

## Chapter Ten

### A Real World Cross-Examination, Annotated

In looking at “real world” cross-examinations, my favorite is Michael Fortier, in the trial of Terry Lynn Nichols. I have lightly edited the transcript, and have added notes. Michael Fortier had been Timothy McVeigh’s friend. He had known of the Oklahoma City bombing plot, and finally and reluctantly became a government witness. He had given the FBI dozens of statements, which were not recorded but memorialized in FBI 302 agent memoranda. According to Fortier, McVeigh had told him that Terry Nichols was part of the plot to blow up the Murrah Building in Oklahoma City. In opening statement, I reminded the jury that such statements, admissible as conspirator declarations, faced two hurdles. First, one had to think that Fortier was telling the truth that McVeigh said these things, and second that McVeigh was telling the truth if and when he said them. I was entitled under the rules to attack Fortier’s and McVeigh’s credibility, for a declarant such as McVeigh is subject to the same impeachment rules as if he or she had testified as a witness. I could therefore use Fortier to undermine McVeigh’s hearsay.

Fortier had reached a plea bargain with the government. He pled guilty to a conspiracy to sell stolen firearms, transporting stolen firearms in interstate commerce, making a false statement that he did not know of plans to blow up the Murrah Building, and misprision of felony. He was not asked to plead guilty to a conspiracy to blow up the building, nor to any offense directly connected with the bombing. This was a key point in the cross-examination, as you will see.

In the end, the jury acquitted Terry Nichols of murder, arson and use of a weapon of mass destruction. They convicted of conspiracy and of involuntary manslaughter. I did not write out questions in advance. I had file pockets with all the prior statements, and an outline with key phrases to guide me from topic to topic. The statements in the file pockets had tape flags on them to help me find key items. I wanted to keep looking at Fortier and at the jury, not at my notes. Other than these “props,” this examination was entirely unscripted.

Q. Good morning, sir.

A. Good morning.

Q. My name is Michael Tigar. I'm one of the lawyers appointed to represent Terry Nichols. You've told several different stories about what happened to you in April 1995, haven't you, sir?

A. Yes, I have.

[The battle lines are being drawn. He has changed his story. This examination begins and will continue with leading questions until we get some preliminaries sorted out.]

Q. I want to ask you first about what you told us yesterday and today, and then I'm going to ask you about some of the things you said other times. You have a written agreement with the government. Is that right?

A. Yes, I do.

Q. You are not charged with a conspiracy to blow up the Murrah Building, are you, sir?

A. That's correct.

Q. You did not plead guilty to that; is that correct, sir?

A. Yes, sir.

[Note how carefully he is phrasing his answers. He has been through many hours of preparation for this moment, and we are sizing each other up.]

Q. And you did not plead guilty to blowing up the Murrah Building; correct?

A. That is true.

Q. You didn't plead guilty to murdering anybody inside it; is that correct?

A. Yes, sir.

Q. And didn't -- the prosecutors told you, did they not, that you were being asked to plead guilty to everything that you did. Is that your understanding?

A. Yes, everything that I could be charged with.

[He waffles a little on that last one. But this man, who was in our view closer to McVeigh and his plans than was Terry Nichols tells us that the government did not term him a conspirator or a murderer. We will argue that Terry Nichols' guilt is, at most, no greater than this. The jurors are getting this point, but I will save the explanation for summation. To be sure, Fortier will claim some credit for having become a government witness, but later on we will see some characteristics that make him perhaps less than worthy to bear that standard. So now we turn to McVeigh.]

Q. Now, you mentioned that you first had a political discussion with Mr. McVeigh in the Army; is that correct? Did he share some literature with you?

A. Yes, he did.

Q. He gave you a copy of a book called The Turner Diaries; correct?

A. Yes.

Q. And is it fair to say, sir, that from that day down to the time when you last saw him, he often gave you political literature?

A. Yes, that is true.

Q. And is it fair to say, sir, that he made copies of political literature that he had and handed it out to others?

A. I believe he did.

Q. Did you see him using the copy service in Kingman for that purpose?

A. No, sir.

[A non-leading question, to which I did not know the answer. All I knew was that McVeigh used the copy service and spent a lot of time with the Fortiers. So I kept the tone easy. A leading question implies that I do know the answer and if the witness does not agree with me, and I have nothing with which to impeach, I have lost that exchange. So I change the inquiry a little.]

Q. Did you know that he used the copy service in Kingman for that purpose?

A. He had told me he did.

Q. And is it fair to say that this political literature that Mr. McVeigh began to share with you in the Army had a certain character?

A. Yes, I think that's fair.

Q. It was white supremacist literature; correct?

A. The book in the Army certainly was, yes.

Q. And -- now, you did not agree with the white supremacist agenda, did you, sir?

A. I do not.

Q. You do not and you did not; correct?

A. That is correct.

Q. You were his friend all of these years, but you did not share his racism; is that right?

A. That is correct.

Q. Now, you mentioned that Mr. McVeigh's attitudes changed over time. Is that fair?

A. Yes.

Q. After the events in Waco in 1993, he became much more agitated; right?

A. He was upset about the events in Waco.

[Fortier is waffling. He knows that my characterization is right, and probably knows I could impeach him, but it is no use taking time to argue with him. The evidence of McVeigh's violent reaction to Waco is already in the record, and more is yet to come.]

Q. Now, during your friendship with Mr. McVeigh, he asked you to defraud some credit card companies; correct?

A. Yes, he did.

Q. He asked you to -- he asked you to go to Kansas and said he would pay you \$10,000; correct?

A. May I respond to the previous question, please.

[Always dangerous when a witness has a sudden desire to clarify a previous answer, but as you will see, we know the facts so let him go.]

Q. Yes, sir.

A. He didn't actually ask me to defraud the credit card companies.

Q. He asked you to max out your credit cards?

A. And give him the money.

Q. And give him the money. Did you discuss whether or not you would pay back the credit card companies?

A. I certainly would have paid back my credit card companies.

[Let this answer go. The later examination will show just who this witness is and the jurors can evaluate this relatively harmless invention.]

Q. What did you understand he was asking you to do?

A. Give him money.

[We are now filling in blanks in the direct and factual details from the defense opening.]

Q. And when you had a discussion with him about false identification, you told us you thought that was so that he could get his own credit cards; right?

A. That's what I told him.

Q. He told you that he was -- you were going to get \$10,000 from him for going to Kansas; correct?

A. He used the term "10 to the power of 10."

Q. Well, 10 to the power of 10 is not \$10,000, is it, sir?

A. No, it's not. It's not even close.

Q. All right. But you understood that meant \$10,000?

A. That is correct.

Q. You got some guns, but you never got anything worth \$10,000 from him, did you?

A. No. Those weapons all together were not worth \$10,000.

Q. So he didn't tell you the truth; right?

A. That is correct.

Q. Now, you know that he's a thief; correct?

A. What do you mean?

Q. Well, sir, you and Mr. McVeigh snuck into a National Guard yard and stole things together; correct?

A. Yes, sir, that is correct.

Q. So that's thieving, isn't it?

A. Yes, it is.

Q. And Mr. Nichols wasn't with you then, was he?

A. No, he was not.

Q. Didn't have anything to do with that; correct?  
A. No, he did not.  
Q. So you learned that Mr. McVeigh was a thief; right?  
A. Yes.  
Q. Now, in addition to that, you heard Mr. McVeigh on a number of occasions say that he was going to blow up a building; correct?  
A. Yes.  
Q. And he told you that he was going to blow up a building while it had people in it; correct?  
A. Yes, he did say that.  
Q. You learned that Mr. McVeigh uses narcotics; correct?  
A. He has.  
Q. On how many occasions have you seen Mr. McVeigh use controlled substances?  
A. Two or three times.  
Q. What controlled substances did you see Mr. McVeigh use on the occasions when you were with him?  
A. He smoked a marijuana joint with me once; and on two or three other occasions, he used crystal meth.  
Q. Now, towards the end of your direct testimony, you said that there was an LSD experience. Did that involve Mr. McVeigh?  
A. Yes. He attempted to take some LSD along with me and my wife.  
Q. You say "he attempted"?  
A. The LSD was bunk. It was no good. It didn't do anything.  
Q. So you all took what you thought was LSD and it didn't do anything for you. Correct?  
A. That is correct.  
Q. What was it supposed to do for you?  
A. I'm not really sure. It was -- I've only taken it one other time, and it just makes you feel kind of goofy.  
Q. Kind of what?  
A. Goofy.  
Q. Goofy?  
A. Yes.  
[I had heard him the first time.]  
Q. So that when you were taking it with Mr. McVeigh, was it your objective to get goofy with him?  
A. Yes, it was.  
Q. And what was the objective of taking crystal meth with Mr. McVeigh?  
A. Mr. McVeigh wanted to experience it.  
Q. And did he experience it?  
A. I believe he did.  
Q. Now, you also told us that Mr. McVeigh moved out of your house because you were going to start baby-sitting. Correct?  
A. Yes, that is.  
Q. And he didn't like little kids?

A. I always thought he did; but when I mentioned bringing in other children, he became upset and left.

Q. Upset and left within the hour; correct?

[I am trying here to paint a picture of McVeigh the racist loner who resents children and resents those like Fortier – and Terry Nichols – who have children and who care for and about them. This is part of the defense theme that McVeigh was disappointed that Nichols and to a lesser extent Fortier would not help him and so he tried to inveigle them into helping and then reached out to others. This theme recurs throughout the examination.]

A. That is absolutely correct.

Q. And you had another conversation with him in which he said in a mocking way that you had become domesticated; right?

A. No, that's not correct.

[We need to stop now and break this down to see what he is disagreeing with. You can ask compound questions to move things along, but when you get a “no,” consider dividing the inquiry.]

Q. He said you had become domesticated?

A. Yes. I'm mistaken. He was mocking me when he said that.

[He sees me reach for something, which he probably thinks is impeachment, so he backpedals.]

Q. Well, I don't want to put words in your mouth, sir; but what's a better word than "mocking" for the way he said "domesticated" to you?

A. What confused me was your smile. I thought you were saying he said that to me in a joking manner.

[This witness is really locked on to the examiner now, trying to get clues.]

Q. No, I'm sorry. Please don't take anything from the facial expressions. He said it as an insult. Right?

A. That is correct.

[This was a key exchange, though we had to save for summation the explanation of it. For McVeigh, “domesticated” was a key word. Frustrated by Fortier’s and Nichols’s unwillingness to help in the final stages of his plans, McVeigh reached out to a man named Steve Colbern, to whom an Arkansas gun dealer had referred him. McVeigh’s note to Colbern, in a recruiting effort, stridently contrasted the brave and adventurous man with the domesticated one. On a related note, the FBI failed to give the Nichols and McVeigh defense teams its many memoranda on Colbern. This issue is still being litigated as this chapter is written. Later, when he was on death row, McVeigh sent me a book inscribed “To Michael Tigar, a domesticated man who nonetheless has some redeeming qualities.” Fortier is still trying to argue with me a little, so this next series of questions will be leading.]

Q. Now, you never saw Mr. Nichols steal anything; right?

A. Never.

Q. And you know that Mr. Nichols has two little kids; right?

A. At that time -- now I do, yes.

Q. Yes. And as a matter of fact, his daughter is the same age as your Kayla; correct?

A. About a year -- I think there is almost a year difference.

Q. Is there almost a year? But you remember when the Nicholsons first came to your house that Mrs. Nichols, Marife, and your wife, Lori, were talking about your two kids; correct?

A. Yes.

Q. And since April 19, 1995, you and Lori have had another child; correct?

A. Yes.

Q. And it's your understanding Mr. and Mrs. Nichols have had another child; correct?

A. Yes.

Q. Now, after the Army, you knew -- you at least knew who Mr. Nichols was in the Army; correct?

A. Yes.

Q. The first time after the Army that you saw Mr. Nichols was in the fall of '93. Is that right?

A. Yes, that's correct.

Q. You met him at a Wal-Mart and he came to your house and spent a little while. Right?

A. Yes.

Q. And that was the time you told us that he and your wife -- or that Mrs. Nichols and your wife, Lori, talked about babies and you and Mr. Nichols talked about that he was going to get a job as a carpenter in Las Vegas. Is that fair?

A. Yes.

[Note the tenor of these leading questions. Seeking agreement, one can use the simple interrogatory, or the word "right?" or "correct?" or the formulation "is that fair?". It is boring to use any one form. In this exchange, I like the sound of "fair."]

Q. Now, during that time -- during that conversation, did Mr. Nichols -- did you hear Mr. Nichols threaten anybody?

A. No.

Q. He didn't say that he was going to bomb anything; right?

A. No, he did not.

Q. He didn't express any political views to you, did he?

A. No. We didn't speak about political issues.

Q. Didn't give you any political literature; correct?

A. No, he did not.

[Nichols never proselytized. All Fortier knew of Nichols' alleged political views was what McVeigh had told him.]

Q. Now, then you said that you had a conversation sometime after that in early 1994 with Mr. McVeigh. Do you remember that?

A. Yes.

Q. And he called you from the Nichols farm in Michigan; is that correct?

A. That's where he told me he was calling from.

[Since the phone records are in evidence, this bit of hearsay goes unchallenged, and is probably admissible anyway.]

Q. Now, the second time you saw Mr. Nichols was at a dinner at a house in Golden Valley. Correct?

A. Yes.

Q. That was a house that had been rented by Timothy McVeigh; is that right?

A. Yes.

Q. You told us also that Mr. McVeigh had got some wood from the True Value Hardware and made berms. Is that right?

A. Yes.

Q. Did you see the berms that he made?

A. At his house?

Q. Yes.

A. Yes.

Q. What did those wooden berms look like?

A. About 15 feet long by about 3 or 4 feet high of stacked wood.

Q. And Mr. McVeigh told you that that was going to defend him in the event that something happened?

A. That's what he said.

Q. Well, what did he tell you that this stack of wood was going to do?

A. He told me it was going to block bullets.

Q. Did that sound rational to you that a stack of wood could block bullets?

A. Oh, yes.

Q. It did? Have you read the story of the three little pigs and the wood house?

A. Not lately.

Q. But from your experience, do you think that wooden blockades can actually stop heavy weapons?

A. Yes. The berm that he built would stop a bullet.

[I really didn't care which way this exchange was coming out. The point here was that McVeigh had become paranoid enough to think that U.N. forces or somebody like that would attack his house with heavy weapons, so he built a wooden barricade around it. If his barricade was insufficient, as I (and I think the jurors) began to see, so be it. If it was not, then McVeigh's level of worry was obviously that much higher. Our story had been of McVeigh's descent into madness, in the course of which his friends one by one fell away from him.]

Q. And you said that he also had guns at the corners of rooms in his house?

A. His house was mainly one large room. He had a weapon in the corners.

Q. And by the way, when we talk about your wife, Lori, you were -- you were together as a couple from shortly after you got out of the Army; right?

A. And before that.

Q. And before that. And then there came a time when you decided to go through the official ceremony, but you always had considered yourself married before that; right?

A. Yes.

Q. Okay. So when I talk about your wife, Lori, or Mrs. Fortier, you had lived together in that way for quite some time. Correct?

A. Yes. I considered her that same way.

Q. Yeah. Okay. Now, that evening, Mr. Nichols talked about nutrition; correct?

[A "yeah" and an "okay." Both unnecessary words, hiding the search for the next question. Court reporters can help one learn about those superfluous words. Best to fill the pause with silence.]

A. He talked about bread.

Q. And he was talking about he likes, what, wheat bread or things like that?

A. He told me wheat bread is what he can only eat or what he likes to only eat. And he told me also that he likes to make his own bread.

Q. Now, you know, Mr. McVeigh -- he's not exactly a health-food addict, is he, would you say?

A. No, I wouldn't say he's concerned about that.

Q. No. You'd say -- I mean he eats at Wendy's, where you all ate once -- Wendy's, he goes to Pizza Hut and eats, places like that?

A. Yes.

Q. The fast food/junk food?

A. Yes.

Q. Is that fair to say?

A. Yes, that's fair.

[We are painting a picture here of Terry Nichols through the words of somebody who observed him, and of his differences from Tim McVeigh. Since it was unlikely that Mr. Nichols would take the stand, we needed to use every possible chance to paint this picture of him -- perhaps odd, perhaps eccentric, but not the sort of driven zealot that McVeigh was.]

Q. Now, that evening when you met with Mr. Nichols, did he say -- did he threaten anybody?

A. Not that I remember.

Q. You didn't have any political conversation of any kind with him that evening, did you?

A. Not that I remember.

Q. Now, in -- sometime in 1994 later on, Mr. McVeigh left Kingman. Correct?

A. Yes.

Q. Now, when he left Kingman -- and you told us that -- he had some kind of a sale. Correct?

A. He did. He had a sale, but it wasn't when he left. It was prior to that.

Q. All right. When he had the sale, did you buy something from him?

A. Yes.

[Note how well-trained he is. He just answers the question, and does not go on to tell what he bought. I have to ask for it.]

Q. What did you buy from him?

A. Among other items, I bought some explosive items from him.

Q. What explosive items did you buy from Mr. McVeigh there in 1994 when he left Kingman?

[I am repeating the answer for emphasis, as a kind of loop to the next question.]

A. I bought some cannon fuse.

Q. Some what? I'm sorry?

A. Some cannon fuse.

Q. Cannon fuse. All right, sir.

A. Some blasting caps.

Q. Yes, sir?

A. Some aluminum powder that he said would blow up in some way. A can of gun powder. Possibly other items, but I can't remember.



Q. In addition to explosive items, did you buy fertilizer from him?

A. No, sir.

Q. Did you ever get fertilizer from Mr. McVeigh?

A. Yes.

Q. When did you get fertilizer from Mr. McVeigh?

A. That night he asked me to -- if I wanted to buy the fertilizer also, ammonium nitrate in the bag.

Q. That's the same night as the garage-sale night?

A. Yes.

Q. And he asked you if you wanted to buy some ammonium nitrate. What did you say to him?

A. I told him no. I didn't know how to use the ammonium nitrate. And he asked me if I would just hold onto it for him then.

Q. Did you hold onto it for him then?

A. I took it home and put it in my shed.

[Look back at this exchange. He got ammonium nitrate, which can be used to make an explosive device, and was in fact the main ingredient of the Oklahoma City bomb. He didn't pay for it, so his answer to me that he did not "buy" it was literally true. But I had a piece of paper showing that he obtained ammonium nitrate, so went on to the follow-up question. Note that I asked a non-leading question at that point. Fortier's parsimony of expression is not helping his image with the jury. He is not looking careful, he is looking evasive.]

Q. Now, during this garage sale, Terry Nichols wasn't there, was he?

A. No, he was not.

Q. To your knowledge, he wasn't even in Kingman, Arizona, was he?

A. I didn't know where he was.

Q. But you certainly didn't see him in connection with all of this; correct?

A. I did not.

Q. Now, you mentioned that Mr. McVeigh talked to you about the New World Order. Correct?

A. Yes.

Q. Now, that night that you went thieving with Mr. McVeigh in the armory, had he told you there were U.N. vehicles down there?

A. What he told me was there was a big build-up at the armory, and we went to check it out.

Q. Did he also tell you that he had been to look for U.N. markings on military vehicles in Mississippi?

A. No, he never told me that.

[This exchange relates to one of McVeigh's letters, which refers to such an alleged buildup, and to his proven conversations with others on this subject. One can believe Fortier on this or not, but the evidence as to McVeigh was clear, so I did not care which way he answered.]

Q. You also mentioned in talking to us yesterday something about a militia. Correct?

A. Yes.

Q. Did you all contact some individual or organization about the possibility of forming a militia?

A. We contacted an individual in Prescott, Arizona, and talked to him about what his militia consisted of and how myself and Tim could build one.

Q. And who was that person?

A. I believe his name is Walter Bassett.

Q. And is that the National Alliance?

A. I don't know about that.

[We will call Bassett in our case, and he will describe the contact. He was a "semi-hostile" witness, but he had every motivation to tell the truth in order to avoid being thought of as involved in the Oklahoma City bombing.]

Q. In addition to that, during that time you and Mrs. Fortier and Mr. McVeigh, you said, set off a pipe bomb in the desert together; right?

A. Yes.

Q. Now, during this period of time, 1994, Mr. McVeigh was frequently in your home; correct?

A. Yes.

Q. He lived there for a part of the time; correct?

A. Very early part of 1994, he lived at my house for approximately a week.

Q. And then later in 1994, he house-sat your house; correct?

A. That's right.

Q. He was best man at your wedding; correct?

A. That is correct.

Q. Anytime Mr. McVeigh wanted to come by, he felt free to do so; right?

A. Yes.

Q. Now, when was it that you and Mr. McVeigh and Mrs. Fortier set off that pipe bomb in the desert that you told us about?

A. I believe it was right around May of 1994.

Q. Was that just a lark?

A. Yes.

Q. I mean, that is to say, you just were going to go see if something blew up; right?

A. Well, actually, we went out to the desert, and Tim brought it with him and he pulled it out of a bag; and I didn't have any objections to him blowing it up.

Q. All right. Now, you told us that you had received a letter from Mr. McVeigh sometime in August or September, 1994. Remember that?

A. Yes.

Q. All right. And sometime after you got that letter, Mr. McVeigh came to Kingman. Is that your testimony?

A. Yes.

Q. Was Mr. Nichols with him when he came to Kingman?

A. Not that I know of.

Q. You didn't see them together; right?

A. No, I did not.

Q. So you and Mr. McVeigh had a discussion about the possibility of some action. Correct?

A. That is correct.

Q. But Mr. Nichols wasn't there, was he?

A. No, he was not.

Q. So what you were learning about this -- and Mr. Nichols never wrote you a letter, did he, sir?

A. No, sir.

Q. Now, you also told us that sometime Mr. McVeigh asked you to look for a locker for him; correct?

[In the letter, McVeigh had said that he and Nichols planned to take action.]

A. Yes.

Q. And that was Mr. McVeigh calling and saying, "Get a locker"; right?

A. Yes.

Q. Now, sometime after that, you told us, Mr. McVeigh and Mr. Nichols did come to Kingman; correct?

A. Yes.

Q. And that was the time that you told us that you went to a storage locker; right?

A. Yes.

Q. You showed us a picture of a storage locker; right?

A. Yes.

[This is damage control. There were explosives in the locker. Did Nichols know about them? Another government witness, an expert from England, would testify that she has written an article using a hypothetical of two men who shared a storage locker where explosives were kept, but one of them was ignorant of that use. So I am going carefully here, trying not to ask too many questions.]

Q. Now, that evening, Mr. McVeigh went into the storage locker, lifted up a blanket, and showed you some explosives; correct?

A. He didn't actually lift the blanket. He reached underneath the blanket and pulled a box.

Q. All right. Reached under the blanket, pulled a box out and showed you some explosives; correct?

A. Yes.

Q. And what was those -- was that sausage [a form of plastic-type explosive] or something?

A. I can't remember exactly what it was he showed me.

Q. Now, during that time, Mr. Nichols was getting a spare tire out of the shed and handling other things that were in the shed; right?

A. Yes. I think he was loading stuff from the shed into the truck.

Q. When you say "stuff," you don't mean explosives, do you?

A. No, I don't mean that.

Q. All right. And in fact, it was Mr. McVeigh that was showing you explosives; correct? [Enough. On to something else.]

A. That is right.

Q. Now, that evening, did you discuss politics with Mr. Nichols?

A. No, sir.

Q. Now, was there any time in your life when Mr. McVeigh and Mr. Nichols were standing so that everybody could hear when Mr. McVeigh said in words or substance: "This is my friend Terry. We're going to blow something up that belongs to somebody else, like a building"?

A. No, sir.

Q. Was there ever a time in your life where Mr. McVeigh and you and Mr. Nichols were standing side by side, where everybody could hear each other, when Mr. McVeigh said in words or substance: "My friend Terry and I are going to blow up a building with people in it and kill people"?

A. No, sir.

Q. Now, you [also told us] that Mr. McVeigh came by and he told you to watch over his storage shed; right?

A. Yes.

Q. And he gave you a key and a piece of paper; right?

A. Yes.

Q. What did he do with the piece of paper?

A. He wrapped it around the key.

Q. What side was the writing on?

A. I don't know.

[McVeigh also gave Nichols some coins, wrapped in a receipt for ammonium nitrate. We were at pains to note this habit of McVeigh's. I left in this exchange as an example of mining every bit of an ostensibly hostile witness's testimony for things that may help. Note that we have not yet turned to the attack on Fortier. It is coming.]

Q. Okay. Now, you also told us that there came a time when Mr. McVeigh left a message with you for Mr. Nichols; correct?

A. Yes.

Q. About a storage locker.

A. Yes.

Q. When was that?

A. Just prior to October 31.

Q. All right. Now, were you ever in that storage locker after the time that Mr. McVeigh left that message?

A. Yes. Excuse me. No.

Q. Well, which is it? Yes, or no?

A. It is no.

Q. Because you did go in the storage locker using that key to put in the O2 bottle you had stolen; correct?

A. That is correct.

Q. And can you recall now that it was before Mr. McVeigh left -- supposedly left this message that you put the O2 bottle in there?

A. Mr. McVeigh did not leave me a message to put the O2 bottle in there.

Q. No, no. My question is inartful. There was an episode where you put an O2 bottle in. Correct?

A. Yes.

Q. And then there was a time when you say you gave a message to Mr. Nichols; correct?

A. Yes.

Q. Which event happened first?

A. The event that I put the O2 bottle into the storage shed.

Q. Now, you didn't know what things Mr. Nichols was supposed to get out of the shed, did you, sir?

A. No, sir.

[The prosecution theory was that McVeigh's message was that Nichols was to take explosives from the shed. Fortier does not know what if anything Nichols got from the shed, and we are about to see that McVeigh still had explosives in Kingman long after he had supposedly told Nichols to get things from the shed, so our argued inference is that Nichols was not told to get explosives, or at any rate did not do so.]

Q. And, in fact, in December 1994, you met Mr. McVeigh in a motel room, didn't you?

A. Yes, I did.

Q. And at that time, he had explosives, didn't he?

A. Yes, he did.

Q. And in fact, you wrapped explosives with him; right?

A. My wife did.

[We will follow up on this tidbit later.]

Q. Now, during the conversation when Mr. Nichols came, did you talk about politics, when he came to get this message you say you gave him?

A. No.

Q. Okay. So now is that the fourth time you saw Mr. Nichols? We count once in '93, once at dinner, once the night of the shed, once to get the message. Right?

A. I believe there was one other time.

Q. When is the one other time? Oh, I'm sorry. That's the time you told us about when they came by and said they were going in the desert; right? That is it?

[I have prior statements covering these meetings, but they are not entirely clear. They are clear enough to permit some non-leading questions, because if Fortier gives a bad answer I can impeach him. However, now things are getting a little uncertain. There is danger here, and I will try to go carefully.]

A. Actually, I was thinking of another time.

Q. All right. What's the fifth -- what's the sixth time?

A. Outside of Kingman -- in the desert outside of Kingman when Tim told me that they were planning on robbing this guy Bob in Arkansas.

[Whoops. This could be bad. Fortier had already said on direct that McVeigh said Nichols would rob Bob, the Arkansas gun dealer, whose real name is Roger Moore. I need to get that back into the open, and deal with it, even though there is some risk.]

Q. All right. You saw them out there. Now, where was Mr. Nichols when Tim was telling you this?

A. He was standing about 50 yards away.

Q. That's the 50 yards away. Okay. So now let's go back through these times. Six times you've seen Mr. Nichols from that time in '93 when he came through until the time you saw him yesterday. Is that correct?

A. That is correct.

Q. Did Mr. Nichols ever say he was going to rob anybody?

A. No, sir.

Q. Did he ever say he had robbed anybody?

A. No, sir.

Q. Did Mr. McVeigh ever say within earshot of Mr. Nichols that Mr. Nichols was going to rob anybody?

A. He did not.

Q Did Mr. McVeigh ever say within earshot of Mr. Nichols that Mr. Nichols had robbed anybody?

A. No, sir.

Q. And as we've established before, Mr. McVeigh never said within earshot of Mr. Nichols that Mr. Nichols planned to explode anything in a way that was going to hurt anybody; correct?

A. That is correct.

Q. And Mr. Nichols never said he was going to explode anything in a way that was going to hurt anybody; correct?

A. That is correct.

[Whew! But I can't leave it alone, because there is more there. Fortier knows he has helped me, and he will try to get even, but I chose to take that risk.]

Q. But Mr. McVeigh told you that he was going to be responsible for robbing somebody; correct? He told you he was going to have Bob robbed. Correct?

A. He told me that him and Nichols were going to rob Bob.

Q. I understand that, but Mr. Nichols wasn't present then when he said that?

A. That is correct.

Q. And Mr. McVeigh said this fellow Bob was a traitor; correct?

A. That is correct.

[In hindsight, I should have quit this line three questions ago.]

Q Well, let's continue on with what you told us yesterday. Christmas of 1994: Now, Mr. McVeigh said, "Go get some wrapping paper"; correct? Did he ask you to do that?

A. He asked me to bring some wrapping paper to his motel room.

Q. Did you get the wrapping paper, or did Mrs. Fortier get the wrapping paper?

A. I think we just brought it from my house.

Q. Did you know what it was you were going to wrap in wrapping paper?

A. No, sir.

Q. And when you got there, you discovered it was explosives you were going to wrap in Christmas paper; correct?

A. Yes.

[I am trying to paint this picture of Fortier helping McVeigh to conceal the explosives for transportation to the Oklahoma area by wrapping them in Christmas paper.]

Q. Had Mr. McVeigh asked you especially to get Christmas paper to wrap whatever it was he wanted to wrap?

A. Yes, he did.

Q. And what kind of Christmas paper did you choose to wrap the things that Mr. McVeigh wanted you to wrap?

A. We just got some stuff that was laying around the house.

Q. Now, Mr. Nichols wasn't there, was he?

A. No, he wasn't.

Q. After you wrapped the explosives in the Christmas wrapping paper, you took a trip. Is that correct?

A. Yes.

Q. Did you have the Christmas-wrapped packages with you on the trip?

A. I believe Tim had them with him.

Q. Well, you were together in the same car; correct?

A. That is correct, but I didn't -- I did not visually see them in the car.

Q. Didn't see them. And you told us that you drove to Oklahoma City; correct?

A. We drove through Oklahoma City.

Q. Now, you told your people at work you were going to Florida; correct?

A. Yes, that's what I told them.

Q. Why did you lie to them?

[A "why" question, but good.]

A. In an effort to get time off work.

Q. You thought it would be easier to get time off work to say you were going to Florida instead of saying you were going to Oklahoma?

A. I'm not sure why I said Florida. I don't remember why that was the state I chose.

Q. Did you know of any business relationships that Mr. McVeigh had in Florida?

A. No.

Q. Did Mr. McVeigh suggest Florida to you?

A. He may have. I don't recall.

Q. Have you ever been to Elohim City, Oklahoma?

A. No, I never have.

Q. Do you deny that?

A. I absolutely deny that.

Q. Have you ever used the name Michael Fontaine?

A. Never.

Q. Do you deny that?

A. Absolutely deny that.

[Denials were expected. We have other evidence, later in the trial. So why ask him? If our other evidence is believed, the jurors will think he was trying to cover up some of his activities with McVeigh.]

Q. Have you ever stayed in the Dreamland Motel in Junction City, Kansas?

A. I may have. I'm not sure of the motel's name.

Q. Did you stay at the Dreamland Motel in Junction City, Kansas, Easter weekend of 1995?

A. No, I did not.

Q. Do you deny that?

A. Absolutely.

[Now we resume talking about this trip he admits taking with McVeigh in late 1994, when Terry Nichols was out of the United States.]

Q. You say you got to Oklahoma City, and you looked at the building; right?

A. Yes.

Q. Did that discussion with Mr. McVeigh in Oklahoma City cause you to say to him that you wouldn't have anything more to do with him?

[He has seen the target building and knows the plan, and does not split with McVeigh.]

A. I don't believe I said that.

Q. Now, before you went to Oklahoma City, you mentioned about this oxygen bottle. That was a trip you took or a thieving trip you took with Mr. Rosencrans; correct?

A. And another person

Q. Who was the other person?

A. His name is Jason Hart.

Q. Pardon me?

A. Jason Hart.

Q. Are you related to him?

A. No, sir.

Q. Now, Mr. Rosencrans you also told us is a dope dealer; right?

A. Yes.

Q. He's your neighbor, or was?

A. Yes.

Q. How did you know he was a dope dealer?

A. By what I observed.

Q. Did you buy from him?

A. On occasion.

Q. Did you sell to him?

A. No.

[We will call Hart and Rosencrans, two of Fortier's neighbors, to substantiate our claim that Fortier dealt narcotics – offenses for which he is not being prosecuted.]

Q. Now, you told us in direct examination that you had used methamphetamine; correct?

A. Yes.

Q. How did you use it?

A. I either smoked it, or I snorted it through my nose.

Q. And when you "smoked it," you smoked it in some kind of -- how did you smoke it?

A. We either put it on glass or on tinfoil, and you heat the bottom of it and it will smoke.

Q. And then what do you do with the smoke as it comes up off the glass or the tinfoil?

A. You inhale it.

[He says "you" inhale it. I do not accept this careless terminology. I am trying to make a point here.]

Q. Well, you can inhale it. One does inhale it. Is that what you do with it?

A. Yes.

Q. What does it do for you?

A. It makes you feel very excited.

[We are going to present expert testimony on the effect of long-term methamphetamine usage on memory, and on the ability to distinguish truth from invention. Our expert will not be able to examine Fortier, but will have to use the evidence we obtain as the basis for testimony on the drug's effect.]

Q. Does it make you irritable?

A. I believe it does when you're coming down off it.

Q. Did it make you stay awake a long time?

A. Yes.

Q. Did it give you a schedule where you'd be up late at night and then you wouldn't get up until late the following morning?

A. If you didn't have to go to work, yes.

Q. Well, did you have to go to work?

A. On occasion, yes.

Q. After December of 1994, did you have to go to work?

A. No, sir.



Q. Can you remember saying in one of those recorded conversations, "If I had a job, I'd hate Mondays"?

[These "recorded conversations" are FBI wiretaps and bugs of the Fortiers' house trailer. We will play some of them later in the examination.]

A. Not specifically.

Q. Now, you say also you snorted it; correct?

A. Yes.

Q. How would you do that?

A. One would form it into a line on some surface, and you take a straw --

Q. What do you mean "form it into a line"?

A. Well, sometimes it comes in a powder form, or sometimes it comes in a solid form. If it came in a solid form, you'd have to crush it up into a powder. Then you could form that into a line and snort it through a straw into your nose.

Q. And show the jury how you would do that.

A. What you do is you take a razor blade or a knife or some type of sharp instrument and you would just go like this [indicating] and it would form a line.

Q. And then to snort it, what would you do? Put the straw in your nose?

A. Yes.

Q. And then what, go, "Chnchnchnchn"? Like that?

[I made a snorting noise, which the court reporter tried to approximate.]

A. Just like that.

Q. Just like that. And then it would get up -- what would it do to you when the stuff got into you?

A. Right off the bat, it would burn real bad; and then that would go away.

Q. You did this on purpose?

[I have a quizzical expression at this point. During this line of inquiry, I have tried to have a neutral, nonjudgmental demeanor, to let the facts speak for themselves.]

A. Yes. Many times.

Q. Okay. And then what would happen?

A. And then you would feel like -- I'd describe it as an excitement. It feels as if you would just get off a roller coaster and you're just very excited.

Q. Did you ever talk about blowing something up and hurting people when you were doing this?

A. No, sir.

Q. That morning [of the Oklahoma City bombing], when you saw the bombing on the television, you were playing a video game with Mr. Rosencrans, the dope dealer; correct?

[Picture theory: Mr. Rosencrans the dope dealer -- just to remind the jurors.]

A. That is correct.

Q. Were you high? Is that what you call it, high, when you use this stuff?

A. Yes, sir.

Q. Were you high?

A. That morning, yes.

Q. And how long had you been up with Mr. Rosencrans, the dope dealer, that day?

A. All night the previous night.

Q. Now, you mentioned that sometime in November, you got a red-alert call from Mr. McVeigh. Correct?

A. He either said "red alert" or he said "code red." I'm not sure.

Q. And you described going to the Tri-Mart. Do you remember that?

A. Yes.

[We are repeating the direct to set up the next question, as to which we have ironclad evidence of the call about which I will now ask him.]

Q. Isn't it a fact, sir, that days before you ever went to the Tri-Mart that Mr. McVeigh called your home and spoke to you for 11 minutes on the 5th of November, 1994?

A. I'm not sure when I received the red-alert phone call. And all I remember Tim calling me once during that month.

Q. Now, we continue, here, with the Oklahoma City trip. You mentioned that before you went off to Oklahoma City that you had ordered these -- this stuff from the Soldier of Fortune magazine. Right?

A. Yes.

Q. Now, have you talked to your wife about what -- what happened to that ID kit?

[We are picking up the thread again of the Fortier-McVeigh road trip in late 1994. I am asking him about his testimony that he ordered a kit from Soldier of Fortune magazine, to provide McVeigh with a false ID.]

A. I have.

Q. Now, you told us that you went to a storage shed. That was in Council Grove, Kansas, where Mr. McVeigh got some guns out; correct?

A. I believe it was in Council Grove.

Q. And he told you: "Wipe the guns down and get my prints off of them." Correct?

A. Yes. He said that to me more than once.

Q. All right. And he said just -- do you remember his words -- don't you?

A. Yes.

Q. "Wipe the prints down" -- "Wipe the guns down and get my prints off them." Correct?

[I am trying, by focusing on McVeigh's instruction to get his prints off the guns, to point away from allegations that Nichols had been primarily responsible for stealing the guns.]

A. Yes.

Q. Now, after you got back from your trip to Oklahoma City and Kansas, you spent Christmas with your family; correct?

A. Yes.

Q. Now, during all of that trip in Kansas and so on, you never saw Mr. Nichols; right?

A. No, sir.

Q. Now, you told us that then Mr. McVeigh showed up in Kingman sometime after the first of the year. Do you remember that?

A. Yes.

Q. And you told us that he had given you a phone call to go to his motel; right?

A. Yes.

Q. And you noticed that he was more agitated than he had been before? Did you notice that?

A. No, sir.

[I don't like this denial, so I come back on a sure theme. I focus on the fact that Fortier regarded McVeigh as so crazy and dangerous that he went armed to see him.]

Q. When did you start packing a weapon for your visits to Mr. McVeigh's motel room?

A. In April of 1995.

Q. Now, at that motel room, he -- he gave you a book to read?

A. Yes.

Q. Now, you've also told us in what you said yesterday and today that you went to three different gun shows. Remember that?

A. Yes.

Q. Now, what name did you register under at the gun shows?

A. I'm not sure, but they were alias names.

Q. They just weren't your name. Right?

A. That's correct.

Q. And Mr. McVeigh told you that -- did he tell you that you should use a different name?

A. I was selling stolen weapons. He did not need to tell me that.

Q. You thought you were selling stolen weapons; right?

A. Yes.

Q. The only thing you know about whether those weapons were stolen is what Mr. McVeigh told you; correct?

A. That is correct.

Q. And he told you that the stolen weapons came from a guy named Bob in Arkansas; right?

A. That's right.

Q. And he told you that Bob was a gun dealer; correct?

A. Yes.

Q. And you're able -- you have some experience with guns; right?

A. Yes, I do.

Q. From across the room here without getting down, you were able, when Agent Tongate held up a gun, to say, "Oh, that's my gun, that's the one I had." Correct?

A. Yes.

Q. And you could say, "That's my gun, and I put a scope on it, and I know it's different from when I first had it"; correct?

A. Yes.

Q. Would you say that anybody who was in the gun business would be able to recognize some gun that belonged to them or looked like one that belonged to them fairly easily?

[Prosecutor]: Objection.

23 THE COURT: Overruled.

THE WITNESS: I believe that's possible.

[This witness has helped us establish that one of the alleged victims of the gun robbery must be viewed with skepticism because she was unable to identify at least some of the weapons. Throughout this part, I am trying to get as much helpful stuff from the witness as possible before turning the corner.]

Q. And so you -- as I say, Mr. McVeigh had told you all this; and Mr. Nichols never talked to you about this, did he?

A. No, sir.

Q. All right. And what Mr. McVeigh told you about Bob, the person from whom this robbery supposedly happened, was that he was a traitor; correct?

A. Yes. He did say that.

Q. And he told you that Bob was a person who had a list of members of the patriot movement that he was going to give to law enforcement in the event he was ever busted. Correct?

A. He did not specifically say the militia movement.

Q. No, I said, "patriot movement."

A. Excuse me. He only said that Bob had a list of names that he would turn over in the event that he got busted.

Q. And McVeigh didn't like that -- did he -- that Bob had this list; correct?

A. That is correct.

Q. When Mr. McVeigh didn't like people, he expressed himself, didn't he?

A. Yes, he did.

Q. And Mr. McVeigh also told you that whoever committed this robbery got tired in the middle of it; correct?

23A. That's not exactly what he told me.

24Q. Well, he told you that the -- that the robber tied up or restrained Bob; correct?

A. He told me that Terry Nichols tied Bob up.

[He volunteers Terry Nichols' name. This is an inevitable risk in these situations. The examiner uses a neutral term like "this person" and the witness wants to help the prosecution so he makes sure to put in the name. That makes it necessary to clear the air.]

Q. I understand. That's what Mr. McVeigh told you.

A. That's correct.

Q. Right? My question to you, sir, was whoever it was he said did it -- he said that person got tired; correct?

A. That is correct.

Q. All right. And I know that he told -- that Mr. McVeigh told you that was Terry Nichols; right?

A. Yes.

Q. But you weren't there, were you?

A. No, sir, I was not.

Q. And you know that Tim McVeigh is a liar, don't you?

A. Not at that time.

Q. You know today that Mr. McVeigh has told a lot of lies to you; correct?

A. I believe he has.

Q. In fact, he gypped you out of the \$10,000; right?

[I am sorry to have used the word "gypped," which is an ethnic slur against gypsies or Romish people, just as "jewing down" is a slur. I try not to do that sort of thing, and you will see how the word then keeps cropping up because Fortier adopts it.]

A. That's correct.

Q. Okay. Just for one. Now, he also said some things that later turned out to be true; correct?

A. Yes.

Q. Okay. But whoever it is he said did this robbery, he said that person got tired in the middle of it, untied the victim, and had the victim help him for a while; right?

A. That's what he told me.

[We are perhaps ahead on points on this one, although his blurting out Terry Nichols' name was intended to hurt, and did. The alleged robbery victim, about whom we wove a web of suspicion as having been McVeigh's accomplice and friend, had told a story that did not include any "helping," so the reference to Terry Nichols is less important than the fact that Fortier is contradicting another government witness.]

Q. Anyway, there you were selling these guns that were gotten from Bob in Arkansas; and there came a time when Mr. McVeigh said, "Listen, you got 4,000. I need to send some money to Terry Nichols"; right? Is that what he said? Words to that effect?

A. Words to that effect, yes.

Q. And you gave him a thousand dollars; right?

A. Yes.

Q. Did you get a receipt?

A. No, sir.

Q. Now, this was the guy who had already got you to go to Oklahoma and Kansas and told you he was going to give you \$10,000 but didn't; right?

A. That is correct.

Q. Because that already happened; correct?

A. Yes.

Q. And the next time he asked you for a thousand dollars, you just reached in your pocket and said, "Here's a thousand"; right? Right?

A. Yes.

Q. And, of course, you don't know what he did with the money, do you?

A. No. Only know what I seen.

Q. Right. And what you saw, you saw him put it in an envelope; correct?

A. Right. And then write on the envelope.

Q. Okay. Oh, now you're telling us you saw him write on the envelope?

A. Yes, sir.

Q. Okay. All right. What did he write?

A. I don't know what he wrote on it.

Q. Oh, you don't know what he wrote on it.

A. That's right. I only -- he prepared the envelope. It appeared to me he was going to send it to Terry Nichols as what was agreed upon.

Q. It appeared to you. You didn't see what he wrote on it; is that correct?

A. That's correct.

Q. Is that your testimony now?

A. I seen him write on the envelope. I just didn't see what he wrote on it.

Q. On June 21 and 22, 1995, were you interviewed by Special Agents Volz and Zimms of the Federal Bureau of Investigation?

A. I believe so.

Q. And did you describe for them this so-called event where you gave the thousand dollars to Timothy McVeigh?

A. Yes.

Q. And when you described it, did you say anything about seeing Mr. McVeigh write on an envelope?

A. I do not recall.

MR. TIGAR: May I approach, your Honor?

THE COURT: Yes.

Q. I show you a report of interview prepared by those agents of the Federal Bureau of Investigation and ask if that refreshes your recollection that you did not tell Agents Volz and whatever the other one's name was that you saw anybody write on an envelope. My question is not what it says there because that's not yours, but does it refresh your recollection.

A. No, sir, it doesn't.

[It is obvious to the jury, I hope, that there is a contradiction, but the FBI does not record witness interviews. I only have the FBI agents' interview report, so I cannot impeach with it directly. I asked my series of questions in reliance on the FBI report, but Fortier declined to "improve" his testimony by agreeing that he had not told the agents he saw McVeigh write anything on the envelope. That is always a risk with the witness who wants to do a good job for his or her sponsor. It is, however, a risk you must taken in order to get the most from your cross.]

Q. Thank you, sir. Now, after Mr. McVeigh moved out of your house in anger over the baby-sitting episode, you still continued to see him; correct?

A. Yes, sir.

Q. Now, you said that Mr. McVeigh dropped some things by your house; correct?

A. Yes.

Q. So you got some blasting caps from Mr. McVeigh. We talked about that. Correct?

A. Yes.

Q. You got some ammonium nitrate from Mr. McVeigh; correct?

A. Yes.

Q. You got some Primadet from Mr. McVeigh; correct?

A. I don't know what Primadet is.

Q. Oh. You got that stuff that -- the orange tubing that you saw during your direct examination. You got that from him; correct?

A. Yes. Blasting caps, yes.

Q. Well, it's a blasting cap, but it has the orange stuff at the end of it; right?

A. Yes.

Q. You got some Kinepack or some Kinestik, some binary explosive from him?

A. Yes.

Q. You got both halves of it?

A. Yes.

Q. And your understanding is you can mix those together and you can make an explosive; right?

A. Yes.

Q. And you had all of these things at one time or another either in your house or your storage shed; correct?

A. The shed in my yard, yes.

Q. And you didn't conspire with Timothy McVeigh to blow up that building, did you?

A. No, sir, I did not.

[So now we establish that even the possession of many explosives from McVeigh, and all Fortier's other involvement, does not make him a conspirator – in his eyes and according to what the government charged him with, as noted at the beginning of the examination. This ends this theme, so I use a transition to the next one.]

Q. Now, sir, I'd like to turn to the versions of events – the things that you said before you came here today. When is the first time that you were interviewed by the Federal Bureau of Investigation in connection with this case?

A. I believe it's April 22, 1995.

Q. And do you remember on April 22, which would be a Saturday, being interviewed by Agents Williams, Petrie, and Mooney?

A. Yes.

Q. Now, they told you that they were investigating the bombing; correct?

A. Yes, they did.

Q. And you told them that you had not left Kingman, Arizona, for several months; right?

A. That's what I told them.

Q. According to you today, that was true; correct?

A. No, that is not true.

Q. All right. What was untrue about it?

A. I had left to go do gun shows.

Q. All right. And if you included December, you had also left to go to Oklahoma City; correct?

A. I never went -- I went through Oklahoma City. That was not my destination.

[The jury will notice his caviling.]

Q. I understand destination, but you sure didn't tell those agents you had been there; right?

A. No, I did not.

Q. Now, you also told them that you had -- you knew Jim Rosencrans; correct?

A. Yes.

Q. And you told them he was a guy with crazy ideas about the government. Correct?

A. I don't remember exactly what I said. I do remember saying that Rosencrans was crazy.

Q. All right. Now, this crazy man Rosencrans: You and McVeigh had talked about him; correct?

A. Yes.

Q. And you and McVeigh talked about trying to hire him to do some driving; right?

A. No, that's not true.

Q. Well, Mr. McVeigh asked you if he was reliable; correct?

A. Yes. Yes, he did.

Q. Did Rosencrans ever tell you anything about Mr. McVeigh talking to him about driving?

A. Mr. Rosencrans --

Q. Just yes or no, because he's not here. I just want -- if he did, then we can obviously call him. Did he ever talk to you about that subject -- Mr. Rosencrans?

A. Yes.

Q. And did Mr. McVeigh ever talk to you about the subject of Mr. Rosencrans' driving?

A. He told me that he had asked Mr. Rosencrans to do that for him.

Q. Mr. McVeigh told you that?

A. Yes.

Q. What did he tell you about asking this fellow Rosencrans to do some driving for him? What did he say about that?

A. I asked him a question, and he told me that he had asked Mr. Rosencrans to give him a ride to Arkansas.

[Note his denial, and how carefully crafted it was. It is almost literally untrue. So I had to go back with very precise and narrow questions to find out where he thought the problem lay.]

Q. Now, in your interview with the -- that first interview on the 22d, you described yourself as a constitutionalist. Correct?

A. Yes.

Q. What is a constitutionalist?

A. One who reads and is concerned about constitutional issues.

Q. Was that an accurate description of your views?

A. Somewhat, yes.

Q. Well, you had written a paper when you were in college about the Second Amendment and gun control; correct?

A. Yes.

Q. You had a lot of literature in your house that Timothy McVeigh had given you, didn't you?

A. Yes.

Q. Some of it Timothy McVeigh had given you, and it talked about Waco; correct?

A. Yes.

Q. Some of it talked about some international conspiracies of various kinds; correct?

A. Yes.

Q. Some of it talked about the New World Order; correct?

A. Yes, sir.

Q. Some of it talked about the significance of April 19 in American history; correct?

A. That's possible.

Q. A Revolutionary War event long before Waco. Do you remember that? Not that you were alive then, but do you remember reading about it?

A. I remember something about it. I believe there was a battle.

Q. Yeah. And you had all of this stuff in your house; correct?

A. Yes.

Q. And some of it you had got; and some of it Mr. McVeigh had given to you and you just kept it. Right?

A. Yes.

Q. Now, you also told the agents that you were not into selling guns with McVeigh; correct?

A. Yes.

Q. Now, you said that you had -- you did tell them that you traveled to Kansas to buy guns from Timothy McVeigh; correct?

A. Yes.

Q. All right. Now, part of that was true; correct?

A. Part of that was correct.



Q. Right. Because you knew that Mr. McVeigh had some guns, wherever he had gotten them, and you knew if you sold them you could make some money; correct?

A. Yes.

Q. That is, the gun shows you went to -- those were perfectly legal events; right?

A. Yes, they were.

Q. People walking around in camouflage suits and selling weapons and ammunition and literature and all sorts of things; correct?

A. Yes, sir.

Q. And from what you could see, that was a perfect -- that was a respectable way to make money -- correct -- just going to gun shows?

A. Yes. That's my opinion.

[Again establishing, whenever possible, that activities such as Terry Nichols engaged in are not unlawful.]

Q. Now, you did tell the agents, however, that you hitched a ride to Manhattan, Kansas, and rented a car to come back. Right?

A. Yes, sir.

Q. And as a matter of fact, you told a story about hitching a ride from a trucker at a truck stop located on Andy Devine Boulevard next to a McDonald's restaurant; correct?

A. Yes, sir. I said something like that.

Q. Yeah. Now, where is that truck stop out there? Is that that Tri-Mart truck stop?

A. No. I wouldn't consider Tri-Mart to be a truck stop.

Q. Well, what truck stop was it you were telling the agents that you hitched a ride from?

A. I believe the one I was referring to would be called Flying J, but I'm not sure.

Q. Okay. You're not sure. Well, is one reason you're not sure is that you were making it up, or you just don't remember?

A. Oh, absolutely I was making that up.

Q. You weren't -- there is a truck stop there; right?

A. Yes, there is a truck stop.

Q. And there is a McDonald's nearby?

A. Beside the McDonald's, yes.

Q. You told the agents that you then hitched and you met McVeigh at an airport and rented a car, picked up the weapons and drove back to Kingman; right?

A. Yes.

Q. Now, you told the agents that you had not stayed in contact with Terry Nichols nor seen him since leaving military service, you didn't know anything about Terry Nichols. Right?

A. That's right.

Q. Now, some of that was false; right?

A. Yes, sir.

Q. That is, you had seen Terry Nichols six times; correct?

A. Yes.

Q. But it was true that you didn't know anything from Terry Nichols' own mouth about what his political views were; correct?

A. That is correct.

Q. Well, where did this interview take place? At your house, or down at some sort of facility they had there?

A. Both places.

Q. So it started one place and then moved to another?

A. Yes.

Q. How did you decide what you were going to tell the truth about and what you were going to lie about?

[This is not only an open-ended question, it is wide open. It illustrates, in my opinion, when and why such questions can be useful during cross-examination.]

A. The factor would be the legality of the issue. Anything that was illegal, I would lie about.

Q. Well, why would you do that? What were you afraid of?

[This is a "why" question, just in case you missed it.]

A. Of getting in trouble.

Q. What kind of trouble did you think you'd get into?

A. Well, for one reason, I had a bunch of stolen weapons in my house. I did not want them to know that.

Q. Right.

A. I had prior knowledge of the bombing, and I didn't know -- I wasn't sure if that was illegal or not, but it sure did seem like it should be; so I did not want to tell them about any prior knowledge.

Q. Had you talked to your wife after you saw the pictures of the bombing about the conversations she had with Mr. McVeigh about the bomb?

A. No, sir.

Q. Did she ever tell you about the soup cans?

A. No, sir.

[McVeigh had showed Mrs. Fortier the arrangement of the barrels containing ammonium nitrate that would comprise the bomb. He used soup cans as models. I thought it likely that Mrs. Fortier told Mr. Fortier of this conversation, but apparently she did not. It was worth asking the question. As it happened, the government did not call Mrs. Fortier as a witness.]

Q. You knew Mr. McVeigh had -- you had watched him, you had gone past a Ryder truck, you had gone to the building, you had done all of those things. Had you seen the thing -- the stories on television with public officials talking about what was going to happen to people if they could prove somebody was involved in this?

A. Yes. Because it was my understanding that they were going to go for the death penalty.

Q. That scared you, didn't it?

A. It was certainly a concern, yes.

Q. It scared you, didn't it?

[Although his answer is "almost" OK, I refuse to accept his evasion. The best way to do that is usually to repeat the question.]

A. Yes.

Q. Okay. And so one reason you were lying was that you were scared; right?

A. Yes. That's one reason.

Q. But when you first heard about the -- when is the first time you ever saw your name or heard your name in the media about this event?

A. It may have been the 22d. As soon as the FBI showed up, they brought the media with them. I'm not sure on the date. Maybe it was the 22d.

Q. You had a media invasion at your house?

A. I would certainly call it that.

Q. And when you heard your name on the media in connection with this, did you turn to your wife, Lori, and say: "Let's gather up Kayla and go to the police station and find out what this is about"?

A. Mr. Tigar, they were already talking to me at that time.

Q. Okay. Did you then look at your wife and say: "Lori, let's tell them that we know Tim McVeigh. Let's tell them every time we saw him, and let's do the best we can to remember all these things that happened these last few months so that we can help"? Did you say that?

A. No, sir.

[Terry Nichols had taken his wife and child to the local police station as soon as he heard of the bombing, and answered questions from FBI agents for many hours. He was denied counsel during this encounter, at a time when counsel could have helped. But we needed to make a virtue of Mr. Nichols' cooperation, and one way to do that was to contrast it with Fortier's actions.]

Q. Did you think that?

A. The first day of the bombing, the first morning?

Q. The 21st, sir?

A. Not on the 21st.

Q. Did you do that?

A. No, sir.

Q. In fact, sir, you were extremely proud of the confrontational approach that you took to the FBI. Isn't that a fact?

A. Yes.

Q. And -- now, of course, you were not aware, were you, that there was a wiretap in your house? Right?

A. No, sir, I was not aware of that.

Q. You were not aware that there was a -- also later on -- bug in your house; right?

A. That's true.

Q. Now, the wiretap was the thing that listened in on your phone calls; right?

A. Yes.

Q. And the bug was an actual microphone that the FBI had planted in your home; correct?

A. Yes.

Q. Now, your home is a trailer house; right?

A. Yes, it is.

Q. And as a matter of fact, it was -- that's the same trailer house where Timothy McVeigh stayed for a while; right?

A. Yes.

Q. That was his temporary address; correct?

A. No, sir.

Q. Well, he used your phone, didn't he?

A. Yes, he did.

Q. He stayed there for weeks at a time; correct?

A. On occasion.

Q. Did he use your -- used your stuff?

A. Sure. I had no problem with him using my stuff.

Q. Okay. And you wouldn't be surprised to know that his fingerprints are all over that place; correct?

A. No, I'm sure they are.

[Once again, he would not give me the answer I sought -- "temporary address." It is perhaps not important, but I needed to discipline him for not being fully forthcoming.]

Q. Okay. Well, I'd like to --

THE COURT: Mr. Tigar, tell us whenever a good time for a break is.

MR. TIGAR: We're about now -- I want to play for him some of these statements about these different subjects, so this would be a good place to break. I didn't keep track of the time, your Honor.

THE COURT: All right. Then we will break at this point. You may step down, Mr. Fortier.

(Reconvened at 1:31 p.m.)

THE COURT: Please be seated.

(Jury in at 1:32 p.m.)

(Michael Fortier was recalled to the stand.)

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

Mr. Tigar, you may continue.

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

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

(Defendant's Exhibit D566 played.)

[This was a picture of Fortier with shaggy hair and an unkempt appearance, quite a contrast with his dress and demeanor for court. This technique often helps the jury to put the witness in context.]

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.

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.

[We are now going to play excerpts from these recordings. I have not included the text of the excerpts, but they are available from Pub-Netics, a company in Denver, Colorado.]

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.)

[He talks about selling his story to the media.]

Q. Is that you?

A. Yes, sir.

(Defendant's Exhibit A8 played.)

[Again, he is talking about selling a story to the media. I pick up a key phrase in the next question.]

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.)

[I have made a CD-ROM of just the excerpts that we want to play. I have shown it to the government, in case they wish to object, although arguably Federal Rule of Evidence 106, the rule of completeness, does not apply to tape-recorded conversations. I am playing these tapes in part to show that he is willing to sell a story for money, and in part to contrast his silence and falsehoods with the FBI with his expressed desire to share a story with the media. These tapes also show a rather greedy, sometimes irrational Michael Fortier. He reacted sometimes visibly to their being played, and that was not lost on the jury.]

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?

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 say "You know what, CNN sucks. They owe me some money"?

A. Yes.

MR. TIGAR: Could we have A13, please.

(Defendant's Exhibit A13 played.)

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. 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.)

[Another tape in similar vein.]

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

A. Yes, sir. That's me.

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.)

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.)

[This is a tape of Fortier cursing out his mother for talking to the media, and undercutting his plan to sell his story. The court is going to let this in. The prosecutor's objection therefore simply underscores the issue. If the court has ruled, and you need to preserve an objection, try to do so out of the jury's hearing.]

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

THE COURT: Overruled. Go ahead and play it.

(Defendant's Exhibit B7 played.)

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.)

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.

[Kato Kaelin was O.J. Simpson's driver, and had become well-known as a witness in the O.J. Simpson criminal trial. His celebrity status, as a result of being a witness, went so far that he is mentioned in a Charles Robison country song.]

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.)

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

[I do not know why he denied thinking of himself as a Kato person, when the contrary evidence was on the tape. We had told the government which excerpts we would play, but Fortier apparently had not been prepared for this.]

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.)

[This tape has Fortier saying, among other things that he would pick his nose and flick the resulting material at the judge. He was, from his tone of voice, obviously high on something, probably methamphetamine, which can make one boastful.]

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?

19A. That is correct.

[Tapes show him being angry at the FBI's overbearing tactics.]

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.)

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.)

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 Rosencrans turned off the video game?

[Fortier first became aware of the Oklahoma City bombing the morning after it happened. He and his friend Rosencrans had been up all night on drugs, playing a video game.

They dozed off and when they turned on the TV, the news reports were being broadcast.]

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?

[This is a reference to an FBI sketch artist picture of the person with McVeigh when he rented the Ryder truck used in the bombing.]

A. I believe they did.

Q. April 25, 1995. Could we have A6, please.

(Defendant's Exhibit A6 played.)

[In this tape, Fortier says the FBI agents told him they might change the sketch to make it look more like Fortier. The FBI did not record any such comment in its report of interview. Fortier's progression to becoming a government witness is a combination of his own desire and a lot of FBI pressure. We are going to see his story develop. In summation, I spoke of the way the FBI worked with him to fashion his story. I said, "The Marine Corps builds men. The FBI builds witnesses."]

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?

A. Yes.

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

(Defendant's Exhibit A7 played.)

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 taken 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?

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 investigation?

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?

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.

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.)

Q. Was that your dad talking to you?

A. Yes, sir. That was him.

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

A. That's what I said.

[He has already admitted in this examination that he had been lying. So now we have him lying to his father about whether he was lying at that time.]

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.)

[A short excerpt, in which he complains about being called that name.]

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.)

[The content of this tape, in which they discuss his potential testimony, becomes apparent in the next series of questions.]

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?

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.)

[Content obvious from next questions.]

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 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.

[The four felonies are the ones mentioned at the outset of this Chapter.]

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?

22A. I believe that's fair to say.

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?

[I was surprised by this, but pleasantly. McVeigh had, as I said above, reached out to Colbern to help him. The next questions are impromptu, to take advantage of this new matter. During cross-examination, you must look for "gifts," then decide quickly if the "gift" is real or not, and if real if it worth deviating from your plan of attack. The key is that you must listen, which you cannot do if your cross is scripted.]

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?

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.

[Moore was the Arkansas gun dealer who was a government witness.]

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.

[Now back to the planned cross theme.]

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

A. Yes.

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 at 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.

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 also said that you were fearful of reprisals from the Aryan movement if you testified against Timothy McVeigh; correct?

[This corroborates our theory that McVeigh had ties to that movement.]

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?

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.

[Note how careful he is being here. He is ready for this part of the encounter, is listening carefully and measuring his answers. Some of his backtracking is, I think, caused by my rustling my examination notes, so that I appear to be getting ready to impeach him. He is watching me carefully.]

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

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

[Again, he knows I have the 302s. He is, probably without intending to do so, helping me impeach him. Note that we now have it in evidence that the FBI version is that he asked his wife to go first in the statement-correcting process.]

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 302s say.

Q. Is that what you remember?

A. No, sir.

[This is, to me, rather remarkable, considering that there are several dozen 302s. It shows his careful study, a point not lost on the jurors. He is helping me here by putting in evidence that the FBI 302s contradict his recollection. I would not call the FBI agents to contradict Fortier because I could not control the scope of their testimony as adverse witnesses. So Fortier is giving me a gift without realizing it.]

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.

[This is to make a point of his earlier not remembering. Note that he has not denied he said the things about which I asked him.]

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

A. Yes.

Q. Where did you go?

A. I went to speak with Special Agent Volz.

Q. Physically where was that?

A. Outside the room on the balcony.

Q. This is a balcony on the second floor?

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?

[I am trying here to get a word picture of a two-story motel with a long balcony serving the second floor rooms.]

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 Agent Volz saying that.

Q. And after they told you that, you went back in the room; right?  
[This is a key portion of the examination. I could not get him to admit that the FBI said they could not give immunity, but the jury knows he did not in fact get immunity, only a plea bargain. The key here is that he offered only McVeigh, not Nichols, and was turned down flat with the assertion that they already had McVeigh and did not need Fortier to make that case. The clear inference is that he would have to give them somebody else, probably Nichols, who was already in custody. His statements to the government from now on out progressively expand his alleged knowledge about Nichols.]

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 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?

[I started to ask the next question, then decided to risk some refreshment of recollection to focus him.]

THE COURT: Yes.

MR. TIGAR: 3498 [the Bates stamp number].

PROSECUTOR: What page?

MR. TIGAR: 7.

PROSECUTOR: Thank you.

BY MR. TIGAR:

Q. I 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 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?

[You may wonder why I say "okay" so often. I am trying to give approval when he answers in a satisfactory way. I hope it is not simply carelessness on my part.]

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

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?

A. It could have been one of many people.

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

A. Yes. John Doe 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 30<sup>th</sup> 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?

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 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.

MR. TIGAR: D9171, page 4.

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?

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 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 for Steve Colbern from the media; right?

A. Yes.

[In this series of questions, I am hoping to suggest that a married person with kids would have split from McVeigh by early 1995 at the latest. We have evidence that Terry Nichols did so, but Terry Nichols will not be testifying. I am also pointing out that in his early versions, he identified several people other than Terry Nichols as possible McVeigh conspirators.]

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?

[These are names of other McVeigh associates, each of whom has something to do with explosives.]

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, 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 [a local hardware store in Kingman where Fortier worked].

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.

BY MR. TIGAR: 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.

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.

[This is a recap of the direct testimony, as a lead-in to the next questions.]

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.
- 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 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 7th?

A. No, sir, I did not.

Q. Have you ever called VP Racing Fuels?

A. No, sir.

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

[If Fortier did not make these calls, then McVeigh did, using the Fortier phone. They are calls related to travel and to assembling the bomb components, as one can infer from what the called businesses deal in. There are also calls from Terry Nichols house to component suppliers, made while McVeigh was staying with Nichols; as to these calls, we wish to suggest that Nichols was unaware, just as Fortier was unaware of the calls from his home.]

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 Coogle Trucking, Incorporated?

A. Absolutely not.

Q. Okay. Have you ever called Coogle 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.

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. 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.

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 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 about the investigation?

A. Yes.

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

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 BDU's, camouflage military battle dress with full backpacks and weapons?

A. No, sir.

Q. You deny that?

A. I do deny that.

[We have interviewed Rosencrans and expect him to testify to this. Hence, the sequence of questions.]

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.

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.

[Some of Fortier's fingerprints were found on objects in Nichols' house.]

Q. I show you now, sir, what has been -- . May I approach, your Honor?

THE COURT: Yes.

Q. [continuing] -- 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 Mr. Fortier has just identified.

PROSECUTOR: No objection.

THE COURT: All right. D397 is received.

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 am trying to use the ELMO device to show this exhibit to the jury, but I can't make it work. The deputy clerk helps me.] [The deputy clerk] has taken the lens cap off the device, your Honor, and it now works perfectly. 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.

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.

PROSECUTOR: 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. 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.

[Once again I am using him to make a point, because Terry Nichols had some arguably sensational reading material at his home.]

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. I will go on to something else. Your Honor, to speed this up, I'm going to give him a whole notebook at once, if I may.

THE COURT: All right.

[I am coming to the end here, and I want to keep up the pace. I have the relevant exhibits in a notebook, and this will help move things along – with the court's permission.]

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 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.

MR. TIGAR: Offer D484.

PROSECUTOR: No objection.

THE COURT: Received.

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. We offer it, your Honor.

PROSECUTOR: No objection.

THE COURT: D485 is received.

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.

[Thank you, Judge.]

BY MR. TIGAR:

Q. 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.

PROSECUTOR: No objection.

THE COURT: D491 is received.

25BY MR. TIGAR:

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.

[I am using the ELMO as required by the judge. However, I want to show the object as a three-dimensional item, so the jurors will recognize it.]

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?

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.

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.

Q. 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.

PROSECUTOR: No objection.

THE COURT: E513 received.

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

PROSECUTOR: 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.

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

PROSECUTOR: 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?

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.

PROSECUTOR: No objection.

THE COURT: D516 received.

[These questions bring out that he had a lot of far right literature in his home, yet the government did not consider him a conspirator.]

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.

PROSECUTOR: No objection.

THE COURT: Received.

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.

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: 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.

(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?

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 lawyers preparing for your testimony?

A. Between 150 and 200 hours.

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 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 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.

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 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 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 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 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 63553(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.
- 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?
- 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?

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.

I wanted to argue that Fortier would tell a lie to gain his freedom, and in fact had told many lies for that and even less noble purposes. I wanted to argue that the government had assessed his maximum liability at the offenses to which he pled, and that therefore Terry Nichols should be treated with at most the same rigor.