

Q. Mr. Fortier, over the break, we queued up a very short video segment just to show a picture of you back in the April, May, 1995 period.

Michael Fortier - Cross

MR. TIGAR: Your Honor, this has been shown to the Government. We'd like to show it now.

(Defendant's Exhibit D566 played.)

BY MR. TIGAR:

Q. That was it, Mr. Fortier.

A. Yes, it was.

Q. Now, sir --

THE COURT: Excuse me, Mr. Tigar. Was that marked some way for the record?

MR. TIGAR: D566, your Honor.

THE COURT: Thank you.

BY MR. TIGAR:

Q. Mr. Fortier, you have had an opportunity, have you not, to review the tape recordings that were made of the microphones that were placed in your home and the tap on your phone?

A. Yes, I have.

Q. And would you agree with me, sir, that beginning on the 25th of April, you began to talk about the possibilities that might exist to you to sell your story to the media?

A. Yes.

Q. I'd like to play A8, April the 25th.

(Defendant's Exhibit A8 played.)

BY MR. TIGAR:

Q. Is that you?

A. Yes, sir.

Michael Fortier - Cross

(Defendant's Exhibit A8 played.)

BY MR. TIGAR:

Q. That's you and your brother talking?

A. Yes, it is.

Q. "And I could tell stories all day," that's you; correct?

A. Yes.

Q. You also had a conversation with -- about CNN; correct? With your brother John? Remember that on April the 25th?

MR. TIGAR: Could we have A9, please.

(Defendant's Exhibit A9 played.)

BY MR. TIGAR:

Q. And that was you talking about the possibility of being on CNN; correct?

A. Yes, sir.

Q. That was April the 25th?

A. I believe it was.

Q. And you were still talking to the FBI, but you hadn't decided to tell them what you knew about Mr. McVeigh; correct? The FBI.

A. I don't believe I was on speaking terms with the FBI at that point.

Q. And did you become angry that CNN, you thought, had agreed to pay you some money and then backed out?

A. No, sir.

Q. Did you ever see "You Know What CNN Does" when you were

Q. Did you ever say "you know what, CNN sucks. They owe me

Michael Fortier - Cross

some money"?

A. Yes.

MR. TIGAR: Could we have A13, please.

(Defendant's Exhibit A13 played.)

BY MR. TIGAR:

Q. That was you?

A. Yes.

Q. On April the 28th?

A. I believe it was on that date, but there was no agreement between me and CNN to exchange money whatsoever.

Q. You just thought they -- well, why did you think they owed you money, sir?

A. They had taken the clips from my interview with them and -- what I thought they did was pass it out to other -- like ABC, NBC and CBS; and that's what I was upset about. I felt they owed me money for distributing my image.

Q. You thought your story was worth something, didn't you, sir?

A. I imagine it was to the -- the media.

MR. TIGAR: Could we have B1, please.

(Defendant's Exhibit B1 played.)

BY MR. TIGAR:

Q. That's you saying, "I was thinking one cool one"; is that right?

A. Yes, sir. That's me.

Michael Fortier - Cross

Q. And that meant you were thinking of a million?

A. Yes. That's what I was referring to.

Q. And then did you also think about after the trial, doing book and movie rights?

A. That is something that was discussed.

MR. TIGAR: May we have B2, please, April 30, 1995.

(Defendant's Exhibit B2 played.)

BY MR. TIGAR:

Q. Talking about something that's worth The Enquirer? Is that what we heard?

A. I believe that's what I said.

Q. Now, did there come a time, sir, when your mother started to make comments to the media?

A. I believe she did.

Q. And were you angry at her for making comments to the media?

A. Yes, I was.

Q. And did you not want her talking to the media?

A. That is correct.

Q. And when you heard a tape recording of her doing that, did you react in a certain way?

A. Yes.

MR. TIGAR: May we have B7, please.

(Defendant's Exhibit B7 played.)

(Defendant's Exhibit B7 played.)

MR. MEARNS: Your Honor, we would object to this for the reasons stated.

Michael Fortier - Cross

THE COURT: Overruled. Go ahead and play it.

(Defendant's Exhibit B7 played.)

BY MR. TIGAR:

Q. That's you, sir?

A. Yes, sir.

Q. Now, you also talked in May with your friend Lonnie Hubbard about the possibility of a made-for-TV movie; is that correct?

A. That is possible. I don't recall that.

MR. TIGAR: Could we have C2, please.

(Defendant's Exhibit C2 played.)

BY MR. TIGAR:

Q. What you were -- that was you saying, "The bigger the price is going to be later"; right?

A. Yes.

Q. You were being silent that time; correct? That is, you weren't -- you weren't talking to the media at that time?

A. That is correct.

Q. Now, at the time that all this was going on, had someone named Kato become a celebrity?

A. Yes.

Q. And did you think of yourself kind of like that person Kato?

A. No, I did not.

MR. TIGAR: Would you play C3, please.

(Defendant's Exhibit C3 played.)

Michael Fortier - Cross

BY MR. TIGAR:

Q. Is that you saying, "A real Kato, huh"?

A. Yes.

Q. And now, sir, do you remember a long conversation you had with Mr. Lonnie Hubbard about how you would behave if you ever became a witness in court?

A. Yes, I do.

Q. And that was about the 8th of May, 1995?

A. Or thereabouts.

MR. TIGAR: May we have C4, please.

(Defendant's Exhibit C4 played.)

BY MR. TIGAR:

Q. Now, sir, during this period of time, you and the FBI, you said, were not getting along very well. Is that fair to say?

A. That's correct.

Q. And there were times when the tapes captured your reactions to what the FBI was asking you and how you were feeling about it; correct?

A. That is correct.

MR. TIGAR: May we have A2 from April 25, 1995, please.

(Defendant's Exhibit A2 played.)

BY MR. TIGAR:

Q. That was you and -- who was the other speaker there? Your brother John?

Michael Fortier - Cross

A. Yes.

Q. And on April 25, did you also talk with your brother John about news reports of sketches of John Doe No. 2?

A. I believe I did.

Q. Now, who did you understand John Doe No. 2 to be, sir?

A. I did not know who he was.

Q. But what did you understand that John Doe No. 2 talk to be about? Something to do with this case?

A. Yes.

MR. TIGAR: May we have A3, please.

(Defendant's Exhibit A3 played.)

BY MR. TIGAR:

Q. Is that you talking about one needing to talk about an alibi?

A. Yes, sir. That was me.

Q. Now, also on April the 25th, did you talk about having bigger and better things to worry about? Do you remember that?

A. I believe I used those words.

MR. TIGAR: Could we have A5, please.

(Defendant's Exhibit A5 played.)

BY MR. TIGAR:

Q. Now, the thing that was terrible that happened was the bombing; correct?

A. Yes, sir.

Q. The bombing that you had seen that morning when you and Jim

Michael Fortier - Cross

Rosencrans turned off the video game?

A. That is correct.

Q. What bigger and better things did you have to worry about right then, sir?

A. The media and the FBI being more or less in my face at that time. That's what was concerning me and filling all of my days.

Q. And feeling what?

A. And filling my days at that time.

Q. Now, when you say "filling" your days, you weren't going down to the FBI to tell them everything you knew, were you?

A. No, sir, but they were sitting right out front.

Q. Now, in addition to sitting right out front, the FBI had some talk with you about that John Doe No. 2 sketch, didn't they?

A. I believe they did.

Q. April 25, 1995.

MR. TIGAR: Could we have A6, please.

(Defendant's Exhibit A6 played.)

BY MR. TIGAR:

Q. Now, did someone imply that they were going to change the sketch to make it look more like you?

A. I don't recall what they said to make me say that.

Q. Now, you do recall that you got very angry at the FBI; right?

Michael Fortier - Cross

A. Yes.

MR. TIGAR: Okay. May we have A7, please.

(Defendant's Exhibit A7 played.)

BY MR. TIGAR:

Q. Now, the "standing up and yelling in each other's face," that's you and the FBI; correct?

A. Yes.

Q. Now, the Arizona Republic, you were following the media reports at this time; correct?

A. Yes.

Q. You had took the Arizona Republic, which is the major newspaper in Arizona; right?

A. I had received one copy of the Arizona Republic from my neighbor.

Q. All right. And was that a copy that had a great deal of information about the bombing and the investigation?

A. Yes. It was all about the bombing.

Q. In addition to the Arizona Republic copy that you had, did you watch television regularly?

A. Yes.

Q. And did you listen to the radio regularly?

A. No.

Q. How many hours a day would you say that you watched television programs of a news character during this period beginning about the 21st of April and on until the 15th of May?

Michael Fortier - Cross

A. Half an hour at the 6:00 news and half an hour at the 10:00 news.

Q. And is it fair to say that on every major news program, there was some information about the ongoing information?

A. That is fair.

Q. Now, did you talk to your friend Lonnie Hubbard about his being down there, talking to the FBI?

A. We may have.

MR. TIGAR: And -- could we play A15, please.

(Defendant's Exhibit A15 played.)

BY MR. TIGAR:

Q. Now, when you said, "I was too, until the last day," that was in answer to Mr. Hubbard saying, "I was calm, I was really loaded"; right?

Well, which were you in talking to the FBI, calm or loaded?

A. On the last day on the 24th?

O Yes sir

Q. Yes, sir.

A. I was loaded. On the other days, I was just calm.

Q. All right. Well, you were calm except when you were in each other's faces; correct?

A. That only happened on the last day.

Q. Okay. And that last day when you -- by "loaded," you mean that you had been taking some substance into yourself?

A. The previous night, I was smoking crystal meth.

Michael Fortier - Cross

Q. And had you been up all night the previous night smoking crystal meth?

A. Yes.

Q. How many nights in 1993 and '94 and '95 were you up all night under the influence of methamphetamine?

A. Many.

Q. How many? More than you can remember?

A. It's difficult to recall every time. I'd have to do some math right now for you.

Q. Some math?

A. Yes.

Q. Okay. Did you -- what's your dad's name?

A. His name is Paul.

Q. Did you talk to him about what was going on? About the questioning?

A. I spoke with my father, yes.

Q. Did you talk to him about lying?

A. No, I did not tell him I was lying.

Q. No. No. Did you talk to him about whether or not a person should lie?

A. I don't recall.

MR. TIGAR: May we have A18, please.

(Defendant's Exhibit A18 played.)

BY MR. TIGAR:

Q. Was that your dad talking to you?

Michael Fortier - Cross

A. Yes, sir. That was him.

Q. And you said, "I haven't been lying to them"?

A. That's what I said.

Q. Now, in questioning you, did the FBI call you names? Did they call you "baby killer"?

A. Yes, they did.

Q. Did that make you angry?

A. Yes, it did.

MR. TIGAR: May we have A19, please.

(Defendant's Exhibit 19 played.)

BY MR. TIGAR:

Q. Now, did there come a time in May when you began to talk about a worry that you might be indicted?

A. Yes. I became worried in -- in May about that.

Q. And did you and your wife, Lori, talk about this possibility that you might be indicted?

- - -
A. Yes.

Q. And --

MR. TIGAR: May we have B13, please.

(Defendant's Exhibit B13 played.)

BY MR. TIGAR:

Q. Now, that's your wife, Lori, talking about the grand jury process; right?

A. Yes.

Q. And she says, "Well, correspond it all"; correct?

Michael Fortier - Cross

A. That is what she said.

Q. Uh-huh. And the tape becomes unintelligible after that. Did you discuss with her later how you would correspond it all?

A. That's what we were discussing. I was worried because I was lying so much to everybody; and once I got in front of a grand jury, I did not think I would be able to get away with all those lies. And that -- and she was encouraging me to continue to lie by corresponding it all.

Q. She was doing what?

A. She was encouraging me to lie still.

Q. Oh, by getting your stories together? Is that what "correspond it all" meant to you?

A. Not together. But just get my own story straight.

Q. Now, in addition to the questions about the media and the others, there were some conversations that were captured about narcotics; correct?

A. Yes, sir.

MR. TIGAR: Could we have A14, please.

(Defendant's Exhibit A14 played.)

BY MR. TIGAR:

Q. Now, "Lori wants me to load the pipe again," what kind of a pipe is that that you're using?

A. It was a tinfoil pipe.

Q. That's what you described before where you put heat under it and then ingest the -- what do you -- get the smoke from it

Michael Fortier - Cross

or something --

A. Yes.

Q. -- like that? Okay. Now, have you been charged with any offenses related to the use of narcotics?

A. No, sir, I have not.

Q. Have you been promised that you will not be charged with any offenses related to the use of narcotics prior to the date of your plea agreement?

A. Yes.

Q. Okay. In other words, you do not expect to be prosecuted for any narcotics use; correct?

A. I believe it says in my plea agreement that any crimes that I have divulged at that time I would not be prosecuted for

besides the four felonies.

Q. Now, you told us earlier about Mr. McVeigh and his attitude towards the children that you were going to baby-sit. Do you recall that, sir?

A. Yes, I do.

Q. And isn't it a fact, sir, that your daughter, Kayla, was getting on his nerves because he didn't like to be around a two-year-old?

A. I believe that's fair to say.

MR. TIGAR: Could we have A20, please.

(Defendant's Exhibit A20 played.)

BY MR. TIGAR:

Michael Fortier - Cross

Q. Now, do you know a person named Steve Colbern?

A. No, sir, I do not. I know of him.

Q. And did the FBI ask you about him?

A. I believe they only showed me a picture of him and asked me if I knew him.

Q. And that's the only way -- that's the only knowledge you have of him; is that right?

A. No, sir.

Q. Oh. What other personal knowledge do you have of him?

A. He is a person that Tim McVeigh was being introduced to by a guy named Bob in Arkansas.

Q. By a guy named Bob what?

A. Bob in Arkansas.

Q. Oh, Bob in Arkansas. That's this Bob?

A. Yes.

Q. And did Mr. McVeigh tell you that Bob in Arkansas had introduced him to Mr. Steve Colbern?

A. No. He -- Bob in Arkansas was trying to get them together to introduce them to each other.

Q. And that's what Mr. McVeigh told you?

A. Yes.

Q. Now, Mr. McVeigh gave you a -- a letter once to mail to Bob, didn't he?

A. Yes, he did.

Q. Did he give you a letter to mail to Bob more than once?

Michael Fortier - Cross

A. No. Just only once.

Q. Do you know what other names Bob has other than Bob?

A. I believe his name is Roger Moore.

Q. And did you learn that before May the 17th, 1995, or after?

A. After.

Q. After.

A. I believe it was after. It was definitely after the bombing.

Q. Now, sir, there came a time when you got a grand jury subpoena; correct?

A. Yes.

Q. You and your wife, Teri, went to Oklahoma City?

Q. You and your wife, Lori, went to Oklahoma City?
A. Yes.
Q. Did you -- you stayed in a motel?
A. Yes.
Q. Shared a room at a motel, of course?
A. Yes.
Q. And on (sic) 4:30 p.m. on the 17th of May, 1995, did you call the FBI?
A. I called a number that was on the subpoena. I don't know if it was the FBI or not.
Q. And did you later that day speak to some FBI agents?
A. Yes.
Q. Were they Agents Volz and Zimms?
A. Yes, they were.

Michael Fortier - Cross

Q. Now, they got there at about 5:35 p.m.; correct?
A. That sounds right.
Q. And you told them you wanted to correct the statements that you had made to the FBI in Kingman, Arizona; is that right?
A. Yes. I said that to them.
Q. And Mrs. -- your wife, Lori, what -- how does she like to be referred to? Mrs. Fortier, Ms. Fortier? What --
A. Mrs.
Q. Mrs. Okay. Mrs. Fortier said that she wanted to correct her statements, as well; correct?
A. Yes. That was her intentions, also.
Q. Now, you showed them a rough-draft proffer; correct?
A. I don't remember doing so.
Q. Now, you also said that you were fearful of reprisals from the Aryan movement if you testified against Timothy McVeigh; correct?
A. That is correct.
Q. Now, the -- you also said that you did not want Mrs. Fortier to appear before a federal grand jury; correct?
A. I don't remember saying that.
Q. Now, you were asked if you wanted to correct your prior statements; correct? The FBI asked you that?
A. No, sir, they did not.
Q. Do you remember a time when the agents left the room?
A. Yes, I do. May I refer back to the last question?

Michael Fortier - Cross

Q. Of course.
A. The purpose for the agents coming to my motel room was I was wanting to correct my statements. So there came a time when the FBI agents left the room; and when they came back, they asked me if I still wanted to correct my statements.
Q. Well, isn't it the way it happened, sir, that the agents got there, you told them you wanted to correct your statement, you talked about reprisals and that you didn't want Mrs. Fortier to go before the grand jury and then they asked you do you still want to correct your statement?

A. Yes, sir.

Q. All right. And then the next thing that happened, sir, isn't it, is that you and Mrs. Fortier started to talk amongst yourself about just exactly what you were going to do?

A. Yes.

Q. And then the next thing that happened, sir, was that the two FBI (sic) just left the room? Isn't that what happened?

A. Yes.

Q. And while the FBI agents were out of the room, you and Mrs. Fortier talked; correct?

A. Yes, sir.

Q. It was agreed that they would go away for an hour; is that right?

A. I believe it was, yes.

Q. Now, when the agents came back in, you turned to

Michael Fortier - Cross

Mrs. Fortier and said, "Correct your statement," or words to that effect; right?

A. That's what the 302's reflect. I don't remember saying that to her.

Q. You have read the FBI report; is that right?

A. Yes, I have.

Q. Okay. You don't remember it that way; is that right?

A. That's right.

Q. And then did she turn to you and say, "No, you correct yours"?

A. That's what the 302's say.

Q. Is that what you remember?

A. No, sir.

Q. Did the FBI agents then leave the room again for a few minutes?

A. Yes.

Q. You do remember that?

A. I do remember that.

Q. Then you stepped out of the room; correct?

A. Yes.

Q. Where did you go?

A. I went to speak with Special Agents (sic) Volz.

Q. Physically where was that?

A. Outside the room on the balcony.

Q. This is a balcony on the second floor?

Michael Fortier - Cross

A. Yes, sir.

Q. Where is the motel? What motel is it?

A. I don't know which motel it is.

Q. It's a motel in Oklahoma City?

A. Yes.

Q. All right. Does the Motel 6 refresh your recollection?

A. I -- I'm not sure which motel it was.

Q. And you told the agents in effect, "I want immunity, and

I'll give you Tim McVeigh"? Isn't that what you said?

A. In effect, that is what I said.

Q. And they told you that they didn't have the power to give you immunity, didn't they?

A. I don't remember them saying that.

Q. Did they tell you that they were going to give you immunity?

A. No, sir, they did not.

Q. Did they tell you that they weren't?

A. I don't remember them saying they weren't.

Q. Isn't it a fact, sir, that they told you that you would not and could not be granted immunity by the interviewing agents and that only prosecutors involved could do that?

A. I don't remember them saying that.

Q. Didn't they tell you, sir, that they didn't need you to make a case against Mr. McVeigh?

A. Yes, I do remember Special Agents (sic) Volz saying that.

Michael Fortier - Cross

Q. And after they told you that, you went back in the room; right?

A. Yes.

Q. And you and Mrs. Fortier began to talk; correct?

A. Yes.

Q. You've read the report of that interview, haven't you, sir?

A. Yes, I have.

Q. How long an interview was that?

A. I believe it lasted for about a half hour.

Q. And in that interview, you told the agents that you knew Terry Nichols; correct?

A. I believe so.

Q. And Mrs. Fortier told the agents that Mr. McVeigh and Terry Nichols had been to their house -- had been to you alls' house together in Mr. Nichols' pickup truck; correct?

A. I don't really remember what my wife said to them.

Q. And you told them that -- find it here -- Mr. Nichols had called you once and said that he had gotten your telephone number from Mr. McVeigh. Do you remember that?

A. I may have said that to them.

Q. And Mr. Mc --

MR. TIGAR: May I approach, your Honor?

THE COURT: Yes.

MR. TIGAR: 3498.

MR. MEARNS: What page?

Michael Fortier - Cross

MR. TIGAR: 7.

MR. MEARNS: Thank you.

BY MR. TIGAR:

Q. Show you now, what I -- well, would you look at it first, sir, and see is that the FBI 302 of report of interview of the conversation about which we've been speaking on the 17th of

1005 1005 1005 1005 1005 1005 1005 1005 1005 1005

May, 1995, in Oklahoma City at the Motel 6?

A. Yes.

Q. Now, would you look at page 7, sir, the bottom. See the bottom paragraph there?

A. Yes, sir.

Q. Does that refresh your recollection that you told the agents about the visit that the Nichols had had at their -- your house with Mrs. Nichols and the baby Nicole?

A. Yes, I do not dispute that. I just do not remember telling the FBI that.

Q. I understand. I'm just -- I'm showing it to you to refresh your recollection. Right?

A. Yes. I see it, and I agree with it.

Q. Okay. And now, would you look, please, sir, at the top here of page 8. And does that refresh your recollection that Mrs. Fortier told the agents about the -- Mr. McVeigh and Mr. Nichols arriving together in the truck?

A. Still, I don't -- I don't remember her saying that, but I don't dispute it.

Michael Fortier - Cross

Q. Okay. You wanted to come clean, didn't you?

A. That was my intentions.

Q. And you didn't tell the FBI anything about Terry Nichols there while you were coming clean other than the fact that he came to your house one time with his baby daughter and his wife; isn't that right?

A. That is right. I was -- I did not come clean in that interview. I lied to the FBI throughout that interview.

Q. Oh, you lied more throughout this?

A. Yes.

Q. You didn't lie about Mr. Nichols coming to your house with his baby and his wife, did you, because he did come?

A. Yes. That is true.

Q. And Mrs. Fortier, if she told them that they came one time in Mr. Nichols' truck, she didn't lie about that, did she?

A. I don't think so.

Q. And those are the only things you told them. In addition to that -- well, the agent -- didn't the agent also tell you after he said that he didn't need you to make the case against McVeigh; that you'd have to give them somebody else?

A. I do not remember him saying that.

Q. Now, you also told the agents that you had an opinion about who Unknown Subject No. 2 was; correct?

A. I told him who it could -- possibly could be.

Q. And who did you understand Unknown Subject 2 to be?

Michael Fortier - Cross

A. It could have been one of many people.

Q. But what -- what was the context? Why -- who -- this Un. Sub. 2, that was the kind of a -- a law enforcement name for somebody that helped with the bombing?

A. Yes. John Doe 2

A. Yes. Again Doc 2.

Q. Yeah.

A. The agents would ask me who -- who do you think it is, or do you think it could be this person, and I would say yes or no.

Q. Yeah. And you told them that it could be Bob from Arkansas, didn't you?

A. Sure, it could have been. I've never seen Bob. It was just a guess.

Q. Now, you were interviewed again by the agents on the 30th of May, 1995, weren't you, sir?

A. I believe so.

Q. By Agents Zimms and Volz?

A. Yes.

Q. All right. And did you tell them at that time that you and Mr. McVeigh had attempted to alter a number on a plastic stock of a .50 caliber rifle?

A. No, sir, I believe that's a mistake by the agent.

Q. All right.

A. I did that myself. Tim did not help me with that.

Q. Oh, you did that yourself?

Michael Fortier - Cross

A. Yes, sir.

Q. Why did you want to change a number on the stock?

A. It was on the .50 cal because I was planning on keeping the .50 cal and I knew it was stolen, so I didn't want the stolen number on there.

Q. You -- you thought it was stolen; right? You didn't know it was stolen?

A. That was my belief.

Q. Right. And your belief again is based on nothing other than what Timothy McVeigh told you; correct?

A. That is correct.

Q. Now, there came a time, sir, when you took a trip to Kansas with the agents. Do you remember that?

A. Yes, sir, I do.

Q. And you drove around Kansas and had a lot of discussion with the agents about what you were seeing and about other subjects; correct?

A. Yes.

Q. Now, that was a time you told the agents about Mr. McVeigh asking you to get a number in Bullhead City, Arizona; correct?

A. I talked to them about that on that -- at that time.

Q. Yes. He wanted you to get the phone number of a white supremacist group. Do you remember that?

A. Yes.

Q. And in addition to that, you said that you were not aware

Michael Fortier - Cross

of anyone McVeigh could reach out to help him other -- for help except for Rosencrans; correct? Do you remember saying that?

A. Not -- not exactly.

BY MR. TIGAR:

Q. I show you now what is a report of investigation dated 6-23-95. Ask you to look at page 4, the bottom paragraph, and ask you if that refreshes your recollection, sir.

A. Yes.

Q. Okay. Now, in fact, you did have a conversation with Mr. McVeigh in which you told him that -- excuse me. You -- it was your opinion that Rosencrans was somebody that McVeigh could reach out to; correct?

A. Is it my opinion that Rosencrans is somebody McVeigh could reach out to?

Q. Yes, sir.

A. Sure.

Q. You had a conversation with him about Rosencrans doing some driving; correct?

A. Tim told me that he had asked Rosencrans to give him a ride.

Q. And Rosencrans was the dope dealer next door; correct?

A. Yes.

Q. The man that you used to help stash some of the things to keep out of the way of the search; correct?

Michael Fortier - Cross

A. Yes.

Q. Now, was the conversation about driving -- was that before or after McVeigh told you that he wanted you to be a desperado?

A. I believe it was after.

Q. So the first thing that happens is McVeigh says, insulting, that you're domesticated; correct?

A. Yes.

Q. And then -- and he tells you he wants you to be a desperado, but you refused; right?

A. Yes.

Q. And you refused because you had a baby and another on the way; correct?

A. Absolutely.

Q. You refused because you were a married fellow, hoped to put your life together and -- and live within the law; correct?

A. That's correct.

Q. And he was asking you to do things but you refused; right?

A. Yes.

Q. Well, he had gypped you out of some money in December -- right -- in the trip?

A. He did.

Q. And then you went to gun shows later on with him; right? Why did you continue to go to gun shows with him if -- if he'd already gypped you once?

A. He didn't actually gyp me at one time. When I found out

Michael Fortier - Cross

that he had gypped me would be after all the gun shows were

finished and I found out that all those weapons did not equal \$10,000.

Q. I see. So -- but you -- you were doing business with him, but he already told you that he had -- that he had these views that you disagreed with; right?

A. Yes.

Q. He'd already told you he was going to do something that you knew was against the law; right?

A. Yes.

Q. But he's -- he still knew how to work a gun show, didn't he?

A. Yes.

Q. He knew how to go to a gun show and register and make money; right?

A. Yes, he did.

Q. And then when you found out -- you found out at some point that he was a really very bad actor; right? That you didn't want to have anything more to do with him?

A. Well, he became aggressive towards me. That's why I didn't want anything to do with him.

Q. So you quit having something to do with him; right?

A. Yes, I did.

Q. Now, in that same trip that you took, you said that you knew about a note on a telephone pole from (sic) Steve Colbern

Michael Fortier - Cross

from the media; right?

A. Yes.

Q. You said you knew about Dave Paulsen, Ed Paulsen, and Kevin Nicholas from watching TV; correct?

A. Yes. Although I believe Mr. McVeigh may have mentioned this guy Nicholas.

Q. Well, I'll ask you about that in a minute, but the answer to the first question is you had heard those names, Paulsen and Nicholas, from the TV; correct?

A. Yes.

Q. So you were following the TV carefully enough in those early days that by the 21st of June, you could still remember the names and what you'd heard on the TV; right?

A. I don't know if I could or not.

Q. Do you have any quarrel with the -- with the assertion that you did tell the agents on the 21st and 22d that you did remember those names from TV?

A. No, I have no quarrel with that.

Q. Now, you said a moment ago that Mr. McVeigh had told you some things. He told you he was going to sell the Christmas-wrapped blasting caps to someone in -- to a -- what, a friend in Michigan?

A. I don't remember if he said a friend. He said he was going to sell the blasting caps in Michigan.

Q. Now, in addition to the half a bag that -- of ammonium

Michael Fortier - Cross

nitrate that you got from McVeigh -- start -- where do you think that half a bag of ammonium nitrate you got from Mr. McVeigh came from? Do you know?

A. It was my guess it came from True Value.

Q. Were you aware that Mr. McVeigh had bought fertilizer -- ammonium nitrate fertilizer at the True Value hardware store in Kingman, Arizona?

A. No, sir, I did not see him do that.

Q. Did you tell the agents that you were aware that he had bought some?

A. I may have.

MR. TIGAR: Page 9.

BY MR. TIGAR:

Q. I show you, sir, page 9 of that report of interview, and I ask you to look at the last paragraph; and then with that, tell us whether your recollection is refreshed that you told the agents that Mr. McVeigh had purchased ammonium nitrate fertilizer at the True Value hardware.

A. Yes, I very well could have said that to them. It is my best guess that that's where he got that ammonium nitrate while he was living in Kingman.

Q. Thank you, sir. Now, Mr. McVeigh also described to you during some conversation that -- about fertilizer purchases; correct?

A. Yes.

Michael Fortier - Cross

Q. Now, he told you, did he not, that Terry Nichols had screwed up a fertilizer purchase?

A. That is what he said to me.

Q. And he told you that since Terry Nichols screwed up the purchase, he, McVeigh, had to do the next one? Did he tell you that?

A. Yes, sir.

Q. Now, you don't know whether he was telling the truth about this or not, do you?

A. No, I don't.

Q. And whatever he said on this subject, he didn't say it when Terry Nichols was present; did he?

A. That is correct.

Q. You have never in your life had a discussion with Terry Nichols about ammonium nitrate, have you, sir?

A. That is correct.

Q. And you also told the agents that you could not recall Mr. Terry Nichols ever using your telephone or coming into your house except for the one -- excuse me -- you could not recall him ever using your telephone; correct?

A. That is right.

Q. And you could not recall him ever coming into your house except for that one time that he was there with Mrs. Nichols and little baby, Nicole?

A. That is true.

Michael Fortier - Cross

Q. Now, Mr. McVeigh, however, did use your telephone, didn't he, sir?

A. Yes, he did.

Q. Certainly had access to it; right?

A. He had my permission. Free use of the phone.

Q. Now, during October of 1994, were you working at the True Value hardware store?

A. Yes, I was.

Q. Do you remember receiving a call from Mr. McVeigh on the 1st of October, 1994?

A. I couldn't pin it down to that date. I remember receiving a phone call during that time period.

Q. Do you remember -- would it refresh your recollection if I showed you this record of two telephone calls, one to True Value and one to your house?

A. Yes.

Q. It does refresh your recollection? See, there are two telephone calls here, one 2 minutes and 26 seconds, the other 9 minutes and 48 seconds.

A. This -- no, it does not help with this one.

Q. Does not?

A. No, sir.

Q. All right.

A. That is the one to Kingman True Value.

Q. Now, the second call, however, could that be one of these

Michael Fortier - Cross

calls that you told us about earlier, Mr. McVeigh calling you, asking you to do things?

A. It could be.

Q. Now, on the 7th of October, 1994, do you know where Mr. McVeigh was?

A. No, sir. Except I believe he was in and around Kingman.

Q. Were you at work that day?

A. I don't recall.

Q. Do you know what day of the week the 7th was?

A. No, I do not.

Q. Would it refresh your recollection if I showed you a pocket calendar, and could we agree it was a Friday?

A. Are we on the 7th?

Q. Yes. The 7th, sir. Somewhere in there, yes.

A. Yes. I agree it was a Friday.

Q. Thank you. Was Friday a normal workday for you at the True Value hardware store in Kingman, Arizona, sir?

A. Yes, sir.

Q. So on that day, at -- and did you come home for lunch or did you work throughout the day, usually?

A. No. I usually went home for lunch either at noon or at 1.

Q. Well, did you call the Arctic -- the Arctic Travel there in Alamogordo, New Mexico, on the 7th?

A. No, sir.

Q. Did you call VP Racing Fuels in Manhattan, Kansas, on the

Michael Fortier - Cross

7th?

A. No, sir, I did not.

Q. Have you ever called VP Racing Fuels?

A. No, sir.

Q. Did you call Coogee Trucking, Inc., in Otterbein, Indiana, on the 7th?

A. Unless -- if that was -- call was made from Kingman True Value, I may have. Otherwise, no.

Q. No, sir, it was not. But you didn't -- did anyone -- did you, from your house, call Coogee Trucking, Incorporated?

A. Absolutely not.

Q. Okay. Have you ever called Coogee Trucking, Incorporated, from your house?

A. No, sir.

Q. So that if a record showed that a telephone call was made from your home phone to those entities whose names I've read out, that would have been done without your knowledge; correct?

A. Yes, sir.

Q. Now, in driving around with the agents there in June of 1995, you also talked about the storage locker E10 in Kingman, Arizona; correct?

A. Most likely, we did.

Q. Now, were you with Mr. McVeigh in February of 1995 in or near that storage locker?

A. No, sir.

Michael Fortier - Cross

Q. How many times have you visited that storage locker?

A. Three times.

Q. The first time was the evening that you told us about when Mr. McVeigh showed you explosives; correct?

A. That is correct.

Q. The second time was to stash the O2 bottle that you, Jim Rosencrans, and Jason Hart stole; correct?

A. That is correct.

Q. Now, Jason Hart, is he related to Mrs. Fortier?

A. No, sir.

Q. Okay. What is Jason Hart's profession?

A. I don't believe he works.

Q. Did he sell you things, sir?

A. Many times, he tried, yes.

Q. He was your dealer, wasn't he?

A. No, sir.

Q. What did he try to sell you?

A. Junk.

Q. Sir, is it your testimony that Mr. Hart never tried to sell you narcotics?

A. No, sir, that is not my testimony.

Q. All right. What -- would you tell us about Mr. Hart and narcotics, please; what you know.

A. I know that he uses narcotics and he on occasion tries to sell narcotics, but he was not my dealer.

Michael Fortier - Cross

Q. Did he ever sell you narcotics?

A. I can remember once or twice that he did, yes.

Q. And did he ever give you narcotics?

A. Yes. On many times.

Q. I'm sorry? Many times?

A. A few times.

Q. A few times. And what narcotics did you get from him?

A. Crystal meth.

Q. Any other kind?

A. Not that I can recall. No. Excuse me. That's where I got that bunk LSD from was from Mr. Hart.

Q. The --

A. The LSD.

Q. The bonk (sic) LSD, did you say?

A. Yes.

Q. What does "bonk" mean?

A. Bunk. It's no good.

Q. Oh, bunk LSD. Okay.

A. Yes.

Q. Now, and what was the third time you went to the storage unit?

A. I went to the storage unit with a man named Terry. I don't know his last name. He's the gentleman that I gave one of the weapons to go to Phoenix to get drugs. I was with him in his car one day when he stopped by a unit that he had -- he was

Michael Fortier - Cross

renting. He had to get something out of it.

Q. And the man's first name is what?

A. The man's name was Terry.

Q. Terry. Not Terry Nichols?

A. No, sir.

Q. No. This was somebody who you'd traded a gun for drugs with; right?

A. Yes.

Q. All right. So it's three times you've been to that storage unit; correct?

A. Yes.

Q. Well, didn't you tell the FBI on the 21st or 22d of June that you'd only been there twice?

A. I may have. That would have just been an innocent mistake.

Q. Pardon me?

A. That would have been just an innocent mistake.

Q. An innocent mistake. Well, by the 21st or 22d of June, were you trying not to make mistakes when you were talking to the FBI?

A. I absolutely was.

Q. Now, during the period between April the 21st and May the 17th, did you have any conversations with James Rosencrans

then, did you have any conversations with James Rosencrans about the investigation?

A. Yes.

Q. And did you urge him to tell the truth?

Michael Fortier - Cross

A. I believe I did.

Q. Now -- and of course, Mr. Rosencrans is your next-door neighbor. You know him; right?

A. Yes.

Q. Did you ever -- were you ever in Mr. Rosencrans' presence, you and Mr. McVeigh, in full BBU's, camouflage military battle dress with full backpacks and weapons?

A. No, sir.

Q. You deny that?

A. I do deny that.

Q. Now, you mentioned that Mr. McVeigh had asked you to max out your credit cards. Do you recall that, sir?

A. Yes, sir.

Q. And you said you thought that was a way for him to get a free ride?

A. Yes.

Q. What did you mean? What was your understanding of that? What did you mean, "free ride"?

A. He asked me if I would be willing to in the future max out my credit cards and give him the money. It was my impression that he was going to use that money to pay for his food and lodging so he would not have to work and pay for himself.

Q. Now, did he offer to pay you back this money that you were going to use to give him a free ride?

A. No, sir, he did not offer to pay me back.

Michael Fortier - Cross

Q. Now, you told us that Mr. McVeigh had mentioned that -- that he wanted to go to -- one time, he said he wanted somebody to drive him to the desert and another time, he said he wanted someone to drive him to Arkansas. Do you remember that?

A. Yes, sir. That is correct.

Q. Now, he asked you to drive him to the desert; correct?

A. Yes, sir.

Q. And you said no.

A. Yes.

Q. And the Arkansas, was that something that he was saying he wanted Rosencrans to do?

A. Yes, sir.

Q. Now, just to be clear, sir, you have never been in Terry Nichols' house; correct?

A. That is correct.

Q. So that if any fingerprints of yours were found in Terry Nichols' house, that would be for some other reason than your having been there; correct?

A. Absolutely.

Q. How many times during the month of October, 1994, did you

see Mr. Nichols? You told us once he came over just before the 31st. Just before you bought your Jeep; right?

A. That is true.

Q. Okay. And when you say "just before," you think within a week or so?

Michael Fortier - Cross

A. Within a week, yes.

Q. Okay. And then you said you saw him earlier in the month; right? Was he clean-shaven on both occasions?

A. Yes.

Q. Okay. He didn't have a beard?

A. I had never remembered Nichols having a beard.

Q. Okay. Now, sir, I'd like to show you some exhibits, some things that were taken from . . .

MR. TIGAR: I'll go on to something else, your Honor, while they are finding that exhibit.

THE COURT: Thank you.

BY MR. TIGAR:

Q. I show you now, sir, what has been --

MR. TIGAR: May I approach, your Honor?

THE COURT: Yes.

BY MR. TIGAR:

Q. -- what has been marked as Defendant's 397 for identification. And the first page is a Government document. I'm asking you, please, to look at the second page and tell us whether you recognize the handwriting.

A. Yes, I do.

Q. And whose is that, sir?

A. That is my handwriting.

MR. TIGAR: Your Honor, we offer pages 1 and 2 of 397.

397 is a self-authenticating Government document, and page 2

Michael Fortier - Cross

is -- Mr. Fortier has just identified.

MR. MEARNS: No objection.

THE COURT: All right. D397 is received.

BY MR. TIGAR:

Q. I'm placing up on the device here what has been received in evidence as Government's 397, page 2.

THE COURT: Defendant's 397.

MR. TIGAR: Excuse me. Defendant's 397, your Honor.

I almost forgot what side I'm on. Pardon me. Defendant's -- D397. Am I not pushing the right button? I've now taken -- Ms. Hasfjord has taken the lens cap off the device, your Honor, and it now works perfectly.

BY MR. TIGAR:

Q. Mr. Fortier, this is a firearms transaction record; correct?

A. Yes, sir.

Q. And you filled it out, did you not? On July 17, 1993?

Right?

A. Yes, sir.

Q. And you were asked are you an unlawful user or addicted to marijuana or any depressant, stimulant or narcotic drug or any other controlled substance; and you answered no. Correct?

A. That is true.

Q. And then you signed it; right?

A. Yes, I did.

Michael Fortier - Cross

Q. And before you signed it, did you read the part that says, "I hereby certify that the answers to the above are true and correct. I understand that a person who answers yes is prohibited from purchasing and/or possessing a firearm except as otherwise provided by federal law. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony"? Did you read that?

A. I do not recall. Most likely, I skipped that part.

Q. Well, was the "no" true?

A. No, the "no" was false.

Q. Why did you put a false statement on a firearms record, sir?

A. Because I knew that if you answered yes, they would not let you buy the weapon.

Q. You committed a federal felony because you wanted to have a gun?

A. Yes, sir.

Q. Sir, I have now what has been identified as Defendant's Exhibit D390; and I ask you, sir, are these two issues of The Spotlight, the newspaper to which you subscribed, bearing your address label?

A. Yes, sir.

MR. TIGAR: We offer them, your Honor.

Michael Fortier - Cross

MR. MEARNS: No objection.

THE COURT: Received, D390. But there are two of them with the same number?

MR. TIGAR: Yes, your Honor. It's a group exhibit.

THE COURT: All right.

MR. TIGAR: And they are dated May the 1st, 1995, and April 17, 1995.

BY MR. TIGAR:

Q. That was the subscription you were telling us about earlier; correct, sir?

A. Yes, sir.

Q. Now, just because you subscribed didn't mean you agreed with everything that was in there, did you?

A. That is correct.

Q. I show you, sir, what has been marked as Defendant's

Q. I show you, sir, what has been marked as Defendant's Exhibit D463. I ask you if that is some literature that was taken from your home.

A. I don't really recognize this.

Q. Go on to something else.

MR. TIGAR: Your Honor, to speed this up, I'm going to give him a whole notebook at once, if I may.

THE COURT: All right.

BY MR. TIGAR:

Q. I'm going to place this in front of you, sir; and I'll ask you, please, will you turn to Tab No. 484. Is that a -- a gun

Michael Fortier - Cross

purchase form dated December, 1993? Looking at page 2, D484.

A. This is a firearms transaction record.

Q. And whose is it?

A. It is mine.

Q. Did you sign it?

A. Yes.

Q. Did you make the same false --

MR. TIGAR: Excuse me, your Honor. Offer D484.

MR. MEARNES: No objection.

THE COURT: Received.

BY MR. TIGAR:

Q. Did you make the same false statement, sir?

A. Yes, I did.

Q. And what -- what gun was it that you told the lie to get there?

A. This was a 10/22.

Q. What's a 10/22?

A. It's a small arms. It's a .22 caliber rifle.

Q. Would you look at D485, sir. Is that a firearms transaction record?

A. Yes, sir.

Q. Whose is that?

A. This is mine.

Q. And is that --

MR. TIGAR: We offer it, your Honor.

Michael Fortier - Cross

MR. MEARNES: No objection.

THE COURT: D485 is received.

BY MR. TIGAR:

Q. -- July, 1993?

A. Yes.

Q. Did you lie?

A. Yes, sir.

Q. Was it the same lie?

A. Yes, sir.

Q. What gun did you get for that lie?

A. Two guns, actually. A .38 pistol and a Mini-14 rifle.

Q. Now, under your plea agreement, you will not be prosecuted

for any one of the lies you've told on these firearms forms; is that correct, sir?

A. I do not believe so.

THE COURT: I'm not sure of the answer. You don't believe it's correct --

THE WITNESS: I don't believe I'm going to be prosecuted for this.

THE COURT: All right.

BY MR. TIGAR:

Q. And would you look, please, at D486, please.

A. Yes.

Q. Is that a handwritten letter?

A. Yes, it is.

Michael Fortier - Cross

Q. Now, is that document in your handwriting?

A. No, sir, it is not.

Q. Whose handwriting is it in?

A. I believe it is my wife's.

Q. Have you ever seen the letter before?

A. Yes.

Q. Is that a document that you and your wife worked on jointly?

A. No, sir, it is not.

Q. That's hers exclusively?

A. Yes. I have read this letter before; and there are some of the things that I was saying at that time being right after the bombing that is written down here, but I did not work with her on this.

Q. All right. Would you turn, please, to D491. Is that a Kit Kat candy bar wrapper with notes on it by you?

A. Yes, sir, it is.

Q. When did you write that?

A. It was either late April or early May of 1995.

MR. TIGAR: May I approach for a moment, your Honor?

THE COURT: Yes.

MR. TIGAR: We offer it, your Honor.

MR. MEARNES: No objection.

THE COURT: D491 is received.

BY MR. TIGAR:

Michael Fortier - Cross

Q. May I take it out of the book here, sir, just so I can display it. Looking first -- there's the Kit Kat candy bar side; correct?

A. Yes.

Q. And then we have your notes. Now, did you give this to the FBI?

A. Yes, I did.

Q. Well, why would you use a Kit Kat candy bar wrapper to send a note to the FBI?

A. I have no idea. I just grabbed a piece of paper and wrote

a note on it.

Q. It said, "Heard about Colbern on the news. Want to see his picture. Maybe I could be of help." Do you see that?

A. Yes.

Q. Now, is that a reference to this Colbern fellow that you had heard about being somehow connected with Roger or Bob of Arkansas and Tim McVeigh?

A. Yes.

Q. And was the help related to what you've already told us that you know about Mr. Colbern?

A. No.

Q. Well, how were you going to help the FBI -- This is in April; right?

A. April or May. I'm not sure.

Q. Was it before May the 17th?

Michael Fortier - Cross

A. Yes.

Q. Well, the Michael Fortier before May the 17th wasn't very inclined to be helping the FBI, was he?

A. That is true.

Q. You were in their face and they were calling you names and what we heard on the tape; right?

A. Yes.

Q. Well, what help were you going to be to the FBI by passing them the Kit Kat candy bar wrapper with the Colbern note?

A. I had heard on the news that Mr. Colbern was in the Kingman area, and I was going to talk to them; and I thought if I could look at his picture again more closely -- maybe I had seen him around -- I could tell them that.

Q. Well, why were you going to do that?

A. I don't recall.

Q. Well, did -- did you want to get Mr. Colbern in trouble?

A. No, sir. I would not say anything about Mr. Colbern that was not true.

Q. Well, you knew somebody was looking for Mr. Colbern; right?

A. I'm not sure if they were looking for him. But he was certainly on the news. I don't remember exactly what they said about him.

Q. You had heard his name in the news as being someone connected to the bombing; right?

A. Yes.

Michael Fortier - Cross

Q. And you were passing the agents a Kit Kat candy bar wrapper with the Colbern name in order to put the agents onto Mr. Colbern; correct?

A. No. I was only going to offer my help, and I was going to tell them if I had seen him around or not.

Q. And this -- you're going to offer this help at this time before May 17. You had no idea whether Mr. Colbern had anything at all to do with this, did you, sir?

A. No, sir. I did not.

A. NO, SIR, I DID NOT.

Q. Would you turn, please, to D497. And is that a newspaper that was found in your house?

A. I believe it is.

Q. Now, the copy that we have is -- has some markings on it; correct? I mean, it looks like it's -- some parts of it are obliterated.

A. Yes, sir.

Q. Okay. Now, would you look at the very last page.

A. Okay.

Q. And that's an address label; correct?

A. Yes.

Q. It's your address?

A. Yes.

MR. TIGAR: We offer it, your Honor.

MR. MEARNES: No objection.

THE COURT: D497 received.

Michael Fortier - Cross

BY MR. TIGAR:

Q. Now, do you know, sir, whether or not the original from which this copy was taken is smudged so that the marks that are on the copy are reflected on the original?

A. No, sir, I do not know.

Q. Okay. Would it refresh your recollection if I showed you what appears to be the original and you can compare and see that the markings are on that?

A. Yes. They --

Q. Okay. The copy is just as bad as the original; right?

A. It looks like it.

Q. Okay. Would you turn, please, to page -- excuse me -- to Item 501, please.

A. Okay.

Q. Now, is that a paper that you wrote?

A. Yes, sir. It's a term paper.

Q. For college?

A. Yes.

Q. And that was in your house?

A. Yes.

MR. TIGAR: We offer it.

MR. MEARNES: No objection.

THE COURT: D501 is received.

BY MR. TIGAR:

Q. Now, sir, just put this on here. The paper is called,

Michael Fortier - Cross

"Freedom for All"; correct?

A. Yes, sir.

Q. And it is a study of the constitutional right to keep and bear arms; correct?

A. Yes, sir.

Q. And among the things that you cite is The Citizens' Rulebook from Liberty Lobby; correct?

A. That is correct.

Q. And this is a paper that shows that you're a -- you know, some of your constitutionalist views; correct?

A. Yes.

Q. Now, sir, would you turn to Tab 511, please. Without reading from it, can you tell us first do you remember whether that was in your house, or not?

A. I don't remember.

Q. Do you ever remember reading sections of the code related to the issues that are in there?

A. Yes.

Q. When do you remember reading -- without regard to the exhibit, when were you studying sections of the code related to being an accomplice?

A. I don't remember reading that.

Q. Do you see -- again, do you see the very first thing on the top of the page, the definition and then the word? Does that refresh your recollection?

Michael Fortier - Cross

And with your recollection thus refreshed, do you ever remember reading anything on that subject?

A. No, sir, I do not.

Q. All right. Would you turn, please, to page 512.

A. May I explain what I did read in this?

Q. I'm sorry, sir. It's not in evidence and I don't want -- I don't want to offer something in evidence that I can't establish a foundation for. Let me ask a few questions and see if we can get someplace with it. All right?

A. Sure.

Q. Do you -- do you remember reading what I just showed you?

A. No, sir.

Q. Okay.

A. Not that portion.

Q. Not that portion. Okay. Do you remember reading some other portion?

A. Yes. I believe in this would be rules and regulations on how to earn -- excuse me -- when it would be proper to use a firearm in self-defense.

Q. I see. So you were reading up on firearms in self-defense; correct?

A. Yes. In conjunction with a firearms safety class.

Q. Okay. And so this was provisions of the law that related to when you could use deadly force; correct?

A. That is correct.

Michael Fortier - Cross

Q. All right. Doesn't have anything to do with what we've been talking about up to now; correct?

A. Well, it does have to do with my views on the Second Amendment.

Q. It has to do with your views as a constitutionalist and the Second Amendment?

A. That's true.

Q. Well, I'm not going to offer it into evidence, then, because we understand about your views.

Would you take a look at 513. Was that in your house?

A. I do recognize this. I believe it was in my house.

Q. Where did you get it?

A. I got this from Tim McVeigh.

MR. TIGAR: We offer it, your Honor.

MR. MEARNS: No objection.

THE COURT: E513 received.

MR. TIGAR: 512, your Honor. If I misspoke -- D512.

MR. MEARNS: I understood 513, your Honor.

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

BY MR. TIGAR:

Q. Would you look at 512, please. I apologize. Did you get that from Mr. McVeigh?

A. Yes. I got this from Mr. McVeigh, also.

Q. Was it in your house?

A. Yes.

Michael Fortier - Cross

MR. TIGAR: We offer 512 and 513, your Honor. D512 and D513.

MR. MEARNS: No objection.

THE COURT: They are received.

BY MR. TIGAR:

Q. Placing now up here D512, this is a prayer; correct? Patriot's Prayer?

A. Yes, sir. That is what it is.

Q. And among the things it prays "to voice our declaration of independence against the New World Order"; correct? Do you see that?

A. Yes.

Q. Now, did you agree with the sentiments expressed in this prayer?

A. Yes.

Q. And then D513 that you got from Mr. McVeigh is called, "Communist Rules for Revolution"; correct?

A. Yes.

Q. And Mr. McVeigh wasn't -- wasn't a communist, was he?

A. No, sir. I don't believe so.

Q. No. This is a -- an opposition to what the communists think; correct? Is that right?

A. I believe so.

Q. Now, sir, will you turn to 516. Is that a document that was taken from your house?

Michael Fortier - Cross

A. Yes, sir.

Q. And where did you get it?

A. I also got this from Tim McVeigh.

MR. TIGAR: We offer it, your Honor.

MR. MEARNS: No objection.

THE COURT: D516 received.

BY MR. TIGAR:

Q. And this is a newsletter that is against the New World Order, among other things; correct?

A. Yes, sir.

Q. And Mr. McVeigh gave it to you, and you put it in your house; right?

A. Yes. He gave me most all of this stuff in one big stack in the spring of 1994.

Q. When -- when was it?

A. In the spring of 1994.

Q. Where -- and this is one more instance of Mr. McVeigh giving literature about his favorite causes to people; correct?

A. Yes.

Q. Now, would you look, please, at 517. Is that something else you got from Mr. McVeigh?

A. Yes, sir, it is.

MR. TIGAR: We offer it, your Honor.

MR. MEARNS: No objection.

THE COURT: Received.

Michael Fortier - Cross

BY MR. TIGAR:

Q. Now, this one, if I put it up here -- this is one about "U.S. Government Initiates Open Warfare Against American People"; correct?

A. Yes, sir.

Q. Now, did Mr. McVeigh give you an original of this document, or did -- was what he gave you a copy?

A. I don't remember.

Q. And do you see on page 1 here the quote from Thomas Jefferson? Correct? "The growth and course of history . . ."

A. I see that.

Q. Now, did you know that Mr. McVeigh had a T-shirt that had a slogan from Thomas Jefferson on it?

A. Yes, sir, I did.

Q. Is that that slogan that has the tree with the blood droplets on it?

A. Yes.

Q. He wore that to your daughter's birthday party, didn't he?

A. No, sir. That wasn't my daughter.

Q. Oh. Whose birthday party? I'm sorry. He wore it to some child's birthday party?

A. Yes. I believe that's what you're referring to.

Q. What child's birthday party did he wear the tree-with-the-droplets-of-blood T-shirt to?

A. A friend of my wife's.

Michael Fortier - Cross

Q. Will you turn, please, to page D518. Is this something you got from Mr. McVeigh?

A. Yes.

Q. And was it found in your house?

A. I believe it was.

Q. Did you read it?

A. I don't remember doing so.

MR. TIGAR: We offer it.

MR. MEARNS: No objection.

THE COURT: D518 received.

BY MR. TIGAR:

Q. This is an article entitled, "Noplace to Hide"; correct?

A. Yes.

Q. And from what you know about it, does it have to do with government intrusion into people's privacy?

A. I imagine so.

Q. Do you know who Frank Snepp is, the author?

A. No, sir.

Q. Now, would you please just take your -- take a moment, please, and read -- and leaf through 519, 520, 521, 522, 523, 524, 525, and 526. And I'll ask you -- I want to ask you the same question: Were they found in your house and did you get them from Tim McVeigh?

A. Yes, sir.

MR. TIGAR: We offer those, your Honor.

Michael Fortier - Cross

MR. MEARNS: 521 through 526?

THE COURT: 519 through --

MR. TIGAR: 519.

MR. MEARNS: No objection.

THE COURT: They are received. D519 through D526.

BY MR. TIGAR:

Q. Now, you previously told us, did you not, about staying -- did you stay in a motel in St. George, Utah, with Mr. McVeigh in connection with the gun show there?

A. Yes, I did.

Q. And was that -- did the two of you occupy a single room on that occasion?

A. Yes, sir.

Q. And would you look at D527, please. Do you know -- do you recognize that?

A. I recognize the handwriting on it.

Q. But that's not something you've ever seen before; is that right?

A. That is right.

Q. All right. Would you look, please, at D528. Was that in your house and did you get it from Tim McVeigh?

A. This most likely was found in my house and taken from my house. And by the date, I would say that I had a subscription at that time, so this would have come through the mail, not through Tim McVeigh.

Michael Fortier - Cross

MR. TIGAR: We offer it, your Honor.

MR. MEARNS: No objection to 528.

THE COURT: D528 received.

BY MR. TIGAR:

Q. Now, from the copy we have, it appears that there was some highlighting placed on there at one time. Do you ever remember seeing a copy of that issue with highlighting on it?

A. No. I don't remember doing that --

Q. Do you remember --

A. -- seeing that.

Q. Do you ever remember seeing a copy with highlighting on it?

A. Not that I can recall.

Q. Did Mr. McVeigh -- when he gave you literature, did he ever give you literature that had highlighting?

A. Yes. On occasion.

Q. Now, you told us earlier, sir, that Mr. McVeigh had been the best man at your wedding; correct?

A. Yes.

Q. And where -- where was that wedding held?

A. In Las Vegas.

Q. At the Treasure Island hotel?

A. Yes, sir.

MR. TIGAR: May I approach, your Honor?

THE COURT: Yes.

BY MR. TIGAR:

Michael Fortier - Cross

Q. I'm going to show you now what has been marked as Defendant's D552 and ask you if that is an Arizona Republic that was taken from your home.

A. Yes, sir.

MR. TIGAR: We offer it, your Honor.

MR. MEARNS: No objection.

THE COURT: D552 received.

MR. TIGAR: Your Honor, if -- if I may have the afternoon recess now, I could collect my notes and be done in a very few minutes.

THE COURT: How could I refuse an invitation like that? I'll accept.

You may step down, Mr. Fortier.

Members of the jury, we will take the afternoon recess; and of course, during this time, please remember the cautions always given at recesses, which I know you do remember from one time to the next. But remember: I've got a duty to recite this on the record, and you have a duty to obey to avoid discussion of the case among yourselves and with all other persons and keep open minds.

And you know, you hear all of these exhibits being referred to. You won't be required to read every word of every exhibit. That's not something that'll happen, although the exhibits are important and will be discussed.

So you're excused now, 20 minutes.

Michael Fortier - Cross

(Jury out at 3:06 p.m.)

THE COURT: All right. We'll recess. 20 minutes.

(Recess at 3:07 p.m.)

(Reconvened at 3:27 p.m.)

THE COURT: Please be seated.

(Jury in at 3:28 p.m.)

THE COURT: Please resume the stand again,

Mr. Fortier.

Mr. Tigar, you may continue.

BY MR. TIGAR:

Q. Mr. Fortier, I omitted to ask you: While you were in the VA Hospital, Mr. McVeigh borrowed your Jeep; correct?

A. Yes, he did.

Q. And what did he say he was going to do with it?

A. He didn't say exactly. He just asked me if he could borrow it.

Q. Didn't he say he wanted to go four-wheeling in the Music Mountains and check the area along Buck-Doe Road?

A. Yes, that is what he did.

Q. That's what he said he was going to do; right?

A. I don't recall if he said at the time that he asked me to use his (sic) Jeep or not.

Q. But you didn't go with him; correct?

A. Oh, no. I was in the hospital at that time.

Q. So all you know about is what he told you?

Michael Fortier - Cross

A. Uh-huh.

Q. Now, just to be sure, did Mr. McVeigh ever give you a copy of a book called or publication called The Soldier's Guide?

A. Not that I recall.

Q. Do you ever remember handling such a book, putting your fingers on it?

A. I don't recall that book.

Q. Do you remember ever handling a publication called Armed and Dangerous?

A. Yes.

Q. And was that something Mr. McVeigh gave to you?

A. Yes.

Q. And after you handled it, do you know what happened to it?

A. Yes. I gave it back to Mr. McVeigh.

Q. Now, you testified on direct examination, sir, that you had spent some time with Government lawyers discussing the matters you were going to present in court; is that correct, sir?

A. Yes.

Q. And you said you met with Government lawyers about 25 times?

A. Yes. And each one of those times were for either one day or maybe two days.

Q. So that how many hours total have you spent with Government

Q. So that how many hours total have you spent with Government lawyers preparing for your testimony?

A. Between 150 and 200 hours.

Michael Fortier - Cross

Q. When did those preparation sessions begin?

A. When I went to Oklahoma City and started meeting with the U.S. prosecutors.

Q. You met with Mr. Hartzler?

A. Yes, sir.

Q. And then you met with Mr. Mendeloff?

A. Yes. I believe I met him twice.

Q. Twice. Did you have a disagreement with Mr. Mendeloff?

A. Yes.

Q. Were voices raised?

A. I would say no.

Q. After the disagreement, you did not meet with him anymore?

A. No, sir.

Q. It is correct you did not meet with him anymore after the disagreement, or that you did?

A. Well, I met him after that disagreement, but I did not meet with him to speak about the issues.

Q. I see. You did not meet with him to prepare your testimony?

A. That's correct.

Q. You met with Mr. Goelman?

A. That's correct.

Q. You met with Mr. Mearns?

A. Yes, sir.

Q. Did you meet with any other Government lawyers to prepare

Michael Fortier - Cross

other than those I mentioned?

A. No, sir.

Q. This morning is the first time that you and I have ever met. Is that correct, sir?

A. Yes, sir, it is.

Q. Now, you testified on direct examination that you have a plea agreement. Do you remember that?

A. Yes.

Q. Now, as a part of the agreement that you made with the Government, did you stop using narcotics?

A. Yes, I did.

Q. When is the last time that you used narcotics?

A. It was before I traveled to Oklahoma City.

Q. It was before the 17th of May?

A. Yes, sir.

Q. Now, I'm going to show you page 7 of the plea agreement portion of Government's Exhibit 193 in evidence. That is entitled, "Breach of Agreement," isn't it, sir?

A. Yes, sir.

Q. And is that part of the deal that you have with the Government?

A. Yes, it is.

Q. It says, "If further investigation discloses that Mr. Fortier conspired to bomb any federal building" -- and then it continues on with some other things. It says, ". . . then

Michael Fortier - Cross

the United States will have the right to characterize such conduct as a substantial breach of this agreement," and so on. Correct?

A. Yes.

Q. And it says, ". . . in which case the obligations of the United States under this agreement will be void, and the United States will have the right to prosecute Mr. Fortier for any and all offenses that can be charged against him in any district or state." Do you see that?

A. Yes.

Q. You have not been charged with conspiring to bomb a federal building, have you, sir?

A. No.

Q. And the United States is aware of everything, all the facts, that we have talked about today, are they not?

A. Yes.

Q. They're aware that you got ammonium nitrate from Mr. McVeigh; correct?

A. Yes.

Q. They're aware that Mr. McVeigh left explosives in your house; correct?

A. Yes.

Q. They're aware that Mr. McVeigh could -- lived in your house and could use your tools; correct?

A. Yes.

Michael Fortier - Cross

Q. They're aware that Mr. McVeigh could use your phone?

A. Yes.

Q. They're aware that Mr. McVeigh borrowed your car?

A. Yes.

Q. They're aware that you went to Oklahoma City with Mr. McVeigh?

A. Yes.

Q. They're aware that you wrapped explosives for transport?

A. I was a part to that, yes.

Q. They're aware that you tried to get a storage shed in a different name than your own?

A. Yes.

Q. They're aware that you handled guns you thought were stolen?

A. Yes.

Q. They're aware you handled explosives you thought were stolen?

A. Yes.

Q. They're aware that you shared money with Mr. McVeigh in

connection with the guns?

A. Yes.

Q. They're aware that you wanted to form a militia and took steps to that end?

A. Yes.

Q. They're aware that you had literature that you got from

Michael Fortier - Cross

Mr. McVeigh that you had in your house; correct?

A. Yes, they are.

Q. And those are just -- those aren't all of the things we talked about today but some of them; correct?

A. That is correct.

Q. As you sit there today, sir, are you fearful that the United States will decide to charge you with conspiring to bomb a federal building?

A. No, sir, I am not.

Q. Now, you testified in direct examination -- excuse me. One moment.

Let's look at more of the paragraph here, if we may.

It also says that if further investigation discloses that you refused to answer any questions put to you -- well, you haven't done that, have you?

A. No, sir, I have not.

Q. " . . . or makes any false or misleading statements to investigators or attorneys of the United States or makes any false or misleading statements or commits any perjury before any grand jury or court," do you see that, sir?

A. Yes.

Q. Now, who do you understand has the right to decide whether or not you have committed perjury and prosecute you for it?

A. I believe that would be the judge.

Q. Well, is it your understanding, sir, that it's prosecutors

Michael Fortier - Cross

who decide whether to prosecute people?

A. Yes.

Q. You're aware that neither I nor Mr. Woods nor Mr. Nichols has any power to prosecute you if we should think that you're committing perjury?

A. I'm aware of that.

Q. Now, in your direct testimony, sir, you discussed the charges to which you have pleaded guilty and the maximum potential sentence that you might receive. Do you remember that?

A. Yes.

Q. And what do you understand to be the maximum potential sentence that you could receive?

A. 23 years in prison.

Q. Now, when -- do you expect to do 23 years?

A. I think that's a distinct possibility.

Q. Now, Judge Matsch is not the judge who will sentence you;

correct?

A. No, sir.

Q. That is, another judge has been appointed for that purpose; right?

A. That is right.

Q. And you understand that's a judge in Kansas; correct?

A. Yes.

Q. Now, at the time you are sentenced, which hasn't happened

Michael Fortier - Cross

yet -- correct?

A. That is correct.

Q. -- your lawyer will have the right to present reasons why the sentence should be less than 23 years; correct?

A. Yes.

Q. Do you know what the guidelines' sentence is that --

A. Yes.

Q. Yes. What is it?

A. I believe it's 27 to 33 months.

Q. So if you were sentenced in accordance with the sentencing guidelines, you'd get 27 to 33 months; correct?

A. Yes.

Q. Now, your lawyer and you would have the right to argue for something less than that; correct?

A. I believe that's true.

Q. And a probation report would be prepared; correct?

A. Yes.

Q. In addition to that, the Government will have the right to present evidence at that sentencing hearing; correct?

A. Yes.

Q. Now, is it your understanding that the Government has the right but not the obligation to say to the judge, should it choose, that you have rendered substantial cooperation?

A. Yes.

Q. Are you aware that neither you nor I nor Mr. Nichols nor

Michael Fortier - Cross

Mr. Woods would have any right to ask the judge to consider substantial cooperation? Is that your understanding?

A. Yes.

Q. Now, looking here at page 5 of your plea agreement, sir, do you see paragraph 65, Section 23 -- excuse me -- Section 3553(e) motion. What do you understand a Section 3553(e) motion to be?

A. That if I fulfill my obligations with the United States prosecution, they under their sole discretion -- they may file a -- they may ask the judge to reduce my sentence.

Q. Let's read this: "If Mr. Fortier completely fulfills all of his obligations under this agreement" -- that's the first part; correct?

A. Yes.

Q. One of your obligations is to tell the truth. Correct?

A. Yes, sir.

... 100, 511.

Q. But the decision as to whether you did or not is going to be made by the prosecutors -- right -- for these purposes?

A. Yes.

Q. "At the time of sentencing, the United States will advise the sentencing judge of the full nature, extent, and value of the cooperation provided by Mr. Fortier. In addition, the United States will evaluate the information provided by Mr. Fortier pursuant to the preceding paragraph." Do you see that, sir?

Michael Fortier - Cross

A. Yes.

Q. And then it says, "If the Government determines in its sole discretion that Mr. Fortier has rendered substantial assistance in the investigation and prosecution of others involved in criminal activities" -- "others" includes others than yourself; correct?

A. Yes.

Q. "... then it will file a motion pursuant to" -- and it cites some laws which will so advise the judge.

And then it tells you the judge has the discretion to determine the sentence. Correct?

A. Yes.

Q. Now, we read here that the United States will evaluate the information provided by Mr. Fortier. Do you read that?

A. Yes.

Q. What does "evaluate" mean to you, sir? You worked at the True Value hardware store; right?

A. Yes.

Q. What does "evaluate" mean to you?

A. It means to me like they will grade my cooperation.

Q. Pardon me?

A. "Evaluate" means grade or consider how helpful I was.

Q. Okay. And the United States prosecutors are the only ones under this agreement who have any power to grade or to consider your cooperation. Correct?

Michael Fortier - Cross

A. Yes.

Q. And then the judge will decide based on what they do or do not say; correct?

A. Yes.

Q. When you went into prison, sir, had your youngest child been born?

A. No, sir.

Q. Have you seen your youngest child?

A. Yes, I have.

Q. Is it your hope, sir, to be reunited with your children?

A. Yes.

Q. Of all of the things in the world, is being reunited with your family the most important to you?

A. Absolutely.

Q. And you want that to happen as soon as you can, don't you, sir?

A. Yes, I do.

Q. And you are a man who would lie just to have a gun, aren't you, sir?

A. I did do that, yes.

MR. TIGAR: No further questions.

THE COURT: Mr. Mearns, do you have any redirect?

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

REDIRECT EXAMINATION

BY MR. MEARNS:

Michael Fortier - Redirect

Q. Mr. Fortier, earlier this afternoon or before lunch, Mr. Tigar asked you certain questions about the letter you received from Mr. McVeigh and the subsequent conversation at your fence. Do you recall those?

A. Yes.

Q. Is there any doubt in your mind that that letter and the conversation -- the subsequent conversation you had with him had to do with the plan to bomb the federal building in Oklahoma City?

MR. TIGAR: I object, your Honor.

THE COURT: Sustained.

BY MR. MEARNS:

Q. You were asked by Mr. Tigar about whether or not Mr. McVeigh lied to you.

A. Yes.

Q. Did Mr. McVeigh tell you the truth, also?

A. Yes, he did.

Q. Did he tell you the truth when he told you that the plan involved the federal building in Oklahoma City?

A. Yes, he did.

Q. Did he tell you the truth when he told you that the date of the bombing was going to be April 19?

A. He told me that it was going to be on the anniversary of Waco, and that is April 19.

Q. Did he tell you the truth when he told you that the bomb

Michael Fortier - Redirect

would be contained in a large Ryder truck?

A. I believe he did.

Q. Mr. Tigar asked you certain questions about what Mr. McVeigh told you about the robbery of Bob in Arkansas; do you recall those?

A. Yes.

Q. What did Mr. McVeigh tell you about how that robbery happened?

A. Mr. McVeigh told me that Mr. Nichols approached Bob's house one morning. He was dressed in camouflage and he had boots on, and he was -- he had a shotgun with him. He approached Mr. -- he approached Bob as Bob came out of his house and told him to

go back inside his house. He tied Bob up and then loaded weapons into Bob's van.

Mr. McVeigh told me that Mr. Nichols got tired so he untied Bob and had Bob help him; and when they were finished, he tied Bob back up and then drove the van to where he had stashed his truck and he unloaded the weapons from the van into his truck and he drove off leaving the van there.

Q. Mr. Tigar asked you certain questions about a Mr. Steve Colbern. Do you recall those questions?

A. Yes.

Q. Did you ever meet Mr. Colbern?

A. No, sir.

Q. What did Mr. McVeigh tell you about Mr. Colbern?

Michael Fortier - Redirect

A. That this was an individual that Bob in Arkansas was trying to hook him up with.

Q. And did Mr. McVeigh ever talk to you about plans to meet Mr. Colbern?

A. Yes.

Q. What did Mr. McVeigh say about that?

A. Mr. McVeigh told me that he was going to meet Mr. Colbern in the desert. He asked me to hide out in the desert near the area and to watch his back.

Q. Did that ever happen?

A. No, sir, it did not.

Q. Mr. Tigar asked you certain questions about things or items that Mr. McVeigh gave to you or that you bought from him. Do you recall those questions?

A. Yes.

Q. Did you ever buy any ammonium nitrate?

A. No, sir.

Q. Did you ever steal any explosives for use in the bombing plan?

A. No, sir, I did not.

Q. Did you ever rob a gun dealer to finance the bombing?

A. No, sir, I did not.

Q. Did you ever obtain any barrels for use in the bombing plan?

A. No, sir, I did not.

Michael Fortier - Redirect

Q. When your house -- when you were arrested -- or after the bombing on April 19, how many 55-gallon barrels -- plastic barrels did you have in your house?

A. I believe at that time I owned three. They're my trash cans.

Q. You were asked by Mr. Tigar about whether or not you were in Junction City in April, 1995. Do you recall those questions?

A. Yes.

Q. Were you in Oklahoma City on April 16, 1995?

A. I absolutely was not

A. I absolutely was not.

Q. Were you at Geary Lake in Kansas on April 18, 1995?

A. No, sir.

Q. Mr. Tigar asked you certain questions about telephone calls that were placed from your house. Do you recall those questions?

A. Yes, sir.

Q. Did you know at that time that Mr. McVeigh was using a calling card from your house?

A. No, sir, I did not.

Q. Do you know that now?

A. That has not been proven to me, no.

Q. Did you ever use a calling card number that Mr. McVeigh gave you?

A. No, sir, I did not.

Michael Fortier - Redirect

Q. Mr. Tigar earlier this afternoon showed you lots of literature and documents that Mr. McVeigh gave you?

A. Yes, sir.

Q. Did you have conversations with Mr. McVeigh about the contents of some of that literature?

A. In general, yes.

Q. Would it be fair to say that Mr. McVeigh was shy about --

MR. TIGAR: Object to leading, your Honor.

THE COURT: Sustained as to leading.

BY MR. MEARNS:

Q. Were those conversations lengthy, or brief?

A. Some of them were brief and others were lengthy.

Q. Did you ever have to solicit or ask Mr. McVeigh what his opinion was about the contents of that literature?

A. No. Not at all.

Q. You told us on both direct examination and on cross-examination about conversations that you had with Mr. McVeigh about the plan to bomb the federal building in Oklahoma City; right?

A. Yes, sir.

Q. During any of those conversations, did Mr. McVeigh ever mention anyone else by name besides Terry Nichols?

A. No, sir. No one at all.

MR. MEARNS: No further questions, your Honor.

THE COURT: Mr. Tigar, do you have anything further?

Michael Fortier - Recross

RE CROSS-EXAMINATION

BY MR. TIGAR:

Q. Just to clarify, sir: You did not hide out in the desert and watch Mr. McVeigh's back with respect to any meeting with Mr. Colbern; correct?

A. That is correct. I did not.

Q. But you have no -- you have no personal knowledge as to whether Mr. McVeigh and Mr. Colbern ever met. Correct?

A. That is correct.

Q. Now, you were asked on redirect examination whether you had stolen any firearms. Correct? Do you remember that?

A. That is correct.

Q. You pleaded guilty to transporting and selling stolen firearms; correct?

A. Yes.

Q. And those were ones you believed to have been stolen from Mr. Moore; correct?

A. Yes.

Q. And you also pleaded guilty to actually transporting the stolen firearms; is that correct, sir?

A. Yes.

Q. And were those the -- again, those firearms you thought had been stolen from Mr. Moore?

A. Yes.

Q. And with respect to whose names were mentioned --

Michael Fortier - Recross

Mr. McVeigh asked you to drive him, didn't he?

A. Yes.

Q. He said, "Mike, will you drive me?" Right?

A. Are you speaking about --

Q. When Mr. McVeigh was talking about getting away, he asked you to drive him, didn't he?

A. Yes.

Q. And you understood that had to do with the bombing plan, didn't you, sir?

A. Yes.

Q. And he said, "Mike, will you drive me," didn't he?

A. Yes.

Q. And then he asked you about whether Jim Rosencrans could do some driving, didn't he?

A. Yes.

Q. And you understand that had to do with the plan, didn't it?

A. Yes.

Q. And then he asked you to go in the desert and watch his back for a meeting with Steve Colbern, didn't he?

A. Yes, he did ask me to do that.

Q. Did you understand that had to do with his plan?

A. No, sir. Not at all.

Q. Just you and Rosencrans? Just the first two I asked you about. Correct?

A. Yes.

MR. TIGAR: Thank you. Nothing further.

MR. MEARNS: Nothing further, your Honor.

THE COURT: Are you going to excuse the witness, or not?

MR. MEARNS: We agree to excuse the witness, your Honor.

THE COURT: Mr. Tigar.

MR. TIGAR: Well, so long as it's understood he's subject to recall should he be needed in the defense call, we have no objection.

MR. MEARNS: That's acceptable to us, your Honor.

MR. TIGAR: -- acceptable. Thank you.

THE COURT: We'll make sure that Mr. Fortier is kept in the -- within reach.

You may step down now, Mr. Fortier.

Next witness, please.

MR. MACKEY: Yes, your Honor. We would call Dawn Hester.

THE COURT: All right.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Dawn Hester 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: Dawn Dmitrya Hester, H-E-S-T-E-R.

THE COURTROOM DEPUTY: Thank you.

MS. WILKINSON: Could I just have a moment, your Honor?

THE COURT: All right.

DIRECT EXAMINATION

BY MS. WILKINSON:

Q. Good afternoon, Ms. Hester. How are you?

A. Fine.

Q. Can you tell the jury where you work.

A. FBI, Houston, Texas.

Q. What do you do for the FBI in Houston?

A. Photographer.

Q. How long have you been a photographer?

A. 20 years.

Q. And were you -- I take it then you were a photographer for them back in April of 1995?

A. Yes.

Q. And other than working in Houston as a photographer, did you ever work at FBI headquarters as a photographer?

A. Yes.

Q. What did you do there at headquarters?

A. Photography, forensic.

Q. When you say "forensic," does that mean you sometimes compared photographs?

A. Yes.

Dawn Hester - Direct

Q. Did you sometimes compare photographs to objects that you had photographed?

A. Yes.

Q. How many years did you do that at headquarters?

A. About five years.

Q. And back on April 19, 1995, or shortly thereafter, were you asked to report to Oklahoma City to participate in the investigation?

A. Yes.

Q. And were you working at the crime scene that is in downtown Oklahoma City near the Murrah Building on April 22, 1995?

A. Yes.

Q. Do you recall where you were working that morning, the morning of April 22?

MORNING OF APRIL 22:

A. We were working in the alley off of Robinson Street.

Q. Do you remember what building was near that alley?

A. We were behind the YMCA -- excuse me.

Q. Do you remember what the weather was like that day?

A. It was cold, windy and rainy.

Q. Why do you remember that?

A. It probably was the ugliest day when I was there, and you'll never forget a day like that.

Q. When you weren't taking photographs, were you trying to keep yourself warm?

A. Yes.

Dawn Hester - Direct

Q. But were there times when agents asked you to come out and photograph evidence they had found?

A. Yes.

Q. Were you asked to take evidence -- take photographs of that evidence when it was in place before they seized it and took it into FBI custody?

A. Yes.

Q. Do you remember photographing a key?

A. Yes.

Q. All right. Hold on one second, please.

MS. WILKINSON: Your Honor, may I approach?

THE COURT: Yes.

BY MS. WILKINSON:

Q. Do you see Government's Exhibit 699 right there in that envelope? It should be -- I think I took the first one out for you.

A. Yes.

Q. Could you take that -- the actual exhibit, 699, out of the plastic.

Do you recognize that key?

A. Yes.

Q. Does that key have a Q number on it that matches the bag that it's in?

A. Yes.

Q. What's the Q number?

Dawn Hester - Direct

A. Q2323.

Q. Now, did you take that key and compare it to a photograph that you had taken?

A. Yes.

Q. Can you look at Government's Exhibit 700. Should be a photograph that's in your envelope up there.

Is that your photograph?

A. Yes.

Q. Did you take it on April 22?

A. Yes.

Q. And where did you take this photograph?

A. The alley behind the YCMA --

--- --- ---
Q. The YMCA?

A. Yes.

Q. Are you a little nervous?

A. Yes.

MS. WILKINSON: Your Honor, we'd offer Government's Exhibit 700.

MR. WOODS: No objection, your Honor.

THE COURT: Received, 700.

MS. WILKINSON: If I could use the ELMO to display it.

THE COURT: Yes.

BY MS. WILKINSON:

Q. Would it be fair to say, Ms. Hester, this is a bunch of dirt with a key in it?

Dawn Hester - Direct

A. Yes.

Q. Is that what you saw on April 22 --

A. Yes.

Q. -- 1995? And was there an agent there who pointed that key out for you to photograph?

A. Yes.

Q. Who was that?

A. Mark Young.

Q. Did you see him take that key into custody?

A. Yes.

Q. What did he do with it?

A. He put it in a bag.

Q. And have you taken the key, Government's Exhibit 699, and compared it to this photograph?

A. Yes.

Q. Is it the same key?

A. Yes.

MS. WILKINSON: Government offers 699, your Honor.

MR. WOODS: No objection.

THE COURT: 699 received.

BY MS. WILKINSON:

Q. Ms. Hester, I'd like you to step down for a moment so you can show exactly where this key was when you photographed it.

Keep your voice up.

MR. WOODS: May I step over to observe?

Dawn Hester - Direct

THE COURT: Yes. Surely.

BY MS. WILKINSON:

Q. If you can turn towards the jury and orient yourself.

Here's the Murrah Building. Can you show them where you were photographing that morning?

A. The alley behind the Y.

Q. And you're pointing up as you go up Robinson to the Murrah Building?

A. Right.

Q. There is a little dot. You see that dot right there behind the YMCA?

A. Yes.

Q. Does that indicate where you found the key that day?

A. Yes.

Q. You can take a seat.

Ms. Hester, there should be another photograph that you took that's up there that is the photograph of the spot where you found the key. Do you see that in there?

A. Yes.

Q. Do you recognize that?

A. Yes.

Q. What's the Government's exhibit number on there?

A. 703.

Q. Did you take that that same morning?

A. Yes.

Dawn Hester - Direct

Q. If we showed that to the jury, could you show them where you found the key?

A. Yes.

MS. WILKINSON: Government offers 703.

MR. WOODS: No objection.

THE COURT: Received. May be displayed.

BY MS. WILKINSON:

Q. Tell the jury what they're looking at in 703, would you please, Ms. Hester.

A. What you see is a long photo of the alley; and when you look on to your left, you see a brown area where you got a lot of dirt and the telephone wires and poles -- that situation. And right near where the dirt area is where the key was found.

Q. Okay. Let's see if I can get this in focus a little bit better.

Can you grab that little black pen that's up there on the top. Take it down to the bottom computer screen, and just put a circle in the area where you found the key.

Now, that circle got on the cement. Is that where you

meant? We know the pen is a little bit off.

Try an X.

Hold the dot where you want it first, and we'll look there.

Can you put it over --

A. Okay. In this area.

Dawn Hester - Direct

Q. And are you trying to circle that dirt area there?

A. Yes, I am.

Q. Okay. Thank you.

MS. WILKINSON: Your Honor, at this time we have a stipulation on the key, No. 7.

MR. WOODS: Yes, your Honor. We have stipulated that

key fit the Ryder truck, if that's the one she's speaking of.
I'm not sure what she's speaking of.

MS. WILKINSON: Yes. It says Government's Exhibit 699, which is the key that was recovered in the location near the YMCA building in downtown Oklahoma City as described in the testimony of FBI photographer Dawn Hester. The location of that key when found is shown in the photograph marked Government's Exhibit No. 700 and 703. The key fits the ignition of the Ryder rental truck bearing VIN 1FDNF72J4PVA26077 that was rented from the Ryder dealership at Elliott's Body Shop on April 17, 1995, in the customer name of Robert Kling.

MR. WOODS: That's our stipulation, your Honor.

THE COURT: All right. Then once again, members of the jury, we accept what has been agreed to as fact.

MS. WILKINSON: That's all I have, your Honor.

THE COURT: All right. Mr. Woods?

MR. WOODS: Yes, your Honor.

CROSS-EXAMINATION

Dawn Hester - Cross

BY MR. WOODS:

Q. Good afternoon, Ms. Hester.

A. Good afternoon.

Q. My name is Ron Woods. I'm one of the lawyers that was appointed by the district court in Oklahoma City to help Terry Nichols after he was charged in this case.

You and I have never met. Is that correct?

A. Right.

Q. What day did you come to Oklahoma City from Houston?

A. On the 20th. April 20.

Q. Thursday?

A. Yes.

Q. There were a number of people that came up from Houston, including the special agent in charge, Mike Wilson. Is that correct?

A. Yes.

Q. How many people came up from Houston?

MS. WILKINSON: Your Honor, could I just object: If she knows.

THE COURT: Yes --

THE WITNESS: It was about ten.

BY MR. WOODS:

Q. Okay. Okay. How did you get there?

A. Took one of the Bureau cars up, drove it up.

Q. You didn't fly; is that correct?

Dawn Hester - Cross

A. No, sir.

Q. What was the weather like on the 20th when you arrived in Oklahoma City?

A. A little cloudy, cool. I had ran into some rain on the way up; but when I got there it was a little cloudy and cool

up, but when I got there, it was a little cloudy and cool.

Q. Could you tell whether or not it had been raining?

Let me back up one question. What time did you get there on Thursday, the 20th?

A. About 5:00 in the evening.

Q. Could you tell whether or not it had been raining that day?

A. No.

Q. Okay. Did you go directly to the crime scene and to the FBI command post nearby?

A. I reported to the command post.

Q. All right. And at that time, where was the command post?

A. It was in an old building off a side street.

Q. Approximately how far from the Murrah Building?

A. Maybe a block or two.

Q. Now, when did you go to the scene and start your duties; that is, photographing evidence that agents found?

A. Well, we started the next morning, once I got with my team.

Q. Checked into a hotel the evening of the 20th, I assume?

A. Yes. We had to get the badges and all that for it.

Q. Everybody had a badge that allowed entrance into the crime scene that was with you. When I say "everybody," I mean people

Dawn Hester - Cross

that were with the FBI. Is that correct?

A. Yes.

Q. And so you started work on Friday, the 21st?

A. Yes.

Q. Approximately what time?

A. Early in the morning. We have a meeting every morning before we start work.

Q. And what was the purpose of the meeting?

A. I think all the team leaders would get together with the coordinator, find out where we supposed to start out and what we supposed to do; and then we all divided, went out and started working.

Q. Okay. Now, on the 21st, did you happen to search the parking lot that was across the street from the Murrah Building?

A. No. I believe we started six blocks out and made a sweep in.

Q. Oh, so you were starting out and coming in?

A. Yes.

Q. Do you know whether or not there were other teams that were searching the parking lot that was directly across the street?

A. I don't know.

Q. Okay. When you say you were six blocks out, is that east and then you're working your way in toward the Y and the Murrah Building?

Dawn Hester - Cross

A. I don't remember.

Q. Okay. Okay. At any rate, at some point, you got to the YMCA and you were in the alley behind there; is that correct?

A. Yes, sir.

Q. And your team: Who all was on the team? How many -- I don't need the names, but how many people?

A. Probably 10 to 15. We also had some locals with us. Yes.

Q. Okay. And at sometime on the 22d, which is going to be Saturday, I take it -- is that correct?

A. Uh-huh. Yes.

Q. -- Mr. Young found the key?

A. Yes.

Q. And was that in the morning or afternoon?

A. I'd say midmorning.

Q. Okay. Now, you described to the prosecutor that it was pretty cold and windy. And was it raining that day?

A. Yes, sir.

Q. And you were notified to go over and photograph the key which was on some dirt?

A. Yes, sir.

Q. Now, the key looked sort of shiny and new, but there is a lot of debris and pine bark and vegetation around there. Was that the condition you saw it in when it was there?

A. Yes.

Q. And you don't know whether or not it had been raining

Dawn Hester - Cross

Wednesday, the 19th, and Thursday, the 20th?

A. I don't remember.

Q. Okay. Friday, the 21st: Do you remember whether or not it had been raining?

A. I don't remember.

Q. Did you have an occasion while you were there in Oklahoma City to photograph items that were recovered in the parking lot across the street from the Murrah Building?

MS. WILKINSON: Objection, your Honor. Could we have a time?

MR. WOODS: During her whole period there.

We've covered the fact she recovered the key.

THE COURT: Yes, you can ask that.

BY MR. WOODS:

Q. During your period there -- how long did you stay in Oklahoma City, Ms. Hester?

A. About two weeks.

Q. During that two-week period, were you always doing the photography of items that were recovered by agents, or seen by agents?

A. Yes.

Q. Did you have an occasion to photograph items that were recovered in that parking lot? And just so you're familiar with what I'm talking about, if you don't mind assisting -- stepping down, do you recall a large parking lot right across

Dawn Hester - Cross

the street from the Murrah Building?

A. Yes.

Q. And that's what I'm talking about.

Did you have an occasion to photograph any items that agents found in that location?

A. No.

Q. Were you the photographer that took the photos of the Ryder truck that was brought to the scene by the ATF?

A. No.

Q. Did you ever see that truck that was brought to the scene by ATF?

A. I don't remember they did or not.

Q. Do you recall seeing a Ryder truck?

A. Yes.

Q. On the scene?

A. Yes. But I don't know who brought it there.

Q. Okay. Okay. You weren't the one who took photographs of it?

A. No.

Q. Do you recall approximately what day it was when you first saw that truck on the scene?

A. The day I was in the alley. 22d.

Q. So that would be Saturday, the 22d? Okay.

Do you recall where it was?

A. The back part of the alley.

Dawn Hester - Cross

Q. Same alley that you're in?

A. Yes.

Q. Behind the Y?

A. Yes.

MR. WOODS: Okay. Thank you very much. I appreciate you answering my questions.

THE COURT: Anything else of this witness?

MS. WILKINSON: Yes, your Honor.

REDIRECT EXAMINATION

BY MS. WILKINSON:

Q. Ms. Hester, you photographed a Ryder truck at the end of that alley on April 22, didn't you?

A. Yes.

Q. It didn't have any ATF writing or anything on the side, did it?

A. No.

Q. And you didn't see anything inside the truck, did you?

A. No.

Q. You have no idea how that Ryder truck got to the end of the alley, do you?

A. No.

Q. Did you see FBI agents around that truck?

A. No.

MS. WILKINSON: No further questions.

MR. WOODS: Well, that just elicits one.

THE COURT: All right.

RECROSS-EXAMINATION

BY MR. WOODS:

Q. I'm sorry, Ms. Hester. Why did you photograph that truck

Q. I'm sorry, Ms. Nestel. Why did you photograph that truck at the alley, the Ryder truck?

A. Well, when I took the long photo of the alley, the truck was there.

Q. Oh, okay.

A. I was taking a long one of the alley and a short.

Q. So you weren't specifically trying to photograph the truck?

A. No. I was doing the alley.

Q. I see. And you don't know anything about that truck, who brought it there?

A. No.

MR. WOODS: Okay. Thank you very much.

THE COURT: This witness to be excused?

MS. WILKINSON: Yes, your Honor.

THE COURT: Agreed, Mr. Woods?

MR. WOODS: Yes.

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

Next witness, please.

MR. MACKEY: Call Jodie Carlson. Mr. Ryan will question.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Jodie Carlson 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: Jodie R. Carlson, C-A-R-L-S-O-N.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Ryan.

MR. RYAN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. RYAN:

Q. Ms. Carlson, where do you live?

A. I live in Tucson, Arizona.

Q. Now, you're here today to tell us about the rental of a storage unit in Kingman, Arizona; is that right?

A. That is correct.

Q. Before we do that, let me ask: Are you married?

A. Yes, I am.

Q. And what do you do in Tucson, Arizona?

A. I'm the property manager and business manager of Lincoln Green Apartments, and I'm currently working on my master's degree.

Q. And where were you -- how long have you been there in Tucson?

A. I've been in Tucson approximately one-and-a-half years.

Q. Did you live in Kingman, Arizona, in October of 1994?

A. Yes, I did.

Jodie Carlson - Direct

Q. And by whom were you employed?

A. I was employed by Century 21, Barbara Ricca Realty.

Q. Can we just call that Century 21?

A. Yes.

Q. What kind of work did you do for Century 21 in Kingman?

A. We leased residential homes. We leased apartments and also

storage units.

Q. Was one of the storage units that you leased known as Northern Storage?

A. Yes.

Q. And describe Northern Storage for all of us, if you would.

A. Northern Storage was a facility in Kingman located on Northern Avenue, and the cross street was Powell Avenue. It had approximately, I would say, about 100 storage units in different sizes to rent.

Q. Now, would you tell us what your responsibilities were regarding Northern Storage for Century 21.

A. My responsibilities were to take care of the customer that came into our office requiring the rental of a storage unit, to locate the size that they were looking for, set up the application process, take the fees and assign a unit to them.

Q. Now, I want to ask you specifically about October 4, 1994. Do you -- did you rent Storage Unit E10 on that day?

A. Yes, I did.

Q. Now, do you recall the person who rented the storage?

Jodie Carlson - Direct

A. Yes. Timothy McVeigh.

MR. RYAN: Your Honor, I'm pleased to report that I've relinquished the computer duties to Mr. Johns; so I'm going to ask him, if he would, to call up Exhibit 169 for the witness.

THE COURT: Okay.

BY MR. RYAN:

Q. Now, can you identify this exhibit?

A. Yes. This is the storage-unit rental application.

MR. RYAN: Your Honor, the Government would offer Exhibit 169.

MR. TIGAR: No objection.

THE COURT: 169 received.

BY MR. RYAN:

Q. Now, if you would, please, tell us the name of the customer.

A. Tim McVeigh.

Q. And did he give you an address?

A. It states -- which is the information I took was from his driver's license. He noted on the application P.O. Box 2153, Fort Riley, Kansas.

Q. Now, you indicated that you took this information off a driver's license. What was the cause for that?

A. That was normal procedure.

Q. Normal procedure in what sense?

A. To provide documentation to the file that the application

Jodie Carlson - Direct

and the individual renting the storage unit was the actual individual.

Q. Was this a procedure required by Century 21?

A. Yes. It was required for all applications.
Q. And did you do that with respect to all applications?
A. Yes, I did. I'm a licensed agent for the State of Arizona.
Q. Down at the bottom of the application, it states -- well, actually, it's more in the middle. It says, "Persons who will have access to unit." That's a standard question, I gather, in the application.
A. Yes.
Q. What does it state there? Can you read the writing?
A. It states, "None."
Q. What does that mean?
A. That means no other individuals will have access to the unit that we are allowed to give authorization to.
Q. Other than Mr. McVeigh?
A. That is correct.
Q. Now, do you have any way of enforcing that?
A. No, I don't.
Q. I mean, how does a person secure the storage shed?
A. The actual storage units are vacant when we rent them to the individuals and they put their own locks on them, whether they be key locks or combination locks. After the initial transaction takes place, we do not any longer have any

Jodie Carlson - Direct

communication with that individual.
Q. Now, down at the bottom there it says, "Type of goods being stored." Could you read what it is stated there for us?
A. It states, "Type of goods being stored: Household." In parentheses, "(Dishes, bathroom stuff, etc.)."
Q. Now, who provided that information?
A. The applicant, Timothy McVeigh.
Q. Now, is all of the information supplied here on Exhibit 169 -- or the handwriting, rather -- is that the handwriting of Mr. McVeigh?
A. Yes.
Q. Now, again, with respect to the type of goods being stored there, what the customer writes in that block: Do you verify that in any way?
A. No, sir.
Q. Does anyone from Century 21 go and look in the storage unit to see what's there?
A. No, sir.
Q. Down at the bottom, it says, "No chemicals or flammable fluids may be stored." Do you or Century 21 have any ability to verify that, or do you take any steps to verify that?
A. No, sir.
Q. Now, let me show you what's been marked as --
MR. RYAN: Well, I'm sorry, your Honor. I didn't show
that to the jury. Could I ask --

Jodie Carlson - Direct

it was on there?

THE COURT: Yes.

MR. RYAN: Thank you.

BY MR. RYAN:

Q. Let me show you now what's been marked as Exhibit 170.

Now, can you identify that for us?

A. Yes. This is the rental agreement contract for the storage unit, E10.

Q. What unit is being rented?

A. It says E10.

Q. On what date?

A. On October 4, 1994.

Q. And again, the name of the person renting the unit?

A. Tim McVeigh.

Q. And how much did the unit rent for each day?

A. It rented for \$30 per month with a \$5 service fee that day for a total of \$35.

Q. And how long -- when would that \$35 expire?

A. That would expire on 11-4-94.

Q. And that's what's reflected there on the face of the exhibit?

A. Yes, sir.

MR. RYAN: Your Honor, I move to offer Exhibit 170.

MR. TIGAR: No objection, your Honor.

THE COURT: Received, 170.

Jodie Carlson - Direct

BY MR. RYAN:

Q. Now, let me turn your attention to Exhibit 171.

Could you identify that for us, please.

A. Yes. This is a Kansas driver's license with the name McVeigh, Timothy J.

MR. RYAN: Your Honor, we would offer Exhibit 171.

MR. TIGAR: No objection.

THE COURT: Received, 171.

BY MR. RYAN:

Q. Now, tell us how you obtained a copy of this driver's license.

A. It was normal and standard procedure for an individual renting a storage unit to have an application provided to them, and I would take the driver's license and make a copy of it while they filled out the application.

I would then verify the individual at the counter with the application and with the face at the counter.

Q. Was this all conducted on October 4?

A. Yes, sir.

Q. Now, again, let me turn your attention to Exhibit 144. Do you have that in front of you?

A. Yes, sir.

Q. Could you identify that for us, please.

A. This is a document stating, "Return check policy, tenants store goods at their own risk, and insurance is tenant's

Jodie Carlson - Direct

responsibility."

Q. When was that document created?

A. That was created on October 4, 1994.

MR. RYAN: Your Honor, the United States would offer Exhibit 144.

MR. TIGAR: No objection.

THE COURT: Received.

BY MR. RYAN:

Q. Now, it appears there are two signatures on that document and two dates. See that?

A. Yes.

Q. And whose handwriting is that?

A. That was the applicant, Tim McVeigh.

MR. RYAN: Your Honor, at this time I would ask that the Court advise the jury of the stipulation with respect to Exhibits 169, 171, 170 and 144, that these documents all contain the handwriting of Timothy McVeigh.

MR. TIGAR: That's right, your Honor. We've agreed to that.

THE COURT: All right. So agreed, and we accept the agreement, members of the jury.

BY MR. RYAN:

Q. I'll ask that you be displayed Exhibit 173.

Could you tell us what that is, please.

A. This is a receipt that I wrote out when I received payment

Jodie Carlson - Direct

for the storage unit that day.

Q. And is this your handwriting?

A. Yes, it is.

MR. RYAN: Your Honor, we would offer Exhibit 173.

MR. TIGAR: No objection.

THE COURT: Received.

BY MR. RYAN:

Q. What does this receipt reflect, Ms. Carlson?

A. This receipt reflects the date and the year and the name of the person that has rented the storage unit, and it also states the location of the storage unit and the term how long the individual will be renting that storage unit and the length of payment -- amount of payment. Excuse me.

Q. I ask that you be shown Exhibit 174.

Can you identify this for us?

A. Yes. This is a receipt that was dated 10-13-94 for a payment for a storage unit from McVeigh to Northern Storage, E10, for the dates 11-4 to 12-4 of '94 in the amount of \$30.

MR. RYAN: Government would offer Exhibit 174.

MR. TIGAR: No objection.

THE COURT: Received.

BY MR. RYAN:

Q. Now, what day was this transaction?

A. This transaction to the best of my knowledge was 10-13 of '94.

Jodie Carlson - Direct

Q. This was approximately nine days after Mr. McVeigh had come in and leased the Storage Unit E10. Is that correct?

A. That is correct.

Q. Now, how was this payment made as according to the receipt?

A. This payment was made in cash.

Q. And when did this payment that was made nine days after the first payment extend the lease for?

A. 12-4 of '94.

Q. I ask that you be shown Exhibit 175. Can you identify that for us, please.

A. Yes. This is another receipt dated 10-27 of '94 for a storage unit rented by McVeigh, Northern Storage, Storage Unit No. E10, for the term of 12-4 to 2-5 of '95 in the amount paid in cash of \$60.

MR. RYAN: Government offers Exhibit 175.

MR. TIGAR: No objection.

THE COURT: Received.

BY MR. RYAN:

Q. Now, this payment by Mr. McVeigh occurred approximately 23 days after he initially rented the lease (sic). Is that correct?

A. That is correct.

Q. And this extended the lease through what date?

A. 2-5 of '95.

Q. Again, was this cash?

Jodie Carlson - Direct

A. Yes.

Q. I show you what's been marked as Exhibit 176. Can you identify this exhibit?

A. Yes.

Q. What is it?

A. This is Northern Storage.

MR. RYAN: Your Honor, this has already been offered and admitted into evidence, your Honor, so I just ask it be published.

THE COURT: All right.

BY MR. RYAN:

Q. Ask you show us -- you have a pen there on a -- see that? Put it under the table there. Can you show the jury where -- excuse me -- Storage Shed E10 is located.

Thank you.

Let me ask that you be shown Exhibit 177, which is also in evidence. If you'll hit the side of the pen there, it will erase the marks you just made.

And would you place an X where Storage Unit E10 is located.

What is the size of that unit?

A. It's a 6-by-15.

Q. I want to ask that you be shown Exhibit 145, which is not

in evidence.

Can you identify this for us, please.

Jodie Carlson - Direct

A. Yes. This is the ledger card that was kept in our office documenting the transactions for individual clients.

MR. RYAN: Your Honor, we would offer Exhibit 145.

MR. TIGAR: May I inquire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. TIGAR:

Q. Good afternoon, ma'am.

A. Hi.

Q. I'm Michael Tigar, one of the lawyers appointed to help Terry Nichols.

There is a change of address on this form here. Do you know how that came to be?

A. No, sir.

Q. But this is a document kept in the regular course of your business; that is, you got one of those for every one of these locker transactions?

A. Yes, sir.

MR. TIGAR: No objection, your Honor.

THE COURT: 145 is received.

DIRECT EXAMINATION CONTINUED

BY MR. RYAN:

Q. Ms. Carlson, according to Government's Exhibit 145, when was the -- when was it noticed that the Storage Shed E10 was vacated?

Jodie Carlson - Direct

A. It was vacated on 2-13 of '95.

MR. RYAN: Thank you, ma'am.

THE COURT: Mr. Tigar, do you have any questions?

MR. TIGAR: Yes, your Honor. Thank you. I was just getting exhibits.

CROSS-EXAMINATION

BY MR. TIGAR:

Q. Good afternoon again, ma'am.

Were you working there at the real estate office on the 13th when this whole transaction ended?

A. No, sir.

Q. Had you left the company by then?

A. Yes, sir.

Q. And you're down in Tucson now?

A. Correct.

Q. And getting a master's in what?

A. Education specializing in academic counseling.

Q. At ASU?

A. University of Phoenix.

Q. University of Phoenix.

Now, the -- so you would not know what investigations were conducted by law enforcement with respect to the shed. is

were conducted by law enforcement with respect to the shed, is that correct?

A. That is correct.

Q. Okay. Now, you said that somebody came in and rented the

Jodie Carlson - Cross

shed. Do you remember what that person looked like?

A. No, sir.

Q. Do you remember what time of day it was?

A. No, sir.

Q. Have you looked back to try to figure out whether it was morning or afternoon? I know it's a long time ago.

A. No, sir.

Q. The 4th of October was a regular weekday; right? A
workday?

A. That is correct.

Q. Now, the storage rental, you said, was \$30 a month. Right?

A. Yes.

Q. So with the three payments we have here, somebody would have the right to occupy it until the 2d of February; correct?

A. Till the 5th of February.

Q. Excuse me. Till the 5th of February. The 5th day of the second month?

A. Yes.

Q. Were you the person who personally took the payments in each one of these cases?

A. No, sir.

Q. That was done by somebody else in the office who made out a standard receipt; is that correct?

A. Yes.

Q. But you are certain that you would not have rented the unit

Jodie Carlson - Cross

to someone who didn't look anything at all like the picture on their driver's license; right?

A. Could you restate the question, please.

Q. Well, whenever somebody came in to rent, you looked at the driver's license to make sure you had the right person; correct?

A. That's correct.

Q. And -- and that's one of the ways that you verified that the -- what the transaction was; right?

A. Yes, sir.

Q. Now, with respect -- if I could show here what's been received in evidence as Government's Exhibit 177, a photograph, we see there in the center E10. And that's the unit we're talking about. Correct?

A. Correct.

Q. Now, if we look here, that's the locking mechanism on the door; is that right?

A. Yes.

Q. Now, how many locks is that designed to take?

A. Two.

Q. Two. And those are the two little marks that we have -- you can see those two little things hanging down there?

A. Yes.

Q. And the locks are to be supplied by the customer. Is that correct?

Jodie Carlson - Cross

A. Yes.

Q. Did you ever observe anyone in or around that storage unit after you rented it until the time you left the company?

A. No, sir.

Q. Was your office at some distance away from where the storage sheds were located?

A. Yes, sir.

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

THE COURT: Anything else of this witness?

MR. RYAN: Just one question, your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. RYAN:

Q. Ms. Carlson, was it permissible with Century 21 for a customer to have one keyed lock and one combination lock on the storage units?

A. Yes.

MR. RYAN: Thank you. That's all, your Honor.

MR. TIGAR: Yes, your Honor. One -- I'm sorry. I forgot to ask.

RE CROSS-EXAMINATION

BY MR. TIGAR:

Q. I want to show you what's been marked -- received, rather, as Government's Exhibit 145, if I may. Do you see the top here

Jodie Carlson - Recross

where there is a change of address; that is to say, the renter -- first was typed in "McVeigh, Tim; P.O. Box 2133; Fort Riley, Kansas," and then a ZIP Code. Do you see that?

A. Yes.

Q. And then has written "1711 Stockton Hill, No. 206." Do you see that?

A. Yes.

Q. Now, that is not your writing, is it?

A. No, sir.

Q. Is it -- was it the regular course of business of your company at that time to make changes of address when the customer would report that the address had changed?

A. Yes.

Q. And the purpose of that was the -- was the purpose of that so that you could notify the customer, should that become necessary?

A. Yes.

Q. So are you satisfied as you sit there today that that notation was made in the regular course of your business by someone whose responsibility it was to keep this card corrected?

A. Yes.

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

MR. RYAN: None, your Honor; and she may be excused.

THE COURT: All right. Agree to excuse?

MR. TIGAR: Yes, your Honor.

THE COURT: All right. Ms. Carlson, you may step down. You're excused.

Next?

MR. MACKEY: Your Honor, we would call Lou Hupp. Mr. Mearns will question.

THE COURT: All right. Mr. Hupp.

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

(Louis Hupp 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 Louis Gale Hupp. The last name is spelled H-U-P-P.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. MEARNES:

Q. Mr. Hupp, how are you employed?

A. I'm employed by the Federal Bureau of Investigation in Washington, D.C., in the Latent Fingerprint department.

Q. How long have you been working for the FBI?

A. More than 32 years.

Q. Have you worked continuously for the FBI for 32 years?

Louis Hupp - Direct

A. With the exception of two years off for military service in '66 through '68, yes.

Q. What is your specialty?

A. I'm employed as a fingerprint specialist in the Latent Fingerprint section.

Q. How long have you been in that position and in that section?

A. I've been employed in the latent print section since August of 1975.

Q. Tell us what are your duties as a fingerprint specialist in the Latent Fingerprint section?

A. I receive items of evidence from various law enforcement officials, both state and federal, for the purpose of examining for the presence of latent prints.

Q. And is it part of your responsibility to also attempt to identify latent fingerprints?

A. Yes, it is.

Q. Do you have any additional duties or responsibilities with the FBI?

A. I also instruct law enforcement officials throughout the

A. I also instruct law enforcement officials throughout the United States and have on occasion lectured in foreign countries in the art of detecting fingerprints, preserving them and preparing for courtroom testimony.

Q. And prior to today, how many times have you testified about your fingerprint examination work?

Louis Hupp - Direct

A. It would be more than 80.

Q. That is both state and Federal Court?

A. Yes, it is.

Q. Now, as a fingerprint specialist, are you familiar with the term "inked fingerprint"?

A. Yes, I am.

Q. Tell us what an inked fingerprint is.

A. An inked fingerprint is the reproduction of the friction ridges on the underside of the fingers by placing those friction ridges in contact with something such as printer's ink on a piece of metal and then rolling the print onto that and placing it on a card such as a stated fingerprint card which has a contrasting background.

Q. So it's a deliberate recording of the fingerprint?

A. That is correct.

Q. Are you also familiar with the term "latent fingerprint"?

A. Yes, I am.

Q. Can you tell us what is the difference about a latent fingerprint in contrast to an inked fingerprint?

A. Well, these friction ridges I spoke of on the underside of the fingers are covered with, or lined with a series of sweat pores which constantly exude some sort of perspiration; and this perspiration usually covers these ridges. On other occasions, if you would happen to touch a portion of your body, you would pick up foreign oils or something of that nature.

Louis Hupp - Direct

When this -- these ridges come in contact with something such as this piece of wood, those tracings or outlines are usually transferred to that but remain invisible to the naked eye.

Q. If they're generally invisible, how do you examine them as a latent or as a latent fingerprint examiner?

A. We process them with various chemicals and powders in order to make them visible to the naked eye.

Q. How do you go about identifying whose finger made a latent fingerprint?

A. Well, these -- we look for these points of identity which are present as part of these friction ridges, and we look for these points of identity to lie in the same relative position in two fingerprint impressions; and once you've done that, then we've effected an identification.

Q. When you say "points of identity," is there also a phrase in your expertise called a "point of comparison"?

A. Yes, there is.

--- ---, ----- ---

Q. Are those essentially the same things?

A. Yes, they are.

Q. How many different types of points of comparison or points of identity are there?

A. There are basically four. There are ridges that suddenly begin or end, which we call an end of a ridge. There is a ridge which starts as one ridge, splits or divides to form two.

Louis Hupp - Direct

There is another one that starts as a single ridge, splits or divides to form two only to rejoin again and form one ridge. We call this an "enclosure." And the last is what I call a "dot" or "ridge" with no direction.

Q. How many points of comparison or points of identity do you need to make a positive fingerprint identification?

A. Well, the FBI has no set standard. However, I have never identified a print with less than seven points as of today.

Now, that's not to say that I might not on a -- in some future date identify less; but as of today, seven would be the bottom.

Q. How many fingerprint specialists such as yourself review each latent fingerprint to make an identification?

A. Once an identification has been effected in the latent print section, a minimum of two people must concur before that identification is released.

Q. When you examine an object or a document for the possibility of a latent fingerprint and you identify a latent fingerprint, is there any way to tell when that fingerprint was left on the document or the object.

A. No, there is not.

Q. How do you determine what process to use to try to identify a latent fingerprint?

A. Basically, when I receive items of evidence, I break them into two basic groups, that being either a porous-type evidence

Louis Hupp - Direct

or a nonporous.

Q. What do you mean by "a porous-type evidence"?

A. "Porous" would be something such as this folder or a piece of paper or cloth, something that the latent print is literally absorbed into the surface of.

Q. What types of chemical processes do you use with a porous item such as a folder or a document?

A. Well, there are several, but we use them in strict sequential order. And those would be initially I would just visually examine the item for the presence of latent prints. Then I would certainly examine it with the presence of -- in the presence of an alternate light source or a laser to look for inherent fluorescence. Then I would process this with a chemical called DFO, place it into a dry heat situation, and then examine it in the presence of an alternate light source or laser.

The next chemical is what we call a ninhydrin. That reacts with humidity, and they would develop then. And the last but not least would be physical developer or silver nitrate.

Q. Do any of the processes you just described discolor documents or porous items?

A. Yes, they do.

Q. Which ones do that?

A. On an occasion, DFO will discolor an item. Certainly

Louis Hupp - Direct

ninhydrin will and physical developer or silver nitrate will cause great distortion either in a black, gray, or a dark brown color.

Q. The other processes that turn it a dark gray or a black: What color do they turn the document?

A. Generally it's a reddish-purple color.

Q. Do any of the processes, the chemical processes you just described, destroy or partially destroy a document?

A. Certainly will on occasion render a document, if there is writing or something on it, to where you cannot read it. Silver nitrate will destroy an object over a period of time.

Q. When you say "an object," you mean a document?

A. A document, yes.

Q. You said there were two types of items. One was porous, which you've just described.

A. Yes.

Q. You also said the nonporous.

A. Yes.

Q. What is a nonporous item?

A. Nonporous would be something such as the -- this piece of wood or a countertop or a piece of glass.

Q. And what processes do you use to develop a latent fingerprint, to identify a latent fingerprint on a nonporous item?

A. First would be, of course, visual examination to see if I

Louis Hupp - Direct

can see the latent on the item itself. Secondly, I would again go to the laser or alternate source and attempt to see any inherent fluorescence. Then I would process it with cyanoacrylate or what many people refer to as Super Glue. After that, I would again examine it visually. Then I might apply a chemical-dye stain which would react with the cyanoacrylate. Then I would place it under an alternate light source or a laser again, because this would fluoresce. And last but not least, I would certainly powder it with appropriate colored powder.

Q. And by "powder," that's what we see on television? We see detectives using fingerprint powder?

A. Yes, it is.

Q. Do you ever use the term "fragile" with respect to latent

fingerprints?

A. Yes.

Q. What does the term "fragile" mean in your field?

A. In my field, we would consider a latent which would appear or would be presented on a porous piece of -- or nonporous piece of evidence, one that lies on the surface. They're very easily removed by simply brushing or touching, and they're easily removed; therefore we give them the term "very fragile."

Q. Which type of items, porous or nonporous, are more fragile?

A. Certainly the nonporous would be the most fragile.

Q. Now, if I handed you a porous item like a piece of paper

Louis Hupp - Direct

after I held it like this and I handed it to you now, would you necessarily be able to develop my fingerprints on this piece of paper?

A. Not necessarily.

Q. Why not?

A. There are a number of reasons. First and foremost, you must have something on the ridges of your fingers to transfer. If you were to have washed your hands recently or had wiped them dry, then certainly there is very little to transfer, if anything.

You might be wearing a pair of gloves, or you might be, like myself, somebody that has very dry skin and does not leave very good latents at all.

Q. Would it be fair to say that in your 30-some-odd years with the FBI that you've examined thousands of documents?

A. Yes.

Q. In your experience, how often do you develop a latent fingerprint on a document on a nonporous -- excuse me -- on a porous item like a piece of paper?

A. I would estimate it's somewhere in the 20 percent range.

Q. I want to direct your attention now to April 22, 1995.

Were you in Abilene, Kansas, that day?

A. Yes, I was.

Q. What did you do in Abilene, Kansas, on April 22?

A. I had been directed to Abilene, Kansas, for the purpose of

Louis Hupp - Direct

printing an individual by the name of Terry Nichols.

Q. Did you do that that day?

A. Yes, I did.

Q. Do you see the individual that you fingerprinted on April 22? Do you see him in the courtroom today?

A. Yes, I do.

Q. Could you tell us where he's seated and what he's wearing?

A. He's the gentleman sitting in the middle with the dark blue blazer and white shirt.

MR. TIGAR: He's identified him, your Honor.

THE COURT: All right.

BY MR. MEARNS:

Q. Mr. Hupp, if you would look in the folder there for

Q. Mr. Hupp, if you would look in the folder there for Government's Exhibit 1290 for identification.

Do you recognize that?

A. Yes, I do.

Q. What is that?

A. This is a standard fingerprint card which I recorded on April 22 in Abilene, Kansas. And on it are the 10 rolled impressions of the right hand and left hand as well as four simultaneous impressions at the bottom and two thumbs of each hand.

Q. Are there several pages in this one exhibit?

A. Yes, there are.

Q. Those are all the fingerprints that you took from

Louis Hupp - Direct

Mr. Nichols on April 22, 1995?

A. That is correct, yes.

MR. MEARNS: Your Honor, we would offer Government's Exhibit 1290.

MR. TIGAR: May I inquire, your Honor?

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. TIGAR:

Q. Good afternoon, Agent Hupp. My name is Michael Tigar, one of the lawyers appointed to help Terry Nichols.

1290 is a major-case print card?

A. Yes. It's what I would call major-case prints, yes.

Q. And it contains all ten fingers; correct?

A. That is correct.

Q. Does it contain palm prints?

A. Yes, it does.

Q. And is the taking of palm prints a regular part of the major case print operation?

A. Yes, it is.

Q. And is that because those have value to you?

A. Yes, that's correct.

Q. And in addition to all 10 fingers, you take -- and the palm prints -- what else did you take?

A. The attempt was to record the entire friction ridge area of the underside of the fingers and palms. So I took the ten

Louis Hupp - Voir Dire

rolled impressions, I took impressions of the lower joint areas of the fingers, as well as impressions of the palm to include both the side outside area of the palm and under the thumb area of the palm.

Q. When we look at that, will we see an impression that one might make by putting one's hand down? We'll see directly? We'll see that?

A. That is correct.

Q. And another thing we'll see is an impression we would make if we took the finger or each finger and rolled it, like that.

Is that correct?

A. Yes.

Q. All right. And when -- and how many times have you taken major case prints in your years?

A. In my career, I've instructed more than I've taken. Probably I've taken 20 -- 20 sets.

Q. And you did a good job on that day?

A. I think I did, yes, sir.

MR. TIGAR: No objection, your Honor.

THE COURT: 1290 received.

DIRECT EXAMINATION CONTINUED

BY MR. MEARNS:

Q. Mr. Hupp, did you rely on those fingerprint samples that you took on April 22 to make identifications in this case?

A. Yes, I did.

Louis Hupp - Direct

Q. I want to direct your attention now to the previous day, Friday, April 21, 1995. Where were you that afternoon?

A. I was in Perry, Oklahoma.

Q. And what were you doing in Perry, Oklahoma?

A. I had been directed to Perry, Oklahoma, for the purpose of recording the fingerprints as well as major case prints of an individual by the name of Timothy McVeigh.

Q. And did do you that that day?

A. Yes, I did.

Q. I'd like you to look in your folder for Government's Exhibit 444. Do you recognize that?

A. Yes, I do.

Q. What is that?

A. This again is -- on the front is a standard fingerprint card bearing the 10 rolled impressions of both left and right hand as well as the plain impressions simultaneous, as well as thumbs. And behind that are the major case impressions that I recorded of the individual Timothy McVeigh.

Q. And did you use the same procedure that you just described a moment ago in response to Mr. Tigar's questions?

A. Yes, I did.

MR. MEARNS: Your Honor, we would offer 444.

MR. TIGAR: No objection, your Honor.

THE COURT: Received.

BY MR. MEARNS:

Louis Hupp - Direct

Q. During the process that you just -- that you used to take Mr. McVeigh's fingerprints, did he cooperate with you?

A. Yes, he did.

Q. Did you rely on Mr. McVeigh's inked fingerprints to make fingerprint identifications in this case?

A. Yes, I did.

Q. Directing your attention now to May 4, 1995, did you obtain any inked fingerprints that day that you relied on to make

identifications in this case?

A. Yes.

Q. Whose fingerprints did you take on May 4, 1995?

A. On that date, I recorded the fingerprints as well as major case prints of a gentleman by the name of Roger Moore.

Q. Do you have Government's Exhibit 1755 in that folder?

A. Yes, I do.

Q. And what is Government's Exhibit 1755?

A. This is again -- the top card is a fingerprint card bearing the 10 rolled impressions, the simultaneous fingers around the thumbs at the bottom.

And the prints behind that are the major case prints that I recorded that day of Mr. Roger Moore.

Q. And did you use the same procedure that you described a few moments ago?

A. Yes, I did.

MR. MEARNS: Your Honor, we would offer Government's

Louis Hupp - Direct

Exhibit 1755.

MR. TIGAR: No objection, your Honor.

THE COURT: Received.

BY MR. MEARNS:

Q. Mr. Hupp, did you rely on Mr. Moore's inked fingerprints to make identifications in this case?

A. Yes, I did.

Q. Do you see in your folder also what has been introduced into evidence as Government's Exhibit 1723?

A. Yes, I do.

Q. What is that?

A. This is a standard fingerprint card bearing the fingerprints of an individual by the name of Michael Fortier. It bears the same 10 rolled impressions of both hands, the simultaneous impressions, the thumbprints at the bottom, as well as fingerprints and palm prints on the subsequent cards.

Q. Did you rely on Mr. Fortier's fingerprints to make fingerprint identifications in this case?

A. Yes, I did.

Q. Did you also rely on several other fingerprint -- inked fingerprints to make identifications or comparisons in this case?

A. Yes.

Q. What I'd like to do now is ask you some questions about specific documents that you examined in this case. Okay?

Louis Hupp - Direct

I'd like to first ask you about what has been received

in evidence as Government's Exhibit 83. Do you have that in the folder?

A. Yes, I do.

Q. What is that?

A. This is a metal receipt for the Starlite Metal in the name

A. This is a motel receipt for the Statite Motel in the name of Terry Havens.

MR. MEARNS: And if we may display that on the monitor, please.

BY MR. MEARNS:

Q. And did you examine this registration card in the name of Terry Havens during the course of your participation in the investigation?

A. Yes, I did.

Q. And did you develop any fingerprints, latent fingerprints, on this document?

A. Yes. I developed latent fingerprints which were suitable for identification purposes.

Q. And how many of those four did you identify?

A. All four.

Q. And who did you identify those fingerprints to be?

A. I identified those with the fingerprints that I had recorded of Mr. Terry Nichols.

Q. And were those four fingerprints all on the same side of this registration card?

Louis Hupp - Direct

A. Yes, they were.

Q. Which side?

A. The front side, or the side that we're viewing now.

Q. Did you prepare prior to coming to court -- did you prepare enlargements of one of those latent fingerprints so that you could show it to the jury -- how you made that identification?

A. Yes, I did.

Q. If you would look at Government's Exhibit 84. And what is that?

A. This is a photographic enlargement that I prepared of both the latent and the inked print. It bears red lines and red numbers as well as red letters that I placed there for illustrative purposes.

Q. Is it an enlargement of one of the latent fingerprints on Government's Exhibit 83?

A. Yes.

Q. And is it also then an enlargement of one of the inked fingerprints that was provided by Mr. Nichols?

A. That is correct.

MR. MEARNS: Your Honor, at this time we would offer Government's Exhibit 84 for demonstrative purposes only.

MR. TIGAR: May I inquire, your Honor?

THE COURT: Yes, you may.

MR. TIGAR: May I look at the exhibit?

THE COURT: Sure.

Louis Hupp - Direct

MR. TIGAR: Thank you, your Honor.

VOIR DIRE EXAMINATION

BY MR. TIGAR:

Q. Agent Hupp, what process did you use to develop the

latent -- on the latent side there?

A. These were developed with the chemical DFO.

Q. And the -- is it fair to say that the enlargement on the latent side is -- doesn't -- lacks the clear definition of the -- of the actual case prints?

A. Yes, that's fair.

Q. That's clear?

A. That's fair.

Q. Is it your testimony, sir, that the latent print was deposited by the person, whoever made it, by touching the paper motel registration?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And could -- does your photograph there show the degree of pressure applied by the touching?

A. No, it just shows it was a mere impression placed there. I couldn't judge the amount of pressure that was placed.

Q. And the document that you got it off: That is a motel registration card like someone would receive across a motel desk, then hand back to the clerk; correct?

Louis Hupp - Voir Dire

A. Yes.

Q. And did you have any difficulty at all raising the print of that person based on that touching?

A. No. It was merely processed in the standard procedure, and they were developed.

Q. You didn't have to go down to either ninhydrin or silver nitrate to get it? You got it with No. 3, DFO. Correct?

A. That is correct.

Q. And DFO was the first thing you tried on it?

A. That was the first chemical process applied.

Q. Because as a practical matter, you didn't really expect to get it with Process 1 or 2; is that correct?

A. That's not necessarily true.

Q. But as you looked at it in this particular print, you didn't expect to get it that way, did you?

A. Well, I certainly didn't see anything visually. Until I examined it with the laser, I would have no way of knowing; but the odds are that it would be further down the chain.

Q. So what we're seeing here is what you got from the DFO processing, and that's on the latent side; correct?

A. That is correct, yes, sir.

MR. TIGAR: No objection, your Honor.

THE COURT: All right. 84 is received, may be used.

DIRECT EXAMINATION CONTINUED

BY MR. MEARNS:

Louis Hupp - Direct

Q. Mr. Hupp, if you would hold up Government's Exhibit 84 and display it to the jury and explain to them how you went about

identifying the latent fingerprint.

A. All right. The -- the enlarged photograph marked latent print -- this is approximately a 12-times photographic enlargement of a latent print that I developed --

MR. TIGAR: May I stand in the corner, your Honor?

THE COURT: Yes.

THE WITNESS: The photograph enlargement marked inked fingerprint --

BY MR. MEARNS:

Q. Mr. Hupp, you're hitting the microphone.

A. Excuse me. Is an impression of one of the fingerprints that I recorded of the individual Terry Nichols.

Now, the black lines that you see represent the friction ridges that I spoke of earlier. The white lines represent the valleys or furrows between these ridges.

The red lines, red numbers, and red letters were placed there by me for illustrative purposes only.

Let me direct your attention to the latent fingerprint up in the approximate left-hand center portion of the photograph. A ridge comes up and ends; and where that ridge ends, I have designated as Point No. 1.

Continuing down this ridge a short distance, there is a dividing ridge there which is part of No. 1. I designated

Louis Hupp - Direct

that as Point No. 10.

From Point No. 10, count across one intervening ridge and continuing up the white area, a short area, there is a small short ridge there. One end of it, I designated as Point No. 9. The other end of it, I designated as Point No. 2.

Now, let me direct your attention back to the photograph marked "inked fingerprint." In the upper left-hand portion of the photograph, a ridge ends right here or begins, either one. That's Point No. 1.

Continue down the ridge a short distance, and it splits or divides just like here.

That is Point No. 10.

From Point No. 10, count across this one intervening ridge and up this white area or valley. There is that extremely short ridge, which is Point No. 9 on one end and Point No. 2 on the other, bearing in mind that I must find these same or similar points of identity lying in the same relative position for two fingerprints to effect an identification.

Let me direct your attention back to the Point No. 2 here, this short ridge. Count across 1, 2, 3, 4, 5 and down the valley or furrow, and there is a ridge that suddenly ends. That's Point No. 3.

From Point No. 3, count across 1, 2, 3 ridges. A ridge that comes up and ends. That's Point No. 4.

Louis Hupp - Direct

Let me direct your attention back to Point No. 2 on

Let me direct your attention back to Point No. 4 on the inked fingerprint counting across 1, 2, 3, 4, 5; and down this white area, there is a ridge that ends, Point No. 3.

Q. Mr. Hupp, if I can interrupt you, how many different points of comparison did you identify between the inked fingerprint and the latent fingerprint?

A. In this one, I have charted 10 points that I marked. There are more than that. There are probably more than 20 in this particular latent print which were made in the same relative position. I only charted 10 for illustrative purposes.

Q. Thank you, Mr. Hupp.

Now, if you would look for what has been introduced in evidence as Government's Exhibit 62. Do you recognize that?

A. Yes, I do.

Q. And did you examine that document in the course of this investigation?

A. Yes, I did.

Q. Did you develop any latent fingerprints on that document?

A. Yes.

Q. How many latent fingerprints did you develop?

A. There were two latent prints suitable for identification developed on this particular document.

Q. Did you identify both of those?

A. Yes, I did.

Q. Who did you identify those fingerprints to be on that

Louis Hupp - Direct

receipt?

A. Both fingerprints were an impression of the right index finger of the individual Timothy McVeigh.

Q. So it was two latent prints of the same single finger?

A. Yes.

Q. And the same single finger of Mr. Timothy McVeigh?

A. That is correct.

Q. Now, if you would turn to what is in your folder Government's Exhibit 160, 161, and 162. Mr. Hupp, it's in that other --

A. In the other folder?

Q. Did you identify -- did you examine those items during the course of your investigation?

A. Yes, I did.

Q. And did you develop any latent fingerprints on any of those items?

A. I developed one fingerprint on one of the cardboard sleeves which was suitable for identification purposes.

Q. And when you say a "sleeve," what are you referring to?

A. I'm referring to a piece of cardboard that was used to hold the orange cord inside. It was sort of a wrapper that went around it. It bears the name "Primadet," for instance, and "18M" or 18 meters.

Q. And is that in that separate envelope which has been marked 160A?

Louis Hupp - Direct

A. Yes, it is.

Q. How many latent fingerprints did you develop on 160A?

A. One.

Q. And did you identify it?

A. Yes, I did.

Q. Whose fingerprint did you identify it to be?

A. I identified it as a fingerprint of Terry Nichols.

MR. MEARNS: Your Honor, we would offer Government's Exhibit 160A.

MR. TIGAR: No objection, your Honor.

THE COURT: 160A is received.

BY MR. MEARNS:

Q. Do you have Government's Exhibit 158, Mr. Hupp?

A. Yes, I do.

Q. What is that?

A. This is a book entitled The Hunter by Andrew Macdonald.

MR. MEARNS: And 158 has been received in evidence.

Is that correct?

THE COURTROOM DEPUTY: 158?

THE COURT: Should be.

MR. TIGAR: Yes, your Honor, it has.

THE COURT: Yes.

MR. MEARNS: Your Honor, may I just publish the computer image so that the jury can see --

THE COURT: Yes.

Louis Hupp - Direct

BY MR. MEARNS:

Q. Did you develop any latent fingerprints in this book?

A. Yes, I did.

Q. How many latent fingerprints did you develop in this book?

A. There were 14 latent fingerprints suitable for identification purposes.

Q. And how many did you identify?

A. I identified 13.

Q. And who were -- whose fingerprints did you identify?

A. All 13 fingerprints belonged to Terry Nichols.

Q. And could you tell us on what pages within the book you identified Mr. Nichols' fingerprints?

A. The pages that I identified Mr. Nichols' prints on were page 4 --

MR. TIGAR: Excuse me, your Honor. If he's reading from a document, may we know what it is?

THE COURT: Are you reading from something?

THE WITNESS: Yes. This was a sort of a breakdown of my notes which we're going to use to kind of expedite things, your Honor.

THE COURT: All right. Would you like to look?

MR. TIGAR: Yes, I would, your Honor.

Government counsel is handing me what I'm told is a copy.

May I look --

Louis Hupp - Direct

THE COURT: Certainly, you can look at what the witness has.

MR. TIGAR: Yes, your Honor. I see it now.

BY MR. MEARNS:

Q. Mr. Hupp, did you prepare that notebook prior to coming to court to assist you in recalling your identification on these numerous documents?

A. Yes, I did.

Q. Could you tell us the page numbers on which you identified Mr. Nichols' fingerprints?

A. Okay. The pages which I identified with Mr. Nichols' fingerprints was page 4, page 31, page 47, page 117, page 137, page 149, page 159, page 190, page 224, page 240, page 248, page 259, and page 260.

Q. How many pages are there in that book?

A. There are probably -- it appears to be -- about 165 -- or 265. Excuse me.

MR. TIGAR: Your Honor, I would request that all of the various pages of notes that the agent intends to use be marked as a group exhibit and received in evidence.

MR. MEARNS: We would have no objection to that.

THE COURT: All right. Well, you can do that during a recess, which is what we're about to do.

MR. TIGAR: Yes, your Honor.

THE COURT: So you may step down now, Mr. Hupp.

Members of the jury, we're going to recess, it being almost 5:00, our usual time for recess; and of course, during the time of this recess overnight until we resume tomorrow, you, of course, will follow the cautions always given at recesses and avoid therefore discussion of the case, really; avoid thinking about it during the time of the recess, also being careful about all of the things that you read, see, and hear to avoid anything that may relate to the subject matter of our evidence.

Tomorrow, of course, is our shortened day, tomorrow being Friday, when we'll resume at 8:45 and recess at 1 with hopefully one break in between as we did last Friday.

On the subject of scheduling, we should be thinking ahead here -- or I am thinking ahead. I can't give you yet an estimate -- and I've discussed this with counsel -- of how long we're going to be going here; but, of course, as you know from what I've told you before, trials are human events. We cannot anticipate exactly how long each witness will take, recognizing that there is both direct and cross-examination. And we can't predict exactly what will happen.

So I'm not in a position to let you know how long trial will be as yet, but it is certain that we will be working the week on which Thanksgiving is a holiday, another legal holiday coming up here. And that's November 27.

Normally, the Court -- the 28th, the day after Thanksgiving, is a normal court day; and we hold court on the following day. I did not, however, it occurs to me, at the

time of asking you, each of you, all of these questions on voir dire -- ask of you whether any of you had family plans or that kind of thing for the Thanksgiving day and the following day. So I want you to let us know about that. We'll ask you about that tomorrow, because we would honor it if you have such plans; otherwise, we would expect to hold court on the 28th.

But, as I say, I didn't clear that with you when you signed on, so to speak, as jurors; so I want you to let us know about that tomorrow.

We will, of course, at this time, then, recess until tomorrow morning at 8:45. Hope you have a pleasant evening.

(Jury out at 5:01 p.m.)

THE COURT: Mr. Tigar.

MR. TIGAR: Mrs. Hasfjord had asked that we clarify the exhibit numbers for the various tracks that were played during Mr. Fortier's cross-examination so that the record may be complete in that regard. And we do have each of those tracks on a separate CD, your Honor.

THE COURT: All right.

MR. TIGAR: I'm just repeating what I was told. There is no understanding behind these words, but Ms. Hare, our paralegal, does have those tracks, and I can read them into the record now and ask that they be received in that form, if your Honor believes that's the best way to complete the record.

THE COURT: Well, I don't understand what you're saying. This is on a -- when you say "tracks," it's like on a CD-ROM?

MR. TIGAR: When I called out, for example, A9, I was referring to something on the CD remote that our people had.

A9 corresponds to an exhibit number, D462. And if I could just read those correspondences, the record would be complete.

THE COURT: Go ahead. All right.

MR. TIGAR: A9 corresponds to D462.

A13 corresponds to D411.

B1 corresponds to D420.

B2 corresponds to D421.

B7 corresponds to D426.

C2 corresponds to D443.

C3 corresponds to D444.

C4 corresponds to D445.

A2 corresponds to D418.

A3 corresponds to D429.

A5 corresponds to D450.

A6 corresponds to D459.

A7 corresponds to D460.

A15 corresponds to D413.

A18 corresponds to D416.

A19 corresponds to D417.

B13 corresponds to D433.

A14 corresponds to D412.

A20 corresponds to D419.

A8 corresponds to D461.

We would ask that those be admitted in evidence, your Honor.

THE COURT: Well, we'll certainly admit them since

the

jury has heard them.

MR. TIGAR: Yes, your Honor.

THE COURT: Are we talking about a physical -- when you say D413, and so forth --

MR. TIGAR: Each one is a separate CD-ROM disk, your Honor, because the spoken word is the evidence. It may be at a later time we would choose to offer a transcript as an aid, but we doubt that we're going to do that.

THE COURT: Right.

MR. TIGAR: I think the spoken word is the evidence. The transcript would be an aid.

THE COURT: Right. Just like the testimony is. But we should have the -- I guess the backup exhibits.

MR. TIGAR: We'll, this evening, your Honor, separately mark with a sub A each -- the relevant transcript pages; and we'll present those tomorrow to complete the record.

THE COURT: All right.

MR. TIGAR: Thank you, your Honor.

THE COURT: And unless there be objection from counsel, I'll ask Mr. Manspeaker to check with the jurors this morning -- or tomorrow morning to see what their response is to my invitation to let us know if they have conflicts with holding court on the 28th.

MR. MACKEY: That's fine.

THE COURT: Agreeable?

MR. TIGAR: Yes, your Honor.

The Government, during its examination of Mr. Hupp, examined him concerning the Mike Havens receipt but did not offer 62C. Was it -- I don't know if Mr. -- which -- which would complete that exhibit. If the Government chooses not to offer it, we would ask that it be received under Rule 106, your Honor.

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

THE COURT: Yes.

MR. MEARNS: We would have no objection to 62C.

THE COURT: All right. We'll receive 62C, and then we're going to mark these notes that he was working with?

MR. TIGAR: Yes, your Honor. Whatever number they want to give them.

THE COURT: All right. You can do that during the time of the recess.

We'll recess. 8:45.

(Recess at 5:07 p.m.)

* * * * *

INDEX

Item

Page

WITNESSES

Michael Fortier

Cross-examination Continued by Mr. Tigar

8439

Redirect Examination by Mr. Mearns

Recross-examination by Mr. Tigar

Dawn Hester

Direct Examination by Ms. Wilkinson

Cross-examination by Mr. Woods

Redirect Examination by Ms. Wilkinson

-

Recross-examination by Mr. Woods
Jodie Carlson
Direct Examination by Mr. Ryan
Voir Dire Examination by Mr. Tigar
Direct Examination Continued by Mr. Ryan 8547
Cross-examination by Mr. Tigar
Redirect Examination by Mr. Ryan
Recross-examination by Mr. Tigar
Louis Hupp
Direct Examination by Mr. Mearns
Voir Dire Examination by Mr. Tigar
Direct Examination Continued by Mr. Mearns 8564
(Louis Hupp)
Voir Dire Examination by Mr. Tigar
Direct Examination Continued by Mr. Mearns 8571

PLAINTIFF'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
62C	8583	8583			
84	8569	8571			
144	8543	8543			
145	8547	8547			
160A	8576	8576			
169	8538	8538			
170	8541	8541			
171	8542	8542			
173	8544	8544			
174	8544	8544			
175	8545	8545			
444	8565	8565			
699	8524	8524			
700	8523	8523			
703	8526	8526			
1290	8563	8564			
1755	8566	8567			

DEFENDANT'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
D390	8481	8482			

DEFENDANT'S EXHIBITS (continued)

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
D397 pp. 1-2	8479	8480			
D411-D413	8582	8582			
D416-D421	8582	8582			
D426	8582	8582			
D429	8582	8582			
D433	8582	8582			
D443-D445	8582	8582			
D450	8582	8582			
D459	8582	8582			
D460-D462	8582	8582			
D484	8483	8483			
D485	8483	8484			
D491	8485	8485			
D497	8488	8488			
D501	8489	8489			
D512	8493	8493			
D513	8493	8493			

D516	8494	8494
D517	8494	8494
D518	8496	8496
D519-D526	8496	8497
D528	8498	8498
D552	8499	8499

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 13th day of November, 1997.

Paul Zuckerman

Bonnie Carpenter

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