

Friday, May 2, 1997 (afternoon)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TIMOTHY JAMES McVEIGH,

Defendant.

REPORTER'S TRANSCRIPT
(Trial to Court - Volume 76)

Proceedings before the HONORABLE RICHARD P. MATSCH,
Judge, United States District Court for the District of
Colorado, commencing at 1:30 p.m., on the 2d day of May, 1997,
in Courtroom C-204, United States Courthouse, Denver,
Colorado.

APPEARANCES

PATRICK M. RYAN, United States Attorney for the Western District of Oklahoma, 210 West Park Avenue, Suite 400, Oklahoma City, Oklahoma, 73102, appearing for the plaintiff.

JOSEPH H. HARTZLER, SEAN CONNELLY, LARRY A. MACKEY, BETH WILKINSON, SCOTT MENDELOFF, JAMIE ORENSTEIN, AITAN GOELMAN, and VICKI BEHENNA, Special Attorneys to the U.S. Attorney General, 1961 Stout Street, Suite 1200, Denver, Colorado, 80294, appearing for the plaintiff.

STEPHEN JONES and ROBERT NIGH, JR., Attorneys at Law, Jones, Wyatt & Roberts, 999 18th Street, Suite 2460, Denver, Colorado, 80202; JERALYN MERRITT, 303 East 17th Avenue, Suite 400, Denver, Colorado, 80203; CHERYL A. RAMSEY, Attorney at Law, Szlichta and Ramsey, 8 Main Place, Post Office Box 1206, Stillwater, Oklahoma, 74076, and CHRISTOPHER L. TRITICO, Attorney at Law, Essmyer, Tritico & Clary, 4300 Scotland, Houston, Texas, 77007, appearing for Defendant McVeigh.

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PROCEEDINGS

(Reconvened at 1:30 p.m.)

THE COURT: Mr. Jones, have you reviewed the tendered exhibits?

MR. JONES: I have, your Honor. Thank you.

THE COURT: What is your position on it?

MR. JONES: I don't have any objection on them.

I'll continue to be agreeable.

THE COURT: All right.

(Jury in at 1:31 p.m.)

THE COURT: Please resume the stand.

And Exhibits 77 through 82 and 77A are admitted without objection.

You may proceed.

(Louis Michalko was recalled to the stand.)

DIRECT EXAMINATION CONTINUED

BY MR. MENDELOFF:

Q. Agent Michalko, before lunch we were just about to begin to talk about the summary charts you prepared. Let me ask you first, before we begin to look at them. Are the charts divided into two different categories?

A. Yes.

Q. What are they?

A. Analyzing the data from all the branches of Mid-Kansas Co-op would be one set, and the other set would be just looking at sales at the McPherson branch, only.

Q. And you did the same analysis for each; is that right?

A. Yes.

Q. Let me ask you to look first at Government Exhibit 77.

And can you tell us in focusing on Government Exhibit 77 what this chart summarizes?

A. This summarizes the eight largest customers, purchasers of

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ammonium nitrate at any branch of Mid-Kansas Co-op between January 1, 1994, and April 19, 1995, those people purchasing 1,000 pounds total or more.

Q. All right. Now, let me ask you about the last point, being

total. Are these individual purchases -- or this is the total amount of purchase, customer by customer?

A. The figures reflected on this chart show the total for each

of these eight customers over the time period.

Q. So let's start with column by column and just understand how this chart is set up. The first column represents what?

A. The name of the customer.

Q. And the second column?

A. The branch from which they purchased ammonium nitrate.

Q. All right. The third column?

A. The amount of pounds they purchased over the total period of time.

Q. All right. The fourth column?

A. The method by which they made their purchase, either cash or on account.

Q. And the fifth column?

A. How many different purchases they made.

Q. So looking at Harvey County Field, the top purchasers, you've got five purchases, total is 9,500 pounds?

A. That's correct.

Q. And those purchases would have been recorded in how many

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different tickets?

A. Five.

Q. You totaled the amount of all the tickets, and that's how you got to 9,500?

A. Yes.

Q. Now, let me ask you where does the Mike Havens purchases from the Mid-Kansas Co-op, McPherson branch, rank on all the sales of ammonium nitrate at all the different branches of Mid-Kansas Co-Op during that time period?

A. Mike Havens ranks third overall.

Q. And he ranked third based upon how many total transactions?

A. Two.

Q. And we see that where?

A. In the last -- well, all of the information related to Mike

Havens is on the third line, and the amount of transactions he had is in the last column under number of purchases, two.

Q. Now, those two purchases are the two you referenced earlier

earlier

at the McPherson branch?

A. Yes.

Q. And can you go through the line, the Mike Havens line, on the chart and explain each column?

A. The first column bears the name Mike Havens. The second column bears the name of the branch where he did business, McPherson. The third column reflects the total pounds of ammonium nitrate that he purchased over the period of time,

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4,000 pounds. The next column reflects how Mr. Havens made his

purchases, in cash. And the last column reflects how many different transactions make up those 4,000 pounds, two.

Q. Of all the purchasers of ammonium nitrate, at all the different branches, who purchased a total of a thousand pounds or more, how many purchased that ammonium nitrate in cash?

A. Only Mr. Havens.

Q. Now, looking at this chart of all the entities on this chart, how many are individuals, human beings?

A. Two.

Q. And they are?

A. Mike Havens and James Wiens.

Q. And how many -- how much greater -- how many times greater was Mike Havens' total purchases than Mr. Wiens'?

A. Four times greater.

Q. Let me ask you to look at Government Exhibit 77A, please.

A. Yes.

Q. What is 77A?

A. 77A is a chart that lists the same names and methods of payment that are on the previous chart, Government's Exhibit 717, except 77A does not reflect any of the other details that are on Exhibit 77.

Q. And prior to testifying, did you review 77A with Robert Nattier?

A. Yes.

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Q. Let me ask you to look at Government Exhibit 78. Can you tell us what is summarized in Government Exhibit 78?

A. Government Exhibit 78 is done under the same premise as Government Exhibit 77, except it looks only at sales at the McPherson branch.

Q. All right.

A. It lists the top customers for that branch for the period of review, and there's only three listed on the charts, only three customers purchased a thousand pounds or more total.

Q. And by the way, how many total tickets did you get from the

McPherson branch reflecting ammonium nitrate sales?

A. 278.

Q. And Mike Havens was one of only three that bought -- three

customers that bought over a thousand pounds; is that right?

A. That's right.

Q. Now, how many times larger are the Mike Havens total sales than the total sales of the McPherson Golf Club?

A. Double. Mike Havens bought twice as much as the country club.

Q. By the way, the country club made one purchase of fertilizer for the entire year; is that right?

A. For the entire 15 1/2 months.

Q. 15 1/2 months.

Let me ask you to look, then, at Government Exhibit 79.

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What is Government Exhibit 79?

A. Government Exhibit 79 looks at individual purchases as opposed to combined purchases, and it's information related to all branches. Co-op. It lists the 15 individual sales that were the largest company-wide, and again it's a thousand pounds or more.

Q. All right. Now, let's just go through this quickly column by column. The first column indicates what?

A. The date of the transaction.

Q. Second column is the customer's name?

A. Yes.

Q. The third column is the amount purchased; is that right?

A. Yes.

Q. Fourth column is the amount -- the way in which the customer made the purchase?

A. Correct.

Q. And the fifth column is the location from which the purchase was made; is that right?

A. Yes.

Q. Out of 132,000 sales tickets that you reviewed, how many sales tickets for ammonium nitrate sales were larger than the Mike Havens purchases?

A. One.

Q. And that is Showalter Villa?

A. Yes.

Louis Michalko - Direct

Q. Is that an individual or a corporate entity?

A. It's a corporate entity.

Q. Of the top five -- 15 individual purchases of ammonium nitrate company-wide, how many were made in cash?

A. Two individual purchases were made in cash.

Q. And those were?

A. A purchase made on September 30, 1994, by Mike Havens for 2,000 pounds and a purchase made on October 18, 1994, made by Mike Havens for 2,000 pounds.

Q. All the others are by account; is that right?

A. Yes.

Q. Let me ask you to look at Government Exhibit 80. What is summarized in Government Exhibit 80?

A. Government Exhibit 80 shows the similar information from Government Exhibit 79, except this is the McPherson branch only, not company-wide. And it shows the five top individual purchases of ammonium nitrate from the McPherson branch for that period of time.

Q. With a break-off point, again, with a thousand pounds or greater; is that right?

A. Yes.

Q. Now, who are the top three purchasers, individual purchasers, of ammonium nitrate in McPherson for that period you reviewed?

A. The top three are a purchase on September 30, 1994, by Mike

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Havens; a purchase on October 18, 1994, by Mike Havens; and a purchase on November 18, 1994, by the McPherson Country Club, each of those three purchases being 2,000 pounds.

Q. Are any of the Mike Havens purchases the same size or smaller than each of the two corporate purchases by NCRA Pipeline?

A. No.

Q. Let me direct your attention to Government Exhibit 81.

What is reflected on Government Exhibit 81?

A. Government Exhibit 81 shows a breakdown of how many tickets

I found reflecting ammonium nitrate activity in different ranges of amounts of ammonium nitrate for those transactions.

Q. Now, let's take this one a little slower, please. Focus in on the chart a little bit.

What is located -- what is listed on the far left column?

A. The number of pounds purchased that's reflected on any given ticket.

Q. All right. Far left column is divided into amount, total amounts purchased; is that right?

A. Per ticket, yes.

Q. And you're talking about in the first column, the first line would be any tickets where there was a sale of over 2,000 pounds?

A. That's correct.

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Q. And the next column indicates the number of tickets you found in that category?

A. Yes.

Q. And what is the third column?

A. What percentage of the total that category represents.

Q. Now, let me ask you, that this chart would be a bar chart.

Q. Now, can you tell us what this chart reveals line by line, please.

A. Line by line, the chart reveals that for all branches of Mid-Kansas Co-op, for this period of time, January '94 through April 19, 1995, there was only one transaction involving ammonium nitrate that was more than 2,000 pounds. That's less than 1 percent of the total number of tickets.

Q. All right. The next line?

A. The next line reveals there were seven tickets involving purchases of 2,000 pounds of ammonium nitrate, and that's roughly 1 percent of the totals.

Q. And so on down the page?

A. Yes.

Q. Where does the Mike Havens transaction fall?

A. The Mike Havens -- two of the Mike Havens transactions would fall into that category.

Q. So two of the seven are the Mike Havens transactions?

A. Yes.

Q. Now, let me just ask you to focus your attention on the last two lines, category 100 and category under 100, showing

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transactions of 20 percent and 56 percent. What does that indicate to you?

A. That indicates those two lines taken together, that 76 percent of all ammonium nitrate transactions at this company

are for people buying one or two 50-pound bags.

Q. Finally let me ask you to direct your attention to the final chart of Exhibit 82. What is this chart?

A. This chart is set up in the same way as Government Exhibit 81 except it looks at the figures for the McPherson branch, only.

Q. And what -- where do the Mike Havens transactions fall in this chart?

A. Again, on the second line where it says, "Number of Pounds Purchased, 2,000," which is the exact amount Mr. Havens purchased each time, it reflects that there were three sales in that category, Mr. Havens had two of them.

Q. And finally, looking again at the categories 100 and under 100, what does that represent -- reflect?

A. That represents that just for the McPherson branch, 80 percent of all transactions involving ammonium nitrate were for people buying either one or two bags.

Q. Thank you.

MR. MENDELOFF: Nothing further, your Honor.

THE COURT: Do you have any questions?

MR. JONES: Just a few, your Honor.

Louis Michalko - Cross

CROSS-EXAMINATION

BY MR. JONES:

BY MR. CROSS:

Q. No matter how these figures turn out, we're talking about, what, under \$500 worth of fertilizer purchased by Mike Havens?

A. That's correct.

Q. Now, this McPherson co-op, that's pretty close to being the middle of Kansas, isn't it?

A. Pretty close, I would say.

Q. And you recognize that as farm country?

A. Yes.

Q. Wheat country?

A. I'm not familiar with what -- what the farms consist of, but I would agree it's farm country.

Q. Well, does it seem strange to you that -- what was it, 75 percent of the fertilizer purchases here were for less than how many bags?

A. One or two bags.

Q. Does that suggest something to you?

A. Regarding what?

Q. Why so many people are only buying one or two bags at this co-op.

A. It suggests to me that most of the people who buy ammonium nitrate are buying it for a small purpose, perhaps to put on their lawn.

Q. Exactly. And yet it's right in the middle of the farm

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country, isn't it?

A. It's right in the middle of the state, yes.

Q. Now, that is farming country; I mean you didn't see any factories out there when you were driving down the highway, did you?

A. No.

Q. Well, now, doesn't it suggest to you that most of the farmers out there aren't buying their fertilizer from McPherson

co-op because they'd certainly need more than one or two bags, wouldn't they?

A. I don't know what kind of fertilizer the farmers buy in Kansas.

Q. I see. Now, some of these companies here, are you familiar with the concept that they may, particularly in the rural part of America, kind of spread their business around a little bit?

A. I'm not familiar with that.

Q. This is the United School District. Do you think -- they were a very large purchaser, weren't they?

A. Yes, they were.

Q. And do you know how large an area this school district covers?

A. No, I do not.

Q. Do you think it's possible that they might be buying fertilizer from more than one place?

A. I would not have any way to know that.

Louis Michalko - Cross

Q. You didn't check to see if these companies here, like Harvey County Field and NCRA Pipeline and Showalter Villa and Memorial Home, bought fertilizer from other companies?

A. Some of these places we did contact.

Q. Uh-huh.

A. I don't know if they were asked specifically if they trade with any other companies than Mid-Kansas Co-op or not.

Q. Did you find any other place where Mike Havens had bought fertilizer?

A. I didn't check any other place.

Q. You ever played golf at this McPherson Country Club?

A. No, sir.

Q. I was going to ask you if you could agree with me that they

should have bought some more.

MR. JONES: I don't have anything else. Thank you.

THE COURT: You may step down.

Next witness.

MR. HARTZLER: Helen Mitchell. Ms. Wilkinson will question her.

THE COURT: Okay.

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

(Helen Mitchell affirmed.)

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

Would you state your full name for the record and

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spell your last name.

THE WITNESS: Helen May Mitchell, M-I-T-C-H-E-L-L.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MS. WILKINSON:

Q. Good afternoon, Miss Mitchell. How are you?

A. Fine.

Q. Can you tell the ladies and gentlemen of the jury a little bit about yourself, starting with where you live?

A. I live in Herington, Kansas.

Q. How long have you lived in Herington?

A. Since 1941.

Q. Where were you born?

A. In St. Francis, Kansas.

Q. Why did you leave St. Francis and move to Herington?

A. My father is a minister, and he received a call to the Lutheran Church in Herington.

Q. And you've been there ever since?

A. Yes.

Q. Have you ever been married?

A. Yes.

Q. How long were you married?
A. About 33 years when my husband passed away.
Q. How many children do you have?
A. I have five children.

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Q. And what about grandchildren?
A. Seven grandchildren.
Q. Do you mind telling the jury how old you are?
A. I'm 69.
Q. And are you working?
A. Yes.
Q. What do you do?
A. I'm a bookkeeper at the Clark Lumber Company.
Q. How long have you been a bookkeeper with them?
A. For about 26 years.
Q. And can you tell us who owns the company that you work for.
A. Well, it's a corporation now. It's owned by the Mueller family, and he's my brother.
Q. And you said the corporation was Clark Lumber Corporation?
A. Yes, uh-huh.
Q. What type of business are they?
A. It's a lumberyard and hardware and home center. Do-it-yourself center.
Q. Are there any other businesses that are part of the corporation?
A. Well, they -- Verlin, my brother, and his son own the mini storage which is a -- separate from the lumber company.
Q. Tell us just a little bit about the mini storage company.
A. In what respect do you mean?
Q. What is it?

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A. Oh. It's a -- two buildings that have separate -- or individual storage units in it, about 26 of them.
Q. And what are your responsibilities in connection with this storage business?
A. Well, when they come in and want to rent a storage unit, I make out the contract for them and take the money for the first month, or whatever they want to pay.

MS. WILKINSON: Your Honor, could I approach with the exhibits?

THE COURT: Yes, please.

BY MS. WILKINSON:

Q. Now, you told us that the business is located in Herington, Kansas, also; is that right?
A. Yes.
Q. And prior to coming to court today, did you review a map that has several different markings including the location of

that has several different markings, including the location of the storage units?

A. Yes, I did.

Q. Okay. I'm going to show you Government's Exhibit 97.

Do you see that on your screen?

A. Yes.

Q. Do you recognize it?

A. Yes, I do.

Q. What is it?

A. It's a city map and showing the four other locations.

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Q. And are you familiar with all four of these locations?

A. Yes, I am.

MS. WILKINSON: The Government moves in Exhibit 97, your Honor.

MS. MERRITT: No objection.

THE COURT: 97 received.

BY MS. WILKINSON:

Q. Starting up in the right-hand corner, can you take your little pen that should be there on your left-hand side -- do you see that?

A. Uh-huh.

Q. -- and can you start by explaining to us the location of the storage units.

A. It's No. 1, up here in the right-hand corner.

Q. And what is the address of the storage units?

A. Well, it's just an industrial department -- or not department -- industrial development of Herington.

Q. Can you use the pen to mark the two roadways there?

A. Yes, this is Highway 77 running north and south, and there's just a road into this area of the industrial park.

Q. I can't tell from my screen, Mrs. Mitchell. Are you writing on the screen?

A. No, I'm not. Did you want me to?

Q. Would you mind?

A. Yes. This is Highway 77. And there's a road that goes

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from that right into the area of the industrial park.

Q. How far off Highway 77 is the -- are the storage units?

A. Oh, probably about two, three blocks.

Q. Okay. If you can click your pen, you'll be able to erase those marks you made.

There you go.

What about the Pizza Hut that's located along there?

A. The Pizza Hut is right along Highway 77, also.

Q. How far away is the Pizza Hut from the storage units?

A. Oh, maybe a quarter of a mile, maybe.

Q. And are you also familiar with Tim's Amoco there, No. 4?

A. Yes, I am.

Q. And what's the location there?

A. Well, that is the city Route 50. You take that -- 77

crosses -- 50 crosses 77, and it's probably about a half mile.

Q. Okay. And are you also familiar with the residence listed here 109 South 2d Street?

A. Yes, I am.

Q. How far away is that from the storage units, approximately?

A. From the storage unit?

Q. Yes, ma'am.

A. Probably about a mile and a half.

Q. Okay. Thank you.

Now, you told us that when someone comes in to rent a storage unit, you handle the contract; is that right?

Helen Mitchell - Direct

A. Yes.

Q. Can you tell us basically what you do when someone approaches you about renting storage space?

A. Well, I ask them what size they would need. Of course, it depends on what we have open at the time, but -- and if it's satisfactory, then I make out a contract asking their name, their address, telephone number, and then tell them how much it is.

Q. Do you maintain other records so that you know how long a unit is being rented?

A. No, only on the contract.

Q. And do you maintain records showing the payments --

A. Yes.

Q. -- made by an individual?

Okay. Let me show you Government's Exhibit 92. Do you recognize that?

A. Yes, I do.

Q. What is it?

A. It's an aerial view of the industrial park where the mini storage is located.

MS. WILKINSON: Government offers 92.

MS. MERRITT: No objection.

THE COURT: Received.

BY MS. WILKINSON:

Q. Okay. Could you use your pen and show the jury where the

Helen Mitchell - Direct

storage units are located in this aerial photo.

A. Whoops. Missed it a little bit there.

Q. Okay. You want to click your pen, you can try it again.

And what is that office building right to the left, where your arrow is right now?

A. Well, I'm not really sure. It's, I think, the Strodo (phonetic) Plumbing or Electric Company. I'm not sure which one is which.

Q. And is your office in the building that you've circled?

A. No.

Q. Where is your office?

A. At the lumberyard.

Q. I want to turn your attention to September 22, 1994. Did you rent a storage unit that day?

A. Yes, I did.

Q. And after the bombing in Oklahoma City on April 19, 1995, did you review your records with regard to that rental?

A. I did not see them right away because they had been picked up already. I was out of town when they came in.

Q. Did you later review them?

A. Yes, I did.

Q. And did they refresh your recollection as to the rental --

A. Yes.

Q. -- you did on that day?

A. Yes.

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Q. Let me show you what's been marked Government's Exhibit 88,

and if -- we'll start with the top because it won't all come up

on the screen here.

Do you recognize this document?

A. Yes, I do.

Q. What is it?

A. It's the contract that I made out.

Q. On September 22 --

A. The 22d; right.

Q. -- 1994?

MS. WILKINSON: Government offers --

BY MS. WILKINSON:

Q. How do you recognize it? Is that your handwriting?

A. Yes, it is.

MS. WILKINSON: Government offers 88, your Honor.

MS. MERRITT: I have no objection.

THE COURT: 88 received.

MS. WILKINSON: Could we publish it, please?

BY MS. WILKINSON:

Q. Now, Miss Mitchell, using Government's Exhibit 88, can you tell us what happened that day when an individual came in to rent a storage unit from you?

A. Well, I asked him his name and the address and telephone number, which he did not have.

Q. Okay. Starting at the top of the form, what does it

Helen Mitchell - Direct

indicate on Government's Exhibit 88?

A. The date that he came in.

Q. And that was what date?

A. September 22, 1994.

Q. Is that your handwriting?

A. Yes, it is.

A. Yes, it is.

Q. And down under "Lessee," is that the name that he gave you?

A. Yes.

Q. What name is that?

A. Shawn Rivers.

Q. What is the address that he gave you?

A. Route 3, Box 83.

Q. And where is that located?

A. At Marion, Kansas.

Q. Now, tell us -- you're familiar with the Herington area; correct?

A. Yes.

Q. Tell us what Route 3, Box 83 signified to you.

A. That was a country address, like a farm place.

Q. What did you think when Mr. Rivers gave you that address?

A. That it just went through my mind that it was kind of unusual having a farmer needing a storage unit, but I didn't ask any questions.

Q. Why did you think that was unusual?

A. I would think they had room on a farm, some building to put

Helen Mitchell - Direct

something in.

Q. Now, you've told us down here under "Phone Number" you didn't fill in the phone number. Why is that?

A. I started to write over on the residence a 3, because Marion is 316 area code; but then he said he didn't have a telephone, so I didn't finish it.

Q. And under "Storage Space No.," what did that signify?

A. That was No. 2 storage unit.

Q. Is that the unit that you assigned to Mr. Rivers?

A. Yes.

Q. And the cost there of the rentals, what does that indicate?

A. \$20 a month.

Q. Now, all of this on this side of the contract is your handwriting; is that right?

A. Yes, it is.

Q. After you filled this out with Mr. Rivers, did you also have him sign the contract?

A. Yes, I did.

Q. Okay. I'm showing you the second page of Government's Exhibit 88. Let's see if I can get it a little bigger. Did you see that?

A. Yes.

Q. Under "Lessee," whose signature is that?

A. Shawn Rivers'.

Q. Did you see him sign that document?

Helen Mitchell - Direct

A. Yes, I did.

Q. And on the left, who --

A. That was my signature.

Q. Now, did you tell him about -- tell Mr. Rivers about the price of the storage unit that day?

A. Yes, I did.

Q. What did you tell him?

A. I told him it was \$20 a month.

Q. And what did he indicate he wanted to do about paying for the unit?

A. Well, he had cash, and he wanted to rent for four months.

Q. I take it you took his money?

A. I took his money.

Q. And what did you do after he paid you?

A. I handed him his copy of the contract.

Q. And when you prepare a contract for customers, do you also provide them with receipts for their payment?

A. Not at the time of the contract.

Q. When do you give them receipts?

A. Whenever he -- if he would come in again and pay some more, then he would get another receipt.

Q. Now, can you estimate how long this transaction took you to complete with Mr. Rivers?

A. Oh, maybe 10 minutes. Not very long.

Q. Do you recall anything about Mr. Rivers?

Helen Mitchell - Direct

A. No, I don't.

Q. Do you recall what he looked like?

A. No, I don't.

Q. How tall he was?

A. No.

Q. Do you have customers who come in frequently to rent storage units?

A. Not frequently. 'Cause they don't come open that often.

Q. And do you remember some of your customers who come in to rent storage units from you?

A. Well, if they're people that have lived at the Herington area and I know them, yes.

Q. What if you don't know them?

A. Well, I just make out the contract for them.

Q. Now, did there come a time when you received a second payment on this storage unit?

A. Yes.

Q. I'm going to show you what's been marked Government's Exhibit 91 and 91A. First 91. Did you recognize that?

A. I think it's backwards.

Q. There you go. See that?

A. Yes.

Q. What is that?

A. That was the receipt that I had made out on October the

23d

for another four months' rent of \$80.

Helen Mitchell - Direct

Q. Is that your handwriting?

A. Yes, it is.

MS. WILKINSON: Government offers Exhibit 91, your Honor.

MS. MERRITT: No objection.

THE COURT: Received, 91.

MS. WILKINSON: May we publish?

THE COURT: Yes.

BY MS. WILKINSON:

Q. Okay. Miss Mitchell, let's talk about October 23, 1994. What happened that day?

A. Well, he came in and said he wanted to pay another four months on Rental No. 2. And I probably did not go back to look

at the contract. I made out this receipt and put down "No. 2" and that it was for \$80.

Q. And does it indicate whether you got cash or some other form of payment?

A. It doesn't exactly say cash on there, but it was cash.

Q. Now, does this document look a little different than when you filled it out?

A. Well, it's smudged up.

Q. But it's the same document other than that?

A. Yes.

Q. Let me show you 91A, which is just a copy.

A. Yes, that's the original.

Helen Mitchell - Direct

Q. Is that a copy of the same document?

A. Yes.

MS. WILKINSON: Your Honor, we'd offer 91A.

MS. MERRITT: No objection.

THE COURT: Okay. 91A is received.

BY MS. WILKINSON:

Q. Okay. Miss Mitchell, tell us, starting with the \$20 on the right there, what this indicates.

A. The monthly rent.

Q. And how about the dates there?

A. That was the date that the previous \$80 paid to.

Q. So in other words, when Mr. Rivers came in on September 22 and paid the \$80, he was paid up to January 22?

A. Right.

Q. And then he comes in just a month after that?

A. Yes.

Q. And makes another payment?

A. Right.

Q. And that payment, through your receipt, shows that he's paid through to when, then?

THE COURT: 1005

A. May the 22d, 1995.

Q. Now, is that unusual for someone to come in a month after they've paid four months' rent and pay another four months'?

A. Normally it is, yes.

Q. Now, what did you do with this receipt, Government's

Helen Mitchell - Direct

Exhibit 91, after you filled it out?

A. Well, my copy -- the part that I gave to my brother, then, and he recorded it in the book.

Q. Is that your normal practice?

A. Yes, at that time it was.

Q. You're familiar with the storage sheds there out in Herington, aren't you?

A. Yes.

Q. I'm going to show you what's been previously marked Government's Exhibit 358. Do you recognize this?

A. Yes.

Q. What is it?

A. It's the two buildings that belong to the mini storage.

MS. WILKINSON: Your Honor, the Government moves in 358.

MS. MERRITT: No objection.

THE COURT: Received.

MS. WILKINSON: Is it published, your Honor?

THE COURTROOM DEPUTY: Yes.

THE COURT: What number is this?

MS. WILKINSON: 358, your Honor. These are substitutions from some other photos. They're on the master exhibit list but not on Miss Mitchell's exhibit list. I shared them with counsel.

THE COURT: All right. Thank you.

Helen Mitchell - Direct

BY MS. WILKINSON:

Q. Miss Mitchell, could you take your pen and indicate where on the storage sheds Unit 2 is?

A. Missed it.

Q. Want to try it again? There you go.

Okay. Thank you.

Now I'm going to show you 359. Do you recognize this photo?

A. Yes, I do.

Q. What does it show?

A. It's a close-up of the four units that are on the one end of the building.

MS. WILKINSON: We offer 359, your Honor.

MS. MERRITT: Your Honor, this one I'm going to object to on relevancy grounds, prejudice, it's misleading, and it contains extraneous matter

contains exculpatory matter.

THE COURT: Well, we don't have an explanation of what else is on the exhibit.

MS. WILKINSON: I can ask her to explain.

THE COURT: All right.

BY MS. WILKINSON:

Q. Miss Mitchell, can you tell us exactly what is indicated in this photo, please.

A. In between -- excuse me. What did you say?

Q. Can you tell us exactly what you're seeing in this photo?

Helen Mitchell - Direct

A. Well, you're seeing the four doors and also tracks leading up to those doors.

Q. Okay.

A. To the No. 2 door.

MS. WILKINSON: Your Honor, we'd move in 359.

MS. MERRITT: Same objection, your Honor.

THE COURT: Sustained.

BY MS. WILKINSON:

Q. Miss Mitchell, let me show you one more photograph, Government's Exhibit 96. Do you recognize that?

A. Yes.

Q. What is that?

A. It's the interior of No. 2.

MS. WILKINSON: Your Honor, we offer 96.

MS. MERRITT: No objection.

THE COURT: 96 is received.

MS. WILKINSON: May we publish?

THE COURT: Yes.

BY MS. WILKINSON:

Q. Miss Mitchell, tell the jury what this shows.

A. That the unit was empty.

Q. And is this the doorway to Unit No. 2?

A. Yes.

Q. Now, you told us that you also maintain a payment log; is that right?

Helen Mitchell - Direct

A. Yes.

Q. With your brother.

And did you do that for Mr. Rivers' payments?

A. Yes.

Q. Let me show you Government's Exhibit No. 90.

Is this document familiar to you?

A. Yes.

Q. How do you recognize it?

A. It's the sheet that we write the payments on and how far they are paid to.

Q. Do you recognize the handwriting on Government's Exhibit 90?

A. Yes, that's my brother's.

MS. WILKINSON: Government offers No. 90 into evidence.

MS. MERRITT: No objection.

THE COURT: 90 is received.

You may publish it.

MS. WILKINSON: Thank you.

BY MS. WILKINSON:

Q. Starting at the top, Miss Mitchell, could you tell us what this record indicates?

A. On the left-hand side is a "\$20," that's what the unit rented for, and the right-hand side was the "No. 2 unit" and then the name of the renter. And then -- excuse me, go ahead.

Helen Mitchell - Direct

Q. Go ahead.

A. And then the first was contract was dated paid to January the 22d. That was four months' cash, \$80. And then January to

May the 22d, that was four months, and that was also cash, \$80.

Q. So is it correct to say that all of these payments were made by October 23 of 1994?

A. Yes.

Q. You received that second payment on October 23, 1994 --

A. Yes.

Q. -- correct?

Do you recall anything about the individual who came in and paid for Unit 2 at that time?

A. No, I do not.

Q. Do you remember what he looked like?

A. No.

Q. Do you remember how tall he was?

A. No.

MS. WILKINSON: No further questions, your Honor.

THE COURT: Any questions?

MS. MERRITT: Yes, your Honor.

THE COURT: All right. Ms. Merritt.

CROSS-EXAMINATION

BY MS. MERRITT:

Q. Good afternoon, Mrs. Mitchell.

Now, you stated that you'd conducted the transaction

Helen Mitchell - Cross

with the person who said he was Mr. Rivers on September 22; is that correct?

A. Yes.

Q. And he rented Unit No. 2 for \$20 a month; right?

A. Yes.

Q. And he paid you for four months, which was \$80?

A. Right.

Q. You can't remember what he looked like?

A. No.

Q. Did you -- you were interviewed by agents of the FBI in this case, weren't you?

A. Yes, I was.

Q. And were you interviewed on or about April 25, 1995?

A. Yes.

Q. Did they show you photographs at that time to try and assist you to identify the individual?

A. No.

Q. And you don't know Terry Nichols, do you?

A. No.

Q. I'm going to let you take a look at what's been admitted as

Government's Exhibit 97, which you stated you're familiar with.

This is a city map?

A. Yes.

Q. Directing your attention to the address on the left, 109 South 2d Street. Do you know that to be Terry Nichols'

Helen Mitchell - Cross

residence?

A. Yes.

MS. MERRITT: Oh, can she display it?

THE COURTROOM DEPUTY: I'm sorry.

BY MS. MERRITT:

Q. Do you know that the pay phone on the Pizza Hut is (913)258-5988?

A. No.

Q. Do you know that the telephone number for Tim's Amoco is (913)258-5980?

A. No.

Q. You were also interviewed by some investigators for Mr. McVeigh; is that correct?

A. Yes.

Q. And do you recall telling them that you don't believe that either Mr. McVeigh or Mr. Nichols leased the unit because you had seen their photographs in the paper and neither photograph rang a bell with you?

A. Would you repeat that, please.

Q. Sure. Do you recall telling Mr. McVeigh's investigators that you did not believe either Mr. McVeigh or Mr. Nichols leased the unit because you had seen their photographs in the paper and neither rang a bell?

A. I don't think I ever said I don't believe.

Q. Okay, what -- do you recall what you did say?

Helen Mitchell - Cross

A. That I don't remember their faces at all.

Q. You don't really remember anything about the man, do you?

A. No.

Q. And he never showed you any identification, did he?

A. No.

A. NO.

Q. And you also mentioned that you saw the man again -- correct -- on a second occasion?

A. When he came in the second time, yes.

Q. Okay. Are you even certain that it was the same person both times?

A. Well, I can't say that, no; but he asked for the same unit.

Q. Right. But you can't say it was the same person; right?

A. Not exactly, no.

Q. And you don't really have any recollection of the details of your conversation with him, do you?

A. No.

Q. And you don't know of any earlier calls that this individual made to you or to the business, do you?

A. No.

Q. And you don't have any recollection of any prior personal visits by this individual, do you?

A. No.

Q. I'm going to show you what's been previously admitted as Government's Exhibit 88 and just ask you whether -- can you see it now?

Helen Mitchell - Cross

A. Yes.

Q. Is all the handwriting on that page yours?

A. Yes, it is.

Q. And I'm now going to show you the second page to that exhibit and ask you whether all the handwriting on that page, with the exception of the signature of Shawn Rivers, is yours?

A. Yes.

Q. Now, do you have any personal recollection of receiving that second payment of \$80?

A. No.

Q. Is it -- you recall your handwriting --

A. Yes --

Q. -- on the receipt; correct?

A. -- I know it was my receipt.

Q. But you don't know whether the person mailed the payment or came in with the payment?

A. No. He came in. I remember that.

Q. Well, what is it that you don't have personal recollection of? Is it just the individual again?

A. The individual. I'm very bad about remembering faces and names.

Q. When did you begin -- become -- your duties as a bookkeeper for the mini storage shed partnership?

A. Well, just when they opened this mini storage -- I'm usually the one that's sitting there, where people can come in

Helen Mitchell - Cross

and can talk to me first, although it does belong to my brother. And probably right from the beginning.

Q. And when was that?

A. I don't remember what year they started. I'm sorry. I don't remember what year they started.

Q. Did you have a change of duties or job around December of 1994?

A. No.

Q. Okay. You were bookkeeper for both the lumber company and the storage shed mini partnership then?

A. Yes.

Q. The storage mini shed partnership. Okay.

MS. MERRITT: May I have a minute, your Honor?

THE COURT: Yes.

MS. MERRITT: Nothing further.

THE COURT: Ms. Wilkinson.

MS. WILKINSON: Yes, your Honor.

REDIRECT EXAMINATION

BY MS. WILKINSON:

Q. Mrs. Mitchell, I'm going to show you Government's Exhibit 88, which you already looked at, the storage lease.

A. Yes.

Q. After you filled out this contract with Mr. Rivers, where did you put the contract?

A. I took it back to my brother's desk where he could record

Helen Mitchell - Redirect

it.

Q. And did the contract stay in the files?

A. Yes.

Q. Did you maintain this contract in the files until the FBI came to seize it after the bombing?

A. Yes. We have a notebook with sleeves, and they're stuck into the sleeve; and that's how we file them.

Q. And is that your customary business practice --

A. Yes.

Q. -- to maintain the contracts at the office at all times?

A. Yes.

MS. MERRITT: I have one question based on that.

THE COURT: All right.

RECROSS-EXAMINATION

BY MS. MERRITT:

Q. Were you aware that the FBI came and took this document on April 21, 1995?

A. I was told that afterwards, yes.

Q. And did you retain a copy of the document after the FBI

took it?

A. No.

Q. And had you even seen that document again until you were shown it by the U.S. Attorney in this case?

A. Well, they sent a copy back to us.

Q. Okay. But you don't know that that is the exact copy you

Helen Mitchell - Recross

sent out, do you, since you hadn't seen yours since April 21?

A. Well, no, I did not see it because I wasn't there the day they picked it up.

Q. Okay.

A. But we called them, and they sent us a copy. That's all I know.

MS. MERRITT: Thank you.

THE COURT: Excuse the witness?

MS. WILKINSON: Yes, your Honor.

THE COURT: Agreed?

MS. MERRITT: Yes.

THE COURT: You may step down. And you can go home. Next witness.

MR. HARTZLER: The Government calls Allen Radtke.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Allen Radtke affirmed.)

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

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

THE WITNESS: Allen E. Radtke, R-A-D-T-K-E.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Hartzler.

MR. HARTZLER: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. HARTZLER:

Allen Radtke - Direct

Q. Mr. Radtke, do you have a nickname?

A. Bud. B-U-D.

Q. And where do you currently reside?

A. Marion, Kansas.

Q. How long have you lived in Marion?

A. In the general area, for about 25 years.

Q. Can you tell us who you live there with?

A. My wife and three kids.

Q. And are you employed?

A. With Martin Marietta Rock Company, rock quarry, aggregates.

At a rock quarry.

Q. Where is that located?

A. A mile and a half north of Marion.

Q. How long have you worked at that rock quarry north of Marion?

A. I think I got moved there in 1992.

Q. When did that rock quarry open?

A. The fall of '91, if I remember right.

Q. Mr. Radtke, for those of us that are not familiar with the business of a rock quarry, can you describe it?

A. On, we just take the dirt off the top of the rock ledge -- I need to speak into that a little more -- and then you've got to drill holes in the rock and put explosives in there, dynamite, to blow the rock down into smaller chunks so our crushing plant will take care of it and break it into smaller

Allen Radtke - Direct

pieces to be used on highway jobs and other road construction work.

Q. What is your role in this operation?

A. I drill the holes and also load the explosives into the holes to blow the rock down.

Q. How long have you been doing that?

A. 11, going on 12 years.

Q. What do you call yourself? What is your job title or position?

A. Driller, blaster.

Q. I take it you've worked at other facilities prior to the north Marion rock quarry?

A. Yes.

Q. You indicated that you use various explosives. I think you

referred to the term "dynamite" in blasting this rock and preparing it for the crusher; is that correct?

A. Yes.

Q. Is it actually dynamite that you use?

A. No. It's -- it's still -- they used to use dynamite; but now it's an emulsion mix. And it's altogether different and a lot safer.

Q. And what do you use in addition to that emulsion mix?

A. We charge it with an electric blasting cap and then also use ANFO or fuel-treated fertilizer with it.

Q. What form is that ANFO or fuel-treated fertilizer?

Allen Radtke - Direct

A. It comes in 50-pound bags, is the way we get it.

Q. Premixed?

A. Premixed.

Q. So it's not just the ammonium nitrate fertilizer?

A. No, it's already mixed and ready for us to use.

Q. And how does this blasting operation work?

A. After I've got the two -- after the holes are drilled, you just insert -- put a blasting cap into a stick of that blasting

agent or emulsion mix and lower it into the hole and then pour in so many pounds or feet of the ANFO. You measure it as you pour it in, cover the hole up with some rock; and after the -- that's all done on several holes, you wire it all in. And we have a special machine for touching it off, electronic machine.

Q. And it's an electric machine for what purpose?

A. Setting off the blasting caps that are in the dynamite or in the blasting material.

in the blasting material.

Q. Okay. So these are electric blasting caps you use for that operation?

A. For that part of it, yes.

Q. And can you better describe for us this emulsion mix stick, as you referred to it?

A. It's -- ones that we use now are 2 inches in diameter, 16 inches long. It kind of looks like a big stick of sausage in a white plastic wrap.

Q. 2-foot long?

Allen Radtke - Direct

A. 16 inches long.

Q. 2 inches in diameter?

A. 2 inches in diameter.

Q. Is it soft, mushy, hard?

A. It's a little on the soft side.

Q. How large a hole do you drill to drop that thing down in there?

A. Three-inch diameter.

Q. So it falls down in and you pour the ammonium nitrate mix on top of that?

A. Yes.

Q. Where do you obtain these various explosive components, this sausage tube of emulsion mix and the ANFO and the electric blasting cap you use?

A. There's a supplier that delivers it to us.

Q. I mean on a given day, if you were going to do some blasting this afternoon, where would you go to get this?

A. We have magazines that it's stored in, in an area on the quarry, off to the side, kind of out of the way.

Q. Could you give us some detail on what the storage units look like, how many there are, why you refer to them as "magazines"?

A. Well, they don't want me calling them "houses." I used to call them that. They're little metal buildings with -- they're not very big. The cap magazine is probably 4-, 5-foot square,

Allen Radtke - Direct

about 4 feet tall. And it's wood lined, it's lined with wood on the inside to, in case of any sparking in there. We've got -- it's a ruling that we've got to have it lined like that so that if there's any electrical charge around there and it's grounded, so it won't short out and blow everything up that way.

And a powder magazine is basically built the same way. It's larger, but we store more. You take 150-pound cases, take

up a lot more room than a few little boxes of caps do, so we have to have more room there.

The ANFO is stored in an ordinary van-type trailer.

Q. You said "powder magazine." What are you referring to when you say "powder"?

A. That's where the blasting agent, the emulsion mix -- the 2-by-16 and the 3-by-16 sticks are kept in that.

Q. Is the emulsion mixed in a powder?

A. No. That's another term that old -- the older ones have carried on down the line. The same with the dynamite. We just still call it that, just terminology.

Q. So the nature of the explosives change, but they still call it "powder," or "powder magazine"?

A. Yeah.

Q. And how far away are these magazines from the area that you actually blast the rock?

A. A quarter of a mile. Sometimes just under a quarter of a

Allen Radtke - Direct

mile. Right now, at the time where I'm working at right now, they're almost 5/8 of a mile from that area where I'm working in right now.

Q. Are the magazines movable?

A. Yes.

Q. How do you move them?

A. A loader.

Q. So you can replace -- I'm sorry. Go ahead.

A. Our wheel loaders that we use at the quarry for loading out trucks or whatever -- that type of machine would be used to pick them up.

Q. I think maybe you skipped -- or I didn't listen closely enough -- to the trailer of ANFO. You keep that on site as well?

A. Yes. Yes.

Q. What kind of quantity do you keep in that trailer?

A. We'll bring in like -- it's usually ordered 40,000 pounds, 800 bags to a load like that.

Q. Let's move back to the powder magazine. What quantity of that emulsion mix in the sausages do you keep on site?

A. Well, we'll bring in probably a hundred cases of 55-pound boxes of one size and then another size of it, well, the 3-by-16 like that, and the 2-by-16, we usually only get six or eight at a time. We don't use it quite as often as the larger sticks.

Allen Radtke - Direct

Q. And per box, how many sticks or sausages are there in each box, approximately?

A. What size? The 3-by-16 have 10 or 11 -- 10 to 11 sticks to

a box and 25 on the smaller ones, the 2-by-16's.

Q. How are these magazines secured?

A. Two padlocks on the door.

Q. I want to direct your attention to the fall of 1994. But I

missed one step.

Are there any other kind of blasting caps that you use

at your quarry?

A. We have a nonelectric-type cap that is used at the plant, at the crushing plant.

Q. And what do you use nonelectric blasting caps for?

A. If we get a large boulder or rock hung up in the feeder housing, it's used to blast it into smaller pieces so it will go on through.

Q. So the blasting cap itself will crush a large boulder?

A. Yes.

No. Not by itself, no. It has to have a small amount

of the blasting agent with it.

Q. And is there a particular length in time delay of blasting cap that you have used the entire time you have been there?

A. On the nonelectrics, we've used -- normally it's a 60-foot cord on it and No. 8 delay.

Q. I want to direct your attention back to the fall of 1994.

Allen Radtke - Direct

Do you recall when there was some problem with equipment at the

Marion quarry?

A. Yes.

Q. And you were shut down for a short period of time?

A. Yes, I do.

Q. When, approximately, did that occur?

A. Around the first part of October, the very first part of October.

Q. And for how long was the plant nonoperational?

A. Three days.

Q. Do you recall the days of the week when you were nonoperational?

A. Wednesday, Thursday, Friday, and Saturday. And of course, then, Sunday on the weekend.

Q. And did you work there --

A. Yes.

Q. -- at that time?

Do you recall returning to work that Monday morning?

A. Yes.

Q. Do you remember the date?

A. The date, no, I don't.

Q. This would have been in early October of 1994?

A. Yes.

A. 100.

Q. Can you tell us what occurred out of the ordinary when you were at work that following Monday morning after the plant had

Allen Radtke - Direct

not been operational for a couple of days?

A. In the morning, nothing really. It was all -- it was around the noon hour when I went to get caps and the powder to load a shot to blast some rock out for crushing when we got ready, which they told me it would probably be 2 or 3:00 in the

afternoon. I went to the magazine. I went to the ANFO trailer

first, loaded up the ANFO I needed, and went on to the -- well,

the other magazines. I believe the cap magazine was my next stop.

Q. Let me interrupt you. The ANFO magazine -- ANFO trailer had a lock on it?

A. Yes.

Q. And was it locked that day?

A. That door was locked.

Q. What door, when you say "that door"?

A. There's a side door and a back door on that trailer. And I

always used the side door. It was locked.

Q. So it was locked. You opened it, went into the ANFO trailer.

A. I got what I needed, went on to the cap magazine. And the way those locks are designed, you don't see the padlock. It's hidden behind kind of a hood. You've got to reach up from the bottom side to get to the padlock. Normally, I just stick my hand up in there and feel for the key slot in the padlock. There was no padlock there. Then I looked. And no padlock on

Allen Radtke - Direct

that door.

I went over to the magazine where the powder is stored

and carefully looked around there, and I saw no padlocks on that. And then I went and reported to my plant manager.

Q. Okay. After you reported it, did you open up those two magazines?

A. Yes, we did.

Q. Directing your attention first to the caps magazine, what did you notice?

A. Several boxes of caps were missing.

Q. What about the powder magazine?

A. There were several boxes missing out of there, too.

Q. Approximately how many boxes of the electric blasting caps were missing?

A. I would say in the neighborhood of -- there was -- they're

boxed 10 small boxes to a case; and there was at least four, maybe five cases like that that were gone --

Q. How many blasting --

A. -- near as I can recall.

Q. How many blasting -- how many electric blasting caps per box?

A. 25.

Q. 10 boxes per case. That's 250 per case?

A. Yes.

Q. And how many cases were missing?

Allen Radtke - Direct

A. Could have been six, seven cases. I'm not sure about the number anymore. I don't recall it.

Q. And in the caps magazine, are there also nonelectric blasting caps -- I should have said "were there also . . ."

A. Yes, there was.

Q. How many cases of nonelectric blasting caps did you have in there?

A. One.

Q. Was it there when you opened up after the locks were missing?

A. No.

Q. How many nonelectric blasting caps are there per case?

A. There's been a hundred in that case. 100.

Q. And do you know approximately how many were remaining prior to the break-in?

A. None.

Q. Before that, I mean. How many were there before that?

A. I don't recall.

Q. Was it a more than a half-full case?

A. It could have been. I just -- the number doesn't come to mind.

MR. TRITICO: Excuse me. Excuse me, sir.

Object to speculation.

THE COURT: Overruled.

What is your memory of how many were there?

Allen Radtke - Direct

THE WITNESS: Excuse me?

THE COURT: What is your memory of how many were there?

THE WITNESS: It wasn't a full case; but it could have been 75, it could have been 80.

BY MR. HARTZLER:

Q. Now, directing your attention to the powder magazine, when you looked in there, how many cases of the sausage emulsion mix

were missing?

A. There was seven cases.

MR. HARTZLER: Your Honor, I'd like to show him a photograph --

THE COURT: I'm not sure on the answer, whether there were seven cases there, or seven cases missing.

MR. HARTZLER: Thank you.

THE WITNESS: Seven cases missing.

THE COURT: Thank you.

BY MR. HARTZLER:

Q. And this was of the sausage that you said comes in 55-pound boxes -- cases, I mean? Sir?

A. There's nothing on the screen.

THE COURT: No, there's a question asked.

BY MR. HARTZLER:

Q. I'm asking you about the sausage, emulsion mix.

A. Yes.

Allen Radtke - Direct

Q. You said there are how many sticks per case?

A. 25 and 26. It varied, 'cause we buy it by the pound, not by the stick. It would vary one stick per case.

Q. So the number of sticks that were missing was in the range of 175, or so?

MR. TRITICO: Excuse me. I'm going to object to the leading.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MR. HARTZLER:

Q. I'd like to show you what's marked as Government Exhibit 115.

MR. HARTZLER: Your Honor, may Agent Hersely assist in this? It's the large photograph behind the witness.

THE COURT: Well, the marshal can.

MR. HARTZLER: Marshal, I think it's the first one. Thank you.

THE COURT: Don't show the exhibit until he sees it. Show it to the witness.

No, we got the wrong thing.

The agent can come up and do it.

MR. TRITICO: Your Honor, can I come up and look?

THE COURT: Yes.

MR. HARTZLER: Agent Hersely, before you show that to the jury, could you just show it to Mr. Radtke, please.

Allen Radtke - Direct

BY MR. HARTZLER:

Q. Mr. Radtke, are you familiar with this exhibit marked Government Exhibit 115?

^ Yee

A. Yes.

Q. What is that?

A. That's an aerial photo of the quarry where I work at.

MR. HARTZLER: Your Honor, I move the admission of Government Exhibit 115.

MR. TRITICO: No objection.

THE COURT: 115 is received.

Now you can put it on the easel.

BY MR. HARTZLER:

Q. Okay. Well, I think we're going to have to focus in on that. Do you have a light pen?

MR. HARTZLER: Does he have a light pen next to him? Or a pointer, I should say, a pointer.

Yes.

BY MR. HARTZLER:

Q. Mr. Radtke, can you just point out what the quarry area is.

Where the entrance is, let's start with. You're going to have to keep your voice up if you leave the witness stand.

MR. HARTZLER: Is that permissible, your Honor?

THE COURT: Yes, if he can keep it up.

THE WITNESS: If you move that picture a little closer, I'll be closer to the mike, then. I don't know how

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this is going to work.

THE COURT: We can hear you all right.

THE WITNESS: This is the road coming in from the highway. That would be the entrance gate, right in this area right here. Our office -- no.

Have you got that? Okay.

That's our office and scale house. There's roads going different directions around the stockpile area. One comes through here, and we have office trailers and truck parking and loader parking over here. The magazines that we were talking about are located right in this area right here, the cap and the powder magazines and the ANFO.

BY MR. HARTZLER:

Q. All right. Thank you.

MR. HARTZLER: Thank you.

May I approach, your Honor?

THE COURT: Yes.

BY MR. HARTZLER:

Q. Could you look through that folder and pull out the exhibit

that's marked Government Exhibit 117?

A. I have it.

Q. Do you have it? Can you identify that?

A. Yes. That's an aerial photo of our magazine storage area.

Q. Little closer shot than we saw a moment ago?

A. Yes.

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MR. HARTZLER: Move the admission of Government Exhibit 117.

MR. TRITICO: No objection.

THE COURT: Government Exhibit 117 received, and you may display it.

BY MR. HARTZLER:

Q. Now, you have on your left-hand side, I believe, a little pen that if you place underneath the glass -- you see it on the

screen beneath you. Move your photograph.

A. Yes.

Q. And using that pen, can you just mark where these magazines are?

A. That would be the cap magazine.

Q. Very good.

A. And the powder. The 2-by-16 and the 3-by-16 sausage stuff is stored in that magazine.

Q. By the way, what's the name of the sausage-type stuff that you were using in the fall of 1994?

A. Tovex.

Q. And what's the name of the nonelectric blasting caps that you were using in the fall of 1994?

A. Those were called Primadet.

Q. Can you show us where that -- the ANFO trailer is?

A. Right over here.

Q. Very well. In that photograph, it appears as though there

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are some berms of gravel built up around these magazines; am I correct?

A. That's correct.

Q. And what is the purpose of those?

A. It's a ruling with the MSHA for fire or -- and storage, you've got to have a certain distance between them; and by putting that berm in between them, we can put them closer together and take up less space and not have them strung out all over the place.

Q. So it's a safety measure?

A. Safety measure.

Q. Look through your folder, if you would, and try to find Government Exhibit 117. Oh, you need to click the pen. I'm sorry. If you click the pen, it will take those three little Xs off there. One, two, three. You got it, thank you.

Have you found 117?

A. This is 117.

Q. Yes. Oh, I'm sorry, that was 117. Look at 119. I'm sorry.

A. Yes, I have it.

Q. That's simply a photograph of the entryway to the quarry?

A. Yes, it is.

MR. HARTZLER: I move the admission of Government Exhibit 119.

MR. TRITICO: No objection.

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THE COURT: 119 is received, and it may be displayed.

MR. HARTZLER: Thank you.

BY MR. HARTZLER:

Q. This simply shows the entryway into the quarry that you pointed out at the end of the street when you were showing us from the large aerial photograph earlier?

A. Yes, it is.

Q. And is that open during the day?

A. Yes.

Q. Locked at night?

A. Locked every night.

Q. There's a little white house. It appears to be in the right side of the photograph. What is that?

A. Our office and scale house.

Q. And there's a truck that's coming. Is that coming out or is it doing something else?

A. Those trucks are heading out the gate.

Q. Where are the scales?

A. Between the -- to the right of those trucks, you can just barely see the guardrail on the scales. Maybe I can . . . that

would be the deck of the scale right in that area.

Q. Okay. Is there any other way to get into the quarry other than through that gate?

A. There's another road, but it's not well used or well known.

Q. Okay. Why don't you look through your folder again and

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pull out Government Exhibit 118.

A. Have it.

Q. And is that another aerial photo of the quarry showing the area behind the quarry that you get in through the back way?

A. Yes.

MR. HARTZLER: Move the admission of Government Exhibit 118.

MR. TRITICO: No objection.

THE COURT: 118 is received and may be displayed.

BY MR. HARTZLER:

Q. Now, using your pen again, if you could, could you circle the area of the quarry so we can orient ourselves.

There you go.

A. There we are.

Q. Okay. So the quarry area is at the upper part of the photograph?

A. Yes.

Q. Now, at the bottom of the photograph there is a straight line, just above the exhibit sticker. What is that? Can you draw your pen across that and tell us what that is?

A. That's another roadway coming off from a county road that leads you into the quarry, past an abandoned farmstead.

You'll

need to . . . follow that trail -- there's a creek down there in the trees; that going on in that direction there will take you back. In less than a half a mile, you'll be back in the

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area of stockpiles and our office trailers, our parking area for the trucks and loaders.

MR. TRITICO: Excuse me, Mr. Radtke.

Your Honor, I'd like to have that printed before it's erased.

MR. HARTZLER: I'll ask another question. We won't remove it. Just tell me when you're ready.

THE COURTROOM DEPUTY: It's okay.

BY MR. HARTZLER:

Q. The line that goes across at the bottom of the photograph, is that the county road that you were referring to?

A. This line right here?

Q. Yes.

A. That's the county road.

Q. And does that go out to the main highway?

A. Yes. That does.

Q. What's that route?

A. Highway 56.

MR. HARTZLER: I'm sorry. Are you ready?

THE COURTROOM DEPUTY: Yes.

BY MR. HARTZLER:

Q. Will you click your pen again, please.

Look through your folder for Government Exhibit 120.

Do you see that?

A. Yes.

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Q. The photograph of the ANFO trailer?

A. Yes, it is.

MR. HARTZLER: I move the admission of Government Exhibit 120.

MR. TRITICO: No objection.

THE COURT: 120 is received, and it may be displayed.

BY MR. HARTZLER:

Q. I'm sorry, my screen is dark. You can see it on yours fairly well?

A. Well, yes, I can see it.

Q. Why don't you use your light pen and just show us where the

ANFO trailer is on that photograph.

A. Right there.

Q. So the photograph was taken some distance up the road from where that ANFO trailer actually is?

A. Yes. It was

A. Yes, it was.

Q. And this is just an ordinary trailer, there's no extra security precautions other than the locks on the doors; right?

A. That's right. Well, no, there is a lock on the fifth-wheel pin, too.

Q. Oh, so nobody can come in and move it away?

A. Just hook onto it and drive away, yes.

Q. How many doors are there on the ANFO trailer?

A. This one has a side door and a double door in the back.

Q. And what door do you typically use when you go in to get

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it?

A. The side door.

Q. On the day that you went, on that Monday in early October that you previously described, when you went to get ANFO for the blast that you were preparing, which door did you check?

A. The side door.

Q. On that day, did you check the double back doors of that trailer?

A. No, I didn't.

Q. Did you later check those back doors, on another day?

A. The next day. The next day there was discovered the lock had been tampered with.

Q. So the lock -- and "tampered with" meaning what?

A. It had been drilled out and unlocked.

Q. Very well. Let me show you what -- if you'll look through your exhibit folder and find Government Exhibit 121.

A. Have it.

Q. And is that a photograph of the powder magazine or the Tovex magazine?

A. That would be the powder magazine. Tovex. That's where the Tovex was stored.

MR. HARTZLER: I move the admission of Government Exhibit 121.

MR. TRITICO: No objection.

THE COURT: 121 received.

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BY MR. HARTZLER:

Q. Now, Mr. Radtke, you indicated these magazines are movable, you can move one in and take it someplace and move another one in its place?

A. That's right.

Q. Is this a photograph of the powder magazine that was broken

into in early October?

A. Yes.

Q. And can you take your light pen once again and explain to us exactly where the door on the -- this powder magazine is

locked.

A. Each one of these square boxes is sealed on all sides except the very bottom. And you can -- that's where you get the -- you got to put your hand up in there to get to the padlock. This bar acts like a deadbolt. It would slide into another slot before you can put the padlock into it, but you've got to reach up through the bottom of that box to get to the padlock.

Q. So it's a shroud or a seal that has an opening in the bottom?

A. Yes.

Q. And you marked the bottom. Are there two of them?

A. Yes, there's another one right above it.

Q. All right. Can you click your pen again, and we're going to look at Government Exhibit 123.

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A. Have it.

Q. And is that a photograph of the blasting caps magazine that was in place when you discovered the break-in in early October, 1994?

A. Yes.

MR. HARTZLER: I move the admission of Government Exhibit 123.

MR. TRITICO: No objection.

THE COURT: 123 is received and may be published.

BY MR. HARTZLER:

Q. And again this is the smaller of the two magazines that you indicated?

A. Yes, it is.

Q. Just very quickly with your light pen, can you indicate the shrouds and show us where those locks were.

There's the bottom one.

A. And there's the top.

Q. Again, the same deal, metal shroud, opening at the bottom?

A. Yes, it is.

Q. Can you remove your marks. And look for Government Exhibit 128 in your folder.

A. Have it.

Q. Is that a photograph of the shroud up close?

A. Yes, it is.

Q. Looking from the bottom up?

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A. From the bottom up.

MR. HARTZLER: Move the admission of Government

Exhibit 128.

MR. TRITICO: No objection.

THE COURT: Received.

BY MR. HARTZLER:

Q. Okay. I don't think you need to use your light pen. This is just the shroud depicted from the bottom, and there's a lock in there.

A. That's right.

Q. To show you how it's encased in the metal; is that right?

A. That's right.

Q. Please look through your folder and find Government Exhibit 122.

A. Have it.

Q. Is that a photograph of the powder magazine with the door open?

A. Yes, it is.

MR. HARTZLER: Move the admission of Government Exhibit 122.

MR. TRITICO: I'll object to this pursuant to Rule 402 and 403 of the Federal Rules of Evidence.

THE COURT: You need to explain more about it.

BY MR. HARTZLER:

Q. Can you explain what that photograph depicts?

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A. Well, it shows -- the boxes you see in there are 3-by-16, like open box.

MR. TRITICO: Excuse me. I'm going to object to him testifying about the contents of it since --

THE COURT: Well, your objection is overruled. He's trying to lay a foundation.

Go ahead.

THE WITNESS: The boxes you see in there have the 3-by-16 sticks, like the open box there. Another corner of the

magazine was on, over in this area --

BY MR. HARTZLER:

Q. Mr. Radtke, this is not being displayed yet, I believe, to the jurors, so I need to get it into evidence. Can you just explain what this evidence shows us, without marking it yet?

A. Oh. Just shows where the powder was stored.

Q. I know. But at what time period? Why are there no 2-by-16's in here?

A. This was the day that I discovered the break-in.

Q. And do you know who took this photograph?

A. FBI agents, but I don't know when. It was shortly after that, a day or two, maybe.

Q. You said FBI. Did the FBI investigate the burglary that day?

A. Not that day. The sheriff's department was out there that day, but I'm sure the FBI was in there later on. I was on the

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job site, but I wasn't always right up there all the time. There were different agents up there.

Q. I understand you didn't see the photograph being taken. But does this depict the condition of the powder magazine on the day of the theft?

A. Yes.

MR. HARTZLER: I move the admission of the Government Exhibit 122.

THE COURT: Is this what you saw when you went in?

THE WITNESS: Yes.

THE COURT: All right. Any objection now?

MR. TRITICO: No.

THE COURT: Received.

MR. HARTZLER: Thank you, your Honor. I think I know the questions now.

BY MR. HARTZLER:

Q. Now, the ladies and gentlemen of the jury have it on their screen, so could you use your pen and explain what is in the powder magazine -- what is in the photograph, I should say?

A. What you see are the 3-by-16 sticks in an open box.

Q. Mark those, please. Okay.

A. The ones that set over in this area here were quite a bit smaller than those, and the rest of them are the larger sticks.

Q. And the ones that you marked -- you marked a squiggly line on the right side of the screen indicating what looks like the

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floorboards.

A. Those are wooden boards in the floor, yes.

Q. Were you telling us before the break-in there had been something there?

A. Yes, there were several boxes stacked in that area. It's just showing a part of the wall there, but it's right on the side there.

Q. And that's where you used to store the smaller of the Tovex sausage, too?

A. Yes.

Q. You indicated there are approximately how many cases of that Tovex missing?

A. There was, I recall, seven.

Q. Very well. You can take those marks off the screen, and I will show you what's been -- or look for Government Exhibit 124.

A. Have it.

Q. Does that photograph show what you saw when you opened up the blasting-cap magazine?

A. Yes, it does.

MR. HARTZLER: Move the admission of Government

Exhibit 124.

MR. TRITICO: No objection.

THE COURT: Received. 124 may be displayed.

BY MR. HARTZLER:

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Q. Okay. And can you describe for us and use your light pen to depict what you're describing, mark what you're describing, what we see in this photograph?

A. You'll see what's -- there's several boxes and different delays of the caps. There was a lot more in there before that.

There were -- several cases would have been setting along this area. That's the wall, and this is a floor. There was other ones setting in there before the -- that date.

Q. Okay. What we see in the photograph, what's remaining, are

some white boxes; is that right?

A. That's right.

Q. And there are numbers in the sides that I think are legible, are they not?

A. Yes, some are, yes.

Q. Okay. What numbers are legible to you?

A. These are No. 20 delay boxes. These look like 18.

Possibly 13, 12. Those are 14's. Some of these over here are 9's.

Q. Okay. Well, they're getting more difficult.

A. That's all I can see.

Q. Okay. And those are all electric blasting caps; is that right?

A. That's right.

Q. With varying delays?

A. Yes.

Allen Radtke - Direct

Q. Were there also nonelectric blasting caps in this caps magazine prior to the theft?

A. Yes, there was.

Q. And did they have varying delays?

A. No, we just had the one delay.

Q. Which was?

A. A No. 8.

Q. Brand again was?

A. Primadet.

Q. And how were they encased?

A. In a cardboard box, roughly 30 inches by -- I don't know -

-

16, 14, 16 inches, by 12 inches deep.

Q. 30 inches high?

A. 30 inches high.

Q. How high are these little -- these white boxes?

A. There's probably 6-by-10, 10 inches long.

Q. So you would have had a fairly sizable cardboard case of electric -- nonelectric blasting caps prior to the --

A. Yes.

Q. And the -- all of the nonelectric blasting caps would have been of what length?

A. 60-foot.

Q. I'd like you to look through your folder and see if you can

find in there Government Exhibit 141.

MR. HARTZLER: And, your Honor, I'll be using this

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only for demonstrative purposes with this witness.

THE WITNESS: 141?

BY MR. HARTZLER:

Q. 141.

A. There we are. Got it.

Q. Can you describe what's depicted in that photograph?

A. Those other Primadet caps, the nonelectric.

Q. Those are the same features as the ones that you had?

A. Yes.

MR. HARTZLER: I'd move the admission of Government Exhibit 141 for demonstrative purposes at this point, only.

MR. TRITICO: I have no objection to using it as a demonstrative exhibit.

THE COURT: They're received for demonstrative purposes with this witness.

BY MR. HARTZLER:

Q. Again using your light pen, can you just -- obviously -- or

point out the obvious brand name on these nonelectric blasting caps and read it?

A. Primadet.

Q. You referred to a time delay. Can you show the ladies and gentlemen of the jury how you know or how we would know what time delay these blasting caps are?

A. This is a No. 8. Means after the electricity is -- or not

the electricity on these, these are nonels, but once the powder

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is activated in that cord, it's 250 milliseconds before the cap goes off.

Q. How do you know that? What do you mean 200 milliseconds?

A. 200 milliseconds, that's what that on there says.

Q. I see. Okay.

A. You can't see what the fine print is on it, but that's what

the number 8 is on there, for speed.

Q. And they're just referred to as a No. 8 time delay?

A. Yes.

Q. And tell us how it is you know these are 60-foot. Right there.

A. Marked in the corner of the wrapper.

Q. Okay. Can you click your screen, then. And these are the identical type of brand, length, and time delay that you had in

your caps magazine that October noontime when you went out there and they were missing?

A. Yes, that's right.

Q. That was a terribly worded question.

Before they were missing, this is the exact brand, length, and time delay that you had; is that right?

A. Yes.

MR. HARTZLER: May we approach? I have another demonstrative exhibit. It's a box. Government Exhibit 133.

MR. TRITICO: I'd just like a look at it.

THE COURT: All right. Take a look at it.

Allen Radtke - Direct

MR. HARTZLER: May I ask Mr. Tritico to

THE COURT: He's coming over to look at it.

MR. HARTZLER: May I request the Court to show one other exhibit?

THE COURT: Did you reach some agreement there?

MR. TRITICO: We're going to have coffee later, your Honor.

I have no objection to the box that he's offering now.

THE COURT: All right. You can bring the box to the witness.

MR. HARTZLER: I move the admission of Government Exhibit 133, which is the box.

THE COURT: And is this for demonstrative purposes?

MR. HARTZLER: Absolutely, yes.

THE COURT: And you do not object --

MR. TRITICO: I do not object to the box for demonstrative purposes.

THE COURT: All right.

BY MR. HARTZLER:

Q. Okay. Can you explain what you have in front of you as Government Exhibit 133?

A. It's a box cover from a box that was in the powder magazine.

Q. It would contain what?

A. These contain 3-by-16 because we couldn't give a 2-by-16.

Allen Radtke - Direct

They were all gone.

Q. What do you mean couldn't give? Couldn't give to the FBI --

A. Investigating officers, sheriff's department.

Q. They came out and wanted a sample box?

2. They came out and wanted a sample box.

A. Yes.

Q. And did the 2-by-16s also have that colored triangle on them?

A. Yes.

MR. HARTZLER: Your Honor, I have another demonstrative exhibit to which Mr. Tritico objects. It is a sample of one of the items we've been discussing, and I'm using it solely for demonstrative purposes.

MR. TRITICO: I object to it pursuant to Rule 402 and Rule 403 of the Federal Rules of Evidence.

THE COURT: Well, it's overruled.

BY MR. HARTZLER:

Q. I'd like to show you what's been marked as Government Exhibit 132.

MR. HARTZLER: You can take the box down.

BY MR. HARTZLER:

Q. I want to assure you and the Court that that has been rendered inert. Can you describe what you have in front of you?

A. This is a sample --

Allen Radtke - Direct

Q. Put it down, please, before -- I'll introduce it or offer it at least in a moment.

A. It's a 2-by-16 stick of the Tovex that we had.

Q. And that was the type that was missing when you got to the storage locker?

A. Yes.

MR. HARTZLER: I move the admission of Government Exhibit 132, solely for demonstrative purposes.

THE COURT: Just to show what it looks like.

MR. TRITICO: I have the same two objections.

THE COURT: That's overruled, and you can show the jury what it looks like.

BY MR. HARTZLER:

Q. Can you just lift it up now. That's the size, shape, color

of the sausage that you referred to as using in the fall and missing that October when you went in that -- that October day when you went into your powder magazine?

A. Yes.

MR. HARTZLER: Thank you. Nothing further.

THE COURT: Mr. Tritico.

CROSS-EXAMINATION

BY MR. TRITICO:

Q. Mr. Radtke, how are you?

A. Fine.

Q. My name is Christopher Tritico. You and I have never met

Allen Radtke - Cross

personally, have we?

A. I don't believe so.

Q. I've never had the opportunity to sit with you and discuss your testimony that you've given here today, have I?

A. No.

Q. Now, you testified about the burglary that occurred of the magazines; do you recall that?

A. Yes.

Q. Prior to -- or actually, you keep a running inventory of the materials that are contained within the magazine; is that correct?

A. Yes.

Q. And do you take part in the production and the continuing count to maintain the inventory?

A. At the time, I was just filling out a daily card; or whenever I'd use any material, I'd turn it in to the plant manager.

Q. I'm sorry. You would fill out a card and turn it in to the plant manager?

A. At that time, yes.

Q. Were you the one responsible for creating the running inventory sheet?

A. No.

Q. Have you reviewed any running inventory sheets from your --
--
the quarry that you're employed at?

Allen Radtke - Cross

A. Not lately I haven't, no.

Q. Did you review any running inventory sheets at the time that the sheriff was investigating this burglary?

A. Yes.

Q. Did you prepare those running inventory sheets for the sheriff?

A. I didn't.

Q. When you reviewed the running inventory sheets, did you -- well, let me ask you this: As you prepare these inventories, one of the things you want to make sure is that you have an accurate count of the explosives that are contained within the magazine; right?

A. Right.

Q. And that's so that you know and your employer know that the explosives that you're responsible for are where they're supposed to be; correct?

A. Correct.

Q. When you reviewed the running inventory sheets prepared by your employer, based on the information that you gave them, did you find any errors?

A. I don't recall at the moment.

Q. Would it refresh your recollection to review them?

A. Yeah, I can look at them.

MR. TRITICO: May I approach the witness?

THE COURT: Yes.

Allen Radtke - Cross

MR. TRITICO: May I be permitted to ask a few questions from there? It might speed things along if I did.

THE COURT: You want to hang over his shoulder or something?

MR. TRITICO: I was going to point to him certain areas that might be easier. Or I won't.

THE COURT: I prefer that you stay where you are.

MR. TRITICO: Okay.

BY MR. TRITICO:

Q. What I've handed you is two pages out of Government Exhibit

138. Do you see that, what's marked Government Exhibit 138?

A. Yes.

Q. Take a moment to review those, if you would, please.

Have you had a chance to review them?

A. Yes, I have.

MR. TRITICO: Your Honor, may I retrieve those from the witness?

THE COURT: Yes.

THE COURTROOM DEPUTY: What?

MR. TRITICO: I need to retrieve them.

BY MR. TRITICO:

Q. Now, when you reviewed these records, did you notice some errors that were made in the inventory?

MR. HARTZLER: Objection, your Honor. I'm not sure: Are we introducing the records or --

Allen Radtke - Cross

THE COURT: No. He's just asking him if there were some errors in the inventory.

MR. HARTZLER: And I understood these were not prepared by him.

THE COURT: Well, the question asked is not objectionable.

MR. HARTZLER: Okay.

BY MR. TRITICO:

Q. Did you notice some errors made in the inventory?

A. I didn't look that close at them. And I'd have to sit down

and just line by line and go through them, which at that time I

had no part of that record-keeping.

Q. Who was in charge of maintaining these records at the time?

A. Mike Jantz.

Q. Where is Mike Jantz? Is he still employed by Martin Marietta?

A. Yes, he is.

Q. He's no longer at this plant?

Q. He's no longer at this plant:

A. He's not at that quarry, no.

Q. What quarry is he at now?

A. I believe he's been transferred to the Winfield area.

Q. As a matter of fact, he was demoted, was he not, and transferred shortly before the burglary of this quarry?

MR. HARTZLER: Objection to relevance.

THE COURT: Does it relate to keeping the inventory?

Allen Radtke - Cross

MR. TRITICO: Not necessarily the inventory, your Honor; but it does relate --

THE COURT: Well, then, the objection is sustained.

BY MR. TRITICO:

Q. Now, when the sheriff came out and investigated the burglary of the quarry, were you the person who showed him the magazines?

A. Yes, I was, one of them. There was -- I wasn't alone.

Q. You and the plant manager, as a matter of fact; right?

A. Yes.

Q. And did the sheriff look at only those two magazines at the time?

A. Yes, he did.

Q. Did he -- did you notice him attempting to take any fingerprints or fingerprint impressions off of the magazines?

A. No, he did not.

Q. Now, did you discuss with the sheriff the rear entrance to the -- to the quarry that you've outlined here today?

A. Yes.

Q. As a matter of fact, one of the things that the sheriff left with was the impression that whoever burglarized this quarry had to be someone very familiar with the quarry; isn't that correct?

A. At least --

MR. HARTZLER: Objection, your Honor.

Allen Radtke - Cross

THE COURT: Sustained.

BY MR. TRITICO:

Q. Is it your opinion, sir, and have you ever held the opinion, that the person who burglarized this quarry had to be someone who was familiar with the quarry?

MR. HARTZLER: Same objection.

THE COURT: Overruled.

THE WITNESS: You could -- well, you'd have to know your way in and out of there, had to have at least drove it once.

BY MR. TRITICO:

Q. And you've expressed the opinion before that it was someone

who was very familiar with the quarry, haven't you?

A. Not necessarily very familiar.

Q. Familiar?

A. Have driven on the road one time, maybe. They could have -- would be known to that road.

Q. My question, sir: Have you expressed the opinion before that it had to be someone familiar with the quarry?

A. No.

Q. Now, the FBI at some point showed you some photographs, did they not?

A. Yes.

Q. Asked you if you had ever seen a person by the name of Timothy McVeigh and showed you a picture of him, right?

Allen Radtke - Cross

A. Right.

Q. And you said you had not?

A. Right.

Q. You have not?

A. No.

Q. Never seen Timothy McVeigh at or near the quarry; is that correct?

A. That's correct.

Q. And showed you a picture of Terry Nichols?

A. I've seen a picture of him.

Q. And you've never seen Terry Nichols at or around your quarry; is that correct?

A. That's correct.

Q. They show you a picture of Terry Nichols' pickup truck?

A. Yes, they showed me a picture.

Q. You've never seen Terry Nichols' pickup truck at or around your quarry, have you?

A. No.

Q. Now, the quarry was closed for how many days prior to the burglary?

A. It was not -- the crushing plant was not operating for several -- three or four days. It was shut down, the gates were locked on Saturday -- or Sunday.

Q. And Saturday?

A. Saturday and Sunday.

Allen Radtke - Cross

Q. And so it was closed completely to the public for a 48-hour period; is that fair?

A. Yes.

Q. Or more than 48 hours?

A. Yes.

Q. And no one was in there? You don't have a guard at the quarry, do you?

A. No. No.

Q. You don't know when the burglary occurred other than it occurred within that 48-hour period; is that correct?

A. It could have, yes.
Q. And actually you don't know, since the crushing plant was closed -- you don't know if the burglary occurred anytime Thursday, Friday, Saturday, or Sunday; is that right?
A. That's right.
Q. You don't know if it was more than one burglary, do you?
A. No, I . . .
Q. Now, let me see if I understand. On the day that you found out that a burglary had occurred of the quarry, you went to the ANFO trailer first, and you noticed nothing wrong with the lock on the ANFO trailer; is that correct?
A. That's right.
Q. It worked properly?
A. Yes.
Q. And you got whatever you needed out of it; right?

Allen Radtke - Cross

A. Right.
Q. And then you went and noticed that the locks had been cut off of the other two magazines; is that correct?
A. They were gone.
Q. Gone. That's what I meant. I apologize.
And it was later that you learned that the lock had been tampered with on the ANFO trailer, even though it worked?
A. Double doors on the back side of the trailer. The doors I never use.
Q. Oh, I see. You went to the other door.
A. That's right.
Q. Was it you that noticed the lock had been tampered with on the back of the ANFO trailer?
A. No.
Q. How many days after the bur -- after the weekend was it that you noticed that the ANFO trailer had been bur -- had been tampered with?
A. It was the day after I discovered the other theft on the other -- the magazines.
Q. So whoever tampered with the ANFO trailer had an extra day to do that, is that right?
A. I don't know.
Q. Could have been?
A. Could have been. I don't know.
Q. Now, when you went and checked what was missing in the

Allen Radtke - Cross

magazines, I thought I understood you to say that six or seven cases of the caps could have been missing; is that right?
A. Yes.
Q. Or six or seven cases of the caps were missing; right?

A. Yes.

Q. And did I understand you to say that's 250 caps per case?

A. Thereabouts, yes, it is.

Q. Now, is that 1500 to 1750 caps that you claim were taken in this burglary?

A. Yes.

Q. And you've been exploding ANFO for how many years?

A. Going on 12.

Q. Now, I take it from your testimony that typically -- and probably all that you've ever done with ANFO is drill a hole roughly 3 1/2 inches wide in the rock. I'm assuming the rock is like I'd call a hill. Is that fair?

A. Well, yeah, you can -- some is that way, yes.

Q. And you drill the hole down however many feet, fill it up, and then blast the rock off the hill; is that fair?

A. Yes.

Q. Have you ever had occasion, sir, when you fill that up with the ANFO and the blasting cap and the Tovex and you set it off and the charge doesn't go off right and unexploded ANFO prills go flying everywhere?

A. No, they always --

Allen Radtke - Cross

Q. In 12 years, that's never happened to you?

A. Not with ANFO. It doesn't blow out of the hole and go flying through the air. It's burnt up by the explosion.

Q. I'm asking you if you've ever had a situation where it didn't explode right.

A. If that's the case, you've got everything in the hole that didn't go off.

Q. Yes, sir.

A. That's happened with the broken wire at times.

Q. Sure. That's happened that you've got the ANFO there; right?

A. Right.

Q. You only use premixed ANFO, right?

A. Right.

Q. You don't have to mix it, yourselves?

A. No.

Q. You all don't have to deal with all of that knowing the mixtures and how to do it, right?

A. That's right.

Q. Okay.

MR. TRITICO: May I have just a moment, please?

THE COURT: Yes.

MR. TRITICO: I'll pass the witness.

THE COURT: Mr. Hartzler, do you have some additional?

MR. HARTZLER: Yes.

Allen Radtke - Cross

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. HARTZLER:

Q. Mr. Radtke, first of all, could you clarify a point about these, the electric blasting caps. I think you said there were

a number of cases that were stolen. The electric, we're talking about.

A. Yes, yes.

Q. And were those all full cases?

A. No. Some of the smaller boxes may not have been full.

Q. So do you have an approximation, or do you recall the calculations that you and the plant manager made to determine the number of electric blasting caps that were missing?

A. No.

Q. Well, Mr. Tritico calculated a figure of something in the range of 1500? I'm sorry; I've forgotten.

A. I think that -- I'm not going to say for sure, but it was a large number.

Q. Mr. Radtke, when you blast this rock, using these explosives, does it make a fair amount of noise?

A. Sometimes.

Q. And can the sound of the blast be heard outside of the immediate quarry area?

A. If it's the right type of a day and the wind, it does carry sometimes.

Allen Radtke - Redirect

Q. And would it be possible for someone to follow that noise into the area of the quarry? Figure out where you're blasting if they were out on the highway someplace?

A. If they wanted to find out where the noise -- it's possible, I suppose. I don't know if anybody wanted to chase a noise like that, but it's possible.

Q. And if someone came into that quarry area at nighttime, what would -- what's there? How many structures are there?

A. Like buildings?

Q. Yes.

A. Well, we've got two van-type trailers we use for our office and tool storages -- storage, and the one where the ANFO is, the scale house and the office there.

Q. That's that little white office we saw in the picture?

A. Yes. That's the only real structure on the place, outside of those three trailers, and then the magazines where the caps and the powder are stored. There's no other buildings out there.

Q. And you were asked if you knew a couple of people and had ever seen a truck. Of course, you weren't there --

A. No.

Q. -- when these magazines were burglarized?

A. No.

MR. HARTZLER: Nothing further.

MR. TRITICO: I have no further questions.

Allen Radtke - Redirect

THE COURT: All right.

MR. TRITICO: But I have a question I need to ask the Court. The exhibit that I printed: It's marked as a Government exhibit. I have not offered it. I'm not sure what the procedure is.

THE COURT: It shouldn't be marked separately until you ask that it be marked.

MR. TRITICO: Okay, then I do have some more questions.

THE COURT: We can use the Government's designation and just mark it with a subletter like.

MR. TRITICO: Oh, okay. I can do that.

THE COURTROOM DEPUTY: I marked it 118A because it came off of Exhibit 118.

THE COURT: All right.

MR. TRITICO: May I hand it to the witness?

THE COURT: Yes. 118A now is the printout of the witness's mark on 118.

RE-CROSS-EXAMINATION

BY MR. TRITICO:

Q. Mr. Radtke, you've been handed what's now been marked as Exhibit 118A. Is that the same, a photograph of the drawings you made on Government Exhibit 118?

A. Yes.

Q. It fairly, accurately represent the drawing that you made

Allen Radtke - Recross

earlier?

A. It is real close, yes.

Q. It's a lot smaller, isn't it?

A. Yes, a lot. Lot smaller, but . . .

MR. TRITICO: Okay. I'll offer 118A.

MR. HARTZLER: No objection.

THE COURT: All right. 118A is made part of the record.

MR. TRITICO: And I'll pass the witness.

MR. HARTZLER: Nothing further.

THE COURT: May he be excused now?

MR. HARTZLER: Yes.

MR. TRITICO: Yes.

THE COURT: You're excused now. You can go home.

THE WITNESS: Thank you.

THE COURT: Members of the jury, we'll take our afternoon recess at this time. I didn't follow the witness out this time. We'll excuse you for the usual 20-minute recess,

and of course continue to follow the cautions that you have been instructed at all recesses, avoid discussing anything about the case.

You're excused now.

(Jury out at 3:19 p.m.)

THE COURT: Okay. 20 minutes.

(Recess at 3:19 p.m.)

(Reconvened at 3:40 p.m.)

THE COURT: Please be seated.

(Jury in at 3:40 p.m.)

MR. HARTZLER: May I take the podium, your Honor?

THE COURT: Yes. Sure.

Next, please, Mr. Hartzler.

MR. HARTZLER: The Government calls Edward Davies.

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

(Lloyd Edward Davies affirmed.)

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

Just one minute.

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

THE WITNESS: Lloyd Edward Davies, D-A-V-I-E-S.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Hartzler.

MR. HARTZLER: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. HARTZLER:

Q. Mr. Davies, where do you live?

A. In Marion, Kansas.

Q. Who do you live with there?

A. My wife, Jemma (phonetic).

Q. How long have you lived there?

Lloyd Edward Davies - Direct

A. I've lived there since 1987. I was born in Marion County and left Marion County about when I was 21 years old; and then I've been away, moved back in '87, been there since.

Q. Do you have children?

A. Have three grown children.

Q. Mr. Davies, are you presently employed?

A. Pardon me?

Q. Are you currently employed?

A. I work part-time at the Zeiner (phonetic) Funeral Home there in Marion.

Q. For how long have you had that part-time job?

A. Since January of this year.

Q. Did you previously have full-time employment in Marion County?

A. Yes, I was the Marion County sheriff from March of 1988 to January 13 of this year.

Q. For what county?

A. For Marion County, Kansas.

Q. And within that jurisdiction, is there a quarry that's owned and operated by Martin Marietta?

owned and operated by Martin Mallick.

A. There is.

Q. Where is that located in relationship to the city of Marion?

A. It's half a mile north of the south -- or the northeast edge of Marion.

Lloyd Edward Davies - Direct

Q. Was there ever an incident at that quarry that you had to investigate during the period of time that you were sheriff of Marion County?

A. Yes, there was.

Q. Do you recall when that occurred?

A. Yes, sir. There was a theft and break-in on October 3 of 1994.

Q. That was the date of report?

A. That's correct.

Q. Did you investigate that?

A. Yes, I did.

Q. Could you relate to the Court and the ladies and gentlemen of the jury what you did?

A. Well, we got the call of a break-in there at the quarry.

I

responded there on October 3 of '94 about 1 p.m. in the afternoon. I was met there by Bud Radtke and the plant manager, David Herb, and they escorted me over to a section of the quarry which lies in the southeast corner of the quarry ground where they keep the ammunition -- or the explosive -- the magazines -- explosive magazines.

Q. What did you observe when you arrived in that area of the magazines?

A. Well, there was two magazines. Each one is surrounded by a

berm that opens to the north; and upon examining these two magazines, the west magazine had been entered forcibly. The

Lloyd Edward Davies - Direct

magazine itself is a steel building. It has one steel door on the front. The door locks by a sliding bar at the top and bottom of the doors that slide into a steel box on the side of the door that is open from the bottom. To lock it, you slide the bar into the square box and you reach a padlock in from the

bottom and latch it through a hole in this bar, and then that padlock keeps the bar from sliding out.

And so when someone had entered that area -- and from

shavings and lock tumblers that were on the ground below the boxes, the lock boxes, it indicated that somebody had drilled the locks to get them open and slide the bars back to open the door to get into the magazines.

And the one magazine contained Blastrite, and the other magazine --

MR. TRITICO: Excuse me. I'm going to object to the narrative.

THE COURT: Well, let's go question and answer.

MR. HARTZLER: All right.

BY MR. HARTZLER:

Q. You referred to shavings. What kind of shavings?

A. Shavings from the lock cylinder.

Q. These are metal shavings, then?

A. Yes. They're kind of a brass shavings, then.

Q. Where was it that you observed these shavings?

A. On -- they were on the ground below the lockboxes on both

Lloyd Edward Davies - Direct

of the magazines.

Q. All right. Did you ask for an inventory of those two magazines?

A. Yes, I did.

Q. And you made a police report of that incident?

A. That's correct.

Q. After that investigation on October 3, 1994, did you return

for further investigation?

A. I did, on October 5.

Q. Let me go back to October 3, because I neglected to ask you: Did you do any investigation near the ANFO trailer on your first visit to that quarry on October 3, 1994?

A. No, I did not.

Q. And was there any indication at that time that there had been a break-in at the trailer?

A. Nothing had been indicated to me of that.

Q. I interrupted you, and you were about to tell us about an investigation you conducted two days later, on the 5th of October, 1994.

A. Yes. We got a call from the office that there has been apparently an attempted break-in at the ANFO trailer, so I responded back out there around 5 p.m. on the 5th of October, '94; and there again, I met Bud Radtke, who escorted me over to the ANFO trailer. And the ANFO trailer has a side door with steps leading up to it as the main entrance in and out of that

Lloyd Edward Davies - Direct

trailer.

Q. That's the most accessible entrance?

A. That's correct. And the back two doors -- it's a regular semitrailer. The back two doors have a latch that closes, and then there was a padlock stuck in the latch. When I was -- observed there, the lock had already been opened, was hanging in the latch but unlocked, and the bottom keyhole had been drilled with some type of a drill.

Q. So you went to the ANFO trailer on this second trip out to the quarry?

A. Yes. And the ANFO trailer is located just in front of the two magazines.

Q. Is it also surrounded by a berm that you described for the magazines?

A. That's correct.

Q. And where in relationship to that berm is that -- are the double back doors?

A. They would be closest to the berm. It would open to the south, and the front would be to the north.

Q. When you got to the ANFO trailer, you were directed to go to the double back door?

A. That's correct.

Q. You described finding a padlock there?

A. Yes.

Q. In the latch on the doors?

Lloyd Edward Davies - Direct

A. It was in the latch on the door, and it was unlocked.

Q. The padlock was unlocked?

A. That's correct.

Q. Did you look in the padlock?

A. Did I look in it?

Q. Look at it.

A. Yes. I took the padlock out of the latch and recovered it as evidence, as a No. 15 Master Lock; and I just -- after collecting it, I took it back to the sheriff's office and put the lock in the safe in my office.

Q. Mr. Davies, what did you observe about the lock when you took it off of the latch from the ANFO trailer?

A. The keyhole had been drilled. There is a hole in the bottom where you can see that the drill had run up inside of it, there again in an attempt to free the lock so it would open; and it apparently worked because the lock was unopen (sic).

Q. You put that lock into your safe on what day?

A. On the 5th.

Q. Of October of 1994?

A. Yes.

Q. For how long did the lock remain in your safe?

A. It remained in the safe until April 25, 1995, at which time

I turned it over to FBI Agent Cullen Scott.

Q. At your office?

Lloyd Edward Davies - Direct

A. Yes.

Q. There in Marion?

A. Right.

Q. What's the population of Marion approximately?

A. About 1800.

Q. I'd like to show you what's been marked as Government's Exhibit 128.

MR. HARTZLER. If I may approach your Honor?

MR. HARTZLER: If I may approach, your honor?

THE COURT: Yes.

MR. HARTZLER: It's 126. Thank you.

BY MR. HARTZLER:

Q. What do you have in front of you, Mr. Davies?

A. It's a plastic bag, Government's Exhibit 126. It looks like it contains a brown envelope and -- and part of a lock and

then a plastic vial with a cap.

Q. Is that brown envelope familiar to you, Mr. Davies?

A. Well, from the best I can see in this package, yes.

Q. Why don't you unseal the evidence tape on the top of the package and pull out the brown envelope.

Is that envelope separately marked as Government's Exhibit 126A?

A. Yes, it is.

Q. Can you identify that envelope?

A. This envelope that I put the Master Lock into when I turned

it over to Agent Scott -- I'm sorry.

Lloyd Edward Davies - Direct

Q. How is it you can identify --

A. I've got my initials.

Q. Mr. Davies, it's not yet in evidence; so keep it down in front of you without displaying it to the jury.

How is it you can identify that envelope?

A. I've got my initials on it, the case number, property form number, the date that I recovered it on the 5th, and the victim

marked as Martin Marietta Aggregates. I also have a -- have an

evidence seal here where I sealed the bag, which is also marked

with my initials and the case number.

MR. HARTZLER: Thank you.

I move the admission of Government's Exhibit 126A only.

MR. TRITICO: May I take a moment just to look at it?

THE COURT: Sure. Come over.

MR. TRITICO: I have no objection.

THE COURT: 126A is received.

BY MR. HARTZLER:

Q. And can you reach into the envelope and pull out the heaviest item in there.

I actually meant the plastic envelope, which you have done.

Keep it down, please.

A. Excuse me.

It's a plastic Ziploc envelope that contains part of a

Lloyd Edward Davies - Direct

lock. It's identified as Government's Exhibit 126.

Q. Can you look on the bottom of that and determine what the number on the lock is, what type, brand it is?

A. Not without looking in the bag. There is some Scotch tape across the bottom here.

Q. Why don't you open up the bag, then, sir.

A. Yes. It's a No. 15 Master Lock.

Q. The lock that you recovered from the ANFO trailer was a No. 15 Master Lock. Is that correct?

A. That's correct.

Q. What was the condition of the lock that you recovered from the ANFO trailer?

A. It was -- other than being opened and drilled in the bottom, it was complete.

Q. Okay. But I mean its condition in appearance?

A. Yes. Well, the lock is weathered, and it also was drilled in the bottom through the keyhole.

Q. All right. Are there any differences between the lock that

you seized from the ANFO trailer and the item you have in front

of you marked Government's Exhibit 126?

A. There is no hasp on the top. There has been a couple of wedges -- two wedges cut out of the bottom -- bottom plate of the lock, and there is something in front of the keyhole here where you can't -- you can see where a drill mark is on the side of the keyhole here, but you can't see down into the

Lloyd Edward Davies - Direct

keyhole.

Q. So other than those obvious cuts in the lock and the removal of the hasp, is there anything different in the appearance of that item and the lock you seized from the ANFO trailer?

A. They appear to be the same.

Q. Very well. Was there any report of items missing from the ANFO trailer?

A. No.

Q. And the lock that you have just observed there has a hole in the keyhole; is that right?

A. Yes.

Q. In the same location that you saw a hole in the lock from the ANFO trailer?

A. Yes. And in a similar area there. You can see where it starts, but the -- the keyhole itself, there is a little metal plate across it in this lock, so I can't see the keyhole itself.

MR. HARTZLER: Nothing further, your Honor.

THE COURT: Mr. Tritico?

MR. TRITICO: Yes, your Honor. Thank you.

CROSS-EXAMINATION

BY MR. TRITICO:

Q. How are you, Mr. Davies?

A. Fine.

Lloyd Edward Davies - Cross

Q. My name is Christopher Tritico, and I'm one of the lawyers that represents Timothy McVeigh. You and I have never met personally, have we?

A. No.

Q. I have never sat down with you and discussed the facts and circumstances of the investigation that you did at the rock quarry in October of 1994; is that correct?

A. That's correct.

Q. Let me talk to you a little bit about what you did do -- was it October 3, you said?

A. October 3 was the initial investigation.

Q. Now, you went out and you did the investigation and you looked at two magazines; is that right?

A. That's correct.

Q. You didn't go at that time and look at the ANFO trailer; am

I -- do I understand that?

A. That's correct.

Q. What you did see when you were there was some tire tracks. Is that right?

A. Well, there were several tracks around there from employees

driving around. Now, there was a set of tracks leading up to the east side of each of the magazines, which from my investigation indicated would not be from an employee, because they don't drive up the east side of the magazine when they load things up. It's on the west side.

Lloyd Edward Davies - Cross

The track that was observed in the gravel, though, was

not distinct as to where you could measure it or photograph it for any identification.

Q. Well, you didn't photograph it. Is that right?

A. No.

Q. You didn't attempt to take any molds from it. Is that right?

A. That's right.

Q. And you made no attempt to measure the tracks. Is that right?

A. That's right. There was no evidentiary value of these tracks.

Q. You could see the tracks. Is that right?

A. Very faintly.

Q. But you didn't measure them?

A. No.

Q. Now, you're aware, are you not, that the front entrance is not the only entrance into the Martin Marietta rock quarry.

is
that right?
A. Well, the primary entrance is the front.
Q. Perhaps my question is inartfully phrased. Are you aware
there is another way to get into the quarry?
A. That's correct.
Q. And you learned that -- did you learn it for the first
time
when you were conducting your investigation?

Lloyd Edward Davies - Cross

A. Yes. Basically, I did. I was aware that if you go to the
north -- the far side of the gate on the quarries around
there,
you can usually get into them because they can't fence off an
entire quarry.
Q. What you did learn was that it's not an easy ride in the
back way to the quarry; is that right?
A. You could find your way through, but --
Q. Someone had to know where they're going?
A. It wouldn't be a real easy route, no.
Q. Someone would have to know where they're going?
A. Basically, yes.
Q. I take it these were dirt roads leading back up into the
quarry.
A. They were paths through a pasture. The person that owns
the pasture beside the quarry takes hunters in there to hunt
game and pheasant and stuff.
Q. Is it paved?
A. No. It's just a path through a pasture, grass.
Q. You never went back on that route and made an
investigation
back there, did you, sir?
A. We drove back through that route.
Q. Did you make any attempt to determine if there were any
tire tracks that would be suitable for molding, photographing,
measuring while you were back there?
A. No.

Lloyd Edward Davies - Cross

Q. Now, during the course of your investigation, you became
familiar with or were given the names of several suspects. Is
that right?
A. Well, there was two.
Q. Two employees of Martin Marietta; right?
A. Right.
MR. HARTZLER: I object, your Honor.
THE COURT: What's the objection?
MR. HARTZLER: Hearsay.
THE COURT: Well, you know, the objection is
overruled. This goes to what his investigation was.
BY MR. TRITICO:
Q. There were two employees. one current employee. one former

Q. There were two employees, one current employee, one former employee, at the time that you were given as suspects; is that right?

A. That's right.

Q. One was a plant manager that had been recently demoted?

A. Right.

Q. And the other one was a gentleman who had been recently fired?

A. I don't know how recent it was. It was I think the year before, something of that nature.

Q. You think it was the year before, but --

A. As I can remember, yes.

Q. Sure. And you did learn that the person who had been fired

Lloyd Edward Davies - Cross

left pretty angry at his employer who had just terminated his services, did you not?

A. I don't know what his state of mind was.

Q. And you don't know what his state of mind was, sir, because

you never talked to him, did you?

A. That's correct.

Q. You never talked to the person who had been demoted; is that right?

A. That's correct.

Q. You also came into some information about another possible suspect, did you not?

A. Well, there was a motorcycle gang that -- Is that what you're referring to?

Q. Specifically, I'm referring to the individual who had threatened to blow up a hospital in the area.

A. Oh, okay. Yeah.

Q. Now, you never talked to that individual, either, did you?

A. No, I didn't.

Q. You didn't search his house?

A. No.

Q. You did no investigation into whether or not this person who had threatened to blow up a hospital was responsible for stealing the explosives from the quarry; correct?

A. That is correct.

Q. Now, you talked to a witness who had come up on the quarry

Lloyd Edward Davies - Cross

on October 2, I believe, or early in the morning on October --

A. Morning of the 3d, yes.

Q. Do you recall that individual's name?

A. Craig Knoche.

Q. Knoche?

A. K-N-O-C-H-E, I think. Something of that nature.

Q. That's how I have it spelled. I didn't know how to pronounce it.

You did talk to him; right?

A. Yes.

Q. And he gave you a description of a vehicle or some lights, anyway, on a vehicle that he had seen; correct?

MR. HARTZLER: Your Honor, pardon me. I appreciate it's his investigation, but he's eliciting from another witness now what he told the sheriff.

THE COURT: I'm going to permit a cross-examination as to the quality of the investigation that was done with respect to this break-in.

BY MR. TRITICO:

Q. He described for you at least some lights on a vehicle that

he saw that he perceived was in the quarry. Is that right?

A. That's correct.

Q. And what he described for you was a truck or a heavy-duty vehicle with lights that he called KC lights; right?

A. I don't know if he described a heavy-duty vehicle. He said

Lloyd Edward Davies - Cross

that the lights resembled KC lights, which are common on light bars on pickup trucks.

Q. Like a roll bar?

A. Right.

Q. And he described them as very bright lights, did he not?

A. I don't remember that.

Q. Do you recall him telling you that when he came over the hill toward the quarry that it was so bright he thought the quarry was open?

A. I don't remember that.

Q. Did you investigate whether or not the person who had threatened to blow up the hospital -- what type of car he had?

A. Well, I know Danny King. He's got several different cars. I don't know exactly what car he was driving at that time. It was either Wichita or Sedgwick County police officers who were investigating that incident, because the threat was made there in Sedgwick County.

Q. My question to you, sir, was did you do it?

A. No, I did not. No.

Q. Now, if I understood you correctly, there is 1800 people in

Marion County -- in Marion, Kansas?

A. Approximately.

Q. And you were the sheriff of the county?

A. Yes.

Q. How many people approximately at the time lived in the

Lloyd Edward Davies - Cross

county?

A. About 13,000.

Q. Did you then make any investigation, any attempt to determine how many vehicles in your county had those kind of lights and roll bars on them?

A. No, I did not.

Q. There are several colleges in Kansas, are there not?

A. In Kansas? Yes, there are.

Q. And there is a couple of colleges that really aren't that far away from your jurisdiction, aren't they?

A. We have Tabor College that's in the county.

Q. A lot of young people -- young men around that age of college age will have vehicles with those kind of lights on them because they like them. Do you agree with that?

A. Well, there are vehicles with them on. I don't --

Q. Sure.

A. -- counting them.

Q. Did you make any investigation at the college to determine if any young people had done this burglary?

A. No.

Q. Now, you did call this into the ATF, did you not?

A. That's correct.

Q. They conducted no investigation into the burglary in a quarry, to your knowledge?

A. Not to my knowledge.

Lloyd Edward Davies - Cross

Q. Now, when you go out -- and your practice as a sheriff when

you were the sheriff -- you go out and you do your investigation and you write your report as quickly and as soon as you can after you finished that portion of the investigation

while it's still fresh in your mind. Is that a fair statement?

A. That's fair.

Q. And you do that so that other people later on will have a complete record of what you do. Right?

A. I don't -- as complete as the report reads, yes.

Q. Sure. Now, you found out that the ANFO trailer had been broken into on October 5 -- was the day -- or the lock on the ANFO trailer had been tampered with on October 5; is that correct?

A. I don't know when it was tampered with. That's when I was called out there to look at the lock.

Q. Yes. My question wasn't phrased well, and I apologize. The day you found out was October 5?

A. Right.

Q. You don't know what day the lock was tampered with?

A. No, I don't.

Q. You don't know what day the quarry was burglarized?

A. I know a time frame. That's all.

Q. What day did the FBI come to see you concerning this investigation?

A. I don't have a recollection on that.

Lloyd Edward Davies - Cross

Q. Does April 26 sound familiar?

A. It was earlier than that.

Q. Earlier than April 26 of '95?

A. Uh-huh.

Q. It was in April of '95?

A. April of '95 is when Agent Scott picked up the lock from me.

Q. And that was the first time you spoke with -- well, that was the second time you had spoken with the FBI about this investigation; right?

A. Well, there had been agents out in that county investigating this case.

Q. After April 19?

A. After April 19.

Q. Well, they certainly didn't come before the explosion occurred. Do you agree with that?

A. Yeah.

Q. Okay. Now, what day did you write the supplement to your report regarding your investigation and your seizing of the lock at the quarry? Do you recall?

A. Well, I'm trying to think, here. I -- I wrote one report after picking it up, and then there was a later one after I had

given the lock to Agent Scott to clarify the discrepancy that would appear on the recovered property slip, on the back, as far as when I released it, because I didn't have the locations

Lloyd Edward Davies - Cross

on the slip at that time.

Q. In fact, what you did, Mr. Davies, was the first time you ever entered into your report that you had seized the lock at the Marion County quarry was on April 25, the day Agent Scott came to see you. Isn't that right?

A. I don't believe so. I think I had it in an earlier report.

Q. On April 25, did you detail your conversations with Mr. Radtke regarding the lock and the ANFO trailer?

A. Yeah. I had reinterviewed him. Yes.

MR. TRITICO: May I approach the witness?

THE COURT: Yes.

BY MR. TRITICO:

Q. Is that a copy of your report, Mr. Davies?

A. Yes.

Q. Take a moment and review that, if you would.

A. There isn't a report in here on October 5. I think we might be missing a copy here.

Q. Before you testify from it, let me ask you some questions, sir. That is a copy of your report?

A. It's most of the copy, yes. What I've got here is a copy, yes.

Q. Is it your testimony now that that's not a full and complete copy of your report?

A. I'm saying right now without going back and looking at the report, I think that there should be a report in here dated on

Lloyd Edward Davies - Cross

October 5 when I collected that lock.

Q. When the Federal Bureau of Investigation came to see you in

April of 1995, did you give them a full and complete copy of the report as it existed at that time?

A. I don't recall.

Q. Well, you wouldn't have held anything back, would you?

A. No.

Q. The first entry in that report that you have regarding the seizing of the lock is dated April 25, 1995. Is that correct?

A. Yes.

Q. Now, you testified that you picked up some metal shavings out there?

A. That's correct, and some lock tumblers.

Q. Yes, sir. Now, when the FBI came to see you in April of 1995, you couldn't find that evidence, could you?

A. Not at the time they went to pick it up. Like I said, I had not put it on the recovered property form, the location; and so I had to go to the property room and seek it out.

Q. It wasn't on the form?

A. I hadn't put it on the form, no.

MR. TRITICO: Yes, sir. Thank you.

I'll pass the witness.

MR. HARTZLER: Nothing further, your Honor. He may

be
excused.

THE COURT: Are you excusing the witness? Agreed?

MR. TRITICO: Yes.

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

Next, please.

MR. HARTZLER: The Government calls Brian Espe.

THE COURT: All right.

THE COURTROOM DEPUTY: Raise your right hand,
please.

(Brian Espe affirmed.)

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

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

THE WITNESS: Brian H. Espe, E-S-P-E.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. RYAN:

Q. Good afternoon, Dr. Espe.

A. How are you?

Q. Long wait?

A. Long wait.

Q. Where do you live?

A. Oklahoma City.

Q. Your age, sir?

- A. 59.
Q. Are you a married man?
A. Yes, I am.
Q. How long have you been married?

Brian Espe - Direct

- A. Almost 43 years.
Q. Do you have children?
A. Five children.
Q. What are their ages in terms of the span of ages?
A. 22 to 35.
Q. Where were you born and raised, Dr. Espe?
A. I was born and raised in Palatine, Illinois.
Q. Whereabouts is that?
A. Northwest of Chicago, a suburb of Chicago.
Q. Did you go to school?
A. Went to school, graduated from Palatine High School, 1955.
Q. What did you do after you graduated from Palatine High School, 1955?
A. I spent two years studying preveterinary medicine at North Dakota State University in Fargo, North Dakota, followed by four years at Oklahoma State University, receiving a doctor of veterinary medicine degree.
Q. After you completed your veterinarian degree at Oklahoma State, what did you do?
A. I went to work for U.S. Department of Agriculture, initially in the state of Connecticut, spent two years there; and then they transferred me to Madison, Wisconsin, where I, in addition to working, obtained a master's degree in epidemiology at the University of Wisconsin.
Q. Can you give us a brief definition of epidemiology?

Brian Espe - Direct

- A. It's tracing the origin and spread of diseases.
Q. All right. Now, when did your career with Department of Agriculture begin? What year?
A. 1961.
Q. All right. And you worked for the Department of Agriculture from 1961 until what date?
A. Until 1982.
Q. 21 years?
A. Correct.
Q. Then what did you do in 1982?
A. I did a number of other things between 1982 and 1989. I initially was the extension veterinarian for the College of Veterinary Medicine at Oklahoma State University. Then I became the first official veterinarian for the Oklahoma Horse Racing Commission and was a consultant to the Kerr (phonetic) Foundation in developing animal health information.
Q. At some point you returned to the Department of Agriculture?

Agriculture:

A. 1989, went back to work for the U.S. Department of Agriculture.

Q. Have you been with the Department of Agriculture since that time, 1989 to the present?

A. Yes, I have.

Q. And where were you assigned in 1989?

A. To the Alfred P. Murrah Federal Building.

Brian Espe - Direct

Q. Now, let us -- well, before we go to the floor plan of the building, why don't you tell us just briefly what the business of the Department of Agriculture that was conducted at the Murrah Building in Oklahoma City was?

A. Our division is primarily involved in the elimination of infectious animal diseases, especially diseases which may infect humans, also.

One other aspect of our job is certifying animals to be eligible for export out of the U.S. That is most of what our time is spent doing.

Q. All right. Now, as I understand it, then, you would have been in the Murrah Building for how many years prior to April of 1995?

A. From October of 1989 until April 19.

Q. So approximately six years?

A. Six years.

Q. How many employees of the Department of Agriculture worked at the Murrah Building?

A. Generally, there were 15 employees that either worked there on a regular basis or had a desk assigned, even though some of their activities were field activities.

Q. How many people of the 15 were regular full-time employees who officed there on a daily basis at the Murrah Building?

A. It would have been about 12 that were routine, full-time. That was their duty station.

Brian Espe - Direct

Q. What was your position vis-...-vis the Department of Agriculture at the Murrah Building?

A. I was the area veterinarian in charge for U.S.D.A. for Oklahoma.

Q. So you had supervisory responsibilities of the other employees?

A. Correct.

Q. What floor did the Department of Agriculture occupy within the Murrah Building?

A. We occupied a portion of the fifth floor of that building.

Q. Now, I'm going to pull out the computer screen in front of you and in front of the jury, the fifth floor. It's already been admitted in evidence as part of Exhibit 952.

Do you have it on your screen?

A. Yes.

Q. Would you briefly explain how the floor plan was laid out and where the folks worked that occupied the department?

A. All right. If I can get this to reach.

Our office section was -- well, I've put an arrow where my office was.

Q. Okay. Then just kind of walk us around the building, if you would.

A. The next office --

Q. Before we leave your office, now, that is the south side of the building; correct?

Brian Espe - Direct

A. That is the south side -- well, it's the -- yes, the southeast wing of the building.

Q. And the explosion that we're going to talk about in a minute is on the opposite side of the building, on the north side?

A. Correct.

Q. Okay. So your office there, you've already pointed out to us.

Now, if you would go around the floor plan.

A. Okay. This was an office occupied by Dr. Nancy Roberts, an area epidemiologist with the Department of Agriculture.

Q. Okay.

A. This was the office occupied by my administrative assistant, James Boles.

Q. All right.

A. This area here was occupied by secretary Cindy King, who worked for another division of the U.S. Department of Agriculture, the Plant Protection and Quarantine Division.

Q. All right.

A. This office was occupied by Jack Goldman, who is a state plant health director for U.S. Department of Agriculture.

This was our office conference room that no one routinely occupied that.

Q. Okay.

A. This was a break room and a smoke room.

Brian Espe - Direct

Q. All right.

A. Now, the rest were not enclosed offices, but they were desk areas with partitions; and I can go through where -- where each of those were, if you --

Q. I don't think we need to do that. I just wanted the jury to understand generally the layout of the office.

The area there that doesn't have separate offices showing was a large, open area with individual desks?

A. And the fabric partitions, panels.

Q. Now, I want to turn your attention to April 19, 1995. And tell the jury when you arrived at work that day.

A. Arrived at work at 7:30 in the morning, parked in the basement of the Murrah Building, went to my office.

Q. What did you do when you got there?

A. Got a cup of coffee from our coffeepot, went to my office, made a couple of phone calls, drafted a couple of memos to employees, visited with the employees that were there that day until approximately quarter of 9, at which time I had a project

I was working on; so I went to the conference room at the far east end of the building.

Q. All right.

A. And I needed to put together a slide presentation, and that

was the only room in our office that you could turn off the lights to put slides in a slide projector.

Q. Were you alone in that room until the time of the

Brian Espe - Direct

explosion?

A. Yes, I was.

Q. Now, who did you see in the Department of Agriculture space

that morning prior to the explosion?

A. I saw Ada Maloney, my secretary. She would have been the first person as you walk in the door that you would encounter.

I saw James Boles, my administrative officer.

I saw Olen Bloomer, budget analyst for the Department of Agriculture.

I saw Adele Higginbottom, Rita Long; and then later, oh, about 8, 8:15, I saw Carole Khalil. I saw Richard

Cummins,

who had come to our office to meet with me, and we met about 8:00 to discuss an investigation he was conducting for our agency.

And then I saw Dr. Margaret Clark about 8:15, when she

came in. Again, she was in to finish up a project that she had

been working on, so I visited with her.

Q. Dr. Espe, after 9:02 on April 19, 1995, did you ever see Jim Boles alive again?

A. No, I did not.

Q. Did you ever see Olen Bloomer alive again?

A. No, I did not.

Q. Did you ever see Adele Higginbottom alive again?

A. No, I did not.

Q. Did you ever see Rita Long alive again?

Brian Espe - Direct

A. No, I did not.

Q. Did you ever see Dick Cummins alive again?

A. No.

Q. Did you ever see Carole Khalil alive again?

A. No, I did not.

Q. Did you ever see Dr. Peggy Clark alive again?

A. No, I did not.

Q. Dr. Espe, tell us what happened at 9:02.

A. Well, I was sitting in the conference room facing east, had

my slide projector on a large, massive, oak conference table.

And I'm not sure which came first, the shaking of the building,

or the loud rumbling noise followed by things falling from the ceiling, the ceiling tiles, the light fixtures, and just generally being rained on with all kinds of rubble.

Q. What did you do?

A. I apparently -- and here again, I don't remember exactly --

I apparently slid partly out of the chair and was under part of

that conference table.

Q. Okay. Then what happened?

A. Then it became very still. Things quit falling. There was

no longer a rumbling noise. And then I tried to free myself from the debris that I was under. Fortunately, it was mostly very light debris. There was nothing heavy that had fallen on me: ceiling tiles and wires and a few pipes.

Q. Did you get up?

Brian Espe - Direct

A. Got up very slowly, because I was concerned about the wires

that were surrounding me, whether they were still electrically charged; so I did extract myself from under the debris and started to look around.

Q. What did you see when you looked around?

A. I saw -- probably the first thing was I had been in a room that had no windows and had the lights off; and now I could see

the -- across 5th Street to the Journal Record Building.

Q. Which was across the way to the north?

A. Right, where there had been a wall prior to 9:02.

Q. And now, take that pen, if you would, Dr. Espe, and tell --

draw a line, if you will, across the Department of Agriculture that will indicate what part of the building of your space no longer existed.

A. And from where I was sitting, I could not see any further to the west to know how much further to the west, but this is the area that I could -- could visualize.

Q. All right. Now, if you'll leave that line on the floor

Q. All right. Now, if you'll leave that line on the floor plan; and now I would like for you to put a spot where you are right now.

A. I'm right there in the conference room.

Q. All right. Now, everything below that line, as I understand your drawing -- everything below that line to the north of that line is gone?

A. It did not exist at that point.

Brian Espe - Direct

Q. Where all these employees were with the partitions and the desks and all of that did not exist any longer?

A. Correct.

Q. All right. After you saw this, did you see anyone else that you recognized?

A. Yes, I did see the two employees of the plant protection and quarantine office. What was interesting was I could see them from my vantage point here in this office here, where prior there had been a wall between them. There was no way to see that; but that wall was gone.

Q. And were the three of you there?

A. I was still here, and I climbed over to where the two of them were.

Q. All right. So the three of you are now together?

A. We're now together.

Q. And are you the only three from the department who survived the bombing that were present that day?

A. That were present at 9:02, yes.

Q. Tell me what you all did.

A. Pardon?

Q. Tell me what the three of you did.

A. Well, first we kind of checked each other over to see that we weren't injured. And Ms. King had some minor cuts.

Mr. Goldman had some minor cuts. I had some minor scrapes.

We determined that none of us were -- had any serious injuries at

Brian Espe - Direct

that point.

By this time, we could hear ambulances and people coming up primarily from the south side, because we could not see much to the north, because by this time, the vehicles were burning across the street and black smoke was blowing in our direction; but we were looking out the windows on the south side. Of course, there was no glass left in those windows. And we could see rescue people coming up from the south side of the building.

Q. Could you leave?

A. No.

Q. Why not?

A. We -- we examined that possibility, but there was no floor

that could get us from where we were to the nearest stairwell or elevator.

Q. So what did you do?

A. Well, we finally made visual and voice contact with some of the rescue people that were coming up from the south side to let them know that there were three of us in this corner of the building but none of us were critically hurt.

Q. What was the next thing that happened?

A. Well, then we waited. They signaled they understood. We waited, I think fully expecting that we would be rescued from the south side of the building.

Q. How long did you wait?

Brian Espe - Direct

A. Approximately an hour.

Q. Then what happened?

A. Then we were totally surprised when a fireman came up from behind us who had come up the north side of the building on a ladder and said, "I'm here to get you out of here."

Q. What did you do at that point?

A. Well, we decided -- they said, "We'll take you down one at a time. We only want one at a time on the ladder."

We said, "Well, Ms. King needs to go first." I opted to let Jack Goldman go second because had I a terrible fear of heights and I was very reluctant to go down that ladder.

Q. Then what happened?

A. Finally, they came up. And I had explained to the fireman my fear of heights; and he said, "Well, the best way, then, is for you to go down the ladder frontwards rather than the traditional way, and I'll walk you down every step of the way," which he did.

Q. All right. Now, Dr. Espe, you and I met last night, didn't we?

A. Yes, we did.

Q. For about 45 minutes?

A. Yes.

Q. And while we met, I showed you some video footage of you coming down the ladder.

A. Correct.

Brian Espe - Direct

Q. And it lasts, what, about 45 seconds?

A. Yes.

Q. And does that -- is that the actual footage of you coming down the ladder, what is portrayed on that exhibit?

A. That is.

MR. RYAN: I would represent to the Court that that

footage is contained on Exhibit 1013, and we would request

permission of the Court to play it.

MS. RAMSEY: No objection, your Honor.

THE COURT: 1013? Was that the designation?

MR. RYAN: Yes, your Honor.

THE COURT: You may publish it.

MR. RYAN: The video auxiliary, I think.

BY MR. RYAN:

Q. Dr. Espe, would you erase the markings on the screen there.

Thank you.

(Exhibit 1013 played.)

BY MR. RYAN:

Q. Do you know where the firemen were from that helped you down the ladder?

A. I do now, yes.

Q. Where were they from?

A. They were from Fire Station No. 5.

Q. Where is that located?

A. That's located at N.W. 23d and Broadway.

Brian Espe - Direct

Q. Do you recall the first time you and I ever met at Brown's Bakery?

A. Yes.

Q. What were you doing that day?

A. I was buying doughnuts to take to the fire station.

Q. You do that every month, don't you?

A. Yes, I do.

Q. After you got down from the building, Dr. Espe -- I won't go through all the details -- did you eventually make it back to your house?

A. Yes.

Q. Did you ever -- When you were going down the building frontward, you had your back to the Murrah Building, did you not?

A. Yes, I did.

Q. Did you ever see the front of the building before you went home?

A. No, I did not. I never -- when I got to the ground, I never looked around back at the building.

Q. And you went home. What did you do when you got home?

A. Of course, besides hug my wife and kids -- of course, the TV was on. I looked at the TV and then for the first time saw the destruction that had been done to the entire building.

Q. What did you think about your department at that time?

A. I thought it would be a miracle if anyone survived,

Brian Espe - Direct

especially --

MS. RAMSEY: Your Honor, we would object as speculation

speculation.

THE COURT: Overruled.

THE WITNESS: It would be a miracle if anyone survived in the most badly damaged part of the building.

BY MR. RYAN:

Q. And you were right.

A. Yes, unfortunately.

Q. When were the bodies of the seven members of your office recovered from the building and identified?

A. The first bodies were not recovered until the 11th day after the bombing; and the last body was recovered on the 16th day, which was the day before they ended the search for bodies.

Q. Dr. Espe, again, last night I showed you Exhibit No. 1030, which was a photographic chart of the seven employees in your department who died. Do you remember that?

A. Yes. Yes, I do.

Q. Was that chart -- was it an accurate photograph of each of those deceased employees?

A. Yes, it was.

MR. RYAN: Your Honor, with the marshal's assistance, I would offer Exhibit 1030 and ask that it be placed on the easel.

THE COURT: All right.

Brian Espe - Direct

MS. RAMSEY: No objection, your Honor.

THE COURT: You may proceed. 1030 is received.

MR. RYAN: It's the very first one there, Marshal.

Or maybe the second one. I'm not sure.

BY MR. RYAN:

Q. Dr. Espe, would you call out each member -- each deceased employee's name and make a brief statement about what they did for the department.

A. Olen --

Q. Excuse me --

THE COURT: Get a mic for him.

MR. RYAN: Thank you.

THE WITNESS: Olen Bloomer was my budget analyst.

Jim Boles was my administrative assistant.

Richard Cummins was a senior investigator for the regulatory enforcement leg of U.S.D.A.

Adele Higginbottom was my purchasing agent.

Carole Sue Khalil was what we call a document examining clerk, who looked at all the export certificates that we did.

Rita Long was a clerk-typist.

Dr. Peggy Clark was a veterinarian who was in training, soon to be assigned to another state for a position with U.S.D.A.

BY MR. RYAN:

Brian Espe - Direct

Q. Thank you, Dr. Espe.

MR. RYAN: Marshal, if you would be kind enough to please take down that chart; and if you would put up on the easel the very next chart, the fifth-floor floor plan, which is already in evidence.

BY MR. RYAN:

Q. Dr. Espe, in the brown folder there on your desk is -- contains seven name tags. Do you see those?

A. Yes.

Q. With the Court's permission, I'd ask you to leave the witness stand and not say anything but simply place those name tags at the locations where those employees were.

Thank you, Dr. Espe.

And finally, this event, of course, everyone knows, occurred on April 19. When did you go back to work?

A. I went back for two hours on the 20th of April.

Q. Did you have any hard-copy documents?

A. We had no documents, no equipment; but I did have surviving employees and field employees that were very concerned for the whereabouts and the welfare of the seven that we've talked about.

MR. RYAN: Thank you, Dr. Espe.

No further questions.

THE COURT: Do you have any questions?

MS. RAMSEY: No, your Honor.

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

MR. RYAN: Yes, your Honor.

MS. RAMSEY: Yes, your Honor.

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

MR. HARTZLER: Bruce Lind.

THE COURT: All right.

MR. HARTZLER: Ms. Behenna will question.

THE COURT: Thank you.

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

(Bruce Lind affirmed.)

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

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

THE WITNESS: Bruce Alfred Lind, L-I-N-D.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MS. BEHENNA:

Q. Mr. Lind, are you married?

A. Yes, I am.

Q. How long have you been married?

A. Just short of 32 years.

Q. Do you have children?

A. Yes.

Bruce Lind - Direct

Q. How many children?

A. Three children.

Q. And their ages?

A. The oldest is, let's see, about 28. I have a daughter 22 and a son that's 19.

Q. Do you live in Oklahoma City?

A. Yes, I do.

Q. How long have you lived in Oklahoma City?

A. Eight years.

Q. Did you attend college?

A. Yes.

Q. Can you tell the jury a little bit about your college education?

A. Yeah. I spent three years at Carroll College in Waukesha, Wisconsin; and I then transferred to Marquette University College of Engineering, and I spent two years there.

I graduated from both schools in 1964, bachelor of science from Carroll College and a bachelor of civil engineering from Marquette University.

Q. So you have dual degrees?

A. Yes.

Q. Undergraduate degrees.

Are you employed currently?

A. Yes, I am.

Q. Where are you employed?

Bruce Lind - Direct

A. I'm employed by the Federal Highway Administration in Oklahoma City.

Q. How long have you worked for Federal Highway Administration?

A. Just short of 33 years.

Q. And what do you do for that agency?

A. I'm the assistant division administrator for the Oklahoma division.

Q. And that's your current position?

A. Yes, it is.

Q. Was that your position on April 19, 1995?

A. In addition to that, on the 19th I was also the acting division administrator.

Q. Can you tell the jury what the Federal Highway Administration does?

A. My branch of the Federal Highway Administration is responsible for basically overseeing the Federal Aid Highway Program. We oversee funding that is collected through gas taxes, diesel taxes, and so on, at the federal level. The money is apportioned to the states; and then the states are responsible for the design, construction, and maintenance of highways. Our job is to provide technical assistance to the states in that regard, to manage the funds from a fiscal

perspective and just general oversight or stewardship of the funds.

Bruce Lind - Direct

Q. Do you work closely, then, with the Oklahoma Department of Transportation?

A. Yes, very closely.

Q. Where was the office of Federal Highway Administration located on April 19, 1995?

A. We were in Room 454 of the Murrah Federal Building.

Q. That's the Alfred P. Murrah Building in downtown Oklahoma City?

A. Yes.

Q. Let me show you what has been previously been admitted as Government's Exhibit 952, which is the fourth floor of the Murrah Building. Do you have that in front of you?

A. I will have.

Yes.

Q. Can you briefly -- and I believe there is a pen on the desk

as well. Can you just generally show the jury where the Federal Highway Administration office was located?

A. Do I push the button on this?

Q. No. All you need to do is just write with it.

Now, you circled an area that's titled "Motor Carrier Safety." What is that?

A. That is another office within the Federal Highway Administration; and as the name implies, its basic responsibility deals with the safety of the trucking industry.

Q. And that's a division of the Federal Highway

Bruce Lind - Direct

Administration?

A. Yes, it is.

Q. Okay. And can you generally -- go ahead and click that button and that marking will come off.

Just generally with this exhibit show the jury the configuration and whose office was located where on this floor plan.

A. All of the offices?

Q. Yes, if you would, please.

A. Okay. Let's see. This one right here was Jim Carver's office. The next one is Johnny Wade's office, Calvin Carper's office, my office, the office of the division administrator, our conference room.

Over here was Larry Jones' office.

Let's see, here. Then Mike Herron's office, Ronata Woodbridge's office. Then we had Lucio Aleman, J. K. Martin, Mark Bolte, Gary Rimrod, Carmen Evans, Becky Lawson, Jerry Parker.

And let's see, here. Kathy Quinn's work area, Michelle Reeder's work area.

...the... area.

Over here was Crystal Mail's, Mick Carrillo.

Let's see. This is Rick Tomlin's office here, and John Youngblood was here. Sandy Primm had her office here. And then Billy was in here.

Q. How many employees did Federal Highway have on April 19?

Bruce Lind - Direct

A. There were 25.

Q. If you'll click that button, each one of those markings will come off.

A. We also had a summer aide that was --

Q. Where was the main entrance to Federal Highway?

A. Okay. To the Federal Aid Office, it was right there and to the Office of Motor Carrier office -- was right there.

Q. And again, if you wouldn't mind removing those.

Were you in the office on the morning of April 19, 1995?

A. Yes, I was.

Q. What time did you get to the office?

A. Shortly before 7.

Q. Did you drive yourself?

A. Myself and Mark Bolte.

Q. And did you normally drive to work together?

A. Yes, we were in a carpool.

Q. Was there anybody else in that carpool?

A. Yes. Mike Herron was in the carpool as well. He was on annual leave that day.

Rick Tomlin also was in that carpool, but he had chosen to drive in by himself.

Q. And I don't remember if I asked you: What time did you arrive at the office?

A. Shortly before 7.

Bruce Lind - Direct

Q. Who did you see that morning?

A. During the course of the morning, Gary Rimrod; Kathy Quinn; of course, Mark Bolte; Larry Jones; Johnny Wade, Jim Carver. Those are the ones I'm absolutely certain I saw.

Q. Did you have anything planned the morning of April 19, 1995?

A. Yes. I had a meeting planned at 9:00 with some guests from the U.S. Forest Service from our eastern office of direct construction and from the state for our annual forest highway meeting.

Q. And who was in attendance from your office?

A. From my office was myself and Gary Rimrod.

Q. And where was that office -- or where was that meeting held?

A. It ended up being held in my office.

Q. And again, can you just show the jury where your office was located?

A. Right there.

Q. What time did the meeting begin?

A. 9:00.

Q. Were you all in your office at 9:00 in the morning?

A. Yes.

Q. Do you remember hearing an explosion that morning?

A. Yes.

Q. How shortly after the meeting began did you hear that

Bruce Lind - Direct

explosion?

A. Just very shortly. I can remember saying, "Well, it's 9:00. Let's get started"; and within a few minutes or a minute or so, it occurred.

Q. Can you tell the jury what it is you experienced after you heard the explosion?

A. Well, the first -- my first realization was being on the floor. I was laying on my -- I believe my right side. My feet

were trapped under the desk that had fallen on it; and between that and hearing this loud, metallic bang, that was my first recollection of what had happened.

Q. A metallic bang --

A. An explosion.

Q. All right. What's the next thing that you remember happening?

A. There was one of the folks -- one of the ladies screamed; and there was, you know, "What happened? What's going on?"

Then a couple of people got up, and two came over to my desk and tried to help me out. And then the building started to collapse, so everybody ran back under my conference table.

Q. How do you know the building was collapsing? Could you see it?

A. Yes, I could see it.

Q. And just concrete and debris falling?

Bruce Lind - Direct

A. Well, it was sort of like rain. I could look over my left shoulder and I could see it coming down; and it would come down, and then it would stop for a few seconds, and then it would start coming down again, and then it would stop. Then finally after several iterations of that, it stopped altogether.

Q. Could you see daylight?

A. Yes.

Q. And in which direction would you have been looking to see

that?

A. I had been looking over my left shoulder, so I was looking up at the sky to the north.

Q. Were you able to see any of the buildings across the street from the Murrah Building?

A. Later on I could; but where I was, all I could do was to look up and see the sky.

Q. Did you experience any smoke?

A. A lot of dust, very strong odor; but it wasn't till later that we saw the smoke, and we didn't get an awful lot of smoke where we were.

Q. Can you on the same floor plan, Mr. Lind, show the jury what area of your office, Federal Highway Administration, was missing as you looked out to the north? And if you come -- there you go.

A. Well, after I was able to get up and actually look out, it

Bruce Lind - Direct

was -- that's roughly what it looked like.

Q. Were you able to leave from the main entrance of Federal Highway?

A. No. There was a big gap. We were congregated over here, and there was a -- a big gap in the -- there was nothing there, and the door was over here.

Q. How did you get out of the building?

A. We went down a ladder that was provided sometime after the building quit collapsing, through one of the windows in the division administrator's office.

Q. And is that the arrow that you've pointed on screen?

A. Yes.

Q. How long were you in the building before you were able to exit from the south on the ladder?

A. I would guess on the order of about 30 minutes.

Q. Do you know where the ladder came from?

A. Yes. It came from an OG&E truck, Oklahoma Gas & Electric Company truck. That's what I was told.

Q. How many people exited the fourth floor in the area where you are down this ladder?

A. Let's see. Everybody that was in my office, plus Kathy Quinn, the secretary, and James Erickson, who was to be our new division administrator. He happened to be visiting the office that morning.

Q. So for a total of how many people?

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A. Let's see. Myself, Gary Rimrod -- let's see. Six, eight people.

Q. Were any of the eight seriously injured?

A. Kathy was. She had some cuts to her head that required

A. Kathy was. She had some cuts to her head that required stitches, and she had taken a pretty hard hit to her hip.

Q. Everybody else just had minor cuts and bruises?

A. Cuts and bruises.

Q. In the days following April 19, what happened to the business of Federal Highway Administration?

A. Well, initially we pretty well shut down and concentrated on just getting back together. We'd, over the weekend -- we were able to put together an office over at the Transportation Safety Institute offices.

Q. Did that office open on Monday, the following Monday?

A. That office opened on Monday, and we were able to carry out

the absolutely essential functions of the Federal Highway Administration. We were able to pay the current bill; and we also authorized the projects for the state's letting, the next letting.

Q. But from Wednesday, until that following Monday, which I think would have been the 24th of April, there was no business conducted by the Federal Highway Administration?

MS. RAMSEY: Your Honor, we would object as leading.

THE COURT: Sustained as to leading.

MS. BEHENNA: Let me rephrase it, your Honor.

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BY MS. BEHENNA:

Q. The office space that you mentioned earlier was located on what day?

A. We identified it -- I believe it was Thursday; and on Friday, I think we had our first look at it, spent the weekend installing computers and getting, you know, necessary office stuff, paper, pencils, things of that nature. And then Monday morning, we opened for business, such as it was.

Q. Had you lost any files of the Federal Highway Administration as a result of the explosion?

A. Nearly all of them.

MS. RAMSEY: I'm going to object as being irrelevant.

THE COURT: Overruled.

BY MS. BEHENNA:

Q. You can answer.

A. Nearly all of our files.

Q. And those had to be re-created?

A. Most of them, we could rely on information that was kept at

the state, or information that was maintained by our Washington office.

Q. But you had to re-create those files that were lost?

A. Yes. We used them there.

Q. In addition to losing three-quarters of the office of Federal Highway Administration, were employees of Federal Highway Administration killed during the explosion on April 19,

Bruce Lind - Direct

1995?

A. Yes.

Q. How many employees were killed?

A. There were 11 employees killed total. Ten of them died during or immediately after the explosion.

Q. And the one that you're referring to?

A. The one, John Youngblood, died a couple weeks later.

Q. As a result of being involved in the explosion?

A. Yes.

Q. Did you know each of these 11 employees?

A. Yes.

MS. BEHENNA: With the marshal's assistance, your Honor, I'd like to have Mr. Lind look at Government's Exhibit 1113; and again, not to publish it, but just to show him.

THE COURT: Are these the pictures?

MS. BEHENNA: Yes, your Honor, they're pictures.

THE COURT: No, that's Agriculture.

THE WITNESS: Yes, those are our folks.

BY MS. BEHENNA:

Q. Are you familiar with that chart? Have you seen that before?

A. Yes, I have.

MS. BEHENNA: Your Honor, the Government would move the admission of Government's Exhibit 1113.

MS. RAMSEY: No objection, your Honor.

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THE COURT: 1113 is received. It can be displayed, names identified.

BY MS. BEHENNA:

Q. Mr. Lynn, would you briefly identify each individual on that chart and give a brief description of what they did for Federal Highway Administration.

A. Okay. Beginning on the left is Lucio Aleman, and he was our safety programs engineer.

Next was Mark Bolte. He was our environmental coordinator.

Next is Mike Carrillo. Mike was the head of the Office of Motor Carriers.

Next was Larry Jones. He was our computer specialist.

J. K. Martin was an area engineer. He had just come into the office.

Jerry Parker is on the extreme right. He was also an area engineer and had been there for many years.

Michelle Reeder was a secretary, over on the left side.

Rick Tomlin was with the Office of Motor Carriers, and he was, I believe, their state programs coordinator.

Johnny Wade was our planning and research engineer.
And Ronata Woodbridge was our payments and materials
engineer.

And finally, John Youngblood was with the Office of

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Motor Carriers.

MS. BEHENNA: With the Court's indulgence again, if
I
could have Government's Exhibit 952, the exhibit of the floor
plan, put up.

BY MS. BEHENNA:

Q. I believe you have in front of you a board that has names
on it. Could you approach the fourth-floor board and place
the
name where each of those individuals worked.

You can return to your seat.

MS. BEHENNA: That's all I have.

THE COURT: Do you have any questions?

MS. RAMSEY: No, your Honor.

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

MS. BEHENNA: Yes, your Honor.

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

And we're a couple minutes after 5; so we'll,

members

of the jury, be recessing now for the weekend. And since we
went past 5:00 a few minutes, we'll make it up to you by
declaring a holiday on May 16, Friday. And of course, that's
conditioned on your continuing to follow the instructions
which

I give you and I'm sure you take seriously. And that is,
again, this is a long time before we're together again on
Monday morning at 9:00. A lot of things, I'm sure, will be
appearing in newspapers, magazines, publications of various
types, radio, television, that could relate to the trial and
also to the subject matter which, as I've explained before,
includes not only the things that relate directly to the
charges in the case but also to some of the subject matter
you've heard testimony about. And so you -- you know, as I
told you before, we don't want you going out doing your own
research on some of these subjects. You'll have to decide on
the basis of what you see and hear in this room in this trial.
And I'm sure you'll do that.

So we'll excuse you now until 9:00 Monday morning,
and

we hope you have a pleasant weekend.

You're excused.

(Jury out at 5:03 p.m.)

THE COURT: The trial will be in recess on Friday,
May 16, as I announced to the jury, so you can make plans
accordingly.

And we'll be in recess till 9:00 Monday morning.

(Recess at 5:04 p.m.)

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PLAINTIFF'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
77 - 82					

77A

88	6601	6601			
90	6611	6611			
91	6606	6606			
91A	6607	6607			
92	6599	6599			
96	6610	6610			
97	6597	6597			
115	6633	6633			
117	6635	6635			
118	6638	6638			
118A	6669	6669			
119	6636	6637			
120	6640	6640			
121	6641	6641			
122					

122	6646	6646			
123	6643	6643			
124	6647	6647			
126A	6678	6678			
128	6644	6644			
132	6654	6654			

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Exhibit	Offered	Received	Refused	Reserved	Withdrawn
133	6652	6652			
141	6650	6650			
358	6608	6608			
359					
359	6610				
1030	6708	6709			
1113	6723	6724			

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REPORTERS' CERTIFICATE

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated at Denver, Colorado, this 2d day of May, 1997.

Paul Zuckerman

Kara Spitler

