for **crack**cocaine.
- 10 Q And what kind of equipment was it that was stolen?
- 11 A: She didn't tell me what it was. She said tools and
12 machinery. I don't know.
- 13 Q You don't know what kind of tools or what kind of
14 machinery.
- 15 A: I am not going to sit there and ask her that, no.
- 16 Q Did she tell you how many times she had participated in
17 thefts from this site?
- 18 A: She said **they** had been up to the construction site.
19 How many times, I don't know.
- 20 Q Did you take it on the various conversations you had
21 with her that it was more than once?
- 22 A: Yes.
- 23 Q Did you take it based on the number of conversations
24 you had with her it was a substantial amount of
25 equipment and tools that were stolen?

1

1 A I don't know how much. She said she took it and traded
2 1 it for **crack**cocaine. I don't know.

3 1 Q And do you know to whom it was sold or traded?

4 A No, I don't.

5 Q And do you know for how much?

6 A No.

7 Q Value. A: No.

8 Q Now, has there been previous occasions, or a previous
9 occasion, Miss Quiroz, where you have been a
10 cooperating witness with the government seeking
11 leniency other than this case?

12 A Yes.

13 Q Can you tell us about that.

14 A My own case.

15 Q And what did you do?

16 A I told the government how I was involved in the **drug**
17 trade and how I started from the very beginning and the
18 people I was involved with and also the ones that got
19 caught, I gave the government their names.

20 Q By giving their names, then you agreed to appear and
21 testify against **them**, if necessary.

22 A: Yes.

23 Q How many people?

24 A: I believe it was two.

25 Q And what relief did you obtain as a result of that

1 effort?

2 A: I did get a sentence reduction, not very much.

3 MR. BUNCH: Thank you.

4 THE COURT: All right. Are we skipping to
5 Mr. O'Connor?

6 MR. O'CONNOR: Yes, I think so, Judge.

7 CROSS EXAMINATION

8 BY MR. O'CONNOR:

9 Q Is it Miss Quiroz?

10 A: Yes.

11 Q Miss Quiroz, I am John O'Connor. I represent Bryan
12 Sheppard. You and I have met before, is that right?

13 A: That's right.

14 Q I believe you have testified under direct examination
15 that no promises have been made to you, is that what
16 you said?

17 A: Yes, no promises have been made. My attorney said he
18 would file a Rule 35. Mr. Becker said he would look at
19 it but he could not give me any promises whatsoever.

20 Q Did you tell any authorities back at the time that you
21 gave your initial interview on September the 25th, 1996
22 that you wanted something for your cooperation?

23 A: Yes, I did.

24 Q What did you tell **them** you wanted?

25 A: I told **them** I wanted a sentence reduction.

1 Q Didn't **they** tell you at that time **they** would look into
2 that for you?

3 A: No, an ATF agent came and he interviewed me and he told
4 me he didn't have anything to do with it. The ATF
5 agent had sent **them** down there to question me. At that
6 time he told me he had nothing to offer. And to this
7 time **they** still haven't offered me anything.

8 Q Now I came to see you, did I not, on January the 11th
9 around 7:00 P.M., Saturday, at the Cass County Jail, is
10 that right?

11 A: Yes.

12 Q And did I identify myself to you, who I represented?

13 A: Yes, you did.

14 Q Did I tell you I wanted to ask you certain questions
15 what you had already discussed with the federal agents
16 in this case?

17 A: Yes.

18 Q Did you then refuse to answer any questions?

19 A: Yes, I did.

20 Q Did you tell me that you would answer questions for me
21 if you had a chance to talk to your lawyer?

22 A: Yes, I did.

23 Q And did we make arrangements while I stood there, we
24 got your lawyer on the line and I called him long
25 distance, Richard McFadden, and you talked to him

1 there, is that correct?

2 A: Yes.

3 ~ Q And Mr. McFadden told you it was okay to talk to me,
4 didn't he?

5 A: Yes, that's correct.

6 Q And I asked can I talk to you and you refused.

7 A: That's right. I didn't like the decision.

8 Q You have freely talked to the government in this case.

9 A: Yes, I did.

10 Q Freely talked to the agents.

11 A: Yes.

12 Q Now, when you were on the phone with Mr. McFadden we
13 were right there together, weren't we?

14 A: Right.

15 MR. BECKER: Can we approach.

16 (Proceedings out of the hearing of the jury.)

17 MR. BECKER: The problem with Mr. O'Connor's
18 method of personal contact is that he is now a witness.
19 He is saying this whole line of questions, I was there
20 and I did this, I was there and I did that. An
21 attorney in a case should not put himself in a position
22 where he is the witness. This line of questioning, I
23 thought a couple of questions and he would be done with
24 it but now it continues to revolve around what counsel
25 did.

1 THE COURT: Where are you going?

2 MR. O'CONNOR: I have an independent witness.
3 I have the jailers who were there heard the
4 conversation, the court reporter who heard this
5 conversation so I am not a witness.

6 THE COURT: Where are you going? The way the
7 questions are phrased, you were there and you talked
8 to Mr. McFadden, she talked to Mr. McFadden. She
9 decided she still didn't want to talk to you. Where
10 are we going with this. You have gotten all that.

11 MR. O'CONNOR: She said to McFadden "**They**
12 haven't kept their 'f'ing promises. I am not 'f'ing
13 helping **them**. **They** have put me in this 'f'ing hole.
14 No-one has talked to me.

15 Then two days later I think you will be
16 able to see from cross examination **they** moved her
17 to another jail and made it a little nicer. And I
18 think **they**'re grounds for cross examination. She
19 thinks there are promises. She is saying **they**
20 didn't keep their 'f'ing promises. The real
21 reason -

22 THE COURT: She didn't like you.

23 MR. O'CONNOR: No, she liked me. Do you want
24 to read the transcript? She didn't want to screw up
25 her deal. She wanted to get her deal. If she talked

1 ~ to me she figured she wouldn't get her deal. That's
2 reasonable.

3 MR. BECKER: That's argument. Mr. O'Connor
4 can argue that to the jury at the end if that is what
5 he wants to argue. There is no evidence here of that.

6 THE COURT: You can ask her, if you want to
7 get into that foul language.

8 MR. O'CONNOR: I am going to say "f"ing.

9 THE COURT: Now wait a minute.

10 MR. O'CONNOR: An expletive statement.

11 THE COURT: I don't care about that. The
12 main thing is here you not get into argument with her
13 about didn't you say such and such or wasn't it.

14 MR. O'CONNOR: I will say, did you say.

15 THE COURT: Wait a minute. After she says
16 yes or not, that's it. You are bound by this answer.

17 MR. BECKER: The line of questioning is
18 impugning a witness for asserting a right. The witness
19 has a right not to speak to Mr. O'Connor.

20 THE COURT: That's true.

21 MR. O'CONNOR: Her reason she didn't want to
22 speak to me, she wanted her lawyer. Then she got the
23 lawyer. I think the jury is entitled to hear that.

24 THE COURT: We have been through that.

25 MR. O'CONNOR: I am onto something else. I

1 ~ am past that.

2 1 MR. BECKER: No, he is not. I let him go

3 1 because we have had this conversation before.

"Did

4 1 you refuse to speak to me?" "Yes, I did." "After

5 speaking with your attorney did you refuse?" She said,

6 "I didn't like his decision.

7 THE COURT: Why don't we just go on.

8 MR. O'CONNOR: I am.

9 THE COURT: What is next?

10 MR. O'CONNOR: Did you say in my presence

11 that **they** hadn't kept their promises, the government.

12 THE COURT: I think he is entitled to ask

13 that.

14 MR. BECKER: That's fine.

15 (Proceedings in the hearing of the jury.)

16 Q Miss Quiroz, when I was there I had a court reporter

17 with me, didn't I?

18 A: Yes.

19 Q A lady like this.

20 A: Yes, you did.

21 Q When you were on the phone did you say these words,

22 that the government had not kept their "f"ing promises

23 to you or words to that effect?

24 A: I said **they** had not kept their promises, yes, I did.

25 Q What were their promises?

1 A: Well, I am talking when I was indicted, when the
2 government told me I would get a drastic sentence
3 reduction, I did not get it. I didn't appreciate it.
4 The government **drug** me down here again -- still didn't
5 get no promises -- and put me in the Clay County Jail
6 with no clothes.

7 Q Cass County.

8 A: Cass County with no clothes, no food. I have been
9 **drug**, I have been treated like a criminal on this case
10 that I didn't even commit. I didn't have any clothing,
11 no food. Been in the snow with no coat. I am not even
12 getting a reduction. I am doing this because I think
13 it's the right thing to do. Since I am here I may as
14 well do it.

15 Q **They** moved you to a nicer jail, didn't **they**?

16 A: Yes, **they** did.

17 Q I think you said on direct examination that you had a
18 conviction for -- tell me again. I'm sorry.

19 A: Cocaine.

20 Q Any other felony convictions?

21 A: Purchased food stamps unlawfully, also.

22 Q So you have two felony convictions.

23 A: Yes.

24 THE COURT: Were those in the same indictment
25 or charge or at different times?

1 THE WITNESS: The same indictment.

2 Q Let me show you Defendants' Exhibit 15. It is in
3 evidence. That's the notes you say you wrote.

4 A: Yes.

5 Q And did I also show you those particulate notes and ask
6 you if those were your notes and you refused to even
7 answer that question.

8 A: That's right.

9 Q Now, a cell mate of yours back at the time was
10 Bridgette Dornhoffer.

11 A: No.

12 Q Bridgette Dornhoffer wasn't in jail.

13 A: She wasn't my cell mate, no.

14 Q Was she in jail with you?

15 A: Yes.

16 Q And you and Bridgette and Darlene were all together.

17 MR. BECKER: Objection. Beyond the scope of
18 direct examination.

19 MR. O'CONNOR: We may have to bring her back
20 after Bridgette.

21 THE COURT: I'm sorry. I am confronted
22 whether it is beyond the scope of direct, and it is.

23 Q You know Bridgette Dornhoffer.

24 A: Yes, I do.

25 Q And have you been up in the Clay County jail now with

1 Bridgette Dornhoffer before you came here to testify?

2 A: Yes.

3 Q And, in fact, you both have the same lawyer right now.

4 A: Yes.

5 Q And you have been on the phone this week to lawyers
6 trying to get a deal for your testimony, you and
7 Bridgette, is that true?

8 A: That's true.

9 Q Did Darlene Edwards ever say **they** went to an Amoco to
10 get gas?

11 A: No.

12 Q Did she ever say she went to several Amoco gas stations
13 or several gas stations to get gas?

14 A: No.

15 Q Did she ever say that Black Sabbath was with **them** that
16 night?

17 A: No.

18 Q Did you say earlier that Darlene Edwards said she
19 dropped some people off at the site and then she went
20 home, did I misunderstand?

21 A: She said she dropped **them** off at the site. She told me
22 she went home. She heard the explosion. I don't know.

23 Q So according to that Darlene wasn't even there when the
24 explosion happened.

25 A: She said she dropped **them** off at the construction site

1 after **they** got gas. I don't know.

2 Q Whatever you learned about what happened at the
3 explosion site was then hearsay.

4 MR. BECKER: Objection. That is an
5 admission, not hearsay.

6 MR. O'CONNOR: It is hearsay.

7 THE COURT: The objection is sustained. A.
8 She isn't the person to assess whether it is hearsay
9 and, B. I think you are misconstruing or misstating
10 her testimony.

11 Q You said when you were making these notes on
12 Defendants' Exhibit 15 you were making **them** in order to
13 get a plea agreement.

14 A: Yes, when I first went to CCA, you think prison is
15 going to be really bad and everything, like you see on
16 television. And I thought I would use this in case it
17 did me any good. Now I am in prison I don't mind doing
18 the time. I am getting out in time, whether or not I
19 get the reduction; as he said he couldn't promise me.
20 I am going to get zilch out of this. I am doing this
21 for nothing.

22 Q He is going to call somebody for you, is that what he
23 said?

24 A: Who?

25 Q Mr. Becker, didn't he say he would call someone about

1 this program?

2 A: But I already have that coming. I was supposed to be
3 in the **drug** program January the 22nd. Because I am
4 here I missed out on my **drug** program, missed out on my
5 year off and I missed my six months at the halfway
6 house. I could be completing the program instead of
7 being here.

8 Q Now, this information was told you, as I understand it,
9 in April or March of 1995. In other words, Darlene was
10 incarcerated with you and that's when she told you
11 these things.

12 A: She told us during the time I was incarcerated, yes.

13 Q Do you agree that's between April and March of '95?

14 THE COURT: Between April or March.

15 Q Was it around April or March of '95? I apologize.

16 A: March or April.

17 THE COURT: Until when?

18 MR. O'CONNOR: Let me start over.

19 Q You talked to the agents.

20 A: Yes.

21 Q You talked to the agents on September 25th, 1996.

22 A: Yes, I did.

23 Q **They** asked you to relate conversations you had with
24 Darlene at the prison.

25 A: Right.

1 Q Did you tell **them** that the conversations happened some
2 time in March or April of '95?

3 A: I said these conversations were during the time that I
4 was incarcerated. Darlene Edwards came I believe 30
5 days after me. I don't know the exact date. And from
6 the time I was incarcerated, from the time she was
7 incarcerated, I guess from March to -- she got there in
8 March. I don't know how many days. She came soon
9 after me, until the time I left, yes, which was August
10 of '95.

11 Q And had she made statements to you up until you left,
12 like August the 1st, in that period?

13 A: I have seen Darlene interviewed.

14 Q The question is did she make statements to you
15 regarding her involvement in this in August of '95?

16 A: All the way up to the time I left.

17 Q And you left when, do you know?

18 A: No, I don't.

19 Q Did you have a motion for downward departure to get
20 your sentence down on August 24th, 1995?

21 A: Yes, I did.

22 Q And so what happened on that?

23 A: I guess Mr. Meiners didn't file it in time.

24 Q You didn't get a downward departure.

25 A: No, I didn't.

- 1 Q And March, April, May, June, July, August of '95 you
2 never came forward with this information to anyone, did
3 you, about Darlene Edwards?
- 4 A: Yes, I did. I called the Unsolved Mysteries.
- 5 Q When was that?
- 6 A: Whenever **they** had it aired on television. I don't know
7 the exact date.
- 8 Q Give **them** your name?
- 9 A: Yes, I did.
- 10 Q What else did you give **them**?
- 11 A: I gave **them** my name and told **them** I knew a little bit
12 about it. And I don't know how the FBI but this FBI
13 number, we got a message from the FBI telling us to
14 call **them** back. At that time I didn't feel I should
15 tattle on her so I just didn't do it.
- 16 Q So when you called in the summer of '95 did you just
17 tell **them** that Darlene Edwards took some men to a gas
18 station and dropped **them** off and went home.
- 19 A: No.
- 20 Q Now, this note that you say is your note.
- 21 A: Yes, it is.
- 22 Q Defendants' Exhibit 15 that you say is your writing and
23 your notes.
- 24 A: It's the same thing, yes, it is.
- 25 Q Did anyone ever ask you to give handwriting exemplars

1 so **they** could be checked to see if that was your
2 handwriting.

3 A: No, but I am willing to do it.

4 Q Did Miss Edwards tell you that a radio transmitter was
5 stolen from the site?

6 A: Radio transmitter?

7 Q Of some kind.

8 A: No.

9 Q Remember talking to this special agent Jeffrey Ribaski?

10 A: She said something about some walkie-talkies but I
11 don't know the story. Can't remember.

12 Q So you didn't tell him that a radio transmitter was one
13 of the items that was stolen from the construction
14 site.

15 A: I told him something about the walkie-talkies . If he
16 put radio transmitter, I don't know.

17 Q You told him or he told you about the walkie talkies.

18 A: I told him.

19 Q That walkie-talkies were stolen from the site.

20 A: I told him she had mentioned something about the walkie
21 talkies. I don ~ t know.

22 Q Was it your understanding the walkie talkies had been
23 stolen from the site?

24 A: I can't remember.

25 Q So my question again is did you tell him a radio

1 transmitter was one of the items that was stolen from
2 the construction site?

3 MR. BECKER: Objection. Repetitious.

4 THE COURT: I think it has been asked and
5 answered. I don't believe you need to go on the radio
6 transmitter any more.

7 MR. O'CONNOR: I was just trying to set it up
8 for rebuttal, Judge.

9 THE COURT: I think you have got it set.

10 MR. O'CONNOR: Thank you.

11 Q Now when **they** came up to see you to get this interview
12 of you on September 25, 1996, did **they** bring a tape
13 recording machine so we could hear everything **they** were
14 saying to you and you were saying to **them**.

15 A: Yes.

16 Q Did **they** have a lady like this or a gentleman that was
17 taking down what you said?

18 A: No.

19 Q Did **they** ever have you raise your right hand and swear
20 to this affidavit, what you told **them**?

21 A: No.

22 Q Did she say anything about at the site **they** stole power
23 tools, materials, cement?

24 A: No.

25 Q Did she tell you **they** stole an acetylene torch?

1 A: No.

2 Q Or welding equipment.

3 A: No.

4 Q Did she refer to the items that **they** got things from as
5 a shed?

6 A: No.

7 Q Were you ever told you may lose your good time if you
8 didn't testify here today?

9 A: No.

10 MR. O'CONNOR: Thank you very much. I have
11 no further questions.

12 THE COURT: Any other?

13 MR. OSGOOD: I have a question or two.

14 CROSS EXAMINATION

15 BY MR. OSGOOD:

16 Q Ma'am, did I understand you to testify in response to
17 Mr. O'Connor's questions, that Mr. Meiners did not
18 follow through for you on your motion for downward
19 departure?

20 A: Yes.

21 Q So he basically made a deal with you and then backed
22 out on it and double-crossed you.

23 THE COURT: Mr. Osgood.

24 Q That is your testimony.

25 THE COURT: I am not going to allow that in

1 this courtroom. I think that is really bad.

2 MR. OSGOOD: I will show you where I am going
3 in a minute. It is not to impugn the integrity of Mr.
4 Meiners, an honorable man.

5 I will ask another question.

6 Q Is that your view of it?

7 A: Yes.

8 Q Did he, in fact, file a motion for downward departure?

9 A: No, he didn't.

10 MR. OSGOOD: Could we have this marked,
11 please. It is a public document. I would like to read
12 the highlighted portion to the jury. I have drawn a
13 yellow marker.

14 THE COURT: Would you come up a minute.

15 (Proceedings out of the hearing of the jury.)

16 MR. BECKER: You can offer the whole
17 thing.

18 MR. OSGOOD: I would like to offer the
19 document and read it to the jury.

20 MR. BECKER: **They** can pass it. We have so
21 many bench conferences.

22 MR. OSGOOD: I would like to read it or
23 throw it up on the machine and let the jury see it in
24 connection with the statement she just made.

25 THE COURT: August of '95.

1 MR. OSGOOD: Prior to her coming back to the
2 well one more time in September with all of this
3 testimony after she did this and she has impugned the
4 integrity of Mr. Meiners. Mr. Meiners filed it and put
5 it in front of the court. And the court obviously read
6 that and exercised his discretion and wouldn't give
7 her one.

8 MR. BECKER: I am not sure if it was granted
9 or not. I would have to look.

10 THE COURT: I think it probably was because
11 she got five years.

12 MR. OSGOOD: He gave her some credit.

13 MR. BECKER: On a prior **drug** conviction, I
14 think she got some credit for it, not as much as she
15 wanted.

16 THE COURT: This is so collateral. If you
17 want to read this, you may.

18 MR. OSGOOD: I will read it briefly.

19 THE COURT: Just read it.

20 MR. OSGOOD: The whole document?

21 THE COURT: The whole ball of wax.

22 (Proceedings in the hearing of the jury.)

23 MR. OSGOOD: I will offer Defendants' 16.

24 THE COURT: Pursuant to our discussion, it
25 will be admitted for the limited purpose.

1 (DEFENDANTS' EXHIBIT NO. 16 WAS RECEIVED IN EVIDENCE.)

2 MR. OSGOOD: "Comes now the United States of
3 America versus Rosemary Quiroz". And it is file
4 stamped August 24, 1995. And it is the government's
5 motion for downward departure.

6 "Comes now the United States of America,
7 through its United States Attorney, Stephen L.
8 Hill, Jr. and through its Assistant United States
9 Attorney, William L. Meiners, both for the Western
10 District of Missouri, and hereby files this motion
11 pursuant to the United States Sentencing
12 Guidelines, Section 5K1.1 and Title 18 U. S. Code,
13 Section 3553(e) permitting the court, in the
14 exercise of its discretion, to depart downward
15 from the sentencing guidelines and the statutory
16 mandatory minimum sentence.

17 In support of this motion the United
18 States represents the following:

19 On October 31, 1994 the federal grand
20 jury sitting in Kansas City, Missouri returned an
21 indictment charging the defendant with conspiracy
22 to possess with intent to distribute cocaine, in
23 violation of Title 21 United States Code, Section
24 846.

25 Thereafter, on February 10, 1995 the

1 defendant entered a plea of guilty to this charge.
2 As part of the plea agreement the government
3 indicated a motion for downward departure would be
4 filed at the appropriate time.

5 The government is filing this motion at
6 this time because the defendant has rendered
7 'substantial assistance' as that term is defined
8 in the sentencing guidelines.

9 The defendant has assisted the
10 government by meeting with Special Agent James
11 Cheatham of the United States Customs Service on
12 several occasions to give proffers concerning her
13 **drug** trafficking activity.

14 Additionally, she has testified for the
15 United States in separate proceedings against
16 Christina Hernandez, Joe Brown and Juan Villages.

17 Moreover, her cooperation was instrumental in
18 obtaining an indictment and conviction of Pedro Vlloa.

19 Subsequent to the completion of her
20 cooperation, however, the defendant became re
21 involved in **drug** trafficking. This resulted in
22 the initiation of a lengthy and costly federal
23 investigation which culminated in the indictment
24 of the defendant for food stamp violations and
25 **drug** trafficking offenses.

1 Mrs. Quiroz's usefulness as an informant
2 was severely compromised by this activity as well
3 as by her subsequent cocaine use which caused her
4 current incarceration.

5 Wherefore, the United States
6 respectfully moves this court pursuant to Title 18
7 United StatesCode, Section 3553(e) and Sentencing
8 Guidelines Section 5K1.1 to exercise its
9 discretionand depart downward from the sentencing
10 guidelines and the mandatory minimum sentence."
11 And it bears the signature of William Meiners.

12 One last question, Your Honor.

13 Q Mr. Meiners did, in fact, file a sentencing motion for
14 reduction, didn't he, ma'am?

15 A: If he did, I didn't see it.

16 MR. OSGOOD: I see. Thank you.

17 THE COURT: Any Redirect?

18 MR. BECKER: Two questions.

19 REDIRECT EXAMINATION

20 BY MR. BECKER:

21 Q Mrs. Quiroz, you have taken a look at both of these, is
22 that right, the photocopy and then the original.

23 A: Yes.

24 Q And your signature is at the bottom of the photocopy,
25 is that right?

1 A: That's correct.

2 Q What is the date next to the signature?

3 A: September the 25th, '96.

4 Q Is that the date that ATF agent in Texas brought the
5 photocopy to you for you to look at?

6 A: Yes.

7 Q Then also when Mr. O'Connor came up to speak to you at
8 the various jails, did he tell you he was representing
9 Bryan Sheppard?

10 A: Yes.

11 Q Do you know anything about Bryan Sheppard?

12 A: No.

13 Q Mr. Osgood, who was just asking you questions, he
14 represents Richard Brown, do you know anything about
15 Richard Brown?

16 A: No.

17 MR. BECKER: I don't have any further
18 questions, Judge.

19 MR. BUNCH: Nothing further.

20 THE COURT: Okay, we will take a 15 minute
21 break. Ladies and gentlemen, please be back in the
22 jury room at five minutes of eleven. Don't talk about
23 the case. You are excused.

25 (Proceedings in the courtroom out of the presence of



1 the jury.)

2 MR. BECKER: We are going to take Lucia
3 Chenier next. She found the note at CCA. She will be
4 five minutes hopefully. But after that if we took
5 Dornhoffer, we wouldn't get to the other three
6 witnesses. **They**'re construction people.

7 MR. BUNCH: I want to just tell the Judge
8 inquiry has been made by Mr. Dave Phillips who is a
9 federal public defender in the District of Kansas who
10 represents Miss Dornhoffer who said **they** would have to
11 respect her desires and that's Miss Dornhoffer's. So
12 if she is against unsealing the records, **they** would
13 also
14 be, which is a proper thing for a defense lawyer to do.
15 I just wanted the court to know that.

16 THE COURT: Have you talked to her?

17 MR. BECKER: No, she won't talk.

18 MR. BUNCH: No, and she wouldn't agree to
19 that without any question but I wanted you to know,
20 Judge, I think the issue is overwith.

21 MR. PETERS: The other thing, we had said
22 something about coming up with an instruction after
23 Quiroz has testified and we will work on that after
24 the break.

25 RECESS

1 (Proceedings out of the presence of the jury.)

2 THE COURT: Mr. Peters.

3 MR. PETERS: First, I again move for a
4 mistrial based on Mr. Becker's final questions before
5 this witness where he pointedly brought out that you
6 don't know anything about Richard Brown and you don't
7 know anything about Bryan Sheppard, drawing attention
8 to **Frank** Sheppard and Skip Sheppard. And I will have
9 something prepared in writing for the court by Monday.
10 But again that is the government directly bringing to
11 the jury's attention Skip Sheppard and **Frank** Sheppard
12 which is a violation of the rules of Bruton and its
13 progeny. But again I am making my record and I will
14 prepare something in writing.

15 THE COURT: All right, anything else?

16 MR. PETERS: The other thing, we have
17 mentioned we would like an instruction given to the
18 jury since she mentioned **Frank** and Skip.

19 First of all, I think Susan needs to
20 join in my objection and motion.

21 MS. HUNT: On behalf of Skip Sheppard, we as]
22 for a mistrial and renew our severance motion.

23 MR. PETERS: Then I apologize to the Court.
24 I don't have the Pattern instructions with me. But
25 I have handed to the court a handwritten proposed

auoemos mo~; 6uFmoo Alpa~od~nd Aes~eq sT qaFqM SZ
 a~Fs aq~ mo~; ualo~s 6uFaq ;~n~s pue uoFsoldxa aq~ bZ
 ~noqe P1•q uesq peq aqs ~eq~ seM P1•~ seM A~nF aq~ EZ
 leqM Tnff AUomFTsaT alqFssimpe laq ~o ~ua~xa aq~ ZZ
 sF ~eq~ pu~ a6pnr ~Al]oexa :suaiga dW IZ
 uoFsoldxa 6Fq e seM a~aq~ ~a~el OZ
 amT~ amos uaq~ pu~ amoq quaM uaq~ pu~ ;;o maq~ 6T
 paddo~p uaq~ pue auFIose6 To9 :~unoo aHI 8T
 amoq quaM I pue ~Jo maq~ paddo~p pue LT
 sAn6 OM] ~00~ I 6UFAes ~aq sF alqFssF~pe sF leql 9T
 AuomF~sa~ AIUo aq~ 'sp~eMpa aual~ea o~ sp~eba~ ST
 se ~eq1 sF ~eq~ pu~ •dF+s pue yue~g •1 aaFpnFa~d bT
 se aAFaa~ad aM ~eqM qtFM UF seFT leql U•FlUalle 8T
 s,~no~ aq~ o~ 6uF~q o~ peau aM ~a~em ~aq~oue sF ZT
 a~aq~ ~uFq~ I 'a6pnp '~uFod ~eq~ uo pu~ TT
 sp~eMpg aual~ea o~ p~ebax uF OT
 pasn aq AIUo uea sp~eMpg anal~ea ~o AuomF~saq aq~ 6
 ~eq~ ~aa;;a aq~ o~ 6uFq~amos ',,,Aaq~,,, og 6uF~ela~ 8
 AuomF~saq su~aonoa ~F ~o ~ed puo~as aq~ L
 p~ebaxsFp o~ waq~ P1•q Al~aa~Fp noA ~eq~ 9
 6uFq~amos sF sFq~ AaAuoo uea q~no~ aq~ 6uFdoq a~e aM S
 pu~ llaq aq~ 6uFIun o~ 6U]A~l ale aM ~uel~ pue dFy
 plebalsFp o~ maq~ pa~onl~suF aAeq noA ~eq~ ale AlnF aq~ £
 •1 P1•1 aq o] peau ~uFq~ aM s~uFod OM~ aq~ ~eq~ ~Inoo Z
 aq~ ~o uoF~alosFp aq~ •q ~F aAeal IIFM I uoF~onI~suF T
 SELT

1 else.

2 TuE COURT: It is admissible hearsay. It is
3 an admission of this defendant.

4 MR. PETERS: It is not an admission of this
5 defendant.

6 THE COURT: If she told she took part in any
7 enterprise in which it was stolen, it is an admission
8 against that defendant.

9 MR. PETERS: Judge, these defendants, as the
10 government has repeatedly pointed out, are not charged
11 with conspiracy. A statement made to Darlene Edwards
12 by someone else and related through another witness by
13 Darlene Edwards is hearsay.

14 If the statement was made by anybody
15 else, whether it is a defendant or another person
16 in a case in which the government has not alleged
17 conspiracy, it is a hearsay statement.

18 TRE COURT: I understand your position on
19 that. Do you have something, Miss Hunt?

20 MS. HUNT: Just to join in the motion.

21 THE COURT: Mr. Becker.

22 MR. BECKER: Judge, I think the court is well
23 aware of the federal laws, we don't have to charge
24 conspiracy for that law of evidence to apply, and I
25 don't have any problem with the court repeating its

1 instruction that it did earlier in the case.

2 THE COURT: I am going to repeat Instruction
3 2.15 simply because it is ripe at this time,
4 considering the Quiroz testimony.

5 MR. O'CONNOR: I would like to make just a
6 short record relating to this.

7 I know everybody is trying to do the
8 right thing and the witness probably said
9 something Mr. Becker didn't anticipate but it has
10 happened at least three times that I am aware of.
11 I am just asking we take extreme caution with
12 these witnesses when Mr. Becker talks about
13 staying away from things that are not asked.
14  Because every time it happens it adds to the
15 problem. I am not blaming him. I don't think
16 it's his fault. But it is happening more than I
17 think it should and there are a lot more witnesses
18 coming.

19 THE COURT: Well, it is a function of the
20 artificiality of the rule and I have already expressed
21 myself and how much I dislike having to try to change
22 history to make it fit with what this rule dictates.
23 And we will do what we can but I am not going to tamper
24 with this evidence just because there is a rule out
25 there called Bruton.

1 MR. PETERS: Along those lines, I agree
2 completely with what the Court is saying and that
3 is why again I would ask for a severance because there
4 are some instances where, as the Court is saying, what
5 you are trying to do is change history. And in those
6 instances where history can't be changed -- and I
7 believe this is one of these cases -- the remedy is a
8 severance.

9 THE COURT: You have been through that with
10 Judge Bartlett and I am not going to change that.

11 Okay, let's go. Get the jury.

12 If there were motions and objections and
13 all of that, they are overruled.

14 (The jury enters the courtroom.)

15 THE COURT: Have a seat, ladies and
16 gentlemen.

17 In an abundance of caution, I am going
18 to repeat to you an instruction that I read to you
19 earlier and I suppose it is possible I may be
20 caused to read it to you again. But this pertains
21 to testimony of Miss Quiroz. And I say to you
22 that you may consider the statement, or
23 statements, of defendant Darlene Edwards only in
24 the case against her and not in the case against
25 any of the other defendants.

1 What that means is that you may consider
2 the defendant Darlene Edwards' statement in the
3 case against her and for that purpose rely on it
4 as much or as little as you think proper. But you
5 may not consider or discuss that statement in any
6 way when you are deciding if the government has
7 proved beyond a reasonable doubt its case against
8 any of the other defendants.

9 All right, you may proceed.

10 MR. BECKER: Thank you, Judge. The United
11 States calls Lucy Chenier.

12 LUCIA CHENIER,

13 having been sworn, testified:

14 DIRECT EXAMINATION

15 BY MR. BECKER:

16 Q Good morning. Please state your name and spell your
17 last name.

18 A: Lucia Chenier, C-h-e-n-i-e-r.

19 Q How do you spell your first name?

20 A: L-u-c-i-a.

21 Q How are you employed?

22 A: Through CCA.

23 Q What is CCA?

24 A: Corrections Corporation of America.

25 Q How long have you been working there?

- 1 ~ A Two and a half years.
- 2 1 Q Briefly what are your duties at the Corrections
- 3 1 Corporation of America?
- 4 1 A Briefly custodian control.
- 5 Q Of prisoners.
- 6 A Of inmates.
- 7 1 Q Where is that located?
- 8 A Leavenworth.
- 9 Q Kansas. A Yes.
- 10 Q Were you working there on April 29, 1995?
- 11 A: Yes, sir.
- 12 Q Do you recall being in the -- is there like a dining
- 13 area, a common dining area?
- 14 A: It's an open pod; it's open.
- 15 Q Do you recall being there in the morning hours when an
- 16 inmate gave you a yellow note?
- 17 A: Yes.
- 18 Q I will show you what is in evidence as Government's
- 19 Exhibit 386 and ask if you recognize it. Do you
- 20 recognize that?
- 21 A: Yes, sir.
- 22 Q Is that the note that you were given on April 29th,
- 23 1995?
- 24 A: Yes, sir.
- 25 Q Prior to that note being given to you, did you see how

1 the inmate -- what was the inmate's name that gave it
2 to you?

3 A: Quiroz.

4 Q It was Quiroz' note but did inmate Holveck give it to
5 you?

6 A: Yes.

7 Q Did you see how inmate Holveck got that note?

8 A: Yes, I came in the unit to collect the trays from
9 breakfast and she had been bent underneath the back
10 table in the very back and picked up the yellow paper.

11 Q "She" being inmate Holveck.

12 A: Yes.

13 Q Who had been sitting at that table.

14 A: There were four inmates. I remember two of them which
15 was inmate Marino and inmate Quiroz.

16 Q What did Holveck do with the note after you observed
17 her pick it up?

18 A: They kind of stood to the side, her and inmate Holveck
19 and they were reading it. I didn't pay any attention.
20 I was picking up the trays. Before they left the pod
21 they both came up to me.

22 Q And gave you the note.

23 A: Yes.

24 Q What did you do with the note?

25 A: I kind of glanced through it and I turned it into the

1 captain on the shift.

2 Q As far as you know, it has been kept by the captain
3 until it was turned over to the Department of Justice

4 A: Yes, sir.

5 MR. BECKER: Thank you. I have no further
6 questions.

7 MR. BUNCH: No questions.

8 MR. OSGOOD: No questions.

9 THE COURT: Thank you, ma'am. You are
10 excused.

11 THE COURT: All right, call your next
12 witness.

13 MR. MILLER: The government calls Kenneth
14 Richard Brown.

15 KENNETH RICHARD BROWN.

16 having been duly sworn, testified:

17 DIRECT EXAMINATION

18 BY MR. MILLER:

19 Q Would you tell the court and jury your name, please.

20 A: Kenneth Richard Brown.

21 Q You go by Rick Brown.

22 A: Yes.

23 Q And how are you employed?

24 A: I am currently the president of L. B. Enterprises.

25 Q And back in November of 1988 how were you employed?

1 A: I was the vice president of Brown Brothers Excavating.

2 Q And what project was Brown Brothers working on back in
3 November of '88?

4 A: The 71 highway project.

5 Q Where was that?

6 A: Kansas City, Missouri.

7 Q And is that 71 highway and 87th right in there?

8 A: Yes.

9 Q And what was Brown Brothers to do at that site?

10 A: We were constructing one of the phases of the new big
11 town freeway and the 87th street highway relocation.

12 Q What kind of equipment did Brown Brothers Excavation
13 use?

14 A: A bulldozer, scrapers, motor grinders, high-
loaders,
15 mainly Caterpillar equipment.

16 Q Basically heavier moving equipment.

17 A: Yes.

18 Q And then were there any kind of batteries you used at
19 that work site?

20 A: All the equipment had batteries in there.

21 Q Would you describe the different kinds of batteries,
22 did you have a large battery?

23 A: Some of the batteries are called ED batteries. **They're**
24 very large batteries. **They're** probably two and a half
25 feet long, a foot and a half wide; eight, nine inches

- 1 in depth. **They**'re a big heavy battery.
- 2 Q There is a battery called a 4D.
- 3 A: A 4D battery that is like twice the size of a car
- 4 battery, give or take.
- 5 Q When a battery was drained, would you discard it at the
- 6 work site?
- 7 A: Yes.
- 8 Q Did you keep any accurate account on any discarded
- 9 batteries?
- 10 A: No.
- 11 Q Did you have any walkie-talkies on the job site?
- 12 A: No, we didn't.
- 13 Q Was a bobcat utilized?
- 14 A: Yes, it was.
- 15 Q Would you briefly tell the jury what a bobcat is.
- 16 A: A bobcat is like a little miniature high-loader. You
- 17 have probably all seen them out and about. They're
- 18 four wheels and they have a little bucket in front of
- 19 them.
- 20 Q Briefly tell what you mean by a bucket in front of
- 21 them? Let me help you. Is that what scoops up the
- 22 earth?
- 23 A: That is what scoops up the earth.
- 24 Q And a bobcat can change the buckets depending on what
- 25 it is needed for, right?

1 A: Yes.

2 THE COURT: It is kind of like a caterpillar,
3 isn't it?

4 THE WITNESS: It is a baby caterpillar.

5 Q And where was the bobcat kept?

6 A: As I remember, most of the time it was probably stored
7 on the west side of the road after working hours.

8 Q Now, when you say "west side", are you talking about 71
9 highway?

10 A: Yes.

11 Q So now on the west side of 71 highway is where Brown
12 Brothers Construction would keep their heavy earth
13 moving equipment.

14 A: Correct.

15 Q Were there any concrete saws utilized at the work site
16 by your company?

17 A: I don't think so. There could have been for a minor
18 reason but I can't remember one being used.

19 Q Would that have been left at the work site or would the
20 concrete crew have them?

21 MR. O'CONNOR: I object. He said there were
22 no concrete saws. And the next question, where were
23 the concrete saws?

24 MR. MILLER: I said "if".

25 THE COURT: Why don't you phrase your

1 question in terms of equipment relating to concrete and
2 then I think we can answer it without speculating.

3 Q Did you have a concrete crew?

4 A: Yes.

5 Q Do you remember what they would do with their
6 equipment?

7 A: They should have kept it with them at the end of the
8 day.

9 Q So if they went home, the equipment went with them.

10 A: That's what should have taken place.

11 Q What kind of fluid; by that I mean petroleum product,
12 and so forth, were kept at the work site?

13 A: We had diesel fuel, anti-freeze, various types of oils,
14 cleaning solvents.

15 Q You said diesel, this is already in evidence. I am
16 referring to Government's Exhibit 76. Is this your
17 tanker trailer?

18 A: That's one of our diesel storage tank trailers.

19 Q Do you remember how many you had at the site back in
20 November of '88?

21 A: Just the one, I believe.

22 Q Now, do you recall what side of the highway it was kept
23 on?

24 A: It was on the east side of the highway.

25 Q Was any gasoline kept at the work site?

1 A: There could be some gasoline stored in small containers
2 that the mechanics and possibly the fuel they would
3 have on their trucks.

4 Q Was any left at the work site at the end of the day?

5 A: From time to time there could be but not typically.
6 Typically they're kept with the mechanics or on the
7 fuel truck.

8 Q Were any transits at the work site?

9 A: Yes.

10 Q Would you briefly tell the jury what a transit looks
11 like.

12 A: A transit is a small device that sits up on a tripod
13 and you have control where you can sit it to shoot a
14 level eye distance for measuring the height and
15 elevations.

16 Q Now was Brown Brothers licensed to do business in
17 Missouri?

18 A: Yes.

19 Q Did you ever bring equipment from other states?

20 A: We had work in Kansas and we would go back and forth
21 between the two states with the equipment.

22 Q I want to ask you now about bulldozers. You kept
23 bulldozers there at the work site.

24 A: Yes.

25 Q Where were they kept? Do you remember what side of the

1 work site or were they all over?

2 1 A Typically they would be kept on the west side. That
3 1not to say from time to time one wasn't left on the
4 lother side of the road, on the east side of 71.
5 1Typically they were all lined up at the west side at
6 1the end of the day.

7 1 Q Have the bulldozers ever been vandalized?

8 A: Yes.

9 Q Do you remember when that happened?

10 A: Fairly early in the project. It could have been
11 September, October of '88.

12 Q Now, who was your mechanic? You mentioned a mechanic,
13 what was his name?

14 A: One of our mechanic's names was Kenneth Alson.

15 Q Did he have a nickname?

16 A: We called him Arky.

17 Q When a bulldozer breaks down, what is the procedure you
18 all use to fix it?

19 A: That is kind of a broad question.

20 Q Well, do you just leave it sit? Do you tow it
21 someplace?

22 A: Okay, depending on what occurs. Sometimes we just
23 leave it sit because running it can cause quite a bit
24 more damage. You could have something minor that
25 breaks and moving it can really cause a lot more

1 damage. So in this instance we left it where it was
2 at.

3 Q Now did you go to that bulldozer yourself with Arky and
4 look at it?

5 A: At the time it first broke, no, I did not.

6 Q Did you eventually go and look at it?

7 MR. OSGOOD: I would like to clarify what
8 dozer we are talking about. I am assuming this is the
9 dozer that was on the site of the blast, on the east
10 side.

11 THE COURT: You will have an opportunity for
12 cross examination. Do you have an objection?

13 MR. OSGOOD: I am objecting to not
14 establishing a time basis on relevance grounds. If it
15 was at the time of the blast, it is relevant; if not,
16 I don't know what it has to do with this case.

17 THE COURT: Make sure the jury understands
18 what time you are talking about.

19 Q We are talking about the dozer you described in
20 September or October that broke down.

21 A: Correct.

22 THE COURT: Of '88.

23 THE WITNESS: Of '88.

24 Q Was that on the east or west side of 71 highway?

25 A: The west side of 71.

1 Q And we are back to where. Do you remember going to
2 that dozer yourself and looking at it?

3 A: At some point in time, yes, I did.

4 Q And do you remember what was found in the dozer that
5 made it break down.

6 A: Arky, our mechanic, thought somebody put some sand down
7 in the transmission of it, which caused it to break
8 down.

9 Q Now, were the police notified about this?

10 A: Yes, they were.

11 Q Why would you call the police on this?

12 A: Any time we thought something occurred in the way of
13 vandalizing our equipment we had to call the police for
14 insurance company purposes.

15 Q And then did you go ahead and contact the insurance
16 company?

17 A: Yes, we did.

18 Q Do you recall any problems with any woodcutters?

19 A: We had a certain amount of clearing we had to do and we
20 took the remains of the clearing and it was piled up on
21 the east side of 71. And people would come in and cut
22 wood out of this pile of trees. And we had one night
23 where one of the woodcutters wanted to build a fire. I
24 think he actually did build a fire. The guards called
25 my father and my father said we don't want any fires up

1 there, to tell him to put it out. From what I
2 understand there was some, you might say an argument
3 between the woodcutters and the guard. He put the fire
4 out and left the job from what I understand.

5 Q Can you recall about what time this was going on? By
6 that I mean in reference to the explosion.

7 A: As I remember, it was like a week, maybe two weeks,
8 before the explosion.

9 A: Shortly before the explosion.

10 Q Now, did you have many problems with theft there at the
11 work site before November the 29th of 1988?

12 A: We didn't really have a lot of things stolen. We
13 didn't have anything stolen I really know of. We had a
14 lot of activity. It seemed like the guards were
15 calling, someone is up at the site. They chased these
16 people off. It seems like there was a lot of activity
17 there but as far as stealing, most of my stuff were
18 bulldozers, it is hard to steal them.

19 Q Do you recall, were there any problems with the labor
20 unions over your work?

21 A: Not that I know of.

22 Q Was this what they call a union shop job?

23 A: Yes, it was.

24 Q Now, if there would be a problem with the labor union,
25 what normally was the first thing that would happen?

~

1 1 A I would get a phone call.

2 1 Q Did you ever get any phone calls from the labor unions
3 about what was going on there?

4 A: No.

5 Q Do you remember any problems with concrete deliveries
6 from non-union concrete companies?

7 A: Do I remember of them?

8 Q Any problems with concrete deliveries from non-union
9 concrete companies?

10 A: No, there were no problems.

11 Q Do you recall at this point of the construction how
12 much concrete was being used?

13 A: At the time of the explosion I am not sure if any had
14 ever been delivered yet. If it had it may be a load or
15 two to go around the ends of some pipe, but no major
16 amounts of concrete had been delivered at that point.

17 Q Like for footings and so forth.

18 A: Not so much for footings but when you lay pipe, at the
19- end of the-p-ipe-you-h-ave-to-put a certain amount of
20 concrete at the end of the pipe to hold the pipe in
21 place.

22 MR. MILLER: That is all I have of this
23 witness, Judge.

24 THE COURT: Were you on that section of the
25 job?

1 1l THE WITNESS: Yes.

2 1 THE COURT: Were you the contractor of the
3 1 job?

4 THE WITNESS: Yes.

5 THE COURT: Were you in charge of the job at
6 that site?

7 I THE WITNESS: Yes.

8 CROSS EXAMINATION

9 BY MR. O'CONNOR:

10 1 Q Mr. Brown, good morning. I am John O'Connor. I
11 1 represent Bryan Sheppard. I want to ask you a few
12 1 questions.

13 A Okay.

14 1 Q You have described both the east side and the west side
15 of this construction site, is that true?

16 A True.

17 Q And as I understand it and let's see if I can get this
18 right, you had the west side, Brown Brothers did, that
19 is where their equipment was kept.

20 A: That's correct.

21 Q That would have been on the other side of 71 highway.

22 A: Correct.

23 Q Do you mind coming down here to this exhibit. This
24 would have been a photograph taken on October 28, 1988,
25 approximately a month before the explosion, which shows

1 I believe your equipment here and this site here, would
2 you write west side and Brown Brothers in big letters,
3 as you want, in here where your equipment was.
4 A (Witness complies.)
5 1 Q Maybe draw an arrow here.
6 ~ A (Witness complies.)
7 Q Do you mind marking this as the east side.
8 A: (Witness complies.)
9 Q Would that have been Mountain Plains where they were
10 doing their work?
11 A: That's where they were doing their work.
12 Q Would you put Mountain Plains up here for me.
13 A: (Witness complies.)
14 Q I just want to have a reference while we are talking.
15 Now primarily it is my understanding that you dealt
16 with the west side, this was kind of where your
17 equipment was kept and where your stuff was.
18 A: For the most part, all of our equipment at the end of
19 the day was put on the west side of the road.
20 Q A minute ago when you were talking about bulldozers and
21 machinery and things like that, this is where it was
22 kept.
23 A: Yes.
24 Q The east side is where Mountain Plains had the trailers
25 and stuff, dynamite to blow up, to make the highway.

1 A: Correct.

2 Q Now, you mentioned something about a caterpillar. I
3 have a caterpillar and a bobcat, do you know what a
4 bobcat is?

5 A: Yes.

6 QDoes a thing called a uni-loader, could that be
7 mistaken for a bobcat?

8 A: Yes.

9 QDid you say no walkie-talkies were on the site or no
10 walkie-talkies were taken from the site as related to
11 Brown Brothers?

12 A: We don't own any walkie-talkies.

13 QAnd there were no concrete saws, to your knowledge, on
14 the site, on the west side.

15 A: If there were any concrete saws out there they should
16 have been taken with the men at the end of the day. It
17 is not to say they weren't left there. That wasn't
18 what was supposed to have occurred.

19 Q What we are interested in here, you were aware the
20 night of the explosion, I am assuming.

21 A: Yes.

22 Q Could you tell the jury for sure, with any certainty,
23 whether or not there were any concrete saws there that
24 night before the explosion.

25 A: I do not know.

1 THE COURT: Whose responsibility was the
2 concrete work?

3 THE WITNESS: Some of the concrete work was
4 being performed by J. M. Pagan Construction and some
5 was being performed by L. B. Enterprises. That's our
6 company.

7 Q A minute ago you mentioned your father. Is your father
8 like the president of the company and you work for your
9 father or what is that relationship as it relates to
10 Brown Brothers?

11 A: He was the president and I was the vice president.

12 Q Who would have been the person that would have been
13 dealing with the workers at the site on a daily basis?

14 A: Probably more so him than I.

15 Q And you said there were transits on the site.

16 A: Yes.

17 Q Were there transits on the site the night before the
18 explosion?

19 A: That I do not know.

20 Q Who would have been using transits for Brown Brothers?

21 A: My foreman.

22 Q And do you know whether or not the transit work had
23 already been done related to the work you had done to
24 that point?

25 A: It's done throughout the job.

1 Q Was it ever reported to you or your company that a
2 transit was missing?

3 A: No.

4 Q How much are transits?

5 A: Five hundred dollars. You can spend \$500.00 to maybe
6 \$2,000.00.

7 Q If I understood you a minute ago, you said if things
8 were missing you would file some kind of report so you
9 could make an insurance claim.

10 A: That's correct.

11 Q As I understand it, nothing was ever missing.

12 A: As far as the transits, that's correct.

13 Q Was anything else ever missing from that site the day
14 after the explosion? Did you go to the site and
15 inventory and find out things were missing with the
16 west side?

17 A: Nothing was missing that I knew of.

18 Q And had anything been reported missing from the west
19 side up to a month, two months, three months before the
20 explosion, to your knowledge?

21 A: We had a problem on the west side where we thought
22 somebody was taking fuel and oil out of the equipment.

23 Q And at the time did you believe you knew who that
24 person was? Without saying who it was, do you believe
25 you think you knew who it was?

1 A: At the time I had no idea.

2 Q Did you hire guards or some security company to do some
3 surveillance to try to find out who, in fact, was doing
4 that?

5 A: Yes.

6 Q Did you believe it was an inside job?

7 A: No, I didn't even really believe it was taking place
8 because it makes no sense.

9 Q Tell us about it.

10 A: Well, the equipment was running out of fuel and in the
11 morning we would have the habit, you always check your
12 fuel, oil and water before you start the piece of
13 equipment. Things that were supposedly completely full
14 that night, they weren't full that morning. And my
15 opinion, I had a fuel man that wasn't doing his job and
16 didn't want to be fired by saying I didn't fill it up.
17 And he was saying I filled it up so someone is coming
18 there at night taking fuel and oil out. Some of this
19 equipment holds 200 gallons. You have got to take 45
20 gallons out to show it has been down. You just don't
21 go out and do that.

22 Q Didn't you also have guards working out there for you?

23 A: At the time that we had the fuel problem, it seems like
24 that's what got us to hire the guards in the first
25 place. I can't be sure on that. It's a long time ago.

1 Q Back to these transits, at the end of the day what
2 would a person do that was responsibly doing their job
3 with the transit, would they leave it or would they put
4 it and lock it?

5 A: The foreman should have kept it in his pickup truck.
6 He could put it in the office trailer. He is not
7 supposed to.

8 Q But there were no break-ins at the office trailer where
9 a transit was stolen.

10 A: No, not that I know of.

11 Q No report from one of your foremen someone stole a
12 transit out of his truck.

13 A: Correct.

14 Q Now, the security guard, that company that you hired
15 was Ameriguard, is that correct?

16 A: That's correct.

17 Q Who was the individual for Ameriguard you hired? Was
18 there someone from the company that introduced
19 themselves to you that you hired?

20 A: Yes.

21 Q Who was that?

22 A: Robert Riggs.

23 Q And how many employees were you told worked for Mr.
24 Riggs at the time he hired your company?

25 A: I don't know if anyone ever asked him that question.

1 Q And how did you pay them for their services, did they
2 just send you a statement or bill and you paid them or
3 did they have to give you a detailed report with the
4 officer's name and times on them? How did you make
5 them show what they had done?

6 A: They gave us daily reports and they submitted a bill, I
7 don't know, every week or two weeks. I am not sure.

8 Q Did they ever tell you they were using false names on
9 those reports?

10 A: No, they did not.

11 Q Did you know Robert Riggs before that?

12 A: No, I did not.

13 THE COURT: I'm sorry. Before what date?

14 Q Before the day you hired him. Did you know Debbie
15 Riggs?

16 A: No, I did not.

17 Q Now, Brown Brothers, as I understand it, was dealing
18 with a concrete company for concrete, is that correct?

19 A: No, not really.

20 Q Was the concrete that was going to be used or was used
21 on that site, you tell me which was it going to be,
22 non-union concrete?

23 A: Not on purpose if it was.

24 Q T understand. But was non-union concrete being used on
25 that site?

1 ~ A I don't know if there was or not.

2 1 Q Did you have a relationship with the company that

3 Clarkson owned called Southern Industries or something

4 I like that?

5 1 A I have no relationship with them, no.

6 ~ Q I believe you said on direct examination, you tell me

7 what you said so I understand. You were asked a

8 question about labor unrest, is that correct?

9 A: Correct.

10 Q Was there any picketing at the site?

11 A: No.

12 Q Was there any labor unrest about the use of non-union

13 concrete to your knowledge?

14 A: Not to my knowledge.

15 Q Now, was brown sugar ever put into any of the concrete,

16 to your knowledge?

17 A: Not that I know of.

18 Q Did you ever give brown sugar to any ATF agent to have

19 checked?

20 A: No, I did not.

21 Q Now, they asked you something about batteries I think

22 on direct examination. Were any batteries stolen from

23 any of your equipment?

24 A: Not that I remember.

25 Q That is anyone ever showed you a battery? The

1 government showed you a battery they claim may have
2 come from that site?

3 A: Yes.

4 Q When was that?

5 A: A couple, two or three weeks ago.

6 Q When was the first time they talked to you in this
7 case?

8 A: Right after the explosion.

9 Q You never told them about any batteries even being
10 missing.

11 A: Correct.

12 Q They showed you some batteries three weeks ago.

13 A: Correct.

14 Q What did they say about that battery?

15 A: They wanted me to look at it to see if it looked
16 familiar.

17 Q What did you say?

18 A: It didn't look familiar.

19 Q Did they tell you where it came from?

20 MR. MILLER: Objection. Hearsay.

21 THE COURT: That is sustained. I don't see
22 there is any exception there.

23 Q Have they showed you anything else?

24 A: We looked at some pictures.

25 Q I am talking about anything like a battery or piece of

1 equipment or something.

2 A: No.

3 Q Was any bulldozer ever missing from your site?

4 A: No.

5 MR. O'CONNOR: That is all I have. Thanks.

6 MR. PETERS: May it please the Court.

7 THE COURT: Yes.

8 CROSS EXAMINATION

9 BY MR. PETERS:

10 Q Mr. Brown, my name is Pat Peters and I represent **Frank**
11 Sheppard. I want to ask you some more questions about
12 Ameriguard. At the time that you first were contacted
13 by Robert Riggs, what was the agreement as to what
14 services he was supposed to be providing?

15 MR. MILLER: I object as repetitious and not
16 within the scope of direct examination.

17 THE COURT: I don't remember him going into
18 Ameriguard on direct examination.

19 MR. PETERS: We will recall the witness. I
20 have no questions.

21 THE COURT: Any other Cross?

22 MR. OSGOOD: I have a question, Your Honor.

23 CROSS EXAMINATION

24 BY MR. OSGOOD:

25 Q Mr. Brown, I represent Mr. Brown. You are not related.

1 A: Not that I know of.

2 Q I am John Osgood, by the way. The bulldozers that were
3 sabotaged, you mentioned sand I think in one of them.

4 A: Correct.

5 Q Did you also find metal shavings in them?

6 A: I don't remember.

7 Q You don't remember telling Detective Zinn that back in
8 '88.

9 A: No.

10 Q One of the dozers had metal shavings in it.

11 A: I don't remember. It could. I don't remember seeing
12 that now.

13 Q Did you tell Detective Zinn the kind of problems you
14 were experiencing with these dozers appeared to be the
15 kind of problem that would be within the knowledge or
16 expertise of a particular kind of employee or type of
17 employee that was assigned to the job, they would have
18 that expertise?

19 A: I believe I did.

20 Q And did you have the capability, for example, a lot of
21 cutting and grinding going on and the mechanics would
22 have metal shavings available to them on the site
23 during the day.

24 A: No, not on the job site I wouldn't expect to see metal
25 shavings.

- 1 Q Any lathes there?
- 2 A: No.
- 3 Q You have saws there though.
- 4 A: The mechanics could have some type of saw for metal.
- 5 Q What about the rebar that goes into concrete, would
- 6 that be cut on occasion?
- 7 A: Yes, that would have been by some other subcontractor.
- 8 Q But there would be metal shavings.
- 9 A: Not from that, there are no metal shavings.
- 10 Q To make a long story short, you pretty much in your own
- 11 mind believed that it was somebody on the job site that
- 12 was messing around with your bulldozer one way or
- 13 another, and that gave you some concern as the
- 14 contractor.
- 15 A: Yes.
- 16 Q And one last question. When you would come to work in
- 17 the daytime, we have talked about the woodcutter fire
- 18 and I assume there would be some evidence they built a
- 19 fire there such as old firewood, whatnot.
- 20 A: I believe they had a fire. This is going back a long
- 21 way. I think they had a fire in the 55 gallon drum.
- 22 Q You had some of those drums around there.
- 23 A: Yes.
- 24 Q Was there other evidence you would see on a daily basis
- 25 where people were coming and going on the site at night

1 or was it pretty much pristine as far as you were
2 concerned?

3 A: I never bothered to look.

4 Q You didn't have a problem.

5 A: People coming and going didn't present a problem to me.

6 Q How long were you in the construction business, sir?

7 A: I have been in it full time since '85.

8 Q Have you had projects where you, for whatever reason,
9 felt it was necessary to put a chain-link fence or
10 other barriers around the site?

11 MR. MILLER: I object to that as not
12 relevant.

13 MR. OSGOOD: I think it goes to his state of
14 mind, the problems they were having at the site -

15 THE COURT: I don't think the problems at the
16 site have entered in his mind at all. I will sustain
17 the objection.

18 Q Was there a fence around this site?

19 A No.

20 Q Did you have the capability to fence it if you wanted
21 to?

22 A Yes.

23 MR. OSGOOD: Thank you.

24 THE COURT: Any other Cross?

25 MR. PETERS: No.

1 THE COURT: Any Redirect?

2

3 MR. MILLER: No Redirect, Your Honor.

4 THE COURT: All right, you may step down.

5 Call your next witness.

6 NORMAN COLLINS,

7 having been sworn, testified:

8 DIRECT EXAMINATION

9 BY MR. MILLER:

10 Q Would you tell the court and jury your name, please.

11 A: Norman Collins.

12 Q How old are you, sir?

13 A: I am 62.

14 Q What is your occupation?

15 A: I am a civil engineer for a construction company.

16 Q I want to go back to November of 1988, how were you
17 employed?

18 A: At that time I was president of Mountain Plains
19 Construction Company.

20 Q Would you tell the jury what Mountain Plains
21 Construction Company did back in November of 1988.

22 A: We were doing a lot of utility work but one of our
23 projects was to drill and shoot the rock on the 71
2 4 highway project.

25 Q When you say drill and shoot the rock, what do you

1 mean?

2 A: We were to drill it and use explosives to blow it up to
3 where the dirt contractor could load it and haul it
4 away.

5 Q Who was the dirt contractor?

6 A: Brown Brothers Construction Company.

7 Q What was your business relationship with Brown
8 Brothers?

9 A: We were a subcontractor to him.

10 Q Did you have any problems with theft there at the site?

11 A: Yes, we had a couple attempted break-ins.

12 Q Did you employ any security agents?

13 THE COURT: Counsel, I think we need to
14 establish a time frame. He said he had a couple of
15 attempted break-ins. I don't know what that means in
16 terms of time.

17 Q In relationship to the explosion of November the 29th,
18 1988 when these break-ins occurred.

19 A: They occurred in the previous month to six weeks. It
20 could have been a couple months prior to the explosion
21 and then one two or three weeks later.

22 Q How often were you on the job site?

23 A: Oh, I was there most every day for a short period of
24 time.

25 Q Who from your company was on the job site basically

1 eight hours a day?

2 A: Mike McReynolds was the blasting superintendent. He
3 was there on the job all the time.

4 Q Where was your company, Mountain Plains, incorporated
5 back in November of 1988?

6 A: In Texas.

7 Q Were you licensed to do business in both Kansas and
8 Missouri?

9 A: Yes, sir.

10 Q In November of 1988 was the equipment you used brought
11 in from any other states?

12 A: Yes, most of the equipment was stored in Kansas and we
13 brought it to the job in Missouri.

14 Q How was the project for the highway there funded?

15 A: It was with state and federal funds, I believe.

16 Q Do you recall any problems with any woodcutters there
17 at the construction site?

18 A: Yes, at one time I was called and went up there and the
19 woodcutters were cutting wood and they had built a fire
20 and it was in the general vicinity of where we had
21 explosives stored. So I told them they could not have
22 the fire and asked Brown Brothers if they could make
23 arrangements not to allow them to cut up there any
24 more, cut the wood.

25 Q Now, was this work on Mountain Plains, was this a union

1 shop?

2 1 A Yes, sir.

3 1 Q Was there any kind of labor problems at the time?

4 1 A No, sir.

5 1 Q Any kind of picketing you were aware of?

6 1 A No, sir.

7 Q And the time frame I am talking about is prior to the
8 explosion on November 29, 1988.

9 A: Yes, sir.

10 Q Do you have any knowledge of any non-union concrete
11 being delivered?

12 A: It was my understanding that there was some concrete
13 delivered to Brown Brothers from a non-union source.
14 We had not purchased any but I understood some was
15 delivered.

16 Q Do you have any idea as to how much?

17 A: No, sir, I do not.

18 Q I want to show you one more thing. This is
19 Government's Exhibit 119. I believe it is in by the
20 stipulation. Could you tell us what this is.

21 A: I believe that is an explosive permit that was in one
22 of the magazines that had been purchased from a
23 contractor in Colorado and I think it had been left
24 over when they had been using it in Colorado. It was a
25 magazine that had been inspected and met ATF

~
1 regulations.

2 Q Then I do want to cover this with you. As a result of
3 what happened and your involvement with Mountain
4 Plains, was any criminal action brought against you?

5 A: Yes.

6 Q Would you tell us what happened. Let me stop you.
7 What were you convicted of?

8 A: Of, number one, having purchased this magazine and not
9 notifying ATF, the trailers were located too close to
10 71 highway and one of the magazines that had powder
11 stored was too close to 87th Street.

12 Q When you say magazines are you talking about those
13 yellow boxes.

14 A: Yes, sir.

15 Q What was your sentence?

16 A: A year's probation.

17 MR. MILLER: That is all I have of this
18 witness, Judge.

19 CROSS EXAMINATION

20 BY MR. O'CONNOR:

21 Q Mr. Collins, I am John O'Connor. I represent Bryan
22 Sheppard. You were just talking about this prosecution
23 that was done. What did you have in that magazine that
24 caused you to get prosecuted?

25 A: There was dynamite in it and it was too close to 87th

1 Street.

2 Q You talked earlier about two break-ins that had
3 previously occurred at the site, is that true?

4 A: Yes.

5 Q Is that something you dealt with or that James
6 McReynolds dealt with?

7 A: I dealt with one of them because I was called at night.
8 And the next one, we noticed it the next morning and he
9 handled it.

10 Q Let's talk about the one you handled, do you remember
11 that particular one?

12 A: I was called.

13 Q Let's get a time frame, please.

14 A: It was approximately two weeks prior to the explosion.
15 I received a call that someone had been around the
16 trailers and unlocked the lock but we could not
17 determine -- it was unlocked but it was laying on the
18 ground and we could not determine anything had been
19 taken.

20 Q The only thing in the trailers, as I understand it,
21 would have been this ANFO.

22 A: Yes, sir.

23 Q Had the doors even been opened, to your knowledge?

24 A: It appeared the doors had been opened but nothing had
25 been taken out of it.

~ 1

1 Q If you looked into the trailer with the doors open it
2 would be these big -- they had one the other day, it
3 looks like sausage or a tubular thing. ;

4 A: Yes, there were two different materials in it. One was
5 a forty pound sack and the other would have been in a
6 fifty pound sack, very similar like a concrete sack.

7 Q And the lock had not been tampered with or pried or
8 jimmied or anything like that.

9 A: It appeared it had been opened with a key.

10 Q Did you have a belief about how it got open with a key?

11 A: No, we just assumed someone had a key so we changed all
12 the locks on the trailer.

13 Q And then the second one you are telling me Mr.
14 McReynolds would probably have better firsthand
15 information about.

16 A: Yes.

17 Q Nothing was missing from the trailers when that one
18 lock you were involved with was found.

19 A: To my knowledge, there was nothing missing in either
20 one of the instances.

21 Q Thank you. Now James McReynolds worked for you.

22 A: Yes, sir.

23 Q And there was a pickup truck on the site, who did it
24 belong to?

25 A: It belonged to Mountain Plains Construction Company.

~ 1

1 Q When I say "on the site" we are talking about the east
2 side of the highway.

3 A: Yes, sir, it was parked near where the trailers were.

4 Q Were keys left in it just because it was used on the
5 site or would that truck have been locked and secured,
6 to your knowledge, if you know?

7 A: I could only assume it was locked. We routinely don't
8 leave things unlocked.

9 Q Did you make any reports of any batteries missing from
10 any equipment that you had on the east side?

11 A: No, sir, I don't believe so.

12 Q Has anyone ever showed you any batteries?

13 A: When I received my subpoena, the person that served the
14 subpoena had a battery and asked if I recognized it and
15 I said no.

16 Q When did you get served with your subpoena?

17 A: In early December.

18 Q Of '96.

19 A: Yes.

20 Q And you had never reported any batteries having been
21 taken.

22 A: No, sir, not to my knowledge.

23 Q And they were showing you a battery.

24 A: Yes, sir.

25 Q And did you recognize the battery?

1 A: No, sir, I did not recognize it.

2 MR. O'CONNOR: That is all I have. Thanks.

3 THE COURT: Any other Cross? Any Redirect?

4 MR. MILLER: No Redirect.

5 THE COURT: All right, thank you. You are
6 excused.

7 MR. MILLER: Your Honor, the government calls
8 James McReynolds.

9 JAMES MICHAEL MCREYNOLDS.

10 having been sworn, testified:

11 DIRECT EXAMINATION

12 BY MR. MILLER:

13 Q Would you tell the court and the jury your name,
14 please.

15 A: James Michael McReynolds.

16 Q How old are you, sir?

17 A: Forty-two.

18 Q I want to go back to November 28th and 29th of '88, how
19 were you employed?

20 A: I was employed by Mountain Plains Construction.

21 Q What were your duties?

22 A: I was job foreman at the 71 highway project.

23 Q And how many people did you have working under you?

24 A: Probably seven or eight people.

25 Q And what were your duties there with Mountain Plains,

1 ~ what were you there to do?

2 A: We were doing blasting, subcontracting blasting work
3 there at the site. My duty was to keep up with the
4 day-to-day things, supervising, loading the holes,
5 figuring the loads, keeping track of the inventory,
6 this type of thing.

7 Q Would you tell the jury your background for knowing how
8 to do blasting.

9 A: I got into blasting directly out of **high** school. My
10 dad had his own company and started into blasting. And
11 I have just kind of been in it ever since.

12 Q Do you have any college education on blasting?

13 A: No, it has all been field experience.

14 Q You do a lot of work with ANFO.

15 A: Yes.

16 Q What does that stand for?

17 A: Ammonium nitrate fuel oil mix.

18 Q How was it stored?

19 A: The ANFO was stored in trailers.

20 Q Do you know how many?

21 A: How many?

22 Q Trailers.

23 A: Trailers, two trailers.

24 Q Mr. McReynolds, I am showing you Government's Exhibit
25 No. 11, what are these?

1 A: Those appear to be two of the trailers we had on site.

2 Q And do you recall ANFO was in each trailer?

3 A: At the time of the blast?

4 Q Yes. On November 28th when you left the job site how
5 much ANFO was stored in each trailer?

6 A: I believe there was 30,000 in one and about 25 in the
7 other.

8 THE COURT: Pounds?

9 THE WITNESS: Yes.

10 Q And do you remember which trailer had the 30,000 and
11 which trailer had the 20,000 pounds?

12 THE COURT: Twenty or twenty-five?

13 THE WITNESS: Twenty-five.

14 A: Not off the top of my head, I don't remember.

15 Q Was the ANFO stored a little differently in one trailer
16 as opposed to the other?

17 A: Yes, one trailer had different sizes of socks in them
18 so there was two different piles, or stock piles you
19 might say, in one of the trailers. The other one had
20 all one size. In fact, I think it was brought in the
21 day before so it was in one big pile.

22 Q Can you give us an idea in feet the difference between
23 the piles in that one trailer?

24 A: Oh, somewhere between eight and ten feet probably.

25 Q And then they were stacked. Tell the jury how they

1 were stacked.

2 A: They were laying on the floor. The socks are
3 approximately three feet long. It resembles a sock
4 like they use for traction. That is what it resembles.
5 And they were just stacked on top of each other.

6 Q Do you know about how high?

7 A: Probably three, three and a half feet high, tops.

8 Q So it hit you about waist-high.

9 A: Yeah.

10 Q Had you ever worked with that much ANFO before at a job
11 site?

12 A: Not at one time, no.

13 Q How were the trailers secured at night?

14 A: They had padlocks on all three of the doors.

15 Q Who had the keys?

16 A: I did.

17 Q How many sets?

18 A: Two.

19 Q And who checked them of an evening?

20 A: I did.

21 Q Did you do so the evening of November 28th, 1988?

22 A: Yes, I did.

23 Q Was any gasoline kept in the trailers?

24 A: No.

25 Q Was anything flammable kept in the trailers other than

1 the explosive?

2 A: No.

3 Q Was there anything with an electrical current going

4 into the trailer?

5 A: No.

6 Q Coming out of the trailer.

7 A: No.

8 Q Any tools or equipment kept in the trailers?

9 A: I had a drill bit that was in there and I believe some

10 equipment filters were in there, also.

11 Q You say drill bits, tell the jury what kind of drill

12 bit?

13 A: We were using a rotary drill out there which is like

14 the oil people use. It was a big seven, seven-

15 eighths

16 drill bit and probably twelve inches long.

17 Q Not like our little Black and Deckers.

18 A: No, not hardly.

19 Q Had the trailers ever been broken into?

20 A: Yes, they had.

21 Q Can you give us a time frame? What I am talking about

22 is before the explosion, when had one of the trailers

23 been broken into?

24 A: There was twice I can remember. Once the doors were

25 open when we came in. That was approximately about a

 month, I believe, before the explosion.

- 1 Q Did you find the lock to that trailer?
- 2 A: At that time?
- 3 Q Yes. A: Yes.
- 4 Q What did the lock look like?
- 5 A: It was still intact. Somebody had a key to it.
- 6 Q Had anything been taken out of the trailer?
- 7 A: No.
- 8 Q What preventive measure did you take after that?
- 9 A: I changed the locks at that point and we brought in
10 security guards.
- 11 Q Was there another time that you found anything that
12 showed an attempted break-in?
- 13 A: Just before that, probably a couple weeks before that,
14 we found a hack saw and a crow bar laying beside one of
15 the trailers.
- 16 Q I want to show you Government's Exhibit No. 110. Can
17 you tell the jury what this is?
- 18 A: That is one of our dynamite bunkers. We call it a
19 magazine.
- 20 Q Now, were the trailers also called magazines?
- 21 A: Yes, they were.
- 22 Q Do you recall who was inside this bunker?
- 23 For the record, I am referring to
24 Government's Exhibit 110.
- 25 A: It is hard to tell exactly where it's at on site. It

1 could have been either the caps or the dynamite.

2 Q I am showing you what has been marked as Government's

3 Exhibit 111. Does this show what is inside one of the

4 bunkers?

5 A: Yes.

6 Q What is that?

7 A: Those are caps.

8 Q When you say "caps", all these boxes are caps.

9 A: Yes, they're filled with caps, yes.

10 Q When you say "caps", you mean blasting caps.

11 A: Correct.

12 Q How many of these boxes did you have out there?

13 A: We had two of the big magazines like that.

14 Q I am showing you Government's Exhibit No. 117 and is

15 this inside the other box, the other magazine?

16 A: It looks like it. It is kind of dark on the inside.

17 It is hard to tell. That's the inside on the other

18 magazine.

19 Q What was stored inside the magazine?

20 A: Our dynamite and our boosters.

21 Q Could you tell us what you mean by a "booster"?

22 A: We were using boosters out there to detonate the ANFO

23 with. They're one pound -- I can't remember the exact

24 name for them but the initials are P-e-t-n is what it

25 is made out of and you put the caps inside of them to

1 make a primer to detonate the ANFO with.

2 Q I am referring now to Government's Exhibit 118. And
3 what is that on the floor that I have zoomed in on?

4 A: Those are two walkie-talkies.

5 Q Did you all utilize walkie-talkies in your work?

6 A: Yes, we did.

7 Q Do you know how many you had?

8 A: I had three walkie-talkies.

9 Q How many can you see inside this?

10 A: I see two in this particular picture but one of our
11 laborers usually took his home in the truck with him.

12 Q And what did you utilize these for?

13 A: To be able to talk back and forth shutting down the
14 traffic on 71 highway when we got ready to set off the
15 shot.

16 Q Did you ever worry about the walkie-talkies setting off
17 the shot?

18 A: No, that's why the particular caps we are using are
19 non-electric and you didn't have to worry about the
20 radio waves and that kind of thing setting off these
21 caps.

22 Q It is not like in the James Bond movies they hit a
23 transmitter and there is an explosion.

24 A: That's correct.

25 Q Government's Exhibit No. 120, what is this?

1 A: It is a cardboard box.

2 Q And was anything that was in this cardboard box used at

3 the work site?

4 A: Yeah, that's what the dynamite came in.

5 Q That is how it looked inside the yellow magazine.

6 A: Yes.

7 Q By dynamite you mean sticks of dynamite.

8 A: Yes.

9 Q What were the size of those sticks?

10 A: I believe we had an inch and a quarter by eight, two

11 by-eight and some seven-eighths by twenty-four sticks.

12 Q I am going to show you Government's Exhibit 123, can

13 you tell us what that is.

14 A: Yes, that is what the bulk ANFO came in.

15 Q Were these bags in either one of the trailers?

16 A: Yes.

17 Q In both.

18 A: Probably one of the trailers. I didn't use a lot of

19 bulk ends. There was too much water.

20 Q I neglected to bring it with me but when you say

21 "sock", we are talking about like you said --

22 A: Like for traction, right.

23 Q And that was in one of the trailers or in both of the

24 trailers?

25 A: The socks?

1 Q The socks.

2 A: The socks were in both of the trailers.

3 Q Did the first explosion wake you?

4 A: Yes, it did.

5 Q How far away were you from the work site?

6 A: Oh, probably a mile as the crow flies.

7 Q And what did you do after hearing the first explosion?

8 A: It woke me straight out of bed, just like it did most

9 everybody else. And that was about the time gas

10 explosions were going on. So I got up to see which one

11 of my neighbors lost his house. I didn't see anything.

12 I only knew three places that had that many explosives
13 around.

14 Q Then what did you do?

15 A: I got dressed and headed for the job site.

16 Q Who did you meet there?

17 A: I can't remember the battalion chief's name but I met
18 with a fire chief down there.

19 Q When you got there, how many of the trailers containing
20 the ANFO were left?

21 A: Well, actually you couldn't see any of the trailers
22 left. One was apparently totally gone and the other
23 one was on fire.

24 Q What did you and the battalion chief do at that point?

25 A: I met him halfway up the hill headed up toward where

1 the second trailer was burning and told him what all
2 was up there and what all was still on site or what it
3 looked like was still on site and the explosive
4 potential. And he told me what had gone on. And we
5 made the decision to back off at that point.

6 Q You say "back off , where did you go?

7 A: We went down to a command post they set up at 95th and
8 71.

9 Q Did you ever fly over the area?

10 A: Yes, I did.

11 Q Do you remember who with?

12 A: The same battalion chief. We were in Life Flight.

13 Q When you grew up with him, what were you doing up
14 there?

15 A: He asked me to go up with him and pinpoint where the
16 explosives were stored and determine whether there was
17 another explosion possibility.

18 Q You were shown countless pictures but there was a wood
19 pile there, right?

20 A: Right.

21 Q And what was the point of the wood pile?

22 A: They had stockpiled up the wood there, just trying to
23 get rid of it at that point, Brown Brothers had. And
24 they couldn't burn it off because we had our explosives
25 up there. And they wouldn't allow the woodcutters to

1 cut wood. We were using it for a barricade between
2 the dynamite and the ANFO, between the bunkers and the
3 trailers.

4 Q So it did serve a purpose.

5 A: It made a practical purpose for us, yes.

6 Q You mention as a barricade. Was there any other
7 barricade there you used?

8 A: Just a natural barricade of the hill. And I think
9 there was some woods around there also we utilized.

10 Q Was there a berm that was between where the ANFO
11 trailers were kept and 71 highway?

12 A: They set up over 71 highway quite a bit so, no, there
13 was not.

14 Q On these trailers were they designed to store ANFO?

15 A: Yes, they were.

16 Q Would you tell the jury what their specifications were,
17 like the doors.

18 A: Well, the doors were just basically semi-trailer doors.
19 They didn't have to have any special type of locks
20 other than they had to have five-ton locks on them.
21 The inside had to be covered with three quarter inch
22 plywood, non-flammable material. And the outside was
23 just basically a semi-trailer.

24 Q Plywood in the doors.

25 A Yes.

- 1 Q And plywood in the floor of the trailer.
- 2 A: Yes.
- 3 Q Now that night of November the 28th, 1988 was there a
- 4 pickup truck parked close by these trailers?
- 5 A: Yes.
- 6 Q Whose pickup? By that I mean the company.
- 7 A: Mountain Plains.
- 8 Q Do you know who put it there?
- 9 A: My laborer did.
- 10 Q Why?
- 11 A: I told him to park it there to protect it from the
- 12 shock the night before.
- 13 Q Do you know how close that pickup truck was parked to
- 14 the trailer?
- 15 A: Probably five to ten feet.
- 16 Q Was there any ANFO in that pickup truck?
- 17 A: No.
- 18 Q Dynamite.
- 19 A: No.
- 20 Q Blasting caps.
- 21 A: No.
- 22 Q Was there a gas can in that pickup truck?
- 23 A: No.
- 24 Q Diesel fuel.
- 25 A: No.

1 Q Any battery other than the battery inside the truck?

2 A: No.

3 Q You were there at the scene eight hours a day, at the
4 work site I mean.

5 A: Close to twelve hours a day but yes.

6 Q Was there any kind of labor problems there at the work
7 site while you were there?

8 A: No.

9 Q Was Mountain Plains a union shop?

10 A: Yes, we were.

11 Q If there was any kind of problem at the work site who
12 were the guards supposed to call, you or Mr. Collins?

13 A: They had Mr. Collins' number.

14 MR. MILLER: That is all I have of this
15 witness, Your Honor.

16 CROSS EXAMINATION

17 BY MR. O'CONNOR:

18 Q Mr. McReynolds, I am John O'Connor. I represent Bryan
19 Sheppard. I have a few questions. I am well aware we
20 are at the lunch hour so I will try to do this quickly.
21 I do have some important questions to ask.

22 Q Was there any copper at the site?

23 A: Not to my knowledge.

24 Q Did you ever see any copper at the site?

25 A No.

1 Q When we are talking about the site, for purposes of my
2 questions we are talking about the east side of the
3 highway where the trailers were, correct?

4 A: That's correct.

5 Q The east side is Mountain Plains, the west side was
6 Brown Brothers.

7 A: That's correct.

8 Q Was there a bobcat at the east side?

9 A: There was a uni-loader. It looks a lot like a bobcat.

10 Q Do you know what a transit is?

11 A: Yes, I do.

12 Q Did Mountain Plains have a transit there on the east
13 side the night of the explosion?

14 A: No.

15 Q Did Mountain Plains ever keep a transit at that site on
16 the east side?

17 A: No.

18 Q Was there ever an acetylene torch at the site that
19 Mountain Plains had there?

20 A: Just during the day.

21 Q Tell us about that.

22 A: We had a mechanic on site every day and he kept one in
23 his truck.

24 Q Did he then take it with him when he left?

25 A: Yes.

1 Q Any acetylene torches kept on the site?

2 A: No.

3 Q Was a acetylene torch ever reported to be stolen from
4 the site?

5 A: No.

6 Q Was there some kind of door in the dirt?

7 A: Say that again.

8 Q Was there some kind of door in the dirt at the site?

9 A: A door?

10 Q In other words, a door that was in the dirt at the
11 site, underground bunker of some kind?

12 A: No, there were no underground bunkers.

13 Q Anything that could be construed you could open a door
14 and somehow go underground to steal or take things.

15 A: No.

16 Q You told us there were two break-ins at the site, is
17 that correct?

18 A: That's correct.

19 Q One was where the trailer was open, the lock was there
20 and it appeared someone had a key.

21 A: Definitely.

22 Q The other one would you, you tell me, the lock,
23 somebody had done something to it but it had not been
24 broken.

25 A: Apparently the hack saw didn't even scratch the

- 1 surface. The locks were fine.
- 2 Q No-one got into the trailer.
- 3 A: That's correct.
- 4 Q Was anything taken or missing in any of these break
5 ins, the two?
- 6 A: No.
- 7 Q You talked about the drill bit that was in the trailers
8 at the time of the explosion, is that correct?
- 9 A: Yes, sir.
- 10 Q How much did that drill bit weigh?
- 11 A: Probably a hundred pounds.
- 12 Q Was there also a Japanese drill that was there on the
13 site near the trailers?
- 14 A: Yes, an hydraulic drill.
- 15 Q How many pounds did it weigh?
- 16 A: Probably 40,000 pounds.
- 17 Q Did you find part of that drill across 71 highway?
- 18 A: Yes, we did.
- 19 Q Was there any other equipment stored in those trailers
20 the day of the explosion?
- 21 A: Any other equipment stored in the trailers?
- 22 Q Anything else other than this drill bit?
- 23 A: I had some equipment filters in there was the only
24 other thing.
- 25 Q No other tools.

- 1 A: No.
- 2 Q Were there any saw blades stored in the trailers the
3 day of the explosion?
- 4 A: Not that I recall.
- 5 Q Was there any use on your site for saw blades?
- 6 A: No.
- 7 Q Was the drill bit that was stored in the trailer with
8 the ANFO the day of the explosion ever found after the
9 explosion?
- 10 A: No, it was not.
- 11 Q What did you believe happened to it?
- 12 A: Well, being at the back of one of the trailers I
13 figured it went flying. There was a lot of stuff we
14 didn't find after the blast.
- 15 Q Was there ever any sabotage done to the Mountain Plains
16 equipment at the site?
- 17 A: No.
- 18 Q Was there any sabotage done to any equipment at the
19 site on either side of the highway?
- 20 A: I heard Brown Brothers was having trouble with
21 sabotage.
- 22 Q Did Mountain Plains, this pickup truck that was at the
23 site, did it have a tool box on it?
- 24 A: It had a tool box in the back of it.
- 25 Q What machinery at the site on the east side used gas

1 besides a truck, any?

2 A: No.

3 Q Before the day of the explosion -- this is the dynamite

4 bunker, is that correct?

5 A: That's correct.

6 Q Before the day of the explosion had the dynamite

7 bunkers at the site ever been broken into?

8 A: No.

9 Q Had they ever been broken into as long as you guys

10 worked there?

11 A: No.

12 Q On the day of the explosion, prior to the day of the

13 explosion had there been any attempt to break into

14 those dynamite bunkers?

15 A: Not to my knowledge.

16 Q Did you check the day of the explosion to see if there

17 was any attempt to break into the locks?

18 A: ATF got them before we did so I couldn't say.

19 Q Had any dynamite ever been stolen from that site at any

20 time, including the day before the explosion or the day

21 of the explosion?

22 A: No.

23 Q Before the day of the explosion at any time or the day

24 of the explosion, were any blasting caps ever stolen?

25 A No.

- 1 Q Were any blasting caps ever missing?
- 2 A: No.
- 3 Q Was there loose cardboard on the ground at your site?
- 4 A: Yes.
- 5 Q Were there straw bales at the site?
- 6 A: Yes.
- 7 Q Were there any bales kept around the trailers?
- 8 A: No.
- 9 Q Were there CB radios at the site?
- 10 A: There was walkie-talkies but no CBs except in the guy's
- 11 truck.
- 12 Q That went home at night.
- 13 A: Right.
- 14 Q All the walkie-talkies that were there for Mountain
- 15 Plains are all accounted for, is that correct?
- 16 A: That's correct.
- 17 Q Before the day of the explosion were any walkie-
- 18 talkies
- 19 ever stolen from the site?
- 20 A: No.
- 21 Q Were there small tools kept at the site?
- 22 A: A few, yes.
- 23 Q And did most of the workers bring their own tools from
- 24 home?
- 25 A: The mechanic kept most of the tools he needed to work
- on the equipment other than maybe a hammer or something

1 like that that the operator would keep on his own
2 personal equipment. It stayed with the equipment,
3 though.

4 Q You went up there, as I understand, after the
5 explosion. Was there some equipment still at the site
6 that was up there?

7 A: Yes.

8 Q Were there tools like hammers sitting out, cans of
9 ether, wrenches sitting out on that equipment?

10 A: Well, they weren't actually sitting out but they were
11 still on the equipment, yes.

12 Q They hadn't been taken.

13 A: No.

14 Q I am showing you what has been marked as Defendants'
15 Exhibit 4 which is in evidence, is that a picture of
16 the caterpillar that was at the site?

17 A: It's one of the Brown Brothers' scrapers, yes.

18 Q And can you see in that photograph an extension cord
19 laying on the ground?

20 A: Yes, I see something like that, it looks like it might
21 be an extension cord.

22 Q Can you see whether or not it was an extension cord?

23 A: No, I can't.

24 Q Before the date of the explosion were there ever any
25 tools reported missing from the site?

- 1 A: No.
- 2 Q On the day of the explosion were there any tools
3 missing from the equipment at the site?
- 4 A: The stuff that was left standing, no.
- 5 Q Were there ever any missing batteries from any of the
6 equipment at the site?
- 7 A: No.
- 8 Q Did all the equipment that was still there, was some of
9 it battery-operated?
- 10 A: Yes, we started with batteries, yes.
- 11 Q All the batteries were there.
- 12 A: Yes.
- 13 Q This would have been after the explosion when you went
14 up to see what happened, the batteries were still with
15 the equipment that was left standing.
- 16 A: Everything started up.
- 17 Q Now, as I understand it, the dozer would require two
18 batteries.
- 19 A: That's correct.
- 20 Q A uni-loader that was there would have required two
21 batteries.
- 22 A: One battery.
- 23 Q One. The drills that were there required how many
24 batteries?
- 25 A: Two batteries apiece.

1 Q How many is that total?

2 A: Two, four, six, seven.

3 Q Some of them were there the next day.

4 A: That's correct.

5 Q Was there any equipment at the site that appeared to be

6 on a platform?

7 A: My drills might be considered to be on a platform;

8 maybe the fuel tank.

9 Q Can you describe the drills kind of briefly, what they

10 would have looked like.

11 A: It had a big tower on it. It looked like a piece of

12 equipment on three stilts basically.

13 Q This Defendants' 4, the caterpillar that is in this

14 photograph, was that kind of close to the trailer at

15 the time of the explosion or within the vicinity?

16 A: Close but I can't say exactly.

17 Q On the trailers at the site how many hasps and locks

18 would there have been?

19 A: I wouldn't call them hasps but there were three locks

20 on each trailer.

21 Q Can a hasp on the trailer be pried off?

22 A: It's possible. They would have to work at it.

23 Q Can you explain what you mean by that.

24 A: Well, it's basically a semi-trailer locking mechanism.

25 It has a long rod with clamps that go in and lock into

~ ~

1 the underside of the door or the solid pieces as the
2 case may be. The locking mechanism would come down and
3 a latch would come around and lock it in place. And
4 that is where you would place your lock.

5 Q How was the dynamite shipped to that site?

6 A: The dynamite or the ANFO?

7 Q The dynamite.

8 A: The dynamite was shipped in van trucks, enclosed vans.

9 Q Was it in cardboard boxes?

10 A: Yes.

11 Q Was it ever shipped in crates?

12 A No.

13 THE COURT: By that you mean wooden crates.

14 MR. O'CONNOR: That's fine.

15 Q Would it be shipped in wooden crates?

16 THE COURT: It is your word. How do you
17 distinguish crate from cardboard box?

18 Q Would you describe what the dynamite came in as boxes
19 or crates?

20 A: I would describe it as boxes, cardboard boxes.

21 Q I guess you can see one of those boxes in that exhibit.
22 Is that the cardboard boxes we are talking about?

23 A: Yes.

24 Q Are you familiar with how dynamite works, how you get
25 it to go off?

1 A: Yeah.

2 Q How long have you been working with dynamite?

3 A: Ever since I was 18 and I am 42 now.

4 Q Long enough.

5 A: Quite a while.

6 Q If an individual had a stick of dynamite, could they

7 just light it and throw it and expect it to go off?

8 A: Without a fuse or cap or anything?

9 Q Yes. A: No.

10 Q Is there a requirement the federal government has, more

11 specifically the ATF has, you must report immediately

12 any theft of dynamite explosives if that ever happens

13 at a site.

14 A: Yes.

15 Q Did you make any such reports?

16 A: I didn't need to.

17 Q Mr. McReynolds, I am just going to ask you to mark on

18 something for me down here, would you, please. This is

19 a frame of reference. This is Defendants' Exhibit 1

20 which is a photograph taken on 10-28 of '88 which would

21 have been a month before the explosion. Do you see the

22 dynamite bunkers on here?

23 A: Yes, I do.

24 Q Would you circle each one and just write dynamite on

25 them, if you would.

- 1 A: (Witness complies.)
- 2 Q Is there another one?
- 3 A: Just one dynamite. The other one is a cap.
- 4 Q Could you circle that and put "cap" on it, please.
- 5 A: (Witness complies.)
- 6 Q Take the stand, please. The locks that were on the
- 7 trailers that night you checked before you left work
- 8 that day, the night of the explosion, do you know the
- 9 name brand of the locks they were?
- 10 A: We used Master five ton locks.
- 11 Q How big would that lock be?
- 12 A: Bigger than your average lock. Probably two and a half
- 13 inches by an inch and a quarter, probably.
- 14 Q Now, the pickup truck that was on the site, can you
- 15 tell me where the truck was facing when you left that
- 16 night, the night of the explosion, or do you remember?
- 17 A: Yes, it was facing toward the trailer, at the south end
- 18 of the trailer.
- 19 Q Would it have been about five to fifteen feet from the
- 20 trailer?
- 21 A: Five to ten, yes.
- 22 Q Did anyone ever show you anything when you got your
- 23 subpoena, any kind of equipment? Did ATF bring out
- 24 something for you to look at?
- 25 A: They brought out a battery.

1 Q When was that?

2 A: It was right at Christmas.

3 Q Of '96. Yes.

4 Q Did you ever report any batteries stolen from the site?

5 A: No.

6 Q What did you say to them about the batteries?

7 A: It didn't look like anything we had on site.

8 MR. O'CONNOR: Thank you. I have no further

9 questions.

10 THE COURT: All right, any more Cross?

11 MR. PETERS: No.

12 THE COURT: Any Redirect?"

13 MR. MILLER: No Redirect.

14 MR. OSGOOD: I did have one question, just

15 one question.

16 CROSS EXAMINATION

17 BY MR. OSGOOD:

18 Q You said you used non-electric blasting caps.

19 A: That's correct.

20 Q Were they still detonated with a land wire and electric

21 detonator?

22 A: No.

23 Q Or fuse detonator?

24 A: No. What it is is a long plastic tube and it is filled

25 with a chemical dust. One pound of this dust would be

1 30,000 feet of tubing. And the way you set it off you
2 use a mushroom-type detonator and use a shotgun primer
3 inside this detonator. It takes heat and impact at the
4 same time to initiate it.

5 Q It's mechanical in connection with deatacord.

6 A: Deatacord is definitely different. Deta
7 cord is a lot stronger. it is actually dynamite in
8 itself.

9 Q That is what I thought. It blows up all at once.

10 A: Right. This tube doesn't just burn up powder. You
11 still have the tube.

12 Q It is a fuse of sorts.

13 A: Of sorts. It is not really a fuse. Like I say, it is
14 a real fine dust, and once it is initiated the fire
15 will travel through the tube and set the blasting cap
16 off.

17 Q If you drilled holes so many feet apart in a sheet of
18 rock, you would use that tube to connect between the
19 rocks.

20 A: Yes.

21 MR. OSGOOD: Okay. Thank you.

22 THE COURT: Any Redirect?

23 Mn. Man; rlo.

24 THE COURT: Mr. McReynolds, if a stick of
25 dynamite without a fuse and without a blasting cap, if

1 a stick of dynamite is thrown on a fire, what would you
2 expect to happen?

3 THE WITNESS: I would expect it to burn.

4 THE COURT: Explosively?

5 THE WITNESS: No.

6 THE COURT: Thank you. Anything else?

7 MR. O'CONNOR: No, Your Honor.

8 THE COURT: All right, ladies and gentlemen,
9 we are going to stop now for the weekend. And with the
10 weekend intervening I advise you again you should not
11 discuss the case or allow anything about the case to
12 come to your attention while we are a part over the
13 weekend. We will start on Monday morning at nine
14 o'clock or as soon thereafter as we can. Have a good
15 weekend. Drive carefully and we will see you Monday.
16 We will be in recess.

18

19

20

24

25

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

I
1 UNITED STATES OF AMERICA,)
l)
l Plaintiff,)
I) No. 96-00085-01/05-CR-W-9-8
l) February 3, 1997
l) Kansas City, Missouri
v.)
GEORGE FRANK SHEPPARD,) CRIMINAL
EARL D. SHEPPARD,)
DARLENE N. EDWARDS,)
BRYAN E. SHEPPARD, and)
RICHARD W. BROWN,) e
Defendants.)

TRANSCRIPT ON APPEAL

V O L U M E X

(Pages 1804 - 1990)

BEFORE THE HONORABLE JOSEPH E. STEVENS, JR.

UNITED STATES DISTRICT JUDGE

AND A JURY

Proceedings recorded by electronic stenography

Transcript produced by computer

Kathleen M. Wirt, CCR, RMR

United States Court Reporter

811 Grand, Room 654 * Kansas City, MO 64106

(816) 474-4616

I N D E X
V O L U M E X
(Pages 1804 - 1990)
Monday, February 3, 1997
(Trial)

GOVERNMENTS WITNESSES:

Kenneth Allison

Direct Examination by Mr. Miller	1814
Cross-examination by Mr. Peters	1822
Cross-examination by Mr. O'Connor	1824
Cross-examination by Mr. Osgood	1825

Bridget Dornhoffer

Direct Examination by Mr. Becker	1829
Cross-examination by Mr. O'Connor	1844
Voir Dire Examination on Offer of Proof by Mr. O'Connor	1870
Resumed Cross-examination by Mr. O'Connor . . .	1885
Cross-examination by Mr. Bunch	1895
Resumed Cross-examination by Mr. Bunch . . .	1916
Cross-examination by Mr. Peters	1920

Linda Mynhier

Direct Examination by Mr. Becker	1931
Cross-examination by Mr. Bunch	1942
Cross-examination by Mr. Peters	1954
Cross-examination by Mr. Osgood	1958

Argument regarding taped interview of Darlene Edwards .	1961

Bridget Dornhoffer

Voir Dire Examination by Mr. O'Connor	1983

1 Monday, February 3, 1997

3 (The following proceedings were had in the
4 courtroom out of the presence of the jury:)

5 THE COURT: Good morning. Anything before we bring
6 the jury in?

7 MR. BECKER: May we approach?

8 THE COURT: Yes.

9 (Counsel approached the bench and the following
10 proceedings were had:)

11 MR. BECKER: I just wanted to place on the record
12 that one of the witnesses this morning' Bridget Dornhoffer,
13 in the past Mr. O'Connor has sought to speak with her' and
14 she's declined to speak with him.

15 THE COURT: What's her first name?

16 MR. BECKER: Bridget Dornhoffer. And then over the
17 weekend Mr. O'Connor contacted the witness's attorney, and
18 according to the witness -- and, again, this is according to
19 the witness -- she says that Mr. O'Connor through the
20 attorney said that if the witness would talk with him, he
21 would basically limit his in-court questions to seven or
22 eight questions if she would agree to talk with him over the
23 weekend with a stenographer, but if she did not agree to
24 speak with him, then the quote was that the witness would be
25 mine on Monday in court.

1 THE COURT: would be what?

2 MR. BECKER: She'll be mine in court. I think if
3 that kind of statement was made, it would be inappropriate,
4 and especially given the fact that this witness has on
5 several occasions directly told Mr. O'Connor she did not wish
6 to speak with him.

7 MR. O'CONNOR: Let me give you a quick history of
8 this, Your Honor. A week ago Monday, I think, maybe last
9 Monday, I don't remember the exact date, I went to the Clay
10 County Jail to interview Bridget Dornhoffer. When she came
11 down, she initially spoke to me. We just talked before
12 answering any questions. She had worked for Bob Duncan
13 before, she knew me through Bob Duncan. We exchanged those
14 kind of pleasantries.

15 I told her I wanted to talk with her. I had a
16 court reporter with me. She said she would be more than
17 happy to talk. Even though the prosecutor told her it was
18 her choice to talk or not talk, that she was willing to talk
19 to me, but she wanted to check with her lawyer first. I told
20 her that's fine, and then I expressed concern to her that
21 maybe she wouldn't talk to me after she talked to an
22 attorney, but that was her choice and I would honor that. I
23 then left.

24 The next day or the day after, I don't know which
25 it was, I don't even know who her lawyer was at the time, we

1808

1 left court and I was so tired I did not want to drive up
2 here for her to tell me again she wasn't going to talk to me
3 or needed to talk to a lawyer. So I called the jail and gave
4 her my number that she could call me collect. She did not
5 call me back in fifteen minutes, and I was getting ready to
6 leave for the day. I called the jail guard back and I asked
7 him if he got the message to her. I think he left the phone
8 and came back and said, "She's got the message, she does not
9 want to talk to you." That was the end of it.

10 In the meantime she hired Dan Ross. Dan was here
11 last week for Rosemarie Quiroz, and both Dan -

12 THE COURT: Is he here now?

13 MR. O'CONNOR: I don't think so.

14 THE COURT: Okay.

15 MR. O'CONNOR: And so he was, he's her lawyer. So
16 over the weekend, I called Dan at home and I said, would you
17 agree for me to talk with Rosemarie? And I said, here is
18 what I would be willing to do.

19 I mean, you will see from this witness, Judge, that
20 she has a lot of baggage and a lot of impeachment. What I
21 said to Dan was, there's only seven or eight answers that I
22 really would like to ask her, if I got truthful answers to I
23 would not have to get into the impeachment material, and I
24 would be satisfied with the cross-examination, and that's
25 kind of where it was left.

1809

1 He said he would talk to her. He thought, and you
2 can ask him, that it wasn't a bad idea for her to know what
3 was coming. And he called her, they talked, and he called me
4 back, and said, "She's not willing to talk to you."

5 Now, all I said to him was, if she doesn't want to
6 speak with me, as you know, we have this impeachment, and I
7 intend to get into impeachment. But I didn't say anything
8 like she's mine, or I'll have her. I don't remember making
9 any statement like that, and you can ask him if that
10 happened. I do not believe he'll say that I said that.

11 THE COURT: I don't know what you expect me to do.

12 MR. BECKER: I just wanted to put that on the
13 record, Judge.

14 THE COURT: All right. I need to know who's the
15 lead cross-examiner of these people.

16 MR. O'CONNOR: I'll get that for you, Judge.

17 MR. BECKER: Amazing, she doesn't offer any
18 evidence against Bryan Sheppard. Mr. O'Connor is stepping up
19 to the plate.

20 THE COURT: Are you going to do -- when are you
21 going to get to the tape?

22 MR. BECKER: I assume sometime -

23 THE COURT: You're not planning on using the tape
24 itself, are you?

25 MR. BECKER: Yes. It's been redacted. It's -

1 THE COURT: I'm not sure that it's possible to
2 intelligently redact a tape. I mean, you can redact a
3 transcript and substitute other words and that sort of thing,
4 but a tape, it's obvious in a tape that other things have
5 been taken out and nothing substituted or a sloppy job of
6 substitution. I don't know how you're -

7 MR. BECKER: I'm happy to preview the tape for the
8 Court. I think that the tape technicians have done an
9 excellent job.

10 THE COURT: I'm looking at this right now, and
11 there are things in here that I don't, that shouldn't be in
12 here.

13 MR. BECKER: I will give the Court the most recent
14 version of the transcript that reflects the redacted tape.
15 All references to Bryan Sheppard and/or Richard Brown have
16 been taken out. Here is the transcript. It's now down to 17
17 pages. It's much shorter. It has blanks where things have
18 been taken out. It has asterisks where pages have been taken
19 out. Just like in any other redacted, you know, transcript.

20 THE COURT: Well, when are you planning on -

21 MR. BECKER: Well, it depends upon -

22 THE COURT: Who is going to do that, Lett?

23 MR. BECKER: The agent, yes.

24 MR. O'CONNOR: Enough for us.

25 THE COURT: Well, let me see.

1 MR. BECKER: I don't know how else I offer it,

2 Judge. The transcript is -

3 THE COURT: You offer the transcript.

4 MR. BECKER: Typically in this circuit -

5 THE COURT: If it's been adequately redacted. I

6 mean, if -

7 MR. BECKER: Why can't we play the tape?

8 THE COURT: I don't know how the tape sounds, but I

9 may have to listen to the tape because Judge Hays and I are

10 concerned that there are things in this written transcript,

11 as you had previously redacted, that still ought not be

12 there. And there are certain, the redactions are so

13 considerable that it might make the tape sound redacted. In

14 other words, they'll just have to guess as to what was taken

15 out. Or know from the context of before and after the

16 redaction what was taken out.

17 MR. BECKER: If need be, we'll just take a break.

18 Because this is a crucial place in the government's

19 evidence. This issue was litigated many months ago and

20 there hasn't been any -

21 THE COURT: By litigated, you mean heard before

22 Judge Hays?

23 MR. BECKER: Right. And there's been no further

24 objection by the defense. They've been given the redacted

25 transcript, and it's even shorter than it was the last time

1 we gave it to them. We took out the tail end where they're
2 talking about putting in another tape, and we made it as
3 short as possible. But it directly contradicts Darlene
4 Edwards' assertion that she stayed home all night. I mean,
5 that's her defense.

6 MR. BUNCH: You're not playing the videotape, I
7 guess, which I'm going to argue that a part -- the initial
8 videotape two days earlier, are you playing that?

9 MR. BECKER: No.

10 MR. BUNCH: I think it ought to be played under the
11 doctrine of completeness just because this thing starts off
12 by saying -- ends by window of opportunity and sort of starts
13 off that way.

14 THE COURT: Well -

15 MR. BUNCH: There is a motion that Mr. Peters has
16 prepared in that regard. I didn't have it.

17 MR. BECKER: Where has he been? There was
18 discovery of this tape in June.

19 MR. BUNCH: I'm not talking about -

20 MR. BECKER: It's February 3rd.

21 MR. BUNCH: Paul, I'm telling you and, Judge, all I
22 would do is for the record renew my objection, which I have
23 to do to preserve it with respect to that. And if you have
24 properly redacted it, and the tape, I haven't heard the
25 latest version, I understand you can play that. I'm merely

1813

1 saying under the completeness doctrine, I do want to make an
2 argument about that.

3 MR. BECKER: I'm just saying if there are written
4 motions, it would have been better to deal with it prior to
5 the start of the trial.

6 MR. BUNCH: It would have been, yes.

7 THE COURT: Okay. Let's get going. I'll take a
8 look at it and see if I can deal with this before we get to
9 it.

10 (The following proceedings were had in open court
11 in the presence of the jury:)

12 THE COURT: Good morning. The courtroom clock has
13 clearly not been adjusted to accommodate for the power outage
14 over the weekend. I have about 23 after 9:00. We'll try to
15 get it adjusted during the day.

16 Okay. Mr. Becker? Oh, Mr. Miller?

17 MR. MILLER: Your Honor, the government calls Mr.
18 Kenneth Allison.

1814

1 KENNETH ALLISON,

2 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
3 testified as follows:

4 THE COURT: Just a minute, counsel. All right.

6 DIRECT EXAMINATION

7 By Mr. Miller:

8 Q. Would you tell the Court and the jury your name, please?

9 A. Do what, now?

10 Q. Would you tell us your name, please?

11 A. Kenneth Allison.

12 THE COURT: Just a minute. I'm sorry. Would you
13 please put that microphone around your neck?

14 JUROR: It's not working.

15 THE COURT: It's not working? Go ahead, counsel,
16 see if you can be heard.

17 Q. (By Mr. Miller:) And do you go by any nicknames?

18 A. Arkie.

19 Q. Why do they call you Arkie?

20 A. Well, I came up from Arkansas to work up here years ago.

21 Q. And how old are you, sir, how old are you?

22 A. Fifty-three.

23 Q. Now, I want to go back to October and November of 1988.

24 All right?

25 A. Okay.

1 Q. All right. Would you tell the jury who you worked for
2 back then?

3 A. I worked for Brown Brothers Excavating.

4 Q. What do you do for them?

5 A. I was a mechanic.

6 Q. And tell the jury as the mechanic for Brown Brothers
7 Excavating, what were your job duties?

8 A. To make sure the equipment was started of a morning and
9 to repair all breakdowns. Wherever the equipment was broke
10 down, that's where we repaired it.

11 Q. And I want to talk specifically about the job at 71
12 Highway and 87th Street. Were you working there?

13 A. Yes, sir.

14 Q. And about how many hours a week were you working there
15 at that site?

16 A. Approximately 60 hours a week.

17 Q. Now, do you recall back then -- well, first of all, were
18 you a member of a union?

19 A. Yes.

20 THE COURT: Try it again, would you?

21 THE WITNESS: I should have been an engineer.

22 Q. (By Mr. Miller:) And what union were you a member of?

23 A. I belonged to 101 Kansas City.

24 Q. Now, during the time that you were out there, were there
25 any labor problems?

1816

1 A. None that I know of.

2 Q. Any picketing that you knew of?

3 A. I never seen any.

4 Q. Now, I want to talk about your tools. As a mechanic,
5 where did you keep your tools?

6 A. My tools are my personal property, and I take them home
7 with me of a night.

8 Q. Would you tell the jury what kind of tools you kept in
9 your truck?

10 A. In my truck, I have cutting torches, welding machines,
11 all the hand tools it takes to overhaul diesel equipment.

12 Q. Did you carry any gasoline in your truck?

13 A. Yes, I did.

14 Q. Okay. And did that go home with you of a night?

15 A. Yes, it did.

16 Q. What did you keep the gasoline in?

17 A. Five gallon containers.

18 Q. About what was the dollar amount of the equipment you
19 kept in your truck?

20 MR. PETERS: Objection, Your Honor, relevancy. The
21 testimony is he's taken the tools home every night. This
22 occurred at night. Objection, relevancy.

23 THE COURT: That seems rather -- no. That's all
24 right. I'll overrule it. Go ahead. He can answer the
25 question.

1817

1 Q. (By Mr. Miller:) You can answer the question. What was
2 the dollar amount of your tools?

3 A. My own personal truck is about \$30,000.

4 Q. How often did you ever leave your truck at the work site
5 at the end of the day?

6 A. I didn't hear you, sir.

7 Q. Okay. How often would you leave your truck at the work
8 site at the end of the day?

9 A. None.

10 Q. When you would service the equipment, how was the
11 equipment parked at the end of the day?

12 A. We'd call it a row up. We rowed it up in a row along
13 the job site where the maintenance people could drive by each
14 machine and service it or repair it.

15 MR. MILLER: May he stand down for a minute, Your
16 Honor?

17 THE COURT: Surely. I think there's enough cord on
18 that microphone. You can take it with you. Don't strangle
19 yourself, though.

20 Q. (By Mr. Miller:) Mr. Allison, I'm referring to
21 Government's Exhibit No. 5. And do you see where the Brown
22 Brothers Construction equipment was?

23 A. Right there.

24 Q. All right. Now, the way they're worked, is that what
25 you would call rowing up?

1 A. Yes, it is.

2 Q. And then if you could, tell the jury how you would go up
3 and down and service the equipment.

4 A. Well, of a night, it would be parked, and then the
5 service truck would come through of a night and check all the
6 fluids and grease each machine. And then of a morning, one
7 of the mechanics would come by and check the engine oil and
8 antifreeze or water in each machine and start it. He would
9 not check any of the other fluids because that was left up to
10 the oiler to do.

11 Q. Okay. Thank you, sir. How many mechanics were there at
12 this job site?

13 A. I believe there was three of us.

14 Q. Now, do you know a fellow by the name of John F. White,
15 he's a white male, smaller than you, gray hair, wears
16 glasses, said he was in the real estate business?

17 A. No I do not.

18 Q. Were there any bulldozers there at the work site?

19 A. Yes, there was.

20 Q. What is called a D9H dozer? What is that?

21 A. The D9 stands for the size of the machine. The H is a
22 series in which it was built.

23 Q. And how many of those dozers were there?

24 A. I believe at that time there was just one.

25 Q. Did you ever discover one that had been vandalized?

1819

1 A. Do what, now?

2 Q. You can't hear out of one ear, can you?

3 A. No.

4 Q. Okay. Did you ever discover a bulldozer that had been
5 vandalized?

6 A. Well, we had the one 9H that was vandalized on that
7 job. It had dirt and rock poured into the transmission.

8 Q. Now, do you remember the date that you discovered this?

9 A. No I do not.

10 Q. Do you remember that you called the police on this?

11 A. We called the police, but I have no idea of the dates or
12 the time.

13 Q. If I showed you a report, the police report, would that
14 refresh your memory as to the date and time that you called?

15 A. Yes, it would.

16 Q. Now, after you look at this, I'll have to take it away.

17 A. It says 10/18/88; time, 1138.

18 Q. Okay. So on October the 18th is when you called the
19 police?

20 A. Yes, sir.

21 Q. All right. And it would have been about 11:30 in the
22 morning?

23 A. Yes, sir.

24 Q. Now, about how many gallons of transmission fluid are in
25 those bulldozers?

1820

1 A. Approximately twenty some gallon.

2 Q. Now, the D9 dozer, does it have a cab over the seat
3 area?

4 A. All it had was a rollover protection, no locked cab, no
5 doors that opened, no nothing, just an OSHA-approved rollover
6 structure.

7 Q. How difficult is it to get to the, what do you call it,
8 the spout where you pour in the transmission fluid?

9 A. under the seat, just raise the seat up.

10 Q. Is the cap over it locked, or can you just unscrew it?

11 A. Just unscrew it with your hand.

12 Q. You do not need a tool?

13 A. No.

14 Q. Now, even if there's rocks in the transmission fluid or
15 dirt, are you able to start the machine?

16 A. Yes, sir.

17 Q. okay. Now, what happens if you start the bulldozer and
18 it's got dirt and such in the transmission?

19 A. Well, it starts the oil pumps to running, it circulates
20 oil through the transmission cavities all through the system,
21 and it would have sat and ground itself up. The dirt and the
22 rock going through the oil, running through the planetary
23 gears and the bearings will just destroy it.

24 Q. You say grind itself up. Will it make its own metal
25 shavings?

1

1 A. Well, yes, it will.

2 Q. Even though you're the mechanic, do you work any with a
3 transit?

4 A. I do not work with a transit. I see them sitting on the
5 job sites, but I don't work with them at all, no sir.

6 Q. Now, you mentioned the difference in the jobs. There's
7 a fellow called a greaser?

8 A. Yeah, oiler is the proper name for them. They will do
9 all, they change all the oils, check the transmission fluids,
10 grease the machine, add oil, add water, if needed.

11 Q. Okay. After you found this bulldozer would not work
12 because of the dirt and such in the transmission, did you get
13 Rick Brown over there?

14 A. I'm assuming I got with the superintendent, and he
15 probably got with Mr. Brown. I don't remember getting with
16 Mr. Brown.

17 Q. And how long ago did you leave Brown Brothers
18 Construction?

19 A. Three years.

20 Q. And where do you work now?

21 A. I work for W. A. Ellis at Branson.

22 MR. MILLER: That's all I have of this witness,
23 Judge.

24 THE COURT: All right. Cross?

25 MR. PETERS: May it please the Court.

1822

1 THE COURT: Now, I'm sorry. This isn't -- do you
2 understand the order I've been given?

3 MR. O'CONNOR: Judge, I thought -- I was wrong
4 about this witness. I apologize.

6 CROSS-EXAMINATION

7 By Mr. Peters:

8 Q. Mr. Allison, my name is Pat Peters, and I represent
9 Frank Sheppard. You're a member of 101. Is that Operating
10 Engineers; is that correct?

11 A. Do what, now, sir?

12 Q. Is union 101, is that Operating Engineers?

13 A. I belong to the Operating Engineers 101, Kansas City.

14 Q. I just want to go through some of the questions that you
15 were asked by Mr. Miller. First, on November 28th going into
16 the 29th, the night of this explosion, it's your testimony
17 that your truck was not at work that night, correct?

18 A. That's correct.

19 Q. You didn't have anything taken at all from that job site
20 on the 28th or 29th, did you?

21 A. That's correct.

22 Q. From your experience as an operating engineer, if you
23 wanted to steal a D9 Caterpillar, would you put rocks and
24 gravel in the transmission? Would that be a good thing to
25 do?

1823

1 A. I don't -- I wouldn't want to steal a D9 to start with,
2 sir. But I don't think anybody would want to put rocks or
3 dirt in it.

4 Q. okay. Do you know a person by the name of Pendleton who
5 I believe was working back in October as an oiler for Brown
6 Brothers Construction Company?

7 A. Do I know a Gary Pendleton?

8 Q. Yes.

9 A. Yes, I do.

10 Q. And are you aware of the reason that he left the
11 employment of Brown Brothers Construction Company?

12 A. No sir, I'm not. I'm not involved in the labor end of
13 it.

14 Q. Now, would you agree that by November 28th or 29th of
15 1988, he had left the employment of Brown Brothers?

16 A. I don't know when he left, sir.

17 Q. You said that you work with a transit. Let me ask you,
18 sir, have you ever seen anybody leave a transit at the job
19 site at the end of the day?

20 A. On that particular job site, no I did not.

21 MR. PETERS: Okay. I have no further questions.

22 Thank you.

23 THE COURT: Any other cross?

24 MS. HUNT: I have no questions.

25 MR. BUNCH: No questions.

2

3 By Mr. O'Connor:

4 Q. I just have a couple of questions, sir. I'm John

5 O'Connor, I represent Bryan Sheppard.

6 You said, I believe, on direct examination, and
7 correct me if I'm wrong, that you did not remember or there
8 was no picketing done at that site back in ,88?

9 A. I do not remember any picketing at that job site.

10 Q. Do you remember any picketing going on at that job site
11 between November the 9th, 1988, and November the 15th, 1988,
12 by the OE's, the very people that you were in the union with?

13 A. I don't remember any there, sir, none whatsoever.

14 Q. And you were asked if you knew a John White, who was in
15 the real estate business. Did you know of a John White who
16 was in the prostitution business?

17 A. I don't know anybody by that name at all, sir.

18 Q. All right. And the bulldozer was on the west side of
19 the highway; is that true?

20 A. That's correct.

21 Q. And it was never on the east side where the explosion
22 happened, was it? The bulldozer?

23 A. Restate the question.

24 Q. The bulldozers there on the night of the explosion were
25 on the west side; is that correct?

1 A. Correct.

2 Q. And they remained on the west side at night, did they
3 not?

4 A. Not necessarily. Wherever they was done with a
5 particular machine is where it was left.

6 Q. Was any bulldozer up at the site the night of the
7 explosion?

8 A. I can't remember that.

9 MR. O'CONNOR: That's all I have. Thank you.

11 CROSS-EXAMINATION

12 By Mr. Osgood:

13 Q. Do you keep maintenance logs the way some companies do?

14 A. I didn't hear you.

15 Q. Did you maintain maintenance logs where maintenance was
16 recorded in a log book for that vehicle on a regular basis?

17 A. I had a maintenance log, and I left it with the company
18 when I left.

19 Q. It was your individual log?

20 A. Not really, sir. It belonged to the company.

21 Q. But I mean, did the company require that a maintenance
22 log be kept?

23 A. No.

24 Q. ALL right. Was there scheduled maintenance performed on
25 a regular basis?

1826

1 A. Yes, it was.

2 Q. Was that put in the log book?

3 A. Yes, it was.

4 Q. And then Brown Brothers would have that log book?

5 A. They should have.

6 Q. Now, did anybody ever perform -- you've been in the
7 service, sir?

8 A. I didn't do the servicing, I was the mechanic.

9 Q. Have you been in the military?

10 A. No.

11 Q. ALL right. Do you know whether or not anybody ever
12 compared the logged service that supposedly was performed
13 with the actual fluid levels and work that was done on those
14 vehicles?

15 A. I don't know that, sir.

16 Q. So there wasn't periodic vehicle inspection where
17 someone would go down and actually look to see if the oiler
18 was doing his job?

19 A. Not that I know of.

20 Q. That would have shown that, wouldn't it, if you would
21 have done that, whether he was doing his job or not, if you
22 periodically inspected those?

23 THE COURT: That's speculative, Mr. Osgood.

24 MR. OSGOOD: I agree. Thank you, Your Honor.

25 THE COURT: Any redirect?

1827

1 MR. MILLER: No redirect, Your Honor.

2 THE COURT: Thank you, sir.

3 THE WITNESS: Thank you.

4 THE COURT: All right. Call your next witness.

5 MR. BECKER: United States calls Bridget
6 Dornhoffer.

7 THE COURT: Maybe we'd better talk a bit while this
8 is pending. Come up here to the bench.

9 (Counsel approached the bench and the following
10 proceedings were had:)

11 THE COURT: Now, as I understand it, you're
12 abandoning your motion with respect to this witness so far as
13 the mental examination?

14 MR. BUNCH: Yes, uh-huh.

15 THE COURT: There will be no mention of that?

16 MR. BUNCH: That's right.

17 THE COURT: Okay.

18 MR. PETERS: As to that motion with Mr. Bunch, that
19 would be correct.

20 THE COURT: There's to be no mention of that
21 examination by anyone.

22 MR. O'CONNOR: The one that was done in federal
23 court we're talking about?

24 THE COURT: Yes.

25 MR. BECKER: That sort of begs the question, Mr.

1 O'Connor -- Mr. O'Connor chooses his words carefully because
2 he refers specifically to the one in federal court. He's
3 intimated -- although he's never showed me any copy of any
4 other psychiatric or psychological evaluations, he's
5 intimated that he's had one from state court, although I've
6 never seen it.

7 THE COURT: You're not to make any reference to
8 that without giving us the opportunity to see it in detail.

9 MR. O'CONNOR: Okay.

10 (The following proceedings were had in open court:)

11 THE COURT: Would you stand by the witness chair,
12 please, and be sworn.

13 -- -- --

14 BRIDGET DORNHOFFER,

15 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
16 testified as follows:

17 THE COURT: Mr. -- Well, one of you counsel for the
18 government and Mr. O'Connor.

19 MR. O'CONNOR: Yes, sir.

20 (Counsel approached the bench and the following
21 proceedings were had:)

22 THE COURT: We have a question from the, from a
23 juror, which is what side of the highway was the bulldozer on
24 when the rocks and dirt was found in trans -- I'm sure it
25 means transmission. No. 2 has asked that question. Now, is

1 there any question about that?

2 MR. O'CONNOR: It was on the west side.

3 MR. MILLER: It was on the west side.

4 THE COURT: So I can tell them that?

5 MR. MILLER: Yes.

6 THE COURT: All right.

7 (The following proceedings were had in open court:)

8 THE COURT: Mr. Rainey, in response to your
9 question, and I'll tell the rest of the jurors, the question
10 is, "What side of the highway was the bulldozer on when the
11 rocks and the dirt were found in the transmission?" And the
12 agreed answer to that is on the west side.

13 All right. Go ahead, please.

14 MR. BECKER: Thank you, Judge.

16 DIRECT EXAMINATION

17 By Mr. Becker:

18 Q. Good morning.

19 A. Good morning.

20 Q. Please state your name and spell your last name.

21 A. Bridget Dornhoffer; D, as in David, O-R-N-H-O-F-F-E-R.

22 Q. How old are you?

23 A. I'm 38.

24 Q. Are you currently incarcerated?

25 A. Yes, I am.

1830

1 Q. Before you went to jail, what was your employment?

2 A. I worked as an in-house legal assistant/secretary.

3 Q. Did you work for various lawyers in the Kansas City
4 metropolitan area?

5 A. Yes, I did.

6 Q. Did you work for any criminal defense attorneys?

7 A. Yes, I did.

8 Q. Who were the criminal defense attorneys or the principal
9 criminal defense attorney you worked for?

10 A. Robert Duncan, James Chancellor, Donald Norris, Cynthia
11 Clark Campbell.

12 Q. During the time you worked for them, then, did you have
13 exposure to or review documents relating to criminal defense
14 work?

15 A. Yes, we did everything from traffic to Supreme Court
16 briefs. There were several documents that I had access to.

17 Q. Okay. During the time you worked for Mr. Duncan, did
18 you have occasion to speak with or talk to Mr. O'Connor?

19 A. Yes, Mr. O'Connor represented Mr. Duncan on an issue
20 that was within this jurisdiction.

21 Q. Do you have any children?

22 A. Yes, I do.

23 Q. How old are they?

24 A. Seventeen and twelve.

25 Q. Have you ever been convicted of a crime?

- 1 A. Yes, I have.
- 2 Q. In 1988 in Clay County, were you convicted of a crime?
- 3 A. Yes, I was.
- 4 Q. What was that?
- 5 A. It was a forgery charge and a bad check charge.
- 6 Q. Did you receive a sentence for that?
- 7 A. Yes, I did.
- 8 Q. What was that?
- 9 A. There were several four-year sentences running
- 10 concurrently.
- 11 Q. So it was a number of bad checks?
- 12 A. Correct. Each one was a separate issue, but they ran
- 13 them all concurrent.
- 14 THE COURT: Four years in 1988?
- 15 THE WITNESS: Yes, sir.
- 16 Q. (By Mr. Becker:) And, again, that was a number of
- 17 separate charges, one for each check; is that right?
- 18 A. That is correct.
- 19 Q. In 1989 in Platte County, did you, were you convicted of
- 20 a crime?
- 21 A. Yes, it was with regard to the same matters. It was
- 22 within the same time frame, and they gave me three years
- 23 running concurrent with the Clay County charge.
- 24 Q. Then moving ahead to 1994, were you again convicted in
- 25 Clay County?

1 A. Yes, I was.

2 Q. What was that for?

3 A. Actually, it didn't happen until after my federal
4 charges were disposed of because they moved me from Clay
5 County to the marshal's service, and the marshal service
6 issues were taken care of before the Clay County issue was.

7 Q. In 1995, then, in the District of Kansas, federal court,
8 were you convicted of a crime?

9 A. It was a bank fraud case.

10 Q. What does that mean, what did you do?

11 A. I stole some money.

12 Q. From your employer?

13 A. Yes.

14 Q. How much time did you get on that?

15 A. Eighteen months.

16 Q. And then finally last year, 1996, were the Clay County
17 matters -- again, were there charges in Clay County?

18 A. Yes, it was one Class D felony of a bad check, and on
19 that I received three years. And on the previous one that
20 they finally disposed of during the course of the District
21 Court in Kansas, I got an eight-year sentence for a bad check
22 charge.

23 Q. So right now where are you incarcerated?

24 A. Renz Correctional Center in Jefferson City, Missouri.

25 Q. Your sentence is all the state court charges that all

1 concurrently run together?

2 A. All state charges are concurrently run together, and the
3 three-year sentence that came out of Clay County is running
4 concurrent with my federal sentence also. That is the only
5 one.

6 Q. Okay. And the federal sentence you got in the District
7 of Kansas, that is consecutive, that is, you have to finish
8 your state court time before you start your federal time; is
9 that accurate?

10 A. That's half correct. I have finished part of my -- I've
11 done part of my federal time. I still owe them about ten
12 months is what I've calculated, once I finish and am paroled
13 from my state charges.

14 Q. so while the charges were pending in federal court in
15 Kansas, you were in jail?

16 A. Correct.

17 Q. And you've got credit for that time in jail?

18 A. Yes. I was in federal custody from September of 1994
19 through May the 9th of 1995.

20 Q. And we'll get to that in just a minute. In exchange for
21 your testimony today, has the government agreed to see if you
22 can be transferred to federal custody to serve out your
23 sentences?

24 A. That is only a possibility. There's only -

25 Q. The united States Attorney's Office has agreed to see if

1 that's going to be possible?

2 A. They've agreed to look into it is what I've been told.

3 There's no promise on it.

4 Q. And secondly, in December of last year, 1996, did

5 Special Agent True appear at a parole hearing in Jefferson
6 City?

7 A. Yes, he did, on December 4th.

8 Q. Did he inform the parole board of your cooperation in
9 this case?

10 A. Yes, he did.

11 Q. Did you get parole?

12 A. No. Actually, they went ahead and gave me within my
13 sentencing guidelines according to my sentencing factor.

14 Q. Have you asked for, or have you been given any promises
15 that your sentence is going to be cut in exchange for your
16 testimony?

17 A. No. No promises have been made to me at all
18 whatsoever. Just possibility of looking into the one issue,
19 that's it.

20 Q. And the issue is that you'd serve your time in federal
21 jail rather than in state jail?

22 A. Yes. But either way, I'm going to be serving more time
23 than I actually would be serving.

24 Q. Now, you talked about being in federal custody from
25 September '94 through May 9 of 1995; is that right?

1835

1 A. That's correct.

2 Q. Were you incarcerated at a place known as CCA,
3 Corrections Corporation of America?

4 A. I was at CCA for a matter of one week in September of
5 1994. And I left for Lexington, Kentucky, and I came back to
6 CCA December the 5th of 1994 and was at CCA from December
7 5th, 1994, through May the 9th, 1995.

8 Q. While you were there, did you meet a woman by the name
9 of Darlene Edwards?

10 A. Yes, I did.

11 Q. Do you see her here in court today?

12 A. Yes.

13 Q. Could you just tell us where she's sitting and what
14 she's wearing?

15 A. She's got on like a beige jacket, and it looks like a
16 black, with the same colored blouse.

17 Q. Now standing?

18 MR. BECKER: Your Honor, indicating Darlene
19 Edwards.

20 THE COURT: Yes.

21 Q. (By Mr. Becker:) Can you tell us how you met Darlene
22 Edwards?

23 A. When Darlene came into CCA, I later learned that she had
24 been cutting wood, and she came in in jeans, and she was
25 dirty from being outside all day long.

1 THE COURT: I'm sorry. I'm not hearing what you're
2 saying.

3 A. I'm sorry. When Darlene came to CCA, she had been, what
4 she told me was cutting wood later on. She came in, and she
5 was very dirty. And Trudy Spoke (phonetic) was our unit
6 manager at that time and had asked me if I could help Darlene
7 get cleaned up because they make them shower and then go to
8 the multipurpose room where they do their orientation. So I
9 gave her a bar of soap and let her use some shampoo. That
10 was my first encounter with Darlene.

11 Q. Could you briefly describe the unit as you were in it
12 from December through May of 1995? How big is it, how many
13 people, women are typically housed there?

14 A. It holds up to 24 women in each housing unit. It's a
15 day room that is probably the length of this room. It has
16 several tables with four metal seats that go around it. We
17 have a TV up front with a sink that's underneath of it for
18 general population use, and then the showers are to the left
19 of that. There are six rooms that go down along each side of
20 the day room.

21 Q. And those have, presumably, the beds and -

22 A. Yes, they have two bunks, a desk, two stand-up lockers,
23 sink, toilet.

24 Q. Were you in the same room or cell with Darlene Edwards?

25 A. No. Actually, when she first got there, I was right

1837

1 across from her. She was in 107. I was in 106, and then
2 they moved me down to 103 shortly afterwards.

3 Q. Now, while you were at CCA, did you discuss with Darlene
4 Edwards her pending case?

5 A. No not right away. Our first discussion was a **drug**
6 case that she was there on.

7 Q. Okay. And later on, did you discuss the explosion that
8 killed the six firefighters?

9 A. That was brought to my attention when she was reading in
10 the newspaper an article with regards to one of the
11 defendants, and later on within the article they had made a
12 remark about that another woman was the target of the
13 investigation but that she could -

14 Q. Is this something she told you?

15 A. Yes. She had the paper. It was in the Kansas City Star
16 that day.

17 Q. Tell us what literally happened that you remember.

18 A. She was real upset about it. There was a comment in the
19 newspaper with regards to that they could not reach the
20 female person for a comment. And her remark was after we had
21 sat down and read the article again that she had never been
22 notified that they had wanted to talk to her about the
23 article.

24 Q. Had you earlier in the day read that article?

25 A. Yes, I had.

1838

1 Q. Did you have any idea they were talking about Darlene
2 Edwards?

3 A. I had no idea it was talking about Darlene Edwards. I
4 didn't realize it until she told me it was referring to her
5 herself.

6 Q. How did she do it? What happened?

7 A. She had been very upset about it. She had been upset
8 about the **drug** case for some time. And she was, it was kind
9 of strange because Darlene never really talked to a lot of
10 people at first. And it took her some time to come around
11 and get pretty well situated within the environment.

12 And she just came to me and said that the article
13 was with regards to her at the very end and that she was very
14 upset about it.

15 Q. Okay. I want to show you what's been marked for
16 identification purposes as Government's Exhibit 392. Just
17 look at it to yourself. Don't read it out loud, please. If
18 you would look at the last paragraph of that piece of paper.
19 Is that a photocopy of the newspaper article you were just
20 discussing?

21 A. Yes, it is.

22 Q. What's the date of that article?

23 A. March 14th, 1995.

24 Q. After that, after you read this, then, did Darlene
25 Edwards discuss this explosion case with you?

1 A. Yes, she did.

2 Q. Why would, why did somebody tell you, why you as opposed
3 to any of the other 20 persons on the unit?

4 A. I later found out that one of the other women there had
5 told Darlene that I had done some work for some -- Darlene
6 was aware of it to begin with, because one of the other
7 ladies, I don't know if I could mention her name or not, I
8 was helping her with a letter of immunity that she was given
9 by her attorney when we were sitting there reading about it.

10 And Darlene had asked me what the immunity meant.
11 And I had explained to her that she was testifying against
12 someone else and that the immunity was not going to keep her
13 from doing any time, but keep any further allegations and
14 charges from actually being hit upon her. It depends on what
15 the immunity outlined, it doesn't necessarily mean someone is
16 going to walk scot-free.

17 Q. Now, I'd like to go through, then, with you what Darlene
18 Edwards said about the explosion. All right?

19 A. Okay.

20 Q. Did Darlene Edwards talk about anything occurring at her
21 house before the explosion?

22 A. She had talked about a couple of discussions that she
23 had overheard with the other codefendants.

24 MR. PETERS: Objection, Your Honor.

25 MR. BECKER: Can we approach, please?



1 MR. PETERS: Move for mistrial.

2 THE COURT: Oh.

3 (Counsel approached the bench and the following
4 proceedings were had:)

5 THE COURT: That's drama we don't need. We do not
6 need dramatic moves for a mistrial in front of the jury.
7 Now, what's the objection?

8 MR. PETERS: The objection is that this is the
9 sixth witness he's brought before the Court with a standing
10 motion in limine that other defendants not be mentioned and
11 have the witness say other defendants. It's a violation of
12 Bruton, it's ongoing, it's prejudicial, and as we'll discuss
13 later on today -

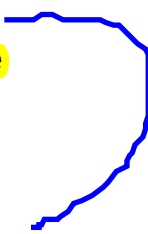
14 THE COURT: It will be stricken. And she should -
15 I will instruct her to not to refer to other defendants or
16 anyone that was not in the room with her when any comment was
17 made.

18 MR. BECKER: All right.

19 (The following proceedings were had in open court:)

20 THE COURT: Ladies and gentlemen, the reference to
21 other defendants is not appropriate by this witness, and you
22 should disregard it. It's stricken from the record, and it
23 should be stricken from your consideration.

24 I'll instruct you, ma'am, not to make any reference
25 to anyone other than the person making the comment that



1 you're testifying about, or any person, other person that
2 might have been in the room or in your presence at the time.

3 THE WITNESS: Okay, sir.

4 THE COURT: All right.

5 Q. (By Mr. Becker:) Miss Dornhoffer, where did these
6 discussions with Darlene Edwards take place?

7 A. Some of them were in the day room, some of them were in
8 her room and my room. Some of them were in the multipurpose
9 room.

10 Q. Was this one session or multiple sessions during the
11 time you were there?

12 A. We talked numerous times.

13 Q. Do you -- is there something to do during the day while
14 you're at CCA in pretrial detention? How did you spend your
15 time when you were there?

16 A. We worked out in the multipurpose room, we went to the
17 library, we sat around and watched TV, played cards, talked.

18 Q. So it's not like prison where you have a job that you
19 would go to?

20 A. Oh, no. Darlene had a job for a while. She worked in
21 the library checking out books when we went down there.

22 Q. Did you have a job at all?

23 A. No.

24 Q. Now, when you were talking with Darlene Edwards about
25 this, did Darlene Edwards say -- just tell us what she said

1 she did. Okay?

2 A. Okay.

3 Q. What did she say she did on the night of the explosion?

4 A. She had told me that she drove the vehicle, that she
5 drove to the site.

6 Q. Did she talk about gas at all?

7 A. Yes, she did.

8 Q. What did she say?

9 A. She said that she had, she had taken a vehicle to a gas
10 station to purchase some gas.

11 Q. Did she say anything about after leaving the gas
12 station, going to the construction site?

13 A. She didn't go directly to the construction site once she
14 left the gas station, no. She went back to the house and
15 then went to the site.

16 Q. Did she say why she went to the site?

17 A. They were going to she was going to steal some tools.

18 Q. Did she say she was with other people?

19 A. Yes, she did.

20 Q. And the motive was to steal tools?

21 A. The motive was to steal, yes.

22 Q. What was the purpose of stealing tools, according to
23 Darlene Edwards?

24 A. To turn around and sell them, cash, purchase **drugs**, pay
25 bills. I mean, she listed off a number of things.

1843

1 Q. Did Darlene Edwards tell you anything about what was the
2 purpose of getting gasoline?

3 A. Was to cover up the fact that **they** had robbed the site,
4 and it was going to keep them busy for a while.

5 Q. In other words, setting a fire with the gasoline?

6 A. Right.

7 Q. Did Darlene Edwards say anything about a possible alibi?

8 A. Yes, she did.

9 Q. What did she say?

10 A. That there were several discussions as to where she was
11 when the incident occurred.

12 Q. Did she say that anyone in particular would be her
13 alibi?

14 A. Yes, she did.

15 Q. Who was that?

16 A. She had made it very clear that a neighbor had seen her
17 periodically through the day, and that was intentional so he
18 could say that she was at the house.

19 Q. Did she give a name to you of that neighbor?

20 A. It was a nickname that she referred to him as. It
21 wasn't his name.

22 Q. What's that?

23 A. She called him Bear.

24 THE COURT: I'm sorry, Bear?

25 THE WITNESS: Yes.

1 THE COURT: As in grizzly bear?

2 THE WITNESS: As in grizzly bear.

3 Q. (By Mr. Becker:) Did you ever meet this fellow, this
4 Bear?

5 A. No I never did.

6 Q. Have you ever been to the Marlborough area?

7 A. I am familiar with it. I've been to it a couple of
8 times, but I would get lost if I were there. Every time I've
9 gone, someone else has driven.

10 Q. What part of Kansas City did you live in when you -

11 A. I live up north of the river.

12 MR. BECKER: I have no further questions at this
13 time.

14 THE COURT: All right. Mr. O'Connor?

16 CROSS-EXAMINATION

17 By Mr. O'Connor:

18 Q. Miss Dornhoffer, you said earlier that you know me; is
19 that correct?

20 A. Yes.

21 Q. And you know that I'm representing Bryan Sheppard?

22 A. Yes.

23 Q. I have a few questions I'd like to ask you.

24 A. Okay.

25 Q. I want to go to your criminal history that you talked

1 about on the, your direct examination. And I'm going to
2 start with 1988. I'm going to start with 1986, I'm sorry.

3 Do you agree that you have a conviction on 10/4 of
4 ,86 for forgery?

5 A. That did not get disposed of until 1988.

6 Q. You have a conviction for October 28th, 1988, for
7 passing a bad check, Clay County, four years?

8 A. That's correct.

9 Q. You have another conviction 12/15 of ,88, passing a bad
10 check, Clay County, four more years?

11 A. They all ran concurrent.

12 Q. And concurrent means at the same time?

13 A. Correct. There were several charges.

14 Q. I'm going to go through them now.

15 A. Okay.

16 Q. On 12/15 of ,88 you had another passing bad check charge
17 in Clay County and received a four-year sentence?

18 A. Yes, running concurrent with the others.

19 Q. On 12/15 of ,88 you had another bad check charge and
20 four-year sentence?

21 A. Yes, that ran concurrent too.

22 Q. 1988, 12/15, you had another bad check charge and
23 four-year sentence?

24 A. Yes, that ran concurrent also.

25 Q. On 12/15 of '88, you had a forgery conviction and a

1 four-year sentence?

2 A. That ran concurrent also.

3 Q. On December 15th of '88 you had another forgery

4 conviction and a four-year sentence?

5 . Yes, that ran concurrent also.

6 Q. On 12/15, you had another bad check conviction and a

7 four-year sentence?

8 A. Yes, that was also concurrent.

9 Q. And on 12/15/88, you had another forgery and a four-year
10 sentence?

11 A. Yes, that was also concurrent

12 Q. And then on 9/28 of '92, is that when you're talking
13 about that you, this forgery and four years?

14 A. Yes.

15 Q. And you had another bad check conviction on 12/15 of '88
16 in Clay County, four-year sentence?

17 A. Yes, that all ran concurrent.

18 Q. And then you had, on 1/13 of '89 you had a forgery
19 conviction out of Platte County and a three-year sentence
20 which they ran concurrent back to Clay County?

21 A. That's correct.

22 Q. on March the 7th, 1994, you had a bad check charge, got
23 an eight-year sentence, five years probation?

24 A. Correct.

25 Q. And at that time under the law, you were a prior and

1847

1 persistent offender; is that true?

2 A. That's correct.

3 Q. What does that mean?

4 A. A prior and persistent offender is, under 558.016 of the
5 Revised Missouri Statutes, it states that if you have one
6 prior felony conviction, the Court can enhance your
7 sentence. Therefore, it was a Class D felony, which was
8 enhanced, which meant I could have been sentenced up to ten
9 years within the Department of Corrections on a Class D
10 passing a bad check felony charge.

11 Q. You're real familiar with what they can do on these
12 enhancements on people who continue to commit crimes?

13 A. Correct.

14 Q. And on 3/16 of '94, you had a forgery out of Jackson
15 County which you got seven-year sentence and five years
16 probation that ran concurrently with the probation you got in
17 Clay County?

18 A. That's correct.

19 Q. On 19 --

20 A. Actually, that issue has not been disposed of, as far as
21 the sentence being imposed yet. It should be any day.

22 Q. 1994, you have a misdemeanor conviction for a bad check?

23 A. Correct.

24 Q. June 14th, 1995, another bad check?

25 A. Yes.

1 Q. February 16th, 1996, another bad check and a three-year
2 sentence?

3 A. That's correct. And the other two were dismissed within
4 that plea agreement.

5 Q. And then on 5/1 of ,95 you received a conviction in the
6 Federal District Court in Kansas for fraud, and received an
7 18-month sentence?

8 A. That's correct.

9 Q. And you got five years supervised release?

10 A. Correct, 18-year prison term with five years supervised
11 release.

12 THE COURT: Eighteen, how much?

13 THE WITNESS: Eighteen-month prison term, and five
14 years supervised release.

15 Q. (By Mr. O'Connor:) And restitution of \$26,389?

16 A. And 11 cents.

17 Q. On 5/1 of '95?

18 A. Correct.

19 Q. That's before you ever came forward on this case?

20 A. Yes. Actually, that was imposed May 1st of 1995.

21 Q. You were also as part of your probation, defendant
22 shall participate in mental health program?

23 A. Correct.

24 Q. Which may include inpatient treatment?

25 A. Correct.

1849

1 Q. At the direction of the U.S. Probation office?

2 A. That's correct.

3 Q. Now, let's talk a little bit about your employment.

You

4 told us about your employment. You worked for other people
5 other than lawyers, didn't you?

6 A. Yes, I did.

7 Q. You worked at a place called Gilbert/Robinson?

8 A. Yes, I did.

9 Q. You worked at a place called Erickson Refrigeration?

10 A. Yes.

11 Q. You worked at a place called Commonwealth General?

12 A. Correct.

13 Q. Did you falsify applications at Gilbert/Robinson to gain
14 employment there?

15 A. Gilbert/Robinson, I filed that application years ago. I
16 could not tell you for sure.

17 Q. Did you falsify your application to work at
18 Gilbert/Robinson's.

19 MR. BECKER: Objection, asked and answered. She
20 answered it.

21 A. That was way back in -

22 MR. BECKER: Wait until he rules on the objection.

23 THE COURT: I think she did answer that, Mr.

24 O'Connor.

25 Q. (By Mr. O'Connor:) Did you falsify your application by

1850

1 telling themthat you were a graduate of UMKC and you had a
2 bachelors degree when, in fact, that was a lie?

3 A. I do not believe I told them that.

4 Q. Have you ever told anyone that you graduated from UMKC
5 with a degree?

6 A. Not that I'm aware of, no.

7 Q. How come you left Gilbert/Robinson?

8 MR. BECKER: Objection, relevance.

9 MR. O'CONNOR: Judge, he got into her employment
10 history with people back ten years ago.

11 THE COURT: I'm not interested in her personnel
12 history with other employers unless it relates to her
13 credibility as a witness.

14 MR. O'CONNOR: It absolutely does, Judge.

15 THE COURT: Come up.

16 (Counselapproached the bench and the following
17 proceedings were had:)

18 MR. O'CONNOR:I don't want the witness to hear
19 what I'm saying. Can we go to the side?

20 Judge,they have put her on to basically say that
21 she workedfor these lawyers to build her up like she's got
22 all of this background and she's a good person. When she
23 worked at Gilbert/Robinson, she called into Gilbert/Robinson
24 -- first off, to Gilbert/Robinson she filled out an
25 employment application and told them she had a bachelors

1 degree. When they told her to bring in verification, she did
2 not come back to work.

3 The day before they called for a verification, she
4 called in and told them that she couldn't come to work
5 because her mother had died and she was feeling bad about it
6 because she had talked to her mother the night before and got
7 upset with her, and that she was sad that she wasn't there
8 when she died. Her mother did not die. Her mother is not
9 dead.

10 She has a history of making things up and
11 fabricating stories. The mental history on her is that she's
12 a chronic and pathological liar. She's learned how to tell
13 detailed and fabricated stories to get herself out of
14 trouble.

15 THE COURT: You're not going to be able to make
16 that kind of a psychiatrist out of this jury. We don't have
17 that kind of testimony to verify the record of this.

18 MR. O'CONNOR: I'm stuck with the answer, but I
19 have a good faith basis for asking it. I have the
20 information.

21 MR. BECKER: I'm not saying it's not a good faith
22 basis, but the reason her legal employment was brought up is
23 to give some context to her jail house advice to people. I
24 mean, that's why I inquired about her being -- I mean, I
25 could have asked about other lawyers, the civil practice that

1 she's done, but I don't care about the civil practice. The
2 inmates that consulted with her didn't care about her civil
3 practice, it was the criminal defense.

4 THE COURT: The rest of her employment is beyond
5 the scope of direct. I'll sustain the objection.

6 MR. O'CONNOR: I can't ask her if she's falsified
7 or told people where she worked that her mother had died when
8 she hadn't without referring to Gilbert/Robinson?

9 THE COURT: You can ask her that.

10 (The following proceedings were had in open court:)

11 Q. (By Mr. O'Connor:) Miss Dornhoffer?

12 A. Yes, Mr. O'Connor.

13 Q. When you worked at -- you worked at Gilbert/Robinson and
14 then you worked at Erickson Refrigeration?

15 A. Correct.

16 Q. Had you ever told any employer in order to get off work
17 that, this story about your mother passing away and that you
18 were on the phone with her and you got angry with her and you
19 were upset about the fact that she had died and you weren't
20 there with her, and the truth was your mother hadn't even
21 died?

22 A. No I never told them that.

23 Q. That never happened?

24 A. No it did not.

25 Q. Never happened at Gilbert/Robinson's or Erickson

1 Refrigeration?

2 A. Noit did not.

3 MR. BECKER: Objection, argumentative. She said it
4 never happened.

5 THE COURT: Yeah, she's testified it didn't
6 happen. Sustained.

7 Q. Commonwealth General, did you work there?

8 A. Yes, I did.

9 Q. What's your Social Security number?

10 MR. BECKER: Objection.

11 THE COURT: Well, I fail to see its relevance,
12 but -

13 Q. (By Mr. O'Connor:) Let me see if I know what your
14 Social Security number is. Is it 488-70-1121?

15 A. I could not tell you what my Social Security number is.
16 I have not used it in a while.

17 Q. Did you use a false Social Security number when you
18 worked at Commonwealth General?

19 A. No.

20 Q. Now, when you committed the crimes that you've committed
21 over this span of time, have you ever yourself, you yourself
22 claimed that you were suffering from something called
23 selective amnesia?

24 A. No I've never claimed that.

25 Q. Have you ever said you had selective amnesia?

1854

1 A. No I never said it.

2 Q. Have you ever told officers who were interrogating you
3 for the checks that you did, the bad checks, that you had
4 selective amnesia and could never remember doing these
5 crimes?

6 A. No. I never said that.

7 Q. All right.

8 MR. BECKER: Judge, may we approach?

9 THE COURT: Yes.

10 (Counsel approached the bench and the following
11 proceedings were had:)

12 MR. BECKER: Counsel has indicated that he intends
13 to show this to the witness to refresh her recollection. She
14 didn't say she didn't remember. She said she never said it,
15 and the highlighted portion of that statement doesn't
16 contradict it. It says she was told by other persons that
17 that's a problem she may have.

18 MR. O'CONNOR: The witness is listening to you.

19 MR. BECKER: That's the argument. That's the legal
20 argument.

21 THE COURT: Was told. It doesn't -

22 MR. O'CONNOR: I'll ask her another one.

23 (The following proceedings were had in open court:)

24 THE COURT: The question as to whether she was told
25 that wouldn't stand on -

1 MR. O'CONNOR: I understand that.

2 Q. (By Mr. O'Connor:) Have you ever claimed to have
3 suffered from amnesia?

4 MR. BECKER: Objection. That was the same question
5 she just answered.

6 THE COURT: I think that was what we just went
7 through.

8 MR. O'CONNOR: The question was did she ever say
9 she had selective amnesia, and she said no. Now I'm asking
10 has she ever claimed she suffered from amnesia?

11 A. Not that I recall, No I have not.

12 Q. Is that something you would recall?

13 A. I would imagine, yes.

14 Q. And in December of 1993, did you, in fact, cooperate
15 with the government and testify as a government witness for
16 Mr. Dan Stewart with the U.S. Attorney's Office?

17 A. Yes, I did.

18 Q. In exchange for your testimony, they agreed to try to
19 help you out up in Clay County and Jackson County, and that's
20 where you got the two probations?

21 A. Actually, that is not true.

22 Q. Tell me what's not true about it.

23 A. Dan Stewart, I helped him while I was at Chillicothe
24 Correctional Center serving a prison sentence. He wrote a
25 letter to the Board of Probation and Parole with regards to

1856

1 my assistance. I was still conditionally released on that
2 sentence and did not get out of prison any earlier due to his
3 letter.

4 Q. Well, were you sentenced in front of a judge up in Clay
5 County on March the 4th, 1994? Did you go there for a
6 sentencing with your lawyer, Tom Fincham?

7 . In March of 1994?

8 Q. Yes.

9 . For what?

10 Q. You tell me.

11 . March of 1994?

12 Q. Were you sentenced up -- did you go in front of Judge
13 Howard up there to be sentenced, Mr. Newberry was there, you
14 were there, on the case in which you got the probation?

15 A. Oh, yes.

16 Q. Wasn't the letter that Mr. Stewart wrote on your behalf,
17 wasn't it put to the judge as an exhibit of your cooperation
18 in that federal case?

19 A. The letter was written in 1991. I do not see how in the
20 world that even affected a sentence I received years later.

21 Q. I could show you the transcript of the sentencing. Do
22 you think that may refresh your recollection?

23 A. Yes.

24 MR. BECKER: Could I take a look at that, please?

25 Are there copies available?

1 THE COURT: Is this a transcript of her testimony
2 at a hearing, Mr. O'Connor?

3 MR. O'CONNOR: It's a transcript of the sentencing
4 proceeding in which -- yes, sir.

5 THE COURT: Well, did she testify?

6 MR. O'CONNOR: No.

7 THE COURT: How are you going to use it to refresh
8 her recollection?

9 MR. O'CONNOR: My understanding of the rule on
10 refreshing recollection, you can show a witness anything to
11 refresh their recollection. You can show them a pizza pie.
12 If it would refresh his recollection, it can be used. She
13 said if she saw this, it would refresh her recollection, so
14 I'm offering it to her to see if it will.

15 (So done.)

16 A. Okay. I've read the paragraph on Page 4, the paragraph
17 you wanted me to read.

18 THE COURT: What's the question, now?

19 Q. (By Mr. O'Connor:) Have you read it?

20 A. Yes.

21 Q. Can I have it back? Does that refresh your recollection
22 as to whether or not a letter from Dan Stewart was provided
23 to the judge to show your willingness in cooperating in terms
24 of what the judge was going to do toward your sentencing?

25 A. It says that the letter was submitted, but it doesn't

1858

1 say that's the reason the judge gave me my probation.

2 Q. I'm not saying it is either. It was submitted as a
3 document to attempt to get you probation.

4 A. Yes, there were several documents that were submitted to
5 get me probation. Also there was a letter submitted from my
6 employer.

7 Q. Okay. Let me show you that, Defendants, Exhibit 19. Is
8 that the letter from your employer?

9 A. Yes, it is.

10 MR. O'CONNOR: Move for admission of Exhibit 19.

11 MR. BECKER: I'd like to see it.

12 THE COURT: I would, too. Hand it up to the clerk,
13 please, Mr. O'Connor.

14 MR. O'CONNOR: Yes, I'm sorry.

15 THE COURT: Do you have any objection to this?

16 MR. BECKER: No Judge.

17 THE COURT: ALL right. 19 is admitted without
18 objection.

19 (Defendants, Exhibit 19 was admitted into
20 evidence.)

21 Q. (By Mr. O'Connor:) And so a letter from Mr. Stewart was
22 also given at that time; is that correct?

23 A. I could not tell you. I did not see the letters
24 myself. I would imagine, that's what Mr. Fincham indicated
25 that he had done.

1859

1 Q. If you saw the letter, do you think it would refresh
2 your recollection?

3 A. I could not tell you. I didn't -- I've never seen the
4 letter to begin with.

5 Q. Okay.

6 A. So it could not refresh anything since the fact of the
7 matter is I've never seen it.

8 Q. Okay. Thank you. But the letter from Mr. Stewart was
9 talked about at the hearing; is that correct?

10 A. That's correct.

11 Q. For your sentencing. And then you supplied the letter
12 from your employer to your attorney, to the Court to show
13 that you had employment so you could get a job back?

14 A. Actually, I did not supply the letter to my attorney for
15 the Court.

16 Q. How did the letter come about?

17 A. I believe the letter was faxed from the company to my
18 attorney.

19 Q. Is that something that you had done?

20 A. No it is nothing I had done.

21 Q. Okay. So have you had a chance to read this before?

22 A. No actually I have not.

23 THE COURT: Read what?

24 Q. This Exhibit 19.

25 A. No I have not read it.

1 Q. Are you sure this is the letter that was used up there
2 that day?

3 A. I couldn't tell you if it is.

4 Q. Was there only one letter from Sealright given to the
5 judge that day?

6 A. I don't know.

7 Q. Signed by the general manager, Harold Fernau?

8 A. Fernau.

9 Q. That's a forgery, isn't it?

10 A. No it is not.

11 Q. Mr. Fernau never signed that, did he?

12 A. I could not tell you if Mr. Fernau ever signed it
13 because I didn't take him his letters for a signature.

14 MR. O'CONNOR: This exhibit in evidence, Judge?

15 THE COURT: Is it 19?

16 MR. O'CONNOR: Yes.

17 THE COURT: Yes.

18 MR. O'CONNOR: Can I have the witness read the
19 exhibit to the jury?

20 THE COURT: Sure.

21 A. January 4, 1994, hand-delivered by Thomas Fincham to The
22 Honorable Judge V. Howard, Division One, Clay County
23 Courthouse, Liberty, Missouri 64068.

24 Dear Judge Howard: This correspondence is prepared
25 on behalf of Ms. Bridget Galvan-Dornhoffer. Miss Galvan is

1 an employee of Sealright Engineering Services, and a valued
2 employee at that. She has shown great maturity,
3 responsibility and loyalty to this company. We value her
4 input in various projects, and she has, in fact, gone beyond
5 the call of duty. When overtime is requested of her, she is
6 there.

7 We realize that an infraction has been made and
8 have discussed in length with Bridget what has been done. We
9 also see and know if she is granted probation, she will have
10 no difficulty in meeting all requirements that are expected
11 of her. She has a wonderful business life and a fabulous
12 personal life. Bridget is a single working mother, and is
13 very involved in her life with her daughters. When she is
14 asked to work on Saturday, the majority, and then it says
15 paren, 97 percent, of the time her daughters come with, and
16 we have expressed that that is fine with the company. She
17 truly loves her daughters and they her. We not only think of
18 Bridget as an employee, but as part of our family here at
19 Sealright. She puts in over 100 percent and is very
20 dedicated and proud of her work. We see an entirely
21 different woman, a very caring, understanding, and sensible
22 person. We are willing to work with Bridget with regard to
23 her terms if granted probation. We are willing to give her a
24 flexible schedule to meet with a probation officer when it is
25 required of her. This is not a normal routine for our

1862

1 company, but when we do value our employees, we were more
2 than willing to go the extra for them.

3 If she is not granted the probation, we feel it is
4 out of loyalty to Bridget to hold her position for a
5 reasonable amount of time. She has worked very diligently
6 and hard to get to where she is within the company, and in
7 return feel that we owe this to her.

8 We thank you for your consideration and hope that
9 the Court will find Bridget deserving of probation.

10 Sincerely, Harold Fernau, General Manager. And
11 then it has HF/dsf, cc: personnel.

12 Q. It looks like a real letter, it's even copied to the
13 personnel file?

14 A. Yes.

15 Q. Now, on that day when that letter was presented and the
16 letter from the U.S. Attorney's Office here in the Western
17 District, you got probation, didn't you?

18 A. Yes, I did.

19 Q. You know that that letter is a forgery, don't you?

20 A. No I do not know that.

21 Q. Do you know Harold Fernau?

22 A. I know Harold Fernau.

23 Q. Did you ask Harold Fernau to write that letter for you?

24 A. I asked Harold Fernau to write me a letter, yes.

25 Q. Is that the letter he wrote for you?

1 A. Harold Fernau told me he would write me a letter. Yes,
2 he did tell me that.

3 Q. And do you know his signature from working there at
4 Sealright?

5 A. I would have known it had you asked me before now. It's
6 been a long time since I've seen his signature on anything.

7 Q. Do you want to look at this again to see if that's his
8 signature?

9 A. I could look at it, but we're talking, what, three years
10 later.

11 Q. And Harold Fernau would have been the only person you
12 would have been asking to write a letter to the judge for
13 you; is that true?

14 A. Not necessarily.

15 Q. Who else wrote a letter to the judge?

16 A. I could have asked a couple of other people out at
17 Sealright also.

18 Q. I'm saying who else wrote a letter, not who could have?

19 THE COURT: You asked her if he was the only person
20 she would have asked. Now, and you're now asking who else
21 did she ask.

22 Q. (By Mr. O'Connor:) Did anyone else write a letter to
23 Judge Howard other than Mr. Fernau from Sealright?

24 A. No.

25 Q. And this is on Sealright stationery?

1 A. I could not tell you. That's a Xerox copy.

2 Q. So you got sentenced, as I understand it, on, I think it
3 ended up being March the 7th, 1994; is that true?

4 A. That's correct.

5 Q. And then you violated that on 8/11 of ,94, five months
6 later, by tampering with your house arrest equipment?

7 A. That is what the allegation was.

8 Q. And what they said was that you had removed the bracelet
9 and tucked it in your house so that if you went out, you were
10 able to fool the machinery as to whether or not you were home
11 or not?

12 A. That was the allegation.

13 Q. On 8/17 of ,94 they said you were tampering with your
14 bracelet again, didn't they?

15 A. I could not tell you the exact dates.

16 Q. Didn't they come out and see that the equipment had been
17 pried and tampered with and you had tried to reglue it?

18 A. No that is not correct.

19 Q. That didn't happen?

20 A. That did not happen, no. As a matter of fact, when the
21 deputies picked me up on that and I was at Clay County,
22 someone from the house arrest program came to remove the
23 bracelet from my ankle, and my sister turned in the house
24 arrest equipment.

25 Q. Let me ask you this. Did you tell the probation people

1865

1 that federal officers had removed the strip from you?

2 A. No I never said that.

3 Q. Never said that?

4 MR. BECKER: Judge, that's argumentative. She's
5 answered the question.

6 THE COURT: It is, Mr. O'Connor.

7 MR. O'CONNOR: Okay.

8 A. There was one incident -

9 THE COURT: There's no question pending. Just
10 answer any questions.

11 A. Okay.

12 Q. Was your bracelet ever cut or torn?

13 A. Yes, it was, one time.

14 Q. ALL right. And -

15 A. And that was when I went to a doctor because I had
16 fallen, and they x-rayed my ankle. And I had a pink sheet of
17 paper from the doctor saying it was removed within his
18 office.

19 Q. And you provided that to the probation office?

20 A. Yes, I did.

21 Q. Now, then, about five days later on 8/22 of ,94 they
22 moved to recommend violation of probation because you had got
23 in some trouble in a place you were working called Panel
24 Systems, from which you had stolen three checks; \$12,500,
25 \$641, \$710.40.

1 A. Those were the allegations, yes.

2 Q. And then on 8/23 of '94, another violation for you lying
3 to your probation officer?

4 A. She said I wasn't home, and I said I was.

5 Q. She was the one that was lying?

6 MR. BECKER: Objection, argumentative, Judge.

7 THE COURT: Yeah. And the objection is sustained.

8 Q. (By Mr. O'Connor:) Then on 6/30 of ,94 you got the new
9 indictment for the bank fraud over in Kansas?

10 A. Yes.

11 Q. Now, has Mr. Becker ever talked to the people in Clay
12 County for you?

13 A. No he has not.

14 Q. Has he ever had any discussions with Mr. Newberry for
15 you?

16 A. Not that I'm aware of.

17 Q. Have you ever written any letters to Mr. Newberry
18 telling him, asking him about a conversation he had with Mr.
19 Becker?

20 THE COURT: You'd better identify Mr. Newberry.

21 Q. He's the assistant prosecutor in Clay County.

22 A. Yes. I know him.

23 MR. BECKER: Can we approach on this?

24 (Counsel approached the bench and the following
25 proceedings were had:)

1 MR. BECKER: I'd like to inquire as to a good faith
2 basis here because -

3 MR. O'CONNOR: It's a letter from her to John
4 Newberry in which she asks him if he's talked to -- "as I
5 understand, Mr. Becker has contacted you."

6 MR. BECKER: Well.

7 MR. O'CONNOR: That's what the letter says.

8 MR. BECKER: Okay. Mr. Newberry and I aren't
9 exactly friends, Judge. Now, you know, counsel was under a
10 standing order to give discovery of any statements of
11 government witnesses.

12 THE COURT: I can't even read this thing.

13 MR. O'CONNOR: I'm just interested in the first
14 paragraph.

15 MR. BECKER: I would think that a letter authored
16 by a witness would fall within the discovery obligations of
17 counsel, unless he just received it this morning.

18 MR. O'CONNOR: No I did not. I've had it.

19 MR. BECKER: Therefore, it should have been turned
20 over.

21 MR. O'CONNOR: Judge -

22 THE COURT: This doesn't, this doesn't amount to
23 anything believable about whether he's contacted him or not.

24 MR. O'CONNOR: But she thought he had.

25 THE COURT: It says she understands he had. Out of

1 the presence of the jury, you may establish for your record
2 why she understands he had, but -

3 MR. O'CONNOR: I can ask her if she wrote him a
4 letter, did she inquire of him about her case, without
5 referring to this. And then ask her if she had some
6 understanding that Mr. Becker had spoke with him. And then
7 I'm going to ask her if this letter would refresh her
8 recollection. I can ask her those things, I think, and then
9 let the Court make the ruling.

10 THE COURT: I'm telling you out of the presence of
11 the jury we'll ask her the basis of her understanding that
12 Mr. Becker had contacted Newberry.

13 MR. O'CONNOR: That's fine. Can we do that now?

14 MR. BECKER: If there are any other discovery
15 materials, I'd like to have an opportunity to review them.
16 This is clearly something that should have been turned over
17 to the government.

18 THE COURT: That's right.

19 MR. O'CONNOR: Judge, until she just testified, I
20 didn't know that Mr. True showed up to her parole hearing for
21 her.

22 MR. BECKER: I wrote a letter to you guys a couple
23 of weeks ago after I prepped all of these witnesses, and I
24 listed all of the prisoners.

25 MR. O'CONNOR: Was she in there?

1869

1 MR. BECKER: Yes, she's in there, and that
2 particular date and event was detailed there.

3 MR. O'Connor: Okay. I apologize.

4 THE COURT: We'll take a break now.

5 (The following proceedings were had in open court:)

6 THE COURT: Ladies and gentlemen, we have a little
7 work here to do. We'll ask you to withdraw now and take the
8 morning break, 15 minutes. And don't talk about the case
9 while you're in recess.

10 You may withdraw.

11 (The following proceedings were had in the
12 courtroom out of the presence of the jury:)

13 THE COURT: Before we get into this, let me tell
14 you folks, I don't know what she's been asked to look at this
15 morning.

16 COURTROOM DEPUTY: It came up Friday.

17 THE COURT: I guess it's just a carry-over from
18 last week, but we've had queries about this before. This
19 says, "The display stand has adjustable legs and is set on
20 the lowest setting. We're still not able to see the bottom
21 part of the display." I guess it's -- did you use one of
22 those pictures?

23 MR. OSGOOD: We did, I think.

24 MR. BECKER: I don't think we've used it today,
25 Judge.

1870

1 THE COURT: See if you can make some sort of -
2 this is the second communication from the second juror about
3 that. So see what you can do about it.

4 All right. Now, you may inquire, Mr. O'Connor.
5 Where is Mr. O'Connor?

6 MR. O'CONNOR: I'm right here, Judge.

7 THE COURT: All right. You may inquire.

8 MR. O'CONNOR: Thank you, Your Honor.

10 VOIR DIRE EXAMINATION

11 By Mr. O'Connor:

12 Q. Miss Dornhoffer, do you remember sending correspondence
13 to John Newberry with the Clay County Prosecutor's Office on
14 May 2nd, 1995?

15 A. I sent him several correspondences. I can't remember
16 the exact dates of them.

17 Q. Let me show you what I've had marked as Defendants,
18 Exhibit 21 for identification purposes. Can you identify
19 that?

20 A. It's a letter dated October 2, 1995, to John Newberry.

21 Q. Is that a letter that you sent to Mr. Newberry?

22 A. Yes, it is.

23 MR. O'CONNOR: Do you mind if I approach the
24 witness, Judge? Does it bother you if I'm up here?

25 THE WITNESS: No.

1 Q. (By Mr. O'Connor:) Starts out, does it not, "this
2 correspondence is twofold"?

3 A. Uh-huh.

4 Q. Why don't you read that paragraph for me.

5 A. "This correspondence is twofold. I have been advised
6 Mr. Becker with the United States District Attorney would be
7 contacting you, and I do understand that he has. Thank you
8 for taking the time to talk to him."

9 Q. Had Mr. Becker to your knowledge contacted John Newberry
10 on your behalf?

11 A. That is what I had been advised. I could not guarantee
12 you that.

13 THE COURT: Who advised you of that?

14 THE WITNESS: My attorney at the time.

15 Q. (By Mr. O'Connor:) Did you have ever any discussions
16 with Mr. Becker yourself?

17 A. No I have not.

18 Q. You always talked through an attorney?

19 A. Yes.

20 Q. And what was your understanding that Mr. Becker was
21 going to say or do with John Newberry?

22 A. I do not know the outcome of what Mr. Becker was
23 supposed to say or do with John Newberry.

24 Q. When you wrote this letter, you say, I understand he's
25 contacted you, and I do understand that he has. What was

1 your understanding from your lawyer as to what the discussion
2 was?

3 A. Actually, there was no understanding from my lawyer as
4 to what the discussion entailed. She -- at the time, I
5 believe you're referring to Kate Ladesh, had told me she was
6 going to be contacting Paul Becker so the judge would be made
7 aware of the fact that I was providing some assistance.

8 Q. And so -

9 A. And he wanted to confirm that. That is basically all
10 the discussion was.

11 Q. Did you have an understanding from your lawyer that the
12 government was trying to or going to try to assist you in
13 your case up in Clay County?

14 A. No. That was never even an understanding, nor was there
15 anything to that effect that the government would be
16 assisting in my case in Clay County. After all, I got eight
17 years out of it.

18 Q. So I can understand from this letter, you correct me if
19 I'm wrong, is that you just thought that Mr. Becker had
20 contacted him based on what your lawyer told you?

21 A. I had thought that Mr. Becker had been contacted to
22 confirm that I was providing the assistance, yes. That's
23 basically what the whole issue was was to confirm that that
24 was being done. He wanted confirmation that was being done.

25 Q. on the last page of this letter to Mr. Newberry, you say

1 -- read that last yellow marked part there.

2 A. "If I can be of assistance, you know where I am. I will
3 cooperate."

4 Q. All right. And what did that mean?

5 A. Basically that if he needed any additional information
6 or if he had any questions, he knew exactly where to reach
7 me.

8 Q. About what?

9 A. About anything.

10 Q. You were willing to give him information about anything?

11 A. No. If he needed to contact me with regards to saying,
12 yes, it has been confirmed or, no it hasn't, he knew how to
13 reach me.

14 Q. This supposed connection between Becker and Newberry, is
15 that what we're talking about here?

16 A. Basically, it was -- all he was going to do was call Mr.
17 Becker's office per the judge to confirm that I was providing
18 assistance. There was never any issue with regards to Mr.
19 Becker would talk to the judge on my behalf or anything
20 else. Kate Ladesh was, indeed, told that I was providing
21 assistance.

22 Q. okay. So your lawyer told the prosecutor, "My client is
23 assisting the government"?

24 A. Correct.

25 Q. And then you were told by your lawyer that Mr. Becker

1 was going to contact Newberry to tell him about your
2 assistance?

3 A. I was told that Mr. Becker would be contacted to confirm
4 that that was a fact.

5 Q. And then in this letter, you say, "I understand that he
6 has." Where did that understanding come from?

7 A. Because what I had understood was there was a session of
8 telephone tag and that they would have Mr. Newberry call to
9 confirm that.

10 THE COURT: We've been through all of this, Mr.
11 O'Connor.

12 MR. O'CONNOR: Okay. One second, Your Honor.

13 Q. (By Mr. O'Connor:) Would you be willing to waive your
14 lawyer/client privilege as it relates to this particular
15 statement?

16 A. No I would not be willing to waive -

17 MR. BECKER: Objection, Judge.

18 THE COURT: That's sustained, and the objection to
19 the letters is the sustained. Okay. Let's take our recess.
20 Ten or fifteen minutes.

21 (A recess was taken from 10:46 a.m. to 11:06 a.m.)

22 THE COURT: Can you find in your notes prior to the
23 bench conference the question that was asked by Mr. O'Connor
24 with which he was attempting to use that employer letter
25 exhibit?

1 (The requested portion of the record was read.)

2 THE COURT: I'll stay with the ruling. It occurred
3 to me that there could be an approach to that that would have
4 made it admissible and usable, but I'll stay with my ruling.

5 MR. O'CONNOR: Do you mind assisting me on how it
6 may be admissible?

7 THE COURT: I'm not going to do that.

8 MR. O'CONNOR: Can we approach on another matter
9 before we

start?

10 THE COURT: Yes.

11 (Counsel approached the bench and the following
12 proceedings were had:)

13 MR. O'CONNOR: I want to make an offer of proof as
14 it relates to her mental history because that's where I'd
15 like to go at this point. I wanted to ask her if in 1987
16 that she was an inpatient, that she made herself an inpatient
17 for two months at Western Missouri Mental Health and then was
18 treated by a Dr. Kaft at Tri-County for six months. She
19 claimed to be suffering from a mental disease or defect,
20 major anxiety disorder which has affected her ability to
21 assist in her own defense. On that date, July the 20th, she
22 was found not competent to proceed. On 10/7 of ,87.

23 THE COURT: When was that, again?

24 MR. O'CONNOR: That was on 7/20 of ,87. Three
25 months later she had a second mental, and then they said she

1876

1 was fit to proceed; and then they did a third mental about
2 two months after that, and they found that she was fit to
3 proceed. But at one point in time, 7/20 of '87 until,
4 basically, 10/7 of '87, she was found not competent to
5 proceed on a case, I believe, in Clay County.

6 MR. BECKER: I don't know about that information.
7 I spoke to her attorney, Mr. Fincham, on Friday, and it was
8 his recollection that she had never been found unfit to
9 proceed. Perhaps Mr. O'Connor has other records, but -

10 THE COURT: That apparently is just within a
11 limited period of time and doesn't apply now. Didn't
12 apply -- you're not talking about the dates -

13 MR. O'CONNOR: In 1987, Your Honor?

14 THE COURT: You're not talking about the dates of
15 any occurrences that she would be asked to testify to about
16 here. I think it's interesting, but collateral, I think.
17 I'll deny that proffer.

18 MR. O'CONNOR: So for the record, the questions I
19 would ask are found to be, "Were you found to be suffering
20 from a mental disease or defect on July 20th, 1987?"

21 I'm assuming her answer would be yes.

22 "Did you suffer from a major anxiety disorder
23 which affected your ability to assist in your own defense?"

24 Yes.

25 "Were you found not competent to proceed or stand

1 trial at that time?"

2 Yes.

3 That would be my offer.

4 Unrelated to that, I believe that she did put
5 herself into Western Missouri Mental Health, unrelated to any
6 court action. This was on her own, as I understand it. And
7 that Dr. Kaft at Tri-County, she was seeing him for six
8 months for her problems. Now, she is the person who has told
9 everyone that she, herself, suffers from what she called
10 selective amnesia. That's her term. That she does something
11 against her morals and beliefs and then doesn't remember
12 committing the act. These are things that she has said that
13 she did.

14 MR. BECKER: Well, where and when and who?

15 THE COURT: Particularly when.

16 MR. O'CONNOR: I think these would be around 1988.
17 And every -- Judge, so you can get the history of this lady.
18 Every case that she's ever had, state or federal, a mental
19 exam has been filed, every case.

20 In fact, over in Kansas, the government filed one,
21 along with the defendant. So I think her mental, her prior
22 mental history is relevant here to whether the jury can
23 believe this witness. And she has quite a history. This
24 isn't an isolated incident. I mean, she has a history of
25 committing fraud and crimes and then trying to cover them up

1 by trying to claim mental disease or defect. And basically
2 what happened here -

3 MR. BECKER: If I may just respond. She's never
4 pled not guilty by reason of mental disease or defect. I
5 spoke to Mr. Fincham about that, and I believe he handled the
6 Clay County cases, for the most part. These evaluations were
7 to see whether or not, given her current state of mind, she
8 as fit to proceed. The witness said she was under
9 tremendous stress, which is normal, and I would think when
10 you're charged with criminal offenses, and she had
11 evaluations to determine whether she was fit to proceed, and
12 when she was found fit to proceed, she pled out on all of
13 those matters.

14 So that -- her counsel specifically informed me
15 that Bridget Dornhoffer has never entered a plea of not
16 guilty by reason of -

17 THE COURT: Okay. The record will show you're -

18 MR. O'CONNOR: That is true. I'll go along with
19 that. What I'm trying to say, Judge, is what happened was
20 she tried to claim this selective amnesia, and then when they
21 evaluated her the first time, they couldn't get a good
22 evaluation of her, and then the next two times they did. And
23 it's our point, not so much that she proclaims to have a
24 mental history, but she's tried to use the mental history to
25 get out of things that she's done by fabricating that she has

1 some kind of a disease.

2 THE COURT: She's not trying to do that now.

3 MR. BECKER: She's pled guilty to every charge
4 she's ever been charged with.

5 MR. O'CONNOR: But what I'm saying is originally,
6 even with the authorities, she has told them that she does
7 things and then doesn't remember doing them as part of her
8 response to things.

9 MR. BECKER: She's been asked about that, though.

10 MR. O'CONNOR: I understand. But I think that we
11 ought to be able to explore mental history. In the exams
12 that have been filed against her, they say she's on numerous
13 medications. I'd like to ask her about any psychiatric
14 medications that she was taking at the time she gave these
15 statements. I think that's relevant to what her mental
16 status was. If he wants to ask her ahead of time so we know
17 the answer to that, that's fine. I don't know the answer.

18 MR. BECKER: I don't have an objection to that
19 question. 1995, when this occurred.

20 THE COURT: You can ask that, if it's the right
21 time, and that it's -- how do you describe them? Actually,
22 you can't call on her to give her opinion of the effect of
23 the medication. You're just going to have to ask her what
24 medications she was taking at that time without describing
25 them, and then you can prove what they were through somebody

1880

1 else.

2 MR. O'CONNOR: Looking at it from a good faith
3 standpoint, I cannot in good faith ask that question because
4 the motions were filed back in '92 or '93. I don't know if
5 she was doing it then. We don't have discovery here, so I
6 can't ask her. I'm willing for Mr. Becker to ask her. If
7 she says she was, I'll explore. But I don't have a good
8 faith basis to ask her now if she was taking psychiatric
9 medicine. I don't know.

10 THE COURT: I didn't ask you, I didn't tell you to
11 characterize it as psychiatric medications. Just ask her
12 what medications she was taking. And then if you can prove
13 it was mind-altering or memory-adjusting medications, you can
14 prove that. But don't call on her to say what it was, or
15 Becker.

16 MR. O'CONNOR: All right. The -- she was under the
17 care at Western Missouri, I believe, in, again, I think this
18 is 1988, Your Honor, of a -- not a doctor. She's a
19 psychologist, as I understand it. Her name is Mary Darnell
20 Hutchison (phonetic). She's with the Institute for Human
21 Development, and she made an analysis of Bridget Dornhoffer.

22 And basically, as you remember, this is where they
23 had like numerous cases pending. Those were all the ones
24 that were talked about. And so she had this mental
25 evaluation.

1 As a result of testing on her, she came up with
2 these four things. One, that Bridget Dornhoffer is very
3 intelligent and good at fabricating stories.

4 Two,' it's hard to tell when Bridget is lying or
5 telling the truth.

6 Three, she has, what she describes herself, Bridget
7 describes, selective amnesia, and it was the doctor's opinion
8 that a psychosis similar to this disease can be studied and
9 then playacted by someone who is attempting to get out of
10 trouble. It was their feeling that she was saying selective
11 amnesia, she was playacting trying to say that, you know, she
12 couldn't remember doing any of these crimes in order to get
13 out of trouble.

14 And basically her last thing is it was her feeling
15 that Dornhoffer was a chronic and pathological liar.

16 MR. BECKER: You could call the doctor as a
17 witness, if you want, for the character of truthfulness of
18 Miss Dornhoffer if her professional ethics will allow her to
19 testify.

20 I mean, I've looked at, you know, prior to today
21 when you intimated you may have this information, you know,
22 Rule 609. You would be allowed to call a witness as to her
23 character for truthfulness. You can do that. Just parade
24 them right up here. But I don't think, you know,
25 cross-examining the witness about a psychiatrist's or

1 psychologist's report and that psychologist's opinions is
2 admissible. If you want to call the psychologist, then you
3 can do that, I suppose.

4 THE COURT: Again, if it relates to the right
5 time.

6 MR. BECKER: This is ,87/,88.

7 MR. O'CONNOR: Yeah.

8 THE COURT: So it probably wouldn't relate to the
9 right time.

10 MR. BECKER: No the events in question here
11 occurred in 1995.

12 THE COURT: It's not the crime here, it's the time
13 of the statements. Yeah, that's pretty remote. It's all
14 remote.

15 MR. O'CONNOR: I would say it's remote, Judge,
16 until you see this witness on the stand. The way she tried
17 to portray herself as working at law offices, being this
18 legal eagle, and being an upstanding citizen.

19 MR. BECKER: Wait a minute. She never portrayed
20 herself as an upstanding citizen. On direct examination she
21 admitted at least half a dozen felony convictions. And as a
22 legal eagle, compared to the other people at CCA, she is a
23 legal eagle. So -

24 THE COURT: She's a jail house lawyer.

25 MR. BECKER: Right.

1883

1 MR. O'CONNOR: So that's what I'd like to do.

2 THE COURT: Well, I've indicated my ruling on
3 that.

4 MR. O'CONNOR: Okay. Let me ask this so I don't
5 step out of bounds. I can say to her, you're a person who
6 fabricates stories, aren't you, that kind of thing, without
7 reflecting back to where that information came -

8 MR. BECKER: I think that's so general as to you
9 know, when did you stop beating your wife. You know.

10 MR. O'CONNOR: I asked Mr. Elliott if he'd lie to
11 get out of jail and he said he would. Maybe she'll say that
12 she does.

13 MR. BECKER: I don't remember that question and
14 answer.

15 MR. MILLER: No you didn't ask him that. You
16 asked him that in that statement, but you didn't ask him that
17 in court.

18 MR. BECKER: Because his answer in the statement
19 was he was going to say no I wouldn't. That's what he said
20 in the statement to you, John.

21 MR. O'CONNOR: One of those guys. I get them all
22 mixed up. I know the ruling. Thank you, Your Honor.

23 MR. PETERS: Paul, real quick. Just because I have
24 to do my record. The statements that Miss Dornhoffer is
25 making I think would come in as an exception to hearsay

1 because it's a statement being made by her of a present sense
2 impression made in the course of her treatment at the time.
3 I understand the Court's ruling, but -

4 THE COURT: That's the reason I asked for a repeat
5 of the question. I'm still ruling on that basis.

6 MR. PETERS: Okay.

7 (The following proceedings were had in open court:)

8 MR. BECKER: Just for scheduling purposes, Judge -
9 it's fixed now.

10 THE COURT: Oh, is it? It is.

11 MR. BECKER: That's fine. We'll have another
12 witness ready. I thought it was 10:00, I thought that was
13 still a half hour slow.

14 THE COURT: It's okay now. All right. Let's get
15 the jury, Miss Sheehan.

16 (The following proceedings were had in the
17 courtroom in the presence of the jury:)

18 THE COURT: We took longer than we originally
19 intended, ladies and gentlemen, but the lawyers and I had
20 some work we had to do. We've gotten it done, and we can
21 proceed.

22 Everybody sit down, please. And I'll remind you,
23 Miss Dornhoffer, that you're still under oath. And Mr.
24 O'Connor, you may proceed.

25 MR. O'CONNOR: Thank you, Your Honor.

2 RESUMED CROSS-EXAMINATION

3 By Mr. O'Connor:

4 Q. Miss Dornhoffer, I want to hand you what's been
5 previously marked in this case as Government's Exhibit 386.
6 Ask you if you've had a chance to see that report.

7 A. Yes, you showed it to me the night you visited me at
8 Clay County.

9 Q. And you were up there with Rosemarie Quiroz at the time
10 you were with Darlene Edwards; is that true?

11 A. Correct.

12 Q. And does that appear to you to be Rosemarie Quiroz's
13 handwriting?

14 MR. BECKER: Objection. There's no foundation.

15 THE COURT: I think you ought to ask her if she
16 thinks she would recognize Rosemarie Quiroz's handwriting.

17 Q. Would you recognize her handwriting if you saw it?

18 A. I'm going to give you the same response I gave you the
19 first night you asked me. I could not tell you Rosemarie
20 Quiroz's handwriting. I don't know it.

21 Q. Did you say to me that it didn't look like it?

22 MR. BECKER: Objection.

23 THE COURT: You can't testify to what she said to
24 you. You can ask her a question.

25 Q. (By Mr. O'Connor:) When I came up to talk to you, Miss

1 Dornhoffer, I had a court reporter with me, did I not?

2 A. When you first got there, the court reporter and Miss
3 Franco were not there. They didn't get there until sometime
4 later, yes.

5 Q. And you told me during that conversation that you didn't
6 want to talk without talking to your lawyer?

7 A. I said I didn't want to talk without a lawyer present.

8 Q. And that you would talk to me after you talked to a
9 lawyer and I could come back and see you?

10 A. I said I would think about talking to you after I talked
11 with an attorney, yes.

12 Q. And then you've refused to talk to me; is that right?

13 A. I talked to Mr. Ross yesterday because you contacted me
14 on Saturday stating you wanted to see me yesterday.

15 Q. The question is did you talk to me?

16 A. Yes, I talked to him.

17 Q. Did you talk to me this weekend?

18 A. No I did not.

19 Q. Did you give me the statement with the court reporter
20 that you told me that you would after talking to your lawyer?

21 MR. BECKER: Objection, the witness has a right -

22 THE COURT: Yeah, I think -

23 MR. O'CONNOR: I didn't want to get into the
24 confrontation, Judge.

25 THE COURT: I don't think you should. You can ask

1 her if she ever gave you a statement.

2 Q. (By Mr. O'Connor:) Did you ever give me a statement
3 with a court reporter present?

4 A. I gave you a statement with a court reporter present,
5 but she was not keying anything at that time.

6 Q. Did you give me a statement as to questions and answers
7 about this case and the facts of the case with a court
8 reporter present?

9 A. No I did not give you any information with the court
10 reporter present. I was not sworn in before a court
11 reporter, no.

12 Q. Now, you've been up in Clay County with Rosemarie
13 Quiroz; is that true?

14 A. I have been up in Clay County with Rosemarie Quiroz and
15 other women.

16 Q. And you and Rosemarie Quiroz have been on the phone this
17 week calling lawyers, seeing about maybe getting a better
18 deal from the government for yourselves?

19 A. That is not correct.

20 Q. June the 14th, 1995, 6/14/95, you got your eight-year
21 sentence in Clay County, and then your consecutive time of 18
22 months in federal prison was to begin?

23 A. That's not correct.

24 Q. What date?

25 A. My federal sentence is running concurrent with

1888

1 three-year sentence out of Clay County. It is not running
2 concurrent with the eight-year sentence that is out of Clay
3 County.

4 Q. Which one is running consecutive?

5 A. My primary is the state. My secondary is my federal.

6 Q. Well, explain that to us.

7 A. Well, due to the fact that state is primary, that is the
8 time I have to do first, and then I will finish my federal
9 time second.

10 Q. So in other words, you have to do the, whatever you have
11 to do on eight years for Missouri; and then as soon as you're
12 done with that, you have to leave and go to federal prison to
13 serve your 18 months?

14 A. No I go to federal to serve the remainder of my 18
15 months. As I told you previously, I've served part of that.

16 Q. Is that time consecutive?

17 A. It would be considered consecutive, yes.

18 Q. Meaning you would have to serve one before you serve the
19 other?

20 A. Yes, to my parole date.

21 Q. Can we have this agreement that all of that happened,
22 whether it was eight years or three years or whatever it was,
23 it happened on June the 14th, 1995, everything got finalized
24 and you had your sentence?

25 A. No. The last sentence was the three-year sentence.

1 Q. What date was that?

2 A. That was in September.

3 Q. But the eight years you got, the big sentence, the eight
4 consecutive with the eighteen?

5 A. Was in June.

6 Q. Was June 14th, 1995?

7 A. Correct.

8 Q. And Darlene Edwards made these admissions to you in CCA
9 before June 14th of 1995; is that correct?

10 A. That is correct.

11 Q. Then on July 12th, 1995, less than a month after hitting
12 prison, you called your lawyer telling him you knew something
13 about the firefighters case?

14 THE COURT: Now, wait a minute, that was a
15 statement, not a question.

16 Q. (By Mr. O'Connor:) Did you call Mike Harris, your
17 lawyer in Kansas, to tell him you may have some information
18 about the firefighters case?

19 A. That is partially true and partially untrue. I never
20 hit prison when I called Mike Harris. I was still at Clay
21 County Detention Center.

22 Q. But you had your time, you were getting ready to go?

23 A. Yes, I already had the majority of it done.

24 Q. And you'd just been in jail 28 days. Did you say you
25 had the majority of your sentence done?

1 A. That's not correct. My time started August the 20th.

2 Q. Oh, of '94 when you were arrested?

3 A. Correct.

4 Q. So ____

5 A. I had quite a bit of time in already.

6 Q. So you had 11 months on eight years, and you're saying
7 you were almost done?

8 A. No. I'm saying I had quite a bit of time in on that
9 sentence already.

10 Q. oh, okay. But you were sitting, ready to go to prison,
11 and that's when you called your lawyer, Mike Harris; is that
12 correct?

13 A. That is correct.

14 Q. And you told him you had information about the
15 firefighters case?

16 A. That is correct.

17 Q. And what you wanted in return for that was your federal
18 time to start running, reversed with your state time so that
19 you wouldn't have to go to one sentence after you finished
20 the other.

21 A. That is not correct.

22 THE COURT: Wait a minute. Wait a minute. You're
23 making statements again, Mr. O'Connor.

24 MR. O'CONNOR: All right. I'm sorry, Judge.

25 Q. (By Mr. O'Connor:) Did you talk to Dave True on July

1 the 12th, 1995, when he took this taped statement from you?

2 A. Yes, I did.

3 Q. And during that interview, did you tell Dave True, did
4 you tell him that you wanted to see about getting your time
5 reversed?

6 A. No I did not. I asked Dave True about the possibility
7 of serving my time in a federal prison camp. There was never
8 any mention of getting my time reversed.

9 Q. But now, as I understand, your direct testimony is the
10 government is going to try to call someone to see about
11 getting your federal time running now?

12 A. That is not correct.

13 Q. Tell me. I'm -

14 A. They are going to see about transferring me back into
15 federal custody.

16 Q. Which will start your federal time?

17 A. And my state time will run, too' correct.

18 Q. And what that means is if that happens, you are going to
19 get out earlier?

20 A. That is not true.

21 Q. Then why in the world would you want to switch your
22 federal -- what would it matter?

23 A. I don't have a parole date until August the 20th of next
24 year from state custody, so regardless of when I do the time,
25 I'm still not getting out any sooner, Mr. O'Connor.

1 Q. So then why go to federal custody?

2 A. I just wanted a switch for a while, that's all.

3 Q. Isn't it a fact that when you switch to federal custody
4 that you're going to that will cut your time, you won't have
5 to come back to do -- your consecutive time is running with
6 the federal, is it not? It's not running with the state.
7 It's not running backwards, is it?

8 A. That's correct.

9 Q. So if you have to do your federal time first, it's then
10 running concurrent with your state time, which means you're
11 doing them both at the same time?

12 A. That is correct.

13 Q. So there is a huge difference, isn't there?

14 A. There is not a huge difference.

15 Q. Is there some difference?

16 A. No. Because the fact of the matter is, I would be
17 eligible to go to an honor center August the 20th of this
18 year, but due to the fact that I still owe the feds time, I
19 am not guaranteed that, I do not have that, so I am doing
20 more time than the average convicted state felon.

21 Q. But this time you're trying to get in federal prison to
22 benefit yourself, aren't you?

23 A. No I'm not.

24 Q. It's no benefit to you, you just want to go to a federal
25 prison?

1 A. There's no benefit.

2 Q. Okay. Now, getting back to this taped statement that
3 was done, they brought a tape recorder when they came to talk
4 to you?

5 A. That is correct.

6 Q. It worked, they could operate it freely?

7 A. They did.

8 Q. And did they have it on the whole time from the minute
9 they walked in to talk to you until the minute they walked
10 out?

11 A. They had it on from the time they told me they were
12 starting it until the time they walked out the door.

13 Q. How long did they talk to you before they started it?

14 A. A minute to introduce themselves. I had never met Dave
15 True until that day, and Mr. Sturkey. He's the gentleman
16 right there in the blue suit.

17 Q. okay. So I understand it -

18 A. They walked in, he and Mr. Sturkey from Mike Harris's
19 office. Mr. Sturkey introduced me to Dave True, the
20 introductions were done, and the recorder started.

21 Q. Have you had the opportunity to review that tape?

22 A. I have not reviewed the tape, no.

23 Q. Okay. And you're telling us from the minute they walked
24 in after introductions that they had the tape recorder on
25 until you quit?

1894

1 A. Well, he basically, you know, told me that he was
2 assigned to this case and said that he had been notified that
3 I had information.

4 Q. Didn't they talk to you for about 30 minutes before they
5 ever started doing the tape?

6 A. It wasn't no 30 minutes.

7 Q. Did they -- you're sure of that?

8 A. I'm sure of that, yes.

9 Q. Okay. When he was down there talking to you, did he
10 seem to know your history?

11 A. Yes, he was aware of my history.

12 Q. All right. And now, did you tell -

13 A. Hold on a second, I -

14 THE COURT: Wait a minute, there's no question
15 pending.

16 Q. Back at the time that you were giving this information
17 to the authorities about Darlene Edwards, were you taking any
18 medications?

19 A. No I wasn't.

20 Q. You're sure of that?

21 A. Yes.

22 MR. BECKER: Objection, argumentative.

23 THE COURT: It is argument, but she answered the
24 question.

25 MR. O'CONNOR: She just looked like she was

1895

1 questioning, Judge, that she wasn't sure. That's why I
2 asked.

3 THE COURT: I sustain the objection.

4 MR. O'CONNOR: Thank you.

5 Q. (By Mr. O'Connor:) Now, when Darlene Edwards talked to
6 you, as I understand it, you had filled legal pads with the
7 information she told you about?

8 . That's correct.

9 Q. And you told the authorities when you gave them that
10 statement that you were going to go get the legal pads so you
11 could show them exactly what she told you?

12 . Yes.

13 Q. Did you ever get the legal pads for them?

14 A. Well, they wouldn't let me leave Clay County Detention
15 Center to go to CCA.

16 Q. So you never did give them the legal pads?

17 A. NO' I did not.

18 MR. O'CONNOR: Thank you.

19 THE COURT: All right.

20 MR. BUNCH: If it please the Court.

21 THE COURT: Yes.

23 CROSS-EXAMINATION

24 By Mr. Bunch:

25 Q. Miss Dornhoffer, my name is Will Bunch, and I represent

1 Darlene Edwards.

2 A. Good morning.

3 Q. Good morning to you. And I'll follow, begin, perhaps,
4 where Mr. O'Connor finished. These diaries, there were
5 diaries, as well as legal pads, as I understand your
6 statement?

7 . There were several notes, cases, information that she
8 ad given me, yes.

9 Q. All right. And there was at least seven legal pads that
10 you had -- I don't know if they were filled or what, but
11 seven different -

12 . No they were not filled. There were times when I would
13 pick up one pad and go over to the multipurpose room and take
14 down notes, et cetera. I did not carry every one of them
15 with me at every single point of the day.

16 Q. That really wasn't what I meant, and I didn't intend to
17 be confusing. Of the seven legal pads, how much information
18 would you say was contained?

19 A. There was quite a bit of information.

20 Q. And these pads for some reason were lost, so far as you
21 know, at CCA, or misplaced?

22 A. I don't know what happened to the pads after I left. I
23 had left two packages with another inmate there.

24 Q. uh-huh.

25 A. And I know that they were picked up by my attorney, by

1897

1 Mr. Harris and his office, and I know the pads were not in
2 there when they were picked up.

3 Q. All right. So as far as you know, they remained there.
4 If he picked up what he got and they weren't in there, they
5 were left at CCA, apparently?

6 A. Evidently, yes.

7 Q. And you've described various places they could be, in
8 the library that you used?

9 A. I couldn't imagine them being in the library because I
10 know I had had them the night before I left because I was
11 working on a project for someone else, and I gave her her
12 notes off of one of those pads.

13 Q. They could have been in the multipurpose room, could
14 have been left there or hidden there?

15 A. I don't leave things in the multipurpose room. I never
16 even left anything when I went to the restroom in there
17 unless I was in there alone.

18 Q. Didn't you say they could be in cubbyholes, pop-out
19 light fixtures, and under the artwork?

20 A. There were a lot of places that people hid stuff out
21 there.

22 Q. Did you ever make inquiry about these legal pads?

23 A. Yes, I did.

24 Q. Did these legal pads contain information that you
25 obtained contemporaneous with the writing on the pad?

1 A. I'm sorry, you lost me.

2 Q. When you were taking notes, did you take them at the
3 time that the information was provided to you?

4 A. At times, yes.

5 Q. And I take it that this would be, if located, great
6 detail about what occurred?

7 A. Yes.

8 Q. Or what Darlene Edwards said occurred?

9 A. Yes, there is detail.

10 Q. And have you told Mr. Becker or Agent True or anyone on
11 behalf of the United States about these pads and asked that
12 they be located?

13 A. I had talked to Mr. True about those. I never really
14 talked to Mr. Becker about them until recently.

15 Q. Now, I'll be asking you some questions, Miss Dornhoffer,
16 about what you say Miss Edwards told you.

17 A. Okay.

18 Q. All right? I preface that because of the admonitions by
19 the Court earlier when this thing began and so forth.

20 A. I understand.

21 Q. Thank you. You said that she told you that there were
22 various practice runs or drills accomplished prior to the
23 time, prior to the night of the explosion; is that correct?

24 A. We discussed that, yes.

25 Q. That she told you there were various planning sessions,

1 one in a park, one at her house, one at other locations, and
2 that these sessions were moved around to avoid suspicious
3 neighbors?

4 A. We discussed that because of one point she and I were
5 trying to work out.

6 Q. With all due respect, I'm asking you if that's what she
7 told you.

8 . Yes, it is.

9 Q. All right. And the purpose of going to the construction
10 site, did she say, was to obtain a lot of tools that would
11 result in a sale for a lot of money?

12 A. That is correct.

13 Q. There's some reference in this interview with you
14 concerning a person or something or other, a Black Sabbath.
15 Can you enlighten me on what that is?

16 MR. BECKER: Can we approach, please?

17 MR. Bunch: Yes.

18 (Counsel approached the bench and the following
19 proceedings were had:)

20 MR. BECKER: This witness could testify that
21 Darlene Edwards gave the witness a number of names of persons
22 who were present during these planning sessions. A number of
23 the names are frankly sort of odd, such as Black Sabbath.
24 Now, the fact is, though -

25 THE COURT: Is that supposed to be the name of a

1900

1 person?

2 MR. BECKER: Yes.

3 MR. Bunch: Purportedly. I didn't understand it

4 because that's a musical group over there. That's why I was

5 asking it. But I don't intend to elicit -- I know what

6 you're getting at, and I didn't intend to do that. I mean to

7 elicit specific references to persons.

8 MR. BECKER: If he talks about the four that I

9 don't think were there, but she also mentions the other

10 people that I think were there, I don't think it's fair

11 questioning to say that she mentioned X, Y. and Z without, I

12 can't get up and say that she mentioned Defendant 1, 2, and

14 THE COURT: See, that's the trouble with this.

15 MR. BUNCH: I agree. The only thing I know -

16 well, I'd like to ask her, this Black Sabbath is a musical

17 group, if she knows such a musical group, that's all.

18 MR. BECKER: What's the relevance?

19 MR. BUNCH: The relevance is that my client would

20 testify that's what it is, that she never made such a

21 statement, that it's a group that played in that area. Where

22 it comes from, I don't know. It's not of great importance,

23 and if it worries you, I won't ask it, but that's my purpose.

24 THE COURT: I think it's dangerous to get into the

25 presence of a bunch of other people, but then not allow the

1 government to prove everybody that was there.

2 MR. Bunch: All right. I won't ask it. I'll
3 withdraw.

4 MR. PETERS: Your Honor, Mr. Becker? I don't agree
5 with that analysis. If she identifies people who are not
6 charged defendants, that's admissible and it's not a Bruton
7 violation. If she says that Black Sabbath was a person,
8 which I think we all know not only that it was a person but
9 who the person was, then that's admissible, it's
10 exculpatory. But it violates no rule because it's not a
11 charged defendant. So if a witness says that **Frank**
12 Sheppard -

13 THE COURT: Inculpatory?

14 MR. PETERS: It's inculpatory as to Black Sabbath,
15 but it's not inculpatory to any of the defendants. There is
16 no error, there is no reason to exclude the names of other
17 people, other than the charged defendants. The reason the
18 names of the charged defendants have to be excluded is
19 because there's a charge to them. But to say that the
20 defendants can't bring out other people to show that those
21 people were not involved I think would be prejudicial to the
22 defendants and should not be confused with -

23 THE COURT: You can bring out the fact that there
24 were other people there, but not who **they** were.

25 MR. PETERS: If that's the Court's ruling that we

1 are prevented from bringing out the names of other people,
2 then I've made my record.

3 THE COURT: That's correct.

4 (The following proceedings were had in open court:)

5 Q. (By Mr. Bunch:) I'm not sure where I was left, but I'm
6 going on to something else, Judge.

7 Now, did she tell you that her main job or her
8 principle job was to obtain plenty of gas, gasoline?

9 A. She implied that, yes.

10 Q. And that in carrying out that responsibility, she went
11 to various gasoline stations?

12 A. Yes.

13 Q. One off of Prospect near where she lived, an Amoco
14 station?

15 A. The Amoco station was one off 435 and 87th Street by
16 Bannister Mall.

17 Q. But she's told you that she had to go to various
18 stations, several stations?

19 A. There were only a couple that were ever mentioned in
20 that.

21 Q. Just two?

22 A. Well, two or three, I don't recall offhand. There's
23 only a couple of them that she stated to me about.

24 Q. All right. Well, I had simply -- you've used the word
25 various, but I'm asking -- if you say if there were two

1 there were two but the various is two?

2 A. Yes, just a few, yes.

3 Q. Did she tell you that she was driving a truck?

4 A. She told me she was driving a vehicle.

5 Q. All right. Did she tell you that she had obtained so
6 much gas that she had made a claim that she was going
7 boating?

8 A. She had mentioned boating, and she had mentioned it to
9 be used for power saws because **they** did a lot of landscaping
10 work, firewood cutting, et cetera.

11 Q. And that she had more than one vehicle, there were at
12 least two trucks and one rental car?

13 A. Yes, there was a rental car.

14 Q. She was the insured person on the rental car?

15 A. That's correct.

16 Q. Did she tell you that the main objective of going to the
17 construction site was to obtain, that is, steal power tools?

18 A. No. Her remark was to steal tools and whatever else was
19 resellable.

20 Q. Building materials, steal building materials?

21 A. Anything that **they** could turn around and resell.

22 Q. Cement?

23 A. She did not get specific. She said that **they** went there
24 to steal tools and items that **they** could turn around and
25 resell.

1 Q. And to steal pops, P-O-P-S. What were those, as you
2 understood it?

3 A. I don't really understand what she meant by it.

4 Q. Now, did you understand that there had been items stolen
5 by her from a construction site that morning?

6 . I understand that she had stolen items previously. I do
7 not know if it was from that construction site. I know that
8 there had been other burglaries that she had participated in
9 before the one that led to the explosion.

10 Q. And that, did you understand that on that morning they
11 had stolen a lot of tools, expensive tools?

12 A. I had understood that **they** had went there to steal what
13 **they** had intended to steal.

14 Q. And they had stolen an acetylene torch?

15 A. I could not tell you if it was acetylene torch. As I
16 had explained that, it was something that she had told me
17 that would require someone to wear something over their eyes
18 so that it didn't damage the eyes. I couldn't tell you a
19 wrench from anything else. I mean, I didn't know that there
20 was two kinds of screwdrivers until recently. So -

21 Q. So you only understood it to be a torch of some sort?

22 A. I couldn't even tell you if a torch requires something
23 over your eyes.

24 Q. All right. Now, did she tell you that she had an old
25 pickup truck that they used because they cut, she cut a lot

1 of wood?

2 A. I understood there to be a pickup truck that was not
3 feasible because they couldn't get a camper shell off of it,
4 the camper shell would not remove. So I don't know if that's
5 the old truck you're referring to or if there was another
6 one. But I know there was one truck where the camper shell
7 could not be removed.

8 Q. Did she tell you that she owned that truck?

9 A. I didn't ask her.

10 Q. ALL right. And the other truck was a newer truck, is
11 that your understanding, one old pickup truck and one new
12 truck?

13 A. I know there was one of them where they were concerned
14 about a scratch on them. And I can't imagine them being
15 concerned about an old beat-up truck having a scratch on it.

16 Q. So you drew the inference that it had to be a newer
17 vehicle?

18 A. Not necessarily. It could be a nicer older one, too
19 for all I know. I couldn't sit here and say under oath that,
20 yes, it was a new truck or that it wasn't.

21 Q. And she was up at the construction site at the time the
22 explosion occurred?

23 A. She was at the construction site at the time the fire
24 started.

25 Q. At the time the explosion occurred, she was there.

1 THE COURT: Are you asking her? Are you asking if
2 she told her that?

3 MR. BUNCH: Yes.

4 THE COURT: Did she tell you that she was there at
5 the time -

6 A. She was within the vicinity when the explosion occurred.

7 Q. (By Mr. Bunch:) Didn't she tell you that they couldn't
8 get off of a hill, she couldn't get off the hill?

9 A. **They** did not want to be, as she put it, obvious to be in
10 a hurry to leave because a crowd really started coming to the
11 site area where the fire had begun.

12 Q. Did she tell you she was there when the police were
13 trying to move people back?

14 A. She had made a remark that **they** were there. **They** did
15 not want to leave and look suspicious.

16 Q. Did she tell you that the police had to move a police
17 car so **they** could get out, get out to the highway?

18 A. That the police had to move a police car so she could
19 get out to the highway?

20 Q. uh-huh.

21 A. I could not tell you. It's been so long ago. I'm
22 trying to sit here and think about everything as you're going
23 through it.

24 Q. Well, let me -

25 A. I know that there were some vehicles that needed to be

1907

1 removed, some firetrucks, emergency vehicles, that **they** were
2 moving around.

3 Q. Well, your statement was given on July 12th, 1995?

4 A. Is this the taped statement or the grand jury
5 statement?

6 Q. Yes, well, I'd like to show it to you to see if it will
7 assist you in your recollection.

8 A. Okay.

9 Q. And I would ask you to begin reading where the word "oh"
10 is.

11 A. Okay. Oh, and evidently they have -

12 THE COURT: Don't read it out loud. Read it to
13 yourself.

14 MR. BUNCH: Read it to yourself.

15 MR. BECKER: What page, please?

16 MR. BUNCH: It's Page 15.

17 THE WITNESS: Fifteen?

18 A. I know what that's referring to.

19 Q. (By Mr. Bunch:) Well, did she tell you that they had to
20 get the police car to move so they could get out?

21 A. It wasn't just police cars, it was other vehicles also
22 emergency vehicles.

23 Q. Well, I'm asking, is this the statement that you made,
24 ma ' am?

25 A. That's the statement I made, yes.

1908

1 Q. What does it say?

2 A. It says the police cars -

3 MR. BECKER: Objection. It's not in evidence, and
4 if he wants to read the question, read the whole answer.

5 MR. BUNCH: I will.

6 Q. (By Mr. Bunch:) Was this question asked and this answer
7 given? "Is there any doubt in your mind that Darlene Edwards
8 was present at the site, along with others?"

9 And your answer, "There's no doubt in my mind,
10 because she knew what was going on, and then she talked about
11 how she, everything went up real fast, a lot faster than what
12 **they** had anticipated. She had talked about that **they**
13 couldn't leave the site until a bigger crowd of people got
14 there because people were coming, and it would look real
15 funny if a group of people just got up and left. **They** didn't
16 want it to look too obvious, so **they** waited until a pretty
17 good group of people came around. She talked about the
18 firetrucks getting there, about people hollering and
19 screaming and police trying to move people back. Oh, and
20 evidently it had to be there for a little bit of time because
21 of the simple reason when **they** finally did move, the police
22 had already blocked off the area, and **they** had to get the
23 police car to move so **they** could get out."

24 A. That's correct.

25 Q. Was that question asked and that answer given?

1 A. Yes, sir.

2 Q. Now, did she also tell you that she had been taking
3 relaxants in order to pass a polygraph examination?

4 MR. BECKER: Objection. May we approach?

5 THE COURT: Yes.

6 (Counsel approached the bench and the following
7 proceedings were had:)

8 MR. BECKER: Prior to trial, I believe Mr. Bunch
9 made a motion in limine regarding polygraph examinations. My
10 response to that was that, it was the government's position
11 that the polygraph, any mention of polygraph examinations,
12 either of witnesses or defendants, would be inadmissible
13 under current federal law and that there should be no mention
14 of any possible polygraph examinations by anyone. And it was
15 my understanding that there was a ruling on that.

16 THE COURT: Not by me. It wasn't by me. Or was it
17 by Judge Bartlett?

18 MR. BECKER: I thought it was by you, Judge,
19 because it was contained within Mr. Bunch's motion in limine
20 that was taken up by the Court at the beginning of the
21 trial.

22 MR. BUNCH: The question propounded, that doesn't
23 have anything to do with whether or not she took a
24 polygraph. It has to do with whether or not Darlene Edwards
25 told her that she, along with others, but I limited it to

1 she, was taking relaxants in order to pass a polygraph
2 examination, should one be required.

3 THE COURT: What does it have to do with this
4 here?

5 MR. BUNCH: **Drugs**, Judge. Because it didn't
6 happen. I can't impeach without asking questions. That's
7 all.

8 MR. BECKER: Can he prove it didn't happen?

9 MR. PETERS: The significance of it is that she,
10 Darlene Edwards, this witness is saying Darlene Edwards told
11 her that she took a polygraph that she passed because she
12 took **drugs**. The fact is Darlene Edwards never took a
13 polygraph.

14 THE COURT: Well, then -

15 MR. PETERS: But that's impeachment. We're not
16 suggesting that Darlene Edwards took a polygraph. We're
17 showing that she's lying.

18 THE COURT: What are you impeaching?

19 MR. PETERS: That she claims that Darlene Edwards
20 told her that she had taken a polygraph.

21 THE COURT: She hasn't claimed that here. You're
22 bootstrapping it.

23 MR. PETERS: The question was objected to.

24 MR. BECKER: She's never answered any question
25 relating to any polygraph.

1 THE COURT: That's right. Or **drugs**.

2 MR. BECKER: And that's what the question is. The
3 question contains the -

4 MR. PETERS: I understand.

5 MR. BECKER: -- impermissible point.

6 MR. PETERS: If someone said John Doe told me that
7 on this date they did such-and-such, that question would be
8 asked and the witness would be impeached by showing that
9 that, in fact, did not happen. It goes to the credibility of
10 this witness. If she says that Darlene Edwards told her she
11 took a polygraph and we're able to show that Darlene Edwards
12 never took a polygraph, it isn't being admitted.

13 MR. OSGOOD: Maybe we should take a lunch break
14 because we've got 20 more minutes of her anyway.

15 THE COURT: Yeah.

16 MR. BUNCH: If you say it's collateral to the whole
17 issue, then I'll respect your ruling, Judge.

18 THE COURT: Well, that's my inclination because
19 what you're asking her doesn't go to her credibility here. I
20 mean, this may be one of those general credibility questions,
21 or inquiries. I'm not sure about that. But she hasn't
22 testified that Darlene took a polygraph, or didn't say
23 anything about taking **drugs**. This is a new subject, as far
24 as her testimony is concerned, and I don't think that we need
25 to go into this.

1 MR. BECKER: My objection is, as Mr. Peters
 2 outlined, that they would be able to then go back and prove
 3 that Darlene Edwards did not take a polygraph. They would
 4 not be able to come forward with evidence regarding that.
 5 Not literally, I don't think it's admissible. I mean,
 6 literally.

7 THE COURT: Polygraph just generally, as far as I'm
 8 concerned, I think the law is that polygraph is not
 9 admissible and reference to it is not admissible.

10 MR. PETERS: I would agree, but the cases where
 11 polygraph comes in, and I believe the transcript I've read
 12 involves Mr. Becker, where the polygraph isn't being
 13 discussed for the results of the polygraph, but for another
 14 purpose. And that case with the transcript I've read, he was
 15 arguing that it showed the witness's state of mind that after
 16 refusing to take a polygraph he then confessed. It was
 17 allowed into court not for the purposes of saying polygraph,
 18 but to show state of mind.

19 In this instance we have a witness who is telling
 20 us that Darlene Edwards told her, "I took a polygraph and I
 21 beat it because I was on **drugs**." And, in fact, we know that
 22 Darlene Edwards never took a polygraph, so it goes directly
 23 to her credibility in recounting what Darlene Edwards told
 24 her.

25 THE COURT: It goes to her gullibility that she

1 believed what Darlene Edwards told her.

2 MR. OSGOOD: I agree with the judge on that one.

3 THE COURT: Okay. Let's go to lunch.

4 (The following proceedings were had in open court:)

5 THE COURT: We're going to break now, folks. Don't
6 talk about the case. Please be back in the jury room at
7 1:30. Have a good lunch. You're excused.

8 (The following proceedings were had in the
9 courtroom out of the presence of the jury:)

10 THE COURT: Okay. We're in recess.

11 (A recess was taken from 12 p.m. to 1:41 p.m.)

12 THE COURT: All right. Do you have something you
13 want to say before the jury -

14 MR. PETERS: Yes, Judge. In the hopes of guessing
15 the exception on the letter to John Newberry relating to what
16 she believed had gone on with Mr. Becker, we would move for
17 admission under Rule 803(3), then existing mental, emotional,
18 or physical condition, offered to show her intent, plan,
19 motive or design.

20 She's clearly, her intent is that she's writing to
21 Mr. Newberry because she believes that he's talked with Mr.
22 Becker and Mr. Becker will have conveyed that she's of value,
23 or something to that extent. Her reason for it doesn't
24 matter, but we would suggest that it shows her intent, plan,
25 motive, and design for testifying. That's all I have, Judge.

1914

1 THE COURT: Okay. I still don't think that we've
2 got this postured for appropriate admission of that at this
3 time. I'm not -- as I've told you, I'm not going to design
4 your presentation for you, but -- and it may be that there's
5 a -- you said 803(3)?

6 MR. PETERS: That's correct, Judge.

7 THE COURT: No. I don't think this is an 803(3)
8 situation.

9 Okay. Anything else?

10 MR. O'CONNOR: One other issue, Judge. The Court
11 had ruled earlier on this, our request regarding the mental
12 information. And what I would like to do is make an offer of
13 proof with Miss Dornhoffer outside the hearing of the jury to
14 perfect my record because I don't think without asking it -

15 THE COURT: Sure. Let's get her in here and do it
16 now.

17 (Witness Bridget Dornhoffer came into the
18 courtroom.)

19 THE COURT: Okay. Have a seat. I'll remind you
20 you're still under oath, and Mr. O'Connor has some questions
21 outside the presence of the jury.

1915

1 BRIDGET DORNHOFFER,

2 having been previously sworn, testified further as follows:

3 -- -- --

4 VOIR DIRE EXAMINATION

5 By Mr. O'Connor:

6 Q. Miss Dornhoffer in 1987, were you committed or commit
7 yourself to -

8 MR. BECKER: Judge, I'm sorry. May we approach on
9 this?

10 THE COURT: Yes.

11 (Counsel approached the bench and the following
12 proceedings were had:)

13 MR. BECKER: I don't think these questions need to
14 be publicly propounded. They're not -- it's embarrassing to
15 a witness to review her mental history in open court when
16 it's not admissible evidence. It's merely for purposes of
17 making a record.

18 MR. O'CONNOR: I don't have any objection to that.

19 THE COURT: So you're suggesting that we have an in
20 camera conference?

21 MR. BECKER: Maybe we could do it when she
22 finishes.

23 MR. O'CONNOR: It doesn't matter to me.

24 THE COURT: How do we get rid of the spectators in
25 the courtroom?

1916

1 MR. BECKER: We don't.

2 MR. O'CONNOR: Obviously, if I make my offer of
3 proof, arguably, the Court may see that it is admissible, and
4 maybe the Court wouldn't, obviously. But that's why I'd
5 rather do it now than do it afterwards and have to call her
6 back. But I, I agree with the concerns.

7 THE COURT: Where is she? She's at -

8 MR. BECKER: She'll be available.

9 THE COURT: Let's do it after she's through toward
10 the end of the day.

11 MR. O'CONNOR: That's fine. Thank you, sir.

12 (The following proceedings were had in open court:)

13 THE COURT: All right. You can get the jury now.

14 (The following proceedings were had in the
15 courtroom in the presence of the jury:)

16 THE COURT: The witness has already been reminded
17 that she's still under oath, and you may proceed, Mr. Bunch.

18 MR. BUNCH: Thank you, Judge.

19 — — —

20 RESUMED CROSS-EXAMINATION

21 By Mr. Bunch:

22 Q. I would just remind you, Miss Dornhoffer that I was
23 asking you questions about things allegedly said to you by
24 Miss Edwards, if you recall.

25 A. Correct.

1 Q. Now, did she tell you that gasoline was poured at
2 various points at the construction site?

3 A. In various areas.

4 Q. Various areas?

5 A. Correct.

6 Q. And then it was permitted to remain on the ground for a
7 while?

8 A. Yes, sir.

9 Q. And charcoal, some sort of charcoal fluid, did she say,
10 was added to that mixture?

11 A. Some other type of chemical, yes.

12 Q. And then **they**'d, at these various areas, fire would be
13 set?

14 A. Correct.

15 Q. And the purpose in setting various fires in various
16 areas was to divert anybody's attention in that particular
17 area so that thefts could occur; is that correct?

18 A. The fire was set to cover up the thefts, yes.

19 Q. So do you have any recollection about the number of
20 fires she claimed had been set, that is, Miss Edwards claimed
21 had been set?

22 A. She just said various areas.

23 Q. On one occasion, a fire did she say was set to a shed?

24 A. She referred to it as a shed, at times a trailer, but as
25 a rule it was a shed.

1 Q. Shed. Only on one occasion?

2 A. Well, there were other occasions, but I couldn't tell
3 you exactly how many occasions.

4 Q. Now, among -- did she say that among the things stolen
5 from the site included radios and walkie-talkies?

6 A. She just said various equipment, and she had mentioned
7 something about communication equipment.

8 Q. Did you say that -- or was it your understanding that
9 they were walkie-talkies?

10 A. I said I did not know for sure. I had said it would be
11 something along that line.

12 Q. And they also -- or did she tell you that a fax machine
13 or something like that, some piece of office equipment had
14 been stolen?

15 A. There was office equipment that had been mentioned.
16 Basically it was anything that was resellable.

17 Q. Do you know what particular office equipment?

18 A. She didn't go into detail about that.

19 Q. And as I understand it, this piece of office equipment
20 was taken out of the trailer, she said; is that correct?

21 A. That's what I understand.

22 Q. And in that particular area, it was heavily gasolined,
23 she said, so that nothing could be detected as having been
24 missing?

25 A. There was several areas that were heavily, more

1 saturated than others, I should say.

2 Q. When they were set afire, did she say that it would make
3 it appear that the items that had been stolen had actually
4 been destroyed in the fire?

5 A. Correct.

6 Q. Did she also tell you that she on purpose got in a fight
7 in her front yard to bring notice that she was home that
8 evening?

9 . She had made a remark that she and another party had got
10 into a disagreement in front of the neighbor so the neighbor
11 could say that they were there.

12 Q. Did she also tell you that she had a house guest who
13 stayed overnight and thus would provide her an alibi?

14 . She had made mention that there was a house guest, yes.

15 Q. And that the house guest had been asleep when she was
16 gone?

17 A. Yes.

18 Q. So that the house guest believed, did she say that she
19 was there all night?

20 A. She told me the house guest was asleep and that the
21 house guest was still asleep when she returned.

22 MR. BUNCH: No other questions.

1

2 By Pat Peters:

3 Q. Ma'am, my name is Pat Peters, and I represent **Frank**
4 Sheppard, and I'm going to be going back over some of the
5 questions during direct.

6 First thing I want to ask you about is the letter
7 that you've talked about that was written to Mr. John
8 Newberry.

9 A. Correct.

10 Q. Do you remember the letter I'm talking about?

11 A. The one you showed me earlier today, or someone showed
12 me earlier today.

13 Q. Have you written other letters to Mr. Newberry?

14 A. I have written a couple of letters to Clay County with
15 regards to my case.

16 Q. okay. In the letter that we've been talking about, I
17 believe dated October 2nd, 1995, you expressed concern about
18 a, another -

19 MR. BECKER: Objection. Reading from something not
20 in evidence.

21 MR. PETERS: I'll rephrase it, Judge.

22 THE COURT: All right.

23 Q. (By Mr. Peters:) Have you ever expressed concern to Mr.
24 Newberry about another inmate who had been interviewed by Mr.
25 St. John?

1 MR. BECKER: Objection. Relevance.

2 THE COURT: Yeah. I don't see what that has to do

3 with what we're doing here.

4 MR. PETERS: May we approach?

5 THE COURT: Yes.

6 (Counsel approached the bench and the following
7 proceedings were had:)

8 THE COURT: I don't have -

9 MR. PETERS: It's very difficult to read, but it's
10 those two paragraphs.

11 THE COURT: Never has anyone said anything to this
12 individual directly. All it was was what she overheard.

13 MR. PETERS: And this is Rosemarie Quiroz is what
14 my question is going to be.

15 MR. BECKER: I don't know who St. John is. I don't
16 know what Newberry would be doing involved in this.

17 THE COURT: I don't know when this is.

18 MR. PETERS: It would have been in this October
19 2nd, 1995, letter. I can just ask her -

20 MR. BECKER: Why would Newberry and St. John be
21 talking to Quiroz?

22 MR. PETERS: It's cross-examination.

23 MR. BECKER: What's the relevance?

24 THE COURT: You can't flail around in an undirected
25 manner.

1922

1 MR. PETERS: What I expect her to say is Rosemarie
2 Quiroz was recounting information that she could have only
3 learned from this witness.

4 THE COURT: I just think it's too remote. If this
5 really pinned her to something, I'd let you put it in. But,
6 A, it's very difficult to read and I'm not sure what it says;
7 but, B. I think it's too remote to what we're -

8 MR. PETERS: That's fine. And my offer of proof
9 would be that I would ask her did you write John Newberry
10 regarding a concern that Rosemarie Quiroz did not have
11 firsthand knowledge of statements made by Darlene Edwards. I
12 would expect her to say yes. What were those concerns? That
13 Rosemarie Quiroz did not have firsthand information, and it
14 all came from me. And that's my offer.

15 THE COURT: Okay.

16 (The following proceedings were had in open court:)

17 THE COURT: That objection is sustained, and you
18 may proceed.

19 Q. (By Mr. Peters:) Ma'am, I want to go back to the
20 questions regarding your time on probation and ask you, did
21 you ever tell your probation officer that you suffer from
22 selective amnesia?

23 A. No I did not.

24 Q. Did you ever tell Sergeant Huskisson who -

25 MR. BECKER: Objection. We've reviewed this

1 matter. I believe other counsel asked specifically these
2 questions.

3 THE COURT: I thought we'd covered this, Mr.
4 Peters.

5 MR. BECKER: I'm sorry. I withdraw it. I thought
6 he was going back into the amnesia business.

7 THE COURT: Oh, I did too. All right.

8 Q. (By Mr. Peters:) Do you recall a Sergeant Huskisson
9 coming to your house to question you about forged checks, and
10 at that time did you identify yourself to him as Juanita
11 Galvan?

12 A. No I did not.

13 Q. Did you give Sergeant Huskisson a false name?

14 A. I don't even know who Sergeant Huskisson is.

15 Q. Do you recall being interviewed by a sergeant from the
16 North Kansas City, Missouri, Police Department regarding
17 forged checks?

18 A. I recall being interviewed from a officer with the North
19 Kansas City Police Department when I was up in Clay County,
20 yes.

21 Q. At that time did you give that officer a false name?

22 A. No because I was already incarcerated in the Clay
23 County Detention Center underneath my name.

24 Q. Do you recall being interviewed by a North Kansas City,
25 Missouri, Police Officer at your residence?

1 MR. BECKER: Can we have a time frame?

2 THE COURT: When is this?

3 MR. PETERS: This would have been approximately
4 1993, Your Honor.

5 THE COURT: Do you recall that?

6 THE WITNESS: No I do not.

7 Q. (By Mr. Peters:) If I recall your direct testimony,
8 Darlene Edwards told you that **they** were unsuccessful at
9 stealing items from the construction site; is that correct?

10 A. I did not say that she said **they** were unsuccessful.

11 Q. Did she tell you that they had stolen items from the
12 construction site on the night of the explosion?

13 A. She had mentioned that there were some items taken, yes.

14 Q. Did she tell you that there were a lot of tools, that
15 they had stolen a lot of tools, a lot of expensive tools?

16 A. She didn't say either a lot of tools or a lot of
17 expensive tools.

18 Q. Did she ever say that they had succeeded in stealing a
19 whole bunch of tools?

20 A. She just said that **they** succeeded in taking items.

21 Q. Okay. Do you remember the statement that you gave on
22 July 12th to Agent David True?

23 A. I recollect parts of it. I have not seen it.

24 Q. I'm showing you Page 13 and indicating an area that I'll
25 ask you -- read this, and then I'm going to ask for it back

1 and see if that refreshes your recollection.

2 A. She told me they had -

3 THE COURT: No. Read it to yourself.

4 Q. Read it to yourself, I'm sorry.

5 (So done.)

6 A. Okay.

7 Q. Do you recall whether or not you told Agent True that
8 **they** had taken a lot of tools, a lot of expensive tools? Do
9 you recall that?

10 A. I recall saying that **they** took a lot of tools. I recall
11 saying that **they** took expensive tools.

12 Q. Do you recall saying that they had taken building
13 materials, some cement, and there was one thing they referred
14 to as pops?

15 A. Yeah, the pops thing, that was confusing. I didn't know
16 what that meant.

17 Q. But you recall her saying that they had taken building
18 materials and cement?

19 A. Yes.

20 Q. Do you recall her talking about them taking something
21 that was an acetylene torch?

22 A. I had made mention that it was something that had to
23 have your eyes covered with it. I didn't know what it was
24 called.

25 Q. And so your testimony is that Darlene Edwards had told

1 You that on the night of the explosion, they had taken a lot
2 of tools; is that correct?

3 A. That there were some tools that were taken, yes, for
4 resale.

5 IQ. Did she tell you that they took a drill?

6 A. There was a list of things, Mr. Peters, that she had
7 I said that she had taken. She rambled on and on at times.

8 Q. And these would be contained in the information that
9 was, in the diaries that you've testified to; is that
10 correct?

11 A. That's correct.

12 Q. I believe on your direct examination you had indicated
13 that Mr. True had come and talked to you this one time; is
14 that correct?

15 A. Mr. True came to talk to me, yes, at the Clay County
16 Detention Center.

17 Q. And on this one occasion, he was there a very short
18 period of time before the videotape equipment started
19 running; is that your testimony?

20 A. That is correct.

21 Q. And this would have been on February 12th; is that
22 correct?

23 A. I don't know the exact date.

24 Q. Again, I would ask you just to read the first sentence
25 and see if that refreshes your recollection.

1 A. Yes, it does. I thought you had said February 12th a
2 minute ago.

3 Q. Oh, I'm sorry. July 12th, you're right. I was wrong.

4 A. Yes. I was confused when you said February.

5 Q. I was confused, I apologize.

6 A. That's okay.

7 Q. And it's your testimony that this is the time, the only
8 time that you've spoken with Dave True up until the time of
9 the statement on July the 12th?

10 A. That is correct.

11 Q. Isn't it true, ma'am, that on Friday, July the 5th, Dave
12 True came to visit you in the jail and talked to you on two
13 separate occasions; isn't that correct?

14 A. I thought it was after the statement that Dave True came
15 to see me.

16 Q. Did Dave True come and talk -

17 A. Excuse me. He did come prior to that, and that's when
18 he got permission to record it. He came with Niles Sturkey.

19 Q. So on July the 5th, you had an interview with Dave True
20 prior to this July 12th statement; isn't that correct?

21 A. It was not an interview, though.

22 Q. Because -- was it recorded, ma'am?

23 A. No it was not recorded.

24 Q. Was there a court reporter taking down what you said
25 word for word?

1 A. No there wasn't.

2 Q. Did you refuse to have it recorded?

3 A. No I did not refuse to have it recorded.

4 Q. And on July the 5th, how many times did you meet with

5 Dave True?

6 A. He came in and asked me if I had information, that he

7 had been advised that I had information and if I would have a

8 problem with making a statement, and I said no. And I had

9 made a remark that I had had some notes written down, and

10 that is when they had attempted to find my legal pads. And

11 he came back later that evening to advise me that they were

12 not able to locate them. And then we sat in the interview

13 where they recorded it and videotaped it.

14 Q. And this afternoon interview on July the 5th, 1995, how

15 long did that interview take place?

16 A. It didn't take any time at all. I would say, at the

17 most, 15 to 20 minutes, if that.

18 Q. During that interview, you told Agent True that you had

19 these notebooks that he could find back at CCA; is that

20 correct?

21 A. That is correct.

22 Q. And in the evening, isn't it true that he came back with

23 all of your materials and possessions in a box; isn't that

24 correct?

25 A. Came back in two boxes, I believe.

1929

1 Q. And in those two boxes, how many of your, how many of
2 these notebooks did you find?

3 A. There were none in there, the boxes had been opened.

4 Q. On this -- the second interview with Dave True on July
5 7th, 1995, how long did that second interview last?

6 A. It didn't last very long.

7 Q. How long, ma ' am?

8 A. I couldn't tell you, sir.

9 Q. Fifteen minutes, thirty minutes, an hour? Could you
10 give us an estimate?

11 A. Probably as long as the first one did, 15 or 20 minutes.

12 Q. In the statements that you've talked about relating to
13 Darlene Edwards, did she also tell you that they stole
14 walkie-talkies from the site?

15 A. She mentioned communicational materials or equipment.

16 Q. As best you can, would you relate to us the words
17 Darlene Edwards, your testimony as to what Darlene Edwards
18 told you relating to communication equipment or
19 walkie-talkies?

20 A. She had made a remark that it was like remote type
21 talking devices to where you could speak to someone from one
22 end to another.

23 Q. And based on her representations, you believed those to
24 be walkie-talkies; is that correct?

25 A. Something along that line, yes.

1 MR. PETERS: That's all I have, Your Honor.

2 MR. O'CONNOR: Judge, I'd like to ask a few
3 questions following Mr. Peters.

4 MR. BECKER: Your Honor, if I might. Excuse me,
5 I Mr. O'Connor has already cross-examined, I thought.

6 MR. O'CONNOR: Yes, Judge.

7 THE COURT: I'm sorry, there's an objection by the
8 government. I can't approve that. You may follow redirect
9 with questions, but -

10 MR. O'CONNOR: Can I have a conference with Mr.
11 Osgood a minute?

12 (Counsel conferred off the record.)

13 MR. O'CONNOR: Can we approach quickly, Your
14 Honor?

15 THE COURT: Mr. Osgood?

16 (Counsel approached the bench and the following
17 proceedings were had:)

18 MR. O'CONNOR: I know the government's objecting,
19 but we could call her in our case, if we want. She's listed
20 on our list. I mean, we can call her back. I would intend
21 to do that. We can short-circuit -

22 MR. Osgood: Is this like Congress, can I yield my
23 time to him?

24 THE COURT: You know your cases. You know what you
25 have to do. I'm not going to take a chance on something like

1 this on this record.

2 MR. O'CONNOR: Okay. Thank you, sir.

3 (The following proceedings were had in open court:)

4 THE COURT: Mr. Osgood?

5 MR. OSGOOD: I don't have anything, Your Honor.

6 THE COURT: All right. Any redirect?

7 MR. BECKER: No, Your Honor. Thank you.

8 THE COURT: All right. You may step down.

9 Call your next witness, please.

10 MR. BECKER: united States calls Linda Mynhier.

11 THE COURT: Stand by the witness stand and be

12 sworn, please, ma'am.

13 --

14 LINDA MYNHIER,

15 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,

16 testified as follows:

17 --

18 DIRECT EXAMINATION

19 By Mr. Becker:

20 Q. Good afternoon. Please state your name and spell your

21 last name.

22 A. Linda Sue Mynhier, M-Y-N-H-I-E-R.

23 Q. How old are you?

24 A. Forty-nine.

25 Q. Where do you live?

1

1 A. Gary, Indiana.

2 THE COURT: Gary, Indiana?

3 THE WITNESS: Yes, sir.

4 Q. Where did you grow up?

5I A. Peoria, Illinois.

6 Q. Have you ever been to Kansas City before being

7 subpoenaed to appear here in this trial?

8IA. No.

9 Q. Have you ever been convicted of a crime?

10IA. Yes, I have.

11IQ In 1992, were you convicted of possessing a counterfeit,
12 counterfeit money?

13 A. Yes, I was.

14IQ. What was your -- is that in federal court?

15IA. Yes, it was.

16 Q. And where was that?

17 A. Northwestern Indiana.

18IQ What was your sentence for that?

19~A. Probation.

20 Q. In 1993 was that probation revoked?

21 A. Yes, it was.

22 IQ. What for?

23 A. Because at the same time that I had possession of 24 counterfeit
money, I was also embezzling money from my 25 employer for gambling.

1 Q. Did you get sentenced for the probation violation?

2 A. Yes, I did.

3 Q. How much time was that?

4 IA. Ten months at FPC Alderson.

5 Q. Where is that?

6 IA. West Virginia, prison camp.

7 IQ Then in 1994 were you charged and convicted with
8 conspiracy?

9 IA. Yes. That was all tied in.

10 IQ. And that was a separate charge, though, right?

11 A. Yes. But it was all at the same time, committed at the
12 Same time.

13 IQ. That was conspiracy to do what, what did you do?

14 A. Actually, it was conspiracy to commit wire and bank
15 fraud, which was taking money from my employer, like
16 I embezzlement.

17 Q. How much money did you take from your employer?

18 Ia. \$350,000.

19 Q. What for?

20 I A. Gambling.

21 Q. I take it you were losing; is that right?

22 A. You lose when you play.

23 Q. What was your sentence in that case?

24 A. Eighteen months.

25 Q. Where were you -- where did the Bureau of Prisons have

1 you serve that time?

2 A. FPC Pekin, Illinois.

3 Q. What is FPC, what does that -

4 A. Federal prison camp.

5 Q. What type of facility is Pekin, Illinois? Is that a
6 high level, or what's a prison camp?

7 A. Minimum to out custody, as low as you can get.

8 Q. When were you at Pekin, Illinois, at that federal prison
9 camp?

10 A. I got out in May of 1995, I believe.

11 Q. While you were there, did you meet an individual by the
12 name of Darlene Edwards?

13 A. Yes, I did.

14 THE COURT: At Pekin?

15 THE WITNESS: Yes, sir.

16 THE COURT: Thank you.

17 Q. (By Mr. Becker:) And that's spelled P-E-K-I-N; is that
18 right?

19 A. Yes.

20 Q. Where in Illinois is that? upstate or downstate or -

21 A. By Peoria, middle, I guess.

22 Q. Did you meet Darlene Edwards at Pekin, Illinois?

23 A. Yes, I did.

24 Q. Do you see her here in court today?

25 A. Yes, sir, I do.

1 Q. Could you tell us where she's -- is she the individual
2 standing now at counsel table?

3 A. Yes, sir, she is.

4 MR. BECKER: Indicating defendant Darlene Edwards,
5 Your Honor?

6 THE COURT: Yes. That's correct.

7 MR. BECKER: Your Honor, pursuant to our earlier
8 stipulation between counsel on records, I would offer into
9 evidence Government's Exhibit 398.

10 MR. BUNCH: No objection.

11 THE COURT: All right. Admitted without
12 objection.

13 **(Government's Exhibit 398 was admitted into**
14 **evidence.)**

15 MR. BECKER: With the Court's permission, I'll read
16 the pertinent part of this.

17 THE COURT: Yes, sir.

18 MR. BECKER: This is a letter to the United States
19 Attorney from the Federal Bureau of Prisons, Pekin,
20 Illinois.

21 Inmate Mynhier was initially received at the
22 Federal Prison Camp, Pekin, Illinois, on May 1, 1995. She
23 was released from FPC Pekin on May 7, 1996.

24 Inmate Edwards was initially received at the
25 Federal Prison Camp, Pekin, Illinois, on October 17, 1995,

1 and she's currently on writ status. Meaning, she's here.

2 Q. (By Mr. Becker:) Do you remember meeting, then, Darlene
3 Edwards sometime when she arrived, after she arrived at the
4 facility in October of 1995?

5 A. Yes.

6 Q. How did you come to meet Darlene Edwards?

7 A. She was assigned to our housing unit.

8 Q. Do you recall the first time you met her?

9 A. Yes.

10 Q. Please tell us about that.

11 A. She wanted a cigarette.

12 Q. Do you smoke?

13 A. Yes, I do.

14 Q. So did you share your cigarettes at that time?

15 A. I think somebody else did.

16 Q. How big was your housing unit? How many individuals
17 there?

18 A. Population-wise?

19 Q. Well, in the area you were with with Darlene Edwards.

20 A. It's a very, very small camp. I can give you a
21 guesstimate of maybe 500 girls, 400 girls, women.

22 Q. And that, in your experience, is a small facility?

23 A. Very small.

24 Q. Did Darlene Edwards ever discuss with you an explosion
25 that occurred in Kansas City that killed some firefighters?

1 A. Yes, she did.

2 Q. Prior to Darlene Edwards mentioning this to you, had you
3 ever heard of this explosion?

5 Q. Had you ever seen anything on TV about it?

6 A. No.

7 Q. Had you ever read any newspapers, Kansas City newspapers
8 or other newspapers about it?

9 A. No sir.

10 Q. Now, how did this subject of the explosion come up in
11 conversation, if you've never, with Darlene Edwards if you'd
12 never heard about it?

13 A. She asked me if I'd seen it on TV and said that the ATF
14 was trying to pin this on her and wanted to know if I'd ever
15 seen it on TV, and I told her no.

16 Q. Then over the course of time in the months that you were
17 there with Darlene Edwards, did she tell you more information
18 about what happened in that explosion?

19 A. Yes, sir.

20 Q. Now, did this all happen at one time, or was it over the
21 course of time?

22 A. Over the course of time.

23 Q. Was she asking you for legal advice at all, or just
24 passing the time of day?

25 A. I would say more frustration, what should I do.

1 Q. Had you indicated that you had cooperated with the
2 government in some of the cases you have been charged with
3 and other cases?

4 A. Absolutely.

5 Q. And that's something you had up front told Darlene
6 Edwards that you had done?

7 A. Yes.

8 Q. Did Darlene Edwards -- and I would like to talk about
9 what she told you happened relating to the explosion. And if
10 you would, please, just tell us what Darlene Edwards said
11 Darlene Edwards did. All right?

12 A. Yes.

13 THE COURT: Without reference to anyone else.

14 THE WITNESS: Yes, sir.

15 Q. (By Mr. Becker:) Did Darlene Edwards tell you whether
16 or not there was any discussion of planning or talking about
17 thefts from a construction site?

18 A. Yes, at her kitchen table at her house.

19 Q. Did Darlene Edwards say anything about the purpose of
20 the thefts?

21 A. To purchase **drugs**.

22 Q. Did Darlene Edwards say anything about what her
23 particular **drug** problem was at that time?

24 A. I know what she used, but I don't remember, and I really
25 hate to say for sure because I honestly don't -- it's not

1 right.

2 Q. During the discussion of this theft or burglary from the
3 construction site, did Darlene Edwards mention anything about
4 a fire that was going to be set?

5 A. Yes.

6 Q. What did she say?

7 A. It was a diversion. **They** had security there, and it was
8 a diversion so that the security officers would go towards
9 the fire.

10 Q. Did Darlene Edwards say anything about an explosion
11 occurred then?

12 A. Yes.

13 Q. What did she say?

14 A. She said that there was dynamite in a storage trailer
15 and that the fire that was set ignited the dynamite.

16 Q. Did she say whether anyone was killed in that?

17 A. Yes, she did.

18 Q. What did she say?

19 A. She said that -- I thought and remembered her saying
20 five firemen were killed and two pumper trucks were blown to
21 pieces.

22 Q. Did Darlene Edwards say anything about her actions in
23 purchasing gas that evening?

24 A. She said that **they** had stopped to get gas.

25 Q. Did she say whether or not she went to the construction

1 site?

2 A. Not exactly. What she did say was when we got home, the
3 explosion was so bad that it blew the neighbor's windows out
4 and some out of my house.

5 MR. PETERS: Your Honor, may we approach?

6 THE COURT: Why?

7 MR. PETERS: I need to object.

8 (Counsel approached the bench and the following
9 proceedings were had:)

10 MR. PETERS: Her testimony was that when we got
11 home. And through the evidence in this case, we getting home
12 could only apply to the Defendant **Frank** Sheppard.

13 THE COURT: I've given that instruction already.
14 I'm not going to go into it any more. I'll give it to them
15 again before closing the case.

16 (The following proceedings were had in open court:)

17 Q. (By Mr. Becker:) Now, did you call this information to
18 the attention of any law enforcement authorities?

19 A. Yes. I called an FBI agent in northwestern Indiana whom
20 I'm associated with.

21 Q. You had cooperated on cases that this FBI agent had -

22 A. Absolutely.

23 Q. -- investigated before?

24 A. Yes.

25 Q. You didn't know anybody in Kansas City to call at that

1 point?

2 A. No.

3 Q. Then do you remember, you got out of prison, did anybody
4 come to speak to you while you were still in prison on, that
5 would be up to May 7, 1996?

6 A. No.

7 Q. And then do you recall federal agents from Kansas City,
8 Dave True and another agent, coming to see you in Indiana in
9 September of 1996; is that right?

10 A. Yes.

11 Q. By that time, obviously, you were out of prison; is that
12 right?

13 A. Yes.

14 Q. Did the government, did my office, I guess, even before
15 we talked to you, were you given any assistance in getting
16 out of prison early because of your information in this case?

17 A. No. I served my time. I did the crime, I served my
18 time.

19 Q. Did you ask for anything in exchange for your testimony
20 here today?

21 A. No.

22 MR. BECKER: I have nothing further, Judge.

23 THE COURT: All right. Mr. Bunch?

24 MR. BUNCH: Yes, Your Honor.

1

2 By Mr. Bunch:

3 Q. My name is Will Bunch, and I'm Darlene Edwards' lawyer.

4 Would you pronounce your name for me again?

5 A. Sure. Mynhier, Linda.

6 Q. Mynhier. I didn't want to mispronounce it. Thank you.

7 A. Sure.

8 Q. Now, as I understand the statement that you give, that

9 you've given, first you talked to an FBI agent Purcell back
10 in November of 1995, November the 7th?

11 A. Yes, sir.

12 Q. And was any written statement taken at that time that
13 you're aware of?

14 A. No sir. I contacted him, which I did daily from the
15 prison. Every day of my sentence, I've talked to him.

16 Q. Okay.

17 A. I contacted him by telephone, and I told him that I met
18 Darlene, and I told him what she had said. This probably
19 seems kind of odd to you, but my father was a fireman. I was
20 raised by a fireman.

21 Q. Well, it wouldn't be odd to me that your father happened
22 to be a fireman, but -

23 A. That's why I'm saying it kind of touched me.

24 Q. I assume that you're saying that that was one motivating
25 factor?

1 A. Yes.

2 Q. okay. Okay.

3 A. Yes, it was.

4 Q. All right. But there was, the question I had, and you
5 already answered it, there was no written statement or
6 recorded statement taken by Agent Purcell, you simply talked
7 to him by phone. So far as you know, there are no documented
8 statements in writing; is that true?

9 A. No sir. But when you make a phone call from Pekin, all
10 phone calls are recorded.

11 Q. ALL right. Well, but he didn't, never brought something
12 around for you to see or prove or swear to?

13 A. Huh-uh.

14 Q. Or anything of that sort, that's the question.

15 A. No sir.

16 Q. okay. Then on September 25th, 1996, in Hammond,
17 Indiana, you gave a statement that we're talking about here
18 today, on which you've been examined today; is that correct?

19 A. Yes.

20 Q. And that was with Special Agent David True, correct?

21 A. Yes.

22 Q. Who is here in the courtroom. You see him here, do you
23 not?

24 A. Yes, sir.

25 Q. Now, as I understand your direct testimony, let me ask

you some questions, if I may, about what you say that Miss

2 Edwards said to you.

3 A. Yes, sir.

4 Q. And you were in this facility in Pekin?

5 A. Yes, sir.

6 Q. Not far from your old hometown, were you, really?

7 A. Yes, sir.

8 Q. You were born in Peoria about 20 miles down the road?

9 A. Yes, sir.

10 Q. And this, these conversations developed, as I understand
11 your direct testimony, because of a relationship that you,
12 the two of you had developed amongst yourselves, as well as
13 her frustration with the situation that she was in?

14 A. Yes, sir.

15 Q. And that she told you that the ATF was trying to pin
16 this offense on her?

17 A. Yes, sir.

18 Q. And she told you, did she, that this fire was caused by
19 a dynamite explosion?

20 A. Yes, sir.

21 Q. And did she also tell you that she was aware prior to
22 the time of the explosion that there was dynamite on the
23 site?

24 A. Yes, sir.

25 Q. And did she tell you that she was awakened at her home

1 when this blast occurred?

2 I A. No sir.

3 IQ She did not?

4 THE COURT: Excuse me. Mr. Bunch and counsel,
5 would you all come up for a minute?

6 MR. BUNCH: Yes

7 (Counsel approached the bench and the following
8 proceedings were had:)

9 THE COURT: I was really surprised by something you
10 asked her and then about her answer, because I have a clear
11 note here that Darlene told her the fire was set, the fire
12 that was set ignited the dynamite. But you said -- you just
13 asked her, the fire was caused by the dynamite explosion.

14 MR. BUNCH: Well, I asked it wrong. You said it
15 right. I meant the same thing that -- I'll go back and do
16 that.

17 THE COURT: Would you check that because I thought
18 that it was turned around from what it was.

19 MR. BUNCH: Okay. I will.

20 (The following proceedings were had in open court:)

21 Q. (By Mr. Bunch:) I think I asked you a question that I
22 am reminded probably wasn't what I intended to ask.

23 You did testify that the fire caused the dynamite
24 explosion, did you not?

25 A. Yes.

1946

1 Q. And I think I asked it in a way that was opposite, the
2 dynamite caused the fire. I didn't mean that.

3 A. I didn't catch it.

4 Q. Your testimony is that there was a fire set?

5 A. Yes.

6 Q. Which caused the dynamite to explode; is that correct?

7 A. Yes, sir.

8 Q. And I had asked you about, I had asked you a question
9 dealing with whether or not Miss Edwards was at home, whether
10 she told you she was at home at the time of the blast. And
11 you said she had not?

12 A. That's right.

13 Q. And, thus, she had told you that she was at the site, at
14 the site of the explosion when that occurred?

15 A. No sir. That's not  exactly what she said either.

16 Q. All right. I'm trying to find out what it was. Will
17 you tell us?

18 A. Okay. What she said was **they** had stopped to get gas and
19 when, I don't know if I can say this.

20 Q. Be careful.

21 THE COURT: Don't name anybody else. You can just
22 say another person or someone else, but don't name anyone
23 else.

24 THE WITNESS: **We**, is that allowed to be used, **we**?

25 THE COURT: Well, that's generic, yes.

1 A. No. What she said was when we got back, there was such
2 an explosion that it broke out my windows and -- some of my
3 windows and some of my neighbor's windows.

4 Q. All right.

5 THE COURT: Now, the jury is instructed that that
6 testimony is not to be attributed against or to the actions
7 of any of the defendants other than Mrs. Edwards. All
8 right.

9 Q. (By Mr. Bunch:) Thank you. She had gone to the
10 QuikTrip and then returned home and the blast blew out the
11 windows of the house?

12 A. I don't know where she had gone.

13 Q. oh. She had gone to get gas somewhere?

14 A. (Witness nods head.)

15 Q. okay. And when she returned -

16 A. "We stopped and got gas. And when we got home, there
17 was such an explosion, it blew out some of my windows and
18 some of my neighbor's." Now, that's what was said.

19 Q. All right. Now, did she tell you that prior to the
20 explosion, 65 percent Hercules explosives had been stolen
21 from the site?

22 A. Prior to this night -

23 Q. Yes.

24 A. -- that you're questioning about, there had been some
25 dynamite taken, so I was told, from the construction site

1948

1 that was 65 percent Hercules dynamite.

2 Q. All right. And did she say that this dynamite had been
3 stored in an oven in some, a certain house?

4 A. There was a mention that some dynamite that had been
5 taken once before from the same location had been put in, had
6 been hid in an oven.

7 Q. And the dynamite about which you're testifying she said
8 came from the construction site where the explosion occurred?

9 A. This is what she said.

10 Q. ALL right. Did she make some mention of a blue type van
11 having been used some way or other in transporting herself
12 somewhere?

13 A. She was driving -

14 Q. Excuse me, ma'am. Having to do with the construction
15 site. Thank you.

16 A. She was driving a van. Whether it was blue in color, I
17 have no idea.

18 Q. okay. But she was driving a van?

19 A. Yes.

20 Q. Did she say whether or not it was her van?

21 A. No.

22 Q. You don't know whose van it may have been?

23 A. No I do not.

24 Q. Nonetheless, she drove it?

25 A. This is what she had said.

1 Q. And did she tell you that these fires were set so the
2 guards would go would be drawn to them?

3 A. Yes.

4 Q. Rather than be at a location where people may be
5 committing these thefts? Did she say that?

6 A. Yes.

7 Q. Did she tell you how many fires -

8 A. No.

9 Q. -- had been set? And did she tell you that the dynamite
10 about which you've testified was located in a storage
11 trailer?

12 A. Yes.

13 Q. Now, as I understand it, on the 16th day of October,
14 1992, you were charged with and convicted of possession of a
15 counterfeit federal reserve note; is that correct?

16 A. Yes, sir.

17 Q. And out of that conviction, you received no time in
18 prison, but four years probation?

19 A. Yes, sir.

20 Q. I'm a little bit uncertain about -- had this
21 embezzlement already occurred, or did it occur later that
22 resulted in your being sent to Alderson, the penitentiary
23 there?

24 A. okay. I was convicted of possession of the counterfeit
25 currency, which I pled guilty to. I did it. And while I was

1950

1 on probation, I was taking money from my employer. I call it
2 embezzlement, the government's charge was conspiracy because
3 it was done through a fax machine. Okay? And I was taking
4 those funds, and I was out gambling. I mean, anything
5 gamble-able.

6 Q. Okay. So this offense in 1993 that resulted in your
7 incarceration in Alderson was committed while you were on
8 probation for having counter, possessed a counterfeit federal
9 reserve note?

10 A. I went to Alderson for probation violation.

11 Q. Yes.

12 A. Yes.

13 Q. Because the offense occurred after you were placed on
14 probation, the conspiracy to commit bank fraud, right?

15 A. Okay. Yes. Yes.

16 Q. How many federal convictions do you have? Is it two of
17 these federal -- was the possession of counterfeit federal
18 reserve note a federal offense?

19 A. Yes, it is.

20 Q. Were you then -- conspiracy to commit bank fraud was a
21 federal offense?

22 A. Yes.

23 Q. Any other convictions that you have?

24 A. Not unless a probation violation is another. I don't
25 know if it is.

1 Q. Those are the two convictions?

2 A. Yes.

3 Q. All right. And those were committed in the state of
4 Indiana?

5 A. Yes.

6 Q. Correct? Now, can you tell us how many aliases you may
7 have used?

8 A. Lynn and Linda.

9 Q. Have you been known as L. S. Allen?

10 A. Well, that's how I sign when you sign your initials.

11 Allen is my maiden name, that's my birth name.

12 Q. Have you been known as Linda Friend?

13 A. Yes, that was a married name.

14 Q. And, of course, your true name is Linda, is it Linda Sue
15 Mynhier?

16 A. Yes, it is.

17 Q. You've been known as Lynn Mynhier?

18 A. Yes.

19 Q. Have you had more than one Social Security number?

20 A. No. But I have reversed my Social Security numbers
21 around.

22 Q. And by mistake, not -

23 A. No I did it intentionally back then.

24 Q. Not in use of -- you have no as I understand it, you
25 have no state convictions?

1952

1 A. Yes, I do.

2 Q. What do you have in the state?

3 A. All at the same time, bad checks.

4 Q. So you were prosecuted both by the federal government
5 and the State of Indiana?

6 A. At the same time.

7 Q. For the same offenses, one being a state crime and the
8 other federal?

9 A. Yes.

10 Q. What kind of -

11 A. Well, it was bad checks through my trucking company.

12 Q. So that is insufficient funds, no account checks,
13 forgery or what?

14 A. No. It was trucking company checks that were
15 non-sufficient.

16 Q. All right. So you'd written checks on an account that
17 did not have sufficient money?

18 A. Yes.

19 Q. Correct? Knowing that it did not?

20 A. Yes.

21 Q. And you were prosecuted by the State of Indiana?

22 A. Yes, I was.

23 Q. What kind of a sentence did you receive there?

24 A. Eighteen months to run at the same time as the federal
25 sentence.

1 Q. So those would run concurrent with your federal time
2 you'd done in Pekin?

3 A. Together, yes.

4 MR. BUNCH: Thank you.

5 MR. PETERS: May we approach, Judge?

6 THE COURT: Yes.

7 (Counsel approached the bench and the following
8 proceedings were had:)

9 MR. PETERS: Judge, two matters real briefly. The
10 printout that we have, that I have did not have any of her
11 convictions. We were wondering, we're kind of limited in our
12 ability to cross-examine. We don't know if the state
13 convictions -

14 MR. BECKER: You don't have the federal convictions
15 on there?

16 MR. PETERS: This is all I've got.

17 MR. BECKER: There was another follow-up to that
18 one that you all got.

19 THE COURT: I think Mr. O'Connor just handed it to
20 him.

21 MR. PETERS: I was doing that at the behest of
22 someone else. The point I wanted to go into is in her
23 statement, she states that one of the people involved was
24 Darlene Edwards' stepson. She refers to the stepson twice.
25 That is not one of the charged defendants. And then further

1 Sheppard. How many total state and federal felony
2 convictions do you have?

3 A. Three.

4 IQ And this would be two federal convictions?

5 I A. Yes, sir.

6 IQ. And one state conviction?

7 I A. Yes, sir.

8 IQ On November 16th, 1992, you pled guilty to possession of
9 counterfeit federal reserve notes in the Northwestern
10 District of Indiana and received four years probation; is
11 that correct?

12 A. Yes, sir.

13 IQ. And then in state court in West Virginia you received 18
14 months of supervised release. Is that in connection with the
15 IIndiana charge?

16 A. I don't know what you're talking about.

17 THE COURT: Mr. Peters, I don't fully know why
18 l we're doing this again. I mean, this has already been over,
19 we've been through this twice, and it isn't going to get any
20 Idifferent I don't think. Can't we go into something else?

21 l MR. O'CONNOR: Judge, can we approach on this a
22 second?

23 THE COURT: Yes.

24 (Counsel approached the bench and the following
25 ~ proceedings were had:)

1 MR. O'CONNOR: Here is the confusion that we have.
2 We show a sentence, there's a No. 1 conviction. She got four
3 years probation in Indiana. And then this is in Arkansas,
4 second conviction, ten months, three years supervised
5 release. Third conviction, conspiracy, 18 months. Fourth
6 conviction, conspiracy. I see four convictions.

7 MR. BECKER: What you're confused about is it says
8 arrested or received. She was received at the federal prison
9 camp in Alderson on that particular date.

10 MR. O'CONNOR: So that's the one -

11 MR. BECKER: That's the way the FBI sheets are set
12 up.

13 MR. O'CONNOR: So is this two different ones here?
14 So she has three, not two federal convictions?

15 MR. BECKER: She's right. She's got two federal
16 convictions, the counterfeit note on the first page.

17 MR. O'CONNOR: Okay.

18 MR. BECKER: The counterfeit note there.

19 MR. O'CONNOR: There's one.

20 MR. BECKER: Then she's got the probation violation
21 that she talked about.

22 MR. O'CONNOR: But it looks like a new charge.

23 Okay. So that's one. Okay.

24 MR. BECKER: That's what she was on probation for,
25 and then she got ten months on that probation violation, and

1 then no supervised release. And then she got indicted again
2 for the conspiracy, and she pled to the conspiracy.

3 MR. O'CONNOR: That's two convictions now federal.

4 MR. BECKER: Two feds, yes.

5 MR. O'CONNOR: Okay.

6 MR. BECKER: And here is the state charge, I
7 think. All of these thefts, 185 counts of -

8 MR. O'CONNOR: This is federal.

9 MR. BECKER: That's when she goes in, that's the
10 sentencing on the federal.

11 MR. O'CONNOR: Which would be her third conviction.

12 MR. BECKER: No. Here is the charge. Right here,
13 No. 5 arrested for the charge. And here is where she gets
14 sentenced on that charge.

15 MR. O'CONNOR: Where does she get sentenced on this
16 charge?

17 MR. BECKER: On this?

18 MR. O'CONNOR: uh-huh.

19 MR. BECKER: I don't know. That's why I didn't
20 think she had a state charge. She's telling us she did.

21 MR. O'CONNOR: That was the confusion. When you
22 read this, Judge, it looks like four. That's why we were
23 going to inquire more, to examine her. We've got it
24 straightened out. Thank you.

25 (The following proceedings were had in open court:)

1958

1 Q. (By Mr. Peters:) Ma'am, in your conversations that
2 you've testified about with Darlene Edwards, she told you
3 that one of the people involved was her stepson; is that
4 correct?

5 THE COURT: You may answer that.

6 A. Yes.

7 Q. And she told you that one of the people involved was an
8 individual with the initials J. D.; is that correct?

9 A. Yes.

10 MR. PETERS: I have no further questions.

11 MR. O'CONNOR: No questions, Your Honor.

12 MR. OSGOOD: I have just a couple of follow-up
13 questions, Your Honor, on what Mr. Peters just covered.

14 — — —

15 CROSS-EXAMINATION

16 By Mr. Osgood:

17 Q. Ma'am, my name is John Osgood. I represent Richard
18 Brown.

19 Did you tell Agent True in your interview in
20 September 25, 1996, that you felt that Darlene Edwards was
21 trying out different versions and stories on you to see what
22 your reaction was?

23 A. Yes, I did.

24 Q. And she contrasted what she said on different occasions?

25 A. Yes, she did.

19s9

1 Q. Did she express concern that there were other people she
2 knew back in Kansas City that were marking her off; in other
3 words, telling on her?

4 A. Yes.

5 Q. And so she was running by a series of possible
6 explanations she might use to you to come up with a defense;
7 is that what you're saying?

8 A. I'm not saying that's a fact what she did. That was my
9 assumption of what was going on.

10 Q. So you really at this point don't know what the truth
11 is, I guess is what you're telling me, because she told you a
12 bunch of different scenarios; is that a fair statement, in
13 all honesty, ma' am?

14 MR. BECKER: Objection.

15 A. Not necessarily.

16 THE COURT: Just a minute, please.

17 MR. BECKER: Calls for a conclusion. It was two or
18 three questions in there.

19 THE COURT: I think it's pretty speculative. I'm
20 going to sustain on that basis.

21 MR. OSGOOD: Thank you, ma'am, that's all I have.

22 THE WITNESS: Yes, sir.

23 MR. O'CONNOR: Nothing further.

24 THE COURT: All right. Any redirect?

25 MR. BECKER: No redirect, Your Honor.

1960

1 THE COURT: You may step down, then.

2 THE WITNESS: Thank you.

3 (Counsel approached the bench and the following
4 proceedings were had:)

5 MR. O'CONNOR: This is the redacted interview, and
6 all defense counsel want to request to listen to it before
7 it's played to the jury to see if there's going to be any
8 objections because we're worried about how it's been
9 redacted. Not saying that Mr. Becker has done anything
10 wrong, we just haven't heard it redacted.

11 THE COURT: Do you have any problem with that?

12 MR. BECKER: No. We could have covered this over
13 the weekend. He was on the list Friday at 10 o'clock, and if
14 they wanted to listen to the tape, we could have played them
15 the tape then.

16 THE COURT: We'll just take our recess and let the
17 jury go and we'll play the tape right now here.

18 MR. BECKER: We're ready.

19 (The following proceedings were had in open court:)

20 THE COURT: Ladies and gentlemen, we're going to
21 take our afternoon recess a little early so we can do some
22 specific work while you're away. Please don't talk about the
23 case, and we'll try to call you in about 15 or 20 minutes.
24 You may withdraw from the courtroom at this time.

25 (The following proceedings were had in the

1961

1 courtroom out of the presence of the jury:)

2 THE COURT: Okay. Let's go with it.

3 MR. O'CONNOR: Judge, Mr. Osgood had to make an
4 emergency run. He'll be back in a minute.

5 THE COURT: Okay. We can get started.

6 MR. BECKER: Your Honor, for the Court's
7 information, the Government's Exhibit is 361, which is the
8 redacted statement made by Darlene Edwards on February 19,
9 1995, and to accompany it is Government's Exhibit 361-A, the
10 transcript of the redacted tape.

11 THE COURT: So 361 is the tape?

12 MR. BECKER: Yes.

13 THE COURT: And 361-A is the transcript of the
14 redacted tape?

15 MR. BECKER: Yes. And for the Court's, just for
16 information purposes, 360 is the whole tape. It's the,
17 whatever length it is, tape. This is, 361 we'll play right
18 now is the redacted tape that we would be offering into
19 evidence pursuant to the pretrial rulings in this matter.

20 THE COURT: All right. Wait just a minute.

21 (Government's Exhibit 361 was played.)

22 MR. O'CONNOR: Judge, can we suggest we take our
23 break and then come back and argue?

24 THE COURT: All right. Is that the most
25 understandable that that tape can be made?

1 MR. BECKER: Well, we're going to -

2 THE COURT: I'm just talking about the audibility
3 of it.

4 MR. BECKER: I've discussed that with the agents,
5 and we'll try and work something else out over the break with
6 a different machine. Overall, I think that sort of
7 exemplifies why a transcript is used as an aid in listening
8 to a tape because parts sometimes overlap each other, and Ms.
9 Edwards has a tendency to speak quickly and in long blocks.
10 And, again, no matter what the quality of the system playing
11 the tape, we're still going to have the problem of
12 overlapping voices and rapid speech.

13 MR. OSGOOD: Your Honor, Mr. Becker has correctly
14 stated the law. The transcript can only be an aid, and here
15 the fear is that the tape itself is not intelligible. We
16 have a hearsay transcript.

17 THE COURT: No the tape isn't unintelligible. The
18 tape is difficult to understand, but it is not
19 unintelligible, and the transcript does assist in hearing the
20 tape and understanding the tape.

21 MR. OSGOOD: I'm concerned about it, and I want to
22 object to it.

23 THE COURT: Well, you'll have the opportunity.

24 MR. O'CONNOR: We'll make our other record later
25 that's related to the redaction and all of that.

1 THE COURT: That's what I wanted to know. For
2 instance in your transcript, there are some blanks.
3 What's -- and I can't tell from hearing the tape what's in
4 there where there's a blank.

5 MR. BECKER: For the most part names.

6 THE COURT: Just the word name?

7 MR. BECKER: Names of codefendants.

8 THE COURT: So they're still in there?

9 MR. BECKER: You asked me what was in those blanks.

10 THE COURT: Well, what occupies the tape now?
11 They're just cut out?

12 MR. BECKER: They're just cut out.

13 THE COURT: So just go with me to Page 4, the top
14 third of page four. "We went to bed. I pacified him. He
15 passed out. Blank come up." What do you hear on the tape?

16 MR. BECKER: You hear "come up."

17 THE COURT: That's generally true throughout where
18 there are blanks; is that right?

19 MR. BECKER: It just skips with no appreciable
20 delay.

21 THE COURT: Okay. okay. Well, you all look it
22 over quickly, if you can. We'll be back in about ten
23 minutes.

24 MR. OSGOOD: One of the problems we've got to
25 immediately address is we've got Miss Edwards and we've got

1 **Frank** and she, that **they've** left in as being in the house
2 when their theory of prosecution is that **Frank** was at the
3 scene. If **Frank** is at the house and the tape is to be
4 believed and Mr. Becker is sponsoring it, then that only
5 leaves Mr. Bryan Sheppard and Mr. Brown and **Frank** Sheppard -
6 I'm sorry, Skip Sheppard as the only three remaining
7 individuals in the case. These blanks I think inescapably
8 point to these three defendants, Your Honor.

9 I just don't see how he can play this tape in its
10 total context and not have the jury sit there and say blanks
11 are these three defendants.

12 MR. BECKER: With all due respect, this tape and
13 the redacted transcripts have been available for at least six
14 months. And I fail to understand why these objections were
15 not raised. There were motions for severance. From Miss
16 Hunt on behalf of Skip Sheppard I think has filed two
17 separate motions for severance on the basis of this, and
18 those have been ruled upon. And Mr. Peters filed something
19 at about 20 after 9:00 this morning.

20 But other than that, no one has ever addressed -
21 and the Court has ruled on the earlier motions by Miss Hunt.
22 But other than that, based on the pretrial rulings, I made an
23 opening statement, I've structured the evidence, **they've**
24 attacked the credibility of government witnesses, and I knew
25 full well the things that those government witnesses were

1965

1 testifying to were repeated on tape by Darlene Edwards. So
2 that when we spend a full morning with Bridget Dornhoffer's
3 cross-examination, that may be all well and good, but
4 everything Dornhoffer says is on the tape with Darlene
5 Edwards saying it.

6 So there was a method to this whole presentation of
7 evidence that included the tape based upon the pretrial
8 rulings.

9 MR. OSGOOD: In all due deference to what Mr.
10 Becker has just said, if you will search your memory, Mr.
11 Becker, I think you will recall, I was the only defendant
12 that did not file a motion for severance. And at the time in
13 l front of the magistrate on more than one occasion, I
14 l expressed grave concern about the Bruton problem and said
15 that I was going to object to the transcript when it came in
16 and object to the Bruton or the ability to or attempt to
17 redact this stuff that I didn't think could be redacted.
18 That's been my position all along, and you know that.

19 MR. O'CONNOR: Why don't we take a break, Judge,
20 and we'll come back.

21 THE COURT: ALL right. About ten minutes.

22 (A recess was taken from 3:13 p.m. to 3:55 p.m.)

23 THE COURT: Anything further on this statement now
24 that -

25 MR. PETERS: Yes, Judge, and there are a couple

1966

1 things. And at the outset, we may want to consider sending
2 the jury home. One of the things that -

3 We're talking about two statements by Darlene
4 Edwards. One, February 1st, 1995, you've heard the taped
5 conversation. We filed a motion today regarding the
6 statement of 2/17/95 which, I believe, if the Court listens
7 to the videotape, and the videotape is completely
8 understandable, easy to understand, we would need to make an
9 offer of proof of the videotape under the doctrine of
10 completeness.

11 In that February 17th, ,95, statement, it begins
12 with Darlene Edwards saying she would -- first of all, the
13 entire statement says she knows nothing about the case,
14 nothing about the firefighters case. She says she would take
15 a polygraph exam. She says that she was not at the QuikTrip,
16 that she has no involvement in the case, that she doesn't
17 know who is responsible. That then Agent True goes into a
18 dialogue of -- this is on the day she's arrested on the **drug**
19 charges. And he goes into a dialogue of you have a window of
20 opportunity, asking her to contact them. She says, "I wish I
21 knew who did this." She says, "See, I was honest, and it
22 didn't help me, did it? Didn't help me at all being
23 honest." This statement is referred to in the statement
24 taken on the 19th.

25 An added problem in the mix, I received a statement

1 -- because I was doing the research on the doctrine of
 2 completeness, Mr. Becker was kind enough to fax me a copy of
 3 lit. It came as a surprise to the other defendants, other
 4 than Mr. Bunch. It's a statement by his client. So that
 5 means that Bryan Sheppard's attorney and Richard Brown's
 6 attorney had not seen this statement, which is a prior
 7 inconsistent statement exculpatory of their client, so we've
 8 got a number of issues.

9 I think the Court needs to view the tape. I'm told
 10 the transcript is 51 pages long. I'm told that the fidelity
 11 is fine on this tape. This is the tape that's referred to in
 12 the 19th statement where **they** talk about not being able to
 13 run the equipment and some other things going on.

14 Once that issue is resolved, then we move to the
 15 issue raised in the motion which is different for different
 16 groups of defendants. If the Court rules that the 17th and
 17 19th statements are admissible, then those are admissible
 18 against Darlene Edwards as a statement by a party opponent,
 19 an admission by a party opponent.

20 THE COURT: Opponent, you mean party defendant?

21 MR. PETERS: Party defendant. I'm just quoting
 22 from the rule. It talks about a party opponent.

23 THE COURT: Yeah.

24 MR. PETERS: But that same statement for Richard
 25 Brown and Bryan Sheppard is a Brutonized statement that -

1968

1 and that's why we Brutonized it. But that same statement for
2 **Frank** Sheppard and Skip Sheppard is exculpatory. And as I
3 mention in my brief, so the statement -

4 THE COURT: Well, how does it -- I realize that
5 it's, to a certain extent anyway, for **Frank** Sheppard it's
6 exculpatory, but how does it become admissible?

7 MR. PETERS: If **Frank** Sheppard was being tried by
8 himself, I would be able to offer Darlene Edwards, statement
9 as a statement against penal interest. She shows that she's
10 aware of the consequences of it and has that indicia of
11 reliability.

12 THE COURT: Independently of her testimony? If she
13 just sat mute?

14 MR. PETERS: Exactly, Judge. If she was
15 unavailable as a witness, this is an exception to hearsay
16 specifically enumerated in the rule where it's a statement
17 against penal interest with an indicia of reliability,
18 obviously because the government is wanting to admit it,
19 which exculpates my client and Skip Sheppard.

20 THE COURT: I do think that there's enough to this,
21 I'm probably going to want to look at this videotape. So I
22 think probably we ought to send the jury home.

23 MR. BECKER: Let's get that done, and then I'd like
24 to be heard, Judge.

25 (Court and Courtroom Deputy conferred off the

1969

1 record.)

2 THE COURT: I hate to do something like this
3 feeling under the pressure of hurrying so we can get them in
4 here, so she can let them go.

5 MR. BECKER: Is she going to bring the jury in,
6 then?

7 THE COURT: Noshe's just going to send them
8 home.

9 MR. BECKER: First, Judge, what I think is the easy
10 issue, I have not had a chance to go back on our discovery
11 receipts to see whether or not counsel had this statement.
12 Obviously, it was given to Mr. Bunch the day after the
13 indictment. And I don't know whether or not the other
14 counsel received it or had the opportunity to come get it or
15 not.

16 THE COURT: Didn't you share that sort of thing
17 with each other?

18 MR. BUNCH: I didn't know **they** didn't have it, Your
19 Honor, until today, frankly.

20 MR. BECKER: But as more practical information on
21 that, on, I believe it was September 26, 1996, a hearing was
22 had before Magistrate Judge Sarah Hays on the admissibility
23 of Darlene Edwards' statement. At that time, there was
24 reference, direct reference, and I think Mr. Bunch offered it
25 into evidence.

1970

1 MR. OSGOOD: Mr. Becker, I'm not going to complain
2 about not having it, if that saves some time.

3 THE COURT: That will save some time.

4 MR. OSGOOD: I'm not going to complain about not
5 getting it. I have it now, and I think if I don't have it,
6 it's my fault. I should have read the second one and picked
7 up that I didn't have the first one. I want to go to the
8 substantive issues.

9 MR. O'CONNOR: I don't have a complaint either,
10 Judge.

11 MR. BECKER: I want it clear on the record that
12 several of the attorneys present here today were at that
13 hearing when the videotape was offered into evidence.

14 THE COURT: And he's acknowledging that.

15 MR. BECKER: A minute ago they claimed they didn't
16 know about it until today or yesterday.

17 MR. PETERS: We're making the record, Judge. I
18 wasn't at that hearing. I'm not complaining because I got it
19 on Saturday, and I've had a chance to review it. But it
20 wasn't provided in discovery, and all I'm doing is making my
21 record. We aren't casting aspersions. Everybody is
22 trying -

23 MR. OSGOOD: I didn't realize there were two. I
24 didn't compare the transcript to the tape. But be that as it
25 may, I'm not complaining.

1 THE COURT: Do you want to say something, too?

2 MS. HUNT: I never saw it at the hearing. I never
3 Isaw a videotape.

4 MR. O'CONNOR: And I have no complaint on behalf of
5 Bryan Sheppard.

6 THE COURT: Okay. Let's go on, Mr. Becker.

7 MR. BECKER: The rule of completeness as set forth
8 by Mr. Peters is Rule 106, and it talks about when a writing
9 or recorded statement or a part thereof is introduced by a
10 party, an adverse party may require the introduction at that
11 time of any other part or any other writing or recorded
12 statement which ought in fairness to be considered
13 contemporaneously with it.

14 I would submit, Your Honor, that we have two
15 separate statements, one given on the 17th, a Friday evening,
16 of February, 1995; and then two days later, Ms. Edwards comes
17 forward and asks for an opportunity to make a second
18 statement and at that time makes the audio-taped statement
19 that we've previously heard.

20 I don't believe that rule of fairness should be
21 allowed to have her place into evidence an hour-long
22 videotape in which she denies any culpability. Certainly
23 such a denial would not independently be admissible. I mean,
24 exculpatory statements made by defendants generally are not
25 admissible because there's no indicia of reliability. I

1 don't think, for purposes of the rule of completeness, that
2 the analysis should be -- I do think the analysis should be
3 that we have two separate statements.

4 Should Ms. Edwards take the stand, certainly she
5 would have the opportunity to say whatever she said on
6 February 17th in the first statement and tell the Court and
7 the jury that's what she said on her first statement of
8 February 17th and then be subject to cross-examination.

9 The Bruton issue has been the subject matter of
10 previous motions by counsel, responses. And, again, I
11 believe that the redactions made in the statement would allow
12 this to be presented in a joint trial.

13 I called the Court's attention earlier to the Jones
14 case. Again, I refer to that at 101 F.3d 1263, Eighth
15 Circuit, 1996. Which summarizes -

16 THE COURT: Kathy? I just wanted to make sure that
17 you were there and noting this so we would be able to discuss
18 this at a later time. Go ahead.

19 MR. BECKER: Which summarizes basically the state
20 of the law in the Eighth Circuit on the Bruton issue and the
21 use of the pronouns, neutral pronouns such as we or they in a
22 joint trial.

23 I believe the redactions we've made here conform to
24 the requirements of the Supreme Court law in the Eighth
25 Circuit cases and that we should be able to proceed as

1

1 outlined in the pretrial hearings and in my opening statement
2 to the jury.

3 THE COURT: Well, what's your reaction to the rock
4 and a hard place that Mr. Peters described between the right
5 of two of the defendants to have this in and two to have it
6 excluded?

7 MR. BECKER: I don't believe that he's correct in
8 leither the rock or the hard place. I mean, two clearly have
9 la right to have those redactions, the two that were named.
10 But if, if a defendant says, "I did it and my codefendant
11 Ididn t do it," I don~t believe the state of the law is that
12 Ithe second part of that statement comes in.

13 And I'm perfectly happy to come back with some law
14 on that in the morning, but there's, I don't think, any
15 exception there that allows the whole statement to come in.
16 II mean, not in my 16 years, experience as a prosecutor do we
17 ever have an admission by one defendant which then exculpates
18 la codefendant coming in. I mean, I did it, but 1, 2, 3, and
19 14 didn't do it. That second part of the statement would not
20 be admissible evidence. He could get up on the witness stand
21 and say that.

22 THE COURT: That might have been my view of it
23 before Mr. Peters made his comments a few minutes ago but
24 ~ that doesn't seem to be in accord with your view now. How do
25 ~ you get around that?

1 MR. PETERS: Judge, first on the, going in order,
2 very briefly on the doctrine of completeness, Rule 106
3 specifically talks about other statements. So Mr. Becker's
4 analogy of parts of the same statement, that's true. But
5 Rule 106 and the cases and legislative history clearly say
6 that the doctrine of completeness applies between multiple
7 statements.

8 Now, moving to the question the Court just raised,
9 the facts of this case are unique to any litigation that I've
10 been able to find on Westlaw, precisely as the Court has
11 noted. The usual scenario is where you've got jointly
12 charged defendants and a statement is inculpatory towards one
13 and inadmissible, the other one couldn't bring it out. You
14 can't bring out exculpatory hearsay. But in this case, the
15 statement is a statement against penal interest.

16 THE COURT: Of one defendant.

17 MR. PETERS: It's a statement against penal
18 interests of Darlene Edwards that if **Frank** Sheppard was
19 brought to trial by himself, we would be allowed to
20 introduce.

21 Let's say we called Darlene Edwards to the stand
22 and she took the Fifth Amendment. We would be able to
23 introduce her statement that she, Richard, and Bryan did it
24 as a statement against penal interests, indicia of
25 reliability, and it exonerates my client. And the cases

1 supporting that -- and that's explicit in the rule.

2 MR. BECKER: What cases? I mean, we say this as a
3 proposition. But in my experience -

4 THE COURT: I think we'd like to know that.

5 MR. PETERS: What I would do and I can provide the
6 Court with cases. What I'm going under, and I've got the
7 cases at home on computer because I -- and I'm using that
8 Westlaw that I've had access to. The -

9 MR. BECKER: Just give us a cite.

10 MR. PETERS: If you look at your book under
11 804(b)(3), it lists the cases where you're allowed to bring
12 in a statement against penal interest in a case. It lists
13 the three things that are required for that. I didn't
14 actually think we would have an argument as to whether or not
15 a statement against penal interests would be admissible at
16 trial. For it to be admissible and -

17 THE COURT: Well, there isn't any question that a
18 statement against penal interest is admissible against the
19 interest of the person making it. But you're trying to use
20 such a statement to exculpate another defendant in the case.
21 And I'm not sure that it's admissible for that purpose.

22 MR. BECKER: That's my position, Judge.

23 MR. PETERS: And I'll provide the Court with cases
24 by tomorrow morning that the -- I guess the easiest
25 explanation, Judge, is if I was on trial for murder and

1 somebody else confessed to it, I would be allowed to put on
2 their confession in my case to show that I didn't do it.

3 THE COURT: I'm not so sure of that.

4 MR. PETERS: I'll provide the cases on that.

5 MR. BECKER: But that's different -- what Mr.
6 Peters just proposed is different than what he's earlier
7 argued. If in his hypothetical Peters is on trial for murder
8 and somebody else is videotaped saying he didn't do it, "I
9 did it, and he didn't do it," I mean, the "I did it" part, as
10 I said earlier, would come in. It's the somebody else didn't
11 do it part that is exculpatory hearsay.

12 MR. PETERS: Judge, I will have a brief on that
13 exact issue for you in the morning.

14 THE COURT: Okay. We'll appreciate whatever you'd
15 like to present on it because we're going to have to move
16 pretty quickly on it. And I'm not sure that this is an
17 appropriate application of the rule of completeness. I
18 understand that there are two separate meetings with her.

19 MR. BECKER: There's Friday, February 17, 1995, and
20 then Sunday, February 19, 1995.

21 THE COURT: And that after -- we'll see how the
22 first one was concluded, at least what's on the tape. But
23 then sometime within the next 48 hours, as I understand it,
24 she contacted the agents, or one of the agents, and said, "I
25 want to talk to you again"; is that right?

1 MR. PETERS: That's correct, Your Honor.

2 MR. BUNCH: Yes.

3 MR. BECKER: Yes.

4 MR. PETERS: And Judge, in the videotaped
5 Statement you hear the agents telling her, this is the
6 window of opportunity, contact us. And that's referred to in
7 the redacted tape of you contacted us, the reason being she
8 I had been instructed to do that in the 17th interview. And
9 There are some other things that counsel better versed in it
10 I can address the Court on.

11 This interview, again, for the record, this is a
12 videotape that the audio is perfect, the video is perfect.
13 You have no trouble hearing anybody talk. But that's, what
14 the Court is asking is exactly why, under this doctrine of
15 completeness, to understand the 19th interview, you have to
16 hear the 17th interview.

17 THE COURT: See, that's what I'm not so sure of.
18 That's the reason I want to see the 17th interview. Because
19 it seems to me that what I have seen and heard of the 19th
20 interview is complete in itself and not dependent on the 17th
21 to make any sense. So let's just look at it. Who is going
22 to play it?

23 MR. O'CONNOR: I think it's going to take -- Sharon
24 said it would take about ten minutes to get it set up.

25 MR. BECKER: We're going to do it right here and

1 now? No one told us you needed our technical assistance.

2 MR. O'CONNOR: I talked to Sharon about it. She's
3 working on it. She was waiting to see if the judge wanted to
4 look at it.

5 MR. BUNCH: It's also transcribed if the judge just
6 wants to read it. It's also transcribed, Your Honor, if that
7 helps you in any way.

8 THE COURT: Well, I'd like to have a transcript.

9 MR. PETERS: Judge, we've marked as Defendants,
10 Exhibit 22 the actual videotape, and 23, the transcript, and
11 I have no objection -- the only thing, for the record, on 23,
12 you've got my Post-it notes, which you can just disregard.

13 THE COURT: Don't you have a transcript of it
14 available for distribution of the 17th tape?

15 MR. BECKER: Certainly. Yeah. I have it. I sent
16 it to -- counsel has it.

17 MS. HUNT: I never received one.

18 MR. BUNCH: That is my transcript. That's why I
19 mentioned it to Your Honor. It's transcribed. I'm simply
20 saying, whatever is convenient for the Court.

21 THE COURT: Well, what is it we have to do other
22 than just plug the thing into the VCR?

23 MR. BECKER: Judge, I think I would suggest, since
24 it's not in evidence, if counsel wants to submit it to the
25 Court for review, I think that would -

1979

1 MR. O'CONNOR: In camera would be fine with us.

2 MR. BECKER: That would be fine with me. I will
3 get a clean copy of the transcript within the next five
4 minutes, and counsel has a copy of the tape, and you can plug
5 it in your tape machine and watch it.

6 THE COURT: All right.

7 MR. O'CONNOR: The other thing is I guess we would
8 want part of that transcript to go to the court reporter so
9 we could make that also as our offer of proof so we won't
10 have to come and do that.

11 THE COURT: All right.

12 MR. OSGOOD: Your Honor, one of the things that the
13 Court should be aware of was, as I understand it, my client
14 made a statement, which I assume they're going to attempt to
15 put in also through an agent.

16 MR. BECKER: No. I've said in numerous written
17 pleadings that I would not seek to introduce Richard Brown's
18 statement that he saw three of the defendants going up the
19 hill with the can of gas.

20 MR. OSGOOD: At any rate, my client made a
21 statement to the agents, like Mr. Becker just said, that he
22 saw the other defendants going up the hill with a can of
23 gasoline. They confronted Miss Edwards after the first
24 statement that she made with my client's statement and showed
25 it to her.

1
1 That was the reason I asked that last witness about
2 Whether or not Miss Edwards thought other people were
3 snitching on her. The person she thought was snitching on
4 her was, in fact, Mr. Brown, that he was saying things that
5 was putting her in the soup, so to speak.

6 They went back to her, and this was the window of
7 opportunity, and this was the predicate, I believe, for
8 making the second statement in which she said a bunch of
9 things about people basically trying to shift the blame.

10 And so that's another reason I think the first
11 statement and the second statement go together. In the first
12 statement she clearly indicates that she doesn't know
13 anything about it and didn't have anything to do with it, and
14 I believe she through a variety of ways became aware of what
15 happened and that's when over the one or two-day period, that
16 was part of the basis for giving the second statement.

17 So I think we have to look at the first and the
18 second to get a total picture here of what happened. And I
19 assume there will be some testimony at some point from
20 somebody about what she knew, won't there? I don't know.

21 MR. PETERS: And real quick, Judge, because I've
22 been asked to let you know, somebody counted up in the
23 transcribed February 14th statement. We have 58 instances of
24 they or them.

25 THE COURT: I have no problem with they, them, we.

1 I'm only worried about previously -- maybe I would be worried
2 about previously identified generic pronouns, but they
3 aren't. And I think that one or two you missed one or two
4 instances of taking out identification of Frank, and I've got
5 them marked in here. And I'll go over this this evening
6 before we talk about this tomorrow.

7 MR. PETERS: Judge, of course, we want the mention
8 of Frank in there because Frank's at home asleep while all of
9 this is going on.

10 THE COURT: That's what the mention is.

11 MR. O'CONNOR: And, of course, on behalf of Bryan
12 Sheppard, I don't want it in there because it directs it away
13 from Bryan Sheppard -- I mean, away from Frank and at my
14 client.

15 MR. OSGOOD: We shouldn't forget, just two
16 witnesses ago or one witness ago we had, I guess it was one
17 witness ago. It's been a long day. Dornhoffer stating that
18 it was a house guest, referring to the house guest that was
19 at her house that night.

20 MR. BECKER: That's good for the government. That
21 throws it out even wider, broader cast of characters. It
22 doesn't necessarily indisputably refer to the defendants,
23 which is what these line of cases object to. So if we have
24 house guest -

25 MR. O'CONNOR: If Mr. Becker will promise to argue

1

1 that, we withdraw our objection.

2 MR. OSGOOD: I think it should be house guest,
3 quite frankly, in this tape, or friend or whatever she wants
4 to call it.

5 MR. O'CONNOR: One other matter, Your Honor,
6 unrelated Dornhoffer matter, about doing our offer of proof
7 on the, that we were going to do earlier. I'm assuming she's
8 still here. Did you want to do that, or did you want to -

9 THE COURT: I guess we probably better do it while
10 she is here so we don't have to have her brought in again.
11 okay. Would the marshal bring Miss Dornhoffer down, would
12 you, please?

13 MR. BECKER: Judge, could we do that, then, in
14 camera?

15 THE COURT: All right. Marshal, we'll do it in
16 this conference room right here. All right.

17 Is there anything else now that we need to do in
18 here before we do that and adjourn for the evening?

19 MR. BECKER: Nothing from the government, Judge. I
20 will make copies of this forthwith.

21 MR. O'CONNOR: Judge, Mr. Osgood and myself are
22 going to go back. Everyone else is going to take off. If
23 that's okay with you.

24 THE COURT: okay. We'll be in chambers.

25 (The following proceedings were had in chambers in

1
2 the presence of Witness Bridget Dornhoffer, Mr. O'Connor, Mr.
3 l Osgood, Mr. Becker, and Mr. Miller, but none of the
4 Idefendants present.)

5 THE COURT: You are still under oath. You
6 understand, you were sworn in the courtroom. You understand
7 I that?

8 WITNESS DORNHOFFER: Yes, sir.

9 MR. BECKER: Could I explain to the jury what's
10 going on? I mean, to the witness?

11 THE COURT: To the witness? The jury is not here.

12 MR. BECKER: There were a number of questions that
13 IMr O'Connor wanted to ask earlier and the Court upheld an
14 objection to it. But in order for his appellate record to be
15 complete, he wants to go through those questions now. So
16 it's just some more cross-examination that I thought would be
17 abetter done in camera rather than in public.

18 WITNESS DORNHOFFER: Okay.

19 1

- _

20 BRIDGET DORNHOFFER,

21 having been previously sworn, testified further as follows:

22 1

- - -

23 VOIR DIRE EXAMINATION

24 By Mr. O'Connor:

25 Q. Miss Dornhoffer, I just have a few questions for you.

26 ~ Back in '87, were you in Western Missouri Mental Health for

1 two months where you went in there voluntarily on your own?

2 A. I went in there under a court order.

3 Q. okay. And what were you suffering from at that time?

4 A. Stress and depression.

5 Q. Okay. And were you on medication?

6 A. While I was there, yes. When I was released, no.

7 Q. All right. And were you there for a two-month period?

8 A. It was right around eight weeks, yes, I couldn't tell
9 you definitely.

10 Q. And did you receive any treatment as a result of that
11 outside of Western Missouri with a Dr. Kaft, K-A-F-T, at
12 Tri-County, or was that a separate deal?

13 A. That was the same incident.

14 Q. Did you see him for approximately six months?

15 A. I don't think I saw him that long.

16 Q. Did they do a diagnosis on you there or tell you what
17 you were suffering from, if anything?

18 A. They did a report to the Court.

19 Q. And do you remember what their diagnosis of you was?

20 A. To be honest with you, Mr. O'Connor, no.

21 Q. All right. On July the 20th, 1987, were you found to be
22 suffering from a mental disease or defect where you were not
23 competent to stand trial?

24 A. He thought that due to the stress and tension that I was
25 under, I was not able to enter a plea voluntarily. That is

1 why they ordered an evaluation.

2 Q. You were unable at that point to assist in your own
3 defense?

4 A. He said I couldn't enter the plea. I already knew that
5 I was going to enter a plea. It was for going to trial.

6 Q. As I understand it, 10/7 of '87, which would have been
7 about three months later, you had a second exam, and then he
8 found or someone found that you were fit to proceed?

9 A. Findings were that I was fit to proceed, yes.

10 Q. And then I think out of -- it looks like to me, but out
11 of an abundance of caution, they had a third exam and you
12 were found fit to proceed at that time, as well, on 1/20 of
13 '88, I believe?

14 A. Right. The Court did one, and then my own attorney did
15 one.

16 Q. You had heard the term in court, selective amnesia, and
17 we've talked about that. Was that ever a diagnosis given to
18 you by any health care professional or -

19 A. That was an opinion, but they never had a basis for it.

20 Q. And do you remember whose opinion that was?

21 A. It was not the psychiatrist but the psychologist.

22 Q. Would that have been Dr. Mary Darnell Hutchison at
23 Institute for Human Development?

24 A. Mary Darnell Hutchison was a completely different issue.

25 Q. Okay. So -

1986

1 A. Mary Darnell Hutchison, I went to her voluntarily on my
2 own to help me and my kids before my incarceration period.

3 Q. But someone diagnosed you as having -

4 A. That was done at Western Missouri Mental Health.

5 Q. And please let me finish my question. You're telling me
6 that someone diagnosed you as having selective amnesia?

7 A. A psychologist, but not the psychiatrist.

8 Q. And what was, what were you told selective amnesia was?

9 A. I never asked. All I knew is it wasn't in the final
10 prognosis. Tom said the judge would never let me enter a
11 plea because then I would not know what I was entering a plea
12 to.

13 Q. Who would have found that you were suffering from
14 selective amnesia?

15 A. It was a psychologist there at Western Missouri Mental
16 Health.

17 Q. Would this have been about the time that you were going
18 through the mental evaluations?

19 A. That was during the time of the evaluation.

20 Q. That would have been in late '87, early '88?

21 A. Correct. It was while, during that two-month period I
22 was there.

23 Q. Now, from December the 2nd, 1987, to September the 22nd,
24 1988, were you also receiving outpatient treatment at Western
25 Missouri Mental Health?

1 A. No it was at Tri-County.

2 IQ. All right. And that's where the Tri-County was during
3 that period of time?

4 ~ A. Correct.

5 IQ. Now, who was treating you at Tri-County?

6 A. I don't even remember the doctor's name. Actually, it
7 wasn't a one-on-one treatment. It was like a group deal for,
8 la group stress session. It wasn't really a one-on-one type
9 deal. It was, you'd go there, you would have a group
10 meeting, and then you would leave.

11 IQ. Were you ever told that you suffered from what's called
12 major anxiety disorder?

13 IA. No.

14 Q. And was any definition ever given to you of what they
15 believed you had or didn't have?

16 A. Basically I left it in my attorney's hands to take care
17 of, and he told me there was no problems, that we could go
18 on, so I just took it at that.

19 Q. But when you were in getting these mental health
20 evaluations, didn't you want to know what, if there was
21 anything -

22 MR. BECKER: Objection. This is -- I mean.

23 THE COURT: That's kind of argumentative. I don't
24 think you need to go into that.

25 ~ Q. (By Mr. O'Connor:) Were you ever under the care of Mary

1 Darnell Hutchison?

2 A. Yes.

3 Q. With the Institute of Human Development?

4 A. Yes, I was.

5 Q. And did she perform tests on you?

6 A. No. She really didn't do that many tests. It was
7 basically a family type deal. It was me and my children.

8 Q. The question is did they perform some tests on you?

9 A. Yes, she did.

10 Q. Did she also meet with you in a clinical setting?

11 A. By clinical setting, what do you mean?

12 Q. Talk to you about your problems or what you were doing
13 at the time and why you were there to see her.

14 A. She was talking to me about coping mechanisms for my
15 kids, yes.

16 Q. Did she ever make an analysis that you were a person
17 that was very intelligent but good at fabricating stories?

18 A. No , she did not.

19 Q. Were you ever aware of an analysis by her -

20 A. No.

21 Q. Were you ever aware of an analysis by her that it was
22 hard to tell whether you were lying or telling the truth
23 after having you in session?

24 A. I'd never heard that.

25 Q. Did she ever say that this selective amnesia was a

1989

1 psychosis similar to -- a psychosis similar to the disease of
2 selective amnesia can be studied by someone and then
3 playacted out? In other words, someone could read up on it
4 and then playact it out in attempting to get out of trouble,
5 by claiming to get out of this trouble?

6 A. That's the first I heard of it.

7 Q. Did you ever hear of her saying that you were a chronic
8 and pathological liar?

9 A. No.

10 MR. O'CONNOR: That completes my inquiry, Judge.

11 THE COURT: All right. Anything from the
12 government?

13 MR. BECKER: Nothing, Judge.

14 THE COURT: Okay. Thank you, ma'am. We appreciate
15 your waiting for us. I think that's all we have for now.

16 MR. O'CONNOR: Thank you, Your Honor. I'm assuming
17 your ruling is the same.

18 THE COURT: Yes.

19 MR. O'CONNOR: Thank you. Just for the record, I
20 would request to ask those questions in front of the jury for
21 purposes of cross-examination to bring out her prior mental
22 history.

23 THE COURT: All right. And it's denied.

24 MR. O'CONNOR: Thank you, sir.

25 (The trial adjourned for the evening at 4:35 p.m.)

1990

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
Plaintiff, ~
vs.) Nos. 96-00085-01/05-CR-W-8
)
)
GEORGE FRANK SHEPPARD,)
EARL D. SHEPPARD,)
DARLENE M. EDWARDS,) Tuesday, P.M.
BRYAN E. SHEPPARD, and)
RICHARD W. BROWN, ~ Februa ry 4, 1997
) Ransas City, Missouri
Defendants.)

TRANSCRIPT ON APPEAL

VOLUME XI

(Pages 1991-2117]

BEFORE THE HONORABLE JOSEPH E. STEVENS, JR..

UN ITED STATES DISTRICT JUDGE

AND A JURY.

Proceedings recorded by electronic stenograph
Transcript produced by computer

ELIZABETH SHI NN , RPR
UN ITED STATES COURT REPORTER
811 GRAND AVENUE, ROOM 702
RANSAS CITY, MO 64106

I					
2~					
3	<u>CARRIE NEIGHBORS</u>			Page	
4 I	Direct Examination			1993	
l	Cross Examination			2002	
Cross	Examination				. . .2014
6	<u>BRIAN ATTERBURY</u>				
ii					1
7 'a	Direct Examination			2021	
t	Cross Examination			2025	l
3 1					
' ,	<u>KEVIN R. SMITH</u>				I
' ,					
~	Direct Examination			2037	
'0	Cross Examination			2044	
	Redirect Examination			2056	:
	<u>CHRISTINE MALL</u>				
'2					
	Direct Examination			2058	
	Cross Examination			2065	
•	Redirect Examination			2073	
1_					
	<u>STEPHEN CAUDILL</u>				
'5					
	Direct Examination			2074	
0	Cross Examination			2078	
:	Cross Examination			2093	
:~	Redirect Examination			2093	
'£	<u>WESLEY ROMANS</u>				
i~	Direct Examination			2094	
	Cross Examination			2101	
:0	Cross Examination			2111	
-					
		<u>E X H I B I T S</u>			
I				Received	
~	Plaintiff's	334		2062	
2~	Defendants'	24		2051	
~				;	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Good morning, everybody.
Call your first witness.
MR. BECKER: Your Honor, the government
would call Carrie Neighbors.

CARRIE NEIGHBORS

having been sworn, testified:

DIRECT EXAMINATION

BY MR. BECKER:
Q Please state your name and spell your last name.
A: Carrie Neighbors, N-e-i-g-h-b-o-r-s.
Q How old are you?
A: Twenty-five.
Q Where do you live?
A: Raytown.
Q What do you do for a living?
A: I am a homemaker.
Q How many children do you have?
A: One.
Q Do you know an individual by the name of Bryan
Sheppard?
A: Yes.
Q How do you know Bryan Sheppard?
A: I went to school with him.
Q What school?

1994

1 A: Center High School.

2 Q Here in Kansas City, Missouri.

3 A: Yes.

4 Q How long ago was that?

5 A: Eleven years ago.

6 Q Do you know an individual by the n a m e of Richard Brown?

7 A: Yes.

8 Q How do you know Richard Brown ?

9 A: Through mutual friends. I think the first time I met
10 him was at Swope Park.

11 Q Do you see Bryan Sheppard or Richard Brown here in
12 court today?

13 A: Yes.

14 Q Could you tell us where Bryan Sheppard is sitting and
15 what he is wearing.

16 A: He has on a gray sweater.

17 Q And now standing.

18 A: Yes.

19 MR . BECKER: Indicating Bryan Sheppard, Your
20 Honor.

21 THE COURT: All right.

22 Q Do you see Richard Brown here in court today?

23 A: Yes.

24 Q Would you tell us where he is sitting and what he is
25 wearing.

1 A: A white shirt with a tie and he's standing.

2 Q Thank you.

3 MR. BECKER: Indicating the defendant Richard
4 Brown, Your Honor.

5 THE COURT: All right.

6 Q Going back to November of 1988, November of 1988, do
7 you remember the explosion that occurred here in Kansas
8 City on 71 highway that killed the six firemen?

9 A: Yes.

10 Q Where were you living then?

11 A: In Terrace Lake.

12 Q Did you hear the explosion?

13 A: No.

14 Q Was that the period of time you were attending Center
15 **High** School?

16 A: No.

17 Q Then, in the next year, in 1989, do you remember
18 hearing Bryan Sheppard and Richard Brown talk about
19 that explosion?

20 A: Yes.

21 Q First of all, where did that occur?

22 A: At Swope Park. Shelter 7.

23 Q Where is Shelter 7 at Swope Park?

24 A: A place where people hang out and party.

25 Q At that time was that where you and your friends would

1996

1 get together and party?

2 A: Yes.

3 Q Do you recall when this conversation with Bryan
Sheppard and Richard Brown would have occurred?

5 A: The end of April or May.

6 Q Of 1989. A: Yes.

7 Q Is there any reason you remember why it was April or
8 May of ,89?

9 A: yes, because I had been shopping with a friend for her
10 prom dress.

11 Q Now, could you tell us what time of day this
12 conversation took place.

13 A: In the evening.

14 Q Were you with anybody?

15 A: Shannon Newcomb . She was my roommate.

16 Q So please tell us then what was said by Richard Brown
17 or Bryan Sheppard about the explosion.

18 A: That **they** had -

19 MR . OS GO OD: Objection. She has identified
20 them both. I would ask she specify which defendant
21 said what.

22 THE COURT: Yes.

23 Q What did you hear being said by Bryan Sheppard or
24 Richard Brown? First of all, could you describe, were
25 you all sitting or standing or what were you doing?

1 A: We were all standing around.

2 Q That would be Brown and Sheppard and yourself and
3 Shannon Newcomb , is that right?

4 A: Yes.

5 Q Could you describe, were you 20 feet apart or just
6 standing in sort of a group talking?

7 A: In a group. We were close together.

8 Q Were there any other people right next to you or in the
9 area?

10 A: There was a lot of people but not close to us.

11 Q What did Bryan Sheppard or Richard Brown say? And
12 please tell us which one is talking.

13 A: I can't remember which one said what, but I know that
14 it was said that -

15 MR . OSGOOD: Objection. No independent
16 recollection of who said what.

17 THE COURT: She is going to have to specify
18 who she is quoting.

19 MR . BECKER: I would like to be heard.

20 (Proceedings out of the jury 's hearing.)

21 MR . BECKER: Her testimony would be that both
22 men were talking; that there were no other people
23 around that could have been saying this. It was either
24 said by Richard Brown or Bryan Sheppard. And, as I
25 filed in my memorandum earlier, this is exactly what I

1998

1 had intended, the situation of admission by silence,
2 that if it is Brown talking -

3 THE COURT: Incriminating the other one it's
okay. You don't have that foundation yet. I am sure
5 you can lay it but you don't have a foundation of this;
6 they had to hear, in other words. What I am saying, I
7 can't tell one had to hear the other.

8 MR . BECKER: I thought I covered that with
9 who was there, where they were standing, were they in a
10 small group conversing. But I will go through some
11 more questions.

12 MR . OSGOOD: She just testified she doesn't
13 remember who said what.

14 THE COURT: That is not necessary in cases he
15 cited to us.

16 MR . OSGOOD: I agree if you can show it was a
17 conversation that one party was making statements, the
18 other party was attentive; that they were accepting
19 those statements as truthful and they were in a
20 conversation and that indicia of reliability is there.
21 Otherwise it is not admissible.

22 THE COURT: That is just what I said. So you
23 have to build a foundation there.

24 (Proceedings in the presence of the jury .)

25 Q Miss Neighbors, could you describe where you all,

1 Sheppard and Brown and Shannon Newcomb and yourself,
2 could you hear what Sheppard and Brown were saying?

3 A: Yes.

4 Q Were Brown and Sheppard as close to each other as you
5 were to them?

6 A: Yes.

7 Q What would that be, arm's-length?

8 A: Probably, yes.

9 Q And Shannon Newcomb, was she also right in the arm's
10 length vicinity?

11 A: Yes.

12 Q And during the conversation about the explosion did you
13 hear both Richard Brown and Bryan Sheppard say things
14 about the explosion?

15 A: Yes.

16 Q Could you tell us please what they said.

17 MR. O'CONNOR: Same objection for the record,
18 Judge.

19 THE COURT: Overruled.

20 A: That **they** went there to steal batteries and **they** set
21 the fire to cover their tracks and **they** saw two
22 security guards and **they** ran.

23 Q Did they say where they ran to?

24 A: To Richard's grandma's house.

25 Q Did Bryan Sheppard and Richard Brown say what they did

2000

- 1 at Richard's grandma's house?
- 2 A: **They** faked **they** were asleep.
- 3 Q When they said they went to steal batteries, did they
- 4 say where they were going to steal batteries? Was it
- 5 from a car lot or where was it from?
- 6 A: It was from where the firemen were killed.
- 7 Q Did they say why they ran when they saw the security
- 8 guards?
- 9 A: No.
- 10 Q A couple of weeks later did you hear Bryan Sheppard and
- 11 Richard Brown again speaking about the explosion that
- 12 killed the firemen?
- 13 A: Yes.
- 14 Q Where was that?
- 15 A: That was down the street from a party that Shannon had
- 16 been at.
- 17 Q That would be your roommate, Shannon Newcomb.
- 18 A: Yes.
- 19 Q Was that in Kansas City, Missouri?
- 20 A: Yes, off of 85th Street in Marlborough.
- 21 Q Where did you see Richard Brown and Bryan Sheppard, was
- 22 that in the evening?
- 23 A: Yes.
- 24 Q Where did you see them that evening?
- 25 A: Down the street.

1

1 Q Approximately 85th Street in Kansas City in
2 Marlborough.

3 A: Yes.

4 Q What happened there?

5 A: They pretty much just repeated what they had said
6 before.

7 Q Who was present during that conversation?

8 A Myself, Shannon Newcomb and Richard Brown.

9 Q Again, were you within a distance from each other where
10 you could hear what Richard and Bryan were saying?

11 A: Yes.

12 Q Was Bryan and Richard close enough to each other so
13 they could hear each other talking?

14 A: Yes.

15 Q Shannon Newcomb, how close was she to this
16 conversation?

17 A: Right by me.

18 Q What was said by Richard Brown and Bryan Sheppard about
19 going to the construction site?

20 A: **They** went to steal batteries. **They** set the fire to
21 cover their tracks.

22 Q Did they mention again about going to Bryan's
23 grandmother's house?

24 A: Yes.

25 Q Did you go to the police with this information?

2002

1 A: No.

2 Q Did you come forward in February of 1995 with this
3 information?

4 A: No.

5 Q How is it we got you to be a witness here today?

6 A: Mark and Amy Studna called the ATE and told them -

7 MR. O'CONNOR: Objection. Any statements
8 made are hearsay what someone else may have told
9 her, may have said.

10 THE COURT: I think that may be
11 objectionable, Mr. Becker. You better address this
12 some other way. I will sustain that objection.

13 Q As a result of someone calling ATF did agents come to
14 see you?

15 A: Yes.

16 MR. BECKER: I have no further questions at
17 this time.

18 CROSS EXAMINATION

19 BY MR. O'CONNOR:

20 Q Is it Miss or Mrs. Neighbors?

21 A: I am not married.

22 Q Miss Neighbors, I am John O'Connor and I represent
23 Bryan Sheppard. I have some questions I would like to
24 ask you. Mr. Becker just asked you about not coming
25 forward. The agents came to see you, as I understand

2003

1 it, on February 13, 1995.

2 A: Yes.

3 Q And when they came to see you, did they bring a tape I
4 recorder and tape record everything they were saying to
5 you and you were saying to them?

6 A: No.

7 Q Did they take a signed statement from you, question and
8 answer?

9 A: No.

10 Q Did they have you swear to an affidavit after you gave
11 your interview?

12 A: No.

13 Q Did they have a court reporter, someone there taking
14 everything down?

15 A: No.

16 Q In the interview they did of you, did they ever bring
17 back that written interview to you, back to your house
18 the next week, the next day, the next month for you to
19 look at to see if it was accurate?

20 A: No.

21 Q When was the first time you were shown the interview
22 they did of you?

23 A: About three weeks ago.

24 Q Did you make any changes to the interview?

25 A: Yes. They had it backwards. They said that the Swope

2004

1 thing happened second, not first.

2 Q And so I can understand it, you say you had a
3 conversation with Richard and Bryan at Swope Park and
4 then at a party.

5 A: Right.

6 Q And in your interview, this interview, it says that the
7 party happened first and Swope happened second, is that
8 a fair statement?

9 A: Yes.

10 Q And you are saying you told them it was the opposite of
11 that.

12 A: Yes.

13 Q The Swope was first and the party was second.

14 A: Yes.

15 Q You told that to these people.

16 A: Yes.

17 Q Now, when you read this interview, is everything they
18 said to you in this interview?

19 A: Not every single word, no.

20 Q Now, when the conversation took place, the first
21 conversation happened at Swope Park, is that true?

22 A: Yes.

I

23 Q Had you been drinking?

24 A: Yes.

25 Q How much had you been drinking?

1 A: Probably four or five beers. ~

2 Q And had you consumed any marijuana that day or that

3 night?

4 A: Probably.

5 Q Shannon Newcomb was your roommate at the time.

6 A: Yes.

7 Q Had she been drinking as well?

8 A: Yes.

9 Q How many beers or drinks do you think she had?

10 A: Probably four or five.

11 Q Was she also using marijuana?

12 A: Probably.

13 Q And you say that Bryan and Richard were there, is that

14 right?

15 A: Yes.

16 Q Had they been drinking?

17 A: Yes.

18 Q And did they appear to be intoxicated, drunk or how

19 would you describe their intoxication level?

20 A: Probably drunk.

21 Q And do you know whether Bryan Sheppard was using or had

22 used any marijuana?

23 A: I don't know.

24 Q So then on February the 13th of 1995 was the first time

25 you were asked about this by law enforcement, is that

2006

1 right?

2 A: I had talked to someone on the phone a couple days
3 before that.

4 Q And you were then asked on February 13, 1995 to
5 remember conversations that happened back in the spring
6 of 1989.

7 A: Yes.

8 Q Six years previous.

9 A: Yes.

10 Q Can you tell this jury that you can remember everything
11 each one of them said about their involvement in this
12 case?

13 MR. BECKER: Objection. Argumentative.

14 THE COURT: Sustained.

15 Q Shannon Newcomb was there present, is that correct?

16 A: Yes.

17 Q Let's go to the second time that you saw these men.
18 Was that at a party?

19 A: It was down the street from a party.

20 Q Tell the jury where the party was, approximately, in
21 the Kansas City area, would the party have been in
22 Marlborough?

23 A: Yes.

24 Q And about where was that party?

25 A: Off of 85th Street and probably Wayne.

2007

- 1 Q And who was having the party, did you know at the time?
- 2 A: I did but I can't remember.
- 3 Q And would the party have been at 4th or 5th and Paseo?
- 4 A: No.
- 5 Q Fourth or Fifth and Euclid?
- 6 A: No.
- 7 Q Now at the party what time was it that you talked with
- 8 Bryan and Richard, approximately, that night?
- 9 A: In the middle of the night.
- 10 Q And when you say "in the middle of the night", can you
- 11 give us some frame of reference?
- 12 A: I don't know. Somewhere between one and three.
- 13 Q In the morning.
- 14 A: yes.
- 15 Q And Shannon was there when this conversation happened.
- 16 A: Yes.
- 17 Q And the conversation happened in the middle of the
- 18 street, is that right?
- 19 A: Yes.
- 20 Q Down from the party.
- 21 A: yes.
- 22 Q The conversation didn't happen in the living room at
- 23 the party.
- 24 A: No.
- 25 Q Did you go inside the party?

2008

1 A: No.

2 Q Did Shannon go inside the party?

3 A: Yes.

4 Q Did you ever see Richard and Bryan come from inside the
5 party or go inside the party when you were around
6 there?

7 A: No.

8 Q Is the only place you saw Richard and Bryan was down
9 the street after the party had kind of ended?

10 A: Yes.

11 Q What had you been drinking that night, the night of the
12 party?

13 A: Beer.

14 Q About how many do you think you had?

15 A: Probably five or six.

16 Q And were you smoking any marijuana that night?

17 A: Probably.

18 Q What about Shannon Newcomb, was she drinking that
19 night?

20 A: Yes.

21 Q Did she smoke any marijuana?

22 A: Probably.

23 Q And you saw Richard and Bryan down the street, you and
24 Shannon, from the party, is that correct?

25 A Yes.

1

1 Q Bryan and Richard, had they been drinking?

2 A: I didn't see them drinking.

3 Q Did they appear to be intoxicated?

4 A: Yes.

5 Q Were they drunk?

6 A: Yes.

7 Q Could you tell whether or not they had used or were
8 taking any marijuana at the time?

9 A: I don't know.

10 Q And Shannon was present in the street and can verify
11 this conversation and where it occurred.

12 MR. BECKER: Objection. Two questions and
13 we will be hearing from the other witnesses.

14 THE COURT: It is a compound question.

15 MR. O'CONNOR: I apologize.

16 Q Shannon was there present in the street when this
17 conversation was had, is that correct?

18 A: Yes.

19 Q As I understand it, in both the conversations, one or
20 the other of these men said they went to steal
21 batteries.

22 A: Yes.

23 Q And one or the other of these men said they set a fire
24 to cover their tracks.

25 A: Yes.

2010

1 Q Now, did they also tell you they were on foot?

2 A: No. I just assumed that.

3 Q They told you they went to Richard's grandmother's
4 house to fake being asleep.

5 A: Yes.

6 Q So in other words, they had an alibi for where they
7 were at the time of the explosion.

8 A: They said they went there afterwards.

9 Q After the explosion. So if someone would ask where
10 they were they were at grandma's house basically.

11 A: Yes.

12 Q Now, was Bryan bragging?

13 A: No.

14 Q Did he say he was on a bicycle that night?

15 A: No.

16 Q Did either of the men, Bryan or Richard, say they went
17 to this site to steal dynamite?

18 A: Yes.

19 Q And did you tell that to the -

20 A: No I am sorry. No. They said they went to steal
21 batteries, not dynamite.

22 Q You didn't hear either of these men ever say they went
23 to steal dynamite, is that true?

24 A: That is true, yes.

25 Q Did they say they set up some kind of diversion and ran

1 away so the security guards couldn't see them?

2 A: No.

3 Q Did Bryan Sheppard say the word "diversion"?

4 A: No.

5 Q How do you know he didn't say that word?

6 A: He probably would have said it a simpler way, on the
7 diversion.

8 Q Is that a word you think he would use?

9 A: Probably not.

10 MR. BECKER: Objection.

11 THE COURT: Oh, she has answered.

12 Q Did they say, either of the men, they threw something
13 in the bed of a pickup truck setting it on fire?

14 A: No.

15 Q And again you and Shannon are with them at both of
16 these locations where these statements are being made.

17 A: Yes.

18 Q Did either of the men, Bryan or Richard, say they threw
19 something through the window of a pickup truck to set
20 it on fire?

21 A: No.

22 Q Can you tell us that night in the middle of the street,
23 can you remember exactly what Bryan Sheppard said about
24 his involvement in this?

25 A: No.

2012

1 Q That night in the middle of the street can you tell us
2 what Richard Brown said exactly?

3 A: No.

4 Q At the shelter house can you tell us exactly what Bryan
5 Sheppard said?

6 A: No.

7 Q At the shelter house can you tell us exactly what
8 Richard Brown said?

9 A: No.

10 Q Is that because your memory and the time frame that has
11 gone by -

12 MR. BECKER: Objection. Argumentative.

13 THE COURT: It is not a question and it is
14 argumentative in case you are fancying reframing it.

15 MR. O'CONNOR: I will go to something else.

16 THE COURT: The objection is sustained.

17 MR. O'CONNOR: Okay.

18 Q Did you and Shannon, when you went home as roommates,
19 talk about what had been said?

20 A: Yes.

21 Q Did Shannon ever tell you that they said dynamite?

22 A: No.

23 Q Did Shannon ever tell you they said they set a fire to
24 the pickup truck?

25 A: No.

1

1 Q Did Shannon ever tell you that they were creating a
2 diversion?

3 A: No.

4 Q And in both these conversations, so I understand it,
5 let's go one at-a-time. At the shelter house Shannon
6 heard the conversation you heard; went to steal
7 batteries, covered our tracks and went to grandma's
8 house.

9 A: Yes.

10 Q That basic theme was repeated at the party.

11 A: Yes.

12 Q Did they say anything about knocking a lantern over?

13 A: No.

14 Q Did they say anything about throwing a stick of
15 dynamite at the fire?

16 A: No.

17 Q Did they say anything about having a wonder bar with
18 them?

19 A: No.

20 Q Did they say anything about going up there for copper
21 or tools or torches or transits?

22 A: No.

23 Q And did you read this interview of you?

24 A: Yes.

25 Q They said that you said the first conversation,

2014

1 wherever it happened, happened in the summer of '89, is
2 that what you told them?

3 A: Yes.

4 Q What is the summer to you?

5 A: Well, I thought about it and the reason I said it was
6 the summer is because I can remember what we had on.
7 We were wearing shorts.

8 MR. O'CONNOR: Thank you very much. I don't
9 have anything further.

10 MR. PETERS: I have no questions.

11 MS. HUNT: No questions.

12 MR. BUNCH: No question.

13 THE COURT: Now, Mr. Osgood.

14 CROSS EXAMINATION

15 BY MR. OSGOOD:

16 Q Miss Neighbors, my name is John Osgood and I represent
17 Richard Brown. We have never met, have we?

18 A: No.

19 Q How old were you when this conversation occurred?

20 A: I don 't know. I can't remember.

21 Q How old are you now?

22 A: I am 25.

23 Q And this occurred back in 1988.

24 A: No.

25 Q Or ,89, I mean.

1

1 A Yes.

2 I Q So you were about 14.

3 A No.

4 THE COURT: More like 17 or 18.

5 I THE WITNESS: Right.

6 I MR. OSGOOD: My math is terrible.

7 Q 17 or 18.

8 A: Yes.

9 Q Was there a lot of talk in Marlborough after this
10 explosion about the explosion?

11 A: I don't know.

12 Q Did you talk to other friends at school about the I
13 blast?

14 A: I didn't live in Marlborough.

15 Q Where did you live?

16 A: I lived in Terrace lake.

17 Q Where is that?

18 A: It's close to Grandview.

19 Q Did you have to drive up 71 on occasion, you or your
20 parents?

21 A: Yes.

22 Q Do you remember the area being blocked off?

23 A: Yes.

24 Q Were you ever in a car with your parents, for example,
25 where you drove by and said this is the site where this

1 occurred and you had to go around it or that kind of
2 thing?

3 A: Probably.

4 Q Do you ever remember discussing the blast with your
5 parents?

6 A: Yes.

7 Q Ever remember what they might have said? Did they read
8 about it in the newspaper?

9 MR. BECKER: Objection.

10 THE COURT: Sustained.

11 Q Did you hear your parents discussing it, for example?

12 MR. BECKER: Objection.

13 Q I am not asking what they said. Did you hear your
14 parents, for example, discuss it in the front seat of
15 the car?

16 THE COURT: You are asking the subject of
17 what they said which goes to prove what they said. I
18 will sustain it.

19 Q Were you familiar with Becky's Male Room?

20 A: Yes.

21 Q Did you ever hang out there?

22 A: I have been there.

23 Q Was there talk about this, for example, when all this
24 was going on?

25 A: I wasn't old enough to go in there then.

2017 'Q

1 Q Now you dated Bryan when you were in the 9th grade, is
2 that right?

3 A: Yes.

4 Q And how old were you then?

5 A: Fourteen. I

6 Q Did you ever carry a gun during that period or have a
7 gun?

8 MR. O'CONNOR: May we approach, Judge?

9 THE COURT: Yes. I

10 (Proceedings out of the hearing of the jury.)

11 MR. O'CONNOR: We have a motion in limine
12 about this.

13 MR. OSGOOD: You do. Okay, I will withdraw
14 the question. She shot Mr. Sheppard when she was 14
15 and has a substantial bias against him. That is the
16 problem but I will withdraw it.

17 (Proceedings in the hearing of the jury.)

18 THE COURT: The objection to the question is
19 sustained.

20 MR. O'CONNOR: And I would ask the jury be
21 instructed to disregard it, Your Honor.

22 THE COURT: The jury is instructed to
23 disregard any reference to a gun and the question.

24 Q Now, do you remember telling the grand jury you didn't
25 remember or did you tell the grand jury when you

2018

1 testified you didn't remember exactly what they said?

2 A: Yes.

3 Q And you testified before the grand jury in July of
4 1995, is that correct?

5 A: Probably.

6 Q And that was five months after you had given the
7 interview to the ATF agent.

8 A: Yes.

9 Q Now what you testified here today basically tracks the
10 interview, doesn't it?

11 A: Yes.

12 Q They showed you that interview before you came in here
13 to testify.

14 THE COURT: Wait a minute. You are
15 testifying now.

16 MR. OSGOOD: I believe she testified to that.

17 THE COURT: Ask her a question.

18 Q Did you review the report of interview by Agent Schram
19 of you on February 13, 1995 before you came in here to
20 testify?

21 A: Not today, no.

22 Q Have you previously in the last week or two or three
23 reviewed it? A: Yes.

24 Q What you testified here today basically tracks that
25 interview, doesn't it?

2019

1 MR. BECKER: Objection. Argumentative.

2 Q If You recall.

3 THE COURT: Sustained.

4 Q But do you remember telling the grand jury you did not
5 remember.

6 THE COURT: Asked and answered, Mr. Osgood.
7 The record should reflect Mr. Becker was on his feet, I
8 assume, to make an objection.

9 MR. BECKER: Yes, Judge.

10 THE COURT: And it being before the question
11 was answered. Go ahead.

12 Q Did you tell the grand jury they weren't talking to you
13 when they were having this conversation?

14 A Yes.

15 Q Did you tell the grand jury they were bragging or, in
16 effect, talking at you.

17 A: I said they were talking at us; not bragging.

18 Q Now, how long did you know Mr. Brown?

19 A: I'm not sure. Obviously the first year I met him was
20 in '89.

21 Q And the two conversations that you say occurred, the
22 first one was at Swope Park.

23 A: Yes.

24 Q And the second one was in the street at the party.

25 A: Down the street from the party.

1 Q And it is your recollection they said the same thing on
2 both occasions, ma'am.

3 A: Pretty much the same thing, yes.

4 Q But you don't remember who said what?

5 A: No.

6 Q Now were they talking at you on that second occasion,
7 also?

8 A: Yes.

9 Q Did you ever know either of them to ever brag or
10 exaggerate in front of you about things you knew were,
11 in fact, not true? A: No.

12 Q And you were not interviewed until February of '95,
13 some seven years or '88, seven years after this
14 occurred, is that correct?

15 A: I think so.

16 THE COURT: No Mr. Osgood. It is your
17 arithmetic again.

18 MR. OSGOOD: It's atrocious.

19 THE COURT: It started in '89 and she was
20 interviewed in '95.

21 MR. OSGOOD: Six years. I plead guilty to
22 having atrocious arithmetic. That's all.

23 THE COURT: Any Redirect?

24 MR. BECKER: No Redirect.

2021

1 BRIAN ATTERBURY,

2 having been sworn, testified:

3 DIRECT EXAMINATION

4 BY MR. MILLER:

5 Q Would you tell the court and the jury your name,
6 please.

7 A: Brian Atterbury.

8 Q How old are you, sir?

9 A: Twenty-nine, sir.

10 Q Sir, could you tell us, do you have any state or
11 federal felony or misdemeanor convictions?

12 A: No. No I don't. I have a misdemeanor, tampering, in
13 '89.

14 Q And what sentence did you get for that?

15 A: Six months in the Clay County Jail.

16 Q I want to go back to November of 1988 and back then
17 where did you live?

18 A: Excelsior Springs.

19 Q In Excelsior Springs. From Excelsior Springs did you
20 know a Bryan Sheppard?

21 A: No I did not.

22 Q Did you ever meet Bryan Sheppard?

23 A: No I did not.

24 Q Was there a time after 1988 when you met Bryan
25 Sheppard?

2022

- 1 A: Yes, there was.
- 2 Q And where was that?
- 3 A: In the Clay Count Jail.
- 4 Q And do you remember where specifically you met him at?
- 5 A: In Day Room A.
- 6 Q Can you describe Day Room A to the jury.
- 7 A: In the Clay County facilities they have A, B. C and D,
8 different sectors for different offenses and I was in A
9 which would be the lightest one, for misdemeanors.
- 10 Q And when was this, what year?
- 11 A: It would have been February of '88, I believe, or '89.
- 12 Q Would have been after the explosion that killed the six
13 fire fighters.
- 14 A: Yes, it would have been.
- 15 Q Now, did Bryan Sheppard and you have conversations
16 about his involvement in the explosion?
- 17 A: Yes, we did.
- 18 Q And where would these conversations take place?
- 19 A: In the day room.
- 20 Q And about how many did you have?
- 21 A: Probably four or five different little conversations
22 about it.
- 23 Q What did Bryan Sheppard tell you about his involvement
24 with the explosion that killed the six fire fighters?
- 25 A: He kind of told me the scenario or what would be the

2023

1 story of what happened. He said **they** were going to
2 take explosives out of a trailer. He told me the
3 scenario how **they** used a pry bar to try to gain access
4 to the trailer and that a security guard came up on
5 them and someone suggested starting a fire as a
6 diversion. That's what **they** did. And the security
7 guard went to the fire instead of coming to where **they**
8 were and **they** left. That was my understanding of his
9 story. That's what he told me.

10 Q Now you had several conversations with him, right?

11 A: Yes.

12 Q Did he ever tell you anything about someone wanting to
13 pay him money?

14 A: About an older, he just described as an older gentleman
15 wanting to said he would pay him \$500 to take the
16 dynamite from the trailer.

17 Q Now, after the fire was set did Bryan Sheppard say
18 where he went?

19 A: Home.

20 Q And do you recall from his conversations what Bryan
21 Sheppard, how he said he got home?

22 A: What I recall he said, it was on a bicycle.

23 Q Did he ever tell you what he was in jail for in Jackson
24 County originally?

25 A: For stealing a bicycle.

2024

1 MR. O'CONNOR: Objection. Relevance.

2 THE COURT: It is a little late, Mr.

3 O'Connor. Overruled.

4 Q When he said he went home, did he tell you how he got
5 into the home?

6 A: Through his bedroom window.

7 Q And after he got in through his bedroom window where
8 did he say he went?

9 A: To his bed.

10 Q Did he say he was in bed when one of the explosions
11 happened?

12 A: Yes, he did.

13 Q Did he say which explosion?

14 A: No he didn't.

15 Q Now, this conversation was in '89. When did you come
16 forward to the authorities with what you knew?

17 A: In '94.

18 Q So then were you given anything by the authorities back
19 in '89 for what you knew?

20 A: No.

21 Q Have you been given anything since?

22 A: No.

23 MR. MILLER: That is all I have of this
24 witness, Your Honor.

25 THE COURT: All right.

2025

1 THE COURT: All right.

2 CROSS EXAMINATION

3 BY MR. O'CONNOR:

4 Q Mr. Atterbury, I am John O'Connor. I represent Bryan
5 Sheppard. I have some questions for you. Did you say
6 on Direct Examination that you had one misdemeanor
7 conviction, is that what you told us?

8 A: I believe so yes.

9 Q When was that?

10 A: It would have been 1988.

11 Q 11-15 of '88, does that sound like a Class A
12 misdemeanor conviction.

13 A: Yes.

14 Q For what?

15 A: Tampering.

16 Q And what sentence did you receive?

17 A: Two years probation.

18 Q You have any other misdemeanor convictions?

19 A: Not that I am aware of, sir.

20 Q How about on 12-15 or '87 in Pamona, California, do you
21 have a forgery conviction from there?

22 A: Never been there, sir.

23 Q What about in Clay County, destruction of government
24 property on 3-19-91?

25 A: Never destroyed any government property, sir.

2026

1 Q Did you ever get charged with like banging your head
2 against a wall in the Clay County Jail and you went
3 over and pled guilty and got six months suspended
4 sentence and six months probation?

5 A: No sir, I did not.

6 Q How about on August 11th of 1995 did you plead guilty
7 to tampering with a witness in the second degree?

8 A: No sir, I did not.

9 Q And receive a 90 day sentence.

10 MR. MILLER: Can we approach? I object.

11 If he said no then it's irrelevant.

12 THE COURT: He has answered, Mr. O'Connor.

13 MR. BECKER: I advise the Court of Rule 609
14 and the provisions relating to prior convictions.

15 THE COURT: The objection is sustained.

16 Q All right, on your '88 conviction, when you were put
17 out on probation, was that probation violated?

18 A: Yes, it was.

19 Q Revoked and you got a year in the Clay County Jail.

20 A: Six months in the Clay County Jail, sir.

21 Q And you were revoked for use of marijuana.

22 A: Yes, sir, I was.

23 Q And for not attending Renaissance West Out Patient **drug**
24 treatment.

25 A: Yes, I was.

1 Q What is your date of birth?

2 A: 7-17-67.

3 Q Is your address 724 Northeast 68th Street, Gladstone,
4 Missouri?

5 A: No sir, it's not.

6 Q Was it back in 1995?

7 A: In '95, I believe so sir.

8 Q If you saw a copy of documents charging you, would that
9 refresh your recollection?

10 THE COURT: Just a minute, Mr. O'Connor. You
11 better come up on that.

12 (Proceedings out of the hearing of the jury.)

13 MR. O'CONNOR: This goes right to the heart
14 of Cross Examination, Judge.

15 THE COURT: I'm sorry. I haven't looked at
16 all the papers. Mr. O'Connor has handed me a document.
17 What is it, a printout of something.

18 MR. O'CONNOR: This is the case record from
19 Court as to the disposition.

20 THE COURT: I can't read all that.

21 MR. O'CONNOR: Here is the obstruction
22 of government property.

23 MR. BECKER: These are all misdemeanor or
24 ordinance violations.

25 THE COURT: The objection is sustained.

2028

1 Let's go on.

2 MR. O'CONNOR: I think you have to understand
3 because there is going to be another objection.

4 On 2-18, I believe is the date -
5 correct me if I am wrong.

6 THE COURT: What year?

7 MR. O'CONNOR: ,95. He called the ATF and he
8 said I have information for you about this case. And
9 they have just put him up and said no promises and he
10 is just here out of the goodness of his heart and he
11 had no intention when he called ATF. Well on 2-15-95
12 he called the residence of the person who he committed
13 the first degree burglary and threatened to kill her if
14 she testified and threatened to pay her off with a \$500
15 bribe.

16 The authorities found out about his
17 phone call on the 15th. Then on the 18th he calls
18 the ATF. And on the 1st of March he is indicted
19 with the burglary and for the tampering with the
20 witness. And it goes to his motive. It goes to
21 his motive to show why he was coming forward. He
22 wasn't coming forward out of the goodness of his
23 heart. And he knew he was going to get in trouble
24 and he was calling ATF to get out of trouble and I
25 think it goes to his interest.

2029

1 MR. MILLER: He was never charged or
2 convicted of any of this.

3 MR. O'CONNOR: Here's what happened, Judge.
4 What happened was he started cooperating and then his
5 case got reduced to tampering in the second degree.
6 I talked with Mr. Hassler who told me, who represented
7 him, that Mr. True, or someone on behalf of the
8 government, had been talking with him and telling him
9 they were going to help him with that case. And I
10 want to ask him about that.

11 THE COURT: It is speculative. I will
12 sustain the objection.

13 MR. PETERS: The cross examination goes to
14 the issue raised by the government on direct
15 examination. If Mr. O'Connor had brought it out on
16 his own, I think we would be in a different
17 position.

18 THE COURT: It isn't the proper method. It
19 violates 609 and I am not going to let that happen.

20 MR. O'CONNOR: They asked do you have any
21 felony or misdemeanors and he says no. I know that's
22 not true. Now, the answer is before the jury and to
23 disallow me -

24 THE COURT: Also the fact of the conviction,
25 he has testified to that.

2030

1 MR. O'CONNOR: He has four convictions.

2 MR. BECKER: Misdemeanors.

3 MR. O'CONNOR: You are the ones that brought
4 out he only had one.

5 MR. BECKER: He had to explain what he was
6 doing in jail listening to Bryan Sheppard.

7 MR. O'CONNOR: But it is misleading and I
8 want to make an offer of proof on this other
9 evidence.

10 THE COURT: When the jury isn't here.

11 MR. O'CONNOR: Okay.

12 (Proceedings in the hearing of the jury.)

13 Q You came forward, as I understand it -- you didn't come
14 forward. You called the agents on February the 18th,
15 1995. Where were you when you called them?

16 A: I never called anyone, sir. You made a statement and
17 then assumed the truth of the statement in your
18 question.

19 Q I apologize. You sent a note out from the jail, is
20 that right?

21 A: That's correct.

22 Q To another witness and it said you wanted to talk to
23 someone about the explosion.

24 A: That's correct, sir.

25 Q Then on February the 18th, 1995 the ATE came up there.

2031

1 A: That's correct, sir.

2 Q And you were in the Clay County Jail.

3 A: Yes, I was.

4 Q Now, you told us that your previous conviction, as I
5 understand it, was in 1988.

6 A: Yes, sir.

7 Q And you got a year sentence after violating probation
8 so that was over with, right?

9 A: Right, sir.

10 Q What were you in the Clay County Jail for?

11 A: Domestic violence.

12 Q Have you ever asked anyone to lie for you to get you
13 out of trouble?

14 A: No sir, I have not.

15 Q Now, let's go back to this, the agents came out, is
16 that right?

17 A: Yes, sir. An agent.

18 Q Agent. Who was the agent, do you remember?

19 A: No I do not remember his name. I remember him. I I
20 don't remember his name.

21 Q Did he bring a tape recorder with him to tape record
22 the conversation?

23 A: I believe so sir.

24 Q So there is a tape of an interview of you.

25 A: I believe so.

2032

1 Q Have you seen this two-page interview that was provided
2 to us?

3 A: No I haven't, sir.

4 Q But you are telling us there is a tape that exists with
5 a conversation you had with an agent in this case.

6 A: I am telling you I believe so. I am not sure. I am
7 not totally positive.

8 Q Did the agent have you raise your hand and swear to an
9 affidavit?

10 A: Yes, he did.

11 MR. O'CONNOR: Can we approach a minute,
12 Judge.

13 (Proceedings out of the hearing of the jury.)

14 MR. O'CONNOR: If there is a sworn
15 affidavit, I don't have one.

16 MR. MILLER: There isn't one. There is grand
17 jury.

18 (Proceedings in the hearing of the jury.)

19 Q The interview they did of you on February the 13th,
20 have you ever seen it?

21 THE COURT: You mean a report of the
22 interview.

23 MR. O'CONNOR: I'm sorry, Judge. Thank you.

24 Q Report of the interview.

25 A: I don't think so sir.

2033

1 Q So no-one has asked you to review a report to see if it
2 is accurate or not.

3 A: Of my interview?

4 Q Yes.

5 A: With the ATE agent?

6 Q Yes.

7 A: No sir, they have not.

8 Q Would the name Lett, if I told you the agent's name was
9 Harold Lett.

10 A: Yes, that's the gentleman.

11 Q And did you tell Agent Lett it was a warm night the
12 night **they** went out to the explosion site?

13 A: Yes, I did, sir.

14 Q Did you tell him that **they** had a thing called a wonder
15 bar.

16 A: Yes, I did, sir.

17 Q You told him. Did you tell him he snuck back into his
18 house through a bedroom window and was in bed at the
19 time to explain his whereabouts.

20 THE COURT: Are you asking him if he was told
21 that?

22 MR. O'CONNOR: Yes.

23 Q Was that told to you by Bryan Sheppard?

24 A: Bryan Sheppard told me he crawled back in through the
25 window of his bedroom and he was in bed when the

2034

1 explosions happened and that's where his family
2 believes he was.

3 Q Did he ever say he was at Richard Brown's or someone
4 Brown's grandmothers house?

5 A: He never mentioned any names to me, sir.

6 Q And was there a Derron Elder that was present for this
7 conversation?

8 A: Yes, there was, sir.

9 Q Did they have you testify before the grand jury?

10 A: Yes, they did, sir.

11 Q Have you had a chance to look at that?

12 A: Yes, I have, sir.

13 Q When was that?

14 A: On Sunday afternoon.

15 Q And just so we can clear up the confusion, if there is
16 any, when I asked you a minute ago if they had you
17 swear to an affidavit, what I mean by that so you
18 understand it, when he came up and interviewed you,
19 after the interview did he have you swear as to what
20 you told him -- shall I start over?

21 A: No you don't need to start over. I am listening to
22 you. Do you want me to answer your question to the
23 best of my ability? My recollection is not after my
24 affidavit but before he made me swear that the
25 interview we were about to have was the truth and

2035

1 nothing but the truth.

2 Q Now, did you have a conversation with Bryan Sheppard in
3 the jail where he told you the reason they brought him
4 from the Jackson County Jail to the Clay County Jail
5 was because people there were lying and making up
6 things about him to get themselves out of jail?

7 A: Yes, he mentioned that. He said that.

8 MR. MILLER: I object to that as hearsay and
9 self-serving.

10 THE COURT: Yes. I don't understand any
11 theory of admissibility for something like that. I
12 will sustain the objection and instruct the jury to
13 disregard it and the witness' answer.

14 MR. O'CONNOR: I want to approach.

15 (Proceedings out of the hearing of the jury.)

16 THE COURT: You can make the record later, at
17 the same time we make the record we have pending.
18 Let's keep moving.

19 (Proceedings in the hearing of the jury.)

20 Q Did you read the newspapers daily on this case?

21 A: Yes, I did.

22 Q You read them daily before you came forward with your
23 information.

24 A: Yes, I did.

25 Q Did Bryan Sheppard directly say to you he had something

2036

1 to do with the explosion?

2 A: Directly?

3 Q Yes. A: No sir.

4 Q He told you he was up there on a bicycle.

5 A: Yes, he referred to it always as "us".

6 Q But at least he was on a bicycle.

7 A: Yes.

8 Q And he had a wonder bar with him.

9 A: He never said he had the wonder bar, sir.

10 Q I thought you said he had a wonder bar, using it to
11 break into the trailer.

12 A: Again there was the "**they**". He never said just like,
13 you asked me if he told me directly, there was no
14 direction of who had what or who did what, sir.

15 MR. O'CONNOR: Other than those other
16 questions I want to ask, Judge, I don't have anything
17 further at this time.

18 THE COURT: All right. Any other Cross? Any
19 Redirect?

20 MR. MILLER: No Redirect.

2037

1 KEVIN R. SMITH.

2 having been sworn, testified:

3 DIRECT EXAMINATION

4 BY MR. BECKER:

5 Q Good afternoon.

6 A: Good afternoon.

7 Q Please state your name and spell your last name.

8 A: Kevin R. Smith, S-m-i-t-h.

9 Q How old are you, Mr. Smith?

10 A: Twenty-five years old.

11 Q What do you do for a living?

12 A: I work as a retreader, build tires.

13 Q How long have you been doing that?

14 A: About four months now.

15 Q Have you ever been convicted of a felony crime?

16 A: Yes, I have.

17 Q What felony crime and when was that?

18 A: Robbery, second degree, back in '94 and burglary, Class
19 C felony.

20 Q What was your sentence on those two cases?

21 A: Five years total.

22 Q And that sentence was to run together.

23 A: Yes.

24 Q When did you get out of jail on those crimes?

25 A: September, '96.

2038

1 Q Prior to getting out of jail did you talk to the ATE
2 people about the fire fighters explosion?

3 A: Yes, I did.

4 Q Did anyone from the federal government or state
5 government help you get out of jail earlier because of
6 your cooperation?

7 A: No.

8 Q Did you ask to get out of jail earlier?

9 A: No.

10 Q Did you get out of jail any earlier than you were
11 scheduled to get out?

12 A: No I didn't.

13 Q Do you know an individual by the name of Bryan
14 Sheppard?

15 A: Yes, I do.

16 Q How do you know him?

17 A: I used to live right down the street from him with a
18 couple friends of mine and I used to party with him
19 there.

20 Q Who are the two friends you lived with at that time?

21 A: Joe Pugh and a guy named Dean.

22 Q That would be Dean O. Ivers?

23 A: I believe so.

24 Q When was that?

25 A: That was quite a few years ago. I would say about '86,

1 somewhere back in there.

2 Q Do you remember the explosion that occurred on 71
3 highway that killed the six firemen?

4 A: Yes, I do.

5 Q Were you living in Marlborough then?

6 A: No I wasn't.

7 Q Where were you living then?

8 A: I was living in the East Wood Hills area of Kansas
9 City.

10 Q Where is that?

11 A: Out by the sports complex.

12 Q Do you remember what you were doing that night when the
13 explosion occurred?

14 A: Yes, we had been out partying all night, playing
15 Canasta.

16 Q Did you hear the explosion?

17 A: Yes.

18 Q What did you do?

19 A: We just jumped up and ran outside to see what was going
20 on.

21 Q Could you see anything from where you were?

22 A: No.

23 Q Now, you said you knew Bryan Sheppard. Do you see him
24 here in court today?

25 A: Yes, I do.

2040

1 Q Could you tell us where he is sitting and what he is
2 wearing?

3 A: He is sitting over there with the sweater. He stood

5 MR. BECKER: Indicating defendant Bryan
6 Sheppard, Your Honor.

7 THE COURT: Yes.

8 Q Does he look different now than when you knew him back
9 in the late fifties?

10 A: Yes, he's a lot heavier-set, a lot shorter hair.

11 Q How much heavier-set?

12 A: Probably 25, 30 pounds more.

13 Q Now, you talked about when you were contacted by ATF.
14 Where were you when you were contacted by the ATF
15 agents in March of '96?

16 A: Ozark Correction Center.

17 Q Where is that?

18 A: Down in Fordland, Missouri.

19 Q You were serving your sentence there.

20 A: Yes, the Parole Board sent me down there.

21 Q Did you call them and ask to talk to ATF?

22 A: No I didn't.

23 Q How is it they showed up on your doorstep?

24 A: I have no idea. They came down to the camp and
25 requested to see me, said my name came up on Unsolved

2041

1 Mysteries.That's what I had been told.

2 Q Had you ever called in as a result of seeing anything
3 on TV?

4 A: No.

5 Q I would like to call your attention to the early part
6 of 1990, actually earlier than that.

7 MR. BECKER: Judge, can I briefly approach?

8 (Proceedings out of the hearing of the jury.)

9 MR. BECKER: I am going to ask him if he
10 remembers when Bryan was arrested on the state
11 charges.

12 MR. O'CONNOR: That's fine. Do you mind
13 saying something in there it was later dismissed?

14 MR. BECKER: Absolutely.

15 MR. O'CONNOR: Okay.

16 (Proceedings in the hearing of the jury.)

17 Q Mr. Smith, do you remember back in 1989 when Bryan
18 Sheppard was charged with this explosion, those charges
19 were later dismissed?

20 A: Yes.

21 Q In the first part or in 1990 do you recall having a
22 conversation with Bryan Sheppard about this explosion?

23 A: Yes.

24 Q When, please? If you remember, when was that?

25 A: Right about the spring of 1990.

2042

1 Q Where did that occur?

2 A: Minor Park.

3 Q Which is in the south side of Kansas City, Missouri.

4 A: Yes.

5 Q Where in Minor Park did this conversation occur?

6 A: We was up in the circle drive, the parking lot.

7 Q Is that a particular area of Minor Park that you went
8 to often?

9 A: Yeah, everybody around there went there and partied.

10 Q What do you mean by "partied"?

11 A: Drink. Just party up there.

12 Q Drink a case of beer or a six-pack of beer.

13 A: Whatever we ended up drinking that night.

14 Q Whatever was there that night.

15 A: Yes.

16 Q Did you have a conversation with Bryan Sheppard about
17 the explosion that killed the firemen?

18 A: Yes.

19 Q How did that come up?

20 A: I asked him what was going on. I knew he had been
21 arrested for it and everything and that he got off with
22 it. And I asked him what was going on with it.

23 Q What did he say to you?

24 A: He more or less was bragging about getting off with
25 doing it.

2043

1 Q Do you remember generally what he said about why he got
2 off?

3 A: Because they couldn't prove -- they didn't have enough
4 evidence on him to prove it.

5 Q Did he tell you then what it is that he said he did
6 that night of the explosion?

7 A: Not exactly what he done. He said he set a fire as a
8 diversion to go steal some explosives.

9 Q Did he say anything about a trailer?

10 A: No I don't recall.

11 Q Did you ask him how he got down to the site?

12 A: No.

13 Q Did you ask him how he left the site?

14 A: No I didn't.

15 Q Why is it that somebody would tell you about being
16 involved in that explosion?

17 MR. O'CONNOR: Objection. Calls for
18 speculation. How would he know?

19 THE COURT: Right. I think it is probably
20 immaterial. I will sustain the objection.

21 Q Did you ever come forward with this information to the
22 police on your own?

23 A: No I did not.

24 Q Why?

25 A: I didn't want to get involved with it. I was strung

2044

1 out on **drugs** and didn't have much respect for the law
2 at that time and I wasn't going to get involved.

3 MR. BECKER: That's all I have, Judge.

4 CROSS EXAMINATION

5 BY MR. O'CONNOR:

6 Q Mr. Smith, I am John O'Connor. I represent Bryan
7 Sheppard. I want to go through with you a little bit
8 of your criminal history. On 11-30 of '94 were you
9 convicted of burglary, Count One, and stealing, Count
10 Two and got two three year sentences.

11 A: Yes.

12 Q In '94 you were convicted of robbery in the second
13 degree and got a five year sentence.

14 A: Correct.

15 Q And that was concurrent with the burglary and the
16 stealing, is that correct?

17 A: That's correct.

18 Q Giving you three convictions.

19 A: Correct.

20 Q Is that right?

21 A: Yes.

22 Q Do you have any other convictions?

23 A: No I don't.

24 Q Three convictions is what you are telling us.

25 A Yeah.

2045

1 Q Do you remember testifying before the grand jury in
2 this case on November the 5th, 1993?

3 A: Yes.

4 Q Do you remember telling the grand jury, "Question:
5 What is your conviction?" "I got robbery, second,
6 two counts of burglary and two counts of stealing,
7 that equals five."

8 A: They dropped one, two of the counts and just gave me
9 three.

10 Q So you ended up with three convictions total.

11 A: Exactly.

12 Q At that time, as I understand it, the authorities came
13 to talk to you at Fordland when you were doing time on
14 these sentences.

15 A: Exactly, yes.

16 Q On your conviction in 1994 when you got the two three
17 sentences, did you get those sentences or did you
18 receive probation as a result of those sentences the
19 first go-around?

20 A: The first go-around for the first charge of robbery,
21 second degree I got probation.

22 Q Then you violated the probation.

23 A: Yes, I did.

24 Q And by getting a new charge was the robbery charge -

25 A: The burglary.

2046

1 Q And then you kind of worked all three of them into
2 three sentences to serve concurrently.

3 A: Exactly.

4 Q Now, when the agents came to talk with you, I
5 understand they brought a tape recorder and tape
6 recorded the interview.

7 A: Yes, they did.

8 Q And did they tape record the entire time they were
9 there talking to you? Did they have the tape going
10 from the beginning to the end?

11 A: Not from the very beginning.

12 Q Did they talk to you for 30 minutes or so before they
13 got the tape running?

14 A: A few minutes.

15 Q And did Bryan Sheppard ever say to you he went to the
16 construction site?

17 A: Yes.

18 Q Have you gone over this tape-recorded transcript of
19 your statement that you gave to the agents on March the
20 22nd?

21 A: Yes, I did.

22 Q And when did you do that?

23 A: The 8th of this month or last month.

24 Q If you had a copy of that transcript would that help
25 refresh your recollection as to answers you would have

sFql UT aIV aql Aq paMa7A~aquF 6uTaq ~aq~a~a~ noA oa 0 sz
 •~F azFael6~nq pue dn o6 o~ 6uFo6 a~a~ Aaq~ ~ ~Z
 zalF8 EZ
 uoF~onz~suoo aq~ o~ quaM aq AqM Aes p~eddaqs ueA~u pFa 0 ZZ
 sa~ ~ IZ
 uo ade~ aq~ pau~ng Aaq~ axo~aq ~aFI~ea 0Z
 maq~ P1•q peq noA ~eqM uo paseq AIUo seM ~F ase0 61
 aq~ gnoqe suoF~sanb noA 6uFyse a~aM Aaq~ uaqM 08 pu~ 0 81
 '•N ~ Ll
 zaseo aq~ ~noqe peq Aaq~ uoF~e~zo~uF a~os noA 91
 a^F6 Aaq~ PFP uo ~ap~ooa~ adeg aq~ pau~n~ Aaq~ axo~au 0 51
 •~onuo0'O 91
 •~W ~MOU ~q6F~ ~ua~qoead~7 ~0 ~ua~qsa~;a~ speau ~eq~ El
 6uFq~Aue sF ala~q~ yuFq~ 4,uop I :IunoD aH~ Zl
 azaq aouaxa~a~ oF;Foads e sF a~aq~ ~F 'a~ns ~ou 11
 me I 'squabe aq~ o~ ~eq~ 1la~ noA PFP 6uFAes MO~ TF 01
 pa~aMsue aq pue pa~se seM uoF~sanb aq~ sFq~ pa~aMsue 6
 pue pa~se seM aH uoF~oaCqo :uaX3au uw 8
 z~eq~ ~aq~a~a~ noA op L
 'a~Fs uoF~on~~suoo aq~ og ~uaM aq FF noA 10e Aaq~l PFP 9
 ~a~aq~ noA panoFgsanb ~o noA paUF~exa s~uabe aq~ uaqM 0 s
 ~ouuo~,o •~W 'uoF~oalloca~ ~o a~nlFe; b
 Aue paqsFIqe~sa ~,uaAeq no:Luno~ gHL E
 uoF~oaCqo :uaxDau uw Z
 zbuFpIooal ade~ ~eq~ 6uF~np uaAF6 I
 L10Z

2048

1 recorded interview, do you remember this question being
2 asked, "Question: Did he say why **they** went to the
3 construction site -- page 3. I will start over.
4 Question by Dave True. "Did he", meaning Bryan, "say
5 why **they** went to the construction site? "Answer: I
6 don't recall him saying that." Do you remember that
7 being the answer on the tape?

8 A: No I don't.

9 Q Would the tape be the best evidence of what was said?

10 A: Yes.

11 Q Do you remember telling the agents where Bryan said he
12 went to this construction site, where the construction
13 site was located?

14 A: Well, I knew where it was located, the site was.

15 Q Did the agents ask you if you were familiar with the
16 site?

17 A: Yes.

18 Q Did **they** ask you where the site was located?

19 A: Yes.

20 Q What was your answer?

21 A: I told them where it was, off of 87th Street and 71
22 highway.

23 Q Let me ask you this. On this tape did they ask you
24 where it was located and you said, "I believe it's off
25 Gregory and South 71 highway", was that your answer on

2049

1 tape?

2 A: It was, yes.

3 Q I believe on Cross Examination you were asked about
4 whether or not you said something about getting into a
5 trailer or something like that and you said you didn't
6 remember.

7 A: Right.

8 Q You remember telling the agents on the tape that when
9 Bryan was bragging about it, that he said **they** were
10 trying to get in some kind of trailer because **they** were
11 there stealing, trying to get something out of a
12 trailer. Did you tell them that on tape?

13 A: I believe I did.

14 Q Did the agents suggest to you that is what he had done?

15 A: No **they** made no suggestions.

16 Q On Direct you said he never mentioned anything about a
17 trailer. Now in this interview you said trailer. Can
18 you tell us why there is a difference?

19 THE COURT: Wait a minute. My reason for
20 stopping you, Mr. O'Connor, it is the he said - you
21 said situation isn't the same frame of reference and it
22 is not impeachable. Can you frame that in such a way
23 to make an appropriate question.

24 Q Did you mention to the agents when they interviewed you
25 that Bryan had told you that he was trying to get into

1 some kind of a trailer?

2 A: Yes.

3 Q And Mr. Becker asked you on Direct if Mr. Sheppard had
4 mentioned anything about a trailer and you said no do
5 you remember that?

6 A: I don't recall that.

7 Q Did he say who set the fire?

8 A: No he didn't.

9 Q Did Bryan Sheppard mention anything about walkie
10 talkies?

11 A: I heard something about that but I don't believe it's
12 from the same case.

13 Q So you don't know if it was Bryan Sheppard or you heard
14 that somewhere else.

15 A: Right.

16 Q Did the agents that were there mention anything to you
17 about walkie-talkies?

18 A: They brought something up about that.

19 Q Now, as I understand, sometime you were talking with
20 someone up in the prison about what you knew, is that
21 right?

22 A: Yes.

23 Q And I think you talked to it may have been Officer
24 Laughlin up at the Department of Corrections, does that
25 sound like the right name?

2051

1 A: Yes.

2 Q And did you give him some information about this case?

3 A: I told him I knew something about it.

4 Q Was there mention about the reward money?

5 A: He had mentioned it, the officer did, said there was
6 reward money.

7 Q Did you see a reward poster there at the prison?

8 A: Yes.

9 Q And when did you see the reward poster at the prison?

10 A: While I was there.

11 Q Is that before the ATE came up there to talk to you?

12 A: Yes.

13 Q Handing you what has been marked as Defendants' Exhibit
14 24 and ask you if that is a copy of the reward poster
15 that you would have seen before the agents came up
16 there to talk with you?

17 A: Yes.

18 MR. O'CONNOR: I offer into evidence, Your
19 Honor, Defendants' 24.

20 MR. BECKER: No objection, Judge.

21 THE COURT: It is admitted without objection.
22 (DEFENDANTS' EXHIBIT NO. 24 WAS RECEIVED IN EVIDENCE.)

23 Q Now in your earlier interview on tape, before you went
24 on tape, did they ask you questions they were going to
25 ask you when you went on tape?

2052

1 A: Yes.

2 Q Did you ever tell them that Bryan Sheppard was stealing
3 metals and copper, or anything like that, in that
4 interview?

5 A: Yes, I believe so.

6 Q You did tell them that.

7 A: Yes.

8 Q And so they asked you in the interview, once they got
9 on tape, Dave True asking would they steal, page 5 at
10 the bottom.

11 MR. BECKER: Judge, may we approach on
12 this.

13 THE COURT: Sure.

14 (Proceedings out of the hearing of the jury.)

15 MR. BECKER: I want to make sure counsel is
16 aware. He seems to infer the stealing about the copper
17 and all this other stuff that Bryan Sheppard, he knew
18 Bryan Sheppard was a thief basically and it sounds to
19 me as if it is inferring it was the night of the
20 explosion; whereas the whole tenor of this second part
21 of the conversation where he talked about what Bryan
22 Sheppard is stealing, in response, "Do you know the
23 criminal background of Bryan Sheppard?" I will go back
24 into that hard if he wants it.

25 MR. O'CONNOR: Five at the bottom and go to

1 the second page.

2 MR. BECKER: Look at the question by your
3 thumb.

4 THE COURT: "I knew Bryan Sheppard back there
5 as having a criminal background. He was wild and
6 crazy. He stole a lot of things and used a lot of
7 **drugs**. -- he was talking about his habit of stealing,
8 not this particular kind.

9 MR. O'CONNOR: I understand. It's kind of
10 like the President's speech, then the Republicans have
11 their spin and the Democrats have their spin. And my
12 spin, they had people telling them about plans to go
13 up there and steal copper and metal.

14 THE COURT: You are not going the right
15 direction. He isn't talking about what they told him
16 anyway. The question here is would he be involved in
17 stealing metals and copper, not did he tell you that he
18 stole metals and copper. This hasn't been objected to.
19 There has been a deficiency in a lot of the questions,
20 not just by you but other people, too. All of these
21 witnesses are talking about statements and it seems to
22 me you guys are dealing with what they are talking
23 about as fact, established facts and not statements,
24 not evidence of what was said to them, what the
25 established facts were. And that is a big difference

2054

1 and there is a big difference here.

2 MR. O'CONNOR: Your point is well taken.

3 (Proceedings in the hearing of the jury.)

4 Q Back at the time you say Mr. Sheppard made these
5 statements to you, were you a heavy **drug** user at that
6 time?

7 A: Yeah, moderate.

8 Q What kind of **drugs** were you using?

9 A: Pot, crystal cocaine, alcohol.

10 Q And at the time these alleged statements were made to
11 you, were you drinking at that time?

12 A: Yes.

13 Q Were you taking **drugs** at that time?

14 A: Yes.

15 Q What **drugs** were you taking?

16 A: Smoking weed.

17 Q And the conversation that you were asked to remember
18 about that night at Minor Park was some years after it
19 happened, is that true?

20 A: Yes.

21 Q Is your memory real clear about that conversation?

22 A: It's pretty clear.

23 Q When you talked to Bryan Sheppard was he drinking as
24 well?

25 A: Yes.

2055

1 Q How many had he been drinking?

2 A: I'm not sure. I didn't keep track of him.

3 Q Was he taking any **drugs** as well?

4 A: Yes, he was smoking weed then.

5 Q Now, do you know from your conversations with Bryan
6 Sheppard that day at Minor Park where they were trying
7 to break into something or he was trying to break into
8 something at the site?

9 A: That's what he said.

10 Q What did he say he was trying to break into?

11 A: **They** didn't say exactly. **They** were just going to go up
12 there and burglarize it, rob it.

13 Q Do you remember testifying before the grand jury in
14 this case?

15 A: Yes.

16 Q Page 7, line 11.

17 THE COURT: Wait a minute. What is this now?
18 Is this his grand jury testimony?

19 MR. O'CONNOR: Yes, Your Honor.

20 THE COURT: You are asking him if this
21 question was asked -

22 MR. O'CONNOR: And this answer given.

23 "Question: Set a fire to what, do you
24 know what **they** were trying to break into?"

25 "Answer: No **they** said **they** were going

2056

1 to a building, a trailer building."

2 Do you remember giving that answer?

3 A: I may have.

4 Q Who else was there at Minor Park during this party?

5 A: There was a bunch of people out there.

6 Q That was not Swope Park.

7 A: No.

8 Q Had like a shelter house.

9 A: No something similar.

10 Q Had you seen the case previewed on Unsolved Mysteries
11 before **they** came up to talk to you?

12 A: I hadn't seen it.

13 Q Was there anything on America's Most Wanted?

14 A: Not that I had seen.

15 MR. O'CONNOR: That is all the questions I
16 have. Thank you, sir.

17 THE COURT: Any further Cross?
18 Any Redirect?

19 MR. BECKER: Very briefly, Judge.

20 REDIRECT EXAMINATION

21 BY MR. BECKER:

22 Q Mr. Smith, Mr. O'Connor just read one line of grand
23 jury testimony. I would like to ask you if you
24 remember hearing these questions and giving these
25 answers. Same page, 7, line 1. At the top of the

2057

1 page.

2 "Question: That's a good thing. Did
3 Bryan, other than saying **they** didn't have enough
4 evidence, did he say what actually happened?

5 "Answer: Yeah. I asked him what
6 happened on that. He said **they** were going, to go
7 down there and steal something, I don't recall
8 what, and **they** had set a fire and it ended up
9 causing an explosion which **they** didn't mean
10 happen.'

11 "Question: Set a fire, do you know what
12 **they** were trying to break into?"

13 "Answer: No **they** said **they** were going
14 to go into a building, a trailer building."

15 "Question: A trailer?"

16 "Answer: Uh-huh. n

17 Do you remember that being your entire
18 answer to those questions?

19 A: Yes.

20 MR. BECKER: Thank you.

21 MR. O'CONNOR: Nothing further, Judge.

22 THE COURT: You may step down.

having been sworn, testified:

DIRECT EXAMINATION

BY MR. BECKER:

Q Please state your name and spell your last name.

A: Christine Mall, M-a-l-l.

Q How old are you?

A: Twenty-five.

Q Where do you live?

A: Off of -

Q Just generally.

A: Kansas City.

Q What do you do for a living?

A: I am a secretary and skip tracer.

Q Very briefly, what does a skip tracer do?

A: Find people that don't pay their bills.

Q How long have you been doing that?

A: A couple months.

Q Going back to 1992, what were you doing for a living then?

A: I was a bartender.

Q Where were you a bartender?

A: At Amigo's Cantina.

Q Where was Amigo's Cantina located?

A: Wornall, 8241 Wornall.

~ 1

1 Q That's about 82nd and Wornall in Kansas City, Missouri.

2 A: Yes.

3 Q In 1992 did you have -

4 MR. O'CONNOR: Can we approach.

5 (Proceedings out of the hearing of the jury.)

6 MR. O'CONNOR: The report of interview, he is
7 talking about '92, -

8 MR. BECKER: She is correct. Mr. Osgood
9 realized there are reports for his client relating
10 to the incident at Amigo's Cantino that have been
11 recovered since this interview. So she is referring
12 to those police reports.

13 (Proceedings in the hearing of the jury.)

14 Q I think you were a bartender at Amigo's on basically
15 82d and Wornall in 1992, is that right?

16 A: Yes.

17 Q Do you recall having an incident there at the bar with
18 an individual by the name of Richard Brown?

19 A: Yes, I do.

20 Q Was there an argument between you and Mr. Brown and as
21 a result of that did Brown leave the restaurant?

22 A: Yes.

23 Q Do you see Richard Brown here in court today?

24 A: Yes.

2060

1 Q Could you tell us, is he the man standing up over
2 there?

3 A: Yes.

4 Q Did he look like that back in 1992?

5 A: No.

6 Q What was different?

7 A: He had long hair.

8 MR. OSGOOD: '92 isn't relevant.

9 THE COURT: Power of observations.

10 Overruled.

11 Q What was different?

12 A: He had longer hair.

13 Q As long as yours or not quite that long?

14 A: I don't think it was quite as long as mine.

15 Q Is it fair to say that after that incident then you and
16 Richard Brown, that left bad feelings between the two
17 of you?

18 A: Yes, that's fair to say.

19 Q Some weeks after that do you remember an individual by
20 the name of John McGovern?

21 A: Yes.

22 Q Who is that?

23 A: I was dating him at the time.

24 Q Did John McGovern know, introduce you to an individual
25 by the name of Bryan Sheppard?

1 A: Yes, he did.

2 Q How did John McGovern know Bryan Sheppard?

3 A: **They** were friends for a long time.

4 Q Then were you introduced through John McGovern to Bryan
5 Sheppard?

6 A: Yes.

7 Q Do you see Bryan Sheppard here in court today?

8 A: Yes.

9 Q Could you tell us, is that the individual standing?

10 A: Yes.

11 MR. BECKER: Indicating defendant Bryan
12 Sheppard, Your Honor.

13 THE COURT: Yes.

14 Q At that time did he look the same as he does now?

15 A: No.

16 Q What was different?

17 A: He's put on some weight.

18 Q Did you ever have occasion then in 1992, some weeks
19 after this incident with Richard Brown, to visit the
20 house of Bryan Sheppard?

21 A: Yes.

22 Q Tell us how that occurred.

23 A: I was with John McGovern and he wanted to go see his
24 friend Bryan and I was driving so we took my car and
25 went over there.

2062

1 Q Show you what is marked for identification purposes as
2 Government's Exhibit 334 and ask if you recognize that.

3 A: Yes.

4 Q What is it?

5 A: Bryan's house.

6 Q That is a photograph of the house that you visited with
7 John McGovern and saw Bryan Sheppard.

8 A: Yes.

9 MR. BECKER: I would offer this as
10 Government's 334.

11 MR. O'CONNOR: No objection.

12 THE COURT: Admitted without objection.

13 (PLAINTIFF'S EXHIBIT 334 WAS RECEIVED IN EVIDENCE.)

14 Q What time of day was it when you went over there?

15 A: It was during the day. I am not sure exactly what
16 time. It was daylight.

17 Q Who was present in the house when you went over there?

18 A: Bryan was there and there was a few other people there
19 that I didn't know.

20 Q What was going on when you got over there?

21 A: **They** were just drinking a little bit of beer and
22 talking.

23 Q Where did you go when you went in that house?

24 A: I went into the living room and I sat down in a chair.

25 Q Where was Bryan Sheppard at that point?

1 A He was standing up in the living room.

2 Q Where was your friend John McGovern?

3 A He was sitting down in the chair, kind of by me.

4 Q Altogether, how long were you there?

5 A Maybe an hour.

6 Q While you were there was any statements by Bryan

7 Sheppard, did he say anything about the explosion that

8 killed the six firemen?

9 A What I heard, he was talking to some people and I

10 accidentally overheard that there was possession of

11 dynamite.

12 Q What did you hear Bryan Sheppard say?

13 A That **they** were going to blow up a truck to collect

14 insurance money off of it and -

15 Q Did **they** say **they** set a fire? Did Bryan Sheppard say

16 anything about setting a fire?

17 A No not that I heard.

18 Q Why don't you continue and tell us what you heard.

19 A I heard Bryan talking to his friends and he said he had

20 dynamite in his possession and **they** were going to blow

21 up a truck for insurance purposes but **they** tucked up.

22 Q Those were his words.

23 A Those were his words.

24 Q Some time right

near when you heard this or after that,

25 did Richard Brown arrive?

2064

- 1 A: Yes, he did.
- 2 Q What happened then?
- 3 A: I decided it was time to leave.
- 4 Q Why?
- 5 A: Because him and I don't get along very well.
- 6 Q What was it -- was it uncomfortable for you at that
- 7 house?
- 8 A: Very uncomfortable.
- 9 Q Did you tell your boyfriend?
- 10 A: Yes, I told him I wanted to leave; it's time to go.
- 11 And he said okay and we left.
- 12 Q Now, did you ever call the police with this information
- 13 about what you heard at the Sheppard residence?
- 14 A: Yes, I did.
- 15 Q When was that?
- 16 A: It was several weeks after I heard about it. I started
- 17 thinking that's not right; it shouldn't have happened
- 18 and I called.
- 19 Q What happened? Did someone come out and talk to you?
- 20 A: No they did not.
- 21 Q Who did you call?
- 22 A: I called the 474 TIPS people.
- 23 Q Then just last year did you call again?
- 24 A: Yes, I did.
- 25 Q And this time did someone come out and interview you?

1

1 A: Yes.

2 MR. BECKER: I have nothing further. Thank
3 you.

4 CROSS EXAMINATION

5 BY MR. O'CONNOR:

6 Q Miss Mall, I am John O'Connor. I represent Bryan
7 Sheppard. You remember I came out to your residence
8 last week with a court reporter to talk with you.

9 A: Yes.

10 Q I asked you if you would answer some questions for me
11 regarding your interview and you declined, is that
12 true?

13 A: Yes.

14 Q Now, you just told us on Direct Examination that this
15 was 1992, that this conversation happened at a party,
16 is that right?

17 A: Yes.

18 Q Do you remember, when were you interviewed by the ATE,
19 do you remember the date? If I gave you the date,
20 would that help?

21 A: I don't know the exact date.

22 Q Does it sound like July the 10th, 1996, does that sound
23 about right, last summer?

24 A: It could have been. I'm sorry. I don't remember the
25 date.

2066

1 Q Okay, but it was in the summer of '96, do you remember
2 that, the agents came out to ask you what you knew.

3 A: It would have been.

4 THE COURT: Would you say it was within the
5 last year?

6 THE WITNESS: Yes.

7 Q And when they came out to see you is it your testimony
8 you had called them?

9 A: Yes.

10 Q And when they came out did they interview you and ask
11 you questions?

12 A: Yes.

13 Q Did they ever have you raise your hand and swear to
14 what you were telling them?

15 A: No.

16 Q Did they tape record what you told them?

17 A: No not that I am aware of.

18 Q Did they do questions and answers?

19 A: They asked me questions and I gave them answers.

20 Q You were trying to help them.

21 A: Yes.

22 Q You were trying to give them honest information and
23 truthful information.

24 A: To my knowledge, yes.

25 Q And did you tell the agent, specifically, did you tell

2067 ~

1 Agent True who interviewed you that the conversation
2 that you had with Bryan Sheppard was in January of '89?

3 A: Yes, I got my dates mixed up and I cleared that up with
4 him.

5 Q When did you get that cleared up?

6 A: After speaking with John McGovern, I realized my dates
7 were mixed up.

8 Q And when was that?

9 A: Maybe five months ago.

10 Q Did you tell the prosecutors about this?

11 A: Yes, I did.

12 Q When was that?

13 A: I told them when they came to serve me the subpoena.

14 Q How long ago would that have been?

15 A: A couple months ago when they served me.

16 Q You told them the interview was incorrect.

17 A: I told them the date.

18 Q As to the date.

19 A: The date was incorrect.

20 Q And did you tell the agents you were trying to give
21 them as much information as you could, is that correct?

22 A: yes.

23 Q Did you ever use the word dynamite or mention the word
24 dynamite to Dave True when he interviewed you?

25 A: Yes, I did.

2068

1 Q Have you had a chance to look at the two-page interview
2 he did of you?

3 A: Yes.

4 THE COURT: You mean the report.

5 Q The interview of his report.

6 THE COURT: Report of his interview.

7 Q Report of his interview, -- that's better, Judge --did
8 you do that?

9 A: Yes.

10 Q Did you see anywhere in there the word dynamite?

11 A: It could be. I don't remember it word-for-word.

12 Q Do you remember telling Agent True that you remember
13 Bryan Sheppard saying they went to the site for the
14 purpose of blowing up a vehicle?

15 A: Yes.

16 Q Or possibly a truck owned by a friend of theirs named
17 Darlene?

18 A: Yes.

19 Q And that the purpose was to destroy this truck of
20 Darlene's, was to collect insurance money.

21 A: Yes.

22 Q In 1992 then, so you were three years off basically
23 from what you told the ATE, is that correct?

24 A: Yes.

25 Q And in 1992 when you did go to this party at Bryan

2069

1 Sheppard's house, you went with John McGovern.

2 A: Yes.

3 Q And you were dating John McGovern.

4 A: Yes.

5 Q You and John McGovern had met, what is the name of the
6 Mexican place?

7 A: Amigo's Cantina.

8 Q How long did you date John McGovern?

9 A: For just a few months.

10 Q And how you met Bryan Sheppard was through John
11 McGovern.

12 A: Yes.

13 Q You never met Bryan Sheppard before in your life.

14 A: No.

15 Q How many times had you talked with Bryan Sheppard
16 before going to his house that day for this party?

17 A: I don't ever remember even talking to him.

18 Q So at this party where he has never even been around
19 you, he started saying in your presence about being
20 involved in this explosion.

21 A: Yes. I don't think he meant for me to hear it, though.

22 Q John McGovern was there as well.

23 A: Yes, he was.

24 Q Now, you said you talked with John McGovern recently,
25 how was it that happened?

2070

1 A: I was a bartender and he used to come up there.

2 Q Before you went to Bryan Sheppard's house that day had
3 you and John -- let me start over. Give me the name of
4 the Mexican place you guys worked.

5 A: Amigo's Cantina.

6 Q We will give them a good plug. Did you ever talk at
7 Amigo's with John McGovern about the facts of the case
8 where Bryan had been charged and all the allegations
9 that were against him when he was charged in state
10 court and kind of go over and talk about the case in
11 general, just talking about it?

12 A: The only time we actually really talked about it was
13 the day I left Bryan's house. I asked him a couple
14 questions about it because I mean I heard, you know,
15 three-fourths of the conversation about it and I just
16 wanted to verify what I thought was true.

17 Q So you had a conversation with John McGovern as you
18 left the house about what you had heard.

19 A: Yes, I did.

20 Q It was basically just what you relayed to us.

21 A: Yes.

22 Q So I want to make sure you understand my question. I
23 think you do but I want to make sure. Before you ever
24 went to Bryan Sheppard's house, like a month before,
25 two months before, whenever you and John were dating,

2071

1 were there ever conversations at the restaurant where
2 you would sit around and talk about the fact he had a
3 friend named Bryan Sheppard who had been charged with
4 this explosion?

5 A: No.

6 Q Talk about the case.

7 A: No.

8 Q That never happened.

9 A: He never said anything bad about Bryan.

10 Q I am just asking you about the case.

11 A: All he said about Bryan was he had a friend Bryan,
12 that's all I knew.

13 Q Had you read newspaper accounts or did you know
14 anything about, had you heard anything about who may
15 have been involved or who was involved?

16 A: No.

17 Q Had you heard Bryan had been charged in the past?

18 A: No.

19 Q That conversation never would have happened with John
20 McGovern any day before going to Bryan's where this
21 statement was made by Bryan.

22 A: I don't think it would have ever came up.

23 Q Now, when you were at Bryan Sheppard's house, I don't
24 want to put words in your mouth, was everyone drinking
25 or just -

2072

1 A: Not everyone was drinking.

2 Q Was Bryan drinking?

3 A: Yes.

4 Q Did he appear to be intoxicated or appear to have drunk
5 a lot of beer?

6 A: No.

7 Q Were you drinking?

8 A: I had one beer but I didn't drink at all.

9 Q Was anyone there using any kind of **drugs** in your
10 presence?

11 A: No not that I seen.

12 Q Including Bryan.

13 A: No not that I seen.

14 Q And this John McGovern was with you the whole time.

15 A: Yes.

16 Q He went to Bryan's house with you, was in the house
17 with you.

18 A: Yes.

19 Q And he went to Bryan's house with you, was in the house
20 with you and left with you.

21 A: Yes.

22 Q This conversation happened where in the house?

23 A: In the living room.

24 Q Did he say they had taken dynamite or stolen dynamite?

25 A: All he said was that he had possession of dynamite.

1 Q He did say that and you told that to the agents, you
2 believe.

3 A: Yes.

4 Q Not the agent, you told that to Agent True on July the
5 10th, 1996 when he interviewed you.

6 A: Yes.

7 MR. O'CONNOR: That is all the questions I
8 have. Thank you.

9 THE COURT: Any further Cross? Any Redirect?

10 MR. BECKER: Briefly, Judge.

11 REDIRECT EXAMINATION

12 BY MR. BECKER:

13 Q Miss Mall, Mr. O'Connor asked you a number of questions
14 about conversations you had with John McGovern, both
15 before the statement Bryan Sheppard made and after, do
16 you remember that?

17 A: Yeah.

18 Q As you were walking out of that house what advice did
19 McGovern give you about what you heard in that house?

20 A: He told me I shouldn't say anything, act like I don't
21 know nothing.

22 MR. BECKER: Thank you.

23 MR. O'CONNOR: That's all I have.

2074

1 STEPHEN CAUDILL

2 having been sworn, testified:

3 DIRECT EXAMINATION

4 BY MR. MILLER:

5 Q Would you tell the court and jury your name, please.

6 A: Stephen Caudill.

7 Q How do you spell your last name?

8 A: C-a-u-d-i-l-l.

9 Q How old are you, sir?

10 A: Thirty one.

11 Q In November of '88 when the explosion was caused that
12 killed the six firefighters, where were you?

13 A: I was residing in Louisiana.

14 Q And when did you return to Missouri?

15 A: In late February, I believe, or early March.

16 Q While you were down in Louisiana -

17 THE COURT: Of what year?

18 THE WITNESS: '89.

19 Q While you were down in Louisiana did you hear the
20 explosion?

21 A: Yes, on the news.

22 Q When you moved back to Missouri from Louisiana in
23 February of '89, what area did you go live in?

24 A: The Marlborough neighborhood.

25 Q Before you went to Louisiana had you lived in the

2075

1 Marlborough area?

2 A: Briefly, yes.

3 Q Did you know Richard Brown?

4 A: Yes, I did.

5 Q Do you see him in the courtroom today?

6 A: Yes, I do.

7 Q Could you point him out?

8 A: He is right over there with the white shirt.

9 Q Standing up with the tie on.

10 A: yes, sir.

11 Q Do you remember having any conversations with Richard
12 Brown about the explosion that caused the deaths of the
13 six firefighters?

14 A: yes, I do.

15 Q Do you remember when you had these conversations with
16 him?

17 A: It was a month or so after I returned to the area.

18 Q You returned in February of '89.

19 A: Or early March, yes.

20 Q How many conversations do you recall having?

21 A: Two.

22 Q Let's talk about the first one. Do you remember where
23 the first one took place?

24 A: It was outside Pat Danser's house, 83rd and Wayne.

25 Q What did Richard Brown tell you about his involvement

2076

1 in front of 83rd and Wayne at that time?

2 A: He said that him, in the company of others, were down
3 at the site the night it got blew up.

4 Q Did he say why he was down there at the construction
5 site?

6 A: Just to be stealing. Just, in general, stealing.

7 Q Did he say what he was looking to steal?

8 A: No he did not.

9 Q Did Richard Brown tell you what he was going to do with
10 any of the stolen goods if he had gotten any?

11 A: I can't recall.

12 Q You don't recall that.

13 A: I can assume.

14 Q Did you have another conversation with Richard Brown?

15 A: Yes, I did.

16 Q And where was this one?

17 A: In the street outside my house at 8111 Bart.

18 Q If you can give us a time frame, when did this take
19 place, how soon after the first conversation.

20 A: I would say between three weeks and five weeks,
21 somewhere in that range.

22 Q And what did Richard Brown say to you this time about
23 his involvement in the explosion that caused the death
24 of the six firefighters?

25 A: He said that him and some other people had went down

2077

1 there and that he was the last to leave and that
2 basically that he was just the last to leave. And I
3 didn't ask any question. I never asked.

4 Q Now, when did you go to the authorities with what you
5 knew?

6 A: It was September, I believe, '89.

7 Q And which department did you go to?

8 A: The homicide.

9 Q The Kansas City, Missouri Police Department.

10 A: Yes, sir.

11 Q Now have you ever been convicted of any felonies?

12 A: Yes, I have.

13 Q Would you tell the jury what you have been convicted
14 of?

15 A: I have been convicted of assault and burglary and
16 stealing.

17 Q Was the assault in 1984?

18 A: Yes, it was.

19 Q And what was your sentence?

20 A: Three years.

21 Q And were the burglary and stealing in December of 1994?

22 A: Yes, it was.

23 Q And what was your sentence on the burglary and
24 stealing?

25 A: Ten years.

1 Q Did you have four counts of burglary, do you remember
2 how many counts you had?

3 A: I believe it was two counts of burglary and one count
4 of stealing, two burglaries and two stealing is what I
5 believe it was.

6 MR. MILLER: That is all I have of this
7 witness.

8 THE COURT: All right. Mr. Osgood.

9 CROSS EXAMINATION

10 BY MR. OSGOOD:

11 Q Mr. Caudill, my name is John Osgood and I guess you
12 figured out I represent Mr. Brown. I am going to ask
13 you some questions about your testimony. Before I do
14 that I want to establish when you had conversations
15 with the authorities.

16 A: I believe the first was on September the 26th of 1989
17 with a Detective Praise, does that ring a bell to you?

18 A: Yes, sir.

19 Q And then I believe four days later you went back again
20 and talked to him, would that be accurate?

21 A: I don't recall.

22 Q And then on the 30th of September, 1989 actually you
23 gave a videotaped statement, did you not?

24 A: Yes.

25 Q Do you remember that, and that was with Detective

2079

1 Praise.

2 A: T recall doing it, yes.

3 Q And where was that done at, sir?

4 A: At the Kansas City Police Department.

5 Q And about how long did that videotaped statement take?

6 A: I would say an hour and a half.

7 Q Was it preceded by a pre-video interview? In other
8 words, you sat down and informally discussed matters
9 with the detective and then you turned on the machine
10 later.

11 A: I don't recall it like that.

12 Q Did you just walk in, introduce yourself and he turned
13 on the tape or was there some preliminary conversation?

14 A: I believe I just walked in and they started taping.

15 Q And that was about an hour and a half you said.

16 A: I believe so.

17 Q And did he tell you when to come in, that kind of
18 thing?

19 A: I believe he gave me a ride there.

20 Q He picked you up out at your place.

21 A: I believe that is the way it went, yes. It is hard for
22 me to recall. It has been a long time ago.

23 Q Were you still under any kind of supervision at that
24 time from this conviction you told us about?

25 A: No I was not.

2080

1 Q You had been what, released then on parole.

2 A: Yes, I had completed my sentence April 1st of '87 and I
3 was not under any jurisdiction, court or otherwise.

4 Q So you were free of paper.

5 A: Yes.

6 Q Where were you working at that time?

7 A: I was working for a roofing company.

8 Q The first conversation that you had with Mr. Brown, did
9 Mr. Brown mention Chuck Jennings?

10 MR. MILLER: I object. There is no relevance
11 who else he talked to.

12 MR. OSGOOD: It is highly relevant.

13 THE COURT: Come up, please
14 (Proceedings outside the hearing of the jury.)

15 MR. OSGOOD: Obviously I am not going to ask
16 him about Bryan but I am going to ask him about Chuck
17 Jennings and Lonnie Joe Pugh because he later in his
18 statement -

19 THE COURT: "He" being?

20 MR. OSGOOD: This witness, said he had
21 felony convictions and they looked up to him. They
22 told him things to try and impress him and he
23 considered that's what it was. It was trying to
24 impress him because of his reputation as a tough guy
25 in the neighborhood.

2081

1 THE COURT: Are you going to ask if he
2 believed it?

3 MR. OSGOOD: He said he didn't believe

5 THE COURT: I don't care what he said.

6 MR. OSGOOD: He said after he read the
7 report in the paper about Bryan being arrested is
8 when he contacted the police, that he would not
9 contact the police after the first conversations
10 with him because they were kids and he discounted
11 it.

12 THE COURT: Where does that get you? Did you
13 ask him why he didn't contact the police?

14 MR. OSGOOD: I am going to. I haven't
15 gotten that far.

16 THE COURT: Why are you getting into these
17 collaterals?

18 MR. OSGOOD: They aren't collateral. He said
19 Mr. Brown told him it was Chuck Jennings, Lonnie Joe
20 Pugh that were up there and did it.

21 THE COURT: And Bryan Sheppard.

22 MR. OSGOOD: And Bryan Sheppard. But the
23 point, he discounted it, didn't believe it. He said
24 they were young kids trying to impress him as a felon
25 and he had a reputation for people telling him that

2082

1 kind of stuff and he blew it off. And when he read
2 about Bryan being arrested and reported to the police
3 and that will tie into a reward.

4 THE COURT: You have a lot of opinion you
5 didn't get into. The fact he didn't report it to the
6 police, you can demonstrate that.

7 MR. OSGOOD: I want to ask him what names,
8 whether these other two names were mentioned to him.

9 MR. MILLER: I object to this as not
10 relevant. If you get into the names, get into all
11 of them.

12 MR. OSGOOD: It is highly relevant except
13 you are going to object under Bruton, you chose to
14 try them together, sir.

15 MR. MILLER: What they are saying he said,
16 the implication he only said Jennings and this other
17 fellow. And that is all he is going to say and that
18 is not true. That is not the only time he said. He
19 said Bryan Sheppard. What they are going to say, all
20 he said was just he and Lonnie Joe Pugh, two other
21 people not charged. That is what they are trying to
22 back-door in.

23 MR. OSGOOD: I will ask him if there was a
24 third person, someone else.

25 MR. MILLER: Anything this witness told him

2083

1 about Chuck Jennings is not relevant.

2 THE COURT: Yes, what are you getting at?

3 MR. OSGOOD: Your Honor, they don't know
4 who did that and they have different theories about
5 who did it. They have got one witness testifying
6 it was Bryan and then they have other witnesses
7 saying they were all up there. And they have other
8 witnesses saying they don't know. The jury needs
9 to hear these other names.

10 THE COURT: You establish about these other
11 names, what are you going to do?

12 MR. OSGOOD: When Richard talked to you, did
13 he say he was with Lonnie Joe Pugh, Chuck Jennings and
14 another person?

15 MR. MILLER: No.

16 MR. OSGOOD: Or with someone else.

17 THE COURT: He was with other people,
18 including.

19 MR. OSGOOD: That's fine.

20 THE COURT: Including Pugh and Jennings, I
21 think he is entitled to that.

22 MR. MILLER: If he says it that way, what he
23 is getting into is exculpatory hearsay because he is
24 not mentioning Bryan Sheppard's name. It is
25 exculpatory for Bryan Sheppard.

2084

1 MR. OSGOOD: He sponsored the witness.

2 THE COURT: It is but we are trapped by the
3 U. S. Supreme Court. I can't do anything about that.
4 I am not going to violate a clear rule of the Supreme
5 Court just because I think it is foolish.

6 MR. MILLER: What is the relevance of him
7 saying that Bryan said that two other guys are not
8 indicted in this? We are back then to the relevance.

9 THE COURT: Wait a minute. Maybe we are
10 getting to my point in this whole thing. What is this
11 all for?

12 MR. OSGOOD: What it establishes is that he
13 is not credible. It goes to the credibility of the
14 statement he is ascribing to my client. It is not
15 credible, true, real information from my client and he
16 did not treat it as real, credible, true information.
17 It was merely neighborhood talk.

18 THE COURT: You don't have to bring in those
19 other people to establish that. You could establish
20 that by just asking if he reported.

21 MR. OSGOOD: The next question, he had a
22 conversation with Mr. Jennings and Mr. Jennings
23 admitted it to him.

24 MR. MILLER: That is hearsay.

25 THE COURT: That doesn't make any difference.

2085

1 I think you can ask him if he reported this first
2 conversation to anybody else. He probably will say no
3 and you may ask him why.

4 MR. OSGOOD: As a predicate, I want to ask
5 what they said. Did he say Lonnie Joe Pugh and others
6 were there.

7 MR. MILLER: That is back to what we were
8 talking about.

9 THE COURT: You have got that already.

10 MR. MILLER: None of it is relevant and if
11 he gets it in the way he is saying -

12 THE COURT: No these non-party people, it is
13 just rank hearsay.

14 THE COURT: It is exculpatory.

15 MR. OSGOOD: it is what my client told him.
16 They can't put on piecemeal what my client told him
17 because my client is the defendant and his liberty
18 is at stake.

19 THE COURT: Don't make a speech to me, John.

20 MR. OSGOOD: I am sorry, Your Honor. I think
21 it is fair and it is important to my client.

22 THE COURT: It is also important we have a
23 fair trial.

24 MR. OSGOOD: Absolutely.

25 THE COURT: I don't think it is fair to the

1 government to roll in these miscellaneous names,
2 irrelevant names of people that don't figure into this
3 thing.

4 MR. OSGOOD: Except we are back to the old
5 problem like with the tape that **they** are going to play
6 tomorrow, **they** get to refer to my client and the
7 codefendants as "**they**", "**they**", "**they**", "**they**", "**they**".

8 THE COURT: No. Your client is not referred
9 to as -

10 MR. OSGOOD: Not by name but when we are not
11 allowed to bring out these other names, the only thing
12 left are the clients. That's the problem.

13 MR. O'CONNOR: I understand the court is
14 sympathetic with the government's position, they have
15 gone down this road, we can't be punished for the road
16 they have taken to try this case. And I think we
17 should be entitled to try our case the way the law says
18 we can. I agree with the court in some ways it may be
19 unfortunate but that is not our choice or the court's
20 choice.

21 THE COURT: Tell me, how is getting into
22 irrelevant things punishing them?

23 MR. OSGOOD: it is relevant, highly
24 relevant.

25 THE COURT: I am trying to figure out a way

2087

1 you can get this in without opening up a whole
2 Pandora's box. You are on cross examination so you can
3 just simply ask him if Brown told him that Pugh and
4 Jennings were with them.

5 MR. MILLER: But they also said Bryan
6 Sheppard.

7 MR. OSGOOD: I don't care about that. I will
8 do it however the court wants.

9 MR. BECKER: We could ask on redirect did
10 they give you other names.

11 THE COURT: But you can't ask who the other
12 names were. I think that is right. Do you understand
13 what he is saying?

14 MR. O'CONNOR: I didn't hear what he said.

15 THE COURT: On redirect if he asked that
16 question, you have to work that out. If he, on
17 redirect, he can ask did he give you other names.

18 MR. O'CONNOR: With the understanding he is
19 trying to fish out the name Bryan Sheppard.

20 MR. OSGOOD: Okay.

21 (The proceedings were had in the hearing of the
22 jury.)

23 Q My question to you was did Richard Brown tell you that
24 he was up there with Chuck Jennings and Lonnie Joe
25 Pugh?

2088

1 A: Yes, he did.

2 Q Now this information was not immediately reported to
3 the policy by you, was it?

4 A: To the police department, as I recall and like I said,
5 this has been a long time ago. And as I recall coming
6 down it was after me and Richard had had a
7 conversation. I didn't even believe him. I didn't
8 believe him for one second but he told me at one point
9 that Bryan Sheppard was in on it.

10 MR. O'CONNOR: I object.

11 THE COURT: Don't mention other people.

12 MR. O'CONNOR: May we approach the bench.

13 THE COURT: We don't need to approach. I am
14 instructing the jury to disregard that reference to
15 Bryan Sheppard. You are not to mention other people.
16 Just answer his question carefully.

17 MR. O'CONNOR: Just for the record, I move
18 for a mistrial.

19 THE COURT: Denied.

20 Q You had these felony convictions at that time.

21 A: I had one at that time.

22 Q You were an older guy to these guys.

23 A: Yes.

24 Q You were kind of a neighborhood -- and I think these
25 are your words in the transcript -- you were kind of a

1 tough guy in the neighborhood these kids looked up to.

2 A: That's right.

3 Q They told you things to try and impress you.

4 A: That's the only way I can make any sense.

5 MR. MILLER: I object. That calls for
6 speculation why they would tell.

7 THE COURT: It really does. I will sustain
8 the objection and strike the answer.

9 Q Did you later read about Bryan Sheppard being arrested?

10 A: Right.

11 Q Is that when you went to the police about this
12 information about Richard?

13 A: That's when I maintained he wasn't lying. Maybe there
14 was some truth.

15 Q Did he, in fact, tell you any details whatsoever about
16 the fire, how it was set?

17 A: No.

18 Q Did he tell you specifically anything that he allegedly
19 stole or took from the site?

20 A: No he did not.

21 Q Did he tell you how he got up there, whether it was on
22 a bicycle, foot, by train, by bus?

23 A: No he did not.

24 Q Do you know what kind of car he was driving when you
25 came back to town?

1 THE COURT: Who is the "he" you are referring
2 to.

3 MR. OSGOOD: My client, Mr. Brown.

4 A: He had several at that time. I believe it was a black
5 Firebird, I believe, and maybe an old Ford pickup.

6 Q A Ford pickup at one time.

7 A: About that time. I don't know specifically but about
8 that time it was either a Firebird or a pickup.

9 Q How long did you know Mr. Brown?

10 A: Since about '85, I believe, January of '85, somewhere
11 in there.

12 Q And when did you come back from Marlborough?

13 A: From Louisiana?

14 Q Yes. When did you come back to Marlborough?

15 A: Late February, early March of '89.

16 Q Where was it you were working at that time?

17 A: I can't recall. I am a roofer by trade and that is all
18 I have ever done so I was working for a roofing
19 company.

20 Q You were aware, were you not, there was a reward
21 offered for this thing at the time?

22 A: I am aware of it. That was also on TV.

23 Q Particularly after Bryan had been arrested for it back
24 in '89

25 A: Is your question am I aware that one was offered?

2091

1 Q Yes.

2 A: Yes, I was aware.

3 Q And had you made any inquiry as to whether or not you
4 were entitled to a portion of it?

5 A: No.

6 Q You know that at the time you went down and met with
7 Detective Fraise.

8 A: I knew that at the time the firemen got blew up.

9 Q You had a three year sentence, a ten year sentence and
10 they ran concurrent.

11 A: No I did a three year sentence from '84 to '87 and
12 then in '94, I believe, December, '94, I received a
13 three year consecutive for a total of ten.

14 Q What were the status of those charges, at least in
15 terms of incarceration, probation, parole or what-have
16 you in May of ,96 when you testified before the grand
17 jury?

18 A: May of '96?

19 Q Yes, sir.

20 A: Before the grand jury?

21 Q Yes.

22 A: I was on house arrest.

23 Q House arrest.

24 A: Released from **drug** rehab at OCC.

25 Q And did you have any conversation with the government

2092

1 in terms of the status of that situation and testifying
2 in this case; in other words, did they have anything to
3 do with each other?

4 A: Absolutely not.

5 Q So the bottom line is Richard told you he was up there
6 with a couple other people.

7 MR. MILLER: I object. That is argument.

8 MR. OSGOOD: That is a fair statement.

9 MR. MILLER: I object to the form of the
10 question.

11 MR. OSGOOD: I will withdraw it.

12 THE COURT: The question is withdrawn and you
13 are to disregard it.

14 Q Is it a fair statement, sir, he did not tell you
15 anything other than the bald statement he was up there
16 when he was an 18 year old kid?

17 MR. MILLER: I object to the form of the
18 question. That misstates his testimony. He said
19 nothing about being 18 years old and we have two
20 conversations.

21 THE COURT: Sustained.

22 Q What you told us here is what you recall.

23 A: That is how I recall it.

24 Q And it is accurate.

25 Thank you, sir.

2093

1 CROSS EXAMINATION

2 BY MR. PETERS:

3 Q Sir, my name is Pat Peters and I represent **Frank**
4 Sheppard. In the conversations that you have related
5 to the jury, Mr. Brown never told you anyone by the
6 name of **Frank** Sheppard was involved, did he?

7 A: Not as I recall.

8 Q And he never told you anyone by the name of Skip
9 Sheppard was involved, did he?

10 A: Not as I recall.

11 Q Never told you anyone by the name of Darlene Edwards
12 was involved, did he?

13 A: Not as I recall.

14 MR. PETERS: I have no further questions.

15 THE COURT: Any other cross? Any redirect?

16 MR. MILLER: Yes.

17 REDIRECT EXAMINATION

18 BY MR. MILLER:

19 Q When you were asked about Mr. Brown telling you about
20 Chuck Jennings and Lonnie Joe Pugh, he didn't say the
21 names -- did he say Chuck Jennings and Lonnie Joe Pugh
22 and any others?

23 A: Yes, he did.

24 Q And about this black Ford pickup that you mentioned,
25 what color was it?

2094

1 I guess that would be leading.

2 Q What color was the Ford pickup?

3 MR. OSGOOD: We will stipulate it was

4 black.

5 Q What condition was it in?

6 A: Poor.

7 Q And what condition was the muffler in?

8 A: Poor.

9 Q Was it loud?

10 A: At times.

11 MR. PETERS: I object. I think this is

12 beyond the scope of any of the cross examination.

13 THE COURT: He answered. Overruled.

14 MR. MILLER: No further questions.

15 WESLEY ROMANS,

16 having been sworn, testified:

17 DIRECT EXAMINATION

18 BY MR. MILLER:

19 Q Would you tell the court and jury your name, please.

20 A: Wesley Romans.

21 Q Could you spell your last name.

22 A: R-o-m-a-n-s.

23 Q How old are you, sir?

24 A: Thirty.

25 Q I want to go back to November of 1988 and where did you

2095

1 live then?

2 A: Warrensburg, Missouri.

3 Q And do you recall the explosion in November of '88 that
4 caused the death of the six fire fighters?

5 A: Yes.

6 Q How do you recall that explosion?

7 A: Over the news.

8 Q Back in November of 1988 did you know Bryan Sheppard?

9 A: No sir.

10 Q When did you meet Bryan Sheppard?

11 A: December of '89.

12 Q Where did you meet Bryan Sheppard?

13 A: The Clay County Jail.

14 Q Were you and he in the same cell or pod?

15 A: We was in the same cell block.

16 Q How many other people were in the same cell block?

17 A: Altogether I believe 10. Counting everybody, it was
18 10.

19 Q Did you know a fellow by the name of Brian Atterbury?

20 A: No sir.

21 Q Did you ever hear or overhear Bryan Sheppard talking
22 about the explosion that killed the six fire fighters?

23 A: Yes.

24 Q Do you remember when you overheard this?

25 A: From December 2nd until I left which was December 24th.

1

1 Q And about how many conversations did you hear?

2 A: About 10.

3 ~Q Was he talking to you or someone else?

4 ~A: He was talking to somebody else.

5 Q What did you overhear Bryan Sheppard say about his
6 involvement in the explosion that caused the death of
7 the six fire fighters.

8 A That he had drove up there with others and was sitting
9 in a car when it happened.

10 Q Did he say what they went up there for?

11 A **They** went to steal some dynamite and explosives.

12 Q What did he tell you about setting a fire to anything?

13 A **They** set a fire to a trailer.

14 Q Did he tell you why they set the trailer on fire?

15 A To cover their tracks.

16 Q Now, do you have any convictions, felony convictions?

17 A: Yes, sir.

18 Q And what was that felony conviction for?

19 A: Sexual assault in the third degree.

20 Q That is a Class D felony.

21 A: Yes.

22 Q What year were you convicted?

23 A: Eighty-Eight.

24 Q What was your sentence?

25 A: Five years suspended imposition and five years back-up.

2097

1 Q And were you placed in the county jail for a probation
2 violation?

3 A: Yes, sir.

4 Q What did you do for a probation violation?

5 A: Traveled.

6 Q What do you mean by "traveled"?

7 A: Did not report that I was going to travel out of a 30
8 mile radius.

9 Q Are you able to identify Bryan Sheppard today?

10 A: Yes.

11 Q Can you point him out?

12 A: He's sitting right over there.

13 Q What is he wearing?

14 A: He has got a sweater on with a shirt underneath it.

15 Q Also I want to show you -- may We approach.

16 (Proceedings out of the hearing of the jury.)

17 MR. MILLER: We were told about these
18 yesterday morning. This is going to pick Bryan out,
19 number 5.

20 MR. O'CONNOR: I don't think it is proper.
21 There has been no examination about identification.
22 Bryan was in jail at the time.

23 THE COURT: Why are you going into those?

24 MR. MILLER: We need to establish he looks
25 different than he does now and it goes to show

2098

1 his perception of the event. He talked to him enough
2 he could recognize him. Bryan Sheppard is number 5.

3 MR. O'CONNOR: Cross examination as to
4 identification. He has identified him in court. The
5 fact he earlier picked out his picture only now tries
6 to buttress the I.D. If I would cross examine him,
7 they then could show he was able to pick him out but I
8 don't intend to ask any questions.

9 I think they are trying to use this to
10 bootstrap identification which they already have.

11 MR. OSGOOD: They are also trying to show a
12 conditional defendant at the time which casts him in a
13 prejudicial light.

14 THE COURT: Why are you saying it casts him
15 in a prejudicial light?

16 MR. OSGOOD: Unkempt.

17 THE COURT: This picture of Bryan Sheppard
18 isn't unkempt.

19 MR. OSGOOD: Look at Mr. Brown.

20 MR. MILLER: Mr. Brown is not on this. I
21 am not introducing Brown.

22 MR. OSGOOD: Then I will butt out.

23 MR. O'CONNOR: He has made the
24 identification. There is no issue. This mugshot
25 doesn't prove anything.

1 THE COURT: It raises my curiosity why they
2 had mugshots and why this is made up.

3 MR. MILLER: There has been all kinds of
4 testimony he was in the county jail. They are going
5 to take a mugshot for going into the jail. There is
6 no big mystery.

7 MR. O'CONNOR: I don't intend to make
8 identification an issue.

9 MR. MILLER: If he says it is not an issue,
10 then it is definitely not prejudicial. The jury may
11 want to know how five, six years later he could
12 recall how he looked then and he recalls now. He met
13 the man, no doubt about it.

14 MR. O'CONNOR: What is the date on the
15 mugshot?

16 MR. MILLER: We covered that.

17 MR. O'CONNOR: What is the date?

18 THE COURT: 8-23-89 is the date on the back
19 of the picture.

20 MR. O'CONNOR: Is that the date of the
21 picture?

22 THE COURT: I don't know that.

23 MR. O'CONNOR: The other thing, that wasn't
24 what Bryan Sheppard looked like in the Clay County
25 Jail because I represented him. I went up there and

2100

1 he had shorter hair. He didn't have this long hair.

2 THE COURT: I just don't think we ought to
3 get into it. I am going to sustain that objection.

4 MR. BECKER: Obviously, that is the Court's
5 ruling on this witness but there have been other
6 witnesses with problems making identifications and it
7 is because of the drastically changed appearance of the
8 defendants, we are not saying they did it
9 intentionally. Bryan didn't go out and gain a hundred
10 pounds on purpose.

11 THE COURT: He has testified to that and he
12 identified him.

13 MR. O'CONNOR: In closing argument I am not
14 going to say he didn't identify him. He obviously
15 has.

16 MR. MILLER: That is the thing, if you are
17 going to argue he talked to the guy. Let's show the
18 guy he talked to how he looked in '89.

19 MR. O'CONNOR: I don't know that that has
20 any relevance.

21 THE COURT: No.

22 (Proceedings in the hearing of the jury.)

23 Q Did you ever watch the Unsolved Mysteries episode?

24 A: Yes, sir.

25 Q And when you watched that did you recall any names

1 being mentioned in that episode?

2 A: No.

3 Q Were you ever shown a reward poster that talked about
4 the reward?

5 A: Yes, sir. It was advertised on Unsolved Mysteries,
6 \$50,000.

7 Q Did you ever apply for the reward?

8 A: No sir.

9 Q And when did you come forward to the authorities with
10 what you knew?

11 A: Back in August of last year when I seen it on Unsolved
12 Mysteries they were hunting for information.

13 Q And why did you wait so long? Why did you wait until
14 you saw the Unsolved Mysteries episode?

15 A: Because I didn't know I had substantial enough evidence
16 to tell anybody that would prosecute the victim.

17 MR. MILLER: That is all I have, Your Honor.

18 THE COURT: All right, Cross.

19 CROSS EXAMINATION

20 BY MR. O'CONNOR:

21 Q Mr. Romans, I am John O'Connor. I represent Bryan
22 Sheppard. Your prior felony conviction out of Johnson
23 County, I believe you received a five year sentence and
24 five years probation in 1988.

25 A: Yes, sir.

1

1 Q And then you violated probation and had to go serve
2 your sentence.

3 A: Yes, sir.

4 Q And did you tell us the only reason that you got
S violated was because you failed to -

6 A: Travel.

7 Q Wasn't one of the other reasons you got violated
8 because you did not complete the sex offender program
9 they sent you to?

10 A: No they had not sent me to that, sir.

11 Q Was that one of the allegations in your probation
12 violation?

13 MR. MILLER: I object to that.

14 THE COURT: If there was a conviction for
15 that but otherwise I don't think that is relevant. I
16 will allow it.

17 MR. O'CONNOR: We need to approach real
18 quick.

19 (Proceedings out of the hearing of the jury.)

20 MR. O'CONNOR: He said the only reason he
21 was violated was not giving him a travel pass.

22 THE COURT: The only reason.

23 MR. O'CONNOR: Here are the four violations
24 filed against him.

25 THE COURT: No it doesn't say he didn't

2103

1 attend a class. He says he failed to provide
2 verification of attendance.

3 MR. O'CONNOR: If you look further in the
4 record he did not make his appearances. He has made
5 us believe he violated just because he didn't give
6 them a travel pass. Everyone knows, one, that
7 wouldn't happen.

8 THE COURT: These are terrible records, just
9 terrible.

10 MR. O'CONNOR: They brought it up, Judge.

11 THE COURT: They didn't bring up this record.

12 MR. O'CONNOR: They were the ones that asked
13 him how he got violated and he volunteered this one
14 thing. I can probe into whether or not he is being
15 honest about it.

16 THE COURT: Well, there isn't any indication
17 here to me that he was convicted or that he was revoked
18 because of failure to attend a sexual offender class.

19 Now, if there is something in here that
20 shows that -

21 MR. O'CONNOR: Yes, the order revoking
22 probation and imposing sentence.

23 THE COURT: The classes are GED classes and
24 failing to participate in counseling as directed.

25 MR. O'CONNOR: The directive, his first

2104

1 probation, if you go back, the conditions of probation
2 was to attend sexual counseling, sexual offender
3 counseling. I didn't start it, Judge.

4 THE COURT: I will tell you something. I
5 think you guys are losing this jury with all this
6 business, picayune prior stuff. Everybody in this
7 case has priors.

8 MR. O'CONNOR: Again, I don't disagree but
9 at the same time, "I didn't show up. I wasn't where
10 I was supposed to and they revoked me" when, in fact,
11 it's not true.

12 THE COURT: You may use that finding. Then
13 you are going to have to relate all those numbers.

14 MR. O'CONNOR: Here are the special ,
15 conditions of probation, are to get a GED, attend
16 counseling as directed by the Probation Office,
17 address inappropriate sexual behavior, if necessary.

18 THE COURT: All right. We are losing this
19 jury, we really are. There has been too much of this.

20 MR. O'CONNOR: It says to refer to the order
21 of probation. That is why I went back to the order.

22 Page 2. 1

23 MR. MILLER: Show me.

24 THE COURT: He can read that but I want you ''
25 to specify what those conditions are.

2105

1 MR. O'CONNOR: Yes, sir.

2 (Proceedings in the hearing of the jury.)

3 Q Mr. Romans, back to this question on your revocation.
4 As part of your original probation were you ordered to
5 attend counseling as directed by your probation officer
6 to address inappropriate sexual behavior?

7 A: Yes.

8 Q And in the order, violation of your probation, did the
9 Judge enter an order violating you for the reason you
10 had not completed that counseling?

11 A: Not to my knowledge.

12 Q If you were able to see the order of probation, would
13 that help refresh your recollection as to whether or
14 not that happened?

15 THE COURT: The order of revocation you want
16 him to look at.

17 MR. O'CONNOR: Yes.

18 Q Would that refresh your recollection, do you believe?

19 THE COURT: Have you ever seen the revocation
20 order?

21 THE WITNESS: I had all the paperwork. What
22 they said I was violating for on the probation
23 violation which my recollection was, it was not for
24 that because when I got violated I had only lived
25 underneath this P.O. for two and a half months. We

2106

1 were still in the process of a GED. I do have the
2 paperwork where I did show proof I had applied for my
3 GED application out of Jeff City to take it at a
4 community college.

5 Q Were you in court the day Doug Danner testified?

6 A: Yes.

7 Q Do you remember his saying you violated your probation
8 by failing to notify the probation office of changes in
9 employment within 48 hours.

10 A: Yes.

11 Q For failing to provide verification of GED classes as
12 directed, was that one of the reasons he gave for
13 revoking you?

14 A: Yes, but I -

15 Q By failure to participate in counseling as directed,
16 isn't that another reason he revoked you?

17 A: No sir.

18 Q If you saw the order and revocation, would that help
19 refresh your memory, do you believe?

20 A: No sir.

21 THE COURT: That is the reason I asked him
22 the question that I did, counsel. Your question
23 assumes there is a reason. That needs refreshing.

24 MR. O'CONNOR: That's right.

25 THE COURT: He didn't ever say to me he

1 actually ever saw that order.

2 Q So you went five years in prison because you didn't go
3 to GED classes.

4 A: Yes.

5 Q Now, when you talked to the agent in this case, I
6 believe you talked to a Jerry Ludwig with the Kansas
7 City, Missouri Police Department, is that correct?

8 A: Yes.

9 Q He came out and interviewed you.

10 A: Yes, sir.

11 Q And that would have been on August the 11th, 1996.

12 A: Yes, sir.

13 Q And did you try to tell Detective Ludwig everything
14 you knew about the case?

15 A: I told him everything I could recollect.

16 Q Have you had a chance to look at the report, the one
17 page report of interview he did of you?

18 A: Yes.

19 Q Have you reviewed that before testifying?

20 A: Yes, sir.

21 Q Is that report accurate?

22 A: Yes, sir.

23 Q Is everything in there what you told him?

24 A: There is one thing that is not, it is a misprint in it.

25 THE COURT: If you have it, why don't you

2108

1 show it to him and let him look at it.

2 Q Why don't you point it out to me.

3 A: (Witness complies.)

4 Q I believe what you referred to was something in your
5 statement about the Warrensburg Fire Department
6 captain, or something like that.

7 A: Yes, sir.

8 Q In here, as I read it, what prompted your call,
9 according to Ludwig's report, was that your fiancée is
10 the niece of a Warrensburg Fire captain, is that
11 inaccurate?

12 A: That is inaccurate.

13 Q Everything else is accurate.

14 A: Yes, sir.

15 Q And everything that you told him he put in this report.

16 A: Yes, sir.

17 Q Anything that he didn't put in this report you told
18 him?

19 A: No sir.

20 Q You have had a chance to look at this report.

21 A: Yes, sir.

22 Q Is there anywhere in this report that you gave to Jerry
23 Ludwig on August the 11th, 1996 that says that they
24 set a fire to a trailer?

25 A: I said **they** set a fire in the report but it was a

2109

1 trailer he set fire to.

2 Q That's what you said on Direct Examination.

3 A: Yes.

4 Q Did you tell that to Ludwig?

5 A: Yes.

6 Q Did he put it in the report?

7 A: I can't remember, sir.

8 Q Do you want to look at the report to refresh your
9 recollection of that?

10 MR. MILLER: I object at this time. This is
11 improper use of the report by the detective. May we
12 approach on this.

13 MR. O'CONNOR: I don't think we need to
14 approach.

15 THE COURT: He says it reflects what he said.

16 MR. O'CONNOR: I believe he has basically
17 adopted it. I asked if he read it, looked at it. Is
18 everything in it what you said? He said yes. He has
19 adopted the interview.

20 THE COURT: But he said he wasn't sure
21 whether it was in there that way. Hand it to him and
22 let him look at it.

23 Q Handing you what has been marked as Defendants' 25 and
24 just don't say anything, just look at that yourself and
25 then I will ask you a question. Have you had a chance

2110

1 to look at it? Take your time.

2 A: Here you go.

3 Q Does it say anything in that interview where you said
4 anything that said that they set a fire to a trailer?

5 MR. MILLER: I object. If this is
6 impeachment, it is improper. There is no prior
7 inconsistent statement in the report of interview by
8 Detective Ludwig.

9 THE COURT: I think we have covered this. He
10 said that he said a trailer and he didn't write it
11 down, "trailer", so that's the way it is. Can't we go
12 on to something else?

13 MR. O'CONNOR: My argument, when I asked him
14 did you tell him everything, is everything in here? He
15 said yes. Then I asked him if he told him "trailer"
16 and I now asked, after looking at it, is "trailer" in
17 there.

18 THE COURT: He said that. This is the second
19 time you have gone into "trailer and he said 'trailer"
20 and he didn't write down "trailer".

21 MR. O'CONNOR: I am not arguing with the
22 Court. I respect the Court.

23 THE COURT: Let's go on to something else.

24 Q Is there anywhere in that interview where they said
25 they were covering their tracks?

1 A: Yes.

2 Q Can you show that to me so I can see it on Defendants'
3 25, covering their tracks.

4 A: It doesn't say it exactly like that. It says when **they**
5 couldn't get it all **they** started a fire to destroy the
6 evidence.

7 Q You think that's just a different way of saying it?

8 A: Yes.

9 Q Okay. Did Mr. Sheppard say to you that he didn't do
10 it?

11 A: He said to all of us he had not done it when everybody
12 found out that was in the same cell block.

13 Q He was saying he didn't do it.

14 A: He was saying he didn't start the fire.

15 MR. O'CONNOR: Thank you. I don't have any
16 further questions.

17 THE COURT: Any other Cross? Any Redirect?

18 MR. PETERS: Judge, I have some questions.
19 Very brief.

20 CROSS EXAMINATION

21 BY MR. PETERS:

22 Q Sir, my name is Pat Peters and I represent **Frank**
23 Sheppard. At no time in this conversation that you
24 overheard did Bryan Sheppard say anything about **Frank**
25 Sheppard, did he?

1 MR. MILLER: We object to this.

2 (Proceedings out of the hearing of the jury.)

3 MR. MILLER: This is not relevant. And,
4 secondly, it doesn't go to impeachment. Third, they
5 are starting to build error by constantly going up
6 by process of elimination.

7 MR. BECKER: The same statement, he took his
8 **uncle** to the site. He is just inviting this Bruton
9 error.

10 THE COURT: I will sustain the objection.

11 Let's go on.

12 MR. PETERS: My next question would be
13 did he ever say Darlene Edwards, followed by the
14 rest of the defendants, rather than go through them
15 one at a time and come up.

16 MR. MILLER: He said "**uncle**." And two of
17 the defendants are his **uncle**.

18 MR. BECKER: What if the answer is yes, when
19 the kid answers truthful and **uncle** is mentioned?

20 MR. MILLER: We told him not to say
21 "**uncle**". We didn't use it, stayed away from it. And
22 we are going to be walking right into it with these
23 questions.

24 THE COURT: He has been instructed not to use
25 the identification of "**uncle**" to Brutonize for you.

1 MR. PETERS: I am not asking "uncle". I am
2 asking, **Frank** Sheppard, Darlene Edwards or Richard
3 Brown.

4 THE COURT: He is going to say yes.

5 MR. PETERS: No he is going to say no.

6 MR. MILLER: That is misleading the jury.

7 THE COURT: I think that is misleading. I
8 will sustain the objection.

9 MR. PETERS: As to all those questions?

10 THE COURT: Yes.

11 MR. OSGOOD: To save time, I propose they
12 ask him was Richard Brown ever mentioned.

13 MR. MILLER: Again I object. We are walking
14 into error. He was up here as to who he testified
15 to. Bryan Sheppard, he didn't say anything at all
16 about him. Why get up and say the obvious to him.
17 It is repetitious and looking for trouble. And it
18 goes back to what happened earlier by a process of
19 elimination who he is talking about.

20 MR. PETERS: For my record, this is a
21 statement against penal interest, admission by Bryan
22 Sheppard in which he is recounting what he knows
23 about the case. It does not mention my client or any
24 of the other defendants. I believe it is admissible,
25 although the Court has ruled against me and I respect

1 that. Now these witnesses are coming on for Bryan
2 Sheppard or Richard Brown, I feel as if the standard
3 has changed because when the statements were being
4 made by **Frank** Sheppard, other defendants were allowed
5 to ask did he say Richard Brown, did he say Bryan
6 Sheppard, did he say Darlene Edwards. And because of
7 the timing I am now being prevented from showing to
8 this jury that this witness did not say **Frank**
9 Sheppard and I think it is prejudicial both in this
10 instance and aggravated. Because in earlier testimony
11 the Court did allow, over objection, questions, did
12 they say Richard Brown.

13 MR. OSGOOD: It gets into the issue of
14 credibility, Your Honor, I think because some of the
15 witnesses are saying -- for example, Bryan said he was
16 with his **uncle**; one of the witnesses was saying Bryan
17 said he was with my client.

18 THE COURT: I think that came in without
19 objection.

20 MR. OSGOOD: I want to be able to ask him
21 was my client mentioned.

22 THE COURT: No.

23 MR. OSGOOD: Why not?

24 MR. MILLER: I object to that.

25 **THE COURT: You can't do that. Consistency.**

2115

1 Are you trying to lead me into a Bruton violation?

2 MR. OSGOOD: No. No. If he says, yes, my
3 client is mentioned, I have asked for it and I am stuck
4 with the answer.

5 THE COURT: How about all the other people
6 who are eliminated, who are clouded, rather, by the
7 elimination of your client?

8 MR. OSGOOD: That is the problem with joint
9 trials.

10 THE COURT: You can't continually revel in
11 the fact the government brought a case against these
12 people.

13 MR. OSGOOD: My point, they are putting on
14 some witnesses that say Bryan and my client admitted
15 it and, therefore, if this is the statement by Bryan,
16 Bryan supposedly telling all and they're casting
17 Bryan and Richard in this situation together. These
18 are focusing on Bryan and Richard. I
19 ought to be able
20 to ask this witness whether or not he mentioned
21 Richard.

22 THE COURT: But if he didn't, that's all you
23 need. If he didn't mention Richard in his testimony,
24 that's good for you.

25 MR. OSGOOD: I know. I want to establish

2116

1 that.

2 THE COURT: Then you reflect on the other
3 defendants and you can't do that. If he doesn't
4 mention him you could argue the hell out of the fact he
5 didn't identify Richard as being there.

6 MR. OSGOOD: All right. I understand the
7 ruling and I object.

8 THE COURT: Let's go.

9 (Proceedings in the hearing of the jury.)

10 Q Sir, didn't you tell Officer Jerry Ludwig that Bryan
11 had told you he was locked up for the blast but he
12 didn't do it?

13 A: Yes, sir.

14 Q What cell were you in at the time of your overhearing
15 this conversation that you have testified about, what
16 cell or pod?

17 A: That has been a while back so I don't remember.

18 Q Were you together in the cell your entire stay?

19 A: My entire stay there I was in the same cell block as
20 Bryan Sheppard.

21 Q You were there from I believe December 4th to December
22 24th?

23 A: Yes, sir.

24 MR. PETERS: No further questions.

25 THE COURT: Any Redirect?

1 MR. MILLER: You may step down.

2 THE COURT: All right, ladies and gentlemen,

3 we are going to quit for the evening. Please

4 remember my admonition about not discussing the

5 case.

6 Drive carefully and we will see you in the morning at

7 9:30.

CERTIFICATE

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled
matter. ~ ~ S ~ ~

Elizabeth hinn
U.S. Court Reporter

l IN THE UNITED STATES DISTRICT COURT
l WESTERN DISTRICT OF MISSOURI
l WESTERN DIVISION
l UNITED STATES OF AMERICA,)
1)
l Plaintiff,)
vs. ~ Nos. 96-00085-01/05-CR-W-8
)
)
GEORGE FRANK SHEPPARD,)
EARL D. SHEPPARD,)
DARLENE M. EDWARDS,) Wednesday,
BRYAN E. SHEPPARD, and)
RICHARD W. BROWN,) February 5, 1997
Defendants.) Kansas City, Missouri
)

TRANSCRIPT ON APPEAL

VOLUME XII

(Pages 2118-2314)

BEFORE THE HONORABLE JOSEPH E. STEVENS. JR..

UNITED STATES DISTRICT JUDGE

AND A JURY,

Proceedings recorded by electronic stenograph
Transcript produced by computer

ELIZABETH SHINE, RPR
UNITED STATES COURT REPORTER
811 GRAND AVENUE, ROOM 702
KANSAS CITY, MO 64106

1 j	<u>I N D E X</u>		
21	<u>VOLUME XII</u>		
3D	<u>HAROLD LETT</u>		Page
I	Direct Examination		2122
	Cross Examination		2134
5	Cross Examination		2137
	Cross Examination		2159
6 1			
i	<u>TRAVIS SMALL</u>		
'	Direct Examination		2163
sl	Cross Examination		2172
~j	Redirect Examination		2187
9,			
'	<u>PAM HARTH</u>		
~0			
	Direct Examination		2193
::	Cross Examination		2202
.2	<u>THOMAS BUTNER</u>		
	Direct Examination		2215
	Cross Examination		2221
;	Cross Examination		2233
-	<u>FERN AYERS</u>		
,6	Direct Examination		2236
	Cross Examination		2240
W	Cross Examination		2249
	Redirect Examination		2252
''			
'	<u>FRANK GILE</u>		
~			
	Direct Examination		2257
-	Cross Examination		2263
	Cross Examination		2272
-.	Cross Examination		2286
-:	<u>WALLY MILLS</u>		
^-	Direct Examination		2290
	Cross Examination		2294
-			
	<u>AMY PEDERSON</u>		
	Direct Examination		2303
	Cross Examination		2306
	Plaintiff ~ s Exhibit 362 received on pare 2128		

2120

1 FEBRUARY 5. 1997

2 THE COURT: Is there anything before we get
3 the jury?

4 MR. BUNCH: Is the first witness -

5 MR. BECKER: Agent Lett.

6 MR. BUNCH: Yes, for the record I renew my
7 motion to suppress in order to preserve the issue.

8 THE COURT: All right, it will be the same
9 ruling.

10 MR. BECKER: And the deletion of 'Guys'
11 worked out pretty well. It doesn't affect or alter the
12 meaning of any sentence in particular.

13 THE COURT: So you are planning on playing
14 the tape and having the edited transcript, right?

15 MR. BECKER: Yes.

16 (The jury enters the courtroom and is seated.)

17 THE COURT: Good morning, everybody. Have a
18 seat.

19 MS. HUNT: Your Honor, may we approach.

20 THE COURT: Yes.

21 (Proceedings out of the hearing of the jury.)

22 MS. HUNT: I want to renew my motion for
23 severance because the tape is going to be next, is
24 that right?

25 MR. BECKER: Yes.

2121

1 MS. HUNT: I think it is exculpatory, the
2 name should not be redacted.

3 THE COURT: Inculpatory or exculpatory?

4 MS. HUNT: Exculpatory toward me.

5 MR. BECKER: Toward Skip Sheppard.

6 MS. HUNT: I would like to play it in its
7 entirety which I know violates their rights so I
8 want to renew my motion for severance and have a
9 continuing objection.

10 THE COURT: You think it exonerates Skip?

11 MS. HUNT: Yes, I do.

12 THE COURT: Why are you objecting to it being
13 played?

14 MS. HUNT: Because the names are redacted
15 out.

16 THE COURT: You are objecting to it being
17 edited.

18 MS. HUNT: Right.

19 THE COURT: That is overruled.

20 MS. HUNT: My continuing objection.

21 THE COURT: That's fine.

22 (Proceedings in the hearing of the jury.)

23 MR. BECKER: The United States calls Special
24 Agent Harry Lett.

25 HAROLD L. LETT.

1 having been sworn, testified:

2 DIRECT EXAMINATION

3 BY MR. BECKER:

4 Q Good morning. Please state your name and spell your
5 last name.

6 A: My name is Harold L. Lett, L-e-t-t.

7 Q How are you employed?

8 A: I am employed as a special agent for the Bureau of
9 Alcohol, Tobacco and Firearms.

10 Q How long have you been a special agent with the Bureau
11 of Alcohol, Tobacco and Firearms?

12 A: Four and a half years.

13 Q Prior to that did you have any experience in law
14 enforcement?

15 A: Yes, I did.

16 Q What was that?

17 A: I spent five years in the United States Army, partly as
18 a military policeman, military police investigator and
19 a special agent.

20 Q Briefly, where are you assigned now?

21 A: I am assigned to the Kansas City Missouri Field
22 Division.

23 Q Briefly, what are your duties here?

24 A: My duties are to investigate violations of the federal
25 firearms, arson and explosive laws.

1 Q Do you ever do any undercover work?

2 A: Yes, I do.

3 Q Did you have training in undercover work while you were
4 with the United States Army?

5 A: Yes, I did. I worked with the United States Army in
6 Europe undercover for several months.

7 Q Is that why you have a pony tail?

8 A: Yes, that is why I have a pony tail.

9 Q Going back to February of 1995, specifically Friday,
10 February 17, 1995, did you assist in the arrest of
11 Darlene Edwards on criminal charges?

12 A: Yes, I did.

13 Q Do you see Darlene Edwards here in court today?

14 A: Yes, I do.

15 Q Could you point her out please and tell us where she is
16 sitting and what she is wearing.

17 A: Darlene just stood up. She is sitting right next to
18 Mr. Bunch.

19 MR. BECKER: Indicating the defendant
20 Darlene Edwards, Your Honor.

21 THE COURT: Yes, that's correct.

22 Q After February 17, 1995, later that day, did you take
23 custody of Darlene Edwards?

24 A: Yes, I did.

25 Q Where was she taken that evening?

1 A: Myself and another agent transported her to the Clay
2 County Detention Facility at Liberty.

3 Q Is there any reason you went to that jail as opposed to
4 any other?

5 A: Yes, there is. I do quite a bit of work up there with
6 the individuals. I knew the facility, knew it to be
7 clean, good and a safe place to put her.

8 Q Did you leave your name or card or anything that you
9 could be contacted if need be?

10 A: Yes, I did.

11 Q With whom?

12 A: I believe it was Sergeant Hartman was the desk sergeant
13 there at the time at the jail.

14 Q Calling your attention then to two days later, Sunday,
15 February 19, 1995, did you receive a call from the Clay
16 County jail regarding Darlene Edwards?

17 A: Yes, I did.

18 Q About what time did that occur?

19 A: Approximately 8:30 P.M.

20 Q What was the call about?

21 A: Sergeant Lloyd called me from the jail and informed me
22 that Darlene wanted to speak to me.

23 Q Did you speak with Darlene at that time on the
24 telephone?

25 A: I informed Sergeant Lloyd -- she was still in a cell at

1 that time -- I called him right back and then I did
2 speak with her.

3 Q Was that done?

4 A: Yes, it was about seven or eight minutes later.

5 Q What was the conversation?

6 A: Darlene got on the phone and she told me she wanted to
7 tell me all about the narcotics and where the **drugs**
8 came from. And I said, Darlene, I don't care about the
9 narcotics, I said you know what I am interested in.
10 And she said I know. She said I want to tell you about
11 that, too. And I said I mean the firemen. And she
12 said I know. And I told her I would be there in
13 approximately a half hour.

14 Q What did you do next?

15 A: Well, in between my phone call from Sergeant Lloyd and
16 calling back and talking to Darlene, I paged Agent True
17 shortly after I got off the phone. Shortly after I got
18 off the phone with Darlene, he returned the page.

19 Q Why did you call Agent True?

20 A: Because he is the case agent on the fire fighters case.
21 And he returned my page. And I informed him that
22 Darlene wanted to talk to us. And we met down at the
23 jail to talk to her.

24 Q Literally where is the Clay County Jail?

25 A: Well, I don't know the exact address but it is just off

2126

1 the square in downtown Liberty, Missouri.

2 Q Approximately what time did you get there to the Clay
3 County Jail?

4 A: We got there, we took a little longer than a half hour.
5 Like I promised Darlene, we got there somewhere closer
6 to 9:30.

7 Q What happened when you got to the Clay County Jail?

8 A: I made contact with Sergeant Lloyd, of course, because
9 he was in charge. And they made arrangements to bring
10 Darlene to one of the interview rooms adjacent to the
11 jail.

12 Q What does the interview room look like?

13 A: It's a small room, maybe ten foot by ten foot. It has a
14 table. There is a pay phone there and a couple of
15 chairs for interviewers and defendants to just sit down
16 and talk. The acoustics are kind of bad. It is mostly
17 cedar block walls.

18 Q Painted?

19 A: They're painted. It is nice and clean but it is still
20 just concrete walls.

21 Q Is that where the conversation with Darlene Edwards
22 took place?

23 A: Yes.

24 Q Did you or Agent True have a tape recorder that night?

25 A: Yes, we did.

1 Q Did you tape record the conversation with Darlene
2 Edwards?
3 A: Yes, we did.
4 Q Who was present during that conversation?
5 A: Well, just as the interview was starting, Detective, I
6 believe he is Sergeant Bill Forbes, came into the room
7 just as we were getting started.
8 Q Where is he from?
9 A: He is from the Kansas City Missouri Police Department.
10 Q Was there any conversation with Darlene Edwards before
11 the tape recorder started?
12 A: A very short conversation. We essentially just advised
13 her of her legal rights again and filled out the form
14 so stating she wanted to waive her rights and discuss
15 the case with us.
16 Q Were any promises or threats made to Darlene Edwards
17 prior to that tape recording being started on February
18 19th?
19 A: No, no promises or no threats.
20 Q I want to show you what has been marked for
21 identification purposes as Government's Exhibit 362 and
22 ask you if you recognize it.
23 A: Yes, I do.
24 Q What is it?
25 A: It is the waiver of right to remain silent and of the

2128

1 right to advice of counsel. It is signed by Darlene
2 Edwards on February 19, 1995.

3 Q Is your name anywhere on that form?

4 A: Yes, it is. Below the certification it has my
5 signature as a witness.

6 Q Is that the form that was filled out and signed by you
7 and Darlene Edwards and Dave True on the evening of
8 February 19, 1995?

9 A: Yes, it is.

10 MR. BECKER: I offer that in evidence as
11 Government's Exhibit 362.

12 MR. BUNCH: No objection.

13 THE COURT: It is admitted without objection.
14 (PLAINTIFF'S EXHIBIT 362 WAS RECEIVED IN EVIDENCE. ~

15 MR. BECKER: Judge, may I pass this out to
16 the jury while the testimony continues?

17 THE COURT: Yes. Do you have multi copies
18 or just the original?

19 MR. BECKER: I actually have two copies.

20 THE COURT: I guess that is multiple.

21 Q Now you and Special Agent True and Sergeant Forbes then
22 interviewed Darlene Edwards, is that correct?

23 A: Yes, we did.

24 Q Was that interview recorded?

25 A: Yes, it was.

1 Q Have you listened to the recording of that entire tape?

2 A: Yes, I have.

3 Q Or the tape recording of that entire conversation.

4 A: Yes. I have.

5 Q I want to show you what has been marked for

6 identification purposes as Government's Exhibit 360 and

7 ask if you recognize that.

8 A: Yes, I do.

9 Q What are those two cassette tapes?

10 A: There are the two cassette tapes used to record

11 Darlene's confession to us on February 19th.

12 Q And does that tape recording, those two cassettes,

13 which are marked as Government's 360 fairly and

14 accurately record the conversation that you had with

15 Darlene Edwards on February 19, 1995?

16 A: Yes, absolutely.

17 Q Now, has a shorter version of that tape recording been

18 prepared?

19 A: Yes, it has.

20 Q What has been taken out of that tape in the shorter

21 version.

22 A: Well, essentially certain bits of information have been

23 removed from the tape for legal reasons that were 

24 either irrelevant to the case or inadmissible.

25 Q I want to show you what has been marked for

2130

1 identification purposes as Government's Exhibit 361.

2 Do you recognize that?

3 A: Yes, I do.

4 Q What is it?

5 A: This is a redacted copy of the original.

6 Q Redacted meaning?

7 A: Meaning it is missing the information we just
8 discussed.

9 THE COURT: The edited copy.

10 Q This edited copy, have you listened to it?

11 A: Yes, I have.

12 Q Does it fairly and accurately reflect the conversation
13 you had with Darlene Edwards minus the parts you just
14 referred to?

15 A: Minus the parts, yes, it does.

16 MR. BECKER: I would offer that in evidence
17 as Government's Exhibit 361.

18 MR. BUNCH: No objection.

19 MR. PETERS: For the record, we stand by our
20 earlier record, earlier objection.

21 THE COURT: I understand you have no further
22 objection.

23 MR. BUNCH: No further objection.

24 THE COURT: The prior objections having been
25 dealt with, they're overruled and the exhibit admitted.

1 Are you offering 360 as a substitution of 361?

2 MR. BECKER: I would offer it in evidence
3 with the understanding that with the Court's prior
4 instructions it not be played.

5 THE COURT: Yes, I think you ought to have it
6 in your record anyway. So I will admit 360 for that
7 limited purpose.

8 (PLAINTIFF'S EXHIBITS 360 AND 361 WERE RECEIVED IN
9 EVIDENCE.)

10 Q Agent Lett, was a transcript prepared based upon
11 Government's Exhibit 361, the edited tape?

12 A: Yes, it was.

13 Q Have you had an opportunity to listen to the tape and
14 review the transcript?

15 A: Yes, I have.

16 Q Does the transcript fairly and accurately reflect the
17 words that are on the tape?

18 A: Yes, it does.

19 Q I want to show you what has been marked for
20 identification purposes as Government's Exhibit 361A.
21 Is that the transcript that was prepared of
22 the edited tape?

23 A: Yes.

24 Q Now, there are a number of initials that are on that
25 transcript, could you tell the Court and the jury

2132

1 what those initials represent.

2 A: Yes, I can. The first one starts off with DT which
3 would be Dave True, the case agent. DE is Darlene
4 Edwards. HL is myself, Harry Lett. And BF would be
5 Bill Forbes.

6 MR. BECKER: Your Honor, with the Court's
7 permission, I would like to play the tape for the
8 jury.

9 THE COURT: Have you distributed the
10 transcript?

11 MR. BECKER: Yes.

12 THE COURT: Ladies and gentlemen, I instruct
13 you -- I believe I have done this before but I instruct
14 you again that you are going to be listening to a tape
15 and you have what has been identified as a written
16 transcript of what is on the tape. The tape is the
17 evidence, not the transcript. And insofar as the
18 transcript might not conform to the tape or might not
19 reflect what you hear on the tape, it is what is on the
20 tape that governs and not what might be in the
21 transcript.

22 It has already been mentioned to you
23 some editing was necessary and it is possible in
24 rare instances where there may be a word on either
25 the transcript or the tape that doesn't exactly

1 coincide but it would be a matter of two words
2 that may have been edited and that need not
3 concern you. All right.

4 Q Agent Lett, these head phones, could you briefly tell
5 the members *of* the jury about them.

6 THE WITNESS: There are head phones under
7 Death each of your chairs. On one side of the head
8 phones there is an on and off switch. I can *f* lip that
9 to the on position. And then on the left there is a
10 left and right switch that will control the sound
11 coming through each side.

12 There is some static that makes some
13 part of the tape difficult to understand or hear
14 but I think if you follow along in the transcript
15 you can make out everything. Once again we
16 apologize for that because of the acoustics.
17 Sometimes by adjusting the left or right you may
18 be able to knock out some of that background
19 status.

20 This red button, the left and then
21 right. It seems to work best as you put it all
22 the way over on the right side.

23 (The tape was played.)

24 Q Agent Lett, after you finished the tape-recorded
25 statement, confession by Darlene Edwards, what did you

2134

1 do?

2 A: We placed the record in custody and then went ahead and
3 put her back in her cell.

4 Q That was it and you left for the night.

5 A: Yes, it was.

6 MR. BECKER: I have no further questions at
7 this time, Judge.

8 CROSS EXAMINATION

9 BY MR. BUNCH:

10 Q Agent Lett, I am William Bunch. As you know, I
11 represent Darlene Edwards.

12 A: Yes, I do.

13 Q Was there a videotape statement taken of Miss Edwards
14 on February the 17th?

15 A: Yes, there was.

16 Q You were not present at the time that statement was
17 taken.

18 A: No, I was not.

19 Q Do you know whether during the course of that statement
20 whether or not Miss Edwards denied any involvement in
21 this offense?

22 A: Yes, I do.

23 Q And did she?

24 A: She did deny it ultimately at that time, yes.

25 Q Do you know whether or not a statement alleging Miss

1 Edwards had been involved made by another person was
2 shown to her?

3 A: I believe there was. I haven't given it much thought
4 but I believe it was. You are saying did another
5 person say she was involved?

6 Q Yes.

7 A: And that was presented to her on Friday.

8 Q Yes. A: Yes.

9 Q That was after the videotape statement.

10 A: I have no knowledge, sir. I wasn't there.

11 Q In any event, thereafter she made the call and this
12 videotape statement was made.

13 THE COURT: Audio.

14 Q Audio.

15 A: It is difficult for me to answer questions about
16 Friday, Mr. Bunch, because I wasn't there. It wouldn't
17 be fair for me.

18 Q And I am not asking you to speculate what you know.
19 Anyway, the videotape statement was on the 17th and the
20 audiotape statement was the 19th, we do know that.

21 A: Yes, we do.

22 Q Now let me ask you this. You have been asked questions
23 about the editing of the tape.

24 A: Yes, I have.

25 Q And I have this question, during the course of the

editing of this tape has there been any information
2 removed from the tape that involves the alleged
3 involvement of Miss Edwards, anything taken out of
4 there she said she had done? Maybe I can ask it a
5 different way.

6 A: Other than incriminating statements that might have
7 been taken out?

8 Q Yes.

9 A: Well, I would have to go back and review the original
10 transcript. I would say other incriminating statements
11 involving her may have possibly been taken out. I
12 guess maybe it would have been too much, too much of
13 that other inadmissible stuff. I would have to go back
14 and look. I couldn't say for sure.

15 Q Maybe I can ask you a different way and get to the
16 answer or the question that I really want to pose to
17 you. The sum and substance of what she told you about
18 her involvement, of what she claimed her involvement,
19 was included in this edited tape.

20 A: I don't believe -- I am still not understanding this.

21 Q Let me ask it another way. Her alleged, the things she
22 said she had done, are they all included, she
23 personally had done, are they all included in this
24 edited tape?

25 A: I would have to go back and check. It is quite a

1 lengthy tape. I would have to go back and check both
2 transcripts. There is obviously things she said and
3 how much relevance those are -

4 Q Well, I suppose I could ask it and I was trying to get
5 at it a shorter way. I appreciate your answers and I
6 don't mean to be confusing you about it. She said that
7 she was awakened and asked to go to the Quik Trip by
8 somebody.

9 A: Yes, she was.

10 Q And as a result of that, she did that.

11 A: Yes.

12 Q And she transported someone to the designation, that is
13 stated in this edited tape.

14 A: Yes.

15 Q Then she returned home.

16 A: Yes.

17 Q And was there anything else that she had done
18 personally that you can recall that is not included in
19 this edited tape?

20 A: Not that I can recall, no.

21 MR. BUNCH: Thank you.

22 CROSS EXAMINATION

23 BY MR. PETERS:

24 Q Agent Lett, would it help you in determining whether
25 otherwise admissible incriminating statements were

1 taken out of this tape if you reviewed the two
2 versions?

3 A: I think I understand Mr. Bunch's question now. I
4 believe all of Darlene's involvement is in the edited
5 version.

6 Q In layman's terms, would I be correct in saying
7 anything bad about Darlene is contained in the version
8 that the jury heard.

9 A: I would say so, yes.

10 Q You arrested Darlene Edwards on February 17th, is that
11 correct?

12 A: Arrested, no, I didn't arrest her. Dave True arrested
13 her.

14 Q Were you present on February 17th, 1995 when Dave True
15 arrested Darlene Edwards?

16 A: I was not -- I guess I am getting caught on a legal
17 term. When we arrest we say you are under arrest, I
18 was not there, no.

19 Q What caused her to be transported to the Clay County
20 Jail?

21 A: I was asked to transport her to the Clay County Jail.
22 I believe Dave True probably asked my supervisor, do we
23 have a facility, and I transported her.

24 Q And you knew that she wasn't being arrested on the case
25 of the death of the firefighters, was she?

1 ~ A No, she was not.

2 I Q She was being arrested on a **drug** charge, isn't that
3 correct?

4 A On an unrelated narcotic charge.

5 I Q Are you familiar with the fact what you have
6 characterized as an unrelated narcotic charge?

7 A I am familiar with some of the facts but not entirely.

8 Q Are you aware that the facts allege she sold crack
9 cocaine to her stepson, Ronnie Edwards?

10 A Yes.

11 Q Are you also aware that Ronnie Edwards was working on
12 behalf of Special Agent Dave True?

13 A Yes, I am.

14 Q So on February 17, 1995 when she was transported to
15 jail, that was on a **drug** sale from Darlene Edwards to
16 her stepson, Ronnie Edwards, working for ATF Agent
17 True, is that correct?

18 A Yes.

19 Q And on February 17th, after you transported her to the
20 Clay County Jail, were you present when ATF Agents set
21 up videotape equipment for Darlene Edwards?

22 A Okay, when I transported her to the Clay County Jail?

23 Q Yes, were you present when videotape equipment was set
24 up to interview Darlene Edwards?

25 A No. See, I transported her to the Clay County Jail

2140

1 after she had been interviewed at the ATF. Video
2 equipment would have been used at the ATF office.

3 Q Thank you for clarifying that. Were you present at the
4 ATF office when video equipment was set up to interview
5 Darlene Edwards?

6 A: I had periodically walked through, I guess it would be
7 our break room. I am aware the video equipment was
8 there. I remember our tech guy messing with the stuff
9 but I didn't hang around. I may have grabbed a cup of
10 coffee and gone back to my office.

11 Q Have you had an opportunity to view the videotape
12 itself or review the transcript of that videotape
13 statement?

14 A: No, I have never seen the videotape.

15 Q When you went back on February 19th, two days later, to
16 interview Darlene Edwards, you had not reviewed a
17 videotape statement taken two days before in the ATF
18 office.

19 A: No, I still haven't to this day; no, sir.

20 Q But on February 19th you were aware she had given a
21 videotape statement two days before.

22 A: Yes, sir.

23 Q You are aware in that videotape statement given two
24 days before she had stated she had no knowledge of
25 criminal activity related to the firefighters'

1 explosion.

2 MR. BECKER: objection.

3 (Proceedings out of the hearing of the jury.)

4 MR. BECKER: He hasn't reviewed the
5 transcript. Secondly, if even he was fully familiar
6 with the videotape, asking the witness did Darlene
7 Edwards say she was not guilty, there is no
8 permissible reason for eliciting that evidence.

9 THE COURT: What is the theory of
10 admissibility?

11 MR. PETERS: It is contained in the tape
12 itself.

13 THE COURT: Even if we were listening to the
14 tape, the tape isn't in evidence. Even if we were
15 listening to the tape, what is the theory of
16 admissibility of that hearsay?

17 MR. PETERS: It is a prior inconsistent
18 statement, to rebut an inference of recent fabrication
19 two days before she gave an inconsistent statement.

20 THE COURT: His awareness, that may or may
21 not be, but you are asking him if he is aware she said
22 this in this way. That is what isn't admissible.

23 MR. PETERS: Then can I ask it this way.
24 During the tape he has introduced on February 19th,
25 the agents say you told us you weren't involved two

2142

1 days before, isn't that correct? Yes.

2 THE COURT: He hasn't seen the tape.

3 MR. PETERS: No, but in this statement he
4 witnessed the audiotape, he witnessed he was present
5 when the agents said two days before you told us you
6 weren't involved.

7 THE COURT: It is too far removed. I'm sorry
8 but I don't think it is admissible.

9 MR. PETERS: Okay.

10 (Proceedings in the hearing of the jury.)

11 Q This tape-recorded statement on February 19th, Sunday.

12 THE COURT: Audiotape.

13 MR. PETERS: Yes, tape-recorded.

14 THE COURT: Well, the videotape is a tape
15 recorded statement. You are talking about the
16 audiotape, are you not?

17 Q On February 19th in this audio-tape recorded statement,
18 Darlene Edwards told you that **Frank** Sheppard was drunk
19 and that he was passed out, isn't that correct?

20 A: Yes, she did.

21 Q And are you aware of any statement by Darlene Edwards
22 prior to that time that is inconsistent with that
23 statement?

24 MR. BECKER: Objection.

25 THE COURT: Sustained.

2143

1 Q In this February 19, 1995 statement Darlene Edwards
2 told you in the statement when she left the house,
3 **Frank** Sheppard was passed out, correct?

4 A: From the transcript, "We went to bed. I pacified him.
5 He passed out.'

6 Q And when she came home she told you that **Frank** Sheppard
7 was still in the house, correct?

8 A: What page are you referring to on the transcript, do
9 you recall?

10 Q Sir, I am just asking you from your recollection of
11 February 19th.

12 A: I believe that was the inference, yes, he was still at
13 home. Whether he was passed out or not, I don't know,
14 that she ever addressed that again.

15 Q Darlene Edwards never told you anything about things
16 being stolen from the construction site, did she?

17 A: She was asked were you aware of anything that was
18 stolen later. I believe there was a reference to
19 radios and batteries, that kind of stuff.

20 Q Sir, isn't it true that Darlene Edwards told you that
21 he didn't know anything about anything being taken from
22 the site and that was something that ATF agents had
23 suggested.

24 A: She said towards the end of the interview, yes, in her
25 interview she said I didn't know what they were doing.

2144

1 I didn't know specifics. And then she said I heard
2 that from you. Then it was almost like she got it from
3 the paper or almost inferred that we had told the paper
4 or something but that isn't the way we work our
5 investigations. She gathered that information from
6 somewhere, whether from the neighborhood or whatever.
7 Is that what you are asking?

8 Q Yes. You just stated "That is not the way we work our
9 interviews" and I want to ask you about that, sir.

10 A: I said that is not the way we work our investigations.

11 Q "That is not the way we work our investigations." Let
12 me ask you about that, sir. It would be improper in an
13 investigation for an investigating agent to suggest
14 something to the witness, isn't that correct?

15 A: You mean to lead them to a particular answer, yes, that
16 would be improper.

17 Q It would be inappropriate for an investigator to, for
18 example, we have been told by other people that you
19 took tools, is that what you are telling us?

20 A: No, that seems to me like that would be a very proper
21 question. That is a very general statement. We were
22 told tools. Now can you elaborate what kind of tools
23 because we have to have a point of reference, we are
24 trying to verify statements and now we are having
25 somebody who actually has personal knowledge. So we

1 use the term tools, are they going to tell us
2 particular types of tools.

3 Q So what would be inappropriate mentioning a particular
4 type of tool like a walkie-talkie or transit, something
5 of that sort?

6 A: Maybe not even being specific with the walkie-talkie.

7 Q When you say that is not the way we work our
8 investigations, what do you mean by that?

9 A: I was talking a few moments ago reference to the news
10 press. We don't brief the news mentioned on our
11 investigations. We just don't do that. They gather
12 their information from public records. That is why I
13 was referring to Darlene said I gathered that from you
14 guys or whatever.

15 Q Your testimony is that you don't brief the news press
16 on your investigations, is that correct?

17 A: As agents, no, we don't.

18 Q Do you remember Darlene being asked by Special Agent
19 Dave True, "Did **they** tell you what **they** were going to
20 steal" and her answer being, "No, **they** didn't"?

21 A: Yes.

22 Q Do you remember him asking, "Did you learn later on
23 what it was **they** were looking for" and her answer, "Not
24 until you guys mentioned it, you know"?

25 MR. BECKER: Page.

2146

1 MR. PETERS: Page 8.

2 Q Do you recall that?

3 A: Yes, and that's what I was referring to, "Not until you
4 guys mentioned it, you know." "You guys", I don't
5 know, it has been two years ago. I don't know when she
6 said "you guys" whether she was talking about ATF or
7 "you guys" being essentially the Marlborough area. It
8 has a broad meaning but we didn't -

9 Q You didn't what?

10 A: We didn't give her, "you guys", I believe she was
11 referring to us in that room.

12 Q Are you telling "you guys" meaning ATF and KCMO Police
13 Department never told Darlene Edwards what you believed
14 the perpetrators of this offense had gone up there
15 looking for.

16 A: What I am telling you, during that interview, keep in
17 mind I didn't do the entire investigation, I was here
18 for this particular confession. We didn't tell her at
19 that time what they were going up and looking for.

20 Q And you have no knowledge as to what would have been
21 told to her at any time you weren't there.

22 A: I wasn't there for the videotape.

23 Q Okay. Thank you. Darlene Edwards told you that she
24 had no personal knowledge of what was set fire to,
25 isn't that correct?

1 A: True.

2 Q Can you explain to us what would prompt then a question
3 by Dave True of "So he started" -

4 MR. BECKER: Objection as to form. What
5 would prompt someone else to do something.

6 THE COURT: He can't guess why somebody else
7 did something. Sustained.

8 Q Sir, were you present when Dave True stated "So he
9 started a fire in the truck", were you present when
10 Dave True asked that?

11 THE COURT: Dave True didn't ask that.

12 MR. PETERS: Page 9.

13 A: Yes, I was present when Dave said "So he started a fire
14 in the truck".

15 Q You were present when Darlene was asked about a cargo
16 van, weren't you?

17 A: Yes. Is that the one without the windows, he asked if
18 there were any cargo vans in the neighborhood.

19 Q For your benefit, we are talking page 10 toward the
20 bottom.

21 A: Yes.

22 Q And she told you and Agent True that she couldn't think
23 of anybody in the neighborhood that had one, is that
24 correct?

25 A: Yes, she did.

2148

1 Q Darlene Edwards in this interview is talking about two
2 other people coming to her house that night, isn't that
3 correct?

4 A: Yes, she is.

5 Q In fact, in this version of the tape we hear that one
6 of these individuals sat in the front seat and one sat
7 in the back seat, isn't that correct?

8 A: Yes.

9 Q And she told you in this interview that no-one else was
10 involved other than the people that she has mentioned,
11 isn't that correct?

12 A: During this interview, yes.

13 Q In this interview taken two days after Darlene's arrest
14 on **drug** charges as she is describing what she knew
15 about these two individuals, she told you that she
16 never saw where **they** walked after getting out of her
17 car, is that correct?

18 A: That's correct.

19 Q In this interview she was asked about the gas can that
20 was purportedly brought by these two individuals with
21 them when **they** went to meet Darlene, isn't that
22 correct?

23 A: Yes, she was asked about that.

24 Q And she was asked how big it was and said "A gallon or
25 two gallons; just, you know, it wasn't a big one like a

1 ~ five gallon."

2 THE COURT: Mr. Peters, I don't fully
3 understand why we are taking time to do this. The
4 interview says what it says. The transcript, if it
5 comports with the tape, says what it says. Why are you
6 reading that back to this witness to have him agree or
7 disagree with what it says?

8 MR. PETERS: I am conducting cross
9 examination, Judge.

10 1 THE COURT: I don't think it is appropriate.
11 I think you should move on to something else in another
12 form.

13 MR. PETERS: So no further questions about
14 the gas can, is that correct?

15 THE COURT: No further questions of "this
16 says this, doesn't it .

17 Q Sir, you asked, "**They** didn't throw any crow bars or
18 anything like that", that was a question asked by you,
19 1 is that correct?

20 1 A Yes, it was.

21 1 Q Why did you ask that question?

22 A I asked that question because I had information of
23 particular types of tools that may or may not have been
24 1 used in the area.

25 ~ Q Used in what area, sir?

2150

1 A: Used up at the site, the site of the explosion.

2 Q Used by construction personnel?

3 A: No, used by one of the defendants.

4 Q And when you asked her whether or not **they** had crow
5 bars, she told you **they** did not, isn't that correct?

6 A: She said she didn't see any.

7 Q In this February 19th audiotape-recorded statement -
8 scratch that. Can you tell us why on February 19th,
9 1995 videotaped equipment wasn't used by ATF to conduct
10 this interview?

11 A: No, videotape was not used.

12 Q Can you tell us why videotape equipment wasn't used.

13 A: Yes, I suppose I can. We responded to the Clay County
14 Jail. There was no video equipment available. They
15 don't keep video equipment, to my knowledge, at the
16 jail to be used for interviews. They are very generous
17 in just giving us a room to use. So we do with what we
18 had which was a hand recorder.

19 Q In this February 19th audio hand recorded statement,
20 was it ever reduced to the form of an affidavit?

21 A: In other words, transcribed and then had her sign it,
22 no, we wouldn't transcribe it there. It is very time
23 consuming.

24 Q Was she placed under oath during this interview?

25 A: She was asked if this was the truth. Was she sworn to

1 God, I don't recall whether she was or not. We would
2 have to look back on the original transcript. I don't
3 believe she was.

4 Q That is something you would be able to do for us, to
5 let us know whether there is a statement under oath.

6 A: It would be on the original transcript. I don't
7 believe she was sworn to that. Once again, we could
8 check the original transcript.

9 Q Can we leave it the best of your recollection she was
10 not placed under oath?

11 A: The best of my recollection, yes.

12 Q You will let us know if you find out that she was
13 placed under oath, can we just agree with that?

14 MR. BECKER: We -

15 MR. PETERS: I withdraw the question.

16 THE COURT: Let us finish what we are doing
17 on the record, Mr. Peters, before you go ahead. Now
18 what did you have?

19 MR. BECKER: We all have the original
20 transcripts. No big mystery.

21 THE COURT: That's right. He has had it,
22 too, has he not?

23 MR. BECKER: Absolutely.

24 Q So in the original transcript she was never placed
25 under oath, was she?

1 THE COURT: Are you testifying? You asked
2 and he said he didn't know.

3 MR. OSGOOD: Can we approach?

4 THE COURT: You are not in this.

5 MR. OSGOOD: I have an objection.

6 THE COURT: It is not your objection to make.
7 You can make your record later. Let's go on. Please
8 let's go on.

9 MR. PETERS: The objection to my question was
10 we have the original transcript. The Court asked him
11 if he had reviewed the original transcript. So I come
12 back with a question she wasn't sworn in the original
13 transcript.

14 THE COURT: When you asked that question he
15 already said he didn't know whether she was sworn or
16 not.

17 Q Sir, I am showing you what is marked as Plaintiff's
18 Exhibit 1C and ask that you review that to determine
19 whether or not Darlene Edwards was placed under oath.

20 MR. BECKER: It just has an exhibit sticker
21 from another hearing.

22 THE COURT: It is not an exhibit or in
23 evidence in this case.

24 A: She was not sworn to it. It would typically be done
25 right at the end of the transcript. She was simply

2153

1 asked if it was true.

2 MR. PETERS: For the record, Your Honor, the
3 exhibit that I handed Agent Lett is now marked as
4 Defendants' Exhibit 29 which is the transcript of the
5 February 19th interview of Darlene Edwards and for
6 the limited purposes of testimony of this witness we
7 would ask it be admitted.

8 THE COURT: I will allow it to be admitted
9 into the record of the case. It will not be used as an
10 exhibit to distribute to the jury.

11 MR. BECKER: For that limited purpose, Judge,
12 we have no objection.

13 THE COURT: All right.

14 Q Agent Lett, you are also aware in the videotape
15 statement taken February 17, 1995 that Darlene Edwards
16 denied involvement, correct?

17 MR. BECKER: Objection. Repetitious and I
18 believe I objected the first time and that was
19 sustained.

20 THE COURT: I already sustained an objection
21 to that question. I sustain it now.

22 Q During the one audiotaped statement you heard, that you
23 were a party to on February 19, 1995, was everything
24 said on the tape or was there an interview after the
25 tape recording?

2154

1 A: There was obvious conversation before we started the
2 tape. That conversation was limited, to my best
3 recollection, probably three to five minutes. We
4 started the tape pretty quick after we got there and we
5 did the rights advice on of course the form that has
6 already been submitted. So as soon as she was ready to
7 talk, we turned the tape on.

8 Q Was there conversation after the tape recording
9 stopped?

10 A: There was obvious conversation, take care of yourself.
11 Nothing pertaining to the case.

12 Q Sir, are you aware of any threats or promises made to
13 Darlene Edwards prior to the February 19 audiotape
14 recorded statement.

15 A: Threats or promises, no, with one exception I make a
16 promise -- two promises to any defendant when I am
17 dealing with them. The first promise is is if they're
18 involved and cooperate, their cooperation will go to
19 the attention of the prosecutor, we make no promises as
20 agents. We don't have the authority. The second
21 promise, I will testify as a character witness for that
22 person if they are truthful with us. And, of course,
23 their defense attorney has to call me as a character
24 witness. Those are the only two promises I ever make
25 to any defendant.

1 Q Sir, are you suggesting that was a promise you made to
2 Darlene Edwards prior to the February 19, 1995
3 audiotape recorded statement?

4 A: Those two promises are probably what I would have
5 communicated to her on Friday evening, yes, any
6 cooperation would go to the attention of the prosecutor
7 and I would testify as a character witness if she was
8 truthful. Those are fully within my abilities. I can
9 make those promises.

10 Q How many times have you been called by a party as a
11 character witness?

12 A: Probably four to five times.

13 Q How many times have you interviewed people where you
14 have made that statement?

15 A: I typically use that statement in every subject
16 interview so probably hundreds.

17 MR. PETERS: I have no further questions.

18 THE COURT: We will take our morning break
19 now, ladies and gentlemen. Please be back in the jury
20 room at eleven or as shortly after eleven as you can.
21 Don't talk about the case while we are in recess and
22 you may withdraw.

23 (The jury leaves the courtroom.)

24 THE COURT: We are in recess.

25 RECESS

2156

1 (Proceedings in the courtroom outside the presence of
2 the jury.)

3 MR. OSGOOD: I am concerned about the
4 detective having put her character in issue and I have
5 no way to cross examine.

6 MR. BECKER: What detective?

7 MR. OSGOOD: This officer.

8 MR. BECKER: Special Agent Lett.

9 MR. OSGOOD: The special agent. I have no
10 way to cross examine her now about specific acts of
11 misconduct. They are sponsoring the second statement
12 as the truth. It is indicated he is prepared to
13 testify for her.

14 THE COURT: No, that is not what he
15 indicated. He said he would have told her that. He
16 didn't assert that as a fact. He can't testify as to
17 her character or her credibility.

18 You guys are misconstruing. He did the same
19 thing just a while ago. You are taking what he said
20 and twisting it and making him say something else and
21 it is terribly important we stick with what he really
22 said.

23 MR. OSGOOD: The record will speak for
24 itself. I interpreted the question as having put
25 her character in issue and I should have the right to

1 cross examine her and the agent now about specific
2 acts, bad acts by her and I can't do that under Bruton.
3 In other words, I need to ask about her activities down
4 at the Four Acres Motel, her **drug** dealings, all of the
5 things she has done that would make her an incredible
6 witness.

7 THE COURT: What did she do?

8 MR. PETERS: Gets knocked over by the blast.

9 MR. OSGOOD: Just using crack, buying and
10 running with **drug** dealers. Some suggestion of
11 prosecution. I don't know. I would have to go back
12 and check the record and a lot of acts of misconduct
13 which would go specifically to test the knowledge of
14 a character witness.

15 THE COURT: But he is not a character
16 witness.

17 MR. BECKER: He has not vouched for her
18 character. He said he would have told her if she was
19 truthful, then he would come on her behalf.

20 MR. OSGOOD: We are back to the problem of
21 the first statement being described here, not having
22 been played and, in contrast, the government
23 sponsoring the second statement in referring in front
24 of the jury.

25 THE COURT: Let's do that now.

2158

1 MR. OSGOOD: I need to supplement and I
2 will be done in a second.

3 The first statement is now, in the eyes
4 of the jury, in generic terms exculpatory. Mr.
5 Becker tells in front of the jury, he, the lawyers
6 and the court, that we have the first transcript,
7 then we can't play it for the jury. We play the
8 second one. He says he believes her on the second
9 one in essence and is sponsoring the second one.

10 And now I can't cross examine on either
11 the first one or the character evidence that is

12 That is the basis of my objection.

13 THE COURT: Okay. It is overruled.

14 MS. HUNT: The only question I want to ask
15 him, during this audiotape conversation she didn't
16 mention Skip Sheppard, which I know, they are going
17 to objection.

18 MR. MILLER: The same thing we have been
19 through.

20 THE COURT: I think we have been through that
21 before.

22 MS. HUNT: I know but for purposes of my
23 record.

24 THE COURT: I understand and I don't think I
25

2159

1 can let you do that.

2 MR. O'CONNOR: Can we make an offer?

3 THE COURT: Can't you just agree she would
4 say she didn't mention Skip Sheppard.

5 MR. BECKER: And Mr. O'Connor and Mr. Osgood
6 would be objecting.

7 MR. OSGOOD: Absolutely.

8 MS. HUNT: Right.

9 THE COURT: Okay, now let's get the jury.

10 (The jury enters the courtroom.)

11 THE COURT: Everybody have a seat and we will
12 proceed. Agent, I will remind you you are still under
13 oath.

14 CROSS EXAMINATION

15 BY MR. OSGOOD:

16 Q Agent, I am John Osgood and I represent Richard Brown.
17 I just want to ask you a couple of geography questions
18 and I am going to put up here Government's Exhibit 1
19 and with the court's permission I will hold it here
20 because it will be quick. Could you step down here
21 with the court's permission. You probably will have to
22 take your mike off.

23 Now Government's Exhibit 1 has been introduced and is
24 a map of the area and do you see "blast site" on there?

25 A: Yes, I do.

2160

1 Q Were you assigned to Kansas City during this time
2 frame?

3 A: No, sir, I was stationed in Germany with the U. S. Army
4 in 1988.

5 Q When did you come to Kansas City?

6 A: In 1992.

7 Q In the course of this investigation.

8 A: Yes.

9 Q Have you been out to the site as it exists now and seen
10 those crosses?

11 A: As it exists, yes.

12 Q And driven around in the area out there.

13 A: Yes, somewhat.

14 Q And drive by the various places mentioned; for example,
15 have you been to the Quik Trip?

16 A: Yes, I have.

17 Q On the map here it shows Darlene Edwards' house and I
18 am pointing to a green dot beside Darlene Edwards, do
19 you see that?

20 A: Yes, I do.

21 Q And, for the record, is the blast site closer to the
22 Quik Trip or is the Quik Trip closer to Darlene
23 Edwards' house?

24 A: From this diagram it appears Quik Trip is closest to
25 the blast site.

2161

- 1 Q What is the direct route from the blast site to the
2 Quik Trip?
- 3 A: Using streets?
- 4 Q Yes, sir.
- 5 A: It would be coming straight up past the Quik Trip. I
6 would imagine **they** would come west on 85th.
- 7 Q There are streets that would connect between the Quik
8 Trip and Edwards'?
- 9 A: Around the bottom here.
- 10 Q Is there an industrial area that limits it to one to
11 two streets between where the school is, do you know
12 where that school is?
- 13 A: Yes.
- 14 Q Very close to the Edwards' house.
- 15 A: The one at 85th? A: Yes.
- 16 Q And so to get to Darlene Edwards' house, you just told
17 us the normal route would be right past the Quik Trip
18 and all the way over to the Edwards' house, is that
19 right?
- 20 A: No, the normal route would be up 85th and then north.
- 21 Q Still by the Quik Trip.
- 22 A: Yes, if you were driving, yes.
- 23 Q Did Miss Edwards tell you these two people came over to
24 get her to take them to the Quik Trip to get gas?
- 25 A: Yes.

1 Q She parked and **they** went in and got the gas.

2 A: No.

3 Q Nowhere on the tape did she say **they** didn't have any
4 money, did she?

5 A: No, I don't believe so, no.

6 Q Have you on occasion checked people out of the jail and
7 taken them down to the agency for interrogation, you
8 have the authority to do that, don't you?

9 A: Have I checked them out of the jail and then down to my
10 office? Q Sure.

11 A: Yes, I don't believe I have ever done that.

12 Q Seen other agents do that.

13 A: I am sure it has happened. Typically if a person is
14 kept in jail they're only there the shortest amount of
15 time before they are placed in the U. S. Marshal's
16 custody if they are defendants.

17 Q Because that was perhaps an alternative way of
18 interrogating her, to take her to headquarters and
19 videotape it, if you know.

20 A: Maybe during normal daylight hours, normal working
21 hours, that might have been acceptable.

22 MR. OSGOOD: Thank you.

23 THE COURT: Any Redirect?

24 MR. BECKER: No Redirect.

having been sworn, testified:

DIRECT EXAMINATION

BY MR. MILLER:

Q Would you tell the court and jury your name, please.

A: Travis L. Small.

Q And how old are you, sir?

A: Thirty-five years old.

Q Would you tell the court and jury how many felony convictions you have.

A: Two, counting one I have got present, right now.

Q What is the one you got in 1993?

A: Sale of cocaine.

Q Is that Jackson County or is that a federal felony?

A: Jackson County.

Q What was your sentence for that?

A: Five years.

Q Did you also take a federal conviction in Arizona?

A: A state conviction in Arizona, yes, for transporting cocaine.

Q Was that also in 1993?

A: Yes -- actually, '92 but I was convicted in '93, yes.

Q What was your sentence in the Arizona case?

A: Five years to run concurrent.

Q When you say "concurrent", that means at the same time

2164

1 with your Missouri case.

2 A: Consolidated together, making one five year sentence.

3 Q Did you just recently plead guilty to something here in
4 federal court?

5 A: Yes, I did.

6 Q And what was that?

7 A: Conspiracy to possession of marijuana and
8 methamphetamine with intent to distribute.

9 Q When did you plead guilty to that?

10 A: Last Thursday, the 28th or 29th.

11 Q Now, have you received any kind of consideration for
12 your testimony today based on those pleas?

13 A: Yes, I have.

14 Q Tell the jury what it is?

15 A: Consideration of a SK for substantial assistance to
16 authorities and it is part of the proffer I made and
17 there are lots of other things involved in that proffer
18 besides this case.

19 Q Does it mean you are guaranteed anything?

20 A: No guarantees. Nothing in writing. Only that I would
21 assist and hope I would get consideration.

22 Q When you mention this SK motion, tell the jury what you
23 mean by a SK motion.

24 A: It is a downward departure for assisting authorities in
25 the process of other people that I know that broke the

1 law or have broken the law. But there is no guarantee.
2 There is nothing in writing. They can either accept it
3 or they can reject it.

4 Q On this last conviction that you took, was your wife
5 also indicted with you?

6 A: Yes, she was.

7 Q Was there any consideration for her?

8 A: Yes.

9 Q And what was that?

10 A: It's a package deal. She's helping me and we kind of
11 help each other and help the authorities to the arrest
12 of other people that have broken the law.

13 Q Now, I want to go back prior to your conviction. Where
14 did you live prior to your '93 conviction?

15 A: Prior to my '93 conviction, on 103rd and Bennington.

16 Q Did you live anywhere around the Marlborough area?

17 A: Yes, I grew up on 79th

18 That's in the Waldo area. Probably three miles, four
19 miles from the Marlborough district, yes.

20 Q And do you recall the explosion that caused the death
21 of the six fire fighters?

22 A: Yes, I do.

23 Q How do you recall that?

24 A: I was getting ready for work one morning and I worked
25 with my step father and we had to get up early in the

2166

1 morning. We went to work at six in the morning but we
2 had to leave early because the highways were closed so
3 we had to take a different route because of that
4 warning.

5 Q Now, were you ever questioned about your knowledge of
6 who caused the explosion that killed the six fire
7 fighters?

8 A: Yes.

9 Q Were you questioned by an ATF agent named Marquardt?

10 A: Yes, sir.

11 Q And did you tell him that you had any information about
12 Bryan Sheppard?

13 A: No, sir.

14 Q Now, was that the truth at that time?

15 A: No, sir. I did have information about Bryan Sheppard.

16 Q And did you sign anything saying you didn't know
17 anything about Bryan Sheppard?

18 A: Yes.

19 Q What did you sign?

20 A: I believe it might have been an affidavit or something,
21 a statement I made.

22 Q Now, were you ever questioned again about the explosion
23 that caused the death of the six fire fighters, this
24 time by ATF Agent Dave True?

25 A Yes.

1 Q And at that time did you tell him you had any knowledge
2 about Bryan Sheppard?

3 A: Yes, I did.

4 Q In between that statement that you gave to Agent
5 Marquardt that you didn't know anything about Bryan
6 Sheppard's involvement and the statement you gave to
7 Dave True you did know about Bryan Sheppard's
8 involvement, were you given anything by the government
9 in consideration?

10 A: No.

11 Q About Bryan Sheppard, how long have you known Bryan
12 Sheppard?

13 A: I have known Bryan since probably '86.

14 Q 1986. A: 1986.

15 Q Now, do you remember the time when you learned
16 information from Bryan Sheppard about his involvement
17 in the explosion?

18 A: Yes, it was March of '89, around six o'clock, between
19 six and eight. He had paged me to purchase an eight
20 ball of cocaine.

21 MR. O'CONNOR: Objection. Relevance.

22 THE COURT: I think that is probably not
23 necessary.

24 MR. MILLER: It goes to show -

25 THE COURT: Maybe you better come up.

2168

1 (Proceedings out of the hearing of the jury.)

2 MR. MILLER: It goes to show their
3 relationship and we are not going into it any
4 deeper than when he pulls up, Sheppard gets
5 in the car and he's acting very nervous and
6 paranoid. "Let's get out of here" and he tells
7 this man why. He was a supplier. We are not
8 going to get into the fact he was a supplier.

9 THE COURT: I am going to instruct the jury
10 to disregard the eight ball. Just lay off the cocaine.

11 MR. MILLER: That was just to establish the
12 relationship and as to why Bryan Sheppard would trust
13 him to tell him this stuff, instead of out of a
14 vacuum he makes this admission. That's why it is
15 there.

16 THE COURT: This is '86 and this is '89.
17 So there is three years. Would he testify that he
18 had seen or been with Bryan Sheppard regularly between
19 '86 and '89?

20 MR. MILLER: I wasn't going to ask him that.

21 THE COURT: The thing is I don't think you
22 should use the cocaine to establish a relationship but
23 maybe you can establish there was some relationship,
24 social or otherwise.

25 MR. MILLER: That is the relationship, he

1 supplies Bryan with methamphetamine and other **drugs**.

2 THE COURT: All right, without referencing

3 methamphetamine or **drugs**, can he say he saw him a given
4 number of times during that period of time?

5 MR. MILLER: Sure, he can say that.

6 MR. O'CONNOR: I don't mind him leading
7 through that.

8 THE COURT: Don't talk about cocaine.

9 MR. O'CONNOR: For my record, you are going
10 to ask the jury to disregard that. And after you do
11 that, I move for a mistrial, other crimes. That
12 outweighs the probative value and I think I am highly
13 prejudiced.

14 THE COURT: Overruled.

15 (Proceedings in the hearing of the jury.)

16 THE COURT: Ladies and gentlemen, you should
17 disregard the last statement of the witness and use the
18 information in it in no way in your deliberations with
19 respect to defendant Bryan Sheppard.

20 Now, you may proceed.

21 Q You had known him since '86 and so forth.

22 A: Yes.

23 Q And this happened in '89. You had seen him and been
24 around him on several occasions during those three
25 years, hadn't you?

2170

1 A: Yes, sir.

2 Q Where did the two of you meet?

3 A: I worked, I was an assistant manager at the WMF on
4 Wornall.

5 THE COURT: Assistant manager of what?

6 THE WITNESS: Working Man's Friend, a
7 cut-rate station, gasoline station.

8 Q That is where you met back in '86. I want to go back
9 to March of '89 and where did you agree to meet Bryan
10 Sheppard at?

11 A: He paged me and we agreed he would meet me in front of
12 Mama Tios.

13 Q Where is that?

14 A: Approximately 80th and Paseo.

15 Q Do you remember what time of the day it was you met
16 there?

17 A: About six o'clock.

18 Q Who drove?

19 A: I drove.

20 Q After you pulled up in front of Mama Tios, was Mr.
21 Sheppard there?

22 A: He was standing in front of the side of the building
23 there.

24 Q As you pulled up what did he do?

25 A: He got in the car.

1 Q After he got in the car what did he say to you?

2 A: He told meto get out of the neighborhood, the cops
3 were all over the neighborhood.

4 Q How was he acting?

5 A: Paranoid. The use of cocaine will make you -

6 MR. O'CONNOR:Object to the reference
7 to cocaine.

8 THE COURT: You are not to refer to **drugs** in
9 that way. Just answer the question and the question
10 only.

11 THE WITNESS: All right, sir.

12 MR. O'CONNOR: I also move for a mistrial.

13 THE COURT:That is overruled. Denied.

14 Q In the car what did Bryan Sheppard say to you?

15 A: He told meto get out of the neighborhood, the cops
16 were all over. He asked me for a ride.

17 Q And then what else did he say to you?

18 A: I asked him what he meant, the cops were all over the
19 neighborhood, and he said, "I Lucked up. Some people
20 got killed." And I said, "What do you mean, some
21 people got killed?" He said, "The explosion on the
22 highway." I drove him approximately three blocks and
23 dropped him off at a corner house.

24 Q How many times has Bryan Sheppard talked with you about
25 the explosion?

1 A: One time.

2 Q That time. A: Yes, sir.

3 Q Do you see Bryan Sheppard in the courtroom today?

4 A: Yes, I do.

5 Q Can you point him out.

6 A: Yes, I can. That man right over there, standing up
7 right there.

8 THE COURT: The record should reflect the
9 defendant Bryan Sheppard stood up and the witness
10 identified him.

11 MR. MILLER: That is all I have of this
12 witness, Your Honor.

13 THE COURT: All right. Mr. O'Connor.

14 CROSS EXAMINATION

15 BY MR. O'CONNOR:

16 Q Mr. Small, my name is John O'Connor. I represent Bryan
17 Sheppard. Can you give us your birth date, please.

18 A: 10-22-61.

19 Q So you are 35 years old.

20 A: Thirty-five years old.

21 Q And so in November of '88 you would have been 27.

22 A: About 27.

23 Q How old was Bryan Sheppard then, do you know?

24 A: Oh, about 18.

25 Q And I believe you told us on Cross Examination that you

1 had two felony convictions, is that the truth?

2 A: Yes.

3 Q Do you remember pleading guilty in front of the
4 Honorable Donald Mason in Division it in case 92-2891
5 to Count One, sale of a controlled substance, a Class B
6 felony, and receiving a five year sentence?

7 A: Yes.

8 Q Do you remember pleading guilty to Count Two, sale of a
9 controlled substance, cocaine, a Class B felony and
10 receiving another five year sentence?

11 A: The same thing.

12 Q A different case though.

13 A What?

14 Q A different case you were pleading to.

15 A: It was in the same court in front of Judge Mason.

16 Q But you pled to three counts of an indictment.

17 A: To run concurrent, making one five-year sentence.

18 Q Let's start over. Did you plead guilty to Count One,
19 sale of a controlled substance, a Class B felony?

20 A: Yes.

21 Q How many felonies is that, one?

22 A: One.

23 Q Then you pled guilty to Count Two, sale of a controlled
24 substance, a Class B felony. That was two felony
25 convictions.

2174

- 1 A: Yes.
- 2 Q Then you pled guilty to Count Three, sale of a
3 controlled substance, cocaine, which is three felony
4 convictions.
- 5 A: That's correct.
- 6 Q Then you pled guilty in Arizona to some kind of **drug**
7 charge and received a five-year sentence which makes
8 four felony convictions.
- 9 A: Yes.
- 10 Q Now, how many other names have you used besides your
11 own?
- 12 A: I used to go by "T" and Bryan Simpson.
- 13 Q Ever use the name Craig Fisher?
- 14 A: Yes.
- 15 Q Ever use the name Lee Small?
- 16 A: Yes, I went by Lee Small.
- 17 Q Ever use the name Travis Smull, S-m-u-l-l?
- 18 A: No.
- 19 Q Ever use the name Travis Simpson?
- 20 A: No.
- 21 Q Used different dates of birth before?
- 22 A: No.
- 23 Q Ever use the date of birth 7-3- of '63?
- 24 A: On one occasion.
- 25 Q Now do you remember the ATF coming to see you on

1 February 9th, 1995 in the jail down there in Arizona?

2 A: In the prison in Arizona, yes.

3 Q And do you remember that they asked you questions about
4 this man over here, my client, Bryan Sheppard?

5 A: Yes.

6 Q And do you remember that the agent then filled out a
7 four page affidavit that you signed and swore to under
8 the penalty of perjury?

9 A: Yes.

10 Q Handing you what has been marked as Defendants' Exhibit
11 27 and ask you if that is the affidavit you signed
12 under penalty of perjury.

13 A: Yes, that is my signature.

14 Q Is that the interview you gave them on February the
15 9th?

16 A: Yes.

17 Q In that interview, under the penalty of perjury, did
18 you make this statement, "I do not know the Sheppards
19 except I have heard of a Skip Sheppard but never met
20 him. They had never told me anything about the firemen
21 because I have never met them." Did you tell the agent
22 of that under penalty of perjury on February 9th, 1995?

23 A: Yes, I did.

24 Q And did the agent read this back to you? Did you read
25 it yourself before you signed it?

1 A: I believe so.

2 Q Does it say on the front of this affidavit, "I have
3 read the foregoing statement consisting of four pages,
4 each of which I have signed. I fully understand this
5 statement and I declare, certify, verify and state
6 under the penalty of perjury that the foregoing is true
7 and correct. I made the corrections shown and placed
8 my initials opposite. I made this statement freely and
9 voluntarily without any threats or rewards or promises
10 of rewards having been made to me in return for it."
11 Executed February 9th, 19 9 5 .

12 A Yes.

13 MR. O'CONNOR: Offer into evidence
14 Defendants' 27.

15 MR. MILLER: Objection. That is hearsay.

16 MR. O'CONNOR: I only ask it be admitted
17 for the purposes what I just read from it.

18 THE COURT: Just verify the part you just
19 read and for that limited purpose and without
20 further publication to the jury it is admitted.

21 MR. O'CONNOR: Thank you, Your Honor.

22 Q February the 9th, 1995 is when you told the agents
23 that.

24 A: Yes, I did.

25 Q Then on August the 5th you never changed that affidavit

from February the 9th of 1995 until November, you never changed your statement in that affidavit from February the 9th, 1995 until November of 1996, is that true?

A: Yes.

Q Now, on 8-5 of '96 was a federal indictment returned against you in the Western District of Missouri?

A: Yes.

Q And were you charged in Count One of that indictment with possession with intent to distribute and distribute methamphetamine, a Schedule II controlled substance, in the amount of a hundred grams or more?

A: Yes.

Q Did you have charged against you in Count Two, that you did knowingly and intentionally possess with intent to distribute a mixture or substance containing a detectable amount of marijuana, a Schedule I controlled substance?

A: Yes.

Q And did you have charged against you in Count Three where you were charged with aiding and abetting each other and others in this indictment, you did knowingly and intentionally attempt to possess with intent to distribute a mixture or substance containing a detectable amount of marijuana, a Schedule I controlled substance?

2178

- 1 A: Yes.
- 2 Q August the 5th, 1996.
- 3 A: Right.
- 4 Q Was your wife Crystal also named in that same
- 5 indictment?
- 6 A: Yes.
- 7 Q On Count One were you facing a penalty of not less than
- 8 five years nor more than 40 years?
- 9 A: That's correct.
- 10 Q Were you facing a two million dollar fine?
- 11 A: Yes.
- 12 Q In Count Two were you facing a five year imprisonment?
- 13 A: Yes.
- 14 Q And a \$250,000 fine.
- 15 A: That's correct.
- 16 Q And Count Three were you facing five years
- 17 imprisonment?
- 18 A: That's correct.
- 19 Q And a \$250,000 fine.
- 20 A: That's correct.
- 21 Q Was your wife also facing not more than five years nor
- 22 more than 40 years, her sentence?
- 23 A: Yes, sir.
- 24 Q Was your wife pregnant at the time of the indictment?
- 25 A: Yes.

1 Q Now, did you hire a lawyer or did a lawyer get
2 1 appointed?

3 A: I hired an attorney.

4 Q And your attorney then started negotiating with
5 prosecutors regarding your **drug** case, is that correct?

6 A: Yes.

7 Q And on November the 19th, 1996 you did a proffer letter
8 with the government.

9 A: Yes.

10 Q What a proffer letter is is a letter in which you agree
11 to admit your involvement in the crime you are charged
12 but you are willing to cooperate against others in the
13 indictment.

14 A: Yes.

15 Q And other people in general.

16 A: Correct.

17 Q And part of this proffer was also to aid and assist
18 your wife who is charged and pregnant -

19 THE COURT: You are making statements again,
20 Mr. O'Connor.

21 Q Was your wife also charged and pregnant at the time you
22 made the proffer?

23 A: Yes, we both made the proffer.

24 Q Then on November the 25th, six days after that proffer,
25 you met with Dave True and now you had information

2180

1 about Bryan Sheppard.

2 THE COURT: Now, Mr. O'Connor, please don't
3 do that.

4 MR. O'CONNOR: I apologize.

5 THE COURT: Ask him a question.

6 MR. O'CONNOR: Yes, sir, I apologize, Your
7 Honor.

8 Q On November the 25th, 1996 did you meet with Special
9 Agent Dave True?

10 A: Yes, I met with Dave True.

11 Q And you now are telling Dave True on November the 25th
12 you now know Bryan Sheppard.

13 THE COURT: Now, Mr. O'Connor, you did it
14 again.

15 Q Are you telling us you knew Bryan Sheppard.

16 A: Yes.

17 Q And in your previous affidavit under oath you said you
18 did not even know the Sheppards.

19 A: That's correct.

20 Q Did you see Bryan Sheppard between 1986 and 1989?

21 A: Yes.

22 Q How many times did you see Bryan Sheppard,
23 approximately?

24 A: Between the three years?

25 Q Yes, sir.

1 A: Probably -

2 Q Just give me, ball park is fine.

3 A: Twenty, twenty-five times.

4 Q And in any of those other 24 times you have talked with
5 him and met him did he ever say anything about his
6 involvement in the fire fighters explosion?

7 A: No.

8 Q Is the only time this one time you say, as I understand

10 A: March of '89.

11 Q March of '89. Have you read the interview Dave True
12 did of you?

13 A: And what date was that?

14 Q November 25, 1996.

15 A: No, I haven't.

16 Q And so I understand the scenario, did you say Bryan
17 Sheppard came by, you went by to pick Bryan Sheppard up
18 at Mama Tios?

19 A: Yes.

20 Q And Bryan Sheppard got in the car.

21 A: Yes.

22 Q And he was like saying let's get out of here, words to
23 that effect, the cops are in the neighborhood.

24 A: "There is cops all over the neighborhood. Let's get
25 out of here."

1 Q This is like four months after the explosion, is it?

2 A: I believe it to be. Four months, yes.

3 Q And he says to you in this limited one conversation
4 that Bryan Sheppard said some people got killed over on
5 the highway, the explosion up on the highway.

6 A: That's not what he said. He said he tucked up and some
7 people got killed.

8 Q On the highway.

9 A: And then I said, "What are you talking about?" And he
10 said, "The explosion on the highway."

11 Q You now have a plea agreement with the government, do
12 you not?

13 A: Yes, I do.

14 Q Did you agree to provide full and complete cooperation
15 in the investigation and prosecution of other persons
16 who have committed offenses against the laws of the
17 United States?

18 A: Yes.

19 Q Have you agreed that in the event you give false,
20 incomplete or misleading testimony, that you will be in
21 violation of this agreement?

22 A: Yes.

23 Q And do you expect to be prosecuted for the false
24 affidavit that you say now is a lie?

25 A: I hope I am not.

2183

1 Q Do you really believe you will be?

2 MR. MILLER: I object to that.

3 THE COURT: Yes, don't speculate about that.

4 Q Under the federal law do you qualify as a career
5 offender?

6 A: That hasn't been determined yet.

7 Q Did you read your plea agreement?

8 A: Yes, I did.

9 Q Does it say in your plea agreement you can be treated
10 as a career offender?

11 A: Yes, it does.

12 Q Meaning you have two or more.

13 A: One or more priors, two.

14 Q You could be facing a maximum 40 year prison sentence
15 as a career offender.

16 A: Yes.

17 Q And the government in this agreement retains the right
18 to make the recommendations they want to make on your
19 behalf, is that true?

20 A: As far as the complete and truthful testimony I give?

21 Q Yes.

22 A: Yes, they reserve the right to determine that.

23 Q And they are the sole determiners of what happens to
24 you in this plea agreement, isn't that true?

25 A: Yes, it is.

1

1 Q And they have agreed as part of your cooperation to
2 file this motion for substantial assistance, have they
3 not?

4 A: Yes, it's a motion they filed.

5 Q And tell me what you understand it means.

6 A: It means it is a motion. It can be accepted. It may
7 not be accepted. That is up to the government to
8 decide whether they accept it or not.

9 Q But the government is going to be the sole determiner
10 as to whether or not you have provided substantial
11 information.

12 A: The prosecutor in this case will be, yes, sir.

13 Q And under the Federal Sentencing Guidelines, what
14 sentence were you told you would be facing without
15 assistance?

16 A: If I am not considered a career criminal I will be
17 facing a guideline range of 28, and with a three point
18 acceptance of responsibility it will go to 25. That's
19 if that is accepted.

20 THE COURT: That is a range you are talking
21 about.

22 THE WITNESS: Only a range.

23 THE COURT: Not years of punishment.

24 THE WITNESS: No, if I was accepted as a 25
25 I would be facing about a ten year sentence, between

2185

1 100 and 137 months.

2 Q But as a career offender -

3 A: As a career offender I would face 324 to 262 months.

4 Q If I have it right, it's 21 to 27 -

5 A: 21.8 to 27 years if I am a career offender, if I am
6 considered as a career offender.

7 Q And you are.

8 A: That hasn't been determined yet.

9 Q It is your understanding to be a career offender you
10 had to have one or more **drug** convictions.

11 A: Two convictions.

12 Q Do you have two prior **drug** convictions?

13 A: Yes.

14 Q Now, you pled guilty to a federal crime which makes you
15 a career offender under the law.

16 A: Two convictions concurrent to the other. Still two
17 convictions but there may be consideration as far as
18 whether I am a career criminal.

19 Q There may be a loophole is what you are saying.

20 MR. MILLER: Objection.

21 THE COURT: Let's don't argue. This is a
22 legal question. Let's don't argue about it.

23 Q So if the government on their own determination files
24 this motion, then the guidelines are out and you can
25 get any sentence, including probation, isn't that true?

1 A: I don't think I qualify for probation, no.

2 Q Could you get a sentence substantially less than what
3 you are facing?

4 A: Yes, but part of the proffer, if the government accepts
5 it, -- if the government don't accept it, that's up to
6 the government. There has been nothing guaranteed in
7 writing.

8 Q Did you talk to them about this false statement under
9 oath?

10 A: Yes, I did.

11 Q Did they seem concerned about it?

12 A: Yes, they did.

13 Q Hand you what has been marked as Defendants' Exhibit 26
14 and ask you if that is the plea agreement you entered
15 into on January the 30th, 1997.

16 A: Yes, it is.

17 MR. O'CONNOR: Your Honor, I would offer at
18 this time Defendants' Exhibit No. 26, the plea
19 agreement.

20 MR. MILLER: No objection.

21 THE COURT: All right. Admitted without
22 objection.

23 Q I am going to hand you what has been marked as
24 Defendants' Exhibit 28, a copy of the indictment
25 returned against you and your wife on August the 5th,

2187

1 1996. Is that a copy of the indictment?

2 A: Yes.

3 MR. O'CONNOR: I offer at this time
4 Defendants' Exhibit 28.

5 MR. MILLER: No objection.

6 THE COURT: All right, it is admitted then
7 without objection.

8 (DEFENDANTS' EXHIBIT NO. 28 WAS RECEIVED IN EVIDENCE.)

9 Q Now when they talked to you on November the 19th, 1996
10 did they have you do another affidavit?

11 A: They took down my statement.

12 Q The question is did they have you swear to it under
13 oath like they did the other one?

14 A: I am not sure. Yes, I think probably so.

15 Q Dave True was there. A: Yes.

16 Q He would probably know the answer better than you.

17 A: Probably would.

18 MR. O'CONNOR: That is all I have. Thank
19 you, sir.

20 THE COURT: Any other Cross? Redirect?

21 MR. MILLER: A few questions, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. MILLER:

24 Q The plea agreement, the deal you entered into, that was
25 with a federal prosecutor by the name of Bill Meiners,

2188

1 correct?

2 A: Yes.

3 Q That is to testify in the **drug** case in Arizona, isn't
4 it, or what state is it?

5 A: Yes, Arizona.

6 Q And that is what the substance of the plea agreement
7 was, testify in the **drug** case, isn't it?

8 A: Yes.

9 Q It is not to testify in this case, is it?

10 A: No, it is to testify about knowledge that I knew about
11 other people that have committed crimes against the
12 United States Government.

13 MR. MILLER: That is all I have, Your
14 Honor.

15 MR. O'CONNOR: Nothing further, Judge.

16 THE COURT: All right, you may step down.

17 We will break for lunch, ladies and
18 gentlemen. Don't discuss the case while you are
19 at lunch, among yourselves or with anyone else. And
20 please be back in the jury room ready to go at 1:30.

21 You may withdraw from the courtroom.

22 (The jury leaves the courtroom.)

23 THE COURT: All right, we are in recess.

24 LUNCHEON RECESS

25 (Conference in the Court's Chambers)

2189

1 MR. PETERS: On the witnesses, so I don't
2 run afoul of what I think is the court's ruling and
3 we have got a number of them today where the witnesses
4 wouldn't say, they didn't say Frank Sheppard, they
5 didn't say Darlene Edwards, they didn't say Skip
6 Sheppard.

7 Can I just make my offer now and the
8 Court has ruled that is improper cross examination
9 or should I come up after each witness or how do
10 you want me to do it? In other words, like the
11 first witness is Pam Barth. She doesn't mentioned
12 Frank Sheppard, Skip Sheppard or Darlene Edwards.

13 THE COURT: Are these specific names
14 mentioned in these statements?

15 MR. BECKER: This situation I contend to be
16 an admission by Bryan Sheppard and Richard Brown, they
17 are both present when Richard Brown says we did thus
18 and so. So they don't mention any other names. They
19 don't say Joe Smith or anybody. They just said here's
20 what we did.

21 MR. PETERS: What I would propose, I would
22 get up and say to Pam Barth, did Richard Brown say that
23 Frank Sheppard was involved. No. Skip Sheppard was
24 involved? No. Darlene Edward was involved? No. But
25 on the past witnesses that has been objected to and

2190

1 sustained. If you want me to do it after each
2 witness.

3 THE COURT: This is this crazy Bruton rule.
4 Would it be consistent just for him to say did she
5 mention anybody else.

6 MR. BECKER: I don't have a problem. Did
7 Richard Brown mention anybody else.

8 THE COURT: Yes.

9 MR. BECKER: No, and I won't object to that.

10 THE COURT: Then you can argue because they
11 didn't mention anybody else.

12 MR. BECKER: I am not as confident of the
13 details on the other witnesses what the answer would
14 be. I just prepared her again so I am very familiar
15 with the next two or three. I can't speak for Dan's
16 witnesses. There will be three more after that.

17 MR. MILLER: As far as mentioning other
18 defendants' names, yes, several say Richard, mentioned
19 like in one instance Bryan and another one, he keeps
20 talking about **uncles**, they're not his **uncles** but he is
21 saying **uncles** and the witness has taken Richard Brown
22 to think he is talking about his **uncles**. And I have
23 counseled her don't say the word **uncles**, we are
24 trying to say Richard Brown, Richard Brown, Richard
25 Brown.

1 ; MR. PETERS: What I need for my purposes on
2 the record, my offer to the Court is I want to ask
3 specifically Frank, Skip, Darlene. When we have done
4 that in open court, it has been objected to. We
5 approached and because of Bruton we haven't been
6 allowed to.

7 I guess I am asking for the Court's
8 help. How can I preserve my record without taking
9 up time on each of these witnesses? Can I make
10 that offer now and have the ruling now and have it
11 apply to all the witnesses?

12 THE COURT: That is agreeable with me.

13 MR. BECKER: That is agreeable with us,
14 Judge.

15 THE COURT: But what I think you ought to
16 have is the opportunity to demonstrate that and
17 apparently there isn't any way to do that.

18 MR. PETERS: We respect the Court's ruling.
19 We believe it is appropriate for us to elicit that
20 because what we are impeaching is not the witness but
21 the statement of Richard Brown propounded by the
22 witness. And our argument is going to the
23 believability of a statement by Richard Brown, the only
24 people who were involved were two people -- two people
25 -- that that goes to the credibility of the statement

1 itself.

2 I understand the Court's ruling as
3 regard to Bruton. In other words, if five people
4 were seen going in robbing a bank and somebody
5 said me and another person did it, that would lead
6 you to believe that the statement itself wasn't
7 credible because they have testified to facts
8 inconsistent with five people being involved. And
9 so the reason I want to bring it out, first of
10 all, it is beneficial to my client but only two
11 people in these various statements, the statements
12 say only two people were involved.

13 MR. BECKER: It doesn't say only two
14 people were involved. That is the whole point. It
15 says Richard Brown would say Bryan and I did this.
16 Didn't say we did it all alone.

17 THE COURT: Didn't say nobody else was there.

18 MR. BECKER: Doesn't say no-one else was
19 there. So I mean counsel characterizes it as sort of
20 an exclusivity that the speaker says only we did it.
21 And that is not what is being said. That is not what
22 is being testified to.

23 MR. PETERS: But I think in fairness, Judge,
24 if I was charged with bank robbery and another person
25 confessed to the bank robbery and said that they had

1 done it, it would be excluded. That statement against
2 people's interest wouldn't be excluded because he
3 didn't say Pat Peters didn't do it. In other words,
4 a statement that says I did it with one other person by
5 its very nature excludes everybody else in the world
6 and there is no case law to suggest -

7 THE COURT: That was my point. You can
8 argue that if that is the evidence, if there is
9 evidence without mentioning anybody else.

10 MR. PETERS: We can put it to rest for
11 purposes of my hearing, everybody is in agreement I
12 have made my offer.

13 I would propose to elicit Frank Sheppard
14 specifically but I would also elicit Darlene
15 Edwards and Skip Sheppard on the witnesses called
16 this afternoon, that I have made my offer of
17 proof. I have made my record. The Court has made
18 its ruling and I do not have to make a
19 contemporaneous objection with each witness.

20 THE COURT: That is all right with me.

21 (Proceedings in the hearing of the jury.)

22 MR. BECKER: The United States calls Pam
23 Harth.

24 PAM BARTH.

25 having been sworn, testified:

1
2 BY MR. BECKER:
3 Q Please state your name and spell your last name.
4 A: My name is Pam Harth, H-a-r-t-h.
5 Q Where do you live?
6 A: I live in Kansas City, Missouri.
7 Q Have you ever lived in the Marlborough area?
8 A: Yes, I have.
9 Q How long have you lived in the Marlborough area?
10 A: Oh, I would say we have lived out there about, I would
11 say about ten years, you know, my parents.
12 Q Do you have any sons?
13 A: Yes, I do.
14 Q What are their names and their ages?
15 THE COURT: How many do you have?
16 THE WITNESS: Two.
17 Q How old is Anthony Harth?
18 A: Anthony Harth is 23. Alfred Harth, the III, is 24.
19 Q In November of 1988 where were you living?
20 A: I was living at 8012 Virginia. It's on 80th Street.
21 Virginia runs this way. I lived on 80th.
22 Q Eightieth runs east-west and Virginia is a north-south.
23 A: Right. Right.
24 Q Do you remember the explosion that happened in the
25 early morning hours of November 29, 1988?

1 A: No, I really don't but my boyfriend did.

2 Q Did he wake you up?

3 A: Yes, he did.

4 Q Did he go outside then?

5 A: Yes, he did. He thought the house behind us blew up.

6 Q Was it a gas leak?

7 A: Yes, he thought it was a gas leak and I said, oh, go

8 back to bed; it's thunder, because I was asleep.

9 Anyway, the I guess when he got up he looked outside

10 and my brother had crossed the street, him and Jimmie -

11 - what's his name, Gary Dean.

12 Q And people were outside.

13 A: Yes.

14 Q At that time did you know two people, Richard Brown and

15 Bryan Sheppard?

16 A: Yes.

17 Q How did you know them?

18 A: By my sons.

19 Q Tell us a little more about that. How did you know

20 them through your sons?

21 A: They used to run around together and they used to come

22 to my house, call me mom, you know. One of them really

23 did call me mom.

24 Q Which one was that?

25 A: Richard.

1 Q Do you see them here in court today?

2 A: Yes, I do.

3 Q Do you see Richard Brown?

4 A: Yes, I do.

5 Q Could you tell us where he is sitting and what he is
6 wearing.

7 A: He is sitting at the end and has a blue shirt on and
8 dark tie.

9 MR. BECKER: Indicating the defendant
10 Richard Brown.

11 Q Do you see Bryan Sheppard here in court?

12 A: Yes, I do, right there. He's got a white shirt, right
13 there. He has gained weight but, yes, that's him.

14 MR. BECKER: Indicating the defendant Bryan
15 Sheppard, Your Honor.

16 THE COURT: Yes.

17 Q You say he has gained weight.

18 A: Yeah.

19 Q Is that since you have last seen him?

20 A: Right, he has gained weight since the time I seen him.
21 Richard looks different. He has got his hair shorter.

22 Q Have you ever seen his hair that short?

23 A: No, I haven't.

24 Q Approximately a month after the explosion do you
25 remember Richard Brown and Bryan Sheppard being at your

2197

1 house?

2 A: Yes.

3 Q What were they doing there?

4 A: They were there waiting for my son Anthony to come
5 home. And he hadn't come home yet and I told them he
6 might come and he might not come. Finally, they left.
7 I was in the kitchen cleaning my kitchen.

8 Q Where in your house was Richard Brown and Bryan
9 Sheppard?

10 A: In the front room.

11 Q How far away is that from the kitchen to the front
12 room?

13 A: I would say the kitchen, between me and you, you know.
14 The house wasn't that big.

15 Q Approximately.

16 A: I would say -

17 Q Ten to fifteen feet.

18 A: My kitchen wasn't that big. I would say, maybe from
19 that right there, -- no, a little further. Right
20 there. And here that was my, maybe a little bit
21 bigger, I don't know.

22 Q But, in any event, it would be somewhere between 10 and
23 15 feet.

24 A: It was a little house, yes, something like that.

25 Q Could you see them in the living room?

2198

1 A: Oh, yes, I could hear them.

2 Q And could you hear them?

3 A: Yes, you could heard Richard real good.

4 Q Did you see if Richard Brown and Bryan Sheppard were
5 sitting or standing.

6 A: Richard was standing and Bryan was sitting down. Bryan
7 didn't say too much. It was Richard blabbing at the
8 mouth.

9 Q Did the subject of this explosion that killed the
10 firemen come up?

11 A: Oh, yes.

12 Q What did Richard Brown say about the explosion?

13 A: Well, he said after it happened that, you know, **they**
14 went to get tools and which **they** did. Anyway, **they**
15 set the fire on top of the hill and it got bigger than
16 **they** thought and **they** ran out of gas before **they** had
17 done this crime. **They** were going to break into the
18 shed to get, I guess the equipment out of it, whatever.

19 Q Let's take it one step at a time. What were you doing
20 in the kitchen?

21 A: I was mopping my floor.

22 Q And where was Bryan Sheppard when Richard Brown was
23 telling you this?

24 A: He was about five feet away. Bryan was sitting in a
25 chair and Richard was standing up.

2199

1 Q Did Bryan Sheppard say anything?

2 A: All I could really hear was Richard. I am the type of
3 person I hear what I want to hear, you know. Richard
4 was the one mostly talking.

5 Q Did Richard say why **they** set a fire on the hill?

6 A: Because **they** wanted to burglarize the shed that had the
7 tools in it.

8 Q Did he say anything about distracting the guard?

9 A: Yes.

10 Q What did he say?

11 A: He said **they** went to get gas to start a fire up on the
12 hill and the guards, or whatever, **they** were down there,
13 distracted them.

14 Q This conversation happened in your home.

15 A: Yes. **They** had been to my house many a time but Richard
16 has been to my house more than Bryan has.

17 Q At the time did you know what kind of a vehicle Richard
18 Brown had?

19 A: I think it was a Ford, a Ford pickup truck. I don't
20 know what year.

21 Q Did you go to the police with this information?

22 A: No, I didn't.

23 Q Why not?

24 A: Because my family all lived out there. I don't want
25 them in jeopardy. I didn't want them to be killed or

2200

1 hurt, whatever, you know.

2 MR. OSGOOD: Unless there is some evidence.

3 THE COURT: Be careful with that. She is
4 expressing her own view of that situation. I don't
5 think you ought to make a speech about it. Do you want
6 to come up?

7 (Proceedings out of the hearing of the jury.)

8 MR. OSGOOD: I would ask the jury to
9 disregard that comment.

10 MR. BECKER: I am more than happy to ask
11 this witness if she is aware of acts of violence by
12 these defendants, a basis for that fear. I am more
13 than happy to ask that.

14 THE COURT: Do you want to voir dire the
15 witness?

16 MR. OSGOOD: I would just prefer you not go
17 into it any further and let's just move on.

18 MR. BECKER: The objection is withdrawn?

19 MR. OSGOOD: That was a gratuitous comment.

20 MR. BECKER: No, it's why she waited six
21 years to come forward.

22 MR. OSGOOD: She came forward because of the
23 reward. She is going to testify to that.

24 MR. BECKER: He can cross examine her on
25 that.

2201

1 THE COURT: Let's just leave it.

2 MR. PETERS: While we are up here, I have a
3 good-faith basis to ask this witness if she is **high** as
4 a kite right now, under the influence of
5 methamphetamine rather than coming up when I begin
6 cross examination.

7 MR. BECKER: What is the good-faith basis?

8 MR. PETERS: This witness' demeanor is
9 completely consistent, from my lengthy experience as a
10 prosecutor, with people who are speeding on
11 methamphetamine as opposed to people speeding on
12 cocaine. The change in demeanor is completely
13 consistent.

14 THE COURT: What do you mean "change in
15 demeanor"?

16 MR. PETERS: She doesn't usually talk this
17 fast. She is usually not this animated.

18 MR. BECKER: How many times have you spoken
19 to this woman?

20 MR. PETERS: I am making my offer.

21 MR. BECKER: I have spoken to this witness
22 three times and she has been just as animated each
23 time. She is nervous because she is sitting in a
24 courtroom. I mean every witness acts differently
25 than they do in normal life because they are not in a

2202

1 normal situation.

2 THE COURT: Other than the fast-talking, do
3 you have any independent basis to believe she is on
4 something?

5 MR. PETERS: I haven't been told by anybody
6 she is doing moth.

7 THE COURT: Okay, then don't ask the
8 question.

9 (Proceedings in the hearing *of* the jury.)

10 THE COURT: I believe the objection is
11 withdrawn.

12 MR. OSGOOD: I will withdraw it.

13 Q Eventually, in 1996 did you come forward and talk to
14 Officer Jerry Ludwig and Detective Guffey *of* the Kansas
15 City, Missouri Police Department?

16 A: Yes, I did.

17 Q Did you ask them about the reward money?

18 A: No, no, I don't care about the reward money. I don't
19 want the reward money.

20 MR. BECKER: Thank you very much.

21 THE COURT: Cross.

22 CROSS EXAMINATION

23 BY MR. OSGOOD:

24 Q My name is John Osgood and I represent Mr. Richard
25 Brown. You and I have never talked, have we?

2203

1 A No.

2 Q Where do you live at this time?

3 A: Kansas City, Missouri.

4 Q And you, I believe, just testified you didn't care
5 about the reward.

6 A: No, I don't care. Give it to the families -- I don't
7 care -- the ones that need it, the children. I don't
8 care. I don't want the money.

9 Q Do you remember when you were interviewed on March
10 29th, 1996 by Detective Robert Guffey and present at
11 that interview was a Bill Welch?

12 A: Yes, that's my boyfriend.

13 Q This is the boyfriend who woke you up and told you
14 there was an explosion.

15 A Right.

16 Q At the end of the interview with the detective did you
17 both volunteer and advise there was reward money
18 concerning this offense and make an inquiry about it?

19 A: I heard about the reward money. Like I said, I don't
20 care about it and he doesn't either. We don't care
21 about the money.

22 Q But you did raise that subject with the detective.

23 A: I can't really remember that.

24 Q Wasn't that a significant factor in you coming forward
25 at that time?

2204

1 A: No, not really.

2 Q Hadn't you heard it on Unsolved Mysteries there was a
3 \$50,000 reward -

4 A: That don ~ t bother me.

5 THE COURT: Let him finish the question
6 before you start answering.

7 Q That doesn't bother you, you said.

8 A: Now say it again. I'm sorry. Maybe I am jumping the
9 gun. I'm sorry.

10 Q Hadn't you heard on the radio and television reports
11 and in particular the Unsolved Mysteries about that
12 time there was a \$50,000 reward.

13 A: Oh, yeah.

14 Q That is when you called, you and Mr. Welch discussed
15 it, didn't you?

16 A: No.

17 Q And you called Detective Guffey, didn't you, on your
18 own.

19 A: Oh, no, I didn't.

20 Q How did he come out to see you?

21 A: I might have called him. I don't know. I might have
22 called him. I mean, you know.

23 Q Well, it's been -- about March -- it's been coming up a
24 year, hasn't it?

25 A: A year since the explosion?

1 Q No, since you talk to the detective.

2 A: Oh, yes.

3 Q And you don't remember?

4 A: I remember him coming to my house and talked to me.

5 Well, I don't know if I called him. I think he come to
6 my house.

7 Q It is kind of hard to remember.

8 A: Yes, I am pretty sure he come to my house.

9 Q A little difficult to remember exactly what happened?

10 A: Yeah. Yeah.

11 Q You have problems with your memory, don't you, ma'am?

12 A: No, not really. Just I have been going through a lot
13 right now.

14 Q Do you remember testifying before the grand jury in May
15 of 1996 which would have been three months after the
16 detective was at your house?

17 A: Yeah. They were at my house.

18 Q Were you asked this question, ma'am, and did you give
19 this answer: "Question: Now where were you living in
20 November, 1988?"

21 MR. BECKER: What page?

22 MR. OSGOOD: Page 4. "Answer: I was living
23 on 80th Street and Virginia.

24 "Question: How long had you been living
25 there?

1 "Answer: I was living there, how long
2 had I lived there?"

3 "Question: Right."

4 "Answer: My memory ain't too good so I
5 would say, I think I lived there about a year.
6 Well, I have lived in the neighborhood, altogether
7 we have lived there about eight years."

8 So did you tell the grand jury your
9 memory ain't too good?

10 A: Maybe I did.

11 MR. BECKER: Objection. Argumentative.

12 THE COURT: I think it is argumentative. I
13 will sustain the objection.

14 Q Let me ask it another way. Is this transcript
15 accurate?

16 A: What, sir?

17 Q Is that transcript an accurate record of what was asked
18 and what was said?

19 A: What I said was the truth. I mean, -- oh, about my
20 memory, is that what we are talking about now?

21 Q Yes, ma'am.

22 A: Oh, well, no, it ain't because -- I know what is going
23 on.

24 Q So that wasn't the truth to the grand jury.

25 A: Yes, it was the truth.

2207

1 MR. BECKER: Objection. That isn't what the
2 testimony was.

3 MR. OSGOOD: She just said it wasn't the
4 truth.

5 THE COURT: She didn't say.

6 THE WITNESS: No, I did not.

7 THE COURT: I will sustain the objection.

8 Q Do you have trouble with your memory?

9 MR. BECKER: Objection.

10 A: No. Am I talking to you, sir?

11 THE COURT: You can stop now, please.

12 THE WITNESS: I'm sorry.

13 THE COURT: Asked and answered. The
14 objection is sustained.

15 A: I have a good memory.

16 THE COURT: Don't volunteer anything.

17 THE WITNESS: I'm sorry.

18 Q When was it that this conversation, the first one
19 between Mr. Brown and Mr. Bryan Sheppard occurred?

20 A: About a month after it happened, or two.

21 Q What month would that have been?

22 A: I don't know. When the explosion happened, I haven't
23 really kept up on it. I know it happened. I was
24 there. I heard it. I know the windows were blown out
25 of our house.

2208

- 1 Q Do you remember what year?
- 2 A: I am pretty sure '88.
- 3 Q Did you have a chance to review the report of interview
- 4 that Detective Guffey prepared?
- 5 A: Sure, two or three times.
- 6 Q Two or three times.
- 7 A: Right.
- 8 Q When is the last time you read this interview, ma 'am?
- 9 A: A while ago. About 10 minutes ago.
- 10 Q Before you got on the stand.
- 11 A: Right.
- 12 Q When was the time before that you read it?
- 13 A: I read it Saturday, I think it was, this last Saturday.
- 14 Q And the time before that, when did you read it?
- 15 A: I think I just read it twice.
- 16 Q And then how many times did you read the grand jury
- 17 transcript?
- 18 A: I never have read no grand jury statement. Oh, the
- 19 other paper, yeah, I guess, if that's the grand jury.
- 20 Q The sworn testimony, yes, ma'am. Did you read it?
- 21 A: Yes, I read it.
- 22 Q At the same time.
- 23 A: Yes, after I read mine, what I said, yes, I read it.
- 24 I'm sorry. I mean sworn in and everything like that.
- 25 Yes, I read it.

2209

1 Q Did you then talk to Mr. Becker about your testimony?

2 A: A little bit, yes.

3 Q And kind of go over it.

4 A: Should I answer that?

5 Q I don't know, ma'am.

6 A: That's between me and him. It's not between me and
7 you. It's not between me and you.

8 THE COURT: Just answer the question.

9 A: Yes.

10 Q So you did.

11 A: Yes.

12 Q Now your son Anthony was home when this conversation
13 occurred, is that right?

14 A: My son Anthony was home, no, he was not.

15 Q He never showed up the time they were there.

16 A: Oh, no, no, no, no.

17 Q What about when the detective came out in '96, was
18 Anthony there at that time?

19 A: No, he was not.

20 Q But Mr. Welch was.

21 A: Yes, he was.

22 Q And Mr. Welch overheard this interview.

23 A: Yes, he did.

24 Q He was present during the entire interview.

25 A: Yes, he was.

2210

1 Q Now, you said you were in the kitchen cleaning, is that
2 right, ma 'am?

3 A: Yes, I was mopping my floor.

4 Q And where again, who was standing and who was sitting?

5 A: Richard was standing and Bryan was sitting.

6 Q What were the furnishings at that time?

7 THE COURT: Where, Mr. Osgood?

8 MR. OSGOOD: Where they were at, Your Honor.

9 THE COURT: Well, do you want the kitchen
10 furnishings or the living room?

11 Q In the living room, where were they?

12 A: In the living room, my couch was over here and there
13 was a chair, Bryan was sitting over here in a chair and
14 Richard was standing. You walk in my door and there is
15 a chair and there is a couch and straight ahead was my
16 kitchen, like that. Richard was standing and Bryan was
17 sitting down. Bryan didn't say too much. It was
18 Richard.

19 Q What other furnishings were in the living room?

20 A: A television -- do you want me to explain what my front
21 room looks like?

22 Q Sure. Please.

23 A: Okay, my couch was sitting over here and I had a chair
24 over here and I had my console television. you know,
25 it has been so long, I know what I had in my front

1 room. I am the type of person I move my furniture
2 around all the time.

3 Q Was there a chair in there?

4 A: Oh, sure, there was a chair. Like I said, there was a
5 chair and a couch, TV. I move my furniture around a
6 lot. I can't tell you really, you know. It has been
7 quite a while ago.

8 Q What do you remember Mr. Brown saying about the
9 location and what was located where, do you remember?
10 Did he say anything like that?

11 MR. BECKER: I don't understand the
12 question.

13 THE COURT: What location?

14 Q You said he talked about something up on the hill.

15 A: Yes, robbed that trailer. There were tools in it.

16 Q Did he mention a shed?

17 A: It might be a shed. To me, it looked like a trailer
18 house. I go by there a time or two while they was
19 fixing the highway. To me it looked like a trailer
20 house. I don't know whether it was a tool shed or a
21 trailer house.

22 Q Could it have been that your recollection, ma'am, today
23 of whether it was a shed or a trailer -

24 A: To me -

25 Q What you saw as opposed to what they said.

1 A: The only thing I seen there sitting was a trailer. So
2 1 I figured it must have been that because I didn't see
3 ~ no shed, if that is what **they** call a shed.

4~ Q Now, was a Larry Morgan mentioned?

5 A Yes, he sure was.

6 1 Q Tell us what was said about Mr. Larry Morgan.

7 1 MR. BECKER: Objection.

8 THE COURT: Just a minute. Come up.

9 1 (Proceedings out of the hearing of the jury.)

10 MR. BECKER: She in the same paragraph
11 relates information from another person. This is a
12 1 statement from her boyfriend's cousin. I mean if I
13 1 were writing the report I would make a separate
14 1 paragraph but after you stop here, where it starts,
15 this information is not from Richard Brown, I object
16 1 to it.

17 MR. OSGOOD: Let me lay some predicate
18 1 because I was going to come back. I will withdraw
19 the question.

20 1 THE COURT: Who is Larry Morgan?

21 1 MR. BECKER: She got information through a
22 1 variety of relatives, I suppose.

23 MR. OSGOOD: I will withdraw the question.
24 That is the direction I want to go next anyway.

25 ~ (Proceedings in the hearing of the jury.)

1 THE COURT: That question is withdrawn,
2 ladies and gentlemen, and you may disregard it and the
3 prior answer.

4 Q Your boyfriend, Mr. Welch, has a cousin, doesn't he?

5 A: Yes, he does.

6 Q You had heard a lot of rumors from him, hadn't you?

7 A: Not a lot. Just heard one.

8 THE COURT: I worry about rumors, Mr. Osgood.

9 MR. OSGOOD: I understand. I am not going
10 to ask what they were.

11 Q And, please, ma'am, don't tell us what any rumors were.

12 A: Okay.

13 Q Were there rumors floating around all over Marlborough?

14 A: If you really want to know the truth, yes, I heard
15 about 50 million rumors.

16 Q Fifty million rumors.

17 A: Yes.

18 Q And your cousin, your boyfriend's cousin provided some
19 of those, didn't he?

20 A: He heard something in jail. That's hearsay.

21 Q You had that in your mind at the time you heard those
22 rumors by the time you talked to the detective.

23 A: I heard everybody was asking. I heard a lot of people.

24 Q You did drive by the site yourself before the explosion
25 and saw it.

2214

1 A: Sure did. Sure did.

2 THE COURT: You people are talking at the
3 same time and we can't get a record on that. Now you
4 stop until he has finished asking his question. Then
5 you answer the question and nothing more, okay.

6 THE WITNESS: Okay.

7 Q I think we got that on the record but my question, you
8 had heard rumors and you had driven by the site
9 yourself and so you had both of those things in your
10 mind at the time you talked to the detective, didn't
11 you?

12 A: They was going to break into it?

13 Q No, ma'am.

14 A: Yes, I drove by. I lived by there. I drove by it. I
15 had to to get up on the freeway.

16 THE COURT: You have answered.

17 MR. OSGOOD: The point has been made.

18 Q Now you said Mr. Brown at one time had a black truck,
19 is that right, ma'am?

20 A: Yes, he has had a lot of cars and trucks.

21 MR. OSGOOD: I think that is all I have for
22 you, ma'am?

23 THE COURT: Any other Cross?

24 MR. O'CONNOR: No questions.

2 5 THE COURT: Any Redirect?

1 MR. BECKER: No, Your Honor.

2 THE COURT: You may step down.

3 MR. BECKER: The United States calls Tom
4 Butner.

5 THOMAS E. BUTNER,

6 having been sworn, testified:

7 DIRECT EXAMINATION

8 BY MR. BECKER:

9 Q Good afternoon.

10 A: How are you doing.

11 Q Please state your name and spell your last name.

12 A: Thomas E. Butner. My last name is spelled B-u-t-n-e-r.

13 Q Mr. Butner, how old are you?

14 A: Twenty six.

15 Q What do you do for a living?

16 A: I work on cars.

17 Q What area of Kansas City do you live in?

18 A: The Marlborough area.

19 Q Where did you grow up?

20 A: I grew up in the Marlborough area most of my life.

21 Q Do you know the defendants in this case, **Frank**
22 Sheppard, Skip Sheppard, Darlene Edwards, Bryan
23 Sheppard and Richard Brown?

24 A: Yes, I do.

25 Q How long have you known these people?

1 A: Most of my life.

2 Q You are a mechanic, did you say? Do you just sort of
3 do free lance work on cars?

4 A: Yes, I do.

5 Q Did you ever work on any of the defendants' cars?

6 A: Yes.

7 MR. PETERS: Objection. Relevance.

8 THE COURT: What does this have to do with
9 anything? He says he has known them all his life.

10 MR. BECKER: That's fine, Judge.

11 Q Where were you living in November of '88 when the
12 explosion occurred that killed the six firemen?

13 A: I was living in a trailer park, about 78th.

14 Q Do you remember the explosion?

15 A: Yes, I do.

16 Q What do you remember happening?

17 A: I remember the noise and the impact on the trailer.

18 Q Were you sleeping at that time?

19 A: Yes, I was.

20 Q What happened?

21 A: It knocked me clear off of the couch for one reason.

22 Q And about five or six months after the explosion in
23 1989 do you recall a conversation with Richard Brown
24 about the explosion?

25 A Yes.

1 Q Where did that conversation take place?

2 THE COURT: What was the date?

3 MR. BECKER: It would be in mid 1989, is
4 that right?

5 THE WITNESS: Right.

6 THE COURT: All right. Go ahead.

7 A: The house we partied at.

8 Q During that time were you friends with Richard Brown
9 and Bryan Sheppard?

10 A: Yes.

11 Q Did you I guess go to parties together?

12 A: Yes.

13 Q Did you work on their cars?

14 A: Yes.

15 Q At that time did you also do you work on your own cars
16 and soup them up?

17 A: To tell you the truth, I like fast cars and I run from
18 the law.

19 Q You try and out-run police officers.

20 A: Yes, I do.

21 Q Is that something you were doing back then at that
22 time?

23 A: Yes.

24 Q You got older and sort of got over that.

25 A Yes.

1 Q Do you try and out run police officers?

2 A Yes, I do.

3 Q Is that something you were doing back then at that
4 time?

5 A Yes.

6 Q You got older and sort of got over that.

7 A Yes.

8 Q Do you recall Richard Brown saying anything to you
9 about the explosion that killed the firemen?

10 A Yes.

11 Q What did he tell you?

12 A I mean he really didn't -- I mean he come out and said
13 he was up there. About every time he done it he was
14 either drunk or half-asleep. He wasn't wide awake.

15 Q It wasn't right in the cold hard light of day.

16 A No.

17 Q It would be after you all had been partying together.

18 A Right.

19 Q Did he say that he went to the construction site with
20 other people?

21 A Right.

22 Q Did he say why he went to the construction site?

23 A Well, just to see what **they** can get.

24 Q To steal.

25 A Yeah. That ain't the exact words he said.

2219

1 Q What were the exact words Richard used?

2 A: Just like I said, just see what **they** can get.

3 Q Did he say anything about trying to get into one of the
4 trailers?

5 A: Yes.

6 Q What did he say?

7 A: He said he couldn't -- was trying to get it open,
8 couldn't get it open. God mad and **they** just started a
9 little fire.

10 Q Did he say if **they** used anything to start it on fire?

11 A: Gas.

12 Q Do you remember if Richard Brown ever told you where
13 **they** got the gas?

14 A: I can't say he said it or who said it but **they** got it
15 at Quik Trip.

16 MR. PETERS: Your Honor, I object.

17 THE COURT: Ask your next question.

18 Q Tell us what Richard Brown told you, all right?

19 A: Okay.

20 Q During that time do you know what kind of vehicle
21 Richard Brown had?

22 A: Yes, I do.

23 Q What was it?

24 A: A Ford black pickup.

25 Q Now, how many times did Richard Brown tell you about

~

1 what he did up at this construction site?

2 A Probably eight or nine. I mean like I say, he was
3 always half asleep or something, never straight out
4 tell me.

5 1 Q But this was on multiple occasions at multiple times he
6 told you about what he did that night.

7 A Right.

8 Q Now before that explosion did you talk to Richard Brown
9 about you buying that pickup truck?

10 A Yes.

11 Q Tell us about that, please.

12 A Well, he didn't want to sell it because that's how he
13 was making his money, tree work and gutter.

14 Q What was the deal you offered?

15 A I had a maroon Malibu and I offered it to him and so
16 1 much cash but he couldn't make no money out of the car
17 so he wanted to keep his truck to make money out of it.

18 Q Did you have another conversation with Richard Brown
19 after the explosion about buying the pickup truck?

20 1 A Yes.

21 Q How long after the blast?

22 A Two to three days. I can't tell you an exact date.

23 Q What happened.

24 A He come back and said he would trade. So we traded.

25 i The rear-end was messed up in it but he wanted the

1 Malibu and I wanted the truck. And so we went ahead
2 and traded and went on to our own business.

3 Q Did you have to throw money in on the deal?

4 A: No, I didn't.

5 Q Did you ever come forward to the police then with the
6 information you knew about what Richard Brown confessed
7 to you?

8 A: Yes.

9 Q Was that in 1995?

10 A: Yes.

11 Q Why did you wait five years or more to come forward?

12 A: Well, I mean I really never thought nothing of it
13 because he would say he done something even if he
14 didn't do it. Just like a wreck, if he didn't do it he
15 would still brag about it, if he did it or not. So I
16 really never thought nothing of it. If I do something
17 wrong I pay the crime. If they did it, why shouldn't
18 they pay the crime.

19 CROSS EXAMINATION

20 BY MR. OSGOOD:

21 Q Is it Butner or Butener?

22 A: Butner.

23 Q I am John Osgood and I represent Mr. Richard Brown. We
24 have never met or talked, have we sir?

25 A No.

Q You first gave a statement to Detective William Lutman on the 8th day of February of 1995. I should say there was an interview and a statement was prepared, did you sign that statement?

A: Yes.

Q And did you actually hand write it out or did the detective hand write it?

A: No, the detective did.

Q He hand wrote it out and handed it to you. Did you read it?

A: Yes, I did read it.

Q And then you signed it.

A: Yes.

Q Now in that statement did you, in fact, offer to wear a wire?

A: Yes, I did.

Q And tell the ladies and gentlemen of the jury what you mean by wear a wire.

A: Wear a wire to confess. Other than that, I don't know what to say. That's about it.

Q That is a body tape recorder of some kind, as you understand it.

A: Yes.

Q You would hide it on your body. Have a little microphone come out, is that correct?

1 Q Yes.

2 Q And then you would call up the person you were going to
3 wire and go meet them, wouldn't you?

4 A: Yes.

5 Q You understood that.

6 A: Yes.

7 Q Because you suggested wearing a wire.

8 A: Yes.

9 Q And then when you would go meet them, if they talked to
10 you about something eight or ten times before, you
11 would try to get them to talk to you on the tenth time,
12 wouldn't you?

13 A: I wouldn't come out and say it. I would wait to bring
14 it up.

15 Q I understand but the idea would be you would go in with
16 a wire and to see if they would talk about it on the
17 tenth time. Did the defendant wire you up and send you
18 to Richard Brown?

19 A: No.

20 Q They did not, did they?

21 A: No.

22 Q So all we have are your recollections at this point,
23 isn't that true?

24 A: Correct.

25 MR. BECKER: Objection. Argumentative.

2224

- 1 THE COURT: You know better than to cross
2 examine that way, Mr. Osgood.
- 3 Q Now are you aware of the reward in this case, sir?
- 4 A: Yeah.
- 5 Q Did you talk to the detective about the reward?
- 6 A: No, I didn't.
- 7 Q Have you since?
- 8 A: Have I what?
- 9 Q Since made inquiries about the reward.
- 10 A: Nope.
- 11 Q Now, how many times did you tell the detective Mr.
12 Brown had made these admissions to you?
- 13 A: Eight or nine.
- 14 THE COURT: How many times to the detective
15 or Brown and him?
- 16 Q What did you tell the detective with respect to the
17 number of times Mr. Brown allegedly said these things
18 to you?
- 19 A: Eight or nine. Odds and ends.
- 20 Q Have you had a chance to review your statement?
- 21 A: What do you mean?
- 22 Q Have you had a chance to review this statement that was
23 written out that you signed?
- 24 A: Yes.
- 25 Q When is the last time you saw it, sir?

1 A: I don't remember.

2 Q Is it true, sir, you told the detective that he told
3 you this story 20 times?

4 A: Repeat that.

5 Q Did you tell Detective Lutman on the 8th day of
6 February, 1995 about one o'clock in the afternoon that
7 Mr. Brown had made these admissions to you at least 20
8 times?

9 A: No, I didn't.

10 Q Would you like to look at your statement to refresh
11 your memory.

12 A: Yeah.

13 THE COURT: Is that his statement?

14 MR. OSGOOD: Yes, it is his statement. He
15 signed it.

16 A: I know I never said 20 times. I still don't see where
17 the 20 came in on it.

18 Q Is that wrong in the statement then?

19 A: On the 20 because I did not say 20.

20 Q Okay. Now you said and I don't want any names please
21 but you said Mr. Brown said there were other people
22 with him.

23 A: Yes.

24 Q Do you know whether or not he had a girlfriend by the
25 name of Kelly?

1

1 A Yes.

2 Q Did her name come up in these conversations?

3 MR. BECKER: Objection.

4 THE COURT: Sustained.

5 Q What was it that he said they got when they went up to
6 the construction site, anything? Did you ever hear him
7 say that?

8 A No.

9 Q What were they looking for?

10 A Probably anything **they** can get. I don't know.

11 Q Have you ever been down to that site yourself?

12 A: When the truck was there?

13 Q Yes, sir.

14 A: Nope.

15 Q Where was your garage located, sir?

16 A: Wherever their house was.

17 Q So you did service by going to somebody's house on
18 their car at the house.

19 A: Yes.

20 Q Are you a trained mechanic or self-taught?

21 A: A backyard mechanic.

22 Q So the kind of modifications you were making typically
23 would be the addition of what, an intake manifold,
24 bigger carburetor or bigger cam to make the car run
25 faster.

1 A: Whatever it takes.

2 Q Did you charge for that kind of work?

3 A: Yes, I charged so much. Some, I didn't.

4 Q Now, what about apart from those after-market editions,
5 what about actually working on cars, did you ever do a
6 major engine overhaul for anybody?

7 MR. BECKER: I object.

8 THE COURT: I will overrule the objection.

9 Q During this time frame were you doing engine overhauls?

10 A: Yes.

11 Q The Malibu you traded to Mr. Brown for his pickup, was
12 that about a '78 or '79?

13 A: Yeah.

14 Q And it had been customized, hadn't it?

15 A: Yes.

16 Q And a Malibu, for the record, is a Chevrolet, isn't it?

17 A: Yes.

18 Q Did it have a four-speed transmission?

19 A: No.

20 Q Automatic. A: Yes.

21 A: A V-8. A: Yes.

22 Q Roll and tuck interior on it.

23 A: No, it just had regular vinyl seats.

24 Q Now this car came from California, didn't it?

25 A: No, this car came from Mountain Due Auto Sales.

2228

- 1 Q Is that here in Kansas City?
- 2 A: Yes.
- 3 Q You lived in California for a period, didn't you, sir?
- 4 A: Yes.
- 5 Q When did you move to California?
- 6 A: Oh, probably about two weeks after.
- 7 Q Two weeks after the explosion.
- 8 A: Yes.
- 9 Q And how long were you in California?
- 10 A: Two weeks to a month.
- 11 Q Then you came back to Kansas City.
- 12 A: Yes, I did.
- 13 Q Did you go back to California again?
- 14 A: Yes, I did.
- 15 Q How long were you in California that time?
- 16 A: I don't know. I don't remember when I went back again,
- 17 what date it is. That's where my parents lived so
- 18 that's why I went.
- 19 Q How did you get out there, sir?
- 20 A: Sometimes I would fly and sometimes I would drive.
- 21 Q Did you take the maroon Malibu at any time when you
- 22 went out to California?
- 23 A: No, I didn't.
- 24 Q Did you drive?
- 25 A: That time, no, I flew.

2229

1 Q Now, isn't it a fact, sir, you traded the Malibu with
2 Mr. Brown for his pickup some five or six months after
3 the explosion in the spring?

4 A: No, I don't think so.

5 Q Now did the Malibu have a bad rocker arm on it?

6 A: Rocker arm?

7 Q Yes, was there anything wrong with the Malibu?

8 A: Yes, the rear end. The axles were coming out of the
9 rear end.

10 Q Stripping an axle.

11 A: Yeah.

12 Q Were you abusing it in the sense of hot-rodding it?

13 A: Yes.

14 Q Isn't it a fact, sir, based on your knowledge of
15 automobiles, that it is quite possible to get 150,000
16 miles out of a rear end but if you floor-board with a
17 good V-8 you will take the axle out almost immediately.

18 THE COURT: Mr. Becker is on his feet to
19 state an objection which is sustained.

20 Q At any rate, you were abusing the Malibu.

21 A: Yeah.

22 Q So all it needed to make it run again was a new rear
23 end.

24 A: Yeah.

25 Q And it was in better shape than the pickup, wasn't it?

2230

1 THE COURT: Mr. Osgood, how did this case
2 degenerate into an inquiry about an abused Malibu?

3 MR. OSGOOD: Mr. Becker is making something
4 of the fact he traded his pickup to him.

5 THE COURT: So what?

6 MR. OSGOOD: I think it will be a point
7 later.

8 THE COURT: Let's get to the end of this
9 examination.

10 MR. OSGOOD: Your Honor, we need to approach.

11 THE COURT: No, you don't. Just ask your
12 next question.

13 Q You said Mr. Brown was drunk when he made some of these
14 statements to you.

15 A: I can't tell you if he was drunk, **high** or what.

16 Q Would it be times when you two were partying together?
17 Were you partying with other people?

18 A: Yes.

19 Q Would you describe yourself as a moderate drinker or
20 heavy drinker during those kinds of occasions?

21 A: I know when to quit.

22 Q I mean do you quit after a six pack or two six packs or
23 what is your standard of when you quit?

24 A: Yes, whenever I get a buzz.

25 Q Intoxicated or high.

1 A: Not really. Not none of them.

2 Q I believe your testimony was you didn't believe him
3 because he is all the time taking credit for stuff he
4 didn't do, is that right, sir?

5 A: That's the truth.

6 Q That is the truth as you remember it today.

7 A: Yes, it is.

8 Q Thank you.

9 A: You are welcome.

10 MR. PETERS: May we approach just for a
11 moment.

12 (Proceedings out of the hearing of the jury.)

13 MR. PETERS: The only question I intend to
14 ask, in keeping with what the Court has allowed the
15 previous witnesses, is that the statement he is talking
16 about, Richard Brown names a girl named Kelly as being
17 with them when they went to the explosion on site. So
18 my only question is going to be it is not a named
19 defendant. My only question, in the statements that
20 you heard from Richard Brown, did he consistently tell
21 you that a girlfriend named Kelly was with them. And
22 in keeping with the Court's earlier ruling I just
23 wanted to approach.

24 MR. BECKER: Then I am going to come back and
25 ask, don't give us the other name but did he also name

1 another person.

2 MR. PETERS: That's fine. He is entitled as
3 long as he doesn't bring out a defendant's name, I
4 think he is entitled.

5 MR. BECKER: He named Skip consistently.

6 MR. OSGOOD: For the record, you limited my
7 cross examination of this witness on a critical defense
8 point. The government is going to attempt the black
9 Ford pickup went flying by the house on the night in
10 question and it is a critical piece of government
11 evidence against my defendant. It didn't go flying by
12 the house on the night in question. And it is a
13 critical piece of the government's evidence against
14 my client.

15 THE COURT: You are saying -

16 MR. OSGOOD: It didn't go flying back. It
17 was somebody else's truck and they are trying to
18 show he traded three days after, about some kind of
19 sinister motivation to get it out of the state. I
20 will make a record.

21 THE COURT: You can make proof on exchange of
22 cars without any problem.

23 MR. BECKER: The questions were related to
24 the operability of the Malibu.

25 MR. OSGOOD: The valued reasonableness of the

2233

1 trade, the role the Malibu played.

2 MR. BECKER: Talking about how long a rear
3 end lasts on a Malibu.

4 MR. OSGOOD: Okay, I have made my record.
5 You have limited my cross examination.

6 THE COURT: That's right, I did. I limited
7 it a little bit. Let's go.

8 (Proceedings in the hearing of the jury.)

9 MR. OSGOOD: That's all.

10 CROSS EXAMINATION

11 BY MR. PETERS:

12 Q Mr. Butner, my name is Pat Peters and I represent **Frank**
13 Sheppard in this case. In the statements that you
14 have testified that you heard from Richard Brown,
15 isn't it true, sir, that consistently in these
16 statements you were told that a girl named Kelly
17 accompanied them on the night of the explosion to
18 the hill, is that correct?

19 A: Yes.

20 Q And this name Kelly was consistently raised but you
21 don't know her last name, is that correct?

22 A: No, I don't.

23 Q There is no doubt in your mind that the name that you
24 heard repeatedly was Kelly, is that correct?

25 A: Right.

1 MR. PETERS: I have no further questions.

2 1 MS. HUNT: No questions, Your Honor.

3 MR. BUNCH: No questions.

4 MR. O'CONNOR: No questions.

5 1 THE COURT: Any Redirect?

6 1 MR. BECKER: Briefly, Judge.

7 1 REDIRECT EXAMINATION

8 1 BY MR. BECKER:

9 Q Mr. Butner, without naming any names, did Richard Brown
10 consistently tell you the name of another person who
11 1 went with him up the hill?

12 A: Yes.

13 MR. BECKER: Thank you.

14 RECROSS EXAMINATION

15 BY MR. OSGOOD:

16 Q There were different names at different times, as a
17 matter of fact, weren't there, sir?

18 A: Right.

19 Q Which is one of the reasons you thought he was yanking
20 your chain, is that a fair statement?

21 A: Yes.

22 MR. OSGOOD: Thank you.

23 THE COURT: All right, you may step down.

24 MR. BECKER: The United States calls Fern
25 Ayers.

1 MR. O'CONNOR: Can we approach.

2 (Proceedings out of the hearing of the jury.)

3 1 MR. O'CONNOR: Do you intend to get into this
4 stuff about the dynamite stolen from the witness,
5 hidden in a drainage site at an apartment complex?

6 1 MR. MILLER: No.

7 THE COURT: I have had inquiry from one of
8 1 the jurors, "Please restate if this has already been
9 1 presented: When did the Unsolved Mysteries
10 episode/episodes occur?'"

11 MR. BECKER: I am not sure this witness can
12 1 say it off the top of her head.

13 MR. O'CONNOR: Why don't we stipulate.

14 THE COURT: Do you know when it was?

15 MR. PETERS: February 10th, one episode.

16 THE COURT: Can I tell her that? Does
17 anybody have any problem?

18 MR. BECKER: '95, yes. I am not overly
19 confident that is the date, not that I don't have
20 the utmost confidence in Mr. Peters. It was absolutely
21 in that range.

22 THE COURT: Does that offer any serious
23 problems?

24 MR. OSGOOD: I will bring the tape in
25 tomorrow.

1 MR. O'CONNOR: I think the date should be
2 1 specific. We will be arguing when these interviews
3 1 happened.

4 1 MR. BECKER: She won't know off the top of
5 her head.

6 1 (Proceedings in the hearing of the jury)

7 THE COURT: In response to Mrs. Baird's
8 question, the question is "When did the Unsolved
9 1 Mysteries episode/episodes occur?" And there is pretty
10 much consensus on the general area of time but not
11 right yet any specific information as to the exact
12 1 time. Counsel has promised to get that and they will
13 1 stipulate to it and we will present it to you within a
14 1 day or so. We will answer that inquiry later. Okay,
15 let's go.

16 MR. BECKER: Thank you, Judge.

17 FERN AYERS.

18 having been sworn, testified:

19 DIRECT EXAMINATION

20 BY MR. BECKER:

21 Q Good afternoon.

22 A: Good afternoon.

23 Q Please state your name and spell your last name.

24 A: Fern Ayers, A-y-e-r-s.

25 Q What section of Kansas City do you live in?

1 A: South Kansas City.

2 Q How long have you lived there?

3 A: I just moved back there but I have lived there about
4 ten years.

5 Q Do you have any sons?

6 A Yes.

7 Q How old are they?

8 A: The oldest is 31. The next one is 25 and then 21.

9 Q Do you know an individual by the name of Richard Brown?

10 A: Yes, sir.

11 Q How do you know Richard Brown?

12 A: Richard always ran around with my boys and then he was
13 a neighbor. He lived in the neighborhood.

14 Q Do you know an individual by the name of Bryan
15 Sheppard?

16 A: Yes, sir.

17 Q How do you know Bryan Sheppard?

18 A: He always ran with Richard Brown.

19 Q Were you living in that area when the explosion
20 happened on November 29, 1988 that killed the six
21 firemen?

22 A: Yes, sir.

23 Q What do you remember about that night?

24 A: I remember about the house shaking and the foundation
25 cracking up. And I remember Richard was at my door

1 earlier that evening.

2 Q Did you ever talk to Richard Brown and Bryan Sheppard
3 about this explosion?

4 A: Yes, sir.

5 Q Do you remember when that was?

6 A: I talked to Richard on several occasions about it and
7 the first time was when I lived at 8300 Paseo.

8 Q Do you remember when that was?

9 A: It was right after the explosion.

10 Q What did Richard Brown tell you about what happened?

11 A: It was an accident.

12 Q How did you know what he was talking about?

13 A: Because we had been sitting there talking about what
14 had happened and about different things that had
15 happened in the neighborhood with all the people,
16 vandalism to their houses. And he said it wasn't meant
17 to happen that way.

18 Q Was Bryan Sheppard there at that time?

19 A: Not at that time, no.

20 Q Do you remember a second conversation with Richard
21 Brown or Bryan Sheppard about the explosion?

22 A: About 8500 Wayne, it was just across the street.
23 Richard and I was talking about the explosion. He
24 asked me if I wanted to see some of the stuff. And
25 Bryan told him, no, don't do it. And Richard said why,

2239

1 we can trust her. And Richard went to open up the
2 trunk of the car and Bryan slapped it down.

3 Q Whose car was that?

4 A: Bryan Sheppard's. He was working on a car of his.

5 Q Did you ever have a conversation with **Frank** Sheppard
6 about this explosion?

7 A: Yes.

8 Q How do you know **Frank** Sheppard?

9 A: **Frank** was just in the neighborhood. He is Bryan's
10 **uncle** and everybody knew **Frank** Sheppard. And I used to
11 live across the street from **Frank** and Darlene Edwards.

12 Q What did **Frank** Sheppard tell you about this explosion?

13 A: He just said the firemen were stupid.

14 Q Did **Frank** Sheppard say anything about seeing the fire
15 or seeing the explosion?

16 A: He said **they** stood up on a hill and watched them.

17 Q Did he say anything about what happened after the fire
18 started?

19 A: **They** all ran.

20 Q You were in that neighborhood, you have lived in that
21 neighborhood for a long time, right, ma'am?

22 A: Yes, sir.

23 Q Did you ever see Skip and **Frank** and Bryan and Richard
24 together?

25 A: It was mostly Bryan and Richard together but **Frank**,

~

1 Skip, yes, they have had occasion to be together, yes.

2 Q But they would be different ages, is that unusual in
3 the neighborhood?

4 A: No, sir. No, sir. Marlborough is a community in
5 itself. Everybody practically knows everybody and
6 everybody knows just about what is going on, who does
7 what.

8 Q When your son was friends with Richard, was he the same
9 age as Richard?

10 A: Which one, my youngest son?

11 Q Youngest. A No.

12 Q How much younger was he than Richard?

13 A: He was only twelve and Richard was a teenager, about
14 17, 18.

15 MR. BECKER: I have no further questions at
16 this time, Judge.

17 THE COURT: Any Cross.

18 MR. OSGOOD: Yes, Your Honor.

19 CROSS EXAMINATION

20 BY MR. OSGOOD:

21 Q Miss Ayers, I am John Osgood and I represent Richard
22 Brown. You and I have never met, is that right?

23 A: No, sir, we haven't.

24 Q And what is your first recollection of Richard Brown in
25 terms of his size and age?

1 terms of his size and age?

2 1 A Richard was just a young boy. He was a teenager when I
3 first met Richard.

4 1 Q Where were you living at that time?

5 1 A 8300 Brooklyn, right across the street from his
6 grandmother.

7 1 Q Your kids are about the same age.

8 1 A yes, I have a son about the same age as Richard.

9 Q And you have known him in and about the neighborhood
10 them through the years.

11 A: Yes.

12 Q And how many times were you interviewed about these
13 incidents, ma'am, remember the first time you were
14 interviewed?

15 A: Yes, sir.

16 Q When was that?

17 A: It was clear back right after the explosion, the first
18 time I was interviewed, talked to, you would call it an
19 interview.

20 Q Who by?

21 A: A policeman named Billy Martin.

22 Q And did you tell him at that time you didn't know
23 anything about it.

24 A: No, sir.

25 MR. OSGOOD: May we approach.

2242

1 (Proceedings out of the hearing of the jury.)

2 MR. OSGOOD: I have no such interview.

3 MR. BECKER: Counsel has inquired about the
4 possibility of a report of interview. This witness
5 has told me this was a copy-cat kind of thing, "My
6 friend, she called and told me she knew the Sheppards
7 did it."

8 THE COURT: You have no papers.

9 MR. BECKER: That officer never was assigned
10 to the case. Didn't write it up and he is now the
11 present police chief, I am told, of Avondale.

12 THE COURT: It doesn't create any obligation
13 on the part of the government.

14 MR. OSGOOD: I am not going to go into
15 that interview because apparently you haven't seen
16 any summary of that interview.

17 MR. BECKER: Objection.

18 THE COURT: There is no evidence there is any
19 summary of that interview, Mr. Osgood.

20 MR. OSGOOD: That is what I wanted to bring
21 out.

22 THE COURT: You don't need to bring that out.
23 Let's just proceed.

24 (Proceedings in the hearing of the jury.)

25 Q The next time you were contacted was on the 9th day of

1 February, the 17th day of July of 1995, is that
2 correct?

3 A: Yes, sir.

4 Q And that was by Agent True of the Bureau of Alcohol,
5 Tobacco and Firearms.

6 A: No, Detective Collins and Detective Rumbaugh.

7 Q That's right, I was one interview ahead. So you were
8 contacted on the 9th day of February, '95 by Detectives
9 Collins and Rumbaugh and you talked to them for how
10 long, ma ' am?

11 A: About half an hour to 45 minutes

12 Q And did you relate something about seeing Richard and
13 Bryan at that time working on somebody's car?

14 A: I talked to them about several things. They basically
15 wanted to know who I thought did it.

16 Q Knew or thought?

17 A: No, I knew who did it.

18 Q Were you there?

19 MR. BECKER: Objection. Argumentative.

20 THE COURT: It is argumentative.

21 MR. BECKER: There are other ways of knowing
22 who did it other than being there.

23 THE WITNESS: That's true. You don't have to
24 be there to know.

25 MR. OSGOOD: I respectfully want to ask her

1 if she was at the scene up on the hill.

2 THE WITNESS: No, I was not at the scene.

3 Q Now, did Richard tell you that he had stolen some stuff
4 from the construction site?

5 A: **They** said **they** were there and **they** had been there the
6 night before.

7 Q Did he tell you that he had blasting caps?

8 A: It's not in the report.

9 Q Did you tell the grad jury -- we are jumping ahead now.
10 Of course, it is not in the report but on July 25, 1992
11 you testified before the grand jury, didn't you?

12 A: Yes, sir.

13 Q Did you tell the grand jury that he said he had
14 blasting caps?

15 A: I don't remember at that time. They asked me several
16 questions. I don't remember those.

17 Q Do you remember this question and answer session when
18 you were referring to the explosion, the firemen's
19 explosion out there on 71 Highway:

20 "Question: When you are referring to the explosion" -

21 "Answer: The firemen's explosion out there on 71
22 highway?"

23 "Question: When he asked you if you wanted to see some
24 of the caps, what was he referring to? What did he
25 mean by caps?"

2245

1 "Answer: The way he explained it, the stuff that goes
2 on top of the dynamite to blow, I forget, **they** have to
3 have that for the dynamite."

4 "Question: And did you ever actually see any of those
5 caps?"

6 "'Answer: No."

7 Was that asked and answered?

8 MR. BECKER: Could you read the rest.

9 MR. OSGOOD: Sure. Be glad to. "No, he
10 opened the door and started to open up the trunk and
11 Bryan slammed the trunk down, I do remember that. And
12 Bryan told him to shut his mouth and I didn't need to
13 know anything. He told Bryan I would not say anything,
14 it would be all right and Bryan and him kind of got
15 into an argument so I didn't see anything."

16 THE COURT: Do you remember that explanation?

17 THE WITNESS: Yes, I remember that.

18 Q Did you see any stolen items at any time?

19 A: Bryan slammed the trunk. No, sir.

20 Q So you don't know whether they really had anything in
21 the trunk or not.

22 A: No, sir.

23 Q Now, Richard has snickered and kidded with you about
24 this on occasion, hasn't he?

25 A: Yes, sir.

2246

- 1 Q But he has also flatly denied it, hasn't he?
- 2 A: No, the way Richard, when he was snickering, I said I
- 3 know, we both know you did it and he just snickered, "I
- 4 didn't do it."
- 5 Q Now there were a lot of rumors floating around out in
- 6 Marlborough about this, weren't there?
- 7 A: Everybody talked about it.
- 8 Q It was the talk of the neighborhood.
- 9 A: Yes.
- 10 Q How old was Richard at this time?
- 11 A: Let me see -- my son is 21. He was about 18.
- 12 Q Now Richard had his usual -- I should say not unusual
- 13 run-ins with the law as a teenager for traffic
- 14 violations, didn't he?
- 15 A: Yes.
- 16 Q You are aware of that.
- 17 A: Yes.
- 18 Q And occasionally, I think on one or two occasions or
- 19 maybe even more, his license was suspended.
- 20 A: Yes.
- 21 Q How long have you known him?
- 22 A: Since he was a teenager.
- 23 Q And up through this trial.
- 24 A: Yes.
- 25 Q You are aware he did not have any felony convictions,

2247

1 he has no felony convictions.

2 A: I have no idea.

3 Q Is it a fair statement, ma'am, that he has exaggerated
4 and bragged to you about things through the years that
5 you later learned were not true on many occasions?

6 A: On some things, yes, but on some things he's done.

7 Q Who is Christopher Rainer?

8 A: He's a boy from the neighborhood, too.

9 Q Did he tell you at one time he did this?

10 MR. BECKER: Objection.

11 THE COURT: What is this designed to show?

12 MR. BECKER: Can I approach?

13 THE COURT: Come up.

14 (Proceedings out of the hearing of the jury.)

15 MR. BECKER: This is the part that the other
16 counsel did not want to go into.

17 MR. OSGOOD: That's fine.

18 MR. BECKER: I thought you were going to go
19 into the rest of it, what the other fellows objected
20 to.

21 MR. OSGOOD: No.

22 THE COURT: Limit yourself.

23 MR. OSGOOD: I will.

24 (Proceedings in the hearing of the jury.)

25 Q We won't talk about anybody else. Just talk about

2248

- 1 Christopher Rainer. Didn't he tell you he was up there
2 that night and offered to sell you some stuff, some
3 dynamite for ten dollars a stick?
- 4 A: Yes, sir.
- 5 Q You didn't buy any dynamite for ten dollars a stick
6 from Christopher.
- 7 A: No, I don't have no use for it.
- 8 Q How old was he, ma 'am?
- 9 A: I don't know. He was a teenager about that time.
- 10 Q Did he run around with these kids, too?
- 11 A: Basically, no.
- 12 Q Was he a kid that would come to your house and call you
13 mom and kid with you and do that kind of thing?
- 14 A: Yes. Not really kid. He was more serious.
- 15 Q You were pretty good to these kids, weren't you?
- 16 A: Richard and them, yes.
- 17 Q In fact, Richard called you mom on occasions, didn't
18 he?
- 19 A: Yes.
- 20 Q And would tease you sometimes.
- 21 A: Yes.
- 22 Q And were you aware there is a reward in this case?
- 23 A: That has nothing to do with this.
- 24 Q Did Richard actually live with you for a while?
- 25 A: Richard lived with me several times off and on.

~ 2249

1 Q Now, did you tell the grand jury, ma'am, that your
2 first recollection of these conversations was within
3 about a year after the explosion?

4 A: No, it wasn't that long after that because I still
5 lived at 8300 Paseo.

6 Q Well, the conversation that you are telling us about
7 here, was that about a year after?

8 A: Between six months to a year, yes.

9 Q You might have said three or four days in direct
10 testimony.

11 A: Richard and I have talked about this on several
12 occasions.

13 Q But the conversation we are talking about here by the
14 car was about a year afterwards.

15 A: Yes, a little over a year.

16 Q The caps and the dynamite in the trunk and that stuff.

17 A: Yes, sir.

18 MR. OSGOOD: Your Honor, that's all.

19 MR. PETERS: May it please the Court.

20 THE COURT: Yes, sir.

21 CROSS EXAMINATION

22 BY MR. PETERS:

23 Q Miss Ayers, my name is Pat Peters and I represent **Frank**
24 Sheppard in this case. And I just have a few questions
25 to ask you. Shortly after the explosion, after what

2250

1 you had been hearing in the neighborhood, you made a
2 call to the TIPS hotline to tell them what you had been
3 hearing, isn't that true?

4 A: Yes.

5 Q And you never got a call back from anybody, from any
6 government agency after calling the TIPS hotline
7 shortly after the explosion.

8 A: No, they were busy.

9 Q Now your testimony is in the summer of 1990,
10 approximately a year and a half after the explosion, my
11 client **Frank** Sheppard came over to mow your yard, is
12 that correct?

13 A: I talked to **Frank** earlier than that.

14 Q But the discussion that we are going to be talking
15 about is, you have testified to, is in the summer of
16 '90 when he came over to cut your grass, isn't that
17 correct?

18 A: Yes, he came over to cut my grass, yes.

19 Q And what you are telling us you remember from that is
20 that **Frank** Sheppard told you he and one other person
21 were standing up on the hill when the explosion
22 occurred, is that correct?

23 A: He said he was standing up on the hill when that
24 occurred, yes.

25 Q And then five years later, in the summer of 1995, is

1 the first time that you recollected that conversation
2 to anybody from law enforcement, is that correct?

3 A: No, -- well, that's on paper, yes.

4 Q And are you aware, did you at any other time tell
5 anybody from law enforcement that in the summer of 1990
6 -- let me go a step at a time. Prior to the summer of
7 1995 had you told anybody in law enforcement that you
8 had recollected a statement from the summer of 1990
9 where **Frank** Sheppard told you he and another person
10 were on the hill when the explosion occurred?

11 A: Yes.

12 Q Who was it that you said that to from law enforcement?

13 A: A police officer.

14 Q Who is that police officer?

15 A: Billy Martin.

16 Q Did he take a statement from you, ma ' am?

17 A: He wrote it down and he had a notebook and he was
18 taking notes in his notebook.

19 Q And when would that have been that Billy Martin wrote
20 this down?

21 A: It was in about 1990 is when I talked to him.

22 Q And how long after that did detectives from Kansas City
23 or agents from ATF come and talk to you?

24 A: It was in ,95.

25 MR. PETERS: I have no further questions.

1 MR. BUNCH: No questions.

2 MS. HUNT: No question.

3 THE COURT: Any Redirect?

4 MR. BECKER: Just briefly.

5 REDIRECT EXAMINATION

6 BY MR. BECKER:

7 Q Miss Ayers, I think Mr. Osgood, the first gentleman who
8 asked you questions, was asking you about when you saw,
9 I think what he was talking about, when you saw Richard
10 and Bryan on the street by the car when they were
11 working on the car, that conversation, do you remember
12 those questions?

13 A: Yes, sir.

14 Q And he was asking you questions about when that
15 conversation occurred, do you remember that?

16 A: Well, Bryan had been in jail. Bryan hadn't been out
17 but just a few days after he had gotten out of jail
18 again.

19 Q Let me show you something and ask you to just read it
20 to yourself and see if that refreshes your memory about
21 when that conversation occurred.

22 A: South of 85th Street, yes, that's down the street from
23 where I lived.

24 THE COURT: Now what is your question?

25 Q Do you remember when that conversation took place? Not

1 ~ the exact date but generally when it happened.

2 A It was in 1990.

3 Q And where did that take place?

4 A Right down the street from Bryan's house. It was in
5 1 front of some girl's house and he was working on a car.

6 Bryan lived at 85th and Wayne. It was just across the
7 highway, across the road.

8 Q Eighty-Fifth.

9 A: Across 85th.

10 Q So busy it's like a highway.

11 A: Yes, right across 85th Street.

12 MR. OSGOOD: No Recross.

13 THE COURT: Thank you, ma'am. You may step
14 down.

15 MR. BECKER: We need a break, Judge.

16 THE COURT: Okay, we will take our afternoon
17 recess at this time. Don't talk about the case. You
18 may withdraw from the courtroom, please.

19 RECESS

20 (Proceedings in the courtroom out of the presence of the
21 jury)

22 MR. PETERS: I have a real brief record
23 before the jury comes out.

24 THE COURT: All right, go ahead.

25 MR. PETERS: The last witness to testify

1 stated during cross examination that she had given a
2 statement to an officer, if my memory is right, Billy
3 Martin, saying that **Frank** Sheppard had told her he was
4 on the hill at the time the explosion occurred.

5 We never received a statement to that
6 effect which I think, if the statement existed, we
7 would be entitled to. On the other hand, if no
8 statement existed and the government was aware of
9 that, we think we would be entitled to that
10 information as well.

11 So I am just making my record. We have
12 never been told a statement to that effect existed
13 or that the government knew she was claiming the
14 statement had been made and the statement didn't
15 exist.

16 MR. BECKER: This is a matter that Mr. Osgood
17 brought up at the bench and I informed the court at
18 that time there is no written report of that contact or
19 information.

20 THE COURT: No statement.

21 MR. BECKER: Right, no written, recorded
22 statement by the witness Fern Ayers.

23 THE COURT: That's right. I think I dealt
24 with that.

25 MR. PETERS: Would it be appropriate, can we

1 enter into a stipulation that no report exists of the
2 conversation between Fern Ayers and Billy Martin?

3 MR. BECKER: No, I am not going to stipulate
4 to that. We can call Billy Martin and he could tell
5 us whether or not he received that information. He
6 wasn't assigned to the case. He wasn't responsible
7 for writing up everything that he was ever told. I
8 didn't bring it out on direct. They asked about it on
9 cross and I don't think I have to stipulate to things
10 that are not in existence.

11 THE COURT: I agree with that. How about
12 agreeing that as we try this case prior to the
13 testimony of this witness you were not aware of any
14 writing memorializing that conference?

15 MR. PETERS: What you just said gets to the
16 heart of what I am saying. We were never advised that
17 Fern Ayers had told the government that she had talked
18 to the police about this case prior to 1995.

19 We believe that if the witness is going
20 to take the stand and say I had talked about this
21 prior to 1995 and I talked to a police officer and
22 he wrote it down, which was her testimony, if the
23 writing is in existence we should be advised and
24 if the government has talked to the witness, tried
25 to confirm whether there was a writing and found

2256

1 out there wasn't a writing, we think that's even a
2 stop farther where they know the witness is saying
3 something occurred that, in fact, didn't occur.

4 MR. BECKER: Until there was cross
5 examination I never heard she saw a pencil moving
6 across paper. She has told us she conveyed this
7 information to the officer. It was a call
8 into the police department and she happened to get
9 somebody she knew and passed along the information
10 to somebody she knew.

11 Now counsel can cross examine about
12 whether or not that has ever been in any reports.
13 I mean if one of their witnesses takes the witness
14 stand, frankly, I don't think there will be any
15 reports and counsel has shown they are certainly
16 capable of cross examining about the fact, hey,
17 this is the first time you have ever brought this
18 up. I don't think I need to confirm things that
19 aren't in existence.

20 THE COURT: You will have the opportunity, if
21 you want to take it, assuming that officer is still
22 alive, to call that officer and demonstrate what was
23 said.

24 MR. PETERS: I agree with the court on that.
25 The point I am making is it appears Miss

Ayers had told Mr. Becker, I gave this information to Billy Martin. And at that point he is being told by a witness that a statement exists.

THE COURT: No, no, I don't believe that. I don't think that follows. I think she had a casual relationship with Officer Martin which is the way she described it on the stand here today and she knew nothing about any reports and didn't sign any statement and I don't think Mr. Becker is obligated to go any further than that if he doesn't want to.

MR. PETERS: Okay, Judge.

(The jury enters the courtroom and is seated.)

THE COURT: Call your next witness.

MR. MILLER: The United States calls **Frank** Gile.

FRANK GILE.

having been sworn, testified:

DIRECT EXAMINATION

BY MR. MILLER:

Q Would you tell the court and jury your name.

A: **Frank** Gile.

Q How old are you, Mr. Gile?

A: Twenty-four.

Q I want to go back to November of '88, where were you living at that time?

A: South Kansas City.

Q Did you go up in the Marlborough area?

A: Yes.

Q Do you know Richard Brown?

A: Yes.

Q Do you see him in the courtroom today?

A: Yes.

Q Could you point him out?

A: Right over there.

Q Is he the gentlemen in the blue shirt and tie?

A: He just stood up.

Q Do you know a Bryan Sheppard?

A: Yes, I do.

Q Do you see him in the courtroom?

A: Yes, I do.

Q Can you point him out?

A: He just stood up.

Q With the sweater.

A: Yes, sir.

Q And how long have you known these two?

A: All my life, just about.

Q I want to go back to about two to three years ago from now. Where were you living?

A: South Kansas City.

Q At whose house were you staying at?

1 A: Richard Brown ' B.

2 Q Was this in Marlborough?

3 A: Yes, sir.

4 Q Who else was staying there?

5 A: My brother Mike.

6 Q Anyone else that you recall?

7 A: Just people in and out.

8 THE COURT: What is your date, counsel?

9 MR. MILLER: Two to three years from now,
10 from today.

11 THE COURT: Two or three years ago.

12 MR. MILLER: Yes.

13 Q We are talking '94, '95.

14 A: Or earlier, before that.

15 Q '93.

16 A: I would say '91 or '92.

17 Q And how long did you stay there?

18 A: About six months.

19 Q Now, did Richard Brown ever talk with you about the
20 explosion that caused the death of the six fire
21 fighters?

22 A: Yes, he has.

23 Q How many times did he talk with you about it?

24 A: A few times.

25 Q What did he tell you? What did Richard Brown tell you

1 was his involvement in the explosion that caused the
2 death of the six fire fighters?

3 A: That he went down there to steal and on the way down
4 there **they** were out of gas and had to get some gas.

5 Q Did he tell you what **they** went down there in?

6 A: Yes, his pickup.

7 Q What kind of pickup truck did he have?

8 A: A Ford pickup, black. A black Ford pickup.

9 Q What condition was it in?

10 A: An old pickup. It wasn't in too good a shape.

11 Q How loud was the muffler on it?

12 A: It was loud.

13 Q Now, you said he ran out of gas. Did he tell you what
14 he did after he had run out of gas?

15 A: Not exactly. He said he went to go get gas and went on
16 down there.

17 Q After **they** got gas and went on down there, what did he
18 mean by "there"?

19 A: To the construction site.

20 Q When **they** got on down there, did he tell you what **they**
21 did with the gas?

22 A: Yes, **they** started the pickup on fire.

23 Q Did he say where this pickup was?

24 A: Next to the trailer.

25 Q What warning or what did he say to you about what he

2260

1 had told you?

2 A: He said he told me not to tell nobody.

3 Q Now you know Bryan Sheppard.

4 A: Yes, I do.

5 Q And did he talk with you about his involvement in the
6 explosion?

7 A: Yes, he did.

8 Q What did he tell you?

9 A: He said he went down there.

10 Q Did he give you any other specifics?

11 A: No.

12 Q Where did these conversations take place?

13 A: At Richard Brown's house.

14 Q And what was that address or where was it?

15 A: About 77th and Main or Wayne. He had a sign up there
16 that said "Richard Street".

17 Q Where was the sign?

18 A: Up on the pole. He tore the other one down and put
19 "Richard".

20 Q Do you have any felony convictions? Let me do this.

21 In 1991 did you receive a felony conviction?

22 A: Yes, I did.

23 Q What was that conviction for?

24 A: Stealing over a hundred and fifty.

25 Q What was your sentence?

1 A: Three years, 120 days and three years back up.

2 Q What you are saying then you got a three year sentence

3 but the execution of it was suspended.

4 A: Yes, I did 120 day shock at Farmington Treatment

5 Center.

6 Q Then you were placed on three years probation.

7 A: Yes, I was.

8 Q And then was your probation ever violated?

9 A: Yes, it was.

10 Q And then when you were in the Jackson County jail did

11 you contact the authorities or did they contact you?

12 A: I contacted them.

13 Q And then who came to see you?

14 A: I don't remember his name. Ludwick, an ATF agent.

15 Q Lobdell .

16 A: Lobdell yes.

17 Q And were any promises made to you at the time?

18 A: No.

19 Q And what do you expect to get from your testimony from

20 us?

21 A: Peace of mind.

22 Q Were you told about having anything put in your parole

23 file?

24 A: Just the paper saying I cooperated.

25 Q Have you received any kind of a sentence reduction from

2262

1 this?

2 A: No, I should have done, been home.

3 Q Now, you testified before the grand jury.

4 A: Yes, sir.

5 Q Before you testified before the grand jury did you see
6 Richard Brown?

7 A: Yes, I did.

8 Q Where did you see him at?

9 A: My mother's house.

10 Q How soon before the grand jury did Richard Brown come
11 by your mother's house?

12 A: A couple weeks.

13 Q Were you there?

14 A: Yes.

15 Q And what did Richard Brown say to you?

16 A: He said he heard I was telling, snitching about this
17 situation and my mom was hollering at the point in time
18 he pulled up to get out of there, and he was just
19 threatening me.

20 Q Now if you heard this information back in '90 why did
21 you wait those years? And I said '90, '91, '92, why
22 did you wait those several years before you came
23 forward?

24 A: Well, **they** killed six fire fighters and my life would
25 be too much of a deal. It wouldn't have mattered if

1 something happened to me.

2 Q Are you saying you were scared?

3 A Yes.

4 MR. MILLER: That is all I have of this
5 witness, Your Honor.

6 THE COURT: Any Cross?

7 MR. O'CONNOR: Yes.

8 CROSS EXAMINATION

9 BY MR. O'CONNOR:

10 Q Mr. Gile, I am John O'Connor. I represent Bryan
11 Sheppard. You and I have met before, you talked to me,
12 is that correct?

13 A: Yes, I have.

14 Q I am going to go through your criminal record here a
15 minute. Do you have a felony conviction in 1988 for
16 auto theft?

17 A: Yes, I do.

18 Q Is that out of Jackson County?

19 A: Clay County.

20 Q And you have a felony conviction under CC-912151 out of
21 Jackson County for stealing over 150, is that correct?

22 A: Yes, I do.

23 Q Now, what sentence did you receive on the auto theft
24 conviction in 1988?

25 A: Probation, paying \$1,500 back.

2264

1 Q And in your conviction in Jackson County what happened
2 on that originally?

3 A: I was sentenced to three years, 120 day shock time. I
4 walked all but eight days of my probation and they
5 violated me and sent me back.

6 Q And were you given probation from the 120 day sentence
7 on approximately January the 17, 1992?

8 A: Yes.

9 Q And then the Judge ordered your released from the
10 Farmington Treatment Center on February the 19th, 1992.

11 A: I was there from October to February, I think.

12 Q I am asking on February 19, 1992 were you released from
13 there?

14 A: Yes, somewhere in that time period, yes.

15 Q And then you were going to be on how long of a
16 probation?

17 A: Three years.

18 Q On October the 26th, 1994 did you have a violation
19 report filed against you?

20 A: 1994?

21 Q 1994, October 26th, ordered you to appear for a
22 probation violation hearing in Jackson County,
23 Missouri.

24 A: Possibly. Yes, I have had quite a few of them.

25 Q You failed to appear for that hearing, is that correct?

1 A: Possibly.

2 Q And from October the 26th, 1994 until you were arrested
3 on your probation violation arrest warrant, you were
4 out until 1-27 of '95, does that sound right?

5 A: It could be. I don't know.

6 Q And would the bond have been \$10,000?

7 A: Yes.

8 MR. MILLER: I object to the relevance of
9 this.

10 MR. O'CONNOR: It is highly relevant.

11 THE COURT: What does the bond have to do
12 with it?

13 MR. O'CONNOR: He can't get out of jail.

14 MR. MILLER: They had a bond, not a parole
15 violation bond.

16 THE COURT: Objection sustained.

17 Q On February 10th, 1995 did you stipulate to the
18 violations that had been filed against you?

19 MR. MILLER: I am going to object to that.
20 This is not under Rule 609. None of these are
21 convictions.

22 THE COURT: Yes. I don't think we want to
23 talk about charges.

24 MR. O'CONNOR: This is the violation report
25 of the probation he was on on the felony.

2266

1 THE COURT: I know but those are charges,
2 assertions, allegations of violations of parole.

3 MR. O'CONNOR: Can we approach. I think I
4 can explain a little better.

5 THE COURT: Yes.

6 (Proceedings out of the hearing of the jury.)

7 MR. O'CONNOR: Judge, this goes to his motive
8 for testifying. On 2-10-95, seven days before he is
9 calling the ATF he stipulates in court to the
10 violation. These aren't allegations. He stipulated
11 and agreed. He doesn't even fight them in court.

12 MR. BECKER: They're not felony convictions.

13 MR. O'CONNOR: It goes to motive.

14 MR. BECKER: You can ask him was he in jail.
15 That's the whole point.

16 THE COURT: He's in jail.

17 MR. BECKER: We don't doubt it. He was in
18 jail.

19 THE COURT: So?

20 MR. O'CONNOR: You were saying they're
21 allegations. They're not allegations. He stipulated
22 those were the violations.

23 THE COURT: Yes, that is another feature of
24 this. These aren't things that can be used in this
25 way, though.

1 MR. O'CONNOR: It is not 609, I agree but
2 they go to his motive for testifying.

3 THE COURT: Under what rule?

4 MR. O'CONNOR: For the record, four days
5 later, after he goes back to jail, now he has got three
6 years. That is when he calls the ATF and I think I can
7 develop through Cross he says I want to clear my
8 conscience, what he says in the affidavit, is the
9 sole reason.

10 THE COURT: Why don't you use that affidavit.

11 MR. O'CONNOR: I am going to. The timing is
12 important. The dates are so important to show his
13 motive. This is the last date I am going through.

14 MR. MILLER: It doesn't matter if it is the
15 last one. It is not covered by anything. If he's got
16 it, ask him why and if he can impeach him with the
17 affidavit, do it.

18 THE COURT: Let's do it that way.

19 (Proceedings in the hearing of the jury.)

20 Q Was your probation revoked on February the 10th, 1995?

21 A: Could have been.

22 Q And why was it revoked?

23 A: **Drug** use.

24 Q And then on February the 14th, 1995, four days later,
25 that is when you called the ATF?

1 A: Could have been.

2 Q And that is when you were getting ready to go to prison
3 to serve your three year sentence.

4 A: Yes.

5 Q Now, the ATF came over and talked to you, is that
6 correct?

7 A: Yes.

8 Q And they took an interview of you which I think it
9 became an affidavit you signed and swore to.

10 A: Yes.

11 Q Have you had a chance to look at that affidavit?

12 A: Yes.

13 Q Let me show you what has been marked as Defendants'
14 Exhibit 30 and ask you if that is the affidavit.
15 Please take your time and look at all the pages.

16 A: Yes, sir.

17 Q And that is where you gave an interview and then you
18 swore to the truth of the interview.

19 A: Yes, sir.

20 Q Now back at the time you were talking with Bryan
21 Sheppard were you drinking and doing **drugs** at that
22 time?

23 A: Yes.

24 Q And what kind of **drugs** were you using?

25 A: Pot, methamphetamine, cocaine, LSD.

2269

1 Q Were you sniffing glue and gasoline as well?

2 A: No.

3 MR. MILLER: I object unless you put it on
4 a time frame as opposed to general.

5 THE COURT: Yes.

6 Q Back at the time you were talking to Mr. Sheppard, he
7 made some statements to you.

8 A: Yes.

9 Q You said the reason you came forward was for peace of
10 mind.

11 A: Yes.

12 Q Do you remember this affidavit that you swore to under
13 penalty of perjury?

14 A: Yes.

15 Q "I am providing this information at this time for the
16 sole purpose of potentially reducing my prison time."

17 A: Yes.

18 Q Do you remember testifying before the grand jury in
19 this case where you were under oath on July 25th, 1995?

20 A: Yes.

21 Q Page 9 and the top of 10. Do you remember this
22 question being asked and your answer being given on
23 those pages: "Question: Has Bryan Sheppard in the
24 past told you about his involvement in the firemen's
25 explosion?" "Answer: Yes, ma'am.~, "Question: What

1 has he told you specifically?" "Answer: Just that
2 things happened, you know, he was involved and he just
3 screwed up, just like Richard did and he's sorry for
4 what he has done." "Question: Did he give you a
5 specific account of what happened at the construction
6 site?" "Answer: I can't say, really say at this point
7 in time, ma'am. I don't really, you know, he has told
8 me but I can't say, you know, what he told me, you
9 know. It has been so long since that has happened."

10 THE COURT: What is that supposed to impeach,
11 Mr. O'Connor? We have been through this before but I
12 really don't like examinations that purport to impeach
13 something that don't impeach. Now, you haven't read
14 anything from that transcript that is inconsistent with
15 anything he said. He has a recollection here
16 apparently he didn't have there.

17 Q Would your recollection have been better back in '95
18 than it would be today?

19 MR. MILLER: I object. That is
20 argumentative.

21 THE COURT: I think it would be better if you
22 ask him why it is he didn't recall that in '95 and he
23 does today.

24 MR. O'CONNOR: Thank you, Judge.

25 THE COURT: You're welcome.

1 A: I don't know. Would you repeat the question. I am off
2 track here.

3 Q On February 14, 1995 you told the agents -- is that
4 correct?

5 A: Yes.

6 Q You told them Bryan Sheppard had said something to you
7 about being involved in the fire fighters explosion.

8 A: Yes.

9 Q Then the grand jury, you told them you couldn't really
10 specifically say what he had even said.

11 A: No, I am saying he did tell me but that's all that was
12 said, more or less, about it. You know. I'm sorry. I
13 screwed up and I felt bad for that people that I have
14 done that to.

15 Q That was it, the sum and substance.

16 A: That's all me and Bryan said to each other about the
17 situation.

18 Q Now, I think you testified, and correct me if I am
19 wrong, someone is going to do something for you, put
20 some letter with the Parole Board or something.

21 A: Yes, they said they was going to put a letter in my
22 parole hearing but I was supposed to go up for parole
23 January 13th, 14th of this year. They pulled me out on
24 the 13th. So I was not able to make my parole hearing
25 and I should be home by now.

1 Q When is your date?

2 A: December 10th of this year. I believe I'm eligible for
3 the honor center, halfway house or house arrest right
4 now but instead I am here.

5 Q Who told you they were going to put a letter or
6 something in your parole jacket?

7 A: Dave True.

8 Q And how long ago did you talk to Dave True when he told
9 you he was going to do that?

10 A: Just about two or three minutes on the phone.

11 Q How long ago?

12 A: A couple weeks ago. December, the 1st of January.

13 Q And what did he tell you about this letter?

14 A: Just that it shows I cooperated with the investigation.

15 Q And that letter will be placed in your file after you
16 testified.

17 A: Yes.

18 MR. O'CONNOR: That's all.

19 THE COURT: Mr. Osgood.

20 CROSS EXAMINATION

21 BY MR. OSGOOD:

22 Q Mr. Gile, I am John Osgood and I represent Richard
23 Brown. When did you first move in with Richard Brown?

24 A: Back in '91, '92.

25 Q Where?

1 A: seventy-seventh Street.

2 Q What was the address?

3 A: It was Wayne but instead he changed it to Richard

4 Street.

5 Q Do you remember the real address?

6 A: No, I don't.

7 Q Did you get mail there?

8 A: No, I didn't.

9 Q Did you use that address?

10 A: I just lived there. A bunch of kids living together.

11 Q Did you have a job at that time?

12 A: Yes, I did.

13 Q Did you use that address on your job application?

14 A: No, I worked for my cousin.

15 Q Did you ever have to fill out any paperwork for him?

16 A: No.

17 Q Paid in cash. A:Yes, sir.

18 Q So would there be any other instances where you would

19 have had to use an address?

20 A: For Parole, I used my mom's address.

21 Q So you were on probation and parole.

22 A: I was out screwing up.

23 Q So you were telling the Probation Office you were

24 living over at your mom's house but in reality that

25 wasn't true, you were living at Richard's house.

1 A: Yes.

2 Q So that was a lie to the Probation Office.

3 A: Yes.

4 Q I want to jump around a little bit. It is not with any
5 intent to confuse you or anything but there are some
6 questions I had notes on first. You said two weeks
7 before your grand jury testimony Richard came over and
8 threatened you.

9 A: yes.

10 Q Remember that testimony. Did you call Richard and tell
11 him you were going to the grand jury?

12 A: No.

13 Q How did you know to go to the grand jury?

14 A: How did I know to go?

15 Q Yes, sir. Who told you you had to be there?

16 A: Dave True.

17 Q And So Mr. True, did he bring you a subpoena or just
18 call you up and tell you?

19 A: He brought me a subpoena. They brought me a subpoena.
20 They come out and talked to me.

21 Q Told you what date to be there.

22 A: Yes.

23 Q And when to be there. Did you call up Mr. Brown and
24 tell him you were going to the grand jury.

25 A No.

1 Q Do you remember having Bryan Sheppard's mother cash a
2 check for you?

3 A: Yes, I do.

4 Q And you were working at the time, weren't you?

5 A: Yes, I was.

6 Q And it was a \$175.00 payroll check.

7 MR. MILLER: I object to this as to
8 relevance.

9 MR. OSGOOD: I am going to tie it up.

10 THE COURT: Come up.

11 (Proceedings out of the hearing of the jury.)

12 THE COURT: What does this have to do with
13 this case?

14 MR. OSGOOD: Richard threatened about the
15 payroll check because Bryan's mother cashed the check
16 for him and he got the money. And then he called up
17 his boss and told him he lost the check and got
18 another check issued and they stopped payment on that
19 one. And then Bryan's mother was mad at him and so
20 was Richard.

21 THE COURT: I bet he didn't go to Sunday
22 school that week.

23 MR. OSGOOD: He may not. I won't ask him
24 that. He was biased. That's what the confrontation
25 was outside the house. It had nothing to do with grand

2276

1 jury.

2 MR. BECKER: Mr. O'Connor, if the testimony
3 relates to Bryan's mother, she is present in court and
4 I agreed she could be present but if it is going to
5 relate to her, I don't want her in here.

6 MR. O'CONNOR: She is in here and I am not
7 going to put her on to testify.

8 MR. BECKER: Mr. Osgood may ask her those
9 questions.

10 MR. OSGOOD: I won't put her on either. I
11 just want to ask this witness these questions. We
12 promise you that and we will stick by that.

13 THE COURT: What do you want to ask him?

14 MR. OSGOOD: I want to establish that was
15 the basis of the confrontation.

16 THE COURT: You are going to argue -

17 MR. OSGOOD: No, I want to ask him.

18 MR. MILLER: I don't know how they are going
19 to establish this.

20 THE COURT: How are you going to establish
21 this? You can't call Bryan's mother.

22 MR. OSGOOD: I haven't asked him a question
23 yet. He is under oath. He is not going to perjure
24 himself. It goes to bias.

25 THE COURT: I will let you see if you can

1 establish that kind of bias but you have to do it
2 carefully. I don't like this, "didn't you", "wasn't
3 it", "weren't you" kind of questions.

4 MR. OSGOOD: I understand.

5 THE COURT: All right.

6 (Proceedings in the hearing of the jury.)

7 Q My question to you was about the check and that a
8 \$175.00 check was cashed by Bryan's mother.

9 A: Yes.

10 Q And was a second check issued to you by your employer?

11 A: Could have been but I repaid Bryan back that money with
12 a cross bow and gold chain.

13 Q That check after Bryan's mother cashed it, was stopped
14 payment.

15 A: I don't know. That was on my boss.

16 Q You told your boss you lost that check and had a second
17 check issued, didn't you?

18 A: Yes.

19 Q That was another lie to your boss, like the probation,
20 is that a fair statement?

21 A: No, I did not lie to my boss.

22 Q You did lose the check.

23 A: No, I traded it to Bryan for when he was selling dope.

24 Q Did you tell your boss that?

25 A No.

1 Q Told him you lost it.

2 A: No, because he was doing dope, too.

3 Q Your boss was. A: Yes.

4 Q And so Mrs. Sheppard was out \$175.00.

5 MR. MILLER: Objection. Repetitive and
6 argumentative.

7 THE COURT: Let's not argue any more.

8 MR. OSGOOD: I am going to move on.

9 Q Did Mr. Brown come over to your house and confront you
10 about the \$175.00 that was owed to Bryan's mother and
11 that, in fact, was the basis for the argument between
12 the two of you?

13 A: He did not say anything about the check when he come
14 over and threatened me. There was a man standing
15 there, Shawn Wright. When he threatened me about the
16 check it was up at Michael Damaggio's house.

17 Q Okay, but you don't like Mr. Brown, do you, because of
18 that?

19 A: No, that's not why I dislike Mr. Brown.

20 Q But you do dislike him.

21 A: Right at this point in time, yes, I do.

22 Q For a variety of reasons.

23 A: Excuse me?

24 Q For a variety of reasons.

25 A: We can go into them.

1 THE COURT: I think he would rather not.

2 Q You said Richard talked about the explosion to you two

3 times, sir.

4 A: Two times, yes.

5 Q A few times or two times?

6 A: Two or three times, yes.

7 Q You said he went down to steal, is that what you told

8 us on Direct?

9 A: Yes.

10 Q And he ran out of gas.

11 A: Yes.

12 Q And did you tell the grand jury that then he said he

13 had to go steal some gas?

14 A: Could have been. Yes, he had to get some gas somewhere

15 and get his truck going again.

16 Q My question to you was did you tell the grand jury that

17 you guessed **they** stole some gas?

18 A: Yes.

19 Q So at least with respect to that portion of your

20 testimony today, at the time you testified before the

21 grand jury you were guessing, weren't you, sir?

22 A: No.

23 Q Well, did you tell the grand jury you could recall

24 clearly what he said?

25 A: Sir, I am just having a lot of trouble right now.

2280

1 MR. MILLER: I object as improper
2 impeachment. If he has a question about the statement
3 from the grand jury testimony -

4 THE COURT: Why don't you refer to the
5 transcript in question and answer form. Ask him if he
6 was asked this question and gave this answer. That is
7 the way to cross examine on that.

8 Q All right, the question was asked of you, "Then what
9 happened after he ran out of gas?" "Answer: I guess
10 **they** stole some gas or something like that. I can't
11 recall clearly, you know, giving anything on that but
12 **they** ran out of gas and **they** stole some gas off the
13 trucks that was there or something like that from what
14 I remember."

15 A: Yes.

16 Q Now, when you gave your sworn statement to Special
17 Agent Peter Lobdell on February 14, 1995, some five
18 months prior to your appearance before the grand jury
19 on the 25th day of July, 1995 you did not mention
20 anything at all about stolen gasoline to Agent Lobdell,
21 did you?

22 MR. MILLER: I object. This is improper use
23 of a statement. If he didn't make a statement he can't
24 be impeached on it.

25 MR. OSGOOD: I am not impeaching. I am just

2281

1 asking he didn't tell him.

2 THE COURT: That's the only reason to bring
3 that out would be to impeach what he said here.

4 MR. OSGOOD: It tests his memory, Your Honor.

5 THE COURT: I will sustain the objection.

6 Q In February of 1995 when you talked to Agent Lobdell
7 did you have any independent recollection of him having
8 mentioned gasoline and stealing gasoline and running
9 out of gasoline?

10 A: Yes.

11 Q Did you tell that to the agent?

12 A: Yes.

13 Q So if it is not in the sworn statement -

14 THE COURT: Careful.

15 Q Have you reviewed the sworn statement?

16 A: The grand jury statement and my statement?

17 Q Your statement, yes, sir, the one you signed, the
18 affidavit. Did you review that before you came to
19 court today?

20 A: No, I didn't.

21 Q Have you reviewed your grand jury testimony before you
22 came to court today?

23 A: No, I haven't.

24 Q Have you ever seen your grand jury transcript?

25 A: One time.

2282

- 1 Q When was that, sir?
- 2 A: When that other lawyer came up and talked to me in the
- 3 morning in the Osceola County Jail.
- 4 Q That was Mr. O'Connor.
- 5 A: That man over there. Yes, him.
- 6 Q The man that just stood up.
- 7 A: The first time I ever seen him.
- 8 Q And Mr. Becker never showed you your grand jury
- 9 transcript.
- 10 A: Can I read -- you want me to read this?
- 11 Q If you haven't seen it, take a look at it.
- 12 A: Yes, I just read it.
- 13 Q Did Mr. Miller show you your grand jury transcript?
- 14 A: That man right there.
- 15 Q This man sitting right here (indicating).
- 16 A: Yes.
- 17 Q So you have seen your grand jury transcript.
- 18 A: Yes, I was down there the other day, last Saturday.
- 19 Q That is what I just asked you. Did you read your grand
- 20 jury transcript?
- 21 A: Yes.
- 22 Q When you just told me you hadn't seen it before, until
- 23 Mr. O'Connor showed it to you -
- 24 A: I thought it was that one piece of paper.
- 25 Q I said grand jury, sir.

2283

1 A: I'm sorry. Yes, I did see it.

2 Q So when you said the first time you saw it was when Mr.
3 O'Connor showed it to you was not accurate.

4 MR. MILLER: Objection.

5 THE COURT: Don't argue with him about this,
6 Mr. Osgood.

7 MR. OSGOOD: All right.

8 Q Now, did you say **they** started a fire down there?

9 A: Yes, sir.

10 Q And it was in a pickup.

11 A: Yes.

12 Q Now do you remember a person by the name of Vernon
13 Tennison?

14 A: Yes, I do.

15 Q Were you ever over at his house one day and had an
16 occasion to see some stuff that supposedly came from
17 the construction site the night of the explosion?

18 A: Yes. Not that exact night, no. I was in jail the
19 exact night it happened.

20 Q No, no, I mean were you told those items came from the
21 explosion site?

22 A: Yes.

23 MR. MILLER: I object. This is not relevant.
24 Hearsay by inference.

25 THE COURT: And beyond the scope of Direct.

2284

1 Sustained all around.

2 Q Now when Mr. O'Connor came to see you did he have a
3 court reporter?

4 A: Yes.

5 Q A lady who takes things down like the lady is doing
6 here?

7 A: Yes.

8 Q Did he place you under oath at that time?

9 A: Not at that time, no.

10 Q Were there questions and answers propounded by Mr.
11 O'Connor and you answered the questions?

12 MR. MILLER: That is not relevant unless we
13 are going to impeach him.

14 THE COURT: Yes, where are we going?

15 MR. OSGOOD: I will just ask the question.

16 Q Did you refuse to discuss with Mr. O'Connor anything
17 about your grand jury transcript?

18 A: Yes, I did.

19 Q And your sworn statement.

20 MR. MILLER: Objection. This is not relevant
21 either.

22 MR. OSGOOD: It goes to his credibility, Your
23 Honor.

24 THE COURT: No, it doesn't. Sustain the
25 objection.

1 Q I believe this has been covered but on behalf of
2 Richard Brown, is it true that your sole purpose for
3 providing this information was to potentially reduce
4 your prison time?

5 A: No. Maybe -- I would like to be honest with the court
6 and clear my mind, maybe at the beginning of the point
7 in time but I should be on the street right now instead
8 of being locked in that cell still. And I am here on
9 my own free will just to have the peace of mind, you
10 know. Like you can read all my reports. I have done
11 the crime. I admitted to everything I have done wrong
12 and I feel if you take another man's life you should
13 admit to it and face the consequences yourself.

14 Q So you are suggesting it is because you want to be
15 truthful.

16 A: Yes, I do.

17 Q But you were not truthful on several prior occasions,
18 based on your testimony.

19 MR. MILLER: Objection. Repetitious and
20 argumentative.

21 THE COURT: Sustained.

22 Q Back in 1995, on February the 14th when you signed the
23 affidavit, did you make the statement, "I am providing
24 this information at this time for the sole purpose of
25 potentially reducing my prison time."?

1 MR. MILLER: This is repetitious.

2 MR. OSGOOD: It hasn't been asked on behalf
3 of my client.

4 THE COURT: It has been asked and the facts
5 don't change from your client to somebody else's
6 client.

7 MR. OSGOOD: Very well. Thank you, sir.

8 THE WITNESS: No problem.

9 CROSS EXAMINATION

10 BY MR. PETERS:

11 Q Sir, my name is Pat Peters and I represent **Frank**
12 Sheppard. And I just want to ask you a few questions.
13 Is it your understanding that the reason you are not
14 out of jail right now is because you were called as a
15 witness in this case?

16 A: Yes.

17 Q So it is your understanding that as soon as you finish
18 testifying here, you are done and get to go home.

19 A: No.

20 Q What is your understanding?

21 A: My understanding I should have been home. You get a
22 12-12. You're allowed to sign up for honor center,
23 halfway house or house arrest 14 months prior to your
24 12-12 date. And my parole date was January 14th and
25 the date I should have been able to sign up for house

1 arrest, honor center or halfway house.

2 Q After you testify here Dave True has told you there
3 will be a letter put in your parole file.

4 MR. MILLER: This is repetitious.

5 A: I will be honest about that. I'm not worried about
6 that letter.

7 THE COURT: That has been gone into.

8 MR. PETERS: Judge, I have tried to choose my
9 questions carefully. I am confused between an out date
10 of 12-12 and him saying he shouldn't be here but for
11 testifying and a letter going into the file when he
12 wouldn't be here.

13 MR. MILLER: No relevance.

14 THE COURT: Yes, it is sustained. Let's go
15 on.

16 Q Were you told by Richard Brown that dynamite was stolen
17 from the construction site?

18 A: Yeah.

19 Q And, in fact, an occasion came up where you saw that
20 dynamite and several sticks were taken by Richard Brown
21 to a party, isn't that your testimony?

22 A: No, it was taken to Vern Tennison's house.

23 Q Did you talk about an occasion where several sticks of
24 dynamite were taken to a party and burned and
25 detonated?

2288

1 A: Yes.

2 Q Was that dynamite you saw burned and detonated dynamite
3 that was told to you came from the construction site?

4 A: There was dynamite that was took. **They** said **they** took
5 it from a construction site. The ones that was
6 detonated that night, I don't know.

7 Q The night that it was detonated you are talking about,
8 was that a night you were using LSD?

9 A: No.

10 Q Do you remember in your sworn affidavit where you were
11 placed under oath, saying that at that particular night
12 you were tripping on LSD and -

13 MR. MILLER: Excuse me. I object to him
14 reading from this.

15 MR. PETERS: Judge, I am not reading.

16 THE COURT: It is not in evidence.

17 MR. PETERS: I am not reading. I am asking
18 if he remembers from his affidavit saying that he was
19 tripping on LSD and dynamite was taken to a party and
20 burned and ignited which he just said he hadn't said.

21 MR. MILLER: If he is not reading from it,
22 then he can't be asking this question from this; if he
23 is not taking it verbatim and it's not in evidence.
24 Also, it assumes facts not in evidence.

25 THE COURT: State your question to him

2289

1 without a direct reference to the paper that isn't in
2 evidence.

3 Q Sir, isn't it correct that while you were tripping on
4 LSD Richard Brown took sticks of dynamite with you to a
5 party and burned the sticks of dynamite and you saw
6 them explode?

7 A: Yes.

8 Q You have testified about being in fear, is that
9 correct?

10 A: Yes.

11 Q And you were in fear on February 14, 1995 when you gave
12 your statement, is that correct?

13 A: Yes.

14 Q How many conversations have you had with agents from
15 ATF or attorneys from the government?

16 A: Four or five.

17 Q During any of those conversations did any of those
18 people advise you that your name, your statement, none
19 of the evidence that has been talked about here in
20 court, that none of that would be provided to the
21 defense until December 24th, 1996?

22 A: No.

23 Q They never gave you that reassurance.

24 A: No.

25 MR. PETERS: I have no further questions.

2290

1 THE COURT: Any Redirect?

2 MR. MILLER: No Redirect.

3 THE COURT: You may step down.

4 MR. MILLER: Your Honor, the government
5 calls Wally Mills.

6 WALLY MILLS,

7 having been sworn, testified:

8 DIRECT EXAMINATION

9 BY MR. MILLER:

10 Q Would you tell the court and jury your name, please.

11 A: Wally G. Mills.

12 Q How old are you, sir?

13 A Twenty-three.

14 Q I want to go to November of 1988, where did you live
15 then?

16 A: Excelsior Springs, Missouri.

17 Q And do you remember the explosion in 1988?

18 A: Oh, I'm sorry. Phoenix, Arizona.

19 Q Let me go back. In November of '88 you lived in
20 Phoenix, Arizona.

21 A Yes.

22 Q Did you learn about the explosion that happened in
23 Kansas City in November of 1988 that caused the death
24 of six firefighters?

25 A Yes.

1 Q How did you learn about that?

2 A: My grandparents.

3 Q Do you know a Richard Brown?

4 A: Yes.

5 Q Do you see him in the courtroom today?

6 A: Over here (indicating).

7 Q When you say "over here", what is he wearing?

8 A: A blue shirt with a tie. He's standing up.

9 Q When did you move to Missouri?

10 A: I am going to say like in November, something like
11 that.

12 THE COURT: Of?

13 Q What year.

14 A: It was '88. I moved out here I think in '88.

15 Q In November.

16 A: I am not sure of the exact date we moved back. It has
17 been a long time ago.

18 Q Did you move here after the explosion?

19 A: Yes, after the explosion.

20 Q Do you remember about how many months after the
21 explosion you moved to Missouri?

22 A: Three or four.

23 Q Now you say you know Richard Brown. How did you meet
24 Richard Brown?

25 A: Through **Frank** Gile.

1 Q And did you ever stay over at Richard Brown's home?

2 A: Yes, one time when I was on-the-run.

3 Q We will get to the on-the-run but where was this house?

4 A: Independence.

5 Q Was this his mother's home?

6 A: Yes.

7 Q Now do you have any felony convictions?

8 A: Yes, one.

9 Q Was that in 1994?

10 A: Yes.

11 Q And that was for escape from confinement.

12 A: Yes.

13 Q And when you said "on-the-run", when you escaped from
14 confinement and were on-the-run, is that when you
15 stayed with Richard Brown at his mother's house?

16 A: Yes.

17 Q When you were over there at Richard Brown's mother's
18 house with Richard Brown, did a conversation about the
19 explosion that caused the death of the six firefighters
20 ever come up?

21 A: Well, it wasn't when I was on-the-run. It happened
22 before I was on-the-run. This was like when I first
23 met him, when I first met him. We was up there
24 partying, me, **Frank** Gile, a bunch of people. We always
25 partied over there. And the conversation come up about

2293

- 1 something and I asked him if he was involved and he
2 said, yes, me and some friends were out there drinking
3 and our truck ran out of gas and we didn't have a gas
4 can; it was a construction site. And **they**, I guess,
5 opened up the container to find a gas can. And I guess
6 **they** went down to get some gas and come back up and put
7 gas in the truck and somebody poured the rest on there,
8 lit it on fire and **they** left. That's all I know about
- 10 Q Did he say where **they** went to get the gas from?
- 11 A: Quik Trip.
- 12 Q And did he say what **they** poured the gas on?
- 13 A: Just a trailer.
- 14 Q How many times did Richard Brown talk with you about
15 this?
- 16 A: Once.
- 17 Q Now did you go to the authorities with this or did they
18 come to you?
- 19 A: They came looking for me. **Frank** Gile told them that I
20 was out there and I might have overheard it. And they
21 came out when I was locked up to talk to me.
- 22 Q Do you remember who it was that came out?
- 23 A: Not right offhand.
- 24 Q And when he came out to talk with you, were there any
25 promises made to you?

2294

1 A: No.

2 Q Are you currently incarcerated?

3 A: No.

4 Q Are you on probation?

5 A: Yes.

6 Q How much longer?

7 A: Three years

8 Q Was the jail time you did shortened by cooperating with
9 the agents?

10 A: No.

11 MR. MILLER: That is all I have of this
12 witness, Judge.

13 THE COURT: All right. Cross.

14 CROSS EXAMINATION

15 BY MR. OSGOOD:

16 Q Mr. Mills, I am John Osgood and I represent Richard
17 Brown. When did you say you moved here, around the
18 spring of '89?

19 A: Eighty-eight. I moved here in '88.

20 Q Then was it before or after the blast?

21 A: It was after. It might have been '89. I don't know.
22 It has been such a long time ago.

23 Q Some of those events then no longer -

24 THE COURT: Just ask him a question, Mr.
25 Osgood.

1 Q When did you first meet Richard Brown?

2 A: I don't know the exact dates. I just met him through
3 **Frank** Gile. That's all I can say.

4 Q When is the first time you ever had contact with any
5 law enforcement officer?

6 A: When was the first time?

7 Q Yes, about this case.

8 A: I don't understand the question.

9 Q When is the first time anybody from the police came to
10 see you?

11 A: That was out at security housing specialist in Lathrop,
12 Missouri.

13 Q That would have been on February the 22nd of 1995 then
14 and Agent Lobdell came out to see you.

15 A: Yes.

16 Q And they found you.

17 A: They found me.

18 Q And what is the security housing specialist?

19 A: It's a county jail. Just like if you have a bunch of
20 time to do, they send you out there.

21 Q What was your prior conviction for?

22 A: Escape from confinement.

23 Q That was a felony.

24 A: Yes.

25 Q And how much time were you doing on that?

~

1 A: I did over a year in the county and four months house
2 arrest and five years probation.

3 Q How long after you moved back here in '89 was it you
4 said Mr. Brown made these admissions to you?

5 A: Around '92, '93, somewhere around there.

6 Q This interview was at least two years following that.

7 A: Yes.

8 Q And in the interim you never went to the authorities or
9 the police about this.

10 A: No.

11 Q Were you aware there was an investigation?

12 A: I guess, yes.

13 Q Had you seen, for example, the Unsolved Mysteries
14 episode on television?

15 A: Yes.

16 Q And, in fact, it aired early in February of 1995,
17 didn't it?

18 A: I guess. I don't know.

19 Q Now did you live with Mr. Brown at some point in time,
20 ever?

21 A: I stayed with him when I was on-the-run for four
22 months.

23 Q Was Mr. **Frank** Gile staying there at that time?

24 A: No.

25 Q Did Mr. Gile ever live with Mr. Brown?

1 A: Not that I know of.

2 Q Where was this house that you stayed at with Mr. Brown?

3 A: Independence.

4 Q Was that his mother's house?

5 A: Yes.

6 Q And did you have your own bedroom?

7 A: No, I stayed in his brother's room.

8 Q And you say it was in this time frame that Mr. Brown

9 told you that he -

10 A: No.

11 Q When was it?

12 A: It was '92, '93. I stayed with him on-the-run in '94.

13 Q And then in February, '95 was when you first told the

14 authorities about what you knew.

15 A: Well, they kind of come out there and asked me, you

16 know, **Frank** Gile is the one that told them I was there

17 at a party the night that he was talking about it. And

18 that's when the authorities came out and talked to me.

19 Q Had you and Mr. Gile discussed that conversation at any

20 time prior to them coming out to see you?

21 A: No.

22 Q Now where did the conversation with Mr. Brown take

23 place?

24 A: In front of his mom's in Independence.

25 Q Do you know where his grandfather lives?

2298

1 A: Yes, I do.

2 Q Did you tell Agent Lobdell in 1995 the conversation
3 took place in front of his grandfather's house over in
4 Marlborough, down around 85th and the school down
5 there?

6 A: I don't recall that.

7 Q Would it help if you were able to see that report?

8 A: I have already seen all of it.

9 Q And you don't remember telling him that it occurred in
10 Richard's grandfather's house.

11 A: Nope.

12 Q And did you tell Agent Lobdell that Richard had said
13 that he and a couple of other people, including Johnny
14 Driver, were up there?

15 A: Nope.

16 Q You never mentioned Johnny Driver.

17 A: I don't even know the people.

18 Q So if that is in the report, is it a mistake?

19 A: It must be.

20 THE COURT: Same amount of questioning we
21 talked about earlier, Mr. Osgood.

22 MR. OSGOOD: I understand.

23 MR. MILLER: Objection.

24 THE COURT: Sustained.

25 Q Did you tell Agent Lobdell that Richard had said that

2299

1 they went up there to steal dynamite?

2 A: Nope.

3 Q Did you tell him anything about running out of gas?

4 A: I told him, yeah.

5 Q So then after your interview with Agent Lobdell were
6 you later subpoenaed to the grand jury?

7 A: Yes.

8 Q But you never mentioned Johnny Driver.

9 A: No.

10 Q You remember this question and this answer, sir, in the
11 grand jury on the 25th day of July, 1995 here in Kansas
12 City, Missouri: Page 6.

13 "Question:What did Richard Brown tell you about that
14 explosion that killed the firemen?"

15 "Answer: He just told me that him, Johnny Driver and I
16 can't think of the other guy's name, **they** went to steal
17 some dynamite at a construction site. And when **they**
18 went there the truck ran out of gas. And **they** went to
19 Quik Trip and came back up and put some of the gas on
20 the truck and poured some on, I guess it was the
21 trailer."

22 Were you asked that question and did you give that
23 answer?

24 A: Well, I had to. It's on there, yes.

25 Q Where did you get the name Johnny Driver?

1

1 A I couldn't tell you. I would say the agent. That's
2 1 all I can say.

3 1 Q Did you discuss your testimony with the agent before
4 1 you went into the grand jury?

5 A Out at security housing I did.

6 1 Q That was Agent Schram.

7 1 A I guess.

8 Q What about Agent True who is in the courtroom here, did
9 1 you discuss your testimony with him?

10 A I don't know where he's at.

11 Q Besides the name Johnny Driver, do you recollect now
12 today whether or not any of this other information came
13 from the agents?

14 A: None of it. Just what I told you, that came from
15 Richard Brown. That was it. I don't know if it was
16 true or not but it might be and it might not be. Who
17 knows.

18 Q You mean what Richard told you.

19 A: Right, we was driving and partying so he might have
20 been blowing it out of his butt.

21 Q Did he do that on occasion? You knew the man.

22 A: That's my thought.

23 Q That happened on more than one occasion about other
24 things.

25 A: Yes.

230i

1 Q That was kind of his personality, wasn't it, sir?

2 A: Yes.

3 Q That is one of the reasons you didn't report it.

4 A: Exactly.

5 Q Because you didn't think that much about it.

6 A: Exactly.

7 Q One time did he show you some flares over at his mom's
8 house?

9 A: I seen some flares in his mom's garage but I never
10 thought any of that, **they**'re the ones that are saying,
11 you know -

12 Q Have you ever seen dynamite?

13 A: No, sir.

14 Q A flare is kind of a long thing and red. Like you pop
15 the cap on it and put it by your car when your car
16 breaks down, don't you?

17 A: Right, that's what it was.

18 Q And they're red.

19 A: Right, that's what it was.

20 Q Richard ever suggest it was dynamite to you?

21 A: No.

22 Q But you knew they were flares.

23 A: Right.

24 Q How much had you had to drink when this conversation
25 took place?

2302

1 A: I couldn't tell you.

2 Q You guys party hard.

3 A: Yeah.

4 Q And by "party hard", I mean get rip-roaring drunk
5 sometimes.

6 A: Yes.

7 Q And was Richard that way?

8 A: Yes.

9 Q And you were that way.

10 A: Kind of.

11 Q Having a good time.

12 A: Yes.

13 Q And that's when he said some of these things.

14 A: Yes. You know how guys talk.

15 Q Do you remember whether or not **Frank** Gile might have
16 mentioned something about these flares and suggested
17 they were dynamite?

18 MR. MILLER: I object to that as hearsay.

19 MR. OSGOOD: You are right. I withdraw
20 it.

21 THE COURT: Sustained.

22 MR. OSGOOD: That is all I have. Thank
23 you, sir.

24 THE WITNESS: You are welcome.

25 THE COURT: Any other questions?

2303

1 MR. O'CONNOR: No, Your Honor.

2 THE COURT: Any Redirect?

3 MR. MILLER: No.

4 THE COURT: Call your next witness.

5 MR. MILLER: The government calls Amy
6 Pederson.

7 AMY PEDERSON,

8 having been sworn, testified:

9 DIRECT EXAMINATION

10 BY MR. MILLER:

11 Q Would you tell the jury and the court your name,
12 please.

13 A: My name is Amy Pederson.

14 Q How old are you, ma ' am?

15 A: Twenty-one.

16 Q Are you attending college anywhere?

17 A: Yes, Longview Community College.

18 Q And before you went to college where did you go to high
19 school?

20 A: Center and also Aquinas.

21 Q Is that in the Marlborough area?

22 A: Yes.

23 Q Do you know Richard Brown?

24 A: Yes, I do.

25 Q Would you be able to point him out in the courtroom

2304

- 1 today?
- 2 A: Right there (indicating).
- 3 Q In the blue shirt with the tie.
- 4 A: Yes.
- 5 Q When did you meet him?
- 6 A: Probably around '92.
- 7 Q Were you in **high** school then?
- 8 A: Yes, I was 16, 15 or 16.
- 9 Q And did you see him often back then?
- 10 A: Yes, we used to hang out at his house a lot.
- 11 Q Where was that at?
- 12 A: Off of 77th and Prospect.
- 13 Q When you were over there did you ever have a
- 14 conversation with Richard Brown regarding the explosion
- 15 that killed the six firefighters?
- 16 A: Yes, I did.
- 17 Q Before we get into it, do you remember when this
- 18 conversation took place?
- 19 A: The summer of '93. I was 16. So it was '93.
- 20 Q And do you remember where it took place?
- 21 A: It was in his living room.
- 22 Q Of the house off 77th.
- 23 A: Yes.
- 24 Q Who all was present?
- 25 A: Just Richard and I.

2305

1 Q And do you remember what time of the day it was?

2 A: It was in the evening.

3 Q And what condition was he in? Was he drunk or sober?

4 A: He was sober.

5 Q Do you know who he was living with at that time?

6 A: He was living with Mike Gile.

7 Q And what did Richard Brown tell you about his
8 involvement in the explosion that killed the six
9 firefighters?

10 A: He told me him and a group of people had gone down to
11 the construction site to set off some dynamite and that
12 **they** set the explosion off and left. **They** set the
13 dynamite near or underneath the truck, I don't remember
14 which one.

15 Q Did he say why **they** did this?

16 A: Just for fun.

17 Q Did he make any comment about the firefighters?

18 A: He said **they** didn't know **they** had died until later, the
19 next day.

20 Q And have you seen anything about this on Unsolved
21 Mysteries?

22 A: No, I have not seen Unsolved Mysteries.

23 Q Have you told anyone else about this?

24 A: My mother and father were present when I talked to the
25 ATF.

2306

1 Q And when did you come forward to the ATF about this?

2 A: It was when it was in the paper they were doing the
3 Unsolved Mysteries and I remembered he had told me.

4 MR. MILLER: That is all I have of this
5 witness, Judge.

6 CROSS EXAMINATION

7 BY MR. OSGOOD:

8 Q Hi, ma'am. My name is John Osgood and I represent
9 Richard Brown. you were interviewed, I believe, in
10 November of 1994 by Agent Peter Lobdell, about November
11 22nd, do you remember that interview?

12 A: Yes.

13 Q And you were 18 at that time.

14 A: Yes.

15 Q And these conversations that he interviewed you about
16 occurred two years prior to that.

17 A: Yes.

18 Q Would be '92 then, is that right?

19 A: Yes.

20 Q Did you tell Agent Lobdell in that interview that it
21 had actually occurred four years prior to the interview
22 and not two years?

23 A: I don't remember. I mean I might have. I know it was
24 when I was 16 though, when I was driving at the time.

25 Q So if it was four years prior, you would have been 14.

1 A: Right.

2 THE COURT: What is it you are saying
3 occurred four years prior?

4 MR. OSGOOD: I am asking her did she tell the
5 agent in this interview in '94 the conversation she
6 recalled occurred four years prior instead of the two
7 she just testified to.

8 THE COURT: The conversation with Mr. Brown?

9 MR. OSGOOD: Mr. Brown.

10 Q Now, I don't want to use names but did Mr. Brown tell
11 you that he and his **uncle** were involved in this?

12 A: Would you like me to tell you exactly what he said?

13 Q Who was there, not by names. Did he say his **uncle**,
14 Mr. Brown's **uncle** was involved?

15 MR. MILLER: Excuse me. May we approach. 

16 (Proceedings out of the hearing of the jury.)

17 MR. MILLER: First of all, whatever it is
18 for, it is collateral. If it is for impeachment,
19 we are going to be walking into possibly some kind
20 of error here, talking about Richard's **uncle**. If
21 she clears it up, she will also be talking about
22 Bryan Sheppard, Bryan Sheppard, get the **uncle**, get all
23 kinds of mess in here.

24 THE COURT: You are just itching to name some
25 of the names.

2308

1 MR. OSGOOD: I am instructing her not to.

2 She said Richard and his **uncle**, **they** had dynamite at

3 his house and placed the dynamite underneath the

4 trailer and blew it up for kicks.

5 THE COURT: It's pretty much what she said.

6 Now what is it you are challenging her?

7 MR. OSGOOD: I am trying to see if what she

8 told them is consistent.

9 THE COURT: You are trying to bring out other
10 names. You are trying to create error.

11 MR. OSGOOD: No, I am not.

12 THE COURT: I sustain the objection. You may
13 ask her if he said there were others with him.

14 MR. PETERS: That is my concern. In keeping
15 with the court's earlier ruling, if **they** talk about
16 somebody, not the charged defendants, ask if Richard
17 Brown's **uncle**, specifically mentioned his **uncle** with
18 the last name Brown, is one of the charged defendants.
19 You sustained the objection.

20 Now I believe it creates the inference
21 you are talking about **uncle** and the testimony
22 throughout the trial is of **Uncle Frank**.

23 THE COURT: I don't know anything about an
24 **uncle**.

25 MR. MILLER: With all respect, that is too

2309

1 bad. She may clear this up as to what she is talking
2 about. And then what do we do with the mess. Are you
3 saying it is collateral?

4 MR. OSGOOD: Are you saying they're reports
5 for all?

6 THE COURT: No, John.

7 MR. PETERS: My concern and I understand the
8 court's ruling on the state of the record.

9 THE COURT: That will be stricken.
10 Withdrawn.

11 MR. PETERS: Can we say because it is
12 consistent with the testimony, that it was not **Frank**
13 Sheppard?

14 MR. BECKER: Pat, if you look at the
15 beginning of the highlighted statement -

16 MR. PETERS: I understand completely.

17 MR. BECKER: The first sentence before it
18 says paren, it says, "And **Uncle Frank** Sheppard". I
19 mean it clearly could be a problem with the record
20 and she would answer your client.

21 THE COURT: I am going to sustain the
22 objection.

23 (Proceedings in the hearing of the jury.)

24 THE COURT: Ladies and gentlemen, I sustained
25 an objection to that question and you are to disregard

2310

1 it and not to draw any inferences from the asking of
2 the question.

3 Q Row well did you know Mr. Brown?

4 A: I knew him fairly well. I spent a lot of time at his
5 house.

6 Q Do you know who he dated?

7 A: Yeah, he didn't have a steady girlfriend when I went
8 out with him.

9 Q Did you tell the agent he was dating somebody named
10 Candy Miller and had a child by her?

11 A: Yes.

12 MR. MILLER: That is not relevant.

13 MR. OSGOOD: It is because it is incorrect,
14 Your Honor. Testing -- -

15 THE COURT: I have got to say so what.

16 MR. OSGOOD: I am testing her credibility
17 and her knowledge about Mr. Brown. She said things
18 about him and I want to test her credibility and her
19 knowledge.

20 THE COURT: Objection sustained.

21 Q Did you tell the agents he married Valerie Rooks?

22 A: No.

23 MR. MILLER: That is not relevant.

24 THE COURT: This is not relevant.

25 MR. OSGOOD: She just testified she knows

1 him well. He is not married and never married Valerie.
2 Somebody else married Valerie Rooks.

3 THE COURT: Do you want to take an oath and
4 testify.

5 MR. OSGOOD: I could do a better job than
6 she is doing.

7 THE COURT: You are through. Let's go.

8 Q Now, did you -

9 THE COURT: Mr. Osgood, I said you are
10 through.

11 MR. OSGOOD: May we approach.

12 MR. PETERS: May we approach.

13 (Proceedings out of the hearing of the jury.)

14 MR. OSGOOD: I apologize to the court
15 publicly.

16 THE COURT: You have gone way too far. This
17 is crap -- this is just sheer crap.

18 MR. OSGOOD: I apologize. I am trying to
19 defend him. I know you have been doing this a long
20 time.

21 THE COURT: Stop.

22 MR. OSGOOD: I need to get into the business
23 of dynamite under the truck.

24 MR. O'CONNOR: The only thing, this is his
25 only witness. None of us are going to cross

1 examine or are prepared to. He is the only one. I
2 would ask the court to reconsider.

3 THE COURT: What is it about the dynamite
4 under the truck?

5 MR. OSGOOD: There was no dynamite put under
6 any truck. She has testified in the grand jury he
7 said there was dynamite put under the truck.

8 THE COURT: Can you do that in one question.

9 MR. O'CONNOR: You could bring the agent.

10 THE COURT: Without arguing.

11 MR. OSGOOD: I appreciate your help but I
12 will do what the Court tells me to do but I want it on
13 the record you are limiting my cross examination again.
14 If I am asking the wrong questions or if I am doing it
15 wrong, I will try and do it right.

16 THE COURT: You are asking questions on
17 irrelevant matters and you are asking and I am
18 sustaining the objections. Let's go. You can ask her
19 that question. And if you have some way of proving it
20 didn't happen collaterally, you can do that.

21 MR. OSGOOD: I want to ask her other
22 questions, too.

23 THE COURT: Like what?

24 MR. OSGOOD: I am not prepared at this point
25 to provide the court with a script and I don't have to

1 under the law.

2 THE COURT: Tell me what you want to ask her.

3 MR. OSGOOD: Your Honor, I want to go over
4 her grand jury testimony. I am entitled to examine
5 this witness. I am entitled wide latitude in cross
6 examination and the Court knows that.

7 THE COURT: You have had wide latitude.

8 MR. OSGOOD: I did not, with all due
9 respect.

10 THE COURT: Ask the question we just referred
11 to.

12 (Proceedings in the hearing of the jury.)

13 Q What did Mr. Brown say about dynamite, ma ' am?

14 A: He said **they** had brought dynamite to the site to blow
15 off.

16 Q How did **they** use this dynamite **they** had up at the site?

17 A: He told me **they** had put it near or under a truck and
18 set it off.

19 Q Did he say how **they** set it off?

20 A: No, he did not.

21 Q And did he say it blew up?

22 A: No, not, I mean he said that **they** blew up dynamite. So
23 if that's what you mean, yes, he did.

24 Q Did he say **they** used a timer or a fuse?

25 A: No, he did not tell me how **they** blew up the dynamite.

2314

1 Q Did he say the big explosion was as a result of the
2 dynamite **they** blew up underneath the trailer?

3 A: No, he did not.

4 Q I don't want any names but I want to know where did he
5 say he got this dynamite to blow up this truck? No
6 names, just did he have it or did he get it from
7 somebody else?

8 A: From one of the people at the party.

9 Q The party, which party?

10 A: The party that's on trial right now.

11 Q Ma'am.

12 A: You said no names.

13 MR. OSGOOD: That is all I have, Your Honor.

14 THE COURT: All right. Redirect?

15 MR. MILLER: No Redirect.

16 THE COURT: All right. You may step down.

17 We will stop now for the day and reconvene at 9:30.

18 Remember my admonition about not discussing the case
19 and we will see you in the morning. You are excused.

20

22

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

1	UNITED STATES OF AMERICA,	)	
1		)	
1	Plaintiff,	)	
1		)	No. 96-00085-01/05-CR-W-9-8
1	v.	)	February 6, 1997
I		)	Kansas City, Missouri
I	GEORGE FRANK SHEPPARD,	)	CRIMINAL
1	EARL D. SHEPPARD,	)	
1	DARLENE M. EDWARDS,	)	
1	BRYAN E. SHEPPARD, and	)	
1	RICHARD W. BROWN,	)	
1	Defendants.	)	

TRANSCRIPT ON APPEAL
V O L U M E X I I I
(Pages 2315 - 2514)

BEFORE THE HONORABLE JOSEPH E. STEVENS, JR.
UNITED STATES DISTRICT JUDGE
AND A JURY

Proceedings recorded by electronic stenography
Transcript produced by computer

Kathleen M. Wirt, CCR, RMR
United States Court Reporter
811 Grand, Room 654 * Kansas City, MO 64106
(816) 474-4616

Page 2316
I N D E X
V O L U M E X I I I
(Pages 2315 - 2514)
Thursday, Februarv 6. 1997
(Trial)

GOVERNMENT'S WITNESSES:

Shannon Reimers

Direct Examination by Mr. Becker	2324
Cross-examination by Mr. Bunch	2336
Cross-examination by Nr. Peters	2339
Cross-examination by Mr. O'Connor	2341
Redirect Examination by Nr. Becker	2342
Recross-examination by Mr. Peters	2344
Voir Dire Examination by Mr. O'Connor	2347
Voir Dire Examination by Nr. Becker	2351

Brian Studna

Direct Examination by Mr. Becker	2355
Cross-examination by Mr. Osgood	2361
Redirect Examination by Mr. Becker	2385
Recross-examination by Mr. Osgood	2393
Cross-examination by Mr. O'Connor	2394

Kelly Corrison

Direct Examination by Mr. Becker	2396
Cross-examination by Mr. Osgood	2404
Cross-examination by Mr. Peters	2415

Kimberly Finch

Direct Examination by Mr. Becker	2420
Cross-examination by Mr. O'Connor	2434
Cross-examination by Mr. Osgood	2442
Cross-examination by Mr. Peters	2445

Shannon Newcomb

Direct Examination by Mr. Miller	2446
Cross-examination by Mr. O'Connor	2453
Cross-examination by Mr. Osgood	2468

Margaret Weaver

Direct Examination by Mr. Becker	2477
Cross-examination by Mr. O'Connor	2486
Cross-examination by Mr. Osgood	2489

Carolee Ann Smith

Direct Examination by Mr. Miller	2490
Cross-examination by Ms. Hunt	2503
Cross-examination by Mr. Peters	2510
Cross-examination by Mr. O'Connor	2511

Reporter's Certificate	2514

— * —

Thursday, February 6, 1997

1

3 (The following proceedings were had in the
4 courtroom out of the presence of the jury:)

5 THE COURT: Okay. Let's get the jury in.

6 MR. O'CONNOR: Good morning, Your Honor.

7 MR. BECKER: Mr. Bunch.

8 MR. BUNCH: Yes.

9 MR. BECKER: The witness will be, I'll be asking
10 her about what I gave notice of, 404(b) evidence, as part of
11 her testimony, not all of her testimony. It relates to
12 approximately six weeks before the explosion, she will
13 testify she was present and heard conversations with Darlene
14 Edwards about stripping, Darlene Edwards having her own
15 automobile stripped and then burned in order to collect the
16 insurance proceeds.

17 MR. OSGOOD: Is that all you're going to get into?

18 MR. BECKER: No. That's part of her testimony.

19 MR. BUNCH: Well, we have been notified about that
20 by Mr. Becker, Your Honor. And I would object to it on the
21 grounds of relevancy, that its prejudicial effect upon the
22 jury outweighs any probative value with respect to the guilt
23 or innocence of this defendant as the government presents it,
24 without further comment.

25 MR. PETERS: Judge, we would also object. I

2318

1 don't -- and Mr. Becker can correct me. But we haven't
2 received notice under 404(b), or we would have provided the
3 Court with a trial brief on it. This is something unrelated
4 to the explosion that caused the death of the firefighters.

5 It's obviously prejudicial, and it goes against
6 what the government's evidence has been, which is **they** went
7 up there to burn something that night. So the only purpose
8 is to show a propensity on the part of Darlene Edwards to
9 burn things.

10 As another matter, the Court did not allow defense
11 to bring out an insurance fraud elicited on direct exam of
12 Deborah Riggs where she had arranged to have her car stolen
13 with her roommate, who was also employed with the security
14 company at the time. So I think both for it not being
15 relevant or material and to be consistent with prior rulings,
16 that material should not be admitted.

17 MR. BECKER: First, prior notice was given, and it
18 was at least 10 days before trial, if not earlier.

19 Second, this event happened some six weeks before
20 the explosion. The Riggs incident that counsel refers to, I
21 think, was at least ten years, and probably like 15 years
22 before the explosion.

23 THE COURT: What's your rule citation as the basis
24 for this admission?

25 MR. BECKER: Rule 404(b).

1 MR. BUNCH: I have acknowledged, Mr. Becker, that I
2 did have notice. Did you note my comment? I did note that.

3 THE COURT: Is this -- I'm sorry, Mr. Becker, but
4 I'm being dense about this this morning, I think. Are you
5 talking about 404(b)?

6 MR. BECKER: Yes, Judge.

7 THE COURT: Other crimes, wrongs, or acts?

8 MR. BECKER: Right. And I would suggest it is
9 being offered for evidence of motive.

10 THE COURT: I would think more of that if the crime
11 committed had ended up being or involving the vehicle, the
12 destruction of the vehicle you're talking about. Or her
13 car -

14 MR. BECKER: I agree that if I was trying a case
15 where it was an arson of an automobile, a prior arson of an
16 automobile would be more significant. What I'm saying is
17 that these individuals committed crimes in order to obtain
18 money for **drugs**, and that's been the consistent theme
19 throughout this trial. And this is an example of a
20 relatively close in time event where one of the defendants
21 participated in a crime in order to obtain money to buy
22 **drugs**.

23 MR. BUNCH: Judge, we take the position, of course,
24 it's totally unrelated to the offense. It's evidence of a
25 separate crime. It has absolutely no connection with an

2320

1 alleged arson that resulted in death, and it is highly
2 prejudicial. It simply has by its very nature an
3 inflammatory thrust with respect to its receipt by the jury
4 and is simply offered for that purpose. It has no legitimate
5 connection, so far as I know or can conceive, with the
6 offense that she's on trial for today. I think Mr. O'Connor
7 would like to address the Court.

8 MR. O'CONNOR: One second, Your Honor.

9 MR. BECKER: The other point of relevance is that
10 Miss Edwards stated in her audio statement that she had a
11 rental car on the night of the explosion, and this is why she
12 had a rental car, because her car had been reported stolen
13 when, in fact, it had been stripped and torched by Darlene
14 Edwards and others.

15 MR. O'CONNOR: Judge, the other confusing aspect to
16 me is that Christine Mall testified, I believe yesterday, and
17 her testimony was that **they** went up there the night of the
18 explosion, Richard and Bryan, to burn Darlene's truck for
19 insurance money. And so now the government wants to bring in
20 the fact that this truck was burned to try to corroborate
21 Christine Mall when, in fact, that would be confusing for the
22 jury. The truck, if it was burned, was burned six weeks
23 previously. They've put a witness on -

24 THE COURT: A different vehicle, Mr. O'Connor.

25 MR. BECKER: It's not a truck. Different vehicle,

1 different time. It's a Datsun 280Z. There will be specific
2 testimony about what was taken off, the parts that wouldn't
3 be on the truck. We're not confusing -- we're not offering
4 this to bolster Christine Mall. It's different.

5 MR. O'CONNOR: Okay. That's my concern. Okay.

6 Well, different in that the jury could make the difference
7 between car and truck.

8 MR. BECKER: It will be clear in the testimony that
9 this happened at least six weeks before the explosion.

10 THE COURT: I'm going to allow it. I think it's
11 admissible under 404(b), and I will allow it.

12 MR. O'CONNOR: For the record, I object on behalf
13 of my client. I believe the prejudicial effect outweighs the
14 probative value of the evidence.

15 THE COURT: All right.

16 MR. BECKER: For the record, the only one mentioned
17 in this regard would be Darlene Edwards.

18 THE COURT: Carefully.

19 MR. BECKER: Yes.

20 THE COURT: Okay. Let's get the jury.

21 (The following proceedings were had in the
22 courtroom in the presence of the jury:)

23 MR. O'CONNOR: Your Honor, may we approach before
24 we get started, please?

25 THE COURT: Let me tell the young folks back there,

1 we have visitors from a school this morning. Those of you
2 back behind that big TV screen, you may feel free to move
3 your position back there anywhere there's a seat to sit in so
4 you can see. There are some of you whose view is blocked by
5 that TV monitor. You won't be able to see, I don't think.

6 (Counsel approached the bench and the following
7 proceedings were had:)

8 MR. O'CONNOR: I believe the testimony from
9 Christine Mall was that in her interview she remembers Bryan
10 Sheppard saying that they went to the site for the purpose of
11 blowing up a vehicle, or possibly a truck. So it was before
12 this jury as a vehicle or possibly a truck, not just a
13 truck. And I think -- now, let me just make a record.

14 THE COURT: I don't think there's a question it was
15 a truck that was involved that burned.

16 MR. O'CONNOR: I understand that. But the
17 testimony before the jury is it's a vehicle or a truck.

18 MR. BECKER: John, this really is apples and
19 oranges. This testimony is going to be Darlene Edwards, six
20 to seven weeks before the explosion, a sports car that was
21 burned in Whore's Hollow.

22 THE COURT: There's been mention of that already.

23 MR. O'CONNOR: Where is that?

24 MR. BECKER: It's not on the construction site.
25 It's a low-lying area off of the Blue River south of 85th

1 ~ Street.

2 ~ MR. PETERS: Judge, the relevancy, the relevancy of
3 that as to who on November 29th -

4 MR. BECKER: We've had the ruling.

5 THE COURT: We've already been through that. It's
6 going to be limited, and the relevancy is established by the
7 rules. So I mean -

8 MR. PETERS: My question is does it go to motive,
9 intent, plan?

10 MR. BECKER: I've said what it goes to, and there's
11 been a ruling.

12 THE COURT: There was.

13 MR. O'CONNOR: Thank you, Your Honor.

14 MR. PETERS: I join in the objection.

15 THE COURT: All right.

16 MR. OSGOOD: Technically, I'm going to join in the
17 objection, too.

18 THE COURT: Overruled.

19 (The following proceedings were had in open court:)

20 THE COURT: All right.

21 MR. BECKER: United States calls Shannon Reimers.

22 THE COURT: All right.

1 SHANNON REIMERS,
2 being first duly sworn by Kathy Geller, Law Clerk, testified
3 as follows:

5 DIRECT EXAMINATION

6 By Mr. Becker:

7 Q. Good morning.

8 A. Good morning.

9 IQ Could you please state your name and spell your last
10 name?

11 A. Shannon Reimers, R-E-I-M-E-R-S.

12 Q. How old are you?

13 A. Twenty-three.

14 Q. When are you due to give birth?

15 A. Any day.

16 THE COURT: Today?

17 MR. BECKER: That's why she's the first witness,
18 Judge.

19 THE COURT: Let's get on with it, Mr. Becker.

20 MR. BECKER: First witness, Judge.

21 Q. (By Mr. Becker:) Are you Richard Brown's sister?

22 1 A. Yes.

23 Q. Where were you living in November of 1988?

24 A. On 83rd Street.

25 Q. Whose house was that?

1 A. **Frank** and Darlene's.

2 Q. That would be **Frank** Sheppard and Darlene Edwards?

3 A. Yes, sir.

4 Q. I want to show you what's in evidence as Government's
5 Exhibit 323. Can you see up on the video screens there?

6 A. (Witness nods head.)

7 Q. Is that a photograph of the house with some significant
8 weeds growing on it where you were living in 1988?

9 A. Yes, sir.

10 Q. Where in the house were you living?

11 A. Upstairs.

12 Q. And that's in this, on Government's 323, the two windows
13 that are in the upstairs part of that house?

14 A. Yes, sir.

15 Q. Where was the door to the house that you came in and out
16 of?

17 A. On the left side of the house.

18 Q. Indicating on the left side of the photograph,
19 Government's 323?

20 A. Right.

21 Q. Were there any other entrances to the house that you
22 used?

23 A. No, sir.

24 Q. Were there any other -- is that the same entrance that
25 **Frank** and Darlene would use, as well?

2326

1 A. Yes, sir.

2 Q. Who was living with **Frank** and Darlene?

3 A. Becky.

4 Q. That would be Darlene's daughter Becky?

5 A. Yes.

6 Q. On the evening -- do you remember the explosion that
7 killed the six firemen?

8 A. Yes, I do.

9 Q. On that evening, which would be November 28 and then
10 into the morning of November 29, 1988, where were you?

11 A. I was at my **uncle** Tommy and Nancy Romi's.

12 Q. Where was that, in the Marlborough area?

13 A. Yes, about three blocks away from 83rd Street.

14 Q. I want to show you what's in evidence as Government's
15 Exhibit 1. Can you see that from where you're sitting?

16 A. Yes, sir.

17 . And where it says Nancy Romi, is that Tom and Nancy
18 Romi's where you were staying just off of Brooklyn; is that
19 right?

20 . Yes, sir.

21 . And Brooklyn is the street that runs north and south; is
22 that right?

23 . Yes, sir.

24 . And your brother, Richard, was living with your
25 grandfather on Brooklyn at that time?

1 ~ A. Yes, sir.

2 Q. What do you remember about the explosion? What were you
3 doing when the explosion happened?

4 A. Sleeping.

5 Q. What happened when you heard the explosion?

6 A. Woke up. It was extremely loud.

7 Q. Was there anybody with you at that time?

8 A. Yes. My **uncle** Tommy Romi, his wife Nancy Romi, and my
9 baby, my oldest son's father Mike Dimaggio and their younger
10 girls, Tommy's younger girls.

11 Q. Do you remember the second explosion?

12 A. Yes, I remember the second boom.

13 Q. Did you leave Nancy and Tom Romi's house that evening or
14 the early morning of November 29th?

15 A. Yes, after the second explosion between dark and
16 daylight, it was still dark, I went home to Darlene's where I
17 lived.

18 Q. How did you get from the Romi house to Darlene Edwards'
19 and **Frank** Sheppard's house?

20 A. At this point, it was almost eight years ago. I'm not
21 sure if I walked or if Nancy drove me, but it was one or the
22 other down Brooklyn.

23 Q. So you would have gone, did you go up Brooklyn two
24 blocks and then down to Darlene's?

25 A. Yes, sir.

1 Q. How close to the corner is Nancy Romi's, was Nancy
2 Romi's house?

3 A. One house off of the corner, hers was the second house.

4 Q. Then do you remember how far down the block Darlene
5 Edwards' was?

6 A. Like four or five houses.

7 Q. When you went in to **Frank** and Darlene's house, what did
8 you see, what was going on?

9 A. I walked in the house, and **Frank** and Darlene and Becky
10 and somebody else was sitting there.

11 Q. Sitting where?

12 A. In the living room is what you call it.

13 THE COURT: This is after the explosion?

14 THE WITNESS: Yes, sir.

15 Q. (By Mr. Becker:) Were the lights on?

16 A. No. It was dark. I walked in the living room, and they
17 were sitting there. It was dark.

18 Q. Could you see if they were dressed?

19 . Yes, they were dressed.

20 . Did anyone -- what else could you see, any lights or
21 anything else in that room?

22 . No. I remember it was dark because I remember seeing a
23 lit cigarette when I walked in the house. Somebody was
24 smoking. That's the only reason I remember it was dark.

25 . Did anyone say anything to you?

1 ~A. No, sir.

2 i Q. Did that strike you as odd?

3 A. Yeah, I guess.

4 Q. What did you do then?

5 A. I went upstairs to where I lived. I rented the
6 upstairs. Me and Mike Dimaggio went on upstairs to where we
7 stayed.

8 Q. And went to bed?

9 A. Yes, went back to bed.

10 Q. Now, were you living at the house there with Darlene and
11 **Frank** about a month to six weeks before the explosion?

12 MR. PETERS: Excuse me, Your Honor, may we
13 approach?

14 THE COURT: This is the thing that we've already
15 had, isn't it?

16 MR. PETERS: We have some information we need to
17 ask the Court about.

18 (Counsel approached the bench and the following
19 proceedings were had:)

20 MR. O'CONNOR: Just so I know, Paul, just so I
21 know, from reading, from looking at her statement and reading
22 her grand jury, there's nothing in here that tells me that
23 she had personal knowledge of Darlene burning her car.

24 MR. BECKER: Okay. She's asked in the grand jury,
25 "What did she do to it?"

2330

1 "She burned it for insurance."

2 Question: "Where did she have it burned, do you
3 know?"

4 Answer: "Whore's Hollow is the name of the
5 place."

6 Question: "How do you know that she did this?"

7 Answer: "I lived with her at the time. She didn't
8 speak of it with me."

9 She will now testify that she did speak about it
10 with her.

11 MR. O'CONNOR: Go ahead. We haven't been told
12 that. In the grand jury she says that she has no personal
13 knowledge -

14 MR. BECKER: May I finish?

15 MR. O'CONNOR: Yes, I'm sorry.

16 MR. BECKER: She goes on to say, "But I was at the
17 house the night that **they** were prepping it, I guess you would
18 call it, to be, to do whatever **they** were going to do. I've
19 never been around someone doing that, but she had got a bunch
20 of tires and T-tops off before she took it off to have
21 whatever was going to be done to it."

22 THE COURT: That's enough to establish the
23 foundation.

24 MR. BECKER: She was personally present.

25 THE COURT: There's reasonable grounds to believe

1 that she testified that way.

2 MR. O'CONNOR: What this creates, in my opinion, is
3 now we're going to have to cross-examine her on an issue
4 unrelated to this case.

5 MR. BECKER: But you're not, John.

6 MR. O'CONNOR: Someone is, and it's my job, I think
7 it's all of our jobs, to get to the truth here, and whatever
8 it is, it is. She has no personal knowledge from Darlene,
9 according to her statement.

10 THE COURT: Apparently from that testimony, she has
11 knowledge from observations. Observations, she saw it.

12 MR. O'CONNOR: Is she going to be asked to say did
13 she speak to her about it?

14 THE COURT: I don't know what she's going to be
15 asked, John. I just think that the testimony under the rule
16 I've cited is admissible.

17 MR. O'CONNOR: But what I'm saying to you is if
18 he's telling us now that she's changed this, I'm telling you
19 we haven't been told that, and we would be entitled to know
20 that under the discovery in this case.

21 MR. BECKER: Excuse me. She's Defendant Richard
22 Brown's sister. I didn't talk to her until 8:30 this morning
23 since the time of this grand jury testimony. She's pregnant,
24 she's a defendant's sister, I'm not going near her. She came
25 in this morning voluntarily, I told her what the questions

1 were going to be, she told me what her answers were going to
2 be.

3 THE COURT: She was sitting with Defendant Richard
4 Brown out in the hall outside the courtroom prior to trial
5 this morning.

6 MR. BECKER: She was sitting with Mr. Peters when I
7 walked in.

8 MR. O'CONNOR: But the issue is, Your Honor, if I
9 had a witness on the stand for the defense right now and I
10 had provided Mr. Becker with a statement of that witness,
11 whatever it was they were going to say, and the witness
12 before they testified told me it was different, would I have
13 an obligation to go to him and say, "I need to tell you
14 something? You have a statement from me, but it has now
15 changed"?

16 And he's the prosecution here. He has an
17 obligation and we're now talking about -

18 THE COURT: What's your position on that?

19 MR. BECKER: I would cross-examine on it. I
20 wouldn't -

21 MR. O'CONNOR: We didn't even know it.

22 THE COURT: His point is now that -- his point is
23 that you have an obligation to have told him that her
24 testimony is now not going to be consistent with that
25 statement. Apparently you knew that when you started this.

1 MR. BECKER: Well, I want to look back earlier in
2 this grand jury.

3 THE COURT: I'll tell you what we'll do. We'll
4 hold her until -

5 MR. BECKER: She needs to get off the stand and get
6 out of here. She's going to have a baby, and she's ready. I
7 mean, if they want to recall her next week after she's had
8 the baby, great. Because a witness tells me a half hour ago
9 that -

10 THE COURT: Is that when she told you?

11 MR. BECKER: At 8:30 this morning, that she
12 remembers a conversation with Darlene, I don't think I have
13 to run up and inform them. There's no, nothing under the
14 Jencks Act, I don't think that's Brady material. It doesn't
15 tend to exculpate anybody. I mean, you know, what's the
16 theory that I have to turn that over?

17 MR. O'CONNOR: The purpose of discovery, once it's
18 given, is to give us the opportunity to defend our clients.
19 If we don't know something, we're sitting back there -

20 THE COURT: Well, discovery in criminal cases is
21 very limited and established in this district mostly by local
22 custom or rule. If you've got, if you've got a rule-driven
23 discovery right, then I'll listen to you, John. But if
24 you're just talking about what generally is done around here
25 in discovery and you say you didn't get it in the sense of

1

1 that, you're not entitled to it.

2

MR. PETERS: Judge, the part that concerns me that doesn't seem to have been addressed, the defense and the prosecution have different obligations under the code of professional responsibility. And what it seems to me is you were troubled by doesn't a prosecutor have an obligation, not based in any of the rules, but under the code, to advise the Court and counsel when a witness is giving testimony different than their grand jury testimony and different from what we have, and that question hasn't been resolved.

11

THE COURT: I think what we're dealing with here is something that can be clearly covered by cross-examination of the witness, and there's no need to deal with it any further.

15

MR. O'CONNOR: It's our position, Judge, under Jencks that we are entitled to the information.

17

MR. BECKER: There's no written or recorded statement of her, so there's no Jencks material that's been withheld. Okay?

20

THE COURT: Let's go.

21

(The following proceedings were had in open court:)

Q. (By Mr. Becker:) Okay. Ms. Reimers?

23

A. Uh-huh.

24

Q. Were you living at **Frank** and Darlene's about six weeks before the explosion in October of 1988?

25

1 A. Yes, I was.

2 Q. Do you remember a sports car that Darlene had, a Datsun
3 280Z?

4 A. Yes.

5 l Q. Do you remember what happened to that sports car?

6 A. It caught on fire, it burned.

7 Q. I'm sorry?

8 A. It burned up.

9 Q. Did you talk to Darlene or hear Darlene talking about
10 that car burning up?

11 A. Yes, I think I did. She never directly talked to me,
12 but I heard some things about it.

13 MR. O'CONNOR: Judge, objection, can we approach
14 the bench, please?

15 THE COURT: No. I think we know what we've got
16 here, and we'll deal with it. We've already dealt with it.
17 Go ahead.

18 Q. (By Mr. Becker:) What did you hear Darlene saying?
19 Even if it wasn't directly to you, but if it was from
20 Darlene, what did you hear her saying?

21 A. That the car was burned.

22 Q. Okay. Before it happened or after it happened?

23 A. I think it was after it happened.

24 Q. Do you remember being at her house when parts were being
25 taken off of the sports car?

1 A. Yes, I think I remember the T-tops. I think she took
them off.

3 Q. Did you know -- this was in October of 1988, right?

4 A. I'm not sure.

5 l Q. Was it before the explosion?

6 A. Yes.

7 Q. Do you know what happened to that car after the T-tops
8 were taken off?

9 MR. PETERS: Your Honor, I'll object unless she has
10 personal knowledge.

11 THE COURT: She just testified to that. Overruled.

12 Q. (By Mr. Becker:) Do you know what happened to the car
13 after the T-tops were taken off?

14 A. It burned up. It got burned up.

15 Q. Do you know where it got burned up?

16 A. No. Rumor is -

17 Q. Don't tell us what the rumor is.

18 A. Okay.

19 MR. BECKER: That's all I have, Judge, thank you.

20 THE COURT: All right. cross?

22 CROSS-EXAMINATION

23 By Mr. Bunch:

24 Q. Miss Reimers, my name is Will Bunch, and I'm counsel for
25 Darlene Edwards.

1 ~ A. Yes.

2 ~ Q. Did you have a formal rental arrangement with Miss
3 Edwards at her house?

4 A. I'm pretty sure I did. I'm not for sure. It was so
5 long ago. She was, she was good to me. She could have let
6 me live there for free. I can't remember. I think I might
7 have paid something, but -

8 Q. Wasn't it a situation from time to time where it **was**
9 necessary for you to go there to have someplace to stay
10 sometimes?

11 A. That is correct.

12 Q. And that anytime that might have come up, was she kind
13 enough to say come on in and stay here?

14 A. Yes, she sure was.

15 Q. Now, can you tell us, and I know it's been quite a while
16 ago, but can you tell us how Becky was dressed that night
17 that you came into the house?

18 A. I believe she was in her nightgown.

19 Q. All right. And was Miss Edwards also in her nightgown?

20 A. No. She was dressed.

21 Q. Can you tell us how she was dressed?

22 A. No, just fully clothed.

23 Q. Now, you had -- your place that you stayed was, in the
24 house, as I understand it, was upstairs; is that correct?

25 A. Yes, sir.

2338

1 Q. Now, what time was it that you got there the night that
2 you've testified about?

3 A. I don't have a time. I know it was after the second
4 explosion between night and daylight. It was still dark, but
5 almost daylight.

6 Q. And so it was very early morning, would it be?

7 A. Yeah. Still dark but towards early morning, yes.

8 Q. Where had you been prior to that time?

9 A. At my **Uncle** Tommy and Nancy's baby-sitting.

10 Q. And they had gotten home, had they, very late?

11 A. Yeah, came home -- by the time I got up and came home,
12 they were home.

13 Q. And did you tell us who was with you at that time?

14 A. Mike Dimaggio, my oldest son's father.

15 Q. All right. And you've testified that this automobile
16 that you said was burned had T-tops?

17 A. Yes.

18 Q. And did Miss Edwards remove those T-tops, or do you know
19 who did?

20 A. I guess she did. Just took them off.

21 Q. You don't know who removed them?

22 A. I believe it was her car, she took them off.

23 Q. The question I'm asking you is whether or not you saw
24 her remove them.

25 A. I'm pretty sure I did or I wouldn't have said that she

1 took them off.

2 Q. All right. And were they, then, removable, I mean, you
3 ~ didn't have to cut them off or anything of that sort?

4 A. No.

5 Q. You could just take them off; and, in fact, you did take
6 them off from time to time if you wanted to have the
7 automobile open, did you not?

8 A. Yes, sir.

9 Q. And then I think you said that sometime after the T-tops
10 were removed, this car burned up?

11 A. Right.

12 Q. And that's all you know about?

13 A. That's correct.

14 MR. BUNCH: Thank you.

15 MR. PETERS: May it please the Court.

16 THE COURT: Yes.

17 CROSS-EXAMINATION

18 By Mr. Peters:

19 Q. Shannon, my name is Pat Peters and I represent **Frank**
20 Sheppard. Just want to ask you a few things.

21 A. Okay.

22 Q. You've known -- I guess the right way to word it is
23 Darlene Edwards has basically known you your whole life; is
24 that fair to say?
25

2340

1 A. Yes.

2 Q. And you've known **Frank** Sheppard for quite a while too?

3 A. Yes.

4 Q. And on the morning of November 29th, 1988, your
5 testimony is that you came back to the house and you don't,
6 you can't give us an hour time that you arrived back at the
7 house; is that correct?

8 A. No. It's been so long ago, I can't give you an exact
9 time.

10 Q. And as best -

11 THE COURT: Excuse me, but it was after the
12 explosion, right?

13 THE WITNESS: After the explosion but before
14 daylight.

15 Q. (By Mr. Peters:) And as best you recollect, is it
16 closer to the explosion or closer to daylight when you went
17 to the house?

18 A. I don't know. I know that it was early morning but
19 still freshly dark. Almost morning light.

20 . And you had, during this time period, you'd lived with
21 **Frank** and Darlene off and on; is that true?

22 . Yes.

23 . And there wasn't anything at all unusual about **Frank** and
24 Darlene being up early in the morning fully dressed, was
25 there?

1 A. No, not at this point. We used to party and stuff. It
2 I wasn't unusual that they were up that late, no.

3 Q. And when you came in, you didn't think that there was
4 anything unusual about them being fully dressed, what seemed
5 unusual is that the lights were out; is that correct?

6 A. And that nobody spoke to me, yes.

7 Q. And you didn't speak to them either?

8 A. No, sir.

9 Q. Did you think it was unusual that you didn't speak to
10 them?

11 A. I guess not. I was tired.

12 MR. PETERS: I don't believe I have any more
13 questions, Judge.

14 THE COURT: All right. Anything else from the
15 defendants?

16 MR. O'CONNOR: Just have a couple of questions,
17 Your Honor.

19 CROSS-EXAMINATION

20 By Mr. O'Connor:

21 Q. Miss Reimers, I'm John O'Connor. I represent Bryan
22 Sheppard. Did you know Bryan Sheppard back at that time?

23 A. Yes, I did.

24 Q. And did you see Bryan Sheppard from time to time?

25 A. Yes, I did.

1 IQ Did Bryan Sheppard ever brag to you about him being
2 involved in this fire?

3 A. No, sir.

4 MR. BECKER:Objection.

5 THE COURT: That's sustained and the answer
6 stricken. The jury is instructed to disregard it.

7 MR. O'CONNOR: I have no further questions.

8 THE COURT: All right. Do you have any redirect?

9 MR. BECKER:I do, but there may be one more.

10 THE COURT: Mr. Osgood, do you have anything to ask
11 this witness?

12 MR. OSGOOD:No, I don't have anything at all.

13 THE COURT: Okay. You may go ahead.

15 REDIRECT EXAMINATION

16 By Mr. Becker:

17 Q. Miss Reimers, Mr. Peters over there on behalf of **Frank**
18 Sheppard asked you if it was unusual that **Frank** and Darlene
19 would be up all night partying. Do you remember that?

20 A. Yes.

21 MR. PETERS: Your Honor, I object. That wasn't the
22 question I asked at all.

23 THE COURT: What was the question you asked?

24 MR. PETERS: I asked is it unusual for them to be
25 dressed early in the morning.

1 ~ THE COURT: And she had said **they** had been up
2 partying.

3 MR. PETERS: No. And I would object, I don't
4 believe that was her testimony.

5 THE COURT: All right. Rephrase your question.

6 Q. (By Mr. Becker:) Do you remember being asked if they
7 were up at night all night sometimes?

8 A. Yes.

9 Q. What were they doing when you would observe them **up all**
10 night?

11 A. They would -

12 MR. PETERS: Your Honor, I would object.

13 THE COURT: I think you opened it up, Mr. Peters.
14 Overruled.

15 A. Just partying.

16 Q. (By Mr. Becker:) Were the lights normally on when they
17 were up at night partying?

18 A. Yes. I guess sometimes. Sometimes no, sometimes yes.

19 Q. Do you remember, we talked about your testimony earlier
20 today?

21 A. Uh-huh.

22 Q. And you stated that if they were up normally -

23 MR. BUNCH: I would object to that as being,
24 obviously, a leading question.

25 THE COURT: Well, in this venue, Mr. Bunch, he can

1 do that even with his own witness from time to time. I'll
2 overrule it.

3 MR. BUNCH: I'll object on the grounds it's
4 improper rehabilitation.

5 THE COURT: All right. Overruled.

6 Q. (By Mr. Becker:) You stated that normally if they were
7 up at night partying, they would be in the kitchen with the
8 lights on. Do you remember that?

9 A. Yes.

10 Q. Was that a truthful statement?

11 A. Yes. Mainly, we would party in the back of the house or
12 whatever, and we would have the lights on.

13 Q. Do you remember any other time seeing people sitting in
14 the dark in the middle of the night in that house?

15 A. No, I don't. But I don't think they were partying.

16 MR. BECKER: Okay. Thank you.

17 MR. PETERS: Judge, I have some more
18 cross-examination.

19 — — —

20 RECROSS-EXAMINATION

21 By Mr. Peters:

22 Q. Ma'am, Mr. Becker has asked you about your experience
23 with **Frank** and Darlene Sheppard during the time that you
24 lived there.

25 Let me ask you, ma'am, the time that we're talking

1 about, November 29, 1988, had there been something unusual
2 that had happened in the Marlborough neighborhood earlier in
3 the morning? Hadn't there been a huge explosion, two huge
4 explosions?

5 A. Yes.

6 Q. And you were up at that time because of the explosions,
7 weren't you?

8 A. Yes.

9 Q. And as you walked or drove, Marlborough had people that
10 were up because of these two loud explosions, didn't they?

11 A. Yes.

12 Q. And would it be unusual in your mind after hearing two
13 loud explosions for people to turn off lights or turn off gas
14 appliances after hearing two explosions?

15 MR. BECKER: Objection. Speculation.

16 THE COURT: Sustained.

17 MR. PETERS: Judge -

18 THE COURT: Calls for her opinion. You can't argue
19 with her. You can argue your case to the jury.

20 Q. (By Mr. Peters:) As you came, as you came back towards
21 **Frank** and Darlene's house, did you notice other houses with
22 their lights off?

23 A. I don't remember.

24 THE COURT: Lights off or on, did you say?

25 MR. PETERS: Off.

1 A. I don't recall. It was too long ago.

2 Q. (By Mr. Peters:) Given what had gone on in the early
3 morning hours with the two loud explosions, was that an
4 unusual morning in the Marlborough neighborhood?

5 A. Very unusual morning.

6 MR. PETERS: I have no further questions.

7 THE COURT: All right. Anything else?

8 MR. BECKER: No. We need to approach, Judge.

9 THE COURT: All right.

10 (Counsel approached the bench and the following
11 proceedings were had:)

12 THE COURT: Are we through with this witness?

13 MR. BECKER: I don't know. Mr. O'Connor asked me
14 about -- this is your note.

15 MR. O'CONNOR: Judge, at the break, I want to make
16 an offer of proof with her as it relates to this evidence
17 that was elicited earlier.

18 MR. BECKER: Well, let's excuse the jury and do it
19 now.

20 THE COURT: Let's take a break now. I don't want
21 her having a baby in this courthouse.

22 MR. BUNCH: Judge, just for the record, I want to
23 object to, further my record by objecting to Mr. Becker's
24 permission, that Mr. Becker was permitted to inquire as he
25 did of this witness on the grounds that I did not open it up

1 on behalf of Darlene Edwards; and if it was opened up, it was
2 Mr. Peters. It's prejudicial to my client. Merely a record
3 I objection, Judge.

4 THE COURT: All right. Overruled.

5 MR. PETERS: On my record, Your Honor, I would
6 object to the substance of her conversation regarding the
7 burning of the automobile was speculation and opinion. And
8 on my cross-examination of her, I was not allowed to ask her
9 her speculation and opinion of whether it would be unusual to
10 have lights off.

11 THE COURT: Okay. Overruled.

12 (The following proceedings were had in open court:)

13 THE COURT: Ladies and gentlemen, we have a matter
14 that we need to take up, and we really can't satisfactorily
15 do it in one of these bench conferences. So if you all would
16 go into the jury room and have a cup of coffee or go
17 downstairs, if you wish. Take about ten or fifteen minutes.

18 Don't discuss the case, and we'll call you when
19 we're ready.

20 (The following proceedings were had in the
21 courtroom out of the presence of the jury:)

22 THE COURT: All right. Miss Reimers, some of the
23 lawyers may have a couple of questions to ask you. You all
24 may be seated. You're still under oath. And Mr. O'Connor,
25 you may proceed.

1 ~ MR. O'CONNOR: Thank you, Your Honor.

3 VOIR DIRE EXAMINATION

4 By Mr. O'Connor:

5 Q. Miss Reimers, what I'm going to discuss with you is the
6 burning of the 280Z. Okay?

7 A. Okay.

8 Q. That's the area of inquiry. Now, did Darlene Clark,
9 Darlene Clark or Darlene Edwards ever say to you that she
10 burned the 2802 or anything like that?

11 A. No, sir.

12 Q. Did you hear that from someone else?

13 A. Yes, sir.

14 Q. And did you ever tell Mr. Becker that you heard Darlene
15 Edwards say that she burned the car?

16 A. No. I don't recall telling him personally I heard her
17 tell me she burned her car.

18 Q. Did you tell Mr. Becker this morning before we came up
19 here to court that your grand jury testimony was not right
20 and that Darlene Edwards had, in fact, told you she had
21 burned the car?

22 A. No, I don't remember saying that she told me she burned
23 her car.

24 THE COURT: Well, did you tell him, though, that
25 your grand jury testimony which he apparently called to your

1 attention was not fully accurate?

2 THE WITNESS: No, I didn't tell him that either. I
3 don't remember him saying to me that it was in error, that
4 that's -

5 THE COURT: Not him saying to you, it's whether you
6 indicated to him that it might be different than the grand
7 jury testimony.

8 THE WITNESS: I remember saying that I knew her car
9 had been burned. She never admitted to me that she burned
10 her car. She never directly told me, "I burned my car."

11 Q. (By Mr. O'Connor:) So you understand my question, this
12 morning before you came to court like 30 minutes ago, did you
13 tell Mr. Becker that Darlene Edwards had told you she had
14 burned her car?

15 A. No.

16 Q. All right. Now, so you got that from someone else. You
17 did not have any firsthand knowledge of that, did you?

18 A. No. I know it happened, but no, she didn't tell me she
19 did it.

20 Q. And you were there at the house that night when they
21 were removing T-tops?

22 A. Yeah.

23 Q. Okay. And was it being, anything said as to why the
24 T-tops were being removed that you heard?

25 A. I can't recall if there was.

1 Q. And was there anything said about the tires being taken
2 off that you heard as to what was being done and why it was
3 being done that you have personal knowledge of?

4 THE COURT: That's pretty complicated. Were the
5 tires taken off?

6 THE WITNESS: Yes, the tires and T-tops were taken
7 off, but -

8 THE COURT: Who took them off?

9 THE WITNESS: I guess Darlene, but she never said
10 she -

11 THE COURT: Did anybody say why that was done?

12 THE WITNESS: No, they didn't.

13 Q. (By Mr. O'Connor:) Did you see it done?

14 A. Yeah, I think I was there when they took the T-tops and
15 the tires off. I think I was there when they took the T-tops
16 off.

17 Q. Who was doing that?

18 A. I know -- I think Darlene took her T-tops off her car.

19 Q. And you saw that?

20 A. Yes.

21 Q. But nothing was said as to why it was being done?

22 A. No, no one ever said.

23 Q. And someone later told you the why?

24 A. That the car was burned, and that's why the T-tops and
25 tires were taken off.

1 Q. And do you know when that was told to you?

2 A. On numerous times, different occasions, all after that.

3 Q. But by someone else?

4 A. Yes.

5 MR. O'CONNOR: Okay. That's all I have, Judge. We
6 would, I would -- for my record, I would move that the
7 testimony now be stricken that's before this jury as it
8 relates to this evidence of other crimes based on the fact
9 that the personal knowledge that we were led to believe she
10 had she did not, in fact, have.

11 MR. BECKER: May I finish?

12 THE COURT: I'm not going to deal with your motion
13 until he has his chance. All right. Go ahead.

14 -- --

15 VOIR DIRE EXAMINATION

16 By Mr. Becker:

17 Q. When you were talking with me this morning, was your
18 mother present?

19 A. Yes, she was.

20 Q. Was Agent Dave True also present?

21 A. Yes, he was.

22 Q. Did, and we talked about this Darlene car business,
23 right?

24 A. Yes, we did.

25 MR. OSGOOD: Her mother is in here. Would you like

1 for her mother to step out?

2 MR. BECKER: I'm not going to call her mother.

3 MR. OSGOOD: She would be glad to step out.

4 MR. BECKER: That's okay.

5 Q. (By Mr. Becker:) Do you remember me asking you if you
6 ever heard Darlene say that she was having the car stolen for
7 insurance?

8 MR. O'CONNOR: I'm going to object, just for the
9 record, that now Mr. Becker is making himself a witness.
10 Previously I asked a witness in this court the same kind of
11 question -

12 MR. BECKER: The jury is not here.

13 THE COURT: The jury isn't here, Mr. O'Connor.

14 MR. O'CONNOR: I understand. I'm making my record
15 now.

16 THE COURT: All right. Let's do it real quick.

17 MR. O'CONNOR: I was prevented from asking where I
18 put myself against a witness. Mr. Becker is doing that now,
19 which puts him in a position of testifying.

20 THE COURT: All right. Overruled.

21 Q. (By Mr. Becker:) Did you say in front of your mother
22 and Agent True that Darlene Edwards never said that directly
23 to you, but you heard her say the car was being stolen for
24 insurance?

25 A. Yes, I could have said that. I do remember saying that.

1 THE COURT: This morning?

2 THE WITNESS: Yes. I remember saying that she
3 never told me that she stole, or that she burned the car for
4 insurance, that someone stole it, but that was the talk
5 around me by her and other people.

6 THE COURT: Talk by her?

7 THE WITNESS: And other people, yes. Sorry.

8 Q. (By Mr. Becker:) Do you remember saying that the reason
9 the car was stolen was for Darlene to get money to buy crack?

10 A. No.

11 MR. BECKER: That's all I have, Judge.

12 THE COURT: All right.

13 MR. O'CONNOR: Just move, the same argument, Judge.

14 THE COURT: Overruled. Let's go.

15 MR. BUNCH: I would join in that.

16 THE COURT: I assume everybody joined in that.

17 Now, do we have any more, then, from this witness?

18 MR. BECKER: Nothing.

19 THE COURT: All right. Ma'am, you're excused.

20 Thank you.

21 MR. OSGOOD: Your Honor, she's under subpoena. I
22 guess I'd like to keep her under subpoena for the defense
23 case.

24 THE COURT: Okay. You arrange for that.

25 MR. OSGOOD: It will save some money because the

1 marshals will have to go out and serve her, otherwise, on a
2 defense subpoena.

3 THE COURT: You may have to go to a hospital and
4 get her.

5 MR. OSGOOD: I'll work that out with her. But if
6 she knows she's under subpoena and that she's going to get a
7 voucher when the thing is over, it might simplify.

8 THE COURT: I'll tell you, then, that you're still
9 under subpoena, but they will have to let you know if they
10 need you back.

11 MR. BECKER: The witness had inquired whether she
12 could sit and watch, and I said I probably thought she
13 could. But since the defense is going to recall her or may
14 recall her, then I would invoke the rule.

15 MR. O'CONNOR: I don't think we're going to recall
16 her. Okay. He wants to keep her. Okay.

17 MR. BUNCH: I want her.

18 MR. OSGOOD: Okay.

19 MR. O'CONNOR: Mr. Bunch may want to recall her.

20 THE COURT: I'm sorry. You'd better not stay with
21 us. If they need you back, they'll let you know.

22 MR. O'CONNOR: Judge, can we have a solid fifteen
23 minutes from now break.

24 THE COURT: What for?

25 MR. O'CONNOR: I've got some matters pending in

1 some courts that I need to make some phone calls, if
2 possible.

3 THE COURT: All right. We'll break now until 20
4 five minutes to 11:00.

5 (A recess was taken from 10:20 a.m. to 10:41 a.m.
6 when the following proceedings were had in the courtroom in
7 the presence of the jury:)

8 THE COURT: Court will come to order and you may
9 proceed, Mr. Becker.

10 MR. BECKER: United States calls Bryan Studna.

11 BRIAN STUDNA,

12 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
13 testified as follows:

14
15 — — —

16 DIRECT EXAMINATION

17 By Mr. Becker:

18 Q. Good morning.

19 A. Good morning.

20 Q. Please state your name and spell your last name.

21 A. Bryan Studna, S-T-U-D-N-A.

22 Q. How old are you?

23 A. Twenty-eight.

24 Q. Where do you live?

25 A. 3616 East 112th Street.

1 Q. Is that Kansas City, Missouri?

2 A. Grandview.

3 Q. Grandview? Where did you grow up and go to school?

4 A. Marlborough.

5 Q. Did you go to the Center School District?

6 A. Yes.

7 Q. In 1992, were you convicted of a crime?

8 A. Yes.

9 Q. What was that?

10 A. Forgery.

11 Q. How much, how long was your sentence in that case?

12 A. A year and a day.

13 Q. Do you know an individual by the name of Richard Brown?

14 A. Yes.

15 Q. How do you know him?

16 A. I grew up with him.

17 Q. So in the neighborhood you've known him basically all
18 your life?

19 A. Yes.

20 Q. Do you see him here in court today?

21 A. Yes.

22 Q. Could you tell us where he's sitting and what he's
23 wearing?

24 A. Sitting over with defendants wearing white, just stood
25 up.

1 MR. BECKER: Indicating Defendant Richard Brown,
2 Your Honor?

3 THE COURT: That is correct.

4 Q. (By Mr. Becker:) When you knew him for the past 15
5 years, did he look like this?

6 A. No.

7 Q. What was different?

8 MR. OSGOOD: Objection. Irrelevant. He identified
9 him, and he knows him.

10 THE COURT: He identified him. Why is it
11 relevant?

12 MR. BECKER: I'm prepared to make argument. Do you
13 want to briefly approach?

14 THE COURT: Well, yeah.

15 (Counsel approached the bench and the following
16 proceedings were had:)

17 MR. BECKER: A number of witnesses, and one in
18 particular, a couple of witnesses have been unable to
19 identify him.

20 THE COURT: That's right. Okay.

21 MR. OSGOOD: All right. I'll withdraw the
22 objection.

23 (The following proceedings were had in open court:)

24 THE COURT: Go ahead.

25 Q. (By Mr. Becker:) Mr. Studna, what looks different about

2358

1 Richard Brown now?

2 A. He's got short hair, clean-cut.

3 Q. How long was his hair before?

4 A. Halfway down his back.

5 Q. And was that consistent through the last ten years?

6 A. Yes.

7 Q. Now, do you remember in approximately 1990 where **Richard**
8 Brown lived?

9 A. At his grandpa's house on Brooklyn.

10 Q. I want to show you what's been marked for identification
11 purposes as Government's Exhibit 320, ask you if you
12 recognize that.

13 A. Yes. That's his grandpa's house.

14 ~ Q. Does this photograph accurately -

15 MR. OSGOOD: We have no objection to it.

16 1 A. Yes.

17 MR. BECKER: I would offer it into evidence as
18 Government's 320.

19 THE COURT: 320 is admitted without objection.

20 **(Government's Exhibit 320 was admitted into**
21 **evidence.)**

22 Q. (By Mr. Becker:) Mr. Studna, I want to also show you
23 what's been marked for identification purposes as
24 Government's Exhibit 321 and ask you if you'll take a look at
25 this, please, and tell us if you recognize that.

1 A. Yes.

2 Q. What is it?

3 A. That's Richard's grandpa's house.

4 Q. From a different angle?

5 A. Yes, from up the street, from 83rd Street.

6 Q. It's on Brooklyn; is that right?

7 A. Yes.

8 MR. BECKER: I would offer this into evidence as
9 Government's Exhibit 321.

10 MR. OSGOOD: I have no objection to it.

11 THE COURT: All right. 321 is admitted without
12 objection.

13 **(Government's Exhibit 321 was admitted into**
14 **evidence.)**

15 MR. OSGOOD: I think Mr. Becker can ask him what
16 angle it was taken from.

17 Q. (By Mr. Becker:) Mr. Studna, is this looking north up
18 Brooklyn towards the house?

19 A. Yes.

20 Q. Do you see an entrance here on Government's Exhibit 321
21 along the driveway and then in the front of the house; is
22 that right?

23 A. Yes.

24 Q. Typically, what entrance did you use when you went in
25 and out of the house?

1 A. Usually the basement entrance or the back door.

2 Q. Now, do you remember being at that house in the summer
3 of 1990 with Richard Brown?

4 A. Yes.

5 Q. Did he discuss the, with you the explosion that killed
6 the six firemen back in 1988?

7 A. Yes.

8 Q. What was Richard Brown's condition at that time?

9 A. He had been drinking.

10 Q. Were you drinking too?

11 A. Yes.

12 Q. What did Richard Brown tell you about the explosion?

13 A. He said that he started the truck on fire, and as a
14 diversion after that he started the rest of it on fire.

15 Q. Did he say he was there with other people?

16 A. Yes.

17 Q. Did he say why he was there?

18 A. To steal, to steal stuff. To steal stuff to trade for
19 **drugs**.

20 Q. Was anybody else there when Richard Brown told you this?

21 A. No.

22 Q. Now, did you tell the police this at any time?

23 A. Yes, I have.

24 Q. Well, was it in 1995 when you finally told the police
25 about this?

1 A. Yes.

2 Q. Why did you wait so long before coming to the police?

3 A. I felt like I was in danger.

4 Q. And in 1995, were you also in trouble with the police
5 for methamphetamine use?

6 A. No, not for methamphetamine use.

7 Q. For **drug** use?

8 A. Yes.

9 Q. Were you promised or given anything in exchange for your
10 testimony today?

11 A. No, I wasn't.

12 MR. BECKER: I have nothing else at this time,
13 Judge, thank you.

14 THE COURT: Okay. Mr. Osgood?

15 MR. OSGOOD: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 By Mr. Osgood:

19 Q. You said in 1995 you were in trouble for **drug** use?

20 By the way, excuse me, Mr. Studna. I'm John
21 Osgood. You and I have never talked other than I just
22 introduced myself out in the hallway about ten minutes ago,
23 correct?

24 A. Correct.

25 Q. And I represent Mr. Brown. You said in 1995 you were in

1 trouble for **drug** use, sir?

2 A. Yes.

3 IQ Well, actually, in May of 1995, you met with Detective
4 James P. Shea, S-H-E-A, did you not, and gave him a bunch of
5 information about a number of people, at least 16 people that
6 you said you knew that did **drugs** in and around the area,
7 didn't you?

8 A. Yes.

9 Q. And you were using **drugs** yourself at the time, weren't
10 you, sir?

11 A. Yes.

12 Q. And that was a method whereby you were telling the -
13 strike that. The purpose of this interview that you sought
14 out with this detective was to work for him as an informant,
15 wasn't it?

16 A. No.

17 Q. You didn't tell the detective that you were tired of
18 **drugs** messing up your life, that you'd like to work as an
19 informant, but you wanted financial compensation for your
20 assistance? You didn't say that, sir?

21 A. Yes, I might have.

22 Q. All right. So you wanted, you know what an informant
2 3 is?

24 A. Yes.

25 Q. And when in '95 did you get in trouble for **drugs**, sir?

1 ~ A. I'm not sure.

2 Q. Was it after you approached them and told them you
3 wanted to work as an informant?

4 A. I'm not sure.

5 Q. Were you ever given any financial compensation for your
6 ~ work, for giving them names of people that were involved with
7 **drugs**?

8 A. Yes.

9 Q. How much money did you get, sir?

10 A. I got paid twice.

11 Q. When and how much?

12 A. A hundred dollars each time.

13 Q. And were these specific situations where they sent you
14 in against people?

15 1 A. Yes.

16 Q. And were those people prosecuted?

17 1 A. Yes.

18 Q. Okay. Did you testify in those cases?

19 A. No.

20 Q. When did you terminate your relationship with them as an
21 informant?

22 IA. Quite a while ago.

23 Q. Well, was it in '95 after you got in trouble yourself
24 for **drugs**?

25 ~ A. No.

1 Q. Well, tell me about how -- you told Mr. Becker you got
2 in trouble in '95 for **drugs**. What happened?

3 A. I don't really recall getting in trouble for **drugs**, but
4 -- I don't really recall getting in trouble for **drugs**, but I
5 did work with them.

6 Q. Well, let's -- I want to go over your record with you a
7 little bit. You pled guilty in Division 15 in Jackson County
8 Circuit Court in 1992 on Case No. 92-2079 to a Class C felony
9 of forgery on June the 22nd, didn't you?

10 A. Yes.

11 Q. And you got probation, didn't you?

12 A. Yes.

13 Q. And then on September the 28th of 1992, you got
14 violated, didn't you?

15 A. Yes.

16 Q. And so you had to go back. And what happened after
17 that, what did they do to you?

18 A. Nothing.

19 Q. So they gave you a second chance?

20 A. Yeah.

21 Q. Okay. And then on November the 13th of 1996, you pled
22 guilty in Division 25 of Jackson County Circuit Court in Case
23 No. 95-6408 to tampering in the first degree, which is a
24 Class C felony, one to seven-year punishment range, **and you**
25 got three years, suspended execution of sentence, didn't you?

1 A. Yes.

2 THE COURT: You said '96; is that right?

3 MR. OSGOOD: Yes, sir, Your Honor.

4 THE COURT: And the date was?

5 MR. OSGOOD: The date of that was November the 13th
6 of '96.

7 Q. (By Mr. Osgood:) So you were a prior offender from the
8 '92 incident, correct?

9 A. Yes.

10 Q. And you'd been violated, and they didn't do anything to
11 you, correct?

12 A. Yes.

13 Q. And then you draw another, or catch another case, as
14 they say in the vernacular, and they don't do anything to you
15 again, other than suspend the execution of the sentence; is
16 that correct?

17 A. Yes.

18 Q. And tell the ladies and gentlemen what a suspended
19 execution of the sentence is, if you know.

20 A. I'm not sure.

21 Q. Well, you didn't go to jail, did you?

22 A. No -- yes, I did do some jail time.

23 Q. Before you pled guilty?

24 A. Yes.

25 Q. But after you pled in front of the judge, you walked out

1 ~ the door again, didn't you?

2 I A. Yes.

3 IQ And, of course, this was after the indictment in this

4 I case, wasn't it?

5 A. Yes.

6 I Q. And after you knew you were going to testify in this

7 case, wasn't it?

8 A. Yes.

9 Q. And after you'd given the statement that I'm going to
10 ask you about in a minute on July 31, 1995, which Mr. Becker
11 has asked you about, wasn't it?

12 A. Yes.

13 Q. So you have a brush with the law twice, you've given the
14 statements, you have a brush with the law then very recently,
15 and you walk out the door?

16 A. Yes.

17 Q. Now, did you know Agent True?

18 A. Yes.

19 Q. Did Agent True intercede on your behalf over in Jackson
20 County on this last conviction where you got the suspended
21 execution?

22 A. No, he didn't.

23 Q. Was the judge aware that you were a federal witness?

24 A. I'm not sure.

25 Q. Did you tell your lawyer about it, being a federal

1 witness?

2 iA. Yes, I did.

3 Q. Okay. Your lawyer is Mr. Caskey?

4 A. Yes.

5 THE COURT: Who, please?

6 MR. OSGOOD: C-A-S-K-E-Y, Mr. Caskey.

7 Q. (By Mr. Osgood:) Now, when did you first meet Mr.

8 Brown, Mr. Studna?

9 A. Years ago.

10 Q. Did you guys grow up together?

11 A. Off and on.

12 Q. Hang around off and on together?

13 A. Yes.

14 Q. Like kids that age, did you have times when you were

15 friends and then times when you weren't so friendly?

16 A. We were mostly friends in my teenager years.

17 Q. Okay. And you say that you recall going over to the

18 basement of his house in the summer of 1990; is that correct?

19 A. Yes.

20 Q. Now, you did not report what you say occurred there

21 until this May 12th, 1995, interview, did you?

22 A. Right.

23 Q. And that was when you wanted to inform on these 16 or 18

24 people; is that correct?

25 A. Yes.

1 Q. And is it a fact that during that interview that you
2 said about two years ago you were partying when Richard Brown
3 got drunk and said these things to you?

4 A. Yes.

5 Q. Now, when you were **being debriefed by the detective, did**
6 you mention Shannon Newcomb?

7 A. I'm not sure.

8 Q. You know Shannon Newcomb?

9 A. Yes.

10 Q. How do you know her, sir?

11 A. Friends with her.

12 Q. And how long have you been friends with her?

13 A. About 15 years.

14 Q. And she was in jail at this time, wasn't she?

15 A. I'm not sure.

16 Q. When you gave this interview?

17 A. I'm not sure.

18 MR. BECKER: Objection, relevance.

19 THE COURT: Yeah. I don't -- I don't see how that
20 fits, Mr. Osgood. I'll sustain the relevance objection. He
21 answered he wasn't sure, so it doesn't make any difference.

22 Q. (By Mr. Osgood:) Now, during this interview where you
23 gave information about these 14, 15 people that you
24 ultimately worked two people on; is that right, out of 14 or
25 15?

2369

1 A. Yes.

2 Q. Did you wear a wire during that time, sir?

3 A. Yes.

4 Q. on those two people?

5 A. Yes.

6 Q. And tell the ladies and gentlemen what you did, how you
7 were wired, what is that procedure?

8 A. I was wired up and went in and made dope buys and came
9 out, and that was it.

10 Q. So you had a little body recorder on under your clothes?

11 A. Yes.

12 Q. And you call the person up or arrange to meet them, and
13 then you have a conversation about criminal activity; is that
14 right?

15 A. Yes.

16 Q. Did you, were you at any time asked to wear a wire to
17 contact Mr. Brown about these things that you told him, or
18 that you told him he said?

19 A. Yes, I was asked to wear a wire to make a dope buy from
20 Richard.

21 Q. A dope buy?

22 A. Yes.

23 Q. You didn't do that, did you?

24 A. No, I didn't.

25 Q. And incidentally, you did not -- of all the people you

1 named in here as doing dope, you didn't name Richard as one
2 that was doing dope, did you?

3 A. I'm not sure.

4 Q. And did you, in fact, wear a wire then, or did anybody
5 ask you to wear a wire to go ask him about these things you
6 said he said over at his house when he was drunk?

7 MR. BECKER: Judge, may we approach?

8 THE COURT: Yeah.

9 (Counsel approached the bench and the following
10 proceedings were had:)

11 MR. BECKER: I want to alert the Court that counsel
12 has misstated his report, and I'm going to go back into it.

13 MR. OSGOOD: Where? You're right.

14 THE COURT: Wait a minute. Let me see.

15 MR. BECKER: He said nowhere in this report does he
16 say that Richard Brown dealt **drugs**, and here at the top -

17 MR. OSGOOD: I'll clean it up. I agree. It was a
18 mistake.

19 THE COURT: Well, if you'll call that to the
20 attention -

21 MR. OSGOOD: I will, sure.

22 (The following proceedings were had in open court:)

23 Q. (By Mr. Osgood:) I apologize to you, Mr. Studna. It's
24 been brought to my attention that of the 15 or 16 people, you
25 did name Richard Brown as a white male, 25 years old, lives

1 in the area of 83rd and Brooklyn, drives a black '74

2 Chevrolet Camaro, deals small amounts of methamphetamine and

3 buys stolen property. You did tell them that?

4 A. Yes.

5 Q. But he was not one of the ones you wore a wire against?

6 A. No, I couldn't get in there.

7 Q. Well, did they ever wire you up and say -- strike that.

8 First of all, did you ever make any telephone calls

9 where they recorded the call where you would **call somebody**

10 and say, let's get together?

11 A. No, I didn't.

12 Q. So you just went straight in wired up?

13 A. No. I made telephone calls to the people that I made

14 buys from, but I never made phone calls to Richard.

15 Q. All right. And were those phone calls that you made to
16 people that you were making buys from, were those recorded by
17 the agents?

18 A. Yes, they were.

19 Q. Did they at any time ask you to get on the phone and
20 call up Richard Brown and ask him either about **drugs**, or get
21 on the phone and call him up and ask him about what you say
22 occurred over at his house that night he was drunk?

23 A. Yes. They asked me to try to make a dope buy over the
24 phone from him, and I couldn't do it.

25 Q. Well, did you try to call him on the phone?

1 A. No.

2 Q. Did you try to call him on the phone with an agent there
3 that could be recorded on the fire thing?

4 A. No.

5 Q. And did you ever go over to his house wired up to try
6 and nail down these conversations?

7 A. No, we weren't getting along at the time.

8 Q. All right. Now, when they conducted this interview with
9 you on the 5th day of, 12th day of May of 1995, did they
10 record this interview, sir, this detective?

11 A. I'm not sure.

12 Q. Well, did you see any recording equipment out in front
13 of you?

14 A. Not that I can remember.

15 Q. All right. And they didn't videotape it?

16 A. No.

17 . Okay. It was conversation between you and the
18 detective?

19 . Yes.

20 . Now, you say that he got drunk and you had this
21 conversation?

22 . Yes.

23 . Now, had you partied with him before?

24 A. Yes.

25 . And had you seen him drunk before?

1 ~ A. Yes.

2 Q. And had you seen him smoke marijuana before?

3 A. Not very often.

4 Q. okay.When he was drunk -- would you get drunk when you
5 were partying?

6 A. Yes.

7 Q. And has he told you things when you guys were partying
8 that you later learned were not true?

9 A. Not really.

10 Q. Okay.You don't recall any incidents where he would
11 puff or brag to you?

12 A. No.

13 Q. okay.Now, did he tell you that -- well, strike that.

14 What is it that he told you at this meeting in the
15 basement of his house?

16 A. Just told me that, that he started the truck on fire as
17 a diversion, and after the truck was on fire that he burnt
18 the rest.

19 Q. Now, the word diversion, that was his word, sir?

20 A. No, it wasn't.

21 Q. Okay.Thank you, sir. Where did that word diversion
22 come from?

23 A. It came from me.

24 Q. Well, what did he actually say, then, if he didn't use
25 the word diversion?

1 A. He burnt the truck to throw off the people.

2 Q. Well, is diversion a word you use, then?

3 A. Yes.

4 Q. So you surmised that was a diversion?

5 A. Yes. That's what I just told you.

6 Q. You didn't get that word from the agents that were
7 interviewing you?

8 ~ A. No, I didn't.

9 Q. They didn't suggest to you that this was done as a
10 diversion?

11 A. No.

12 Q. Now, have you had conversations with Shannon Newcomb
13 about what occurred?

14 A. No, I haven't.

15 MR. BECKER: Objection.

16 MR. OSGOOD: I'm not going to **ask the nature of the**
17 conversation.

18 THE COURT: I don't know what difference it makes
19 if he's had the conversation. Sustain the objection.

20 MR. OSGOOD: Because she's going to testify.

21 MR. BECKER: Can we approach, please? I'm sorry.

22 (Counsel approached the bench and the following
23 proceedings were had:)

24 MR. BECKER: The statement he keeps referring to is
25 Bryan Sheppard also reportedly told Shannon Newcomb that he

1 and Brown were involved in the firemen's deaths.

2 MR. OSGOOD: He has knowledge of what Shannon
3 Newcomb said or he wouldn't have said that.

4 THE COURT: What Shannon Newcomb or what Bryan
5 Sheppard said?

6 MR. OSGOOD: Well, both.

7 MR. BECKER: I don't know what the source of the
8 information is, because it's not admissible. The statement
9 says Bryan Sheppard also reportedly told Shannon Newcomb that
10 he and -

11 MR. OSGOOD: We'll move on.

12 THE COURT: How do you want to clear this up?

13 MR. OSGOOD: Just ask her if he knows her and move
14 on.

15 MR. BECKER: I think the reference is completely
16 off base, because there's no -

17 MR. OSGOOD: She is going to be a witness, and
18 we'll cross-examine her.

19 THE COURT: We'll deal with it when she's a
20 witness.

21 (The following proceedings were had in open court:)

22 THE COURT: Ladies and gentlemen, the reference to
23 Shannon Newcomb or any contact with her by this witness is
24 inappropriate and not based on any reasonable grounds of
25 belief, and you should disregard it. It will be stricken

1 from the record.

2 Q. (By Mr. Osgood:) Now, Mr. Studna, you were involved in
3 a suicide attempt on April the 15th of '95 in which you
4 threatened to jump off an overpass at 103rd and I-435, and
5 they called in Operation 100; is that correct?

6 A. Yes.

7 Q. And you were taken off of the overpass?

8 A. Yes.

9 Q. And you were heavy into controlled substances at that
10 time?

11 A. Yes.

12 Q. Did that affect your memory? When you would get on
13 controlled substances, could you always remember what was
14 going on?

15 A. Usually.

16 Q. Usually?

17 A. Usually.

18 Q. Were there times when you couldn't, sir?

19 A. Yes, there was.

20 Q. Were you drinking also sometimes when you were using
21 methamphetamine?

22 . Yes.

23 . And now, methamphetamine is a high. Were you taking
24 anything then to come down off of the high, to crash, so to
25 speak?

1 MR. BECKER: Judge, can we have a point of
2 reference?

3 Q. During '95 when this interview was taken.

4 MR. BECKER: Object to the relevance.

5 A. During '95 what?

6 MR. BECKER: During the whole year or the day -

7 MR. OSGOOD: May of '95.

8 THE COURT: May of '95?

9 MR. OSGOOD: Yes, the April/May time frame because
10 the attempted suicide was on April 15th, and then you had
11 this interview on -

12 THE COURT: You apparently have the report of the
13 interview. What is the date of the interview report?

14 MR. OSGOOD: May 12th of '95, Your Honor.

15 THE COURT: Why don't you specify May 12th of '95.

16 Q. (By Mr. Osgood:) All right. From April 15th, '95, time
17 frame to the May 12th, '95, time frame, in other words,
18 bracketing the suicide with the interview, attempted suicide,
19 were you heavy into methamphetamine in that period?

20 A. No.

21 Q. Had you cut back on your use drastically then when you
22 had this interview?

23 A. Yes.

24 Q. Were you using it heavily on the April 15th date when
25 you had the incident at the bridge?

1 A. Yes, I was.

2 Q. All right. Did you appear and testify before the grand
3 jury?

4 A. No, I didn't.

5 Q. Have you ever made a sworn statement of any kind where
6 you would actually give a statement and then somebody would
7 put it in front of you and say, "Read this and swear this is
8 true," in relation to this case?

9 A. Yes, I have.

10 Q. You did?

11 A. I think so. I made a statement before about it.

12 THE COURT: I think these folks sometimes are
13 confused by this reference to a sworn statement rather than
14 just a statement, Mr. Osgood.

15 A. Right. I made a statement about it.

16 Q. You made a statement and there was a report prepared
17 after that. For example, we've talked about the May 12th,
18 '95, interview. You gave that interview.

19 And a report of that interview was prepared. Were
20 l you later shown that report in getting ready to come here to
21 testify?

22 1 A. Yes.

23 Q. Okay. Was that recently?

24 A. Yes.

25 Q. And then you gave a similar interview on August the 1st

1 of 1990 -- excuse me -- on July the 31st of 1995, which would
2 have been a little over three months after the first one, and
3 ~ a report was prepared of that. Have you had a chance to
4 review that report?

5 A. I don't think so.

6 Q. okay. It was a longer one than the first one, dealt
7 specifically with this offense.

8 MR. BECKER: Why doesn't he just show it to him.

9 THE COURT: Yeah, show it to him. If he's seen it,
10 he's seen it.

11 Q. (By Mr. Osgood:) See if that refreshes your memory.

12 A. Yes. I've seen this.

13 Q. Okay. Now, when did you see this, Mr. Studna?

14 A. A few days ago.

15 Q. Okay. Did this take place at the office of the U.S.
16 Department of Labor, Inspector General, Office of Labor
17 Racketeering? In other words, Agent Schram's office?

18 MR. BECKER: Judge, again, which interview? And if
19 there's a good faith -

20 MR. OSGOOD: July 31st, '95, interview.

21 THE COURT: You just asked him something about a
22 few days ago. This flowed from that.

23 Q. All right. Apparently the interview took place at the
24 ATF, I'm told. Is that your recollection?

25 A. Yes.

2380

1 Q. Who was present to interview you on that occasion?

2 A. Dave True.

3 Q. Detective Guffy there?

4 A. Yes.

5 Q. And had you met Detective Guffy before?

6 A. I'm not sure.

7 Q. All right. And did the subject come up of -- strike
8 that. Were you pending charges on this charge that you pled
9 to in November of '96?

10 A. Could you repeat that?

11 Q. Had you been arrested at that point for this November
12 '96 incident that you later pled to?

13 A. Yes, I had.

14 Q. okay. So you were on bond at the time?

15 A. Yes.

16 Q. Did the subject come up between you and the agents as to
17 what, if anything, they could do for you in relation to that
18 pending charge?

19 A. No.

20 Q. Okay. Never mentioned that?

21 A. No.

22 Q. Were they aware of it, do you know? I mean, did they
23 mention it?

24 A. I'm not sure.

25 THE COURT: Aware of what, Mr. Osgood?

1 MR. OSGOOD: The pending charge.

2 A. I'm not sure if they were aware of it.

3 Q. All right. Now, going back to my question about

4 partying with Mr. Brown. When you both would get drunk, did

5 he ever make any admissions to you other than this one at the

6 house when he was drunk?

7 A. No.

8 Q. Now, did you tell Detective Guffy and **Agent True that**

9 you'd heard a whole lot of rumors in the neighborhood about

10 who was up on the hill the night that this happened?

11 A. Yes. I probably did.

12 Q. And you were familiar with the Marlborough area?

13 A. Yes.

14 Q. And had lived there; is that right, sir?

15 A. Yes.

16 Q. And after this blast, it was the biggest news in

17 Marlborough, wasn't it?

18 1 . Yes.

19 . Everybody was talking about it, weren't they?

20 . Yes.

21 . You'd hear about it down at the QuikTrip, wouldn't you?

22 . No, it wasn't that widespread.

23 . How about at Becky's Bar, for example. Did you ever go

24 in there?

25 . No. Yes, I've been in there.

1 ~ Q. okay. But it was gossip in the neighborhood, wasn't it?

2 A. To a point, yes.

3 THE COURT: Did you say no to the Becky's Bar

4 inquiry?

5 A. I said no, that I'd never heard anything in there.

6 Q. And this, of course, the gossip was heavy in the late

7 '88, early '89 time frame after it happened; is that a fair

8 statement?

9 A. Yes.

10 Q. And then it kind of subsided, didn't it?

11 A. Yes.

12 Q. In other words, dropped off?

13 A. Yeah, kind of.

14 Q. And do you remember when the television series ran,

15 then, about on America's -

16 A. Unsolved Mysteries?

17 Q. Unsolved Mysteries?

18 A. Yes.

19 Q. Did you see that?

20 A. Richard and Bryan were both at my house that day.

21 Q. And have you talked to other people in Marlborough area

22 that saw that?

23 A. Yes.

24 Q. Did the rumors start to fly again after that, sir?

25 A. Rumors were flying before that.

1 Q. But they started flying again after that. There was a
2 \$50,000 reward mentioned, wasn't there?

3 A. It had been going on ever since then.

4 Q. All right. And have you made any inquiry about the
5 reward at all, Mr. Studna?

6 A. No, I haven't.

7 Q. Now, were you present at, with Richard and Chris Renier
8 (phonetic) at the What's Happen'N Bar and Grill at 85th and
9 Prospect sometime after the conversation over in the
10 basement?

11 A. Yes. I could have been.

12 Q. When was that, sir?

13 A. It depends on when you're talking about.

14 Q. Well, I don't know because there isn't a date in the
15 report. The report indicates that you told the detective -
16 MR. BECKER: Objection. Reading from something not
17 in evidence.

18 THE COURT: Yeah. Let's don't -

19 Q. (By Mr. Osgood:) Well, did you tell the detectives
20 bout an incident over at Becky's -- I'm sorry, not Becky's,
21 he What's Happen'N Bar at 85th and Prospect?

22 A. I'm not sure.

23 . Would you like to review that document you've reviewed
24 before?

25 THE COURT: Well, now, is it his writing?

1 MR. OSGOOD: No, it's not, Your Honor, but he's
2 looked at it before he testified.

3 THE COURT: Has he verified it?

4 MR. OSGOOD: I don't know. That's what I'll ask
5 him.

6 THE COURT: I don't think you can use it unless he
7 says that when he looked at it it appeared to him to be an
8 accurate description.

9 Q. (By Mr. Osgood:) All right. Did you tell Detective
10 Guffy and Agent True on July 31st, 1995, later in the
11 interview, that Richard Brown had denied any involvement in
12 your presence?

13 MR. BECKER: Objection.

14 THE COURT: Mr. Osgood, you can't do that. Sustain
15 the objection. Instruct the jury to disregard that comment
16 by Mr. Osgood. Let's move off of that document. It's not in
17 evidence.

18 Q. (By Mr. Osgood:) Do you know Mike Dimaggio?

19 A. Yes.

20 Q. Okay. Do you know Johnny Driver?

21 A. I know of him.

22 Q. And Kevin Tull (phonetic)?

23 A. Yes.

24 Q. Were these all people that you discussed at some point
25 with Detective Guffy?

1 A. Probably so.

2 Q. In relation to rumors and what was going on with respect
3 to this investigation and the explosion?

4 MR. BECKER: Objection.

5 THE COURT: You're asking him the subject of the
6 conversations, again, the substance of them. I sustain the
7 objection.

8 MR. OSGOOD: I think that's all I have, Your Honor.

9 THE COURT: All right. Any more cross?

10 MR. PETERS: No, Your Honor.

11 THE COURT: Any redirect?

12 MR. BECKER: Yes, Judge.

14 REDIRECT EXAMINATION

15 By Mr. Becker:

16 Q. Mr. Studna, you remember Mr. Osgood asking you about
17 watching that Unsolved Mysteries program?

18 A. Yes.

19 Q. Who was there with you when you watched that program?

20 A. My mother, me, Richard Brown and Bryan Sheppard.

21 Q. Did Brown and -- Richard Brown and Bryan Sheppard say
22 anything about what they were going to do after that program?

23 A. Not really. **They** were worried about the **neighborhood**,
24 supposedly. There was supposed to be a whole bunch of people
25 busted right after that show.

2386

1 Q. Do you remember saying, them saying anything about
2 leaving town?

3 A. Not really.

4 Q. I want to show you something and ask you if it refreshes
5 your memory. Just read it to yourself, please.

6 MR. OSGOOD: Objection. That's the same report I
7 couldn't do that with, Your Honor.

8 THE COURT: You didn't try.

9 MR. O'CONNOR: Your Honor, he's not said that he
10 this could refresh his recollection. That's my personal
11 objection.

12 MR. BECKER: He said he couldn't remember.

13 MR. O'CONNOR: He's not said that any document
14 would refresh his recollection.

15 THE COURT: All right. Then, you'll have to go
16 through that procedure, Mr. Becker.

17 Q. (By Mr. Becker:) Are you aware if there's any document
18 or report that might refresh your memory about what was said
19 that night?

20 . No, I wasn't.

21 . Listen to the question.

22 MR. OSGOOD: Objection. He asked it, and he
23 answered it, Your Honor.

24 THE COURT: Mr. Osgood, he didn't understand the
25 question.

1 MR. O'CONNOR: Your Honor, can we approach one
2 second so I can make a record on something first?

3 THE COURT: Yes.

4 (Counsel approached the bench and the following
5 proceedings were had:)

6 MR. O'CONNOR: Back when the defense was trying to
7 use these interviews -- these are interviews, these are not
8 statements. The witness hasn't adopted them. To now try to
9 show him this, that's exactly what we've been stopped from
10 doing the whole trial.

11 THE COURT: If he says that he has seen that report
12 of the interview and that it is an accurate report of what
13 was said during the interview but he has forgotten what was
14 said, then he may use that to refresh his recollection. You
15 didn't undertake to do that with anything that I kept out,
16 but he can do it with this if he says that, if he lays the
17 foundation that he's seen that report and that it was an
18 accurate transcription of the interview, or accurate report.

19 MR. OSGOOD: Your Honor, I laid that foundation. I
20 asked him if he saw these, and he said he did, and I went to
21 attempt to refresh his recollection.

22 THE COURT: You didn't ask him if it was an
23 accurate reflection of the interview.

24 MR. BECKER: I don't think counsel was trying to
25 refresh his recollection. He was trying to read passages and

2388

1 saying, did you tell the detectives this or that.

2 THE COURT: You picked up the language of the
3 report and asked him if he said that, and you didn't hand him
4 the document and say, look at this and is this an accurate
5 transcription of the interview, and tell me now if this, is
6 your recollection refreshed.

7 MR. OSGOOD: I think that's a hypertechnical
8 application of the rule.

9 THE COURT: We've got to be hypertechnical. I've
10 got an obligation to be hypertechnical.

11 MR. OSGOOD: I understand, I understand that, and I
12 respect that.

13 MR. O'CONNOR: I'll make an objection on behalf of
14 my client that this is an interview. It's not a statement.
15 The words that are in here are the words that the agent wrote
16 down. Okay. So for Mr. Becker to wave this statement, use
17 this statement to refresh his recollection, this isn't what
18 he said, this is what the agent said he said.

19 THE COURT: This is a report of what he said. And
20 if the foundation is laid, it can be used. If it isn't laid,
21 it can't. It's as simple as that. It could be used by
22 anybody if the appropriate foundation is laid.

23 MR. O'CONNOR: My objection is he's waving an
24 interview -- I mean, maybe I missed something earlier and
25 maybe I'm wrong. And I'm subject to being wrong, obviously.

1 I thought when I was up trying with witnesses to
2 talk about their interviews that I was prevented from doing
3 that because I thought the Court told me -- and please
4 correct me, maybe I misunderstood it. I thought the Court
5 said, Mr. O'Connor, that's not a statement, that's not what
6 **they** said.

7 THE COURT: And you didn't have an appropriate
8 foundation of the witness saying that is an accurate
9 reflection of what was said in the interview, and without
10 that, it is just a hearsay statement, it's just a piece of
11 paper with a bunch of hearsay statements on it.

12 MR. O'CONNOR: Has he laid the foundation?

13 THE COURT: I don't know.

14 MR. O'CONNOR: Can we start over with the
15 foundation?

16 MR. BECKER: I'll just start over.

17 THE COURT: You've got this problem. You've got a
18 very unintelligent witness. And, of course, we've had this
19 problem a lot during this case. But it isn't fair to the
20 jury to restrict the examiner, either side, maybe too
21 technically, your words, hypertechnically, because of the
22 intelligence of the witness.

23 MR. O'CONNOR: But my objection is that he was
24 asked if he said it. He said he didn't remember saying it.

25 MR. BECKER: Right.

1 MR. O'CONNOR: Then he was asked another follow-up
2 question to try to get him to see if he was still saying it,
3 and he said he didn't say it, and he's not said that he needs
4 something to refresh his recollection.

5 MR. BECKER: He said, ''I don't remember.'' Then I
6 get to ask did you -

7 THE COURT: Is there anything that would cause you
8 to have your recollection refreshed? Would a report of that
9 interview cause your recollection to be refreshed?

10 MR. O'CONNOR: But it goes back to -

11 THE COURT: Maybe you should ask him just after,
12 just after the following interview, did you have a
13 recollection of what was said during it.

14 MR. BECKER: I'll do it. That's the right way to
15 ask it, but we're going to lose this guy.

16 MR. O'CONNOR: But my argument still is, and then
17 I'll quit, is that this has never been his statement. He's
18 never said that this is the way it is.

19 MR. BECKER: You can show him a matchbook and ask
20 him if that refreshes his recollection.

21 MR. O'CONNOR: Absolutely. I know that.

22 (The following proceedings were had in open court:)

23 Q. (By Mr. Becker:) Okay. Mr. Studna, now, I **think where**
24 we were is that you said you couldn't remember what Richard
25 and Bryan said to you after the viewing of the Unsolved

1 Mysteries; is that right?

2 A. Yes.

3 Q. Do you remember being interviewed, and Mr. Osgood asked
4 you about it, by Detective Guffy and Dave True back on July
5 31st of 1995 at the ATF offices; do you remember that?

6 A. Yes.

7 Q. At that time, do you remember, at that **time did you**
8 remember what Bryan Sheppard and Richard Brown said after the
9 Unsolved Mysteries program?

10 A. I would have. I don't remember it now, though.

11 Q. I want to show you a document and ask you to read it to
12 yourself and then just tell us if your memory is refreshed
13 about what was said.

14 MR. O'CONNOR: Same objection. It's not a proper
15 foundation laid.

16 THE COURT: I think it's all right now. Overruled.

17 Q. (By Mr. Becker:) Just read this first **paragraph to**
18 yourself.

19 MR. OSGOOD: I would ask that he read the entire
20 document to put it in context, Your Honor.

21 MR. BECKER: If you want to ask him about the
22 entire document, you go ahead.

23 THE COURT: You may expand it to whatever extent
24 you feel is appropriate, Mr. Osgood.

25 Q. (By Mr. Becker:) Okay. Mr. Studna, did you have a

1 chance to read the first part of Page 2 of this report?

2 A. Yes.

3 Q. Does that refresh your memory about what was said by

4 Bryan Sheppard and Richard Brown after that Unsolved

5 Mysteries program?

6 A. Yes.

7 Q. What do you remember being said?

8 MR. O'CONNOR: Same objection.

9 THE COURT: Overruled.

10 A. Just that **they** were talking about leaving town, and that

11 was really about it. **They** were talking about leaving town

12 because of the nine bust. Supposedly there was supposed to

13 be nine people busted after the show, and everybody was

14 afraid **they** were going to be busted then.

15 Q. In the show -- do you remember watching the show?

16 A. Yes.

17 Q. Did it ever mention Richard Brown or Bryan Sheppard or

18 any other culprits by name?

19 MR. O'CONNOR: Objection. Hearsay. Calls for a

20 hearsay response.

21 THE COURT: Well, I don't think it's for a hearsay

22 purpose, though.

23 MR. PETERS: Your Honor, I would object to

24 hearsay. He's asking him about the content of the show

25 specifically for the, to prove the truth of the matter of the

2393

1 hearsay that the show did or did not contain names.

2 THE COURT: No, I don't think that's what -- I
3 don't think that's the purpose of this question. I think you
4 might do it a little differently, though. I'll sustain that
5 objection at this time.

6 Did you say that you yourself saw and heard the
7 show?

8 THE WITNESS: Yes.

9 Q. (By Mr. Becker:) Did you see it and hear it with Bryan
10 Sheppard and Richard Brown?

11 A. Yes.

12 Q. Did anything in the show that you heard or saw say that
13 there were warrants out for arrests of Bryan Sheppard or
14 Richard Brown?

15 A. No.

16 MR. BECKER: Thank you.

17 RECROSS-EXAMINATION

18 By Mr. Osgood:

19 Q. Mr. Studna, part of the conversation was you expected
20 your own door to be kicked in after seeing the show. You
21 told the detective that, didn't you?

22 A. Yes, with them there.

23 Q. You weren't up there and did any of this, **were you?**

24 A. No, I wasn't.

2394

1 Q. So the speculation was, among people in this
2 conversation, was they were going to be kicking in doors all
3 over Marlborough, weren't they?

4 A. Yes.

5 Q. Might be a good time to leave town. That's a question.

6 A. Yes.

7 Q. And did you think about leaving town at that time?

8 A. No, I didn't.

9 Q. Okay. By the way, were you aware that Richard had had
10 his better than fair share of arrests for traffic **violations**,
11 and the police were always looking for him?

12 MR. BECKER: Objection.

13 THE COURT: Immaterial. Sustained.

14 MR. OSGOOD: That's all. Thank you.

15 MR. O'CONNOR: I have one question. I can ask it
16 from here.

18 CROSS-EXAMINATION

19 By Mr. O'Connor:

20 Q. Did Bryan Sheppard ever leave town, to your knowledge?

21 A. No.

22 MR. O'CONNOR: No further questions.

23 THE COURT: All right. Any other cross? Any
24 redirect?

25 MR. BECKER: None, Your Honor.

1 THE COURT: All right. You may step down, sir.

2 Thank you.

3 Call your next witness.

4 MR. BECKER: United States calls Kelly Corriston.

5 THE COURT: Come up and stand by the witness chair
6 and be sworn, please. Up here.

7 — — —

8 KELLY CORRISTON,

9 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
10 testified as follows:

11 MR. BECKER: Judge, Mr. Osgood, can we briefly
12 approach?

13 (Counsel approached the bench and the following
14 proceedings were had:)

15 MR. BECKER: I'd like to place on the record the
16 fact that my paralegal informed me when the witness came in
17 at the back, Richard Brown flipped her off, meaning that he
18 gave her the middle index finger. I did not observe it, but
19 an officer in the back of the courtroom did.

20 MR. OSGOOD: I didn't see it, and I don't -- I'll
21 put it in context. The firemen have been doing that to him
22 through the course of the trial on a regular basis.

23 THE COURT: And he's stupider than we think he is
24 if he did that.

25 MR. OSGOOD: I agree. That has been going on. I

1 did not see it was relevant to bring to the Court's
2 attention, but the firemen in the audience have been doing
3 that to my client daily.

4 MR. BECKER: I'll see that it's stopped if you call
5 it to my attention.

6 MR. OSGOOD: It's inappropriate behavior by
7 everybody, absolutely, I agree.

8 THE COURT: Okay. Here we go again.

9 (The following proceedings were had in open court:)

11 DIRECT EXAMINATION

12 By Mr. Becker:

13 Q. Good morning. Please state your name and spell your
14 last name.

15 A. Kelly Rainey Corrison, C-O-R-R-I-S-T-O-N.

16 Q. How old are you?

17 A. Twenty-five.

18 Q. Where do you live?

19 A. South Kansas City.

20 Q. What do you do for a living?

21 A. Construction.

22 Q. Do you know Richard Brown?

23 A. Yes.

24 Q. How do you know Richard Brown?

25 A. I used to go out with him.

1 Q. When was that?

2 A. Eight years ago.

3 MR. OSGOOD: I can't hear, Your Honor.

4 THE COURT: What was your answer?

5 A. About eight years ago.

6 THE COURT: All right. Now maybe it will be
7 better.

8 THE WITNESS: Thank you.

9 Q. (By Mr. Becker:) It will be better if you can hold your
10 hand down, too, and -

11 Do you see Richard Brown here in court today?

12 A. Yes, I do.

13 Q. Could you tell us where he's sitting and what -

14 MR. OSGOOD: Objection. Can we approach?

15 (Counsel approached the bench and the following
16 proceedings were had:)

17 MR. OSGOOD: I'll withdraw the objection if I can
18 voir dire with one or two questions.

19 MR. BECKER: My question was do you see him here in
20 court today.

21 MR. OSGOOD: Detective Ludwig just brought her to
22 the window of the courtroom and pointed out where the
23 defendant was sitting.

24 THE COURT: That's cross.

25 MR. BECKER: Also to put this matter in context,

1 when I went to deliver some documents to counsel this morning
2 at approximately, what, 9 o'clock, Mr. Brown and Mr. Osgood
3 told me, and appropriately so, that Brown had been up on the
4 fifth floor.

5 MR. OSGOOD: With his mother.

6 MR. BECKER: Right. Near my offices because his
7 sister was there, and this witness had seen Brown at that
8 time and burst into tears. So this is not a mystery about
9 people -- come on.

10 THE COURT: Okay.

11 (The following proceedings were had in **open court**:)

12 Q. (By Mr. Becker:) Okay. Do you see Richard Brown here
13 in court today?

14 A. Yes.

15 Q. Where is he sitting and what's he wearing?

16 A. To the left of me in a white shirt.

17 Q. Okay.

18 MR. BECKER: And indicating Defendant Richard
19 Brown, Your Honor, now standing?

20 THE COURT: Is that correct?

21 THE WITNESS: Yes.

22 MR. BECKER: All right. That's what the record
23 should reflect.

24 Q. (By Mr. Becker:) In November of '88, 1988, were you
25 dating Richard Brown?

1 A. Yes.

2 Q. Was he working at that time?

3 A. No.

4 Q. Did you have a car or drive around in a car at that
5 time? Did Richard Brown ever borrow your car?

6 A. Did he ever borrow my car, yes.

7 Q. Did he tell you why he was borrowing your car?

8 A. To go make some money.

9 THE COURT: I'm sorry, what?

10 THE WITNESS: To go make some money.

11 Q. Did he ever tell you how he was making money?

12 A. Yes.

13 Q. What did he tell you?

14 A. He would go look for copper wire to take it to a
15 recycling bin for money.

16 Q. He would use your car to do that?

17 A. Yes.

18 Q. Do you remember the explosion that happened, then, on
19 November 29, 1988?

20 A. Yes.

21 Q. Where were you when that happened?

22 A. At my sister's house in Grandview.

23 Q. In Grandview?

24 A. Uh-huh.

25 Q. Did it wake you up when it occurred?

1

1 A. Yes.

2 IQ. Sometime shortly after that explosion -- do you know

3 Where Richard Brown was living at that time?

4 A. At his grandparents' house.

5 Q. Sometime just after that explosion, did Richard Brown

6 talk to you about the explosion? Did he mention a 7-Eleven?

7 A. Oh, yeah.

8 IQ. Could you tell us about that conversation, please?

9 A. He was worried -- someone had said that **they** had seen

10 him at 7-Eleven getting gas in gasoline cans.

11 Q. He told you he was worried about that?

12 A. Yeah. He was worried that people were saying that.

13 Q. Someone had seen him at the 7-Eleven?

14 A. 7-Eleven.

15 Q. Now, did you ever go over to the house where Richard

16 Brown was living at that time in November, December of **1988?**

17 1 A. Yes.

18 Q. I'll show you what's in evidence as Government's Exhibit

19 320. Do you recognize that?

20 A. Yes.

21 Q. Is that the house where he was living at the time?

22 1 A. Yes.

23 Q. Do you recall a conversation there shortly after the

24 explosion where Richard Brown was talking to his grandmother

25 ~Wilda Romi?

2401

1 A. Yes.

2 Q. Could you tell us what was said in that conversation?

3 A. It was the time period between when he was home the
4 night prior to the explosion.

5 Q. All right. So the conversation was about the explosion?

6 A. Yeah. When he was out -

7 THE COURT: I'm sorry. When he -

8 A. When he got home the night before.

9 Q. Who was talking about that?

10 A. Him and his grandmother.

11 Q. Who else was present?

12 A. I was.

13 Q. And anyone else besides you?

14 A. I'm not sure.

15 Q. Where in the house did this conversation take place?

16 A. The living room.

17 Q. Could you tell us if that's in the -- excuse me, the
18 front of the house here or back of the house?

19 A. It's on the right side of the front door.

20 Q. Indicating on Government's 320 where the windows appear
21 on the right side; is that right?

22 A. Yes, sir.

23 Q. How big is that room?

24 A. I -

25 Q. Would you describe it as a big living room, small living

1 room, how would you describe it?

2 A. It was medium-sized. I don't know.

3 Q. Was the conversation -- who was the conversation
4 between? Who was talking?

5 A. Richard and his grandmother.

6 Q. What were they talking about?

7 A. His grandmother told the police that he had got home
8 right after the first explosion. He wanted that story
9 changed to where he got home -- well, he was already in bed
10 before it happened. That was basically what it was.

11 Q. What was Richard Brown's demeanor -- how did he appear
12 to you?

13 A. He was very angry.

14 Q. Was this a loud conversation?

15 A. Very.

16 Q. How old is the grandmother, Wilda Romi? Do you know,
17 just roughly?

18 A. I have no -- seventy. I don't know, honestly.

19 Q. Do you recall Richard Brown telling his mother, telling
20 his grandmother that she had messed up?

21 MR. OSGOOD: Objection. Leading.

22 THE COURT: Oh, I don't think it's inappropriate.
23 Overruled. You made your objection.

24 Q. (By Mr. Becker:) What do you remember, was there any
25 discussion about Wilda Romi talking with the police beyond

1 what you've told us?

2 A. That she needed to change her story because he would get
3 in trouble if she didn't.

4 Q. Did Brown, did you observe him take something out of his
5 pocket?

6 A. Yes.

7 Q. Tell us about that, please.

8 A. It was a handkerchief.

9 Q. What was significant about that?

10 A. Because I didn't know what was in it. He held it in his
11 hand, and you couldn't see what the contents was inside.

12 Q. Indicating with your palm up like, face up; is that
13 right?

14 A. Yes.

15 Q. Did you ask Richard Brown about that?

16 A. Yes.

17 Q. What did he tell you?

18 A. It was none of my business.

19 Q. Now, do you remember talking to the police about, giving
20 the police this information for the first time?

21 A. The first time? Can you give me a date?

22 Q. Sure. Was that in October of 1989 that you first gave
23 this information to the Kansas City, Missouri, police
24 detectives?

25 A. I'm not real familiar with that. I don't know much

2404

1 about that. I haven't seen that paper.

2 Q. Right. But do you remember, was it one, you know, one
3 year after this happened or five years after this happened
4 that you finally talked to the police about this?

5 A. I'm sorry. It was one year. It was in '89.

6 MR. BECKER: Okay. Thank you very much.

7 THE WITNESS: I'm sorry.

9 CROSS-EXAMINATION

10 By Mr. Osgood:

11 Q. Ma'am, my name is John Osgood, and I represent Richard
12 Brown. And you and I have never met or talked, have we?

13 A. No, sir.

14 Q. okay. Now, you knew Richard for, what, several months?

15 A. Yeah.

16 Q. Back in '88 and '89?

17 A. (Witness nods head.)

18 Q. You probably should say yes or no, ma'am.

19 A. Yes. Sorry.

20 Q. And you dated him?

21 A. Yes, sir.

22 Q. And how old were you at the time?

23 A. About 17.

24 Q. About 17. And he was what, about 18?

25 A. I guess, I -

1 Q. Nineteen?

2 A. Yes.

3 Q. When is the last time you saw him before you came in
4 here to testify today?

5 A. It was before they, them people called me in for a test,
6 statement. He had seen me on the outer ramp.

7 Q. Out in the neighborhood?

8 A. No. By my house.

9 Q. And, in fact, the last time you saw him, he suggested
10 that you come on over and visit, and you said okay, but you
11 went a different direction and turned somewhere else?

12 A. Yes, sir.

13 Q. He didn't threaten you at that time?

14 A. No, sir.

15 Q. In fact, he was nice, as you recall?

16 A. He wasn't mean. He wasn't overly nice.

17 Q. He was Richard?

18 A. Richard. Yeah.

19 Q. Okay. Now, you gave your first interview to the police
20 in October, on October the 6th of 1989 at about 3:30 in the
21 afternoon and talked to a Detective Kilventon and a Robert
22 McKarnin. Do you remember that?

23 I apologize. Detective Zinn. I'm reading in the
24 wrong place.

25 THE COURT: Just a minute, please. All right. You

2406

1 may answer the question.

2 Q. (By Mr. Osgood:) A Detective Zinn.

3 A. I vaguely recall, yes.

4 Q. okay. At that time, that would have been about a year
5 after you were over at Richard's house; is that right?

6 A. Yes.

7 Q. And did you go into great detail with them at that time,
8 or did you tell them, basically tell Detective Zinn that you
9 couldn't remember anything that he'd said?

10 A. Yeah. That's what I said.

11 Q. That you couldn't remember anything?

12 A. Yes.

13 Q. And said you knew nothing about it, didn't you?

14 A. I'm not real familiar with that form. I just seen it
15 for the first time in a long time a couple of days ago.

16 Q. Well, and I understand that. But I'm just asking you
17 what you remember today, having had the opportunity to look
18 at that, what you remember about that conversation with
19 Detective Zinn.

20 A. Yes.

21 Q. And you told Detective Zinn at that time you couldn't
22 remember anything about this, didn't you?

23 A. Yes.

24 Q. Back in '89?

25 A. Can you keep your -- I'm just right here. Please don't

2407

1 yell.

2 Q. okay.I'm not trying to upset you, ma'am. In fact, I
3 want you to listen to my questions. And if I ask you a
4 question you don't understand, tell me and I'll repeat it or
5 try to rephrase it.

6 MR. BECKER: Those instructions need to come from
7 the Court.

8 THE COURT: I think that would be more appropriate.

9 Q. Then Detective Fraise came back four days later on
10 October the -- you need to take a break?

11 (Witness crying.)

12 THE COURT: Do you want to break for a while?

13 THE WITNESS: No, I'm -

14 THE COURT: All right. Go ahead, Mr. Osgood.

15 Q. (By Mr. Osgood:) Detective Fraise came back four days
16 later in October of '89; is that right? Do you remember
17 that? Do you remember that?

18 A. Vaguely.

19 Q. When he came back four days later?

20 A. Yes.

21 Q. And you told him at that time that you still weren't
22 able to remember four days later at that time anything that
23 Brown had said, right?

24 A. Right. Yes.

25 Q. You said you remembered something about some

2408

1 conversation, but you were unable to remember any significant
2 details, didn't you?

3 A. Yes. I was scared.

4 Q. Pardon?

5 A. I was scared.

6 Q. I see. And then in June of '95, 23rd day of June of
7 '95, you were interviewed by Agent True of the Bureau of
8 Alcohol, Tobacco, and Firearms, weren't you?

9 A. Yes.

10 Q. And during that interview, Agent True actually played
11 for you a videotaped interview of your sister, Tracy Smith,
12 where she was talking to the police -- and I don't want to
13 know what she said, but they showed you an interview that she
14 had with them, didn't they?

15 A. Yes.

16 Q. And you watched that, didn't you?

17 A. Yes, sir, I did.

18 Q. Did you even during that interview tell **Agent True, even**
19 sitting there watching that tape, that your memory was still
20 vague, very vague about what was said by Richard Brown?

21 A. I didn't say it was very vague. I remembered some
22 things.

23 Q. Pardon?

24 A. I remembered some things.

25 Q. Now, did you tell them that you wanted to remember that

1 phase of your life because it was a bad time for you?

2 THE COURT: That she wanted to?

3 Q. (By Mr. Osgood:) Wanted to not remember that period of
4 your life because it was a bad time for you?

5 ~A. Yes.

6 I Q. That you were doing a lot of **drugs**?

7 A. Yes, sir, I was.

8 ~Q. All right. Then on 20 February of 1996, you came in
9 with your father for yet another interview with Officer True
10 down at the ATF; is that correct, ma ' am?

11 A. Yes.

12 Q. Now, had you seen the Unsolved Mysteries episode by that
13 Time on television, or were you aware of it?

14 A. I saw it, yeah.

15 Q. Were you aware there was a \$50,000 reward out, ma ' am?

16 1A. Yes.

17 j Q. All right. And during that interview, you then provided
18 someof the details that you've testified here today, didn't
19 1 you?

20 A. Yes.

21 Q. SO that was the fourth time that you'd been in to see
22 Somebody from the authorities about this incident, wasn't it?

23 1A. Yes.

24 IQ. And that was the first time that you had, after you'd
25 watched this videotape of your sister that you said he said

2410

1 these things, wasn't it?

2 A. No.

3 Q. Okay. And then they took you to the grand jury on the
4 12th day of March of 1996, didn't they?

5 A. Yes.

6 Q. And they asked you about these incidents there, didn't
7 they?

8 A. Yes.

9 Q. Did Richard Brown talk a lot about this incident to you?

10 A. Not a whole lot, no.

11 THE COURT: What does a lot mean, Mr. Osgood?

12 Q. Well, in fact, would he avoid the subject?

13 A. Yes.

14 Q. Didn't talk about it much with you, did he, other than
15 the one time that you say it happened?

16 THE COURT: What was the question? I didn't
17 understand the question.

18 Q. Well, I'll rephrase the question. Apart from what
19 you've testified here to today, there were no other
20 conversations with Mr. Brown about this, were there?

21 A. No.

22 Q. Now, let's talk a little bit about the incident with his
23 grandmother. You didn't remember that during any of these
24 first interviews, did you?

25 MR. BECKER: Objection. It's not what the

2411

1 testimony was. She never testified she didn't remember. She
2 said -

3 Q. Let me rephrase it. You didn't tell the police about
4 that conversation during the first interview, did you?

5 A. No.

6 Q. Pardon?

7 A. No.

8 Q. That was in October '89, which was shortly right after
9 you say that happened, wasn't it?

10 A. Yes -

11 MR. BECKER: Objection. She testified, and counsel
12 asked her, it's approximately a year later. I don't know
13 what shortly thereafter means, but I would object as not
14 reflecting the testimony.

15 Q. When did the conversation with his grandmother occur, as
16 best you recall?

17 A. Just days after the explosion.

18 Q. All right. And he, in fact, was in an argument with his
19 grandmother about what time he got home, wasn't he?

20 A. Yeah.

21 Q. And he said he was there before then, and she said she
22 didn't remember that, didn't she, that she thought it was a
23 different time?

24 A. Not exactly.

25 Q. Do you know his grandfather?

1 A. Yes.

2 Q. Did you see him there at this time?

3 A. He was in the bedroom.

4 Q. Pardon?

5 A. He was in the bedroom. He was always in the bedroom.

6 Q. Are you aware that he died about two weeks ago?

7 A. No, sir. I don't keep in contact with these people
8 anymore.

9 Q. Okay. Now, when you met with Agent True on the 20th of
10 February, is that the first time that you talked about the
11 incident with his grandmother?

12 A. What was the date again? I'm sorry.

13 Q. On the 20th of February of 1996. This would have been
14 ~ your fourth interview with the authorities.

15 A. I'm not sure.

16 Q. okay. Well, let me ask you this. Apart from showing
17 ~ you the videotape of your sister, did, in any of these four
18 interviews and particularly the last two, did the agents fill
19 in some blanks for you and tell you some things about the
20 case to put it in total context?

21 1 A. No.

22 Q. Okay. Now, did you tell the authorities that Richard
23 Brown said that he could sell, or that he was selling
24 dynamite out of the country?

25 ~ A. No, I did not. I said -

1

1 Q. What did you say?

2 A. I said he said that he can get rid of some dynamite for
3 a decent amount of money.

4 Q. It would bring big bucks?

5 A. Yes.

6 Q. Out of the country?

7 A. Yeah.

8 Q. And did Richard Brown tell you things from time to time
9 that you later found out were not true? We said Richard is
10 Richard.

11 A. Yeah. Are you calling him a liar?

12 Q. Pardon?

13 A. Are you calling him a liar?

14 Q. I'm asking you, did he lie to you?

15 A. I'm not sure.

16 Q. Or exaggerated?

17 A. I don't remember our relationship that well.

18 Q. Did he exaggerate about things to you?

19 A. When Richard said he was going to do something, he would
20 do it. That was Richard. When he had his mind set, he would
21 do it.

22 Q. All right. Did you ever know him to leave the country
23 with a truckload of dynamite?

24 A. Well, no, sir.

25 Q. You're smiling.

1 A. He would probably be gone still.

2 Q. Pardon?

3 A. Because you said that sarcastically. He would probably
4 still be gone if he had left the country with dynamite.

5 Q. So that was probably exaggeration and, to put it
6 bluntly, B.S. on his part, wasn't it?

7 A. I couldn't say if it was or wasn't, sir.

8 Q. Did you take it that way?

9 A. I took it as I heard it.

10 Q. But you didn't get around to relaying that to the
11 authorities until almost eight years after that occurred?

12 MR. BECKER: Objection. Repetitious.

13 THE COURT: Wait a minute. It's argumentative, and
14 it's also been asked and answered.

15 Q. (By Mr. Osgood:) Now, when your father, when you -
16 strike that. When you saw Unsolved Mysteries, did **you watch**
17 it with your father?

18 . No.

19 . I don't know what, I don't want to know what your father
20 aid, but did you tell your father about the Unsolved
21 Mysteries program and the reward?

22 . I don't remember.

23 . How is it that your father went down to **the ATF with you**
24 n the 20th of February of 1996?

25 . Because my father loves me, and he's standing beside me.

1 MR. OSGOOD: okay. I think that's all, if I could
2 have just a minute, Your Honor.

3 MR. O'CONNOR: No questions, Your Honor.

4 MR. PETERS: Judge, I have one.

6 CROSS-EXAMINATION

7 l By Mr. Peters:

8 Q. Ma'am, just a quick question. When your dad went down
9 with you, was he allowed to be with you while you talked to
10 l Agent True?

11 A. No. Because they told him he would be a witness if he
12 was.

13 MR. PETERS: Okay. Thank you.

14 THE WITNESS: Sure.

15 THE COURT: Any redirect?

16 MR. BECKER: Nothing, Your Honor.

17 THE COURT: All right. Thank you, ma'am. You may
18 step down.

19 THE WITNESS: No problem.

20 THE COURT: I guess we'd better break, hadn't we,
21 counsel?

22 MR. BECKER: I would appreciate that, Judge, so we
23 can regroup.

24 THE COURT: We'll take our usual lunch hour, ladies
25 and gentlemen. We'll work this afternoon until 4 o'clock. I

1 have a court en bane meeting at 4 o'clock, so we'll stop at
2 that time and try to do some of the business of the court.

3 We'll pick up at 1:30. Don't discuss the case, and
4 don't allow anyone to talk about it in your presence. You're
5 excused.

6 (The following proceedings were had in the
7 courtroom out of the presence of the jury:)

8 THE COURT: Mr. Becker, you have six remaining on
9 your daily list. I don't know whether we're going to get to
10 all of them or not.

11 MR. BECKER: And for the Court's information, there
12 is an additional witness, one of the protected witnesses the
13 government gave notice of this morning. So I intend to get
14 her on, regardless of whoever else gets on.

15 THE COURT: Can you do her right after lunch?

16 MR. BECKER: I don't think we need to get to her
17 that quickly. There are some people that have been waiting
18 since this morning.

19 THE COURT: All right. We'll be in recess until
20 1:30.

21 (A recess was taken from 12 noon to 1:34 p.m.)

22 THE COURT: All right. Let's get the jury.

23 MR. BECKER: Judge, can we briefly approach while
24 they get the jury?

25 (Counsel approached the bench and the following

1 proceedings were had:)

2 MR. BECKER: Judge, in my 16 years as a prosecutor,
3 I've always made a standing request to any stenographer that
4 if the opposing parties order something, I'd like to know so
5 I can get a copy. And I've been told there's been some
6 things -- obviously, I've heard things that are being
7 ordered, and the stenographer said that she was told that
8 they were ex carte requests. She needs some guidance, as
9 well. I can't imagine a reason why -

10 THE COURT: We're not going to use officers of the
11 court as ex Carte functionaries on behalf of any party. If
12 there's something been ordered, I want to know about it.
13 What's been ordered?

14 MS. FRANCO: Nothing, Your Honor, you have the two
15 requests. We'll be happy to -

16 THE COURT: You mean there have been two -

17 MS. FRANCO: Excuse me, we have nothing ex parte
18 other than what you've heard us discuss, and that's the two
19 that are in front of the Court for approval. I'll be happy
20 to tell -- I think that you overheard anyway. There were the
21 ~ opening statements, the government's opening, the Riggses'
22 cross-examination, the cross-examination by Miss Hunt of
23 Kilgore.

24 MR. BECKER: I didn't know about that.

25 MS. FRANCO: Wait, there's another one. I think

1 Mr. Peters requested, and I would have to look, Mr. Peters
2 requested -- oh, Mr. Elliott, Charles Elliott's date of
3 Confinement which I think you cleared up by the stipulated
4 in-custody dates of May 25th, 1995, if I remember correctly.

5 That's all that's been requested. But they're
6 before the Court. I'm not sure if they've been approved or
7 not.

8 MR. BECKER: Mr. Peters, is he up here?

9 MS. HUNT: No.

10 MR. BECKER: I guess I'd like to be heard before
11 any defendant would call the Riggses as a witness again. My,
12 what I thought I heard in conjunction with the request for
13 the cross-examination transcript, that they needed it for
14 further impeachment of the witnesses. And I would submit
15 that although you can impeach your own witness, you can't
16 call someone merely for further cross-examination. I mean,
17 there has to be some substantive testimony to be adduced.

18 THE COURT: That's right. You're calling them back
19 as your own witness. You can't call them back for purposes
20 of impeachment.

21 MR. BECKER: Thank you.

22 MR. OSGOOD: Judge. While we're here, this next
23 witness, Kim Finch, I'm concerned that everything she has to
24 say, quite frankly, is hearsay based on three reports of
25 interviews. I'll just, if I can just briefly read these into

1 the record, it would be quicker.

2 MR. BECKER: I'll just -- she's going to testify
3 she came down from St. Joseph a full day after the explosion,
4 which would be the 30th. And while at the Richard Brown
5 grandfather residence, and upon leaving the residence, she
6 saw a number of individuals, the defendants, in a truck
7 outside the residence.

8 MR. OSGOOD: That's it?

9 MR. BECKER: And then in 1991, I think it's '90,
10 '90 or '91, I can't remember, she was at a party where
11 Richard Brown made admissions in the presence of **Frank**
12 Sheppard and Bryan Sheppard.

13 THE COURT: She heard them?

14 MR. BECKER: Yes.

15 THE COURT: Okay.

16 MR. BECKER: That's it. So I'm not, I don't know
17 what hearsay we're talking about.

18 MR. OSGOOD: Well, let me -

19 THE COURT: We don't have to dig into those things
20 if that's what he's going to talk about.

21 MR. OSGOOD: Except that seems like that's
22 something she got from Candy Smith.

23 THE COURT: If she says that, then it won't be
24 admitted, but let's go ahead and get the witness on.

25 MR. OSGOOD: Okay. Okay.

1 (The following proceedings were had in open court:)

2 MR. BECKER: United States calls Kim Finch.

3 THE COURT: Come up, please, stand by the witness
4 chair and be sworn, Miss Finch.

6 KIMBERLY FINCH,
7 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
8 testified as follows:

10 DIRECT EXAMINATION

11 By Mr. Becker:

12 Q. Good afternoon.

13 A. Hello.

14 Q. Please state your name and spell your last name.

15 A. Kimberly Kay Cooley Finch, F-I-N-C-H.

16 THE COURT: What is your middle name?

17 THE WITNESS: My name is Kimberly Kay Cooley
18 Finch.

19 THE COURT: Okay. Thank you.

20 Q. (By Mr. Becker:) Where do you live?

21 A. In Kansas City.

22 Q. How long have you lived in Kansas City?

23 A. About ten years now, nine and a half, ten years now.

24 Q. In 1988, were you living somewhere else?

25 A. St. Joe, Missouri.

- 1 Q. Do you know an individual by the name of Richard Brown?
- 2 A. Yes, sir, I do.
- 3 Q. How do you know him?
- 4 A. He's my nephew through marriage.
- 5 Q. Do you know an individual by the name of Bryan Sheppard?
- 6 A. Yes, sir, I do.
- 7 Q. How do you know him?
- 8 A. He used to run around with Richard.
- 9 Q. Do you know **Frank** and Skip Sheppard?
- 10 A. Yes, I do.
- 11 Q. How do you know them?
- 12 A. Used to run around with Richard.
- 13 Q. Going back to November 29, 1988, do you remember reading
- 14 about or hearing about the explosion that happened here in
- 15 Kansas City that killed the six firemen?
- 16 A. Yeah, it came over the news up in St. Joe. And at that
- 17 time she wasn't my sister-in-law, but she talked to her dad.
- 18 Q. Who was that?
- 19 A. Louie.
- 20 Q. Okay. Who is, who was your sister-in-law, or who are we
- 21 talking about?
- 22 A. Candy.
- 23 Q. What's Candy's last name?
- 24 A. Smith.
- 25 Q. What happened with Candy Smith, then?

1 I A. Okay. She called down -

2 THE COURT: Don't testify to anything that she
3 said, Miss Finch.

4 THE WITNESS: No, I ain't.

5 A. She called down to check on her dad because it was,
6 where it happened at wasn't very far from her dad's house.

7 Q. (By Mr. Becker:) Who is her dad?

8 A. Louie.

9 Q. That would be Louie Smith?

10 A. Uh-huh.

11 Q. Is that Richard Brown's grandfather?

12 A. Yeah.

13 Q. Please tell us what happened then.

14 A. She called down to check on her dad and everything, and
15 he said the stuff had came off the wall and everything from
16 what had happened the night before. And Candy asked me if I
17 could run her down here so she could check on her dad and
18 check on the house and everything, and I said yeah.

19 Q. Did you come down to Kansas City, then, that same day
20 that the explosion had happened?

21 A. The night after, the evening afterwards.

22 Q. It would be the next day after that; is that right?

23 A. Yeah.

24 Q. I want to show you what's in evidence as Government's
25 Exhibit 320 and ask you if you recognize this. Can you see

2423

1 that from where you are, Miss Finch?

2 A. Uh-huh.

3 Q. Do you recognize that house?

4 A. Yeah.

5 Q. Who lived there?

6 A. That was Grandpa's house.

7 Q. Did Grandpa Smith, Richard Brown's grandfather recently
8 die?

9 A. I didn't know that until just today.

10 Q. I want to show you what's been marked for identification
11 purposes as Government's Exhibit 322.

12 MR. OSGOOD: No objection.

13 Q. Ask you to take a look at this and see if you recognize
14 it.

15 A. Yeah, it's Grandpa's house.

16 Q. What is it?

17 A. Grandpa's house.

18 Q. Is that just another view of the house?

19 A. Yeah.

20 Q. What street is that on?

21 A. Brooklyn.

22 MR. BECKER: Okay. I would offer that in evidence
23 as Government's Exhibit 322.

24 Q. (By Mr. Becker:) Do you know what direction this is -

25 A. Yeah, looking at the side from the street, like a side

1

1 from that one street right there.

2 Q. The street in front is Brooklyn; is that right?

3 A. Uh-huh. This one here is the one street that you can
4 turn off.

5 Q. Well, there's only one street shown here.

6 A. Where that car is sitting at, from where they took that
7 picture, there's a street right there.

8 Q. And that would be looking south; is that right?

9 A. Yes.

10 MR. BECKER: Offer it as Government's Exhibit 322.

11 MR. OSGOOD: No objection.

12 THE COURT: It's admitted.

13 **(Government's Exhibit 322 was admitted into**
14 **evidence.)**

15 Q. (By Mr. Becker:) So who drove down from St. Joseph?

16 A. I did.

17 Q. Who else came with you?

18 A. Candy.

19 Q. Where did you go when you came to Kansas City?

20 A. Grandpa's house.

21 Q. What happened when you got to that house?

22 A. I was in the car -- well, I got out of the car, but then
23 I got back in the car. Candy went in, talked to her dad and
24 everything. I guess she talked to her dad. She went in for
25 a minute, came back out, and I was still up in the car.

1 Richard and all of them were -- first **they** were in the yard,
2 and then Candy, me and Candy started to leave. But **Frank** and
3 Richard was in the yard at first talking to some people.
4 Candy was down there talking to them and everything, but then
5 Candy came back up to the car. And **they** all got in this
6 black truck that was sitting down there. I always thought it
7 was **Frank's** because he always drove it.

8 Q. Who got in this truck?

9 A. **Frank**, Richard, and Skip, and there was some
10 blond-headed dude that was up in the back of the truck.

11 Q. Did you know him?

12 A. I want to say it was Darlene's son. As far as I know,
13 it was Darlene's kid. I don't know.

14 Q. Now, and that was the day after the explosion; is that
15 right?

16 A. Uh-huh, that evening, yeah.

17 Q. I want to go ahead now to 1991. Do you remember being
18 at a party sometime in 1991 where Richard Brown and some of
19 the other defendants were present?

20 A. Uh-huh.

21 Q. You have to answer yes or no.

22 A. Yes.

23 Q. Was this in the summer or winter, when was this?

24 A. It wasn't cold outside, but it wasn't real, real hot
25 outside either. It was -

~

1 ~ THE COURT: Do you remember roughly what time of
2 the year it was?

3 THE WITNESS: Fall, maybe. It wasn't real, real
4 hot, but it wasn't real, real cold.

5 Q. (By Mr. Becker:) Where was this house?

6 A. You go straight out Prospect, you turn left by the
7 day-care center, you go straight down that street, it's a
8 dead end, and you go, okay, you take a left. Then there's a
9 house sits here and another house over here, and Richard's
10 house was over on this side.

11 Q. Indicating somewhere off to the left as you -

12 A. Yeah, sitting on that side of the street.

13 Q. Indicating to the left. Who did Richard Brown live
14 there with?

15 A. There was, all I know is Richard lived there. Sometimes
16 it was one of his girlfriends that might live there or, you
17 know, everybody was always over there. I don't know. I know
18 Richard lived there.

19 Q. And looking back, does that look back towards the
20 landfill and where 71 Highway is?

21 A. Yeah, because you can see the back of the house when
22 you're coming down I-71.

23 Q. Highway 71?

24 A. Uh-huh.

25 Q. Not I-70?

2427

1 A. No, not I-70, Highway 71.

2 Q. Now, what was going on at that house that you remember
3 when you were there?

4 A. Everybody was drinking. There was a keg outside. I
5 went in the house.

6 Q. Who were you with?

7 A. A couple of friends of mine.

8 Q. What did you do when you went in the house?

9 A. Went back into the back bedroom. Well, I stood there in
10 the living room for a little bit because that's where Richard
11 and everybody was at.

12 Q. Who else was there? Was Bryan Sheppard there?

13 A. Uh-huh.

14 Q. You have to answer yes or no.

15 A. Yes.

16 Q. What about **Frank** Sheppard?

17 A. Yes.

18 Q. Was Skip Sheppard there?

19 A. Yes.

20 Q. Was Darlene Edwards there?

21 A. She was there off and on. She kept, she would go
22 outside and then she would leave for a little bit, and then
23 she would come back. So she was there off and on.

24 Q. What did you do then after you first went into the
25 house? Did you get a beer outside?

2428

1 A. Yeah.

2 Q. Probably?

3 A. Yeah, I did.

4 Q. Okay. What happened when you went back in the house?

5 A. Went back in the back bedroom, and I was talking to my
6 niece through marriage. And at that time, I don't know if
7 her and him were married, but her kids' daddy, we were back
8 there in the back bedroom talking.

9 Q. And that's Shannon Reimers?

10 A. Reimers.

11 Q. Or Shannon Brown.

12 A. Yeah.

13 Q. Richard's sister?

14 A. Yeah, my niece. Yeah. And we was talking and
15 everything. And I heard Bryan start hollering at Richard,
16 you know, and the dog started barking. And so I came out -
17 like in the living room, when you first walk in the living
18 room, it's a great big old long room, and then the kitchen is
19 right here, and then you go this way to a bedroom.

20 Q. Towards the left?

21 A. Yeah. And then there's like a hallway right there, if
22 you go this way. So I came out and I heard Bryan hollering
23 at my nephew. And I was standing there, and the dog kept on
24 barking and everything, and Bryan kept saying -

25 Q. All right. What did Richard say?

1 A. Richard -- see, when I first walked in the house, **they**
2 were talking about the firefighter thing. And whenever **they**
3 always got drunk and everything -

4 MR. O'CONNOR: Judge, I just wanted to clarify who
5 they is. When she says **they**, who is she saying is doing the
6 talking?

7 THE WITNESS: Bryan and Richard.

8 MR. O'CONNOR: Okay.

9 Q. (By Mr. Becker:) Okay.

10 A. And when I first walked in the house, I was like, yeah,
11 **they**'re all drunk, **they**'re up here talking all of this stuff
12 again. And I went back there and was talking to Shannon and
13 Russell. And then Bryan kept on hollering at Richard to shut
14 his mouth or else he was going to hit Richard in his mouth.

15 Q. All right. When you went back out in the hallway then
16 and you looked back in the living room, could you see Richard
17 and Bryan?

18 A. Uh-huh.

19 Q. You have to answer yes or no.

20 A. Yeah.

21 Q. What did Richard say?

22 A. He just kept talking -- okay. I remember Richard saying
23 something about that Bryan, you're the one that wiped off all
24 the prints and everything -

25 MR. O'CONNOR: Your Honor, I object to what Bryan

1 said to Richard as hearsay.

2 THE WITNESS: Huh?

3 THE COURT: Just a minute.

4 MR. BECKER: I believe I submitted a legal

5 memorandum on this issue earlier in the case.

6 THE COURT: This is the silence issue?

7 MR. BECKER: Yes. They're both present, the
8 testimony is they were conversing with each other, so clearly
9 they could hear each other.

10 THE COURT: That's overruled, Mr. O'Connor.

11 Q. (By Mr. Becker:) What was Richard saying to Bryan?

12 A. That he was the one that had got something to wipe off
13 -- first **they** kept talking about a shed, and then **they** would
14 be talking about a trailer, and to wipe off the fingerprints
15 and everything. And Bryan kept telling Richard to shut his
16 mouth, he was going to bust him in his mouth, he was going to
17 do this, he was going to do that.

18 And I was walking out in the hallway, and I told my
19 niece, I said, ain't no way in hell Bryan Sheppard is going
20 to whoop my nephew's behind because I know better, he ain't
21 capable of it.

22 THE COURT: Don't go too fast. She's got to write
23 down what you're saying. Slow it down a bit, if you could,
24 please.

25 A. And we stood there for a minute, and Richard said

1 something to do with the effect of the lock, the lock, and
 2 said that Bryan had wiped off the shed and everything, or the
 3 trailer. And Richard said -- well, Bryan said something
 4 about that lock, and Richard said, well, you're the one that
 5 said you were going, said that you were going to catch that
 6 lock on fire, set that lock on fire so **they** could get in
 7 there and see what was in there.

And -

8 Q. Did Bryan say something back then?

9 A. Yeah, told him to shut his mother Lucking -

10 Q. Is that what was said?

11 A. Yeah. Told him to shut his mother tucking mouth because
 12 he was running his mouth, and he was sick of him running his
 13 mouth. And said something to the effect that -

14 MR. O'CONNOR: Judge, can we approach a minute,
 15 please? I need to approach, please.

16 THE COURT: Don't you know about this?

17 MR. O'CONNOR: No, I don't. That's why I want to
 18 approach.

19 (Counsel approached the bench and the following
 20 proceedings were had:)

21 MR. O'CONNOR: Objection is I've heard none of this
 22 or seen any of this, what was just said about a lock and
 23 burning a lock or any of that in any statement, **any grand**
 24 jury, anything.

25 MR. BECKER: Then cross-examine her.

1 THE COURT: That's cross-examination.

2 MR. O'CONNOR: Did **they** know about this before **they**
3 put her on, obviously, and we weren't told?

4 THE COURT: Are you contending that -- until the
5 termination of her testimony, isn't it the technical rule
6 that you're not entitled to anything until the termination of
7 her testimony?

8 MR. BECKER: They've been given every report of
9 interview and the grand jury testimony of this witness.

10 MR. O'CONNOR: And none of it is in there. And all
11 I'm saying, Judge, is if they have told him something since
12 these interviews, wouldn't we be entitled to that
13 information?

14 THE COURT: I don't know.

15 MR. BECKER: I can tell you in my ten years as a
16 federal prosecutor, when we prep witnesses for trial, we
17 don't go out and create a new set of reports. It wasn't just
18 this -- you know, there comes a point in time when you quit
19 writing reports.

20 MR. O'CONNOR: But if they have information that we
21 can -- I mean, I am now in a position, not truly ready,
22 although I obviously am going to have to cross-examine her.
23 If she's told them things, I have no way to investigate it,
24 no way to cross-examine it.

25 MR. BECKER: The federal rules are that he doesn't

2433

1 get the Jencks material until after the witness testifies.

2 So, I mean, it may be that Mr. O'Connor would like to

3 investigate this, but that's not what the federal rules

4 contemplate. He's been given this witness's statements on

5 December 24th. It's now the middle of February, so he's had

6 far more time than any other, than contemplated under the

7 rules.

8 THE COURT: Okay. Then the objection is

9 overruled.

10 (The following proceedings were had in open court:)

11 Q. (By Mr. Becker:) Could you see **Frank** Sheppard in the

12 living room?

13 A. Yeah. He had been outside -- no. He was sitting on the

14 couch, and he got up and told my nephew that if you don't

15 shut, if you don't shut your mouth and quit running your

16 mouth, I'm going to punch you dead in your mouth.

17 And I looked around. I said, man, look, it's time

18 to go because every time they all got drunk and acted

19 ignorant, they was all ready to fight, you know.

20 Q. Was Skip Sheppard around there?

21 A. Yeah, because he came in from being outside and went

22 into the bathroom.

23 Q. What did you do then?

24 A. I left because I thought they were really going to end

25 up fighting.

1 MR. BECKER: I have no further questions at this
2 time, Judge.

3 THE COURT: All right. Cross?

4 MR. OSGOOD: With the Court's permission, we're
5 going to reverse the order.

6 THE COURT: All right.

8 CROSS-EXAMINATION

9 By Mr. O'Connor:

10 Q. I'm John O'Connor, I represent Bryan Sheppard.

11 A. I know. I met you Saturday morning at 10 o'clock when
12 you woke me up out of bed.

13 Q. As I remember, I knocked on your door and someone
14 answered the door.

15 A. My husband.

16 Q. And you were laying on the couch?

17 A. Uh-huh, asleep.

18 Q. And I had a lady court reporter with me?

19 . Yeah, I know. He was bopping like he was bopping for
20 apples looking in my house.

21 . And I knocked on the door and asked you, representing a
22 client, if I could -

23 . And I told you I didn't want to talk to you, and I
24 didn't. I covered my head up and went back to sleep, and my
25 husband turned around and told you the same thing I had just

2435

1 told you, that I didn't want to talk to you.

2 Q. And I heard that and left, didn't I?

3 A. Yeah.

4 Q. As I understand it, the detective by the name of Robert
5 Guffy interviewed you on June the 19th, 1995. Do you
6 remember that?

7 A. Yeah.

8 Q. And when you talked to Detective Guffy, you wanted to
9 give him all the information that you could about this case,
10 didn't you?

11 A. Everything that I knowed about it, yeah, I sure did.
12 Because at first they thought I was my sister-in-law. They
13 thought I was Candy.

14 Q. All right.

15 A. And they thought my husband was Marvin (phonetic).

16 Q. All right. And you wanted to be honest with them?

17 A. Yeah, no reason to lie.

18 Q. And you wanted to give them as much information as you
19 could -

20 A. Yeah.

21 . -- about what you knew?

22 . Yeah.

23 . And have you had a chance to look at the interview that
24 Detective Guffy did of you on June the 19th, 1995?

25 . Yeah, I know what I said.

2436

1 Q. And do you need, you don't need to see it?

2 A. No. I know -

3 Q. okay. I want to go back here a minute. There's some
4 things you said that, I don't want to put words in your mouth
5 or mislead because I tried to write as fast as I could. But
6 you said something about being at a party?

7 A. Uh-huh.

8 Q. Something about Bryan and Richard talking about -

9 A. Arguing.

10 Q. -- about the fire or something like that?

11 A. Uh-huh, because Bryan said he was fed up with my nephew
12 running his mouth, telling everything. And Bryan said, told
13 him straight up that he wasn't even there, so how in the hell
14 is he supposed to know anything, quit running his mouth.

15 Q. okay. And that, something about that Bryan said **they**
16 had to wipe the fingerprints off the shed or trailer or
17 something?

18 A. Bryan had to wipe his fingerprints off the, it was
19 either -- **they** always used to talk about the shed or the
20 trailer, the shed or the trailer.

21 Q. okay. And, of course, when **they** talked about this, this
22 was before you ever talked to Detective Guffy on June the
23 lath, 1995?

24 A. Oh, yeah.

25 Q. Did you tell Detective Guffy, for example, did you tell

1 him that you went to this party?

2 A. Uh-huh, they knowed it, I told them.

3 Q. Okay. And on June the lath, 1995, did you tell

4 Detective Guffy that Bryan Sheppard made all of these
5 statements that you just told this jury about?

6 A. Yeah. Yes, I did.

7 Q. And you're positive you told him that because you wanted
8 to tell him all the information you had?

9 A. Yeah.

10 Q. Did you tell Detective Guffy that you did not have any
11 information firsthand about this offense?

12 A. Right. Just that -

13 THE COURT: Ma'am, just answer the questions as
14 briefly as you can, please, Miss Finch.

15 A. Yeah.

16 Q. (By Mr. O'Connor:) And did you tell him that whatever
17 information you had either came from Richard Brown or Kathy
18 Smith?

19 A. Kathy Smith?

20 Q. That's what this says.

21 1 . No.

22 . Is there a Cindy?

23 . (Witness shakes head.)

24 . Who was giving you all of your information?

25 . Actually, everybody was talking about it.

1 Q. Okay. Who is Candy Smith?

2 A. My sister-in-law.

3 Q. Is that where you were getting most of your information?

4 A. Yeah, bits and pieces.

5 Q. And you told that to Detective Guffy, that you did not
6 have any firsthand information of your own?

7 A. Uh-huh. And they said that they already knowed that
8 anyway because that's who they actually were looking for was
9 Candy.

10 Q. Okay. In that first interview with the detectives, did
11 you tell them everything that you knew?

12 A. Yeah.

13 Q. Was there any reason for them to come back out and talk
14 to you again?

15 A. Yeah. Because -- well, they came back out there and
16 brought me that subpoena when I -

17 Q. When was that?

18 A. The very first time they had me down here talking to
19 them people. The first subpoena I got.

20 Q. okay. Do you remember -

21 A. April?

22 Q. -- that a detective by the name of Guffy contacted you
23 again to interview you again on July the 13th, 1995, less
24 than a month after they interviewed you the first time?

25 A. Yeah, about the color of Richard's hair.

2439

1 Q. And in that interview, did you tell him that the
2 information that you were giving him you had gotten from
3 Candy?

4 A. Yeah, probably, probably.

5 Q. Was there any other information you needed to relay to
6 them?

7 A. To Guffy and them?

8 Q. Yeah. After that interview?

9 A. Huh-uh, I don't think so.

10 Q. Okay. Then Detective True came out to talk to you
11 again -

12 A. Yeah, they kept coming back.

13 Q. -- October 27, 1995.

14 THE COURT: Is that a question?

15 Q. (By Mr. O'Connor:) Yes. Did they come out on October
16 27th, 1995?

17 A. October, you said?

18 Q. Yes, ma ' a. i.

19 . Uh-huh.

20 . So June the 19th, July the 13th, and now they're out at
21 our house a third time?

22 . Yeah.

23 . I thought somebody said something, maybe you said
24 something?

25 . I'm thinking. I don't know.

~ 2440

1 Q. Did you tell them in the third interview anything about
2 This party that you went to where you heard all of these
3 conversations?

4 A. Uh-huh, I think so.

5 Q. This third agent right here, you told him that on
6 October the 27th, 1995?

7 A. I think so, yeah.

8 Q. You told him -- let's go through the things you told
9 him. Did you tell Agent True on October the 27th, 1995, that
10 Bryan was saying that he was trying to get his fingerprints
11 wiped off and yelling at Richard?

12 A. Yes. Hollering at Richard, shoving Richard, telling
13 Richard to shut his mouth, that he run his mouth too much.

14 Q. Did you tell Detective True on October 27th, 1995,
15 something about that Bryan Sheppard was trying to burn a lock
16 off where the fire, the trailer was and to get into it, or
17 words to that effect?

18 A. No. I told the jury that.

19 Q. Okay. You've never told anyone that, then?

20 A. No, just the jury.

21 THE COURT: You mean this jury?

22 THE WITNESS: Huh-uh.

23 Q. (By Mr. O'Connor:) Oh, the grand jury?

24 A. Yeah.

25 Q. So when the police were out there, were they telling you

1 that they only wanted limited information on this case, that
2 they -

3 A. Police out where?

4 Q. To talk to you, when they came to talk to you, did they
5 tell you not to tell them everything?

6 A. No.

7 MR. BECKER: Objection, argumentative.

8 THE COURT: Well, she answered. She said no.

9 Q. (By Mr. O'Connor:) You told them everything you knew
10 before you went to the grand jury, right?

11 A. Yeah, mostly everything, yeah.

12 Q. Well, what didn't you tell them?

13 A. Where my sister-in-law was.

14 Q. But I'm talking about the facts of this case and what
15 you knew and what you heard at that party and what you
16 specifically heard that man, Bryan Sheppard, say.

17 A. Oh, yeah, I told them.

18 Q. You had told detectives that, well, in one or two or
19 three of those interviews?

20 A. Yes. And then I told the grand jury the same thing I
21 told them.

22 Q. Now, your appearance before the grand jury was on **March**
23 the 12th, 1996?

24 A. Yes.

25 Q. So that would have been approximately -- October the

1 27th was the last time you were interviewed. Let me figure
2 my math here, about five months before you got to the grand
3 jury to -

4 A. Right.

5 Q. But you'd already told the detectives everything you
6 knew?

7 A. Yeah.

8 MR. O'CONNOR: That's all I have. Thanks.

9 THE COURT: All right. Any further cross?

11 CROSS-EXAMINATION

12 By Mr. Osgood:

13 Q. Ma'am, my name is John Osgood, and I represent Richard
14 Brown.

15 A. Uh-huh.

16 Q. When did you marry into the family?

17 A. When did I marry into whose family? Their family?

18 Q. Mr. Brown's.

19 A. No.

20 Q. You have a husband who is, his brother is married into
21 the family?

22 A. Right.

23 Q. That's Candy Smith?

24 A. Right.

25 Q. And then when did that marriage take **place and you first**

1 Met the Browns?

2 A. When did I first meet all of them?

3 Q. Yes.

4 A. When I was about 13 years old.

5 ~ Q. Were you from Marlborough, then, originally?

6 A. No, I'm from St. Joe. Candy and all of them, Candy,

7 Alena, Molly, Junior, they all lived up in St. Joe and Louie

8 was their daddy, and we always used to come down.

9 Q. I know it's not polite to ask a lady her name (sic), but

10 I think in these circumstances, it would be forgiven. How

11 old are you, ma' am?

12 A. Thirty-six years old.

13 Q. Thirty-six? And so almost seven or eight years older

14 than Richard Brown; is that right?

15 A. Uh-huh. Yeah.

16 Q. You probably should say yes or no because this lady has

17 to take it down.

18 A. Yes. Yes, I'm older than Richard.

19 Q. Okay. Now, have you socialized with Richard, then, or

20 seen him at parties and that kind of thing through the years?

21 A. Uh-huh. Yes.

22 Q. And when he drinks, does he drink hard?

23 A. Yes.

24 Q. Is he a Wartier?

25 A. Yes, he loves to party.

~

1 ~Q. And runs his mouth when he parties?

2 IA. Yes.

3 IQ. And known him to brag?

4 A. Yes.

5 IQ. And take credit for things he hasn't done?

6 A. Yes.

7 Q. Pardon?

8 A. Yes.

9 Q. Does that often, doesn't he?

10 A. Yes. That's how come I always used, when **they** would get
11 to talking about it, Richard would get to running his mouth.
12 Whoever I was with, I would say, "It's time to go."

13 Q. And I believe in response to Mr. O'Connor's question,
14 you said at one point Bryan said, shut his mouth because he
15 wasn't there, and stop running his mouth?

16 A. Yeah.

17 Q. Because he didn't know anything about it?

18 A. That's what Bryan told my nephew to do, if he didn't
19 shut up, he was going to plow him in it. That's when I came
20 down the hallway and started listening because I wasn't going
21 to let nobody hit my nephew. I don't care.

22 Q. Has Richard Brown ever told you sober that he did this
23 or had anything to do with it?

24 A. No, not when he's sober.

25 Q. Has he ever told you when he was drunk specifically that

1 ~ he was up there and did it?

2 ~ A. No. The only thing I can tell you is what I just told
3 you a few minutes ago.

4 MR. OSGOOD: Thank you very much, ma'am.

5 THE COURT: I thought we passed you up.

6 MR. PETERS: I hope not, Judge.

8 CROSS-EXAMINATION

9 By Mr. Peters:

10 Q. Ma'am, my name is Pat Peters, and I represent **Frank**
11 Sheppard. You've never heard **Frank** Sheppard say that he was
12 at the site at the time of the explosion, have you?

13 A. No. The only thing I heard **Frank** Sheppard do was
14 threaten my nephew when my nephew was drunk that night at the
15 party.

16 Q. And **Frank** Sheppard had told him to -

17 A. Shut his mouth or he was going to punch him in his mouth
18 because he ran his mouth too much, just like Bryan had told
19 him.

20 Q. And so that we're clear, that was the extent of **Frank**
21 Sheppard's involvement in this conversation, telling him to
22 quit jabbering, quit running their mouth, and that was it; is
23 that correct?

24 A. Yeah.

25 MR. PETERS: No further questions.

1 THE COURT: Any other cross? All right. Any
2 redirect?

3 MR. BECKER: No, Your Honor.

4 THE COURT: All right. You may be excused. Call
5 your next witness.

6 MR. MILLER: Your Honor, the government calls
7 Shannon Newcomb.

9 SHANNON NEWCOMB,
10 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
11 testified as follows:

13 DIRECT EXAMINATION

14 By Mr. Miller:

15 Q. Would you tell the Court and the jury your name, please?

16 A. Shannon Newcomb.

17 Q. And how old are you, ma'am?

18 A. Twenty-six.

19 . okay. You might need to keep your voice up a little
20 it. Let's try it again. How old are you?

21 . Twenty-six.

22 . And did you just recently add a new one to the family?

23 . I did. Five days ago.

24 . Now, I want to go back to November of 1988. And where
25 id you live then?

1

1 A. I lived with Carrie Neighbors at Timberlane Village
2 Apartments.

3 Q. Okay. Was this in the Marlborough area?

4 A. It was in South Kansas City in the Red Bridge area.

5 Q. Okay. Did you ever have any association with the
6 Marlborough area?

7 A. Yes, I did.

8 Q. Okay. Now, do you know a Richard Brown?

9 A. Yes, I do.

10 Q. And do you know a Bryan Sheppard?

11 A. Yes, I do.

12 Q. Do you see Richard Brown in the courtroom?

13 A. Yes.

14 Q. Could you point him out for the Court?

15 A. Sitting back -- standing up with the white shirt on.

16 MR. MILLER: Okay. May the record indicate she's
17 identified Richard Brown?

18 THE COURT: Yes.

19 Q. (By Mr. Miller:) And do you see Bryan Sheppard in the
20 courtroom?

21 A. Yes, I do.

22 Q. Would you point him out?

23 A. In the sweater, dark hair.

24 Q. The one standing now?

25 A. Yes.

1 MR. MILLER: May the record indicate she's
2 identified the defendant Bryan Sheppard?

3 THE COURT: It may.

4 Q. (By Mr. Miller:) Now, do you remember the explosion
5 that occurred on November the 29th, 1988?

6 A. Yes, sir, I do.

7 Q. How do you remember that explosion?

8 A. I remember it because I woke up when it happened, I woke
9 up in the middle of the night when the explosion occurred.

10 Q. Now, I want to go back to Richard Brown and Bryan
11 Sheppard. How did you meet Richard Brown?

12 A. Through Carrie.

13 Q. Okay. Now, did you know him before the explosion of
14 November '88?

15 A. Yes.

16 Q. Okay. And did you see him off and on, you know, around
17 that time frame?

18 A. Yes.

19 Q. Okay. How about Bryan Sheppard? Did you know him
20 before the explosion?

21 A. Yes.

22 Q. Was -- do you remember attending some parties and at the
23 parties Bryan Sheppard was there and Richard Brown was there?

24 A. Yes.

25 Q. okay. Now, I want to talk about this one party. Do you

1 remember a party where the explosion was talked about?

2 A. Yes.

3 Q. Okay. About when was this party?

4 A. To the best of my knowledge, it was in the springtime of

5 1989.

6 Q. Okay. You said to the best of your knowledge. What
7 makes you think it was spring?

8 A. Because I was wearing a sweater, but I was wearing a

9 short skirt, so I know it wasn't real cold or real warm.

10 Q. And at this party, was Bryan Sheppard there?

11 A. Yes.

12 Q. Was Richard Brown there?

13 A. Yes.

14 Q. Do you remember at whose house the party was?

15 A. Yeah, it was at Tim Laddish's house.

16 Q. Now, at this party, did a conversation about the
17 explosion come up?

18 A. Yes.

19 Q. okay. Who were you with when this came up?

20 A. Carrie Neighbors.

21 Q. Okay. Who else?

22 A. A large group of people, Bryan and Richard being among
23 them.

24 Q. okay. And who was talking about the explosion?

25 A. Richard was.

2450

1 Q. okay. And where were you and Carrie and Richard when
2 this conversation was going on?

3 A. We were outside in front of the house, somewhere in
4 between the front porch and the sidewalk and the street
5 area. There was a lot of people outside.

6 Q. okay. Now, where was Bryan Sheppard?

7 A. He was there with Richard. **They** were, there was them
8 and a small group of people that **they** were talking to and a
9 bunch of people just milling around.

10 Q. Did you also go to the party with a fellow named Mark
11 Roth?

12 A. Yes, I did.

13 Q. What happened with Mr. Roth?

14 A. He got drunk, belligerent, and left, was arrested that
15 evening by the police. The police came to that party.

16 Q. Did the conversation that you heard about the explosion
17 take place before or after the police had come?

18 A. I believe it was before.

19 Q. Now, these questions coming up to you now are about when
20 you're in the street in front of the house and Richard and
21 Bryan are present. Who started talking about the explosion
22 that killed the six firefighters?

23 A. It was Richard was the person I heard talking first.

24 Q. And what did he say?

25 A. Something to the effect of how **they** were on the site, up

1 at the site and that the security guards had seen them, so
2 **they** started a fire in one of, his pickup truck and ran, ran
3 towards the woods. I don't know which direction or anything.

4 Q.Okay. While Richard Brown is making these comments
5 about his knowledge of the fire, where is Bryan?

6 A. Standing right next to him, standing right by him.

7 Q. And what is Bryan doing?

8 A. Agreeing, interjecting, a comment every once in a while,
9 like talking with Richard almost about it.

10 Q. Howwere the two acting about this?

11 A. Like it wasn't any big deal. Nonchalant, kind of just
12 joking about how **they**, how **they** ran.

13 Q. Inbetween those two, who was doing the most talking?

14 A. Richard was doing the majority of the talking.

15 Q. How is it that you remember this conversation so well?

16 A. Because it was such an odd thing to talk about at a
17 party, you know, to be openly discussing around all of those
18 people.

19 Q. What came up about Richard's hair?

20 A. Oh, that they, that someone, a witness had reported
21 seeing -

22 MR.OSGOOD: Objection.

23 Q. (ByMr. Miller:) Is this what they're saying to you?

24 A. Well, I don't know exactly the words **they** said. **They**
25 were jokingsomething about that there was, there had been an

1 eye witness report of somebody who said **they** thought **they** saw
 2 a man and a woman running from the scene. And I think that
 3 was on the news or something, and **they** were talking about
 4 that that was funny because Richard has, had long hair at
 5 that time and that was, that was what **they** mistook for a
 6 woman was someone with long hair. And it was, and he had
 7 long hair, and that it was him instead of a woman.

8 Q. And the two were laughing about this?

9 A. Yeah, joking about it.

10 Q. And you said his hair -

11 THE COURT: There appears to be an objection
 12 ~ pending on the record. It's overruled. I assumed that you'd
 13 abandoned that. Okay. Go ahead.

14 Q. (By Mr. Miller:) How long was Richard's hair back then?

15 ~ A. Almost to his waist, like mid, middle of his back,
 16 1 fairly long.

17 Q. Did you ever date Richard Brown back then?

18 A. Not date. I was, I went out with him one evening.

19 Q. Okay. Was it this evening?

20 A. Yeah, it was the evening of that party.

21 Q. Did you ever go inside Laddish's house?

22 A. Yeah. For just a couple of minutes to look around to
 23 see who was inside, and then I came right back out.

24 Q. Did Carrie stay out in the street, Carrie Neighbors, or
 25 was she -

1 A. No, she was outside the whole time. She didn't go in.

2 Q. Do you recall another party with Carrie Neighbors at
3 1 Swope Park?

4 A. I do.

5 Q. What shelter house was that, do you remember?

6 A. It was Shelter 7.

7 IQ. Can you remember, was that before or after this party?

8 A. I don't have any idea if it was before or after it. I
9 think that it was maybe after it, but I don't know for sure.

10 Q. And what you're testifying you heard are admissions made
11 1 to you at the party at Laddish's house?

12 A. Right.

13 MR. MILLER: That's all I have of this witness,
14 Judge.

15 THE COURT: All right. Mr. O'Connor?

17 CROSS-EXAMINATION

18 By Mr. O'Connor:

19 Q. Miss Newcomb, my name is John O'Connor. I represent
20 Bryan Sheppard. I have a few questions for you.

21 As I understand it, you gave your interview to an
22 agent with the ATF on February the 9th, 1995?

23 A. I'm not sure of the date, but, yes, I gave an interview
24 to an ATF agent.

25 Q. And did the agents just come and find you, or had you

1 called them to tell them that you had information?

2 A. No, they came to me.

3 Q. And when they talked to you, did they bring a tape
4 recorder with them to tape record what you had said?

5 A. I don't remember.

6 Q. All right. Did they do a question and answer with you
7 where they asked you questions and you wrote answers, and
8 then later you initialed or signed the statement?

9 A. Yes.

10 Q. They did that?

11 A. I remember initialing and signing a statement. I don't
12 know if we wrote down answers and stuff.

13 Q. And do you believe that was -- was that the **only time**
14 they came to interview you was the one time before you went
15 to the grand jury?

16 A. Right.

17 Q. Have you ever been shown a report of interview that was
18 done of you with the ATF agent?

19 A. Yes.

20 Q. When was that shown to you?

21 A. It was shown to me once a few months ago or when I had
22 talked to someone. It was shown to me also here.

23 Q. Okay. And who would you have been talking to a few
24 months ago? Do you know who that was?

25 A. Gene Schram, I believe.

2455

1 Q. So I believe he's an agent in this case. Did he come
2 out to see you, or how was it that he came to talk to you?
3 Do you know?

4 A. You know, I don't, I don't really remember. I've talked
5 to him on a couple of occasions.

6 Q. Did he bring this interview out to have you look at it
7 to make sure everything in it was correct?

8 A. Yes, at one point he did.

9 Q. And did you tell him that everything in it was correct?

10 A. Yes.

11 Q. Was there anything that wasn't in it that you had told
12 the previous agent?

13 A. I don't -

14 THE COURT: You mean the report of interview?

15 MR. O'CONNOR: Yes, report of interview.

16 A. I don't believe so.

17 Q. (By Mr. O'Connor:) All right. And you've testified to
18 numerous things here today. Was everything that you
19 testified to here today, did you tell all of those things to
20 Agent Randol who came out to see you?

21 A. I believe so.

22 Q. Any changes that needed to be made to the report of
23 interview?

24 A. Not that I can remember.

25 Q. Okay. Now, the night of this party that you went to

1 with Carrie Neighbors, Carrie at the time, was she your
2 roommate?

3 A. Yes.

4 Q. And you and her were pretty close friends?

5 A. Yes.

6 Q. Kind of went everywhere together?

7 A. Yes.

8 Q. When you went to this party, did Carrie go to **the party**
9 with you, I mean, where you got in the car and went there
10 together?

11 A. Yes.

12 Q. And this was at Tim Laddish's house?

13 A. Yes.

14 Q. Had you been drinking that night?

15 A. Maybe one or two beers, but I was not drunk.

16 Q. Okay. And were you smoking any marijuana that night?

17 A. It's possible. I don't remember for sure, but it's
18 possible.

19 Q. And did Carrie Neighbors go inside the party?

20 A. No.

21 Q. In the statements that you've attributed to Bryan
22 Sheppard and Richard Brown, those happened out in the street;
23 is that correct?

24 A. Yes.

25 Q. Did you tell that to the interviewing agent, Mr. Randol,

2457

1 do you remember if you told him that?

2 A. I don't remember.

3 Q. They certainly didn't happen in the living room of the
4 residence at Mr. Laddish's, did they?

5 A. It was in front. It was there in between the front
6 porch and the front door and the street. There was, that was
7 basically just the area that everyone was standing in.

8 Q. Did this conversation happen in the living room of Tim
9 Laddish's house?

10 A. I don't believe so.

11 Q. And do you remember testifying before the grand jury in
12 ~ this case on July the 26th, 1995?

13 1 A. Yes.

14 Q. Page 6, line 3. I want to ask you if these questions
15 were asked and these were your answers. To put it in
16 ~ perspective I'm going to start with 3.

17 "Is there a specific instance or a party or, you
18 know, a" -

19 Answer: "Yes."

20 Question: -- "something -- what do you mean?

21 Where was it at and what was said?"

22 Answer: "We were at Tim Laddish's house, which is
23 a neighborhood acquaintance of everybody in the neighborhood
24 and, neighborhood of Marlborough at that time, and they were
25 in the front living room and not talking directly to me."

1 Do you remember telling that to the grand jury?

2 A. Yes.

3 Q. Did the conversation happen in the living room or in the
4 street?

5 A. I believe that I was mistaken then and it happened
6 outside of the living room.

7 Q. Did someone show you your grand jury testimony before
8 you testified today?

9 A. Yes.

10 Q. Did you make that change?

11 A. No.

12 THE COURT: Maybe you all had better come up here a
13 minute, please.

14 (Counsel approached the bench and the following
15 proceedings were had:)

16 THE COURT: I just need to know something that I
17 really don't know. Does a witness, a grand jury witness have
18 the authority to change a transcript of grand jury
19 testimony?

20 MR. BECKER: We wouldn't make changes. I mean,
21 whatever is said is transcribed. If there's a -- I mean, the
22 only change we would ever make is typographical, frankly, or
23 misspellings.

24 MR. O'CONNOR: I did not mean to leave that
25 impression. I can ask another question. What I meant was

1 did she tell anyone that there was a difference in her grand
2 jury testimony than what she knew to be the truth.

3 MR. OSGOOD: For what it's worth, the question you
4 asked, legally, the perjury statute -- and I'm not, this
5 doesn't have anything to do with her, but for record
6 purposes, the perjury statute says that a witness **can correct**
7 previously sworn testimony at any time and bring it to the
8 attention of the person who took it, and it goes to the issue
9 of materiality and still, whether or not the correction is
10 made timely in terms of the subsequent charge. Would you
11 agree with that, Mr. Becker?

12 MR. BECKER: Absolutely.

13 MR. OSGOOD: That's the reason that they review it.

14 THE COURT: All right.

15 (The following proceedings were had in open court:)

16 Q. (By Mr. O'Connor:) Miss Newcomb, when I read this back
17 to you about you saying it happened in the living room and
18 then your testimony has been that you believe it happened in
19 the street, did you bring that difference in your grand jury
20 testimony to the attention of anyone this morning?

21 A. I don't believe I did.

22 Q. okay. Now, in the conversation in the street, you say
23 happened in the street, did you hear one or both of -- you
24 tell me who you heard say **they** went to the construction site
25 to steal dynamite.

1 A. I don't remember either of them stating what **they** were
2 going to steal. Richard had said that **they** were up at the
3 construction site.

4 Q. Do you remember telling Agent Randol when he talked with
5 you that **they** had gone to the construction site to steal
6 dynamite, that Bryan and Richard had said that?

7 A. I had said to him that that was what I, that's what I,
8 ~ everybody thought that **they** went up there to steal, but I
9 don't remember that, if either one of them specifically said
10 dynamite. **They** could have gone up there to steal just about
11 anything.

12 Q. You just assumed that?

13 A. That was the talk in the neighborhood.

14 Q. okay. Did you tell, did you say that they threw
15 something, did they say out there that they threw something
16 in the bed of a pickup truck, setting it on fire so it would
17 be a diversion while they ran and not be seen by a guard?

18 A. **They** said that **they** threw something in the pickup
19 truck. I don't know if **they** said it was in the bed or where
20 **they** threw it. And **they** didn't use those exact words because
21 it was, it was a very long time ago. I don't remember the
22 exact words.

23 Q. So did you tell Agent Randol, at least, that when he
24 interviewed you on February the 9th, 1995, that **they** said
25 **they** threw something in the bed of a pickup truck, setting it

1 on fire?

2 A. Yes. I don't know if I said the bed exactly, but, yes,
3 **they** said **they** threw something into a pickup truck and set it
4 on fire.

5 MR. O'CONNOR: Can we approach a minute, Your
6 Honor?

7 THE COURT: Yeah.

8 (Counsel approached the bench and the following
9 proceedings were had:)

10 MR. O'CONNOR: What I want to do is I want to read,
11 I think, to put it in perspective the answers all the way
12 over here that I want.

13 But the question is, "Did Richard Brown ever bring
14 this up again about being involved in this?"

15 And the answer was, "They talked about it on a few
16 occasions. I can remember several occasions that, you know,
17 the things were said just, you know, off the cuff. And then
18 they, like, just like kind of mini-conversations about this,
19 and then about the pickup truck. Mostly everything they
20 said, that I remember them ever saying was when people were
21 talking to them about what happened they were saying, oh,
22 those security guards saw us and we lit the truck on fire.
23 We threw something through the windows or something like
24 that, through the windows into the seat and then ran away."

25 Her statement now is that she said they said they

2462

1 threw something in the back of the pickup truck.

2 MR. MILLER: That's not her statement.

3 MR. BECKER: If he wants to read it, that's fine.

4 Go ahead and read it. Tear into it.

5 THE COURT: Read it all.

6 MR. O'CONNOR: Do you have an objection to it?

7 MR. OSGOOD: You're using it to impeach her because
8 he said he threw something in the -

9 MR. O'CONNOR: She first said that they threw it
10 into the bed of the pickup truck, and now she's saying they
11 threw it through the window of the pickup truck.

12 THE COURT: She's saying now she doesn't know
13 whether they threw it in the bed or the window. She said
14 they threw something in the pickup truck and set it on fire.

15 MR. BECKER: We're not objecting.

16 MR. O'CONNOR: Okay. I missed that.

17 THE COURT: All right.

18 (The following proceedings were had in open court:)

19 Q. (By Mr. O'Connor:) Did one of them say that **they** threw
20 something in the bed of a pickup truck, setting it on fire in
21 that conversation in the street that night?

22 A. **They** said **they** threw something in the pickup truck to
23 set it on fire.

24 Q. And Carrie Neighbors was there?

25 A. Yes, she was.

2463

1 Q. You were there?

2 A. Yes.

3 Q. I mean, Bryan was there and Richard was there?

4 A. Yes.

5 Q. Now, you were asked, I believe, on direct examination
6 when you believe that this conversation took place in the
7 street out there at the party; is that correct?

8 A. Uh-huh.

9 Q. And I believe what you said was that you remembered it
10 was in the spring of '89?

11 A. Yes.

12 Q. Do you remember being before the grand jury under oath
13 on the 26th of July, 1995, and this question being asked?
14 I'll start at line 15 on Page 5.

15 "What can you remember about that? First of all,
16 when did that, when did you hear that, and where did you hear
17 it or something about it?"

18 Answer: "I don't recall the exact date or anything
19 like that."

20 Question: "What year, how about that?"

21 "Gosh, I guess it was maybe a year or so after the
22 explosion happened, after the explosion itself because it was
23 quite a while afterwards. **They** were still kind of talking
24 about it, probably eight months to a year after it
25 happened."

1 Is that what you told the grand jury?

2 A. Yes, it is.

3 Q. Could this conversation have happened eight months after
4 the explosion?

5 A. No. After I thought about it and thought about what I
6 was wearing, it had to have been in the springtime because I
7 was wearing a sweater and a shorter skirt, and it wasn't cold
8 or anything. I'm almost sure it was the springtime, that I
9 was mistaken.

10 Q. Okay. And did you try to remember that before you went
11 to the grand jury and testified, or you're saying this is
12 something you remembered since you went to the grand jury?

13 A. Yeah, I've had time in between then to think about what
14 happened then. And as I recall, I can remember what I was
15 wearing, and that's why I think that it was the springtime.

16 Q. Did you know when the fire and explosion happened, did
17 you know that date?

18 A. Yes.

19 Q. November the 29th, 1988?

20 A. Yes.

21 Q. So eight months from that date would be, eight months
22 from that date would be July 29th, 1988, wouldn't it?

23 A. Okay.

24 Q. Did you and Carrie have a conversation after overhearing
25 what you said Richard Brown and Bryan Sheppard said, did you

1

1 guys have a conversation about it?

2 A. Yes.

3 Q. Did you hear Carrie, did you tell Carrie that you heard
4 something about them saying that **they** went there to steal
5 dynamite, or is that something you assumed?

6 A. I don't know exactly what we said to each other. I just
7 remember that we talked about how strange it was that they
8 would be talking about it at all.

9 Q. Did you tell Carrie that **they** talked about throwing
10 this, starting a fire in the truck or somehow **they** started a
11 fire in the truck? Did you repeat that to Carrie?

12 A. I think we discussed it together. We both heard the
13 same things.

14 Q. And did you tell Carrie that **they** talked about doing it
15 to create this diversion or something to do with the security
16 guards?

17 A. Right. Because the security guards had seen them or
18 **they** had seen the security guards or something.

19 Q. Now, you said that you were at Swope Park, is that true,
20 at another time?

21 A. Yes.

22 Q. Did you ever tell the Agent Randol who talked with you
23 on February the 9th, 1995, about a, any conversation that
24 happened at Swope Park?

25 A. I don't remember.

2466

1 Q. And when Agent Schram came back out to see if your
2 interview was correct, did you tell him anything about Swope
3 Park?

4 A. I don't remember.

5 Q. When you went before the grand jury on July the 26th,
6 1995, did you mention anything in there anywhere about being
7 at Swope Park and overhearing a second conversation?

8 A. No, I don't believe so. I remember being at Swope Park
9 with Carrie and Bryan and Richard there, but I have, I don't
10 remember at all what they said.

11 Q. And as I understand it, before you even went to the
12 party, you'd heard a lot of rumors about what happened out
13 there?

14 A. Yeah, everybody had.

15 Q. And since you've been to the parties, even after you
16 testified and talked to the agents, there's still rumors
17 going on about what happened out there.

18 THE COURT: I'm sorry.

19 Q. (By Mr. O'Connor:) Are there still rumors going on out
20 there?

21 THE COURT: Thank you.

22 A. I assume. I don't associate or hang around with anyone
23 in that neighborhood or area or anything anymore.

24 MR. O'CONNOR: One second, Your Honor, I think I'm
25 about finished.

1 Q. (By Mr. O'Connor:) Now, when you were talking with
2 Bryan and Richard at the party, were they both, had they both
3 been -- outside the party, I'm sorry -- had they both been
4 drinking?

5 A. I believe so.

6 Q. Could you tell, for example, whether Bryan Sheppard was
7 smoking any marijuana or using any **drugs**?

8 A. I can't remember.

9 Q. Could have been?

10 A. Yeah, could have been. I didn't really pay any
11 attention to that.

12 Q. And at Swope Park, did he appear to be intoxicated, as
13 well?

14 MR. MILLER: I'm going to object to Swope Park.
15 It's not relevant. She doesn't recall any conversations.

16 THE COURT: Yeah. There's been nothing specific
17 about Swope Park.

18 MR. O'CONNOR: I thought she said on direct that
19 she did. I'm sorry.

20 THE COURT: She was there, but that's all she
21 testified to.

22 MR. O'CONNOR: Okay. I think that's all I have.
23 thank you, ma'am.

24 THE COURT: All right. Any other cross?

1 CROSS-EXAMINATION

2 By Mr. Osgood:

3 Q. Hi, Miss Newcomb. My name is John Osgood, and I
4 represent Richard Brown. Might I ask how old you are, ma'am?

5 A. Twenty-six.

6 Q. okay. And so you're, what, a year or two younger than
7 Richard Brown?

8 A. I don't know how old he is.

9 Q. Did you grow up down there in the neighborhood?

10 A. I hung around there a lot.

11 Q. okay. And where did you live at in this time frame back
12 in '88 and '89?

13 A. In Red Bridge.

14 Q. Red Bridge?

15 A. Terrace Lake.

16 Q. And I don't remember whether all of our jurors are from
17 the Kansas City area or not. So would you tell them in
18 relation to the Marlborough area where Red Bridge is? How
19 would you get from, say, the QuikTrip up in Marlborough down
20 to Seven Corners in the Red Bridge area.21 A. I would probably go down to Blue River Road and take
22 Blue River Road to Red Bridge out there.

23 Q. Or if you go down 71 straight down?

24 A. Right. Right.

25 Q. So it's two or three miles, four miles as the crow

2469

1 flies?

2 A. Probably not very far. I've never paid any attention to
3 how far it is.

4 Q. I don't know. Do the kids in Red Bridge go to Center
5 High School?

6 A. I don't know. I didn't go to school when I lived out
7 there.

8 Q. Well, at that time was it usual or unusual for the kids
9 in Red Bridge sometimes to hang around up in Marlborough and
10 vice versa?

11 A. I don't know. I just know that I lived out there.

12 Q. I understand. You say you dated Richard one time?

13 A. Yes.

14 Q. And that was this night at the, when you went over to
15 this party?

16 . Yes.

17 Q. So you didn't know much about him; is that a fair
18 statement?

19 . I knew him and had been around him and everything. We
20 were never like close friends or anything.

21 . Is he a talker?

22 . Yeah.

23 . Does he, is he a bragger, think a lot of himself, that
24 kind of thing?

25 . Seemed to then. I haven't spoken to him for many years.

1 Q. Did he tend to exaggerate a lot?

2 A. Seemed to, but, you know.

3 Q. Okay. Kind of caught up with himself?

4 A. (Witness nods head.)

5 Q. Did he try to impress you that night?

6 A. He flirted, you know.

7 Q. Flirted?

8 A. Yeah.

9 Q. Talked big about things he'd done?

10 A. Not directly to me, really. Just kind of flirting.

11 Q. Kind of talking at you?

12 A. Talking at everyone, really.

13 Q. Letting everybody hear him, he's a big guy in
14 Marlborough and knows what's going on?

15 A. Right.

16 Q. Knows everything that's happening; is that a fair
17 statement?

18 THE COURT: Are you asking her questions, Mr.
19 Osgood?

20 MR. OSGOOD: Yes, I am, Your Honor.

21 THE COURT: Then ask her a question.

22 . (By Mr. Osgood:) Seemed to know everything that was
23 happening; is that a fair statement?

24 . Seemed to.

25 . All right. Did you tell the grand jury, ma'am, in fact,

2471

1 that everybody in that neighborhood seemed to know what was
2 going on with everybody else's business?

3 A. Yes.

4 Q. And minded everybody else's business; is that what you
5 told them?

6 A. Yes.

7 Q. Now, did -- were you with Carrie **Frank** most of the time?

8 A. I'm sorry, Carrie **Frank**?

9 Q. Were you and Carrie together while you were at the
10 party?

11 A. Yeah, most of the time.

12 Q. Was this kind of a double date situation?

13 A. No. No, I don't think she went there with any
14 particular person, aside from me.

15 Q. Okay. So were you, had you talked to Richard earlier
16 and were going to meet him at the party, was that it?

17 A. No.

18 Q. How did you hook up together?

19 A. He was just there and I was just there.

20 Q. So it was kind of a young guy, young folks getting
21 together at the party?

22 A. Right.

23 Q. As opposed to a prearranged date?

24 A. Right.

25 Q. And he's flirting with you?

1 A. Yes.

2 Q. Did -- like a lot of girls who go to a party together,
3 did the two of you then pretty much stick right together?

4 A. Most of the evening.

5 Q. And were you together when these conversations you've
6 testified to occurred?

7 A. Yes.

8 Q. Okay. Do you ever remember Richard, or Bryan for that
9 matter, saying that they put dynamite under the truck and
10 blew it up?

11 A. No.

12 Q. That didn't happen in your presence?

13 A. No.

14 Q. Okay. Were they drinking?

15 A. I believe so, but I didn't -

16 Q. Partying hard?

17 . I wasn't paying attention to what they were doing,
18 really.

19 . They were partying hard.

20 THE COURT: Is that a statement or a question?

21 MR. OSGOOD: It's a question.

22 . (By Mr. Osgood:) Weren't they?

23 THE COURT: Well, then, ask a question.

24 MR. OSGOOD: Yes, sir, I apologize.

25 . (By Mr. Osgood:) Did you tell the grand jury, ma'am,

~

1 That it was actually light conversation?

2 IA. Yes, it didn't seem to be real stressful conversation.

3 Q. Okay. Now, did you immediately run out and call the

4 police and report -

5 A. No.

6 Q. -- that you'd just gotten two confessions to this big

7 crime?

8 A. No.

9 MR. MILLER: I'm going to object to that question

10 as argumentative.

11 THE COURT: Yes. I think that's a bit combative.

12 I'll sustain the objection.

13 Q. (By Mr. Osgood:) Did you call the police and report

14 them?

15 A. No.

16 Q. You, in fact, allowed Richard Brown to give you a ride

17 home that evening, didn't you?

18 A. Yes.

19 Q. And then it was after that I think that you talked to

20 Carrie about it, is that correct, sometime after that?

21 A. Yes.

22 Q. And then you weren't contacted by anybody until Special

23 Agent Ronald C. Randol, R-A-N-D-O-L, from Alcohol, Tobacco,

24 and Firearms, came to talk to you in 1995; is that right,

25 ma' am?

1 A. That's correct.

2 Q.

February 9th?

3 A. Yes.

4 1 Q. And that's when you told them pretty much what you just
5 told me here today; is that right?

6 A. Yes.

7 Q. Did you put it in the terms as you and I have discussed,
8 at least insofar as Richard is concerned?

9 A. Yes.

10 Q. Now, the word diversion keeps coming up in this case.
11 Is that your word?

12 A. Yes.

13 Q. Okay. You didn't hear that from the agents?

14 A. No.

15 Q. Did you use that word anywhere in the grand jury,
16 though?

17 A. I believe so.

18 Q. Okay. Would you -

19 A. I'm not sure. I would have to look and see what I said.

20 Q. Did you have a chance to look at the prepared statement
21 that -- not statement, excuse me -- the prepared report of
22 interview that Mr. True prepared?

23 A. Yes.

24 Q. And did you have a chance to look at the grand jury
25 transcript also?

1 A. Yes.

2 Q. Do you remember the word diversion being on the first
3 page of Agent True's report?

4 A. I'm not real sure. I believe so. I would have to see
5 it.

6 MR. MILLER: Excuse me. It's not Agent True's
7 report.

8 Q. (By Mr. Osgood:) I'm sorry, ma'am. Excuse me. Agent
9 Randol.

10 A. I don't know what was on what page.

11 Q. Okay. I think you also told the grand jury, didn't you,
12 that it didn't appear to be a big deal at the time?

13 A. Not to them.

14 Q. Okay. Or to you, for that matter, because you went home
15 with him that night; is that right?

16 A. Yes, I did.

17 MR. OSGOOD: Okay. Thank you very much.

18 THE COURT: All right.

19 MR. MILLER: No redirect.

20 THE COURT: Thank you, ma'am. You're excused.

21 MR. PETERS: Judge, can we approach for a minute?

22 THE COURT: Yes.

23 (Counsel approached the bench and the following
24 proceedings were had:)

25 MR. PETERS: A couple of things. Who is next?

1 MR. BECKER: Margaret Weaver, and then Carol
2 Smith.

3 MR. PETERS: I'm assuming that I don't have to make
4 any continuing objection, the thing that we talked about
5 yesterday where they'll get up and say they didn't say Frank,
6 they didn't say Skip, and they didn't say Darlene, that's
7 fine, and we can argue that; is that right?

8 THE COURT: Yes.

9 MR. PETERS: If the next witness -- a restroom
10 break would be greatly appreciated. I don't know how long
11 the next witness is going to be.

12 MR. BECKER: We have Weaver, and then we have Smith
13 next. We want to get these next two on.

14 THE COURT: We'll take about ten minutes.
15 Everybody be back in here at 3 o'clock because I do have to
16 stop at 4:00.

17 (The following proceedings were had in open court:)

18 THE COURT: We're going to take our afternoon break
19 now, ladies and gentlemen. We will try to be ready to resume
20 promptly at 3 o'clock. Don't talk about the case. You may
21 withdraw.

22 (The following proceedings were had in the
23 courtroom out of the presence of the jury:)

24 THE COURT: All right. We're in recess.

25 (A recess was taken from 2:49 p.m. to 3:06 p.m.)

1 THE COURT: All right. Proceed, counsel.

2 THE COURT: Who is next?

3 MR. BECKER: Weaver, Judge.

4 (The following proceedings were had in the
5 courtroom in the presence of the jury:)

6 THE COURT: You may proceed, counsel.

7 MR. BECKER: United States calls Margaret Weaver.

8 THE COURT: Stand by the witness chair and be
9 sworn, please.

11 MARGARET WEAVER,
12 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
13 testified as follows:

14 MR. BECKER: Thank you, Judge.

15 — — —

16 DIRECT EXAMINATION

17 By Mr. Becker:

18 Q. Please state your name and spell your last name.

19 A. Margaret Weaver, W-E-A-V-E-R.

20 Q. How old are you?

21 A. Twenty-five.

22 Q. Where do you live?

23 A. South of Kansas City.

24 Q. What do you do for a living?

25 A. I work in a factory.

- 1 Q. Do you have a family?
- 2 A. Yes, I do.
- 3 Q. How many children?
- 4 A. I have two children.
- 5 Q. Going back to November of 1988, where did you live?
- 6 A. At 80th and Paseo.
- 7 Q. In Kansas City, Missouri?
- 8 A. Yes, sir.
- 9 Q. Where did you work?
- 10 A. At Things Remembered at Ward Parkway Mall.
- 11 THE COURT: I'm sorry, Miss Weaver, I'm not hearing
- 12 you.
- 13 Q. You've got to slow down, okay?
- 14 A. At Things Remembered at Ward Parkway Mall.
- 15 Q. What kind of shop was that at Ward Parkway Mall?
- 16 A. It's a gift shop. They do engravings and make keys and
- 17 things like that.
- 18 Q. Now, on Monday, November 28, 1988, do you remember when
- 19 you worked that day?
- 20 A. In the evening.
- 21 Q. What would the hours have been?
- 22 A. I would have got off around 9:00 or 10:00.
- 23 Q. What was your, briefly, what was your job there at
- 24 Things Remembered?
- 25 A. I engraved and made keys, and then when the store

1 closed, I had to finish the orders that needed to be engraved
2 for the next morning, clean up and ring the register out and
3 make, do the paperwork and make the night deposit.

4 Q. So after the store would close, there was still things
5 for you to do?

6 A. Oh, yeah.

7 THE COURT: Is this a shop in the middle of the
8 concourse at the mall?

9 THE WITNESS: Yes, sir.

10 THE COURT: Free-standing?

11 THE WITNESS: Yes.

12 Q. (By Mr. Becker:) Did you then -- did you leave the mall
13 that night, how did you get home?

14 A. A girlfriend of mine, she came and picked me up.

15 Q. What was her name?

16 A. Anna Lisa Kelsey.

17 Q. Where did you go after your girlfriend picked you up?

18 A. I went over to see my boyfriend at work, and then we
19 picked him up and dropped him off somewhere else.

20 Q. How long did this whole process take do you think where
21 you went and talked to him? For example, how long did you go
22 and talk with your boyfriend?

23 A. Probably half hour, 45 minutes.

24 Q. Then you said you took him somewhere?

25 A. Uh-huh.

2480

1 Q. Where did you take him?

2 A. Over to a friend of his house. It was right around the
3 same area.

4 Q. Where did you go after that?

5 A. We went to my house.

6 Q. Was that a house or an apartment, or what was it?

7 A. It was like a studio apartment.

8 Q. What was the address, if you remember?

9 A. 8060 Paseo.

10 Q. So it was on Paseo roughly at 80th Street?

11 A. Uh-huh, yes, sir.

12 Q. After you got to your studio apartment, what were your
13 plans for that evening?

14 . I was going over to Anna Lisa's house to spend the
15 night.

16 . What did you do when you got back to your studio
17 apartment?

18 . I started getting my clothes together, and she was
19 looking for some tapes, and I needed to go get some
20 cigarettes.

21 . Where did you go?

22 . I went to 7-Eleven right down the street.

23 . On Paseo?

24 . Yes, sir.

25 . And that would be at 79th and Paseo?

1 ~ A. Yes, sir.

2 Q. I want to show you what's been marked for identification
3 purposes Governments Exhibit 329. Ask you if you recognize
4 that.

5 A. Yes, sir.

6 Q. What is it?

7 A. That's 7-Eleven.

8 Q. That's a photograph of the 7-Eleven after it was shut
9 down?

10 A. Yes, sir.

11 Q. Was it not boarded up when you went there that night?

12 A. No, it wasn't.

13 MR. BECKER: I would offer this into evidence as
14 Government's Exhibit 329.

15 MR. O'CONNOR: No objection.

16 THE COURT: All right. It's admitted without
17 objection.

18 **(Government's Exhibit 329 was admitted into**
19 **evidence.)**

20 Q. (By Mr. Becker:) And I also want to show you what's
21 been marked for identification purposes as Government's
22 Exhibit 331. Ask you if you recognize this.

23 A. Yes. That's a church across the street from 7-Eleven.

24 Q. And is this the view, then, from the 7-Eleven across
25 Paseo?

1 A. Uh-huh. I mean, yes, sir.

2 MR. BECKER: I would offer this into evidence as
3 Government's Exhibit 331.

4 MR. O'CONNOR: No objection.

5 THE COURT: It's admitted without objection.

6 **(Government's Exhibit 331 was admitted into**
7 **evidence.)**

8 Q. (By Mr. Becker:) So that's sort of a big intersection
9 there at 79th and Paseo; is that right?

10 A. Yes.

11 Q. When -- at that time in 1988, on the evening or, then,
12 the early morning hours of November 29, 1988, did you know an
13 individual by the name of Bryan Sheppard?

14 . Yes, I did.

15 Q. How did you know him?

16 . I went to school with him, and I knew him from around
17 the neighborhood.

18 . Center **High** School or grade school?

19 . Yes, **high** school.

20 . Do you see him here in court today?

21 . Yes.

22 . Could you tell us where he's sitting and what he's
23 wearing?

24 . Over by the wall wearing the sweater.

25 MR. BECKER: Indicating the gentleman standing up

2483

1 with his hands in his pockets, Judge, the Defendant Bryan
2 Sheppard.

3 THE COURT: Yes, yes, the record can show that.

4 Q. (By Mr. Becker:) Did you know an individual by the name
5 of Richard Brown?

6 A. Yes, sir.

7 Q. Do you see him here in court today?

8 A. Yes, sir.

9 Q. Could you tell us where he's sitting and what he's
10 wearing?

11 A. He's sitting over by the wall with a shirt and tie on.

12 Q. Well, we've got a couple of fellows with ties.

13 A. Well, it's a -

14 Q. Bolo tie?

15 . Right.

16 MR. BECKER: Indicating Defendant Richard Brown,
17 our Honor.

18 THE COURT: Very well.

19 . (By Mr. Becker:) How did you know Richard Brown?

20 . From living in the neighborhood.

21 . Did you at that time have a friend by the name of Debbie
22 ally, or Debbie Howard?

23 . Yes, sir.

24 . How did you know her?

25 . I went to school with her, as well.

1 Q. In late November of 1988, I'm sorry, did Debbie Tally
2 know Bryan Sheppard?

3 A. Yes, sir.

4 Q. How?

5 A. That was his girlfriend at the time.

6 Q. so you went -- how did you get down to 7-Eleven from
7 your apartment?

8 A. I walked.

9 Q. What did you do when you got to 7-Eleven?

10 1 A. I went in and bought some cigarettes and bought a pop.

11 1 THE COURT: And bought a what?

12 THE WITNESS: A pop, a coke.

13 Q. What happened after that?

14 A. I came outside, and I don't remember if it was in the
15 parking lot or right out in the street, and I ran into Bryan
16 and Richard.

17 Q. What were they doing?

18 A. Just cruising around, I guess.

19 Q. Well, were they standing, sitting, driving -

20 A. Standing.

21 Q. Were they near anything or standing next to anything?

22 A. Next to a car.

23 Q. What car?

24 A. It was a black car, I believe it was a Monte Carlo.

25 Q. Do you know whose car that was?

1 A. I believe at the time it was Bryan's.

2 Q. Did you have any conversation -- was there anybody else
3 with Bryan and Richard?

4 A. Yes.

5 Q. Who was that?

6 A. I don't know for sure.

7 Q. Man or a woman?

8 A. It was a man.

9 Q. Did you have any conversation with Bryan Sheppard and
10 Richard Brown?

11 A. Yes, sir.

12 Q. Please tell us about that.

13 A. We just basically were just talking, and they were
14 talking about a party they were going to go to and what was I
15 doing and stuff like that.

16 Q. Now, given your activities, I guess, after getting,
17 after work, would this be sometime after midnight into the
18 early morning hours of November -

19 A. Yes, sir.

20 Q. The next day?

21 A. Yes, sir.

22 Q. Did you tell them you were going to the party, or what
23 was the end result of that conversation?

24 A. No, I just told them I was going home, and I left and
25 went home.

2486

1 Q. And this conversation happened right at the 7-Eleven on
2 Paseo?

3 A. Uh-huh, yes, sir.

4 MR. BECKER: I have no further questions, Judge,
5 thank you.

6 THE COURT: Cross?

7 MR. O'CONNOR: Just a couple of questions, Judge.

8 -- -- --

9 CROSS-EXAMINATION

10 By Mr. O'Connor:

11 Q. Miss Weaver, I'm John O'Connor. I represent Bryan
12 Sheppard. I have a couple of questions for you.

13 Back, I think you were first interviewed -- were
14 you first interviewed, I should say, on October the 12th,
15 1989; is that correct?

16 . Uh-huh, yes, sir.

17 . And that probably would have been about almost ten
18 months after the explosion?

19 . Yes.

20 . Is that correct? And you were interviewed by the Kansas
21 City, Missouri, Police Department, and they did do like a
22 question and answer statement that they had you read and
23 sign; is that correct?

24 . Yes.

25 . And you remembered seeing Richard and Bryan at the

1 7-Eleven, I think that's depicted in Government's Exhibit
2 329; is that correct?

3 A. Yes, sir.

4 Q. Which I think is on the board right here now. Do you
5 remember what Bryan Sheppard was wearing that night?

6 A. Jeans and a T-shirt, I believe.

7 Q. Okay. And do you remember what Richard was wearing?

8 A. I believe jeans and a T-shirt.

9 Q. Okay. And do you remember telling the detective, John
10 Fraise, in your signed statement that the third person that
11 you believe they were with was a fellow by the name of Mike
12 Dimaggio?

13 A. No, I said it could have been Mike Dimaggio. I didn't
14 know for sure.

15 Q. And you thought it might have been Mike Dimaggio at the
16 time?

17 . No. They asked me if the man could have been Mike
18 Dimaggio, and I said I didn't know, that it could have been.
19 It was somebody I didn't know, either I didn't know very well
20 or wasn't friends with because I didn't really pay any
21 attention to them.

22 . Okay. Did they supply the name Mike Dimaggio to you to
23 see if you knew them, or did you mention the name of Mike
24 Dimaggio as being the person -

25 . They asked me.

2488

1 Q. If Mike Dimaggio was the third person?

2 A. Yes, sir.

3 Q. And did you say, "I think it might have been Mike
4 Dimaggio"?

5 A. It might have been.

6 Q. okay. And they were out -- they were in Bryan
7 Sheppard's black Monte Carlo?

8 A. Yes, sir.

9 Q. Now, do you remember yourself what the weather was that
10 night?

11 A. No, sir, I don't. I don't think it was very cold
12 because I walked.

13 Q. And just in trying to make sure that this is the night
14 of the explosion and not some other night, how are you able
15 to pinpoint that particular night in your mind when you were
16 interviewed like ten months later? Can you tell us how you
17 knew that it was the night before the explosion?

18 A. Because I went and spent the night at my girlfriend's
19 house, and when the explosion happened, I hit my head on the
20 wall.

21 Q. Okay. And that's how you kind of remember what
22 happened?

23 A. Uh-huh, yes, sir.

24 Q. And as I understand it, you could have seen them as late
25 as 2:00 in the morning?

2489

1 A. I don't believe it was quite that late, but -

2 Q. 1:00 to 2:00?

3 A. Yeah, somewhere around there.

4 Q. And when you last talked to them, they said they were
5 going to a party?

6 A. They were talking about a party. I don't know if they
7 went or not.

8 MR. O'CONNOR: Okay. Okay. Thank you very much.

9

10 CROSS-EXAMINATION

11 By Mr. Osgood:

12 Q. Just a couple of questions, ma'am. My name is John
13 Osgood. I represent Mr. Brown. The Monte Carlo that Mr.
14 Sheppard had, did it have loud mufflers on it?

15 A. I don't know. I know it was loud.

16 Q. Okay. You mean noisy when you started it up?

17 . Yes, it was noisy.

18 Q. Did you grow up down in that area?

19 . Yes, sir.

20 . And you're about the same age as they are; is that
21 right?

22 . Yes, I believe so, yes.

23 . Was that common or uncommon for the kids in the
24 Marlborough area to have loud mufflers on their cars?

25 . It was pretty common.

!

1 Q. Pretty common? A lot of them there?

2 I A. Yeah.

3 Q. Almost every kid in the neighborhood had one that way?

4 A. I don't know about every, but there was quite a few.

5 MR. OSGOOD: Okay. Thank you.

6 THE COURT: Any further cross?

7 MR. PETERS: No, Judge.

8 THE COURT: Any redirect?

9 MR. BECKER: No redirect, Your Honor.

10 THE COURT: Thank you, ma'am.

11 MR. MILLER: Your Honor, the government calls

12 Carolee Ann Smith.

14 CAROLEE ANN SMITH,

15 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,

16 testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Miller:

20 Q. Would you tell the Court and the jury your name, please?

21 A. My name is Carolee Ann Smith.

22 THE COURT: I'm sorry. Your first name?

23 THE WITNESS: Carolee, C-A-R-O-L-E-E.

24 Q. (By Mr. Miller:) How old are you, ma ' am?

25 A. Thirty-nine.

1 Q. And what's your occupation?

2 A. I'm a registered nurse.

3 Q. How long have you been a registered nurse?

4 A. Sixteen years.

5 Q. And do you work here locally?

6 A. Yes.

7 Q. Do you live in the Marlborough area now?

8 A. Yes.

9 Q. okay. When did you move into the Marlborough area?

10 A. Approximately ten years ago.

11 Q. Did you live there prior to the explosion of 1988?

12 A. Yes, sir.

13 Q. Who do you live next-door to?

14 A. Naomi Sheppard.

15 THE COURT: Which one?

16 THE WITNESS: Naomi.

17 Q. I want to show you what's been marked as Government's
18 Exhibit No. 406, and is this a representation of your house
19 next to Miss, to Naomi's house?

20 A. Yes, sir.

21 MR. MILLER: Offer Government's Exhibit No. 406
22 into evidence.

23 MR. PETERS: No objection.

24 THE COURT: All right. It's admitted without
25 objection.

~
1 **(Government's Exhibit 406 was admitted into**
2 **I evidence.)**

3 Q. (By Mr. Miller:) And what we're talking about where my
4 pen is, is this your residence here?

5 A. Yes, sir.

6 Q. And this is Naomi's house?

7 A. Yes, sir.

8 Q. And how do you know her last name, as Naomi -

9 A. Sheppard.

10 Q. Sheppard? Do you know a **Frank** Sheppard?

11 A. Yes, sir.

12 Q. Do you know Earl Skip Sheppard?

13 A. Yes, sir.

14 Q. Okay. Do you see **Frank** Sheppard here in the courtroom?

15 A. Yes, sir.

16 Q. Can you point him out?

17 A. Right there.

18 Q. The gentleman that just stood up?

19 A. (Witness nods head.)

20 MR. MILLER: Your Honor, may the record indicate
21 she's identified Defendant **Frank** Sheppard?

22 THE COURT: It may.

23 Q. (By Mr. Miller:) Do you see Earl Skip Sheppard in the
24 courtroom?

25 A. Yes, sir.

1 Q. Can you identify him?

2 A. Right there.

3 MR. MILLER: Your Honor, may the record reflect
4 she's identified Earl Skip Sheppard?

5 THE COURT: He was standing. Yes, it may.

6 Q. (By Mr. Miller:) Now, I want to talk about your house
7 in this picture here. Whereabouts is the kitchen to your
8 house?

9 A. Their kitchen?

10 1 Q. Your kitchen, at your house.

11 A. At the other end of the house.

12 Q. Over here?

13 A. Behind the garage.

14 Q. Okay. And is your house set up the same as Naomi
15 Sheppard's house?

16 A. As far as I know, yes.

17 Q. Okay. How many times have you been in Naomi Sheppard's
18 house?

19 A. One time.

20 Q. And where is your bedroom at?

21 A. It's at the corner of the house.

22 Q. Here where my pen is?

23 A. Yes, sir.

24 Q. And when the explosion happened, where were you?

25 A. In bed.

1 Q. And what happened?

2 A. Well, when the explosion went off, it pretty much threw
3 me out of bed.

4 Q. And I'm going to stop and back up for a minute. Is
5 there anything unique in your home about a crawl space?

6 A. Well, there is a crawl space in the back bedroom in the
7 closet floor, yes.

8 Q. Okay. And you changed it now, but how did you get
9 access to it back then?

10 A. You had to use a screwdriver to pry out the floor.

11 Q. Was it like a trapdoor?

12 A. Yes.

13 Q. And how big is that crawl space underneath there?

14 A. It runs the full length of the house.

15 Q. so it's large?

16 A. Yes.

17 Q. Is it deep? I mean, is it easy to get -

18 A. At parts it can be deep.

19 MR. PETERS: Objection, relevancy.

20 THE COURT: Where are we going with this, counsel?

21 MR. MILLER: There was testimony earlier from Patty
22 Smith about things in a crawl space in Naomi Sheppard's
23 house.

24 MR. PETERS: so what's the relevancy of this
25 woman's house?

1 MR. MILLER: She said they're set up the same.

2 MR. PETERS: Can I voir dire the witness?

3 THE COURT: I don't think you need to take time for
4 that, Mr. Peters. Let's go on. I'll overrule the
5 objection. Let's move on.

6 Q. (By Mr. Miller:) And I'm going to show you another
7 picture of Naomi Sheppard's house, Exhibit No. 407. Is that
8 also her house?

9 A. Yes, sir.

10 MR. MILLER: Any objection to 407?

11 Q. This is again Naomi Sheppard's home. And can you tell
12 from living next-door to her where the dryer vents are?

13 A. The dryer vent's below the garage window.

14 Q. Here where my pen is?

15 A. Pretty much -- yeah, right there.

16 Q. This privacy fence, was that there in November of 1988?

17 A. No, sir.

18 Q. And when did you put that up?

19 A. It will be two years in July.

20 Q. This tree here back in November of '88, was it that big?

21 A. No, sir.

22 Q. other than that, with the absence of the foliage, is
23 this pretty much how it looked in November of '88?

24 A. Yes, sir.

25 Q. okay. I want to go back now to the explosion. **You're**

1 in your bedroom and it woke you up. And what was the first
2 Thing that you did?

3 A. I got up and looked, walked through the house to make
4 sure nothing had been damaged and came back into the bedroom.

5 Q. Okay. When you came
back into your bedroom, did

6 anything draw your attention to the bedroom window?

7 A. Yes, I heard the sounds of a truck pulling in the
8 driveway.

9 Q. And we say bedroom window. Is it this window where my
10 pen cap is?

11 A. Yes, sir.

12 Q. And you heard a truck pull in. What I mean by how it
13 pulled in, was it quickly, loud, how did it pull in that drew
14 your attention?

15 A. It was loud.

16 Q. And when you looked out the window, what did **you see**?

17 A. I saw four people getting out of the truck.

18 Q. Okay. Did you know,
did you recognize any of the four
19 people?

20 A. Two of them.

21 Q. Who did you recognize?

22 A. **Frank** and Skip Sheppard.

23 THE COURT: I'm sorry?

24 THE WITNESS: **Frank** and Skip Sheppard.

25 Q. (By Mr. Miller:) In the years that you lived there, how

1 often had you seen that pickup truck there in that house,
2 parked in front of that house?

3 A. Often.

4 Q. How many times had you seen **Frank** Sheppard come and go
5 in that house?

6 A. Often.

7 Q. How many times had you seen Defendant Skip Sheppard come
8 and go in that house?

9 A. Often.

10 THE COURT: When was this that you saw this?

11 THE WITNESS: This was the night of the explosion.

12 THE COURT: Before or after the explosion?

13 THE WITNESS: After the first one.

14 Q. (By Mr. Miller:) That's my next question, sir. How
15 soon after the first explosion did you see the truck pull in?

16 A. Five, ten minutes after the first explosion.

17 Q. Now, you say four men got out of the truck. Did you
18 know the other two?

19 . Well -- no, I didn't know who the other two people were.

20 . Who got out of the driver's side?

21 . Skip.

22 . Did you see which side **Frank** got out of?

23 . No.

24 . After the four got out, where did they go?

25 . In between the houses.

1 Q. So you're saying, was the truck parked here where this
2 car is now?

3 A. Yes, sir.

4 Q. And then they went around here?

5 A. Yes, sir.

6 Q. How unusual was that for -- I'm sorry. **How unusual was**
7 it for them to, in the years that you've lived there, park in
8 the driveway and go around to the back?

9 A. Fairly unusual.

10 Q. If you hadn't recognized **Frank** or Skip Sheppard, what
11 would you have done?

12 A. Probably called the police.

13 Q. Was it unusual or not to see Defendant Skip Sheppard or
14 Defendant **Frank** Sheppard come and go from that house at that
15 time in the morning?

16 A. No.

17 Q. How were the four of them moving?

18 A. They were walking. They weren't walking slowly, but
19 they weren't running either.

20 . They were walking quickly?

21 . Yes, sir.

22 . Did you know whose truck it was?

23 . Yes, sir.

24 . Whose truck was it?

25 . It was Mr. Sheppard' s.

1 Q. You say Mr. Sheppard' s. What was his name?

2 A. Naomi's husband. I believe his name was Earl.

3 Q. Did you also know him as Archie?

4 A. Yes, I had heard him called that, yes.

5 Q. Did you ever meet him before?

6 A. Yes, a couple of times.

7 Q. Do you know, is he still living?

8 A. No, sir, he's not.

9 Q. I want to show you Government's Exhibits 311, 312, 313
10 and 314. Are these fair and accurate representations **of the**
11 pickup truck you saw parked in front of Naomi Sheppard's
12 house five to ten minutes after the explosion on November the
13 29th, 1988?

14 A. Yes, sir, it's the same color. It looks just like it,
15 except it's rusted now, but it wasn't then.

16 MR. MILLER: Offer Government's Exhibit 311, 312,
17 313, and 314, Your Honor.

18 MR. PETERS: No objection.

19 THE COURT: All right. They're admitted without
20 objection.

21 **(Government's Exhibits 311, 312, 313, and 314 were**
22 **admitted into evidence.)**

23 Q. (By Mr. Miller:) And we'll use 312. That's the pickup
24 that you saw that night, or the same color?

25 A. The same -

2500

1 Q. You believe that's the pickup truck?

2 A. I believe that it is, yes.

3 Q. Do you remember at that time, was there a camper shell
4 on it?

5 A. I do not remember whether there was at that time or not.

6 Q. Did Mr. Sheppard keep -- I'm talking about the deceased
7 Mr. Sheppard, did he have a camper shell on it every now and
8 then?

9 A. Yes, he did.

10 Q. I want to go back now to that morning when you saw
11 them. What was the lighting like?

12 A. There was a street light that's out on the street that's
13 in front of my house. I have a front porch light, and the
14 Sheppards have a front porch light.

15 Q. Now, you spoke of a street light. Is it on this
16 picture?

17 A. No, it's not.

18 Q. Is it further over this way?

19 . Yes, sir.

20 . And your porch light?

21 . It's a little further over, as well.

22 . All right.

23 . It's over the front door.

24 . And Naomi Sheppard's porch light, is that also off this
25 picture?

- 1
- 1 A. Yes, sir.
- 2 Q. And from your years of living there, does it light up
- 3 that area well enough?
- 4 A. Yes, sir.
- 5 Q. When they got out, do you remember what they were
- 6 wearing?
- 7 A. Dark clothing.
- 8 Q. Did either -- when I say **they**, I'm talking about **Frank**
- 9 Sheppard and Defendant Skip Sheppard. Did either one have a
- 10 hat on?
- 11 A. No, sir.
- 12 Q. Do you remember how long Skip Sheppard's hair was then?
- 13 A. It was about collar length.
- 14 Q. How did he comb it?
- 15 A. Straight back.
- 16 Q. Do you remember what **Frank** Sheppard's hair looked like?
- 17 A. It was about a little shorter than that, but almost to
- 18 the collar.
- 19 Q. How did he comb it?
- 20 A. Kind of had a part to it, off to the side.
- 21 Q. Could you hear their voices?
- 22 A. I could hear them talking, yes.
- 23 Q. Did you recognize their voices?
- 24 A. Yes.
- 25 Q. Could you understand what **they** were saying?

1 A. No.

2 Q. When did you first notify the authorities about what
3 you'd seen?

4 A. After I saw the state grand jury, I had notified the
5 Tips hotline, but no one returned the call at that time.

6 Q. And who is a Mr. Randy Gibson?

7 A. He was a gentleman that had worked on my house when it
8 had been hit by a Suburban truck.

9 Q. And did you tell him what you saw that morning?

10 A. Yes.

11 Q. Have you been seeing news accounts of the trial as it's
12 been going on?

13 A. Yes, sir.

14 Q. Have you seen some of the drawings of some of the
15 witnesses?

16 A. Yes, sir.

17 Q. Did you recognize anyone?

18 A. Yes, sir.

19 Q. Who?

20 A. Patty Smith.

21 Q. And how often had you seen Patty Smith come and **go from**
22 the Sheppard house?

23 A. A couple of times.

24 MR. MILLER: One moment, Your Honor. No further,

25 Your Honor.

2503

1 THE COURT: Any cross?

2 - - -

3 CROSS-EXAMINATION

4 By Ms. Hunt:

5 Q. Miss Smith, my name is Susan Hunt. I represent Skip
6 Sheppard. I believe in your direct testimony you stated you
7 1 talked to a person named Randy Gibson; is that correct?

8 A. Yes, yes, ma'am.

9 Q. And you gave him this information several years ago; is
10 that correct?

11 A. Yes.

12 Q. And did you have an opportunity when you came and talked
13 to Agent True to listen to a tape that Mr. Gibson had made?

14 A. Yes, ma'am.

15 Q. Let's go to the night of the explosion. What did you do
16 earlier that evening?

17 A. I would have been at work.

18 Q. What time did you get home?

19 A. Approximately 9:30.

20 Q. And I think you said you were in bed when the first
21 explosion went off?

22 A. Yes, ma'am.

23 Q. Were you asleep?

24 A. Yes, ma'am.

25 Q. And it woke you up?

1 A. Yes, ma ' an.
2 Q. Did you look at a clock and see what time it was?
3 A. I looked at the clock, and it said it was after 4:00.
4 Q. Just shortly after 4: Go?
5 A. Somewhere in there, yeah.
6 Q. And you got up, walked through the house to see if there
7 was any damage; is that right?
8 A. Correct.
9 Q. And after you made that tour of the house is when you
10 looked out the window and heard this pickup truck; is that
11 right?
12 A. Yes, ma ~ a.
13 Q. And you just saw the one pickup truck; is that right?
14 A. Yes, ma'am.
15 Q. And you looked out your bedroom window; is that right?
16 A. Yes, ma'am.
17 Q. The bedroom window in the front of the house, or is
18 there one at the side of the house also?
19 . There's one at the side of the house, as well.
20 Q. Did you look out both the windows?
21 . Yes, sir.
22 . And these four people, could you tell if the other two
23 ere a man or a woman?
24 . I couldn't tell real clearly, no.
25 . You just knew they were human beings, correct?

2505

1 A. Yes.

2 Q. But it could have been a man or a woman, or it could
3 have been two women or two men; is that correct?

4 A. Yes.

5 Q. And they walked right by your window; is that right?

6 A. Yes, ma'am.

7 Q. But had you ever seen these people before?

8 A. No, ma'am.

9 Q. Have you ever seen Darlene Edwards before?

10 A. Yes, ma'am.

11 Q. Have you ever seen Bryan Sheppard before?

12 A. I believe once.

13 Q. And I think you testified there was some light, so these
14 people were readily visible to you?

15 A. Yes.

16 Q. Were they wearing coats?

17 A. Yes, ma'am.

18 Q. And you heard some conversation out there; is that
19 right?

20 . I heard them talking, yes.

21 . But you could not make out what they were saying; is
22 that right?

23 . No, ma'am.

24 . Did these four individuals get out of the pickup **truck**
25 and immediately start walking by the side of the house?

2506

1 A. Yes, ma'am.

2 Q. Did they go in the back and take anything out of the
3 pickup truck?

4 A. I didn't see them take anything out, no.

5 Q. Did you see them carry anything down this pathway?

6 A. No.

7 Q. And you can't remember if the camper shell was on the
8 truck or not?

9 A. I really don't remember.

10 Q. Did you hear the second explosion?

11 A. Yes.

12 Q. And where were you when that second explosion occurred,
13 where in the house?

14 A. In bed.

15 Q. You had gone back to bed?

16 A. Yes.

17 Q. Did you get out of bed again after the second explosion?

18 A. Yes, ma'am, I did.

19 Q. Did you look through your house again?

20 A. Yes, ma'am.

21 Q. Did you look outside?

22 A. Yes, ma'am.

23 Q. Did you see any people outside?

24 A. No, ma'am.

25 Q. Was the truck still there?

1 A. Yes, ma'am.

2 Q. Did you ever see a black pickup truck go into that
3 driveway that night?

4 A. No, ma'am.

5 Q. Did you ever see this truck leave the driveway that
6 night?

7 A. No, ma'am.

8 Q. So when you saw these four people go into the Sheppard
9 house, you never saw them leave again; is that right?

10 A. No, ma'am, I never saw them leave again.

11 Q. Then you read several -- I think you testified on direct
12 that you had seen the state grand jury. You didn't see the
13 grand jury, you just heard about it; is that right?

14 A. I saw the news clips on TV.

15 Q. You weren't down at the grand jury?

16 A. No.

17 Q. And you never told anybody with the state police at that
18 time while that grand jury was going on that you had seen
19 this; is that right?

20 A. That's when I called the Tips hotline, yes, at that
21 time.

22 Q. After you'd read some news accounts?

23 A. Right.

24 Q. And you kind of had a feel for who was testifying?

25 A. I was surprised at who they had there. I didn't know

1 anything about it.

2 Q. But you learned about it through the newspaper?

3 A. Yes.

4 Q. And you kind of learned who they were talking to and
5 what they were talking about; is that right?

6 A. Yes.

7 Q. Then you called the Tips hotline; is that right?

8 A. Yes.

9 Q. Did you leave your name and phone number?

10 A. I said I was a neighbor and left my phone number.

11 Q. Did you ever call them back?

12 A. No.

13 Q. When is the first time, then, you actually sat down with
14 a law enforcement person and talked about this information;
15 do you remember?

16 A. Two years ago, three.

17 Q. Okay.

18 A. I'm not real sure exactly when.

19 Q. Two to three years ago?

20 A. Uh-huh.

21 Q. Which was several years after 1989; is that right?

22 A. Yes.

23 Q. Okay. And that's the first time you told this
24 information to any law enforcement officer; is that right?

25 A. Yes, ma'am.

2509

1 Q. And they called you because a repairman told them; is
2 that right?

3 A. Yes, ma'am.

4 Q. You didn't come forward to them between '89 and '95, or
5 whenever it was you talked to them?

6 A. No, ma'am.

7 Q. What is the -- your house, is it a stone house?

8 A. No, ma'am. It just has a brick front.

9 Q. Has a brick front. Mrs. Sheppard's does not, does it?

10 A. No, she has siding on her house.

11 Q. Skip Sheppard never admitted to you that he did this
12 crime, did he?

13 A. No, ma'am.

14 Q. And I think you testified on direct that you saw this
15 truck pull in the driveway and these people get out about
16 seven or ten minutes after the first explosion?

17 A. Yes.

18 Q. How far do you live from the construction site?

19 A. six blocks.

20 Q. It would take a minute or two to get there; is that
21 right?

22 A. Yes, ma'am.

23 MS. HUNT: That's all I have.

24 THE COURT: Any further cross?

25 MR. PETERS: Judge, I guess I do.

2510

1

2

CROSS-EXAMINATION

3 By Mr. Peters:

4 Q. Ma'am, my name is Pat Peters, and I represent **Frank**
5 Sheppard. We've heard testimony about the similarity between
6 your house and Naomi Sheppard's house, and I just wanted to
7 ask you some things about that. In Naomi Sheppard's house,
8 have you ever seen or been shown a crawl space in her house?

9 A. No, sir.

10 Q. Okay. And on Naomi Sheppard's house **as you walk around**
11 **hack**, is that layout similar to yours where you have the
12 garage, and the kitchen is behind the garage?

13 A. Yes, sir.

14 Q. Okay. And on Naomi Sheppard's house, behind that, there
15 isn't an add-on shed behind her house, is there?

16 A. What do you mean, add-on shed?

17 Q. There isn't something that protrudes out from the house
18 behind that's been added on to the house, is there, a storage
19 area or anything like that?

20 A. No.

21 Q. And if you were, if you were coming home and wanting to
22 go into the kitchen, let's say to the refrigerator for a
23 beverage, is that the way that you would go **is around back to**
24 the house? Is that how you could get into the kitchen?

25 A. You can at their house. You can't at mine, no.

2511

1 Q. Okay. So -

2 MR. PETERS: That's all I have, Judge.

3 THE COURT: All right. Anything else on cross?

4 MR. O'CONNOR: Yes, Your Honor.

6 CROSS-EXAMINATION

7 By Mr. O'Connor:

8 Q. Miss Weaver (sic), I'm John O'Connor. I represent Bryan
9 Sheppard. I understand when you were interviewed by -- you
10 gave an affidavit to Agent True and Detective Guffy, you had
11 told them that you had met Bryan Sheppard and seen him a few
12 times, as I think you said it?

13 A. Yes.

14 Q. Would you stand up, Mr. Sheppard? Is this the Bryan
15 Sheppard that you had seen before the blast?

16 A. Yes, sir.

17 Q. Okay. Sit down.

18 And you said that there were two other people who
19 got out of this vehicle with Skip and **Frank** Sheppard; is that
20 true?

21 A. Yes, sir.

22 Q. And do you remember -- and as I understand it, you said
23 you did not recognize those two people?

24 A. Correct.

25 Q. And did you mean by did not recognize them that you had

2512

1 not seen them before, did not recognize them from having seen
2 them before, as you had recognized **Frank** and Skip from seeing
3 them before?

4 A. I didn't recognize them.

5 Q. Okay. And can you tell me whether the two men, not
6 **Frank** and Skip -- strike that. You didn't say they were two
7 men.

8 Were the two people that got out of the car, could
9 you say they were two men or two women?

10 MR. MILLER: This is repetitious. This was covered
11 by Miss Hunt.

12 THE COURT: It really has been covered. once was
13 enough.

14 Q. (By Mr. O'Connor:) Okay. What were the individuals
15 wearing that got out of the truck?

16 A. They all had on dark clothes.

17 Q. Did they all have on coats?

18 A. As I said before, yes.

19 Q. Was it cold that night?

20 A. It was November.

21 Q. Did either of the two human beings that got out with
22 **Frank** and Skip Sheppard have just T-shirts on?

23 A. Not at that time, no.

24 Q. And did you ever see a black Monte Carlo there in front
25 of the house or come into that house that night?

1 A. No. Not while I was there, no. That I saw.

2 MR. O'CONNOR: That's all I have. Thank you.

3 THE COURT: Any other cross? All right. Any

4 redirect?

5 MR. MILLER: No redirect.

6 THE COURT: Thank you, ma'am. You're excused.

7 All right. Gentlemen, is that it for today?

8 MR. BECKER: That's it, Judge.

9 THE COURT: All right. Ladies and gentlemen, we've
10 concluded our work for the week. I urge you, again, not to
11 discuss the case or allow anyone to discuss it in your
12 presence. Don't pay any attention to any media coverage
13 about the case that has not otherwise come to your
14 attention.

15 We will start Monday morning at 9:30. Have a good
16 weekend. Drive carefully. You're excused.

17 (The trial adjourned for the day at 3:50 p.m.)

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

V.

GEORGE FRANK SHEPPARD,
EARL D. SHEPPARD,
DARLENE M. EDWARDS,
BRYAN E. SHEPPARD, and
RICHARD W. BROWN,
Defendants.

No. 96-00085-01/05-CR-W-9-8
February 10, 1997
Kansas City, Missouri
CRIMINAL

 $\sim e$

TRANSCRIPT ON APPEAL

V O L U N B X I V

(Pages 2515 - 2735)

BEFORE THE HONORABLE JOSEPH E. STEVENS, JR.

UNITED STATES DISTRICT JUDGE

AND A JuRY

Proceedings recorded by electronic stenography
Transcript produced by computer

Kathleen N. Wirt, CCR, RMR
United States Court Reporter

811 Grand, Room 654 * Kansas City, MO 64106
(816) 474-4616

Page 2515
I N D E X
V O L U M E X I V
[Pages 2515 - 2735)
Monday, February 10, 1997
(Trial)

GOVERNMENT'S WITNESSES:

Cynthia Butner

Direct Examination by Mr. Becker 2521
Cross-examination by Mr. Osgood 2526
Cross-examination by Mr. Peters 2549

Stephen Wayne Morales

Direct Examination by Mr. Miller 2557
Cross-examination by Mr. O'Connor 2572
Examination on Offer of Proof by

Mr. O'Connor 2605

Resumed Cross-examination by Mr. O'Connor . . 2612

Cross-examination by Mr. Peters 2629

Cross-examination by Mr. Osgood 2659

Examination on Offer of Proof by

Mr. O'Connor 2668

Robert Williams

Direct Examination by Mr. Becker 2676
Cross-examination by Mr. Peters 2685

Carol Williams

Direct Examination by Mr. Becker 2692
Cross-examination by Mr. Peters 2697
Cross-examination by Mr. Bunch 2705

Monica Mansard

Direct Examination by Mr. Miller 2707
Cross-examination by Mr. Osgood 2714
Cross-examination by Mr. O'Connor 2731

Reporter's Certificate 2735

Monday, February 10, 1997

1

3 (The following proceedings were had in the
4 courtroom out of the presence of the jury commencing at 9:36
5 a.m.:)

6 THE COURT: Gentlemen, and ladies, what is the
7 situation with the filing of the instructions?

8 MR. BECKER: I'm sorry, Judge.

9 THE COURT: I just was asking what the situation
10 is. I haven't communicated with the clerks fully about it
11 yet, but what about instruction filing? Have you all made
12 them?

13 MR. BECKER: Government has, Judge, and they told
14 me to -- we are still getting the clean copy and a disk
15 available for the Court. What we have are normal jury
16 instructions that were filed this morning.

17 THE COURT: They were filed this morning?

18 MR. BECKER: Yes. And I'll leave five copies of
19 the -- apparently the -- the clerk doesn't, did not want -
20 normally we file an original, and then one for each defendant
21 down in the clerk's office, but they've instructed me this
22 morning with jury instructions that I needed to give all five
23 copies to the Court. So I have copies.

24 THE COURT: So you haven't distributed any to the
25 defendants yet?

1 MR. BECKER: Yes, I have.

2 THE COURT: You have distributed them to the
3 defendants?

4 MR. BECKER: This is an additional five copies.

5 THE COURT: Well, thank you. I need those. Leave
6 those with Miss Sheehan, then.

7 And how about the defendants? Starting in the
8 order of the indictment, I guess, Mr. Peters?

9 MR. PETERS: Judge, we'll have our instructions -

10 MR. O'CONNOR: I can speak to that, I think. We've
11 got their instructions, Your Honor. I don't think there's
12 going to be much variance of those. We may have a few
13 additional for the defendants that we're working on, and
14 we're hoping to have them to you tomorrow for all of us.

15 THE COURT: Mr. Becker, what's your anticipation of
16 winding down the government's case?

17 MR. BECKER: We anticipate finishing Wednesday.

18 THE COURT: All right. And will it be Wednesday
19 before the defense is able to give me some estimate of how
20 long it will take?

21 MR. O'CONNOR: We're thinking a trial week,
22 meaning, trial week being four days. So if he finishes
23 Wednesday, I think it's going to be late Wednesday, from what
24 I understand.

25 THE COURT: So you plan on starting Thursday?

1 MR. O'CONNOR: Thursday morning we have witnesses
2 ready, I think, Judge, and Monday is a holiday, President's
3 Day. I didn't know if you were going to work Monday and go
4 Tuesday through Friday or -

5 THE COURT: I think we'd better do that. We will
6 have Friday -- normally, we would not work Friday. What we
7 might do is work Friday morning. I don't want to discommode
8 anybody. I think we're coming along pretty well. If you
9 want to work Friday morning, then we'll be sure of, we can
10 take the holiday on Monday and be sure of finishing next
11 week.

12 MR. O'CONNOR: You're planning on going Monday?

13 THE COURT: No, not going Monday. We'll work
14 Friday morning, stop at noon, take Monday off and then go
15 ahead.

16 MR. O'CONNOR: Is that a trial day or instruction
17 conference Friday?

18 THE COURT: No. I don't think it's going to be
19 trial. I don't think instructions are going to be that much
20 of a problem. Okay?

21 MR. BECKER: The only other issue, in discussing
22 with administrative counsel, Mr. O'Connor, over the weekend,
23 I requested the names of any persons that may be witnesses
24 for the defense that are not on their witness list.

25 THE COURT: Mr. O'Connor?

2520

1 MR. O'CONNOR: I apologize, Your Honor.

2 THE COURT: That's all right. He says he requested
3 the names of anybody that might be witnesses that aren't on
4 the list.

5 MR. BECKER: Mr. O'Connor provided me those names
6 for his client, and Mr. Osgood provided me any names. And
7 the other counsel declined to provide any names, saying that
8 they would be rebuttal witnesses. Obviously, if they're
9 surrebuttal witnesses, technically, then, I would not be
10 entitled to their names, but if they're witnesses that the
11 defense intends to call during their case, then those names
12 should be provided if they're not already on the list.

13 MR. BUNCH: Paul, I did tell you this morning that
14 I will give those to him today.

15 MR. BECKER: Mr. Bunch said that a few minutes ago.

16 THE COURT: Miss Hunt, you too?

17 MS. HUNT: Yeah, I'll give them to him right now.

18 THE COURT: Mr. Peters?

19 MR. PETERS: our list remains the same and,
20 depending on one witness today and I think one on Wednesday,
21 I may have an additional one or two witnesses. But I won't
22 know that until you put on a couple of yours. And as soon as
23 I have them, I'll give them to you, but right now I don't
24 think I'll have any.

25 THE COURT: Okay. All right.

1 (The following proceedings were had in the
2 courtroom in the presence of the jury:)

3 THE COURT: Good morning, ladies and gentlemen, I
4 hope you all got here comfortably. Have a seat, and we'll
5 get started.

6 Mr. Becker, you may call your next witness.

7 MR. BECKER: Thank you, Judge. The United States
8 calls Cynthia Butner.

9 THE COURT: Come up, please, stand by the **witness**
10 stand and be sworn.

12 CYNTHIA BUTNER,
13 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
14 testified as follows:

16 DIRECT EXAMINATION

17 By Mr. Becker:

18 Q. Good morning.

19 A. Good morning.

20 Q. Please state your name and spell your last name.

21 A. Cynthia Butner, B-U-T-N-E-R.

22 Q. How old are you?

23 A. Twenty-five.

24 Q. What do you do for a living?

25 A. I'm a manager.

1 Q. Of what kind of business?

2 A. Retail.

3 THE COURT: Retail manager?

4 THE WITNESS: Uh-huh.

5 Q. (By Mr. Becker:) Did you grow up in the Marlborough
6 area of Kansas City, Missouri?

7 A. Yes.

8 Q. Where did you go to school?

9 A. Center Elementary.

10 Q. Do you know an individual by the name of Richard Brown?

11 A. Yes.

12 Q. How do you know him?

13 A. He's friends with my brothers.

14 Q. What are your brothers' names?

15 A. Tom and John Butner.

16 Q. How long have you known Richard Brown?

17 A. Probably about 15 to 20 years.

18 Q. Pretty much your whole life, then?

19 A. Yes.

20 Q. Do you see him here in court today?

21 A. Yes.

22 Q. Could you tell us where he's sitting and what he's
23 wearing?

24 A. He's wearing the striped shirt.

25 MR. BECKER: Indicating Defendant Richard Brown,

1 Your Honor?

2 THE COURT: All right.

3 Q. (By Mr. Becker:) Where were you living in November of
4 1988?

5 A. With my aunt.

6 Q. Where was that?

7 A. By Brooklyn, right off Brooklyn.

8 Q. In Kansas City, Missouri?

9 A. Yes.

10 Q. on November 20 -- in the early morning hours of November
11 29, 1988, do you remember the explosion that occurred at 71
12 Highway?

13 A. Yes.

14 Q. What do you remember about it happening?

15 A. I remember the house shaking. I remember a big
16 explosion.

17 Q. A couple of months after that in January of 1989, do you
18 remember being a party at, being at a party at a different
19 aunt's house?

20 A. Yes.

21 Q. Whose house were you at for this party?

22 A. Dorothy Haley.

23 Q. Where did she live at that time?

24 A. She lived right off Brooklyn.

25 Q. So both the aunt you were living with and the aunt where

2524

1 you went to the party at, they were both living on Brooklyn
2 or near Brooklyn?

3 A. The other one lived near Brooklyn, but not on Brooklyn.

4 Q. Is it, was it close to 85th Street, in that
5 neighborhood?

6 A. Yes.

7 THE COURT: When was the party at the aunt's house,
8 ma' am?

9 THE WITNESS: I don't remember the exact date. It
10 was in January.

11 THE COURT: Of '89?

12 THE WITNESS: Uh-huh.

13 Q. (By Mr. Becker:) Do you remember if Richard Brown was
14 at that party?

15 A. Yes.

16 Q. Do you remember hearing any conversation by Richard
17 Brown, any statements by Richard Brown about the explosion
18 that killed the six firefighters?

19 A. Yes.

20 Q. What did he say?

21 A. **He said him and a group of people** was there at the
22 explosion.

23 Q. Did he say anything about a fire?

24 A. Yes.

25 Q. Did he say why **they** were there?

2525

1 A. To take some dynamite.

2 THE COURT: Some what?

3 THE WITNESS: Take some dynamite.

4 Q. (By Mr. Becker:) Did he say whether or not **they** got
5 dynamite?

6 A. No, he did not.

7 Q. Did he say anything about a fire?

8 A. Yes.

9 Q. What did he say?

10 A. That **they** got, used some gasoline to set it on fire.

11 Q. Was -- did Richard Brown say anything about getting
12 caught for this crime?

13 A. He said that **they**, that **they** think **they**'re so smart, but
14 **they**'re not going to be able to catch them.

15 Q. Where was, where did this conversation take place in the
16 house?

17 A. In the living room.

18 Q. Where was Richard Brown?

19 A. On the couch.

20 Q. Where were you?

21 A. Behind the couch.

22 Q. Was he talking to you, then, over his shoulder, or how
23 was that working?

24 A. He was not talking to me. He was talking to some other
25 people.

2526

1 Q. At the time of the explosion, do you know what kind of
2 vehicle Richard Brown had?

3 A. A black truck.

4 Q. And that -- was it your brother Tom who testified here
5 last week?

6 A. Yes.

7 MR. BECKER: I have no further questions at this
8 time, Judge.

9 THE COURT: All right. I don't have an order
10 here. You have them for me?

11 MR. O'CONNOR: I have them here, Your Honor. Mr.
12 Osgood is going to go first.

13 THE COURT: Thank you.

14 CROSS-EXAMINATION

15 By Mr. Osgood:

16 Q. Miss Butner, is it Butner or Butner?

17 A. Butner.

18 Q. My name is John Osgood, and I represent Richard Brown.
19 And we've not met, have we?

20 A. No.

21 Q. How old are you, ma ' am?

22 A. Twenty-five.

23 Q. And this party occurred when?

24 A. In January.

1 Q. Of what year?

2 A. 1989.

3 Q. And when was the first time you were contacted by

4 anybody from law enforcement with regard to this
investigation?

6 A. I contacted them.

7 Q. When?

8 A. It was when they were trying to find information on the

9 explosion.

10 Q. Would that be after you heard it on Unsolved Mysteries?

11 A. No, it was before.

12 Q. Was there information in the newspaper or on television

13 or something?

14 A. There was banners hanging up.

15 Q. Banners?

16 A. Yes.

17 Q. Where were these banners at, ma ' am?

18 A. Down the street from where I live.

19 Q. And where did you live at the time?

20 A. 77th Street.

21 Q. What kind of banners were these?

22 A. It was for a reward.

23 Q. How much?

24 A. I believe it was \$25,000.

25 Q. Could it have been fifty?

1 A. Yes.

2 Q. Okay. Be twenty-five if you got half?

3 A. Right. But -- yes.

4 Q. So you talked to somebody else about splitting the
5 reward. That's a question.

6 MR. BECKER: Objection.

7 THE COURT: That seems to assume something clearly
8 not in evidence. I would like for you to assure me that you
9 have some good faith belief that that is true.

10 MR. OSGOOD: I'm asking a question. Did you talk
11 to somebody else -

12 THE COURT: Without a good faith belief, how can
13 you ask that question?

14 MR. OSGOOD: Well, Your Honor, it's just a
15 question. I want to know if she discussed it.

16 THE COURT: You can't cross-examine just
17 willy-nilly without some good faith belief that there's truth
18 to an implied fact.

19 MR. OSGOOD: I can't ask her if she talked about
20 somebody else splitting the reward, Your Honor? It goes to
21 the issue of the reward and to the whole issue of the case,
22 one of them. It's a major issue in the case.

23 THE COURT: Do you have some cause to believe that
24 she did talk to somebody else about splitting the reward?

25 MR. OSGOOD: She just talked about twenty-five, and

2529

1 the reward is fifty. That's half, Your Honor. She's
2 smiling.

3 THE COURT: You can answer that.

4 A. No, I didn't talk to anybody about the reward, but I
5 believe when I first seen it, it said that it was \$25,000.

6 Q. All right. You're married to -- or I forget. Tom is
7 your brother or your husband?

8 A. My brother.

9 THE COURT: Now, the jury is instructed that you
10 are to disregard any implication that this lady had any
11 agreement to split an award with anybody that might have been
12 in Mr. Osgood's question.

13 Q. (By Mr. Osgood:) And do you recall the date that you
14 saw the poster?

15 A. I remember seeing the poster hanging, yes.

16 Q. Do you remember the date?

17 A. Not the exact date.

18 Q. You, I believe, talked to the ATF on February the 17th
19 of 1995; is that correct?

20 A. It was somewhere around there, yes.

21 Q. Were you going to school then?

22 A. Yes.

23 Q. Where were you going to school?

24 A. At TAD.

25 Q. Taft?

1 A. TAD, T-A-D, Institute.

2 Q. T-A -

3 A. D.

4 Q. D?

5 A. Uh-huh.

6 Q. Is that some kind of -

7 THE COURT: What does TAD stand for?

8 THE WITNESS: I'm not -- I can't say. I was going
9 there for business management.

10 Q. (By Mr. Osgood:) Okay. That's what I was going to ask
11 you. It's not a high school, it's some kind of special
12 training school?

13 A. Yes.

14 Q. Business college or something like that?

15 A. Yes.

16 THE COURT: Where is it?

17 THE WITNESS: It's -- let me think.

18 THE COURT: In Kansas City?

19 THE WITNESS: Yes. I believe it's on -- it's on
20 Troost.

21 Q. (By Mr. Osgood:) Okay. Now, how old were you when this
22 party occurred?

23 A. I was about 18 or 19.

24 Q. Okay. And why did you wait until 1995 to contact the
25 authorities?

2531

1 A. Because before then I never really thought about it.

2 Q. Had you -- how long had you known Richard Brown?

3 A. For most of my life.

4 Q. In the neighborhood?

5 A. Yes.

6 Q. And had you heard him say other outrageous things during
7 the course of the time you've known him?

8 A. No.

9 Q. All right. Never?

10 A. No.

11 Q. And then when you heard this standing behind the couch,
12 why didn't you call the police immediately?

13 A. Because I didn't know if it was my place to step in and
14 say anything. You know, I was there at a party, and I really
15 didn't think much about it.

16 Q. Who else was there, ma ' am?

17 A. I was there with my cousin.

18 Q. Who is that?

19 A. Cindy Lopez.

20 Q. Cindy Lopez?

21 A. Uh-huh.

22 Q. Who else was there?

23 A. I don't remember the rest of the people that was there.
24 I didn't know them.

25 Q. Who was Richard talking to?

- 1 A. Some people there. I did not know the people.
- 2 Q. How long were you there?
- 3 A. About half an hour.
- 4 Q. Were you drinking?
- 5 A. Yes.
- 6 Q. What were you drinking?
- 7 A. I was drinking Bud Lite.
- 8 Q. Beer?
- 9 A. Uh-huh, yes.
- 10 Q. How many did you have, ma ' am?
- 11 A. I would say probably about two.
- 12 Q. What time did you get there?
- 13 A. Probably about 10:00.
- 14 Q. What time did you leave?
- 15 A. I would say probably about 10:45, 11:00.
- 16 Q. And you consumed two beers during that period?
- 17 A. Yes.
- 18 Q. Did you drink anything before you got over there?
- 19 A. No.
- 20 Q. Were you using any marijuana?
- 21 A. No.
- 22 Q. Okay. Was anybody else there smoking **marijuana**?
- 23 A. Not that I know of.
- 24 Q. All right. Anybody else there drinking?
- 25 A. Yes.

1 Q. And whose house was it?

2 A. It was my aunt's.

3 Q. okay. What's your aunt's name?

4 A. Dorothy Haley.

5 Q. And is she married?

6 A. Now?

7 Q. Was she then, I'm sorry.

8 A. No.

9 Q. All right. Who lived there besides your aunt?

10 A. Just her and her son.

11 Q. Where is the house at?

12 A. It was right off, by 80th and Brooklyn.

13 Q. How did you find out about the party?

14 A. Because she invited me.

15 Q. The other people that were there, were they older or
16 younger?

17 A. They were probably around my age and older.

18 Q. How old was your aunt at this time?

19 A. I would say about 29.

20 THE COURT: At that time? Is that right, ma ' am?

21 THE WITNESS: Yes.

22 Q. (By Mr. Osgood:) And so the group of people that were,
23 that Mr. Brown was talking to, were **they** older or younger,
24 your age or your aunt's age?

25 A. About my age.

2534

1 Q. So was this a party that your aunt threw for young
2 people?

3 A. No. We were just over there. Just -

4 Q. How did you find out about the party?

5 MR. BECKER: Objection. Repetitious.

6 THE COURT: I think she's already testified to that
7 in cross.

8 Q. (By Mr. Osgood:) Now, did Mr. Brown mention that Kelly
9 Corrison went up to get the dynamite with him?

10 MR. BECKER: May we approach, Judge?

11 THE COURT: Yes.

12 (Counsel approached the bench and the following
13 proceedings were had:)

14 MR. BECKER: I would object to him listing names
15 because the government's precluded from listing the fact that
16 she said Richard Brown said he was there with Skip Sheppard
17 and Bryan Sheppard, as well as this Kelly Corrison. That's
18 my objection.

19 MR. OSGOOD: Kelly Corrison just testified as
20 their last witness as to his admissions and said nothing
21 about herself being there. In fact, obviously denied she was
22 there. And this witness supposedly was present at the same
23 conversation, and she says she overheard Bryan, or my client
24 say that Kelly Corrison was with him, Kelly was with him.

25 MR. PETERS: Judge, in addition -

1 MR. BECKER: I don't think it's the same party. Is
2 that what you're -

3 MR. OSGOOD: I feel it's the same party. **They** go
4 to so many parties, I don't know.

5 MR. BECKER: I thought Kelly Corrison talked
6 about, I thought it was one-on-one admissions with Richard.

7 MR. PETERS: Judge, keeping with what we've done
8 prior, when **they** mention somebody that's not one of the
9 charged defendants, you've allowed us to bring it out.
10 Kelly's name is one of the ones that's already on the white
11 board, and this would be the second witness. I think the
12 Court has allowed us to bring out the names of people other
13 than the charged defendants previously in this trial.
14 It's significant. It goes to the credibility of
15 the statement, if she's overhearing names of people. If
16 she's saying the names of people that aren't part of the
17 government's evidence, then it goes to the credibility of the
18 statement. Just like she said she heard Richard Brown say
19 that Paul Becker or Pat Peters was there, it goes to the
20 credibility of what she's relating she heard from Richard
21 Brown and dovetails exactly.
22 But my main concern is in terms of consistency, the
23 Court has allowed us to bring out the names of other people
24 other than the charged defendants. There's been no concern
25 in that regard.

2536

1 MR. BECKER: That's fine. I'll get up and say -

2 THE COURT: You may ask if he said Kelly and two
3 others were with him.

4 MR. OSGOOD: All right.

5 MR. BECKER: Okay.

6 (The following proceedings were had in open court:)

7 Q. (By Mr. Osgood:) Did Mr. Brown say in this conversation
8 that Kelly and two other people were with him? And I don't
9 want to speculate on other names, just the name Kelly, did he
10 mention any Kelly?

11 A. I believe so.

12 Q. All right. And you testified, I believe, that he said
13 **they** went there to get dynamite, but **they** couldn't get the
14 dynamite out?

15 THE COURT: Now, Mr. Osgood, I'm sorry. Mr. Osgood
16 kind of limited his question when he first asked it. The
17 original question was did he say Kelly and two others were
18 with him. And what would be the answer to that question?

19 THE WITNESS: Yes.

20 MR. OSGOOD: okay. Thank you, Your Honor.

21 Q. (By Mr. Osgood:) My last question, I don't know that
22 you answered it. **They** were going up to get dynamite was your
23 understanding?

24 A. Yes.

25 Q. Now, how far did you live from the site, ma ' am?

2537

1 A. Not very far.

2 Q. Had you ever been up there?

3 A. No.

4 Q. Had you ever been to any of those hills attending any
5 parties?

6 A. No.

7 Q. Who were you dating at this time?

8 A. No one.

9 Q. okay. Now, when Mr. Brown mentioned Kelly, were you
10 aware that he was indicating a Kelly Corriston at the time?

11 A. I thought he was. I wasn't for sure.

12 Q. All right. Did you know her?

13 A. Yes.

14 Q. How well?

15 A. Pretty well.

16 Q. All right. Had you seen them together?

17 A. No.

18 Q. Was Miss Corriston there that evening?

19 A. That evening, not that I remember.

20 Q. You were only there 45 minutes, though; is that your
21 recollection?

22 A. Right.

23 Q. Now, you say that you recall Mr. Brown said that **they**
24 could not get the dynamite open and so **they, they** set the
25 thing that it was in on fire with gasoline?

2538

1 A. Yes.

2 Q. Okay. And you said, I believe, that Mr. Brown drove a
3 black truck; is that right?

4 A. Yes.

5 Q. Do you remember what kind it was?

6 A. No.

7 Q. All right. Do you know any other people down there that
8 drove black trucks?

9 A. No.

10 Q. Have you ever seen any other black trucks in that entire
11 neighborhood?

12 A. I don't remember if I have or not.

13 Q. Okay. Now, how many -- were there any **other interviews**
14 that you gave to the ATF besides the one on February the 17th
15 of 1995 and the grand jury?

16 A. No.

17 Q. Okay. Those are your two recollections?

18 A. Yes.

19 Q. Okay. Now, have you had a chance to look at the
20 statement of February the 17th, 1995, and review it before
21 you came in here today?

22 A. Yes.

23 Q. And when is the last time you saw that statement?

24 A. Yesterday.

25 Q. All right. And did you also look at the grand jury

2539

1 yesterday?

2 A. The what?

3 Q. The grand jury transcript, did you read it yesterday,
4 the grand jury transcript?

5 A. Yes.

6 Q. And did you go over that with Mr. Becker or Mr. Miller?

7 A. Yes.

8 Q. All right. And did Mr. Becker tell you that I would be
9 asking you whether or not Mr. Brown exaggerated or bragged a
10 lot?

11 A. No.

12 MR. BECKER: Objection.

13 THE COURT: I think she's answered it. You don't
14 have any objection to that, do you?

15 MR. BECKER: No, Judge, it's just what I said is
16 not what is evidence in this case.

17 THE COURT: That's true. She's answered the
18 question.

19 Q. (By Mr. Osgood:) Did you go to school with Mr. Brown?

20 A. No.

21 Q. When did you first meet him?

22 A. I don't remember.

23 Q. Where did you go to grade school, ma ' am?

24 A. Center Elementary.

25 ~ Q. And then where did you go to **high** school?

2540

1 A. In California.

2 Q. All right. When did you move back to this area?

3 A. I moved back and forth here about four or five different
4 times.

5 Q. Do you remember the dates?

6 A. No.

7 Q. Well, how were you able to recall the date of this party
8 that you say occurred in 1989?

9 A. I can't say exactly what date it was that the party was.

10 Q. But it could have been 1988?

11 A. No.

12 Q. Why are you smiling, laughing, saying no?

13 A. Because I wasn't here then, I was in California.

14 Q. All right. Then when did you come back from California?

15 A. I came back, I've been back here about four different
16 times since we moved out to California. It was for sometimes
17 just two or three months, and then I went back.

18 Q. But you have no independent recollection at this time of
19 those dates?

20 A. No.

21 Q. Did anybody suggest to you that the date of this party
22 would have been in 1989 in the summer?

23 A. No.

24 Q. When did you go back to California after this party?

25 A. I went back around February.

1 Q. February of what?

2 A. I don't remember exact date.

3 THE COURT: You mean, you asked her February, what
4 day?

5 MR. OSGOOD: What year, Your Honor.

6 THE COURT: What year.

7 A. What year? I went back -- because when I came up here,
8 I came up here in the wintertime, and then I went back after
9 winter was over to California.

10 Q. Did your brother go with you?

11 A. No.

12 Q. Did you discuss after -- after seeing this poster, what
13 you had heard and what your brother had heard, did the two of
14 you discuss that together?

15 A. No.

16 Q. Never ever?

17 A. No.

18 Q. And have you discussed it with your brother before the
19 trial started?

20 A. No.

21 Q. Did he go down with you to the ATF on February the 17th,
22 1995?

23 A. No.

24 Q. Did you find out later that he went down to the ATF?

25 A. No.

2542

1 Q. So you went on your own?

2 A. Yes.

3 Q. How did you know where to go?

A. Because I got a paper. They brought me a paper to go.

5 Q. Who brought you a paper?

6 A. A detective.

7 Q. So you talked to a detective prior to this interview at
8 the ATF?

9 MR. BECKER: I want to object to facts not in
10 evidence. Do you want me to approach?

11 THE COURT: Well, maybe you'd better. I'm not sure
12 where you're going with this.

13 (Counsel approached the bench and the following
14 proceedings were had:)

15 MR. BECKER: I think the witness is confused
16 because the interview didn't happen at the ATF. I mean, she
17 came down when she got the paper and appeared before the
18 grand jury, but this is -- I think that's what the problem
19 is.

20 MR. OSGOOD: I'll try and clarify that. I'm not
21 trying to confuse her. You're right, it's 77th Street. I'll
22 hack up and see if I can straighten it out.

23 (The following proceedings were had in open court:)

24 Q. (By Mr. Osgood:) Miss Butner, I apologize. I presumed
25 you went to the ATF. Apparently, you were interviewed at

1 your residence on 77th Street; is that right?

2 A. Yes.

3 Q. And this was an ATF agent by the name of Denardi,

4 D-E-N-A-R-D-I. Does that name ring a bell?

5 A. Yes.

6 Q. So how did -- did you telephone them?

7 A. Yes.

8 Q. The number off the poster?

9 A. Yes.

10 Q. And then they came out to see you?

11 A. Yes.

12 Q. And so when you said detective, at least that we not
13 have any confusion in the case, this was the person that you
14 were talking about that came to see you?

15 A. Yes.

16 Q. You haven't had any other contact with the police or
17 anything?

18 A. No.

19 Q. Prior to or since, other than coming to the grand jury;
20 is that right?

21 A. That's right.

22 Q. Now, when you came down to the grand jury to testify on
23 the 15th day of March, 1995, which was just about 30 days
24 after your interview, were you shown the report of interview
25 before you went in to the grand jury to testify, did you get

1 a chance to review that?

2 A. No, not that I remember.

3 Q. All right. Now, was Chuck Jennings at the party?

4 A. I don't remember.

5 Q. Did you ever have any conversation about Chuck Jennings
6 with Agent Denardi?

7 A. I don't remember.

8 Q. All right. When you gave the report of interview to
9 Agent Denardi -

10 THE COURT: Now, wait a minute.

11 MR. OSGOOD: I'm sorry. I'll rephrase it, Your
12 Honor.

13 Q. (By Mr. Osgood:) When you talked to Agent Denardi,
14 after he prepared the report, have you had a chance to look
15 at that report? I believe you said you did before you
16 testified here today.

17 A. Yes.

18 Q. Did the report appear to be accurate based on the
19 conversation that you had with Agent Denardi at the time?

20 A. Yes, what I remember, yes.

21 Q. If you saw that report, would it refresh your memory as
22 to, perhaps, what you and Agent Denardi talked about?

23 A. No, I remember still parts of it and parts, yes. Yes.

24 Q. So it would help you refresh your memory if you had a
25 chance to look at that report again right now?

1 A. Right now?

2 Q. Yes.

3 A. No.

4 Q. It wouldn't help you?

5 A. No.

6 Q. Why is that, ma ' am?

7 THE COURT: Now, don't argue with her, Mr. Osgood.

8 MR. OSGOOD: It's a prior written statement. I
9 just want to know why she thinks it wouldn't help her.

10 THE COURT: There's no evidence that it's contrary
11 to her recollection. She says she doesn't need any
12 refreshment of her recollection.

13 Q. (By Mr. Osgood:) So it's your recollection you didn't
14 talk about Mr. Chuck Jennings?

15 A. I don't recall.

16 Q. Do you know Chuck Jennings?

17 A. Yes.

18 Q. How long have you known him?

19 A. A long time.

20 Q. Is he from the neighborhood there?

21 A. Yes.

22 Q. And how old of a fellow is he?

23 A. I believe he's around a year older than me, or two
24 years.

25 Q. Did Mr. Brown tell you, or did you hear Mr. Brown say

2546

1 where he got this gasoline to set this fire?

2 A. No.

3 Q. Did you hear him say how he got up there to the site?

4 A. No.

5 Q. Did you hear him say anything to the effect that he took

6 a stick of dynamite and threw it under the trailer and set it

7 on -- or blew it up?

8 A. No.

9 Q. Did you hear him say that he stole a bunch of tools

10 while he was up there?

11 A. No.

12 Q. Did you hear him say that he set a pickup truck on fire?

13 A. No.

14 Q. Was he drinking?

15 A. Yes.

16 Q. Was he intoxicated, as a matter of fact?

17 A. I don't know.

18 Q. All right. Was his speech slurred?

19 A. I don't know.

20 Q. Was he cursing?

21 A. I don't know.

22 Q. Have you ever talked to him any length of time?

23 A. No.

24 Q. okay. Now, where was the couch in the living room

25 area? Was it in the living room?

1 A. Yes.

2 Q. How was the living room furnished?

3 A. I don't know.

4 Q. You don't remember?

5 A. No.

6 Q. Do you remember whether there was a lamp in the living
7 room or not?

8 A. No.

9 Q. Do you remember whether or not there was an overstuffed
10 chair in the living room?

11 A. No.

12 Q. All you remember is the couch?

13 A. I remember a couch and a TV.

14 Q. Pardon?

15 A. I remember there being furniture in there.

16 Q. Okay. And were you talking to anyone else when you were
17 standing behind the couch?

18 A. No.

19 Q. So you were just behind the couch and he was talking to
20 the people standing in front of the couch?

21 A. Yes.

22 Q. And he was bragging that they'd never be able to get
23 anything on him?

24 A. Yes.

25 Q. So he was bragging, madam?

2548

1 A. Not -- I wouldn't say bragging. I don't know. Like I
2 said, I caught parts of the conversation because I was behind
3 there and I -

4 Q. Were you aware at the time in 19 -- you say this
5 occurred in 1989. Were you aware at the time that there were
6 a whole bunch of people in Marlborough that there were rumors
7 about involved in this thing?

8 A. Yes.

9 Q. Many, many people in Marlborough were considered as
10 possible people up on the hill, weren't they?

11 A. Yes.

12 Q. Rumors were flying everywhere, weren't they, ma ' am?

13 A. Yes.

14 Q. And then it was on television, and the rumors heated up
15 again, didn't they?

16 A. Yes.

17 Q. And that was about 1995 when it was on television,
18 wasn't it?

19 A. Yes.

20 Q. And if you didn't see it, you certainly remember people
21 talking about it, don't you?

22 A. Yes.

23 Q. It was the biggest thing that ever happened to
24 Marlborough, wasn't it, ma ' am?

25 A. Yes.

1 Q. And everybody was interested in it, and everybody was
2 gossiping about who did it or who might have done it or who
3 they thought was a bum in the neighborhood that they thought
4 might have something to do with it, didn't they?

5 A. Yes.

6 MR. OSGOOD: All right. Thank you, ma'am.

8 CROSS-EXAMINATION

9 By Mr. Peters:

10 Q. Ma'am, my name is Pat Peters, and I represent **Frank**
11 Sheppard. I'd like to show you what's been marked and
12 received as Defendants' Exhibit 24 and ask you if that's the
13 type of flyer or poster that you're talking about seeing up
14 in the neighborhood.

15 A. Yes.

16 Q. okay. And, ma'am, do you recall today whether after
17 seeing this poster you called 474-TIPS or 1-800-ATF-GUNS?

18 A. Yes.

19 Q. Which number did you call?

20 A. I believe it was the Tips hotline.

21 Q. Okay. And you've testified that you've had a chance to
22 review the report of interview prepared by Special Agent
23 Denardi following your February 17, 1995, statement; is that
24 correct? You had a chance to review it?

25 A. You mean -- I don't -

2550

1 Q. I believe your testimony has been that you had a chance
2 to review the report of interview. Have you reviewed both
3 your grand jury testimony and the report of the interview
4 conducted by Agent Denardi with you?

5 MR. BECKER: Objection, repetitious.

6 MR. PETERS: Judge, it's a foundation to my
7 follow-up question.

8 THE COURT: But I don't think she testified that
9 she reviewed the grand jury testimony.

10 MR. PETERS: So then it wouldn't be repetitious.

11 THE COURT: No. I think she said she hadn't.

12 MR. BECKER: I think she said she had.

13 THE COURT: All right. Then it is repetitious.

14 Q. (By Mr. Peters:) So, ma'am, in reviewing, if your
15 testimony is that you reviewed this February 17, 1995, report
16 of interview conducted with you by Anthony Denardi, at the
17 time that you reviewed it, was everything in there correct?

18 A. Yes.

19 Q. And everything was accurate in it?

20 A. Yes.

21 Q. Did you make any changes or ask that any changes be
22 made?

23 A. No.

24 Q. And isn't it correct that you told Agent Denardi that
25 possibly a Chuck Jennings was at the party?

1 A. I said I believed so.

2 Q. Okay. And that would have been accurate when you talked
3 to Agent Denardi, that you believed that Chuck Jennings was
4 at this party?

5 A. Right.

6 Q. And you also told Agent Denardi that Richard Brown had
7 told you that he and three other people were involved and
8 that one of those three other people was Kelly Corrison;
9 isn't that correct?

10 A. He did not tell me that.

11 Q. Pardon?

12 A. He did not tell me that.

13 Q. I'm saying isn't that what you told the agent, that one
14 of the people mentioned was Kelly Corrison?

15 A. I believe so, yes.

16 Q. And your testimony, I believe, is that you never heard
17 anything about how the people got up to the site; is that
18 correct?

19 A. Right.

20 Q. Do you recall telling Agent Denardi that they got up to
21 the site in a black pickup truck?

22 A. I remember them saying, talking about a black pickup
23 truck because I didn't know, my brother owned one.

24 Q. And you didn't know your brother owned a black pickup
25 truck, right?

2552

1 A. I did know.

2 Q. You did know?

3 A. Yes.

4 Q. How was it that you -- do you remember telling Agent
5 Denardi that a black pickup truck was used that night?

6 A. Yes.

7 Q. But you didn't get that information from Richard Brown,
8 did you?

9 A. About the pickup truck?

10 Q. About the pickup truck being used that night.

11 A. I don't remember.

12 Q. Can you tell, can you tell us where you got information
13 that a black pickup truck was used if Richard Brown told you
14 nothing about how anybody got to the site? Where did you get
15 that information?

16 A. Because I did remember my husband sold one to him
17 because my brother said that he was talking to Richard about
18 his black truck.

19 Q. This would have been after the party that you had the
20 discussion with your brother; is that correct?

21 A. I didn't have the discussion. I remember my brother
22 before this happened with the truck.

23 Q. So your brother had the black pickup truck before the
24 explosion?

25 A. Yes.

1 Q. Do you recall if it was Agent Denardi who told you that
2 a black pickup truck was used the night of the explosion?

3 A. I don't remember.

4 Q. When Agent Denardi came out to talk to you, did you see
5 a tape recorder with him? Did he have a tape recorder?

6 A. Not that I know -- I don't remember.

7 Q. Would you have refused if he had asked to tape record
8 the conversation?

9 A. No.

10 Q. Did he have a lady like this, a court reporter taking
11 down what you said word-for-word?

12 A. No.

13 Q. Did he write out something and come back and have you
14 look at it and raise your hand and swear that it was accurate
15 and sign it, an affidavit, did he do that?

16 A. No.

17 Q. Do you recall whether or not you told Special Agent
18 Denardi that Richard Brown was bragging to a group of people?

19 A. I remember saying that he was talking about it.

20 Q. Do you remember telling Agent Denardi that he was
21 bragging, specifically the world bragging?

22 A. No.

23 Q. Would you consider that something that you would feel a
24 need to make a change in a report about, the word talking
25 versus bragging, ma ' am?

1 MR. BECKER: Objection, Your Honor.

2 THE COURT: That's pretty speculative. I'll
3 sustain that.

4 Q. (By Mr. Peters:) Are you sure, ma'am, that you didn't
5 tell Agent Denardi that Richard Brown was bragging?

6 MR. BECKER: Objection, repetitious.

7 MR. PETERS: Judge, I haven't asked that question.

8 MR. BECKER: Are you sure, I mean -

9 THE COURT: You haven't asked the argumentative
10 question, you've asked the other question. I'll sustain the
11 objection.

12 Q. (By Mr. Peters:) Ma'am, doesn't your **uncle** drive a
13 black truck?

14 A. I don't know. I don't speak to my family.

15 MR. PETERS: Judge, I have one more question, but I
16 need to approach.

17 (Counsel approached the bench and the following
18 proceedings were had:)

19 MR. PETERS: This has to do with the Catch-22 of
20 Bruton, Judge. I believe the case law says that I would be
21 able to -- she does not mention my client, **Frank** Sheppard,
22 and case law suggests that I should be allowed to bring out
23 that she doesn't mention **Frank** Sheppard. I've been having to
24 do cross-examination because I'm here in the case, but it's
25 my position that the Court's limiting my cross-examination in

1 reliance on Bruton, and I think that reading of Bruton and
2 reading of U.S. v. Luna, which is an Eighth Circuit case,
3 says that I would be entitled to ask her was one of the two
4 other people **Frank** Sheppard. I wanted to come up and
5 approach before I did it, and so that my record is complete.

6 THE COURT: See, the trouble of that is -- you go
7 ahead and make your record.

8 MR. PETERS: I understand completely the box that
9 the Court is put in, but I'm now cross-examining this
10 witness. I think a fair inference from the jury is if you're
11 cross-examining the witness, you've got to have a reason to
12 cross-examine. The reason is beyond merely being one of the
13 five defendants. I think I'm entitled, again, referring to
14 U.S. v. Lone, the case that I believe is the Eighth Circuit
15 case.

16 MR. BECKER: Any cite on that?

17 MR. PETERS: It's in one of my prior motions. It's
18 already been filed with the Court. That a defendant is
19 allowed to bring out that my client wasn't mentioned. So
20 both because as an attorney in the case I have to
21 cross-examine her, and I think it creates an inference that
22 the reason I'm cross-examining her is because my client is
23 one of the ones named. And it goes to the credibility of her
24 statement, the statement purportedly from Richard Brown that,
25 in fact, she never mentioned, he never mentioned **Frank**

1 Sheppard. So for those reasons -

2 THE COURT: Why are you cross-examining her, by the
3 way?

4 MR. PETERS: Because we have to go in order of the
5 indictment, and if somebody else doesn't bring out
6 impeachment on a witness, I think I have an obligation to do

8 MR. BECKER: Well, if counsel chooses to
9 cross-examine when his client is never mentioned and then
10 says because he cross-examines he has to get into something
11 that his client is not mentioned, I think it's a
12 self-fulfilling prophesy there. He's brought up nothing in
13 cross-examination that prior counsel didn't cross-examine on.

14 THE COURT: You can certainly argue that she said
15 nothing about **Frank** Sheppard.

16 MR. PETERS: Am I correct that I can argue it for
17 the truth of the matter, that Richard Brown did not mention
18 **Frank** Sheppard, because that's the importance for me is the
19 fact that **Frank** Sheppard was not mentioned.

20 THE COURT: You can argue that she didn't testify
21 Richard Brown mentioned **Frank** Sheppard. I think that's about
22 as far as you can go. But I think we're caught in this
23 Bruton thing, and I can't allow that question directly at
24 this point.

25 , ~

ME PETERS:

Okay.

2557

1 (The following proceedings were had in open court:)

2 MR. PETERS: Ma'am, I have no further questions.

3 Thank you.

4 THE COURT: Anybody else?

5 MR. O'CONNOR: No, Your Honor.

6 THE COURT: Miss Hunt?

7 MS. FRANCO: No questions, Your Honor.

8 MR. BUNCH: None, Your Honor.

9 MR. BECKER: No redirect, Your Honor.

10 THE COURT: All right. Ma'am, you may step down.

11 Thank you for coming.

12 MR. MILLER: Your Honor, the government **calls Mr.**

13 Steve Morales.

14 -- -- --

15 STEPHEN WAYNE MORALES,

16 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,

17 testified as follows:

18 -- -- --

19 DIRECT EXAMINATION

20 By Mr. Miller:

21 Q. Would you tell the Court and the jury your name,

22 please.

23 A. Stephen Wayne Morales.

24 Q. okay. How old are you, sir?

25 A. Thirty-six.

2558

1 Q. And I want to ask you about the Marlborough area of
2 Kansas City. Did you grow up in that area?

3 A. Yes, I did.

4 Q. Did you work in that area?

5 A. Yes, I did.

6 Q. Did you ever live in that area?

7 A. Yes, I did.

8 Q. And are you familiar at all with the construction site
there at 71 Highway and 87th Street?

10 A. Yes, sir.

11 Q. How are you familiar with it?

12 A. Years before they done any construction there, we used
13 to four-wheel there all the time. All the four-wheelers were
14 able to go there until they blocked it off and made it no
15 longer possible.

16 Q. And -

17 MR. MILLER: Excuse me, please.

18 Q. I believe where I was at was do you know a Bryan
19 Sheppard?

20 A. Yes, I do.

21 Q. Do you see him in the courtroom today?

22 A. Yes, I do.

23 Q. Can you identify him for us?

24 A. Over there, the maroon and -- that's the individual.

25 Q. Standing up?

2559

1 A. Yes, sir.

2 MR. MILLER: May the record indicate he's
3 identified Defendant Bryan Sheppard?

4 THE COURT: It may.

5 Q. (By Mr. Miller:) Do you know a **Frank** Sheppard?

6 A. Yes, I do.

7 Q. And do you see him in the courtroom?

8 A. Right there.

9 MR. PETERS: Your Honor, I object. May we
10 approach?

11 (Counsel approached the bench and the following
12 proceedings were had:)

13 MR. PETERS: In keeping with the hearing we've had,
14 Judge, he doesn't offer any testimony against **Frank**
15 Sheppard. The only possible reason for having **Frank** Sheppard
16 to stand up is to create an inference that he's included in
17 the testimony he's going to relate from Bryan Sheppard.

18 MR. MILLER: No. I -

19 THE COURT: That takes it too far. I'll overrule
20 that objection.

21 MR. PETERS: My objection is having him identify
22 **Frank** Sheppard when the testimony he's going to relate comes
23 from Bryan Sheppard.

24 MR. MILLER: No. No. There's an incident at the
25 bar where he spoke with **Frank** Sheppard about this incident.

1 MR. PETERS: Okay.

2 (The following proceedings were had in open court:)

3 Q. (By Mr. Miller:) Now, did you know Bryan Sheppard back
4 in 1988?

5 A. Yes, sir.

6 Q. Did you know **Frank** Sheppard back in 1988?

7 A. Yes, sir.

8 Q. Did you know both of them prior to the explosion in
9 1988?

10 A. Yes, sir.

11 Q. Now, I want to go back to the date of the explosion,
12 November the 29th, 1988. And where were you that morning?

13 A. I was going in, south 71 northbound to get my papers. I
14 worked the paper route in the mornings.

15 Q. Were you with anybody?

16 A. Going in with my boss, Bruce Trammell.

17 Q. And you said you were going in.

18 MR. MILLER: May he approach this diagram, Your
19 Honor?

20 THE COURT: Yes.

21 Q. (By Mr. Miller:) okay. I'm referring to Government's
22 Exhibit No. 5, and if you could keep your voice up. Can you
23 show the jury what route you were taking when you went in -

24 THE COURT: Mr. Miller, let's take a poll here and

25 see if the jury a n see the exhibit. Can you all back there,

2561

1 the alternates, can you see that exhibit?

2 (Jurors nod heads.)

3 THE COURT: Can you? Okay. Feel free -- if you
4 need to, back in that spot, feel free to stand up to see it.
5 I mean, you're not glued to your seats. If you want to stand
6 up and see the exhibits or do anything you need to to look at
7 it. okay.Go ahead.

8 Q. (By Mr. Miller:) Okay. Show the jury the route you
9 took.

10 A. I was coming in northbound, south 71 Highway coming in
11 northbound towards the QuikTrip. We make a left on 85th
12 Street here and go up to Prospect to pick up our papers every
13 morning.

14 Q. Okay.About what time in the morning was this?

15 A. Originally went by between 1:15 and 1:45. Our papers
16 were not there yet that morning.

17 Q. okay.And as you proceeded on down to get your papers,
18 did you see the Defendant Bryan Sheppard that morning?

19 A. Yes, I did.

20 Q. And who did you see him with?

21 A. I believe it was Robert and Buddy Bohrn, Richard Brown,
22 **Frank** Sheppard, and one other individual I didn't recognize.

23 Q. okay.Let me stop you here. You said Richard Brown.

24 Do you see the Defendant Richard Brown in the courtroom?

25 A. He's over there.

2562

1 Q. Okay.Seated there at the far end of the table?

2 A. Far end.

3 MR. MILLER: May the record indicate he's

4 identified the Defendant Richard Brown?

5 THE COURT: Yes.

6 Q. (By Mr. Miller:) Do you recall about what time in the
7 morning this was?

8 A. Between 1:15 and 1:45, basically, because our papers
9 weren't there yet. They were running late, so I went by to
10 see a friend, and I drove right by what I believed was
11 Bohrns' parents' house that morning.

12 Q. Can you recall any of the vehicles that you saw **in front**
13 of that house?

14 A. There was a pickup truck primered in color, Chevy or
15 GMC, seventies.

16 THE COURT: You drove by whose parents' house,
17 please?

18 THE WITNESS: The Bohrns.

19 THE COURT: All right.

20 Q. (By Mr. Miller:) And do you recall that pickup truck
21 belonging to anyone that you knew in that area?

22 A. It looked like one of the Raynor brothers' trucks, some
23 friends of the Bohrns'. The truck had been around the
24 neighborhood for a lot of years.

25 Q. okay.Did you stop and speak with Bryan Sheppard or

1 Richard Brown or any of them?

2 A. No, I didn't.

3 Q. After you picked up your papers, where did you go?

4 A. We picked up our papers about 3:30 that morning, and we
5 went directly from there over to 99th and Wornall. It's
6 Willow Creek Apartments. That's where we begin our delivery
7 route.

8 Q. Excuse me. I confused you. After you went to the
9 Bohrns' house, what route did you take to go get your papers?

10 A. The papers weren't there yet at that time in the
11 morning, so we went ahead -- I went back down to my boss's, I
12 met him at 85th and Prospect at the shop where we picked up
13 our papers. They were going to be a while, so we went ahead
14 and drove back out and picked up a kid that worked with us.

15 Q. Okay. When you went to pick up the kid that worked with
16 you, what route did you take?

17 A. We came southbound on 71 Highway back towards 95th
18 Street. He lived out just off 103rd and Holmes.

19 Q. Do you recall about what time in the morning this would
20 be that you're now southbound on 71 Highway?

21 A. About 2:00, 2:15.

22 Q. What do you recall seeing as you were going southbound
23 on 71 Highway?

24 A. There was a pickup truck broke down, you know, or
25 something. It was just sitting on the side of the road.

1 Q. Can you show the jury where it was sitting?

2 A. Right through here.

3 Q. Right there at that intersection?

4 A. Yes, sir.

5 Q. okay. Do you remember what side of **the road it was on**,

6 can you recall?

7 A. It was on the right side.

8 Q. As you're going south?

9 A. As I was going south. Parallel to the creek.

10 Q. So then it would be on the west side of 71 Highway?

11 A. Yes, sir.

12 Q. Okay. Did you notice anything else other than that

13 pickup as you're going down there?

14 A. No, sir, not at that time.

15 Q. Okay. At any time, either when you were going

16 northbound or southbound, did you notice the security guards?

17 A. Yes, sir.

18 Q. Which time?

19 A. When we were going back down, we got a call -

20 Q. Excuse me. When you're going back in north or south?

21 A. Going back in northbound on northbound 71 Highway, we

22 were told our papers were there, so we were going in to pick

23 them up. It was about 3:15 or 3:30 that morning.

24 Q. Okay. So now you come southbound and you've picked up

25 this other gentleman to work with?

1 A. Yes, sir.

2 Q. And now, where did you go from there? Which route did
3 you take this time?

4 A. When we got and picked up our papers, we were going in.
5 And off of Little Blue River Road, there's a security vehicle
6 pan lighting a spotlight up on the hill. We thought maybe
7 somebody was four-wheeling up there that morning.

8 Q. When you're going in or going -

9 A. Northbound.

10 Q. -- northbound on 71 Highway?

11 A. Yeah, to pick up our papers.

12 Q. You recall seeing a security -

13 A. Yes, sir.

14 Q. What were they doing?

15 A. **They** had their spotlight **they** were shining up on top of
16 the hill, and **they** were driving real slow along there.

17 Q. When you say top of the hill, show the jury what you
18 mean by top of the hill.

19 A. At the time, this was all raised area pretty much
20 still. It was a hill. It's where we actually four-wheeled
21 when we were younger, a bunch of us went up on top.

22 Q. Okay. All right. And do you recall about what time
23 this was?

24 A. About 3:30, 3:15 or 3:30 that morning.

25 Q. Okay. And then where did you go from there?

1 A. We went down 85th Street, picked up our papers there at
2 85th and Prospect, come back up 85th, and come back
3 southbound 71 to 435, took it up to Seth, and Holmes.

4 Q. Okay. Do you recall the explosion?

5 A. Yes, sir.

6 Q. Where were you when the first explosion went off?

7 A. Willow Creek Apartments at 99th and Wornall.

8 Q. At any time did you see anything on fire when you were
9 going by that, the construction site?

10 A. No, sir.

11 Q. okay. If you can have a seat, thank you.

12 Where were you when the second explosion went off?

13 A. We were still in Willow Creek. We were in there for a
14 while. It takes us about 30 minutes to do that. We felt and
15 heard the first explosion about 4 a.m. or just a little after
16 that morning.

17 THE COURT: I'm sorry, was that the first one or
18 the second one was at 4 a.m.?

19 THE WITNESS: It was in the neighborhood of 4 a.m.
20 We were there the whole time of the explosions. We heard the
21 first one about 4 a.m. when it went.

22 THE COURT: Okay. Thank you.

23 Q. (By Mr. Miller:) Now, did you ever have a conversation
24 with **Frank** Sheppard about the explosion that caused the death
25 of the six firefighters?

1 A. Yes, I did.

2 Q. Okay. When did you have this conversation?

3 A. Late December or early January, late December of '88 or
4 early January of '89.

5 Q. Where did you have this conversation?

6 A. Condi's Bar, 85th and Prospect.

7 Q. And how did the conversation take place? By that I mean
8 did you ask him something, did he say something, what
9 happened?

10 A. I asked him, you know, Marlborough is kind of a
11 tightknit neighborhood, and I heard that, you know, maybe
12 involvement and I asked him about it.

13 MR. PETERS: Your Honor, I object.

14 THE COURT: Disregard any comment about heard about
15 involvement. Just go on from you asked him?

16 A. I asked him if it was, if he had anything to do with
17 it. He got highly upset with me and told me it would be best
18 if I keep my mouth shut or I'm liable to wind up hurt.

19 Q. And then what did you do?

20 A. I just let it go and I left.

21 Q. Now, do you have any -- now, you have a conviction from
22 December the 4th of 1995 for possession of marijuana, right?

23 A. Yes, sir.

24 Q. And your sentence on that was three years, it was
25 suspended, and you were placed on five years' probation,

2568

1 right?

2 A. No, sir. It was three years' probation with a five-year
3 backup.

4 Q. Backwards?

5 A. Yes, sir.

6 Q. So currently you're on probation for that?

7 A. Yes, sir.

8 Q. Now, on January 6th of 1989, you **were convicted of the**
9 Class A Misdemeanor of sexual assault in the third degree,
10 right?

11 A. Yes, sir.

12 Q. And for that, you were placed in the Clay County Jail,
13 right?

14 A. Yes, sir.

15 Q. What -- do you remember when you went into the Clay
16 County Jail?

17 A. February of '89.

18 Q. While you were there in the Clay County Jail, did you
19 meet Defendant Bryan Sheppard?

20 A. Yes, I did.

21 Q. Did the two of you recognize each other from the
22 Marlborough area?

23 A. Yes, sir.

24 Q. Did you have any conversations with Defendant Bryan
25 Sheppard about his involvement in the explosion that killed

1 the six firefighters?

2 A. Yes, sir.

3 Q. How many conversations did you have?

4 A. Several. Several conversations. I was a trustee.

5 Q. What did Bryan Sheppard tell you about his involvement
6 in the explosion that killed the six firefighters?

7 A. Originally, he was brought over to Clay County from
8 Jackson County. When he was brought in, I was in receiving
9 that day, and we recognized each other and we spoke.
10 a remark that they shipped him from Jackson County over to
11 Clay County because of another individual and himself
12 getting, hurting someone, basically for getting them and
13 whacking on them.

He made

14 MR. O'CONNOR: Objection. This is nonresponsive,
15 and it's not even true that that happened.

16 THE COURT: You can't testify, Mr. O'Connor.

17 MR. O'CONNOR: Well, it's not responsive. **He asked**
18 him what he told him, and he went into this dissertation
19 about when -

20 THE COURT: I thought he was just saying what he
21 told him.

22 MR. O'CONNOR: I don't think he was saying what he
23 told him.

24 THE COURT: Well, tell us what, if anything, Bryan
25 Sheppard told you.

1 A. Bryan Sheppard, on several occasions we spoke. I got, I
2 brought food to him, I done the change of clothes. We spoke
3 about involvement. He made the remark that that morning **they**
4 were on what you call raiding parties where **they** were going
5 after tools and construction equipment and batteries and
6 such, and **they** wound up having a problem.

7 **They** had a lookout because security was checking
8 them out and security -- **they** set the truck on fire, you
9 know, their lookout did, to draw security away from the
10 hill.

11 And then their lookout went across the road, across
12 the highway to get and let them know, and **they** set the
13 trailer on fire to get off the back side of the hill.

14 Q. (By Mr. Miller:) Now, let me stop you there. On the
15 pickup truck that was set on fire to draw the security people
16 away, did he say where that pickup truck was?

17 A. Down on 71 Highway.

18 Q. Then he said to make their way out. Did he tell you how
19 **they** made their way out?

20 A. He said by way of going off the back hill down Little
21 Blue River Road. It goes towards, past the golf course and
22 goes around towards Lake of the Woods.

23 Q. Now, from your times of four-wheeling around **there and**
24 your familiarity with the area, did you know what he was
25 talking about?

2571

1 A. Yes, sir.

2 Q. Can you show the jury on this diagram, Government's
3 Exhibit No. 5, the route that Bryan Sheppard told you that
4 **they** took to get away from there?

5 A. It would have been this route that goes up and goes into
6 the park itself, Parks and Recreation Lake of the Woods, it
7 wraps around to Gregory where the Nature Center is, and back
8 up Gregory.

9 Q. Is there any problems getting from that site down to
10 that road?

11 A. No. You can go off the back side of the hill.

12 Q. Okay. Thank you. When did you come forward with what
13 you knew about this?

14 A. I came forward after a friend of mine was over at
15 another friend's and he made a remark that -

16 Q. Wait a minute. You can't tell us what anybody else
17 said. Just, can you give us the date and year?

18 A. '95.

19 Q. So, then, you didn't notify anyone while you were in
20 jail in '89?

21 A. No, sir.

22 Q. Has the government given you anything in exchange for
23 you coming forward?

24 A. No, sir.

25 Q. Any help with your probation or anything?

2572

1 A. No, sir.

2 MR. MILLER: That's all I have of this witness,
3 Your Honor.

5 CROSS-EXAMINATION

6 By Mr. O'Connor:

7 Q. Mr. Morales, my name is John O'Connor. I represent
8 Bryan Sheppard. Did I come out to your residence the other
9 night with a court reporter to talk to you?

10 A. Yes, you did.

11 Q. Did you refuse to answer any questions for me?

12 A. Yes, I did.

13 Q. Did I contact your lawyer over the weekend to have him
14 contact you to see if you would talk with me with him
15 present?

16 MR. MILLER: I'm going to object to the relevance
17 of him contacting Mr. Morales's lawyer for anything. Mr.
18 Morales just said he wasn't going to speak to him.

19 THE COURT: I'm not sure what relevance the contact
20 with the lawyer has unless you're going to prove that the
21 lawyer was biased too.

22 MR. O'CONNOR: No. I want to prove that the lawyer
23 could have been present in case I was going to do something
24 that he was worried that I was going to do.

25 THE COURT: Well, let's go on. I don't think

1 that's relevant.

2 Q. (By Mr. O'Connor:) Now, on February the 1st, 1996, you
3 gave one of these sworn affidavits, didn't you?

4 A. Yes, I did.

5 Q. Swore under the penalty of perjury, as I understand it?

6 A. Yes, sir.

7 Q. And then you went to a grand jury on March the 12th,
8 1996, and you swore under the penalty of perjury there to
9 certain things, didn't you?

10 A. Yes, sir.

11 Q. Told the grand jury the truth, didn't you?

12 A. Yes, sir.

13 Q. Told the agents under the penalty of perjury the truth,
14 didn't you?

15 A. Yes, sir.

16 Q. Have you seen Bryan Sheppard since you left the Clay
17 County Jail?

18 A. No, I have not.

19 Q. Have you had a chance to read this affidavit?

20 A. On the affidavit itself?

21 Q. Yes.

22 A. I've read it over before, yes.

23 Q. Under the penalty of perjury?

24 A. Yes, sir.

25 Q. Did you say under the penalty of perjury to this agent

1 right here, "I have seen Bryan Sheppard on a few occasions
2 since our incarceration"? Is that in your sworn affidavit?

3 A. May I look at it?

4 Q. Sure. You're welcome to look at all of it, but it's up
5 on the top.

6 A. Yes, sir.

7 Q. So which one is true, you have seen him or -

8 A. I may have seen him. I've never spoke with him **since**.

9 Q. The question was had you seen him since you've been
10 incarcerated. You told us you had not. So is this perjury?

11 MR. MILLER: I'm going to object to this as
12 argumentative.

13 THE COURT: Yeah, that is a bit argumentative. It
14 calls for a legal conclusion. I'll sustain the objection.

15 MR. MILLER: Plus this is getting collateral as to
16 whether he saw him or not.

17 THE COURT: Will you all come up a minute?

18 MR. O'CONNOR: Sure.

19 (Counsel approached the bench, an off-the-record
20 discussion was had between Court and counsel, and a portion
21 of the record was read back, after which the following
22 proceedings were had in open court:)

23 THE COURT: We're going to take our morning recess,
24 ladies and gentlemen. Be back in the jury room by 11
25 o'clock. Don't talk to anybody during the recess. You may

2575

1 withdraw.

2 (The following proceedings were had in the
3 courtroom out of the presence of the jury:)

4 THE COURT: Okay. I have a question. Miss Hunt,
5 would you come up, please?

6 MR. BECKER: Judge, is the witness excused until -

7 THE COURT: Yes, I'm sorry. You may step down
8 until 11 o'clock, please.

9 (Counsel approached the bench and the following
10 proceedings were had:)

11 THE COURT: I have -- well, this is just a note
12 from a juror, and she says that she sent us a note two weeks
13 ago which I have not seen that the doctor she works for wants
14 to send her out of town for a **drug** study. He's purchased the
15 tickets and so forth, leaving Thursday evening, 8 p.m., back
16 Saturday evening, 9:30 p.m. I don't see how that can pose
17 any problems as long as she gets back.

18 MR. PETERS: All we would lose is Friday morning.
19 One of the attorneys had a conflict with a doctor's
20 appointment, so that would work out good for us.

21 THE COURT: That's right. We had decided to work
22 Friday. I think we ought to let her go, but I would rather
23 not take an alternate unless we had to.

24 MS. HUNT: They probably planned that because they
25 know the Friday schedule.

2576

1 MR. BECKER: That's fine.

2 THE COURT: Okay.

3 (The following proceedings were had in open court:)

4 THE COURT: All right. We'll be in recess for a
5 few minutes.

6 (A recess was taken from 10:52 a.m. to 11:15 a.m.
7 when the following proceedings were had in the courtroom in
8 the presence of the jury:)

9 THE COURT: A couple of housekeeping matters before
10 we go any further. Miss Boyd, there was a failure of
11 communication and I didn't get your earlier note, but it
12 certainly is agreeable for you to do what you propose to do
13 there. It won't discommode us. Everybody is pretty amenable
14 to not working on Friday anyway, so you won't miss anything.

15 And also Mr. Deaton's note on the problem with your
16 daughter, I think that poses no problem. We're talking about
17 three weeks -- let's see. This is the 10th. We're talking
18 about three more weeks in February before we even get into
19 March, so I don't think that poses a problem. If anything
20 develops that it would be, we'll let you know promptly. But
21 right now, I think we can hope to be well out of here by that
22 time.

23 All right. All right, Mr. O'Connor.

24 MR. O'CONNOR: Thank you, Your Honor.

25 Q. (By Mr. O'Connor:) I think we left, Mr. Morales, where

1 your affidavit was you had seen Bryan Sheppard on a few
2 occasions since incarceration.

3 Do you remember telling the grand jury under oath
4 on the 12th day of March, 1996, Page 13, line 12, question:
5 "Have you seen Bryan Sheppard since Clay County

6 Answer: "No."

7 Was that question asked and that answer given to
8 the grand jury on the 12th day of March, 1996?

9 A. I'd like to see the paper with that on it.

10 Q. Sure. There's the front page of it, and then **you can do**
11 whatever you want with it. It's there.

12 A. Yes, sir.

13 Q. Have you seen Bryan Sheppard since you left the Clay
14 County Jail or have you not?

15 A. No, sir.

16 Q. I want to talk to you about this paper route a little
17 bit. How long had you been working this paper route?

18 A. Approximately three months, three and a half months.

19 THE COURT: Had he been in 1988?

20 Q. Yes, at the time of the explosion.

21 A. Yes.

22 Q. About three months. Who did you work for?

23 A. Bruce Trammell.

24 Q. Who was your boss?

25 A. Bruce Trammell.

1 Q. That's the person you would call boss?

2 A. Yes.

3 Q. And where were you living at the time of the explosion
4 where you would have driven to work the direction you told us
5 about?

6 A. Ruskin Heights.

7 Q. Now, are you telling this jury that you drove to work
8 that morning with Bruce Trammell?

9 A. When I got originally -

10 Q. The question is are you telling this jury -

11 THE COURT: Well, let him answer the question.

12 MR. O'CONNOR: It's an easy question yes or no.

13 THE COURT: There may be some ramification of that
14 that isn't covered by yes or no.

15 Q. (By Mr. O'Connor:) I apologize.

16 A. On the initial time when I went in, I had a van, and I
17 was going in to meet him. Sometimes we would separate. I
18 left my van when we went to go pick up the kids, I went ahead
19 and rode with him from then on.

20 Q. The question is did you ride to work the morning *of* the
21 explosion with Bruce Trammell.

22 THE COURT: From where to where?

23 MR. O'CONNOR: From his house to work.

24 THE COURT: Work, obviously, by his prior testimony
25 involved more than going from his house to the first -

2579

1 Q. (By Mr. O'Connor:) I'll put it a different way, I'm
2 sorry. When you were going in early in the morning, you were
3 going to the drop site for papers at 85th and Prospect?

4 A. Yes.

5 Q. And the papers were dropped at 85th and Prospect every
6 morning, and there would be like 25 trucks there to pick up
7 the paper drop?

8 A. Yes.

9 Q. So when you were saying you were going to work, you
10 would go to work at 85th and Prospect, and then from there
11 you would go do your work?

12 A. Basically.

13 Q. So when you were on your way to work to where the papers
14 were being dropped, was Bruce Trammell with you?

15 A. Yes.

16 Q. How did you guys get -- did he pick you up at home or
17 did you pick him up?

18 A. Neither. Met him at the drop site.

19 Q. Okay. Was Bruce Trammell in your van with you while you
20 rode to work on the morning of the explosion?

21 A. No, not from my home.

22 Q. From your home -

23 A. No.

24 Q. -- to the drop site you were by yourself?

25 A. Yes.

2580

1 Q. Okay. And Bruce Trammell was in another vehicle?

2 A. Yes.

3 Q. You met him at the drop site?

4 A. Yes.

5 Q. 85th and Prospect?

6 A. Yes.

7 Q. Using this as an example, can you step down just one
8 second? I think this will be easy. The drop site is going
9 to be over here like at 85th and Prospect, down this street?

10 A. Right.

11 Q. And over here?

12 A. Yes.

13 Q. Okay. And what time was the drop made that morning, do
14 you know?

15 A. About 3:30 that morning. It was late.

16 Q. And you got there at the drop site at what time?

17 A. Between 1:15 and 1:45, probably.

18 Q. And was the drop there made every day around 3:30?

19 A. No.

20 Q. What was the earliest the drop that would be made?

21 A. The drop would usually be between 1:30 and 2:30 in the
22 morning.

23 Q. It was just late that morning?

24 A. Yes, it was.

25 Q. And what was your job on the route? What did you do?

1 A. I threw papers and delivered papers inside the apartment
2 buildings.

3 Q. Okay. And did both of you and Mr. Trammell leave after
4 you got your papers in separate vehicles to make, to do the
5 route?

6 A. No.

7 Q. Was your route from 85th to 101st, Holmes to Wornall?

8 A. No, we didn't deliver in the neighborhood of 85th
9 itself.

10 Q. What's your route, tell me?

11 A. It would go from Wornall to just the other side of
12 Holmes and certain points from 103rd to 95th.

13 Q. So there was no route between 85th and 95th?

14 A. No.

15 Q. Okay. And you remember this morning, one of the reasons
16 you remember this morning is because you and Mr. Trammell
17 were in the same vehicle doing this?

18 A. Yes.

19 Q. Was it ever a situation where Mr. Trammell would throw
20 the papers from his truck and you would take the papers to
21 deliver them to the apartment so that you both could be doing
22 the same thing at once but not together?

23 A. Yes, but he dropped me off at the apartments with the
24 papers, and then he would go continue.

25 Q. Didn't it happen that way the morning of the explosion,

1 that you went in separate vehicles to deliver the papers, you
2 took the apartment papers, and he went in a separate vehicle
3 to throw the papers to the residences? Isn't that what
4 happened?

5 A. No.

6 Q. Now, after you got to the site of the drop for the
7 papers, you waited there from 1:15 to 3:30 or thereabouts?

8 A. No.

9 Q. What did you do?

10 A. We left, I went by a friend's house first, and then we
11 went ahead and met up, and we left.

12 Q. When you say we left, who is we?

13 A. Bruce Trammell and I.

14 Q. In the same vehicle?

15 A. Yes.

16 Q. You and Bruce Trammell left in the same vehicle and went
17 where?

18 A. Over off 103rd between Holmes and Wornall to pick up a
19 young kid that worked with us.

20 Q. From 85th and Prospect?

21 A. Yes.

22 Q. So using this, if you were at 85th and Prospect and the
23 person is at 103rd and Holmes, which way did you go get the
24 person that was at 103rd and Holmes?

25 A. We would go back up 85th, we would hit the highways, hit

2583

1 71 to 435; 435 and then get off on Holmes.

2 Q. Who was the young man you picked up?

3 A. I don't remember his name. It was a kid that was going
4 to the junior **high** there.

5 Q. But Mr. Trammell was with you, wasn't he?

6 A. Yes, he was.

7 Q. Okay. And I'm assuming, did Mr. Trammell, did you have
8 a conversation about some truck that you had seen, did you
9 guys converse about that in the car?

10 A. Yes, we did.

11 Q. Now, you correct me if I miswrote this. I thought you
12 said -- give me a second, please. Well, I don't see it.
13 I'll have to come back to it in a minute.

14 So after you and Mr. Trammell went to talk to this
15 friend of yours -- who was the friend that you and Mr.
16 Trammell were going to talk to before the papers got
17 delivered, got dropped off for you to pick up?

18 A. It wasn't Mr. Trammell and I, it was just myself.

19 Q. So you left Mr. Trammell at the site where the drop was?

20 A. Yes.

21 Q. And you went by yourself?

22 A. Yes.

23 Q. In a van?

24 A. Yes.

25 Q. To see who?

2584

1 A. A friend of mine that lived there down the road, Robert
2 Dresnick.

3 Q. Did you see Robert?

4 A. Briefly.

5 Q. Talked with him?

6 A. Briefly.

7 Q. As I understand it -- you tell me when you saw Bryan
8 Sheppard, Richard Brown, and the Bohrn brothers that morning
9 around 85th and Olive. What time was that?

10 A. Between 1:15 and 1:45, probably. It was early.

11 Q. Now, when you did this affidavit, it appears on the
12 affidavit that your statement was, the statement was taken
13 February the 1st, but you weren't asked to swear to it until
14 three weeks later on February the 22nd. Do you know why that
15 happened?

16 A. No, sir.

17 Q. Everything you told them was the truth in this, correct?

18 A. Yes, sir.

19 Q. And you told them all the information that you could
20 remember?

21 A. Yes, sir.

22 Q. You tried to help them?

23 A. Yes, sir.

24 Q. To give them everything you could?

25 A. Yes, sir.

2585

1 Q. I think you said on direct examination that you saw
2 **Frank** Sheppard there, as well?

3 A. Yes, sir, I believe it was **Frank** Sheppard.

4 Q. Now, when you were talking to the agents under the
5 penalty of perjury, did you name **Frank** Sheppard as one of the
6 people you saw between 2 a.m. and 2:15 a.m. the morning of
7 the explosion?

8 A. I believe it was before that, yes, sir, I believe I did.

9 Q. So it would be in this affidavit?

10 A. Yes, sir, I believe -- I mentioned five **individuals**.

11 Q. If you saw this, do you think it would refresh your
12 recollection of what you told them?

13 A. Yes, sir.

14 Q. I'm going to hand you what's been marked as Defendants'
15 32, which is a copy of your affidavit. I believe if you
16 would just read that first paragraph to yourself, if you
17 would.

18 THE COURT: What's your exhibit number?

19 MR. O'CONNOR: Judge, I think it was 26. Let me
20 look.32.

21 Q. (By Mr. O'Connor:) Did you have a chance to look at
22 your sworn affidavit?

23 A. Yes, sir.

24 Q. Did you mention the name **Frank** Sheppard as being one of
25 the people that you saw there between 1 a.m. and -- 2 a.m.

2586

1 and 2:15 a.m.

2 A. No, sir.

3 Q. Now, I believe you told the agent that you saw four
4 people, Richard Brown, Buddy Bohrn, Pooh Bohrn, and Bryan
5 Sheppard at 85th and Olive around between 2:00 and 2:15; is
6 that a fair statement?

7 A. That's a fair statement.

8 Q. And you told them that you saw a pickup truck. **Did you**
9 tell them that you saw a pickup truck, Chevy three-quarter,
10 reddish orange in color, which you believed to belong to one
11 of the Raynors in front of the house?

12 A. Yes, I did.

13 Q. And you believe that to this day, don't you, that it was
14 one of the Raynors' trucks?

15 A. It reminded me of one of the Raynors' trucks. I hadn't
16 seen the Raynors in years, but it looked like one of their
17 old trucks.

18 Q. I believe you testified on direct examination that it
19 was the Raynors' truck?

20 A. I believed it was. I didn't -- I've never said I was
21 definite that it was Raynors' truck.

22 Q. Do you still believe it was?

23 A. Yes, sir.

24 Q. Do you remember testifying before the federal grand jury
25 in this case on the 12th day of March, 1996?

1 A. Yes, sir.

2 Q. Where you were under oath?

3 A. Yes, sir.

4 Q. Page 5, line 11.

5 Question: "Were **they** in a pickup truck?"

6 Answer: "No, there was a pickup truck out front
7 that looked like to be another one of the Sheppards '.,',

8 Did you tell the grand jury that you thought that
9 the truck was one of the Sheppards' trucks?

10 A. If I did, I misworded it.

11 Q. Do you want to look at it?

12 A. Because all the individuals I saw was in the front,
13 front yard.

14 Q. But did you tell the grand jury that the truck looked
15 like the Sheppards' truck?

16 A. I believe I said Raynors.

17 Q. All right. If you saw this, would it refresh your
18 recollection of what you said?

19 A. Yes, sir.

20 MR. O'CONNOR: I'd better have this marked too.
21 Hand the witness Defendants' Exhibit 33.

22 Q. (By Mr. O'Connor:) If you would look at line 11, that
23 would help you. Read it to yourself, please.

24 A. If I said this, I'd gotten a bit confused because I've
25 never known what vehicle the Sheppards have driven, but I did

1 make the remark that it was Raynor's truck and believed it
2 was Raynor's truck. If I said that, I was a bit confused
3 when I made the remark.

4 Q. Have you read this grand jury testimony before
5 testifying today?

6 A. once, yes, sir.

7 Q. Was it gone over with you what you had said? **Which is**
8 okay, they have the right to talk to you.

9 A. Parts, yes, sir.

10 Q. Did you make that change, did you note that change?

11 A. I didn't **spot** it, sir.

12 Q. Now, after you got the paper dropped -- **well, let's go**
13 back.

14 Where the papers get dropped at 3:30, is that when
15 you and Mr. Trammell went to get the young man to help throw
16 the papers?

17 A. Yes, sir, before then.

18 Q. Okay. And so when you were back, the papers got dropped
19 at 3:30; is that right?

20 A. Yes, sir.

21 Q. And then you started working; is that a fair statement?

22 A. Yes, sir, we picked up the papers and drove from there.

23 Q. All right. So at 3:30, using the Government's Exhibit
24 5, you're here at 85th and Prospect, you've got the papers,
25 and now are you going to go across 85th Street to start

1 delivering them?

2 A. No.

3 Q. Where do you go?

4 A. We go back out the highway route, back out 71 Highway,
5 and we hit 435 westbound, and we get off on Wornall and go up
6 to 99th and Wornall, and right there is the Willow Creek
7 Apartments.

8 Q. And you and Mr. Trammell were in the same car still?

9 A. Yes, sir.

10 Q. Or vehicle, whatever it was?

11 A. Van, yes, sir.

12 Q. And the young man was with you?

13 A. Yes, sir.

14 Q. Now, you told this jury, I think you told us that you
15 saw these four men -- in your affidavit, at least, you saw
16 four men, including Bryan Sheppard, Richard Brown and the
17 Bohrn brothers, between 2:00 and 2:15 a.m. That would have
18 been before you delivered the papers?

19 A. Yes. It was before I delivered the papers.

20 Q. All right. Now, do you remember testifying to the grand
21 jury on, again, the 12th of March, 1996? You were under
22 oath; is that right?

23 A. Yes, sir.

24 Q. Were these questions asked and these questions given?

25 Page 4, line 13.

1 Question: "Now, those early morning hours when you
2 were out working on delivering papers, did you also see
3 them?"

4 Answer: "Yes, I did."

5 Question: "Who were **they** with?"

6 Answer: "**They** were with Buddy Bohrn, Pooh Bohrn,
7 **Frank** Sheppard" -

8 Now you're naming **Frank** Sheppard to the grand jury,
9 and -

10 MR. MILLER: I'm going to object to that argument
11 while he's reading.

12 THE COURT: Yeah, you don't need to argue your
13 case. Just give him, ask him if that was the answer. Start
14 it again.

15 MR. O'CONNOR: Okay. I apologize. Let me start it
16 again. Let me start it again.

17 MR. OSGOOD: What page are you starting on?

18 MR. O'CONNOR: Page 4, line 13.

19 Q. (By Mr. O'Connor:) Question: "Now, those early morning
20 hours when you were out working on delivering papers, did you
21 also see them?"

22 Answer: "Yes, I did."

23 Was that question asked and that answer given?

24 A. Yes.

25 Q. "Who were **they** with?"

1 Answer: **"They** were with Buddy Bohrn, Pooh Bohrn,
2 **Frank** Sheppard, and **they** were at, at what I, what at that
3 time was Bohrns' parents' house."

4 Was that question asked and that answer given?

5 A. Yes, sir, at the time.

6 Q. So you saw Bryan Sheppard after the paper drop, after
7 3:3 0?

8 A. No. No, sir.

9 Q. Did you tell that to the grand jury?

10 A. I had gotten, I was asked questions. I was nervous
11 about even doing it. That morning I saw them before the
12 drop.

13 Q. All I'm asking you, did you tell the grand jury that you
14 saw them after you got the papers?

15 MR. MILLER: I'm going to object to this.

16 THE COURT: You don't need to argue with him about
17 it. You have the grand jury transcript. You may put it into
18 evidence for the limited purpose of testing this testimony.
19 I don't think we need to go through it.

20 MR. O'CONNOR: At this time I would offer Exhibit
21 33 for that limited purpose, the lines I've already read.

22 THE COURT: All right. You don't need to go into
23 it anymore.

24 MR. O'CONNOR: Thank you.

25 Q. (By Mr. O'Connor:) When you saw Bryan Sheppard that

1 morning, did you see a black Monte Carlo anywhere around that
2 residence?

3 A. I didn't really notice.

4 Q. Were you using or doing **drugs** back at the time of the
5 explosion?

6 A. No, sir.

7 Q. And did you use any **drugs** the night of the explosion?

8 A. No, sir.

9 Q. When did you start using **drugs**?

10 MR. MILLER: I'm going to object to that. If it
11 wasn't at the time, it's not relevant.

12 THE COURT: Yeah, after the explosion, I don't
13 think it really relates to anything. I'll sustain it.

14 Q. (By Mr. O'Connor:) Between the time of the explosion
15 and the time that you met Bryan Sheppard as you've told us
16 about in the Clay County Jail, were you using **drugs**?

17 MR. MILLER: I'm going to object again. There's no
18 relevance to that either, in that time frame.

19 THE COURT: What are you testing him on?

20 MR. O'CONNOR: Testing his memory. If he's been
21 using **drugs**, I want to know about it so I can ask him how his
22 memory is after he used the **drugs**. I believe I have a good
23 faith basis for asking it.

24 THE COURT: I think you can ask him that.

25 A. My memory is fine.

1 Q. (By Mr. O'Connor:) The question is were you using **drugs**
2 between the time of the explosion and the time you met Bryan
3 Sheppard in the Clay County Jail.

4 A. No.

5 Q. Now, your incarceration history in the Clay County Jail
6 was you went in there on February the 23rd, 1989?

7 A. Yes, sir.

8 Q. For sexual abuse in the third degree?

9 A. Yes, sir, a misdemeanor, Class A.

10 Q. It was a felony broken down.

11 MR. MILLER: I'm going to object to that. That's
12 not proper.

13 THE COURT: You can't argue that, you can't prove
14 that to the jury. He's told you what the charge was, unless
15 you have something contrary.

16 Q. (By Mr. O'Connor:) And you were there until December of
17 '89?

18 A. Yes, sir.

19 Q. You told us you were a trustee?

20 A. Yes, sir.

21 Q. How long did that last, you being a trustee?

22 A. I was a trustee until I left there. I was rolled out
23 for a week until I was cleared by two of the corrections
24 officers, Dan Lloyd and Jay Bertram, because I was set up on
25 a situation, and they proved I was set up. So I was

2594

1 reinstated as trustee. I was out a trustee one week.

2 Q. Well, you were thrown out of being a trustee, weren't
3 you?

4 A. For one week until I was cleared.

5 THE COURT: Wait a minute, now, let's be fair.

6 MR. O'CONNOR: It is fair.

7 THE COURT: I want you to be abundantly fair with
8 this witness. He has already said he lost the position of
9 trustee for one week and he was cleared after that week.
10 Now, if your examination is going to that, that's fair.

11 MR. O'CONNOR: What if he wasn't, Judge, what if it
12 was more than a week?

13 THE COURT: If you have some proof that that is not
14 true, then let's have it.

15 (Counsel approached the bench and the following
16 proceedings were had:)

17 MR. O'CONNOR: Give me a chance to explain that.

18 THE COURT: But this doesn't deal with what he said
19 at all. Lockdown beginning 5/25, ending 6/1. That's a
20 week.

21 MR. O'CONNOR: But hear me out. What happened was
22 -- let me show you. They conducted a search of his, they
23 conducted a search of his premises, and they found him to be
24 with a toothbrush that had a razor blade melted into it. He
25 was found guilty of that offense. He was locked down from

1 6/1 -- from whatever that date is, May 25th to 6/1, then he
2 was taken out of the trustee program. He wasn't a trustee
3 after that.

4 He's trying to make it sound like he was out for a
5 week. He was out for a week for disciplinary problems, but
6 then he was not returned back to trustee.

7 MR. MILLER: My objection is it's all collateral
8 and it's not relevant, it's not under 609.

9 THE COURT: It's too collateral. I'm not going to
10 allow it.

11 MR. O'CONNOR: Can I make my argument?

12 THE COURT: All right.

13 MR. O'CONNOR: They on direct examination elicited
14 from him that he was a trustee, so a trustee to people can be
15 someone who can be trusted. That's an area of bias and
16 prejudice. He was thrown out. Right now the jury -

17 THE COURT: If you can prove by different evidence
18 -- I think that's too confusing for it to be fair to this
19 man to impeach him with it. If you can prove through the
20 Clay County people that he was not only removed for a week
21 but that he was permanently removed from the trustee program,
22 then you can prove it that way, but you're not going to prove
23 it with that.

24 MR. O'CONNOR: Well, I do want to ask him if -- in
25 fact, the other thing I want to get into with this guy was he

2596

1 had enemies in the jail. That's why they moved him to be a
2 trustee, because they were in fear of people that were
3 enemies of his, which is the reason why Bryan Sheppard would
4 have never talked to or trusted this guy because nobody ever
5 trusted this person.

6 THE COURT: That's quintessential opinion. I'm not
7 going to allow that question.

8 (The following proceedings were had in open court:)

9 Q. (By Mr. O'Connor:) Was a disciplinary action filed
10 against you on 5/27 of '89 by the Clay County Jail people?

11 MR. MILLER: Same objection. It's not relevant.

12 THE COURT: I thought we just went over that, Mr.
13 O'Connor.

14 THE WITNESS: I'll answer it.

15 THE COURT: All right. Answer it.

16 A. Yes, I was. And if you would check, the officers are
17 still there that cleared me of it. The captain reinstated me
18 a trustee, and I left there as a trustee.

19 Q. (By Mr. O'Connor:) Were you found guilty of the offense
20 of what they said you did?

21 A. No, I was not.

22 MR. MILLER: Judge, excuse me.

23 THE COURT: That's collateral, and I sustain the
24 objection. I strike the answer. The answer is no, but
25 strike the answer.

1 MR. O'CONNOR: Your Honor, he just told the jury
2 that he was exonerated by these officers, as I understood
3 what he said, so that means he would not have been found
4 guilty.

5 THE COURT: That's what he said.

6 Q. (By Mr. O'Connor:) Hand you what's been marked as -

7 THE COURT: Hand me what you've got there before
8 you hand it to him.

9 MR. MILLER: May we approach on that?

10 THE COURT: Yes.

11 (Counsel approached the bench and the following
12 proceedings were had:)

13 THE COURT: I'm not going to let you use this on
14 cross-examination of this witness. He didn't make that
15 record. He doesn't know whether that's accurate or not.

16 MR. O'CONNOR: Judge, the rule is in jail, because
17 I worked there for three years, when someone files a
18 disciplinary action, they have a right and obligation to
19 bring this back to them and show it to them, and they have to
20 sign for this.

21 THE COURT: Did he sign for that?

22 MR. O'CONNOR: I don't know, but I know that's the
23 procedure. He has to be told the reason why he's being
24 punished and put in for six days.

25 THE COURT: He's testified to all of that, John.

1 MR. O'CONNOR: I think it's -

2 THE COURT: He's testified that he was taken out of
3 trustee status at the beginning of the week, which was like
4 5/25, and he was out of trustee status for a week, which
5 would roughly have been on 6/1, that would be a week. And
6 that was the lockdown, and the other action was removal from
7 trustee program. But the fact this doesn't say he was
8 reinstated doesn't mean anything.

9 MR. O'CONNOR: He's already told this jury that he
10 didn't get any disciplinary action, they found in his favor,
11 and that is untrue. Now -

12 THE COURT: And do you have some record that that's
13 untrue?

14 MR. O'CONNOR: Right there.

15 THE COURT: That's not a record of that. I've told
16 you, that's not a record of that.

17 MR. O'CONNOR: I'm just asking, why isn't it?

18 THE COURT: It doesn't say anything about what the
19 end result of it was. For this period of time, he was -

20 MR. O'CONNOR: That's all I'm asking about.

21 THE COURT: I'm not going to allow you to, that's
22 unfair. That's why I'm not going to let you do it. I think
23 it's unfair to him.

24 MR. O'CONNOR: How can it be unfair? In other

25 ~ words, m just asking,
how can it be unfair if he's led this

2599

1 jury to believe -- we know that this, if nothing else,
2 then -

3 THE COURT: There's all kinds of -- there's all
4 kinds of implicit language in the operation of these jails
5 and the keeping of these records, and they're not very
6 complete, and this doesn't deal with what you're asking him
7 about. If you've got people from up there that can prove
8 this for you, bring them in.

9 MR. O'CONNOR: Do you agree with me that I have a
10 good faith basis for asking him? I mean, right now I don't
11 have a witness indoors. I could use a witness like you're
12 saying to impeach him, but I haven't asked him a question to
13 impeach him with, but I have a good faith basis to ask it
14 because I have this.

15 THE COURT: He's already testified to what you
16 disagree with. You can use a witness to impeach that if you
17 want to.

18 MR. MILLER: If I may, and I think we're done
19 here. But if I may, first of all, if this isn't under 609,
20 it's collateral. If he's trying to get in a bad act, he's
21 stuck with the answer, it's over with, whether he brings in
22 anybody or not.

23 MR. O'CONNOR: They have consistently put evidence
24 on to build people up and then abandoned them when we start
25 cross-examining. It happened on the misdemeanors, and it's

2600

1 happened now.

2 Here is the relief I'm asking for, then, in light
3 of the Court's ruling is to have the jury disregard his
4 answer a minute ago when he said that there had been, that
5 someone had -- whatever, we can have it read back, to
6 disregard that.

7 THE COURT: But you're worried about that guilty
8 finding there, right? Is that the reason, because of that
9 guilty finding there?

10 MR. O'CONNOR: Yes.

11 THE COURT: But that was on the 25th of May.

12 MR. O'CONNOR: That's what we're talking about.

13 THE COURT: That's what he said. He said he was
14 found guilty on the 25th of May but a week later he was
15 exonerated.

16 MR. O'CONNOR: I'm telling you honestly that I
17 believe that he is saying that he was, that they've removed
18 him, but it was for the, they didn't have -

19 THE COURT: We're taking a lot of time.

20 MR. O'CONNOR: This is an important issue, hear me
21 one more time, please.

22 What he's saying to the Court is on, his testimony
23 is he's saying that he was removed but they were wrong. It
24 was a bad removal, and after that, I got exonerated.

25 THE COURT: I'm going to tell you something. I

2601

1 want this record to reflect, and I'm going to tell you, I
2 believe him. I do not believe that he was not restored as a
3 trustee from this testimony and from his demeanor and from
what he has said. And I think that if that is accurate, it's
s incomplete. That record, which is identified as Exhibit 34,
6 is incomplete.

7 MR. O'CONNOR: I would make a request to voir dire
8 him outside the hearing of the jury later to preserve my
9 record, can we do that?

10 THE COURT: That's fine.

11 MR. PETERS: Very briefly. What he told you,
12 Judge, is -- what he told us is that he had been exonerated
13 from that.

14 THE COURT: Well, that's a word. I mean, the fact
15 is that he got out of lockdown and he was restored to trustee
16 status, and that's the question. And the big bugaboo in
17 O'Connor's mind is whether he was a trustee and whether he
18 was restored as a trustee.

19 MR. PETERS: I understand that came in that this
20 witness said he was exonerated, and the Court has been shown
21 a document that says that was not true, he was not
22 exonerated.

23 THE COURT: That document wouldn't necessarily show
24 that he was exonerated. He was, in fact, on the 25th of May
25 refound guilty of something, he was put in lockdown, and his

2602

1 testimony is, and there's nothing to the contrary, that after
2 that week he was exonerated by two officers who found out he
3 didn't do it, so that's where we are on that.

4 (The following proceedings were had in open court:)

5 THE COURT: Okay. About four minutes to lunch
6 break, Mr. O'Connor.

7 MR. O'CONNOR: Okay, Your Honor.

8 Q. (By Mr. O'Connor:) Now, when you were in the Clay
9 County Jail with Mr. Sheppard, was he telling you that he got
10 transferred from another jail before he was brought to the
11 Clay County Jail?

12 A. Yes, he did.

13 Q. And did he tell you that other inmates in Jackson County
14 Jail had been saying that he was talking up there or making
15 admissions about this explosion?

16 A. He said that one other inmate in there was going to get,
17 testify, was trying to testify against him, snitch him out.

18 Q. And he was telling you that?

19 A. Yes.

20 Q. Did he ever tell you whether or not that anything was
21 stolen from the site?

22 A. No, he didn't.

23 Q. Now, did you tell any ATF agent or anybody in this case
24 that they were up there stealing copper and metal or anything
25 strike that?

2603

1 THE COURT: If they were or they said they were?

2 Q. That they said they were?

3 A. No, not that they said they were.

4 Q. So that would not have been a conversation that you
5 would have had with Mr. Sheppard; is that correct?

6 A. No, the conversation was that **they** would go up, getting
7 batteries, construction equipment, other things like that
8 **they** could sell.

9 Q. Now, did they ask you about other individuals?

10 THE COURT: They?

11 Q. The ATF.

12 A. Yes, they did.

13 Q. Did they ask you about Allen Bethard?

14 A. Yes, they did.

15 Q. Robert Dresnick?

16 A. No.

17 Q. Ronnie Edwards?

18 A. I don't remember -- they listed a lot of names I did
19 know and some I didn't. I can't recall the names.

20 Q. Larry Baker, Didi Baker, ask you about those names?

21 A. I believe their names came up.

22 Q. Johnny Driver?

23 A. I believe his name did come up.

24 Q. Can you tell us your felony convictions, please?

25 A. I've had two felony convictions.

1 MR. MILLER: Excuse me, may we approach?

2 THE COURT: Yes.

3 (Counsel approached the bench and the following
4 proceedings were had:)

5 MR. MILLER: I'm going to object to the form of the
6 question about felony convictions. The only other one he has
7 is outside of ten years. As I understand the rule, if it's
8 outside of ten years, it can't be used. We covered the one
9 felony conviction that he has.

10 MR. O'CONNOR: I just follow the lead of the
11 Government. **They**'ve asked all their witnesses, do you have
12 any felony convictions.

13 THE COURT: I think the ten-year rule ought to
14 apply, unless you can show me some reason why it shouldn't,
15 and I'll accept the government's representation that one of
16 them was more than ten years so you shouldn't go into it, and
17 he has testified to one already.

18 MR. O'CONNOR: Judge, we'd better break here
19 because I've probably got another 30 minutes with this guy.

20 THE COURT: We're through with the felony
21 conviction question, right?

22 MR. O'CONNOR: Felony convictions, yes.

23 THE COURT: All right.

24 (The following proceedings were had in open court:)

25 THE COURT: We're going to take our lunch break

1 now, ladies and gentlemen. Again, don't talk about the
2 case. Have a good lunch, and we'll see you in the jury room
3 at 1:30. You're excused.

4 (The following proceedings were had in the
5 courtroom out of the presence of the jury:)

6 THE COURT: Okay. We're in recess.

7 (A recess was taken from 11:58 a.m. to 1:34 p.m.)

8 MR. O'CONNOR: Judge, can we make this offer of
9 proof now on this jail record?

10 THE COURT: Yeah. Come ahead, please. Come on up
11 and resume the stand, if you would, Mr. Morales, and I'll
12 remind you that you're still under oath.

14 STEPHEN WAYNE MORALES,
15 having been previously sworn, testified further as follows:

16 THE COURT: All right. Go ahead.

18 EXAMINATION ON OFFER OF PROOF

19 By Mr. O'Connor:

20 Q. Mr. Morales, I'm going to hand you what's been marked as
21 Defendants' Exhibit 34 and ask if you have seen that document
22 before. Take your time and look at it. If you haven't, you
23 haven't.

24 A. Yes, I have.

25 Q. And you understand that Exhibit 34 is a record that we

1 received from the government in this case as part of the
2 discovery. And in that record, it shows that you were in
3 possession of a weapon, in violation of general rule No. 8,
4 inmates will not manufacture or possess any weapon or
5 anything that could be reasonably construed as such. That
6 was the allegation against *you*; isn't that true?

7 A. Yes, it was.

8 Q. And the board after a hearing where you put on evidence
9 -- did you put on evidence at a hearing? Did you testify?

10 A. I went before a hearing. Like I said, it was overturned
11 and the officers are still there and it can be verified. Dan
12 Lloyd and Jay Bertram are the officers that cleared me of
13 that. **They** proved that I was set up.

14 Q. I'm going to ask you, did the board find you guilty of
15 that offense and you were taken off trustee status at that
16 time as a result of that guilty finding?

17 A. For a very short period. And I was reinstated. If I
18 would have been guilty and it would have stood guilty, I
19 would not have gotten trustee back because of it being a
20 weapon.

21 Q. okay. So do you agree with me that you were in lockdown
22 because of this offense that you were found guilty of from
23 S/25 of '89 to 6/1 of '89, approximately a week?

24 A. Yeah.

25 Q. And then you're saying that later you were put back on

1 trustee status again?

2 A. Right after I got out of there.

3 Q. Did you have any enemies in the Day Rooms E, H. and A
4 from where you served food as a trustee?

5 A. Not that I was aware of.

6 Q. Were you isolated by the deputies because people did not
7 want to be around you or were you, was that made known to you
8 by anyone?

MR. MILLER: Excuse me. I didn't know that this
10 was part of the -

11 THE COURT: Well, and this is the grossest kind of
12 speculation and opinion. I mean, did you have enemies, it
13 seems to me, is in essence calling on him to testify to
14 somebody else's opinion about him. But that's not even the
15 question you're on now. You're on the question of whether he
16 was isolated. What did you say, isolated in the day room?

17 MR. O'CONNOR: I'm reading from a record here,
18 Judge. It's 6/1 of '89, release from 4-P, bumped to main
19 security due to having enemies in Day Rooms E, H. and A from
20 when he served food on line as trustee.

21 This is the record that I'm reading, I'm not making
22 it up. I'm reading it from the record the government
23 provided to us. so I'm asking him about that because, for my
24 offer of proof, besides the issue to rebut what he's already
25 told the jury about the trustee business, I want to get into

~ 2608

1 with him, which I assume the Court had told me earlier that I
2 could not, to explore his bias that if -- the argument could
3 be made, I think, to the jury that if he was up there and had
4 enemies that, and people did not like him, it was unlikely,
5 or argument could be made that Bryan Sheppard would not be
6 talking to someone like that. That's -- I understand what
7 the Court's ruling is.

8 THE COURT: My ruling will be the same. Let's go
9 on.

10 MR. O'CONNOR: But I'm making my offer of proof
11 right now as it relates to that.

12 THE COURT: Go ahead with your offer of proof.
13 Let's don't take too long.

14 Q. (By Mr. O'Connor:) Okay. On 6/1 of '89, were you
15 bumped to main security due to having enemies in Day Rooms E,
16 H. and A?
17 A. No.

18 MR. O'CONNOR: I think that's all on the offer of
19 proof, Judge, that I have on the trustee. And I would reask
20 the Court when the jury is brought in to ask him specific
21 questions about the event that he has described in his
22 earlier cross-examination where he has told this jury that he
23 was cleared of these charges because the record is -- and
24 this is just the record I got from the government, not
25 something I went and got -- that shows that he was

1 disciplined, and now he's testified to this jury that he was
2 basically cleared of it, and I think it's proper.

3 THE COURT: But the record doesn't show he wasn't
4 cleared of it. The record shows that he was disciplined, as
5 he testified, for the period of time that he testified he was
6 disciplined for, and what -- your argument with him is that
7 he testified that after all of that he was restored to
8 trustee status and -

9 MR. O'CONNOR: My argument, Judge, is that -

10 THE COURT: And the record does not indicate that
11 did not happen.

12 MR. O'CONNOR: I would argue that the absence of
13 the record would prove that it did not happen.

14 THE COURT: Well, I don't agree with that. All
15 right. Let's go on.

16 MR. BECKER: For the record, Judge, the records do
17 show that he was placed back in trustee status.

18 THE COURT: Does it?

19 MR. BECKER: Oh, yes.

20 MR. O'CONNOR: We know that because he was -- I'm
21 talking about the window of the week. He was -

22 THE COURT: Well, the week was when he had been
23 framed and was improperly held as guilty of that offense, and
24 then he says at the end of that week he was cleared.

25 MR. O'CONNOR: But the record shows he was not

2610

1 cleared, Judge. And that's what I'm trying to argue.

2 THE COURT: Show me that. You don't have to show
3 me that, I've seen that that you have in your hand. Guilty,
4 and he served a week for it.

5 MR. O'CONNOR: Right. That's all I want to get
6 into.

7 THE COURT: But then after that week, he was
8 cleared.

9 MR. O'CONNOR: What evidence is there of that?

10 THE COURT: What evidence is there that he wasn't?

11 MR. O'CONNOR: I think the absence of the record
12 would prove it.

13 THE COURT: We're not getting anywhere. Let's go
14 on.

15 MR. PETERS: I would just -- because it's something
16 that I would get into, as well. The witness's statement was
17 that he was exonerated. The record shows that he was not
18 exonerated. And what the Court -

19 THE COURT: How does it show that? I've seen that
20 record, and I don't see it saying that.

21 MR. PETERS: It shows that he was found guilty of

22 THE COURT: As of May 25th, and he was held in
23 lockdown for a week. And he's testified that after lockdown,
24 two officers came forward and cleared him of the offense, and
25

1 that's exoneration, if that happened. And I've seen or heard
2 no evidence that he wasn't.

3 MR. PETERS: And so I can make my offer of proof,
4 it's not our burden to come forward with something that
5 doesn't exist which he says he was exonerated.

6 THE COURT: If you're impeaching, it's your burden.

7 MR. PETERS: What I would direct the Court to is
8 the rule regarding hearsay. Mr. O'Connor has provided to the
9 Court certified records provided by the prosecution in this
10 case, and it may take me a second to find it.

11 What the Court is asking is is there a record that
12 shows that he was exonerated. The records provided by the
13 government do not show that. And as a hearsay to the
14 exception under Rule 803, we can introduce these records to
15 show that he was not exonerated.

16 THE COURT: But those records show, Mr. Peters,
17 exactly what he's testifying to.

18 MR. PETERS: No, Your Honor.

19 THE COURT: That he was found -- yes, it is. We're
20 going to stop arguing about this right now. I'm really
21 getting tired of this, and I'm afraid I'm getting a little
22 short-fused on it. Let's stop it and go on with our case.
23 You've made your record. You've made your record, Mr.
24 Peters, you've made yours, Mr. O'Connor, and I've made mine.

25 MR. PETERS: Judge, my suggestion is that it comes

1 under 803, I guess it would be -- well, I'll say 803 that the
2 fact that the records themselves do not show that he was
3 exonerated can be offered to show that, in fact, he was not
4 exonerated.

5 THE COURT: Okay. And that's a stretch I'm not
6 willing to make. All right. Let's go. Get the jury.

7 (The following proceedings were had in the
8 courtroom in the presence of the jury:)

9 THE COURT: Go ahead, Mr. O'Connor. Mr. Morales,
10 I'll remind you you're still under oath.

11 THE WITNESS: Yes, sir.

12 RESUMED CROSS-EXAMINATION

13 By Mr. O'Connor:

14 Q. Mr. Morales, I believe you testified on direct
15 examination that you had received no promises from the
16 government; is that true?

17 A. That's true.

18 Q. And that you have received no assistance from the
19 government; is that true?

20 A. That's true.

21 Q. And how was it that you came in contact with the
22 government to give this interview on February the 1st, 1996?

23 A. Through a friend.

24 Q. And is that, id you call the ATF, did **they** call you,

1 how did this take place?

2 IA. My friend had mentioned that he had spoke with them and
3 that you know, it would be best if I go ahead and give them
4 1a call and just talk to them for a few minutes, so I did.

5 IQ. And at the time you went to talk to them, you had just
6 been on probation a couple of months from the **drug** charge out
7 of Jackson County?

8 A. Yes, sir.

9 Q. And that was a five-year sentence and a three years
10 probation?

11 A. Yes, sir.

12 Q. And who was the friend that suggested that you talk to
13 them?

14 A. Michael Rush.

15 Q. So the first time that you ever had contact with any
16 agent or any officer in this case was when you called them
17 after having this conversation with Mr. Rush?

18 A. Yes, sir.

19 Q. Never talked to any agents between the time of the
20 explosion in 1989 until February the 1st of 1996?

21 A. Not about this case, no, sir.

22 THE COURT: The explosion?

23 MR. O'CONNOR: '88, I'm sorry.

24 Q. (By Mr. O'Connor:) 1988, from the time of the
25 explosion, November of '88 until February 1st of '96, did you

1 shave any conversation with any agent or government official,
2 prosecutor, about what you knew about this case?

3 A. NO.

4 Q. Now, you were in the Clay County Jail when you talked to
5 Bryan Sheppard; is that true?

6 A. That's true.

7 Q. And you were a trustee in the Clay County Jail?

8 A. Yes.

9 Q. And as a trustee in the Clay County Jail, you kind of
10 worked hand-in-hand with the deputies in getting people out,
11 delivering food, and stuff like that?

12 A. Yes.

13 Q. And you got certain privileges where you could hang out,
14 not be in a cell all day, and you could be out with the
15 guards, just you and them one-on-one in a lot of situations.

16 THE COURT: Is that a question?

17 ~ Q. Is that true?

18 A. It was doing my job.

19 Q. okay. And at any time when you were out as a trustee,
20 did you, while Mr. Sheppard was in jail charged with this
21 very explosion, did you tell any of those deputies up there
22 when you were out as a trustee all of these conversations
23 that Bryan Sheppard had had with you?

24 A. No, I did not.

25 ~ Q. Has the government assisted you or helped you in any

2615

1 bonds, any criminal bonds that you have made?

MR. MILLER: I'm going to object unless we have a
3 time frame.

4 THE COURT: Yeah. I think we probably ought to pin
5 it down a little bit.

6 Q. (By Mr. O'Connor:) December the 13th, 1996.

7 A. I was sitting -

8 THE COURT: Wait a minute, Mr. -

9 Q. Were you helped, did any government person intercede on
10 your behalf in relation to a bond that was set on you in Cass
11 County?

12 A. I asked for no help. I got a signature bond from the
13 judge out of Cass County.

14 Q. And that bond was a \$5,000 cash bond that became a
15 \$5,000 signature bond; is that true?

16 A. Yes, sir.

17 Q. On December the 13th, 1996?

18 A. Yes, sir.

19 Q. And you aren't aware of any assistance anyone made on
20 your behalf to get that bond; is that what you're telling us?

21 A. I'm saying I asked for no assistance.

22 Q. I'm asking, did you get some?

23 A. I don't know if it was directly or indirectly.

24 Q. Well, what do you know about it?

25 A. I just know that I was, I got a signature bond, I was

1 bonded out, and that I was to contact the ATF officer.

2 Q. Did the ATF officer tell you that he had gone to bat for
3 you to get a signature bond?

4 A. He said that, you know, he spoke to someone, but I
5 didn't -

6 Q. So on December 13th, 1996, you were in the Cass County
7 Jail with a \$5,000 cash bond, and then that went to a
8 signature bond and someone from the ATF told you that they
9 had assisted you in getting that done?

10 A. They said they had spoke to someone. They didn't say
11 they actually assisted.

12 Q. Who did they speak to, do you know?

13 A. No, sir, I'm not sure.

14 Q. Now, did you also have a bond on another case in Jackson
15 County in November of 1996?

16 A. Yes, I did.

17 Q. And was that also a \$5,000, 10 percent bond?

18 A. Yes, it was.

19 Q. You made that one?

20 A. Yes, I did.

21 Q. But then as a result of those two new charges, your
22 probation on the **drug** charge was being violated because you
23 were on probation and you now have a new charge in Cass
24 County and a new charge in Jackson county; is that true?

25 A. That's true.

1 Q. And there was a warrant issued for your arrest on the
2 probation violation, and that bond was set at 5,000 security?

3 A. It was R.O.R.

4 Q. Was it originally set at 5,000 security? I take that
5 back, I'm even wrong about that. Was it originally set at no
6 bond?

7 A. That's an R. O. R. bond.

8 THE COURT: I'm sorry. What did you say that was?

9 THE WITNESS: R.O.R., released on my own
10 recognizance.

11 THE COURT: All right.

12 Q. (By Mr. O'Connor:) Did you realize a capias warrant had
13 been issued for you for probation violation?

14 MR. MILLER: Excuse me. I'm going to object
15 unless, is there some relevance as to bias or anything?

16 MR. O'CONNOR: Absolutely.

17 MR. MILLER: Can we approach?

18 THE COURT: Yeah, come up. What are you
19 demonstrating here?

20 MR. O'CONNOR: Sure.

21 (Counsel approached the bench and the following
22 proceedings were had:)

23 THE COURT: What's this all about?

24 MR. O'CONNOR: Let me run you through it, Judge.

25 THE COURT: Just tell me about the capias warrant

1 that you just asked him about.

2 MR. O'CONNOR: I've got to tell you this other for
3 it to make sense.

4 In November, November the 8th of '96, he went into
5 a United Missouri Bank with a \$3700 check that wasn't his.
6 He was caught at the scene. He was taken down and charged
7 with forgery, and his bond on that was set at 5,000, 10
8 percent, and he made a \$500 bond.

9 That case then put him in violation of his
10 probation because he has a new case. So then there's a
11 capias warrant issued by Judge Scoville, and it's in here.
12 When they issue warrants out of that division, there's no
13 bond set. In other words, a guy is arrested, there's no
14 bond, then you've got to go to the judge to get a bond. The
15 bond then got set at 5,000 security. Then, I believe that
16 someone from the ATF -

17 THE COURT: You believe?

18 MR. O'CONNOR: Here is what I've been told.

19 MR. BECKER: By who?

20 MR. O'CONNOR: Two people.

21 MR. BECKER: Who is that?

22 MR. O'CONNOR: Getting ready to tell you. When I
23 went out to get this, I went in and showed this to the judge
24 that he reduced a 5,000 secured bond to a 5,000 R.O.R. He
25 told me that he would never reduce a bond that was secured to

2619

1 R.O.R. unless someone requested him to do so.

2 What you have to understand is that this guy has a
3 forgery pending in Cass, he's on probation violation, he
4 hasn't shown up for his other court date which I'm going to
5 show in a minute that they issued another capias warrant, got
6 his bond set aside.

7 But a long story short, I went out to talk to the
8 public defender who was representing him. She remembered
9 that someone had called out and talked to Probation Officer
10 Jennifer Clyburn and talked to them about getting the bond,
11 but she didn't know the gist of it.

12 I went and talked to the prosecutor. The
13 prosecutor told me that she received a call from someone, who
14 she won't tell me, but it wasn't Dan Miller, it wasn't Paul
15 Becker, and it wasn't a lawyer, to ask about the bond getting
16 reduced.

17 Then I talked to Jennifer Clyburn. Jennifer
18 Clyburn told me that she had received a call, that the rules
19 would not allow her to tell me who it was. It's obvious who
20 it was, Judge, it's the same people who called out -- I can
21 prove that the call was made to Cass County because they have
22 it in their record out there.

23 THE COURT: Who made all of these calls?

24 MR. O'CONNOR: Dave True to get this guy on bond.

25 ~ TEE COURT: As it is, I'm not going to allow it.

2620

1 MR. O'CONNOR: I've got to ask it to be -

2 THE COURT: You've asked it. It's on the record.

3 MR. MILLER: I'm going to object to the whole

4 line. There's no more of it?

5 MR. O'CONNOR: I want to ask him about his bond

6 situations. I want to ask him about what his bond

7 situations -

8 THE COURT: People are really getting tired of

9 this, John. I really don't think you're getting anywhere

10 with this. You've proved this is a bad guy. You've proved

11 that he's got -

12 MR. O'CONNOR: The law is they have to tell us when

13 they make promises and do things for people. They've floated

14 this witness up here. They said they made no promises.

15 THE COURT: You're overstating it.

16 MR. O'CONNOR: Let me ask you this, Judge. If he

17 was, if he got a bond because of the assistance of Dave True

18 in Cass County, do you believe we're entitled to know that?

19 And do you believe that the government putting forth that he

20 has no assistance is the truth?

21 THE COURT: What's your position on that?

22 MR. MILLER: Our position is if he doesn't know -

23 if he doesn't know about it, then it doesn't matter what Dave

24 True did for him if he doesn't know about it. That's the

25 first thing. There's no foundation that he does.

1 Second of all, if they can prove it was True, then
2 when True is on the stand, rip him up about Morales. But if
3 he doesn't know about it -

4 THE COURT: You don't have any indication that he
5 knew this happened. He got the bond, he knew that, but he
6 didn't know what True had done or what anybody had done.

7 MR. O'CONNOR: Let's assume this for argument
8 purposes. I may be dead wrong. Let's assume -- I know up in
9 Cass County, I'm right. Let's assume on Jackson County that
10 True made the call and this guy doesn't know it. How can
11 this man in good faith ask him if any assistance has been
12 given to him when he knows it has?

13 THE COURT: You just said he didn't know it.

14 MR. O'CONNOR: He said he knew it. He said he was
15 told to call ATF after he got out and that ATF -- they
16 didn't, he didn't know exactly who he had talked to. His
17 thing was I didn't ask for it, they did it for me.

18 THE COURT: You're springing through all of your
19 own assumptions to get to this, and I can't allow that.

20 MR. O'CONNOR: These aren't assumptions. I agree
21 with you, if I hadn't run this thing to ground, but they know
22 right now as we're standing here, did True call out and get a
23 bond for him in Jackson?

24 THE COURT: True is going to be on the stand in
25 Ethic case, is he ~t7 You can prove it that way.

1 MR. O'CONNOR: I can ask him right now if they've
2 made those -

3 THE COURT: You're not entitled to interrogate this
4 witness on this subject anymore. You've gone over it with
5 him, and you've gone over it with him, and you've made an
6 offer of proof, which wasn't very persuasive, and now let's
7 go on.

8 MR. O'CONNOR: Hold on a minute, Judge,
9 respectfully. If they've given any witness assistance -

10 MR. MILLER: Can we keep it down?

11 MR. O'CONNOR: If they've given any witness
12 assistance -

13 THE COURT: That he knows about.

14 MR. O'CONNOR: No, that they know about.

15 THE COURT: No, that's not true. He has to know.

16 How can it bias him if he doesn't know that he's gotten any
17 assistance?

18 MR. O'CONNOR: I understand what you're saying
19 there, but what I'm asking you is do they have an obligation
20 to tell us if they've given assistance to a witness? They've
21 put this witness up here. Did Dave True call out there, yes
22 or no? We're entitled to know that.

23 Forget this witness. Let's assume this witness
24 doesn't exist. We're entitled to know any promises of
25 Assistance that they've given to people. Forget this witness

1 is even on the stand.

2 THE COURT: I'm not so sure about that. What's
3 your position on this now, or yours, either one?

4 MR. O'CONNOR: Did Dave True call out and get a
5 bond in Jackson County and Cass County for this guy? That's
6 the question.

7 MR. BECKER: No. No.

8 MR. MILLER: No, and I don't know anything about it
9 either, so quit pointing your finger at me.

10 MR. O'CONNOR: I specifically said that she said it
11 wasn't you. I said that a minute ago.

12 MR. MILLER: You're assuming that we knew about
13 this and we're covering up. No. If he doesn't know it, the
14 case is cleared with Morales. If you've got it on True, then
15 go after True.

16 MR. O'CONNOR: I haven't asked him the Jackson
17 County bond, whether someone made it for him. I asked him in
18 Cass, I'm entitled to ask in Jackson. I asked him if he got
19 assistance because I have a good faith basis for asking.

20 THE COURT: What is your good faith basis that he
21 did know?

22 MR. O'CONNOR: That record shows -- Judge, it
23 doesn't take a rocket scientist to figure out that if a guy
24 goes from a \$5,000 secured bond to signature that someone
25 isn't helping him.

1 THE COURT: I'm not going to assume that.

2 MR. O'CONNOR: That's part of it.

3 THE COURT: This is getting way out of hand. We're
4 taking too much time with it. You've made your record, I've
5 made my record.

6 MR. O'CONNOR: I've not explored with him Jackson
7 County, whether he's been assisted. I can just ask him
8 that. If he says no, I'm done.

9 THE COURT: If he says no, you've got it.

10 (The following proceedings were had in open court:)

11 Q. (By Mr. O'Connor:) Mr. Morales, are you aware of any
12 assistance that was given to you on your bond on your
13 probation violation in Jackson County?

14 A. No, sir.

15 Q. So as I understand it right now, you're on three, two
16 signature bonds, is that correct, one in Jackson, one in
17 Cass?

18 A. No. Jackson County I posted a bond. Cass was
19 signature, and there's no signature on an R.O.R. with the
20 judge. I go Friday for my probation violation.

21 Q. So this Friday is when you have your probation
22 violation?

23 A. Yes, it is. That was determined by my probation
24 officer.

25 Q. Now, wasn't that case originally set, the probation

1 violation originally set in January?

2 MR. MILLER: Objection as to relevance.

3 THE COURT: Why is that relevant?

4 MR. O'CONNOR: Because it's been moved past the

5 starting of this trial. It's been moved twice.

6 THE COURT: Why is that relevant?

7 MR. O'CONNOR: I think it is.

8 A. It's been moved one time.

9 THE COURT: I don't think it's relevant. I sustain
10 the objection.

11 Q. (By Mr. O'Connor:) So you have a new forgery count in
12 Jackson County that's pending and a new forgery count in Cass
13 County that's pending and this probation violation; is that
14 true?

15 MR. MILLER: Objection. That's all improper, and
16 he knows it.

17 THE COURT: Sustained.

18 MR. PETERS: Your Honor, I object.

19 THE COURT: We're not going to do this anymore, Mr.
20 O'Connor. We've been through this and through it. Now,
21 let's move on, please.

22 MR. O'CONNOR: Judge, I want to approach. I think
23 I'm right on this.

24 THE COURT: Apparently, because this is about the
25 third time that you've brought it up to me.

1 MR. O'CONNOR: Respectfully, Judge, I'm not
2 arguing, but I do think I want to approach, if I can.

3 THE COURT: Let's go on. You can make an offer of
4 proof after the jury isn't here.

5 MR. PETERS: Your Honor, I had a pending
6 objection. I don't know if you want me to say it here or at
7 the bench.

8 THE COURT: Whatever you want.

9 (Counsel approached the bench and the following
10 proceedings were had:)

11 MR. PETERS: I just don't know your procedures. In
12 the courts that I've been in, for either a prosecutor or a
13 defense attorney to say "you know that question is improper"
14 when they make a speaking objection, they're usually
15 chastised by the bench. Whether or not it's improper is for
16 the Court to determine.

17 My objection was to Mr. Miller's objection, saying
18 you can't ask that and you know it's improper." I don't
19 believe anybody would suggest -

20 THE COURT: All right. I understand your
21 position. I think it's collateral.

22 (The following proceedings were had in open court:)

23 Q. (By Mr. O'Connor:) Mr. Morales, were you interested in
24 the reward money in this case?

25 A. No, sir.

1 Q. Would you accept reward money if your information is
2 helpful?

3 A. I would prefer not.

4 Q. In this sworn affidavit that you gave to the ATF on
5 February the 1st, 1996, did you say that you were aware of
6 the reward money being offered but you were not making reward
7 payment as part of your cooperation, did you say that?

8 A. Yes, sir, I did.

9 Q. And did you then say at the end, "I would accept reward
10 money if my information is helpful"?

11 A. If they wanted to, fine. But I haven't been in it for
12 the money, I let them know from the beginning.

13 Q. Now, when they came out to do this affidavit that was
14 signed three weeks later, did they bring a tape recorder so
15 we could hear everything they said to you and you said to
16 them?

17 A. I don't recall.

18 Q. And did they have any kind of a lady like this with them
19 where they were taking everything down, everything they said
20 and everything you said?

21 A. I don't recall.

22 Q. When did you get out of the Clay County Jail?

23 A. I believe it was December of '89.

24 Q. And did you tell anybody then about all of these
25 admissions that Bryan Sheppard had made to you in the jail?

2628

1 A. I had spoke to one friend.

2 Q. Anybody in law enforcement?

3 A. No.

4 Q. Now, when Mr. Trammell hired you, did he teach you the
5 route?

6 A. Yes, he did.

7 Q. In other words, you went together so you could learn the
8 route a couple of days so you could get the hang of it?

9 A. No, Mr. Trammell always went on the route. We went on
10 the route together.

11 Q. Even back at the time of the explosion?

12 A. Yeah. It made it easier, and so he could drive and we
13 could throw.

14 Q. Okay. And since you both took two cars, I guess met
15 there in two different cars, did you leave one car there and
16 then come back at the end of the route?

17 A. A lot of times we had a woman working with us, and she
18 would go ahead and load some papers and go to other places
19 and drop it off at apartments. She would take a second
20 vehicle.

21 Q. Do you remember about the first day or two that you went
22 to work for Mr. Trammell?

23 A. Yeah.

24 Q. I mean, where you didn't know the route but he was going
25 to teach it to you?

2629

1 A. Yeah.

2 Q. Didn't Mr. Trammell when he did the route go across 85th
3 Street to Holmes to start the route? He never went down 71
4 Highway out to around the highway, did he?

5 A. It's all going to if we had to pick up, you know, the
6 lady that was working with us.

7 Q. And so I understand, you thought, you say the route was
8 95th Street to like 101st?

9 A. I believe it was 95th to about 103rd.

10 Q. And you don't believe it was 85th to 103rd?

11 A. If it was 85th, it would be the other side of Holmes,
12 but I didn't think so. It's been quite a few years ago.

13 Q. Did Bryan Sheppard tell you what was used to set the
14 fires?

15 A. No.

16 MR. O'CONNOR: I believe I'm about done, Your
17 Honor. I want to look at one other thing. That's all I
18 have. Thank you.

19 THE COURT: All right. Any more cross?

21 MR. PETERS: Yes, Judge.

22 CROSS-EXAMINATION

23 By Mr. Peters:

24 Q. Mr. Morales, my name is Pat Peters and I represent **Frank**
25 ~ Sheppard, and I'm going to be moving back and forth based on

1 what we've heard. If I'm **unclear** as to a date or something,
2 I apologize, and just let me know.

3 First, is it your testimony that since the time of
4 this explosion, you've received no benefits or favorable
5 treatment from the government?

6 MR. MILLER: This is repetitious. We've gone over
7 it and over it.

8 THE COURT: Yes. And in order for it to be
9 meaningful as far as my ruling is concerned, you have to say
10 that you are aware of.

11 Q. (By Mr. Peters:) Okay. Sir, since the time of the
12 explosion, have you received any benefits or good things come
13 your way from government, ATF, up until the time that you've
14 testified today, that you're aware of?

15 A. No, sir.

16 Q. And I want to go back, the truck that you were driving
17 on November 28th going into the early morning hours of
18 November 29th, 1988, was this a van truck?

19 A. Yes, it was.

20 Q. And this was a van owned by your boss, Mr. Trammell; is
21 that correct?

22 A. By his mother, yes, I was buying it from her.

23 Q. And at this time in November, late November of 1988, you
24 were essentially living out of the van; is that fair to say?

25 A. No.

1 Q. When did you begin living out of the van, sir?

2 A. I was still at home. There was just a lot of times I
3 didn't feel like being with my girlfriend, so I would stay
4 out and gone.

5 Q. In November, December, January, that time frame, were
6 you living out of the van or staying at home?

7 MR. MILLER: I'm going to object to this as not
8 relevant.

9 MR. PETERS: Judge, I have that question and
10 answer, and I'm going on. And I think the Court will see
11 where I'm going.

12 A. I was still living at home.

13 Q. Okay.

14 THE COURT: I guess I overrule your objection since
15 it's moot.

16 MR. PETERS: Thank you, Judge.

17 THE COURT: Don't feel too good about it.

18 MR. PETERS: I'm getting ready, Judge.

19 Q. (By Mr. Peters:) Now, I also believe on your direct or
20 your cross-examination you testified that from the time of
21 the explosion until the time that you were in jail with Bryan
22 Sheppard that you didn't use **drugs**; is that correct?

23 A. That's correct.

24 Q. Sir, isn't it true -

25 MR. MILLER: I'm going to object. May we

2632

1 approach?

2 THE COURT: Yes.

3 (Counsel approached the bench and the following
4 proceedings were had:)

5 MR. MILLER: I just assume we're going to get into
6 something about a **drug** arrest or what have you. It's
7 extrinsic, it's collateral, and he's stuck with the answer,
8 and the answer is that he wasn't using **drugs** between such and
9 such a time.

10 THE COURT: Do you have a **drug** conviction during
11 that time?

12 MR. PETERS: Judge, I have a report from January of
13 '89 where he was stopped and he has **drugs** and **drug**
14 paraphernalia in his car. He's interviewed by the Grandview
15 Police Department, and he acknowledges that the **drugs**,
16 certain of the **drugs** and **drug** paraphernalia were his.

17 MR. MILLER: Nothing came of it.

18 THE COURT: Was he charged with it?

19 MR. PETERS: No, Judge. He has said he didn't use
20 **drugs**. He didn't say -- I'm not asking him whether he's
21 charged. I don't care.

22 THE COURT: Well, he said he didn't use **drugs**, and
23 I think you're stuck with it.

24 MR. PETERS: I have a statement to say that he does
25 use **drugs**.

2633

1 THE COURT: Not through him, you can't get it in.

2 But if you can get it in, you can get it in some other time.

3 MR. MILLER: Some other time?

4 THE COURT: Yeah, not now.

5 (The following proceedings were had in open court:)

6 Q. (By Mr. Peters:) Sir, on January 20th of 1989, were you
7 found to be in possession of dynamite and blasting caps and
8 detonator cord?

9 A. They found, they found in the van that I was driving in
10 the back under some papers a red box that they said had
11 explosives in it.

12 Q. Sir, on January 20, 1989, were you stopped in the van,
13 the van that you've described as being Trammell's van, and in
14 your possession was dynamite, blasting caps, and detonator
15 cord?

16 MR. MILLER: I'm going to object to this. This is
17 not relevant, and it's not under 609.

18 THE COURT: What's your theory of admissibility?

19 MR. PETERS: A variety of things, Judge.

20 MR. MILLER: Excuse me. If we have a variety.

21 THE COURT: Come on up, then.

22 (Counsel approached the bench and the following
23 proceedings were had:)

24 MR. PETERS: Judge, on this stop he had dynamite,
25 detonator cord, and detonators in his possession. In his

1 interview with the officer, he had had this in his possession
2 on November 28th and 29th, 1988, at the time of this
3 explosion.

4 THE COURT: Wait a minute.Wait a minute. You
5 said something about his interview with the officer.

6 MR. PETERS: Yes.

7 THE COURT: Did he say in the interview with the
8 officer that he had had it in his possession?

9 MR. PETERS: He described it alternatively as
10 coming from a dope house that he had picked it up from some
11 months before, and then in another statement he said he had
12 gotten it from a friend. But in any event, he's described
13 them as being in his possession in the van throughout the
14 time period that would encompass the time of the explosion.
15 That's the first part.

16 The second part is he's now said, as the Court has
17 pointed out repeatedly, that he's never received any benefit
18 from the ATF since the time of the explosion. The ATF was
19 advised that he is carrying dynamite, blasting caps and
20 detonator cord, the three components required to make an
21 explosion, and that's relayed to an ATF agent, as well as
22 KCPD. They come out, they do the things to detonate the
23 dynamite to confirm that it was real, and that ATF did not
24 press charges. Kansas City did not press charges. He has
25 now, that goes directly contrary to any claim of not having

2635

1 received benefit since the time of the explosion.

2 MR. MILLER: They didn't even know that he had any
3 information back when this happened. They didn't know
4 anything about him until -- on top of that, they didn't
5 pursue it because they couldn't prove it. But there's
6 nothing in there that he got a deal on this. Again, it's all
7 collateral. There's nothing to show anything.

8 MR. PETERS: Judge, I would suggest that if this
9 witness at the time of the explosion is present, by his own
10 statement, alone on 71 Highway, that by his own statement
11 this witness had dynamite, detonator cord and -

12 THE COURT: No, by your statement.

13 MR. PETERS: No, by his. These are his words.

14 MR. BECKER: Where does it say that?

15 MR. PETERS: These are contained in the report.
16 He's had continuous possession of this during the time
17 period. He's had possession *of* the dynamite during the time
18 period, and he doesn't have charges brought against him
19 relating to the explosion.

20 THE COURT: That could be your argument, but I
21 don't think that you have any kind of evidence to bring it
22 out through him with opinions and legal conclusions that are
23 necessarily involved.

24 MR. PETERS: And I'm not going to ask him about
25 were you charged.

1 THE COURT: That's fine.

2 MR. MILLER: I'm sorry, what are we doing?

3 THE COURT: Were any charges ever brought because
4 of -

5 MR. PETERS: I'm not going to do that. He can
6 answer my last question.

7 THE COURT: Which was?

8 MR. PETERS: Having this in his possession in late
9 November of 1988, the dynamite.

10 THE COURT: Well, he said -- no, he testified that
11 he had the dynamite in his possession in January *of* 1989.

12 MR. PETERS: I want to go back that he had it in
13 his possession on November 28th/29th *of* 1988.

14 THE COURT: I think you can demonstrate that.

15 MR. MILLER: He can ask that, if he had that?

16 THE COURT: Yeah. Why not?

17 MR. MILLER: Just -- what are we bringing in
18 evidence that he was, that he had it for *if* there's any
19 relevance, just like an arrest is not proper. He can't bring
20 in an arrest. We get into -- what's it *f* or?

21 MR. PETERS: I think the answer -

22 THE COURT: That's why I asked what your theory *of*
23 admissibility of it was.

24 MR. PETERS: I can give a bunch *of* theories, but at
25 its most basic level, Judge -- and whatever you say goes -

1 at its most basic level, as you sit here and you're advised
2 that this witness, known to the government, had in his
3 personal possession on November 28th and 29th dynamite,
4 blasting caps, and detonator cord, it is of significance both
5 to his credibility and to the whole theory of the case. And
6 if we further go along, this witness is an expert in
7 explosives and demolition from the Marine Corps.

8 Now, just as you sit here, if you were a juror,
9 wouldn't you feel deprived not being allowed to know that a
10 witness testifying against, for the government had dynamite,
11 had no charges brought, and then under influence from the ATF
12 comes in and makes this statement?

13 MR. MILLER: But see, that's the whole -

14 THE COURT: That's the assumption you make, and I
15 don't buy that.

16 MR. PETERS: You don't have to buy it. I agree, I
17 think it goes to weight, not admissibility.

18 MR. MILLER: This is six years prior. He doesn't
19 come forward until February of '96. We're almost seven
20 years. You know, there's no relevance to this.

21 MR. PETERS: This is six weeks after the explosion,
22 but he admits that at the time of the explosion he had the
23 dynamite, the blasting caps, and the det cord.

24 THE COURT: I thought he had testified to that, and
25 I did tell you if he hadn't that you can ask him that.

1 MR. PETERS: Right.

2 THE COURT: But that's all.

3 MR. PETERS: Right, and I had started to leave and
4 then Mr. Miller -

5 THE COURT: But then he can ask him *if* he had
6 anything to do with the explosion.

7 MR. PETERS: Right. And that's fine.

8 MR. MILLER: Can you give me an idea what the
9 question is?

10 THE COURT: He's going to ask him *if* at the time *of*
11 the explosion he had dynamite and the blasting caps and det
12 cord in his possession. That doesn't make everybody who had
13 that in their possession exploders.

14 MR. PETERS: A lot of people can have this.

15 THE COURT: The whole community of Marlborough.

16 (The following proceedings were had in open court:)

17 THE COURT: All right. Let's go.

18 Q. (By Mr. Peters:) Mr. Morales, I've asked you questions
19 about the dynamite, blasting caps, and det cord that were in
20 the van on January 20th, 1989. And I want to ask you, isn't
21 it true, sir, that that same dynamite, blasting caps and det
22 cord were in your possession on November 28th and 29th of
23 1988?

24 A. No, sir.

25 Q. In January of 1989, do you recall being interviewed by

1 Sergeant Walker of the Grandview Police Department?

2 A. Yes, sir.

3 MR. MILLER: I'm going to object. This is -

4 MR. PETERS: I'm not going to the substance, Judge,

5 I'm just laying my foundation for what the Court suggested.

6 I'm not going into the substance of it at all.

7 MR. MILLER: Can we just do this as an offer to

8 you, then? We're already going to make one offer later.

9 MR. PETERS: All I'm going to do as what I thought
10 your instructions -- I'm going to ask him did he talk to this
11 person, this person, this person, and not ask him any
12 details, and later we can address that. I'm not going into
13 the substance of any conversation.

14 THE COURT: All right. Let's do it.

15 Q. (By Mr. Peters:) Sir, do you remember in January of
16 1989 talking to an Agent Mark James of the ATF?

17 A. Yes, sir.

18 Q. And do you also recall talking to various detectives
19 from the Kansas City, Missouri, Police Department, including
20 Sergeant Bill Forbes of the Bomb and Arson Unit, Detective
21 Don Peterson, and Detective Don Emerson from the Kansas City,
22 Missouri, Police Department? Do you remember talking to
23 them?

24 A. No, sir.

25 Q. I believe your testimony was that -

2640

1 MR. PETERS: And I don't remember if this is
2 something we've talked about. I'm going to ask him about
3 narcotics in the van and don't remember if we've already
4 discussed that. I'll ask my question.

5 MR. MILLER: Well -

6 Q. (By Mr. Peters:) Sir, at the same time that you were
7 stopped on January 20th, 1989, didn't you have a variety of
8 narcotics and paraphernalia in the van?

9 MR. MILLER: Object to this as irrelevant.

10 THE COURT: We've dealt with that. That's
11 sustained.

12 MR. PETERS: Was the Court allowing the answer and
13 then I'm bound by it or -

14 THE COURT: No. I sustained the objection to the
15 question, Mr. Peters.

16 MR. PETERS: Can we approach just a second? It's
17 just one quick question, Judge, I apologize.

18 (Counsel approached the bench and the following
19 proceedings were had:)

20 MR. PETERS: Judge, he's testified that he didn't
21 use **drugs** from the time of the explosion until the time he
22 talked to Bryan Sheppard.

23 THE COURT: Right.

24 MR. PETERS: And he had in his possession and
25 acknowledged that the **drugs** in the van were his.

2641

1 THE COURT: Yes.

2 MR. PETERS: I haven't been allowed to ask were you
3 using **drugs** during that time. Do I just bring in the officer
4 to show it?

5 THE COURT: What did the officer arrest him for,
6 using **drugs**?

7 MR. PETERS: He was arrested for having the **drugs**
8 in the van and the dynamite.

9 THE COURT: No. You didn't answer my question.
10 Did the officer arrest him for using the **drugs**?

11 MR. PETERS: No.

12 THE COURT: See, that's the difference, and that's
13 the reason why cross-examination is such an insidious tool
14 unless you're absolutely fair in approaching things like
15 this. He wasn't arrested for using **drugs** at that time, so it
16 isn't impeachment of anything he said.

17 MR. PETERS: If I have the officer come in and say
18 that he admitted using some of the **drugs** in his van then -

19 THE COURT: That would be impeachment.

20 MR. PETERS: Okay. That's fine.

21 (The following proceedings were had in open court:)

22 Q. (By Mr. Peters:) In relation to this January 20th,
23 1989, stop, when you were interviewed by ATF Agent Mark
24 James -- strike that.

25 You were stopped on January 20, 1989, on south 71

2642

1 Highway; isn't that correct?

2 A. That's correct.

3 Q. And when you were interviewed by Special Agent Mark
4 James from the ATF at that time, January 23, 1989, were you
5 ever asked any questions about the explosion on 71 Highway on
6 November 29, 1988, that caused the death of the six
7 firefighters?

8 A. Yes, I was.

9 Q. When he was talking to you about that, did he have a
10 tape recorder?

11 A. I don't remember.

12 Q. He was writing down what you and he were talking about?

13 A. Right. He wanted to know if I was involved in any way,
14 shape, or form, wanted to know where I was that morning.

15 Q. Did he ever, then, bring you back, or have you ever seen
16 any, any report of that interview, any statement, any
17 affidavit where Agent Mark James asked you about the
18 explosion of November 29, 1988?

19 A. No.

20 Q. Prior to going to work throwing papers, you had been in
21 the Marine Corps; is that correct?

22 A. Yes, it is.

23 Q. And your training in the Marine Corps included
24 explosives and demolition; is that correct?

25 A. Yes, it is.

2643

1 Q. That would include -- what kind of training did you have
2 in regards to explosives and demolitions in the Marine Corps?

3 A. Assault and demolition training, take-out objectives,
4 clear landing zones, disarm bombs that hadn't went off that
5 the Navy fired on the island.

6 Q. This would include the use of both fuse type detonation
7 using det cord and timer type detonation?

8 A. Yes, sir.

9 Q. Did you advise Special Agent Mark James of your military
10 training when he talked to you in 1989?

11 A. Yes, I did. I believe I also told him I wouldn't be
12 that stupid.

13 Q. What do you mean by that, sir?

14 A. Because the way it was explained on what it looked like
15 in the box, it was a science project. And where I was going,
16 it's all bumpy roads.

17 MR. PETERS: Your Honor, has the door been opened?

18 THE COURT: No. You opened it, but it hasn't been
19 opened to overcome my ruling.

20 Q. (By Mr. Peters:) Sir, from your experience and
21 training, if you have dynamite that is in a deteriorating
22 condition and a blasting cap is put into that and either a
23 timer or a det cord is used, isn't it true that one of two
24 things can happen, either the dynamite blows up or it fizzles
25 and creates a fire?

1 MR. MILLER: Excuse me. I'm going to object as to
2 the relevance, and there's no qualification to answer it
3 anyway.

4 MR. PETERS: Judge, I think -- I would think he's
5 qualified as an expert on demolitions and explosions.

6 THE COURT: I think he testified that he had been
7 trained in that sort of thing in the Marine Corps. That
8 doesn't necessarily make him a forensic expert, Mr. Peters.
9 Sustain the objection.

10 Q. (By Mr. Peters:) Sir, based on your training in the
11 Marine Corps -- were you with the special forces or special
12 unit?

13 A. No, sir.

14 Q. Okay. Based on your training in the Marine Corps on
15 demolitions and explosions, are you aware of what happens or
16 the hazards in using deteriorating atlas stick dynamite?

17 A. No, sir.

18 MR. MILLER: Excuse me. Object again to the
19 relevance.

20 THE COURT: He said no.

21 MR. PETERS: He says no.

22 THE COURT: I'll overrule the objection. It's
23 moot.

24 Q. (By Mr. Peters:) Okay. You're driving the van back on,
25 it would be the early morning hours of November 29, 1989,

1 and -

2 MR. OSGOOD: '88.

3 Q. I'm sorry, 1988. 1988. And is your testimony that on
4 the way to the drop-off site on 85th and Prospect that it was
5 on your way there that you happened by 85th and Olive where
6 you tell us that you saw people out in front of the Bohrns'
7 house?

8 A. Went to the paper drop first. Went from the paper drop,
9 since the papers weren't there, to my friend's place up on
10 Olive, then returned there.

11 Q. Okay. And what time is it that you would have gone past
12 the Bohrns' house?

13 A. It would be early morning.

14 Q. Can you be more -

15 A. Between 1:15 and 2:30.

16 Q. Pardon me?

17 A. 1:15 or 2:30. It's early morning. Our papers weren't
18 even there yet. They were late that morning.

19 Q. And at this time you would have been with your boss, Mr.
20 Trammell; is that correct?

21 A. Not when I went by my friend's. He was waiting down
22 there to see if the papers would arrive soon.

23 Q. And it's -- where did your friend live at the time?

24 A. He lived up the road from, up Olive, or one street over,
25 but you kind of jog in and out of there sometimes.

1 Q. So he didn't live on Olive or 85th Street; is that
2 correct?

3 A. No.

4 Q. And what was your friend's name?

5 A. Robert Dresnick.

6 Q. And your testimony is that on your way to this friend's
7 house, you happened to drive by 85th and Olive?

8 A. Yeah. I drove up Olive.

9 Q. Okay. Now, in your affidavit which you've had a chance
10 to review, you didn't mention **Frank** Sheppard being there;
11 isn't that correct?

12 A. Correct.

13 Q. Excuse me?

14 A. Correct.

15 Q. Okay. And would you agree that in your grand jury
16 testimony, what you're saying is that you may have seen **Frank**
17 Sheppard there but that you weren't sure?

18 MR. MILLER: Excuse me. I'm going to object to him
19 paraphrasing.

20 THE COURT: Let's use the testimony. What is the
21 testimony?

22 MR. PETERS: Judge, don't I get to ask the
23 foundation question first?

24 THE COURT: Which is?

25 Q. (By Mr. Peters:) Do you remember telling the grand jury

1 that you weren't sure whether or not you saw **Frank** Sheppard
2 there, he may have been there, he may not have been?

3 A. I believe I saw him, but I wasn't sure.

4 Q. Okay. And how many people is it that you saw outside of
5 the Bohrns' house?

6 A. There was a group of people. I thought it was five or
7 six. There was at least one that I couldn't identify. I
8 wasn't sure who it was, but I did know who four of them were
9 for sure.

10 Q. And the four that you were sure of **were the Bohrn**
11 brothers and Bryan Sheppard and Richard Brown; is that
12 correct?

13 A. That's correct.

14 Q. Okay. And then after making this jog to go by the
15 Bohrns' house on your way to your friend's house, was your
16 friend home, sir?

17 A. He was home.

18 Q. Did you talk to him?

19 A. Briefly.

20 Q. You they went back and drove down 71 Highway; is that
21 correct?

22 A. I went back to the, where we got our papers and got with
23 my boss, and we went back down 71 going southbound.

24 Q. And was it on your way to the site or on your way back
25 from the site, when was it that you saw this vehicle parked

2648

1 on the side of the road on 71 Highway?

2 A. There was an abandoned vehicle on the side of the road
3 on the way to go pick up the other kid.

4 Q. So that would have been when you were going southbound
5 with Mr. Trammell; is that correct?

6 A. That's correct.

7 Q. You describe it as a vehicle in your affidavit, is that
8 correct, an abandoned vehicle?

9 A. Yeah, I believe it was a truck.

10 Q. But do you agree that in your affidavit you referred to
11 it as a vehicle and you didn't, you didn't give any further
12 description; isn't that correct?

13 A. I guess so. I would have to see the paper.

14 MR. O'CONNOR: It's up here. It's marked. It's
15 sitting right there.

16 Q. And for the record, I'm looking at Page 2. And on my
17 copy, it would be -- oh, I had it. I'm going to have to find
18 it, Judge. I had it and lost it. On Page 2.

19 THE COURT: Of what?

20 Q. Of the affidavit, read this one paragraph.

21 MR. O'CONNOR: What exhibit number is that, for the
22 record?

23 MR. MILLER: Judge, I'm going to object. He hasn't
24 said anything inconsistent with what -

25 THE COURT: I'd like to see what it is that you're

2649

1 confronting him with.

2 MR. PETERS: That's why I wanted to ask the
3 foundation.

4 Q. (By Mr. Peters:) As best you recall, when you talked to
5 the ATF agents the first time, you referred to it as a
6 vehicle; isn't that true?

7 A. Yes, sir.

8 Q. And then it's your recollection that in front of the
9 grand jury, you remembered it being a small pickup truck and
10 testified to that effect; is that correct?

11 A. Yes, sir.

12 Q. Isn't it also true that the connection between a vehicle
13 and a small pickup truck was based on other information that
14 had come to you as opposed to what you remembered about
15 actually seeing?

16 A. No, sir. No one had mentioned it to me.

17 Q. When you were, when was it that you saw the security
18 guard's pickup truck driving on the east side of the highway
19 shining the spotlight?

20 A. About 3:30 that morning.

21 Q. And was that as you were headed back southbound on -

22 A. Headed northbound.

23 Q. Headed northbound?

24 A. Headed northbound to pick up papers.

25 Q. And you would have been with?

1 A. Bruce Trammell.

2 Q. Okay. And your testimony is that from 71 Highway you
3 could see up above and see the security guard's pickup truck
4 and a spotlight being shined; is that correct?

5 A. It was on the lower, it was down towards -- it was down
6 off Little Blue River Road. The area at the time had a dirt
7 track basically all the way around that rim. He was on the
8 lower end flashing the spotlight up at the top.

9 Q. And this was a different pickup than the one that you've
10 described as being abandoned on the side of the road; is that
11 correct?

12 A. I just knew it was a security vehicle. It was white,
13 had a spotlight, and you could see the emblem on the side. I
14 think it was a pickup. It could have been a blazer or
15 something like that.

16 Q. And in your affidavit and grand jury, would it be your
17 recollection that you described it as being a truck of some
18 sort; is that correct?

19 A. That's correct.

20 Q. Okay. Can you tell the jury what Condi's Bar is?

21 A. It was just a local hangout.

22 MR. PETERS: I apologize to the Court, Judge.

23 Q. And is it a place that you had gone to frequently back
24 in the later part of 1980's?

25 A. Yes, it was. I've known the owner for probably 15 or 20

2651

1 years.

2 Q. What was the owner's name?

3 A. Ray Condi.

4 Q. And so you know that from time to time Ray Condi would
5 get tired of somebody who drank a lot or was disruptive and
6 he'd bar them from Condi's Bar; is that correct?

7 A. Yes, sir.

8 Q. And are you aware that Ray Condi had barred **Frank**
9 Sheppard from Condi's Bar beginning in early 1988?

10 MR. MILLER: I'm going to object to this. He's
11 testifying and stating facts not in evidence and asking this
12 witness to agree to it.

13 MR. PETERS: I'm asking if he was aware of this,
14 Judge.

15 THE COURT: But isn't the assumption -- when you
16 ask if you're aware of it, isn't it the assumption that it is
17 a fact, that he may or may not be aware of it? And that
18 assumes facts not in evidence.

19 MR. PETERS: Judge, I'm asking him if he is aware
20 that **Frank** Sheppard was barred from Condi's.

21 THE COURT: I think an appropriate question would
22 be do you know anything about **Frank** Sheppard ever being
23 barred from Condi's. That doesn't assume anything.

24 Q. (By Or. Peters:) Do you know anything about **Frank**
25 ~ ~ Sheppard having been barred from Condi's?

2652

1 THE COURT: Ever being barred from Condi's.

2 Q. Ever being barred from Condi's?

3 A. No. But I was barred from there twice, and so were many
4 other people at one time or another. Ray was forgiving.

5 Q. And your testimony is that you went up to **Frank** Sheppard
6 and asked him if he was involved in the explosion and he
7 became somewhat irritated with you; is that a fair statement?

8 A. Hostile is more like it.

9 Q. Mad as hell would be another way to say it?

10 A. Yeah.

11 Q. He never said anything to you about him being involved
12 in the firefighters' deaths or the explosion or anything
13 having to do with this case, did he?

14 A. No, sir.

15 Q. How many times have you talked with Special Agent Dave
16 True in this case?

17 A. Twice, maybe three times.

18 Q. How many times have you talked to other agents with the
19 Bureau of Alcohol, Tobacco, and Firearms since the time of
20 the explosion until your testimony here today?

21 A. Off and on maybe five, six.

22 Q. And we've talked about your meeting with Mark James.

23 Who else from the Bureau of Alcohol, Tobacco and Firearms did
24 you meet with in relation to this case?

25 A. Gene Schram, if that's your question.

2653

1 Q. Pardon?

2 A. Gene Schram.

3 Q. And if he works for the Department of Labor racketeering
4 section, would that jog your memory that he actually was with
5 a different agency than ATF?

6 A. I just assumed they were both together.

7 Q. And when you met with Gene Schram, he also was taking
8 notes of the conversation that he was having with you?

9 A. Yes, sir.

10 Q. And did he tape record this conversation?

11 A. I don't remember.

12 Q. What did Gene Schram talk with you about?

13 MR. MILLER: I'll object to this as hearsay.

14 THE COURT: Yeah. Sustained.

15 Q. (By Mr. Peters:) Have you ever seen a report prepared
16 by Gene Schram of an interview with you?

17 A. I don't know who's gotten, prepared the reports.

18 Q. And then were there other times when both Gene Schram
19 and Dave True would come and talk to you?

20 A. I met them both together twice.

21 Q. The affidavit that we've referred to, which has been
22 marked as Defendants' Exhibit 32, it was taken on February 1,
23 1996, and I believe you've testified that it was signed on
24 February 22, 1996. Do you have any idea why there was the
25 delay between the taking of the affidavit and the signing?

1 MR. MILLER: Excuse me. We've already covered this
2 with Mr. O'Connor.

3 THE COURT: It's been asked and answered.
4 Sustained.

5 Q. (By Mr. Peters:) The time that you saw the individuals
6 in front of the Bohrns' you believe to have been between 2:00
7 and 2:45; is that correct?

8 A. Actually, I believe it was earlier.

9 Q. Between 1:15 and 1:45?

10 A. In the time frame 1:15 to 2:30 would be the best time
11 frame. I didn't have a clock in there, and I was guessing.
12 I just knew our papers we usually got at 1:30 to 2:30. They
13 weren't there, and so I went ahead and went up through there.

14 Q. So if in an affidavit or grand jury you had picked
15 different times within that time frame, we can agree, I
16 guess, that it's somewhere between 1:15 and 2:30 a.m.?

17 A. Yes, sir.

18 Q. What was the approximate date that you saw **Frank**
19 Sheppard at Condi's?

20 A. I believe it was January.

21 Q. Of 1989; is that correct?

22 A. Yes, sir. I'm really not sure. It was either December
23 of '88 or January of '89, though.

24 MR. PETERS: Judge, I just have to check my notes,
25 and I think I'm -

1 Q. Sir, during I believe it was your cross-examination by
2 Mr. O'Connor, he had asked you about when you had seen the
3 people outside with the Bohrns.

4 MR. PETERS: And for clarity, for clarity, Judge, I
5 think more of the question and answer needs to be read.

6 THE COURT: For clarity, it sounds like an
7 introduction to a repetitive question.

8 MR. PETERS: No, Judge. On his cross-examination,
9 two questions and answers were read. I think in fairness to
10 the witness, about another ten lines need to be read.

11 THE COURT: Of what?

12 MR. PETERS: Of the answers coming after his, what
13 was elicited on cross-examination.

14 THE COURT: Maybe -- I'm a little curious about
15 something you want to read to the witness in fairness to the
16 witness. Maybe I'd better look at it.

17 MR. PETERS: You'll be proud of me, Judge.

18 (Counsel approached the bench and the following
19 proceedings were had:)

20 MR. PETERS: Mr. O'Connor had read this top part
21 here, and I think in fairness to the witness, the remainder
22 -- Mr. O'Connor had, I think, if you read just the top part,
23 it implies that he's seen it while he was throwing,
24 delivering papers. And if you read the rest, he makes clear
25 that he was doing it before.

2656

1 MR. MILLER: Also, go on to the end of line 8.

2 MR. PETERS: Yeah, I agree.

3 MR. BECKER: And we were going to get back into
4 that, Judge. But starting at line 4 on Page 4, the whole
5 passage rather than -

6 MR. PETERS: Right.

7 (The following proceedings were had in open court:)

8 THE COURT: So the question is does he remember
9 these questions and these answers.

10 MR. PETERS: That's correct.

11 Q. (By Mr. Peters:) Do you remember Mr. O'Connor asking
12 you, "Now, these early morning hours when you were out
13 working on delivering papers, did you also see them?"

14 Referring to Bryan Sheppard and Richard Brown.

15 MR. MILLER: Your Honor, we agreed to start higher
16 on line 4.

17 THE COURT: At 4.

18 Q. (By Mr. Peters:) This would be a question by Dan
19 Miller.

20 Question: "I said the 28th. I meant the morning
21 of the 29th. Do you know a Bryan Sheppard?"

22 "Yes, I do."

23 "Do you know Richard Brown?"

24 "Yes, I do."

25 "How long have you known Bryan Sheppard?"

1 "Probably 10, for 15 years. I grew up in
2 Marlborough."

"How about Richard Brown?"

4 "About the same."

5 "Now, these early morning hours when you were out
6 working on delivering papers, did you also see them?"

7 "Yes, I did."

8 "Who were **they** with?"

9 "**They** were with Buddy Bohrn, Pooh Bohrn, **Frank**
10 Sheppard, and **they** were at what, what at that time was the
11 Bohrns' parents' house."

12 "And where was that?" Question.

13 Answer: "Just off 85th, I believe it's Olive."

14 And question: "What were the circumstances that
15 you saw them?"

16 Answer: "I was going over to a friend in the
17 neighborhood that lived up a couple of blocks, and I went up
18 the street. And **they** were all standing out front talking in
19 a group. It was nothing, not unusual to see them all
20 together."

21 Question: "Do you remember what time this was?"

22 Answer: "It was, it was before the route, so it
23 would have been between 1:15 and 2:30. It was early morning
24 hours."

25 Do you remember those questions being asked and

1 those answers being given in the grand jury?

2 A. Yes.

3 Q. And, again, in fairness, as you sit here today, you
4 can't say with certainty that you saw **Frank** Sheppard outside;
5 isn't that true?

6 A. That's true.

7 THE COURT: Mr. Peters, I'm just puzzled. You said
8 as you were reading the first of that transcript that you
9 just read from, Mr. O'Connor was asking questions?

10 MR. PETERS: Not in the grand jury, Judge, this was
11 the segment of one question and answer, question and answer
12 that Mr. O'Connor elicited on his cross-examination. And
13 that's what as a preface I had asked him. But these are
14 questions being asked by Dan Miller.

15 THE COURT: At the grand jury.

16 MR. PETERS: At the grand jury, that's correct.

17 THE COURT: Thank you. All right. Anything else?

18 MR. OSGOOD: I may have a couple of questions. I
19 promise they're different, Your Honor.

20 THE COURT: We'll take you at your word, Mr.
21 Osgood.

22 MR. OSGOOD: Thank you.

1 CROSS-EXAMINATION

2 By Mr. Osgood:

3 Q. Sir, my name is John Osgood and I represent Richard
4 Brown, the fellow over here that you identified.

5 I believe we just heard a recitation from the grand
6 jury that you knew Richard Brown from 10 to 15 years, and
7 that testimony was provided in 1996. So that would mean you
8 met him in about 1986, is that accurate, or would it have
9 been 1981?

10 A. I just -- I'm not really sure. I met him through my
11 brothers.

12 Q. And who would that be, your older brothers or younger
13 brothers?

14 A. Younger brothers.

15 Q. How old is your younger brother? That's a bad
16 question. How old are you, sir?

17 A. I'm 36.

18 Q. You're 36. And how old are your younger brothers today?

19 A. Thirty, thirty-one, and thirty-two.

20 Q. So the youngest would be six years younger than you; is
21 that right?

22 A. That's right.

23 Q. And would you agree with me that Mr. Brown is ten years
24 younger than you?

25 ~A. Yes, sir.

2660

1 Q. Back in -- so if you knew him for 15 years, you met him
2 when he was about 11 years old, 1996 back to then; is that
3 right?

4 A. We all grew up in the same neighborhood. My brothers
5 ran with a lot of the older kids, a lot of the younger ones,
6 they tagged along. They all hung out at the park together,
7 down at Bear Park.

8 Q. Did you hang out with Richard Brown, sir?

9 A. No, I didn't hang with Richard Brown.

10 Q. When you gave this testimony in 1996, when was the last
11 time you'd seen Richard Brown prior to the 1996 testimony?

12 THE COURT: I'm sorry, what 1996 testimony are you
13 referring to?

14 MR. OSGOOD: The grand jury testimony in 1996.

15 THE COURT: All right.

16 Q. (By Mr. Osgood:) When you testified about him being
17 outside the Bohrns' place, when was the last time prior to
18 this '96 testimony that you saw him?

19 A. It had been a few years. I ran into him up at a
20 neighborhood bar.

21 Q. Do you know when, sir?

22 A. I'm not sure what year, no, sir.

23 Q. Was it before or after this incident outside of the
24 Bohrns'?

25 A. It was after.

2661

1 Q. All right. And -

2 A. The last time I saw him was October.

3 Q. October?

4 A. of this last year.

5 Q. This last year? On television?

6 A. No.

7 Q. When did you see him?

8 A. Over in Marlborough.

9 Q. All right. Was he driving something?

10 A. No.

11 Q. Was he on foot?

12 A. No, he was with some other people.

13 Q. okay. What did he look like back in, at the time that
14 he was outside the Bohrn residence?

15 A. Hair was fairly long, not extremely long. Kind of shag
16 cut to it.

17 Q. Sort of like it is now?

18 A. No.

19 Q. What do you mean by a shag cut?

20 A. He's changed his whole appearance.

21 Q. What do you mean by a shag cut?

22 A. Layered, sort of. Kind of like wave it, wave it down.

23 Q. I see. Did he have a moustache then?

24 A. I didn't really notice.

25 Q. Okay. And what was the lighting like that night?

2662

1 A. There was a street light right across the road from
2 there, usually kept the yard pretty well lit up as long as
3 someone didn't shoot it out.

4 Q. Pardon?

5 A. Well, the street light got shot out a lot, but it was
6 working that night.

7 Q. And you said there was a red pickup; is that right?

8 A. Uh-huh, orange, reddish orange, primered pickup.

9 Q. Okay. At any time that night did you see a white pickup
10 anywhere, other than the Toyota we've talked about?

11 A. Security vehicle. I'm not sure what color the vehicle
12 was as far as that I passed on the highway that was broke
13 down, I didn't pay attention.

14 Q. You said it was broke down. You don't know whether it
15 was broke down or not, sir, do you? It was parked, right?

16 A. Usually people don't just park right alongside the
17 highway. There's nothing to do around there, so I considered
18 it broke down.

19 Q. Was it by the equipment?

20 A. No, it wasn't.

21 Q. Okay. And did you see a black pickup broke down
22 anywhere along there when you drove up either direction
23 either time?

24 A. No, sir.

25 Q. What kind of vehicle was Mr. Brown driving the last time

1 you saw him when you saw him in a vehicle, if you did? If
2 you didn't, just tell me.

3 A. He was with a couple of friends. They went over to a
4 house over off of Montgall and 80th.

5 Q. Okay. Now, were you shown any photos of Mr. Brown
6 before you came in here to testify?

7 A. No, sir.

8 Q. By the ATF or anybody else?

9 A. No, sir.

10 Q. Any photos of him, for example, as he appeared back in
11 that time frame?

12 A. No, sir.

13 Q. All right. What was he wearing that night that you saw
14 him, sir?

15 A. I didn't really pay attention to what they were wearing.

16 Q. Do you remember what you were wearing?

17 A. Not really.

18 Q. Well, was it a warm night, cold night?

19 A. It was warm for that time of year.

20 Q. Oh, it was? And what's warm for that time of year?

21 Would it be somewhere in the forties or the fifties or -

22 A. It wasn't so cold -

23 Q. Or the seventies or the eighties?

24 A. It wasn't so cold that you had to bundle up real tight,
25 so -

1 Q. So you didn't have a coat on?

2 A. No, sir.

3 Q. Okay. What were they doing, just standing around or -

4 A. Just standing around talking.

5 Q. Did you roll the window down and say hi, how are you
6 guys doing, or anything?

7 A. No.

8 Q. How long have you known the Bohrns?

9 A. Moved into Marlborough back in '66, '67, and met them
10 probably about 1970.

11 Q. Do you know where Richard Brown lives in the Marlborough
12 area?

13 A. No, I don't.

14 Q. Ever been to his house?

15 A. No, sir.

16 Q. Your little brothers ever go over there?

17 A. They might have.

18 Q. You've never picked them up or anything over there?

19 A. No, sir.

20 Q. Now, I think that's about all I have. I've got one
21 final question for you, and I don't know, maybe this has been
22 covered, maybe I just didn't get it right. I thought you
23 told Mr. O'Connor that the first time that you ever talked to
24 any federal authorities was when you gave this interview,
25 which is actually a sworn statement, on February 1 of 1996.

2665

1 That you'd not talked to any -- did you tell Mr. O'Connor
2 that you'd not talked to any officials or law enforcement
3 people prior to that time here today?

4 A. As far as my knowledge of it, yes, sir.

5 Q. But then I thought you just told Mr. Peters that you
6 had, in fact, prior to February 1, 1996, met with an ATF
7 agent and other people.

8 A. As to my involvement.

9 MR. MILLER: I'm going to object to this as
10 improper impeachment, and it's also repetitive.

11 MR. OSGOOD: It's not impeachment, Your Honor, I
12 just want to know the answer.

13 THE COURT: You can answer the question.

14 A. As far as my own involvement. That's all I was asked
15 on, and I answered it truthfully, but I hadn't been asked
16 anything on my knowledge of the case or what I may know.

17 Q. (By Mr. Osgood:) So the original questioning prior to
18 this February 1, '96, was about things they were asking you
19 what you might or might not have done or what you knew or
20 didn't know?

21 A. Yes, sir.

22 Q. And then in the February 1, '96, they kind of centered
23 on this thing we're talking about here today?

24 A. Yes, sir.

25 Q. Now, I guess my final question to you is it's

1 important -- strike that.

2 My final question to you is I want you to search
3 your memory and think back for a minute and honestly tell me
4 whether or not in your mind driving by that night at the
5 speed that you did, sir, that you could possibly be mistaken
6 as to whether or not you saw Mr. Brown, that there were a lot
7 of kids in that neighborhood that looked like that and that
8 it might have been somebody else.

9 A. There was not a lot of kids in that neighborhood or on
10 that street.

11 Q. Well, there was a lot of kids in Marlborough, aren't
12 there?

13 A. Yeah, but not on that street through that area.

14 Q. Could you possibly have been mistaken as you think back
15 all the time, '96 going all the way back to '88, could you be
16 mistaken, sir?

17 A. I don't believe so.

18 Q. You say you don't believe so, but is there a
19 possibility, human error -

20 MR. MILLER: I'm going to object to this.

21 THE COURT: You're arguing with him, Mr. Osgood.

22 MR. OSGOOD: All right.

23 Q. (By Mr. Osgood:) By the way, were ~ here a lot of rumors
24 in Marlborough as to this explosion, about who might have
25 done it or not done it?

1 MR. MILLER: Excuse me. This has been covered.

2 Q. Could you answer this one? Did you hear a lot of rumors
3 down here about all of this?

4 A. There was a lot of people being told to keep quiet.

5 Q. Were there a lot of rumors floating around too?

6 A. Off and on.

7 MR. OSGOOD: Thank you, sir.

8 THE COURT: Mr. Bunch?

9 MR. BUNCH: No questions.

10 THE COURT: Anybody else? Any redirect?

11 MR. MILLER: No redirect, Your Honor.

12 THE COURT: All right, sir, you may step down.

13 Thank you.

14 MR. BECKER: Mr. O'Connor, may we approach?

15 THE COURT: Do you want to keep him there just in
16 case?

17 MR. O'CONNOR: So we can make the offer of proof,
18 Judge.

19 MR. BECKER: Perhaps we can take the afternoon
20 break while Mr. O'Connor goes forward with that.

21 THE COURT: It will be kind of an extended break,
22 but we have something to do with this witness before he gets
23 away, ladies and gentlemen, and then we're going to have to
24 take our break, so you may withdraw, and don't talk about the
25 case. We'll call you as soon as we can.

1 (The following proceedings were had in the
2 courtroom out of the presence of the jury:)

3 THE COURT: All right. Ask Mr. Morales to step
4 back into the courtroom.

5 MR. OSGOOD: Your Honor, could I run around the
6 corner while we're bringing him in?

7 THE COURT: We're not going to be at this very
8 long, Mr. Osgood.

9 MR. BECKER: Judge, he had to run to the bathroom.
10 He'll be right back.

11 MR. O'CONNOR: Who is that?

12 MR. BECKER: The witness.

13 THE COURT: Mr. Morales, come up, please, and
14 resume the stand, and I'll remind you you're still under
15 oath. Mr. O'Connor has a few questions to ask you, or more.

16 Okay, Mr. O'Connor, you're up.

17 EXAMINATION ON OFFER OF PROOF

18 By Mr. O'Connor:

19 Q. Mr. Morales, I wanted to go into with you some questions
20 regarding your previous, your arrest in Jackson County. As I
21 understand it, you're on a probation out of Jackson County on
22 a possession of controlled substance from December the 4th,
23 1995, in which you received a five-year sentence and three
24 years probation; is that true?

2669

1 A. That's true.

2 THE COURT: That's been covered. That's not new.

3 MR. O'CONNOR: Okay.

4 Q. By Mr. O'Connor:) You are on probation out of Jackson
5 County on a **drug** case; is that true?

6 A. That's true.

7 Q. out of Jackson County?

8 A. Jackson County.

9 Q. As a result of being on probation and while on probation
10 on 11/7 of '97, were you charged in Jackson County with
11 forgery?

12 A. Yes, sir.

13 Q. And was that bond -

14 THE COURT: I'm sorry, 11/7 of when?

15 Q. Of '96, 11/7 of '96, were you charged with forgery?

16 A. Yes, sir.

17 Q. And was that, then, a direct violation of your probation
18 that was out of Jackson County, as well?

19 A. Yes, sir.

20 Q. And as a result of that new charge, was a violation
21 report done on you on 11/27 of '96 in Jackson County?

22 A. Yes, sir.

23 Q. Now, the bond that was set there was 5,000, 10 percent,
24 and you posted that bond; is that true?

25 A. That's true.

1 Q. And then you were given a court date in Jackson County
2 for the forgery case; is that correct?

3 A. That's true.

4 Q. After you made bond in Jackson County on 11 -- around
S 11/27, you were then transported to Cass County because you
6 had a forgery charge pending there; is that true?

7 A. That's true.

8 Q. And you were in the Cass County Jail from 11/27 or about
9 11/27 of '96 until 12/13 of '96 when you made bond?

10 A. That's true.

11 Q. Was the bond on your forgery case in Cass County 5,000
12 secured cash only when you arrived at that jail?

13 A. When I first arrived, yes, sir.

14 Q. Okay. And as a result, after you went to court on the
15 13th of December of 1996, was the bond then made into either
16 an R.O.R. or a signature bond where you did not have to place
17 any money?

18 A. I didn't go to court that day.

19 Q. Was your bond changed to a signature bond on December
20 the 13th?

21 A. Yeah, I was trustee out there, and I got a signature
22 bond.

23 Q. Do you know, did anyone seek to get a signature bond for
24 you on your behalf, that you're aware of?

25 A. Not that I was not aware of directly.

1 Q. All right. And when you say directly, what do you mean
2 by that?

3 A. I mean I didn't ask for any help. I couldn't make any
4 phone calls to anybody or anything like that.

5 Q. Did someone make a phone call on your behalf?

6 A. I was told that, you know, maybe speak to someone and
7 that's it. I don't know.

8 Q. And did you ever -- when you say not directly, do you
9 believe, do you have information now, knowledge, this is
10 something you would know firsthand, not something you would
11 get from someone else, that someone got that bond to a
12 signature bond from a secured bond?

13 A. Not directly, no, sir.

14 Q. And do you know a Sergeant Harper out there in Cass
15 County?

16 A. No, sir.

17 Q. Did you ask any sergeant or any officer with Cass County
18 to try to arrange you to get a signature bond?

19 A. No, sir.

20 Q. Now, as I understand it, then you got a probation
21 violation capias warrant issued for you because you were in
22 violation of your probation in Jackson County as a result of
23 these two new forgery charges; is that true?

24 A. I don't believe it is, sir. I've reported in to my
25 probation officer every week. She let me know when my court

1 date was. She said she would let me know if a warrant was
2 issued. A warrant was never issued on me on no probation
3 violation.

4 Q. And you're saying that to your knowledge no warrant was
5 ever issued?

6 A. No, sir.

7 Q. Okay. Was a bond ever set at 5,000 secured regarding
8 your probation violation out of Jackson County for the **drug**
9 case?

10 A. No, sir.

11 Q. And did you make a signature bond on the **drug** case,
12 R.O.R., on the **drug** case probation violation on January the
13 24th, 1997?

14 MR. MILLER: Judge, aren't we kind of beyond an
15 offer of proof now?

16 MR. O'CONNOR: I don't think it is at all.

17 THE COURT: I know this. Don't you know this?

18 MR. O'CONNOR: It's part of my offer, Judge.

19 THE COURT: Can't you incorporate the record that
20 he's already made into your offer? Do you have to ask him
21 again?

22 MR. O'CONNOR: I don't think I've asked him did he
23 make an R.O.R. bond on January the 24th. If I have, I
24 apologize. Did I ask that question? On January the 24th,
25 1997, did you make an R.O.R.?

1 THE COURT: '97?

2 MR. O'CONNOR: '97, yes.

3 THE COURT: You're asking him that on February 10th
4 of '97?

5 MR. O'CONNOR: Yes.

6 THE COURT: All right. All right. So a month ago.

7 Q. (By Mr. O'Connor:) A month ago, January 24th, 1997, did
8 you, was the bond set and the case continued to February the
9 14th of 1997?

10 A. Yes, sir.

11 Q. So for my offer, you're on two signature bonds, one out
12 of Cass County and one out of Jackson County; is that
13 correct?

14 A. I'm on one -

15 Q. You're on three bonds?

16 A. I'm on one signature bond, one bond I posted, the other
17 one I never signed nothing. It's an R.O.R., and my probation
18 officer wanted to get my charges with Jackson and Cass County
19 cleared up before she went ahead with the probation violation
20 to see what the disposition of the case was going to be.

21 Q. Did she indicate to you that she was in contact with
22 anybody, any federal authorities regarding trying to get your
23 cases taken care of?

24 A. No, sir, she did not.

25 Q. Do you know why your probation officer would be trying

1 to help you get cases taken care of when you had two brand
2 new cases which were a direct violation of your probation?

3 MR. MILLER: Object to this as argument. We're no
4 longer in an offer of proof.

5 THE COURT: Sustained.

6 Q. (By Mr. O'Connor:) Did your probation officer indicate
7 to you that she had been in contact with anybody regarding
8 your cooperation in this case?

9 MR. MILLER: He's already answered that.

10 MR. O'CONNOR: He's not answered that, I don't
11 think.

12 A. No, sir.

13 THE COURT: Objection is sustained. The answer is
14 no.

15 MR. O'CONNOR: At this time, Judge, further for my
16 offer, I would -- Your Honor, for my record, I would offer
17 Defendants' 35 and 36.

18 Defendants' 35 is the Complaint and Information and
19 all the documents pertaining to the Cass County forgery
20 charge.

21 And Defendants' Exhibit 36 is the judgment and
22 sentence of the probation -- I mean, the original order of
23 the Court, five years, three years probation with the order
24 of the Court, the capias warrant that was issued for his
25 arrest on the probation violation, the warrant being set

1 aside, the bond set at \$5,000 secured, and then moved to
2 5,000 R.O.R. on January the 24th, 1997, and all papers that
3 were within the file. The circuit court file is No. 36.
4 These aren't certified or authenticated, but I would propose
5 to the Court that's where I got them. And if the Court wants
6 them authenticated for the purposes of the record -

7 THE COURT: We'll take them as offered for what
8 they're worth and for the limited purpose of your offer of
9 proof.

10 MR. O'CONNOR: That's all I have, Your Honor.

11 THE COURT: We'll resume as close to 3:30 as we
12 can. I've got this call that's got to be made at 3:15.
13 We'll be in recess.

14 (A recess was taken from 3:10 p.m. to 3:40 p.m.
15 when the following proceedings were had in the courtroom in
16 the presence of the jury:)

17 THE COURT: You may swear the witness. You may
18 remain seated. Raise your right hand, please, to take the
19 oath.

1 Q. In November of 1988, who were your neighbors to the
2 west?

3 A. **Frank** and Darlene.

4 Q. Would that be **Frank** Sheppard and Darlene Edwards?

5 A. Yes, sir.

6 Q. Do you see them here in court today?

7 A. Yes, sir.

8 Q. Could you tell us where they're sitting and -

9 A. Right there.

10 Q. Is that the lady and the man that just stood up?

11 A. Yes, sir.

12 MR. BECKER: Indicating Defendants **Frank** Sheppard
13 and Darlene Edwards, Your Honor.

14 THE COURT: Very well.

15 Q. (By Mr. Becker:) I want to show you what's been marked
16 for identification purposes as -- I think it's in evidence as
17 Government's Exhibit 323. Is this a photograph of the house
18 that they were living in in November of 1988?

19 A. Yes, sir.

20 Q. And on the right of this photograph, Government's 323,
21 is that your home?

22 A. Yes, sir.

23 Q. And then what's in evidence as Government's 324, can you
24 see on this picture, then, on the left what was **Frank** and
25 Darlene's house and then on the right what -- is that your

2678

1 house where you still live?

2 A. Yes, sir.

3 Q. Going back to the early morning hours, 4 o'clock in the
4 morning on November 29, 1988, did you hear the explosion that
5 occurred on 71 Highway that killed the six firemen?

6 A. Yes, sir.

7 Q. What do you remember about that?

8 A. Knocked me out of bed.

9 Q. What did you do then?

10 A. Well, I was laying on the floor trying to put my pants

12 Q. Was your wife Carol awakened by the explosion, as well?

13 A. Yes, sir.

14 Q. What did you do after you got your pants on?

15 A. Well, went around and checked the windows and everything
16 and stuff like that because it broke a bunch of my windows,
17 and then I went to the phone and called my mom to see what
18 happened.

19 Q. Did you do anything to repair the windows?

20 A. We put some plastic up, trying to keep the wind from
21 blowing in.

22 Q. Then did your mother live in the area, as well?

23 A. She lives close, maybe half a mile away, something like
24 that.

25 Q. Do you remember the second explosion that occurred

1 approximately 4:40 in the morning?

2 A. Yes, sir.

3 Q. What were you doing when that explosion occurred?

4 A. I was talking to my mom on the phone.

5 Q. What -- did that cause any more damage or any damage to
6 your house, the second explosion?

7 A. Blew the windows back out again, or the plastic we put
8 up.

9 Q. What did you do after that second explosion?

10 A. Well, I just kind of went through the front door to see
11 what in the hell was going on.

12 Q. Was your wife with you?

13 A. She was behind me.

14 Q. Did you go outside?

15 A. I was out on my little front porch.

16 Q. And that on this picture is the front of your house. Is
17 that an enclosed porch or -

18 A. That's the enclosed porch.

19 Q. Okay. Did you go outside of that porch?

20 A. Yeah. I opened the screen door and stood outside.

21 Q. Did you talk to anybody when you were outside after the
22 second explosion occurred that morning?

23 A. Yes, I did.

24 Q. Who did you talk to?

25 A. **Frank** and Darlene.

1 Q. Where were they?

2 A. **They** were standing in their doorway.

3 Q. Do you remember seeing anybody with them?

4 A. I could just remember little kids is all I remember,
5 somebody standing behind them.

6 Q. Do you remember what you talked about?

7 A. I asked them what happened, you know. I couldn't, you
8 know, just something like that, you know, just what happened
9 so -- I couldn't remember.

10 Q. Do you remember seeing any damage to their house?

11 A. No.

12 Q. Now, from time to time, did **Frank** Sheppard -- well,
13 strike that. Did **Frank** Sheppard ever come by your house
14 attempting to sell you a battery?

15 A. Yeah, he did one night.

16 Q. About what time in the morning or night?

17 A. I think it was about 2 o'clock in the morning.

18 Q. Please tell us what happened.

19 A. Well, I know that he came by because I heard him yelling
20 or honking. And I couldn't get out of bed, so I had my wife
21 get out of bed and see what he wanted. And he said he had a
22 battery for sale and wanted five dollars. And I just gave
23 him the five dollars to get him out of there and told him to
24 put it alongside of the house.

25 Q. Now, many years later when the ATF agents came to visit

1 you, was that battery still sitting alongside the house?

2 A. Unfortunately, it was.

3 Q. I want to show you what's been marked for identification
4 purposes as Government's Exhibit 387.

5 MR. PETERS: Your Honor, I would object to
6 relevancy based on there is no testimony that anything was
7 taken from the construction site.

8 THE COURT: I'll not sustain on that basis.

9 MR. BECKER: Just one -

10 MR. PETERS: I guess we need to approach.

11 (Counsel approached the bench and the following
12 proceedings were had:)

13 MR. PETERS: If the Court won't sustain on
14 relevancy when there's no evidence that a battery was taken
15 from the site or -

16 MR. BECKER: He did sustain. I'm up here arguing.

17 THE COURT: I did not sustain it.

18 MR. BECKER: I thought you sustained. I'm sorry.

19 THE COURT: I said I'll not sustain on that basis.

20 I think that the evidence is in dispute, let's say, as to
21 whether there was anything taken from the site, batteries or
22 anything else. And there is no question that there is
23 evidence -- whether it was a fact or not, I'm not saying that
24 it is. But there is no question that there is evidence that
25 prior to this occasion **they** had taken batteries from there.

1 MR. PETERS: Judge, that's not the evidence. The
2 evidence is that nothing was taken from this site. That is
3 the uncontradicted, unimpeached evidence, that nothing was
4 taken from the site. If something was taken prior to this,
5 then it's irrelevant. There is no witness who will say that
6 this battery was from the site, was from equipment at the
7 site, or had anything to do with the site.

8 MR. BECKER: That's true. I'm not saying that I
9 can prove that this battery is from the site. I think it has
10 some relevance that he's walking around the neighborhood
11 selling batteries that are obviously not just stolen from
12 cars. And I would submit it as evidence under Rule 404(b) as
13 a common scheme or plan.

14 MR. PETERS: It's a common scheme or plan that's
15 inconsistent with the government's position and the evidence
16 that this Court has heard. Second of all, the testimony
17 from -

18 MR. BECKER: It's consistent with them stealing
19 from construction sites. That's the theory.

20 MR. PETERS: The second, Judge, if you'll recall,
21 the testimony from Norm Collins was that no batteries were
22 stolen but that old batteries were discarded. But he's told
23 you that he wants to show this as a common scheme or plan of
24 stealing batteries. This is a dead battery. The testimony
25 that the government has adduced is that this battery would

2683

1 have been discarded, that there's no link to this crime
2 scene.

3 THE COURT: Well, I think you've got a pretty thin
4 link here. I mean, I think it's obviously weird to be
5 running around the neighborhood at 2 or 3 o'clock in the
6 morning selling batteries. We'll get the inevitable question
7 about whether he was drunk, but I don't think that in terms
8 of being probative of whether he committed this crime it has
9 any relevance.

10 MR. BECKER: Okay.

11 MR. PETERS: Judge, we would ask that the jury be
12 instructed to disregard the preliminary questions relating to
13 **Frank** Sheppard selling a battery or any testimony related to
14 the battery.

15 MR. BECKER: I would object to that.

16 THE COURT: Do you have anything else on that from
17 this man?

18 MR. BECKER: A few more questions for him.

19 THE COURT: Not relating to the battery.

20 MR. BECKER: No.

21 THE COURT: Okay. Then I'll strike the battery.

22 (The following proceedings were had in open court:)

23 THE COURT: Ladies and gentlemen, I have sustained
24 an objection to that line of questioning on the battery, and
25 you are instructed to disregard, you are instructed to

2684

1 disregard any testimony about Defendant **Frank** Sheppard
2 selling a battery to this man at 2 o'clock in the morning.

3 All right. Counsel, you may proceed.

4 MR. O'CONNOR: Your Honor, can we approach one
5 second, real quick?

6 (Counsel approached the bench and the following
7 proceedings were had:)

8 MR. O'CONNOR: I thought I heard, did you say Bryan
9 Sheppard or **Frank** Sheppard?

10 THE COURT: **Frank**.

11 MR. O'CONNOR: I'm sorry. I thought you said
12 Bryan.

13 THE COURT: I thought I said **Frank**.

14 (The following proceedings were had in open court:)

15 Q. (By Mr. Becker:) Mr. Williams, I want to just back up a
16 little bit. After the first blast, you talked about fixing
17 the windows and talking on the phone with your mother, right;
18 is that right?

19 A. Yes.

20 Q. Did you see **Frank** and Darlene, **Frank** Sheppard and
21 Darlene Edwards after that first blast?

22 A. No.

23 Q. It was when you went outside after the second blast that
24 you saw them; is that right?

25 A. Yes, sir.

2685

1 MR. PETERS: Your Honor, I would object. Leading
2 questions.

3 THE COURT: It's not leading. That's what he
4 testified to. What is your answer?

5 THE WITNESS: I said yes, sir.

6 Q. (By Mr. Becker:) Early, about a year ago, in January,
7 early part of 1996, did **Frank** Sheppard -- well, in the spring
8 of 1996, did **Frank** Sheppard come around your house asking
9 about this particular night and the explosion?

10 A. Yes, sir.

11 Q. What did he say to you?

12 A. He was just trying to tell me that I seen him on the
13 first blast, and I didn't.

14 Q. Where did this conversation take place?

15 A. In my front room.

16 MR. BECKER: That's all I have, Judge.

17 THE COURT: All right.

18 CROSS-EXAMINATION

19 By Mr. Peters:

20 Q. Mr. Williams, my name is Pat Peters, and I represent
21 **Frank** Sheppard. So that it's clear, Mr. Sheppard has never
22 told you that he was involved in any way with this explosion,
23 has he?

24 A. No, sir.

1 Q. Mr. Sheppard has never sold you, given you, anything
2 that he told you was involved with this explosion, has he?

3 A. No, sir.

4 Q. Now, going back to November 29, 1988, the chain of
5 events that happened is the explosion knocked you out of bed,
6 correct?

7 A. Yes, sir.

8 Q. You then got up and put on your pants; is that correct?

9 A. No, I was laying on the floor putting my pants on.

10 Q. Okay. And after you got your pants on, you called your
11 mom; isn't that correct?

12 A. In between putting the plastic and stuff up, yes, I
13 called my mom.

14 Q. Do you remember being interviewed by Special Agent Dave
15 True on July 7, 1996?

16 A. I think so.

17 Q. Do you remember giving a tape-recorded statement to ATF
18 Agents Harold Lett and Tony Donaldson on March 3rd, 1995?

19 A. Yes, sir.

20 Q. And do you remember testifying before the grand jury on
21 March 15th, 1995?

22 A. Yes, sir.

23 Q. Prior to calling you as a witness today, did the
24 government give you these, grand jury testimony, the
25 tape-recorded statement, and the report of interview for you

2687

1 to review?

2 A. Gave me some papers, yeah.

3 Q. And did you review those?

4 A. I can't read.

5 Q. Did somebody read them to you?

6 A. No, sir.

7 Q. Did you tell the government that you couldn't read the
8 papers that they were giving you?

9 A. Why should I tell them?

10 Q. So did they ask you whether there were any mistakes?

11 A. They asked me.

12 Q. And what did you tell them?

13 A. I told them there wasn't because there wasn't no
14 mistakes. Whatever I told them was the truth.

15 Q. Okay. Okay. On March 3rd, 1995, when they interviewed
16 you, you saw them having a tape recorder there, and you gave
17 your permission for them to tape-record you; is that true?

18 A. Yes, sir.

19 Q. Okay. In that statement, do you remember telling them
20 that you had got dressed, you went to the phone to call your
21 mom, and that's when the second blast went *of f*? Do you
22 remember telling them that?

23 A. Yes, sir.

24 Q. In that statement, you didn't say anything about getting
25 up and going and fixing windows, did you?

2688

1 A. No, sir.

2 Q. The same thing in your grand jury testimony, you told
3 them that after the first blast, you got dressed, called your
4 mom, and that's when the second blast occurred. Isn't that
5 true?

6 A. Yes, sir.

7 Q. And that is what actually happened is you put your pants
8 on and immediately called your mom, didn't you?

9 A. No, sir.

10 Q. Okay. When was it that you recollected getting up and
11 repairing the windows after the first blast?

12 A. I don't have to recollect.

13 Q. Had you ever told that to any ATF agents, Department of
14 Labor agents, or the grand jury?

15 A. I didn't specify everything I done. I just gave the
16 closest version of what happened, and that was it.

17 Q. Your recollection is that the first time that you went
18 outside, standing outside was **Frank** Sheppard, Darlene
19 Edwards, and a child, and that you spoke to them, and that
20 was the very first time you went outside; is that correct?

21 A. Yes, sir.

22 Q. Okay. When the first blast went off, do you remember
23 going outside after the first blast to repair your windows?

24 A. No, because I did it from the inside.

25 Q. Okay. You never went outside after the first blast is

1 your testimony?

2 A. No, sir.

3 Q. I may have asked that wrong. After the first blast, did
4 you go outside at all?

5 A. No, sir.

6 Q. In 1988 or '89 or '90 or '91, up until this conversation
7 in 1996, **Frank** Sheppard never came up to you and said, I need
8 you to -- did he ever talk to you about your recollection of
9 the events of November 29th, 1988?

10 A. They sure did.

11 Q. Did he ever ask you prior to the conversation that
12 you've related, which took place, I believe, in '96, did he
13 ever ask you about do you remember me, seeing me out there
14 and talking to me?

15 A. He asked me.

16 Q. When did he do that, sir?

17 A. Oh, I don't -- I can't recollect what dates or anything,
18 but it was not too long ago.

19 Q. And I believe your testimony on direct was that it was
20 sometime in 1996; is that right?

21 A. Yes, sir. I'm almost sure.

22 Q. And I'm not hooking you into it like a particular month,
23 but prior to that conversation, **Frank** Sheppard had never come
24 up to you and said -- your nickname is Bear, isn't it?

25 A. Yes, sir.

1 Q. And he'd never come up to you and said, "Bear, I need
2 you to be an alibi for me," had he?

3 A. No, but he tried to get me to change and say I saw him
4 on the first blast, and I didn't.

5 Q. That was in 1996 that he asked you to do that?

6 A. Yes, sir.

7 Q. He didn't threaten you at all, did he?

8 A. No, sir.

9 Q. And -- okay. Let me ask you, during the time that they
10 were tape recording you on March the 3rd, 1995, was there
11 ever a time that they stopped the tape to ask you additional
12 questions?

13 A. No, sir.

14 Q. Was there ever a time when this tape broke that you were
15 aware of?

16 A. State what -

17 Q. Was there ever a time when they were tape recording this
18 where they said, "Wait a minute, Mr. Williams, the tape
19 broke, we need to start over"?

20 A. No, sir.

21 Q. Do you have any recollection in this record of interview
22 and -- counsel, which would be Page 4 -- where there's a time
23 where the notation says, tape cuts out? Do you remember
24 somebody reading that to you about this tape-recorded
25 statement that you gave?

1 A. No, sir.

2 Q. Have they ever let you listen to the tape-recorded
3 statement?

4 A. I don't remember.

5 Q. Do you have any memory of the tape cutting out at all?

6 A. No, sir.

7 Q. Can you tell us what is meant by after tape cuts out,
8 Robert Williams says, "Won't that hurt me?" Do you know what
9 they're asking you about during that time period?

10 A. I don't -- I don't know.

11 MR. PETERS: I don't believe I have any further
12 questions, Judge.

13 THE COURT: All right. Anybody else?

14 MR. BUNCH: No questions.

15 MR. O'CONNOR: No, Your Honor.

16 THE COURT: All right. Any redirect?

17 MR. BECKER: No redirect, Your Honor.

18 THE COURT: All right, Mr. Williams. He may need
19 some assistance getting down from here.

20 All right. Call your next witness.

21 MR. BECKER: United States calls Carol Williams.

22 THE COURT: Come up and stand by the witness chair
23 and be sworn, please, Mrs. Williams.

2692

1 CAROL WILLIAMS,
2 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
3 testified as follows:

5 DIRECT EXAMINATION

6 By Mr. Becker:

7 Q. Good afternoon. Please state your name and spell your
8 last name.

 A. Carol Williams, W-I-L-L-I-A-M-S.

10 Q. Mrs. Williams, where do you live?

11 A. At 2020 East 83rd Street.

12 Q. Kansas City, Missouri?

13 A. Yes.

14 Q. How long have you lived there?

15 A. About 24 years, 20 -- somewhere around in there.

16 Q. Up on the TV screens here is a photograph, which is
17 Government's Exhibit 324. Is that a photograph of your
18 house, and then that white house next-door?

19 A. Yes.

20 Q. Back in November of 1988, who was living in that white
21 house?

22 A. **Frank** Sheppard and Darlene Edwards.

23 Q. How long, do you know, were they living there?

24 A. I'm not sure.

25 Q. Is that -- well, strike that. Going to the evening, or

2693

1 the early morning hours, then, of November 29, 1988, do you
2 remember the explosion that happened that morning?

3 A. Yes.

4 Q. Could you tell us what you were doing when the explosion
5 occurred?

6 A. I just went back to bed. My son threw papers back
7 then. And I just went back to bed, and then the first
8 explosion went off, and my husband and I got up to look to
9 see what was going on, and -

10 Q. Was there damage to your house?

11 A. Yes, the windows were busted out.

12 Q. What did you do about that?

13 A. I was looking for some plastic or something to put up
14 over the windows so it wouldn't get cold in there. And I
15 went and found some roofing nails and stuff, and we were
16 outside putting up the plastic on the windows.

17 Q. So you and your husband -- can you see the photograph
18 from where you're sitting?

19 A. Uh-huh.

20 Q. And would you come out the, the house here that's on the
21 right here, that's your house?

22 A. That's my house.

23 Q. What windows were you working on, if you remember?

24 A. I think it was the one on the left side, I think.

25 Q. Somewhere along here?

2694

1 A. Uh-huh. No, up in the front.

2 Q. Okay.

3 A. On the front porch.

4 Q. No, in the front porch?

5 A. No, not that one. The one right in the front where the
6 door is.

7 Q. Where the door is?

8 A. There are two windows there. They were busted.

9 Q. That would be facing south on your house; is that right?

10 A. Yes.

11 Q. Did you talk to anyone while you were working on that
12 window at all other than your husband?

13 A. No.

14 Q. Did you go back in the house then?

15 A. Uh-huh, yes.

16 Q. Do you remember the second explosion?

17 A. Yes.

18 Q. What was happening, what were you doing or what was your
19 husband doing at, before the second explosion?

20 A. After we got the, everything covered back up, you know,
21 we wanted to know, there was nothing on TV or, you know, it
22 was like we were all by ourselves. So he was going to go
23 drive around. And he was going to leave and got to the front
24 door, and he said, "Well, this won't work."

25 And you know, I said, "What?" He carries a lot of

1 keys and the keys on the first explosion had gotten knocked
2 off the buffet and bent the key to the car. So he was going
3 to come back and get my set. And I started to walk towards
4 him, and that's when the second one went off. And -

5 Q. Did it shake the house?

6 A. Yeah, it did.

7 Q. Any more damage to the house?

8 A. Blew off the plastic and everything that we just put up
9 on the first one.

10 Q. What did you do then?

11 A. After we got together, we went back out and gathered up
12 the plastic and got some more roofing nails and went back out
13 to put the plastic back up again.

14 Q. That would be, again, on basically the front side of
15 your house here in this photograph?

16 A. Yes.

17 Q. Did you see or talk to anyone while you were outside
18 besides your husband, or Bear?

19 A. Yes.

20 Q. Who was that?

21 A. I think it was **Frank** and Darlene.

22 Q. Did you see them or hear them, or what did you do?

23 A. I heard them -- or I think I heard them, but I don't
24 remember seeing them.

25 Q. Okay. Could you remember what was being said?

2696

1 A. I think **Frank** hollered, "Hey, man, what's going on," or
2 something to that aspect.

3 Q. Did you talk to your husband about that?

4 A. Yeah. I said, "Yeah, what are they going to do, use us
5 for an alibi?" And that was it.

6 Q. Did you go back inside then?

7 A. Yeah, and then we left. I remember we left.

8 Q. Do you remember back just last year in 1996 talking to
9 **Frank** Sheppard or **Frank** Sheppard talking to you about this
10 explosion?

11 A. Yeah.

12 Q. Where did that take place?

13 A. At our house.

14 Q. Please tell us what happened.

15 A. He just come over and started talking about, you know,
16 "Man, you saw us on the first explosion," or something like
17 that. Or just silly stuff.

18 Q. Well, did he tell you that, about seeing him after the
19 first explosion rather than the second explosion?

20 A. Yeah.

21 Q. What did you tell him -- go ahead.

22 A. Nothing. I just sat there, and I said nothing until I
23 could get him to go.

24 THE COURT: Until what?

25 THE WITNESS: Until I could get him to leave, go.

2697

1 Q. (By Mr. Becker:) Was your husband home at that time?

2 A. Yes.

3 MR. BECKER: I have no further questions at this
4 time, Judge.

5 MR. PETERS: May it please the Court.

6 THE COURT: Uh-huh.

8 CROSS-EXAMINATION

9 By Mr. Peters:

10 Q. Mrs. Williams, my name is Pat Peters, and I represent
11 **Frank** Sheppard. You've had an opportunity to be interviewed
12 by Special Agent Dave True on July 24, 1995. Do you remember
13 that interview?

14 A. Somewhat.

15 Q. And by Gene Schram of the Labor Department, Labor
16 Racketeering Section, on December 16, 1996; do you remember
17 that interview? I believe the report would show that it was
18 Agent True and Gene Schram that were -

19 A. I remember somebody coming to the house and then going
20 to Denny's and talked to somebody, a couple of guys, or
21 three.

22 Q. And then you remember testifying under oath before the
23 grand jury on July 25th, 1995?

24 A. Yes.

25 Q. Has the government provided you with copies of these two

2698

1 reports of interviews and your grand jury testimony for you
2 to review before coming to trial today?

3 A. Yes.

4 Q. And did you go over those and read them?

5 A. Uh-huh.

6 Q. You have to say yes or no for the court reporter.

7 A. Yes, I'm sorry.

8 Q. And did you notice any mistakes or anything that you
9 left out, anything that you needed to change when you
10 reviewed it?

11 A. On one, the one when I talked to the guys, the officers,
12 there was just, the way they worded some things.

13 Q. And did you tell the prosecution, did you tell Mr.
14 Becker or Mr. Miller or Agent Schram or Agent True that they
15 had worded some things incorrectly in their report of their
16 interview with you?

17 A. Uh-huh, yes, and they said okay.

18 Q. They said okay?

19 A. They would *f ix* it or whatever.

20 Q. When did you tell them about that, ma ' am?

21 A. The 31st, Friday, when I saw my papers.

22 Q. January the 31st?

23 A. Yes.

24 Q. Okay. What was it that was wrong about their report of
25 their interview with you that you brought to their attention

2699

1 on January 31st, 1997?

2 A. The one where, when the second blast went off, what I
3 said to my husband, they had worded it, or left a word out or
4 something. I don't -- I remember reading it, but to sit here
5 and tell you what it -

6 THE COURT: Well, if you have it, why don't you let
7 her look at it.

8 Q. (By Mr. Peters:) Ma'am, I'm going to show you what is a
9 report of interview dated December 16th, 1996, and see if
10 that's the report that you told the government -

11 A. No, it's the other one.

12 Q. Maybe this one. This, for the record, is the July 24th,
13 1995, report.

14 A. Now I can't find it. The one -- I know what I said. I
15 just don't know if I could see it in here. Where I said -
16 after the second explosion and everything was jumping and
17 moving and everything, and I said, Is this like what hell is
18 like, or the war like, or something. And that part -- and I
19 can't seem to find it right now. I know it's in here.

20 Q. That's okay.

21 A. And the one part about Skip.

22 Q. Was Skip over there that night, ma ' am?

23 A. No.

24 Q. Ma'am, you told us something about -- let me go a step
25 at a time. You were being interviewed in July of 1995 and in

2700

1 December of 1996 about the explosion that happened on
2 November 29th, 1988; isn't that correct?

3 A. Yes.

4 Q. And in either of these two reports of interview or your
5 grand jury testimony, did you say anything at all about
6 thinking alibi on November 29th, 1988?

7 A. I don't know what you mean, thinking -

8 Q. You testified on direct exam that after, I believe, the
9 second explosion in talking to who you believed were Darlene
10 Edwards and **Frank** Sheppard that you made a comment to your
11 husband about, something about alibi?

12 A. Using us as an alibi.

13 Q. Did you say that to anybody in either of your two
14 reports of interviews or on your grand jury testimony?

15 A. I think I did.

16 Q. Ma'am, like everybody in Marlborough, this is a case,
17 the explosion and the following investigation has been
18 something that everybody has followed. Would you agree with
19 that?

20 A. Yes.

21 MR. BECKER: Objection. Speculation. I mean -

22 THE COURT: I don't know where we're going with
23 that. Let's get on with it.

24 Q. (By Mr. Peters:) And since sometime in 1995, you and
25 your husband were aware that **Frank** Sheppard and Darlene

2701

1 Edwards were saying, "We talked to our neighbors, we couldn't
2 have been at the blast site." You're aware of that?

3 MR. BECKER: Objection. What they said, I mean,
4 they're not -

5 THE COURT: Yeah, one thing, it's your form. But
6 in addition to that, -- I think you stated it as a fact, Mr.
7 Peters, and I don't think that's appropriate. It wasn't a
8 question.

9 MR. PETERS: I thought I asked were you aware.

10 THE COURT: No.

11 Q. (By Mr. Peters:) Ma'am -- we'll go to substance. Your
12 recollection of November 29, 1988, is that the first
13 explosion occurred and that, of course, woke both you and
14 your husband up; isn't that right?

15 A. Yes.

16 Q. And your recollection is that both of you got out of
17 bed, and did both of you go outside to begin repairing
18 windows, or just your husband?

19 THE COURT: Or just you?

20 A. Or just me? To my recollection, I think he went out
21 first. And then I started, it started getting cold in there.

22 Q. And ma'am, weren't you wearing a nightgown with your
23 coat over it because it was cold, as best you can recall?

24 A. As best as I can recall.

25 Q. And did you ever go outside the house, either after the

1 first or second explosion?

2 A. Yes.

3 Q. And you don't remember, or you don't have any
4 recollection of seeing, actually seeing with your own eyes
5 **Frank** Sheppard or Darlene Edwards; is that correct?

6 A. On the first explosion, no.

7 Q. Okay. But you were wearing, in fact, your night clothes
8 and then a coat over it when you went outside; isn't that
9 true?

10 A. Yes.

11 Q. Okay. And your husband was outside repairing the
12 windows for approximately 20 minutes? How long of a time
13 period was he outside with the nails and the sheets of
14 plastic repairing the windows?

15 A. I don't know. I'm not good at telling, estimating
16 times.

17 Q. How many windows as best you can recall was he having to
18 repair from this huge explosion?

19 A. The two big ones was the biggest ones we were repairing
20 then.

21 Q. Then after repairing those after the first explosion he
22 came in, and then at that point he called his mom; isn't that
23 right?

24 A. Yes.

25 Q. Okay. And it was while -- when did the second explosion

2703

1 occur? Was he still on the phone with his mom, as best you
2 can recall?

3 A. As best as I remember, he was already off.

4 Q. But then he's getting ready to leave again, he's got the
5 key that you're describing that had been bent, so he's
6 getting ready to walk out the door again, and that's when the
7 second explosion happened?

8 A. The second one went off.

9 Q. Is that right?

10 A. Yes.

11 Q. And then that blew the plastic sheeting that he had put
12 on when he had first gone out, that blew that off. Did it
13 break any additional windows?

14 A. I don't remember.

15 Q. And after the second explosion, instead of leaving with
16 this bent key?

17 A. Key.

18 Q. Did he then go outside to re-repair the windows?

19 A. Yes.

20 Q. Okay. Was it while he was outside the second time that
21 you heard voices or conversation with who you believed to be
22 Darlene Edwards and **Frank** Sheppard from inside their house?

23 A. At the second explosion, yes.

24 Q. Okay. And you were inside the house at that time?

25 A. No.

2704

1 Q. You were outside the house?

2 A. I was outside.

3 Q. And the voices that you were hearing after the second
4 explosion were coming from inside **Frank** and Darlene's house;
5 is that right?

6 A. As far as I know, it came from somewhere over there.

7 Q. Okay.

8 A. I don't know where.

9 THE COURT: Are you saying you don't know whether
10 the voices came from inside the house or somewhere in the
11 yard?

12 THE WITNESS: At one point I think it came from the
13 house, but I'm not sure. I don't know how to answer that.

14 THE COURT: Okay.

15 Q. (By Mr. Peters:) But as best you recall, whether it
16 came from inside the house or outside the house, it's coming
17 from **Frank** and Darlene's house, and it sounded like **Frank** and
18 Darlene; is that correct?

19 A. Yes.

20 Q. Something else, while I think of it. This photograph,
21 State's Exhibit 324, has been offered into evidence. This is
22 a picture of the house quite a time after the November 29th,
23 1988, explosion. And my question to you is, obviously, this
24 isn't what it looked like in November with the tall grass and
25 the trees, leaves on the trees; is that fair to say?

2705

1 A. Yes.

2 Q. And your recollection, as best you can tell us, is that
3 your husband Bear had gone outside to repair the windows,
4 came back in -- it's going to be compound.

5 Your recollection -

6 THE COURT: First why don't you start with is it
7 your recollection.

8 Q. (By Mr. Peters:) Okay. Is it your recollection that
9 your husband Bear after the first explosion had gone out and
10 repaired the windows, had come back in, had talked to his mom
11 on the phone, as best you recall, he had started to leave,
12 had approached the door when the second explosion came and
13 blew the door in, and he then went out a second time to
14 repair the windows again?

15 A. Yes.

16 MR. PETERS: I have no further questions. Thank
17 you.

18 CROSS-EXAMINATION

19 By Mr. Bunch:

20 Q. Miss Williams, I'm Will Bunch, counsel for Darlene
21 Edwards. When you first looked outside or went outside after
22 the explosion, there were no lights on anywhere in the
23 neighborhood; isn't that correct?

24 A. Yes.

2706

1 Q. You described the scene as being like the Twilight Zone?

2 A. Yes.

3 Q. There were no lights at anybody's houses?

4 A. No, just seemed like we were all by ourselves.

5 Q. And you saw not a single one of your neighbors?

6 A. (Witness shakes head.)

7 MR. BUNCH: Thank you, ma'am.

8 THE COURT: Anything else?

9 MR. BECKER: No redirect, Your Honor.

10 THE COURT: All right. Thank you, ma'am. You're
11 excused.

12 MR. PETERS: Your Honor, based on the Court's
13 ruling, is there any particular reason why -

14 (Counsel approached the bench and the following
15 proceedings were had:)

16 MR. PETERS: Based on the Court's ruling, is there
17 any reason why the battery is sitting in front of the jury
18 box?

19 MR. BECKER: It's hidden underneath my table. From
20 the angle they're sitting, they can't see it.

21 MR. PETERS: It was wheeled in in front of the jury
22 when I made my objection, and the jury knows the Court has
23 ruled the battery isn't admissible.

24 MR. BECKER: If you want me to take it out right
25 now, I'll take it out right now.

2707

1 THE COURT: Right now.

2 MR. BECKER: Right now.

3 (The following proceedings were had in open court:)

4 THE COURT: Come forward, please, Miss Maggard,
5 stand by the witness chair, and be sworn.

7 MONICA MAGGARD,

8 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
9 testified as follows:

11 DIRECT EXAMINATION

12 By Mr. Miller:

13 Q. Would you tell us your name, please?

14 A. My name is Monica Maggard.

15 Q. How old are you, Miss Maggard?

16 A. I'm 40 years old.

17 Q. And what was your address back in November of 1988?

18 A. 6217 East 95th Terrace, Kansas City, Missouri.

19 Q. Is that around the Marlborough area?

20 A. No, it's in the south part of Kansas City.

21 Q. Were you familiar at all with the Marlborough area back
22 then?

23 A. Somewhat.

24 Q. Do you remember the explosion that caused the death of
25 the six firefighters back on November the 29th, 1988?

2708

1 A. Yes, I do.

2 Q. And how do you recall that explosion?

3 A. A friend and I were out driving around. At the time,
4 this friend of mine used to break into places and get
5 different items out of places and then go and exchange it for
6 money. And he and I were out at the time.

7 Q. So at the time of the explosion, you and your friend
8 were out?

9 A. Driving around.

10 Q. Looking for a place to burglarize?

11 A. Yes.

12 Q. And what stopped you from going ahead, you or your
13 friend from going ahead and breaking into a place?

14 A. We heard the explosion, and we were on 71 Highway. We
15 heard the explosion, and we turned, we stopped. We decided
16 we'd better turn around. We didn't know what was going on.
17 And we headed back towards my house.

18 Q. And was your friend thinking about breaking into the
19 Silo store?

20 A. Yes.

21 Q. Now, is that the Silo at the Bannister Mall?

22 A. The Silo store is on Bannister Road close to the
23 Bannister Mall.

24 Q. After the explosions and after you and your friend
25 decided not to break into the Silo store, where did you go?

2709

1 A. We went back to my house, and we decided that we were
2 going to go ahead and go to sleep. We'd been up a couple of
3 days. We decided to go to sleep and waited until the
4 afternoon, and then he decided that him and his friend wanted
5 to go up to Swope Park up to the coliseum.

6 Q. Okay. And how did they get up to the Swope Park area?

7 A. I drove them.

8 Q. What was going on up there at the Swope Park area?

9 A. There was a lot of people that always gathered around up
10 there at the coliseum. My friend always let me take him but
11 never let me stay around at the place. He always let me drop
12 him off, and I would stay there and wait until they decided
13 when they wanted me to come back and pick him up, him and his
14 friends up.

15 Q. You can go ahead. What's the name of your friend that
16 we're talking about?

17 A. Patrick Stewart.

18 Q. Now, back then in November of 1988 at the, now the 29th,
19 November the 29th, 1988, at Swope Park, did you know by sight
20 a man by the name of Richard Brown?

21 A. I knew who he was because of Pat. I'd never talked to
22 him. I've never associated with him.

23 Q. Now, while Pat was -- while your friend Pat Stewart was
24 up there at the party, did Richard Brown come up to him?

25 A. Yes. Pat and I and another friend, we walked up there.

2710

1 And Pat and Richard always had their own little clique of
2 people. And Pat walked up to Richard and started to brag to
3 him about what he was going to go do.

4 Q. Now, what he was going to go do earlier that morning?

5 A. Right.

6 Q. Breaking into the Silo store?

7 A. Right.

8 Q. And what was Richard Brown's response?

9 A. And his response was, he put his arm around Pat and told
10 Pat, "Well, let me tell you what we just did." He said, "You
11 remember the explosion?" And about that time, Pat looked at
12 me, and I looked at him, and I turned around and walked off.

13 Q. Do you remember, did Richard Brown -- after he said,
14 "Did you hear the explosion," did Richard Brown say, "Well,
15 we did that"?

16 A. Yes, he did.

17 Q. Who did he say this to?

18 A. He said it to Pat.

19 Q. At the time that this went on there at Swope Park, were
20 you aware that six firefighters had died?

21 A. No, I wasn't.

22 Q. At first, did you know that it was Richard Brown that
23 had put his arm around your friend, Pat Stewart?

24 A. No. I didn't know that that was his name.

25 Q. Were you later shown a photo spread, a photo array and

1 asked to pick anybody out as to who it was that put his arm
2 around your friend Pat Stewart there that day at Swope Park?

3 A. Yes.

4 Q. I want to show you what's been marked as Government's
5 Exhibit No. 404. And if you could tell me, is this the photo
6 spread you were shown?

7 A. Yes, it is.

8 Q. okay. And did you identify anyone in that photo spread?

9 A. Yes, I did.

10 Q. Did you place your initials and a date when you made the
11 identification on that photo spread?

12 A. Yes, I did.

13 MR. MILLER: Offer Government's Exhibit No. 404
14 into evidence, Your Honor.

15 MR. O'CONNOR: No objection.

16 MR. OSGOOD: No objection.

17 THE COURT: It's admitted without objection.

18 (Government's Exhibit 404 was admitted into
19 evidence.)

20 Q. (By Mr. Miller:) And were you told the name of the
21 person that you identified on Government's Exhibit No. 404?

22 A. Yes, I was.

23 Q. And what was the name?

24 A. Richard Brown.

25 Q. And when did you notify the authorities of what you

1 knew?

2 A. I had told a friend, and he notified, he gave me the
3 information to notify Dave True.

4 Q. Now, did you give this information to Dave True at ATF
5 with the hopes of benefiting your friend Patrick Stewart?

6 A. Yes.

7 Q. Because what happened to Patrick Stewart in between
8 times?

9 A. In the meantime he violated his parole, and he also had
10 gone over into Kansas and had gotten drunk and broke into
11 someone's home.

12 Q. Was he placed in prison?

13 A. Yes, he was.

14 Q. All right. And has your friend Patrick Stewart been
15 given anything from the government for your coming forward?

16 A. No.

17 MR. MILLER: Your Honor, I would also ask to pass
18 Government's Exhibit No. 404 at this time to the jury.

19 COURT: May I see it before you do that?

20 MR. MILLER: I'm sorry.

21 THE COURT: All right. You may.

22 MR. OSGOOD: May I see it just a minute, again,
23 Your Honor?

24 (Counsel approached the bench and the following
25 proceedings were had:)

1 MR. OSGOOD: I'm concerned about the indication
2 that these were arrest photos.

3 THE COURT: Concerned with what?

4 MR. OSGOOD: That these indicate that these are
5 arrest photos. My client doesn't have any prior felonies.
6 Will they stipulate with me that he doesn't have any
7 felonies?

8 MR. BECKER: Mr. Osgood has taken several
9 opportunities to tell the jury that he only has traffic
10 infractions.

11 MR. OSGOOD: As long as that's clear. As long as
12 it's clear that it's a traffic infraction photo, I have no
13 objection.

14 MR. BECKER: Your client can testify, I'm sure,
15 about that.

16 THE COURT: The Exhibit 404 is admitted without
17 objection.

18 MR. MILLER: May I pass it at this time?

19 THE COURT: Yes.

20 (The following proceedings were had in open court:)

21 THE COURT: Ladies and gentlemen, you might be
22 interested, this is a full-service court so we give you all
23 the information that is appropriate for you to have.
24 The verdict, the damage verdict in the O.J. Simpson
25 case was \$25 million. My reaction precisely.

2 CROSS-EXAMINATION

3 By Mr. Osgood:

4 Q. Ma'am, my name is John Osgood, and I'm counsel for Mr.
5 Richard Brown. I'm going to be asking you some questions.
6 The first question I want to ask you is you said you'd been
7 up for two days at the time that you finally heard the
8 explosion and went over and decided to get some sleep; is
9 that correct?

10 A. Uh-huh, yes.

11 Q. How was it that you were up for two days?

12 A. At the time I was going through a very difficult
13 separation.

14 Q. And that caused you to, what, not be able to sleep?

15 A. Caused a lot of things.

16 Q. Well, was there anything else that contributed to you
17 being up for two days?

18 A. No.

19 Q. Were you taking any medication?

20 A. No. ~

21 Q. Were you taking anything else that would cause you to
22 stay up for two days?

23 A. We had been drinking, but that was it. Not at that
24 night, though, we hadn't.

25 Q. So you had been drinking over the course of the two-day

2715

1 period you were up?

2 A. Yes.

3 Q. All right. Now, you were with Mr. Pat Stewart?

4 A. Yes.

5 Q. He's presently incarcerated at the Lansing State
6 Penitentiary; is that correct?

7 A. Yes, he is.

8 Q. Doing a felony sentence; is that right?

9 A. Yes.

10 Q. And you had conversation with him, and I don't want to
11 get into what was said, but as a result of that conversation,
12 you contacted the Alcohol, Tobacco, and Firearms folks to see
13 if you could assist him, didn't you?

14 A. Yes.

15 Q. Now, you went to them armed with your observations out
16 at the park that day, as well as conversation you'd had with
17 Mr. Stewart, didn't you? You had both of those?

18 A. Yes.

19 Q. So you had -- in the one sense, you had your
20 conversation with Mr. Stewart and what you saw; is that
21 right?

22 A. Yes.

23 Q. Now, you met with Agent True on August the 27th of 1996,
24 didn't you?

25 A. I believe so.

1 Q. And this was after it had been in the paper, was it not,
2 that these five defendants had been indicted sometime in June
3 or July of that year?

4 A. Yes.

5 Q. You remembered that; is that correct?

6 A. Yes.

7 Q. And when you went to Agent True, you don't need to give
8 me any names, but you gave him a specific name of these
9 persons that made these admissions at Swope Park, didn't you?

10 A. Yes.

11 Q. And that name was not Richard Brown, was it, ma ' am?

12 A. No, at that time -

13 Q. Just answer my questions, please. That name was not
14 Richard Brown?

15 THE COURT: Let her finish her answer.

16 Q. Go ahead.

17 A. No, it was not. I had thought it was Bryan Sheppard,
18 and they had -

19 MR. OSGOOD: Your Honor, she's naming someone else.

20 THE COURT: Well, you asked her if she named
21 someone else.

22 MR. OSGOOD: No, I said don't give me the name.

23 Q. (By Mr. Osgood:) You gave them the name Bryan Sheppard,
24 didn't you?

25 A. Yes, it's right there in my testimony that I gave to

1 Dave True.

2 Q. All right. And then they showed you this photo spread,
3 didn't they?

4 A. Yes.

5 Q. All right, ma'am. Let's zoom in on this photo spread a
6 minute. And you knew this was a federal indictment, didn't
7 you, that he'd been charged under this, with this bombing in
8 federal court, didn't you, where you're at today?

9 A. I didn't know exactly that he had been charged. I just
10 knew that there were people that were -

11 Q. Indicted?

12 A. Being brought up on charges of it.

13 Q. And you were talking to a federal agent?

14 A. Yes.

15 Q. He identified himself as a federal agent, didn't he?

16 A. Yes, he did.

17 Q. All right, ma'am. What do you see under the photo that
18 you initialed and identified, ma' am?

19 A. What do I see?

20 Q. What does it say, ma ' am?

21 A. It says W/M U.S. Marshal, Kansas City, Missouri.

22 Q. Yes, ma'am. Now, the photo you did not identify, what
23 does it say, ma ' am?

24 A. Police Department, Kansas City, Missouri.

25 Q. What does the next one say?

1 A. ID number -
2 Q. Just the city and the state will do.
3 A. Belton Police Department, Belton, Missouri.
4 Q. What does the next one say?
5 A. Police Department, Kansas City, Missouri.
6 Q. And the next one, does it have any at all?
7 A. No, it does not.
8 Q. The next one, does it have any at all?
9 A. No, it does not.
10 Q. So the one you picked out is the one that had United
11 States Marshal Service on it, wasn't it, ma ' am?
12 A. Yes, but I didn't look at that. That isn't what made me
13 choose the picture.
14 Q. You told them the person was Bryan Sheppard, though,
15 didn't you, first, that said this?
16 A. Yes.
17 Q. When did you meet Richard Brown, ma ' am?
18 A. I never was personally introduced to him, like I said.
19 Q. What possessed you to say to the agents, then, it was
20 Bryan Sheppard that made this statement?
21 A. Because Pat and I had sat and talked, and he had brought
22 up both of their names because those two ran together in the
23 same area that Pat did.
24 Q. So he named Bryan as the person who made this statement?
25 A. No. Pat did not. Pat said that Bryan and Richard were

1 together. And then that's when I said that that was who put
2 his arm around him.

3 Q. You said that, or he said that?

4 A. I told Dave True that.

5 Q. That it was Bryan Sheppard that put his arm around him?

6 A. That I -- yes, at that time that's who I thought it was.

7 Q. Where did you get that name?

8 A. Pat had told me their names.

9 Q. Well, did you just decide that it must have been Bryan
10 and not Richard, or how did you -

11 A. No, it was my mistake by saying the wrong names. I said
12 that those two had always ran together up there at the
13 coliseum. Just as Pat and other friends of his had always
14 ran up there together.

15 Q. In fact, you weren't able to pick out a picture of Bryan
16 Sheppard, were you?

17 A. Yes, I was, I initialed it.

18 Q. From another photo spread?

19 A. Oh, I'm sorry. I initialed it of Richard Brown.

20 Q. Is that Bryan Sheppard as you know him now?

21 A. I don't know Bryan Sheppard now.

22 Q. Stand up, Mr. Sheppard, please, with Mr. O'Connor's
23 permission.

24 (So done.)

25 Q. This is Bryan Sheppard. Is that the person in that

1 photo?

2 A. In this photo or the photo that I initialed?

3 Q. This photo, ma'am. Not the one you initialed, this
4 photo.

5 A. I don't know.

6 Q. But you identified this man as the man that put his arm
7 around -

8 A. Yes, because I was right there beside him, as well as
9 beside Pat Stewart.

10 Q. And the two of you were out driving around getting ready
11 to rob a Silo store; is that right?

12 A. No, he was getting ready to rob.

13 Q. And you were just along for the ride?

14 A. I was driving.

15 Q. Were you going to go in the Silo with him?

16 A. No, I was not.

17 Q. Were you going to take the merchandise back and exchange
18 it for -

19 A. No, I was not.

20 Q. -- money?

21 A. No, I was not.

22 Q. What was your role in the operation, ma ' am?

23 A. I had just drove for Pat.

24 Q. All right. Now, when you got out to Swope Park, you say
25 that Mr. Stewart was bragging a lot. Excuse me. Yes, Mr.

1 Stewart was bragging about being dressed up in black and
2 going out to hit a Silo store, wasn't he?

3 A. Yes.

4 Q. And the person, whoever it was that you say made this
5 statement, came up and said, "Well, let me tell you what, we
6 did one better, we blew the place up down there last night,"
7 and that's the way the conversation went, wasn't it?

8 A. Somewhat.

9 Q. I can best you, you're robbing Silos, but I blew up -

10 A. That's right. That's what they usually did was they
11 always tried to outdo each other's stories.

12 Q. Thank you. So whoever had the biggest story, somebody
13 was going to top it; is that a fair statement?

14 A. Yes, and normally it was always true what they said.
15 They weren't ever to lie. Why would they lie about something
16 like that?

17 Q. Were they laughing when they did it, was the person
18 whoever made this statement laughing?

19 A. They were pretty jovial about it. I wouldn't say they
20 were laughing, they were just -

21 Q. Well, did you tell the agent in the interview on August
22 the 27th they were laughing?

23 A. I don't recall. If you let me read the notes, I can
24 tell you.

25 Q. Now, what did you tell the agent with respect to the

1 reason why you didn't come forward with this information
2 immediately after you heard it?

3 A. I guess just like everyone else, I figured what little
4 bit of information I knew really didn't mean a whole lot
5 being that I didn't personally know him.

6 Q. Well, did you tell him that you felt that your past
7 would make it unbelievable?

8 A. Yes, somewhat.

9 Q. What did you mean by that?

10 A. Because of hanging around Pat.

11 Q. Now, your intention originally in calling was to
12 actually get his jail sentence reduced, wasn't it, ma'am?

13 A. We thought maybe that it would help, yes. Pat said it's
14 always been bothering him.

15 Q. Well, in fact, Mr. Brown beat Mr. Stewart up on one
16 occasion, didn't he, in a fistfight? You were aware of that?

17 THE COURT: When was this, Mr. Osgood?

18 Q. Not too many months prior to this incident you're
19 testifying to.

20 A. I really don't know who beat him up.

21 Q. You don't have any knowledge of that?

22 A. No. As a matter of fact, I wasn't even aware that he
23 was beat up a couple of months before that it happened.

24 Q. Okay. Tell me again what your route was that night when
25 you were out looking for this Silo store.

1 A. We were on 71 Highway heading north, and that's when the
2 explosion occurred.

3 Q. So you're going north on 71?

4 A. Yes.

5 Q. From 95th?

6 A. Yes.

7 Q. Where were you going?

8 A. We were driving around trying to figure out how the best
9 way would be for him to get in.

10 Q. To the Silo?

11 A. Yes, sir.

12 Q. Well, the Silo is the other direction, isn't it, ma ' am?

13 A. Yes, it is.

14 Q. Go ahead.

15 A. Pardon me? We were coming from Belton, though, that's
16 where he had lived.

17 Q. I see. And so was he seeking your advice?

18 A. No. We just were talking and driving, and he decided
19 that maybe the Silo would be a good place. So we were on 71
20 heading, like I said, north, and we were probably going to
21 come up 87th Street.

22 Q. Did you go by the construction site?

23 A. No, we did not. We didn't make it that far.

24 Q. So where did you turn on?

25 A. Actually, we turned right around in front of the rock

2724

1 quarry. That's where we were when the first explosion hit.

2 Q. I see. Did you have burglar tools with you?

3 A. No, we did not.

4 Q. Had you done that before with him ever, Mr. Stewart?

5 A. Yes, I've taken, I've drove him other places before in
6 the past.

7 Q. How old is Mr. Stewart?

8 A. He's 11 years younger than I am.

9 Q. Well, you said what you're 40?

10 A. Yes.

11 Q. So, what, he's 29?

12 A. Yes. Twenty-eight.

13 Q. When is the last time you talked to Mr. Stewart, ma' am?

14 A. Probably in November.

15 Q. Are you on his visitation roster?

16 A. Yes, I am.

17 Q. Do you visit him regularly?

18 A. No, I don't.

19 Q. Okay. You saw him when, in November?

20 A. Yes.

21 Q. When is he scheduled to get out of the penitentiary,
22 ma ' am?

23 A. I don't know.

24 Q. What is he in the penitentiary for?

25 A. For two things. Like I said earlier, for a parole

1 violation and because he had gone over into Kansas to a party
2 and had gotten drunk and went to use somebody's phone. And
3 the lady said that she tried to get him out and claimed that
4 he broke in and wouldn't leave. I don't know what actually
5 happened because I wasn't there. I was talking to him on the
6 phone.

7 Q. Some kind of an assault charge or something, or burglary
8 or something?

9 A. I believe it's assault.

10 Q. What was his original conviction that he got revoked on
11 that you were trying to help him with?

12 A. I really don't remember right now.

13 Q. Well, when is the first time that you actually ever
14 face-to-face met Richard Brown?

15 A. The first time?

16 Q. Yes, ma'am.

17 A. Actually, Pat and I have been friends for about 13
18 years. Probably about ten years ago. I didn't meet him.
19 Like I told you, I've never been introduced to any of these
20 people. Pat wouldn't let me go around and actually meet
21 anybody. I would just go up there and drop him off at
22 friends' houses in the Marlborough area or at Swope Park at
23 the coliseum. He just never let me go and associate with
24 people like that. He just kind of kept me -

25 Q. Thirteen years ago you started going with Mr. Stewart?

1 A. Pat and I were -- yes, I wasn't going with him.

2 Q. When he was 16?

3 A. I wasn't going with him. We're friends.

4 Q. I see. Well, when is the first time that he introduced
5 you to Mr. Brown?

6 A. He never introduced me to him, I told you.

7 Q. When is the first time that you ever had eyeball contact
8 with Mr. Brown?

9 A. Probably about ten years ago, like I said.

10 Q. Where?

11 A. At the coliseum in Swope Park.

12 Q. All right. And then when is the next time you saw him
13 between then and the time at Swope Park that you've testified
14 to about here today?

15 A. That I couldn't actually tell you. That would be like
16 me asking you when is the last time that you saw a
17 classmate. I don't really recall. A lot has happened in my
18 life between now and 13 years ago.

19 Q. All right. When is the last time that you saw Bryan
20 Sheppard face-to-face?

21 A. I don't know. Like I told you, that would be like me
22 asking you the same question again.

23 Q. How many other people were at Swope Park that day that
24 you could name today?

25 A. The people that I know? Quite a few of Pat's friends,

1 quite a few.

2 Q. Name some of them, please. Just name three.

3 A. Their first names, I'll only name their first names.

4 Q. No, I want their full names. Give me full, three full
5 names of people that were there that day.

6 THE COURT: Did you say the first name?

7 A. Why would I have to do that? I mean, that's naming
8 people that -

9 Q. Because I'm asking you to, ma'am, and because it's a
10 trial, and Mr. Brown is on trial and the jury is entitled to
11 hear it if you know the names. If you don't, if you can't,
12 say so, please say so. I'm not trying to play games with
13 you. If you can't remember, please say so. If you can, name
14 three names of people that were there along with these two
15 people.

16 A. No, I told you of Pat's friends, I can name -

17 Q. Name them please, three names, full names that were
18 there.

19 A. There was Pat Stewart, there was Eddie Wise, there was
20 Tony Everhart, there was Jeff Harris.

21 Q. All right. So there were a number of people there,
22 weren't there?

23 A. Yes.

24 Q. And were they drinking, ma' am?

25 A. No, they hadn't started drinking yet.

2728

1 Q. What time did you get there?

2 A. I dropped Pat off around -- like I told them, I don't
3 exactly know what time it was. It was in the afternoon
4 about, around noon. And then Pat told me to come pick him
5 back up later.

6 Q. And did you?

7 A. Yes, I did.

8 Q. What time was that?

9 A. Somewhere between, I believe, 6:00 and 8:00. I'm not
10 real sure. If I can look at the papers, I could tell you.

11 Q. Now, on direct exam, you were asked the question what
12 happened. And your answer was -- I wrote it down. Pat was
13 bragging about Silo, and Richard put his arm around Pat and
14 said, "Guess what we did," and I walked off.

15 Do you remember that testimony and that answer?

16 A. I didn't walk off until he finished part of his answer
17 to Pat, part of his -- then I walked off.

18 Q. The prosecutor came back to you and suggested what the
19 answer was, and you agreed with that. Now, which is it? Do
20 you remember specifically what was said after he said, "Guess
21 what I did last night," or did Mr. Stewart later tell you
22 that at the penitentiary?

23 A. No, I was standing there. And then later on Pat told me
24 everything then that the conversation -

25 Q. All right. So you -

1 A. I heard. Yes, I heard him as he put his arm around Pat
2 say -

3 Q. "Guess what we did"?

4 A. "Guess what we did. You heard the explosion. Well, we
5 were the ones that did that." And then I walked off. I
6 looked at Pat, and Pat looked at me, and I walked off to the
7 car. And Pat came to the car and told me to pick him up
8 later on.

9 Q. Now you've used the term we. Earlier in your testimony
10 you used the term I.

11 A. Okay. Let me look at my papers to see exactly what I
12 said, then.

13 Q. Do you need those for recollection of what occurred,
14 ma ' am? You just gave this statement in August of last year,
15 and you're recounting something that happened six years ago.

16 MR. MILLER: I'm going to object to him arguing
17 with her.

18 MR. OSGOOD: I'm not arguing.

19 THE COURT: You're asking her, Mr. Osgood. Give
20 her the papers that she asked for.

21 A. Thank you

22 Q. Have you had an opportunity to review that?

23 A. Uh-huh.

24 Q. Okay. What's your recollection now, having looked at
25 that?

2730

1 THE COURT: As to what, Mr. Osgood?

2 Q. As to who was said, specifically.

3 A. Exactly what I wrote, what I said to them and that they
4 wrote down.

5 Q. Which is? Which is what, ma ' am?

6 THE COURT: Well, are you expecting her to remember
7 that verbatim? You have the paper in front of you, right?

8 A. It's on the second page.

9 Q. All right. So was it the term we or was it the term I?

10 A. It says we. And that's what I said.

11 Q. But you do agree with me that you discussed this with
12 Mr. Stewart after the fact, before you came in and talked to
13 the agents?

14 A. We hadn't discussed what was said. I mean, we had
15 discussed that Pat said he knew that -

16 Q. Well, I don't want to get into anything that Pat said -
17 excuse me just a minute. Pat is not here as a witness.

18 A. Okay.

19 Q. Did you discuss it with Pat? I don't want to know what
20 he said. You did have discussions with Pat?

21 A. Yes, or I wouldn't have come forward to talk to the
22 agent.

23 Q. Okay. Now, one last question. You've also been working
24 as an informant in **drug** cases on behalf of the government in
25 an attempt to help Mr. Stewart, haven't you?

1 A. No. No, I have not. He's still in. If I was helping,
2 it sure didn't work out, then, did it, because he's still
3 incarcerated.

4 Q. Maybe that's why you're here today, ma'am.

5 THE COURT: That will be stricken as unnecessary
6 argument, and the jury is instructed to disregard it.

8 CROSS-EXAMINATION

9 By Mr. O'Connor:

10 Q. I just have a couple of questions. Miss Maggard, I'm
11 John O'Connor. I represent Bryan Sheppard.

12 Correct me if I'm wrong. Did you say on direct
13 that you had never met Bryan Sheppard?

14 A. I'd never been introduced to him.

15 Q. Okay. And the person that came up at Swope Park -- it
16 was one person who came up and started talking to Pat
17 Stewart?

18 A. One person that came up, yes.

19 Q. And that was one person that put his arm around Pat
20 Stewart?

21 A. Yes.

22 Q. And you're not testifying that Bryan Sheppard was at
23 Swope Park that night, are you?

24 A. That isn't what they asked me.

25 Q. That's what I'm asking you now, though. Are you saying,

1 was Bryan Sheppard -- I'm asking, was Bryan Sheppard there
2 that night at Swope Park at the shelter house, wherever this
3 conversation took place?

4 A. I don't know.

5 MR. O'CONNOR: Okay. No further questions. Thank
6 you.

7 THE COURT: Anything else? All right. Any
8 redirect?

9 MR. MILLER: Just a second, Your Honor. No
10 redirect, Your Honor.

11 THE COURT: All right. Thank you, ma'am. You're
12 excused.

13 All right. Ladies and gentlemen, we've now reached
14 the closing time for this day. Please be with us in the
15 morning at 9:30. Don't talk about the case, don't read the
16 papers about the case or watch the television, please.

17 We'll see you in the morning at 9:30. Drive
18 carefully. Good night.

19 (The following proceedings were had in the
20 courtroom out of the presence of the jury:)

21 MR. BECKER: I need to make a record on something.
22 Mr. Osgood and Mr. O'Connor, can I speak with you up at the
23 bench, please?

24 MR. O'CONNOR: Yes.

25 MR. BECKER: And Miss Hunt, too, I think.

1 (Counsel approached the bench and the following
2 proceedings were had:)

3 MR. BECKER: I just want to make clear on the
4 record. I think the witness was correct literally in her
5 answer to -- Mr. Osgood's question was are you cooperating in
6 other cases in an effort to assist Stewart. And I think that
7 was the question, and she said no.

8 Now, I'm aware that she's cooperating in other
9 cases. Mr. O'Connor represents somebody; is that right? You
10 represent -- what's that woman's name, some attorney that's
11 been -

12 MR. O'CONNOR: Diana Webb. I wasn't aware if she
13 was a witness.

14 MR. BECKER: Miss Hunt maybe is.

15 MS. HUNT: No, I'm not, but I am now. She's
16 cooperating on that case now?

17 THE COURT: You blew her cover.

18 MR. BECKER: I probably let the cat out of the
19 bag. I've been told they've made contact with her.

20 MR. OSGOOD: Stewart told me that. I interviewed
21 Stewart.

22 THE COURT: That's not the authority that's
23 incarcerating Patrick Stewart anyway. He's in Kansas. She
24 can sing like a canary to the feds, and it's not going to
25 work in Kansas.

1 MR. BECKER: I just want to make that clear.

2 MR. OSGOOD: So I object about the pictures, Your
3 Honor.

4 THE COURT: Well, I don't think -- that's good,
5 but -

6 MR. OSGOOD: That's all I've got.

7 (The following proceedings were had in open court:)

8 THE COURT: All right. We'll be in recess until
9 9:30 in the morning.

10 (The trial adjourned for the evening at 5:10 p.m.)

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff, ~
vs.) Nos. 96-00085-01/05-CR-W-8
)
GEORGE FRANK SHEPPARD,)
EARL D. SHEPPARD,)
DARLENE M. EDWARDS,) Tuesday,
BRYAN E. SHEPPARD, and)
RICHARD W. BROWN,) February 11, 1997
) Kansas City, Missouri
Defendants.)

TRANSCRIPT ON APPEAL

VOLUME XV

(Pages 2736-2886)

BEFORE THE HONORABLE JOSEPH E. STEVENS' JR..
UNITED STATES DISTRICT JUDGE

AND A JURY,

Proceedings recorded by electronic stenograph
Transcript produced by computer

ELIZABETH SHINN, RPR
UNITED STATES COURT REPORTER
811 GRAND AVENUE, ROOM 702
KANSAS CITY, MO 64106

A			
1~			
21~			
3;	<u>NANCY JILL ROMI</u>		
	Direct Examination		Page
	Cross Examination	2746	2738
5 1			
~	<u>RICHARD W. BROWN</u>		
., ;	Direct Examination		2771
~	Cross Examination	2775	
	<u>BECKY EDWARDS</u>		
	Direct Examination		2780
	Cross Examination		2784
: .j			
	<u>PATSY PEELER</u>		
	Direct Examination		2792
	Cross Examination		2795
	<u>LONNIE JOE PUGH</u>		
	Direct Examination		2804
	Cross Examination		2810
	Cross Examination		2819
	Cross Examination		2825
	Redirect Examination		2829
	<u>KIMBERLY ARCHER</u>		
	Direct Examination		2832
	Cross Examination		2842
	Cross Examination		2847
	<u>JOHN OVERMAN</u>		
	Direct Examination		2852
	<u>BONITA J. PETERSON</u>		
	Direct Examination		2861
	<u>PAUL MARQUARDT</u>		
	Direct Examination		2871

B

I 10

E X H I B I T S

2 ~

VOLUME XV

~

~ ~ Plaintif f 's Received

I

, +

403 2740

1

- I 344 2806

!

- 1 345 2807

!

371 2836

2837

342 2838

..

~

- 0 0 0 -

//

::

THE COURT: Good morning. Mr. Miller,
you may proceed.

MR. MILLER: The Government calls
Nancy Romi.

NANCY JILL ROMI.

having been sworn, testified:

DIRECT EXAMINATION

BY MR. MILLER:

Q Would you tell the court and jury your name, please.

A: Nancy Jill Romi

Q How old are you, ma ' am?

A: Thirty-five.

Q And how long have you lived in the Marlborough area of
Kansas City?

A: Probably about 27 years of my life.

Q You don't have to say where you are living now but do
you still live in that area?

A: No.

Q And do you know the defendant Richard Brown?

A: Yes, sir.

Q And how long have you known him?

A: Practically all my life.

Q And how is it you have known him almost all your life?

A: I was married to his **uncle**.

2739

1 Q And are you related to the defendant Darlene Edwards?

2 A: Yes.

3 Q And how are you related to her?

- 4 A: She is my sister.

5 Q Going back to Richard Brown, did you know what kind of
6 a vehicle he was driving back in November of 1988?

7 A: Yes.

8 Q What was that?

9 A: A black Ford pickup.

10 Q And how often during the day or the week would you see
11 that black Ford pickup?

12 A: Several times.

13 Q And you saw him driving.

14 A: Yes.

15 Q And you said it was a black Ford pickup. Could you
16 describe a little bit more about it.

17 A: It had some, like primer, rust marks on the hood and it
18 was like a '70 Ford pickup with one headlight out of
19 it.

20 Q Which headlight?

21 A: The driver's headlight.

22 Q How did it sound going up and down the road?

23 A: It was loud.

24 Q Do you know why it was loud?

25 A: I would think because it had no muffler. I don't know.

2740

1 Q And how often did you see it going up and down in the
2 streets in the Marlborough area with Richard driving it
3 in that condition during November of 1988? ;

4 A: Several times.

5 Q Now in September of 1988 where did you and your family
6 move, what was the address?

7 A: 2132 East 83rd Terrace.

8 Q On the morning of the explosion, November 29, 1988,
9 where did you and your family live?

10 A: 2132 East 83rd Terrace.

11 Q On the morning of the explosion who was in the house
12 with you?

13 A: Tom Romi, Shannon Reimers, Michael Demaggio and my
14 three children.

15 Q I want to show you Government's Exhibit No. 403 and is
16 this a picture of the house you lived in on November
17 29, 1988?

18 A: Yes.

19 MR. MILLER: Offer Government's Exhibit 403,
20 Your Honor.

21 THE COURT: Any objection?

22 MR. BUNCH: No objection.

23 THE COURT: It is admitted without objection.

24 (PLAINTIFF'S EXHIBIT 403 WAS RECEIVED IN EVIDENCE.)

25 Q How do you remember the explosion?

2741

1 A: I was asleep in my home when it went off. It woke me
2 up. And I remember hearing voices outside my home from
3 the next door neighbors.

Q Now, referring to Government's Exhibit No. 403, where
5 on here is your bedroom?

6 A: It's right there where you are pointing to.

7 Q Where the pen is.

8 A: Yes.

9 Q After it woke you up did you go through the house?

10 A: Well, my telephone had rang which it was my sister
11 saying, Patsy Peeler saying someone had bombed her
12 home, which brought me out of my bed and I walked to my
13 living room to see the curtains on the east side of my
14 front room blowing in.

15 Q You say the east side, here or here?

16 A: East side, over here.

17 Q You say the curtains were blowing in.

18 A: Yes.

19 Q And what did you do after you noticed the curtains
20 blowing in through that window?

21 A: I walked over and I went to put my hand through to find
22 out why the curtains were blowing in. And I realized
23 my window was gone. And I pulled the curtains aside.

24 Q Your window is gone, how close to the construction site
25 at 87th and 71 highway is your home?

1 A Just a couple miles.

2 Q After you went to the front room and you put your arm
3 through the window, Patsy had already called before you
did this.

5 A Yes.

6 Q And you had gone through the house.

7 A Yes.

8 Q And then as you looked out did you notice any vehicles
9 in the street?

10 A Yes, I did.

11 Q Tell the jury what you saw.

12 A Upon looking out I saw a vehicle topping the hill at
13 Brooklyn, heading northbound at a **high** rate of speed.

14 I realized when it hit the dip by the elementary school
15 where it was very lighted it was a black Ford pickup
16 and with the driver headlight out and I saw the red
17 rust on the hood. Upon seeing this I made the remark,
18 "There goes Richard."

19 Q Now, even though you made the remark, "There goes
20 Richard", could you see who was driving?

21 A No.

22 Q Did you know the license plate number of Richard's
23 truck before the explosion?

24 A No.

25 Q Did you see a license plate on this truck?

2743

1 A: No.

2 Q The truck that went by your house, did it also have a
3 headlight out?

A: Yes.

5 Q Did it also have the red rust primer?

6 A: Yes.

7 Q Was it also a black seventies Ford?

8 A: Yes.

9 Q Was it also loud?

10 A: Yes.

11 Q And the lighting, you said it is lit by what?

12 A: By street lights.

13 Q I want to show you now Government's Exhibit No. 1. Can
14 you make that out?

15 A: Yes.

16 Q From the blaze site how close to your home is Richard
17 Brown, where he was staying?

18 A: Just like two blocks north from where I lived.

19 Q And which direction was this pickup going as it went by
20 your home?

21 A: It was heading northbound on Brooklyn.

22 Q That line there connecting the green dots where my pen
23 cap is, what street is that?

24 A: That's Brooklyn.

25 Q And then how far from Richard Brown's home is Darlene

2744

1 Edwards' home?

2 A: About a block west.

3 Q Now, is this accurate as to where these homes are?

4 A: Yes.

5 Q And how long have you lived in that neighborhood?

6 A: About 27 years of my life.

7 Q After the first explosion how soon was it that you saw
8 the pickup go by your house?

9 A: Approximately three to five minutes.

10 Q Are there street lights, stop lights, along this area
11 here over to your home, in that area?

12 A: There are stop lights on 85th Street.

13 Q Now at that time of the morning how are the stop lights
14 operated?

15 A: They are blinking lights.

16 Q They're yellow flashing lights.

17 A: Yes, one way is yellow and one way is red. I am not
18 sure which way is which but they're blinking lights.

19 Q About how many minutes, if you are driving normally, is
20 your house from that blast site, from the construction
21 site?

22 A: Probably about five minutes.

23 Q After the first explosion and after you had seen the
24 black Ford pickup go by your house, where did you go?

25 A: We then left and went to my sister Patsy's house.

2745

1 Q Where were you when the second explosion happened?

2 A: I was at Patsy Peeler's home, my sister.

3 Q Who did you go over to Patsy's with?

4 A: Tom Romi.

5 Q Who do you live at your house with?

6 A: Shannon Reimers, Michael Demaggio and my three

7 children.

8 Q Shannon whom?

9 A: She was my niece through marriage.

10 Q When did you go back to your house?

11 A: Approximately 15 minutes after the second explosion.

12 Q How close is your sister Patsy Peeler's house to your
13 house?

14 A: Probably four or five blocks.

15 Q Now when you went back to your house about 15 minutes
16 after the second explosion, who was there?

17 A: Shannon Reimers, Michael Demaggio and my three
18 children.

19 Q Did Shannon Reimers and Michael DeMaggio leave your
20 house?

21 A: Yes.

22 Q How soon after you got back to your house did they
23 leave?

24 A: Probably 10, 15 minutes.

25 Q Which direction were they headed?

2746

1 A: North on Brooklyn.

2 Q Which would have been toward the direction of Darlene
3 Edwards or Richard Brown's home.

A: Yes.

5 MR. PETERS: Darlene Edwards or Richard
6 Brown's home?

7 MR. MILLER: Where Richard was staying.
8 That's all I have of this witness, Your Honor.

9 THE COURT: All right. Cross.

10 CROSS EXAMINATION

11 BY MR. OSGOOD:

12 Q Miss Romi, my name is John Osgood and I represent
13 Richard Brown. You and I have never met.

14 A: No.

15 Q You were married to Richard's **uncle**, Jack Clark.

16 A: No, Tom Romi.

17 Q Tom -

18 A: Tom Romi.

19 Q You will have to speak up.

20 A: Thomas Romi.

21 Q He is related to Richard by blood, is that correct?

22 A: Yes.

23 Q Now, you are separated or divorced from him now.

24 A: We are divorced.

25 Q And he has custody of the children, does he?

1 MR. MILLER: I object to that.

2 THE COURT: That is immaterial. Sustained.

3 Q Did you tell your daughter after this case is over,
shortly after you gave these police reports, that you
5 are going to be rich?

6 A: No.

7 Q Were you arrested recently in Boots and Saddles with
8 **drug** paraphernalia?

9 MR. MILLER: Just a moment.

10 THE COURT: You know better than that. The
11 objection is sustained and I instruct you not to make
12 that kind of inquiry again.

13 Q You were first interviewed on August the 16th, 1989,
14 about six months after the incident, is that correct?

15 A: I never -

16 Q Closer to eight months. I'm sorry .

17 A: I first made contact just a couple months after the
18 explosion happened. I believe it was in June.

19 Q You're right, February 21st of '89 and you called and
20 talked, at least you had a conversation with detectives
21 then, is that correct?

22 A: Yes.

23 Q And did he come out to your house or did you go down to
24 the station?

25 A: I believe they came to my home.

1 Q Well, in fact, did you make a call first, though, to
2 initiate the contact?

3 A: Yes.

Q And then later they arrived at your house at 83rd and
5 Brooklyn?

6 A: Yes.

7 Q And did you tell the police at that time, back in '89,
8 that you thought you recognized a truck as belonging to
9 Richard Brown ?

10 A: No, I told them I saw the black Ford pickup. I know
11 what I seen.

12 Q And did you tell them also at that time that you didn't
13 get a good look at the driver and it was possible
14 someone else was driving the truck?

15 A: I said I did not know who was driving the truck.

16 Q Did you tell me he had often loaned his truck and one
17 of the persons he loaned it to, for example, was Chuck
18 Jennings?

19 A: Yes.

20 Q When the blast occurred, were you home?

21 A: I was in my home at 2132 East 83rd Street.

22 Q Were you asleep in bed?

23 A: Yes.

24 Q And the blast woke you up.

25 A: Yes.

2749

1 Q Were you at that time married?

2 A: Yes.

3 Q And your husband was there.

4 A: Yes.

5 Q And did he get up?

6 A: Yes.

7 Q Did you get up?

8 A: Yes.

9 Q And who else was in the house?

10 A: Shannon Reimers, Michael Demaggio and my three
11 children.

12 Q Were they asleep or were they up?

13 A: They were asleep but the blast woke everybody up in the
14 house.

15 Q Where did Shannon and Mr. DeMaggio sleep?

16 A: They were in the back bedroom, at the back of the
17 house.

18 Q And where was your bedroom?

19 A: In the front of the house.

20 Q And after the blast going off then you got up. Did you
21 dress?

22 A: No.

23 Q What did you do?

24 A: I got up out of bed. I walked in my living room. When
25 I noticed the curtain blowing I walked over and put my

2750

1 hand to find out why my curtain was going. And I
2 realized the window, it blew out the window of my home.

3 Q Through the inside?

4 A: I don't remember if it was inside or outside. I just
5 remember the window blowing out.

6 Q What was the weather like?

7 A: It was chilly.

8 Q And what did you do at that point?

9 A: At that point, because my telephone had rang when the
10 explosion went off, Patsy had said, my sister told me
11 she thought somebody had bombed her home. So I got up
12 thinking someone had bombed her home. And it was so
13 bad it blew out the windows on the east side of my
14 side. And she lived to the west, she would have no
15 home left. So we got dressed, me and Tom Romi, and we
16 went over to my sister's to see if she had a home left.

17 Q When was this in relationship to when you heard the
18 truck?

19 A: This was after I saw the truck.

20 Q So the first thing you did, you got up and stuck your
21 hand through the window. Did you go outside?

22 A: I went to the front door, opened the door and there was
23 complete silence. There wasn't even, not even a dog
24 barking in the neighborhood. So I went to pick up the
25 phone to call 911, the operator, to see what was going

2751

1 on. And all the lines were busy.

2 Q Isn't it a fact, Miss Romi, the power had been severed
3 at that point?

4 A: No, sir.

5 Q And there was no electricity.

6 A: No, sir.

7 Q Okay. You saw there was a street light on out there.

8 A: Yes.

9 Q The blast hadn't caused the power failure of the
10 streetlights.

11 A: No.

12 Q So you walked out on the porch, is that right?

13 A: Opened my front door, yes.

14 Q And what did you see?

15 A: On my front porch I saw nothing.

16 Q And did you say your house faces right onto the street
17 or does it set sideways?

18 A: It faces 83rd Terrace.

19 Q Are you the corner house?

20 A: No, I was the second house.

21 Q So there is another house between your house and
22 Brooklyn.

23 A: Yes.

24 Q Isn't it a fact there is a large Oak tree out there in
25 front of that house?

1 A: Yes.

2 THE COURT: Which house?

3 THE WITNESS: It is a Pine tree.

4 MR. OSGOOD: In front of the house next to
5 her, Your Honor.

6 THE WITNESS: It was a Pine tree, I believe.

7 Q A large old tree.

8 A: It wasn't real large. Just a Pine tree.

9 Q And when is the first time that you heard the noise
10 that you have identified as Mr. Brown's truck

11 A: There is a dip in Brooklyn where the school is. When
12 the truck hit the dip I heard the loud pipes. I could
13 hear them the whole time because the rate of speed it
14 was going.

15 Q Now the school is actually, if you will look at my
16 pointer here, down in this location, isn't it?

17 A: I am on 83rd Terrace. The school is right across the
18 street from me.

19 Q All this open area there did not appear to be any
20 streets, is that where the school is located?

21 A: Yes.

22 Q You are saying the dip is in this area.

23 A: Yes.

24 Q You can see my pen, I believe. So you heard a car hit
25 the dip.

2753

1 A: I did not hear the car hit the dip. I heard a loud
2 vehicle. I saw sparks when they hit the dip, I saw
3 sparks coming from the vehicle.

4 Q So from your house you could see the dip down there.

5 A: Yes.

6 Q How far away was that?

7 A: How far away was Brooklyn, the dip?

8 Q How far away was the dip from where you were standing?

9 A: I would say several hundred yards.

10 Q And I am not clear. I thought the school was between
11 you and the dip.

12 A: The school is there but the area I was at is where the
13 fence was and part of the playground which enables me
14 to have full access of Brooklyn.

15 Q Well, when you get in your car and leave your house you
16 do have to go down to the corner and take a left to get
17 on Brooklyn.

18 A: I didn't go that direction.

19 Q If you are driving from your house to get onto
20 Brooklyn, you have to get in your car, drive down the
21 block, drive past another house and take a right or
22 left to get onto Brooklyn, don't you?

23 A: Right.

24 Q I guess you are telling me you look caddie-corner then
25 across an open area to see the dip.

1 A: When I looked out the window, I pulled up my curtain, I
2 looked this direction, I saw the truck coming over the
3 hill. When it hit the dip I could see it in full
4 vision. I could see the vehicle.

5 Q Okay. Now, you said it needed a muffler. Is it more
6 accurate to say it had, like many vehicles the kids
7 drive in that neighborhood, loud mufflers?

8 A: I have no idea. Just a loud automobile.

9 Q For example, doesn't your brother Jackie -- you brother
10 is Jackie Clark, right?

11 A: Yes.

12 Q Doesn't he drive a black pickup that is loud?

13 A: No.

14 Q He doesn't?

15 A: Not to my knowledge.

16 Q What about Lonnie Joe Pugh, do you know him?

17 A: No. I am an acquaintance. I have seen him with
18 Richard. I don't know the man personally.

19 Q Have you ever seen him in a black pickup?

20 A: With Richard.

21 Q A pickup of his own.

22 A: No.

23 Q You know Alan Haley?

24 A: No comment. I know some Haleys but Alan -

25 Q If you don't, that's not important. I will ask

1 somebody else. Did you go down to the end of the
2 street to look and see if Richard had pulled in and was
3 just getting out of his truck or anything?

4 A: I did not. If I did I would have seen it because there
5 was a dip where he lived on Brooklyn.

6 Q That dip, is it not, is just the other side of the
7 street you live on, north of it.

8 A: It is north of my home.

9 Q So the street comes up, goes over a hill, goes down
10 through a dip and then comes and goes down through
11 another dip.

12 A: No. When you come up Brooklyn and 85th, you come over
13 a hill. And you come down from the school, you have a
14 straight-a-way and Brooklyn kind of makes a little
15 curve, a small curve, you go up the hill and you go
16 down the dip. And that's where Richard lived.

17 Q Your street is before that second dip.

18 A: Yes.

19 Q Now did you drive down and take a look around like many
20 people did in the area that night?

21 A: No.

22 Q Did you go down the next morning?

23 A: No.

24 Q When was the first time you went down to the site to
25 see what had happened?

1 A: I never went to the site. I just saw pictures in the

3 Q Were you working at this time?

4 A: No.

5 MR. MILLER: I object. That is not
6 relevant.

7 MR. OSGOOD: I want to find out what she
8 did, whether she went to work the next morning.

9 THE COURT: It is not relevant, what she did
10 unless you can show me it would enhance her testimony.

11 Q Did you work that day?

12 A: No.

13 Q What time did you go to bed that night?

14 A: The night of the explosion?

15 Q Yes, ma'am.

16 A: Probably around ten o'clock, ten or ten-thirty, when
17 the news was coming on.

18 Q Did Miss Reimers and Mr. DeMaggio come in?

19 A: Yes.

20 Q What time did they come in?

21 A: They come in earlier that evening and Shannon had made
22 the remark she had no place to say. And being it was
23 my niece, I wasn't going to kick her in the street. I
24 invited her to stay the night at my home.

25 Q What time was that?

1 A: Probably around six, seven maybe, in the evening.

2 Q And did the four of you do anything that evening?

3 A: Watched TV.

Q Play cards or anything like that?

5 A: I don't recall.

6 Q How was your relationship with Mr. Brown during this
7 period of time, ma' am?

8 A: The period of time the explosion happened?

9 Q Yes, ma' am .

10 A: He was my nephew.

11 Q Did you get along with him?

12 A: Yes.

13 Q How often did you see him?

14 A: Practically every day.

15 Q Was he living at your house?

16 A: No.

17 Q Was there somebody living at your house he was running
18 around with?

19 A: I was his aunt. I was living with his **uncle**. I was
20 married to his **uncle**.

21 Q So he came by frequently to see his **uncle**.

22 A: He came by frequently just to visit.

23 Q Now, after you gave the statement -- actually, it
24 wasn't a statement, it was an interview -- in August of
25 '89, you gave another interview in February of '89,

2758

1 didn't you?

2 A: The first one was in February.

3 Q I got my months backwards. You're right, February of
4 '89. And then you gave another one in August of '89.

5 A: Yes.

6 Q And the first one was to, it looks like Detective Zinn
7 and the second one was to Detective Fraise, is that
8 right?

9 A: Yes.

10 Q Now when Detective Fraise came out, did he tape record
11 the interview?

12 A: I remember him telling me they were tape-recording
13 things which did not bother me at all. I had nothing
14 to hide.

15 Q Now are you confusing that -- and I don't want to
16 confuse you -- with the February 24th session where you
17 went back and they had a tape recording.

18 MR. BECKER: What year?

19 MR. OSGOOD: Of '95.

20 Q The first tape recording you gave was in February of
21 '95, wasn't it?

22 A: It might have been.

23 Q And when the detectives came out, they just interviewed
24 you and talked to you and took notes, didn't they?

25 A: Yes.

2759

1 Q And then when you went down for your interview with
2 Special Agent True, he actually got a recorder out and
3 recorded it, didn't he?

4 A: Yes.

5 Q Now, before the interview with Agent True did he give
6 you these two reports from these police detectives and
7 let you look at them and review them?

8 A: No.

9 Q Did he talk to you before he turned on the tape
10 recorder for a period of time?

11 A: He just told me, asked me if they had my permission to
12 tape the conversation.

13 Q Well, you talked to the detectives in '89 and I take it
14 you get a telephone call or something in '95 from Agent
15 True or did you initiate contact with Agent True in
16 '95?

17 A: I believe he contacted me. I don't recall.

18 Q Did you ask him what it was about.

19 A: I knew what it was about.

20 Q Six years had gone by and he just called you up on the
21 telephone and said I am Agent True, I want to talk to
22 you.

23 A: He told me he was Agent Dave True with ATF. I knew
24 what it was about. It's something you don't forget.
25 If you lived in that neighborhood you would not have

2760

1 forgotten what happened that night.

2 Q Did you make inquiry in the intervening years, your
3 interviews with the detectives, what the status was?

A: No, I knew what I saw.

5 Q Did you watch the Unsolved Mysteries episode in '95?

6 A: No, I didn't. I heard it was on but I did not get a
7 chance to watch it.

8 Q Were you aware of the reward that had been offered?

9 A: I don't care about the reward. I think they're six
10 families out there that lost fathers, dads; six
11 families who deserve to know who did this and why they
12 did this.

13 Q I agree with you but my question, were you aware of the
14 reward?

15 A: I was aware of it, yes.

16 Q That episode aired before your February , '95 interview,
17 didn't it?

18 A: I don't recall. I heard it was on Unsolved Mysteries.
19 I didn't get to see it.

20 Q Did you see any of the posters floating around, reward
21 posters?

22 A: No.

23 Q Now there was also an Agent Schram present when you
24 gave the taped interview, is that right?

25 A: yes.

2761

1 Q And then after that interview they brought you down to
2 the grand jury on the 15th of March, didn't they?

3 A: Yes.

4 Q Did the grand jury before you went in talk to you for
5 any length of time before the session started?

6 A: I believe they talked to me a little bit.

7 Q Who was that?

8 A: I believe it was Dave True.

9 Q For how long?

10 A: Just to tell me that I had to go before the grand jury
11 and telling me this is what was going to happen.

12 Q Did he give you the February 24th, 1995 taped interview
13 to review at that point?

14 A: I believe he gave it to me afterwards.

15 Q After you went into the grand jury or after he talked
16 to you?

17 A: I don't recall.

18 Q It was about a month between the two, wasn't it?

19 A: I don't recall.

20 Q Did you listen to the tape recording before you went
21 into the grand jury?

22 A: No.

23 Q How long did you talk to Agent True before you went
24 into the grand jury ?

25 A: Maybe several months.

1 Q How long did you talk to Agent True and Agent Schram
2 before they turned on the tape recorder?

3 A: Just a few minutes. They informed me they had some
4 questions to ask me and they were going to be recording
5 it, did I have any problems with that and
6 I told them no.

7 Q Now at that point when the recorded interview was
8 taken, you had separated from Tom Romi, is that
9 correct?

10 A: At what point?

11 Q In '95, in February.

12 A: Yes.

13 Q When did you separate from Mr. Romi?

14 A: It was approximately Memorial Day of ,93 or '94.

15 Q And what is your daughter's name?

16 A: Which one?

17 Q How many do you have?

18 A: I have three.

19 Q What are their names and their ages?

20 MR. MILLER: Judge, I object to her
21 daughters' names and ages.

22 THE COURT: This doesn't bear, Mr. Osgood.

23 MS. OSGOOD: I believe they are witnesses
24 potentially.

25 THE COURT: That's fine. You can ask them

1 their names and ages.

2 MS. OSGOOD: I need to confirm who they are
3 and how old they are.

4 THE COURT: Not with this testimony. It is
5 beyond the scope. Not material.

6 Q Did you go over to your ex-husband's within the last
7 two or three days and attempt to talk to him about his
8 testimony in this case and your testimony?

9 A: No.

10 Q You have had no contact with your ex-husband in the
11 last 24-48 hours.

12 MR. MILLER: Excuse me. May we approach?

13 THE COURT: Yes.

14 (Proceedings out of the hearing of the jury .)

15 MR. MILLER: What we are getting into, they
16 have just recently lodged into a custody battle. I
17 think her children were given custody to him January
18 the 30th and he has now filed a motion to modify. He
19 wants custody and she already said she didn't talk to
20 him about the case. And I think he is getting into
21 the custody. Right now she has lost custody and it is
22 being litigated.

23 MR. OSGOOD: She went over and talked to him
24 about his testimony; said he was a liar.

25 THE COURT: His testimony in this case?

2764

1 MR. OSGOOD: Yes, sir. He is going to
2 contradict what she heard and saw that night.

3 THE COURT: You are cross-examining her. You
4 may directly ask her that, did she go to him and tell
5 him, find out what he was going to say and testify and
6 did she call him a liar.

7 MR. OSGOOD: All right. Thank you.

8 THE COURT: But no mention of any custody
9 battles.

10 (Proceedings in the hearing of the jury.)

11 Q I want you to listen to the question very carefully
12 because I am going to try to structure it the way the
13 Court has instructed and I am not asking about anything
14 except what is in the question, do you understand?

15 A: Yes.

16 Q Did you go over to your ex-husband's within the last
17 24, 48 hours and accuse him of being a liar or calling
18 you a liar and attempt to discuss your testimony and
19 what the two of you recalled from this incident?

20 A: I have never discussed with Tom Romi because I am
21 scared to death he will beat the crap out of me again.

22 MR. OSGOOD: Your Honor, I asked her just to
23 answer the question.

24 THE COURT: I think that probably answers the
25 question.

2765 ~

1 MR. OSGOOD: It raises other issues you
2 won't let me get into.

3 THE COURT: You brought it up and she
answered. Let's go on.

5 Q You found out, did you not, that Richard Brown gave the ~
6 authorities a statement, something to the effect that
7 he had seen one of your relatives at the Quik Trip on
8 the night -

9 MR. MILLER: Excuse me. I am going to
10 object. It assumes facts not in evidence and he is
11 testifying for his client with that question.

12 MR. OSGOOD: It was her state of mind,
13 something she knew.

14 A: I never discussed anything about this case with his
15 family for fear of my life.

16 Q You believed that Richard Brown had implicated one of I
17 your relatives in this crime, didn't you, when he
18 talked to the police? ;

19 A: No, I didn't.

20 Q Before you testified today did you have the opportunity
21 to go over again your grand jury testimony?

22 A: Yes.

23 Q And did you get a copy of it? Did they give you a copy
24 of it and let you read it?

25 A: I read a part of it, yes.

2766

1 Q Did they give you a copy of the taped statement you
2 made and let you read it?

3 A: I did not read the whole thing. I just went over
4 little things they would be asking.

5 Q Did they give you the reports of interview with the
6 police back in '89 to look over and review?

7 A: I did not look over and review. I knew what I was
8 saying. I didn't have to be reminded. I lived it. I
9 knew it.

10 Q How long was Mr. Brown's headlight out on his truck?

11 A: I believe it had been out for quite some time. I don't
12 know exactly how long.

13 Q When did you first observe it being out?

14 A: He would come by my house periodically, day and
15 evening. He would pull in my driveway. I would see
16 the headlight was out.

17 Q And describe the other features of the vehicle.

18 A: It had like a rust primer marking on the hood of it.

19 Q You mean where it had rusted and someone sprayed primer
20 on it.

21 A: Sprayed the red primer, yes.

22 Q How much of it was red?

23 A: Just spots of it. Not the whole thing.

24 Q Well, is this rust-colored primer or is it a bright red
25 primer?

2767

1 A: It's a rust-colored primer.

2 Q Was the truck itself primered black or was it glossy
3 black?

4 A: I believe a glossy black, a regular original paint job
5 from the factory.

6 Q Was it a pickup?

7 A: Yes.

8 Q Did it have a taillight?

9 A: Yes.

10 Q The night you saw this was the tailgate up or down?

11 A: It was down.

12 Q Did Mr. Brown usually drive around with the tailgate
13 down?

14 A: Yes.

15 Q You know Johnny Driver?

16 A: Yes.

17 Q You know him to be a young man who was seen in and
18 around the Marlborough area.

19 A: I knew Johnny Driver because I used to live across the
20 street from his ex-wife Terry Davis. I grew up in that
21 neighborhood. I went to school with the Davises.

22 Q Had you heard a lot of rumors about this incident in
23 the Marlborough area from the time it happened, as a
24 matter of fact, up through today?

25 A: I have tried to stay out of the case and not discuss

2768

2 Q My question was have you heard a lot of rumors, a
3 little small neighborhood.

A: I moved out of that neighborhood shortly after that
5 explosion happened.

6 Q When did you move out, ma, am?

7 A: Probably in like ,90, '91.

8 Q So you were living there when the police interviewed
9 you the first time in '89 and the second time in '89?

10 A: Yes.

11 Q Between the time of the blast in '88 and the time you
12 were interviewed, did you hear a lot of rumors about
13 what had happened down there?

14 A: When I was with that family, when I approached
15 everyone, I kind of shut up.

16 Q Were you over at Richard's house the next day after the
17 blast?

18 A: No.

19 Q When was the next time that you went over to Richard's
20 house?

21 A: I don't recall exactly who was there. Every Sunday we
22 went down there for dinner.

23 Q Did you know his grandmother?

24 A: Wilma Romi, yes, I did.

25 Q How about his grandfather?

1 A: Louie Romi Smith, yes.

2 Q You are aware he died a couple weeks ago?

3 A: No, I wasn't.

4 Q Did you see either his grandmother or his grandfather I
5 the night of the explosion? ;

6 A: Pardon?

7 Q Did you see either his grandmother or his grandfather
8 the night of the explosion? I

9 A: No, I didn't.

10 Q Were you close to his grandfather?

11 MR. MILLER: Judge, I object. This is not
12 relevant.

13 THE COURT: It seems fairly clear, Mr.
14 Osgood.

15 MR. OSGOOD: I hope it wasn't something I I
16 said. I didn't know she didn't know.

17 THE COURT: Do you want us to take a break?

18 THE WITNESS: Yes.

19 MR. OSGOOD: I think I am about finished.

20 THE COURT: We will take a break. Don't talk
21 about the case while we are in recess. We will call
22 you in 10 or 15 minutes. You may withdraw.

23 RECESS

24 (Proceedings in the courtroom outside the presence of
25 the jury .)

1

1 MR. BECKER: Your Honor, before the jury
2 comes in I have a motion to revoke the bond of Richard
3 Brown.

4 Mr. Brown has engaged in a pattern of
5 conduct intended to intimidate the government's
6 witnesses.

7 Earlier in this trial, I will put on the
8 record, that when Witness Kelly Corrison came
9 into the courtroom Mr. Brown made an obscene
10 gesture to her. That was witnessed not only by
11 the witness but by the police officer who was with
12 the witness.

13 Yesterday he approached Becky Edwards on
14 the street and attempted to talk with her.

15 Yesterday after court he was present on
16 the fifth floor which is the U. S. Attorneys
17 Offices. He was down near the marshal's space for
18 I don't know what reason. But two witnesses were
19 leaving, Nancy Romi and Monica Maggard, he glared
20 at them. And that was also witnessed by a police
21 officer in addition to the witnesses.

22 About a half an hour ago, after Nancy
23 Romi left the witness stand, obviously distraught,
24 Mr. Brown went out in the hallway and in the
25 presence of many other people called her, "a lying

1 bitch."

2 Based upon this pattern of conduct, I
3 respectfully request his bond be revoked and he be
 in custody for the remainder of this trial.

5 MR. OSGOOD: Your Honor, with respect to the
6 fifth floor, first, he went down there to pick up Mr.
7 Sheppard's clothing and did, in fact, pick up the
8 clothing from the marshal's office.

9 His mother has been doing the cleaning
10 of the clothing and I have instructed him, now
11 after Mr. Becker mentioned it to me, not to go
12 back to the fifth floor. And his mother from now
13 on will pick up the clothing.

14 THE COURT: I don't care much about the fifth
15 floor but I do care about the sixth.

16 MR. OSGOOD: Let me tell you what happened,
17 as I understand, in the hallway. And I will put Mr.
18 Brown on the stand if you would like testimony with
19 respect to the intent in the hallway.

20 Mr. Brown, come up and take the stand.

21 RICHARD W. BROWN.

22 having been sworn, testified:

23 DIRECT EXAMINATION

24 BY MR. OSGOOD:

25 Q State your full name, please.

1 A: Richard W. Brown.

2 Q And you are a defendant in this case.

3 A: Yes, sir.

Q I want to ask you only about the incident in the
5 hallway, not about any other facts related to this case
6 or anything. After the witness testified -

7 THE COURT: She isn't through yet, Mr.
8 Osgood. We took a break during her testimony. That is
9 one of the more treacherous things about what is
10 claimed happened.

11 MR. OSGOOD: Actually, I believe we were
12 through and we had told Mr. Becker that.

13 THE COURT: It wasn't on the record when we
14 recessed. She was still testifying.

15 Q While she was in the courtroom or was she outside, did
16 you walk outside and say something in the presence of
17 her parents?

18 A: Well, sir, she took this mike off and came around the
19 table and went out, and my cousin was walking out of
20 the courtroom with me.

21 Q Is he in the courtroom now?

22 A: Yes, he is.

23 Q Did you have a conversation with your cousin?

24 A: Yes, that's who I was talking to.

25 Q Tell me exactly what you said.

1 A: We stepped out the door and I stated to him, ''I can't
2 believe her, man. She's a lying bitch."

3 Q You did call her sea lying bitch"?

A: Yes. I apologize.

5 Q Did you say it in the presence of her parents that were
6 on the bench out there?

7 A: I was coming out this door over here (indicating). Her
8 parents were over here on the bench. And obviously
9 they had full ears and listened to me. So as I come to
10 walk over there, her mother stood up and her father
11 stood up right in front of me and he said, "You better
12 watch yourself, mister.Ó,

13 Q What did you say?

14 A: I said, "Fuck you" and I was walking. I never stopped
15 or anything. I had to actually go around them because
16 they jumped up and stomped in front of me.

17 Q Did you at any time see the witness? Was she still in
18 here taking the mike off?

19 A: I didn't see her. I was going down the elevator.

20 Q Now I have instructed you any repeat of that behavior
21 would likely result in revocation of your bond if you
22 weren't careful.

23 A: Yes, sir. I told her, I apologize and she told me I
24 need to apologize to myself, not her.

25 Q Have you been upset the last couple days?

1 A: Yes, about a week and a half ago my grandfather died.

2 Q What happened yesterday or the day before yesterday?

3 A: Well, my year old son is in ICU and has got IVs in him.

Q What is the matter with him, Mr. Brown?

5 A: He has pneumonia.

6 Q Have you been told he might have meningitis?

7 A: Yes, they are going to do a spinal tap.

8 Q Has this trial been stressful on you?

9 A: Very.

10 Q I don't want to embarrass you, Mr. Brown, but you have
11 got a reputation of being a tough guy, but have you on
12 occasion cried yourself to sleep at night at home?

13 A: Because of this case, yes.

14 Q Now you realize what you did here could cause you big
15 problems if it occurs again.

16 A: Yes, sir, I do. It just eats me.

17 Q Are you apologizing to the court?

18 A: Yes, sir.

19 Q I know what is going on eats at you but you understand
20 I am your lawyer, it is my job to bring out if anybody
21 is lying and I am here to protect you and you don't
22 have a role in this case, you understand that from now

24 A: Yes, sir.

25 Q You apologize to the court and to the parents of this

1 woman.

2 A: Yes, sir.

3 Q It is not going to happen again.

A: No, not in my presence or anything, never.

5 MR. OSGOOD: All right. Thank you, Mr.

6 Brown . I didn't mean to embarrass you, but this is
7 important.

8 THE COURT: Mr. Becker.

9 CROSS EXAMINATION

10 BY MR. BECKER:

11 Q Mr. Brown, did you make an obscene gesture to Kelly
12 Corrison when she walked into the courtroom?

13 A: No, sir. I have known Officer Ludwig for several
14 years. Actually, we have got along. He has been
15 somewhat a friend to me in some ways.

16 Q My question was when Kelly Corrison walked in the
17 courtroom did you raise your middle finger towards that
18 direction?

19 A: No, sir, I did not. I was looking in the window there.
20 As Ludwig was pointing out all the defendants showing
21 where everybody was sitting and I was talking to Mr.
22 Ludwig. Ludwig had let her in that door and went over
23 there and I was like this (indicating). She's over
24 here. Ludwig is over here. And I was joking with Mr.
25 Ludwig. I would never interrogate a witness, period.

1 THE COURT: Not unless you are a lawyer.

2 Q Yesterday did you approach Becky Edwards on the street?

3 A: Never. I seen Becky Edwards out there in the hallway.

4 And that is the only time I ever saw Becky Edwards.

5 Becky Edwards went to my **uncle**'s house, her and Nancy

6 Clark, and interrogated him .

7 Q Yesterday were you on the fifth floor when Nancy Romi

8 and Monica Edwards went out towards the elevators?

9 A: Yes.

10 Q Did you glare at them as they went out toward the

11 elevator?

12 A: Sir, I was at the other end of the hallway. It is a

13 very long hallway.

14 Q I am familiar with it.

15 A: I was waiting for the sheriff which you can ask them.

16 Q My question was did you glare at them as they walked to

17 the elevators?

18 A: No, I did not. Actually, I was smiling. I was happy

19 for the day to be over so I could go see my son.

20 MR. BECKER: I have no further questions,

21 Judge.

22 THE COURT: I have an obligation to preserve

23 the integrity of this process and to protect these

24 witnesses to whatever extent I can outside the confines

25 of this courtroom. And I believe the case has been

2777

1 made for this man's bond to be revoked and I order it
2 revoked.

3 MR. OSGOOD: Could I address that and ask for
4 reconsideration for a moment. There are restrictions
5 that can be placed on him far less stringent than
6 revocation of his bond. It is an important trial.
7 We are well into it. I have a working relationship
8 with him. We have got work to do.

9 THE COURT: That would mean everybody had the
10 same relationship and the same situation with their
11 client working now.

12 MR. OSGOOD: I understand that, Your Honor,
13 but up to this point we have done certain things and
14 taken certain actions on the assumption he is
15 available to work with me and he has been.

16 Now, I agree he should be restricted
17 from the fifth floor. He will not go back to the
18 fifth floor and pick up anybody's clothing again
19 and I will take entire control of him . And I have
20 talked to him and I can't over-emphasize the fact
21 he has been very stressed over the incident with
22 his son. The son was seriously ill. He is an
23 emotional kind of guy. He has not threatened any
24 witnesses in the sense of asking them to change
25 testimony or telling them they're going to be hurt

1 or anything is going to happen, characterized as a
2 threat. This does not rise to that level, I don't
3 believe, of justification at this point to pull
4 his bond.

5 Now, the court can certainly, I think,
6 impress on him -- and I think this proceeding has
7 impressed on him -- the necessity that he have
8 absolutely no further contact whatsoever with any
9 of these people. Mr. Brown tends to be angry
10 sounding in his speech. He uses curse words.
11 That is not something for him to I think change
12 overnight. It is part of his personality. It is
13 part of how he grew up. Some people curse and
14 some people can't say three sentences without
15 curse words. Others can. Unfortunately, Mr.
16 Brown uses curse words. But he did not threaten
17 anyone when he walked out of this courtroom. And
18 I just don't think it is a just punishment at this
19 point, that the court can take other measures with
20 him.

21 I assure the Court as his lawyer I will
22 keep a tight leash on him. I need him out where
23 he is now. His family needs him. His wife needs
24 him. His child needs him.

25 THE COURT: His wife's child.

1 THE WITNESS: They're my kids.

2 THE COURT: They are your children.

3 THE WITNESS: Yes, sir. They're both, a
two year old boy and a one year old boy.

5 THE COURT: I am sorry but it has been clear
6 through testimony what happened here in the courthouse,
7 it has been clear of my observations of this man in the
8 courtroom, this young man doesn't have much control
9 over himself and he needs a good dose of judgment
10 somewhere along the line and maybe this will help, but
11 I am going to revoke his bond.

12 Now, let's move on.

13 (The jury enters the courtroom.)

14 THE COURT: All right, folks, have a seat. I
15 apologize for the delay but we had something come up we
16 had to deal with.

17 Is Miss Romi in the courtroom? Come up,
18 Miss Romi, and have a seat in the witness chair.
19 I will remind you you are still under oath.

20 Q (By Mr. Osgood) Miss Romi, before we broke I neglected
21 to ask you one final question. The business about the
22 headlight being out, the first time that you told
23 anybody about that was in this courtroom today, is that
24 not correct?

25 A: The first time I discussed the headlight being out?

2780

1 Q Yes, ma' am , that's not in your grand jury testimony.

2 A: Yes, it is.

3 Q Was it in your statement to the police in 1989?

4 A: I believe I have said it all along.

5 Q Was it in your transcribed statement to the ATF agent?

6 A: Yes.

7 Q You had a chance to look at your grand jury testimony.

8 A: Yes.

9 Q So it is apparently, according to what we have
10 discovered in the grand jury and in the recorded
11 statement but it is not in the police report
12 anywhere.

13 A: No.

14 Q Did you have a chance to review the police report?

15 A: I don't remember if I reviewed it or not.

16 MR. OSGOOD: That is all I have.

17 THE COURT: Any other Cross?

18 MR. O'Connor: No questions.

19 MR. MILLER: No Redirect.

20 THE COURT: Thank you, ma ' am . Call your next
21 witness.

22 MR. STEWART: The United States calls Becky
23 Edwards.

24 BECKY EDWARDS,

25 having been sworn, testified:

1
2 BY MR. BECKER:
3 Q Good morning. Please state your name and spell your
last name.
5 A: Becky Edwards, E-d-w-a-r-d-s.
6 Q How old are you?
7 A: Nineteen.
8 Q Is Darlene Edwards your mother?
9 A: Yes.
10 Q Was **Frank** Sheppard her boyfriend?
11 A: Yes.
12 Q For how long?
13 A: About eight years.
14 Q Going back to November of 1988 where were you living?
15 A: I don't know what street.
16 Q Was it on 83rd Street off of Brooklyn?
17 A: Yes.
18 Q Who was living in the house with you?
19 A: Me and my mom and **Frank**.
20 Q Did you have a next-door neighbor named Bear and his
21 wife Carol?
22 A: Yes.
23 Q Did Skip Sheppard or Bryan Sheppard or Richard Brown
24 ever come over to the house?
25 A: Yes.

2782

1 Q Do you remember the explosion that occurred on 71
2 highway on November 29, 1988?

3 A: Yes.

Q Before that explosion do you remember anyone being at
5 your house discussing taking things from that
6 construction site?

7 THE COURT: Time frame.

8 MR. BECKER: Next question, Judge.

9 Q When was that?

10 A: Within a week before.

11 Q Who was there?

12 A: My mom, **Frank**, Skip, Richard, Bryan, my brother Ronnie.

13 Q You were about 11 or 12 back then, is that right?

14 A: Yes.

15 Q Where were all these people in your house?

16 A: In the kitchen.

17 Q What were **they** doing?

18 A: Getting high.

19 Q What do you remember any of these people saying about
20 taking things from a construction site?

21 A: Just said there was some copper and stuff **they** could
22 take and sell and there were some sheds.

23 Q Who was doing the talking?

24 A: **Frank** and Richard.

25 Q Did **they** talk about a bucket, a bobcat bucket at all?

2783

1 A: Yes.

2 Q What was said?

3 A: There was a bobcat bucket just laying up there **they**
could take and sell.

5 Q Do you know if **they** could sell that?

6 A: Yes.

7 Q How did you know that?

8 A: Because **Frank** did it before.

9 Q Was anything said about gasoline?

10 A: Not that night.

11 Q Do you remember any cars or trucks or any other
12 vehicles being at the house at that time?

13 A: Richard's truck.

14 Q Richard's pickup truck, is that right?

15 A: Yes.

16 Q You have to try and answer out loud. Now the night of
17 the explosion do you remember being woken up by either
18 one of the blasts?

19 A: The second blast.

20 Q Did you know at that time it was a second blast?

21 A: No.

22 Q Did you later find out that it was the second of two?

23 A: Yes.

24 Q What do you remember after waking up? What was going
25 on? What did you do?

2784

1 A: I went out of my bedroom and my mom was coming through
2 the hallway and **Frank** was coming in the front door.

3 Q Was **Frank** dressed or in jammies or whatever?

A: He had on his jeans and a shirt.

5 Q Did it appear as if, were his clothes clean or dirty or
6 could you see?

7 A: He had a tear in his pant leg and he had grass stains
8 on his pants and his shoes.

9 Q What happened after that?

10 A: I went into my mom's bedroom and sat on the couch for a
11 while. And my mom, **Frank** was talking to the neighbor
12 next door through the window.

13 Q Do you remember anything else about that night?

14 A: **Frank** said he thought the furnace blew up and turned
15 off the thermostat.

16 Q Was it cold in the house then?

17 A: Yes.

18 MR. BECKER: I have no further questions at
19 this time, Judge.

20 THE COURT: All right. Mr. Bunch.

21 MR. BUNCH: If it please the Court.

22 THE COURT: Yes.

23 CROSS EXAMINATION

24 BY MR. BUNCH:

25 Q Becky, you know I am your mom's counsel, don't you?

2785

1 A: Yes. !

2 Q And I have a few questions to ask you and if you have
3 any difficulty understanding them, I will certainly
4 understand that. I will try not to make that happen.
5 Now the conversation that you overheard, your testimony
6 was it occurred within a week of the explosion.

7 A: Yes.

8 Q And you don't have any particular memory about what
9 particular night it was on.

10 A: No.

11 Q And you named various people who were there, all of
12 which are here and Ronnie Edwards, is that your
13 brother?

14 A: Yes.

15 Q He was there as well.

16 A: Yes. I

17 Q And Tommie Lee King.

18 A: I told them I remembered him being there that day but I I
19 wasn't for sure, positive he was there. He may have
20 left before then.

21 Q Let me ask you, Becky, if I may, about the night of the
22 meeting that occurred at your house. Was it often
23 there were meetings there?

24 A: It wasn't really meetings. **They** would just get high
25 and find a way to get money.

2786

1 Q Certainly not anything that you would formally call a
2 meeting.

3 A: No.

4 Q Always a lot of guys hanging around there drinking,
5 smoking, so forth.

6 A: Yes.

7 Q Is that fair? A: Yes.

8 Q And that might be every night. And the discussions
9 might take on a variety of subjects.

10 A: Yes.

11 Q And it might be the same people one, two or three
12 nights in a row, different people another night in a
13 row.

14 A: Yes.

15 Q Most of the people would be persons who lived in or
16 around the Marlborough area.

17 A: Yes.

18 Q Now your mom didn't set up any of these meetings, did
19 she?

20 A: Nobody really set them up. People just showed up.

21 Q Did she sometimes have trouble getting them out of the
22 house?

23 A: Yes.

24 Q That is they would tend to stay well after the hours
25 she thought appropriate for them to remain there.

1 A: Yes.

2 Q Would it be a fair statement to characterize these
3 groups that occurred as parties more than meetings?

4 A: Yes.

5 Q And a lot of big talk went on as the night continued
6 and people got drunker.

7 A: Yes.

8 Q A lot of big talking went on in there.

9 A: Yes.

10 Q Now did you hear any discussions prior to this
11 explosion within a week, that week period or any other
12 time, about radios?

13 A: No, sir.

14 Q Was there any discussion within that week, or perhaps
15 earlier, about the purchase of gasoline?

16 A: Afterward. That's the same time I heard about the
17 radios **they** said **they** took afterwards. I told them I
18 didn't hear that before.

19 Q Now was it a situation or did your mom frequently mow
20 lawns in the area?

21 A: Yes, me and my mom both mow lawns.

22 Q Did you have a lot of gasoline cans there at the house?

23 A: Yes.

24 Q I don't suppose you have any idea how many.

25 A: No.

2788

1 Q Do you have any idea what size they were?

2 A: The kind you usually buy. I don't know.

3 Q A gallon or two, probably.

A: Yes.

5 Q Now when the second explosion occurred that woke you
6 up, was it cold where you were sleeping?

7 A: Yes, because it blew my door open.

8 Q And you got cold and that was part of the reason you
9 were awake.

10 A: Yes.

11 Q And when you saw your mom, did she have her night
12 clothes on?

13 A: Yes.

14 Q And she was coming from where?

15 A: Out of the hallway.

16 Q And after the second explosion, after you got up I
17 should say and saw your mom there, did you then go back
18 to bed with her?

19 A: I went to her bedroom, yes.

20 Q Now, after you were up and saw your mom, there was some
21 conversation, was there, that occurred between she and
22 the Williams who lived next door.

23 A: Yes.

24 Q And do you recall what the subject matter of that
25 discussion was?

2789

1 A: I just remember everybody was asking what was going on
2 and they had a police scare, that's why they were
3 talking.

4 Q Did they know what was going on or did you overhear or
5 was it pretty much a mystery?

6 A: No.

7 Q You say **Frank** said he thought the furnace blew up.

8 A: Yes.

9 Q Did Mr. Williams make any comment what he thought had
10 caused the explosion?

11 A: No.

12 Q Now you have had a lot of meetings with Special Agent
13 True here and others, have you not?

14 A: Yes.

15 Q This whole situation has been a difficult one for you,
16 Becky, I take it.

17 A: Yes.

18 Q You demonstrate that today, but during the course of
19 those meetings of what you have told us here and also
20 your testimony before the grand jury has been pretty
21 much the same thing, hasn't it?

22 A: Yes.

23 Q And those meetings occurred at your house at 8349
24 Brooklyn.

25 A: Among other places.

2790

1 Q And Michelle Carter's house on Red Bridge and Nancy
2 Clark's down in Adrian.

3 A: And at their office.

4 Q At their office and was there some kind of meeting that
5 occurred at the Quik Trip store?

6 A: They showed up. They said they didn't know I was
7 working.

8 Q What happened there?

9 MR. BECKER: Objection. Relevance.

10 THE COURT: If you feel it is relevant, you
11 better come up and tell me why.

12 (Proceedings out of the hearing of the jury.)

13 THE COURT: I really wonder about the
14 relevance.

15 MR. BUNCH: She caused herself to quit her
16 job there because of what occurred. And I talked to
17 her on that occasion. Mr. Becker knows this has been
18 a very traumatic thing for her. In that meeting she
19 told me she had been interviewed so many times she had
20 difficulty knowing what was true and what was not.
21 That is where I was going.

22 MR. BECKER: This incident at the Quik
23 Trip was very upsetting because the agent went in
24 there.

25 MR. BUNCH: I am not claiming they did it

2791

1 purposely.

2 MR. BECKER: She thought so.

3 THE COURT: You can lead her into that. I

 MR. BECKER: I am going to stay the hell
5 away. It is not a big deal.

6 MR. B UN CH: I will be careful.

7 THE COURT:He wants to get to the statement.

8 MR. B UN CH: That's all.

9 MR. BECKER: That's fine.

10 (Proceedings in the hearing of the jury.)

11 Q Without getting into a great deal of detail, as a
12 result of this meeting, for whatever reason, you lost
13 your job there.

14 A: I quit my job.

15 Q You quit your job there because of the embarrassment
16 and trauma of the whole thing, correct?

17 A: Yes.

18 Q And as a result of these many meetings and the things
19 that have happened to you, you have said that it was
20 difficult for you to know what the truth really is any
21 more.

22 A: Sometimes, yes.

23 MR. BUNCH:Thank you.

24 THE COURT:An y other questions?

25 MR. PETERS: I have no question.

1 MR. O'CONNOR: No questions, Your Honor.

2 THE COURT: Any Redirect?

3 MR. BECKER: No, Your Honor.

The United States calls Patsy Peeler.

5 (Proceedings out of the hearing of the jury.)

6 MR. BUNCH: To preserve the record, this
7 witness will testify about the stripping and
8 destruction of the car of Darlene Edwards and I have
9 previously made an objection. I just wanted to renew
10 it.

11 THE COURT: I will rule the same.

12 (Proceedings in the hearing of the jury .)

13 PATSY PEELER.

14 having been sworn, testified:

15 DIRECT EXAMINATION

16 BY MR. BECKER:

17 Q Good morning.

18 A: Good morning.

19 Q Please state your full name and spell your last name.

20 A: Patsy Peeler, P-e-e-l-e-r.

21 Q How old are you?

22 A: Forty one.

23 Q Where do you live?

24 A: 11301 Bennington.

25 Q And are you Darlene Edwards' sister, Darlene Clark's

1 sister?

2 A: Yes.

3 Q Do you have any other sisters?

4 A: Nancy.

5 Q That would be Nancy Romi that testified here today.

6 A: Yes.

7 Q Going back to October and November of 1988, where were
8 you living at that time?

9 A: 8309 Wayne.

10 Q And that is roughly 83rd and Wayne, is that right?

11 A: Yes.

12 Q In the Marlborough section of Kansas City, Missouri.

13 A: Yes.

14 Q How far away did your sister Nancy Romi live?

15 A: About four or five blocks.

16 Q What about your sister Darlene Edwards, how far away
17 was she?

18 A: About the same.

19 Q At that time did you know **Frank** Sheppard?

20 A: Yes.

21 Q How did you know **Frank** Sheppard?

22 A: He was my sister's boyfriend.

23 Q Did you know Skip Sheppard?

I

24 A: Yes.

25 Q How did you know Skip Sheppard?

1 A: Just from being over there a couple times at my
2 sister's house and at the park.
3 Q What park?
4 A: Minor Park.
5 Q And that is at Red Bridge and Holmes basically.
6 A: Yes.
7 Q Did you know Bryan Sheppard?
8 A: I had met him a couple times. i didn't know him
9 personally.
10 Q Where did you meet him?
11 A: He came to my house once. I don't know.
12 Q Did you know Richard Brown ?
13 A: Yes.
14 Q How did you know Richard Brown ?
15 A: I grew up around Richard or Richard grew up about me.
16 Q In Marlborough.
17 A: Yes.
18 Q In October of 1988 did you know what kind of car your
19 sister Darlene Edwards had?
20 A: A 280Z.
21 Q That is a Datsun 280Z sports car.
22 A: Yes.
23 Q Did you talk with Darlene Edwards about that car in
24 October of '88?
25 A: We talked about the car, yes.

2795

1 Q Did she ask you to do anything with the car?

2 A: One time she asked me to steal it for her but I told
3 her no.

Q Do you know what happened to that car?

5 A: We were at the bar one night, a bunch of us, and **Frank**
6 was kind of wasted and he said **they** took the car and
7 burned it.

8 MR. BECKER: I have no further questions at
9 this time, Judge.

10 CROSS EXAMINATION

11 BY MR. PETERS:

12 Q Ma' am , my name is Pat Peters and I represent **Frank**
13 Sheppard. As near as I can tell, the only report of an
14 interview that was conducted with you was on March 3rd
15 with Dave True here, do you remember talking to him on
16 March 3rd?

17 A: Yes.

18 Q Have they given you a chance to read his report of what
19 you told him on March 3rd, have you seen this report?

20 A: I would have to look at it again. Yeah, I remember
21 reading it.

22 THE COURT: Before we go on, may I see that
23 piece of paper.

24 All right, there is a question from a I
25 juror what year the March 3rd referred to. Can

2796

1 you clear that up, please, Mr. Peters.

2 MR. PETERS: Sure.

3 Q Ma' am, the stuff about this 280z, when are we talking
4 about? First, this 280Z has nothing to do with the
5 explosion on November 29, 1988, does it?

6 A: No.

7 Q Can you tell the members of the jury what time frame
8 this 280Z, unconnected to the explosion that killed the
9 six fire fighters, what time frame are we talking
10 about?

11 A: I don't know what you are talking about.

12 Q When did these conversations you are talking about take
13 place? When did the 280z get stolen or burned or
14 whatever happened to it?

15 A: Oh, I don't know.

16 Q When did the conversations that you have testified
17 about take place?

18 A: We were at the bar one night when it came out. I
19 couldn't tell you what night it was.

20 Q Can you give us a year?

21 A: No. I can tell you it was right before the explosion.

22 Q The 280Z, whatever happened to it was before the
23 explosion, correct?

24 A: Yes.

25 Q You have read this report of interview.

2797

1 A: Yes.

2 Q When was the first time that you have told the FBI that
3 **Frank** Sheppard said he did something to the 280Z?

4 A: When they asked me about it.

5 Q Ma' am , if you would go ahead and review that report of
6 interview.

7 A: (witness complies.)

8 Q Ma' am , for purposes of what I am going to be asking you
9 about if you have made it to page 3 and part-way down,
10 that's far enough for whatever I am going to be asking
11 you about.

12 A: Okay.

13 Q And you can go ahead and keep that if you need it. It
14 may have run past me. Can you tell me again what it is
15 your testimony was about something that **Frank** Sheppard
16 said?

17 A: Yes, we were at the bar one night and we were all
18 drinking and **Frank** said **they** set fire to Darlene's car.

19 Q And that is all you remember him saying, **they** set fire
20 to Darlene's car, is that correct?

21 A: Yes.

22 Q And you had a chance to look at the statement that you
23 gave. There is nothing in your statement about **Frank**
24 Sheppard saying **they** set fire to Darlene's car in your
25 statement, is there, in that report of interview?

2798

1 A: It says I said "set fire to Darlene's car."

2 Q Can you show me what you are talking about, ma'am?

3 A: "Set fire to Darlene Edwards' 280Z after he stripped
4 down.~

5 THE COURT: Is it there?

6 MR. PETERS: It's there, Judge. She is a
7 better reader than I am .

8 Q In your statement, ma' am, do you also tell, just
9 because we had a question from the jury , as best you
10 recall, can you remember when this conversation took
11 place?

12 A: No, I just know we were at the bar one night and we
13 were all drinking together.

14 Q And your testimony is the 280Z has nothing to do with
15 the explosion that we are here in trial about.

16 MR. BECKER: Objection. That calls for a
17 conclusion.

18 THE COURT: Sustained.

19 Q In your statement did you tell this ma n, Agent Dave
20 True, that a person by the name of Billy Bob Atchison -

22 MR. BECKER: Objection. May we approach.

23 THE COURT: Yes.

24 (Proceedings out of the hearing of the jury .)

25 MR. BECKER: The question relates to

2799

1 information that the witness provided relating to
2 some guy named Billy Bob Atchison. She did not hear
3 the admission from Billy Bob Atchison if you read
4 carefully. I had that thought myself until I spoke
5 with the witness. And then the agent pointed out to
6 me this was information from Gary Plumb, referring
7 to the fourth paragraph of this report of interview
8 of Patsy Peeler on March 3rd, 1995 that says "Mrs.
9 Peeler said through conversations with the individuals
10 including but not limited to Gary Plumb and his brother
11 Carl Plumb that an individual named Billy Bob', and then
12 relates the information about Billy Bob.

13 MR. PETERS: I will ask the foundation and
14 not ask her what she said.

15 THE COURT: But if it doesn't relate to
16 anything germane to this, why ask it at all?

17 MR. PETERS: If either Gary Plumb or Carl
18 Plumb or Billy Bob Atchison told her directly they
19 were at the site -- and I understand your
20 interpretation of the report but the report, as I think
21 Mr. Becker has said -- certainly reads as these people
22 told her directly.

23 THE COURT: Where are you going?

24 MR. PETERS: They were at the site.

25 MR. BECKER: Again, let's make it real

2800

1 clear.

2 MR. PETERS: I will.

3 MR. BECKER: May I finish? There is no
4 interpretation of this paragraph that Gary Plumb or
5 Carl Plumb were at the site. It is that Billy Bob
6 was at the site.

7 MR. PETERS: Here is the paragraph we are
8 referring to.

9 THE COURT: So what are you intending to ask
10 her about?

11 MR. PETERS: Has Billy Bob, Carl Plumb or
12 Gary Plumb ever told you **they** were at the site at the
13 time of the explosion? And if she says, no -

14 MR. BECKER: I guess to limit the
15 confusion, if you could ask about the Plumb boys, if
16 **they** ever told you **they** were at the site and then ask
17 about Billy Bob.

18 MR. PETERS: That's fine.

19 (Proceedings in the hearing of the jury .)

20 Q We are almost through. Did individuals by the name of I
21 Gary Plumb or Carl Plumb ever tell you **they** were at the
22 construction site at the time of the explosion? I

23 A: No, **they** didn't.

24 Q Did Billy Bob Atchison ever tell you that he was on top
25 of the hill at the time of the explosion?

2801

1 A: Yes, he did.

2 Q When was it that Billy Bob Atchison told you he was up
3 on the hill at the time of the explosion?

4 A: It has been a long time ago. I couldn't tell you what
5 day it was.

6 Q And you gave this information to this man, David True.

7 A: Yes, I did.

8 Q And did Billy Bob Atchison tell you he was up there
9 with his truck and that his truck windows were blown
10 out?

11 A: Yes, he did.

12 MR. PETERS: I have no further questions.

13 THE COURT: Any other Cross?

14 MR. O'Connor: No, sir.

15 MS. HUNT: No, sir.

16 THE COURT: Any Re-Redirect?

17 MR. BECKER: No.

18 THE COURT: You are excused. I have run out
19 of witnesses for the morning. I thought we were going
20 to be longer with some of them. I would ask we could
21 perhaps break now and come back at a quarter of one.

22 THE COURT: Yes, we can try that. It is a
23 difficult day for me to be back at that time but we
24 will do our best. If it is comfortable for you all, we
25 will go to lunch now and I will ask you to be in the

2802

1 jury room at 1:10. We will resume then as soon
2 thereafter as we can. Don't talk about the case. In
3 the meantime don't let anybody talk about it in your
4 presence and you are excused. Have a good lunch.

5 LUNCHEON RECESS

6 (Proceedings in the courtroom out of the presence of
7 the jury .)

8 MR. BECKER: Over the lunch period there was
9 an incident with the same witness, Nancy Romi. When
10 she walked out to her truck, which was parked across
11 the street, at the top there was gas that had been
12 poured in the truckbed, the back portion of her truck.
13 She came back. She reported that to the marshals.
14 And then the fire department came and hosed that out.
15 And we are looking into the incident.

16 MR. OSGOOD: She had a gas can in the
17 truck?

18 MR. BECKER: There was a gas can in the back
19 of the truck but Agent True was out there. It wasn't
20 like it tipped over and tipped its contents. It was
21 horizontal when we went out to investigate and no-one
22 had touched the area.

23 THE COURT: Is the lot directly across the
24 street?

25 MR. BECKER: Yes, he has been interviewed.

~
1 Apparently he didn't know anything. The marshal
2 service indicates there are cameras on the courthouse
3 that may have picked something up. So we are going
4 to review that.

5 THE COURT: Mr. Brown was in custody.

6 MR. OSGOOD: He was in custody. And his
7 mother and relatives walked out at the same time the
8 witness did. As a matter of fact, one young lady, I
9 think went over and hugged Miss Romi and said she was
10 sorry that this was all occurring and got to the
11 truck at the same time.

12 THE COURT: That happened during the morning.

13 MR. BECKER: So we are looking into that.

14 Then the second thing, Mr. O'Connor
15 brought attention that we had information that
16 there had been threats towards the prosecution in
17 this case. I don't frankly know. I don't know
18 anything more than that.

19 MR. OSGOOD: I think there was a single
20 emotional comment by one of the gallery to the effect
21 I am going to get Becker and kill that son of a bitch,
22 something to that effect.

23 THE COURT: Is this a male type person?

24 MR. OSGOOD: No, it was a female, as I
25 understand it. I didn't hear it obviously and I am

2804

1 hearing it second or third or fourth-hand. I think
2 it was an emotional response, a one-time thing when
3 emotions were really running high.

4 MR. O'CONNOR: We did not hear it firsthand.
5 We got it third-hand. There came out there had been a
6 fire set. We heard this. I don't know if Mr. Becker
7 was leaving the building for lunch. I was concerned
8 for his safety. I thought he should know. No concrete
9 information but human being to human being.

10 THE COURT: Do you know who said that?

11 MR. O'CONNOR: No, I do not.

.12 THE COURT: Thank you all for keeping the
13 record up-to-date on that.

14 Let's get the jury.

15 (The jury enters the courtroom.)

16 THE COURT: All right, we are ready to
17 proceed.

18 MR. BECKER: The United States calls Lonnie
19 Pugh.

20 LONNIE JOE PUGH.

21 having been sworn, testified:

22 DIRECT EXAMINATION

23 BY MR. BECKER:

24 Q Good afternoon.

25 A: Good afternoon.

2805

- 1 Q Please state and spell your name.
- 2 A: Lonnie Joe Pugh, P-u-g-h.
- 3 Q How old are you?
- A: Thirty-seven.
- 5 Q What area of Kansas City do you live in?
- 6 A: South Kansas City.
- 7 Q Have you ever lived in the Marlborough area?
- 8 A: Yes, I have.
- 9 Q How long had you lived in that area?
- 10 A: I lived there back in the early eighties.
- 11 Q What do you do for a living?
- 12 A: Concrete finisher.
- 13 Q Going back to November of 1988, where were you living?
- 14 A: At 85th And Flora.
- 15 Q Flora, F-l-o-r-a, is that right?
- 16 A: Right.
- 17 Q Who were you living with?
- 18 A: I was living with my girl friend.
- 19 Q What was her name?
- 20 A: Star Jordan.
- 21 Q Who was your next-door neighbor?
- 22 A: Larry and Diddie Baker.
- 23 Q Do you know if they are related to Skip Sheppard at
- 24 all?
- 25 A Yes.

2806

1 Q How are they related?

2 A: Diddie and Skip are brother and sister.

3 Q Do you know the Sheppard family?

A: Yes, I do.

5 Q How long have you known them?

6 A: I knew them for about five years, six years. At least
7 back in that time, from '85 to about '89, I think, '90.

8 Q I want to show you what has been marked for
9 identification purposes as Government's Exhibit 344 and
10 ask you if you recognize that.

11 A: Yes, I do.

12 Q What is that a photograph of?

13 A: It is Larry Baker and Diddie's house.

14 Q You were living next door to them in November of 1988,
15 is that right?

16 A: Yes.

17 MR. BECKER: I offer this in evidence as
18 Government's Exhibit 344.

19 THE COURT: heaving no objection, it is
20 admitted without objection.

21 (PLAINTIFF'S EXHIBIT NO. 344 WAS RECEIVED IN EVIDENCE.)

22 Q Whose house did you say that is, Mr. Pugh?

23 A: Larry and Diddie Baker.

24 Q Next door to yours.

25 A Right.

2807

1 Q Is your house as you are looking at this picture, which
2 is Government's 344, as you face it, are you on the
3 right-hand side which is south or on the left-hand side
4 which is north?

5 A: On the left-hand side of this picture.

6 Q I am going to show you what has been marked for
7 identification purposes as Government's Exhibit 345 and
8 ask if you recognize that.

9 A: Yes, I do.

10 Q What is it?

11 A: That is the side of Larry and Diddie's house.

12 Q Basically looking from what was your front yard towards
13 that house.

14 A: My driveway and front yard.

15 MR. BECKER: I would offer this in evidence
16 as Government's 345.

17 MR. O'CONNOR: No objection.

18 THE COURT: There being no objection, it is
19 admitted.

20 (PLAINTIFF'S EXHIBIT NO. 345 WAS RECEIVED IN EVIDENCE.)

21 Q On this picture does the street sort of loop around and
22 come then up north past your house?

23 A: Yes, it does.

24 Q And that is sort of the end of the line.

25 A: The end.

2808

1 Q You can't go any further on that street and Larry
2 Baker's house, is that right?

3 A: I think you go on around the corner.

4 Q Right. It goes around and then back up the other side.

5 A: Right.

6 Q Now, do you remember the explosion that occurred in the
7 early morning hours of November 29, 1988?

8 A: Yes, I do.

9 Q Were you sleeping when that occurred?

10 A: Yes, I was.

11 Q Did it wake you up?

12 A: It knocked me out of my bed.

13 Q Did it do any damage to the house?

14 A: Not to my house.

15 Q How close was that construction site to where you were
16 living?

17 A: Pretty close.

18 Q What did you do after you got knocked out of bed?

19 A: I talked to my girl friend. We were both awakened and
20 decided to go outside and see what the commotion was.

21 Q Did you talk to anyone outside?

22 A: I seen Larry outside.

23 Q That would be Larry Baker.

24 A: Larry Baker.

25 Q Did you talk to him at all?

1 A: I think I recall talking to him, yes.

2 Q Just sort of what's going on, what the heck was that?

3 A: Yes.

4 Q Did you see any vehicles when you were standing

5 outside?

6 A: I seen a truck pull up.

7 Q A truck pull up where?

8 A: Right by the Willow tree there in the picture.

9 Q That is in front of Larry Baker's house, is that right?

10 A: That's right.

11 Q And that would be the, not the first tree on

12 Government's 345 but this Willow tree that is in front

13 of Larry Baker's house.

14 A: That's right.

15 Q What kind of truck was it?

16 A: I recall it was a Ford.

17 Q What color was it?

18 A: It was a dark color.

19 Q Did you see anyone get out of that truck?

20 A: I seen Skip Sheppard, I think, get out of it and with a

21 beer, I recall.

22 Q Where did he go?

23 A: Inside the house. ~

24 Q Did you see anyone inside the truck? !

25 A: A couple other people I didn't recognize.

2810

1 Q Now did you come forward with this information, did you
2 contact the police and say, hey, I have this
3 information?

A: No, I didn't.

5 Q Did they come to you?

6 A: They came to me.

7 Q Did you tell them when you were interviewed in May of
8 1996 that you didn't remember seeing anything?

9 A: Yes, I did.

10 Q Why was that?

11 A: At the time it was just like -

12 Q Did you not want to get involved in this case?

13 A: Yes, that's basically true, too.

14 MR. BECKER: I have no further questions at
15 this time, Judge.

16 THE COURT: All right. Cross.

17 CROSS EXAMINATION

18 BY MS. HUNT:

19 Q Mr. Pugh, my name is Susan Hunt and I represent Skip
20 Sheppard and we have met before, haven't we?

21 A: Yes, we have.

22 Q Isn't it a fact that you talked to the police on two
23 different occasions about this case?

24 A: Yes, I did.

25 Q And do you remember the first occasion was on September

2811

1 27th of 1989?

2 A: I couldn't remember the date.

3 Q Do you remember some time in the summer, spring of '89,
4 an officer from the Kansas City, Missouri Police
5 Department coming out to your house?

6 A: I don't know about an officer. A detective.

7 Q A detective with the police department, Detective John
8 Fraise?

9 A: I don't recall his name.

10 Q And you had accompanied him or went by yourself but met
11 him down at the police headquarters, isn't that right?

12 A: They gave me a ride down , yes.

13 Q And you went to police headquarters, is that right?

14 A: Yes.

15 Q And you had a conversation with them at that point, is
16 that right?

17 A: That's right.

18 Q And did they tell you that your name had been
19 implicated in this trial?

20 A: Yes, they did.

21 Q And you denied any involvement, didn't you?

22 A: Yes, I did.

23 Q Did they read you your rights before they questioned
24 you down there?

25 A: I believe they did.

2812

1 Q And you immediately denied and denied throughout that
2 interview you had any involvement, is that correct?

3 A: Correct.

MR. BECKER: Objection. Repetitious.

5 THE COURT: Sustained. It has been asked and
6 answered.

7 Q Did you deny your involvement on one or more occasions
8 during that interview?

9 MR. BECKER: Objection. The s a m e question
10 that has been asked and answered.

11 THE COURT: We have been there twice. I
12 don't know where we are going with this. Sustained.

13 Q During the interview they asked you where you were that
14 night, isn't that correct?

15 A: Yes.

16 Q And you told them that when these explosions occurred
17 you were sleeping with your girl friend Star Jordan, is
18 that correct?

19 A: That's right.

20 Q And you told them you were awakened by the first
21 explosion, is that right?

22 A: That's right.

23 Q And you told them you went outside to see if you could
24 determine what happened, is that right?

25 A: That's correct.

1 Q And you told them you saw nothing unusual and went back
2 to bed, isn't that right?

3 A: That's right.

4 Q And then you told them a short time after the first
5 explosion and after you went back to bed, you heard the
6 second explosion, is that right?

7 A: That's right.

8 Q And you told them you looked out the window at that
9 point, is that correct?

10 A: That's correct.

11 Q And you saw nothing to indicate when it occurred, is
12 that right?

13 A: I couldn't see in the dark.

14 Q But you never told them during that interview in
15 September of '89 that you saw a black pickup truck pull
16 up with Skip Sheppard, did you?

17 A: I don't recall.

18 Q Have you had a chance to read through this police
19 report?

20 A: Police report?

21 Q The report of interview you had in September of ,89?

22 A: No, I don't think I have.

23 Q And you also told them when you were down at the police
24 station that day that your recollection of the events
25 that night was somewhat hazy because you were involved

2814

1 in heavy **drug** use and drinking, isn't that true?

2 A: That's true.

3 Q You told them you were selling marijuana to people in
4 the neighborhood at the time, isn't that true?

5 A: I don't recall that.

6 Q And you told them that you knew Bryan Sheppard and
7 Richard Brown , isn't that right?

8 A: That's right.

9 Q And you had gone into business with them at some point
10 after this explosion, is that right?

11 A: I don't recall.

12 Q Do you recall telling them you were friends with them
13 in the neighborhood?

14 A: Right.

15 Q Then the next time for my information you were
16 interviewed was in May of 1996, do you remember that
17 interview?

18 A: I do.

19 Q That was again by two Kansas City, Missouri police
20 officers, do you remember that?

21 A: All I remember talking to detectives.

22 Q And does the name Detective Guffey ring a bell?

23 A: Yes, sir.

24 Q And how about Detective Gerald Ludwig?

25 A: Yes, sir.

1 Q Those were the people that conducted that interview in
2 May of ,96, is that right?

3 A: (No answer.)

Q During that interview they again asked you what
5 occurred the night of the explosion, didn't they?

6 A: Yes, they did.

7 Q This time you lived next door to Larry and Diddie
8 Baker, is that correct?

9 A: Yes.

10 Q You told them the first explosion occurred, you went
11 outside and saw Larry Baker, isn't that right?

12 A: Yes.

13 Q You didn't tell them that that night when they talked
14 to you, did you?

15 A: I don't recall. And then didn't they ask you during
16 that interview what time Skip got home.

17 A: I don't recall the time.

18 Q No, but didn't they ask you that question during that
19 interview?

20 A: They might have.

21 Q And didn't you say in response to that question, "I
22 didn't see Skip at all."?

23 A: I don't recall.

24 Q Have you had a chance to review the report of that
25 interview?

2816

1 A: No, I haven't.

2 Q When they took that interview did they have a tape
3 recorder?

4 A: I don't recall.

5 Q Did they have you swear to an affidavit?

6 A: I don't think so.

7 Q You remember swearing to something, reading it and
8 signing your name?

9 A: I would.

10 Q You don't remember reading anything and signing your
11 name?

12 A: What date was this?

13 Q In that interview or any time.

14 A: I think so.

15 Q Well, you don't remember exactly what occurred during
16 that May interview, is that right?

17 A: That's right.

18 Q I am going to hand you a copy of the report of
19 interview and see if it refreshes your recollection as
20 to what you said about Skip Sheppard.

21 THE COURT: What are the miscellaneous
22 papers?

23 MS. HUNT: I will take them off. Shall I
24 mark this first?

25 THE COURT: It would be a good idea.

2817

1 Q I will hand you what has been marked as Defendants'
2 Exhibit 37 and just take your time and read through
3 that.

4 THE COURT: Come up.

5 (Proceedings out of the hearing of the jury .)

6 THE COURT: How do you propose to use this?

7 MS. HUNT: Just to refresh his recollection.

8 Doesn't he remember he did say that, he didn't say

9 Skip. That is the only purpose. Nothing else.

10 THE COURT: You don't propose to offer it.

11 MS. HUNT: No. No.

12 THE COURT: Because there is no foundation
13 for it.

14 (Proceedings in the hearing of the jury.)

15 Q Mr. Pugh, does that refresh your recollection of that
16 interview in May of ,96?

17 A: Yes.

18 Q And isn't it true during that interview you said you
19 did not see Skip that night?

20 A: Yes.

21 Q And you said when you looked out the window after the
22 second explosion, all you saw were Larry and a few
23 neighbors, isn't that right?

24 A: Yes.

25 Q Then on June 12th of ,96 or I don't know the exact date

2818

1 but sometime in June of '96 do you remember testifying
2 in front of the grand jury?

3 A: Yes.

4 Q And do you remember you now stated you were out after
5 the first explosion and stayed out until after the
6 second, do you remember that?

7 MR. BECKER: Where is that?

8 MS. HUNT: I am asking if he remembers
9 testifying.

10 THE COURT: Can you specify where it is in
11 the grand jury transcript. That is what he needs.

12 Q Do you remember testifying in the grand jury ?

13 A: Yes.

14 Q Do you remember saying for the first explosion you went
15 outside, is that right?

16 A: Yes.

17 Q Did you ever say you went back inside?

18 A: I went back inside.

19 Q Then you heard the second explosion and came out.

20 A: Right.

21 Q This is the only time you ever said you saw Skip
22 Sheppard, isn't that right?

23 A: Right.

24 Q You don't know when you saw him, do you?

25 A: In between the explosions.

2819

1 Q Was it before the first, after the second, do you know?

2 A: I don't recall right now.

3 Q But you never told the officers that in September of
4 '89 when you were questioned, did you?

5 A: No.

6 Q And you never told anybody that when you were
7 questioned again in May of '96, isn't that right?

8 A: That's right.

9 Q In fact, when you were asked a direct question, "When
10 did you see Skip", you said, "I didn't see him", isn't
11 that right?

12 A: At the time, yeah.

13 MS. HUNT: That is all I have.

14 THE COURT: Any other Cross?

15 MR. PETERS: Yes, Judge.

16 CROSS EXAMINATION

17 BY MR. PETERS:

18 Q Hi, Mr. Pugh, my name is Pat Peters and I represent
19 **Frank** Sheppard. And I was with Susan Hunt when she and
20 Tom Allen and I came out and talked to you and your now
21 wife Star, isn't that right?

22 A: Yes.

23 Q And I just want to go through some things, what you
24 have testified to, you did not see Bryan Sheppard,
25 Richard Brown , Darlene Edwards or **Frank** Sheppard after

2820

1 the explosion, they aren't part of anything having to
2 do with the pickup truck, are they?

3 A: True.

4 Q And didn't I tell you when I was there as to your
5 testimony I didn't have a dog in the fight, I was just
6 there.

7 MR. BECKER: Objection. What Mr. Peters
8 said is not what this trial is about.

9 THE COURT: Let's get to the relevant
10 testimony. Sustained.

11 Q Sir, I would like to go over the chain of events that
12 have brought you here today.

13 MR. BECKER: Again, if he has questions -
14 can we have questions?

15 THE COURT: Please.

16 Q At the time that you had spoken to Kansas City,
17 Missouri police officers no mention was made of you
18 maybe seeing Skip Sheppard, isn't that true?

19 MR. BECKER: Objection. Repetitious. We
20 have covered this ground.

21 THE COURT: I think you really should be
22 specific as to when you are asking him whether he saw
23 Skip Sheppard. He lived in the Marlborough area for
24 years.

25 Q We are talking about your testimony that you might have

1 possibly seen a pickup truck and you might have seen -

2 MR. BECKER: Objection. That
3 mischaracterizes the testimony.

THE COURT: He didn't say i~I might have seen
5 anything", Mr. Peters.

6 Q Mr. Pugh, in your testimony before the grand jury and
7 your testimony today, haven't you been very careful to
8 say I might have seen Skip Sheppard or I possibly could
9 have seen Skip Sheppard, haven't you been careful to
10 put that distinction?

11 THE COURT: The thing I pulled you up short,
12 not he might have seen Skip Sheppard but he might have
13 seen a pickup truck and there was no testimony he might
14 have seen a pickup truck. I don't know whether he is
15 saying he might have seen Skip Sheppard or not. An d
16 you ma y examine on that but he said he saw a pickup
17 truck.

18 Q Isn't it true that any time somebody has asked you to
19 swear to what you saw that night, you have been very
20 careful to say I might have seen Ship Sheppard, isn't
21 that true? You have been very careful to couch it in
22 terms of "I might have.. or "I possibly could have"?

23 A True.

24 Q Now, let's get into that. When you had been
25 interviewed by Kansas City, Missouri police department

~

1 detectives following the time of the explosion, you
2 told them I, I don't have anything to do with this case
3 and I don't know anything about anybody else having
4 anything to do with the case", isn't that true, you had
5 no firsthand knowledge.

6 A: On what date?

7 Q Any time that you talked to the Kansas City, Missouri
8 police officers, isn't that true?

9 A: True.

10 Q And then in 1995 Agent Dave True contacted you, isn't
11 that true?

12 A: True.

13 Q And you were told that a confidential witness who was
14 religious and well respected in the community was
15 saying that you had seen Skip Sheppard after the
16 explosion and that's how this started, isn't it?

17 A: True.

18 Q And Dave True presented to you this religious woman and
19 you believed that what he was talking about was your
20 boss' wife, didn't you?

21 A: True.

22 Q And you had never told her anything about Skip
23 Sheppard, had you?

24 A: True.

25 Q And Dave True then tells you, ''Joe, we have got a

~

1 problem. We have somebody that will testify you said
2 it that is well respected in the co mm unity and you are
3 telling me that it never happened", isn't that what he
4 told you?

5 A: True.

6 Q And after Dave True presented that to you is when you
7 started saying, well, maybe I saw Skip Sheppard, isn't
8 that correct?

9 A: That's correct.

10 Q And Dave True wanted you to come down to the ATF
11 offices to talk to him and you wanted to bring an
12 attorney, didn't you?

13 A: That's true.

14 Q And you brought an attorney down to the ATF offices to
15 straighten out what we are talking about here, didn't
16 you?

17 A: True.

18 Q And Dave True would not allow the attorney in the room
19 when he interviewed you, would he?

20 A: She was locked downstairs is what it was.

21 Q And so, Mr. Pugh, cutting to the chase, Dave True has
22 put you between a rock and a hard **spot** and the way that
23 you have dealt with it is by taking an oath and
24 covering both sides and saying I ma y have seen him
25 outside, isn't that what you have done?

1 MR. BECKER: Objection. Argumentative.

2 THE COURT: It is sustained.

3 Q As you sit here today in front of this jury, you cannot
4 swear that you saw Skip Sheppard get out of a pickup
5 truck; you can't say that with certainty, can you?

6 A: I can say that. I can say that.

7 Q You can say that.

8 A: I say I seen him get out.

9 Q And that is you think you saw him.

10 MR. BECKER: Objection. Mischaracterization.

11 Q My question to you is your testimony has been that you
12 may have seen Skip Sheppard, you possibly saw Skip
13 Sheppard, is that your testimony under oath?

14 THE COURT: One thing, I don't know what
15 testimony you are referring to prior to today. There
16 were interviews, some of which were written up. The
17 testimony that we have to deal with is in this
18 courtroom and he has just said what he just said.

19 Q Do you remember testifying on direct exam here today
20 that "'I think I seen a truck pull up", do you remember
21 saying that?

22 A: Today?

23 Q Yes.

24 A: I think I said I seen a truck pull up.

25 Q Do you remember testifying on direct exam that i.I saw

2825

1 Skip Sheppard, I think"?

2 A: No, I don't.

3 Q Did you ever tell anyone prior to being interviewed by
4 Dave True that you had seen Skip Sheppard in a pickup
5 truck?

6 A: No.

7 Q And the girl friend that you referred to in your direct
8 testimony, that is now your wife Star, isn't that true?

9 A: Yes.

10 Q And she was outside the house that night with you,
11 wasn't she?

12 A: Yes.

13 Q And she did not see Skip Sheppard, did she?

14 A: She said she didn't.

15 Q And she told Dave True she didn't see Skip Sheppard,
16 didn't she?

17 A: I don't recall that.

18 MR. PETERS: I have no further questions.

19 THE COURT: Any other Cross?

20 CROSS EXAMINATION

21 BY MR. OSGOOD:

22 Q Mr. Pugh, my name is John Osgood and I represent Mr.
23 Brown. You know Richard Brown , don't you?

24 A: Yes, I do.

25 Q Known him for quite a period of time.

1 A: Yes, I have.

2 Q And you were in the salvage or junk business with him
3 for several months in the early '89 time frame.

4 A: Yes, we were.

5 Q And you were familiar with his black pickup truck.

6 A: Yes, I was.

7 Q And, in fact, you, yourself, had a black pickup truck,
8 Ford, didn't you?

9 A: I had a red '66.

10 Q A red '66. Had the red bulbs on the rear taillights.

11 A: No.

12 Q It was red though.

13 A: Right.

14 Q And Mr. Brown's black pickup was a fairly clean pickup,
15 wasn't it. Had a 464 motor in it.

16 A: Yes.

17 Q Glossy black.

18 A: I do recall.

19 Q You do recall you say.

20 A: Yes.

21 Q A nice pickup.

22 A: Right.

23 Q Have a set of glass packs on it.

24 A: Yeah, it was kind of loud.

25 Q But have you ever had glass packs on a pickup?

1 A: Yes, I have.

2 Q Driving normally do they make a lot of racket or are
3 they more prone to making racket when you run it up
real fast and back off, do you know what back off
5 means?

6 A: Right.

7 Q Tell the jury what I am talking about.

8 A: Let's off gas, it passes off and makes noise.

9 Q And as you are driving down the road you have a steady
10 hum out of them, is that right?

11 A: Right.

12 Q Do you remember whether or not Mr. Brown had a driver's
13 license during this period?

14 A: I couldn't remember that.

15 Q Was he having a lot of problems with traffic tickets
16 and that kind of thing?

17 A: Sure.

18 Q Were you having traffic ticket problems at that time?

19 A: Quite a few.

20 Q What did you do about such things as making sure your
21 taillights were working and your headlights were
22 working, that kind of thing?

23 A: Pardon me.

24 Q Did you take extra caution and make sure your
25 taillights and headlights were working when you were

1 having those traffic problems?

2 A: Yes.

3 Q Why?

4 A: Just to be safe.

5 Q And was that common practice in the neighborhood by
6 people who were concerned the police were constantly
7 looking for them for technical traffic violations?

8 MR. BECKER: Objection.

9 THE COURT: Not material. Sustained.

10 Q You didn't see Richard Brown in that truck, did you?

11 A: No, I didn't.

12 Q You know Richard Brown?

13 A: Yes, I do.

14 Q Did that truck you saw have any primer on it?

15 A: I don't think so.

16 Q But you do remember Richard's truck as being a clean
17 truck.

18 A: Right.

19 Q Did he keep it in good repair as far as you know, at
20 least the time you were in the junk business with him.

21 A: Right.

22 Q Headlights working.

23 A: Yes.

24 Q Taillights working.

25 A: Yes.

2829

1 Q Brakes working.

2 A: Yes.

3 MR. OSGOOD: Thank you, sir.

4 THE COURT: Redirect.

5 MR. BECKER: Yes, Judge.

6 REDIRECT EXAMINATION

7 BY MR. BECKER:

8 Q Mr. Pugh, when you came up, I think about a week ago,
9 to the United States Attorneys office to be interviewed
10 in preparation for your testimony did you have an
11 attorney John Quinn with you?

12 A: Yes, I did.

13 Q Was he with you throughout the interview that we had?

14 A: Yes, he was.

15 Q Do you recall Dave True being in the building at all at
16 that time?

17 A: I don't recall seeing him at that time, no.

18 Q Do you remember when you testified before the grand
19 jury ?

20 A: Yes.

21 Q Was Dave True in the grand jury room with you?

22 A: Yes, he was.

23 Q But in the room when you testified?

24 A: Yes, I think he might have been sitting at a desk.

25 Q Are you sure it wasn't me.

2830

1 MR. PETERS: I object. Argumentative.

2 MR. BECKER: That's all right. I will move
3 on, Judge.

4 Q Do you recall being asked these questions and giving
5 these answers in the grand jury, page 5, line 17,
6 "Question: Did you recognize anybody in that truck?"
7 "Answer: I recognized Skip and two other people."
8 "Question: That would be Skip Sheppard."
9 "Answer: Skip Sheppard, yeah.~.
10 "Question: How did you know Skip Sheppard?"
11 "Answer: From being next door to living in between
12 them."
13 "Question: Did you recognize the other two people
14 at all?"
15 "'Answer: I vaguely, I just recall seeing them, you
16 know, like a, not blond but a light colored hair and
17 a dark haired guy."
18 "Question: Was Skip driving the car?"
19 ".Answer: I seen that Skip was in the center, in the
20 center seat."
21 "Question: What did you see them do at all when **they**
22 pulled up, what did **they** do?"
23 "Answer: I recall seeing them, Skip getting out with
24 a beer. And after that I think I went inside or
25 something.~'

2831

1 "Question: You went back in your house., '

2 "Answer: Right. Right."

3 Do you remember hearing those questions and giving

4 those answers?

5 A: Yes, I do.

6 Q Were they truthful answers?

7 A: Yes, they were.

8 MR. BECKER: I have nothing further, Judge.

9 MR. PETERS: Very briefly, Judge.

10 RE CROSS EXAMINATION

11 BY MR. PETERS:

12 Q Mr. Pugh, the other two people again, it wasn't Richard

13 Brown, Bryan Sheppard, **Frank** Sheppard or Darlene

14 Edwards, isn't that true?

15 A: That's true.

16 RE CROSS EXAMINATION

17 BY MS. HUNT:

18 Q Mr. Pugh, he just read part of your grand jury

19 testimony and you said you know Skip Sheppard from

20 living in between them. Did you live in between Skip

21 Sheppard and somebody?

22 A: I lived between the Sheppards.

23 Q Between what Sheppards?

24 A: Diddle, the Bakers, Diddle and Larry Baker and Skip's

25 family lived on the other side.

2832

1 Q Skip Sheppard lived in the house on the other side?

2 A: Not Skip, no; Bryan.

3 Q Skip Sheppard didn't live on that street, did he?

4 A: No.

5 Q Do you know where Skip Sheppard lived at the time?

6 A: No.

7 Q But it was not on that street.

8 A: No.

9 THE COURT: An y Re-Redirect?

10 MR. BECKER: No, Your Honor.

11 THE COURT: Thank you, sir. You may step
12 down. You ma y proceed, counsel.

13 MR. BECKER: Thank you, Judge.

14 KIMBERLY ARCHER,

15 having been sworn, testified:

16 DIRECT EXAMINATION

17 BY MR. BECKER:

18 Q Good afternoon. Please state your name and spell your
19 last name.

20 A: Kimberly Archer, A-r-c-h-e-r.

21 Q How old are you?

22 A: Twenty-nine.

23 Q Do you have any children?

24 A: Three.

25 Q Are you currently in the Jackson County jail?

2833

1 A: Yes.

2 Q For what?

3 A: Probation violation.

4 Q What was that violation?

5 A: Forgery.

6 Q Are you in any program right now?

7 A: The James Program .

8 Q What is that?

9 A: It is a **drug** abuse program .

10 Q How long does that program last?

11 A: Twenty-one days.

12 Q During that time then are you incarcerated in the
13 Jackson County Jail?

14 A: Yes.

15 Q In any of your arrests or charges against you have you
16 received any promises or assistance from the U. S.
17 government or anybody on behalf of the government?

18 A: No.

19 Q Going back to 1988, did you know an individual by the
20 name of Carl Brown?

21 A: Yes.

22 Q How did you know him ?

23 A: I dated his brother.

24 Q Did you know Carl Brown ?

25 A: Yes.

1 Q How did you know him?

2 A: I dated him.

3 Q For how long?

A: A few years. A couple years.

5 Q Did you know his brother Richard Brown ?

6 A: Yes.

7 Q Do you see him here in court today?

8 A: Yes.

9 Q Can you tell us where he is sitting and what he is
10 wearing.

11 A: Right there with the white shirt on.

12 Q Standing up.

13 A: Yes.

14 MR. BECKER: Indicating the defendant
15 Richard Brown, Your Honor.

16 THE COURT: Yes. .

17 Q Did you ever meet Bryan Sheppard?

18 A: Yes.

19 Q How did you meet him?

20 A: Through Richard.

21 Q I want to show you what has been marked for
22 identification purposes as Government's Exhibit 371.
23 Take a look at that and tell me if you recognize it.

24 A: Yes.

25 Q What is it?

~ 1

1 A: It is a picture of me and Carl and his grandma.

2 Q Do you know roughly what year that would have been?

3 Would that be around 1987 or 1988?

4 A: Yes, probably around '87.

5 MR. BECKER: Your Honor, I would offer this
6 in evidence as Government's Exhibit 317.

7 MR. O'Connor: We would make an objection
8 as to relevance.

9 MR. BECKER: We can argue that.

10 (Proceedings out of the hearing of the jury.)

11 MR. O'CONNOR: I didn't know you were going
12 to introduce that.

13 MR. BECKER: I think it tends to show the
14 witness knows this fellow and had some association.
15 And there is no prejudicial effect. I

16 THE COURT: It was a grandma that died.

17 MR. BECKER: Grandpa.

18 MR. O'CONNOR: There is not going to be a
19 dispute she is his grandma. I don't know if it
20 hurts anything.

21 MR. OSGOOD: It doesn't bother me.

22 MR. O'CONNOR: We withdraw the objection. i

23 (Proceedings in the hearing of the jury.)

24 THE COURT: 371 is admitted then without
25 objection.

2836

1 (PLAINTIFF'S EXHIBIT NO. 371 WAS RECEIVED IN EVIDENCE.)

2 Q And again who is that in the picture?

3 A: Me and Carl and his grandma.

4 Q And that is Wilma Romi, is that the grandma on the
5 left?

6 A: Yes.

7 Q Where was Carl Brown living in November of 1988?

8 A: At Barcelona East.

9 Q Where are they located?

10 A: Across the street from the Bannister Mall.

11 Q Did you ever stay there from time to time?

12 A: Yes.

13 Q I want to show you what has been marked for
14 identification purposes as Government's Exhibit 340 and
15 ask if you recognize that.

16 A: Yes.

17 Q What is it?

18 A: An apartment building.

19 Q Is that a picture of the Barcelona East apartment
20 building?

21 A: Yes, it is.

22 MR. BECKER: I would offer in evidence
23 Government's Exhibit 340.

24 MR. O'CONNOR: No objection.

25 THE COURT: All right, Exhibit 340 is

1 admitted without objection.

2 (PLAINTIFF'S EXHIBIT 340 WAS RECEIVED IN EVIDENCE.)

3 Q Miss Archer, I want to call your attention to the early
morning hours of November 29, 1988. Do you recall
S where you were staying the night of November 28th, into
6 the morning of November 29th?

7 A: At Carl's apartment.

8 Q Was anyone else living at the apartment?

9 A: Yes.

10 Q Who was that?

11 A: Johnny Perkins.

12 Q Was it a two-bedroom apartment then; Carl had one room
13 and Perkins had another?

14 A: Yes.

15 Q Do you remember the explosion that occurred during that
16 night, did they wake you up?

17 A: No.

18 Q What woke you up that morning?

19 A: A knock on the door.

20 Q What did you do when there was a knock on the door?

21 A: Looked out the window.

22 Q What did you see out the window?

23 A: Richard's truck.

24 Q What kind of truck was that?

25 A: It was an old black truck.

2838

1 Q I want to show you what has been marked for
2 identification purposes as Government's Exhibit 342 and
3 ask you if you recognize that.

4 A: Yes.

5 Q What is it?

6 A: The parking lot when you are looking out the window.

7 MR. BECKER: I would offer that in evidence
8 as Government's 342.

9 MR. OSGOOD: I have no objection.

10 MR. O'CONNOR: I don't have any objection.

11 THE COURT: There being no objection to 342,
12 it is admitted.

13 (PLAINTIFF'S EXHIBIT NO. 342 WAS RECEIVED IN EVIDENCE.)

14 Q Miss Archer, is this the view out the window where you
15 could see? Obviously, this isn't a picture of Richard
16 Brown's truck or anything but is this where you would
17 see Richard Brown's truck that morning?

18 A: Yes.

19 Q Do you remember what time it was?

20 A: I think it was approximately around 6:30.

21 Q Did you go out to answer the door?

22 A: No.

23 Q Who did?

24 A: Carl.

25 Q What happened next? Did anyone come in?

1 A: Yes.

2 Q Who came in?

3 A: I heard Richard and Bryan's voices outside.

4 Q Did you see who came in?

5 A: No.

6 Q How did you recognize the voices?

7 A: I just know their voices from being friends.

8 Q Were they talking low or were they talking loudly?

9 A: Both.

10 Q Could you hear what they were saying?

11 A: A little.

12 Q Could you tell what room they were in?

13 A: They were in the front room, living room.

14 Q Did you hear anything about an explosion?

15 A: Yes.

16 Q What did you hear?

17 A: That there was an explosion, there was a fire.

18 Q Who said that?

19 A: Richard.

20 Q Did you hear anything about you should have seen it?

21 A: Yes.

22 Q Who did you hear that from?

23 A: Richard.

24 Q How long were they there?

25 A: Probably about a half an hour.

1 Q What happened after that?

2 A: I got ready to leave.

3 Q Did you have a doctor's appointment that morning?

A: Yes. ~

5 Q Who took you to the doctor's appointment?

6 A: Carl.

7 Q Was that doctor's appointment to terminate a pregnancy? :

8 A: Yes.

9 Q Where did you go after your doctor's appointment?

10 A: To my dad's house.

11 Q While you were at your dad's house on that day did you
12 tell your stepmom what had happened at Carl Brown 's
13 apartment?

14 MR. O'CONNOR: Objection. Hearsay, told her
15 stepmom.

16 MR. BECKER: I will have a legal argument.

17 THE COURT: Your question was?

18 MR. BECKER: Did you have a conversation with I
19 your stepmother about what happened at Carl Brown 's.

20 MR. O'CONNOR: The objection is relevance,
21 what is that relevant to, whether or not she had a
22 conversation with anybody.

23 THE COURT: I'm sorry but I don't see that it
24 relates -- I think it can be related but I don't think
25 it

2841

1 is competent.

2 MR. BECKER: May we approach.

3 THE COURT: Yes.

(Proceedings out of the hearing of the jury)

5 THE COURT: What can you prove with this this
6 way?

7 MR. BECKER: I am laying a foundation for the
8 introduction of a prior consistent statement. The
9 mother is prepared to testify that she was told what
10 happened long before any reason for fabrication and I
11 have a legal memorandum to file on that point. I
12 anticipate counsel will cross examine, as they have
13 throughout this trial, that the government's witnesses
14 are making things up in order to get out of legal
15 trouble or to avoid the wrath of Special Agent True or
16 some such thing. And, therefore, I believe it would be
17 permissible to introduce a prior consistent statement.

18 MR. O'CONNOR: That hasn't happened yet and
19 I think it is not going to happen. For my cross
20 examination -- I don't know what Mr. Osgood is going
21 to ask here but I think it is preliminary, I think if
22 we get into it, then it may be relevant but right now
23 it is not.

24 THE COURT: This is a statement that she made
25 to True.

2842

1 MR. BECKER: No, this is a legal memorandum
2 on prior consistent statements.

3 THE COURT: You are examining her.

4 MR. BECKER: I am just asking what she told
5 her stepmother.

6 THE COURT: Not her mother.

7 MR. BECKER: Her stepmother. That's all.

8 MR. O'CONNOR: There is no relevance yet.
9 If I cross examine her, this really didn't happen,
10 these guys never really said this.

11 THE COURT: I think you are premature with
12 your prior consistent statement.

13 MR. BECKER: I will just ask the question
14 again in 15 minutes.

15 THE COURT: Whatever.

16 (Proceedings in the hearing of the jury .)

17 Q Did you sometime later come forward and tell the ATF
18 agent whathappened that morning at Carl Brown's
19 apartment?

20 A: Yes.

21 MR. BECKER: I have no further questions at
22 this time, Judge. ~

23 THE COURT: All right. Cross. I

24 CROSS EXAMINATION

25 BY MR. O'CONNOR:

2843

1 Q Miss Archer, I am John O'Connor. I represent Bryan
2 Sheppard and I just have a few questions for you. The
3 morning of the explosion, around 6:30 in the morning is
4 when you said that Bryan Sheppard came by and Richard
5 Brown, is that true?

6 A: Yes.

7 Q And as I understand it, you did not physically see
8 them; you just heard their voices.

9 A: Yes.

10 Q And they were talking to Richard Brown's brother who is
11 Carl.

12 A: Yes.

13 Q And that Richard was doing most of the talking, is that
14 what you said?

15 A: Yes.

16 Q Now, they were there about a half an hour, is what you
17 said.

18 A: Yeah.

19 Q So they left somewhere around seven in the morning.

20 A: Yeah.

21 Q And did you eventually go into the room they had been
22 in talking to your boy friend Carl?

23 A: Yes.

24 Q Did you smell gasoline?

25 A: No.

2844

1 Q Did you smell any kind of a smoke or smoldering smell
2 or a mildew smell, something that fire or smoke would
3 have made that kind of smell?

4 A: No.

5 Q Did you notice whether or not there was any mud on the
6 floor or on the carpet, dirt?

7 A: No.

8 Q Was there?

9 A: I didn't notice any.

10 Q You said you heard Bryan Sheppard's voice. Did you
11 hear what he was saying, what he particularly was
12 saying, Bryan Sheppard?

13 A: No.

14 Q Was Bryan Sheppard saying anything that you could hear
15 like he was injured or needed to have some First Aid
16 for something?

17 A: No.

18 Q Now, as I understand your direct, let me go back to
19 something. The agents came out at some time and talked
20 to you about this case, I believe, January the 12th of
21 '96, is that correct?

22 A: Yes. ~

23 Q As I understand it, they talked to you for about 15 I
24 minutes to an hour before they ran the tape and took
25 this interview of you, is that true?

1 A: Yes.

2 Q And did you tell them you had not seen Richard Brown or
3 Bryan that morning but had you, in fact, heard their
4 voices?

5 A: Yes.

6 Q And so when you were on tape they asked you what their
7 physical condition was when they came in to the
8 apartment after you told them in pre-interview you
9 never saw them.

10 A: No.

11 Q Do you know why they asked you what they were wearing?

12 A: No.

13 Q Because you already told them you didn't see them,
14 didn't you?

15 A: Yes.

16 Q I believe you said on direct that when they came in you
17 heard Richard Brown say there was an explosion and
18 fire, some words to that effect. I think that is what
19 you said on direct examination, is that true?

20 A: Yes.

21 Q Could you tell from what he said whether or not **they**
22 were there when the explosion and fire happened or **they**
23 had heard about the explosion and fire?

24 A: I am not sure.

25 Q And you were in the bedroom, is that correct?

2846

1 A: Yes.

2 Q You were just hearing bits and pieces of the
3 conversation with Carl.

4 A: Correct.

5 Q And where was Johnny, what was his name?

6 A: Johnny Perkins.

7 Q Yes, ma ' am, was he there?

8 A: Yes.

9 Q And so could you tell from the conversation whether
10 **they** had heard about the explosion and fire and had
11 come by to tell every body what **they** heard or could you
12 tell **they** had actually been at the explosion and fire
13 from what **they** were saying, could you tell?

14 A: No.

15 Q And I think Mr. Becker asked you something to the
16 effect you said Richard Brown said you should have seen
17 it, could you tell whether or not he was saying he was
18 actually there, **they** were actually there at the
19 explosion and saw the explosion or **they** had driven by
20 afterwards and you should have seen what was out there?
21 Could you tell what **they** were saying one way or the
22 other?

23 A: No.

24 Q Did **they** say anything like **they** had actually set the
25 fire truck on fire and saw it explode or anything like

1 that?

3 Q Could you even tell from what **they** were saying whether
4 Bryan Sheppard and Richard Brown had been together at
5 or near the time the explosion occurred?

6 A: No.

7 Q Did Richard Brown or Bryan Sheppard ever admit that
8 morning **they** were involved in this explosion?

9 A: No.

10 Q Did Richard Brown or Bryan Sheppard say **they** had been
11 together at the time of the explosion?

12 A: No.

13 Q Did either one of them say **they** were the ones who
14 caused the explosion?

15 A: No.

16 MR. O'CONNOR: No further questions.

17 CROSS EXAMINATION

18 BY MR. OSGOOD:

19 Q What color was Mr. Brown's truck, black?

20 A: Yes.

21 Q What color is that truck in the picture?

22 A: That looks to be black.

23 Q Was it a black truck like that, his truck?

24 A: You mean a color like that?

25 Q A color like that, black.

2848

1 A: It wasn't shiny.

2 Q Was it dirty sometimes?

3 A: Yeah.

MR. OSGOOD: Thank you.

5 THE COURT: Any other Cross?

6 MR. BUNCH: None.

7 THE COURT: Counsel.

8 MR. BECKER: Nothing further.

9 THE COURT: Thank you, ma'am. You may step
10 down

11 MR. BECKER: Judge, we need to take a five
12 minute break. We have four more witnesses.

13 THE COURT: All right, we will take a break.
14 It probably won't be more than five minutes. We don't
15 seem to be able to break for five minutes but we will
16 not be gone too long. And I instruct you not to discuss
17 the case while we are in recess. You may withdraw.

18 RECESS

19 THE COURT: All right.

20 MR. MILLER: The government calls John
21 Overman.

22 MR. PETERS: May we approach.

23 (Proceedings out of the hearing of the jury.)

24 MR. BECKER: I am going to offer pursuant to
25 the stipulation, the medical records for the last

1 witness Kimberly Archer, she had an abortion on
2 November 29, 1988. It corroborates her testimony.
3 That is why she remembers that day. That is why she
4 remembers those two there. And they have made great
5 attacks on the government's investigation. And yet in
6 an instance when the witness tells us something and
7 we go out and get the record and it corroborates the
8 witness, then they say, no, you can't put these in
9 evidence, they might violate the person's privacy.
10 The person got up and testified what happened.

11 MR. OSGOOD: I don't have any objection.
12 I am just suggesting we might stipulate she had a
13 medical procedure on that day and the record show
14 that.

15 MR. PETERS: I do have an objection and I
16 think Mr. Becker probably correctly stated it. We will
17 stipulate she was correct on the date. You control
18 what the jury sees. It doesn't hurt. It has nothing
19 to do with my client. You control what the jury
20 sees. Is there any reason to influence and give this
21 jury the medical records of a woman who talks about
22 pain in her vagina when we will stipulate to the fact.

23 THE COURT: If you can get a stipulation, why
24 do you need the records if you can get a stipulation
25 that she did, in fact, have a medical procedure on

2850

1 November 29, 1988?

2 MR. BECKER: And the records of the
3 Comprehensive Health for Women Clinic reflect she
4 received that treatment.

5 MR. OSGOOD: Sure.

6 MR. BECKER: On the morning of November 29th.

7 THE COURT: That's fine.

8 MR. OSGOOD: Absolutely.

9 MR. PETERS: I have no problem at all.

10 MR. BECKER: Now, we have the medical
11 examiners to show the cause of death.

12 THE COURT: Why? They won't stipulate to
13 that?

14 MR. BECKER: I don't know if they will or
15 not.

16 THE COURT: Counsel. It seems to me
17 unnecessary to have to put medical examiners on the
18 stand to testify to cause of death.

19 MR. OSGOOD: We agree.

20 MR. BECKER: I want to offer this proof. The
21 Court in its first instruction to the jury indicated
22 this was an element. It may not be an element when we
23 are finished. We are not showing any autopsy pictures.
24 We are not showing any autopsy diagrams but this is a
25 matter that is an element of proof for the government

2851

1 and I think we have a right to present this evidence.
2 It is being presented in a non-spectacular fashion.

3 **Frankly**, the families of the victims
4 have indicated that this is something they want to
5 hear, how their loved ones died and I am not
6 willing to stipulate. I want to have that in the
7 case.

8 THE COURT: Okay.

9 (Proceedings in the hearing of the jury.)

10 MR. BECKER: Do you want me to write a
11 stipulation regarding these records of the last I
12 witness?

13 MR. O'CONNOR: You can do it orally.

14 THE COURT: I think you can do it orally.

15 MR. O'CONNOR: We have no objection.

16 THE COURT: As we indicated at the bench.

17 MR. BECKER: There is an agreement between
18 the defendants and the government that if a witness
19 were called from the Comprehensive Health for Women
20 Clinic, that they would present records that reflect
21 that the last witness, Kimberly Archer, was a patient
22 and that on the morning of November 29, 1988 she had a
23 termination of her pregnancy at that clinic. I

24 MR. O'CONNOR: Just for the jury , you
25 probably should specify the time. Did it have a time

1

1 on it?

2 MR. BECKER: It has a discharge time of
3 1:41 P.M. The first blood pressure is taken at
4 10:00 A.M.

5 THE COURT: Is that satisfactory?

6 MR. O'CONNOR: That's fine, Judge.

7 THE COURT: Okay.

8 JOHN OVERMAN,

9 having been duly sworn, testified:

10 DIRECT EXAMINATION

11 BY MR. MILLER:

12 Q Would you tell the court and the jury your name,
13 please.

14 A: Dr. John Overman.

15 Q How are you currently employed?

16 A: I am a pathologist in Hutchinson, Kansas.

17 Q Prior to going to Hutchinson, Kansas where were you
18 employed?

19 A: At the Jackson County Medical Examiner's Office here in
20 Kansas City.

21 Q And were you the medical examiner?

22 A Yes.

23 Q And were you the medical examiner back in November of
24 1988?

25 A: No, I would have been the assistant medical examiner in

2853

1 November of '88.

2 Q Did you perform autopsies though in your position in
3 1988?

4 A: Yes, I did.

5 Q Do you recall performing the autopsies of the following
6 four men on November the 30th, 1988: Luther Hurd.

7 A: Yes.

8 Q Gerald Halloran.

9 A: Yes.

10 Q Robert McKarnin.

11 A: Yes.

12 Q And Thomas Fry .

13 A: Yes.

14 Q After you performed the autopsies, did you prepare a
15 report?

16 A: Yes.

17 Q And did you do this in the normal course of business?

18 A: Yes.

19 Q And were these autopsy reports kept at the office of
20 the medical examiner here in Jackson County?

21 A: Yes, it is physically located at Truman Medical Center.

22 Q And when you were there, under whose care and custody
23 were the records kept?

24 A: Well, they're Dr. Peterson's, the medical examiner at
25 the time, so it would have been under her care and

2854

1 custody. Then later I was the medical examiner.

2 Q So they would have been under your care and custody.

3 A: Correct.

4 Q Do you currently have copies of those reports?

5 A: Yes.

6 Q And have you reviewed those to review and look over?

7 A: Yes.

8 Q And those reports, are they signed by you?

9 A: Yes.

10 Q I want to go to the autopsy of Mr. Luther Hurd. First
11 of all, before we go into that, would you tell the jury
12 why autopsies are performed.

13 A: Well, in this case we do them so that judges and juries
14 can carry out their duties without everybody having to
15 go to medical school to understand the scientific
16 principles involved. We do them so you can do your
17 job.

18 Q With Mr. Hurd, what was his age?

19 A: He was 31.

20 Q And what race was he?

21 A: He was black.

22 Q And how tall and how much did he weigh?

23 A: He was six feet, one inch tall and weighed 227 pounds.

24 Q Now is the first thing you do, you do an external
25 examination of the body.

1 A: Yes.

2 Q And as you were examining Mr. Hurd, what was the most
3 significant external examination finding?

4 A: Mr. Hurd had a lot of different lacerations and
5 abrasions over his entire body. The biggest one I
6 noticed, there was a large laceration of his chest that
7 extended from the front of his chest all the way around
8 to his back.

9 Q And what internal organs did this laceration -

10 A: In association with the chest injury , the explosion
11 from the blast had caused his lungs to fill up with
12 blood and the laceration itself tore his lungs.

13 Q And did that cause the lungs to collapse?

14 A: Yes.

15 Q What is massive pulmonary contusion?

16 A: That refers to the process I talked about where the
17 lungs fill up with blood. A contusion is just a 75
18 cent word for a bruise. And his his lungs were bruised
19 all the way through.

20 Q Is this consistent with death caused by an explosion?

21 A: Yes, that would be the most characteristic thing.

22 Q And how quickly was his death?

23 A: Instantaneous.

24 Q And how did you classify his death?

25 A: Homicide.

2856

1 Q And again, what was the cause of death?

2 A: The cause of death was the blast injury which caused
3 his lungs to fill up with blood.

4 Q I want to go now to the autopsy of Mr. Gerald Halloran.
5 I forgot this on Mr. Hurd. We will come back to that.
6 What date and time did you perform the autopsy of Mr.
7 Halloran?

8 A: It was nine in the morning on November 30, 1988.

9 Q And how old was Mr. Halloran?

10 A: He was 59.

11 Q And what was his race?

12 A: He was white.

13 Q And how tall was he and about how much did he weigh?

14 A: He was five feet, seven inches and he weighed 167
15 pounds.

16 Q And what did the external examination of Mr. Halloran's
17 head reveal to you?

18 A: Mr. Halloran had a very severe and extensive blast
19 force injury to his head and it caused the skin to
20 actually split apart, beginning down here at the base
21 of his neck and extending up the side of his cheek.
22 And it had also just crushed his skull.

23 Q In your autopsy report you say "multiple explosive type
24 fractures" and what are those?

25 A: It took an egg shell and crushed it. Just fractured

1 into multiple little bits.

2 Q What does it mean when you say "the brain was
3 eviscerated"?

4 A: The blast forced the brain right out of its skull. It
5 wasn't in the skull anymore.

6 Q What injuries did you notice to his arms, chest and
7 abdomen?

8 A: He also had a lot of abrasions and lacerations similar
9 to what I talked about before from the blast injury .

10 Q What condition were his legs?

11 A: Both of his lower legs were broken.

12 Q What condition was his chest?

13 A: He had the identical injury to his lungs. The lungs
14 were contused and filled with blood.

15 Q So he also had massive pulmonary contusions.

16 A: Yes.

17 Q Did he have rib fractures?

18 A: Yes.

19 Q And how did you classify his death?

20 A: His death was also classified as homicide.

21 Q And the cause.

22 A: The cause in his case was trauma to both the head and
23 chest.

24 Q How quickly did Mr. Halloran die?

25 A: That would have been instant.

2858

1 Q I said I would go back and pick this up. Can you recall
2 the date and the time of the autopsy of Mr. Hurd?

3 A: Yes, that one I started at 7:45 in the morning, also
4 November 30, 1988.

5 Q I would like to go next to the autopsy of Mr. McKarnin.
6 How old was Mr. Robert McKarnin?

7 A: Forty-two years old.

8 Q What was his race?

9 A: He was white.

10 Q And how tall was he and how much did he weigh?

11 A: He was six feet, two inches and weighed 198 pounds.

12 Q And on the external examination, what did you notice
13 about his scalp?

14 A: His scalp had a lot of little abrasions and also small
15 lacerations, again from the blast injury.

16 Q And you classified a shrapnel type injury and what do
17 you mean by that and what part of the body?

18 A: He had a lot of unburned powder particles of soot that
19 were deposited in his skin around his head and upper
20 chest.

21 Q And was his body covered with any kind of a powdery
22 substance?

23 A: Yes.

24 Q What?

25 A: Well, it was covered with some type of a gray powdery

2859

1 substance.

2 Q You don't know the name.

3 A: No.

4 Q What did the external examination of the head reveal?

5 A: He had a lot of powder deposited around his head. An d

6 he also had a lot of unburned powder that actually had

7 been blown into the skin.

8 Q And what did the internal examination of his chest

9 cavity show?

10 A: It was the similar injuries I described with the other

11 two. The lungs were contused and filled with blood.

12 Q And how did you classify Mr. McKarnin's death?

13 A: It was classified as a homicide.

14 Q And the cause of death.

15 A: The cause of death was the pulmonary hemorrhages.

16 Q And how quickly did Mr. McKarnin pass?

17 A: The same, it would have been instant.

18 Q I want to go next to Mr. Thomas Fry . What time and

19 date did you do the autopsy of Mr. Fry?

20 A: That was at twelve noon on November 30, 1998.

21 Q And what was the most significant external injury you

22 found on Mr. Fry ?

23 A: He had a transverse laceration across his neck. That

24 was associated with destruction of the neck and the jaw

25 bones as well as the skull.

2860

1 Q Let me back up. I may have forgot this. How old was
2 Mr. Fry?

3 A: He was 41.

4 Q And what was his race?

5 A: White.

6 Q And how tall was he and how much did he weigh?

7 A: He was five feet, eight inches and weighed 178 pounds.

8 Q Did he have any dislocated fractures?

9 A: Again his skull was also fractured in multiple places
10 due to the blast injury and he had very extensive brain
11 damage associated with that.

12 Q Did he have any long bone injuries?

13 A: Let me refer to the notes. He had fractures of the
14 ribs. He also had some abrasions of the legs and
15 lacerations of the arms but he didn't have any bony
16 fractures other than the ribs and the skull.

17 Q Under Evidence of Trauma in the third paragraph on the
18 front page -

19 A: Yes.

20 Q -- Did you note any long bone injuries there?

21 A: I'm sorry . He did have a fracture of the right forearm
22 and the right leg.

23 Q And did he also suffer from the massive pulmonary
24 contusions?

25 A: Yes.

2861

1 Q Which is consistent with the death and explosion and
2 blast.

3 A: Yes. That is exactly what we would have expected.

Q How did you classify his death?

5 A: Homicide.

6 Q And the cause of death.

7 A: The cause of death was, in his case, both the trauma to
8 the head and the lung contusions.

9 Q And how quickly did Mr. Fry pass?

10 A: It was instant.

11 MR. MILLER: I have no further questions,
12 Your Honor.

13 MR. PETERS: Judge, we have no questions.

14 THE COURT: All right, Doctor, thank you.

15 MR. MILLER: The government calls Dr. Bonita
16 Peterson.

17 BONITA J. PETERSON.

18 having been duly sworn, testified:

19 DIRECT EXAMINATION

20 BY MR. MILLER:

21 Q Would you tell the court and jury your name, please.

22 A: Bonita J. Peterson.

23 Q How are you employed?

24 A: I am self-employed at the present time.

25 Q What do you do?

2862

1 A: I am a pathologist. I do autopsies.

2 Q And in 1988 were you the medical examiner for Jackson
3 County, Missouri?

4 A: Yes, I was.

5 Q And, Doctor Overman was your assistant.

6 A: That's correct.

7 Q And did you, along with Dr. Overman, perform autopsies
8 of the deceased firemen on November the 30th of 1988?

9 A: Yes.

10 Q And after the autopsies was there a report made?

11 A: Yes.

12 Q And this is done in the normal course of business.

13 A: Yes.

14 Q And since you were the medical examiner at the time,
15 where were the autopsy reports kept?

16 A: They were kept at the office of the medical examiner at
17 Truman Medical Center.

18 Q And they were under your care and custody while you
19 were the medical examiner.

20 A: Yes.

21 Q Then they would have passed to the next medical
22 examiner.

23 A: That's correct.

24 Q And about how many autopsies have you performed?

25 A: About 7,500 I would say.

1
1 Q And did you bring with you reports of the autopsies you
2 performed on Mr. Michael Oldham and Mr. James
3 Kilventon?

4 A Yes, I did.

5 Q And if we could refer to the one on Mr. Michael Oldham .
6 How old was he?

7 A Thirty two.

8 Q What was the date and time of his autopsy?

9 A It was started at 8:40 A.M. November 30th.

10 Q And were you able to tell his height and weight?

11 A No.

12 Q Was that from the condition of the body?

13 A Yes.

14 Q On the external examination what were the injuries to
15 ~Mr. Oldham 's head?

16 A Well, the top of the skull was absent and all of the
17 brain was gone.

18 Q How were the extremities, by that I mean the hand and
19 feet, received?

20 A: Both arms had been amputated by the explosion and one
21 of the legs. There were fractures of most, if not all,
22 the bones of all the extremities.

23 Q All of his bones were fractured.

24 A: Well, I didn't check each one individually but there
25 were multiple fractures. There were many small bones I

2864

1 didn't attempt to examine.

2 Q Were there lacerations to his chest?

3 A: Yes.

 Q And what was the condition of the rib cage?

5 A: There were multiple rib fractures in front and in back.

6 Q And what were the conditions of his lungs?

7 A: There were lacerations of the lungs associated with a I
8 fracture of the spine and other injuries in the chest,
9 including lacerations of the heart and aorta. I

10 Q Did he suffer from massive pulmonary contusions?

11 A: I don't know. I don't believe I would put it that way.
12 Massive injury to the lungs, contusions, more
13 lacerations or tears, ruptures.

14 Q Were any foreign objects found in his torso, the body
15 part, you received?

16 A: No.

17 Q How did you classify his death?

18 A: I classified it as a homicide. ~

19 Q And what was the cause of his death? I

20 A: Massive injuries to all parts of the body.

21 Q And could you say how quickly Mr. Oldham passed?

22 A: Immediately.

23 Q I want to go next to Mr. James Kilventon. And what
24 date and time did you perform the autopsy of Mr.
25 Kilventon?

2865

1 A: It was started at 10:00 on the morning of November
2 30th.

3 Q And how old was Mr. Kilventon?

4 A: Fifty-four.

5 Q And could you tell his race?

6 A: Yes.

7 Q What was his race?

8 A: It was white.

9 Q Could you tell his height and his weight?

10 A: No.

11 Q Why couldn't you?

12 A: Because of the massive injuries.

13 Q What injuries did you note to his head?

14 A: The face and most of the head was missing. The brain
15 was missing. There were fracture lines in the skull,
16 the base of the skull.

17 Q What injuries did you note to his torso area?

18 A: Well the organs of the abdomen had been eviscerated.
19 They were received separately.

20 Q When you say eviscerated, what does that mean?

21 A: They had been ejected from the body The chest organs,
22 the heart and lungs were not received. They were also
23 ejected from the body and did not accompany the remains
24 I had to examine.

25 Q What injuries did you note to his right arm and right

2866

1 hand?

2 A: His right arm and his right hand and forearm were
3 received separately, had been amputated.

4 Q When you say amputated, you mean by the blast, not
5 medically.

6 A: Not medically amputated, no.

7 Q They were received separately. What injuries did you
8 note to them?

9 A: Again, there were fractures and lacerations.

10 Q His left arm and hand.

11 A: It was attached to the torso by soft tissue.

12 Q Just barely.

13 A: Just barely.

14 Q What injuries did you notice to that?

15 A: Again multiple fractures and lacerations.

16 Q His right leg and right foot.

17 A: The extremities were amputated; that is not medically
18 but by the blast, so it was separate, too, from the
19 rest of the body.

20 Q What internal injuries did you note from Mr. Kilventon
21 as you examined him?

22 A: Well, as I said, the organs were received separately.
23 There were lacerations and they were covered with dust.

24 Q In other words, there was really nothing there to
25 examine.

1 A: Really not that much to examine.

2 Q And how did you classify his death?

3 A: As a homicide.

Q And what was his cause of death?

5 A: Again massive injuries to all parts of the body.

6 Q Consistent from an explosion.

7 A: Yes.

8 Q And how quickly did Mr. Kilventon pass?

9 A: Immediately.

10 MR. MILLER: That is all I have of Dr.

11 Peterson, Your Honor.

12 THE COURT: All right. Any Cross.

13 MR. PETERS: No questions, Judge.

14 THE COURT: Thank you, Doctor.

15 MR. BECKER: The United States calls Special
16 Agent Paul Marquardt.

17 MR. PETERS: May we approach for a minute.

18 THE COURT: Yes.

19 (Proceedings out of the hearing of the jury.)

20 MR. PETERS: This witness is going to
21 testify to a form he filled out and part of the form
22 involves inserting, following the instructions for
23 filling out the form. And since January 25th I have
24 been asking for this document that tells you what the
25 codes are and what the forms are. All that has been

2868

1 provided to me is a single page. I know Mr. Becker has
2 been busy. I have
asked him.

3 MR. BECKER: Every day.

MR. PETER: I can't cross examine the witness
5 without the document that he used to fill out the
6 forms. So if we want to do direct and break, that
7 would be fine but I don't have the codes he is going to
8 be testifying to or the procedures for filling out the
9 form .

10 MR. BECKER: The particular codes you put on
11 this one, for example, I think it is Y-24, I did
12 provide that sheet. I have a copy of it here, noted
13 as Government's Exhibit 409E. And I believe I received
14 that on February 3rd from ATF and I gave it to counsel
15 the next day.

16 MR. PETERS: As the Court can see, it is page
17 12 of a document. It doesn't say what the codes are or
18 where the codes go.

19 THE COURT: We don't need to examine all the
20 codes they use in the FBI just to figure out what he
21 put on one particular form . Is there something
22 inscrutable on the form you don't understand?

23 MR. PETERS: This runs contrary to the other
24 page of the Codes Manual that Agent Lund testified to,
25 the B for bombing, this doesn't have a B.

2869

1 MR. BECKER: This is apples and oranges. I
2 recall when counsel was doing it.

3 THE COURT: You made that record at that time
4 as I recall.

5 MR. BECKER: Right.They were two different
6 forms, what he fills out and the form s that are
7 generated in the field are then used by the next
8 witness, Mr. Shide, in Washington with the code. It is
9 a multiple page thing Mr. Peters has that includes the
10 B for bomb and various and sundry other codes.

11 MR. PETERS: All I am asking, since January
12 25th I have been asking for this document. They are
13 calling a witness.

14 THE COURT: I don't understand. You have got
15 that document. You know what that says.

16 MR. PETERS: I have one page from a document.

17 THE COURT: I am not sure you are entitled to
18 all pages to the whole document just because there is
19 a reference to one code here on page 12.

20 MR. PETERS: The document tells you how to
21 fill it out, what codes to use, the instruction
22 manual.

23 MR. BECKER: If I ma y, what it comes down to
24 is that this witness filled out the form and put in
25 Y-24. That is what he put in.

2870

1 Now, what was said in the other pages of
2 the manual about how to fill out the form all come
3 back to he put in Y-24, that it was an arson and
4 so I don't understand what the point is.

5 MR. PETERS: I appreciate Mr. Becker's
6 representation of what this document says but, Judge,
7 on January 25th I asked for this document. I have
8 asked for it every day. They have had the document
9 to photocopy one page from it. I don't think my
10 request was outlandish or burdensome and we are now
11 having a witness testify, oh, I used this, what comes
12 before this, I believe I am entitled to it.

13 THE COURT: Is it the government's position
14 there is something confidential or sensitive about the
15 whole document?

16 MR. BECKER: No. I s imply every day had
17 other matters that were pressing.

18 THE COURT: Do you have it now?

19 MR. BECKER: I don't know. I can ask this
20 witness. I asked him last night.

21 THE COURT: Let's see where we are with the
22 witness and if it is important we will get him back in
23 the morning.

24 MR. BECKER: He is certainly able to be
25 recalled.

1 MR. PETERS: I will just reserve my Cross.

2 THE COURT: You may not. It depends on what
3 he says. I am not at all convinced you don't have all
4 you need to cross. Let's hear his direct.

5 MR. PETERS: At the conclusion of direct,
6 under the rules I am entitled to the documents he used
7 and I have made that request since January 25th.

8 MR. BECKER: He will testify this is what he
9 used, this page. I will get that thing and I will
10 have them available in the morning if you have any
11 further questions.

12 (Proceedings in the hearing of the jury.)

13 PAUL MAROUARDT,

14 having been sworn, testified:

15 DIRECT EXAMINATION

16 BY MR. BECKER:

17 Q Good afternoon.

18 A: Good afternoon.

19 Q Please state your name and spell your last name.

20 A: My name is Paul Marquardt, M-a-r-q-u-a-r-d-t.

21 Q How are you employed?

22 A: I am a special agent with the Bureau of Alcohol,
23 Tobacco and Firearms.

24 Q How long have you been a special agent with ATF?

25 A: Twenty-one years.

1 Q Where are you currently assigned?

2 A: Here in Kansas City.

3 Q How long have you been here in Kansas City?

4 A: Twenty-one years.

5 Q Where are you currently assigned?

6 A: Here in Kansas City.

7 Q How long have you been here in Kansas City?

8 A: Twenty-one years.

9 Q What is your current assignment within the Kansas City
10 Office of the Bureau of Alcohol?

11 A: I am assigned to a firearms group called the Kansas
12 City, Missouri, Group Two, Firearms Investigative
13 Group.

14 Q Over the course of your 21 years with ATF, is that
15 primarily your area of expertise?

16 A: Primarily.

17 Q Going back to November and particularly the early
18 morning hours of November 29, 1988, were you the duty
19 agent for that week?

20 A: Yes.

21 Q What does it mean to be a duty agent?

22 A: A duty agent is after hours when our answering service
23 takes over our telephones, there is a duty agent
24 assigned to handle any emergency. So if there is an
25 emergency, the answering service will contact the duty

2873

1 agent. And we do that on a rotating schedule and
2 usually you have it for one week and it rotates to
3 another agent.

4 Q Do you recall the explosions that happened that morning
5 that killed six Kansas City, Missouri firemen?

6 A: Yes.

7 Q Where were you living at that time? I

8 A: I was living at that time in Independence.

9 Q Did you hear one or both of the explosions?

10 A: I heard them both. The first one woke me. I wasn't
11 sure what it was. I had levelers and an attic fan and
12 it rustled the levelers of the attic fan and that woke
13 me up. That had happened before with a strong gust of
14 wind or something like that. But the second one I was
15 kind of still awake. So the second one I pretty much ~
16 knew what it was. I

17 Q Did you receive any inquiries as a duty officer that
18 morning?

19 A: Yes, shortly after the second blast I received a call
20 from the answering service that there had been media
21 inquiry about the explosion. So I turned down the
22 radio and called my supervisor.

23 Q What was his name?

24 A: Rick Van Healts.

25 Q What, if anything, was decided? What did you do next

1 in relation to this explosion?

2 A: When I talked to him I had already heard the radio for
3 a few minutes so I knew there had been two large
4 explosions and several firemen were missing. So we
5 split up a number of agents. I had to call a couple of
6 agents. He called a couple agents. And we decided we
7 were going to meet at the office to gather our
8 equipment together we used for investigating bomb
9 scenes.

10 Q What did you do? ;

11 A: I basically got dressed and got in my car and left.
12 And while talking to my supervisor on the radio I told
13 him that I thought it would be best if I went directly
14 to the scene and that he meet the other agents at the
15 office to gather equipment together.

16 Q So did you go to the scene on 71 highway and 87th
17 Street?

18 A: Well, I took 435 to 87th Street, yes, and I went right
19 to the scene.

20 Q Did you go up along 71 highway, then to the foot of the
21 construction area, the base of the construction area?

22 A: Yes, it was blocked off at that time. It was corded
23 off by police officers, but I showed them my
24 identification and went through the barricade.

25 Q What did you do when you got to the area in front of

1 the construction site?

2 A: I found Sergeant Bill Forbes was the sergeant with the
3 Kansas City, Missouri Police Department Bomb and Arson
4 Unit. I knew Bill and we had worked together on many
5 occasions. So I just hooked up with him.

6 Q About what time was that? Was it still dark?

7 A: Yes, still dark and it was around 5:30 A.M.

8 Q Did you go up to the site?

9 A: Yes, at daylight, approximately six of us, there were
10 several from the Kansas City, Missouri Police
11 Department Homicide Unit and three people from the Bomb
12 and Arson Unit and myself went up on the hill.

13 Q What was your purpose in going up there?

14 A: At that time, when it was dark it was just considered
15 too unsafe to conduct an investigation so the main
16 purpose was obviously to find the firefighters and
17 determine what had happened to them. And then the
18 second part was to check other explosives that were up ~
19 there to see if they were safe. And if they were safe, j
20 then we could bring in other investigators.

21 Q And as the agent on the scene I guess for ATF it was
22 your responsibility to check on the explosives.

23 A: Well, we had bomb and arson people that are very
24 experienced as well so, yes.

25 Q From the Kansas City, Missouri Police Department.

2876

1 A: Yes.

2 Q I want to show you what is in evidence as Government's
3 Exhibit 29. Could you tell us what route you and the
4 other detectives and investigators took up onto the
5 scene that morning.

6 A: Yes, sir. There were about six of us and we came up
7 the road that is at the top of the scene.

8 Q Indicating the dirt road in the middle of Government's
9 29.

10 A: Yes.

11 Q Where did you go next?

12 A: You can see the car.

13 Q Is that the battalion chief's car at the top of the
14 hill?

15 A: Yes.

16 Q Where did you go then?

17 A: We started walking down the road that continues down
18 the center on the screen there. Not too far from the
19 battalion chief's car we found a human jawbone. Not
20 too far from there I found a hand. So I realized then
21 it was going to be pretty bad.

22 Q What did you do next?

23 A: We just all continued to walk down looking for the
24 firefighters.

25 Q When you got to the craters here in the middle of

2877

1 Government's Exhibit 29, were you able to inspect that
2 area?

3 A: Yes, we went all over that area. There was still small
4 fires burning. There was a lot of smoke. It was very
5 eerie because the sun was just coming up and we could
6 hear one of the firefighter's radios still working.
7 And we went and moved from firefighter to firefighter
8 to check the bodies. And after we located all the
9 firefighters we moved to the explosive magazines.

10 Q I want to show you what is in evidence as Government's
11 Exhibit 26. Do you see those explosive magazines in
12 this photograph?

13 A: Yes.

14 Q Tell us what you did.

15 A: I believe we went to the small one which would be in
16 the lower right-hand corner of the screen right there.
17 That is what we call a cab magazine. That is a
18 portable explosive magazine that is made out of metal.
19 And Sergeant Forbes had the keys for both of these that
20 he obtained from I believe the fore man from Mountain
21 Plains that was the explosives permittee that had that
22 stuff stored up there.

23 Q What do you mean by explosives permittee?

24 A: In order to use explosives when you are a company like
25 that you have to have an ATF permit.

1 Q Sergeant Forbes had the keys.

2 A: Yes.

3 Q Was that the smaller of the two?

4 A: That's the smaller one. We opened that up and
5 ascertained it was full of blasting caps. There were
6 detonators. I can't remember exactly. There were
7 records in there. Nothing was unsafe in there so we
8 relocked it.

9 Q When you got up to it was it locked up and secure?

10 A: Yes.

11 Q And then you locked it up again.

12 A: Right.

13 Q Did you go over to the second bunker?

14 A: Yes.

15 Q What did you see there?

16 A: In the second bunker when we opened it the boxes were
17 stacked up in there and the force of the blast had
18 disheveled them. They were kind of leaning, some of
19 them to the side. So we took the cases out and
20 examined them to make sure everything was okay and then
21 basically put every thing back in.

22 Q What was in those boxes?

23 A: Dynamite, uni-jell, boosters, things they use for their
24 blasting.

25 Q Was that magazine locked when you got up to it?

2879

1 A: Yes.

2 Q Did you lock it up again after you were finished?

3 A: Yes.

4 Q Then that morning and throughout the day did other
5 agents from the Bureau of Alcohol, Tobacco and Firearms
6 and the Kansas City, Missouri Police Department come
7 onto the scene to basically process the crime scene?

8 A: Yes. Once we determined the site was safe to bring up
9 other investigators, now it was daylight and a large
10 number of other investigators came up, homicide
11 detectives, other detectives with the Bomb and Arson
12 Unit and a number of ATF agents.

13 Q What did you do the remainder of that day?

14 A: I worked with Reed Bente. Reed is a homicide detective
15 and he was assigned to handle the bodies. So my
16 initial thing was to help him with the bodies. And we
17 were obtaining body bags to put them in, things like
18 that.

19 Q Were you informed that day at all that you were going
20 to be involved in this investigation?

21 A: Yes, my supervisor advised me at the scene I would be
22 the case agent.

23 Q What does that mean?

24 A: It just means that I would be in charge of making sure
25 all the reports that needed to be done for the initial

2880 ~

1 stages of the investigation were done and the case
2 agent basically is the one in charge of the
3 investigation.

4 Q The next day, that is November 30, 1988, did you
5 prepare a report to advise ATF headquarters in
6 Washington about this tragedy?

7 A: Yes.

8 Q I want to show you what has been marked for
9 identification purposes as Government's Exhibit 409A
10 and ask if you recognize that.

11 A: Yes, this is what we call a case KSAR.

12 Q K-S-A-R.

13 A: I believe that stands for significant activity report.
14 I don't even know what the "K" stands for. I don't
15 think it has any meaning. But this would have been the
16 first report that went to our headquarters regarding
17 this incident.

18 Q Did you prepare that report?

19 A: Yes, I did.

20 Q When did you prepare this report?

21 A: I think I started probably writing part of it on the
22 November 29th, the actual date of the incident, but
23 finished it up the next morning.

24 Q Is it noted when it was sent to Washington?

25 A: Yes, it was faxed on 11-30-88 by Ruth Fox who was one

1 of the division clerical staff. That is her initials
2 RF. I

3 Q You recognize those initials.

4 A: Yes.

5 Q Have you reviewed this report prior to testifying
6 today?

7 A: Yes.

8 Q Is this the report you had sent to Washington on
9 November 30, 1988?

10 A: Yes, it is.

11 MR. BECKER: I would offer in evidence as
12 Government's Exhibit 409A.

13 Can we approach.

14 (Proceedings out of the hearing of the jury .)

15 MR. BECKER: I have provided copies of this
16 report to Mr. Peters. He now advises me none of the
17 other defense attorneys have them.

18 MR. PETERS: That was in response to my
19 question of the forms. He gave me that. I never was
20 told I was supposed to copy it for other people. And I
21 mean, in fairness, when we get stuff we get copies. I
22 was never led to believe or never thought that report
23 was coming into evidence. I have never made a copy.
24 Never given it to any of the other attorneys. It's a
25 report, Judge.

1 THE COURT: Does that give the other
2 attorneys any problem?

3 MR. PETERS: I think they need to read the
4 report.

5 THE COURT: Why aren't they up here?

6 MR. PETERS: Because they don't know
7 anything about the report.

8 MR. OSGOOD: I object to it on the basis it
9 is an internal report. It is not a business record.
10 It is a report prepared. It has something about a
11 number of suspects that have been developed. I don't
12 know under what exception he is trying to put it in.
13 It is not a business record. It is not a government
14 record that would come in under 9-0 -- whatever it is.

15 MR. BECKER: It's a public record. Earlier
16 in the case, probably a month ago, Mr. Peters put in
17 evidence this explosive incident listing, as you may
18 recall, with the B in it for bombing. And it was
19 absolutely without any foundation. But because the
20 witness said I don't know what this report is, I have
21 never reviewed it, I don't know how it's prepared, but
22 it came in as a business record.

23 Now in order to put that red herring to
24 rest I have the agent who prepared the reports.
25 And then I have the agent in Washington who looked

2883

1 at the reports and decided to put the B down even
2 though all these reports say arson, arson, arson.
3 So that is the purpose they are being offered.

4 MR. PETERS: We may not have an objection.
5 We may be able to work out a stipulation, but I was
6 never told this was going to be an exhibit that was
7 being offered. It was never on the government's
8 exhibit list.

9 THE COURT: It was not on your exhibit list?

10 MR. BECKER: No, it was not. It was added
11 after this B business came up. And counsel, talk about
12 exhibit list, the defense attorneys don't have an
13 exhibit list. We add to it every day as we move along.

14 MR. PETERS: Again, Judge, -- and I am not
15 saying this is trying to clear up some stuff that was
16 raised I guess three weeks ago but we don't have the
17 manual that he used to prepare the report. The other
18 defense attorneys don't have the report. And now we
19 are moving for admission of the report and since my
20 January 25th letter I have been asking for this
21 information.

22 MR. BECKER: I can't believe counsel didn't
23 share this information with his colleagues. Every day
24 they're together.

25 THE COURT: I am skeptical.

1 MR. OSGOOD: He certainly can testify, Your
2 Honor, as to what he told them in Washington and that
3 he has got a report and that the report was forwarded
 and the report essentially contained the information
5 he had told them. Then the agent can say I have got
6 the report and the agent on the other end could testify
7 what he recalls from it as an exception to hearsay.
8 The report itself should not come in.

9 THE COURT: This is not the B bombing report.

10 MR. BECKER: There is no B bombing report.
11 These are the records in the case. Then there are two
12 other forms that are filled out and were filled out in
13 the early days following the explosion. Those three
14 documents are sent to Washington and those three
15 documents are the ones that the next witness, Steve
16 Shide, will testify he looked at, this document and
17 the other two documents. And then, based upon what he
18 reviewed in those documents, said this is the B.
19 something blew up so I am going to say it's a B as
20 opposed to whatever the code is for arson which I
21 guess is what counsel's point was weeks ago.

22 MR. PETERS: I don't think we are asking for
23 anything out of the ordinary . We are being presented
24 with one page of a multi-page document I specifically
25 requested.

2885

1 MR. BECKER: We have already talked about the
2 form book and I thought we resolved that one but if you
3 have something else.

4 MR. PETERS: We are now getting into a
5 document prepared in reliance on a form book we don't
6 have.

7 THE COURT: I think it would be a mistake to
8 admit this document and use it in an examination of
9 this witness without counsel for defendants all having
10 seen it.

11 MR. BECKER: I am sorry I relied upon Mr.
12 Peters to share that with his colleagues.

13 THE COURT: I think that was undue reliance.

14 MR. OSGOOD: I haven't seen it.

15 MR. BECKER: I am sure you haven't seen it.
16 Mr. Peters said he didn't share it.

17 MR. OSGOOD: I think there is a more basic
18 reason not to admit it. It doesn't come under any
19 exception. I have no objection to him testifying.

20 THE COURT: I would assume he would be able
21 to lay the foundation under the rule for business
22 records, for a public record. It is obviously in the
23 course of business. It is obviously a form that is
24 frequently used.

25 MR. OSGOOD: I think it is more an

2886

1 investigative report if you read it. It is not a
2 business record.

3 MR. PETERS: That wasn't anything we had
4 found out other than through Cliff Lund.

5 MR. OSGOOD: There is a lot of hearsay in it,
6 too.

7 THE COURT: Make copies available to all
8 counsel now. And I take it from what you said we will
9 have to stop with this fellow and not have your next
10 witness.

11 MR. BECKER: Every body goes home.

12 MR. PETERS: Can I also get this?

13 MR. BECKER: You will get the book.

14 (Proceedings in the hearing of the jury.)

15 THE COURT: Well, ladies and gentleman, we
16 have some clerical duties we are going to have to take
17 care of. So we will not go forward with any further
18 examination today. I will ask you please to be in the
19 jury room at 9:30 and we will start at 9:30 or as soon
20 after that as we can. Don't talk about the case
21 overnight and we will see you in the morning.

22

Page 2887
I N D E X
V O L U M E X V I
(Pages 2887 - 3120)
Wednesday, February 12, 1997
(Trial)

GOVERNMENT'S WITNESSES:

Paul Marquardt

Resumed Direct Examination by Mr. Becker . . . 2897
Cross-examination by Mr. Peters 2906
Cross-examination by Mr. Osgood 2920

Steve Scheid

Direct Examination by Mr. Becker 2926
Cross-examination by Mr. Peters 2933

Karen Baird

Direct Examination by Mr. Miller 2942
Cross-examination by Mr. O'Connor 2955
Cross-examination by Mr. Osgood 3012
Redirect Examination by Mr. Miller 3014
Recross-examination by Mr. O'Connor 3018

Kathy Marburger

Direct Examination by Mr. Becker 3022
Cross-examination by Mr. O'Connor 3029
Cross-examination by Mr. Osgood 3038
Redirect Examination by Mr. Becker 3044

Michael Collins

Direct Examination by Mr. Miller 3045
Cross-examination by Mr. Peters 3055
Resumed Cross-examination by Mr. Peters . . . 3073
Redirect Examination by Mr. Miller 3086
Recross-examination by Mr. Peters 3087

Charles Conyers, Jr.

Direct Examination by Mr. Miller 3088
Cross-examination by Mr. Peters 3110
Reporter's Certificate 3120

E X H I B I T S

VOLUME XVI

<u>PLAINTIFF'S EXHIBITS</u>	<u>RECEIVED</u>
409-B	2901
410	3104
411	3106
412	3106
413	3106
414	3101
415	3101
416	3101
417	3101

Wednesday, February 12, 1997

- - -

(The following proceedings were had in the courtroom out of the presence of the jury:)

THE COURT: The record should reflect that I have received and read Defendant Brown's motion for reconsideration of the order of February 11th revoking his bond, and the motion for reconsideration is denied.

MR. BECKER: This is the materials that were discussed at the bench at 4 o'clock yesterday. This is the manual of which Page 12 has the codes that were used to fill out the particular form. I've given a copy to Mr. Peters this morning. It turns out that this booklet is not used to fill out the forms that I was seeking to introduce. This just is a different, it relates to a different form, which I will pass up to the Court, which is a case summary, which is used to, on the computer system apparently to open a case. Yet again, another form.

But in any event, this material, this booklet was given to Mr. Peters this morning, although it doesn't really have anything to do with the documents I'm seeking to

introduce. And then last night I provided all counsel with copies of the reports I will be seeking to introduce.

Actually, two of them I will not because they are more of a narrative report.

One of them is more of a business record

1 type report with specific information related to the
2 information systems that generated the report, which is
3 Defendants, Exhibit 8. In any event, I'll pass these up to
4 the Court.

5 Secondly, we hope to finish today. And if not
6 today, tomorrow. Pursuant to the Court's directions, every
7 night we've provided the defense attorneys with lists of the
8 witnesses for the upcoming day. And at this time, then, I
9 would ask the Court to issue those instructions to the
10 defense so that when we reach the defense case tomorrow, the
11 government will have some idea of who is going to be on the
12 witness stand first, second, third, so forth.

13 Mr. O'Connor, Mr. Bunch, and Mr. Osgood have
14 provided me with what would be fairly characterized as actual
15 witness lists. You know, it's just as the government filed a
16 list of 150 people and then was directed by the Court to say,
17 okay, of these 150, which ones are you really going to call.
18 And I did provide that list, I think, of about 103 people.

19 I would ask that the two remaining counsel, Miss
20 Hunt and Mr. Peters, provide the government with a list of
21 actual witnesses, those that they really intend to call, as
22 opposed to -

23 THE COURT: Not the universe of possible witnesses,
24 but the real witnesses.

25 MR. BECKER: Right. They have provided me names of

1 individuals who are in addition to anything they've ever
2 given notice of before. And those are people that they
3 legitimately believe arose as witnesses because of the
4 testimony during the government's case. And so I'm not
5 complaining about lack of notice prior to the trial on those
6 few names, but what I would really like to know is of this
7 wide universe -

8 THE COURT: Who they think they're really going to
9 call?

10 MR. BECKER: Right.

11 THE COURT: Can you all please provide that to
12 counsel by the end of this day?

13 MR. O'CONNOR: Yes, sir.

14 MR. BECKER: Mr. O'Connor has, Mr. Osgood has, and
15 Mr. Bunch has.

16 THE COURT: So it would be Mr. Peters and Miss
17 Hunt.

18 MR. BECKER: Yes.

19 MR. OSGOOD: I think we agreed that everybody
20 would, rather than calling a witness and recalling it in that
21 particular defendant's case, that we would put the witnesses
22 on in an orderly fashion. And if they pertained to two
23 lawyers, we would deal with it that way. so I think at noon
24 we can give him an order of testimony, or we can work that up
25 at noon.

2892

1 THE COURT: And indicate what counsel will be
2 doing -- I suppose that it's possible that there would be
3 more than one direct examination.

4 MR. OSGOOD: Absolutely.

5 THE COURT: Of some of the witnesses.

6 MR. OSGOOD: We'll try to cover it all for
7 everybody, I think, but that would seem to be logical. And
8 so what I'm saying is we're going to attempt to reciprocate
9 the same way as closely as possible the order they'll testify
10 in.

11 MR. BECKER: That's fine, Judge. Thank you.

12 THE COURT: And by the end of this day, I would
13 like some sort of a fair and intelligent estimate from the
14 defense counsel as to how long the defenses, they anticipate
15 the defenses are going to take.

16 MR. BECKER: One more point. Exhibits. Again, Mr.
17 Bunch and Mr. O'Connor filed exhibit lists and told me, and
18 gave me copies of whatever I didn't already have. I don't
19 believe any of the other three counsel filed any exhibit
20 lists, and I've not received any discovery of any possible
21 exhibits so that if there's going to be defense exhibits from
22 Defendant Frank Sheppard, Skip Sheppard or Richard Brown, I'd
23 like to have some idea. And certainly under Rule 16, I
24 should have been given discovery of these materials many,
25 many months ago. If there are going to be exhibits offered

1 bythe defense that they've not previously made discovery of,
2 I think now is at least the time to do it.

3 MR. OSGOOD: I have one exhibit, the death
4 certificate, and I thought I showed that to you.

5 MR. BECKER: No, but -- okay. And if I could get a
6 copy of that.

7 MR. OSGOOD: Sure.

8 THE COURT: Okay. Is that understood by
9 everybody? I agree with what Mr. Becker says. He should
10 have those lists promptly, and certainly by the end of
11 business here today.

12 MR. PETERS: Judge, I think the only other thing
13 before the jury comes up is when we broke yesterday, Mr.
14 Becker was wanting to admit the internal document sent from
15 KCATF to Washington, D.C. We object for a variety of
16 reasons. It's being offered -- my understanding -

17 MR. BECKER: Maybe I can short-circuit this. I'll
18 show Mr. Peters Government's Exhibit 409-A, which is what was
19 described as the K-SAR. The government is not going to offer
20 that. Government's Exhibit 409-B, which is the Form 3270.1,
21 I will be seeking to admit that. I believe this is a
22 business record and attempt to qualify it as such.

23 MR. PETERS: We don't have an objection to that
24 one, Judge.

25 MR. BECKER: And then 409-C, which is the opening

2894

1 memorandum, we will refer to it, but I will not seek to
2 introduce it.

3 MR. PETERS: No problem.

4 THE COURT: Okay.

5 MR. BECKER: Judge, we need to approach on another
6 matter. I'm sorry.

7 (Counsel approached the bench and the following
8 proceedings were had:)

9 MR. BECKER: I don't know if this is Miss Hunt's
10 issue or -- the defense has requested certain transcripts.

11 THE COURT: Just a minute. Miss Hunt?

12 MR. BECKER: The defendants have ordered certain
13 copies of transcripts. In my 16 years of practice, I've
14 always had an understanding with any court stenographer that
15 if the opposing side would order something, I would request a
16 copy, and we would pay for it in the normal course of
17 business.

18 I'm now told, I thought we addressed this a week
19 ago, but now I'm now told that the stenographer has been
20 requested not to tell us what's been ordered, and it's
21 amazing to me that we can put court personnel in that
22 position. She's a court stenographer, and if something is
23 ordered, I can place a standing order to have a copy of it.
24 It's always been my practice.

25 THE COURT: I don't understand why it would be

1 otherwise.

2 MS. HUNT: I never said that to her. I've never
3 talked to her about it.

4 THE COURT: Somebody has because it's also happened
5 to my reporter, that is, the reporter in my division.
6 Somebody on the defense side has told these ladies not to
7 reveal to the government what pages they've ordered.

8 MR. BUNCH: Not me, Judge.

9 MR. OSGOOD: Not me.

10 MS. HUNT: No.

11 THE COURT: ALL right, then, it's no problem.

12 MR. O'Connor: I have ordered through Libby Shinn
13 land this lady here transcripts personally, not through any
14 CJA money, that Miss Sheppard paid for for her son's
15 transcripts. And what I said to Libby Shinn, I said, do you
16 have to tell Mr. Becker that they were ordered if they were
17 ordered privately and not through CJA funds.

18 And they were in a quandary about it. And I said
19 to them, and you can ask them, then handle it the way you
20 would normally handle it, but my position is I'm paying for
21 these privately. Unless the government is going to share in
22 those, I don't think he's entitled to them. That's what I
23 said, but I did not put it on them.

24 MR. BECKER: I don't understand. Who pays for it
25 ~ doesn't really matter. I mean, I've tried a lot of cases

2896

1 against private attorneys who use their own money to get
2 overnight copy, and I've always gotten a copy. We pay for
3 our own copies. I don't know -- we don't have to pay his
4 costs, but we pay our own costs. I don't understand this.

5 THE COURT: Well, do you take the position that
6 there's some sort of rule or statutory exemption from
7 distribution of these things or publication of these
8 transcripts?

9 MR. O'Connor: It's my understanding from talking
10 to Miss Shinn and the other court reporter, after they're
11 prepared they'll be filed and become part of the court
12 record. If he gets them out of the public record, that's his
13 business, but I'm not going to tell him they're there.

14 THE COURT: she doesn't need to withhold that
15 information.

16 MR. BECKER: When they're in the public record, the
17 stenographers rightly complain if we just go down and
18 photocopy them, they don't get the appropriate reimbursement
19 for their efforts. That's why we do it. And also to get a
20 speedy turnaround time so I'm not caught without something
21 that the other side has. I certainly would never request a
22 court stenographer not to tell the defense what I've
23 ordered. I mean -

24 THE COURT: That's going to be the way it's going
25 to be.

1 (The following proceedings were had in the
2 courtroom in the presence of the jury in open court:)

3 THE COURT: ALL right. Mr. Marquardt, I'll remind
4 you you're still under oath.

5 THE WITNESS: Yes, Your Honor.

7 PAUL MARQUARDT,
8 having been previously sworn, testified further as follows:

9 _-_-

10 RESUMED DIRECT EXAMINATION

11 By Mr. Becker:

12 Q. Special Agent Marquardt, good morning.

13 A. Good morning.

14 Q. I guess we left, we started out this morning the way we
15 left yesterday, at the bench, but let me continue, if I may.

16 I want to show you what's been marked for
17 identification purposes as Government's Exhibit 409-A. What
18 is that?

19 A. This is what we call a K-SAR or a significant activity
20 report. This is a report that we send from Kansas City to
21 Washington, D.C., to our headquarters when there's a
22 significant event that takes place.

23 Q. What's the purpose of that report?

24 A. Just to give them the earliest possible information in
25 case they get any immediate inquiries or
anything else so

1 they at least are aware of what happened and where it
2 happened.

3 Q. When was this report sent to Washington?

4 A. On November 30th, 1988.

5 Q. What information did you transmit to Washington in this
6 report?

7 A. Well, the purpose of the report was to relay the
8 information that six firefighters had died, had been killed
9 in the explosion. And then the details of it were that an
10 explosives trailer with approximately 20,500 pounds is what
11 the report said of ANFO had been engulfed in fire, and it
12 exploded as the firefighters were attempting to extinguish
13 the fire.

14 Q. Go ahead.

15 A. It went on to say that sometime later, I believe it's 31
16 minutes, something like that, a second explosives trailer
17 also exploded. There were no injuries from that because the
18 area had been evacuated. It went on to discuss the fact that
19 it wasn't arson, that the pickup truck across the street had
20 been arson.

21 Q. Did you physically yourself inspect that pickup truck?

22 A. Yes.

23 Q. What do you remember about seeing that pickup truck on
24 the morning of November 29, 1988?

25 A. The front seat was burned.

1 MR. PETERS: Excuse me, Judge. Just for the
2 record, he's referring to the pickup truck on 71 Highway as
3 opposed to the pickup truck at -

4 MR. BECKER: Is there an objection?

5 MR. PETERS: Yes. Objection, it's not clear as to
6 which pickup truck he's referring to. There are two pickup
7 trucks at the scene.

8 Q. (By Mr. Becker:) Right. We can get that. Agent

9 Marquardt, what pickup truck are you talking about?

10 A. I'm talking about the one that was across the four-lane
11 highway, 71 Highway there. It was not in close proximity to
12 the trailers that exploded. It was across the highway.

13 Q. What do you remember about your seeing and looking and
14 being near that pickup truck that was parked on 71 Highway?

15 A. You could smell that it was gas or some kind of
16 distillate.

17 Q. Now, in this report, this K-SAR report that was sent to
18 Washington on November 30, 1988, is there any information in
19 that report whatsoever that there was a bomb in either one of
20 those trailers up on the hill?

21 A. No.

22 Q. I want to show you what's been marked for identification
23 purposes as Government's Exhibit 409-B, ask if you recognize
24 this.

25 A. Yes. This is what is referred to as a personal history

1 text input form. It's a document that we fill out and then

3 Q. What's the purpose of that document?

4 A. It's to give personal history information of the victim
5 of a crime, or in some cases the defendant or subject of a
6 crime. It's to take this information and computerize it so
7 it goes in a computer.

8 Q. Did you fill out that form which is now marked for
9 identification as Government's 409-B?

10 A. Yes, I filled it out, and it's dated December 1st, 1988.

11 Q. And that would have been two days after the event that
12 we're obviously talking about here, right?

13 A. That's correct.

14 Q. And does that form reflect information that you gathered
15 during those two days?

16 A. Yes.

17 Q. And was it made, that form, in the regular course of
18 business activities of the Bureau of alcohol, Tobacco, and
19 Firearms?

20 A. Yes, we're required to fill out one of these every time
21 we open an investigation.

22 . And then not only this one, but, certainly, this form is
23 used in every case that ATF conducts?

24 . That's correct.

25 MR. BECKER: I would offer this into evidence as

1 Government's Exhibit 409-B.

2 MR. PETERS: Is that the one-page one, Paul?

3 MR. BECKER: Yes.

4 MR. PETERS: No objection.

5 THE COURT: May I see that a minute, Mr.

6 Marquardt?

7 Mr. Marquardt, this is titled after the treasury
8 and ATF identification, Personal History/TECS, T-E-C-S,
9 input, right?

10 THE WITNESS: That's our computer system.

11 THE COURT: And the personal history is on the
12 permittee, right?

13 THE WITNESS: That's correct.

14 THE COURT: In this instance, Mountain Plains
15 Construction, Inc., which was the outfit that held the permit
16 to have the explosives; is that right?

17 THE WITNESS: Yes. Besides the firefighters who
18 were killed, that would be the victim of the arson, so that's
19 why that name was placed on there.

20 THE COURT: Okay. Thank you. That 409-B, then,
21 will be, is admitted without objection.

22 (Government's Exhibit 409-B was admitted into
23 evidence.)

24 Q. (By Mr. Becker:) If we could, then, Agent Marquardt,
25 could you look at the form. And at the top, then, I think

1
2 the judge just covered the name Mountain Plains, that's the
3 federal explosives permittee; is that right?

4 A. That's the name of the construction company that was
5 operating up there, and these are what we call Type 5
6 explosives trailers, and they were the ones that owned
7 those. It was their explosives. They were using it up there
8 to do blasting, and they were a federally, they were a
9 federal permittee, they had to have a federal permit.

10 Q. Is there listed on there their place of business?

11 A. Yes, their address is 6319 Kansas Avenue, Kansas City,
12 Kansas.

13 Q. Now, further along down that form is something, No. 18,
14 profile. What is profile?

15 A. These are just codes that we use to give basic
16 information about the, what kind of case it is.

17 Q. ALL right. Then, the first one, I believe we've
18 discussed this before, and it's Y24. What does Y24 stand
19 for?

20 A. Y24 is a code for arson.

21 Q. And what's 076?

22 A. 076 is also a code for arson.

23 Q. Why do you have two codes for arson?

24 A. One is what we call a crime impact code, and one is a
25 project number code. It's just two different ways of saying
the same thing.

1 Q. MUR, what does that stand for?

2 A. That stands for murder.

3 Q. And then finally at the end, EXL?

4 A. That stands for explosives licensee or permittee. In
5 this case, they were an explosives permittee, so that's why I
6 put EXL.

7 Q. And then No. 19, this case investigation is open; is
8 that right? You're opening up this investigation?

9 A. Right.

10 Q. And then at the bottom, then, what remarks do you put
11 relating to this event?

12 A. 11/29/88, victim of suspected arson to explosives
13 trailer containing blasting agent, and in parens I wrote
14 ANFO, which resulted in the deaths of six KCMOPD firemen.

15 I must have written PD just as a slip there because
16 I'm so used to writing KCMOPD, it must have just came out PD
17 down there. That means police department, but it was just a
18 slip on my part when I wrote it.

19 Q. I'd like to show you what's been marked for
20 identification purposes as Government's Exhibit 409-C. Ask
21 you if you recognize this.

22 A. This is an ATF form 3270.2, which is a report of
23 investigation. In fact, that's what it's titled at the top.
24 These are the reports that we do to document to headquarters
25 what we're doing in the investigation.

1 Q. This particular document, did you prepare that report?

2 A. Yes. It's dated December 1, 1988.

3 Q. Did you sign that at the bottom of Page 1?

4 A. Yes.

5 IQ. Is it also reviewed and signed by anyone else at the
6 Kansas City, Missouri, Division of ATF?

7 A. Yes. It is reviewed by your group supervisor. In this
8 case it was Richard VanHaelst, who also signed it on 12/2 of
9 ,88. It is further reviewed in this case by our assistant
10 special agent in charge. At that time that person was David
11 L. Benton. He signed it on 12/15/88, and then there are
12 1 initials above that that I recognize. Our special agent in
13 charge at that time is Floyd Truman, and his initials appear
14 above that. And he dated it 12/6 of ,88.

15 Q. Was this the case-opening memorandum back to Washington?

16 1 A. Yes.

17 Q. Very briefly, did it contain similar information to what
18 1 was sent, I guess, some days earlier in that K-SAR report?

19 A. Yes. It's a little more detailed, but, basically, it's
20 the same information.

21 Q. Anywhere in this report, is there any information that a
22 bomb was placed in either one of those two trailers that
23 exploded on top of the hill?

24 A. No. In fact, at the top of the page is where we have to
25 ~ say what the crime impact code is. And I coded it as arson.

1 Q. Now, moving ahead to January of 1989, you had testified
2 yesterday you were the case agent in this investigation; is
3 that right?

4 A. Yes.

5 Q. Was there a change in the case agent at or near that
6 time?

7 A. Yes.

8 Q. What happened?

A. Well, at that time, at the time that the blast occurred,
10 I was duty agent, but at that same time I was assigned to the
11 organized crime drug task force. I had a number of cases
12 going then that involved California gangs, Crips and Bloods.
13 In fact, had to go to Los Angeles on that investigation in
14 early January. When the case went through the month of
15 December -

16 Q. When the firefighters case?

17 A. Yes, when this case, the firefighters case went through
18 the month of December and I had trials coming up in these
19 drug and firearms cases starting in January and February, it
20 became apparent that I wasn't going to be able to continue as
21 case agent on it, and the case was transferred to David True,
22 who is our, you know, at that time was our cause and origin
23 specialist and had a lot of experience in arson
24 investigations.

25 In addition to that, there was a case that we were

1 going to do on Mountain Plains, the permittee' for a storage
2 violation' and it was determined that I would concentrate on
3 perfecting that end of this investigation. So I branched out
4 and did a case report on the storage violation of Mountain
5 Plains, and Mr. True took over as the case agent of the
6 criminal investigation.

7 Q. And eventually, I guess, in 1989 or early 1990, was
8 Mountain Plains charged and convicted for, and Norm Collins
9 and Mike McReynolds for various regulation violations?

10 A. Yes, for storage violations, that's correct.

11 MR. BECKER: I have no further questions at this
12 time, Judge.

13 THE COURT: All right. Cross?

14 _ - _

15 CROSS-EXAMINATION

16 By Mr. Peters:

17 Q. Agent Marquardt, my name is Pat Peters. I represent
18 Frank Sheppard, and I wanted to go over some stuff, I guess,
19 in reverse order. Dave True is the cause and origin
20 specialist for this ATF office; is that correct?

21 A. Yes.

22 Q. At the time that you sent this report to Washington, had
23 Dave True provided you with a cause and origin report
24 relating to this explosion?

25 A. Which report are you referring to?

1 Q. At the time that you sent the K-SAR report and the
2 multi-page narrative' had Dave True provided you with a cause
3 and origin report?

4 A. No.

5 Q. For the jury's benefit, what's a cause and origin
6 report? What are we talking about?

7 A. Cause and origin is -- I don't know exactly what you
8 mean by report, but they are the investigators that are
9 trained to determine whether something's an arson or of an
10 accidental nature.

11 Q. And when we talk about arson, an arson in the broad
12 context is any fire, explosion, that is not accidental or not
13 natural; is that correct?

14 A. I wouldn't agree with that.

15 Q. Okay. What do you mean by an arson?

16 THE COURT: Well, if -

17 MR. BECKER: Objection. Outside the scope of
18 direct examination.

19 THE COURT: Well, he's -

20 MR. BECKER: Actually, I'll withdraw it, I'm sorry.

21 THE COURT: All right.

22 Q. (By Mr. Peters:) What do you mean by arson?

23 A. Arson is when something from an incendiary nature is
24 done. If you use a bomb, that's not an arson.

25 Q. And at the time that you sent this report, had you seen

1

1 any cause and origin reports that -

2 THE COURT: Are you saying origin?

3 MR. PETERS: Origin.

4 THE COURT: Origin? I'm just puzzled by origin.

5 Is it O-R-I-G-I-N?

6 MR. PETERS: That's the word I'm trying to say,

7 Judge.

8 Q. (By Mr. Peters:) How about if I say the c& A report -

9 c& O. the cause and -- the arson report. At any time prior
10 to your transmitting this, had any investigator prepared a
11 report that you'd seen that eliminated an explosion?

12 A. When I prepared this report, I was at the scene. I was
13 there when the Kansas City, Missouri, Police Department arson
14 investigators made the determination that the pickup truck
15 was an arson.

16 Q. And the determination of arson had been made as to the
17 pickup truck because you could actually smell the gasoline
18 when you approached the truck, correct?

19 A. Yes.

20 Q. At that time, no determination as to the cause of the
21 explosion that killed the six firefighters had been made, had
22 there been?

23 A. I don't know if it was an official report. We're going
24 by the eye witness accounts that the trailer was in flames
25 ~ when the firefighters arrived.

1 Q. How many people had you interviewed to gain this
2 knowledge that eye witness accounts told you that the trailer
3 was in flames?

4 A. I gathered that information from the other
5 investigators.

6 Q. So you never interviewed anybody who said the trailer
7 was in flames from their own personal knowledge, did you?

8 A. I didn't personally, but I was the case agent. People
9 reported that to me.

10 Q. And if they reported things to you, you were also told
11 that the trailers were glowing, according to the fire
12 professionals, at the scene; is that right?

13 A. That's correct.

14 Q. That the trailer was glowing and not on fire, other than
15 fire looping over the back and the middle of the trailer.
16 That's what you'd been told by the fire professionals at the
17 scene; isn't that correct?

18 A. Are you saying that if something is glowing it's not on
19 fire? I'm not understanding what you're saying.

20 Q. Are you suggesting to this jury that if something -

21 MR. BECKER: object to the form of the question.

22 THE COURT: It's argumentative.

23 Q. (By Mr. Peters:) Are you telling this jury -

24 MR. BECKER: Objection.

25 THE COURT: That's argumentative. Either he's

1 saying it or he isn't. He's saying it to all of us, me too.

2 Q. (By Mr. Peters:) If something is glowing, is it your
3 testimony that it is then on fire?

4 A. The witness accounts that were reported to me was that
5 the firefighters as they were there could actually see the
6 rims of the trailer. I mean, if that isn't a fire, I don't
7 know what it is.

8 Q. So let me reask my question. If something is glowing,
9 is it your testimony that it is on fire?

10 A. Depends on what you mean by what's glowing. If a
11 trailer is in flames and it's glowing inside, yes, then I
12 would say it's on fire. If you're talking about a glow stick
13 or something is glowing, it's not on fire. But under the
14 circumstances of what we're looking at and what we're talking
15 about here, yes, that trailer was on fire.

16 Q. Okay. Let's take a more common example. A charcoal
17 brick used for barbecuing, is there a difference in your mind
18 between when that charcoal brick glows from heat versus when
19 it is combusted by fire?

20 A. It's usually combusted by fire before it starts glowing.

21 Q. Is there a difference between the glowing of a charcoal
22 brick and a flame from a brick?

23 A. It's burning.

24 Q. Okay. So in your mind, there is no difference between
25 something that is glowing from heat and something that is

1 burning; is that correct?

2 A. I'm not sure I'm understanding your question' but that
3 trailer was on fire' and that's my answer.

4 Q. And you know that from your own personal observations?

5 MR. BECKER: Objection. Argumentative.

6 THE COURT: It is.

7 Q. (By Mr. Peters:) Do you know that from your own
8 personal -

9 MR. BECKER: Objection. We've covered this ground.

10 THE COURT: Yeah. He's said what the source of his
11 conclusion is, counsel. Let's move on.

12 Q. (By Mr. Peters:) At the time that you sent this report
13 to Washington, D.C., had you seen a professional report
14 prepared by the Kansas City Bomb and Arson Unit or an ATF
15 bomb and arson unit that had determined that the cause of the
16 fire on November 29th, 1988, was arson?

17 MR. BECKER: objection, repetitious. It's been
18 asked and answered.

19 THE COURT: I'm not sure. I'll let him answer.

20 Q. (By Mr. Peters:) Have you seen -

21 THE COURT: Just a minute. You've asked the
22 question. Had you seen such a report?

23 THE WITNESS: No.

24 THE COURT: All right. Let's go on.

25 Q. (By Mr. Peters:) Now, you were the agent in charge, is

1 that correct, on the early morning of November 29th, 1988; is
2 I that correct?

3 IA. Well, it was later in the day that I was notified that I
4 was going to be the case agent, but I was present.

5 Q. On your way to the scene, in your direct examination,
6 you testified that you gathered equipment for investigating
7 bomb scenes; is that correct?

8 A. No, that's not what I said. I said that other agents in
9 the office reported, or other agents that we had called
10 reported to the office to gather equipment that we use at
11 bomb scenes.

12 Q. And what type -

13 A. We also use the same equipment at arson scenes. It's a
14 bomb and arson truck. It's equipment that we use at both of
15 these. ALL the equipment is the same.

16 Q. What type of specialized equipment did ATF bring to the
17 scene on November 29th to investigate whether or not a
18 bombing had occurred?

19 A. I was so occupied up on top of that hill that day, I
20 don't know that we -- I know the bomb truck was brought. And
21 when I say bomb truck, it's called a bomb and arson truck.
22 It contains clothing -- I mean, there's hundreds of things
23 that are in that truck. When it's there, everything is
24 there.

25 ~Q. Can you tell us what specialized equipment the ATF

2913

1 brought to the crime scene on November 29, 1988, to

2 investigate whether or not a bombing had occurred?

3 A. We weren't looking at this as a bombing. It was a

4 fire. It was an arson.

5 Q. So you never brought any equipment to investigate

6 whether or not it was a bomb; is that correct?

7 A. That's not what I said. The equipment that was there

8 can be used for both.

9 Q. Can you tell us whether or not there is any specialized

10 equipment that is available to investigate whether or not a

11 bomb has been detonated?

12 A. Yes, there is.

13 Q. And was that equipment brought to the scene by the ATF

14 on November 29th, 1988?

15 A. When it comes, it's all together, whether it's a bomb or

16 an arson.

17 Q. And what is that specialized equipment that is used to

18 determine whether or not a bomb has been detonated?

19 A. It's a list of -- the bomb truck is full of equipment'

20 so I don't know -- what specifically do you want me to tell

21 you about?

22 Q. Are there certain pieces of equipment that are unique to

23 determining, to looking for whether a bomb has been used as

24 opposed to a regular arson investigation?

25 A. In a case like this where an explosive trailer exploded,

1 any trace evidence, as an explosive, has already exploded.

2 I'm not sure -- I just don't understand your question.

3 Q. Agent Marquardt' what I'm asking you is was there any

4 specialized equipment used by ATF, to your knowledge, to

5 determine whether or not a bomb exploded on November 29th?

6 A. The specialized equipment that we used that day could be

7 used for either arson or explosives.

8 Q. And to your knowledge, did any of that equipment rule

9 out the possibility of a bomb on November 29th, 1988?

10 A. Equipment doesn't -- I mean, I don't understand what

11 you're asking me. Equipment doesn't rule out anything.

12 Equipment is tools that we use to gather evidence. If you

13 think there's some little gizmo that you can set up and it

14 lights up and says this was a bomb or this was an arson, we

15 don't have anything like that. I don't know what you're

16 talking about.

17 Q. Does the ATF have any bomb sniffing dogs?

18 A. Now we do. We didn't then.

19 Q. You didn't have any bomb sniffing dogs at the site on

20 November 29th, did you?

21 A. No.

22 Q. Did you have any equipment to detect trace elements of

23 an explosive PETN, did you have that on November -

24 A. What blew up there was an explosive, sir.

25 Q. Are you testifying that ANFO would be detectable as

1 PETN, a trace element of dynamite?

2 A. That's not what I'm testifying to. What I'm testifying
3 to is the ANFO when it blew up is -- when it blows up, it's
4 an explosive.

5 Q. Is it an explosive or a blasting agent?

6 A. It's a blasting agent. And when you use a booster or
7 anything to blow it up, in this case an arson fire, it blows
8 up.

9 Q. And if the cause of this explosion had been fire, as
10 opposed to a bomb, there would not have been any PETN at the
11 site; isn't that correct?

12 A. I don't know what was at the site after something -
13 that left a 40-foot crater, Mr. Peters. If you're talking
14 about PETN, it's a minute amount that is in blasting caps.
15 You're talking about a 40-foot crater here. I don't know of
16 any equipment anywhere that would detect whether PETN was
17 there anymore after an explosion of that size.

18 Q. Are you familiar with an investigation into Flight 800,
19 a TWA flight blown out of the air found on the bottom of the
20 ocean where tests were conducted for PETN and discovered
21 PETN? Are you aware of those tests?

22 MR. BECKER: Objection. We're -

23 THE COURT: This is interesting, but I don't think
24 it's material. I'll sustain the objection.

25 Q. (By Mr. Peters:) No tests were made for PETN by the ATF

1 on November 29th; is that correct?

2 A. Not that I'm aware of.

3 Q. Did you have any equipment at the site to test for PETN?

4 A. Equipment you're talking about would be swabs or
5 something like that. That's evidence that's sent to a lab.
6 That's where the test for PETN is done.

7 Q. And what items did the ATF recover to submit for
8 laboratory analysis, if you know?

9 A. ATF, as far as I know, at that time didn't recover.
10 That was a Kansas City, Missouri, Bomb and Arson Unit crime
11 scene.

12 Q. The ATF didn't recover any items of evidence, as far as
13 you know?

14 A. Not that I'm aware of.

15 Q. Okay.

16 A. They may have later on in the investigation, but I'm not
17 aware of what we did there at the scene that day.

18 Q. Were you present at the scene when the -- and I'm afraid
19 of pronouncing it. Cause and origin?

20 THE COURT: Good.

21 Q. Cause and origin specialist Dave True arrived?

22 A. No. He was out of town the day of the blast and didn't
23 arrive until sometime that evening. By that time I'd already
24 left the scene.

25 Q. What time did you leave the scene?

1 A. I don't recall exactly. I believe we had about a 2:30
2 in the afternoon briefing down at the police department, and
3 I was, because I was case agent, I was asked to attend that.
4 So I believe it was around 2:30.

5 Q. Were you present when explosives specialist Cliff Lund
6 arrived at the scene?

7 A. No.

8 Q. Okay. Were you present -- did you ever -- was Special
9 Agent Mark James at the scene that day that you recall?

10 A. Not that I recall. He may have been. There were a lot
11 of people there that day, and I can't remember everybody.
12 But I know he was involved later in the investigation. I
13 know that. So whether he was actually there that day or not,
14 I don't remember.

15 Q. And there were over a hundred different law enforcement
16 people there during the initial, I mean, this first day, day
17 and a half, wasn't there?

18 A. It got real crowded.

19 Q. Okay. Was Gene Schram from Department of Labor, Labor
20 Racketeering Section, there, did you see him there that day?

21 A. No, he was not there.

22 Q. You were agent in charge until what date? What
23 approximate date did the transition occur?

24 A. I think it happened on January 5th, 1990 -- I'm sorry,
25 1989. I'm sorry, 1989.

2918

1 Q. And after January 5th, you still remained involved in
2 different parts of the investigation, or from that point on
3 was your investigation solely limited to the criminal charges
4 that ATF brought against Mountain Plains and the blasting
5 employees?

6 A. Pretty much, yeah. Most, I would say probably 95
7 percent of my time was devoted to perfecting that case
8 against Mountain Plains.

9 Q. Were you aware of, through January 5th, 1989, were you
10 aware of picketing at the Highway 71 and 87th Street site
11 between 11/8 -- excuse me, 11/9 and 11/15 of 1988?

12 A. I'm not.

13 Q. Did you ever see any of the reports prepared by Gene
14 Schram from Department of Labor?

15 A. No. I've never seen any of his reports.

16 Q. Have you ever seen a cause and origin report prepared by
17 anyone from ATF relating to the November 29th explosion?

18 A. Not that I'm aware of.

19 Q. Have you ever seen a cause and origin report prepared by
20 anyone else relating to the November 29th explosion?

21 A. I haven't, not personally.

22 Q. And regarding the K-SAR report that you filed and the
23 codes that you use, you're using codes that you're supposed
24 to use with the K-SAR; isn't that correct?

25 A. We determine what the codes are, if that's what you

1 mean.

2 Q. Right. You weren't using codes designed for a Form 3270
3 type of incident; is that correct?

4 A. You lost me there.

5 Q. I'm showing you Defendants, Exhibit No. 7, which is
6 titled Alcohol, Tobacco, and Firearms Explosives Incident
7 System, EXIS codes, Page 2, titled Type of Incident?

8 A. These codes are something that aren't even in the
9 field. I've never seen this before. Mr. Becker showed me
10 this several days ago, and I told him then that these codes
11 aren't even in the field. We don't get these. These are
12 something done by somebody at headquarters.

13 Q. Right. And so the codes that you were providing to
14 Washington were not these EXIS codes that you've just looked
15 at; isn't that correct?

16 A. They're two separate systems entirely.

17 Q. And you had no control over the information that you
18 submitted to Washington, how somebody else is going to enter
19 it into a different database, did you?

20 A. That's correct.

21 MR. PETERS: Okay. One moment, Judge. I have no
22 further questions.

23 THE COURT: ALL right. Anything else on cross?

24 MR. OSGOOD: I have a couple of questions on a
25 different subject.

2920

2 CROSS-EXAMINATION

3 By Mr. Osgood:

4 Q. Agent Marquardt, you said -- I'm John Osgood.

5 A. Yeah, I know you.

6 Q. You know me. I represent Mr. Brown. I wanted to ask
7 you a couple of questions.

8 You said that Mountain Plains, I believe,
9 self-reported themselves, as they're required to do under the
10 regulations? Probably a self-report wasn't necessary, they
11 knew it happened.

12 A. What do you mean by self-reported themselves?

13 Q. Well, when they have an incident regarding explosives, a
14 theft, a loss, an unexpected explosion, something like that.

15 MR. BECKER: Objection. Outside the scope of
16 direct.

17 MR. OSGOOD: No, it's not, Your Honor.

18 THE COURT: I'm not sure where it's going.

19 MR. OSGOOD: It will become apparent where I'm
20 going in a minute, Your Honor.

21 THE COURT: Well, do you remember whether there was
22 self-reporting on the part of Mountain Plains?

23 THE WITNESS: I'm not sure. He said I said they
24 self-reported. I'm not sure what he's referring to. I don't
25 remember saying that today. I don't know what you're talking

1 about.

2 Q. (By Mr. Osgood:) I think what you said was they were
3 assessed an administrative fine or something for -

4 A. They were convicted for storage violations, and one of
5 those violations was failure to report the acquisition of
6 explosives magazines, which were the two -- if you remember
7 from yesterday when we talked about the cap magazine and the
8 high explosives magazine. They were not damaged in the
9 blast. They failed to report to us that they acquired those,
10 and they were convicted on that charge.

11 Q. That's what I was going to ask you about. There are
12 regulations that require when an explosive is transferred
13 from A to B to C that it be accounted for in every move and
14 every transaction; is that correct?

15 A. Well, not necessarily. It depends on what it is. A
16 blasting agent like that is not reportable because it's in
17 portable containers.

18 Q. What about the dynamite?

19 A. The dynamite, they have to report to us when they
20 acquire a magazine, and then they keep daily records
21 themselves of the use of it.

22 Q. And those are subject to inspection by ATF?

23 A. Yes.

24 Q. And if there's a loss, they're required to report that
25 to you?

1 A. Yes.

2 Q. And they can actually be assessed a fine, even though
3 they're required to self-report; is that true?

4 A. That's -- well -

5 Q. Administratively?

6 A. If they had -- when you say self-report, you're throwing
7 me there, because if they report to us that there's a theft
8 and we go out and investigate the theft and we find other
9 administrative things that they're doing wrong, yes, they
10 could be not necessarily fined, but they could be cited.

11 Q. ALL right. And this is true in each link of the chain
12 with dynamite, isn't it, in terms of the regulations?

13 A. Yes. It's fairly regulated, yeah.

14 Q. And you track very closely the loss of dynamite if it
15 gets loose in the community, don't you?

16 A. Yes, it's -- the law requires it be reported to us
17 within 24 hours of the theft.

18 Q. And when dynamite is recovered from someone that you
19 suspect didn't have a permit or reason to have it, do you
20 trace that dynamite back to the last legitimate holder if
21 it's got numbers on it and markings and whatnot?

22 A. It sometimes is done or can be done.

23 Q. So is it fair to say that it's a highly regulated
24 commodity?

25 A. Well, the problem that we've run into over the years is

2923

1 that the storage violations are only misdemeanors. So if you
2 catch somebody with explosives' unless you can prove that
3 they possessed it and knew where it, you know, knew what it
4 was, just merely having it is a misdemeanor.

5 Q. Well, but my point is, it is a regulated item, it's not
6 like bananas or oranges or other commodities, it's a highly
7 regulated commodity?

8 A. Yes, depending on what it is.

9 Q. And so is it fair to say that it's a significant
10 incident, as far as ATF is concerned, if dynamite comes up
11 missing?

12 A. If it's stolen, yes.

13 ~ Q. ALL right. Did you have in your recollection prior to,
14 or did you check in the time period, let's say, a year prior
15 to the explosion in 1988 as to whether or not there were any
16 thefts of dynamite in the Kansas City area?

17 A. I personally did not.

18 Q. Did the ATF?

19 A. Whether somebody checked that or not, I'm not really
20 aware of.

21 Q. But based on your experience, would you have checked it
22 if you were the one in charge?

23 A. I don't believe so. To me that was not a factor in this
24 investigation.

25 Q. Well, and that's precisely my point. The dynamite -

1 MR. BECKER: Judge, could we have questions,
2 please?

3 Q. (By Mr. Osgood:) If you thought somebody threw a stick
4 of dynamite under the trailer, for example, and blew the
5 trailer up, you would have looked for stolen dynamite,
6 wouldn't you?

7 A. If we had reason to believe that somebody threw a stick
8 of dynamite at it, yeah.

9 Q. And if there had been prior to the explosion thefts of
10 dynamite from that site up there, you would have known about
11 it or checked on that, wouldn't you?

12 A. Yes.

13 Q. And during the eight-year course of this investigation,
14 you have nothing in your files to indicate that anybody in
15 the Kansas City area within a reasonable time frame
16 bracketing this explosion, going back, say, six months or a
17 year, stole any dynamite, do you?

18 A. That's not true. That's not what I said.

19 Q. Well, do you know the answer to my question?

20 A. The file on this case is so extensive, I would be
21 surprised if there isn't something in there along those
22 lines. But my point is that whether it was involved in this
23 case or not, ATF keeps track of any reported theft of
24 dynamite, whether it's involved in this case or not.

25 Q. Exactly. And did you try to backtrack the dynamite that

1 was seized from Mr. Lonnie Pugh within 30 days of this
2 incident?

3 MR. BECKER: Objection. There's absolutely no
4 evidence of dynamite from Lonnie Pugh.

5 MR. O'Connor: Steve Morales.

6 THE COURT: Sustained.

7 Q. (By Mr. Osgood:) I'm sorry, Mr. Morales.

8 A. I have no personal knowledge of that case at all.

9 MR. OSGOOD: ALL right. Thank you.

10 THE COURT: ALL right. Anything else? Any
11 redirect?

12 MR. BECKER: None, Your Honor.

13 THE COURT: ALL right. Thank you, Mr. Marquardt.
14 You may step down. Call your next witness.

15 MR. BECKER: United States calls Steve Scheid.

16 THE COURT: Come up, stand by the witness chair,
17 and be sworn, please, Mr. Scheid.

1 Q. What is the explosives incident system?

2 A. ATF has a system where we capture explosive incidents,
3 arsons, that type of information, and do a database.

4 Q. And when was that set up?

5 A. It was set up in 1974 and ,75. It went operational in
6 1975.

7 Q. Since -- what's your involvement with that system since
8 beginning with ATF in 1977?

A. ,77. I oversee the data that goes into the system. I
10 read all of the reports that ATF generates throughout the
11 country on explosive incidents and arsons.

12 Q. First, what is an explosive incident?

13 A. An explosive incident is any type of incident that
14 involves explosives, such as -

15 Q. ALL right. What are your sources of information? Where
16 do you get information to put into this system?

17 A. From ATF, I get it from the reports of interview,
18 reports of investigation that are the thirty, ATF Form
19 3270.2, and a computer-generated form that's called a R-SAR.

20 Q. Do you get information, as well, from state and local
21 law enforcement agencies?

22 A. Yes, I do.

23 Q. What does that relate to?

24 A. That relates to bombings and explosive incidents that we
25 do not get involved in as an agency. We do not investigate

1

1 every bombing or arson in the country.

2 Q. But you attempt to gather information from all such
3 events?

4 IA. Yes, sir, I do.

5 Q. What's the purpose of that?

6 A. The purpose is fourfold. First, it's for investigative
7 work, statistical information, research, and intelligence.

8 Q. So if there are a number of different bombings in
9 different cities, would you be able to get that information
10 and then alert the various local or state agencies that there
11 may be something else, that they should be in contact with
12 them?

13 A. Yes, sir.

14 Q. So that's basically, it's a coordination function, as
15 well?

16 A. Yes.

17 Q. Now, you said you're in charge of the system. How many
18 incidents are in this database?

19 A. There's approximately 73,000 explosive incidents and
20 arsons in the system.

21 Q. I want to take you back, please, to the early part of
22 December, 1988. Did you have the same position that you've
23 just described?

24 A. Yes, sir.

25 Q. Do you recall an explosive incident here in Kansas City,

1 Missouri, an explosion that killed six firefighters?

2 A. Yes, sir.

3 Q. Well, of all of these thousands of reports that you

4 receive, do you have an independent recollection of this

5 case?

6 A. Yes, I do.

7 Q. Why?

8 A. Because it was significant. The six firefighters were

9 killed, and that's something that I remembered.

10 Q. In -- I mean, in your line of work, you see reports from

11 all over the country; is that right?

12 A. Yes, sir.

13 Q. Now, I want to show you what's been marked for

14 identification purposes -- let me just start over again.

15 So I want to show you what's been marked for

16 identification purposes as Government's Exhibit 409-A and ask

17 you if you recognize that.

18 A. Yes, sir, I do.

19 Q. What is that?

20 A. This is a, what we call at headquarters a K-SAR. It's a

21 significant activity report that's generated by our field

22 offices to notify headquarters of significant incidents that

23 occur in their respective field divisions.

24 Q. Is this one of the documents that you receive from the

25 field, and did receive in this case, that you would use to

2930

1 put the information in your explosive incident system?

2 A. Yes, sir.

3 Q. I also want to show you what's been marked for
4 identification purposes as Government's Exhibit 409-C and ask
5 you if you recognize that.

6 A. Yes, sir, I do.

7 Q. What is that?

8 A. This is ATF's report of investigation. It's ATF Form
9 1 3270.2.

10 Q. Is there any way to tell on that form whether or not
11 that's the first one relating to this case?

12 A. Yes, it is.

13 Q. How do you know that?

14 A. In one of the boxes, it's called a preliminary report.
15 And the first report is always the preliminary, and then
16 those after, they become status reports until a final report
17 is done.

18 Q. Now, did you use this document, which is identified as
19 Government's 409-C, in inputting the information in the
20 explosive incidents system?

21 A. I would have probably used both of them.

22 Q. I want to show you now, then, what's in evidence as
23 Defendants, Exhibit 8 and call your attention to a page
24 that's been tabbed. Do you see on that page -- first of all,
25 this whole document, what is this?

2931

1 A. This is a printout from ATF's explosive incident system
2 of certain amount, or a certain type of explosive incidents.

3 Q. Now, are you aware that was provided to the defendants
4 at their request by Cliff Lund?

5 A. Yes, sir.

6 Q. Is there a line there that has to do with this case?

7 A. Yes.

8 Q. Did you put that line in the computer system?

9 A. Yes, I did.

10 Q. Could you tell the Court, tell all of us, please, what
11 information is on that line?

12 A. Okay. It's the investigation number; the date of the
13 incident; the type of incident, which I put in there as a
14 bombing; the victim, which is Mountain Plains Construction
15 Company; Kansas City is the city in which it happened, the
16 State is Missouri. The target is an explosive magazine. I
17 have here marked a homicide type motive, six people killed;
18 and the damage amount, I really can't -- it's six hundred and
19 some thousand dollars worth of damage.

20 And I believe that's -- these documents are faxed,
21 and this one area is -- I believe it's around 4 a.m. in the
22 morning that the incident happened.

23 . Do you put the exact time of these reports in the
24 system?

25 . We round it up to the nearest hour.

1

1 Q. Is there any other information relating to this case on
2 that particular page?

3 A. Yes. The type of explosives that were involved in the
4 incident.

5 Q. What is that? ~

6 A. That's the code for ammonium nitrate.

7 Q. Now, why did you put the B down there for bombing?

8 A. I used the B category because it involved explosives,
9 and that was my call. That's why I put it in there as a, a
10 bombing.

11 Q. In reviewing the K-SAR, which is Government's 409-A for
12 identification purposes and it is, that memorandum opening
13 the case which is Government's 409-C for identification, have
14 you had the opportunity to, again, review those documents
15 before testifying today?

16 A. Yes.

17 Q. Is there anything at all in those reports from the field
18 that a bomb was placed in the trailer that caused this
19 explosion?

20 A. No, sir.

21 Q. Could this have been classified some other way by you?

22 A. We could have put it in the system as an arson.

23 Q. Why didn't you?

24 A. Because it involved explosives, and I wanted to keep the
25 explosives in with the type of incident that I thought it

1 was, was a bombing type incident. The misuse of explosives
2 in a criminal activity.

3 Q. And your designation in this computer system -- I guess
4 you have the report. Does that have any effect on the
5 operation or investigation that's going on out here in Kansas
6 City?

7 A. No, sir.

8 MR. BECKER: I have no further questions at this
9 time.

11 CROSS-EXAMINATION

12 By Mr. Peters:

13 Q. Sir, you can have that document for a minute. My name
14 is Pat Peters, and I represent Frank Sheppard.

15 Sir, what we're talking about is a K-SAR report
16 comes to you, and then you have to take that report which
17 uses codes for R-SAR and enter it into your system which uses
18 different types of codes for the EXIS system; is that
19 correct?

20 A. Yes, sir.

21 Q. And there really isn't a mystery, it was a judgment
22 call, and that's what you're testifying to; is that right?

23 A. Yes, sir.

24 Q. And so since November 29th, 1988, if any government
25 agency, any law enforcement agency had looked for information

1 about bombings involving ammonium nitrate -

2 A. Yes.

3 Q. -- and they had done a search for bombings, ammonium
4 nitrate, the printout which we have here -- I need to go a
5 step at a time. I apologize.

6 The printout we have here has a number of incidents
7 in addition to bombings with ammonium nitrate; isn't that
8 correct?

9 A. That's correct.

10 Q. And at my request, Cliff Lund from the Explosives Bureau
11 of Alcohol, Tobacco, and Firearms, the explosives expert, ran
12 a computer printout of incidents involving ammonium nitrate;
13 is that fair to say?

14 A. I believe it was ammonium nitrate and ANFO incidents.

15 Q. ANFO. And since November 29th -- or I believe you would
16 have entered this sometime in early December of 1988; is that
17 correct?

18 A. That's correct.

19 Q. Since that time, anybody looking for a bombing involving
20 ammonium nitrate would have been given a printout that would
21 show this information; is that correct?

22 A. Yes.

23 Q. And do you agree that if a defense attorney in a case
24 was given this printout, it would appear that it was
25 designated a bombing based on this printout?

1 A. Yes.

2 Q. And again, I'm going to be pointing -- but you've
3 testified -- it's a short entry. This where I'm pointing now
4 is the date of the incident; is that correct?

5 A. Yes.

6 Q. 11/29/88. There's been a, what is actually here is just
7 a B. which has been highlighted; is that correct?

8 A. Yes.

9 Q. And then this shows the victim as Mountain Plains?

10 A. Yes.

11 Q. And here it is listed as ANFO; is that correct -- I
12 mean, as ammonium nitrate?

13 A. Ammonium nitrate.

14 Q. And in the reports, why was it listed as ammonium
15 nitrate instead of ANFO?

16 A. Because I believe that the trailer contained the
17 ammonium nitrate, and that's what exploded.

18 Q. okay. And then showing you Defendants' Exhibit 7 at my
19 request -- were you -- I'll ask, were you the person who
20 faxed the information to Cliff Lund or ran the printout for
21 him?

22 A. No, sir. I was home on sick leave at the time.

23 Q. okay. So you're really getting pulled into this?

24 A. I had surgery.

25 Q. What we're now showing is Defendants, Exhibit No. 7,

2936

1 which is titled EXIS codes?

2 A. Yes.

3 Q. And EXIS is the computer program that you're the program
4 manager for; is that correct?

5 A. Yes, sir.

6 THE COURT: Has that been admitted?

7 MR. PETERS: Yes, Judge, it's Defendants' 7.

8 Q. (By Mr. Peters:) And on the second page of this type of
9 incident, these are the codes that are entered into the 3270
10 form for entry into the EXIS computer system; isn't that
11 right?

12 A. I used the reports of investigation in the K-SAR, and I
13 used those codes to enter the information into the system.

14 Q. So there really isn't anything mysterious. The K-SAR
15 code uses a Y and some numbers, and that doesn't correspond
16 with the codes that you use in the EXIS system. And you made
17 a judgment call and picked one of these -

18 . That's correct.

19 Q. -- codes. Okay. And, again, if you were defense
20 counsel in a case -

21 MR. BECKER: Objection, he's not -

22 THE COURT: No. He's not defense counsel.
23 sustained.

24 .(By Mr. Peters:) The code that you've entered was not an
25 or an 0, but the B. which is for bombings; is that correct?

2937

1 A. Yes.

2 Q. Okay. You've testified about the database, and I was
3 curious. Were you recently interviewed by National Public
4 Radio?

5 A. Yes, I was.

6 Q. And the focus of that interview was the number of
7 bombings that go on in the United States annually; is that
8 right?

9 A. I believe it was.

10 Q. And is it correct that -- I'm going by memory -
11 approximately 1600 bombings a year occur in the United
12 States?

13 A. Last year -- or in the last year that I can tell you, in
14 1995, there were 2,577; and the year before, there were 3100
15 bombings, so the bombings actually came down from 1994.

16 Q. And do you have any idea how many bombings -- my -
17 never mind. Do you have any idea how many bombings were
18 reported in 1988, approximately?

19 THE COURT: Just a minute.

20 MR. BECKER: We're back to 1988, at least.

21 THE COURT: Okay. You can answer.

22 A. I could not do that without first running a computer or
23 looking at one of our publications that we do annually.

24 Q. Would, can you give us a guesstimate as to -- would it
25 be more than 1,000 bombings?

1 A. I really couldn't say.

2 Q. Is that something that you would be able to, when you
3 get back to Washington, run a search to determine how many
4 bombings were reported in 1988?

5 A. Yes, that is very possible.

6 MR. PETERS: Thank you. I have no further
7 questions.

8 THE COURT: Any other cross? All right. Any
9 redirect?

10 MR. BECKER: No, Your Honor.

11 THE COURT: Thank you, sir. You're excused.

12 Ladies and gentlemen, we'll take a short recess.
13 Don't talk about the case. Don't let anybody talk about it
14 in your presence. You may withdraw.

15 (The following proceedings were had in the
16 courtroom out of the presence of the jury:)

17 THE COURT: We're in recess.

18 (A recess was taken from 10:50 a.m. to 11:08 a.m.)

19 MR. O'CONNOR: Can we approach a minute on the next
20 witness?

21 THE COURT: Yes.

22 (Counsel approached the bench and the following
23 proceedings were had:)

24 MR. O'CONNOR: Your Honor, it's my understanding
25 that the agent has his notes from his interviews with Karen

1 Baird and Kathy Marburger, and we had requested those notes
2 yesterday. And it's the government's position that they had
3 the notes, but they would not turn them over. We believe
4 that they're relevant and necessary in order to examine these
5 witnesses.

6 MR. BECKER: The particular notes -- you know,
7 we've heard quite a bit about the means of conducting
8 interviews. And in this particular interview I think that
9 Mr. O'Connor is referring to, it was videotaped. Before the
10 videotape, and it says it on the videotape, that the agent
11 and the witness talked. And then on the videotape, the agent
12 says, "Now, I'll be referring to my notes when I ask you
13 questions during this recorded interview."

14 So it's the government's position that they have
15 the best evidence; that is, they have a transcript of the
16 video, and the video has been available to them if they
17 wanted to look at it. But just as if the agent then had
18 prepared a report of interview from his notes, we normally
19 don't turn over the notes unless there's some, at least a
20 prima facie claim that there's something exculpatory or
21 different in those notes. Here we have a videotape.

22 THE COURT: Which they have a transcript of.

23 MR. BECKER: Right. So I would suggest that
24 there's no reason -- I've reviewed them. There's nothing
25 inconsistent in those notes. They're barely decipherable. I

2940

1 mean, I could barely read them with the assistance of Agent
2 True. They're just scribblings.

3 MR. O'Connor: For my record, Judge, the specific
4 inquiry I'm most interested in -- this witness is going to be
5 critical against Bryan Sheppard, is basically going to say
6 that at some time or another, I believe she's going to say
7 that at some time or another Bryan Sheppard called from the
8 jail and made certain admissions. She was interviewed back
9 at the time by KCPD, three different interviews in which she
10 said no admissions occurred.

11 And then in this taped interview they ask her, do
12 you remember Bryan Sheppard during one of those conversations
13 crying or being sad, saying that he was present at the
14 explosion the night it occurred, and her answer is, "No, I
15 don't recall him saying that. I'm not saying he didn't, but
16 I don't recall."

17 Well, my point -- what they do then is they have
18 another witness, Kathy Marburger, who was also on a three-way
19 phone call. So they ask her about Kathy Marburger and about
20 this three-way phone call.

21 My point is -- and Mr. Becker can maybe answer this
22 and maybe it's easily answered. She sounds like on here
23 she's starting to equivocate on whether or not he made these
24 statements, whether he said this. And I'm wondering if in
25 the notes that were taken before the interview if she

1 unequivocally said no, he never made those statements on the
2 phone.

3 MR. BECKER: I don't have any specific recollection
4 of that. As I said, these notes were barely decipherable. I
5 can have the agent review them again for that specific -

6 MR. O'CONNOR: That's the only thing I'm asking
7 about.

8 MR. BECKER: If she specifically said no, I never
9 heard -

10 MR. O'Connor: Even a more definitive answer than
11 she did in the tape.

12 THE COURT: Take that up with your agent, and let's
13 go ahead with the witness.

14 MR. BECKER: Judge, the witness is not physically
15 capable of getting up in the witness chair. She's in a
16 wheelchair, so she'll just be placed near the end of the jury
17 box, I suppose.

18 THE COURT: I think you have enough cord to get a
19 microphone around her neck.

20 MR. BECKER: Right.

21 (The following proceedings were had in open court
22 in the presence of the jury:)

23 MR. MILLER: Your Honor, the government calls Miss
24 Karen Baird.

25 THE COURT: ALL right.

2942

2 KAREN BAIRD,

3 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,

4 testified as follows:

5 MR. O'CONNOR: Your Honor, do you mind if I move so
6 I can see the witness?

7 THE COURT: No, that's fine.

9 DIRECT EXAMINATION

10 By Mr. Miller:

11 Q. Would you tell the Court and the jury your name, please?

12 A. Karen Baird.

13 Q. How do you spell your last name?

14 A. B-A-I-R-D.

15 Q. And where do you live?

16 A. South Kansas City.

17 Q. Okay. And how long have you lived at your residence
18 there in South Kansas City?

19 A. Twenty-three years.

20 Q. And how old are you, ma'am?

21 A. Fifty-four.

22 Q. And do you have any children?

23 A. One son.

24 Q. Now, you've lived in that area -- is this the
25 Marlborough area that you live in?

1 A. Yes, it is.

2 Q. Okay. Do you know a Bryan Sheppard?

3 A. Yes, I do.

4 Q. And do you know Richard Brown?

5 A. Yes, I do.

6 Q. How long have you known them?

7 A. I've known Bryan about 23 years.

8 Q. When was the last time you saw Bryan Sheppard?

9 A. It's been two or three years ago.

10 Q. Okay. How long have you known Richard Brown?

11 A. Maybe 18 years.

12 Q. When was the last time you saw Mr. Brown?

13 A. Two or three years ago.

14 Q. Would you be able to recognize them if you saw them
15 today?

16 A. I believe I will.

17 Q. Are you able to see through the courtroom for Mr. Brown
18 and Mr. Sheppard?

19 MR. O'CONNOR: Judge, for the record, I would say
20 that she knows my client for the purposes of identification.

21 MR. OSGOOD: I believe she knows my client, as
22 well.

23 THE COURT: All right. Then, so can we stipulate
24 as to that as to both of them, that she is acquainted with
25 these two defendants?

1 MR. O'Connor: Yes, Your Honor.

2 THE COURT: All right. Go ahead, ma'am.

3 Q. (By Mr. Miller:) And what do you do for a living?

4 A. Right now I'm on Social Security disability.

5 Q. okay. Back in 1988, what did you do for a living?

6 A. Licensed therapist and teacher.

7 THE COURT: I'm sorry? Licensed therapist and

8 what?

9 THE WITNESS: A school teacher.

10 Q. (By Mr. Miller:) And did you do massages, masseuse

11 work?

12 A. I did structural integration. It's similar to a

13 massage.

14 Q. And did you do this out of your house?

15 A. Yes, I did.

16 Q. And how long had you been doing that?

17 A. Since 1984.

18 Q. Now, do you remember the explosion that occurred on

19 November the 29th, 1988, in the morning hours?

20 A. Yes, I do.

21 Q. Where were you when the first explosion happened?

22 A. I was in bed at home.

23 Q. Did it wake you?

24 A. Yes, briefly.

25 Q. And what did you do after the first explosion woke you?

2945

1 A. I went back to sleep.

2 Q. And then what happened after you'd gone back to sleep
3 after the first explosion?

4 A. Well, I was awakened by the second explosion.

5 Q. And after the second explosion, what did you do?

6 A. I heard some glass shatter and got up just to see what
7 was going on.

8 Q. Now, can you recall, did you go back to bed or not? Did
9 you go back to sleep or not after the second explosion?

10 A. I think I laid down across the bed. I don't recall if I
11 fell back to sleep or if I did not.

12 Q. Later on that morning, did Bryan Sheppard and/or Richard
13 Brown come over?

14 A. Yes, they did.

15 Q. Okay. Do you recall about what time in the morning they
16 came into your house?

17 A. It seems like it was about 7:30, 8 o'clock in the
18 morning.

19 Q. Do you know how they got to your home?

20 A. No, I do not.

21 Q. Okay. Where in the home were you when you saw Bryan and
22 Richard?

23 A. I was in my bedroom.

24 Q. And who came back to your bedroom?

25 A. Bryan and Richard.

1

1 Q. And when Bryan Sheppard came back there, what did he
2 want?

3 A. He wanted me to fix his neck and work on his neck.

4 Q. What did he say to you?

5 A. "Karen, can you fix my neck?"

6 Q. And then what did you start to do?

7 A. I felt his neck and started massaging his neck and
8 shoulder area.

9 Q. Now, while you were doing this, what did you notice
10 about his person? I'm talking about Bryan Sheppard, what did
11 you notice about Bryan Sheppard's person as you're starting
12 to massage him?

13 A. I noticed his skin was kind of sandy feeling. I noticed
14 he had some abrasive scratches on his body, on his arms.

15 Q. Was -- go ahead.

16 A. I noticed, observed the smell of smoke and gasoline.

17 Q. What did you notice about his clothing?

18 A. He was kind of dirty and muddy, because I recall laying
19 a towel on the bed to, you know, keep it from getting it
20 soiled.

21 Q. So you put a towel on the bed because of his muddy
22 condition?

23 A. Correct.

24 Q. Now, while you're massaging him, what did you notice
25 about his muscles?

- 1 A. They were tighter than usual.
- 2 Q. And did you ask him anything about why he was so tense?
- 3 A. Yes' I asked him, I reminded him his muscles were very
- 4 tight, and I asked him what happened and why he was so tight.
- 5 Q. What did Bryan Sheppard say to you?
- 6 A. He said, "If you'd been through what I've been through,
- 7 you'd be tight too."
- 8 Q. After he said that, "If you'd been through what I'd been
- 9 through, you'd be tight too," what did you say?
- 10 A. I asked what he'd been through.
- 11 Q. And what was his response, what was Bryan Sheppard's
- 12 response?
- 13 A. He told me I really didn't want to know.
- 14 Q. Now, while this is going on, did Richard Brown say
- 15 anything to you?
- 16 A. If he did, I don't recall.
- 17 Q. Were they both in the same room while you're talking and
- 18 massaging Bryan Sheppard's neck?
- 19 A. No. Richard was in the doorway.
- 20 Q. Did you ever see the two of them in the same room
- 21 together at one point in your house?
- 22 A. No.
- 23 Q. Did you ever see them interact between one another while
- 24 they were in your house?
- 25 A. Yes.

1 IQ. okay. And what did you notice them, how Richard Brown
2 and Bryan Sheppard, how they were interacting between each
3 other in your house?

4 A. I know they kind of looked at each other and said, shook
5 their heads, you know, like you really don't, they were kind
6 of amazed.

7 Q. Could you say the last part again?

8 A. Yes, I noticed that they exchanged smiles and shook
9 heads like wow, or just kind of being amazed.

10 Q. Did you notice anything about Richard Brown's person?

11 A. Not particularly that I recall.

12 Q. Who is Kathy Marburger?

13 A. She's a neighbor and a friend.

14 Q. Now, did you hear from her that same morning of the
15 explosions?

16 A. Yes, I did.

17 Q. How did you hear from her?

18 A. After the first explosion or maybe the second, I called
19 to see if she had heard anything on the police scanner that
20 might tell what the noise was about.

21 Q. Now, do you recall, did she ever call your home?

22 A. Yes. We talked about three more times that morning.

23 Q. okay. And we're talking about the same morning of the
24 explosion?

25 A. Yes.

2949

1 Q. Do you recall, was Bryan Sheppard or Richard Brown
2 present in your home when Kathy Marburger called?

3 A. They could have been. I don't recall if they were or
4 not.

5 Q. How many times had Bryan Sheppard come to your house
6 before the morning of the explosion? How many times had
7 Bryan Sheppard come to your house in the early morning hours
8 for a massage?

9 A. Well, none that I know of.

10 Q. After the explosion, had he ever come back to your house
11 for a massage?

12 A. Yes.

13 Q. After the explosion and he had come back to your house
14 for a massage, did he ever come again in the early morning
15 hours?

16 A. No.

17 Q. Now, did you ever give a statement to the police about
18 what Bryan Sheppard had said to you while you were massaging
19 his neck about 8 a.m. on November the 29th, 1988?

20 MR. O'Connor: Object to that. Relevance. She's
21 testified what he said. Whether it's in a police report
22 doesn't make it any more true.

23 MR. MILLER: It's an event, did it happen.

24 THE COURT: I'm not sure -

25 MR. MILLER: May we approach, then?

1 THE COURT: Yes.

2 (Counsel approached the bench and the following
3 proceedings were had:)

4 MR. MILLER: She gave a statement to the police,
5 and then afterwards, Mr. O'Connor comes out and he takes one
6 of those stenographer statements of her. Right after he
7 leaves, she calls the police. She calls the police and said
8 that he's been out there, she felt intimidated by Mr.
9 O'Connor. And another reason she felt intimidated was
10 because she had received a phone call from Bryan, and in
11 those phone calls, he had more or less threatened her by
12 saying, I know a lot of people in the neighborhood, and if
13 you say anything, words to that effect.

14 So this goes into a series of events. That's the
15 relevance of it.

16 THE COURT: Did the call from Bryan come after she
17 had talked to the police?

18 MR. MILLER: Apparently -- yes. The call -- well,
19 either before or after she'd gone to the police in October.
20 The way we have it is this. In ,88 he's there. She contacts
21 the police October the 3rd, 1989. I believe it was the 3rd.

22 THE COURT: ,89, a year later?

23 MR. MILLER: Yes, but this is what I'm getting
24 into. It's another admission by Bryan Sheppard because then
25 Mr. O'Connor comes out and interrogates her for a while. If

1 you see your statement -

2 MR. O'CONNOR: Doing my job. She was under oath.

3 MR. MILLER: And as soon as he leaves, she calls
4 the police, saying that she's felt intimidated by Mr.
5 O'Connor, tells the police what she told Mr. O'Connor, and
6 then she goes on to state that she's afraid because Bryan has
7 called her before and has threatened her, and she takes it as
8 a threat. This explains why she called the police, because
9 now Bryan's attorney is out there.

10 THE COURT: ALL right. You may show that. And
11 John, I'm puzzled by this business of statement under oath
12 that you keep talking about. It's an ex parte pro se
13 interview of a witness, apparently in the presence of a
14 notary public, but it's not an adversarial proceeding.
15 Counsel for the other side is not there. I don't think the
16 oath means a damn thing.

17 MR. O'CONNOR: Judge, it's what it means to the
18 witness, it's not what it means to anybody else when someone
19 takes an oath.

20 THE COURT: You're using it here to make it very
21 significant to this jury.

22 MR. O'CONNOR: What I'm saying, Judge, is this is
23 totally phony about this, threats from Bryan Sheppard, for
24 this reason. Just like in this case, this kid has no idea
25 the work that I've been doing. We don't even talk. He has

1 no idea I've talked to 50 people. He had no idea that I was
2 going out to see Karen Baird. I didn't have any idea I was
3 going out there until I saw her.

4 THE COURT: Why didn't you call her?

5 MR. O'Connor: I'm just telling you the truth from
6 my standpoint. I didn't go to Bryan Sheppard and say, "I'm
7 going to go run down all the witnesses with a court
8 reporter." I didn't talk to him about what I was doing. He
9 didn't have any idea I was going out there. That's the
10 honest truth.

11 THE COURT: It's unfortunate that he called her,
12 then, because it certainly gives that appearance.

13 MR. MILLER: Okay.

14 (The following proceedings were had in open court:)

15 Q. (By MR. Miller:) Ma'am, my question was do you recall
16 going down to the police department then and telling them
17 what Bryan Sheppard had told you on November the 29th, 1988,
18 in your bedroom that morning?

19 A. Yes, I do.

20 Q. okay. Can you recall the date that you went down there?

21 A. It was October 3rd or 4th of ,89.

22 Q. Of 1989?

23 A. Yes.

24 Q. After you'd gone down to the police department, were you
25 visited by MR. O'Connor, who represents MR. Sheppard?

1 A. Yes, I was.

2 Q. Okay. And when he came out there, he talked to you,
3 too, about the case?

4 A. Yes, he did.

5 Q. All right. Now, after MR. O'Connor left that same day,
6 did you then call the Kansas City, Missouri, Police
7 Department again?

8 A. Yes, I did.

9 Q. Do you remember, can you remember the date that you
10 called them?

11 A. It was the same day, the 3rd or 4th of October.

12 Q. Now, was it the same day that MR. O'Connor had been out
13 there?

14 A. Yes.

15 Q. And did you -

16 A. Well, it was the same day Mr. O'Connor was out there.

17 Q. Okay. And did you, when you talked to the police
18 department, did you tell them that any, about a conversation
19 that you had had with Bryan Sheppard over the phone? Do you
20 remember that?

21 A. Yes.

22 Q. okay. And do you remember what you told the detective
23 over the phone about what Bryan Sheppard had said to you over
24 the phone?

25 MR. O'Connor: Objection, hearsay. What she told

1

1 I the detectives is hearsay.

2

THE COURT: Counsel, aren't you really getting at whether she has any memory of what Bryan Sheppard said to her over the phone?

5

MR. MILLER: I'll rephrase the question.

6

THE COURT: It's not material what she told the detectives.

Q. (By MR. Miller:) Okay. What did Bryan Sheppard say to you over the phone?

A. Well, the main thing he said, recall is that if anyone testified against him, you know, he had friends and relatives that would deal with the people.

Q. And how did you take that?

A. Like a threat.

Q. At any of these conversations, has Bryan Sheppard called you from the jail?

A. Yes.

Q. Do you know which jail?

A. The one I remember is Clay County.

Q. ALL right. When he called you from Clay County, did he tell you anything about his involvement in the explosion that caused the death of the six firefighters?

A. He did say, you know, put himself at the site, that he was there. And after the first explosion that he ran across the road with another person and ducked down in a ditch.

2955

1 Q. Now' does your telephone have a three-way capability?

2 A. Yes' it does.

3 Q. And would you explain to the jurors what that is' your
4 three-way capability?

5 A. It's a three-way calling. I can call, like someone
6 calls, I can call another person and have a conversation,
7 like a conference call, I guess.

8 Q. On any of those phone calls with Bryan Sheppard from the
9 county jail' do you recall, was Kathy Marburger on the phone
10 also on your three-way?

11 A. Yes, she was, in a few conversations.

12 THE COURT: I'm sorry, how many conversations?

13 THE WITNESS: Oh, I don't recall the number, sir.

14 A few.

15 THE COURT: All right.

16 THE WITNESS: Three to five.

17 MR. MILLER: That's all I have of this witness'
18 Judge.

19 - - -

20 CROSS-EXAMINATION

21 By MR. O'Connor:

22 Q. Miss Baird, I'm John O'Connor. We've met; is that true?

23 A. Yes, sir.

24 Q. You know I represent MR. Sheppard?

25 A. Yes.

1 Q. And there's been a little talk here that I came out and
2 talked with you back in 1989 when I was representing Mr.
3 Sheppard when he was charged in state court; is that correct?

4 A. Correct.

5 Q. And when I came out to talk to you, did I bring a court
6 reporter with me?

7 A. Yes, you did.

8 Q. A lady like this?

9 A. Yes.

10 Q. And we took everything down that you said and I said?

11 A. Yes.

12 Q. Everything was put on the record?

13 A. To the best of my knowledge.

14 Q. Has the government shown you that?

15 A. Yes, they have.

16 Q. Now, do you have -- you do have a felony conviction; is
17 that true?

18 A. Not to my knowledge.

19 Q. Have you pled guilty to a felony in Jackson County to
20 possession of controlled substance on October the 1st, 1990,
21 and received a four-year sentence and three years probation?

22 A. Okay.

23 Q. Is that true?

24 A. Yes.

25 Q. And do you remember on October the 3rd, 1989, this would

1 have been a year after, about a year after the explosion; is
2 that true?

3 A. Yes.

4 Q. And this information that you have told us about today,
5 you never came forward to the police about that information
6 at all, is that true, back in ,88 when it happened?

7 A. Right.

8 Q. And as you've told us, Bryan Sheppard and Richard Brown
9 were at your residence the next morning, and you never called
10 the police or gave that information until they came to you on
11 October the 3rd, 1989; is that a fair statement?

12 A. Yes.

13 Q. When they came out to talk to you on October the 3rd,
14 1989, you thought that they were there to arrest you for a
15 drug charge; isn't that true?

16 A. They stated the reason they came.

17 Q. But did you tell them, Detective Fraise that you
18 presumed that they were there to arrest you on a drug charge?

19 A. I could have possibly stated that. I don't recall.

20 Q. Did they talk to you and ask you if you had any
21 information about this case at that time?

22 A. Yes.

23 Q. Did you tell them at that time that you did not feel as
24 if you had any information that could assist or help them in
25 their investigation?

1 A. Yes.

2 Q. Did they then take you from your residence down to the
3 police station to talk to you further?

4 A. Yes, they did.

5 Q. And at that time, did they remind you of a drug charge
6 that may be pending against you or was pending against you,
7 or words to that effect?

8 A. I don't recall if they did.

9 Q. Do you remember the report that shows here, I need some
10 help from you on this because I didn't ask you back in ,89,
11 it says here that they were at your residence at 2 a.m. on
12 10/3 of ,89. And it appears that you gave your statement the
13 next day at 1700 hours. Did they hold you down there for 15
14 hours?

15 A. No. That must have been a typographical error.

16 Q. Okay. But the next morning, they gave you a signed, you
17 gave them a signed statement; is that true? The morning
18 after?

19 A. Signing the report, you mean?

20 Q. Yes, there's a five-page report, Victor Zinn, Karen
21 Baird, in which you gave them a signed statement. They had
22 you, asked a question and answer, had it all typed out, and
23 then had you sign it?

24 A. Yes.

25 Q. And when you were down talking to Detective Zinn, did

1 you tell him what you believed happened the morning of the
2 explosion?

3 A. Yes.

4 IQ. Now, is it your testimony here today that after the
5 first explosion that you called Kathy Marburger?

6 A. I could have.

7 Q. I thought you said on MR. Miller's questions to you that
8 you were the person that called Kathy Marburger after the
9 first explosion. Did I mishear that?

10 THE COURT: Now, wait a minute. What was your -
11 I'm sorry. Just a minute. What was your question before
12 that? Is it possible that -

13 MR. O'Connor: No, I didn't say possible. I said
14 did she call Kathy Marburger, and then she gave an equivocal
15 answer, and then I said did I miss something on direct. I
16 thought she did. Let's start over.

17 THE COURT: Who called who?

18 Q. (By Mr. O'Connor:) That's what I'm trying to find out.
19 Did you call Kathy Marburger after the first explosion?

20 A. It was either the first or second explosion I called,
21 yes, to see -

22 Q. Do you remember telling Detective Zinn on October the
23 3rd, 1989, that you called Kathy Marburger after the first
24 explosion to see if she had heard anything on her scanner?

25 THE COURT: I'm puzzled by that. That's not

1 contrary to anything she said. Why are you using that?

2 MR. O'Connor: She just said either after the first
3 or second, which I think is equivocal.

4 THE COURT: Does it make any difference?

5 MR. O'Connor: I think it does, Judge, for where
6 I'm going, and there's another witness coming behind this.

7 THE COURT: All right. Let's go.

8 MR. O'Connor: Thank you.

9 Q. (By MR. O'Connor:) Did you tell Detective Zinn that you
10 called Kathy Marburger after the first explosion?

11 A. That's in the report. If -- that's the way it was, as I
12 recalled it then. It's been eight years since then. You
13 know, there's, I just -

14 Q. Did Kathy say something to you in the phone conversation
15 about a truck was on fire someplace?

16 MR. MILLER: Excuse me. That's hearsay.

17 THE COURT: Yeah. Sustained.

18 Q. (By Mr. O'Connor:) Did you have a conversation with
19 Kathy on the phone?

20 A. Yes.

21 Q. Did -- was Kathy's scanner on, to your knowledge?

22 THE COURT: Now, we're talking hearsay here. How
23 would she have known if Kathy's scanner was on unless Kathy
24 had told her?

25 MR. O'Connor: Can we approach on this a minute,

1 Judge?

2 (Counsel approached the bench and the following
3 proceedings were had:)

4 MR. O'Connor: Judge, it's not being offered for
5 the truth of the matter, only to show what they did.

6 THE COURT: What? I don't know about that. Maybe
7 you can show what they did some other way, but you asked her,
8 was Kathy's scanner on, and the only possible way -

9 MR. O'Connor: I understand that question.

10 THE COURT: So the question is objectionable.

11 MR. O'Connor: The question I wanted to ask -

12 THE COURT: You say it's not offered for the proof,
13 but it is offered for the proof of whether Kathy's scanner
14 was on.

15 MR. O'Connor: I understand that, and I agree to
16 that objection. It was the one before that where I asked did
17 Kathy Marburger tell you that there was a truck on fire
18 someplace. And I think that's relevant because they're going
19 to bring in Kathy Marburger to talk about conversations that
20 she had with Karen that morning when the defendants are
21 there. So if I don't probe it with her now, we're going to
22 have to bring her back. We just as well get it over with.
23 What's your position?

24 MR. MILLER: My position is it's hearsay.

25 ~ THE COURT: I'll sustain the objection.

(The following proceedings were had in open court:)

1

2 IQ. (By Mr. O'Connor:) Now, you've talked about

3 conversations that you had with Bryan Sheppard on the phone

4 from jail; is that correct?

5 A. Yes.

6 Q. And at the time that you were talking with Detective

7 Zinn on October the 3rd, 1989, had you been talking to Bryan

8 on the phone up until that time?

9 A. I don't recall.

10 Q. Well, when did these conversations occur that you say

11 that he made these veiled threats?

12 A. When he was in the Clay County Jail.

13 Q. And I'm assuming the threats were made to you before I

14 came to see you, I think you said?

15 A. I don't recall, sir.

16 Q. The statements were he said that he was present or ran

17 across and ran into a ditch?

18 MR. MILLER: Excuse me, Judge, there's two

19 different things that she's testified to about what he said

20 on his calls, two different time frames.

21 MR. O'Connor: I'm trying to get the time frame for

22 these. She said she didn't know the time frame for the calls

23 on the veiled threats. Now I'm asking the time frame on the

24 calls where he's making these admissions about being involved

25 in this event.

1

1 THE Court: ALL right. Finish your question.

2 IQ. (By Mr. O'Connor:) Can you tell us when those were

3 I made?

4 A. When he was at the Clay County Jail.

5 Q. Was that before I came to see you?

6 A. I don't know.

7 Q. Wasn't he in the Clay County Jail at the time you gave

8 your statement to Victor Zinn?

9 A. I'm not sure.

10 Q. How many times did Bryan Sheppard call you from jail?

11 A. Many times.

12 Q. Almost every day?

13 A. Fifty or sixty dollars, worth of calls. I think they

14 were \$1.50 each.

15 Q. And do you remember Detective Zinn asking you in this

16 statement that you signed, was this question asked and this

17 answer given?

18 MR. MILLER: Where at?

19 Q. Last page. "Has anyone ever admitted to you their

20 responsibility for this fire and explosion?"

21 Answer: "No."

22 Is that what you told Detective Zinn on October the

23 4th, 1989?

24 A. Could you repeat the question, please?

25 Q. Yes, ma'am.

1 MR. MILLER: Excuse me. I'm going to object to
2 this. Can we approach?

3 THE COURT: Yeah.

4 (Counsel approached the bench and the following
5 proceedings were had:)

6 MR. MILLER: This is what he's talking about, and
7 the whole thing is she's telling him about the Defendant
8 Bryan Sheppard's admissions to her. Just because the
9 detective uses has anyone ever admitted to you their
10 responsibility, I mean, that's misleading.

11 MR. O'Connor: Show the judge, an admission he
12 makes from the Clay County Jail.

13 MR. MILLER: You said from the Clay County Jail,
14 and that's not what that question said.

15 MR. O'Connor: The question is -- if he made an
16 admission from heaven, it wouldn't matter where it was from.
17 Has anyone ever admitted to you their responsibility. If
18 he's admitted to you, he's a person who admitted it.

19 THE COURT: But that calls for a conclusion and an
20 opinion as to the effect of what was said. Now, the reason
21 it's admissible in this court is because it was an admission
22 against his interests and he said it. But she can't, she
23 can't conclude that it's an admission or not and thereby
24 testify to it in front of the jury.

25 MR. O'Connor: He says he's at the explosion site.

1 THE COURT: That's an admission.

2 MR. O'CONNOR: Then she says no one has ever told
3 me they're responsible?

4 THE COURT: That's not an admission to her of
5 responsibility.

6 MR. O'CONNOR: It's impeachment, Judge.

7 THE COURT: As to what?

8 MR. O'Connor: It's impeachment of the fact that
9 she says he admitted involvement. Here she says no one
10 admitted involvement.

11 MR. MILLER: I would ask the jury be instructed to
12 disregard the last question and answer.

13 THE COURT: Now, wait a minute, you are asking her
14 to conclude that it was an admission, right?

15 MR. O'Connor: Judge -

16 THE COURT: Now, answer my question. You are
17 asking her to conclude it was an admission, right?

18 MR. O'Connor: No.

19 THE COURT: The officer was asking her to conclude
20 it was an admission, right?

21 MR. O'Connor: Someone was.

22 THE COURT: Whoever asked that question.

23 MR. O'Connor: Has anyone admitted their
24 responsibility to you.

25 THE COURT: Do you think it's appropriate to ask

1 her a question in front of this jury about what her opinion
2 was at a particular time?

3 MR. O'Connor: Judge -

4 THE COURT: Now, wait a minute, what's the answer
5 to my question?

6 MR. O'Connor: The answer is yes.

7 THE COURT: No.

8 MR. O'CONNOR: If I called you on the phone and
9 said I was responsible for the fire and explosion the next
10 day -

11 THE COURT: But she doesn't have that. That isn't
12 in this record. He said he was there. He got the hell blown
13 out of himself, he was scuffed around on the dirt, he
14 scratched his arms and so forth, he came in with a stiff
15 neck. He didn't say, "I started the fire."

16 MR. O'Connor: I understand that argument, and I'm
17 not saying that I don't agree with you on that. That's why I
18 don't think that part is relevant. But when she now says
19 this guy is calling me making admissions, he was there and he
20 ran across the road, I'm offering it for these admissions,
21 her state of mind at the time she's talking to him. If he's
22 calling her from the jail and saying these things, then he's
23 admitting his involvement.

24 MR. MILLER: She doesn't take that as an admission
25 because then there's another statement following it up.

1 That's why this is misleading.

2 THE COURT: Where is the other statement?

3 MR. MILLER: This is it. And, again -

4 THE COURT: ALL right. Now, what are you talking
5 about, the threat there?

6 MR. MILLER: Right. See, this is when she calls
7 after Mr. O'Connor has been out there, and this is the first
8 time she talks about the telephone call. But, still -- I'm
9 sorry.

10 THE COURT: That's all right.

11 MR. MILLER: But still, he never admitted to her
12 that he splashed gasoline and tossed a match. Even when he
13 calls from the jail, the admission says "I was there" after
14 the first or second explosion, I forget which one she said,
15 then he ran across the highway and jumped in a ditch. And
16 for us -- she doesn't think that's an admission.

17 THE COURT: And I think, if the officer was being
18 fair to her here and maybe, and he probably implied this, but
19 I think that this should have said has anyone else ever
20 admitted to you their responsibility.

21 MR. O'CONNOR: This is her statement. She signed
22 it.

23 THE COURT: No. No. No. It's a Q and A session.

24 MR. O'CONNOR: It says this is the truth, I admit
25 it, I adopt it, and I'm signing it. It's impeachment. If it

1 doesn't mean anything -

2 THE COURT: What's in here?

3 MR. O'CONNOR: They always leave those blank.

4 MR. MILLER: It's basically a form .

5 MR. O'CONNOR: That's a statement from the Kansas
6 City Police Department.

7 MR. MILLER: You just said they leave it blank, and
8 I said it's basically a form.

9 MR. O'CONNOR: My point is it's impeachment.
10 They're asking her whether or not someone has made any
11 admissions to her, and that was the time he was calling her
12 from the jail.

13 MR. MILLER: If he wants that one question
14 admitted, then the whole statement should come in.

15 THE COURT: Say that again.

16 MR. MILLER: If he wants that one thing in there
17 about making an admission, and then the whole thing can come
18 in because that's misleading the jury. It is an admission.

19 MR. O'CONNOR: I'll tell you what. My statement
20 that I took from her, I'll admit that whole thing if they
21 want to admit it.

22 THE COURT: Where is the -

23 MR. O'CONNOR: It's the next page, Judge.

24 THE COURT: Well -

25 MR. O'CONNOR: The other thing is, Your Honor,

1 she's clearly telling him things that are contrary to Bryan's
2 interests, so it's not like she's sitting there afraid. And
3 this was way before this.

4 MR. MILLER: Well, then, wait a minute, if you're
5 saying that, that she's telling things contrary to Bryan's
6 interests, then he did make admissions, then he did make
7 admissions to her about his responsibility. See, that's why,
8 it says it right there why this is so misleading.

9 MR. O'CONNOR: It's not misleading at all. They
10 asked her -

11 MR. MILLER: A legal conclusion is what they asked
12 her.

13 THE COURT: Wait a minute. Let him finish.

14 MR. O'CONNOR: They said, you've heard the witness
15 tell this jury -- I've got other impeachment besides this
16 which is much stronger.

17 THE COURT: Then move to it.

18 MR. O'CONNOR: But I want to lay the foundation.
19 This is one of many. Has anyone ever admitted to you their
20 responsibility.

21 THE COURT: That's a silly question.

22 MR. O'CONNOR: I know, but the point is the answer
23 to give is if he's on the phone calling and bragging about
24 it, he's in jail charged with this, he's charged under
25 indictment. This is a week later, the indictment was

2970

1 returned 9/22.

2 so here is a person that was in jail. She has
3 direct admissions from him, that's something you would
4 definitely want to tell the authorities because you're
5 already telling on him anyway with this other stuff. It's
6 relevant. It's her statement.

7 THE COURT: I don't think that says what, on its
8 face, says what she thought she was being asked. She had
9 just gone through this whole litany of what Bryan said to her
10 and how he had said this and that about being there and
11 getting blown out and this sort of thing, and then he says
12 has anyone ever admitted responsibility. And she says no.
13 Now, that doesn't make any sense.

14 MR. O'CONNOR: Okay. What I'm saying to you is I'm
15 offering this, I'm not going to argue to the jury that when
16 she said no that that meant no here. I'm saying that meant
17 no about the phone call. You see what I'm saying? I hear
18 what you're saying. You're saying that this could be
19 misleading. I'm not trying to be misleading.

20 This phone conversation, Judge, is key. They're
21 going to have two witnesses, one after the other, talking
22 about admissions from this man from the jail, and this
23 impeachment is critical to my case on behalf of Bryan
24 Sheppard. And I think it's admissible. I think it's a
25 statement of this witness as to try to get into her thought

1 processes at the time. At the time she's talking about
2 these, she's cooperating.

3 THE COURT: You can put it in, but he can follow up
4 with it on redirect.

5 MR. O'CONNOR: That's fine.

6 THE COURT: And ask her her interpretation of that
7 question.

8 MR. MILLER: Can we get the entire five-page
9 document in as substantive evidence as a prior consistent
10 statement, then, because that whole first paragraph on this
11 whole front page is all about his admissions to her.

12 THE COURT: I think if they're going to insist on
13 that, you're entitled to that, yes. If you're going to
14 insist on that last question and answer, then you're entitled
15 to the whole document.

16 MR. O'CONNOR: How is the whole document -- even
17 under the rule of completeness, there's nothing that relates
18 to admissions.

19 THE COURT: Well, it relates -- sure there is,
20 John. You take your poison or not.

21 MR. O'CONNOR: Can I have a minute to read this?

22 THE COURT: Yeah.

23 MR. O'CONNOR: Now, the other defendants may have
24 objections because -- I'm assuming Mr. Peters is going to
25 object when Bryan -- I mean, I want this in because here she

1

1 says I asked Bryan if he did the explosion, and he says -

2 MR. MILLER: Now we're away from -

3 MR. O'Connor: Let me finish. It says F no. And
4 then he said even if it was his uncles, he would turn them
5 in, that he didn't do it. Then he makes direct reference to
6 their clients.

7 Now, for my purposes, they're making, there's
8 references to other crimes in here. There's no relevance
9 whatsoever. If there's a particular thing that they want.

10 THE COURT: Are you sure you want to use that, that
11 line out of that statement?

12 MR. O'Connor: Yes, I do, because I think I'm
13 entitled to it. What I'm saying is I think they're entitled
14 to take whatever they think out of this statement that
15 pertains to that part. I disagree with the Court that
16 they're entitled to throw the whole statement in because I'm
17 going to ask one question. That can't be -

18 MR. MILLER: My objection is still misleading and
19 asking her to make a legal conclusion. Whether Mr. Zinn
20 asked her of it or whether Mr. O'Connor is asking her of it
21 at this time now on this question, has anyone ever admitted
22 it to her, none of these to this witness -- unless you say,
23 "I threw the gasoline and tossed the match," she doesn't
24 think that running across the highway and jumping in a ditch
25 is an admission.

1 MR. O'CONNOR: If -

2 THE COURT: Well, I'm going to let him use that
3 last question and answer. And then I'm going to let you ask
4 her on redirect, if you want to, whether she interpreted that
5 to mean has anyone else made that kind of an admission to
6 you. Because I think that's the reason for her answer.

7 MR. PETERS: Judge, I would object to that question
8 as being leading. I think -

9 THE COURT: Sure, it's leading. But you're
10 entitled to, you're entitled to either impeach or reconstruct
11 your own witness, rehabilitate your own witness.

12 MR. PETERS: Why wouldn't the appropriate question
13 be, instead of giving her the answer, why wouldn't the
14 appropriate question be what did you mean when you answered
15 no.

16 MR. O'Connor: Why don't we break for -

17 THE COURT: I'm getting a little tired of these
18 people, most of whom are pretty stupid, taking so much of our
19 time in this trial and not understanding where they're going
20 or what they're saying, and this lady obviously is -

21 MR. O'Connor: I understand, Judge, but this is
22 critical evidence to Bryan Sheppard's case.

23 THE COURT: I don't see that it's all that
24 critical.

25 MR. O'Connor: Do you want to take a lunch break?

1 THE COURT: Let's get her done.

2 MR. O'Connor: I've got an hour.

3 THE COURT: You're kidding.

4 MR. O'Connor: No, I do.

5 THE COURT: There isn't an hour in here.

6 MR. O'Connor: Have I gone through all the
7 witnesses in a fashion that was consistent with what the
8 Court -- I mean, I think my -

9 THE COURT: Let's finish this. Keep going.

10 (The following proceedings were had in open court:)

11 Q. (By Mr. O'Connor:) Miss Baird, on October the 3rd,
12 1989, when you talked with Detective Zinn, did he ask you
13 this question and you gave this answer?

14 "Has anyone ever admitted to you the
15 responsibility for this fire and explosion?"

16 And your answer was no. Is that what you told him?

17 A. Yes.

18 Q. Had you given Bryan Sheppard massages in the past?

19 A. Yes, I have.

20 Q. On numerous occasions?

21 A. Yes.

22 Q. Had you heard Bryan discuss the explosion in any way
23 with anyone, or have you heard of any people who frequent
24 your house that have heard Bryan talking about the explosion
25 back at the time that you talked to the police?

1 MR. MILLER: Excuse me.

2 A. I don't understand the question.

3 MR. MILLER: Excuse me. That's compound.

4 THE COURT: Yeah. It is compound and calls for
5 hearsay. Sustain the objection.

6 Q. (By Mr. O'Connor:) Back at the time, now I'm asking
7 when you talked to the detective. This is the time frame, so
8 it's fair to you. You were talking to them on October the
9 4th. Did Bryan ever mention to you before October the 4th
10 going to the site where the firemen's explosion occurred?

11 A. I'm not sure if it was before I talked to the detectives
12 or after.

13 Q. Do you remember telling the detective, "If he did, I
14 don't remember him saying it?" Would that have been the
15 answer that you gave the detective?

16 A. If that's what's in the report, that's the truth.

17 Q. Do you want to see the report?

18 A. Yes, could I, please?

19 Q. Yes. No. 10 there. I'm sorry. 4. Did I say it right?

20 A. Yes.

21 Q. Did you also tell Detective Zinn on October the 3rd that
22 you had been talking to Bryan from the Clay County Jail on
23 the phone?

24 A. On -- could I see it again, please?

25 Q. Read this to yourself, but this is what I'm going to ask

i

1 you' this question and answer. Do you know where I'm at?

2 Page 4.

3 A. Thank you.

4 Q. Did you have a chance to read it? Did you have a
5 conversation with Bryan on the phone where he was talking to
6 you about the explosion?

7 A. Yes.

8 Q. And did you ask Bryan if he had done the explosion?

9 MR. MILLER: I'm going to object to this.

10 THE COURT: Yeah. This is -- if I understand where
11 you're reading from in that part of the report, it's
12 self-serving and I don't think it impeaching anything.

13 MR. O'CONNOR: I'm not reading from the report,
14 Judge.

15 THE COURT: You're doing cross-examination on the
16 report.

17 MR. O'Connor: I'm asking her did she have a phone
18 call with Bryan Sheppard from the Clay County Jail while he
19 was in jail at some time. And you asked him about the
20 explosion. Did that conversation happen?

21 THE COURT: Well, that question has been asked and
22 answered. Tell me what the last answer of the witness was.
23 Not this series, but the last answer that he asked, the
24 question just before we had this exchange.

25 (The requested portion of the record was read.)

1 THE court: That was asked and answered.

2 Q. (By Mr. O'Connor:) And did you ask him if he had done
3 the explosion?

4 MR. MILLER: This is where I'm going to object.
5 This is self-serving.

6 THE COURT: As long as you don't tell him, Miss
7 Baird, what the answer was. You could tell him that you
8 asked him that question, but just don't tell him what the
9 answer was.

10 THE WITNESS: Okay, Your Honor.

11 Q. (By Mr. O'Connor:) Did you ask Bryan Sheppard if he did
12 it?

13 A. Yes, I did.

14 MR. O'Connor: Can we approach, Judge?

15 THE COURT: Yes.

16 (Counsel approached the bench and the following
17 proceedings were had:)

18 MR. O'Connor: If the prosecution is that he's on
19 the phone at the jail calling and saying, "I did this, I'm
20 responsible, I was there. n His answer was, Of no, I didn't
21 do it, and if I knew who did, I would tell." Now, they're
22 saying that he's on the phone saying that he did it, she's
23 telling the police he's on the phone saying he didn't do it.

24 MR. MILLER: That's self-serving. It's still
25 self-serving. We have several conversations.

2978

1 MR. O'CONNOR: It's impeachment.

2 MR. MILLER: He's made several, she said 50 some
3 odd times he's called.

4 MR. O'Connor: Judge, it's impeachment. Here is
5 the thing, they want their cake and eat it too. They have 50
6 phone calls, and we can't figure out which call it was that
7 he actually made the confession, and we're supposed to sit
8 and try to pick and choose. I'm trying to do this fairly
9 because she was talked to on different times. On October the
10 4th when you were talking to him, he was saying to her, I
11 didn't do it. Now, they're saying that he's calling on the
12 phone saying he did do it. This is impeachment. This
13 impeaches what she's saying.

14 THE COURT: Well, I think -- now, wait a minute. I
15 think maybe she has testified that at one time or another he
16 said he did it.

17 MR. O'Connor: On the phone.

18 THE COURT: On the phone.

19 MR. O'Connor: Yes.

20 THE COURT: And she's now said -- now it reflects
21 in that report that she's saying that he said he didn't do
22 it?

23 MR. O'Connor: Right.

24 THE COURT: He can prove that.

25 MR. MILLER: I would say it's impeachment if

1 there's only one phone call, but she said there's 50 phone
2 calls.

3 THE COURT: You can bring that out.

4 MR. MILLER: That's why this isn't impeaching her.
5 This is getting in self-serving testimony.

6 THE COURT: You got that once. He can get it in.

7 (The following proceedings were had in open court:)

8 Q. (By Mr. O'Connor:) When you asked Bryan Sheppard if he
9 had done this explosion, didn't he say, F. no, he didn't do
10 it?

11 A. Correct.

12 THE COURT: On which occasion was that, now?

13 MR. O'Connor: This was on October the 3rd when
14 she's talking to the police.

15 THE COURT: No. That wouldn't be the conversation
16 with Mr. Sheppard.

17 MR. O'Connor: Oh, when was the conversation? I
18 understood she couldn't remember when the conversations
19 were.

20 Q. (By Mr. O'Connor:) Is that true?

21 A. That's correct.

22 Q. Now, you were asked about on November 30th, I guess on
23 November the 29th, the day that I came out to talk with you
24 with the court reporter, after I left, you had called the
25 police; is that correct?

1 A. That's right.

2 Q. And your purpose of calling the police was for what?

3 A. So I wouldn't be bothered with you again, intimidated
4 and just coming to my home without calling.

5 Q. Okay. And when you say intimidated, was I mean to you
6 or did I yell at you or something?

7 A. No.

8 Q. Was I friendly?

9 A. Basically. Kind of pushy, but I would have preferred a
10 hone call.

11 . ALL right. And when you told the detective about
12 threats, did Bryan directly threaten you, did he say, "If you
13 testify against me, something is going to happen to you"?
14 as he saying that directly to you?

15 A. Yes.

16 Q. You believe that he was. And would that threat have
17 been made before I came to talk to you on November the 29th?

18 A. I don't recall.

19 Q. Do you know how much longer Bryan was in jail before he
20 was out?

21 A. No.

22 Q. Do you remember that Agent True on March the 8th, 1995,
23 took a tape recording or, I guess it was a video recording of
24 you, an interview of you? Do you remember that?

25 A. Yes.

2981

1 Q. And have you had a chance to review the transcript of
2 that video?

3 A. Yes, I have.

4 Q. And did you tell Detective -- I mean, Special Agent
5 True, I apologize, Agent True. Special Agent True -- did you
6 tell Special Agent True that you had called Kathy Marburger's
7 house that morning after the first explosion?

8 A. Can I see the report, please?

9 Q. Sure. It would be -- you have to read there, and then
10 down through there. Have you had a chance to look at that?

11 A. Thank you.

12 Q. Yes. Did you tell Agent True that you had made a phone
13 call that morning after the first explosion?

14 A. Yes, I did.

15 Q. Is it in this interview I guess is what I'm saying. Did
16 you tell him in the interview where you're saying -

17 THE COURT: The question really is, isn't it, does
18 the interview reflect.

19 Q. Yes, does the interview report reflect that you told him
20 that? Thank you, Judge.

21 A. Yes.

22 Q. And does the interview report reflect that -

23 MR. MILLER: Excuse me. May we approach?

24 THE COURT: It's not in evidence.

25 MR. MILLER: Well, my objection is he's misstating.

2982

1 MR. O'CONNOR: I didn't misstate anything. I asked
2 her what she said, and she said it. I didn't misstate a
3 thing.

4 MR. MILLER: He's got some things out of sequence,
5 then, if he's wanting to use this.

6 THE COURT: Come up.

7 (Counsel approached the bench and the following
8 proceedings were had:)

9 MR. MILLER: She says a friend of mine named Kathy
10 called to discuss what the noise was.

11 THE COURT: Yes.

12 MR. MILLER: Okay. And what he's trying to say or
13 imply is that he had called, that she had called Kathy. I
14 mean, that's not what that says.

15 MR. O'CONNOR: I didn't imply anything, I just
16 asked.

17 THE COURT: Well, you did too, John. You asked her
18 if she told Agent True that she had called Kathy.

19 MR. O'CONNOR: Yeah, did she.

20 THE COURT: Where does it say here -

21 MR. O'CONNOR: It doesn't. That's why I'm asking
22 her.

23 THE COURT: Where does it say here that she told
24 Agent True or whoever is taking this down that she called
25 Kathy?

1 MR. O'CONNOR: I asked her did she tell him that.
2 It's not there.

3 THE COURT: Ask her if this was said in those
4 words.

5 MR. O'CONNOR: The difference is, Judge, seriously,
6 and this may not mean a lot with this witness, but these
7 people, this woman and this other woman call each other all
8 the time and talk.

9 THE COURT: Right. So what difference does it
10 make?

11 MR. O'CONNOR: I think it makes a lot of
12 difference.

13 THE COURT: I don't. I don't think it makes any
14 difference, and I'm going to insist that you be fair to her
15 and say did you give this statement to whoever did this
16 interview.

17 MR. O'CONNOR: I'm going to get to that. I'm going
18 to that, exactly. I'm not leaving that out. Don't mistake
19 this.

20 THE COURT: By implication you have said now she
21 called Marburger.

22 MR. O'Connor: I asked her -

23 THE COURT: And that's not what this says, and
24 hat's not fair.

25 MR. O'Connor: Hold on, give me a minute here to

1 regroup. She said on direct examination, I believe, and
2 cross that she called Marburger. Okay? Marburger will say
3 that did not happen.

4 THE COURT: Well, then, you've got it, then, you've
5 got it with Marburger.

6 MR. O'Connor: What I'm saying is I've asked her
7 did you tell True that you called Marburger. Her answer is
8 as, I understand, is no. Then I was going to read the rest
9 of this. And then did Kathy call you. I'm going to read
10 that.

11 THE COURT: Where does it say here that she told
12 True that she called Marburger?

13 MR. O'Connor: I said, did you tell True that you
14 called her?

15 MR. MILLER: Excuse me. After he laid a foundation
16 with this statement, he's trying to -

17 THE COURT: That's what's unfair about this. The
18 jury is convinced that you're picking your questions from
19 this statement that you've got in your hand, and you don't
20 have that in the statement.

21 MR. O'Connor: I'm not doing that.

22 THE COURT: You are too. Now, she is entitled to
23 be asked right now if that's in that report. And then you
24 can go from there.

25 MR. O'Connor: Okay.

2985

1 (The following proceedings were had in open court:)

2 Q. (By Mr. O'Connor:) Miss Baird, did Kathy, a friend of
3 yours, Kathy, call you to discuss the noise that was heard
4 later on to tell you, later on tell you there had been an
5 explosion involving the firemen?

6 A. Yes.

7 Q. Did you tell Detective True in your interview, I'm
8 asking, that you had called Kathy or that she had called you?

9 A. I don't remember which way it was. I called her a
10 couple of times, and she called me two or three times.

11 Q. As I understand it, you have stated that Bryan Sheppard
12 and Richard Brown came to your house, it would have been
13 after 7 a.m. in the morning; is that true?

14 A. Yes.

15 Q. And you believe that, as I understand it, to be around
16 7:30 or 7:40 in the morning?

17 MR. MILLER: Objection. That's not what she
18 testified to, that's -

19 THE COURT: Just ask her what time.

20 Q. (By Mr. O'Connor:) What time did they come up?

21 A. Between 7:40 and 8 a.m.

22 Q. And did you ask them where they had been?

23 A. Somewhere along the way, yes.

24 Q. And what did they tell you?

25 MR. OSGOOD: Objection to the word they.

1

1 Q. What did Bryan Sheppard tell you?

2 THE COURT: About where he had been.

3 IQ. Right. What did Bryan Sheppard tell you about where he
4 shad been?

5 A. He said he had been working on cars all night.

6 Q. And was Bryan known to work on cars?

7 A. Yes.

8 Q. Did Bryan come in to your place after working on cars
9 and get massages?

10 A. I don't recall. He might have.

11 Q. And I believe you said that Bryan Sheppard did not have
12 a shirt on when he came in that morning?

13 A. Correct. I don't know when he entered the house because
14 I saw him when he got to the back of the house to my bedroom.

15 Q. But it's at 7:30 or thereabouts there was this smoky
16 smell and gasoline smell; is that right?

17 MR. MILLER: Excuse me. I'm going to object again
18 to him using 7:30. That's not the testimony.

19 MR. O'CONNOR: I said around 7:30.

20 THE COURT: Why don't you say at the time they came
21 in.

22 Q. (By Mr. O'Connor:) At the time they came in, did they
23 have a smoky and gasoline smell?

24 MR. OSGOOD: objection.

25 THE COURT: You've got they in there again.

1 MR. O'CONNOR: I'm sorry. Thank you, Mr. Osgood.

2 Q. (By Mr. O'Connor:) Did Bryan Sheppard?

3 A. I really don't understand the question. It's kind of
4 vague to me when they first came in.

5 Q. My question is vague?

6 A. I didn't smell it until I started massaging Bryan's
7 neck.

8 Q. Had you smelled gasoline on him before?

9 THE COURT: That day?

10 A. I don't recall.

11 Q. other days when he had come in, had you smelled gasoline
12 on him?

13 A. If I had, I don't recall it.

14 Q. Now, you gave this interview to Agent True on March the
15 8th, 1995. Can we agree that Bryan was well out of jail at
16 least six years at that time, or better?

17 A. I don't have any idea.

18 Q. Okay. And do you remember Agent True asking you if
19 there were one or more occasions where it might have been a
20 three-way phone call with you, Bryan, and Kathy Marburger on
21 the phone?

22 MR. MILLER: What page are we on?

23 MR. O'Connor: Bottom of 7 going to the top of B.

24 A. Yes.

25 Q. And do you remember Dave True asking you, "Do you

1 remember Bryan Sheppard during one of those conversations
2 crying or being sad, saying he was present at the explosion
3 the night it occurred?"

4 And your answer was, "No, I don't recall him saying
5 that. I'm not saying he didn't, but I don't recall if he
6 did."

7 A. Correct.

8 Q. And you just said that in 1995?

9 A. Would you repeat the question again, please?

10 Q. Sure. I'll go back so it puts it into perspective.

11 Detective True is asking you on February, and I
12 believe they swore you under oath at the end of this, on
13 March the 8th, 1995, on videotape. Detective True asked you
14 this question. "Were there one or more occasions where it
15 might have been a three-way phone call with you, Kathy
16 Marsburger (sic), and Bryan Sheppard?"

17 And your answer was yes, right?

18 A. Yes.

19 Q. And the question from Detective -- I'm sorry, it says
20 DT, Agent True, Special Agent True.

21 "Do you remember Bryan Sheppard during one of
22 those conversations, oh, crying or being sad, saying he was
23 present at the explosion the night it occurred?"

24 And then your answer. "No, I don't recall him
25 saying that. I'm not saying he didn't, but I don't recall if

1 he did."

2 Is that what you told Agent True in 1995?

3 A. Yes.

4 Q. At the time Bryan Sheppard was making the admissions
5 that you said he made back from the jail where he told you he
6 was at the site and ran across into a ditch or words to that,
7 to that effect, did you ever call back the officers who you
8 had been calling on the phone about me to give them this new
9 information on this man that's sitting in jail on these
10 crimes that he's now on the phone telling me, confessing to
11 me? Did you ever tell anyone before he was turned loose?

12 A. What were the date of the calls during the time?

13 Q. Well, Bryan Sheppard -- I think I can say this, it's a
14 fact -- was in jail from 7/27 of ,89 to 12/29 of '89, so
15 that's when the phone calls would have had to have been made
16 from the Clay County Jail.

17 THE COURT: If she had calls from the Clay County
18 Jail.

19 MR. O'CONNOR: Judge, I believe from July 27th, I
20 could be off a day or two, and I'm not pinning her to the
21 Clay County Jail. From July 27th to approximately August
22 23rd was the date he was in Jackson County. I believe on
23 August 23rd he was transferred, still in custody without
24 going home, to Clay County and was, the case was dismissed on
25 12/29 of ,89. so the phone calls would have had to have come

2990

1 in that period of time.

2 Q. (By Mr. O'Connor:) Did you at any time between 7/27,
3 July 27th of ,89 and December the 29th of ,89 call these
4 detectives who you had been calling about information and
5 tell them that Bryan Sheppard has been on the phone telling
6 me he was there, telling me he ran into a ditch, did you ever
7 do that?

8 A. No.

9 MR. O'Connor: Your Honor, I think this would be a
10 good breaking point. I have probably another 20 minutes, but
11 I could compact it if I had some time.

12 MR. MILLER: No.

13 THE COURT: Well, let's go for a while.

14 MR. O'CONNOR: You want to go?

15 THE COURT: See if you can do it in ten.

16 Q. (By Mr. O'Connor:) Now, when you gave your interview to
17 Agent True where they swore you and put you under oath, did
18 you tell them everything that you knew about this case and
19 all about the phone calls?

20 A. To the best of my ability.

21 Q. And did Agent True come out and see you again four
22 months later to interview you again?

23 A. I recall Agent True coming out twice.

24 Q. And did you call him out the second, this next time?

25 A. If I did, I don't recall that I did.

1 Q. Did you know that he wrote a report from his interview
2 of you?

3 A. Yes.

4 Q. Did you have a chance, have you had a chance to review
5 it and look at it?

6 A. Could I see what you're talking about, please?

7 Q. Yes, ma'am.

8 (So done.)

9 A. Yes, thank you, I've read it.

10 THE COURT: I'm sorry, what did you say, ma'am?

11 THE WITNESS: Yes, thank you, I have read it.

12 THE COURT: Does that mean you've just read it or
13 does that mean you read it before?

14 THE WITNESS: I read it prior to this, Your Honor.

15 THE COURT: Thank you.

16 Q. (By Mr. O'Connor:) And is this the interview -- in this
17 interview, did you tell Detective True that you now
18 remembered a phone call from Bryan Sheppard from the jail?

19 . Is that what it states? Can I see it?

20 . Sure.

21 (So done.)

22 Q. You probably have to read the whole page.

23 (Counsel approached the bench and the following
24 proceedings were had:)

25 MR. O'Connor: Judge, I know you want to get

2992

1 through this witness, but I haven't even gotten to the
2 deposition, I mean, the statement that I took from her. And
3 it's forty some pages, and there's a bunch in there to go
4 through. I mean, it's going to be, honestly, every bit of 30
5 minutes. If I can have time to go over this and redo it, I
6 can shorten it out. I don't want to be pushed at this
7 point.

8 MR. MILLER: With all due respect, we can all
9 endure 30 or 40 minutes sitting here and listening to her.

10 she can't stay in that chair an hour and a half. And we need
11 to get her home for physical reasons.

12 THE COURT: Why is she in the wheelchair?

13 MR. MILLER: Because she's so obese. She's either
14 in that wheelchair or she's in a bed. I think she can only
15 walk a couple of feet at a time. If she had to go to the
16 bathroom, I don't know that we've got the facilities for her,
17 I really don't.

18 MR. O'Connor: I'm just telling you it's going to
19 be a while, I'm just wanting you to know, for lunch purposes.

20 THE COURT: I understand that, but I want to finish
21 this before we break for lunch.

22 MR. O'Connor: That's fine.

23 (The following proceedings were had in open court:)

24 THE COURT: Just so you have some idea what's going
25 on, I have told counsel that we want to finish with this

1 witness before we break for lunch, so it may be a little bit.

2 THE WITNESS: Thank you.

3 Q. (By Mr. O'Connor:) Have you had a chance to look at
4 this?

5 A. Yes.

6 Q. And is this an interview where they had you swear and do
7 an affidavit or anything?

8 A. I don't recall.

9 Q. And when were you first shown this report of this
10 interview that was done of you on July the 9th, 1995? When
11 is the first time you saw this?

12 MR. MILLER: I'm going to object. There's no
13 relevance as to when she first saw it or anything. If
14 there's some impeachment on it or something, it's not
15 relevant to when she saw it.

16 MR. O'Connor: I think it is relevant. This is a
17 statement they say is hers. This is her interview. I want
18 to know when she first saw it to realize whether or not it's
19 correct or right. I mean, I think it's a fair question.

20 THE COURT: Why don't you just ask her when she saw
21 it did she deem it to be correct.

22 Q. (By Mr. O'Connor:) Okay. Did you see this?

23 A. Yes.

24 Q. When?

25 A. I saw it this morning.

1 Q. And is it correct?

2 A. To the best of my knowledge, yes.

3 Q. And in this interview, you say that Bryan Sheppard on
4 the phone -

5 MR. MILLER: Excuse me. I'm going to object. If
6 he's using it, he's reading it into evidence. There's no
7 question, there's no impeachment.

8 THE COURT: Yeah. Let's get, let's do it right if
9 you're going to do it.

10 MR. O'CONNOR: Okay.

11 Q. (By Mr. O'Connor:) Did you tell them that you now
12 remembered a specific phone call from Bryan Sheppard from the
13 Clay County Jail?

14 A. Yes.

15 Q. And had you called them to tell them after your
16 videotaped interview that you now had remembered this, or did
17 they just come out to talk to you?

18 A. I don't recall for sure.

19 Q. I mean, did you call them back and say, you know, I
20 don't think I told you guys everything. I now remember the
21 specific event and I need to tell you guys about it. Or did
22 they just come back out to reinterview you and in the
23 reinterview process you remembered this conversation?
24 . I don't recall.

25 . So from April, May, June, July, four months, you never

1 heard from them about this initial videotape, which they had
2 you swear to; is that right?

3 A. That's correct.

4 Q. And then four months later, they came out -- didn't they
5 telephone you and do a telephone interview of you? Wasn't
6 that what this was?

7 A. I don't recall.

8 Q. Well, they didn't come back out, did they?

9 A. They were at my house at least twice.

10 MR. MILLER: I'm going to object. While he's doing
11 it, he's missed -- I don't want to say it in open court.

12 MR. O'Connor: Tell me what I'm doing because I
13 want to get it straight.

14 THE COURT: Let's just do it -- for one thing, the
15 form of the question is argumentative. They didn't come back
16 out, did they, is argumentative.

17 (Counsel conferred off the record.)

18 MR. O'Connor: Thank you very much.

19 Q. (By Mr. O'Connor:) As I'm told now, because it says at
20 the top, telephone. They came out, did they come out and
21 talk to you, and then they called later to do a follow-up on
22 the phone, as well?

23 A. I believe I called them.

24 Q. You called them?

25 A. Yes.

1 Q. Oh, that's right, you called them back with information
2 about phone records?

3 A. Right.

4 Q. But they, did they initiate the contact with you on July
5 the 9th, they came out to see you?

6 A. Correct.

7 Q. Had you called them to tell them, come out to my house,
8 I now remember a specific conversation with Bryan Sheppard
9 and I need to tell you guys about it, or did they just show
10 up and ask you for another interview?

11 A. They asked for another interview.

12 Q. And in this other interview is when you told them the
13 following, as I understand it. I'll try to get all of this.

14 "Miss Baird remembers that Bryan called" -

15 MR. MILLER: Excuse me. Can we -- this is not
16 right. May we approach?

17 THE COURT: Come up.

18 MR. O'CONNOR: I'm tired of him telling me, Judge,
19 that this isn't right. I'm trying to do it properly, and I
20 haven't done anything improper in this courtroom. And I'm
21 tired of him making these suggestions to the jury.

22 THE COURT: I'm not going to enter into that
23 argument one way or the other.

24 (Counsel approached the bench and the following
25 proceedings were had:)

1 MR. MILLER: That's why we're up here. What he's
2 saying is not a correct rendition. This was all done over
3 the phone, all of it, and he's implying that ATF went back
4 out to the house and insisted on this. It's all done over
5 The phone. It's a telephone interview after the videotape.

6 THE COURT: All right. And it also -- John, the
7 problem with this technique is -- wait a minute. Wait a
8 minute. The problem with this technique is that you're
9 dealing with this as if it were a verbatim transcript of what
10 she said, and it's a report.

11 MR. O'Connor: Listen to me, please. I'm trying to
12 avoid the very thing I'm being accused of. I did not not
13 want to read what was in there and then them accuse me of
14 keeping this back. I was getting ready to read the
15 incriminating things she was saying about my client.

16 This does not help my client, Judge. It's
17 incriminating to my client, and I'm trying to show the jury
18 fairness that I'm reading the whole thing. That's why I'm
19 doing it.

20 THE COURT: What are you getting at right now?

21 MR. O'CONNOR: What she told them in this second
22 interview, which was he said -- Bryan Sheppard told her he
23 was there at the construction site when the first or second
24 explosion occurred, and that Mrs. Baird -- Bryan Sheppard
25 said he ran across the road and jumped into a ditch. That's

1 what I'm trying to do.

2 MR. MILLER: Let's just do that. It's nothing
3 about did they come out or whatever, it's over the phone.

4 THE COURT: The confusion here has been confronting
5 her with whether it was on the telephone or whether they had
6 come out, and why did they come out, and did she call them
7 and get them to come out, or was it before or after the
8 conversation and that sort of thing. Let's confront her with
9 the report of what she said and Bryan said.

10 (The following proceedings were had in open court:)

11 Q. (By Mr. O'Connor:) I apologize, Miss Baird. In this
12 follow-up interview on July the 9th, 1995, did you tell Agent
13 True that during the phone conversation with Bryan on the
14 phone that he told you he was there at the construction site
15 when the first or second explosion occurred?

16 A. Yes.

17 Q. And that Miss Baird in response to this revelation asked
18 Bryan, "Weren't you scared?"

19 In response to her question, Bryan Sheppard
20 responded, "We ran across the road and ducked into a ditch."

21 A. Correct.

22 Q. Now, do you remember when I came out to your residence
23 at 10:30 a.m. on November 29th, exactly one year after the
24 explosion, when you were living at 8508 Wayne?

25 A. Is that the date you came out?

1 Q. That's what this transcript says. That's what I have.

2 A. I remember you came to my house.

3 THE COURT: Do I have a copy of that?

4 Q. It should say on the front there. Does that date

5 coincide with what you believe when I came out?

6 A. I'm not sure about the date, sir.

7 Q. okay. And was it around 10:30 in the morning?

8 A. It could have been. I was thinking it was in the

9 afternoon, but -

10 Q. And I identified myself to you as to who I was?

11 A. Yes.

12 Q. And I had a court reporter with me?

13 A. Yes.

14 Q. Now, you've told this jury, as I understand it, that

15 Richard Brown and Bryan Sheppard came by your house the

16 night, the morning after the explosion; is that true?

17 A. Yes.

18 Q. Do you remember me asking you this question, Page 13 at

19 the bottom and into the top.

20 Question: "I understand. Can you say with any

21 certainty at all he was here the morning of November 29th,

22 1988?"

23 Answer: "It seems like he came home with Richard

24 Brown, but to bet my life on it or somebody else's, I

25 couldn't do that."

3000

1 Did you give me that answer to that question on
2 November 29th, 1989?

3 A. Yes. After you'd asked me that question probably ten or
4 twelve times.

5 Q. And did I ask you this question and did you give this
6 answer?

7 MR. MILLER: Where are we now?

8 MR. O'Connor: We're on Page 14.

9 Q. (By Mr. O'Connor:) Question: "In other words, if you
10 were under oath in front of a jury in this case, could you
11 tell them with any certainty at all that Bryan Sheppard was
12 here at your house at 8 a.m. the morning of the explosion
13 that killed the firefighters?"

14 Your answer was, "I wouldn't want to, no."

15 Question: "Well, I understand you wouldn't want
16 to, but my question is can you with any certainty say he was
17 here on that date?"

18 Answer: "What could I say," you said. "No, I
19 guess."

20 Question: "Is that because no is the truth?"

21 Answer: "I'm not sure. There's just little things
22 that kids come in and do. Some things you remember, and some
23 things you don't."

24 Were those your answers to my questions on November
25 the 29th, 1989?

1 A. Could I see that, please?

2 Q. Sure. I think we're right there is where it starts.

3 Did I read that properly?

4 A. Thank you. Yes.

5 THE COURT: Was that on Page 14?

6 MR. O'Connor: Yes, Your Honor.

7 THE COURT: ALL right. Go ahead.

8 Q. (By Mr. O'Connor:) And as I understand it, the first
9 time you were asked to remember the date of November 29th,
10 1988, about the whereabouts of Bryan Sheppard was this
11 interview that was done almost a year later on October the
12 3rd, 1989; is that a fair statement?

13 A. Yes.

14 Q. And do you remember me asking you at Page 15, question:
15 "And you're telling me today that you cannot say with any
16 certainty that Bryan Sheppard was at your residence that
17 morning, November 29th, 1988, with Richard Brown; is that
18 correct?"

19 Answer: "That's right."

20 Question: "Are you saying that just to please
21 me?"

22 Answer: "No. I'm under oath. I wouldn't -- I
23 mean, I don't really have a good memory, I guess. He could
24 have been here. It seems like he was here, but I wouldn't
25 want to jeopardize anybody's life to say he was."

3002

1 Is that the answers that you gave me on November
2 the 29th, 1989?

3 A. That's the answer I gave you.

4 Q. Was it the truth?

5 A. At that time, yes. When I realized I was -- I felt
6 pressured by you, and when I could think about it, I realized
7 that Bryan was there the morning of the explosion.

8 Q. At the end of the, Page 42, which is two pages from the
9 end of the deposition.

10 THE COURT: It's not a -

11 Q. End of the statement, I apologize, Judge. Do you
12 remember me asking this question, line 20.

13 Question: "You understand that you're free to
14 change any answer you've given me to this point?"

15 Your answer was, "Right."

16 "You understand that I'm going to rely on every
17 answer you've given me in defending this case?"

18 Answer: "Yes, I understand that."

19 Question, Page 43: "And did I explain to you at
20 the beginning that you didn't have any obligation to talk to
21 me, that you basically didn't have to talk to me if you
22 didn't want to; is that right?"

23 Answer: "Right."

24 A. Yes.

25 THE COURT: Wait a minute, finish that answer.

3003

1 Q. Question -- yeah. You said' "Did you really say that?
2 I didn't remember that," is what she said. But did I tell
3 you at the beginning that you did not have to answer
4 questions?

5 A. Yes.

6 MR. MILLER: Excuse me, Your Honor, but to complete
7 this answer, he needs to read on.

8 Q. I'll be happy to. Okay. Question: "Remember when you
9 came in, you said do I need a lawyer. I said that's up to
10 you. I said you don't really have to talk to me if you don't
11 want to."

12 Answer: "Because you would subpoena me later,
13 right?"

14 Question from me, "You could be subpoenaed later to
15 a deposition."

16 Answer, "I want to get it over with."

17 Is that what you said?

18 A. I don't recall, but if it's documented, yes.

19 Q. And what I'm saying is was I out there saying, lady, if
20 you don't talk to me, I'm going to drag you down and give you
21 a subpoena and I'm going to take you -- was I saying stuff
22 like that to you?

23 A. No.

24 Q. I may have asked this, but it would be quick. How many
25 times has Bryan been over to have his neck massaged?

1 A. Numerous times, I don't recall. Twenty, thirty times.

2 Q. Now, isn't it true that this explosion really never
3 stuck out in your mind after it happened, the date?

4 A. Yes.

5 Q. And did the day of the explosion sit in your mind where
6 you remembered like every minute what you did the day of the
7 explosion?

8 A. No.

9 Q. Isn't it true that when Bryan came by your house that he
10 usually never wore a shirt?

11 A. I don't understand the question, sir.

12 Q. Well, when he came by your house, whenever he came by
13 there, isn't it true that he usually never had a shirt on?

14 A. No. That's not true.

15 Q. Did he usually never have a shirt on?

16 A. It depends on the season, I guess.

17 Q. You have smelled gasoline on Bryan before; is that true?

18 A. If I do, I don't recall.

19 Q. Page 28.

20 THE COURT: Of? 28 of what?

21 MR. O'CONNOR: 28, line 3.

22 THE COURT: Of your statement?

23 MR. O'Connor: Yes, Your Honor, November 29th,
24 1989.

25 Q. (By Mr. O'Connor:) "How many times have you smelled

3005

1 gasoline on Bryan?"

2 Answer: "I don't know."

3 Question: "More than a dozen?"

4 "I don't count them, you know."

5 Question: "Would it be more than a half dozen
6 times or not?"

7 "No, it wouldn't be. More than three, but I don't
8 know, probably. He works on cars."

9 Question: "He always works -- strike that. He
10 always worked around cars?"

11 Answer: "Uh-huh."

12 "Was it unusual to smell gasoline on him?"

13 Answer: "No, not if he's working on a car."

14 Is that the answers you gave at that time?

15 A. Yes.

16 Q. Were you saying things to me that day to help, just to
17 help Bryan, or were you saying things to me because it was
18 the truth what you were telling me?

19 A. I did not lie. I told you the truth.

20 Q. Page 31, line 19. Question: "Would you lie under oath
21 for Bryan Sheppard as it relates to the information that you
22 have" -

23 MR. MILLER: I'm sorry. Finish your question.

24 Q. "That you have regarding his whereabouts on the morning
25 of the explosion?"

1

1 MR. MILLER: I'm going to object to this. This
2 doesn't impeach anything.

3 MR. O'Connor: That's fine. Okay.

4 Q. (By Mr. O'Connor:) Now, when the police were out
5 talking to you to get the times and the dates that Bryan
6 Sheppard was at your house, were you scared and confused when
7 they were there?

8 A. No.

9 Q. Were you confused about the dates?

10 A. Possibly.

11 Q. Page 37, line 9. Question: "You've talked to Bryan on
12 the telephone since he's been charged; is that correct?"

13 Answer: "Right."

14 Question: "Has he in any way ever said to you
15 don't testify or change your story or don't testify against
16 me, anything like that whatsoever?"

17 Answer: "Yes."

18 Question: "What has he said?"

19 Answer: "No, you'll tell him, so, no, he hasn't
20 said anything."

21 Was that your answer to me?

22 A. I don't recall.

23 Q. If it's down here, would that have been your answer?

24 1 A. Yes.

25 ~ Q. And I said, "Let's go back, let's strike all that, then,

1 I want to ask" -

2 MR. MILLER: Excuse me. I'm going to object. This
3 is not impeachment.

4 THE COURT: It doesn't impeach.

5 MR. O'Connor: This next one is going to impeach as
6 it relates to the phone call. I wanted to read it in
7 context.

8 THE COURT: Wait a minute. Come up.

9 (Counsel approached the bench and the following
10 proceedings were had:)

11 MR. MILLER: I'm not being flip, but -

12 MR. O'Connor: I'm trying to get has Bryan ever
13 admitted his involvement, and I wanted to read that all
14 because I didn't want you guys to think I was leaving this
15 last part out. I'm just trying to read this in context,
16 Judge, the last question, line 24, has Bryan ever admitted
17 any involvement in the crime, to that. That's why I'm
18 reading above that, to put this whole sentence in context.

19 THE COURT: Go ahead. Finish out 37, do the first
20 line of 38, and then I think in fairness you ought to read
21 through line 7 on Page 38.

22 MR. O'Connor: Yeah, I've got it marked.

23 (The following proceedings were had in open court:)

24 Q. (By Mr. O'Connor:) Miss Baird, line 18.

25 Question: "Let's go back. Let's strike all that,

3008

1 then.I want to ask this again. Has Bryan ever told you on
2 the telephone not to testify or to lie about what you told
3 the police or anything like that since he's been arrested?"

4 Answer, "He's never told me to lie."

5 Is that the answer you gave?

6 A. Correct.

7 Q. Question: "Has Bryan ever admitted his involvement in
8 this crime to you?"

9 Answer: "No."

10 Is that what you said?

11 A. If it's on there, yes.

12 Q. Do you want to see it?

13 MR. MILLER: I thought we were going to read on.

14 THE COURT: He's not through.

15 Q. Did you want to see that?

16 A. Yes, please.

17 Q. The question is here. It goes into there.

18 Have you had a chance? Did I read that correctly?

19 A. Yes.

20 Q. Thank you. Page 38. Question: "Do you feel, do you
21 feel that if you say Bryan was here the morning of the
22 explosion that something is going to happen to you as a
23 result of his family, or are you in any fear like that
24 today?"

25 Answer: "That's a consideration, but mainly I

1

1 wouldn't want to incriminate Bryan."

2

2 Question: "And you say you don't want to

3

3 incriminate Bryan. You mean you don't want to incriminate

4 him because you really don't remember that date with

5 certainty; is that correct?"

6

6 Answer: "Right."

7

7 Question: "You wouldn't want to incriminate

8 anybody based on what you can remember on the morning of

9 November 29th, 1989, would you?"

10

10 Answer: "No."

11

11 Question: "Are you later going to say in court

12 that you answered these questions the way you answered them

13 today about your knowledge of that date for any other reason

14 other than it's the truth?"

15

15 Answer: "No. I'm pretty sure Bryan was here, but

16 I wouldn't stake my life on it or anybody else's life on

17 it."

18

18 Question: "I understand."

19

19 Answer: "But I'm pretty sure he was, but that

20 doesn't mean, you know, he couldn't have been out doing

21 something else."

22

22 Question: "I understand. You were asked to

23 remember this ten months after the fact; is that correct?"

24

24 Answer: "Right. No, I did remember it. I

25 wouldn't have been called in, but Debbie called the police

1 and told them."

2 Did you give those answers to those questions to me
3 on November the 29th?

4 A. I gave those answers.

5 Q. Now, when you were talking to me, you said you felt
6 intimidated by me a little bit; is that right?

7 A. That's correct.

8 Q. Had you also felt intimidated by the police when they
9 had talked with you?

10 A. No.

11 Q. Do you remember Page 18, line 21. Question: "Were you
12 scared when you were out talking to the police; is that a
13 fair statement?"

14 Answer: "Yes, more than I am now."

15 Is that what you said to me?

16 A. I was scared, but I didn't feel intimidated.

17 Q. Did Bryan Sheppard on the phone say these words, "I was
18 there, I helped start the fire," when you were on the phone
19 with you and Bryan and Kathy Marburger?

20 A. I don't recall him saying that, no.

21 MR. O'Connor: I'm almost done, Your Honor.

22 Q. Have you and Kathy Marburger in the last few weeks been
23 on the phone talking to each other about what Richard and
24 Bryan said or did at your residence the morning of the
25 explosion?

1 A. Just briefly. I try not to talk to anyone.

2 Q. And when did you have that discussion with Miss
3 Marburger?

4 A. I don't recall the dates.

5 IQ. And why was it that you were talking to her or asking
6 her about that morning or she asking you?

7 A. Will you state the question again, please?

8 Q. Yes. I don't want to misstate what you said. How was
9 it that you guys talked to each other about Richard and Bryan
10 in the last few weeks about the morning of the explosion?

11 A. I think more or less we were just talking about what's
12 taking place in the court trials.

13 Q. I'm asking you did you guys talk specifically about
14 where Richard and Bryan were the morning of the explosion and
15 what they were saying. In other words, you were talking to
16 her about that event. Are you saying that did or did not
17 happen in the last few weeks?

18 A. Briefly, yes.

19 Q. And the reason for that conversation?

20 A. I don't know. She initiated the conversation and -- I
21 know what I know, and apparently she knows what she knows.

22 Q. And when you said in this last interview with Agent True
23 in, I believe, July of ,95 about Bryan telling you that he
24 was at the explosion or there after the first or second blast
25 ~ and ducked into a ditch, that was at a time when you and

1 Kathy Marburger and Bryan Sheppard were on this three-way
2 phone call; isn't that true?

3 A. I don't know.

4 Q. Wasn't Kathy on the three-way calls when he made the
5 admissions?

6 A. Yes.

7 MR. O'Connor: No further questions.

8 THE COURT: Do you have any cross?

9 MR. OSGOOD: About three or four questions, Your
10 Honor. I promise.

12 CROSS-EXAMINATION

13 By Mr. Osgood:

14 Q. Ma'am, my name is John Osgood and I represent Richard
15 Brown.

16 A. Yes.

17 Q. Did Bryan Sheppard have other friends besides Richard?

18 A. Yes.

19 Q. And was your house pretty much open and people came and
20 went because you were running a business?

21 A. Yes.

22 Q. And was it, would Richard come with other, I mean, would
23 Richard come by himself sometimes?

24 A. Occasionally.

25 Q. okay. And would Bryan come by himself sometimes?

1 A. Yes.

2 Q. And would Bryan come with other people sometimes?

3 A. Yes.

4 Q. And Richard would come with other people sometimes?

5 A. Yes.

6 Q. And there was nothing distinctive about what you've
7 testified here today that you remember about Richard Brown ,
8 is there, on this occasion?

9 A. No.

10 Q. It could have been somebody else in truth and fact
11 because it didn't stick in your mind with Richard, did it?

12 A. No, it was Richard.

13 Q. Okay. You're sure of that?

14 A. I'm sure.

15 Q. But he was in the front room?

16 A. Well, he came back to my bedroom door and talked, or
17 said hello.

18 . okay. Said hello and then he went back out in the
19 front?

20 . Right.

21 MR. OSGOOD: ALL right. Thank you, that's all.

22 THE COURT: Any other cross?

23 MR. PETERS: No, Your Honor.

24 MR. BUNCH: No.

25 THE COURT: Redirect?

1
2 1

- - -

3

REDIRECT EXAMINATION

4 By Mr. Miller:

5 Q. On your statement to the police on October the 3rd,
6 1989, at 5:30 p.m., you were asked -- let me know if you
7 remember this. You were asked this question. This question
8 and this answer, if you remember.

9 MR. O'Connor: Where, please?

10 Q. The very front. "Miss Baird, would you please tell me
11 what you know about the firemen's explosion which occurred on
12 November 29th, 1988?"

13 And this was your answer.

14 THE COURT: Was this your answer.

15 Q. Was this your answer? "I don't know anything directly
16 about the explosion. I was at home in bed when the first
17 explosion woke me up. I didn't realize at first that it was
18 an explosion. I just thought it was thunder. I went back to
19 sleep, and a short time later the second explosion occurred.
20 My son David yelled for me to get up, and I got up. I walked
21 around the house, and David said he heard some glass
22 breaking, so I was looking to see where the broken glass
23 was. I called Kathy Marburger after the" -

24 MR. OSGOOD: Your Honor, I'm going to object to
25 this because it's a complete reading of the statement.

1 MR. MILLER: That's what you said I could do.

2 THE COURT: Overruled.

3 MR. O'Connor: I have no objection to him reading
4 it.

5 THE COURT: Overruled.

6 Q. (By Mr. Miller:) I called Kathy Marburger after the
7 first explosion to see if she heard anything about the
8 explosion on her scanner. Kathy said something about a truck
9 was on fire someplace.

10 After the second explosion, I did not go back to
11 sleep but stayed awake. I think I turned on the radio to
12 listen for any news about what had happened.

13 Gene who stays downstairs came upstairs after the
14 second explosion to see if we were all right. He also wanted
15 to know if anybody knew what was going on.

16 Nothing unusual happened for the next several
17 hours. I had several friends call me to see if I was all
18 right or if I knew what had happened. Most of the
19 conversations were short.

20 Sometime around 8 a.m. Bryan Sheppard and Richard
21 Brown came by the house. I was in my bedroom laying across
22 y bed when Bryan came into my room. The first thing Bryan
23 aid was something like, Karen, will you fix my neck? Bryan
24 at down on the edge of the bed, and I started massaging his
25 back and back and shoulders. This was about the time that I

3016

1 noticed he was dirty and kind of gritty. He also had
2 abrasive scratches on his left arm around his elbow. I also
3 asked him why he was so tense. It was obvious he was real
4 tight as I was massaging him. He said something like, You'd
s be tight, too, if you had been through what I have just been
6 through. I said, What have you been through anyway? He said
7 Never mind, you don't want to know. I asked him this several
8 times during the course of giving him a massage, and he would
9 never give me a definite answer.

10 The massage continued for about an hour and a half
11 to two hours. After the massage, he left my bedroom, and I
12 think he may have gone to talk to the kids in the other room,
13 or he might have left.

14 After this, nothing unusual happened that I can
1s remember. I do remember my friend Kathy who has a scanner
16 called to tell me about the explosion, but I don't remember
17 if this was before or after Bryan came by.

18 Do you remember telling that to Detective Zinn?
19 I'm sorry, to Detective John Fraise and Detective Victor
20 Zinn?

21 A. Yes.

22 Q. When you called Detective Zinn after Mr. O'Connor had
23 been to your home, do you remember Detective Zinn asking you,
24 Detective Zinn asked Karen after this if her statement to
25 police was accurate. And you were reminded that the morning

1
1 of the explosion would be hard to confuse, and you stated
2 that you were truthful in your statement.

3 MR. O'Connor: Judge, I'm going to object to what
4 Detective Zinn said, that it would be hard to confuse. That
5 has nothing to do with this witness.

6 MR. MILLER: The question is did he ask her, and
7 her answer is -

8 THE COURT: I think he was reading her answer,
9 which she said it would be hard to confuse.

10 MR. O'Connor: This is not a question/answer,
11 Judge. This is an interview that the detective did where he
12 made his own statements. I don't object to her answering.

13 THE COURT: She should be asked if that was her
14 answer to Detective Zinn.

15 Q. (By Mr. Miller:) Your answer was -

16 THE COURT: No, was your answer.

17 Q. (By Mr. Miller:) Was your answer that you were truthful
18 in your statement?

19 A. Yes.

20 Q. Mr. O'Connor asked you if you were scared of the
21 police. Do you remember this question being asked to you.

22 Question by Mr. O'Connor. "I understand that. But
23 when you gave" -

24 MR. O'Connor: Where are you please?

25 MR. MILLER: I'm sorry. Page 22, and I'm on line

2 MR. O'Connor: Thank you.

3 Q. (By Mr. Miller:) Question, by Mr. O'Connor. "I
4 understand that. But when you gave this statement to the
5 police, you said that he was here the morning of the
6 explosion. Did you say that at the time because you were
7 scared?"

8 Your answer was no. Do you remember that?

9 A. Yes.

10 MR. MILLER: That's all I have on redirect.

11 THE COURT: ALL right.

12 MR. O'Connor: I've just got a couple real quick,
13 please.

14 RE CROSS-EXAMINATION

15 By Mr. O'Connor:

16 Q. Did you tell Detective Zinn in that same interview that
17 you were 70 percent sure that Bryan Sheppard had come by your
18 house? Your term, 70 percent?

19 . I don't recall.

20 . Okay. If you saw this, would that help you refresh your
21 recollection as to what you told him, or you just don't
22 recall?

23 . I thought I told you 70 percent.

24 . One second, Your Honor, I want to get this and then I'm

3019

1 done.

2 Page 41, line 13. Question, "If you are
3 subpoenaed, I'm assuming the prosecuting attorney will
4 subpoena you to testify."

5 Answer, "I would say 60 or 70 percent sure that
6 Bryan was here, 100 percent that he might not be."

7 Was that what you said?

8 A. Pardon me?

9 Q. Why don't I just let you read it, and I think that will
10 work better. If you are subpoenaed, start there, please.

11 (So done.)

12 A. I don't recall that.

13 Q. Is that what's on there?

14 A. I see it, it's written, yes.

15 Q. So did I read it correctly?

16 A. You read it correctly.

17 Q. Okay. And then after I left, did you call Detective
18 Zinn and tell him that you were 70 percent sure that Bryan
19 Sheppard was at your house?

20 MR. MILLER: Excuse me. May we approach?

21 (Counsel approached the bench and the following
22 proceedings were had:)

23 MR. O'Connor: I see what you're saying.

24 MR. MILLER: That's not it.

25 MR. O'CONNOR: Ended up telling the lawyer that

1 she -

2 THE court: Let's stop this.

3 MR. O'CONNOR: I want to do this because I

4 thought. That -- that's fine.

5 (The following proceedings were had in open court:)

6 Q. (By Mr. O'Connor:) Miss Baird, did you tell Detective
7 Zinn that the lawyer, meaning me, continued questioning and
8 you ended up telling me that you were 70 percent sure that
9 Bryan Sheppard had come by your house? Is that what you told
10 him?

11 A. Yes.

12 Q. And I misspoke saying that you told the detective 70
13 percent. I apologize. It's what you had told me you were
14 telling him. Is that right?

15 . Excuse me?

16 Q. In other words, what you had told me about being 70
17 percent sure, you were telling the detective that that's what
18 you had told the lawyer?

19 . I'm confused. I'm sorry.

20 . Do you remember telling me, do you remember the
21 statement that I just read to you where you said 60 to 70
22 percent?

23 . Yes, I recall that.

24 . ALL right. And then did you call Detective Zinn and
25 ell him that you had told the lawyer, meaning me, that -

3021

1 let me just read this the way it is.

2 The lawyer continued his questioning -- wait a
3 minute, let me go back a little bit.

4 "Karen felt intimidated by this lawyer and his
5 questioning. The lawyer continued his questioning, and Karen
6 ended up telling him she was 70 percent sure that Bryan
7 Sheppard had come by her house."

8 Did you tell that to Detective Zinn?

9 A. Yes.

10 MR. O'Connor: Okay. Thank you.

11 MR. MILLER: No redirect.

12 THE COURT: ALL right. Ladies and gentlemen, we
13 are now going to take a break for lunch. I'll ask you to try
14 to be back in the jury room at 2:15. Don't talk about the
15 case, or anything about the case while we're at lunch, and
16 we'll see you about around 2:15. You may withdraw.

17 (The following proceedings were had in the
18 courtroom out of the presence of the jury:)

19 THE COURT: We'll be in recess.

20 (A recess was taken from 12:45 p.m. to 2:18 p.m.)

21 THE COURT: Okay. Let's get the jury.

22 (The following proceedings were had in the
23 courtroom in the presence of the jury:)

24 THE COURT: You may proceed, Mr. Becker.

25 MR. BECKER: Thank you, Judge. The United States

3022

1 calls Kathy Marburger.

2 THE COURT: If you would just remain seated and
3 raise your right hand, please, the clerk will administer the
4 oath.

6 KATHY MARBURGER,
7 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
8 testified as follows:

10 DIRECT EXAMINATION

11 By Mr. Becker:

12 Q. Good afternoon. Please state your name and spell your
13 last name.

14 A. Kathy Marburger, M-A-R-B-U-R-G-E-R.

15 Q. How old are you?

16 . Forty-six.

17 Q. Where do you live?

18 . South Kansas City.

19 Q. Is that in or near the Marlborough area of Kansas City?

20 . That's in the Marlborough area.

21 . How long have you lived in that area of Kansas City,
22 Missouri?

23 . Since 1990.

24 . Do you have any children?

25 . Yes.

3023

1 Q. Have you been blind your whole life?

2 A. Yes.

3 Q. Do you know an individual by the name of Bryan Sheppard?

4 A. Yes.

5 Q. How do you know Bryan Sheppard?

6 A. Because Bryan is a friend of Karen's.

7 Q. Who is Karen?

8 A. Karen is one of my friends who has a massage business on
9 Wayne.

10 Q. Is that Karen Baird?

11 A. Yes.

12 Q. And you're aware that she testified here this morning?

13 A. Yes.

14 Q. Do you know a Richard Brown?

15 A. Yes.

16 Q. How do you know Richard Brown?

17 . Because Bryan and Richard partied with my children,
18 Rhonda and Phillip.

19 . How long have you known Bryan Sheppard and Richard
20 Brown? How long have you known Bryan Sheppard and Richard
21 Brown?

22 . I would say at least since, since about 1988, probably.
23 don't exactly know how many years, but it's been a while.

24 . Where were you living in November of 1988?

25 . I was living at Champlain Apartments.

3024

1 Q. Where were they?

2 A. About 80th and Troost.

3 Q. Was Karen Baird still living at the same place where she
4 lives now?

5 A. Yes.

6 Q. Do you remember the explosion that occurred about 4 a.m.
7 on November 29, 1988?

8 A. Yes.

9 Q. Where were you when that occurred?

10 A. I was in the Champlain Apartments.

11 Q. Were you sleeping?

12 A. Yes.

13 Q. Did it wake you up?

14 A. Uh-huh.

15 Q. What happened when you woke up?

16 A. I called Karen and I said, "Did you hear the noise, did
17 you hear that noise?" That was -- and I said, you know, "It
18 sounds like an explosion." And at that time, you know, we
19 didn't know anything.

20 . Did you hear the second explosion?

21 . Yeah.

22 . Later that morning, did you talk to Karen Baird again on
23 the telephone?

24 . Yes.

25 . Do you remember about what time that was?

1 A. Well, there was one time right after the second
2 explosion I called her, and I said that there had been a
3 second explosion. I said, "Turn your radio on, six firemen
4 have been killed." And then we hung up.

5 And then at 8 o'clock, I called Karen and I said
6 The same thing, basically, that, you know, you remember the
7 explosion, and did you hear anything else on the radio, and
8 that was 8 a.m.

9 Q. What happened next?

10 A. Karen made the statement, yes, that she heard, you know,
11 she knew about the explosion, and she said, "Bryan and
12 Richard are both here."

13 Q. What did you say?

14 A. She said, "Bryan and Richard are both here. n And I said
15 to her, I said to her, what did they look -- you know, I
16 said, "Really?" And I said what did they look like.

17 Q. Well, was that normal in your experience for Richard and
18 Bryan to be over at Karen's house that early -

19 A. Not that early, no.

20 Q. What happened next?

21 A. so then Karen proceeded to tell me what Bryan and -- is
22 it soon after this?

23 Q. Just tell us what happened in that telephone
24 conversation.

25 A. so Karen proceeded to tell me that Bryan and Richard

1 were covered with smoke and had gasoline on them and their
2 shirt was all black and their necks were black, and I could
3 hear Bryan and Richard's voice in the background as she was
4 talking.

5 Q. Did you recognize their voices?

6 A. Yeah. I know Richard and Bryan's voice.

7 Q. Could you hear what, if anything, they were saying?

8 A. They were saying, "If you had been through what we had
9 just been through and where we had just come from, you would
10 be nervous too."

11 MR. OSGOOD: Object to the use of the word they.
12 They both didn't say that simultaneously, I'm sure, Your
13 Honor.

14 MR. BECKER: If there's an objection, perhaps we
15 could deal with the objection.

16 THE COURT: What is the objection?

17 MR. OSGOOD: The objection is she said they said,
18 and it would imply there was a simultaneous statement by two
19 people, which I would ask that it be clarified. If it's
20 simultaneous, fine; but if it wasn't, I would like to know
21 who said it.

22 . (By MR. Becker:) What did you hear Richard Brown and/or
23 Bryan Sheppard say?

24 . I heard Richard and Bryan's voices in the background
25 making the statement, "If you had been where we were just at

3027

1 and had been through what we have just been through, you
2 would be nervous too."

3 MR. OSGOOD: Same objection, Your Honor.

4 THE COURT: ALL right. You'll have the opportunity
5 to cross-examine. If it isn't cleared up, we'll deal with it
6 then.

7 Q. (By MR. Becker:) Ma'am, I'd like to move ahead to the
8 following year in the time from the second part of 1989.

9 Were you still friends with Karen Baird during that time?

10 A. Yes.

11 Q. And are you still friends to this day?

12 A. Yes.

13 Q. Do you know in 1989, the second part, did Karen Baird's
14 telephone have a three-way capability?

15 A. Yes.

16 Q. How do you know that?

17 A. Because she, because Bryan called Karen, Karen called me
18 on her three-way phone.

19 Q. Do you know where Bryan Sheppard was at that time?

20 A. He was in jail.

21 Q. How often were you on the phone in this three-way
22 conversation with Bryan Sheppard and Karen Baird?

23 . Three to four times.

24 . Can you give us any particular date that this happened?

25 . No.

3028

1 Q. Do you know it happened while Bryan Sheppard was in
2 jail, though, in 1989?

3 A. Yes.

4 Q. Did Bryan Sheppard say anything about the explosion that
5 killed the firemen?

6 A. Bryan said with both of us on the phone, "I was there, I
7 helped to start the fire, but I did not mean to kill the
8 firemen."

9 Q. What was his demeanor, then, was he upset or happy or
10 what was he doing?

11 A. No. He was real -- he was crying and, you know, he was
12 real shook up.

13 Q. Now, last, it would be two years ago in 1995, did you
14 testify before the grand jury concerning these matters?

15 A. Yes.

16 Q. And approximately a month ago on January 7, 1997, did
17 MR. O'Connor come out to your house and have two separate
18 interviews with you with a stenographer present?

19 A. Yes.

20 Q. Did you tell him everything that you've testified to
21 ere today?

22 . Yes.

23 MR. O'CONNOR: That's objectionable. That's not -
24 hat she said in any statement or what she said to the grand
25 jury is not relevant. It's just like she said something to

1 The police. It's what she said here is evidence.

2 THE COURT: It's not what she said but is what she
3 said the same thing is relevant. That's what he's asking
4 her.

5 MR. O'Connor: That's buttressing the evidence, and
6 The evidence should stand by itself.

7 Q. (By Mr. Becker:) Did you also meet with MR. O'Connor
8 for three hours last night to discuss your testimony?

9 A. Yes. I met with Mr. O'Connor to write these questions
10 down and my answers because he was concerned of the fact that
11 I am -

12 Q. okay. But you went over your testimony with Mr.
13 O'Connor?

14 A. Yeah. Yeah.

15 Q. And, again, last night with Mr. O'Connor did you tell
16 ~ him everything that you've testified to here today?

17 A. Yes.

18 MR. BECKER: I have no further questions, Judge.

19 THE COURT: All right. Mr. O'Connor?

20 MR. O'Connor: Judge, I think I gave you my stuff,
21 and these are the originals. These are mine. Thank you.

23 CROSS-EXAMINATION

24 By Mr. O'Connor:

25 ~ Q Miss Marburger, John O'Connor. You and I have met; is

1 that right?

2 A. Yes.

3 Q. And you know that I represent Bryan Sheppard?

4 A. Yes.

5 Q. And before I get to the questions that we've talked
6 about, because I know you've got them there so you can read
7 them in Braille; is that right?

8 A. Uh-huh.

9 Q. It's been mentioned that I came out to see you on
10 January the 7th, I came at 8:30 a.m. one time, didn't I?

11 A. Yeah.

12 Q. And then did you call my office that afternoon and ask
13 me to come back out? I read you your reports when I was
14 there at 8:30, did I not? The first time did I read you the
15 reports that you'd given to the police?

16 A. I think some of them, and then when I called you in the
17 afternoon, my words to you were, you know, defense attorneys
18 tend to twist everything around, so come on back out, and you
19 brought reports and you read them to me.

20 . Okay. And when I brought the reports back out, I
21 brought the same reports and you ran them through your
22 machine so you could convert them to Braille, not only to
23 make sure what I said earlier was right, but to make sure
24 what you had said was right; is that right?

25 Right.

1

1 Q. Did I mislead you in any way with the reports?

2 I A. Huh-uh.

3 IQ. Now, last night,
I came out to your house. Was that
4 okay with you?

5 I A. Yeah.

6 Q. That I came out there?

7 A. Yeah.

8 Q. Okay. And I told you that I was going to ask you
9 certain questions, and then you said do you mind if I put
10 them down in Braille so that I know what you're going to ask
11 me and I can tell you what my answers are, and we sat there
12 for three hours and you punched the Braille machine; is that
13 right? Or whatever that is; is that right?

14 A. Yeah.

15 Q. And the answers that you have there that you're going to
16 maybe use as a reference, if it's okay, are your answers.
17 It's not what I said for you to say, is it?

18 A. Oh, no. No.

19 Q. Okay. so we'll start with No. 1, which is your No. 1.
20 And you were on the phone with Bryan three to four times on
21 one of these three-way calls; is that right?

22 A. Yes.

23 Q. And on at least one occasion, Bryan said, "I was there,
24 I helped to start the fire, but I did not mean to kill the
25 firemen"? ~

1 A. Yes.

2 Q. You do not remember the dates?

3 A. No.

4 Q. But you knew he was in jail?

5 A. Yes.

6 Q. Am I going too fast?

7 A. No, that's fine.

8 Q. Anytime that you talked to Bryan and he said anything
9 about his involvement in this case, did you call Detective
10 Zinn or Detective Fraise to tell them what he had said?

11 A. Yes.

12 Q. When Bryan said, "I was there, I helped to start the
13 fire, but I did not mean to kill the firemen," did you call
14 Zinn and Fraise and tell them what Bryan had said on the
15 phone?

16 A. Yes.

17 Q. No. 7. Are you there?

18 A. Uh-huh.

19 Q. Is it true that anytime that you had information about
20 the case that you would call Zinn and Fraise and tell them
21 what you knew?

22 A. True, yes.

23 Q. Just -- before we go to No. 8, you knew Zinn and Fraise
24 from the neighborhood, and you would call them about
25 different things from time to time when you would know things

1 that were going on?

2 A. Right.

3 Q. You knew them on a, by voice and on -- kind of on a
4 first-name basis?

5 A. Yeah, right.

6 Q. Okay. No. 8. Had you heard numerous stories about what
7 happened the night and the morning of the explosion?

8 A. Yes.

9 Q. And were there a lot of rumors going -- No. 9, are you
10 okay?

11 A. Yes.

12 Q. Were there a lot of rumors going around Marlborough
13 about the explosion?

14 A. Oh, God, yes.

15 Q. That's what you wrote down last night; is that right?

16 A. Yes. Oh, God, yes.

17 Q. I didn't say that?

18 A. No, I said it.

19 Q. Okay. Were there rumors going around at the time you
20 were talking to Bryan on the phone about what had happened?

21 Not that you were on the phone and the rumors were going
22 around, but at the time that he was making these calls, at
23 that same time, not during the calls, but at that time rumors
24 were going around about what had happened?

25 A. Yes.

1 Q. How many different stories did you hear about the
2 explosion?

3 A. Too many to count.

4 MR. BECKER: Objection. How many different stories
5 land from whom, when, where, and -

6 THE COURT: Right. She hasn't testified to -
7 except that there were rumors, she hasn't testified to any
8 stories.

9 Q. (By Mr. O'Connor:) Okay. No. 12. Did you say to Bryan
10 in one of these phone conversations, one of these three-ways?

11 A. Uh-huh.

12 ~Q. Did you say to Bryan if you didn't do it, you need to
13 stand up and tell the truth that you didn't do it; and if you
14 did do it, you need to stand up and tell the truth that you
15 did do it?

16 A. That's exactly what I said.

17 Q. Do you remember that Special Agent True had interviewed
18 you in this case?

19 A. Uh-huh.

20 Q No. 13. Did you tell Dave True on February the 23rd,
21 1995, that Bryan Sheppard was a pyromaniac?

22 1 A. No.

23 Q. 14. Did you ever tell any authorities that you did not
24 say that, get that statement cleared up about pyromaniac?

25 ~A. Yes, everybody knows I didn't say that, and all of that

3035

1 stuff has been corrected.

2 Q. okay. And did you tell the prosecutors other things
3 that were in your report of interview that weren't correct,
4 as well?

5 A. Yes.

6 Q. And there were some names that were wrong and so on?

7 A. Yeah, and it's all been corrected.

8 Q. Did you get that all cleared up with, I think, Mr.
9 Ludwig?

10 A. With MR. Becker? Mr. Ludwig was the one asking me the
11 questions, and MR. Becker will tell you it's all been
12 corrected.

13 Q. Okay. No. 16. Who was the first person to show you the
14 interview that the ATF had done of you?

15 A. You.

16 Q. And had you ever seen any reports that had been done of
17 you by the ATF before I showed them to you when I came out to
18 see you on January the 7th?

19 A. No.

20 Q. Are you on 18?

21 A. Uh-huh.

22 Q. Other than the phone conversation with Bryan, did he
23 ever admit to you that he was involved in the explosion?

24 A. No.

25 Q. How many different times have you seen Bryan Sheppard

3036

1 out on the street after he got out of jail in December?

2 A. It was quite a few times. You know.

3 Q. Did you have any conversations with him?

4 A. What, did I have any?

5 Q. Did you talk to him?

6 A. Yeah, but not about that.

7 Q. Going to 23.

8 A. Wait. Okay. Let me back up. Okay. Go ahead.

9 Q. How sure are you today, Miss Marburger, that you called
10 Zinn and Fraise and told them that Bryan Sheppard had made
11 these admissions on the phone?

12 A. 100 percent sure.

13 Q. After the first explosion, did Karen Baird call you or
14 did you call Karen?

15 A. I called Karen.

16 Q. Did you call Karen again after the second explosion?

17 A. Yes.

18 Q. Okay. Is that 25?

19 A. Yeah.

20 Q. Okay. Did Karen Baird call you at all the morning of
21 the explosion?

22 A. No.

23 Q. Did you tell Karen that you heard about a truck being on
24 fire someplace?

25 A. No.

1 Q. Did you and Karen a couple of weeks ago or a few weeks
2 ago go over or talk about what was said by Bryan and Richard
3 the morning of the explosion?

4 A. Yes, we did.

5 Q. Did you tell Zinn and Fraise that you heard Bryan and
6 Richard in the background the morning of the explosion having
7 the conversation at Karen's house in which they were saying,
8 "You should have been where we had been"? Did you tell that
9 to Zinn and Fraise?

10 A. Ask me how it reads, did you tell Zinn or Fraise that I
11 overheard Bryan or Richard's voices in the background, and
12 then what you said is all true, yes.

13 Q. I guess what I threw in is what they said and I
14 shouldn't have done that. But the point I'm making is that
15 when you had the conversation, when you overheard the
16 conversation with Bryan and Richard about being there and
17 saying you should have been where we had been that you'd
18 overheard, you told that to Zinn and Fraise?

19 A. Yeah, I heard both the voices in the background.

20 Q. Did Bryan Sheppard ever on the phone with you and Karen
21 say, "We ran across the road and ducked into a ditch"?

22 A. I never heard Bryan say nothing like that.

23 MR. O'Connor: That's all I have. Thank you very
24 much.

25 THE COURT: Any other cross?

3038

1 MR. OSGOOD: Yes.

3 CROSS-EXAMINATION

4 By Mr. Osgood:

5 Q. Miss Marburger, my name is John Osgood, and I represent
6 Mr. Richard Brown. Now, we have not met, have we; is that
7 right?

8 A. No, we haven't.

9 Q. All right. Is it your testimony today that you heard
10 both voices of Richard Brown and Bryan Sheppard?

11 A. Yes, it is.

12 Q. Do you recall which of the two made the statement that
13 you've testified to here today?

14 A. I heard both voices. They were both talking. You know,
15 I can't say Richard -- you know, you could hear both of their
16 voices in the background.

17 Q. And did you hear Miss Baird say that -- is it your
18 testimony that Miss Baird said that they both had smoke all
19 over their shirts and clothes?

20 A. Yes. I asked her what they looked like, and she said
21 they have black smoke all over their shirt and neck and
22 gasoline, and they smell like gasoline.

23 Q. And she used the word they on the phone?

24 A. Yeah.

25 Q. And you used the word they on the phone?

1 A. What do you mean I used the word?

2 Q. When you said, "What do they look like?"

3 A. Yeah.

4 Q. All right. Ma'am, do you remember when Mr. Becker had
5 you down before the federal grand jury on the 26th day of
6 September of 1995 here in this building?

7 A. Uh-huh.

8 Q. And you were, did you talk to Mr. Becker before you went
9 in front of the grand jury, ma'am?

10 A. Paul, did we talk?

11 Q. If you remember.

12 A. I don't know because, you know, I'd never been in front
13 of a grand jury, and I was scared half out of my mind, so -

14 Q. And I understand. But for the benefit -

15 A. And I didn't even know you were going to talk, but I'm
16 telling you the truth, whether you talk or not.

17 Q. It was up on the ninth floor of this building. Were you
18 told that in the little waiting area where you waited before
19 you went in?

20 A. I don't know. It was somewhere.

21 Q. And was it like this, did somebody put you under oath
22 and swear you in?

23 A. Yeah, we had a mike on and we were talking, you know, he
24 asked questions and I answered questions.

25 Q. All right. Now, was Mr. Becker examining you; is that

1 right?

2 A. Yeah, Paul Becker.

3 Q. All right. Ma'am, do you remember these questions asked
4 of you and did you provide these answers? Page 8. Starting
5 out with, I'll just pick up with the time.

6 THE COURT: Do I have -

7 A. Wait a minute. Because you're confusing me because I
8 didn't -- first of all, I was told by Mr. O'Connor that
9 nobody would be talking to me but him.

10 Q. Well, Mr. O'Connor represents the other -

11 A. So I don't know you, so I don't -

12 THE COURT: Go ahead and answer his questions the
13 best you can, Miss Marburger. Do you have another copy of
14 that?

15 MR. OSGOOD: This is the grand jury transcript,
16 Your Honor.

17 THE COURT: All right.

18 MR. OSGOOD: I only have one copy. Could I use
19 yours?

20 MR. BUNCH: Right here.

21 MR. OSGOOD: Page 8, Your Honor.

22 Q. (By Mr. Osgood:) Now, I'm going to read you a series of
23 questions and answers, ma'am, that a court reporter took
24 down, just like a court reporter is taking it down in these
25 proceedings, and then I'm going to ask you about this series

1 of questions and answers. Question.

2 THE COURT: What line?

3 MR. OSGOOD: Line, line 11 is where I'll pick up,
4 Your Honor.

5 THE COURT: All right.

6 Q. "How do you remember it was 8 o'clock?"

7 A. How do I remember it was 8 o'clock?

8 Q. No, ma'am, these are questions and answers that were
9 asked of you. I want you to listen until I'm finished
10 reading, if you would, please. okay? This was dialogue
11 between you and Mr. Becker back on September 26th of 1996
12 taken down by a court reporter in the grand jury. I want to
13 read this to you, and I want you to listen to it until I'm
14 done reading, please. Okay?

15 Question: "How do you remember it was 8 o'clock?"

16 Answer: "Cause I asked her what time it was, and
17 she said it was around 8 o'clock."

18 Question: "And what was that conversation about?"

19 Answer: "Well, that was about the explosion. She
20 said, oh. I said, well, six firefighters got killed, and she
21 said yeah. She said, I know. Bryan was just at my house.
22 And I said, you know, I said, Bryan was just at your house at
23 8 o'clock in the morning?"

24 Question: "was that unusual?"

25 Owell, I thought it was kind of unusual."

3042

1 Question: "Why?"

2 Answer: "Well, cause, first of all, Karen didn't
3 even open up until later in the day, and I don't know. I
4 just thought it was unusual. So I told her, I said, what did
5 Bryan look like? You know, because she said Bryan was
6 there. And so she told me, she said, Bryan was really
7 nervous. Karen said, Karen said that Bryan said, well, if
8 you had been where I was at, you would be nervous too. So
9 then I proceeded to ask her, you know, I said, well, what did
10 he look like? She said, well, Bryan had smoke all over his
11 shirt and clothes and he smelled like gasoline and his neck
12 was black and he was there and that he had fled from this
13 area on this security guard's truck. And I have to let you
14 ask more questions."

15 "No, that's okay. That's all right. Did you ever
16 talk to Karen Baird about that again?"

17 Answer: "Karen and I talked about it a lot, yeah,
18 we talked about it a lot."

19 so, ma'am, in that exchange that just took place,
20 Mr. Brown's name is not mentioned one single time, is it?

21 A. No, it's not mentioned.

22 Q. And the word they is not mentioned one single time, is
23 it, ma'am?

24 MR. O'Connor: Judge, I'm going to object to Mr.

25 Osgood yelling at the witness.

1 THE COURT: Excuse me, Miss Marburger. I don't
2 think, I don't think -- this is the kind of question that
3 really isn't necessary. It's clear that they is not in
4 there. You read it, it's not there.

5 MR. OSGOOD: I made my point, you're right, Your
6 Honor.

7 Q. (By Mr. Osgood:) You did talk to Miss Baird recently,
8 though, about your appearing here and testifying?

9 A. Yeah.

10 Q. Did you get a chance, did somebody read this grand jury
11 transcript to you before you testified here today?

12 A. Mr. O'Connor -- let's see. Well, both the -- did you
13 read it, Paul, to me?

14 MR. BECKER: I can't answer that question.

15 THE COURT: I'll put him under oath and ask him
16 later, but -

17 A. I'm sure that Paul went over it.

18 MR. O'Connor: I did.

19 A. I'm sure that Paul went over it because he went over
20 papers last week, and Mr. O'Connor went over papers this
21 week.

22 Q. And isn't it true, ma'am, that Richard Brown's name is
23 not mentioned anywhere in this transcript at all except that
24 when they asked you if you knew Richard that you said, well,
25 Richard always ran around with Bryan. That's the only

3044

1 mention of Mr. Brown in this entire transcript; isn't it,
2 ma'am?

3 A. That maybe true for that entire transcript.

4 MR. OSGOOD: Thank you. Thank you.

5 MR. O'Connor: No further questions.

6 THE COURT: All right. Anything else, counsel?

7 MR. O'Connor: No, sir.

8 THE COURT: No, for the government.

9 --

10 REDIRECT EXAMINATION

11 By Mr. Becker:

12 Q. Miss Marburger, it's Paul Becker again. Why were you
13 and Karen Baird talking about your testimony some weeks ago?

14 A. Oh, why did me and Karen talk about the testimony, or
15 the boys a couple of weeks ago?

16 Q. Right.

17 A. For the simple reason that, for the simple reason that
18 Karen had been called by the defense, Karen was afraid of the
19 defense. I wanted to tell Karen to make sure and remember
20 the truth and what was said.

21 MR. BECKER: Thank you.

22 THE COURT: All right.

23 MR. O'Connor: Nothing further, Judge, other than I
24 do apologize to the witness. I didn't know someone else was
25 going to ask her questions. Mr. Osgood had every right to,

3045

1 but I didn't think he was going to, and that's what I told
2 Miss Marburger last night, and I apologize to her.

3 THE COURT: All right. Thank you, Miss Marburger.
4 Sharon is coming along there, and she'll help you down .

5 All right. You may call your next witness,
6 counsel.

7 MR. MILLER: Your Honor, the government calls
8 Detective Michael Collins.

9 THE COURT: Mr. Bunch, I think maybe this is
10 yours. Did they steal this from you?

11 MR. BUNCH: Yes, Your Honor. Thank you, Your
12 Honor.

13 THE COURT: Stand by the witness chair and be
14 sworn, please, Detective Collins.

15 - - _

16 MICHAEL COLLINS,
17 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
18 testified as follows:

20 DIRECT EXAMINATION

21 By Mr. Miller:

22 Q. Would you tell the Court and the jury your name, please?

23 A. Michael Collins.

24 Q. And how old are you, sir?

25 A. Forty-seven.

1

1 . And how are you employed?

2 A. I'm employed as a detective in the Bomb and Arson Unit,
3 Kansas City, Missouri, Police Department.

4 Q. How long have you been a detective in the Bomb and Arson
5 Unit?

6 A. Twelve years.

7 Q. And could you briefly tell the jury your training?

8 A. My arson training consists of, I graduated from the
9 National Fire Academy in Emmitsburg, Maryland, which dealt
10 with the cause and origin of fires. I've also attended arson
11 seminar which is conducted by the Kansas City Arson Task
12 Force every year since 1983, and I've also during my time
13 that I've spent within the arson unit investigated in the
14 area of a thousand fires.

15 Q. Prior to the explosion of November of 1988, how many
16 fires had you investigated?

17 A. Approximately 400 fires.

18 Q. Have you testified in court before regarding arson
19 fires?

20 A. Yes, sir, I have.

21 Q. Have you ever offered opinions as to the source and
22 origin of fires?

23 A. Yes, I have.

24 Q. I want to go now to the construction site there at 71
25 Highway and 87th Street after the explosion of November the

3047

1 29th, 1988. Which side of the construction site did you
2 investigate, going down 71 Highway?

3 A. We were on the east side.

4 Q. That's where the trailers were?

5 A. Yes, sir.

6 Q. Were you able to examine any of the trailers?

7 A. No, sir, we weren't.

8 Q. Why not?

9 A. The explosion had destroyed all of the, all of both
10 trailers, and our crime scene basically had been obliterated
11 by the explosion.

12 Q. So what you're saying is you had no crime scene?

13 A. We had no crime scene.

14 Q. Did you find a pickup truck, what was left of a pickup
15 truck there on the east side?

16 A. Yes, we did.

17 Q. And did you notice any burning on that pickup truck?

18 A. Yes, sir, there was some burning at the front of the
19 pickup truck.

20 Q. Now, even though the trailers were gone and you've got
21 the pickup, from your investigation, were you able to tell,
22 could the pickup have been on fire before the trailer?

23 A. Possibly. We were unable to determine if the fire from
24 the trailers caused the fire damage on the pickup truck or
25 if, in fact, there had been an independent fire on the pickup

3048

1 truck.

2 Q. Unable to determine?

3 A. That's correct.

4 Q. What is high order detonation?

5 A. High order detonation is when an explosive material
6 detonates in excess of 3300 feet per second.

7 . Now, can ANFO high order detonate?

8 . Yes, ANFO is a high order explosive.

9 Q. And how many ANFO high order detonations caused by fire
10 ere you aware of as of November of 1988?

11 A. None.

12 Q. How did they used to dispose of old ANFO prior to 1988?

13 A. The procedure that we used prior to that was that we
14 would burn ANFO to destroy it.

15 Q. Is that still done?

16 A. No, sir.

17 Q. Because of what happened?

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

19 Q. How can ANFO high order detonate?

20 A. Well, ANFO can be boosted. In other words -

21 MR. PETERS: Your Honor, I object. I don't have a
22 report regarding his qualifications.

23 MR. BECKER: We can approach.

24 (Counsel approached the bench and the following
25 proceedings were had:)

1 MR. PETERS: I have nothing saying he's qualified
2 as an expert for anything having to do with ANFO.

3 THE COURT: Except he's investigated over 400
4 fires.

5 MR. PETERS: He can testify to that, but as soon as
6 he starts talking as an expert in ANFO, I'm entitled to some
7 report as an expert.

8 THE COURT: Who says you're entitled to a report?
9 You're entitled to a report if there is one.

10 MR. MILLER: Right.

11 THE COURT: Is there a report?

12 MR. MILLER: No. What we have is a deposition
13 taken of the man by the civil attorneys and his crime scene
14 report, and Mr. Peters has those.

15 MR. PETERS: I've read both of those carefully, and
16 he's never offered an opinion regarding ANFO. He's never
17 investigated an ANFO fire, and he's never worked with ANFO.
18 That's straight out of his deposition, Judge.

19 THE COURT: If you can't establish him as an expert
20 in ANFO, you can't ask him an ANFO question. If you can, you
21 can. It seems fairly simple.

22 (The following proceedings were had in open court:)

23 Q. (By MR. Miller:) Have you ever done any research on how
24 ANFO can high order detonate?

25 A. Well, I've worked with ANFO. In fact, that is the

3050

1 explosive that we use in our demolition work.

2 Q. Okay. Now, from your work with ANFO, then, in your
3 demolition work, can ANFO high order detonate?

4 A. Yes, sir.

5 Q. And how?

6 A. ANFO is a type of explosive that would have to be
7 boosted. In other words, you have to have a cast booster
8 which also contains an explosive, or you would have to have a
9 stick of dynamite or something like that to boost ANFO.

10 We also know now prior, or since this incident that
11 under extreme amount of heat and fire that ANFO will also
12 high order.

13 Q. Also, there at the scene, how many craters did you find?

14 A. Three.

15 Q. And was the largest crater on which side?

16 A. On the west side.

17 Q. That west side closest to 71 Highway?

18 A. That's correct.

19 Q. And did you find two smaller craters east of the larger
20 crater?

21 A. Yes, we did.

22 Q. Now, were these two craters created simultaneously or
23 not?

24 A. I would say pretty much simultaneously, yes, sir.

25 Q. Why would you say simultaneous?

1 A. They were both, if one had detonated before the other,
2 probably, and then the other one gone, we would have a little
3 bit more distortion, we wouldn't have had two separately set
4 craters. In other words, if one went and then the other, the
5 second one would have destroyed the first one somewhat, it
6 wouldn't have been a crater.

7 Q. Do you know how many feet separated, talking about those
8 two small craters, or the small crater and the other craters?

9 A. You mean the two craters that were together?

10 Q. Yes.

11 A. What the distance was that separated them? Probably
12 three feet or so. It wasn't very large. Or wasn't very
13 great.

14 Q. Even though you had nothing left of the trailers, from
15 your experience and your training, what would burn on a
16 trailer?

17 A. Well, the trailers that I'm familiar with, these are,
18 from my information that I had gathered afterwards, were just
19 common trailers with wood floors, aluminum sides, rubber
20 tires on the rear of the trailers. So we have material such
21 as the rubber tires, the wooden floor, and the aluminum which
22 would burn. Also, the ANFO which was inside were in, I
23 believe, nylon sacks or socks, and then paper bags and, of
24 course, they would burn also.

25 Q. How hot does aluminum have to get before it starts

3052

1 burning?

2 A. Well, aluminum melts at 1220 degrees, so it would start
3 to melt. So burning temperature would be less than that,
4 approximately 1200 degrees.

5 Q. Would the tires set on fire by an accelerant be able to
6 generate that much heat?

7 A. Yes, it would.

8 MR. PETERS: Your Honor, object. That assumes
9 facts not in evidence. I don't object if it's a
10 hypothetical, but if the tires were set on fire with an
11 accelerant, would that generate enough heat, it's assuming
12 facts not in evidence.

13 THE COURT: You're saying hypothetically?

14 MR. PETERS: Hypothetically, I have no objection,
15 Your Honor.

16 THE COURT: If the tires had been started by an
17 accelerant. All right. The objection is withdrawn.

18 Q. (By Mr. Miller:) How were you able to eliminate or
19 determine what may have started that fire?

20 A. We did this by a process of elimination.

21 Q. Now, excuse me. Is that an accepted process of
22 investigation?

23 A. Yes, it sure is. In fact, it's not real common, but in
24 cases and fires where we have heavy fire damage, heavy
25 destruction from fire, we have to do this.

1 And so what we did, since the fire scene, in other
2 words, the trailers where the fire occurred were now gone,
3 once we got there, what we had to do was start backtracking
4 and talking to people who were associated with the
5 construction company and the contractors on site to determine
6 if there was any electricity going to the trailers, if they
7 had any sort of portable generators, portable heaters. It
8 was cold, seeing if maybe they had had possibly some portable
9 heaters running to keep equipment or something warm in the
10 trailers.

11 And through this process, we learned that there was
12 no electricity being run to the trailers. They had no
13 electrical or no heaters or generators, gas powered
14 generators in or around the trailers that were running at the
15 time, that time of night. Virtually, they said there was
16 nothing in or around those trailers which would have caused a
17 fire.

18 By this fact, we were able to eliminate any
19 accidental causes as far as natural causes. There was not a,
20 the temperature was cold, slightly overcast, we had no
21 reports of any lightning strikes, no thunderstorms in the
22 area, so we were able to eliminate any sort of lightning
23 strike of this nature. By virtue of eliminating all natural
24 and accidental causes, we were then able to classify this
25 fire as an intentionally set fire and an arson fire.

-3054

1 Q. Now, going back to what we had at the scene, what you
2 were told was at the scene, the trailers are gone, and you've
3 eliminated natural and accidental causes, what is the
4 simplest method to have started those trailers on fire?

5 A. The simplest method would have been to have someone pour
6 an accelerant on or around the trailers, possibly on the
7 rubber tires, ignite them. Once the rubber in the tires got
8 burning, they burn, rubber will burn for a long period of
9 time.

10 The tires being located underneath the trailer
11 would have then started the wooden flooring on fire. Most
12 wooden floorings of trailers are constructed of heavy
13 timber. Once the wooden flooring got burning, it would have
14 generated a tremendous amount of heat, which would then have
15 gotten the aluminum siding of the trailers burning and,
16 consequently, the contents of the trailers, which was the
17 ANFO, they would have started burning. And we do know now
18 since that incident that once ANFO gets superheated and
19 starts and it's in a confined space, such as the trailers,
20 they'll high order, and it's my opinion that's how this
21 explosion occurred.

22 Q. How long would it have taken the trailer to get that hot
23 if the tires had been started with an accelerant?

24 A. For the ANFO to high order?

25 Q. Yes.

1 A. I would say no longer than, say, 20 minutes, 20-minute
2 extensive burn or less would have generated enough heat and a
3 high enough heat to cause the ANFO to high order.

4 MR. MILLER: No further, Your Honor.

5 THE COURT: All right. Cross?

7 CROSS-EXAMINATION

8 By Mr. Peters:

9 Q. Detective Collins, my name is Pat Peters, and I
10 represent Frank Sheppard. And I'd like to go over a few
11 things with you.

12 At the time that you prepared your investigative
13 report back in November of 1988, you tell us that you'd
14 investigated about 400 fires at that time; is that correct?

15 A. Approximately, yes, sir.

16 Q. Would you tell us how many of those fires that you
17 investigated, how many of those 400 had been ANFO related?

18 A. None.

19 Q. How many of them involved explosives, blasting agents,
20 the type of thing that you'd normally find at a construction
21 site?

22 A. None.

23 Q. Before you conducted this investigation, how many
24 courses had you taken dealing with blasting agents, their
25 explosive properties, that sort of thing? How many courses

1 Shad you taken on that?

2 IA. Well, I attended bomb school, which is in Huntsville,

3 Alabama. It's a four-week course sponsored by the FBI.

4 I've also attended several seminars which were
5 conducted by the International Association of Bomb
6 Technicians and Investigators through the explosive, or
7 Hazardous Device Explosive School in Huntsville. And through
8 the two seminars I attended through the IABTI, we covered,
9 you know, explosives and fires caused by explosives and that
10 sort of thing. Exactly how many hours, I couldn't tell you.

11 Q. On November 29th, 1988, how many courses had you taken
12 that dealt exclusively with blasting agents such as ANFO?

13 A. The ones I mentioned.

14 Q. And you had taken all of those -

15 A. Prior to.

16 Q. -- prior to November 29th?

17 A. Yes, sir.

18 Q. How many hours of courses would you guess that all of
19 those that you named took up?

20 A. Guess?

21 THE COURT: You shouldn't -- wait a minute. Let's
22 make sure that we know what you're asking. Do you mean
23 credit hours or class hours?

24 MR. PETERS: Whatever would be best for the
25 witness, Judge.

3057

1 Q. (By Mr. Peters:) What's the length of time that you
2 spent in a classroom where somebody might have said the word
3 ANFO?

4 A. Where they just -- well, probably -- I mean, ANFO is a
5 common explosive, and anytime you take any sort of class
6 dealing with explosives, ANFO is always discussed because
7 it's a common type explosive. Roughly off the top of my
8 head, maybe 20 hours where ANFO is discussed.

9 Q. How many classroom hours had you taken that were
10 specifically dedicated to ANFO and either how to deal with it
11 in case of a fire or what the aftermath of an ANFO explosion
12 might be?

13 A. Well, take those 20 hours, and we narrow it down to
14 where ANFO was the main subject of discussion, I would say
15 probably four.

16 Q. When you were called to the site and you learned that
17 ANFO had been stored, did you call anybody in with expertise
18 in ANFO fires or ANFO-related explosions?

19 A. No, sir.

20 Q. And I apologize, I'm going to skip around a little bit.
21 But did I hear you say that we now know that under pressure
22 and fire, ANFO will detonate?

23 A. Yes, sir.

24 Q. And what is the difference between a detonation and an
25 explosion?

1 A. It's basically the same, just different terminology.

2 Q. Sir, isn't a high order explosive something different
3 from a blasting agent?

4 A. Depends on the use. A high order explosive, as I said
5 before, is anything that will detonate at or higher than 3300
6 feet per second. A blasting agent -- ANFO was, or is used,
7 terminology blasting agent is used because it has to be
8 boosted. It's not cap sensitive. In other words, if you
9 took a blasting cap and you stuck it in a sack of ANFO, it is
10 not supposed to high order. What it needs is something like
11 a stick of dynamite, a booster, to get it to high order.

12 Q. And so if we're, if we're talking technical language,
13 ANFO does not detonate, it explodes; isn't that correct?

14 A. Well, I use the two terms synonymously.

15 Q. And in your four hours of training, do you recall being
16 told that if a sample of ANFO does detonate, it doesn't meet
17 specifications, it is then a high order explosive instead of
18 a blasting agent?

19 A. Yes. Once it detonates, it's a high order, if it
20 detonates faster than the 3300 feet per second.

21 Q. We now know that under pressure and fire, ANFO will
22 detonate. What is the source of that information that you've
23 given us?

24 A. Well, the fact that it, the fact that we had the
25 explosion.

1 Q. So you're using the explosion as proof that the cause of
2 the explosion was fire; am I hearing -

3 A. The burning of the ANFO in a confined area.

4 Q. Have any tests been conducted by Kansas City, Missouri,
5 Bomb and Arson Unit to see if under any circumstances of
6 pressure and fire that you could make ANFO detonate without a
7 booster?

8 . Well, after seeing what we saw up there, we didn't think
9 e needed to have any tests done.

10 . So the answer to the question is no tests were done?

11 . Is no, yes, sir.

12 . Approximately 10 days before this explosion, the Kansas
13 City Bomb and Arson Unit responded to a location where a
14 large quantity of ANFO was located at 85th and Troost; is
15 hat correct?

16 . That's correct, I was there.

17 Q. About 85 bags of 50-pound Maynes Mix, the same mix that
18 as stored at the site on 71 Highway; isn't that correct?

19 . That's correct.

20 Q. And the Kansas City, Missouri, Bomb and Arson Unit took
21 those 85 bags at 55 pounds apiece and burnt them, didn't
22 they?

23 A. Yes, we did.

24 Q. And no explosion; is that correct?

25 A. That's correct.

1 Q. And you're aware of no, no scientific test that has ever
2 been conducted by anyone to see if fire alone can cause a
3 quantity of ANFO to high order.

4 THE COURT: Is that a statement or a question?

5 MR. PETERS: Are you? It's a question now, Judge.

6 A. Well, fire alone, or are you talking about ANFO being
7 confined or just burned out in an open field? Just fire -

8 Q. I'm asking you, are you aware of any tests that have
9 been able to cause ANFO -

10 A. Scientific tests?

11 Q. Yes.

12 A. No, I'm not.

13 Q. So what you're saying is that the reason that you
14 believe fire can cause ANFO to high order is because you had
15 the occurrence on November 29th where ANFO high ordered?

16 A. That's correct.

17 Q. Now, all during the months preceding that at that
18 location, ANFO was high ordering every workday when they
19 detonated the high order with a blasting cap and a stick of
20 dynamite; isn't that right?

21 A. That's correct.

22 Q. From your examination of the scene, you can't tell us
23 whether or not a high order explosive in the ANFO caused it
24 to explode, can you?

25 A. You mean -- well, we know that there was no other

3061

1 explosives stored in the trailers, other than the ANFO, from
2 the information that we had received from the construction
3 workers. They had no dynamite or boosters stored in there.

4 Q. And you also knew that there was no gasoline stored in
5 the trailer?

6 A. That's correct.

7 Q. And so it could have been, if a stick of dynamite,
8 several sticks of dynamite had been placed in the trailer
9 with a blasting cap on a timed charge and that's what had
10 caused the trailers to blow up, are you telling us that you
11 wouldn't be able to disprove that theory?

12 MR. MILLER: I'll object to this hypothetical. It
13 excludes the fire.

14 THE COURT: I don't think you've created the same
15 situation, Mr. Peters.

16 Q. (By MR. Peters:) I'll rephrase. You're telling us
17 that -

18 THE COURT: Wait a minute. That's argumentative.

19 Q. (By Mr. Peters:) Sir, is your testimony that on
20 previous occasions, you personally had burned ANFO and it
21 hadn't exploded; is that correct?

22 A. That's correct.

23 Q. And, of course, you're aware of other incidents where
24 ANFO trailers fully loaded caught fire and didn't blow up.
25 You're aware of that?

1 A. No.

2 Q. Are you aware of an incident just this year in southern
3 Missouri where a trailer load of ANFO coming out of the plant
4 on I-44 caught fire, the tires burned, the fire department
5 was called, and the trailer burned out with no explosion?
6 Are you aware of that?

7 A. It was my understanding that the only thing that burnt
8 on that trailer were the tires. I did not understand that
9 the whole trailer burned. That the fire department was able
10 to extinguish the fire prior to the whole trailer burning,
11 that was my information.

12 Q. Did you talk to the fire chief who dealt with the fire?

13 A. No, I didn't.

14 MR. MILLER: I'm going to object. This is argument
15 now.

16 THE COURT: Yeah, it comes down to who reads what
17 newspaper, it sounds like to me. Sustained.

18 Q. (By Mr. Peters:) What test did you conduct to determine
19 whether or not an accelerant was used at the crime scene on
20 71 Highway?

21 A. We didn't use any.

22 Q. How much gasoline would it take for somebody -- if we
23 go, if we use the hypothetical of someone setting the tires
24 on fire, for example, how much gasoline would it take for
25 somebody to set the tires on fire?

1 A. Oh, three to five gallons.

2 Q. Have you previously stated that it would take five
3 gallons?

4 A. No, I don't believe so.

5 THE COURT: Didn't he just say three to five?

6 MR. PETERS: Yes, Judge.

7 THE COURT: Why are we going back to it?

8 Q. (By Mr. Peters:) Because do you remember giving a
9 deposition in the civil case on 9/25/89?

10 A. Yes.

11 Q. Do you recall being asked, Do you have an opinion as to
12 how much accelerant would be necessary? This is page 74.
13 How much accelerant would be necessary -

14 "Do you have an opinion as to how much accelerant
15 would be necessary if accelerant was, in fact, used to start
16 the fire to get, say, the trailer tires going?"

17 And your answer was, "Well, if you want, five
18 gallons would be a good, would start the trailer fire, say,
19 gasoline, five gallons of gasoline would definitely get the
20 trailer tires burning."

21 Do you recall being asked that question back in ,89
22 and that being your answer?

23 A. Not until you just read it to me, no, sir.

24 Q. okay. Have you had a chance, did the prosecution have
25 you reread this?

3064

1 A. I looked over that, yes, sir.

2 Q. okay. so at least in 1989, if the theory was that the
3 source of ignition were the tires, at that time you thought
4 it would take five gallons to get them going good?

5 A. Yes, sir.

6 Q. Okay. Were you aware at the time that you conducted
7 your investigation of any other flammable materials that were
8 available at the site?

9 A. Well, there were some trees that had been pushed down
10 east of where the trailers had been. Of course, they were
11 partially dead. They were certainly flammable.

12 Q. And do you remember next to the three craters, but
13 basically the two craters, that a ways away was the large
14 piece of equipment with straw on it?

15 A. Hay, yes.

16 Q. Would straw be a flammable material?

17 A. Yes, definitely.

18 Q. And did you see on the construction site that there was
19 cardboard? When they would use the dynamite, they would
20 discard the cardboard box? Do you recall seeing pieces of
21 cardboard out there?

22 A. I don't recall seeing any, but I suppose there certainly
23 could have been some there.

24 Q. Now, you conducted no test to determine whether there
25 was an accelerant. Did you do scoopings from the ground near

3065

1 the trailer to submit to a laboratory for analysis on whether
2 or not an accelerant was used?

3 A. I didn't, no, sir.

4 Q. Are you aware of whether or not any samples were
5 collected and submitted to the FBI laboratory?

6 A. I'm not aware of any, no, sir.

7 Q. Can you tell the members, can you tell us where, if it
8 was a fire, where the fire started?

9 A. Well, the information that we had from the battalion
10 chief at the scene when he arrived is that he did see one of
11 the trailers on fire.

12 Q. Where on the trailer did you determine the source of
13 ignition to be?

14 A. We didn't.

15 Q. Could it have started inside the trailer?

16 A. Possibly, yes.

17 Q. Could it have started on the trailer itself?

18 A. Yes, sir, it could have.

19 Q. Could it have started outside the trailer?

20 A. Yes, sir, it could have.

21 Q. You talked about the pickup truck that had been parked
22 behind the trailer. It's a large bed pickup truck, the one
23 that you observed badly damaged?

24 A. Ford pickup truck, right.

25 Q. You had received information that it was parked s to 1s

3066

1 feet behind the trailers; is that correct?

2 A. One of the trailers, yes.

3 Q. And there would not be a way that if that pickup truck
4 was set on fire that that fire could jump 5 to 15 feet to the
5 trailer, is there?

6 A. No, sir.

7 Q. Okay. So we can eliminate the pickup truck as being any
8 possible source for the explosion of the ANFO trailers; is
9 that right?

10 A. Well, the source for the fire, yes, sir.

11 Q. Now, as I understand it, based on the explosion that
12 occurred on November 29th, it is your opinion that ANFO that
13 is on fire and confined may high order; is that right?

14 A. Yes, sir.

15 Q. Now, from your interviews of people, you know that the
16 second trailer was ruptured by the blast from the first
17 trailer; isn't that correct?

18 A. Yes, sir.

19 Q. So in the second trailer, the ANFO clearly wasn't
20 confined, was it?

21 A. Well, the second trailer was the one that was fully
22 loaded. And we don't know how much it ruptured. And
23 according to the construction people and the contractors,
24 when I asked them, when you say fully loaded, what do you
25 mean, and they said that it's loaded from the front to the

1 back and from the top to the bottom. We don't know how much
2 it ruptured. So it may not have ruptured enough really to
3 cause the ANFO not to -- you know, it still possibly could
4 have been fairly well confined.

5 Q. Have you ever, or to your knowledge has anybody from the
6 bomb and arson unit gone to the Maynes plant to see how the
7 ANFO is actually transported?

8 A. No, sir.

9 Q. You're familiar with what the Maynes bags look like,
10 sausage rolls?

11 A. Yes, sir.

12 Q. Would -- based on what you said -- let me ask it this
13 way. Are you aware that ANFO when shipped in trailers is
14 stacked in pyramid shapes? Are you aware of that?

15 A. No, sir, I'm not.

16 Q. And -- okay. And you were told that the ANFO was not
17 stacked in pyramid shapes but was floor to ceiling, front to
18 back?

19 A. That's what I was told, yes, sir.

20 Q. Would it change your opinion if you found out that it
21 wasn't stacked that way?

22 MR. MILLER: I'll object to that question. It
23 calls for speculation.

24 THE COURT: We don't have any record of that, so
25 I'll sustain that.

3068

1 MR. PETERS: We don't have any record of what,
2 Judge?

3 THE COURT: Of what you hypothesized in your
4 question.

5 MR. PETERS: That was the testimony of Mr. Collins,
6 that it's stacked one on top of the other in a pyramid shape.

7 THE COURT: Normally, but he didn't say it was in
8 this instance, did he?

9 MR. PETERS: We have testimony from someone telling
10 us how it was done on this one. I'm confused.

11 THE COURT: I am, too. I sustained the objection.
12 Let's go on.

13 Q. (By Mr. Peters:) Sir, did you talk to anybody to
14 determine the amount of damage to this second trailer?

15 A. I'm not sure there was anyone to talk to. In answer to
16 your question, no, because I'm not sure there was anyone to
17 talk to to find out how much damage was done to the second
18 trailer prior to it high ordering.

19 Q. Were you aware that Chief Germann, his driver, Deborah
20 Riggs and Robert Riggs were there after the first explosion
21 and before the second explosion?

22 A. Yes.

23 Q. Did you talk to any of them?

24 A. Yes.

25 Q. Did you ask them the condition of the second trailer?

1 A. At the time Chief Germann' the information that he gave
2 us that after he was there at the first explosion' and he
3 never gave me or never said anything to me about if he could
4 even see the second trailer or what amount of damage the
5 first explosion did to the second trailer.

6 Q. And I guess my question is did you ask any of those four
7 people whether -- did you ever ask them, "What was the
8 condition of the second trailer?"

9 A. No. No.

10 Q. Are you aware that members from the Kansas City,
11 Missouri, Fire Department going up in the hopes of finding
12 their fellow firefighters had actually gone up near the site
13 prior to the second explosion?

14 A. Well, when you say near, I'll -- it was our, it was my
15 impression that when I got there that no one, which was
16 probably 20 minutes after the second explosion, that no one
17 had been up there since the second explosion.

18 Q. So you're aware of no one other than -

19 THE COURT: He said since the second explosion.

20 Q. Right. I understand. So you're aware of no one besides
21 Chief Germann, his driver, Deborah Riggs, and Robert Riggs
22 who would have been at the site between the time of the first
23 explosion and the second explosion to ask about the condition
24 of the second trailer; is that correct?

25 A. That's correct.

1 Q. Of the 400 times that you had responded to a scene, how
2 many of those scenes had involved a high order explosive like
3 dynamite?

4 A. Are you talking about fire scenes or explosive scenes?

5 Q. I'm just going by -

6 A. We do both.

7 Q. I was going by you had the 400 number of -

8 A. Okay. That was fire scenes.

9 Q. Okay.

10 A. None involving explosives because we separate our
11 explosive scenes from our arson scenes. The 400 -- or from
12 our fire scenes. The 400 arson scenes; probably in '88 I'd
13 probably done three or four explosive scenes.

14 THE COURT: Are you about through, counsel?

15 MR. PETERS: Do you want me to be about through,
16 Judge?

17 THE COURT: We've got to take a break, and I'd like
18 to do it before the store closes down on the first floor.

19 MR. PETERS: He's an officer. Can we just go ahead
20 and break? Probably ten minutes more would be my guess.

21 THE COURT: Okay. We will take a break and ask you
22 to come back. Don't talk about the case, folks. We'll
23 resume at 20 minutes to 4:00. You may withdraw.

24 (The following proceedings were had in the
25 courtroom out of the presence of the jury:)

1 THE COURT: Mr. O'Connor? I just want you two to,
2 and the rest of them, I guess, take a look at those
3 communications from the jury and see if we can satisfy them.
4 One of them I think is almost answered. The question is
5 really almost answered. The other is an accommodation as far
6 as exhibits are concerned that you might be able to help them
7 out.

8 (A recess was taken from 3:26 p.m. to 3:44 p.m.)

9 THE COURT: Do you have any answers to these, or
10 reactions to these?

11 MR. PETERS: We'll take care of the trailer
12 position with this witness, Judge.

13 MR. BECKER: And the other question, I would
14 propose they're going to have to wait until deliberations to
15 start having personal maps. I mean, we have a small version
16 of Government's Exhibit 1. I think that's what they're
17 asking for.

18 THE COURT: Yes.

19 MR. BECKER: But I don't think they should
20 permanently be given the map of the exhibit during the course
21 of the trial.

22 THE COURT: Well, do they have these smaller copies
23 of Exhibit 1?

24 MR. BECKER: No. No. And I would at this point
25 not be in favor of letting them use that during the course of

1 the testimony. I mean, in deliberations they can ask for any
2 exhibit they want.

3 THE COURT: Well, they're saying that they would
4 like something to be able to look at during -- why is it that
5 you don't think -

6 MR. BECKER: I see. Okay.

7 THE COURT: They need it now. They think it would
8 be beneficial to them now.

9 MR. BECKER: Tomorrow morning I'll have 16.
10 Tomorrow morning I can have 16 copies of that. I'll show you
11 what it is.

12 THE COURT: You don't need to show it to me now.
13 We'll make whatever you have available to them in the
14 morning.

15 MR. BECKER: So, Judge, it would be 16 of these.
16 Only, you know, on a typewriter sheet.

17 THE COURT: Yeah. All right. That's what I think
18 they want.

19 (The following proceedings were had in the
20 courtroom in the presence of the jury:)

21 THE COURT: I've had a couple of communications
22 from the jury. Mr. Rainey, if your question about the second
23 trailer has not yet been answered, I think it will be before ,
24 the conclusion of the -

25 JUROR: He's pretty much done it already.

1 THE COURT: -- of this witness's testimony. And
2 with respect to, is it Mr. Ricad? Riod; is that right? I
3 think that a diminished copy or a copy of diminished size of
4 Exhibit 1 will probably be available to you all in the
5 morning.

6 All right. Let's proceed.

8 RESUMED CROSS-EXAMINATION

9 By Mr. Peters:

10 Q. Mr. Collins, I first want to ask you if the trailers -
11 is it your testimony that from what you know, the trailers
12 were about three feet apart; is that correct?

13 A. The trailers themselves?

14 Q. Right.

15 A. I don't remember exactly, but I believe they were
16 further apart than that, from the craters that we had, which
17 they would have been probably directly above the craters, and
18 the craters were -- I'm saying the craters, the one big,
19 large crater and then the two smaller ones were quite a
20 distance apart.

21 Q. When you mentioned something being three feet apart,
22 were you talking about the two craters being -

23 A. Yes, next, close to each other.

24 MR. PETERS: Okay. And that -- Judge, can we have
25 the witness stand down just for a moment?

3074

1 THE COURT: Yeah. Would that be edge to edge?

2 THE WITNESS: Yes, sir.

3 Q. (By Mr. Peters:) If you can, stand down and we can kind
4 of point it out. Excuse me. Referring to -

5 A. This is -

6 Q. Wait, I have to identify it. Referring to Government's
7 Exhibit No. 5, which is an aerial photograph taken after the
8 November 29th, 1988, explosion, if you would, sir, would you
9 indicate to the jury where the craters that you're going to
10 talking about are generally located?

11 A. The larger of the three craters was to the west of this
12 road here, access road. And then there were two craters
13 smaller than this one east of it.

14 When I refer to craters, being, what I was
15 referring to was this crater and this crater. The distance
16 between these two is approximately three feet apart.

17 Q. You're referring to the lower right-hand corner of
18 Government's Exhibit No. 5. And when you say three feet
19 apart, that would be the lip of the craters were three feet
20 apart?

21 A. That's correct.

22 Q. okay. You can take your seat.

23 Do you have an opinion -- kind of following up on
24 that, do you have an opinion as to how many explosions there
25 were and the chain of events that went on in the explosions?

3075

1 A. Yes, sir, I did.

2 Q. And what is your theory as to what exploded first?

3 A. Okay. My opinion is that the trailer which was east of
4 the access road exploded first. We don't know if the other
5 trailer was on fire at this time or not. It possibly could
6 have been on fire. It also, when the first trailer exploded,
7 the molten aluminum and the blast could have ignited the
8 second trailer, causing it to burn and, consequently, then,
9 high order.

10 Q. And so that we're consistent in trying to answer the
11 question that was submitted, the easternmost trailer is the
12 one that's indicated with two craters; is that correct?

13 A. That's correct.

14 Q. And originally, didn't you believe that actually there
15 were three separate explosions and that's why you had the
16 three craters?

17 A. Yes, sir.

18 Q. And didn't you originally hypothesize that one exploded
19 and that caused the second to explode, and then some of the
20 ANFO went over into the other trailer, and that's what caused
21 that explosion? Or in your own words, what was your
22 conclusion back on November 29th as to how many explosions
23 there were and how it went from one pile to another is the
24 way I would word it?

25 A. Okay. We knew that there was, from eye witness accounts

3076

1 that we had two explosions approximately 20 minutes apart.
2 However, we had three craters, which was a little hard to
3 explain. We had three craters and only two explosions.

4 From talking to Mr. McReynolds, who was the
5 blasting foreman on the site, the trailer that was to the
6 east of the road where the two craters were, he explained to
7 us that that crater, or that trailer had the ANFO that was
8 stored in it, there was some ANFO stored in the back and some
9 stored in the front, and that there was a gap between the
10 ANFO. In other words, they had taken the ANFO from the
11 center of the trailer as they used it. So that helped
12 explain to us why we would have two explosions but three
13 craters.

14 So what we theorized happened is when this trailer,
15 like it was to the east is what Captain Germann saw burning
16 when he went up there. When it high ordered, the ANFO on
17 both ends high ordered, causing the two craters, and the gap
18 in the middle would have been the void spot in the trailer
19 where there was no explosive. And then, of course, the large
20 crater on the west side of the access road was full and,
21 consequently, we just had one very large crater.

22 Q. Can you explain why, if thousands of pounds of ammonium
23 nitrate/fuel oil in the easternmost trailer went high order,
24 why that wouldn't cause a trailer sitting nearby to go high
25 order?

1 A. About the only explanation that we could come up with is
2 the fact that the trailer itself being constructed of the,
3 the sides being constructed, the exterior being constructed
4 of aluminum and the interior being constructed of plywood,
5 was enough of a buffer to keep the ANFO that was in that
6 trailer from high ordering also.

7 Q. And, again, have you ever tried to find out whether the
8 trailer is constructed to house blasting agents, as these
9 trailers were, have you ever tried to find out how they are
10 constructed in terms of fireproof wood floor, aluminum sides
11 halfway up, those sorts of things?

12 A. Well, just from the description that Mr. McReynolds gave
13 us, they were common trailers. I mean, he gave us no
14 indication that there was anything special about them because
15 they carried ANFO.

16 Q. And did you ever go beyond that to try and determine it?

17 A. No, sir, we didn't.

18 Q. You're aware that Alcohol, Tobacco, and Firearm s has
19 fairly elaborate specifications with the storage of blasting
20 agents and dynamite, aren't you?

21 A. Yes, sir.

22 Q. Have you reviewed those specifications to determine
23 whether or not what's required is a fireproof floor, aluminum
24 siding halfway up, secure locks and, in fact, vents on the
25 trailer to prevent pressure from building up? Have you -

3078

1 A. I've not thoroughly reviewed those' no.

2 Q. Would it be significant to you if the trailers used at
3 the time had vents that would prevent the buildup of pressure
4 from any internal fire?

5 A. Well, I guess it would depend upon the size of the
6 vents, how many vents there were, if they were, in fact,
7 specifically constructed to vent pressure. If it met all of
8 those, if this was a trailer meant to, you know, constructed
9 to transport explosives, yes, that would have made a
10 difference in our investigation.

11 Q. Okay. Let me show you some photographs. I asked you
12 earlier about whether you found any combustible type material
13 on the site. I'm going to show you first Defendants, Exhibit
14 No. 3. Do you remember seeing this Caterpillar up there on
15 the site on November 29th?

16 A. Yes.

17 Q. And I'm going to zoom in a little bit first. Do you
18 notice around the wheels the bales of hay that were there?

19 A. Yes, sir.

20 Q. And going over -- oh, I'm sorry. Thank you. Much
21 clearer picture now. Do you see the bales of hay; is that
22 correct?

23 A. Yes, sir.

24 Q. And then I asked you about cardboard. Do you see laying
25 all over the ground here what appears to be boxes that had

3079

1 been discarded after the dynamite had been taken out?

2 A. I see boxes that are discarded, yes, sir.

3 Q. I don't know if we can zoom in enough to read anything
4 on these. I may have another picture.

5 Again, this is the front, clearly showing next to
6 this Caterpillar is, does that show bales of hay and, in
7 fact, in the background you can see the secure magazine that
8 held the actual high order explosives, the dynamite and
9 blasting caps; is that correct?

10 A. Yes, sir.

11 Q. And that photograph is Defendants, Exhibit No. 6. Had
12 you talked to anybody about what was going on with this
13 Caterpillar that was sitting there?

14 A. If I recall correctly, I think the information that we
15 got with that is that it had broken down and was being
16 repaired, I believe.

17 Q. And, in fact, in this photograph which, again, is
18 Defendants, Exhibit No. 6, does it appear where I'm pointing
19 that you can see grease and oil that was on the ground near
20 that Caterpillar?

21 A. Yes, sir.

22 Q. okay. Would that be combustible?

23 A. Yes, sir.

24 Q. And in this picture, it's a little bit clearer. Again,
25 it's the Caterpillar. And does it look like we've got a

1 fairly sizable oil leak there?

2 A. Yes, sir.

3 Q. Would you tell us what we mean when we talk about
4 spontaneous combustion?

5 A. Well, spontaneous combustion is when a material in and
6 of itself produces enough heat to start a fire.

7 Q. When you've got ANFO that's stacked like this, can it
8 spontaneously combust?

9 A. I've never heard of any cases where it has.

10 Q. Do you know as an expert that it cannot?

11 A. No.

12 Q. So you were not able to rule out spontaneous combustion
13 as a cause?

14 A. Well, we did simply because of the temperature of, the
15 ambient temperature. Usually when you're talking about
16 spontaneous combustion, the ambient temperature has to be of
17 a sufficient degree where the material will start the process
18 of spontaneous combustion. That day and that night when it
19 occurred, the temperature was -- I don't know how, exactly
20 how cold it was, but it was a chilly night. It was cold. It
21 would be my opinion that the ambient temperature was not warm
22 enough to have -- if, in fact, ammonium nitrate can
23 spontaneously combust, I do not think the ambient temperature
24 would have been warm enough to start that process.

25 Q. Isn't one of the things that also affects spontaneous

3081

1 combustion is changes in' fluctuations in temperature and
2 humidity and dew point and all of those factors; is that
3 correct?

4 A. Yes, sir.

5 Q. Did anybody do any tests, to your knowledge, to
6 determine whether the conditions available that night, that
7 there would have been fluctuations in dew point or humidity
8 or temperature?

9 MR. MILLER: Excuse me. I'm going to object to any
10 relevance to this. He already said that it could not have
11 been spontaneous combustion.

12 MR. PETERS: I believe his testimony was that he
13 couldn't rule out spontaneous combustion.

14 THE COURT: Well, yes, but do you mean by that
15 under the circumstances then and there existing it could have
16 been spontaneous combustion?

17 THE WITNESS: I'm saying with those conditions, we
18 ruled it out simply because -- but the fact, simply to rule
19 out in general spontaneous combustion of ANFO, I can't
20 because I have no information. But under those conditions,
21 being somewhat familiar with the spontaneous combustion
22 process, we considered that. But given the ambient
23 temperature of that evening or the early morning hours under
24 that particular day, we did rule that out because of the
25 ambient temperature.

3082

1 THE COURT: ALL right.

2 Q. (By Mr. Peters:) What I'm following up with, Judge, is
3 in addition to the ambient temperature, the air temperature,
4 other factors that affect something spontaneous combusting is
5 changes in temperature, no matter what the temperature is,
6 changes in humidity and dew point. Isn't that correct?

7 A. Yes, sir.

8 Q. And my question was has anybody to your knowledge ever
9 conducted any tests of how those variables affect the way
10 that ANFO would spontaneously combust?

11 MR. MILLER: Object to the relevance. The facts of
12 this case are -

13 THE COURT: I don't see where it gets you, Mr.

14 Peters. I'm going to sustain the objection. I think it's
15 irrelevant.

16 Q. (By Mr. Peters:) During your investigation, you had
17 determined that the magazines that contained the dynamite had
18 been secured with padlocks and that they had not been
19 tampered with; is that correct?

20 A. That's correct.

21 Q. During your investigation, did you also learn that the
22 ANFO trailers had been padlocked?

23 A. Yes, sir.

24 Q. And during your investigation, did you find the actual
25 locks that were found, locks that had been on the trailer?

1 A. I did not.

2 Q. And was it your testimony that basically the trailers
3 were vaporized and you found no parts of the trailer?

4 A. Yes, sir.

5 Q. Were you familiar with a program that aired on February
6 10th, 1995, called Unsolved Mysteries?

7 A. Yes, sir.

8 Q. Did you have a chance to see that?

9 A. Yes, sir.

10 Q. In November of ,94, was the Kansas City, Missouri, Bomb
11 and Arson Unit contacted to give any assistance in the
12 filming of that program?

13 A. Yes, sir, we were.

14 Q. I take it Unsolved Mysteries was footing the bill for
15 burning the trailers in that one; is that correct?

16 A. That's my understanding, yes, sir.

17 Q. Did anybody from the Kansas City Bomb and Arson Unit do
18 any tests on these trailers that were being sacrificed to
19 determine the burn rate of the wood floors or the sides?

20 A. No, sir.

21 Q. Did anybody do any tests to determine the temperature
22 that would occur inside a trailer with a fire set outside?

23 MR. MILLER: I'm going to have to object to this.

24 You have to load up those trailers with ANFO to be accurate.

25 It's not a fair hypothetical.

3084

1 MR. PETERS: Judge, I think you can determine the
2 ambient temperature in a trailer that's on fire without any
3 contents in it. I think it's a fair question.

4 THE COURT: Well, I'm not sure that we're all using
5 the phrase ambient or the word ambient in the same way. When
6 you're saying ambient under those circumstances, do you mean
7 the interior temperature of the trailer?

8 MR. PETERS: Right.

9 THE COURT: And your question is?

10 MR. PETERS: Did anybody, you've got two trailers
11 that somebody is going to burn, so you don't have to foot the
12 bill for that. Did anybody stick a thermometer in the
13 trailer to see how hot it got inside the trailer?

14 MR. MILLER: Again, who is going to hold the
15 thermometer?

16 MR. PETERS: I could think of some possibilities,
17 but I would think it would be a device, Judge. Maybe like a
18 metal pole, a probe I think it's called.

19 THE COURT: Well, you can answer that, if you know
20 the answer, Mr. Collins.

21 A. No, sir, we didn't.

22 Q. (By Mr. Peters:) And do you know if the trailers that
23 were used in the Unsolved Mysteries episode were trailers
24 that met the same specifications as the ones on the site of
25 the Maynes explosives on November 29th, 1988?

1 A. Well, they were, there was one used that it was a common
2 trailer.

3 Q. okay. Can you tell us the -- it's my understanding that
4 one possibility, one hypothetical is that these tires would
5 be set on fire with five gallons of gasoline and that that
6 would create enough heat to catch the floor of the trailer on
7 fire; is that correct?

8 A. Yes, sir.

9 Q. Would it catch a fireproof floor on fire?

10 A. Well, I guess it would depend on what sort of fireproof
11 floor we're talking about. I mean, I don't know of any
12 material that is totally fireproof, but if it met some sort
13 of standards for fireproof, the possibility exists, I
14 suppose, that it wouldn't.

15 Q. And if somebody did take five gallons of gasoline to get
16 those duallies, the big wheels on fire, there would be
17 billowing black smoke from that, wouldn't there?

18 A. Yes, sir.

19 Q. And that billowing black smoke would, we're talking
20 about a lot of smoke, aren't we?

21 A. Tires produce a lot of smoke, yes, sir.

22 Q. And have you had any report, are you aware of anybody
23 who described seeing billowing black smoke coming prior to
24 this explosion?

25 A. No, sir.

3086

1 MR. PETERS: I think I'm done, Judge, but let me
2 just check.

3 Q. (By Mr. Peters:) Do you know what a material safety
4 data sheet is?

5 A. I'm not real familiar with it, no, sir.

6 MR. PETERS: I don't believe I have any further
7 questions, Judge. Thank you.

8 THE COURT: All right. Any other cross? Okay.
9 Any redirect?

10 MR. MILLER: A little, Your Honor.

12 REDIRECT EXAMINATION

13 By Mr. Miller:

14 Q. Would billowing black smoke be more noticeable in the
15 daytime or at night?

16 A. During the day.

17 Q. As far as ground samples, where the trailers were, where
18 the tires would have been or the gasoline would have been
19 poured, that's where the craters are now; is that right?

20 A. That's correct.

21 Q. Where would you have gotten ground samples?

22 A. I don't know, because the ground was not there anymore
23 that was there prior to the fire. It was not there. It had
24 dispersed. The ground had been dispersed from the explosion.

25 Q. And when you talked about you used to burn ANFO, you

1 would spread it out and burn it in the open?

2 A. That's correct.

3 Q. And you would never confine it in anything?

4 A. No, sir.

5 MR. MILLER: No further.

6 THE COURT: ALL right.

7 MR. PETERS: I just have a brief follow-up, Judge.

9 RECROSS-EXAMINATION

10 By Mr. Peters:

11 Q. Are you aware that that night it was a clear night with
12 a full moon?

13 A. It was clear. I don't recall the moon being full.

14 Q. And you've been at the scene. Wouldn't you expect on a
15 clear night with a full moon that from 71 Highway you would
16 be able to see truck tires smoke across the highway?

17 THE COURT: Who would, Mr. Peters, at that time
18 1 of -

19 MR. PETERS: He's been at the scene.

20 THE COURT: At that time of the morning, who
21 would?

22 Q. (By Mr. Peters:) On a clear night with a full moon,
23 would you be able to see black billowing smoke from a
24 distance of 400 yards?

25 MR. MILLER: I'll object to that as speculation.

3088

1 THE court: If you had been there. If you add that
2 to the question, you can answer it.

3 THE WITNESS: If I had been there?

4 THE COURT: If one had been there.

5 A. They would have obviously, I think, seen the smoke.

6 Whether they would have been able to determine whether it was
7 black billowing, it's hard to say. I'm not going to
8 speculate on that, it's hard to say.

9 MR. PETERS: Thank you very much.

10 MR. MILLER: Nothing further.

11 THE COURT: Thank you, sir. You may step down.

12 Call your next witness.

13 MR. MILLER: Your Honor, the government calls Mr.

14 Chuck Conyers.

15 THE COURT: Come up and stand by the witness chair

16 and be sworn, please, Mr. Conyers.

18 CHARLES CONYERS. JR.,

19 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
20 testified as follows:

22 DIRECT EXAMINATION

23 By Mr. Miller:

24 Q. Would you tell the Court and the jury your name, please?

25 A. Charles Conyers, Jr.

1 Q. And how old are you, sir?

2 A. Forty-eight.

3 Q. And where are you employed?

4 A. Clarence Kelley and Associates.

5 Q. And what do you do for them?

6 A. I'm a vice-president in charge of the insurance
7 investigations division.

8 Q. And what does Clarence Kelley and Associates do?

9 A. We're an investigating and security consultant firm .

10 Q. And could you tell the jury your training for what you
11 do?

12 A. I began as a police officer in the City of
13 Independence. Then in 1978, I began specializing in fire and
14 explosion investigations. I've been through numerous fire
15 scene schools, post-blast schools. I'm a certified fire
16 investigator by the State of Missouri, and I've been doing
17 fires since 1978.

18 Q. And how many fire scene investigations have you done?

19 A. In my career, I'm sure I've done over a thousand, and
20 I've reviewed by reports more than that.

21 Q. Now, were you asked to examine anything at the
22 construction site after the explosion at 71 Highway and 87th
23 Street?

24 A. Yes, sir, I was.

25 Q. Okay. On whose behalf?

3090

1 A. I was retained by a law firm representing an insurance
2 company that had liability coverage.

3 Q. So you did not do it as part of a police department?

4 A. That's correct.

5 Q. Did you meet with a Detective Michael Collins on any of
6 your results and findings?

7 A. No, I have not.

8 Q. Have you ever testified before as an expert?

9 A. Yes, I have.

10 Q. I wanted to go now to the scene that you went to at 71
11 Highway and 87th Street. And on the west side of the road,
12 did you examine anything? West side of 71 Highway, did you
13 examine anything?

14 A. I saw a location where a fire had occurred, but there
15 was no vehicle there at that time.

16 Q. Okay. Did you examine a vehicle that had been there?

17 A. Yes, I did.

18 Q. And where did you examine that vehicle at?

19 A. In the tow lot of the Kansas City, Missouri, Police
20 Department.

21 Q. Do you remember when you examined that vehicle?

22 A. On December 1, 1988.

23 Q. I'm going to show you Government's Exhibit No. 140.
24 Even though this is not at the tow lot, is this the vehicle
25 that you examined at the police tow lot?

3091

1 A. It appears to be the vehicle.

2 THE COURT: I'm sorry, counsel. I didn't write it
3 down. Your number, please?

4 MR. MILLER: 140, Your Honor.

5 THE COURT: Is that in evidence or -

6 MR. MILLER: It's in evidence.

7 THE COURT: ALL right.

8 Q. (By Mr. Miller:) And when you examined this vehicle,
9 what was the significance of the tires?

10 ~ A. I noted, first of all, by doing an investigation, began
11 with the exterior and by going all around, I noticed that all
12 four tires are inflated, they're all the same tire, all
13 wheels are in place, which indicated to me that there had
14 been no tampering with the tires at all. It also indicated
15 that there had not been any fire on the ground around them.

16 Q. What is this damage here on the door, is that caused by
17 gasoline or what?

18 A. That's caused by a fire. Obviously, it is a fire that
19 has occurred within the cab from the interior coming against
20 it. As you can see on that door, the heat patterns that you
21 see are -

22 Correct. If you go a little lower down, you're
23 almost to the bottom of the door. The source of heat is very
24 low within that vehicle to create that level of pattern;
25 however, is not on the exterior of it as the rocker panel,

3092

1 which is directly below the door, retains the paint. There's
2 no burning to it.

3 Q. So then what we see on the outside of the door is caused
4 by heat from within the cab?

5 A. That's correct.

6 Q. What is known as a trailer of flammable liquid?

7 A. It's a common name given to situation where -- a trailer
8 is anything that can be used to propagate a fire from one
9 point to another.

10 When you're talking about a trailer of a flammable
11 liquid, generally you associate that with something that has
12 been poured to increase, not only the intensity, but the
13 speed of the fire spreading from one point to another.

14 Q. Is this like you see on TV where they pour something and
15 then light it at one end and -

16 A. And it runs right to it, yes.

17 Q. And did you find any evidence of a trailer like that?

18 A. No, I did not.

19 Q. Did you examine the inside of the vehicle?

20 A. Yes, sir, I did.

21 Q. And where did you start your examination of the
22 information?

23 A. I started going from, working the fire from least damage
24 to greatest damage, which meant I overviewed the bed area of
25 the truck, moved into the motor area of the truck, before

1 proceeding into the cab or passenger area of the truck. And
2 the greatest damage, as I said, was in the passenger area.

3 Q. Did you find anything in the bed area of the truck?

4 A. Nothing that would indicate a fire propagated or began
5 in there.

6 Q. Did you find anything in the motor area of the truck?

7 A. Nothing that indicated that the fire originated in that
8 area. The fire damage indicated that the spread of the fire
9 came through the fire wall from the interior or passenger
10 area of the vehicle.

11 Q. What did you find on the inside of the truck? Where did
12 you start the investigation on the inside of the cab area?

13 A. The interior was first documented by photograph prior to
14 making an examination. The overview of the interior
15 indicated from the burn pattern the heaviest damage was on
16 the driver's side on or near the floorboard and progressed
17 from that point.

18 Q. Let me show you what's been marked as Government's
19 Exhibit No. 1s8. And what part of the truck is this that
20 you're looking at there?

21 A. With the driver's door open, you can see the exposed
22 area that we originally called the rocker panel, which is
23 below the area showing the discoloration of black. You can
24 see the framing part of the seat in the right. You'll notice
25 the heat pattern on it extends clear down to the floor. The

1 covering materials on the seat portion itself have all been
2 consumed by the fire on this side.

3 Q. And what does this picture show?

4 THE COURT: Wait a minute.

5 MR. MILLER: It's the same exhibit, Your Honor,
6 it's the same, 158.

7 THE COURT: So you have two pictures on the same
8 exhibit?

9 MR. MILLER: Yes, Your Honor.

10 THE COURT: Okay. Just wanted to make sure that's
11 clear on the record.

12 THE WITNESS: Is it possible that I could see my
13 original because it's difficult to see it from here.

14 THE COURT: Sure. Hand him the picture and let him
15 look at it.

16 A. Okay. You can put it back up, and I can talk about it.
17 This is the interior dashboard area, floorboard area of the
18 pickup truck taken from standing in the bed looking through
19 the, what had been the rear window opening.

20 Q. And what did you note from this?

21 A. Noted that the fire damage was heavier coming on the
22 left side, the driver's side coming up, going across, moving
23 toward the passenger area. Also noted that there was no
24 evidence of an origin area or an area where a fire would have
25 started within the dashboard area. I also noted that the

3095

1 radio, I believe, is still there, indicating to me that it
2 was not the result of a, somebody trying to cover a theft on
3 a piece of stereo equipment or something like that.

4 Q. And where was the fire burning the longest, what was its
5 greatest concentration of fire?

6 A. It would have been on the floorboard area, driver's
7 side.

8 Q. Did you find a blue towel on the floorboard area?

9 . Yes, I did.

10 . Is that in this picture?

11 . I don't believe it's in that one. I believe it's in
12 another photograph. It's hard for me to see.

13 Q. Let me try to find that picture for you.

14 A. There. Let me see that one. Perhaps it is -- I think
15 it was more clearly seen in another photograph, but it was in
16 this center area around the transmission hub.

17 Q. Showing you what's been marked as Government's Exhibit
18 No. 154. Is that the towel?

19 A. That looks like it, yes, sir.

20 Q. And what did you notice about the towel?

21 A. When I first saw it and picked it up and examined it, I
22 noticed that there was an odor of petroleum product I
23 recognized as gasoline.

24 Q. But what does the -- even though you noticed it smelled
25 of a petroleum product like gasoline, what does the towel in

3096

1 there tell you?

2 A. With that significant of fire, it told me that it had
3 not been there having been used or soaked with gas for a
4 while. The gas was fairly fresh. I have no idea as to the
5 origin of the towel, just the gasoline was there and it was
6 quite obvious.

7 Q. So what you're saying is that the towel could have been
8 placed in there, or the towel could have been in there when
9 the gasoline was poured in?

10 A. That's correct.

11 THE COURT: But the towel was not burned; is that
12 right?

13 THE WITNESS: Only around the edges, Your Honor.

14 THE COURT: Around the edges.

15 Q. (By Mr. Miller:) What else did you find on the floor of
16 the truck as you were examining the inside?

17 A. Among things that I found, I found a holster, as I
18 recall. I found some sunglasses. I found a ring of keys.

19 Q. Let me ask you about the ring of keys. Did you find
20 what you believed to be the ignition key?

21 A. Yes, I did.

22 Q. And what was significant about that?

23 A. From the way that I found it, I believed that it had
24 been in the steering column locking mechanism when the fire
25 occurred, that the column and the locking mechanism had

3097

1 dropped out, been consumed with the floorboard because on the
2 ignition key when looking at the face on a steering column,
3 there's a small metal piece that the key fits through. That
4 was still over the key. And I removed it and photographed
5 it.

6 Q. Showing you what's been marked as Government's Exhibit
7 161 and 162. First 162, if you can make that out. Is that
8 the key that you found?

9 . I believe that it is.

10 Q. And 161. Is that what you found around the key?

11 A. And that's the ring, the small portion that -- you can
12 see the configuration there in the center where the key slips
13 through.

14 Q. How did you determine that the fire started on the
15 floor?

16 A. By tracing the fire and burn pattern that was with that
17 particular vehicle.

18 Q. And where did the fire start in the truck, in your
19 opinion?

20 A. In the cab section on and around the floorboard area,
21 driver's side.

22 Q. Was there any evidence of an accelerant?

23 A. Yes, there was.

24 Q. And what was that evidence of the accelerant?

25 A. I took some debris samples, submitted them to the

1 laboratory we use for analysis, and they sent back confirming
2 what my nose had told me, that there was, in fact, gasoline
3 product in it.

4 Q. And did you send them to the Southeastern Research
5 Laboratories?

6 A. That's correct.

7 Q. With your experience and your investigation, what is the
8 consistent way that this fire was started?

9 A. By pouring a flammable liquid, in this particular case
10 gasoline, onto the interior and igniting it with something as
11 simple as a match would have been effective.

12 Q. And just opening the door?

13 A. Just opening the door.

14 Q. Did you find any evidence of some kind of a device to
15 start this truck on fire?

16 A. No, I did not.

17 Q. Now, did you ever go across 71 Highway to the east side
18 of the construction site to where the craters were?

19 A. Yes, I did.

20 Q. Do you remember when you went over there to do that?

21 A. It was not the same day. It was later, a day later, I
22 believe. Perhaps it was the same day. Let me look. Yes.
23 It was on the 3rd.

24 Q. Of December?

25 A. That's correct, sir. I'm sorry, 1988.

1 Q. Same year?

2 A. Yes.

3 Q. Now, when you went over there, were the firetrucks that
4 had been destroyed, were they still over there?

5 A. No, they were not.

6 Q. With the craters, the two large craters, what was the
7 distance between them?

8 A. By my pace, it was approximately 30 paces, 30 yards.

9 Q. 90 feet, 30 yards, 90 feet?

10 A. Correct.

11 Q. Do you remember what you found between these craters?

12 A. A roadway commonly used on a construction site. It
13 wasn't like a paved road. Just an area where vehicles were
14 driven.

15 Q. How is debris from a blast expected to travel?

16 A. Debris from a blast can travel generally in a
17 cone-shaped configuration. That can be altered by certain
18 factors, such as, you know, a piece of resistance that would
19 force the blast wave and force going a different direction.
20 But generally you look for a cone shape.

21 Q. Did you find anything to indicate that the force of the
22 blast, the cone shape went to the east?

23 A. Yes, I did.

24 Q. What did you find?

25 A. On the cratering area which is positioned on what would

1

1 be the east side of that drive area, while there is one
2 overall large appearance of crater, there's two depressions,
3 for lack of a better word, within the crater. The one toward
4 the south edge has a sharply different appearance in that the
5 edge closest to the drive area was more direct in a downward
6 position, while the other side was laid over, a longer angle
7 down than would have been if a direct cone had been laid over
8 that direction.

9 Q. Did you then start examining the east, the far eastern
10 part of the construction area there?

11 A. Correct. I went to that area.

12 Q. Did you go to where tree branches and wood debris and so
13 forth was?

14 A. That's correct.

15 Q. And what did you find there?

16 A. Of most significance was the appearance of the axles
17 from a trailer, one of which had part of a trailer frame
18 still attached to it.

19 Q. I want to show you what's been marked as Government's
20 Exhibits 414, 415, 416, and 417. And are these fair and
21 accurate representations of what you found?

22 THE COURT: Are these in now?

23 MR. MILLER: They are not in evidence yet, Your
24 Honor.

25 A. Yes, they are.

1 MR. PETERS: No objections, Judge.

2 THE COURT: All right. They're admitted without
3 objection.

4 (Government's Exhibits 414, 415, 416, and 417 were
5 admitted into evidence.).

6 MR. MILLER: Yes, Your Honor, did you want to see
7 these first?

8 Q. (By Mr. Miller:) And referring to Government's Exhibit
9 414, what is this a photograph of?

10 A. It's a photograph of the remains of a trailer with an
11 axle still attached to it, also pieces of trailer frame.

12 Q. Is this what you found over there where the wood debris
13 had been cut down and stored?

14 A. Correct, that's one of the two pieces.

15 Q. okay. Are you able to tell from which trailer this came
16 from?

17 A. No, I'm really not.

18 Q. Is there anything significant in 414 that you found?

19 A. As you look at the axle pieces -

20 Q. Where am I at here?

21 A. To your left there, we'll begin at that point where your
22 photograph is. It is my belief that that would have been the
23 side of the trailer away from the drive area. As you can see
24 in the photograph, there are still remains of the steel
25 pieces of the tires, the steel belt mechanisms, the wheels on

1 the tandem is still there.

2 On the right you'll notice that you do not have
3 that, there's been far more damage to that side. The
4 right-hand side where you last pointed also has fracturing, a
5 piece of the hub area. In the next photograph, it's easier
6 to see the, I believe it's the next one there, the frame
7 piece.

8 Q. Now, I'm referring now to 41s. Is this the one that you
9 wanted?

10 A. Yes. As you can see from looking at that side, you're
11 looking at the most damaged side. There is a small amount of
12 rail left above that wheel. In it also you can see at the
13 front edge the leaf spring assembly.

14 Q. Where am I at?

15 A. Keep coming to your left. Yeah, in that area just up a
16 little bit there is a leaf assembly that is with that
17 particular side wheel. The front edge of that leaf assembly
18 is bent down at a very noticeable angle. You'll also notice
19 that the longer piece of frame is attached to the opposite
20 side and is bent, which indicated to me that when this event
21 occurred and that particular piece moved east, the piece that
22 you see here moved first, bending the frame this way as it
23 flew away.

24 Q. show you Exhibit 416. And what do you see here?

25 A. That's the other axle from the tandem that's mounted

3103

1 with the back of a trailer. That is not attached to any
2 trailer frame piece and has landed a little further away than
3 did the first photograph that you saw by matter of yards.

4 Q. Can you tell from which trailer this came from?

5 A. No, I cannot.

6 Q. Could it have come from the same trailer?

7 A. I believe it would have come from the same trailer
8 because of the damage that was evident.

9 Q. Are you able to tell from anything on Government's
10 Exhibit 416 that it would have been on fire before the
11 explosion?

12 A. From the photograph that you see there, it would be my
13 opinion that that side of the trailer had fire applied to it
14 first and longest at that point because of the destruction
15 not only to the tire and rim, but also the discoloration of
16 the metal pieces that's there with it.

17 Q. Is this, am I pointing to the right place?

18 A. That is where the rim is. The discoloration is more
19 significant there where your pencil is now because those are
20 steel pieces. Those are not a lighter weight metal. And you
21 can see the discoloration in the photograph with them, which
22 is associated with a longer heat application to them.

23 Q. And Government's Exhibit 417, and what is this a picture
24 of?

25 A. The company had a pickup truck that was in the immediate

1 proximity of the trailer that was also part of my original
2 assignment was to look at that particular pickup truck and
3 ascertain if that truck had any causation relation to this
4 event. That is the pickup truck. It was a red, I believe it
5 was a GMC pickup truck. It had been parked immediately
6 behind the trailer.

7 Q. When you examined this pickup truck, had a fire
8 intentionally been set on that truck, did you determine?

9 A. I saw nothing that told me there was a fire within that
10 truck. What I observed was fire damage that came against it,
11 not originating in it.

12 Q. Did you find any blasting agent placards?

13 A. Yes, sir, I did.

14 Q. I want to show you Government's Exhibit No. 410. Is
15 this a picture of what you found?

16 A. Yes, it is.

17 MR. PETERS: No objection, Judge.

18 MR. MILLER: Offer 410, Your Honor.

19 THE COURT: Hearing no objection, it's admitted.

20 (Government's Exhibit 410 was admitted into
21 evidence.)

22 Q. (By Mr. Miller:) And I used the word placard. What's
23 the placard?

24 A. It's something required of trailers carrying hazardous
25 materials that they have warnings on them. That's a placard

3105

1 identifying a blasting agent.

2 Q. Is this the sign that's put on the trailer?

3 A. That's correct.

4 Q. And it warns people as to what's in the trailer?

5 A. That's correct.

6 Q. And this is what you found there at the scene?

7 A. That's correct.

8 Q. Were you able to determine what it came off of?

9 A. No, I was not.

10 Q. Did you find any locks there at the scene?

11 A. Yes, I did.

12 Q. Show you Government's Exhibits 411, 412, and 413.

13 A. Those are photographs that I took.

14 Q. Of the locks?

15 A. Yes.

16 MR. PETERS: Judge, I don't have an objection to
17 conditional admissibility of the photographs. These are
18 photographs of locks and hasps, but -

19 MR. BECKER: Perhaps we need to approach.

20 (Counsel approached the bench and the following
21 proceedings were had:)

22 MR. PETERS: Judge, I don't think -- depending on
23 where he's going with them, I don't have an objection to them
24 finding locks and hasps. The locks are secured. It shows
25 the trailers weren't broken into. I don't have a problem

3106

1 with that.

2 In the grand jury, he went into some speculation
3 about the locks and hasps, and we've never had the locks and
4 hasps. It's my understanding that Mountain Plains is the,
5 his employer has them.

6 MR. MILLER: That's what he's going to testify to.
7 It's what he found.

8 MR. PETERS: He's not going to talk about pry marks
9 and all of that, or he's not going to talk about they were
10 pried off the trailer?

11 MR. MILLER: He's going to say that it showed no
12 evidence of that. It's right there in the report. At the
13 grant jury, he didn't even have his report. So I mean -

14 MR. PETERS: Okay.

15 THE COURT: Okay.

16 MR. PETERS: We have no objection, then, Judge.

17 THE COURT: ALL right. Then, 411, 412, and 413 are
18 admitted without objection.

19 (Government's Exhibits 411, 412, and 413 were
20 admitted into evidence.)

21 (The following proceedings were had in open court:)

22 Q. (By Mr. Miller:) Show you what's been marked as
23 Government's Exhibit No. 411. And what is this a picture of?

24 A. It's the inside edge of a lock hasp mechanism.

25 Q. Would you explain what a lock hasp mechanism is?

1 A. What you see on the back is a metal strip, and you can
2 see the piece of metal that you're somewhat outlining there
3 is on the opposite side of, the next photograph can be seen.
4 The lock or the U-bolt goes through that to secure a side
5 door. The silver pieces you see in the middle, those are
6 pieces of aluminum from the side of the trailer that have
7 been pulled free when it came off.

8 Q. So this is from the side door on the trailer?

9 A. That would be from the side.

10 Q. And showing you now Government's Exhibit No. 412, is
11 this the other side of it you're talking about?

12 A. That's the other side of it, showing the exterior side
13 with the lock still in place.

14 Q. Now, did you look at the lock there at the scene?

15 A. Yes, I did.

16 Q. And did it show any evidence that it had been pried
17 upon?

18 A. No, I saw no evidence of tampering or tool marks on it.

19 Q. And what did you do with these locks?

20 A. Gave them to the custody of an employee of Mountain
21 Plains Construction Company, as it was theirs.

22 Q. And you were there as a private investigator, not with
23 any police department?

24 A. That's correct.

25 Q. Did you find any other locks?

1 A. Yes, I did. I found one other lock that is off of a
2 back door assembly.

3 Q. Showing you what's been marked as Government's Exhibit
4 No. 413. And what is this a picture of?

5 A. That's a picture of the lock assembly that would have
6 come off of a back door, and I found that one in the near
7 proximity of the GM pickup truck.

8 . When you say back door, back door of a trailer?

9 . That's correct, I'm sorry.

10 Q. As you examine it, what do you see?

11 . The locking mechanism is still in place and still
12 locked.

13 Q. What is that bar there that is connected?

14 A. It's a fold-over bar that allows you to move it over,
15 lock it down in place, and then you put the lock on.

16 Q. so what it is, when you close down a trailer door, you
17 swing the, that, you swing this mechanism into place?

18 A. For lack of a better term, the arm .

19 Q. The arm. And then you slip the bolt through the eye
20 part, the bolt of the lock through the eye part and lock it?

21 A. It's attached to a long rod that goes down and folds it
22 over, and it locks a piece behind, a protective piece. Folds
23 over and locks down, and then you put the padlock on it, and
24 that secures it.

25 Q. Did you examine this lock at the scene?

1

1 A. Yes, I did.

2 . Any evidence that it had been pried upon?

3 A. No, I saw no evidence of tool marks on it either.

4 Q. What did you do with this lock?

5 A. I also gave that lock to the custody of Mountain Plains
6 employees, as it was theirs.

7 Q. One thing about the heat damage to the pickup, although
8 you've eliminated a fire starting from inside the truck. The
9 heat damage that you noticed on the outside, was it caused by
10 low, moderate, extensive heat? What kind of heat?

11 A. I attributed it to a significant temperature flash.

12 Q. An explosion?

13 A. An explosion.

14 Q. Now, do you have any training at all in detonators and
15 the like?

16 A. No, I do not.

17 MR. MILLER: Your Honor, before I'm through, we've
18 entered into a stipulation, and it goes in with this
19 witness. If I could read that at this time to the jury.

20 THE COURT: If that's agreeable with -

21 MR. PETERS: Yeah, no problem, Judge.

22 THE COURT: Okay.

23 MR. MILLER: What I'm about to read is a
24 stipulation entered into between the prosecution and the
25 defense.

3110

1 The United States of America and the undersigned
2 defendants and their counsel do hereby agree and stipulate
3 that were he to testify, Dr. Richard W. Henderson would state
4 the following:

5 He is a professional chemist and certified fire
6 investigator for Southeastern Research Laboratories, Inc.

7 He chemically analyzed three samples submitted to
8 in by Mr. Chuck Conyers. In Sample 1, Dr. Henderson found
9 no identifiable accelerants. In Sample 2, Dr. Henderson
10 found the presence of gasoline. In Sample 3, Dr. Henderson
11 found the presence of gasoline.

12 That's all I have of this witness, Your Honor

13 THE COURT: ALL right. Cross?

14 MR. PETERS: I will be done, Judge, by 5 o'clock.

15 CROSS-EXAMINATION

16 By Mr. Peters:

17 Q. So I'm going to have to hurry, Mr. Conyers. And with
18 that in mind, the red Toyota pickup truck down on 71 Highway
19 that you examined after it being released from the Kansas
20 City, Missouri, Police Department?

21 A. Okay.

22 Q. Your conclusion as to that was clearly that the cause of
23 the fire was gasoline and accelerant being put inside,
24 correct?
25

1 A. That's correct. Excuse me. I'm going to cough again.

2 Q. Would you like some water?

3 A. If you've got some.

4 Q. When the -- I'm using State's Exhibit No. 170. When

5 this pickup truck -

6 THE COURT: Government's Exhibit 170?

7 MR. PETERS: Yes, Judge.

8 THE COURT: Wrong government, Mr. Peters.

9 MR. PETERS: I'm showing my background.

10 Q. (By Mr. Peters:) Was the truck actually released to

11 you, then, because it no longer had evidentiary value?

12 A. No, it was not.

13 Q. But the police, the Kansas City, Missouri, Police

14 Department had released it so that you could conduct your

15 investigation?

16 A. They gave me permission to conduct the investigation

17 while it remained in their custody.

18 Q. And at the time that you conducted your investigation,

19 they'd completed yours? Or did you know?

20 THE COURT: You mean they'd completed their -

21 Q. Their investigation.

22 A. I had no idea whether they were completed or not.

23 Q. And you found in the vehicle on the floorboard keys that

24 included the ignition key, correct?

25 A. That's correct.

1 Q. And then you found a holster that -- do you recall what
2 type of weapon that holster would have held?

3 A. I can surmise what kind of weapon it would have held.

4 Q. And you did so in your report. What kind did you
5 surmise?

6 A. I assumed it would have been a 38 caliber revolver.

7 Q. And you testified that there was significance to the
8 radio being present in that the fire wasn't set to try and
9 cover a theft; is that correct?

10 A. I believe that's what I stated.

11 Q. Because we're talking about an accelerant placed on the
12 towel and because of -- I'm going to, I'm trying to hurry too
13 much.

14 You're able to determine that this wasn't a Molotov
15 cocktail thrown through a window, weren't you?

16 A. I determined that the windows were up; therefore, it
17 would have been difficult to do that.

18 Q. Especially with a blue towel through the window, would
19 that be -

20 A. I assumed that would be reasonable.

21 Q. And in this exhibit, and I always forget the number.
22 Government's Exhibit 140, this is a pickup truck, what type
23 of handle mechanism did it have?

24 A. A handle on what?

25 Q. On the doors, on the driver and passenger doors? Was it

1 the kind that you pull like this or a push button one?

2 A. I really don't know because, as you can see, it was
3 burned off.

4 Q. Was it burned off on the other side, as well?

5 A. I believe so.

6 Q. And when you got the truck, the handles, as far as you
7 now, weren't recovered at the crime scene on 71 Highway?

8 . I have no knowledge of that.

9 . In your report, you talked about it being significant,
10 r something to the effect of there was no fingerprint dust
11 hat you could tell?

12 . I was making a statement. Whether or not that's
13 significant is somebody else's determination.

14 . What do you mean by there was no fingerprint dust?

15 Could you explain that to the jury?

16 . Because I did not know if Kansas City, Missouri, had
17 totally completed their investigation. I just wanted to
18 document that I was examining the vehicle and I would be
19 touching it, and I noted there was no fingerprint dust on it.

20 Q. So at the time that you examined it, nobody had dusted
21 for fingerprints; is that correct?

22 A. Not that I saw. It doesn't mean that it didn't happen,
23 I just didn't see it.

24 Q. During the course of your employment, since I believe
25 you left Independence -- you've been doing this since 1978;

1 is that right?

2 A. I've been involved in fire investigations since ,78.

3 Q. You've probably done extensive work in determining
4 insurance fraud; is that correct?

5 A. I will say that I've done extensive work in working in
6 the insurance industry.

7 Q. Is a common form of insurance fraud setting fire to a
8 vehicle to collect on insurance?

9 A. I would say it's not that common, but it has happened.

10 Q. And if you had been called to investigate for the
11 insurance carrier of the pickup truck here, would there be
12 significance to you that the keys were in the truck?

13 A. Probably not.

14 Q. Would it be of significance to you that nothing was
15 taken from the truck?

16 A. It probably would be, yes.

17 Q. What would that significance be?

18 A. That nothing was taken from the truck, nor does there
19 appear to be anything that would tell me that if, using if,
20 if this were a stolen truck, it wasn't stolen for the purpose
21 of stealing something from it.

22 Q. Prior to your looking at the truck, had you been told
23 that on the front seat was something described variously as a
24 purse or wallet or anything like that? Had you been told
25 that by Kansas City, Missouri, police investigators?

1 A. No, I had not.

2 Q. Would that also be significant if there was a wallet or
3 something of value on the seat of the pickup truck at the
4 time of this fire?

5 A. It may be.

6 Q. Okay. Then it was on December 3rd that you had occasion
7 to go on the east side of the highway where the trailers had
8 exploded; is that correct?

9 A. That's correct.

10 Q. And about what time of the day was it that you went
11 there, if you remember?

12 A. I seem to recall it was in the morning hours, but not
13 very early.

14 Q. Were you able to determine from your investigation
15 whether the trailers had been vaporized with no parts of the
16 trailer remaining?

17 . Yes, I was able to determine that.

18 Q. And you found parts of the trailer in your
19 investigation; is that correct?

20 . That's correct.

21 Q. You've shown, we've shown pictures with the, these real,
22 the rear axles, the duallies or -

23 . Excuse me a second. Okay. I'll try it again.

24 Q. You've shown pictures and testified about the rear
25 axles, sometimes called duallies; is that correct?

3116

1 A. Correct.

2 Q. And I'll try to ask questions that you can nod to if we
3 need to. Do you know whether or not anybody ever took any
4 sort of swabs from those, the remaining wheel on the one and
5 the rim and wheel on the other, any swabs to check for an
6 accelerant?

7 A. I have no idea if anybody ever did.

8 Q. And that wouldn't have been part of your assignment that
9 day because you were concerned about the pickup truck owned
10 by Mountain Plains that was partially destroyed by the blast;
11 is that correct?

12 A. Yes and no. My concern was, in fact, the pickup truck,
13 but had I seen something that would have told me there was
14 some evidentiary value of anything available on the duallies,
15 I would have done so.

16 Q. The placard that you've, that you took a photograph of,
17 we don't have any way of knowing where that placard was at
18 the time of the explosion, do we?

19 A. As it's mounted in position, that's correct.

20 Q. And as to its mounted position, it could have been
21 inside the trailer, outside the trailer, on the floor of the
22 trailer, underneath the ANFO, it could have been anywhere;
23 isn't that correct?

24 . No.

25 Q. Tell us why not.

1 A. Because of the fact that the, while it did show damage,
2 it has not got any burning to it, the paint is still on it,
3 and it's still very readable.

4 Q. And what is the significance of that in term s of if it
5 had been inside the trailer and the trailer was detonated,
6 Would you expect to find fire damage on the placard?

7 A. I would have expected to find significant damage to it.

8 Q. And did you -- in the photograph, it appeared pretty
9 mangled. Is that inconsistent with if it had been inside the
10 trailer?

11 A. In my mind, it is inconsistent had it been inside.

12 Q. Do you know, have you heard during your investigation
13 that it is common for construction sites to reverse the
14 placard so that it's, the wording side is facing the trailer
15 to deter vandalism and thefts? Have you heard that?

16 A. I've never heard that.

17 Q. You've never heard that?

18 A. No.

19 Q. Okay. Who was employing you when you conducted this
20 investigation?

21 A. We were retained by a law firm here in Kansas City.

22 Q. And what law firm was that?

23 A. Gordon Myerson's law firm.

24 Q. And what was the insurance carrier that they were
as by?

3118

1 A. I believe it was American States.

2 Q. And who was the company that that insurance company
3 insured?

4 A. I believe it was Mountain Plains Construction.

5 Q. So you were hired -- so Mountain Plains, insurance
6 company hired a law firm that hired you to conduct this
7 investigation; is that correct?

8 A. That's correct.

9 MR. PETERS: I'm done, Judge.

10 THE COURT: ALL right. You made it. Any
11 redirect? Well, is there any other cross? I'm sorry.

12 MR. O'Connor: No, sir.

13 MR. BUNCH: No.

14 THE COURT: Any redirect?

15 MR. MILLER: No, Your Honor.

16 THE COURT: ALL right. Thank you, sir. You're
17 excused.

18 ALL right. Ladies and gentlemen, we're going to
19 recess, pick up in the morning at 9:30. And we'll work a
20 full day tomorrow, and then we won't work Friday. Actually,
21 we'll have a long weekend because Monday is a holiday. So
22 we'll work tomorrow and then resume on Tuesday, if that's
23 necessary, and I'm sure it will be.

24 Don't talk about the case, don't read anything in
25 the paper about it, don't look at the television about it,

1 and drive carefully getting home. We'll see you in the
2 morning. You're excused.

3 (The following proceedings were had in the
4 courtroom out of the presence of the jury:)

5 THE COURT: All right. We'll be in recess.

6 (The trial adjourned for the day at 4:00 p.m.)

REPORTER'S CERTIFICATE

I, Kathleen M. Wirt, Registered Merit Reporter, hereby certify that I am an official reporter for the United States District Court, Western Division, at Kansas City; that I was present at the time and place first hereinbefore set forth, and that I reported all of the proceedings by electronic stenography and the transcript was produced by computer.

I further certify that the foregoing is a correct Volume XVI transcript (Pages 2887 - 3120) from the record of proceedings in the above-entitled cause.

Transcript completed this ~ day of
 , 1997.

 ~ /(' lit

Kathleen M. Wirt, CCR,rmR

United States Court Reporter

~v ~

Page 3121
IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

WESTERN DIVISION

UNITED STATES OF AMERICA,)
 Plaintiff, ~
 vs. ~ Nos. 96-00085-01/05-CR-W-8
)
GEORGE FRANK SHEPPARD,)
EARL D. S8EPPARD,)
DARLENE M. EDWARDS,) Thursday,
BRYAN E. SHEPPARD, and)
RICHARD W. BROWN,) February 13, 1997
) Kansas City, Missouri
Defendants.)

TRANSCRIPT ON APPEAL

VOLUME XVII

(Paaes 3121-3245)

BEFORE THE HONORABLE JOSEPH E. STEVENS, JR..

UNITED STATES DISTRICT JUDGE

AND A JURY,

Proceedings recorded by electronic stenograph

Transcript produced by computer

ELIZABETH SHINN, RPR

UNITED STATES COURT REPORTER

811 GRAND AVENUE, ROOM 702

KANSAS CITY, MO 64106

A			
r			l
I I	<u>I N D E X</u>		I
,			1
21	<u>VOLuME XVII</u>		~
3 I	<u>DAVE TRuE</u>	Page	I
I.l	Direct Examination	3124	
'	Cross Examination	3163	
5	Cross Examination	3209	
~	Cross Examination	3228	
6 !			I
a	- 0 0 0 -		~
'I	<u>EX H I B I T S</u>		
	Plaintiff's	Received	
. ~			
	408	3152	
-	88	3155	
	421	3156	
--	422	3157	
	310	3158	
-	373A, B&C	3160	
	394 and 395	3162	
	- 0 0 0 -		
:			
=			
.			

1
2 THE COURT: Let me talk just a minute
3 about scheduling, if I might. I will tell you that
4 the government will finish the presentation of its
5 evidence today, probably this morning. Now somebody
6 stop me if this isn't what we agreed on. We will
7 then recess for the long weekend and resume on
8 Tuesday with the presentation of whatever evidence
9 the defendants elect to present. I can't predict
10 with any assurance but I believe it is fair to predict
11 we may conclude the case by the end of next week.

12 Is that a fair prediction?

13 MR. O'CONNOR: Yes, Your Honor.

14 MR. BECKER: I believe so.

15 THE COURT: And we will still not work on
16 Friday afternoon of next week but we will otherwise
17 start on Tuesday and work until Friday.

18 MR. BECKER: Judge, these are the maps we
19 discussed yesterday that were requested.

20 THE COURT: Yes. They are okay with you,
21 Mr. O'Connor.

22 MR. O'CONNOR: Yes, Your Honor.

23 MR. BECKER: It is Government's Exhibit No.
24 l, just a small version.

25 THE COURT: Yes, minimized.

,\

1 MR. BECKER: The United States calls Special
2 Agent True.

3 DAVID TRuE,

4 having been sworn, testified:

5 DIRECT EXAMINATION

6 BY MR. BECKER:

7 Q Good morning. Please state your name and spell your
8 last name.

9 A: David True, T-r-u-e.

10 Q How old are you?

11 A: Fifty-two.

12 Q Do you have a family?

13 A: Yes.

14 Q Where do you live?

15 A: Jackson County, Missouri.

16 Q Could you please tell us what your law enforcement
17 background is.

18 A: I actually started with the military. I was in the
19 military from 1966 to '68 as an explosive arson
20 specialist and rendering safe devices and destroying
21 explosives. And from '68 to '71 I was a police officer
22 with the St. Louis Missouri Police Department; part
23 time as a street officer and then part time as a bomb
24 arson detective assigned to homicide in the St. Louis
25 Police Department. Then from 1971 until the present I

1 have been employed with the Bureau of Alcohol, Tobacco
2 and Firearms, assigned in St. Louis for the first five
3 years. And I have been in Kansas City since 1976.

4 Q Going back to November 29, 1988 where were you on that
5 day?

6 A: In Springfield, Missouri.

7 Q What were you doing in Springfield?

8 A: I was involved in a grand jury investigation regarding
9 an unrelated case, involving an investigation of a
10 remote control bomb , attempted murder case.

11 Q Did you receive a call or any information about the
12 explosion that had occurred here in Kansas City at
13 about 4:00 A.M. on 71 highway?

14 A: Yes, I did.

15 Q Tell us about that, please.

16 A: Well, I was notified by our office here to come back to
17 Kansas City, along with our explosive tech. specialist,
18 Cliff Lund, who was with me down in Springfield. We
19 came back, arrived in mid-day and then eventually got
20 to the scene about late afternoon, around 4:00, 4:30,
21 5:00.

22 Q Now, the scene, we have seen it and heard it described
23 now for over a month and it is what is depicted in this
24 photograph as Government's Exhibit 5, is that right?

25 A: That's correct.

1 Q What was it like when you went out there in the late
2 afternoon of November 29, 1988?

3 A: Well, the scene had already been processed by the
4 Kansas City Missouri Police Department. It was just
5 starting to close down. When I arrived I met with my
6 supervisor, Rick Van Healst, and Captain Cannady was
7 there from the police department. And they were just
8 getting ready to turn the scene over to the media or
9 anybody else that wanted to come in and look at it.
10 So the scene examination at that site had been
11 completed when I arrived.

12 Q Did you talk with Paul Marquardt from ATF at the scene
13 that day?

14 A: No, we had already left the scene.

15 Q Did you conduct a personal investigation of the scene
16 to gather evidence of what happened?

17 A: No.

18 Q Do you know who gathered the physical evidence from
19 that scene on November 29, 1988?

20 A: The members of the Kansas City Missouri Police
21 Department, the bomb and arson detectives and the
22 homicide detectives and homicide I believe took custody
23 of all the evidence.

24 Q Later, and that being a few days later, were you aware
25 that Chuck Conyers, a privately-retained investigator,

1 and a Gary Compton also gathered evidence from that
2 scene.

3 A: That's correct.

4 Q Over the course of the years since have you been given
5 that evidence?

6 A: I have. ATF has been given the evidence.

7 Q Were you assigned to participate in this investigation?

8 A: I was.

9 Q What was your assignment then on November 29th, or
10 shortly thereafter, 1988?

11 A: Well, of course, the case was assigned to Agent
12 Marquardt initially. My assignment was to investigate
13 and determine if a labor unrest situation that was
14 going on at another location had any connection with
15 this particular site.

16 Q Well, what was that other location and what were you
17 supposed to look at?

18 A: Well, the location was a company called Courtney
19 Concrete which was located in Sugar Creek, Missouri,
20 east of Independence, Missouri. And there has been
21 some information come to us that some of the picketers
22 there may have been causing some vandalism at the site
23 and that is what kind of got me started in that
24 direction. I was given that assignment and I just
25 carried out and carried on that assignment.

3128

1 Q When you say picketers or vandalism, is that at the 71
2 highway explosion or at Courtney Concrete?

3 A: That was at Courtney Concrete in Sugar Creek.

4 Q Is there another company that was called to your
5 attention by the name of Southern Ready Mix?

6 A: Through some initial interviews we learned there might
7 be similar incidents at Southern Ready Mix which was
8 located closer to the construction site off of 85th
9 Street.

10 Q Were both of those companies, Courtney and Southern
11 Ready Mix, were they union or non-union operations?

12 A: Courtney was a non-union operation. Southern Ready Mix
13 was non-union but it was owned by Bill Clarkson who had
14 a huge union operation, also a construction company.
15 So it was quasi-union but the concrete company itself
16 was non-union.

17 Q In your investigation then, I suppose we are talking
18 about December of 1988, is that correct?

19 A: Yes.

20 Q Were you able to determine if there was any concrete
21 from those two companies, either of those two
22 companies, delivered to the site?

23 A: It's my understanding that four different deliveries
24 were made during the October-November period. And by
25 that I mean four different dates, different instances,

~

1 small loads like a truck from Southern Ready Mix up to
2 the concrete site.

3 Q Did you have any information about any labor unrest as
4 a result of those four truckloads of concrete?

5 A: No, none whatsoever. It's my understanding some
6 informational picketers followed one or more of those
7 deliveries up to that site and they would stay at the
8 highway there. The load would go in and then they would
9 follow them back.

10 Q Back?

11 A: To the company.

12 Q In December of 1988 did you seek the assistance of
13 anyone else, any other law enforcement personnel, that
14 had knowledge of organized labor in Kansas City?

15 A: I made an initial contact with Gene Schram. He is a
16 special agent in charge of the Labor Racketeering
17 Section for the Department of Labor and he and his
18 people had some background on unions and the makeup on
19 that structure. So I contacted him initially by phone
20 in December. And then eventually he joined in with me
21 in February of '89 and started working with me on a
22 case and has been with me ever since.

23 Q In January of 1989 were you assigned this case?

24 A: Yes, it was reassigned to me.

25 Q From Paul Marquardt?

3130

1 A: Yes, sir.

2 Q And we heard his testimony yesterday morning about
3 that, is that right?

4 A: That's right.

5 Q Did you work with or coordinate with the investigation
6 being conducted by the Kansas City Missouri Police
7 Department then in January of 1989?

8 A: Well, the first couple weeks we interacted and worked
9 together and our agents came back and homicide worked
10 the case. I followed the labor unrest issue by
11 assignment. And I went on my direction and they
12 continued on with their homicide investigation. So we
13 split some time during January or the early part or
14 February.

15 Q Who was in charge of the case over at the Kansas City
16 Missouri Police Department, Homicide?

17 A: Detective Fraise and Detective Zinn were the primary
18 detectives for homicide.

19 Q Did you make a trip with them in January of 1989?

20 A: January 9th Detective Fraise, me, Agent Pete Lobdell
21 and the Kansas City Missouri Police Department flew up
22 to Quantico, met with the FBI profilers and asked them
23 if they would prepare a profile of types of
24 personalities that would have caused this type of
25 crime. We had run out of leads.

1 Q What do you mean by "we had run out of leads"?

2 A: The initial leads that had come in were starting to be
3 exhausted. We weren't getting any calls over at our
4 office. I still had my assignment in terms of the
5 potential labor situation and homicide had told me they
6 had pretty much exhausted most of the early leads,
7 suspects.

8 Q Then you go to FBI headquarters in Quantico for this
9 profile.

10 A: That's correct.

11 Q Then following February of 1989 and working with Gene
12 Schram with the Office of Labor Racketeering, what did
13 you do to investigate this labor angle?

14 A: Well, I met with a Mr. Bill Baker initially who was a
15 foreman at Courtney Concrete and I learned through him
16 about some of these incidents that occurred at Courtney
17 and coming to and from this concrete company.

18 Q Were these acts directed at the concrete trucks then?

19 A: Equipment, trucks, individuals, and personal property.

20 Q What unions were you looking at, what were under
21 consideration?

22 A: Local Union 541 which is the Teamsters and Local 101
23 which is Operating Engineers, various individuals
24 within those two unions.

25 Q Throughout the course of 1989 then and into 1990 did

1 you interview persons that were with those unions?

2 A: Yes, we did.

3 Q How many of them?

4 A: Probably 30 or 40, including from the presidents of the
5 unions down to the picketers who were out at Courtney
6 and Southern Ready Mix.

7 Q What did you get?

8 A: Nothing. What I learned there were some acts directed
9 at these companies, and Bill Baker, too, there was a
10 personal grudge going there but I was not able to tie
11 any of this into anything related to the construction
12 site tragedy other than those picketers, informational
13 picketers, legal picketing on those one or two
14 occasions would come up empty.

15 Q Now, in September of 1989 were you aware that charges
16 were brought and then later dropped against Bryan
17 Sheppard?

18 A: Yes.

19 Q Were you a part of that investigation at all?

20 A: No.

21 Q Were you aware of the evidence in that investigation in
22 1989?

23 A: No, I wasn't.

24 Q From 1989 now through 1996 was this fire fighters case
25 your only case?

1 A: No.

2 Q In 1989 did you have an investigation and trials in
3 Springfield, Missouri?

4 A: Yes, that was the case I addressed a minute ago about
5 the remote control bomb incident. We had two trials,
6 one in the summer and another one in the fall.

7 MR. PETERS: Objection. Relevancy.

8 MR. BECKER: I will make an argument.

9 MR. PETERS: If it is relevant, then I don't
10 care. I withdraw the objection.

11 THE COURT: You may continue with your
12 answer, Agent.

13 Q In 1990 did you have any investigations in Iowa?

14 A: Yes, the Ryan Fitness Center arson, two fire fighters
15 died. I assisted the agent. And then we went to trial
16 and that went through '91.

17 Q Here in Kansas City in 1990 were you involved in the
18 investigation of a fellow by the name of Rod Anthony?

19 A: Yes, that was an investigation regarding some
20 wrongdoings of a private investigator.

21 Q Also were you the case agent on a fire here in Kansas
22 City, Missouri, in Grandview actually?

23 A: Yes, it was the House of Lloyd arson, a large fire loss
24 where we investigated and went to trial on an employee
25 there.

3134

1 Q In 1991 were you involved in trial work in Iowa at that
2 time?

3 A: That was the Ryan Fitness Center trial. It went
4 through the latter part of '91.

5 Q Were you involved in any new arson investigations in
6 St. Joseph or Blue Springs, Missouri?

7 A: Two different cases, an arson fraud case in St. Joe and
8 a similar case in Blue Springs.

9 Q In 1992 were you involved in a supermarket arson
10 investigation?

11 A: That was in Kearney, Missouri, John's Supermarket
12 investigation. It was an investigation of a
13 supermarket that was burned.

14 Q Also, were you involved in a murder investigation in
15 Springfield?

16 A: Yes, that was an arson, attempted murder, murder for
17 contract.

18 Q As a result of that were any lives saved?

19 A: Yes.

20 Q In 1993 were you involved again in the RSBI Aerospace
21 arson investigation and prosecution?

22 A: Right, yes, I was.

23 Q So it is fair to say your every waking moment wasn't
24 devoted to the fire fighters case during that period of
25 time.

3135

1 A: No.

2 Q Now, moving toward November of 1993, do you recall any
3 actions or initiatives as it relates to this case?

4 A: I got a phone call from Captain Joe Galetti and he had
5 asked if we could help him.

6 MR. O'CONNOR: I object to anything Captain
7 Galetti said as hearsay.

8 THE COURT: Well, it certainly wouldn't be
9 taken for a hearsay purpose but I am not sure this
10 isn't informing what he was asked, not to prove the
11 truth of what he said.

12 MR. O'CONNOR: I don't know what the offer
13 is. Is the offer for the truth or to show he did it?

14 Q What happened next, how we get to where we are today.

15 MR. O'CONNOR: Withdraw the objection.

16 THE COURT: All right.

17 Q Did you discuss this with Captain Galetti?

18 A: They asked for assistance in seeing if we could meet
19 with officials of the Unsolved Mysteries show. We
20 did assist and we were able to have them agree to come
21 and do a segment on the fire fighters tragedy.

22 Q What was the purpose of that?

23 A: To take one last shot at trying to solve the case,
24 really. We thought maybe we could generate some
25 interest through the media and try to get some people

1 to call in who may have called before and hopefully
2 get some people to call in who had never called
3 before.

4 Q Is it fair to say at this point, by November, December
5 of 1993 things had dried up and there was nothing more
6 to be done?

7 A: I would say yes.

8 Q Did you discuss this matter then in February of '94
9 with Sergeant Forbes of the bomb and arson unit?

10 A: Yes, I did. We were at a meeting and I suggested maybe
11 he could get the case transferred to the bomb and arson
12 unit and we could work together with him in concert
13 with the show that was in preparation for the latter
14 part of that year. And he talked to his major and they
15 agreed to transfer the file to the bomb and arson unit
16 of the Kansas City Police Department.

17 Q From where?

18 A: From the homicide.

19 Q Then in November of 1994 can you tell us if anything
20 occurred relating to the Unsolved Mysteries program?

21 A: Well, November 13th was the first day they were here
22 in terms of making the show. They conducted the
23 interviews on that day with a number of us that were
24 involved in the investigation.

25 Q Where did this filming take place?

1 A: Out at the old Longview Farm.

2 Q Were you interviewed on camera for this program?

3 A: Yes.

4 Q What was the purpose of that?

5 A: They wanted to interview some people that were involved
6 in the case, both from family members of the fire
7 fighters and the investigators and people that had been
8 involved and were aware of it. That included Detective
9 Fraise, Paul Marquardt, Agent Marquardt. I interviewed
10 some of the family members. And each explained a
11 little piece of the investigation and the tragedy
12 itself.

13 Q What part did you talk about on Unsolved Mysteries?

14 A: They asked me to address the early part of the
15 investigation and I was closest to, and that was the
16 labor unrest thing that we tried to work but we got
17 nothing out of it. So I was somewhat limited to that.

18 Q But you talked on the camera, and eventually the
19 program, about your investigation of the labor angle.

20 A: Yes.

21 Q Following that, that filming business, were there press
22 reports about the filming?

23 A: There was press reports about the filming, yes.

24 Q Did that generate any calls -- and, specifically, I
25 want to call your attention to Amy Pederson.

3138

1 A: Yes, it did.

2 Q Could you tell us, if you remember that, what do you
3 remember about it?

4 A: Well, during the filming and local media attention we
5 were starting to get some calls. The calls would come
6 in to either the TIPS hotline or the police department,
7 our office. She called in and was interviewed by Agent
8 Pete Lobdell. That was the first time that I really
9 was able to see that there was information provided to
10 us about somebody in the Marlborough area. I was
11 really familiar with the Marlborough area up to this
12 point. And that's what really, if there was a starting
13 point for me in terms of looking at the investigation,
14 as we sit here today it would probably be that
15 interview of Amy Pederson.

16 Q And did you do that interview?

17 A: No, that was Agent Lobdell. He told me the results of
18 the interview.

19 Q In January and February of 1995 did you participate in
20 a narcotics investigation of Darlene Edwards?

21 A: I did but actually prior to that, in December is when I
22 really first started reading all the police reports.
23 We had finally received the reports in volume and
24 through December I started reading these reports. And
25 through that is when I got involved in the narcotics

3139

1 investigation regarding Darlene Edwards.

2 MR. O'CONNOR: Mr. Becker, when was that
3 date, December of '94?

4 MR. BECKER: It would have been December of
5 '94.

6 THE WITNESS: December of '94 on the review
7 of the reports and then the narcotic investigation
8 started in January of '95.

9 Q And also were you coordinating the investigation in
10 preparation for the showing of this Unsolved Mysteries
11 show?

12 A: Yes.

13 Q What was being done?

14 A: Well, the show itself, the taping of it, and then we
15 also with the help of a lot of people put up some
16 banners along the highway and some posters throughout
17 the community, throughout the city and throughout the
18 prison systems of Kansas and Missouri.

19 Q What was on the posters or banners?

20 A: Reward posters. I had learned the International Fire
21 Fighters Union had regenerated a reward fund and our
22 agency had also added \$10,000 to that fund. And I
23 think it was right at 50,000.

24 Q Did you, with Sergeant Forbes from bomb and arson, get
25 a group of investigators put together in January and

3140

1 February of 1995?

2 A: Yes.

3 Q Could you tell us about that, please.

4 A: Well, we started a narcotic investigation where
5 Sergeant Forbes and his men were going to follow some
6 leads, we were simultaneously following leads and we
7 were working together. And Bill Forbes and his men
8 went to serve a search warrant on a house on Wornall
9 owned by a lady called Kathy Utter and Ronnie Edwards,
10 who was Darlene's stepson, and a gentleman named John
11 Atterbury. They didn't find what they were looking
12 for. They were looking for a videotape. But after
13 that search went on John Atterbury and Ronnie Edwards
14 talked to the bomb and arson detectives and provided
15 information and knowledge they had about the fire
16 fighters' tragedy. And they were brought to the
17 station and statements were taken from both Ron
18 Atterbury -- John Atterbury and Ronnie Edwards. And
19 while that was going on they both said they had
20 knowledge of Darlene.

21 MR. O'CONNOR: May we approach.

22 (Conference out of the hearing of the jury.)

23 MR. O'CONNOR: He is talking about Ronnie
24 Edwards who I don't think testified in this case. I
25 don't know what relevance it would have for him talking

1 about Ronnie Edwards.

2 Secondly, he is trying to get in by
3 inference what they did. Therefore, we continued
4 out investigation. The witnesses have been here.
5 The jury has heard what they have said. He is
6 trying to bootstrap what they told him with this
7 witness. That is not relevant, not material to
8 this case. The jury has heard the witnesses. For
9 him to tell us now what the witnesses told him or
10 infer what they told him, led him to do other
11 things is not relevant and especially not Ronnie
12 Edwards, not having called him to the stand, why
13 is he talking about Ronnie Edwards?

14 MR. BECKER: There has been considerable
15 cross examination of all these witnesses about how
16 the evidence was gathered. There has been some
17 focus on this process. As much as I would like to keep
18 the focus on the testimony, there has been considerable
19 cross examination of in this report we said this and
20 in this report we said that and didn't the agent tell
21 you the answers to put in these reports or didn't the
22 agent just make that stuff up and you didn't say it.
23 So I think that I want to march through this agent
24 gathered the evidence that led us to this courtroom
25 today.

1 MR. O'CONNOR: What he is saying, when he
2 testified they gave us this information, and based
3 on this, the information was given, tell the jury
4 basically what the information was, I don't have a
5 problem.

6 THE COURT: What I am going to do is tell
7 them testimony like this I am letting in only for the
8 purpose of proving what was said and the motivation for
9 what he might have done next and not proving the truth
10 of what he said.

11 MR. BECKER: Okay, but for the most part he
12 is not going to be reciting what these witnesses said.
13 We are going to say did you talk to this person and
14 what did you do.

15 MR. PETERS: I would object to him talking
16 about interviews of people they haven't called to
17 trial. I don't have a problem with our investigation
18 revealed thus and so but I think it is highly
19 improper to elicit or engage in we talked to Ronnie
20 Edwards and Ronnie Edwards told us thus and so and in
21 response to that we did something.

22 MR. O'CONNOR: I would ask the jury to be
23 instructed to disregard any reference to Ronnie
24 Edwards.

25 MR. BECKER: He is on the defense witness

1 list. They are going to call him next week.

2 THE COURT: That is overruled and I am going
3 to give the instruction I indicated. Then you can
4 proceed.

5 MR. BECKER: Okay. Thank you, Judge.

6 (Proceedings in the hearing of the jury.)

7 THE COURT: Ladies and gentlemen, there may
8 be some testimony from this agent about what some of
9 these people that he contacted said to him. Unless you
10 are instructed otherwise, that is not offered to prove
11 the truth of what was said but just to prove the fact
12 that it was said, perhaps to provide justification for
13 whatever action he took next. It won't be to prove the
14 truth of what was said.

15 All right, you may proceed.

16 MR. BECKER: Thank you, Judge.

17 Q After speaking with Ronnie Edwards and John Atterbury,
18 was a narcotic investigation conducted of Darlene
19 Edwards?

20 A: Yes.

21 Q Now, when was this Unsolved Mysteries program shown on
22 TV?

23 A: February the 10th of 1995.

24 Q Prior to the airing of that program did you have any
25 meeting with the various investigators to coordinate

1 the activity?

2 A The week before, preceding the airing of the show, we
3 handed out all of the leads that had been generated
4 that hadn't been run out yet. And as a large group of
5 agents and officers, we went out to contact people,
6 interview them and recontact people who had been
7 interviewed before.

8 Q Did you then watch that program on February 10, 1995 on
9 Unsolved Mysteries?

10 A: No, I was out working.

11 Q Have you seen it since?

12 A: Yes.

13 Q Anywhere in that show is the word Marlborough
14 mentioned?

15 A: No.

16 Q Anywhere in that show is the Sheppard name ever
17 mentioned?

18 A: No.

19 Q Anywhere in that show was the name Brown or Edwards
20 ever mentioned?

21 A: No.

22 Q Now, you talked about giving out leads to all the
23 various officers, detectives, agents. Were some of
24 them to re-interview witnesses who had been interviewed
25 back in 1989 by the police department homicide

1 detectives?

2 A: Yes, exactly.

3 Q Were you able to get more information from those
4 people?

5 A: Yes, we were.

6 Q How is it you were able or other agents or detectives
7 were able to get more information five years later?

8 A: Well, a number of different reasons but primarily a
9 number of these people had grown up, moved away from
10 the Marlborough area, had established their own
11 independent lifestyles and had married and whatever,
12 and were not as close to the situation. They were
13 cooperative.

14 MR. OSGOOD: I object. This is pure
15 speculation, what these people were thinking and
16 did. He can say they told him.

17 THE COURT: I suppose marriage might be a
18 state of mind, but he is testifying to things like
19 marriage that happened to these people. That is not
20 speculation. Overruled.

21 MR. OSGOOD: It is speculation whether it was
22 a factor in the changes of testimony from the first
23 statement, second statement, third statement.

24 THE COURT: Overruled. Go ahead.

25 A: Those are some of the reasons that we opted the

3146

1 cooperation from the individuals who had previously
2 been interviewed and sitting down with them and going
3 over previous statements, some of them were able to
4 provide additional information, not necessarily change
5 it but provide additional information which is not
6 unusual at all. I don't think I have ever interviewed
7 anybody, the most honest person in the world, that told
8 me everything they remembered from a past recollection
9 the first time I talked to them. It is not unusual to
10 interview somebody two, three, four times to get as
11 close as you can, total recall.

12 Q And physically had many or some of them moved out of
13 the Marlborough area?

14 A: Yes.

15 Q Were there leads generated, new leads, from this
16 Unsolved Mysteries program?

17 A: Yes, the combination of the show, the local media
18 attention and the show itself, we received new leads
19 and we were finding that the majority of the call-ins
20 was providing us with information regarding people
21 living in and around the Marlborough area.

22 Q Then, a week later, was there an arrest of Darlene
23 Edwards? That would be a week later, February 17,
24 1995.

25 A: Yes.

3147

1 Q Did she make a statement to you on that day?

2 A: Yes, she did.

3 Q Was it basically a denial of any involvement in the
4 fire fighters case?

5 A: Yes, it was.

6 Q Then I believe we have heard the tape. Did you
7 participate in an interview of Darlene Edwards on
8 February 19, 1995 at the Clay County jail?

9 A: Yes, I did.

10 Q And we heard that tape about two weeks ago now, is that
11 right?

12 A: Yes, that's right.

13 Q As the various detectives and agents went out and did
14 these interviews, did they use a variety of means of
15 recording or making reports from these interviews?

16 A: Yes, they did.

17 Q In your 25 years-plus of investigative work, what is
18 the most normal way that you report on interviews of
19 witnesses?

20 A: The most co mm on way by far is the report of interview
21 where I go and I talk to somebody. First of all, I
22 introduce myself and try to develop somewhat of a
23 rapport to let them know I want to talk to them and try
24 to have a conversation with them, and then go into the
25 information they claim they have or might have, whether

3148

1 it would be admissions or seeing something, and have
2 them tell me, as best they can remember, what it was
3 they saw or heard, did. And then that becomes a report
4 of interview. There is numerous others ways that are
5 all acceptable that I use. All the federal agents and
6 police officers I know use all the combinations
7 including attorneys, prosecutors, defense attorneys.
8 They're all acceptable ways of conducting interviews
9 with individuals.

10 Q And then are we talking about, as we have heard so
11 often, did you bring a tape recorder with you on any
12 occasion?

13 A: At times I would tape record interviews.

14 Q Did you have signed statements from some of these
15 witnesses?

16 A: At times we would take signed statements.

17 Q Did you ever go out with a stenographer like this lady
18 here, Mrs. Shinn, and do interviews?

19 A: No, I don't know of any federal agency I am familiar
20 with that has the luxury to have a stenographer. It
21 isn't practical. We do interviews in taverns, in
22 parking lots, behind pickup trucks and back seats of
23 cars. It isn't practical.

24 Q In fact, as part of the investigation were witnesses
25 brought before the grand jury here on the 9th floor of

3149

1 this building?

2 A: I believe almost a hundred.

3 Q Is there a stenographer in the grand jury who records
4 what the witnesses say?

5 A: Yes, there is.

6 Q Now, during the course of your investigation then in
7 1995, through 1995, were there two broad classes, or
8 categories, of witnesses that you developed?

9 A: Yes, there were.

10 Q What are they?

11 A: Well, in breaking them down in very broad
12 classifications, we have witnesses that I would
13 identify as witnesses to an event where they, he or she
14 saw something at a certain time and place. In this
15 particular investigation the critical time, through
16 November 28, 1988 and throughout the early morning and
17 throughout the rest of the day of November 29, 1988,
18 witnesses to an event, either heard something or saw
19 something during that period of time. The second
20 classification would be individuals who provided
21 information where they either were a party to a
22 conversation or where somebody made an admission to
23 them or they were present in a room where an admission
24 was made to someone else in their presence.

25 Q Now, you talked about when the case was transferred

3150

1 from the homicide unit to the bomb and arson unit of
2 the Kansas City Missouri Police Department. Did you
3 have an opportunity to review the work and all the
4 interviews that were done by the homicide unit from the
5 day of the event through when you looked at that file
in December of 1994?

7 A I did and it was an ongoing process. There were seven
8 or eight volumes of reports, a lot of papers. So it
9 wasn't like one setting but over a period of time I had
10 an opportunity to start reading and pull reports out
11 and follow leads on that. So, yes, I did.

12 Q Did you see a videotape and read a transcript of a
13 confession by a fellow by the name of Frederick
14 Martindale?

15 A I did.

16 Q That would have been done, a videotape of Martindale,
17 on March 7th, 1991, is that your memory ?

18 A I believe that's the date.

19 Q Did the Police Department follow up on that confession
20 by Martindale?

21 A Yes, they did.

22 Q Were any charges ever brought by the state against
23 Martindale?

24 A No.

25 Q Did you do any follow-up work on this confession by

3151

1 Martindale?

2 A: I did.

3 Q What did you do?

4 A: I talked to Martindale.

5 Q Did you talk to any friends of Martindale?

6 A: Me and some of the other investigators that were part
7 of the team, collectively, talked to friends, family
8 members, talked to Martindale and we also eliminated
9 that.

10 Q Throughout then following this Unsolved Mysteries
11 program did you receive contacts from incarcerated
12 witnesses?

13 A: Yes.

14 Q Did you go interview them?

15 A: We did.

16 Q You and other agents.

17 A: Me or other agents assigned to the team.

18 Q We have seen a number of them. There is one I would
19 like to talk about. Glenn Sheppard, do you remember
20 talking with him?

21 A: Yes, I do.

22 Q And there was quite a bit of cross examination about
23 his sentencing in Clay County or Cass County, Missouri
24 on October 31, 1996, do you remember that?

25 A: I do.

1 Q Did you go down there?

2 A: I did.

3 Q Did you appear and make a statement on the record?

4 A Before the judge.

5 Q I want to show you what has been marked for
6 identification purposes as Exhibit 408 and ask if you
7 recognize this.

8 A: I do. This is the transcript of my appearance before
9 the judge in Cass County.

10 Q And have you reviewed this prior to your testimony
11 today?

12 A: Yes, I have.

13 Q Does it fairly and accurately report what you told the
14 judge in Cass County?

15 A: It does.

16 MR. BECKER: I would offer it in evidence
17 as Government's Exhibit 408.

18 MR. O'CONNOR: No objection.

19 THE COURT: All right, it is admitted without
20 objection.

21 (PLAINTIFF'S EXHIBIT NO. 408 WAS RECEIVED IN EVIDENCE.)

22 Q What were the two points that you made to the judge in
23 Cass County when Glenn Sheppard was being sentenced?

24 A: I told him of his cooperation in our fire fighters
25 investigation and that we had corroborated some of the

1 information he had provided to us and that I expressed
2 some concern for his safety because he was maybe
3 incarcerated in the Missouri system along with two
4 defendants in the case that were also incarcerated in
5 the Missouri system already.

6 Q Did you ever ask the judge to reduce his sentence to 25
7 years parole?

8 A: No, I remained neutral.

9 Q Ever ask the judge for any reduction there?

10 A: No. In fact, present during that was the judge, the
11 prosecutor, Mr. Sheppard's defense attorney on his
12 behalf and everything that was said is on the record
13 there.

14 Q What did you do to corroborate the testimony, the
15 information from Glenn Sheppard about going to an
16 apartment-building with **Frank** Sheppard to pick up Bryan
17 Sheppard?

18 A: He told us about the apartment building located at 85th
19 and Holmes. He drove us to it. We drove him to it.
20 He pointed it out.

21 Q Was he in custody then?

22 A: Yes, he was in custody. We checked him out and he took
23 us directly, directed us to it, where it was located.
24 And as a follow-up investigation I learned that Bryan
25 Sheppard and a girl friend of his at that time, Valerie

3154

1 Rocha, were staying at an apartment with a friend from
2 time to time during that period of time and had a
3 friend who had an apartment at the Santa Fe apartments
4 at 85th and Holmes.

5 Q Do you remember receiving information from an inmate by
6 the name of Rosemary Quiroz?

7 A: I do.

8 Q And after receiving that information were you able to
9 get any note from CCA which is now in evidence as
10 Government's Exhibit 386?

11 A: Yes.

12 Q Do you remember that?

13 A: I do.

14 Q And that is the note that was recovered by the witness
15 earlier, security officer Lucia Chenier.

16 A: Yes, she turned it over to us.

17 Q Did you arrange for Quiroz to be shown this note?

18 A: I sent a copy of this down to an agent in Texas who was
19 going to do the interview with her, she was
20 incarcerated, to have her look at it during his
21 interview.

22 Q And do you remember if the copy then was signed by
23 Rosemary Quiroz?

24 A: He had her sign a copy at the bottom just indicating
25 she looked at it and remembered the note.

3155

1 Q Do you remember interviewing Kim Archer?

2 A: I do.

3 Q After her interview, after you talked with Kim Archer,
4 did you go out and obtain any records relating to the
5 information she provided you?

6 A: Again, we wanted to verify her information and we
7 obtained the records at the Planned Parenthood Clinic
8 where she and Coro Brown went that morning on November
9 29, 1988.

10 Q I want to show you what has been marked for
11 identification, actually pursuant to the stipulation of
12 the parties, pursuant to the stipulation, entered into
13 earlier between the parties regarding business records.

14 Judge, I would offer into evidence
15 Government's Exhibit 372 which are the records of
16 the Barcelona East Apartments for October and
17 November, for the latter part of 1989.

18 MR. O'CONNOR: No objection.

19 MR. BECKER: Actually, it goes all the way
20 back to November, '88.

21 THE COURT: One exhibit, it is admitted
22 without objection.

23 (PLAINTIFF'S EXHIBIT NO. 88 WAS RECEIVED IN EVIDENCE.)

24 Q Did you obtain these records, and also the photographs
25 which were earlier in evidence, of the Barcelona East

1 Apartments?

2 A: Yes, and that documents that he was renting at that
3 time from an apartment and photographs are of that
4 apartment, from the interior and the exterior.

5 Q As a part of your investigation following up on Darlene
6 Edwards' tape-recorded confession, were you able to
7 locate the rental car she was talking about?

8 A: Yes.

9 Q How did you find it?

10 A: Well, she had been stopped in that car the early part
11 of December of '88 for questioning. The license plate
12 was in the police report. We ran a license plate with
13 the help of the Missouri Highway Patrol and they came
14 up with an issue on that. And through that I asked for
15 a title search to be made. And I received a certified
16 copy of a title search showing that rental car, that it
17 was a rental car back in November, '88.

18 MR. BECKER: And I would offer, Judge, as a
19 public record under seal, Government's Exhibit 421.

20 MR. BUNCH: No objection.

21 THE COURT: Admitted without objection.

22 (PLAINTIFF'S EXHIBIT NO. 421 WAS RECEIVED IN EVIDENCE.)

23 Q What is Government's Exhibit 421?

24 A: This is a title search showing the current owner, a
25 gentleman in Lee's Summit and tracing it back to the

3157

1 rental company back in November of '88.

2 Q Show you what has been marked for identification
3 purposes as Government's Exhibit 422.

4 MR. BUNCH: No objection.

5 THE COURT: 422 is admitted without
6 objection.

7 (PLAINTIFF'S EXHIBIT NO. 422 WAS RECEIVED IN EVIDENCE.)

8 A: This is a photograph of the car on the parking lot in
9 Lee's Summit. We went to the current owner and asked
10 if they could take a picture of it and this is the
11 rental car that Darlene had in November of 1988.

12 MR. BECKER: I would offer it but I guess it
13 has already been admitted, is that right?

14 THE COURT: You did offer it and it was
15 admitted.

16 Q Did you follow up and try and locate a pickup truck
17 that may have been owned by the father of **Frank** and
18 Skip Sheppard?

19 A: Yes, we did.

20 Q How did you go about doing that?

21 A: I learned that Officer Ludwig had worked for years in
22 the Marlborough area as a street officer and he kept
23 real close and copious notes and records of car stops
24 and so forth. That was my first contact with him. He
25 checked his notes and found where he had made some

1 traffic stops with one or more members of the Sheppard
2 family. In those notes was a license plate at the
3 time. Again calling the Jeff City Highway Patrol, they
4 ran the plate, got an issue to Earl Sheppard, the
5 father, and then did a title search showing that this
6 was currently owned by a person in the Marlborough
7 area. We went to him and he had purchased the car from
8 the Sheppards a year or two prior to that. And through
9 that we found the truck. And then I asked for a
10 certified copy of the title search of the Sheppard's
11 pickup truck.

12 MR. BECKER: I would offer as a public record
13 under seal Government's Exhibit 310 which is a
14 certified copy of the vehicle records for that pickup
15 truck.

16 MR. O'CONNOR: No objection.

17 THE COURT: Hearing no objection, it is
18 admitted.

19 (PLAINTIFF'S EXHIBIT 310 WAS RECEIVED IN EVIDENCE.)

20 Q Agent True, I would like you to look at this fifth page
21 and see if that has a vehicle identification, who owned
22 that pickup truck and what is the address.

23 A: Yes, at the time of the explosion this was owned by
24 Earl M. and Naomi Sheppard at 7939 Hickman Mills Drive,
25 Kansas City, Missouri.

1 Q I believe we have previously had in evidence through
2 Carol Lee Ann Smith, photographs of that pickup truck.
3 I will show you now Government's Exhibits 311 through
4 314 and could you tell us how it is that you obtained
5 photographs of this pickup truck.

6 A: We went to the address of the current owner.

7 MR. OSGOOD: I don't know we have any
8 objection but I don't think it has been admitted.

9 THE DEPUTY CLERK: They are all admitted.

10 Q How did you get the photographs of the pickup truck?

11 A: Through the title search we located the current owner.
12 We went to his house. And when he showed up we asked
13 if we could take some pictures of the truck. And those
14 are photographs at his address in the Marlborough
15 neighborhood and he had purchased it from the
16 Sheppards.

17 Q Finally, as a part of the investigation, did you obtain
18 records from various jails showing that these persons
19 who have testified were incarcerated with the various
20 defendants?

21 A: Yes, sir.

22 Q I believe we have in evidence Government's Exhibit 367
23 which relates to Skip Sheppard and John White being
24 incarcerated together in St. Claire County, Missouri,
25 is that correct?

1 A: Yes, sir.

2 MR. BECKER: I would offer, pursuant to the
3 prior stipulation between the parties, records from
4 Clay County, Missouri relating to Bryan Sheppard,
5 Brian Atterbury and Steve Morales which is Government's
6 Exhibits 373 A, B and C.

7 MR. O'CONNOR: No objection.

8 THE COURT: 373A, B and C are admitted
9 without objection.

10 (PLAINTIFF'S EXHIBITS 373A, B AND C WERE RECEIVED IN
11 EVIDENCE.)

12 Q Have you reviewed these records?

13 A: Yes.

14 Q Do they show Bryan Sheppard was in jail in Clay County
15 with Atterbury and Morales?

16 A: Yes.

17 Q I believe we have had a stipulation that Chuck Elliott
18 and **Frank** Sheppard, George **Frank** Sheppard, were
19 incarcerated together at the Honor Center here in
20 Kansas City, Missouri.

21 A: Yes.

22 Q Did you receive records from the Corrections
23 Corporation of America, CCA, relating to Bridgette
24 Dornhoffer, Darlene Edwards and Rosemary Quiroz?

25 A: Yes.

1 MR. BECKER: I would offer in evidence
2 Government's Exhibit 391a, B and c relating to the
3 incarceration records of Dornhoffer, Edwards and
4 Quiroz during 1995.

5 MR. BUNCH: No objection.

6 THE COURT: Admitted without objection.
7 (PLAINTIFF'S EXHIBIT NOS. 319A, B AND C WERE RECEIVED
8 IN EVIDENCE.)

9 Q Do these records show the three women were incarcerated
10 together at the CCA facility in Leavenworth, Kansas?

11 A: Yes.

12 Q Did you receive records from the Missouri State
13 penitentiary showing Glenn Sheppard and **Frank** Sheppard
14 were incarcerated together in the Missouri state
15 system?

16 A: Yes.

17 MR. BECKER: I would offer them in evidence
18 as Government's Exhibits 394 and 395.

19 MR. PETERS: The same as before, we have no
20 objection.

21 THE COURT: All right, they're admitted, 394
22 and 395.

23 MR. BECKER: 394 are the records pertaining
24 to Glenn Sheppard and 395 are records relating to **Frank**
25 Sheppard.

3162

1 THE COURT: They're both admitted without
2 objection.

3 (PLAINTIFF'S EXHIBIT NOS. 394 AND 395 WERE RECEIVED IN
4 EVIDENCE.)

5 Q Also, did you receive records -- and I believe they're
6 in evidence -- from the Dismas House, Government's
7 Exhibit 39, that Michael Whitelaw and Skip Sheppard
8 were incarcerated together at that facility?

9 A: Yes.

10 Q Finally, did you receive records that are in evidence
11 as Government's Exhibit 398 that Lynn
12 Minehower(phonetics) and Darlene Edwards were
13 incarcerated together at the women's federal prison in
14 Macomb, Illinois?

15 A: Yes, we did.

16 Q All of this evidence, was it presented to the federal
17 grand jury?

18 A: Yes, we had an ongoing grand jury for approximately 18,
19 19 months.It was all presented to the grand jury over
20 the course of time for their consideration.

21 Q And that brings us to this trial which started six
22 weeks ago, is that right?

23 A: Yes, sir, that's what brought us to this trial.

24 MR. BECKER: Thank you very much.

3163

1 CROSS EXAMINATION

2 BY MR. O'CONNOR:

3 Q Agent True, you know me, John O'Connor. I am
4 representing Bryan Sheppard. I have some questions for
5 you this morning. I am going to start out with Glenn
6 Sheppard. As I understand it, the first contact you
7 had with Glenn Sheppard, was that in the Cass county
8 jail?

9 A: Yes.

10 Q You had gone there to see him.

11 A: Correct.

12 Q When you got there to see him you at some point read
13 him his rights.

14 A: I believe so.

15 Q Now you sat in court and listened to all the testimony,
16 is that true?

17 A: Yes.

18 Q and after you read Glenn Sheppard his rights did you
19 remind him in this interview before you talked with him
20 about a Blue springs gun charge that was, may be
21 pending against him in Blue Springs?

22 A: I told him we were aware of it, yes.

23 Q And did you indicate to him, Glenn Sheppard, that a
24 felon in possession of a firearm could have serious
25 implications for him if that Blue Springs gun charge

3164

1 turned into a federal gun charge?

2 A: I told him what the law was. If it was a federal
3 charge, yes.

4 Q And a man with Glenn Sheppard's record did you have to
5 tell him what the law was or did he know it?

6 A: He knew.

7 Q And he knew he was facing 15 to life for this gun
8 charge when you were there talking to him.

9 A: If it was a prosecutable case.

10 Q But you told him about it before you interviewed.

11 A: I think I mentioned it to him before I interviewed him.

12 Q Of course, at the time you talked to Mr. Sheppard he
13 was also aware of the charge that were pending against
14 him in Cass County which he was facing a substantial
15 number of years already.

16 A: He was aware of that, yes.

17 Q Now, did you interview him at that time, after you had
18 those discussions with him, did you interview him?

19 A: I believe we talked for a while after that, yes.

20 Q And did you make a report of that interview?

21 A: I believe one was made.

22 Q Do you remember whether or not you made a report of
23 that interview?

24 A: Can you show me that.

25 Q I will see if I can find it here.

1 A: January 10th. This was prepared by Agent Gene Schram
2 but I was there and participated in the interview,
3 signed the waiver as a witness.

4 Q And did you tell Mr. Sheppard that you were only
5 interested in what truthful information he had about
6 this case?

7 A: I may have made some comment like that. We use a
8 phrase like that quite often.

9 Q In the interview on February the 10th, 1996 was Glenn
10 Sheppard asked if he knew Bryan Sheppard?

11 A: Can I see that report again?

12 Q Yes.

13 A: He said he knew Bryan Sheppard.

14 Q Was Glenn Sheppard asked if Bryan Sheppard had made any
15 admissions about the fire fighters explosion?

16 MR. BECKER: I object because it clearly
17 implies something that is inadmissible.

18 (Proceedings out of the hearing of the jury.)

19 MR. BECKER: If you recall the testimony,
20 that is the fellow that says Bryan was sort of drunk
21 and sobbing at an apartment and said, "I can't handle
22 it like you, **Frank**. This east away at me", something
23 like that.

24 MR. O'CONNOR: Which they have put in as an
25 admission against my client.

1 MR. BECKER: Whether Glenn Sheppard
2 understands that as an admission is the issue, really.

3 THE COURT: Say that again.

4 MR. BECKER: Whether or not Glenn Sheppard
5 in his mind thinks that statement by Bryan Sheppard is
6 an admission is what I have a problem, that I object

7 THE COURT: It is a pretty strong component
8 of opinion in asking him whether he made any admission.
9

10 MR. O'CONNOR: You have to follow the
11 sequence. After he gives this interview, they take him
12 to the grand jury. If he would have gone to the grand
13 jury that day, the only statements would have been
14 about **Frank** Sheppard but he refused and Mr. Becker
15 talked to him and told him he couldn't possibly be
16 interviewed. He was taken before the grand jury and
17 then Sheppard said True was upset with him, reminded
18 him of the gun charge and two months later, a month
19 later, all of a sudden he said, oh, yes, Bryan Sheppard
20 made these admissions. This is a guy who has been in
21 prison for 20 years. People are confessing and he
22 knows and they put that statement in on Sheppard, on
23 my client saying he was over there saying the fire
24 fighters thing, eating him up and it was bothering him
25 what he had done, put that in, an admission and this is

1 impeachment.

2 THE COURT: But he didn't identify this
3 information. The thing that bothers me is the
4 statement Bryan Sheppard never made any admission to
5 Glenn Sheppard.

6 MR. O'CONNOR: I will do it another way.

7 (Proceedings in the hearing of the jury.)

8 Q Did Glenn Sheppard tell you that Bryan Sheppard had
9 made statement about being involved in the fire
10 fighters explosion?

11 A: In that interview?

12 Q Yes. A: No.

13 Q In fact, he had told you that Bryan had never said
14 anything to him about the fire fighters explosion,
15 didn't he?

16 A: He said he made no admissions.

17 Q That was January the 10th, 1996. When did Mr. Sheppard
18 get taken to a grand jury to testify in this case?

19 THE COURT: Glenn Sheppard.

20 MR. O'CONNOR: Yes, sir.

21 A: Do you have the grand jury transcript?

22 Q Yes. I am talking about the first time. When was the
23 first time he was taken down to appear before the grand
24 jury?

25 A: I am still going to need that date.

3168

1 Q I have never had it.

2 THE COURT: That is a matter of public
3 record. Can we agree what that date was?

4 MR. O'CONNOR: He refused this time.

5 THE COURT: I understand but can we agree on
6 the date he had that opportunity and refused?

7 MR. O'CONNOR: Somewhere around March of '96,
8 a couple of months later.

9 A: That's probably right.

10 Q He was brought down to the grand jury.

11 A: Yes, sir.

12 Q He refused to go before the grand jury.

13 A: Correct.

14 Q Had you interviewed him between January the 10th and
15 the date you took him to the grand jury?

16 A: No. When he arrived he said he didn't want to go in.
17 He wanted to talk to his attorney and that was that.

18 Q Were there any reports generated from any conversations
19 with him between January the 10th and the time he came
20 before the grand jury?

21 A: I don't think so.

22 Q And did he meet Mr. Becker there, to your knowledge?

23 A: I am sure he did because Mr. Becker was at each grand
24 jury session.

25 Q Was Mr. Sheppard told, only if you know, was Glenn

1 Sheppard told in your presence his refusal to testify
2 could mean he could be brought back and basically
3 forced to testify; in other words, he could be granted
4 immunity to testify, was that said in your presence?

5 A: You know, I don't remember if I was with Mr. Becker
6 when he said that. I probably was, though.

7 Q So if he would have appeared that day and testified
8 before the grand jury, his testimony that day would
9 have been Bryan Sheppard had made no admissions.

10 A: I don't know what he would have said in that room. I
11 don't go in that room.

12 THE COURT: Wait a minute. Let's don't
13 speculate if he would have it would have been.

14 Q Now after he got the lawyer and after he got back in
15 the Cass County jail, he did recontact you and wanted
16 to talk to you again.

17 A: Through his lawyer.

18 Q and then in this interview, which was I believe in
19 April of 1996, he then said in that interview that
20 Bryan Sheppard had made admissions.

21 A: I believe in that interview he told me what he knew
22 about Bryan Sheppard.

23 Q and after the grand jury and before he went back and
24 got the lawyer, did you remind him again before he went
25 back, of this federal gun charge that could be a

1

1 ~ problem for him?

2 1 A I don't even think that came up. I would imagine I
3 addressed it with his attorney since his attorney would
4 be representing him and would want to know his client's
5 situation.

6 Q And so then after his second interview he was put
7 before a federal grand jury last May, is that true?

8 A: He appeared.

9 THE COURT: Why don't you mark where you are.
10 We will take our break with my instructions to the
11 Valentines not to talk about the case during the
12 recess. We will resume at 11:00.

13 (The jury leaves the courtroom.)

14 THE COURT: We will be in recess.

15 RECESS

16 (Proceedings out of the hearing of the jury.)

17 THE COURT: We have a juror, no. 7, who is
18 under active treatment, laser treatment, for an eye
19 problem. I think it is a detached retina or something
20 like that. And he was told if he suffered any sudden
21 loss of vision in that eye he had to get into his
22 ophthalmologist's office immediately. And he has
23 apparently suffered that this morning. And so he has
24 to go to the doctor, but he wants to stay in the case.
25 He doesn't want to be excused.

1 So we are exploring now whether he can
2 get in right away. It is likely to take longer
3 than say until 1:30 and if it doesn't, I will let
4 him stay; if it does, we will have to commission
5 alternate number one and proceed.

6 MR. OSGOOD: I have only about 15 minutes
7 worth with Agent True, tops, if that helps.

8 MR. BECKER: It doesn't help.

9 MR. O'CONNOR: I have every bit of an hour
10 or better, Judge.

11 THE COURT: Do you have much?

12 MR. BUNCH: Very little. Probably six or
13 eight questions.

14 MR. O'CONNOR: I will do a lot of stuff for
15 everybody.

16 THE DEPUTY COURTROOM CLERK: He can come in
17 now. He doesn't have an appointment until 1:30. I
18 talked to the nurse or assistant who said it was okay
19 to be in here until noon or one. She had no idea
20 whether he could come back today or not. He truly
21 wants to stay on the case.

22 THE COURT: He has the appointment at 1:30.
23 They don't know how long that is going to take.

24 THE DEPUTY COURTROOM CLERK: No, I talked to
25 the nurse and she said probably an hour.

1 MR. OSGOOD: Do you want to push through the
2 lunch hour and get him in by one. Then we would be
3 all done. Then he could go to the doctor and that
4 would be the end.

5 THE COURT: If you think they would be done.

6 MR. O'CONNOR: If we push on.

7 MR. BECKER: That's fine.

8 THE COURT: Tell him what we are doing.

(Proceedings in the hearing of the jury.)

10 THE COURT: I think I should tell all of you
11 one of the jurors has developed a medical problem and
12 it is going to have to be dealt with this afternoon.
13 However, that isn't going to happen until right after
14 the lunch hour. He is anxious to remain on the jury.
15 So everybody has agreed we will proceed and it is our
16 hope we will proceed and finish with the government's
17 case before he has to go to his appointment and he can
18 stay on. So we will have a late lunch.

19 All right, Mr. O'Connor.

20 MR. O'CONNOR: Thank you, Judge. And
21 I will remind you, Agent, you are still under
22 oath.

23 Q Do you know as you sit here now what the result was of
24 the slue Springs gun charge?

25 A: It is my understanding that it was reviewed by two

different Assistant United States Attorneys and refused prosecution due to the merits of the case.

Q Do you know what happened to the case in Blue Springs?

A: No, I don't.

Q Now, you had some discussions here in Direct Examination about what you said out in Cass County regarding Glenn Sheppard, is that true?

A: Correct. Can I see the report you are referring to, that second interview?

Q No. Maybe I misspoke. You said on Direct Examination, I believe, you went to testify at a hearing on behalf of Mr. Sheppard.

A: I want to correct something. While we were discussing before the break, you were referring to the second interview there before we quit.

Q The one on April 19th.

A: Yes. May I clarify something? I think we both are making a mistake on that one. I wasn't at that interview and I think we both missed that, I believe. But I wasn't present. I am somewhat aware but that was conducted by two different agents.

Q and you had become aware of all the reports in this file. You read them at one time or another.

A: I would say I read almost all but I would like to point out because of that, there is thousands, maybe, of

3174

1 reports, I would like to look at them and make sure it
2 is not a report I am familiar with by virtue of
3 somebody relaying information or whether I was at the
4 interview itself.

5 Q I think what I have done for purposes, I hope, I have
6 pulled the interviews, that is the one I have and if I
7 don't, please correct me.

8 A: That one there I wasn't at that interview.

9 Q When you were out testifying on behalf of Glenn
10 Sheppard, that was testifying on behalf of the
11 defendant in this case.

12 A: No, I wasn't testifying on his behalf. As I viewed it,
13 I was asked to appear at a hearing before the Judge in
14 the presence of the prosecutor and the defense attorney
15 who was representing Mr. Sheppard to provide some
16 testimony to the judge that was about to sentence him.

17 Q Were you subpoenaed there to come?

18 A: No.

19 Q You appeared without subpoena.

20 A: Yes, sir.

21 Q Did you clear that with your S.A.?

22 A: Yes. In addition to that, I clear everything I do, as
23 a legal matter, with the U.S. Attorney's office before
24 I go. And it is with their understanding, their
25 direction, that I go to a hearing such as this.

3175

1 Q And did you ask at any time Judge Dandurand to place
2 Glenn Sheppard on probation?

3 A: No, I didn't.

4 Q Did you ever request Judge Dandurand to place Glenn
5 Sheppard on probation?

6 A: No, I didn't.

7 Q Now, you were present for the sentencing of Mr.
8 Sheppard. Did it appear to you the Judge was concerned
9 about Glenn Sheppard, himself, his prior criminal
10 record and ask you a lot of pointed questions about
11 Glenn Sheppard and his cooperation in this case?

12 A: I believe in this transcript that addressed that; yes,
13 sir.

14 Q And it was important for you to tell Judge Dandurand as
15 much as you could about Mr. Sheppard and his
16 cooperation, is that true?

17 A: Well, I want to be clear on what I believed to be his
18 cooperation and still just address that and remain
19 neutral.

20 Q You wanted Judge Dandurand to know everything about
21 Glenn Sheppard you could tell him.

22 A: I don't know if I could tell everything. I didn't
23 speak that long at this hearing.

24 Q Did you tell Judge Dandurand, for example, he went down
25 and he refused to appear before the grand jury, did you

1 tell Judge Dandurand that?

2 A I don't think we got into that.

3 Q And I think in your testimony out in front of Judge
4 Dandurand you told the Judge Glenn Sheppard had stated
5 that two individuals, one being my client Bryan
6 Sheppard, had made certain admissions about being
7 involved in the fire fighters explosion, is that true?

8 A: I believe that is in the transcript.

9 Q Did you tell Judge Dandurand you had talked to Mr.
10 Sheppard on January the 10th and he advised you that
11 Bryan Sheppard had made no admissions?

12 A: No, we didn't get into that.

13 Q Did you tell Judge Dandurand about the discussions you
14 had with Glenn Sheppard about the Blue Springs gun
15 charge and the fact that could be a federal offense?

16 A: I don't believe that was discussed in the hearing.

17 Q Did you tell Judge Dandurand you were upset with Mr.
18 Sheppard after he refused to testify the first time
19 before the federal grand jury?

20 A: No.

21 Q Did you describe Glenn Sheppard's assistance in this
22 case to be substantial?

23 A: I believe that word is in the transcript.

24 Q And the jury has already heard the deal that Mr.
25 Sheppard received, but did the Judge also say at the

1 end of the hearing that after he testified in this case
2 that he was also going to consider a parole early from
3 the county jail sentence he is serving?

4 MR. BECKER: What page is that?

5 MR. O'CONNOR: The last page of the
6 transcript.

7 A: Is that what the Judge is saying?

8 Q When you were there in court did you hear the Judge say
9 that?

10 A: Could I see that?

11 THE COURT: Is it clear this witness was in
12 the courtroom at that time?

13 MR. O'CONNOR: That is my belief. He was
14 there the whole time.

15 THE WITNESS: Me?

16 MR. O'CONNOR: Yes.

17 THE COURT: It was another witness after you,
18 right?

19 THE WITNESS: He was there and I was there.
20 Yes, I was present during that entire transcript.

21 Q So Mr. Sheppard, after he testified here, is going to
22 get further consideration on the two one-year sentences
23 and may get paroled early from those according to what
24 the Judge told him.

25 A: It's the Judge's choice.

3178

1 Q You didn't jump up and tell the Judge not to do this,
2 did you, not to place him on probation?

3 A: It's not in the transcript. No, sir.

4 Q But would you agree with me Bryan Sheppard was in jail
5 from July the 27th, 1989 to December the 29th, 1989?

6 MR. BECKER: Objection.

7 Q If you have that knowledge. Only if he has the
8 knowledge.

9 MR. BECKER: I object to the form of the
10 question then. "Would you agree with me"?

11 THE COURT: Yes.

12 Q Was Bryan Sheppard in custody, to your knowledge, from
13 July 27th, 1989 to December 29th, 1989?

14 A: I believe the court record or the jail records would
15 support those dates.

16 Q Now, I believe you said on Direct Examination that in
17 1989 that your investigation went one way, that you
18 were doing and the Kansas City Missouri Police
19 Department went another, is that true?

20 A: I think that is how I characterized it.

21 Q Did you have any information in 1989 that Bryan
22 Sheppard, on your investigation, that Bryan Sheppard
23 was responsible for this explosion, at that time?

24 A: My assignment as it relates to the labor unrest?

25 Q I am just saying in 1989 did you have any information

i that led you to any information that Bryan Sheppard was
2 involved in this explosion, the one you were doing at
3 that time?

4 A: I had some conversations with Detective Fraise
5 periodically. As they carried on their investigation
6 we would visit and he didn't give me much information
7 but he kind of let me believe that they were pursuing
8 an investigation involving Bryan Sheppard and some
9 others during that period of time in 1989.

10 Q You had an independent investigation of your own going
11 on, right?

12 A: I believe you could say that, yes.

13 Q My question was in your independent investigation that
14 you were conducting on your own for ATF, not by
15 yourself, did you have any information in that
16 investigation that I have got, that you received, that
17 Bryan Sheppard was responsible?

18 MR. BECKER: Objection. I think he has
19 answered that question.

20 THE COURT: I am puzzled by that. And also I
21 am puzzled by the use of the word ,~independent.~'

22 MR. O'CONNOR: Maybe I am using the wrong
23 word. As I understood it, he said he was conducting
24 an investigation because he was going in one direction
25 and the Kansas City police was going in another. And I

1 am just asking in the direction he went, did he get
2 any information in that direction that led him to Bryan
3 Sheppard in 1989.

4 MR. BECKER: The "any information" part then
5 includes what the witness just answered. He spoke to
6 Fraise from time to time and received information.

7 THE COURT: Yes, I think he probably answered
8 that.

9 MR. O'CONNOR: Okay.

10 Q Now, in your discussions with John Fraise over time,
11 did you ever go back and talk with John Fraise after
12 you began your investigation in basically, as I
13 understand it late '94, '95?

14 A: I have talked to Detective Fraise probably, maybe six
15 times, seven times. I hate to put a number -- several
16 times. Since I was working with the Bomb and Arson
17 Unit, in passing from time to time and we did talk
18 about the case a little bit.

19 Q When did you gain access to all the Kansas City,
20 Missouri Police Department files as it related to this
21 investigation?

22 A: I believe Sergeant Forbes had them turned over to him
23 in the latter part of '94 and through that process I
24 eventually was able to get access to the ones that he
25 was getting. And I don't know that I ever saw all the

3181

1 reports, ever. So it would have been in the middle,
2 latter part of '94 when I started looking at them.

3 Q So there could be reports out there that you don't know
4 exist.

5 A: How would I know?

6 Q Were you aware of reports they had of Kathy Marburger
7 and Karen Baird?

8 A: The Karen Baird interview I saw during interview, and I
9 believe the Kathy Marburger interview also, yes.

10 Q And do you see anywhere in either one of those
11 interviews where they had said -

12 MR. BECKER: Objection, what he read in the
13 report that was said by another witness and they both
14 testified yesterday.

15 THE COURT: Yes, I don't think that is
16 permissible, Mr. O'Connor. I will sustain that
17 objection.

18 Q Did Miss Marburger tell you in your February 23, 1995
19 report that she had provided substantially the s a m e
20 information to you, that she provided to you on that
21 date, to Detective Fraise of the Kansas City Missouri
22 Police Department?

23 A: Do you have my report there?

24 Q Yes.

25 A: Is that the police report?

1 Q Yes. This is Schram and True. It is at the bottom.

2 MR. BECKER: I would like to approach on
3 this question.

4 (Proceedings out of the hearing of the jury.)

5 MR. BECKER: Again, I object on hearsay
6 grounds. What did Marburger tell you or what is in
7 that report. This doesn't impeach Marburger. Perhaps
8 the next witness will.

9 MR. O'CONNOR: He put this witness on to say
10 how he corroborates everything. What did he do to
11 corroborate what Marburger told him about Bryan making
12 these admissions. He said she told the same thing to
13 Fraise and the logical thing you would call up Fraise.
14 I am not going to ask him what was said. I am going to
15 ask him if he followed up to corroborate. I am not
16 going to ask what was said.

17 MR. BECKER: That was the pending question.

18 THE COURT: What was said.

19 MR. O'CONNOR: I'm sorry.

20 THE COURT: You did ask him what was said.

21 MR. O'CONNOR: Did I?

22 THE COURT: I thought you did.

23 (Proceedings in the hearing of the jury.)

24 Q Have you had a chance to look at that?

25 A Yes.

1 Q As I understand it, you interviewed Miss Marburger, is
2 that true?

3 A: Yes.

4 Q Then you wrote a report of the interview.

5 A: I believe Agent Schram authored that.

6 Q But you were with him.

7 A: I was with him.

8 Q And this wasn't an affidavit.

9 A: No, sir.

10 Q And this was never taken back and shown to Miss
11 Marburger, is that true?

12 A: I wouldn't have been able to show it to her.

13 Q I apologize. Did you take it back.

14 A: I think she eventually reviewed that, yes.

15 Q Did you hear her testimony in here she reviewed it with
16 me on January the 7th?

17 A: Yes, I have.

18 Q Now, as a result of what Miss Marburger had told you,
19 without saying what she told you, did you go and call
20 John Fraise, Detective Fraise, on the phone to try to
21 corroborate what she had told you about a three-way
22 phone conversation she had with Bryan Sheppard?

23 A: No.

24 Q Did you call or talk to Detective Fraise to try to
25 corroborate what Karen Baird had told you about this

3184

1 three-way conversation in 1989?

2 A: No.

3 Q Did you know the date that Bryan Sheppard was indicted
4 in 1989, do you know that date?

5 A: September the 29th.

6 Q I think it was the 22nd.

7 A: Twenty-second.

8 Q And from your review of the reports of Kathy Marburger
9 and Karen Baird they had talked to the police, John
10 Fraise particularly, and Victor Zinn before the 21st
11 and after the 21st, after the indictment, is that
12 right?

13 A: The dates are on the reports, are what I would accept
14 as accurate.

15 Q Okay. And did you review every report that Detective
16 Fraise and Detective Zinn had of prior conversations
17 with Karen Baird and Kathy Marburger back in 1989?

18 A: Do you have that in front of you?

19 Q First, as to Karen Baird I will show you the three
20 reports that I have of October the 3rd and 4th of 1989
21 and I think there is another one like November 29,
22 1989.

23 A: Yes, I have reviewed all three of these.

24 Q Let me show you the interview of Kathy Marburger and
25 see if you had reviewed this as well?

1 A: Yes, I saw this, also.

2 Q Thank you. And as to Karen Baird, did the information
3 contained in those -

4 MR. BECKER: Objection.

5 MR. O'CONNOR: I didn't ask the question.

6 THE COURT: Come up in terms of unringing the
7 bell.

8 (Proceedings out of the hearing of the jury.)

9 MR. O'CONNOR: The question is going to be
10 after reviewing those did you determine whether or not
11 those corroborated their statements made to you in
12 1995.

13 MR. BECKER: I object to that. The large
14 part of Karen Baird's statement is verbatim about what
15 Bryan did when he came over that day.

16 MR. O'CONNOR: I am talking about the
17 three-way phone call.

18 MR. BECKER: Only that part.

19 MR. O'CONNOR: I am going to ask him
20 regarding the three-way phone call, after he reviewed
21 those reports were you able to corroborate the
22 information you gave in 1995 regarding this phone
23 call.

24 MR. BECKER: Whether or not it is in these
25 reports is not up to this witness. We have had the

1

1 first two witnesses, the ones whose reports they are,
2 and then we have been promised counsel is going to
3 subpoena the author of these reports.

4 MR. O'CONNOR: But they're putting this
5 witness on to corroborate.

6 THE COURT: You show that in some respects.

7 MR. O'CONNOR: But not the ultimate question
8 as to the phone calls.

9 THE COURT: Why is the phone call the
10 ultimate question?

11 MR. O'CONNOR: This particular examination,
12 that's the last question on this area.

13 MR. BECKER: Whether or not she mentioned
14 these, whether or not he read about them in these
15 reports doesn't confirm or deny anything.

16 MR. O'CONNOR: It is whether or not they
17 were corroborated. They say he was corroborating
18 everything.

19 MR. BECKER: I didn't say everything. I
20 never said that.

21 THE COURT: Who is defining corroborate?

22 MR. O'CONNOR: They have been saying he went
23 and got certain records, certain information.

24 THE COURT: There is no opinion implicit in
25 the fact he went and got records. The opinion and the

1 reason I am not going to allow this question is because
2 you are asking for an opinion as to whether it was
3 corroborated.

4 MR. O'CONNOR: Then I will move on, Judge.

5 (Proceedings in the hearing of the jury.)

6 Q Agent True, did you ever check the financial records of
7 the security guards in this case, Robert Riggs and
8 Deborah Riggs, either before or after the explosion?

9 A: I remember on Debbie Riggs there was an issue about her
10 pickup truck and there was some suspicion about whether
11 she had something to do with that fire. I received, if
12 this is a financial record, from GMAC Credit Union,
13 wherever she was carrying the note, and determined that
14 she had paid that truck off clear and free about seven
15 months before the explosion. If that is what you are
16 referring to in terms of financial records, I remember
17 that. Whether you are talking about a Dunn and
18 Bradstreet type of financial background, I don't
19 believe we did.

20 Q And when did you first meet Debbie Riggs in this
21 investigation, approximately?

22 A: I believe February of '89.

23 Q And since February of '89 to today she has given
24 statements to the police, interviews to you, testified
25 before a grand jury, testified in civil cases, is that

1 true?

2 A: Yes.

3 Q When was the first time that Debbie Riggs told you that
4 she staged the theft of her own car for insurance
5 purposes?

6 A: She never did tell me.

7 Q Did you learn it in your investigation?

8 A: Yes.

9 Q And when was that?

10 A: At the trial here.

11 Q When she showed up to testify -

12 A: yes.

13 Q She told you that for the first time.

14 A: I learned it through Mr. Becker.

15 Q Have you investigated that any further, or anyone at
16 ATF, since the start of the trial, to see what was
17 behind that staged theft for insurance purposes?

18 A: No, and I believe that testimony was stricken, too.

19 Q Did you learn who she had planned this or did this
20 theft with?

21 MR. BECKER: Objection. The witness has
22 reminded me this was an area the Court had ruled on.

23 MR. PETERS: Yes, I have a transcript and
24 it wasn't stricken from the record.

25 MR. O'CONNOR: It was not stricken. We

3189

1 have a transcript.

2 THE COURT: All right, are you satisfied?

3 MR. BECKER: Well, there are two
4 references. There is a section that counsel just
5 showed me and then later in cross examination the
6 Court, I believe, said that no further questioning
7 could be allowed on that matter. That's my
8 recollection.

9 THE COURT: All right. I will overrule the
10 objection. Go ahead.

11 Q Was Donna Costanza the woman that was with Debbie Riggs
12 when she claimed she staged this theft on her own for
13 insurance purposes?

14 MR. BECKER: Objection. Hearsay. Again we
15 couldn't ask the witness about it. So now we are
16 asking this witness what the other witness said that
17 wasn't allowed to be inquired on.

18 THE COURT: I think that is right, Mr.
19 O'Connor. I believe that goes beyond the limits we put
20 on her testimony. I will sustain the objection.

21 Q Now, as it relates to witnesses in this case I am
22 assuming one of the things you did as well was to
23 investigate their background to see what motives they
24 may have for saying what they said.

25 A: To some degree.

3190

1 Q Bridgette Dornhoffer, have you seen Defendants' Exhibit
2 19?

3 A: Yes, I have.

4 Q And that exhibit is in evidence in this case.

5 A: I believe it is, yes.

6 Q And it is purported to be signed by Harold Fernau.

7 Have you and the U. S. Attorney's Office been in touch
8 with Mr. Fernau regarding this document?

9 A: Yes.

10 Q This document is a forgery, isn't it?

11 MR. BECKER: Objection.

12 THE COURT: Calls for opinion. Legal
13 conclusion. Sustained.

14 Q While Miss Dornhoffer was on the stand did someone go
15 up and call Mr. Fernau?

16 MR. BECKER: Objection.

17 MR. O'CONNOR: I am not asking what he said.

18 MR. BECKER: Fernau is listed as a defense
19 witness. We will hear from Fernau. Whether or not
20 someone called Fernau -

21 THE COURT: Yes, I suppose whether they
22 called isn't assertive of any fact but the next
23 question is.

24 MR. O'CONNOR: All right.

25 Q Were you aware of this document before it was produced

1

1 in court?

2 A: No.

3 Q What kind of background check did you do on Miss
4 Dornhoffer to see about her?

5 A: Her what?

6 Q Her past.

7 A: What I did with her information is corroborate with
8 what I had already known to be accurate and truthful
9 and felt comfortable that the conversations she had
10 with Darlene Edwards, in fact, occurred.

11 Q And that was with Miss Quiroz as well, that was another
12 witness in that same chain of witnesses against Miss
13 Edwards.

14 A: Correct.

15 Q You were here when Miss Quiroz was on the stand.

16 A: Yes, sir.

17 Q And do you remember she said to me -

18 MR. BECKER: Objection. She has testified.

19 What she testified to here and what his impression of
20 that is -

21 THE COURT: He can't be asked if he agrees
22 with it. Sustained.

23 Q Has she provided handwriting exemplars?

24 A: No.

25 Q Have they been requested by us?

1 MR. BECKER: Objection. There is a motion
2 pending before the court.

3 THE COURT: Sustained.

4 Q Christine Mall, do you remember her?

5 A: Yes, sir.

6 Q I believe you talked to Christine Mall on July the
7 29th, 1996 which would have been after this indictment
8 was returned against Bryan Sheppard.

9 A: Is that the date on that report?

10 Q That is what it says.

11 A: yes, sir.

12 Q And let me restate this again. You talked to her on
13 July 10th, 1996 -- I have Mr. McGovern. I apologize.

14 A: Could I look at that?

15 Q Sure. Maybe you better start looking at all of them.

16 A: I think I will. This is my interview with her on July
17 10th.

18 Q As a result of an interview with her was an interview
19 conducted of John McGovern by another officer?

20 A: By another officer, yes, sir. And the reason that was
21 done to try to see if you could corroborate what she
22 was telling with a person who would have been present
23 at the time.

24 Q Travis Small, when did you become aware of the
25 affidavit that Travis Small had signed under the

1 penalty of perjury, or February 9th, 1996.

2 A: Is that Agent Marquardt's?

3 Q Yes.

4 A: Could I see that?

5 Q Sure.

6 A: I became aware of this I would guess the s a m e day after
7 it was completed because Agent Marquardt was on his way
8 to the Unsolved Mysteries studios and did that
9 interview in the prison in Arizona on the way. So I
10 would say either that day or when he arrived in
11 California.

12 Q And I have got the exact exhibit in my hands. It is
13 the same one. It is Defendants' 27 that is in
14 evidence. So you knew about that on February the 9th,
15 or thereabouts, 1995?

16 A: I believe he called me to -- well, he called me to let
17 me know he had completed the interview. I am not sure
18 if he told me the substance of the interview at that
19 time but I have since become aware of it.

20 Q Did Mr. Small ever change his original affidavit under
21 oath before he got this new drug indictment in the
22 Western District?

23 A: No, he provided me with an interview you probably have
24 in front of you.

25 Q Would have been on November 25, 1996.

1 A: Is his name and the date on that?

2 Q Yes.

3 A: Then I accept that.

4 Q Well, what it says is that the report was done on
5 November -- I don't know if you talked to him -- the
6 report indicates November 25th.

7 A: That would have been the day I talked to him.

8 Q Now at the time you talked to him on November the 25th
9 you were aware of the drug indictment that was against
10 him and his wife.

11 A: Yes.

12 Q You were aware of his criminal record.

13 A: Not the complete criminal record but I was somewhat
14 familiar with his background.

15 Q And you were familiar with the affidavit that he had
16 signed under penalty of perjury.

17 A: Yes.

18 Q Jerry Rooks, when you talked with Mr. Rooks in the
19 Platte County Jail was the first thing you showed him
20 before you started interviewing him was this reward
21 poster?

22 A: No.

23 MR. BECKER: Again, may we approach.

24 THE COURT: Yes.

25 (Proceedings out of the hearing of the jury.)

1 MR. BECKER: He didn't do that interview.

2 I don't want to have to jump up and say he didn't do
3 the interview. It's Joe Herrera from the P.D. You
4 went out and talked to Joe Herrera.

5 MR. O'CONNOR: He was there when that was
6 show, True was.

7 MR. BECKER: You're right. I'm wrong.

8 (Proceedings in the hearing of the jury.)

9 THE COURT: All right. Proceed.

10 Q You were there with Detective Herrera when he did the
11 taped interview.

12 A: When he did the taped interview I was with him. He had
13 preceded me during the day and he had interviewed him
14 by himself earlier.

15 Q So if he showed the reward poster you didn't know that.

16 A: No.

17 Q And without going through that whole tape would you
18 agree with me there is nothing mentioned on the tape
19 about the man being shown the reward poster before he
20 gave his interview?

21 A: I would agree.

22 Q Now, Mr. Rooks was shown how many photographs to see if
23 he could identify Bryan Sheppard?

24 A: Again, that was done by Detective Herrera and I wasn't
25 there.

1

1 Q You weren't there. Okay. Thank you. Now, when Mr.
2 Rooks gave his interview to you that day there was
3 something mentioned, I believe, about an underground
4 storage or some kind of underground door that someone
5 was trying to get into at the site of the explosion.

6 MR. BECKER: Objection. What the witness
7 said, the witness has testified here -

8 THE COURT: I will sustain that objection.

9 Q Were you ever able to find that there was an
10 underground storage or some kind of underground door at
11 the construction sites where the explosion occurred?

12 A: No. Just the two bunkers that are in the ground.

13 Q Those are the one in the yellow -

14 A: The yellow colored bunkers.

15 THE COURT: You say they are in the ground?

16 THE WITNESS: They are on the ground. No,
17 I didn't mean to misstate. Not underground or buried.
18 They are on the ground.

19 Q You didn't find any under-door.

20 A: No, they're up on the ground.

21 Q Was Mr. Rooks ever even able to show you the Sheppard
22 home where he claimed these admissions had occurred?

23 A: I don't believe so. In fact, he said it was a house on
24 Hickman Mills.

25 Q Now, I may have asked this but if I did I apologize.

3197

1 On Baird and Marburger, did you go back and show them
2 the interviewed you had done with them after you did
3 them?

4 MR. BECKER: This has been asked and
5 answered, Judge.

6 MR. O'CONNOR: I have got another question
7 follow-up.

8 THE COURT: It has been asked and answered.

9 MR. O'CONNOR: Just one time maybe.

10 THE COURT: If this were only this time.

11 Q Did you go back and review with them your interviews?

12 A: I believe each one of them had their interviews
13 reviewed with them, at least before testifying.

14 Q I am talking back at the time they were taken, '95.
15 They were both taken in '95.

16 A: You tested me there. I don't know if I took them back
17 right after they were interviewed, no.

18 Q And Glenn Sheppard and John Wright, the two people that
19 were in custody, do you remember both of those people,
20 their interviews were gone over with them again to make
21 sure they were right?

22 A: I believe they were. I remember there was a second
23 interview with Glenn that I wasn't there and they would
24 have gone over that then, I assume.

25 Q Steve Morales, did you, or anyone to your knowledge,

3198

1 call Deputy Harper at Cass County and ask him to help
2 get bond reduced on Morales' forgery charge that is
3 pending out there?

4 A: I didn't call. I know Agent Schram called down there
5 to inquire about the bond.

6 Q Didn't Agent Schram ask Deputy Harper to intercede with
7 the prosecutor to get the bond reduced from a secured
8 bond to a signature bond?

9 A: You are asking me to testify about what Schram did when
10 I wasn't in the room.

11 Q But someone called to assist Morales on the bond.

12 A: No. I know Gene Schram called to inquire about the
13 bond with Sergeant Harper, to see if it was a signature
14 bond situation because it was a non-violent crime.
15 That's my understanding.

16 Q But that information is available in the Circuit Court
17 records. You can pick up a phone and call the Circuit
18 Court of Cass County and they will tell you right over
19 the phone what the bond is.

20 A: Sergeant Harper would have given the answer quicker.
21 It was his choice. I wasn't there when the call was
22 made.

23 Q Do you or Agent Schram usually called up places and
24 inquire about people's bonds?

25 A: If it's necessary.

1 Q Was it necessary in this case?

2 A: He made the call. I wasn't with him when he made the
3 call.

4 THE COURT: Why are we arguing with him about
5 something somebody else did?

6 Q Did you, or anyone to your knowledge, call the Jackson
7 County Prosecutor about the bond on Morales over there
8 regarding his probation violation?

9 A: I don't believe so, no.

10 Q Did any Jackson County prosecutor call you, or anyone
11 to your knowledge, to ask about a bond or what to do
12 about a bond on Mr. Morales?

13 A: I don't believe so.

14 Q Have you, or anyone to your knowledge, been in contact
15 with Jennifer Cliburn with the Probation Office?

16 A: Boy, —

17 THE COURT: Ever?

18 MR. O'CONNOR: Regarding Mr. Morales.

19 A: Well, I know I haven't talked to her. I don't believe
20 I have talked to her. Whether any of the other agents
21 -- keep in mind -

22 Q I am asking you. If you don't have knowledge, I am not
23 asking you.

24 A: There are lots of officers working on this and I don't
25 have knowledge of all the things going on.

3200

1 Q Do you have knowledge of anyone being in contact with
2 Mr. Morales' probation officer in his case pending in
3 Jackson County?

4 A: I am just not sure if someone would have called and
5 talked to her or not.

6 Q So a call could have been made.

7 A: Yes, sir.

8 Q And, to your knowledge, did a Jackson County Prosecutor
9 call and ask, or anyone else to your knowledge, whether
10 or not a \$5,000 secured bond should be kept in place
11 because of this person being a witness in this case or
12 did you, the authorities want the bond signature so he
13 could get out?

14 A: I think that has already been asked and again I just
15 don't remember.

16 Q So it could have happened.

17 THE COURT: He says he doesn't remember. I
18 don't think that is a fair question.

19 Q Mrs. Finch, you did an interview of her on October
20 27th, I believe, 1995.

21 A: Yes, a telephone interview.

22 Q Were you aware Miss Finch had been interviewed on two
23 other occasions before you talked to her on that
24 occasion?

25 A: Do you have those two?

3201

1 Q Yes, sir.

2 Give me Kim Finch's interview and Candy
3 Smith's interview.

4 A: Were you aware there had been two other interviews?

5 A: But this is Candy Smith.

6 Q I apologize. I had that in the file because it was
7 related. Sorry.

8 A: Yes.

9 Q In looking at those interviews, I believe one was done
10 on June the 19th, one on July 11th and one on October
11 27th and the only one you did was October 27th, the
12 third one.

13 A: Right.

14 Q You can refer to this if you need to. I will hand it
15 to you. I am going to ask you a couple questions about
16 it. Can you tell me if anywhere in there Kimberly
17 Finch told you Bryan was saying he was trying to get
18 his fingerprints wiped off?

19 MR. BECKER: He is testifying to something
20 not in evidence.

21 THE COURT: You are asking if it's in the
22 document? The document speaks for itself. Either it
23 is or it isn't.

24 MR. O'CONNOR: I gave it to him for his
25 recollection if he wanted to look for it. I am not

3202

1 using the document.

2 THE COURT: You are asking him if she ever
3 said that to him?

4 MR. O'CONNOR: Yes.

5 THE COURT: The objection to the question you
6 asked is sustained. The other one I just asked is a
7 good question.

8 MR. O'CONNOR: Can you say it again? I'm

10 THE COURT: I just asked him if she ever said
11 it to him.

12 Q Did she ever say it to you?

13 A: I don't think you completed the question when we first
14 got into this.

15 Q Did she ever say to you in that statement Bryan
16 Sheppard said something about wiping his fingerprints
17 off at the crime scene?

18 A: In the statement. I don't remember her saying that to
19 me. I don't remember her saying that to me.

20 Q Did she ever say to you anything about Bryan telling
21 Richard to keep his mouth shut, "You're running your
22 mouth too much"?

23 A: She might have said that, yes.

24 Q And if she said that would you have put that in the
25 interview, your report?

1 A: Not necessarily.

2 Q Did she say to you that Richard and Bryan were in an
3 argument over what was going on or who did catch the
4 lock on fire? In any interview you did with her did
5 she say that to you?

6 A: The only one I did was this one.

7 Q Did she say that to you?

8 A: I don't remember her saying that to me.

9 Q Did the locks that were found by Conyers appear to have
10 been burned or cinched or set on fire?

11 A: Based on the photographs?

12 Q Yes.

13 A: I don't know if I could tell from those photographs. I
14 didn't see the locks.

15 Q And did she, Miss Finch, also tell you she heard most
16 of her information from a Candy Smith?

17 A: She said she heard information from Candy Smith, yes.

18 Q And in the interview with you did she state that Bryan
19 Sheppard had made any admissions in that interview you
20 did of her on October 27th of '95?

21 A: She doesn't talk about Bryan Sheppard in this
22 interview. She talks about someone else.

23 Q Thank you. Mr. Atterbury, did you ever verify whether
24 Bryan Sheppard owned a bicycle?

25 A: I know he stole one.

1 Q The question was did he own one?

2 A: He didn't own that but he possessed it.

3 Q Did you feel compelled you had to say that?

4 THE COURT: Now, you don't need to argue with
5 him about that. You asked him the question.

6 MR. O'CONNOR: The question was did he own a
7 bicycle.

8 THE COURT: That calls for a legal
9 conclusion, doesn't it?

10 Q Were you able to corroborate the fact that Bryan
11 Sheppard owned a bicycle on November the 29, 1989?

12 A: No, the bicycle that I am aware of -

13 Q The question is easy.

14 A: Was restitution made on this incident. Then if that is
15 the case the bike might have been owned or possessed.
16 It's difficult to answer. I don't know if he had the
17 bicycle on that date, sir.

18 Q And did you try to visualize him on this bicycle with a
19 wonder bar in one hand and the bicycle with the other
20 going up to this construction site?

21 MR. BECKER: Objection. Prefaced with
22 gasoline. I object to the question.

23 MR. O'CONNOR: Can't ride the bicycle.

24 THE COURT: I think the objection is well
25 taken. Good argument. Not a very good question.

3205

1 Q Did you verify or not whether or not the Teamsters in
2 Kansas City owned a union jet or a union jet is kept in
3 Kansas City that belongs to the Teamsters?

4 A: A union jet.

5 Q A jet that is owned by them. Did you investigate and
6 look in to see if they owned one or had one at KCI the
7 night of November 29, 1989?

8 A: No.

9 Q Were you given any information about people who came in
10 on a jet did this explosion and then left, did that
11 come out?

12 A: No.

13 Q Did that information come in to you in this
14 investigation?

15 A: I don't believe so.

16 Q Is that an area Mr. Schram would have been working?

17 A: Repeat that again, please.

18 Q Were you aware of any lead that came in to you or your
19 agency or the police department, about a Teamsters
20 Union jet coming in to Kansas City and two men, or more
21 than two men, were involved in the explosion and
22 afterwards left on this jet?

23 A: No, I don't remember that.

24 Q No record were checked then I am assuming at KCI or at
25 the municipal airport to see if any such jet left or

3206

1 arrived in Kansas City on the night of the explosion?

2 MR. BECKER: Objection. Repetitious and he
3 says he doesn't have any recollection of this
4 information.

5 THE COURT: Yes. I think he has answered
6 your question. I think that question has been
7 answered. Sustained.

8 Q I believe you told us from 1989 to 1992 you had other
9 duties that kept you away from investigating this
10 case.

11 A: Well, it didn't really keep me away. We get other
12 assignments and I was working those primarily during
13 that period of time.

14 Q Six firemen being killed, was this a high priority item
15 for ATF?

16 A: I think that would be high for anybody.

17 Q Did they bring in agents to pick up this slack between
18 '89 and '92, like they do other investigations, to
19 assist?

20 A: No, because I had exhausted all leads on this labor
21 thing. It just didn't exist. There was no reason to
22 bring in agents because there was nothing to do. It
23 didn't exist.

24 Q Now, your one shot to get this case aired came from
25 national media, is that true, Unsolved Mysteries?

3207

1 A: Well, that plus the efforts of a lot of agents and
2 officers combined with the media attention, regenerated
3 this to give us a good shot at bringing it to this
4 courtroom.

5 Q And the one shot that you had to put this in the
6 national attention, you were on there saying you
7 believed that it was labor that caused this explosion,
8 didn't you?

9 A: We all know what the quote is. No, I was asked to
10 address that. Somebody else was asked to address other
11 motives that had been ongoing throughout the course of
12 this investigation.

13 Q Did you say on Unsolved Mysteries that we have Kathy
14 Marburger or two people, Baird and Marburger, two
15 people who had been on the phone with the man who
16 confessed to this and if we could just get a few more
17 leads, we can put this case to rest?

18 A: I hadn't read any of those reports on November 13, '94
19 when I assisted in that show. It was December. Again,
20 it was the Amy Pederson lead that got me started and
21 throughout December, after the show was taped, is when
22 I started learning about Karen Baird, Kathy Marburger
23 and all the others that had provided information and
24 new ones that came forward.

25 Q Would you agree with me the investigation into the

3208

1 deaths of the six fire fighters is an ongoing
2 investigation?

3 MR. BECKER: Objection as to the form of the
4 question. Relevance.

5 THE COURT: I don't think it is material
6 whether he agrees with you, Mr. O'Connor.

7 Q Is the deaths of the fire fighters an ongoing
8 investigation?

9 A: I believe the case is just about ready to be resolved
10 here pretty soon and we are in a courtroom regarding
11 this matter now. We continue to investigate, all of us
12 calling people, conducting follow-up interviews,
13 talking to defense witnesses, talking to witnesses. If
14 that is your description of "ongoing", then I would
15 accept that, but we are in a courtroom right now with
16 the case.

17 Q As to reading these reports, you didn't read until '94,
18 '95, was the Kansas City Police Department not allowing
19 you to do that? Was there some kind of inner-fighting
20 going on?

21 A: No, I just didn't ask for them until I met with Sergeant
22 Bill Forbes and we decided that we needed to do that
23 because neither one of us had really looked at those
24 reports. So, no, I wouldn't describe it as that. We
25 just didn't ask for them.

3209

1 MR. O'CONNOR: I believe that is all I have,
2 Judge. Thank you.

3 CROSS EXAMINATION

4 BY MR. PETERS:

5 Q Agent True, I am Pat Peters. I represent **Frank**
6 Sheppard. I am going to skip around some stuff. In
7 response to the judge's question, did you say that, in
8 fact, there were no explosive bunkers built into the
9 ground at the back of the site?

10 A: No, they were built I said onto the ground.

11 Q They were portable bunkers setting on the ground.

12 A: Setting on the ground.

13 Q Do you recall your testimony before the grand jury?

14 A: Yes, I testified before the grand jury.

15 Q Do you remember being asked this question.

16 MR. BECKER: Page please.

17 MR. PETERS: Forty-one.

18 Q This is being asked by Mr. Becker. "In fact, were
19 there two bunkers of explosives built into the ground
20 at the back of that site?" And your answer was,
21 "That's correct." Do you recall that question being
22 asked and that being your answer in front of the
23 grand jury?

24 A: Yes, my interpretation was they were built into the
25 ground, on the ground.

3210

1 Q You were there that day, though, on November 29, 1988.

2 A: Yes.

3 Q As this region's cause and origin specialist, is that
4 correct?

5 A: Not in this case.

6 Q Are you this region's cause and origin specialist, sir?

7 A: No.

8 Q Is this your training, cause and origin?

9 A: It was. I left it for this case.

10 Q The reward poster that is Defendant's Exhibit 24, it is
11 my understanding that you were the person responsible
12 for re-initiating the reward in 1995, is that correct?

13 A: No, it was a group effort. Again, Captain Joe Galetti
14 contacted me wanting us to see about the Unsolved
15 Mysteries show. In the process he communicated with
16 the International Brotherhood of Fire Fighters, I
17 believe that's the proper unit, and he initiated their
18 interest in that portion of the reward fund. I talked
19 with our superiors in Washington and through our bosses
20 and they re-initiated the \$10,000 on behalf of ATF.
21 And then I believe there is some money that was donated
22 in this new fund by Mast Ambulance Service. So it
23 would have to be a combination of several people.

24 Q Who is the person responsible for generating this
25 poster printed by Constable Hodgins printing company?

Who set out the reward of \$50,000, "For information leading to the arrest and conviction of person, or persons, for the 1988 explosion and death of six fire fighters call 474-TIPS, 1-800-ATF-GUNS"?

A: That would have been assigned to some specific individual responsible to handle the making of those and then a large group of people distributed them.

Q And under what authority did the ATF come up with \$10,000 for this reward?

A: That is something I passed along to superiors and they decided that.

Q Do you know who the superior you passed it along to was?

A: Well, normal chain would be to my supervisor and from there to the front office to Washington.

Q And in your direct testimony I believe you said it was about \$50,000 is the reward in this case.

A: Fifty thousand dollars.

Q Noticing this poster, you are familiar with the TIPS.

A: Yes.

Q Reward posters. And you are familiar, just from probably news accounts, with the reward for the Olympic Park Bombing.

THE COURT: Are you asking if he is?

MR. PETERS: Yes.

1 Q Are you aware there is a \$50,000 reward in that case?

2 MR. BECKER: Objection. Relevance.

3 MR. PETERS: I will tie it up on relevance
4 and that is my second question.

5 Q Are you aware there is a reward in that case?

6 A: I am aware there is a reward. I am not sure of the
7 amount.

8 Q And on those posters, the reward always says "Up to",
9 The TIPS says "Up to \$2,000." This reward poster
10 doesn't say up to \$50,000, does it?

11 A: No.

12 Q You caused this reward poster to be posted in jails
13 throughout Missouri and Kansas, is that correct?

14 A: Yes.

15 Q And the 1-800-ATF-GUNS, that is the number that these
16 out-of-town jail people would be calling, is that
17 correct, somebody who wouldn't be able to dial 474-TIPS
18 directly.

19 A: I would assume that.

20 Q How many calls did you get on 1-800-ATF-GUNS, do you
21 know?

22 A: No.

23 Q When was the last time that somebody called either 474
24 TIPS or 1-800-ATF-G UN S?

25 MR. BECKER: Relating to this case, I assume.

1 MR. PETERS: Relating to this case.

2 THE COURT: That you know.

3 A: I don't know.

4 Q What is the procedure if somebody calls 1-800-ATF-GUNS
5 and says I am sitting in jail with somebody today who
6 confessed to this case and knows all the details, they
7 dial 1-800-ATF-GUNS, what happens from that point on?

8 A: I believe that would go to our Washington, D.C. office,
9 I believe, and then the person would either be
10 transferred to our office or initial information would
11 be taken if they would leave a number. I really don't
12 know for sure because I wasn't handling the
13 interactions of this particular project. You are
14 putting me in a project I wasn't involved in directly.

15 Q So you know how many calls have been referred to your
16 office through 1-800-ATF-GUNS, is that correct?

17 A: No, I was involved with another part of the case.

18 Q Have you ever called 1-800-ATF-GUNS?

19 A: No.

20 Q If you called 1-800-ATF-GUNS, can you tell us why there
21 is no answer, the number has been disconnected?

22 A: I haven't called them.

23 Q To your knowledge, do you have any knowledge of how
24 long that number has been disconnected if it's
25 disconnected?

3214

1 MR. BECKER: Objection. It assumes facts not
2 in evidence. Second, the witness says he has never
3 called that number. Third, he said he wasn't involved
4 in that project.

5 THE COURT: Sustained on all three grounds.

6 Q Would you be able over the break to call 1-800 -

7 THE COURT: We are not going to do that.

8 MR. PETERS: I will move along.

9 Q The first explosion occurred at 4:08 A.M., is that
10 correct?

11 A: According to the dispatch log, yes.

12 Q The second explosion occurred at 4:48 A.M., is that
13 correct?

14 A: Forty minutes later?

15 Q Yes.

16 A: Forty minutes later.

17 Q Have you done any investigation to determine whether or
18 not forty has special significance related to this
19 site?

20 A: The number 40?

21 Q Yes.

22 A: You are going to have to explain that one.

23 Q Has the number 40 come up in the investigation related
24 to other incidents of vandalism or destruction or the
25 number of loads of concrete that had been delivered,

1 anything of that sort?

2 A: Not that I am aware of.

3 Q Are you aware of a 15 page investigation?

4 MR. BECKER: Objection. May we approach.

5 THE COURT: Yes.

6 (Proceedings out of the hearing of the jury.)

7 MR. PETERS: It is Agent Schram's report.
8 It's a 15 page report by Agent Schram given to the
9 defense at the exact time he and Agent Schram were
10 working on it which describes the union involvement
11 and lists details of their investigation up to the
12 date of the report. I am not moving for admission.
13 I am asking if he is aware of it and I am going to
14 ask him some questions.

15 THE COURT: You are not going to ask
16 questions that relate to the substance of it, what it
17 says. It is not in evidence.

18 MR. PETERS: Then I will move for its
19 admission.

20 THE COURT: It isn't going to get admitted.
21 How could it be admissible? It is replete with.
22 suspicion and unfounded allegations that did not result
23 in any charges or trial.

24 MR. PETERS: He has testified repeatedly
25 about the investigation that he conducted for six years

1 into organized labor. They have called witnesses and
2 said was there picketing and they have elicited answers
3 of no. They know there was picketing. They know all
4 of these things had gone on. They have brought it out
5 on their direct examination repeatedly. This witness
6 is the one in charge of this investigation for six
7 years.

8 MR. BECKER: Counsel yesterday finally
9 provided me with his witness list and he has listed
10 Gene Schram, the author of this report, as one of his
11 witnesses. I submit that if he wants to inquire about
12 this report, it is far better to inquire of the author
13 of the report, if it is proper inquiry, at that time.

14 MR. PETERS: Throughout this trial we have
15 questioned witnesses of reports they were aware of,
16 Judge. This report went from Gene Schram to Dave True.

17 MR. BECKER: Mr. Schram to labor headquarters
18 is where it went.

19 MR. PETERS: He has testified he was in
20 charge of the labor investigation beginning in January,
21 on January 5th, he assumed charge of the investigation
22 into labor racketeering.

23 THE COURT: No, is Schram going to be a
24 witness?

25 MR. PETERS: For the defendant?

1 MR. BECKER: If there is a subpoena served,
2 yes, we will make him available but I have advised
3 counsel repeatedly about the CFR and to ask for
4 subpoenas if they want these witnesses.

5 THE COURT: That's true. I am not unaware of
6 that. What is your question?

7 MR. PETERS: My question, are you aware of
8 this 15 page report. If he says he is not aware, I
9 can't ask him any questions out of it. I am going to
10 touch on three areas of investigation in the report
11 directly tied to what his testimony is. Was there
12 picketing going on. The report says there was.

13 THE COURT: At the site.

14 MR. PETERS: At the site.

15 MR. BECKER: Just ask him.

16 THE COURT: Just ask him.

17 MR. PETERS: That's fine.

18 (Proceedings in the hearing of the jury.)

19 Q Sir, beginning about January 5th of 1989 you began
20 working with Gene Schram from the Department of Labor,
21 Office of Labor Racketeering, is that correct?

22 A: I don't know the exact date but it's in that general
23 area.

24 Q And for the following years, up until today, you and
25 Gene Schram have continued to work together on this

1 case, is that correct?

2 A: Yes, sir.

3 Q And I want to ask you some questions. Are you aware
4 that on 8-19 of '88 -

5 THE COURT: Wait a minute. I'm sorry, but
6 you are already assuming a fact that is not in
7 evidence.

8 Q Through your investigation, Agent True, did you learn
9 that the International Brotherhood of Teamsters began
10 picketing Southern Ready Mix on 8-19 of '88?

11 A: I believe that is the approximate date.

12 Q Through your investigation did you learn that on 9-12
13 of '88 Mountain Plains Construction Company began work
14 at highway 71 and 87th Street?

15 A: Right.

16 Q Did you learn between 9-9 of '88 and 10-7 of '88
17 systematically 40 gallons of engine oil and 400 gallons
18 of diesel fuel were leaked from machinery located at
19 the 71 highway and 87th Street construction site?

20 A: I believe Rick Brown testified about that.

21 Q Through your investigation did you learn that on 10-4
22 of '88 the Lenexa, Kansas Police Department received a
23 bomb threat directed against Southern Ready Mix?

24 MR. BECKER: Objection. May we approach on
25 this.

3219

1 THE COURT: No, I don't think that is
2 material. We are not going to get into all of the
3 labor problems that everybody that mixes concrete in
4 Kansas City had in this six-month period.

5 MR. PETERS: No, Judge, we are directly
6 limiting it to those problems. Those problems relate
7 to the site. This is Southern Ready Mix.

8 THE COURT: But that is not at the site.

9 MR. PETERS: Let me ask the next question.

10 Q Were you aware on 10-28 of '88 Southern Ready Mix
11 delivered cement for Brown Brothers Construction site,
12 to the site at 71 highway and 87th Street?

13 A: It is my understanding -- and I think I have already
14 testified to that -- there was three or four loads,
15 small loads delivered. Legal informational picketers
16 followed them, did their legal picketing and the trucks
17 left. So you don't have to read all of them. There is
18 four of them.

19 Q Did you find it significant in your investigation -

20 MR. BECKER: Objection.

21 Q Did you find in your investigation then that Southern
22 Ready Mix is the company that delivered concrete with
23 non-union drivers to the site at 87th Street and 71
24 highway?

25 A: I think that is why the picketers followed.

1 Q And this is the same Southern Ready Mix that on 10-4 of
2 1988 reported a bomb threat, is that correct?

3 THE COURT: Now, are you testified?

4 MR. PETERS: I said, "is that correct".

5 Q Is that correct?

6 THE COURT: Do you know that to be correct?

7 A: Well, I believe there was a report of a bomb threat
8 from a Lenexa Police report, is that is what you are
9 referring to.

10 Q And then on 11-28 of 1988 the International Brotherhood
11 of Teamsters -

12 MR. BECKER: May we approach?

13 THE COURT: Yes.

14 (Proceedings out of the hearing of the jury.)

15 MR. BECKER: First of all, counsel is
16 testifying. There is no question. "Then on November
17 28th" -

18 MR. PETERS: If I ever get to finish a
19 question. I have been doing it consistently with the
20 court and saying, "isn't that right".

21 THE COURT: Who ordered?

22 MR. PETERS: It is a federal court order.

23 THE COURT: It doesn't say that.

24 MR. PETERS: He is aware of that.

25 MR. BECKER: Where is the federal court

1 order?

2 MR. PETERS: Are we allowed to ask questions
3 without having the identifying document? I will
4 provide the court and defendants with the federal court
5 order.

6 MR. BECKER: I have asked counsel repeatedly
7 for exhibits and he keeps saying he has none.

8 THE COURT: Are you telling me there was a
9 federal court order enjoining the picketing?

10 MR. PETERS: And the court order explicitly
11 said they had to post the notices in the union hall,
12 they were no longer allowed to picket on November 28,
13 1988.

14 MR. BECKER: If counsel has that document,
15 he certainly hasn't made discovery pursuant to Rule
16 16.

17 MR. PETERS: The documents were contained in
18 the prosecutor's file.

19 THE COURT: How do you ask him a question
20 about that without asking him the substance of the
21 order. Your question must necessarily imply the
22 substance of the order and that is hearsay.

23 MR. PETERS: Did your investigation reveal
24 there was an order issued.

25 MR. BECKER: Did your investigation reveal

1 that Joe Blow said this.

2 MR. PETERS: No, it doesn't call for
3 hearsay.

4 THE COURT: It is hearsay, sure, it is.
5 Order about what? As soon as you get into an order
6 about what, you are asking him to testify to the
7 substance of the order and that is hearsay.

8 MR. PETERS: So is everything else with this
9 agent. He has no firsthand knowledge other than at
10 the site.

11 THE COURT: That is what you are cross
12 examining about. You can't go into this kind of
13 hearsay.

14 MR. BECKER: If there is a court order,
15 counsel can bring it in.

16 THE COURT: I would like to see the court
17 order.

18 (Proceedings in the hearing of the jury.)

19 Q At any time since November 29, 1988 have you personally
20 ever told anyone in law enforcement that you believed
21 Sam Long was responsible for this explosion?

22 MR. BECKER: Objection.

23 THE COURT: Oh, I think that is overruled.
24 You can answer that.

25 A: No, not with that. What you are wanting me to say is

1 did I suspect Sam Long of certain criminal acts before
2 and during that period of time and discussed it with
3 someone in law enforcement, much like I would have said
4 it where I suspected all five of the defendants sitting
5 here. If you use that analogy, then I would give you
6 that one. If you don't, then I won't.

7 Q My question was did you ever tell anyone in law
8 enforcement that Sam Long was responsible for the
9 explosion?

10 A: Was -

11 Q Not a suspect, was responsible for the explosion.

12 A: I don't believe I have ever made that statement.

13 Q I am going to read something because it was in my
14 opening statement and it purports to be the transcript
15 of your Unsolved Mysteries, quote -

16 THE COURT: Let's have the transcript.

17 MR. PETERS: I have the tape. The tape is
18 the best evidence. We will do it in the defendants'
19 case.

20 THE COURT: It is not in evidence and your
21 opening statement doesn't put it in evidence.

22 MR. BECKER: My point, there is nothing
23 inconsistent with this statement with what he has
24 testified to here today.

25 THE COURT: We only impeach with

3224

1 inconsistencies, not just repetitious. Let's move on.

2 Q Is Ronnie Edwards Darlene Edwards' stepson?

3 A: Yes, sir.

4 Q Did you testify that there was a search warrant served
5 on a house where Ronnie Edwards was residing?

6 A: Actually they had a search warrant. They didn't serve
7 it because they gave him permission so I believe it
8 turned into a consent search.

9 Q Thereafter did Ronnie Edwards, in cooperation with ATF,
10 obtain a controlled substance, or substances, from
11 Darlene Edwards?

12 A: Yes.

13 Q Would Ronnie Edwards meet with Darlene Edwards and then
14 accompany her to locations where controlled substances
15 were purchased?

16 A: Yes.

17 Q Would she then provide those controlled substances to
18 Ronnie Edwards?

19 A: Yes.

20 Q Was Ronnie Edwards charged with any criminal offense
21 arising out of that activity?

22 A: Of course not. He was working with us.

23 Q Was Darlene Edwards charged with a criminal offense
24 arising out of that?

25 A: She was charged and pled guilty to selling crack

3225

1 cocaine right by a grade school.

2 Q During the course of your investigation did you talk to
3 fire fighters, members of the Kansas City, Missouri
4 Fire Department in an attempt to discover the training
5 that the six men who were killed on November 29, 1988
6 had in the area of hazardous materials?

7 A: No.

8 Q You have never talked to them about that.

9 A: Not really.

10 Q Have you reviewed any reports discussing whether or not
11 any of the six fire fighters had hazardous material
12 training?

13 A: No, I think we had some testimony on that here but no.
14 Again I was in the criminal investigation.

15 Q Did you think there was any significance in the
16 transcript where magnesium was mentioned by one of the
17 fire fighters?

18 MR. BECKER: Objection, whether or not
19 this witness thinks it is significant -

20 THE COURT: Immaterial. Sustained.

21 Q Did you conduct any investigation based on the
22 transcript to determine whether or not magnesium was in
23 the mains mix that was housed in the trailers?

24 A: I understand that there was a product in with some of
25 the ANFO designed to cause the rock to break at the

1 proper size and that product was inside with the ANFO.
2 I am not sure if it was magnesium or an aluminum pellet
3 so I can't answer that with a great degree of accuracy.
4 Q Did anyone from ATF or the Kansas City Missouri Police
5 Department test the mains mix to determine its
6 composition you are aware of?

7 MR. BECKER: Objection. Relevance.

8 (Proceedings out of the hearing of the jury.)

9 THE COURT: Yes, I don't know where we are
10 going. You are not trying to prove there was no
11 explosion, are you?

12 MR. PETERS: No, Judge, I have never
13 suggested there was no explosion. The testimony
14 is the mains mix contains ammonium nitrate, fuel oil
15 and pure aluminum pellets. That is from Cliff Lund.

16 The transcript says he saw magnesium.
17 Did anybody check to see whether the mains mix, in
18 fact, had magnesium.

19 THE COURT: And if they did?

20 MR. PETERS: If there is magnesium, it
21 confirms one of these fire fighters was correct
22 in reporting that he saw magnesium burning.

23 THE COURT: So?

24 MR. PETERS: It would confirm they had
25 HAZMAT training and were aware when they went up

1 there.

2 THE COURT: This is La La Land, Mr. Peters.

3 I am going to sustain the objection. That is
4 immaterial. That is another way of saying it is
5 immaterial.

6 (Proceedings in the hearing of the jury.)

7 Q From your review of the information that was provided
8 to you, do you have an opinion as to whether or not
9 these fire fighters had actually been informed that
10 there was ammonium nitrate and diesel fuel up there?

11 MR. BECKER: Objection.

12 THE COURT: It is not a matter of his
13 opinion. I will sustain it.

14 Q Have you reviewed a report of interview, there is a
15 report of interview from Special Agent Mark James
16 relating to Steven Morales.

17 A: No.

18 Q Was he ever questioned?

19 A: Well, if you are talking about the Grandview, Missouri
20 Police Department, then I misstated that answer which
21 includes the investigation regarding that. So if that
22 is what you mean then I did review it.

23 Q In the Grandview report it talks about Special Agent
24 Mark James responding to the scene, do you recall that?

25 A: Yes.

1 Q Do you know if he interviewed Steven Morales?

2 A I believe there is an interview in that Grandview
3 police report.

4 Q So there is an interview conducted by Mark James.

5 A: Well, I am not sure. I know Mr. Morales was
6 interviewed and there is a police report documenting
7 who conducted that interview. So whatever is in that
8 police report would be the factual basis of the
9 interview.

10 MR. PETERS: Your Honor, I have no further
11 questions.

12 MR. OSGOOD: I have just a few questions.
13 I am the only one, I think.

14 CROSS EXAMINATION

15 BY MR. OSGOOD:

16 Q Agent True, you testified about the method in which you
17 obtained the picture and the registration information
18 on the pickup owned by the Sheppards.

19 A: Yes.

20 Q Didn't you?

21 A: Yes.

22 Q Now, what is a VIN number?

23 A: That is the vehicle identification number which
24 identifies the motor.

25 Q And that number would trace back to the origin of the

1 vehicle, is that correct, the manufacturer, if it's a
2 VIN number.

3 A: If it is a correct VIN number.

4 Q The other method is a license tag to establish
5 registration, is that correct?

6 A: Right.

7 Q If there is a safety inspection sticker, that would
8 also establish who had it inspected, is that correct?

9 A: If the sticker belongs to that particular car. If the
10 motor belongs to that truck or if the plate belongs to
11 that.

12 Q An additional way would be the actual annual renewal
13 sticker that sticks to the license tag which has its
14 own separate number, is that correct?

15 A: Again, if it belongs to the owner.

16 Q Now, did you interview Mr. Tom Butner, a government
17 witness, you or somebody?

18 A: He was interviewed, yes.

19 Q Isn't it true that he bought or traded Mr. Brown's
20 black pickup for his black pickup and took possession
21 of it?

22 A: I believe that was his testimony.

23 Q Do you have any records here today with you or any
24 photographs of that black pickup?

25 A: No, we couldn't find it.

3230

1 Q Is it true, also, that motor vehicle records, while
2 each state is different, to some extent that there is a
3 uniform method of checking registration identification
4 throughout the United States when a police officer
5 stops somebody in Kansas City, Missouri by just looking
6 at the VIN number on that car?

7 A: It's not an easy process but if we get lucky and there
8 is a pattern and history for that particular car and
9 all the parts haven't been changed and it is registered
10 rightfully, we can have some success.

11 Q You said you discussed this with Officer Ludwig and he
12 provided you his notes about stops of vehicles in the
13 Marlborough area, is that true?

14 A: Yes.

15 Q Just quite bluntly, you are aware, are you not, that
16 Mr. Brown had a notorious driving record in the
17 Marlborough area.

18 A: Yes.

19 Q And he had been stopped a number of times, hadn't he?

20 A: According to the police report, quite a bit.

21 Q In that truck on more than one occasion.

22 A: In that truck and many other vehicles.

23 Q But you have no photo of that truck today.

24 A: We couldn't find it. I understand it was crushed.

25 Q You understand or you traced it to where it was

1 crushed.

2 A: I understand it was crushed. I would like to have it
3 but that's one we couldn't find.

4 Q Junk dealers require when they crush a vehicle to
5 maintain a record when they buy that.

6 A: If the junk dealer is abiding by all those rules and
7 regulations they are supposed to.

8 Q Now, I want to move on. I want to ask you about the
9 sequence of statements. I don't want to know the
10 content. I just want to know was Mr. Brown interviewed
11 on a number of occasions.

12 MR. BECKER: Objection.

13 THE COURT: Why?

14 MR. BECKER: I can explain.

15 (Proceedings out of the hearing of the jury.)

16 MR. BECKER: If Mr. Osgood wants to talk
17 about his client giving statements, then his client can
18 testify. But the fact his client came in on several
19 occasions and said I didn't do it but three of the
20 codefendants did, there is nothing admissible about any
21 of those statements.

22 MR. OSGOOD: That is not what I am going to
23 ask him.

24 THE COURT: Where are you going?

25 MR. OSGOOD: The number of times he was

1 interviewed and in the interview of 11 February of
2 1995 to Agent True did Agent True ask him if he would
3 submit to a tape-recorded statement and he said he
4 would be glad to but he wanted to do so in the presence
5 of his attorney. Agent True did not recontact him
6 again. But then on 21 May they went back and got him
7 and pulled him out of the lock-up actually and spent
8 several hours interviewing him again on 21 May. I want
9 to establish those facts.

10 MR. BECKER: There is nothing admissible
11 about that. In fact, Mr. Brown here says I am
12 refusing to provide information that is tape-recorded
13 until I talk to my attorney.

14 MR. OSGOOD: No. No. He says he would be
15 willing -- would be willing -- would be willing to give
16 it in the presence of his attorney. They did not take
17 him up on it.

18 MR. BECKER: The next one is not even True.
19 It is Ludwig and Guffey who are on the defense list.

20 MR. OSGOOD: He says he has reviewed this.
21 I want to know if he asked. He agreed to provide the
22 taped interview. They did not call him back.

23 MR. BECKER: He was invited to come into the
24 grand jury and he declined that one, too.

25 THE COURT: Let's don't get into all that.

1 It is collateral.

2 MR. OSGOOD: This is important to my case.

3 THE COURT: I am sorry you feel that way
4 because I am going to sustain the objection.

5 MR. OSGOOD: On what basis, Your Honor?

6 THE COURT: On the basis stated in the
7 objection.

8 MR. OSGOOD: He hasn't stated a basis.
9 He just says he doesn't like it.

10 MR. BECKER: Nothing admissible.

11 THE COURT: It is a self-serving statement by
12 your client.

13 MR. OSGOOD: I am not asking what he said.
14 I am entitled to ask him the contact he had with him
15 when he saw him and whether or not he contacted him.
16 That is all I am asking.

17 THE COURT: You will ask him whether he
18 agreed to make a statement in front of his lawyer. And
19 then you will ask him whether his lawyer was there and
20 on and on and it doesn't stop.

21 MR. OSGOOD: No, I am not going to ask him
22 anything they said. I am going to ask him did you take
23 him up on his offer to give you a taped interview.

24 THE COURT: That's it.

25 MR. BECKER: He refused on that date to give

1 a taped interview. He said he would do it later with
2 his attorney.

3 MR. OSGOOD: You never recontacted him.

4 THE COURT: Sustained.

5 MR. OSGOOD: The other offer on the record is
6 Defendants' Exhibit 39, for identification is the
7 results of a polygraph exam he passed. I want to ask
8 him if he took a polygraph exam and did he pass it. I
9 know your ruling. I want it part of my record.

10 (Proceedings in the hearing of the jury.)

11 Q This is Defendants' 24, the \$50,000 reward poster. To
12 your knowledge, at any time was there ever a \$25,000
13 reward offered, posted or circulated?

14 A: The amount of money varied and I don't know the exact
15 amounts as to this increase and decrease; whether
16 it was exactly that, I don't know.

17 Q Have you ever seen a poster for 25?

18 A: I don't think so.

19 Q The only poster you have ever seen is the one for
20 50,000.

21 A: Yes.

22 Q Do you know Mr. Alan Bettard?

23 A: Yes.

24 Q Did you attempt to interview Mr. Bettard in connection
25 with this investigation?

1 A: He has been interviewed.

2 Q Did you tell Mr. Bettard someone else interviewed you
3 during the course of that interview? I don't want to
4 get into what they said.

5 THE COURT: Show him a report of someone
6 else.

7 Q A report of interview of someone else's interview.

8 A: Which interview?

9 Q The one at the jail where he was incarcerated.

10 A: He was interviewed three times.

11 Q All right. Just to get to the nub of the matter, was
12 he told at the time that if he failed to cooperate that
13 he could be indicted for transporting a stolen motor
14 vehicle across state lines?

15 A: No, he was told that he could be charged with that as
16 well as a state charge and the U. S. Attorney's office
17 was looking at it because he did cross the state line
18 with the particular vehicle and has since pled guilty
19 to that.

20 Q But he refused to give you a statement, didn't he, and
21 you then went to the grand jury and indicted him
22 thereafter on the motor vehicle charge, didn't you?

23 MR. BECKER: The agent doesn't indict
24 anyone. It is a grand jury.

25 THE COURT: That's true.

1 MR. OSGOOD: I agree and I am trying to move
2 quickly.

3 THE COURT: You are talking lingo you know
4 and most the rest of us don't.

5 A: He did give a statement.

6 Q He gave a statement and is it a fair characterization
7 that you felt that statement was not truthful?

8 A: That's very fair.

9 Q And you then went to the U. S. Attorney and asked to
10 have him indicted for interstate transportation of a
11 stolen motor vehicle, didn't you?

12 A: I didn't write the case. I made the U. S. Attorneys
13 Office aware of the violations that he committed and he
14 has since pled guilty to.

15 Q And he got sentenced to prison for that, didn't he?

16 A: I am not sure if he has been sentenced yet.

17 Q He faces a substantial prison sentence, doesn't he?

18 A: I am not sure of the number. I just wasn't involved in
19 that case.

20 Q To your knowledge, he is not testifying in this case,
21 is he?

22 A: I think he is on your list.

23 MR. OSGOOD: Thank you.

24 THE COURT: Any other questions by anybody?

25 MR. BECKER: No Redirect.

1 THE COURT: All right, Agent, you may step
2 down. Ladies and gentlemen, we are going to stop now
3 and we will not resume until Tuesday morning at nine
4 o'clock. I hope you remember nine o'clock. I have
5 been changing that time on you but I think we probably
6 ought to get started at nine o'clock. We are going
7 to have full days next week, I suspect. So be here, if
8 you would please, Tuesday at nine. In the meantime
9 over this long weekend don't talk about the case.
10 Don't let anybody talk about the case to you. Don't
11 look at or read anything about the case while you are
12 away from here. And I hope you have a good weekend and
13 drive carefully and we will see you Tuesday morning.

14 (The jury leaves the courtroom.)

15 THE COURT: What have you got? Who has
16 something they want to say?

17 MR. OSGOOD: I want it on the record. I
18 think this was a legitimate line of inquiry. And the
19 only reason I wasn't allowed was because of the problem
20 the juror has with his eye, not because of relevance.

21 I would like to call Agent True now and
22 put on a record what I was going to ask him and I
23 think it is important.

24 THE COURT: You want to make an offer of
25 proof.

1 MR. OSGOOD: Yes.

2 MR. BECKER: My objection was not based on
3 the amount of time remaining in the case.

4 THE COURT: No, nothing was changed by reason
5 of the time. No rulings were made because of
6 the time. That should be clear on the record, too.

7 Why don't you just state your offer.
8 You know what you think.

9 MR. OSGOOD: I do. And throughout this trial
10 by virtually being last on the indictment, I have been
11 rushed in my examination. I have not been able and
12 allowed to cover material and matters that I think are
13 important to this defense and I think that it has
14 substantially prejudiced my client. The record will
15 speak for itself. But on that basis I am moving for a
16 mistrial right now with respect to Mr. Brown and I am
17 asking for a severance and allow me to retry the case
18 so I can adequately cross examine the witnesses.

19 THE COURT: That is denied.

20 MR. OSGOOD: With respect to the offer of
21 proof, I agree with respect to one of the five
22 interviews it would be, under current Eighth Circuit
23 rule, inadmissible. But it is part of the sequence of
24 events and I was not going to ask him to tell me in any
25 of the interviews what happened.

1 I am going to ask Agent True whether or
2 not he had reviewed all of the interviews
3 conducted by the Kansas City Missouri Police
4 Department in his office with respect to the
5 detectives. The records would show -- and these
6 are in Agent True's file -- on 3 December, 1988
7 Mr. Brown was interviewed by Detective Ed Green of
8 the homicide unit. On 17 February, 1989 he was
9 again interviewed by, this time Detective Victor
10 Zinn of the Kansas City Missouri Police
11 Department. They got mixed up in the sequence.
12 Let me repeat that. On 7 December, 1988 he was
13 interviewed by Special Agent Mark James. On 13
14 December, 1988, some six days later, he came in
15 and was administered a polygraph examination. He
16 was asked three questions. And they are: "Near
17 87th and 71 highway did you take any part in the
18 setting of the fire?" "Answer: No." "Question:
19 Near 87th and 71 highway did you set that fire?"
20 "Answer" No. "Question: On November 29th near
21 87th and south 71 did you see any blast or blaze
22 start?" "Answer: No."
23 The result of the polygraph was that he
24 was truthful.

25 I realize under Eighth Circuit law this

3240

1 cannot be put in front of the jury. I want to
2 make a record on that. And that is one of the
3 contacts he had. The only thing I was going to
4 ask the agent, did you have contact or did the
5 police or some authority have contact with him on
6 7 December? They did. Did you have subsequent
7 contact with him on 13 December? Yes, we did.
8 Did you have subsequent contact with him on 17
9 February? Yes, we did. Did you have subsequent
10 contact with him on 16 October, '89? The answer
11 would be yes, we did. Did Special Agent
12 Cynthia Grobe with the ATF interview him on 3
13 February, '95? Yes, she did. Then did Agent True
14 interview him on 11 February of 1995, at the conclusion
15 of the interview of which there is a report. Did Agent
16 True ask him if he would make or give a tape-recorded
17 interview. He did ask Agent True to contact his
18 attorney, Mr. John Price at that time, and said he
19 would give a tape-recorded statement about this
20 incident in the presence of his attorney.

21 Mr. True, I think, would then tell you
22 they made no further contact with him, did not
23 attempt to get a tape-recorded interview from him.
24 And then on 21 May, 1996 when he was in jail on a
25 traffic violation, they went over to the municipal

3241

1 farm, the police did, Detective Guffey again, and
2 took him out from the municipal farm and talked to
3 him a couple of hours which generated a seven page
4 report.

5 I think that sequence of events is
6 relevant to our case. I don't want to ask what
7 was said. I just want to show he was interviewed,
8 offered to give a taped statement like they have
9 used in Miss Edwards' case and they did not take
10 him up on it.

11 THE COURT: That gets into if you want to
12 prove he offered to give a taped statement.

13 MR. OSGOOD: I think that is a fact
14 relevant this jury ought to hear. He offered to do
15 that. They did not take him up on it. All they have
16 are interviews of him and they have not seen fit to
17 put any of those interviews into evidence through any
18 of their witnesses, which they can do and which they
19 have done repeatedly. I am not asking them what they
20 said.

21 THE COURT: You can do it too; not now, but
22 you will have the opportunity.

23 MR. OSGOOD: The opportunity to what, Your
24 Honor?

25 THE COURT: To put the reports in evidence.

3242

1 MR. OSGOOD: There is no way these reports
2 can come in except through the agent or the police.

3 THE COURT: As independent impeachment of
4 something the agent said -- I don't know. I haven't
5 seen the report -- I was saying you have them and you
6 have access, you can do with them what you will within
7 the law.

8 MR. OSGOOD: I think in fairness I should be
9 able to ask the witness did you conduct these
10 interviews. He passed a polygraph. They didn't charge
11 him. He gave them information they used in the case.
12 In fact, they showed these reports of interview, at
13 least one of them, to Mrs. Edwards which generated the
14 statement she gave. Because she was mad at him because
15 she thought he said things that were incriminatory to
16 her.

17 MR. BECKER: There is nothing admissible in
18 any of these statements. Brown gives exculpatory
19 statements for himself and in some of them he gives
20 inculpatory statements towards some of the
21 codefendants. So there is nothing in these statements
22 that would be admissible evidence in this courtroom.
23 That would be like me asking the agent did we give Mr.
24 Brown a target letter inviting him to appear before the
25 grand jury and did he decline to appear. There is

nothing admissible about that.

MR. OSGOOD: You can ask him that for all I care because in light of all the other interviews I don't blame him for not appearing and you can ask that. I will concede that to you.

MR. BECKER: Again, there is nothing admissible about any of these contacts with the Police Department and thus they are not a proper subject of inquiry.

MR. OSGOOD: I think that's it.

THE COURT: I think the record is made and I will deny the offer of proof; that is, deny the proof offered.

I have two notes from jurors and we will deal with them on Tuesday. I will tell you what they are.

One, number 11 asks, "What was the purpose of the grand jury trial for this case?"

And then the next question, "Can I ask what was the outcome?"

And you can think about that but I propose to tell them there was not a trial; that there was an inquiry and the result was the indictment which is being tried in this case.

MR. O'CONNOR: We would ask you to follow

1 up, an indictment is just a way of charging people.

2 THE COURT: I have already told them that
3 once and I will tell them again.

4 MR. OSGOOD: What they might be confused
5 about, Your Honor, is the burden of proof. If they
6 think the grand jury was operating under the same
7 burden of proof and it is evident to me from this
8 question that is what prompted this question. If the
9 grand jury was operating under the same burden of
10 proof they have got the dilemma that is troubling the
11 country right now in the O. J. Simpson case. I think
12 you need to tell them the grand jury was operating
13 under a much lower threshold, they only had to be
14 convinced there was probable cause to believe.

15 THE COURT: I am not going to say "only had
16 to be".

17 MR. OSGOOD: The grand jury's burden is
18 probable cause and that is a distinctively different
19 burden than beyond a reasonable doubt.

20 THE COURT: I am not going to say
21 distinctively different.

22 MR. OSGOOD: Different.

23 THE COURT: I am not going to argue your case
24 in an instruction I give to the jury.

25 MR. OSGOOD: I understand.

1 THE COURT: I may consider giving them some
2 sort of instruction about the difference in grand jury
3 and petit jury proceedings.

4 MR. OSGOOD: I think that would be advisable.

5 THE COURT: All right.

6 MR. OSGOOD: The other thing, I would like
7 to offer Exhibit 39, the polygraph report, as a court
8 report.

9 THE COURT: It will be received for appellate
10 purposes.

11 Then the other comment, "Please show us
12 on the map showing the defendants' and witness
13 residences where Kim Archer and Carl Brown lived in
14 November, 1988." That's all one sentence. "When
15 convenient, please" is the other sentence.

16 And I will leave that with you for
17 whatever you all want to do. I thought that had
18 been shown.

19 MR. BECKER: It wasn't related to the map.
20 She described the apartment as being across from
21 Bannister Mall.

22 THE COURT: You folks see what you want to do
23 with that. There should be some response to it. We
24 will deal with it on Tuesday, Okay.

1			
	<u>I N D E X</u>		
	<u>VOLUME XVIII</u>		
2	Conference In Chambers Page		
~	3248		
3~	Plaintiff Rests		
4 ~	Opening Statement on behalf of	3285	
	Defendant Bryan Sheppard		
541			
~	Opening Statement on behalf of	3294	
6~	Defendant Skip Sheppard		
	Opening Statement on behalf of	3298	~
	Defendant Richard Brown		I
	Defendant Darlene Edwards' Evidence		
	<u>HAROLD FERNAU</u>		
-	Direct Examination	3299	
	Cross Examination	3303	
.			
	Defendant Bryan Sheppard's Evidence		
. ~			
..			
	<u>FREDERICK MARTINDALE</u>		
	Direct Examination	3307	
i,			
	<u>BRUCE TRAMMEL</u>		
	Direct Examination	3331	
	Cross Examination	3339	
	<u>JOHN FRAISE</u>		
	Direct Examination	3342	
	Cross Examination	3353	
	Cross Examination	3355	
	Cross Examination	3356	
	Cross Examination	3356	
	Redirect Examination	3360	
	Further Direct Examination	3365	
• ,4			
- 0 0 0 -			
,			
· — , , ...			—

I N D E X (Continued)

VOLUME XVIII

3	<u>VICTOR ZINN</u>	Page	
4~	Direct Examination	3366	
l	Cross Examination	3370	1
5~	Redirect Examination	3375	
,~	Cross Examination	3378	
6~	Cross Examination	3379	
.]			I
7t	<u>ROBERT GUFFEY</u>		I
~			/
~j	Direct Examination	3390	~
, I			I
.~	<u>JOHN McGOVERN</u>		
1C	Direct Examination	3394	
	Cross Examination	3396	
~'	Cross Examination	3402	
1- ~			

E X H I B I T S

	<u>Plaintiff's</u>	<u>Received</u>
	420	3281
	425	3325
i6	424	3399
:~	<u>Defendants'</u>	
,Q	41 and 42	3351
, ~		
. . ,		
.		
I		
~ .		
. .		

3248

1 FEBRUARY 18. 1997

2 (Conference in the Court's Chambers with all attorneys
3 present.)

4 THE COURT: The government and all parties
5 are here. And we are specifically going to take up the
6 motion for production under Rule 16 and other rules,
7 statutes, basically what is claimed to be Jencks Act
8 material as a result of the cross examination of Agent
9 True.

10 I and members of my staff and Magistrate
11 Judge Hays, who is here, have all read the filing
12 made by the defendants.

13 Was there a filing made by the
14 government on this, too?

15 MR. BECKER: No, Your Honor, I just received
16 it yesterday.

17 THE COURT: So did I. But maybe we should
18 have then a statement of the government's position on
19 this. And we will try to explore this as quickly as we
20 can.

21 MR. BECKER: The government's position, it
22 has made full discovery of all appropriate reports from
23 the labor files. These are not statements
24 of
25 Special

24 Agent True. Any statement or report authored by
25 ~ Special Agent True of any witness who has testified in

1 this case has long since been discovered.

2 THE COURT: That is Brady material.

3 MR. BECKER: As Jencks and those files have
4 been reviewed and any Brady material in those files
5 have been turned over. There is nothing further in
6 those files that is discoverable either under, Rule 16
7 I don't think is applicable here. Rule 3500, these are
8 not statements of Special Agent True. They are not
9 even authored by Special Agent True.

10 And, finally, it would be the Brady
11 review and those material matters have been
12 reviewed and any Brady material has been turned
13 over to the defendants.

14 So I don't think there is anything new
15 in Special Agent True's testimony that would
16 require further discovery of the Department of
17 Labor files.

18 The second point requested is raw notes
19 of Special Agent True regarding the investigation
20 of this case. I don't believe that is necessary.
21 We have given the reports of interview of any
22 witnesses that testified.

23 Request evidence of all arrangements,
24 basically promises or inducements to the
25 witnesses. We have done that.

3250

1 Fourth, it says a paper trail required
2 by the CFR when a government agent intervened or
3 testified on behalf, endorsed a witness. I know
4 that is not required. And there wouldn't be such
5 a paper trail.

6 Telephone logs and such relating to I
7 guess contact by government agents on behalf of
8 witnesses. There are none.

9 Number six, again promises or
10 inducements. We have given them.

11 Seven, evidence of number of bombings in
12 the U.S. in 1988 and 1989. We do not have that
13 information and I don't think we need to do the
14 research for the defendants.

15 Number eight, evidence of incidents of
16 theft of dynamite. Again, we don't have that
17 information and I don't believe we need to be
18 searching for it under some theory of discovery.

19 Nine, policy and procedures of the
20 Kansas City Missouri Fire Department relating to
21 handling of hazardous materials. We don't have it
22 from 1988. Again, if the defendants want that,
23 they should go ask the fire department or perhaps
24 two months ago could have asked the fire
25 ~ department.

3251

1 Next, the personnel records of the
2 victims, showing five of the six firemen had taken
3 Hazmat courses.

4 THE COURT: All of this is equally available
5 to them. If they want it, they can get it.

6 MR. BECKER: Right. And, therefore, we
7 don't believe there is any further discovery that is
8 necessary at this time.

9 There is a claim in here that I had said
10 in the pretrial conferences or hearings that the
11 government was not going to mention that it
12 investigated labor as a part of the federal
13 investigation and I have no recollection of ever
14 saying that. That was never my intention to put
15 my head in the sand and say, ignore the fact that
16 the federal government investigated whether or not
17 labor had something to do with this for many
18 years.

19 THE COURT: As a matter of fact, as pointed
20 out in here, you mentioned that in your opening
21 statement.

22 MR. BECKER: Right. Therefore, I don't
23 believe there is any further discovery that is
24 required under any rule or case law.

25 THE COURT: I need to know, assuming Mr.

1 Peters is the spokesperson here for the defendants, I
2 need to know, I think first, whether Mr. Becker's
3 recital that he just made of the disclosure that
4 has been made is accurate.

5 MR. PETERS: I would say accurate but
6 incomplete. It is accurate, he has told us there
7 is nothing in the files that is discoverable, I would
8 agree with that.

9 He has told us there is nothing Jencks
10 Act, nothing that is Brady. That no deals have
11 been made. That no CFR trails, no telephone logs,
12 no nothing. I would agree that he has made that
13 representation.

14 But I think it begs the question. I
15 think the hurdles that have to be gotten around
16 are that I think we have an obligation to advise
17 the court of any time that we think a prior ruling
18 may be moving the court towards reversible error
19 as opposed to sand-bagging.

20 The research that was done, we aren't
21 asking for Jencks material because Jencks material
22 is statements of the witnesses. We have gotten
23 all of those and I acknowledge that.

24 What we are asking for -- and I was
25 ~ surprised by the statement that Rule 16 doesn't

1 apply -- what we have provided the Court with are
2 two cases, Poindexter and George which deal with a
3 situation analogous to this one wherein the
4 defendant said my client is being prosecuted and
5 another branch of the Justice Department has
6 conducted an ongoing investigation of the Iran
7 Contra affair. This is in the pretrial setting.
8 Disclosure late is better than no disclosure at
9 all. And on both Poindexter and George the Court
10 said it is disingenuous to say that the special
11 prosecutor handling the case of one defendant was
12 not aware of the investigation that went on in
13 another part of the Department of Justice.

14 The reason that I think this issue has
15 been raised, again I can tell you I was surprised
16 by the opening statement of the government. I
17 don't think that matters whether I was surprised
18 but then Agent True, the purpose of Agent True's
19 testimony was to talk about the scope of the
20 investigation and these are direct quotes: "The
21 scope of the investigation over the last eight
22 years". That is what we were told about in
23 opening statement and that is what True's direct
24 testimony was.

25 ~ And to then say I am calling a witness

3254

1 to testify about the complete scope of the
2 investigation which for six years was the
3 Department of Labor, but I am also telling you
4 that none of that material is discoverable, I
5 think in the words of Poindexter and George would
6 be disingenuous.

7 The reason I brought it to the Court's
8 attention is the cases that I reviewed said that
9 the threshold showing the defendants must make is
10 a low threshold showing. And in this case I think
11 I would suggest that the showing we have made has
12 not been de minimis but shows an ongoing
13 investigation for six years. I would suggest that
14 information has continued to go into the
15 Department of Labor file related to possible
16 organized labor at least through July, August,
17 September of 1996.

18 So the concern I had was from an appeal
19 standpoint. I have made my case but I was
20 concerned that in our prior hearings in front of
21 Judge Hays, I don't think these cases were brought
22 to the Court's attention.

23 What I have done before with the Court
24 is just said let's take a deep breath. What the
25 government has done, they have said the Department

3255

1 of Labor investigated this for six years and they ;
2 found that there was no evidence linking anybody.
3 They produced three witnesses who say there was no
4 picketing. Well, the Department of Labor files
5 show there was picketing.

6 MR. BECKER: Could I interrupt. These
7 witnesses testified that they didn't know of any
8 picketing. They didn't say there wasn't any
9 picketing. They said we don't know of any picketing.
10 That is all they said.

11 MR. PETERS: I agree with that.

12 THE COURT: There was testimony as to pickets
13 being on the site and you knew that.

14 MR. PETERS: But the point is it was brought
15 out to the jury. The testimony was brought out in
16 response to Mr. Becker's opening statement about
17 labor.

18 I made my opening statement that
19 mentioned labor. And I think the Court, when you
20 heard that, your belief was, well, defendants,
21 what are you talking about. And there was
22 picketing. And while we can say the purpose of
23 it, they were never told that there was never any
24 picketing, the clear purpose -- and I am sure what
25 the Court was left with after their testimony was,

3256

1 hey, there was no picketing at the site. When, in
2 reality, there was. There is extensive
3 information that we have so far about the
4 investigation conducted by the Department of
5 Labor. Again going back to Poindexter and Georae,
6 the burden isn't for us to show that it is Brady
7 material. The burden is for us to show it may
8 lead to impeaching exonerating, discoverable
9 matter and I believe that I have an obligation to
10 advise the Court when I read these cases that we
11 may have been going on the wrong standing. We can
12 stand on the motion as to that specific part.

13 The next part, again in doing the
14 research having to do with Agent True, I cited to
15 the Court the Noble case which in ruling against
16 defendants says if the agent takes the stand, the
17 other side is entitled to his notes of interviews.
18 I don't know how you get around that. We have
19 asked for it and whatever the Court decides we
20 will live with. The U.S. vs. Miller case I told
21 the Court about on page 6.

22 MR. BECKER: Just one minute. That
23 misrepresents Noble. Noble was a defense investigator
24 who took the stand and was required to produce the
25 notes of the defense investigator's interviews of

1 actual witnesses.

2 MR. PETERS: Correct. '

3 MR. BECKER: You have been given those. I
4 don't want the Court to get the wrong impression of
5 Noble. That somehow by having a defense investigator
6 take the stand that threw open their files completely
7 for review.

8 MR. PETERS: No, what Noble says -- and I
9 didn't mischaracterize it in what I said -- as soon as
10 you put your defense investigator on, the defense
11 investigator's notes of his interviews with the
12 witnesses must be disclosed to the other side.

13 THE COURT: Of actual witnesses.

14 MR. PETERS: We have received no notes of
15 interviews from Agent True of his interviews of actual
16 witnesses. During the course of the trial do we have
17 reason or belief there are such notes in existence.
18 There is a standing order in this district that agents
19 keep their raw notes. We have received no raw notes.

20 MR. O'CONNOR: The other thing, as it relates
21 to Marburger and Baird, I made a specific request of
22 Mr. Miller, I believe it was for those, and I made a
23 specific request at the bench, of which the Court
24 denied that.

25 MR. BECKER: We reviewed' and I showed you the
..

1 results of that review.

2 MR. O'CONNOR: What I am saying, I was not
3 allowed to review.

4 MR. BECKER: You have been given the reports
5 prepared from those notes.

6 MR. OSGOOD: I would agree, if I can chime
7 in, when the witness testified if the witness didn't
8 see his agent notes or changed or modified them, we are
9 not entitled to them, Your Honor. But once the agent
10 testifies they are his recollections of the
11 conversations that he had with this witness, there have
12 been serious allegations as recently as Saturday in the
13 newspaper in which Judge Wright severely chastised the
14 government over its dealings with Allen Bethard, a
15 witness we are going to have tomorrow.

16 THE COURT: I am not going to be swayed one
17 way at all by that.

18 MR. OSGOOD: And I don't propose we call
19 Judge Wright or put in his hearsay comments. But the
20 point is that opens up Agent True to cross examination
21 about matters that impacted the testimony of the
22 witnesses, at least in theory. And once we looked at
23 those notes, it might then be a basis for us to recall
24 some of these witnesses in the defense's case, to go
25 back into matter that they have thus far denied or

3259

1 glossed over such as the reward issue, such as
2 promises and inducements such as when they first
3 learned of this, such as what documents they were shown
4 during the course of the interview or as a predicate to
5 the interview to refresh their recollection before they
6 gave the '96 statement, for example. All of those
7 things may well be revealed by the notes.

8 I am not suggesting we get his entire
9 collection of notes on everything but certainly as
10 a minimum we should see his notes with regard to
11 the witnesses that he has interviewed, that have
12 testified since he has now testified himself and
13 made assertions about his conduct with those
14 witnesses;

15 MR. BECKER: All the information that is in
16 the notes, if there is any specific witness, apparently
17 there was. Mr. Osgood talked about cross examination
18 of True. Then it's done. True was on the stand. Be
19 is done. We are now at a point where I think they want
20 to revisit the whole government's case and it's time
21 for the defense to put on their case and we sum up
22 in this matter. There is nothing new in this
23 motion. There is nothing new that has been revealed
24 by Agent True's testimony.

25 THE COURT: My concern is -- and what I am

3260

1 1 not going to let happen is that there is some desire
2 1 that you won't even admit because perhaps you don't
3 even recognize, cloaked in this recall vehicle, to just
4 1 put a witness on the stand and argue with him again, or
5 her, and that is not going to happen. We are going to
6 look at this -- my staff while I am in there mainly -
7 and I with their consultation are going to look at
8 whatever you specify you think you should have.

MR. PETERS: I agree with the Court. I am
10 not saying that we get it and I am not saying it is
11 error or suggest it is error if we don't get it.

12 I believe from my reading of the cases
13 you are doing the exact procedure and I am
14 satisfied.

15 The procedure is I am concerned that it
16 is error if you don't look at the information.

17 THE COURT: We are going to do that.

18 MR. OSGOOD: I part company with counsel.

19 MR. BECKER: No showing of materiality. It
20 is one thing to say it is all there; another to claim
21 there is anything material to point specifically to
22 anything material in this body of documents.

23 THE COURT: Unfortunately, Paul, the case law
24 is pretty broad on defining the phrase, the key phrase
25 here, which is in the statute of "relate to" or

3261

1 relates to", I am not sure which way it is worded in
2 the statute, but that is what we are dealing with here.
3 And if any of this material relates to what he talked
4 about on examination on the stand, we have to take a
5 hard look whether it ought to be produced for the
6 defendant.

7 I probably would agree with your
8 conclusion it is not really material to the issues
9 in this case. But that is not probably what
10 testimony is.

11 MR. OSGOOD: We have two distinct categories
12 of material here. One I agree should be looked at in
13 camera. The other I believe we are entitled to under
14 a right request under 18 U. S.C. 3500, the raw notes
15 of any witnesses he interviewed who have testified in
16 this case since he got on the stand and testified about
17 those interviews.

18 THE COURT: I am not going to rely on this
19 too heavily, John, but it may very well be if push
20 comes to shove, I would say you waived that right
21 because this is a hell of a time for you guys to be
22 making this motion when the government has rested its
23 case.

24 MR. OSGOOD: That is a separate issue, I
25 agree.

3262

1 THE COURT: I am not going to delay this.

2 MR. OSGOOD: Whether it is ripe, I think it
3 requires to make the request at the conclusion of the
4 witness' testimony strictly under Jencks.

5 We asked for the notes during the course
6 of the trial and he took the position we weren't
7 entitled to them under the statute at that point
8 and that's correct. I agree that is correct.

9 MR. BECKER: I didn't rest on Section 3500.

10 MR. OSGOOD: That is a lie, Paul.

11 MR. BECKER: You were given the reports a
12 month before the trial. That is why I opposed
13 providing the notes.

14 THE COURT: How quickly can you provide a
15 specific list of what it is you think you are entitled
16 to out of the True reports?

17 MR. OSGOOD: Myself, personally, I would
18 like the witnesses that testified against my client.

19 MR. PETERS: We can give you a list of the
20 exact witnesses. It will be the witnesses that -- and
21 I think there are two issues: One, clearly witnesses
22 that he interviewed would be reviewed by the Court.
23 But the other thing is witnesses that he interviewed
24 that testified at trial that he didn't prepare a report
25 on. They're the only ones that can look at that

3263

1 information so we can't tell you.

2 MR. BECKER: I don't understand this.

3 THE COURT: He has raw notes and didn't
4 prepare a report.

5 MR. PETERS: There are several witnesses
6 that Agents True and Schram will interview and Schram
7 will prepare a report.

8 THE COURT: I am not going to make Schram an
9 alter-ego of True or vice versa.

10 MR. PETERS: What I am saying, I think we are
11 entitled to any notes by Agent True of an interview of
12 any of the witnesses that they have called in their
13 case in chief. We can give you that list.

14 THE COURT: What theory is there the
15 notes somehow contradict or clarify the report?
16 You have been given all the reports.

17 MR. OSGOOD: They don't have to under 18
18 U.S.C. 3500. It is not Brady. It is a Jencks
19 requirement.

20 THE COURT: They have to be statements of the
21 witnesses.

22 MR. BECKER: They're not statements of Dave
23 True.

24 MR. OSGOOD: They're written recollections of
25 Dave True's interview.

1

3264

1 MR. BECKER: You are not going to be able to
2 read them, as a practical matter.

3 MR. PETERS: Instead of arguing, I would
4 suggest the staff read U.S. versus Noble because it is
5 a case that is more persuasive because it is against a
6 defendant and they are specifically saying that you get
7 notes.

8 MR. BECKER: Because there are no reports.
9 Defense attorneys don't prepare reports and that's
10 what happened in that case. And that is why the notes
11 were discoverable.

12 MR. PETERS: Rather than arguing, Judge, I
13 would just suggest that somebody read Noble.

14 THE COURT: All right. I think you all are
15 not too much at odds on the question of the video in
16 the Marlborough matter. I think maybe Mr. Becker
17 anticipated the worse and thought you were going to try
18 to use the video individually in an impeachment effort.
19 I understand it is not the case and so we will have to
20 live with that.

21 MR. BECKER: That was the situation a day ago
22 before I filed my motion, it was going to be sought to
23 be introduced.

24 MR. O'CONNOR: My intention was to introduce
25 the video. I think Mr. Becker knew and he sent me

3265

1 his motion in limine regarding the statement against
2 penal interest, I believe on that issue, he's right.
3 But now we have given you a brief as we believe it
4 comes in under 804.

5 THE COURT: If he testified in such a manner
6 1 it is inconsistent with the video.

7 MR. BECKER: I think on page 3 counsel for
8 the defense says "If under oath Frederick Martindale
9 denies he set the fire", that's not the point.

10 The point is does he deny making the
11 statement. We all know he is going to deny
12 setting the fire. Mr. O'Connor has interviewed
13 him at length. I interviewed him. The kid says,
14 "I didn't set the fire. The question on the
15 admissibility of this, "Did you make this
16 statement, yes or no." The kid is going to say,
17 "Yes, I made that statement. Yes, I told the
18 police one, two, three, four, all the way through
19 point 50 -- he is going to admit every single word
20 of it. So unless John has convinced him otherwise
21 this morning in the prep. session -

22 MR. O'CONNOR: He will admit making that
23 statement.

24 THE COURT: Why? Why did he make it?

25 MR. PETERS: Because he did it.

3266

1 MR. O'CONNOR: That is our assertion.

2 MR. OSGOOD: Who did he make it to?

3 MR. BECKER: His testimony will be he figured
4 that if he told them what they wanted to hear, they
5 would let him go. And believe it or not, strangely
6 enough, that's what happened. He gave the confession
7 and they let him go.

8 MR. PETERS: The only thing I think there
9 will be a dispute over -- and this goes back to the
10 Court's prior ruling on what is the best evidence. He
11 is not being impeached with the prior inconsistent
12 statement. Neither party is limited to did you say
13 thus and so. Yes, I did. The statement that he did
14 not, in fact, set the fire that caused the explosion
15 lets the defense go into a prior inconsistent
16 statement and that is why we have the video and all of
17 that.

18 MR. BECKER: Extrinsic proof of a prior
19 inconsistent statement is only admissible after the
20 witness has been confronted with the statement and
21 asked to admit it or deny it or explain it.

22 THE COURT: If he admits it, there is nothing
23 to confront him.

24 MR. O'CONNOR: I have another issue.

25 This is the critical part of my case. I

1 This is the critical part of my case. I
2 am putting on my case today, Judge, and it will be
3 around eight or nine witnesses but this is a
4 critical part of my presentation.

5 I believe the tape should be shown to
6 show the demeanor of the witness at the time he
7 made the statement. He has told me -- I am sure
8 he told Mr. Becker he was scared and intimidated
9 by the police. If you look at Fraise's report, he
10 says he is calm and cooperative. And I think he
11 is going to say on the stand they intimidated and
12 scared me. They showed him the pictures of the
13 firefighters. They told him he was responsible.
14 They told him they had witnesses that put him
15 there. Then he gave a confession.

16 I want the Court, before this ruling,
17 to make a ruling on whether or not you believe the
18 jury is entitled to see it, not only for demeanor
19 but for the interest of justice here.

20 This guy has given a confession, a video
21 confession and he has given at least five specific
22 facts that were at the scene that no-one told him
23 about: Cardboard, a creek, a caterpillar, a
24 bobcat and platform. That guy talked about those
25 ~ big things on the platform. Those are things he

3268

1 told them were up there and he set the cardboard
2 and straw on fire underneath this trailer. I
3 think if you watch the confession it is pretty
4 convincing at the end of the confession he says I
5 am relieved to get this off my shoulders and he
6 writes the detective a note which is in the file.

7 THE COURT: That is a classic Ellery Queen
8 line.

9 MR. O'CONNOR: He writes a letter thanking
10 for sticking with him and getting the truth. All I am
11 saying, they put the guy, they talked to him for six
12 hours, booked him for murder. Held him in jail over
13 night and took him back the next morning. And after
14 spending all night in jail, he told them in this
15 statement he knew he was facing a life sentence. And
16 the next morning he goes down and gives this
17 videotaped confession.

18 There is another explanation they let
19 him go and I will say this in the courtroom, I
20 believe will be very logical. They did not let
21 him go because they told him to give that
22 confession. It will be very logical. I haven't
23 talked to Zinn and Fraise but it will be very
24 obvious why they let him go. I think there is
25 ~ another explanation for it.

3269

1 MR. BECKER: I talked to the detectives
2 and they were available for John to talk to yesterday.
3 They let him go.

4 MR. PETERS: Another consideration for the
5 Court is judicial economy. Under one theory what is
6 going to go on, if we aren't allowed to play the
7 tape, then we have to make an offer of proof and show
8 the tape to the Court if we do it in the way Mr.
9 Becker suggests.

10 Mr. O'Connor is going to go through
11 line-by-line-by-line were you asked this question,
12 did you give this answer and read the verbatim
13 transcript of the answer because all of the
14 questions are important.

15 And then at the end we will move for
16 admission of the tape because it is the best
17 evidence of his prior inconsistent statement
18 pursuant to the cases cited by the court.

19 THE COURT: He is entitled to the line-by
20 line bit if, in fact, what he is examining about is
21 inconsistent with what the witness has testified to,
22 but it is not a back door way of getting into evidence
23 something that is not otherwise admissible in evidence.

24 MR. PETERS: We agree.

25 ~ THE COURT: He can only do it to impeach and

3270

1 that is a word of art and that means to contradict
2 which has already been testified to.

3 MR. PETERS: He is going to take the stand
4 and say I wasn't there, I didn't do it. So the prior
5 statement where he drove to his parents' house,
6 that impeaches that. That he was at the site, that
7 impeaches that. The he was there with a friend, that
8 impeaches that.

9 MR. BECKER: Mr. O'Connor can go into that.

10 MR. PETERS: My only thing was judicial
11 economy.

12 MR. BECKER: He will say, yes, I said it. He
13 gave a 26 page deposition to Mr. O'Connor. And he
14 said, yip, I said all that.

15 THE COURT: A deposition or statement?

16 MR. BECKER: A sworn statement and the police
17 gave me all that information. If he wants to go into
18 all that, let him go. But this tape is extrinsic
19 proof of a prior inconsistent statement and the kid is
20 going to admit saying all that to the police.

21 MR. O'CONNOR: I would ask the Court, because
22 I think it is a 27 minute tape, I would ask the Court
23 before we go into Court because I am going to make an
24 opening statement and I want to do it in good faith, I
25 ~ would like to have a ruling after viewing the tape. It

1 is only 27 minutes long. We can be putting our list
2 together to give to your law clerk. We can be killing
3 two birds with one stone.

4 Polygraphs are admissions in the Second
5 Circuit, the Sixth Circuit, the Eleven Circuit and
6 the Ninth Circuit.

7 MR. PETERS: I list them all, the Ninth
8 Circuit, the Fifth Circuit and the Eighth Circuit.
9 This Williams case specifically cited on page 3
10 number seven, and the Eighth Circuit tells you what
11 can be done, what can't be done.

12 Paul and I have talked about this.
13 Candidly, when I make my showing, it is up to the
14 discretion of the Court. Again I am letting the
15 Court know where there may be potential traps,
16 prior to Daubert if they're reversed for not
17 admitting polygraphs where the evidence was
18 circumstantial and no eyewitness, but I don't
19 think that saying counsel failed to endorse the
20 witness, I would agree with that. But I think the
21 Court is aware of the research I have done. I
22 don't think it was part of a tactic or pan or an
23 attempt to sandbag Mr. Becker. As I have learned
24 more stuff, I have let him know informally as we
25 ~ have talked. And I think it would be an injustice

1 to prevent an attorney from presenting a defense
2 that has come to his attention as of late. That
3 may be admissible. I think I would agree it is a
4 two-step process.

5 I think if the Court would make the
6 Daubbert finding polygraphs are admissible, then I
7 think it goes back to the Court whether you want
8 to admit it in this case. And whatever you decide
9 on that, I can't do anything about.

10 MR. O'CONNOR: I would join on behalf of
11 Bryan Sheppard who took a polygraph and passed it in
12 1989.

13 MR. OSGOOD: As did Mr. Brown.

14 THE COURT: You better get your list together
15 on this True stuff. And as soon as they get the
16 machine up here we will look at this.

17 MR. BECKER: Are any of the defendants other
18 than Mr. O'Connor going to make an opening statement?

19 MR. BUNCH: No, I am not.

20 MS. FRANCO: We are going to do one very
21 briefly, three to five minutes max.

22 MR. OSGOOD: Basically resurrected those
23 statements and used them in this indictment. One of
24 my two key witnesses' grandfather is deceased now.

25 ~ MR. PETERS: That would be given in a

1 written form for the Court.

2 THE COURT: This is the grandfather whose
3 death you revealed to one of the witnesses on the
4 stand.

5 MR. PETERS: She knew him very well.

6 MR. OSGOOD: It is conceivable she didn't
7 know he was deceased.

8 THE COURT: She knows now.

9 MS. HUNT: The government hasn't rested
10 so this motion for judgment of acquittal isn't filed.
11 We get to make an oral record, things not in there I
12 would like to raise.

13 MR. BECKER: Just two exhibits that aren't
14 reflected, I am going to offer them in the case in
15 chief.

16 I was unaware Miss Franco was going to
17 make an opening statement. They are going to make
18 it tomorrow.

19 THE COURT: I think we ought to have openings
20 consecutively for the defendants and not piecemeal.
21 When the defense for Mr. O'Connor's client is over, the
22 next one can make an opening.

23 MR. O'CONNOR: I will be jumping a few of
24 Will Bunch's witnesses into mine to accommodate them
25 ~ in my schedule. That probably makes more sense.

3274

1 THE COURT: Who is going to make an opening?

2 MR. OSGOOD: I think I will pass.

3 MR. BUNCH: Pass.

4 MS. FRANCO: Three minutes, five.

5 MS. HUNT: We will split our time.

6 MR. PETERS: Now we are on the record, Mr.

7 Osgood, and maybe Miss Hunt, haven't signed the four

8 motions I filed, three of them are joint motions but

9 I think the record should reflect that everybody joins

10 in the joint motions.

11 THE COURT: Is that correct, Mr. Osgood?

12 MS. OSGOOD: Yes, Your Honor.

13 THE COURT: Miss Hunt.

14 MS. HUNT: Yes.

15 MR. OSGOOD: I can drop down at noon and

16 sign those.

17 THE COURT: It is not critical, I assume.

18 THE LAW CLERK: I am saying, for the record

19 it might help if they are joining in motions, to name

20 the motions in which they are.

21 MR. PETERS: There were three motions that

22 were joint motions, Motion for Production under Rule

23 1626(2) and 18 U.S.C. 3500, Legal Memorandum on

24 Statements against Penal Interest and, as I had advised

25 ~ the Court and as Susan just brought out, the third one,

1 the Rule 29 Motion for Judgment of Acquittal, we are
2 going to be moving orally for failure to prove each and
3 every element but the motion that was filed directs the
4 Courts attention to specific points. And those are
5 the three motions.

6 The polygraph was filed on my behalf but
7 I think joined in by the defendants.

8 MR. OSGOOD: I moved to try to admit the
9 polygraph on the assumption you would not and my
10 exam has been entered into the record. I obviously
11 would join in the request.

12 MR. O'CONNOR: I would make the same request
13 on behalf of Bryan Sheppard.

14 THE COURT: I think from what you said, John,
15 that I delay looking at this tape until over the noon
16 hour.

17 MR. O'CONNOR: For my opening statement, if
18 you were going to allow it, I would really want to talk
19 about it in my opening. If you weren't, then that
20 would tell me which direction I would have to go.

21 MR. PETERS: Also, I am not sure if it was on
22 the record. It is my understanding that the defendants
23 are to provide the Court with a list of witnesses that
24 we believe there may be handwritten notes from True.
25 ~ we will do that as you are viewing the tape.

3276

1 And it is my understanding the Court is
2 going to conduct an in camera review of the DOL
3 file.

4 THE COURT: No, no, I am going to conduct an
5 in camera review of *anything* that you specify or
6 describe as subject to production under either the
7 prior omnibus order or under Jencks. And I am not
8 going to second-guess you all as to what you want to
9 produce. You tell me what you think should have been
10 produced and we will look at it.

11 MR. O'CONNOR: Thank you, Your Honor.

12 MR. BECKER: Your Honor, I have received a
13 list from Mr. O'Connor, a basic list of government
14 witnesses with some individuals checked off they are
15 not requesting notes and someone is now preparing to
16 deliver it to the Court for your inspection, a copy of
17 the report of interview and with the notes attached.
18 They will be separated in two files; one that Special
19 Agent True prepared and then one for any witnesses
20 somebody else prepared.

21 THE COURT: All right.

22 MR. PETERS: Judge, further on our record, I
23 will hand to the court now, or to your clerk, the
24 people that have been called as witnesses, our first
25 ~ request for Agent True notes regarding those witnesses.

1 Secondly, notes of True regarding the Department of
2 Labor investigation. And the third one that we
3 discussed was the Department of Labor file. And the
4 record I need to make and I apologize for not having
5 it in writing and I will do an offer of
6 proof as opposed to calling Dave True.

7 What I would tell the Court, on November
8 30, 1990 an article in The Kansas City Star
9 quoting Dave true, that the Federal Bureau of
10 Alcohol, Tobacco and Firearms is still working on
11 the case, quoting spending about as much time as
12 it did after it occurred. He said one or two
13 agents were assigned to the case daily.

14 It then goes on to detail the union,
15 possible union involvement.

16 Then in 1993 on the five year
17 anniversary of the blast, Agent True is quoted, as
18 it gets hot for a lead, we check it out and there
19 is nothing and we are frustrated. True maintains
20 somebody on the work project possibly because
21 contractors were using non-labor *union*.

22 It then goes on dealing with their
23 specific investigation into Teamsters Local 541,
24 Operating Engineers Local 101.

25 ~ Based on the canoe that we have cited to

3278

1 the Court, we think this offering would show the
2 Department of Labor file and notes of ATF Agent
3 True would make the requisite showing, at least
4 through 11-29 of -93. So I will hand it to your
5 clerk now, the specific witnesses called by the
6 government.

7 THE COURT: That is the same list he just
8 said he had made, right?

9 MR. BECKER: That is the list they provided
10 me ten minutes ago. We are now gathering that
11 material. The shotgun request for other materials I
12 don't believe is justified under any statute or case
13 law.

14 THE COURT: Or prior testimony in the case.

15 MR. BECKER: Correct.

16 THE COURT: All right, let's proceed.

17 MR. PETERS: Just for the record, is the
18 government being required to submit for an in camera
19 inspection those parts of the Department of Labor file
20 in which Agent True participated and those parts of the
21 Department of Labor filed through, at least the
22 statements, five years after the explosion by Agent
23 True, union involvement was still being investigated
24 with one or two agents assigned on a daily basis?

25 ~ MR. BECKER: I can **frankly** say I am not aware

1 of any report that says what Mr. Peters quoted from the
2 newspaper. There is no annual update that this is what
3 we are still looking at. The reports of interview of
4 witnesses that Agent True prepared are being gathered.
5 The reports of interviews, with the accompanying notes.
6 The reports of interviews that others agents did are
7 being gathered with the accompanying notes.

8 THE COURT: This would include the Department
9 of Labor investigation, is that right?

10 MR. BECKER: Absolutely. As counsel
11 indicated earlier in chambers, Special Agent Schram
12 prepared some of these reports.

13 THE COURT: We have spent a lot of time and I
14 understand what you are saying and we will be satisfied
15 with that if that is what you produce.

16 MR. BECKER: Then I have to offer in evidence
17 Government's Exhibit 368 which is a public record under
18 seal, the National Weather Service reports for November
19 28th, November 29th and November 30th, 1988.

20 THE COURT: You want to do this in front of
21 the jury?

22 MR. BECKER: Sure, but then we will have
23 legal argument. And then we have Rule 29.

24 THE COURT: I am fine with that. I wanted to
25 ~ make sure you remembered the jury isn't here and you

3280

1 might want it to be.

2 MR. BECKER: Not particularly.

3 MR. OSGOOD: We agree it can be published in
4 our case.

5 MR. BECKER: If you want to use it or pass it
6 around, I don't care.

7 MR. PETERS: We have no objection.

8 MR. BECKER: Government's Exhibit 368, then I
9 would offer that in evidence at this time.

10 THE COURT: How did you characterize that?

11 MR. BECKER: A record from the National
12 Climatic Data Center relating to the temperature and
13 other weather conditions in Kansas City, Missouri on
14 November 28, 1988, November 29, 1988 and November 30,
15 1988.

16 THE COURT: Is that admitted without
17 objection?

18 MR. O'CONNOR: Yes, Your Honor.

19 THE COURT: All right, it is admitted.

20 (PLAINTIFF'S EXHIBIT 368 WAS RECEIVED IN EVIDENCE)

21 MR. BECKER: Then I would also offer and I
22 thought I had offered it during Agent True's testimony,
23 as a public record under seal, Government's Exhibit
24 420 which are Motor Vehicle records showing that the
25 ~ Datsun 280ZX was titled to Darlene Edwards.

1 MR. BUNCH: No objection with the exception
2 of relevancy.

3 THE COURT: All right, admitted with that
4 exception.

5 (PLAINTIFF'S EXHIBIT 420 WAS RECEIVED IN EVIDENCE.)

6 MR. BECKER: Then I am prepared when the
7 jury comes back in, to state that is the end of the
8 government's case in chief.

9 MR. O'CONNOR: Could I get a ruling from
10 Martindale before I make an opening statement?

11 THE COURT: I am not sure I can make a
12 ruling.

13 MR. O'CONNOR: I can stay away from it.

14 THE COURT: I have looked at the tape from
15 beginning to end and I can envision circumstances which
16 it would be usable and I can envision lots of
17 circumstances it wouldn't be usable. And it just
18 depends what the record has been at the point you might
19 want to use it. I don't think it is something that
20 ought to be alluded to in opening statements because at
21 best it would be impeachment and not substantive
22 evidence in your case.

23 The way I intend to rule on it, I am not
24 going to admit it as substantive evidence in your
25 ~ case.

1 MR. O'CONNOR: Can I say in the opening
2 statement that Mr. Martindale was interviewed and gave
3 a videotape statement to the police without alluding to
4 what is in the video statement versus what he told
5 them? In other words, tell them what he said without
6 referring to the video but tell them he did, in fact,
7 make a videostatement.

8 MR. BECKER: I don't believe the videotape
9 statement is admissible, Mr. O'Connor. This witness
10 is fully prepared to admit he said to the police
11 everything that is in that statement. I went over it
12 with him. Mr. O'Connor has gone over it with him. So
13 I don't see an independent basis for this tape to be
14 shown to the jury.

15 THE COURT: That is my view of it now, Mr.
16 O'Connor, and I think it would take some pretty drastic
17 changes of things for the ruling to be different. I
18 don't think there should be reference to it until it
19 becomes usable.

20 MR. O'CONNOR: So I can say he gave a
21 statement.

22 THE COURT: Yes.

23 MR. PETERS: Two other housekeeping matters.
24 One, the list we have provided, we have marked as
25 ~ defendants', 40 of the witnesses, and what we are

1 planning on doing, don't we need to go ahead and have
2 the government rest, us make our motions for judgment
3 of acquittal at the close of the governments case
4 before we bring the jury in?

5 THE COURT: He wants to rest in the jury's
6 presence and the record reflects he has rested. And I
7 will let the record show that I have Darlene Edwards'
8 motion and I assume everybody else is ready with the
9 motion and I will not sustain any motions at this
10 time. Is your motion filed?

11 MR. PETERS: Ours is filed and I don't know
12 if we were on the record in chambers. The only part I
13 need to make in addition on behalf of all the
14 defendants, we are asking for judgment of acquittal at
15 the close of the state's case pursuant to Rule 29, for
16 the government failing to prove each and every element
17 of the crime charged. I stand on the additions to that
18 that are contained in our motion that was joined by the
19 other defendants.

20 THE COURT: Then as to all defendants, the
21 Rule 29 motions are denied.

22 MS. HUNT: For purposes of the record, on
23 behalf of Skip Sheppard, I want to add judgment of
24 acquittal on the Statute of Limitations and also renew
25 my motion for severance.

3284

1 THE COURT: The Statute of Limitations has
2 been dealt with and you will preserve your position on
3 that. Mr. Bunch.

4 MR. BUNCH: I have the first witness who
5 has been here all morning, Mr. Fernau, and I know how
6 the hour is getting, I would hope we can get him on
7 this morning with your indulgence.

8 THE COURT: Mr. O'Connor exercises some
9 control in making that opening statement.

10 MR. OSGOOD: I presume we are included in the
11 motion for judgment of acquittal.

12 THE COURT: Everybody is.
13 (Proceedings in the courtroom in the jury's presence)

14 THE COURT: Good morning, folks. Have a
15 seat. I am sorry we had you wait all this time but we
16 have been working since nine o'clock and I think we
17 have accomplished quite a bit that will help move the
18 case along. And we are prepared to do that now.

19 Mr. Becker.

20 MR. BECKER: Your Honor, that is the end of
21 the government's case in chief.

22 THE COURT: All right, with the appropriate
23 record indications as we have already agreed to, at
24 this time to whatever extent the defense wishes to
25 ~ proceed, it may do so.

3285

1 PLAINTIFF RESTS

2 MR. O'CONNOR: May it please the Court.

3 THE COURT: Mr. O'Connor.

4 OPENING STATEMENT ON BEHALF OF BRYAN SHEPPARD

5 MR. O'CONNOR: Mr. Becker, Mr. Miller, and
6 members of the jury.

7 It is my privilege at this time to talk
8 with you and discuss with you what evidence I will
9 present in this case.

10 Thefirst witness who will testify in
11 this case is a man by the name of Fernau. He
12 works at Sealright.He is the president of
13 Sealright.He will tell you that Bridgette
14 Dornhoffer,who testified in this case, that he
15 had never talked with Miss Dornhoffer, was never
16 asked or requested to write a letter on her
17 behalf. That the letter was presented in this
18 Court and is in evidence as Defendants' Exhibit
19 No. 19, is a forgery.That there is certain
20 information in that letter that would never be in
21 any letter written on behalf of an employee. That
22 Bridgette Dornhoffer was a temporary employee.
23 She would never be asked to work weekends as this
24 letter alluded to and other information as it
25 ~ relates to this letter.

3286

1 He will also tell you that while Miss
2 Dornhoffer was still in the courthouse he received
3 a call from the U. S. Courthouse, one of the
4 person's attorneys trying to find out if this
5 letter was legitimate and he told them it was not.

6 The next testimony will come from a man
7 by the name of Frederick Martindale. On February
8 27, 1991 Frederick Martindale was summoned, picked
9 up by the Kansas City, Missouri Police Department
10 and taken down for questioning relating to the
11 deaths of the Kansas City firefighters. After
12 about two or three hours of questioning, Mr.
13 Martindale denied any involvement in the crime,
14 any knowledge of the crime, and he was allowed to
15 go home.

16 Approximately a week later, March the
17 6th, he was asked to come back to the police
18 department. When he got back to the police
19 department more questioning ensued. And at this
20 time Detective John Fraise, an experienced member
21 of the Kansas City, Missouri Police Department
22 Homicide Unit, and Rosalind Allen conducted this
23 interrogation. During the interrogation of
24 Frederick Martindale, he told them various stories
25 ~ about not being involved. When they confronted

3287

1 him with the fact they had witnesses who had
2 placed him at the scene and given information he
3 was involved, he suddenly broke down and said, "I
4 did it. I committed this crime."

5 For the next couple of hours they
6 continued to interrogate him and told him that the
7 night of the explosion he and another man,
8 although varied accounts during the interrogation
9 who was with him, at one point even included his
10 father, who was at the time of the interrogation
11 deceased but would have been alive at the time of
12 the explosion.

13 He told them he went up that night to
14 steal explosives and when there were no explosives
15 to steal, they set fire with cardboard and straw;
16 that cardboard and straw was placed under the
17 trailers at the scene and set on fire. That they
18 left the scene, him and another individual. They
19 went out to Lee's Summit to I think his father's
20 house. Spent the night, slept. And the next
21 morning, when they awoke, they saw the news what
22 had happened. He immediately got on the phone and
23 called his dad to tell his dad he and his friend
24 had been at the site that night, had started the
25 ~ fire and believed they were responsible for this

3288

1 explosion.

2 He will tell you his dad basically shut
3 him off, would not talk to him about it. And he
4 and this other man had a pack not to tell anybody
5 about what had happened until he came to the
6 police on March the 6th, 1991.

7 During the interrogation the detectives
8 showed him the photographs, maybe some of the
9 photographs you saw in evidence. They told him
10 this is what he had done, he was responsible and
11 he agreed with that. He told them he was
12 responsible. And that night, after questioning,
13 they booked him in to the Kansas City detention
14 jail and booked him for homicide and held him
15 overnight.

16 The next morning they came back, took
17 him from that unit again. He will tell you he sat
18 up there overnight. He knew he was facing a life
19 sentence because they told him that. He knew he
20 was facing big trouble for this explosion. And he
21 again reiterated the confession he had given the
22 night before.

23 The officers will be here to tell you
24 about that confession. They will also tell you at
25 ~ the end of the confession when he was asked if he

1 had anything else to say, that he said he was
2 sorry, he did not intend this to happen and did
3 not intend to kill anyone.

4 He also has written a personal note to
5 the two detectives thanking them for taking the
6 time and spending the time and getting him through
7 this to get this off his shoulders.

8 Mr. Martindale will be here today to
9 testify and you will hear that testimony.

1-0 The next material and as it relates to
11 the Martindale confession, I would ask you to
12 listen to five things that were said in that
13 confession.

14 He said that there was cardboard there.
15 Defendants' Exhibit 3, which is in evidence, shows
16 you cardboard that was there.

17 He told the detectives there was a
18 caterpillar there that night. Defendants' Exhibit
19 4, the caterpillar.

20 He told the detectives he had to cross
21 something that looked like a creek, Defendants' 5,
22 something looking like a creek.

23 He told the defendants there was a
24 bobcat there. I think, if you remember the
25 ~ testimony of Mr. Norm Collins, they said this uni

3290

1 loader was something that could be mistaken for a
2 bobcat.

3 And he also told them there were things
4 sitting on a platform. If you remember Mr.
5 Collins' testimony, he talked about the drilling
6 devices that were on the platform.

7 Those are all things Mr. Martindale told
8 the police that night and the next morning when he
9 confessed to this crime.

10 The next evidence will come from John
11 Fraise. John Fraise, I believe will talk to you
12 about the confession he took from Frederick
13 Martindale and under the circumstances that
14 confession was taken.

15 Then he will tell you during his
16 investigation he talked to Kathy Marburger and
17 Karen Baird. He will tell you he talked to Kathy
18 Marburger and Kathy Marburger told him of any
19 admissions made by Bryan Sheppard on a three-way
20 phone call. In fact, the call she made to him,
21 which she made a report of, she said just the
22 opposite. She had talked with Karen Baird and
23 Karen Baird had told her Bryan Sheppard had made
24 no admissions.

25 ~ At no time in 1989 during this

1 investigation did Karen Baird tell anyone that
2 Bryan Sheppard made any admission from the jail.
3 And, in fact, in her statement that Fraise took,
4 she said that no admissions had been made. And
5 when he did call from jail he said I didn't do it.

6 Zinn and Fraise both will tell you, I
7 believe, they talked to Kathy Marburger. I think
8 they will tell you she called them on more than
9 one occasion. They will tell you that at no time
10 did she ever in any of the phone calls to them
11 tell them that Bryan Sheppard had called from jail
12 and said I was there and set the fire that caused
13 the explosion and I'm sorry, the firemen weren't
14 intended to be killed.

15 They will tell you they talked to her
16 and those words were never spoken to them and
17 never told in their investigation. And what they
18 will tell you, if she would have said that they
19 would have gone out and interviewed her and taken
20 a statement. And that would have been true of
21 critical evidence as it was at the time.

22 At no time did Kathy Marburger or Karen
23 Baird tell Detectives Zinn or Fraise -- and you
24 have to remember the timing Bryan Sheppard is in
25 ~ jail charged with a crime. These are witnesses

1 now calling the police after he is in jail. These
2 would be neutral witnesses to the police. At no
3 time did they ever tell Fraise or Zinn that these
4 admissions had been made on a three-party phone
5 call by Bryan Sheppard, my client.

6 Detective Zinn will also testify, I
7 believe, and Detective Fraise, they talked to
8 Deborah Riggs. And after talking with Debbie
9 Riggs and giving her story that I think you will
10 remember the evidence was -- and this is
11 Government's 26 -- that the Riggs were parked
12 somewhere here, somewhere right in here, and they
13 saw someone run across the highway. And that is
14 what caused them to leave where they were to go
15 check it out.

16 They will tell you they went there on
17 December the 1st, put their vehicle where the
18 Riggs' vehicle would have been. And I believe
19 they will tell you you could not see what Debbie
20 Riggs said she saw the night of the explosion.

21 The next evidence will come from Bruce
22 Trammell. Bruce Trammell is the paper route man
23 that worked with Steve Morales. He will tell you
24 that he drove a separate vehicle the night of the
25 ~j explosion and that he was never in the same

1 vehicle with Steve Morales after the paper drop
2 was made because Morales did the apartments and he
3 did the paper boys and threw the papers from his
4 truck.

5 He will tell you it always was his
6 practice to go across 85th Street to Holmes
7 because the route was 91st, I think, to 103rd,
8 Holmes to Wornall. I think he will tell you at no
9 time did he get in a vehicle with Steve Morales
10 and go across and up the area where the explosion
11 happened.

12 Then you will hear from John McGovern.
13 You heard testimony, on Direct Examination
14 Christine Mall, she was at a party some time in
15 1992 at Bryan Sheppard's house and Bryan Sheppard
16 made admissions about being involved in that
17 crime. And John McGovern was with her. John
18 McGovern will be here to testify he was present
19 and no admissions were made, nothing was said when
20 he left the party as Miss Mall testified about
21 keeping her mouth shut or not saying. And he will
22 be here to tell you about that conversation and he
23 was interviewed by an agent and a report was made,
24 Bob Guffey, a detective with the police
25 ~ department.

1 I believe you heard testimony from
2 Kimberly Finch. Miss Finch, while on the stand,
3 said she told Agent True and Agent Guffey, Bryan
4 Sheppard had burned the lock off the trailer to
5 gain access and he was yelling certain words or
6 saying certain curse words to Richard Brown in her
7 presence. I believe Detective Guffey will tell
8 you he took a report from her and none of that was
9 ever said to him.

10 Finally, we will produce for you the
11 jail records of Bryan Sheppard. Bryan Sheppard
12 was in the Jackson County Jail on July 26, 1989.
13 He was transferred to the Clay County Jail on, I
14 think it's August the 23rd, 1989 where he remained
15 until he was released from custody on December 29,
16 1989.

17 I believe after you have heard this
18 evidence and all the evidence, that you will find
19 that Bryan Sheppard is not guilty as charged.

20 Thank you.

21 THE COURT: Miss Franco.

22 MS. FRANCO: May it please the Court.

23 THE COURT: Yes, ma'am.

24 OPENING STATEMENT ON BEHALF OF DEFENDANT SKIP SHEPPARD

25 ~ MS. FRANCO: Counsel, ladies and gentlemen.

3295

1 My name is Elena Franco. You haven't
2 heard much from me since before the trial. And I,
3 along with Susan Hunt, represent Skip Sheppard,
4 Earl D. Sheppard.

5 I have elected to speak to you briefly
6 because you will not be hearing any evidence on
7 behalf of Skip Sheppard until tomorrow. Chances
8 are it may even be tomorrow afternoon. However, I
9 want to alert you you will hear testimony from
10 three different witnesses.

11 You will hear from Kevin Lamanske.
12 Kevin Lamanske is currently an over-the-road truck
13 driver, but in 1989 he was working for the Riggs
14 and Ameriguard. And he was working the night of
15 the tragic explosion.

16 Mr. Lamanske will tell you he worked
17 earlier that evening. He will tell you what he
18 can recall of that evening. And since he wasn't
19 on duty on that night, he doesn't have the details
20 to give you other than as to the time his shift
21 ended. He will also tell you he doesn't know the
22 Sheppards, has heard their names in the paper.
23 Actually, his opinion as to what goes on, what has
24 gone on to this date in this trial is unbeknownst
25 ~ to him. He is out of town most of the time. He

3296

1 has never heard of the Sheppards other than
2 through the paper and TV.

3 you will also hear testimony from
4 Elizabeth Harrigan who goes by the name Lisa.
5 Lisa Harrigan was Skip Sheppard's girlfriend
6 during 1988. She will tell you that the night of
7 the explosion she had had a date with Skip
8 Sheppard. They had spent the evening at Skip's
9 brother-in-law's house. They actually went to bed
10 after midnight. Again, she can only tell you what
11 she knows and knew firsthand.

12 She will tell you she went to bed. Skip
13 Sheppard went to bed next to her. The next
14 morning they were awakened. The household was in
15 an uproar. The children were all hyper. And she
16 will tell you Skip was there with her and she at
17 no time felt he had left her side.

18 You will also hear from Naomi Sheppard
19 who is Skip and **Frank**'s mother. She will allow
20 you a videotape tour of her home so you can see
21 for yourself the layout of this home, room-by
22 room, where all the doors are, where the
23 refrigerator, the dryer, the washing machine, the
24 closet, all their storage availability.

25 ~ She will also tell you about her

3297

1 relationship with John and Peggy Barchers, her
2 relationship with John Barchers' mother before she
3 died, how frequently they visited.

4 She will tell you about her
5 relationship with Lisa Harrigan. She will tell
6 you also about Patty Smith. And she will tell you
7 that Patty Smith was a woman that came around
8 their home for six weeks to eight weeks max and
9 was not Skip Sheppard's girlfriend.

10 And of great importance, I request you
11 listen very carefully to all the testimony but in
12 particular when she speaks to you regarding Steven
13 Kilgore who she will tell you she had not seen in
14 over 20 years and only chose to see him when he
15 called wanting to put a head stone on the grave of
16 her son Phillip. She will give you a overview of
17 that relationship and what she knew of Steven
18 Kilgore.

19 We would ask you to, as you all well
20 know, you have had volumes of evidence presented
21 and you will continue to get more evidence this
22 week from all the defendants, we ask that you keep
23 in mind that this is about Skip Sheppard when we
24 present testimony to you tomorrow and ask that you
25 ~ consider the evidence that we present to you as it

1 pertains to Skip Sheppard. And we are confident
2 when you weigh the evidence and take into your
3 hands Skip Sheppard, that you will be convinced he
4 had nothing to do with this tragedy.

5 Thank you.

6 THE COURT: Are there any other Openings?
7 Mr. Bunch is next in order.

8 MR. BUNCH: No statement, Your Honor.

9 THE COURT: Mr. Osgood.

10 MR. OSGOOD: Very briefly, Your Honor.

11 OPENING STATEMENT ON BEHALF OF THE DEFENDANT RICHARD BROWN

12 MR. OSGOOD: Ladies and gentlemen, as you
13 know, I represent Richard Brown. And I would ask you
14 to keep in mind the opening statement Mr. Peters gave
15 when the trial commenced, the opening statement of Mr.
16 O'Connor that he just made and, to the extent it
17 applies, to my client, the opening statement that
18 Miss Franco just made.

19 We will call several witnesses that will
20 tell you to some extent the whereabouts of Mr.
21 Brown earlier in the evening. And his grandmother
22 will testify as to events that occurred during the
23 first and second blast and the fact he was home
24 and, quite **frankly**, in a drunken stupor, having
25 ~ been out partying earlier in the evening.

3299

1 I would ask as you listen to the
2 defendants' witnesses you bear in mind the cross
3 examination and how that interplays in the course
4 of events.

5 And I think after you hear the testimony
6 you certainly will find beyond a reasonable doubt
7 the defendant is innocent.

8 Thank you.

9 MR. BUNCH: Call Mr. Fernau.

10 DEFENDANT DARLENE EDWARDS' EVIDENCE

11 HAROLD FERNAU,

12 having been sworn, testified:

13 DIRECT EXAMINATION

14 BY MR. BUNCH:

15 Q State your name, please.

16 A: Harold Fernau.

17 Q Mr. Fernau, where do you live?

18 A: I live in Overland Park.

19 Q And where are you employed?

20 A: I work for the Sealright Company in Kansas City,
21 Kansas.

22 Q And in what capacity are you employed with Sealright?

23 A: Director of Engineering.

24 Q How long have you been employed there?

25 ~ A: Fourteen years.

3300

1 Q I want to show you what has been received in evidence
2 as Defendants' Exhibit 19 and ask if you have
3 previously seen that document.

4 A: I saw this document about two weeks ago when someone
5 from your office faxed it to me to ask if I had written

7 Q This is a letter purportedly authored by you, is it
8 not?

9 A: Yes, sir.

10 Q To whom is it addressed?

11 A: It is addressed to Thomas Finch and Judge Howard.

12 Q And does it bear a date?

13 A: Yes, it does, January the 4th, 1994.

14 Q Is this letter on the letterhead of Sealright, your
15 letter?

16 A: No.

17 Q What is the difference or how can you tell that?

18 A: Well, my letterhead has Harold Fernau, General Manager,
19 across the top of it. Another fact is when my
20 secretary types, she always puts in my middle initials
21 with a colon and then her initials rather than, it's
22 HF/SF. That is not the way she does it. Another thing
23 is within the letter it states how many Saturdays and
24 her overtime. Her record shows she never worked

25 ~

Saturdays. And it is not my signature.

1 Q You have examined that signature, have you?

2 A Yes, sir.

3 Q You are testifying you did not sign that letter.

4 A I didn't write it nor did I sign it.

5 Q That's the next question. Are you the author of the
6 letter?

7 A No, sir.

8 Q Now, as a matter of fact, was Miss Dornhoffer an
9 employee of the Sealright Company?

10 A No, sir we brought her in as a temporary from the
11 Olsten Company, which is a temporary service, and I
12 believe our records show she worked for us ten weeks.

13 Q You did, at our request, review the personnel records
14 of the individual who alleges she worked for Sealright,
15 did you not?

16 A Yes, sir. We have no personnel records on her because
17 she didn't work for us. All we could do is go back to
18 Olsten and ask them to verify the timesheets she had
19 turned in to them.

20 Q Now, did this person bring her children in as she
21 worked for Sealright?

22 A No, sir. This is against our company policy.

23 Q Did she work all these Saturdays this exhibit alleges?

24 A No.

25 Q Have you, yourself, written letters of recommendation 1

3302

1 on behalf of employees or former employees?

2 A I would say that they are very rare and normally if we
3 write a letter of recommendation, it is very brief as
4 to the amount of time they work there, the position
5 they held and their salary will be given upon request.

6 Q All right, sir. My purpose in asking that has to do
7 with whether or not you would use language -- do you
8 have a copy of this letter?

A: Yes, sir.

10 Q If you would refer to the first page of that letter,
11 sir, Defendants' Exhibit 19. Would you utilize the
12 type of language that is in the first two paragraphs of
13 the letter dealing with the infractions she has had and
14 all of her great responsibility and loyalty to the
15 company and so forth?

16 A No, I would not.

17 Q And have you ever?

18 A No.

19 Q Do you know, Mr. Fernau, whether or not the United
20 States has been advised by you that letter was not
21 written by you?

22 A I had someone from the prosecution call me and ask if I
23 had written a letter, yes, sir.

24 Q And you so advised them as you are advising us today.

25 A I did not.

3303

1 Q Could you give the dates that Miss Dornhoffer worked as
2 an employee of, is it Olsten?

3 A: Olsten, yes. She worked from 11-21-93 to 1-30-94.

4 Q And never was employed by you or covered under any
5 benefits or the like.

6 A: No.

7 Q And you certainly did not ask Judge Howard to put her
8 on probation because of her excellent work past.

9 A: I certainly did not.

10 MR. BUNCH: Thank you, sir.

11 CROSS EXAMINATION

12 BY MR. PETERS:

13 Q Sir, my name is Pat Peters and I represent **Frank**
14 Sheppard and I may have misunderstood. You said that
15 you had received a call from somebody from the
16 government asking you about the letter that you have
17 been talking about, Defendants' Exhibit 19, is that
18 correct?

19 A: Yes, sir.

20 Q When they called you and asked you, did you write this
21 letter or is it a forgery, what did you tell them?

22 A: I said, no, I did not write the letter. That was about
23 the extent of it.

24 Q Do you recall Bridgette Dornhoffer calling you and
25 ~ asking you to write this letter?

3304

1 A: No, sir.

2 Q Do you recall her ever asking you in person to write
3 the letter?

4 A: No, sir.

5 MR. PETERS: Thank you very much. That is
6 all I have, Judge.

7 THE COURT: Anything else from the defense?
8 All right, you may cross.

9 CROSS EXAMINATION

10 BY MR. BECKER:

11 Q Good afternoon, Mr. Fernau. You and I met this morning
12 out in the hall, is that right?

13 A: Yes.

14 Q The call you got from somebody in my office, that was
15 about two weeks ago after this letter popped up in the
16 court.

17 A: That's exactly right. I have it written on my tablet
18 at my office but I don't know the exact date but about
19 two weeks ago.

20 MR. BECKER: I have nothing further, Judge.

21 MR. BUNCH: Nothing further, Your Honor. I
22 would move to pass Defendants' Exhibit 19 to the jury
23 at a time considered appropriate by the court.

24 THE COURT: Isn't this an admitted exhibit?

25 MR. BECKER: Yes.

3305

1 THE COURT: Was it admitted as a defense
2 exhibit?

3 MR. BUNCH: Yes, Your Honor, it was.

4 THE COURT: Okay, it may be published to the
5 jury. I don't think we need to do it right now. Don't
6 let us forget it.

7 All right, ladies and gentlemen, we will
8 just take an hour this noon hour. I don't want to
9 discommode you and don't rush through your lunch,
10 but if you can, as much as possible, be in the
11 jury room at one o'clock and we will start then or
12 as soon after that as we can.

13 In the meantime the government has
14 rested its case and we are into the defense
15 testimony. I urge you not to discuss the case,
16 keep an open mind and don't let anyone discuss it
17 in your presence and we will see you at about one
18 o'clock.

19 LUNCHEON RECESS

20 (Conference in the courtroom out of the
presence of the
21 jury.)

22 THE COURT: Mr. Peters.

23 MR. PETERS: The third request has been for
24 the DOL file, at least the 11-28-93 interview where
25 ~ Agent True had said they were still pursuing it. That

3306

1 was what they were focused on and I don't know if we
2 ever got a ruling on that one. I don't know how many
3 pages we have been talking about but I think we have
4 made a threshold showing this is something the
5 defendants would be entitled to.

6 THE COURT: Anything Agent True has been
7 reporting to or in the DOL file, anything that you have
8 talked about, as I understand, it would be strictly
9 hearsay and would not be Jencks material or subject to
10 any Rule 26 disclosure.

11 MR. PETERS: I think under the cases cited,
12 our position would be if Agent True was conducting
13 investigation or interviews of summaries that would,
14 pursuant to the cases, lead to discoverable material
15 or tend to exonerate as opposed to what had previously
16 been the standard of Mr. Becker going through and
17 determining it, I think we have made the threshold
18 showing it certainly is something that was presented
19 in their case in chief. That is the second prong, as
20 the Court has pointed out, among three things; one,
21 two, three. I think we have met two of the three
22 prongs. We only need to make one and I think that is
23 what triggers the Court in reviewing it in camera.

24 THE COURT: We have talked about this and
25 ~ at this point I am not going to require that

3307

1 production.

2 (The jury enters the courtroom.)

3 THE COURT: Everybody have a seat.

4 MR. O'CONNOR: Call Frederick Martindale.

5 DEFENDANT BRYAN SHEPPARD'S EVIDENCE

6 FREDERICK MARTINDALE,

7 having been sworn, testified:

8 DIRECT EXAMINATION

9 BY MR. O'CONNOR:

10 Q Mr. Martindale, I am John O'Connor. I represent Bryan
11 Sheppard. You and I have talked, is that correct?

12 A: Yes, we have.

13 Q Mr. Martindale, isn't it true that you are the person
14 who set the fire that caused the explosion that killed
15 six Kansas City firefighters.

16 MR. BECKER: Objection.

17 THE COURT: There was an objection.

18 MR. BECKER: I will withdraw the objection.

19 A: No.

20 Q On November 29, 1988 did you go to the construction
21 site at 87 and 71 Highway to steal explosives?

22 A: No.

23 Q On November the 29th, 1988 did you go to the
24 construction site where the six firefighters died,
25 jet gathered cardboard and straw, placed it under a trailer

3308

1 and set it on fire?

2 A No, I didn't.

3 Q The day after the explosion that killed the six Kansas
4 City firefighters were you in a house in Lee's Summit
5 where you called your father and told him about your
6 involvement in the explosion that had killed the
7 firefighters?

8 A No.

9 (Proceedings out of the hearing of the jury)

10 MR. O'CONNOR: Based on the responses of
11 this witness, I would now like to move to play the
12 videotape to impeach his statement he says he did
13 not set the fire the caused the explosion that killed
14 the six firefighters.

15 MR. BECKER: Oh, no. He has never been
16 confronted with a prior inconsistent statement.

17 THE COURT: You cannot ask him. He said
18 he did not do it. Did you ever say you did do it.

19 MR. O'CONNOR: Okay.

20 THE COURT: Then he has to say no to that
21 before you have something usable.

22 MR. O'CONNOR: I have two more questions and
23 then we need to come back up.

24 (Proceedings out of the hearing of the jury)

25 ~ Q Did you tell a detective with the Kansas City Police

3309

1 Department that you set the fire that caused the
2 explosion that killed the six Kansas City firefighters?

3 A: Yes, I did.

4 Q Did you tell them you did that because you were scared
5 of them and what they were saying to you?

6 A: Yes, I did.

7 Q Did you tell them that because you were intimidated by
8 them?

9 A: Yes.

10 MR. O'CONNOR: Can we approach.

11 THE COURT: Yes.

12 (Proceedings out of the hearing of the jury)

13 MR. O'CONNOR: I would now offer to play the
14 tape to show his demeanor, that he wasn't intimidated;
15 he wasn't scared and to show the jury his state of mind
16 at the time. He has told the jury the reason he gave
17 them this statement is because he was scared and
18 intimidated. The tape clearly shows. The Court had a
19 chance to look at it in camera. He wasn't threatened
20 or intimidated. I think the jury can look at the tape
21 and consider his demeanor and judge his credibility.

22 MR. BECKER: It is not an admission. He
23 admitted making the statement.

24 THE COURT: What are they judging, what
25 substantive testimony? He hasn't testified to

3310

1 anything.

2 MR. O'CONNOR: We are getting ready to go
3 into the confession and I think it is important now
4 for the jury to understand under what circumstances
5 that confession was made.

6 THE COURT: That is pure argument. There
7 is nothing substantial, nothing substantial. Just
8 argument.

9 (Proceedings in the hearing of the jury)

10 Q Mr. Martindale, do you remember being brought to the
11 police department on approximately February the 27th,
12 1991 to be interviewed regarding your involvement or
13 alleged involvement at that time in this explosion?

14 A: Yes.

15 Q And do you remember also in that interview, did you
16 deny any and all knowledge of the explosion to the
17 authorities?

18 A: Yes.

19 Q Did you then go back to the police department on March
20 the 6th, 1991?

21 A: Yes.

22 Q And did they again begin to interrogate you and
23 question you about your involvement in the explosion?

24 A: Yes.

25 Did the detectives inform you of some of the facts they

1 had learned in the investigation?

2 A Yes.

3 Q And did they tell you they had some witnesses against

4 you?

5 A Yes.

6 Q Did they tell you they knew how the fire was set and

7 where it was initially set?

8 A Yes.

9 Q Did they accuse you of being the person who did set the

10 fire?

11 A Yes.

12 Q At some point in their questioning of you when they

13 asked you to simply tell the truth, did you say to

14 them, "I was there", you lowered your head and said "I

15 was there"?

16 A Yes.

17 Q Were you asked to explain in further detail why you had

18 gone to the construction site?

19 A Yes.

20 Q Did you tell them your purpose of going to the

21 construction site was to steal explosives?

22 A Yes.

23 Q Did they tell you or did you tell them it was at 71

24 highway and 87th Street?

25 ~ A They told me.

1 Q They didn't tell you explosives were stored there, did
2 they?

3 A: No.

4 Q They didn't tell you explosives were stolen from there,
5 did they?

6 A: No.

7 Q Did you tell them when you were not able to locate any
8 explosives you had to do something so you set a trailer
9 on fire, did you tell them that?

10 A: Yes.

11 Q Did you tell them at some point your father had
12 accompanied you to the site?

13 A: Yes.

14 Q Did you tell them that because you knew your father was
15 deceased at the time you were giving this statement,
16 there would be no way for them to corroborate that?

17 A: Yes.

18 Q Did they tell you they had witnesses that said you were
19 there and you did it?

20 A: Yes.

21 Q Did they show you pictures of these witnesses that were
22 against you?

23 A: Yes, they did.

24 Q Did they tell you that some friends of your dad's, or
25 ~ acquaintances of your dad's, was one of the witnesses

1 against you?

2 A: Yes.

3 Q Did they show you photographs of the bodies of the
4 firemen?

5 A: Yes, they did.

6 Q And when they showed you the photographs, did they say
7 this is what you did?

8 A: Yes.

9 Q Did they say they were all dead because of you?

10 A: Yes.

11 Q Were they serious?

12 A Yes.

13 Q Did they put you in jail over night and hold you saying
14 you were being booked for homicide?

15 A: Yes.

16 Q Did they tell you they were booking you for the
17 homicide of the six firefighters?

18 A: Yes.

19 Q Did they tell you you are the guy responsible for what
20 happened?

21 A: Yes.

22 Q Did they tell you you were facing a long jail sentence?

23 A: Yes, they did.

24 Q Did they tell you you may be facing a life sentence?

25 ~ A Yes.

1 Q And you continued to tell them you were responsible.
2 A Yes.
3 Q Did they say *anything* to you about your sexual
4 persuasion?
5 A Yes, they did.
6 Q What did they say?
7 MR. BECKER: Objection. First of all, it is
8 hearsay.
9 THE COURT: I don't see how this relates to
10 what we are here for. Sustained.
11 Q Did they tell you that they thought you were gay?
12 MR. BECKER: Objection. Leading. Hearsay.
13 THE COURT: Sustained.
14 Q Was prison mentioned to you by them?
15 A Excuse me?
16 Q Was prison mentioned by these detectives?
17 A Yes.
18 Q Was prison mentioned to you as it related to whether or
19 not you were a gay individual?
20 A Yes.
21 Q What prison would have in store for someone like you?
22 A Yes.
23 Q Were you always consistent in telling them during this
24 entire interview you started the fire?
25 ~ A Yes.

1 Q Did you tell them I know I was there and I set the
2 fire?

3 A Yes.

4 Q You knew the consequences of what you were saying at
5 the time.

6 A Yes.

7 Q After you sat in jail over night before they
8 interrogated you the next *morning*, they told you to
9 think about everything.

10 A Yes.

11 Q The next morning is when you came down and gave them a
12 full statement admitting your involvement.

13 MR. BECKER: Judge, objection. Leading.

14 THE COURT: Sustained.

15 Q Did you give them a full statement the next morning?

16 A Yes.

17 Q During any of this interrogation by the detectives did
18 they tell you machinery was up there?

19 A Yes.

20 Q Are you sure of that?

21 A Yes.

22 Q Do you remember talking to me on Wednesday, January the
23 8th, 1997?

24 A Yes.

25 ~ Q You remember me bringing a court reporter with me and

1 asking you questions?

2 A Yes.

3 Q Page 38, line 7. Let me ask you a question again

4 before I ask this question. At any time during the

5 questioning did the defendants tell you machinery or

6 certain machinery was up at the explosion site?

7 A Yes, they did.

8 Q Yes, they did.

9 A Yes, they did.

10 Q Page 38, line 7, "Did either detective that talked to

11 you at any time during this whole process ever tell you

12 machinery was, certain machinery was up there?" "No,

13 not that I recall." Does that in any way refresh your

14 recollection?

15 A About?

16 Q Whether or not they told you about certain machinery

17 being up there.

18 A Yes.

19 Q Did they tell you?

20 A Yes, they did.

21 Q Did they tell you cardboard was laying around up there?

22 A No, they didn't.

23 Q Did they tell you an earth moving machine was up there?

24 A No.

25 Q Did they tell you that caterpillars were up there?

1 A: No.

2 Q Did they tell you a trailer was up there?

3 A: Yes.

4 Q Did you tell them cardboard was up there so you used
5 cardboard to start the fire?

6 A: Yes.

7 Q Did you tell them a caterpillar was up there at the
8 site where you started this fire?

9 A: Yes.

10 Q Did you tell them a bobcat was up there at the site
11 where the fire was started?

12 A: Yes, I did.

13 Q Did you tell them there was a creek up where you had
14 passed over that night at the time the fire was set?

15 A: Yes, I did.

16 Q Did you tell them something appeared to be sitting on a
17 platform up there?

18 A: Yes.

19 Q None of those five things I mentioned, they didn't tell
20 you about cardboard.

21 A: Right.

22 Q They didn't tell you about caterpillars.

23 A: No.

24 Q They didn't tell you about bobcats?

25 A: No.

3318

- 1 Q They didn't tell you about a platform.
- 2 A No.
- 3 Q Those are all things you told them independently.
- 4 A Yes.
- 5 Q Did you tell them you observed a work type truck
- 6 situated on the site around the trailers?
- 7 A Yes, I did.
- 8 Q Did you tell them you started the fire under the
- 9 trailer?
- 10 A No, I told them under the truck, not the trailer.
- 11 Q Did they tell you the fire started under the trailer?
- 12 A I don't really recall.
- 13 Q At some time during this investigation did you meet
- 14 Agent True that is seated at the table here?
- 15 A Yes.
- 16 Q Tell the jury when that was.
- 17 A That was I do believe right after Christmas this last
- 18 year. It was either right before or right after. I am
- 19 not too sure on the exact dates.
- 20 Q In the last couple of months.
- 21 A Right.
- 22 Q And when he approached you what did he ask you?
- 23 MR. BECKER: Objection. Hearsay.
- 24 THE COURT: That is right. Sustained.
- 25 ~ Q Did you give the detectives different scenarios who was

1 with you that night?

2 A: Yes, I did.

3 Q Did you tell them that in addition to setting the
4 trailer on fire you recalled a truck parked in close
5 proximity to the trailer that you guys also set on
6 fire?

7 A: Yes, I did.

8 Q And did you tell them you set the fire by lighting the
9 straw and cardboard to get the fire going?

10 A: Yes.

11 Q What kind of a car did you have back then?

12 A: It was a '78 four door Nova.

13 Q Black?

14 A: Yes.

15 Q Did they tell you your car had been seen there?

16 A: Yes, they did.

17 Q Did they tell you by whom?

18 A: I don't recall by whom.

19 MR. O'CONNOR: May we approach.

20 (Proceedings out of the hearing of the jury)

21 MR. O'CONNOR: Before I mention the video
22 statement I want to ask do you remember in your
23 video statement he said -- he told them on direct, I
24 believe he just said he set the truck on fire, not the
25 ~ trailer. On his video statement he said "There was a

3320

1 trailer, I am not sure which one it was. Then I
2 started picking up things right underneath, I was
3 setting them on fire", meaning he was sitting under
4 the trailer. I think that impeaches and I want to ask
5 him did he say that in his statement.

6 MR. BECKER: He also says mobile home.

7 MR. O'CONNOR: That's fine.

8 THE COURT: I can't believe we are spending
9 all this time on this. What is this man's substantive
10 testimony? You are setting up a straw man and trying
11 to light a fire to him, I guess. He hasn't said
12 anything. He hasn't said *anything* substantive. He
13 hasn't testified to *anything* except he was involved in
14 an investigation.

15 MR. O'CONNOR: He confessed to a crime.

16 THE COURT: Oh, fiddle. Come on. You have
17 seen that tape. You can see this man. You have seen
18 that tape.

19 MR. O'CONNOR: Why can't the jury see the
20 tape if it doesn't mean *anything*?

21 THE COURT: Because it is Rule 403 prejudice.

22 MR. O'CONNOR: I think it should be allowed
23 to be shown to the jury.

24 THE COURT: I understand and I have ruled on
25 ~ that.

1 MR. O'CONNOR: Next I want to ask him -- I
2 don't want to get another objection -- I want to get to
3 this question what True asked him.

4 THE COURT: You don't have to refer to the
5 statement to ask him that.

6 MR. O'CONNOR: No, I was going to ask him
7 what did Dave True and what he is going to say, he
8 asked me if I did it. That is what I want to know.

9 THE COURT: And he said?

10 MR. O'CONNOR: No.

11 MR. BECKER: What is the relevance?

12 THE COURT: Again it is another straw man.

13 MR. O'CONNOR: Judge, the labor thing in
14 our opinion was a straw man. They set it up and
15 knocked it down. Here is my stand honestly and
16 truthfully. I don't know if this guy did it or not.
17 I don't know this guy committed this crime but let's
18 assume, let's assume for argument purposes you are
19 right -- and I am not disagreeing with that -- what I
20 am saying under the theory of the prosecution in this
21 case there is no physical evidence. Here a man over
22 time has admitted. Under their theory of the case, he
23 should be prosecuted. That is argument, okay.

24 What I am saying, I don't know if this
25 ~ guy did it or not. I am not going to make a big

1 strong argument but he is a person who has
2 confessed to it.

3 THE COURT: You have shown that.

4 MR. O'CONNOR: Can I ask the other question?

5 THE COURT: It doesn't refer to the tape.

6 MR. BECKER: He could have asked True, did
7 you go talk to Martindale? Did you ask Martindale if
8 he did it. That is the witness to ask that question

10 THE COURT: You can still call True and ask
11 him that if you want to.

12 MR. O'CONNOR: Okay. You are saying I can't
13 ask him whether or not he gave a video confession. I
14 want to ask him if he gave a statement on videotape
15 which I think gives it more reliability.

16 THE COURT: Why is it relevant whether it is
17 on videotape.

18 MR. O'CONNOR: More reliability.

19 THE COURT: Are you trying to make them
20 wonder about the tape I wouldn't allow in evidence?

21 MR. O'CONNOR: Are you saying I can't ask him
22 this?

23 MR. BECKER: You can ask him what he said.

24 THE COURT: But not the video.

25 ~ MR. O'CONNOR: My *request is to ask it the*

1 other way but I am going to follow the court's
2 instructions.

3 THE COURT: Thank you.

4 (Proceedings in the hearing of the jury.)

5 Q Mr. Martindale, you remember when you talked with the
6 detectives, I want to ask you if you made this
7 statement to them. The question was, page 7, question
8 by Detective Fraise, "When you got to the site, tell us
9 what happened as far as your part is concerned?"
10 "Answer: I went to the site. There was a trailer or
11 mobile home, you know, I am not sure which one it was.
12 I got there and I started picking up things and I set a
13 whole bunch on fire and set it basically right
14 underneath. And I was setting cardboard on fire.
15 There was straw that caught on fire, a whole bunch of
16 junk laying around."

17 Did you tell the detective you put the straw and
18 cardboard underneath this trailer?

19 A: Yes.

20 Q At the end of your interview with the police did you
21 tell them that you did not intend to kill anyone?

22 A: Yes.

23 Q Did you tell them that you set the fire but did not
24 intend the consequences of what happened?

25 ~ Yes.

3324

1 Q Did you also write a note to Detective Fraise and
2 Detective Morrison, I believe is her name, Rosalind
3 Morrison, thanking them for getting this off your
4 shoulders?

5 A: Yes.

6 Q Did you tell them this was a big relief off your
7 shoulders after you made this statement about your
8 involvement?

9 A: Yes, I did.

10 Q I am going to hand you what has been marked as
11 Government's Exhibit 425 and ask you if that is what
12 you drew and handed to the detectives that day?

13 A: Yes, it is.

14 THE COURT: Which exhibit?

15 MR. O'CONNOR: 425 of the government 's.

16 THE COURT: Okay, you recognize that, is that
17 correct?

18 THE WITNESS: Yes, sir.

19 Q Do you know if you wrote that before or after you gave
20 your statement?

21 A: I am not real sure. I think it was before -- no, I
22 think it was before but I am not real sure.

23 MR. O'CONNOR: At this time I offer
24 Plaintiff's 425.

25 ~ THE COURT: It is admitted.

(PLAINTIFF'S EXHIBIT NO. 425 WAS RECEIVED IN EVIDENCE.)

MR. O'CONNOR: I don't believe I have any further questions. Thank you.

CROSS EXAMINATION

BY MR. PETERS:

Q Mr. Martindale, my name is Pat Peters. Can you tell us how tall you are.

A: I am six, three; six, four.

Q And ultimately in your final statement you indicated you had been to the construction site and set the fire with another particular individual, isn't that right?

A: Yes.

Q Who is that individual?

A: It was Billy Hardin.

Q And can you tell us how big a fellow Billy Hardin is?

A: He's a pretty good-sized fellow. I would say he's about 260, close to 300 pounds, not quite that big. He's about six, three.

MR. PETERS: I have no further questions.

THE COURT: *Anything* else?

MR. BUNCH: I have none, your Honor.

THE COURT: Mr. Becker.

CROSS EXAMINATION

BY MR. BECKER:

Q Good after on, Mr. Martindale. We met last week and

1 we discussed your testimony, is that right?

2 A: Yes.

3 Q Do you work at a local pizza store?

4 A: Yes, I do.

5 Q How long have you had that job?

6 A: It has been four years, almost four and a half years.

7 Q Had the same job for four and a half years.

8 A: yes, sir.

9 Q Going back to 1991, why did you confess to this crime?

10 A: Well, for one thing, I was scared and I wanted to get
11 out of there and I figured if I told them what they
12 wanted to hear they would go easier on me. So I told
13 them and they let me go.

14 Q Amazingly after confessing to killing six Kansas City,
15 Missouri firefighters you were released, is that right?

16 MR. PETERS: I object to the form of the
17 question as to "Amazingly".

18 THE COURT: Strike the "Amazingly".

19 Q After confessing to killing six Kansas City, Missouri
20 firefighters, you were released, is that right?

21 A: Yes, I was.

22 Q Up until 1996 were you ever contacted again by the
23 police department or anybody else?

24 A: No, I wasn't.

25 ~ Q Were you ever charged with this crime?

1 A: No.

2 Q You talked about a little bit with Mr. O'Connor you
3 lived in Lee's Summit, Missouri, is that right?

4 A: Yes, I did.

5 Q I am talking about now in November of '88, all right?

6 A: Yes.

7 Q In order to get to where your father was living, where
8 was your father living?

9 A: Off Holmes Road.

10 Q About what, 87th Street, is that right?

11 A: Around about there, yes.

12 Q How did you get from Lee's Summit to your father's
13 house?

14 A: Most of the time I drove straight down Bannister Road.

15 Q It would be west on Bannister and then take a right and
16 go straight up north on Holmes.

17 A: Yes.

18 Q Today do you know the construction site we are talking
19 about where this explosion occurred?

20 A: Yes, I know today.

21 Q When you go across Bannister from Lee's Summit and then
22 up Holmes, do you go past that construction site?

23 A: No.

24 Q In your statement to the defendants that next morning,
25 March 7th, 1991, did you tell them you left your l

3328

1 father's house and went down Holmes to the highway?

2 A: Yes, sir.

3 Q Would that be all the way down to 435 and then back
4 east or did you take Bannister usually?

5 A: I usually took Bannister. It was the quickest way for
6 me to go.

7 Q Did you ever get off Bannister before you got to Lee's
8 Summit?

9 A: No, it drops you right out into Lee's Summit.

10 Q In the statement I think Mr. O'Connor just read, did
11 you tell the detectives you either set fire to a
12 trailer or mobile home, is that what it was?

13 A: Yes.

14 Q Do you know if a mobile home was set on fire at that
15 site?

16 A: No.

17 Q In your mind is it fairly typical at a construction
18 site to have a caterpillar or bobcat or a truck?

19 A: Yes.

20 Q And Mr. O'Connor talked about with you, you remember
21 the statement you gave to him with a stenographer on
22 March 8th, 1997?

23 A: Yes, I do.

24 Q Did you tell Mr. O'Connor that the detectives told you
25 ~ where the site was?

1 A: Yes.

2 Q You didn't even know where the site was.

3 A: No.

4 Q Did you tell Mr. O'Connor that the detectives told you
5 about the bales of hay?

6 A: Yes.

7 Q Did you tell Mr. O'Connor that in the statement they
8 told you about the pickup truck.

9 A: Yes, I did.

10 Q Did you tell Mr. O'Connor in the statement they told
11 you about the trailer?

12 A: Yes, I did.

13 Q Did you tell Mr. O'Connor that -

14 MR. PETERS: I object to this as improper
15 impeachment. He has been asked these questions on
16 direct exam and didn't deny them.

17 THE COURT: He is on cross examination.
18 There is more latitude in cross examination.
19 Overruled.

20 Q Did you tell Mr. O'Connor you told the detectives what
21 they wanted to hear.

22 A: Yes.

23 Q Have you received a copy of this statement?

24 A: Yes, I have.

25 Q Did you read it?

3330

1 A: yes.

2 Q In all those 62 pages were you ever asked if you
3 actually set the fire?

4 A: No.

5 Q Did you set this fire?

6 A: No, I did not.

7 MR. BECKER: Thank you.

8 MR. O'CONNOR: Judge, I think, based on this
9 cross examination, that we should be allowed to play
10 the tape. It looks like a joke. "Amazingly, they
11 let you go home."

12 THE COURT: "Amazingly" is not in the record.

13 MR. O'CONNOR: He has made it clear to this
14 jury the emphasis on the statement was the reality, the
15 true reality if they thought this guy was a joke, they
16 would never have taken the video statement from him.

17 THE COURT: How could they possibly have
18 thought it was anything but a joke?

19 MR. O'CONNOR: They arrested him the day
20 before at eleven o'clock. There is a 20 hour rule.
21 When they played this video he had been there 20 hours.
22 They had no choice but to let him go. That is another
23 argument. They let him go but I think the video should
24 come in in light of this cross.

25 ~ THE COURT: That is denied.

1 (Proceedings in the hearing of the jury.)

2 Q A couple more questions, Mr. Martindale. Did you tell
3 the detectives that you had been drinking the night of
4 the explosion?

5 A: I do believe I was, yes.

6 Q And the night of the explosion were you drinking?

7 A: No -- I am not sure. I possibly was. I drank a lot
~ back then.

9 Q And you remember when the police took your statement
10 back before I ever met you, this would have been on
11 March 7th of 1991, page 9, do you remember
Detective

12 Fraise asking you this question: "Question: Now you
13 know this construction site to be right on 71
14 highway, is that correct?" "Answer: Yes."

15 MR. O'CONNOR: Thank you.

16 MR. BECKER: I have nothing else, Judge.

17 THE COURT: You may step down. Call your
18 next witness.

19 BRUCE TRAMMEL

20 having been sworn, testified:

21 DIRECT EXAMINATION

22 BY MR. O'CONNOR:

23 Q State your name to the jury, please.

24 A: Bruce Trammel.

25 ~ And where do you live, Mr. Trammel?

1 A In Polo, Missouri.

2 Q Did you live in Kansas City, Missouri at some time?

3 A Yes.

4 Q Do you remember when that was?

5 A I just moved to Polo about five years ago.

6 Q And back in November of 1988 did you run a paper route
7 here in Kansas City?

8 A Yes, I did.

9 Q Can you tell us how long you had run that paper route,
10 from what year to what year?

11 A No, I don't exactly remember the years I had the route
12 but when the explosion happened I had had it about six
13 months.

14 Q And tell us where your route was.

15 A It ran from 95th Street to 101st, from Holmes to
16 Wornall.

17 Q And did you have people working for you on that paper
18 route along with yourself?

19 A Yes.

20 Q Who worked for you? I am only talking about the time
21 of the explosion on November 29, 1988, who would you
22 have working for you?

23 A Steve Morales worked for me. He drove the second van
24 and I had two paper boys. I don't recall their names.

25 ~ Q And the van that Steve Morales drove, did you own that

1 van?

2 A: Yes, I did.

3 Q Did you give him that van to use as part of his job
4 working for you?

5 A: Yes, I did.

6 Q And did he have permission to drive that van when he
7 delivered papers for you?

8 A: Yes, he did.

9 Q At any time did you give Mr. Morales permission to
10 carry dynamite, blasting caps or detonator cords in
11 your van?

12 A: Absolutely not.

13 Q At any time did he have, to your knowledge, dynamite,
14 blasting caps or detonator cords in that van?

15 A: Absolutely not.

16 Q Were you notified at some time by the authorities your
17 van had been seized?

18 A: Yes, I was.

19 Q And when you gave your van to Mr. Morales to use, did
20 it have any drug paraphernalia or anything in it?

21 A: Absolutely not.

22 Q Now, the night of the explosion, let's go back, where
23 are the papers dropped for your route?

24 A: Eighty Fifth and Prospect.

25 Approximately what time did they get dropped there in

1 the morning?

2 A: They would vary but somewhere between, usually 2:30 to
3 3:00, 3:30, sometimes a little earlier, sometimes a
4 little later.

5 Q The night of the explosion did you arrive at the drop
6 site to get the actual papers in a separate vehicle
7 from Steve Morales?

8 A: Yes.

9 Q What kind of a vehicle did you have then?

10 A: I have a Chevy van.

11 Q What was your normal practice as it related to delivery
12 boys?

13 A: I usually would pick them up before the route so they
14 could put the papers together on the way to the route so
15 when we got to the route I could just throw the papers
16 out of the van.

17 Q And so the van the papers got thrown from, what was the
18 purpose of having a separate van for Mr. Morales to be
19 in?

20 A: He would take a second van into the large apartments
21 where you had to go inside each floor and deliver them
22 to the doors.

23 Q After the papers were dropped there that morning do you
24 remember approximately, and if you don't, don't say, do
25 you remember approximately what time the papers got

1 dropped on the morning of November 29th?

2 A No, I really don't.

3 Q And that is 1988, is that right?

4 A Yes.

5 Q Did you leave with Steve Morales in any vehicle before

6 the paper route to go to someone's house?

7 A Not that I recall.

8 Q Had you ever left in a vehicle with Steve at any time

9 he worked for you before the papers were dropped to go

10 to someone's house to visit?

11 A Not that I can recall.

12 Q And what was your normal route every day after you

13 picked up your papers, which way would you go?

14 A Go down 85th Street to Holmes, over to Holmes and 95th.

15 Q Why was it you would go down 85th Street?

16 A There was a gas station there. I would get my gas

17 there and a good way for me to start throwing my

18 papers.

19 Q Is that the route you went every time you delivered

20 papers back to the time Mr. Morales was working for

21 you?

22 A Excuse me?

23 Q Was that the route you took you delivered papers at the

24 time Mr. Morales worked for you, 85th Street?

25 ~ A Yes.

1 Q Now the morning of the 29th, 1988, November, did you
2 see which direction Mr. Morales left you had loaded the
3 separate van to make the deliveries?

4 A: No, I did not.

5 Q Did you ever go down 71 highway with Steve Morales
6 after the papers were delivered and dropped at the drop
7 site?

8 MR. MILLER: I object. That doesn't impeach
9 Mr. Morales.

10 MR. O'CONNOR: I believe it does.

11 THE COURT: I am afraid you will have to show
12 me that. You say you have it there. You can show me.

13 (Proceedings out of the hearing of the jury)

14 MR. MILLER: This is 119 pages and I don't
15 have it marked specifically.

16 THE COURT: You are asking him if they ever
17 went together down 71 highway after the papers were
18 delivered.

19 MR. O'CONNOR: Yes.

20 MR. BECKER: Delivered where?

21 MR. O'CONNOR: Off -- here's the point I am
22 trying to make. The papers get dropped, each of them
23 going in different vehicles. Morales said they all got
24 in the same vehicle. They went down 71 highway to
25 ~ start the route, no question about that. That's what

1 he said. That is what impeachment is about.

2 What he also said was before the
3 delivery they went down 71 to pick up the paper
4 boys. He said that as well.

5 THE COURT: He did say that.

6 MR. O'CONNOR: They later said after the
7 papers got dropped, they were all in the same vehicle
8 and they went down 71 highway to start the route.

9 MR. BECKER: Could you agree with that.

10 MR. MILLER: Okay.

11 MR. BECKER: It is the part that he never
12 said he went with anybody else.

13 THE COURT: Okay, let's go on.

14 (Proceedings in the hearing of the jury.)

15 THE COURT: Was that objection withdrawn?

16 MR. MILLER: Yes.

17 THE COURT: You may proceed.

18 Q Mr. Trammel, so we get relative terms here. I don't
19 want us to get mixed up. When I say the paper is
20 dropped, once they were dropped at the site and once
21 everyone loaded their vans and left, that is what I am
22 talking about now, okay?

23 A: Yes.

24 Q Now you are going to deliver papers to your route, did
25 ~ you ever go down 71 highway with Steve Morales after

1 the papers were dropped?

2 A: Not that I recall.

3 Q Were you and Steve Morales in the same vehicle together
4 doing the route after the papers were dropped that
5 morning, November 29, 1988?

6 A: Not that I recall.

7 Q Did you observe Mr. Morales the morning of November 29,
8 1988 loading his van with the papers for the apartment
9 deliveries?

10 A: Yes, I did.

11 Q And did you load your truck the morning of November 29,
12 1988, your van, I mean, for the hand deliveries or the
13 paperboy deliveries?

14 A: Yes.

15 Q On the night of the explosion after the papers were
16 dropped, did you get in a vehicle with Steve Morales
17 before you went to do your own route and go down 71
18 highway at any time?

19 A: Not that I recall.

20 Q Would there have been any reason for you to get into a
21 vehicle with Morales that morning after the papers had
22 been dropped?

23 A: No.

24 Q Did Mr. Morales ever give you an explanation how the
25 ~ dynamite and blasting caps, detonator cords were in

1 your van?

2 MR. MILLER: I object.

3 MR. O'CONNOR: Impeachment, Judge.

4 THE COURT: Impeaching who?

5 MR. O'CONNOR: What he later told the
6 detectives about how they got in his truck.

7 MR. MILLER: There is no impeachment with
8 this witness on that.

9 THE COURT: I don't think so. Sustained.

10 Q What was the color of the van that Mr. Morales was in
11 you owned the morning of the explosion, the one he was
12 driving?

13 A: White.

14 MR. O'CONNOR: Thank you.

15 CROSS EXAMINATION

16 BY MR. MILLER:

17 Q Good afternoon, Mr. Trammel. My name is Dan Miller.
18 We have spoken over the phone.

19 A: Yes, sir.

20 Q You used to go four-wheeling up there on that
21 construction site yourself, didn't you?

22 A: Yes.

23 Q Back then, in November of 1988, from that drop site at
24 85th and Prospect you could see security guard
25 spotlights up there on that hill, couldn't you?

1 A: I believe so.

2 Q And Mr. Morales was working the *morning* of the
3 explosion.

4 A: Yes.

5 Q Mr. Morales would get to the drop site before you
6 usually, wouldn't he?

7 A: Yes, he would.

8 Q And that morning the papers were late.

9 A: As I recall, yes.

10 THE COURT: "That morning" being the *morning*
11- of the explosion.

12 MR. MILLER: Yes.

13 Q The morning of the explosion, November the 29th, 1988,
14 the papers were late.

15 A: Yes.

16 Q And if the papers were late, Steve Morales would
17 sometimes leave and then come back, wouldn't he?

18 A: Yes.

19 Q On the *morning* of the explosion you weren't with him if
20 he left the drop site to go see a friend, were you?

21 A: No.

22 Q Now, Steve Morales would take 71 highway to get to his
23 route, wouldn't he?

24 A: Quite **frankly**, I don't know.

25 ~ Q he took different routes, didn't he?

3341

1 A: He did take different routes.

2 MR. PETERS: Objection. Argumentative. He
3 got the answer and then argued with the witness.

4 THE COURT: No, he didn't. Overruled.

5 Q He would sometimes take different ones to go to his
6 route, wouldn't he?

7 A: Yes, I didn't care which way they went as long as they
8 got the work done.

9 Q And that morning you don't recall seeing anyone that
10 you knew in front of their house hours before the
11 explosion, do you?

12 A: I don't follow you.

13 Q Okay, that *morning* of the explosion, the 29th, and you
14 are going to your route, you don't recall seeing anyone
15 that you knew in front of their house, did you?

16 A: Whose house?

17 Q Their house, whoever you knew. See what I am saying?

18 A: No.

19 Q That *morning* on the 29th, as you are doing your route,
20 did you see anyone out in front of their house that you
21 knew.

22 A: No.

23 Q And, in fact, when the explosion happened, you don't
24 remember where you were on your route, do you?

25 ~ A No.

1 MR. MILLER: No further questions.

2 MR. O'CONNOR: No further questions.

3 JOHN FRAISE.

4 having been sworn, testified:

5 CROSS EXAMINATION

6 BY MR. O'CONNOR:

7 Q Would you please state your name to the jury.

8 A: My name is John Fraise.

9 Q By whom are you employed?

10 A: The Kansas City, Missouri Police Department.

11 Q How long have you been with the Kansas City, Missouri
12 Police Department?

13 A: A little over 24 years now.

14 Q What assignment do you have presently?

15 A: Currently I am assigned to the Intelligence Unit.

16 Q As part of that work do you work in this building?

17 A: Yes, I do.

18 Q Back in 1988, '89, can you tell the jury where you were
19 assigned.

20 A: At that time I was assigned to the homicide.

21 Q How long had you been a homicide detective in 1989,
22 '88? A About a year.

23 Q And how long did you stay at that job?

24 A: Oh, roughly, six and a half years.

25 ~ Q Had you had other investigative positions, detective

1 positions within the police department before that job?

2 A Yes, sir.

3 Q Now, as part of your job as working in the homicide

4 unit, did you work on the investigation into the deaths

5 of the six firefighters?

6 A yes, sir.

7 Q And could it be said you were one of the lead

8 detectives, how would you say what your role was?

9 A Initially I was just one of the detectives that was

10 assigned to the squad that worked that day.

11 Q Did you work with several other detectives?

12 A Yes.

13 Q Did you work with a Detective Zinn?

14 A Yes, I did.

15 Q During that investigation did you come in contact with

16 a lady by the name of Karen Baird?

17 A Yes, sir.

18 Q And can you tell us how you came in contact with Karen

19 Baird initially?

20 A If you would have a copy of her report, it would help

21 me refresh my memory.

22 Q Sure. I believe these two are the two you did,

23 Detective Fraise. Take your time and look at those.

24 A I remember this, yes.

25 ~ Q cave you had a chance to review those before coming to

3344

- 1 court today?
- 2 A Some, yes.
- 3 Q Did you want to use those to refresh yourself?
- 4 A If you don't mind.
- 5 Q Sure. Can you tell us when you first came in contact
- 6 with Karen Baird?
- 7 A On 10-3-89 at about two o'clock in the afternoon.
- 8 Q Was that at her residence?
- 9 A Yes.
- 10 Q And was she then at some point asked to come down to
- 11 the police station to give a formal statement?
- 12 A Yes, she was.
- 13 Q Do you see on one interview, that interview shows it is
- 14 like two in the morning, is that about right?
- 15 A Well, that is what that says but I don't recall it
- 16 being two o'clock in the morning. I honestly don't
- 17 recall the time.
- 18 Q That was my next question because it looks like the
- 19 statement that is taken from her is not until about,
- 20 how many hours later according to the statement?
- 21 A Five thirty in the afternoon.
- 22 Q It looks like she would have been in custody 15 hours,
- 23 not in custody but at the police station, does that
- 24 ring with your recollection?
- 25 ~ A No, not at all.

3345

1 Q Did you interview Karen Baird about any knowledge she
2 might have about the explosion?

3 A: Yes, I did.

4 Q And I am assuming you wrote a report and in the one
5 instance you wrote a report and the other instance you
6 took an actual statement from her, is that true?

7 A: That is true.

8 Q Have you taken pride in writing your police reports?

9 A: Yes.

10 Q Did you take caution they're accurate and truthful and
11 complete?

12 A: Yes, sir.

13 Q And you were asking Karen Baird, I am assuming,
14 questions to try to get answers from her what knowledge
15 she may have about this case?

16 A: Yes.

17 Q And did you ever come in contact with Karen Baird again
18 during your investigation after those two interviews?

19 A: Not that I recall, no, sir.

20 Q Did you ever get a call from Karen Baird giving you
21 further information?

22 A: Not that I recall.

23 Q Did Karen Baird ever tell you that Bryan Sheppard had
24 called her from jail and was confessing to the crime,
25 saying he was there, he ran across the street and ran

3346

1 into a ditch, did she ever tell you that?

2 A No.

3 Q Had she told you that would you have written it in the
4 report?

5 A Absolutely.

6 Q Would you have gone out and interviewed her?

7 A Yes.

8 Q During your investigation did you talk to a Kathy
9 Marburger?

10 A I recall that name. And again, sir, if you have a copy
11 of the report I could refer to.

12 Q Sure. Let me give you this.

13 A Thank you. According to this report it appears to be a
14 copy of one I had typed on 9-21-89, Miss Marburger
15 telephoned the homicide unit.

16 Q And is that a report you read before coming to court
17 today?

18 A Briefly, yes, sir.

19 Q And was that provided to you by Mr. Becker or someone
20 on his behalf for you to look at?

21 A Yes.

22 Q Evidently Kathy Marburger called the homicide unit, is
23 that true?

24 A Yes, sir.

25 ~ Q You talked with her.

1 A: Yes.

2 Q And you made a report of what she told you.

3 A: Yes.

4 Q Did she ever claim in her call to you she had any
5 firsthand knowledge of any facts as it related to this
6 case?

7 A: No, sir.

8 Q Did she ever relate to you that she had a firsthand
9 conversation or was on a three-way phone conversation
10 with Bryan Sheppard in which he said I set the fire
11 that caused the explosion and he didn't mean to do it?
12 Did she tell you anything like that?

13 A: No, sir.

14 Q Did she tell you she had talked with Karen Baird?

15 A: Yes, sir.

16 Q And without saying what she said did she tell you she
17 had gotten certain information from Karen Baird?

18 A: Yes, sir.

19 Q Now, did she ever say anything to you about any
20 admission Bryan Sheppard had made to her on any three
21 way phone conversation?

22 A: No, sir.

23 Q If she had told you she had heard on a three-way
24 conversation an admission by a person who was charged,
25 ~ not at that time, was in jail at the time, would you

3348

1 have made a report?

2 A: Yes, sir.

3 Q Did Kathy Marburger ever, to your knowledge, call you
4 and tell you Bryan Sheppard was in jail making
5 admissions to her over a telephone?

6 A: No.

7 Q If she had at any time called and told you that, would
8 you have made a report of it?

9 A: Yes, I would have.

10 Q Would you have gone out and seen her in person and
11 gotten a report from her?

12 A: Yes.

13 Q Someone confessing like that, is that pretty serious
14 information if you have someone that is making an
15 admission?

16 A: Yes.

17 Q In working at the homicide unit were there ATF agents
18 working hand-in-hand during the initial investigation?

19 A: Yes.

20 Q Did ATF agents have access to the homicide files as
21 well as you had access to that file?

22 A: Yes.

23 Q Any time within the last year or two years did Special
24 Agent Dave True ever call you and ask you about any
25 phone conversations?

1 MR. BECKER: Objection, what someone else
2 said to this detective.

3 THE COURT: It sounds like you are getting
4 into the substance of what he said.

5 MR. O'CONNOR: No, I am asking did he ever
6 call.

7 THE COURT: The fact of the call is not
8 objectionable.

9 MR. BECKER: I don't think that is where the
10 question was headed.

11 Q Did you ever receive a call from Dave True regarding
12 Kathy Marburger?

13 MR. BECKER: May we approach.

14 (Proceedings out of the hearing of the jury.)

15 MR. BECKER: I thought we said not the
16 substance.

17 THE COURT: Now you are getting into what it
18 was about.

19 MR. O'CONNOR: About a person.

20 THE COURT: Regarding?

21 MR. O'CONNOR: A person, not what they said.

22 MR. BECKER: That is what they said. And
23 Agent True could have been cross-examined by all of
24 you.

25 ~ THE COURT: Sustained.

3350

1 (Proceedings in the hearing of the jury)

2 Q You were willing to share with anyone any information
3 you had about this case, weren't you, that was in law
4 enforcement.

5 A: Yes.

6 Q I am going to hand you what has been marked as
7 Defendants' Exhibits 41 and 42. This is regarding
8 Frederick Martindale. Take your time and look at
9 those, if you would. Have you had a chance to
look at

10 those. And, first, as it relates to Exhibit 41, is
11 that an investigation or approval, what is
called a may

12 I, you have to get permission from a sergeant to book
13 someone for an investigation?

14 MR. BECKER: This is direct examination. Can
15 he have non-leading questions.

16 THE COURT: Why don't you ask him what it is.

17 Q What is it?

18 A: It is a copy of an investigation and approval report
19 that requires a supervisor from the homicide unit to
20 sign okay for someone being incarcerated.

21 Q Is that the one that was done on Fred Martindale I
22 believe on March -

23 A: March the 6th.

24 MR. O'CONNOR: At this time I would offer in
25 ~ evidence Defendants' 41.

1 MR. BECKER: No objection.

2 THE COURT: Admitted without objection.

3 (DEFENDANTS' EXHIBIT 41 WAS RECEIVED IN EVIDENCE.)

4 Q Hand you Exhibit 42 and ask you, sir, what that is.

5 A: Well, this is two things. One on the top portion of it
6 is a copy of what we call a booking slip. When you
7 formally book someone in the city jail this form is
8 filled out. Then the one below it is a copy of a
9 release order, when you release someone from jail, that
10 also has to be signed off by a supervisor.

11 Q Is that the booking form for Frederick Martindale?

12 A: The booking form for Frederick Martindale for March 6th
13 and released March 7th.

14 MR. O'CONNOR: At this time I offer
15 Defendants' 42.

16 MR. BECKER: No objection.

17 THE COURT: Admitted.

18 (DEFENDANTS' EXHIBIT 42 WAS RECEIVED IN EVIDENCE.)

19 Q As I understand it, you interrogated a man by the name
20 of Frederick Martindale.

21 A: Yes.

22 Q And he gave a confession to this crime, is that true?

23 A: Yes.

24 MR. BECKER: Objection. Leading.

25 ~ THE

COURT: It was leading but it was

1 answered.

2 Q Karen Baird, looking in that first big paragraph for my
3 question, did Karen Baird ever tell you -

4 MR. BECKER: Objection. Leading.

5 THE COURT: I am not sure.

6 Q Is there any mention?

7 THE COURT: Is the other withdrawn?

8 MR. O'CONNOR: Yes, I will go somewhere else.

9 Q Was there any mention by Karen Baird in your interview
10 with her about Kathy Marburger being on the phone when
11 Bryan Sheppard came by the morning of the explosion?

12 A: Yes, sir.

13 Q Tell us where that is. Read that portion to us, if you
14 would.

15 A: "I called Kathy Marburger after the first explosion" -

16 THE COURT: What is he reading from?

17 MR. O'CONNOR: His statement of Karen Baird.

18 MR. BECKER: That has already been read once
19 to this jury.

20 THE COURT: All right.

21 Q Go ahead.

22 A: "I called Kathy Marburger after the first explosion to
23 see if she heard anything about the explosion on her
24 scanner."

25 ~ Q Were you told -

1 MR. BECKER: It goes on for quite a bit. I
2 don't object if they read the whole thing but I do
3 object we just take one sentence here.

4 Q I am just trying to find out one thing in there that
5 says Kathy Marburger was on the phone when she was
6 having discussions with Bryan Sheppard there at her
7 house, where Kathy Marburger heard the discussion, did
8 she tell you that?

9 A: I don't recall that, no, sir.

10 Q Did Kathy Marburger tell you she called Baird the
11 morning of the explosion and heard Bryan Sheppard in
12 the background saying that you should have seen what we
13 seen, or anything like that? Did Kathy Marburger ever
14 tell you that?

15 A: No, sir, I don't recall that, no.

16 Q If she had told you would you have put it in the
17 report?

18 A Absolutely.

19 MR. O'CONNOR: That is all the questions I
20 have.

21 THE COURT: Let's go in order. Miss Hunt.

22 CROSS EXAMINATION

23 BY MS. HUNT:

24 Q Detective Fraise, my name is Susan Hunt and I represent
25 ~ Skip Sheppard. When you were investigating this case

3354

1 did you have an opportunity to interview several
2 witnesses about their knowledge?

3 A Yes, ma'am.

4 Q Were some of those interviews videotaped?

5 A Yes, madam.

6 Q Do you remember an interview you did with a Douglas
7 Bayliff?

8 A No, ma'am.

9 Q If I would hand you his statement, would that refresh
10 your recollection?

11 A I will try. I don't recall these. This obviously has
12 got my name to it and I am not disputing that but I
13 just don't recall.

14 Q How long ago was this interview taken, does it say on
15 there?

16 A October.

17 Q That was when you were involved in investigating this
18 case.

19 A I was still involved in the case, yes, ma'am.

20 Q At that time, do you recall around September, October,
21 somewhere in that area in '89, was there a reward out?

22 A I don't recall clearly.

23 Q Could have been.

24 A Could have been.

25 ~ Q Okay, and you have no recollection of this interview

1 whatsoever?

2 A: No, ma'am.

3 Q Was it a videotaped interview?

4 MR. BECKER: Objection. The witness just
5 said he doesn't have any recollection.

6 THE COURT: I don't know how he would know
7 that. Sustained.

8 MS. HUNT: That is all I have.

9 CROSS EXAMINATION

10 BY MR. OSGOOD:

11 Q Detective Fraise, I am John Osgood and I represent
12 Richard Brown. I am not going to go over the
13 statements one-by-one. I just want to ask you a couple
14 of procedural questions. If during the course of an
15 interview with a potential witness in this case, that
16 witness would have said to you that Richard Brown
17 admitted involvement in some way in this offense, would
18 you have put that down in your report?

19 MR. BECKER: Objection. Hypothetical -- I
20 will withdraw the objection.

21 Q Police training, by police procedure, training and as a
22 detective if you would have interviewed some witness
23 and that witness would have said during the course of
24 that interview Richard Brown admitted involvement in
25 ~ this, would you have put it down in that statement?

3356

1 A: Yes, sir.

2 Q That would have been an important fact.

3 A: Yes.

4 Q If they didn't in a first interview, in a follow-up
5 interview that person changed it and added that
6 statement, you would have put that in your statement.

7 A: Yes.

8 Q If there was a third interview, even if they didn't
9 mention it in the first two, you would have put it
10 down, wouldn't you?

11 A: I could.

12 Q I am not going to go over the Marburger and Baird -
13 Miss Marburger was the blind lady, wasn't she?

14 A: Yes, sir.

15 Q Did she at any time ever mention hearing Richard Brown
16 say one thing?

17 A: No, sir.

18 MR. OSGOOD: Thank you, sir.

19 CROSS EXAMINATION

20 BY MR. BECKER:

21 Q Good afternoon, Detective.

22 A: Mr. Becker.

23 Q We have worked together for a number of years, not on
24 this matter but other cases, is that right?

25 A: Yes.

1 Q I would like to talk to you a little bit about the
2 timing of the conversations that Mr. O'Connor was
3 asking you about and I will give you again the three
4 reports; one relating to Kathy Marburger and the next
5 two that deal with Karen Baird. When you look at those
6 three reports, chronologically which one happened
7 first?

8 A: The interview with Kathy Marburger.

9 Q Is it fair to say then that Kathy Marburger brought you
10 over or introduced you to Karen Baird?

11 A: Yes, sir.

12 Q And have we reviewed that report, that Kathy Marburger
13 report, prior to your testimony today?

14 A: Yes, sir.

15 Q Are there a number what can fairly be called errors on
16 that report? For example, the listing of a Bryan
17 Sheppard' B associate as a Bobby Brown.

18 A: Yes, sir.

19 Q That would be Richard Brown, wouldn't it?

20 A: That's correct.

21 Q And the address on that report relating to Karen Baird,
22 is that an incorrect address?

23 A: Yes, sir.

24 Q So after you speak to Kathy Marburger, she takes you
25 ~ over to Karen Baird, is that right?

1 A: Yes, sir.

2 Q And then Karen Baird, as Mr. O'Connor, has asked you
3 about, you get a statement from her in which she tells
4 you that Bryan Sheppard and Richard Brown were there
5 the morning of the explosion, is that right?

6 A: At her house, yes, sir.

7 Q Right. And she tells you and you put down in your
8 report that Kathy Marburger called her; just couldn't
9 remember if it was before Bryan was there or after
10 Bryan was there, is that right?

11 A: Yes, sir.

12 Q Did you go back then and talk to Kathy Marburger about
13 those telephone calls?

14 A: No, sir.

15 Q And you were working with Detective Zinn, is that
16 right?

17 A: Yes, on this particular occasion; yes, sir.

18 Q And I want to show you another report of an interview
19 with Karen Baird, take a look at that. Have you talked
20 with Detective Zinn about contact he might have had
21 with Karen Baird?

22 A: I am sure I would have but I honestly don't recall that
23 from this report, no.

24 Q Just to talk about Frederick Martindale a minute, in
25 trio statement or confession to you and Detective

3359

- 1 Morrison, did he talk about going between Lee's Summit
2 where he lived and where his father lived at 87th, off
3 of Holmes?
- 4 A Yes, sir, he did.
- 5 Q And on that map, which is Government's Exhibit 1, is
6 this 85th Street that runs right past where Karen Baird
7 and Bryan Sheppard lived?
- 8 A Yes, sir.
- 9 Q This street running north and south, is that Paseo?
- 10 A Yes, sir.
- 11 Q I'm sorry, that would be Troost.
- 12 A Troost, yes.
- 13 Q Seven Eleven is Paseo.
- 14 A Yes.
- 15 Q And then this is Troost. The next one west, is that
16 Holmes off the left edge of Government's Exhibit 1?
- 17 A Yes, sir.
- 18 Q If you were going to go down to Bannister Road, if you
19 went down Holmes, you would end up down here, is that
20 right, which is Bannister Road?
- 21 A Yes, sir.
- 22 Q And obviously that never goes past the blast site, does
23 it?
- 24 A No.
- 25 ~ Q IS that what Martindale told you his route was between

3360

1 Lee's Summit and his father's house?

2 A: Yes, sir.

3 Q Mr. O'Connor asked you about conversations with Agent
4 True, are you aware in the last several years since
5 '94, '95, Agent True was working with Sergeant Forbes
6 of Bomb and Arson and Detective Guffey of Homicide and
7 Officer Jerry Ludwig of the Patrol Division?

8 A: Yes, sir.

9 Q Are you aware the federal government had access to all
10 the files of the homicide investigation that occurred
11 in the many years you were working on the case?

12 A: Yes.

13 MR. BECKER: Thank you.

14 REDIRECT EXAMINATION

15 BY MR O'CONNOR:

16 Q Have you found when criminals confess crimes, do they
17 always remember exact addresses, exact locations where
18 they committed their crimes?

19 A: No.

20 Q And someone who had been drinking and had committed a
21 crime such as this, you wouldn't expect them to be able
22 to remember the address as well either, would you?

23 MR. BECKER: We don't know what criminal we
24 are talking about, Judge.

25 ~ THE COURT: That is true. You better be

1 specific.

2 Q If Mr. Martindale was drinking at that time and given
3 this, drinking at the time of the crime, and gave this
4 statement to you -

5 MR. BECKER: Objection, form and says he was
6 drinking. He knows what the statement is but he
7 doesn't know what happened there.

8 MR. O'CONNOR: I will withdraw it. It is
9 confusing.

10 Q As to Marburger and Baird, if they would have called
11 you at any time and given you firsthand information
12 regarding phone conversations with Bryan Sheppard in
13 which he was confessing to the crime, would you have
14 made a report of it?

15 A: Yes, sir.

16 Q Does any such report exist?

17 A: I am not aware of one.

18 MR. O'CONNOR: Thank you.

19 THE COURT: All right, sir, you may step
20 down. Thank you for coming.

21 We will take our afternoon recess.

22 Don't talk about the case.

23 RECESS

24 (Conference in the courtroom out of the presence of the
25 ~ jury.)

MR. BECKER: I want to recall Detective Fraise. I forgot to ask him four questions.

MR. O'CONNOR: And we don't have an objection. Jack and Virginia Sheppard are not going to testify in the case. We have had a long discussion over the noon hour here and pursuant to Mr. Becker having no objection to them being in the courtroom as long as I assured him they were no longer witnesses. And I am assuring the court they are no longer witnesses.

The next three are Zinn, Guffey and McGovern. And we will offer the jail records and that's it. No more defense witnesses today.

We want to talk a little bit about Guffey. Guffey interviewed Kimberly Finch and Kimberly Finch had her testimony typed up and it basically starts on page 13 and goes to page 18, the areas I am talking about in here. This is direct examination by the government. She mentions things like Bryan said something about wiping fingerprints off and that Bryan was in an argument about Richard trying to keep his mouth shut about what he knew. I asked her on page 19 -- they were in the front yard bobbing for apples -- I want to ask her those two questions, "Did she tell you that Bryan Sheppard said anything about wiping

1 fingerprints off at the scene?" "Did Bryan Sheppard or
2 Richard Brown have an argument or did she report they
3 had an argument in which Bryan told him to keep the
4 'F'ing mouth shut?"

5 MR. MILLER: The reason I am objecting, he
6 never challenged her with those statements. These are
7 what he challenged.

8 I agree he can impeach, Did you tell
9 Detective Guffey you went to his party?" And she
10 said, "I told him no." I agree he can impeach her
11 with that. But then after that, "Did you tell
12 Detective Guffey he made all these statements?"
13 Which ones. She has been testifying. He didn't
14 pin her down on any statements, just picking
15 anything out and I am going to object to that.

16 THE COURT: But she did say, "Yes, I did."
17 In other words she said she told him that he made all
18 of these statements they just talked about. We are
19 beyond the point of any return on all this. I realize
20 you have to make your case.

21 MR. BECKER: Mr. O'Connor has informed me
22 Jack and Virginia Sheppard will not be testifying in
23 this matter. If he would so state on the record, I
24 don't object to them being present.

25 ~ THE COURT: We have already done that.

1 MR. O'CONNOR: Those are the two questions.

2 I figure we will make a record at the end of the case
3 on all the defendants not testifying.

4 THE COURT: Yes, that is going to be the
5 case. All right, let's get the jury.

6 (The jury enters the courtroom.)

7 THE COURT: Have a seat, please. Okay, Mr.
8 Becker.

9 MR. BECKER: Thank you, Judge.

10 THE COURT: I will remind you, sir, you are
11 still under oath.

12 Q Detective, I had a few more questions I had to ask you.
13 In March of 1991 when Martindale confessed did he say
14 he was with anyone?

15 A Yes, sir.

16 Q Who was that?

17 A Billy Hardin.

18 Q Did you follow up on the statement made to you by
19 Martindale by trying to find Billy Hardin?

20 A Yes.

21 Q Did you find Billy Hardin?

22 A Yes.

23 Q Did you interview Billy Hardin?

24 A Yes.

25 Q Did Billy Hardin say he was with Martindale that night?

1 A: Yes.

2 MR. OSGOOD: Objection. That is hearsay. He
3 can ask him what he did as a result of the interview,
4 Your Honor.

5 MR. BECKER: That's fine, Judge.

6 THE COURT: I think that would be better.

7 Q After interviewing Billy Hardin was Martindale ever
8 charged with this crime?

9 A: No, sir, he wasn't.

10 MR. BECKER: Thank you.

11 MR. O'CONNOR: I just have a couple other
12 questions.

13 FURTHER DIRECT EXAMINATION

14 BY MR. O'CONNOR:

15 Q Did he also state that he was with a person by the name
16 of Shawn Bryant that night as well? Did he give you
17 that name?

18 A: Yes, sir, he did.

19 Q Did you ever talk to Shawn Bryant?

20 A: I believe I did, yes, sir.

21 Q Is it uncommon for people who would be a potential
22 codefendant in a case to deny involvement in the case?

23 A: No, sir.

24 MR. O'CONNOR: No further questions.

25 I THE COURT: Thank you, Detective. Call your l

1 next witness.

2 VICTOR ZINN,

3 having been sworn, testified:

4 DIRECT EXAMINATION

5 BY MR. O'CONNOR:

6 Q Would you state your name for the record, please.

7 A: Victor Zinn.

8 Q By whom are you employed?

9 A: The Kansas City, Missouri Police Department.

10 Q How long have you been with the Kansas City, Missouri
11 Police Department?

12 A: Almost 20 years.

13 Q And in November of 1988, at the time of the explosion
14 that took the deaths of six Kansas City firefighters,
15 were you working in the homicide unit at that time?

16 A: Yes.

17 Q Were you assigned as one of the investigators in the
18 case?

19 A: Yes.

20 Q As a result of being assigned one of the investigators
21 in the case did you have contact with a Karen Baird?

22 A: Yes.

23 Q Did you interview Karen Baird along with Detective
24 Fraise where you took a five page statement?

25 ~ A Yes.

1 Q Did you also then take another interview of her on
2 November the 29th, '91 when she called you about
3 certain information in this case?

4 A Yes.

5 Q Have you had a chance to look at the reports that were
6 written as a result of your questioning of Miss Baird
7 on those two occasions?

8 A Yes, I have.

9 Q And can you tell us whether at any time Miss Baird ever
10 told you that Bryan Sheppard had been on the phone and
11 confessing about being involved in this case, himself?

12 A I would have to look at my report exactly to make sure
13 exactly what statements were made.

14 Q I will show you the two reports that I have. You are
15 entitled to read all of this but this is probably what
16 I will be referring to.

17 A These are the same reports I referred earlier, yes.

18 Q At any time did Karen Baird tell you Bryan Sheppard had
19 called on the telephone and confessed to being involved
20 himself in this explosion?

21 A No.

22 Q Did Karen Baird ever tell you that Bryan Sheppard was
23 at the site of the explosion and ran across the street
24 into a ditch?

25 ~ A No.

3368

1 Q Did you ever talk with a Kathy Marburger during your
2 investigation in this case?

3 A: Yes.

4 Q And how was it you talked with Kathy Marburger?

5 A: She would frequently -- I'm sorry, infrequently called
6 the homicide unit.

7 Q When you say "infrequently", how many times would you
8 say she called the homicide unit during this
9 investigation?

10 A: I wouldn't be able to give you an exact number, even
11 close. There were numerous times she called and she
12 would ask for Detective Fraise and after a period of
13 time he wouldn't be in the office, she inquired as to
14 who I was and if I was working with him. And I would
15 say yes. I would say I talked to her four or five
16 times.

17 Q Detective Zinn, did you say she frequently -

18 A: Infrequently. Initially I said frequently and I
19 misspoke to say infrequently.

20 THE COURT: Your view she made infrequent
21 calls to the homicide unit.

22 THE WITNESS: Yes.

23 Q And I understand you talked to her on at least four or
24 five occasions yourself?

25 A: Yes.

3369

1 Q Did you listen to what she had to say?

2 A: Yes.

3 Q And did she ever give you any firsthand knowledge, any
4 firsthand information she had about this case?

5 A: I am not quite sure what you mean by "firsthand".

6 Q Something that was told her or was she telling you
7 something that other people had told her?

8 A: I believe most of the information she gave was passed
9 on from someone else.

10 Q Did she ever tell you in any of the four or five
11 conversations you had with her she had been on a three
12 way phone conversation with Bryan Sheppard from jail
13 and he said he had set the fire that caused the
14 explosion and that he did not intend the firefighters
15 to be killed, did she ever tell you that?

16 A: No.

17 Q If she had told you that, what would you have done?

18 A: Initially I would have tried to get a statement from
19 her. Gone out to wherever she was at. I would also
20 have tried to include defendant Fraise on it. It would
21 have been better for us to take a videostatement from
22 her, try to have brought her downtown but because of
23 her debilities, that may not have been possible.

24 Q Were you aware from your conversations with her, she
25 ~ was

blind?

3370

1 A: Yes, I had some information Detective Fraise had given
2 me.

3 Q And so I understand it, would you have believed this
4 kind of information where the defendant was on the
5 phone confessing the crime, that would be pretty
6 substantial information?

7 A: Absolutely.

8 MR. O'CONNOR: No further questions.

9 THE COURT: Mr. Peters.

10 MR. PETERS: No questions.

11 MR. BUNCH: No questions.

12 THE COURT: Mr. Osgood.

13 MR. OSGOOD: No questions.

14 CROSS EXAMINATION

15 BY MR. MILLER:

16 Q Most of the time when you talked with Miss Marburger,
17 it was very brief, wasn't it?

18 A: Yes.

19 Q and you would give the call to Detective Fraise,
20 wouldn't you?

21 A: If he was available, yes, I would pass it off.

22 Q And the last time you would have spoken to Miss
23 Marburger was back in '89.

24 A: It would have been many years ago, yes.

25 ~ Q Because then the investigation was given on to ATF,

1 wasn't it?

2 A: Yes.

3 Q Now there was one phone call that Karen Baird told you
4 about though, right?

5 A: That's correct.

6 Q And that is when she called your office on November the
7 29th, right?

8 A: Here again I need reports relative to that.

9 Q This will remind you of the date.

10 A: Okay. Yes.

11 Q And in that phone call to you -

12 MR. O'CONNOR: I object, what she would have
13 told him. I believe she has testified already what she
14 told him. Now for him to testify what she told him is
15 hearsay; that is not impeaching her.

16 THE COURT: But if he testifies she told him
17 something contrary to what she testified she told him,
18 then it sounds like impeachment.

19 MR. O'CONNOR: I agree but it won't be
20 contrary to what she testified before the jury. Can we
21 approach?

22 THE COURT: Yes.

23 (Proceedings out of the hearing of the jury.)

24 MR. MILLER: His question was that Karen
25 ~ Baird never called saying Bryan Sheppard in any way

1 confessed when, in fact, she did call in and say Bryan
2 Sheppard had called her and made a threat to her about
3 saying anything about this.

4 THE COURT: That was?

5 MR. O'CONNOR: That was asked after Karen
6 Baird said, yes, I made the phone call and, yes, Bryan
7 made the threat. Now to ask him if he made the threat
8 is irrelevant. I asked did he call her and tell her
9 about an admission and not about threats.

10 MR. MILLER: This detective basically
11 testified Karen Baird never told him about any phone
12 call from Bryan. That can be read as a confession
13 and it is a phone call to her from Bryan she told
14 this detective about.

15 THE COURT: I think since he has testified on
16 direct examination she didn't say anything about Bryan
17 in his phone calls with her and he asked if that would
18 have been a report, now here is something in a report.

19 MR. O'CONNOR: I object for this reason: The
20 testimony has been from Karen Baird exactly to that,
21 that she told the police he threatened her. That is in
22 evidence. Two, my questions were geared, did she ever
23 call you to tell you about any confession from Bryan.

2 4 Now for them to ask in this question is
25 ~ to buttress the fact. It's hearsay. It's already

1 before the jury.

2 THE COURT: But it is impeachment of him on
3 direct examination.

4 MR. O'CONNOR: AS to what?

5 THE COURT: Did she ever tell him anything on
6 the telephone?

7 MR. O'CONNOR: About confessing to the crime,
8 no, this does not impeach that.

9 MR. MILLER: This is a phone call to her from
10 Bryan and that he knows about and it goes to knowledge
11 of the crime. It goes to the crime, she did in fact
12 call him and told him she had a phone call from Bryan
13 and talking about his involvement.

14 MR. O'CONNOR: Then I would be allowed in
15 the phone call on October 4th where he took this
16 statement, "She asked Bryan exactly did he do it and
17 he said no." I can ask him about that.

18 Karen Baird has already said this
19 happened. It's already before the jury, one.
20 Secondly, Karen Baird said before the jury she did
21 tell Fraise that Bryan had made no admission
22 over the phone.

23 I think this is misleading to the jury
24 now to ask him this question. It is totally
25 misleading.

1 MR. MILLER: I think it is the opposite.

2 She did tell this detective about a phone call Bryan
3 made to her. If we let that go, that is misleading.

4 THE COURT: I think in this confused state, I
5 will let him inquire.

6 MR. O'CONNOR: I want to inquire about the
7 October 4th statement he talked about, where he said
8 he didn't do it.

9 MR. MILLER: We have covered that.

10 MR. O'CONNOR: I never covered that. This is
11 now muddying the waters because this talks about
12 threats already before the jury.

13 My questions to this man, did Karen
14 Baird ever tell you this man had confessed. That
15 was it. I didn't say did she ever call you and
16 give you information.

17 THE COURT: She called and said he
18 threatened. That is tantamount to a confession.

19 MR. O'CONNOR: I f you are reading it that
20 way, I guess it is admissible but I don't read it
21 that way.

22 THE COURT: All right. Proceed now.

23 (Proceedings in the hearing of the jury.)

24 Q In that conversation you had with Miss Baird over the
25 ~ phone, she told you about a phone call she got from

1 Bryan Sheppard, didn't she?

2 A: Yes.

3 Q And she told you that his remarks to her over the
4 phone, that she related to you were this, "I know a lot
5 of people in the neighborhood and they will take care
6 of anyone that will testify against me", right?

7 A: Correct.

8 Q And although she didn't take it as a threat, she was
9 scared by the remarks, correct?

10 A: Yes.

11 Q She did, in fact, tell you about a phone call she got
12 from Bryan about this incident.

13 A: Yes.

14 MR. MILLER: No further questions.

15 REDIRECT EXAMINATION

16 BY MR. O'CONNOR:

17 Q Did she ever say that she received a phone call from
18 Bryan Sheppard in which he said I was at the site, at
19 the scene, and ran across the street and ducked into a
20 ditch?

21 A: No.

22 Q In your interview of her on October the 4th, October
23 the 3rd, 1989, did she tell you she had asked Bryan
24 Sheppard if he had done the explosion on the phone?

25 ~ MR. MILLER: I object. This is beyond the

1 scope of Cross. It is also exculpatory.

2 MR. O'CONNOR: It is relevant in light of
3 the previous cross examination, Judge, as to these
4 phone calls.

5 THE COURT: Cross examination as to one phone
6 call doesn't open up every phone call that has ever
7 been made.

8 MR. O'CONNOR: They are saying these are
9 admissions and I want to ask about something that is
10 not an admission which would be contrary to that
11 statement.

12 THE COURT: I am going to sustain that.

13 MR. O'CONNOR: No further questions.

14 MR. PETERS: Can we approach.

15 THE COURT: Yes.

16 (Proceedings out of the hearing of the jury.)

17 MR. PETERS: I just don't know how you want
18 to handle it. He has some stuff I would use in regard
19 to Riggs. I am not calling Riggs until tomorrow. Do
20 you want me to go ahead and do it while he is on the
21 stand for expediency?

22 MR. BECKER: I didn't understand the Riggs
23 were going to be allowed to testify at all.

24 MR. OSGOOD: It would be relevant to my
25 ~ witnesses,

1 THE COURT: I think you better do anything
2 today that is based on a proposition these people are
3 going to be allowed to come back and be recalled for
4 further cross examination. Assuming it is impeaching.

5 MR. BECKER: We had direct and cross.

6 THE COURT: As a matter of fact, Mr. Becker
7 points out where does this fit in, what are you doing
8 now? This is a defense witness and there was direct
9 and there was cross. Now what is this?

10 MR. PETERS: This would be direct on an issue
11 related to the points I discussed with the court.

12 MR. MILLER: We are outside the scope of
13 Cross.

14 MR. BECKER: If I may, I don't think Mr.
15 Peters indicated he was going to call this witness. I
16 don't think you ever indicated you were calling this
17 witness.

18 MR. PETERS: He is on my list.

19 MR. BECKER: Okay, you're right I just
20 thought after Mr. O'Connor asked questions, then the
21 next attorney would ask questions so we would only
22 have one cross. I thought that was the way we were
23 proceeding.

24 MR. PETERS: This is the first witness
25 ~ coming up. My stuff is completely different and that

3378

1 is why I approached the bench.

2 MR. MILLER: I don't think it matters who
3 asked him. It is outside the scope of Cross.

4 THE COURT: I am not going to go on that
5 basis. We will just give this defendant a separate
6 right of direct examination.

7 MR. OSGOOD: Two or three questions relating
8 to Cross.

9 THE COURT: Do it now and then we will do
10 Peters with his direct.

11 (Proceedings in the hearing of the jury.)

12 CROSS EXAMINATION

13 BY MR. OSGOOD:

14 Q Detective, my name is John Osgood and I represent
15 Richard Brown. In your report anywhere when you were
16 testifying about the conversation with this witness
17 with regard to Mr. Bryan Sheppard, was Richard Brown
18 mentioned at all?

19 A: No.

20 Q Do you recall the woman ever saying during the course
21 of this conversation that Richard Brown was present
22 during such a phone call?

23 MR. MILLER: I object. This is outside the
24 scope of cross.

25 ~ THE COURT: It really is, Mr. Osgood. The

1 scope rule means anything that is an objectionable
2 question. I am going to sustain it.

3 MR. OSGOOD: All right. That is all. Thank
4 you.

5 THE COURT: Now, Mr. Peters has some
6 questions which in effect constitute a new Direct
7 Examination of this witness on behalf of his client.

8 DIRECT EXAMINATION

9 BY MR. PETERS:

10 Q Good afternoon, Detective. I am Pat Peters. How are
11 you doing?

12 A: All right.

13 Q Back in 1988 did you have an occasion to interview
14 Robert and Deborah Riggs?

15 A: Yes.

16 Q And during the course of that interview I am going to
17 be talking about an interview on December 1st, 1988
18 with Deborah Riggs, a December 5th, 1988 interview with
19 Deborah Riggs and a December 31st interview with
20 Deborah Riggs. If at any time you need to refresh your
21 recollection with the notes, let me know and I have got
22 them up here.

23 Going first to December 1st of 1988 did
24 you and Detective Fraise re-interview the Riggs in
25 an attempt to recreate the scene they had told you

3380

1 about where they were sitting in one place; excuse
2 me, Deborah Riggs was sitting in one place and
3 observed two men down by the trailer?

4 A: I am assuming your dates are accurate, I would say yes.

5 Q Would you tell all of us what it was that the officers
6 did to recreate that scenarios.

7 A: I believe that is the one you are speaking of; it was
8 just John Fraise and myself.

9 Q That's right.

10 A: We responded out to the scene. It was dark. And we
11 parked our department vehicle as close to the same
12 position as the station wagon the Riggs were in, and I
13 proceeded to go northbound on 71 highway on foot to the
14 general area that Deborah said she saw the individuals
15 crossing the road.

16 Q And the area that you are describing is the area where
17 the office trailers were, north of 71, in between the
18 median, is that correct?

19 MR. O'CONNOR: Maybe you want to use the
20 photograph.

21 Q On the monitors now is Government's Exhibit 24 and
22 where my finger is indicating now, there has been
23 testimony that was where the Riggs' vehicle had been
24 located and the construction trailers are down in this
25 area. What area did you park the patrol car to try and

3381

1 corroborate their entire story?

2 A: This is a view from the southeast?

3 Q That's correct.

4 A: About the center of the picture there is a dirt road
5 that goes down and goes across the northbound lanes of

7 Q You are right here.

8 A: Yes.

9 Q It gets into the southbound lanes.

10 A: Their vehicle was parked almost exactly to the west of
11 where that gravel road comes into the interstate
12 southbound lanes.

13 Q That would be indicating the left side of this picture.

14 A: Right.

15 Q What direction was it? What area did you go to to
16 attempt to recreate what you had been told happened
17 that night?

18 A: I walked northbound, left in that picture, on the
19 emergency lane of 71 highway past Blue River Road.

20 Q Blue River Road is indicated by my finger now.

21 A: That would be the next street horizontal, across.

22 THE COURT: I am a little worried about
23 counsel doing the indicating. Could you step down and
24 indicate on the exhibit what you did.

25 ~ (Witness complies.)

1 A: Their car would have been parked right about here. And
 2 that is where we parked the police car. And I went on
 3 foot along the side of the road up, oh, probably midway
 4 between this tree line and this road on this side of
 5 the street. And Detective Fraise was still up by the
 6 car. I went across the road and back. And after a
 7 while I walked back down to where he was at and asked
 8 if he saw me.

9 Q Based on the information that you had from conducting
 10 that experiment, did you have an occasion to confront
 11 the Riggs with the improbability of them being able to
 12 see somebody walking toward the trailers?

13 A: Yes.

14 Q And first as to Deborah Riggs, what did she tell you?

15 MR. MILLER: I object to this. This doesn't
 16 impeach Miss Riggs.

17 THE COURT: Not at least so far. If you want
 18 to come up and tell us where it is impeachment, so far,
 19 I don't see it.

20 (Proceedings out of the hearing of the jury.)

21 MR. BECKER: What was the impeachment?

22 MR. PETERS: She said she saw people walking
 23 to the trailer and the police recreated.

24 MR. BECKER: You made that point.

25 THE COURT: You have made the point. There

3383

1 is evidence of the point in addition to which I don't
2 think this is a recreated physical scene.

3 MR. BECKER: I'm sorry, Mr. Peters. What
4 was the question. I don't understand the impeachment.

5 THE COURT: He is trying to get independent
6 proof you can't see walking from where Deborah Riggs
7 sat.

8 MR. BECKER: That part I have got. The next
9 question that was objected to, what did Debbie Riggs
10 say to you. Debbie Riggs has never been asked about
11 her conversations.

12 THE COURT: You have a lot more physical
13 facts to demonstrate before you can recreate this.

14 (Proceedings in the hearing of the jury.)

15 Q Detective, you and Detective Fraise went out there to
16 make that recreation, how did you decide where to place
17 your cars and where to walk, who did you talk to to
18 gain that information?

19 A: There was an initial interview with Deborah on the day
20 of the explosion, really that morning. And she had
21 told where she was situated, the car she was in was
22 situated. And when we responded back to the scene you
23 could see the burnt pieces of the truck that was
24 sitting on the side of the road, we could park the
25 ~ police car next to that.

1 Q You were able to park the police car in what was the
2 exact spot where the car that Debbie Riggs' truck had
3 been burned, is that correct?

4 MR. MILLER: Excuse me. He is leading.

5 THE COURT: It really is, Mr. Peters. You
6 have a difficult time saying anything but yes to that.

7 MR. PETERS: Throughout the case on Direct
8 leading was allowed to preliminary questions. This
9 isn't something in controversy. He has already stated
10 this and I am just trying to be consistent.

11 THE COURT: The objection is sustained.

12 Q Detective, would you tell us what you did next, how was
13 it that you came to learn that the burnt mark on the
14 road was of some evidentiary significance?

15 A: It was the only area that had any burnt particles and
16 it was consistent with the information we had from
17 other detectives that had been to the crime scene. I
18 had, in fact, been to the crime scene briefly that
19 morning. And here again we responded back it was the
20 only place where there was charred plastic, steel,
21 whatever this stuff was that was laying there.

22 Q On November 29, 1988 you saw the actual location where
23 the pickup truck had been set on fire, correct?

24 A: Yes.

25 ~ Q And then attempting to recreate this fairly, you parked

3385

1 your patrol car in that exact same location, is that
2 correct?

3 A As close as I could assume it would be where the
4 station wagon had been.

5 Q And the test you and Detective Fraise conducted, why is
6 it you chose to walk north on 71 highway?

7 A That was the direction that Deborah said she was
8 looking when she saw the two individuals crossing the
9 road.

10 Q And why did you choose to stop walking north on 71
11 highway just past 85th Street and walk toward the
12 trailers?

13 A That wouldn't have been past 85th Street, past Blue
14 River Road.

15 Q I'm sorry, you're correct.

16 A That is the area she designated where the individuals
17 came from, the area of the road that was in front of
18 the trees and she watched them walk down to the
19 trailers that were there, the officers.

20 Q In the interview, the initial interview with Deborah
21 Riggs and the interview conducted on 12-5 of '88 did
22 she tell you whether or not she was sitting on the east
23 side of the road in her pickup truck or was she saying
24 that she was in her brother's car with him?

25 ~ A She was in her brother 'a car.

3386

1 Q Showing you the 12-5 interview and ask you to take a
2 look at that and see if it refreshes your recollection.

3 THE COURT: He hasn't indicated any failure
4 of recollection. You can't do that.

5 Q Detective, do you have an independent recollection of
6 all the questions that were asked and answered on
7 December 5th, 1988 of Deborah Riggs?

8 MR. MILLER: I object to that.

9 THE COURT: That is sustained and you are not
10 going to be able to resurrect with that.

11 Q Do you have an independent recollection of your
12 interview with Deborah Riggs on November, '88?

13 A: I do remember the interview.

14 Q Do you think if you had a chance to review that report
15 it would refresh your recollection?

16 A: Yes.

17 THE COURT: He hasn't testified to any
18 failure of recollection. We just can't do that, Mr.
19 Peters.

20 MR. PETERS: May we approach.

21 (Proceedings out of the hearing of the jury.)

22 MR. MILLER: First, the December 5th
23 statement that is 11-29, it says 12-5 but it is a
24 transcript of an interview done on 11-29.

25 ~ MR. PETERS: That is the part I am trying to

1 get at, she stated on 11-29 she was sitting in her red
2 pickup truck, she saw the people and she radioed her
3 brother to come over.

4 As the Court is aware, the testimony was
5 that she was with her brother in her brother's car
6 when she saw the person.

7 MR. BECKER: Two things. One, on Direct
8 Examination she admitted she did not tell the police
9 the true story the first time she was interviewed. She
10 said she was alone when, in fact, she wasn't.

11 Secondly, counsel never confronted the
12 witness with what presumably is a prior
13 inconsistent statement.

14 THE COURT: Which witness?

15 MR. BECKER: This is Deborah Riggs' statement
16 and gave the witness the opportunity to explain, admit
17 or deny what is claimed to be a prior inconsistent
18 statement.

19 In fact, this statement is consistent
20 with her testimony. She said in her testimony
21 that she didn't tell the truth on a number of
22 different points in this first interview.

23 MR. PETERS: I don't recall. I recall the
24 testimony of "I told several different things, several
25 ~ different things were wrong in my statement." I don't

3388

1 recall bringing out the statement she said she was
2 in a pickup truck. I don't recall her saying she never
3 mentioned the gun.

4 MR. BECKER: I brought out the specifics.
5 Those were three specific things. It was whether or
6 not she was supposed to be working that night at all or
7 she just brought down a sandwich, which is what
8 she says in this video, and in fact she had been
9 scheduled to work.

10 Two, that she was by herself and her
11 brother was across the road and that one fell
12 apart pretty quickly.

13 And then three, she did, in fact, -
14 there was cross examination -- quite a bit of she
15 never told the cops, she went back to get the gun
16 out of the case. And she said "I was never asked"
17 but I brought that out she never said that
18 initially.

19 More importantly, the Rules of Evidence,
20 she was never confronted, I don't think, with this
21 statement and asked to explain, deny, admit it.
22 In fact, I think she admitted it but never
23 specifically "Did you tell Detective Zinn on
24 November 29, 1988".

Zs ~ THE COURT: She was trying to explain or

3389

1 clarify the differences between being alone and being
2 with her brother. Do you think you confronted her with
3 this statement?

4 MR. PETERS: What I recall, the general
5 tenor, there were inconsistencies in my testimony.

6 MR. BECKER: The question is did you ever
7 confront the witness with a prior inconsistent
8 statement.

9 MR. PETERS: No.

10 MR. BECKER: There is no extrinsic proof.
11 You can't bring extrinsic proof of prior inconsistent
12 statements when the witness hasn't first been
13 confronted with that statement. The witness has to be
14 given a chance to explain, deny or admit a prior
15 statement.

16 THE COURT: That is some sort of a rule of
17 fairness.

18 MR. BECKER: That is sort of like the rules
19 of evidence.

20 MR. PETERS: Do we agree she was impeached
21 on whether or not she had previously told people there
22 was ammonium nitrate, fuel oil and fertilizer?

23 MR. BECKER: She has never been asked about
24 that point in this conversation. It talks about the
25 two lockers. It is sort of apples and oranges.1

3390

1 THE COURT: I am going to sustain the
2 objection.

3 (Proceedings in the hearing of the jury.)

4 MR. PETERS: Detective, thank you. I have
5 no further questions.

6 THE COURT: Any other Direct?

7 MR. MILLER: No Recross, Your Honor.

8 THE COURT: Call your next witness.

9 MR. O'CONNOR: Detective Guffey.

10 ROBERT GUFFEY,

11 having been sworn, testified:

12 DIRECT EXAMINATION

13 BY MR. O'CONNOR:

14 Q Could you state your name for the record, please?

15 A: Robert Guffey.

16 Q By whom are you employed?

17 A: The Kansas City Missouri Police Department.

18 Q What do you do for the Kansas City Missouri Police
19 Department?

20 A: I am a defendant in the homicide division.

21 Q How long have you been with the police department?

22 A: Twenty-five years and two months.

23 Q Now I want to ask you about some investigative work you
24 did in this firefighters' case. Did you on June the
25 ~ 19th, 1995 interview a Kimberly Finch?

1 A Yes, sir, I did.

2 Q On July 13, 1995 did you re-interview a Kimberly Finch?

3 A I don't believe it was the 13th.

4 Q July the 11th.

5 THE COURT: Why don't you show him the dates.

6 Q I am looking at when the report is dated but it says 7

8 A That's correct.

9 Q July 13th on there also at the top.

10 A That is the date; yes, sir.

11 Q And during either one of those interviews did Kimberly

12 Finch tell you about anything about Bryan Sheppard

13 wiping fingerprints off something at the scene of the

14 explosion?

15 A No, sir.

16 Q During those two interviews did Kimberly Finch tell you

17 anything about Bryan and Richard arguing and Bryan

18 saying to Richard, "Keep your 'F'ing mouth shut"?

19 A No, sir.

20 Q Did you have the opportunity to interview a Pam Harth?

21 A Yes, sir.

22 Q And would that have been on March 26, 1996?

23 A I would have to look at the report, sir.

24 Q Sure.

25 ~ A That was on March 26th of 1996, yes, sir.

1 Q And have you had a chance to review this report before
2 coming today?

3 A: Yes, sir.

4 Q At the conclusion of the report they both advise -

5 MR. MILLER: I object to him reading off
6 the report.

7 THE COURT: Yes, it is not in evidence.

8 Q Was anything said by you to them or them to you about
9 the reward money?

10 A: Can I look at my report, sir?

11 Q Sure.

12 MR. MILLER: I object. This doesn't impeach
13 Pam Harth.

14 THE COURT: I don't know whether it impeaches
15 Pam Harth.

16 (Proceedings out of the hearing of the jury.)

17 MR. O'CONNOR: On questions by Mr. Osgood he
18 was asked what was said, if he remembers about the
19 reward. It is clear in this report someone is
20 inquiring and it could be he asked her and she never
21 asked him. I am just asking.

22 MR. BECKER: As I recall, what my notes said,
23 I don't have a transcript, she didn't care about it.
24 What she says now she didn't care and here, this says
25 ~ toward the conclusion, they both advised of reward

3393

1 money.

2 THE COURT: It is pretty equivocal, John.

3 Who is the "they"?

4 MR. O'CONNOR: They interviewed her and
5 her boyfriend.

6 THE COURT: "They both advised us regarding
7 this offense." She didn't say she didn't know about
8 the reward money.

9 MR. OSGOOD: She admitted on Cross she had
10 a conversation with the police about the reward and
11 that they asked about it and she was the one I believe
12 who said she was getting 25,000. She admitted she
13 initiated the conversation. She then said "I don't
14 care."

15 THE COURT: I will sustain the objection.

16 (Proceedings in the hearing of the jury.)

17 MR. O'CONNOR: I don't have anything further
18 of this witness.

19 THE COURT: All right. Cross.

20 MR. PETERS: No questions.

21 THE COURT: Now Cross.

22 MR. MILLER: No questions, Your Honor.

23 THE COURT: Thank you, sir. All right,
24 proceed.

25 ~ MR. O'CONNOR: John McGovern.

3394

1 JOHN MCGOVERN,

2 having been sworn, testified:

3 DIRECT EXAMINATION

4 BY MR. O'CONNOR:

5 Q Would you state your name for the record, please.

6 A: John McGovern.

7 Q Where do you live, Mr. McGovern?

8 A: 201 West 89th Street.

9 Q Are you currently employed?

10 A: Yes, sir.

11 Q What city?

12 A: Kansas City, Missouri.

13 Q And have you ever been convicted of a felony?

14 A: No, sir.

15 Q Are you currently employed, did you say?

16 A: Yes, sir.

17 Q Where do you work?

18 A: I work for CPR Contractors.

19 Q Now, did you have occasion to go to a party back in the

20 early nineties at Bryan Sheppard's house with a

21 Christine Mall?

22 A: Yes, sir.

23 Q What was your relationship with Christine Mall back

24 when you went to this party at Bryan Sheppard's?

25 ~ A: I was her boyfriend.

1 Q Do you remember going to a party at Bryan Sheppard's
2 house?

3 A Yes, sir.

4 Q How did Christine Mall even meet Bryan Sheppard?

5 A Through me.

6 Q And at any party you were with with Christine Mall, did
7 Bryan Sheppard ever make any admission about being
8 involved in the firefighters explosion?

9 A No, sir.

10 Q Did Bryan Sheppard ever make any admissions about
11 burning a truck or setting a truck on fire?

12 A No, sir.

13 Q Did you ever leave a party with Christine Mall where
14 she expressed to you Bryan Sheppard had made
15 statements to her about being involved in the
16 explosion?

17 A No, sir.

18 Q Did you ever tell her to just keep her mouth shut or
19 forget what she heard or anything like that?

20 A No, sir.

21 Q Now were you contacted by the government in this case
22 in July of this year?

23 A Yes, sir.

24 Q Did you give them an interview at that time?

25 I A Yes, sir, I did.

3396

1 MR. O'CONNOR: That is all I have. Are you
2 hear under subpoena today.

3 THE WITNESS: Yes.

4 THE COURT: Any further Direct?

5 MR. PETERS: No.

6 THE COURT: Cross.

7 MR. BECKER: Yes, Judge.

8 CROSS EXAMINATION

9 BY MR. BECKER:

10 Q Hello, Mr. McGovern. I am Paul Becker and I am one of
11 the prosecutors in this case.

12 A: Hello.

13 Q I'm sorry, how old are you?

14 A: Twenty seven.

15 Q And how long have you known Bryan Sheppard and Richard
16 Brown?

17 A: Approximately since I was nine.

18 Q So did you go to school with them?

19 A: Yes, sir.

20 Q Grew up with them during all the time you were in
21 school.

22 A: Yes, sir.

23 Q Do you know in 1988 whether Bryan Sheppard or Richard
24 Brown were employed?

25 A I don't know, sir. I lived in Tuscaloosa, Alabama.

l

1 THE COURT: In 1988?

2 THE WITNESS: Yes, sir.

3 Q I want to show you what is in evidence as Government's
4 Exhibit 334, do you recognize that, Mr. McGovern?

5 A: Yes, sir.

6 Q Whose house is that?

7 A: The Sheppard's residence, sir.

8 Q That is Bryan Sheppard's home with his parents.

9 A: Yes, sir.

10 Q Have you ever been in that home?

11 A: Yes, sir.

12 Q Have you ever gone into the basement in that home?

13 A: Yes, sir.

14 Q Is there a door in the back of that house that goes
15 right down to the basement?

16 A: Yes, sir.

17 Q Now when you were at this party with Christine Mall at
18 Bryan Sheppard's house, did Richard Brown come into
19 that party?

20 A: Yes, sir.

21 Q Was there a problem that Christine Mall had with
22 Richard Brown at that time?

23 A: Yes, sir.

24 Q What did Richard Brown say when he came into that
25 party?

3398

1 A: He asked why I brought her there.

2 Q Was it that polite?

3 A: Well, no, not really.

4 Q Why don't you tell us what he said?

5 MR. OSGOOD: Objection.

6 THE COURT: On what basis?

7 MR. OSGOOD: It is hearsay, not an
8 admission.

9 THE COURT: I don't believe he is offering it
10 for the truth of what was said; the fact that it was
11 said, is that right?

12 MR. BECKER: That's right, Judge.

13 THE COURT: Overruled.

14 Q What did Richard Brown say?

15 A: He said "Why did you bring that bitch with you?"

16 Q Did that make Christine Mall uncomfortable?

17 A: I doubt it.

18 Q Did you leave shortly thereafter?

19 A: Yes, sir, we did.

20 Q I want to show you what has been marked for
21 identification as Government's Exhibit 424 and ask if
22 you recognize that.

23 A: Yes, sir, I do.

24 Q What is it?

25 ~ A: The back of the Sheppard house.

1 MR. BECKER: I would offer this in evidence
2 as Government's Exhibit 424.

3 MR. O'CONNOR: No objection.

4 THE COURT: Hearing no objection, it is
5 admitted, 424.

6 (PLAINTIFF'S EXHIBIT NO. 424 WAS RECEIVED IN EVIDENCE.)

7 Q So, Mr. McGovern, on Government's Exhibit 424 here
8 where my pen is, this door that appears in the middle
9 of the building, does that door go directly into the
10 basement rooms in the house?

11 A: Yes.

12 Q Do you know Darlene Edwards, another defendant in this
13 case?

14 A: Yes, sir.

15 Q Did you ever live with Darlene Edwards?

16 A: Yes, sir.

17 Q When was that?

18 A: I don't remember the exact dates. It was probably in
19 '92 or '93.

20 Q Were you working then?

21 A: Yes, sir.

22 Q Was Darlene Edwards working then?

23 A: No, sir.

24 Q About two weeks ago, on February 1st or February 2nd,
25 ~ did you call Christine Mall prior to her testimony and

3400

1 attempt to contact her?

2 A: Yes.

3 Q Where did you get this phone number?

4 A: I got it through an attorney.

5 Q An attorney in this case.

6 A: Yes, sir.

7 Q Who is that?

8 A: I believe it was Mr. O'Connor.

9 Q Mr. McGovern, in your interview with the detectives
10 back in 1996 did you tell them you were in Tuscaloosa,
11 Alabama until 1991?

12 A: Yes, sir, I did.

13 Q Did I show you the interview of Christine A. Mall in
14 which she said that you went to this party?

15 MR. BECKER: Objection, what she said.

16 THE COURT: What "he said I don't believe is
17 right, Mr. O'Connor.

18 MR. O'CONNOR: Can we approach on this real
19 quick?

20 THE COURT: Can't you just refer to it as a
21 report of interview with Christine A. Mall which
22 generated a conversation you had with her?

23 Q Did I tell you about a report of interview that
24 Christine A. Mall had given which she said -

25 ~ MR. BECKER: Objection.

3401

1 THE COURT: No.

2 MR. O'CONNOR: We need to approach.

3 (Proceedings out of the hearing of the jury.)

4 MR. O'CONNOR: There has been some
5 intimation I did something wrong here with this
6 witness and I think I have the right now to
7 explain how this all happened.

8 THE COURT: I don't think there is anything
9 wrong. It wasn't intimation. The man said you gave
10 them a phone call.

11 MR. O'CONNOR: That's right and I want to
12 explain why the information was one so other witnesses
13 had given clearly a date that was erroneous to get it
14 clear and she changed her testimony to tell another
15 date. Nothing improper.

16 In fact, I brought out what the real
17 truth was from both witnesses and there was
18 intimation left maybe I had given it to him to
19 call and harass her or something like that. And
20 that did not happen. That is why I should get
21 some leeway is what I am asking for.

22 MR. BECKER: I think counsel has made
23 his point. I have no further questions. I will sit
24 down.

25 ~ THE COURT: As long as the jury remembers

3402

1 what I told them a long time ago and that is statements
2 of counsel are not evidence.

3 MR. O'CONNOR: I understand but this is one
4 that is important from a credibility standpoint how
5 this occurred.

6 THE COURT: Okay.

7 (Proceedings in the hearing of the jury.)

8 CROSS EXAMINATION

9 BY MR. OSGOOD:

10 Q Mr. McGovern, my name is John Osgood. I represent
11 Richard Brown. You were aware, were you not, Richard
12 Brown had had a confrontation with Miss Mall at a bar
13 over some mixed drinks and they didn't like each other?

14 A: Yes.

15 Q Mr. Brown made no statements whatsoever as to any
16 involvement in this business at any time whatsoever,
17 did he?

18 A: No, sir.

19 Q And, as a matter of fact, you were there maybe three
20 minutes, she saw him and the two of you left, isn't
21 that true?

22 A: Yes, sir.

23 MR. OSGOOD: All right. Thank you, sir.

24 MR. O'CONNOR: Nothing further.

25 THE COURT: Any further Cross?

3403

1 MR. BECKER: No, Your Honor.

2 THE COURT: you may step down.

3 MR. O'CONNOR: Judge, I think I am finished
4 except one stipulation I would like to make orally.

5 I would like to approach with Mr. Becker
6 to make sure I say this right.

7 THE COURT: Okay.

8 (Proceedings out of the hearing of the jury.)

9 MR. O'CONNOR: I want to read, It is hereby
10 stipulated by the parties if one was called from the
11 jail, I will say Jackson County Jail, that Bryan
12 Sheppard was in custody from July 27th to August 23rd
13 and on August 23rd he never left custody but then was
14 transferred to the Clay County Jail and was released
15 from there on 12-29 of '89.

16 MR. BECKER: I have no objection.

17 MR. O'CONNOR: Okay, then, that is it. I am
18 done.

19 MR. BUNCH: We have made copies of Exhibit 19
20 so each of the jurors has them at the conclusion of
21 this.

22 MR. BECKER: As long as they pass them back
23 when they are done.

24 MR. BUNCH: All right, if that is suitable
25 ~ with the Court I

3404

1 (Proceedings in the hearing of the jury.)

2 MR. O'CONNOR: It is hereby agreed and
3 stipulated by the parties if someone was called from
4 the Jackson County Jail, they would testify Bryan
5 Sheppard was in the Jackson County Jail from July 27,
6 1989 until August the 23rd, 1989. He never left
7 custody. Was then transferred from the Jackson County
8 Jail on August the 23rd, 1989 and was there until
9 12-29 of '89 when he was then released.

10 At this time, Your Honor, I request to
11 pass Defendants' Exhibit 19, the letter to
12 Sealright which we now have a copy for each juror.

13 THE COURT: You may pass them and the jurors
14 may examine them. We will want them back before you
15 leave here this evening.

16 MR. O'CONNOR: Mr. Peters has corrected me.
17 On July 27th of '89 to August 23rd of '89 in the
18 Jackson County Jail. From August the 23rd of 1989 to
19 12-29 of '89 he was in the Clay County Jail. And I
20 will pass one for each juror.

21 I also ask to pass Defendants' 3, 4, 5
22 and 6 on behalf of Bryan Sheppard.

23 THE COURT: Now, if you would just leave
24 everything at or in your seat, we will collect it when
25 ~ we are through. Take your own notes.

3405

1 Anything else?

2 MR. O'CONNOR: No, Your Honor, nothing
3 further for the day.

4 THE COURT: All right, we will stop now and
5 pick up in the morning at 9:30. Of course, I admonish
6 you not to talk about the case or let anyone talk about
7 the case with you or in your presence. Don't read
8 anything in the newspaper or observe anything on the
9 television about the case. Drive carefully and we will
10 see you in the morning at 9:30. Good night. We will
11 be in recess until 9:30 in the morning.

T

1

1

1

1

1

1

1

1

(816) 474-4616

)

I N D E X
V O L U M E X I X

(Pages 3406 - 3588)
Wednesday, February 10, 1997
(Trial)

Argument	3408
<u>DEFENSE WITNESSES:</u>	
<u>Rick J. Van Hoecke</u>	
Direct Examination by Mr. Bunch	3454
Cross-examination by Mr. Miller	3461
<u>Kevin LeManske</u>	
Direct Examination by Ms. Franco	3463
<u>Elizabeth Harriman</u>	
Direct Examination by Ms. Franco	3466
Cross-examination by Ms. Becker	3472
Redirect Examination by Ms. Franco	3479
Cross-examination by Mr. Osgood	3481
Recross-examination by Mr. Becker	3481
<u>Naomi Sheppard</u>	
Direct Examination by Ms. Hunt	3482
Cross-examination by Mr. Becker	3504
<u>Deborah Riggs</u>	
Offer of Proof by Mr. Peters	3511
<u>Earl Walker</u>	
Direct Examination by Mr. Peters	3526
Cross-examination by Mr. Miller	3537
Redirect Examination by Mr. Peters	3538
<u>Brenda Carpenter</u>	
Direct Examination by Mr. Osgood	353g
Cross-examination by Mr. Miller	3546
<u>Janet Carpenter</u>	
Direct Examination by Mr. Osgood	3549
<u>Linda Peak</u>	
Direct Examination by Mr. Osgood	3554
Cross-examination by Mr. Miller	355g
Redirect Examination by Mr. Osgood	3569
Reporter's Certificate	3588

— * —

3408

1 Wednesday, February 19, 1997

3 (The following proceedings were had in the
4 Courtroom out of the presence of the jury commencing at 9:37
5 a.m.:)

6 THE COURT: All right. Let's get the jury.

7 MR. O'CONNOR: Judge, I want to take up a couple of
8 things real quick. Here is our list for today, Your Honor.

9 MR. BECKER: And this is the Government's list for
10 cross-examination, although our list matches up with the list
11 we got from the defendants at 6 o'clock or 5 o'clock last
12 night, but it's changed since then.

13 MR. PETERS: Judge, I've already given this to your
14 clerk, and this is the original. Mr. Becker already has a
15 copy.

16 THE COURT: Well, I already have this.

17 MR. PETERS: That was after our discussion
18 yesterday. I don't think the Court's addressed the issue of
19 Dave True's stuff on the labor investigation. We're only
20 getting his notes on witnesses that have been called.

21 MR. BECKER: Judge, while we're waiting, I have a
22 custodian of records here from Research Hospital. I'd
23 subpoenaed earlier, maybe last week or earlier this week,
24 hospital records relating to **Frank** Sheppard for any treatment
25 e may have received on October 22nd, 1988. There's a police

1
1 report indicating he took his head *off* a bumper *of* a police
2 Icar on that date, and we may inquire about that *if* he
3 testifies.

4 And I've subpoenaed those records. The custodian
5 is here and said she requires a court order.

6 THE COURT: I'm sorry, I'm having difficulty
7 hearing counsel. Would you please come to order.

8 MR. BECKER: Yes. I had a trial subpoena issued
9 for custodian of records of Research Hospital relating to any
10 medical records they may have for **Frank** Sheppard for
11 treatment on October 22nd, 1988. Mr. Sheppard took his head
12 off the back of a bumper, front bumper, actually, of a police
13 car on that date outside the residence where he and Darlene
14 Edwards were living.

15 THE COURT: Took his head?

16 MR. BECKER: He fell and hit his head off the
17 bumper. And I was going to inquire of Mr. Sheppard, and I
18 need those records to follow up on. However, the custodian
19 indicates and, more importantly, the attorney for the
20 hospital indicates that they are requesting a court order
21 before they release those records.

22 So I'm asking the Court order those documents be
23 given to the government, and I'll obviously give them to the
24 defense.

25 THE COURT: Do you have a form of order for me?

1

1

MR. BECKER: No, I do not. The hospital indicated

2 that they

would be satisfied with an oral order from the

3 Court.

4

THE COURT: Well, I think, assuming that the

5 background is made as you indicate, then -- assuming the

6 foundation is laid as you indicate, then they ought to be

7 here, so I'll order them.

8

MR. BECKER: They're here. Miss Long, could you

9 please come up?

10

This is Miss long. She's a custodian of records

11 for Research Hospital.

12

THE COURT: All right. Now, this is -

13

MR. BECKER: Mr. Peters.

14

THE COURT: Yes. Mr. Peters, do you want to take a

15 look at this?

16

MR. BECKER: I haven't seen the records.

17

MR. PETERS: I guess I ought to look at them real

18 quick.

19

MR. BECKER: You can't look at them until you get

20 the order.

21

THE COURT: I understand an oral order is

22 appropriate, and I'm now ordering you to produce those to

23 counsel for the government, and he can share them with

24 counsel for Mr. Sheppard.

25

CUSTODIAN OF RECORDS: Okay. Thank you.

1 (So done.)

2 THE COURT: Thank you for coming.

3 MR. O'CONNOR: Judge, I have a couple of
4 housekeeping matters relating to my evidence, and then I
5 won't have any further evidence.

6 At this time I would offer into evidence
7 Defendants' 45, which is the transcript of the videotaped
8 statement of Frederick Martindale. I would make this offer
9 based on the impeachment of Mr. Martindale yesterday in which
10 I asked him a series of questions relating to whether or not
11 he was the person who was responsible for setting the fire,
12 which he said no.

13 At the time I offered to play the videotape, and
14 was denied. I did not ever offer just the transcript of the
15 tape. At this time I would offer the transcript of the tape
16 into the case.

17 MR. BECKER: I would object to that, Judge.
18 There's no -- I can't think of an evidentiary reason why it
19 should be admitted into evidence. I mean, for purposes of
20 appeal, for the limited purpose that it be part of the
21 record, I don't oppose it.

22 THE COURT: That's the basis on which I'll admit
23 it. The tape itself was not played, and the transcript was
24 only for his use as an appellate tool.

25 MR. O'CONNOR: That's correct. Secondly, Your

1 Honor -- so for that purpose, at this time I would offer
2 l Defendants' Exhibit 45 for that purpose.

3 THE COURT: All right. It's admitted on that
4 basis.

5 (Defendants' Exhibit 45 was admitted into evidence
6 for the stated purposes.)

7 MR. O'CONNOR: Next, Your Honor, I would offer the
8 interview of January 10th, 1996, of Glen Shepard, just this
9 one sentence on Page 2 in which Glen Shepard stated and it
10 was brought out in impeachment with Dave True, "Shepard knows
11 Bryan Sheppard. Bryan Sheppard has never made any admissions
12 to Shepard . n

13 I would offer this exhibit only to that limited
14 area of, for that limited purpose.

15 MR. BECKER: I would oppose that. We're not going
16 through every police report and picking out the page or the
17 paragraph that supports the government's position and
18 offering that as a prior consistent statement. The witness
19 was, in fact, cross-examined on that statement, and I believe
20 he admitted making that statement to the investigating
21 officers.

22 THE COURT: Yeah. I don't know that that -

23 MR. O'CONNOR: My belief, Judge, was he was
24 unequivocal about it -- he was equivocal, I mean, about it.
25 He's basically said that he didn't remember, didn't know if

1 he'd said that. That's what set me up to allow me to ask the
2 Impeachment of True because Mr. Becker would never have
3 allowed me to ask Mr. True that impeachment question had I
4 not properly set it up, I don't believe. And I believe he
5 was equivocal when he testified. I'm offering it just for
6 the limited purpose as to that statement in that report.
7 This is, for the record, Defendants' 46.

8 MR. BECKER: I don't recall what Special Agent
9 True's response was to that. You asked him did Glen Shepard
10 tell you he didn't know anything about Bryan Sheppard and
11 Bryan Sheppard had never made admissions to him?

12 MR. O'CONNOR: Yes.

13 THE COURT: This is Schram's report, anyway. I'm
14 not going to admit this.

15 MR. O'CONNOR: What happened was, Judge, if you
16 remember the testimony is that True was present and heard the
17 conversation as well, and then Schram wrote the report. They
18 were both there.

19 THE COURT: I understand.

20 MR. BECKER: I don't really have a recollection of
21 this, but I assume Special Agent True said, yes, that's what
22 he told me.

23 MR. O'CONNOR: Which impeaches -

24 MR. BECKER: Was that the answer?

25 MR. O'CONNOR: Basically, yes, which I say

1 impeaches Mr. Shepard, who said, who was equivocal on whether
2 or not he had made those statements. So now I believe that
3 comes in as substantive evidence of the proof of the
4 statement.

5 MR. BECKER: I don't -- the impeachment may or may
6 not have been made through Special Agent True, but that
7 doesn't make the report independently admissible.

8 THE COURT: The statement itself is equivocal.
9 "Bryan Sheppard has never made any admissions to Shepard.
10 Admissions about what and when? I mean, it's just, it's
11 vague and ambiguous. I'm going to sustain the
objection.

12 MR. O'CONNOR: And, third, Your Honor, Brian
13 Attebury testified in this case. On direct examination from
14 Mr. Miller, he was asked in the early questions, "Sir, could
15 you tell us, do you have any state or federal felony or
16 misdemeanor convictions?" He stated that he had one
17 misdemeanor conviction.

18 I then sought to impeach him on a misdemeanor
19 conviction, another misdemeanor conviction that he had out of
20 Clay County for destruction of government property. His
21 response was, on the record, what about -

22 My question, "What about in Clay County,
23 destruction of property on 3/19/91?"

24 Answer: "Never destroyed any government property,
25 sir."

1

1 Question: "Did you ever get charged with like
2 banging your head against a wall in the Clay County Jail and
3 you went over and pled guilty and got six months suspended
4 sentence and probation?

5 "No, sir, I did not."

6 I have the information from Clay County on the
7 charge that was filed against him. I do not have the
8 certified copy, although I've discussed it with Mr. Becker.
9 And I believe that he would, if this were allowed, that he
10 would agree that he has a misdemeanor conviction for this
11 destruction of government property.

12 I think the Court may find that this is collateral,
13 but I think it's direct impeachment. It goes directly to the
14 heart of this witness's testimony, and he said not only did
15 he not have a conviction, but he'd never been charged with
16 it, which were both untrue statements. So I would offer that
17 into evidence.

18 THE COURT: I would just have to see what you
19 have.

20 MR. O'CONNOR: This is the charging document,
21 Judge. I do not have the certified copy of conviction, but I
22 can tell the Court in good faith that there is such a
23 document that exists. If the Court was inclined to admit it,
24 I can get it before the day's out and offer it at that time.

25 THE COURT: What's your view on this, Mr. Becker?

1

3416

1

MR. BECKER: I

don't disagree that the fellow had a

2 misdemeanor for banging his head against the jail house

3 door But I think it's somewhat -

4

THE COURT: We've

got to straighten out this

5 business about his head. There's nothing in here about it

6 being his head.

7 MR. BECKER: Maybe that's why he doesn't remember

8 it, Judge.

9 THE COURT: Repeatedly banged on the door of his

10 jail cell, which could have been with anything, thereby

11 causing the mortar around the doorway and the doorjamb to

12 become loose and caused his cell to be not operable for

13 holding inmates.

14 MR. O'CONNOR: If the Court was inclined to admit

15 it, I will get the certified copy of conviction and then ask

16 before the jury is out to offer it, not read it, and then I

17 could refer to it in the argument regarding his credibility.

18 That would be the only -- and then I have one other offer.

19 THE COURT: It's a little confusing. I think that

20 he denied destroying government property on the stand.

21 MR. O'CONNOR: I think he denied being charged with

22 it. Let me see what this says. My question was, Page 6,

23 "What about in Clay County, destruction of government

24 property on March 1st, 1991?"

25 Answer: "Never destroyed any government property,

1 sir."

2 Question: "Did you ever get charged with like
3 banging your head against a wall in Clay County and you went
4 lover and pled guilty and got six months suspended sentence
5 land six months probation?

6 "No, sir, I did not. n

7 THE COURT: Well, you see -

8 MR. O'CONNOR: Compound question.

9 THE COURT: Your question is wrong. He didn't get
10 charged with banging his head against the wall. His head is
11 not in the charge.

12 MR. O'CONNOR: Let me get the document. I think it
13 will support what I say. Assuming it does, I would make that
14 offer once I have that document.

15 THE COURT: It's conflicting and confusing right
16 now. You bring whatever you want, and we'll look at it.

17 MR. O'CONNOR: Thank you, sir. One other thing.
18 Travis Small, there's a proffer letter given to him by the
19 government. Mr. Becker has been trying to track that down.
20 We still don't have it, but I think they're going to have
21 that before the day is out. I would offer that, not for the
22 jury, but just offer that to be able to argue it as part of
23 my impeachment of Travis Small in the closing argument.
24 Other than that, I don't have any further evidence.

25 MR. BECKER: We have no objection to that.

1
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: All right.

MS. FRANCO: Your Honor, may we approach briefly on another matter?

(Counsel approached the bench and the following proceedings were had:)

MS. FRANCO: Judge, the third witness is Elizabeth Harrigan, and I would like to make an oral motion in limine that the government be precluded from asking her any cross-examination pertaining to any assaultive behavior during her relationship with Skip Sheppard.

MR. BECKER: **Frankly**, I was going to approach before I did it. But this was quite a violent relationship. I think it casts light on the relationship and whether or not she would be afraid of Skip Sheppard.

In the direct months preceding the explosion, Skip Sheppard knocked her teeth out on two separate occasions, and there was a full order of protection. That is, it was served on Mr. Sheppard, that there was a hearing, and there was a order of protection entered in -- I have it in my file. It's in October of 1988. That was good for six months. And I had planned on inquiring about that after bringing it to the Court's attention.

THE COURT: I think I'll have to rule on the inquiry as it's made. I can't anticipate it and bar it now.

MS. FRANCO: Okay.

1
2 THE COURT: It sounds to me like it might very well
3 be the kind of thing that would enter into motivation or
4 cause for taking a particular position.

5 MS. FRANCO: I'll address it again, Your Honor, but
6 the assaults during their relationship were all prior to the
7 explosion. There's no indication of anything having to do
8 with the explosion or intimidation of her by Mr. Sheppard.

9 THE COURT: She might be intimidated to testify
10 favorably to him because she's afraid of him.

11 MS. FRANCO: She's actually not even testifying
12 that favorably to him.

13 THE COURT: She's being called by him.

14 MS. FRANCO: Yes. She could have been called from
15 either side.

16 The other point I would bring up in limine also,
17 Your Honor, is any cross-examination as to her drug use.

18 MR. BECKER: Well, she's got a significant drug use
19 with Skip Sheppard. And her relationship, she describes, how
20 did you get involved with Skip Sheppard, in the grand jury.
21 Answer, through drug usage. So that the whole relationship
22 was one based upon drug usage.

23 Skip wasn't working at the time. She was aware of
24 his thieving activity. I intend to cross-examine her on
25 that. The whole, you know, she's being put up -- and she's
26 got relevant information about the night of, into the morning

3420

1 of November 28/29, 1988. But she also was Skip's girlfriend
2 those, basically, months prior to the explosion and knew of
3 his conduct during that time.

4 THE COURT: Drug usage contemporaneously with the
5 occurrence of whatever she's testifying to would certainly
6 affect her credibility.

7 MR. BECKER: She's got a history of mental problems
8 too.

9 MS. FRANCO: Your Honor, if he would limit it in
10 time to the portion regarding the period around the
11 explosion, but her drug -- she has no drug convictions of any
12 sort.

13 THE COURT: I know. But has she fried her brain
14 with crack? She doesn't have to be convicted to have a fried
15 brain.

16 MS. FRANCO: There's no indication that there's
17 even any crackor -

18 MR. BECKER: Intravenous use of methamphetamine and
19 cocaine.

20 MS. HUNT: At the time of the explosion, she was in
21 drug treatment.

22 MS. FRANCO: She was in drug treatment anyway, from
23 our reports.

24 THE COURT: That goes to credibility. I would say
25 if she was in treatment, she had a pretty serious drug

1 problem. If she had a pretty serious drug problem, it seems
2 to me there's a question about her memory.

3 MR. BECKER: One more thing that I was going to
4 Approach on is when Naomi Sheppard testifies, I want to ask
5 her about if she told Patty Smith about going fishing with
6 Skip. And I was going to phrase it as, was there, did Skip
7 go fishing with one of the Ward boys and an accident happened
8 and Ward was killed or dead, found dead. However you want me
9 I to -

10 MS. HUNT: He's never been charged with it. I
11 think that's really a problem.

12 MR. BECKER: I know. That's why I was going to
13 approach on it.

14 MS. HUNT: Somebody drowned when he was fishing.
15 He's never been charged with that criminal act. There's
16 never been an investigation that there even was a criminal
17 act. It's been ruled a drowning.

18 MR. BECKER: The report of interview, and that you
19 have, is that Skip then says, "I hit him on the back of the
20 head with a rock," and then they ruled it was an accident. I
21 mean -

22 THE COURT: Accidental rock hitting?

23 MS. HUNT: What report is that?

24 MR. BECKER: It's a handwritten one. I'll show it
25 to you. You have it.

MS. HUNT: By whom?

1

2 1 MR. BECKER: Patty Smith.

3 MS. HUNT: So Patty Smith is now going to say that
4 he said he did this? That's hearsay.

5 MR. BECKER: Well, it's not hearsay, it's an
6 admission by a defendant that was kept out on my direct
7 examination and cross of Patty Smith because it was overly
8 prejudicial. But now we have the mother who was present
9 during that conversation saying nothing ever was said, I
10 never said anything to Patty Smith, Skip never said anything
11 to Patty Smith. And I want to, you know -- I mean, you know,
12 do I get into the fact that Skip beat her too? I mean, I
13 don't know what I'm going to do about that one. But
14 there's -

15 MS. HUNT: I'm going to object to any questions
16 about fishing trips and some supposed homicide. I think
17 it's -

18 MR. BECKER: I wasn't going to call it a homicide.
19 I was going to say that somebody died or there was a drowning
20 and just -

21 MR. MILLER: And Skip hit him in the head with a
22 rock.

23 MR. BECKER: No.

24 THE COURT: How is it relevant? How is it
25 admissible?

1 MR. BECKER: It shows that the mother, Naomi, did
2 have conversations with Patty Smith that caused Patty Smith
3 to be in fear of this family, of Skip Sheppard. She's going
4 to, the mother's going to testify no conversations ever
5 happened with Patty Smith. Right?

6 MS. HUNT: I'm sorry, what? She's going to
7 testify -

8 MR. BECKER: Naomi, I assume, is going to testify
9 that she never told Patty Smith anything about -

10 MS. HUNT: Relating to this explosion, right.

11 MR. BECKER: Right.

12 MS. HUNT: Exactly. Patty Smith was just there on
13 a few occasions. They weren't even dating and -- right.

14 THE COURT: I have to deal with it in the context
15 of the record that's been made at that time. I can't
16 anticipate what's going to be good and what's not good.

17 MR. BECKER: I certainly won't just venture into
18 that without alerting you.

19 MS. HUNT: Just along -- I want to play a videotape
20 that they've gotten of her house during her testimony.

21 MR. BECKER: Do you need that back?

22 MS. HUNT: No. I've got a copy. At the very end
23 of it, it's not even important, when they show the bathroom
24 and the living room, that's not even important as far as the
25 videotape. I propose to stop it after the trapdoor.

1

1 MR. BECKER: I have no problem with that. That's

2 I fine.

3 THE COURT: Whose house?

4 MS. HUNT: Naomi Sheppard's, because there's been
5 testimony of how her house is set up.

MR. BECKER: It's rather difficult to follow. At
7 least it was when we watched it.

8 MS. HUNT: It's not the greatest, but at least it
9 shows the rooms.

10 MR. BECKER: We're only capable of showing it on
11 the one TV.

12 THE COURT: We won't have any running commentary or
13 description as the videotape is playing?

14 MR. MILLER: I think it's necessary. It's
15 incomprehensible.

16 MS. HUNT: I'll have to stop it and ask her, which
17 room is that?

18 THE COURT: Rather than stop her, ask it in terms
19 of question and answer, what room is that, what is that
20 showing, that sort of thing.

21 MS. HUNT: okay. And not stop it? It's very
22 short. It's only about three or four minutes long. There's
23 not going to be much time. Or I can ask her afterwards, you
24 know.

25 THE COURT: Let's do it Q and A. Let's not have

1 her just narrating like a guided tour of the White House.

2 MR. BECKER: It's not.

3 MS. HUNT: That's fine. And it's not.

4 (The following proceedings were had in open court:)

5 MR. BECKER: Okay. One more issue on recalling of
6 witnesses. The government filed a motion in limine the other
7 day. I've been in contact with Debbie Riggs' attorney, Mr.
8 Hobbs. He called me this morning and said he spoke with Mr.
9 Peters.

10 Debbie Riggs is listed on the most recent defense
11 list they gave me this morning. She continues to be listed
12 as a witness. Mr. Hobbs informed me that the areas of
13 inquiry that counsel told him there would be relate to
14 whether the insurance fraud that supposedly happened in the
15 late 1970's included Donna Costanza taking the truck, and the
16 answer to that would be no, it was another person.

17 The second area of questioning, did Robert Riggs
18 know about that, and the answer to that would be no, not
19 until this trial.

20 The third question proposed to Mr. Hobbs was, how
21 was the truck, the pickup truck running at the time of the
22 fire, or at the time of the explosion. And the answer to
23 that would be it was running fine.

24 And then the final -- two more questions. The next
25 question is about two weeks before the explosion, did she

1 chase the defendants off the site. And she says, I don't
2 I know. I mean, she's described what she did with persons on
3 the site that she chased off, but she doesn't know who that
4 is.

5 And then the final question would be, were you five
6 or seven months pregnant at the time of the explosion? And
7 the answer to that is she was five months pregnant. She gave
8 birth at seven months because the baby was premature, and
9 that would have been in January.

10 I see nothing in those proposed questions at least
11 that counsel for the witness is aware of that would justify
12 recalling her as a witness. I told Mr. Hobbs I would try and
13 contact him if we had a ruling from the Court.

14 THE COURT: All right. Well, I don't know what
15 justification you offer for recalling this person whom you
16 had a chance to cross-examine.

17 MR. PETERS: Judge, she's not being recalled.
18 She's my witness. I'm not calling her to impeach her
19 testimony, she's my witness. The things I'm going into were
20 things that were not covered on direct examination.

21 THE COURT: But they have to be relevant and
22 competent in this part of the case.

23 MR. PETERS: I would suggest that it would be
24 relevant if she had said that her gas gauge wasn't working,
25 she kept a gas can in her truck, that she couldn't afford to

1 keep her truck, and there are some other questions.

2 I don't anticipate getting -- and I've spoken with
3 Mr. Hobbs today. I don't anticipate getting into anything
4 having to do with Donna Costanza because, as the Court
5 remembers, that testimony came in unimpeached and wasn't
6 stricken for the record, so I didn't have to do that. But
7 this is my witness that -- I'm not calling her to impeach.

8 The question about the pregnancy -- and when I
9 talked to J. R. today, I'm not going to ask her about it
10 because I don't think it's a big deal. I told him that in
11 all her prior depositions, she said she was seven months
12 pregnant. And I said, is that an issue that you want me to
13 clear up with her, of concern for that.

14 So the areas that I'm going into are areas not
15 covered on direct exam or cross-examination of a witness that
16 as been endorsed by me since whatever it was, one week prior
17 to trial, pursuant to the court order.

18 MR. BECKER: You can't -- these are matters that
19 have been known to counsel for, at least since the beginning
20 of this trial. You can't just reserve a few questions so you
21 can bring back a witness to further impeach her. I mean,
22 counsel is saying, "I'm not going to impeach her. n But
23 yhere's nothing -

24 THE COURT: I haven't heard anything substantive,
25 Mr. Peters, or constructive to your case. You just want to

1

1 bring her in and chip away at her some more.

2 MR. PETERS: Then I would ask that I be allowed to
3 make an offer of proof. I think that it is relevant to the
4 defendant's case that the guard on duty who left the site has
5 in reports provided by the government told people that her
6 gas gauge wasn't working, she had a gas can in it, and she
7 couldn't -

8 THE COURT: Did you know that when you had her on
9 the stand for cross?

10 MR. PETERS: Yes, but -

11 THE COURT: Well, then, why didn't you ask her?

12 MR. PETERS: Because it wasn't brought out on
13 direct, and the Court has consistently told us -

14 THE COURT: I'm not going to buy that, Mr. Peters.

15 MR. PETERS: Judge, then I'll need to make an offer
16 of proof -

17 THE COURT: You may do so.

18 MR. PETERS: -- in the transcripts of the number of
19 times that we've been told that cross-examination -

20 THE COURT: You've had plenty of opportunity
21 exhaustively to cross-examine that lady, and you passed it
22 up. We're not going to prolong this trial by recalling
23 witnesses and going over and over and over what could have
24 been gone over in the first instance.

25 MR. PETERS: I will need to make an offer of proof,

1 ~ Your Honor.

2 THE COURT: You may do so.

3 MR. O'CONNOR: Just a short record on that point,
4 Judge. Like yesterday, Mr. Becker wanted to recall John
5 Fraise, and under the ruling of the Court, Fraise should not
6 Shave come back in and -

7 THE COURT: There was no object
8 O'Connor. There was no objection raised to it, and it was a
9 simple formal matter. This is concerning, this is critical
10 stuff.

11 MR. O'CONNOR: I don't think it was a formal matter
12 when you put the guy back on to basically refute the
13 confession of the person you just put before the jury. We
14 didn't object to it because -

15 MR. BECKER: But that's apples and oranges. I
16 forgot to ask four questions. The witness was still in the
17 hallway, and he had just finished his testimony. I put him
18 back on for four more questions. I knew I was going to hear
19 about it later. But this is deliberately withholding some
20 cross-examination so a month later we can come back and
21 revisit it with this witness, who was the second witness in
22 this trial.

23 THE COURT: And the government has rested.

24 MR. PETERS: Judge, the record I want to make is
25 there's nothing deliberate in this. I complied with the

3430

1 Court's order in turning over the names of my witnesses. I
2 believe that I will show the Court that the Court has
3 consistently said that the defense questioning of witnesses
4 is limited to the scope of direct examination so -

5 THE COURT: That's the rule in federal court.

6 MR. PETERS: And, Judge, the government did not
7 bring out that she had said that her car was in trouble, that
8 it had a gas can in it, the working order of the car that
9 night, and it wasn't -- there's no implication that I can see
10 that what I was doing was trying to string out a witness or
11 delay the trial or perpetrate any sort of fraud on the
12 Court.

13 She was endorsed by me as a witness. I covered
14 everything that was covered in direct examination in my
15 cross-examination of her, but the issues, the two limited
16 issues that I wanted to call my witness for were not covered
17 on direct examination.

18 And I think the Court is aware the Riggses, the
19 credibility of the Riggses is at issue in this case, and the
20 issues that I want to raise I think are very important to the
21 defense case.

22 And in the length of time, in terms of judicial
23 economy, and I understand the Court's concern about that,
24 Deborah Riggs would have been on and off by now. I have just
25 a few questions.

3431

1 THE COURT: Let's stop this now. What is your
2 position on this business of whether this was something that
3 was not covered on her original direct examination which,
4 therefore, would not have been appropriate for cross?

5 MR. BECKER: I disagree with that. I covered with
6 Ms. Riggs the whole events of that night and all about her
7 truck. If there were -- I imagine Mr. Peters is going to ask
8 about the condition of the truck that night. Certainly the
9 fact, on cross, did you have a gas can in the back of that
10 truck, would not have been outside the scope of direct, that
11 night.

12 THE COURT: It seems to me the truck figured very
13 prominently in the direct examination.

14 MR. BECKER: The whole matter of the truck and what
15 happened to the truck and where was the truck.

16 THE COURT: Okay.

17 MR. O'CONNOR: Judge, I'd like to make one more
18 argument.

19 THE COURT: Let's get on with this, Mr. O'Connor.

20 MR. O'CONNOR: One thing, the Court hasn't been in
21 this case the whole time. We got in this case 3400 pages on
22 December the 24th. I mean, we have done, I think, remarkable
23 to do everything we've been able to do.

24 Now that we have maybe missed in 3400 pages and
25 being basically forced to trial with a minimal continuance on

1 this case, should we get some leeway on a matter like this
2 that is critical to our case.

3 THE COURT: A, I don't think it's that critical
4 and, B. I don't see that it's a matter of too many pages to
5 examine. It's a question of whether he conducted a thorough
6 l cross-examination, knowing what he knew then. There isn't
7 l any newly discovered evidence here, he just didn't ask the
8 questions.

9 MR. O'CONNOR: What I'm saying is he chose as a
10 part of his trial strategy, Your Honor, he was calling the
11 witness himself as a witness. So if he chose as his trial
12 strategy not to ask the witness a question when she was on
13 the stand, I don't understand why he would be precluded when
14 he's now putting on his case to now put her on as part of his
15 case.

16 MR. BECKER: Because Rule 611 allows the Court to
17 control the order of witnesses and the manner of direct and
18 cross-examination. And the rule that I've been aware of here
19 in federal court is that if there's cross-examination to be
20 made, it should be made, rather than withholding some
21 cross-examination until calling the witness yourself late in
22 the trial merely to highlight some point you want to make.

23 THE COURT: After the other side has rested.
24 Okay. Let's go.

25 MR. PETERS: Judge, the final point is we filed a

1 motion today. I was unclear yesterday as to whether or not
2 based on the information the Court's been provided that the
3 Department of Labor files which Dave True supervised, if
4 those were going to be submitted for ex carte review. In the
5 motion, what I don't believe I had yesterday is we found a
6 transcript of an evidentiary hearing on August 18th, 1989,
7 where the ATF was involved in litigation, the criminal
8 litigation of McReynolds. In an evidentiary hearing, Dave
9 True -

10 MR. BUNCH: Civil litigation, I believe.

11 MR. PETERS: Actually, it was the criminal
12 litigation where they criminally were prosecuting him for
13 having the trailers too close together.

14 But Dave True was asked, "Have you reviewed your
15 notes prior to this hearing?"

16 His answer was, "It would take me two weeks to
17 review the notes on this case. There was a continued
18 dialogue on my investigation of the homicide. n

19 And then on November 30th, logo, he was quoted in
20 the Kansas City Star as saying that they were spending about
21 as much time right now as they did after it occurred, with
22 one or two agents assigned to the case daily.

23 July lags, a federal grand jury was -

24 THE COURT: I have read all of your motion.

25 MR. PETERS: I think based on what we've presented

1 to the Court, it would be reasonable to assume that Dave True 2 has done
summary reports of the case, that he was the case
3 agent in charge. Based on the Court's ruling yesterday, it
4 was my impression that we would be entitled to those type of 5 reports, but
I don't know if that was ever solidified. I've 6 checked with Judge Hays, and
what they've been provided have 7 been his raw notes of witnesses called at
trial.

8 So I'm raising that. I think that, I think that on
9 the record, I would suggest we've made the threshold showing
10 of at least having the Court review them in camera. And
11 beyond that, we can wait and see what the Court's willing to 12 order and
whether there's anything -

13 THE COURT: There may or may not be some further
14 production. We've examined in some detail and would be in a 15 position to
tell you at or over the noon hour what documents 16 you may be getting or
whether you're getting any.

17 MR. PETERS: Judge, the only -- I've spoken with
18 Judge Hays, and what has been turned over have been notes of 19 interviews
of witnesses.

20 THE COURT: That's right.

21 MR. PETERS: What we're requesting are the summary
22 type of documents that Agent True would have prepared or
23 reviewed as agent in charge of this investigation that
24 remained active at least through February 10th of 1995.

25 (Court and Law Clerk conferred off the record.)

1 THE COURT: There was in our box, or in Miss
2 Geller's box today a three-page handwritten list. Does
3 anyone claim responsibility for producing this list? It's
4 two pages and a few lines of names and dates.

5 (Court and Law Clerk conferred off the record.)

6 THE COURT: All right. Mr. O'Connor, have you
7 looked at this typed list of statements that the clerk has
8 prepared?

9 (Counsel approached the bench and the following
10 proceedings were had:)

11 MR. O'CONNOR: Yes, Your Honor.

12 THE COURT: Have you received those statements?

13 MR. O'CONNOR: I was going to look at them when the
14 testimony started. I was going to go through my file and
15 check those out.

16 THE COURT: I'd like to put this thing to rest.

17 MR. O'CONNOR: I would too. That's why I just
18 talked about this this morning with Miss Geller.

19 THE COURT: It looks like there are six on there
20 that might have some information that would be pertinent and
21 that you should have.

22 MR. O'CONNOR: I believe we have an interview of
23 Kimberly Archer.

24 THE COURT: So that's not needed.

25 MR. O'CONNOR: Oh, you want me to look at all of

1 these? Okay.

2 THE COURT: All of them? No.

3 LAW CLERK: Just have they received them or not.

4 MR. O'CONNOR: Have we received a written report?

5 LAW CLERK: Yeah, because then there's no issue at
6 1 all.

7 MR. O'CONNOR: Okay. We can probably look at this
8 real quick and answer that. Archer, yes; Ayers, yes; Baird,
9 yes; Barchers, yes; Bayliff, yes; Butner, yes; Caudill -

10 MR. BECKER: There's also Cindy Butner. I think
11 the judge -

12 MR. O'CONNOR: That we got reports is what we're
13 saying.

14 MR. BECKER: Absolutely.

15 MR. O'CONNOR: Corriston.

16 MR. BECKER: Yes.

17 MR. O'CONNOR: Denyer, yes; Dornhoffer, yes;
18 Edwards, yes; Finch, yes; Lisa Fredrick?

19 MR. BECKER: She's the Clay County Jail for two
20 minutes.

21 MR. O'CONNOR: Right. Fugate, yes; Shawn Furrell,
22 yes; Marion Germann, yes; Lisa Landon?

23 MR. BECKER: She's a Barcher. Remember, she's the
24 third Barcher?

25 MR. O'CONNOR: We had a statement from her.

1

1

MR. BECKER: Yes.

2 1 MR. O'CONNOR: Maggard, yes; Mall, yes; Marburger,

3 yes; Morales, yes; Mynhier, yes; Neighbors, yes; Nettles,

4 1 yes; Ownby -

5 MR. BECKER: She's a skip Sheppard witness, yes.

6 MR. O'CONNOR: Pedersen, yes; Patsy Peeler, yes;

7 Shannon Reimers, yes; Deborah and Robert Riggs, yes; Nancy

8 Romi.

9 MR. BECKER: Yes, she's the one with the truck that

10 you -

11 MR. O'CONNOR: Okay. Glen Shepard, yes; Travis

12 Small, yes; Carolee Smith.

13 MR. BECKER: She's the one that I gave you the

14 morning she testified, remember?

15 MR. O'CONNOR: You gave us the interview, an actual

16 report?

17 MR. BECKER: Yes.

18 MR. O'CONNOR: Okay. Kevin Smith, yes; Patty

19 Smith, yes; Brian Studna, yes; Margaret Weaver, yes; John

20 White, yes; Carol Williams?

21 MR. BECKER: That's Bear's wife.

22 MR. O'CONNOR: Okay. Megan Williams.

23 MR. BECKER: Another skip Sheppard witness.

24 MR. O'CONNOR: We have interviews of those people

25 that we were given as typewritten interviews, yes, of all the

1 people we just talked about. I'm glad we did that.

2 LAW CLERK: On the second list, do you know from
3 the government whether they have typed statements of the ones
4 that are circled that the defense has requested but we have
5 not received to look at?

6 MR. BECKER: I didn't give them to you because I
7 haven't found the notes yet. Unless I found notes, I didn't
8 just give you reports. They have all of these reports.

9 THE COURT: But they want more than the reports,
10 don't they?

11 MR. BECKER: There's a number of them that I'm
12 still searching for the notes. For example, the Quiroz
13 interview was done by an agent in Texas. We've got to get
14 those notes. The PD, the interviews that are done by the
15 police department, they don't keep notes. And I have an
16 annotated one that I gave to Judge Hays about 7:30 or 8
17 o'clock last night that says which ones there are no notes
18 for. Like the Bear Williams one was a tape recording, there
19 were no notes. They just taped it. But it's annotated to
20 say whether or not -- there's about six of them. We're still
21 looking for notes from agents here or agents in other
22 jurisdictions, or there are just no notes.

23 THE COURT: Is it the state of our research of this
24 now that they should be producing the notes on these six that
25 e -

1 LAW CLERK: They have -- actually, that's correct

2 ~ THE COURT: They have the statements? And now we
3 want them to produce the notes?

4 LAW CLERK: Yes, and we have them copied, actually,
5 if you want the Court to just hand them over to the defense.

6 THE COURT: Does that integrate this list, this
7 list being what's marked DX40, the list headed Weaver through
8 True, second page, Wall through Newcomb?

gLAW CLERK: It incorporates all of the named
10 requests. The ones that are circled are the ones that we did
11 not receive either a typed statement or interview notes on
12 from the government. And if Paul looks over that list and
13 says that he doesn't have any notes on those and John looks
14 over that list and says, well, we already have the typed
15 statements, it's just the notes that we want, then we're
16 done. It's just that I can't do that myself, someone needs
17 to look at that list.

18 MR. BECKER: With that list, I can tell you if they
19 have these reports.

20 LAW CLERK: The ones that are circled.

21 MR. BECKER: Cindy Butner, you have that. Bear
22 Williams, you have that. Becky Edwards, you have that.
23 Lonnie Joe Pugh, you have that. That's page one.
24 The second page here. Virgil Whitt, you have
25 that. Chuck Elliott, you have that. Jerry Rooks, you have

1 that. Ronald Williams, the Four Acres Motel, you have that.

2 ILorena Deardorff, remember her, you have that. Michael

3 Whitelaw, he was in jail.

4 MR. O'CONNOR: Right.

5 MR. BECKER: Lisa Fredrick, Clay County Jail, you

6 have those. Rosemarie Quiroz, we definitely have those.

7 MR. O'CONNOR: We agree, unless I say I don't

8 agree.

9 MR. BECKER: Okay. Ranier (phonetic) was the

10 security officer up there. Remember, she found the note.

11 MR. O'CONNOR: Right. Do you have the report of

12 her?

13 MR. BECKER: Yes, you have the report on her

14 finding the note. There's no report on Kenneth Allison. He

15 was the mechanic. There was just a police report of him

16 making a report of damage to the vehicle.

17 Attebury, you have that. Harry Lett is an agent.

18 He testified, but there wouldn't be, he didn't do any report

19 about Darlene's confession or statement. You just -

20 MR. O'CONNOR: He interviewed a couple of

21 witnesses, but I don't remember who they were.

22 MR. BECKER: Yeah, but independently under his

23 name -

24 MR. O'CONNOR: Under his name, there's nothing

25 independent, that's right.

1 MR. BECKER: Pam Harth, you have that; Tommy
2 Butner, you have him. **Frank** Gile, you have him. Wally Gene
3 Mills III, you have him. And finally, Shannon Newcomb, you
4 shave those.

5 THE COURT: Okay. I want, before we conclude
6 this -

7 LAW CLERK: There's no notes on those.

8 MR. BECKER: We're looking for notes on some of
9 them. There's about four, we're still looking.

10 THE COURT: I want you -- I want Peters to get on
11 the record and say that he is satisfied with what you've been
12 provided.

13 MR. O'CONNOR: Okay. Let me talk to him real quick
14 about this.

15 (court and Law Clerk conferred off the record.)

16 MR. O'CONNOR: What I did on the record, I verified
17 that we had a report of interview or a typed statement or
18 some, something as it related to each of the persons circled
19 that we've been provided. And is there any of those that you
20 disagree with, including this list of people circled?

21 MR. PETERS: Judge, I've scanned through it. As
22 far as I know, we have received these. Depending on how long
23 the lunch hour is, I can verify it by computer, but I am not
24 aware of anybody that we don't have that's circled. Is
25 that -

1

1 MR. O'CONNOR: That's right.

2 THE COURT: I want to go further than that. I want
3 to be sure now that counsel has stated on the record that
4 there has been compliance, then, with the request made in
5 their motion for production of certain statements and/or
6 reports and/or notes by agents who were to relate to
7 witnesses called by the government.

8 MR. PETERS: My response would be we've received
9 written reports on these people. Whether there are other
10 written reports, we would have no way of knowing. And as to
11 raw notes on Agent True on those, we haven't received any of
12 those. So, no, we've received no raw notes.

13 MR. O'CONNOR: I think they have some to be
14 distributed to us now, as I understand Miss Geller, but we
15 haven't received any yet.

16 THE COURT: If it's appropriate.

17 LAW CLERK: We're going to look at them.

18 THE COURT: Okay. I think that's satisfactory for
19 now. All right.

20 MR. O'CONNOR: Have we resolved -- Paul, have we
21 resolved this Department of Labor stuff of your motion this
22 morning?

23 MR. PETERS: I wasn't up here.

24 MR. O'CONNOR: We didn't talk about that at all.
25 This is all part and parcel. I figure we'd better get it all

1 resolved here.

2 MR. BECKER: The one thing I wanted to respond to,
3 Mr. Peters indicated he thought there were, perhaps, summary
4 l reports or status reports or some kind of ongoing reports by
5 Special Agent True relating to either the investigation or
6 the labor situation. There are no such things.

7 Mr. Peters received this memorandum from Gene
8 Schram, the Department of Labor, and that was the opening
9 memo back in February of 1988. After that, the agents,
10 specifically Agent True, he does reports of interview. He
11 doesn't do periodic updates to me or to his superiors or to
12 anybody else, **frankly**.

13 THE COURT: Have you seen the reports of
14 interviews?

15 MR. BECKER: Right. And those have been -

16 MR. PETERS: The government has. We haven't.

17 MR. BECKER: Well, yeah. There's 900 witnesses in
18 the case, and I've reviewed all of those reports of
19 interview. We've produced the ones that are either Jencks
20 material or Bradv material.

21 MR. PETERS: Our position is that we've made the
22 threshold showing -- while recognizing what Mr. Becker says,
23 e think we've made the threshold showing for the Court to
24 the review. That is the first response.

25 The second response is I'm surprised that there

1 aren't updated reports by Agent True because one has been
2 provided to us in discovery. It's a 1996 report where he
3 goes over witnesses that he interviewed in the case and it's
4 an update to file.

5 MR. BECKER: At the time of the indictment, that
6 gets done. But -

7 THE COURT: And you have it.

8 MR. PETERS: But I thought I just heard that Agent
9 True didn't do summary reports and that I just said we have
10 one.

11 MR. BECKER: In federal practice, it's typical for
12 an agent to do a case report. And they've asked for
13 discovery of that, and I've refused it as work product
14 because it's merely a summary of all of it. But they have
15 his testimony before the grand jury, which is basically the
16 same summary.

17 You know, federal agents, and in particular ATF
18 agents, they do a case report at the end. But that's not -

19 THE COURT: Well, I'll tell you. I want the record
20 to reflect that after five weeks of this, I conclude that
21 there has been very fair and very legitimate disclosure by
22 the government of all of the information required by the
23 law. There may be a few sets of notes which could be
24 interpreted to relate to something about which there's been
25 testimony, and we may require that to be produced just as a

1 matter of abundant safety.

2 But as has been this Court's experience with this
3 United States Attorney's Office and this strike force for a
4 long time, I think they are abundantly fair, and I must say
5 from what I know about practice in other districts, much more
6 fair than is the case in a lot of other districts. And I
7 think the defendants have gotten more than they're entitled
8 to. And let's go.

9 MR. PETERS: So as to the motion filed today,
10 that's overruled?

11 THE COURT: What, for the Labor Department?

12 MR. PETERS: For summary reports prepared by
13 agent -

14 THE COURT: There aren't any.

15 MR. PETERS: Now we were just told that what a
16 federal agent does throughout the case is review things and
17 prepare summary reports.

18 MR. BECKER: No. At the end of the case prior to
19 indictment.

20 THE COURT: You've got that.

21 MR. OSGOOD: There's a prosecutor's report,
22 obviously, which has a brief summary of what each witness
23 Agent True thinks would be relevant and would testify to.

24 THE COURT: That would be work product.

25 MR. OSGOOD: There's an argument it is and there's

1

1 Tan argument it isn't. This comes up in tax cases whether or
2 not you get the special agent's report. I candidly admit
3 there's some authority that says we don't get it. There's
4 also some authority that says we do, depending on what's in
5 fit. But I presume there's probably a 50 or 75-page document
6 prepared that lists in his view what the order of testimony
7 ought to be and who the witnesses will be and what the
8 proposed charges ought to be, that kind of thing. Typically,
9 that's taken and massaged by the prosecutor and ends up as an
10 indictment and as a worksheet to -

11 MR. BECKER: That's all true, and they have all the
12 raw data that that document is based on.

13 THE COURT: All right.

14 MR. O'CONNOR: Just to further close this out, it's
15 our position, Judge, kind of like the Court thought that the
16 Martindale thing may have been a straw man that's knocked
17 down. That's exactly what they've done with this stuff.
18 They put up the straw man and knocked it down, and then they
19 say there's nothing to it, yet there's a 14-volume report out
20 there. There's notes that this agent took from people that
21 are out there, and all we're asking the Court to do is -

22 We're not accusing Mr. Becker of anything. I mean,
23 no one is saying he did anything, but he's an advocate in
24 this case. He has certain interests, and we have certain
25 interests, and the Court is the final arbiter. We're not

1 saying -- I'm not intimating and never have that he's done
2 anything wrong.

3 THE COURT: What is it that you think is in that 14
4 volumes that you haven't seen that -

5 MR. O'CONNOR: For example, Dave True said on, I
6 think it was direct examination, that they went out and
7 talked to 30 people and that it went nowhere. Well, 14
8 volumes doesn't sound like they went out to 30 people and it
9 didn't go anywhere.

10 MR. BECKER: I think you misunderstand the nature
11 of the labor file and this 14 volumes. As you've seen
12 throughout this case, Agent Schram went with Agent True to do
13 interviews of the witnesses we would agree are Marlborough
14 people, but that's still a labor report, and that goes in the
15 labor file. The labor file in most respects mirrors the ATF
16 file. If there's a PD report done of a Marlborough witness,
17 it got put in the PD file, the ATF file, and the labor file.
18 I mean, that's why the labor file grew is because it
19 contained all of this material on what we've been doing.
20 It's not 14 volumes of labor, purely labor information. It's
21 basically another case file.

22 MR. O'CONNOR: But it's my understanding that a
23 grand jury was convened, the people were brought before the
24 grand jury regarding the labor investigation. The government
25 took a serious approach to this labor issue, including their

1 evidence. Now what they did was they put on three witnesses
2 to say no picketing. Then they brought in True to say there
3 was picketing, yet it was informational picketing, like it
4 wasn't that big of a deal. They've put the straw man up, and
5 they've knocked it down themselves.

6 What we're trying to do is we're trying to at least
7 see if there's anything there that's discoverable. We're
8 down to the last two days of this trial. The trial was
9 supposed to go to March 1st. We're way ahead of schedule.
10 Our clients are facing life without parole. There's a real
11 issue here in this case. The whole case against our clients
12 is basically admissions. It's not the strongest of cases. I
13 could see if we had another case sitting before the Court
14 where we had fingerprints and all these other things -

15 THE COURT: I also see how easy it would be for you
16 folks to take this labor file and yourselves make some sort
17 of a straw man out of it and prosecute the way the labor file
18 was investigated and not prosecuted.

19 MR. O'CONNOR: We wouldn't be able to do that, Your
20 Honor, because we're not asking you to give it to us, we're
21 just asking you to look at it to see if you believe -

22 THE COURT: Where is it?

23 MR. BECKER: It's in the Department of Labor over
24 at City Center Square. The point is, all it is is reports of
25 interviews of hundreds of witnesses in this case that were

1 interviewed. If they are Jencks material, they've been
2 turned over. If there's Brady material, it's been turned
3 over.

4 So I don't understand the nature of their request,
5 other than, boy, you know, we want to look at this.

6 THE COURT: You want to challenge the Executive
7 Department decision made not to prosecute somebody under, as
8 a labor matter is what you all want to do.

9 MR. O'CONNOR: Not necessarily, Judge. It's kind
10 of like, you know, I don't know what's in there because I
11 haven't seen it. Okay. Mr. Becker knows, and he's told the
12 Court most of it's this case. So I'm assuming that could be
13 taken out for purposes of what you would look at.

14 All we're asking is if there's nothing, there's
15 nothing, and we can go on. Right now we have a legitimate
16 concern about the labor issue. They've put up this straw
17 man, in our opinion, and knocked it down, and maybe you can
18 say we put up a straw man on Martindale and knocked it down.

19 But the point is, there's issues before this jury
20 regarding the labor issue, which I think is going to be an
21 issue to be determined by them in their deliberations, to
22 some extent. And all I'm asking the Court, we don't want to
23 see it, we're asking you to look at the things that's not
24 related to this case, and you may look at it and say there's
25 nothing there. If that's the case, that's the case.

MR. PETERS: I

1

guess I seek guidance from the

2 court. On the Iran-Contra case that we cited to the Court,
3 the facts were, seemed to me to be analogous to what's going
4 on here, where the defendant charged in the crime said, well,
5 you conducted an investigation that didn't indict some other
6 people, and I should be allowed to review that information in
7 preparation of a defense. And then against the objections of
8 the government, the Court said it was to be given up.

9 That was what, that what in honesty prompted
10 this. This was an investigation that was a joint
11 investigation and in the Iran-Contra case, it was a different
12 agency, a different department, and the Court said -

13 THE COURT: Well, so was this.

14 MR. PETERS: Well, but in this case and some of the
15 cases cited to the court, that was a special prosecutor
16 outside the Department of Justice. This is a case where the
17 case agent from the ATF is in charge of the Department of
18 Labor investigation. And, again, I don't, I don't think -

19 THE COURT: You say this labor file is in a DOL
20 office in the City Center Square?

21 MR. BECKER: Yes.

22 THE COURT: How extensive is it?

23 MR. BECKER: It is, I think, 14 Manila folders
24 labeled 1 through 14. I don't understand this claim. You
25 now, the national security cases have nothing to do with the

1 case before the Court. This isn't a matter of us claiming
2 some privilege in the documents.

3 I've reviewed those documents. They do not contain
4 any Jencks material, they do not contain any Brady material.
5 There's no specific -- counsel keeps saying he's made the
6 threshold showing.

Of what? We just

go over and over and

7 over this same issue.

They've had this

opening memo from

8 Labor that contains every piece of dirt we ever had in
9 February of '89 on what we thought was a labor angle. If
10 they wanted to present evidence on their own of some labor
11 angle to say somebody else did this, they had the ammunition
12 to go about doing that.

13 But I've reviewed this whole file subsequent to
14 that February of '89 memo, and there is nothing in there that
15 tends to exculpate these defendants. There's just no other
16 basis to ask the Court to review it.

17 THE COURT: I'm confident that is the case. I
18 believe you. I believe that that is the case. I believe,
19 however, that it would be the course of wisdom for me to have
20 that file in my office promptly and for us to take a look at

22 MR. OSGOOD: Your Honor, I have a list in the
23 computer of about 500 people that you disclosed to us that
24 you made contact with by name. Would that be of assistance
25 in terms of eliminating -

1 MR. BECKER: You don't understand how much work it
2 is to take these files apart, take things -- and the minute I
3 start taking things out of the file, you'll say I took
4 something out of the file.

5 MR. OSGOOD: Did they have a list was my point.

6 THE COURT: Can't they just provide us with the
7 file?

8 MR. BECKER: Absolutely.

9 THE COURT: All right. Then that's what we'll do.
10 Then we'll take a look at it. We may be here until the end
11 of next week.

12 MR. BECKER: This is just meant to delay this
13 trial.

14 THE COURT: I know exactly what it's meant to do.
15 It does not relate to anything that's substantive in this
16 case, but we're going to make the right record because *if*
17 these people are convicted, I want them convicted. And if
18 they're acquitted, I want them acquitted on an honest record.

19 MR. OSGOOD: If it would expedite it, I'll give you
20 the list of those names.

21 THE COURT: Okay. Let's just get the file.

22 MR. OSGOOD: We probably should reflect on the
23 record while we're at the bench, all the defendants went to
24 the restroom, and no counsel objected to that, and this was
25 all done at the bench, that they wouldn't be privy to

1 anyway.

2 (The following proceedings were had in open court:)

3 THE COURT: Okay. All right. Does anybody have
4 many more instructions or revisions of instructions that you
5 haven't provided us?

6 MR. BECKER: I provided mine to the Court this
7 morning.

8 THE COURT: Did you get them from the defendants?
9 Where did you provide them, Mr. Becker, in our office?

10 MR. BECKER: Yes, in chambers, but I have -- are we
11 in recess, Judge?

12 THE COURT: We're just waiting for the defendants
13 to return, and then we're going to bring the jury in.

14 MR. BECKER: I need to make arrangements to bring
15 the file over.

16 (The following proceedings were had in the
17 courtroom in the presence of the jury:)

18 THE COURT: We apologize for the delay here, but we
19 had a rather serious evidence question that had to be dealt
20 with, and I believe we've now dealt with it, and we can now
21 proceed.

22 MR. O'CONNOR: Mr. Bunch has his first witness,
23 Your Honor.

24 MR. BUNCH: Call Mr. Van Hoecke, Your Honor.

25 THE COURT: Come up, Mr. Van Noecke, stand by the

1 witness stand, and be sworn.

2 1

-- --

3 RICKJ. VAN HOECKE,

4 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,

5 testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Bunch:

9 Q. State your name, please.

10 A. Rick J. Van Hoecke.

11 Q. And how old are you, sir?

12 THE COURT: I'm sorry. I didn't understand what
13 you said.

14 THE WITNESS: Rick J. Van Hoecke.

15 THE COURT: Van Hoecke?

16 THE WITNESS: Yes, sir.

17 Q. (By Mr. Bunch:) Do you want to spell your last name,
18 please?

19 . V-A-N H-O-E-C-K-E.

20 Q. And you've given -- your age, again?

21 . Thirty-four.

22 Q. And where are you presently employed?

23 . At the IRS as federal security officer.

24 . How long have you been in that employment?

25 . Two and a half years.

1 Q. Let me ask you, Mr. Van Hoecke, where you were employed
2 when the explosion that resulted in the death of six firemen
3 occurred.

4 A. Danguard Security.

5 Q. And what is the -

6 THE COURT: I'm sorry. What was, what did you
7 say?

8 THE WITNESS: Danguard.

9 THE COURT: Danguard?

10 THE WITNESS: Yes, sir.

11 THE COURT: And that was in November of '88?

12 MR. BUNCH: Yes, Your Honor.

13 Q. (By Mr. Bunch:) And what is Danguard Security, or what
14 was the nature of its business and in what capacity were you
15 employed?

16 . Just patrol and just different various buildings around
17 greater Kansas City and the Kansas area.

18 Q. And what did you do in connection with your employment?
19 on patrol.

20 Q. And what areas did you patrol?

21 . Kansas and Missouri both.

22 Q. Now, are you familiar with the site where the explosion
23 occurred?

24 . Yes, sir.

25 . And were you on duty on the night of the explosion?

1

1 A. Yes, sir.

2 l Q. And are you familiar -- you are, or did I ask you if

3 l you're familiar with the site where that explosion took

4 place?

5 A. Yes, I'm familiar with the site.

6 Q. And how is it that you are familiar with the site, and

7 how is it that you were in that area on that evening?

8 A. I just live about a mile from there, and I went on

9 patrol that night about 3:30. I was going down 87th heading

10 west, and I just seen a brown van that -

11 Q. Let me ask you some preliminary questions, if I may,

12 about this. Did you have patrol responsibilities for

13 Danguard Security in the area where the explosion site

14 existed?

15 A. No.

16 Q. And so where were the businesses that you had

17 responsibility for, where were they located in that area?

18 A. Just north on 71 through the business district there,

19 and then in Kansas.

20 THE COURT: I'm sorry, sir. I'm not hearing you.

21 Maybe he needs a little, a better location of the mike. What

22 did you say about Kansas?

23 THE WITNESS: We had fares in Kansas also.

24 THE COURT: And that night at 3:30 in the morning

25 that you've testified to, where were your responsibilities?

1 THE WITNESS: Kansas and Missouri both.

2 THE COURT: Kansas City, Missouri?

3 THE WITNESS: And Overland Park, Kansas.

4 THE COURT: And Overland Park, Kansas. Sorry, Mr.
5 Bunch, go ahead.

6 MR. BUNCH: That's all right.

7 Q. (By Mr. Bunch:) Now, you went on duty about 3:30 a.m.,
8 did you say?

9 A. It was -- I got on duty at midnight.

10 Q. And about 3:30 a.m., where were you?

11 A. I was going to QuikTrip to get a soft drink.

12 Q. And QuikTrip where?

13 A. Off Old 71 Highway by the explosion site.

14 Q. And en route to the QuikTrip, did you observe anything?

15 A. I noticed a brown panel like Chevy van.

16 Q. Where did you see that?

17 A. By the firefighters memorial site.

18 Q. And what was this, was the van occupied?

19 A. Yes, it was. I could not tell how many occupants or
20 who.

21 Q. What kind of van was it?

22 . It was like a delivery van, panel type van.

23 Q. And did you, were you able to observe how many people
24 are inside the van?

25 . No, sir.

1

1 Q. Was the van moving, or was it parked?

2 A. It was parked.

3 l Q. After you saw the van, what did you do?

4 A. I just proceeded to go on to QuikTrip and get a soft
5 drink.

6 Q. That's what you did in there?

7 A. Yes.

8 Q. How long do you think you were in the QuikTrip?

g A. Two or three minutes.

10 Q. And why did you leave?

11 A. I got a call on the radio to respond to an alarm call.

12 Q. Did you make any observations while you were leaving the
13 QuikTrip?

14 A. I just seen two individuals, one male and one female,
15 entering while I was exiting the building.

16 Q. Where were they at?

17 A. They were going in the doors as I was walking out.

18 THE COURT: I'm sorry. I'm having a terrible time
19 hearing this man. How many individuals did you see?

20 THE WITNESS: Two.

21 THE COURT: One man and one woman?

22 THE WITNESS: Right.

23 . (By Mr. Bunch:) Where were they?

24 . They were coming in as I was walking out.

25 THE COURT: Into the QuikTrip?

1 THE WITNESS: Yes, sir.

2 THE COURT: As you were walking out?

3 THE WITNESS: Yes, sir.

4 THE COURT: Thank you.

5 Q. (By Mr. Bunch:) Can you describe the male for us?

6 l A. Oh, the male, he was about mid-twenties, mid-thirties,
7 blandish, brownish hair, about 150 pounds.

8 Q. Any height?

9 A. About five eight, maybe five ten.

10 Q. How was he dressed?

11 A. Kind of scroungy looking, holes in his jeans.

12 Q. Could you describe the female you saw entering the
13 QuikTrip?

14 A. Small build, brownish hair, height about five four, five
15 five.

16 Q. Weight?

17 A. 110.

18 Q. I take it you had no conversation with these people?

19 A. No, sir.

20 Q. Did you see them enter the QuikTrip?

21 A. Yes, sir.

22 Q. And then you left because you had a call?

23 . Yes, sir.

24 Q. Where did you go?

25 . It was on American Fence.

1

1 Q. Well, can you tell us after you left the QuikTrip the
2 direction in which you proceeded?

3 A. I headed north down 71.

4 Q. How far?

5 A. Probably about two or three miles.

6 Q. And after that, then you checked, did you, the -

7 A. Yeah, I checked the building.

8 Q. And then what did you do?

9 A. I proceeded to go to Kansas.

10 Q. And what route did you take?

11 A. I went south.

12 Q. Did you again then, was this south on what highway?

13 A. 71.

14 Q. And then did you again pass the site of where the
15 explosion occurred?

16 A. Yes, sir.

17 Q. Did you at that time see any fire?

18 . No, sir.

19 Anywhere?

20 . No, sir.

21 Q. Did you see any vehicles that were patrolling the site?

22 . No, sir.

23 . That is, you didn't see any parked vehicles or vehicles
24 with spotlights or anything of that sort; is that correct?

25 . No, sir.

1 Q. And from there you proceeded to where?

2 IA. I went to Kansas.

3 IQ. And when did you learn of the explosion?

4 IA. I heard on the scanner on the -

5 Q. How long after that?

6 A. Probably about 30, 35 minutes.

7 MR. BUNCH: All right, sir. Thank you.

8 MR. PETERS: I have no questions, Judge.

9 MR. O'CONNOR: No other questions, Judge.

10 THE COURT: Any cross?

11 MR. MILLER: A few questions, Judge.

12 -- -- --

13 CROSS-EXAMINATION

14 By Mr. Miller:

15 Q. You said that from the QuikTrip you went up to American
16 Fence?

17 A. Yes, sir.

18 Q. And that's 200 to 300 yards away from the QuikTrip?

19 A. Two or three miles.

20 Q. Two or three miles, I'm sorry.

21 THE COURT: Which direction?

22 Q. North?

23 A. North.

24 Q. And your times that you're giving are estimate times,
25 right?

1 A. Pretty close, yeah, they're estimated.

2 IQ. Because you didn't look at your watch and then jot down
3 on a note pad anything that you saw?

4 A. No.

5 MR. MILLER: That's all I have, Judge.

6 MR. BUNCH: No redirect.

7 THE COURT: I guess I don't understand why it was
8 that you went north to American Fence and then turned around
9 and went south on 71. Why did you go to American Fence?

10 THE WITNESS: I had an alarm call out there. It
11 was an intrusion alarm.

12 THE COURT: All right. So you went, and what
13 happened then at American Fence?

14 THE WITNESS: Just an alarm was going off.

15 THE COURT: And then you went south on 71?

16 THE WITNESS: Right.

17 THE COURT: To what?

18 THE WITNESS: 71 south to Bannister, Bannister to
19 State Line.

20 THE COURT: And you were also on an alarm call
21 there; is that right?

22 THE WITNESS: No, I was just going in towards
23 Kansas.

24 THE COURT: All right. Thank you. You may step
25 down.

1 Call your next witness.

2 ~ MS. FRANCO: Kevin LeManske, Your Honor.

3 THE COURT: Come up and stand by the witness chair
4 and be sworn, please, sir.

6 KEVIN LeMANSKE,

7 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
8 testified as follows:

10 DIRECT EXAMINATION

11 By Ms. Franco:

12 Q. Sir, could you please state your name?

13 A. Kevin LeManske.

14 Q. And where do you live?

15 THE COURT: Just a minute. Spell the last name for
16 the reporter, please.

17 THE WITNESS: L-E, capital M-A-N-S~ E.

18 THE COURT: Okay.

19 Q. Mr. LeManske, where do you live?

20 A. I live in Kansas City, Kansas.

21 Q. Do you have any felony convictions?

22 A. No.

23 Q. How are you employed?

24 . I'm a truck driver.

25 Q. Do you recall the explosion that occurred November 29,

1 1988, in South Kansas City?

2 I A. Vaguely.

3 IQ. Do you recall how you were employed at that time?

4 A. I was a security guard with Ameriguard.

5 l Q. Do you know what your duties, what you were guarding
6 during that time?

7 A. We were supposed to visually inspect the area, the
8 perimeters of the area and everything in the compound. Both
9 the construction equipment and the trailers.

10 Q. And was this the construction site that eventually had
11 the explosion on it?

12 A. Yes.

13 Q. Okay. While you were on duty during your tenure there,
14 during your employment there, did you ever allow any
15 individuals onto the site that had no permission to be there?

16 A. No, ma'am.

17 Q. Do you know Skip, Earl D. Sheppard, known as Skip
18 Sheppard?

19 A. Never heard of him.

20 Q. Do you know **Frank** Sheppard?

21 A. No, ma'am.

22 Q. How about Bryan Sheppard?

23 A. No, ma'am.

24 Q. And a woman by the name of Darlene Edwards?

25 A. No, ma'am.

1
1 Q. Do you know a gentleman by the name of Richard Brown?
2 A. No, ma'am.
3 Q. You've never met any of those individuals?
4 A. No.
5 Q. Did you ever allow any of those individuals onto the
6 site to steal construction equipment or tools?
7 A. No, ma'am.
8 MS. FRANCO: Thank you, Mr. LeManske, that's all I
9 have.
10 THE COURT: Any further questions by the defense?
11 MR. PETERS: No, Judge.
12 THE COURT: Any cross?
13 MR. MILLER: No, Your Honor.
14 THE COURT: All right. Thank you, sir, you're
15 excused.
16 Call your next witness.
17 MS. FRANCO: Elizabeth Harrigan.
18 THE COURT: Come up and stand by the witness chair
19 and be sworn, please, Miss Harrigan.

ELIZABETH HARRIGAN,

being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
testified as follows:

-- --

DIRECT EXAMINATION

By Ms. Franco:

Q. Miss Harrigan, could you please state your full name for
the record?

A. Elizabeth K. Harrigan.

Q. Do you go by the name Elizabeth?

A. No, I go by Liza.

Q. Where do you live?

A. I live in South Carolina.

Q. Where did you live in November of 1988?

A. Kansas City.

Q. Do you have any felony convictions, ma'am?

A. No.

Q. Do you have any history of drug use?

A. Yes.

Q. Do you know Skip Sheppard?

A. Yes.

Q. How do you know Skip Sheppard?

THE COURT: I'm sorry. Did you say yes?

THE WITNESS: Yes, we dated.

Okay. How long ago did you date or for how long did you

1

1 date?

2 l A. Probably three or four years off and on. It was quite a
3 long period of time.

4 Q. Okay. Could you briefly describe your relationship?

5 A. We went as far as talking about marriage. Very close.

6 Q. Did you have any kind of physically abusive times during
7 your relationship?

8 A. A few.

9 Q. And describe briefly what those may have entailed.

10 A. We were split up one time for a couple of weeks, and we
11 saw each other in a bar. And he got upset with me dancing
12 with somebody and walked up and knocked me in my mouth, and
13 my tooth fell out. It didn't even break my lip, but my tooth
14 did manage to fall out.

15 Q. Did you have any subsequent episodes similar to that?

16 A. One other time, and the tooth was bonded back into the
17 other teeth temporarily. I wasn't allowed to even bite on a
18 potato chip without it falling out. So I had to be real
19 careful. And we got into an argument at his mother's house
20 when I went there to see him, and I don't even know that he
21 necessarily hit me in any way. I fell on the bed and knocked
22 my mouth, and my tooth came out once again.

23 Q. Did you have any other incidents where you had physical
24 abuse, where you were physically abused?

25 A. Nothing major like that, no, nothing.

3468

1 Q. Did you, in fact, at one time obtain a protective order?

2 A. That was after the first time he knocked my tooth, it
3 was after the first time.

4 Q. What was the reason that you sought a protective order?

5 A. Because I didn't want to lose my tooth again. Probably
6 just to make him mad.

7 Q. And -

8 A. Because I violated the order myself.

9 Q. You violated the order?

10 A. Yes, to see him.

11 Q. So you continued seeing him, even though you obtained a
12 protective order?

13 A. Yes.

14 Q. Did you ever get any treatment for your drug -

15 A. Yes, I went to my mother and begged her to get me help,
16 and she -

17 THE COURT: Counsel, let's get to the substance of
18 your testimony, could we? This all seems preliminary.

19 MS. FRANCO: It is, Your Honor, but I think it will
20 tie in right now.

21 Q. (By Ms. Franco:) Do you recall the explosion that
22 occurred November 29th, 1988?

23 A. Yes.

24 Q. Do you recall where you were that evening?

25 A. Yes, I was at Didi and Larry Baker's house.

3469

1 Q. And who were Didi and Larry Baker?

2 A. Didi is Skip's sister.

3 Q. Do you recall what you were doing there that evening?

4 A. We had been staying there like a few days off and on.

5 We did that a lot. We would spend the night and spend time
6 with the kids.

7 Q. Do you recall if you were using drugs that evening?

8 A. No, we had not been for a few days, just kind of laying
9 back.

10 Q. Did you spend the night there?

11 A. Yes.

12 Q. Okay. Do you recall where skip was when you went to
13 bed?

14 A. He was in bed with me.

15 Q. Do you recall what time approximately that was?

16 . I believe it was sometime after midnight. Midnight, 1
17 o'clock.

18 Q. What's the next thing you recall?

19 . Everybody waking me up, Skip and the kids and Larry and
20 Didi in a panic. And the kids were panicked and not knowing
21 what was going on, asking me if I realized what had
22 happened. And they were at the point where they didn't know
23 what was going on. The kids were scared.

24 . Do you recall who woke whom up?

25 . Skip was waking me up, and the children were all right

1

1 there. It was like everybody was right over me when they
2 were waking me up, and I guess the children had woke the
3 parents up and Skip up because they woke up scared when they
4 heard the noise.

5 IQ. But you didn't wake up on your own, did you?

6 IA. No.

7 IQ. Do you recall, do you know if Skip ever got out of bed
8 while you were sleeping?

9 A. Not that I know of no.

10 Q. You can't say if he did, or you can't say if he didn't?

11 A. No, he never roamed around too much in the night.

12 Q. okay. Did you notice anything unusual about his
13 demeanor when he did wake up?

14 A. No He was panicked like the rest of them. They all
15 looked real shocked and like they just didn't know what had
16 happened. They didn't know what was going on. They were
17 looking around the house to see if windows were broke and
18 trying to calm the kids down.

19 Q. Do you know what time that was?

20 A. I've always thought it was, I always said it was early
21 in the morning, but I always felt it was 6 00 or 7:00, maybe,
22 in the morning. Of course, I'm not really sure. And I never
23 l even -- I assumed that that's when all of this took place
24 because I slept through it. But -- and when they woke me up,
25 ~ it was like it had just taken place because they were

1 panicked. The kids were still terrified like they had just
2 got up scared. So I'm assuming it was -

3 Q. So you have no independent recollection of what time?

4 IA. I never looked at a clock, no.

5 IQ. Okay. Are you testifying today because you're afraid of
6 I skip?

7 IA. No, I've never been afraid of Skip.

8 IQ. In fact, were you not subpoenaed by us to come and
9 I testify?

10 A. I thought I was going to testify, and then my testimony
11 might hurt Skip. I didn't know who it would hurt, if it
12 would hurt any of them. But when they asked me, I have to
13 tell them the truth. And I thought the government was going
14 to call me to start with. So they had questioned me first.
15 So I've never been afraid of Skip.

16 THE COURT: Excuse me. You've answered the
17 question. Ask another question.

18 MS. FRANCO: Thank you, Miss Harrigan. That's all
19 I have.

20 THE COURT: Any questions by the defense?

21 MR. PETERS: No, Judge.

22 THE COURT: Any cross?

23 MR. BECKER: One second, Judge.

1

2 By Mr. Becker:

3 IQ. Good morning, Miss Harrigan.

4 IA. Good morning.

5 Q. Do you remember approximately when you met Skip
6 Sheppard?

7 A. It was -- years are not good with me, dates and times,
8 I've always said that, but it was, I guess, back in '84. I'm
9 not -- I'm assuming from the time that all of this took
10 place, I can't remember dates and times, but it's been -

11 Q. Do you remember living with -

12 A. I was living with Dixie Everhart, yes, that's how I
13 remember.

14 Q. You were using drugs at that time?

15 A. Yes, I was.

16 Q. And did you meet Skip Sheppard, then, through -

17 A. Using drugs, yes.

18 Q. At some point, Dixie Everhart was arrested; is that
19 right?

20 A. Yes. They had busted the apartment that we were staying
21 in or something and Skip came and took me to his mother's
22 house.

23 Q. So you were living at that time at the house on Hickman
24 Mills Drive owned by Skip Sheppard's parents; is that right?

25 A. Yes.

1 Q. And at that time were you and Skip Sheppard continuing
2 to use drugs?

3 IA. When I first got there, he pretty much wanted me to
4 straighten up. I was in pretty bad shape. And he tried to
5 help me get better and healthier and clean me up a little
6 bit. And then we did continue to use drugs, not the same
7 drugs, cocaine.

8 Q. Right. Do you remember when you've talked about this
9 before -

10 A. Yes.

11 Q. -- with the agents, and you've talked to the grand jury,
12 you said he tried to move you from what are dirty drugs to -

13 A. To a cleaner drug. That's how we looked at that.

14 THE COURT: Excuse me, ma'am, let him finish his
15 question and then you answer.

16 A. Yes.

17 Q. He basically tried to move you from dirty drugs to
18 cleaner drugs, right?

19 A. That's what we called them. That's how we all look at
20 it is cocaine as a cleaner drug than crank or crystal
21 methamphetamine, as far as drug users are concerned.

22 Q. So as far as intravenously, you were -

23 A. No, we were still intravenously.

24 Q. And that was with Skip Sheppard?

25 A. Yes.

3474

1 Q. Was Skip working during that time?

2 A. Yes, he did work.

3 Q. Did you know Skip Sheppard to steal things during that
4 time?

5 A. Him and his brothers and his friends and all of their
6 buddies, they would, kind of ten speeds, hub caps kind of
7 stealing, lawn tools. I mean, things like that.

8 Q. Do you remember that they stole tools and radios and
g lawn mowers and televisions, things like that?

10 A. I never witnessed it myself but, yes, they went around,
11 little things here and there throughout the years, I guess.

12 Q. Do you remember that Skip Sheppard stored those things
13 in the garage at Hickman Mills Drive until they could be
14 traded for drugs?

15 A. There might have been some things in there every now and
16 then. It was his home.

17 Q. Do you remember the pickup truck that Skip Sheppard's
18 father owned?

19 A. Yes.

20 Q. Did Skip Sheppard use that pickup truck?

21 . He drove it every now and then because his father would
22 let him.

23 . The night of the explosion, who was at Larry and Didi
24 Baker's house?

25 . Me and Larry and Didi and the kids and Skip, as I

1 recall.

2 l Q. Do you know where Larry Baker is today?

3 A. No, I don't.

4 l Q. Do you know where Didi Baker is today?

5 A. No, I don't. I heard Didi is at home.

6 THE COURT: Never mind what you heard, just what
7 you know.

8 THE WITNESS: Okay.

9 Q. (By Mr. Becker:) The night, that would be November 28,
10 1988, you were at Larry Baker's house with skip Sheppard?

11 A. Uh-huh.

12 Q. Did Bryan Sheppard come over?

13 A. Yes. I remember him coming over early that evening.

14 Q. Bryan Sheppard was skip's nephew; is that right?

15 A. Yes.

16 Q. He came over to the house in the early evening and tried
17 to get Skip to go out with him; isn't that right?

18 A. He came over asking him if he would go somewhere with
19 him, something to that effect, yes. skip just stood at the
20 door speaking to him.

21 Q. Right. skip went to the door and spoke with Bryan and
22 then came back and told you he wasn't going to go out with -

23 A. I overheard him saying that he wasn't going anywhere,
24 yes.

25 Q. But you heard Bryan Sheppard come over?

1 A. Let's go.

2 Q. And try and get Skip to go out at that time?

3 A. Somewhere, yeah, something.

4 Q. Are you a heavy sleeper?

5 A. Yes.

6 Q. In fact, have you previously told the agents and
7 testified that you're, proverbially, one of those the house
8 could fall down around you and you wouldn't hear it?

9 A. Yes.

10 Q. And it's your testimony you didn't hear either one of
11 these explosions; is that right?

12 A. No, I did not know there were two explosions until
13 recently.

14 Q. Do you remember also -- now, you had some confusion at
15 the end there with your testimony with Miss Franco, when you
16 woke up in the morning, when they woke you up, was it
17 daylight outside?

18 A. I would assume it was. I said I always assumed it was
19 6:00, at least 6:00 in the morning when I woke up because it
20 never seemed to be any earlier. I always assumed the
21 explosions were earlier, but then that confused me because I
22 always assumed -- they were panicked like it had just
23 happened. I mean, the kids were still terrified like it had
24 just happened, so that does confuse me.

25 . But do you remember it being daylight when you woke up?

1 A. I guess -- yes. I don't remember seeing the sun shine,
2 No In my mind when I think about it, no, but I mean it was
3 I -- if I feel that it was 6:00, I would say that when I was
4 telling, when I made my statement I said it was, I guess it
5 was around 6:00. And he said, well, then, it would have been
6 daylight? Well, I guess it would have been daylight, you
7 know, if it was that time.

8 Q. Do you remember testifying before the grand -

9 A. That's how I stated it, yes.

10 Q. Do you remember testifying before the grand jury?

11 A. Yes.

12 Q. Do you remember being asked these questions?

13 A. Yes.

14 Q. You've got to give me -

15 A. Yes. I remember all of that.

16 THE COURT: Let him finish the question before you
17 answer.

18 Q. Page 9, "Was it daylight at that point?"

19 Answer, "Oh, yes. I assume it was. I assume it
20 couldn't have been any earlier than 6:00 or 7:00, somewhere
21 around there, because it was daylight."

22 A. That's what I said.

23 Q. Was that accurate?

24 A. Yes, that's what I said.

25 Q. I know, but was that true?

1 A. Yes. Well, yes.

2 Q. Afterwards, after this whole explosion thing, did you
3 ask Skip Sheppard about the explosion and did Skip tell you,
4 "You don't want to know about it"?

5 MS. FRANCO: Objection, Your Honor.

6 THE COURT: Why?

7 MS. FRANCO: For one, it's hearsay.

8 THE COURT: I don't think it's offered for a
9 hearsay purpose. Any other basis?

10 MS. FRANCO: Pardon me?

11 THE COURT: Any other basis for your objection? He
12 doesn't offer a hearsay purpose. Overruled.

13 A. Right after it was on the TV and they had questioned
14 Bryan or went through that with him, I had asked Skip if
15 there was, if Bryan had done or knew anything about it. He
16 says, "You don't really need to know anything, if there were
17 anything," and, you know, kind of just shrugged it off.

18 Q. (By Mr. Becker:) Now, recently, and I mean last May
19 when you would have come back to Kansas City to testify, did
20 you go over and visit with Naomi Sheppard -

21 A. Yes.

22 Q. -- after that? Did you tell Naomi Sheppard about -

23 MS. FRANCO: Objection, Your Honor, this is well
24 beyond the scope.

25 THE COURT: Well, I don't know. I haven't heard

1 the question.

2 MS. FRANCO: Well, it's still beyond the scope if
3 he's talking about her visits last May to Naomi Sheppard's
4 house.

5 THE COURT: But it could relate directly to what
6 she testified on direct. Do you want to ask your question,
7 and then we'll decide whether it's beyond the scope.

8 Q. (By Mr. Becker:) Yes. Did you tell Naomi Sheppard that
9 Bryan Sheppard had come over that night to the Baker
10 residence to get Skip?

11 A. Yes.

12 THE COURT: It's not beyond the scope.

13 MR. BECKER: Thank you very much.

14 THE COURT: Any other questions by -- any
15 redirect?

16 MS. FRANCO: Just a couple, Your Honor.

17 REDIRECT EXAMINATION

18 By Ms. Franco:

19 Q. Miss Harrigan, when you testified that you had seen the
20 things stored in the Sheppard garage, do you have firsthand
21 knowledge of what things and where they came from?

22 A. No. I just said I assumed there were some things in
23 there.

24 Q. Did you ever see Bryan Sheppard come back to the Baker

1 household anytime after you saw him that early evening?

2 A. No.

3 Q. And about your testimony regarding whether it was
4 daylight or not, I'm not really clear, but it appears to me
5 that you in, your testimony was that you always assumed it
6 was 6:00 or 7:00 but there was confusion. Is the daylight,
7 the comment daylight, was that your independent recollection?

8 A. I couldn't elaborate. I've been confused about it, and
9 I've thought about everything. I've been questioned three
10 different times. It confuses my own mind when I say that
11 they acted like it had just taken place. The kids, the kids
12 are what matters to me. I can still see their faces. They
13 were still just Creaked, like this had just happened. And
14 then I said it happened, I would assume it was around 6:00 or
15 7:00 a.m. when they woke me up. And when they questioned me,
16 they said, well, then, it would have been daylight. Yes, it
17 would have been daylight if it were 6:00 or 7:00 a.m.

18 Q. So it was basically -

19 A. I never looked at a clock. I don't even know. I've
20 always assumed that. But then it doesn't make sense to me in
21 my own mind that those children were the way they were and
22 everything was so crazy, and then they're telling me this
23 explosion took place much earlier because I didn't know when
24 it took place, and that's gotten me confused.

25 MS. FRANCO: Okay. Thank you.

3481

1 MR. OSGOOD: Your Honor, I have two questions.

2 Ma'am -

3 THE COURT: Do you have to be -- you have to be
4 limited to her redirect.

5 MR. OSGOOD: I will.

7 CROSS-EXAMINATION

8 By Mr. Osgood:

9 Q. Was there anybody else with Bryan Sheppard when he came
10 over?

11 A. No, sir.

12 MR. OSGOOD: Thank you.

14 RECROSS-EXAMINATION

15 By Mr. Becker:

16 Q. Did you sleep through both of these large explosions?

17 A. Yes, sir.

18 MS. FRANCO: Objection, Your Honor, that's beyond
19 the scope of redirect.

20 THE COURT: It's been asked and answered also.

21 Q. (By Mr. Becker:) Do you know how far away you were from
22 this construction site?

23 MS. FRANCO: Objection, Your Honor.

24 THE COURT: Well, now, I think you asked her if she
25 slept through it, didn't you?

1 MS. FRANCO: I did not, Your Honor. That's been
2 asked and answered on direct, and I did not reask it on
3 redirect.

4 MR. BECKER: I thought the redirect was about
5 whether or not she knew it was daylight or the kids were just
6 waking up, all of that business with her waking up.

7 THE COURT: Yes, you may answer that.

8 Q. (By Mr. Becker:) Do you know how far away this
9 construction site was?

10 A. I believe Didi's house is approximately, what, three or
11 four miles, five miles from the site. I'm not real good at
12 mileage, so -- it's not very far.

13 MR. BECKER: Thank you. That's fine.

14 THE COURT: Okay. You may step down. Thank you.

15 MS. HUNT: The defense calls Naomi Sheppard.

16 NAOMI SHEPPARD,
17 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
18 testified as follows:

19
20 -- -- --

21 DIRECT EXAMINATION

22 By Ms. Hunt:

23 Q. Good morning. State your name.

24 A. Naomi Sheppard.

25 Q. And spell your last name.

1 A. S-H-E-P-P-A-R-D.

2 Q. And where do you live?

3 A. 7939 Hickman Mills Drive.

4 Q. And is that in the Marlborough area of Kansas City?

5 A. Right.

6 Q. I'm going to show you what's been admitted into evidence
7 as Government's Exhibit 318 and ask you if you recognize
8 that.

9 A. That's my home.

10 Q. That's a picture of your house?

11 A. Yes.

12 Q. How long have you lived in that house?

13 A. Thirteen years.

14 Q. And when you moved into that house, who moved in with
15 you?

16 A. My two sons, Earl Sheppard and George Sheppard, my
17 husband Earl Sheppard, and myself.

18 Q. And is your husband now deceased?

19 A. Yes.

20 Q. Does your son Earl Sheppard go by a nickname?

21 A. Yes.

22 Q. What is that nickname?

23 A. skip.

24 Q. Why does he go by that nickname?

25 A. Because I nicknamed him at birth.

- 1
- 1 Q. Okay. Is your son skip Sheppard in the courtroom today?
- 2 A. Yes, he is. That's him.
- 3 Q. And how old is skip?
- 4 A. He's thirty-six.
- 5 Q. Is George Sheppard in the courtroom today?
- 6 A. Yes, he is.
- 7 Q. And does George go by any other name besides George?
- 8 A. **Frank.**
- 9 Q. Is that the name he normally goes by?
- 10 A. Yes.
- 11 Q. Is your grandson in the courtroom today?
- 12 A. Yes, he is.
- 13 Q. And who is that?
- 14 A. Bryan Sheppard.
- 15 Q. And Bryan is whose son?
- 16 A. He's my oldest son, Jack Sheppard's boy.
- 17 Q. Okay. And did Jack Sheppard live with you in that
- 18 house?
- 19 A. (Witness shakes head.)
- 20 Q. Let's go through, how many children do you have, total?
- 21 A. I have four living and one dead.
- 22 Q. Okay. And the oldest is?
- 23 A. Jack Sheppard.
- 24 Q. Then?
- 25 A. **Frank** Sheppard, Phillip Sheppard that's deceased.

1 Q. Okay.

2 A. Earl Sheppard, and my daughter Naomi Sheppard Baker.

3 Q. And she's married?

4 A. Yes.

5 Q. Baker is her married name?

6 A. Yes.

7 Q. Let's talk for a minute about Phillip Sheppard. You say

8 he's deceased?

9 A. Yes.

10 Q. When did he die?

11 A. He died in 1970.

12 Q. How old was he when he died?

13 A. Fourteen years old.

14 Q. How did he die?

15 A. Shot in the head.

16 Q. Explain a little bit more about the circumstances of his
17 death.

18 A. He and his little friend that was 14 that ran around
19 together, went to school together, played hooky one morning.
20 He hitchhiked over there to his friend's house, and they
21 started looking at guns. I don't know, that's what they tell
22 me. And one had a hair trigger on it. As he was bringing it
23 out for my son to look at, it accidentally went off and shot
24 him in the head.

25 Q. And who is the friend who he was with that day?

3486

1 A. Stephen Kilgore.

2 Q. How were you first notified that your son Phillip had
3 died?

4 A. The police officers came up to my home.

5 Q. And then at some point did Steve Kilgore tell you what
6 happened?

7 A. Later on down the road, he did.

8 Q. Where is Phillip Sheppard buried?

9 A. He's buried at Longview Cemetery.

10 Q. Was Steve Kilgore at Phillip Sheppard's funeral?

11 A. Yes.

12 Q. After the funeral, when is the next time you saw Steve
13 Kilgore?

14 A. I never seen him for 23 years.

15 Q. And what year was it that Phillip Sheppard died?

16 A. 1970.

17 Q. And, then, so you saw Steve the next time 23 years
18 later?

19 A. Right.

20 Q. How did Steve contact you again?

21 A. He got ahold of the cemetery office and asked them for
22 my phone number and would they contact me because he wanted
23 to talk to me desperately.

24 Q. And so the cemetery called you first?

25 A. Yes.

1 Q. And did you give permission for Steve Kilgore to contact
2 you?

3 A. Not at that time, I didn't.

4 Q. Did you ever give permission?

5 A. About the third call, I did.

6 Q. Okay. Then did he ever come to your house, or did you
7 ever see him after the cemetery phone calls?

8 A. He finally came about a week later.

9 Q. And just tell us, what happened when he came to your
10 house?

11 A. He knocked on the door, I was in my bedroom, my daughter
12 answered the door, and she went and let him in. And he first
13 spoke to her, and then he came in my bedroom because he asked
14 her where I was. He came in my bedroom where I was as I was
15 walking out and told me who he was because I did not
16 recognize him. And we walked in the living room and sat down
17 on the sofa.

18 Q. And who else was present in your house during that time?

19 A. My two sons, **Frank** and skip Sheppard, and myself, and
20 Larry Baker, my son-in-law. And my daughter.

21 Q. And did you have a conversation with Mr. Kilgore in your
22 living room?

23 A. Yes, I did.

24 Q. Did everybody that you just named that were present, did
25 everybody stay for that conversation?

1 A. They stayed for just a short while, but my sons with
2 Larry Baker, my son-in-law, got up and they went outside and
3 sat in the front yard in front of the garage door.

4 Q. That's Larry Baker, **Frank** Sheppard, and Skip Sheppard?

5 A. Right.

6 Q. Did you at any point leave your house with Mr. Kilgore?

7 A. Later on that evening, yes.

8 Q. And tell us who left and where you went.

9 A. Myself, my daughter Naomi Baker, and three little
10 grandkids went to his house, but he first wanted to go by the
11 cemetery.

12 Q. okay. Did he have a car?

13 A. Yes, he did.

14 Q. And the three little grandkids, are those your daughter
15 Naomi's children?

16 A. Yes.

17 Q. And so you and your daughter and the three grandkids and
18 Steve Kilgore got in the car?

19 A. Yes.

20 Q. Okay. And you went by the grave first?

21 A. We went by the grave first.

22 Q. Did he talk to you about buying a headstone or any
23 conversation about that?

24 A. That was the reason why he wanted to get in touch with
25 me.

1 Q. Okay. And did you discuss him buying a headstone?

2 A. Yes, we did for just a short while in my living room.

3 Q. Did you tell him that you wanted him to buy a headstone
4 or didn't want him to buy a headstone?

5 A. I told him I didn't care one way or the other.

6 Q. When you went with, after going by the grave, did you go
7 anyplace else?

8 A. He wanted us to meet his wife and family and to see his
9 home. And it was in Raytown someplace. I'd never been
10 there. And we went there, stayed for a while.

11 Q. Did he take you home that night, then?

12 A. Yes, he did.

13 Q. And did he come back in the house or just drop you off?

14 . No. He didn't come in the house.

15 Q. Okay. Did you ever see him again?

16 . About a month later, he came back.

17 Q. Did he, did you know he was coming, or was it -

18 A. No, I didn't.

19 Q. Okay. And tell us what happened when he came back.

20 A. He visited for just a short while, and then he wanted us
21 to just ride around with him. so I don't know what possessed
22 me to go, but I did.

23 Q. And when he came back the second time, who was present
24 in your house?

25 A. There was Larry Baker, my son-in-law, my three

1 grandkids, and my daughter, and myself.

2 Q. And did you go for another ride with Mr. Kilgore?

3 A. Yes, we did.

4 Q. All the people you just named went for this ride?

5 A. Yes.

6 Q. To your knowledge, did skip Sheppard or **Frank** Sheppard
7 ever go for a ride or go anywhere with Steve Kilgore?

8 A. They never.

9 Q. After that second time, did you ever see Steve Kilgore
10 again?

11 A. Never.

12 Q. Did he ever buy a headstone?

13 A. Never.

14 Q. You testified that the first time he came over, **Frank**
15 and Skip and Larry went outside?

16 A. Yes.

17 Q. Were they angry at Mr. Kilgore, or did they say
18 anything, or why did they go outside, to your knowledge?

19 A. They didn't say anything to him. They were friendly to
20 him and spoke to him as he first came in, but they've never
21 had good feelings towards him anyway because they felt like,
22 you know, he shot our brother, and they felt bad all of these
23 years about it and blamed him.

24 Q. Do you know an individual by the name of Lisa Landon,
25 her maiden name would be Barchers?

1 A. Yes.

2 Q. How do you know her?

3 A. I've known her since birth. She is the daughter to my
4 best girlfriend I had that passed away.

5 Q. What's her name?

6 A. Sylvia Barchers, her mother.

7 Q. How long ago did Mrs. Barchers die?

8 A. She died around four or five years ago, I believe.

9 Q. Did Lisa Landon ever come to your house or go into your
10 house?

11 A. She's never been in my house but once.

12 Q. Okay. Tell us, when she came to your house, what
13 happened?

14 A. To let me know one morning that her mother was not
15 expected to live but a few hours and wanted to know if I
16 wanted to go to the hospital where she was. And I said yes.
17 I got up and I went with her, we walked outside, got in her
18 car, and went to the hospital.

19 Q. And then did you stay at the hospital, then?

20 A. All night long with the family.

21 Q. so the day that she came over, did she physically come
22 inside the house?

23 A. She stepped right in my living room, and that was it.

24 Q. Okay. Did she and her mother when her mother was still
25 alive ever come over to your house for dinner?

1 A. Never.

2 Q. Did her mother visit your house?

3 A. Quite a bit.

4 Q. Do you know Lisa's husband?

5 A. Met him, but I don't really know him.

6 Q. Okay. And you've known her since birth, you said,
7 right?

8 A. Yes.

9 Q. Has the families, her family and your family always been
10 close or -

11 A. Always been close.

12 Q. Did she always live in Kansas City?

13 A. No, she was born in New York City.

14 Q. Okay.

15 A. Brooklyn, I believe it was.

16 Q. And did she live there at some point?

17 A. Until she was probably about three or four years old,
18 she moved here.

19 Q. Okay. Did she ever move back to New York?

20 A. Never moved back there, huh-uh.

21 Q. Okay. Did your sons, were your sons friendly with her
22 son, I guess, John Barchers, and Lisa?

23 A. Always friendly.

24 Q. Okay. Did they stay in touch in later life, or was it
25 just as kids?

1 A. Just as kids, mainly.

2 Q. And after they were a certain age -

3 A. Beg your pardon.

4 Q. After they got to be a certain age, did they stop

5 associating all the time?

6 A. Right.

7 Q. When was that, roughly?

8 A. Right.

9 Q. When was that, what age would you guess?

10 A. Oh, teens, early teens.

11 Q. Okay. I'm going to ask you a few questions. The

12 picture on the screen here is your house; is that right?

13 A. I can't see. Oh, uh-huh.

14 Q. Okay. Does your house have a back door to it?

15 A. Yes, it does.

16 Q. And is that back door functional?

17 A. Yes.

18 Q. Do people in your family use that back door?

19 A. Yes.

20 Q. Okay. In your house, is your washer and dryer together

21 in a small room?

22 A. No.

23 Q. Has there ever been a small room with your washer and

24 dryer in it?

25 A. No.

1 . Has there ever been an add-on addition at the back of
2 your house?

3 A. No.

4 Q. Okay.I'm going to show you -- can you see this
5 diagram?

6 A. Yes.

7 Q. This is what's been entered into evidence as Defendants'
8 Exhibit No. 12. Now, I'm going to ask you one time. Is
9 there an add-on addition back here in your house?

10 A. No.

11 Q. Okay.Have you seen a videotape that we have taken of
12 your house?

13 A. I seen it once, I believe.

14 Q. You've watched the whole videotape; is that right?

15 A. Uh-huh.

16 Q. Is it an accurate portrayal of your house?

17 A. Yes, it is.

18 MS. HUNT: Okay. Your Honor, I want to show
19 Defendants' Exhibit No. 44, which is the videotape, at this
20 time.

21 MR. BECKER: No objection.

22 Q. (By Ms. Hunt:) It will only be shown on that screen, so
23 you need to direct your attention to that screen.

24 (The playing of Defendants' Exhibit 44 began.)

25 Q. Is this now showing the side of your house?

- 1 A. That's the north side of my house.
- 2 Q. Is that showing the back of your house?
- 3 A. Yes, it is.
- 4 Q. And that back door was functional in 1988?
- 5 A. Yes.
- 6 Q. Now, this is showing the living room; is that correct?
- 7 A. Uh-huh.
- 8 Q. Now, what room of the house is this?
- 9 A. That's the dining room.
- 10 Q. Which is right off the living room; is that right?
- 11 A. Yes, it is.
- 12 Q. And now we're going into which room?
- 13 A. That's my kitchen.
- 14 Q. And is there a washer and dryer in the kitchen?
- 15 A. Just the dryer.
- 16 Q. And is that the dryer?
- 17 A. That's my dryer.
- 18 Q. Is that the front door -
- 19 A. Yes.
- 20 Q. -- in the house? That's the dining room looking towards
- 21 the front of the house; is that right?
- 22 A. Yes, it is.
- 23 Q. Is that your garage?
- 24 A. Yes.
- 25 Q. Is that a washing machine?

1 A. That's my washing machine.

2 Q. That's in the garage?

3 A. That's in the garage.

4 THE COURT: Is that the back wall of the garage?

5 Q. It goes into the kitchen from there, is that -

6 THE COURT: Excuse me, counsel. Is that washing
7 machine at the back wall of the garage?

8 THE WITNESS: It's the back wall of the garage that
9 just connects to my kitchen.

10 Q. And what are we looking at in this picture?

11 A. That looks like the back bedroom opening of the closet
12 at the bottom where you go into my crawl space.

13 (The playing of Defendants' Exhibit 44 concluded.)

14 Q. Explain one more time where the washing machine is
15 located in the garage.

16 A. My washing machine is in the garage next to the wall of,
17 the kitchen wall.

18 Q. Behind the kitchen wall?

19 A. Uh-huh.

20 Q. Okay. And the dryer is where?

21 A. It's in my kitchen.

22 Q. Okay. Has the dryer ever been in the garage?

23 A. Never.

24 Q. Is there a dryer vent that comes out of the -

25 A. Yes, there is.

1 Q. Have you ever used that dryer vent?

2 A. Never.

3 Q. Have the washer and dryer ever been in the same room?

4 A. No.

5 Q. The crawl space, have you ever been in that crawl space?

6 A. I've looked in it.

7 Q. Have you ever been down there?

8 A. I'm scared to go down there because I'm scared of
9 snakes.

10 Q. Have you ever been down in there?

11 A. I looked down there because we had a rainy spell one
12 year and the water was coming up in it, and I was thinking
13 about getting a plumber to come down there.

14 Q. How deep is the crawl space?

15 A. I would have to double over to get back in there.

16 Q. In 1988, did you and your husband own a pickup truck?

17 A. Yes, we did.

18 Q. When did you sell that truck?

19 A. I sold my truck a year later on his birthday, August the
20 8th of '89.

21 Q. When did your husband pass away?

22 A. He died in '88, December the 30th.

23 Q. I'm going to hand you what's been marked Government's
24 Exhibit 312 and 313, see *if* you can identify these.

25 A. That's the pickup.

3498

1 Q. And this one?

2 A. That's it.

3 Q. Okay. This is a photograph of the pickup truck that

4 you -

5 A. Yes, that's our pickup.

6 Q. -- at one time owned? Was it in that condition when you

7 owned it?

8 A. No.

9 Q. How was it different?

10 A. It was a pretty nice pickup. Hardly any rust, any

11 primer or anything like that on it. Real nice.

12 Q. And I'll show you Government's Exhibit 313. When the

13 pickup truck, when you owned it, did it have that red primer

14 on the hood?

15 . No.

16 Q. But you recognize that that's the pickup truck?

17 . That's it.

18 Q. Was skip ever in a car wreck?

19 A. Yes, he was.

20 Q. Was he injured?

21 A. Severely.

22 Q. What kind of injuries did he have?

23 MR. BECKER: Objection, relevance.

24 THE COURT: What's the relevance of this?

25 MS. HUNT: Can we approach?

1 THE COURT: Yes.

2 (Counsel approached the bench and the following
3 proceedings were had:)

4 MS. HUNT: Before we had testimony through
5 Barchers, I believe, that he was in a car wreck and had head
6 injuries and was kind of slow since then. I'm going to
7 confirm that he was in a car wreck and had head injuries.
8 That's it.

9 THE COURT: Do you have some sort of head injury
10 defense in this case?

11 MS. HUNT: That's in evidence, and I just wanted to
12 confirm that he was in a car wreck and had head injuries,
13 that's all.

14 MR. BECKER: Are you arguing that he's incapable of
15 doing this crime?

16 MS. HUNT: No.

17 THE COURT: I don't think it relates. Sustain the
18 objection.

19 (The following proceedings were had in open court:)

20 Q. (By Ms. Hunt:) Mrs. Sheppard, do you know Patty Smith?

21 A. Do I know Patty smith?

22 Q. Uh-huh.

23 A. Yes.

24 Q. When did you first meet her?

25 A. About '93, somewhere along in there.

1 Q. And where did you meet her?

2 A. At my house.

3 Q. Was she introduced to you, or did she introduce herself,
4 or how did you get to know her?

5 A. She just sat there and introduced herself one day.

6 Q. Did she come over with anybody or just come in by
7 herself?

8 A. Alone.

9 Q. Was she friends or dating or anything any of your
10 children?

11 A. No.

12 Q. Did she hang out with any of your children?

13 A. She took skip several times to go get his checks cashed
14 or something like that for the ride.

15 Q. Okay. Did skip ever date her?

16 . Friends.

17 Q. skip never dated her, to your knowledge?

18 A. Never.

19 Q. How many times did she come to your house?

20 A. Very few.

21 Q. If you had to guess, estimate, three or four, five, six?

22 A. About three times a month or so after work or something.

23 Q. And how long of a period of time did she come by? I'm
24 talking about from the first time she came by to the last
25 time you saw her, about how long ago was that in between?

1 A. Two or three weeks apart, something like that.

2 Q. Okay. But the first time you saw her and then the last
3 time you saw her, between those two dates, was it two months,
4 three months, a year?

5 A. A couple of months or something like that.

6 Q. Did you ever warn Patty Smith about dating your son
7 Skip?

8 A. I never have talked to her that much.

9 Q. Did you ever -

10 THE COURT: Wait a minute. Wait a minute. Is the
11 answer to that question no?

12 THE WITNESS: No.

13 Q. (By Ms. Hunt:) You never warned -

14 . No.

15 Q. Did you ever tell Patty Smith that you had dynamite
16 buried underneath your house?

17 A. No.

18 Q. To your knowledge, did you ever have dynamite buried
19 underneath your house?

20 A. No.

21 Q. Did you ever tell Patty Smith that your son committed
22 this crime?

23 A. No.

24 Q. Did you ever have an emotional conversation with her in
25 which you were crying and very upset and just wanted to

1 confide in her?

2 A. Never.

3 Q. Do you remember the night of the explosion?

4 A. Yes, I do.

5 Q. And where were you?

6 A. In bed asleep.

7 Q. And who was in the house that night?

8 A. My mom moved in there with us just not too long before
9 that, and she was there with us, and then my husband.

10 Q. Okay. Were any of your children there?

11 A. No.

12 Q. Did you wake up, did you hear the explosion?

13 A. On the first one, we woke up.

14 Q. And when you woke up, what did you do?

15 A. Me and my husband went out to the front door, stepped on
16 the porch, checking everything out to see what that was.

17 Q. Did you have any damage to your house?

18 A. I had one glass broke in the back bedroom, and that was
19.

20 Q. Okay. When you were out on the front porch, did you see
21 the pickup truck?

22 A. Parked right there in our driveway.

23 Q. Did Skip or **Frank** ever come home that night?

24 A. No, they didn't.

25 Q. Do you remember the second blast that occurred?

3503

1 A. Yes.

2 Q. And did you do anything after that blast?

3 A. No.

4 Q. Never looked out?

5 A. No. Didn't even get out of bed.

6 Q. But were you still awake then?

7 A. Yes.

8 Q. Did anybody ever come home that night?

9 A. No.

10 Q. Did anybody ever call you that night?

11 A. No.

12 Q. Are you an alibi witness for Skip Sheppard?

13 A. No.

14 Q. Did Skip Sheppard ever confess to you that he committed
15 this crime?

16 A. No.

17 Q. Did **Frank**?

18 A. No.

19 MS. HUNT: That's all I have. Thank you.

20 MR. PETERS: I have no questions for her.

21 MR. O'CONNOR: No, Your Honor.

22 MR. OSGOOD: No, Your Honor.

23 MR. BECKER: Thank you.

3504

1 CROSS -EXAMINATION

2 By Mr. Becker:

3 Q. Good morning, ma'am.

4 A. Hello.

5 Q. When is the last time you saw Larry Baker?

6 A. The last time I saw Larry Baker was yesterday.

7 Q. Is he living with you at your home now?

8 A. Yes.

9 Q. And your daughter Didi Baker, is she living with you at
10 your home now?

11 A. Yes.

12 Q. How long has Larry Baker been living with you?

13 A. Oh, about a year and a half now.

14 Q. Liza Harrigan, did you see her before you came in here
15 today?

16 A. I seen her in the witness's room.

17 Q. Was she living with skip at your home in 1988?

18 A. No. No, it was before that, I think. But she was
19 living at my house for a while. Just a short while.

20 Q. And that was -

21 A. Before.

22 Q. And that was sometime before the explosion; is that
23 correct?

24 A. Uh-huh. Uh-huh.

25 Q. During that time, were the two of them using drugs at

3505

1 your house?

2 A. No.

3 Q. Did you know that they were using drugs?

4 A. No.

5 Q. Did you know that -- was Skip employed at all in
6 November of 1988?

7 A. He was employed with the L. B. Ball's Tree Service.

8 Q. Do you know, was he living at your house then?

9 A. Yes.

10 Q. So he'd get up every morning and go to work; is that
11 your testimony?

12 A. Well, L. B. didn't work every day. Bad weather and
13 stuff like that, he didn't, his boss. But he worked whenever
14 he had work to do.

15 Q. so it's your recollection that he had a regular job in
16 November of 1988?

17 A. It wasn't regular, no.

18 Q. Did **Frank** Sheppard have a job in November of 1988?

19 . No.

20 Q. Now, do you recall last May Liza Harrigan coming over to
21 your house to say hello to you and catch up with you?

22 . Yes, I do.

23 MS. HUNT: Objection. This is beyond the scope of
24 direct examination of this witness. We didn't discuss Liza
25 Harrigan on our direct.

1 THE COURT: You'd better come up on that.

2 (Counsel approached the bench and the following
3 proceedings were had:)

4 MR. BECKER: She's going to clear my ears out yet.

5 THE COURT: Yeah.

6 MR. BECKER: I believe this goes to motive. The
7 last witness Harrigan testified that she went over to Mrs.
8 Sheppard's house and informed Mrs. Sheppard that Bryan had
9 come over to the Baker residence the night of the explosion
10 to try and get Skip to come out. This witness then told
11 Harrigan, "Don't tell that to the agents." So I think it
12 goes to her motive to falsify and withhold information
13 relating to this case.

14 MS. HUNT: I think that's a far stretch.

15 THE COURT: Overrule the objection.

16 (The following proceedings were had in open court:)

17 . (By Mr. Becker:) Mrs. Sheppard, do you remember Liza
18 Harrigan telling you that on the night of the explosion Bryan
19 Sheppard had gone over to the Baker residence to try and get
20 Skip to go out?

21 . She mentioned it to me once.

22 Q. Do you remember you told her not to tell that to the
23 agents?

24 . No, I never told her that.

25 Q. Now, you testified about the Barchers family. Do you

1 remember, was there an individual by the name of Al Barchers,
2 one of the sons?

3 A. Uh-huh, yes.

4 Q. Did you ever visit Sylvia Barchers' home at 7g01 East
5 114th Street in Kansas City, Missouri?

6 A. Yes.

7 Q. Do you recall being at Sylvia Barchers, home and telling
8 Al Barchers that your family was at the site using your
9 husband's pickup truck?

10 A. No.

11 Q. Do you recall being at Sylvia Barchers' house and
12 telling Al Barchers and Sylvia Barchers that they were there
13 looking for copper and aluminum to cash in for money?

14 A. No, sir.

15 Q. Do you recall telling Al Barchers and Sylvia -

16 MS. HUNT: Objection. Your Honor, Al Barchers was
17 not discussed on direct and has not been a witness in this
18 case, and he keeps cross-examining her on what she told Al
19 Barchers. It's beyond the scope.

20 THE COURT: I don't think credibility questions are
21 beyond the scope.

22 MS. HUNT: There has been no testimony to date
23 about Al Barchers.

24 MR. BECKER: Because he's a potential rebuttal
25 witness, but there -

1 THE COURT: There has been mention of the Barchers
2 family and the Barchers relationship. I'm not sure that
3 specifically Al Barchers -

4 MR. BECKER: We've had three Barchers testify, and
5 this is one more.

6 THE COURT: I'll deny that, I'll overrule that.

7 Q. (By Mr. Becker:) Did you tell Sylvia Barchers and Al
8 Barchers that when the security guard approached, Skip
9 created a diversion?

10 MR. PETERS: Your Honor, I object to hearsay.

11 MR. BECKER: It's what she said.

12 THE COURT: It's not offered for -

13 MR. PETERS: It's not in the presence of any of
14 these defendants.

15 THE COURT: It's not offered for the hearsay, for
16 the purpose of proving the truth of what she said. It's
17 offered to prove whether she said it.

18 Q. (By Mr. Becker:) Did you say that, that when the
19 security guards approached, Skip created a diversion? Did
20 you say that to Sylvia Barchers and Al Barchers?

21 A. Never.

22 Q. Now, you testified that Patty Smith came around your
23 house in 1993. Are you sure that that's the year?

24 A. I believe that's when it was.

25 Q. Are you -

3509

1 A. I'm not quite sure.

2 . Are you aware of a police report that your son was
3 arrested for assaulting Patty Smith sometime around October
4 nd, logo? Do you remember that?

5 . No, I don't.

6 MR. BECKER: I have no further questions, Judge.

7 THE COURT: Any redirect?

8 MS. HUNT: No redirect, Your Honor.

9 THE COURT: All right. You may step down.

10 THE COURT: Do you have a short witness?

11 MR. PETERS: If we could approach for just a
12 minute.

13 (Counsel approached the bench and the following
14 proceedings were had:)

15 MS. HUNT: That's all I've got.

16 THE COURT: Okay.

17 MR. PETERS: Judge, I'm thinking if we could break
18 for lunch and I could have Debbie Riggs come in and I ask my
19 two questions for my offer of proof, she's been here with her
20 attorney, and that way we could get her on the road.

21 THE COURT: Let's let them go and then bring her in
22 to make that offer of proof.

23 MR. OSGOOD: Then we're with Mr. Bethard when we
24 come back after lunch?

25 MR. PETERS: Walker.

3510

1 MR. OSGOOD: Mr. Bethard's attorney is here is why
2 I'm asking. So 1:30, Your Honor?

3 THE COURT: Yes. We're going to have an offer of
4 proof here on Debbie Riggs.

5 (The following proceedings were had in open court:)

6 THE COURT: Ladies and gentlemen, we're going to
7 take our lunch break now with the usual instruction to you
8 about not discussing the case. Please be back in the jury
9 room at 1:30. You're excused.

10 (The following proceedings were had in the
11 courtroom out of the presence of the jury:)

12 THE COURT: All right. You may make your offer of
13 proof.

14 MR. PETERS: I'm going to get Miss Riggs, Judge.

15 THE COURT: Come up, please, and I'll remind you
16 that you've already been sworn in this case and you are sworn
17 to tell the truth. You understand that?

18 THE WITNESS: Yes, sir.

19 THE COURT: Okay. Have a seat.

DEBORAH RIGGS,

having been previously sworn, testified further as follows:

-- --

VOIR DIRE EXAMINATION

By Mr. Peters:

Q. Miss Riggs, during the time period of November 28th, 29th, 1988, was this red Toyota pickup that you had in good working order?

A. Yes, it was.

Q. Would you have been working on it at all the night of November 29th?

A. No.

Q. 1988?

A. No.

Q. At the time that you were working for Ameriguard, you were being paid as a security guard by Ameriguard; is that correct?

A. That's correct.

Q. But at the time that you were being paid, you actually weren't receiving the checks, they were being given to somebody because you owed money; is that correct?

A. To my mother.

MR. PETERS: I have no further questions, Judge.

THE COURT: Anything else? Mr. Becker?

MR. BECKER: Nothing from the government, Judge.

1 THE COURT: All right. Thank you. You may step
2 down. Anything else?

3 MR. PETERS: No, Judge. We can do a very brief
4 record after lunch.

5 THE COURT: All right. Then we'll take our lunch
6 break and reconvene at 1:30.

7 (A recess was taken from 11:59 a.m. to 1:47 p.m.)

8 THE COURT: Mr. Bunch, just so the record is clear,
9 and we'll make a written record later this afternoon on this
10 with an order, but we are denying that motion for -- I don't
11 think I told you. We're denying that motion for handwriting
12 exemplar on the grounds that there doesn't seem to be any
13 reasonable suspicion raised by the record that there's
14 anything irregular about that -

15 MR. BUNCH: All right. I accept the ruling.

16 THE COURT: Okay. Thank you, sir. Now, we have
17 made determinations on the original material produced by the
18 government. And have you gotten that yet? It will be handed
19 to you during the afternoon, anyway. The latest submission,
20 that is the labor investigation file, the Labor Department
21 investigation file we will examine between now and probably
22 this time tomorrow. The government -- or the defense will
23 not be allowed to rest until it's had the opportunity to have
24 and see any material that may come from that file.

25 It's -- I have looked at enough to know, to have

1 the opinion that it's very unlikely that anything will result
2 from that, or anything of any consequence. But we'll give
3 you the opportunity to see what's there. Okay.

4 Now, then, Mr. -- you look like you want to make a
5 speech, Mr. Osgood.

6 MR. OSGOOD: Not a speech. It might be something
7 we can approach on.

8 MR. PETERS: I think we can -

9 MR. OSGOOD: He's ready to go. It's a matter of
10 Fifth Amendment rights that we want to talk to you about.

11 (Counsel approached the bench and the following
12 proceedings were had:)

13 MR. OSGOOD: We haven't made that decision yet.

14 MR. BUNCH: Can I handle this, please? We had a
15 discussion, I'm sure Mr. Osgood wasn't there, and I don't
16 mean to in any way infringe upon anything you want to say.

17 Judge, I think it's important in the case that we
18 have an opportunity to meet collectively, that is the defense
19 lawyers and the defendants. There are judgments being made
20 about who isn't going to be called and so forth. Thereafter
21 after we work this out, and I believe that we can, I think
22 it's much more efficient and will run much smoother if we
23 meet five lawyers and five defendants.

24 THE COURT: When do you want to do it?

25 MR. BUNCH: Whenever it's convenient, and then we

~ 3514

1 would be in a position to put each of the defendants on the
2 stand and waive their right to testify. It is my opinion
3 none of them are going to. We had a discussion over the
4 lunch hour. so we're asking sometime this afternoon to have
5 that opportunity.

6 MR. OSGOOD: That was my idea, we would do this
7 while you were doing the other.

8 THE COURT: Let me ask -- I guess you're at bat.
9 What more do you have?

10 MR. PETERS: I have one witness, probably four or
11 five questions. And at the end of Deborah Riggs' testimony
12 -- I said I would have an offer of proof. Over the lunch
13 hour, I called Mr. Greg Pugh, and I advised Mr. Becker of
14 this. After Deborah Riggs testified, Mr. O'Connor received a
15 call from Mr. Pugh saying that on the night of the explosion
16 he was taking his daughter to the hospital, going north on 71
17 Highway, observed the red pickup truck underneath the cleed
18 (phonetic) lights.

19 He's a mechanic, so he noticed that they were
20 working on this red pickup truck. The hood was up. He was
21 then driving home after midnight from the hospital and again
22 sees the red pickup truck with the hood up.

23 Until we had the information and until Deborah
24 Riggs was directly asked were you working on your truck that
25 night, did you have your hood up, we, if she had said she had

1 her hood up, then this, Mr. Pugh's testimony wouldn't be in
2 conflict. But you had asked whether there was new evidence.
3 I did speak to him for the first time over the lunch hour. I
4 think -

5 THE COURT: You already had her back on the stand.

6 MR. PETERS: I've had Deborah Riggs, but the Court
7 had said that the testimony may not be relevant. I think the
8 testimony that her truck was in working order and she didn't
9 have the hood up is relevant when -

10 THE COURT: Do we know it was her truck this guy
11 saw?

12 MR. PETERS: He describes it -- as the Court will
13 remember where they were, they had these huge cleed lights,
14 the bright, bright lights on the west side of the highway
15 illuminating it. He remembers that and he, again, keeps
16 pointing out, I'm a mechanic, I noticed that they were
17 working on this truck.

18 THE COURT: Who is they? How many people were
Is working on it?

20 MR. PETERS: I'm recollecting that he said he saw
21 four people there on the way. I don't remember asking him
22 how many people he saw on the way back. But it's in the time
23 period where the only testimony during the trial, there's no
24 other explanation other than it being a red Toyota pickup
25 truck, which was Deborah Riggs'. And we had no way of

1 knowing -- the guy called after Deborah Riggs had testified.

2 We had no way of knowing -

3 Oh, and the other tidbit is he had also called the
4 Tips hotline previously, and that was something that we
5 weren't aware of. My guess is it's one of those things that
6 the Tips hotline didn't forward, he never got a call back.
7 But I would again ask that either we read the Deborah Riggs
8 two-question testimony to the jury or she be allowed to be
9 recalled and then I would call this Mr. Greg Pugh, and he's
10 available to testify at any time.

11 MR. BECKER: Well, the first I've heard of this,
12 this fellow's name was about one hour ago when Mr. Peters
13 gave me a name and a phone number. It's rather odd to me
14 when we had Kevin LeManske, the other security guard, on the
15 stand this morning, if we were interested, truly interested
16 in allowing of inquiry about the truck or whether it was
17 Donna Costanza's car that was being worked on that night,
18 then counsel could have asked, anybody could have asked
19 LeManske, who was there, what happened. And was it Donna
20 Costanza's car that was being worked on or was it Debbie
21 Riggs' pickup truck being worked on.

22 THE COURT: What is your position on this? What
23 does this all mean? so the hood was up on the pickup truck.

24 MR. PETERS: It means that the government has
25 provided reports that show that Debbie Riggs, that suggest

1 that Debbie Riggs wanted to get rid of her pickup. I think,
2 we would suggest the Riggses have been impeached. As Mr.
3 Becker pointed out yesterday, she's changed her testimony as
4 to where they were at the time and all of that.

5 We think it's significant that -- and the Court saw
6 her demeanor. She's adamant that the truck was fine that
7 night and nobody worked on it. Mr. LeManske -- as we're all
8 aware, Mr. LeManske had a white vehicle, not a red pickup
9 truck. The only red pickup truck -

10 THE COURT: Why wasn't LeManske asked if the red
11 pickup truck was worked on?

12 MR. PETERS: Well, first of all, he doesn't know -

13 MS. HUNT: When we interviewed him, he had no
14 recollection. He really doesn't know.

15 MR. PETERS: But more important, Judge, if you
16 recall from the evidence, LeManske left when Debbie Riggs
17 came on. Remember, LeManske and Costanza were arguing.

18 MR. BECKER: What were they arguing about, the fact
19 that Costanza's car wasn't working?

20 MR. PETERS: Right. And Costanza's car isn't at
21 issue here. Nobody else at the site had a red pickup truck.
22 All of those people had left, according to the testimony of
23 Debbie and Robert Riggs. LeManske and Costanza had left by
24 the time that we're talking about here. They had left
25 probably before 10:00; but certainly when this guy is coming

3518

1 back after midnight, they were gone.

2 THE COURT: So? I don't understand the
3 significance of this guy seeing a red pickup truck at that
4 site. I mean, she has said the red pickup truck was there.

5 MR. PETERS: But she says that her truck was in
6 working order and that she didn't have the hood up that
7 night, and we have an independent witness who is sitting
8 outside the courtroom reading the newspaper accounts. He
9 called John O'Connor's office and said, reading the accounts
10 of her pickup truck and what went on, and he tells Mr.
11 O'Connor, I had driven by at 10:00, I drove by after
12 midnight, I'm a mechanic, they were working on the truck, and
13 I called the Tips hotline.

14 THE COURT: Well, now, honestly, if he's just
15 driving by, how does he know they were working on the truck?
16 They could have been putting water in it.

17 MR. PETERS: First, he said he's a mechanic, but I
18 don't care if they were -

19 THE COURT: He's driving by. so he's a mechanic,
20 so what? I'm a lawyer. Doesn't mean just because I walk
21 past a courtroom I know the subject of the litigation going
22 on inside.

23 MR. PETERS: If Debbie Riggs had not been asked
24 directly, as I did today, did you have your hood up that
25 night, then I don't think it would matter. But she

1 explicitly said no, I didn't have my hood up.

2 THE COURT: Are you saying that this proves that
3 the Riggs truck was torched by the Riggses that night?

4 MR. PETERS: I'm not, I don't -- I think that if we
5 were in a trial of arson on the Riggses for their truck, if
6 this was, you know, an insurance case and I came to you with
7 this information that it would certainly be considered
8 relevant. If I had known this information before, I
9 certainly would have asked their arson investigator would you
10 consider it significant if somebody says their truck was in
11 fine working order and that they never raised the hood and
12 that an independent witness says, yes, they were working on
13 it and the hood was raised.

14 But further than that, the Court has said the
15 credibility of the witnesses aren't collateral and she -- you
16 got to see her demeanor. It was, no, my truck was working
17 fine; and, no, my hood was not up. And here we have the
18 exact location, we're talking about a time period now three
19 before the truck is set on fire. And while -

20 THE COURT: Well, this guy is a little late, nine
21 years after the fact, or eight years after the fact.

22 MR. PETERS: He called the Tips hotline apparently
23 early on, but we've never -- we don't know that.

24 THE COURT: You have no indication of that.

25 MR. BECKER: I've never heard of this fellow.

1 There were -- many of our witnesses said they called the Tips
2 hotline and never heard back either. I would object to this
3 as a collateral matter. You know, she had her hood up. She
4 didn't have her hood up. At this point in the trial, I don't
5 see that as the issue in the case.

6 MR. PETERS: What we would suggest is the judge is
7 aware of the burden we have. There is a great deal of
8 inconsistency with the Riggses' testimony, beginning with the
9 three parts that Mr. Becker brought out that they changed
10 their statement to the police on fairly important details.
11 They originally had said Robert was on the east side, and
12 then Mr. Becker brought out that that was incorrect, that the
13 car had been there. The Court's heard testimony as to the
14 credibility of the Riggses. The Court also heard Debbie
15 Riggs say that she told Chief Germann that it contained
16 ammonium nitrate and diesel fuel, and Chief Germann did not
17 recount that, did not remember that, did not testify to that.

18 THE COURT: Well, she said fertilizer, didn't she?

19 MR. BECKER: Right.

20 THE COURT: Germann said -- that's just what
21 ammonium nitrate is. Interchangeable terms.

22 MR. PETERS: The point being, Judge, whether you
23 use ammonium nitrate/fuel oil, explosives, or anything, Chief
24 Germann never heard Debbie Riggs say anything about anything
25 in the trailers. There's no testimony from Chief Germann of

1 Debbie Riggs ever saying anything to him.

2 MR. BECKER: Chief was in the car and Riggs
3 testified she talked to the battalion chief's aid.

4 MR. PETERS: We have a copy of her transcript, and
5 she says she leaned over in the car and told the guy in the
6 car, he reached for the microphone, and that's contradicted
7 by Chief Germann's testimony. All of these things, Judge -

8 THE COURT: This is the time, this is right at the
9 time it blew, wasn't it?

10 MR. BECKER: Yes.

11 MR. PETERS: Right. At the time of the explosion.

12 THE COURT: I don't think you can expect anybody to
13 be too precise at that -

14 MR. PETERS: We understand. What we're talking
15 about is argument. We don't have the six firefighters. And
16 we haven't -- but I think it goes to -- I think, I believe
17 that it's important to the defense that Debbie Riggs had the
18 hood of her truck open at a time when she -

19 THE COURT: Why? What are you going to prove was
20 the reason that she had the hood open?

21 MR. PETERS: I don't think it matters why she had
22 her hood open. I think the reason she had the hood open is
23 because her truck stopped working and that's why she torched
24 it. You're asking, and that's what I think.

25 THE COURT: You mean she drove it there and it

1 stopped working while she was there and then she decided
2 she's going to burn it?

3 MR. PETERS: Right.

4 MR. MILLER: And, another thing, too, Your Honor,
5 we're assuming this is the red pickup, and this is the first
6 time we've heard of four people?

7 MR. PETERS: But what we're talking about and as
8 you think about -- when Morales testified, for example, he
9 didn't give many details about anything he saw. This man
10 says I remember -- you remember the testimony from the
11 Riggses that you had the gas generator powered huge lights
12 right over the location where they were sitting.

13 This witness, that's what he remembers. He
14 remembers details about the event that corroborate. He
15 remembers it's, you know -- according to the Riggses, there's
16 no testimony to suggest that this guy is making anything up.
17 He's calling up and saying, hey, I'm hearing about this red
18 pickup. I called the Tips hotline and told them that I saw
19 red pickup with its hood up. And that was after Debbie
20 Riggs testified, and it is significant that she says -- and
21 as the Court's pointed out, the credibility is the issue.

22 MR. BECKER: Debbie Riggs testified January 21st.
23 When did this guy call?

24 MR. PETERS: February 13th, I believe, is when we
25 talked to him.

1 MR. BECKER: So four weeks later he decided to call
2 in. So he didn't just call in after Debbie Riggs testified.
3 She testified on the 22nd, I believe.

4 THE COURT: He called in when, February 13th?

5 MR. PETERS: 2/13.

6 THE COURT: So it was a week ago tomorrow and we're
7 just first hearing about it today?

8 MR. PETERS: Today was the first time that we were
9 able to ask Debbie Riggs, "Was your hood up on your truck?"

10 And, again, the chain of events is -

11 MR. BECKER: He claims -- I thought counsel said
12 that he called after reading about Debbie Riggs. Debbie
13 Riggs testified five weeks ago.

14 MR. PETERS: That may go to, you know, weight
15 versus admissibility. I didn't talk to him when he first
16 called.

17 THE COURT: My concern is admissibility, and it is
18 basically untrustworthy on the face of it.

19 MR. O'CONNOR: Judge, that call, the guy called my
20 office. I came back after court around 5:00 or 5:30. I
21 called, I think, John Osgood to see if he thought there was
22 any significance in returning this guy's call, and then I
23 called the guy back. He gave me the information that he gave
24 me. I called Mr. Peters with it and Mr. Osgood and told them
25 about what he had said, whether we wanted to use it or not.

1 It wasn't a witness that I was interested in because I wasn't
2 putting on the Riggs part of the case. I haven't done that
3 part of the case. So just to give you a history of that.

4 THE COURT: Okay.

5 MR. BECKER: Well, I would oppose this, Judge. One
6 minute we were told he came forward with this information
7 after Riggs testified, but it turns out it was a month after
8 Riggs testified.

9 MR. PETERS: And he also called the Tips line
10 beforehand.

11 MR. BECKER: We don't know that.

12 THE COURT: Is there a record of it?

13 MR. PETERS: I would suggest to the Court that we
14 don't get the tips. We only get what you tell us we can
15 have. We have no record.

16 THE COURT: You can serve a subpoena on Tips and
17 take their deposition.

18 MR. PETERS: Having moved to quash a subpoena on
19 information, neither the government nor us can get the
20 Tips information unless Tips provides it to the law
21 enforcement agency.

22 MR. BECKER: I don't know. I've never dealt with
23 them.

24 THE COURT: Tips will provide it if a lawyer comes
25 into court and gets an order saying he wants to get some

1 information from Tips that's relevant to the defense.

2 MR. PETERS: I think I've made my record.

3 MR. BECKER: I think it's a collateral matter.

4 MR. PETERS: It's new information, it's new
5 evidence that wasn't available when Deborah Riggs first
6 testified. It goes directly to her credibility on the issue
7 of whether or not her truck was operating properly at the
8 time. I made my offer of proof. She said that it was
9 operating and that her hood was never up that night. I've
10 advised the Court that we have an independent eye witness who
11 is a mechanic who describes the scene, is certain -- and it's
12 backed up by medical records if we wanted to go that far as
13 to when he drove past the scene going north to the hospital
14 with his daughter, and when he came back after midnight and
15 the truck was still there with the hood up.

16 THE COURT: Well, the government objects to that,
17 and I think on the basis of the record we have now and the
18 Riggses' testimony that it's -- well, regardless of the
19 Riggses' testimony, I think it's collateral and not, I'll not
20 admit it.

21 MR. PETERS: Thank you, Judge.

22 (The following proceedings were had in open court:)

23 MR. BECKER: It's my understanding, then, the
24 defense is not going to rest today. So if I have any
25 rebuttal, it will not be presented today.

1
1 THE COURT: I want the defense to have the
2 opportunity to examine whatever material we decide they
3 should have the right to examine. And, therefore, I'm not
4 going to accept a resting by the defense until that
5 opportunity has been given. I suspect time being what it is
6 now that we'll not close the case out today, in any event.
7 So do you anticipate rebuttal?

8 MR. BECKER: One witness.

9 THE COURT: Well, why don't you have that witness
10 here in the morning.

11 MR. BECKER: Okay.

12 (The following proceedings were had in the
13 courtroom in the presence of the jury:)

14 MR. PETERS: Defense calls Sergeant Walker.

15 THE COURT: Come up, please, Sergeant, and stand by
16 the witness chair and be sworn.

17 — — —

18 EARL WALKER,
19 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
20 testified as follows:

22 DIRECT EXAMINATION

23 By Mr. Peters:

24 Q. Sir, would you state your name for the record and spell
25 your last name for the court reporter?

1 A. My name is Earl Walker, and spelling is W-A-L-K-E-R.

2 THE COURT: First name is spelled how?

3 THE WITNESS: Earl, E-A-R-L.

4 Q. (By Mr. Peters:) And you're a sergeant with the
5 Grandview Police Department; is that correct?

6 A. Yes, sir.

7 Q. How long have you worked for the Grandview Police
8 Department?

9 A. Going on 18 years.

10 Q. Directing your attention back to January 20th, 1989, was
11 a person by the name of Stephen Morales stopped in Grandview?

12 A. Yes, he was.

13 Q. And at the time of the stop, it was a routine traffic
14 stop, but subsequent to that, was his van towed to the
15 Grandview Police Department?

16 A. Yes.

17 Q. And if you would, describe for the jury what happened
18 when his van was towed to the Grandview Police Department
19 garage.

20 A. It was towed to the police department for purposes of
21 doing an inventory of the van.

22 THE COURT: I'm sorry, doing what, please?

23 THE WITNESS: An inventory pursuant to the arrest.

24 THE COURT: Thank you.

25 A. During the search of the van, some explosives were found

1 in the van.

2 Q. (By Mr. Peters:) In terms of the explosives, was there
3 a green sack that contained a metal box, blasting caps, and
4 detonator cord? Or going a step at a time, was there a sack,
5 and within the sack was a metal box, and outside of the metal
6 box were blasting caps and detonator cord?

7 A. That's correct.

8 Q. In addition, in the van, did you find a wooden pipe with
9 marijuana -

10 MR. MILLER: I'm going to object to this. I'm
11 sorry. I'm going to object to this. It's irrelevant, and
12 it's collateral. It's already been asked and answered with
13 Morales.

14 MR. PETERS: Judge, this is impeachment that we had
15 discussed at the bench on this matter.

16 MR. MILLER: Whoa. Excuse me.

17 MR. PETERS: Whoa?

18 THE COURT: It's not impeaching of what he said.
19 He said it.

20 (Counsel approached the bench and the following
21 proceedings were had:)

22 MR. PETERS: This was the part, Judge, where I
23 wasn't allowed to bring out the narcotics in the van, that we
24 approached the bench, and the Court said that that's what I
25 would have to call Walker for is to bring out the contents of

3529

1 the van. When Sergeant Walker interviewed him, he
2 acknowledges that everything in the van is his.

3 THE COURT: So? What are you demonstrating?

4 MR. PETERS: Steve Morales denied that.

5 THE COURT: He had marijuana in the van.

6 MR. PETERS: It's marijuana, a chrome pipe, a
7 glass -

8 THE COURT: This is January of what?

9 MR. PETERS: '89. Chrome, a mirror with cocaine
10 residue, and a rubber hose.

11 THE COURT: All of which proves what?

12 MR. PETERS: Impeaches what he said under oath. I
13 can, it impeaches him, and at that time I think we had a
14 conference at the bench where I asked, can I follow it up by
15 asking him did you have the stuff in your van, and you said
16 o, and I said, can I call Sergeant Walker, and you said,
17 hat's how you'll do it.

18 MR. MILLER: I believe the questions went to drug
19 se, not anything that was in the van. Because he's never
20 been arrested for it or convicted for it or anything.

21 THE COURT: What is the point of all of this? Are
22 you challenging his credibility because he was a drug user?

23 MR. PETERS: I'm challenging his credibility that
24 e said he didn't use drugs at a time when he was being
25 stopped with drugs in his van that he acknowledges are his.

3530

1 THE COURT: That's two months after the event at
2 issue in this case.

3 MR. PETERS: What he was asked on the stand related
4 o this time, the time of the stop. And if -

5 THE COURT: But what does his using drugs at this
6 time have to do with his testimony in this case?

7 MR. PETERS: Because Mr. O'Connor had asked him,
8 were you using drugs between the time of the explosion and
9 the time that you met **Frank** Sheppard in jail, and it's after
10 this that he goes to jail, and he said no, that he was not.
11 So it goes directly to impeaching him on the drug issue,
12 which was relevant because he came in and said, offered
13 testimony against Bryan Sheppard and denied drug use at a
14 time when -

15 THE COURT: I'm going to let you prove the presence
16 of the marijuana.

17 MR. PETERS: There's a list of five things that are
18 drug-related in his report.

19 THE COURT: All right.

20 MR. BECKER: Is there something specific in the
21 transcript here that -

22 MR. PETERS: I can't hear you.

23 MR. BECKER: Is there something specific in the
24 transcript? We have the Morales transcript here.

25 MR. MILLER: I was going to say, where is the, what

1 question are we impeaching him on?

2 THE COURT: Well, I thought you had it there.

3 MR. PETERS: Well, I didn't expect to -- it was
4 during Mr. O'Connor's testimony. The part I pulled out for
5 impeachment had to do with the explosives.

6 MR. MILLER: No, you also went into the drugs, I
7 thought, Pat.

8 MR. PETERS: On Page 77, when I started to go into
9 it with him, we approached.

10 You said, "Well, he said he didn't use drugs, and I
11 think you're stuck with it."

12 And I said, "I have a statement to say that he does
13 use drugs."

14 "THE COURT: Not through him, you can't get it in.
15 But if you can get it in, you can get it in some other time. n

16 Mr. Miller says, "Some other time?"

17 And you said, "Yeah, not now."

18 And so then I went into the dynamite.

19 THE COURT: What's your position on that?

20 MR. MILLER: That he didn't use drugs. The fact
21 that he may have something in the car doesn't mean that he
22 used it, doesn't mean when he was using it or anything like
23 that.

24 He was arrested for drug paraphernalia and nothing
25 came of it, and it's nothing that's even charged.

1 THE COURT: You mean he wasn't convicted of drug
2 paraphernalia?

3 MR. PETERS: No. If the Court recalls, I never
4 asked him if he was charged. The chain of events that went
5 on first as to the drug stuff, he acknowledged to Sergeant
6 Walker that the stuff in the van is his. so possession and
7 control of it isn't an issue. It's not like somebody having
8 drugs and saying, well, they aren't mine.

9 I think the reason that I was bringing it out is
10 because in the cross-examination by O'Connor, he had asked
11 him whether he was using drugs at the time to test his
12 ability to remember, and he said he wasn't. That's why I
13 tried to bring it out.

14 From my reading of the transcript, what the Court
15 was saying is I was stuck with his answer, but if I called
16 the detective in and the detective says he had them, he said
17 they were his, in his possession that -

18 THE COURT: But on the 20th of January -- it's too
19 collateral. I'm not going to allow it.

20 (The following proceedings were had in open court:)

21 Q. (By Mr. Peters:) Sir, did Mr. Morales tell you that
22 everything in that van belonged to him?

23 A. Yes.

24 Q. And included in that everything were a dozen or more
25 sticks of dynamite, a number of blasting caps and detonator

1 cord; is that right?

2 A. Not exactly.

3 Q. Can you tell us what exactly he had in relation, what
4 exactly he had in the van?

5 THE COURT: With respect to explosives.

6 A. He stated that the det cord, the blasting caps were his,
7 and the container was his; however, he denied knowing what
8 was inside the metal container.

9 Q. Sir, didn't he tell you that the metal box had come into
10 his possession sometime in the last year when he had observed
11 it along with a much larger box?

12 MR. MILLER: Excuse me, I'm going to object to him
13 reading the hearsay from a statement, the report.

14 THE COURT: I don't understand why you're leading
15 your own witness like that.

16 Q. (By Mr. Peters:) Sergeant, would it refresh your
17 recollection to review your report regarding how he told you
18 he came into possession of that box?

19 THE COURT: He hasn't demonstrated any failure of
20 recollection.

21 Q. (By Mr. Peters:) Sergeant Walker, do you recall Mr.
22 Morales telling you how he came into possession of the metal
23 box?

24 A. Yes.

25 Q. And would you tell us how he came into possession of

1 that box?

2 A. He acquired the box at a house north of the river that
3 he stated was a drug house. The container had been left
4 there after the house had been raided by the police
5 department on a drug raid. He stated there were two boxes
6 there, a larger box and then this box. The officers took the
7 larger box during the raid; however, they overlooked this
8 small box.

9 Q. And did he tell you what was in that larger box that the
10 officers took during the raid?

11 A. He stated explosives.

12 Q. And did you have an opportunity to interview Mr. Morales
13 subsequent to this arrest?

14 A. Yes.

15 Q. And did you read him his Miranda rights?

16 A. Yes, sir.

17 Q. Who was present with you during the questioning of Mr.
18 Morales?

19 A. ATF agent, and you'll have to help me with the name now.

20 Q. Could it be Mark James?

21 A. Yes.

22 Q. And at any time when you were questioning Mr. Morales,
23 was he asked any questions about the explosion that caused
24 the death of the firefighters?

25 A. No, sir.

1 MR. MILLER: Excuse me, I'm going to object to
2 this. This doesn't go to impeachment of Mr. Morales on
3 anything.

4 THE COURT: Yeah. He said no. I don't know -

5 MR. PETERS: Are you allowing that?

6 THE COURT: No. Never mind. I'm sustaining that
7 objection.

8 MR. PETERS: Judge, transcript Page 86 going into
9 87.

10 THE COURT: You'll have to show me, I don't have
11 the transcript. All right. Wait a minute. So what?
12 (Counsel approached the bench and the following
13 proceedings were had:)

14 MR. PETERS: He says he was questioned about the
15 firefighters explosion, and Sergeant Walker says he wasn't.

16 THE COURT: So what?

17 MR. PETERS: It directly impeaches what he said.

18 THE COURT: It's inconsequential. How can it make
19 any difference at this point in the proceeding whether or not
20 he was asked that by this agent.

21 MR. PETERS: It was my understanding that my
22 question was asked, it goes directly to an answer given by
23 Mr. Morales which suggests that at the time of his arrest on
24 January 20th, 1989, he was questioned about the firefighters
25 explosion. That's fairly significant since the ATF was

1 there. It directly impeaches his statement under oath.

2 THE COURT: But you didn't ask him what he said.

3 MR. PETERS: I can't ask him what he said.

4 THE COURT: What do you understand he said?

5 MR. PETERS: He knew that he had not been
6 questioned about it because Sergeant Walker and Agent James
7 did not ask him about the firefighters explosion.

8 THE COURT: All right. You may ask him that
9 question.

10 (The following proceedings were had in open court:)

11 Q. (By Mr. Peters:) And so, Sergeant Walker, while you and
12 Agent Mark James interviewed him, was he questioned about the
13 firefighters explosion?

14 A. I do not recall him being questioned about that.

15 Q. And if that was something that he had been questioned
16 about, would you have included it in the report?

17 A. I'm sure I would have.

18 MR. PETERS: Thank you. I have no further
19 questions.

20 THE COURT: Any other direct?

21 MR. O'CONNOR: No, sir.

22 THE COURT: Cross?

23 MR. MILLER: Excuse me just a minute, please.

24 THE COURT: Yes.

3537

CROSS-EXAMINATION

1

2 By Mr. Miller:

3 Q. The dynamite that was found in the van, it was in a

4 locked box?

5 A. Yes.

6 Q. And you looked for the key to the box?

7 A. Yes, sir.

8 Q. You looked in the van for the key and couldn't find it?

9 A That's correct.

10 Q. And you looked for the key on Mr. Morales, and you

11 couldn't find the key on him either?

12 A. That's correct.

13 Q. And then the Bomb and Arson Squad was called out, right?

14 A. Yes, sir.

15 Q. And then the box was taken out to a field?

16 A. Correct.

17 Q. And it was opened by a water bomb device that the Bomb

18 and Arson Squad used?

19 A. Yes, sir.

20 Q. And then the box just kind of dumped over?

21 A. Yes, sir.

22 Q. And what you saw was just old crumbly -

23 A. Deteriorating, right.

24 Q. -- deteriorating dynamite?

25 A. That's correct.

1 Q. And there were no numbers or anything on them?

2 A. No, sir.

3 Q. And what the ATF did to dispose -- was it bomb and arson
4 that did the disposal?

5 A. The bomb and arson did the disposal.

6 Q. They soaked it with kerosene?

7 A. I believe it was diesel fuel.

8 Q. They soaked it with diesel fuel and just burned it right
9 there?

10 A. Yes, sir.

11 MR. MILLER: That's all I have, Judge.

12 THE COURT: Any redirect?

13 MR. PETERS: Briefly, Judge.

14 -- -- --

15 REDIRECT EXAMINATION

16 By Mr. Peters:

17 Q. In addition, Sergeant Walker, didn't they detonate two
18 of the blasting caps to determine that they were operational?

19 A. Yes, sir.

20 Q. And subsequently, did you present the case both to the
21 Jackson County Prosecutor's Office and the ATF for
22 prosecution?

23 A. We submitted to the Jackson County Prosecutor's Office
24 and provided ATF with our reports.

25 MR. PETERS: Okay. Thank you.

1 MR. MILLER: No further, Your Honor.

2 THE COURT: All right. Thank you, sir. You may
3 step down. Call your next witness.

4 MR. OSGOOD: Call Brenda Carpenter.

5 THE COURT: I'm sorry, Linda Carpenter?

6 MR. OSGOOD: Brenda, Your Honor.

7 THE COURT: Brenda?

8 MR. OSGOOD: Yes, sir.

9 THE COURT: Come up and stand by the witness chair
10 and be sworn, please.

11 -- -- --

12 BRENDA CARPENTER,

13 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
14 testified as follows:

15 DIRECT EXAMINATION

16 By Mr. Osgood:

17 Q. Would you state your full name, please, ma'am?

18 A. Brenda Carpenter.

19 Q. And where do you live, Miss Carpenter?

20 A. 7904 Park.

21 THE COURT: I'm sorry, I didn't hear you. Where do
22 you live?

23 THE WITNESS: 7904 Park.

24 Q. (By Mr. Osgood:) 7904 Park?

3540

1 A. Yes.

2 Q. Are you a little bit nervous?

3 A. No.

4 Q. Okay.

5 THE COURT: Is that in -- is that Park Street in
6 Kansas City, Missouri?

7 THE WITNESS: Kansas City, Missouri 64132.

8 THE COURT: Thank you.

9 Q. (By Mr. Osgood:) And how long have you lived at that
10 address, ma' am?

11 A. Since '90 or '91.

12 Q. okay. Where did you live prior to that time?

13 A. 7941 Brooklyn.

14 Q. And can you see this map I've got up here, which is
15 Government's Exhibit 1, I believe? In relation to the
16 7-Eleven there and the Sheppard residence and Darlene
17 Edwards' house, where would your residence be? You might
18 want to step down.

19 A. This is 79th Street, and this is Paseo?

20 Q. It might be easier if you actually walk over here and
21 point to the map on it yourself with the pen so we can get an
22 idea of where you lived at. Right here on this map. Don't
23 mark on it.

24 A. Which one is Paseo?

25 THE COURT: Just indicate.

- 1 A. Okay.
- 2 Q. There is the 7-Eleven?
- 3 A. Go one block and come down and right -
- 4 Q. In the general area?
- 5 A. Right here.
- 6 Q. And when did you move into that residence? You can
- 7 resume your seat, please.
- 8 A. 1988.
- 9 Q. Okay. Were you employed at that time, ma ' am?
- 10 A. Yes.
- 11 Q. And where were you working at?
- 12 A. 7-Eleven.
- 13 Q. Pardon?
- 14 A. 7-Eleven.
- 15 Q. 7-Eleven. And did you know or come to meet Richard
- 16 Brown?
- 17 A. Yes.
- 18 Q. And when did you first meet Richard Brown, if you
- 19 remember? I know it's been a long time ago.
- 20 A. Well, I met him in '86.
- 21 Q. In '86? All right. Did, or do you recall the events
- 22 back in 1988 when the explosion occurred out at the
- 23 construction site?
- 24 A. Yes.
- 25 Q. Do you remember at this time now what you were doing

3542

1 earlier in the evening on that day?

2 A. Yes.

3 Q. Okay. In fact, I believe you did not work that day?

4 A. No.

5 Q. Why was that?

6 A. It was my day off.

7 Q. Okay. And, now, that was a weekday. Did you normally
8 have weekdays off?

9 A. Yes.

10 Q. Okay. On your day off, what did you do up until, say, 6
11 o'clock?

12 A. In the evening?

13 Q. Yes, ma ~ am.

14 A. I hung plastic on my windows.

15 Q. Okay. And was it getting cold then?

16 A. Did I get cold?

17 Q. Was it getting cold at that time?

18 A. Yes. It was November.

19 Q. Okay. And did there come some point in time when you
20 decided to have a card game?

21 A. Yeah.

22 Q. Would you tell the ladies and gentlemen of the jury
23 about that, please?

24 A. Who was there or -

25 Q. How did you, first of all, decide to have the card

1 game? Did it just come to be, or did you plan it?

2 A. It just came to be.

3 Q. Some people showed up?

4 A. Yeah, we got together in the dining room and played

5 cards.

6 Q. Okay. Who all, what time did you start playing cards?

7 A. Probably 8:00, 9 o'clock.

8 Q. In the evening?

9 A. Yeah.

10 Q. All right. Who were you living with at the time,

11 anybody?

12 A. My sister.

13 Q. Okay. What was her name?

14 THE COURT: What date was this, counsel?

15 MR. OSGOOD: This was the evening preceding the

16 blast, November the 28th.

17 THE COURT: Did she testify to that?

18 MR. OSGOOD: Yes, Your Honor, I asked her where she

19 was at on the day preceding the blast early in the morning.

20 Q. (By Mr. Osgood:) Is that right, Miss Carpenter?

21 A. Right.

22 Q. You were living with your sister. And what's her name?

23 A. Janet Carpenter.

24 Q. All right. And how old is Janet?

25 A. Thirty-two.

1 Q. Today?

2 A. No, I'm thirty-six today.

3 Q. Okay. And how old is Janet today?

4 A. Thirty-two.

5 Q. Okay. And who was -- or who arrived first at your house
6 that evening, if you remember?

7 A. They all came together.

8 Q. Okay. Who showed up?

9 A. Richard Brown, Stephanie Webb, Alena, and Stephanie's
10 boyfriend Ron McCullough.

11 Q. That was what, about five people?

12 A. Right.

13 Q. And did you allow drinking at the party, or was that
14 going on?

15 A. We didn't have a party.

16 Q. Well, I know. That's my term.

17 A. The only one that was drinking was my sister.

18 Q. Okay. Janet?

19 A. Yes.

20 Q. It was just a card game, not a party?

21 A. It was a card game.

22 Q. And what kind of cards were you playing?

23 A. We played rummy, spades, and Uno.

24 Q. Pardon?

25 A. Rummy, spades, Uno.

1 Q. Uno. And did you have soda pop and that sort of thing?

2 A. Probably.

3 Q. And how big is your house?

4 A. Three bedrooms.

5 Q. Okay. Was it an apartment or an actual residence?

6 A. It's a house.

7 Q. Okay. And how long did Richard Brown stay at the card
8 game?

9 A. I would say a good three or four hours.

10 Q. Okay. And who did he leave with?

11 A. Stephanie, Alena -- Stephanie and Alena.

12 Q. And do you know what he was driving?

13 A. A black pickup.

14 Q. All right. And at any time that evening, did you see
15 Bryan Sheppard?

16 A. No.

17 Q. Do you know Bryan Sheppard?

18 A. Yes.

19 Q. Did at any time during the course of the evening Mr.
20 Brown use your telephone to make any phone calls to anybody?

21 A. No.

22 Q. Just a card game?

23 A. Just a card game.

24 MR. OSGOOD: Thank you, ma'am.

25 THE COURT: Any further examination from any of the

1 defendants?

2 MR. PETERS: We have no questions, Your Honor.

3 MR. O'CONNOR: No, Your Honor.

4 THE COURT: Any cross?

5 MR. MILLER: Yes, Your Honor.

6 — — —

7 CROSS-EXAMINATION

8 By Mr. Miller:

9 Q. Of all of them there, only your sister Janet was
10 drinking?

11 A. Yes.

12 Q. And she drank so much that didn't she pass out around 10
13 o'clock?

14 A. Yes.

15 Q. Yeah. And she slept on the bed in the dining room?

16 A. Yes.

17 Q. Okay. And McCullough, he slept on the couch, didn't he?

18 A. Right.

19 Q. And even though he hadn't been drinking, Janet was the
20 only one drinking, he slept right through both blasts?

21 A. Right.

22 Q. And Mr. Brown left at about, you said, three to four
23 hours, and the card game started at 8:00 to 9:00?

24 A. Somewhere around there.

25 Q. So what you're saying is that he left either an hour

1 before midnight or about an hour after midnight?

2 A. Probably.

3 Q. And after the explosion, you went up to the 7-Eleven -

4 after the second explosion, you went up to the 7-Eleven

5 store?

6 A. Yes.

7 Q. Okay. And then on your way back -- let's see. Back

8 then you lived at 79th and Brooklyn, didn't you?

9 A. Right.

10 Q. And on your way back to your house around 6:30 or 7:00

11 in the morning, you may have seen Richard Brown's truck at

12 his house, right?

13 A. No, that's not right. I told you when I left to go up

14 to 7-Eleven, I drove around the neighborhood to see what

15 happened. And when I was driving around the neighborhood, I

16 seen Richard's truck in his driveway before I even went up to

17 7-Eleven.

18 Q. Okay. All right. So if that's down, that wasn't right,

19 by the agents that talked to you?

20 A. Yes. It was before I even went to 7-Eleven.

21 Q. Now, who he left with was who?

22 A. Who who left with?

23 Q. Richard Brown.

24 A. He left with Stephanie and Alena.

25 Q. Okay. And Alena had a motel room, right?

1 A. Right.

2 Q. Okay. And Alena is, is she your cousin?

3 A. No, she's Stephanie's cousin.

4 Q. Stephanie's cousin. Okay. But they're all friends of
5 yours, right?

6 A. Yeah. I know them.

7 Q. You were interviewed by special agents of the ATF on
8 February the 8th, 1995, weren't you?

9 A. Yes.

10 Q. Okay. And they were Agents Mark Schmitz, spelled
11 S-C-H-M-I-T-Z, and Herb Drake, right?

12 A. I don't remember their names.

13 Q. Okay. You don't remember their names, but there were
14 two of them?

15 A. Yes.

16 Q. Okay. And you told them that you may have seen Richard
17 Brown's truck at his house around 81st and Brooklyn on the
18 way back from the 7-Eleven store around 6:30 or 7:00 that
19 morning?

20 A. No, that ain't what I told him.

21 Q. Okay. That's not what you told him?

22 A. No.

23 Q. Have you seen Stephanie Webb today?

24 A. Yes.

25 Q. Okay. Where is she?

1 A. In the witness room.

2 Q. Have you seen Alena Fantauzzo today?

3 A. No.

4 Q. Is your sister, have you seen her today?

5 A. Yes. She's back there too.

6 MR. MILLER: Okay. That's all I have, Judge.

7 THE COURT: All right. Any more, any redirect?

8 MR. OSGOOD: No, I don't have anything.

9 THE COURT: Okay. You may step down.

10 MR. OSGOOD: Janet Carpenter.

11 THE COURT: Come stand by the witness chair and be

12 sworn, please. Over here.

14 JANET CARPENTER,

15 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,

16 testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Osgood:

20 Q. Would you state your full name, please, ma' am?

21 A. Janet Carpenter.

22 Q. And do you know the previous witness that just

23 testified, is that your sister?

24 A. Pardon?

25 Q. The lady who just left, is that your sister, Brenda?

1 A. Yes.

2 Q. And where were you living in 1988 around November the
3 28th on the night of the big explosion, 28 or 29 of November?

4 A. 7941 Brooklyn.

5 Q. Who were you living with?

6 A. My sister.

7 Q. Were you working at that time?

8 A. No.

9 Q. Did either you or your sister have any children?

10 A. Yes.

11 Q. Were they living in the residence at the time?

12 A. Yes.

13 Q. Were you kind of the baby sitter, then, when your sister
14 was working at 7-Eleven?

15 A. Yes.

16 Q. Do you remember the night of the explosion?

17 A. Yes.

18 Q. Prior to the explosion, were you involved in some kind
19 of card game?

20 . My sister and them were playing cards.

21 . All right. Do you remember Richard Brown coming over?

22 . Yes.

23 . By the way, do you see Richard Brown in the courtroom
24 ere?

25 . Yes.

1 Q. All right. Where is he seated at?

2 A. Over there.

3 Q. Okay. What's he wearing?

4 A. White shirt and a tie.

5 MR. OSGOOD: Okay. The record should reflect that
6 she's identified Mr. Brown, Your Honor.

7 THE COURT: It should.

8 Q. (By Mr. Osgood:) Did Mr. Brown arrive at some point in
9 time in the evening?

10 A. Yes.

11 Q. And do you remember about what time?

12 A. I'm not sure. I think he was working on my sister's car
13 that day earlier.

14 Q. Earlier?

15 A. And then he came in.

16 Q. Did he have a 12-pack of beer with him when he came in?

17 A. Probably. I don't recall.

18 Q. You say probably. Did he drink a lot?

19 A. Yeah, I think he was drinking.

20 Q. Were you drinking?

21 A. Yes.

22 Q. All right. Quite a bit?

23 A. Yes.

24 Q. And did you play cards that evening?

25 A. No.

1 Q. All right. Were you just socializing?

2 A. Yeah.

3 Q. Who all was playing cards, if you remember? I know it's
4 been eight years ago, or nine, whatever it's been.

5 A. I believe it was Richard, Brenda, Alena, Stephanie,
6 and -

7 Q. And your sister?

8 A. Brenda, yes.

9 Q. Do you remember what time Richard left?

10 A. I don't know. I went to sleep before they left.

11 Q. Okay. Did you actually have too much to drink and
12 passed out on the couch?

13 A. Yes.

14 Q. Okay. Is there any reason why this card game sticks in
15 your mind eight years later?

16 A. Well, I had gotten into it with my boyfriend, so I was
17 just kind of keeping to myself and watching them play, but I
18 know they were playing cards.

19 Q. Do you remember the blast, then?

20 . Oh, yes.

21 Q. When the blast went off, did you wake up?

22 . Yes.

23 . And did you go outside?

24 . I didn't go outside. I went to check on my kids.

25 . Okay. Do you remember your sister getting in the car

1 and driving around to check the neighborhood?

2 I A. Yes, uh-huh. Yes.

3 MR. OSGOOD: Okay. That's all. Thank you, ma'am.

4 I'm sorry, Your Honor.

5 Q. (By Mr. Osgood:) At any time that evening, did you
6 see -- do you know Bryan Sheppard?

7 A. No.

8 Q. You don't know Bryan Sheppard?

9 A. I mean, I know of him, but I've never met him.

10 Q. So you didn't -- nobody was introduced to you that night
11 or showed up at the house that was introduced or identified
12 as Bryan Sheppard?

13 A. No, no one else was at my house.

14 Q. Okay. And for that matter, none of these other
15 defendants were there that night, were they?

16 A. No, I don't know them either.

17 MR. OSGOOD: okay. Thank you.

18 THE COURT: All right. Cross?

19 MR. MILLER: No questions, Your Honor.

20 THE COURT: All right. You may step down, ma'am.

21 Call your next witness.

22 MR. OSGOOD: Linda Peak.

23 THE COURT: Come up and stand by the witness chair
25 and be sworn, please, Miss Peak.

1 LINDA PEAK,
2 being first duly sworn by Tenilla Sheehan, Courtroom Deputy,
3 testified as follows:

5 DIRECT EXAMINATION

6 l By Mr. Osgood:

7 Q. Would you state your full name, please, and spell your
8 last name?

9 A. Linda Ann Peak, P-E-A-K.

10 Q. Where do you live at this time, Miss Peak?

11 A. 8513 Flora, Kansas City, Missouri.

12 Q. And on November 28th of 1988, where were you living?

13 A. On the corner of 82nd and Brooklyn.

14 Q. And do you know where Miss Wilda Romi lived at that
15 time?

16 A. I don't even know who that is.

17 Q. Richard Brown's grandmother.

18 A. Across the street from us.

19 Q. And there's a map up on the screen now, Government's
20 Exhibit No. 1, which has a green dot by Richard Brown's house
21 and a green dot by Darlene Edwards' house. Can you see that
22 from where you're seated? Can you read that?

23 A. A little better.

24 Q. Would you point -- the top is north, obviously, the
25 bottom is south, to your left is going to be west, back the

1 other way is east. Where would your house have been in
2 relation to Richard Brown's house?

3 A. Let's see, this is Brooklyn right here?

4 Q. Yes.

5 A. Right across the street.

6 Q. Okay. If you would resume your seat, please. Now, were
7 you friends with Richard Brown or his grandmother or
8 grandfather?

9 A. No.

10 Q. Explain that.

11 A. We weren't friends. We were neighbors.

12 Q. All right. And how old are you, ma'am?

13 A. I'm 30.

14 Q. And so at the time, you were in your early twenties when
15 this explosion occurred?

16 A. Yes, sir.

17 Q. Were you married at the time?

18 A. No, I wasn't.

19 Q. Living with your parents?

20 A. No, I take that back. I was married, but I was going
21 through a divorce.

22 Q. You didn't run around with Richard Brown or any of his
23 friends?

24 A. No.

25 Q. Didn't date him?

1 A. No.

2 Q. Did you even like him?

3 A. No, I didn't know him.

4 Q. Didn't know him?

5 A. Yeah.

6 Q. All right. Did you read in the paper that he was
7 charged in this case?

8 A. Yes, I did.

9 Q. And when you read that, what did you do? Did you call
10 anybody?

11 A. Yes, I did.

12 Q. Who did you call?

13 A. I called his mother.

14 Q. All right. And then did you subsequently call me?

15 A. Yes, I did.

16 Q. And did I send somebody out to talk to you?

17 A. Yes, you did.

18 Q. And that's how you got here as a witness today?

19 A. That's correct.

20 Q. All right. Do you remember the night of the explosion,
21 ma ' am?

22 A. Yes, I do.

23 Q. And where were you at?

24 A. I was at home.

25 ~ Q. And were you in bed asleep?

1 A. Yes, I was.

2 Q. Did the explosion wake you up?

3 A. Yes, it did.

4 Q. And after the first explosion, what, if anything, did
5 you do?

6 A. I woke up. I got up, kind of startled and dazed,
7 confused. And I was there with my parents. Everybody was
8 wondering what was going on.

9 Q. Okay. Did you go outside?

10 A. No, not the first time, I didn't.

11 Q. All right. And did you hear the second blast?

12 A. Yes, I did.

13 Q. After the second blast, what did you do?

14 A. I went out the back door. My dad told me to stay in,
15 but I wanted to know what was going on, so I went out the
16 back door and he went -

17 Q. From your back door, could you see Mr. Brown's
18 residence?

19 . Yes.

20 . And what, if anything, did you see over at Mr. Brown's
21 t that time?

22 . What did I see there?

23 . Yeah, did you see anybody?

24 . Yeah.

25 . Who did you see?

3558

1 A. Richard Brown, what I found out was his sister, and an
2 elderly lady.

3 Q. Okay. And how was Mr. Brown dressed at the time?

4 A. No shirt, blue jeans, no shoes. That was about it.

5 Q. Were they looking around too?

6 A. Yeah.

7 Q. Were there lots of people out?

8 A. Well, yeah. I mean the whole neighborhood was out
9 wondering what was going on.

10 Q. okay. And then did you go on back to bed?

11 A. No. I didn't go back to bed. I went back inside.

12 Q. okay. Did you happen to see Mr. Brown's truck?

13 A. I seen a truck there and a car.

14 Q. Okay.

15 A. But I couldn't tell you what kind.

16 Q. All right. And that's all you know about this
17 situation?

18 . That's it.

19 Q. All right. Did you see any other young men at the Brown
20 residence?

21 . No.

22 . Do you know Bryan Sheppard?

23 . No.

24 . Ever met him?

25 . No.

1 Q. Ever heard of him?

2 IA. Not until this trial, no.

3 IQ. Do you know any of the other defendants in this case,
4 Shave any connection with them?

5 A. No.

6 Q. Date anybody that they know?

7 A. No.

8 Q. Run around with them?

9 A. No.

10 Q. Played cards with them?

11 A. No.

12 Q. Associate with them in any way whatsoever?

13 A. No.

14 MR. OSGOOD: Thank you.

15 THE COURT: Any other direct?

16 MR. O'CONNOR: No, sir.

17 THE COURT: Cross?

19 CROSS-EXAMINATION

20 By Mr. Miller:

21 Q. Good afternoon, Miss Peak.

22 A. Good morning. Or good afternoon.

23 Q. You said that you'd never been introduced or had
24 anything to do with Richard Brown; is that right?

25 A. That's correct.

1 Q. And Mr. Osgood talked about how Mr. Reeder, that's the
2 fellow who let you in through the door, came out to talk to
3 you?

4 A. Right.

5 Q. And do you remember you referred to Mr. Richard Brown as
6 Ricky Brown to Mr. Reeder?

7 A. I don't think I ever referred to him as Ricky Brown. I
8 think I referred to him as Rick Brown because I wasn't quite
9 sure of his name at the time. I mean, I knew who he was and
10 I had been told who he was, but I'd never, I'd never been
11 formally introduced to him.

12 Q. In fact, it was your dad who had to point him out to
13 you, right?

14 A. That's correct.

15 Q. And you said that it was hot the day before the
16 explosion?

17 A. It seems like it. I think I just had a baby, and it
18 seemed like what I recall.

19 Q. You'd just had a baby?

20 . Yeah. I think I told him in my statement that I was
21 regnant, but I got to thinking back, and I had just had a
22 baby.

23 . Well, so when you went out of the house that morning,
24 you didn't, you can't recall if you were pregnant or if you'd
25 just had a baby?

1 A. No. At the time that he had contacted me, he kind of
2 caught me off guard and, you know, just putting the days back
3 together and everything, it took me a little while to realize
4 where, and who was with me at the time.

5 Q. And you went out after -- in your statement to Mr.
6 Reeder, you said you went out after the first explosion?

7 A. As I recall, it was after the second explosion.

8 Q. You didn't tell him it was after the first?

9 A. Not that I can remember, no.

10 Q. You didn't say immediately after the explosion?

11 A. Well, I got out of bed immediately after the explosion.

12 Q. Now, and you saw Richard Brown standing outside his
13 house, right?

14 A. Right.

15 Q. Okay. And it's about 200 feet away?

16 A. Somewhere around there, yeah.

17 Q. And it was dark, right?

18 . Yeah.

19 Q. And standing with him was his grandmother?

20 . I assumed it was his grandmother. I really couldn't
21 tell you because I don't know for sure who the older lady
22 as.

23 . Okay. Well, it's an older lady?

24 . Uh-huh.

25 . Who lived in the house?

3562

1 A. That's correct.

2 Q. Grandfather didn't come out?

3 A. No, not that I can recall, no.

4 Q. And also there was a dark-haired girl?

5 A. That's right.

6 Q. okay.Teenager?

7 A. Uh-huh.

8 Q. Okay.So she's not a child, she's a teenager?

9 A. Yeah, she was in her early teens, I would say.

10 Q. I want to show you what's been marked as Government's
11 Exhibits 426 and 427. And is this a fair and accurate view
12 of the grandfather's house, grandmother's house from the back
13 where you would have been?

14 A. Uh-huh.

15 THE COURT: Yes?

16 A. Yes, I'm sorry.

17 MR. OSGOOD: I object to the lighting and the
18 scheme, Your Honor. They're not discernible as to what they
19 are. They're Polaroids.

20 (Counsel approached the bench and the following
21 proceedings were had:)

22 THE COURT: For what they show. I mean, they
23 don't -

24 MR. OSGOOD: Except we don't know who took them.
25 here's no foundation as to the lighting.

THE COURT: She has testified that

1 they're a fair
2 representation of what they -- I mean, that's the foundation

3 Plaid.

4 (The following proceedings were had in open court:)

5 THE COURT: The objection is overruled, the
6 exhibits are admitted.

7 (Government's Exhibits 426 and 427 were
admitted
8 into evidence.)

9 THE COURT: They aren't very good pictures.

10 MR. O'CONNOR: Judge, can we have some at least
11 reference as to when the photograph was taken?

12 MR. OSGOOD: That's the problem, Your Honor. We
13 don't have the person who took the photos.

14 THE COURT: You don't have to have the person who
15 took the photos to get them into evidence.

16 MR. O'CONNOR: We just want the date.

17 THE COURT: I don't know that she knows that. Do
18 you know when those pictures were taken?

19 THE WITNESS: No, I've never seen the photos
20 before.

21 Q. (By Mr. Miller:) Ma'am, the date on the back of these
22 is February the 9th of '97?

23 A. Uh-huh.

24 Q. And you said that this fairly and accurately represents
25 what you would have seen that night, although this is a

1 little lighter than it would have been then?

2 A. Somewhat, yeah.

3 Q. Okay. so this is lighter than what you would have seen

4 that night?

5 A. I mean I really -- I mean, I wasn't really paying

6 attention to the lightness or darkness. I know it was early

7 in the morning. Like I said, dazed and confused, wondering

8 what was going on.

9 Q. So you were dazed and confused as to what was going on?

10 A. Right.

11 Q. And he's at least, by your estimate, 200 feet away,

12 right?

13 A. Or more.

14 Q. Or more?

15 A. Yeah.

16 Q. 250 to 300?

17 . I don't know how to estimate. He was across the street

18 at his home.

19 Q. Where his home is, is that a good length of a football

20 field away from your house?

21 . No.

22 . From where you're looking?

23 . No.

24 . A little bit less?

25 . Yeah.

1 Q. So it would be under 300 feet but more than 200?

2 A. I would say right at 200.

3 Q. And you believe the time this went off and you went out
4 was about 3:30?

5 A. That was an estimation.

6 Q. And everybody else in your family except maybe your
7 sister went outside?

8 A. Yeah.

9 Q. Okay, so that means your mother went outside?

10 A. I think she followed behind me. I'm not fairly sure
11 which door she went out. I know somebody came out behind me,
12 but I don't know who -

13 Q. And your father -

14 A. -- at the time.

15 Q. And your father went outside?

16 . Yes, he did.

17 Q. And you were sleeping on the couch, and it knocked you
18 off the couch, didn't it?

19 . That's correct.

20 MR. MILLER: Just one moment, Your Honor, please.

21 . Now, back to which blast you said you went outside
22 after, though. Now, you testified that it was the second,
23 right?

24 . Uh-huh.

25 . You have to say yes or no.

1 A. Yes, I'm sorry.

2 Q. But you told Mr. Reeder -- at one point you told him you
3 were asleep on the couch, right?

4 A. Uh-huh.

5 Q. You have to say yes or no.

6 A. Yes.

7 Q. And then did you tell him this when he asked you this
8 question? "Now, turning back to Richard Brown for just a
9 minute, now, on the morning of November 29th, 1988, the blast
10 goes off, what did you do?"

11 And you said, "Well, I got out of bed, I was on -
12 actually, I was laying on the couch and got knocked out of
13 the couch, off the couch, and I jumped up and went outside.
14 I was, you know, wondered what in the world was going on."

15 MR. OSGOOD: Objection. That's not impeachment.
16 That's what she's testified to.

17 MR. MILLER: She said the second explosion, and
18 she's obviously talking about the first.

19 THE COURT: Mr. Osgood, she said the second
20 explosion. This is apparently the -

21 MR. OSGOOD: The first? All right. Fine. I
22 withdraw it.

23 Q. (By Mr. Miller:) I'll go back again. "Well, I got
24 knocked out of bed, I was on -- actually, I was laying on the
25 couch and got knocked out of the couch, off the couch. And I

1 jumped up and went outside. I was, you know, wondered what
2 Tin the world was going on. And that was about it, you know,
3 I wondering what was going on."

4 So you were wondering what was going on after the
5 first blast, didn't you?

6 A. Yeah, I was wondering what was going on after the first
7 blast, but I also recalled that I was told not to go outside.

8 Q. And you made this statement in, what, June of '96.
9 That's only about seven or eight months ago, right?

10 A. June of '96. No, it's been over a year ago. '96 -
11 yeah. Yes.

12 Q. And back when you made that statement, I mean, you
13 didn't equivocate as to after which explosion you went out,
14 did you?

15 A. Not at that -

16 MR. OSGOOD: Your Honor, he's arguing with the
17 witness. I object.

18 THE COURT: Oh, it could be construed to be
19 argumentative. Frame it another way without arguing it.

20 Q. (By Mr. Miller:) You were pretty definite with or.
21 Reeder that immediately after the explosion -

22 MR. OSGOOD: Objection, argument.

23 THE COURT: Overruled.

24 Q. (By Mr. Miller:) You were pretty definite with Mr.
25 Reeder that after the first explosion you wondered what was

1 going on and you went outside.

2

THE COURT: Is that right?

3 IA. No, I wasn't pretty definite at the time when I was
4 talking to him as to which time -- I don't really think there
5 was an indication as to which time I had gone outside.

6

MR. MILLER: I have no further, Judge. Excuse me.

7

I think I do.

8 l Q. (By Mr. Miller:) Are you aware that agents of the
9 Alcohol, Tobacco, and Firearms, ATF, have interviewed your
10 father?

11 A. Yes, I am aware of that.

12 Q. And have you discussed with your father the fact that he
13 told you not to go out after the first blast?

14 A. Can you repeat the question?

15 Q. Have you discussed with your father the fact that he
16 told you not to go out after the first blast?

17 A. Yes, I did.

18 Q. And is that when you changed your mind about getting off
19 the couch and going outside?

20 A. I was already off the couch. After the first blast,
21 yes.

22

MR. MILLER: That's all I have, Judge.

23

THE COURT: Any other direct?

24

MR. OSGOOD: Yes, sir.

1

1

REDIRECT EXAMINATION

2 BY Mr. Osgood:

3 IQ. Ma'am, how many years ago was this?

4 IA. About eight or nine years.

5 Q. Eight or nine years?

6 I A. Right.

7 Q. Are you trying to tell it the best you remember it
8 today?

9 A. Yes, I am.

10 Q. And you called me, I didn't call you?

11 A. That's correct.

12 Q. And you read about it in the paper and felt it was your
13 obligation as a citizen to testify, didn't you?

14 MR. MILLER: I'm going to object to him leading.

15 MR. OSGOOD: That's all.

16 THE COURT: It is leading. I'm going to suggest
17 that that be stricken and the jury instructed to disregard
18 it. And you may step down.19 MR. O'CONNOR: Your Honor, can we take the
20 afternoon recess?21 THE COURT: We'll take our afternoon break now,
22 ladies and gentlemen. Don't talk about the case while we're
23 in recess. We'll take about fifteen minutes, and see you
24 back in the jury room. You may withdraw now.

25 (The following proceedings were had in the

1 courtroom out of the presence of the jury:)

2 THE COURT: We're in recess.

3 MR. BECKER: Judge, I'm sorry. I think we need to
4 discuss something for two minutes. Mr. Osgood has a new
5 witness.

6 THE COURT: All right. You all go ahead.

7 MR. OSGOOD: We don't need the defendants.

8 (Counsel approached the bench and the following
9 proceedings were had:)

10 MR. BECKER: I'm sorry we took a break. I thought
11 we only had one more witness to go.

12 MR. OSGOOD: There's Grandma and there's Tommy.

13 THE COURT: Who is Grandma?

14 MR. BECKER: Wilda Romi.

15 MR. OSGOOD: We've got one Romi on the list, and
16 there's actually two Romis. There's Wilda, and there's
17 Tommy.

18 THE COURT: How about Bethard?

19 MR. OSGOOD: We've skipped him, dumped him.

20 THE COURT: And Webb?

21 MR. OSGOOD: Dumped her.

22 MR. BECKER: My family was here, and they wanted to
23 watch me do something, and then they dumped the witnesses
24 that I was going to do something with. Larry Baker, they're
25 not going to call him.

1 What we have, here, Judge, is a lately discovered
2 I witness ~ Tommy Romi, who -

3 MR. OSGOOD: To put it in perspective,
he's the
4 ex-husband of the lady, Nancy Romi, who testified about
5 hearing Richard's truck go roaring by with one headlight
6 out.

7 I talked to Mr. Romi for the first time this
8 morning. He did not call me, my investigator or my -- my
9 investigator talked to him. I alerted Mr. Becker to this as
10 soon as I found out about it. He says he was in the house
11 and she never made any such statement, and he got up at the
12 same time she did.

13 THE COURT: Didn't make any such statement as to
14 what?

15 MR. OSGOOD: That there goes Richard's truck, he
16 never heard any such statement, by her.

17 THE COURT: Did she testify that she said, "There
18 goes Richard's truck"?

19 MR. OSGOOD: Yes.

20 MR. BECKER: Yes. And in fact, Shannon Reimers,
21 who is Richard Brown's sister, was standing there, and the
22 defense attorneys never asked her about that. And Ms. Nancy
23 Romi came forward with this information in 1989. This is not
24 newly discovered evidence. I mean, this fellow, Tommy Romi,
25 is the defendant, Richard Brown's, uncle.

3572

1 MR. OSGOOD: She's his aunt. And there's
2 tremendous animosity between them. They're fighting over the
3 kids. She's mad at him and mad at the family.

4 THE COURT: So he's going to come up here and make
5 her look like an idiot by testifying that what she said
6 happened didn't happen.

7 MR. BECKER: He was never on any defense witness
8 list. They've had the Nancy Romi reports of interviews
9 forever. There's nothing new about what Nancy Romi said.

10 MR. OSGOOD: He's a defense witness. He's going to
11 testify that he heard the blast, he got up. He did not hear
12 any truck go by, and did not hear his wife tell him anything
13 about a truck. That's the sum and substance of his
14 testimony. That's part of the defense evidence.

15 MR. BECKER: Then it should have been noticed.

16 MR. OSGOOD: I told you as soon as I found out
17 about it. Now, you know, I didn't have eight years to
18 prepare my case. I've had since December 24th. And I'm,
19 quite **frankly**, down to the wire making decisions on it. You
20 know, it's fair testimony, it's relevant.

21 THE COURT: This case has been pending since long
22 before December 24th.

23 MR. OSGOOD: Well, I understand, but that's when we
24 got the statements.

25 MR. BECKER: The information about Nancy Romi, your

1 client knew that forever. I mean, come on. The fact that
2 Nancy Romi saw his truck going down the street has been
3 Around forever. It was part of the Richard Brown file, I
4 mean, the Bryan Sheppard file that you all had forever.

5 MR. OSGOOD: I didn't have it.

6 MR. BECKER: In any event.

7 MR. OSGOOD: It's not surprise testimony, it's just
8 l testimony that is contradictory of testimony you put on.
9 He's not going to testify to anything else. It's a
10 straightforward credibility issue.

11 MR. BECKER: I have no chance to run a rap sheet on
12 this guy. I have no chance to investigate what he does for a
13 living.

14 MR. OSGOOD: If that's a problem, ask him. If he's
15 been convicted, if it's a good faith question, I don't know
16 whether he has or not. Ask him. I don't care.

17 MR. BECKER: He's got tremendous motive to falsify
18 at this point.

19 MR. OSGOOD: So does she.

20 MR. BECKER: You can cross-examine her on that.

21 MR. OSGOOD: I did. -

22 MR. BECKER: And now all of a sudden we have a
23 mystery witness. This is not someone that we should have
24 found out about this morning.

25 MR. OSGOOD: I told you about it when I found out

1 about it three days ago. I told you about it when I
2 introduced you to him this morning outside when you talked to
3 my other witnesses.

4 MR. BECKER: The one I talked to, you decided not
5 to call.

6 MR. OSGOOD: That's my privilege. If you talked to
7 fall of them, I might not have called any of them.

8 MR. BECKER: I would object to Mr. Romi being added
9 to the witness list at this late juncture.

10 THE COURT: **Frankly**, I think it's junky testimony.
11 I don't think it amounts to anything.

12 MR. OSGOOD: It may not, Your Honor. It's five
13 minutes' worth. To suggest in a six-week trial that I can't
14 put on a five-minute witness who is going to testify about
15 facts already in the case, you know, I can't conceive of that
16 being -

17 THE COURT: I understand he's going to testify
18 about non-facts already in the case.

19 MR. OSGOOD: He's going to testify that he didn't
20 hear her make any such statement, he didn't hear the truck go
21 by. And he got up right after the blast, and they were
22 sleeping together, and they got up at the same time.

23 MR. BECKER: Right. But, again, we'll have leading
24 testimony. We'll have, did you hear Nancy Romi say -

25 THE COURT: No.

1 MR. OSGOOD: I'm not going to lead him.

2 MR. BECKER: You led the last one.

3 MR. OSGOOD: Last question.

4 MR. BECKER: If he says, "What happened?"

5 "I got up, I heard the blast, I went back to bed. n
6 If that's what he's going to say, that's fine. But, see, he
7 has no positive facts to offer.

8 MR. OSGOOD: Sure he does.

9 THE COURT: What?

10 MR. OSGOOD: His positive facts are he was there,
11 he got up, they were together, they heard -

12 THE COURT: But that's all cumulative. Everybody
13 in town was blown out of bed by this blast, and they've been
14 here to testify about it.

15 MR. OSGOOD: Your Honor, with all due respect, the
16 standard for a defense presentation is not that it's
17 cumulative. The standard is is it being presented in good
18 faith and does it have some relevant bearing on the
19 defendant's case. And this is a witness that I went over and
20 old my client was one of the stronger witnesses against
21 him. And you would not let me cross-examine her on the issue
22 of losing her kids and the ex Carte order that he got against
23 her and all of that, which, you know, I lived with that
24 ruling. But he's not going to testify about having custody
25 of the kids and having to have her arrested and removed from

1 the property and that kind of thing, which is what he did
2 recently.

3 MR. BECKER: I don't have any information that I
4 can run a background on this guy. You know, we don't have
5 his name, we don't have his date of birth, his address.

6 MR. OSGOOD: He's gainfully employed.

7 THE COURT: Well, you may have -- as I say, I think
8 it's really useless testimony. I think the jury is getting
9 tired of this stuff, but -

10 MR. OSGOOD: I haven't done much of it, Your Honor.

11 THE COURT: Only because you've been fifth on the
12 totem pole and haven't had an opportunity to do it.

13 MR. OSGOOD: I don't know whether that's a
14 compliment or not.

15 THE COURT: He should have the opportunity to talk
16 to this fellow.

17 MR. OSGOOD: Absolutely.

18 THE COURT: And he will have the opportunity to -
19 what else do we have today, then?

20 MR. BECKER: We have the grandmother.

21 MR. OSGOOD: Grandma and him, and that's it.

22 THE COURT: Do the other lawyers have anybody?

23 MR. OSGOOD: I saw True on their list, but I don't
24 know whether -

25 THE COURT: But Will wants to have his meeting, so

1 we'll put Grandma on. And then we'll adjourn and let Will
2 have his meeting. And then we'll come back in the morning,
3 and if you still want to put that -- and then you, Paul, you
4 talk to this guy and run whatever rap sheet on him that you
5 want to, and then we'll have him in the morning.

6 MR. OSGOOD: As a matter of fact, we've got another
7 five or ten minutes, I'm not sure we're even going to put
8 Grandma on. We're about ready to quit, and it's going well.

9 MR. BECKER: I knew that was coming that we're not
10 putting Grandma on. That's the other thing. If I had given
11 them a list with four or five witnesses for the next day that
12 weren't going to appear, I'm sure we would have heard about
13 it. But I prepare for ten witnesses or twenty witnesses, and
14 I get four.

15 THE COURT: All right. We'll be in recess for a
16 while.

17 (A recess was taken from 3:16 p.m. to 3:40 p.m.
18 when the following proceedings were had in the courtroom out
19 of the presence of the jury:)

20 MS. HUNT: Judge, may I make a record briefly?

21 THE COURT: Yeah.

22 MS. HUNT: I'll make it later.

23 MR. OSGOOD: I would like to not call Wilda Romi,
24 o the only one left would be Tommy Romi, the one they're
25 checking on, that would be when we resume again tomorrow, and

1 that would be the end of my witnesses.

2 THE COURT: All right. And will there be any other
3 witnesses after he exhausts his witnesses? I understand
4 I not.

5 MR. BUNCH: None other than if there's a defendant
6 who likes to testify, Your Honor. No other evidence.

7 THE COURT: We'll clear that record tomorrow.

8 MR. BUNCH: Yes, we will.

9 MR. PETERS: We have the True and Schram that the
10 Court's aware of.

11 THE COURT: Yes. I'm afraid I wasn't aware that
12 Schram was in that picture, but he has not been called
13 before.

14 MR. PETERS: Right. That's correct.

15 THE COURT: So he's in a different situation than
16 True. True has been cross-examined by you already.

17 MR. PETERS: That's correct. That's correct.

18 THE COURT: Okay. Well, I think you all should
19 maybe do as you wish, but I'll tell you what time is
20 available to you. We're going to recess now and -- I guess
21 we'll get the jury in here. We can send them home. What I
22 was going to ask is if it's agreeable just to send them home,
23 have the clerk send them home and tell them to be here -
24 maybe we need a little more time in the morning than usual to
25 get ready for the day.

1 MR. O'CONNOR: That's fine with us.

2 THE COURT: Do you have them lined up out there?

3 COURTROOM DEPUTY: They're ready to come in here.

4 THE COURT: All right. Bring them in.

5 (The following proceedings were had in the
6 courtroom in the presence of the jury:)

7 THE COURT: I'm pleased to be able to report to you
8 that we're reaching a point at which we have just about
9 finished with the presentation of testimony. That's not to
10 say that we are quite at that point yet, but it's close. And
11 there are also certain mechanical things that have to be done
12 around here so that we're not going to try to keep you here
13 any longer today.

14 And I'll ask you, please, to be here in the morning
15 at 10:30 tomorrow morning. And honestly and **frankly**, it may
16 be that it will be a short day. We had planned on not
17 working on Friday anyway according to Judge Bartlett's
18 original schedule, but we'll do what we need to do tomorrow,
19 and then I rather suspect that we'll be submitting the case
20 to you the earliest part of next week for your deliberation
21 and disposition.

22 So have a good night, drive carefully getting home,
23 and be back with us at 10:30 in the morning. Don't talk
24 about the case while you're gone. You may withdraw.

25 (The following proceedings were had in the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

courtroom out of the presence of the jury:)

THE COURT: All right. Now, can you hold your meeting now? You don't want to hold it with all of this audience here, do you?

MR. BUNCH: No. May I approach, Judge?

THE COURT: Sure.

(Counsel approached the bench and the following proceedings were had:)

MR. BUNCH: I have asked the Court to permit us to hold a meeting with the defendants, but I am asking -- and I don't really want to delay the matter, but I'm asking that that be done after the defense has rested its case entirely. I'm talking about the last witness. I don't think it will take that long. The reason I say that is depending on what may happen -- we'll have to have another meeting.

MR. BECKER: I'm sorry. I want to get this case over with. I really do.

THE COURT: I do, too, but I'm not going to push on this because I think these folks are -

MR. BUNCH: You know, Paul.

MR. BECKER: They can meet right now. It's a quarter to 4:00, and they have an hour and a half to meet.

THE COURT: Paul, it won't be a, per se, informed meeting until everything is on the record and the record is closed.

1 MR. BUNCH: Paul, you know I've never asked to
2 continue it at all. I just know it's an efficient way to do
3 it, I'm serious. And I'll try to take the lead in it, I've
4 told the Court that, to get it resolved, and I'll give him my
5 word on that, whatever will expedite it.

6 THE COURT: We're going to have -- Judge Hays and
7 Kathy Geller and I are going to -- well, actually, your
8 people are going to tag this stuff, and we're going to
9 examine what's in that file. And, if anything, I **frankly**
10 don't think that anything is going to turn up to be produced
11 out of that of any consequence. I think it's really been
12 combed by the government, and they've given up stuff that
13 they need to give up on Jencks and Bruton.

14 But we're going to go over it again and we're going
15 to, whatever has to be produced will be produced before this
16 day is over. And then they'll have overnight to look at it
17 and can give us some idea in the morning first thing how many
18 they're going to need to do. I don't know where Peters is.

19 And John, where is John? I hope we're going to be
20 able to give you some indication late this day. Judge Hays
21 is going to work, is willing to work tonight. I can't do
22 that, but she's willing to stay here and work tonight
23 designating this stuff that you, perhaps, should have.

24 MR. O'CONNOR: Okay.

25 THE COURT: If there isn't any, you'll know that by

3582

1 the end of this day. And then tomorrow morning, we're going
2 to start out, whatever you have that you need to do something
3 with, do it first thing in the morning, and we're going to
4 start and finish in the morning. And we have to talk about
5 instructions, but I understand they're all in now; is that
6 right?

7 MR. O'CONNOR: Pretty much, I believe, yes.

8 MR. OSGOOD: All except for one potential
9 instruction if they're convicted, and we talked about that on
10 the bifurcated portion of it, whether or not we're entitled
11 to an intervening cause instruction.

12 l MR. BECKER: Mr. Peters and I, and Miss Hunt and I
13 have discussed this, and I thought there was some agreement
14 1 among the defense that the issue of the sentencing
15 enhancement was an issue for the Court and not an issue for
16 the jury, like all other sentencing enhancements. Mr. Peters
17 made that argument the other day, and it made sense to me
18 that sentencing enhancements are, it's not an element. The
19 case law is set forth in Ryan. It's not an element of the
20 offense. It would be a sentencing enhancement, and the Court
21 can determine whether or not the deaths of the firemen were a
22 direct, or proximately caused by the defendants setting the
23 fire.

24 MR. OSGOOD: I don't have any problem with that. I
25 thought you wanted to submit interrogatories to the jury.

1 MR. PETERS: Judge, it's my fault. Mr. Becker and
2 II talked. I told him that from talking to counsel previously
3 I was sure we would agree. I told him that I would talk to
4 counsel and I think it was probably one of those Sunday and
5 Monday deals. I apologize, I didn't talk to counsel.

6 MR. OSGOOD: That's fine with me.

7 MR. BUNCH: I don't have any problem with that
8 either.

9 MR. OSGOOD: It will be submitted to the Court.

10 THE COURT: You're telling me there will be no
11 further submission to the jury after a guilty or not guilty
12 finding?

13 MR. OSGOOD: Not an instruction. We would expect
14 to make an argument.

15 MR. BECKER: On punishment. There's a punishment
16 issue, goes to the jury.

17 THE COURT: The punishment issue goes to the jury?
18 But I thought you just said that the -

19 MR. BECKER: No, the actual sentence. Once the
20 Court would make a finding, if the Court would make a finding
21 that the deaths of the firemen were as a result of them being
22 public safety officers and that their deaths were a direct,
23 or proximately caused by the fire, then the sentence as set
24 forth in Section 34 at the time of the offense in 1988 is
25 that only the jury can direct life without -- life

3584

1 imprisonment. So they will be given two options. Life
2 imprisonment, or any term of years as directed by the Court.

3 MR. PETERS: Judge, on our end, what Paul and I had
4 talked about, and we had talked with the Court, this is kind
5 of a strange thing because like a capital case, it's the only
6 one where you kind of have this bifurcated thing. We think
7 it makes it cleaner.

8 Candidly, the reason that I thought that the
9 defendants would agree to it, and we will stipulate to it on
10 the record, is that it saves us from having to do this absurd
11 argument to the jury of our clients aren't guilty, but if
12 they are guilty, then the firemen killed themselves. So it
13 would be absurd argument that the firemen killed themselves.

14 So I think the defendants benefit from it, I think
15 the government benefits from it because it's a cleaner
16 record.

17 THE COURT: But let me just understand what you say
18 the procedure is. They make their guilty/not guilty
19 finding. If it is not guilty, of course, we're all going
20 home. If it's, if anybody is found guilty, then I have to
21 make a finding, I would assume almost immediately, whether
22 that crime resulted in the death of those fire officers, or
23 firefighters.

24 MR. BECKER: Right.

25 THE COURT: If the finding is that it did, then the

1 jury has to go out and determine what the precise sentence
2 His.

3 MR. OSGOOD: Then our legal argument to you would
4 be like a negligence case.

5 MR. BECKER: I'm sorry. Not the precise sentence,
6 but just the two options, life or any term of years. That's
7 fit.

8 THE COURT: Any term of years.

9 MR. BECKER: Any term of years.

10 THE COURT: And I set the term of years?

11 MR. BECKER: Yes.

12 l MR. OSGOOD: Our legal argument to you would be
13 like in an negligence case that if the, if there is evidence
14 of gross negligence or ordinary negligence, I don't know
15 which the standard would be, if that was an intervening
16 cause, that -

17 THE COURT: Okay.

18 MR. BECKER: All right.

19 MR. PETERS: You and I didn't talk about this, but
20 analogizing it again to the death case, I assume that when we
21 would bring the jury back, there would be brief closing
22 arguments again just on the issue of whether it should be
23 life without parole or a term of years.

24 MR. BECKER: I don't care, **frankly**.

25 MR. PETERS: I think that's fair.

1 THE COURT: Let's get them in here, then, and send
2 them home.

3 MR. BECKER: They're gone.

4 THE COURT: Did I get them out of here? I've
5 forgotten what we've done.

6 MR. BECKER: Now, I'm sorry. Why are we starting
7 at 10:30 in the morning?

8 MR. BUNCH: Presumably, all of this stuff will be
9 reviewed.

10 THE COURT: So we will have finished the review,
11 and hopefully that whatever is going to be distributed will
12 be ready to be distributed first thing in the morning.

13 MR. OSGOOD: We get the notes now, right?

14 MR. BECKER: I don't have them.

15 MR. O'CONNOR: Do you want me to give her a phone
16 number to get ahold of me tonight, or do you want me to be
17 available sometime in the morning?

18 THE COURT: What we were going to tell you was that
19 we hope to have that stuff out of the labor file designated
20 by the end of the day, and you've got people working on it
21 now.

22 MR. BECKER: I hope so.

23 THE COURT: And we will examine what's released to
24 s and make a decision of what should and should not be
25 reduced. But I hope that will all be ready first thing in

3587

1 the morning.

2 MR. O'CONNOR: You just want us to be available
3 first thing to get that, you don't want us to be available
4 tonight?

5 THE COURT: I don't believe so. It depends on how
6 badly you want it.

7 MR. O'CONNOR: I'm available if somebody wants to
8 page me. I'll leave my pager number with Judge Hays if she
9 wants to page me.

10 MR. BECKER: I want to know what's being turned
11 over so we can argue one way or the other.

12 THE COURT: Surely.

13 MR. BECKER: Are we summing up tomorrow?

14 THE COURT: I had not assumed so. I had assumed we
15 would get all of this done tomorrow and not work Friday and
16 start the end of the case on Monday. Paul, where is that
17 work being done?

18 MR. BECKER: In my office on fifth floor.

19 THE COURT: On the fifth floor.

20 MR. BECKER: I'm going to go down and take charge
21 on it and get it done.

22 THE COURT: All right.

23 (The trial adjourned for the day at 4:10 p.m.)

24 — — —

REPORTER'S CERTIFICATE

I, Kathleen M. Wirt, Registered Merit Reporter, hereby certify that I am an official reporter for the United States District Court, Western Division, at Kansas City; that I was present at the time and place first hereinbefore set forth, and that I reported all of the proceedings by electronic stenography and the transcript was produced by computer.

I further certify that the foregoing is a correct Volume XIX transcript (Pages 3406 - 3588) from the record of proceedings in the above-entitled cause.

Transcript completed this ~ ~ day of , 1997.

e~ ~
Kathleen M. Wirt, CCR, RMR
United States Court Reporter

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

1 UNITED STATES OF AMERICA,)
1)
1 Plaintiff,)
1)
1 vs.) Nos. 96-00085-01/05-CR-W-8
1)
1)
1 GEORGE **FRANK** SHEPPARD,)
1 EARL D. SHEPPARD,)
1 DARLENE M. EDWARDS,) Thursday,
1 BRYAN E. SHEPPARD, and)
1 RICHARD W. BROWN,) February 20, 1997
1)
1) Kansas City, Missouri
1 Defendants.)
1)
1 TRANSCRIPT ON APPEAL
1 VOLUME XX

(Pares 3589-3728)

BEFORE THE HONORABLE JOSEPH E. STEVENS. JR
UNITED STATES DISTRICT JUDGE
AND A JURY

Proceedings recorded by electronic stenograph
Transcript produced by computer
ELIZABETH SHINN, RPR
UNITED STATES COURT REPORTER
811 GRAND AVENUE, ROOM 702

KANSAS CITY, MO 64106

1 ~
2 THE COURT: I want the record to reflect this
3 Court and Judge Hays and this Court's clerk spent
4 considerable time yesterday afternoon and evening
5 reviewing in total the Labor Department investigation
6 file made available to us by the government and marked
7 and copied all parts of that by which our examination
8 determined or felt with all assumptions in the
9 defense favor probably ought to be produced under
10 the Brady or Jencks rule and then copied those
11 documents and produced them.

12 I understand they were handed over to
13 the defense this morning, is that right, Mr.
14 O'Connor?

15 MR. O'CONNOR: No, Judge, that is what we
16 were just talking about. We have not received those.
17 We got the notes on True. This is something new.
18 We have not received anything new as of this
19 morning.

20 THE COURT: Well, I don't understand that.
21 Do you understand that, Mr. Becker?

22 MR. BECKER: No, as of nine o'clock this
23 morning there was some agreement. The Court
24 indicated what they were turning over and this was to
25 ~ be copied at that point.

1 ~ THE COURT: We will run that down. We have
2 got Kathy checking on it now and it may be it is a
3 matter of the copying process being ongoing and they're
4 honestly very few documents and virtually, in my
5 judgment, having looked at them, of virtually no
6 consequence but there are things I think in safety the
7 record ought to reflect you had available to you.

8 MR. BECKER: And on my behalf, I would say I
9 have reviewed those documents the Court has indicated
10 they are going to turn over. It is still my opinion
11 they would not contain any Brady material and it would
12 not be Jencks material of Special Agent True.

13 I would point out one report you will be
14 getting this morning. It is a report of interview
15 of a Bill Baker on May 15, 1989. That is arguably
16 Brady because it talks about a guy named Roy Fuqua
17 who has information about the case that a **Frank**
18 Baker and a female with a maiden name of Clark did
19 it but referring to our previous discovery
20 receipts we have turned over the actual two
21 interviews of Roy Fuqua who unfortunately is now
22 deceased. Because Mr. Fuqua in his interview says
23 **Frank** Sheppard and Larry Baker did it with Darlene
24 Clark and this was previously turned over to the
25 ~ defendants on receipt numbers 11 and 12.

1 ~ MR. O'CONNOR: There are probably
2 another couple matters we should discuss.

3 I think Mr. Osgood has one more
4 witness, very short, Mr. Romi. Then we would be
5 down to, I believe, Schram and True and then the
6 defense would be finished.

7 I think Mr. Peters wants to address the
8 Court as it relates to the notes that we have
9 looked at overnight as it relates to some of the
10 witnesses who have previously testified, to make a
11 record on that. And then obviously they have some
12 time to look at the stuff we are getting now
13 before we have to examine Agents True and Schram.
14 And if it is like the Court said, I can't imagine
15 it will be too long to get that done. But that is
16 it for the defense, I mean as it relates to that
17 part of the case.

18 THE COURT: Whose witness is it?

19 MR. O'CONNOR: Mr. Osgood has Mr. Romi.

20 THE COURT: Is he ready, John?

21 MR. OSGOOD: Yes.

22 THE COURT: Let's get the witness and the
23 questions about the copies solved so you will have
24 whatever you are entitled to and we can break again.
25 ~ Thin jury has opens more time in recess than in

3594

1 session, but we will break over the noon hour and pick
2 up this afternoon and give you the opportunity then to
3 follow up on it. You will have to indicate to us what
4 you think is appropriate.

5 MR. O'CONNOR: If what you said, Judge, bears
6 out, which I am sure it will, I think the lunch hour
7 will give us plenty of time to get what we need to do
8 and we would like to move this along as well.

9 MR. PETERS: Judge, do you want it now or
10 after the jury is out? Of the material we received
11 we didn't receive any notes on either Becky Edwards
12 or Darlene Edwards. I have spoken with Kathy and
13 Judge Hays. We had received one report of interview
14 from Becky Edwards and they had received notes on
15 that. But in the grand jury testimony of Dave True,
16 he had indicated that there had been several meetings
17 and in our interview of Becky Edwards she recounts
18 several interviews.

19 Judge Hays suggested I bring that to the
20 Court's attention, both as to Becky and Darlene;
21 that what we would be entitled to are the raw
22 notes of any of these interviews, not just the
23 notes relating to the one report that we have. I
24 asked Mr. Becker about it and his understanding
25 was they were only required to produce the notes

3595

1 corresponding to the one interview. And I don't
2 know if you want me to give the Court some
3 evidence or read Dave True's grand jury testimony
4 but what has been indicated to us is when she was
5 first interviewed, Becky Edwards was first
6 interviewed, she was told she was lying and not
7 home with Darlene and **Frank** at the time.

8 Then there was a second interview in
9 that ATF office where they were telling her she
10 couldn't have slept through the two explosions.
11 Becky Edwards tells us that while the agents are
12 arguing about whether she could sleep through the
13 explosion she fell asleep at the time. Agent True
14 talks about giving her assistance when she is
15 evicted after the arrest of her mother. We have
16 no notes regarding that.

17 THE COURT: What was that last?

18 MR. PETERS: In the grand jury testimony
19 Dave True talks about giving her assistance after
20 Becky Edwards is evicted and her mom was arrested
21 on the direct charge. We don't have any notes relating
22 to what was meant by this. Helping her move is
23 referred to in the grand jury.

24 So we believe that there are several
25 ~ interviews with Becky Edwards. We didn't get the

1 reports. We aren't complaining necessarily about
2 that but there should be raw notes of the
3 interviews.

4 On the final occasion Becky refers to is
5 when she was working at Quik Trip. As the Court
6 recalls her testimony, on the day the indictments
7 were released, Dave True responded to the Quik
8 Trip -- and the Court remembers her saying she
9 left her job -- Dave True responded and had the
10 news media with him. That was the reason she left
11 the Quik Trip.

12 Becky Edwards tells us that Dave True
13 also told her, you know, I am sorry the media was
14 there. I will help you get your job back at Quik
15 Trip. We have no notes. That is the final one we
16 are aware of, an interview with Becky Edwards.

17 Then on Darlene Edwards, the Court is
18 aware of the 19th statement.

19 THE COURT: Excuse me. Before we move on to
20 Darlene, since Becky has testified, is it the
21 underlying theory it is Jencks material?

22 MR. PETERS: Yes, Judge.

23 THE COURT: All of that?

24 MR. PETERS: All of that would be Jencks
25 material. And again what we have is the one interview,

1 ~ one typed interview.

2 It is my understanding pursuant to the
3 Courts order, the government I believe did what
4 it was instructed which was to give the raw notes
5 to correspond with the interview. But we believe
6 there were several other interviews that went on
7 from the time Darlene Edwards was arrested through
8 her grand jury testimony and the date of the
9 indictment at least.

10 Again, Judge Hays suggested I bring that
11 to the Court's attention. It would be our belief
12 that would be Jencks material, interviews
13 conducted by Dave True of the witnesses they
14 called to the stand.

15 THE COURT: What is your position on that?

16 MR. BECKER: I would have to look to see if
17 those notes are there, if there are any notes of
18 interviews, other than what counsel was given. The
19 defense attorneys were given the typed report of
20 interview which is of some length, I think, and the
21 Court examined the notes that accompany that interview
22 and decided not to turn that over to the defense
23 attorneys because there is nothing.

24 THE COURT: They have the report.

25 ~ MR. BECKER: They have the report.

3598

1 THE COURT: But he is not talking about that.

2 MR. BECKER: I know and they have their grand
3 jury testimony.

4 THE COURT: How about those other interviews?

5 MR. BECKER: I don't know if there are other
6 notes, if we have a phone contact with the witness. I
7 don't know if there are notes. I know there is no
8 report of interview. It is not Jencks material. It
9 is not a statement adopted by the witness. It is not a
10 statement by the agent. If the agent makes a note,
11 talks to Becky Edwards today, that isn't Jencks
12 material.

13 THE COURT: Make it your business over the
14 noon hour, if you would, Mr. Becker, to find out about
15 that though. You and Mr. Peters are obviously going to
16 be in diverse positions whether it is or is not
17 producible.

18 MR. BECKER: He has obviously detailed inter
19 views he has had, or someone has had, with Becky
20 Edwards where he gleaned all this information so it is
21 not he doesn't have the information. I don't know what
22 is missing here but I will look to see if those notes
23 are there.

24 THE COURT: We now have copies of this
25 ~ material which we believe in probably an over abundance

1 ~ of caution ought to be produced. There is a copy for
2 you all. Do you need more than one copy?

3 MR. O'CONNOR: Probably a couple copies.
4 That way we can go over them together.

5 MR. BECKER: I will have copies made. We
6 will have someone make copies.

7 THE COURT: All right, that's fine. Let's
8 get the jury.

9 MR. PETERS: The second part had to do with
10 Darlene Edwards. We believe that there were several
11 interviews conducted by Dave True of Darlene Edwards.
12 We haven't received any notes from any of the
13 interviews.

14 THE COURT: You saw the transcript of one of
15 them.

16 MR. PETERS: We have seen the transcript of
17 the 19th, the testimony that has been presented to the
18 Court two days earlier, on the 17th, Dave True's
19 videotape. The court has seen the videotape but the
20 testimony in the suppression hearing and I think before
21 this court as well is that prior to the videotape and
22 after the videotaping there were other discussions with
23 Darlene Edwards about this is a window of opportunity;
24 you are going to lose your daughter, that sort of
25 ~ thing. If there are notes, we are not saying we are

3600

1 entitled to see them but we think the Court would be.

2 THE COURT: The Court has seen those notes.
3 There are two tapes, are there not?

4 MR. PETERS: That's correct.

5 THE COURT: When we examined those two tapes
6 we had the notes available to us and there wasn't
7 anything of any significance of those notes that isn't
8 reflected on the tape.

9 MR. PETERS: That is my mistake. I hadn't
10 talked to Judge Hays and I thought Judge Hays indicated
11 you only had the notes from the interview on the 19th
12 where we had testimony of the videotape statement on
13 the 17th.

14 THE COURT: Let me verify that. Kathy, let's
15 make sure of that.

16 MR. PETERS: That's fine, Judge, and we can
17 do this at another time. At some point we will let the
18 Court know what we have discovered we think we need
19 your vision on, remedies or what we should do in terms
20 of cross examination of Agent True on the material
21 from the notes that was not contained in the report we
22 would have used in cross examination of the witness
23 while the witness was on the stand. And we can either
24 do it orally or we will try and write it out for the
25 Court.

~ 3601

1 A real quick example was Mr. White, the
2 man who had the mail fraud conviction and dealt
3 with prostitutes, was contained in the notes. He
4 was the one who related, if the Court will recall,
5 the transit. He was the one who talked about
6 defendant Skip Sheppard saying they went up and
7 were stealing a transit. The notes show it was a
8 transit with lazer optics. The notes show also
9 there was an acetylene torch which was not
10 contained in the document. Then at the end he was
11 one of the witnesses who testified he never asked
12 for anything or received anything. And at the end
13 of his notes he says he wants to be -- and I am
14 going by memory and that is why you may want us to
15 write it out -- but he wanted to be transferred
16 some place else. He wanted some particular
17 reading books. And then, if he testified, he
18 wanted to be moved to another location which also
19 wasn't contained in the report.

20 Those are the sorts of things.

21 THE COURT: Where are we going with this?
22 Are you saying there are some notes you haven't seen?

23 MR. PETERS: No, what I am getting at, the
24 notes you have given us we need to raise the parts of
25 ~ the notes we think limited our cross examination of

~
1 the witness we would have been able to cross examine
2 him with and get guidance from the Court.

3 I think that -- and I will have to speak
4 for my client -- I think that our rights are
5 protected if we are allowed to cross examine Agent
6 True on that, even though these are things if Mr.
7 White was on the stand it would be significant, we
8 would have been able to bring them out. And that
9 is the whole idea of the Jencks Act is to give you
10 the ability to cross examine, but I would want
11 guidance from the Court on that because I would be
12 going into things that weren't raised with the
13 witness because we didn't know that. I couldn't
14 cross examine the witness.

15 "Didn't you also say acetylene torch"
16 because we don't know acetylene torch until we got
17 Agent True's notes. "Didn't you also ask for" -
18 and the note says "want" and this other
19 consideration. "Didn't you really ask for
20 consideration?" We would have cross examined him
21 on that.

22 I think my client's rights are protected
23 if I can bring that out with Agent True but it
24 would be something that we didn't do with Agent
25 ~ True when he was on the stand before and I just am

1 going to need some guidance from the Court. We
2 are trying to avoid having to call anybody back as
3 a witness to ask them, but that would mean we
4 would need to have the ability to ask Agent True
5 about it.

6 MR. BECKER: Let's just use that as an
7 example why these notes are more fully developed
8 in the actual report because the last line Mr.
9 Peters refers to the notes, it says "will have to go
10 somewhere else later." And then the report, that
turns
11 out to be he intended to testify to the above-related
12 matters. However, he asked for protection once he
13 testifies. So I think the report does reflect the guy
14 asked for something. He asked for protection
after he

15 testified. Now, I don't see that as a discrepancy. It
16 is in the report. It has been turned over.

17 THE COURT: Really the report just flushes
18 out the notes or interprets the shorthand in the notes
19 in an understandable fashion.

20 MR. PETERS: I would agree, particularly
21 with what Mr. Becker read. That is the part we are
22 aware of. But the raw notes say he also wanted some
23 other things that aren't contained in the notes. The
24 report says transit.

25 THE COURT: Wait a minute. he wants some

3604

1 other things that aren't contained in the notes?

2 MR. PETERS: What we are saying we aren't
3 going to complain about a report that accurately
4 reflects the raw notes. We aren't going to complain
5 about things that aren't included that are immaterial.
6 If the guy said 70 degrees and it was 60 degrees, we
7 don't care about that.

8 What Mr. Becker has read to the Court is
9 what the defense, when the witness was on the
10 stand believed the only thing he had said is after
11 I testify I want to move because of protective
12 custody but in the report -- I don't have it in
13 front of me -- but it's I believe the page before
14 that -- he is talking about, well, I want some
15 reading material and being moved to another cell.

16 THE COURT: It is in the report or notes?

17 MR. PETERS: Only in the raw notes. It was
18 not in the report. And the major one I thought was in
19 the raw notes what he describes a transit with lazer
20 sights and acetylene torches. All that is in the
21 report we had was a transit. The Court is aware of
22 our theory.

23 THE COURT: What difference does this make,
24 Mr. Peters? What real difference does this make?

25 ~ MR. PETERS: I think pursuant to the Courts

3605

1 order and pretrial discovery -

2 MR. BECKER: I am sorry but I am looking at
3 this now and the first page, the third paragraph,
4 reads as follows, "He said they have previously taken
5 smaller items, including what he identified as
6 acetylene torch setup." So perhaps counsel hadn't
7 enough time to review.

8 THE COURT: That was in the typewritten
9 report that was available to counsel?

10 MR. BECKER: Yes.

11 MR. PETERS: What Mr. Becker said is
12 completely accurate. I think what we would like to be
13 able to do is write down the things that are
14 important. If they aren't, then it is not a
15 problem and Mr. Becker has just given a perfect
16 example. We were given this stuff. The attorneys
17 had gone over it in detail and it may not be anything
18 that is of import but there are things I think we
19 would be ineffective if we didn't check on. And I
20 guess what I am saying is what Mr. Becker just said.
21 Maybe what we ought to do is write down, give it to
22 Mr. Becker and if we are in error, then not bother
23 the Court with it. And that may be the easiest way
24 to do it.

25 ~ THE COURT: Did you distribute the copies?

3606

1 MR. O'CONNOR: We have everything.

2 MS. HUNT: Could I make one brief record
3 at the bench?

4 THE COURT: Yes.

5 (Proceedings out of the hearing of the jury.)

6 MS. HUNT: Just for the purposes of the
7 record, I am going to ask for a mistrial. When
8 the government produced Steve Kilgore early on in
9 this case and I was attempting to cross examine
10 him with a tape-recorded conversation he had with Mark
11 Reeder, remember I was precluded by the Court because
12 the Court did not trust Mr. Reeder, the government
13 was allowed to use Mr. Reeder's tape-recorded
14 conversation with Linda Peak. He was allowed to use
15 it; I wasn't.

16 THE COURT: Okay.

17 MS. HUNT: I would ask for a mistrial just
18 for the record.

19 THE COURT: Wouldn't you be surprised if I
20 granted it?

21 MS. HUNT: I would be thrilled. Yes, I
22 would be surprised.

23 THE COURT: All right, that will be denied.

24 Now, this is a report and then the notes
25 ~ of the interview of Becky Edwards on July 25,

1 1995. Now, do you know whether these have been
2 produced?

3 MR. BECKER: Yes, to you and in the written
4 order that wasn't one of the ones that the Court
5 decided to give the defendants because there is no
6 discrepancy or difference between the notes and the
7 interview.

8 THE COURT: So we have had a chance to
9 examine it.

10 MR. BECKER: The report encompasses two
11 different interviews. I don't know if the notes
12 reflect that.

13 MR. PETERS: It is my understanding what Paul
14 was going to do is see if there were any other notes -

15 MR. BECKER: That is what I will do.

16 MR. PETERS: -- relating to interviews of
17 Becky Edwards.

18 THE COURT: That's good.

19 MR. OSGOOD: Ready, Your Honor?

20 THE COURT: Yes.

21 MR. OSGOOD: Tommy Romi.

22 THOMAS RAY ROMI,

23 having been sworn, testified:

24 DIRECT EXAMINATION

25 BY MR. OSGOOD:

1 Q Would you state your full name, please, sir, for the
2 record.
3 A: Thomas Ray Romi.
4 Q Where do you live, Mr. Romi?
5 A: I live in Adrian, Missouri.
6 Q Adrian? A: Yes.
7 Q You might want to spell that.
8 A: A-d-r-i-a-n.
9 Q your last name is R-o-m-i.
10 A: R-o-m-i, yes.
11 Q How old are you, sir?
12 A: Thirty-three.
13 Q Do you have children?
14 A: Yes.
15 Q How many?
16 A Three.
17 Q I want to direct your attention to 1988, about November
18 28th, were you married at that time, sir?
19 A: Yes.
20 Q Who was your spouse at that time?
21 A: Nancy Romi.
22 Q And where were you and Nancy Romi living at that time?
23 A: I can't remember the exact address but it was 83rd
24 Terrace and Brooklyn.
25 ~ Q Do you remember the explosion that occurred in the

3609

1 early morning hours of November 29, 1988?

2 A: Yes.

3 Q Where were you, sir?

4 A: I was asleep when it happened.

5 Q Where was your spouse at that time, Nancy?

6 A: She was asleep with me.

7 Q In the same bed.

8 A: Yes.

9 Q And where were your children at that time?

10 A: They were in the back bedroom.

11 Q All three of them.

12 A: Yes.

13 Q And tell me what happened after you or were you

14 awakened by the first explosion?

15 A: Yes.

16 Q What happened?

17 A: We was awakened by what we know now as the explosion.

18 As soon as we woke up I asked Nancy, what was that.

19 She said I don't know.

20 Q What happened next?

21 A: I got up and went to the front room to kind of see what

22 was going on. I turned the light on and my niece

23 Shannon came out of the back bedroom. She come in the

24 front room and said what happened; we don't know,

25 trying to figure it out.

3610

1 Q Did you observe any damage to the house?

2 A Not at that point.

3 Q Did there come a time when you observed some damage to
4 the house?

5 A Yes.

6 Q When was that?

7 A Well, Mike Demaggio came out of the back bedroom and
8 says the back door is open.

9 Q You better not tell us what Mr. Demaggio said. I don't
10 know that's proper.

11 A Okay. I went to check the back bedroom to see what the
12 cause was. I think the door was open. And I came back
13 to the front room. I was looking directly at the
14 window and I noticed the window had been knocked out.

15 Q Where was your wife at this time?

16 A I believe she was coming out of the back bedroom with
17 1 me.

18 Q What happened next?

19 A Then I went to the front door, walked out on the porch
20 to see what happened. And I noticed glass was laying
21 in the yard out front.

22 Q Where was your wife at that time?

23 A She was behind me.

24 Q At any point in time did you see her or observe a black
25 pickup truck go by?

1 A: No.

2 Q Do you know Mr. Richard Brown?

3 A: Yes, sir.

4 Q Do you see him in this courtroom?

5 A: Yes, sir.

6 Q Would you identify him, please.

7 A: He is sitting right over there.

8 Q The gentleman that just stood up.

9 A: Yes.

10 Q Do you know what kind of truck he drove at the time?

11 A: Yes.

12 Q You did not observe that truck that evening.

13 A: I did not observe anybody that evening.

14 THE COURT: What did you just say?

15 THE WITNESS: At that time nobody was on the
16 streets.

17 Q Was this truck, did it have -- do you know what glass
18 packs are?

19 A: Yes.

20 Q Did this truck have glass packs on it?

21 A: I can't remember.

22 Q You don't remember.

23 A: No.

24 MR. OSGOOD: I believe that is all.

25 ~ CROSS EXAMINATION

1 BY MR. MILLER:

2 Q Good morning, sir. My name is Dan Miller. I am one of
3 the prosecutors on the case. You went to the back of
4 the house at one time.

5 A Yes.

6 Q That was with Mr. Demaggio.

7 A Well, all three of us went back to see what was going
8 on, me, Shannon and Nancy.

9 Q Well, I thought you said you came back and Nancy was in
10 another room.

11 A No, I said she was coming out of the back bedroom with
12 1 me.

13 Q Now you are aware that in August of 1989 Nancy informed
14 the police she saw Richard Brown's pickup truck, aren't
15 1 you?

16 MR. OSGOOD: Objection. How is he aware. He
17 hasn't established that.

18 THE COURT: Don't say it is a fact. Ask him.

19 A No, sir, I am not aware of that.

20 THE COURT: Wait a minute. Rather than
21 saying you are aware, ask him.

22 Q Are you aware on August 16th of 1989 your wife, you
23 were still married at the time to Nancy Romi, informed
24 the police she saw Richard Brown's black Ford pickup.

25 A: No, sir.

1 ~ Q And are you aware on February 24th of 1995 she gave a
2 tape-recorded statement to Special Agent Dave True of
3 ATF she had seen Richard Brown's black Ford pickup?

4 A Yes, I am aware of that.

5 Q You were aware of that.

6 A I was aware she gave a statement. ~ didn't know when
7 it was.

8 Q And are you aware that on March the 15th of 1995 she
9 gave grand jury testimony that she saw Richard Brown's
10 black Ford pickup truck?

11 A No, I was not aware of that.

12 Q And Richard Brown is your nephew.

13 1 A Yes.

14 Q Your sister is his mother.

15 1 A Yes.

16 Q And you are aware Richard Brown was indicted for this
17 in June of 1996.

18 A: Yes.

19 Q And you just told Mr. Osgood, Mr. Brown's attorney,
20 what you just testified to about you going through the
21 house and so forth, you just gave him that information
22 this week.

23 A: yes.

24 Q Now are you aware or do you recall on December the
25 ~ 15th, 1996 At Scavuzzo's Market in Harrisonville,

3614

~

1 Missouri Nancy came to give you the children for your
2 visitation and that with you was Richard Brown, do you
3 remember that today?

4 A Yes.

5 MR. OSGOOD: I attempted to cross examine
6 Mr. Romi on this and was not allowed to do so.

7 MR. MILLER: That is not what it was
8 about.

9 THE COURT: I don't recall that was the
10 subject you were precluded from. This is appropriate
11 cross.

12 Q Now you were here in the courthouse yesterday, weren't
13 1 you?

14 1 A Yes.

15 Q And the grandmother's name is pronounced Wilda.

16 A It's my mother.

17 Q Your mother's name, is it pronounced Wilda?

18 1 A Yes.

19 Q And Miss Wilda was here also yesterday, wasn't she?

20 1 A Yes.

21 1 Q And she was here to testify, wasn't she?

22 MR. OSGOOD: Objection. She was not here to
23 testify.

24 THE COURT: Are you testifying?

25 MR. OSGOOD: No, Your Honor, but he is taking

1 ~ matters improper and not in evidence.

2 THE COURT: He is asking questions on cross
3 examination and your objection is overruled.

4 Q She was here to testify, wasn't she?

5 A No.

6 Q But she was out in the hallway of the courthouse,
7 wasn't she?

8 A Yes.

9 Q She wasn't in here to watch the trial, was she?

10 A No.

11 Q And she was here all day, wasn't she?

12 A Yes.

13 Q And she was here after Linda Peak testified, the last
14 witness for the defense testified, wasn't she?

15 A Yes.

16 MR. MILLER: No further questions, Judge.

17 THE COURT: Any Redirect?

18 MR. OSGOOD: I do.

19 REDIRECT EXAMINATION

20 BY MR. OSGOOD:

21 Q Did you have some conversation with your wife about
22 Richard's pickup?

23 A: No.

24 Q Did you hear from somebody else in the presence of your
25 wife about Richard's pickup at some other location

1 ~ maybe some time prior to that?

2 MR. MILLER: This is outside the scope of
3 1 Cross.

4 THE COURT: Yes, sustained.

5 MR. OSGOOD: I think he opened the door as
6 to what his wife told him.

7 THE COURT: I will let him testify to it
8 because I want to get moving.

9 MR. MILLER: Your Honor, it is also hearsay.

10 MR. OSGOOD: That is the point, that is how
11 his wife heard it. That will be his response, I think,
12 your Honor, what his wife heard she got from somebody
13 else. That's the question.

14 THE COURT: That is compound hearsay. I will
15 sustain that objection. You can't ask that.

16 Q Did you have anything to do with making up the defense
17 witness list in this case?

18 A No, sir.

19 Q Did I tell you who were going to be defense witnesses
20 and who were not?

21 1 A Yes.

22 Q Did you consult with me about who were going to be
23 defense witnesses?

24 1 A No.

25 ~ Q Did you consult with the government about who was going

1 ~ to be government witnesses?

2 A yes.

3 Q Did the government tell you all the people they might
4 have called or didn't call?

5 A No.

6 THE COURT: you are on Redirect, Mr. Osgood.

7 MR. OSGOOD: Yes, sir.

8 Q Do you have any felony convictions?

9 A No, sir.

10 Q Did you apply for the reward in this case?

11 A No, sir.

12 MR. OSGOOD: Thank you.

13 MR. O'CONNOR: I have a couple questions,
14 Judge.

15 THE COURT: You are in a very tenuous
16 position.

17 MR. O'CONNOR: This is within the scope.

18 THE COURT: This is going to be Redirect
19 responsive to his Cross Examination.

20 MR. O'CONNOR: Right.

21 REDIRECT EXAMINATION

22 BY MR. O'CONNOR:

23 Q Where did your mom live here in Kansas City?

24 A: Now?

25 ~ Q Wilda, the one that was out here yesterday.

1 ~ A She lives off of East 50th Terrace.

2 Q How long has she lived there?

3 A Five or six years.

4 Q She was out there all day yesterday.

5 A Yes.

6 Q Has the federal government served a subpoena on her to
7 get her to testify?

8 A Yes.

9 Q They have.

10 A Yes.

11 MR. O'CONNOR: No further questions.

12 MR. BECKER: Let's approach on that, Mr.
13 O'Connor.

14 THE COURT: Come up.

15 (Proceedings out of the hearing of the jury.)

16 MR. BECKER: I want to know what good faith
17 basis if the federal government served a subpoena on
18 Wilda Romi.

19 MR. O'CONNOR: The answer was going to be
20 they didn't.

21 MR. BECKER: You have to ask a question on a
22 good faith basis.

23 MR. O'CONNOR: The good faith basis, they
24 didn't serve her with a subpoena.

25 ~ THE COURT: Wait a minute. Let me get

3619

1 something straight.

2 MR. OSGOOD: I don't know anything about
3 this.

4 THE COURT: Did they serve her with a
5 subpoena?

6 MR. OSGOOD: She is in the courtroom now.

7 THE COURT: Let's get her up here Are you
8 through with him?

9 MR. O'CONNOR: Not in front of the witness.

10 MR. MILLER: I honestly believe the question
11 was, he was going to say she was not served. I think
12 he misunderstood the question. She was subpoenaed
13 probably by Mr. Osgood, not by the government.

14 MR. BECKER: Then do you want to clear that
15 up?

16 THE COURT: Clear it up.

17 MR. OSGOOD: I served a subpoena on her.

18 THE COURT: I know. I think he can clear
19 this up more efficiently than anybody else.

20 (Proceedings in the hearing of the jury.)

21 THE COURT: Did you see the subpoena that was
22 served on your mother?

23 THE WITNESS: No, I did not.

24 THE COURT: Do you think it was caused to be
25 ~ served on her by the federal government or by one of

1 the defendants?

2 THE WITNESS: I don't know.

3 MR. O'CONNOR: I will clear it up further.

4 FURTHER REDIRECT EXAMINATION

5 BY MR. O'CONNOR:

6 Q It is my understanding Mr. Osgood served her with a
7 subpoena.

8 A I don't know.

9 Q My question to you was do you know whether or not Mr.
10 Becker, when I said the government, Mr. Becker, or
11 anyone on behalf of the U. S. Attorney's office, while
12 she was here, served her with a subpoena to be a
13 witness in their case?

14 A I don't know that either.

15 MR. O'CONNOR: Thank you very much.

16 THE COURT: Come up a minute.

17 (Proceedings out of the hearing of the jury.)

18 THE COURT: Mr. Osgood, I am puzzled by this.
19 You testified to me she was not going to be a witness.

20 MR. OSGOOD: She is not.

21 THE COURT: But you had served her with a
22 subpoena.

23 MR. OSGOOD: But I elected not to call her.

24 THE COURT: But the fact is she was here
25 under the apprehension she was going to be a witness.

1 She's excluded from the courtroom.

2 MR. OSGOOD: Your Honor, I have no obligation
3 to present any evidence whatsoever.

4 THE COURT: You have an obligation not to say
5 stuff to the court that isn't true.

6 MR. OSGOOD: I made a decision not to call
7 her. Therefore, she is not a witness in this case, and
8 it would be improper and a violation of my client's
9 constitutional rights for them to comment on the
10 failure of me to produce evidence.

11 MR. BECKER: When you are standing in the
12 hallway waiting to testify and presumably the inference
13 left by defense counsel **they** have favorable evidence.

14 MR. O'CONNOR: I am assuming the reason the
15 question was asked to start with, **they** knew she wasn't
16 going to be called.

17 What I am saying, I am assuming the
18 purpose of Mr. Miller's question was proper cross
19 examination, was she here, was she coming in to
20 testify.

21 MR. OSGOOD: It is not proper cross
22 examination.

23 MR. O'CONNOR: Let's start over. I think it
24 is proper for Mr. Miller to say was she here, was she
25 ~ outside. So **they** can argue later she's sitting here,

1 ~ **they** never called her, folks, I think **they** can argue
2 that.

3 It was improper to ask if she was going
4 to be a witness. He doesn't know who the
5 witnesses are. When he said she was, I think Mr.
6 Osgood had to clear it up in the eyes of the jury.

7 THE COURT: During the day yesterday she had
8 a subpoena in her hand, subpoenaing her as a witness.

9 MR. BECKER: The list provided to the
10 defendants and the government had her on the list.

11 MR. O'CONNOR: I think Mr. Osgood will tell
12 you up until the time we took the break she was coming
13 on. We had a joint discussion and decided not to call
14 her. I think he has made a good faith argument.

15 MR. OSGOOD: I want the Court to instruct
16 the jury to disregard all this testimony about who
17 called what witnesses because under Griffen versus
18 Alabama I am not required to produce one single bit
19 of evidence. I can stand moot and rely on the
20 presumption of innocence.

21 THE COURT: I understand your position and I
22 am not going to give an instruction.

23 MR. OSGOOD: I want a mistrial on the basis
24 of the government commenting on me failing to produce
25 ~ evidence. *That* is exactly what error is.

~

1 (Proceedings in the hearing of the jury.)

2 MR. MILLER: We are done with this witness.

3 THE COURT: You may step down. All right,
4 call your next witness.

5 MR. OSGOOD: I don't have any other
6 witnesses, Your Honor.

7 MR. O'CONNOR: We have other witnesses but it
8 will be after the lunch hour we talked about earlier.

9 THE COURT: All right, ladies and gentlemen,
10 we have some more work to do here before we go forward
11 with the case so will you please take your lunch hour
12 now. I think it would probably be the best use of time
13 to plan on being back in the jury room at one o'clock
14 and we will get started as soon after one as we
15 possibly can. Have a good lunch. Don't talk about the
16 case and we will see you then.

17 (The jury leaves the courtroom.)

18 MR. O'CONNOR: We are going to get
19 information to Mr. Becker. If we can't resolve it,
20 then we will come back to the court.

21 MR. BECKER: I object to the original offer.
22 When a subpoena was served by Mr. Peters on the U. S.
23 Attorney's Office was that Dave True would be asked
24 questions relating to any labor matters that might
25 arise from Agent Schram's testimony.

~
1 MR. PETERS: I would not agree with that. I
2 think on the CFR I turned in it was -

3 THE COURT: It's a piece of paper. Let's
4 look at it.

5 MR. PETERS: I don't have it, Judge, because
6 it was faxed to the U. S. Attorney, the nature of my
7 questions. I have got that at home.

8 MR. BECKER: I will find that. That was my
9 recollection, it specifically stated it was related to
10 anything that may arise from Agent Schram's testimony.

11 THE COURT: So it did.

12 MR. BECKER: I would again like to revisit
13 this because Agent True is recalled because I think at
14 the end of Agent Schram's testimony there is not going
15 to be anything there that is new or different that
16 couldn't be inquired upon the first time through.

17 MR. O'CONNOR: If that is true, then I would
18 agree with Mr. Becker.

19 MR. PETERS: I am glad everybody is agreeing
20 but he is my endorsed witness and if need be, if Mr.
21 Becker tells me the CFR that the U. S. Attorney has in
22 response to my letter, if it doesn't include more
23 information than that, then I think I need to get what
24 I faxed to them because I did not, as the Court recalls
25 ~ my examination of True, we went up to November 28, 1988

1 going through his investigation in the case and the
2 Court said before you go farther I want to see the copy
3 of the injunction that was issued on the 28th.

4 My cross examination of Agent True
5 stopped on November 28, 1988 and it certainly is
6 my position, it was my understanding from the
7 Court that before I started going beyond that,
8 before I started going beyond that, it was like I
9 had this first hurdle to get over. I have a
10 variety of questions of Agent True relating to the
11 investigation having to do with this case that is
12 unrelated to the labor issues.

13 MR. BECKER: Then he should have brought
14 1 it up.

15 THE COURT: You should have asked it on cross
16 examination. I don't understand why you are doing it
17 1 now.

18 MR. PETERS: There are two points, Judge.
19 One, Agent True was listed as my witness. And if I am
20 wrong, I certainly apologize, the Court has told me
21 that, correctly, the scope of my cross examination
22 would be limited to his direct examination. That was
23 why he was an endorsed witness. That is why he has
24 remained an endorsed witness. I have abided by the
25 ~ Court' ruling that the scope of my cross examination

1 ~ of Agent True would be limited to the government's
2 case, relying on that that on the evidence that I
3 want to bring out from True, he would be called as
4 a witness in my case.

5 MR. BECKER: A scant few minutes ago counsel
6 said he had other questions relating to the conduct
7 of the investigation.

8 It is hard to imagine any questions that
9 are relevant that are not related to this
10 investigation. And that is what Agent True
11 testified on Direct.

12 I don't remember me ever objecting to
13 any question Mr. Peters had of Agent True, that it
14 was beyond the scope of direct examination. If
15 **they** were relevant to this case, **they** probably
16 were covered in the direct examination. So if he
17 is held back for some reason, some cross
18 examination about this case, then I think Rule 611
19 and the case law I have given to the Court is you
20 can't just pull back on cross examination for a
21 second shot at a time when you want to highlight
22 it for the jury. If you have cross examination,
23 you cross examine.

24 MR. PETERS: Judge, I think the record will
25 ~ show that and I have asked for guidance because I am

3627

1 familiar with a different jurisdiction where the scope
2 of cross examination is not limited to direct.

3 THE COURT: I am not familiar with the asking
4 for guidance routine. You are going to have to try
5 your own case. I am not going to answer to the Eighth
6 Circuit for the way this case is tried.

7 MR. PETERS: What I have relied upon is the
8 Court's instructions with several witnesses that the
9 scope of the cross examination would be limited to
10 direct. On several witnesses when we have attempted
11 to ask questions, the government has objected as
12 beyond the scope and it has been sustained.

13 This is my witness that was endorsed by
14 me a week before trial as ordered by the Court.

15 THE COURT: You see, in a sense we have been
16 sandbagged into this argument because you say that now,
17 but you also have filed a motion formally with this
18 Court asking for permission to recall Agent True for
19 further cross examination. Now which is it?

20 MR. BUNCH: If it please the Court.

21 THE COURT: Another country is heard from.

22 MR. BUNCH: I think we ought to ask your
23 indulgence to let us recess, present to the Court in
24 writing the questions that he proposes, make the record
25 which is what we are doing here and wasting a good deal

1 ~ of your time and everybody else's and we will assist
2 Mr. Peters in doing that.

3 THE COURT: In addition to that, Mr. Bunch,
4 when do you propose to have this meeting?

5 MR. BUNCH: Just as soon as we get back up
6 here you would rule on what is going to be admitted
7 and what isn't. Very quickly. Then we are ready for
8 the meeting because we are done. You can send the
9 jury home if you wish and we are ready to meet with
10 the defendants and make our record on testimony.

11 MR. BECKER: After lunch we are definitely
12 going to have Schram, is that what you are telling me?

13 MR. O'CONNOR: Yes, maybe True.

14 MR. BUNCH: We have been working on this so
15 I don't think it will take us as long as maybe I
16 anticipated.

17 THE COURT: Characterize for me what it is
18 Schram is going to testify to.

19 MR. PETERS: The thing we were provided is
20 a 15 page report detailing instances of union
21 violence that he listed specific suspects. The purpose
22 of this report, as we understand it, and at the end he
23 says this is what we intend to investigate over the
24 next 90 days, lists specific targets.

25 ~ I am going to ask him about was the

l

3629

1 grand jury called and that's it.

2 THE COURT: You are prepared for him to be
3 asked then and for me to allow him to be asked why he
4 didn't pursue any of those specific leads beyond the
5 interview.

6 MR. PETERS: Yes, I would love to have
7 any cross examination what was done. I have agreed to
8 limit it to his 15 page report.

9 MR. O'CONNOR: Unless we have something new
10 in here.

11 THE COURT: I assume that is probably in the
12 15 page report.

13 MR. PETERS: Yes, there is going to be an
14 ongoing investigation but I am going within the
15 constraints of what was given to us and if there is
16 cross examination on the follow-up investigation, then
17 I will have some redirect about how long did that
18 investigation continue, who did he contact.

19 MR. BECKER: I will watch myself. I want to
20 alert counsel and the Court if counsel wants to start
21 reading on such and such, in your report did you report
22 on such and such a date that picketers went out to
23 follow the trucks from Southern Ready-Mix to the 71
24 highway construction site, I am going to object.
25 What he said or didn't say in his report, this is an

1 investigative report. **They** have had it for months.
2 If **they** wanted to develop witnesses to those events
3 based on those reports, **they** have had it. **They** can go
4 get a witness.

5 This guy can't just say based on
6 something I have read, based on what somebody else
7 told me this is what I wrote down in this
8 investigative report. This is the opening memo.
9 And, as the Court is probably aware, when we write
10 opening memos we threw it all in there.

11 THE COURT: Yes.

12 MR. BECKER: There are a dozen people named
13 up front, eight, nine or ten. It would be grossly
14 unfair to name them.

15 THE COURT: Do we have a copy of that?

16 MR. BECKER: I will give it to you right now.
17 Merely regurgitating that report.

18 THE COURT: No, we are not going to do that.
19 You all look at the material we have and remember we
20 will try to reconvene about one o'clock. We will be in
21 recess.

22 RECESS

23 t Conference in the courtroom outside the presence of the
24 jury.)

25 ~ THE COURT: Pat, did you have a record you

1 wanted to make?

2 MR. PETERS: Bob and Carol Williams were
3 the next-door neighbors and Becky Edwards is
4 Darlene's daughter.

5 THE COURT: Why are **they** being called back?

6 MR. PETERS: **They** wouldn't be called back.
7 The preliminary questions would be foundational and
8 since 1988 the police department and anybody that
9 wanted to listen has been aware that Frank Sheppard
10 had said he was home at the time of the explosion;
11 that he talked to his next-door neighbors and Becky
12 Edwards was there. So in terms of preliminary -

13 THE COURT: Preliminary to what?

14 MR. PETERS: Asking the following questions
15 of Agent True. So I would written it out, it
16 would have been:

17 Were you aware that Bob and Carol
18 Williams spoke with Frank Sheppard on the night of
19 the explosion?

20 Were you aware that Becky Edwards saw
21 Darlene Edwards and Frank Sheppard at the house at
22 the time of the explosion?

23 And then going on from there.

24 THE COURT: You are proposing to ask Agent
25 True, right?

1 ~
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25 ~

MR. PETERS: Correct.

THE COURT: If he was aware Frank Sheppard was interviewed by the KCPD in '88.

MR. PETERS: Right.

THE COURT: Why?

MR. PETERS: Why am I asking him that?

THE COURT: What difference does it make?

MR. PETERS: The statements of Bob and Carol, the alibi of Frank Sheppard had been known to everybody since 1988. I am not going to ask him what Frank Sheppard said but that was he aware of them being interviewed in '88 and '89 in the grand jury and '90 in state court.

And then the way it gets tied up is when was the first time somebody went and talked to Bob and Carol Williams and Becky Edwards.

MR. BECKER: I am at a loss as to the evidentiary nature that this is being offered for that is permissible. All of these witnesses have testified, Carol Williams, Robert Williams, Becky Edwards. Counsel could have asked them when **they** were interviewed. Perhaps **they** were. I don't have the transcripts in front of me.

MR. PETERS: That was all brought out, Judge, I would agree.

3633

1 THE COURT: Wait a minute, did you ask Becky
2 Edwards if she was put in a room with another witness
3 to try to get her to say the party was Sunday before
4 the explosion? Did you ask her that?

5 MR. PETERS: I can't ask Becky Edwards what
6 Dave True said to her.

7 THE COURT: No, that is not what Dave True
8 said to her. It is a physical fact, were you put in a
9 room with another witness to try to get you to say the
10 party was the Sunday before the explosion.

11 MR. PETERS: I never asked her that.

12 THE COURT: And that is the point of this
13 whole business. I don't know why you elected to pass
14 up the opportunity to ask all these questions but you
15 did and I am not, in essence, just going to split this
16 whole case wide open again with all of this inquiry of
17 witnesses that could have been asked when **they** were
18 previously on the stand.

19 MR. O'CONNOR: Why don't we just do an offer
20 of proof and let the Court rule and we can move to the
21 next issue.

22 MR. PETERS: That's fine.

23 THE COURT: With these questions, we will be
24 here a while just doing an offer of proof.

25 ~ MR. O'CONNOR: I don't know if we oat and

1 talked longer, we are not going to get anywhere.

2 MR. BECKER: An offer of proof, are you aware
3 Frank Sheppard was interviewed by the police department
4 in '88, I object to that. What is the relevance? He
5 is trying to put before the jury his client has come
6 in and put his side of the story

7 THE COURT: He is trying to avoid Frank
8 having to testify to get his side of the story before
9 the jury.

10 MR. O'CONNOR: What I am saying, Paul could
11 make that objection during the offer of proof and the
12 Court can rule. I just think that is the way to do it
13 and then we can go on.

14 THE COURT: Let's go.

15 MR. PETERS: Agent, are you ready?

16 AGENT TRUE: I have had these for about five
17 minutes but let's go.

18 OFFER OF PROOF

19 DAVID TRUE,

20 having previously been sworn, resumed the stand and
21 testified:

22 DIRECT EXAMINATION

23 BY MR. PETERS:

24 Q As the special agent investigating the case, you are
25 ~ aware that Bob and Carol Williams were next-door

1 neighbors to Frank and Darlene Sheppard, is that
2 correct?

3 MR. BECKER: Objection.

4 THE COURT: Let's just show your objections
5 to all of these questions.

6 MR. BECKER: Thank you, Judge.

7 THE COURT: Are you aware -- were you aware
8 of that.

9 Q Were you aware of that?

10 A That what?

11 Q That Bob and Carol Williams were their next-door
12 neighbors?

13 1 A Yes.

14 Q You were aware that Becky Edwards was Darlene Edwards'
15 daughter?

16 A: Yes.

17 Q When did you become aware that **they** had had
18 conversations with Frank Sheppard on the night of the
19 explosion?

20 A: When I interviewed them.

21 Q You had never seen any reports of anything prior to
22 that indicating Frank Sheppard had spoken with Bob and
23 Carol Williams and Becky Edwards, as well.

24 A: There was a police report.

25 ~ Q And was that a police report from 1988?

1 ~ A I believe it was dated 1988 but I don't have it in
2 front of me.

3 Q It would be safe and just for purposes of my record, I
4 would show you the report but if it is '88 or '89, you
5 remember seeing a report from shortly after the
6 explosion.

7 A I believe that is the one you are referring to.

8 Q Are you aware that Frank Sheppard testified before the
9 Grand jury in state court in 1990.

10 A No, he didn't.

11 Q He did not.

12 1 A 1989.

13 Q 1989. A April.

14 Q And are you aware he testified before the state grand
15 jury in '89?

16 A I am not sure if he did because he showed up drunk,
17 gave an interview with Stan Kramer and may have left
18 before he ever testified, but I wasn't there so I don't
19 know if he testified.

20 Q Are you aware he testified before the federal grand
21 jury in 1995?

22 MR. BECKER: '96.

23 Q Are you aware of that?

24 A: Yes.

25 ~ Q Was he drunk at that time? Are you aware whether he

1 ~ was drunk?

2 A I wasn't there when this process went on. I was
3 outside.

4 Q Did you speak with Frank Sheppard that day?

5 A No.

6 Q Are you aware of any interviews of Frank and Darlene's
7 next door neighbors, the Williams, prior to 1995 or
8 1996 conducted by any law enforcement agencies?

9 A No.

10 Q Did you tell Becky Edwards in your interview with her
11 that she could not have been home with Frank and
12 Darlene because **they** were at the construction site at
13 that time?

14 1 A No.

15 Q Did you tell Becky Edwards she was lying about being
16 home with Frank and Darlene at the time of the
17 explosion?

18 A I didn't tell her she was lying, no.

19 Q Did you say anything to Becky Edwards to imply or did
20 you tell her you didn't believe her story because you
21 believed Frank and Darlene were not home at the time?

22 1 A No.

23 Q Did you tell Becky Edwards she could not have slept
24 through the explosion?

25 ~ A No.

3638

1 Q Did you put Becky Edwards in a room with Ronnie Edwards
 2 in an attempt to have Becky Edwards change her
 3 statement; that the party occurred a week before?

4 A No, I didn't put her in a room with Ronnie Edwards to
 5 get her to change her story in any way. **They** were
 6 interviewed together, voluntarily, to straighten out
 7 the issue of the question.

8 Q Did you leave them in the room alone during the course
 9 of that interview?

10 A I don't believe so.

11 Q Did you go to the Quik Trip where Becky Edwards was
 12 working on the day her mother was indicted in this
 13 present case?

14 A I went to the Quik Trip on 85th Street to get a drink
 15 and when I walked in I noticed she was there. I didn't
 16 even know she was working at that Quik Trip at that
 17 time.

18 Q Were there television crews with you when you went in
 19 to get your drink?

20 A: No, **they** were following us around when we were there
 21 trying to find Richard Brown. **They** came to the Quik
 22 Trip, not with me in any fashion, and I went in to get
 23 a drink with some of the agents and officers and came
 24 back out.

25 ~ Q Were the camera crews filming as you went in to get

11 1

3639

1 your drink?

2 A: Not that I am aware of, no.

3 Q As a result of that, did Becky Edwards quit that job?

4 A: I believe she left that job for other reasons, also.

5 Q After she left that job for whatever reasons, did you
6 tell Becky Edwards you would try and help her get her
7 job back at Quik Trip?

8 A: I asked was she wanting to get her job back or was she
9 going to get her job back.

10 Q Did you tell her you would help her get her job back at
11 Quik Trip?

12 A: No.

13 Q Did you ever tell her you were sorry for the media
14 being there and you felt responsible for that?

15 A: No, I didn't.

16 Q Did you have any evidence in November of 1990 that
17 unions were responsible for the explosion that killed
18 the six firefighters?

19 A No.

20 Q In November of 1990 was the ATF spending as much time
21 investigating the case against the unions as right
22 after the explosion?

23 A: In a sense, when something would come in that was
24 related to that case, we would devote as much time as
25 we could to resolve that particular lead, whatever it

1 may be. However, we were not spending as much time
2 literally because we didn't have anything to do because
3 there wasn't anything to investigate regarding union
4 activity at the construction site at 87th Street and
5 south 71 highway.

6 Q Were you interviewed in The Kansas City Star on or
7 about November 30, 1990? I am going to ask about the
8 highlighted stuff on that. (Handing the witness the
9 paper.)

10 THE COURT: Go ahead.

11 Q In November of 1990 did you say in The Kansas City Star
12 that "ATF was still working on the case, spending about
13 as much time right now as we did right after it
14 occurred."

15 A: Again I will repeat my last answer, as much time as we
16 could devote if leads came in; in the same way we did
17 when we first started the investigation in '88 and '89
18 to resolve anything that would come in.

19 Q Did you have any evidence of union involvement in
20 November of 1993? I am kind of bridging to no. 17.

21 A: Would you ask that again.

22 Q I will ask the way it is written. In November, 1993
23 did you still maintain that someone loyal to organized
24 labor wanted to disrupt the construction site that we
25 ~ are talking about at the time of the explosion?

3641

1 A: I couldn't answer that question. In November of 1993
2 we were still open to investigative things that would
3 come in and we had still developed the information of
4 things that had occurred at other sites and had no
5 information that any union-related activity had
6 occurred at the construction site where the
7 firefighters died.

8 Q In November of 1993 did you maintain that someone loyal
9 to organized labor wanted to vandalize equipment to
10 slow work on the road project possibly because
11 contractors were using non-union concrete?

12 A: I don't believe I maintained that.

13 MR. **PETERS**: And I would ask him if The
14 Kansas City Star article was correct.

15 THE COURT: In total? I have never seen a
16 Kansas City Star article that was totally correct, in
17 my opinion. You mean the whole thing?

18 Q Did you say to the reporter from The Kansas City Star
19 in November of '93, "That someone loyal to organized
20 labor wanted to vandalize equipment to slow work on the
21 road project, possibly because contractors were using
22 non-union concrete"?

23 MR. **BECKER**: May I see that, please.

24 MR. **PETERS**: It is the bottom part.

25 Q My question is did you say that to him?

1 A: No, that is out of context, no.

2 Q After you saw this article in The Kansas City Star, did
3 you call them and tell them **they** had taken it out of
4 context?

5 A: No.

6 Q What did you tell him in regard to your belief of
7 involvement in organized labor?

8 MR. BECKER: I don't understand the
9 relevance.

10 MR. PETERS: This is real close to the end of
11 my stuff.

12 MR. BECKER: You're right.

13 THE COURT: Where are you now?

14 MR. PETERS: I am on number 17. Do you recall
15 what it was you said connected with, someone loyal to
16 organized labor wanted to vandalize equipment to slow
17 work on the project, possibly because the contractors
18 were using non-union concrete.

19 Q Have you determined how many months 1-800-ATF-GUNS was
20 out of order?

21 A: I don't know if it was ever out of order. When I
22 called it I got an answer. I don't know when you
23 called it so I can't address that; if it was ever out
24 of order.

25 Q Your testimony is every time you have called it has

3643

1 been in working order.

2 A No, I called it the other day when you asked me of that
3 in court. And when I called it, or had somebody call
4 it, it worked.

5 Q Did you ever attempt to determine whether or not that
6 number had been out of order for several months?

7 A No.

8 MR. PETERS: As part of our offer of proof we
9 would present testimony that from November through the
10 day the question was asked, at least weekly, usually
11 daily, the number would be called by one or more of our
12 staff and the number was non-functioning.

13 Q Have you reviewed an ATF report of the ANFO fire, I
14 believe it was the Kansas City Bomb and Arson expert
15 testified about, in southern Missouri in 1996 which
16 should not explode?

17 A No.

18 Q Has anyone from your office called the fire chief who
19 fought that fire in 1996?

20 A Not that I am aware of.

21 Q Your office conducted an investigation as to possible
22 violations of storage procedures by Mountain Plains'
23 explosives, Mr. Collins and Mr. McReynolds, is that
24 correct?

25 ~ A Our office, yes.

3644

1 Q And during the course of that investigation you did
2 determine the trailers that **they** were using were not in
3 violation of ATF codes, isn't that correct?

4 A: I wasn't involved in that investigation.

5 Q Have you ever, or anyone from your office, checked to
6 determine whether or not the Mains trailers complied
7 with ATF standards?

8 A: I am sure **they** did but I wasn't involved in that part
9 of the investigation so I don't have any firsthand
10 knowledge.

11 Q Are you aware those standards require fire proof
12 floors, three-quarter inch plywood, half-height
13 aluminum and the trailers be vented?

14 A: No.

15 Q Are you aware that Mains ships loads and I believe we
16 have already had testimony on it but during the course
17 of your investigation did you attempt to determine
18 whether or not Mains ships their loads in two pyramid
19 stock waist-high?

20 A: No.

21 Q Did anybody from the ATF attempt to contact Mains to
22 see whether the Mains trailers were shipped to you were
23 loaded with ANFO from top to bottom, front to back?

24 A: Somebody in our office would have done that. I am not
25 ~ sure who handled that assignment.

3645

1 Q You have seen the dummy Mains mix that was offered as
2 an exhibit in court, haven't you?

3 A: Yes.

4 Q And my recollection is those are 55 pounds apiece.

5 A: I think something like that.

6 Q Would you agree, just on the ballpark guesstimate, if a
7 trailer had 25,000 pounds of that that would be far
8 short of it being loaded top to bottom, front to back?

9 A: Probably but again, you are asking me for conjecture
10 because I would have to see it loaded.

11 Q Another way, have you ever come across any suggestion
12 from any of your investigators or employees of Mains
13 that the trailers could possibly remotely, ever have
14 been loaded with ANFO top to bottom, front to back?

15 A: I don't know.

16 Q Are you aware of any documents showing Mains mix had
17 magnesium in it?

18 A: No.

19 Q Has Mr. Becker provided you with a copy of the exhibit
20 I provided to him, the Department of Transportation
21 documents, showing the Mains mix had two percent
22 magnesium in it?

23 A: I haven't seen that.

24 Q Have you been able to determine whether or not the
25 ~ trailers that exploded were vented? These are two that

3646

1 were handed by co-counsel.

2 A: Would you say that again?

3 Q Have you been able to determine whether or not the
4 trailers that exploded were vented?

5 A: Not me personally, no.

6 Q Did you ever look at the photographs in the government
7 exhibits of the trailers on the construction site prior
8 to the blast?

9 A: I believe I have, yes.

10 Q Do you recall from that, seeing vents on the front of
11 the trailer?

12 A: No.

13 Q As a result of your investigation was it determined
14 that Debbie Riggs advised firefighters ammonium
15 nitrate, diesel fuel and fertilizer was in the trailers
16 before **they** went to put out the fire?

17 MR. BECKER: I object to that question. In
18 an offer of proof it is hard to imagine how this
19 witness could testify based on this whole
20 investigation, is this what Debbie Riggs said to the
21 firefighters. We have had Debbie Riggs. She was
22 cross examined extensively.

23 MR. O'CONNOR: This is an offer of proof,
24 Judge.

25 ~ THE COURT: It is an offer of proof. You

3647

1 have made your record.

2 MR. PETERS: We haven't had an answer.

3 Q As a result of your investigation was it your
4 understanding Debbie Riggs apprised the firefighters
5 the trailers contained ammonium nitrate, diesel fuel
6 and fertilizer before **they** went to put out the fire?

7 THE COURT: The firefighters?

8 MR. PETERS: Yes. Debbie Riggs testified -

9 THE COURT: I know. I think you might want
10 to at least comport with what the evidence was and
11 wasn't she apprised the firefighters -

12 MR. PETERS: Yes, she testified she told
13 four or five of the firefighters on three or four
14 occasions before **they** went up to fight the fire the
15 trailers contained ammonium nitrate, diesel fuel and
16 fertilizer and then up on the hill she related that
17 information to Chief German.

18 MR. BECKER: Actually, Chief German but again
19 this witness' opinion is not relevant, admissible
20 evidence. He is asking his opinion about the testimony
21 in the case. We have heard the testimony. We have
22 heard the 911 tape where she is clearly heard says
23 there are explosive B .

24 MR. PETERS: I can ask it different to lay
25 ~ the foundation.

~

1 THE COURT: That's all right.

2 Q Was it your determination Debbie Riggs did, in fact,
3 advise the firefighters of ammonium nitrate, diesel
4 fuel and fertilizer before **they** went to put out the
5 fire?

6 A I don't know.

7 Q The next one I have shown to Mr. Becker, it was
8 provided to the defense in receipt number 13 and it is
9 item number 16, which I will now hand to the Court.
10 Did you receive information from a source that **they** had
11 heard Teamsters president Danny Johnson talking with
12 union attorney Vernon Scoville discussing how **they** were
13 going to handle inquiries from law enforcement
14 officials about the arson and explosion, that the two
15 said, quote, the two who did it are loose canons or,
16 quote, two guards at the site are loose canons, end
17 quote because **they** were told to get a cup of coffee and
18 get away from the site shortly before the incident
19 occurred.

20 Going down to the final highlighted
21 part, "This friend told the source it appeared to
22 be a labor versus non-labor situation and the
23 security guards were a risk."

24 Has this been provided to you during the
25 ~ course of your investigation?

~

1 A Yes, and we talked with people and **they** said this
2 didn't even occur.

3 Q It is dated November 30, 1988 between eight and nine
4 A.M., is that correct?

5 A Yes.

6 Q And where was this phoned in from, if you know, or what
7 is the phone number on the bottom?

8 A This came to me like maybe two different parties. I
9 just put the information down and it was investigated.

10 Q At the bottom of the document, call in 924-1650, is
11 924-1650 the number for the Teamsters Local union here?

12 A I don't even know that that note relates to the above
13 information, to be honest.

14 Q Do you know whose handwriting it is?

15 A It is my handwriting. It looks like a piece of paper
16 under another piece of paper. So I am not even sure if
17 that is associated.

18 Q I apologize because that's the way it was provided to
19 us. So you have no knowledge as to whether or not you
20 contacted Teamsters President Danny Johnson or union
21 attorney Vernon Scoville?

22 A I am aware investigators talked to them and totally
23 investigated that particular information and found out,
24 we were told it didn't occur. I didn't, personally.

25 ~ MR. PETERS: That is all I have, Agent True.

3650

1 MR. O'CONNOR: As it relates to that.

2 MR. PETERS: As it relates to that.

3 Q Then we go to things contained in the notes that we had
4 received and I think Mr. O'Connor has given you a copy
5 of this. Were you told by Robert Riggs that union
6 unrest had occurred at the site before the explosion?

7 MR. BECKER: I just want to point out that
8 is in the report. This isn't something that is in
9 the notes, the first three.

10 THE COURT: Which counsel was provided.

11 MR. BECKER: Oh, yes.

12 THE COURT: It would be better if we didn't
13 duplicate stuff you already have.

14 MR. PETERS: I am asking other people's
15 questions.

16 THE COURT: Whose questions are **they**?

17 MR. O'CONNOR: I thought when Robert Riggs
18 testified he denied the union theory of this case.

19 MR. BECKER: We have the transcript, if you
20 can show me that, that's fine. But I don't think he
21 was ever asked what he felt about this. First of all,
22 it wouldn't be admissible.

23 MR. PETERS: I thought he was asked had
24 there been any union unrest?

25 ~ THE COURT: Any picketing.

1

1

MR. PETERS: Right.

2

THE COURT: I don't think that is the same thing as union unrest had occurred.

4

MR. O'CONNOR: We can pass that and go to the next one.

5

Q (Mr. Peters) Did John White tell you the transit that he had referred to had lazer sites?

7

A: No, not exactly. He said it was an expensive transit and then there was some discussion what type it may have been and the discussion it might have been laser came up but on the notes -- and these aren't in my notes -- the notes I am testifying to that aren't mine, Agent Schram put a questionmark there. So there was just discussion about the transit.

10

11

12

13

14

Q Did John White request to be put on a medical ward for health reasons?

16

A: No, during our interviews and at the end of it he asked that he be protected because of his testimony. We discussed various options available within the institution, one of them he be put in a medical ward to appear to be for medical reasons and he would be isolated to a degree in that fashion. That's where that came from.

20

21

22

23

Q Did John White request additional exercise and reading material for his assistance?

25 ~

1 A: He wanted some reading material if he was going to be
2 in isolation and he wanted something that he could use
3 to exercise because he would be in somewhat of an
4 isolation condition. And I believe that's the
5 discussion we had with him at the end of the interview.

6 Q Did Debbie Riggs draw a couple of diagrams of the truck
7 she chased from the site?

8 MR. BECKER: Can we have clarification as to
9 when? You are talking about two weeks before?

10 MR. PETERS: Yes, I think it was a week
11 before.

12 MR. BECKER: Before the night.

13 MR. PETERS: Right, the one she chased and we
14 saw some diagrams.

15 MR. BECKER: That's fine.

16 A: You are referring to the one at least a week or more.

17 Q The one where she drew the front and back of the truck.

18 A: She did.

19 Q Did that truck match the description of Mr. Pendleton's
20 truck, the fired employee from Brown Brother's
21 Construction?

22 MR. BECKER: That's not on here. It just
23 sort of dropped off the chart here. That one wasn't on
24 here. Mine says that truck matches the design of the
25 defendants' vehicles.

1 Q Did that truck match the design of the defendants'
2 vehicles?

3 A I didn't know all the vehicles the defendants owned at
4 the time but that particular drawing didn't match any
5 that I was aware of that was either in their possession
6 or owned. It was an older model truck.

7 Q And I am going by my memory but isn't there also
8 contained in the notes a discussion that the truck
9 appeared to be the same truck that Gary Pendleton drove
10 similar in appearance?

11 MR. BECKER: At this late stage we are
12 holding back on questions. If that is a question you
13 thought you were going to propound, why isn't it on
14 here?

15 MR. PETERS: In the length of the time of
16 objections, we could have had our offer of proof done.

17 THE COURT: You haven't answered the
18 question.

19 A I don't remember.

20 Q Okay. Did John White tell you he had read about this
21 case?

22 A He said he had not.

23 Q And did John White tell you he had seen the case on TV?

24 A He had not.

25 ~ Q And is that reflected in your notes?

1

1 A I believe there is a little footnote on the side I
2 could barely find and it says ''read about case on TV"
3 and his answer to that was he had not.

4 MR. PETERS: I think I am done, Judge.

5 MR. O'CONNOR:I have a couple, Judge.

6 This isn't a question for Agent True as
7 it relates to that. We would want the opportunity
8 to call Agent True as it relates to that because what
9 it says, "Read about case, TV". Now he can say what
10 ~ the guy said but that is not what this says. It
11 doesn't say no and I think we can at least examine
12 him on the issue, he can say no. But it is not written
13 in his report. And we can cross examine him about
14 that.

15 MS. HUNT: Those aren't your notes.

16 THE WITNESS: No.

17 THE COURT: Whose notes are **they**?

18 MS. HUNT: Gene Schram's.

19 MR. O'CONNOR: We would ask Schram.

20 THE COURT: You ask
Schram what is

21 appropriate to ask him but not this man about his
22 notes.

23 MR. O'CONNOR:As it relates to Dave True
24 as it relates to me, when Martindale was on the stand,
25 ~ Your Honor, I was trying to ask him the question that

1 Dave True asked him when he came out to see him and
2 the Court said I couldn't but said you could ask Dave
3 True that.

4 I would only propose to ask Dave True if
5 he took the stand again one question, and that
6 would be, what did he say to Martindale when he
7 went out to see him two or three months ago. That
8 is the question I want to ask him.

9 THE COURT: What did he say to him?

10 MR. O'CONNOR: Yes.

11 THE COURT: Generally, like hello,
12 Martindale.

13 MR. O'CONNOR: I am assuming if he is on
14 cross, I could say did you ask Martindale, did you do
15 this crime or did you commit the crime? That is my
16 understanding what Martindale said Dave True asked him.
17 That would be the question, if you want to know the
18 answer.

19 MR. BECKER: What is the relevance? John,
20 it was striking to me in the 62 page statement he took
21 from Martindale, he never asked the kid did you do it.

22 MR. O'CONNOR: I didn't have to. I saw his
23 video confession. I knew he did it.

24 MR. BECKER: I don't see that as a relevant
25 ~ question, the fact he went out and talked to Martindale

1 and asked the kid did you do it.

2 THE COURT: All right, the proffer as to
3 Agent True is denied. Now what is your proposal? What
4 do you propose to do now?

5 MR. O'CONNOR: As to Agent True?

6 THE COURT: As to everybody. As to
7 everything.

8 MR. O'CONNOR: So we can't ask him any of the
9 questions to this point we propose in our offer of
10 proof, is what the court is saying.

11 THE COURT: That's right, I think it is too
12 late.

13 MR. O'CONNOR: Then I would propose to call
14 Agent True for the one question I was not allowed to
15 ask Martindale which the Court said I could ask True,
16 which would be the one question and that would be all
17 I would have.

18 MR. BECKER: I don't see the relevance of
19 that. What is the probative value of asking when you
20 went out there did you ask the kid did you do it.

21 MR. O'CONNOR: One, you just told us you are
22 probably going to argue I never asked him in my
23 thing. That's one part.

24 MR. BECKER: I am not.

25 ~ MR. O'CONNOR: The other part, ~ think I can I

1 argue five months after my client is identified, he is
2 out asking the guy who confessed to it, did he do it.
3 If he didn't believe he did it and he believed that
4 guy is a hoax, then that question wouldn't be asked.

5 MR. BECKER: Of course it would be asked.

6 THE COURT: Does this guy have to carry
7 malpractice insurance as a police officer? Because if
8 he does, he better notify his carrier if he talked to
9 somebody like that and didn't ask him that question.

10 MR. O'CONNOR: I think it is legitimate
11 inquiry. That is why I backed off on Martindale. I
12 was just going to ask him the one question, if allowed.

13 MR. BECKER: I don't see any admissible
14 purpose and if it's admissible, the prejudicial value
15 outweighs the probative value. The argument the
16 government is running around five years or five months
17 afterwards asking people if **they** did it.

18 MR. O'CONNOR: Therefore, my client couldn't
19 have done it.

20 MR. BECKER: You know, again I was surprised.
21 I am not on that side of the table but when you
22 interview somebody you have to look right at them and
2 3 say did you do it and hear straight out of the horse's
24 mouth, he didn't do it; " No, I didn't do it."

25 ~ MR. O'CONNOR: Paul, it was kind of like I

3658

1 knew the answer to the question. If the question
2 would have been asked, what would have been any
3 different from the statement he took?

4 MR. BECKER: Nothing. I don't think
5 we could be faulted for asking the kid.

6 MR. O'CONNOR: you are getting ready,
7 you are going to argue -

8 MR. BECKER: I am not going to argue on
9 summation. I have 30 minutes.

10 THE COURT: I suppose the answer to the
11 question would be yes, wouldn't it?

12 THE WITNESS: Yes, I did ask him and he
13 told me he didn't do it.

14 MR. O'CONNOR: He can say that.

15 THE COURT: And on Redirect Examination Mr.
16 Becker will be allowed if he wants to ask why.

17 MR. O'CONNOR: That is fine.

18 THE COURT: I don't know if he wants to or
19 not.

20 MR. O'CONNOR: Okay, that would be the end of
21 Dave True. I am assuming we do Schram first or do Dave
22 True first, however we want to do it.

23 THE COURT: I don't know what you propose to
24 do.

25 ~ MR. PETERS: I think John had told Paul what

3659

1 I intend to ask Schram about is his background
2 training and all of that, just like you would on direct
3 exam and then go through certain portions of his report
4 dated 8-9-88. I would not go through it line-by-line.

5 MR. O'CONNOR: I think this one we just have
6 to do in court and let the chips fall.

7 THE COURT: Yes, by reading questions we are
8 not going to get before this jury a lot of speculative
9 hearsay that a police officer recorded in reporting on
10 an investigation. We are just not going to do that.
11 And the report is not going to come in.

12 MR. O'CONNOR: We are not offering the
13 report.

14 MR. PETERS: When Dave True was on the stand,
15 I went through a variety of these things up to 11-28,
16 the IBT order to stop picketing and post the order at
17 the union halls and the format I was asking it in was
18 "Through your investigation did you determine that
19 Operating Engineers 101 began picketing at Southern
20 Ready Mix on 8-9-88?" That is how I propose to ask
21 question. I probably have 15 points on here I would
22 bring out and that is the extent of it.

23 As I said, I don't intend to go into
24 stuff beyond that.

25 MR. BECKER: I would strenuously object. It

3660

1 is absolute hearsay. If I went up to Agent True on his
2 testimony and said, "During the course of your
3 investigation are you aware that Kim Archer saw Bryan
4 Sheppard and Richard Brown the morning of the
5 explosion" -

6 MR. O'CONNOR: Yesterday, whenever it was,
7 there were seven or eight questions you asked, were
8 you aware that somebody's mother went down or
9 somebody's dad went down, that was the whole tenor of
10 yesterday. You guys were asking our witnesses, or
11 today, were you aware of certain events.

12 MR. OSGOOD: I objected to them several
13 times.

14 MR. BECKER: Did you see that person in the
15 hallway.

16 MR. PETERS: For the record, what we are
17 talking about with Thomas Romi. This is from the
18 transcript by Mr. Miller. "Now you are aware that in
19 August of 1989 Nancy informed the police she saw
20 Richard Brown's pickup truck? Mr. Osgood: Objection.
21 How is he aware. He hasn't established that. The
22 Court. Don't say it is a fact. Ask him. Answer:
23 No, sir, I am not. The Court: Rather than saying 'You
24 are', ask him." Follow up question, "Are you aware?"
25 ~ "No" "And are you aware that was the question and

1 ~ answer from that point on, are you aware?"

2 MR. BECKER: you are asking the husband, who
3 has come forward now at this late date, if he was aware
4 that the wife had provided the information
5 consistently to the government since 1989. **They** were
6 married for a good long portion of that. So the "are
7 you aware" is much more focused. This is your wife.

8 THE COURT: The thrust of the question goes
9 to the awareness of the act, not to the substance of
10 what was reported.

11 MR. PETERS: The question was, "Are you aware
12 in 1989 Nancy informed the police she saw Richard
13 Brown's pickup truck?" And it has nothing to do
14 with an act.

15 THE COURT: Sure, it does.

16 MR. BECKER: Inform the police.

17 THE COURT: Do you know she informed the
18 police?

19 MR. PETERS: She saw Richard Brown's pickup
20 truck.

21 THE COURT: It doesn't make any difference
22 what she saw. Are you aware she informed the police.
23 I think that is an objectional form of question at
24 this stage and for this witness.

25 ~ MR. O'CONNOR: We are also talking, Judge,

1 about Mr. Schram who is the head of the Organized
2 Labor Racketeering. This is his investigation. He
3 has conducted this from the beginning. This is someone
4 with knowledge who has prepared a report and analyzed
5 the report. This isn't conjecture. This is
6 information that he has gleaned in his report we can't
7 get from other sources other than him.

8 MR. BECKER: Why can't you get it from other
9 sources? You can go to Bill Clark and say on January
10 1, '88 what did you do or you could go to whoever had
11 this truck that went out to the site, **they** are named
12 here, you could say did you go out to the site and walk
13 around with a picket.

14 MR. O'CONNOR: I think this all goes back to
15 the beginning and I am going to say this and then I am
16 done talking about it. It was my belief in this case
17 labor was never going to be an issue. And I say that
18 sincerely.

19 THE COURT: But you guys have made it an
20 issue.

21 MR. O'CONNOR: Paul Becker, there was a labor
22 investigation and put a straw man up and knocked it
23 down. I was surprised. We never thought we were going
24 to get into that report, Judge.

25 ~ THE COURT: The only mention of labor was to

1 ~ explain the passage of time from late '89 until about
2 '91 or '92 when it got resolved.

3 MR. O'CONNOR: We had it typed up and I am
4 paraphrasing what he said, we looked at that and it
5 went nowhere. There was an investigation that went
6 nowhere and this labor report doesn't back that up.
7 This is the opening report, the first report in '89.
8 I never said it went nowhere on February 9, 1989 and
9 I don't think that is a fair inference at all.

10 THE COURT: For you guys to say you were
11 never going to mention labor is preposterous.

12 MR. O'CONNOR: I don't think it is. I never
13 thought we were ever going to get that angle before
14 this jury because it was not going to be an issue. If
15 you can't bring it up, I saw no way to get this report
16 in.

17 THE COURT: How do you feel it has happened
18 prejudicially you have to respond with this kind of
19 inquiry?

20 MR. O'CONNOR: **They** have opened it up by
21 asking three witnesses, there was no picketing. And
22 then Dave True testified and **they** asked him certain
23 things he did -- and I am paraphrasing -- he went out
24 and interviewed their people and the case went
25 ~ nowhere. Then we crossed him using Schram's report and

1

1 went all the way through it without objection. And
2 then there were certain things he didn't remember about
3 the one question, the union jet with the Teamsters on
4 it and he said he didn't remember that report. And
5 that is in the report of Lund. We can only get it from
6 them but that was brought out in direct examination by
7 Mr. Becker. That is what I argued at the time **they**
8 put this straw man up, knocked it down. And now we are
9 prevented from getting into this with the man who wrote
10 the report, who did the investigation, who has the
11 information.

12 THE COURT: What is it you are proposing to
13 demonstrate through Schram even if you are allowed to
14 get into the labor investigation, labor matter, so
15 what?

16 MR. O'CONNOR: We would want to demonstrate
17 from Schram there was vandalism that was targeted at
18 non-union concrete back at the time of this explosion;
19 specifically Southern Concrete. And as a result of
20 that, non-union delivered at the time the picketing
21 was done, trucks were followed by picketers. Court
22 action was taken on it. And the day before the
23 explosion, we have the injunction and order signed in
24 this federal courthouse by a federal judge, I don't
25 ~ know who, telling them to stop the picketing. It was

1 posted at the labor halls. And the next morning the
2 explosion happened. We want to show the vandalism
3 targeted at non-union concrete. We want to show the
4 threat and violence. People were threatened. There
5 were three fires at Southern Ready Mix and the
6 explosion which I think is all related.

7 THE COURT: Shows he concluded the explosion
8 had nothing to do with labor unrest.

9 MR. O'CONNOR: He can say that. We don't
10 conclude because we still believe that is a viable
11 issue. This isn't a red herring.

12 THE COURT: Oh, John, it is a red herring.

13 MR. O'CONNOR: I do not believe it is in
14 light of the testimony we have had from the ATF man
15 who said **they** had not ruled out this is a bomb. We
16 still have no fire that ever caused such an explosion
17 in the history of the United States and we have
18 questions that are unanswered. **They** put on testimony
19 to try to block, tear down the labor. We have 15
20 minutes for Schram; vandalism, Southern Ready Mix, the
21 injunction, the order the day before the explosion and
22 the explosion and we are done.

23 MR. BECKER: He has no firsthand knowledge of
24 any of this stuff. If counsel wanted to pursue this,
25 ~ **they** had more than ample opportunity to get witnesses

1 who would give competent testimony.

2 Schram is saying I talked to True or I
3 talked to another witness who told me this may
4 have happened or I reviewed a police report from
5 Sugar Creek that concrete was being poured in a
6 non-union concrete truck.

7 MR. O'CONNOR: We are not going to ask
8 specifics.

9 THE COURT: But generically, John, for him to
10 respond to a question about the subject is reporting
11 on or testifying to hearsay.

12 The only way he knows anything about any
13 of this stuff is hearsay.

14 MR. O'CONNOR: I guess my question is, for
15 example, on 10-4-88, Agent True, the Lenexa, Kansas
16 Police Department received a bomb threat directed
17 against Southern Ready Mix.

18 What I would propose to ask Agent Schram
19 is, now you are aware that on November 4th, 1988
20 the Lenexa, Kansas City Police Department received
21 a bomb threat directed against Southern Ready Mix.

22 THE COURT: Are you telling him that?

23 MR. O'CONNOR: That was all testified.

24 MR. BECKER: I was a little slow getting out
25 ~ of my seat. That doesn't mean we should do it twice.

1 ~ MR. O'CONNOR: We are not going to ask that
2 question again. In that sense I don't think we should.
3 I think in fairness to Mr. Becker and the Court we
4 shouldn't ask what we got from Agent True. There are
5 certain things we didn't get from Agent True. It is
6 not his fault this is an investigation run by Schram.
7 I think we are entitled to get from Schram vandalism
8 was going on.

9 THE COURT: But it is hearsay. How do you
10 get around the fact it is sheer hearsay? Somebody told
11 him that this happened or somebody told him this
12 happened. It is probably compounded hearsay.

13 MR. PETERS: I have learned not to say I need
14 guidance from the court. What do I do when the
15 questions that were allowed by the government of a
16 witness were, "Now you are aware that in August of
17 1989 another witness, Nancy Romi, informed the police
18 she saw Richard Brown's pickup truck."

19 MR. BECKER: We have argued this before.

20 THE COURT: That is not the same thing.

21 MR. PETERS: This is the agent in charge of
22 the entire investigation.

23 THE COURT: That doesn't make him the
24 purveyor to a jury of all kinds of hearsay for the
25 ~ point of proving hearsay information.

3668

1 MR. PETERS: Should we go head and do an
2 offer of proof. On my cross of Agent True -- and
3 we had gone through the report, had gone through all
4 this stuff up until November 28, 1988, the question
5 that I had asked was on November 28, 1988, the
6 International Brotherhood of Teamsters and Operating
7 Engineers were ordered to stop picketing and post the
8 order, notice at the union halls, and we were up at the
9 bench and you said the best evidence of that would be
10 the actual injunction.

11 The government apparently never had the
12 actual order in its files and we have gone to the
13 record center to get the order.

14 MR. O'CONNOR: We are checking on it. I got
15 paged **they** had it and **they** were supposed to fax it to
16 Judge Hays' fax machine. I just sent someone down to
17 the marshal's office to know if **they** can take the
18 defendant down to go to the bathroom.

19 THE COURT: Tell them to bring them right
20 back. We are going to get started on this.

21 MR. BECKER: I haven't seen this document.
22 It was not on any exhibit list of the defendants.
23 Obviously **they** are just getting it now. **They** have had
24 this report since Christmas Eve.

25 ~ THE COURT: "This report" meaning?

3669

1 MR. BECKER: The labor report from Gene
2 Schram dated February 9, 1989. It has the information
3 necessary to go get competent evidence such as a court
4 record, and I want to be able to inspect this
5 document.

6 MR. PETERS: That would be fine.

7 MR. BECKER: Before we put it before a jury
8 I want to go out to the record center and look at the
9 court files.

10 The information here -- and I will
11 discuss this with Mr. O'Connor -- was from a
12 newspaper article that you all got the other day
13 and it had the wrong address on it. So it may be
14 this is for a different location. I haven't
15 looked at it. Obviously counsel hasn't gone to
16 get it prior to today so that it could be offered
17 in evidence.

18 THE COURT: And that is really what I guess I
19 don't understand about this as much as anything else.
20 This hangs over the whole thing. Why today? Why is
21 this just coming up today? You guys have had this
22 report -- when did **they** get this report?

23 MR. PETERS: I can answer it completely and
24 honestly.

25 ~ MR. BECKER: December 24th.

1
2 MR. PETERS: We have been told we can't get
3 into this. We have asked for the Department of Labor
4 files repeatedly and we are not allowed to get it.

5 Then Mr. Becker made his opening
6 statement where for the first time he injected
7 labor.

8 THE COURT: That was five weeks ago.

9 MR. PETERS: Right. I am just tracking,
10 Judge. We then, with Agent True on the stand, were
11 allowed by you to go through this, down to the 11-28.
12 If the question had been allowed I wouldn't have needed
13 the actual document.

14 Then the chain of events is that I
15 believe it was today, so we never thought we would
16 need the document to prove that the government -
17 we never thought we were going to have to secure a
18 document that, according to the government's
19 document, **they** had already secured. We found out
20 today the government in a six year investigation
21 of organized labor never got the 11-28-88 order
22 that is contained in this document. We have
23 called out to the record center because it's been
24 out there and gone out and copied. In terms of
25 ~ time on December 24th, we didn't think it was
going to be something we could get into, we didn't

3671

1 know we could get into until Agent True testified.
2 You instructed us you wanted to see the document.
3 We have been working with Jackson County.
4 Yesterday we found out from Jackson County it was
5 transferred to federal court. Today we found out
6 in federal court that, yes, **they** purportedly have
7 it but it is at the record center. We have sent
8 our investigator out and, concurrent with that
9 investigation, Mr. O'Connor went and asked Paul,
10 surely you guys have this record that is contained
11 in your report.

12 THE COURT: Are you talking about the
13 injunction order?

14 MR. PETERS: Yes, Judge.

15 THE COURT: You don't have it?

16 MR. BECKER: No.

17 THE COURT: We will just have to look at what
18 you have got. I don't know whether it would be
19 admissible.

20 MR. MILLER: I thought by your opening
21 statement you had it. You opened with a lot more about
22 labor than Paul did.

23 MR. PETERS: My opening statement had nothing
24 to do with labor until Paul's did.

25 ~ MR. MILLER: You talked like you had all

3672

1 these documents.

2 MR. PETERS: No, I never would have said we
3 had the documents because we never had the documents.
4 All we have had, ever had, as you are aware, relating
5 to the labor file was this variously described as 13
6 and 15 page report and a hundred and thirty some odd
7 pages of interviews conducted by Schram. And, again,
8 we tried and tried and tried to get into the labor
9 file. We never believed it was going to be something
10 we could get into in the case.

11 THE COURT: It shouldn't be and I am not sure
12 we are going to go into it any further.

13 MR. O'CONNOR: Judge, I would offer the
14 evidence as relates to labor under 803(24) Other
15 Exceptions in that statement is offered as evidence of
16 a material fact; the statement is more probative on the
17 point which it is offered than any other evidence which
18 the proponent can procure through reasonable efforts
19 and the general purposes of these rules and the
20 interests of justice will best be served by admission
21 of the statement into evidence. We would offer under
22 that exception to the Court.

23 THE COURT: All right.

24 MR. MILLER: Where are we?

25 ~ THE COURT: I don't know.

1 MR. BECKER: Offer of proof on Schram. I do
2 want to make one statement before we start. I just
3 spoke with Agent Schram. He thinks there may be a
4 court order in the files but he remembers it being a
5 Jackson County one. I don't know if there is a Jackson
6 County one.

7 MR. O'CONNOR: What happened, it was filed in
8 Jackson County, removed to federal and we sent someone
9 to the archives. Is that it?

10 MR. PETERS: That's Jackson County.

11 MR. O'CONNOR: We sent Tom and he paged,
12 saying **they** have the injunction order and **they** are on
13 their way back from Bannister.

14 MR. BECKER: There may be something issued I
15 haven't seen but the information relating to that is
16 certainly contained in this report as you have
17 indicated.

18 THE COURT: Mr. Peters, you may proceed.

19 OFFER OF PROOF

20 EUGENE L. SCHRAM,

21 having been sworn, testified:

22 DIRECT EXAMINATION

23 BY MR. PETERS:

24 Q Would you state your name and spell your last name for
25 ~ the record.

1
1 A: My name is Eugene L. Schram, S-c-h-r-a-m.
2 Q And by whom are you employed?
3 A: The Department of Labor.
4 Q How long have you been so employed?
5 A: By the Department of Labor, over 13 years.
6 Q And are you assigned to the Office of Labor
7 Racketeering?
8 A Yes, I am.
9 Q I am going to hand you a copy which has been marked as
10 Defendants' Exhibit 38. Is this a report prepared by
11 you on or about February 9th, 1989?
12 A I believe it is.
13 THE COURT: Are you referring to the
14 Department of Labor -
15 MR. PETERS: Investigation.
16 THE COURT: -- Investigative report.
17 MR. PETERS: For the record, it has been
18 marked and it will be included in the file. The
19 subject is the Kansas City firefighters violation
20 report. There are a number of USC Code B .
21 THE COURT: Did you say February 8th?
22 MR. PETERS: February 9th, 1989.
23 Q So do you have now a copy of that report?
24 1 A Yes.
25 ~ Q In the report do you identify eleven subjects, Robert

Gilliland, vice president of International Brotherhood of Teamsters Local 541; Gale Starling, trustee, International Brotherhood of Teamsters Local 541; Roger McPenka, trustee, Union of Operating Engineers Local 101; Gregory Halphin, member LIUNA.

MR. BECKER: Labor International Union of North America.

Q Number 5, James Ginn; number 6, Joseph young; number 7, Ed Sanders; number 8, Ronald Durrill; number 9, Ron Sebecke; number 10, Raymond Wise and number 11, Gary Bryant. Does this report begin by identifying those eleven subjects?

A: Yes, it does.

Q Then do you go into a description describing the events and for the record it says November 19th but I think we would all agree it actually is November 29, 1988. You go into a brief summary of the explosion that killed the six firefighters, is that correct?

A: That's correct.

Q On page 2 did you begin with "Today the strongest suspect leads are directed as union problems involving IBT Local 541, IUOE Local 101 and possibly LION Local 663 in conjunction with non-union concrete companies." Do you describe that as being the strongest suspects in the case?

1 A: Yes.

2 Q Then beginning on page 2 do you detail a variety of
3 union versus non-union battles beginning in 1973?

4 A: Yes.

5 Q And for the record, I am going to probably start on
6 page 6 but would it be fair to characterize your
7 summary from page 2 to page 6 as a history of conflict
8 between union and non-union shops, largely related to
9 or generally related to growing use of non-union
10 concrete companies by union contractors? For example,
11 first is that generally what we are talking about in
12 this first six pages?

13 A: The movement away from union concrete companies.

14 Q And at the time of the explosion you had prepared this
15 report. On February 9, 1988, was the Department of
16 Labor, Office of Labor Racketeering, aware of and
17 already conducting investigations into various acts of
18 violence directed at non-union construction companies
19 and non-union contract suppliers?

20 A: On the February 9th date?

21 Q Yes. A: No.

22 Q Moving to page 6 and let me know when you get to the
23 page.

24 With the Court's permission, I am going
25 ~ to stand next to the witness so we can share this.

3677

1 At the time you prepared this report on 2-9-88,
2 the items that are contained in your report, would
3 it be an accurate statement the information that
4 you put into this report was accurate to the best
5 of your knowledge at the time that the report was
6 prepared?

7 A: The items I put in the report were collected and known
8 for one reason or another. I wouldn't have any idea
9 how accurate historically **they** had been.

10 Q And where had you assembled the various pieces of
11 information that are contained in the report, from what
12 sources had you accumulated this information at the
13 time it was prepared on February 9, 1989?

14 A: The information came from the Sugar Creek Police
15 Department records, Independence Police Department,
16 Kansas City Police Department, The Kansas City Star,
17 Courtney Concrete records, Southern Concrete records,
18 NLRB files.

19 Q By-in-large the things you are describing were public
20 documents, either police reports or things of that
21 nature, is that correct?

22 MR. BECKER: Objection. That is not what he
23 said. He said police reports, The Kansas City Star
24 articles, information from Courtney Concrete, Southern
25 ~ Concrete and the NLRB files.

3678

1 MR. PETERS: I will withdraw that one.

2 Q When you talk about the information from the various
3 companies, it is my understanding these are the reports
4 of incidents **they** had turned into the various police
5 departments, Independence, Sugar Creek and Kansas City,
6 is that correct?

7 A: Correct or personal notes or whatever records **they** had
8 maintained.

9 Q Beginning on page 6 -- and, Judge, how do you want to
10 do it? I can ask him each one and say is that what it
11 contains or should I just read it into the record?

12 THE COURT: Can't you generically describe it
13 without going into detail in each of these entries?
14 For instance, the last four items on page 6 all relate
15 to incidents at Southern Ready Mix.

16 MR. PETERS: We can do it that way.

17 Q Beginning on 3-21-1988 to 3-22-1988, could you describe
18 four incidents of fires or vandalism involving Southern
19 Ready Mix?

20 A: Three incidents.

21 Q And on 3-22-88 note "A white male, approximately six
22 foot, three tall and heavy and a black male, six feet
23 tall set fire to a storage shed. A guard was shot at
24 by the above individual and the guards returned fire."

25 ~ A
the entry.

That is

3679

1 Q On 3-24-88, do you notice that going to page 7,
2 Courtney Concrete security guard Leonard Dutton
3 receives a telephone call where he is told "You have
4 three minutes to get the 'F' out of there or the place
5 is going up in an FG" -

6 MR. BECKER: Was the question does he know
7 that?

8 MR. PETERS: That is contained in
9 Defendants' Exhibit 38.

10 Q Were you aware that on 3-25-88 the security guard had
11 received a telephone call where he was told, "You have
12 three minutes to get the 'F' out of there or the place
13 is going up in FG flames"

14 THE COURT: Was he aware that had been
15 reported?

16 MR. PETERS: Yes.

17 A Yes.

18 THE COURT: Can't you just generally list?
19 You have got eleven entries on the rest of that page.

20 MR. O'CONNOR: For the record, why don't we
21 just offer the whole report.

22 THE COURT: It is his report.

23 MR. O'CONNOR: For purposes of the hearing.

24 THE COURT: Let's move to where it gets
25 ~ relevant.

3680

1 Q Going to page 9. Were you aware and did you put in
2 your report that on November 14, 1988 Southern Ready
3 Mix began delivering concrete to Brown Construction
4 Company at the site at highway 71 and 87th Street?

5 A: Which page are you on?

6 Q Page 9, the third item.

7 A: October 15th.

8 Q Were you aware of that, your investigation had revealed
9 that.

10 A: Correct.

11 Q Skipping up two lines, on November 4th, 1988, did your
12 investigation reveal the Lenexa, Kansas Police
13 Department had received a bomb threat directed against
14 Southern Ready Mix?

15 A: I have that as October 4th.

16 Q Did I keep saying November. Numbers always confuse me.
17 Then on 10-28 of '88 Southern Ready Mix delivered
18 cement to the Brown Brothers Construction site at
19 highway 71 and 87th Street, is that correct?

20 THE COURT: Wait a minute, you asked if **they**
21 did, in fact, deliver that.

22 Q Through your investigation did you learn Southern Ready
23 Mix did deliver cement to Brown Brothers Construction
24 Company at the highway 71 and 87th Street construction
25 ~ site?

3681

1 A: That information had been obtained, yes.

2 Q And, for our record, that would be an example of
3 something that came through business records maintained
4 by either Southern Ready Mix or Brown Brothers
5 Construction.

6 A: Correct.

7 Q On 10-30 of '88 Ameriguard, which the evidence shows is
8 the company owed by Robert Riggs, was hired by Mountain
9 Plains Construction Company for the highway 71 and 87th
10 Street construction site, is that correct?

11 A: Yes.

12 Q You have reviewed the record. I believe it is a
13 contract contained in the file dated 10-30-88 between
14 Mountain Plains and Ameriguard, is that correct?

15 A: Correct.

16 Q On 11-4-88 business records showed that Southern Ready
17 Mix delivered concrete again to the highway 71 and 87th
18 Street construction site, is that correct?

19 A: Correct.

20 Q The very bottom line, between 11-9 and 11-15-88 did
21 your investigation determine that Operating Engineers
22 101 and the International Brotherhood of Teamsters 541
23 re-established picket lines at Southern Ready Mix and
24 at the mid-town construction site of highway 71 and
25 ! 97th Street?

1

3682

1 A: Correct.

2 Q On 11-10-88 did your investigation reveal that Southern
3 Ready Mix had filed charges with the National Labor
4 Relations board in regard to what **they** viewed as
5 illegal picketing?

6 A: I don't have that entry. I have the entry of Southern
7 Ready Mix files charges with the National Labor
8 Relations Board.

9 Q From your investigation are you aware the nature of
10 their suit was the picketing was illegal, if you know?

11 A: I don't know.

12 Q On 11-21 of '88 did your investigation reveal the Heavy
13 Construction Association of Greater Kansas City and
14 Clarkson Construction Company filed an injunction and
15 restraining order, request for damages against IBT 541
16 and Operating Engineers 101?

17 A: Yes.

18 Q On 11-23 of '88 did your investigation of the business
19 records reveal that Southern Ready Mix again delivered
20 concrete to the Brown Brothers Construction Company at
21 highway 71 and 87th Street?

22 A: Correct.

23 Q And, for the record, at all times that we are talking
24 about, Southern Ready Mix was a non-union concrete
25 ~ company, is that correct?

1 A: Correct.

2 Q And for purposes of our record, how is Southern Ready
3 Mix tied to Clarkson, if you recall?

4 A: I believe it was owned by Clarkson. In what way, I
5 don't know.

6 Q For the record, Clarkson Construction Company is a very
7 large road construction firm located in Kansas City
8 that is a union shop, correct, and so at the time this
9 Southern Ready Mix was being used by Clarkson it was
10 creating a great deal of friction that a union
11 contractor was owner, partial owner of Southern Ready
12 Mix, which was using the non-union drivers, is that
13 correct?

14 A: Could you ask me that again.

15 Q The reason this was creating so much havoc, Clarkson
16 was a union shop buying into or part owner of Southern
17 Ready Mix which was non-union, is that correct?

18 A: Yes, entered into a double breasting **they** called it.

19 Q For the record, what is double breasting?

20 A: When a company had both union and non-union; Clarkson
21 would have a union concrete company and **they** also had a
22 non union.

23 Q On 11-28 of '88 were the International Brotherhood of
24 Teamsters and Operating Engineers ordered by the Court
25 ~ to stop

picketing and to post that order notice at the

3684

1 union halls?

2 A: That's the entry.

3 Q And did you, the best you recall, confirm that in some
4 way either through looking at the records or talking to
5 the actual people involved?

6 A: I saw the records.

7 Q Then on 11-29 you mention the explosion, going to page
8 11. On 11-29-88, about halfway down, did security
9 guard Clark Hall at Courtney Concrete, receive a call
10 from an older male who indicates "You saw what happened
11 this morning; you're next. M.F."

12 A: That's the entry.

13 Q Did you confirm that either by looking at business
14 records or by having someone interview Clark Hall at
15 Courtney Concrete?

16 A: Clark Hall had been interviewed.

17 Q And again Courtney Concrete is another one of these
18 non-union concrete suppliers, is that correct?

19 A: Correct.

20 Q On 12-6 of '88 did the International Brotherhood of
21 Teamsters 541 picket Southern Ready Mix and follow
22 drivers, did your investigation reveal that was true?

23 A: Yes, it did.

24 Q And based on what you had determined on 11-28, '88
25 ~ regarding a federal court order, that 12-6-88 picketing

3685

1 would have been in violation of that order, isn't that
2 correct?

3 A: I don't know that because I don't know the locations
4 where **they** were asked to stop picketing.

5 Q On 12-6-88 did Southern Ready Mix file charges with the
6 National Labor Relations Board?

7 A: Yes.

8 Q On 12-7-88 did Operating Engineers post a cease and
9 desist order received from the National Labor Relations
10 Board?

11 A: Yes.

12 Q Turning to page 13, based upon your initial
13 investigation of the ongoing acts of violence,
14 vandalism and picketing between union and non-union
15 sites, did you believe that there may be a connection
16 between that labor unrest and the explosion that
17 occurred at the site at 71 highway and 87th Street on
18 November 29, 1988?

19 A: I believe that there was a history of what occurred and
20 we were going to investigate to see if it was connected
21 to the explosion.

22 Q And on page 13 you describe on February 9th, 1988 your
23 general strategy and plan consisting of meeting with
24 the ATF and the Kansas City, Missouri Police Department
25 ~ Homicide

Unit to review *the* investigation to date, did

3686

1 you do that?

2 A: Yes.

3 Q Did you further identify suspects and determine any
4 union involvement or ties?

5 A: We further identified the subject as you named up front
6 but we didn't determine any union involvement or ties.

7 Q Did you begin surveillance of the eleven suspects and
8 obtain photographs suitable for photospread?

9 A: We did surveillance of the drivers at Courtney Concrete
10 for a period of time and we did surveillance.

11 Q Number 4, did you assist in interviews and follow
12 assigned leads?

13 A: Yes.

14 Q Number 5, did you contact the Missouri Division of
15 Employment Security and develop the employment history
16 and associates of the suspects?

17 A: I don't believe I did.

18 Q Number 6, did you provide labor expertise for projected
19 assimilation of union financial records?

20 A: Yes.

21 Q Investigate activity projected within the next 90 days,
22 I think we have already talked about that. Were you
23 able at all times during the course of your
24 investigation to have complete access to the Kansas
25 ~ City, Missouri Police Department file?

1 A I didn't review the files. Could I have had access, I
2 am sure I could have.

3 Q Did you ever do that in connection with your
4 investigation?

5 A I didn't.

6 MR. BECKER: At what point in time?

7 Q At any time did you review the Kansas City, Missouri
8 Police Department files?

9 A Yes.

10 Q When would that have been?

11 A Probably in late 1994.

12 Q In addition to this 90 day investigation activity
13 projected within 90 days, did you assist in assembling
14 and presentation of evidence before a federal grand
15 investigating issues raised in your February 9, 1989
16 report?

17 MR. BECKER: I didn't hear the question.

18 Q Did you assist in the preparation of witnesses that
19 were called and the interviewing of witnesses that were
20 called before the federal grand jury, first question -
21 scratch that. To your knowledge, was there a federal
22 grand jury convened to investigate possible connections
23 between organized labor and the explosion of November
24 29, 1988?

25 ~ There was and there was officers that came in and made

1

3688

1 an appearance.

2 Q Were there any civilians or was it entirely officers?

3 MR. BECKER: At what point in time?

4 Q Was the grand jury that we are talking about now in
5 1990, is that what you would recall?

6 A: I am not sure.

7 MR. BECKER: Semantics. Grand juries aren't
8 convened for certain reasons.

9 MR. PETERS: Can Mr. Osgood ask because I
10 don't know the technical language.

11 MR. OSGOOD: Was the original presentation
12 to one of the special Strike Force grand juries that
13 was in session at the time?

14 THE WITNESS: The witnesses appeared to a
15 scheduled grand jury.

16 MR. OSGOOD: Did that grand jury remain?

17 MR. BECKER: I don't think that is clear.

18 MR. OSGOOD: I was going to ask when the
19 first one was convened and was it a continuing grand
20 jury, the entire case was presented to that, ultimately
21 returned the indictment, the same grand jury, if he
22 knows.

23 MR. BECKER: If he knows.

24 THE WITNESS: I don't know.

25 ~ MR. BECKER: Do you mean when I inherited the

3689

1 case or when it was in '89 and '90 when Rob Larsen had
2 it?

3 MR. OSGOOD: There were separate grand juries
4 that were reconvened and whatever was relevant was
5 transferred between those grand juries.

6 MR. BECKER: I am not testifying.

7 THE COURT: Let's go on.

8 Q During the course of your investigation did you ever
9 investigate leads that a Teamsters Union jet was at KCI
10 purportedly containing the people responsible for the
11 blast and left shortly after the explosion?

12 A: I never did.

13 Q But you had seen that report prior to going to trial in
14 this case.

15 A: No.

16 Q You had never seen that report prior to today?

17 A: I had never seen this.

18 Q And handing you what we aren't marking as an exhibit,
19 receipt number 13, item number 16, did you receive
20 information from a confidential source that someone had
21 overheard Local 541 Teamsters president Danny Johnson
22 talking with union attorney Vernon Scoville discussing
23 how **they** were going to handle inquiries from law
24 enforcement officials about the arson and explosion
25 that **they** heard them say, quote, the two guards at the

3690

1 site are loose canons, end quote because **they** were told
2 to go get a cup of coffee and get away from the site
3 shortly before the incident occurred. There may have
4 been something said the ones who did it were told to
5 get out of town. There was some talk about getting
6 together with Jackson County officials to smooth things
7 over. The friend told the source it appeared to be a
8 labor versus non-labor situation and the security
9 guards were a risk. Have you seen a document similar
10 to that before?

11 A: Yes, I have.

12 Q Did you follow that up in your investigation?

13 A: Yes.

14 Q How did you follow that up?

15 A: Dan Johnson was one of the ones that were brought into
16 the grand jury and that was, I believe, one of the
17 questions that was posed to him.

18 Q Did anybody ever identify who the confidential source
19 was or who the friend was that overheard this
20 conversation?

21 MR. BECKER: I object to identifying.

22 MR. PETERS: I am asking a preliminary
23 question.

24 Q Did anybody identify the source or the friend who had
25 ~ overheard this conversations

1 A: Not to me.

2 MR. OSGOOD: I just want to clear up on the
3 grand jury business.

4 CROSS EXAMINATION

5 BY MR. OSGOOD:

6 Q Did you present all this labor information to the grand
7 jury in 1996 that actually returned an indictment in
8 this case?

9 A: No.

10 Q All of this labor information was, in fact, presented,
11 if you know, to a grand jury that was in session back
12 in the '89 or '90 time frame?

13 A: The appearance by the witnesses were in that time
14 frame.

15 Q Then to the extent you participated in the grand jury
16 that actually indicted these defendants, is it an
17 accurate statement that any participation you had dealt
18 with subsequent interviews you did in the '95, '96 time
19 frame geared toward these defendants?

20 A: Geared for, yes.

21 Q The five defendants on trial.

22 A: Yes.

23 Q So the grand jury did not see the contents of this
24 report nor were **they** made aware of the theory of
25 ~ prosecution back in '90 and the possible exculpatory

3692

1 information Mr. Peters has just gone over?

2 A: Not by me.

3 THE COURT: Were you asking this witness to
4 analyze the exculpatory nature of the information?

5 MR. OSGOOD: The question should be did he go
6 back in in '95 or '96 and go over this report with the
7 grand jury. That would be sufficient for my record.

8 THE WITNESS: No.

9 MR. O'CONNOR: I have a few questions.

10 MR. PETERS: That leads me to another thing.

11 DIRECT EXAMINATION (Continued)

12 BY MR. PETERS:

13 Q Did you testify as a witness in this, the latest grand
14 jury, that returned indictments against these
15 defendants?

16 A: I think on the video of one witness, there was a video
17 of Karen Baird.

18 MR. BECKER: And, for the record, I think you
19 saw her, Judge. She couldn't at that time even travel
20 to the courthouse to appear before the grand jury. So
21 we videotaped the statement by Mrs. Baird which was
22 presented to the grand jury. I think this witness just
23 said there's a video of Karen Baird.

24 CROSS EXAMINATION

25 BY MR. O'CONNOR:

3693

1 Q If I was allowed to ask questions for my offer of
2 proof, I would have basically five direct questions of
3 Agent Schram. The first one would be were you aware of
4 labor unrest directed at non-union concrete companies
5 in the Kansas City area in late 1988?

6 A: Yes.

7 Q And did that unrest include vandalism of equipment
8 directed at Southern Ready Mix which was a non-union
9 company?

10 A: I was aware of the picketing and stuff but I didn't
11 accumulate this until 1989.

12 Q All right. Did you become aware there had been
13 vandalism of equipment directed at Southern Ready Mix?

14 A: I am not so sure about Southern. I was aware of
15 Courtney. I am not sure of Southern prior to 1989.

16 Q You were aware of picketing directed at Southern in
17 November of 1988.

18 A: Yes.

19 Q And what was your knowledge, just tell us what your
20 knowledge was of what injunction or order that you
21 thought was issued or may have been issued the day
22 before the explosion?

23 A: I saw notes of whoever had talked to Southern and
24 that's what it is. I don't know in depth of what it
25 ~ entails

there without looking at it.

3694

1 Q Did you go like pull a file and see an order or go look
2 at a court record of some kind regarding an order that
3 would have been issued at a later date?

4 A: I didn't pull any of those records. Those had been
5 pulled when I looked at them.

6 Q And do you remember the last reports that were entered
7 in the labor file regarding the labor side of this
8 investigation? Let me clear that up so you understand.
9 It is my understanding every time something was done we
10 will say in the Sheppard case, the labor file would get
11 a copy of the Sheppard case, is that a fair statement?

12 A: Yes.

13 Q Can you tell us the last time anything went in the
14 labor file, let's say in '94, '95, '96, that was
15 directly directed at the labor side of this
16 investigation that would not have included the Sheppard
17 investigation?

18 A: I don't believe I could tell you the last entry, just
19 totally.

20 Q There had been entries made since 1994 regarding labor
21 that had no relationship to the Sheppard side of this
22 case.

23 A: I believe there was some, there might have been at
24 least one interview of a construction company in Kansas
25 ~ that was located and interviewed. I believe that was

3695

1 post '94 or shortly after. I would have to check.

2 Q Were there any other reports, you are aware of, that
3 went into the labor file after 1994 other than this one
4 from Kansas that would be the labor side of this, not
5 the Sheppard side?

6 A: My labor file is just the entire file.

7 Q I understand.

8 A: I am not aware if I have a late report, later than
9 that.

10 Q What I am saying, I am assuming that something came up
11 that was something other than the Sheppards, that is
12 something you probably would remember, some other new
13 angle came up or new lead regarding labor.

14 A: If there was a new angle I would have amassed it with
15 everything else.

16 Q And do you have knowledge now of this Kansas report you
17 can speak of from remembering or you have no memory of
18 it.

19 A: It is a construction company and we talked to the owner
20 of it, Tom Hudgins, I believe that's the last one.

21 MR. O'CONNOR: And that is all as to my offer
22 of proof as it relates to this.

23 I did want to ask Agent Schram while he
24 was on the stand if Mr. Peters called him
25 ~ regarding this bond stuff of Morales since Agent

3696

1 True had testified he had some awareness of Agent
2 Schram talking to someone regarding Morales' bond.
3 I was going to inquire about that and that was it.

4 That is all the inquiry I have.

5 THE COURT: All right, what is your position
6 on this one?

7 MR. BECKER: I don't think there has been one
8 bit of competent evidence adduced in this last half an
9 hour of questions. Counsel has asked summary questions
10 of a witness, for him to summarize what he may have
11 learned from various sources and he has no firsthand
12 knowledge of any of this information. Therefore, it
13 wouldn't be competent testimony before this jury.

14 MR. O'CONNOR: We offer it under the
15 Exception to the Hearsay Rule we have enumerated.
16 That is what we are offering it under.

17 MR. OSGOOD: A public record, business
18 records and public document. We have examined a
19 number of subpoenaed documents from the company.

20 THE COURT: Even if **they**'re part of a
21 business record or public document, **they**'re still
22 subject to certain constraints.

23 MR. OSGOOD: I agree.

24 THE COURT: It could contain gross opinion.

25 ~ Note the rule of point of impact on police reports. I

3697

1 have a real problem with this. And one of my problems
2 is, it springs from what I think are very serious Rule
3 403 considerations with respect to the fairness to the
4 government, which is entitled to fairness, also.

5 I think that this kind of testimony
6 dealing with hearsay and suspicion and opinions is
7 replete with prospects for confusion of the jury
8 and unfounded accusations against other people
9 which were never brought to fruition in any kind
10 of prosecution and I don't think it is admissible.

11 MR. OSGOOD: Your Honor, what about just the
12 basic uncontroverted fact he is aware of this,
13 particularly the last three or four events that were
14 in close proximity he has personal knowledge of that
15 culminated in the explosion. That to me is a powerful
16 persuasive piece of circumstantial evidence in light
17 of the whole theory of prosecution in this case. It
18 is extremely, at least from an argument standpoint,
19 weak circumstantial evidence. We have three or four
20 events.

21 THE COURT: Tell me what you are talking
22 about.

23 MR. OSGOOD: The fire that led up to the
24 explosion.

25 ~ MR. BECKER: You say he has personal

3698

1 knowledge. What is it he has personal knowledge of?
2 He has read reports or seen interviews of the concrete
3 people. If you wanted, you could call the concrete
4 people.

5 MR. PETERS: I guess where I get confused is
6 the chain of events the government initiated, the labor
7 angle in its opening statement. Then the government
8 asked the three witnesses on the stand were you aware
9 of any picketing, which further builds up this straw
10 man.

11 THE COURT: Wait a minute. None of this
12 information refutes or impeaches that testimony. There
13 wasn't any picketing.

14 MR. PETERS: On the contrary, directing the
15 Court's attention to the bottom of page 9, the
16 Operating Engineers and Teamsters reestablish picket
17 lines at Southern Ready Mix and at the Mid Town
18 Construction Site.

19 THE COURT: Which **they** did as informational
20 picketing following the delivery to the site and left
21 when the delivery is over as the uncontradicted
22 evidence shows.

23 MR. PETERS: So there is uncontradicted
24 evidence on four occasions **they** picketed.

25 ~ THE COURT: Not four.

3699

1 MR. PETERS: That was in the direct
2 testimony of Agent True.

3 MR. BECKER: Four loads, four concrete trucks
4 went out.

5 MR. PETERS: Mr. Becker has just made my
6 point for me. The government has put on testimony
7 there was no picketing.

8 THE COURT: No, **they** haven't. There was
9 testimony in the government's case there was
10 informational picketing following Southern Concrete
11 deliveries and **they** left when the Southern Concrete
12 deliveries were over which, as far as I am concerned -
13 and I am not a great deal of labor-law experienced -
14 but as far as I am concerned is not picketing of the
15 business or property where the pickets are when **they're**
16 following the offending company.

17 MR. PETERS: Well, it was sufficient enough
18 for the heavy construction association, Clarkson
19 Construction, to go and seek an injunction.

20 THE COURT: And not get it.

21 MR. PETERS: According to Agent Schram's
22 testimony and his report.

23 THE COURT: That is the trouble with relying
24 on reports like that where even your assertions, he
25 ~ says -- where is it?

3700

1 MR. PETERS: Page 10, 11-28-88.

2 THE COURT: "Ordered to stop picketing", but
3 for one thing, there was an administrative order that
4 entered into this thing and not a court order and the
5 court order was never secured, isn't that right?

6 MR. O'CONNOR: That is what that shows. We
7 checked to make sure **they** didn't pick up one that
8 wasn't signed.

9 MR. PETERS: Agent Schram on 11-28-88 is
10 incorrect. **They** were never ordered to stop picketing.

11 THE COURT: I said there was an
12 administrative matter. I don't know what it was,
13 whether it was the NLRB, what it was. It's already
14 been mentioned in evidence and there probably was an
15 order out of one of these agencies for this union not
16 to picket at one time or another. Maybe it is in here
17 somewhere but it doesn't say here who **they** were ordered
18 by anyway. It just said "The IBT 541 and 101 are
19 ordered to stop picketing."

20 MR. O'CONNOR: From our perspective, in good
21 faith we were relying on that, believing there was an
22 order and not to cast aspersions on Agent Schram. He
23 thought there was one, too It turns out there wasn't
24 an order.

25 ~ THE COURT: He has an entry 11-21, he reports

3701

1 "Files injunction and restraining order and damages".
2 That really should say "Files for". Obviously no union
3 files injunction and restraining order. So it should
4 read "Files for injunction and restraining order."
5 Then the Star reports the same day pertaining to the
6 above injunction and restraining order. The assumption
7 then begins to become the fact that really is an
8 injunction and restraining order.

9 Then it goes on from there but the fact
10 is there wasn't any injunction and restraining
11 order.

12 And I think reference to the entries in
13 a filed report like this on the assumption **they**
14 reflect accurate facts is not fair.

15 MR. O'CONNOR: I do think the issue of the
16 fact **they** filed a restraining order is still an
17 issue in the case.

18 The fact one was not issued is obviously
19 another issue, but the fact is a legal action was
20 being taken, whether or not an order was issued or
21 not.

22 I understand the Court saying we
23 couldn't put Agent Schram on and then knock him
24 down the fact that was never issued, that would be
25 ~ unfair and wrong. Hut I do think the fact a court

3702

1 order was taken is certainly relevant to the
2 people, **they** were going to court over this and
3 that the next day an explosion happened is
4 relevant testimony. Whether an order was issued
5 is irrelevant.

6 That is our point, Judge. What we would
7 like to do -- the problem is we have asked all
8 these questions we want to ask Agent True and we
9 are not sure if the Court is saying you can't ask
10 any or some of them.

11 THE COURT: True?

12 MR. O'CONNOR: Schram. Pat Peters asked
13 a series of questions. I have asked.

14 MR. OSGOOD: None of mine were for purposes
15 of court.

16 MR. O'CONNOR: I don't know if you are
17 ruling -- you haven't made it yet -- if you are ruling
18 none can be asked, assuming that was the case, then I
19 was going to propose three questions and then the Court
20 could rule on that and then we would be done.

21 I don't want the ruling to be the Court
22 ruled because some of the questions may be
23 objectionable that Mr. Peters wants to ask or I
24 want to ask, doesn't make all of them
25 ~ objectionable.

3703

1 THE COURT: What are your three questions?

2 MR. O'CONNOR: Whether or not he was aware of
3 labor unrest in late 1988 involving non-union concrete
4 companies.

5 Was he aware the labor unrest was
6 directed in late 1988 at Southern Ready Mix.

7 Was he aware that picketing was taking
8 place at Southern Ready Mix between 11-9 of '88
9 and 11-15 of '88.

10 And was he aware -

11 THE COURT: That's four.

12 MR. O'CONNOR: One more. Was he aware of a
13 request for a restraining order on November the 28th,
14 1988, the day before the explosion.

15 THE COURT: And that restraining order was
16 not issued.

17 MR. BECKER: I don't see anything when that
18 was filed.

19 MR. O'CONNOR: Again, that is a fair
20 assessment. I looked at them and passed them to you
21 as soon as I got them

22 MR. OSGOOD: I thought he said he saw it
23 posted in the union hall.

24 MR. PETERS: I would object to those
25 ~ questions. I am going to floor John O'Connor. All

3704

1 of that testimony has already been testified to by
2 Agent True and Agent True's testimony was before the
3 jury and was more complete than these limited questions
4 you would be asking Agent Schram. I would object. It
5 would be repetitive. It is already before the jury
6 from Dave True's testimony. Sorry, John.

7 MR. O'CONNOR: That's all right.

8 MR. OSGOOD: I would like to hear them.

9 MR. O'CONNOR: That is your position.

10 That's fine.

11 MR. BECKER: I would object at this point in
12 the trial to put on an Agent to say are you aware of.
13 He is aware of the fact we have 103 witnesses we have
14 called in this case.

15 What he is aware of is not competent
16 evidence in federal district court.

17 And with regard to this filing, we have
18 a typed complaint is all I have seen, or petition.

19 THE COURT: Apparently there isn't any action
20 being taken.

21 MR. PETERS: Upon reconsideration from Mr.
22 O'Connor, I withdraw my objection. One argument I
23 don't want to win.

24 MR. O'CONNOR: The thing I was saying, one,
25 ! it is his witness and, two, I think I just told him

3705

1 the reason I think it makes sense to us. I don't think
2 we have to share that with the government but I think
3 those four questions are legitimate. **They** are fair and
4 **they** don't over-emphasize and **they** get to the heart of
5 the matter. We won't ask about the restraining order
6 because we don't have a date. So it would be the other
7 information questions I stated Mr. Peters would ask.

8 MR. BECKER: What this witness is aware of,
9 based upon his review of eight years of investigation,
10 doesn't boil down to three questions.

11 THE COURT: Four.

12 MR. BECKER: He is dropping one.

13 MR. O'CONNOR: Because we are being limited.
14 We would like to ask the one or whatever.

15 MR. BECKER: Admissible evidence. The fact
16 he reviewed, he talked, he reviewed a report of a guy
17 from Southern Ready Mix that said the picketers
18 followed his truck out to the site. That is not
19 competent evidence.

20 The question is how are you aware of
21 that. Well, I reviewed a report from a guy at
22 Southern Ready Mix who told me that truck, that
23 one of my drivers told him that the picketers
24 followed them out to 71 highway and Blue River
25 Road. There is no way that I can present or you

l

3706

1 can present a summary to present this evidence to
2 the jury unless he is being offered as an expert
3 and he is giving an expert summary of the evidence
4 pursuant to Rule 1006, I think.

5 MR. O'CONNOR: Your Honor, just for purposes
6 of the record, we would ask the Court to give us a
7 ruling on our first offer of proof which we are
8 requesting to ask everything we propose in that
9 offer.

10 THE COURT: That is denied.

11 MR. O'CONNOR: We would propose to ask the
12 four questions I have propounded to the Court. And
13 we would offer them under 803(24).

14 MR. BECKER: Just 803(24) requires some
15 guarantees of trustworthiness.

16 MR. PETERS: Agent Schram, when he reviewed
17 things Mr. O'Connor was asking about were police
18 reports or interviews with the witnesses directly.

19 MR. O'CONNOR: I think we are reaching a
20 point of no return. If we get a ruling from the
21 court we can move on.

22 THE COURT: I am pondering your questions but
23 **they** really do ask for something that isn't admissible,
24 isn't relevant.

25 ~ MR. BECKER: And the rule states when we look

3707

1 at the catch-all, "A statement may not be admitted on
2 its exceptions unless the proponent of it makes known
3 to the adverse party sufficiently in advance of trial
4 or hearing provide the adverse party with a fair
5 opportunity to meet it, the proponent's intention to
6 offer the statement, including the name and address of
7 the declarants." Here we don't even know who the
8 declarants are. That is the ultimate problem.

9 THE COURT: I will leave that to you to make
10 that argument in the Eighth Circuit. I am not going to
11 rest this ruling on that. I am going to rest it on the
12 fact it is, A, too late; B. it is not competent. That
13 is, it is not admissible because it is incompetent and;
14 C, it is irrelevant and that to me is sufficient reason
15 not to admit it.

16 MR. BECKER: What have we got?

17 MR. BUNCH: I want to ask the Court -- well,
18 everybody, -- where we are at here because the next
19 step I think we should make is this meeting, if there
20 is no more evidence to be presented.

21 THE COURT: Is there to be no more evidence?

22 MR. O'CONNOR: We have the issue of the
23 Morales bond. Morales said he was getting no
24 assistance. Agent True I believe testified he didn't
25 ~ give him assistance but maybe Agent Schram had called

3708

1 someone about his bond. If we can put Agent Schram on
2 about that or Mr. Becker wants to stipulate **they** called
3 out there, we will enter into a stipulation what he
4 says and we will go on.

5 MR. BECKER: Mr. Miller reminded me we never
6 asked anyone in Cass County to reduce his bond but
7 secondly, if Morales doesn't know anybody did anything
8 for him, then it doesn't affect his motive to falsify
9 or give favorable testimony and that in the testimony
10 in cross examination it was made abundantly clear, Mr.
11 Morales said he was not aware anybody did anything for
12 him.

13 MR. O'CONNOR: I have got the transcript
14 here. I re-read it this morning and it said he did
15 not, he knew indirectly, someone said something to
16 him but he didn't know the whole crux of it but someone
17 was doing something about the bond. But it wasn't
18 directly said, hey, we got the bond but he understood
19 something indirectly was being done. Then he was told
20 to contact ATF.

21 MR. PETERS: If I am remembering you here,
22 Agent Schram never called and asked the bond be
23 reduced.

24 THE COURT: He didn't say that.

25 ~ MR. PETERS: I thought that is what Mr.

3709

1 Becker just said.

2 MR. BECKER: We called and inquired about the
3 bond. We did not ask it be reduced.

4 MR. O'CONNOR: I only offer this to the
5 Court. I talked to Sergeant Harper. He said he
6 received a call, he didn't know from whom. Some
7 federal authority asked him to see if **they** could get
8 the bond reduced. He called the prosecutor and
9 Harper said someone called him to get the bond reduced.
10 He didn't remember who it was.

11 MR. BECKER: We talked to Harper. That is
12 not what he told us, since you raised this issue.

13 MR. BUNCH: The problem, Harper isn't
14 testifying anyway. It is what the agent would say.
15 What would you say?

16 THE WITNESS: I called to see if he was
17 eligible for a signature bond.

18 MR. O'CONNOR: What you are saying you didn't
19 ask Harper to help him get a signature bond.

20 THE WITNESS: No, I asked him to see if he
21 was eligible for a signature bond. If he could make
22 that, fine. But obviously the phone call would be
23 made but I didn't request to see if his crime was
24 eligible for a signature bond.

25 ~ THE COURT: Should we explain to the jury we

3710

1 don't have any more need for them today and send them
2 home until Monday morning.

3 MR. BECKER: No rebuttal.

4 THE COURT: I would like to see you all in
5 the morning.

6 MR. BUNCH: One last think we have discussed
7 about making the record about testifying.

8 THE COURT: Yes.

9 (Proceedings in the courtroom out of the presence of
10 the jury with the court, counsel and the defendants
11 present.)

12 THE COURT: Mr. Bunch.

13 MR. BUNCH: If it please the Court. We have
14 proposed now to make the record with respect to the
15 defendants' desire not to testify.

16 In that connection I would call Miss
17 Edwards, although out of turn, that is the way we
18 agreed to do it.

19 THE COURT: Fine.

20 DARLENE EDWARDS,

21 having been sworn, testified:

22 DIRECT EXAMINATION

23 BY MR. BUNCH:

24 Q Would you state your full name, please.

25 ~ A Darlene Edwards.

I

1 Q How old are you?

2 A: Forty-two.

3 Q How far did you go in school?

4 A: I graduated from high school.

5 Q You can read and write.

6 A: Yes.

7 Q And understand the English language.

8 A: Yes.

9 Q Now, Miss Edwards, during the course of my

10 representation of you to include the period of time we

11 have been in trial, we have discussed from time to time

12 the right you have to take the stand and testify on

13 your own behalf, have we not?

14 A: Yes, sir.

15 Q There have been from time to time questions asked of me

16 with respect to whether or not you ought to testify

17 under circumstances when you have observed witnesses

18 and other things have occurred during the trial.

19 A: Yes.

20 Q Have I answered those questions satisfactorily for you?

21 A: Yes.

22 Q And you understand you have a right to testify and it

23 is a very important right.

24 A: Yes, I do.

25 ~ Q And it it you and you alone who must make a decision

1 whether or not you are going to testify in this case.

2 A: Yes.

3 Q Any decision you make, of course, will have been made
4 pursuant to discussion between you and I as well as my
5 advice to you.

6 A: Yes.

7 Q That advice has been based upon a substantial number of
8 factors to include the nature of the evidence in this
9 case, the nature of the way the charges were brought
10 and so forth.

11 A: Yes.

12 Q Without going into any more detail, have I
13 satisfactorily explained to you the reasons for my
14 advice?

15 A: Yes, you have.

16 Q Was for you not to take the stand and testify.

17 A: Yes.

18 Q Do you understand if you make a decision today under
19 oath not to testify in this case and you do not testify
20 in this case, you can make no complaint about that
21 fact.

22 A: Yes, I do.

23 Q That is, you can't say, well, I was railroaded by that
24 slick-talking Mr. Bunch into not testifying, correct?

25 ~ ~ yes. yes, *I do*.

1 Q Now, do you have any other questions about anything
2 that you would like to ask me, privately or otherwise
3 or openly here, about whether or not you ought to
4 testify or about the right you have to testify.

5 A: No, I don't.

6 Q And we have just finished a meeting during which all
7 the defendants were present and all counsel were
8 present and there was an exchange among all of us to
9 include clients and lawyers with respect to our advice
10 to you about testifying, correct?

11 A: Yes.

12 Q At the conclusion of that discussion I asked, did I
13 not, of all defendants whether or not **they** wanted to
14 testify and received your response.

15 A: Yes.

16 Q Now, would you turn to Judge Stevens and tell him
17 whether or not you want to testify in this case.

18 A: No, sir, I don't.

19 Q Thank you.

20 THE COURT: I think I can infer the answer to
21 this question from some of your other answers, but I
22 will ask you if you are, in fact, satisfied with the
23 services given you by your counsel, Mr. Bunch?

2 4 THE WITNESS: Yes, I am.

25 ~ THE

COURT: Has he done what you have asked

3714

1 him to do?

2 THE WITNESS: yes, he has.

3 THE COURT: And do so within the ethics and
4 the law.

5 THE WITNESS: Yes, he has.

6 THE COURT: Has he refrained from doing
7 things you have asked him not to do?

8 THE WITNESS: Yes.

9 THE COURT: Do you have any specific
10 complaint about the way he has performed his task of
11 representing you in this case?

12 THE WITNESS: None whatsoever.

13 THE COURT: All right. Thank you, Miss
14 Edwards.

15 MR. O'CONNOR: Bryan Sheppard.

16 THE COURT: Before we get too far beyond this
17 point, Mr. Becker, I assume you didn't have any
18 questions.

19 MR. BECKER: I don't have any questions.

20 BRYAN SHEPPARD,

21 having been sworn, testified:

22 DIRECT EXAMINATION

23 BY MR. O'CONNOR:

24 Q Would you state your name for the court.

25 ~ A Bryan Sheppard.

1 Q How old are you, Bryan?

2 A Twenty-five.

3 Q How far did you go in school?

4 A Tenth grade.

5 Q And do you read, write and understand the English
6 language?

7 A Yes.

8 Q Now, you have been sitting here during this trial and
9 assisted me during this trial, have you not?

10 A Yes.

11 Q We have come to the point in the trial where we have
12 put on evidence in your behalf, you heard the evidence
13 we put on in your behalf. It has come time whether or
14 not you want to testify at this juncture in this trial,
15 do you understand that?

16 A Yes, I do.

17 Q Have we talked about whether or not you are going to
18 testify in this case?

19 A Yes.

20 Q Have I offered you my opinion of whether or not you
21 should testify in this case?

22 A Yes.

23 Q And is the opinion I gave you that I believe you should
24 not testify in this case, is that true?

25 ~ A That *is* true

1 Q And have I told you as well that the final opinion on
2 whether or not you should testify or not testify
3 obviously is left up to you, do you understand that?
4 A: Yes.
5 Q You understand it is your sole decision whether or not
6 to testify in this case.
7 A: Yes, I do.
8 Q And have you made a decision whether or not you want to
9 testify in this case on your behalf?
10 A: Yes, I have.
11 Q And can you tell Judge Stevens what that decision is.
12 A: That I do not want to testify.
13 Q now during the trial have I answered all the questions
14 you had of me regarding what was going on here in
15 Court? Have I put forth questions or things you wanted
16 me to do on your behalf?
17 A: Yes.
18 Q Do you have any complaints of the services I performed
19 on your behalf in this case?
20 A: No.
21 Q Is there anything you wanted me to do I did not do?
22 A: No.
23 Q Is there anything I did you did not want me to do?
24 A: No.
25 ~ MR. O'CONNOR: I think that is all I have,

1 Judge.

2 THE COURT: Are you then satisfied with his
3 services?

4 THE WITNESS: Yes, I am.

5 THE COURT: -- Of Mr. O'Connor's services.

6 THE WITNESS: Yes, I am.

7 THE COURT: I think that is all I have.

8 Anything from you, Mr. Becker?

9 MR. BECKER: Nothing, Judge.

10 THE COURT: All right, you may step down.

11 MR. PETERS: Call Frank Sheppard.

12 FRANK SHEPPARD,
13 having been sworn, testified:

14 DIRECT EXAMINATION

15 BY MR. PETERS:

16 Q Would you state your full name for the record.

17 A: My name is Frank Sheppard.

18 Q And how old are you, Frank?

19 A: Forty-six.

20 Q Can you read, write and understand the English
21 language?

22 A: Yes, I can.

23 Q And you have been with me every day in trial as we have
24 listened to the testimony over the past several weeks,
25 ~ isn't that corrects

1 A: Yes, sir.

2 Q And you are the same Frank Sheppard who has been
3 charged in this case and entered a plea of not guilty,
4 is that correct?

5 A: Yes, sir, I am.

6 Q Have we discussed throughout this case questions about
7 whether or not you would testify in front of a jury?

8 A: Yes, sir.

9 Q And part of those discussions have been based upon
10 since 1988 you have consistently told police officers
11 and Mr. Becker in front of the grand jury that at the
12 time of the explosion you were asleep at your house,
13 isn't that correct?

14 A: yes, I have.

15 Q Have we discussed at the conclusion of the government's
16 case that fact had been presented to the jury through
17 the government's use of a tape of Darlene Edwards?

18 A: Yes.

19 Q And have I told you that the right to testify is
20 completely up to you; if you tell me you want to
21 testify, I will put you on; if you tell me you don't, I
22 won't put you on.

23 A: Yes, you have.

24 Q And we have discussed it and have I given you my
25 ~ opinion at the close of the government's case as to

3719

1 whether or not you should testify?

2 A: Yes.

3 Q And tell the Judge what my opinion was as to whether or
4 not you should testify.

5 A: Mr. Peters, Your Honor, advised me it would not be in
6 my best interest to testify.

7 Q And after discussing it with me and hearing the
8 discussions of others, have you reached an opinion on
9 your own as to whether or not you want to exercise your
10 constitutional right not to testify?

11 A: I want to go along with your decision, Mr. Peters.

12 Q And that decision is yours and you are making it on
13 your own behalf after discussing it with me, is that
14 correct?

15 A: That is my decision solely.

16 Q If you would, consistent with what the other defendants
17 are doing, would you look at Judge Stevens and tell him
18 it is your decision to not testify.

19 A: Your Honor, I wish not to testify.

20 Q Now I got appointed in this case and until then you and
21 I had never met, had we?

22 A: No.

23 Q During the course of the several months have I done
24 everything you have asked me to do in connection with
25 representing you?

3720

1 A: Yes, you have, Pat.

2 Q Is there anything I have done that you have not wanted
3 me to do?

4 A: No, sir.

5 Q Is there any complaint you want at this time to make to
6 Judge Stevens of how I performed as your attorney?

7 A: None whatsoever.

8 Q Have I also promised not to miss-pronounce words in my
9 closing argument -- you don't have to answer that; you
10 are under oath.

11 I don't believe I have any further
12 questions, Judge.

13 THE COURT: Mr. Becker.

14 MR. BECKER: Nothing.

15 THE COURT: You may step down.

16 SKIP SHEPPARD.

17 having been sworn, testified:

18 DIRECT EXAMINATION

19 BY MR. HUNT:

20 Q State your name.

21 A: Skip Sheppard.

22 Q Is Skip a nickname?

23 A: Yes.

24 Q What is your given name?

25 ~ A: Earl Sheppard.

1 Q You are the same Earl Sheppard in this case.
2 A: Yes.
3 Q How old are you?
4 A: Thirty-six.
5 Q Can you read, write and understand the English
6 language?
7 A: Yes, ma'am.
8 Q Have you understood everything that was going on in the
9 courtroom during this trial?
10 A: Yes.
11 Q Have we discussed today and earlier in this case, the
12 possibility of you testifying?
13 A: yes.
14 Q And you understand it is your right to testify.
15 A: Yes, ma'am.
16 Q And you understand you don't have to testify if you
17 don't want to.
18 A: yes, ma'am.
19 Q Did we have a meeting earlier, a little bit ago, with
20 all the defendants and all the attorneys and discuss
21 this?
22 A: Yes.
23 Q And you feel that you fully know the pros and cons of
24 testifying.
25 A Yes.

1 Q And have you made a decision whether or not you are
2 going to testify?

3 A: Yes, I have.

4 Q What is your decision?

5 A: No, I am not

6 Q Do you realize if you make that decision today under
7 oath, you will not be allowed to testify later?

8 A: Yes.

9 Q Would you tell the Judge what your decision is.

10 A: I wish not to testify.

11 Q Is this your own decision?

12 A: Yes.

13 Q Not made for you -

14 A: No.

15 Q -- by either of your lawyers.

16 A No.

17 Q Or any of the codefendants.

18 A: By me.

19 MS. HUNT: That is all I have.

20 THE COURT: Mr. Becker.

21 MR. BECKER: Nothing.

22 THE COURT: The line of questioning about
23 your lawyers, you have two court-appointed counsel.

24 THE WITNESS: Yes.

25 THE COURT: Miss Hunt and Miss Franco, are

1 you satisfied with their services to you during this
2 trial?

3 THE WITNESS: Yes, I am.

4 THE COURT: And have **they** done everything you
5 have asked them to do within the ethics and the law?

6 THE WITNESS: Yes, **they** have.

7 THE COURT: And do you have any complaint
8 about the services you have gotten from them as your
9 lawyers?

10 THE WITNESS: No.

11 THE COURT: Thank you. You may step down.

12 MR. OSGOOD: Richard Brown.

13 RICHARD W. BROWN,
14 having been sworn, testified:

15 DIRECT EXAMINATION

16 BY MR. OSGOOD:

17 Q State your full name for the record, please.

18 A: Richard W. Brown.

19 Q And you are a defendant in this case and I am your
20 appointed attorney, is that correct?

21 A: Yes.

22 Q And I have been your attorney since the beginning of
23 the case.

24 A: Yes, sir.

25 ~ Q And up
until your bond was revoked last week we worked

3724

1 together while you were on bond extensively on the
2 case, is that correct?

3 A: Yes.

4 Q You have heard all the questions and the answers of the
5 other attorneys and lawyers that has gone on here in
6 the last 30 minutes concerning whether or not to
7 testify. You have been in the courtroom, is that
8 correct?

9 A: Yes.

10 Q And you were at the joint meeting where we agreed or we
11 talked about whether or not you or the other defendants
12 would testify.

13 A: Yes, sir.

14 Q And you participated in that meeting.

15 A: Yes, sir, I did.

16 Q How old are you, Mr. Brown?

17 A: Twenty-six.

18 Q And how far did you go in school?

19 A: Tenth grade.

20 Q And you can read and write and understand the English
21 language, is that correct?

22 A: Yes, sir.

23 Q As a matter of fact, I have been sharing with you
24 almost daily my update summaries of my computer
25 ~ printouts, what I think the evidence is in the case and

1 what is going on.

2 A: Yes.

3 Q You have been reading that and helping me with the case
4 and making suggestions and that kind of thing.

5 A: Yes.

6 Q Have we discussed off and on, both before the trial
7 started and during the course of the trial, whether or
8 not you should testify?

9 A: Yes, we have.

10 Q And before we knew what the government's evidence was
11 in this case we had, I think, decided between us that
12 you would probably testify, didn't we?

13 A: Yes, sir, we did.

14 Q And after hearing the government's case and seeing what
15 it was, did I advice you I thought at this point that
16 that testimony would add absolutely nothing to the case
17 and that it would be in your best interest not to
18 testify?

19 A: Yes, sir, you did.

20 Q And have you made similar suggestions to me and come to
21 the same conclusion yourself?

22 A: yes, I did.

23 Q And is it your decision at this time that you do not
24 wish to testify in the case.

25 ~ A *No, I do not.*

1 Q And you understand that if you waive this right now,
2 that there won't be any questioning, affidavits or
3 transcripts or anything of your version of what
4 happened to the Court of Appeals if we should lose, is
5 that correct?

6 A: Yes.

7 Q And is it your desire at this time then to waive your
8 Fifth Amendment right to testify?

9 A: Yes, I do.

10 Q And it is your sole decision after accepting my advice
11 and relying on my advice and listening to the counsel
12 of the other attorneys in this case and participating
13 in the discussions.

14 A: Yes.

15 Q Have you up to this point been satisfied with my
16 services as your appointed attorney?

17 A: Yes.

18 Q Have I done anything that you did not want me to do
19 during the course of the trial?

20 A: No, sir.

21 Q Or prior to the trial, for that matter?

22 A: No, sir.

23 Q And have I done everything that you have asked me to do
24 within my power during the course of the trial?

25 A: yes.

1 Q And you are satisfied with my services to this point.

2 A: Yes, I am.

3 MR. OSGOOD: That is all I have.

4 THE COURT: Is this decision your own
5 independent decision?

6 THE WITNESS: My own, yes.

7 THE COURT: You may step down.

8 MR. O'CONNOR: At this time, Your Honor, the
9 defense would rest its case.

10 DEFENDANTS REST

11 THE COURT: All right. Anything else we
12 should put on the record here? If not, we will meet in
13 chambers. There is no rebuttal from the government.

14 MR. BECKER: No rebuttal.

15 EVIDENCE CLOSED

16 THE COURT: The evidence is closed and we
17 will meet in chambers to talk about the argument.

18 Now, we have a request from the
19 alternates, **they** wrote me a note saying since we
20 have put so much time into this case could we be
21 allowed to -- Kathy, would you get it; it's on the
22 bench -- **they** want to be on the deliberations. I
23 don't know if **they** say take part in or listen to.
24 We realize **they** can't vote, that's for sure. It
25 ~ can't be done but it is kind of interesting and it

1 is exemplary how frustrating it must be to be in
2 that position.

3 The note is, "After all the weeks we
4 have been a part of the trial, we four alternates
5 would like to be a part of the deliberation
6 process even though we realize we would not make a
7 final vote." Signed by the four alternates. And
8 we will just have to tell them no, I am sorry,
9 because it is frustrating.

10 MR. O'CONNOR: Maybe you can bring them in
11 afterwards and talk to them and let them vent to you.

12 THE COURT: Kathy says **they** have inquired
13 about sequestering and I don't have any intention of
14 sequestering. Does anyone have anything else?
15 All right.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

1	UNITED STATES OF AMERICA,	)	
		)	
	Plaintiff,	)	
	vs.	)	Nos. 96-00085-01/05-CR-W-8
1		)	
1		)	
I	GEORGE FRANK SHEPPARD,	)	
I	EARL D. SHEPPARD,	)	
	DARLENE M. EDWARDS,	)	Monday and Thursday,
	BRYAN E. SHEPPARD, and	)	
	RICHARD W. BROWN,	)	February 24 and 27, 1997
I		)	Kansas City, Missouri
l	Defendants.	)	

TRANSCRIPT ON APPEAL

VOLUME XXI

(Pares 3729-3952}

BEFORE THE HONORABLE JOSEPH E. STEVENS JR..

UNITED STATES DISTRICT JUDGE

AND A JURY.

Proceedings recorded by electronic stenograph
Transcript produced by computer

ELIZABETH SBINN, RPR
UNITED STATES COURT REPORTER
811 GRAND AVENUE, ROOM 702
KANSAS CITY, "0 64106

I N D E X
Volume XXI

1		
2		
3	Instruction Conference	3731
5	Closing Argument on behalf of	
6	the Plaintiff	3747
8	Closing Argument on behalf of	
9	Defendant Frank Sheppard	3791
11	Closing Argument on behalf of	
12	Defendant Earl Sheppard	3816
14	Closing Argument on behalf of	
15	Defendant Darlene Edwards	3832
17	Closing Argument on behalf of	
18	Defendant Richard Brown	3847
20	Closing Argument on behalf of	
21	Defendant Bryan Sheppard	3871
22		
23	Rebuttal Argument on behalf of	3905
24	the Plaintiff	

3731

1 FEBRUARY 24 1997

2 (Instruction Conference in Chambers)

3 THE COURT: All right, this is the revision
- 4 of 3.02 that I think is appropriate. It reads, "It is
5 your duty to find from the evidence what the facts are.
6 You will then apply the law as I give it to you to
7 those facts. You must follow the instructions of the
8 law even if you thought the law was different or shouldxx
9 be different."

10 Then, "The deaths of the six
11 firefighters are not to be considered by you in
12 arriving at your verdict of guilty or not guilty
13 as to each of the defendants. Those deaths become
14 matters to be considered with respect to
15 sentencing only if you should find one or more of
16 the defendants guilty of the offense charged.

17 Do not allow sympathy or prejudice to
18 influence you. The law demands of you a just
19 verdict, unaffected by anything except the
20 evidence, your common sense, and the law as I give
21 it to you.'

22 Obviously, the assertion is the comment
23 about the deaths of the firefighters. But I don't
24 think it is fair just to bluntly, say "the deaths
25 of the firefighters are not to be considered" and

3732

1 leave them with this kind of glazed look in their
2 eyes. So that is the amendment I made there.

3 Does anybody has any problem with 3.02.

4 MR. O'CONNOR: There are a couple records
5 we wanted to make. Do you want to do that while we
~

6 are waiting for the copies? I

7 THE COURT: Yes.

8 MS. HUNT: This weekend on Saturday evening
9 John O'Connor gave me a letter he received from Dave
10 Dawson who was in the Belton City jail with Carl
11 Nettles and Michael Whitelaw were with him for a
12 month. Be talks in this letter about how these two
13 individuals read the newspaper, underline things, got
14 their stories together how **they** were going to
15 testify. Made a statement, "These boys are going
16 down anyway or going to get convicted so it doesn't
17 matter. We will just jump on the bandwagon."

18 On Sunday morning -

19 THE COURT: Dave Dawson is incarcerated in
20 Fulton.

21 MS. BUNT: Yes, sir. I
called to Fulton.

22 I wanted to see Dave Dawson. **They** wouldn't let me
23 come down but **they** let me talk to him on the phone.

24 I talked to him for about an hour, went
25 over the letter. Basically he said Carl Nettles

1

1 and Michael Whitelaw were with him for a month.

2 After talking to Mr. O'Connor and Mr. Becker, I

3 determined that is not true. That Nettles was

4 just there overnight one night before he

5 testified. There was some other inflammatory

6 language in the letter. Because he is lying, I

7 believe, and the other things, I made a decision

I

8 not to call him to testify.

I

9 I have discussed that this morning with

10 my client. I have also discussed this with

11 Darlene Edwards and Frank Sheppard. I don't have

12 a copy of the letter. If the Court would prefer,

13 I could file it for record purposes.

14 THE COURT: I suppose for your own protection

15 it would be a good idea for the copy to be on the

16 record but I am prepared to accept your explanation why

17 you have done what you have done. I believe when we

18 get in the courtroom, before the jury comes in, I will

19 ask the defendants just generally if **they** have heard

20 your description of what happened over the weekend with

21 respect to Dave Dawson. And if **they** agree with the

22 decision not to call him, I think for everybody this

23 ought to be on the record in that way.

24 MS. BUNT: I don't think Bryan Sheppard or

25 Richard Brown have been talked to about this.

~
3734

1 MR. O'CONNOR: I will talk to Bryan about it
2 1 but there is not going to be any objection from me.

3 MS. HUNT: I have a fax copy of the letter.
4 I will submit it at that time.

5 THE COURT: That is fine.

6 MR. BECKER: I would like the court to be
7 aware that one of the government witnesses, Patsy
8 Peeler, received a letter from Frank Sheppard on Friday
9 or Thursday. She considers the letter to be
10 threatening in that it says that she will be the first
11 one that he visits after he gets out of jail after this
12 trial ends in acquittal.

13 I have given counsel a copy of it and I
14 think he is well aware the government will
15 vigorously pursue any possible charges for against
16 a retaliation against a federal witness.

17 MR. PETERS: What we will do is put the
18 letter as part of the record so everybody is aware
19 of it. I think reading it in context I would put a
20 different light on it but again if he does anything
21 to anybody, which I have no reason to think he would,
22 it is in the file. I don't consider this letter
23 threatening. But I can see how, viewed in a different
24 light by a different person at a different time, it
25 could be perceived that way. And I will talk to my

3735

1 client about it. I don't anticipate any problems and
2 he will have been put on notice not only does he have
3 to worry about what he says but he has to worry about
4 the way it is heard by the other person. But one or
5 the other of us will make a copy for the file.

6 MR. BECKER: I would submit it under seal.
7 It is not something that is appropriate for a public
8 record.

9 MR. PETERS: Right.

10 THE COURT: Very well. We will do it that
11 way.

12 MR. O'CONNOR: As well as -

13 THE COURT: And yours, too. Both of the
14 letters referenced in this conference will be submitted
15 under seal.

16 Anything else?

17 MR. O'CONNOR: That is all, Your Honor.

18 MR. PETERS: The only other thing I wanted
19 to ask about, during the course of the trial several
20 times we would ask if we could ask witnesses about,
21 was Frank Sheppard there, those conversations, and the
22 court had said, no, we couldn't do that but we could
23 argue as true that somebody, not name, was not there.
24 And it is the one area I thought I better check on
25 before I do my argument, if that is still the ruling

1 of the court, if it is a statement of Darlene Edwards,
2 or whoever, -- it's Darlene Edwards -- I am not going
3 to get jumped for arguing that statement is only for
4 1 Darlene Edwards.

5 THE COURT: I have an instruction on that.

6 MR. BECKER: I have a list and I didn't
7 1 bring it along because I didn't think anyone would
8 be arguing but if you were to argue a witness didn't
9 mention Frank Sheppard when, in fact, the other people
10 included Frank Sheppard prior to being sanitized, I
11 would object to that as unfair argument.

12 MR. PETERS: What I am saying, for example,
13 Darlene Edwards, I would be able to argue, she says
14 Frank is at home but Darlene Edwards, when talking
15 about two people going up and doing this, this is not
16 Frank Sheppard. i

17 THE COURT: The instruction reads "You may
18 consider evidence of any statement of any defendant
19 1 only in the case against him or her and not in the case
20 1 against the other defendants.

21 1 What that means is you may consider each
22 1 defendant's statement in the case against him or
23 1 her only for that purpose, rely on it as much or
24 as little as you think proper. But you may not
25 ~ consider or discuss that statement in deciding if

3737

1 the government has proved beyond a reasonable
2 doubt its case against any or all of the
3 defendants."

. . 4 MR. PETERS: Without having it, does the
5 final verdict director have fire or fire explosive?

6 THE COURT: It reads, "A person may be found
7 guilty of damaging or destroying, by means of fire or
8 explosive materials, property affecting interstate
9 commerce even if he or she did not do every act
10 constituting the offense charged, if he or she aided
11 and abetted the commission of damaging or destroying, I
12 by means of fire and explosive property affecting
13 interstate commerce."

14 We now have these in hand.

15 The first one is the 3.01. Is there any
16 objection?

17 The next one is the one we discussed
18 including the withdrawal of the death of the
19 firefighters.

20 Now it is time for you all to articulate
21 any objections that you have because we are going
22 to move right through here.

23 The next one is the definition of
24 evidence. It is 3.03.

25 The next one is credibility, 3.04.

3738

1 The next one is the so-called expert
2 witness. I have just changed the language. It
3 seems to me as submitted it said persons may state
4 their opinions and I said persons were permitted
5 by the court to state their opinions." Otherwise
6 it is pretty much as is.

7 Then "You have heard testimony that the
8 defendant Darlene Edwards made a tape recorded
9 statement." That is 2.07.

10 Now I am puzzled about this one, and
11 that is the Darlene and Frank script. The
12 evidence that Darlene and Frank stripped an
13 automobile and had it set on fire. I let that in
14 as what was a 404 (b) exception, but I really don't
15 understand why not. **They** could have kicked the
16 neighborhood cat around two weeks before and that
17 is a nasty thing to do but what does it have to do
18 with this offense?

19 MR. BECKER: I believe it goes to
20 reasons or motive, opportunity, preparation and
21 planning.

22 TEE COURT: That is a litany. That is not a
23 rule.

24 MR. BECKER: There are several I left out but
25 absence of mistake is not one of them. ;

1
1 MR. OSGOOD: There is a problem with the very
2 last sentence, the first paragraph, too. That seems to
3 1 say it is admissible once **they** reach that threshold
4 1 showing against all defendants.

5 THE COURT: I have corrected that. We didn't
6 correct it in here but I have a mark here that is
7 1 supposed to be the names of the defendants involved; ~
8 1 that is Edwards and Frank Sheppard. ;

9 MR. BUNCH: Judge, we made an objection
10 during the course of trial and I will not take much
11 more time other than to say this is merely an
12 exacerbation of the prejudice that is related. It
13 has absolutely no relationship in fact or in law to
14 the crime with which she and Frank stand charged in
15 my opinion. So I simply renew my earlier objection
16 to it.

17 THE COURT: I am disposed to agree with that.
18 I think we are just not going to give this. I think it
19 is a stretch. I can see as a prosecutorially-minded
20 person, which Mr. Becker is to a certain extent, I can
21 see your view of it but I think it is very remote and
22 the rule says that evidence of a bad act is not
23 supposed to be admitted just to prove this is a bad
24 person, he has done bad things in the past; it has to
25 be related in a legally and logically relevant way to

3740

1 what we are charging him with. And except for
2 proving **they** knew how to burn up trucks, I really don't
3 think this -

4 MR. BECKER: If is also offered as an
5 explanation of why Darlene had a rental car at the
6 time of the explosion.

7 THE COURT: That is in there. I am not
8 withdrawing the evidence. I am just not pointing it
9 out with that instruction.

10 MR. BACKER: That's fine.

11 MR. PETERS: On that point, Judge, then is
12 the government going to be able to argue this evidence
13 for the purpose that we have just decided?

14 MR. BACKER: We are not going to argue it.

15 THE COURT: The next one is "You may consider
16 the statement" and we have been over this.

17 The next one is 4.14. And the only
18 change we made was "contradict" and you all know
19 that. So that is done.

20 The next one, we are going to substitute
21 2.18 and 4.04 for your -

22 MR. BECKER: Did we rip out the first or
23 the second?

24 THE COURT: We have two instructions. One is
25 "You have heard evidence certain witnesses have

3741

1 received promises from the government." That is 4.04.
2 And then next, "You heard evidence that certain
3 witnesses were once convicted of crimes." And that is
4 2.18 and that is how we are going to do that.

5 And then we have Travis Small, an unduly
6 long instruction, which is submitted. What we did
7 was change the third from the last word from
8 "your" to "you".

MR. BECKER: Right.

10 THE COURT: Reasonable doubt is next, 3.11.
11 Definition of indictment is next. It is
12 standard, from the approved instructions.

13 Then we have the statute.

14 MR. PETERS: Judge, that is not read to the
15 jury.

16 THE COURT: Yes.

17 MR. PETERS: At some point, combined with the
18 explosives, I will need to make a record.

19 The statute in its entirety defines what
20 is an explosive and I think if explosive is
21 included in the instruction -

22 THE COURT: We are using "explosive
23 material." That is out of the statute, too.

24 MR. PETERS: And I understand but I just need
25 to make my record. My concern is that if **they** found

3742

1 that the defendants were there, that **they** hit the
2 trailer, the trailer spontaneously combusted, which is
3 something that could be found from the evidence, that
4 under the way the instruction is given **they** could find
5 our defendants guilty.

6 My concern is that what we are talking
7 about is a substance that by definition is an
8 explosive, the ammonium nitrate and fuel oil.

9 For our clients to be guilty, **they** must
10 have done something to cause that explosion, not
11 simply it exploded. The property was damaged or
12 destroyed by means of an explosive is true. That
13 is a given because of the nature of the object
14 that supposedly was set on fire. So by including
15 explosive, what you have done, I would suggest, is
16 you have eliminated the burden of proof on the
17 government the knowledge the trailer contained
18 ammonium nitrate and fuel oil. So I think it
19 improperly states the law because the evidence,
20 the theory of this case, it was done by means of
21 fire. But my real concern is that the nature of
22 the substance itself, this ANFO is an explosive.
23 And unlike if you said we did a fire or explosive
24 to a house, the house is not an explosive.

25 In this case the trailer and the

3743

1 contents by their very nature are an explosive.
2 And my concern by submitting it that way, first of
3 all, it goes against the evidence that was
4 presented at court which is that it was by fire.
5 But, more importantly, it effectively eliminated
6 the second essential element the government must
7 prove because, in fact, without contradiction the
8 property, the trailer was destroyed by an
9 explosive material. It had nothing to do with the
10 defendants.

11 THE COURT: Okay, if that is taken as an
12 objection to just the way the court is characterizing -
13 - what instruction is that objection to?

14 MR. PETERS: It would be in the verdict
15 director including "explosive", that the property,
16 which refers to the trailer, was damaged or destroyed
17 by means of fire and explosive materials.

18 THE COURT: Okay. That is really the next
19 instruction we have to talk about and that objection is
20 overruled. And that, as it now reads, has been changed
21 a little from the way it was submitted but it simply
22 gets more specific as to what the trailers contained
23 and went to fire and explosive materials by way of
24 description. Otherwise, there are no other changes.

25 Then the next one is the indictment,

3744

1 reference to maliciously.

2 Then the next one is the statute on
3 aiding and abetting.

4 And then the next instruction on aiding
and abetting being number 5.01. We will give it
6 pretty much as is.

7 MR. PETERS: On, I don't know the number,
8 but the one being, "A person may be found guilty,"
9 it is the aiding and abetting. In paragraph two,
10 to be internally consistent, it needs to say "by
11 means of fire and explosive" -

12 THE COURT: "Materials."

13 MR. PETERS: Right.

14 THE COURT: It says that.

15 MR. PETERS: On the letter two it says "by
16 means of fire or explosive" instead of "by means of
17 fire and explosive materials."

18 THE COURT: You are right. "And explosive
19 materials.,'

20 Then the next, this is the withdrawal
21 thing, we really started with that. Wil.

22 MR. BUNCH: I just wanted to mark mine
23 by an "A" so I have a record and that is all I am
24 asking.

25 MR. BECKER: Are you asking this one be given

3745

1 or not at all?

2 MR. BUNCH: I am going to leave that to the
3 court.

4 THE COURT: It is a matter of argument. He
5 can argue it. Clearly, withdrawal is inconsistent with
6 several of the elements that have to be proved if there
7 is a finding of guilty and the form pertains pretty
8 well to a conspiracy but it really is contrivance to
9 pertain to aiding and abetting.

10 Then in interstate commerce, I think I
11 was surprised to discover through Kathy what I had
12 been kind of thinking all along, you had
13 stipulated to interstate commerce, but you really
14 didn't, did you?

15 MR; PETERS: No, we didn't.

16 THE COURT: So we have this in interstate
17 commerce thing based on Ryan and it has been agreed to
18 by the parties, I understand. That is the instruction
19 agreed to.

20 Then somebody submitted an instruction
21 about presence.

22 MS. HUNT: Yes.

23 THE COURT: And that instruction should not
24 be given. And it is possible, although it might be a
25 contrivance or stretch, it is possible for some of

3746

1 these defendants to be guilty of aiding and abetting
2 without having been present at the site. And I don't
3 think we should give that, 9.07. You can argue it.

4 MR. PETERS: Judge, my concern is the
5 governments evidence against each and every one of
6 the defendants is that Darlene may be in a slightly
7 different posture. There is no evidence that my
8 client, that his involvement was merely aiding and
9 abetting. The testimony from the government's
10 witnesses is that my client threw the stick of
11 dynamite, lit the match. And I believe I need and
12 am entitled to an instruction which says if you find
13 that he wasn't there, he is not guilty.

14 There is no testimony regarding Frank
15 Sheppard, that his role was merely as an aider and
16 abettor for getting gasoline or leaving somebody,
17 dropping somebody off at the scene.

18 The testimony against my client is that
19 he set the structure on fire.

20 THE COURT: I know where you are going and
21 you can argue that but I am not going to instruction on
22 it separately.

23 MS. HUNT: I join in the objection.

24 MR. OSGOOD: I join in the objection.

25 MR. O'CONNOR: I join on behalf of Bryan

3747

1 Sheppard.

2 MR. BUNCH: Make it unanimous.

3 THE COURT: Now 3.12, all we did was take out
4 the last parenthetical sentence which is not necessary.

5 Then we have the forms of verdict.

6 Anything else?

7 MR. OSGOOD: Your Honor, there is the
8 remaining issue of the pre-indictment delay question
9 and I have submitted we just address that in
10 post-conviction briefings if **they** are convicted and
11 you can rule on it in conjunction with the motion
12 for a new trial.

13 THE COURT: Okay, let's go to work.

14 (Court was adjourned and the instructions were read to
15 the jury.)

16 THE COURT: You may close.

17 MR. MILLER: Thank you, Your Honor.

18 CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFF

19 MR. MILLER: Good morning. I am not going
20 to waste time arguing the instructions to you. His
21 Honor just read them to you and you will get to take a
22 copy up there for you.

23 First of all, thank you for giving us
24 these weeks of your time. And I say this not only
25 for myself but Mr. Dave True, Sharon Hutzler and,

3748

1 of course, Paul Becker.

2 The case is about admissions. As Mr.
3 Becker said in his opening, the physical evidence
- 4 is gone. We have got a damaged gas can we found
5 that was all crushed, but the physical evidence is
6 gone. A fine example is "Did you take a soil
7 sample?" Remember that question? Take a soil
8 sample of what?

9 The explosion was so intense two
10 trailers were disintegrated with the exception of
11 a few axles found in the woods, and a fire truck
12 is completely gone.

13 And so their admissions, as Mr. Becker
14 said in his opening, these defendants couldn't
15 keep their mouths shut.

16 So then you have to start looking at
17 what **they** are saying. What are the admissions?
18 What is the evidence here? And the core of this
19 argument, the theme of this argument, you don't
20 admit to a crime like this unless you did it. You
21 just don't do it. But you build it up with other
22 evidence. You just don't take one admission out
23 there. You build it up with other evidence. And
24 then you look to corroborate. And some of it has
25 been corroborated by physically what people saw

3749

1 also that night. And also look at the source, who
2 is saying, who is making the admission and who is
3 relating the admission, In court it is the
4 witnesses and then it is the repetition. By that I
5 mean do the defendants keep saying the same thing.
6 And then you look how many times do **they** repeat
7 the same thing, once or twice or ten to fifteen
8 times.

9 So now let's look at what the admissions
10 are about. It was given to you kind of
11 antiseptically. By that I mean he couldn't really
12 argue to you, Mr. Becker, on November 29, 1988 the
13 defendants George, Earl D. Darlene Edwards, Bryan
14 Sheppard, Richard Brown and others, known and
15 unknown, maliciously damaged and destroyed by
16 means of fire and explosive materials, vehicles
17 and other personal property. And as a direct and
18 proximate result of the defendants' conduct, death
19 resulted to James Kilventon, Robert McKarnin,
20 Michael Oldham, Gerald Halloran, Thomas Fry and
21 Luther Hurd.

22 Now let's look at what happened because
23 that starts the form, the admissions.

24 It is about people. This case is about
25 people because people make admissions. People

3750

1 hear admissions.

2 Six men died. Six men on November the
3 29th, 1988. The only positive thing to say about
4 their death it was instantaneous. And the people
5 who are responsible know what I am about to talk
6 to you about. And the other people who weren't
7 responsible know what I am about to talk to you
8 about because when these six men were taken from
9 us, wives became widows, children no longer had a
10 father, siblings lost a brother, parents lost a
11 son. And you know about this. It has to rest on
12 you. And you start to talk about it. And people
13 remember this offense. It literally rocked Kansas
14 City. And when someone is sitting there with you
15 and **they** admit their participation in it, you will
16 remember this like it was yesterday. It doesn't
17 matter if **they** admitted it to you in 1989, 1990,
18 1991, you will remember that.

19 And it goes back to another theme, doing
20 this to families, doing this to people, being
21 involved in one of the most horrendous crimes in
22 this city. You don't tell people you did it over
23 and over again unless you did.

24 We will work a little bit backward and
25 then get back into the argument.

3751

1 Let's talk about what we heard,
2 backwards, most recently, most recently about some
3 of the defendants' evidence. And we saw Miss
4 Naomi Sheppard on the video. And what did the
5 video really show you, though?

6 It showed you that there is a crawl
7 space in that house, that you get into inside the
8 house. Just like Patty Smith said, the trap door.
9 It corroborates what she said. It is one of the
10 few physical things we have corroborated what
11 someone said.

12 And the picture of the garage, the
13 garage comes out further than the rest of the
14 house. Steve Kilgore, he called it an attachment.
15 But it's there, its' different.

16 **They** gave us Lisa Harrigan as an alibi
17 witness, but Lisa Harrigan slept through both
18 explosions. And that is because Skip had given
19 her cleaner drugs. That is how he was helping her
20 through her drug rehab. "I will just give you
21 cleaner, better drugs." What did she say that
22 corroborates Mr. Kilgore? **They** would steal and
23 **they** kept stolen stuff in Naomi Sheppard's garage,
24 just as Steve Kilgore told you about. Their
25 defense witness corroborates, makes believable Mr.

3752

1 Kilgore.

2 And then this thing with Mr. Martindale. I

3 This goes back to what I was talking about
4 earlier. What is the admission? Do you repeat it
5 and how many times, to who? Mr. Martindale said
6 his so-called confession is no secret or surprise
7 to Mr. Becker when he took the statement. We have
8 all known about it for years. But there is
9 nothing to make it believable. and there is
10 nothing else to put him there other than his just
11 saying "I was there. I did it. n What about the
12 straw and cardboard, did he drag an pile of hay on
13 it. Did he run around at night trying to gather
14 up enough paper and cardboard to start a bond fire
15 for whatever reason? Of course, it was looked at
16 and discounted. There was nothing
17 there and it gives credibility to the investigation.
18 We just didn't say "There it is, let's luck onto it.
19 We have a confession. We will throw him on. We are
20 done with it. We solved the case. n And we could
21 have been done with this case in a week. But, no,
22 he is not telling the truth. And, you know, he said
23 way back then the case lingered on and as Dave True
24 said at one point, "It dried up." Those were the
25 words he used, 'It dried up.'

3753

1 **They** brought on John McGovern. But the
2 evidence is he is a friend of Bryan Sheppard's,
3 not really a ringing enforcement for you. And he
4 lived with Darlene Edwards. And one thing he did
5 that corroborates Christine Mall, when Richard
6 Brown came in she left and he left, too.

7 Bruce Trammel, what he told us was that
8 you can see those lights from 85th and Prospect.
9 You can see those guard lights. And as you look
10 at the maps where **they** were coming from **they** would
11 have gone by 85th and Prospect to get down there.
12 You can see the guard lights are there as you are
13 coming down there.

14 He also said Steve Morales was at work
15 that morning. He said he does leave early if the
16 papers aren't there. And he said the papers were
17 late. But what Mr. Trammel said -- and it is very
18 understandable -- repeatedly he said "Not that I
19 recall'", "Not that I recall." And the reason is
20 that there is really nothing to make him remember
21 because, unlike Mr. Morales, Mr. Trammel did not
22 see someone that he knew who was later charged
23 with this, Richard Brown and Bryan Sheppard. He
24 didn't see them. There is nothing that sticks out
25 in his mind about this. And with all respect Co

3754

1 Mr. Trammel, he really didn't even remember where
2 he was when the explosion happened. He was one of
3 the very few that didn't know where he was when it
4 happened.

5 And, also, what Mr. Morales said was
6 "When we went down 71 highway it was before the
7 papers were dropped." There was some confusion on
8 that. But the bottom line with that is that it
9 doesn't change anything that Mr. Morales says
10 about seeing earlier because there is another
11 witness, and I will touch on her again, Margaret
12 Weaver, who did. She saw the same two people at
13 the 7-11 store in the early morning hours, the
14 same two people that Steve Morales saw. And **they**
15 don't even know one another. By that, I mean Miss
16 Weaver and Mr. Morales.

17 Rick VanHecke, he is a very nice fellow,
18 a security guard. But the bottom line of his
19 testimony, he is over in Kansas and 30 minutes
20 later he hears over the scanner about the
21 explosion.

22 We are not saying there were no cars
23 going up and down 71. In fact, there would be
24 cars. That is why **they** had a guard there.

25 **They** called Sergeant Walker from the

3755

1 Grandview Police Department. But what Mr. Walker
2 does is concur with, corroborate what we heard a
3 lot of, about **they** do get their hands on dynamite.
4 It is a scary thing when Skip Sheppard is at that
5 party and he says "I almost had my hands on
6 dynamite" And then later on through cross
7 examination we found he also told Mr. Bayliff "And
8 I could see it for \$25.00 a stick." **They** are not
9 talking just to hear themselves talk. There is
10 dynamite out floating around.

11 Mr. Morales didn't have a key on him or
12 a key to the van or a key to the box but there was
13 dynamite there and **they** can do it. But that also
14 gives credibility again to the investigation. By
15 that I mean, okay, two months later we find
16 dynamite here on this fellow who is from
17 Marlborough, all around there, used to be four
18 wheeling, very familiar with the area. But **they**
19 don't just hang it on him. **They** check it out.
20 The dynamite is worthless. Plus he didn't have a
21 key to the box. But what is more important, it is
22 a fire. There is no bomb. There is no dynamite.
23 It is a fire.

24 If **they** decide Mr. Morales was the uni
25 bomber, it doesn't matter. It was a fire set by

3756

1 inept thieves.

2 Again, a chance to hang it on someone,
3 that doesn't happen. The investigation has got to
4 be done right.

5 And Detective Zinn was called.

6 Basically what he confirmed was that Karen Baird
7 was threatened, felt threatened and felt
8 intimidated by Bryan Sheppard. Because right
9 after Mr. O'Connor is out there, after he leaves,
10 after the doors closed behind him, what does she
11 do? She calls Detective Zinn, the same detective
12 she gave the statement to. And you heard what she
13 said. It was read to you twice. "He was here from
14 7:30 to 8:00." I am talking about Bryan Sheppard.
15 And she said, Richard Brown, in her statement, "He
16 was here at my house. He was smokey. He was
17 gritty. He smelled of gasoline." And she told
18 the detective -- it got confused at one point but
19 Karen Baird told the detective, she said, "I told
20 him I am 70 percent sure." The detective said,
21 "Is what you told me before accurate?" "Yes, it
22 is." And she came in to court to tell you, yes,
23 what I said then is accurate. You can have all
24 this statement you have to Mr. O'Connor, what I
25 told them back then in 1989, that was accurate.

~ 1

1 And he read a lot of those bits and pieces but
2 maybe this is the paragraph out of everything he
3 read to you, "Question: Has he", referring to Mr.
4 Sheppard, "in any way ever said to you don't
5 testify or change your story or don't testify
6 against me, anything like that whatsoever?" and
7 Miss Baird said, "Yes." And the question was,
8 "What has he said?" And she said this to Mr.
9 O'Connor, "No. You will tell him so, no, he
10 hasn't said anything." She was scared and she was
11 going to tell him anything. And, as she said,
12 "You asked me that same question twelve times?"
13 She wasn't going to tell him because she was
14 scared because he had threatened her. Why
15 threaten someone if A. You weren't there. Is
16 Miss Baird lying or he didn't tell her anything
17 about it. Why threaten someone if, in fact, you
18 weren't there. "You did call her on the phone.
19 You did say these things." Other than that why
20 threaten. And when he was out there talking to
21 her in '89, that solidifies what she said then.
22 "No, you will tell Bryan."

23 The defenses, some of them were
24 mentioned in opening statement such as labor. We
25 brought in Rick Brown, the general contractor, "No

3758

1 labor problems. We were a union shop. If thereI
2 is labor problems, **they** call us on the phone.

3 We brought in Norm Collins, the
4 subcontractor. "We were a union shop. No
5 problems." He is also the witness who testified
6 to interstate commerce where **they** were licensed
7 out of state and also brought equipment in and out
8 of the state. "No problems."

9 Then we brought in Mr. McReynolds, the
10 foreman, who is there all the time. "No
11 problems."

12 And we brought in a mechanic who is a
13 member of one of the unions. "No problems. n

14 Now we heard there was some
15 informational picketing which is legal and what
16 you can do, but we are not talking about bringing
17 in these what **they** call scabs to cross the picket
18 lines and frighten, things like that.

19 The bottom line, no labor problems, no
20 union problems.

21 There had been some talk about a bomb.
22 And at one point when we brought in Mr. Shide from
23 ATF to attest, as **they** say, fall on the sword,
24 because he made the improper computer entry on
25 that, the question was asked, "Can you see how a

3759

1 defense attorney would think this was a bomb?"
2 "Yes, I could see that." but the bottom line is
3 there is no bomb. The firemen were not there
4 putting water on what looked like a bomb. The
5 firemen were there putting water on what **they** saw was a
6 fire.

7 The guards, **they** were inept in what **they**
8 were hired to do. **They** couldn't even watch a f
9 construction site.

10 And Mr. Martindale, I have already
11 covered him. There was nothing there with him.
12 It was really a waste of a morning.

13 The only defense that logically can be
14 made, all of the government's witnesses, all of
15 them, we called approximate 80, and 57 of them
16 testified to what **they** saw and to admissions.
17 **They** must all be lying or **they** are grossly
18 mistaken.

19 Some of the cross examination talked
20 about, "Well, he brags, doesn't he?"; "He boasts,
21 doesn't he?" Well, then you must be saying, yes,
22 he said it. You are conceding yes, he said it but
23 he was just bragging. And that goes back to what
24 I was saying earlier, who brags about something
25 like that? What do you expect to gain by bragging

3760

1 about something like this? He did it. No
2 bragging about it, unless perhaps to him it is a
3 big deal. "Yeah, I had a hand in one of the
4 biggest crimes in the history of Kansas City."

5 The government plays the dispatcher tape
6 with Chief German. "It's a fire." "It is a I
7 fire.' **They** are talking fire. **They** are seeing
8 fire. **They** go down there. Mr. German sees the
9 silhouette of a fireman with a hose fighting a
10 fire.

11 And then there is an explosion. And we
12 find out later on what is in those trailers. It
13 is ANFO. And Detective Collins said, "We no
14 longer dispose of ANFO that way anymore."

15 Mr. McReynolds was here to tell you what
16 is not in that trailer. No electrical current
17 going in there to accidentally set this off to get
18 this going. There is no gasoline to spill over.
19 We had no problems with employees smoking, leaving
20 it there at the end of the work day, because this
21 happened early in the morning, about four in the
22 morning.

23 Detective Collins eliminated all but a
24 fire. It is not spontaneous combustion. You are
25 not going to have that in a trailer in late

3761

1 November. The temperature just isn't there.
2 Whether you want to talk about a dew point
3 dropping of what-have-you, what Detective Collins
4 said, "Yeah, I have heard of spontaneous
5 combustion but it was ruled out here. What we
6 have are 57 people who saw the defendants before
7 the explosion and saw some of them together after
8 the explosion. And what we hear are five
9 defendants, these five defendants saying basically
10 the same thing.

11 The government's case is people that you
12 met when **they** took the witness stand. Some of
13 them have felony convictions. Some of them are
14 convicts. Some at this time are young women,
15 young men. Some of them are, as you say, "good
16 old boys". and some of them are, as you say,
17 feisty people. Thieves, Mr. O'Connor said
18 "**They**'re like cockroaches, **they** come out at
19 night. n Well, yes, **they** came out at night and
20 went to the dark part of this construction site.
21 And there is nothing complicated about what **they**
22 did. **They** simply splashed some gasoline on a very
23 flammable part of the trailer where the tires are
24 and lit it and were probably surprised about how
25 well it did.

3762

1 And unknown to them what warn 't in there -- I
2 perhaps unknown to them -- what wasn't in there
3 wasn't just tools. What was in there was something
4 that killed six men who came out there to do that
5 job, to fight that fire. And a construction site
6 is a good place to go steal things. What if **they**
7 were unlocked. What if someone had left something
8 lying around. What if **they** could break the bolt,
9 what would **they** have gotten -- dynamite. And what
10 did Officer Walkers testimony prove to you? Yeah,
11 these yahoos can get ahold of stuff like that.

12 The bottom line is it is vandalism by
13 inept thieves. The bottom line, it destroyed
14 property. It destroyed people. And that is what
15 makes people hang in there with this.

16 Some witnesses waited to come forward,
17 sure, because "I didn't know I was a witness. I
18 didn't know what I knew was evidence that could be
19 used." Some of them back then were 15 and 16
20 years old when stuff like this was being said to
21 them. **They** are not very proud of what **they**
22 associated with back then. Some of them came out
23 and said I want to put that part of my life behind
24 me because **they** were young teenagers at the time.
25 And some of them were flat told, "You keep your

~ 1

1 mouth shut." **They** keep talking. There's a lot of
2 rumors in the neighborhood and one of the rumors
3 is "You shut up. You don't talk about this." But
4 as you grow up -- and we saw some young women who
5 had grown up -- you lose your father, you get your
6 respect. And for personal reasons, like Mr.
7 Fugate, he enunciated three of them to Mr. Peters.

8 And Miss Romi talked about the six
9 victims, families. You have reasons to do what
10 you do and you take that with you when you take
11 that stand.

12 Plus with exception of Richard Brown,
13 all of the defendants at one time or another are
14 in jail or the penitentiary. **They** are off the
15 street.

16 And what Ronald Williams said -- and
17 this goes back to what I am saying -- "It was on
18 my mind for many years." These witnesses don't
19 want to go to the grave with what **they** knew about
20 what happened.

21 Then there was the Unsolved Mysteries
22 that really kicked it off. That came out because,
23 as Mr. True had said, "It had dried up." When
24 Unsolved Mysteries came in and told these people,
25 who are now young adults, it's still going on.

3764

1 And then the phone calls started. And then the
2 agents went out there and started to talk to the
3 people. And these people found themselves
4 witnesses in this offense and having to come
5 forward now.

6 And the investigation centered on five
7 people from Marlborough. And why these five
8 people? We have witnesses to events. Shannon
9 Reimers, sister of a defendant, and what she saw
10 when she goes back after the second explosion to
11 Darlene Edwards' house and Frank is up and his
12 clothes are dirty and soiled. And Darlene is up.
13 And Becky is there. And someone is there that she
14 doesn't know. Carolee Ann Smith who also puts
15 them together, she puts defendant Earl Skip
16 Sheppard and defendant Frank Sheppard together.
17 Ten to 15 minutes after the first explosion where
18 do **they** go? **They** go to Naomi's house. And we
19 learn about that house. That is where **they** keep
20 some of their stolen stuff. That is where **they** go
21 and **they** are in what she described as "Dad's
22 pickup truck". And we showed you a picture of
23 that. And that is where **they** go. So **they** are
24 together after the explosion.

25 Margaret Weaver who put" together

3765

1 defendant Richard Brown and Bryan Sheppard at the
2 7-11 store before the explosion, corroborated by
3 what Mr. Morales said. **They** were together before
4 the explosion and he believes Frank Sheppard was
5 there. That is the most he could give. He
6 believes Frank Sheppard was with them before the
7 explosion.

8 And then Becky Edwards, the event with
9 her. You want to picture, you are at your mom's
10 house. You are home with mom and mom is sitting
11 around the table with Frank Sheppard and Richard
12 Brown and some other people getting high and
13 talking about how to make money and conspiring to
14 go to a construction site to steal. As I said,
15 there are things you are never going to forget.
16 But she came in and she did it. She is a young
17 woman now.

18 - Lonnie Joe Pugh seeing Skip Sheppard,
19 not in bed with Lisa Harrigan but seeing Skip
20 Sheppard in the pickup truck, getting out of the
21 truck at the Bakers after the second explosion.
22 He said, "I believe he even had a beer in his
23 hand".

24 Miss Archer who heard the voices of
25 Richard Brown and Bryan Sheppard in that apartment

~ 1

3766

1 about 7:00 A.M. in the morning to 7:30.

2 And then we pick up Karen Baird. I will
3 come back to Miss Romi. We picked up with Karen
4 Baird at 7:30 to 8:00 and **they** are up and **they** are
5 there. He smells of gasoline and smoke. You get
6 smoke on you, it's there. You get one cigarette on
7 you it's there for a while.

8 Can you Imagine being there when tires
9 are burning and the explosion which rained down
10 dirt. And he is sweaty and greasy, gritty. And
11 he smelled this way. And she takes note of it.
12 And Nancy Romi says "Richard Brown's truck was
13 flying down there after the first explosion." Four
14 something in the morning that truck is flying down
15 there headed toward Grandma's house who he was trying
16 to use as an alibi as you heard from other witnesses.

17 And Kathy Marburger, although she did not say
18 what she heard in the background when she was
19 talking to Karen Baird --and I am not going to
20 apologize for Miss Baird and Miss Marburger but these
21 are two people that called and talked to each other and
22 she testified what she heard in the background was
23 Bryan Sheppard's voice.

24 These are witnesses to the events. And
25 the five people, the five defendants, and this

~ 1

1 goes back to admissions and repetition and what
2 **they** are saying. In some ways **they** are unique.
3 Frank Sheppard will tell anybody about this for no
4 reason. He talked to the young woman from the
5 convenience store when she was I guess a teenager
6 then, Miss Deardorff, just sitting there, Yeah, I
7 was involved, words to that effect. Thinking it's
8 kind of cute.

9 Here comes Jerry Rooks, still in school.
10 Be wants to buy some cigarettes and he is sitting
11 there talking, telling him all about it. And then
12 as he was leaving, "You better shut up." Remember
13 what Mr. Rooks said, you don't forget when someone I
14 threatens your life. And then he talks to Chuckle
15 Elliott. Met him for the first time in the
16 holding cell here in Kansas City at 19th and Oak
17 and starts to talk to him about it. That is what
18 is unique to Frank. We don't know who he is talking to
19 or for what reason.

20 His brother is a little more careful.
21 Earl basically confined his conversation to people
22 he thought were friends and also to what we
23 learned later were jail house lawyers like John
24 White and other people he met in the penitentiary.
25 That's pretty much confined what he said to.

3768

1 Darlene Edwards is unique in that she
2 told the ATF agent on a tape-recorded statement
3 her involvement. It is tantamount to a
4 confession. She was there with gasoline and in
5 that car. And we will get to that later, too.

6 Bryan Sheppard, I have got to give him a
7 little bit of credit. He is somewhat bothered by
8 it. Remember what he said to Travis Small? Bryan
9 got in the car and he is all pie-eyed and said, "I
10 messed up. Remember those firefighters. I killed
11 somebody." And then when Glen Shepard sees him,
12 he is drunk and he is at this apartment, he's at a
13 table and he said, "It's eating me up and I do not
14 like it. It's eating me up." He is somewhat
15 bothered by it.

16 And then when Frank Gile heard him at
17 Richard Brown's, "Yeah, I was down there. I
18 messed up."

19 And then Richard Brown is unique, I
20 guess unique in that apparently this is really a
21 big thing for him because he brags about it more
22 often than anybody else. And he likes bragging
23 about it. He, of all the five, he definitely
24 cannot keep his mouth shut about this.

25 Why are **they** guilty? It goes back again

3769

1 -- I am going to repeat this argument several
2 times to you -- you don't tell people you cause
3 six men to die unless you did it. There is no
4 motive for these witnesses to lie. And if you
5 believe there is motive with the convicts and the
6 convicted felons, then **they** are corroborated and
7 we will get to this later by what other witnesses
8 said to them. It is the same defendants talking,
9 always these five. And **they** will talk in prison
10 or jail or jail house lawyers, people **they** believe
11 to be friends. That is consistent.

12 It goes back to what I was talking
13 earlier about, repetition, not only what you keep
14 saying but to how many people. And **they** talk
15 about the same things; gasoline, trailer on fire,
16 nothing stolen, wanted dynamite, fire for
17 diversion and blame the firefighters. Yeah, it's
18 somebody Olsen fault. Blame the firefighters.
19 The statements are expected from people who are
20 guilty.

21 Darlene Edwards crying about being
22 responsible, yet distancing herself from knowledge
23 or participation right there at the end. She goes
24 right up to and carries through with the plan that
25 Becky overheard, drives them there. Gasoline?

3770

1 Becky said, "Yeah, we had gas cans." And there is
2 a gas can full of it in that car. And she takes
3 them right to that construction site. But she
4 bails herself out right there at the end. And,
5 "Oh, I knew what **they** were going to do, set
6 something on fire. I was out of there. n That is
7 what guilty people are going to do -- right up to I
8 the end. It bothers them. And at times **they**
9 laugh about it. **They** brag about it. EverythingI
10 is consistent with guilt.

11 And then we have threats. Bryan
12 Sheppard had made some threats. Frank Sheppard
13 had made some threats. The closest thing to a
14 threat from Skip we heard was to Lisa Harrigan
15 when she had on the TV, "You don't want to know
16 about it." The same thing Bryan Sheppard said to
17 Karen Baird at her house. "Don't ask. You don't
18 want to know about it."

19 And we had the phony alibi of Skip.
20 And then we heard through Kelly Corrison, Richard
21 Brown trying to convince his grandmother where he
22 was sleeping in the house when this happened.

23 Let's zero in now on Frank Sheppard and
24 what he said and to whom he said it. You all have
25 been taking a lot of notes and I bet the twelve of

3771

1 you together can come across a lot better than
2 what I am taking here. I only have so much time.
3 Remember what he is consistently saying, "Stupid
4 firefighters. He said it to the Barchers. Be
5 said it to Mr. Kilgore. He said it to Fern Ayers.
6 And this is corroboration. He said it to Chuck
7 Elliott in the penitentiary. The Barchers were
8 never in the penitentiary. Neither was Mr.
9 Kilgore or Fern Ayers. Noting Fern Ayers knew the
10 Barchers but he says, "It's their fault, the
11 stupid firefighters."

12 The thing about sheds, you can argue,
13 well, you are talking about something buried in
14 the ground. Or these sheds, when you first hear,
15 the thing is bunkers to mean buried in the dirt
16 but **they** call it bunkers. **They** look like safes.
17 Look like sheds. He was talking about what was
18 there at the site. And thatch **they** the dynamite -
19 - what do we hear repeatedly? **They** wanted
20 dynamite and **they** couldn't get it.

21 We heard two people refer to a wonder
22 bar or a crowbar that was to Mr. Atterbury by
23 Bryan Sheppard, also to John White by Skip
24 Sheppard. That was told to John White, Mr. Rooks,
25 Fugate and Kilgore. And there is no evidence **they**

3772

1 knew each other.

2 Here is Frank talking, talking with
3 Patty Smith, the rocks and dirt fell down and it
4 hurt. And he told one of the witnesses he was
5 knocked off the hill.

6 And who sees him later on grass-stained
7 in the house -- Shannon Reimers, the defendant
8 Richard Brown's sister. And he is fully dressed
9 and his clothes are soiled. And he likes to
10 impress kids, another unique thing. Lorena
11 Deardorff, Jerry Rooks, Tracy Cauthon, young kids,
12 why tell them about this. **They** are not
13 necessarily trusted friends. This goes back to
14 what is unique about Frank. But he didn't tell
15 just one. We had three of them up there. He
16 keeps going on. And then he threatened people.
17 Jerry Rooks, he threatened him. Tracy Cauthon, he
18 threatened him. "Better keep your mouth shut
19 about this. You don't want to get hurt." And
20 when Morales confronts him in a bar, Frank doesn't
21 say I had nothing to do with that -- I had nothing
22 to do with this at all. No, he says, he threatens
23 him, "Get away from me. You better shut up. You
24 will get yourself hurt." Of course not.

25 And then whenever Richard and Bryan are

3773

1 talking about it he wants them to shut up. That
2 is another unique thing to Frank, when Bryan
3 Sheppard is talking about it in front of Glen
4 Shepard, he says, "Shut up. Shut up about this."
5 Even though later on he tells Glen Shepard about
6 it. And then when Richard Brown is over at the
7 party and Kim Finch overhears him, he said, "I am
8 going to put my fist in your mouth. Shut up about
9 this." However, he will talk openly in front of
10 him with his girlfriend Darlene or his brother
11 Skip Sheppard.

12 And then we have the alibi with the
13 Williams. And he talks about the fire. We have
14 the alibi with the Bairds, "You saw me after the
15 fire, didn't you?" "You saw me after the first
16 explosion." And Baird uses the word, "I guess he
17 thinks we are an alibi. I guess he wants to make
18 an alibi out of this." **They** saw him after the
19 second.

20 Defendant Skip Sheppard likes to talk
21 about dynamite and he is at this party. And Doug
22 Bayliff is sitting next to him and Skip is talking
23 to Bayliff and some other people. We heard one
24 described as a Mexican-looking fellow. And Tracy
25 Ownby at the time was Doug Bayliff's girlfriend,

3774

1 she was there, and Megan Williams was there.

2 What makes this all very believable,
3 those two ladies were probably not meant to hear
4 what those men were saying at that table. **They**
5 overheard him talking about this. And he says, "I
6 almost got my hands on some dynamite." Through
7 their cross examination it was brought out more
8 specifically how he could even sell it for \$25.00
9 a stick. And then as **they** are leaving, **they** are
10 discussing what **they** heard. And remember what
11 Doug Bayliff said -- and this goes back to what I
12 talked about earlier about keeping your mouth
13 shut. And he said, "These guys are dangerous.
14 You don't say anything. These fellows are
15 dangerous."

16 Then the jail house talk to John White
17 and Carl Nettles. The reason he talks to John
18 White, he is a jail house lawyer, he believes him
19 to be and to Carl Nettles because **they** both know
20 Richard Brown. And Michael Whitelaw is up there
21 when **they** were at the Dismas House, **they** had the
22 same officer working for probation and parole on
23 their case. As I said, he is a little more
24 careful about who he is talking to and that is why
25 Tracy and Meagan overheard him. He wasn't talking

3775

1 directly to them. **They** overheard him because he
2 is a little more careful. And he gives a graphic
3 description of the explosion to John White. But
4 what really nails Mr. Sheppard is the vandalized
5 bulldozer about two months prior. He tells John
6 White about pouring something into the
7 transmission of a bulldozer. And, sure enough,
8 that's is what happened. That's what, his
9 nickname was Archie, came on to talk about. He
10 says you pour dirt down there and it's easy to
11 get. There is no lock with a cap, there is no cap
12 to get to those dozers. Why say something about
13 that if you didn't do it, if you hadn't been down
14 there at that site.

15 Then it is obvious what he is telling
16 John White is the truth. This goes back to what I
17 was talking about, corroboration. He is not just
18 a convicted felon up here to tell you what someone
19 told him. It was checked into and, yeah, what you
20 were told is true.

21 And this thing about transit, yes, there
22 were transits there. **They** drove by. He was
23 talking about stuff he wanted to steal.

24 Darlene Edwards, planning at the kitchen
25 table. Becky overhears this.

3776

1 But then Linda Mynhier, Linda doesn't
2 know Becky. Becky never went to the penitentiary
3 to see Linda. **They** didn't write one another.
4 Darlene is telling Linda and Becky overheard about
5 the plan. Again the corroboration, the
 repetition. "I killed six people".

7 Lisa Frederick overheard her when the
8 women were in the holding cell in Clay County.
9 And I put the date up there because two days later
10 this shows it was eating on her and she saw the
11 jig was up. Then she wants to talk to the agents.
12 And then you heard the tape and you read along
13 with it.

14 What does she talk about? Everything we
15 have heard about in this case, gasoline, the gas
16 can, drove there. "I was one of the drivers".
17 She may not have been down there at the site.
18 That is why **they** needed the athletic strong men.
19 QuikTrip, where **they** got the gasoline. Early
20 morning hours. Then she is crying about
21 responsibility but she talks about setting the
22 fire as a diversion and about the motive for going
23 there to steal something. Again we go back to the
24 setting the fire for a diversion in the guards'
25 pickup truck which the inside was doused with

3777

1 gasoline. And **they** are obviously in a hurry
2 whoever did it because **they** didn't go through what
3 was in the truck. As I said, these are inept
4 thieves. And then she, too, is caught up with the
5 alibi because Frank is at her house, boyfriend
6 girlfriend. And she needs that alibi. And she
7 talked about this with Bridgette Dornhoffer. Then
8 she talks about driving with Rosemary Quiroz,
9 Bridgette Dornhoffer. And it is in the taped
10 statement. And that corroborates those women in
11 the penitentiary she is talking to. Again, we
12 just don't put them on in their jail outfit to
13 tell you what **they** think **they** heard. It is
14 corroborated. It does come out of her mouth.

15 And the fire as a diversion, we go back
16 to the fire as a diversion to Linda Mynhier and
17 Miss Dornhoffer and you heard it on the tape.

18 Bryan Sheppard, let's go to sightings.
19 He is seen by two people with defendant Richard
20 Brown prior to the explosion. **They** are out about
21 in these early morning hours. Go back to what Mr.
22 O'Connor says, "thieves, like cockroaches, come
23 out at night."

24 And, as I said, Miss Weaver and Mr.
25 Morales, **they** don't associate with one another.

3778

1 And **they** are there to steal. He makes these
2 admissions to those following people, talks about
3 **they** were there to steal.

4 Carrie Neighbors, a young person,
5 Steven Smith, a young man, Steve Morales, Brian
6 Atterbury when **they** are all in jail. Romans and
7 Atterbury don't know Carrie Neighbors. Pam Barth,
8 Fern Ayers, again the two older women, mature
9 grown people. Pam Barth overhears Richard Brown
10 is shooting his mouth off and Bryan doesn't stand
11 up and deny it.

12 Then he went to slam the trunk when Fern
13 Ayers is there and he talks about the construction
14 site. Again he mentions this earlier he is
15 feeling bad about it. But what he tells Karen
16 Baird, yes, I was there. We ran across the road.
17 Yes, I was scared. Be is there when it blows up,
18 setting the fire.

19 He made the following admissions about
20 being there when the fire was set and talking
21 about knowledge of a fire being set. Kevin Smith,
22 Wesley Romans, Brian Studna, Carrie Neighbors and
23 Pam Barth.

24 And he talks about trailers to Mr.
25 Morales. When he is there in the county jail, we

3779

1 hid behind trailers. So he is talking about
2 trailers, not trailer, trailers there at the
3 construction site.

4 And he talks about seeing the guards.
5 And he says that to Mr. Morales and Shannon
6 Newcomb. Again Shannon Newcomb at the time was a
7 young impressionable girl out there in the street
8 with these two at a party.

9 Morales is a mature man in the county
10 jail. **They** don't know one another. He is saying
11 the same thing to both of them.

12 It goes back to what I am talking about, I
13 repetition and who you are saying it to.

14 And he is with Richard, his buddy, when
15 these admissions are made. And when Richard is
16 shooting off his mouth, with the exception of one
17 time with Kim Finch, Bryan didn't say I wasn't
18 there. He is saying "Shut up", just like Frank
19 was saying. Maybe he took the lead from Frank,
20 "Shut up about this."

21 And then he is with the two girls out in
22 the street at the party. Maybe that is the most
23 telling of what is going on with these two. And
24 **they**'re laughing and joking, even got so fact
25 specific **they** are talking about, remember the

~ 1

1 hair, **they** thought one of us had long hair.
2 Thought one of us was a girl because back then
3 Richard Brown had very long hair. Corroboration.
4 Repetition. Why say these things if it didn't
5 happen.

6 Richard Brown, he, too, is seen that
7 morning with Bryan Sheppard -- again the same two
8 people, two people who don't know one another and
9 **they** give about the same time lines when **they** saw
10 him as you saw from the maps, these areas are
11 close together.

12 Then we have the old black Ford pickup
13 that is seen with Nancy Romi, Frank Gile. That is
14 what he had back there, a beat-up old black pickup
15 truck. Tom Butner says the same thing. Pam Harth
16 says the same thing. Steve Caudill says the same
17 thing. He had an old beat-up black pickup truck
18 back then, at the time of the fire. What does she
19 see coming down from the construction by her house
20 toward grandma's -- that old black pickup truck.
21 Proud of it.

22 As I said, this is what is unique to Mr.
23 Brown. He is proud of it. After all, maybe **they**
24 gave into this thing when **they** started bragging or
25 boasting a concession that he did say these

3781

1 things. And a weak argument he is just bragging
2 about it which goes back to common sense and what
3 is in your heart or hearts, you don't brag about
4 something like this. I

5 Goes up to Monica Maggard's boyfriend at
6 the time and puts his arm around him and Monica I
7 Maggard overhears, hours after the explosion and
8 says, "Well, you heard that big explosion, we did
9 that".

10 To Amy Pederson who doesn't know Monica
11 Maggard, Amy Pederson is a young girl back then,
12 what, 14 or 15, and she is sitting along with
13 Richard Brown. Now to Amy he doesn't talk about
14 gasoline and a fire. He talks about throwing
15 dynamite. What sounds a lot more impressionable,
16 yes, me and some other vandals splashed something
17 with gasoline and threw a match. I am not out
18 there with dynamite. I am blowing stuff up. The
19 thing, he is talking about, he is talking about
20 being responsible for the death of six men. And
21 apparently this is going on to impress this little
22 girl.

23 And Fern Ayers. Fern doesn't know
24 Monica Maggard. And Fern doesn't know Amy. Fern
25 Ayers is a mature woman. "Richard, you and I both

3782

1 know you did it." And Richard snickered. Richard
2 didn't say Fern, I wouldn't do anything like that.
3 Fern, I was at home in bed at Grandma and
4 Grandpa,=. No, he snickered. Corroboration.
5 Repetition. There to steal. Why were you there"
6 The same as the others. We were there to steal.

7 Again Frank Gile doesn't know Carrie
8 Neighbors. Steve Caudill doesn't know Pam Barth.
9 And **they** are talking to all these people. I was
10 there to steal at the site. To Amy Pederson, I
11 was at that construction site when I threw
12 dynamite underneath the truck to blow it up,
13 something like that.

14 Gasoline, he talks about gasoline.
15 Tells Frank Gile we were out of gas. And that is
16 the same thing in Darlene Edwards' statement, **they**
17 were out of gas. And he talks about gas.

18 Then Pam Barth overhears him talking
19 about throwing gasoline. Wallie Mills also
20 mentions this. **They** got it at the QuikTrip. Out
21 of gas, we got gas at the QuikTrip. And that is
22 what Darlene talks about, the QuikTrip.
23 Repetition. Corroboration.

24 Then he talks about the trailers. Says
25 to these three people, talks about trailers. Kim

3783

1 Finch overhears. Gets the prints off the trailer. F

2 One of the reasons **they** may have set it on fire.

3 I guess after a while you want to give

4 yourself a reason for doing something so stupid.

5 If we burn it that will burn our prints off of it.

6 Setting the fire, he talks about setting

7 a fire as a diversion, the pickup next to the

8 trailer, it may have been on fire. We don't know

9 because it was so decimated. Fire to cover up,

10 distraction, diversion.

11 Again, **they** are all saying the same

12 thing about these fires; distraction, diversion.

13 And he said to those two girls a fire was set to

14 cover up and Kim Finch says **they** are talking about

15 using it to burn off a lock but he is talking

16 about fire. And he talked about the trailers, the

17 same as the other people.

18 And then the alibi. Why do you need

19 grandma to alibi for you. Aren't you a big boy

20 now? You need grandma to alibi for you. And then

21 he has to argue about it. Be says to Carrie

22 Neighbors, yes, we were there to steal, laughing

23 about that. We were at grandma and grandpa's, we

24 were there to sleep. And he is arguing with

25 grandma about where he was, he is arguing with

3784

1 Wilma Romi, let's get this right. And he talked
2 several times. By this I mean this is back to
3 repetition. He didn't just say it once to Frank
4 Gile. **They** had several conversations, to Steve
5 Butner several conversations, Steve Caudill
6 several conversations. And even gave the address
7 when it happened because his statement to the
8 police was in 1989 and at first, he was like I
9 didn't know what I had was evidence. I wasn't
10 even sure I believed it then. Suddenly Caudill
11 finds him as one of the 50 others who heard these
12 people shooting off their mouths about this and he ;
13 is with Bryan Sheppard when he makes admissions.
14 These two are together before the fire. These two
15 are together after the fire. And these two are
16 together when **they** are shooting off their mouths.
17 Repetition.

18 Then after the explosion, Rim Archer
19 hears his voice. Karen Baird sees him. Kathy
20 Marburger hears him.

21 And then some more comments and actions
22 by people who are guilty. Guilty people would do
23 these things. You can't prove it. Comments and
24 actions in January of '89. Richard Brown to Cindy
25 Butner, "The police think **they** are so smart but

1 1 **they** will never catch us." Why say that? Think.
2 1 Why say that, "The police will never catch us."
3 1 Apparently you did something for them to catch.
4 1 Why talk about this to someone. It goes back to
5 1 what I said at the start, in your heart of hearts
6 1 who in their right mind would want to say **they** did
7 this unless **they** did do it.

8 1 And in the spring of 1989 Frank Sheppard
9 and Darlene Edwards, in the presence of Tracy
10 1 Cauthon, **they** are talking, let's get our stories
11 straight before the grand jury. And then later on
12 1 Frank threatens Tracy Cauthon, but he is there to
13 hear him talk about it. Why do you need to get
14 your stories straight unless you did it.

15 And then the alibi. Baird, "Don't you
16 remember you saw us after the first explosion. We
17 all met." Baird knows what he saw and Baird knows
18 1 what he is going to do. He is not going to be
19 intimidated to change anything. But why bother
20 him with this. You did it -- that's why.

21 I Then Bryan Sheppard to Kevin Smith at
22 Minor Park. "**They** couldn't prove it. Didn't have
23 enough evidence." Not, "I didn't do it, Kevin and
24 I am really mad about even being in jail about
25 that." Not that. "Didn't have the evidence; **they**

1 couldn't prove it."

2 And Skip Sheppard says to Michael
3 Whitelaw at the Dismas House, "Went to the
4 construction site but **they** couldn't pin it on us.
5 Couldn't pin it on us." Not, no, we wouldn't do
6 anything so horrible. Sure wouldn't be proud of
7 it. No, "Couldn't pin it on us."

8 And then Darlene Edwards to Bridgette
9 Dornhoffer names Baird in her alibi. So **they**
10 can't prove it. She is talking about the alibi.

11 Is the government's case evidence beyond
12 a reasonable doubt, proof beyond a reasonable
13 doubt? Fifty different people heard 65 admissions
14 -- 65 admissions by these defendants and their
15 guilt.

16 Frank Sheppard, you heard 16 admissions
17 from these 50 people. Earl Sheppard, 11 admission
18 that he made. Darlene Edwards, 10; Bryan
19 Sheppard, 13 and Richard Brown, 15 admissions.
20 Not just one or two, not to the same persons, not
21 to Mr. Morales but to different people, different
22 walks all around that neighborhood -- all around
23 ~ that neighborhood.

24 And if I leave you with anything I want
25 to leave you with this, repetition. And what is

3787

1 it repetition about? It is about the destroying
2 six families and in your heart of hearts if you
3 had nothing to do with that, that is something you
4 don't talk about. And you sure don't talk about
5 it over the years. And if you are a grown man,
6 like the defendant brothers, the Sheppard
7 brothers, and a grown woman like Darlene Edwards,
8 you are sure not going to joke about it; you are
9 going to feel bad. But Darlene on tape crying two
10 days after she is in jail, the pony is up as **they**
11 say, she stops short because she is right there
12 taking them to the site, right there at the site
13 with the gas can, with the gasoline. And it goes
14 back to the physical evidence as the defendants
15 said, it was a set fire, it was the easiest way to
16 do it, as the defendants kept talking about, with
17 gasoline. And you can see those trailers on fire.

18 Ladies and gentlemen, it happened.
19 There is no sense arguing about the scientific
20 issues in this case. It happened.

21 The firemen were there fighting a fire
22 that these men set and **they** died for it. You just
23 don't talk about that unless you did it. This is
24 proof beyond a reasonable doubt.

25 The government's case is people, and a

3788

1 lot of people, because **they** heard a lot. And it
2 is corroboration. And there might be one or two
3 things where one witness doesn't exactly concur
4 with another but, if anything, that shows there is
5 no orchestration here by the government. No, this
6 is what you are going to say. That didn't happen.

7 Amy Pederson was up there saying
8 something almost totally different than what Frank
9 Gile told you, just to pick out two people. But
10 the bottom line is I was there, Richard Brown was
11 telling them I was involved -- Richard Brown was
12 telling them. And I caused an explosion Richard
13 Brown is telling them.

14 You can take any of them, if you want to
15 believe one, two or three. Against Frank there is
16 13 admissions. It is just proof beyond a
17 reasonable doubt to you by people, people that you
18 heard, people who are now grown up, people who
19 were at one time threatened.

20 Look at that gas can. Of all the things
21 **they** find torn up there, **they** find a gas can. And
22 as Mr. McReynolds and Rick Brown said, we didn't
23 keep those things laying around loose, the
24 mechanic took them home. But **they** found a gas
25 can, heavier things than that were blown further

3789

1 away. And that gas can wasn't just stepped on or
2 backed over. It goes back to what **they** did.
3 Maybe that is just one piece of the physical
4 evidence that corroborates what **they** are all
5 talking about with gasoline.

6 It is time now to do the right thing, to
7 find these people guilty for what **they** did. And
8 50 people hearing 65 admissions aren't all
9 mistaken and **they** aren't all lying. And when you
10 sit down, cross reference them, **they** are talking
11 about the same thing these people keep talking
12 about, the gasoline, the QuikTrip, that night what
13 **they** are there to steal, the dynamite. It is all
14 out there.

15 I am confident you will do the right
16 thing. It is proof beyond a reasonable doubt. it
17 is proof beyond all doubt.

18 Thank you very much.

19 THE COURT: Ladies and gentlemen, we will
20 break for lunch. I will ask you to please try to get
21 back into the jury room after your lunch by one
22 o'clock. In the meantime it becomes especially
23 important for you not to discuss the case or listen to
24 anyone talking about the case. And that is very
25 difficult as you are coming and going during this lunch

3790

1 hour. There are a lot of folks here and **they** want to
2 talk, not to you necessarily but **they** want to talk.
3 And I am instructing the people in the courtroom not to
4 talk about the case or about the argument or about the
5 evidence until you have left the courthouse because
6 there are too many opportunities for you to have
7 contact with these folks that are on the jury. So with
8 that admonition be back at one o'clock.

9 (The jury leaves the courtroom.)

10 MR. OSGOOD: I want to renew my motion for
11 a mistrial on the grounds the government has again
12 commented with failure of the defendants to testify.
13 You will recall **they** questioned witnesses on the
14 last day of trial to suggest we had some duty to
15 bring forward certain alibi witnesses.

16 In closing argument counsel stated "Why
17 do you need grandma to alibi; aren't you a big boy
18 now", inferring once again the defendant should
19 take the stand and give his own alibi in Griffin
20 vs. Alabama and we are entitled to a mistrial.

21 That is overruled.

22 RECESS

23 THE COURT: Okay, you may proceed, counsel.
24 You may proceed with your summations.

25 MR. PETERS: May it please the Court.

1

1 THE COURT: Mr. Peters.
2 CLOSING ARGUMENT ON BEHALF OF DEFENDANT FRANK SHEPPARD

3 MR. PETERS: Good afternoon, ladies and
4 gentlemen.

5 I would like to take this moment to
6 1 thank you all for your attention over the last six
7 weeks. And we know you have been taking notes and
8 paying close attention to a case that turned out
9 differently than what you would have expected.
10 1 The notes that you have taken are what you have to
11 rely on collectively in determining whether or not
12 these five people individually are guilty of the
13 crime that the government has charged.

14 Frank Sheppard was home asleep that
15 night -- Frank Sheppard was home asleep that
16 night.

17 Much of the delay we have had today has
18 been because the attorneys and the judge have been
19 working on instructions. And Judge Stevens has
20 read to you the instructions and you are going to
21 get to take them to your jury room. Those
22 instructions for you are your bible as jurors. I
23 am not going to skip the instructions. We are
24 going to talk about the instructions because each
25 of you took an oath to your God to follow the

1 instructions that Judge Stevens has given to you.
2 And those instructions, while many of them are
3 common sense, how to view the credibility of a
4 witness, some of them are peculiar to this case.
5 Our legal system of justice that we are talking
6 about is over 200 years old. When **they** founded
7 our country from many other parts of the world,
8 **they** were concerned about a jury system that would
9 be fair. In Scotland jurors are asked whether the
10 defendant is guilty or innocent or not proved.

11 Benjamin Franklin used the phrase we
12 often heard about, "It is better to let 100 guilty
13 people go free than one person to be wrongly
14 convicted."

15 And how has that translated into the
16 oath you have taken? The oath you have taken
17 requires you hold the government to the burden of
18 proof beyond a reasonable doubt. The oath that
19 you take has required you to view these statements
20 presuming Frank Sheppard is innocent. It is in
21 following these instructions and applying the
22 facts that you can render a fair and true verdict.

23 What are the instructions? The
24 instructions now before you, which is in your
25 packet, talks about some of the questions you,

~
1 1 yourself, have raised.

2 The indictment is not evidence. It
3 creates no inference the defendant has done
4 anything. It is what has brought us here today.
5 It is what has brought us here today.

6 As I told you at the beginning of the
7 case, an indictment is simply an accusation. Each
8 defendant is presumed to be innocent. And the
9 burden is on the government. By your oath and by
10 the instructions you can only find a defendant
11 guilty if you are convinced beyond a reasonable
12 doubt. And that is what this case is about,
13 reasonable doubt.

14 This instruction guides you further.
15 There is no burden upon any defendant to present
16 evidence to you to show that he is innocent. And
17 yet in this case what you have had is consistent -
18 - consistent testimony that Frank Sheppard always
19 was, always will be, at home at the time of the
20 explosion, at home before the explosion.

21 And after listening to the government's
22 opening statement and the hour of Mr. Miller's
23 closing statement, that is not refuted. That has
24 not been taken from you beyond a reasonable doubt.

25 ~ And now, eight years later, for the

1 first time a jury listening to the evidence will
2 stand up and say Mr. Sheppard is not guilty

3 Now, the next instruction is one that
4 1 guides you in your deliberations because it talks
5 about reasonable doubt. The government doesn't
6 have to overcome every possible doubt. But **they**
7 do have to prove each and every element beyond a
8 reasonable doubt. And what you are told, "A
9 reasonable doubt is a doubt based upon reason and
10 common sense." You get to use your common sense
11 in this case and not the mere possibility of
12 innocence. A reasonable doubt is the kind of
13 doubt that would make a reasonable person hesitate
14 to act. Proof beyond a reasonable doubt,
15 therefore, must be proof of such a convincing
16 character that a reasonable person would not
17 hesitate to rely and act upon it., '

18 Where was Frank Sheppard that night?
19 This is the instruction that will guide you.

20 I am going to talk to you about the
21 three components of the government's case and ask
22 you if **they** have proven to you each and every one
23 of you individually the guilt of my client beyond
24 a reasonable doubt.

25 We are going to talk about the Riggs.

~ 1

1 I And then we are going to talk about Frank
2 Sheppard, where he was and where **they** say he was.

3 I And, third, we are going to talk about
4 this arson, this fire that did not occur.

5 The Riggs -- the Riggs, Deborah Riggs
6 begins her testimony by telling that 15 minutes
7 before coming to court she advised the court in
8 her younger days when she was drinking she
9 committed insurance fraud. She ended her
10 testimony by telling you on the day after the
11 explosion she lied on three things to the police.
12 She lied about being at work that night. She lied
13 about her brother being up on the hill and not
14 asleep. And she lied about having a gun in her
15 car. The Riggs, **they** were the security guards
16 hired because someone was asleep. **They** were the
17 ones hired to be on the east side and the west
18 side of 71 highway.

19 And on November 29th, 1988 you were told
20 that inexplicably for the first time ever, **they**
21 left the site together. **They** abandoned the site.

22 Now, somebody else had been fired for
23 falling asleep and I would suggest, I think the
24 evidence suggests, that what is an authoritative
25 presence, somebody sleeping would have been

3796

1 better, but what **they** tell you, **they** left the
2 site. And how did **they** do it? **They** are sitting
3 at a location that is the most brightly-lit
4 location available. And you will remember this
5 testimony. **They** were at this location here
6 (indicating). **They** were at the location, you see
7 with the monitor, in the red truck. And you heard
8 the testimony about these clicking lights and you
9 can look at these exhibits, these clicking lights.
10 This is one here. And I have it slightly off.
11 Over there are the kind of lights you have at
12 Arrowhead Stadium. This place was illuminated so
13 much if you sat there you probably would get
14 sunburned. And from that location Deborah Riggs
15 tells you that she looks to the left down the road
16 into the darkness and sees two people and **they**
17 take off, the two people take off. And Deborah
18 Riggs tells you that at the time **they** left to go
19 find out where these people had gone, where these
20 two people who mysteriously matched the
21 description of Martindale and Billy Hardin, where
22 **they** had gone. And **they** pull out and **they** go down
23 the road shining their spotlight with their
24 authoritative presence. And **they** look for them
25 and **they** can't see them. These phantoms are not

3797

1 found. And at that moment these two security
2 guards hired to guard the site, leave the site.
3 And **they** go to QuikTrip. And what is going on,
4 according to the government, at this time? What
5 is going on at this time according to the evidence
6 that has been presented to us is that the gang
7 that couldn't shoot straight, consisting of two
8 people, three, maybe four, five, six, seven, eight
9 people are up on the hill watching as the guards
10 leave, from the darkness of the hill. **They** run
11 down to the pickup truck and **they** open the door of
12 the pickup truck. And in the pickup truck **they**
13 find a wallet, the key is in the ignition. And
14 this bad of thieves set fire to the pickup truck
15 under these lights. And then **they** run back up the
16 hill, because the purpose of this was to create a
17 diversion, a word unknown to these defendants, a
18 diversion to distract the guards who **they** had to
19 have just seen leave the site. But **they** make the
20 diversion and **they** go up and **they** go about,
21 according to the government, to the underground
22 bunker and opening it up and taking out the wooden
23 crate of dynamite that was stolen and going to the
24 trailer that was never broken into and entering it
25 and out of that taking concrete -- concrete, saws,

3798

1 blades, drill bits, acetylene torches. And **they**
2 did this, of course, because **they** had altogether
3 somehow gotten together and walked up to the site
4 in their car, ran up to the site in their truck,
5 had somehow gotten to the site to create this
6 diversion to steal this property that was never
7 stolen, while in the trailer that wasn't broken
8 into. Skip Sheppard knocked over a lantern that
9 caught the trailer on fire which never happened.
10 And after discovering **they** got all the loot, but
11 there wasn't anything there, **they** decided to set
12 fire to the trailer to burn off their fingerprints
13 from that locks that were not found which had not
14 been damaged, which had not been burnt. And after
15 completing all of this **they** then set fire to a
16 trailer. But I am out of time because the Riggs
17 are already back. That is how short a time the
18 Riggs were gone.

I

19 MR. BECKER: May we approach.

20 THE COURT: Come up.

21 (Proceedings out of the hearing of the jury.)

22 MR. BECKER: Counsel jumping up with
23 a stop watch with no reference to what the hell
24 time he is talking about is an impermissible
25 argument and a cheap trick.

1
1 THE COURT: Yes, it won't do. No stop
2 watches.

3 (Proceedings in the hearing of the jury.)

4 1 THE COURT: You can disregard the reference
5 to the stop watch.

6 MR. PETERS: Mr. Riggs told you that **they**
7 were gone for four or five minutes. And in that length
8 of time from start to finish you must keep in mind that
9 other things had to have gone on because when **they**
10 were told at the QuikTrip by the woman that the
11 equipment was on fire, she had already driven past the
12 truck which was on fire and gone to the QuikTrip. So
13 you are talking about a matter of moments before
14 whoever it was, if it was for a diversion, ran across
15 71 highway and ignited the truck. Did it happen?

16 One of the instructions the Judge has
17 given you has told you that you can use deduction,
18 you can use what Sherlock Holmes called, "It's
19 deduction, Mr. Watson." You can do that to ;
20 determine whether or not the facts are consistent.

21 The Judge gave you the example of the
22 Chiefs played Monday night football. You can
23 deduct the lights were on. When Debbie Riggs came
24 back what did we hear on the transmission? The
25 explosives are on fire. She couldn't see the

3800

1 trailer. She didn't see the trailer on fire. She
2 is on 71 highway with a wood pile up there. Why
3 did she say the explosives were on fire? You can
4 use your deductive reasoning to begin to see that
5 something isn't right with this picture.

6 The next thing that we are told is that
7 six experienced firemen come to this scene. When
8 the alarm bells go off these men don't know if
9 **they** are going to be asked to pull somebody out of
10 a burning building, if **they** are again going to be
11 asked to risk their lives for us in this
12 community. And these experienced firemen show up
13 at the scene and you get to use your deductive
14 reasoning to decide whether or not, as Deborah
15 Riggs told you under oath, she told four or five j
16 of these firemen on two or three occasions that
17 there was ammonium nitrate, diesel fuel and
18 fertilizer in there. There is no transmission of
19 it. Everyone that Deborah Riggs claims to have
20 told isn't here to refute her. But you heard the
21 testimony of Chief German, he ever heard those
22 words. Had he heard those words, or had any of
23 these six firemen heard those words, it would be
24 on the transmission.

25 Deborah Riggs, the testimony is, was

~
1 laid off from Ford. She gave birth in January. A
2 reasonable inference from what you have been
3 presented, something isn't right with this
4 1 testimony, something isn't fitting with this
5 testimony from the Riggs. You know **they** lied to
6 the police. What else did **they** lie about -
7 Frank Sheppard.

8 The evidence tells you these firemen
9 were not warned before **they** went up there. The
10 investigator hired by the attorney working for the
11 insurance company that worked for Mains shows you
12 a placard and could not say it wasn't on the
13 trailer. These firemen were not warned. These
14 firemen did not see EXPL0 on the side of the
15 trailer or a placard. And in evidence before you
16 in Government's Exhibit No. 11 are these trailers.
17 You see the placards. You see them turned down.
18 These firemen were not warned. But Frank Sheppard
19 is going around saying these firemen are stupid.
20 Where did he get that? You heard the testimony.
21 You heard the testimony of the Barchers that Frank
22 Sheppard who did not admit to being up there, did not
23 admit to setting the fire, told them he had talked to
24 two guards at the QuikTrip and **they** were on the hill
25 and **they** said that the firemen were stupid.

1 The fact is that you can hate my client,
2 ~ you can hate the type of person that he is, but
3 you must base your decision on the facts of this
4 case.

5 The government includes the Barchers in
6 the list of people he made admissions to, but you
7 heard their testimony under oath. "Did he tell you
8 he was there?" "No. n ~ Did he tell you he set the
9 fire?n nNO. n n Did he tell you where he heard this
10 information?" "From the two guards at the QuikTrip. n
11 "Who were those two guards?"

12 Frank Sheppard was home that night but
13 wait a minute. The government has presented
14 conflicting evidence. The government has presented
15 evidence that at the time of the explosion Frank
16 Sheppard was not here at Darlene's house but he was
17 at his house with Skip right after the first
18 explosion. But the government has presented the
19 evidence of Darlene Edwards.

20 Darlene Edwards says Frank was at home -
21 - Frank was at home. And incredibly as the
22 agents are interviewing her **they** ask her who is
23 your alibi, can Frank Sheppard vouch for you being
24 home at the time of the explosion. The government
25 asked and Frank can vouch for you being at ho _.

3803

1 Yeah and my neighbors can, too. Oh, but the
2 government's evidence is at the time of the
3 explosion Frank Sheppard was throwing a stick of
4 dynamite into the fire.

5 You heard the question asked by the
6 judge, that can't happen. But Frank Sheppard was
7 at home because Becky Edwards saw him right after
8 the second blast, he comes in with grass stains. I
9 And you have seen the yard. This man who has been
10 drinking, awakened by the blast, goes outside and
11 comes in with grass stains and saying something
12 that is undeniably the ring of truth, "Check the
13 thermostat. Something isn't right. Check the
14 thermostat" from eleven year old Becky Edwards.
15 But the government says, no, he wasn't there, he
16 was at the Four Acres Motel beyond the QuikTrip
17 being blown out of his shoes. But wait a minute,
18 But Bar Williams says he was home. Oh, but wait a
19 minute, he was up on the hill when it happened, on
20 that 200 foot cliff. Wait a minute, Carol
21 Williams says he was home.

22 Now Frank Sheppard has been home since
23 1988. And after eight years, for the first time
24 someone goes to interview Bar and Carol Williams.
25 ~ And this is where your deductive reasoning becomes

3804

1 important. Mr. Bar Williams testified I went
2 outside one time and when I went outside I talked
3 to Frank Sheppard. Carol Williams testified that
4 he went out two times. Now, are **they** lying -- are
5 **they** lying about this?

6 Any time we have a statement made by a
7 witness you are guided by the instructions. But
8 this is what goes on in your daily lives. When
9 you listen to somebody tell a story, you judge
10 their credibility. And that is what has to be
11 done in this case. And the Judge tells you some
12 people are going to remember things differently
13 and sometimes that is okay; sometimes it's not.

14 What **they** remembered differently was Bob
15 forgot he went out that first time. We know from
16 Becky Edwards that after the second explosion
17 Frank came in and didn't go out.

18 We know that Carol Williams said I never
19 saw Frank Sheppard. Do you remember the question
20 being asked, "Ma'am, that night weren't you
21 wearing your pajamas and your house coat?" "Yes,
22 I was. Yes, I was."

23 You have three people recollecting what
24 went on eight years before. But the facts don't
25 change that Frank Sheppard was home. And through

3805

1 deductive reasoning you know that he actually did
2 talk to them after the first explosion, not that
3 it matters.

4 Then this Frank Sheppard you heard so
5 much about goes up to the neighbors. And does he
6 threaten them? No.

7 What would any of us do when confronted
8 with somebody saying something different than our
9 memory, hey, don't you remember it this way. **They**
10 say no. And that's the end of the discussion.
11 But Becky Edwards tells you the thermostat "And I
12 heard my mom and Frank talking to both Bob and
13 Carol." Imagine after eight years having the
14 woman that you were asleep with vouch for you, her
15 daughter awakened after the second blast, saying
16 you were there, and the neighbors saying you were
17 there. And listening to a parade of witnesses
18 against Frank Sheppard whose statements, not one
19 matched another except for him being at home.

20 There are a lot of statements in this
21 case and the statements become important. The
22 statements become important when you view the
23 instructions and use your common sense. You may
24 consider the statement of each defendant There
25 are a lot of statements in this case. you can

1
1 consider it. You can consider it as little or as
2 much as you think. You can discuss what one
3 defendant said and wonder who the "**they**" was.

4 1 What this instruction tells you is there
5 are two questions that you have to ask of each
6 ~ person who says I heard Frank Sheppard or somebody
7 make a statement. And the first question is is
8 the statement believable?

9 In their opening statement the
10 1 government said there were no bloody gloves at
11 this scene. There was no physical evidence. Au
12 contraire, there was a wealth of evidence at the
13 scene in what was not taken, what was not there.

14 If somebody says **they** heard a defendant
15 talk about underground bunkers, how can you
16 believe that statement even if it was voiced by
17 Mother Theresa. The statement itself cannot be
18 believed beyond a reasonable doubt when it
19 1 contains a fundamental flaw. This is the sort of
20 stuff that you hear in rumors. We heard **they** were
21 1 looking for underground bunkers, dynamite and any
22 of the things you have heard.

23 Again for Frank Sheppard **they** have not
24 1 presented you with two witnesses who tell the same
25 ~ story other than the four witnesses who put him at

3807

1 home in bed drunk.

2 If the statement and only if the
3 statement is believable by you, if it contains
4 facts like Martindale's, for example, facts that
5 1 fit the crime, facts that you don't get out of the
6 1 rumor mill or the newspaper, only then do you go
7 1 to is the person believable.

8 The structure of a trial is unique in
9 that it is not a dialogue or conversation. You
10 remember Bridgette Dornhoffer, very, very
11 believable. Talks about all this stuff that
12 1 Darlene had said in prison -- very, believable.

13 You have read the letter. You know that
14 letter was submitted to the court and is a
15 1 forgery. And read the letter. Could this woman
16 create a tale and how would you have judged her
17 credibility as you watched her, had you known
18 about the letter beforehand.

19 There is a board game that talks about a
20 1 variety of things. Bridgette Dornhoffer lied. She
21 1 didn't misrepresent something innocently. She
22 1 lied. Go to jail. Go directly to jail. Do not
23 1 pass go. Do not collect \$50,000. Bridgette
24 1 Dornhoffer is one of these unworthy of belief.

25 Confabulation -- confabulation is a big

3808

1 word we are all familiar with. Mark Twain once
2 1 said, "As I get older I have more trouble
3 1 remembering the things that happened and it is
4 easier to remember the things that never did.
5 What is confabulation, what is the trick that
6 1 memory plays. It is where you try and fit in and
7 1 so that your memory is complete. You see a truck
8 1 going down the road and it is a dark truck and
9 that is what you really see. But your mind fills
10 in the blanks. Well, it was a dark truck. It was
11 going toward Richard Brown's house. It was a
12 black truck. Yeah, it was a black truck and it
13 1 was Richard Brown in the truck. These are things
14 1 we have all experienced at family gatherings where
15 1 somebody says I remember being bathed in the sink
16 as a child. I remember my grandparents' farm you
17 1 will hear them say and describe it in great
18 detail. And somebody else will say but **they** sold
19 1 the farm two years before you were born. This is
20 1 confabulation you are all aware of. You go to the
21 1 beauty shop and you overhear Mr. Smith and Mrs.
22 1 Johnson in the Howard Johnsons and you relate that
23 story and gaps are filled in and something is
24 created that was not there. It is something that
25 goes on over time. And, ladies and gentlemen,

3809

1 over time, we have had eight years. Many of these I
2 people were not intentionally lying. **They** were
3 saying to you what **they** believed **they** remembered.
4 And **they** can't filter out, none of us can filter
5 out the rumors we hear, the things that were told
6 by other people. And that is why you have to go
7 back with the first question and ask, is the
8 statement that you are told believable. Because
9 if the statement isn't believable, if it doesn't
10 fit the facts, it can't be relied upon by you to
11 find somebody guilty beyond a reasonable doubt.

12 Frank Sheppard wasn't there -- Frank
13 Sheppard wasn't there.

14 During the course of this trial together
15 we have learned about ANFO, ammonium nitrate, fuel
16 oil. Together we have probably had more than four
17 hours of training by the only expert called by the
18 government to prove to you that a fire caused
19 this. That expert told you that he had ever
20 investigated an ANFO fire. He had never
21 investigated a construction-related fire.
22 Sherlock Holmes says that it is a capital crime to
23 theorize before you have the data. If **they** rise
24 without all the data, you ignore the things that
25 are important and put too much emphasis on things

1 that are unimportant.

2 ~ My client was not there. But, more
3 importantly, the scientific evidence and
4 1 eyewitness testimony tells you that whoever did
5 this did not do it by fire.

6 Think about the testimony of Riggs and
7 German, the three eyewitnesses that actually saw
8 what was going on.

9 Deborah Riggs, "The trailer was not on
10 fire. It was glowing. It was like charcoal. I
11 did not see any fire. It was glowing."

12 Robert Riggs, "It was bright orange. I
13 could see rolls inside it. There was no fire. It
14 was very."

15 Chief German, "It was glowing. It was
16 radiating heat. I didn't see any fire other than
17 over the back of the trailer." And remember
18 Chief German couldn't see the second trailer. And
19 from the testimony you know what he is seeing is
20 what Debbie Riggs talked about 30 foot beyond the
21 1 trailer where this \$80,000 piece of equipment was.
22 1 There was no fire.

23 1 Who did their expert talk to to say
24 1 there was a fire? Bow would you start a trailer
25 ~ on fire? Did he determine it was fire proof as

3811

1 McReynolds talked about? Did he determine it was
2 vented? No. Did he know, as you do, it is two
3 piles of ammonium nitrate? And if you want to
have fun with deductive reasoning, get the sack
5 and think of how heavy it would be if, as their
6 expert said, it was loaded top to bottom, front to
7 back, 300,000 pounds. He made a capital mistake
8 in not looking at his data. He surmised that the
9 trailer fully loaded meant top to bottom, front to
10 back. He surmised it must have been a fire
11 although no witness said that.

12 And then the expert Cliff Lund tells you
13 that in theory if you have a fully loaded top to
14 bottom, front to back trailer that is set on fire
15 without a vent, in theory it can explode.

16 This theory was that if you took twelve
17 trailers out and you lit them on fire, one of them
18 might explode, all of them might explode. The
19 possibility then is from zero to one hundred
20 percent. Is that proof beyond a reasonable doubt?
21 It is not proof beyond a reasonable doubt when he
22 tells you that in the history of the United States
23 an ALTO trailer has never exploded.

24 The burden is on the government to prove
25 each element beyond a reasonable doubt. Frank

3812

1 Sheppard wasn't there but we have learned about
2 this together. **They** are asking you to believe,
3 without any confirmation, that this trailer
4 exploded immediately, in the history of the United
5 States. Is that something reasonable? Is that
6 proof beyond a reasonable doubt? Is there
7 evidence to support it? Their expert who says it
8 was arson, it was fire, yes, I agree you couldn't
9 start the trailer on fire with gasoline so you
10 pour five gallons of gasoline on the wheels. Did
11 you check the wheels? No. Why not? Because
12 everything was vaporized -- everything was
13 vaporized. And yet, four days later, Mr. Conyers
14 finds dual axles, eleven springs. And this is the
15 person that you are to rely on for your proof
16 beyond a reasonable doubt that whoever did this
17 did it by means of fire. There is no evidence of
18 that.

19 When you eliminate all of the
20 possibilities, you are left with the truth, no
21 matter how improbable it might be, this was not
22 set on fire.

23 There have been a couple of issues
24 raised during the trial about organized labor.
25 The defense did not investigate organized labor.

3813

1 The defense did not go on national TV and say
2 organized labor did this. We read to you parts of
3 the investigation, not La La Land, but the
4 investigation conducted by the government into
5 organized labor. Did organized labor do this?
6 Who knows? **They** investigated them for years. If
7 organized labor had set out on a \$200,000,000
8 project to send a message, you can draw upon your
9 own common experience and knowledge as to whether
10 or not **they** would succeed and whether or not **they**
11 would be caught. i

12 There are other pieces in this that have
13 to raise reasonable doubt. All the testimony
14 about people being up there. No testimony it was
15 our clients. But somebody was up there and one of
16 those somebodies had keys to the trailer and **they**
17 opened up trailer number one.

18 MR. BECKER: Objection. No evidence of this.

19 THE COURT: The jury will remember the
20 evidence. You certainly should not make reference to
21 anything of which there is no evidence, Mr. Peters.

22 MR. PETERS: You remember the testimony **they**
23 found the lock and the contractor said so I changed
24 the keys and the door to the trailer was open. This is
25 a trailer that if a band of thieves came up **they** would

3814

1 avoid because it smells like diesel oil. But somebody
2 with the key to unlock the lock opened that door. And
3 you heard the testimony that nothing was taken out.
4 Why do you break into a trailer if not to take
5 something out? I

6 There is another problem with the
7 governments theory. If you choose to ignore the
8 eyewitnesses who said the trailer was not on fire,
9 no billowing smoke from tires, no flames, if you
10 choose to ignore that against the instructions,
11 then we have a second trailer.

12 The only expert testimony is that to get
13 one of these to blow up, it has to be sealed with
14 fire. And the direct testimony from the two
15 firemen that risked their lives seeing if their
16 fellow firefighters were alive and the testimony
17 from German and testimony from the Riggs is that
18 the second trailer had broke in half and a roof
19 was off. This is not a fire that is contained,
20 that can create pressure which is the only theory
21 -- the only theory the government has advanced for
22 how this trailer alone in the United States could
23 blow up.

24 So if against the evidence on the first
25 trailer you reject that it was vented, you believe

3815

1 it was filled from top to bottom, front to back,
2 what about the second trailer? If you eliminate
3 all other possibilities, all you are left with is
4 the truth, no matter how improbable it might be.

5 The truth in this case is that whoever
6 did it did not do it by gasoline. And the
7 remainder about capital mistake to hypothesize
8 before you have data what was done in this case is
9 that the newspapers and everything else said
10 somebody set the trailer on fire. And that is
11 what the rumors started to say, gasoline was used.
12 And that is what the rumors say. And that is a
13 theme that goes throughout this trial, the
14 suggestiveness of the investigation leading to a
15 conclusion it is a fact.

16 The only testimony you have heard from
17 somebody who got all the facts right is
18 Martindale. Martindale, bless his heart, even got
19 the way to start a trailer on fire right. You
20 have got to have something that is going to burn a
21 while like straw and cardboard.

22 I would suggest to you, however, that
23 even Martindale could not be guilty of this
24 because the scientific evidence presented by the
25 government is that it couldn't happen.

3816

1 The standard for you is proof beyond a
2 reasonable doubt. At the conclusion of all of
3 this you will go to the jury room, select a
4 foreperson and begin to deliberate. And I ask
5 that by your verdict you say loudly three things.
6 That you reject the testimony of the Riggs that
7 these firemen were warned and went up there
8 blindly, reject that, reject that as against the
9 evidence, against the truth. Second, that after
10 eight years Frank Sheppard was at home as five
11 people tell you. And, third, that you give
12 guidance in any future investigation that however
13 this tragedy happened the scientific evidence does
14 not support beyond a reasonable doubt the
15 government's theory that this was done by a fire
16 set outside the trailer.

17 Thank you for your time and we look
18 forward to your verdict.

19 CLOSING ARGUMENT ON BEHALF OF DEFENDANT EARL SHEPPARD

20 MS. HUNT: Ladies and gentlemen, I would like
21 to join in with Mr. Peters and the government and thank
22 you for your attention in this case.

23 This case has been a terrible tragedy
24 and we are here to decide if my client, Skip
25 Sheppard, had any involvement in that tragedy.

3817

1 Your attention has been very important to us
2 because this is the most important event, this
3 trial is the most important event that ever took
4 place, has ever taken place in Skip Sheppard's
5 life. He is on trial for his freedom here and it
6 is a very important decision you people will be
7 making very shortly.

8 When you go to the jury room you will
9 take the instructions with you that Mr. Peters
10 just went over. I am not going to highlight any
11 particular instruction but look closely at the
12 reasonable doubt instruction. Look closely at the
13 government's evidence and think to yourselves,
14 using your common sense, would I hesitate to act
15 in my own affairs on this evidence? Would I
16 hesitate to act in effect on Skip Sheppard's life
17 on this evidence?

18 I prepared a chart. I will put the same
19 chart on this because it is fairly small. When
20 you go to the jury room and you think and discuss
21 and you talk to your fellow jurors about this
22 evidence, look at all the people, look at what
23 **they** testified to, the instructions, was their
24 statement believable, could **they** have really heard
25 what **they** said **they** heard? Were **they** in a

3818

1 position to hear? Does it contradict? Is it ;
2 anywhere near legally consistent. I

3 We have heard numerous witnesses,
4 discussed numerous witnesses, Skip Sheppard made a
5 statement to him or he was present when a
6 statement was made or I saw Skip Sheppard some
7 place that night. Look at the dates. Look at the
8 times. Look when these people make statements and
9 when **they** came forward with that information.

10 The first group of people that testified
11 are Bayliff, Ownby and Megan Williams. Remember
12 Doug Bayliff, he was the man who said he went to a
13 party sometime in August, sometime that summer of
14 '89, went to a party. Skip Sheppard was there
15 talking to another man that looked Mexican to him.
16 He doesn't know who that person is. Mr. Bayliff
17 couldn't remember and again had kind of two
18 stories where the party took place but he says it
19 took place.

20 Remember in September when he came
21 forward to the police. September of 1989 Bryan
22 Sheppard was in jail charged with this case.
23 Bryan Sheppard's name was on the news, in the
24 newspaper, on TV. The Sheppard name, everybody in
25 Marlborough at that time had heard of the Sheppard

3819

1 name. But Mr. Bayliff tells you he overheard this
2 conversation, he wasn't really talking to Mr.
3 Sheppard. He just heard Mr. Sheppard speak with
4 someone else. And he tells you that Mr. Sheppard
5 said something about seeing a shiny security guard
6 badge and hat and it made him run, it scared him.
7 The security guards were coming and he ran.

8 Now you remember the testimony of the
9 Riggs. **They** didn't wear security guard outfits.
10 **They** didn't have badges. **They** didn't wear hats.
11 **They** were not dressed in that attire.

12 Skip Sheppard could not have seen a
13 security guard like that up on the hill that night
14 because that did not exist.

15 Be also said Skip went there to steal
16 dynamite. He never said Skip admitted to him he
17 caused this explosion, never said that. His
18 girlfriend Tracy Ownby, was also there at the
19 party that night. She will tell you that she
20 didn't take part in this conversation. Doug, she
21 said, took part a little bit in the conversation
22 but all she did was overhear it.

23 Doug also told you he discussed at that
24 time the TIPS hotline reward was a thousand
25 dollars. And Doug told you he discussed that

3820

1 thousand dollar reward with Tracy, his girlfriend.
2 She denies that conversation ever took place. She
3 only heard bits and pieces of information because
4 **they** whispered, **they** talked in low tones of voice.

5 Megan, who is Tracy Ownby's best friend,
6 she was also at the party but she will tell you
7 she went to the bathroom with Tracy during part of
8 this conversation. She said she didn't hear much,
9 she couldn't hear much because **they** were again
10 talking in whispered tones.

11 She also told you that she used to run,
12 as she said, with people in Marlborough, used to
13 socialize with people in Marlborough. She said
14 she would be shocked if Skip Sheppard did anything
15 with Richard Brown because of the age difference.
16 Skip Sheppard in 1989 was a grown man. Richard
17 Brown was 17.

18 Mr. Bayliff also told you that this
19 explosion caused a lot of rumors in Marlborough.
20 A lot of people were talking about what happened.
21 And he said he and his friends would sit around
22 and talk about different scenarios, different
23 theories and **they** tried to figure out what
24 happened. He heard numerous rumors. And he
25 waited at least a month or more to come forward to

3821

1 the police. And he said the reward is what he is
2 talking about before he came forward.

3 Megan Williams tells you the police
4 officer that interviewed her -- and **they** were all
5 interviewed the very same day as you can see, the
6 very same day -- Detective Fraise told her during
7 her interview about the thousand dollar reward at
8 that time.

9 The next group of people is Lisa Landon,
10 Peggy Barchers and John Barchers. And you
11 remember Lisa Landon is John Barchers' sister so
12 Landon is her married name. She tells you about a
13 conversation that she overheard at the Sheppard
14 house at 7939, I believe it is, Hickman Mills
15 Drive. You have seen pictures of it. But a
16 conversation she overheard taking place between
17 Skip Sheppard and Frank Sheppard in the living
18 room with the TV blaring about two to three days
19 after the explosion. She was over there with her
20 mother for a dinner party. You all saw the video
21 of Mrs. Sheppard's house. You saw where her house
22 looked like then. It looks the same now. You all
23 saw a bed and a dresser in the dining room. I
24 don't think, looking at that, with your common
25 sense you can believe there was ever a diner party

3822

1 that occurred there. She overheard this ;
2 conversation and overheard them talking about the I
3 trailers just exploding and the TV was on.

4 You heard Mrs. Sheppard testify and tell
5 you that, yeah, Lisa Landon has been in my house.
6 She came to my house in about 1990, '91 and she
7 knocked on the front door and came in. And she
8 told me her mother, who was my best friend, was
9 dying and was in the hospital and was not expected
10 to live. And I quickly changed clothes, got my
11 purse and I left with her. She also said "I never
12 had any dinner party at my house. **They** never came
13 over for dinner. That did not occur that day."

14 Now the Barchers, Peggy and John, Mr.
15 Peters touched on them briefly and I won't go into
16 much more detail, but **they** said that Skip and his
17 sister and Frank were at their house. And **they**
18 said that **they** talked to him and **they** said we had
19 some damage from the explosion. Remember **they**
20 lived kind of behind the construction site on
21 Hillcrest, I think. And **they** said, in fact, the
22 gas lines in the neighborhood ruptured and **they**
23 had to leave their house while the gas company
24 repaired it. **They** were evacuated basically in
25 that neighborhood, that street. And **they** asked

3823

1 the Sheppards did you have damage. I know you
2 live not that far, your mother doesn't live that
3 far from the construction site. And that's when
4 Frank said, you know, I was out at the QuikTrip
5 and I heard these guards or I talked to these
6 security guards and that's when **they** told me what
7 happened.

8 What the Barchers testified to is what
9 Frank Sheppard related to them he heard from
10 someone else. And when asked, the Barchers, both
11 Peggy and John said no, **they** didn't tell me **they**
12 had set this fire; no, **they** didn't tell me **they**
13 blew this trailer up; no, **they** didn't even tell
14 them **they** were there that night. **They** just told
15 me what the talk in the neighborhood was.

16 Patty Smith. Patty Smith came in here
17 and told you she was Skip Sheppard's girlfriend
18 and she dated him for three weeks. And then she
19 said she was in error, it was more like six weeks.
20 And she told you she used to go around his house
21 and she heard numerous conversations, overheard
22 numerous conversations in the Sheppard house,
23 conversations by Mrs. Sheppard who testified and
24 told you, "I talked to Patty Smith. Yes, I talked
25 to her. Yes, she came to the house. Yes, she

3824

1 would pick Skip up and take him to cash a check.
2 And I would talk to her as I am talking to
3 anybody. No, I never pried, who are you dating.
4 Patty Smith tells you that Skip told her there was
5 dynamite buried underneath the Sheppard house.

6 Now the government tells you **they** have
7 corroborated that now because I showed you the
8 video of Mrs. Sheppard's house and I showed you
9 where in the closet there is a door in the floor
10 of the closet, a trap door, for lack of a better
11 word, and she pulled up and there is a crawl space
12 but I also viewed in that video the crawl space is
13 24 inches deep, two feet, it's like that.

14 You have all seen Skip Sheppard stand up
15 in this trial. You all know Skip Sheppard is over
16 six feet tall. Nobody corroborated Patty Smith's
17 statement he went down on his hands and knees and
18 buried in the rock of the crawl space dynamite.

19 Mrs. Sheppard also told you **they** have i
20 gotten in that crawl space before. Yes, **they** had
21 because **they** had water problems. Thought the
22 house was flooded. Is that where you bury
23 dynamite when there is water under the house and
24 it is two feet? I submit the government did not
25 corroborate that statement of Patty Smith.

3825

1 She also tells you that, look at the
2 chart, Patty Smith gave her statement on February
3 23, 1991, just one day after Lisa Landon and a
4 couple days before the Barchers came in. But she
5 also told you she called Detective Zinn in October
6 of 1990 to tell Detective Zinn Skip had beaten her
7 up and she wanted a police report and she did file
8 a police report. She told him I know things about
9 the Sheppards. I held that thought for five
10 years. She saw Unsolved Mysteries. She is mad at
11 Skip for beating her up and she went over to her
12 house, she came back. That is how afraid of him
13 she was. And he didn't want nothing else to do
14 with Patty Smith. That is why she came forward in
15 1995.

16 And, by the way, remember Steve Kilgore?
17 The government says **they** have corroborated Steve
18 Kilgore because you have seen the videotape of the
19 Sheppard's house, the room does extend off the
20 back. It is the kitchen of the house. There is
21 no separate little room back there. And he
22 testified there were walls and there was a door to
23 this room. And it was a small room that just had
24 the washer and dryer. You saw the videotape and
25 the washing machine was in the garage. It has

3826

1 always been in the garage. And the dryer is in
2 the kitchen. It has always been in the kitchen.
3 There is no small room. But what is even more
4 telling about Steve Kilgore is he told you that
5 when he had these conversations supposedly with my
6 client and his brother Frank, **they** told him a
7 security guard, he said Lamanske let them in. Be
8 knew this was going on and he turned a blind eye
9 and said come on in here and steal and I won't
10 tell anybody as long as I get a cut.

11 We brought you Kevin Lamanske and what
12 did he tell you? "I have never met these people.
13 I was a security guard. I worked that night and I
14 have never let anybody on that property to steal."

15 Mr. Kilgore tells you he saw all the
16 stuff that was stolen. Be saw radios. Be saw
17 jackhammers. I don't think he saw a transit but
18 he saw everything else. But what did the people
19 from the construction site tell you? "Nothing was
20 ever stolen." I submit you would hesitate to act
21 on what Steve Kilgore told you.

22 Now there are a couple more witnesses
23 that came, Carolee Ann Smith and Lonnie Joe Pugh
24 and **they** don't talk about any statements or
25 admissions by Skip. **They** talk about where he was.

- 3827

1 Carolee Ann Smith, the next-door neighbor of Mrs.
2 Sheppard's, lives right next door, did in ,88,
3 still does today. She says, "The first explosion
4 woke me up out of my bed. I got up. I looked
5 around. Looked out the windows. Saw the Sheppardl'
6 pickup truck pull in the driveway, four people get
7 out, walk from the truck around to the back door I
8 of the house, go in the house. Positive it was
9 Skip. Positive it was Frank. Two other people
10 with them. And she says I saw them and I know all
11 these people. I have met all these people before.
12 I have met them at the Sheppard house, but **they**'re
13 not these people. I don't know who these people
14 are. All I can tell you **they** are human beings.
15 Butshe also goes on to say, well, nobody left. I
16 kind of went back to look for a second and a
17 second explosion went off. I got up and looked
18 out again. Never saw a black pickup truck come by
19 that night and I never saw that pickup. In fact,
20 I never saw anybody leave that night.
21 Now, she knows this information right
22 after the explosion, November 29th of 1988. She
23 doesn't call the police. She doesn't even
24 respond.
25 And I think you will remember Agent

3828

1 True telling you about the signs along Highway 71
2 at one point, wanting information because **they** are
3 trying to solve this case. She lives right there.
4 She drives up and down that road. She never ~
5 called the police. She told a man, Randy Gibson I
6 believe was his name, when he came to her house,
7 he is the one that called the police, that called
8 Dave True. So she knows the information from '88
9 and she comes in and gives a statement finally
10 after someone else tells the police in July, '95.

11 Lonnie Joe Pugh says I heard the
12 explosion. I got up. First I looked out the
13 window. Didn't see anything. And I got up and I
14 came downstairs and I went outside. And he lives
15 right next door to Larry Baker. So I went
16 outside. I saw Larry Baker and I was talking to
17 him for a minute. And then a black pickup truck
18 pulled up. Three people in the truck. Doesn't
19 know who the people are. But he knows Skip and
20 saw Skip get out of the truck with a beer in his
21 hand.

22 You have seen the map. Mrs. Sheppard
23 lives up here. Larry Baker lives over here. Be
24 can't be two places at one time. Plus the black
25 pickup truck that contrasts with Nancy Romi who

3829

1 saw a black pickup truck going down Brooklyn at
2 the same time. So we have the black pickup truck
3 two different places.

4 We have Skip and he is also over here
5 according to what the government put on.

6 Now we also had testimony after the
7 indictment was returned from three people who are
8 incarcerated, Carl Nettles, Mike Whitelaw and John
9 White.

10 What did Mr. Nettles tell you? That
11 Skip Sheppard's mother is his alibi. Be said she
12 is going to come into this court and tell you he
13 was at home sleeping in her back room. You saw
14 the video of her house. She doesn't have a back
15 room. And I asked her when she was on the stand,
16 "Are you Skip's alibi?" "No, I am not." What
17 else did he tell you? Be said he saw Unsolved
18 Mysteries and called his lawyer because he wanted
19 a deal for his case. **They** hadn't got it yet but
20 he hopes he will get leniency. I submit the hope
21 the government might do something for you with
22 your sentence you have, that hope hanging out
23 there, **they** haven't said no yet as far as he is
24 concerned. And Skip told him **they** were stealing
25 generators, jackhammers.

3830

1 The government said **they** have
2 corroborated. What did **they** corroborate? The
3 corroboration on stealing. Everybody told you my
4 client stole items from the construction site.
5 The government doesn't corroborate because the
6 government's own evidence is nothing was ever
7 stolen.

8 Michael Whitelaw, remember he was the
9 guy that was in Dismas Rouse with Skip. And he
10 told you that Skip told him these things in May of
11 1995, around the summer of '95, July maybe, but he
12 didn't believe them. Be thought he was lying
13 because he told you everybody says that kind of
14 stuff in jail. That's common. Everybody says
15 that, I didn't believe it. But then he gets
16 sentenced and then he gets 25 years, a drug
17 conviction using a fireman and he gets a 25 year
18 sentence. And all of a sudden he comes forward.

19 We brought you Lisa Harrigan. Lisa
20 Harrigan told you Skip Sheppard, "I used drugs
21 with him." The government says she told you he
22 went out and stole stuff. But the government then
23 turns right around "but you can't believe Lisa
24 Harrigan." Which one is it? Do we believe her
25 when she says Skip stole stuff and stole items in

3831

1 the garage and not believe her when she says I was
2 home asleep with Skip. Just remember what she
3 said. She said "I went to bed with Skip Sheppard.
4 Re woke me up. She didn't say he smelled like
5 gasoline, didn't have dirt on him. Re woke her up
6 and said, "Did you hear that? What happened?"
7 The whole house was in a panic. Nobody knew what
8 happened. Everybody was agitated, wanted to know
9 and Skip was in bed with her. I submit if you go
10 to bed with your husband and you go to sleep with
11 them, are **they** there when you wake up.

12 The judge instructed you at the
13 beginning of the case. There was an instruction
14 on inferences of the evidence and the instruction
15 said and I have got it right here, "You may use
16 reason and common sense to draw inferences from
17 facts that have been established by the evidence.
18 And the example the court gave you, for example,
19 if a witness had testified the Chiefs played a
20 home game last Monday night, you reasonably may
21 infer Arrowhead Stadium was lighted last Monday
22 night. Ladies and gentlemen, if you go to bed
23 with your husband/wife, significant other, **they**
24 are there when you go to sleep, **they** wake you up,
25 **they** are still in bed, you may infer **they** were

3832

1 there all night. And remember, Lisa Harrigan told
2 you, "I thought I was going to testify for the
3 government. I talked to Dave True. I told him
4 this same story."

5 We brought you the truth. The truth
6 doesn't change. We are not afraid.

7 Patty Smith testified Skip knocked her
8 tooth out. **They** had a violent relationship. Re
9 used drugs. He is not on trial for using drugs.
10 He is not on trial for abusing women. Re is not
11 on trial for stealing anything. Re is on trial
12 for this case. And I think when you look at this
13 evidence, consider it all, apply the instructions
14 to it, would you hesitate to act on this evidence?
15 Would you hesitate in your own life to make a
16 decision? And I believe you would. We ask you to
17 return a verdict of not guilty.

18 Thank you.

19 CLOSING ARGUMENT ON BEHALF OF DARLENE EDWARDS

20 MR. BUNCH: Ladies and gentlemen of the
21 jury, I too want to thank you, as all counsel I
22 am sure, I thank you on behalf of Darlene Edwards
23 for your appearance here. It has been a long case
24 and it has been my observations that you have been
25 a very attentive and certainly neither a defendant

3833

1 nor the government can ask for anything more. And
2 so we do thank you very much.

3 I will not be here very long, 20
4 minutes. I am sure it is a difficult thing to pay
5 attention to us. It is hard enough to follow the
6 evidence, but to have six or seven lawyers get up
7 and talk is bound to be a little bit difficult for
8 you. I am sort of in the middle so as soon as I
9 quit, you can quit listening. But I think it is
10 important to recognize that the usual case is one
11 in which there is an investigation leading to a
12 conclusion. That is the way criminal cases are,
13 as a matter of fact, all cases, and investigating
14 leading to a conclusion; in other words, a result.
15 It is not the usual case where a conclusion is
16 reached and an investigation is conducted to
17 support the conclusion.

18 I submit to you that is the nature of
19 this case. If that is the case, if you have
20 already reached the result and a conclusion about
21 who did something and then you can conduct an ;
22 investigation to support that, there can be no
23 other conclusion, that has already been reached.
24 So you have no alternative if you proceed in that
25 manner to find anybody else and charge them

3834

1 because you have foregone that possibility but
2 having decided in advance who done it. And, of
3 course, it has to do with your job because if you
ignore the testimony that doesn't fit the
5 conclusion, then you have to find the persons not
6 guilty about who the conclusion was previously
7 reached. And that is what I will be asking you to
8 do.

9 First of all, since I made such a
10 profound or maybe outlandish statement, I ought to
11 have something to support that. And I believe
12 that I do.

13 Row did it come about? It came about
14 because the ATF and the Department of Organized
15 Labor Racketeering Section worked on this case for
16 years, many years, always investigating organized ;
17 labor. I make no suggestion nor reach any
18 presumption or draw any inference organized labor
19 had anything to do with this. But that is a fact.
20 For many years that is the people accused by the
21 government of having committed this atrocious
22 crime.

23 In 1994 you remember Special Agent
24 True's testimony, there was brought about again
25 because of a witness contact and interest, and I

3835

1 quote, in people in the Marlborough area, end
2 quote. As a result of this and moving along as
3 quickly without going into great detail, Unsolved ~
4 Mysteries is contacted, a \$50,000 reward was ~t
5 established. I don't see anything wrong with any
6 of that. So I am not suggesting that something is
7 improper about it.

8 Now it is to be remembered in 1989 Bryan
9 Sheppard was charged with this crime by the State
10 of Missouri, having been accused of the offense
11 of murder. And that case was dismissed by the State
12 of Missouri, presumably because the evidence was
13 insufficient after investigating to the conclusion
14 and not concluding and then investigating. But his
15 name was Sheppard and he lived in the Marlborough
16 area. And the Marlborough area by the testimony of
17 everybody was ripe with rumor with who done it. It
18 has a unique location to the site. It has a unique
19 constituency of people, presumably capable of being
20 thieves, low-lives and so forth. So it is kind of
21 a natural place to look if you want to reach some
22 sort of conclusion.

23 Now Unsolved Mysteries was filmed here
24 in Kansas City in late 1994. The reward posters
25 filled all the institutions in the State of Kansas

3836

1 and the State of Missouri; that is, in the ~
2 penitentiaries, seeking information and advising
3 about the reward.

4 You will remember the evidence in this
5 case most of the witnesses who testified here
6 began coming forward beginning in February of
7 1995.

8 Row did this affect Miss Edwards
9 who I represent? You will recall Special Agent True's
10 testimony in January, 1995 her stepson was recruited
11 to make a controlled substance, drug case against her.
12 This resulted in him meeting with her, them traveling
13 about various locations and procuring drugs. He is a
14 young man. She is an older woman. Presumably to feed
15 his habit, the use of drugs. He wasn't charged with
16 the offense. And when I asked Special Agent True
17 about that, of course, he said certainly not or no, he
18 was working for us.

19 So what happened in January of 1995, the
20 people in the Marlborough area are suspects or the
21 conclusion has been reached so we better set
22 somebody up to see if we can get them to tell us
23 about this.

24 Before Miss Edwards was ever charged on
25 the 17th day of February, 1995, she went to the

3837

1 ~ ATF headquarters and gave a statement about what
2 you have heard. She denied any involvement. She
3 denied any knowledge. After her denial, she was
4 1 arrested. After the denial she was arrested and
5 charged with the offense that she remains in
6 1 prison for today; that is, procuring drugs on
7 behalf of her stepson, Ronnie Williams.

8 Now even though she had been charged
9 1 with an offense and had given a statement denying
10 her involvement, she was told by Special Agent
11 True, and perhaps others, that you still have,
12 Miss Edwards, a window of opportunity; you still
13 ~ have a chance to get out of this thing if you will
14 tell us something about your involvement in the
15 1 firefighters case.

16 After two days in the county jail she
17 1 gave a statement that you have read and you have
18 heard here. And she said, and I paraphrase,
19 someone came to her house late at night, well
20 after midnight, and said **they** needed gas. She
21 1 knew them, of course. She got up, put on some
22 1 clothes. Got in her vehicle and drove the
23 1 someone, or someones, to the QuikTrip so **they**
24 could buy gas.

25 ~ Now she testified and you will recall

3838

1 she did remember where she was parked and so on.
2 She didn't go in the QuikTrip and buy the gas but
3 she waited while the gasoline was purchased by
4 whomever purchased it. **They** then, or one of them,
5 asked her to drive to the construction site. And
6 so she took off in route to where she thought
7 their car was parked because she had assumed **they**
8 were out of gas in the vehicle. Somebody talked
9 of a fire and didn't talk of a vehicle. So she
10 knew she was not taking somebody who had run out
11 of gas, some gas to the vehicle. She stopped, put them
12 out and drove home.

13 Now the government wants you to rely on
14 this and has presented evidence and it has been
15 argued strenuously by Mr. Miller, **they** want you to
16 believe this happened, that somebody came to her
17 house and asked her to drive them, to go to the
18 QuikTrip and after **they** got gas, haul them up to
19 the site. But **they** don't want you to believe that
20 she left. Why? Well, it is obvious, isn't it, if
21 what she told is the truth, she didn't have
22 anything to do with setting the fire, if there was
23 a fire set, or blowing anything up, if in fact it
24 was blown up by anybody.

25 Now she did not agree to participate in

3839

1 the crime. She didn't encourage anybody to
2 participate in the crime. And she didn't share in
3 any reward, if there is going to be any, if a
4 crime was committed. She said -- and I think it's
5 strenuously said and you have heard her, after
6 learning what **they** were going to do, 'I said get ~
7 out; I don't want a damn thing to do with it. I
8 Get out of here." And that's what she said.

9 Now you will recall the Martindale
10 confession, that is somebody that confessed to the
11 offense. This is a man who confessed to
12 committing the offense.

13 What you have, if believed, from Miss
14 Edwards is a statement that she made because of
15 being requested to haul somebody to get gas and
16 once believing there was going to be some offense
17 committed, "I don't want anything to do with this,
18 get out of here." And **they** got out with the gas
19 and she drove on.

20 The problem, that might not be the
21 truth either because if you believe the Riggs,
22 that can't be true. There is a fatal flaw in Miss
23 Edwards' statement if you believe the Riggs. Why
24 is that? Well, both of the Riggs said **they** were
25 parked on the west side of Highway 71 and could

3840

1 see both roads leading onto the site. Thus if
2 this was true, she would have had to have stopped
3 in plain view where **they** were sitting. Their only
4 purpose was to let nobody come onto the site. So
5 **they** parked in a particular location so **they** could see
6 if somebody was trying to. **They** could have seen
7 her stop, these two people get out with a gas can and
8 go on up on foot here, turn around. And **they** said
9 no-one drove onto the construction site that night,
10 period -- no-one. Didn't happen.

11 Of course, it happened after the blast.
12 I am not talking about the fire trucks and so
13 forth. No-one.

14 What happened? Deborah Riggs saw two
15 large men, not even in that area, and **they** drove
16 down there. **They** never located these men, if **they**
17 were men and if **they** were large and if you believe
18 it. But it couldn't have happened the way the
19 government wants you to believe she said it did if
20 you believe the Riggs.

21 You know, one of the things I have
22 learned about reasonable doubt, if there is
23 anything at all in the years I have been in the
24 courtroom is this. If you don't know, that is
25 reasonable doubt -- if you don't know who to

3841

1 believe, that is reasonable doubt.

2 Now it may have been a statement by a
3 desperate woman, Mrs. Edwards, trying to get out
4 through that window of opportunity, right. **They**
5 offered her a window of opportunity and she made a
6 statement. She may have been trying to get out of
7 the window. Isn't the government's case to a
8 large degree based upon desperate witnesses trying
9 to find a window of opportunity, out of the jail,
10 whatever you can get of the reward, what-have-you.
11 Isn't it fair to say that is the nature of many of
12 these witnesses, **they** are desperate people.

13 I don't need to repeat and I will try
14 not to but another thing that refutes and shows
15 the desperation of these witnesses is as clear as
16 the morning sun when it comes up, and it is all
17 this stuff that was stolen off of that site
18 beforehand, a transit, concrete saw, batteries,
19 acetylene torch, dynamite, tools and on and on and
20 on, valuable things.

21 I remember Mr. McReynolds, the foreman
22 for Mountain Plains; Rick Brown, vice president of
23 Brown Brothers Construction Company, no thefts
24 prior to the explosion, period, none, zero. These
25 are people that owned the stuff. The thing didn't

3842

1 happen. Desperate people.

2 You have got to make up something that
3 would sound pretty good and if **they**'re thieves,
4 which **they** have been characterized as being, then I
5 **they** ought to be up there thieving as Mr. Peters
6 told you. **They** ought to look in the truck, at
7 least a checkbook, wouldn't you think.

8 What about the witnesses then against
9 Miss Edwards? **They**, of course -- and I think it
10 would be natural for anybody to think about Becky
11 Edwards, her own daughter, eleven years old at the
12 time. And there were meetings at her house. She
13 didn't call it a meeting because it was kind of a
14 place where everybody came and the best I can
15 determine got drunk and took drugs and whatever
16 else **they** could do. **They** came uninvited. She
17 testified mom couldn't even get them out of the
18 house and sometime, maybe within a week of when
19 this happened, I think that went on, one of those
20 nights it went on. And there was some talk by a
21 couple of people and she named them, there was
22 stuff on this construction site you could get and
23 sell. One of the things was copper. And the
24 evidence is by people who were there there wasn't
25 any copper.

3843

1 Now the idea was concocted, these
2 grandiose schemes, as **they** were drinking and using
3 whatever popular drug of the day in an effort to
4 keep the party going. According to Becky, that is
5 what it was, one continuous party at her mother's
6 house.

7 I would remind you that Becky Edwards,
8 her own daughter, never said Mrs. Edwards said
9 anything, participated in any conversation with
10 anybody about anything, never heard anything for
11 that matter. But she did say that on the night of
12 the explosion when she got up, mom was in her
13 nightgown. "After everything calmed down, we went
14 back to bed and I slept with her because I was
15 scared."

16 Perhaps the most disturbing thing about
17 Becky Edwards is the fact she has been interviewed
18 so many times by so many people asking so many
19 questions about things that she should have
20 refused that long ago when she was eleven and she,
21 quote, "I no longer know what the truth really
22 is And by saying that in no way is disparaging
23 young Becky Edwards. That is just what happened.

24 Shannon Reimers, she said she came to
25 Darlene's house near daylight. Darlene and Frank

3844

1 and Becky were awake and were dressed. You will
2 recall, will you not, that Becky Edwards never
3 testified she saw Mrs. Reimers come in there. She
4 never said that. And it was dark Mrs. Reimers
5 said. The house was dark.

6 You remember Mrs. Williams, the next
7 door neighbor. Mrs. Williams said it looked like
8 the twilight zone. There were no lights on in any
9 house. There was no-one on the street after the
10 explosion. So I don't suppose it was unusual for
11 the lights to be off if, in fact, Miss Reimers
12 came there.

13 Another witness that said **they** saw
14 Shannon Reimers at another location in the morning 1
15 you will remember, not there at all. But perhaps
16 most telling if someone is to rely on Becky
17 Edwards, she never testified she came there, would
18 be sitting there looking.

19 Gary Fugate. Mr. Fugate said he was a
20 methamphetamine purchaser. He went to Darlene's
21 house to do that and **they** were living in a tent
22 because it didn't have any electricity. Here is
23 the big time methamphetamine dealer selling high
24 priced dope living in a tent because **they** can't
25 pay their electric bill. Be was also a

3845

1 professional police informer and taken this on to
2 heal his soul from whatever ills he had from
3 taking this. The strange thing about it, he
4 didn't say anything about what happened until
5 1995. He was too busy informing on other folks
6 until he found out about the reward, is what I
7 suggest to you.

8 Now Mr. Denyer says Darlene was at the
QuikTrip when the explosion occurred, stuff flying
10 off the walls, coming down the ceiling. You
11 remember him.

12 Now if she said in her statement she was
13 driving up there, okay, and went home then before
14 the explosion and that didn't happen, if you j
15 believe she took these two guys up there -- and
16 the government wants you to believe I think that
17 she stayed. Well, she wasn't in the QuikTrip. So
18 if you don't know, that is reasonable doubt. You
19 can't just sort this stuff out the way the
20 government wants you to and put it in a little
21 category over here and leave the other holes that
22 don't fit that hole that tell you something
23 different.

24 Rosemary Quiroz, an interesting person,
25 saying that Darlene committed the crime. I

3846

1 suggest to you when you get in the jury room if
2 you wish, you ask for that exhibit of her so
3 called notes so you do see and remind yourselves
4 what actually is on there. But according to her,
5 Darlene was picked up and drove other people to
6 the QuikTrip to buy gas and dropped off at the
7 site and then somebody else drove home. And she
8 talked about all this stuff that was stolen and so
9 forth.

10 And, of course, if you believe the
11 Riggs, none of that could have happened. You
12 couldn't go up to the site if the Riggs were
13 watching.

14 Then there is Miss Dornhoffer which Mr.
15 Peters has addressed but she is a dandy. Among
16 other things, she said there were eight people
17 involved and **they** had meticulous plans. **They** were
18 so concerned about laying this out **they** moved from
19 house to house and during the course of moving
20 from house to house **they** planned the whole thing.

21 The government wants you to pick what
22 helps and ignore what doesn't. And I am saying to
23 you that means don't question the conclusion, even
24 if the evidence doesn't support it, don't question
25 the conclusion.

3847

1 We are here, ladies and gentlemen of the
2 jury, because of the genuine, genuine tragedy, the
3 death of six firefighters, fine men. We are not i
4 here to compound that tragedy by convicting
5 persons who are not responsible.

6 Thank you.

7 CLOSING ARGUMENT ON BEHALF OF DEFENDANT RICHARD BROWN

8 MR. OSGOOD: Good afternoon, ladies and
9 gentlemen. Mr. Bunch is an eloquent attorney and a
10 difficult act to follow, quite frankly. I echo his
11 comments and I don't think anybody could say any
12 better than he just did in terms of how this
13 investigation was result-oriented from the very
14 beginning.

15 I am going to take a little bit
16 different approach in my argument and try to
17 structure it. I have a number of witnesses I want
18 to talk about and I have only 30 minutes. And
19 rather than methodically go through each one of
20 those from the very beginning, I am going to kind
21 of divide my argument into five subcategories.

22 My first chart is categories of
23 witnesses and motives for testimony and I will
24 come back to that in a minute.

25 I will put a chart up about bragging and

3848

1 exaggeration because there has been a lot of talk
2 about bragging and exaggeration during the course
3 of at least the cross examination of witnesses on
4 behalf of Mr. Brown.

5 The third chart you are going to see is I
6 entitled Other Investigative Issues and in that
7 juncture of the argument I am going to talk a
8 little bit about some of the things that were
9 done, some of the things that weren't done, some
10 of the things that could have been done, some of
11 the things that should have been done. That will
12 probably go very quickly.

13 My fourth chart is entitled Richard
14 Brown's Whereabouts. And on this chart we will go
15 into some detail the witnesses who had something
16 to say, both from the government and defendants,
17 where Richard Brow was, starting early in the
18 evening, through the early evening and into the
19 morning hours and finally the next morning.

20 Now I want to caution you -- and the
21 court has already told you -- the defense does not
22 have to prove anything in this case. The burden
23 is on the government to prove the defendants
24 guilt beyond a reasonable doubt. If **they** don't do
25 that, you must acquit. So, to the extent we are

1 coming forward with evidence in this case, that is
2 I an additional piece of the pie that the defendant
3 has seen fit to add for your benefit. Be is not I
4 obligated to do so. In fact, if you carved out
5 what we presented and threw it away and were still
6 left without a case, you would obviously have to
7 acquit. But, anyway, we will talk about that in a
8 little bit when we get to that chart.

9 The final chart, the fifth chart, is,
10 for want of a better term, reasonable doubt. and
11 I will go through some of the items on that chart
12 and suggest to you, as Mr. Bunch did very
13 eloquently, what we believe, at least on behalf of
14 Mr. Brown, serious questions we do not know the
15 answers and to which, as Mr. Bunch says, there
16 must be reasonable doubt. We don't know the
17 answer. What greater doubt could there be if you
18 don't know the answer.

19 Very quickly this, to a certain extent,
20 is repetitive. Mr. Miller told you the categories
21 of the witnesses in this case against Mr. Brown do
22 not surprise anyone. There is the category that
23 say Richard Brown made an admission about his
24 involvement. This would be those situations where
25 Mr. Brown is either alone or with someone else and

1

3850

1 he makes a statement that I did this or I did that
2 or I was responsible for this or I know about
3 this, some involvement; words out of his mouth, in
4 other words.

5 The second category are those situations
6 where Richard was present when someone else made
7 some admission or made some statement. I use
8 admission simply because that is what the
9 government refers to these as.

10 Now the court has given you an
11 instruction on that and read the instruction when
12 you get them back there for the second category to
13 apply as a threshold matter the government must
14 convince you, again beyond a reasonable doubt,
15 that the party that is being used against could
16 hear what was being said, understood what was
17 being said and by virtue of their silence, ergo
18 goes the argument **they** took some part in the
19 conversation. There are a variety of scenarios in
20 situations where each and every one of you has
21 occasion, and I would ask you to reflect on this
22 in the jury room, been present when somebody else
23 perhaps said something and you either agreed with
24 it or disagreed with it. And in some of those
25 instances you probably piped up and said wait a

3851

1 minute stop, that is not what happened. Then
2 again there were situations where you just let it
3 slide; it didn't mean anything; you didn't care.
4 It was bragging or whatever and so you let it
5 slide. So that is the second category.

6 The third category we are going to talk
7 about are those witnesses that say Richard Brown
8 was at a certain location at a certain time
9 earlier in the evening. That is going to be the
10 subject of one of my charts. I sound like Ross
11 Perot up here with my charts. I saw what happened
12 to him. I hope you give me a better reception for
13 my charts.

14 The second major category here is
15 motives for testimony. And I put that up there
16 simply because I want you folks as we are talking
17 here to weave into my argument and rely on your
18 good memories and your collective wisdom the
19 reasons why some of these people as we talk about
20 their testimony, might be saying the things that
21 **they** are saying. And I came up with four
22 categories. And I bet you when you get back there
23 in the jury room and you get to talking about
24 this, you might even come up with even five, six
25 or seven categories. But these four jumped off

3852

1 the page so I put them on my chart.

2 A \$50,000 reward. Mr. Bunch has talked
3 about that. We know that was a moving force in
4 this case virtually from the time of the Unsolved
5 Mysteries episode.

6 My second category is the Unsolved
Mysteries episode in 1995 and all the things that
8 entailed.

9 The third one is we have witnesses who
10 are helping themselves or someone else in trouble
11 with the law. We have several of those that have
12 testified about Richard Brown. We will come back
13 to that in a little bit.

14 And finally there were a couple of
15 witnesses I think it was very apparent from cross
16 examination **they** were openly hostile to Richard
17 and that are, what we would call in the law,
18 biased against him. And you should look at their
19 testimony with considerable doubt and scrutinize
20 it very closely simply because these witnesses
21 from all indications have something to gain by
22 saying something bad about the defendant.

23 Now let's move on first to the bragging
24 and exaggeration. Mr. Miller suggested to you we
25 were going to stand up here and deny that Mr.

3853

1 Brown made all of these statements. I am not
2 foolish enough to get up here, ladies and
3 gentlemen, to tell you when a hundred witnesses
4 come in here and testify about things that were
5 said, that somewhere in the back of their mind,
6 many of them honestly believe eight years after
7 the-fact that something was said.

8 Now Mr. Peters talked to you about how
9 statements can be made and over a course of time
10 can change and be twisted. And as you will get
11 closer to the courtroom the statements, quite
12 frankly, we submit to you get better and get
13 stronger for several reasons, no less of which is
14 a prospect of a \$50,000 reward.

15 The trouble is we don't know originally
16 what was said or who said it but we do know back
17 in '89 when some of these things were said there
18 wasn't any rush to the police department. It was
19 after the investigation commenced, the result
20 orientated investigation, these statements take on
21 much greater significance. But the theme we
22 develop in the cross examination of some of these
23 witnesses is very important to us.

24 We, I think, have give you a picture of
25 the personality of Richard Brown. We are not up

1 here to tell you he is a nice guy. He is, by the
2 1 way, even among the witnesses, the only person I
3 think thus far in this courtroom without a felony
4 1 conviction other than the lawyers and spectators.
5 1 Mr. Brown has no felony convictions but he does
6 have a personality such he likes to talk and he
7 likes to talk all the time about anything and
8 everything.

9 Think about the testimony when you are
10 judging these things. The government now tells
11 you about admissions. Think of what context that
12 some of them were said in. And I am not standing
13 up here and telling you these were actually said
14 but in a worse case scenario, if the government is
15 correct and these witnesses' memories are
16 phenomenally good eight years after the fact,
17 think what else **they** told you. Shannon knew
18 Richard was bragging. Thinks of himself as a big ;
19 guy. He knows everybody in the neighborhood. She
20 didn't find his talk alarming. He's just being
21 Richard. Did she go out and report that? No.
22 How many of these young ladies did Richard flirt ~,
23 with or date? A whole bunch. Quite frankly, I
24 Richard Brown was a ladies' man in Marlborough.

25 The other thing Richard Brown is a tag

l

3855

1 along guy. Who is his buddy in this case if you
2 believe the government's evidence? It's Bryan
3 Sheppard. **They** were both at the time young men in
4 their teens. And like young men, **they** liked to
5 party a little bit. These two young men liked to
6 drink. **They** liked to chase girls, typical teenage
7 men in that respect.

8 What about Pam Barth? She didn't pay
9 attention to Richard because he always talked like
10 that.

11 Tom Butner, he bragged a lot to bring
12 attention to himself. Never took Richard serious.
13 Change versions and names different people.

14 Now let's back up for a minute. Shannon
15 Reimers, she was the lady that said Richard threw
16 something in the bed of the pickup truck, setting
17 it on fire. The other lawyers have already told
18 you the variety of scenarios the government claims
19 started this fire. She is the one that tells you
20 about being a bragger.

21 Let's go to Pam Barth first. Now she
22 asked about a reward. Incidentally he is the one
23 that, Richard said a Larry Morgan gave him a ride -
24 to the site. So there is a name we have never
25 heard before, Larry Morgan. Richard was saying we

3856

1 were up there and Larry Morgan. He doesn't say
2 what kind of car took him up.

3 What does Pam Barth say? I didn't pay
4 any attention to Richard because he always talked
5 like that.

6 Who is the next witness? Tom Butner, he
7 bought Richard's truck after the explosion.
8 Remember this guy. He is the one that suggested
9 Chuck Jennings might have been involved. He had
10 the customized Malibu Chevy. He was the fellow
11 that souped up his car so he could run from the
12 cops. He told you that Richard always bragged
13 about what he didn't do, things he didn't do. He
14 was always acting tough and making up stories.

15 Now the interesting thing, Tom Butner we
16 shouldn't lose sight of, Mr. Butner was also the
17 fellow **they** wired up and he went in against some
18 of his friends as an undercover informer and he
19 was getting a hundred bucks a pop.

20 MR. BECKER: That misstates -

21 MR. OSGOOD: He is right

22 That is another point, ladies and
23 gentlemen, when you are arguing these cases, a
24 lawyer tells you something and he makes a mistake,
25 we are not trying to snow you because I have a

3857

1 whole bunch of people that will catch me if I make
2 a mistake. It is not intentional and I apologize. I

3 One of the things you are going to get
4 when you go back, the arguments of counsel are not
5 evidence. You are to rely on your collective
6 wisdom and your recollections of the testimony.
7 If I tell you something up here and you have a
8 different recollection, talk about it among
9 yourselves. Don't reject it out of hand. But if
10 you remember it differently as an individual, talk
11 among yourselves. Now Osgood said this was said,
12 what do our notes show, what do we remember. You
13 will be amazed as a group the way you come up with
14 the actual, almost verbatim recollection of what
15 happened because that is the beauty of a jury
16 system.

17 At any rate, Butner said he appeared a
18 lot with Richard. Richard bragged about things he
19 didn't do. He tried to take credit for some.
20 Liked to bring attention to himself. And Richard
21 afterwards, he said he went up to the site with a
22 girl named Kelly.

23 So here we have Richard telling Mr.
24 Butner yet another version. He says I was up
25 there at the site and Belly Corrison was with me.

1
1 Ironically, Kelly Corrison comes in and testifies
2 1 against him in the trial and she gives yet another
3 ~ different version. So we have got Richard trying
4 1 to impress Mr. Butner, if you believe that this
5 was actually said. l

6 Wally Mills, he parties with Richard.
7 Said Richard was always bragging. He's the fellow
8 that says he saw flares over at Richard's house.
9 1 And what did Richard tell him **they** were? Well,
10 1 Richard is a big guy -- that's dynamite we got up
11 at the site. Wally Mills knew what **they** were.
12 **They** were red and yellow on the end. **They** were
13 red flares like you put out on the side of the
14 road but here is Richard taking credit for having
15 dynamite at his house.

16 1 What else did Wally Mills tell us?
17 1 Wally Mills is the young man who knew Richard for
18 1 three years. Lived with him. And he also lived
19 1 with Frank Gile. And Richard told him, Richard
20 1 admitted he and somebody else and Johnny Driver
21 1 drove Richard's truck to the site. So Mills is
22 the one telling us Richard said he went in his
23 1 truck. But Mills turns around, I didn't think
24 1 much about anything he told me because he is
25 ~ trying to convince me yellow flares are dynamite.

3859

1 The next guy, Brian Studna, Mr. Becker ;
2 corrected me on this, he said Richard was a
3 braggart and a liar. He called him a liar from
4 the stand, did not take him seriously. Brian
5 Studna is the fellow who does have the somewhat
6 colorful career with law enforcement. He runs
7 around and wires people up for a hundred dollars a
8 pop and was working undercover and worked on some
9 of his friends in the drug trade, tried to work
10 Richard on a drug case and didn't get anywhere.
11 He is the one I asked the question and it was an
12 opportunity to cover some points I think needed to
13 be made and probably will come in on one of my
14 other charts.

15 Brian Studna told you what? He told you
16 one of the things that law enforcement did and
17 **they** did with him, **they** put a wire on him. He
18 described for you the method of doing an
19 undercover investigation. You get on the
20 telephone. You hook a tape recorder up to the
21 telephone. The government has got this stuff.
22 Call a person on the phone and you have a
23 conversation. You remember the other day we were
24 out at the park and you talked to them a little
25 bit and you drag out the admission. And then it

3860

1 is on tape and then you bring the tape into the
2 courtroom and play it. You also put a body pack I
3 recorder on people to do an investigation. Mr.
4 Studna talked about that, how you wear the thing
5 outside. You have a little microphone that sticks
6 up and you go meet the person and you get
7 information from them if you think it is a viable
8 method of investigation.

9 Did **they** do any of that in this case
10 with one single witness? Think about that. One
11 hundred witnesses **they** claim or so or 80, whatever
12 it is, **they** claim are able to tell you things that
13 these defendants said **they** did from 1995 forward.
14 Take a single one of these witnesses and do
15 something as simple as have Agent True, the
16 trained investigator, get a tape recorder and a
17 telephone and get that person in the office and
18 say call this individual and confirm what was said
19 on tape. **They** didn't do it in '89. And **they**
20 doggone sure didn't do it in '95 when all these
21 people started coming in with dollar signs in
22 their eyes saying he said this, he said that, he
23 made these admissions. **They** could have done that
24 and **they** could have played these tapes in here and
25 we would really know what Richard Brown said. At

1 this point we don't know what he said. We are
2 relying on recollections fueled by dollar signs in
3 part, fueled by other motives we have discussed.

4 What about Kelly Corrison? She is the
5 one Richard at one point had on the site with him.
6 She testified Richard said he could sell dynamite
7 out of the country for large amounts of money. I
8 asked her about that. She laughed. This was, by
9 the way, this was the young lady I asked her a
10 couple of questions and she asked please don't
11 holler at me. As you can see, I have a tendency
12 to holler. I am trying to holler at you folks. I
13 am trying to make a point. I don't mean to offend
14 you. It is part of my personality. She did cry
15 on the stand. But the next thing she is laughing,
16 laughed on the stand when I asked her, he bragged
17 a lot. That was B.S. That was Richard.

18 We keep coming back to this, "That's
19 Richard", the guy that runs around with other
20 people and wants to be a big shot.

21 Now that may not be a very commendable
22 personality trait. Getting drunk and partying to
23 odd hours in the morning is not a very commendable
24 lifestyle but that is not a crime, ladies and
25 gentlemen. And as Mr. Bunch told you, you can't

3862

1 look for the results simply because you don't like
2 the personality of the defendant.

3 What did Kelly Corrriston otherwise have
4 to say? She was the one that was interviewed in
5 '89, about a year after being with Richard at
6 Richard's grandmother's house. She told the
7 detectives she could not remember anything and had
8 nothing to say. Four days later Detective Zinn
9 questioned her again. She had nothing to say,
10 couldn't remember anything. Her memory gets
11 decidedly better in February of 1996 after the
12 Unsolved Mysteries television show -- \$50,000
13 offered as a reward. She and her dad go down and
14 talk to Agent True. There is an example of one of
15 the other categories we are talking about.

16 Would you honestly put credibility in
17 what Mrs. Corriston is telling when she doesn't
18 remember anything near the time of the event that
19 the event is supposedly taking place. And yet,
20 several years later, after she sees Unsolved
21 Mysteries and hears about the \$50,000, she has a
22 phenomenal memory.

23 Kim Finch. I don't represent Bryan
24 Sheppard and Mr. O'Connor is going to get up here
25 and argue Bryan Sheppard's case for you. And from

3863

1 everything I have heard in this case if I were
2 arguing Bryan Sheppard's case, I would argue it
3 the same way I was arguing Richard's case.

4 This is not a case for the reasons Mr.
5 Bunch told you, the reasons I have just discussed,
6 and all the other things. But this is one of
7 these overheard conversations. Is Miss Finch
8 telling you the truth -- and I don't think she is
9 telling the truth -- all indications are she is
10 not. But what does she say Richard said? Richard
11 brags and lies all the time when drinking. She is
12 the one that told us **they** were at a party and
13 Bryan turned to Richard and told him "Quit running
14 your mouth. Shut up or I will bust you in the
15 mouth. Shut your mouth. You weren't even there."
16 I don't know how Bryan knows whether he was there
17 or wasn't there or not. But here we have a
18 defendant charged in this case telling another
19 defendant, "Shut up; you weren't even there. You
20 don't know what went on." This might not be that
21 significant if it were not for all these other
22 witnesses who constantly throughout this trial
23 said Richard Brown didn't know what the hell was
24 going on.

25 Think about it for a minute and not just

3864

1 these statements but also the various methods that
2 supposedly were used to accomplish the crime.

3 Now two other lawyers have already
4 discussed this at some length so I won't go over
5 it again. I know it is fresh in your mind. But
6 one person was telling dynamite was thrown under
7 the trailer and blew up. One person said gasoline
8 was thrown in the back of the pickup and set on
9 fire. One person is telling us somebody set I
10 explosives over there and set it on fire. We I
11 heard everything. There is not a ring of truth.

12 The only real common thread,
13 notwithstanding what Mr. Miller told you, the only
14 real common thread **they** have got in this case is
15 these witnesses did, in fact, say something about
16 the explosion and the site at some point in time.
17 Nothing else, contrary to what Mr. Miller tells
18 you fit into the pieces. I used to like in some
19 cases to talk about the old jigsaw puzzle example.
20 You get a jigsaw puzzle and you drop it out on the
21 table and throw all the pieces out. It means
22 nothing. Until you start putting the pieces
23 together and the picture develops, you don't know
24 unless you are lucky enough to look at the picture
25 on the box, you don't know what you are going to

3865

1 get until you are done solving the puzzle.

2 I submit to you in this case there are a
3 whole bunch of pieces missing from the jigsaw
4 puzzle that have never ever been found. And there
5 are pieces that just simply belong in another
6 jigsaw puzzle that aren't going to complete this
7 picture. That is another way of observing what
8 Mr. Bunch told you, if you don't know, it's
9 reasonable doubt.

10 Kim Finch. Rumors flew all over the
11 neighborhood. Biggest thing that ever hit the
12 area.

13 I am going to run on because we are
14 running out of time.

15 Other investigative techniques **they** have
16 used. Many police interviews conducted in 1989.
17 Re-interviews conducted in '94 and '95. We have
18 the Unsolved Mysteries program that publicized the
19 reward. The reward posters were displayed
20 everywhere, including in jails. No attempts to
21 use any witness in an undercover role we have
22 talked to about to verify this. And no physical
23 evidence linking any defendant in this case to
24 this scene, not one shred of physical evidence.

25 Again, contrary to what Mr. Miller told

3866

1 you, this crime occurred and was investigated by
2 numerous agencies. **They** could have kept many,
3 many, many pieces of physical evidence. **They**
4 chose not to do so. **They** have got an old can that
5 was probably left by a fisherman, a five gallon
6 can painted red. **They** have got a bottle I think
7 **they** tried, suggested had a wick in it but the
8 bottle actually had a piece of paper. Not a
9 single thing has a fingerprint. Not a single
10 piece of physical evidence. Not one shred of
11 physical evidence tying any defendant to this
12 crime.

13 The only evidence against Richard are
14 his own alleged admissions. There are numerous
15 inconsistencies the government simply cannot
16 reconcile and we have talked about those, folks.

17 Richard Brown -- I have to move quickly
18 -- Richard Brown's whereabouts, we have to go
19 through this kind of quickly.

20 We pick him up early in the evening.
21 The government wants you to believe that Richard
22 Brown, and probably some of these other ~
23 defendants, were all together. **They** abandoned I
24 their theory there was a planning session that
25 night. Becky Edwards just let them down cold on

3867

1 that. So **they** had the next best thing, **they** are
2 going to pick them up later in the evening.
3 Didn't get up there there was a planning session
4 and **they** all left together.

5 Where was Richard that night? We have
6 two witnesses who don't have felony convictions,
7 don't get reward money and aren't having charges
8 reduced against them. He tells he was at a card
9 game; it wasn't a party. He corrected me, not a
10 party, not a drunken soiree; it was a card game.
11 It was my day off. Worked at the 7-11. Bryan
12 Sheppard was not with him. He left with one of
13 the girls in his truck. He was there with four or
14 five guys. Janet Carpenter, the other sister,
15 while she can't corroborate or point when he left,
16 she corroborates he was there. She was drinking.
17 She was the one that told you Richard brought a
18 twelve pack. She passed out about 10:30. Richard
19 was still there.

20 Margaret Weaver sees Richard and Bryan
21 at 1:00 A.M. in Bryan's Monte Carlo. Does this
22 fit in with the two witnesses we absolutely know
23 probably are telling us where he was early in the
24 morning? The government spent a lot of time,
25 Richard was in his truck. **They** have one o'clock

3868

1 in Bryan's Monte Carlo. Steve Morales sees him at
2 two o'clock at 58th and Olive and **they**'re in an
3 orange or brown pickup with Tobor (phonetics) I
4 believe was the guy's name. That doesn't fit.

5 Carrie Neighbors, another government
6 witness, says that Bryan and Richard ran to
7 Richard's house and faked being asleep after the
8 blast. So are **they** in a Monte Carlo? Are **they** in
9 a brown or orange pickup? Are **they** running on
10 foot over to Richard's house faking being asleep?

11 These are the categories where he was at
12 that Mr. Bunch would tell you we don't know.
13 Reasonable doubt. We do know he was at Janet
14 Carpenter's until one.

15 What is the next witness? Nancy Romi
16 does not like the defendant. That is evidence
17 from the cross examination. She is the one that
18 told us she saw Richard's truck go by after the
19 first blast.

20 There is a lot of talk about trucks.
21 There was another dark-colored truck mentioned as
22 being over somewhere else by another witness who
23 says he saw a couple of other defendants but did
24 not recognize Richard. That was Mr. Lonnie Joe
25 Pugh.

3869

1 Nancy Romi. Her husband has custody of I
2 the children. She came in and testified, said she
3 heard nothing. **They** got out of bed at the same
4 time. Which one is telling us the correct story.
5 I suggest it's Tom Romi. But again it is a
6 question of reasonable doubt.

7 Linda Peek, the young lady who testified
8 she read about the indictment in the paper and
9 called me up on the phone and said I was surprised
10 to see Mr. Brown was indicted. She is the one who
11 said that after she gave a statement to my private
12 investigator, she told the private investigator
13 she saw Richard after the first blast out on the
14 front porch. Here she tried to remember and she
15 said she thought it was after the second blast.
16 Mr. Miller cross examined her with a prior
17 statement and brought out the fact what she said
18 when she called and talked to the investigator, it
19 was after the first blast on the front porch with
20 a girl and an older lady. Now Richard left with a
21 girl from the party. Richard is out on the porch
22 in his jeans. No shirt on. No shoes or socks on.
23 And then **they** took that little Polaroid picture
24 and blew it up on the machine. Though it was a
25 dark and poor picture, you could see right over to

3870

1 the house where she had a clear view and she
2 didn't even like him. She is the next-door
3 neighbor.

4 I have a chart on reasonable doubt and
5 it covers the things that basically I have already
6 covered. I appreciate your attention.

7 Again, if I have offended anybody on the
8 jury by my cross examination or my occasional
9 tendency to get loud, please don't hold it against
10 Mr. Brown. Mr. Brown's life is at stake here. He
11 is an innocent man. He was at home asleep when
12 this happened. He was awakened by everybody else.

13 MR. BECKER: Objection.

14 MR. OSGOOD: Well, he was asleep.

15 MR. BECKER: No evidence he was home.

16 THE COURT: That is true.

17 MR. OSGOOD: There is evidence that he was
18 seen moments after the first blast on his front
19 porch in his jeans with no shoes on and no shirt on by
20 a witness who had nothing to gain and had no felonies
21 and wasn't getting any reward.

22 Thank you, ladies and gentlemen.

23 THE COURT: We are going to take a five
24 minute recess. Please be in the jury room ready to
25 resume at 15 minutes after the hour. You may withdraw

3871

1 and don't discuss the case now.

2 RECESS

3 THE COURT:Mr. O'Connor.

4 MR. O'CONNOR: May it please the Court.

5 THE COURT:Yes.

6 CLOSING ARGUMENT ON BEHALF OF BRYAN SHEPPARD

7 MR. O'CONNOR: Mr. Becker, Mr. Miller
8 and members of the jury, I want to thank the court
9 and Bryan Sheppard for allowing me to be here to
10 represent him. And he may be a yahoo to Dan
11 Miller but he is a human being entitled to the
12 protection of the law that he is cloaked with here
13 today. And this law and these instructions that
14 will be given to you today are what you are to use
15 in following to determine the results in this
16 case. You are the determiner of the results of
17 this case.

18 There are two important principles in
19 this packet, but one of those is the burden of
20 proof. The government must prove the guilt of
21 Bryan Sheppard beyond a reasonable doubt. It is
22 the highest burden known to our system of justice.
23 It is a huge burden. And in order to take
24 someone's freedom the government has to prove
25 guilt beyond a reasonable doubt.

3872 1

1 And then **they** talk about the presumption t
2 of innocence. What does that presumption of I
3 innocence really mean? What it really means is we
4 know from history, history has taught us that
5 innocent people have been brought to sit in the
6 very chairs that these men now, and woman, occupy
7 today; that innocent people have been convicted
8 from these very chairs, giving days, years, some
9 of them their lives when it was later determined
10 the wrong people had been convicted.

11 So when we look at the evidence against
12 Bryan Sheppard I ask you to presume him innocent,
13 cloak him with the presumption of innocence.
14 Looking at the evidence through the eyes of the
15 presumption of innocence, I believe that evidence
16 will take on newer meaning as jurors in this case.
17 Because the government presumed him guilty, you
18 presume him innocent. You do as His Honor
19 instructed and look at this evidence through those
20 eyes.

21 And Mr. Becker told you in his opening
22 statement there were no eyewitnesses, there is no
23 physical evidence. Well, I disagree. And I
24 disagree with Mr. Miller when he gets up here and
25 tells you that Martindale said he did it. My

3873

1 colleagues have said Martindale said he did it.
2 Martindale, when he went down to the police
3 department, he said I didn't do it. **They** brought
4 him back and **they** said he did it. The police
5 told him he did it. The police told him that **they**
6 had witnesses who saw him there. The police told
7 him that his car was there. The police were
8 telling Martindale he did it.

9 Where are those people? Where are the
10 people that saw Martindale? Where are the people
11 that saw his car? Was his car there?

12 Is there a doubt about it? That is
13 reasonable doubt.

14 The police told him your car was there,
15 we have witnesses. And he boughed his head and he
16 looked up and he said I did it. And he confessed
17 and **they** put him in jail overnight and he thought
18 about it. He was facing a life sentence. The
19 next day he confessed again. What did he do?
20 What was so true about his confession? He called
21 his dad. Remember, "I called my dad and my dad
22 wouldn't have anything to do with me." I talked
23 to Billy Hardin, my friend, the only evidence from
24 the government -- the only evidence in the case.
25 **They** went out and talked to Billy Hardin, a

3874

1 codefendant. And he said, oh, I didn't do it.

2 Oh, that ends it.

3 How in the world can that end it? Who
4 are the witnesses the police said saw him? Where
5 are **they** and why weren't **they** put on? Why didn't
6 you hear that evidence? And what did Martindale
7 say? Be said there was cardboard. The police
8 didn't tell him that. Be said there was a
9 caterpillar. The police didn't tell him that. He
10 said there was a Bobcat. And we now have a uni
11 loader there before the explosion. Be told them
12 there was a creek. And there is the creek. And
13 he told them that there was a platform. And you
14 remember Collins said there were oil rigs on a
15 platform. Five things -- five things that Bryan
16 Sheppard never told anyone -- five things
17 undisputed at that scene.

18 After the police told him that he did
19 it, when he said he did it, he put the five things
20 there. And then he said I'm sorry, I did this and
21 it was a big weight off his shoulders. And if
22 Martindale isn't who **they** say he was, then why
23 didn't **they** bring him in here in this big search
24 for the truth? Why didn't **they** put Martindale on
25 the stand? Why did we have to call him?

3875

1 This is about a search for the truth.
2 Let's get all the witnesses here. Let's see what
3 happens. Let's shake it all out. Let's look at this
4 evidence against Bryan Sheppard. Let's look at it
5 through the eyes of the presumption of innocence
6 and let's look at some of their witnesses.

7 Glen Shepard, he is out in jail, a 13
8 time convicted felon. Be shows up at ATF. "I
9 know Bryan Sheppard and Bryan Sheppard has never
10 made any admissions. Two months later **they** took
11 him to a grand jury. **They** get him a lawyer and
12 **they** threatened him with a gun charge and he
13 changes his story.

14 Now Bryan Sheppard has confessed, and
15 you know what we are going to give you, Mr.
16 Shepard for that, we are going to give you five
17 years probation for that. Five years probation
18 because you changed your story. We now like your
19 changed story and for that we are going to give
20 you five years probation.

21 What happened to the story he told them
22 the first time? We are the government, the big
23 search for the truth. When Glen Shepard was on
24 the stand, did **they** ask, Mr. Shepard, you remember
25 telling Agent True about Bryan Sheppard not making

3876

1 admissions, can you explain that to us? No. We
2 had to ask it on cross examination. **They** didn't
3 want to ask him. **They** knew the answer. Bryan
4 Sheppard never made any admission to Glen
5 Shepard. But now, if he can get probation, 25
6 years and probation, a 13 time convicted felon,
7 yeah, you are the kind of witness we would like to
8 take people's freedom, come on, Bryan Sheppard,
9 let's take yours with that kind of evidence.

10 Steve Morales. Steve Morales has some
11 felony convictions, I believe. He is the guy who
12 was out there, remember, with Mr. Trammel.
13 Trammel was the guy who had the paper route.
14 Trammel was the guy **they** all knew about in their I
15 big search for the truth. **They** couldn't get
16 Trammel.

17 We brought him down and what did Trammel
18 say? Trammel said, no, we weren't in the same car
19 that night. Mr. Morales, do you recall what time
20 this was? 3:30, 3:15 that morning. Okay, where
21 did you go from there? We went down 85th Street,
22 picked up our papers there and come back up 85th and
23 went southbound on 71, 435 and to 89th and Holmes, did
24 both. And you and Mr. Trammel, left after you got your
25 papers in separate vehicles to do the route. Yes.

3877

1 Anddo you remember this morning one of the reasons you
2 remember this because you and Mr. Trammel were in the
3 same vehicle. Yes.
4 What did Trammel say? **They** were
5 neverin the same vehicle after **they** picked up the
6 papers.He had the van which was Trammel's van
7 and Trammel took the paperboys and went down 85th
8 Street.**They** wanted you to believe that he had
9 been going down where the site was to give you all
10 that testimony he gave you. And then he was kind
11 of the witness for everything. It just happened
12 before he ran his route he went up and he saw
13 Bryan Sheppard, Richard Brown and the Born
14 brothers. That is what he said in an affidavit
15 under the penalty of perjury to the ATF. But
16 then when he got to the grand jury, his memory got
17 better, kind of like Glen Shepard.
18 People's memories got better now.
19 Frank Sheppard was there. And then he tells the
20 grand jury all he told the ATF in an affidavit,
21 the truck out in front was the Sheppard
22 truck, an out-and-out lie.But he just got put on
23 probation. Be had been on probation for a couple
24 of months when he told this story. As we have
25 heard now he has some new forgery probation

3878

1 violation and it wouldn't hurt a guy like that to
2 fudge his testimony a little bit. And he was
3 willing to do so.

4 What else did he say? Be said he was
5 interested in a reward money in the sworn
6 affidavit, that was one of the things he
7 mentioned. And here he says he was not only out
8 and sees them that night, he not only drove by the
9 site and saw the construction but now ends up in
10 jail with Bryan Sheppard. Oh, yeah, by the way,
11 in jail he confessed to me. Here is a guy,
12 Morales, who is at the time of this supposedly
13 confession of Bryan Sheppard, is a trustee. Be is
14 out with the guard every day. He is in jail for a
15 related charge. Bryan Sheppard is in jail at the
16 time charged with the murder of the firemen. This
17 guy doesn't come forward after this statement
18 while **they** are in jail together, no. He comes
19 forward later, five years later when he is
20 interested in the reward and he's got probation
21 and he's got problems with the police. What does
22 he tell you the morning he saw the Born brothers
23 with Richard and Bryan, he was on his way to
24 Robert Dresnick's house. Where is Robert Dresnick
25 to verify that? Where is Robert Dresnick to

3879

1 verify Morales went by there.

2 In their investigation **they** didn't talk
3 to Dresnick. **They** knew **they** talked to him and
4 Trammel said he was a liar. And remember we
5 brought Trammel who said he was a liar. He is
6 wanting something. Now he has a charge in Jackson
7 County and Cass County and we know there were
8 conversations to help him with the bond. Would
9 you hesitate to act or rely on Trammel?

10 Then there is Travis Small, Travis Small
11 who is the guy under penalty of perjury signed an
12 affidavit in 1995. I do not know the Sheppards
13 except I have heard of Skip Sheppard but never met
14 him. I have never sold them marijuana or any
15 other dope. **They** have never told me anything
16 about the firemen because I have never met them.
17 under the penalty of perjury in February of '95 he
18 says that to the ATF. But, like Morales and
19 Shepard, he too had a change of heart. He too
20 changed his story. Wonder what caused him to
21 change his story? I wonder if it was this
22 indictment on August 5th, 1996 in which he and his
23 wife, who was pregnant at the time, were facing
24 three brand new drug charges. He told you on the
25 stand on direct examination that he had two prior

3880

1 felony convictions. On cross he remembered it was
2 four. On cross I asked him if he used a false
3 date of birth. He thought about it and said no.
4 Then he said only once. What does he tell you, he
5 has an indictment he is facing, he dealt in
6 hundreds of kilos on methamphetamine and drugs, he
7 is facing hard time. And now, all of a sudden,
8 you know, I kind of remember Bryan Sheppard. He
9 did confess to me. And listen to this confession.
10 I was riding around and Bryan Sheppard paged me
11 because he was running from the police. So here
12 is Bryan Sheppard standing on the corner or
13 Marlborough because the police are everywhere for
14 this guy to come by and pick him up so he can get
15 in the car and drive somewhere. And Bryan
16 Sheppard gets in the car, four months later, and
17 said I have got to get out of here because you
18 remember on the hill, that explosion, I killed
19 those people. Do you believe that?

20 Did **they** bring one scintilla, one
21 anything, paper, pager, anything to show Bryan
22 Sheppard ever met this guy, ever knew that guy,
23 ever exchanged a conversation with this guy? This
24 guy is 12 years older than Bryan Sheppard. **They**
25 did not bring one shred. **They** were running around

3881

1 verifying everything.

2 This is the thing to verify. Does this
3 man know Travis Small? Nothing. Oh, we can just
4 take his word for it. He is a perjurer. He
5 committed perjury. And this special instruction
6 we have in here for him, like the government not
7 going to do something for him. Perjury was okay.
8 You committed perjury, we can use you. That is
9 the kind of evidence **they** brought with Travis
10 Small. No corroboration whatsoever. And another
11 guy that was in jail.

12 Then Karen Baird and Kathy Marburger.
13 Mr. Miller didn't even talk about this, about the
14 statement that was allegedly made on the phone by
15 Bryan Sheppard on this three-way phone
16 conversation. Again in their search for the truth
17 Mr. Becker said he was proud of the fact he worked
18 with John Fraise before. **They** don't even call
19 Fraise and Zinn over here for you, put them on to
20 see, no.

21 We talked to Kathy Marburger. She never
22 told us anything about Bryan Sheppard confessing.
23 No, Kathy never told us about being on the phone
24 and calling Karen Baird and overhearing Bryan
25 Sheppard and Richard Brown being there. That

3882

1 never happened.

2 This was a murder case in which six

3 people are dead. Bryan Sheppard was in jail. You

4 heard Zinn and Fraise. If that lady would have

5 told us that, we would have gotten a statement

6 from her. But you don't even have to listen to

7 all that because when Dave True talked to Kathy

8 Marburger, she told him at the bottom of the page

9 "In '95 I told all this to Fraise." What did True

10 say when he was on the stand? "I never called

11 him. nCan you imagine he now has a woman who is

12 telling him we may have a viable confession in the

13 case and the guy never makes the call. Why? He

14 knows the answer to that call. Just like Dan

15 Miller knew the answer this morning. That is why

16 he ever talked about it. That conversation never

17 happened. And both ladies said, one lady said he

18 ran into a ditch to get away from the explosion.

19 Kathy Marburger, "Bryan never said that." Kathy

20 said he said "I set the fire that caused the

21 explosion and I didn't mean to do it." Karen

22 Baird said "He never said that. This never

23 happened." Kathy Marburger never gave the police

24 any firsthand information back at that time and,

25 if anything, doesn't convince you of what Kathy

3883

1 Marburger had to say about this confession from
2 Bryan Sheppard, the one thing she said in her
3 statement should. The question was "What did you
4 say to Bryan?" I said, "Bryan, if you didn't do ~
5 it, tell the truth and say you didn't do it. But
6 if you did it, tell the truth and say you did do I
7 it." Does that sound like someone who just heard
8 someone else confess to doing the crime?

9 And the only conversation that Karen
10 Baird has with the police in '89 she said Bryan
11 called from the jail, she said I asked Bryan if he
12 did it and he said no, I didn't do it, and if I
13 knew who did it I would testify. That is what
14 Karen Baird told the police in '89. She told Dave
15 True under a sworn affidavit the same thing in
16 1995. This was an affidavit that was presented
17 to the grand jury, she was on videotape.

18 MR. BECKER: That is not in evidence.

19 THE COURT: I don't believe it is.

20 MR. BECKER: Not substantive evidence.

21 THE COURT: Come up.

22 (Proceedings outside the hearing of the jury.)

23 MR. BECKER: It has not been admitted
24 as substantive evidence in the case.

25 MR. O'CONNOR: I asked her that question

3884

1 on the stand, I can read it or just say it. I asked
2 if she said that to him, "Do you remember saying to
3 Dave True", I asked that question.

4 MR. BECKER: What?

5 MR. O'CONNOR: What is in that document.

6 MR. BECKER: I don't think that document
7 has been entered.

8 THE COURT: The question was do you remember
9 saying to Dave True what?

10 MR. O'CONNOR: Do you remember telling Dave
11 True Bryan said, oh, whatever is in that statement I
12 read. It is all in evidence. What I am getting ready
13 to read is in evidence. I am not going to use the
14 paper.

15 THE COURT: The statement is not in evidence
16 but the question was answered.

17 (Proceedings in the hearing of the jury.)

18 MR. O'CONNOR: March 8th, '95, question from I
19 Dave True to Karen Baird. "Do you remember Bryan" --

20 MR. BECKER: Can we just have a ruling. ;

21 THE COURT: That isn't in evidence, Mr.
22 O'Connor. You asked a question but it isn't in
23 evidence.

24 MR. O'CONNOR: Do you remember this question
25 being asked, "Do you remember Bryan Sheppard in one of

3885

1 those conversations crying or being sad, saying he
2 wasn't present at the explosion on the night it
3 occurred?" Answer: "No." she said, "I don't recall
4 him saying that. I am not saying he didn't say it. I
5 don't recall it. She told them that in 1995. And
6 then you remember four months later **they** went out and
7 talked to her again. She didn't call them back.

8 Then all of a sudden we had this
9 confession of Bryan on the phone, he called and
10 said he ran into the ditch, which Kathy Marburger
11 said never happened and **they** never showed her that
12 statement until the morning that she was here to
13 testify, the interview. Kathy Marburger, no-one
14 has shown hers to her or taken it back to read to
15 her until I talked to her and took it to her. And
16 what did she say about the one-page report Dave
17 True did of her? Said Bryan was a pyromaniac, she
18 never said that, said **they** had all the names but
19 all got cleared up. I guess we will never know
20 what all got cleared up means. In one page you
21 couldn't get the report talking to Kathy
22 Marburger, but he got in there about Bryan calling
23 on the three-way but he never called John Fraise
24 to find out what that call was about. That ought
25 to tell you actions speak louder than any words I

3886

1 would say on that.

2 What else? Kathy Marburger never said
3 she called Karen and she never told Karen about a
4 car burning. She is the one who called Karen.
5 That is the evidence. And when I went out to
6 interview Karen, which was in evidence, she told
7 me she was like 70 percent sure Bryan was there.
8 She couldn't even hardly remember the date at the
9 time. It meant nothing in her life. Bryan, she
10 says, smelled of gas and what else did she say,
11 smoke. But their own evidence on that -- and we
12 will get to that in a minute from Rim Archer -
13 that was a half hour before that he is in an
14 apartment for 30 minutes. She doesn't smell any
15 smoke, any gasoline, any mud. And he is there
16 before he is at Karen Baird if you believe that
17 story. And Karen Baird told you under cross
18 examination she would not bet her life on it.

19 So why in the world would anybody else
20 bet their life on it.

21 On Karen Baird, remember at the time the
22 police came out there she was worried she was
23 being arrested on a drug charge and she, too, had
24 pled guilty to a felony. **They** know that Zinn and
25 Fraise got no call from Marburger or Baird about

3887

1 any confession or statement about Bryan Sheppard.
2 And Dave True never made the call and Dan Miller
3 didn't even talk about it.

4 Wesley Romans. Mr. Romans was in jail
5 with Bryan Sheppard, if you remember. He is the
6 only one that came in that was out of jail at the
7 time he called the police. And what did he say
8 when he was here? That Bryan said he went there
9 in a car, stayed in a car.

10 Now the government's theory has been
11 **they** went in a truck, or trucks, and left in a
12 truck, or trucks. And then what did he say? Did
13 Bryan say he did it to you, Romans. He said to
14 all of us he had not done it. That was the
15 testimony from Romans in jail. Backing up what
16 Baird had said earlier, Bryan had called and said
17 no, I didn't do it. Here is a guy that was in
18 jail who said, when asked, that he didn't do it.

19 And Bryan Sheppard was transferred, by
20 the evidence, from the Jackson County Jail to the
21 Clay County Jail and he was telling everybody in
22 the Jackson county jail, as we are going to hear
23 in a minute, the people were snitching, saying he
24 was saying he did it and **they** moved him out of the
25 jail. Now he is going to go to another jail and

1 start talking to people there. But the evidence
2 from Mr. Romans was he said he didn't do it.

3 Brian Atterbury, he was on a bicycle
4 1 with a wonderbar. It was warm out. The weather
5 records are in. Look at the weather records that
6 1 night. You probably have been wondering about it.
7 The low was 19. Everybody had these people in
8 shirt-sleeves and T-shirts. Look at the men
9 working out there the next morning. Look at the
10 firemen in the uniforms with their clothes on.
11 1 These people were sighted in their shirt-sleeves
12 and he says it's warm and he went into his mom's
13 bedroom window, if we are going to believe that he
14 is in his mommas bedroom window. Be didn't come
15 forward back when he was in jail with Bryan
16 1 Sheppard. He came forward from jail when he was
17 sitting there on a new charge. He said Darren
18 Elder was there with him. Where is Darren Elder
19 to verify that story in their big search for
20 1 verification on Bryan Sheppard. Told you he read
21 1 the newspapers daily. And then do you believe
22 1 that story. Is the story believable? His stories
23 on a bicycle. He is on a bicycle with a
24 1 wonderbar. That is Brian Atterbury's story.

25 ~ Kevin Smith. Kevin Smith, three felony

3889

1 convictions. He is a convicted robber, a
2 convicted thief and a convicted burglar. He was
3 in jail when **they** talked to him. He had seen the
4 \$50,000 reward poster in prison. Be told you he
5 was strung out on doing drugs in '85, '89. Used
6 drugs and alcohol. The day he talked to Bryan and
7 he said, I don't think, from Dan Miller he said at
8 the park, "**They** couldn't prove it, didn't have
9 enough evidence." Think about that, this guy is
10 remembering a conversation seven years later. I
11 think he was drunk on drugs and he said Bryan
12 Sheppard said **they** couldn't prove it; **they** didn't
13 have enough evidence. I don't know if anybody is
14 fight fans but Sugar Ray Leonard, when he fought
15 Marvin Hagler, Sugar Ray Leonard won that night.
16 At the end of the fight **they** exchanged in the
17 middle of the boxing ring, **they** talked to each
18 other and **they** went to their respective dressing
19 rooms and **they** went down to Hagler's dressing
20 room. "What do you have? You lost the fight."
21 "Talk to Sugar Ray, he told me I was the
22 champion." **They** ran to Sugar Ray's locker room.
23 This just happened minutes before and got to Sugar
24 Ray. 'We talked to Hagler, he said you said he
25 was the champion." He said "No, what I said to

3890

1 him, 'You will always be the champion to me.'
2 Here are two men who heard a conversation who were
3 sober within ten minutes of that fight, had given
4 two different meanings to what was said.

5 As Mr. Osgood said, **they** want these
6 people to come in seven years later and have this
7 crystal-clear meaning what people said at the
8 time. Life just doesn't work that way. It
9 doesn't happen that way.

10 This guy, I mean Bryan Sheppard,
11 probably said **they** couldn't prove it. **They** let me
12 go. That's the case. The case was dismissed.
13 **They** couldn't prove it. **They** let him go. That is
14 the truth. If the truth hurts him, then it hurts
15 him but that is the truth.

16 What did he tell the agent? **They** were
17 down on 71 highway and his memory got better.
18 **They** asked if he remembered saying **they** were there
19 getting dynamite and he said in his statement I
20 don't recall him saying that. Then later he
21 switched back to dynamite. How do you believe
22 these people seven years later on drugs, alcohol,
23 criminals. And then what **they** say and some
24 meaning is to be given to a conversation seven
25 years ago like that -- beyond a reasonable doubt.

3891

1 Pam Barth.She heard 50 million rumors.
2 She said Bryan was the quiet one; that Richard did
3 the talking. There were no admissions by Bryan.
4 She was in the next room working. I guess under
5 the government's theory she is guilty, too, if she
6 didn't say anything back to Richard because he was
7 making admissions under the government's theory.
8 Pam Barth is guilty. She didn't say anything.
9 She just stood there. Doesn't buy this. She is
10 in the next room working. Richard is in there
11 talking, whatever he is saying we don't really
12 know but we know that Bryan Sheppard made no
13 admissions.

14 Kimberly Finch, the one that I said I
15 was out bobbing for apples. No, what I was doing
16 I was out bobbing for the truth. And every
17 witness I went and talked to in this case I took a
18 court reporter because the truth I had no fear of.
19 When someone says **they** are innocent, there isn't
20 anything **they** can tell me I can fear.

21 MR. BECKER: What counsel fears or doesn't
22 fear is not the issue in this case.

23 THE COURT:Yes, I don't know what evidence
24 you are referring to, Mr. O'Connor.

25 MR. O'CONNOR: There has been several

3892

1 references to my court-reported statements with
2 these witnesses.

3 THE COURT: Come up a minute.

4 (Proceedings out of the hearing of the jury.)

5 THE COURT: '~When someone says **they**'re
6 innocent, there isn't anything I have to fear."
7 This man has not said he was innocent.

8 MR. O'CONNOR: Yes, he has by his
9 not guilty plea.

10 THE COURT: No, that is not right.

11 MR. O'CONNOR: I am sorry.

12 (Proceedings in the hearing of the jury.)

13 MR. O'CONNOR: Kimberly Finch. She told you
14 she got everything from Patty Smith. And on cross
15 examination she said she never heard anything
16 firsthand. And remember she is the one who said Bryan
17 wiped off prints or burned off the prints, Bryan was
18 yelling at Richard to keep his "F"ing mouth shut.

19 We brought Detective Bob Guffoy.
20 Remember "I told the officers everything I know",
21 she said. He interviewed her three times. Wasn't
22 in any of the three reports.

23 Kimberly Archer, a very, very important
24 witness. **They** are at her house, Richard Brown
25 and Bryan Sheppard, around 6:30 or 7:00, you remember

3893

1 the evidence. No smell of smoke. No smell of gas. No
2 mud on the floor. No Bryan claiming he was injured.
3 And she was asked a series of questions. And these are
4 the questions: "Did Richard Brown or Bryan Sheppard
5 admit that **they** were there at the time of the ~
6 explosion? "No." "Did Richard Brown or Bryan I
7 Sheppard say **they** were the ones that did the
8 explosion?" "No." "Did you hear what Bryan Sheppard
9 said?" "No. Richard was the one doing most of the
10 talking. **They** were telling his brother **they** had driven
11 by the site." "Could you say from their conversations
12 it was before or after the explosion?" "No." "Did
13 **they** say **they** actually saw the fire truck explode or a
14 fire truck exploded?" "I can't say." "Could you tell
15 from the conversation whether what **they** were saying
16 was something **they** observed or heard about after-the
17 fact?" "Answer: No. n "Did **they** say **they** were at the
18 construction site at the time of the explosion?" "No."
19 "Could have come by after the explosion." "Yes."
20 Presumed innocent and look at what Kim
21 Archer says. She would have been in contact with
22 these men right after it happened, the first
23 person, a witness for the government who, in her
24 house -- remember Mr. Miller in opening statement
25 said if you get gasoline on you, boy, you can

3894

1 smell it -- **they** are in an apartment for 30
2 minutes. She doesn't smell gasoline and she
3 doesn't smell alcohol and she didn't see mud. And
4 Bryan Sheppard doesn't claim he is injured.

5 Frank Gile is the one who was in jail on
6 February the 14th. He was the one who was getting
7 ready to serve three years because his probation
8 just got violated. He is the one that called and
9 wanted a deal. In his testimony he was here for
10 peace of mind but he told the ATF under penalty of
11 perjury he was only coming forward to get his
12 sentence reduced. And what does he say against
13 Bryan Sheppard -- and I hope you will remember it
14 -- Bryan said he was down there but gave no
15 specifics. I really can't say at this point in
16 time. This is what his testimony was in grand
17 jury under cross examination. "I really don't
18 know what he told me, it has been so long." And
19 how true that was. And he talked to Bryan
20 Sheppard and he told you that at the time he
21 talked to him he was using pot, meth, cocaine and
22 LSD when he talked to him the night he is
23 recalling this event.

24 Carrie Neighbors. Carrie Neighbors is
25 the one, if you remember, she is with Shannon

3895

1 Newcomb and **they**'re at a party. And if you
2 remember Shannon Newcomb, she said these
3 admissions she told the grand jury happened in the
4 living room at this party. Shannon Newcomb told
5 you she never went into the party; there were no
6 admissions in the party.
7 When she came to court it was her
8 testimony it happened in the street. Shannon
9 Newcomb said some things I want you to remember.
10 "Did **they** say" meaning Bryan and Richard, "either
11 of them **they** threw something in the bed of a
12 pickup truck, setting it on fire?" She said, "No,
13 that was not said." And again "You and Shannon
14 were with them at both of these locations where
15 these statements are being made." "Yes." "Did
16 either of the men, Bryan or Richard, say **they**
17 threw something through the window of a pickup,
18 setting it on fire?" "No." "Can you, in the
19 middle of the street, can you remember exactly
20 what Bryan Sheppard said about his involvement?"
21 "No." "In the middle of the street could you tell
22 us exactly what Richard and Bryan said?" "No."
23 "Can you tell us exactly what Bryan Sheppard
24 said?" "No. R "Can you tell us exactly what
25 Richard said?" RNo." "Did Shannon ever tell you

3896

1 **they** had dynamite?" "No." "Did Shannon ever tell
2 you **they** set a fire to a pickup?" "No." "Did
3 Shannon ever tell you **they** were creating a
4 diversion?" "No." And she told you Bryan
5 wouldn't even know that word. If Carrie Neighbors
6 can't remember exactly what was said, then how in
7 the world could you determine exactly what was
8 said? **They** are asking you to fill in the blanks.
9 She doesn't even know. And her story is **they** said
10 **they** were there to steal batteries and Shannon,
11 "No, **they** were up there to steal dynamite"
12 Neither story is the same. Every one is there
13 present at the same supposed conversation but it
14 was seven years ago. These people never came
15 forward. And that is why it is so important for
16 you to look at the evidence against Bryan
17 Sheppard, 90 percent of these people never came
18 forward because when **they** heard it **they** either
19 didn't believe it or **they** felt it was drugs
20 talking and or it didn't mean anything to them.
21 You couldn't under any odds-maker, could
22 give you odds on the number of people that would
23 come forward after hearing a confession of killing
24 six firemen. How come none of these people are
25 coming forward if **they** heard it, truly heard those

3897

1 kinds of statements and then **they** are asked to
2 recall it seven years later. And she told you her
3 and Shannon were both drinking that night and
4 smoking marijuana that night and their stories are
5 diametrically opposed.

6 And then Shannon Newcomb didn't even ;
7 remember the Swope Park event.

8 Then Christine Mall told them this
9 happened in '89, she went to this party. That
10 couldn't be because Mr. McGovern lived in
11 Tuscaloosa, Alabama. He did go to a party with
12 her in '92. And McGovern told you he was here to
13 testify that Christine Mall and him went to that party
14 and that nothing was said by Bryan Sheppard about any
15 involvement in the explosion or the fire. But remember
16 if you want to believe Christina Mall, because I don't
17 know, I don't decide, I am not up here to decide. I
18 can only tell you what these people said. You decide.
19 But what she did say to the police, Bryan was talking
20 about burning Darlene's truck for insurance money which
21 is in evidence in this case, that happened six weeks
22 before the explosion. So her testimony wouldn't even
23 be about the explosion if that is what she heard.

24 That is the case against Bryan Sheppard.
25 But then **they** forgot to talk about one, Mr. Miller

3898

1 did, Furrell, a man with a photographic
2 memory. And he gave the government everything **they**
3 wanted. Bryan was a drug dealer because he was
4 delivering marijuana to him. Bryan was threatening
5 him. And Bryan was making admissions about killing
6 those firefighters.

7 There is just one problem with all that.
8 Bryan Sheppard was in jail. That makes two
9 questions. Did **they** know he was in jail and **they**
10 put on that evidence or how could **they** not know he
11 was in jail and put on that evidence. And then
12 when we put it in, like Dornhoffer, like Small,
13 like the rest of them, you saw Mr. Osgood, he had
14 a witness up here, Mr. Studna, and he asked a
15 question about his client, said my client's name
16 is not on this sheet and he was on there, John
17 said okay, I am going to read it to the jury.
18 That is what you do. You make a mistake, you take
19 care of it. Did **they** run up here and say stop the
20 music, Judge. Stop. Let's put these jail records
21 in. Let's let this jury see them. Bryan was in
22 jail. Could we strike the testimony of Mr. Furrell to
23 this jury, doesn't have to be concerned about it in
24 their search for the truth. **They** have Furrell on the
25 phone when Dornhoffer is on here and **they**

3899

1 let that forgerer and that perjurer testify. Did **they**
2 stop -- stop everything, this lady has lied to this
3 jury? **They** don't have to -- **they** are the government.
4 **They** don't have to, **they** can make the deals with Small,
5 **They** can make the deals with Shepard. **They** can do
6 whatever the heck **they** want. And **they** have proved it
7 in this case. **They** will put on perjurers. **They** will
8 put on people on a bicycle. **They** will put on
9 testimony after testimony of witnesses that don't
10 appear credible, all in an effort to vindicate what
11 happened in '89 because **they** had to turn him loose
12 and **they** don't want to face that prospect again -
13 whatever it takes **they**'ll take to take him down.
14 and if that doesn't convince you, there isn't anything
15 I can say that would. And I don't mean to be pointing
16 at anybody.

17 The government chose not to call Bruce
18 Trammel. **They** chose not to call John Fraise.
19 **They** chose not to call Robert Guffey. **They** chose
20 not to call Victor Zinn. **They** had Dave True on
21 the stand. **They** didn't ask about the Bear statement.
22 **They** didn't ask him about Morales. That all had to
23 happen on cross examination.

24 Travis Small, didn't call anybody to
25 verify anything he had to say. Darren Elder can

1 back up Bryan everywhere. He wasn't called.
2 Robert Dresnick, he wasn't called. I had to bring
3 in the jail records after I could prove he was in
4 jail -- did **they** put it on -- so you can get the
5 truth. Dornhoffer was on a forgery but we had to
6 put him on. Fred Martindale, we had to put him
7 on, too. You look at Frederick Martindale's
8 statement, the five facts. I don't know if the
9 guy did it or not, I have no idea, but the
10 government's theory in this case is what **they** told
11 you at the beginning, we have no eyewitnesses, we
12 have no physical evidence. Bryan Sheppard over
13 time has made statements. Under that theory Mr.
14 Martindale gets a chair in this courtroom. He may
15 not be found guilty but he confessed over time.
16 There were witnesses who put him in his car. But
17 we don't know about it. And I guess we can guess
18 about it.

19 There was a jury a couple years ago that
20 tried a case and the case is not important to
21 name, but the jury was out a couple days
22 deliberating the case. And one of the jurors
23 spoke up and said to the other, I want to say
24 something. Is there anyone here who would want to
25 be convicted, or anyone we care about, convicted

3901

1 on the kind of evidence we heard about in this
2 case? And every one of them said no. And **they**
3 said we knew we had our verdict.

4 Look at the evidence in the case against
5 Bryan Sheppard, the evidence **they** brought. **They**
6 will say maybe I failed to mention Becky Edwards.
7 Becky Edwards said Bryan Sheppard was at that
8 house everyone attended a week before. Everyone
9 was drinking, eight or ten people. Bryan Sheppard
10 never said anything. And that night **they** were
11 talking about going and stealing copper. We know
12 there is no copper.

13 Lisa Harrigan, the woman who said Bryan
14 came to see if Skip was there. **They** want to
15 believe her when she says Skip did drugs and beat
16 up women and did all these other things but don't
17 believe her when she says Skip didn't go out with
18 Bryan, that's what happened. If the government
19 believed that evidence was important, why didn't
20 **they** get it on here. Let's get the whole truth
21 going. Let's get it all.

22 Then Dave True said something in this
23 courtroom in his testimony when he was asked a
24 question by me, the question was, "When did you
25 gain access to all the Kansas City, Missouri

3902

1 Police Department files as it related to this
2 investigation?" The answer, 'I believe Sergeant
3 Forbes had them turned over to him in the latter
4 part *of* ~ 94 and through that process I eventually
5 was able to get access to the ones he was getting
6 and I don't know I ever saw all the reports, ever.
7 So it would have been in the middle, latter part
8 of ,94 when I started looking at them." "So there
9 could be reports out there you don't know exist?"
10 Answer: "Yes." The lead investigator in the case
11 has told you he doesn't even know if he has read
12 all the reports and these people are sitting here
13 on trial. Is he going to read them later, next
14 week, next year? Can we call about it if we find
15 something else?

16 I am not presumptuous for a minute of
17 what you are going to do. I have no idea. All I
18 can ask you to do is look at this evidence and be
19 fair. Look at Bryan Sheppard through all these
20 witnesses through the eyes *of* the presumption of
21 innocence. And we have learned as adults, as
22 children, that a terrible -- terrible -- terrible
23 thing happened out there to those firemen -- a
24 terrible tragedy, terrible. There isn't enough *of*
25 those kinds of words to say about it. It is wrong

1

1 what happened to them, it is dead wrong, but it
2 would be wrong to convict someone who wasn't
3 responsible because we all know that two wrongs
4 won't make a right. You can never make this right
5 by convicting the wrong person; you just can't do
6 it as much as you want to, as much as I would love
7 to see closure on people in this case. You have
8 that human emotion that is digging at you now.
9 You have seen these pictures. It is a tough,
10 tough, tough, tough decision but the law will help
11 you. Turn to the law. Turn to the instructions,
12 follow the instructions and I think you will find
13 the help you need.

14 In a criminal case there has to be a
15 unanimous verdict. All twelve people must agree
16 on guilt before any human can have their freedom
17 taken. We have heard horror stories from juries
18 later, eight people said he was guilty, four
19 didn't think but it was getting late, our cars
20 were parked, it was downtown, we figured, you
21 know, everyone else must have been right. Your
22 verdict never counter more. You are Judge. You
23 are God. You are everything individually in this
24 case. You vote your heart and conscience,
25 whatever it is, and be proud of it. But cast your

3904

1 vote proudly. And I ask you to remember this in
2 that vein, that during our lifetime there was a
3 famous man by the name *of* Martin Luther King. And
4 some people love Martin Luther King. Some people
5 hate Martin Luther King. Some people probably
6 don't care one way or the other. People told him
7 he was wasting his time what he was trying to do,
8 trying to make better opportunities for people and
9 getting things *f* or people, ride on the same buses
10 and have the same opportunities, **they** said you
11 probably will be ridiculed, you will probably go
12 to jail, you are probably going to give your
13 race nothing. But he believed in what he believed.
14 And one man changed the entire course *of* this nation -
15 one person.

16 *If you* think he is guilty, by God you
17 vote it. You stick to it. You write it out. But
18 if you don't think **they** proved his guilt beyond a
19 reasonable doubt, you find that way, too.

20 I thank you for listening to me and
21 paying attention to me. I hope you will give the
22 same attention to Mr. Becker in his final remarks
23 and we will see you with a verdict. Thank you.

24 MR. BECKER: Your Honor.

25 THE COURT: Mr. Becker.

REBUTTAL ARGUMENT ON BEHALF OF THE GOVERNMENT

MR. BECKER: Ladies and gentlemen of the jury. It is time for the final statement. The government goes last because we have the burden of proof.

The evidence from the witness stand proves beyond a reasonable doubt that these five defendants are guilty as charged.

You sit here and we have all sat here today through the summations and you wonder, have we watched the same trial. Is it the same evidence that came from the witness stand I heard, that we all heard that was being placed up on these charts? And I submit to you that you must look at the evidence as a whole of all of the witnesses that came in and all of their testimony because we have seen throughout this trial when the lawyers would cross examine **they** would pick out one sentence from one prior statement and say Miss So-and-So, didn't you say this. But then we would have one of these bench conferences and it turns out that the whole statement, when taken as a whole, made a whole lot more sense. It is fundamentally unfair to put up a sentence from one witness' testimony when we have 80 witnesses who

3906

1 each have their own bound volume of transcript
2 that must be viewed as a whole.

3 Now again I would like and I will be
4 reviewing the evidence that the government
5 presented as a whole, but before I do that and
6 that part of the summation is called the rebuttal
7 and I have a chance to come back and rebut the
8 things that were said by these defense attorneys.

9 So let's get to that. The first thing,
10 the attorney for Frank Sheppard talked about three
11 points: Riggs, and said repeatedly Frank Sheppard
12 was at home and, third, although he never used the
13 "B" word, seemed to me in listening to that
14 argument, we were back on the bomb theory we lost
15 some weeks ago in this trial.

16 But, first of all, again while never
17 coming right out and saying it, the attorney for
18 Frank Sheppard would have you believe that the
19 five month pregnant Debbie Riggs torched her own
20 truck, planted bombs in the trailers and then went
21 up to watch it so she could be blown 40 feet away.
22 There is no evidence whatsoever that Riggs had
23 anything to do with this. As Dan said in the
24 first part of the summation, **they** didn't do such a
25 great job of guarding this site, but there is no

3907

1 evidence that **they** caused these fires or planted
2 bombs or any such thing. And it is not a fair
3 inference to get up here and try and argue that.

4 1 Counsel repeatedly said, well, Frank
5 Sheppard was at home. Well, the question is,
6 yeah, he was at home. When was he at home? If you
7 look at the time the fires were reported, that is
8 3:40 in the morning. So is there anybody that
9 says Frank Sheppard is at home at 3:40 in the
10 morning? The only piece of evidence -- and it
11 wasn't a half dozen witnesses -- the only piece of
12 evidence that the government introduced, or
13 anybody introduced, is the Darlene Edwards tape,
14 where Darlene, I submit is trying to cover up for
15 Frank, says Frank was at home when she took the
16 other guys up there to get gas and start these
17 fires. That is the only evidence is that self
18 serving statement by Darlene, covering up for
19 Frank. There is no other evidence that Frank was
20 at home in bed when these fires were started.

21 And, finally, the bomb theory. Counsel
22 can't give it up. There is no evidence of a bomb.
23 The experts said he couldn't build a bomb that
24 would survive 40 minutes of fire. We had the
25 second trailer on fire and that blew up. We could

3908

1 see fire. The witnesses said **they** saw fire.
2 Government's Exhibit 378, is the second trailer on
3 fire? So to get up at this late date and say
4 scientific evidence, reasonable doubt, because
5 there is some slight, because there is some
6 theory, possibility that somehow a bomb survived
7 two separate fires is completely far-fetched and
8 meant merely to distract you from the evidence in
9 this case.

10 Miss Hunt talked about the
11 inconsistencies, what these witnesses heard the
12 defendants say, but that is the whole part the
13 defendants forget. It is what the evidence said.
14 We don't have witnesses who saw what happened.
15 And so there will be inconsistencies that one saw
16 one thing and another saw another and **they** don't
17 perfectly match up. We have to live with what the
18 defendants said and **they** can't give a perfect
19 confession every time and **they** didn't give a
20 consistent confession every time, but what it came
21 down to, of all **they** said, we went up there to
22 steal, we set this fire and we got out of there.

23 Mr. Bunch said we set up Darlene and we
24 had pre-conceived notions who we were going to get
25 and then we went out and got them. If we had -

3909

1 first of all, I don't know where there is any
2 evidence we had these five in mind for anything
3 but then would you go out and gather the cast of
4 characters we had to put on the witness stand.
5 But what it comes down to is that these are the
6 kinds of people that Frank Sheppard, Skip
7 Sheppard, Darlene Edwards, Bryan Sheppard and
8 Richard Brown would make admissions to.

9 Admission, these are the kind of people
10 that hear defendants admit crimes. These are the
11 kind of people that don't run and come forward.

12 Mr. Bunch argues, going from the tape,
13 Darlene said she took others to get gasoline and
14 then took them to the site to set these fires.
15 Mr. Bunch argued that the guards would have seen
16 Darlene drive onto the site. Well, that is not
17 the tape and you can ask for the tape. And listen
18 to the tape again. But on the tape Darlene
19 Edwards says she took them down near, down the
20 road where the fire first started -- it is a
21 memorial now. So there is no testimony, no claim
22 by the government that Darlene went down 71
23 highway, took a left on the haul road, as we have
24 heard it called, and went up there in plain sight
25 and dropped these fellows off. What the tape says

3910

1 is **they** went and got gas and she took them, which
2 would be down Blue River Road, and dropped them
3 off so **they** could get up on the site and we heard
4 about that.

5 Mr. Osgood at least admits that
6 Richard Brown said all these things but then on
7 the other hand he says, well, the witnesses are
8 lying because **they** want a reward. Well, either
9 **they** are lying and Richard Brown didn't say these
10 things or Richard Brown did say these things. You
11 can't have it both ways.

12 And finally Mr. O'Connor, on behalf of
13 Bryan Sheppard, shows you a picture and I don't
14 remember the defendants' exhibit number, but in
15 arguing about Martindale and how you need
16 Martindale's confession, the guy said there was a
17 caterpillar and bobcat at the construction site.
18 When you look back at his testimony, he said he
19 set fire to a mobile home. When you look at Mr.
20 O'Connor's picture of the creek, it is a picture
21 of a puddle. It is a puddle on the site. It is
22 not the creek at Blue River. It is a puddle up on
23 the site.

24 There is also a fundamental
25 misunderstanding here that is being put forth to

3911

1 you by Mr. O'Connor about the obligation of either
2 side to bring forward testimony. He put on
3 Martindale and these other folks because the
4 government gave him that information. It is not
5 something that just drops out of the sky. This is
6 something we gave them. And if he wants to use
7 it, then he uses it.

8 And also, where are the other
9 witnesses that implicate Martindale? Well, if he
10 wanted to use them, he could use them, too. **They**
11 aren't state secrets. We give this stuff over to
12 the defense and **they** decide, like all these
13 statements you have seen these witnesses cross
14 examined with, **they** just don't fall from the sky.
15 **They** are given over to the defense and **they** can do
16 with them what **they** want. So it is fundamentally
17 unfair to say, oh, the government didn't call this
18 guy and the government didn't call that guy. **They**
19 are not some big secret we are holding in our back
20 pocket that were somehow discovered by counsel.
21 We give this pile of stuff and if **they** want these
22 people, **they** brought them in.

23 And then finally we get, I guess the
24 government plot theory one more time with Shawn
25 Furrell. Believe me I think he is the prime

3912

1 example that the government didn't plot to put all
2 this together to convince you that these
3 defendants are guilty. This kid comes in here and
4 not only gives the wrong year of when he saw Bryan
5 Sheppard but he picks out Richard Brown three
6 times. That kid totally went in the tank on the
7 witness stand. But, as Mr. O'Connor said, fine,
8 throw him out. He picked out the wrong guy three
9 times and he told the wrong year. Forget about
10 Shawn Furrell. But that is not some major
11 evidence, evidence of a plot by the government.
12 It gives us some credibility. On the one hand we
13 are accused bringing in all these witnesses to
14 imply; on the other hand, we get stuck with a
15 Shawn Furrell who picks out Richard Brown three
16 times. You can't have it both ways. It is easier
17 as we get older in life, we come to realize it is
18 easier to tear down than it is to build up. We
19 have attempted in five weeks of testimony to build
20 up this case. And now for the last two hours,
21 three hours, we have heard the defense attorneys
22 try and tear it down. It is easy to tear down.

23 Linda Peek was a witness for the
24 defense. She says she saw Richard Brown outside
25 of his house with his sister and his grandmother.

1 And she testified it was after the second blast,
2 although Mr. Osgood would like you to believe her
3 first statement where it was said she said it was I
4 after the first blast. Well, she acknowledged
5 that she knew her father had told her and was
6 prepared to testify that no-one left the house
7 after the first blast. So that when she took the
8 stand now it became the second blast. And Linda
9 Peek couldn't remember whether she was pregnant at
10 the time or whether she had a newborn. Granted
11 this was eight years ago, but those are the kinds
12 of things in one's life that you remember, whether
13 you were pregnant when you ran outside or whether
14 you had a little baby back in the house you might
15 want to think about taking care of. And she said
16 she saw the grandmother, Wilma Romi, outside.

17 And Shannon Reimers, we heard from
18 Shannon Reimers. She didn't say she was anywhere
19 near that night. I use that as an example. It is
20 far easier to tear down than it is to build up.
21 And that is why you have to look at this testimony
22 as a whole, as Dan said earlier, you have 50
23 witnesses who heard these defendants admit **they**
24 did it. And I was surprised, it is a conservative
25 number because it doesn't double count. If one

3914

1 witness heard both Skip and Frank say it, he only
2 counted one. In my books that's two, but let's
3 talk about the witnesses just generally for a
4 minute. Put yourself in their shoes. Would any
5 sane person want to come in here and take that
6 witness stand and have five experienced,
7 professional attorneys dig up your past, rake you
8 through everything you have ever done wrong in
9 your life, yell at you, have you relive times in
10 your life that you probably aren't particularly
11 proud of?

12 You wonder why these witnesses were
13 reluctant to come forward and took so long to come
14 forward. And again, in the years after this
15 explosion, after that first year when many, many
16 of these admissions occurred, it was in those
17 intervening years, it wasn't like this was a front
18 page story every day. It wasn't like there was
19 something active you knew you should go do. And
20 people don't want to get involved. if **they** had
21 known the end result of that, I can assure you
22 many of them would not have gotten involved. But
23 again, as everyone agrees, this is a unique case.
24 There are six firemen dead here and the witnesses
25 truly felt that responsibility.

~ 1

3915

1 The witnesses were not just mouthing the
2 words that I think this is wrong and I had this
3 little bit of information. No-one had the
4 complete unfettered story. Everyone had this
5 little bit of information. And when the call
6 went out, do you know anything more, these people
7 felt an obligation to finally -- finally get
8 involved.

9 And one other thing that goes with that.
10 It was a unique event. It is the reason to
11 remember. If somebody asked you what happened the
12 week before this crime on November 22nd, 1988 I
13 dare think none of us would know the answer to
14 that. But when that explosion occurred and then
15 when that second explosion occurred and then the
16 next day when we found out the consequences of
17 those explosions, that is something here in Kansas
18 City we all remember. And when these people got
19 those admissions over the years, it related to
20 something **they** remembered. When a call went out
21 to come forward with that information, **they** came
22 forward. **They** did their duty.

23 There are no eyewitnesses to this crime,
24 no physical evidence to this crime. What we have
25 are the admissions of the defendants, words from

3916

1 the horses' mouths. These defendants didn't just
2 tell one person. We didn't put one person up
3 there to say Frank said he did it. We would be
4 hanging by a thread if that was the case here
5 today. That is not the case here today. **They**
said, "I did it. **They** said, "We did it." **They**
7 consistently said "We did it" over the years. We
8 went up there to steal and we set this fire.

10 Those admissions are backed up by those
11 few witnesses really, those few witnesses who
12 happened to be out in Marlborough that night and
13 saw these defendants. And that only became
14 significant later on. Would it be significant to
15 you if you were going out to get some cigarettes
16 and a soda and you saw two guys you knew, Richard
17 And Bryan? It wouldn't be significant. But in
18 1989 when **they** came to see Margaret Weaver, when the
19 police detectives did, and asked her if she saw
20 anybody that night, then she remembered. Then it
21 is significant, seeing Richard and Bryan together
22 that night.

23 I very briefly want to talk about the
24 elements in the case because this is what you all
25 have to consider when finding a defendant guilty

3917

1 or not guilty.

2 The first element is the defendant
3 knowingly and intentionally or maliciously damaged
4 or destroyed property. And then there is a
5 definition on malicious. When I opened I said
6 these men are mean and ornery and that is why **they**
7 set this fire. The legal word is malicious. You
8 are advised a person maliciously or intentionally
9 or with willful disregard of the likelihood
10 damage or injury will result. That is exactly what
11 happened here. **They** set these fires with willful
12 disregard of the consequences and the tragic
13 consequences that occurred.

14 No-one here -- and you will look at the
15 elements -- this is not a murder case. The
16 government is not required to prove beyond a
17 reasonable doubt that these thieves went up there
18 trying to kill six firemen. That is not the case.
19 **They** went up there to steal and **they** went up there
20 and set this fire and, as a result of that, six
21 firemen were killed.

22 I would like to review the evidence
23 again with you. I know Dan went through it with
24 you and I am not going to repeat the same things,
25 but I think it is so important we look at this

3918

1 evidence that has been weeks, months, since we
2 heard the first witness. And I want to go through
3 and evaluate that evidence with you. And if I
- 4 skip some of these witnesses that are listed here,
5 it is not because **they** are not important but is,
6 as all attorneys are, we have a fixed amount of
7 time we need to deal with. But I think there are
8 certain points that are important for each of
9 these witnesses. That is why we put them on the
10 witness stand.

11 The first group of witnesses had to do
12 with the crime scene, what happened. And the
13 dispatcher, Phil Wall was important because he
14 gave you a time frame, a time frame that then we
15 can not argue with. It didn't matter if somebody
16 thought it was a different time. We know from the
17 dispatch time the fire call went at 3:40, the
18 first explosion happened at 4:03, the second
19 explosion happened at 4:48. Those are fixed times
20 that other events then can be jogged against.

21 Debbie Riggs, pregnant, was blown 40
22 feet in the air by this explosion and saw this
23 trailer on fire.

24 Robert Riggs, I think one of the most
25 important thing- he testified about was on cross

3919

1 examination and about access to that site and how
2 can you get up on that site other than these two
3 roads, the haul road that goes up the middle and I
4 the other road that comes off 87th Street. Robert
5 Riggs said at great length everything, but Robert
6 Riggs talked about the many ways there is foot
7 access up on this site. And it is always
8 important to remember, especially in light of the
9 argument with the stop watch, Riggs testified, he
10 admitted, Robert, he was over on the other side of
11 the road with Debbie Riggs for 45 minutes to an
12 hour, the area where the trailers were was out of
13 sight and unguarded for at least 45 minutes to an
14 hour before the Riggs took off on their chase of
15 the people there that night.

16 Chief German I guess brought home the
17 reality of what it is like to see and hear and
18 feel that explosion and what he saw his men doing
19 when **they** were -- when **they** were literally blown
20 to death.

21 And Mike Torrey showed you that picture
22 where he climbed up to see if any of his fallen
23 comrades were still alive and he thought perhaps
24 pumper 41 might have gotten away because it wasn't
25 there anymore. But you can see the flames coming

3920

1 off the second trailer here prior to that
2 explosion. It exploded. There is no doubt these
3 two trailers exploded as a result of a fire that
4 was set in the first trailer.

5 Brown and Collins and McReynolds are
6 important because **they** fulfill an element of the
7 case, **they** gave you the testimony that **they** were
8 construction companies engaged in a project that
9 brought goods and materials from other states to
10 this state. And that is what makes it a federal
11 crime, when we have a fire like this that affects
12 a business or activity, in this case construction
13 activity, that brings goods and services from
14 other states to other states. And that is what
15 makes it a federal crime. And that is what
16 element three is when you get down to your
17 deliberations.

18 Dan talked earlier today about Kenneth
19 Allison, Archie. He was important because he is
20 the one that fixed that caterpillar and found it
21 and we were able to find it when we went back to
22 look.

23 John White gave us information that Skip
24 Sheppard had told him, we could go back and see
25 was there dirt in the transmission. And, sure

3921

1 enough, right here. Kenny Allison, he is the one
2 that found the caterpillar some month and a half
3 before that had dirt in the transmission.

- 4 Collins and John Conyers again are part
5 of the government's proof there is arson in this
6 case, this fire was set, this fire was set to the
7 bottom of those trailers. It wasn't an electrical
8 fire. It wasn't a natural fire, a lightening
9 strike and it certainly wasn't spontaneous
10 combustion. There is absolutely no evidence
11 whatsoever that should be allowed for us to get up
12 here and worry about spontaneous combustion and on
13 a night on November 29th when it is 25 degrees
14 outside.

15 I left Cliff Lund because we ran out of
16 space but Cliff Lund was important because he
17 explained how it is when these things are piled
18 up, the pressure can build up and no place for the
19 gas to escape and these trailers blew up. He is
20 the expert. He has been working with bombs all
21 his professional life and he said he could not
22 build a bomb that would survive 40 minutes of fire
23 and then blow up on command.

24 The rational theory, how these
25 explosions occurred, these piles -- and again I

3922

1 think Lund testified the piles were waist-high but
2 it is your recollection, when **they** burned **they**
3 built up pressure inside and finally the pressure
4 got too great and **they** blew.

5 Then we turn to the evidence against the
6 defendants.

7 Frank Sheppard told, except for these
8 two, the Williams, he told all of these people
9 various things about his participation in this
10 crime.

11 The Barchers, again it is your
12 recollection of the testimony that controls. I
13 don't recall the testimony about security guards
14 telling him this is what happened. Granted he
15 didn't tell directly the Barchers I set the fire,
16 I lit the match, but he said we were up there and
17 we were looking for stuff to steal and the fire
18 got set. Now that means he didn't say I set the
19 fire. But certainly the evidence wasn't that some
20 security guard told Frank and Frank is only
21 repeating what a security guard told him. That is
22 not the evidence.

23 Lisa Landon. I ask you what is more
24 credible. Lisa Landon, the Barchers family talked
25 about visiting the Sheppards over the years,

i 1

3923

1 staying in their house when **they** lived in New
2 York. Do you seriously believe Naomi Sheppard
3 when she says Lisa Landon was never in my house.
4 These families, these mothers are best friends and
5 the children aren't in the house. Or would you
6 believe Lisa Landon who said she was over visiting
7 with her mother and she heard Frank and Skip
8 carrying on and saying **they** went over there and
9 **they** set these trailers on fire because **they**
10 wanted to see what would happen when **they** blew up.

11 Chuck Elliott heard admissions from
12 Frank Sheppard, was made a big deal out of on
13 cross examination. He said it was George Sheppard
14 but Mrs. Sheppard on the witness stand called him
15 George; several times repeatedly. Further, when
16 you are in the institution he goes by his first
17 name, George Sheppard. And again he doesn't go
18 into any great detail about the who, what, when,
19 where and why. It is just I did it, I was
20 involved in this. We went up there to steal and
21 set these fires.

22 Rooks and Cauthon, **they** were both
23 threatened by Frank Sheppard. You don't threaten
24 people if you don't have anything to hide. You
25 don't say if you repeat this, if you repeat what

3924

1 you heard, I am going to kill you, if you have
2 nothing to hide.

3 Fugate is a witness that bears listening
4 to because he hears Frank and Darlene together
5 admitting their participation in this crime. And
6 this is exactly the kind of person that Frank and
7 Darlene are going to tell this to. Frank Sheppard
8 and Darlene Edwards don't hang out with stellar
9 citizens. **They** don't go down to any place
10 reputable and start telling reputable people **they**
11 committed this heinous crime. But when you are
12 setting in the tent in the backyard smoking math,
13 or whatever **they** do with it, that is exactly when
14 Frank Sheppard can't keep his mouth shut and
15 Darlene Edwards can't keep her mouth shut. Just
16 as this is an important event in Kansas City's
17 life, this is an important event in these
18 defendants' lives and **they** just can't keep it in.
19 And over the years it is exactly what **they** have
20 done.

21 Ron Williams at the Four Acre Motel.
22 Frank tries to recruit him to go steal from a
23 construction site and says, by the way, we tried
24 to steal something from the construction site just
25 down the road and we set a fire that caused that

3925

1 explosion.

2 Kilgore is the same thing.

3 Glen Shepard is the same thing. Even

4 Lorena Deardorff is the same thing.

5 Now Frank doesn't confess the same way
6 every time. But clearly he wants people to know,
7 he can't keep it in, he did this, he is
8 responsible. You just don't go telling more than
9 a dozen people -- and that is a conservative list
10 -- I committed this crime unless you did it. I

11 The Williams are important. The
12 Williams are important because even Frank talked
13 to them after the first explosion, it didn't
14 happen, saw Bar Williams. He was not about to be
15 bullied by Frank Sheppard a year ago or bullied by
16 these defense attorneys into saying he talked to
17 Frank at all after that first explosion. It is
18 significant because the testimony was -- and it is
19 your recollection -- but the testimony was that
20 Carol Williams said when **they** went out, Carol said
21 what does he want us to be, his alibi. Even then
22 she gets a sense that something is wrong here -
23 something is wrong here.

24 Skip Sheppard is not the big talker some
25 of these other defendants are but he is out there

3926

1 telling the Barchers, who are long-time family
2 friends, about this, telling Steve Kilgore about
3 this. And Kilgore, you know, he looks a little
4 goofy and he acts a little goofy but his diagram I
5 of the Sheppard household was pretty good. And it
6 turns out that when Harrigan testified maybe
7 Kilgore wasn't so crazy after all, when he said
8 there was stolen property in the garage, because
9 Skip's girlfriend said Skip stole things and
10 traded it for drugs and kept the stolen property
11 in the garage. So maybe old crazy Kilgore wasn't
12 so crazy after all. Do you think Kilgore, as
13 Naomi Sheppard would have you believe, took a ride
14 out with the women out to the grave sight or do
15 you think he went out to drink beer and carouse
16 around with Frank and Skip, like he testified.

17 What is important about Willlliams and
18 Bayliff that we see elsewhere in this case when
19 **they** leave the house after hearing Skip Sheppard
20 admit this. Bayliff tells the women, tells Ownby,
21 don't talk about this, don't talk about this.
22 These are dangerous guys. And where do we hear
23 that again? When McGovern is leaving with
24 Christine Mall, **they** are dangerous. There is no
25 evidence whatsoever that Ownby knows Christine

3927

1 Mall. These people don't know each other. These
2 events happen at different times and different
3 places but it is consistent when **they** walk out,
- 4 the boyfriends, who are friends with the Sheppards
5 say, listen, you don't want to remember this,
6 these are bad people, don't repeat it. That has
7 the ring of truth. I

8 Patty Smith. Patty Smith hears these
9 statements, hears the mother of Skip Sheppard I
10 saying you don't know who you are dating and the
11 mother talks about having the years wrong, Skip
12 Sheppard was arrested for beating Patty Smith.
13 Don't you think there is a certain amount of fear
14 in this woman who was beaten by Skip Sheppard and
15 then she is foolish enough to go back again and
16 she is beaten again by Skip Sheppard. You think
17 there is a certain amount of fear that takes some
18 years to work out?

19 John White, Michael Whitelaw, **they** don't
20 know each other. **They** don't see each other.
21 Whitelaw got the admission from Skip in the Dismas
22 House in 1995 and he came forward after that.

23 White got the admission in another
24 county jail and White testified he is from
25 Springfield. He doesn't know about this case. He

3928

1 hasn't read the newspaper about this case. He
2 sort of caught the tail end of an Unsolved
3 Mysteries, I think it was, but Skip Sheppard gives
- 4 him significant details about this case. Skip and
5 another guy go to the site. **They** are joined by
6 two other guys. Those two guys go down to set the
7 fire. **They** go up to get the trailers. Skip
8 Sheppard told John White what happened in this
9 case.

10 Darlene Edwards gave you a statement,
11 gave all of us a statement on audiotape. Again if
12 you want to hear it again, you can ask for it.
13 You can hear it again. Mr. Bunch talked to you
14 about it a little bit. Mr. Bunch talked about
15 this particular tape and there are parts of it
16 here you can read where she talks about taking
17 these men to get gasoline at the QuikTrip and then
18 taking them up and dropping them off so **they** could
19 sneak up on the site and try and steal things and
20 set these fires. This tape can't be seen in
21 isolation.

22 This isn't the only piece of evidence
23 the government has against Darlene Edwards. We
24 have the testimony of her daughter that **they** were
25 all sitting around getting high, talking about

3929

1 ways to steal.

2 We have Cauthon saying **they** were getting
3 together to get the grand jury story straight.
4 Gary Fugate, **they** were in that back tent together
5 talking about how **they** did this crime. So it is
6 not just Darlene Edwards on tape saying I took
7 them up there to get gas and I didn't have any
8 idea what was going on. It is all these other
9 witnesses who heard Darlene Edwards say what she
10 did on the tape.

11 Let's talk about Dornhoffer for a
12 minute. Dornhoffer made up her own letter of
13 recommendation. The defense attorneys dug that up
14 and sprung it on her and, boy, **they** got her. What
15 did Dornhoffer testify to that wasn't on that
16 tape? What did Dornhoffer testify to that Linda
17 Mynhier didn't testify to. Mynhier is from
18 Indiana and she was in jail with Darlene in
19 Illinois. She didn't read the paper. She didn't
20 see the Unsolved Mysteries. She doesn't know
21 anything about this, but Darlene wants to
22 talk about this. She is a talker, yak, yak, yak,
23 tells **they** went up there to steal, tells Mynhier
24 **they** planned it at her own kitchen table. So
25 whatever Dornhoffer is, what she says, is nothing

1 different than a tape recording. And other witnesses
2 from other states heard Darlene say the same thing.
3 Let's talk about Bryan Sheppard for a
4 bit. Counsel would have you believe that these
5 people are all liars and the government got
6 together to fix it all up so **they** could come in
7 here and lie about Bryan Sheppard because the
8 state court people were unsuccessful in getting
9 him in '89. I submit there is no evidence to
10 support that statement. But Glen Shepard, who is
11 a felon from here to tomorrow, but he is a friend
12 of Frank Sheppard, went over and heard Bryan make
13 admissions about this.
14 Counsel made a big deal out of the
15 fact Carrie Neighbors and Shannon Newcomb,
16 Shannon is over here with Richard but Carrie
17 Neighbors and Shannon Newcomb don't exactly in
18 lock step remember the same things. Well, if **they**
19 came in here, if **they** came in here and told you
20 exactly the same story with the same and **they** did
21 have the same place, it was outside the party and
22 Carrie said she never went in and Shannon said
23 Carrie never went in, so that is consistent. But
24 if **they** came in here and told you exactly what was
25 said on the street and **they** each matched each,

3931

1 would any of you believe it but, do you think we
2 would have heard about it from the defense
3 attorneys, these women eight years later come in
4 and tell us exactly the same thing. "Don't you
5 think **they** got together and hatched this all up,
6 cooked it up." Use your common sense. We didn't
7 plot to bring these people. We didn't plot to
8 make their stories perfectly fit because **they**
9 don't.

10 These defendants went out and admitted
11 their involvement in a terrible crime and that is
12 what was remembered by these witnesses. No-one
13 can be expected to remember exact words that would
14 happen on a street outside the party in
15 Marlborough eight years ago. The fact these two
16 women can't remember the exact words, it is
17 ridiculous to say that is reasonable doubt. That
18 is unfair because the reality of it is someone,
19 these two guys, Bryan and Richard, admitted this
20 terrible crime and these two women remember that
21 and **they** were brought in here and cross examined
22 up and down. But that is what **they** remember. And
23 just because their stories don't lock together
24 perfectly doesn't mean **they** are not telling the
25 truth.

1

1 Attterbury, Morans , Morales all heard
2 ~ Bryan admit this at the clay county jail. **They**
3 didn't come forward. Bryan picked people that
4 1 obviously weren't going to run to the police with
5 this information. Be chose well in that regard. I

6

7 1 Kevin Smith, Mr. O'Connor went on at
8 1 some length about him saying that Bryan said **they**
9 1 couldn't pin it on him, maybe two people heard the l
10 1 same thing and really just misunderstood. But
11 what Kevin Smith said -- and look back at your
12 memory and your notes -- Bryan said **they** went to
13 the site to steal; **they** set a fire after trying to
14 break into a trailer. So it wasn't just "**They**
15 1 can't pin it on me." We didn't put them up there
16 1 and he didn't just say "**They** can't pin it on me."
17 Kevin Smith, I am a fellow dope dealer. Yes, Kevin
18 Smith was drinking and probably using drugs but so was
19 Bryan Sheppard. Who are you going to tell about
20 committing a bad crime.

21 Kevin Smith, hey, what happened with
22 1 that deal. You got out of jail. Bryan said, oh,
23 **they** couldn't pin it on me. Smith says what
24 1 happened. Well, we went up there to steal and
25 1 when we couldn't get into a trailer, we set it on
26 1 fire. So it is not just a little misunderstanding

3933

1 about what happened what was said with Smith.
2 What is his motive to lie? He got nothing. He
3 didn't get out of jail one day sooner. He has got
4 no pending charges. What is the reason for this
5 guy to come in here and make all this up?
6 Does he seriously think he is going to cash in on
7 50 grand? Come on. There is no evidence this
8 fellow is in here lying about Bryan Sheppard and
9 it is a simple straightforward admission to a
10 fellow dooper.

11 I am going to dip down to Karen Baird
12 and Kathy Marburger, I want to talk about them.
13 Mr. O'Connor sort of forgot in summation that
14 Bryan and Richard were at Bairns house that
15 morning and Baird told the police in 1989. And
16 then Baird was threatened by Bryan Sheppard. And
17 then Mr. O'Connor came out with his stenographer
18 to take his statements, like he has a right to do,
19 but think about Karen Baird who is so large she
20 had to come in in a wheelchair. When an attorney
21 and a stenographer show up on your doorstep in
22 1989 to question you about the fact you have told
23 the police about Bryan Sheppard, that scares the
24 heck out of her. She tells the police that day I
25 was threatened by Bryan and I was intimidated by

3934

1 the attorney. But she remembers Bryan and Richard
2 were there that morning.

3 Richard Brown told a series of people he
4 did it. He is a talker. He told girlfriends
5 Carrie Neighbors, Shannon Newcomb, Amy Pederson,
6 Kelly Corrison -- Kelly Corrison is important
7 because he told her he was worried that someone
8 saw him at the 7-11 with gas.

9 And we have got Margaret Weaver saw
10 Bryan and Richard together at the 7-11. He told
11 Kelly Corrison he was yelling at his grandmother I
12 to change the story about when he got home. He
13 told his friends in the neighborhood. he told
14 people at parties.

15 Pam Barth and Fern Ayers. On the day
16 after the crime he told Monica Maggard. He told
17 Pat Stewart he was responsible for doing this crime.
18 You saw what he looked like back then in those
19 mugshots.

20 Finally we have left witnesses to the
21 event. Carolee Ann Smith. Ask yourself, would
22 you come forward if you lived next door to the
23 Sheppards? What possible motive does this woman
24 have to lie? She is a nurse for 18 years, 16
25 years. She has lived there for 18 years. If you

1
1 lived next door to the Sheppards I don't think you
2 would want to get involved in the trial either.
3 But she finally came forward. She testified she
4 saw Frank and Skip. There is no testimony **they**
5 went into the house. Frank and Skip and the
6 others went through the middle of the house and
7 went on.

8 Margaret Weaver saw Richard Brown at the
9 7-11. When asked on cross examination why do you
10 remember, she said I hit my head on a wall that
11 1 night. People remember this night in Kansas City.

12 Becky Edwards saw all five defendants
13 there, saying on cross examination **they** were
14 getting high, plotting ways to get money to buy
15 1 drugs. On cross examination there were gas cane,
16 a lot of them at the house.

17 1 Lonnie Joe Pugh, another example of
18 1 people who would rather not get involved who
19 1 finally came forward to say I saw Skip Sheppard
20 1 that night get out of a house and go in.

21 1 That confirms Lisa Harrigan says I went
22 to sleep and when I woke up Skip was still there.
23 1 So she has no idea. She said the house could fall

1
1 down around her but she said Bryan Sheppard came over
2 that night to get Skip.

3 The witnesses come from all walks of
4 1 life. **They** don't know each other. **They** come in
5 1 at different times. **They** talk to different
6 agents. Finally, **they** came forward when it would
7 have been easier to do nothing.

8 We have built up this evidence over the
9 past six weeks that has now been torn down by the
10 defendants. We have built up this evidence that
11 proves beyond a reasonable doubt that these
12 defendants are guilty of the crime charged in the
13 indictment. I ask you, on behalf of the men of
14 pumper 41, pumper 30, their families and the
15 United States of America, to return a verdict of
16 guilty in this case.

17 Thank you.

18 (Whereupon the jury was excused to begin 1
19 deliberations and on February 26, 1997 the jury
20 returned with verdicts of guilty as to all
21 defendants. The jury was then polled and excused.)

22 FEBRUARY 27. 1997

23 THE COURT: All right, Mr. O'Connor, do you
24 want to begin making whatever record we are going to
25 make here.

3937

1 MR. O'CONNOR: Yes, Your Honor, at this
2 time, on behalf of Bryan Sheppard, we are going to
3 waive the jury sentencing and leave it with the
4 Court. I believe Mr. Bryan Sheppard has been
5 previously under oath and I would just ask him if he
6 agrees with my decision to waive jury sentencing and
7 leave the sentencing with His Honor, Judge Stevens.

8 Do you agree with that, Bryan Sheppard?

9 DEFENDANT BRYAN SHEPPARD: Yes, I do.

10 THE COURT: I would be more comfortable if
11 you would say, Mr. Sheppard, and it is up to you, not
12 that it was Mr. O'Connor's decision but you made the
13 decision based on his recommendation, is that correct?

14 DEFENDANT BRYAN SHEPPARD: Yes.

15 MR. O'CONNOR: I want to pass two exhibits,
16 Exhibits 46 and 47, to make it part of my record as it
17 relates to issues I believe should have been brought to
18 the jury's attention for purposes of sentencing. Also,
19 Exhibit 43, the Martindale tape. And, also, we have
20 not found the exhibit number but the Darlene Edwards
21 first interview on February 17, 1995, all issues which
22 we believe should be brought to the jury's attention
23 for purposes of sentencing. The Court has already made
24 its ruling. Based on that ruling and other facts, we
25 made this decision to waive punishment but we wanted

3938

1 to make that as part of our record.

2 THE COURT: We will accept these exhibits,
3 being 46 and 47, and 43 is the videotape tape, for the
4 limited purpose of this proceeding in connection with
5 sentencing.

6 MR. O'CONNOR: Thank you, Your Honor.

7 THE COURT: I had one more question I wanted
8 to ask Mr. Bryan Sheppard. Do you understand, Mr.
9 Sheppard, that there are no constraints or restrictions
10 or parameters on the potential sentencing the Court
11 might assess in this case in this procedure that you
12 are now agreeing to.

13 DEFENDANT BRYAN SHEPPARD: Yes, I do.

14 THE COURT: And do you understand that after
15 a presentence investigation, after a report of a
16 presentence investigation, which I will order at this
17 proceeding, concludes, after a report of that
18 investigation that I would then be, under the law, at
19 liberty to sentence you pursuant to the jury verdict to
20 life imprisonment or a term of years without any
21 further restraints or conditions?

22 DEFENDANT BRYAN SHEPPARD: Yes, I do.

23 THE COURT: Thank you, sir. Thank you, Mr.
24 O'Connor. Mr. Peters, do you want to go next.

25 MR. PETERS: Yes, Judge. I think I probably,

1
1 for purposes of this hearing, would need to make two
2 pages which I don't have a sticker and I apologize,
3 for purposes of the hearing which will be Defendants'
4 1 No 48. It is a two-page Kansas City, Missouri
5 Police Department report detailing a polygraph
6 examination conducted on December 13, 1990 of Frank
7 Sheppard. First, I would move to offer for purposes of
8 this hearing and the reports that were provided by
9 Mr. Becker, the two-page report now marked as
10 Defendants' 48 for purposes of this hearing on the
11 polygraph exam. So, as a preliminary matter, I move
12 for admission in this hearing of 48.

13 MR. BECKER: No objection for purposes only
14 of this hearing.

15 THE COURT: And it will be admitted on that
16 basis.

17 MR. PETERS: The only part I am concerned
18 about, I have spoken with Mr. Becker, we would be able
19 to stipulate at this time for purposes of the record,
20 that if called to testify the people from the Kansas
21 City, Missouri polygraph unit would lay a foundation
22 under the Daubbert decision that **they** are skilled in
23 polygraph examinations, that **they** are familiar with the
24 body of literature talking about the acceptability of
25 polygraph examinations. That **they** conduct their

1

1 examinations in conformity therewith. That those
2 examinations and the examiners are subject to peer
3 review.

- 4 1 Mr. Becker, I think both of us can
5 stipulate for purposes of this hearing to that
6 component. Mr. Becker will not stipulate as to a
7 finding by the Court under Daubbert. I would ask
8 just for expeditious matters, that I be allowed to
9 supplement the record on that prior to sentencing.

10 It is not something critical now. I am talking about
11 having my record complete without having to delay
12 everything and having the witnesses come and testify.

13 THE COURT: We will allow that.

14 (DEFENDANTS' EXHIBITS 43, 44, 46 AND 47 WERE RECEIVED
15 IN EVIDENCE.)

16 MR. PETERS: I have informed my client of
17 our discussions in chambers. If we were in front of
18 the jury I intended to call Larry Baker to the stand
19 as well as introduce the evidence of the polygraph
20 results. I have informed my client that the Court has
21 ruled that such testimony would be inadmissible as
22 attacking the jury's verdict, or words to that effect.
23 And based on that and the considerations of what the
24 jury may do versus what the court may do, it was my
25 ~ recommendation to him that he waive jury sentencing and

1
1 allow the court to consider the full range of
2 sentences, term of years under the Sentencing
3 Guidelines or term of life without parole. I have
4 1 advised Frank Sheppard of that. He has advised me he
5 1 will waive his right of the jury determining the issue
6 1 of life without parole and give that back to the Judge.

7 1 Again, Mr. Sheppard has been placed
8 under oath. Mr. Sheppard, you have heard what I
9 have discussed with the Judge. Are you in
10 1 agreement that under the circumstances as I have
11 1 talked about, it is in your best interest to waive
12 sentencing before this jury?

13 DEFENDANT FRANK SHEPPARD: Your Honor, we
14 have concurred, Mr. Peters and I, and this is my
15 decision.

16 MR. PETERS: You understand you are waiving
17 1 your Fifth Amendment right, this is a right I can give
18 1 you advice on but it is your sole right to waive jury
19 1 sentencing, you understand that.

20 1 DEFENDANT FRANK SHEPPARD: Yes, I do.

21 1 MR. PETERS: It is your decision to waive
22 1 jury sentencing.

23 1 DEFENDANT FRANK SHEPPARD: Yes, it is, Your
24 Honor.

25 MR. PETERS: You also understand that means

1 Judge Stevens, at the time of sentencing, can impose a
2 1 term of years pursuant to the Sentencing Guidelines or
3 a sentence of life without parole.

4 1 DEFENDANT FRANK SHEPPARD: I understand.

5 MR. PETERS: I have no further questions,
6 Your Honor.

7 DEFENDANT FRANK SHEPPARD: Your Honor,
8 expeditiously, I hope.

9 TEE COURT: As soon as possible. We had
10 prepared a written form of waiver of this part of this
11 matter and I am going to ask the clerk to hand it to
12 Mr. Bryan Sheppard and then to Mr. George Frank
13 Sheppard. And you may each execute as I proceed down
14 the list.

15 Mr. Bunch.

16 MR. BUNCH: If it please the court, I have
17 advised Miss Edwards of the rights she has pursuant to
18 the procedure that would be undertaken here with
19 respect to the jury; that is, the matter can be
20 presented to the jury and **they** then could indicate
21 whether or not **they** recommend life without parole or a
22 term of years which would result in a term of years in
23 your imposing sentence. She has been fully advised of
24 the matter. She has been previously placed under oath.
25 She has advised me she wishes to waive her right to

3943

1 have the matter presented to a jury. And I now ask her
2 to stand and indicate to the Court whether or not she
3 wishes to waive that right and if she does, whether she
4 has arrived at that decision, independent of my advice,
5 although concurred with my advice.

6 DEFENDANT EDWARDS: I have. My attorney and
7 I have concurred and it is my decision.

8 MR. BUNCH: You understand if the court
9 accepts the waiver, at the time of sentencing the Judge
10 may impose life without parole or a term of years.

11 DEFENDANT EDWARDS: Yes.

12 MR. BUNCH: You understand there are no
13 restrictions imposed upon this Court to enter either
14 one of those sentences.

15 DEFENDANT EDWARDS: Yes, I do.

16 THE COURT: Thank you. Miss Hunt.

17 MR. HUNT: Your Honor, I would like to
18 incorporate by reference the record made in chambers
19 earlier today. I would like to say if we did have a
20 jury sentencing, it would be my intention to elicit
21 from Larry Baker that my client was at his house
22 that night in support of his alibi. I understand the
23 Court would not allow that. So I discussed the
24 sentencing. I believe he understands and I believe
25 he is willing to waive sentencing and allow the Court

3944

1 to assess sentence.

2 DEFENDANT EARL SHEPPARD: Yes, I do.

3 THE COURT: Is that your decision?

4 DEFENDANT EARL SHEPPARD: Yes.

5 MS. HUNT: You understand the Court will
6 order a presentence report which will be submitted to
7 the Court as to sentencing.

8 DEFENDANT EARL SHEPPARD: Yes.

9 MS. HUNT: You understand the Court can
10 impose a term of years under the guidelines, depart
11 from the guidelines or life without parole.

12 DEFENDANT EARL SHEPPARD: Yes.

13 MS. HUNT: Judge, I would only make one
14 further record or request.

15 As this Court knows, it will take
16 probably two months or more before the sentence is
17 imposed. Mr. Sheppard has a presentence
18 investigation report that was completed about a
19 year, a year and a half ago. So it would be
20 merely an update. He does suffer from brain
21 damage. He does have severe headaches and was
22 designated to the Springfield Medical Center. If
23 at all possible, I would like to have him go back
24 after he talks to the probation officer and prior
25 to sentencing just for his own health situation.

1 THE COURT: Is there a probation officer in
2 the courtroom?

3 MR. FOWLER: Yes.

4 THE COURT: I would suggest you talk with him
5 and if anything further consultation with me is
6 necessary, we will help but I think that would be the
7 best thing to do. And, also, you certainly should urge
8 him to pick up on that old report and use this maybe as
9 an opportunity for a follow-up and not a brand new
10 report.

11 Mr. Osgood.

12 MR. OSGOOD: Yes, Your Honor. Obviously Mr.
13 Brown has been present in court and other lawyers spoke
14 and we discussed this, also. I think particularly it
15 is in his benefit to waive at this point because he has
16 no prior felony convictions and we prefer obviously he
17 be sentenced under the Federal Sentencing Guidelines
18 and incorporate my remarks in chambers. Those issues
19 we are going to raise, those will all be preserved in
20 the presentence report conducted. After discussing
21 this with him, he is in agreement he wishes to waive
22 presentation of the matter to the jury and submit it to
23 the Court.

24 DEFENDANT RICHARD BROWN: I do, Your Honor.

25 MR. OSGOOD: He testified at the bond

3946

1 hearing. He was sworn.

2 THE COURT: You are still under oath, Mr.
3 Brown.

4 MR. OSGOOD: You understand the Court will
5 have full range of sentencing power all the way from
6 life without parole to a term of years.

7 DEFENDANT RICHARD BROWN: Yes, I do.

8 MR. OSGOOD: I have discussed the
9 sentencing guidelines with you and suggested that we
10 are going to argue the Court should give you a fixed
11 sentence of a term of years and that is what you
12 prefer to do.

13 DEFENDANT RICHARD BROWN: Yes, I do.

14 MR. OSGOOD: That is your own decision
15 after discussing it with me.

16 DEFENDANT RICHARD BROWN: Yes.

17 THE COURT: Thank you, Mr. Brown.

18 MR. OSGOOD: The only other thing, Your
19 Honor, we had previously submitted or I should say
20 had presented to the court out of the presence of the
21 jury the polygraph results where Mr. Brown passed the
22 polygraph. I attempted to admit that as substantive
23 evidence and under Eighth Circuit law, that was not
24 allowed, not much to my surprise. However, we do
25 incorporate the offer of proof by Mr. Peters that it

3947

1 should be admitted both in substantive and of course
2 if there were a jury presentation on sentencing, I
3 would use it during the course of that presentation.

4 THE COURT: And the record will reflect that.

5 MS. OSGOOD: Thank you.

6 MR. PETERS: Judge, I am handing back to the
7 Court at this time the waiver signed by all of the
8 defendants.

9 In an abundance of caution, so we aren't
10 waiving more than we should, I think the parties
11 all agree the waiver is as to the jury
12 determination of sentencing; whatever the jury
13 would be able to do, we are now saying the Court
14 can do.

15 As we discussed in chambers, there may
16 be some legal arguments relating to the statutes
17 and all of that as to what an appropriate sentence
18 would be or what the statutory maximum sentence
19 may be. I assume that by our waiving our jury
20 right to determination of sentencing, just as if
21 the jury determined a sentence, we would still be
22 able to challenge the constitutionality and
23 matters such as that that by this waiver if there
24 is a legal challenge to life without parole not
25 being applicable because of the statute of

1

1 limitations or the old statute, we are not waiving
2 that, but that would be a legal argument.

3 THE COURT: That's correct.

4 MR. PETERS: I think all the defendants would
5 join that.

6 MR. OSGOOD: We do.

7 THE COURT: All right. Then I have now the
8 waiver executed by all the defendants and I have heard
9 the oral waivers of all the defendants and of their
10 counsel and I believe we are ready to bring the jury
11 in.

12 MR. BECKER: Your Honor, I consulted over the
13 lunch hour with Mr. Bill, the United States Attorney,
14 and Mr. Hill has consulted with the families of the
15 victims and the government would also waive whatever
16 rights we have to jury determination of the sentencing
17 in this matter and put that in the hands of the Court
18 at a later sentencing date.

19 THE COURT: Thank you. I didn't mean to
20 disregard any right that you and Mr. Bill and the
21 people had to that.

22 I will say to everybody just so you know what
23 is happening. I will have more to say in a minute but
24 we will have the same kind of exit rules today as we
25 had yesterday.

3949

1 (The jury enters the courtroom.)

2 THE COURT: You all may have a seat. As I
3 told you yesterday, the statute under which the charge
4 in this case was brought against each of the defendants
5 in effect makes partners out of the Court and the jury
6 in the sentencing process, and under certain guidelines
7 gives the jury the responsibility, if the Court asks it
8 to, to make certain determinations. The parties, that
9 is, the defendants and the United States, have agreed
10 that in this case the whole sentencing process will be
11 turned over to the Court and that we will not need any
12 further determination by the jury.

13 This is something I did not anticipate
14 happening until some time during this morning of
15 this case and that is the reason we had you come
16 in this morning. However, we now have no further
17 need for your services and after the receipt of an
18 exhaustive presentence report I will announce the
19 sentences of these five people. So we are about
20 to dismiss you but part of my job is not done yet
21 until I tell you how extraordinary I think your
22 service has been. I don't know that I have ever
23 seen a jury as meticulous and as careful in
24 consideration of the case from the time you first
25 started listening until you stopped making charts

3950

1 in the jury room. And I know that your verdicts
2 yesterday were reached and announced only after a
3 good deal of concern and anguish and perhaps even
4 prayer. You have taken part in as important an
5 exercise as you ever will take part in. You
6 didn't come here voluntarily. You were ordered
7 here. Service on a jury is as important as a
8 service to your country as anything you may be
9 called upon to do, including service in the
10 military. And you have performed that service for
11 a longer time than usually is the case and we
12 thank you for that.

13 One other thing I want to tell you which
14 may or may not have been known, you have no reason
15 to know, but all of the lawyers in this case, all
16 of the defense lawyers in this case were appointed
17 to represent their clients. And I will say to you
18 that you have seen lawyering at its best and in
19 the finest tradition of our profession. I commend
20 them for that and I thank you.

21 We got into this under rather sad
22 circumstances and I appreciate the cooperation
23 that has been evidenced by counsel on both sides,
24 even by the parties and certainly by you in
25 accommodating to Judge Bartlett's rather sudden

3951

1 and serious illness.

2 And I believe with that, ladies and
3 gentlemen, we will bid you a fond ado.

4 I will say any constraints about talking
5 to anybody about the case are certainly lifted.
6 There is a sanctity of the privacy of the
7 proceedings in the jury room which you should not
8 violate but you may talk if you want to and if you
9 don't want to, you tell who asks you you don't
10 want to talk, but you are not going to talk in
11 this building because you are going to be able to
12 leave this building without being interrupted by
13 anyone. And if then you want to talk to someone
14 who reaches you one way or another, you may do
15 that. That is up to you. But right now I want to
16 see you comfortably out of the building and we
17 will do that at this time. Thank you very much.

18 (The jury leaves the courtroom.)

19 THE COURT: I want to say to everyone, also,
20 in addition to what I have said to the jury, that I
21 appreciate the depth and intensity of the feelings many
22 of the people that have been here have had and have had
23 about this matter. With one or two possible notable
24 exceptions I commend all of you in the way you have
25 conducted yourselves and observed this trial for so

3952

1 long a time. It was a sad beginning and it was perhaps
2 a sad ending, but I believe it was the best possible
3 example of our system at work and thank you for taking
4 part in it with us.

5 Anything from the government?

6 MR. BECKER: Nothing, Your Honor. Thank you.

7 THE COURT: Anything from any of the defense?

8 MR. O'CONNOR: No, Your Honor.

9 THE COURT: All right, we are adjourned.

CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Elizabeth Shinn
U.S. Court Reporter

IN ~ UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,

)

..

Plaintiff,

)

)

vs.

)

1 Nos. 96-00085-01/05-CR-W-8

)
)

GEORGE FRANK SHEPPARD,

)

EARL D. SHEPPARD,

)

DARLENE M. EDWARDS,

)

Wednesday,

BRYAN E. SHEPPARD, and

)

RICHARD W. BROWN,

)

July 2, 1997

)

Kansas City, Missouri

Defendants.

TRANSCRIPT ON APPEAL

VOLUME XXII

(Paces 3953-4070)

BEFORE THE HONORABLE JOSEPH E. STEVENS, JR..

UNITED STATES DISTRICT JUDGE

Proceedings recorded by electronic stenograph

Transcript produced by computer

ELIZABETH SHINE, RPR

UNITED STATES COURT REPORTER

811 GRAND AVENUE, ROOM 702

KANSAS CITY, MO 64106

3955

1 (Conference in Chambers)

2 THE COURT: All right, I would like for the
3 government to indicate to me now what it is that you
4 intend to do during this hearing and then I will hear
5 from each of the defense counsel.

6 MR. BECKER: I intend to address the issue
7 raised by Mr. Osgood's pleading, the issue before the
8 court of proximate cause by way of oral argument based
9 on the evidence adduced at trial.

10 Thereafter, if the defendants go forward
11 with anything -- and again, I am open to direction
12 from the Court here -- I have a witness,
13 firefighter Mike Torrey, who would testify
14 concerning prior occasions he was at the
15 construction site and on each of those occasions
16 the dispatcher gave him the information. Fireman
17 Torrey will testify on prior occasions he was warned
18 by the dispatcher about explosives on the site just
19 as the allegations by Mr. Osgood in his pleading and
20 **they** understood that, the firemen knew that and knew
21 the explosives were in the bunkers at the rear of the
22 site. And that on at least one occasion he was on
23 that site fighting a fire with pumper 41 when there
24 had been a similar warning by the dispatcher there were
25 explosives on the site.

3956

1 That the warning to the firemen on the
2 night of their deaths that there were explosives
3 on the site is not an isolated incident that
4 should be taken out of context and somehow
5 impugned their actions to be negligent, grossly
6 negligent or cri m; nally negligent.

7 So that would be firefighter Torrey.

8 I ask the Court's direction whether you
9 want me to put him on right away or wait for the
10 defendants to make some defense.

11 THE COURT: It seems to me probably whatever
12 he had to say would be more by way of response or
13 rebuttal to whatever the defendants might have.

14 MR. BECKER: That was my feeling as well,
15 Judge.

16 Then two of the victims, Debbie McKarnin
17 and Karen Oldham, have requested to make a
18 statement pursuant to Rule 32 of the Federal Rules
19 of Criminal Procedure. The other family members
20 will indicate on the record in response to a
21 Court's question that **they** do not wish to make a
22 statement.

23 I believe the Court has been through I
24 this already, but the victims under Rule 32 need
25 to be personally addressed by the Court and asked

3957

1 if **they** want to make a statement. And we can do
2 that collectively.

3 THE COURT: Be sure we have a list of the
4 names of those people. Provide that, if you would, to
5 Miss Sheehan So I can address them personally as
6 provided.

7 MR. BECKER: I have a list of all of their
8 relatives and then I will copy that list and highlight
9 the names of those that would be considered victims
10 under the statute; that is, surviving spouses and
11 children.

12 THE COURT: Not parents. I am just curious.

13 MR. BECKER: **They** are not defined as victims
14 for notice and opportunity to be heard.

15 MR. PETERS: We have no objection if, on your
16 end, you wanted to include the parents just in the list
17 or whatever because if my memory is right, on one of
18 the firemen the only surviving family is the parents,
19 is that correct?

20 MS. HUTSLER: That is correct.

21 MR. PETERS: I thought it was.

22 THE COURT: I think we ought to do that. I
23 will want you to indicate for me before we close out of
24 the case, let's say, specifically what finding it is
25 that you ask the Court to make today.

3958

1 MR. BECKER: Okay.

2 THE COURT: So that the record is clear and
3 so whatever finding I do make is either consistent with
4 or not, but at least we have had the opportunity to
5 know what the government's position is as to what that
6 finding should be. And if it isn't consistent with
7 what I think it ought to be, I will let you know.

8 Now I am puzzled by a message I got from
9 you yesterday, Susan, I had blocked you from
10 calling all of your witnesses. I don't remember
11 signing any orders keeping you from calling any
12 witnesses.

13 MS. HUNT: That message got mistranslated,
14 too. I don't have any witnesses to call. Mr. Osgood
15 filed a joint motion for some witnesses that we are
16 calling. that is all I meant by the message and I
17 don't have any witnesses to call.

18 THE LAW CLERK: When I got that message I
19 was puzzled, too and it was clarified.

20 MR. OSGOOD: If I can speak to that, I
21 supplied the Court with a list of five witnesses ex
22 parte for Mr. Brown. The motion I filed is a joint
23 motion on behalf of all the defendants and certainly
24 the witnesses that I subpoenaed would have been common
25 ~ witnesses to all of the defendants. And I provided the

3959

1 defendants with copies of that ex parse request. I was
2 told by Miss Geller that the Court had examined my
3 request and determined that if there were depositions
4 or
5 affidavits, that I should use those instead of
6 subpoenaing the witnesses, particularly the experts,
7 and the one that identified the Department of
8 Transportation and the one that identified Mr. Eisen.
9 I was satisfied with the deposition testimony, quite
10 frankly, of those witnesses and so I told Miss Geller
11 that would be fine.

12 I also had Chief German on there who was
13 interviewed by us and a couple of other local
14 witnesses. It was my understanding in the first
15 conversation with Miss Geller the Court's
16 instruction to me was I should use depositions on
17 all of those witnesses. So I did not, obviously,
18 subpoena them because I don't have authority to
19 subpoena them. The only way I could subpoena them
20 if the court approved it because the marshals
21 will not serve those subpoenas without an order
22 from the court directing them to do so. I am
23 satisfied those depositions of those witnesses
24 will serve my purpose here and I attached it to
25 the pleading.

3960

1 So I don't have any witnesses today,
2 Your Honor, with the understanding, of course,
3 that hearsay is admissible in the sentencing
4 hearing and these depositions have weight since
5 **they** were taken under oath with counsel on both
6 sides, albeit the government was not a party but
7 nonetheless, there were issues germane to the
8 explosion and the cause and that kind of thing.

9 With that caveat, I don't have any
10 problem not having any witnesses here but I did
11 file the request for the witnesses. So if we are
12 going to be penalized for not having those
13 witnesses here in terms of the weight of the
14 evidence -

15 THE COURT: No, there is no problem, as far
16 as I am concerned, with that.

17 My only concern was Susan. It had been
18 reported to me that Susan had said something about
19 my blocking the appearance or calling of witnesses
20 she had requested. I knew of nothing she had
21 requested.

22 MR. OSGOOD: Miss Geller and I talked and we
23 are satisfied we are on the same sheet of music so I
24 don't have any complaints as long as the Court is going
25 ~ to accept my deposition testimony for the weight it is

3961

1 worth.

2 THE COURT: Which we will do. I want you to
3 describe the import of it as you designate it. We are
4 not in any hurry. We will do what we need to do but I
5 am not sure we need to sit there and read through
6 depositions in the courtroom.

7 MR. OSGOOD: Miss Geller told me you had the
8 pleading I think virtually from the time I filed it.

9 THE COURT: Right.

10 MR. OSGOOD: And you have read it, Your
11 Honor. So I am not going to waste your time reading
12 to you what you have already read, quite frankly. I
13 would like to go to the guts of the issue and get on
14 with it. I know you have read it and so there is no
15 reason to belabor the point.

16 I do want to make enough of a
17 presentation so my client knows I am doing what I
18 am supposed to do but I will tell you you have
19 read it, had it and understand it.

20 THE COURT: Okay. I don't care in what
21 order. Pat, is there anything?

22 MR. PETERS: The only thing we have got is
23 the ruling of the polygraph examination.

24 THE COURT: I had that. I got two of those
25 this morning, maybe one of them.

3962

1 MR. PETERS: One is from Bryan Sheppard, Mr.
2 O'Connor's client, and the other one is mine. I called
3 Paul in regard to mine on whether he wanted me to have
4 the polygrapher here and he indicated I didn't need to
5 have him here. He is going to object to the relevance
6 of it, I presume, but he agreed I didn't have to call
7 the witness because I would just be asking him the
8 questions.

9 THE COURT: I pretty much know what the
10 answer to this is, Paul. What is your position on this
11 polygraph?

12 MR. BECKER: The same as when we were sitting
13 at these chairs some months ago, that at sentencing the
14 government does not believe actual innocence evidence
15 is properly admissible either to the court or to the
16 jury in mitigation of sentence and there is a Supreme
17 Court citation to that. That case is Franklin versus
18 Lynaugh 108 Supreme Court, 2320 101 L.Ed. 2nd, 1955, 1988
19 but there is no Eighth Amendment right to pro-
20 mitigation, actual innocence evidence at sentencing.

21 THE COURT: That is what I thought the rule
22 was and that is what I thought your position would be.
23 I am going to let him present it and I guess simply to
24 make the record, Paul.

25 MR. BECKER: That's fine.

3963

1 **THE COURT:** We would have been dealing with,
2 at the guilt phase, the federal rule excluding
3 polygraph, results of a polygraph exam, as I understand
4 it.

5 **MR. PETERS:** Judge, just so I can make my
6 record, during the course of the trial, the discussion
7 that we have already had took place on the
8 admissibility of the polygraph examinations and at that
9 time you advised us and I think the weight of legal
10 authority was on your side that even if we made the
11 showing under Daubbert that polygraph results are
12 reliable, that you would exclude them as being
13 confusing for the jury and so that wasn't presented at
14 that stage. I just need to voice it for a couple of
15 reasons:

16 The first is that that issue is going to
17 be before the U. S. Supreme Court in their next
18 term so we will know.

19 **THE COURT:** The reliability of a polygraph?

20 **MR. PETERS:** The admissibility of polygraphs.

21 The second part, just for my record, as
22 to the guilt phase of the trial, it was more for
23 what I think the Supreme Court is going to rule
24 but I agree the Court was going on a precedent.

25 As to sentencing, though, I do

3964

1 disagree with Mr. Becker. It has been a long time
2 since I read Franklin but my recollection is it is
3 talking about residual doubt and I think there are
4 two separate issues going on. One, the polygraph
5 that doesn't go to residual doubt but it goes to
6 actual innocence is the first part. The second
7 part has to do with the legal argument for the
8 admissibility of a polygraph to begin with. The
9 reason under the current standard in the federal
10 court is that polygraphs are admissible under
11 Daubbert but it is up to the trial judge to decide
12 whether or not their reliability is outweighed by
13 a potential confusion for the jury.

14 My suggestion in the guilt phase was
15 that because of the type of case we had, the jury
16 should have heard it. But I think in the
17 sentencing phase that argument doesn't exist
18 anymore under federal law because the current
19 status of the law would be that polygraph exams
20 are admissible. The trial judge can exclude them
21 if he thinks the jury is going to be confused.

22 MR. BECKER: I think the Court said it is
23 going to admit them.

24 MR. PETERS: The impression I got from
25 what the Court was saying you were going to admit

3965

1 it insofar as I was going to be allowed to make a
2 record but not that it would be admitted as sub
3 stantive evidence to be considered by the Court.

4 THE COURT: Here is the thing that bothers me
5 with that. As I see it, the issue before me is a
6 fairly narrow one. Guilt has been decided. **They** are
7 guilty. According to the jury, **they** are guilty of what
8 **they** were charged with. It becomes a question whether
9 this was a death caused by an arson fire of a -- what
10 is the statutory language, police officer -

11 MR. BECKER: A public safety officer.

12 THE COURT: -- a public safety officer that
13 occurred in the performance of his or her duty. And
14 that is the issue before me. And what these people
15 said to a polygraph examiner seems to me doesn't have
16 anything to do with that.

17 As I say, it is going to be in whatever
18 you propose with respect to the polygraph, it's
19 going to be in there. And I will be honest with
20 you, it gives me very considerable pause -
21 "pause" is not the right word -- curiosity maybe,
22 being disposed as I am about the guilt of these
23 people, for these to be the results. I don't know
24 how that happened but I have to say this. **They**
25 didn't help me any; "**they**" being the people

3966

1 themselves, the defendants themselves; **they** didn't
2 help me any. And **they** might have. **They** didn't.
3 So I have got only to go on what I have got to go
4 on which is the jury finding that **they** are guilty
5 of the charge. Will.

6 MR. BUNCH: If you are calling on me, I
7 really don't have anything to say. I have filed my
8 objections to the presentence report. There is no
9 point, I think, in rebuttal to that, quite frankly.
10 And I will defer to Mr. Osgood who has filed a motion
11 on behalf of all of us and who did the work. There
12 wouldn't be any sense, in my judgment, in saying
13 something about what Mr. Osgood has written and then
14 he repeats it or vice-versa.

15 So I will have nothing to say other than
16 to say I have filed what I filed and I defer to
17 Mr. Osgood who has filed a motion on behalf of all
18 clients.

19 THE COURT: Who the chair now recognizes.
20 You had your hand up a few minutes ago.

21 MR. OSGOOD: As a polygraph issue, I just was
22 going to remind the Court, I thought we visited this
23 out of the presence of the jury, at least with respect
24 to my client, right, I offered it and it was made a
25 part of the record and was rejected. And, of course, I

3967

1 think that is preserved that way.

2 THE COURT: Right. John, did you have
3 anything?

4 MR. O'CONNOR: No, Your Honor. It would be
5 the same position as Mr. Bunch. Pat is presenting
6 the polygraph which my client is involved in and John
7 is going to argue the motion and I have nothing else.

8 MR. OSGOOD: Perhaps I am not totally clear,
9 Your Honor. Each of us has objections and I think
10 you are required on the record to at least address
11 those objections.

12 THE COURT: That is next. I just have one
13 more thing here. Susan, did you have anything further
14 on this polygraph business?

15 MR. HUNT: We didn't take a polygraph so I
16 have no evidence on that.

17 THE COURT: Now, the objections to the
18 presentence reports, are you prepared to explain what
19 the status of those are? I don't mean right now but
20 when we go on the record, whichever one of you.

21 KEVIN: Both of us.

22 THE COURT: We could do this several ways, at
23 least two ways. And that is open and close court and
24 go through the whole litany as to each defendant or
25 give each of you the opportunity to make whatever

3968

1 record you want to make and explore the objections made
2 and accommodations made to them and get your position
3 on any persisting objections to the presentence report
4 seriatim just as to each defendant and at each
5 opportunity give the defendant a chance to say he is
6 satisfied with what has been done in this regard. I am
7 trying to avoid malpractice suits and 2255 motions and
8 all kinds of things at this stage. I

9 Now, is there a problem with that? 'I

10 MR. BECKER: My only question is really
11 format. We come into court, I have these presentence
12 reports, are there any objections, then we go Frank,
13 Skip, Darlene, Bryan, Richard and then after that we
14 have the proximate cause argument reserving any of the
15 objections in their presentence that relate to
16 proximate cause, to that argument on proximate cause,
17 because if we decide proximate cause first, it makes
18 nothing else important. So we need to march through
19 the presentence reports.

20 Frank has no objections.

21 Skip had two, one of them was
22 sufficiency. The other one relates to whether it
23 is a murder II guideline or murder I guideline.
24 That really needs to be addressed after proximate
25 cause.

3969

1 Darlene had sufficiency, role in the
2 offense. You can decide that. And criminal
3 history, you can either count two prior city court
4 convictions or not. And that would place her in a
5 criminal category IV or V.

6 And Bryan has no objections.

7 And Brown has the same thing. He is
8 objecting about his work history and he can say
9 whatever he wants to say about that.

10 Then the negligence issue which we hold
11 for argument and then criminal history, that all
12 of his crimes occurred after this explosion and,
13 therefore, **they** shouldn't be excluded.

14 THE COURT: Shouldn't be included.

15 MR. BECKER: Should not be included. And
16 our response to that is quite clear, anything you do up
17 to the date of sentence, and you can make a decision
18 on that.

19 MR. OSGOOD: You are oversimplifying it.

20 MR. BECKER: I am trying to march through
21 this, John. Then we would have the argument on
22 proximate cause, should the court find the netting
23 of the fire was a proximate cause.

24 Then there would be a determination of
25 offense level and then a determination by the

3970

1 court of the defendants' arguments that **they**
2 should be sentenced under a level 33 for second
3 degree murder rather than a level 43 for first
4 degree murder. And that really covers the
5 ballpark of objections.

6 THE COURT: Any problems with that?

7 MR. OSGOOD: A fairly succinct summary.

8 THE COURT: If you will, I wasn't taking
9 notes and I don't think anybody else was. Run through
10 your steps again.

11 MR. BECKER: Frank Sheppard, no objection to
12 the presentence report.

13 THE COURT: I think we will just start with
14 objections to the presentence report and go down the
15 line.

16 MR. PETERS: And it is my understanding what
17 we are going to do is object to the substance, claims
18 of omissions or something like that.

19 MR. BECKER: That would be the proximate
20 cause argument.

21 MR. PETERS: Right. The people that are
22 objecting to proximate cause, as I think everybody is,
23 we don't have to say that so I don't have to say
24 anything.

25 THE COURT: I think that's right.

3971

1 MR. BECKER: We will see if that happens.

2 MR. PETERS: On that one, believe me, I don't
3 want to talk about that.

4 MR. BECKER: We would march through the
5 presentence report and three of the five defendants
6 have objections. Those objections relating to
7 proximate cause would be reserved. We would then argue
8 the proximate cause issue and the Court would make
9 whatever findings it determines to make. Then that
10 would result in the Court determining an offense
11 level, either as urged by the government, a level 43,
12 for first degree murder, or as urged by the defendants,
13 I think a level 33 for second degree murder. And then
14 I think, thirdly, we would have both sides make any
15 argument, present any evidence relating to sentence and
16 at that time I think the victims would make their
17 statements. I don't know if there are any witnesses.
18 And then the government would make its impassioned
19 plea.

20 THE COURT: The government would be first.

21 MR. BECKER: Right.

22 THE COURT: But before the government's
23 impassioned plea, the defendant would have the
24 opportunity to put on sentencing evidence. Will there
25 be any?

3972

1 MR. OSGOOD: I think there are a couple of
2 issues that we perhaps have glossed over we need to
3 address, Your Honor.

4 As I see it, the Court has to make two I
5 findings. You have to make a factual finding
6 first as to whether or not the conduct of the
7 firemen was negligent or grossly negligent or
8 reckless based on their conduct.

9 Now, the burden is on the government to
10 establish the requirement for sentencing
11 enhancement. It is not on the defendant. It is a
12 statutory requirement. He has got to show that
13 the enhancement applies. That is his burden, not
14 our burden.

15 THE COURT: Enhancement being triggered by
16 the deaths being caused by the arson fire.

17 MR. OSGOOD: Right. And he has to prove the
18 deaths were caused by the arson fire. We have raised
19 in this pleading and at the trial have presented
20 evidence to cast doubt on that. And we have further
21 briefed that issue.

22 I think it is probably a fairly well
23 joined issue at this point, but I think the Court
24 needs to make a factual finding as to whether or
25 not the burden is on the government.

3973

1 THE COURT: That is a proximate cause issue.

2 MR. OSGOOD: Yes, but there is a second
3 question. It is a legal question if **they**, in fact, if
4 these firemen were negligent, then you have a second
5 question of whether or not it makes any difference
6 under this statute. In other words, you look at the
7 Ryan decision -

8 MR. BECKER: You can look the other way.
9 Why make that finding?

10 MR. OSGOOD: Could I finish, please? Thank
11 you. You have to make a legal decision then as to
12 whether or not under the statute itself it makes any
13 difference. Ryan suggests -- and I think Ryan is
14 wrong on that point -- **they** use the term "a" proximate
15 cause instead of "the" proximate cause. The statute
16 uses the word "the" proximate cause. Ryan was very
17 weak facts in terms of our argument because Ryan set
18 his own building on fire right downtown. Be knew full
19 well the firemen were going to come. **They** came and
20 **they** were fighting the fire and **they** were killed in the
21 fire. Certainly his setting the building on fire was
22 the proximate cause. The Court said a proximate
23 cause because Ryan argued **they** dropped their hoses
24 or some silly argument like that.

25 We have, I think, much different facts

3974

1 where here we argue there is a clear supervening
2 cause. You have to determine, first of all,
3 factually whether or not there was a supervening
4 act and whether or not **they** were reckless or what
5 the degree of their conduct was.

6 If you rule against us on that, then you
7 don't have to make the second question. If you
8 say **they** were doing what **they** were supposed to be
9 doing and **they** responded to the fire and **they**
10 didn't commit any acts of negligence or gross
11 negligence, then it is a done question.

12 If you do find **they** were negligent or if
13 you find **they** were grossly negligent or if you
14 find **they** were reckless, then you have to make the
15 next jump to the legal question of whether or not
16 that makes any difference under the statute. And
17 under the Ryan decision, that is the way I see it
18 in terms of the legal analysis of the issue, Your
19 Honor.

20 MR. BECKER: I would suggest should the Court
21 -- and that's the proximate cause argument I discussed
22 -- you can make the legal decision first, which would
23 either require you to go forward, discuss whether or
24 not you need to make a factual finding on the conduct,
25 probably you would characterize the fire the conduct

3975

1 of the firemen. If you determine it is not relevant
2 under Ryan, then we are done.

3 MR. OSGOOD: That is what I just said.

4 MR. BECKER: You suggested the Court
5 determine the level of their conduct first.

6 MR. OSGOOD: I think that is a safe thing to
7 do because I think the Eighth Circuit might send it
8 back and tell us what the level of conduct was.

9 THE COURT: Level of conduct -

10 MR. OSGOOD: Of the firemen, their actions
11 rise to such a level or recklessness that it broke
12 the causal chain.

13 THE COURT: But if the Court makes the
14 finding that the arson fire was the proximate cause of
15 their deaths, then implicit in that isn't there a
16 finding the causal chain was not broken?

17 MR. OSGOOD: I think so.

18 MR. BUNCH: Yes.

19 MR. OSGOOD: I agree. I think the record is
20 safer if you articulate on the record -- and I would so
21 invite the Court to do so -- whether or not the firemen
22 were reckless in going up there.

23 MR. PETERS: I am going to throw one kink in
24 that. I think there are two issues on proximate cause.
25 ~ What we have been talking about is whether the firemen

3976

1 by negligence have created a supervening set of facts
2 that breaks the chain. But I think there is another
3 standard of proximate cause that applies in this case
4 which is presented from the governments case which is
5 foreseeability, that the concept of proximate cause is
6 that if you do an act it is reasonably foreseeable that
7 certain consequences are going to follow. I am joining
8 Mr. Osgood because I think we have to, in this catch 22
9 argument of enraging the firefighters with the argument
10 from the government's evidence, **they** basically
11 committed suicide.

12 THE COURT: That argument will get out the
13 back door.

14 MR. OSGOOD: I wrote the brief. I don't have
15 to argue it in Court.

16 MR. PETERS: I think from the evidence there
17 is a different issue the Court has to address, which is
18 the foreseeability. We are talking about proximate
19 cause but was it reasonably foreseeable by setting a
20 fire. The fire didn't cause the death of the firemen;
21 the explosion did. Was it reasonably foreseeable by
22 anyone at any time, even in hindsight, that for the
23 first time in recorded history a fire would cause
24 ANFO to explode. And I think that is a different issue
25 than negligence on the part of the firemen. And I

1

3977

1 think it is one that is raised and uncontroverted by
2 any of the evidence, this explosion, which was the
3 cause of the firefighters' death, was not something
4 that was foreseeable, was not something that if you had
5 brought in the ATF expert Lund and the arson expert,
6 who the week before the explosion had been burning
7 ANFO, **they** would have told you it is not going to
8 explode.

9 MR. BECKER: Why don't we have these
10 arguments in court.

11 THE COURT: Yes, I am not going to hold all
12 of those firefighters to the level of expertise of your
13 expert Lund or whatever.

14 MR. PETERS: No, and I am saying just the
15 opposite. Even if you held them to that standard of
16 expertise, nobody -- nobody could foresee that a fire
17 would cause death.

18 MR. OSGOOD: I disagree. I guess we are
19 parting company.

20 MR. BECKER: Scratch your name off that part
21 of the pleading.

22 MR. PETERS: I disagree. I think there are
23 two separate issues.

24 THE COURT: Make sure we articulate on the
25 ~ record a finding that will satisfy you so far as your

3978

1 record is concerned in going up with this.

2 MR. PETERS: That's fine.

3 THE COURT: All right, I think that is all we
4 have then.

5 (Proceedings in the courtroom)

6 THE COURT: The Court calls the matter of
7 United States of America versus George Frank Sheppard,
8 Earl D. Sheppard, Darlene M. Edwards, Bryan E. Sheppard
9 and Richard W. Brown. Would you all enter your
10 appearances, please; first on behalf of the government.

11 MR. BECKER: The United States by Paul S.
12 Becker, Assistant United States Attorney. Also, Daniel
13 Miller, Special Assistant United States Attorney.

14 THE COURT: And for the defense.

15 MR. PETERS: For Mr. George Frank Sheppard,
16 Patrick Peters on behalf of Frank Sheppard who also
17 appears in person, Your Honor.

18 MS. HUNT: Susan Hunt on behalf of Earl
19 Sheppard who is present in person.

20 MR. BUNCH: Will Bunch on behalf of Darlene
21 Edwards who appears in person.

22 MR. O'CONNOR: John O'Connor who appears on
23 behalf of Bryan Sheppard who is present in person.

24 MR. OSGOOD: John Osgood who is present on
25 behalf of Richard Brown, Your Honor.

3979

1 THE COURT: We are here for sentencing in
2 each of these cases. And prior to the opening of this
3 hearing the Court inquired of counsel for each of the
4 defendants as to whether it was agreeable with them for
5 us to proceed with this single hearing dealing with
6 each individual defendant as the law should dictate
7 that but ultimately concluding this matter in this
8 hearing.

9 I am going to ask each counsel if you
10 have made that inquiry of your client and if it is
11 agreeable with you and your client that we proceed
12 in that way. First, Mr.Becker.

13 MR. BECKER: No objection, Judge.

14 THE COURT: Mr. Peters.

15 MR. PETERS: No objection, Your Honor.

16 THE COURT: Miss Hunt.

17 MS. HUNT: No objection, Your Honor.

18 THE COURT: Mr. Bunch.

19 MR. BUNCH: No objection.

20 THE COURT: Mr. O'Connor.

21 MR. O'CONNOR: No objection.

22 THE COURT: And Mr. Osgood.

23 MR. OSGOOD: No objection.

24 THE COURT: Thank you all. This matter first
25 came to the Court's attention on June 12th, 1996 with

3980

1 the hand down of a grand jury indictment in one count
2 charging George Frank Sheppard, Earl D. Sheppard,
3 Darlene Edwards, Bryan E. Sheppard and Richard W. Brown
4 with aiding and abetting an act of arson to property
5 used in interstate commerce, thereby causing death to
6 public safety officers performing official duties, in
7 violation of 18 United States Code, Sections 844, 1 and
8 I(2).

9 Thereafter, after several months of
10 pretrial hearings, motions and rulings, all of
11 which were handled by Magistrate Judge Sarah Hays,
12 and Chief Judge Brooke Bartlett, the matter came
13 for trial on January 1st, 1987 by this judge and a
14 jury, which had been empaneled by Judge Bartlett
15 prior to January 21, 1997.

16 The matter was submitted to the jury as
17 to all five defendants and on February 26, 1997
18 the jury returned a verdict of guilty as to each
19 defendant.

20 The next day all five defendants, having
21 acknowledged on the record, their right to have
22 the jury make the recommendation as to the Court
23 regarding sentencing, all deferred discretion in
24 that matter; that is, make the final determination
25 as to sentencing to the Court.

I

3981

1 We ordered a presentence investigation
2 report and **they** were ultimately filed on May 5th,
3 1997 and were distributed to all of the defendants
4 and their counsel.

5 I need to know now whether there are any
6 objections to the presentence report which have
7 not been disposed of by accommodation of the
8 probation officer or the U. S. Attorney, or both.
9 And I will ask you in order that question. Mr.
10 Peters.

11 MR. PETERS: We have no objection to the
12 presentence report, Your Honor.

13 THE COURT: All right. Miss Hunt.

14 MS. HUNT: We filed two written objections
15 to the presentence; one dealing with sufficiency of
16 the evidence which I understand is not really before
17 this Court for sentencing. The other basically is
18 the proximate cause issue that will be addressed
19 shortly by this Court.

20 THE COURT: Other than that, there are no
21 further objections to the presentence report.

22 MS. HUNT: Those are the only objections.

23 THE COURT: Thank you. Who is next? Mr.
24 Bunch.

25 MR. BUNCH: If it please the Court, we

3982

1 withdraw any objections previously filed with respect
2 to the presentence report with exception of the
3 proximate
4 cause argument and I would defer to Mr. Osgood in that
5 regard.

6 THE COURT: We will deal with the proximate
7 cause argument shortly.

8 Mr. O'Connor.

9 MR. O'CONNOR: No objections to the Court,
10 Your Honor.

11 THE COURT: And now Mr. Osgood.

12 MR. OSGOOD: Just a couple other than the
13 proximate cause argument, Your Honor.

14 It is my understanding our objections
15 have been appended to the report and so some
16 issues I had about employment and other things are
17 going to be part of it anyway. And my concern was
18 the parole commission, prison authorities, have
19 access to those corrections. **They** will by virtue
20 of the amendment.

21 The one I would be concerned about,
22 offense level computation, and criminal history
23 and particularly criminal history. As the Court
24 is aware, Mr. Brown comes out at a level V, having
25 never had a felony conviction prior to this trial.

3983

1 With the exception of one offense, all of those
2 offenses occurred after the date of this offense
3 and were misdemeanor offenses primarily in Jackson
4 County and maybe in surrounding counties, I don't
5 recall.

6 Our argument is several-fold. It is an
7 ex post facto violation. It is used against him
8 to increase his guideline score; that it would
9 violate the spirit of the sentencing guidelines to

11 MR. BECKER: I'm sorry. I couldn't hear
12 that.

13 MR. OSGOOD: It violates the spirit of the
14 sentencing guidelines where an eight year period, such
15 as this, has gone by before sentence is imposed, and
16 then to use misdemeanor conduct during the interim to
17 enhance, bring it all the way up to a V. And obviously
18 I also mention I believe it is unusual punishment under
19 the Eighth Amendment. It constitutes a direct
20 violation of the Eighth Amendment, the unusual
21 punishment provision. I don't know of any other
22 circumstance where somebody eight years ago has been
23 charged and the sentencing guidelines have been used
24 during the course of the time between the offense and
25 the date of imposition of the sentence to bring that

3984

1 person up to a level V with misdemeanor violations. So
2 I suggest it violates unusual punishment of the Eighth
3 Amendment as well.

4 Those are essentially the arguments.
5 And the final one and I don't know it is well
6 articulated in subpart (b) of the objection, the
7 final argument, that is not the type of situation
8 contemplated by the guidelines. The guidelines
9 never envisioned eight years would go by and five
10 or seven, whatever it was, misdemeanors, not five
11 or seven, a number of misdemeanors would push the
12 defendant into a criminal history V. A criminal
13 history V, as the Court knows, is reserved for the
14 most serious of offenders. The guidelines were I
15 designed and basically **they** are designed to rely
16 on felony convictions to weigh the criminal
17 history based on prior conduct.

18 I do not believe the criminal V in this
19 case truly and fairly and adequately represents
20 this defendant's prior criminal history. His
21 prior criminal history is really more in the
22 nature of petty driving offenses primarily. A
23 couple of those, his numbers were bumped because
24 he got out to the local confinement facility here
25 in Cass and basically turned himself in after some

3985

1 medical treatment. That is an escape under the
2 guidelines and that bumps his score some more.

3 My argument, the nature of the conduct
4 he engaged in to arrive at a level V does not
5 adequately and fairly represent his true criminal
6 history so, therefore, the Court should disregard
7 the level V and put him at a level II based on the
8 offense conduct that occurred after his
9 conviction.

10 That is the objection.

11 THE COURT: All right.

12 MR. OSGOOD: I might add, I would ask the
13 Court to reserve ruling on that, quite frankly, until
14 you rule on the other issue for this simple reason.
15 If the Court determines that our proximate cause
16 argument is no good, then the Court has to decide
17 under the statute whether it uses first degree murder
18 or second degree murder or something in between. If
19 it uses something in between or second degree murder,
20 then we are squarely back onto the issue of my
21 client's prior criminal history. If you use second
22 or something in between, you are in a discretionary
23 field anyway, Your Honor, because under the statutes
24 if you depart from a level 43, based on the drafter's
25 ~ note in the guidelines, you are in a discretionary area

3986

1 at that point anyway. Part of that discretion would
2 be how to treat his criminal history I would ask you
3 to reserve ruling on that point.

4 THE COURT: But if the finding is what you
5 characterized as first degree murder, then there is no
6 discretion, is there, so far as the offense level is
7 concerned.

8 MR. OSGOOD: No, I don't see any. So it
9 would moot it at that point, too.

10 THE COURT: Thank you.

11 MR. OSGOOD: I guess that is the only ones I
12 want to talk about.

13 THE COURT: I will ask Mr. Becker if he has
14 any response before we move on.

15 MR. BECKER: I do, Your Honor, And I made a
16 written response to the probation department. It calls
17 the court's attention to the comment defining prior
18 sentencing under the Sentencing Guidelines and reads
19 as follows: Prior sentence means a sentence imposed
20 prior to sentencing on the instant offense. A sentence
21 imposed after the defendant's commencement of the
22 instant offense but prior to sentencing on the instant
23 offense is a prior sentence if it was for conduct
24 other than conduct that was part of the instant
25 offense." -

3987

1 Clearly the guidelines contemplate and
2 include as a part of a defendant's criminal
3 history what has traditionally and always been
4 considered by the Court, what is the defendant's
5 status as a criminal today, how he stands before
6 the court, how has he conducted himself in his
7 life that the Court should consider in sentencing.

8 This defendant, in fact, was given a
9 break by the guidelines. When counting all of his
10 prior misdemeanor convictions, it would have added
11 up to 16 cri mi nal history points, but the
12 ordinance violation, the traffic violations are
13 limited to only four points. So that all those
14 beyond the first four times he committed offenses
15 are not counted. So, in fact, a criminal history
16 category V underrepresents his total criminal
17 conduct. His cri mi nal conduct is accurately
18 reflected in the presentence report and the
19 defendant is a criminal history category V under
20 the plain reading of the guidelines.

21 THE COURT: All right.

22 MR. BECKER: I would ask the Court to inquire
23 directly of the defendants if **they** have any additional
24 objections to the presentence report, especially those
25 defendants through their attorneys represented no

3988

- 1 objection to the presentence reports.

2 THE COURT: All right, we will do that. I do
3 need to know from each defendant if **they** concur with
4 their counsels representation with respect to any
5 objections to the presentence report.

6 Mr. Frank Sheppard, do you agree with
7 your counsel's statement in that regard?

8 DEFENDANT FRANK SHEPPARD: Your Honor, I have
9 no objection to the presentence report.

10 THE COURT: Thank you. Mr. Earl Sheppard.

11 DEFENDANT EARL SHEPPARD: No, none.

12 THE COURT: Mrs. Edwards.

13 DEFENDANT DARLENE EDWARDS: I agree with my
14 attorney.

15 THE COURT: Thank you. Bryan Sheppard.

16 DEFENDANT BRYAN SHEPPARD: No, I don't.

17 THE COURT: Do you have any objection?

18 DEFENDANT BRYAN SHEPPARD: No, I don't. I

19 THE COURT: Thank you. Mr. Brown.

20 DEFENDANT RICHARD BROWN: No objection.

21 THE COURT: Thank you all. Now, Mr. Osgood,
22 on behalf of all the defendants, has raised a proximate
23 cause issue which I think we should discuss at this
24 time. We have had some in-chambers discussion of this
25 so I am already aware of the parties' positions in that

3989

1 regard so that perhaps the discussion here need not be
2 as exhaustive, but I want you to have every opportunity
3 to make whatever record you want to make. So, Mr.
4 Osgood, why don't you proceed.

5 MR. BECKER: I will follow. My initial
6 argument was to rely upon the evidence adduced at
7 trial. So I will be prepared to make further argument
8 once Mr. Osgood makes his argument.

9 THE COURT: That's fine. Keep in mind, as we
10 have pretty much reminded each other in prior
11 conferences, this is not a guilt hearing.

12 MR. OSGOOD: Absolutely.

13 THE COURT: Just so you and others that might
14 be interested are aware, I am not here to determine
15 guilt today.

16 MR. OSGOOD: I agree. In fact, I guess the
17 record ought to be clear, my brief I filed, as Your
18 Honor well knows, having read it, jumps off from the
19 presumption **they** have been convicted and **they** are
20 guilty of the offense and then I make an argument.

21 I think I used the word alleged
22 conviction maybe once or twice but I probably
23 dropped it in that brief and say this is what **they**
24 have been convicted of and this is what **they** did.
25 Referring to the fact **they** set the fire, I am not

3990

1 conceding **they** set the fire. So, no, I don't have
2 any problem. And that was my intent to focus on
3 this issue alone, not reargue the case on the
4 facts.

5 By way of some recapitulation, Your
6 Honor, we filed a brief that was some 27 pages in
7 length and I filed it on the 20th of June at two
8 o'clock in the afternoon and dropped a copy off by
9 your chambers and checked with Miss Geller and was
10 told you had that and you, in fact, commenced to
11 read it almost immediately.

12 THE COURT: I promise you I have read it
13 three times; the last time concluding at eleven o'clock
14 last night.

15 MR. OSGOOD: With that in mind, mainly I am
16 saying this for the benefit of my client and the other
17 clients and the audience, had the Court not seen it
18 I would want to put on witnesses and read the
19 deposition testimony the way depositions are used. But
20 I am not asking to do that because the depositions were
21 appended to the pleading and the Court has had the
22 benefit of that material.

23 THE COURT: I acknowledge that your and your
24 co-counsel's willingness to proceed that way are an
25 accommodation to the Court and all and that it does not

3991

1 in any way deprecate, diminish the effect or importance
2 of the material you are relying on. And I have read it
3 and I am familiar with it.

4 MR. OSGOOD: I hope it will help us because
5 from this point on we will be able to focus on the
6 legal argument.

7 I do have the actual booklet I obtained
8 from the Department of Transportation, along with
9 an affidavit from the agency head and I am going
10 to offer that into evidence. He was Mr. Alan
11 Roberts. And I appended some excerpts of that to
12 the material I gave to Miss Geller. It was not
13 part of the brief but I gave a copy of it to Mr.
14 Becker. This is the actual book. I am going to
15 offer it into evidence at this time.

16 THE COURT: All right, it will be admitted as
17 Sentencing Exhibit 1. Did you mark it 1?

18 MR. OSGOOD: Mr. Peters just put a D.4. I
19 don't have any problem with that.

20 THE COURT: We will take it as four.

21 MR. OSGOOD: With that I am prepared to argue
22 the motion.

23 As the Court knows, there is one other
24 case in this Circuit that is considered a
25 benchmark, that United States versus Ryan. U.S.

3992

1 vs. Rvan focused on the issue of the meaning of
2 the word proximate cause in the statute. I submit
3 Congress put the word proximate cause in the
4 statute because when **they** wrote the statute **they**
5 were familiar with felony, murder rules and knew
6 that there has got to be some relationship between
7 an act and a result. So the statute is an
8 enhancement provision as we know and we agreed to
9 in the trial. And it is triggered by certain
10 events. And if there is injury, then the
11 punishment I believe goes to 20 years. If there
12 is a death, it is the proximate result of the
13 fire, then the punishment can be life without
14 parole in this case or death if it were under
15 other circumstances.

16 In Rvan and I am going to come back to
17 this, it is important I think to distinguish the
18 Ryan facts from the facts in this case right off
19 the bat.

20 Mr. Ryan owed a business in Iowa. Mr.
21 Ryan was having financial problems. He set his
22 business on fire about 8:00 P.M. in the evening,
23 somewhere in that neighborhood. And the firemen
24 responded and there was a raging fire. The fire
25 ~ was in the middle of town, in a commercial area.

3993

1 The Opinion doesn't mention whether or not there
2 were residential areas nearby but certainly in a
3 built-up area in town. The fire department
4 responded. Two firemen went inside the building,
5 apparently dropped their hoses or something at one
6 point to go into another area, and the building
7 collapsed on them and **they** were killed.

8 **They** were clearly responding to a fire
9 and under the statute it was almost ridiculous to
10 argue their deaths were not the proximate cause of
11 the fire.

12 THE COURT: Proximate result.

13 MR. OSGOOD: Proximate result. What **they**
14 were doing, **they** responded to the fire properly, the
15 way **they** were supposed to, went in and fought the
16 fire and were doing what **they** could to put it out.

17 In Ryan, the defendant argued that the
18 act of dropping their hoses was an act that was
19 not foreseeable and that brought about a break in
20 the chain and that the fire was not the proximate
21 cause of their deaths. The Court said -- and I
22 don't know whether it was inartful drafting or
23 intentional -- but the Court said it was a
24 proximate cause, the setting of the fire was a
25 proximate cause of the death. It did not say the

3994

1 proximate cause as the statute says. I think the
2 word is in the statute because Congress put it
3 there, meaning it must be the proximate cause of
4 the deaths. And then you proceed from that
5 standpoint.

6 THE COURT: Do you have legislative history
7 supporting that position?

8 MR. OSGOOD: It is quoted in Ryan.

9 THE COURT: On "a" or "then?"

10 MR. OSGOOD: No history talking about the
11 distinction between "a" and Ethel'. It only talks
12 about the proximate cause, again its analogy with
13 felony murder.

14 There is an older case, Swain
15 (phonetics), cited. Swain was the Tenth Circuit
16 case where the judge doubled the punishment
17 because the person injured was one of the people
18 setting the fire, themselves. The reason I cited
19 that case was mainly because the Tenth Circuit
20 said we don't know exactly what this statute
21 means, we are going to look at state felony murder
22 decisions to see or get some idea how we should
23 interpret this enhancement provision under 18
24 U.S.C. 844. That is one of the reasons I cited
25 Swain. It is pretty good authority.

3995

1 You can look at the state felony
2 murder statutes to interpret what proximate cause
3 means and when this enhancement should apply.

4 Obviously, there aren't any other
5 cases directly on point dealing with this issue.

6 One of the questions I think the Court
7 has to confront is that at what point do you
8 break, is the causal chain broken in this kind of
9 a situation. And LaFave seems to be the best
10 authority I could find to talk about this. And
11 LaFave suggests there is a policy consideration,
12 at some point you don't hold people responsible
13 for what are considered to be extraordinary
14 actions or unusual occurrences or events that
15 would not be expected.

16 That is perhaps coming around the barn
17 to the use of the term foreseeability. Reading my
18 brief, I think the Court will agree with me that
19 you don't treat

these

cases like a state

20 negligence or a civil negligence case. **They** are
21 different than a civil negligence case.

22 So what you have here is an argument
23 that when these firemen arrived at the scene, Miss
24 Riggs told them repeatedly there was ammonium
25 ~ nitrate and fertilizer in the trailer that was on

3996

1 fire. Chief German knew that. She even
2 identified, not in our case, in the case in chief
3 because obviously we were focusing on guilt issues
4 and these issues would have been irrelevant at
5 that point, but in her depositions, which we have
6 appended, she went into a great deal of detail
7 talking about what **they** knew and when **they** knew
8 it, to quote a popular phrase on television in the
9 last couple days, what did **they** know and when did
10 **they** know it.

11 According to all of the deposition
12 testimony, including hers, Mr. Morales and Chief
13 German himself, **they** all knew there was ammonium
14 nitrate and fertilizer.

15 THE COURT: Now, Mr. Osgood, I don't remember
16 that deposition testimony having been read to this
17 jury.

18 MR. OSGOOD: It was not.

19 THE COURT: Is it on the record other than
20 being filed with your motion? Is it part of the record
21 in this case?

22 MR. OSGOOD: Part of the record by virtue of
23 the case, it has been appended to our pleading and the
24 depositions have been filed. As you will recall we
25 discussed in chambers, I filed a request to produce

3997

1 five life witnesses in this case, including the
2 individual at the United States Department of
3 Transportation who is head of this department.

4 THE COURT: I am with you there but I wanted
5 to be sure my recollection wasn't phobic. Up to the
6 point of this filing about that material, it hadn't
7 been a part of the record in the case.

8 MR. OSGOOD: No, sir. Only to the extent
9 Miss Riggs did tell us on the stand, and I think at the
10 time candidly we took her to task on it in cross
11 examination, but Miss Riggs did state on the stand she
12 told the firemen that there was ammonium nitrate and
13 fertilizer before **they** went up there. We didn't
14 elaborate or didn't go into great detail because it
15 simply was a collateral issue.

16 The first information in front of the
17 court as far as I know in any depth would be these
18 excerpts. And, by the way, I said deposition;
19 these are excerpts, Your Honor. And certainly, if
20 the Court wants the full deposition filed, I can
21 do so. **They** run all-told 1,500 pages or maybe
22 close to 2,000. I don't know. I have them all.
23 If the Court wants, we can file them but we have
24 taken excerpts, what we feel are germane to our
25 position.

3998

1 I might add I did give Mr. Becker a copy
2 of all the depositions that we had picked up out
3 of the civil file and he has everything we have.
4 So we are not trying to sandbag him with the
5 depositions. He certainly has the opportunity to
6 file anything out of those depositions himself
7 under the rule of completeness or just simple
8 fairness.

9 So that is what is before the Court at
10 this point.

11 Now, our argument proceeds that
12 certainly under hornbook commentary and under what
13 case law I could find, it is a recognized
14 principle of law that if there is a break in the
15 causal chain, that can and should in our case
16 cause the Court not to apply the extension
17 enhancement provision.

18 Now our argument proceeds that by virtue
19 of what the firemen had in terms of information,
20 **they** should have done something entirely different
21 than **they** did in Ryan. As the Court knows, that
22 was a remote sight. The trailer was in what
23 amounted to a ravine. The nearest building of any
24 consequence, homes, business or residence, were at
25 least a mile and a half way and there wasn't any

3999

1 reason to go up there and fight this fire, quite
2 candidly. If **they** would have followed the
3 procedure in the book, what **they** should have done
4 was evacuate the area, quarter it off and let the
5 fire burn itself out or explode. The book itself
6 says if the fire has reached the cargo area, do
7 not fight fire, evacuate. **They** all had Haxmat
8 training. That was covered in the deposition.
9 **They** had been to school. **They** had the book. The
10 book was carried in each of the fire trucks.
11 Pumper 41 and pumper 30 each had a copy of this
12 book in the truck itself. There is some
13 suggestion **they** even looked at the book that
14 night. So there wasn't any reason to do that.

15 Now, in terms of the lock the barn door
16 after the trailer blew up, that is exactly what
17 Chief German and the others did, **they** backed all
18 the way down to 95th Street, secured the area and
19 waited for the second trailer to blow up.

20 We believe that had **they** done what **they**
21 were supposed to do, under their rules,
22 regulations and procedures, that we wouldn't be
23 here today.

24 Now I think the Court has to deal with
25 the issue of whether or not their acts were simply

4000

1 negligent; in other words, just careless or did it
2 rise to a level above that. And I will concede at
3 this point to the Court if it was simple
4 negligence, I don't think I have an argument. I
5 think the conduct might have risen to the level of
6 reckless conduct such as to break the causal chain.

7 THE COURT: How did you define that in that
8 way except in hindsight?

9 MR. OSGOOD: Unfortunately, I don't know the
10 answer to that, Your Honor. Every appellate decision
11 we read, some court is in hindsight weighing what is
12 negligence and what is gross negligence. That is the
13 only way you can do. You present the facts in
14 hindsight and you say based on prior experience we
15 think this is simple negligence; however, based on
16 prior experience we think this is careless or,
17 excuse me, reckless conduct. So it is not an easy
18 question and I don't envy the Court the position it
19 has right now to make this decision.

20 THE COURT: You could hypothesize without
21 being confronted with fait accompli, hypothesize and
22 ask would it be neglectful to do such and such or would
23 it be gross negligence.

24 MR. OSGOOD: Let me give you some examples.
25 If the fire truck were responding to

4001

1 your house that was on fire, Your Honor, and
2 Fireman A had a responsibility to go around and
3 check the air pressure on the tires once a week
4 and he didn't do it last week. And it so happens
5 there is a bald **spot** on one of the tires and it
6 blows on the way to your house and as a result of
7 that you die in an accident. Certainly Fireman A
8 is not responsible for your death because he
9 failed to check the tires the way he was supposed
10 to in a routine fashion. On the other hand, if
11 Fireman A is the driver -- and there is a case and
12 I don't know if I cited this in the brief -- but
13 Fireman A is the driver and is drinking on the job
14 on the day he receives the call and gets in the
15 truck intoxicated and drives the fire truck to
16 your house intoxicated, it may have been a
17 different situation, reckless, he has a wreck on
18 the way.

19 So the only thing I can say, that is why
20 I cited both the federal statutes on voluntary
21 manslaughter and the state provision on
22 involuntary manslaughter. And certainly no-one in
23 their right mind -- I was a prosecutor many, many
24 years and no-one in their right mind would charge
25 either of those two captains, had **they** survived,

4002

1 with involuntary manslaughter but certainly under
2 the elements of the offense it is something we can
3 look at to analyze what level we place the
4 conduct. In other words, was it reckless or was
5 it just simple negligence. I submit when a
6 trained official who has duties and
7 responsibilities to the public, who has had
8 training, who has a manual on board his unit
9 telling him how to respond to that fire -

10 THE COURT: Let me get this straight, too.
11 You mention that in your brief. Is it your suggestion
12 that with that fire raging out there and equipment
13 arriving by the minute and people there in great
14 numbers, that proper conduct would have been for them
15 to have stopped and turned on their reading lights and
16 pull out the book and read the manual?

17 MR. OSGOOD: Actually, yes, Your Honor,
18 because the manual was designed for precisely that.
19 It has very large letters.

20 THE COURT: Where does it say "Read during
21 fire" in that thing?

22 MR. OSGOOD: You open the first page and it
23 says ammonium nitrate and fertilizer is guide 46. You
24 flip to guide 46 and it tells you right there. You
25 can do it this quickly. Do not fight the fire,

4003

1 evacuate the scene. That is what it is designed for,
2 made with large letters with guides for these kinds of
3 emergency situations. You could read almost every
4 guide in here on the way to the fire if you knew that's
5 what you had. **They** were told **they** had explosives, no
6 not withstanding chuckles by some of the audience.
7 That is exactly what this book is for. This book
8 has probably saved firemen's lives. That is what it
9 was designed for. It has undergone a number of
10 revisions or the first copy I believe was published
11 in '94 by the Department of Transportation. And I have
12 an affidavit from the fellow that is in charge of the
13 section, which I gave the Court. And 1.1 million
14 copies of this book were put out in the hands of
15 firemen. The government spent enough money to put
16 1.1 million in the hands of firemen for free must mean
17 it has some validity. So, yes, I submit to you --and
18 this is just a piece of what **they** had.

19 **They** also had all been to Hazmat
20 training. I believe it was fireman Morrow went
21 into great detail in his deposition about the
22 level of training **they** had had. So it wasn't just
23 the book.

24 The issue then is whether or not this
25 was a supervening act of such degree to break the

4004

1 causal chain here. We cannot hold someone
2 responsible -- and I don't know I have developed
3 it as thoroughly as I would like to and I am going
4 to, for purposes of the record right now, suggest
5 that this is not only a sentencing guideline
6 issue, Your Honor, but this is a Fifth Amendment
7 due process issue under the constitution. In
8 other words, how far can we take a criminal
9 statute in terms of imposing criminal
10 responsibility on somebody for acts that are
11 beyond their control or are not contemplated or
12 are not foreseeable. That is the whole problem
13 with felony murder legislation. In other words,
14 at what point -- and again this is covered in
15 LaFave but at what point do you say as a matter of
16 policy and as a matter of constitutional due
17 process, the chain is broken and you can't hold
18 somebody responsible for subsequent acts that
19 occur, that are maybe in some way remotely related
20 to the original event. And remoteness, by the
21 way, does not key on time. Obviously, in terms of
22 time this was not remote. But it is remote in
23 terms of the events themselves in the sentence
24 that had **they** done what **they** were supposed to do
25 **they** wouldn't have been there.

4005

1 And that pretty well, I think, is the
2 argument. I don't know that I need to go into a
3 great deal of detail about the testimony because
4 you have read it.

5 THE COURT: Thank you, sir. I call on Mr.
6 Becker.

7 MR. BECKER: I have some factual matters to
8 present to the court relating to that issue as well as
9 a legal argument to make.

10 First of all, I ask leave to supplement
11 the record with the deposition of Mike Morrow that
12 has been referred to quite a bit by Mr. Osgood but
13 it was not appended to the pleading I received. I
14 have received a copy. I am not saying that. But
15 I don't believe it is part of the record because
16 it wasn't appended to his pleading.

17 I would like to point out a number of
18 statements in that deposition to correct what Mr
19 Osgood factually asserted and then present a
20 witness firefighter, Mike Torrey. At pages 23 and
21 24 of the Morrow transcript he indicates only four
22 of the deceased firemen received some hazardous
23 material training, not all six. At pages 93 and
24 94 of the transcript Mr. Morrow testified if a
25 firefighter was told there was explosives in a

4006

1 burning trailer, it is not common practice and
2 procedure to evacuate the area. The decision to
3 evacuate depends on the credibility of the
4 individual who provides the knowledge of the
5 explosives. Also at page 95, the statement that
6 knowledge of explosives in a general area is not
7 detailed enough information to evacuate. Finally
8 at page 100 of the transcript, firefighters are
9 taught to assume that explosives are present at a
10 rocky construction site.

11 Next, the United States would call
12 firefighter Mike Torrey.

13 THE COURT: All right.

14 MIRE TORREY.

15 having been sworn, testified:

16 DIRECT EXAMINATION

17 BY MR. BECKER:

18 Q Please state your name and spell your last name.

19 A: Mike Torrey, T-o-r-r-e-y.

20 Q How are you employed?

21 A: Kansas City Fire Department.

22 Q How long have you been employed by the fire department?

23 A: Twelve years.

24 Q I believe you testified in the criminal case about six
25 months ago, is that right?

1 A: Yes.

2 Q You testified that on the early morning hours of
3 November 29, 1988 you responded to the construction
4 site where the explosion occurred, is that right?

5 A: Yes.

6 Q Prior to that date had you ever had occasion to be
7 called to a fire at that construction site?

8 A: Yes.

9 Q Approximately how many times?

10 A: Approximately half a dozen.

11 Q What was the nature of the calls to that location?

12 A: Usually a stolen auto someone had set on fire or a
13 brush fire.

14 Q Do you recall any instructions or warnings or
15 information given to you by the dispatcher when
16 responding to those earlier fires at that location
17 concerning explosives?

18 A: Yes, every time we responded **they** would say to use
19 caution because explosives were on fire. When we
20 didn't, 41 or 30 were dispatched. So we heard it every
21 time somebody went to that location.

22 Q You base your answer on hearing of the other radio
23 communications and the firemen who were killed on
24 pumper 30, pumper 41 had responded on prior occasions
25 and had been informed about explosives on the site, is

4008

1 that right?

2 A: Yes.

3 Q How do you use that information? What did you do when
4 you got to that site?

5 A: Well, we knew there were bunkers there that contained
6 explosives and we just stayed away from that area.

7 Q And in your responding to that site did you know where
8 those bunkers were?

9 A: Yes.

10 Q Where?

11 A: **They** were toward the back of the site.

12 Q Did **they** move around in the times you were responding
13 to that site?

14 A: Not the bunkers themselves, no.

15 Q Did the equipment that was on that site, vehicles,
16 buildings, whatever you had up there, did that change
17 over time when you responded to the site?

18 A: Yes, it did. Sometimes there was more equipment there
19 than others. And it changes. There would be pieces of
20 some kind of materials laying around. And sometimes we
21 would go up there and it would be something else. Just
22 change from time to time.

23 Q Were you ever told what was in those semi-truck
24 trailers that exploded on the site?

25 A No.

4009

1 Q Were the radio warnings, the radio communications you
2 heard on the night of the explosives any different than
3 half a dozen times you had been out there previously?

4 A: No.

5 MR. BECKER: Thank you very much.

6 THE COURT: Mr. Osgood, I will call on you
7 first since you are bearing the brunt of this motion.
8 And then I will ask the others if **they** have any other
9 questions.

10 CROSS EXAMINATION

11 BY MR. OSGOOD:

12 Q You know the policy of the Kansas City Fire Department
13 in terms of responding to a fire if you know what is
14 burning is explosives.

15 A: Could you state that again.

16 Q What would the policy be, as far as you know, of the
17 Kansas City, Missouri Fire Department at the time of
18 this explosion how to respond to an item such as this
19 trailer that was burning if you knew there were
20 explosives in it?

21 A: Of the explosion?

22 Q Yes.

23 A: If you knew there were explosives in there you wouldn't
24 go regardless of the policy, you just wouldn't do it.
25 Would you agree with me in his deposition then Chief

4010

1 German was correct when he said if you were told there
2 were explosives in the trailer that was burning if you
3 knew there were explosives in it?

4 A: If you knew there were explosives in there you wouldn't
5 go, regardless of the policy, you just wouldn't do it.

6 Q Would you agree with me in his deposition then Chief
7 German was correct when he said if you were told there
8 were explosives in the trailer you would not fight the
9 fire, you would evacuate.

10 A: That's right.

11 MR. OSGOOD: That is all I have.

12 CROSS EXAMINATION

13 BY MR. PETERS:

14 Q You were familiar with all six of the firemen that were
15 killed.

16 A: Yes.

17 Q You were familiar with their standard procedures and
18 their training and their level of expertise, isn't that
19 correct?

20 A: Yes.

21 Q And it is something that I think we may have talked
22 about, can you tell the Judge whether you have an
23 opinion, based on your knowledge of the firemen as to -
24 - I am going to go a step at a time -- you are aware at
25 trial unimpeached Deborah Riggs testified she told five

4011

1 of the six firemen on two separate occasions that there
2 was ammonium nitrate and fuel oil in the trailer, you
3 are aware of that testimony, is that correct?

4 A: That is what I heard, yes.

5 MR. BECKER: Objection. Misstatement of
6 the testimony. Misstatement it was unimpeached.

7 THE COURT: Yes, the "unimpeached" is
8 troublesome, Mr. Peters. Certainly I think you are
9 entitled to lay that out in Cross Examination but I am
10 not prepared to assume that all of that testimony was
11 the gospel.

12 MR. PETERS: Precisely, Your Honor.

13 Q I will go a step at a time. You are aware that Deborah
14 Riggs related a conversation with five of the six
15 firemen and because of their deaths the only person who
16 can testify about this conversation is Deborah Riggs is
17 what I am getting at. You would agree with that.

18 A: That would be correct.

19 Q So nobody else could come into court and say whether or
20 not these conversations actually took place.

21 A: No, not at this time.

22 Q And so what I am saying, you are aware what the jury
23 heard, the jury only heard Deborah Riggs' version of
24 the conversation.

25 That's true.

1 Q From talking with you. Do you have an opinion, based
2 upon your knowledge of these firefighters, whether or
3 not Deborah Riggs -- I will rephrase it. Do you have
4 an opinion, based on your knowledge of these
5 firefighters, whether or not, in fact, Deborah Riggs
6 was testifying truthfully when she said that she had
7 warned five of the six on two separate occasions?

8 MR. BECKER: Objection. I don't understand
9 this issue as a sentencing issue, this witness'
10 opinion about another witness at trial. It is simply
11 not an issue before the court. He is not a
12 credibility witness to judge his knowledge of his dead
13 colleagues whether **they** would think that Riggs was
14 telling the truth.

15 MR. PETERS: Your Honor, this goes to
16 something that in the case in chief we attempted to
17 get into when we were attempting to attack the
18 credibility of Deborah Riggs. The six firefighters
19 are dead. But we have people that worked with them on
20 a daily basis and were familiar with their way of
21 addressing the situations like this and I think it is
22 proper to ask this witness whether or not he believes,
23 based on his knowledge of the deceased firemen,
24 whether or not had **they** been told there was ammonium
25 ~ nitrat the trailer, would **they** have then gone up

4013

1 to fight this fire.

2 THE COURT: The trouble I have with that is,
3 Mr. Peters, -- it may be it all boils down to
- 4 materiality and relevance anyway in a sentencing
5 hearing -- the trouble I have with that is if we accept
6 your proposition, then **they** couldn't have known that
7 there was explosives there and, therefore, there was no
8 intervening or, to use your word, supervening cause to
9 block the conduct of your client and others as the
10 cause of the deaths.

11 MR. PETERS: Judge, I understand your point,
12 but what we have is that the defendants are being put
13 in a Catch 22 in the guilt phase where the issue of the
14 credibility of Deborah Riggs was critical. This
15 information was not allowed to be elicited in front of
16 the jury.

17 THE COURT: Which information is that?

18 MR. PETERS: We weren't allowed to probe into
19 the training and experience of the firefighters on the
20 issue of whether or not their comrades believed **they**
21 had been warned.

22 THE COURT: Whether **they** had been warned is
23 not a matter of belief. It is a matter of fact.

24 MR. PETERS: So the court has determined, as
25 a matter of fact, that Deborah Riggs did, in fact,

4014

1 warn the firefighters.

2 THE COURT: No, sir. I have not made any
3 determination, as a matter of fact. The jury made the
4 determination, as a matter of fact. Whatever **they**
5 were, I am not going to sit today and line them out for !
6 you. And that may or may not have been one of them and
7 it isn't essential to go into it here today, but I am
8 not making any determinations here today of that
9 nature.

10 MR. PETERS: What I am getting at is, it is
11 either a fact or not that the firefighters were
12 warned.

13 THE COURT: You are lumping them all
14 together?

15 MR. PETERS: According to the testimony of
16 Deborah Riggs, the only witness, five of the six
17 firefighters and Chief German's driver and Chief
18 German were told.

19 THE COURT: There is testimony, believable or
20 not, I am not here to say today, there is testimony
21 there were other sources of the information that there
22 were explosives on that site other than Deborah Riggs.

23 MR. PETERS: I agree with that but as to the
24 specifics of ammonium nitrate being in the trailer
25 is what I am talking about.

4015

1 MR. O'CONNOR: Could we have a minute to
2 confer here?

3 THE COURT: Yes.

4 (Conference between defense counsel off-the-record)

5 MR. PETERS: I have no further questions,
6 Judge.

7 THE COURT: All right.

8 MR. BECKER: I have a brief legal
9 argument. I have no further questions.

10 THE COURT: Thank you, sir. You may step
11 down.

12 MR. BECKER: Your Honor, I have a few legal
13 arguments before I have some proposed findings for the
14 Court.

15 First of all, Mr. Osgood referred to the
16 Swain case and in his brief referred to several
17 other lines of cases to determine whether or not
18 intervening cause is proven. Those cases are not
19 similar to this. In each of those cases the
20 analysis was whether an injury or death to one of
21 the perpetrators was proximately caused by the
22 defendant's criminal conduct.

23 The issue here he is arguing is whether
24 or not the criminal conduct of the defendants was
25 i not a proximate cause of the firefighters, deaths

4016

1 because of their intervening gross negligence or
2 he argues criminal negligence.

3 The Ryan case and other cases relating
4 to criminal conduct by the defendants hold that
5 the analysis of intervening cause does not apply.
6 We will not excuse criminal conduct because of an
7 intervening cause. When in Ryan the defendant
8 argued that, he couched it in terms of
9 foreseeability but he said the firemen panicked
10 when **they** saw a wall of fire, dropped their hoses
11 and then were killed, I believe by smoke. The
12 Ryan court said when Congress -- and this was at
13 670 -- when Congress provided that death as a
14 proximate result from arson could be punished by
15 death or life in prison, we must consider it to be
16 fully cognizable of the principal of legal
17 causation. There is no intent by Congress on the
18 face of the statute to draft the elements of
19 common law negligence onto the arson statute, thus
20 frustrating the purpose of the statute with
21 artificial restrictions.

22 THE COURT: That is the reason I asked about
23 legislative history.

24 MR. BECKER: Clearly, there is no ambiguity
25 in the statute that would call for an analysis of

4017

1 the legal history. I frankly believe that there is
2 no basis in fact for this negligence argument but
3 certainly under the law, excusing the criminal
4 conduct of these defendants, it is not Congress'
5 intent that the Court be so restricted.

6 I would ask the Court to make the
7 following findings:

I

8 First, the government has proven the
9 defendants' conduct in setting the fire was a
10 proximate cause of the deaths of James H.
11 Kilventon, Robert McRarnin, Michael Oldham, Gerald
12 Halloran, Thomas Fry and Luther Eugene Hurd.

13 Second, that the government has proven
14 James Kilventon, Robert McRarnin, Michael Oldham,
15 Gerald Halloran, Thomas Fry and Luther Eugene Hurd
16 were employed as firefighters for the City of
17 Kansas City, Missouri at the time of their death.

18 Third, the Court would find the
19 government has proven that James Kilventon, Robert
20 McKarnin, Michael Oldham, Gerald Halloran, Thomas
21 Fry and Luther Eugene Hurd were performing their
22 duties as firefighters at the time of their
23 deaths.

24 THE COURT: All right, we are going to
25 proceed after I announce this finding. I want to make

4018

1 sure though as to this proximate cause issue that all
2 counsel, particularly counsel for the defendants,
3 whether you have anything else you want to present at
- 4 this time, just on this issue. Mr. Osgood.

5 MR. OSGOOD: Well, -- and again I harken
6 back -- it is Mr. Becker's burden I think to prove
7 the enhancement provision applies.

8 We have sort of gone out of order and if
9 he wants to speak one more time I don't have any
10 objection. I urge the Court not to make the basic
11 findings Mr. Becker has asked but to step through
12 the process and make the findings the way I
13 suggested would be appropriate in our pre-hearing
14 conference in chambers on the record, to wit, the
15 Court should make a finding as to whether or not
16 it believes the deposition testimony we submitted
17 that **they** were warned there was ammonium nitrate
18 and fertilizer and whether or not under the guide
19 book by the totality of their training that their
20 actions in responding to the fire, instead of
21 evacuating and cording off the area, was, in fact,
22 reckless conduct and then proceed to make the final
23 finding under the Ryan decision and the statute as
24 to whether or not it makes a difference. If you
25 accept Mr. Becker's argument, it doesn't make any

4019

1 difference. If you reject his argument, then it
2 does make a difference, and you rule factually on
3 those steps in our favor, we win on this issue.

4 I submit to the Court to present this
5 properly to the Eighth Circuit, the Eighth Circuit
6 is entitled to know the Court's reasoning and
7 rationale. And I believe that is embodied in Rule
8 32 of the Sentencing Guidelines, that the Court is
9 required to make a factual finding, not a legal
10 finding. What Mr. Becker is asking you to do is
11 make a legal finding. I would ask you to articulate
12 on the record what your factual finding is with
13 respect to this negligence issue: A. Were **they**
14 told; and B. What is the result of that knowledge in
15 conjunction with what **they** knew and their training.
16 And then the ultimate request, whether or not it
17 makes a difference under the statute.

18 THE COURT: I am not entirely sure that all
19 of that is necessary from this Court in this
20 proceeding, Mr. Osgood.

21 Does anyone have anything else on this
22 issue?

23 MR. PETERS: Very briefly, Judge. We
24 discussed it in chambers, whether or not on the issue
25 ~ that Mr. Osgood raised, whether or not the firefighters

4020

1 should have been at the scene based on what **they** had
2 been told and their policies and procedures and the
3 Hazmat manual.

4 There is another issue on proximate
5 cause which is the foreseeability. It is an issue
6 that I kind of pursued during the trial as to
7 whether or not ANFO was going to explode based on
8 this fire.

9 The Court remembers the testimony that
10 never in the history of the United States had a
11 fire caused ANFO to explode.

12 THE COURT: It has now.

13 MR. PETERS: And I think, exactly as the
14 Court has said, in judging the issue of foreseeability,
15 based on the defendants' alleged conduct, if this is
16 the first time that it has exploded, it was not
17 something that was foreseeable from starting a fire at
18 a trailer. And it is the issue we talked about in
19 chambers and I thought I needed to raise it now,
20 Foreseeability as to the issue of proximate cause.

21 MR. BECKER: I would refer the Court again
22 to the Rvan decision at 9 Fed. 3rd, 668, at 669 and
23 as I pointed out, the proximate cause discussion, and
24 the Court indicated the use of the term proximate cause
25 in this criminal status does not require a distinct

4021

1 finding of foreseeability. Therefore, that is not an
2 issue that needs to be decided by the Court. It has
been decided by Congress
4 when **they** determined public safety officers responding
5 to the fire, fire and arson fire is distinctly
6 foreseeable.

7 THE COURT: All right. We will take a recess
8 until 1:45. That is an hour and a half from now. And
9 I will ask the marshal to please have the defendants in
10 the courtroom at that time without any further
11 intervening calls to you **they** be brought down. We will
12 be in recess.

13 RECESS

14 THE COURT: All right, does anyone have
15 anything further for the record what we have come to
16 characterize as the proximate cause issue?

17 Mr. Becker.

18 MR. BECKER: Yes, Judge. I have nothing
19 further.

20 THE COURT: Anyone for the defendant.

21 MR. OSGOOD: No, Your Honor.

22 MR. O'CONNOR: No, Your Honor.

23 MR. BUNCH: No, Your Honor.

24 MR. PETERS: No, Your Honor.

25 MS. HUNT: No.

4022

1 THE COURT: Well, this is obviously a
2 difficult case and has been from its inception.
3 However, as I announced at the beginning of this
4 hearing and I reiterate here, something which I think
5 may be difficult for some who are not practiced in the
6 law practice to accept it, I am not and cannot be under
7 the law, concerned with the question of the guilt of
8 the defendants. That question has been decided by a
9 jury.

10 There is a remaining issue which will
11 have an effect on sentencing which we have been
12 discussing in somewhat esoteric legal terms here
13 this morning. And I am satisfied that I have
14 heard and seen all the necessary material to make
15 the finding.

16 First, and perhaps unnecessarily, but I
17 will find that in my judgment and under the
18 evidence the firefighters were not negligent in
19 going up to fight this fire and in putting
20 themselves where **they** were when the explosion
21 occurred.

22 I also find it has been proven that the
23 defendants' conduct to each of them in setting the
24 fire as found by the jury was a proximate cause of
25 ~ the deaths of James B. Rilventon, Robert D.

4023

1 McKarnin, Michael Oldham, Gerald Halloran, Thomas
2 Fry and Luther Hurd.

3 I also find the government has proven
4 that those six firefighters just named were
5 employed as firefighters for the City of Kansas
6 City at the time of their deaths.

7 And, finally, the government has proven
8 that the same six firefighters were performing
9 their duties as firefighters at the time of their
10 deaths.

11 Now, having announced those conclusions,
12 I will conclude, consistent with the findings, and
13 recommendation of the probation office and the
14 presentence investigation report, that the offense
15 level with which we are dealing here is a level
16 43.

17 And we will move from that issue to any
18 presentations that either side might want to make
19 with respect to sentencing.

20 Mr. Becker.

21 MR. BECKER: Your Honor, I would request the
22 Court make inquiry pursuant to the Federal Rules of
23 Criminal Procedure 32 as to personally inquire as to
24 whether any victim as defined by statute wishes to
25 make a statement to the Court.

4024

1 THE COURT: All right, the statute does grant
2 to victims of crimes like this the right to address the
3 Court and make their feelings known publicly prior to
4 sentencing in such a case. So I will ask by groups,
5 if I might.

6 Any members of the family of Thomas M.
7 Fry and particularly his mother, Marietta Fugate,
8 anything you want to say to the court.

9 MR. BECKER: No, Your Honor, she indicated
10 to our office she did not. She is not present today.

11 THE COURT: Is Rachel Karri here>

12 MR. BECKER: No, Your Honor.

13 THE COURT: Then I will address myself to the
14 family of Gerald Halloran; Mrs. Halloran, Patrick J. or
15 Steven A. Halloran, do any of you have anything you
16 want to say to the Court?

17 MRS. HALLORAN: No.

18 THE COURT: Then I address myself to the
19 relatives of Luther E. Hurd, his wife Jewell Hurd, son
20 Christopher, daughters Giovanna Jones and Crystal Hurd,
21 do any of you have anything you want to say?

22 MRS. HURD: No, Your Honor.

23 THE COURT: Then there is the family of James
24 H. Kilventon, his wife Cecilia, son James Michael and
25 ~ daughter Alice Marie, do any of you have anything you

4025

1 want to say to the court?

2 MRS. KILVENTON: No, Your Honor.

3 THE COURT: Then with respect to the family
4 of Robert D. McKarnin, his wife Debbie C. McKarnin,
5 daughter Cassie and son Sean, do any of you have
6 anything you want to say?

7 MRS. MCKARNIN: Yes, I do, sir.

8 THE COURT: Step forward. If you would come
9 up. I think it would be best if you would step up here
10 by the witness chair, Mrs. McKarnin, and the clerk will
11 swear you and then you can just say whatever it is you
12 want to say.

13 (Mrs. McKarnin was sworn by the clerk.)

14 THE COURT: First, for the record, tell us
15 your Name.

16 MRS. MCKARNIN: I am Debbie McKarnin.

17 THE COURT: And are you the widow of
18 firefighter Robert D. McKarnin?

19 MRS. MCKARNIN: Yes.

20 THE COURT: Are you the mother of Cassie
21 McKarnin and Sean D. McKarnin?

22 MRS. MCKARNIN: Yes. ~

23 THE COURT: Were **they** his children? j

24 MRS. MCKARNIN: Yes, **they** were.

25 ~ THE COURT: Now you have indicated you had

4026

1 something you wanted to say at this stage in this
2 proceeding. You just go right ahead.

3 MRS. MCKARNIN: First of all, I wanted to
4 thank you for this opportunity. And, secondly, to
5 explain to you, the Court, that I sat down with the
6 children last night and we discussed something we
7 would like to have said. And so we discussed it
8 together and these are our thoughts.

9 We personally knew three of the
10 firefighters, Bob of course being their father and
11 my husband. And I got to know the other
12 firefighters' families and mothers and wives and
13 know **they** were all of the same mind in many
14 things.

15 And when Bob and I were first married I
16 used to be afraid for him going to fires and
17 things like that. And I would ask him about that.
18 And he would caution me and he would say, "Debbie,
19 I am cautious when I go into fires. I think
20 things through. We work together." And I wanted
21 the Court to know **they** were not just out there to
22 put out fires and make a big blaze. **They** were
23 there because **they** thought **they** could do something
24 good for the community.

25 These men, I became sort of jealous of

4027

1 my husband and the group of the firefighters, **they**
2 worked together. **They** were so close. **They** spent
3 so much time together. And, as a young wife, I
4 was a little jealous but he explained that to me,
5 also. "You know when you go into a fire and you
6 have to put your life on the line, you have to be
7 able to trust that person that is there behind
8 you.' So **they** did have a really close comradeship
9 and a bond that none of us wives could ever
10 permeate. It was an unusual bond I didn't really
11 understand but I began to appreciate because I
12 thought it was protecting my husband.

13 I wanted to explain how **they** looked
14 forward to their job, how **they** loved their job.
15 **They** didn't just treat it like it was a nine to
16 five thing. It was really something **they**
17 cherished. **They** helped people every day and **they**
18 saved lives every day. And **they** looked forward to
19 doing that. As I said, **they** watched out for each
20 other because **they** had this bond. And when **they**
21 went into a fire, or whatever kind of an emergency
22 situation, **they** had to know **they** could depend on
23 those fellows, that **they** were looking out for each
24 other.

25 So the Captain, Jim and Mike and sob

4028

1 worked together and if one of them missed
2 something and was concerned for the group, **they**
3 would have shared that, **they** would have told one
4 another, **they** would have exited, whatever, **they**
5 would have watched out for each other. **They** would
6 not have acted foolish. And there is over a
7 hundred years of firefighter experience among the
8 six men. So I don't believe **they** acted
9 irrationally or foolishly -- a hundred years of I
10 experience and community service and I don't think
11 that should be looked at lightly.

12 And as firefighters **they** can't be
13 replaced easily but as our family members, **they**
14 can't be replaced at all. And Bob was one of four
15 boys and he was sort of the glue in his family.
16 He tied that family together. He was the oldest
17 boy. And within six months his mother died and
18 within a year his father died. Pardon me. His
19 father died two years to the very date that Bob
20 died. It was a real tragedy in this family and
21 **they** no longer get together; **they** no longer
22 communicate. We used to have wonderful family
23 gatherings but that is lost.

24 I wanted to mention the things that my
25 children and I also have lost but I think that is

4029

1 almost to remain unsaid.

2 I want to thank you for your
3 understanding of the law and your wisdom and your
4 judgment, but I wanted to talk about where these
5 defendants will be sentenced and the penalties
6 placed upon them.

7 I think that people should be held
8 responsible for their actions and should be
9 remorseful of those actions because **they** were
10 desperate. Those were tragic, tragic things that
11 happened. And to be laughed at and be thought of
12 in a group of people as maybe a cool figure or
13 something neat, you accomplished some great thing
14 in your life, is terrible. And I think you need
15 to send out a message to the community, Judge,
16 that says that kind of stuff is wrong in Kansas
17 City and it won't be allowed. And that means a
18 harsh, harsh penalty. And that means that those
19 people will spend their days working hard, breaking
20 up rock, not watching color TV. And I guess that
21 sounds real harsh but I feel like the action was
22 one that demands that. And I thank you for this
23 opportunity.

24 THE COURT: Thank you for coming forward,
25 Mrs. McKarnin. How old are your children?

4030

1 MRS. MCKARNIN: My daughter is 25 and my
2 son is 30.

3 THE COURT: Are **they** here?

4 MRS. MCKARNIN: Yes, **they** are here with
5 me.

6 THE COURT: Does either one of them want to
7 say anything?

8 MRS. MCKARNIN: No, **they** just wanted me to
9 share these thoughts.

10 THE COURT: Thank you very much for sharing
11 that with us.

12 I address myself now to the family of
13 Michael Oldham, his wife Raren, son Kyle, daughter
14 Jacqueline Dianne, does anyone in that family care
15 to say anything?

16 MRS. OLDBAM: Yes, Your Honor, I do.

17 THE COURT: Would you come forward and be
18 sworn by the clerk.

19 (Mrs. Oldham was sworn by the clerk.)

20 THE COURT: Would you tell us your name,
21 please.

22 MRS. OLDBAM: Raren Oldham Cable.

23 THE COURT: And what is your address, where
24 do you live?

25 ~ MRS. OLDBAM: Kansas City, Missouri.

4031

1 THE COURT: Are you the mother of Kyle and
2 Jacqueline Oldham?

3 MRS. OLDHAM: Yes.

4 THE COURT: And are you the surviving widow
5 of Michael Oldham?

6 MRS. OLDHAM: Yes.

7 THE COURT: You indicated you had something
8 you wanted to say.

9 MRS. OLDHAM: In the early hours of November
10 29, 1988 thieves came. Their purpose was to steal.
11 But **they** took more than **they** had planned to -
12 something more precious than earthly things. **They** took
13 the lives of six firefighters. One of those brave men
14 was my husband Mike Oldham. Mike was 32 years old and
15 the father of our two children, Kyle who was six years
16 old, and Jacqueline who was three and a half. We were
17 a young family just starting our lives and planning for
18 the future.

19 Mike was such a good husband and father,
20 always putting us first and trying to do what was
21 right. We had a unique work situation that was so
22 wonderful for our family. I worked around Mike's
23 schedule. The kids spent almost as much time with
24 Mike as with me. He carefully guarded and
25 treasured his time with me and our children. I

4032

1 was only able to know, love and be married to Mike
2 for seven years and nine months. He has been gone
3 from us for eight years and seven months. But
4 that doesn't change our love for him.

5 The families of the six men killed have
6 fought for some things over these past eight-plus
7 years. We have gone before the city council, on a
8 state level and I have attended a United States
9 Senate Subcommittee in Washington for national
10 recognition of this tragedy. None of these events
11 were for our own pleasure but we did them because
12 of the pride and love of those we lost that were
13 taken away, killed by these people who have no
14 regard for human life.

15 Until this trial I personally didn't
16 know who was to blame or how to explain to my
17 children why their dad was taken away.

18 We have fought for quite a long time for
19 a variety of things but now we come to fight for
20 justice to be served, our most important fight
21 yet.

22 Even though there is no punishment great
23 enough here on earth for those individuals, we ask
24 the strictest punishment possible be imposed. The
25 men that were killed were worth so much. **They** had

4033

1 rich lives. It was not due to money, it was
2 because of the love **they** gave and shared with us.
3 We ask the sentence for all five found guilty be
4 life without parole for taking the lives of our
5 loved ones Gerald, Eugene, Tom, Jim, Bob and Mike.

6 Thank you.

7 THE COURT: Thank you for coming forward.
8 Are your children here with you today?

9 MRS. OLDHAM: Yes.

10 THE COURT: What are their ages, please?

11 MRS. OLDHAM: Kyle is 14 and Jacqueline
12 is 12.

13 TEE COURT: Does either one of them want to
14 say anything?

15 MRS. OLDRAM: I don't think so.

16 THE COURT: Thank you for coming forward.

17 THE COURT: I have expressly addressed the
18 members of these victims who the statute mandates
19 should have the opportunity expressly offered to them
20 to speak on this occasion. However, if there are any ~
21 other family members who are here and who wish to I
22 address the court at this time, I want you to know that
23 you are free to do so if you would just stand and
24 identify yourselves. Yes.

25 MR. AORTA: I am Gerald Halloran's

4034

1 brother.

2 THE COURT: All right, sir. Please come
3 forward.

4 (Mr. Halloran was sworn by the clerk.)

5 THE COURT: Have a seat, Mr. Halloran. You
6 are?

7 MR. HALLORAN: Leo Halloran. My brother and
8 I were very close and it has been a great loss to his
9 wife and children and everyone in your family and
10 friends, fellow workers.

11 I would say in the last, previous ten
12 years, maybe twenty years before he was killed, he
13 was the most cautious person I have ever met in my
14 life. He drove cautiously. He worked cautiously.
15 He had an analytical mind. He knew danger when he
16 saw it. And in our private conversations he was
17 well versed in chemicals and had a very well
18 rounded knowledge of explosives.

19 It wasn't long before he died, his
20 oldest son told me about a week before he died, he
21 said, "Dad" -- by the way, his oldest son is Pat -
22 - he said, ~Dad, what do you do when you come upon
23 an explosive fire? Do you fight it?" He said,
24 "No, you can't. You cannot fight an explosive
25 ~ fire. The first thing I do is evacuate the area.

4035

1 I have heard Mr. Osgood's testimony
2 today. Apparently he did some research for
3 various expert witnesses. However, my opinion and
4 common sense tell" me the expert witnesses were
5 the six firefighters who were killed. There is no
6 way, absolutely none, that **they** would allow
7 themselves, my brother and the other six veterans.
8 Debbie McKarnin mentioned a hundred years.
9 Actually doing some quick calculation, about 128
10 years. My brother had 38 years experience. The
11 two captains, Jim Rilventon and Gerald Halloran had a
12 combined experience of 66 years. And I think the
13 least amount of time on the fire department of the
14 other firefighters was I believe Eugene Hurd who
15 had about nine or ten years. If **they** had any
16 knowledge, absolutely an inkling there was a
17 blasting agent, you can call it fertilizer,
18 ammonium nitrate, burning in that trailer, **they**
19 wouldn't even have gone in there. **They** would have
20 evacuated the area just like Chief German did after ~
21 the first explosion. These are the expert witnesses. I
22 Nobody else was there. These were the expert ~
23 witnesses, the six firefighters, which I would I
24 conclude, and anyone with common sense would conclude,
Zs **they** were not negligent. **They** knew where the dynamite

4036

1 and the blasting caps were. **They** had made runs up
2 there before. There was no danger. **They** were 250, 300
3 feet away. **They** were in heavy steel bunkers. **They**
4 were not touched.

5 To bring in negligence at this point in
6 time on these six dead men is like dancing on
7 their graves. I think it is a desecration. I am
8 offended and I believe our families are offended.
9 We are insulted by it.

10 These were the professionals. **They** knew
11 their job. **They** weren't Monday morning
12 quarterbacks.

13 Again I want to emphasize if there was
14 any inkling, any clue what was burning in those or
15 the first trailer, **they** would have never gotten
16 near there. **They** would have called for the
17 evacuation which I understand is a plan in effect
18 through the police department and all public
19 safety agencies.

20 As Debbie mentioned, you can replace
21 firefighters but you can't replace your loved
22 ones, life-long loved ones.

23 So your sentencing, that is up to the
24 Judge. I am not here to try to bring out revenge.
25 ~ I am just stating a fact. Again, theme men w re

4037

1 not negligent. Thank you.

2 THE COURT: Thank you, Mr. Halloran, for
3 coming forward.

4 At the present time now the Court
5 affords any other family members who might desire
6 the opportunity to say anything, that chance at
7 this time. All right, I see no-one else.

8 I want to make sure that the record is
9 clear. And it should be clearly implied from, if
10 the Court did not expressly say, on the basis of
11 the evidence here and the applicable law, any
12 doctrine or rule of intervening cause does not
13 apply to this situation and the deaths of these
14 men were proximately caused by the convicted
15 criminal conduct of these defendants.

16 At this time I want to afford both the
17 government and the defendants and their counsel
18 the right of allocution.

19 MR. OSGOOD: Excuse me. You announced
20 43 but did you mean to announce that as a starting
21 point? We have had the argument. Now we move next to
22 the guidelines and the drafter's comments, whether or
23 not it is appropriate to move from first to second
24 degree. Are you prepared at this point to discuss
25 that?

4038

1 THE COURT: If that is appropriate for
2 discussion, I will give you that opportunity.

3 MR. OSGOOD: I would like to.

4 THE COURT: Feel free.

5 MR. OSGOOD: The drafter's co_ents based on
6 your findings, we go to 2Al.1 of the guidelines as the
7 most analogous offense, Your Bonor, which is first
8 degree murder. You move in the arson provision to that
9 provision inasmuch as you rejected the other argument
10 which I am not going to revisit.

11 One of the things that prompted us to -
12 in fact it was at my urging -- the defendants
13 waived presenting this matter to a jury, was the
14 comment the Court made on the record in chambers
15 that it did not in any way whatsoever believe
16 these defendants intended to kill these firemen;
17 that **they** intended to set the fire, **they** certainly
18 didn't intend to kill anyone when **they** set the
19 fire. And that, of course, is totally and
20 completely consistent with all of the evidence in
21 this case.

22 If you believe the governments case one
23 hundred percent, **they** went up there to engage in
24 petty thievery, **they** did not set the fire with the
25 idea of luring the firemen there and blowing them

4039

1 up or killing them. **They** did not set a building
2 on fire **they** thought was an occupied dwelling with
3 someone in it to burn them to death. **They** merely
4 set a fire. And had it been put out it would have
5 been an act of vandalism, petty thievery and
6 arson.

7 If you look at the drafter's notes to
8 2.A1.1, Application Notes, that note states NIF
9 the defendant did not cause the death
10 intentionally or negligently, a downward departure
11 may be warranted. The extent of the departure
12 should be based upon the defendant's state of
13 mind, e.g. reckless or negligence, the degree of
14 risk inherent in the conduct and the nature of the
15 unrelying offense conduct.- However, the
16 commission does not envision that departure below
17 that specified in 2A1.2, second degree murder,
18 likely to be appropriate. It doesn't say it isn't
19 appropriate. It says anything below that is
20 likely not to be appropriate. Also, because death
21 obviously is an aggravating factor it necessarily
22 would be inappropriate to impose a sentence a
23 level below what the guidelines for the underlying
24 offense require in the absence of death. So what
25 that section Suggests if the Court -- which the

4040

1 Court has already stated on the record it didn't
2 believe these defendants intended to kill anybody
3 -- then the court should consider moving from a
4 level 43 down to a level 33 which is the 2A1.2
5 guideline base offense level for these defendants.

6 Level 33 under a Criminal History I, of
7 course, is 138 to 168 months. If you go up to
8 level VI, the maximum is 230 to 293 months. In
9 other words, 25 to 30 years under criminal history
10 VI, using a level 33.

11 I would remind the Court that this is
12 precisely what the Judge did in the Rvan case.
13 And Ryan was a more egregious set of facts than
14 these, Your Honor. Mr. Ryan for greed, profit,
15 motive and arson burned his building in the middle
16 of town, knowing full well the firemen were
17 responding and fighting the fire. The Judge in
18 that case departed down, stating Ryan didn't
19 intend to kill the firemen, he departed to a level
20 38. In other words, he split the difference
21 between 43 and 33.

22 THE COURT: You are distinguishing Ryan's
23 greed and profit motive, is it your view this was some
24 sort of eleemosynary activity these people were engaged
25 in?

4041

1 MR. OSGOOD: Certainly not. I am speaking in
2 terms of he has been convicted of this. I am not
3 talking about guilt or innocence now. Based on the
jury's finding, the best we have got is a bunch of
5 thievery where **they** wanted to break into a trailer
6 and see what was in it or steal something out of the
7 sheds or the caterpillars or something. That is not,
8 in my mind, anywhere near as serious as a businessman
9 with a balance sheet who is in debt, who sets his
10 building on fire, knowing full well exactly what the
11 consequences are going to be.

12 Now, Judge, in that case -- and the
13 Eighth Circuit accepted sentencing in that case at
14 a level 38 as being appropriate. Under the
15 drafter's notes to the guidelines that Judge
16 apparently felt that since he did not intend to
17 kill those two firemen, it was appropriate to go
18 below first degree murder. First degree murder here is
19 the same sentence that the Court handed out in the
20 murder for hire case in this court recently. It is
21 the same sentence you should hand out in a kidnapping
22 where the child is killed.

23 These people did some terrible things
24 and we have some tragic results but **they** are not
25 cold, calculated pre-meditated murderers, Your

4042

1 Honor. A level 43 is for the cold, calculated
2 pre-meditated murderer. If you treat these in the
3 same way you treat that, you in effect demean the
4 total meaning of level 43 and under-cut, in my
5 mind, its true message. We have five people here,
6 again believing the jury verdict which we must do
7 at this point, who did something far less serious
8 than that. I think it is appropriate in light of
9 all the facts and circumstances and in light of Rvan
10 you go to level 33.

11 With my client's criminal history if you
12 accept the V, under 33 he still is going to do
13 twenty some years, Your Honor. He didn't mean to
14 kill these firemen. If these people are guilty,
15 which the court believes **they** are and the jury
16 said **they** are, it wasn't because **they** went up
17 there with some intent to murder six firemen and
18 hide and wait for them. **They** are probably as
19 sorry in their own minds as anybody in this
20 courtroom. **They** can't give these lives back to
21 these people. But justice is supposed to be
22 tempered with some degree of mercy and we must
23 distinguish between levels of punishment. We have
24 a level 43, the death penalty and life without
25 parole for the hired killers, for the pre

4043

1 meditated killers. It is not appropriate, Your
2 Honor, to give these people a 43 under the guidelines.
3 And relying on the wisdom of the sentencing commission,
4 I ask the court to go down to 33 in this case.

5 THE COURT: Do any other defense counsel have
6 similar comments?

7 MR. O'CONNOR: No-one. On behalf of Richard
8 Brown, I concur in the argument made by Mr. Osgood.

9 MR. PETERS: Not on behalf of Frank
10 Sheppard.

11 MR. BUNCH: No additional comments.

12 MS. HUNT: None on behalf of Earl
13 Sheppard. We join in the motion.

14 MR. BECKER: I will reserve my comments about
15 whether or not these defendants deserve any mercy for
16 a few moments. But right now, addressing the
17 guidelines issue before the Court, the guidelines
18 provision talks about the death being caused
19 intentionally and knowingly.

20 When you speak of that in terms of
21 felony murder, you have to put that in a context
22 of our history of common law and holding persons
23 responsible under the Doctrine of Felony Murder.
24 You have to look at their conduct, the underlying
25 felonious conduct and, in this case, arson.

4044

1 The jury has found **they** knowingly and
2 intentionally lit a fire. So their conduct was
3 not reckless. Their conduct was not negligent.
4 And, thus, their actions were knowing and
5 intentional. The example given by the guidelines
6 puts it in context. The example given is that if
7 in robbing a bank a defendant merely passed a note
8 to the teller, as a result of which she had a
9 heart attack and died, a sentence of life
10 imprisonment clearly would not be appropriate.
11 That is the first paragraph of Application Note 1.
12 It seems to me that the example given by the
13 sentencing commission is a policy that reflects
14 the foreseeability issue. That it would be unfair
15 to the bank robber who was holding a gun but yet
16 did not fire the gun, to sentence him to life
17 without parole because it would be a stretch of
18 the foreseeability. But clearly it is out there,
19 that his conduct in passing the note would result
20 in the teller's death. That person is obviously,
21 under the law, a felony murder, guilty of murder
22 because **they** committed an armed robbery and during
23 the course of that armed robbery a death resulted.
24 But it seems to be an example of the court being
25 able to take into account the actions of the

4045

1 defendant not causing a situation where reasonable
2 people understand death results.

3 In this instance, as reflected by the
4 Eighth Circuit in Rvan, it is clearly foreseeable
5 and Congress determined it was clearly
6 foreseeable, that when an arson fire in set,
7 public safety officers, firefighters would respond
8 and death would result to those men and women who
responded on our behalf to fires.

10 I do not believe this is a situation
11 where there was reckless conducted involved or
12 negligence involved and, thus, the defendants are
13 being held to too strict a standard. It is a
14 situation where **they** knowingly and intentionally
15 set a fire and death resulted. Therefore, I
16 believe a downward departure by the court would be
17 inappropriate.

18 THE COURT: All right. Does any other
19 counsel have any comment on this issue?

20 I will abide by my previous announcement
21 of the finding of a level 43 and will not depart
22 from that level. I do not believe that the
23 authorities cited by Mr. Osgood as supplied by him
24 are aptly applied nor do **they** apply in this
25 situation.

-

4046

1 So we reach the point them of
2 allocution.

3 MR. PETERS: Excuse me. Before then, for
4 purposes of our record, I would move for admission
5 of what have been marked as GS 1, 2 and 3 which are the
6 polygraph results which we discussed in chambers.

7 THE COURT: **They** will be admitted as 1, 2 and
8 3 with the understanding the government would object to
9 them.

10 MR. BECKER: That is correct.

11 THE COURT: Without prejudice to that
12 objection or any right the government might have in
13 this or any ongoing proceeding I simply will accept
14 them as offered for the record that may be needed in
15 the future. Otherwise, **they** are not apt to this
16 proceeding in any event.

17 Anything else before we move to
18 allocution? Very well. Mr. Becker, it is up to
19 you again.

20 MR. BECKER: Thank you, Judge.

21 Your Honor, the purpose of sentencing is
22 deterrence and punishment in this case. In this
23 case we are asking the court to give the
24 defendants a sentence of life without parole to
25 ~ deter them from ever committing any more crimes OD

4047

1 the streets of Kansas City, to generally deter
2 those who would consider setting fires,
3 intentionally setting fires, that must be
4 responded to by the men and women of the Kansas
5 City Fire Department who protect us every day.

6 Secondly, I believe life without parole
7 is the appropriate sentence to punish these
8 defendants. Retribution is part of our criminal
9 justice system. And I believe the appropriate
10 punishment for killing six public servants is life
11 without parole.

12 The defendants, personally, have no
13 redeeming qualities. None of them has ever been
14 gainfully employed but for a few weeks here and
15 there.

16 Defendant Frank Sheppard has four prior
17 felony convictions; armed robbery, burglary,
18 stealing, tampering. The presentence report had
19 21 pages of prior criminal record. Paragraphs 47
20 through 107 detail those offenses. In paragraph
21 107 alone it became too numerous to delineate
22 arrests. Paragraph 27 contains a full 27 more
23 arrests that defendant Frank Sheppard has suffered
24 during his adult life. His pattern of conduct is
25 one of violation of criminal law.

4048

1 Skip Sheppard has a prior felony
2 conviction which was interstate transportation of
3 stolen firearms when he and others went over to
4 Kansas in order to burglarize houses to get
5 property to sell to buy drugs. And in his
6 presentence report it lists approximately 45
7 separate arrests and numerous convictions for
8 assault, destruction of property, a violent
9 pattern of conduct throughout his adult life.

10 Darlene Edwards has three prior felony
11 convictions including one in this court for
12 distribution of cocaine within a thousand yards of
13 a school.

14 Defendant Brian Sheppard has prior
15 felony convictions, one of which he is presently
16 serving a state sentence for sale of
17 methamphetamine.

18 Defendant Richard Brown similarly, while
19 suffering no felony convictions, has had numerous,
20 repeated arrests and convictions for driving
21 without a license, drunk driving, assault and
22 stealing.

23 None of these defendants has ever
24 produced a positive thing for this society. When
25 ~ you compare that to the men who gave their lives

4049

1 on behalf of this community, as the court has
2 heard from these family members, **they** have each
3 left behind spouses, children, mothers and
4 fathers. Gerald Halloran left behind six
5 grandchildren. The suffering those family members
6 have gone through after their husbands have given
7 a lifetime of service to this community cannot be
8 measured.

9 Finally, Judge, the impact on this
10 community as a whole, those of us who live on the
11 south side of town and those of us all over town
12 were jolted out of bed that morning when the two
13 explosions occurred. Hundreds of thousands, if
14 not millions, of dollars of property damage
15 occurred as a result of their actions. But, more
16 importantly, to the community of the fire
17 department who protect us, come when we call,
18 enter dangerous situations every day in order to
19 protect our lives and our families and our
20 property, **they** were shaken by that explosion which
21 was caused by the criminal acts of these
22 defendants. **They** will never again forget that six
23 of their colleagues went to work that day and
24 never went home to their families.

25 On behalf of the fire department, on

4050

1 behalf of the families of these victims, on behalf
2 of the United States, I ask you to sentence these
3 defendants to life without parole.

4 THE COURT: I will call on counsel for each
5 of the defendants and then, after his or her counsel
6 has had the opportunity to speak, I will call on the
7 individual defendants to say whatever he or she might
8 want to say.

9 I first will ask Mr. Peters for his
10 allocution on behalf of his client.

11 MR. PETERS: In light of the Court's
12 findings, I have nothing I would like to say to the
13 court but my client would like to make a statement.

14 THE COURT: All right, Mr. Sheppard.

15 DEFENDANT FRANK SHEPPARD: Yes, Your
16 Honor, I do have some things I would like to say.
17 Please excuse me. These are sensitive in nature but I
18 know no way around this. This is hard for me to say,

19 not

20 because I am speaking in front of people, I am not used
21 to this. It is because I am trying hard to hold inside
22 me this down right hate and contempt I have for what is
23 going on here today.

24 I guess I can understand your fears this
25 crime would go unpunished and nobody would have to

4051

1 go away to prison, but, more importantly, this
2 would go unsolved.

3 Again, people, it is also very hard for
4 me to feel sorry for you people, the families, you
5 fellow firefighters, old friends. By this I mean
6 this prosecution of the five of us by this court,
7 the U. S. Attorney's Office and all involved are
8 wrong to say to you people, finally we got these
9 killers. You all sat in this courtroom for six
10 long weeks. You witnessed all of this. And if
11 you were so full of hate and pain that you
12 actually believed their pathetic evidence, then I
13 guess this pathetic government is using you all
14 just as badly as **they** are using us.

15 Leo Halloran, Cecilia Rilventon, Debbie
16 McKarnin, Karen Oldham, Jewell Hurt and Marietta
17 Fugate, mothers and wives, I maintained my
18 innocence from the very beginning of this tragedy
19 but I have never had the opportunity to tell you
20 personally, regardless of what the government
21 maintains about how your husbands and sons died,
22 ladies, if I don't appear to be a God-fearing man,
23 I guess that is between me and God. But God as my
24 witness I had nothing to do with this -- nothing.

4052

1 This has been a long ordeal for all of
2 us, you and us. It might be over for a while but
3 sadly it is still unsolved. It is not solved.

4 That is all I have, Your Honor.

5 THE COURT: All right Miss Hunt.

6 MS. HUNT: Your Honor, with the Court's
7 ruling, denying all the objections to the
8 presentence and ruling a level 43 applies, the Court
9 has not much choice but to impose a life sentence under
10 the guidelines. Therefore, my comments will be very
11 brief.

12 Contrary to what Mr. Becker just told
13 the court, I think everyone has some redeeming
14 qualities, everyone including these five people.
15 He went through this long litany of arrests -- and
16 the court has had the presentence reports since
17 May and the Court is very familiar. Twenty-two of
18 those 45 were dismissed and a lot of them were
19 animal ordinance violations. The majority of
20 those cases were municipal court, DUI or speeding
21 tickets. It is not the picture the government
22 paints of Mr. Sheppard's past at all.

23 I would just like to ask this court to
24 make a recommendation to the Bureau of Prisons, as
25 the court is aware, Mr. Sheppard has had some head

4053

1 injuries in the past and, in fact, during the
2 trial of this case was suffering from severe
3 headaches most of the time.

4 On the interstate transportation of
5 stolen firearms he was convicted of a few years
6 ago, the court or the Bureau of Prisons sent him
7 to the Springfield Medical Center where he was
8 receiving the medical attention he needed. And as
9 the court remembers, after the verdict came back
10 in this case, I asked that he be sent down there
11 prior to sentencing which the Court ordered and it
12 was never done because one of the witnesses, John
13 White, was at Springfield. I don't think John
14 White has any medical problems. He is not,
15 therefore, a medical reason. I have talked to
16 probation about this and **they** think it is possible
17 anyway for the Bureau of Prisons to still send Mr.
18 Sheppard to Springfield after looking at the case.
19 And he needs medical treatment. I would ask the
20 court at least to make that recommendation and let
21 them take it from there.

22 THE COURT: We will do that. You understand
23 it is only a recommendation and the Bureau of Prisons
24 has the final say.

25 ~ MS. BUNT: Yes, I do understand that. I

4054

1 think Mr. Sheppard would like to address the Court,
2 also.

3 THE COURT: All right.

4 DEFENDANT EARL SHEPPARD: Just that my
5 brother said it all and I would just like to maintain
6 I am innocent of this crime. I will keep by that until
7 I die.

8 THE COURT: All right, Mr. Bunch, do you have
9 something for your client.

10 MR. BUNCH: If it please the court, based on
11 the findings you made, Your Honor, I don't think you
12 have any choice but to impose a life sentence without
13 parole and thus it would be meaningless to address
14 what sentence ought to be imposed here. I respect the
15 judgment of this court, as you know, and so I can only
16 say as an officer of this court, something I have
17 never said before in sentencing, I do not believe my
18 client is guilty.

19 Thank you.

20 THE COURT: All right, Mrs. Edwards.

21 DEFENDANT DARLENE EDWARDS: Yes, Your Honor.
22 I am very sorry you have lost loved ones, innocent
23 people died, but history is repeating itself because
24 I am missing my family. I do hope some day this is
25 ~ truly lved, the guilty people do something, come

4055

1 forward. And I hope it is not too late. God bless you
2 all.

3 THE COURT: Mr. O'Connor, on behalf of Bryan
4 Sheppard.

5 MR. O 'CONNOR: Judge, Virginia Sheppard is
6 here in court today with her only son and if she would
7 be allowed to testify, although I have told her she
8 has a right to, she is not going to, she would tell you
9 she loves him and cares about him and believes in his
10 innocence as well as his father Jack. And I know
11 there are two sides and the other side believes that he
12 is the person responsible and these comments may come
13 as hollow to them but **they** are not. I hope we do have
14 the right people here. Only **they** know or God
knows

15 whether we do or not, but I will ask the court to show
16 whatever mercy it feels it can.

17 I know the court has decided the level
18 43 is a proper level, but I do also, as Mr Bunch
19 said, I have been representing Bryan Sheppard
20 since this happened. We have offered into
21 evidence the results of a polygraph test he took
22 right at the beginning. And I just ask the court
23 to take all those things into consideration. And
24 my motion is as much for Bryan Sheppard here as it
25 is for these people I heard testify. I was very

4056

1 moved and I hope this is not in any way to them,
2 my comments or my motions on behalf of Bryan
3 Sheppard is taken wrong. But I just think in this
4 case two wrongs are never going to make a right.
5 And I hope we have the right people and I ask the
6 court to show mercy.

7 Thank you.

8 THE COURT: All right, Mr. Sheppard, Bryan
9 Sheppard, you have the opportunity to say whatever you
10 might like to say.

11 DEFENDANT BRYAN SHEPPARD: I would just like
12 to say I am innocent of this crime. That is all I
13 have to say.

14 THE COURT: All right, Mr. Osgood, on behalf
15 of your client.

16 MR. OSGOOD: Your Honor, I would remind the
17 court it has made the 43 finding prior to hearing
18 comments of counsel in allocution of the defendants
19 and, therefore, under the law it would be appropriate
20 and I would be remiss in my duties if I didn't ask for
21 reconsideration of those findings in light of what you
22 have heard and what you have seen and particularly in
23 light of what Frank Sheppard stood up here and said.

24 I was, quite frankly, moved by what Frank Sheppard
25 said.

4057

1 I think he has got a better handle on it than any of
2 the lawyers in this courtroom.

3 And again I harken back to, I just don't
4 see how this court can ignore the Rvan decision
5 where in Rvan it was an arson for profit and
6 everything Mr. Becker said about foreseeability
7 applied to Ryan.

8 The purpose of punishment -- and we
9 vacillate back and forth every decade or so about
10 theories of punishment, whether it is retribution
11 or whether deterrence or whether or not it is
12 rehabilitation. The court has read all of that
13 doctrine and has been familiar with it for years
14 and years and years. The one recurring theme in
15 all of that is I think, Your Honor, the criminal
16 justice system ought to provide some hope for
17 everyone. There ought to be some light at the end
18 of the tunnel for everyone.

19 There are a variety of reasons for that.
20 These defendants ought to be able to now move on
21 to another segment of their lives, not the thought
22 of many, many years in prison but for their
23 benefit and the benefit of the people that will
24 house them and work with them and care for them
25 and have to put up with the , everybody ought to

4058

1 have some hope. The hope here would be you give a
2 term of years at least of some fashion so at the
3 end of that term of years there is some hope for
4 release. Right now under these sentencing
5 guidelines, if you impose a level 43 sentence,
6 there is no hope. We are treating these people
7 the same way as if **they** set about in a cold,
8 calculated premeditated fashion to murder
9 somebody. **They** didn't do that. **They** didn't do
10 that, Your Honor. And it is just -- and I say
11 this with a straight face and I say it in front of
12 these victims -- it is not fair to impose this
13 kind of a sentence on these defendants for this
14 conduct.

15 I would ask you, I don't care whether
16 you call it a level 43 or 33, let the probation
17 people figure that out. I would ask you to impose
18 a term of years on my client so at least when we
19 walk out of this courtroom I can tell him you are
20 going to school, you are going to make the most of
21 that prison environment and you are going to work
22 some day toward that release date. Maybe you are
23 going to be 50 years old, maybe you are going to
24 be 60, but you have something to look forward to.

25 ght now the only thing he has to look forward to

4059

1 is being bitter over what he feels is a conviction
2 that was wrongly handed down, as do all of these
3 defendants. And my client has told me from Day
4 One he didn't do this. And the court is aware of
5 his explanation. It was in the record and the
6 statements.

7 More importantly, he took a polygraph
8 examination and passed that polygraph examination.
9 And I have come to know him pretty well and I
10 don't believe he did this. And this is many,
11 many, many years I have been involved in criminal
12 law. I have never seen a case with such thin,
13 questionable, skimpy evidence. And I have to
14 believe that our verdict reflects as a back lash
15 to the O. J. Simpson case and some of those
16 travesties that occurred on the East and West
17 Coast. This jury was going to -- and no matter
18 what, our clients, **they** were going to find our clients
19 guilty because **they** weren't going to have Kansas City,
20 Missouri suffer the reputation of Los Angeles,
21 California.

22 This was not a strong case. You have
23 said TO yourself in the motion denying our request
24 for new trial. Again, kind of mixing apples and
25 oranges but it has to have some bearing on your

4060

1 decision. But, more importantly, I think Your
2 Honor ought to remember the difference between
3 premeditated first degree murder and a level 43
4 and something less. And I remind Your Honor you
5 said say in chambers you didn't believe **they**
6 intended to kill anyone. And if you don't believe
7 that, you have to follow that guideline or you
8 should follow that guideline, the recommendation
9 of the sentencing commission, and come down off of
10 43. Even if it is only a point, two points, come
11 down and give a term of years so I can tell my
12 client at least you are going to get out when you
13 are 60 years old. Right now it is pretty blue,
14 Your Honor.

15 Please reconsider. Please reconsider.

16 THE COURT: Mr. Brown, you have the
17 opportunity to say whatever you might like to say at
18 this time.

19 DEFENDANT RICHARD BROWN: I want to thank
20 my lawyer for representing me. He has done his best.
21 I appreciate him trying to get these years knocked
22 off, but I don't believe anybody that has done such
23 a crime to hurt six whole families deserved to even go
24 to prison. But at the same time other people commit a
25 ~ crime, I don't believe five innocent people, one is

4061

1 myself, should be taken from people **they** love and it
2 hurts.

3 I sat in this courtroom all through the
4 trial. I can't sleep at night. I am telling my
5 mother, I am telling my wife, I am scared because
6 the government drug me in here. Yes, I have done
7 a lot over the years. I have drove on a suspended
8 license and I have done a dozen things like that.
9 I do not steal. I have not run around and robbed
10 people. I do not do nothing of the sort. I do
11 have a heart and I do have feeling. I sat in this
12 courtroom and I come in here, I see my family, I
13 have seen them through a glass. I am seeing my
14 baby through a glass. He wants to kiss me, wants
15 me to come home. This is the only time I get to
16 see them. Might get to touch them. I am smiling
17 and laughing so I can keep from crying and I hurt
18 inside.

19 You know, you all sit over there and
20 look at us which I can't blame you. I can't blame
21 you firemen for getting up there. I respect you.
22 But these individuals that convicted us, knowing
23 that we are innocent, Dave True, you people know
24 who **they** are. The Lord knows who **they** are. The
25 Lord knows we are innocent. And I hope you do

4062

1 find the people who did do this because I will
2 stand right behind you the whole way. Amen.

3 THE COURT: Does anyone have anything further
4 in this matter?

5 MR. O'CONNOR: I will stand and just on
6 behalf of Bryan Sheppard, I would make a request the
7 Court consider Leavenworth as his place of
8 incarceration, if the court would make that
9 recommendation so he would be near his family. Also,
10 that is a level of institution that would fulfill
11 the need of this kind of sentence if it is life without
12 parole.

13 THE COURT: All right, I would recommend
14 that.

15 MR. PETERS: I would join for Frank Sheppard.
16 In addition to his family, I think it may prove
17 beneficial, we are going to be in an appellate stage
18 for quite some time, assuming we have an appointment
19 from Kansas City and it would be much more convenient,
20 at least during the starting process, for the attorneys
21 to be near the client.

22 THE COURT: Yes, I will make that
23 recommendation at least. Maybe I better get straight,
24 all of you, are you saying Leavenworth penitentiary,
25 Leavenworth camp, CSA.

4063

1 MR. OSGOOD: The institution itself would
2 qualify for an offense of this nature, inside the
3 wall at Leavenworth and I would request that of Mr.
4 Brown, the penitentiary, USP.

5 THE COURT: All right. Does anybody have
6 anything further before the court announces its
7 sentence. Mr. Becker.

8 MR. BECKER: Nothing, Judge. Thank you.

9 THE COURT: Any of the defense counsel.
10 This really undoubtedly goes without
11 saying for me to describe this as the most
12 difficult case I have ever had anything to do
13 with, lawyer or judge. It came to me in unusual
14 circumstances with the sad infliction of Judge
15 Bartlett, my good friend Judge Bartlett with the
16 terrible disease that at least was at that time
17 eating away at him. We only pray now that process
18 has been stopped. But it did come suddenly and we
19 launched into it quickly.

20 And I found, having lived in this town
21 all my life, therefore for the last eight years,
22 that one of the more difficult things was to live
23 this case, live with this case in the context of
24 the community feeling about this case. And it was
25 ~ difficult for me as judge to not let that

4064

1 community feeling affect the level of fairness
2 that these defendants and the government were
3 afforded in the trial.

4 The case had been excellently prepared
5 by Judge Bartlett. the jury had been well
6 selected. And I can say that throughout this case
7 these defendants and the United States Government
8 have been afforded the profession of lawyering at
9 its highest level.

10 We have now, however, reached this point
11 at which the final judgment must be determined and
12 announced.

13 I do not believe, as Mr. Osgood has
14 announced to all of you, I announced to him during
15 the trial, that these five men intentionally and
16 with malice and forethought went out to kill six
17 Kansas City firefighters. I do believe that **they**
18 conducted themselves in such a way and committed
19 such act as to clearly and irretrievably make them
20 fall under the statute which prohibited that
21 conduct and set the sentence as penalty for it.
22 That is the reason I announced what I announced
23 today about the sentencing level. And that is the
24 reason I announce at this time, as almost all
25 ~ counsel have anticipated, that each of the

4065

1 defendants; George Frank Sheppard, Earl D.
2 Sheppard, Darlene Edwards, Bryan Sheppard and
3 Richard W. Brown, is sentenced pursuant to the
4 Sentencing Reform Act of 1984 to commitment to the
5 custody of the Bureau of Prisons, to be imprisoned
6 for a term of his or her natural life on this
7 conviction on this one count indictment.

8 If any defendant should be released from
9 imprisonment, he or she shall be placed on
10 supervised release for five years.

11 I find that the defendants, none of the
12 defendants has the ability to pay a fine and,
13 therefore, a fine is waived and the costs of
14 incarceration are waived. This waiver of cost of
15 incarceration does not include any subsistence
16 which may be required by the Bureau of Prisons in
17 community-based programs.

18 It is further ordered that each
19 defendant shall pay to the United States a special
20 assessment of \$50.00 which is due immediately.

21 It is further ordered on this one count
22 indictment each defendant be obligated to pay
23 restitution of \$536,000 to the Kansas City,
24 Missouri Fire Department, 414 East 12th Street,
25 22nd Floor, Kansas City, Missouri, attention

4066

1 Steven Brisbin, Fire Chief. Restitution shall be
2 paid in installments, to commence 30 days after
3 the date of this judgment and shall continue until
4 paid in full.

5 As to supervised release as provided
6 earlier in this sentence, the defendants, and each
7 defendant, shall comply with the standard
8 conditions that have been adopted by this court.

9 In addition to which the defendant, and
10 each of them, shall comply with the following
11 special conditions:

12 First, personally report to the
13 probation office within 72 hours of release.

14 Secondly, pay any restitution balance
15 during the period of supervision.

16 Third, successfully participate in any
17 substance abuse counseling program which may
18 include chemical or Breathalyzer testing as
19 directed by the probation office, and pay any ~
20 associated costs as directed by the probation I
21 office.

22 Fourth, the defendants, and each of
23 them, shall submit his or her person, residence, j
24 office or vehicle to a search conducted by a U. S.
25 ~ probation officer at a reasonable time and in a

4067

1 reasonable manner based upon reasonable suspicion
2 of contraband or evidence of a violation of a
3 condition of release.

4 Failure to submit to a search may be
5 grounds for revocation.

6 Defendant shall warn any other residents
7 the premises may be subject to search pursuant to
8 this condition.

9 The defendants are each in custody at
10 the present time and shall remain in custody.

11 Each of you, George Frank Sheppard, Earl
12 D. Sheppard, Darlene Edwards, Bryan E. Sheppard
13 and Richard W. Brown, has the right to appeal this
14 conviction and this sentence. The lawyers will
15 advise you that an appeal can be accomplished by
16 the filing of a notice of appeal in the office of
17 the clerk of this court within 10 days.

18 Anything else, Mr. Becker?

19 MR. BECKER: Nothing.

20 MR. OSGOOD: Your Honor, I would ask you
21 suspend execution of the collection of the fine, the
22 restitution rather, until after final judgment,
23 final appellate judgment, the reason being that with
24 this imposed it will commence to take money from the
25 ~ defendants' account immediately and take it out of the

4068

1 meager amount of money **they** get at the prison for
2 such things as shaving cream, soap and other needed
3 items. **They** will cut that in about half. And I would
4 ask you to just suspect that at least until this case
5 is affirmed, if it is going to be, by the Court of
6 Appeals. **They** have the rest of their lives to pay
7 that and in the meantime, frankly, **they** all have
8 obligations and what little bit of money **they** can
9 have in their account would ease the burden on their
10 families.

11 MR. BECKER: Most respectfully, in particular
12 to Mr. Osgood's client, he has never met his obligation
13 to his family and provided for them while he was on
14 the street. So at this point to say he wants his funds
15 available to him so he can provide to his family is
16 somewhat disingenuous. I would ask the court to
17 continue the sentence it just announced.

18 TEE COURT: I am not going to announce any
19 alteration of that sentence at this time. Mr. Osgood,
20 I know you are familiar with what can be done to
21 accomplish that change, if it is appropriate. If it is
22 appropriate, I would have to consult not only with the
23 government, whose wisdom on this I have already heard,
24 but I also would have to consult with the probation
25 ~ office and I am not prepared to just rule from the hip.

4069

1 So if you want to make an appropriate filing, I will
2 give it appropriate consideration.

3 MR. OSGOOD: Thank you.

4 THE COURT: Anything else, Mr. Peters?

5 MR. PETERS: No, Your Honor.

6 THE COURT: Miss Hunt.

7 MS. HUNT: No, Your Honor.

8 THE COURT: Mr. Bunch.

9 MR. BUNCH: No.

10 THE COURT: Mr. O'Connor.

11 MR. O'CONNOR: No, sir.

12 THE COURT: And I guess we have heard, I
13 wouldn't be optimistic, the last of Mr. Osgood but at
14 least for this afternoon.

15 I say to all of you that -- and I know
16 the extent of the feeling, I think I appreciate
17 the extent of the feeling that many of you have,
18 that despite the disagreement you might have with
19 the result, I assure you that you have seen good
20 lawyering, good prosecution of this matter and
21 this was a well-tried, hard tried and a very, very
22 conscientious jury. It is difficult for some of
23 you to take, I know, but believe me after 16 years
24 experience I have had doing this, this was one of
25 the best juries I have even seen and the best

4070

1 performance by all of these lawyers, the
2 government and the defense, I have collectively
3 ever seen in my career.

4 There being nothing more to come before
5 the court, we are adjourned.

CERTIFICATE

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled
matter.

./ / ~'
Elizabeth Shinn
U.S. Court Reporter