

Criminal Action No. 96-CR-68
UNITED STATES OF AMERICA,
Plaintiff,

TERRY LYNN NICHOLS,
Defendant.

(Trial to Jury: Volume 72)

Proceedings before the HONORABLE RICHARD P. MATSCH,
Judge, United States District Court for the District of
Colorado, commencing at 1:35 p.m., on the 12th day of November,
1997, in Courtroom C-204, United States Courthouse, Denver,
Colorado.

APPEARANCES

LARRY MACKEY, BETH WILKINSON, SEAN CONNELLY, GEOFFREY MEARNS, JAMIE ORENSTEIN, and AITAN GOELMAN, Special Attorneys to the U.S. Attorney General, 1961 Stout Street, Suite 1200, Denver, Colorado, 80294, appearing for the plaintiff.

* * * * *

(Reconvened at 1:35 p.m.)

(At the bench:)

(Bench Conference 72B1 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

(In open court:)

(Jury in at 1:36 p.m.)

THE COURT: Mr. Dexter, if you'll resume the stand.

(Frederick Dexter was recalled to the stand.)

THE COURT: Mr. Mackey, if you'll continue.

MR. MACKEY: Your Honor, if I can begin by reporting to the Court it's agreed among counsel to admit certain exhibits, and I can make those a matter of record now.

THE COURT: Please.

MR. MACKEY: Government's Exhibit 578, which can be described as activity records for a Tri-Mart pay phone in November of 1994. Exhibit 579, which is the related subscriber record for that same pay phone.

Government Exhibit 1725, which is the long distance phone bill records for Marion, Kansas, the residence of Terry Nichols, for the period ending August 13, 1994.

Exhibit 1726, same description, except the billing period is that ending September 13, 1994.

Government Exhibit 574, the same information except it's the billing period ending October 11, 1994.

In addition, we'd move to admit Government Exhibit 1718. 1718. It's a long distance phone bill record for William McVeigh's residence in Lockport, New York, for the period ending October 25, 1994.

Government Exhibit 1724 -- 1724 -- is the long distance phone bills for the residence of Michael Fortier for the period ending September 5, 1994.

Government Exhibit 1994. 1994 are the business records -- toll records specifically of Quartron, Q-U-A-R-T-R-O-N, for the time period April, 1995.

Government Exhibit 1720 are toll records from the Catlin's, C-A-T-L-I-N'S, IGA, in Herington, Kansas, for the month of April, 1995.

And Government Exhibit 575 is the toll records for the Hutchinson Raceway for the month of September, 1994.

In addition, there are a series of Yellow Pages from telephone books that are agreed to be admitted. They are respectively for the record --

THE COURT: Let's stop right there. I get lost if we go so far.

MR. MACKEY: All right.

THE COURT: These telephone records are agreed, are they?

MR. TIGAR: Yes, your Honor. We stipulated to the admissions of all of those telephone records.

THE COURT: All right. And they are received. And the jury will understand that this is a submission or an agreement to the submission of these records without the need for a foundation witness for each of them.

Now, your next --

MR. MACKEY: Yes, your Honor.

THE COURT: -- area.

MR. MACKEY: The next grouping is a series of Yellow Pages excerpts from various phone books. Exhibit 527 is a

yellow pages listing for chemical suppliers for Wichita, Kansas, effective the fall of 1994.

THE COURT: So it's the Wichita, Kansas, phone book?

MR. MACKEY: Yes, your Honor.

THE COURT: For 1994.

MR. MACKEY: Yes.

MR. TIGAR: These are just single pages from the telephone book.

THE COURT: Yes. I understand.

MR. TIGAR: We're consenting to this.

THE COURT: All right. 527 is received.

MR. MACKEY: 529 is from the same phone book. Just a different page. It covers racetracks. The Yellow Pages listing in Wichita for racetracks.

THE COURT: That's agreed, is it?

MR. TIGAR: Yes, your Honor.

MR. MACKEY: Exhibit 530, same phone book, same time period, Yellow Pages listings for demolition contractors.

MR. TIGAR: That's agreed, your Honor.

THE COURT: All right.

MR. MACKEY: 531 is Yellow Pages for Wichita, also for fall of 1994, for barrel suppliers.

MR. TIGAR: Yes, your Honor.

THE COURT: Agreed? Thank you.

MR. MACKEY: 532 is a different phone book from Kansas City. Yellow Pages listings again for barrel suppliers for the fall of 1994.

THE COURT: What was that number?

MR. MACKEY: 532.

THE COURT: 532. Agreed?

MR. TIGAR: Yes, your Honor.

THE COURT: All right.

MR. MACKEY: 533, your Honor, is the Yellow Pages listing from the Junction City, Kansas telephone book for 1995, specifically the spring of 1995, that listing for truck rentals.

MR. TIGAR: That's agreed, your Honor.

THE COURT: All right.

MR. MACKEY: And finally, your Honor, Government Exhibit 581. 581. It's the Yellow Pages listing from Hutchinson, Kansas, for the fall of 1994, again a listing for racetracks.

MR. TIGAR: It's agreed, your Honor.

THE COURT: All right. And these exhibits are received by agreement.

MR. MACKEY: Thank you, your Honor.

THE COURT: And thank you to counsel and to Mr. Nichols to facilitate the submission of this material. You may continue then.

MR. MACKEY: Thank you, your Honor.

DIRECT EXAMINATION CONTINUED

BY MR. MACKEY:

Q. Mr. Dexter, let me return our attention now to a number of phone calls from the many that you've talked about earlier this morning and ask if you had occasion to assist in creating and

morning and then if you had occasion to assist in creating and verifying a chronological summary of certain phone calls designated by me from among Government Exhibit 553 and the many other exhibits that you've identified in the course of your testimony.

A. Yes, I did.

Q. Would you take a look, please, at Government Exhibit 1888, 1888.

A. Yes, sir.

Q. Is that before you? And is that the exhibit that I've described?

A. Yes, it is.

Q. Is it an accurate and verified listing of certain phone calls that have -- that are a part of other exhibits that you've identified?

A. Yes, they are.

MR. MACKEY: Your Honor, I would move to admit

Frederick Dexter - Direct
Government Exhibit 1888.

MR. TIGAR: May I inquire, your Honor?

THE COURT: You may, yes.

VOIR DIRE EXAMINATION

BY MR. TIGAR:

Q. Hello again, Mr. Dexter. 1888 is -- does it contain anything that is not already contained in items that have been received in evidence?

A. Everything in here has been received, yes.

MR. TIGAR: No objection for demonstrative purposes.

THE COURT: I take it that is the purpose.

MR. MACKEY: Well, it's not, your Honor, because it's about 16 pages long.

THE COURT: Well, but I mean, it's already -- it's duplicating some other --

MR. MACKEY: So to that end, I understand.

THE COURT: So it is simply pulling out a portion of another exhibit for purposes of certain testimony.

MR. MACKEY: Yes, your Honor, for future witnesses.

THE COURT: All right.

MR. TIGAR: That's why our consent is limited to demonstrative purposes, your Honor.

MR. MACKEY: Understood.

THE COURT: 1888 is received then with that limitation on its use.

Frederick Dexter - Direct

DIRECT EXAMINATION CONTINUED

BY MR. MACKEY:

Q. Mr. Dexter, before coming to court, did you assist in the preparation of other illustrative charts that would show what, if any, comparison there were between phone calls that you found in the Bridges card and listings in the Yellow Pages that have been admitted into evidence?

A. Yes, I did.

Q. And are those comparisons the results of your comparisons set forth in Government's Exhibits 567, 570, 571, 2081, 2082, 2083, and 2084?

A. Yes, they are.

Q. And do they accurately depict results of your comparisons?

A. Yes, they do.

MR. MACKEY: Your Honor, I'd move to admit each of those exhibits solely for demonstrative purposes.

MR. TIGAR: No objection to that, your Honor.

THE COURT: All right. They are received for that purpose and may be displayed in the testimony.

MR. MACKEY: Thank you. Your Honor, these particular exhibits are in chart form. If I could ask permission of the Court to have Agent Tongate display them one at a time.

THE COURT: All right.

MR. MACKEY: We'll begin with Exhibit 2081. Your Honor, may I inquire as to whether the jury can see the detail

Frederick Dexter - Direct
of this particular chart?

THE COURT: Can you all see this chart? People on that end can't, so we'll have to move it up some.

MR. MACKEY: Mr. Tongate, could you pull it forward? Members of the jury to the far left here need to see.

BY MR. MACKEY:

Q. Mr. Dexter, with the --

THE COURT: You'll have to move it over here farther. Temporarily obscure the jury's view of the Court.

MR. MACKEY: Your Honor, would it be possible for Mr. Dexter to step down and explain to the jury what's on the chart?

MR. TIGAR: May I move to a vantage that I can see the testimony? Where would your Honor prefer that I stand for this purpose? Over here, I know.

THE COURT: Well, wherever is convenient.

MR. RYAN: He can sit in my chair, your Honor.

THE COURT: All right, Mr. Ryan. We appreciate that. Can you see it there all right, Mr. Tigar?

MR. TIGAR: Yes, your Honor. Thank you.

THE COURT: Okay.

MR. MACKEY: Thank you, your Honor.

BY MR. MACKEY:

Q. Mr. Dexter, start, please, by telling the jury what's on the left-hand side of Exhibit 28 -- 2081.

Frederick Dexter - Direct

A. On the left-hand side are calls that are taken directly out of the Bridges summary.

Q. And on the right-hand side?

A. On the far right is a page from the Yellow Pages with a

dotted line around it that show the enlargement which has been blown up so that you can read it and I can read it.

Q. In the center of that exhibit, is there an enlargement then of the listing in the Yellow Pages in the Wichita phone book for chemical companies?

A. Yes, there is.

Q. And I note that there are a number of phone numbers in that column that are highlighted.

A. That's correct.

Q. And why is that?

A. What we were doing was a comparison from that one particular page to find if there were calls in the summary that matched, multiple ones on that Yell -- that particular Yellow Page.

Q. Did you find that someone using the Bridges card called one or more of the chemical companies listed in the Yellow Pages in September of 1994?

A. Yes, I did.

Q. Let's start then for the entries on September 26, 1994. What did you find?

A. What I found was that there were two different phone --

Frederick Dexter - Direct

from two different phones, one the HRK Resale Shop pay phone called Mid-America Chemical, Inc., in Oklahoma City, (405) 232-6331. That was called three times, and that appears over here under Mid-America Chemical, Inc., in the Yellow Pages.

Also on that day, called from Kahn's Amoco pay phone in Lincolnville, Kansas, to the same Mid-America Chemical Company, same number there.

Q. For clarification of the record, Mr. Dexter, the Bridges summary that you prepared and has been admitted into evidence, it shows the actual time of each of those calls and the duration?

A. Yes, it does.

Q. And for lack of space, I guess, that information is not shown, is it, on this particular exhibit?

A. No, it is not.

Q. But the fact of the phone calls from each of the two pay phones to those chemical companies is reflected accurately?

A. That is correct.

Q. Tell us, then, what took place on September 27, 1994, according to the activity of the Bridges card.

A. From -- on 9-27-94, there were numerous calls made to places that are listed under the chemicals. The calls were all placed from the Coastal Mart pay phone in Marion, Kansas, (316) 382-8652. One of them -- you can see the first one was placed to Vulcan Chemicals, which appears on the Yellow Pages right

Frederick Dexter - Direct

there. The Phone No. 524-4211. There were multiple calls to Barton Solvents, Inc., 555-2305. One, two, three particular calls that were placed and that is there in the ads

calls that were placed, and that is there in the ads.

There was a call to Mid-Con Plastics in Derby, Kansas.

That phone number -- where did I -- right there. 788-2334. And you can see that's right here in the chart. Distributor to Industry in Wichita, 263-9511. Right there. And this one was from Barton Solvents and then Harcros Chemicals, Inc., 263-1244 is right there. So there was one, two, three, four, five -- six different chemical companies were called from -- that were listed in that page of Yellow Pages.

Q. On September 27, that day's activity, there was a phone call to Harcros Chemicals as listed in Wichita, Kansas; is that right?

A. That's correct.

Q. And then immediately below that last entry for the Wichita side of business, is there another number for Harcros Chemicals in a different city?

A. Yes, there is. There's calls to Kansas City, Kansas, (913) 321-3131, and there was three calls placed to that particular number on the 27th.

Q. And the series of phone calls to the Kansas City company started after the end of the last phone call to the one in Wichita?

A. Yes, it did.

Frederick Dexter - Direct

Q. And was that same Kansas City number then called on September 28, 1994?

A. Yes, it was. One time from City Hall pay phone in Marion, Kansas, 382-8630, called the same Harcros Chemicals in Kansas City, Kansas.

Q. Mr. Dexter, let's take that one down and put up Exhibit 567, please.

In Exhibit 567, did you attempt to find any occasion where the Daryl Bridges card was used to call a racetrack number listed in the Wichita Yellow Pages?

A. Yes, I did.

Q. And did you find such occasion?

A. Yes, on 9-28-94, from the City Hall pay phone in Marion, Kansas, 382-8630, two such calls were made, the first one being to Eighty One Speedway, Phone No. 755-1781, which was listed under that category of racetracks from that telephone Yellow Page; and another one to Wichita International Raceway, 522-9100, which appears at the bottom of those Yellow Pages.

Q. And again, the highlighted numbers appear in the Wichita Yellow Pages under "racetrack"?

A. That's correct.

Q. Did you find other phone calls to racetracks listed in the Bridges record from other phone books?

A. I believe they came from Exhibit 1888.

Q. All right. Let me turn your attention to Exhibit 2084.

Frederick Dexter - Direct

MR. MACKEY: Agent Tongate?

BY MR. MACKEY:

Q. What does this exhibit show?

A. This exhibit shows on 9-29-94 that two phone calls were placed from the subscriber record of Terry Nichols, 382-3535, to Hutchinson Raceway, 662-2213, both -- both calls to the same place. And that appeared under "racetracks" in the Hutchinson Yellow Pages.

Q. And were these two phone calls made with the aid of the Bridges calling card?

A. They were not.

Q. How were they made?

A. They were made from the -- by examining the telephone bill from the Terry Nichols subscriber -- the phone bills that subscribed to Terry Nichols.

Q. You found at least two occasions on the long distance telephone bills of Mr. Nichols those two phone calls?

A. That's correct.

Q. Let's turn now to Exhibit 2082.

Describe to the jury what's shown there, please.

A. On 9-29-94, we have a call from 382-3535, subscriber Terry Nichols. The first call was to Heavy Demolition (316) 943-9334, which was listed in the Yellow Pages right there from this portion. And the second call to Cornejo, C-O-R-N-E-J-O, & Sons, Inc., Phone No. 522-5100, which had a block ad on that

Frederick Dexter - Direct
same page in the Yellow Pages.

Q. All right. Mr. Dexter, as you describe the chart, if you can be mindful of the jurors immediately behind you, as well, so they can see.

A. I'm sorry.

Q. Thanks. Let's turn our attention now to Exhibit 2083. Tell us what that shows, please.

A. This shows that there was -- from the Denny's pay phone in Wichita, Kansas, Phone No. 684-9041, that there were multiple calls. The first call that day was to Liberty Lobby in Washington, D.C. Then immediately behind that, there were calls to SDS, Inc., at 321-6570. The last one on the Yellow Pages. There was one, two, three, four immediately after that to Coffeyville Recon, 251-1520, which is the top one. And then there was one to Grelf Brothers Corporation from a different phone from Komer Mart pay phone in Benton, Kansas, Phone No. 778-1473.

Q. And are the highlighted numbers all numbers listed under "barrels and drums" in the Wichita Yellow Pages in the fall of 1994?

A. Yes, they are.

Q. And each of the calls that are reflected on the left-hand side, were they made with the aid of the Bridges calling card?

A. Yes, they were.

Q. And the first several were placed from a pay phone in

Frederick Dexter - Direct
Wichita?

A. That's correct.

Q. Let's turn your attention now to 570. Did your examination find yet other phone calls on the Bridges card to companies listed under "barrel" listings in the Yellow Pages?

A. Yes, they did.

Q. What is depicted on 570?

A. On 10-24-94, from the Denny's pay phone in Topeka, Kansas, 272-9726, there were numerous calls made. The first one to Packaging West, Inc., 241-1717. It appears in the Yellow Pages there. The next one was to Container Recycling, Inc., in Kansas City, 281-5770, which had a block ad right there. And the last one that's highlighted is to Scott Barrel Company, 342-2290, which is right there. And each one of those lines you can see come from a different portion of the Yellow Pages, all under "barrels and drums."

Q. Take a look at the Yellow Pages and find the listing for Al Barrel Company at 6035 Kansas Avenue.

A. It's right there on the insert of the Yellow Pages.

Q. And is that No. 299-3995?

A. Yes, it is.

Q. Was that number dialed on that day from that same pay phone?

A. Yes, it was, with the area code of 816 in front of it.

Q. Do you know whether that was the correct area code in the

Frederick Dexter - Direct
fall of 1994?

A. It was not the area code for Al Barrel Company in Kansas.

Q. And is that the reason that it's labeled "misdial"?

A. Yes. The subscriber record was requested for that phone, and the reason it's a misdial is the phone company told us for 816-299 there is no such exchange that they handle so somebody had to have dialed the number wrong because the area code and exchange are not available through that telephone company.

Q. And the final chart, Mr. Dexter, is 571. Tell us, please, what's shown there.

A. This is the Yellow Page from Junction City with the highlight over the expanded value here in the middle; and you see that on 4-14-95, there were two calls from the J & K Bus Depot pay phone. The one that is highlighted in the -- on the left-hand side is (913) 238-8534, which is in the Yellow Pages listed under -- under the Ryder Truck Rental One Way, Inc.

Q. And was that the number for Elliott's Body Shop's Ryder rental business in the spring of 1995?

A. Yes, it was.

Q. And that phone call -- excuse me. That phone number was called with the aid of the Bridges card, according to your analysis?

A. Yes, it was.

Q. That's all I have for those exhibits, Mr. Dexter. Thank you.

Frederick Dexter - Direct

Mr. Dexter, did you assist, as well, in the preparation of certain additional illustrative charts that have been marked for identification as Exhibits 1955A, B, C, D, E, 1955J, K, L and M and 1955-O?

A. Yes, I did.

MR. MACKEY: Your Honor, we'd move to display these exhibits again for demonstrative purposes only.

MR. TIGAR: No objection, your Honor.

THE COURT: These are 1955A through O?

MR. MACKEY: No, your Honor. A, B, C, D, E, J, K, L, M, and O.

THE COURT: Okay.

BY MR. MACKEY:

Q. If we can show the exhibit now at this time, Government Exhibit 1955A. And can you describe based on your experience and reconstructing the activity on the Daryl Bridges phone card what took place on September 24, 1994, as depicted in this exhibit.

A. On September 24, 1994, from one particular phone in Marion, Kansas, there were three phone calls to Brooklyn Delicatessen in Harrisonburg, Virginia, and there was one call placed to the Greg M. Pfaff residence also from that same phone.

Q. And on the chart, there's one arrowhead that's a slightly different color. What does that represent?

A. The blue arrows indicate that the call was answered. The

Frederick Dexter - Direct

gray arrow indicates that there was a -- there is a zero duration and the call was not answered.

Q. Let's turn now to the 1955B. And describe what is shown here, please.

A. What this tells me is that there were three calls placed from Marion, Kansas, to Mid-America Chemical, Inc., in Oklahoma City. The first two calls were not answered. The third call was answered. There was one call placed from Lincolnville to Mid-America Chemical, Inc., on the same day, and that call was answered.

Q. Let's turn to 1955C. Describe what's shown here.

A. From one phone in Marion, Kansas, there were three calls to Barton Solvents, Inc., in Valley Center. The first two calls were unanswered. The third call was answered. There was one call to Harcros Chemicals, Inc., in Wichita. There was one call to Distributor to Industry, Inc., that was answered that's in Wichita. There was one call to Vulcan Chemicals that was not answered. There was one call to Mid-Con Plastics, Inc., in Derby that was answered. And there were three calls to Harcros Chemical, Inc., in Kansas City; and all three of those calls were answered.

Q. And in 1955D?

A. This tells me that in -- there was two different phones used in Marion, Kansas. The -- there's one call from one of

the phones to Rosewood Signs in Tonawanda, New York. All of

Frederick Dexter - Direct

the rest of the calls came from the second phone. There was one call to Eighty One Speedway in Valley Center. There was one call to Wichita International Raceway in Wichita. There was one call to Ebersol Hobby and RC Raceway in Wichita. There was one call to Harcros Chemical, Inc., in Kansas City. There was one call to Miles, Inc., Industrial Chemicals in Pittsburgh. And there were two calls to Olin Corp. Diversified Chemicals in Stamford, and those two calls were not answered.

Q. And all of those calls took place on September 28, 1994?

A. That's correct.

Q. And all of them were placed on the Daryl Bridges calling card?

A. That's correct.

Q. Mr. Dexter, how many total calls were made on the Bridges card to chemical companies between September 26 and September 28?

A. There was -- 18 phone calls were made.

Q. And how many of those 18 phone calls originated from Marion, Kansas?

A. There were 17 that originated from Marion, Kansas.

Q. Let's turn our attention now to 1955E. Describe what's shown there, please.

A. There were two phone calls from a particular -- there's only one phone that all these calls originated from in Marion, Kansas. Two calls to Hutchinson Raceway in Hutchinson. There

Frederick Dexter - Direct

was one call to Heavy Demolition in Wichita that was not answered. One call to Cornejo and Sons, Inc., in Wichita that was answered. One call to Rosewood Signs, Tonawanda, New York, that was answered.

Q. And those calls took place on September 29, 1994?

A. That's correct.

Q. On the Bridges card?

A. No. I believe the two calls to Hutchinson Raceway were not made on the --

Q. With that exception?

A. Right. With that exception, the other three were on the Bridges card.

Q. 1955J. What date is reflected here?

A. October 17, 1994. From two different phones in Herington, Kansas. One phone was used to call Lana and Leonard Padilla's residence in Las Vegas. The other phone was used to call Coogle Trucking, Inc., in Otterbein, Indiana.

Q. And 1955K, what date's activities is shown here, please?

A. October 18, 1994.

Q. And what is shown in the way of the activity?

A. First, there was a -- a call for information to Kansas.

All these come from one phone in Council Grove that called for

information to Kansas. Then there was a call to Full Service Beverage Company in Hutchinson. There was a call to Coca-Cola Bottling Company, one call. That was also answered.

Frederick Dexter - Direct

Pepsi-Cola Bottling Company, one call answered. Collingwood Grain, Inc., one call answered. One call to Purina Mills, Inc., in Wichita that was not answered. And one call to Equity Standard Numismatics - K.C. That call was, in fact, answered.

Q. And it was the last call to Equity Standard that day on the Bridges card?

A. Yes, it was.

Q. And was that to a coin shop in Wichita, Kansas?

A. Yes.

Q. Let's turn our attention now to 1955L. And where were the phone calls made from on October 19, 1994, as shown in this chart?

A. There were two different origination points. Calls were made on October 19, 1994, one call from Benton to Grelf Brothers Corp. in Winfield.

Then there were numerous calls made from Wichita. One call to SDS, Inc., in El Dorado. One call to Liberty Lobby, Washington, D.C. Both of those -- all three of those calls that I've previously mentioned were answered. And then there were four calls from that Wichita phone to Coffeyville Recon in Coffeyville. The first three not answered. The fourth call was answered.

Q. 1955M. Does this reflect activity for October 20?

A. Yes, it does.

Q. And what's shown?

Frederick Dexter - Direct

A. The call originated in -- first call, Junction City. A call was made to Coogle Trucking in Otterbein, Indiana. And then the second, there was a balance check done against the card in Pauls Valley.

Q. In the fall of 1994, Mr. Dexter, how many total phone calls were made to Coogle Trucking in Indiana?

A. There were three calls placed to them.

Q. And when was the last such phone call?

A. The last call was made on 10-20 -- October 20 at around 10:00. 10:01, I believe it was, that morning.

Q. In the a.m.?

A. Correct.

Q. And the balance check that is shown here at Pauls Valley, Oklahoma, what time of day did that call take place?

A. That call took place a little bit after 9:00 in the evening.

Q. Some 11 hours' difference?

A. Correct.

Q. One final chart, 1955-O. And is this for October 24, 1994?

A. Yes, it is.

Q. Can you tell the jury what we see here.

A. From one phone in Topeka, Kansas, there were four calls made. One was a misdial. One call went to Container Recycling, Inc., was answered. One call to Scott Barrel Company. It was answered. And those two were in Kansas City,

Frederick Dexter - Direct

Kansas. And then there was one call to Packaging West, Inc., in Kansas City, Missouri, and that call was also answered.

Q. Mr. Dexter, based on your review of the Bridges card, how many total phone calls were made to companies listed under "barrels" in the fall of 1994?

A. Calls that were listed under the Yellow Pages that we previously looked at, there were nine such calls that went to phone numbers listed under "barrels."

Q. And how many such calls were made after the date of this chart, October 24, 1994?

A. There were none after that date.

Q. Mr. Dexter, I need your help on just a few more exhibits and then I'll conclude.

In your analysis of the Bridges card, did you find multiple occasions where pay phones were used to generate -- that is, to place -- phone calls?

A. Yes, I did.

Q. And how about the other end, who actually received them?

A. Yes, I did.

Q. And how many occasions did you find where Bridges phone calls were made to a pay phone?

A. I found that that was limited to a two-day period.

Q. And what two days were those?

A. It was November 6 and November 7, 1994.

Q. Do you recall what day of the week November 6 and 7, '94,

Frederick Dexter - Direct

fell on?

A. I believe it was Sunday and Monday. I can't swear to that.

Q. And were those phone calls between any two particular states?

A. Yes, they were.

Q. What states were those?

A. Those phone calls were placed between Kansas and New York.

Q. The state of New York?

A. The state of New York.

Q. How many different pay phones were used during that two-day time period?

A. Counting the from -- the "from" pay phones and the "to" pay phones, there was a total of five different pay phones used.

Q. Mr. Dexter, did you assist in preparing Government's Exhibits 2067 and 2068 to illustrate your testimony on this point?

A. Yes, I did.

MR. MACKEY: Your Honor, I would move to admit for

MR. MACKEY: Your Honor, I would move to admit for demonstrative purposes Exhibit 2067 and 2068.

MR. TIGAR: No objection, your Honor.

THE COURT: They are received for that purpose.

BY MR. MACKEY:

Q. Start, please, with Exhibit 2067. And tell the jury, please, Mr. Dexter, what's set forth on Exhibit 2067.

A. What we did was demonstrate in a chronological order the

Frederick Dexter - Direct

calls between the two states, Kansas being on the left and New York being on the right. The chronology works from top to bottom for the calls between those two states.

Q. And at what time of day did the first phone call on November 6 from Kansas to New York take place?

A. Excuse me. 10:48 a.m., a call was placed from -- I may not pronounce this. Kede Bo Video pay phone in Junction City for 18 seconds to William McVeigh's residence in Pendleton, New York.

Q. And was that call from Junction City to Bill McVeigh's residence on the Bridges card?

A. Yes, it was.

Q. Was that same card used later the same day to place additional calls to the Bill McVeigh residence?

A. Yes, it was.

Q. Describe that from the exhibit, please.

A. Later in the day, at 12:54, about two hours after the first call, call on the card from Waters True Value pay phone in Junction City to William McVeigh's residence. That call lasted 1 minute, 1 second. And then two-and-a-half hours later or so, at 3:36 p.m., there was another call to William McVeigh's residence for 1 minute and 9 seconds.

Q. And again, those two phone calls from the Waters True Value pay phone were made with the Daryl Bridges card?

A. Yes, they were.

Frederick Dexter - Direct

Q. And approximately four hours later, what phone activity did you discover?

A. That there was a phone call placed from the Convenient Mart pay phone in Pendleton, New York, back to the Waters True Value pay phone in Junction City. That took place at 7:41 p.m. That call went unanswered.

Q. And how was the phone call from the Convenient Mart in Pendleton, New York, placed?

A. Using the Bridges -- Daryl Bridges card.

Q. And that's the same Daryl Bridges card that had generated the pay phones (sic) that are shown on the left-hand side of that exhibit?

A. That's correct.

Q. Your chart on Exhibit 2067 indicates the last phone call from New York to Kansas was not answered; correct?

A. That's correct.

Q. Was that same pay phone in Junction City called the next morning, according to your analysis?

A. Yes, it was.

Q. Let me direct your attention now to Exhibit 2068. And if you could walk through for the benefit of the jury the chronology of calls on November 7, 1994, as shown in this exhibit.

A. The first call on that day between the state of Kansas and the state of New York was placed from Edward McVeigh's

Frederick Dexter - Direct

residence in Lockport, New York, to the True Value -- I'm sorry -- the Waters True Value pay phone. That took place at 8:23 a.m., and that call went unanswered.

Q. And how was the call from Mr. Edward McVeigh's residence made?

A. Using the Daryl Bridges card.

Q. Was the pay phone at Waters True Value called yet again that morning?

A. Yes, it was. It was called from -- Fay's pay phone in Lockport, New York, called Waters True Value pay phone. That was at 8:46 that morning, and that call was also unanswered.

Q. What was the next phone activity that you found as is shown in this exhibit?

A. That there was a -- a balance check done from the Mini Mart pay phone in Kansas. And that was -- took place that evening at 5:59 p.m., and it was recorded it took 16 seconds to do that balance check.

Q. Was the William McVeigh residence called yet again on November 7?

A. Yes. This is a -- was called on the 7th from the Travelers Motel in Manhattan, Kansas, five minutes after the balance check was done. That call took place at 6:04, and it lasted 1 minute and 14 seconds.

Q. Mr. Dexter, do you have any personal knowledge as to the names of any of the guests that were registered at the

Frederick Dexter - Direct

Travelers Motel in Manhattan, Kansas, on November 7?

A. I do not.

Q. According to your analysis of phone records, did you see additional phone-call activity that same day from the Convenient Mart?

A. Yes, I did. 8 minutes after the call from the Travelers, there were numerous calls placed in succession from the Convenient Mart pay phone in Pendleton to the Mini Mart pay phone in Manhattan. The same one that had done the balance check at 5:59 right above that. It's a different block, but it's the same phone. The first phone call was done at 6:12 p.m., and it lasted 6 seconds. The second call was one minute later at 6:13. It was unanswered. Third call was at 6:16, and that call was unanswered. The next call at 6:18, and

that was unanswered. Then 3 minutes later at 6:21, between the same two pay phones, and that call was answered with a duration of 13 seconds. 2 minutes later, another call from the Pendleton to the Manhattan phone at 6:23, unanswered. The last one from the Convenient Mart at 6:28 was also unanswered.

Q. And was there additional phone activity yet that same evening?

A. Yes. About an hour later, at 7:22, a call was placed from the Travelers Motel in Manhattan, Kansas, same phone as the block above that -- two blocks up from Manhattan Motel, Kansas, a call that originated at 6:04. This call on the bottom

Frederick Dexter - Direct

originated at 7:22 p.m., and it lasted 6 minutes and 9 seconds; and the call was placed to William McVeigh's residence in Pendleton, the same phone number of two blocks up above that.

Q. Mr. Dexter, how many calls or attempted calls did you find on the Bridges card between the two states of Kansas and New York on the days of November 6 and 7?

A. There were 15 calls between the two states, I believe.

Q. And how many calls on the Bridges card did you find between

those two states after the completion of the phone call at 7:22, lasting 6-some-odd minutes?

A. I did not find any calls between the two states after November 7, '94.

Q. Finally, Mr. Dexter, did you assist in preparing a chart that would illustrate what activity you found during April of 1995? Phone activity, that is.

A. Yes, I did.

Q. And is that set forth in Exhibit 2044?

A. Yes, it is.

MR. MACKEY: Your Honor, I would move for demonstrative purposes admission of 2044.

MR. TIGAR: No objection, your Honor.

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

BY MR. MACKEY:

Q. Tell us, Mr. Dexter, what is -- what information, phone information is set forth on this exhibit.

Frederick Dexter - Direct

A. Starting on 4-11, I found two calls on 4-11 from the Imperial Motel in Kingman, Arizona, to the phone registered by the phone company to Terry Nichols' residence. First call was at 2:49 p.m. for a duration of 3 seconds. 2 minutes later, another call was placed at 2:51 p.m. That call also lasted 3 seconds and went to the Terry Nichols residence. According --

Q. Mr. Dexter, do you have any personal knowledge as to the names of the guests who were registered at the Imperial Motel on Tuesday, April 11, 1995?

A. I do not.

Q. After the two phone calls from the Imperial to the residence of Terry Nichols, what activity did you next

residence of Terry Nichols, what activity did you next discover?

A. On that same day, on 4-11, there was a phone call on the Daryl Bridges card from Manhattan, Kansas, placed from the Food for Less pay phone that went to Michael Fortier's residence in Kingman, Arizona. That call was placed at 3:36 p.m., and it lasted 1 minute and 1 second.

Q. You found a total of three phone calls then on April 11, 1995, between the states of Arizona and Kansas as shown on this exhibit?

A. That's correct.

Q. And were each of those three phone calls made with the Daryl Bridges phone card?

A. Yes, they were.

Frederick Dexter - Direct

Q. On Friday, April 14, 1995, what Bridges activity is shown on this exhibit?

A. On April 14, we had a call at 9:51 a.m. from the J & K Bus Depot in Junction City, Kansas, for a duration of 54 seconds, placed to Terry Nichols' residence in Herington and a second call at 9:53 for 7 minutes and 36 seconds, placed to Ryder Truck Rental in Junction City, Kansas.

Q. And are those the same two phone calls that you offered earlier testimony about generating from the J & K Bus Depot?

A. Yes, they are.

Q. On the next day, Saturday, April 15, was there any Daryl Bridges phone activity?

A. There was a call placed from the Dreamland Motel in Junction City, Kansas, at 9:36 a.m., to Terry Nichols' residence. That call was unanswered.

Q. And on the next day, Sunday, April 16, what activity did you find?

A. On the 16th, there was a call placed from Tim's Amoco pay phone in Herington, Kansas, at 3:80 p.m. -- that's the afternoon -- a duration of 3 minutes and 2 seconds, and that call was placed to Terry Nichols' residence in Herington, Kansas.

Q. And on the next day, did you find yet another Bridges call to the residence of Mr. Terry Nichols?

A. Yes. On 4-17, there was a call placed from the Dreamland

Frederick Dexter - Direct

Motel, Junction City, Kansas, at 9:25 a.m. that lasted 57 seconds. For the chart purposes, that was the same phone two blocks above it from Saturday at 4:15.

Q. Do you know who was registered, if anyone, at the Dreamland Motel on Friday, Saturday, or Sunday of April, 14th through the 17th of 1995?

A. I do not.

Q. But the phone call on Monday, April 17, at 9:25, that was made with the Daryl Bridges card; correct?

A. 9:25 a.m.?

Q. Yes.

A. On 4-17, that's correct.

Q. And later that same day, was the Daryl Bridges card used again?

A. Yes, it was.

Q. From where?

A. It was used at the Kansas City Airport pay phone there at 10:35 p.m. for 52 seconds, and a call was placed to the Dreamland Motel in Junction City, Kansas.

Q. And shortly after that phone call from the Kansas City Airport to the Dreamland, was the Daryl Bridges card used one final time?

A. Yes, it was. At 10:46, a call was placed from the Kansas City Airport pay phone to Lana and Leonard Padilla in Las Vegas, Nevada. It was for 3 minutes and 5 seconds.

Frederick Dexter - Direct

Q. Mr. Dexter, based on your research of the Daryl Bridges accounts, what was the last customer call made with the Daryl Bridges card?

A. The last call -- customer call made on the Daryl Bridges card was from Kansas City Airport on 4-17 at 10:46 p.m.

Q. What was the next-to-last?

A. The next-to-last was 11 minutes earlier from the Kansas City Airport pay phone to the Dreamland Motel.

Q. And were those two phone calls made from the same pay phone at the airport?

A. Yes, they were.

Q. Finally, Mr. Dexter, did you search through all of the available records for any evidence that the Daryl Bridges card was used to place a phone call from Junction City to the residence of Terry Nichols on April 18?

A. Yes, I -- I investigated that through all of the WCT records.

Q. And what did you find?

A. I found that there were -- there was no call, according to the WCT records, placed against the Daryl Bridges card to Terry Nichols' residence on the 18th.

Q. Did you search all Spotlight customers for anyone who would have used a card, a Spotlight card on Tuesday, April 18, 1995?

A. Yes, I did. I checked all of the records to see if there was a call placed by any Spotlight customer to Terry Nichols'

Frederick Dexter - Direct

residence on the 18th, and there was not.

Q. Did you find any call to Terry Nichols' residence on Tuesday, April 18, between the times of midnight and noon of that day?

A. Not on any -- not by any Spotlight customer.

MR. MACKEY: That's all I have, your Honor. Thank you.

THE COURT: Mr. Tigar.

CROSS-EXAMINATION

BY MR. TIGAR:

Q. Good afternoon again, sir.

A. Good afternoon.

Q. I'd like to ask you first about some of the ways in which you assembled the records, and then I would like to go into asking you about particular telephone calls.

Is it correct, sir, that there were a number of telephone calls that were made by users of the Spotlight call (sic) that did not generate an OPUS record or billing record?

A. To my knowledge, there were two calls made on the card that did not generate an OPUS record.

Q. Now, showing you what's been received here for demonstrative purposes as Government's 559, one call that did not generate a billing record -- that is because this is blank -- was a call from the J & K Bus Depot to the Ryder Truck Rental; correct?

Frederick Dexter - Cross

A. That's correct.

Q. And in your research, did you determine how many calls were made by holders of the Spotlight card for which no billing record was obtained by the Spotlight provider?

A. On that day or --

Q. No. All together.

A. I do not have a total, no.

Q. Do you think that it was more than 10,000?

A. No.

Q. How many do you think it was? Do you have any idea?

A. I just didn't total it. We ran it for every day and printed those out of the ones. So I never sat down and totaled them up. On any given day, there was three to six calls that were lost due to the OPUS.

Q. And it's your testimony that that was all there were, three to six a day?

A. That's based on our analysis. That's what we found.

Q. Now, you told us that there are -- this document that you presented, Exhibit 553, was finished in April of 1997; is that right?

A. It was prior to -- yes.

Q. About April? Now, in fact, sir, that was the third or fourth version of the document that you had done; is that right?

A. That was the final. Everything before that were draft

Frederick Dexter - Cross

versions as we continued to work; correct.

Q. And after you did some of the draft versions, you were kind enough to meet with representatives of the defense to discuss errors and problems; is that right?

A. We met with them to discuss where we were in that analysis;

correct.

Q. And did you find that with respect to many of the earlier drafts, you had the wrong city?

A. I'm sorry. The wrong --

Q. The wrong city for the call, the origination of the call?

A. I -- I'm sure there were some, yes.

Q. In other words, did you find that there were occasions when you had listed something as having originated in Chandler, Arizona, when, in fact, it originated in Kingman, Arizona?

A. I don't know specifically, but that would not surprise me, yes.

Q. Did you find that there were some telephone calls that you had listed to Naneth Jaraive in the Philippines that belonged instead to Star Gladh Lumber Company in the Philippines?

A. I don't recall that, but it could have been changed. I don't recall that on the printout.

Q. Not being critical, but this was a process that took a long time and there were a number of things to be checked. Is that fair to say?

A. Right. And there was a difference in the analysis. When

Frederick Dexter - Cross

we received the OPUS records, every one of those, the OPUS record had the city and state that the call was made to. That was part of each one of the OPUS records. That originally -- what was loaded into the computer was that city and state. Then once we got the subscriber records back, those cities and states were changed to reflect exactly what the -- the location based on the subscriber record; so if OPUS told us that it was -- I'm trying to remember your example -- that it was Chandler, but when we got the subscriber that the subscriber data said it was Kingman, then we changed it to match what the subscriber said. So it wasn't changed based on both of them being subscriber records. It was based on what we got from OPUS originally.

Q. And each time that you received additional records, you would look back at your program and attempt to make a fix so that you could account for the new information you were getting; is that right?

A. We never got more records. All of them came on the disk, when we received the three disks at the same time that we were doing the matching. And we continued to evaluate them and verify them, and we couldn't do them all at once, so that verification was done in steps, yes.

Q. And did you have to write about 66 different computer programs to take account of the information you were getting?

A. We wrote 66 programs to do the matching and all the

Frederick Dexter - Cross

validation. The matching was really done with about -- less than a dozen of the programs. All the rest of them were done to do printouts for me to do verification or to do electronic verification.

CONFIDENTIAL.

Q. And you mentioned one instance in which you were puzzled by the absence of an OPUS record and you went and had a meeting with the people in California. Do you remember talking about that?

A. I was in California once in June of '95.

Q. And when you were in California, did you talk to Mr. Kane and his colleagues about why it was that some of the calls had not been debited to a Daryl Bridges or to a Spotlight card, even though it was clear the card calls had been made?

A. Yes. They explained that process to us.

Q. So a part of what you've shown us in this chart depends on having learned from human beings where there are gaps in the computer records; correct?

A. Yeah. I mean, they told us that when we went out there. They had identified that Ryder record. We didn't. They had identified that call prior to us going there.

Q. Now, from your research, were you able to tell how many of the 685 calls were destined for the Philippines?

A. Of the 685?

Q. Yes, sir.

A. Yes. There was 117 calls that were attempted to call the

Frederick Dexter - Cross
Philippines.

Q. And when you say "attempted," not all of those calls went through; correct?

A. The only thing I can tell is whether they were answered or unanswered. I can't tell if it didn't go through or it rang and nobody answered. I can't tell from the records.

Q. Now, when you were doing your records, did you attempt to account for the time at which calls took place on a consistent basis?

A. You mean as far as the matching to match on time in one file against the other?

Q. No, sir. When you were attempting to determine the duration of calls, I should say, did you attempt to do that on a consistent basis?

A. The duration was taken straight from the OPUS record.

Q. Now, I want to show you what's been received for demonstrative purposes as Government Exhibit 1942. Now, is the time accounting on this summary exhibit on a consistent basis?

A. All of those times come from the Sprint/United.

Q. Well, how long was the call to the Ryder truck rental in talk time?

A. Talk time, according to this right here, is 7 minutes and 34 seconds.

Q. How long was the call made to the Nichols residence in talk time?

Frederick Dexter - Cross

A. One minute and 42 seconds.

I'm sorry. I don't have the talk time on the Nichols

record.

Q. So this record doesn't -- uses total time from the time the phone was picked up for the one call and actual talk time for the second call. Is that fair to say?

A. What the total time for the second call is is also there by adding the 28 seconds to the 7 minutes and 34 seconds, yes.

Q. But what is missing is the actual talk time of the Nichols call; correct?

A. Correct.

Q. So to know the actual talk time for that call, we would have to actually look at the records; correct? Look at your summary, 553, Exhibit 553, because that's accurate; is that right?

A. I would look at the -- I would look at the OPUS record, which is what they were billed for talk time and the -- I'm sorry -- and the 3910, because they are -- they are both -- they were both the same time, if my recollection is right.

Q. Well, putting this back up, of course, you couldn't look at the OPUS record for the second of those two calls, could you, because there is no OPUS record for that second call?

A. There is no OPUS record, no.

Q. So you'd have to look at something else for that; correct?

A. The 3910 in the WCT file.

Frederick Dexter - Cross

Q. I wonder if -- in looking at this if you could help me explain. I'm putting up here what's been received for demonstrative purposes as 2085. The time in the 3911, that's the total time that the phone was off the hook; is that right? The initiating phone?

A. No.

Q. What is that?

A. If you took it off the hook and didn't dial the 800 number for 30 seconds, then you wouldn't have that.

Q. Okay.

A. So that is when the call is actually received at WCT switch is what that is.

Q. All right.

A. And the ending time at the switch is what that stands for.

Q. And how -- what is the reason for the disparity of two seconds between the duration in the OPUS record and the duration in the 3910, just so we can understand that?

A. Okay. In the 3910, they captured records in tick time, so the finest increment that you would ever get would be at the three-second level. So when you're capturing it in ticks, then you obviously have three, six, nine, etc. The OPUS time actually captured time -- the duration is the actual seconds. So they would be within three seconds of each other based on how they were actually recorded in the record.

Q. Now, you testified on direct examination that there were

Frederick Dexter - Cross

some inconsistencies in the timekeeping among the local phone companies, the various computers at WCT, and other -- other clocks; is that correct?

A. That's correct.

Q. And you decided to use a single reference point; correct?

A. We used the point where every record had to go is what I used.

Q. And that was the record point that timed things in ticks; correct?

A. That's correct.

Q. Now, it timed in ticks from midnight onward every day; correct?

A. That's correct.

Q. Now, did -- is it your experience that midnight time setting was always strictly accurate?

A. You mean, when the clock in the switch hit midnight, it would set it back to zero?

Q. Yes. I understand it would set it back to zero, but did you look to see if that clock is accurate in terms of the National Bureau of Standards or some standard time?

A. I did not.

Q. So that is it fair to say that your summary has times that are precise because they are in minutes and seconds but that they may not be accurate?

A. The only thing I can say is they are standardized to one

Frederick Dexter - Cross

clock. But what they are off, the variance that they are off against the national clock, I'm not -- I don't know that.

Q. But the point is that that variation is not going to be very much, not -- you wouldn't think more than a minute or two; correct?

A. I would assume that, yes.

Q. All right. And in assuming it, when we look at your summary, 553, the relative times for all of the calls are exact; right?

A. Relative to the --

Q. To one another?

A. Yes.

Q. That is to say, if your summary shows that there are two calls an hour and a half apart, we can know that, indeed, the hour and a half apart is exact?

A. I believe so.

Q. Okay. Now, in assembling the information, did you use any information from FBI 302's?

A. I did not.

Q. So you don't have any information in this summary based on the FBI interviews of witnesses?

A. I do not.

Q. You do not have any information in here based on the statements obtained by any source from people who either made telephone calls or answered telephone calls; is that right?

Frederick Dexter - Cross

A. I do not have anything in there.

Q. You don't have any information in here based on the weather in each of the places where the calls were made; correct?

A. No.

Q. Okay. Now, did you -- in order to validate or to verify, rather, the names of the various pay phones that were used, what procedure did you use?

A. The subpoenas were issued to the local phone companies and came back, and there were a team of people that helped me as far as looking at those. They looked at them. It's my understanding it's what the owner of the pay phone or the phone company designates from the position of the phone on who owns it.

Q. For instance, the J & K Bus Depot phone company or -- J & K Bus Depot pay phone: Is that a pay phone that is listed to J & K, or is that information obtained from some other source?

A. As far as I know, it's list -- that's where it's listed, or it would be the address. If it was Columbia Phone Company, and they listed the address at that, then that may have been included as the subscriber for clarification as to where it was.

Q. Did you have access to photographs taken by the Federal Bureau of Investigation of each of the pay phones that are involved in this case?

A. I had no access to any photographs.

Frederick Dexter - Cross

Q. You've not seen any of that?

A. No.

Q. Do you know whether or not such photographs were taken?

A. I believe they were, but I've not seen it.

Q. All right. Did you direct any agents of the FBI to go out and interview people in people's homes to see what person might have talked on a particular telephone call?

A. No, I did not.

Q. And you weren't a part -- if any such thing happened, you weren't a part of it; correct?

A. That's correct.

Q. Now, sir, I would like, if you would, please, to put Exhibit 553 in front of you, if you could pull it out. Do you have it there, sir?

A. Yes.

Q. All right. Now, first, would you turn to November 7, 1994. I'm going to put up here what's been received for demonstrative purposes as Government's Exhibit 2068. Now, will you please take a look at November 7 and tell us where Waters True Value pay phone is.

A. From the chart, it says it's in Junction City.

Q. Yes. But would you take a look, please, at page 71 of Exhibit 553 and tell us where it is.

A. It says here that it's in Manhattan, Kansas.

Q. All right. Now, if we have a dispute between -- here. I'm

Frederick Dexter - Cross

going to put this on top. This is page 71 of 553. We can see Waters True Value pay phone, Manhattan, Kansas; correct?

A. Yes.

Q. Now, which of these two Government exhibits should we take as reflecting the correct location of the Waters Hardware pay phone?

A. I wouldn't know without looking at the subscriber record.

Q. Okay. Well, 553, which is the thing that's in, what, typewriter type, that comes directly out of your computer; correct?

A. That's correct.

Q. All right. And it reflects the -- your own research; right?

A. Yes.

Q. Now, 2068: You didn't make that, did you?

A. Partly -- not partly. I directed it, yes. The -- but I didn't sit there and key it into the -- to the document, no.

Q. Does the fact that your original -- that your document, 553, is the one that says Manhattan, does that suggest that that's more likely to be accurate?

A. I can't respond to that.

Q. Okay. Now, sir, would you turn, please, to the page for September 24, 1994. That's page 40 of Government Exhibit 553. I know this is -- this may be hard to read, so I'd like to go through some things with you on it. Now, the first call that

Frederick Dexter - Cross

day that's on here -- well, is made -- it says, "Nichols, Terry"; correct?

A. Yes.

Q. Is that right? And then all that means is that there was a -- it was made from a telephone subscribed to by Mr. Nichols in Marion, Kansas; correct?

A. Yes.

Q. And that's made to a William McVeigh; is that right?

A. Correct.

Q. Then the next call is to a Greg Pfaff; correct? In Harrisonburg?

A. Yes.

Q. Then the next call -- what time is that call to Greg Pfaff?

A. 11:59 a.m.

Q. Just before noon; correct?

A. Correct.

Q. Now, there's no telephone activity again until 1:38, is there?

A. No -- yes. You're right.

Q. That's right. Okay. And again, you don't know what the weather was on this day; right?

A. No.

Q. So I won't ask you any more. You don't know the weather for any of the days?

A. No, I don't.

Frederick Dexter - Cross

Q. Okay. Now, at 1:38, somebody using that phone calls the Brooklyn Delicatessen; correct?

A. Yes.

Q. Now, do you know who owns the Brooklyn Delicatessen?

A. I believe it's the man above that, but I can't swear to that.

Q. Okay. Greg Pfaff. That's based on your research. That's what you think, but --

A. I just heard that. It was not my research.

Q. I understand that. And again, sir, if we wanted to know the answer to that, we could ask Mr. Pfaff; right?

A. Yes.

Q. Okay. Then, the next call, again -- now, that call is only 18 seconds; correct?

A. Yes.

Q. The one -- I'm going to move that over. The first one?

A. Yes.

Q. I'm going to move it back. Let's see here. The next call is a -- an uncompleted call at 1:40; correct?

A. Yes.

Q. And that's again to Brooklyn Delicatessen; right?

A. Yes.

Q. And then there's one for 5 minutes and 28 seconds again to the Brooklyn Delicatessen; and that's at 1:41 and 36 seconds; correct?

Frederick Dexter - Cross

A. That's correct.

Q. Now, do you know of any other calls that were made from Mr. Nichols' home phone that day based just on your memory?

A. From my memory, no, I don't -- I don't know of any.

Q. Okay. Now, what day of the week is September 24?

A. I'd have to look at one of the other charts.

MR. TIGAR: May I approach, your Honor, just to show him a calendar?

THE COURT: You may, yes.

THE WITNESS: Get my glasses. I'm sorry.

BY MR. TIGAR:

Q. Please.

A. September 24. Saturday.

Q. Saturday. Okay. Does my showing you the pocket calendar refresh your recollection, sir, that it was a Saturday?

A. Yes.

Q. Okay. Now, then, sir, would you turn to the calls for -- excuse me -- there are no calls listed in the -- in your summary for Sunday, the 25th; is that correct?

A. That's correct.

Q. Now, based on your recollection of your research, do you know if there were calls made, long distance calls, from the Nichols' home phone on Sunday, the 25th?

NICHOLS' home phone on Sunday, the 25th?

A. I don't -- I don't recall.

Q. Would you please turn to page 41 which is -- that's a --

Frederick Dexter - Cross

for September 26; is that correct, sir?

A. Yes.

Q. Okay. Now, September the 26th is a Monday; correct?

A. Yes.

Q. I'm going to zoom in here and look at the calls. Now I'm zooming in on the originating telephones; correct?

Now, we have HRK Resale Shop for three calls; right?

A. Yes.

Q. And those are made at 10:43, 10:45, and 10:48, roughly; is that right? In the morning?

A. Yes.

Q. Now, do you know where the HRK Resale Shop is?

A. Just by reading, it says Marion, Kansas.

Q. Marion, Kansas. Now, the last of the calls for that day on this page is from something called Kahns Amoco in Lincolnville, Kansas; correct?

A. Correct.

Q. And that's at 3:30 and 27 seconds in the afternoon; right?

A. Correct.

Q. And these are the calls -- one, two, three, four -- three in the morning before 11 and one in the afternoon after 3:30 -- to Mid-America Chemical; correct?

A. Correct.

Q. Now, do you remember, sir, from your research whether or not there were calls from Mr. Nichols' home that were long

Frederick Dexter - Cross

distance calls not made with the Daryl Bridges card that day?

A. Without looking, I don't remember.

Q. All right. Now, sir, would you please turn to page 42, September 27. That was a Tuesday; correct?

A. Correct.

Q. Once again, sir, we have this same format with all the information; right?

A. Right.

Q. Now, as we look, all the calls that day are made from Marion, Kansas; correct?

I've got the first page of the calls, and now I'm going to put the second page of the calls, just so we can see. They are all made from Marion; right?

A. Right.

Q. And looking at page 42, the first day -- page 1 of the two pages for that day, we can see that all of the calls are made from the same pay phone; is that right?

A. That's correct.

Q. And they're made starting at just shy of 2 minutes before 1 p.m.; correct?

A. Yes.

--- ----

Q. Is that the first one?

A. Yes.

Q. And the last one is made at 1:21 p.m.; correct?

A. Correct.

Frederick Dexter - Cross

Q. And these are calls to a -- predominantly to various chemical companies; right?

A. That's correct.

Q. Now, the one exception here is this Dorothy Claussen call; correct? That's not a chemical company, is it?

A. I don't know what she sells. I don't -- I don't know anything about her.

Q. Okay. Would you look -- let's see if we can get a clue, here. Would you look at the call immediately above it. And does it look like somebody was either trying to call Ms. Claussen and got the Vulcan Chemicals by mistake or was trying to call Vulcan Chemicals and got Ms. Claussen by mistake? Because the numbers are the same but the area codes are different.

A. It would seem logical.

Q. Again, that's an inference we would have to make. We'd have to call the witnesses and see exactly; correct?

A. Yes.

Q. But there's no question that those two subscriber numbers are identical, but they just have different area codes?

A. The exchange and the number are identical, yes.

Q. Now, sir, would you turn to September 28. And that's going to be pages 44 and 45. Zoom out here. Again, this is this same format -- correct -- that we're seeing here?

A. Yes.

Frederick Dexter - Cross

Q. And throughout your 553, we can look and see that we're going to find the call number, the start time, the call length, and then the "from" and "to"; correct?

A. Yes.

Q. And that's going to be the same on every page?

A. I think so, yeah.

Q. Okay. And when we say "length of call," we mean the actual connect time; correct?

A. That is the -- the length of call is the duration according to the OPUS record.

Q. Yeah. But according to -- and the best you can do with all your computers and all these records that you've summarized for us is that means it's from the time that somebody answered the receiving phone to the time the receiving phone was hung up; correct?

A. Yes.

Q. Within maybe 3 seconds?

A. Yes.

Q. Because a tick is 3 seconds and they could be rounded up or

down, however they do it?

A. OPUS did not round up or down. They kept actual seconds.

Q. Okay. So those are actual seconds?

A. Yes.

Q. So when we see these calls, if we see a zero, that means not answered; right?

Frederick Dexter - Cross

A. That's correct.

Q. And if we see a minute and 25 seconds, that doesn't mean that somebody's phone rang for that time but wasn't answered?

A. That's correct.

Q. Okay. Now, let's look at, then, the 28th; and we see here that these calls are made from the City Hall pay phone in Marion, Kansas; correct? And there's one, two, three, four, five -- six of them made on page 44; is that correct?

A. Correct.

Q. And then if we look at page 45, we'll see two more; correct?

A. Yes.

Q. Now, then, the next call is made from the Nichols residence; right?

A. Yes.

Q. And that's made to something called Rosewood Signs in Tonawanda, New York; right?

A. Yes.

Q. Now, who owns -- do you know who is the owner of Rosewood Signs in Tonawanda, New York?

A. No, I do not.

Q. Do you know where Tonawanda, New York, is?

A. Yes, I do.

Q. That's near Buffalo, isn't it, or -- is that right?

A. I believe it's east of Buffalo.

Frederick Dexter - Cross

Q. East of Buffalo. But somewhere up there near -- in the Buffalo area, would you say?

A. Yeah. The only reason I know that is I went to school in New York and had to take New York geography. I've never been there.

Q. All right.

A. Okay.

Q. We'll accept that.

A. Okay.

Q. But when you testified earlier, you identified a map that had Tonawanda, New York, on it; right?

A. That's correct. That's correct.

Q. So at least you had to know it for that purpose; right?

A. Yes.

Q. Okay. And then we see some calls that are later in the day, and those are Directory Assistance for Michigan and a Spotlight balance -- right -- there for the Nichols residence?

7/11/2013 11:22:11 AM

Those last three calls, the 28th, on page 45?

A. On 45; correct.

Q. Okay. Now, would you turn to -- Oh, I'm sorry. I left out a page for September 28, didn't I?

A. Yes.

Q. Okay. I'm sorry. We have three more calls that day, and one's to Michigan Information; correct?

A. Correct.

Frederick Dexter - Cross

Q. One's to Spotlight Account Balance; right?

A. Yes.

Q. And one's to some outfit in Cass City, Michigan, the Huron Industrial Supply; correct?

A. That's correct.

Q. Now, the Huron Industrial Supply: That's not any part of the Yellow Pages that you identified for us earlier, is it?

A. No, it's not.

Q. Now, on September 29 -- do you have Exhibit 574 in front of you, sir? I've -- I know we've been looking at 553. Do you have 574?

A. In the book.

Q. Could you look for me, please.

Do you have it now, sir?

A. Yes.

Q. All right. Now, would you follow with me -- would you look at page 5, sir, Call No. 11. Can you find a call there to the Hutchinson Raceway Park?

A. I'm looking in 574 for that?

Q. Yes. 574.

A. The quality of this is terrible, but -- to where am I -- what number am I looking for, sir?

Q. You're looking for Call No. 11.

A. Okay.

Q. Now, do you know what -- do you know -- see a call there at

Frederick Dexter - Cross

11:24 a.m.?

A. Yes.

Q. Okay. That lasts for 2 minutes?

A. Yes.

Q. And do you know that that's a call to the Hutchinson Raceway Park?

A. I'd have to look at that number, but I could confirm that, if that's what you want me to do. I don't know right off the top of my head if that's Hutchinson Raceway.

Q. All right. Well, earlier, you identified it. I'm not going to go back over the records. The point is that is a call of 2 minutes and it's at 11:24 a.m.; correct?

A. Yes.

Q. Now, do you see a call on page 15 of Exhibit 574? And I'm going to ask you to look for Call No. 27 at 12:11 p.m.

A. I see that

A. I see that.

Q. And is that a call -- will you read out, please, what number that call is made to.

A. (716) 692-1435.

Q. And it lasts for 2 minutes?

A. Correct.

Q. And based on our having already looked at page 45 of Exhibit 553, we can see that that is Rosewood Signs; correct?

A. I believe --

Q. Go ahead. Take your time.

Frederick Dexter - Cross

A. Yes.

Q. Now, there is no record -- is there -- of any calls on September 30 on the Daryl Bridges phone records; is that right?

A. No.

Q. Let us look at October 1 -- excuse me -- 1994. And here are some calls. And I just want to go down and look at the identities of the called parties. The first party called that day was True Value Hardware; correct?

A. Correct.

Q. In Kingman, Arizona?

A. Yes.

Q. All right. Then the second party called that day was Michael Fortier; correct?

A. Yes.

Q. And that call lasted for 9 minutes and 48 seconds, didn't it?

A. Yes.

Q. The third call that day was the Brooklyn Delicatessen; correct?

A. Yes.

Q. Now, if you look at these two calls, the first -- the one that is made to Michael Fortier starts at 2:08 and 21 seconds; correct?

A. Correct.

Q. And that goes almost 10 minutes; right?

Frederick Dexter - Cross

A. Yes.

Q. And the second one starts at 2 minutes -- 2 hours, 20 minutes and 6 seconds; correct?

A. Yeah. 2 -- 2:20 in the afternoon, yes.

Q. And that's to Brooklyn Delicatessen; right?

A. Yes.

Q. Now, the -- based on the amount of time that it takes to -- let me start that. These two calls in a row from this same Amoco pay phone are not reorigination calls, are they?

A. I can't tell by looking at this chart. I would have to look in my research to determine that.

Q. Okay. No -- Does it appear that these calls were made one right after another, if we allow time for the person who made the first call to then punch in whatever else they need to

punch in to make the second one?

A. I -- I have no way of knowing that.

Q. Well, you did calculate, did you not, the average time that it would take a person to punch in a certain number of digits

in a Touch-Tone phone?

A. I didn't run time tests on that, no.

Q. I understand, but when you were looking to see who it was that -- or what telephone it was that had called the Ryder truck rental place in Junction City, one of the things that helped you to figure that out was a calculation of how long it takes to punch in a certain number of digits; correct?

Frederick Dexter - Cross

A. No. I never did calculations to punch in a certain number of digits.

Q. Did Mr. Kane share with you his observation as to how long it takes to punch in a certain number of digits?

A. No, he did not.

Q. You never discussed that with him?

A. No.

Q. Now, sir, do you recall in your direct examination having been shown some telephone records for the 6th and 7th of November, 1994?

A. Yes.

Q. Would you turn, please, to page 68 of Government's Exhibit 553 in evidence. I'm going to place that up here on the ELMO. And am I showing you page 68, the November 5, 1994 record?

A. November 5, 1994, yes.

Q. All right. Now, I'd like to first zoom in. And there -- there are only two calls made on the Daryl Bridges card on the 5th; is that correct, sir?

A. Yes.

Q. All right. And they are both made from the same VP Gas Station pay phone in Kent, Ohio; is that right?

A. Correct.

Q. Okay. Now, you don't know from your research who was calling on that phone; right?

A. No.

Frederick Dexter - Cross

Q. The person? But it is clear that Kent, Ohio -- that number -- is a 216 area code; correct?

A. Yes.

Q. Now, the first such call lasted for 11 minutes and 12 seconds; correct?

A. Correct.

Q. And it was made to Michael Fortier's residence in Kingman, Arizona, wasn't it?

A. Yes.

Q. And then the second call that date was to check the Spotlight account balance; right?

A. Yes.

Q. And that was made from the same phone, we'd say almost immediately after the first one; correct?

A. Yes.

Q. That is, if we did the arithmetic and added 11 minutes and 12 seconds to 8:09 and 18 seconds, we'd come up somewhere close to 8:21 and 42 seconds; correct?

A. Correct.

Q. Now, sir, would you please turn to page 78.

MR. TIGAR: Your Honor, there's not too much more of this, but if your Honor -- whenever you want to take a break.

THE COURT: I was about to ask you when is a convenient break time.

MR. TIGAR: Well, this is pretty mind-numbing, your

Frederick Dexter - Cross

Honor. I don't have very much more; but if we could take it now, perhaps it would refresh all of us.

THE COURT: All right. We will take a recess. You can step down, Mr. Dexter.

And we'll take our usual 20-minute afternoon refresher. Hopefully, it's refreshing to you. And of course, again, please continue to follow the cautions given at all recesses, avoiding discussion of testimony in the case or anything about the case and among yourselves and with all other persons, remembering that your obligation is to keep an open mind yourself until you've heard it all and to avoid anything that may be outside of our evidence.

So we'll excuse you now for 20 minutes.

(Jury out at 3:11 p.m.)

THE COURT: We'll recess.

(Recess at 3:11 p.m.)

(Reconvened at 3:31 p.m.)

THE COURT: Be seated, please.

MR. TIGAR: Your Honor, may we approach, please.

THE COURT: You may, yes.

(At the bench:)

(Bench Conference 72B2 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

Frederick Dexter - Cross

(In open court:)

(Jury in at 3:34 p.m.)

THE COURT: Please resume the stand, Mr. Dexter.

And, Mr. Tigar, your questions.

CROSS-EXAMINATION CONTINUED

BY MR. TIGAR:

Q. Okay?

A. Sure.

Q. The Daryl Bridges calls or any Spotlight calls cost the same whether the call was made from a home phone or a pay phone or a business phone; correct?

of a business phone; correct?

A. As long as it's a domestic call and a non-information call, because they cost more.

Q. All domestic, non-information calls cost the same.

Correct?

A. Correct.

Q. Now, I want to turn back briefly again to November 5, 1994. Okay? Now, that's page 68.

Now, we were looking at this 216 area code. Are there

any telephone calls to a 216 Ohio area code prior to these two calls that you can remember?

A. I don't recall any. I didn't research that.

Q. Now, sir, I'd like to turn your attention, please, to page 78 of your Exhibit 553, which I'm displaying here in its entirety. That is the page for November 22 of 1994. Correct?

Frederick Dexter - Cross

A. Yes, it is.

Q. And on that day, we see four calls. Correct?

A. Correct.

Q. Now, the first is made from Pendleton, New York. Correct?

A. Yes.

Q. And the second, third and fourth are made from an airport pay phone, Los Angeles, California. Correct?

A. Yes.

Q. And when that says "airport pay phone," that is a telephone, a pay phone located at the Los Angeles International Airport in Los Angeles, California; correct?

A. That's my belief, yes.

Q. And these calls are -- two of them are to -- there we go --

Spotlight account balance and one is to the Padilla residence in Las Vegas; correct?

A. From the airport, that's correct.

Q. Now, sir, I want to look at some of the calls between November 23 and January 16 -- November 23, 1994, and

January 16, 1995. Do you, based on your personal knowledge, know where Mr. Nichols was during that period of time?

A. I know that -- I don't know if those are the dates, but I knew that he was out of the country somewhere in that neighborhood.

Q. In the Philippines somewhere in that neighborhood.

Now, would you look, sir, at the calls for

Frederick Dexter - Cross

November 29. That would be pages 80 and 81. Again, I'll first show page 80 here to show this same format. Then I'll zoom in.

The first -- there were 10 calls made on that day; correct, sir?

A. Yes.

Q. And the first one that day was made and connected to True

-
Value Hardware in Kingman, Arizona. Correct?

A. Yes.

Q. Now, do you know who was employed at True Value Hardware on November 29, 1994?

A. No, I do not.

Q. Then we see a number of calls to Kevin and Jolynn Nicholas and to Nicholas Rentals. Is that correct?

A. Yes.

Q. And all but one of the remaining calls -- that is to say, eight calls -- made that day are made either to the Nicholases or to something called Nicholas Rentals. Correct?

A. That would be the last call; correct.

Q. And the last call that day is made from the residence of William McVeigh, and it's made to someplace called J.A. Rhoney and Sons in Overland Park; correct?

A. Yes.

Q. Do you know what business J.A. Rhoney and Sons is in?

A. No, I do not.

Q. Now, on November 30 -- I'm going to show you page 82, again

Frederick Dexter - Cross

zooming out. We'll come in. Just two calls on that date; correct, sir?

A. Yes.

Q. Both from Pendleton, New York?

A. Yes.

Q. Yes? And the first one to J.A. Rhoney and Sons is not completed, is it?

A. That's correct.

Q. The second one, 28 seconds in duration, is to Nicholas Rentals; again. Yes, sir?

A. Correct.

Q. Do you know what business Mr. Kevin Nicholas is in?

A. No, I do not.

Q. Now, turning our attention to page 83, the next page, that's for December 13, 1994. Correct?

A. Yes.

Q. That day, two calls are made, one from Lincolnville, Kansas, and one from Logan, New Mexico; right?

A. Yes.

Q. Do you know how far apart Lincolnville and Logan are?

A. No, I do not.

Q. But the first call is to True Value Hardware; correct?

A. Yes.

Q. And the second to the residence of someone named Michael Fortier; right?

Frederick Dexter - Cross

A. Correct.

Q. And both calls, we can see here, are completed and we know we can find the time. Right?

A. Correct.

Q. Now, the next day, which is December 14, we have -- it's on page 84 of your record. Correct?

A. Correct.

Q. Again showing a full page.

Now, we can zoom in and we see that those calls are both made from someplace called the Mohave Inn. Correct?

A. Correct.

Q. And they're both made to someone named Dave Paulsen; right?

A. Correct.

Q. Now, neither of these two calls is completed, is it?

A. That's correct.

Q. Do you know what business Mr. Dave Paulsen is in?

A. No, I do not.

Q. In your research, did you find any call made with the Daryl Bridges card to Mr. Dave Paulsen or to any business having the name Paulsen in it that was 49 minutes in duration?

A. No, I did not.

Q. Are you aware of any FBI record that shows a call or that reflects a call to Dave Paulsen or to a business having the name Paulsen in it that is 49 minutes in duration?

A. Yes, I am.

Frederick Dexter - Cross

Q. Again, going to put up a piece of page -- the December 15. Here's another call from the Mohave Inn, also to Dave Paulsen. Correct?

A. Correct.

Q. But again, that call was not completed, was it?

A. Correct.

Q. Have you looked at how many telephone calls were made in December and January of 1994 and '95, using the Daryl Bridges card, to either Dave Paulsen or any business having the name Paulsen in it?

A. I don't know the time period. We did things on counts for records, and I don't know the time period. But I know that there were over 30 calls to him in the whole span of the thing.

Q. Okay.

A. But I don't know the time frame specifically.

Q. Now, the last call we looked at was December 15. You remember that, sir?

A. Yes.

Q. All right. Now, I want to put up the next -- now, there are no calls on the 16th. Correct?

A. Correct.

Q. So the next call we have is December 17. Is that right?

A. Yes.

Q. Now, there are two calls that day, and they're both placed from Mattoon, Illinois. Correct?

Frederick Dexter - Cross

A. Yes.

Q. And one is to Dave Paulsen and the other for the account

balance. Right?

A. Correct.

Q. And this time, there is 35 seconds of talk with this -- with the Dave Paulsen telephone number; correct?

A. Correct.

Q. And once again, we don't know who answered the phone there; right?

A. Correct.

Q. Now, looking at December 18 -- that's the next day for which we have some records -- is that page 87?

A. Correct.

Q. Now, on that day, is there more than one page of Spotlight telephone calls?

A. Yes, there is.

Q. The first page I put up here is page 87 and the second is page 88. Correct?

A. Correct.

Q. And that's all the calls; right?

A. Correct.

Q. There are 11 calls made on the card on that date; correct?

A. That's correct.

Q. Now, looking first at page 87, we see a series of calls made from pay phones, one from a motel, U.S. Grant Motel, and

Frederick Dexter - Cross

then a series of calls made from pay phones in Illinois. Correct?

A. That's correct.

Q. And looking over at who got these calls, we see that the numbers dialed were Dave Paulsen, Dave Paulsen, Lana and Leonard Padilla, Dave Paulsen, Dave Paulsen, Paulsen's Military Supply; correct?

A. Correct.

Q. And the calls to Dave Paulsen were not answered -- is that right -- the ones we're looking at now? Do you see that?

A. The three on that page.

Q. The zero, the zero and the zero. Is that right?

A. Yes.

Q. All right. But we see one here for 48 seconds, and that was to Paulsen's Military Supply, and that was answered. Correct?

A. Correct.

Q. Then on the next page for December 18, we have some more calls. We have two more to Dave Paulsen; correct?

A. Yes.

Q. And neither one of those is answered. Right?

A. Correct.

Q. Then we have Kevin and Jolynn Nicholas, and that's not answered, either. Correct?

A. Correct.

Frederick Dexter - Cross

Q. And then we have Nicholas Rentals. and that is answered for

Q. And then we have Nicholas reveals, and that is answered for a minute and 25 seconds; right?

A. Correct.

Q. And then we have a 2-minute-and-59-second call to Michael Fortier. Correct?

A. Correct.

Q. Now, the other thing about this -- when we look down here on December 18, we can see that the -- that these calls come -- the first one from Illinois, the second from Indiana, and the last three from Michigan. Correct?

A. Correct.

Q. Now, The Spotlight credit card could not be used, could it, to make telephone calls from outside the United States?

A. That's my understanding.

Q. Or at the very least, there are no telephone calls on these records from outside the United States, on the ones -- 553?

A. Correct.

Q. Sir, I won't show you -- if we were just to leaf through the rest of December, we would see on these pages a number of calls in which whoever had The Spotlight card was dialing the number of Dave Paulsen. Correct?

A. That's correct.

Q. Now, sir, I'd like you to turn, if you would, please, to January 17 of 1995. And on that day, how many pages of calls do we have? Is it 105 through 109?

Frederick Dexter - Cross

A. That's correct.

Q. Now, on that day, looking first at page 105, the very first call that's made is made at 00:17:18. Now, is that 12:17 a.m. in the morning?

A. That's correct.

Q. And then that's to check The Spotlight account balance. Correct?

A. Yes.

Q. Then beginning at 7 in the morning, 7:00 and 39 seconds, from the phone subscribed by Lana and Leonard Padilla, we see a dialing to Malaluan, Ernesto, in Cebu, the Philippines. Correct?

A. Yeah. I tried to point out one thing there. We're reading the left column, and I want to point out the call was actually made -- because that's the normalization. The time the call was actually made in Vegas was 5:00:39.

Q. Now, when we look down the start time on these calls, they're all normalized or all made consistent to Central Time. Is that correct?

A. The left-hand column; correct.

Q. The left-hand column. Now, are they all made consistent in your Exhibit 553 to Central Standard Time, or do you change it to Daylight Time during the portions of the year during which Daylight Savings Time is observed in the places that do observe it?

Frederick Dexter - Cross

A. Yes. Yes, it is both CDT and CST.

Q. And when we see one of these records for a call from Kingman, Arizona -- Does Arizona observe Daylight Savings Time?

A. No, they do not.

Q. So when we see a call from Kingman, Arizona, during the portion of the year in which Daylight Savings Time is observed, we should make a mental adjustment to remember that Arizona does not observe Daylight Savings Time; right?

A. Well, on the middle column, it says Mountain Standard Time always for anything that comes from Kingman, and that is adjusted to the time -- the start time. So they're adjusted irregardless (sic) if it's Kingman or whatever to be whatever time it is in the Central Time at that time.

Q. So in the fourth column over, where we see the "call placed from," we will always find the correct time zone for the place where the call originated. Is that right?

A. That's correct.

Q. So that when we talked about the one we just did at 7 a.m. Central, that means it was 5 a.m. in Las Vegas and someone called or dialed Cebu. Correct?

A. That's correct.

Q. Now, for the next several pages of this, do we find a number of efforts by someone to dial the Philippines and for some reason or other they're just not getting through?

A. That's correct.

Frederick Dexter - Cross

Q. Now, sir, have you looked at -- I want to show you one more page and then ask a question. Would you turn, please, to page 167 and 168.

Now, you talked with Mr. Kane, did you not, about the way in which a person who was having trouble with their card could get help in completing telephone calls?

A. That's correct.

Q. And is it your understanding that there was a center in Santa Barbara and another center in San Diego where card users could call and get that kind of help?

A. And in addition, Washington, D.C. There was three locations.

Q. Three. All right. This is our February 28 call, and we see here as the first call of the day the call placed from is West Coast Telecomp. Correct?

A. Correct.

Q. And the call placed to is Ernesto Malaluan in Cebu.

A. Correct.

Q. Now, is it your understanding that this effort was made by the Customer Help Center to try to assist someone to complete a call?

A. That's correct.

Q. So that when we see this West Coast Telecomp, we're not seeing a Spotlight cardholder in Santa Barbara, are we?

A. No.

Frederick Dexter - Cross

Q. Now, is there some way we can tell where The Spotlight cardholder is at the time that that person contacts West Coast Telecomp and asks for some help in getting hold of this number?

A. Not from the WCT records that I have. Not available to me.

Q. Is there -- I know that you looked at a lot more things than the WCT records, and I want to make sure. Is there any record that you have that went into your summary that could provide us that information?

A. I would have to look at that exhibit to see if we had a verification on Call 580 and Call 582. I don't know right off the top of my head.

Q. There might be, or there might not be. Correct?

A. That's correct.

Q. So this could be a case in which we would have to use other evidence beyond what you were looking at to make sure where that person was when they made the call. Correct?

A. When they called the help center; that's correct.

Q. But what we should do if we see this West Coast Telecomp, Santa Barbara, or we see a San Diego or we see a Washington, D.C. -- we should always know that that's the Customer Help Center that's doing it; correct?

A. If it's those numbers there, that's correct.

Q. Because you -- of all of the 600-some calls that you have, do you recall any of them in which the actual cardholder of the Daryl Bridges card initiated a telephone call from Santa

Frederick Dexter - Cross

Barbara, San Diego, or Washington, D.C.?

A. Not to my knowledge, no.

Q. You were shown in direct examination a number of records concerning telephone calls made in April of 1995. Correct?

A. Correct.

Q. If we wanted to see who called whom using what telephone called what telephone during the February and March in using the Daryl Bridges card, we could look at these pages of your summary just as you and I have been doing for the last however many minutes it's been and use this same process to track those calls; correct?

A. That's correct.

Q. And you're satisfied, sir, as you sit there today, that you got -- that is to say, you have recorded here every call that was made using the Daryl Bridges card with perhaps one or two or three exceptions. Right?

A. There is four exceptions that are not included there.

There were two partial calls on the 28th of February that weren't digits long enough to determine what the area code or country code was. There was one call on February 9 that was a balance check, and for a one-hour period, WCD -- WCT did not collect 3911's. And then there was a test call on the 24th of April that was included. So those four calls are not included in the summary.

Q. I understand. But what I was asking you, sir, is we know

Q. I understand. But what I was asking you, sir, is we know,

Frederick Dexter - Cross

for example -- excuse me. We know that the call from the J & K Bus Depot to the Ryder Rental was not a call that OPUS picked up. Right?

A. That's correct.

Q. And as you sit there today, you can't be a hundred percent sure that there aren't a couple of other calls that didn't get picked up in the same fashion.

A. I know of one for sure that did not get picked up. That's correct.

Q. So -- and that's what I'm saying. With that exception, this is complete. Right?

A. That's correct.

Q. And so far as you're aware, every significant call is reflected in your Exhibit 553; right?

A. Every call is, whether it's significant or insignificant. There was no differentiation.

MR. TIGAR: I have no further questions. Thank you.

THE COURT: Do you have some redirect?

MR. MACKEY: Just a few, your Honor. Thank you.

REDIRECT EXAMINATION

BY MR. MACKEY:

Q. Mr. Dexter, you were asked earlier about a 49-second phone call for Paulsen's that conflicted with other FBI material that said 49 minutes. Can you explain that?

A. Yes.

Frederick Dexter - Redirect

MR. TIGAR: Excuse me, your Honor. I object to the explanation. I think it goes outside his personal knowledge and outside the study he did.

THE COURT: Well --

MR. MACKEY: I can ask again --

THE COURT: You can ask -- Are you going to ask about the source of the information?

MR. MACKEY: Yes.

BY MR. MACKEY:

Q. Go ahead.

A. The day of which it was recorded -- I shouldn't say the day. When we looked at the OPUS records, there was a call for 49 seconds at that date and time, etc. All the calls that came in from OPUS on that particular day were loaded into the system in April 22-23 time frame, and they were being manually loaded, etc. And what appears to me -- and I say "appear" because I studied the printouts from the end of April that we still had; I studied them from May -- that somebody keyed into the field that was called "minutes" 49 instead of keying it into the field called "seconds," is what it appeared. It was corrected on a printout that I have on May 4. It was corrected to 49 seconds by then. I don't know what day it was corrected, but it was corrected by May 4.

Q. Any summary that you provided to the defense in this case has correctly listed that phone call as being a 49-second

Frederick Dexter - Redirect
duration. Is that correct?

A. Anything I provided to them; that's correct.

Q. In the way of your work product?

A. Yes.

Q. All right. You were asked about some phone calls in November of 1994. Do you recall those?

A. Yes.

MR. MACKEY: Your Honor, at this time I'd like to publish Stipulation No. 23 regarding those matters.

THE COURT: All right. I'll have to get it.

The -- do we have 202 and 243?

MR. MACKEY: Yes, your Honor.

THE COURT: Oh. All right.

Well, it's agreed, then, that the two photographs marked as Government's Exhibits Nos. 202 and 243 show a pay telephone located at the Tri-Month -- Tri-Mart Chevron, 3595 East Andy Devine Avenue, Highway 66, Kingman, Arizona. In November, 1994, the number assigned to this pay telephone was (520) 757-9154.

That's agreed?

MR. TIGAR: Yes, your Honor.

THE COURT: All right.

MR. MACKEY: Your Honor, we'd move to admit those two photographs and ask permission to publish.

THE COURT: You may do so. They're received by the

Frederick Dexter - Redirect
stipulation.

BY MR. MACKEY:

Q. Mr. Dexter, you told the jury already you have no personal knowledge about where pay phones or other sites of telephones were in connection with the Bridges card; is that correct?

A. That's correct.

Q. All right. Let me just borrow a little bit of your time to show these to the jury nonetheless.

Now I'm displaying Government's Exhibit 243. You do see, do you not, what appears to be a public pay phone on the left-hand portion of that exhibit?

A. Yes, I do.

Q. And you heard his Honor read into the record the phone number that was subscribed to that pay phone in November of 1994?

A. Yes, I did.

Q. Have you looked at Government's Exhibit 579 concerning the activity on that pay phone for the month of November, 1979 (sic)?

A. Yes. I believe 579 is subscriber data.

Q. 578?

A. 578.

MR. MACKEY: If I may approach?

BY MR. MACKEY:

Q. Does Government's Exhibit 578 show the activity on that pay

Frederick Dexter - Redirect

phone, the one depicted in the photographs, during the month of November of 1994?

A. Yes, it does.

Q. And, Mr. Dexter, based on that record and your review of it, did you find any telephone call from that pay phone to either the states of Ohio or New York for that same time period?

A. Yes, I did. In November, there was one call on the 14th of November to New York.

Q. All right. And do you recognize the number that's shown in that exhibit?

A. Yes, I do.

Q. As being?

A. It's subscribed as Ed McVeigh, Edward McVeigh.

Q. And that is in the state of New York?

A. That's correct.

Q. Other than the phone call on November 14 from that pay phone to the residence of Ed McVeigh, did you find any other use of that pay phone to the states of Ohio or New York?

A. I did not.

MR. MACKEY: Your Honor, also pursuant to stipulation, I'd report to the Court and the jury that the parties have agreed that on November 22, 1994, the defendant, Terry Lynn Nichols, traveled from Las Vegas, Nevada, to the Philippines and that on January 16, 1995, the defendant, Terry Lynn

Frederick Dexter - Redirect

Nichols, returned to Las Vegas, Nevada, from the Philippines.

THE COURT: Is that agreed?

MR. TIGAR: Yes, your Honor, that's agreed.

THE COURT: Then we accept those facts as true, members of the jury.

BY MR. MACKEY:

Q. We'll return our attention, then, to November 22. Do you see that clearly enough, Mr. Dexter? It's on page 78 of your Exhibit 553.

A. Okay.

Q. Directing your attention to the first line in your summary for November 22, did you find evidence of use of the Bridges card on that date calling Las Vegas, Nevada?

A. Yes, I did.

Q. From the state of New York?

A. Yes.

Q. And then later the same day with the same Daryl Bridges card, was the Padilla residence called again?

A. Yes, it was.

Q. This time from a pay phone in T. A. 2

Q. This time from a pay phone in L.A.?

A. That's correct.

Q. And this is the same day that Mr. Nichols left the country?

A. Yes.

Q. Per the stipulation?

A. Yes.

Frederick Dexter - Redirect

Q. All right. Mr. Dexter, on January 16, 1995, same day of Mr. Nichols' return to the United States, did you find use of the Bridges card?

A. Can I look? This is awful blurry. Can I look up that exhibit?

Yes, I did.

Q. On January 16, 1995, how was the Bridges card used?

A. There was a call from Vassar, Michigan. Kevin and Jolynn -- Jolynn Nichols (sic) were the subscriber of where the call was placed from, to Lana Padilla. Call was at 8:40 in the morning. 40:54 a.m.

Q. Did you find that phone call to make connection for about 1 minute and 48 seconds?

A. That's correct.

Q. On the next day, Tuesday, January 17, 1995, was the Bridges card used again to call again to the Padilla residence?

A. Yes, it was.

Q. And from where and for how long?

A. It's from the same phone, Kevin, Jolynn Nichols -- Nicholas, from Vassar, Michigan, for 6 minutes and 30 seconds.

Q. And later that same morning, within minutes, was there a return phone call to Michigan?

A. Yes. It's about 24 minutes. Somewheres around there -- return from the Padilla residence back to Kevin Nicholas' residence.

Frederick Dexter - Redirect

Q. Finally, on January 18, 1995, did you find evidence of the use of the Bridges phone card?

A. On the 18th, I found a call from Lana and Leonard Padilla's residence to again Kevin Nicholas' residence. That's at 11:30 in the morning; and then about an hour later, a call from Nicholas Rentals back to Lana Padilla's residence -- Lana and Leonard Padilla.

Q. Did you find then based on your summary that in the course of those three days, January 16, 17 and 18, there were a total of five known calls between those two locations?

A. That's correct.

Q. Finally, Mr. Dexter, let me return your attention to questions you were asked about the two phone calls from the J & K Bus Depot on Friday, April 14. Do you recall those questions?

A. Right.

Q. And did you gather records from every possible source to learn as much as possible about those phone calls?

A. Yes, I did.

Q. And as you sit there now based on your review of those materials and all those records, are you certain that there were two phone calls from the J & K Bus Depot on that day?

A. Yes, I am.

Q. And are you certain that the first phone call went to the residence of Terry Nichols?

Frederick Dexter - Redirect

A. Yes, I am.

Q. And are you certain that it was answered?

A. Yes.

MR. MACKEY: I have nothing else.

THE COURT: Mr. Tigar, any recross?

RECROSS-EXAMINATION

BY MR. TIGAR:

Q. Do you know whether the flight from Las Vegas to the Philippines makes a stop in Los Angeles?

A. No, I do not.

Q. I want to ask you now, then, about this 49 minutes vs. the 49 seconds. Have you seen an FBI 302 of an FBI interview with Mr. Paulsen?

A. Yes, I have.

Q. And are you aware that what the FBI agents -- and I don't want to get into it because that's -- we could call the FBI agent who made that 302 as a witness, could we not?

A. I assume so.

Q. Yes. You were not present when that FBI agent talked to Mr. Paulsen, were you?

A. No, I was not.

Q. But do you know that the FBI agent and Mr. Paulsen had a conversation about the length of the telephone call made to Mr. Paulsen?

A. I did not read the whole interview. What I read was trying

Frederick Dexter - Recross

to determine the accuracy of my summary; so I read the paragraph that said he was -- he was questioned regarding the 49-minute phone call. Yes, I did see that.

Q. Now, again -- once again, they're the people that had the conversation. I'm not asking about that. But you are aware that that FBI 302 does exist; correct?

A. That's correct.

Q. And you are aware of the identities of the interviewing agents; correct?

A. I don't remember them.

Q. But --

A. They were on there, yes.

Q. You don't have any question they really are FBI agents?

A. Yes.

MR. TIGAR: Thank you very much. Nothing further.

MR. MACKEY: Nothing else, your Honor.

THE COURT: Are you excusing him?

MR. MACKEY: Yes, your Honor.

THE COURT: Is that agreed to excuse the witness?

MR. TIGAR: I'm sorry. Yes, your Honor.

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

Next, please.

MR. MACKEY: United States would call Michael Fortier.

THE COURT: Come in, please.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Michael Fortier affirmed.)

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

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

THE WITNESS: My name is Michael Joseph Fortier.

It's spelled F-O-R-T-I-E-R.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Mearns.

MR. MEARNS: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. MEARNS:

Q. Mr. Fortier, how old are you?

A. I'm 28 years old.

Q. And where were you born?

A. I was born in Maine.

Q. How long did you live in Maine?

A. I lived in Maine till I was eight years old.

Q. Where did you move after you left Maine?

A. My family and I moved to Kingman, Arizona.

Q. Where is Kingman, Arizona, in terms of the geography of Arizona?

A. It's in the northwest corner.

Q. Towards California, in that direction of the state?

A. Yeah. It's just south of Las Vegas.

Michael Fortier - Direct

Q. And where do you presently live?

A. I'm in federal custody right now.

Q. How long have you been in federal custody?

A. Since August of 1995.

Q. So a little over two years?

A. Yes.

Q. Are you married?

A. Yes, I am.

Q. What is your wife's name?

A. Her name is Lori.

Q. And how long -- how long have you and Lori been married?

A. For three years.

Q. How long have you known her?

A. For ten years.

Q. Do you and Lori have any children?

A. Yes, we do.

Q. How many children do you have?
A. We have two.
Q. Are they boys or girls?
A. I have a boy and a little girl.
Q. How old is your daughter?
A. She's four years old.
Q. And how old is your son?
A. He's 21 months.
Q. Did you graduate from high school?

Michael Fortier - Direct

A. Yes, I did.
Q. Where did you go to high school?
A. At Kingman High.
Q. And when did you graduate from Kingman High?
A. In 1987.
Q. Did you attend any college after high school?
A. Not directly after high school, but I have attended college.
Q. How much college education do you have?
A. About four semesters.
Q. Where -- where did you go to college?
A. Mohave Community College.
Q. Where is that school located?
A. In Kingman.
Q. You told us a moment ago you didn't go directly from high school to college. What did you do in between high school and college?
A. I went into the Army.
Q. Now, you're testifying this afternoon pursuant to an agreement with the Government; is that correct?
A. Yes.
Q. Is that agreement an oral agreement, or a written agreement?
A. It is a written agreement.
Q. Were you represented by an attorney when you entered into

Michael Fortier - Direct

that agreement with the Government?

A. Yes.
Q. What are your obligations under this written agreement?
A. My obligations are that I -- and I did -- plead guilty to four felony counts and that I would cooperate in any and all trials or any proceedings that were asked of me.
Q. You told us that you were required to plead guilty under this agreement to four felonies?
A. Yes.
Q. What were those four felony charges?
A. They were conspiracy -- conspiring to transport stolen weapons, transporting stolen weapons, misprison of a felony and lying to the FBI.
Q. What is misprison of a felony?
A. Knowing that a crime has taken place and concealing

A. knowing that a crime had taken place and concealing evidence in that crime.

Q. Were all four of those charges that you just spoke about -- were those charges contained in an indictment?

A. Yes.

Q. When was that indictment filed against you?

A. In August of '95.

Q. And where was it filed?

A. In Oklahoma City.

Q. And have you pled guilty to those four charges in that indictment?

Michael Fortier - Direct

A. Yes, sir.

Q. When did you plead guilty to those charges?

A. In August of 1995.

Q. Was that in Oklahoma City as well?

A. Yes.

Q. Were any counts in the indictment dismissed against you?

A. No, sir.

Q. Were you ever charged with participating or conspiring in the bombing in Oklahoma City?

A. No, sir.

Q. What is the maximum penalty that you face pursuant to your guilty plea to those four charges?

A. 23 years in prison.

Q. Now, you told us a moment ago that you're also obligated under this agreement to cooperate with the Government. Is that correct?

A. Yes.

Q. Does that cooperation include being willing to be interviewed?

A. Yes.

Q. And have you been interviewed pursuant to that cooperation agreement?

A. Yes.

Q. Once, or more than once?

A. More than once.

Michael Fortier - Direct

Q. Would it be fair to say that you've been interviewed quite frequently?

A. Yes.

Q. Would it also be fair to say that you've been interviewed quite extensively?

A. Absolutely.

Q. With respect to your cooperation, were you also obligated to testify in any proceeding if called upon by the Government to do so?

A. Yes.

Q. And have you testified prior to today -- have you testified pursuant to that cooperation agreement?

A. Yes, I have.

Q. How many times?

A. Twice.

Q. When was the first time?

A. Before the grand jury in Oklahoma City.

Q. And when was that?

A. In 1995.

MR. TIGAR: I object to identifying a second proceeding, your Honor.

THE COURT: Well, the objection is overruled.

BY MR. MEARNS:

Q. When was the second time that you testified?

A. Just last spring in Timothy McVeigh's trial.

Michael Fortier - Direct

Q. What is your understanding of the Government's obligations under this written agreement?

A. That they will bring no further charges against me.

Q. And when you say there -- when you say "they," you're referring to the United States Government?

A. Yes. And also the government of the State of Oklahoma.

Q. So the Oklahoma state authorities are also bound by this written agreement?

A. Yes, sir.

Q. When you say "no further charges," you mean no further charges beyond the four that you've pled guilty to?

A. Yes.

Q. Is the Government obligated to do anything else with respect to your cooperation?

A. No, sir.

Q. Is there a provision in your plea agreement with respect to the Government filing a motion on your behalf at your sentencing?

MR. TIGAR: Your Honor, I object to the oral recitation. The plea agreement is a document that speaks for itself.

THE COURT: It seems to me we should go to the plea agreement, rather than a summary of it.

MR. MEARNS: May I approach the witness, your Honor?

THE COURT: You may.

Michael Fortier - Direct

BY MR. MEARNS:

Q. Mr. Fortier, you've had placed before you Government's Exhibit 193. If you could take it out of the plastic, please.

Do you recognize that document?

A. Yes, sir.

Q. What is that document?

A. This is the plea agreement.

Q. This is the plea agreement that you're testifying to pursuant -- you're testifying today pursuant to this agreement?

A. Yes.

MR. MEARNS: We'd offer Government's Exhibit 193.

MR. TIGAR: No objection, your Honor.

THE COURT: 193 is received.

BY MR. MEARNS:

Q. Mr. Fortier, does this agreement have a provision whereby the Government will file a motion with the Court at your sentencing?

THE COURT: Just cite to the section of the agreement, and it can be read into the record, I assume.

MR. TIGAR: Yes, your Honor. That's our objection.

THE COURT: All right. As I understand it, this is actually a certified copy of a document on file in the United States District Court in Western District of Oklahoma in a criminal proceeding in which he is the defendant.

MR. MEARNS: That's correct, your Honor.

Michael Fortier - Direct

THE COURT: All right.

BY MR. MEARNS:

Q. Mr. Fortier, if you would turn to paragraph 6 on page 5. Is that the provision that covers what the Government will do for you in exchange for your cooperation?

A. Yes, sir.

Q. Has anyone from the Government other than what is contained in this written agreement -- has anyone from the Government promised you any particular sentence?

A. No, sir.

Q. And as you sit here today, do you know what your sentence will be?

A. No, I do not.

Q. Who will determine your sentence?

A. The judge that sentences me.

Q. Do you know a man named Timothy McVeigh?

A. Yes.

Q. When did you first meet Mr. McVeigh?

A. I first met him when I first went into the service in 1988.

Q. And where did you meet him?

A. Fort Benning, Georgia.

Q. And you were in the Army at that time?

A. Yes, sir.

Q. And was Mr. McVeigh in the service as well at that time?

A. Yes.

Michael Fortier - Direct

Q. Were you there in Fort Benning for basic training?

A. Yes.

Q. How long were you in Fort Benning?

A. Three months.

Q. Until approximately when?

A. Until September.

Q. Of 1988?

A. Yes, sir.

A. Yes, sir.

Q. During that time, during that three-month period when you were in basic training, did you and Mr. McVeigh become friends?

A. No, sir.

Q. How would you characterize your relationship with Mr. McVeigh at that time?

A. He was in the same platoon as I, and I would see him in the platoon; but I never associated with him.

Q. After basic training -- that is, after September of 1988 -- where were you stationed?

A. Fort Riley, Kansas.

Q. Do you know what cities are near Fort Riley, Kansas?

A. Yes.

Q. Could you tell what cities are near there.

A. Junction City is right outside of Fort Riley, and nearby also is Manhattan.

Q. How long were you stationed in Fort Riley?

A. For three years.

Michael Fortier - Direct

Q. Until when?

A. May of 1991.

Q. It was at that point you were discharged?

A. Yes.

Q. When you were transferred from Fort Benning to Fort Riley, was Mr. McVeigh transferred with you at that time?

A. Yes, he was.

Q. And were you in the same company at that time?

A. Yes.

Q. How many people are in a company?

A. Roughly 100.

Q. And how many people are in a squad?

A. I believe there are eight per squad.

Q. Was Mr. McVeigh in the same squad?

A. Yes.

Q. That you were in?

A. Yes.

Q. While you were in Fort Riley -- that is, up until May of '91 -- did you become friends with Mr. McVeigh at that time?

A. Yes, I did.

Q. While you were at Fort Riley, did Mr. McVeigh share any literature with you?

A. Yes.

Q. What?

A. He shared with me a book called The Turner Diaries.

Michael Fortier - Direct

Q. Did he tell you to do anything with the book?

A. Yes. He brought it to me and told me that I should read this.

Q. And did you?

A. Yes, I did.

Q. What was that book about?

A. It was about white supremacy and a revolution in America.

Q. Did Mr. McVeigh continue to be in the same platoon that you were in when you were in Fort Riley?

A. Yes.

Q. And who was your platoon leader in Fort Riley?

A. A gentleman named Sergeant Brown.

Q. And who was your platoon leader in Fort Benning when you were in basic training?

A. Terry Nichols.

Q. Was Mr. Nichols transferred from Fort Benning to Fort Riley when you were transferred?

A. Yes, sir.

Q. During the time that you were stationed with Mr. Nichols either in Fort Benning or Fort Riley, did you become friends with him?

A. No, sir.

Q. How would you characterize your relationship with Mr. Nichols when you were together in the service?

A. Acquaintances.

Michael Fortier - Direct

Q. Did you have an opportunity to observe Mr. McVeigh and Mr. Nichols when they were stationed together?

A. Only in basic training.

Q. How would you characterize their relationship at that time?

A. They were friends.

MR. TIGAR: Excuse me, your Honor. Lack of personal knowledge. Foundation.

THE COURT: Sustained. The answer as "friends" is stricken.

BY MR. MEARNES:

Q. If Mr. Nichols were in the courtroom -- that is, the Mr. Nichols you met in the service -- would you be able to identify him?

A. Yes, I would.

Q. Would you please do so.

A. He's the gentleman sitting in the middle wearing a turtleneck shirt.

MR. TIGAR: The identification is conceded, your Honor.

THE COURT: All right. Thank you.

BY MR. MEARNES:

Q. When were you discharged from the Army?

A. In May of 1991.

Q. What kind of a discharge did you receive?

A. I received an honorable discharge.

Michael Fortier - Direct

Q. What did you do after you were discharged?

A. I traveled back to Kingman.

Q. What did you do in Kingman?

A. That's when I started working and also going to school.
Q. Where were you working at that time?
A. At a place called H & H Printers.
Q. How long did you work at that printing company?
A. For about 6 months.
Q. What did you do in terms of employment after that?
A. I found employment with the Department of Energy.
Q. And when was that?
A. In the summer of 1992.
Q. How long did you work for the Department of Energy?
A. Two months.
Q. What did you --

MR. TIGAR: Your Honor, I'm having trouble hearing the ends of Mr. Fortier's sentences as he is speaking.

THE COURT: All right.

MR. TIGAR: I would appreciate it --

THE COURT: Would you please keep your voice up.

THE WITNESS: Yes, sir.

THE COURT: Thank you.

BY MR. MEARNS:

Q. Tell us again how long you worked for the Department of Energy.

Michael Fortier - Direct

A. I worked for them for two months.
Q. And what did you do after that?
A. Then I went back to school for a semester, and then I found employment at Kingman True Value.
Q. When was that? When did you start working at Kingman True Value?
A. At the beginning of 1993.
Q. And what kind of a business was Kingman True Value?
A. It's a hardware store, plus they have a lumberyard.
Q. During this period of time prior to when you started working at the hardware store, were you going to school as well?
A. Yes.
Q. And this is the Mohave Community College that you spoke about a few minutes ago?
A. Yes.
Q. How long did you continue to work at Kingman True Value?
A. Until December of 1994.
Q. And during that period of time, up until December of 1994, did you remain friends with Tim McVeigh?
A. Yes, I did.
Q. Up -- during that period of time, did he ever visit you in Kingman, Arizona?
A. Yes.
Q. When was the first time that Mr. McVeigh visited you in

Michael Fortier - Direct

Kingman, Arizona - When was the first time that Mr. McVeigh visited you in

Kingman, Arizona, after you were discharged from the Army?

A. First time that I can recall is in April of 1993.

Q. Do you recall the tragedy that occurred at the Branch Davidian complex in Waco, Texas?

A. Yes.

Q. When in relation to that incident did Mr. McVeigh visit you for the first time in Kingman?

A. It would be just a few days after that -- it ended.

Q. When Mr. McVeigh visited you, did he have any items with him that related to the incident at Waco?

A. He had a hat with him.

Q. Describe that hat.

A. It was a black hat. In yellow letters it said "ATF" across the front, and it also had holes in it that -- they were supposed to represent bullet holes.

Q. Were they suppose -- were they actual, real bullet holes?

A. I don't think so.

Q. During that visit when Mr. McVeigh was in Kingman, did you discuss the incident at Waco with him?

A. Yes.

Q. What was the substance of your discussions about Waco?

A. We mostly discussed if the Government acted legally or not in Waco.

Q. Did you have an opinion at that time?

A. Yes.

Michael Fortier - Direct

Q. What was your opinion at that time?

A. That at the very least they committed manslaughter and that they had started the fire themselves.

Q. Did Mr. McVeigh express an opinion to you?

A. Yes.

Q. What was Mr. McVeigh's opinion that he expressed to you?

A. He thought that they had murdered those people in Waco.

Q. In April of 1993, when Mr. McVeigh was in Kingman, where did he stay?

A. He stayed at my house.

Q. Was Mr. McVeigh working at that time?

A. Yes.

Q. What was he doing?

A. He told me he was running the gun show circuits.

Q. What does that mean?

A. It means he was following the gun shows from city to city selling items.

Q. How long in the spring of 1993 -- how long was Mr. McVeigh in Kingman, Arizona?

A. He was there on and off from April until about midsummer.

Q. Did you see Mr. McVeigh at all during the summer of 1993 in Kingman?

A. Yes.

Q. What kinds of places? Where did you see him in Kingman during the summer of 1993?

Michael Fortier - Direct

A. Mostly at my house, but I occasionally went to the trailer that he was renting.

Q. And where was that?

A. It's located on old Route 66. It's west of Kingman.

Q. How long did Mr. McVeigh remain in the Kingman area after the summer of '93?

A. Not long. He left in the fall of 1993.

Q. During this period of time, the spring, summer of 1993, did you see Mr. McVeigh with any other items that related to the incident at Waco, Texas?

A. Yes. He brought over to my house a videotape called "Waco, The Big Lie."

Q. Did you watch that videotape?

A. Yes.

Q. Did you watch it alone?

A. No. I watched it with Tim.

Q. What was the tape about?

A. It had live footage of the Waco incident, and it was mostly antigovernment. It was saying that the government started the fire on purpose.

Q. After viewing the tape with Mr. McVeigh, did you discuss the contents of the tape with him?

A. Yes.

Q. During 1993, did you ever see Mr. Nichols?

A. Yes.

Michael Fortier - Direct

Q. Where did you see Mr. Nichols in 1993?

A. In Kingman.

Q. And when was that?

A. It was in the fall of 1993.

Q. Where in Kingman did you see him?

A. Well, I met him at a Wal-Mart, and then we went to my house.

Q. How was it that you came to meet Mr. Nichols at a Wal-Mart?

A. I received a phone call from Tim McVeigh, and he told me that Terry was moving to Las Vegas and Tim had told Terry that if he wanted to, he could stop at my house as just for like a rest stop on his way to Vegas.

And so one afternoon, I received a call from Terry saying that -- telling me where he was at Wal-Mart and I drove to Wal-Mart and found him and then led him back to my house.

Q. What happened when you got back to your house?

A. He stayed at my house for about half hour to an hour. We just had conversation.

Q. Was Mr. Nichols alone?

A. No, he wasn't.

Q. Who was with him?

A. His wife was with him and their daughter.

Q. Do you recall his wife's name?

A. Yes.

Q. What is her name?

Michael Fortier - Direct

A. Her name is Marife.

Q. And how old was Mr. Nichols' child?

A. Just a baby. A little baby.

Q. Did you see what kind of vehicle that Mr. Nichols was driving that day?

A. Yes.

Q. What kind of vehicle was it?

A. It was a blue truck with a large camper.

Q. When you say a truck, what kind of vehicle are you referring to? Like a large truck?

A. Yeah. A full-size truck. I'm not sure if it was Ford or Chevy.

Q. Like a pickup truck?

A. Yes.

Q. Describe what -- you said it was pulling something else?

A. No. It wasn't pulling anything, but it had a camper on the back of it.

Q. What kind of a camper? Describe it.

A. It's one of those big campers that you can sleep in and live in; and they've got a sink in it, and it hangs over the top of the truck.

Q. Where were you living at that time?

A. I was living on McVicker.

Q. What was your address?

A. 3035 McVicker.

Michael Fortier - Direct

Q. And that's in Kingman, Arizona?

A. Yes.

Q. How long had you been living there?

A. Just under a year.

Q. Were you living with anyone at that time?

A. Yes.

Q. Who was that?

A. My wife and my daughter.

Q. And was Lori present when Mr. Nichols and his wife came to your house -- to your house on McVicker?

A. Yes, she was.

Q. And how long did they stay?

A. No more than an hour.

Q. Was that the first time that you had seen Mr. Nichols since you were discharged from the Army?

A. Yes.

Q. And how long was the visit?

A. It was for no more than an hour.

Q. What did you discuss during that visit?

A. Mostly Lori and Marife talked -- spoke about the babies. I did speak with Mr. Nichols. He told me he was moving to Las Vegas and he was going to try to find employment as a carpenter there. And we spoke about that for a bit.

Q. Turning now to 1994, did you see Mr. McVeigh in 1994?

A. Yes.

Michael Fortier - Direct

Q. When was the first time that you saw Mr. McVeigh in 1994?

A. It was very early in 1994. I believe it was right around February.

Q. And where was it?

A. It was in Kingman.

Q. Where were you working at that time in February of '94?

A. I was still working for Kingman True Value.

Q. When you saw Mr. McVeigh in Kingman in February of '94, where was he working?

A. I got him a job at Kingman True Value.

Q. Tell us how that came about.

A. Well, one day, I was working and I received a phone call from Tim. He told me he was on the Nichols farm in Michigan and he wasn't happy. And I told -- and I told him that if he wanted to come back to Arizona, I could probably get him a job working for True Value; and so he did.

Q. So you helped him get a job at the same hardware store?

A. Yes.

Q. What was your position at that time?

A. I was working as a bookkeeper.

Q. And what job did Mr. McVeigh get?

A. He was working as a laborer in the yard.

Q. Where did Mr. McVeigh live when he initially arrived in Kingman in February of '94?

A. For a very short time, he lived at my house.

Michael Fortier - Direct

Q. How long is that? You said a short time. How long are you talking about?

A. I don't believe it was more than a week.

Q. Where did he go after that?

A. He moved to a house out in Golden Valley.

Q. Where is Golden Valley in relation to Kingman?

A. Golden Valley is about 5 miles west of Kingman.

Q. In February of '94, was Mr. McVeigh then living alone in Golden Valley?

A. No.

Q. Who was he living with?

A. Tim told me that Mr. Nichols had lived with him for about two weeks.

Q. Did you ever go to this home in Golden Valley?

A. Yes.

Q. How many times?

A. Oh, many times.

Q. Did you ever go there for dinner?

A. Yes.

Q. Tell us what happened that night.

A. I don't remember much about it. It was when Tim first

A. I don't remember much about it. It was when Tim Hise moved into Golden Valley. I went over there for dinner and Terry Nichols was there. And we had dinner together.

Q. Was anyone else present besides Mr. McVeigh and Mr. Nichols?

Michael Fortier - Direct

A. No.

Q. Was Mr. Nichols' wife present?

A. No, she wasn't.

Q. Did you see Mr. Nichols' pickup truck when you went out there that night?

A. Yes, I did.

Q. Describe what the pickup truck looked like that night.

A. It looked the same minus the camper.

Q. Was there anything covering the bed of the pickup truck at that time?

A. Nothing at all.

Q. Did you have any conversation with Mr. Nichols that night?

A. Yes.

Q. What was the substance of your conversation?

A. The only thing I can remember talking about was nutrition. He was telling me about the type of bread he has to eat or likes to eat.

Q. How long were you out there that night?

A. I'm not sure.

Q. On the other times that you went to the home in Golden Valley, was Mr. Nichols present?

A. No. That's the only time I ever seen him out there.

Q. Was that the only other time you saw him during that period of time in 1994?

A. Yes.

Michael Fortier - Direct

Q. During this period of time, did you see Mr. McVeigh at the hardware store, the Kingman True Value Hardware store?

A. Yes.

Q. How often would you see Mr. McVeigh at the hardware store?

A. A few times a week.

Q. During this period of time, did you ever socialize with Mr. McVeigh?

A. Yes.

Q. How often did you socialize with Mr. McVeigh during this time?

THE COURT: I'm not clear what time you're speaking about.

BY MR. MEARNS:

Q. In early 1994, how frequently did you see Mr. McVeigh at the Kingman True Value?

A. A few times a week.

Q. And during early 1994, how much did you socialize with Mr. McVeigh?

A. About four times a month. I seen him -- I socialized with

him on the weekends.

Q. How long did Mr. McVeigh remain in the Kingman area?

A. He remained until early August of 1994.

Q. Were you there -- were you in Kingman the entire time from the spring through the summer of 1994?

A. No. I had -- I took a vacation or actually, it was a

Michael Fortier - Direct

honeymoon in the summer of 1994.

Q. When did you get married?

A. July 25.

Q. And how long was your honeymoon?

A. For a week.

Q. Was that the only week that you were outside of the Kingman area during the spring and summer of '94?

A. Yes.

Q. Where did you get married?

A. I got married in Las Vegas.

Q. Was Mr. McVeigh present at your wedding?

A. Yes, he was.

Q. During the summer of 1994, did you have any discussions with Mr. McVeigh about politics?

A. Yes.

Q. How frequently did you and Mr. McVeigh in the summer of 1994, spring and summer of 1994 -- how often did the two of you discuss politics?

A. All the time.

Q. Were these discussions brief?

A. Some of them were. Some of them were not.

Q. When they were not brief, how long were they?

A. That's very hard for me to estimate.

Q. During any of these discussions, did you talk about the United Nations?

Michael Fortier - Direct

A. Yes.

Q. How frequently did you and Mr. McVeigh discuss the United Nations?

A. That was mostly what we talked about. When you said political issues, that's what I was referring to myself.

Q. And what were the kind of topics -- were you talking or discussing in terms of the United Nations?

A. Their supposed plan to form a world government and subvert -- subvert the United States Constitution.

Q. Was there a term or a phrase that you and Mr. McVeigh used to describe that issue?

A. Just the New World Order.

Q. During the spring or summer of 1994, did you or Mr. McVeigh ever take any actions related to your concerns about the United Nations or the New World Order?

A. Yes.

Q. What did you do?

A. We snuck onto a National Guard armory base and was looking at the trucks that were in the backyard.
Q. Did you steal anything that night?
A. Yes.
Q. What did you take?
A. We each took a set of pioneer tools.
Q. What do you mean by pioneer tools?
A. Pioneer tools are an axe, a pick, and a shovel.

Michael Fortier - Direct

Q. And how many of those tools did you take?
A. Six all together.
Q. Two sets?
A. Yes.
Q. What happened with those six tools?
A. We brought them back to Tim's house and Tim kept them for a few days, and he painted them. They were green and we painted them sand.
Q. And then what happened with them?
A. And then I took mine home and they sat in my shed until after the bombing. And we turned them over to -- my wife turned them over, actually, to the authorities.
Q. That is, after your cooperation?
A. Yes, sir.
Q. During the spring and summer of 1994, did you subscribe to any political literature?
A. Yes.
Q. What kind of political literature did you subscribe to?
A. Newspapers and pamphlets, monthly pamphlets.
Q. Did you subscribe to the Patriot Report?
A. Yes.
Q. How is it that you came to subscribe to the Patriot Report?
A. Tim showed me his subscription, and I read it. And it was interesting to me, so I got a subscription.
Q. When -- when, approximately, did you get your subscription

Michael Fortier - Direct
to the Patriot Report?

A. I'm not sure exactly when I first started it. I believe it was the summer of '94.
Q. What is the political perspective or slant of the Patriot Report?
A. It deals with the New World Order.
Q. Have you ever heard of The Spotlight, another publication called The Spotlight?
A. Yes. I also received that one.
Q. You subscribed to that magazine?
A. It's -- yes. It's a newspaper.
Q. When did you get your subscription to The Spotlight?
A. Around that same time.
Q. How is it that you came to learn about The Spotlight?
A. Again, Tim showed me a copy of one.
Q. Does The Spotlight have any political perspective or slant?

Q. Does the Spotlight have any political perspective or slant?
A. Yes.
Q. What is it?
A. The New World Order, and they lean heavy towards the IRS.
Q. In the spring or summer of 1994, did you and Mr. McVeigh have any interest in forming any organization related to your political views?
A. Yes. We thought over forming a militia.
Q. Did you take any steps to do that?
A. Yes, we did.

Michael Fortier - Direct

Q. Did you actually follow through and form a militia?
A. No.
Q. Do you recall any plans that you had for July 4 of 1994?
A. Yes.
Q. What were your plans?
A. Tim and myself were going to pass out a leaflet at the 4th of July fireworks that was going to be held in Kingman.
Q. When you say "a leaflet," what are you referring to?
A. Just a single piece of paper full of quotes from our founding fathers and other information containing -- concerning Waco.
Q. And did you and Mr. McVeigh, in fact, distribute that leaflet on July 4 of 1994?
A. No, sir.
Q. What happened?
A. Tim was called -- was called back to Buffalo, something that had to do with his grandfather. And so he left, and I had no interest of doing that by myself.
Q. During the spring or summer of 1994, did you have any experience with explosives?
A. Yes.
Q. What happened?
A. One afternoon, Lori, my wife, myself, and Tim went into the desert; and Tim brought a pipe bomb with him and we set it off.
Q. During 1994, both the spring and summer of '94, did you

Michael Fortier - Direct

spend a lot of time with Mr. McVeigh?
A. Yes.
Q. Did you spend a lot of time talking with him?
A. Yes.
Q. Socializing with him?
A. Yes.
Q. Did he live with you during any time in 1994?
A. Yes. In July of 1994.
Q. During the spring and summer of '94, did you observe any change in Mr. McVeigh's demeanor?
A. Yes, I did.
Q. What did you observe?
A. He became defensive; and from things he said, I got the understanding that he was thinking that the New World Order may

...that he was thinking that the men would not try to target him personally.

Q. Did you see him do anything?

A. Yes.

Q. What did you -- what did you actually see?

A. He had set (sic) weapons in each corner of his house, loaded rifles; and in his backyard, he was collecting wood from True Value and stacking it in what he was calling a "bullet berm." And he told me in case the feds ever surrounded his house like they did at Waco, that berm was going to protect him.

Q. You told us a few minutes ago that you got married on

Michael Fortier - Direct

July 25; is that right?

A. Yes, I did.

Q. And you were away for how long?

A. Excuse me?

Q. You were away on your honeymoon for how long?

A. For one week.

Q. And then did you return to Kingman?

A. Yes.

Q. Where was Mr. McVeigh living when you and your wife were on your honeymoon?

A. I believe he was staying at my house.

Q. Was he there when you returned?

A. Yes.

Q. How long did Mr. McVeigh stay in your house after you and your wife returned from your honeymoon?

A. For a short time. I believe no more than a week.

Q. Do you recall your next contact of any sort from Mr. McVeigh after he left your house?

A. Yes.

Q. What was the contact?

A. I received a letter from Tim.

Q. When did you receive a letter?

A. It would have been -- it was probably in August or very early September.

Q. And what -- did you read the letter?

Michael Fortier - Direct

A. Yes, I did.

Q. And did you recognize Mr. McVeigh's handwriting?

A. Yes.

Q. What did the letter say?

MR. TIGAR: Excuse me, your Honor. Unless there is an

accounting for what happened to the document, we object to the recitation.

THE COURT: Yes. You'll have to lay a foundation for secondary evidence.

BY MR. MEARNS:

Q. Did you read the letter, Mr. Fortier?

A. Yes, I did.

Q. After you read the letter, what did you do with the piece of paper?

A. I threw it away.

Q. Where did you throw it away?

A. In my trash can.

Q. Have you ever seen the letter since you threw it away in your trash can?

A. No.

MR. MEARNS: With that, your Honor, may I ask the witness what the letter said?

THE COURT: You can ask, and we'll see if there is an objection.

MR. TIGAR: We object to the secondary evidence,

Michael Fortier - Direct

because the speaker has caused the letter to be destroyed.

THE COURT: Objection is overruled.

BY MR. MEARNS:

Q. Mr. Fortier, you read the letter?

A. Yes, I did.

Q. What did the letter say?

A. The letter said that -- Tim was asking me if I wanted to help him and Terry in taking some type of action.

Q. In the letter, did Mr. McVeigh describe what kind of action?

A. I believe it said they were going to take a positive offensive action.

Q. And did the letter identify Terry by a last name?

A. No, it did not.

Q. At that time, did you know anybody by the name of Terry?

A. No, not at that time.

Excuse me. That's not true. My boss at work -- his name was Terry.

Q. During -- at that period of time, did Mr. McVeigh speak with you about anybody by the name -- with the first name of Terry?

A. Yes, he had.

Q. Who was that?

A. He was referring to Terry Nichols.

Q. What else did the letter say?

Michael Fortier - Direct

MR. TIGAR: Your Honor, I object -- could we have a time --

THE COURT: Yes, we ought to have a time. And, you know, this is awfully vague.

BY MR. MEARNS:

Q. During 1994, did you have conversations with Mr. McVeigh about a man named Terry -- a man with a first name Terry?

A. Yes.

Q. Had you ever seen Mr. McVeigh with a man with a first name Terry in 1994?

A. Yes.

Q. How many different men with the first name Terry did you see with Mr. McVeigh in 1994?

A. Only one.

Q. And who was that?

A. That was Terry Nichols.

Q. What else did the letter say?

A. Tim told me if I wanted to be a part of this that I would have to keep it a secret from my wife.

Q. Did you do that?

A. No.

Q. What did you tell your wife?

A. Well, I showed her the letter, let her read the letter.

Q. Did you respond to the letter in any fashion?

A. Yes.

Michael Fortier - Direct

Q. How did you respond to the letter?

A. I wrote him a letter.

Q. What did you say -- what did you say in your letter?

A. I told him I was curious about what he was talking about but that I wouldn't keep it a secret from Lori.

Q. After you sent that letter to Mr. McVeigh, did you have any further contact with him in 1994?

A. Yes.

Q. When was the next time that you had contact with Mr. McVeigh in 1994?

A. Shortly thereafter.

Q. What -- where did you have contact with him?

A. In Kingman.

Q. How was that?

A. He just showed up at my house.

Q. What happened when Mr. McVeigh showed up at your house?

THE COURT: Well, we don't have a time for this.

BY MR. MEARNS:

Q. When you say "shortly thereafter," Mr. Fortier, what do you mean?

A. It would have taken (sic) place between August of '94 and October 31 of 1994.

Q. Can you estimate for us in terms of days or weeks how long after you received the letter from Mr. McVeigh that he came to Kingman?

Michael Fortier - Direct

A. My estimation would be about two weeks or less.

Q. What happened when Mr. McVeigh came by your house?

A. He just -- he dropped by and we spoke about what he meant in the letter.

Q. Where did you have that conversation?

A. In my front yard.

Q. Where in your front yard?

Q. where in your front yard.

A. On the side of the front yard leaning against my fence.

Q. Who initiated that conversation?

A. I don't recall.

Q. Tell us what Mr. McVeigh said.

A. He told me that what he meant in the letter by "taking action" was that they -- they were planning on bombing a building.

Q. Did he say who the "they" was?

A. No. He was using the word "we." He didn't say specifically.

Q. Did he say what type of building?

A. I don't recall.

Q. Did Mr. McVeigh ask you to participate in any way?

A. Yes. That's what he was doing.

Q. In substance, what did he ask you?

A. He -- he just asked me if I wanted to be a part of it.

Q. And what did you say in response?

A. I said no.

Michael Fortier - Direct

Q. Did you condition your "no" on anything?

A. Yes. I said I would never do anything like that unless there was a UN tank in my front yard.

Q. How long was this conversation with Mr. McVeigh in your front yard?

A. I could only estimate.

Q. Estimate for us.

A. 15 minutes or less.

Q. What happened after this conversation was over?

A. I don't recall.

Q. Was anyone else present with you and Mr. McVeigh during this conversation?

A. No.

Q. After this conversation with Mr. McVeigh, did you ever have occasion to look for a storage locker?

A. Yes.

Q. When?

A. Shortly thereafter.

Q. Could you give -- again, could you give us an estimate when in relation to the conversation in your front yard you had an occasion to look for a storage locker?

A. Within a couple weeks.

Q. How was it that you came to look for a storage locker?

A. I received a call from Tim McVeigh, and he asked me to do so.

Michael Fortier - Direct

Q. Do you recall what day of the week it was that you received the call?

A. Yes. It was a Saturday.

Q. Where were you when you received the call?

A. I was at home.

Q. Did Mr. McVeigh say where he was calling from?
A. Not specifically.
Q. Did Mr. McVeigh ask you to do anything else in terms of finding a storage locker?
A. He put conditions on getting a storage locker.
Q. What conditions did he say?
A. He wanted me to find one outside of the Kingman area. He wanted me to use a fake name, and he also wanted me to pay in cash.
Q. How long was this conversation with Mr. McVeigh?
A. It was a short conversation.
Q. During this conversation, did Mr. McVeigh tell you when you could expect to see him again?
A. Yes. He said he would be in Kingman in a couple days.
Q. After receiving this call, did you, in fact, go look for a storage locker?
A. Yes.
Q. When in relation to the call did you go to look for a storage locker?
A. The next day.

Michael Fortier - Direct

Q. So what day of the week was that?
A. That was a Sunday.
Q. Where did you go?
A. I went out to Golden Valley, and then I went on the other side of Kingman to a couple little cities. I believe their names are Hackberry and Valentine.
Q. Did you go alone that day?
A. No, I went with my wife.
Q. What did you find when you got to Golden Valley?
A. I found a storage unit; and when I went inside to rent one, the lady told me that they were full.
Q. And then you went to the other side of Kingman?
A. Yes.
Q. What did you find when you got to the other side of Kingman?
A. Nothing.
Q. What do you mean "nothing"?
A. There were no storage units in those cities.
Q. So were you able to locate a storage unit that day?
A. No.
Q. When in relation to the time that you went to look for the storage locker, that Sunday -- when, in fact, did you see Mr. McVeigh again?
A. A few days thereafter.
Q. Where did you see him?

Michael Fortier - Direct

A. I seen him at my house in Kingman.
Q. And what time of the day did you see him?
A. I believe it was right around sundown.

Q. And about what time would you place that, when you say sundown?

A. Between -- around 6.

Q. Was anyone with Mr. McVeigh at that time?

A. No.

Q. Did you have a conversation with Mr. McVeigh about the storage locker?

A. Yes.

Q. What did you say?

A. When he came into my house, I told him, "Sorry, I couldn't find you one."

And he said, "Don't worry about it. We already got one."

Q. Do you recall your next contact with Mr. McVeigh?

A. Yes.

Q. When -- when was your next contact with Mr. McVeigh?

A. It may have been that evening, but it also could have been the next evening or even the next after that.

Q. And how was it that you came to see or speak to Mr. McVeigh on that occasion?

A. He knocked on my door.

Q. And what happened?

Michael Fortier - Direct

A. He asked me to throw some shoes on and to come with him. He had something to show me.

Q. And did you do that?

A. Yes.

Q. Tell us what happened.

A. I threw some shoes on and a jacket, and I went outside. And then I noticed that Terry Nichols was with Tim.

He, Terry Nichols, had his truck there. And I got into Tim's car, and we followed Terry over to some storage sheds that were over near my house.

Q. Slow down just a minute. Did you see -- you said you got into Mr. McVeigh's car?

A. Yes.

Q. What kind of car was he driving that night?

A. A Chevy Spectrum.

Q. Was Mr. -- was Mr. Nichols riding with you and Mr. McVeigh in the Chevy Spectrum?

A. No.

Q. What kind of vehicle was he in?

A. He was in his truck.

Q. Was the bed of the pickup truck open at that time?

A. No, sir.

Q. What was covering the bed of the pickup truck?

A. A shell camper.

Q. Describe the shell camper.

Michael Fortier - Direct

A. It's the type of camper that is just a shell that is flush with the top of the cab of the truck.

with the top of the cab of the truck.

Q. What color was it?

A. I believe it was white.

Q. And did that shell camper have any windows in it?

A. I believe it did.

Q. Where did you go that night?

A. To some storage units that are near my house.

Q. And you got there in Mr. McVeigh -- in Mr. McVeigh's car?

A. Yes, sir, I did.

Q. Tell us about driving out there.

A. We just followed Terry to the storage units.

Q. That is, Mr. McVeigh's truck -- excuse me -- Mr. Nichols' truck was ahead of the car that you went riding with Mr. McVeigh?

A. Yes.

Q. Where was the storage facility in relation to your house?

A. 2 or 3 miles away.

Q. What happened when you got there?

A. Well, Tim and I pulled in and parked behind Terry; and we got out, and we got into one of the storage units. And Tim showed me some explosives.

Q. When you say you got into a storage unit, what do you mean?

A. Well, I'll not sure who actually opened the locks. It was either Tim or Terry. I'm not sure. But they just got the

Michael Fortier - Direct

locks off the door, slid the door open; and Tim went inside and pulled out a box from underneath a blanket and showed me some explosives.

Q. What did you actually see?

A. I seen the yellow diamond that's on the side of the box.

Q. How large was the box?

A. 18 inches by 4 inches high -- no -- It would be probably 8 inches high by maybe 12 inches deep.

Q. Where was Mr. McVeigh when he was showing you this box?

A. He was towards the back of the storage unit, and he was kneeling down.

Q. How -- was there a light inside the storage unit?

A. Yes. He had a flashlight with him. When he set the flashlight down, it shone -- it was shining right on that diamond.

Q. Where were you standing when you were looking at the box?

A. I was outside the unit and to the side of the door, and I was peeking into the door.

Q. And where was Mr. Nichols when you were looking at the -- when you were looking at the box?

A. He was moving from inside the storage unit and to his truck and back and forth. He was loading stuff into his truck.

Q. Was Mr. Nichols ever inside the storage unit when you were looking at the yellow diamond on the box?

A. Yes.

Michael Fortier - Direct

Q. How large was the inside of the storage unit?

A. I believe it's 5 or 6 feet by about 10 feet.

Q. What else was Mr. Nichols doing while you were looking at this box?

A. That's all I remember him doing, was loading stuff from the storage unit into his truck. One thing in particular was I had to get out of the way because he had a spare tire in his hand.

Q. Did you see anything else inside the storage unit that evening?

A. Yes. There was like a lot of junk lining the walls.

Q. Did you see any other boxes besides the one that Mr. McVeigh showed you?

A. There appeared to be some underneath a blanket.

Q. What do you mean "there appeared to be"?

A. Well, when Tim went into there, he lifted a blanket in there and reached underneath the blanket and pulled a box down; and it appeared to come off a stack of other boxes.

Q. Did Mr. McVeigh show you anything else inside the storage unit that night?

A. No, sir.

THE COURT: I think we'll recess at this point.

You may step down now, Mr. Fortier.

THE WITNESS: Yes, sir.

THE COURT: We'll continue with your testimony tomorrow.

Members of the jury, as is our customary practice, it being now the usual 5:00 quitting time, so to speak, for the day, we will honor that and recess now until 8:45 tomorrow morning.

And, of course, you must follow the caution during this recess and all recesses of withholding judgment in your own minds, keeping your mind open, remembering that we have a ways to go and you will hear a lot more and also avoiding anything in any newspapers, magazines, radio, television, or whatever that could relate to the trial or the issues on trial and affect your decision in the case, knowing as you all do that you must decide according to the law and the evidence presented to you in the course of the trial.

Also, I've been told that the sun has been shining all afternoon; so apparently your trip home will be a little easier than your trip here today. So I know you don't get to see out, so I want to give you these updates on the weather out there.

So with that, members of the jury, you're excused now till 8:45 tomorrow morning.

(Jury out at 5:01 p.m.)

THE COURT: May I have counsel, please.

(At the bench:)

(Bench Conference 72B3 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

(In open court:)

THE COURT: All right. We'll recess. 8:45.

(Recess at 5:06 p.m.)

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INDEX

Item

WITNESSES

Frederick Dexter

Direct Examination Continued by Mr. Mackey 8144

Voir Dire Examination by Mr. Tigar

Direct Examination Continued by Mr. Mackey 8146

Cross-examination by Mr. Tigar

Cross-examination Continued by Mr. Tigar 8206

Redirect Examination by Mr. Mackey

Recross-examination by Mr. Tigar

Michael Fortier

Direct Examination by Mr. Mearns

PLAINTIFF'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
193	8237	8237			
202	8222	8222			
243	8222	8222			
527	8142	8142			
529	8142	8142			
530	8142	8142			

PLAINTIFF'S EXHIBITS (continued)

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
531	8142	8143			
532	8143	8143			
533	8143	8143			
567	8146	8146			
570-571	8146	8146			
574	8140	8141			
575	8140	8141			
578-579	8140	8141			
581	8143	8143			
1718	8140	8141			
1720	8140	8141			
1724	8140	8141			
1725-1726	8140	8141			
1888	8144	8145			
1955A-E	8156	8156			
1955J-M	8156	8156			
1955-O	8156	8156			
1994	8140	8141			
2044	8168	8168			
2067-2068	8163	8163			
2081-2084	8146	8146			

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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 12th day of November, 1997.

 Paul Zuckerman

 Paul Zuckerman

Bonnie Carpenter

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