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8439

Western  
Oklahoma  
JAMIE  
U.S.  
Denver,  
REID  
Lincoln  
for

1 APPEARANCES  
2 PATRICK RYAN, United States Attorney for the  
3 District of Oklahoma, 210 West Park Avenue, Suite 400,  
4 City, Oklahoma, 73102, appearing for the plaintiff.  
5 LARRY MACKEY, BETH WILKINSON, GEOFFREY MEARNES,  
6 ORENSTEIN, and AITAN GOELMAN, Special Attorneys to the  
7 Attorney General, 1961 Stout Street, Suite 1200,  
8 Colorado, 80294, appearing for the plaintiff.  
9 MICHAEL TIGAR, RONALD WOODS, ADAM THURSCHELL,  
10 NEUREITER, and JANE TIGAR, Attorneys at Law, 1120  
11 Street, Suite 1308, Denver, Colorado, 80203, appearing

12 Defendant Nichols.

13 \* \* \* \* \*

14 PROCEEDINGS

15 (Reconvened at 1:31 p.m.)

16 THE COURT: Please be seated.

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

18 (Michael Fortier was recalled to the stand.)

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

20 Mr. Tigar, you may continue.

21 CROSS-EXAMINATION CONTINUED

22 BY MR. TIGAR:

23 Q. Mr. Fortier, over the break, we queued up a very  
short

24 video segment just to show a picture of you back in the  
April,

25 May, 1995 period.

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Michael Fortier - Cross

1 MR. TIGAR: Your Honor, this has been shown to  
the

2 Government. We'd like to show it now.

3 (Defendant's Exhibit D566 played.)

4 BY MR. TIGAR:

5 Q. That was it, Mr. Fortier.

6 A. Yes, it was.

7 Q. Now, sir --

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

10 MR. TIGAR: D566, your Honor.

11 THE COURT: Thank you.

12 BY MR. TIGAR:

13 Q. Mr. Fortier, you have had an opportunity, have you  
not, to

14 review the tape recordings that were made of the  
microphones

15 that were placed in your home and the tap on your  
phone?

16 A. Yes, I have.

17 Q. And would you agree with me, sir, that beginning on  
the

18 25th of April, you began to talk about the  
possibilities that

19 might exist to you to sell your story to the media?

20 A. Yes.

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

22 (Defendant's Exhibit A8 played.)

23 BY MR. TIGAR:

24 Q. Is that you?

25 A. Yes, sir.

Michael Fortier – Cross

1 (Defendant's Exhibit A8 played.)

2 BY MR. TIGAR:

3 Q. That's you and your brother talking?

4 A. Yes, it is.

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

6 A. Yes.

7 Q. You also had a conversation with -- about CNN;  
correct?

8 With your brother John? Remember that on April the  
25th?

9 MR. TIGAR: Could we have A9, please.

10 (Defendant's Exhibit A9 played.)

11 BY MR. TIGAR:

12 Q. And that was you talking about the possibility of  
being on

13 CNN; correct?

14 A. Yes, sir.

15 Q. That was April the 25th?

16 A. I believe it was.

17 Q. And you were still talking to the FBI, but you  
hadn't

18 decided to tell them what you knew about Mr. McVeigh;  
correct?

19 The FBI.

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

21 that point.

agreed 22 Q. And did you become angry that CNN, you thought, had  
23 to pay you some money and then backed out?  
24 A. No, sir.  
owe me 25 Q. Did you ever say "You know what, CNN sucks. They

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Michael Fortier - Cross

1 some money"?  
2 A. Yes.  
3 MR. TIGAR: Could we have A13, please.  
4 (Defendant's Exhibit A13 played.)  
5 BY MR. TIGAR:  
6 Q. That was you?  
7 A. Yes.  
8 Q. On April the 28th?  
9 A. I believe it was on that date, but there was no  
agreement 10 between me and CNN to exchange money whatsoever.  
11 Q. You just thought they -- well, why did you think  
they owed 12 you money, sir?  
13 A. They had taken the clips from my interview with  
them and --  
14 what I thought they did was pass it out to other --  
like ABC,

they  
15 NBC and CBS; and that's what I was upset about. I felt  
16 owed me money for distributing my image.  
you,  
17 Q. You thought your story was worth something, didn't  
18 sir?  
19 A. I imagine it was to the -- the media.  
20 MR. TIGAR: Could we have B1, please.  
21 (Defendant's Exhibit B1 played.)  
22 BY MR. TIGAR:  
is that  
23 Q. That's you saying, "I was thinking one cool one";  
24 right?  
25 A. Yes, sir. That's me.

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Michael Fortier - Cross

1 Q. And that meant you were thinking of a million?  
2 A. Yes. That's what I was referring to.  
doing  
3 Q. And then did you also think about after the trial,  
4 book and movie rights?  
5 A. That is something that was discussed.  
1995.  
6 MR. TIGAR: May we have B2, please, April 30,  
7 (Defendant's Exhibit B2 played.)  
8 BY MR. TIGAR:

Is that 9 Q. Talking about something that's worth The Enquirer?

10 what we heard?

11 A. I believe that's what I said.

started 12 Q. Now, did there come a time, sir, when your mother

13 to make comments to the media?

14 A. I believe she did.

the media? 15 Q. And were you angry at her for making comments to

16 A. Yes, I was.

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

18 A. That is correct.

that, did 19 Q. And when you heard a tape recording of her doing

20 you react in a certain way?

21 A. Yes.

22 MR. TIGAR: May we have B7, please.

23 (Defendant's Exhibit B7 played.)

this for 24 MR. MEARNS: Your Honor, we would object to

25 the reasons stated.

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Michael Fortier - Cross

1 THE COURT: Overruled. Go ahead and play it.

2 (Defendant's Exhibit B7 played.)

3 BY MR. TIGAR:

4 Q. That's you, sir?

5 A. Yes, sir.

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

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

9 MR. TIGAR: Could we have C2, please.

10 (Defendant's Exhibit C2 played.)

11 BY MR. TIGAR:

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

14 A. Yes.

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

17 A. That is correct.

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

20 A. Yes.

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

22 Kato?

23 A. No, I did not.

24 MR. TIGAR: Would you play C3, please.

25 (Defendant's Exhibit C3 played.)

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Michael Fortier – Cross

1 BY MR. TIGAR:

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

3 A. Yes.

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

7 A. Yes, I do.

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

9 A. Or thereabouts.

10 MR. TIGAR: May we have C4, please.

11 (Defendant's Exhibit C4 played.)

12 BY MR. TIGAR:

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

15 A. That's correct.

16 Q. And there were times when the tapes captured your  
reactions  
17 to what the FBI was asking you and how you were feeling  
about

18 it; correct?

19 A. That is correct.

1995, 20 MR. TIGAR: May we have A2 from April 25,

21 please.

22 (Defendant's Exhibit A2 played.)

23 BY MR. TIGAR:

there? 24 Q. That was you and -- who was the other speaker  
Your

25 brother John?

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Michael Fortier - Cross

1 A. Yes.

brother John 2 Q. And on April 25, did you also talk with your

3 about news reports of sketches of John Doe No. 2?

4 A. I believe I did.

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

6 A. I did not know who he was.

7 Q. But what did you understand that John Doe No. 2  
talk to be

8 about? Something to do with this case?

9 A. Yes.

10 MR. TIGAR: May we have A3, please.

11 (Defendant's Exhibit A3 played.)

12 BY MR. TIGAR:

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

15 A. Yes, sir. That was me.

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

18 A. I believe I used those words.

19 MR. TIGAR: Could we have A5, please.

20 (Defendant's Exhibit A5 played.)

21 BY MR. TIGAR:

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

24 A. Yes, sir.

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

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Michael Fortier - Cross

1 Rosencrans turned off the video game?

2 A. That is correct.

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

5 A. The media and the FBI being more or less in my face

at that

6 time. That's what was concerning me and filling all of  
my  
7 days.

8 Q. And feeling what?

9 A. And filling my days at that time.

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

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

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

16 A. I believe they did.

17 Q. April 25, 1995.

18 MR. TIGAR: Could we have A6, please.

19 (Defendant's Exhibit A6 played.)

20 BY MR. TIGAR:

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

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

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

Michael Fortier – Cross

1 A. Yes.

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

3 (Defendant's Exhibit A7 played.)

4 BY MR. TIGAR:

5 Q. Now, the "standing up and yelling in each other's  
face,"

6 that's you and the FBI; correct?

7 A. Yes.

8 Q. Now, the Arizona Republic, you were following the  
media

9 reports at this time; correct?

10 A. Yes.

11 Q. You had took the Arizona Republic, which is the  
major

12 newspaper in Arizona; right?

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

14 neighbor.

15 Q. All right. And was that a copy that had a great  
deal of

16 information about the bombing and the investigation?

17 A. Yes. It was all about the bombing.

18 Q. In addition to the Arizona Republic copy that you  
had, did

19 you watch television regularly?

20 A. Yes.

21 Q. And did you listen to the radio regularly?

22 A. No.

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

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Michael Fortier - Cross

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

2 news.

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

5 A. That is fair.

6 Q. Now, did you talk to your friend Lonnie Hubbard  
about his

7 being down there, talking to the FBI?

8 A. We may have.

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

10 (Defendant's Exhibit A15 played.)

11 BY MR. TIGAR:

12 Q. Now, when you said, "I was too, until the last  
day," that

really 13 was in answer to Mr. Hubbard saying, "I was calm, I was

14 loaded"; right?

calm or 15 Well, which were you in talking to the FBI,

16 loaded?

17 A. On the last day on the 24th?

18 Q. Yes, sir.

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

were in 20 Q. All right. Well, you were calm except when you

21 each other's faces; correct?

22 A. That only happened on the last day.

you mean 23 Q. Okay. And that last day when you -- by "loaded,"

24 that you had been taking some substance into yourself?

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

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Michael Fortier - Cross

smoking 1 Q. And had you been up all night the previous night

2 crystal meth?

3 A. Yes.

all 4 Q. How many nights in 1993 and '94 and '95 were you up

5 night under the influence of methamphetamine?

6 A. Many.

7 Q. How many? More than you can remember?

8 A. It's difficult to recall every time. I'd have to  
do some

9 math right now for you.

10 Q. Some math?

11 A. Yes.

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

13 A. His name is Paul.

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

15 questioning?

16 A. I spoke with my father, yes.

17 Q. Did you talk to him about lying?

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

19 Q. No. No. Did you talk to him about whether or not  
a person

20 should lie?

21 A. I don't recall.

22 MR. TIGAR: May we have A18, please.

23 (Defendant's Exhibit A18 played.)

24 BY MR. TIGAR:

25 Q. Was that your dad talking to you?

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Michael Fortier - Cross

1 A. Yes, sir. That was him.

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

3 A. That's what I said.

4 Q. Now, in questioning you, did the FBI call you  
names? Did

5 they call you "baby killer"?

6 A. Yes, they did.

7 Q. Did that make you angry?

8 A. Yes, it did.

9 MR. TIGAR: May we have A19, please.

10 (Defendant's Exhibit 19 played.)

11 BY MR. TIGAR:

12 Q. Now, did there come a time in May when you began to  
talk

13 about a worry that you might be indicted?

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

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

17 A. Yes.

18 Q. And --

19 MR. TIGAR: May we have B13, please.

20 (Defendant's Exhibit B13 played.)

21 BY MR. TIGAR:

22 Q. Now, that's your wife, Lori, talking about the  
grand jury

23 process; right?

24 A. Yes.

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

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Michael Fortier - Cross

1 A. That is what she said.

2 Q. Uh-huh. And the tape becomes unintelligible after  
that.

3 Did you discuss with her later how you would correspond  
it all?

4 A. That's what we were discussing. I was worried  
because I

5 was lying so much to everybody; and once I got in front  
of a

6 grand jury, I did not think I would be able to get away  
with

7 all those lies. And that -- and she was encouraging me  
to

8 continue to lie by corresponding it all.

9 Q. She was doing what?

10 A. She was encouraging me to lie still.

11 Q. Oh, by getting your stories together? Is that what

12 "correspond it all" meant to you?

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

14 Q. Now, in addition to the questions about the media  
and the

15 others, there were some conversations that were  
captured about

16 narcotics; correct?

17 A. Yes, sir.

18 MR. TIGAR: Could we have A14, please.

19 (Defendant's Exhibit A14 played.)

20 BY MR. TIGAR:

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

23 A. It was a tinfoil pipe.

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

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Michael Fortier - Cross

1 or something --

2 A. Yes.

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

5 A. No, sir, I have not.

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

9 A. Yes.

10 Q. Okay. In other words, you do not expect to be  
prosecuted

11 for any narcotics use; correct?

12 A. I believe it says in my plea agreement that any  
crimes that

13 I have divulged at that time I would not be prosecuted  
for

14 besides the four felonies.

15 Q. Now, you told us earlier about Mr. McVeigh and his  
attitude

16 towards the children that you were going to baby-sit.  
Do you

17 recall that, sir?

18 A. Yes, I do.

19 Q. And isn't it a fact, sir, that your daughter,  
Kayla, was

20 getting on his nerves because he didn't like to be  
around a

21 two-year-old?

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

23 MR. TIGAR: Could we have A20, please.

24 (Defendant's Exhibit A20 played.)

25 BY MR. TIGAR:

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Michael Fortier - Cross

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

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

3 Q. And did the FBI ask you about him?

asked me 4 A. I believe they only showed me a picture of him and

5 if I knew him.

6 Q. And that's the only way -- that's the only  
knowledge you

7 have of him; is that right?

8 A. No, sir.

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

10 A. He is a person that Tim McVeigh was being  
introduced to by

11 a guy named Bob in Arkansas.

12 Q. By a guy named Bob what?

13 A. Bob in Arkansas.

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

15 A. Yes.

16 Q. And did Mr. McVeigh tell you that Bob in Arkansas  
had

17 introduced him to Mr. Steve Colbern?

18 A. No. He -- Bob in Arkansas was trying to get them  
together

19 to introduce them to each other.

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

21 A. Yes.

22 Q. Now, Mr. McVeigh gave you a -- a letter once to  
mail to

23 Bob, didn't he?

24 A. Yes, he did.

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

once?

8455

Michael Fortier – Cross

1 A. No. Just only once.

Bob? 2 Q. Do you know what other names Bob has other than

3 A. I believe his name is Roger Moore.

or after? 4 Q. And did you learn that before May the 17th, 1995,

5 A. After.

6 Q. After.

the 7 A. I believe it was after. It was definitely after

8 bombing.

jury 9 Q. Now, sir, there came a time when you got a grand

10 subpoena; correct?

11 A. Yes.

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

13 A. Yes.

14 Q. Did you -- you stayed in a motel?

15 A. Yes.

16 Q. Shared a room at a motel, of course?

17 A. Yes.

did you 18 Q. And on (sic) 4:30 p.m. on the 17th of May, 1995,

19 call the FBI?

20 A. I called a number that was on the subpoena. I  
don't know

21 if it was the FBI or not.

22 Q. And did you later that day speak to some FBI  
agents?

23 A. Yes.

24 Q. Were they Agents Volz and Zimms?

25 A. Yes, they were.

8456

Michael Fortier - Cross

1 Q. Now, they got there at about 5:35 p.m.; correct?

2 A. That sounds right.

3 Q. And you told them you wanted to correct the  
statements that

4 you had made to the FBI in Kingman, Arizona; is that  
right?

5 A. Yes. I said that to them.

6 Q. And Mrs. -- your wife, Lori, what -- how does she  
like to

7 be referred to? Mrs. Fortier, Ms. Fortier? What --

8 A. Mrs.

9 Q. Mrs. Okay. Mrs. Fortier said that she wanted to  
correct

10 her statements, as well; correct?

11 A. Yes. That was her intentions, also.

12 Q. Now, you showed them a rough-draft proffer;

correct?

13 A. I don't remember doing so.

14 Q. Now, you also said that you were fearful of  
reprisals from

15 the Aryan movement if you testified against Timothy  
McVeigh;

16 correct?

17 A. That is correct.

18 Q. Now, the -- you also said that you did not want

19 Mrs. Fortier to appear before a federal grand jury;  
correct?

20 A. I don't remember saying that.

21 Q. Now, you were asked if you wanted to correct your  
prior

22 statements; correct? The FBI asked you that?

23 A. No, sir, they did not.

24 Q. Do you remember a time when the agents left the  
room?

25 A. Yes, I do. May I refer back to the last question?

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Michael Fortier - Cross

1 Q. Of course.

2 A. The purpose for the agents coming to my motel room  
was I

3 was wanting to correct my statements. So there came a  
time

4 when the FBI agents left the room; and when they came  
back,

5 they asked me if I still wanted to correct my  
statements.

6 Q. Well, isn't it the way it happened, sir, that the  
agents

7 got there, you told them you wanted to correct your  
statement,

8 you talked about reprisals and that you didn't want

9 Mrs. Fortier to go before the grand jury and then they  
asked

10 you do you still want to correct your statement?

11 A. Yes, sir.

12 Q. All right. And then the next thing that happened,  
sir,

13 isn't it, is that you and Mrs. Fortier started to talk  
amongst

14 yourself about just exactly what you were going to do?

15 A. Yes.

16 Q. And then the next thing that happened, sir, was  
that the

17 two FBI (sic) just left the room? Isn't that what  
happened?

18 A. Yes.

19 Q. And while the FBI agents were out of the room, you  
and

20 Mrs. Fortier talked; correct?

21 A. Yes, sir.

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

23 right?

24 A. I believe it was, yes.

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

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Michael Fortier - Cross

words to 1 Mrs. Fortier and said, "Correct your statement," or  
2 that effect; right?

saying 3 A. That's what the 302's reflect. I don't remember  
4 that to her.

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

6 A. Yes, I have.

right? 7 Q. Okay. You don't remember it that way; is that

8 A. That's right.

correct 9 Q. And then did she turn to you and say, "No, you  
10 yours"?

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

12 Q. Is that what you remember?

13 A. No, sir.

few 14 Q. Did the FBI agents then leave the room again for a  
15 minutes?

16 A. Yes.

17 Q. You do remember that?

18 A. I do remember that.

19 Q. Then you stepped out of the room; correct?  
20 A. Yes.  
21 Q. Where did you go?  
22 A. I went to speak with Special Agents (sic) Volz.  
23 Q. Physically where was that?  
24 A. Outside the room on the balcony.  
25 Q. This is a balcony on the second floor?

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Michael Fortier - Cross

1 A. Yes, sir.  
2 Q. Where is the motel? What motel is it?  
3 A. I don't know which motel it is.  
4 Q. It's a motel in Oklahoma City?  
5 A. Yes.  
6 Q. All right. Does the Motel 6 refresh your  
recollection?  
7 A. I -- I'm not sure which motel it was.  
8 Q. And you told the agents in effect, "I want  
immunity, and  
9 I'll give you Tim McVeigh"? Isn't that what you said?  
10 A. In effect, that is what I said.  
11 Q. And they told you that they didn't have the power  
to give  
12 you immunity, didn't they?  
13 A. I don't remember them saying that.

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

16 A. No, sir, they did not.

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

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

19 Q. Isn't it a fact, sir, that they told you that you  
would not  
20 and could not be granted immunity by the interviewing  
agents

21 and that only prosecutors involved could do that?

22 A. I don't remember them saying that.

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

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

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Michael Fortier - Cross

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

3 A. Yes.

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

5 A. Yes.

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

7 A. Yes, I have.

8 Q. How long an interview was that?

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

10 Q. And in that interview, you told the agents that you  
knew

11 Terry Nichols; correct?

12 A. I believe so.

13 Q. And Mrs. Fortier told the agents that Mr. McVeigh  
and Terry

14 Nichols had been to their house -- had been to you  
alls' house

15 together in Mr. Nichols' pickup truck; correct?

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

17 Q. And you told them that -- find it here -- Mr.  
Nichols had

18 called you once and said that he had gotten your  
telephone

19 number from Mr. McVeigh. Do you remember that?

20 A. I may have said that to them.

21 Q. And Mr. Mc --

22 MR. TIGAR: May I approach, your Honor?

23 THE COURT: Yes.

24 MR. TIGAR: 3498.

25 MR. MEARNS: What page?

1 MR. TIGAR: 7.

2 MR. MEARNS: Thank you.

3 BY MR. TIGAR:

4 Q. Show you now, what I -- well, would you look at it  
first,  
of the  
17th of  
5 sir, and see is that the FBI 302 of report of interview  
6 conversation about which we've been speaking on the  
7 May, 1995, in Oklahoma City at the Motel 6?

8 A. Yes.

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

11 A. Yes, sir.

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

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

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

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

20 Q. Okay. And now, would you look, please, sir, at the  
top  
21 here of page 8. And does that refresh your

recollection that

and 22 Mrs. Fortier told the agents about the -- Mr. McVeigh

23 Mr. Nichols arriving together in the truck?

but I 24 A. Still, I don't -- I don't remember her saying that,

25 don't dispute it.

8462

Michael Fortier - Cross

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

2 A. That was my intentions.

Nichols 3 Q. And you didn't tell the FBI anything about Terry

that he 4 there while you were coming clean other than the fact

his 5 came to your house one time with his baby daughter and

6 wife; isn't that right?

that 7 A. That is right. I was -- I did not come clean in

interview. 8 interview. I lied to the FBI throughout that

9 Q. Oh, you lied more throughout this?

10 A. Yes.

house with 11 Q. You didn't lie about Mr. Nichols coming to your

12 his baby and his wife, did you, because he did come?

13 A. Yes. That is true.

one time 14 Q. And Mrs. Fortier, if she told them that they came

she? 15 in Mr. Nichols' truck, she didn't lie about that, did

16 A. I don't think so.

addition 17 Q. And those are the only things you told them. In

tell you 18 to that -- well, the agent -- didn't the agent also

against 19 after he said that he didn't need you to make the case

20 McVeigh; that you'd have to give them somebody else?

21 A. I do not remember him saying that.

opinion about 22 Q. Now, you also told the agents that you had an

23 who Unknown Subject No. 2 was; correct?

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

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

8463

Michael Fortier - Cross

1 A. It could have been one of many people.

this Un. 2 Q. But what -- what was the context? Why -- who --

name for 3 Sub. 2, that was the kind of a -- a law enforcement

4 somebody that helped with the bombing?

5 A. Yes. John Doe 2.

6 Q. Yeah.

7 A. The agents would ask me who -- who do you think it  
is, or

8 do you think it could be this person, and I would say  
yes or

9 no.

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

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

13 just a guess.

14 Q. Now, you were interviewed again by the agents on  
the 30th

15 of May, 1995, weren't you, sir?

16 A. I believe so.

17 Q. By Agents Zimms and Volz?

18 A. Yes.

19 Q. All right. And did you tell them at that time that  
you and

20 Mr. McVeigh had attempted to alter a number on a  
plastic stock

21 of a .50 caliber rifle?

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

23 Q. All right.

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

25 Q. Oh, you did that yourself?

Michael Fortier – Cross

1 A. Yes, sir.

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

3 A. It was on the .50 cal because I was planning on  
keeping the

4 .50 cal and I knew it was stolen, so I didn't want the  
stolen

5 number on there.

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

7 it was stolen?

8 A. That was my belief.

9 Q. Right. And your belief again is based on nothing  
other

10 than what Timothy McVeigh told you; correct?

11 A. That is correct.

12 Q. Now, there came a time, sir, when you took a trip  
to Kansas

13 with the agents. Do you remember that?

14 A. Yes, sir, I do.

15 Q. And you drove around Kansas and had a lot of  
discussion

16 with the agents about what you were seeing and about  
other

17 subjects; correct?

18 A. Yes.

19 Q. Now, that was a time you told the agents about Mr.  
McVeigh

20 asking you to get a number in Bullhead City, Arizona;

correct?

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

22 Q. Yes. He wanted you to get the phone number of a  
white

23 supremacist group. Do you remember that?

24 A. Yes.

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

8465

Michael Fortier - Cross

1 of anyone McVeigh could reach out to help him other --  
for help

2 except for Rosencrans; correct? Do you remember saying  
that?

3 A. Not -- not exactly.

4 MR. TIGAR: D9171, page 4.

5 BY MR. TIGAR:

6 Q. I show you now what is a report of investigation  
dated

7 6-23-95. Ask you to look at page 4, the bottom  
paragraph, and

8 ask you if that refreshes your recollection, sir.

9 A. Yes.

10 Q. Okay. Now, in fact, you did have a conversation  
with

11 Mr. McVeigh in which you told him that -- excuse me.  
You -- it

McVeigh 12 was your opinion that Rosencrans was somebody that

13 could reach out to; correct?

McVeigh could 14 A. Is it my opinion that Rosencrans is somebody

15 reach out to?

16 Q. Yes, sir.

17 A. Sure.

18 Q. You had a conversation with him about Rosencrans  
doing some

19 driving; correct?

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

21 ride.

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

23 A. Yes.

24 Q. The man that you used to help stash some of the  
things to

25 keep out of the way of the search; correct?

8466

Michael Fortier - Cross

1 A. Yes.

2 Q. Now, was the conversation about driving -- was that  
before

3 or after McVeigh told you that he wanted you to be a  
desperado?

4 A. I believe it was after.

5 Q. So the first thing that happens is McVeigh says,  
insulting,

6 that you're domesticated; correct?

7 A. Yes.

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

10 A. Yes.

11 Q. And you refused because you had a baby and another  
on the

12 way; correct?

13 A. Absolutely.

14 Q. You refused because you were a married fellow,  
hoped to put

15 your life together and -- and live within the law;  
correct?

16 A. That's correct.

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

18 A. Yes.

19 Q. Well, he had gypped you out of some money in  
December --

20 right -- in the trip?

21 A. He did.

22 Q. And then you went to gun shows later on with him;  
right?

23 Why did you continue to go to gun shows with him if --  
if he'd

24 already gypped you once?

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

found out

8467

Michael Fortier - Cross

1 that he had gypped me would be after all the gun shows  
were  
2 finished and I found out that all those weapons did not  
equal  
3 \$10,000.

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

7 A. Yes.

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

10 A. Yes.

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

13 A. Yes.

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

16 A. Yes, he did.

17 Q. And then when you found out -- you found out at  
some point

18 that he was a really very bad actor; right? That you  
didn't  
19 want to have anything more to do with him?  
20 A. Well, he became aggressive towards me. That's why  
I didn't  
21 want anything to do with him.  
22 Q. So you quit having something to do with him; right?  
23 A. Yes, I did.  
24 Q. Now, in that same trip that you took, you said that  
you  
25 knew about a note on a telephone pole from (sic) Steve  
Colbern

8468

Michael Fortier - Cross

1 from the media; right?  
2 A. Yes.  
3 Q. You said you knew about Dave Paulsen, Ed Paulsen,  
and Kevin  
4 Nicholas from watching TV; correct?  
5 A. Yes. Although I believe Mr. McVeigh may have  
mentioned  
6 this guy Nicholas.  
7 Q. Well, I'll ask you about that in a minute, but the  
answer  
8 to the first question is you had heard those names,  
Paulsen and  
9 Nicholas, from the TV; correct?

10 A. Yes.

those 11 Q. So you were following the TV carefully enough in

remember 12 early days that by the 21st of June, you could still

13 the names and what you'd heard on the TV; right?

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

assertion that 15 Q. Do you have any quarrel with the -- with the

did 16 you did tell the agents on the 21st and 22d that you

17 remember those names from TV?

18 A. No, I have no quarrel with that.

told you 19 Q. Now, you said a moment ago that Mr. McVeigh had

20 some things. He told you he was going to sell the

-- what, 21 Christmas-wrapped blasting caps to someone in -- to a

22 a friend in Michigan?

was going 23 A. I don't remember if he said a friend. He said he

24 to sell the blasting caps in Michigan.

ammonium 25 Q. Now, in addition to the half a bag that -- of

8469

Michael Fortier - Cross

you 1 nitrate that you got from McVeigh -- start -- where do

2 think that half a bag of ammonium nitrate you got from  
3 Mr. McVeigh came from? Do you know?

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

5 Q. Were you aware that Mr. McVeigh had bought  
fertilizer --

6 ammonium nitrate fertilizer at the True Value hardware  
store in

7 Kingman, Arizona?

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

9 Q. Did you tell the agents that you were aware that he  
had

10 bought some?

11 A. I may have.

12 MR. TIGAR: Page 9.

13 BY MR. TIGAR:

14 Q. I show you, sir, page 9 of that report of  
interview, and I

15 ask you to look at the last paragraph; and then with  
that, tell

16 us whether your recollection is refreshed that you told  
the

17 agents that Mr. McVeigh had purchased ammonium nitrate  
18 fertilizer at the True Value hardware.

19 A. Yes, I very well could have said that to them. It  
is my

20 best guess that that's where he got that ammonium  
nitrate while

21 he was living in Kingman.

22 Q. Thank you, sir. Now, Mr. McVeigh also described to  
you

23 during some conversation that -- about fertilizer  
purchases;

24 correct?

25 A. Yes.

8470

Michael Fortier - Cross

1 Q. Now, he told you, did he not, that Terry Nichols  
had

2 screwed up a fertilizer purchase?

3 A. That is what he said to me.

4 Q. And he told you that since Terry Nichols screwed up  
the

5 purchase, he, McVeigh, had to do the next one? Did he  
tell you

6 that?

7 A. Yes, sir.

8 Q. Now, you don't know whether he was telling the  
truth about

9 this or not, do you?

10 A. No, I don't.

11 Q. And whatever he said on this subject, he didn't say  
it when

12 Terry Nichols was present; did he?

13 A. That is correct.

14 Q. You have never in your life had a discussion with  
Terry

15 Nichols about ammonium nitrate, have you, sir?

16 A. That is correct.

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

21 A. That is right.

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

25 A. That is true.

8471

Michael Fortier - Cross

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

3 A. Yes, he did.

4 Q. Certainly had access to it; right?

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

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

8 A. Yes, I was.

on the 9 Q. Do you remember receiving a call from Mr. McVeigh

10 1st of October, 1994?

receiving 11 A. I couldn't pin it down to that date. I remember

12 a phone call during that time period.

recollection if I 13 Q. Do you remember -- would it refresh your

True 14 showed you this record of two telephone calls, one to

15 Value and one to your house?

16 A. Yes.

two 17 Q. It does refresh your recollection? See, there are

other 9 18 telephone calls here, one 2 minutes and 26 seconds, the

19 minutes and 48 seconds.

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

21 Q. Does not?

22 A. No, sir.

23 Q. All right.

24 A. That is the one to Kingman True Value.

these 25 Q. Now, the second call, however, could that be one of

8472

Michael Fortier - Cross

1 calls that you told us about earlier, Mr. McVeigh

calling you,

2 asking you to do things?

3 A. It could be.

4 Q. Now, on the 7th of October, 1994, do you know where

5 Mr. McVeigh was?

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

7 Q. Were you at work that day?

8 A. I don't recall.

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

10 A. No, I do not.

11 Q. Would it refresh your recollection if I showed you  
a pocket

12 calendar, and could we agree it was a Friday?

13 A. Are we on the 7th?

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

15 A. Yes. I agree it was a Friday.

16 Q. Thank you. Was Friday a normal workday for you at  
the True

17 Value hardware store in Kingman, Arizona, sir?

18 A. Yes, sir.

19 Q. So on that day, at -- and did you come home for  
lunch or

20 did you work throughout the day, usually?

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

22 Q. Well, did you call the Arctic -- the Arctic Travel  
there in

23 Alamogordo, New Mexico, on the 7th?

24 A. No, sir.

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

8473

Michael Fortier - Cross

1 7th?

2 A. No, sir, I did not.

3 Q. Have you ever called VP Racing Fuels?

4 A. No, sir.

5 Q. Did you call Coogle Trucking, Inc., in Otterbein,  
Indiana,

6 on the 7th?

7 A. Unless -- if that was -- call was made from Kingman  
True

8 Value, I may have. Otherwise, no.

9 Q. No, sir, it was not. But you didn't -- did anyone  
-- did

10 you, from your house, call Coogle Trucking,  
Incorporated?

11 A. Absolutely not.

12 Q. Okay. Have you ever called Coogle Trucking,  
Incorporated,

13 from your house?

14 A. No, sir.

15 Q. So that if a record showed that a telephone call  
was made

16 from your home phone to those entities whose names I've  
read  
17 out, that would have been done without your knowledge;  
correct?  
18 A. Yes, sir.  
19 Q. Now, in driving around with the agents there in  
June of  
20 1995, you also talked about the storage locker E10 in  
Kingman,  
21 Arizona; correct?  
22 A. Most likely, we did.  
23 Q. Now, were you with Mr. McVeigh in February of 1995  
in or  
24 near that storage locker?  
25 A. No, sir.

8474

Michael Fortier - Cross

1 Q. How many times have you visited that storage  
locker?  
2 A. Three times.  
3 Q. The first time was the evening that you told us  
about when  
4 Mr. McVeigh showed you explosives; correct?  
5 A. That is correct.  
6 Q. The second time was to stash the 02 bottle that  
you, Jim  
7 Rosencrans, and Jason Hart stole; correct?  
8 A. That is correct.

9 Q. Now, Jason Hart, is he related to Mrs. Fortier?  
10 A. No, sir.  
11 Q. Okay. What is Jason Hart's profession?  
12 A. I don't believe he works.  
13 Q. Did he sell you things, sir?  
14 A. Many times, he tried, yes.  
15 Q. He was your dealer, wasn't he?  
16 A. No, sir.  
17 Q. What did he try to sell you?  
18 A. Junk.  
19 Q. Sir, is it your testimony that Mr. Hart never tried  
to sell  
20 you narcotics?  
21 A. No, sir, that is not my testimony.  
22 Q. All right. What -- would you tell us about Mr.  
Hart and  
23 narcotics, please; what you know.  
24 A. I know that he uses narcotics and he on occasion  
tries to  
25 sell narcotics, but he was not my dealer.

8475

Michael Fortier - Cross

1 Q. Did he ever sell you narcotics?  
2 A. I can remember once or twice that he did, yes.  
3 Q. And did he ever give you narcotics?

4 A. Yes. On many times.

5 Q. I'm sorry? Many times?

6 A. A few times.

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

8 A. Crystal meth.

9 Q. Any other kind?

10 A. Not that I can recall. No. Excuse me. That's  
where I got

11 that bunk LSD from was from Mr. Hart.

12 Q. The --

13 A. The LSD.

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

15 A. Yes.

16 Q. What does "bonk" mean?

17 A. Bunk. It's no good.

18 Q. Oh, bunk LSD. Okay.

19 A. Yes.

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

21 unit?

22 A. I went to the storage unit with a man named Terry.  
I don't

23 know his last name. He's the gentleman that I gave one  
of the

24 weapons to go to Phoenix to get drugs. I was with him  
in his

25 car one day when he stopped by a unit that he had -- he

was

8476

Michael Fortier - Cross

1 renting. He had to get something out of it.

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

3 A. The man's name was Terry.

4 Q. Terry. Not Terry Nichols?

5 A. No, sir.

6 Q. No. This was somebody who you'd traded a gun for  
drugs

7 with; right?

8 A. Yes.

9 Q. All right. So it's three times you've been to that  
storage

10 unit; correct?

11 A. Yes.

12 Q. Well, didn't you tell the FBI on the 21st or 22d of  
June

13 that you'd only been there twice?

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

15 Q. Pardon me?

16 A. That would have been just an innocent mistake.

17 Q. An innocent mistake. Well, by the 21st or 22d of  
June,

18 were you trying not to make mistakes when you were  
talking to

19 the FBI?

20 A. I absolutely was.

21 Q. Now, during the period between April the 21st and  
May the

22 17th, did you have any conversations with James  
Rosencrans

23 about the investigation?

24 A. Yes.

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

8477

Michael Fortier - Cross

1 A. I believe I did.

2 Q. Now -- and of course, Mr. Rosencrans is your next-  
door

3 neighbor. You know him; right?

4 A. Yes.

5 Q. Did you ever -- were you ever in Mr. Rosencrans'  
presence,

6 you and Mr. McVeigh, in full BBU's, camouflage military  
battle

7 dress with full backpacks and weapons?

8 A. No, sir.

9 Q. You deny that?

10 A. I do deny that.

11 Q. Now, you mentioned that Mr. McVeigh had asked you  
to max

12 out your credit cards. Do you recall that, sir?  
13 A. Yes, sir.  
14 Q. And you said you thought that was a way for him to  
get a  
15 free ride?  
16 A. Yes.  
17 Q. What did you mean? What was your understanding of  
that?  
18 What did you mean, "free ride"?  
19 A. He asked me if I would be willing to in the future  
max out  
20 my credit cards and give him the money. It was my  
impression  
21 that he was going to use that money to pay for his food  
and  
22 lodging so he would not have to work and pay for  
himself.  
23 Q. Now, did he offer to pay you back this money that  
you were  
24 going to use to give him a free ride?  
25 A. No, sir, he did not offer to pay me back.

8478

Michael Fortier - Cross

1 Q. Now, you told us that Mr. McVeigh had mentioned  
that --  
2 that he wanted to go to -- one time, he said he wanted  
somebody  
3 to drive him to the desert and another time, he said he  
wanted

4 someone to drive him to Arkansas. Do you remember  
that?

5 A. Yes, sir. That is correct.

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

7 A. Yes, sir.

8 Q. And you said no.

9 A. Yes.

10 Q. And the Arkansas, was that something that he was  
saying he

11 wanted Rosencrans to do?

12 A. Yes, sir.

13 Q. Now, just to be clear, sir, you have never been in  
Terry

14 Nichols' house; correct?

15 A. That is correct.

16 Q. So that if any fingerprints of yours were found in  
Terry

17 Nichols' house, that would be for some other reason  
than your

18 having been there; correct?

19 A. Absolutely.

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

21 see Mr. Nichols? You told us once he came over just  
before the

22 31st. Just before you bought your Jeep; right?

23 A. That is true.

24 Q. Okay. And when you say "just before," you think

within a

25 week or so?

8479

Michael Fortier - Cross

1 A. Within a week, yes.

2 Q. Okay. And then you said you saw him earlier in the  
month;

3 right? Was he clean-shaven on both occasions?

4 A. Yes.

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

6 A. I had never remembered Nichols having a beard.

7 Q. Okay. Now, sir, I'd like to show you some  
exhibits, some

8 things that were taken from . . .

9 MR. TIGAR: I'll go on to something else, your  
Honor,

10 while they are finding that exhibit.

11 THE COURT: Thank you.

12 BY MR. TIGAR:

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

14 MR. TIGAR: May I approach, your Honor?

15 THE COURT: Yes.

16 BY MR. TIGAR:

17 Q. -- what has been marked as Defendant's 397 for  
18 identification. And the first page is a Government  
document.

tell us 19 I'm asking you, please, to look at the second page and

20 whether you recognize the handwriting.

21 A. Yes, I do.

22 Q. And whose is that, sir?

23 A. That is my handwriting.

of 397. 24 MR. TIGAR: Your Honor, we offer pages 1 and 2

page 2 25 397 is a self-authenticating Government document, and

8480

Michael Fortier - Cross

1 is -- Mr. Fortier has just identified.

2 MR. MEARNS: No objection.

3 THE COURT: All right. D397 is received.

4 BY MR. TIGAR:

received in 5 Q. I'm placing up on the device here what has been

6 evidence as Government's 397, page 2.

7 THE COURT: Defendant's 397.

Honor. 8 MR. TIGAR: Excuse me. Defendant's 397, your

Defendant's -- 9 I almost forgot what side I'm on. Pardon me.

taken -- 10 D397. Am I not pushing the right button? I've now

11 Ms. Hasfjord has taken the lens cap off the device,

your Honor,

12 and it now works perfectly.

13 BY MR. TIGAR:

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

16 A. Yes, sir.

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

18 Right?

19 A. Yes, sir.

20 Q. And you were asked are you an unlawful user or  
addicted to

21 marijuana or any depressant, stimulant or narcotic drug  
or any

22 other controlled substance; and you answered no.  
Correct?

23 A. That is true.

24 Q. And then you signed it; right?

25 A. Yes, I did.

8481

Michael Fortier – Cross

1 Q. And before you signed it, did you read the part  
that says,

2 "I hereby certify that the answers to the above are  
true and

3 correct. I understand that a person who answers yes is

4 prohibited from purchasing and/or possessing a firearm

except

5 as otherwise provided by federal law. I also  
understand that

6 the making of any false oral or written statement or  
the

7 exhibiting of any false or misrepresented  
identification with

8 respect to this transaction is a crime punishable as a  
felony"?

9 Did you read that?

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

11 Q. Well, was the "no" true?

12 A. No, the "no" was false.

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

14 sir?

15 A. Because I knew that if you answered yes, they would  
not let

16 you buy the weapon.

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

18 gun?

19 A. Yes, sir.

20 Q. Sir, I have now what has been identified as  
Defendant's

21 Exhibit D390; and I ask you, sir, are these two issues  
of The

22 Spotlight, the newspaper to which you subscribed,  
bearing your

23 address label?

24 A. Yes, sir.

25 MR. TIGAR: We offer them, your Honor.

8482

Michael Fortier – Cross

1 MR. MEARNS: No objection.

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

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

5 THE COURT: All right.

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

8 BY MR. TIGAR:

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

11 A. Yes, sir.

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

14 A. That is correct.

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

16 Exhibit D463. I ask you if that is some literature  
that was  
17 taken from your home.

18 A. I don't really recognize this.

19 Q. Go on to something else.

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

22 THE COURT: All right.

23 BY MR. TIGAR:

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

8483

Michael Fortier - Cross

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

2 A. This is a firearms transaction record.

3 Q. And whose is it?

4 A. It is mine.

5 Q. Did you sign it?

6 A. Yes.

7 Q. Did you make the same false --

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

9 MR. MEARNS: No objection.

10 THE COURT: Received.

11 BY MR. TIGAR:

12 Q. Did you make the same false statement, sir?  
13 A. Yes, I did.  
14 Q. And what -- what gun was it that you told the lie  
to get  
15 there?  
16 A. This was a 10/22.  
17 Q. What's a 10/22?  
18 A. It's a small arms. It's a .22 caliber rifle.  
19 Q. Would you look at D485, sir. Is that a firearms  
20 transaction record?  
21 A. Yes, sir.  
22 Q. Whose is that?  
23 A. This is mine.  
24 Q. And is that --  
25 MR. TIGAR: We offer it, your Honor.

8484

Michael Fortier - Cross

1 MR. MEARNS: No objection.  
2 THE COURT: D485 is received.  
3 BY MR. TIGAR:  
4 Q. -- July, 1993?  
5 A. Yes.  
6 Q. Did you lie?  
7 A. Yes, sir.

8 Q. Was it the same lie?

9 A. Yes, sir.

10 Q. What gun did you get for that lie?

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

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

13 for any one of the lies you've told on these firearms  
forms; is

14 that correct, sir?

15 A. I do not believe so.

16 THE COURT: I'm not sure of the answer. You  
don't

17 believe it's correct --

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

20 THE COURT: All right.

21 BY MR. TIGAR:

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

23 A. Yes.

24 Q. Is that a handwritten letter?

25 A. Yes, it is.

8485

Michael Fortier - Cross

1 Q. Now, is that document in your handwriting?

2 A. No, sir, it is not.

3 Q. Whose handwriting is it in?

4 A. I believe it is my wife's.

5 Q. Have you ever seen the letter before?

6 A. Yes.

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

8 jointly?

9 A. No, sir, it is not.

10 Q. That's hers exclusively?

11 A. Yes. I have read this letter before; and there are  
some of

12 the things that I was saying at that time being right  
after the

13 bombing that is written down here, but I did not work  
with her

14 on this.

15 Q. All right. Would you turn, please, to D491. Is  
that a Kit

16 Kat candy bar wrapper with notes on it by you?

17 A. Yes, sir, it is.

18 Q. When did you write that?

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

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

21 THE COURT: Yes.

22 MR. TIGAR: We offer it, your Honor.

23 MR. MEARNS: No objection.

24 THE COURT: D491 is received.

25 BY MR. TIGAR:

8486

Michael Fortier - Cross

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

4 A. Yes.

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

7 A. Yes, I did.

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

10 A. I have no idea. I just grabbed a piece of paper  
and wrote  
11 a note on it.

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

14 A. Yes.

15 Q. Now, is that a reference to this Colbern fellow  
that you  
16 had heard about being somehow connected with Roger or  
Bob of

17 Arkansas and Tim McVeigh?

18 A. Yes.

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

21 A. No.

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

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

25 Q. Was it before May the 17th?

8487

Michael Fortier - Cross

1 A. Yes.

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

4 A. That is true.

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

7 A. Yes.

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

10 A. I had heard on the news that Mr. Colbern was in the

Kingman

I could  
seen him  
11 area, and I was going to talk to them; and I thought if  
12 look at his picture again more closely -- maybe I had  
13 around -- I could tell them that.

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

15 A. I don't recall.

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

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

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

was  
20 A. I'm not sure if they were looking for him. But he

they said  
21 certainly on the news. I don't remember exactly what  
22 about him.

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

25 A. Yes.

8488

Michael Fortier - Cross

wrapper  
1 Q. And you were passing the agents a Kit Kat candy bar  
2 with the Colbern name in order to put the agents onto

3 Mr. Colbern; correct?

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

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

9 A. No, sir, I did not.

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

12 A. I believe it is.

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

16 A. Yes, sir.

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

18 A. Okay.

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

20 A. Yes.

21 Q. It's your address?

22 A. Yes.

23 MR. TIGAR: We offer it, your Honor.

24 MR. MEARNES: No objection.

8489

Michael Fortier – Cross

1 BY MR. TIGAR:

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

5 A. No, sir, I do not know.

6 Q. Okay. Would it refresh your recollection if I  
showed you

7 what appears to be the original and you can compare and  
see  
8 that the markings are on that?

9 A. Yes. They --

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

11 A. It looks like it.

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

13 Item 501, please.

14 A. Okay.

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

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

17 Q. For college?

18 A. Yes.

19 Q. And that was in your house?

20 A. Yes.

21 MR. TIGAR: We offer it.

22 MR. MEARNS: No objection.

23 THE COURT: D501 is received.

24 BY MR. TIGAR:

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

8490

Michael Fortier – Cross

1 "Freedom for All"; correct?

2 A. Yes, sir.

3 Q. And it is a study of the constitutional right to  
keep and

4 bear arms; correct?

5 A. Yes, sir.

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

8 A. That is correct.

9 Q. And this is a paper that shows that you're a -- you  
know,

10 some of your constitutionalist views; correct?

11 A. Yes.

12 Q. Now, sir, would you turn to Tab 511, please.  
Without

whether 13 reading from it, can you tell us first do you remember  
14 that was in your house, or not?  
15 A. I don't remember.  
related 16 Q. Do you ever remember reading sections of the code  
17 to the issues that are in there?  
18 A. Yes.  
the 19 Q. When do you remember reading -- without regard to  
related to 20 exhibit, when were you studying sections of the code  
21 being an accomplice?  
22 A. I don't remember reading that.  
thing on the 23 Q. Do you see -- again, do you see the very first  
Does that 24 top of the page, the definition and then the word?  
25 refresh your recollection?

8491

Michael Fortier - Cross

you ever 1 And with your recollection thus refreshed, do  
2 remember reading anything on that subject?  
3 A. No, sir, I do not.  
4 Q. All right. Would you turn, please, to page 512.  
5 A. May I explain what I did read in this?

want -- I 6 Q. I'm sorry, sir. It's not in evidence and I don't  
7 don't want to offer something in evidence that I can't  
8 establish a foundation for. Let me ask a few questions  
and see 9 if we can get someplace with it. All right?

10 A. Sure.

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

12 A. No, sir.

13 Q. Okay.

14 A. Not that portion.

15 Q. Not that portion. Okay. Do you remember reading  
some 16 other portion?

17 A. Yes. I believe in this would be rules and  
regulations on 18 how to earn -- excuse me -- when it would be proper to  
use a 19 firearm in self-defense.

20 Q. I see. So you were reading up on firearms in self-  
defense; 21 correct?

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

23 Q. Okay. And so this was provisions of the law that  
related 24 to when you could use deadly force; correct?

25 A. That is correct.

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

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

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

7 A. That's true.

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

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

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

12 Q. Where did you get it?

13 A. I got this from Tim McVeigh.

14 MR. TIGAR: We offer it, your Honor.

15 MR. MEARNS: No objection.

16 THE COURT: E513 received.

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

18 MR. MEARNS: I understood 513, your Honor.

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

20 BY MR. TIGAR:

you get 21 Q. Would you look at 512, please. I apologize. Did  
22 that from Mr. McVeigh?  
23 A. Yes. I got this from Mr. McVeigh, also.  
24 Q. Was it in your house?  
25 A. Yes.

8493

Michael Fortier – Cross

D512 1 MR. TIGAR: We offer 512 and 513, your Honor.  
2 and D513.

3 MR. MEARNS: No objection.

4 THE COURT: They are received.

5 BY MR. TIGAR:

correct? 6 Q. Placing now up here D512, this is a prayer;  
7 Patriot's Prayer?

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

9 Q. And among the things it prays "to voice our  
declaration of

you see 10 independence against the New World Order"; correct? Do  
11 that?

12 A. Yes.

this 13 Q. Now, did you agree with the sentiments expressed in

14 prayer?

15 A. Yes.

16 Q. And then D513 that you got from Mr. McVeigh is  
called,

17 "Communist Rules for Revolution"; correct?

18 A. Yes.

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

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

21 Q. No. This is a -- an opposition to what the  
communists

22 think; correct? Is that right?

23 A. I believe so.

24 Q. Now, sir, will you turn to 516. Is that a document  
that

25 was taken from your house?

8494

Michael Fortier - Cross

1 A. Yes, sir.

2 Q. And where did you get it?

3 A. I also got this from Tim McVeigh.

4 MR. TIGAR: We offer it, your Honor.

5 MR. MEARNS: No objection.

6 THE COURT: D516 received.

7 BY MR. TIGAR:

8 Q. And this is a newsletter that is against the New

World

9 Order, among other things; correct?

10 A. Yes, sir.

11 Q. And Mr. McVeigh gave it to you, and you put it in  
your

12 house; right?

13 A. Yes. He gave me most all of this stuff in one big  
stack in

14 the spring of 1994.

15 Q. When -- when was it?

16 A. In the spring of 1994.

17 Q. Where -- and this is one more instance of Mr.  
McVeigh

18 giving literature about his favorite causes to people;  
correct?

19 A. Yes.

20 Q. Now, would you look, please, at 517. Is that  
something

21 else you got from Mr. McVeigh?

22 A. Yes, sir, it is.

23 MR. TIGAR: We offer it, your Honor.

24 MR. MEARNS: No objection.

25 THE COURT: Received.

8495

Michael Fortier - Cross

1 BY MR. TIGAR:

about 2 Q. Now, this one, if I put it up here -- this is one  
American 3 "U.S. Government Initiates Open Warfare Against  
4 People"; correct?

5 A. Yes, sir.

document, 6 Q. Now, did Mr. McVeigh give you an original of this  
7 or did -- was what he gave you a copy?

8 A. I don't remember.

9 Q. And do you see on page 1 here the quote from Thomas  
history . . . " 10 Jefferson? Correct? "The growth and course of

11 A. I see that.

12 Q. Now, did you know that Mr. McVeigh had a T-shirt  
that had a 13 slogan from Thomas Jefferson on it?

14 A. Yes, sir, I did.

blood 15 Q. Is that that slogan that has the tree with the  
16 droplets on it?

17 A. Yes.

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

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

20 Q. Oh. Whose birthday party? I'm sorry. He wore it  
to some 21 child's birthday party?

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

with-the- 23 Q. What child's birthday party did he wear the tree-  
24 droplets-of-blood T-shirt to?  
25 A. A friend of my wife's.

8496

Michael Fortier - Cross

1 Q. Will you turn, please, to page D518. Is this  
something you

2 got from Mr. McVeigh?

3 A. Yes.

4 Q. And was it found in your house?

5 A. I believe it was.

6 Q. Did you read it?

7 A. I don't remember doing so.

8 MR. TIGAR: We offer it.

9 MR. MEARNS: No objection.

10 THE COURT: D518 received.

11 BY MR. TIGAR:

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

13 A. Yes.

14 Q. And from what you know about it, does it have to do  
with

15 government intrusion into people's privacy?

16 A. I imagine so.

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

18 A. No, sir.

19 Q. Now, would you please just take your -- take a  
moment,  
20 please, and read -- and leaf through 519, 520, 521,  
522, 523,  
21 524, 525, and 526. And I'll ask you -- I want to ask  
you the  
22 same question: Were they found in your house and did  
you get  
23 them from Tim McVeigh?

24 A. Yes, sir.

25 MR. TIGAR: We offer those, your Honor.

8497

Michael Fortier - Cross

1 MR. MEARNS: 521 through 526?

2 THE COURT: 519 through --

3 MR. TIGAR: 519.

4 MR. MEARNS: No objection.

5 THE COURT: They are received. D519 through  
D526.

6 BY MR. TIGAR:

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

10 A. Yes, I did.

room on 11 Q. And was that -- did the two of you occupy a single  
12 that occasion?  
13 A. Yes, sir.  
do you 14 Q. And would you look at D527, please. Do you know --  
15 recognize that?  
16 A. I recognize the handwriting on it.  
is that 17 Q. But that's not something you've ever seen before;  
18 right?  
19 A. That is right.  
that in 20 Q. All right. Would you look, please, at D528. Was  
21 your house and did you get it from Tim McVeigh?  
from my 22 A. This most likely was found in my house and taken  
23 subscription house. And by the date, I would say that I had a  
not 24 at that time, so this would have come through the mail,  
25 through Tim McVeigh.

8498

Michael Fortier - Cross

1 MR. TIGAR: We offer it, your Honor.  
2 MR. MEARNS: No objection to 528.  
3 THE COURT: D528 received.

4 BY MR. TIGAR:

was some

5 Q. Now, from the copy we have, it appears that there

remember

6 highlighting placed on there at one time. Do you ever

7 seeing a copy of that issue with highlighting on it?

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

9 Q. Do you remember --

10 A. -- seeing that.

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

12 A. Not that I can recall.

13 Q. Did Mr. McVeigh -- when he gave you literature, did  
he ever

14 give you literature that had highlighting?

15 A. Yes. On occasion.

16 Q. Now, you told us earlier, sir, that Mr. McVeigh had  
been

17 the best man at your wedding; correct?

18 A. Yes.

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

20 A. In Las Vegas.

21 Q. At the Treasure Island hotel?

22 A. Yes, sir.

23 MR. TIGAR: May I approach, your Honor?

24 THE COURT: Yes.

25 BY MR. TIGAR:

Michael Fortier – Cross

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

4 A. Yes, sir.

5 MR. TIGAR: We offer it, your Honor.

6 MR. MEARNS: No objection.

7 THE COURT: D552 received.

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

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

13 You may step down, Mr. Fortier.

14 Members of the jury, we will take the  
afternoon  
15 recess; and of course, during this time, please  
remember the  
16 cautions always given at recesses, which I know you do  
remember  
17 from one time to the next. But remember: I've got a  
duty to  
18 recite this on the record, and you have a duty to obey

to avoid

19 discussion of the case among yourselves and with all  
other

20 persons and keep open minds.

21 And you know, you hear all of these exhibits  
being

22 referred to. You won't be required to read every word  
of every

23 exhibit. That's not something that'll happen, although  
the

24 exhibits are important and will be discussed.

25 So you're excused now, 20 minutes.

8500

Michael Fortier – Cross

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

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

3 (Recess at 3:07 p.m.)

4 (Reconvened at 3:27 p.m.)

5 THE COURT: Please be seated.

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

7 THE COURT: Please resume the stand again,

8 Mr. Fortier.

9 Mr. Tigar, you may continue.

10 BY MR. TIGAR:

11 Q. Mr. Fortier, I omitted to ask you: While you were  
in the

12 VA Hospital, Mr. McVeigh borrowed your Jeep; correct?

13 A. Yes, he did.

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

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

16 it.

17 Q. Didn't he say he wanted to go four-wheeling in the  
Music

18 Mountains and check the area along Buck-Doe Road?

19 A. Yes, that is what he did.

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

21 A. I don't recall if he said at the time that he asked  
me to

22 use his (sic) Jeep or not.

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

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

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

8501

Michael Fortier - Cross

1 A. Uh-huh.

2 Q. Now, just to be sure, did Mr. McVeigh ever give you  
a copy

3 of a book called or publication called The Soldier's  
Guide?

4 A. Not that I recall.

5 Q. Do you ever remember handling such a book, putting

your

6 fingers on it?

7 A. I don't recall that book.

Armed

8 Q. Do you remember ever handling a publication called

9 and Dangerous?

10 A. Yes.

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

12 A. Yes.

to it?

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

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

you had

15 Q. Now, you testified on direct examination, sir, that

matters

16 spent some time with Government lawyers discussing the

sir?

17 you were going to present in court; is that correct,

18 A. Yes.

25

19 Q. And you said you met with Government lawyers about

20 times?

one day

21 A. Yes. And each one of those times were for either

22 or maybe two days.

Government

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

24 lawyers preparing for your testimony?

25 A. Between 150 and 200 hours.

Michael Fortier – Cross

1 Q. When did those preparation sessions begin?

2 A. When I went to Oklahoma City and started meeting  
with the

3 U.S. prosecutors.

4 Q. You met with Mr. Hartzler?

5 A. Yes, sir.

6 Q. And then you met with Mr. Mendeloff?

7 A. Yes. I believe I met him twice.

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

9 A. Yes.

10 Q. Were voices raised?

11 A. I would say no.

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

13 A. No, sir.

14 Q. It is correct you did not meet with him anymore  
after the

15 disagreement, or that you did?

16 A. Well, I met him after that disagreement, but I did  
not meet

17 with him to speak about the issues.

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

19 testimony?

20 A. That's correct.

21 Q. You met with Mr. Goelman?

22 A. That's correct.

23 Q. You met with Mr. Mearns?

24 A. Yes, sir.

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

8503

Michael Fortier – Cross

1 other than those I mentioned?

2 A. No, sir.

3 Q. This morning is the first time that you and I have  
ever

4 met. Is that correct, sir?

5 A. Yes, sir, it is.

6 Q. Now, you testified on direct examination that you  
have a

7 plea agreement. Do you remember that?

8 A. Yes.

9 Q. Now, as a part of the agreement that you made with  
the

10 Government, did you stop using narcotics?

11 A. Yes, I did.

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

13 A. It was before I traveled to Oklahoma City.

14 Q. It was before the 17th of May?

15 A. Yes, sir.

16 Q. Now, I'm going to show you page 7 of the plea  
agreement

17 portion of Government's Exhibit 193 in evidence. That  
is

18 entitled, "Breach of Agreement," isn't it, sir?

19 A. Yes, sir.

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

22 A. Yes, it is.

23 Q. It says, "If further investigation discloses that  
24 Mr. Fortier conspired to bomb any federal building" --  
and then

25 it continues on with some other things. It says,  
". . . then

8504

Michael Fortier - Cross

1 the United States will have the right to characterize  
such

2 conduct as a substantial breach of this agreement," and  
so on.

3 Correct?

4 A. Yes.

5 Q. And it says, ". . . in which case the obligations  
of the

6 United States under this agreement will be void, and  
the United

any and 7 States will have the right to prosecute Mr. Fortier for  
district or 8 all offenses that can be charged against him in any  
9 state." Do you see that?  
10 A. Yes.  
federal 11 Q. You have not been charged with conspiring to bomb a  
12 building, have you, sir?  
13 A. No.  
the 14 Q. And the United States is aware of everything, all  
15 facts, that we have talked about today, are they not?  
16 A. Yes.  
17 Q. They're aware that you got ammonium nitrate from  
18 Mr. McVeigh; correct?  
19 A. Yes.  
your 20 Q. They're aware that Mr. McVeigh left explosives in  
21 house; correct?  
22 A. Yes.  
your house 23 Q. They're aware that Mr. McVeigh could -- lived in  
24 and could use your tools; correct?  
25 A. Yes.

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

2 A. Yes.

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

4 A. Yes.

5 Q. They're aware that you went to Oklahoma City with

6 Mr. McVeigh?

7 A. Yes.

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

9 A. I was a part to that, yes.

10 Q. They're aware that you tried to get a storage shed  
in a

11 different name than your own?

12 A. Yes.

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

14 stolen?

15 A. Yes.

16 Q. They're aware you handled explosives you thought  
were

17 stolen?

18 A. Yes.

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

20 connection with the guns?

21 A. Yes.

22 Q. They're aware that you wanted to form a militia and

took

23 steps to that end?

24 A. Yes.

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

8506

Michael Fortier - Cross

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

2 A. Yes, they are.

3 Q. And those are just -- those aren't all of the  
things we

4 talked about today but some of them; correct?

5 A. That is correct.

6 Q. As you sit there today, sir, are you fearful that  
the

7 United States will decide to charge you with conspiring  
to bomb

8 a federal building?

9 A. No, sir, I am not.

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

11 moment.

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

13 It also says that if further investigation  
discloses

14 that you refused to answer any questions put to you --  
well,

15 you haven't done that, have you?

16 A. No, sir, I have not.

17 Q. " . . . or makes any false or misleading statements  
to

18 investigators or attorneys of the United States or  
makes any

19 false or misleading statements or commits any perjury  
before

20 any grand jury or court," do you see that, sir?

21 A. Yes.

22 Q. Now, who do you understand has the right to decide  
whether

23 or not you have committed perjury and prosecute you for  
it?

24 A. I believe that would be the judge.

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

8507

Michael Fortier - Cross

1 who decide whether to prosecute people?

2 A. Yes.

3 Q. You're aware that neither I nor Mr. Woods nor Mr.  
Nichols

4 has any power to prosecute you if we should think that  
you're

5 committing perjury?

6 A. I'm aware of that.

the  
maximum  
remember

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

11 A. Yes.

potential

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

14 A. 23 years in prison.

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

16 A. I think that's a distinct possibility.

sentence you;

17 Q. Now, Judge Matsch is not the judge who will  
18 correct?

19 A. No, sir.

purpose;

20 Q. That is, another judge has been appointed for that  
21 right?

22 A. That is right.

correct?

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

24 A. Yes.

happened

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

Michael Fortier – Cross

1 yet -- correct?

2 A. That is correct.

3 Q. -- your lawyer will have the right to present  
reasons why

4 the sentence should be less than 23 years; correct?

5 A. Yes.

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

7 A. Yes.

8 Q. Yes. What is it?

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

10 Q. So if you were sentenced in accordance with the  
sentencing

11 guidelines, you'd get 27 to 33 months; correct?

12 A. Yes.

13 Q. Now, your lawyer and you would have the right to  
argue for

14 something less than that; correct?

15 A. I believe that's true.

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

17 A. Yes.

18 Q. In addition to that, the Government will have the  
right to

19 present evidence at that sentencing hearing; correct?

20 A. Yes.

21 Q. Now, is it your understanding that the Government  
has the

22 right but not the obligation to say to the judge,  
should it  
23 choose, that you have rendered substantial cooperation?  
24 A. Yes.  
25 Q. Are you aware that neither you nor I nor Mr.  
Nichols nor

8509

Michael Fortier – Cross

1 Mr. Woods would have any right to ask the judge to  
consider  
2 substantial cooperation? Is that your understanding?  
3 A. Yes.  
4 Q. Now, looking here at page 5 of your plea agreement,  
sir, do  
5 you see paragraph 65, Section 23 -- excuse me --  
Section  
6 3553(e) motion. What do you understand a Section  
3553(e)  
7 motion to be?  
8 A. That if I fulfill my obligations with the United  
States  
9 prosecution, they under their sole discretion -- they  
may file  
10 a -- they may ask the judge to reduce my sentence.  
11 Q. Let's read this: "If Mr. Fortier completely  
fulfills all  
12 of his obligations under this agreement" -- that's the  
first

13 part; correct?

14 A. Yes.

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

16 A. Yes, sir.

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

19 A. Yes.

20 Q. "At the time of sentencing, the United States will  
advise

21 the sentencing judge of the full nature, extent, and  
value of

22 the cooperation provided by Mr. Fortier. In addition,  
the

23 United States will evaluate the information provided by

24 Mr. Fortier pursuant to the preceding paragraph." Do  
you see

25 that, sir?

8510

Michael Fortier - Cross

1 A. Yes.

2 Q. And then it says, "If the Government determines in  
its sole

3 discretion that Mr. Fortier has rendered substantial  
assistance

4 in the investigation and prosecution of others involved  
in

yourself; 5 criminal activities" -- "others" includes others than

6 correct?

7 A. Yes.

and it 8 Q. ". . . then it will file a motion pursuant to" --

9 cites some laws which will so advise the judge.

discretion to 10 And then it tells you the judge has the

11 determine the sentence. Correct?

12 A. Yes.

evaluate the 13 Q. Now, we read here that the United States will

14 information provided by Mr. Fortier. Do you read that?

15 A. Yes.

at the 16 Q. What does "evaluate" mean to you, sir? You worked

17 True Value hardware store; right?

18 A. Yes.

19 Q. What does "evaluate" mean to you?

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

21 Q. Pardon me?

was. 22 A. "Evaluate" means grade or consider how helpful I

only ones 23 Q. Okay. And the United States prosecutors are the

consider 24 under this agreement who have any power to grade or to

25 your cooperation. Correct?

8511

Michael Fortier – Cross

1 A. Yes.

2 Q. And then the judge will decide based on what they  
do or do

3 not say; correct?

4 A. Yes.

5 Q. When you went into prison, sir, had your youngest  
child

6 been born?

7 A. No, sir.

8 Q. Have you seen your youngest child?

9 A. Yes, I have.

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

11 A. Yes.

12 Q. Of all of the things in the world, is being  
reunited with

13 your family the most important to you?

14 A. Absolutely.

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

16 sir?

17 A. Yes, I do.

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

19 you, sir?

20 A. I did do that, yes.

21 MR. TIGAR: No further questions.

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

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

24 REDIRECT EXAMINATION

25 BY MR. MEARNS:

8512

Michael Fortier – Redirect

1 Q. Mr. Fortier, earlier this afternoon or before  
lunch,

2 Mr. Tigar asked you certain questions about the letter  
you

3 received from Mr. McVeigh and the subsequent  
conversation at

4 your fence. Do you recall those?

5 A. Yes.

6 Q. Is there any doubt in your mind that that letter  
and the

7 conversation -- the subsequent conversation you had  
with him

8 had to do with the plan to bomb the federal building in

9 Oklahoma City?

10 MR. TIGAR: I object, your Honor.

11 THE COURT: Sustained.

12 BY MR. MEARNS:

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

15 A. Yes.

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

17 A. Yes, he did.

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

20 A. Yes, he did.

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

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

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

8513

Michael Fortier – Redirect

1 would be contained in a large Ryder truck?

2 A. I believe he did.

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

6 A. Yes.

robbery 7 Q. What did Mr. McVeigh tell you about how that  
8 happened?  
9 A. Mr. McVeigh told me that Mr. Nichols approached  
Bob's house  
10 one morning. He was dressed in camouflage and he had  
boots on,  
11 and he was -- he had a shotgun with him. He approached  
Mr. --  
12 he approached Bob as Bob came out of his house and told  
him to  
13 go back inside his house. He tied Bob up and then  
loaded  
14 weapons into Bob's van.  
15 Mr. McVeigh told me that Mr. Nichols got tired  
so he  
16 untied Bob and had Bob help him; and when they were  
finished,  
17 he tied Bob back up and then drove the van to where he  
had  
18 stashed his truck and he unloaded the weapons from the  
van into  
19 his truck and he drove off leaving the van there.  
20 Q. Mr. Tigar asked you certain questions about a Mr.  
Steve  
21 Colbern. Do you recall those questions?  
22 A. Yes.  
23 Q. Did you ever meet Mr. Colbern?  
24 A. No, sir.  
25 Q. What did Mr. McVeigh tell you about Mr. Colbern?

## Michael Fortier – Redirect

1 A. That this was an individual that Bob in Arkansas  
was trying

2 to hook him up with.

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

4 Mr. Colbern?

5 A. Yes.

6 Q. What did Mr. McVeigh say about that?

7 A. Mr. McVeigh told me that he was going to meet Mr.  
Colbern

8 in the desert. He asked me to hide out in the desert  
near the

9 area and to watch his back.

10 Q. Did that ever happen?

11 A. No, sir, it did not.

12 Q. Mr. Tigar asked you certain questions about things  
or items

13 that Mr. McVeigh gave to you or that you bought from  
him. Do

14 you recall those questions?

15 A. Yes.

16 Q. Did you ever buy any ammonium nitrate?

17 A. No, sir.

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

19 plan?

20 A. No, sir, I did not.

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

22 A. No, sir, I did not.

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

24 plan?

25 A. No, sir, I did not.

8515

Michael Fortier - Redirect

1 Q. When your house -- when you were arrested -- or  
after the

2 bombing on April 19, how many 55-gallon barrels --  
plastic

3 barrels did you have in your house?

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

5 cans.

6 Q. You were asked by Mr. Tigar about whether or not  
you were

7 in Junction City in April, 1995. Do you recall those  
8 questions?

9 A. Yes.

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

11 A. I absolutely was not.

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

13 A. No, sir.

14 Q. Mr. Tigar asked you certain questions about  
telephone calls

15 that were placed from your house. Do you recall those  
16 questions?

17 A. Yes, sir.

18 Q. Did you know at that time that Mr. McVeigh was  
using a

19 calling card from your house?

20 A. No, sir, I did not.

21 Q. Do you know that now?

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

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

24 gave you?

25 A. No, sir, I did not.

8516

Michael Fortier – Redirect

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

3 A. Yes, sir.

4 Q. Did you have conversations with Mr. McVeigh about  
the

5 contents of some of that literature?

6 A. In general, yes.

about -- 7 Q. Would it be fair to say that Mr. McVeigh was shy

8 MR. TIGAR: Object to leading, your Honor.

9 THE COURT: Sustained as to leading.

10 BY MR. MEARNS:

11 Q. Were those conversations lengthy, or brief?

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

13 Q. Did you ever have to solicit or ask Mr. McVeigh  
what his

14 opinion was about the contents of that literature?

15 A. No. Not at all.

16 Q. You told us on both direct examination and on  
17 cross-examination about conversations that you had with  
18 Mr. McVeigh about the plan to bomb the federal building  
in

19 Oklahoma City; right?

20 A. Yes, sir.

21 Q. During any of those conversations, did Mr. McVeigh  
ever

22 mention anyone else by name besides Terry Nichols?

23 A. No, sir. No one at all.

24 MR. MEARNS: No further questions, your Honor.

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

8517

Michael Fortier - Recross

1 RECROSS-EXAMINATION

2 BY MR. TIGAR:

3 Q. Just to clarify, sir: You did not hide out in the  
desert

4 and watch Mr. McVeigh's back with respect to any  
meeting with

5 Mr. Colbern; correct?

6 A. That is correct. I did not.

7 Q. But you have no -- you have no personal knowledge  
as to

8 whether Mr. McVeigh and Mr. Colbern ever met. Correct?

9 A. That is correct.

10 Q. Now, you were asked on redirect examination whether  
you had

11 stolen any firearms. Correct? Do you remember that?

12 A. That is correct.

13 Q. You pleaded guilty to transporting and selling  
stolen

14 firearms; correct?

15 A. Yes.

16 Q. And those were ones you believed to have been  
stolen from

17 Mr. Moore; correct?

18 A. Yes.

19 Q. And you also pleaded guilty to actually  
transporting the

20 stolen firearms; is that correct, sir?

21 A. Yes.

22 Q. And were those the -- again, those firearms you

thought had

23 been stolen from Mr. Moore?

24 A. Yes.

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

8518

Michael Fortier - Recross

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

2 A. Yes.

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

4 A. Are you speaking about --

5 Q. When Mr. McVeigh was talking about getting away, he  
asked

6 you to drive him, didn't he?

7 A. Yes.

8 Q. And you understood that had to do with the bombing  
plan,

9 didn't you, sir?

10 A. Yes.

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

12 A. Yes.

13 Q. And then he asked you about whether Jim Rosencrans  
could do

14 some driving, didn't he?

15 A. Yes.

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

17 A. Yes.

18 Q. And then he asked you to go in the desert and watch  
his

19 back for a meeting with Steve Colbern, didn't he?

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

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

22 A. No, sir. Not at all.

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

24 about. Correct?

25 A. Yes.

8519

1 MR. TIGAR: Thank you. Nothing further.

2 MR. MEARNS: Nothing further, your Honor.

3 THE COURT: Are you going to excuse the  
witness, or

4 not?

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

6 Honor.

7 THE COURT: Mr. Tigar.

8 MR. TIGAR: Well, so long as it's understood  
he's

9 subject to recall should he be needed in the defense  
call, we

10 have no objection.

Honor. 11 MR. MEARNS: That's acceptable to us, your

12 MR. TIGAR: -- acceptable. Thank you.

13 THE COURT: We'll make sure that Mr. Fortier  
is kept

14 in the -- within reach.

15 You may step down now, Mr. Fortier.

16 Next witness, please.

Dawn 17 MR. MACKEY: Yes, your Honor. We would call

18 Hester.

19 THE COURT: All right.

20 THE COURTROOM DEPUTY: Raise your right hand,  
please.

21 (Dawn Hester affirmed.)

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

23 Would you state your full name for the record  
and

24 spell your last name.

R. 25 THE WITNESS: Dawn Dmitrya Hester, H-E-S-T-E-

8520

1 THE COURTROOM DEPUTY: Thank you.

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

3 Honor?

4 THE COURT: All right.

5 DIRECT EXAMINATION

6 BY MS. WILKINSON:

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

8 A. Fine.

9 Q. Can you tell the jury where you work.

10 A. FBI, Houston, Texas.

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

12 A. Photographer.

13 Q. How long have you been a photographer?

14 A. 20 years.

15 Q. And were you -- I take it then you were a  
photographer for

16 them back in April of 1995?

17 A. Yes.

18 Q. And other than working in Houston as a  
photographer, did

19 you ever work at FBI headquarters as a photographer?

20 A. Yes.

21 Q. What did you do there at headquarters?

22 A. Photography, forensic.

23 Q. When you say "forensic," does that mean you  
sometimes

24 compared photographs?

25 A. Yes.

8521

Dawn Hester – Direct

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

3 A. Yes.

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

5 A. About five years.

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

9 A. Yes.

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

12 A. Yes.

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

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

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

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

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

19 A. It was cold, windy and rainy.

20 Q. Why do you remember that?

and

21 A. It probably was the ugliest day when I was there,

22 you'll never forget a day like that.

trying to

23 Q. When you weren't taking photographs, were you

24 keep yourself warm?

25 A. Yes.

8522

Dawn Hester – Direct

out and

1 Q. But were there times when agents asked you to come

2 photograph evidence they had found?

3 A. Yes.

of that

4 Q. Were you asked to take evidence -- take photographs

took it

5 evidence when it was in place before they seized it and

6 into FBI custody?

7 A. Yes.

8 Q. Do you remember photographing a key?

9 A. Yes.

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

11 MS. WILKINSON: Your Honor, may I approach?

12 THE COURT: Yes.

13 BY MS. WILKINSON:

that  
out for

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

17 A. Yes.

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

20 Do you recognize that key?

21 A. Yes.

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

24 A. Yes.

25 Q. What's the Q number?

8523

Dawn Hester - Direct

1 A. Q2323.

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

4 A. Yes.

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

7 Is that your photograph?

8 A. Yes.

9 Q. Did you take it on April 22?

10 A. Yes.

11 Q. And where did you take this photograph?

12 A. The alley behind the YCMA --

13 Q. The YMCA?

14 A. Yes.

15 Q. Are you a little nervous?

16 A. Yes.

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

18 Exhibit 700.

19 MR. WOODS: No objection, your Honor.

20 THE COURT: Received, 700.

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

22 THE COURT: Yes.

23 BY MS. WILKINSON:

24 Q. Would it be fair to say, Ms. Hester, this is a  
bunch of

25 dirt with a key in it?

8524

Dawn Hester - Direct

1 A. Yes.

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

3 A. Yes.

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

6 A. Yes.

7 Q. Who was that?

8 A. Mark Young.

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

10 A. Yes.

11 Q. What did he do with it?

12 A. He put it in a bag.

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

15 A. Yes.

16 Q. Is it the same key?

17 A. Yes.

18 MS. WILKINSON: Government offers 699, your  
Honor.

19 MR. WOODS: No objection.

20 THE COURT: 699 received.

21 BY MS. WILKINSON:

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

24 Keep your voice up.

25 MR. WOODS: May I step over to observe?

8525

Dawn Hester – Direct

1 THE COURT: Yes. Surely.

2 BY MS. WILKINSON:

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

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

6 A. The alley behind the Y.

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

9 A. Right.

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

12 A. Yes.

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

14 A. Yes.

15 Q. You can take a seat.

16 Ms. Hester, there should be another photograph  
that  
17 you took that's up there that is the photograph of the  
spot

18 where you found the key. Do you see that in there?

19 A. Yes.

20 Q. Do you recognize that?

21 A. Yes.

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

23 A. 703.

24 Q. Did you take that that same morning?

25 A. Yes.

8526

Dawn Hester – Direct

where 1 Q. If we showed that to the jury, could you show them

2 you found the key?

3 A. Yes.

4 MS. WILKINSON: Government offers 703.

5 MR. WOODS: No objection.

6 THE COURT: Received. May be displayed.

7 BY MS. WILKINSON:

you 8 Q. Tell the jury what they're looking at in 703, would

9 please, Ms. Hester.

you 10 A. What you see is a long photo of the alley; and when

got a lot 11 look on to your left, you see a brown area where you

12 of dirt and the telephone wires and poles -- that  
situation.

13 And right near where the dirt area is where the key was  
found.

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

15 better.

16 Can you grab that little black pen that's up  
there on

17 the top. Take it down to the bottom computer screen,  
and just

18 put a circle in the area where you found the key.

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

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

21 Try an X.

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

23 there.

24 Can you put it over --

25 A. Okay. In this area.

8527

Dawn Hester - Direct

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

2 A. Yes, I am.

3 Q. Okay. Thank you.

4 MS. WILKINSON: Your Honor, at this time we  
have a

5 stipulation on the key, No. 7.

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

7 key fit the Ryder truck, if that's the one she's  
speaking of.

8 I'm not sure what she's speaking of.

9 MS. WILKINSON: Yes. It says Government's  
Exhibit

10 699, which is the key that was recovered in the  
location near

11 the YMCA building in downtown Oklahoma City as  
described in the

12 testimony of FBI photographer Dawn Hester. The  
location of

13 that key when found is shown in the photograph marked

14 Government's Exhibit No. 700 and 703. The key fits the

15 ignition of the Ryder rental truck bearing VIN

16 1FDNF72J4PVA26077 that was rented from the Ryder  
dealership at

17 Elliott's Body Shop on April 17, 1995, in the customer  
name of

18 Robert Kling.

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

20 THE COURT: All right. Then once again,  
members of

21 the jury, we accept what has been agreed to as fact.

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

23 THE COURT: All right. Mr. Woods?

24 MR. WOODS: Yes, your Honor.

8528

Dawn Hester – Cross

1 BY MR. WOODS:

2 Q. Good afternoon, Ms. Hester.

3 A. Good afternoon.

4 Q. My name is Ron Woods. I'm one of the lawyers that  
was  
5 appointed by the district court in Oklahoma City to  
help Terry

6 Nichols after he was charged in this case.

7 You and I have never met. Is that correct?

8 A. Right.

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

10 A. On the 20th. April 20.

11 Q. Thursday?

12 A. Yes.

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

15 correct?

16 A. Yes.

17 Q. How many people came up from Houston?

18 MS. WILKINSON: Your Honor, could I just

object: If

19 she knows.

20 THE COURT: Yes --

21 THE WITNESS: It was about ten.

22 BY MR. WOODS:

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

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

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

8529

Dawn Hester - Cross

1 A. No, sir.

2 Q. What was the weather like on the 20th when you  
arrived in

3 Oklahoma City?

4 A. A little cloudy, cool. I had ran into some rain on  
the way

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

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

7 Let me back up one question. What time did  
you get

8 there on Thursday, the 20th?

9 A. About 5:00 in the evening.

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

11 A. No.

to the 12 Q. Okay. Did you go directly to the crime scene and  
13 FBI command post nearby?  
14 A. I reported to the command post.  
post? 15 Q. All right. And at that time, where was the command  
16 A. It was in an old building off a side street.  
17 Q. Approximately how far from the Murrah Building?  
18 A. Maybe a block or two.  
duties; 19 Q. Now, when did you go to the scene and start your  
20 that is, photographing evidence that agents found?  
my team. 21 A. Well, we started the next morning, once I got with  
assume? 22 Q. Checked into a hotel the evening of the 20th, I  
23 A. Yes. We had to get the badges and all that for it.  
the crime 24 Q. Everybody had a badge that allowed entrance into  
25 scene that was with you. When I say "everybody," I  
mean people

8530

Dawn Hester – Cross

1 that were with the FBI. Is that correct?  
2 A. Yes.  
3 Q. And so you started work on Friday, the 21st?  
4 A. Yes.

5 Q. Approximately what time?  
6 A. Early in the morning. We have a meeting every  
morning  
7 before we start work.  
8 Q. And what was the purpose of the meeting?  
9 A. I think all the team leaders would get together  
with the  
10 coordinator, find out where we supposed to start out  
and what  
11 we supposed do; and then we all divided, went out and  
started  
12 working.  
13 Q. Okay. Now, on the 21st, did you happen to search  
the  
14 parking lot that was across the street from the Murrah  
15 Building?  
16 A. No. I believe we started six blocks out and made a  
sweep  
17 in.  
18 Q. Oh, so you were starting out and coming in?  
19 A. Yes.  
20 Q. Do you know whether or not there were other teams  
that were  
21 searching the parking lot that was directly across the  
street?  
22 A. I don't know.  
23 Q. Okay. When you say you were six blocks out, is  
that east  
24 and then you're working your way in toward the Y and  
the Murrah

25 Building?

8531

Dawn Hester – Cross

1 A. I don't remember.

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

4 A. Yes, sir.

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

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

8 Q. Okay. And at sometime on the 22d, which is going  
to be

9 Saturday, I take it -- is that correct?

10 A. Uh-huh. Yes.

11 Q. -- Mr. Young found the key?

12 A. Yes.

13 Q. And was that in the morning or afternoon?

14 A. I'd say midmorning.

15 Q. Okay. Now, you described to the prosecutor that it  
was

16 pretty cold and windy. And was it raining that day?

17 A. Yes, sir.

18 Q. And you were notified to go over and photograph the

key

19 which was on some dirt?

20 A. Yes, sir.

21 Q. Now, the key looked sort of shiny and new, but  
there is a

22 lot of debris and pine bark and vegetation around  
there. Was

23 that the condition you saw it in when it was there?

24 A. Yes.

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

8532

Dawn Hester – Cross

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

2 A. I don't remember.

3 Q. Okay. Friday, the 21st: Do you remember whether  
or not it

4 had been raining?

5 A. I don't remember.

6 Q. Did you have an occasion while you were there in  
Oklahoma

7 City to photograph items that were recovered in the  
parking lot

8 across the street from the Murrah Building?

9 MS. WILKINSON: Objection, your Honor. Could  
we have

10 a time?

11 MR. WOODS: During her whole period there.

12 We've covered the fact she recovered the key.

13 THE COURT: Yes, you can ask that.

14 BY MR. WOODS:

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

17 A. About two weeks.

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

21 A. Yes.

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

8533

Dawn Hester - Cross

1 the street from the Murrah Building?

2 A. Yes.

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

4 Did you have an occasion to photograph any  
items that

5 agents found in that location?

6 A. No.

7 Q. Were you the photographer that took the photos of  
the Ryder

8 truck that was brought to the scene by the ATF?

9 A. No.

10 Q. Did you ever see that truck that was brought to the  
scene

11 by ATF?

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

13 Q. Do you recall seeing a Ryder truck?

14 A. Yes.

15 Q. On the scene?

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

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

18 it?

19 A. No.

20 Q. Do you recall approximately what day it was when  
you first

21 saw that truck on the scene?

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

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

24 Do you recall where it was?

25 A. The back part of the alley.

Dawn Hester – Cross

1 Q. Same alley that you're in?

2 A. Yes.

3 Q. Behind the Y?

4 A. Yes.

5 MR. WOODS: Okay. Thank you very much. I appreciate

6 you answering my questions.

7 THE COURT: Anything else of this witness?

8 MS. WILKINSON: Yes, your Honor.

9 REDIRECT EXAMINATION

10 BY MS. WILKINSON:

11 Q. Ms. Hester, you photographed a Ryder truck at the end of

12 that alley on April 22, didn't you?

13 A. Yes.

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

15 it?

16 A. No.

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

18 A. No.

19 Q. You have no idea how that Ryder truck got to the end of the

20 alley, do you?

21 A. No.

22 Q. Did you see FBI agents around that truck?

23 A. No.

24 MS. WILKINSON: No further questions.

25 MR. WOODS: Well, that just elicits one.

8535

1 THE COURT: All right.

2 RE-CROSS-EXAMINATION

3 BY MR. WOODS:

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

5 at the alley, the Ryder truck?

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

7 was there.

8 Q. Oh, okay.

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

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

11 A. No. I was doing the alley.

12 Q. I see. And you don't know anything about that  
truck, who

13 brought it there?

14 A. No.

15 MR. WOODS: Okay. Thank you very much.

16 THE COURT: This witness to be excused?

17 MS. WILKINSON: Yes, your Honor.

18 THE COURT: Agreed, Mr. Woods?

19 MR. WOODS: Yes.

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

21 Next witness, please.

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

23 question.

24 THE COURTROOM DEPUTY: Raise your right hand,  
please.

25 (Jodie Carlson affirmed.)

8536

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

2 Would you state your full name for the record  
and

3 spell your last name.

4 THE WITNESS: Jodie R. Carlson, C-A-R-L-S-O-N.

5 THE COURTROOM DEPUTY: Thank you.

6 THE COURT: Mr. Ryan.

7 MR. RYAN: Thank you, your Honor.

8 DIRECT EXAMINATION

9 BY MR. RYAN:

10 Q. Ms. Carlson, where do you live?

11 A. I live in Tucson, Arizona.

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

14 A. That is correct.

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

16 A. Yes, I am.

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

18 A. I'm the property manager and business manager of  
Lincoln Green Apartments, and I'm currently working on my  
master's degree.  
20

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

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

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

25 A. Yes, I did.

8537

Jodie Carlson - Direct

1 Q. And by whom were you employed?

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

3 Q. Can we just call that Century 21?  
4 A. Yes.  
5 Q. What kind of work did you do for Century 21 in  
Kingman?  
6 A. We leased residential homes. We leased apartments  
and also  
7 storage units.  
8 Q. Was one of the storage units that you leased known  
as  
9 Northern Storage?  
10 A. Yes.  
11 Q. And describe Northern Storage for all of us, if you  
would.  
12 A. Northern Storage was a facility in Kingman located  
on  
13 Northern Avenue, and the cross street was Powell  
Avenue. It  
14 had approximately, I would say, about 100 storage units  
in  
15 different sizes to rent.  
16 Q. Now, would you tell us what your responsibilities  
were  
17 regarding Northern Storage for Century 21.  
18 A. My responsibilities were to take care of the  
customer that  
19 came into our office requiring the rental of a storage  
unit, to  
20 locate the size that they were looking for, set up the  
21 application process, take the fees and assign a unit to  
them.

4, 1994. 22 Q. Now, I want to ask you specifically about October

23 Do you -- did you rent Storage Unit E10 on that day?

24 A. Yes, I did.

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

8538

Jodie Carlson - Direct

1 A. Yes. Timothy McVeigh.

2 MR. RYAN: Your Honor, I'm pleased to report  
that I've

3 relinquished the computer duties to Mr. Johns; so I'm  
going to

4 ask him, if he would, to call up Exhibit 169 for the  
witness.

5 THE COURT: Okay.

6 BY MR. RYAN:

7 Q. Now, can you identify this exhibit?

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

9 MR. RYAN: Your Honor, the Government would  
offer

10 Exhibit 169.

11 MR. TIGAR: No objection.

12 THE COURT: 169 received.

13 BY MR. RYAN:

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

16 A. Tim McVeigh.  
17 Q. And did he give you an address?  
18 A. It states -- which is the information I took was  
from his  
2153,  
20 Fort Riley, Kansas.  
21 Q. Now, you indicated that you took this information  
off a  
22 driver's license. What was the cause for that?  
23 A. That was normal procedure.  
24 Q. Normal procedure in what sense?  
25 A. To provide documentation to the file that the  
application

8539

Jodie Carlson - Direct

1 and the individual renting the storage unit was the  
actual  
2 individual.  
3 Q. Was this a procedure required by Century 21?  
4 A. Yes. It was required for all applications.  
5 Q. And did you do that with respect to all  
applications?  
6 A. Yes, I did. I'm a licensed agent for the State of  
Arizona.  
7 Q. Down at the bottom of the application, it states --  
well,

8 actually, it's more in the middle. It says, "Persons  
who will  
9 have access to unit." That's a standard question, I  
gather, in  
10 the application.  
11 A. Yes.  
12 Q. What does it state there? Can you read the  
writing?  
13 A. It states, "None."  
14 Q. What does that mean?  
15 A. That means no other individuals will have access to  
the  
16 unit that we are allowed to give authorization to.  
17 Q. Other than Mr. McVeigh?  
18 A. That is correct.  
19 Q. Now, do you have any way of enforcing that?  
20 A. No, I don't.  
21 Q. I mean, how does a person secure the storage shed?  
22 A. The actual storage units are vacant when we rent  
them to  
23 the individuals and they put their own locks on them,  
whether  
24 they be key locks or combination locks. After the  
initial  
25 transaction takes place, we do not any longer have any

1 communication with that individual.

2 Q. Now, down at the bottom there it says, "Type of  
goods being  
3 stored." Could you read what it is stated there for  
us?

4 A. It states, "Type of goods being stored:  
Household." In  
5 parentheses, "(Dishes, bathroom stuff, etc.)."

6 Q. Now, who provided that information?

7 A. The applicant, Timothy McVeigh.

8 Q. Now, is all of the information supplied here on  
Exhibit  
9 169 -- or the handwriting, rather -- is that the  
handwriting of

10 Mr. McVeigh?

11 A. Yes.

12 Q. Now, again, with respect to the type of goods being  
stored  
13 there, what the customer writes in that block: Do you  
verify  
14 that in any way?

15 A. No, sir.

16 Q. Does anyone from Century 21 go and look in the  
storage unit  
17 to see what's there?

18 A. No, sir.

19 Q. Down at the bottom, it says, "No chemicals or  
flammable  
20 fluids may be stored." Do you or Century 21 have any  
ability

that? 21 to verify that, or do you take any steps to verify

22 A. No, sir.

23 Q. Now, let me show you what's been marked as --

24 MR. RYAN: Well, I'm sorry, your Honor. I  
didn't show

25 that to the jury. Could I ask --

8541

Jodie Carlson - Direct

1 It was on there?

2 THE COURT: Yes.

3 MR. RYAN: Thank you.

4 BY MR. RYAN:

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

6 Now, can you identify that for us?

7 A. Yes. This is the rental agreement contract for the  
storage

8 unit, E10.

9 Q. What unit is being rented?

10 A. It says E10.

11 Q. On what date?

12 A. On October 4, 1994.

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

14 A. Tim McVeigh.

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

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

17 for a total of \$35.

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

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

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

21 exhibit?

22 A. Yes, sir.

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

24 MR. TIGAR: No objection, your Honor.

25 THE COURT: Received, 170.

8542

Jodie Carlson - Direct

1 BY MR. RYAN:

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

3 Could you identify that for us, please.

4 A. Yes. This is a Kansas driver's license with the  
name

5 McVeigh, Timothy J.

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

7 MR. TIGAR: No objection.

8 THE COURT: Received, 171.

9 BY MR. RYAN:

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

11 license.

12 A. It was normal and standard procedure for an  
individual

13 renting a storage unit to have an application provided  
to them,

14 and I would take the driver's license and make a copy  
of it

15 while they filled out the application.

16 I would then verify the individual at the  
counter with

17 the application and with the face at the counter.

18 Q. Was this all conducted on October 4?

19 A. Yes, sir.

20 Q. Now, again, let me turn your attention to Exhibit  
144. Do

21 you have that in front of you?

22 A. Yes, sir.

23 Q. Could you identify that for us, please.

24 A. This as document stating, "Return check policy,  
tenants

25 store goods at their own risk, and insurance is  
tenant's

8543

Jodie Carlson – Direct

1 responsibility."

2 Q. When was that document created?

3 A. That was created on October 4, 1994.

offer 4 MR. RYAN: Your Honor, the United States would  
5 Exhibit 144.

6 MR. TIGAR: No objection.

7 THE COURT: Received.

8 BY MR. RYAN:

document 9 Q. Now, it appears there are two signatures on that  
10 and two dates. See that?

11 A. Yes.

12 Q. And whose handwriting is that?

13 A. That was the applicant, Tim McVeigh.

ask that 14 MR. RYAN: Your Honor, at this time I would  
15 the Court advise the jury of the stipulation with  
respect to 16 Exhibits 169, 171, 170 and 144, that these documents  
all 17 contain the handwriting of Timothy McVeigh.

agreed to 18 MR. TIGAR: That's right, your Honor. We've  
19 that.

accept the 20 THE COURT: All right. So agreed, and we  
21 agreement, members of the jury.

22 BY MR. RYAN:

23 Q. I'll ask that you be displayed Exhibit 173.

24                    Could you tell us what that is, please.

25    A.    This is a receipt that I wrote out when I received  
payment

8544

Jodie Carlson – Direct

1    for the storage unit that day.

2    Q.    And is this your handwriting?

3    A.    Yes, it is.

4                    MR. RYAN:    Your Honor, we would offer Exhibit  
173.

5                    MR. TIGAR:    No objection.

6                    THE COURT:    Received.

7    BY MR. RYAN:

8    Q.    What does this receipt reflect, Ms. Carlson?

9    A.    This receipt reflects the date and the year and the  
name of

10    the person that has rented the storage unit, and it  
also states

11    the location of the storage unit and the term how long  
the

12    individual will be renting that storage unit and the  
length of

13    payment -- amount of payment.    Excuse me.

14    Q.    I ask that you be shown Exhibit 174.

15                    Can you identify this for us?

16    A.    Yes.    This is a receipt that was dated 10-13-94 for  
a

Storage, 17 payment for a storage unit from McVeigh to Northern  
\$30. 18 E10, for the dates 11-4 to 12-4 of '94 in the amount of

19 MR. RYAN: Government would offer Exhibit 174.

20 MR. TIGAR: No objection.

21 THE COURT: Received.

22 BY MR. RYAN:

23 Q. Now, what day was this transaction?

10-13 of 24 A. This transaction to the best of my knowledge was  
25 '94.

8545

Jodie Carlson - Direct

had come 1 Q. This was approximately nine days after Mr. McVeigh  
2 in and leased the Storage Unit E10. Is that correct?

3 A. That is correct.

receipt? 4 Q. Now, how was this payment made as according to the

5 A. This payment was made in cash.

after the 6 Q. And when did this payment that was made nine days  
7 first payment extend the lease for?

8 A. 12-4 of '94.

identify that 9 Q. I ask that you be shown Exhibit 175. Can you

10 for us, please.

11 A. Yes. This is another receipt dated 10-27 of '94  
for a

12 storage unit rented by McVeigh, Northern Storage,  
Storage Unit

13 No. E10, for the term of 12-4 to 2-5 of '95 in the  
amount paid

14 in cash of \$60.

15 MR. RYAN: Government offers Exhibit 175.

16 MR. TIGAR: No objection.

17 THE COURT: Received.

18 BY MR. RYAN:

19 Q. Now, this payment by Mr. McVeigh occurred  
approximately 23

20 days after he initially rented the lease (sic). Is  
that

21 correct?

22 A. That is correct.

23 Q. And this extended the lease through what date?

24 A. 2-5 of '95.

25 Q. Again, was this cash?

8546

Jodie Carlson - Direct

1 A. Yes.

2 Q. I show you what's been marked as Exhibit 176. Can  
you

3 identify this exhibit?

4 A. Yes.

5 Q. What is it?

6 A. This is Northern Storage.

7 MR. RYAN: Your Honor, this has already been  
offered  
8 and admitted into evidence, your Honor, so I just ask  
it be  
9 published.

10 THE COURT: All right.

11 BY MR. RYAN:

12 Q. Ask you show us -- you have a pen there on a -- see  
that?  
13 Put it under the table there. Can you show the jury  
where --  
14 excuse me -- Storage Shed E10 is located.

15 Thank you.

16 Let me ask that you be shown Exhibit 177,  
which is  
17 also in evidence. If you'll hit the side of the pen  
there, it  
18 will erase the marks you just made.

19 And would you place an X where Storage Unit  
E10 is  
20 located.

21 What is the size of that unit?

22 A. It's a 6-by-15.

23 Q. I want to ask that you be shown Exhibit 145, which  
is not

24 in evidence.

25 Can you identify this for us, please.

8547

Jodie Carlson – Direct

office 1 A. Yes. This is the ledger card that was kept in our  
2 documenting the transactions for individual clients.

145. 3 MR. RYAN: Your Honor, we would offer Exhibit

4 MR. TIGAR: May I inquire, your Honor?

5 THE COURT: Yes.

6 VOIR DIRE EXAMINATION

7 BY MR. TIGAR:

8 Q. Good afternoon, ma'am.

9 A. Hi.

help 10 Q. I'm Michael Tigar, one of the lawyers appointed to  
11 Terry Nichols.

here. Do 12 There is a change of address on this form  
13 you know how that came to be?

14 A. No, sir.

of your 15 Q. But this is a document kept in the regular course  
of these 16 business; that is, you got one of those for every one  
17 locker transactions?

18 A. Yes, sir.

19 MR. TIGAR: No objection, your Honor.

20 THE COURT: 145 is received.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. RYAN:

23 Q. Ms. Carlson, according to Government's Exhibit 145,  
when  
E10 was  
24 was the -- when was it noticed that the Storage Shed  
25 vacated?

8548

Jodie Carlson - Direct

1 A. It was vacated on 2-13 of '95.

2 MR. RYAN: Thank you, ma'am.

3 THE COURT: Mr. Tigar, do you have any  
questions?

4 MR. TIGAR: Yes, your Honor. Thank you. I  
was just  
5 getting exhibits.

6 CROSS-EXAMINATION

7 BY MR. TIGAR:

8 Q. Good afternoon again, ma'am.

9 Were you working there at the real estate  
office on  
10 the 13th when this whole transaction ended?

11 A. No, sir.

12 Q. Had you left the company by then?

13 A. Yes, sir.

14 Q. And you're down in Tucson now?

15 A. Correct.

16 Q. And getting a master's in what?

17 A. Education specializing in academic counseling.

18 Q. At ASU?

19 A. University of Phoenix.

20 Q. University of Phoenix.

21 Now, the -- so you would not know what  
investigations

22 were conducted by law enforcement with respect to the  
shed; is

23 that correct?

24 A. That is correct.

25 Q. Okay. Now, you said that somebody came in and  
rented the

8549

Jodie Carlson - Cross

1 shed. Do you remember what that person looked like?

2 A. No, sir.

3 Q. Do you remember what time of day it was?

4 A. No, sir.

5 Q. Have you looked back to try to figure out whether  
it was

6 morning or afternoon? I know it's a long time ago.

7 A. No, sir.

8 Q. The 4th of October was a regular weekday; right? A  
9 workday?

10 A. That is correct.

11 Q. Now, the storage rental, you said, was \$30 a month.  
Right?

12 A. Yes.

13 Q. So with the three payments we have here, somebody  
would  
14 have the right to occupy it until the 2d of February;  
correct?

15 A. Till the 5th of February.

16 Q. Excuse me. Till the 5th of February. The 5th day  
of the  
17 second month?

18 A. Yes.

19 Q. Were you the person who personally took the  
payments in  
20 each one of these cases?

21 A. No, sir.

22 Q. That was done by somebody else in the office who  
made out a  
23 standard receipt; is that correct?

24 A. Yes.

25 Q. But you are certain that you would not have rented  
the unit

Jodie Carlson – Cross

1 to someone who didn't look anything at all like the  
picture on

2 their driver's license; right?

3 A. Could you restate the question, please.

4 Q. Well, whenever somebody came in to rent, you looked  
at the

5 driver's license to make sure you had the right person;

6 correct?

7 A. That's correct.

8 Q. And -- and that's one of the ways that you verified  
that

9 the -- what the transaction was; right?

10 A. Yes, sir.

11 Q. Now, with respect -- if I could show here what's  
been

12 received in evidence as Government's Exhibit 177, a  
photograph,

13 we see there in the center E10. And that's the unit  
we're

14 talking about. Correct?

15 A. Correct.

16 Q. Now, if we look here, that's the locking mechanism  
on the

17 door; is that right?

18 A. Yes.

19 Q. Now, how many locks is that designed to take?

20 A. Two.

21 Q. Two. And those are the two little marks that we  
have --  
22 you can see those two little things hanging down there?  
23 A. Yes.  
24 Q. And the locks are to be supplied by the customer.  
Is that  
25 correct?

8551

Jodie Carlson - Cross

1 A. Yes.  
2 Q. Did you ever observe anyone in or around that  
storage unit  
3 after you rented it until the time you left the  
company?  
4 A. No, sir.  
5 Q. Was your office at some distance away from where  
the  
6 storage sheds were located?  
7 A. Yes, sir.  
8 MR. TIGAR: Thank you very much. I have no  
further  
9 questions.  
10 THE COURT: Anything else of this witness?  
11 MR. RYAN: Just one question, your Honor.  
12 THE COURT: All right.  
13 REDIRECT EXAMINATION

14 BY MR. RYAN:

15 Q. Ms. Carlson, was it permissible with Century 21 for  
a  
16 customer to have one keyed lock and one combination  
lock on the  
17 storage units?

18 A. Yes.

19 MR. RYAN: Thank you. That's all, your Honor.

20 MR. TIGAR: Yes, your Honor. One -- I'm  
sorry. I  
21 forgot to ask.

22 RE-CROSS-EXAMINATION

23 BY MR. TIGAR:

24 Q. I want to show you what's been marked -- received,  
rather,  
25 as Government's Exhibit 145, if I may. Do you see the  
top here

8552

Jodie Carlson - Recross

1 where there is a change of address; that is to say, the  
2 renter -- first was typed in "McVeigh, Tim; P.O. Box  
2133; Fort  
3 Riley, Kansas," and then a ZIP Code. Do you see that?

4 A. Yes.

5 Q. And then has written "1711 Stockton Hill, No. 206."  
Do you  
6 see that?

7 A. Yes.

8 Q. Now, that is not your writing, is it?

9 A. No, sir.

10 Q. Is it -- was it the regular course of business of  
your  
the  
11 company at that time to make changes of address when  
12 customer would report that the address had changed?

13 A. Yes.

14 Q. And the purpose of that was the -- was the purpose  
of that  
become  
15 so that you could notify the customer, should that  
16 necessary?

17 A. Yes.

18 Q. So are you satisfied as you sit there today that  
that  
19 notation was made in the regular course of your  
business by  
20 someone whose responsibility it was to keep this card  
21 corrected?

22 A. Yes.

23 MR. TIGAR: Thank you, your Honor. No further  
24 questions.

25 MR. RYAN: None, your Honor; and she may be  
excused.

1 THE COURT: All right. Agree to excuse?

2 MR. TIGAR: Yes, your Honor.

3 THE COURT: All right. Ms. Carlson, you may  
step  
4 down. You're excused.

5 Next?

6 MR. MACKEY: Your Honor, we would call Lou  
Hupp.  
7 Mr. Mearns will question.

8 THE COURT: All right. Mr. Hupp.

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

11 (Louis Hupp affirmed.)

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

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

15 THE WITNESS: My name is Louis Gale Hupp. The  
last  
16 name is spelled H-U-P-P.

17 THE COURTROOM DEPUTY: Thank you.

18 DIRECT EXAMINATION

19 BY MR. MEARNS:

20 Q. Mr. Hupp, how are you employed?

21 A. I'm employed by the Federal Bureau of Investigation  
in

22 Washington, D.C., in the Latent Fingerprint department.

23 Q. How long have you been working for the FBI?

24 A. More than 32 years.

25 Q. Have you worked continuously for the FBI for 32  
years?

8554

Louis Hupp - Direct

1 A. With the exception of two years off for military  
service in

2 '66 through '68, yes.

3 Q. What is your specialty?

4 A. I'm employed as a fingerprint specialist in the  
Latent

5 Fingerprint section.

6 Q. How long have you been in that position and in that  
7 section?

8 A. I've been employed in the latent print section  
since August

9 of 1975.

10 Q. Tell us what are your duties as a fingerprint  
specialist in

11 the Latent Fingerprint section?

12 A. I receive items of evidence from various law  
enforcement

13 officials, both state and federal, for the purpose of  
examining

14 for the presence of latent prints.

15 Q. And is it part of your responsibility to also  
attempt to

16 identify latent fingerprints?

17 A. Yes, it is.

18 Q. Do you have any additional duties or  
responsibilities with

19 the FBI?

20 A. I also instruct law enforcement officials  
throughout the

21 United States and have on occasion lectured in foreign

22 countries in the art of detecting fingerprints,  
preserving them

23 and preparing for courtroom testimony.

24 Q. And prior to today, how many times have you  
testified about

25 your fingerprint examination work?

8555

Louis Hupp - Direct

1 A. It would be more than 80.

2 Q. That is both state and Federal Court?

3 A. Yes, it is.

4 Q. Now, as a fingerprint specialist, are you familiar  
with the

5 term "inked fingerprint"?

6 A. Yes, I am.

7 Q. Tell us what an inked fingerprint is.

friction 8 A. An inked fingerprint is the reproduction of the  
9 ridges on the underside of the fingers by placing those  
10 printer's ink friction ridges in contact with something such as  
11 that and on a piece of metal and then rolling the print onto  
12 which placing it on a card such as a stated fingerprint card  
13 has a contrasting background.

14 Q. So it's a deliberate recording of the fingerprint?

15 A. That is correct.

16 Q. Are you also familiar with the term "latent  
fingerprint"?

17 A. Yes, I am.

18 Q. Can you tell us what is the difference about a  
latent 19 fingerprint in contrast to an inked fingerprint?

20 A. Well, these friction ridges I spoke of on the  
underside of 21 the fingers are covered with, or lined with a series of  
sweat 22 pores which constantly exude some sort of perspiration;  
and 23 this perspiration usually covers these ridges. On  
other 24 occasions, if you would happen to touch a portion of  
your body, 25 you would pick up foreign oils or something of that  
nature.

Louis Hupp - Direct

1           When this -- these ridges come in contact with  
2 something such as this piece of wood, those tracings or  
3 outlines are usually transferred to that but remain  
invisible  
4 to the naked eye.

5 Q. If they're generally invisible, how do you examine  
them as  
6 a latent or as a latent fingerprint examiner?

7 A. We process them with various chemicals and powders  
in order  
8 to make them visible to the naked eye.

9 Q. How do you go about identifying whose finger made a  
latent  
10 fingerprint?

11 A. Well, these -- we look for these points of identity  
which  
12 are present as part of these friction ridges, and we  
look for

13 these points of identity to lie in the same relative  
position  
14 in two fingerprint impressions; and once you've done  
that, then  
15 we've effected an identification.

16 Q. When you say "points of identity," is there also a  
phrase  
17 in your expertise called a "point of comparison"?

18 A. Yes, there is.

19 Q. Are those essentially the same things?

20 A. Yes, they are.

21 Q. How many different types of points of comparison or  
points  
22 of identity are there?

23 A. There are basically four. There are ridges that  
suddenly

24 begin or end, which we call an end of a ridge. There  
is a

25 ridge which starts as one ridge, splits or divides to  
form two.

8557

Louis Hupp - Direct

1 There is another one that starts as a single ridge,  
splits or

2 divides to form two only to rejoin again and form one  
ridge.

3 We call this an "enclosure." And the last is what I  
call a

4 "dot" or "ridge" with no direction.

5 Q. How many points of comparison or points of identity  
do you  
6 need to make a positive fingerprint identification?

7 A. Well, the FBI has no set standard. However, I have  
never  
8 identified a print with less than seven points as of  
today.

9 Now, that's not to say that I might not on a  
-- in

would be 10 some future date identify less; but as of today, seven

11 the bottom.

review 12 Q. How many fingerprint specialists such as yourself

13 each latent fingerprint to make an identification?

latent 14 A. Once an identification has been effected in the

before that 15 print section, a minimum of two people must concur

16 identification is released.

17 Q. When you examine an object or a document for the

latent 18 possibility of a latent fingerprint and you identify a

fingerprint was 19 fingerprint, is there any way to tell when that

20 left on the document or the object.

21 A. No, there is not.

identify 22 Q. How do you determine what process to use to try to

23 a latent fingerprint?

break them 24 A. Basically, when I receive items of evidence, I

evidence 25 into two basic groups, that being either a porous-type

8558

Louis Hupp - Direct

1 or a nonporous.

2 Q. What do you mean by "a porous-type evidence"?

3 A. "Porous" would be something such as this folder or  
a piece  
literally  
4 of paper or cloth, something that the latent print is  
5 absorbed into the surface of.

6 Q. What types of chemical processes do you use with a  
porous  
7 item such as a folder or a document?

8 A. Well, there are several, but we use them in strict  
9 sequential order. And those would be initially I would  
just  
10 visually examine the item for the presence of latent  
prints.  
-- in  
11 Then I would certainly examine it with the presence of  
look  
12 the presence of an alternate light source or a laser to  
with a  
13 for inherent fluorescence. Then I would process this  
situation, and  
14 chemical called DFO, place it into a dry heat  
source or  
15 then examine it in the presence of an alternate light  
16 laser.

17 The next chemical is what we call a ninhydrin.  
That  
18 reacts with humidity, and they would develop then. And  
the  
19 last but not least would be physical developer or  
silver  
20 nitrate.

21 Q. Do any of the processes you just described discolor  
22 documents or porous items?

23 A. Yes, they do.

24 Q. Which ones do that?

25 A. On an occasion, DFO will discolor an item.  
Certainly

8559

Louis Hupp - Direct

1 ninhydrin will and physical developer or silver nitrate  
will

2 cause great distortion either in a black, gray, or a  
dark brown

3 color.

4 Q. The other processes that turn it a dark gray or a  
black:

5 What color do they turn the document?

6 A. Generally it's a reddish-purple color.

7 Q. Do any of the processes, the chemical processes you  
just

8 described, destroy or partially destroy a document?

9 A. Certainly will on occasion render a document, if  
there is

10 writing or something on it, to where you cannot read  
it.

11 Silver nitrate will destroy an object over a period of  
time.

12 Q. When you say "an object," you mean a document?

13 A. A document, yes.

14 Q. You said there were two types of items. One was  
porous,

15 which you've just described.

16 A. Yes.

17 Q. You also said the nonporous.

18 A. Yes.

19 Q. What is a nonporous item?

20 A. Nonporous would be something such as the -- this  
piece of

21 wood or a countertop or a piece of glass.

22 Q. And what processes do you use to develop a latent  
nonporous

23 fingerprint, to identify a latent fingerprint on a

24 item?

25 A. First would be, of course, visual examination to  
see if I

8560

Louis Hupp - Direct

1 can see the latent on the item itself. Secondly, I  
would again

2 go to the laser or alternate source and attempt to see  
any

3 inherent fluorescence. Then I would process it with  
Glue.

4 cyanoacrylate or what many people refer to as Super

5 After that, I would again examine it visually. Then I  
might

6 apply a chemical-dye stain which would react with the  
7 cyanoacrylate. Then I would place it under an  
alternate light

8 source or a laser again, because this would fluoresce.  
And

9 last but not least, I would certainly powder it with  
10 appropriate colored powder.

11 Q. And by "powder," that's what we see on television?  
We see  
12 detectives using fingerprint powder?

13 A. Yes, it is.

14 Q. Do you ever use the term "fragile" with respect to  
latent  
15 fingerprints?

16 A. Yes.

17 Q. What does the term "fragile" mean in your field?

18 A. In my field, we would consider a latent which would  
appear

19 or would be presented on a porous piece of -- or  
nonporous

20 piece of evidence, one that lies on the surface.  
They're very

21 easily removed by simply brushing or touching, and  
they're

22 easily removed; therefore we give them the term "very  
fragile."

23 Q. Which type of items, porous or nonporous, are more  
fragile?

24 A. Certainly the nonporous would be the most fragile.

25 Q. Now, if I handed you a porous item like a piece of

paper

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Louis Hupp - Direct

would you 1 after I held it like this and I handed it to you now,  
piece of 2 necessarily be able to develop my fingerprints on this  
3 paper?

4 A. Not necessarily.

5 Q. Why not?

you 6 A. There are a number of reasons. First and foremost,  
transfer. 7 must have something on the ridges of your fingers to

wiped 8 If you were to have washed your hands recently or had  
transfer, if 9 them dry, then certainly there is very little to  
10 anything.

might 11 You might be wearing a pair of gloves, or you  
does not 12 be, like myself, somebody that has very dry skin and  
13 leave very good latents at all.

years with 14 Q. Would it be fair to say that in your 30-some-odd  
15 the FBI that you've examined thousands of documents?

16 A. Yes.

latent 17 Q. In your experience, how often do you develop a  
-- on a 18 fingerprint on a document on a nonporous -- excuse me  
19 porous item like a piece of paper?

20 A. I would estimate it's somewhere in the 20 percent  
range.

21 Q. I want to direct your attention now to April 22,  
1995.

22 Were you in Abilene, Kansas, that day?

23 A. Yes, I was.

24 Q. What did you do in Abilene, Kansas, on April 22?

25 A. I had been directed to Abilene, Kansas, for the  
purpose of

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Louis Hupp - Direct

1 printing an individual by the name of Terry Nichols.

2 Q. Did you do that that day?

3 A. Yes, I did.

4 Q. Do you see the individual that you fingerprinted on  
5 April 22? Do you see him in the courtroom today?

6 A. Yes, I do.

7 Q. Could you tell us where he's seated and what he's  
wearing?

8 A. He's the gentleman sitting in the middle with the  
dark blue

9 blazer and white shirt.

10 MR. TIGAR: He's identified him, your Honor.

11 THE COURT: All right.

12 BY MR. MEARNS:

13 Q. Mr. Hupp, if you would look in the folder there for  
14 Government's Exhibit 1290 for identification.

15 Do you recognize that?

16 A. Yes, I do.

17 Q. What is that?

18 A. This is a standard fingerprint card which I  
recorded on

19 April 22 in Abilene, Kansas. And on it are the 10  
rolled

20 impressions of the right hand and left hand as well as  
four

21 simultaneous impressions at the bottom and two thumbs  
of each

22 hand.

23 Q. Are there several pages in this one exhibit?

24 A. Yes, there are.

25 Q. Those are all the fingerprints that you took from

8563

Louis Hupp - Direct

1 Mr. Nichols on April 22, 1995?

2 A. That is correct, yes.

3 MR. MEARNS: Your Honor, we would offer  
Government's

4 Exhibit 1290.

5 MR. TIGAR: May I inquire, your Honor?

6 THE COURT: You may.

7 VOIR DIRE EXAMINATION

8 BY MR. TIGAR:

9 Q. Good afternoon, Agent Hupp. My name is Michael  
Tigar, one  
10 of the lawyers appointed to help Terry Nichols.

11 1290 is a major-case print card?

12 A. Yes. It's what I would call major-case prints,  
yes.

13 Q. And it contains all ten fingers; correct?

14 A. That is correct.

15 Q. Does it contain palm prints?

16 A. Yes, it does.

17 Q. And is the taking of palm prints a regular part of  
the  
18 major case print operation?

19 A. Yes, it is.

20 Q. And is that because those have value to you?

21 A. Yes, that's correct.

22 Q. And in addition to all 10 fingers, you take -- and  
the palm  
23 prints -- what else did you take?

24 A. The attempt was to record the entire friction ridge  
area of

25 the underside of the fingers and palms. So I took the  
ten

## Louis Hupp - Voir Dire

1 rolled impressions, I took impressions of the lower  
joint areas  
2 of the fingers, as well as impressions of the palm to  
include  
3 both the side outside area of the palm and under the  
thumb area  
4 of the palm.

5 Q. When we look at that, will we see an impression  
that one  
6 might make by putting one's hand down? We'll see  
directly?

7 We'll see that?

8 A. That is correct.

9 Q. And another thing we'll see is an impression we  
would make  
10 if we took the finger or each finger and rolled it,  
like that.

11 Is that correct?

12 A. Yes.

13 Q. All right. And when -- and how many times have you  
taken  
14 major case prints in your years?

15 A. In my career, I've instructed more than I've taken.

16 Probably I've taken 20 -- 20 sets.

17 Q. And you did a good job on that day?

18 A. I think I did, yes, sir.

19 MR. TIGAR: No objection, your Honor.

20 THE COURT: 1290 received.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. MEARNS:

23 Q. Mr. Hupp, did you rely on those fingerprint samples  
that  
24 you took on April 22 to make identifications in this  
case?

25 A. Yes, I did.

8565

Louis Hupp - Direct

1 Q. I want to direct your attention now to the previous  
day,

2 Friday, April 21, 1995. Where were you that afternoon?

3 A. I was in Perry, Oklahoma.

4 Q. And what were you doing in Perry, Oklahoma?

5 A. I had been directed to Perry, Oklahoma, for the  
purpose of

6 recording the fingerprints as well as major case prints  
of an

7 individual by the name of Timothy McVeigh.

8 Q. And did do you that that day?

9 A. Yes, I did.

10 Q. I'd like you to look in your folder for  
Government's

11 Exhibit 444. Do you recognize that?

12 A. Yes, I do.

13 Q. What is that?

14 A. This again is -- on the front is a standard  
fingerprint  
15 card bearing the 10 rolled impressions of both left and  
right  
16 hand as well as the plain impressions simultaneous, as  
well as  
17 thumbs. And behind that are the major case impressions  
that I  
18 recorded of the individual Timothy McVeigh.

19 Q. And did you use the same procedure that you just  
described  
20 a moment ago in response to Mr. Tigar's questions?

21 A. Yes, I did.

22 MR. MEARNS: Your Honor, we would offer 444.

23 MR. TIGAR: No objection, your Honor.

24 THE COURT: Received.

25 BY MR. MEARNS:

8566

Louis Hupp - Direct

1 Q. During the process that you just -- that you used  
to take  
2 Mr. McVeigh's fingerprints, did he cooperate with you?

3 A. Yes, he did.

4 Q. Did you rely on Mr. McVeigh's inked fingerprints to  
make

5 fingerprint identifications in this case?

6 A. Yes, I did.

7 Q. Directing your attention now to May 4, 1995, did  
you obtain

8 any inked fingerprints that day that you relied on to  
make

9 identifications in this case?

10 A. Yes.

11 Q. Whose fingerprints did you take on May 4, 1995?

12 A. On that date, I recorded the fingerprints as well  
as major

13 case prints of a gentleman by the name of Roger Moore.

14 Q. Do you have Government's Exhibit 1755 in that  
folder?

15 A. Yes, I do.

16 Q. And what is Government's Exhibit 1755?

17 A. This is again -- the top card is a fingerprint card  
bearing

18 the 10 rolled impressions, the simultaneous fingers  
around the

19 thumbs at the bottom.

20 And the prints behind that are the major case  
prints

21 that I recorded that day of Mr. Roger Moore.

22 Q. And did you use the same procedure that you  
described a few

23 moments ago?

24 A. Yes, I did.

25 MR. MEARNS: Your Honor, we would offer  
Government's

Louis Hupp - Direct

1 Exhibit 1755.

2 MR. TIGAR: No objection, your Honor.

3 THE COURT: Received.

4 BY MR. MEARNS:

5 Q. Mr. Hupp, did you rely on Mr. Moore's inked  
fingerprints to

6 make identifications in this case?

7 A. Yes, I did.

8 Q. Do you see in your folder also what has been  
introduced

9 into evidence as Government's Exhibit 1723?

10 A. Yes, I do.

11 Q. What is that?

12 A. This is a standard fingerprint card bearing the  
13 fingerprints of an individual by the name of Michael  
Fortier.

14 It bears the same 10 rolled impressions of both hands,  
the

15 simultaneous impressions, the thumbprints at the  
bottom, as

16 well as fingerprints and palm prints on the subsequent  
cards.

17 Q. Did you rely on Mr. Fortier's fingerprints to make  
18 fingerprint identifications in this case?

19 A. Yes, I did.  
20 Q. Did you also rely on several other fingerprint --  
inked  
21 fingerprints to make identifications or comparisons in  
this  
22 case?  
23 A. Yes.  
24 Q. What I'd like to do now is ask you some questions  
about  
25 specific documents that you examined in this case.  
Okay?

8568

Louis Hupp - Direct

1 I'd like to first ask you about what has been  
received  
2 in evidence as Government's Exhibit 83. Do you have  
that in  
3 the folder?

4 A. Yes, I do.

5 Q. What is that?

6 A. This is a motel receipt for the Starlite Motel in  
the name  
7 of Terry Havens.

8 MR. MEARNS: And if we may display that on the  
9 monitor, please.

10 BY MR. MEARNS:

11 Q. And did you examine this registration card in the  
name of

the 12 Terry Havens during the course of your participation in

13 investigation?

14 A. Yes, I did.

fingerprints, 15 Q. And did you develop any fingerprints, latent

16 on this document?

suitable 17 A. Yes. I developed latent fingerprints which were

18 for identification purposes.

19 Q. And how many of those four did you identify?

20 A. All four.

21 Q. And who did you identify those fingerprints to be?

22 A. I identified those with the fingerprints that I had  
23 recorded of Mr. Terry Nichols.

side of 24 Q. And were those four fingerprints all on the same

25 this registration card?

8569

Louis Hupp - Direct

1 A. Yes, they were.

2 Q. Which side?

3 A. The front side, or the side that we're viewing now.

prepare 4 Q. Did you prepare prior to coming to court -- did you

5 enlargements of one of those latent fingerprints so

that you

6 could show it to the jury -- how you made that  
identification?

7 A. Yes, I did.

8 Q. If you would look at Government's Exhibit 84. And  
what is

9 that?

10 A. This is a photographic enlargement that I prepared  
of both

11 the latent and the inked print. It bears red lines and  
red

12 numbers as well as red letters that I placed there for  
13 illustrative purposes.

14 Q. Is it an enlargement of one of the latent  
fingerprints on

15 Government's Exhibit 83?

16 A. Yes.

17 Q. And is it also then an enlargement of one of the  
inked

18 fingerprints that was provided by Mr. Nichols?

19 A. That is correct.

20 MR. MEARNS: Your Honor, at this time we would  
offer

21 Government's Exhibit 84 for demonstrative purposes  
only.

22 MR. TIGAR: May I inquire, your Honor?

23 THE COURT: Yes, you may.

24 MR. TIGAR: May I look at the exhibit?

25 THE COURT: Sure.

Louis Hupp - Direct

1 MR. TIGAR: Thank you, your Honor.

2 VOIR DIRE EXAMINATION

3 BY MR. TIGAR:

4 Q. Agent Hupp, what process did you use to develop the  
5 latent -- on the latent side there?

6 A. These were developed with the chemical DF0.

7 Q. And the -- is it fair to say that the enlargement  
on the  
8 latent side is -- doesn't -- lacks the clear definition  
of  
9 the -- of the actual case prints?

10 A. Yes, that's fair.

11 Q. That's clear?

12 A. That's fair.

13 Q. Is it your testimony, sir, that the latent print  
was  
14 deposited by the person, whoever made it, by touching  
the paper  
15 motel registration?

16 A. Yes, sir.

17 Q. Is that right?

18 A. Yes, sir.

19 Q. And could -- does your photograph there show the  
degree of

20 pressure applied by the touching?

21 A. No, it just shows it was a mere impression placed  
there. I

22 couldn't judge the amount of pressure that was placed.

23 Q. And the document that you got it off: That is a  
motel

24 registration card like someone would receive across a  
motel

25 desk, then hand back to the clerk; correct?

8571

Louis Hupp - Voir Dire

1 A. Yes.

2 Q. And did you have any difficulty at all raising the  
print of

3 that person based on that touching?

4 A. No. It was merely processed in the standard  
procedure, and

5 they were developed.

6 Q. You didn't have to go down to either ninhydrin or  
silver

7 nitrate to get it? You got it with No. 3, DFO.  
Correct?

8 A. That is correct.

9 Q. And DFO was the first thing you tried on it?

10 A. That was the first chemical process applied.

11 Q. Because as a practical matter, you didn't really  
expect to

12 get it with Process 1 or 2; is that correct?

13 A. That's not necessarily true.

you  
14 Q. But as you looked at it in this particular print,  
15 didn't expect to get it that way, did you?

Until I  
16 A. Well, I certainly didn't see anything visually.

17 examined it with the laser, I would have no way of  
knowing; but

18 the odds are that it would be further down the chain.

DF0  
19 Q. So what we're seeing here is what you got from the

20 processing, and that's on the latent side; correct?

21 A. That is correct, yes, sir.

22 MR. TIGAR: No objection, your Honor.

used.  
23 THE COURT: All right. 84 is received, may be

24 DIRECT EXAMINATION CONTINUED

25 BY MR. MEARNS:

8572

Louis Hupp - Direct

84 and  
about  
1 Q. Mr. Hupp, if you would hold up Government's Exhibit  
2 display it to the jury and explain to them how you went  
3 identifying the latent fingerprint.

latent  
4 A. All right. The -- the enlarged photograph marked

5 print -- this is approximately a 12-times photographic  
6 enlargement of a latent print that I developed --

7 MR. TIGAR: May I stand in the corner, your  
Honor?

8 THE COURT: Yes.

9 THE WITNESS: The photograph enlargement  
marked inked

10 fingerprint --

11 BY MR. MEARNS:

12 Q. Mr. Hupp, you're hitting the microphone.

13 A. Excuse me. Is an impression of one of the  
fingerprints

14 that I recorded of the individual Terry Nichols.

15 Now, the black lines that you see represent  
the

16 friction ridges that I spoke of earlier. The white  
lines

17 represent the valleys or furrows between these ridges.

18 The red lines, red numbers, and red letters  
were

19 placed there by me for illustrative purposes only.

20 Let me direct your attention to the latent  
fingerprint

21 up in the approximate left-hand center portion of the

22 photograph. A ridge comes up and ends; and where that  
ridge

23 ends, I have designated as Point No. 1.

24 Continuing down this ridge a short distance,  
there is

25 a dividing ridge there which is part of No. 1. I

designated

8573

Louis Hupp - Direct

1 that as Point No. 10.

2 From Point No. 10, count across one  
intervening ridge

3 and continuing up the white area, a short area, there  
is a

4 small short ridge there. One end of it, I designated  
as Point

5 No. 9. The other end of it, I designated as Point No.  
2.

6 Now, let me direct your attention back to the  
7 photograph marked "inked fingerprint." In the upper  
left-hand

8 portion of the photograph, a ridge ends right here or  
begins,

9 either one. That's Point No. 1.

10 Continue down the ridge a short distance, and  
it

11 splits or divides just like here.

12 That is Point No. 10.

13 From Point No. 10, count across this one  
intervening

14 ridge and up this white area or valley. There is that  
15 extremely short ridge, which is Point No. 9 on one end

and

16 Point No. 2 on the other, bearing in mind that I must  
find

17 these same or similar points of identity lying in the  
same  
18 relative position for two fingerprints to effect an  
19 identification.

20 Let me direct your attention back to the Point  
No. 2  
21 here, this short ridge. Count across 1, 2, 3, 4, 5 and  
down  
22 the valley or furrow, and there is a ridge that  
suddenly ends.

23 That's Point No. 3.

24 From Point No. 3, count across 1, 2, 3 ridges.  
A  
25 ridge that comes up and ends. That's Point No. 4.

8574

Louis Hupp - Direct

1 Let me direct your attention back to Point No.  
2 on  
2 the inked fingerprint counting across 1, 2, 3, 4, 5;  
and down  
3 this white area, there is a ridge that ends, Point No.  
3.

4 Q. Mr. Hupp, if I can interrupt you, how many  
different points  
5 of comparison did you identify between the inked  
fingerprint  
6 and the latent fingerprint?

7 A. In this one, I have charted 10 points that I  
marked. There

8 are more than that. There are probably more than 20 in  
this  
9 particular latent print which were made in the same  
relative  
10 position. I only charted 10 for illustrative purposes.

11 Q. Thank you, Mr. Hupp.

12 Now, if you would look for what has been  
introduced in  
13 evidence as Government's Exhibit 62. Do you recognize  
that?

14 A. Yes, I do.

15 Q. And did you examine that document in the course of  
this  
16 investigation?

17 A. Yes, I did.

18 Q. Did you develop any latent fingerprints on that  
document?

19 A. Yes.

20 Q. How many latent fingerprints did you develop?

21 A. There were two latent prints suitable for  
identification  
22 developed on this particular document.

23 Q. Did you identify both of those?

24 A. Yes, I did.

25 Q. Who did you identify those fingerprints to be on  
that

Louis Hupp - Direct

1 receipt?  
index 2 A. Both fingerprints were an impression of the right  
3 finger of the individual Timothy McVeigh.  
finger? 4 Q. So it was two latent prints of the same single  
5 A. Yes.  
6 Q. And the same single finger of Mr. Timothy McVeigh?  
7 A. That is correct.  
8 Q. Now, if you would turn to what is in your folder  
in that 9 Government's Exhibit 160, 161, and 162. Mr. Hupp, it's  
10 other --  
11 A. In the other folder?  
during the 12 Q. Did you identify -- did you examine those items  
13 course of your investigation?  
14 A. Yes, I did.  
of those 15 Q. And did you develop any latent fingerprints on any  
16 items?  
sleeves 17 A. I developed one fingerprint on one of the cardboard  
18 which was suitable for identification purposes.  
to? 19 Q. And when you say a "sleeve," what are you referring  
20 A. I'm referring to a piece of cardboard that was used  
to hold

went 21 the orange cord inside. It was sort of a wrapper that  
and 22 around it. It bears the name "Primadet," for instance,  
23 "18M" or 18 meters.  
24 Q. And is that in that separate envelope which has  
been marked  
25 160A?

8576

Louis Hupp - Direct

1 A. Yes, it is.  
2 Q. How many latent fingerprints did you develop on  
160A?  
3 A. One.  
4 Q. And did you identify it?  
5 A. Yes, I did.  
6 Q. Whose fingerprint did you identify it to be?  
7 A. I identified it as a fingerprint of Terry Nichols.  
8 MR. MEARNS: Your Honor, we would offer  
Government's  
9 Exhibit 160A.  
10 MR. TIGAR: No objection, your Honor.  
11 THE COURT: 160A is received.  
12 BY MR. MEARNS:  
13 Q. Do you have Government's Exhibit 158, Mr. Hupp?  
14 A. Yes, I do.

15 Q. What is that?

16 A. This is a book entitled The Hunter by Andrew  
Macdonald.

17 MR. MEARNS: And 158 has been received in  
evidence.

18 Is that correct?

19 THE COURTROOM DEPUTY: 158?

20 THE COURT: Should be.

21 MR. TIGAR: Yes, your Honor, it has.

22 THE COURT: Yes.

23 MR. MEARNS: Your Honor, may I just publish  
the

24 computer image so that the jury can see --

25 THE COURT: Yes.

8577

Louis Hupp - Direct

1 BY MR. MEARNS:

2 Q. Did you develop any latent fingerprints in this  
book?

3 A. Yes, I did.

4 Q. How many latent fingerprints did you develop in  
this book?

5 A. There were 14 latent fingerprints suitable for  
6 identification purposes.

7 Q. And how many did you identify?

8 A. I identified 13.

9 Q. And who were -- whose fingerprints did you  
identify?

10 A. All 13 fingerprints belonged to Terry Nichols.

11 Q. And could you tell us on what pages within the book  
you  
12 identified Mr. Nichols' fingerprints?

13 A. The pages that I identified Mr. Nichols' prints on  
were  
14 page 4 --

15 MR. TIGAR: Excuse me, your Honor. If he's  
reading  
16 from a document, may we know what it is?

17 THE COURT: Are you reading from something?

18 THE WITNESS: Yes. This was a sort of a  
breakdown of  
19 my notes which we're going to use to kind of expedite  
things,  
20 your Honor.

21 THE COURT: All right. Would you like to  
look?

22 MR. TIGAR: Yes, I would, your Honor.

23 Government counsel is handing me what I'm told  
is a  
24 copy.

25 May I look --

8578

Louis Hupp - Direct

1 THE COURT: Certainly, you can look at what

the

2 witness has.

3 MR. TIGAR: Yes, your Honor. I see it now.

4 BY MR. MEARNS:

5 Q. Mr. Hupp, did you prepare that notebook prior to  
coming to

6 court to assist you in recalling your identification on  
these

7 numerous documents?

8 A. Yes, I did.

9 Q. Could you tell us the page numbers on which you  
identified

10 Mr. Nichols' fingerprints?

11 A. Okay. The pages which I identified with Mr.  
Nichols'

12 fingerprints was page 4, page 31, page 47, page 117,  
page 137,

13 page 149, page 159, page 190, page 224, page 240, page  
248,

14 page 259, and page 260.

15 Q. How many pages are there in that book?

16 A. There are probably -- it appears to be -- about 165  
-- or

17 265. Excuse me.

18 MR. TIGAR: Your Honor, I would request that  
all of

19 the various pages of notes that the agent intends to  
use be

20 marked as a group exhibit and received in evidence.

21 MR. MEARNS: We would have no objection to

that.

during a 22 THE COURT: All right. Well, you can do that

23 recess, which is what we're about to do.

24 MR. TIGAR: Yes, your Honor.

Hupp. 25 THE COURT: So you may step down now, Mr.

8579

being 1 Members of the jury, we're going to recess, it

during 2 almost 5:00, our usual time for recess; and of course,

tomorrow, 3 the time of this recess overnight until we resume

at 4 you, of course, will follow the cautions always given

really; 5 recesses and avoid therefore discussion of the case,

also 6 avoid thinking about it during the time of the recess,

see, and 7 being careful about all of the things that you read,

matter of 8 hear to avoid anything that may relate to the subject

9 our evidence.

tomorrow 10 Tomorrow, of course, is our shortened day,

with 11 being Friday, when we'll resume at 8:45 and recess at 1

12 hopefully one break in between as we did last Friday.

13           On the subject of scheduling, we should be  
thinking  
14 ahead here -- or I am thinking ahead. I can't give you  
yet an  
15 estimate -- and I've discussed this with counsel -- of  
how long  
16 we're going to be going here; but, of course, as you  
know from  
17 what I've told you before, trials are human events. We  
cannot  
18 anticipate exactly how long each witness will take,  
recognizing  
19 that there is both direct and cross-examination. And  
we can't  
20 predict exactly what will happen.

21           So I'm not in a position to let you know how  
long  
22 trial will be as yet, but it is certain that we will be  
working  
23 the week on which Thanksgiving is a holiday, another  
legal  
24 holiday coming up here. And that's November 27.

25           Normally, the Court -- the 28th, the day after

8580

1 Thanksgiving, is a normal court day; and we hold court  
on the  
2 following day. I did not, however, it occurs to me, at

the

3 time of asking you, each of you, all of these questions  
on voir 4 dire -- ask of you whether any of you had family plans  
or that 5 kind of thing for the Thanksgiving day and the  
following day.

6 So I want you to let us know about that. We'll ask you  
about 7 that tomorrow, because we would honor it if you have  
such 8 plans; otherwise, we would expect to hold court on the  
28th.

9 But, as I say, I didn't clear that with you  
when you 10 signed on, so to speak, as jurors; so I want you to let  
us know 11 about that tomorrow.

12 We will, of course, at this time, then, recess  
until 13 tomorrow morning at 8:45. Hope you have a pleasant  
evening.

14 (Jury out at 5:01 p.m.)

15 THE COURT: Mr. Tigar.

16 MR. TIGAR: Mrs. Hasfjord had asked that we  
clarify 17 the exhibit numbers for the various tracks that were  
played 18 during Mr. Fortier's cross-examination so that the  
record may 19 be complete in that regard. And we do have each of  
those

20 tracks on a separate CD, your Honor.

21 THE COURT: All right.

22 MR. TIGAR: I'm just repeating what I was  
told. There

23 is no understanding behind these words, but Ms. Hare,  
our

24 paralegal, does have those tracks, and I can read them  
into the

25 record now and ask that they be received in that form,  
if your

8581

1 Honor believes that's the best way to complete the  
record.

2 THE COURT: Well, I don't understand what  
you're

3 saying. This is on a -- when you say "tracks," it's  
like on a

4 CD-ROM?

5 MR. TIGAR: When I called out, for example,  
A9, I was

6 referring to something on the CD remote that our people  
had.

7 A9 corresponds to an exhibit number, D462.  
And if I

8 could just read those correspondences, the record would  
be

9 complete.

10 THE COURT: Go ahead. All right.

11 MR. TIGAR: A9 corresponds to D462.  
12 A13 corresponds to D411.  
13 B1 corresponds to D420.  
14 B2 corresponds to D421.  
15 B7 corresponds to D426.  
16 C2 corresponds to D443.  
17 C3 corresponds to D444.  
18 C4 corresponds to D445.  
19 A2 corresponds to D418.  
20 A3 corresponds to D429.  
21 A5 corresponds to D450.  
22 A6 corresponds to D459.  
23 A7 corresponds to D460.  
24 A15 corresponds to D413.  
25 A18 corresponds to D416.

8582

1 A19 corresponds to D417.  
2 B13 corresponds to D433.  
3 A14 corresponds to D412.  
4 A20 corresponds to D419.  
5 A8 corresponds to D461.  
6 We would ask that those be admitted in  
evidence, your

7 Honor.

8 THE COURT: Well, we'll certainly admit them  
since the  
9 jury has heard them.

10 MR. TIGAR: Yes, your Honor.

11 THE COURT: Are we talking about a physical --  
when  
12 you say D413, and so forth --

13 MR. TIGAR: Each one is a separate CD-ROM  
disk, your  
14 Honor, because the spoken word is the evidence. It may  
be at a  
15 later time we would choose to offer a transcript as an  
aid, but  
16 we doubt that we're going to do that.

17 THE COURT: Right.

18 MR. TIGAR: I think the spoken word is the  
evidence.

19 The transcript would be an aid.

20 THE COURT: Right. Just like the testimony  
is. But

21 we should have the -- I guess the backup exhibits.

22 MR. TIGAR: We'll, this evening, your Honor,  
23 separately mark with a sub A each -- the relevant  
transcript  
24 pages; and we'll present those tomorrow to complete the  
record.

25 THE COURT: All right.

1 MR. TIGAR: Thank you, your Honor.

2 THE COURT: And unless there be objection from  
3 counsel, I'll ask Mr. Manspeaker to check with the  
jurors this

4 morning -- or tomorrow morning to see what their  
response is to

5 my invitation to let us know if they have conflicts  
with

6 holding court on the 28th.

7 MR. MACKEY: That's fine.

8 THE COURT: Agreeable?

9 MR. TIGAR: Yes, your Honor.

10 The Government, during its examination of Mr.  
Hupp,

11 examined him concerning the Mike Havens receipt but did  
not

12 offer 62C. Was it -- I don't know if Mr. -- which --  
which

13 would complete that exhibit. If the Government chooses  
not to

14 offer it, we would ask that it be received under Rule  
106, your

15 Honor.

16 MR. MEARNS: May I just have a moment, your  
Honor?

17 THE COURT: Yes.

18 MR. MEARNS: We would have no objection to  
62C.

then 19 THE COURT: All right. We'll receive 62C, and  
with? 20 we're going to mark these notes that he was working  
they 21 MR. TIGAR: Yes, your Honor. Whatever number  
22 want to give them.  
the 23 THE COURT: All right. You can do that during  
24 time of the recess.  
25 We'll recess. 8:45.

8584

1 (Recess at 5:07 p.m.)

2 \* \* \* \* \*

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10 Dawn Hester

11 Direct Examination by Ms. Wilkinson

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1 (Louis Hupp)

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4 PLAINTIFF'S EXHIBITS

Withdrawn 5 Exhibit Offered Received Refused Reserved

6 62C 8583 8583

7 84 8569 8571

8 144 8543 8543

9 145 8547 8547

10 160A 8576 8576

11 169 8538 8538

12 170 8541 8541

13 171 8542 8542

14 173 8544 8544

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23 DEFENDANT'S EXHIBITS

Withdrawn 24 Exhibit Offered Received Refused Reserved

25 D390 8481 8482

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		DEFENDANT'S EXHIBITS (continued)			
Withdrawn	Exhibit	Offered	Received	Refused	Reserved
	3 D397 pp. 1-2	8479	8480		
	4 D411-D413	8582	8582		
	5 D416-D421	8582	8582		
	6 D426	8582	8582		
	7 D429	8582	8582		
	8 D433	8582	8582		
	9 D443-D445	8582	8582		
	10 D450	8582	8582		
	11 D459	8582	8582		
	12 D460-D462	8582	8582		
	13 D484	8483	8483		
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24	D528	8498	8498
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1 REPORTERS' CERTIFICATE

2 We certify that the foregoing is a correct  
transcript from

3 the record of proceedings in the above-entitled matter.  
Dated

4 at Denver, Colorado, this 13th day of November, 1997.

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Paul Zuckerman

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Bonnie

Carpenter

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