

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,) CAUSE NO. IP 06-CR-1, 2, 3
) Indianapolis, Indiana
-v-) November 15, 2006
) Volume III
MA-RI-AL CORPORATION, d/b/a)
BEAVER MATERIALS, CORP.; et al.)
)
Defendants.)

Before the Honorable
Larry J. McKinney, Chief Judge

OFFICIAL REPORTER'S TRANSCRIPT OF
TRIAL

For the Plaintiff: Frank J. Vondrak, Esq.
Jonathan Epstein, Esq.
Eric Schleef, Esq.
U. S. Department of Justice
Suite 600, Rookery Building
209 S. LaSalle Street
Chicago, IL 60604

For the Defendant James H. Voyles, Esq.
Ma-Ri-Al Corporation: VOYLES ZAHN PAUL HOGAN & MERRIMAN
One Virginia Ave, Suite 700
Indianapolis, IN 46204

For the Defendants Jeffrey Lockwood, Esq.
Ricky and Chris Beaver: SCHUYLER EISELE & LOCKWOOD
200 E 11th Street, Suite 100
Anderson, IN 46016

Court Reporter: Glen Cunningham, CM
Patricia A. Cline, CM
Official Court Reporter
46 E. Ohio Street
Indianapolis, IN 46204

PROCEEDINGS TAKEN BY MACHINE SHORTHAND
TRANSCRIPT PRODUCED BY ECLIPSE NT COMPUTER-AIDED
TRANSCRIPTION

I N D E X

GOVERNMENT'S WITNESSES		PAGE
STEVEN SCHLOBOHM		
Direct examination by Mr. Vondrak		403
Cross-examination by Mr. Voyles		407
Cross-examination by Mr. Lockwood		411
Redirect examination by Mr. Vondrak		414
Recross-examination by Mr. Voyles		415
KAREN MEDERNACH		
Direct examination by Mr. Schleef		417
Cross-examination by Mr. Lockwood		425
Cross-examination by Mr. Voyles		430
Redirect examination by Mr. Schleef		431
Recross-examination by Mr. Lockwood		432
NEIL FREEMAN		
Direct examination by Mr. Schleef		434
Cross-examination by Mr. Lockwood		444
Redirect examination by Mr. Schleef		448
DEFENDANTS' WITNESSES		PAGE
CHARLES R. SHEEKS		
Direct examination by Mr. Voyles		475
Cross-examination by Mr. Vondrak		482
Redirect examination by Mr. Voyles		492
Recross-examination by Mr. Lockwood		450
Recross-examination by Mr. Vondrak		496
Cross-examination by Mr. Schleef		507
CHUCK MOSLEY		
Direct examination by Mr. Lockwood		500
Cross-examination by Mr. Schleef		507
Redirect examination by Mr. Lockwood		520
Recross-examination by Mr. Schleef		523
ALLYN BEAVER		
Direct examination by Mr. Voyles		532
Cross-examination by Mr. Schleef		550
Redirect examination by Mr. Voyles		558
HOWARD A. KENLEY		
Direct examination by Mr. Voyles		560
Cross-examination by Mr. Vondrak		563
Direct examination by Mr. Lockwood		566
Cross-examination by Mr. Vondrak		568
GOVERNMENT'S EXHIBITS		IDEN
45	487	
DEFENDANTS' EXHIBITS		IDEN EVID
A	493	
INSTRUCTIONS CONFERENCE		570

1 (Trial resumed, 9:10 A.M.)

2 (Jury not present)

3 THE COURT: So are we ready to proceed, yes?

4 MR. VONDRAK: Yes.

5 MR. VOYLES: Yes, Your Honor.

6 THE COURT: Get the jury, please.

7 (Jury present)

8 THE COURT: You may be seated.

9 Good morning, ladies and gentlemen?

10 Anybody see or hear anything about this case over night or
11 this morning?

12 I suspect you are wondering if we are going to get into
13 your Thanksgiving holiday with this case because you didn't
14 trust me when I said we would be done by Tuesday. Well, we be
15 done by more than Tuesday. Don't be concerned about it, you
16 will make your Thanksgiving holiday without a problem.

17 A JUROR: Thank you.

18 THE COURT: You are welcome.

19 Let us have our next witness.

20 MR. VONDRAK: The Government calls Steven Schlobohm.

21 STEVEN SCHLOBOHM

22 PLAINTIFF'S WITNESS, SWORN

23 DIRECT EXAMINATION

24 BY MR. VONDRAK:

25 Q Good morning.

SCHLOBOHM - DIRECT / VONDRAK

- 1 A Good morning.
- 2 Q Tell us your name and spell your last name.
- 3 A Steven with a v, middle initial L., last name Schlobohm,
- 4 S-c-h-l-o-b-o-h-m,
- 5 Q And how old are you?
- 6 A Forty-three.
- 7 Q Where do you live?
- 8 A Carmel, Indiana.
- 9 Q What is your occupation?
- 10 A I'm a special agent for the FBI.
- 11 Q How long have you been a special agent with the FBI?
- 12 A Just under 17 years.
- 13 Q Could you tell us a little bit about your educational
- 14 background?
- 15 A Yeah. I have an Associate's degree and a Bachelor's degree
- 16 in electronic engineering technology from Valparaiso Technical
- 17 Institute.
- 18 Q Did you receive any training when you joined the FBI?
- 19 A Yes, I did.
- 20 Q How long was that training?
- 21 A I believe it was approximately four months.
- 22 Q What department does the FBI work under?
- 23 A The Executive Branch of the government.
- 24 Q Is that the Department of Justice?
- 25 A Correct.

SCHLOBOHM - DIRECT / VONDRAK

1 Q Are violations of the Sherman Antitrust Act something that
2 the FBI investigates?

3 A Yes.

4 Q What are your duties and responsibilities as an FBI agent?

5 A To investigate allegations of violations of federal law.

6 Q Did there come a time when you began an investigation into
7 the ready-mix concrete industry in Indianapolis?

8 A Yes.

9 Q And when did that investigation begin?

10 A In October of 2003.

11 Q How did that investigation begin?

12 A An individual had approached the Department of Justice and
13 advised that there was a price fixing scheme among Indianapolis
14 area ready-mix suppliers.

15 Q What was that individual's name?

16 A Gary Matney.

17 Q And what did he tell you about the price fixing conspiracy?

18 A He advised that he had been approached to join this
19 conspiracy.

20 Q And had he ever taken part in the conspiracy?

21 A Not to my knowledge, no.

22 Q As a result of your investigation did you eventually
23 execute search warrants, along with other members of the FBI?

24 A Yes.

25 Q And which companies did you execute search warrants on?

SCHLOBOHM - DIRECT / VONDRAK

1 A That would be Irving Materials, IMI, Builder's, Beaver
2 Materials, Shelby, American Concrete, and Carmel Concrete.

3 Q And when did those -- when were those search warrants
4 executed?

5 A May 25th, 2004.

6 Q On May 25th, 2004, did the FBI do anything else?

7 A Yes, we did.

8 Q What else did you do?

9 A We conducted several interviews on that same date.

10 Q When you say several interviews, do you have a ballpark
11 figure of how many?

12 A Between 15 and 20 interviews would have been conducted.

13 Q And why did you conduct those interviews?

14 A The purpose of the interviews was to gather as much
15 information as quickly as we could, and also to determine who
16 knew what information, where perhaps evidence of the crimes
17 could be located so we could gather that information.

18 Q Was it important for you that these interviews be conducted
19 simultaneously?

20 A Yes.

21 Q Why was that important for you?

22 A We want -- like I say, we want to quickly gather as much
23 information as we possibly can, but also we don't want to allow
24 individuals, if they have knowledge or have participated in the
25 scheme, to get together and either destroy evidence and/or

SCHLOBOHM - DIRECT / VONDRAK

1 concoct a story to protect their culpability.

2 MR. VONDRAK: I have nothing further, Your Honor.

3 THE COURT: Cross-examine.

4 MR. VOYLES: If it please the Court, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. VOYLES:

7 Q Good morning, Agent Schlobohm.

8 A Good morning.

9 Q My understanding, sir, is that you indicated that you first
10 began the investigation October of 2003, is that correct?

11 A In October of 2003, correct.

12 Q And that you had an individual who you have identified who
13 became somewhat a cooperative individual for the Bureau, is
14 that correct?

15 A Correct.

16 Q As a result of that -- and did that begin about the same
17 time as your investigation began in October of 2003?

18 A I first met with Gary Matney on October 9th of 2003.

19 Q So essentially that is the starting point --

20 A Correct.

21 Q -- is that correct?

22 Would it be around or near that time that you began
23 gathering information from Mr. Matney about this alleged
24 conspiracy?

25 A Correct.

SCHLOBOHM - CROSS / VOYLES

1 Q And would it be about that time that also, as part of his
2 cooperation, he agreed to wear a recording device for
3 conversations with certain people, is that correct?

4 A For one individual, yes.

5 Q Okay. And I think that was identified as Mr. Hughey
6 yesterday in the courtroom?

7 A Correct.

8 Q How long do you think would it be a fair assessment that
9 the investigation then ran all the way through the date of the
10 search warrants being issued and being served on these
11 individual companies May 25th, 2004?

12 A I'm sorry, could you repeat that?

13 Q Yes. Would it be a fair assessment that from October of
14 2003, until the search warrants were executed in May of 2004,
15 you were engaged in the continuous investigation in this
16 matter?

17 A I would say that is not correct because we were
18 continuously engaged in the investigation of this matter even
19 after the search warrants were executed.

20 Q All right. But up until that date you had gathered enough
21 information at least to ask a court to issue search warrants?

22 A Correct.

23 Q Had you gained information from that investigation prior to
24 May 25th, 2004, that meetings had occurred in Mr. Nuckols'
25 horse barn?

SCHLOBOHM - CROSS / VOYLES

1 A Yes.

2 Q Had you learned that more than one meeting had occurred?

3 A Yes.

4 Q And had you learned that there had been a meeting at the
5 Signature Inn?

6 A I do not believe that was -- we were aware of that
7 information at that time.

8 Q But you are were aware of the horse barn?

9 A Meeting at the horse barn.

10 Q So that wouldn't have been a surprise to you on May 25th,
11 2004, to learn that there had been meetings because you already
12 knew that?

13 A We knew there had been meetings among the ready-mix
14 suppliers, correct.

15 Q And you knew who had attended?

16 A That is not correct. We do not know everyone who had
17 attended the horse barn meeting.

18 Q Who did you think had attended?

19 A Based on what Gary Matney had told us, there is information
20 that Pete Irving would have attended those, Butch Nuckols,
21 Scott Hughey, sometimes Gary Beaver, the Haehls, Richard and
22 Philip Haehl.

23 Q Gary Beaver is who he said?

24 A Yes.

25 Q Okay. Who is Gary Beaver?

SCHLOBOHM - CROSS / VOYLES

- 1 A He is an officer of Beaver Materials.
- 2 Q And have you ever heard Gary Beaver's name mentioned during
3 the course of this trial?
- 4 A No.
- 5 Q And none of the participants who have testified in this
6 trial ever mentioned a Gary Beaver, have they, that was ever at
7 the meeting?
- 8 A Not at the meeting, right. Correct, he has not been
9 identified as being at the horse barn meeting.
- 10 Q Any of the meetings?
- 11 A Correct.
- 12 Q So when the warrant was -- and the simultaneous interviews
13 that were conducted on the 25th, that information about at
14 least two horse barn meetings was known to the FBI, correct?
- 15 A No, I believe the information was told to us by Mr. Matney
16 that there were three or four meetings that had taken place.
- 17 Q But you knew the horse barn, you knew a location?
- 18 A We knew the location, correct.
- 19 Q And you knew it was owned by Mr. Nuckols?
- 20 A Correct.
- 21 Q And you knew Mr. Nuckols and others had been there?
- 22 A Correct.
- 23 Q Including someone from -- allegedly from Beaver by the name
24 of Gary Beaver?
- 25 A That is correct.

SCHLOBOHM - CROSS / VOYLES

1 MR. VOYLES: I have nothing further. Thank you.

2 THE COURT: Mr. Lockwood.

3 CROSS-EXAMINATION

4 BY MR. LOCKWOOD:

5 Q Mr. Schlobohm, I'm Jeff Lockwood. I represent Chris Beaver
6 and Gary -- and Ricky Beaver. I think you knew that already.
7 I just have a few questions for you, sir.

8 Was Mr. Matney able to tell you that someone from the
9 Beaver organization at least had reportedly attended some or
10 all of these meetings?

11 A Mr. Hughey had provided that information to Mr. Matney, who
12 then provided it to us.

13 Q So you had that information prior to May 25th of 2004?

14 A That supposedly Gary Beaver attended some of the meetings,
15 correct. And then also from our recorded conversations that
16 Chris Beaver was somehow involved in the conspiracy.

17 Q And it turned out later that the only real error in that
18 was that it wasn't Gary that allegedly -- he had Gary confused
19 with Rick?

20 A I don't know that. I mean, the investigation -- I don't
21 have information that would indicate that Gary Beaver attended
22 these horse barn meetings.

23 Q Were you able to listen to the recordings that Mr. Matney
24 had made of his conversations with Mr. Hughey prior to May 25th
25 of 2004?

SCHLOBOHM - CROSS / LOCKWOOD

1 A Yes.

2 Q So would it be fair to say that your investigation was
3 fully aware of the kinds of things that were being discussed at
4 these meetings?

5 A No.

6 Q Why not, sir?

7 A Because Mr. Matney was not present at these meetings. We
8 were receiving it from Mr. Hughey, so we do not -- and we
9 wanted somebody to be at that meeting to record those
10 conversations.

11 Q But you knew from Mr. Matney's conversation and from the
12 tapes -- I'm sorry, maybe not the tapes. I guess you did have
13 tapes from the interviews where he was wearing the wire?

14 A Please rephrase the question.

15 Q I'm sorry. Mr. Matney was wearing a recording device at
16 the time he talked to Mr. Hughey?

17 A On three occasions, yes.

18 Q On three occasions. And you were able to listen to those
19 prior to May 25th?

20 A Correct.

21 Q And your other interview with Mr. Matney, he talked to you
22 about what other people involved in the concrete industry had
23 said to him and what they had done?

24 A Correct.

25 Q So you knew that this was a price fixing conspiracy?

SCHLOBOHM - CROSS / LOCKWOOD

1 A Correct.

2 Q And you also new prior to May 25th that what Mr. Matney --

3 I'm sorry, let me rephrase that.

4 You also knew prior to the 25th that there had been a
5 meeting at which a complaint had been made to Mr. Matney's boss
6 about his failure to go along with this conspiracy?

7 A Correct.

8 Q So you knew that there was a price fixing conspiracy in
9 Indianapolis among the major concrete suppliers?

10 A Correct.

11 Q And you knew that Mr. Hughey and that IMI and that the
12 Beavers were allegedly involved in the conspiracy?

13 A Correct.

14 Q Because of their attendance at various meetings?

15 A Because of the information that Mr. Hughey provided to Gary
16 Matney. Gary Matney did not attend those meetings.

17 Q I understand, but your investigation developed that the
18 meetings occurred?

19 A Based on Mr. Hughey's information to Mr. Matney, correct.

20 Q So you knew that?

21 A Correct.

22 Q And you knew that there were discussions about prices at
23 these meetings?

24 A Yes.

25 Q And fixing -- not just prices, but fixing them?

SCHLOBOHM - CROSS / LOCKWOOD

1 A Coming to an agreement.

2 MR. LOCKWOOD: Thank you very much, Special Agent. I
3 appreciate it. That is all I have.

4 THE COURT: Anything else of the witness.

5 MR. VONDRAK: Just a couple of quick questions, Your
6 Honor.

7 REDIRECT EXAMINATION

8 BY MR. VONDRAK:

9 Q Special Agent Schlobohm, you testified that you were aware
10 that some meetings had taken place, is that correct?

11 A Correct.

12 Q Did you know with any agree of certainty exactly who was at
13 those meetings?

14 A Other than what was reported to Mr. Matney.

15 Q And Mr. Matney reported to you a Gary Beaver, is that
16 correct?

17 A Correct.

18 Q But he had never been at any of these meetings?

19 A Mr. Matney has never been, to the best of my knowledge.

20 Q And did you have any indication as to how long this
21 conspiracy had been going on at the time you executed the
22 search warrants on May 25th, 2004?

23 A I believe Mr. Matney said it had been going on for several
24 years.

25 Q Did he know exactly how many years?

SCHLOBOHM - REDIRECT / VONDRAK

1 A I think he provided an estimate of five to seven years.

2 Q Did he know when the conspiracy began?

3 A He did not have an exact date, no.

4 Q Did he know how the conspiracy began?

5 A I don't believe -- I don't recall if he knows exactly how
6 the conspiracy began.

7 MR. VONDRAK: Thank you. I have no further questions,
8 Your Honor.

9 THE COURT: Anything else, Mr. Voyles?

10 MR. VOYLES: Quick follow-up, Judge.

11 RE-CROSS-EXAMINATION

12 BY MR. VOYLES:

13 Q Agent Schlobohm, if I understand, you talked to Mr. Matney,
14 correct?

15 A Correct.

16 Q And Mr. Matney had a series of at least three opportunities
17 to record conversations with Mr. Hughey, is that correct?

18 A There was other attempts to record conversations with
19 Mr. Hughey.

20 Q Okay, more than three?

21 A But there was three in person recordings in which
22 Mr. Hughey was intercepted.

23 Q And Mr. Hughey indicated that he had been at these
24 meetings, so he confirmed that to Mr. Matney, who confirmed it
25 to you?

SCHLOBOHM - RECROSS / VOYLES

1 A Correct.

2 Q And Mr. Hughey confirmed to Mr. Matney, who confirmed it to
3 you, who was in attendance?

4 A Say that again.

5 Q Mr. Hughey, in his recorded conversation to Mr. Matney,
6 told him he had been at those meetings?

7 A Correct.

8 Q He also told Mr. Matney, who told you, who was at those
9 meetings with him, did he not?

10 A That's not correct. He identified that representatives
11 from companies --

12 Q I understand that.

13 A He didn't say specifically who and each individual at that
14 meeting in the recording.

15 Q He identified the companies that had individuals there, you
16 just didn't know which individuals?

17 A We didn't know all the individuals, correct.

18 Q But he identified their companies. He identified IMI,
19 identified Builder's identified Shelby, correct?

20 A Beaver and others.

21 MR. VOYLES: Beaver. Thank you. Nothing further.

22 THE COURT: Mr. Lockwood.

23 MR. LOCKWOOD: No further questions. Thank you.

24 THE COURT: Anything else from the Government?

25 MR. VONDRAK: Nothing further, Your Honor.

SCHLOBOHM - RECROSS / VOYLES

1 THE COURT: You may step down, sir.

2 (Witness excused)

3 THE COURT: Your next witness.

4 MR. SCHLEEF: Your Honor, the Government would like to
5 call Special Agent Karen Medernach.

6 THE COURT: This is the witness stand up here. If you
7 will come up and be sworn.

8 There has been a motion made and sustained by the Court to
9 separate witnesses in this case, which means you are not to
10 share your testimony with anyone who has been or will be a
11 witness in this matter. Do you understand that?

12 THE WITNESS: Yes.

13 THE COURT: You may inquire.

14 KAREN MEDERNACH

15 PLAINTIFF'S WITNESS, SWORN

16 DIRECT EXAMINATION

17 BY MR. SCHLEEF:

18 Q Would you please state your name, and spell your name for
19 the record.

20 A Karen Medernach. K-a-r-e-n M-e-d-e-r-a-c-h.

21 Q Are you currently employed?

22 A Yes.

23 Q Where are you currently employed?

24 A Employed with the Federal Bureau of Investigation as a
25 special agent.

MEDERNACH - DIRECT / SCHLEEF

- 1 Q Is the FBI a part of the Department of Justice?
- 2 A Yes.
- 3 Q Is the Department of Justice in the Executive Branch of the
4 Federal Government?
- 5 A Yes, it is.
- 6 Q How long have you been employed by the FBI?
- 7 A A little over 17 years.
- 8 Q How long have you worked in Indianapolis?
- 9 A Seven years now.
- 10 Q What are your responsibilities in your current position?
- 11 A Currently I'm assigned to our national security branch and
12 I conduct investigations.
- 13 Q In your current position are you involved with criminal
14 investigations?
- 15 A I can be, yes.
- 16 Q In general, what are your responsibilities when you conduct
17 criminal investigations?
- 18 A We obtain, review, analyze records, and conduct interviews.
- 19 Q What type of criminal matters does the FBI investigate?
- 20 A Violations of federal law.
- 21 Q Would a violation of the Sherman Antitrust Act be a
22 violation of federal law?
- 23 A Yes.
- 24 Q Are you aware of the Department Justice, Antitrust
25 Division's investigation into price fixing for ready-mix

MEDERNACH - DIRECT / SCHLEEF

1 concrete in the Indianapolis metropolitan area?

2 A Yes, I am.

3 Q When did you become aware of this investigation?

4 A In the spring of 2004.

5 Q Were you involved in the investigation into possible price
6 fixing for ready-mix concrete?

7 A Yes.

8 Q Would you please tell the jury what your involvement was?

9 A I assisted by conducting an interview of Ricky Beaver and
10 assisted in a search warrant that was conducted at Beaver
11 Materials.

12 Q Was anyone else present for this interview?

13 A Yes. Amy Johnson of the Indiana State Police.

14 Q Over the course of your 17 year career with the FBI
15 approximately how many interviews have you conducted?

16 A I would say hundreds.

17 Q Besides interviewing Mr. Beaver and assisting with the
18 execution of search warrants did you have any other role in the
19 Antitrust Division's investigation?

20 A No, I did not.

21 Q Could you please describe the morning of the day you
22 interviewed Mr. Beaver?

23 A We arrived at Beaver Materials and Amy and I were in the
24 lobby area while other agents were beginning their search
25 warrant. And Mr. Beaver walked in and I identified myself to

MEDERNACH - DIRECT / SCHLEEF

1 him and explained why we were there and if we could speak with
2 him.

3 Q Where did you conduct this interview?

4 A He made available a conference room at Beaver Materials, so
5 the three of us went in to there.

6 Q You indicated you identified yourself to Mr. Beaver. How
7 did you do that?

8 A Through the display of my credentials and badge, which is
9 normal for us. We always identify ourselves.

10 Q And did Mr. Beaver understand why you were interviewing
11 him?

12 A Yes. I explained to him that we were at Beaver Materials
13 and we were investigating price fixing allegations and agents
14 and others were conducting a search of the premises while I
15 would like -- and Amy would like to interview him.

16 Q Did Mr. Beaver voluntarily agree to speak with you?

17 A Yes, and he made available the conference room and he was a
18 very friendly, amicable interview and he volunteered to answer
19 the questions.

20 Q Approximately how long did you speak with Mr. Rick Beaver?

21 A About an hour.

22 Q What was Mr. Beaver's demeanor the morning you interviewed
23 him?

24 A He was friendly and cooperative.

25 Q At the time of your interview did you inform Mr. Beaver

MEDERNACH - DIRECT / SCHLEEF

1 that it was a crime to lie to you in the course of your
2 investigation?

3 A Yes, I explained 1001, which is providing false statements.
4 So it was important that the questions I asked he answered
5 truthfully.

6 Q Did Mr. Beaver appear to be under the influence of drugs,
7 alcohol, or any medications?

8 A No.

9 Q Did you ask Mr. Beaver what his responsibilities were for
10 Beaver Materials?

11 A Yes, I did.

12 Q And what did he inform you?

13 A He advised me that he was in sales and he would call on
14 customers and look for other customers.

15 Q Did Rick Beaver inform you about his relationship to Allyn
16 and Gary Beaver?

17 A Yes, he explained the whole family business. It was Gary,
18 Allyn, Rick, and I don't recall -- Gary, Allyn, Rick -- Chris
19 Beaver.

20 Q Did he explain to you who Gary Beaver was in relation to
21 him?

22 A Yes. He explained that he and Chris and Gary and Allyn,
23 that one was his dad, his brother, and his cousin, and Bob
24 Matthews, I believe, all made up the board at Beaver Materials.

25 Q Did he tell you what Chris Beaver's position was with in

MEDERNACH - DIRECT / SCHLEEF

1 Beaver Materials?

2 A He did, but I would have to refresh by looking at my notes
3 to see exactly what he said.

4 MR. SCHLEEF: Permission to approach the witness?

5 THE COURT: Yes.

6 Q Do you recognize this?

7 A Yes.

8 Q What is this document?

9 A This is my -- we call it a 302, which is a summary of my
10 interview of Ricky Beaver.

11 Q Could you look at the first page and the second paragraph,
12 please?

13 A Yeah.

14 Q Does that refresh your recollection?

15 A Yes. Chris Beaver is his cousin and general manager and
16 production manager, and he said he was being groomed to be the
17 next president of Beaver Materials.

18 Q Did Mr. Beaver tell you anything about how Beaver Materials
19 determines the list price at which they offer ready-mix
20 concrete for sale?

21 A He said the prices are determined by the board of
22 directors.

23 Q Could you remind me again who he said was on the board of
24 directors?

25 A Chris, Gary, Allyn, himself, and their sales manager, Bob

MEDERNACH - DIRECT / SCHLEEF

1 Matthews.

2 Q Did you ask about Beaver's discount decisions?

3 A I believe I did. And he said again, he repeated that the
4 board would make the decisions, and any discounts would be
5 regarding the time of day that the loads are delivered.

6 Q What, if anything, did you know about Mr. Beaver and his
7 company's role in the price fixing conspiracy when you
8 interviewed him?

9 A I didn't know about their role. That was the point of
10 interview is to determine -- we knew there was allegations of
11 price fixing, and I was aware that there was a meeting, and I
12 was trying to determine his and/or any of the Beaver employees'
13 role in discussions about price fixing.

14 Q Did you ask Mr. Beaver anything about a horse barn meeting?

15 A I did. I asked him if he attended a meeting at Butch
16 Nuckols' barn, and Mr. Beaver stated he wasn't aware of any
17 meeting at a barn.

18 Q Did you ask him if he had ever attended such a meeting?

19 A I asked throughout the interview several times whether
20 Mr. Beaver had any discussions with others about fixing prices
21 for the concrete, if he attended any meetings in which it was
22 discussed, and he denied any knowledge of ever discussing it or
23 meeting with people to discuss it.

24 Q Did he deny ever attending a meeting at Mr. Nuckols' horse
25 barn?

MEDERNACH - DIRECT / SCHLEEF

1 A He denied any knowledge of a meeting at Butch Nuckols'
2 horse barn.

3 Q Did you ask Mr. Beaver if he had been involved in any
4 meetings at all where pricing had been discussed among
5 competitors?

6 A We went in several different ways. I asked Mr. Beaver if
7 he was aware of or participated in any discussions or meetings
8 in which price fixing or setting prices was discussed, and he
9 said no. He did offer to tell me that a customer approached
10 him and he had heard rumors of price fixing, but he couldn't
11 recall the customer's name or the specifics other than a
12 comment, something to the effect of you must have all huddled
13 together and set your prices, but he denied being involved in
14 any of those discussions.

15 Q Did he tell you approximately when that discussion occurred
16 with the customer?

17 A He had mentioned that there was rumors about a year ago,
18 and then that specific instance I don't recall.

19 Q Did he comment upon the general integrity of Beaver
20 Materials employees?

21 A He did, because -- I mean, I didn't know if Beaver
22 Materials was involved, and I kept asking, you know, several
23 different ways throughout the interview, were you involved,
24 were there discussions, could anybody at Beaver Materials --
25 and I know I'm asking him to maybe implicate a relative -- were

MEDERNACH - DIRECT / SCHLEEF

1 any of those guys involved, and he said no, he had the highest,
2 highest confidence in the integrity in Beaver and Beaver
3 Materials.

4 Q Miss Medernach, what effect, in general, does a person
5 being untruthful in an interview have upon an FBI
6 investigation?

7 A It can mislead the investigators, closes down possible
8 avenues of follow-up interviews, investigation, obtaining
9 records, other interviews. It can just misdirect us.

10 MR. SCHLEEF: Thank you. I have nothing further for
11 this witness.

12 THE COURT: Cross, Mr. Lockwood.

13 CROSS-EXAMINATION

14 BY MR. LOCKWOOD:

15 Q Special Agent Medernach, my name is Jeff Lockwood. We were
16 introduced briefly this morning.

17 A Right.

18 Q I represent Chris Beaver and Ricky Beaver.

19 A Okay.

20 Q Would it be accurate to say that there was a chief
21 investigating FBI agent or an agent in charge of the
22 investigation?

23 A There is always a case agent, primary case agent.

24 Q And in this case it was Special Agent Schlobohm, I guess?

25 A That's correct.

MEDERNACH - CROSS / LOCKWOOD

1 Q And so part of your responsibility was to gather
2 information, which you then -- I'll use the term funneled --
3 you got to the case agent, who also was getting information
4 from other agents in the investigation?

5 A Correct.

6 Q And how many FBI agents, if you know, were involved in this
7 investigation?

8 A I don't know.

9 Q Were you involved in actually seizing records at the time
10 of your interview with Rick Beaver?

11 A I conducted the interview of Rick Beaver, completed that
12 and then I went out and saw if there was anything else I could
13 do to help them in finishing up the search warrant.

14 Q And I had little troubling hearing because I think somebody
15 coughed.

16 A I'm sorry.

17 Q I had a little trouble hearing part of your testimony. You
18 were testifying from your notes, and I think you were
19 testifying as to what Rick told you about Chris's position in
20 the company. Do you remember that? You need to see your notes
21 again?

22 A He mentioned that Chris was being groomed to be the next
23 president of Beaver Materials.

24 Q Being groomed?

25 A Being groomed.

MEDERNACH - CROSS / LOCKWOOD

1 Q Okay. I'm sorry, I wanted to make sure that he hadn't you
2 that Chris was the president.

3 A No, he was being groomed to be the next president.

4 Q Did he advise you that both he and Chris were employees of
5 the company?

6 A They were both employed.

7 Q And that the pricing decisions were made by reference to a
8 board?

9 A Prices were set by the board.

10 Q Not by them?

11 A By the board of Beaver Materials, of which they were
12 members of.

13 Q Members only. They didn't describe -- Rick didn't describe
14 any unilateral authority that he had to set any kind of prices
15 or enter into any kind of price agreements on behalf of the
16 corporation?

17 A He mentioned several times that the board, of which he was
18 a member, as well as Allyn and Gary and Bob Matthews, set the
19 prices.

20 Q Did he tell you what office in the corporation Allyn Beaver
21 occupied?

22 A Specific office?

23 Q Yes.

24 A I don't recall.

25 Q Didn't you ask him?

MEDERNACH - CROSS / LOCKWOOD

1 A As far as his position? Are you asking about --

2 Q I'm sorry, what office he held in the corporation?

3 A I mean, I would have to look at my notes again. We talked
4 about what everybody's title and job at Beaver, or with Beaver
5 Materials, is.

6 Q So today you don't recall that he told you that Allyn
7 Beaver was the president of Beaver Materials, or MA-RI-AL
8 Corporation?

9 A It was referred to as Beaver. I would have to look at my
10 notes, but I remember that it was Allyn.

11 Q Did you carry a recording device with you? Is there any
12 recording of this interview at all?

13 A No, there isn't.

14 Q Is there some reason for that? You just -- the Government
15 can't afford to provide them for you? That might be --

16 A It just is not our policy to record interviews, but we take
17 copious notes.

18 Q So what we have here is what is called, is it not, a 302
19 summary?

20 A I have my notes and I have my 302.

21 Q Did you do any other interviews while you were at Beaver
22 Materials on that day?

23 A No, I didn't.

24 Q Were there any other agents that did any interviews that
25 you know of?

MEDERNACH - CROSS / LOCKWOOD

- 1 A At Beaver Materials?
- 2 Q Yes.
- 3 A I'm not sure if there were other -- I mean, they were doing
4 the search warrant at the time, so there were a lot of people
5 there.
- 6 Q About how many?
- 7 A I could only guess, and I don't know because they were
8 doing the search warrant as I walked in and was waiting for
9 Rick to appear at work.
- 10 Q What time of the morning were you there?
- 11 A I was there by 7:30.
- 12 Q And had you been to Mr. Beaver's private residence?
- 13 A We went to the home in the morning, yes.
- 14 Q Did you find anyone home there?
- 15 A His children.
- 16 Q His children. Did they tell you where to find -- I'm
17 sorry.
- 18 A I want to say teenage. But he was gone to work.
- 19 Q Do you know whether or not Allyn Beaver was interviewed at
20 that time by any of your -- any of the FBI agents?
- 21 A I recall everybody was going to be interviewed during the
22 day. We had --
- 23 Q Do you know whether Allyn was present on the Beaver
24 premises while you were there interviewing Rick?
- 25 A I don't know.

MEDERNACH - CROSS / LOCKWOOD

1 MR. LOCKWOOD: Thank you. That's all I have.

2 THE COURT: Thank you. Mr. Voyles.

3 CROSS-EXAMINATION

4 BY MR. VOYLES:

5 Q Good morning.

6 A Good morning.

7 Q The question I have for you, when you were talking to
8 Mr. Rick Beaver did you understand that the pricing that you
9 were talking about in 2004 was different than it had been in
10 2000, 2001, 2002, and 2003? Did you inquire?

11 A I recall us talking about the prices usually increased due
12 to economics.

13 Q No, I meant the way they did pricing. Did you understand
14 in the year 2004 -- December, 2003 and January, 2004, that the
15 company had changed how it did pricing from 2000, 2001, '02,
16 and '03? Did you understand that?

17 A Again, I would have to look at my notes because I know we
18 had a lot of discussion about the pricing, how they set the
19 pricing, and the change. And, as I recall, the prices used to
20 be set just by Allyn, then it became a board decision.

21 Q That is what I was saying. They indicated that that change
22 came in 2004 when you were doing the interview, but in 2001,
23 2002, 2003, Allyn Beaver, the president, set the pricing?

24 A He had said that it changed and the board would do it.

25 MR. VOYLES: Thank you very much.

MEDERNACH - CROSS / VOYLES

1 THE COURT: Anything else of this witness?

2 MR. SCHLEEF: Yes, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. SCHLEEF:

5 Q Miss Medernach, could you remind me again how many
6 interviews you have done?

7 A I would say hundreds.

8 Q Do you ever perform any interviews in your position related
9 to national security matters?

10 A I do.

11 Q How many of these are recorded?

12 A We don't record interviews.

13 Q And again -- permission to approach the witness?

14 THE COURT: Yes.

15 Q What is this document?

16 A This is what we refer to as an FD-302.

17 Q I would like you to look at that document and see if it
18 refreshes your recollection about how many Beavers were on the
19 board of directors.

20 A Allyn, Gary, Chris, and Rick Beaver and Bob Matthews on the
21 board of directors.

22 Q And how many total members is that?

23 A One, two, three, four, five.

24 Q How many of those would be Beavers?

25 A Four.

MEDERNACH - REDIRECT / SCHLEEF

1 Q Now I would like you to turn to the first page, I think it
2 is approximately the second or third paragraph. Could you
3 explain the family relationship for the jury among the Beavers?

4 A Rick is the son of Gary. He is the nephew of Allyn. Gary
5 and Allyn are the company owners, and his cousin is Chris.

6 Q And could you look at the first page and the third
7 paragraph, and do you notice -- did Rick tell you that one of
8 his responsibilities was to bid on jobs?

9 A Yeah, he calls on accounts, reviews incoming bids, obtains
10 bids on smaller ones. So he will meet with customers for bids.

11 MR. SCHLEEF: I have nothing further for this witness.

12 THE COURT: Mr. Lockwood.

13 RECROSS-EXAMINATION

14 BY MR. LOCKWOOD:

15 Q Special Agent Medernach, I'm sorry, I have not had access
16 to your 302 or to your notes. But I want to make sure again
17 and reaffirm that the board of directors you are talking about
18 was the board of directors as of 2004.

19 A I have the discount used to be set by Allyn, and currently
20 the discounts are a board decision.

21 Q So the pricing -- I guess is the point that Mr. Voyles
22 made -- the pricing decisions, up until 2004, according to your
23 interview, were all made by Allyn Beaver?

24 A All I have is that they used to be set by Allyn, and
25 currently. So I don't have a specific date it was changed.

MEDERNACH - RE CROSS / LOCKWOOD

1 And that I have throughout the interview, that he -- that
2 Mr. Rick Beaver has never discussed setting prices with anyone.

3 Q He bid on jobs, but Allyn was the one who determined how to
4 set the prices, at least until 2004?

5 A What I have is that it used to be set by Gary and now it
6 was a board decision. So when I interviewed him on May 25th
7 the board was making the decisions.

8 Q Okay. You just said that it used to be set by Gary. Don't
9 you mean it used to be set by Allyn?

10 A I'm sorry.

11 MR. SCHLEEF: Objection, Your Honor. Asked and
12 answered.

13 THE COURT: She can answer.

14 Q You just misspoke?

15 A Yes. It used to be set by Allyn, now it is the board
16 decision. When that changed, it is not --

17 Q You didn't ask?

18 A I would have to look at my original notes. I just have it
19 was set by Allyn, and currently it is a board decision, which
20 is the four Beavers and Bob Matthews.

21 Q If you looked at your notes do you think it would help you
22 decide whether or not you asked that question?

23 A I don't know.

24 Q Would you like to look at them?

25 A I can look at them.

MEDERNACH - RECROSS / LOCKWOOD

1 MR. LOCKWOOD: Apparently that is not something they
2 want to do. So that is okay. Thank you.

3 THE COURT: Anything else, Mr. Voyles?

4 MR. VOYLES: I have no further questions, Your Honor.

5 THE COURT: Anything else?

6 MR. SCHLEEF: Nothing further, Your Honor.

7 THE COURT: You may step down.

8 (Witness excused)

9 THE COURT: Your next witness.

10 MR. SCHLEEF: The Government would like to call Neil
11 Freeman, Your Honor.

12 THE COURT: This is witness chair up here. If you
13 will come up here I'll swear you in.

14 There has been a motion made and sustained by the Court to
15 separate witnesses in this case, which means you are not to
16 share your testimony with anyone who has been or will be a
17 witness in this matter. Do you understand that?

18 THE WITNESS: Yes.

19 THE COURT: You may inquire.

20 NEIL FREEMAN

21 PLAINTIFF'S WITNESS, SWORN

22 DIRECT EXAMINATION

23 BY MR. SCHLEEF:

24 Q Please state and spell your last name for the record.

25 A My name is Neil Freeman. F-r-e-e-m-a-n.

FREEMAN - DIRECT / SCHLEEF

- 1 Q Are you currently employed, Mr. Freeman?
- 2 A Yes. I am with the FBI.
- 3 Q Where are you assigned?
- 4 A I'm assigned at the Muncie office.
- 5 Q Is the FBI a part of the Department of Justice,
- 6 Mr. Freeman?
- 7 A Yes, it is.
- 8 Q Is the Department of Justice in the Executive Branch of the
- 9 Federal Government?
- 10 A Yes, it is.
- 11 Q How long have you been employed by the FBI?
- 12 A Almost ten years.
- 13 Q How long have you been assigned to the Muncie, Indiana
- 14 office?
- 15 A Almost the entire time.
- 16 Q What are your responsibilities in your current position?
- 17 A I investigate federal criminal violations.
- 18 Q What is your role in criminal investigations?
- 19 A I gather evidence, do interviews, assist other agents in
- 20 their investigations.
- 21 Q Would a violation of the Sherman Antitrust Act be a
- 22 violation of federal law?
- 23 A Yes, it is.
- 24 Q Are you aware the Department of Justice, Antitrust
- 25 Division's investigation into ready-mix concrete in the

FREEMAN - DIRECT / SCHLEEF

1 Indianapolis metropolitan area?

2 A Yes, I am.

3 Q When did you become aware of the Antitrust Division's
4 investigation?

5 A In the spring of 2004.

6 Q Were you involved in the investigation into possible price
7 fixing for the ready-mix concrete industry?

8 A Yes, I was.

9 Q What was your involvement?

10 A I was assigned to interview Chris Beaver, and then
11 subsequent to that to assist on a search warrant.

12 Q Did anybody assist you with this interview?

13 A Yes, an Indiana State Police detective, Donna Ealand.

14 Q How many interviews have you conducted in the course of
15 your investigation?

16 A Well over a thousand.

17 Q Besides interviewing Mr. Beaver and assisting with the
18 execution of the search warrant, did you have any other role in
19 the Antitrust Division's investigation?

20 A No, I didn't.

21 Q Can you describe the morning of the day you interviewed
22 Mr. Beaver?

23 A It was May 25th, 2004. We interviewed him sometime between
24 7:00 and 7:30 in the morning at his home.

25 Q Where was his home?

FREEMAN - DIRECT / SCHLEEF

- 1 A His home is in Noblesville.
- 2 Q Did you identify yourself to Mr. Beaver?
- 3 A Yes, both of us showed credentials and identified ourselves
- 4 by -- me by the FBI and Detective Ealand by state police.
- 5 Q Is this normal procedure for you when you conduct
- 6 interviews?
- 7 A Yes, it is.
- 8 Q Did you tell Mr. Beaver why you wanted to speak with him?
- 9 A Yes, we told him there was allegations of price fixing and
- 10 we would like to find out what his -- what his understanding of
- 11 his operation was as it concerns Beaver Materials.
- 12 Q So did Mr. Beaver understand, from his behavior, why you
- 13 wanted to speak with him?
- 14 A Yes, he did.
- 15 Q Did Mr. Beaver voluntarily agree to speak with you?
- 16 A Yes. He invited us in. I believe he offered is
- 17 refreshments. He was very forthcoming and chatty. Very calm.
- 18 Q Did you wake Mr. Beaver up?
- 19 A It did not appear so. He was dressed when we knocked on
- 20 the door. His kids were getting ready for school. His wife
- 21 was assisting his kids getting ready for school. There was a
- 22 lot of activity in the house already at the time, so I don't
- 23 think we woke him up.
- 24 Q How long did you speak with Mr. Beaver?
- 25 A Probably an hour and a half.

FREEMAN - DIRECT / SCHLEEF

1 Q At the time of your interview did Mr. Beaver appear to be
2 under the influence of drugs, alcohol or medication?

3 A No.

4 Q Did you ask Mr. Beaver what his responsibilities were for
5 Beaver Materials?

6 A Yes. He told us he was the operations manager. He said he
7 had been employed with Beaver for approximately 21 years.

8 Q Did he mention any involvement in sales?

9 A He said that he had become more involved in the last couple
10 years in the pricing and sales area.

11 Q By the last couple of years?

12 A Last two years is what he said.

13 Q Did Chris Beaver mention his relationship with Rick Beaver?

14 A Yes, he did. And there are several Beavers. If I could
15 look at my documentation, I could tell you for sure. I don't
16 want to misstate which relationship he is.

17 MR. SCHLEEF: Permission to approach the witness.

18 THE COURT: You may.

19 BY MR. SCHLEEF:

20 Q Do you recognize this document?

21 A Yes, this is the document I prepared.

22 Q Is that a summary of your interview with Mr. Beaver?

23 A Yes, it is.

24 Q Mr. Freeman, could you please turn to page one, paragraph

25 3?

FREEMAN - DIRECT / SCHLEEF

1 A Right.

2 Rick Beaver is his cousin.

3 Q Did he describe Rick Beaver's position with Beaver
4 Materials?

5 A He said he's in charge of sales.

6 Q Did he mention whether or not Rick Beaver was on the Board
7 of Directors?

8 A Yes, he did mention that.

9 Q And what did he say?

10 A He said that -- well, let me turn the page here. He said
11 the Board of Directors consisted of Rick Beaver, Gary Beaver,
12 Bob Mathews, himself--Chris Beaver, Allyn Beaver, and Shawn
13 Beaver.

14 Q Did you ask Mr. Beaver whether or not he had any pricing
15 responsibilities for Beaver Materials?

16 A Again, he said that that was an area he's becoming more
17 involved with over the last two years because of the upcoming
18 retirement of his father. And Chris said that he was going to
19 be replacing him as president.

20 Q If he was becoming more involved with sales over the last
21 two years, approximately when did Chris Beaver begin becoming
22 involved with sales?

23 A I took that to mean 2002, since we're interviewing him in
24 2004 and he said it had been about two years.

25 Q Did he mention his father and uncle's position with Beaver

FREEMAN - DIRECT / SCHLEEF

1 Materials?

2 A I believe he did. His father, Allyn Beaver, was the
3 president. His uncle, Gary Beaver, the vice-president.

4 Q Well, what was their status with the company?

5 A Can you ask in a different way? I'm...

6 Q Yes. Did he say anything about a change in power at Beaver
7 Materials?

8 A He did say, as I mentioned, that his dad would be retiring
9 soon and that as a result of that Chris would be assuming the
10 presidency.

11 Q At the time of your interview did Chris Beaver indicate
12 he's becoming more or less involved with pricing?

13 A He indicated he was becoming more involved in the pricing
14 area.

15 Q Mr. Freeman, could you tell me what some of the interviews
16 goals were at this time?

17 A There were several goals. One to try and determine, if
18 there was a conspiracy, who the players were in this
19 conspiracy.

20 Another was to determine whether or not Mr. Beaver had
21 participated in a meeting at Butch Nuckols' horse barn. And
22 the third is just to find out the general operation of how
23 Beaver Materials works.

24 Q Did you ask Chris Beaver if he had attended any meetings at
25 Butch Nuckols' horse barn?

FREEMAN - DIRECT / SCHLEEF

1 A I did.

2 Q Could you please tell the jury what his response was?

3 A He denied being at any meeting. He said he didn't think
4 any of the other family members part of Beaver Material had
5 been at it either.

6 Q Did he speculate on why you would believe there was a
7 meeting at Butch Nuckols' horse barn?

8 A He said he couldn't speculate on any reason why there would
9 be a meeting at the horse barn.

10 Q Did he speculate on what type of discussion may have
11 occurred if such a meeting had taken place?

12 A He stated he couldn't imagine why they would have any, what
13 kind of discussion they would be having if they did have a
14 meeting.

15 Q Did you ask Mr. Beaver if he had ever attended meetings
16 along with other competitors in the Indianapolis ready-mix
17 concrete industry?

18 A Yes. And he said they do have Indiana Ready-Mix
19 Association meetings that they periodically go to. And he said
20 that was pretty much the extent of any meetings he would have
21 with any of his competitors is just those meetings.

22 Q Did you also ask Mr. Beaver if he had ever been involved in
23 any discussions with any competitors about price fixing, price
24 establishment, or discounting?

25 A I did ask him that.

FREEMAN - DIRECT / SCHLEEF

1 Q What was his response?

2 A He denied being involved with any kind of discussion of
3 price fixing of any kind.

4 Q Did you revisit this question several times in your
5 interview?

6 A I did.

7 Q Could you tell the jury what his response was each time you
8 revisited this question?

9 A He consistently denied that he had any discussions of that
10 kind.

11 Q Did you ask Mr. Beaver if he was familiar with Butch
12 Nuckols?

13 A I did.

14 He said the only really relationship he had with him was
15 through these Indiana Ready-Mix Association meetings. And
16 other than that, he didn't have any personal involvement with
17 Mr. Nuckols.

18 Q Did you ask -- did he voluntarily whether he had ever met
19 Mr. Nuckols other than at this meeting?

20 A Other than at the meeting, no, he did not indicate that he
21 had met them at all.

22 Q And the meeting we're referring to is the Ready-Mix
23 Association meeting?

24 A That's correct.

25 Q During the course of your interview did you ask Mr. Beaver

FREEMAN - DIRECT / SCHLEEF

1 if he ever met with Butch Nuckols of Builder's Concrete to
2 discuss pricing and discount agreements?

3 A I did.

4 Q What was his response?

5 A He denied meeting with them.

6 Q During the course of your interview did you ask Mr. Beaver
7 if he had ever met with Scott Hughey of Carmel Concrete to
8 discuss pricing and discount agreements?

9 A I did.

10 Q Would you please tell the jury what his response was?

11 A He again denied meeting with them.

12 Q During the course of your interview did you ask Mr. Beaver
13 if he had ever met with Dan Butler of Irving Materials to
14 discuss pricing and discount agreements?

15 A I did. And again he denied meeting with them.

16 Q During the course of your interview did you ask Mr. Beaver
17 if he ever met with Richard or Philip Haehl of Shelby Materials
18 to discuss pricing and discount agreements?

19 A I did. And again he denied meeting with him.

20 Q During the course of your interview did you ask Mr. Beaver
21 if he ever met with Jason Mann of American Concrete to discuss
22 pricing and discount agreements?

23 A I did. And again he denied.

24 Q Did you ask Mr. Beaver if he ever met with Jason Mann to
25 convince him to join Beaver Materials, Carmel Concrete,

FREEMAN - DIRECT / SCHLEEF

1 Builder's Concrete, Shelby Materials and IMI in setting the
2 level of discounting or pricing?

3 A I did. And he denied that.

4 Q During the course of your interview did you ask Mr. Beaver
5 if he ever collectively met with representatives of Builder's
6 Concrete, Carmel Concrete, Irving Materials, and Shelby
7 Materials to discuss pricing and discount agreements?

8 A I did. And he denied having any such meeting collectively.

9 Q What effect would a person being untruthful in an interview
10 have upon your investigation?

11 A It's quite frustrating. Can lead you down wrong paths,
12 waste time in the investigation, waste time on resources. Take
13 you away from the main focus of what you need to be working on.

14 Q When you finished your interview with Chris Beaver, did you
15 believe he was telling you the truth?

16 A I had no reason to doubt that he was telling me the truth.

17 MR. SCHLEEF: I have no further questions for this
18 witness, Your Honor.

19 THE COURT: Thank you.

20 Mr. Lockwood.

21 MR. LOCKWOOD: Thank you.

22 CROSS-EXAMINATION

23 BY MR. LOCKWOOD:

24 Q Special Agent Freeman, my name is Jeff Lockwood. I
25 represent Chris Beaver and Rick Beaver.

FREEMAN - CROSS / LOCKWOOD

1 A Okay.

2 Q Do you recall, sir, testifying before the grand jury
3 concerning this matter?

4 A Yes.

5 Q You were under oath at that time?

6 A Yes, I was.

7 Q Could that have been on or about April 10th of 2006?

8 A That seems correct. I don't know the exact date.

9 Q In answer to a question from a grand juror do you recall
10 saying that you're not the case agent and you were working off
11 of a standard list of questions?

12 A Yes, I do recall.

13 Q And that you don't know where he was on the day of the barn
14 meeting?

15 Let me just read the question.

16 "Do you have any chance to ask him where he may have been
17 on a particular time which these meetings were supposedly held
18 at the horse barn?"

19 Answer: "I did -- I did not ask that question. We were --
20 I'm not the case agent, so we were working off of that standard
21 list of questions. So I don't know where he was on that day."

22 A That's correct.

23 Q And do you recall also saying at that time, testifying
24 under oath at that time that you did not know the answer to the
25 question of whether you or anybody else in the FBI knew the

FREEMAN - CROSS / LOCKWOOD

1 exact dates of those meetings?

2 A That's correct, I still don't know the date.

3 Q So you didn't know the dates the meetings, you didn't know
4 specifics about them, you were operating off of a standard set
5 of questions?

6 A That's correct.

7 Q So his answers didn't lead you down any path, did it?

8 A Lead me down any path, no, sir. Because again I'm not the
9 case agents. So I...

10 Q And what you do I guess from previous testimony is you
11 gather the information and you supply that to the case agent
12 who already has knowledge of the case?

13 A That's correct.

14 Q And he has more knowledge than any of the individual
15 agents, or she does, because that's her responsibility to
16 accumulate this evidence as the case agent, is that a fair
17 statement?

18 A In most instances, yes, that's a --

19 Q So if your working off a standard set of questions, Special
20 Agent Freeman, I guess one of those questions was not about the
21 consistency or who consisted of the Board of Directors of
22 Beaver Material prior to the year 2004 when you did the
23 interview?

24 A Correct. Correct.

25 Q And your standard set of questions did not include any

FREEMAN - CROSS / LOCKWOOD

1 inquiry as to whether or not Allyn Beaver was not in charge of
2 establishing pricing policy solely prior to 2002?

3 A Correct.

4 Q Did you not ask those questions of Chris Beaver?

5 A I did not -- rephrase that please if you could.

6 Q You didn't ask Chris Beaver whether or not his father had
7 been in charge of pricing up until 2004?

8 A No, sir, I don't believe I asked him.

9 Q Didn't ask him about the year 2000 or -- 2000?

10 A No, sir.

11 Q Didn't ask him about 2001?

12 A No.

13 Q 2002?

14 A The year specific, no.

15 Q And you were at Mr. Beaver's home in the early morning with
16 his family, his little children. Were they small children?

17 A They were school age. They were getting ready for school.

18 Q Getting ready to go to school?

19 A Right.

20 Q Did you tell him that if he misled you or made a false
21 statement he might be subject to prosecution for that?

22 A No, I did not.

23 MR. LOCKWOOD: Thank you. That's all.

24 THE COURT: Mr. Voyles.

25 MR. VOYLES: I have no questions, Your Honor. Thank

FREEMAN - CROSS / LOCKWOOD

1 you.

2 MR. SCHLEEF: Your Honor, I have a few questions.

3 REDIRECT EXAMINATION

4 BY MR. SCHLEEF:

5 Q Mr. Freeman, when you conduct interviews such as this one
6 are you also hoping to accomplish other things, perhaps seek
7 cooperation?

8 A Oh, absolutely.

9 Q What other things would you hope to accomplish in an
10 interview such as this?

11 A You always are hoping that you find additional lead
12 information. You're hoping to not only be able to maybe count
13 on this person to serve as in a cooperation, as a cooperating
14 witness against somebody else, you're looking for other steps
15 that will lead you to steps to gather evidence.

16 Q Were you hoping for these types of things when you
17 interviewed Chris Beaver?

18 A Sure.

19 Q And would you remind me again, did Chris Beaver deny
20 attending Butch Nuckols' horse barn meetings?

21 A Yes, he did deny it.

22 Q Did he deny meeting with Scott Hughey of Carmel Concrete?

23 MR. LOCKWOOD: Your Honor, may I object. That's
24 outside the scope of my cross. It's already been asked and
25 answered.

FREEMAN - REDIRECT / SCHLEEF

1 THE COURT: It is. It has.

2 BY MR. SCHLEEF:

3 Q I just have one further question for you. When you create
4 this report and after you conduct this interview, what do you
5 do with that information?

6 A I document it onto what we at FBI call an FD302, an
7 investigative report. In this particular instance I did it the
8 very next day.

9 Q And then what do you do with that information?

10 A That information is forwarded to the case agent to be
11 assembled with all the other evidence to determine further
12 leads and basically where you going to go next with the case.

13 Q If you were a case agent, the lead case agent, you had
14 other agents conducting interviews similar to the one you did
15 for a different case agent, what would you do with the
16 information they retrieved from their interviews?

17 A I would want to review it.

18 Number 2, if it's not matching with the other things that I
19 have said, I need to figure out why it's not matching with
20 other information I have gathered from other sources. If it's
21 not matching and I am able to corroborate that it's the
22 problem, then I tend to target that person as being worthy of
23 more investigation.

24 MR. SCHLEEF: Thank you. I have no further questions
25 for this witness.

FREEMAN - REDIRECT / SCHLEEF

1 THE COURT: Mr. Lockwood.

2 RE-CROSS-EXAMINATION

3 BY MR. LOCKWOOD:

4 Q The goal and objects of your investigation that the
5 government's lawyer just asked you about, you didn't share
6 those observations with Chris Beaver when you interviewed him?

7 A Specifically?

8 Q You didn't say, "Hey, this is how inconvenient it is. If
9 we get some misinformation and this is what we're trying to do
10 here," you didn't have that kind of conversation with Chris
11 Beaver?

12 A No, I did not tell him that.

13 Q And I think you said you forwarded your information to the
14 case agent the very next day?

15 A No, sir. I prepared my report the very next day.

16 Q I see. And you forwarded your report to the case agent
17 when then?

18 A It would have been probably within -- by the time it goes
19 through our set of procedures, probably be three or four days
20 before he got it.

21 Q So would it have been helpful in your experience as an FBI
22 agent all the years you have been doing this if the FBI and the
23 government lawyers who are in charge of this investigation had
24 been informed the very next day that Chris had made
25 misstatements?

FREEMAN - RECROSS / LOCKWOOD

1 A I guess it would have been slightly helpful. I'm not sure
2 what the difference of three or four days would make.

3 Q They would have had the information that there were
4 misstatements and other interviews might be required before
5 they ever even got your report.

6 A That's possible.

7 Q Did you know that the corporate lawyer called Agent
8 Boomgarden in Chicago the next day and advised Agent Boomgarden
9 that these misstatements had been made?

10 MR. SCHLEEF: Objection. Calls for speculation.

11 THE COURT: I will sustain that.

12 MR. LOCKWOOD: That's all. Thank you.

13 THE COURT: Anything else of this witness?

14 MR. VOYLES: I have no questions, Your Honor.

15 MR. SCHLEEF: I have no further questions, Your Honor.

16 THE COURT: You may step down, sir.

17 THE WITNESS: Thank you, sir.

18 (Witness excused.)

19 THE COURT: Your next witness.

20 MR. VONDRAK: Your Honor, the government rests at this
21 time.

22 THE COURT: All right. Ladies and Gentlemen, we'll
23 have a little longer lunch hour for you today than usual.
24 We're going to take a break at this point. There's some
25 matters I need to deal with and we'll reconvene at

1 1:00 o'clock. While you're out don't discuss the case among
2 yourselves. And don't form or express an opinion until I give
3 it to you for your final deliberations. You can step aside
4 until 1:00 o'clock.

5 (Out of the presence of the jury.)

6 THE COURT: All right. You may be seated.

7 Defense I think indicated they would like to make a motion,
8 is that true?

9 MR. VOYLES: That's correct, Your Honor. We have a
10 written motion we filled with the Court. I'm prepared to
11 argue.

12 THE COURT: I'll hear your argument.

13 MR. VOYLES: Please the Court, Your Honor.

14 THE COURT: Mr. Voyles.

15 MR. VOYLES: Judge, we have tendered to the Clerk of
16 the Court for the filing and have tendered to the government,
17 opposing counsel. Really the motion is being filed on behalf
18 of all Defendants at this time. I have been elected to argue
19 the motion.

20 As the Court is aware that at the conclusion of the
21 government's case pursuant to United States Federal Rule of
22 Criminal Procedure 29, we are filing a motion for judgment of
23 acquittal on behalf of all Defendants. I would argue to the
24 Court an issue that, and the Court knows there's a certain
25 standard of proof at the end of the government's case that is

1 required to be met. We understand that the evidence is
2 required to be viewed in the light most favorable to the
3 government.

4 Your Honor, we believe if you look at the evidence as
5 relates to the MA-RI-AL Corporation d/b/a Beaver Materials
6 Corporation, that there is a lack of proof that the corporation
7 or through its officer Allyn Beaver, who is present in the
8 courtroom, that the corporation engaged in any conduct that
9 would be conspiratorial or in fact could be attributed to the
10 corporation.

11 There is a significant issue, we believe, from the evidence
12 that's presented to this jury at this stage that whether or not
13 there ever was an agreement that was entered into, what we have
14 is the issue of two of the individuals, Mr. Chris Beaver and
15 Mr. Rick Beaver attending three meetings. Two by Mr. Rick
16 Beaver, one by Mr. Chris Beaver.

17 During the course of those meetings the evidence appeared
18 to indicate that neither Mr. Chris Beaver nor Mr. Rick Beaver
19 ever had attributed to them any kind of conversation that would
20 indicate that they ascribe to or in any tacit way agreed to any
21 agreement that was alluded to by co-conspirators who have
22 testified in this case, either Mr. Nuckols, Mr. Hughey or Mr.
23 Irving.

24 They were all consistently accurate at least in portraying
25 the meetings, their locations, the people who attended, but

1 there was never any indication that an agreement that other
2 than the fact that people attended the meeting, particularly
3 Chris or Rick Beaver, their attendance alone by the
4 co-conspirators was deemed to be an agreement to the conspiracy
5 that would in fact through the evidence presented by the
6 government attempt to bind the corporation because they were
7 acting for or on behalf of the corporation.

8 We certainly understand now from the evidence that the only
9 person who had authority during the years of the alleged
10 conspiracy to set prices for the corporation was Allyn Beaver.
11 We certainly know from the evidence that Chris Beaver was in
12 fact in operations.

13 We certainly know from the evidence that Rick Beaver was in
14 sales. But we also know from the evidence that neither Chris
15 nor Rick at any of the meetings were ascribed to have indicated
16 any assertions that they were at the meeting but for the
17 purpose to be at the meeting.

18 And what the Court would have to do in weighing the
19 evidence most favorable to the Government is make a
20 determination of whether or not the jury at the time this
21 motion is being made could in any way fashion or believe that
22 the corporation was guilty of the crime. We believe that at
23 this stage of the proceedings that evidence is certainly not in
24 this record.

25 That had they indicated that either Chris or Rick Beaver

1 were actively involved in the meetings, talking as Mr. Nuckols
2 or Mr. Hughey were talking, that there could be then an
3 indication from their actions other than just being present
4 that they in fact were involved in the conspiracy and binding
5 the company that they work for.

6 We believe that when you look at the evidence in the record
7 at this stage, that there's nothing that would bind this
8 corporation to this conspiratorial agreement. At the best we
9 have two individuals who happened to have the last name of
10 Beaver.

11 Had this been Mr. Smith or Mr. Jones. But the government
12 has attempted in this case merely because they have the last
13 name of Beaver. But that means nothing unless you look at the
14 evidence of what the individuals, themselves, did or didn't do.

15 So we would urge the Court at the conclusion of the
16 government's case in chief to issue a ruling pursuant to Rule
17 29(a) on behalf of the defendant corporation that the
18 government in light most favorable to it has failed to
19 establish a conspiracy that would permit this case to go to the
20 jury on behalf of the corporation.

21 In all due respects, Your Honor, we would also suggest on
22 behalf of the two individual Defendants, Mr. Chris and Rick
23 Beaver, as to the issue of the conspiratorial price fixing
24 agreement that the evidence would also be that there is no
25 indication that these individuals on their own behalf have in

1 any way fathomed any kind of evidence that would indicate that
2 they have joined the conspiracy.

3 They did no official act. They did no indication, not only
4 at the meetings, but as we heard not only did the conspirators
5 talk among themselves at this meeting, but they were followed
6 up by repeated conversations either personally at restaurants
7 or bars, or with telephone conversations, none of which
8 involved either Rick Beaver or Chris Beaver, nor Allyn Beaver
9 particularly, the person at the corporation who has the
10 ultimate authority under this record to establish the pricing.

11 It is not an issue that occurred after May 25th, 2004 when
12 the FBI interviewed and there was a determination about members
13 of the Board of Directors, but clearly the evidence is that
14 during the period of the conspiracy there was only one person
15 who set pricing for that corporation.

16 So we would respectfully ask the Court to enter judgment of
17 acquittal on behalf of both Chris and Rick Beaver and the
18 MA-RI-AL Corporation doing business as Beaver Materials on the
19 count of the indictment returned on the issue of conspiracy to
20 commit price fixing. Thank you.

21 THE COURT: Thank you, Mr. Voyles.

22 MR. LOCKWOOD: May it please the Court.

23 THE COURT: Yes.

24 MR. LOCKWOOD: On behalf of the Defendants Chris and
25 Rick Beaver, we would join in Mr. Voyles' motion. We have

1 signed the motion and we would join in the argument to the
2 extent that it applies to those Defendants. Thank you.

3 THE COURT: Did you want to raise the other issues
4 today or --

5 MR. LOCKWOOD: If I may now, sir, if it's convenient.

6 THE COURT: Now is the time.

7 MR. LOCKWOOD: May I get my notes?

8 THE COURT: Yes, you may.

9 MR. LOCKWOOD: Your Honor, we would like to present
10 evidence under Rule 1006 of the --

11 THE COURT: I don't mean that.

12 MR. LOCKWOOD: I'm sorry.

13 THE COURT: I meant on the other count against your
14 client.

15 MR. LOCKWOOD: Oh, no, sir. I have no motion to make
16 about that at this stage of the proceedings. Thank you.

17 THE COURT: Sure.

18 MR. VONDRAK: Your Honor, Mr. Voyles correctly states
19 that when a defendant files a motion pursuant to Rule 29 of the
20 Federal Rules of Criminal Procedure, the Court must view the
21 evidence in the light most favorable to the government. Using
22 that standard, the government has met its burden sufficient to
23 survive a Rule 29 challenge.

24 As this Court is well aware, there are three elements of
25 violation of the Sherman Antitrust Act: That a conspiracy

1 existed, that the defendant knew of the existence of that
2 conspiracy, and that the defendant joined that conspiracy.

3 Mr. Voyles was incorrect when he stated what the burden of
4 proof was as far as the government, as far as the corporation
5 is concerned. There is no need for the government to prove
6 that a high ranking officer was the person who joined the
7 conspiracy. In fact, the evidence in this case is clear that
8 Ricky Beaver was the person who was issuing quotes for bids and
9 had authority to issue those bids.

10 There is no standard -- there is no burden on the
11 government to prove it was an officer of the corporation or
12 that it was the president of the corporation. Any agent
13 acting -- and I believe Your Honor is considering a jury
14 instruction along these lines. Any action by an agent who has
15 authority to do so can bind the corporation.

16 As far as the defendant's activity or lack thereof at the
17 conspiratorial meetings, we have had evidence from Butch
18 Nuckols, Richard Haehl, Price Irving and Scott Hughey that each
19 of the individual Defendants attended conspiratorial meetings
20 and that at the conclusion of those meetings they believed that
21 the two individual Defendants were members of that conspiracy.
22 In addition, we do have evidence that was adduced yesterday
23 from Mr. Hughey that he had conversations with Ricky Beaver and
24 also a conversation or two with Chris Beaver related to pricing
25 pursuant to the conspiracy. So even though that isn't a burden

1 that the government has, we did adduce sufficient evidence for
2 that.

3 Most of what Mr. Voyles brings out to you is argument for
4 the jury. And we have met our burden sufficient for the case
5 to go to the jury.

6 Thank you, Your Honor.

7 THE COURT: All right. Thank you.

8 I'm certain both counsel are more than aware of the burden
9 on that Rule 29 motion and the focus of the Court and the
10 reflection on that motion, which is of course to take the
11 evidence viewed in the light most favorable to the government.
12 And if in listening to Mr. Hughey yesterday and his testimony
13 the jury could believe what he said, they may believe it, they
14 may not, at this point we assume they will, and that would
15 establish enough to defeat a Rule 29 motion as regards both
16 Mr. Chris and Mr. Ricky Beaver. So their Rule 29 motions are
17 denied.

18 The corporation of course is a special category of
19 defendant in this case. And under the rules, the law imputing
20 the acts of the agents of the corporation to the corporation,
21 there is enough evidence in this case that should the jury
22 believe the evidence against Mr. Chris and Mr. Ricky Beaver
23 that they were acting within the scope of their authority. And
24 so that motion is also denied.

25 Now, you wanted to raise another issue. We might as well

1 take this up this morning. Maybe we have time to, after we do
2 this, to go back and talk about the instructions after this, do
3 you think?

4 So let me hear what you have to say about your summary of
5 evidence. And the record again will reflect this matter was
6 taken up at a motion in limine, but it is certainly appropriate
7 for counsel for the defendant to want to raise this issue
8 again, given the government has presented its evidence and
9 rested.

10 Go ahead.

11 MR. LOCKWOOD: And the Defendants are about to present
12 their case. As part of that case, Your Honor, we would like to
13 present evidence under Rule 1006 of the Federal Rules of
14 Evidence. The evidence consists of summaries of bids made by
15 Beaver Material over the course of the life of the alleged
16 conspiracy. It also would include a summary of the actual
17 sales prices for the calendar year 2002.

18 We believe this is admissible, this evidence is admissible,
19 Your Honor, for two reasons. First of all, the government has
20 opened the door to this type of evidence. In Mr. Vondrak's
21 opening statement he said that one of the purposes of the
22 Sherman Antitrust Act was to ensure that the public would have
23 available to it cement products at the lowest possible price.
24 Later on during in his direct examination of one of the
25 prosecution witnesses, and I believe it may have been -- I

1 believe it may have been Mr. Haehl, Mr. Schleef asked in detail
2 how the pricing policies were set. It may not have been that
3 witness. But there was detailed questioning about the internal
4 pricing structures and how those pricing decisions were made.

5 I think that opens up the area for the Beavers to be
6 allowed to testify about how their price structures were set up
7 and how they bid, determined how to bid their prices and what
8 bids they made. But perhaps even more important to the issue
9 of admissibility of this kind of evidence, Your Honor, we would
10 suggest is as a matter of rebuttal and as a matter to attack
11 the credibility of the government's witness, Scott Hughey. If
12 Scott Hughey's testimony is to be believed, he had a number of
13 phone calls with Rick Beaver in which Mr. Beaver in essence
14 said we are complying with the agreement and that we are
15 pricing our product in accordance with the agreement. He also
16 testified that he had one or two conversations with Chris
17 Beaver in which Chris Beaver said virtually the same thing.

18 We believe that it's absolutely essential and crucial to
19 our defense to be able to rebut that testimony.

20 You may recall it was testimony or it was evidence rather
21 that was not disclosed to the defense prior to the trial.
22 Apparently it was not disclosed to the government prior to a
23 very short time before the trial began. We contend that the
24 bids that we actually made throughout the life of this
25 conspiracy and the prices for which we sold our product,

1 actually sold it, during one of the major operative years of
2 the alleged conspiracy is extremely important in rebutting
3 Mr. Hughey's testimony.

4 I acknowledge that Mr. Epstein has mentioned that as to the
5 summaries of the bids there may be a question about whether the
6 government has had access to some of that material. And I am
7 certainly willing to concede that's a possibility. And so to
8 the extent that that is true, we would obviously modify
9 whatever presentation we would make to comply with the
10 discovery rules.

11 THE COURT: Share with me specifically what these, is
12 it one exhibit? Two exhibits? One witness? Two witnesses?
13 Tell me exactly what it is.

14 MR. LOCKWOOD: The first 1006 exhibit would be a
15 spread sheet presented by Rob Shanks, who is a computer
16 operator employed by Beaver Materials.

17 THE COURT: This Mr. Shanks has been a computer
18 operator employed by Beaver for some time?

19 MR. LOCKWOOD: Yes. And part of his normal
20 responsibilities would be to prepare these types of documents
21 from business records.

22 THE COURT: Is he presented as a witness for the
23 corporation?

24 MR. LOCKWOOD: Actually he would be, yes.

25 THE COURT: Okay. And that spread sheet is the one

1 that shows what?

2 MR. LOCKWOOD: What we have asked him to do is go
3 through the business records of Beaver Materials and the
4 records that were seized by the government and returned and put
5 down all the bids that were made from the year 2000,
6 approximately the middle of the year 2000 until July I believe
7 of 2004. And it will show what the -- not what the price list
8 was or what the discount was, but what the actual bid was,
9 every bid that was made by the corporation through that period.

10 And I would represent to the Court that it will show that
11 there was no compliance with any artificial price agreement,
12 that the bids were all over the place. I won't say that none
13 of them fell within, you know, in that magic number of \$5.50
14 discount after a 2-dollar or 3-dollar discount, but it's
15 evidence of what our bids were for the jury to make of it what
16 they will.

17 THE COURT: It's being presented for what reason?

18 MR. LOCKWOOD: To show we did not bid in compliance
19 with any agreement, that we bid the job to get the job.

20 THE COURT: As you're aware, the allegation is that
21 there was an agreement. And it is the agreement, itself, that
22 is the crime. And whether that crime ever gets carried out or
23 not is not the issue for this jury. The only issue for this
24 jury is was there an agreement to fix prices reached in
25 violation of the Sherman Act. You understand, I'm sure you do.

1 MR. LOCKWOOD: I understand that, Your Honor.

2 THE COURT: So with that in mind, how can a record of
3 their, of their actual bids be of any assistance to the jury in
4 determining whether there was in fact an agreement?

5 MR. LOCKWOOD: The direct evidence of our clients'
6 involvement in the conspiracy consists of a series of witnesses
7 who say that our client said nothing at meetings. The rest of
8 the government's evidence is entirely circumstantial based upon
9 extraneous types of situations, meetings, comments, phone
10 calls.

11 If the government can rely upon that kind of circumstantial
12 evidence to prove its case, to wit, the only issue whether we
13 agreed, we believe we should be able to rely on circumstantial
14 evidence to prove that we never did agree. And while it is
15 certainly true, sir, and I acknowledge that the agreement is
16 the thing if you make agreement you violated the law, there is
17 also an instruction I believe that you will be giving that all
18 of the circumstances and the actions of the alleged
19 conspiracies are things that the jury can consider and should
20 consider in determining whether they actually entered into the
21 agreement.

22 THE COURT: Now is this the piece of evidence that you
23 want to introduce also to challenge the truth telling of
24 Mr. Hughey?

25 MR. LOCKWOOD: Yes, I believe it would challenge the

1 truth telling of Mr. Hughey.

2 THE COURT: So you want to introduce it for both of
3 those reasons.

4 MR. LOCKWOOD: Yes, sir.

5 THE COURT: Now what's the other piece of evidence?

6 MR. LOCKWOOD: The other piece of evidence consists of
7 a portion of a power point presentation that was put together
8 by a man by the name of Wayne Bartell who was employed at the
9 Centricity. That name has come up during the trial a couple of
10 times.

11 And what they were doing at Beaver was helping them to
12 establish how to price their products more efficiently, more
13 effectively, and how to maximize their profits by introducing a
14 concept -- this is not particularly relevant except for
15 background, Your Honor. The introduction of the concept was
16 that they should not be concentrating so much on what they bid
17 a job for, but they ought to be paying attention to their
18 trucks as though they were renting them and maximizing the
19 amount of rent per hour.

20 So in the course of that project Mr. Bartell and his
21 assistants put together a slide presentation, power point
22 presentation, part of which showed all of the actual sales
23 prices that were acquired by or were effective or were charged
24 to Beaver's customers. And it's a graph. And there's a little
25 diamond as I recall. And the graph consists of levels of

1 pricing.

2 THE COURT: You have provided the information upon
3 which these conclusions were drawn?

4 MR. LOCKWOOD: He obtained it from the business
5 records of Beaver Materials.

6 THE COURT: Which you provided to the government?

7 MR. LOCKWOOD: Yes. And they have seen the
8 presentation I think at 2:00 o'clock the day before yesterday.

9 THE COURT: So it's essentially the same thing as the
10 other exhibit?

11 MR. LOCKWOOD: Precisely the same reasons.

12 THE COURT: Okay. Thank you.

13 MR. LOCKWOOD: Thank you.

14 THE COURT: Anything else you want to add? I don't
15 mean to cut you off.

16 MR. LOCKWOOD: No, you didn't. That's all.

17 THE COURT: All right. Counsel.

18 MR. EPSTEIN: Your Honor, I'm only addressing about
19 the Shanks document because that's the one I'm familiar with.

20 Mr. Schleef will address the other document.

21 I would just like to say I think the Court hit the nail on
22 the head. Our problem with this document all along has been
23 that, as Mr. Lockwood said, this is used to demonstrate that
24 there was no compliance. But that's affects evidence. The
25 agreements is the crime. That's what the evidence should go

1 to. Whether or not there was compliance is legally irrelevant,
2 and this document goes to that. Therefore --

3 THE COURT: Didn't you ask witnesses from -- I think,
4 didn't you ask Mr. Hughey and Mr. Haehl and even Mr. Irving
5 whether they abided by the agreement?

6 MR. EPSTEIN: I believe I asked Mr. Haehl whether he
7 priced in accordance. And that's to demonstrate that he
8 understood the agreement, he was party to an agreement. Not to
9 show -- we didn't say on this date was this price in
10 accordance, on this date was this price in accordance. We
11 asked him generally and generally simply to demonstrate our
12 burden, which is the agreement was the crime.

13 I believe I asked Mr. Haehl.

14 THE COURT: Then why can't the defendant put in a
15 piece of evidence to demonstrate that he didn't for the same
16 reason?

17 MR. EPSTEIN: Because as counsel testified, that is
18 not what they -- counsel stood up here and told you why he was
19 going to use it, that there was no compliance, and he did not
20 comply. That is his words and that is his testimony as to what
21 they were going to use the documents for. I have to take him
22 at his word. That is his word. That directly refutes what the
23 Judge has already ruled on affects evidence.

24 THE COURT: Well, this is interesting stuff, isn't it?
25 You think when you start out that it is just whether there is

1 an agreement, and yet you ask -- not just you, I think some of
2 the others on your -- other lawyers for the Government also
3 asked the same thing. I was just a little troubled as to why
4 the Government can ask these consistency questions and the
5 defendant can't raise that to show, number one, that Mr. Hughey
6 was incorrect in some of his statements so as to attack his
7 credibility; and number two, to show that the defendants, in
8 fact, did not engage -- or did not enter into any agreement.

9 MR. EPSTEIN: If that is what they were presenting the
10 evidence for, I would agree, Your Honor, but that is not what
11 they are presenting the evidence for. Counsel's statement to
12 that effect --

13 THE COURT: I don't think it is a stretch. I don't
14 think I'm putting any words in counsel's mouth when I suggest
15 that. I don't think it is a stretch to say that is what he
16 wants to use that for.

17 I don't mean to interrupt you. Go right ahead.

18 MR. EPSTEIN: I think it would be equally
19 inappropriate had we presented a chart with 500 examples where
20 they priced in accordance with the agreement. We wouldn't have
21 done that because that affects evidence.

22 The other point, Your Honor, that I think should not be
23 overlooked is, and it is deeply troubling that, like I said,
24 there is almost 500 --

25 THE COURT: If you are going to be troubled you might

1 as well be deeply troubled.

2 MR. EPSTEIN: That is what I figure, Your Honor.

3 There is approximately 500 bids on this sheet. We have
4 gone back through the records produced to us and found
5 approximately -- well, exactly 338.

6 THE COURT: I agree that is a problem, and I would
7 like for that to get resolved before I go ahead and rule,
8 because if those -- if the Government doesn't have the
9 information that substantiates the summary material -- or the
10 summary offering, the rule, of course, is that that is not
11 admissibility.

12 So I suggest you take a look at that. Take about 20
13 minutes, or so, to take a look at that. Can you do that in 20
14 minutes?

15 MR. LOCKWOOD: May I address that briefly?

16 THE COURT: Sure.

17 MR. LOCKWOOD: Mr. Voyles and I need to talk to
18 Mr. Shanks again, but we believe that all of the information
19 that we have put together had Government stickers on it that
20 they had taken and reported back to us. So we will show that
21 to the Government again, and then we need to see what they
22 acknowledge that they do have. So maybe 20 minutes is
23 sufficient.

24 We have asked Mr. Shanks to be here. I think he may be
25 here already.

1 THE COURT: Why don't you just let me know at 11:15
2 where you are on that.

3 MR. LOCKWOOD: Yes, sir.

4 THE COURT: Then I'll give you another five minutes
5 each to argue about it, then I'll rule on it, and then we may
6 have time to look at the instructions.

7 Let's assume that one of these two witnesses testifies.
8 How many days now do you need to present your defense
9 adequately?

10 MR. LOCKWOOD: I wouldn't want to be bold enough to
11 suggest we could get that done all in this afternoon, but I
12 think it would be very close to having the defendants' case
13 over today.

14 THE COURT: The only reason I asked is when we would
15 argue -- that would give us time tonight to argue the
16 instructions, which you have all had.

17 Okay. Well, let's do that then. Let's reconvene at 11:15.

18 MR. LOCKWOOD: Thank you.

19 THE COURT: You are welcome.

20 (The Court recessed from 10:40 A.M. to 11:20 A.M.)

21 (Jury not present)

22 THE COURT: You may be seated.

23 And so, Mr. Lockwood.

24 MR. LOCKWOOD: Do you care if I paraphrase
25 Shakespeare?

1 THE COURT: Shakespeare would be fine if you can
2 balance it with a little Ogden Nash.

3 MR. LOCKWOOD: We have sent for the raw data, and that
4 is the difficulty. Our summary of our raw data doesn't seem to
5 jibe with the Government's. And, you know, if the situation
6 were reversed, you know, if Jonathan Epstein was Jeff Lockwood
7 and Jeff Lockwood was Jonathan Epstein, that would be a
8 Jonathan Epstein that would be complaining very loudly about
9 the introduction of this evidence. So we hope that we can get
10 a little bit more time so we can at least let the Government
11 take a look at what we think we have.

12 THE COURT: The rule requires that the evidence
13 underlying the summary be admissible and admitted. So are you
14 going to offer the evidence underlying the --

15 MR. LOCKWOOD: My understanding was that, yes, we
16 would.

17 THE COURT: Okay. So you are having difficulty
18 determining where that is or what that is?

19 MR. LOCKWOOD: Our summary that is based on that
20 evidence differs from the Government's summary based on that
21 evidence.

22 THE COURT: So how much time do you think you need to
23 get that thing taken care of?

24 MR. LOCKWOOD: Well, we will need a little bit of time
25 to get it here. That should take another 15 minutes, or so.

1 The Government will want to take a look at it.

2 THE COURT: That is not so bad. You can do it in an
3 hour?

4 MR. LOCKWOOD: I think we will be in a position in an
5 hour to say, Judge, we have this solved or we are going to have
6 to withdraw --

7 THE COURT: All right.

8 MR. EPSTEIN: Your Honor, just to be clear, when they
9 get the documents here we need to compare that with what we
10 have.

11 THE COURT: Sure, that is all right. But the point is
12 we will have something for the jury to do at 1:00 o'clock,
13 because we can't leave the jury sitting upstairs thinking that
14 we are doing something that we are not doing.

15 MR. LOCKWOOD: We understand.

16 THE COURT: So we want to reconvene at a quarter to
17 1:00. Will you have things worked out by then, or not, either
18 way?

19 MR. EPSTEIN: I'm not sure -- you want us to review
20 all the documents?

21 THE COURT: I want you to look at it and I want you to
22 see whether or not the document that is being presented is
23 reflective of the underlying materials.

24 MR. EPSTEIN: We will, obviously, do our best to
25 review it in the short time. Obviously, it would be nice to

1 have two weeks.

2 THE COURT: Well, of course it would, but the best
3 laid plans -- that is not Shakespeare.

4 I never did get your Shakespeare.

5 MR. LOCKWOOD: That is kind of a stretch of a quote
6 from Julius Caesar.

7 THE COURT: I knew you weren't going right to kill the
8 lawyers. I knew that.

9 MR. LOCKWOOD: No. That is Henry the 6th.

10 THE COURT: That's good. All right, I'll see you
11 about a quarter of 1:00 in this very spot.

12 MR. LOCKWOOD: Thank you.

13 THE COURT: Thank you.

14 (The Court recessed from 11:25 A.M. to 12:45)

15 (Trial resumed, 12:45 P.M.)

16 (Jury not present)

17 THE COURT: And so how goes it, Mr. Lockwood?

18 MR. LOCKWOOD: Your Honor, after reviewing the
19 materials we had available and the time it would take to try to
20 get everything straightened out it is just not appropriate for
21 us to do that and we withdraw our request to admit the
22 summaries of the bids. We would, however, like to present the
23 sales summary for the year 2002 for Mr. Bartel.

24 THE COURT: You have got the underlying materials?

25 MR. LOCKWOOD: I believe so.

1 THE COURT: Do you object?

2 MR. SCHLEEF: Yes.

3 THE COURT: Can we start at 1:00 o'clock?

4 MR. LOCKWOOD: Yes, sir.

5 THE COURT: I'll see you at 1:00 o'clock.

6 (The Court recessed from 12:50 P.M. to 1:00 P.M.)

7 (Jury not present)

8 THE COURT: So, are we ready for the jury, yes?

9 MR. SCHLEEF: Yes.

10 THE COURT: All right.

11 (Jury present)

12 THE COURT: You may be seated.

13 Afternoon, ladies and gentlemen.

14 Did you have a pleasant noon hour?

15 Good.

16 Is the defense ready to proceed?

17 MR. VOYLES: We are, Your Honor.

18 THE COURT: You may call your first witness.

19 MR. VOYLES: Call Charles Sheeks.

20 THE COURT: This is witness stand up here, sir. If
21 you would come up I'll swear you in.

22 There has been a motion made and sustained by the Court to
23 separate witnesses in this case, which means you are not to
24 share your testimony with anyone who has been or will be a
25 witness in this matter. Do you understand that?

1 THE WITNESS: Yes.

2 THE COURT: You may inquire.

3 MR. VOYLES: Thank you, Your Honor.

4 CHARLES R. SHEEKS

5 DEFENDANTS' WITNESS, SWORN

6 DIRECT EXAMINATION

7 BY MR. VOYLES:

8 Q Please state your name for the Court and jury, and spell
9 your last name.

10 A Charles R. Sheeks. S-h-e-e-k-s.

11 Q And what is your business or occupation, Mr. Sheeks?

12 A I'm an attorney.

13 Q And where are you licensed to practice law?

14 A State of Indiana, Federal District Courts, and the United
15 States Supreme Court.

16 Q How long have you been a member of the bar of the State of
17 Indiana?

18 A 1973, so 33 years.

19 Q What does your practice of law generally consist of?

20 A At this point all civil. I have done criminal in the past,
21 but at this point I do civil for small companies, mom and pop
22 corporations, individuals, some estate planning. Probably
23 easier to tell you what I don't do. I don't do divorces, I
24 don't do bankruptcies, and I don't do extremely large
25 litigation because I'm in a small law firm.

SHEEKS - DIRECT / VOYLES

1 Q Are you acquainted with Beaver Materials or the MA-RI-AL
2 Corporation?

3 A Yes, sir.

4 Q How do you know them?

5 A I have represented them for at least six or seven years.

6 Q As a corporate client?

7 A Yes.

8 Q Essentially what do you do for the corporation? What does
9 a corporate lawyer do?

10 A Well, probably the best answer is whatever the traffic will
11 bear. Whatever they need. I review contracts for them. I
12 negotiate for them sometimes. I keep their minute books
13 up-to-date. I try to make sure they are following all the
14 state rules about corporations to stay in good standing. I
15 have done a handbook for them for their employees. Just all
16 the things necessary for them to run a business.

17 Q Could you please indicate to the jury the corporate
18 structure? And I mean by that, who are the officers? Who are
19 the directors? Who are the board of directors?

20 A Of MA-RI-AL Corporation?

21 Q Of MA-RI-AL Corporation.

22 A There are two shareholders, Allyn Beaver and Gary Beaver.
23 There are two directors on the board of directors, Allyn Beaver
24 and Gary Beaver. And there are two officers, Allyn Beaver and
25 Gary Beaver.

SHEEKS - DIRECT / VOYLES

1 Q Does Chris Beaver or Rick Beaver have any corporate office?

2 A No, since the '50s it has been Allyn and Gary only.

3 Q If someone would say they have a board of directors meeting

4 would it be inaccurate to say that Gary and Allyn and Chris and

5 Rick would be the members of that board of directors?

6 A They are not the board of directors of the corporation. It

7 is only Allyn and Gary. They have managers meetings.

8 Q So if someone said they had a meeting and Rick and Chris

9 were involved, they would be in the form of corporation

10 managers?

11 A Yes, not directors.

12 Q They would have managerial responsibilities within the

13 corporation?

14 A Yes, sir.

15 Q What is the legal relationship between Gary and Allyn? Are

16 they brothers?

17 A They are brothers.

18 Q Is Allyn the president of the corporation?

19 A Yes, sir.

20 Q What is the role of Mr. Gary Beaver?

21 A Gary is the vice-president and --

22 Q Go ahead.

23 A And the secretary.

24 Q Is Gary Beaver actively involved in the corporation?

25 A Yes, but not to the extent that Allyn is.

SHEEKS - DIRECT / VOYLES

1 Q Mr. Sheeks, I want to call your attention to on or about
2 the 25th day of May of the year 2004. Did you have an occasion
3 to receive a call from your corporate clients, the MA-RI-AL
4 Corporation Beaver Materials?

5 A Yes, I did.

6 Q And who would have called you?

7 A Allyn Beaver.

8 Q And did Mr. Beaver request you go someplace?

9 A Yes, he -- yes, he did.

10 Q Where?

11 A Up there, up to their office.

12 Q He asked you to come to the corporate office?

13 A Yes, sir.

14 Q Where is that located?

15 A It is up on River Road just south of the main highway going
16 east and west through Noblesville.

17 Q And about what time of the day or night were you there,
18 sir?

19 A I would guess that it was late morning. I don't recall
20 that specifically. I know it was that day, but it was late
21 morning, I believe.

22 Q Do you recall why you went there that day?

23 A Allyn called me and told me that a search warrant had been
24 served and he wanted to talk to me about it.

25 Q Okay. And you went to the business?

SHEEKS - DIRECT / VOYLES

- 1 A Yes, sir.
- 2 Q During that time did you have contact with Allyn Beaver?
- 3 A Yes, I did.
- 4 Q Did you have contact with Chris Beaver?
- 5 A I believe so.
- 6 Q And Rick Beaver?
- 7 A Yes.
- 8 Q Was there a time in that day that you learned that the
- 9 people at Beaver Materials, particularly Allyn, Chris, and
- 10 Rick, had been interviewed by agents of the FBI?
- 11 A I don't -- yes, I did learn that they had been interviewed,
- 12 yes.
- 13 Q Did you, in fact, discuss with them, or have any contact
- 14 about the source of that interview, or the context of those
- 15 interviews?
- 16 A No. I had something I had to do that afternoon. I don't
- 17 remember if it was a court appearance or a client coming in.
- 18 So I asked to meet with them the next morning at my office.
- 19 Q So that would be the 26th day of May of the year 2004?
- 20 A Yes. And we met the first thing in the morning.
- 21 Q They met with you at your office?
- 22 A Yes.
- 23 Q Did you, on the 26th of May, the year 2004, have a chance
- 24 there to talk to Chris and Rick Beaver?
- 25 A Yes, I did.

SHEEKS - DIRECT / VOYLES

1 Q Did you have a chance to learn about the interviews that
2 they had conducted with -- or conversations they had had with
3 the Federal Bureau of Investigation on the 25th?

4 A Yes. That was the purpose of the meeting.

5 Q And did they tell you that they had spoken individually to
6 agents?

7 A Yes, they did.

8 Q Did they tell you that they had not been truthful with the
9 agents?

10 A Yes, they did.

11 Q Did they ask you to do anything for them in that -- on that
12 behalf?

13 A I suggested what might be done to alleviate that problem,
14 and they agreed and said go ahead.

15 Q All right. And what, if anything, did you do at the
16 request of your clients, Chris and Rick Beaver, as members --
17 in fact, as the corporate lawyer that day on behalf of that
18 corporation?

19 A I called the Justice Department and advised them that these
20 gentlemen had made misstatements to their agents the morning
21 before.

22 Q And who did you talk to at the Department of Justice?

23 A Michael Boomgarden.

24 Q Who would Mr. Boomgarden be identified to you? Who was he
25 and what was his occupation?

SHEEKS - DIRECT / VOYLES

1 A He worked for the Justice Department, and my clients had a
2 business card of his. Apparently he was either at the
3 interviews or someone there gave them a card.

4 Q Was he an attorney?

5 A He was an attorney, yes.

6 Q Did you ask him, or indicate to him the nature of your
7 call?

8 A Yes, I did.

9 Q Did you indicate to him specifically the individuals you
10 were calling about?

11 A Yes, I did.

12 Q Did you indicate to him specifically the reason for your
13 call?

14 A Yes.

15 Q And did you tell him that the statements that they had made
16 on the 25th were inaccurate and they wanted to correct them?

17 A Yes, I did.

18 Q And did Mr. Boomgarden invite you and/or either Chris or
19 Rick Beaver to immediately come or meet with agents of the FBI,
20 or anyone else, to correct what had happened on the 25th?

21 A No.

22 Q Did you ever receive a call from Mr. Boomgarden following
23 up the call you made to him on the 26th of May of the year
24 2004?

25 A No, I did not.

SHEEKS - DIRECT / VOYLES

1 MR. VOYLES: I have no further questions, Your Honor.

2 THE COURT: Cross-examine.

3 CROSS-EXAMINATION

4 BY MR. VONDRAK:

5 Q Good afternoon Mr. Sheeks.

6 A Good afternoon, Mr. Vondrak.

7 Q We have met before, haven't we?

8 A Yes, sir.

9 Q You testified earlier that you have been representing the
10 Beavers for six or seven years, is that correct?

11 A At least that long, sir.

12 Q How long have you known the Beavers?

13 A The same period of time. I did not know of them before.

14 Q During the course of six or seven years in which you did
15 all of the corporate work for them and helped them with
16 employee manuals, and things like that, how much did they pay
17 you over the last six or seven years?

18 A I have no idea total. Total, I don't know.

19 Q Is it more than \$50,000?

20 A Over six or seven years, yeah, probably.

21 Q Is it over \$100,000?

22 A I just don't know. I didn't know you were going to ask me.

23 Q You testified earlier that on May 25th you became aware of
24 the fact that a search warrant was executed on the premises of
25 Beaver Materials, is that correct?

SHEEKS - CROSS / VONDRAK

1 A Yes, sir.

2 Q And that on May 26th you had a conversation with Chris
3 Beaver, is that correct?

4 A Chris, Allyn, and Rick, yes.

5 Q And you testified earlier that Chris Beaver told you that
6 he had not told the FBI the truth during his interview the
7 previous day, is that correct?

8 A Yes, sir.

9 Q Did he tell you that he had, in fact, been at the horse
10 barn meeting?

11 A Yes, that is what he told me. He said he told them he had
12 not been, but he, in fact, had been at a meeting.

13 Q What other statements did he tell you that he told the
14 FBI -- let me ask a better question.

15 In addition to the misstatement, as you characterized it,
16 about having never been at the horse barn, what other
17 statements did Chris Beaver identify for you as having been
18 falsely stated to the FBI?

19 A That was the only one.

20 Q On May 26th -- by the way, where did these conversations
21 take place?

22 A Which one?

23 Q Your conversations with Chris Beaver and Rick Beaver.

24 A Okay, on the 25th I went up to their offices and talked
25 briefly to them. We did not discuss his statement or the horse

SHEEKS - CROSS / VONDRAK

1 barn. I had to be somewhere else. I don't remember where it
2 was, court or a client, but I asked them to come down the next
3 morning to my office, and that is when we got into the details
4 of what had gone on the day before.

5 Q And so was it on May 26th that you came to understand that
6 Mr. Chris Beaver and Mr. Ricky Beaver had made false statements
7 to the FBI?

8 A Yes.

9 Q And what did Ricky Beaver tell you that was false in his
10 statement to the FBI?

11 A That he had been to one of the meetings.

12 Q Did he tell you where that meeting was?

13 A If he did, I don't recall.

14 Q Did he tell you how long ago that meeting had been?

15 A I remember it had been a couple of years.

16 Q Did he tell you what was discussed at that meeting?

17 A Very briefly. He told me that they were discussing the
18 price of concrete to go in roads, and that Beaver doesn't make
19 concrete that goes in roads, so he was kind of bored by it.
20 There may have been other things, but that is all he mentioned
21 to me.

22 Q Did he tell you where that meeting had taken place?

23 A If he did, I don't recall.

24 Q Did Chris Beaver, when he told you about the meeting at the
25 horse barn, did he tell you what was discussed at that meeting?

SHEEKS - CROSS / VONDRAK

1 A He told me one of the things -- one of the things he told
2 me was discussed was the credit situation. They had concrete
3 finishers who would buy concrete from the various suppliers and
4 not pay them. And so they would wear their welcome out at one
5 place and they would go to another supplier, and they wanted to
6 see if they could stop that by letting one another know when a
7 finisher was deeply in debt to one of them so he couldn't go
8 get free concrete out of the next one.

9 Q Did he identify anything else about his interview with the
10 FBI that was false?

11 A No, he did not.

12 Q Now, you testified earlier that on May 26th, 2004, you
13 called Michael Boomgarden?

14 A Yes, sir.

15 Q Did you make any documentation of your conversation with
16 Mr. Boomgarden that day?

17 A Yes, I did. I logged my time on my time sheets, and I also
18 have my -- I'm sorry, I also have my long distance records that
19 show the call to his office.

20 Q Did you memorialize your conversation -- did you send a
21 letter to Mr. Boomgarden to confirm your conversation with him?

22 A No, I did not. He said fine, thanks, and so I assumed
23 there was no need for that.

24 Q Did you ever send any correspondence to Mr. Boomgarden
25 concerning conversations that you had with him?

SHEEKS - CROSS / VONDRAK

1 A I'm sure I did because we discussed a great number of
2 documents that the Government wanted and I was gathering them
3 up and I'm sure I wrote him about that.

4 Q And when you sent that letter to Mr. Boomgarden it was
5 important for you to memorialize what your conversation was
6 with him, wasn't it?

7 A Those didn't have to do with conversations. They had to do
8 with here are these documents you requested, and I'm trying to
9 find the others. And then one of them was, "I don't want to
10 send you the original minute book, how about copies?" So they
11 didn't have to do with phone conversations.

12 Q It was important for you, though, to document accurately
13 what you had discussed with Mr. Boomgarden, wasn't it?

14 A I don't know that I ever wrote him a letter that was, you
15 know, this document or conversation. I think I only wrote him
16 transmittal letters and one request letter, but I would have to
17 look back through the file to see.

18 Q Well, let me see if I can help you with that. I'm going to
19 show you what has been marked as Government's Exhibit Number
20 45.

21 Your Honor, may I approach?

22 THE COURT: Yes.

23 Q Would you tell the ladies and gentlemen of the jury what
24 document number -- what Government's Exhibit Number 45 is?

25 A It is a letter I wrote on May 28th to Jonathan Epstein.

SHEEKS - CROSS / VONDRAK

1 Q And does anything in this letter refer to a telephone
2 conversation that you had with Mr. Boomgarden?

3 A Yes, it does.

4 MR. VONDRAK: Your Honor, at this time I would like to
5 have Government's Exhibit Number 45 admitted into evidence.

6 MR. VOYLES: I have no objection, Your Honor.

7 MR. LOCKWOOD: I object to certain portions of the
8 letter that refer --

9 THE COURT: Specifically which paragraphs would those
10 be?

11 MR. LOCKWOOD: Beginning with the last paragraph of
12 the first page. The next paragraph and the one immediately
13 above the signature line.

14 THE COURT: Is that the only objection you have?

15 MR. LOCKWOOD: If I may have just a moment.

16 THE COURT: Certainly.

17 MR. LOCKWOOD: That is the only objection I have.

18 THE COURT: I'm going to overrule the objection.

19 Exhibit 45 is admitted.

20 (Government's Exhibit(s) 45
21 received in evidence.)

22 Q Mr. Sheeks, at the time you sent this letter it was
23 important to you to be accurate in the reflection of your
24 conversation with Mr. Boomgarden, isn't that correct?

25 A I try to be accurate in all my letters, yes. This was to

SHEEKS - CROSS / VONDRAK

1 Mr. Epstein, though.

2 Q In this letter to the Department of Justice it was
3 important for you to accurately reflect your conversation,
4 isn't that correct?

5 A Yes.

6 Q And it was important in particular because this was a very
7 serious matter for your client, isn't that correct?

8 A I wouldn't say that this matter would be any more important
9 or serious than any letter I write. I try to be accurate in
10 every letter I write. I don't succeed, but I try.

11 Q And when you write a letter to the United States Department
12 of Justice on behalf of your client relating to the execution
13 of a search warrant on your client's premises, you want that
14 letter to be accurate, don't you?

15 A Yes.

16 Q Directing your attention to the top of this letter. Could
17 you tell us what the date of this letter is?

18 A May 28th, 2004.

19 Q And it is directed to Mr. Epstein of the United States
20 Department of Justice, is that correct?

21 A Yes, it is.

22 Q And the first thing -- could you read the first
23 paragraph -- the first sentence?

24 A "Dear Mr. Epstein: This is to confirm a telephone
25 conversation I had with Michael Boomgarden on May 27th, 2004,

SHEEKS - CROSS / VONDRAK

1 regarding my client, MA-RI-AL Corporation."

2 Q So the conversation that you had with Mr. Boomgarden
3 relating to the misstatements, as you put them, did not take
4 place on May 26th, 2004, did they?

5 A Yes, they did. This is a different conversation that I had
6 with Mr. Boomgarden.

7 Q Does it say anywhere in this letter that you had an
8 additional conversation with Mr. Boomgarden?

9 A Yes, I had one on May 27th. It had to do with documents,
10 primarily. We had received a subpoena the 25th that called for
11 documents in a very short period of time, and we were given
12 three weeks after it was issued, and I needed to discuss with
13 him we needed a little bit more time.

14 Q Mr. Sheeks, you testified that the conversation you had
15 with Mr. Boomgarden was on May 26th, is that correct?

16 A The first one, yes.

17 Q And this letter reflects a conversation you had with
18 Mr. Boomgarden on May 27th, 2004, is that correct?

19 A It deals with that in part, yes.

20 Q Directing your attention down to -- you asked for the
21 extension in the second paragraph because of the date that you
22 received the subpoena, and then could you read the third
23 paragraph to the jury?

24 A I also advised him that, "One of the employees of my client
25 made a misstatement to one of your agents to the effect he had

SHEEKS - CROSS / VONDRAK

1 not attended a meeting at what has been referred to as, quote,
2 'Butch's barn'," unquote, period. "He did, in fact, attend the
3 meeting."

4 Q Now, this letter doesn't identify which of your clients had
5 been at Butch's barn, does it?

6 A I haven't read the rest of it. It doesn't so far.

7 Q Take a moment, read the letter.

8 A No, it does not.

9 Q And this letter does not say that both of your clients, or
10 two individuals from your company, had made a misstatement to
11 the FBI, does it?

12 A No, it does not.

13 Q And this letter doesn't say when this meeting at Butch's
14 barn took place, does it?

15 A No, it does not.

16 Q And this letter doesn't say who, in addition to your
17 client, was present at this meeting, does it?

18 A No, it does not.

19 Q And it was important for you to record what was -- what
20 your conversation was with Mr. Boomgarden, wasn't it?

21 A Portions of it, yes.

22 Q Portions of it. It was important for you to point out that
23 Mr. Boomgarden had agreed to accept a Xerox copy of the
24 corporate records, isn't that correct?

25 A I wanted Mr. Epstein to know that. I don't know that it

SHEEKS - CROSS / VONDRAK

1 was super important, but, yeah, I wanted Mr. Epstein to know
2 that.

3 Q You wanted to keep the corporate records, the originals of
4 the corporate records, is that correct?

5 A Yes.

6 Q And you wanted to make sure you had discussed that with
7 Mr. Boomgarden, isn't that correct?

8 A I wanted Mr. Epstein to know that because I was going to be
9 turning documents over to Mr. Epstein.

10 Q Is there any difference between the corporate structure of
11 MA-RI-AL Corporation and Beaver Materials?

12 A You mean Beaver Materials Corporation? And I asked for a
13 reason. Beaver Materials is a b/d/a of MA-RI-AL Corporation.
14 Beaver Materials Corporation is a separate corporation.

15 Q Is Chris Beaver on any board of directors, as far as you
16 are aware?

17 A No, sir.

18 Q Let me ask you this: You have testified before that you
19 are -- you represent MA-RI-AL in a lot of corporate law areas,
20 is that correct?

21 A Yes.

22 Q So you are familiar with corporate law?

23 A Yes.

24 Q Are you familiar with agency law?

25 A To some extent.

SHEEKS - CROSS / VONDRAK

1 Q Does agency law say that only the president of a company
2 can bind the corporation?

3 A (No response)

4 Q Yes or no?

5 A I'm trying to remember my agency law, sir, if you just -- I
6 don't believe it says only the corporation can bind a company,
7 no.

8 Q I'm sorry, only --

9 A It does not say that only a president -- I'm sorry, I
10 misspoke -- only a president can bind the corporation.

11 Q It doesn't say that?

12 A It does not say that.

13 MR. VONDRAK: Thank you, Mr. Sheeks. I have no
14 further questions.

15 THE COURT: Anything else, Mr. Voyles?

16 REDIRECT EXAMINATION

17 BY MR. VOYLES:

18 Q Mr. Sheeks, you indicated when you were being
19 cross-examined by Mr. Vondrak that you had a document that
20 could confirm your telephone conversation on the 26th with you
21 here in the courtroom, is that correct?

22 A Yes.

23 MR. VOYLES: May I approach the bench, Your Honor?

24 THE COURT: Yes, sir. You can also approach the
25 witness.

SHEEKS - REDIRECT / VOYLES

1 Q I want to hand you what has been marked for identification
2 as Defendant's Exhibit A, and ask you if you can please
3 identify that document for us?

4 A That is the long distance phone bill for my office for the
5 period of -- well, it has phone calls as early as May 19th and
6 as late as June 17th, so --

7 Q I want to call your attention, sir, to the page that is
8 marked there. Would that include the period of time that the
9 Government and I have questioned you about?

10 A Yes.

11 Q Is that bill an accurate representation of your phone bill
12 that you received there in your office during that period of
13 time?

14 A Yes, it is.

15 MR. VOYLES: At this time, Your Honor, we would offer
16 into evidence Defendant's Exhibit A.

17 MR. VONDRAK: No objection, Your Honor.

18 THE COURT: Admitted.

19 (Defendants' Exhibit(s) A
20 received in evidence.)

21 MR. VOYLES: May I approach the witness?

22 THE COURT: You may.

23 BY MR. VOYLES:

24 Q Mr. Sheeks, I'm going to show you the bill that you have
25 just identified and ask you if you in fact can -- let's see if

SHEEKS - REDIRECT / VOYLES

1 we can get the zoom in here a little bit. That would indicate
2 a telephone call was made, I think it would appear on a
3 particular line number 8 as a call to Chicago, Illinois on the
4 26th day of May of the year 2004 at approximately 11:20 a.m.?

5 A Yes.

6 Q Can you indicate for the jury what that phone number is?

7 A It says Illinois 312-353-7530. Mine is a little fuzzy,
8 so...

9 Q Well, let's see if we can unfuzzy it. A little bit.

10 A Yes, I read it correctly. IL312-353-7530.

11 Q Would that be the telephone call you referred to on your
12 direct examination that you called the Office of the Department
13 of Justice to talk to Mr. Boomgarden concerning the
14 misstatements of your clients on the 25th?

15 A Yes, sir.

16 Q I want to have you look at now the other portion of your
17 bill that would indicate on line number 15 there is apparently
18 a phone call, is there not, to Chicago, Illinois?

19 A Yes, sir.

20 Q Would that be an indication the same phone number you
21 previously discussed here?

22 A Yes, sir, as well as line 12.

23 Q And would that have been a telephone conversation that you
24 referred to in your letter of May 28th, 2004 when you talked to
25 Mr. Boomgarden?

SHEEKS - REDIRECT / VOYLES

1 A Line 12, May 27th would be the one I was referring to.

2 Line 15 is June second. It was after my letter.

3 Q So in fact you are having phone calls with Mr. Boomgarden
4 you referred to in government exhibit 45?

5 A Absolutely. There are more later on in that bill.

6 Q When Mr. Boomgarden talked to you about the conversation
7 you guys both had on the 26th, did he tell you he was going to
8 take some action, that he immediately was going to send the FBI
9 back out to reinterview Chris or Rick Beaver?

10 A No, he did not.

11 Q Did he send you any documentation to confirm the telephone
12 conversation and indicate to you, "I got your conversation. I
13 have passed this along to the FBI?"

14 A No, I don't recall any.

15 Q In Government exhibit 45 you don't mean that either Chris
16 or Rick didn't talk to you; you may not have included both of
17 them and you may have used the wrong pronouns?

18 A Yes.

19 I just wanted to get the general idea to John that this had
20 happened and that I had told Mr. Boomgarden.

21 Q You told Mr. Boomgarden, who was an associate of
22 Mr. Epstein's, correct?

23 A Yes.

24 Q And then you wrote and memorialized the letter to
25 Mr. Epstein?

SHEEKS - REDIRECT / VOYLES

1 A Because Mr. Boomgarden told me to deal him on a document.

2 Q He passed you along to him?

3 A Yes.

4 Q Correct?

5 A Yes.

6 Q And your records that have been introduced as Defendants'
7 Exhibit A demonstrate the phone call that occurred on the 26th
8 of May 2004?

9 A Yes.

10 Q Correct?

11 And the other phone calls, at least on that next day when
12 you were talking to Mr. Boomgarden, and in fact it was referred
13 to in a letter that you had to Mr. Epstein on the
14 twenty-eighth?

15 A Yes. I talked to him on the 26th. I talked to him on the
16 27th. I wrote the letter on the 28th. There's a call on June
17 second. And I believe when you moved that I saw some later
18 calls to the same number.

19 MR. VOYLES: Thank you very much. I have no further
20 questions.

21 THE COURT: Mr. Vondrak.

22 MR. VONDRAK: Yes, Your Honor.

23 RE-CROSS-EXAMINATION

24 BY MR. VONDRAK:

25 Q Mr. Sheets, let's go back to your telephone record on

SHEETS - RECROSS / VONDRAK

1 defendants exhibit A.

2 Can you show me where on this document the substance of
3 your conversation with Mr. Boomgarden is?

4 A It's not on this document.

5 Q Can you tell from looking at this document how long your
6 conversation to -- your telephone call to the Antitrust
7 Division was?

8 A The one on May 26th was --

9 Q Yes, sir.

10 A -- a minute and two second.

11 Q One minute and two seconds?

12 A Yes, sir.

13 Q Does that include the time it takes for the phone to ring?

14 A I don't know how SBC does that. I would guess they bill
15 you for it.

16 Q Phone company doesn't let us get away with anything.

17 A I don't think they do. They never have me.

18 Q Problem with monopoly, right?

19 THE COURT: We can strike that last comment from the
20 record.

21 BY MR. VONDRAK:

22 Q Now directing your attention to the May 27th telephone call
23 to the Chicago office of the Antitrust Division, how long is
24 that conversation?

25 A Seven minutes, fifty-eight seconds.

SHEETS - RECROSS / VONDRAK

1 Q Mr. Sheeks, is it your testimony here today that in either
2 of these telephone calls with Mr. Boomgarden that you told him
3 that both Chris Beaver and Rick Beaver had made false
4 statements to the FBI?

5 A I told him that on the 26th, yes, that they both had.

6 Q Well, directing your attention back to your letter of May
7 28th, was your recollection of that conversation better on May
8 28th, 2004 or is it better now?

9 A I think it was as good one time as another. I think what I
10 put in this letter was specifically that Butch's barn thing
11 because I never did know where the meeting was that Rick Beaver
12 went to.

13 I wasn't trying to tell Mr. Epstein that Rick did not make
14 a misstatement. I was just telling him that one of them did.
15 In this case it happens to be Chris.

16 Q But you don't say which one it was here?

17 A No, I don't.

18 Q You don't say that it was more than one here, do you?

19 A No.

20 Q You don't say when that meeting took place?

21 A I'm sorry?

22 Q You don't say when that meeting took place?

23 A No.

24 Q And you don't say who else was present at that meeting, do
25 you?

SHEETS - RECROSS / VONDRAK

1 A No.

2 Q And it's important for you, as you side at the beginning,
3 that you accurately do your job for your client, is that right?

4 A Yes. I try my best. I'm not always successful, but I try.

5 MR. VONDRAK: Thank you. Thank you, Mr. Sheets.

6 THE COURT: Anyone else?

7 MR. VOYLES: I have no additional questions, Your
8 Honor.

9 THE COURT: You may step down, sir.

10 THE WITNESS: Do you want this left on or off?

11 THE COURT: Just leave it on.

12 THE WITNESS: May I step down?

13 THE COURT: You may step down.

14 Is there any reason why this witness can't stay in the
15 room?

16 MR. VOYLES: No, Your Honor.

17 MR. VONDRAK: No objection.

18 THE WITNESS: Thank you, Judge.

19 (Witness excused.)

20 THE COURT: Your next witness.

21 MR. LOCKWOOD: May I fetch him?

22 THE COURT: Yes.

23 Do you need the original back?

24 MR. VOYLES: No, I'm fine.

25 THE COURT: The witness stand is over her. Come over

1 and raise your right hand, I'll swear you in.

2 Right there is fine. Raise your right hand, please.

3 CHUCK MOSLEY

4 DEFENDANTS' WITNESS, SWORN

5 DIRECT EXAMINATION

6 THE WITNESS: I do.

7 THE COURT: You may be seated.

8 There has been a motion made and sustained by the Court to
9 separate witnesses in this case, which means you are not to
10 share your testimony with anyone who has been or will be a
11 witness in this matter.

12 Do you understand that?

13 THE WITNESS: Yes.

14 THE COURT: Microphone is right there. If you would
15 attach the smaller end to the lapel, to your top someplace,
16 please.

17 You may inquire, sir.

18 MR. LOCKWOOD: Thank you, Your Honor.

19 BY MR. LOCKWOOD:

20 Q Would you introduce yourself to the Court and the Jury,
21 please?

22 A My name is Chuck Mosley, M-O-S-L-E-Y.

23 Q Where do you live, Mr. Mosley?

24 A Lapel, Indiana.

25 Q What do you do for a living?

MOSLEY - DIRECT / LOCKWOOD

- 1 A I work for Beaver Materials, take care of their lawn.
- 2 Q How long have you worked for Beaver Materials?
- 3 A Fifteen years.
- 4 Q Was there a time when you worked for Beaver Materials in
5 some capacity other than maintain their premises, their lawn?
- 6 A Yes.
- 7 Q What did you do for them?
- 8 A Was a salesman.
- 9 Q What did you sell?
- 10 A Concrete. Ready-mix concrete.
- 11 Q How long did you sell ready-mix concrete for Beaver
12 Material?
- 13 A From February of '91 until the first of January of this
14 year.
- 15 Q The first of January of 2006?
- 16 A Yes.
- 17 Q What were your duties as a salesman of concrete for Beaver
18 Material?
- 19 A The biggest, the duty, a lot of my duty was to sell to home
20 builders and finishers, but a lot of it was going out to visit
21 any finishers and builders and see how they were getting along,
22 if everything was okay.
- 23 Q Did anyone -- well, to whom did you answer as an employee
24 of Beaver Materials?
- 25 A Who did I answer to?

MOSLEY - DIRECT / LOCKWOOD

1 Q Who was your boss?

2 A Allyn Beaver.

3 Q Do you know what his position was with regard to the
4 corporation, MA-RI-AL?

5 A President.

6 Q Did you have anybody else that you had to answer to other
7 than Allyn Beaver?

8 A Allyn and Gary Beaver.

9 Q Gary Beaver, did he hold an office in the corporation?

10 A Vice-president I think.

11 Q How did you go about deciding what you would bid on a
12 particular job?

13 A When I first started, I just used our price sheet. And as
14 I traveled around the finishers or builders, you know, some of
15 them would say, "Well, you're a little high." And general
16 contractors, they wasn't really buying the 2-dollar discount.
17 But a lot of it I was only bidding if it was a job that I
18 thought we could handle and close by the plant because at that
19 time we had very few trucks.

20 Q You made a reference to a price list. Would you explain to
21 the jury what a price list is?

22 A Well, a price list, they have the different mixes on them.
23 And you have your list price and you have a discounted price.
24 You get \$2 off per yard if you pay your bill within thirty
25 days. You will get additional \$2 per yard off.

MOSLEY - DIRECT / LOCKWOOD

1 Q Did that discount change as far as you were concerned in
2 your bids from the time you began in sales until the time you
3 retired this year?

4 A Most of my bids, if I would bid a commercial job that was
5 close by that we could handle that wasn't too big, I would
6 usually bid \$5.75 discount, which would give them additional \$3
7 off per yard. And a lot of those I bid knowing I wasn't going
8 to get the job but wanted to keep our name out there that we
9 was in the ready-mix business.

10 Q Did anybody ever tell you how to bid your jobs?

11 A No.

12 Q Did anybody ever tell you that you needed to bid according
13 to an agreement that had been entered into with other
14 competitors?

15 A No, sir.

16 Q Did Allyn ever have a conversation with you in which he
17 advised you that there was such an agreement?

18 A No, sir.

19 Q Did you ever talk to Rick Beaver about pricing cement?

20 A No, sir.

21 Q Did you ever have a conversation with Chris Beaver about
22 how to price -- I'm sorry, I'm just from the country. I call
23 it cement. It's concrete?

24 A Concrete.

25 Q Did you ever have a conversation with Chris Beaver about

MOSLEY - DIRECT / LOCKWOOD

1 what price you should put on the concrete that you were selling
2 for Beaver Material?

3 A No, sir.

4 Q Did there come a time when -- well, were you the only
5 salesman when you first began in 1991?

6 A Yes.

7 Q Did there come a time when there were other persons who
8 became salespersons?

9 A Yes. Well, not a salesman. We had a gentleman that later
10 on is now the sales manager and they replaced me.

11 Q All right.

12 A With a salesman.

13 Q During the period of time you were selling jobs for Beaver
14 Materials, did you report what your bids were to anybody?

15 A Report bids?

16 Q Yes.

17 A What I done, we had a carbon copy in-house paper that we
18 made notes on. And I would write on that the job that I bid
19 and the discount. And I would give a copy to Allyn and a copy
20 to Gary, just to let them know what I was doing, that I had bid
21 those jobs.

22 Q So what were they, little pieces of paper?

23 A It's just a carbon piece of paper. And I just wrote the
24 general contractor's name on there that I bid to, the location
25 of the job and the discount price. And I gave them each a

MOSLEY - DIRECT / LOCKWOOD

1 copy.

2 Q And did anyone ever come to you and say to you that you
3 needed to bid a job over?

4 A No.

5 Q Did Allyn Beaver ever come to you and say you aren't
6 bidding this properly, you need to bid it according to some
7 agreement that we have with competitors?

8 A No. Never.

9 Q Did that subject ever come up in the time you were ever an
10 employee as a salesperson?

11 A Never.

12 Q Was there a time when you stopped reporting directly to
13 Allyn Beaver and reported to someone else?

14 A Yes. I don't remember exact dates, but when Bob was made
15 sales manager, if I would bid the job I would always go to him
16 and say: Bob, I bid this job. It's just down the street.
17 It's so many yards and this is what I bid it at.

18 Q Who is Bob, sir?

19 A Bob Mathews as sales manager.

20 Q Do you remember approximately when he would have been
21 hired?

22 A As a sales manager it's probably just been in the last two
23 years.

24 Q Sometime in 2004 perhaps?

25 A Yeah.

MOSLEY - DIRECT / LOCKWOOD

1 Q Did Rick Beaver ever -- did you ever know whether Rick
2 Beaver was a salesperson for Beaver Material?

3 A In the last year he started bidding commercial jobs.

4 Q Did you ever know him to bid commercial jobs or what would
5 the other be, just, what would you call bids that aren't
6 commercial, residential?

7 A Residential or just to regular concrete finisher.

8 Q Did you ever know him to be involved in bidding any of
9 those kinds of jobs over the last three or four years?

10 A No.

11 Q If he was, he was not making you aware of it?

12 A Right.

13 Q I'm sorry, you started to say?

14 A He didn't make me aware of them if he was bidding them
15 before, because I done most of all the bidding that I know of.

16 Q Even after Rick came on board, you believe that you bid the
17 majority of the projects for Beaver Materials?

18 A I took care of all of the residential home builders and
19 residential finishers except one of our -- two of our largest
20 companies.

21 Q Who would those be?

22 A Custom Concrete and at that time CP Morgan. I didn't
23 always handle those. But I went out to their jobs.

24 Q Did you and Rick have an office in the same building?

25 A Yes.

MOSLEY - DIRECT / LOCKWOOD

1 Q Was it in the same general area?

2 A Yes.

3 Q Were they separate offices?

4 A Yes.

5 Q And do you know who he reported to?

6 A I just thought he reported to Allyn and Gary.

7 MR. LOCKWOOD: Thank you. Mr. Mosley, that's all the
8 questions I have.

9 THE COURT: Cross-examine.

10 MR. VONDRAK: Yes, Your Honor.

11

12 CROSS-EXAMINATION

13 BY MR. SCHLEEF:

14 Q Mr. Mosley, you were interviewed by Special Agent Rita K.
15 Hornbrook on May 25th, 2004 in connection with this
16 investigation, weren't you?

17 A Yes.

18 Q When you talked with the FBI it was important to be honest,
19 wasn't it?

20 A Yes.

21 Q You worked for Beaver Materials for almost 15 years, didn't
22 you?

23 A Yes.

24 Q Do you receive a pension from Beaver Materials currently?

25 A No.

MOSLEY - CROSS / SCHLEEF

1 Q Do you consider Chris and Rick Beaver to be friends of
2 yours?

3 A Yes.

4 Q They're practically family, aren't they?

5 A I would call it that.

6 Q Isn't your daughter married to Rick and Chris Beaver's
7 first cousin?

8 A Yes.

9 Q After working for the same company and the same family for
10 so long for people you basically consider family, you must feel
11 a sense of loyalty, right?

12 A Sure.

13 Q You testified you helped prepare bids for Beaver, correct?

14 A Correct.

15 Q You stated you actually did most of the bidding for Beaver,
16 correct?

17 A Correct.

18 Q And you testified that you bid commercial jobs, didn't you?

19 A Correct.

20 Q And you testified that for good customers you would give a
21 discount of \$5.75, correct?

22 A Correct.

23 Q And that was off of list price, correct?

24 A Correct.

25 Q So that \$5.75 would include the 2-dollar prompt pay

MOSLEY - CROSS / SCHLEEF

1 discount, correct?

2 A Correct.

3 Q So really after the prompt pay discount you were only

4 discounting \$3.75 off of net, correct?

5 A Correct. It was \$5.75 discount if they paid their bill

6 within thirty days.

7 Q Okay. That was off the list?

8 A That was the discount. It wasn't net. List.

9 Q You testified at the end of last year -- which would be

10 2004, correct?

11 A Correct.

12 Q That Rick Beaver just started getting into commercial

13 sales, isn't that right?

14 A Correct.

15 Q And that he wasn't involved in commercial sales in the last

16 3 to 4 years, correct?

17 A Correct.

18 Q However, when the FBI interviewed you, you told them that

19 Rick was in charge of commercial bid work, didn't you?

20 A He is. He does the -- I did, once Rick came in there, I

21 did not bid any more commercial jobs.

22 Q When did the FBI interview you again, Mr. Mosley?

23 A Again?

24 Q No. Tell me again when the FBI interviewed you, what year

25 was that?

MOSLEY - CROSS / SCHLEEF

1 A 2004.

2 Q At that time you told the FBI that Rick was in charge of
3 commercial work, didn't you?

4 A Yes.

5 Q You just testified today that Rick didn't get involved in
6 commercial work until the end of 2005. How is that possible?

7 A I guess I don't know when I said that. I mean he didn't
8 get in -- however I testified, he didn't get into it --
9 whenever he got into commercial sales, I quit doing commercial
10 bids and just took care of the home builders and home
11 finishers.

12 Q But you testified, correct, that in the last 3 to 4
13 years --

14 MR. VOYLES: Objection, Your Honor, he keeps talking
15 about testify. He's referring to a statement he made to the
16 FBI.

17 MR. SCHLEEF: No, he just stated in open court Rick
18 was not involved in commercial work for the last 3 to 4 years.

19 MR. VOYLES: I understand that, but he's referring to
20 a statement he made to the FBI.

21 MR. SCHLEEF: No, I'm not.

22 THE COURT: Go ahead and ask your question.

23 BY MR. SCHLEEF:

24 Q Did you just state in open court that Rick was not involved
25 in commercial bids in the last 3 to 4 years?

MOSLEY - CROSS / SCHLEEF

1 A I could have. I guess. But what I am trying to say to you
2 is when he took over commercial sales, whenever that was, I
3 quit doing commercial bids and only took care of the home
4 builders and the residential finishers. Whatever time that
5 was, I don't -- I did not write any dates down. I'm sorry, I
6 can't remember the dates.

7 Q Is there a significant difference between 3 to 4 years and
8 2 years?

9 A I didn't even remember when she came to see me, to be
10 truthful.

11 MR. SCHLEEF: May I approach the witness?

12 THE COURT: Yes.

13 BY MR. SCHLEEF:

14 Q Do you recognize --

15 A Yeah, I know now. Yeah.

16 Q Go ahead and take the document.

17 I'm just handing you the FBI summary of the interview that
18 Ms. Hornbrook conducted with you on May 25th, 2004. I would
19 like you to turn the first page, the third full paragraph, last
20 sentence, and read that entire line if you would, please.

21 THE COURT: To yourself.

22 BY MR. SCHLEEF:

23 Q To yourself, I'm sorry.

24 A Let me get my glasses.

25 The second -- the third page?

MOSLEY - CROSS / SCHLEEF

1 Q First page, third paragraph, last line starting with
2 Beavers.

3 A (Witness complied.)

4 Q Does that refresh your recollection of what you said?

5 A Yeah, that's just what I said.

6 Q And was that that Rick was in charge of commercial work
7 bids in 2004 when this interview was conducted?

8 A Evidently when he first came in there to do that.

9 Q So what you stated in open court today then is incorrect,
10 he was actually involved in --

11 A If he said it was last year, yes.

12 Q So he was involved in commercial bid work in 2004?

13 A Yes.

14 Q You also testified here today that you did most of the bid
15 work for Beavers, correct?

16 A Correct.

17 Q However, you told Ms. Hornbrook on May 25th, 2004 that your
18 primary responsibilities with Beaver weren't in sales, didn't
19 you?

20 A No, I didn't tell you it was just in sales. I told her
21 that I was in sales. But at the time when I hired in there, we
22 had 18 trucks. We were busy with those trucks. My biggest job
23 was going out to make sure that the customers was happy and to
24 keep the customers that we had. We could not service more
25 people at that time.

MOSLEY - CROSS / SCHLEEF

1 Q Mr. Mosley, I would like to direct your attention again to
2 the document you're holding in front of you, the summary of
3 your interview with Ms. Hornbrook on May 25th, 2004. And I
4 would like to direct your attention to paragraph 3 of the first
5 page. About into the middle where it says Mosley stated.
6 Could you read that to yourself, please.

7 A Um-hmm.

8 Q Does this refresh your recollection, sir?

9 You stated it was important for you to be truthful to the
10 FBI when they interviewed you, didn't you?

11 A This is what I just said that --

12 Q So it's correct then that you stated your job is more of a
13 public relations job for the company rather than sales and
14 service?

15 A I don't know that the "rather" is correct. It was both.

16 Q Your immediate supervisor at Beaver Materials was Bob
17 Mathews Beaver, sales manager, at the time this interview was
18 conducted, wasn't it?

19 A Yes.

20 Q To the extent you were involved with any pricing, Bob
21 Mathews had final authority over any large job discounts you
22 gave, didn't he?

23 A We discussed them.

24 Q Would you turn to page 2, paragraph 3. The document that
25 you have in front of you. Would you please look at the last

MOSLEY - CROSS / SCHLEEF

1 sentence of that paragraph.

2 A Right.

3 Q Does that refresh your recollection about what you told

4 Ms. Hornbrook?

5 A Right.

6 Q That you stated the final authority on large discounts is

7 made by Bob Mathews?

8 A We discussed them and he was the sales manager. If there

9 was some reason, which there never was, that he said no, we

10 can't do that at this time, we're too busy, I wouldn't bid

11 them.

12 Q But you previously stated when you bid, the general

13 discount you gave to the best customers was \$5.75 off of the

14 list price, correct?

15 A I don't know that I said they was the best customers.

16 Somebody said the best customers. If it was a general

17 contractor job that built the local filling station and we

18 could take care of them, I would bid those jobs at a \$5.75

19 discount.

20 Q And that \$5.75 includes the prompt payment discount,

21 correct, the 2-dollar prompt payment discount?

22 A Right.

23 Q At the time that you were interviewed in 2004 Bob Mathews

24 was on the Board of Directors with Rick and Chris, wasn't he?

25 A Board of Directors?

MOSLEY - CROSS / SCHLEEF

1 Q Yes.

2 A I can't answer that. I don't know.

3 Q You don't have anything to do with setting Beaver Materials
4 price list, do you?

5 A No.

6 Q But you do know that Beaver Materials' price list at the
7 time you were interviewed anyway was always in line with other
8 companies' price lists, don't you?

9 A Yes.

10 Q When you spoke with the FBI, you stated you always
11 complained about the discounts being given out by the other
12 concrete companies, didn't you?

13 A My complaint was, the biggest complaints I ever heard was
14 when I would go out to a finisher and he would say certain
15 concrete companies was coming around, trying to get their
16 business and said, "Well, they would sell them concrete
17 cheaper."

18 Q Mr. Mosley, I would like to draw your attention again to
19 the document you have before you, and I would like you to look
20 at paragraph 5 of page 2. I would like you to read the first
21 sentence to yourself.

22 Does that refresh your recollection of what you told
23 Miss Hornbrook, Mr. Mosley?

24 A Uh-huh.

25 Q You stated you always complained about the discounts given

MOSLEY - CROSS / SCHLEEF

1 out by the other concrete companies?

2 A Uh-huh.

3 Q You know that Butch Nuckols helped organize meetings where
4 competitors agreed to limit discounting in the ready-mix
5 industry because he thought that discounts were getting out of
6 control too, don't you?

7 A I didn't know that.

8 Q Are you aware that Rick Beaver attended a meeting with
9 competitors to limit discounting and fix price at which Beaver
10 Materials sold their concrete?

11 A I never knew that until lately.

12 Q So you are admitting he did --

13 MR. LOCKWOOD: I'm going to object. It was so quick I
14 didn't get a chance to object to that as a multiple question.

15 THE COURT: It was a multiple question, so let's
16 strike that answer and start again. One question at a time.

17 Q Are you aware that Rick Beaver attended a meeting with
18 competitors to limit discounts and fix the price at which
19 Beaver Materials sold ready-mix concrete?

20 A I aware later that he attended a meeting, but it was
21 nothing to do with discounts.

22 Q Are you aware they reached agreements?

23 A If that happened, I didn't know that.

24 Q Are you aware he reached agreements with his competitors at
25 that meeting?

MOSLEY - CROSS / SCHLEEF

1 A I didn't hear you, sir.

2 Q Are you aware that he reached agreements with his
3 competitors at this meeting?

4 A No.

5 Q Are you aware that Chris Beaver attended a meeting with
6 competitors to limit discounts and fix the price at which
7 Beaver Materials sold their concrete?

8 A No.

9 MR. LOCKWOOD: Objection, Your Honor, evidence not in
10 the record.

11 THE COURT: I think at this point everyone knows what
12 the issues are before the Court.

13 Go ahead.

14 Q Do you know that Chris attended a price fixing meeting at
15 Butch Nuckols' horse barn?

16 A I later found out that he attended a meeting, but not to
17 fix prices of concrete.

18 Q Were you aware this meeting was at Butch Nuckols' horse
19 barn?

20 A That Chris -- that was hearsay. I was never told anything.

21 Q When interviewed by the FBI you stated that price fixing
22 would not surprise you, didn't you?

23 A I did say that.

24 Q In fact, at the time you were interviewed you informed the
25 FBI that you had recently traveled to Florida, hadn't you? You

MOSLEY - CROSS / SCHLEEF

1 stated that concrete prices in Florida were \$57 a cubic yard,
2 didn't you?

3 A I did.

4 Q And that Beaver charges between \$67 and \$77 per cubic yard,
5 didn't you?

6 A I did.

7 Q And at the time of your interview you wondered why Beaver's
8 prices were so much higher, didn't you?

9 A I visited Florida on vacation. I talked to a guy that
10 built concrete statues, and he told me what he paid for
11 concrete. That is where that information came from. I don't
12 know what kind of concrete mix he used. I don't know what he
13 used, but that was what I explained to her, that I had visited
14 a place that makes concrete statues.

15 Q That is interesting, Mr. Mosley, but the question was, at
16 the time of your interview you wondered why Beaver's prices
17 were so much higher than the prices in Florida, didn't you?

18 A Not Beavers, everybody's, the whole market was higher in
19 the area than it was in Florida, by talking to this guy.

20 Q And you include Beaver with the whole market, correct?

21 A I would have to if all the prices were about the same.

22 Q So you testified here that you wouldn't be surprised if
23 price fixing was going on, correct?

24 A I said to her that with everything going on in the world I
25 wouldn't be surprised at all if some of these companies were

MOSLEY - CROSS / SCHLEEF

1 price fixing. Nothing surprised me anymore. That is the
2 statement I made to her.

3 Q Mr. Mosley, I would like you to turn to page 2 of the
4 document in front of you and the last paragraph.

5 A Page 2?

6 Q Page 2. Please, would you read that paragraph to yourself?

7 A (Witness complied with counsel's request)

8 Q Does that refresh your recollection of your interview with
9 Miss Hornbrook?

10 A Uh-huh.

11 Q In that interview you told her that price fixing would not
12 surprise you, didn't you?

13 A In this paragraph --

14 Q Don't read it aloud, but just read it to yourself. Does
15 that refresh your recollection of telling Miss Hornbrook --

16 A Which paragraph again? I'm sorry.

17 Q Last paragraph.

18 A Okay. It is the same as I said before, that I stated that
19 the price fixing of companies would not surprise me with
20 everything going on in the world today. I didn't say Beaver
21 Materials was price fixing.

22 Q However, you did say that price fixing would not surprise
23 you, but your bosses at Beaver Materials would never share that
24 type of information with you, would they?

25 A Beaver Materials, no, they don't supply that information

MOSLEY - CROSS / SCHLEEF

1 with me, and I'm sure nobody else.

2 Q So, if I understand your testimony correctly, you wouldn't
3 be surprised if a price fixing conspiracy was going on, and if
4 one was going on your bosses at Beaver Materials would not have
5 told you about it anyway, is that correct?

6 A That is correct, but I would never believe they would ever
7 be involved in price fixing.

8 Q But it wouldn't surprise you?

9 A Yeah, it would surprise me.

10 MR. SCHLEEF: I have nothing further for this witness.

11 REDIRECT EXAMINATION

12 BY MR. LOCKWOOD:

13 Q Mr. Mosley, am I to understand that some things that you
14 said to your interviewer are not recited in the summary?

15 A I can't hear you.

16 Q I'm sorry. Am I to understand from your testimony on
17 cross-examination that some of what you said is not included in
18 this summary?

19 A I don't know.

20 Q Well, let me be a little more specific. You have been
21 asked about several passages. For example, one of them you
22 were asked about says you wouldn't be surprised if there was
23 price fixing going on within the concrete industry.

24 A I made a statement that I would not -- I told her, I said,
25 "With everything going on in this world nothing would surprise

MOSLEY - REDIRECT / LOCKWOOD

1 me."

2 Q Do you still have your summary there?

3 A Yes.

4 Q I don't see that; "with everything going on in the world it
5 wouldn't surprise me," in this summary.

6 A (No response)

7 Q That is on page 2, paragraph 1, 2, 3, 4, 5.

8 A (No response)

9 Q Did she leave out some of the things you told her?

10 A A lot of this stuff is left out in this, which is changed a
11 little, and I'm still trying to go -- page 2?

12 Q Page 2. Count down from the top 1, 2, 3, 4, 5. I referred
13 you to the wrong place.

14 A That is not the right --

15 Q No, it is not. That is my fault. I'm so confused by all
16 of this --

17 A Seventh paragraph.

18 Q Thank you. On page 2.

19 A Yes, seventh paragraph.

20 Q Have you read that to yourself?

21 A Yes.

22 Q Does that paragraph accurately reflect what you really said
23 to the interviewer?

24 A To me this kind of shows that I stated that I wouldn't be
25 surprised, I took it, that Beaver was price fixing, and that is

MOSLEY - REDIRECT / LOCKWOOD

1 not what I said.

2 Q What did you say?

3 A I told her that with everything going on in the world today
4 that other companies price fixing -- nothing shocks me today.

5 Q Did you --

6 A I didn't say anything about a -- you know, I just said it
7 wouldn't shock me. I didn't say that Beaver, or anybody else,
8 was price fixing. Because she stunned me when she came to the
9 door. I didn't even know what she was talking about.

10 Q In the next page, page 3, at the very top, this is where
11 you have been reminded had that you said you went to Florida
12 and were surprised about the price of concrete there.

13 A I said this was a conversation while I was on vacation. I
14 went to buy some concrete pelicans on posts, and we had a
15 conversation. I told him I was in the concrete business, and
16 he made these ornaments and he told me what he was paying for
17 concrete. And I said, without thinking of what mix he probably
18 even used, that concrete was higher in Indiana, evidently, than
19 it is in Florida.

20 Q So the way this appears in the summary is inaccurate
21 because it leaves out who you were talking to?

22 A Sure.

23 Q You were talking about statues of pelicans?

24 A Right. It is very inaccurate.

25 Q Now, did the people that interviewed you have a recorder?

MOSLEY - REDIRECT / LOCKWOOD

1 Did they record your statement in any way?

2 A Not that I -- not that I know of.

3 Q So this is not a totally accurate of summary?

4 A No, it is not.

5 MR. LOCKWOOD: Thank you. That's all.

6 RECROSS-EXAMINATION

7 BY MR. SCHLEEF:

8 Q Mr. Mosley, you testified that it was important for you to
9 be truthful in your interview, didn't you?

10 A Yes, sir.

11 Q Do you think the FBI would have any reason to misrepresent
12 your statements?

13 A No, but there is things in here that I have read that is
14 not right.

15 Q Do you think the FBI would have any reason to lie in a
16 routine report?

17 A No.

18 MR. SCHLEEF: I have nothing further.

19 MR. LOCKWOOD: Nothing further.

20 THE COURT: You may step down, sir.

21 THE WITNESS: Your Honor, can I be dismissed or do I
22 stay?

23 THE COURT: You can be dismissed.

24 THE WITNESS: Thank you, sir.

25 (Witness excused)

1 THE COURT: Your next witness.

2 MR. LOCKWOOD: Can we approach, Your Honor?

3 THE COURT: You may.

4 (Discussion at the bench outside the record)

5 THE COURT: All right, ladies and gentlemen, we will
6 take about 15 minutes at this point.

7 (The Court recessed from 2:20 P.M. to 2:40 P.M.)

8 (In chambers)

9 THE COURT: We are readdressing the issue of the
10 presentation of -- what is the witness' name?

11 MR. LOCKWOOD: I'm sorry. Wayne Bartel, B-a-r-t-e-l.

12 THE COURT: This is being introduced as a summary
13 exhibit. My concern about summary exhibits, as I have
14 mentioned since we began the conversation, is that the rule
15 requires that the information that is being summarized either
16 all be in the record before the summary chart comes in or be
17 presented at the same time, and that everyone knows that the --
18 all of the ordinary rules of evidence, which are, of course,
19 relevance, authenticity, and all those things, have been met
20 and that the summary exhibit is just the -- is allowed because
21 it gives the jury something easier to look at it gives -- the
22 record is easier to read, and that is why it is in.

23 So, my understanding of this particular individual's
24 presentation was -- and I thought I asked the question, maybe I
25 didn't. Maybe I just assumed the answer. But I thought that

1 at this point, and the reason that I admitted this, I thought,
2 at this point was that the underlying data was available had
3 been looked at by the Government and was admissible. And that
4 is why, in addition to the information -- or to the concerns
5 that I imparted on the record as we argued this this morning.

6 So counsel for the Government is indicating that my thought
7 might not be correct.

8 MR. SCHLEEF: Yes. It is my understanding that it is
9 a frame from a power point presentation summarizing truck
10 hours, truck per hour rents, concrete yards, all documentary
11 information that we do not have to support that chart. I do
12 not know where the numbers came from.

13 THE COURT: Mr. Lockwood.

14 MR. LOCKWOOD: Your Honor, the chart is meant to
15 show -- each of these little diamonds are sales.

16 THE COURT: Yes.

17 MR. LOCKWOOD: And that is what the chart is meant to
18 show. It is in the format of truck per sale hours because that
19 is how it was presented, and I was under the impression the
20 Government had these sales records, had looked at them, had
21 seen the presentation, including the slide, and the sales were
22 not objectionable. That was my understanding. Now, if I'm
23 wrong about that -- see, the Government had all these records,
24 and I thought they had a chance to understand what they were.
25 Maybe I misunderstood that. If I did, I apologize.

1 MR. VONDRAK: Your Honor, we have some sales records
2 of the company, but we don't have any records that show the
3 hours of truck rentals, or anything like that. And, in
4 addition to the slide that is before Your Honor, that is
5 entitled --

6 MR. LOCKWOOD: This is the only one we are going to
7 use, and not to show truck hours.

8 THE COURT: This shows the average net -- what is
9 this? This is the amount of money per cubic yard?

10 MR. LOCKWOOD: The pertinent part of this exhibit,
11 each one of these triangle -- or diamonds is a sale at the
12 price indicated in the left-hand column.

13 THE COURT: So there is one, two, three at 50, and all
14 these down here, and most of them -- and it shows what the
15 average amount is.

16 MR. LOCKWOOD: It doesn't show an average or a mean.

17 THE COURT: No, it doesn't. It shows what they were.

18 MR. LOCKWOOD: Across the bottom is for the
19 illustration purposes to the company. We want to extract what
20 the man had done. We want it to be in the context that he had
21 prepared. He prepared it in order to illustrate how much per
22 hour a particular job would represent to them. But that is not
23 the relevant part of the exhibit, and that is not what we would
24 be introducing it for. He won't explain that beyond saying he
25 was --

1 THE COURT: So if I look at this and I say there looks
2 like a sale here at \$50 a cubic yard, does that tell me which
3 one of the many mixtures it is, or just tells me that one of
4 them was sold at 50 a cubic yard?

5 MR. LOCKWOOD: I don't believe it does tell you what
6 of the many mixtures.

7 THE COURT: Yeah, it just tells me -- what is the 125
8 and 175 and 225?

9 MR. LOCKWOOD: That is the part of the chart they were
10 trying to illustrate to the people. They were consulting with
11 Beaver that that particular job netted them \$125 per truck
12 hour, and they were looking at -- this was the re-pricing
13 structure that Beaver adopted, and they were saying you sold
14 this job and this is what you got for your truck. What you
15 need to do is sell these jobs out here because they are netting
16 you 6.75 an hour.

17 THE COURT: Okay, so --

18 MR. LOCKWOOD: That is not relevant to our --

19 THE COURT: What is it you want the jury to look at
20 and see?

21 MR. LOCKWOOD: The sales. They go all over the lot.
22 They include the bid sales and everything else.

23 THE COURT: You want to show in the year 2000 --

24 MR. LOCKWOOD: Two.

25 THE COURT: -- two that each of these diamonds

1 represents a sale?

2 MR. LOCKWOOD: Yes.

3 THE COURT: And each of them represents a sale at that
4 price per cubic yard?

5 MR. LOCKWOOD: Yes.

6 THE COURT: So when I see down here by the 6.75 there
7 is a diamond, that shows somebody got it for \$50 a square yard?

8 MR. LOCKWOOD: Yes.

9 THE COURT: But the bottom numbers don't mean anything
10 in this presentation?

11 MR. LOCKWOOD: No, they are not relevant to what we
12 are trying to show the jury.

13 MR. EPSTEIN: Your Honor, I also point out there is no
14 indication whether it is 4,000 PSI, seven bags --

15 THE COURT: Let me ask you this: In the terms of the
16 alleged conspiracy does it matter whether it was 4,000 PSI,
17 3,500 PSI?

18 MR. EPSTEIN: I think to demonstrate the pricing, if
19 you are going to talk 2000 PSI versus eight bags they are
20 starting a very different price, and that would be reflected in
21 this chart. We don't know because it doesn't indicate what was
22 sold.

23 MR. SCHLEEF: Your Honor, really the biggest concern,
24 or one of the biggest concerns of many, is that it is broken
25 out by a truck hour. I have never seen any documentation of

1 truck hours whatsoever, how long it takes to gets from one
2 place to another.

3 THE COURT: Well, he has got to fold that under. If
4 he folds that under what does that do for you? It looks like
5 that.

6 MR. VONDRAK: Your Honor, we don't know exactly what
7 type of concrete it is, how much of it was sold in a particular
8 job, who it was sold to. You know, all of the factors that we
9 have heard evidence about that go into calculating the price,
10 nothing in this document could possibly show us any of those
11 factors. And above and beyond that, what is the relevance?

12 MR. LOCKWOOD: I thought the relevance was sales price
13 per yard.

14 THE COURT: Excuse me. Let me think about this a
15 minute. I want to be sure that I understand the nature of the
16 offer, what it is you want to use it to show. And, as I
17 understood this then, and I understood this morning, and I
18 understand this now, that you would like for this to show that
19 these are all the sales in 2002, is that right?

20 MR. LOCKWOOD: Yes. And I would like to check with
21 Mr. Bartel and see if everything, no matter what PSI, or not,
22 because I think that is important for you to know.

23 THE COURT: I do too. So check with him about that.

24 (Mr. Lockwood left the conference room)

25 THE COURT: Do you know, Jim -- you can answer this if

1 you can, and you don't have to because your associate just
2 left. Can you tell me why -- this guy worked this chart up to
3 show Beaver how to be more economical?

4 MR. VOYLES: Let me kind of historically tell you. I
5 went over to the meeting, and this company, Cintrex, is a
6 division now of J. Waller Thompson and bought out by Worthland
7 Worldwide. It is a conglomerate. But what they do is they
8 come in --

9 THE COURT: They are consultants?

10 MR. VOYLES: Yeah. The company was concerned about
11 state taxes, how the company runs, so they hired them to kind
12 of efficiently help them manage how to run their business, and
13 that is kind of what this -- they did all kinds of things for
14 them.

15 (Mr. Lockwood returned to the conference room)

16 THE COURT: There guy would testify, if he is allowed
17 to, that he was hired as a consultant, and what the company
18 gave him, and as a part of his consulting agreement, or part of
19 his consulting job, was all of the sales for the year 2000 with
20 the price per cubic yard of each of those sales?

21 MR. LOCKWOOD: Any PSI delivered by truck. No
22 distinction made.

23 THE COURT: So it is just truck deliveries.

24 MR. SCHLEEF: How many bids does this represent?

25 MR. LOCKWOOD: All the sales of the year.

1 MR. SCHLEEF: How many are those?

2 MR. LOCKWOOD: These aren't bids, these are sales.

3 MR. EPSTEIN: The only sales records we have are the
4 bids.

5 MR. SCHLEEF: So we don't have sales records at all, I
6 guess.

7 MR. LOCKWOOD: See, I didn't understand that.

8 MR. SCHLEEF: I would like to clear up the record.

9 When you asked earlier this morning, do you have the underlying
10 documentation, I hadn't seen this by itself. He had provided
11 these slides. This slide actually comes from a larger power
12 point presentation that Mr. Bartel had provided for Beaver, and
13 that is one slide of many summary slides, and when you asked,
14 do you have the underlying documentation, I wasn't sure what
15 you were referring to. I did know I had been provided that.

16 MR. LOCKWOOD: It is okay, Eric. I thought you guys
17 had taken sales records and that you had had a chance to look
18 at them, and that based upon the sales records, not a part of
19 the presentation, that you didn't have any objection. And so,
20 I mean, I'm not trying to give you a hard time. If that is not
21 the case, then I think that represents a whole different
22 problem. If you are telling us you don't have the data that
23 means we have to find it and introduce it, and I'm not going to
24 do that.

25 THE COURT: Yeah, you do.

1 MR. LOCKWOOD: So I misunderstood the basis, and I
2 apologize.

3 THE COURT: That is quite all right, Mr. Lockwood.
4 Those things occur in the finest of families.

5 All right, so we are not going to hear this. And we are
6 going to go hear the rest of your witnesses and then come back
7 here and argue instructions.

8 MR. VOYLES: We may have, as I told the Government, we
9 may have a hiatus until Senator Kenley gets here.

10 THE COURT: You could have a hiatal?

11 MR. VOYLES: I have one of those. Those hurt.

12 (Adjourned in chambers at 2:50 P.M.)

13 THE COURT: Ready for the jury, yes?

14 MR. VOYLES: Defendant is ready, Your Honor.

15 THE COURT: Yes.

16 (In the presence of the jury.)

17 THE COURT: You may be seated. You may call your next
18 witness.

19 MR. VOYLES: On behalf of the corporation I would call
20 Allyn Beaver, President.

21 THE COURT: Would you raise your right hand, sir.

22 ALLYN BEAVER

23 DEFENDANTS' WITNESS, SWORN

24 DIRECT EXAMINATION

25 THE WITNESS: I do.

BEAVER - DIRECT / VOYLES

1 THE COURT: You may be seated.

2 All right. You may inquire.

3 MR. VOYLES: Thank you, Your Honor.

4 BY MR. VOYLES:

5 Q State your name to the jury, please.

6 A My name is Allyn Beaver.

7 Q How do you spell Allyn?

8 A A-L-L-Y-N.

9 Q And, Mr. Beaver, are you the president of a particular
10 company?

11 A Yes, I am.

12 Q What is the name of that company?

13 A I'm the president of MA-RI-AL Corporation.

14 Q And do you refer to yourself as Beaver Materials?

15 A I do.

16 Q How long have you been the president of that company?

17 A Since 19, probably 62, '61.

18 Q It's a family owned company, isn't it?

19 A It is.

20 Q And what is the exact address of your office?

21 A 16101 River Avenue, Noblesville.

22 Q And how long have you been at that location?

23 A Since 1959.

24 Q And the company was started by your grandfather, is that
25 correct?

BEAVER - DIRECT / VOYLES

- 1 A The gravel pit was started by my grandfather, yes.
- 2 Q Then your father was involved in the corporation?
- 3 A In the ready-mix, yes.
- 4 Q And that's kind of how we have this MA-RI-AL?
- 5 A Yes.
- 6 Q When did your father leave the corporation?
- 7 A Probably in '61.
- 8 Q And who is the other officer in the corporation?
- 9 A My brother, Gary Beaver.
- 10 Q In terms of who has more stock, is that somebody has
- 11 50 percent, somebody has 51, somebody has 49?
- 12 A I have 51.
- 13 Q And Gary has 49?
- 14 A That's right.
- 15 Q And is Gary actively involved in the company?
- 16 A Not really.
- 17 Q How long has that been true?
- 18 A Oh, probably for the last few years. Maybe four or five or
- 19 six. I don't remember, he just kind of started working less
- 20 all the time.
- 21 Q But you're there every day?
- 22 A Yes, I am.
- 23 Q And you have been for a long time, haven't you?
- 24 A Yes.
- 25 Q Do you have a son that's in the business also?

BEAVER - DIRECT / VOYLES

1 A I do.

2 Q And who is that?

3 A Chris Beaver.

4 Q During the years of 2000 to 2004 what was his
5 responsibility at the company?

6 A In 2000 we opened up a ready-mix plant in Waverly. And he
7 was constructing the plant. And the reason I remember that is
8 because there was a tank that we had to bury in the ground, and
9 he was putting that in that year, and it caved in and covered
10 him up.

11 Q Try to speak out now so all the jurors can hear you.

12 A (Witness nodded affirmatively.)

13 Q Is there also a young man named Rick Beaver involved in the
14 company?

15 A Yes.

16 Q And who is he to you?

17 A My nephew.

18 Q That would be Gary's son?

19 A That is.

20 Q Between the years of 2000 and 2004 what was his
21 responsibility, if any, in the company? What did he do?

22 A Rick has worked at the company ever since he got out of
23 high school. And he's done various things. As far as a
24 particular year, what he done, my memory isn't that good, but
25 Rick has done about everything.

BEAVER - DIRECT / VOYLES

1 Q During the years of 2000 and 2004 what was he doing?

2 A He could have been in sales during that period.

3 Q Now when you talk about sales, was he the only salesperson?

4 A No.

5 Q Who else was a salesperson for your company?

6 A Chuck Mosley was in sales as you met earlier, for a long
7 period of time.

8 Q Now was there different type of sales? Was there
9 commercial sales, was there residential sales, sales involving
10 concrete finishers?

11 A I'm not exactly sure of the time frame, but -- of course
12 when we started we was very small. And then during that period
13 of time you're talking about, we did begin to add salespeople
14 because I'm getting older and I want to retire, so I'm hiring
15 people to try to replace what I do. And what year I hired
16 them, I don't remember.

17 But I do know that Bob Mathews has worked for me now for
18 probably 12-15 years. And then in Waverly we have a salesman
19 down there that's probably been there four or five years. Rick
20 was working in sales.

21 And really, we really got involved in moving things around
22 in 2003. We started moving that away and then we got to the
23 point where, you know, to get things moved around. And
24 everybody become more and more involved. But probably up till
25 2003 I pretty much done most everything myself. Now I didn't

BEAVER - DIRECT / VOYLES

1 do sales. I mean I had people, we had people working.

2 Q If somebody had to come in and talked about the price of
3 concrete, were you the only person between the years of 2000
4 and 2004 that set prices?

5 A Yes. I had salespeople. But any price that was set, or
6 any price they wanted to discount -- now Chuck kind of give a
7 lot of \$5.75 discounts, maybe some \$7.75, but anything that
8 they wanted to do other than that, it would have to go through
9 me first, yes.

10 Q You're the final authority at the company?

11 A I am.

12 Q Now you mentioned when you were interviewed with the FBI in
13 May of 2004 that there are other people who talked to you about
14 prices, your son Chris and --

15 A Yes.

16 Q -- your nephew Rick, is that correct?

17 A Yes. And Bob Mathews.

18 And Bob Mathews is somebody I hired because he had a good
19 knowledge of bookkeeping. He's not a CPA, but he's good in
20 that area, he's good with numbers. And Bob helped me with
21 keeping that straight. And he worked with accounts receivable,
22 collected money for me.

23 And Bob was just one that it was kind of, could have been
24 the person maybe who took over my position when I left, so I
25 communicated a lot with him. And during the time period that

BEAVER - DIRECT / VOYLES

1 we're talking about, we also hired an outside consulting firm
2 that showed us, you know, how to, helped us a lot with the
3 transition and how to do a better job of what we do.

4 And he worked a lot with Chris. And therefore with the
5 knowledge that Chris had in that area and they was working on
6 truck times, load sizes, you know, I think to me every customer
7 is a good customer but in real life, you know, customers are
8 different. And they showed us how to create that, how to see
9 it and how not to send our trucks where they lost money.

10 Q This is a consulting firm you hired to help you with that,
11 is that correct?

12 A Yes.

13 Q But the pricing of concrete in the Beaver Materials
14 MA-RI-AL Corporation all went through you, is that correct?

15 A That's right.

16 Q I mean Chris or Rick could talk to you about it, advise
17 you, but the ultimate decision-making was with you?

18 A That's right.

19 Q We heard a lot of testimony from individuals who testified
20 in this courtroom, Mr. Nuckols and Mr. Hughey and Mr. Irving,
21 about a number of meetings that took place at restaurants, at
22 horse barns, in all kinds of places. Did you ever attend any
23 of those meetings?

24 A No.

25 Q There was a kind of a period of time from 2000 through

BEAVER - DIRECT / VOYLES

1 2004, and we tried with each witness, or at least I did on
2 behalf of the corporation, to talk to those individuals about
3 who was at those meetings. And the places like Chi-Chi's,
4 Oaken Barrel, Micro Brewery, you never were invited to those
5 meetings?

6 A No, I wasn't.

7 Q They weren't calling you on the phone and talking to you
8 about prices?

9 A No, they didn't.

10 Q You were kind of left out?

11 A Yeah, I was.

12 Q You know some of these people though, don't you?

13 A Yes.

14 Q You have known them from the ready-mix industry?

15 A Yes.

16 Q But during the time in question the government has charged
17 in this indictment you weren't communicating with them, you
18 didn't have any contact with them, and didn't attend any of
19 these meetings and never in fact had any telephone conversation
20 with any of these people?

21 A No. About price fixing or anything of that nature, no, I
22 didn't. I might have run into them at the -- I think during
23 that period of time I might have run into Peter at the airport.
24 I might have run into him in public places. But no, I never
25 had a meeting with them.

BEAVER - DIRECT / VOYLES

1 Q You could have had incidental contact with them?

2 A Yes.

3 Q Now, how big in the years 2002, 3, 4 was your company? How
4 big was your company?

5 A As far as the Indianapolis market, we're one of the
6 smallest. We now have I believe 51 trucks. And I think in the
7 year 2000 I know Chuck said 18. That could very well have been
8 the case. It might have been 21 in that time, and we have just
9 added a little bit each year.

10 Q You have two plants?

11 A We have two plants side by side in Noblesville, and we have
12 one plant in Waverly that we added in year 2000.

13 Q 2000 was the year that the plant opened in Waverly?

14 A I believe that's correct, yes.

15 Q At the time in question from the year 2000 to 2004 did
16 Chris Beaver or Rick Beaver have any authority to set prices
17 for your company?

18 A No, they didn't.

19 Q For Beaver Materials or MA-RI-AL Corporation?

20 A No.

21 Q Did they ever act in your capacity or as agents or people
22 to go out and set prices for you?

23 A Oh, no.

24 Q That was strictly done by you?

25 A That's right.

BEAVER - DIRECT / VOYLES

- 1 Q Okay. Did there come a time, Mr. Beaver, that you,
2 yourself, were interviewed by the FBI?
- 3 A There was.
- 4 Q And that's a situation where somebody comes to what
5 location?
- 6 A Come to my house.
- 7 Q Early in the morning?
- 8 A I wasn't up yet.
- 9 Q And you talked to them?
- 10 A I did.
- 11 Q And they didn't record you, they took notes, whoever was
12 the agent there took notes of the conversation?
- 13 A No, they didn't take notes.
- 14 Q You didn't even see them take notes?
- 15 A No.
- 16 Q So if there was a summary, it was based upon their memory
17 of the conversation?
- 18 A Yes.
- 19 Q Did you indicate to them kind of the corporate structure
20 within Beaver Material, in other words you told them what your
21 job was?
- 22 A Yes.
- 23 Q You told them how much stock you had?
- 24 A I don't think they asked me that.
- 25 Q Well, if the report shows you were 51 percent stockholder?

BEAVER - DIRECT / VOYLES

- 1 A Then they did.
- 2 Q And it showed your brother was 49?
- 3 A Yes.
- 4 Q And they also asked the primary responsibility of Chris and
5 Rick?
- 6 A Yes.
- 7 Q And you told them?
- 8 A Yes.
- 9 Q And you kind of gave them a little history about the
10 concrete industry, didn't you?
- 11 A Yes.
- 12 Q And you talked to them about prices?
- 13 A Yes.
- 14 Q And you talked to them and you told them, did you not, that
15 Rick and Chris were involved with you in pricing?
- 16 A Yes.
- 17 Q But the ultimate authority for the pricing was you?
- 18 A That's right.
- 19 Q And you also talked to them a little bit about some kind of
20 meeting at Butch Nuckols' horse barn?
- 21 A Yes.
- 22 Q When did you first become aware that such a meeting had
23 taken place?
- 24 A Oh, right before Chris was going.
- 25 Q That would be Chris, your son?

BEAVER - DIRECT / VOYLES

- 1 A Yes.
- 2 Q And did he tell you he was going to a meeting?
- 3 A No. He told me Dan Butler called him and asked him to come
4 to the meeting.
- 5 Q Dan Butler called him to come to a meeting?
- 6 A Yes.
- 7 Q Did he know what the reason for the meeting was?
- 8 A No.
- 9 Q Did you tell him it was okay to go?
- 10 A Yes.
- 11 Q Did he go to the meeting?
- 12 A He did.
- 13 Q Did he come back?
- 14 A Yes.
- 15 Q Did he talk to you about it at that time?
- 16 A Actually he called me as soon as the meeting was over.
- 17 Q Had you had any knowledge of anybody in the company, Rick
18 or anybody, going to any other meetings?
- 19 A No.
- 20 Q And what did your son tell you about the meeting? How did
21 he represent it to you?
- 22 A Can I go back to the last question you just asked me?
- 23 Q Yes.
- 24 A Okay. Okay. Because I think -- would you repeat that last
25 question.

BEAVER - DIRECT / VOYLES

1 Q All right. What did your son tell you?

2 A No, the last one.

3 Q The one before that?

4 A Yes.

5 Q Had you had any knowledge that there had been any other
6 meetings that anybody in the family had attended?

7 A The only knowledge that I had is the conversation that Rick
8 and I were having at the time. I could tell by his
9 conversation, and he never told me that he went to a meeting,
10 but I could tell he was communicating with our competition.
11 And mine and Rick's relationship at that period of time, I
12 really did not want Rick talking to the competition because his
13 and my communication wasn't all that well. And I sure didn't
14 want him talking to the competition.

15 So when Chris said Dan Butler called him to go to a
16 meeting, I thought: Okay, because I wanted to see what in the
17 world are we doing? I don't -- I didn't like it that Rick was
18 communicating with our competition. There was no reason for
19 him to. I don't know what he would tell them. And so I was
20 upset that he was doing that.

21 And so when Chris said that he was going to the meeting, I
22 said okay. Because Chris and I's communication is better. And
23 I know a lot of things about Chris. I know (1) is he never
24 makes a decision unless he clears it with me first. And Chris
25 has always told me the truth.

BEAVER - DIRECT / VOYLES

1 Q All right. So he indicated that he had gone to a meeting
2 and he came back or at least telephoned you after the meeting
3 and talked to you about it?

4 A Yes, he did.

5 Q What did he tell you?

6 A He told me that when he went to that meeting that all of
7 our competition, you know, it was almost like a fraternity.
8 You know, they all knew each other's family. They knew each
9 other's wives. I mean they just knew an awful lot about each
10 other. And they had been meeting all the time, a lot of
11 places.

12 And I thought: Well, you know, that's all we need to know.
13 We don't want nothing to do with that.

14 Q Did you tell that to your son?

15 A I did.

16 Q You told him exactly how you felt about that?

17 A I did.

18 Q And when you talked to the FBI, you told them about your
19 knowledge that you had of the meeting from your son Chris, is
20 that correct?

21 A Would you repeat that question.

22 Q Sure. When the FBI talked to you on May 25th, 2004, you
23 told them about Chris going to Butch Nuckols' horse barn?

24 A I did that.

25 Q And had you on behalf of the MA-RI-AL Corporation or Beaver

BEAVER - DIRECT / VOYLES

1 Materials ever agreed with Butch Nuckols, Scott Hughey, Price
2 Irving or any of those people to offer certain discounts to
3 your customers?

4 A You know, I have been in business a long time. And I have
5 dealt with these people forever. And no, this is not people I
6 would make any agreement with. They're just not.

7 Q Why?

8 A You know, because anything that they would ever tell me
9 isn't -- if they told me something, it wouldn't be true. You
10 know competition just don't tell each other the truth I don't
11 think. No, I wouldn't believe them. I wouldn't do it.

12 And I don't, I just don't think they would. So no, I'm not
13 going to make a -- I didn't. I had no reason to make an
14 agreement with them.

15 Q You had no reason to have any agreement with them?

16 A No.

17 Q And you didn't have an agreement with them?

18 A No. We -- I have to run my own business. We're the
19 smallest company. We're not the smallest now, but we have been
20 a small company all of our life. You know, big guys, we don't
21 aggravate them, we tolerate them, and we get by okay.

22 Q Your company does well, does it not?

23 A It does okay.

24 Q And during that period of time from 2000 and 2004 did you
25 ever engage in any kind of conspiracy on behalf of your company

BEAVER - DIRECT / VOYLES

1 that you're the president of to involve yourself in price
2 fixing with these other co-conspirators?

3 A Never.

4 Q Did you ever enter into any agreement with them?

5 A No.

6 Q Did you ever authorize Rick or Chris Beaver to engage in
7 any kind of agreement with them for or on behalf of your
8 company?

9 A No.

10 Q Did Chris or Rick Beaver have any authority to engage in
11 any kind of conversation with competitors about fixing prices?

12 A No.

13 Q Why?

14 A Because I ain't going to allow it.

15 Q And is it because also that you're the only one in the
16 whole company that fixes the prices?

17 A That's right.

18 Q How long do you think you talked to the FBI on May 25th,
19 2006?

20 A It could have been somewhere between 45 minutes and an hour
21 and a half I suppose. Was awful early in the morning.

22 Q Did you indicate to the FBI at that time that you suspected
23 there was some collusion among the suppliers?

24 A I think when we talked about that I said I really thought
25 that the cement companies, if anybody, was doing it, the cement

BEAVER - DIRECT / VOYLES

1 companies would do it. And that's people we buy the powder
2 from.

3 Q Cement being different from concrete?

4 A Yes.

5 Q That's the additive you mix in to make concrete?

6 A That's right.

7 Q You thought there might have been something in that
8 industry?

9 A The way the question was asked, you know, and however I
10 answered it, that's what I was thinking when I answered the
11 question.

12 Q Were any of the prices that you gave or that your
13 competitors were giving to other people, were you influenced in
14 any way during those years or your company prices influenced by
15 anything that may have gone on at meetings that you didn't even
16 know about?

17 A No.

18 Q I notice in the testimony of the people who came in front
19 of this jury that the government called that Mr. Hughey, he's
20 the president of his company, correct?

21 A That's right.

22 Q And Mr. Nuckols is the owner and president of his company?

23 A He is.

24 Q And Mr. Irving is the son of the owner of that company and
25 vice-president of that company, is that correct?

BEAVER - DIRECT / VOYLES

- 1 A That's right.
- 2 Q But you're the President of your company?
- 3 A I am.
- 4 Q And neither Chris nor Rick are officers in that company?
- 5 A That's right.
- 6 Q They're not on the Board of Directors?
- 7 A No.
- 8 Q And you never went to a meeting?
- 9 A No.
- 10 Q You never went to a restaurant?
- 11 A No.
- 12 Q You never went to a Hardee's or McDonald's --
- 13 A No.
- 14 Q -- to discuss prices with them?
- 15 A No.
- 16 Q And you never authorized anybody on behalf of your company
- 17 to authorize prices?
- 18 A No.
- 19 Q And when you found out after you talked to your son who
- 20 described the meeting as kind of a fraternity meeting, you told
- 21 him that -- what?
- 22 A That's it. We're not doing that no more. Because when he
- 23 was invited to the meeting, they didn't tell him, I mean they
- 24 just said they were having a meeting, it would be nice if you
- 25 would be there. They didn't tell him what he was there for.

BEAVER - DIRECT / VOYLES

1 MR. VOYLES: I have no further questions.

2 THE COURT: Cross-examine.

3 MR. SCHLEEF: Yes, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. SCHLEEF:

6 Q Hello Mr. Beaver.

7 You indicated were interviewed by a special agent with the
8 FBI on May 25th, 2004, is that correct?

9 A Yes.

10 Q And you said you didn't see them take notes. But could
11 they have taken notes and you just didn't see?

12 A We were sitting at my kitchen table and I didn't see
13 anybody writing anything. Is that what you're referring to?

14 Q I'm sorry, I didn't here you. Could you speak up, please?

15 A Okay. I have got this on.

16 Q Yeah.

17 A So, no, we were sitting at my kitchen table.

18 Q Okay.

19 A And if they were taking notes -- I mean, we're sitting
20 across the table. And if they were taking notes, I didn't see
21 it.

22 Q Was there more than one person interviewing you?

23 A Yes.

24 Q Could the other person have been taking notes?

25 A I was sitting on one side of the table and they was -- I

A. BEAVER - CROSS / SCHLEEF

1 think there was one sitting on this end and another one sitting
2 over there. If they were, I didn't see it.

3 Q Mr. Beaver, approximately how much does Beaver do in sales
4 per year?

5 MR. VOYLES: We haven't established which years he's
6 talking about. So can we have some reference?

7 BY MR. SCHLEEF:

8 Q On an average year over the past 5.

9 A I understand the question. But I know more about how many
10 yards we do than how many dollars it is. Does that make sense
11 to you? I'm sorry, but that's just the way I watch things.

12 Q Could you approximate it for me?

13 A Oh, I'll guess. Is that what you want me to do?

14 Q To the best of your ability.

15 Well, would a figure around 10 to \$15 million a year sound
16 about right?

17 A What?

18 Q Would a figure of about 10 to \$15 million a year sound
19 about right?

20 A Um-hmm. Close.

21 Q You testified that you knew that Chris attended one of
22 these meetings at Butch Nuckols' horse barn?

23 A I did.

24 Q And you told the FBI that Chris had attended one these
25 meetings?

A. BEAVER - CROSS / SCHLEEF

1 A I did.

2 Q And you told the FBI the truth?

3 A I think so.

4 Q I'm sorry, I don't mean this to be rude, but how old are
5 you, Mr. Beaver?

6 A I have trouble with that, too. Sixty-seven.

7 Q Sixty-seven. Are you getting ready to retire?

8 A I'd like to.

9 Q At the time of your interview did you tell the FBI that
10 Chris was responsible for the day-to-day operations of Beaver
11 Materials?

12 A You know, I probably -- you know, when they come to my
13 house, okay, just so we understand each other, they knocked on
14 the door. They were very polite. And they wanted to know if
15 they could talk to me. Okay? And sure.

16 But I think I would talk to anybody. You know. I mean, if
17 somebody comes to my house and wants to talk to me, you know.
18 I know at work I have an open door policy, anybody want to talk
19 to me I'm going to talk to them.

20 So when they come, they kind of -- they indicated that they
21 just wanted to talk to me. So I thought we were just having a
22 conversation. So I later find out that I'm really under oath.
23 You know. And I don't think I had any reason to know that.
24 Not, that doesn't change anything. Except my conversation with
25 them was more casual.

A. BEAVER - CROSS / SCHLEEF

1 Q Um-hmm.

2 A It wasn't, I didn't know -- it was -- I didn't know it was
3 as specific as it turns out that it should have been. So to
4 answer your question, yes, we talked. And I was not specific
5 with them about what Chris's responsibility was. We were just
6 having a conversation. And he wants to know what Chris does.
7 So that was an easily explanation.

8 Q So it's possible that you told him that Chris was
9 responsible for the day-to-day operations?

10 A I could have.

11 Q When the FBI showed up at your door, did they tell you that
12 they were interested in a possible price fixing conspiracy?

13 A No.

14 Q No?

15 A No. You asked me when they showed up at my door did they
16 ask me that, and they didn't do it at the door.

17 Q No, no. Did they tell you that's what they wanted to talk
18 to you about?

19 A Later they did.

20 Q Now at the time of your interview with the FBI, you told
21 them that Rick Beaver was working in sales.

22 A I did.

23 Q And at the time of your interview did you tell them that
24 Chris Beaver was involved in helping to establish Beavers
25 prices?

A. BEAVER - CROSS / SCHLEEF

1 A I don't believe so -- oh, yes, I did. Yes, I did.

2 And like I explained to Mr. Voyles, there was an area that
3 Chris was doing a lot of training in, and that area is the area
4 that I used from Chris to work on prices.

5 Q But did you tell the FBI that prices established by your
6 company was a collective effort with you, your son and Bob
7 Mathews?

8 A I did.

9 Q And at the time you were interviewed, did the sales staff
10 have the authority to give discounts of up to \$5 to \$6, is that
11 correct?

12 A That's basically right.

13 Q And Rick Beaver was involved in sales at this time, right?

14 A Yes.

15 Q And Rick Beaver as a salesman had the authority to bid
16 work, is that correct?

17 A Yeah.

18 Q You also told the FBI that any discount over \$6 required
19 the approval of you or Bob Mathews or Chris Beaver, is that
20 correct?

21 A Well, if I said that, and I probably did, it's because I
22 thought we were having a casual conversation.

23 Q But you did say that, is that correct?

24 A I don't think I stated it like that. Now I could be wrong.

25 Q Is it possible that's what the FBI heard, what they wrote

A. BEAVER - CROSS / SCHLEEF

1 down?

2 A It's possible, but that's the notes they took after they
3 left my house, or whenever they wrote it down. But there was a
4 lot of discrepancy in what was said at my house and what they
5 wrote down on the report.

6 MR. SCHLEEF: May I approach the witness, Your Honor?

7 THE COURT: Yes.

8 THE WITNESS: I left my glasses on the table.

9 MR. VOYLES: May I approach the witness?

10 THE COURT: Yes.

11 THE WITNESS: Thank you.

12 BY MR. SCHLEEF:

13 Q Sir, could you turn to page 2, and the top paragraph
14 somewhere about in the middle. You can read the whole
15 paragraph, but you can start in the middle.

16 A We're usually --

17 Q No, no, sir. Please, could you read it to yourself.

18 I'm sorry I didn't make that clear.

19 A Do what? Oh, read it to myself.

20 Q Yeah.

21 A Okay.

22 Q Does that refresh your recollection a little bit of the
23 conversation you may have had, or that you did have?

24 A Yeah.

25 Q And did you tell the FBI agent at that time that any

A. BEAVER - CROSS / SCHLEEF

1 discount over \$6 required the approval of yourself, Bob Mathews
2 or Chris Beaver?

3 A The way you stated that question, my answer would have to
4 be no.

5 Q Okay.

6 A Because you're saying anyone as an individual. And I think
7 it says that it takes all three of them to do that.

8 Q That's correct.

9 A Okay. I misunderstood what you said, I'm sorry.

10 Q So you're stating that any discount over \$6 required the
11 collaborative approval of yourself, Bob Mathews and Chris
12 Beaver?

13 A I understand that. But what it takes for a discount
14 greater than that is we would get together, but I would still
15 have the final say.

16 Now is that what you -- does it mean the same thing? I'm
17 not sure what you say means.

18 Q We can just move on.

19 A Okay.

20 Q Let's go back to the horse barn meeting. And you stated
21 your son Chris attended at least one of those, correct?

22 A That's right.

23 Q And Chris told you that prices and discounts were
24 discussed, didn't he?

25 A Yes.

A. BEAVER - CROSS / SCHLEEF

1 Q And you told the FBI that in addition to Chris being there,
2 you believed Builder's Concrete, Carmel Concrete, IMI and
3 Shelby Materials attended, correct?

4 A Yes. I thought they did.

5 Q And you stated today a little bit earlier that you knew
6 that Rick was communicating with the competition at a certain
7 point?

8 A By the conversation Rick and I was having, I could tell,
9 yes, he was communicating with the competition.

10 Q But at the time you said you didn't communicate very well
11 with Rick, yourself, is that fair to say?

12 A That's right.

13 Q So you don't know exactly what Rick was talking about with
14 the competition, do you?

15 A I have no idea.

16 Q Did you tell the FBI everything that Chris told you about
17 what was going on at the horse barn meeting he attended?

18 A Nope.

19 Q Were you at this meeting?

20 A Horse barn meeting?

21 Q Yes.

22 A No.

23 Q Do you know exactly what was said?

24 A I have no idea except what was communicated to me by Chris.

25 Q What did Chris tell you?

A. BEAVER - CROSS / SCHLEEF

1 A We had a long conversation after he left there. And yes,
2 they did talk about prices. But he told me, too, that the way
3 that the meeting was going, these guys must be doing this all
4 the time.

5 We have never been to any meetings that I knew of at that
6 time. And therefore when -- I just thought: I don't know
7 what's going on. But I don't want to be a part of it, whatever
8 it is.

9 Q So you can't say for sure what went on or what --

10 A I wasn't at the meeting.

11 Q So you can't say what Chris did or did not agree to do, can
12 you?

13 A Do what?

14 Q Since you were not at the meeting, can you say for sure
15 what Chris did or did not agree to at the meeting?

16 A How could I do that, possibly do that?

17 Q So is the answer to that no?

18 A I wasn't at the meeting.

19 MR. SCHLEEF: I have no further questions for this
20 witness.

21 THE COURT: Mr. Voyles.

22 MR. VOYLES: Thank you, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. VOYLES:

25 Q Mr. Beaver, when you and Chris talked after the meeting,

A. BEAVER - REDIRECT / VOYLES

1 did he ever ask you to do anything?

2 A Absolutely not. We agreed -- I mean no. We didn't want to
3 do anything.

4 Q You didn't want to, you didn't do anything, and he never
5 asked you to do anything?

6 A No.

7 MR. VOYLES: No further questions, Your Honor.

8 THE COURT: Anything else?

9 MR. SCHLEEF: The Government has nothing further, Your
10 Honor.

11 THE COURT: You may step down, sir.

12 (Witness excused.)

13 THE COURT: Your next witness.

14 MR. VOYLES: Judge, he is not here. Mr. Kenley.

15 THE COURT: All right, let's take about 15 minutes,
16 and we will give him the courtesy of waiting for him for that
17 period of time.

18 MR. VOYLES: Thank you, Your Honor.

19 THE COURT: We will take a short break.

20 (The Court recessed from 3:30 P.M. to 4:00 P.M.)

21 (Jury not present)

22 THE COURT: Are we ready for the jury, yes?

23 MR. VOYLES: We are ready.

24 (Jury present)

25 THE COURT: You may be seated.

1 You may call your next witness.

2 MR. VOYLES: If it please the Court, the defense call
3 Howard Kenley.

4 THE COURT: Raise your right hand I'll swear you in.

5 There has been a motion made and sustained by the Court to
6 separate witnesses in this case, which means you are not to
7 share your testimony with anyone who has been or will be a
8 witness in this matter. Do you understand that?

9 THE WITNESS: Yes.

10 THE COURT: You may inquire.

11 HOWARD A. KENLEY

12 DEFENDANTS' WITNESS, SWORN

13 DIRECT EXAMINATION

14 BY MR. VOYLES:

15 Q State your name to the Court and jury, please.

16 A I am Luke Kenley, known as Luke Kenley, and have been since
17 the day after I was born. But my real name is Howard A.
18 Kenley, III.

19 Q What is your business or occupation, Mr. Kenley?

20 A I have been a grocer most of my life, but the last 14 years
21 I have also been a state senator representing four counties in
22 central Indiana.

23 Q Which counties do you represent?

24 A Hamilton, Madison, Grant, and Tipton Counties.

25 Q Where was your grocery business located?

KENLEY - DIRECT / VOYLES

1 A We had two stores in Noblesville, Indiana and have been in
2 business there since 1946.

3 Q And as a state senator, is that a full-time job?

4 A It is not paid as a full-time job, but it pretty much takes
5 most of your time these days.

6 Q What are your responsibilities at the Senate?

7 A Well, I'm the chair of the tax and fiscal policy committee.
8 I serve on various committees and do quite a bit of the fiscal
9 work with the committee in terms of appropriations and school
10 funding formula and several various committees during the
11 non-session time. So you are meeting sometimes all year long
12 on issues.

13 Q Are you familiar with a gentleman by the name of Allyn
14 Beaver?

15 A Yes.

16 Q How do you know Allyn Beaver?

17 A Allyn Beaver grew up in Noblesville. We are not exactly
18 the same age, but about the same age, and I have known Allyn
19 and many members of the Beaver family most of my life.

20 Q Do you know Chris Beaver?

21 A Yes, I do.

22 Q And do you know Rick Beaver?

23 A Yes, I do.

24 Q How do you know them?

25 A I know them as being part of the Beaver family that ran the

KENLEY - DIRECT / VOYLES

1 Beaver family business, and I have watched both of them grow up
2 and have seen them from their younger years until recent years
3 as business people in Noblesville.

4 Q Now, specifically directing your attention to Allyn Beaver,
5 you had occasion to be in his home?

6 A Yes.

7 Q Has he had an occasion to be in yours?

8 A No.

9 Q Would you consider yourself good friends?

10 MR. VONDRAK: Your Honor, I'm going to have to object
11 to the relevance to the witness' relationship with Mr. Allyn
12 Beaver.

13 THE COURT: I assume you are laying a foundation for
14 something.

15 MR. VOYLES: Have to lay a foundation for a character
16 witness.

17 THE COURT: Go ahead.

18 Q How long have you known him now?

19 A Over 40 years, maybe 45 years, I would guess.

20 Q You can indicate to the Court and the jury, can you not,
21 that you are good friends?

22 A Yes.

23 Q I'll ask you, Mr. Kenley, do you have an opinion, sir, of
24 Allyn Beaver's reputation in his community for truth and
25 honesty?

KENLEY - DIRECT / VOYLES

1 A I do.

2 Q And what is that opinion?

3 MR. VONDRAK: Object again. Mr. Allyn Beaver is not a
4 defendant in this case.

5 THE COURT: Well, that is true. He is not.

6 MR. VOYLES: He is not, but certainly has been a
7 witness who testified in this case.

8 THE COURT: I'll let him testify. Go ahead.

9 THE WITNESS: Would you repeat the question?

10 Q Yes. Do you have an opinion about the honestly and
11 integrity of Allyn Beaver?

12 A Yes.

13 Q What is that?

14 A It is excellent.

15 MR. VOYLES: No further questions, Your Honor.

16 THE COURT: Cross-examine.

17 CROSS-EXAMINATION

18 BY MR. VONDRAK:

19 Q Good afternoon, sir. My name is Frank Vondrak. I work for
20 the United States Department of justice, Antitrust Division.

21 Mr. Kenley, before you began working in the state senate
22 you went through college, didn't you?

23 A Yes.

24 Q And you have a degree in economics, don't you?

25 A Yes.

KENLEY - CROSS / VONDRAK

1 Q And during your training in economics did you have any
2 training in antitrust?

3 A Yes. I also took a course in law school on antitrust.

4 Q And once you were appointed -- once you were elected you
5 were appointed to the finance committee, isn't that correct?

6 A Yes.

7 Q And it is very rare for a junior senator, state senator, to
8 be appointed to the finance committee, isn't that correct?

9 A That is true.

10 Q Now, in your work with the finance committee are you
11 familiar with how the state of Indiana makes purchases?

12 A Somewhat.

13 Q And is it fair to say that the state of Indiana tries to
14 purchase the best possible product at the lowest possible
15 price?

16 A Yes.

17 Q And, in fact, the state of Indiana has laws that require it
18 to obtain competitive bids for goods and products and services
19 that it purchases, is that correct?

20 A That is correct.

21 Q Would you say that the Beavers are constituents of yours?

22 A Yes.

23 Q Have they ever contributed to your political campaign?

24 A I don't know the answer to that question. They may have at
25 some point in time, but I can't recall specifically whether

KENLEY - CROSS / VONDRAK

1 they were -- made contributions as individuals or through a
2 corporation, or not.

3 Q So you don't know?

4 A No, I really don't know.

5 Q Sir, are you testifying here today pursuant to a subpoena?

6 A No.

7 Q And you were at a press conference earlier today, is that
8 correct?

9 A Yes.

10 Q When did you find out that you were going to be needed here
11 today?

12 A I had been contacted by the defense attorney several days
13 ago. And Allyn Beaver called me first and asked me to call the
14 defense attorney if I were willing to do that, so I did make
15 that call, I believe it was last week.

16 Q You did change your schedule to be here today?

17 A I did, yes.

18 MR. VONDRAK: I have no further questions, Your Honor.

19 THE COURT: Anything else of this witness?

20 MR. VOYLES: I have no further questions.

21 MR. LOCKWOOD: I have some questions.

22 THE COURT: Step up here for just a minute.

23 (At the bench)

24 THE COURT: The record should reflect that Allyn
25 Beaver, the president of this corporation, called a character

KENLEY - CROSS / VONDRAK

1 witness for himself, and the counsel has had a direct exam, we
2 have had cross-examination by the Government, and the counsel
3 for the two defendants has requested -- direct or cross?

4 MR. LOCKWOOD: It would be direct.

5 THE COURT: You are calling this man as your witness?

6 MR. LOCKWOOD: I would.

7 THE COURT: Well, then, let me just announce to the
8 jury that we are done with him now and you can call your next
9 witness, and then you can call him.

10 MR. LOCKWOOD: Okay, if that is what you want me to
11 do.

12 THE COURT: I think that is the best way to do it.

13 Thank you.

14 (In open court)

15 THE COURT: This may sound a little technical to you,
16 ladies and gentlemen, but I have just consulted with counsel
17 because this witness has been called by Mr. Voyles for his
18 client and now Mr. Lockwood would like to call this witness as
19 his clients'.

20 So, Mr. Lockwood.

21 MR. LOCKWOOD: Thank you.

22 HOWARD A. KENLEY

23 DEFENDANTS' WITNESS

24 DIRECT EXAMINATION

25 BY MR. LOCKWOOD:

KENLEY - DIRECT / LOCKWOOD

1 Q Senator Kenley, my name is Jeff Lockwood. I'm the attorney
2 for Chris Beaver and Rick Beaver in this trial.

3 You stated earlier today that you had been acquainted with
4 both Rick and Chris --

5 A Yes.

6 Q -- during the time that they grew up. And also after they
7 became adults and in the business world?

8 A Right.

9 Q Do you know them in any other community or context?

10 A The context that I knew them, and this may -- there were
11 two contexts that I knew them. Our family had a family
12 supermarket, so I knew both boys from having seen them in the
13 store with their family that I was well acquainted with. And I
14 was, and still am, a director of the Boys and Girls Club in
15 Noblesville, Indiana, and both of those boys were members of
16 the Boys and Girls Club when they were kids. So they were -- I
17 just recognize their faces from -- at that time.

18 Q Have you remained acquainted with them as they have become
19 adults?

20 A Only causally.

21 Q Do you feel qualified, sir, to express an opinion about
22 their reputations in your community for truth and veracity?

23 A Yes, in the sense of the business that that business has
24 done within our community and how they have been involved in
25 the community and generally their reputation as business people

KENLEY - DIRECT / LOCKWOOD

1 and what type of business they run.

2 Q And do you have an opinion about Chris's reputation?

3 A Yes.

4 Q What is that opinion?

5 A It is excellent.

6 Q And do you have an opinion about Rick's reputation?

7 A Yes, I do.

8 Q What is that opinion?

9 A It is excellent too.

10 MR. LOCKWOOD: Thank you. That's all.

11 THE COURT: Anything else of this witness?

12 MR. VONDRAK: Thank you, Your Honor. Very briefly.

13 CROSS-EXAMINATION

14 BY MR. VONDRAK:

15 Q Senator, would your opinion of Chris Beaver change if you
16 knew that he had engaged in a conspiracy to fix the price of
17 ready-mix concrete?

18 A I would be surprised by that, but it would change, that's
19 right.

20 Q And if you found out that Ricky Beaver was engaged in a
21 conspiracy to fix the price of ready-mix concrete, would that
22 change your opinion?

23 A Yes, I would -- as I said, I would be surprised, but that
24 would change my opinion.

25 Q Why would that change your opinion?

KENLEY - CROSS / VONDRAK

1 A Well, that would reveal information about their character
2 that I had never seen that side of it. So it would cause me to
3 reflect on that.

4 MR. VONDRAK: Thank you, sir. I have no further
5 questions.

6 THE COURT: Anything else?

7 MR. LOCKWOOD: Nothing further. Thank you.

8 THE COURT: You may step down, sir.

9 (Witness excused)

10 THE COURT: Defense may call its next witness.

11 MR. VOYLES: On behalf of MA-RI-AL Corporation Beaver
12 Materials, we rest, Your Honor.

13 MR. LOCKWOOD: On behalf of defendants Chris Beaver
14 and defendant Ricky Beaver, we rest.

15 THE COURT: Does the Government have any rebuttal
16 evidence?

17 MR. VONDRAK: We have nothing else, Your Honor.

18 THE COURT: Ladies and gentlemen, that is all the
19 evidence we will hear in this case. You may retire this
20 evening a little early and be back at 9:00 o'clock.

21 At 9:00 o'clock in the morning we will hear the final
22 arguments of counsel and I'll read you the final instructions
23 and I'll give you this case for your final deliberation. But
24 until then don't speak to anybody about this case, don't decide
25 it, and don't form or express any opinion on it. And do avoid

1 the media presentation of this case, and I'll see you at 9:00
2 o'clock in the morning.

3 (The Court adjourned at 4:15 P.M.)

4 (In chambers, 4:25 P.M.)

5 THE COURT: This is United States versus MA-RI-AL
6 Corporation, doing business as Beaver Materials Corp and also
7 Chris and Ricky Beaver. We are having an instruction
8 conference. I have given a revised final draft of the jury
9 instructions to counsel yesterday and they had indicated that
10 they would go over these last night because we thought we might
11 be finishing up the case a little sooner than we had
12 anticipated.

13 So, the first issue for us from the Government is to look
14 at these draft revised instructions and tell me if there is
15 anything in them with which you disagree or if you have some
16 additional instruction you want to add.

17 MR. VONDRAK: Thank you, Your Honor.

18 I do have several things that I would like to object to,
19 and I have proposals for those.

20 THE COURT: All right.

21 MR. VONDRAK: The first is on page 24 of the revised
22 proposed instructions.

23 THE COURT: Page 24.

24 MR. VONDRAK: Your Honor, I would substitute the
25 paragraph in the jury instructions that were given in ADM,

1 which were previously supplied to the Court and to counsel. I
2 would substitute the second full paragraph and third paragraph
3 on page 5593 for the third paragraph on page 24 of this Court's
4 instructions and the first five lines of page 25 of the Court's
5 instruction. We believe that those more accurately reflect the
6 law and are closer to the 7th Circuit pattern instructions than
7 what is contained in the Court's instruction.

8 THE COURT: I have got our page 24. That is what you
9 are referring to, isn't it?

10 MR. VONDRAK: Yes, sir.

11 THE COURT: The third paragraph, look at that briefly.

12 And the ADM instruction reads like this. The two
13 paragraphs you want from this one are from page 5593?

14 MR. VONDRAK: Yes, Your Honor, presence at the scene
15 of a crime.

16 THE COURT: Right.

17 MR. VONDRAK: And a person who has no knowledge.

18 THE COURT: Let me read this into the record here.

19 The offer is to substitute these words: "Presence at the scene
20 of the crime and knowledge that a crime may be committed by
21 others are not sufficient to establish a defendant's guilt.
22 Mere association with conspirators or those involved in a
23 criminal enterprise is insufficient to prove a defendant's
24 participation or membership in a conspiracy. The person who
25 has no knowledge of a conspiracy, but who happens to act in

1 a way which furthers some purpose of conspiracy, does not
2 thereby become a member of the conspiracy. Similarly,
3 knowledge of a conspiracy without participation in the
4 conspiracy is also insufficient to make a person a member of
5 the conspiracy."

6 Those would be the proposed substituted for that one
7 paragraph, and then the first five lines of the next paragraph.

8 MR. VONDRAK: Original page 25, Your Honor.

9 THE COURT: The first five lines. So that would be
10 the third paragraph on page 24 and the second paragraph at the
11 bottom of 24 and ends at the top of 25.

12 MR. VONDRAK: That's right.

13 THE COURT: Do you have any view of that?

14 MR. VOYLES: Well, I have looked at the attachment,
15 Exhibit A, that the Government has indicated. I am very
16 comfortable with the Court's tendered instruction -- or final
17 instruction, and I think they are both speaking to the same
18 issue.

19 THE COURT: Yeah, I think they are too. I think they
20 both say just about the same thing.

21 But you think, Mr. Vondrak, that this instruction that was
22 given in the other case actually is closer to the 7th Circuit
23 instruction?

24 MR. VONDRAK: I believe so, Your Honor. In looking on
25 page 24, the phrase "and the fact that they may have associated

1 with each other and may have assembled together and discussed
2 common aims and interests," I don't find that in the transcript
3 here or in any of the pattern instructions.

4 THE COURT: This instruction for us comes from our
5 cocaine conspiracies. That is where I got this. I thought, in
6 fact, that this was a part of the 7th Circuit instruction. You
7 are suggesting that it is not?

8 MR. VONDRAK: I do not believe that is the case, Your
9 Honor.

10 THE COURT: Well, I would like for this to be as close
11 to the 7th Circuit instruction as possible. And I don't --
12 certainly don't mean to make up any law. On the other hand,
13 this instructions has been given for a long time in this
14 Court --

15 MR. VOYLES: And I think it has been up on appeal.

16 THE COURT: -- on a lot of conspiracies, and I have
17 never seen it come back. I don't know if it has ever been
18 objected to, actually.

19 Which is the specific phrase you think that you find
20 objectionable?

21 MR. VONDRAK: Specifically, on page 24, "And the fact
22 that they may have associated with each other and may have
23 assembled together and discussed common aims and interests."

24 MR. VOYLES: See, I think that has got to be in there
25 because it reflects exactly what the Court says in the

1 paragraph following it and then reiterates it in the top of 25.

2 THE COURT: Let me see that. It is next to Gloria's
3 desk. Why don't you go get that, Scott.

4 We get this all the time with some kid who shows up at the
5 meeting with a couple of thugs and dances around a little bit
6 and goes home.

7 MR. LOCKWOOD: Kind of like this case.

8 THE COURT: Well, in the instruction on conspiracy in
9 the criminal case -- or in the drug case the Government only
10 has to prove two things, and one is whether there was a
11 conspiracy, and the other is that the guy joined it. And so
12 let me look in here real quick and see.

13 MR. VONDRAK: I think the instruction, Your Honor,
14 might be 5.11, the mere presence instruction.

15 THE COURT: There is a longer instruction on
16 conspiracies.

17 MR. VONDRAK: Conspiracy is 5.08.

18 THE COURT: Where did you say the number for the mere
19 presence was?

20 MR. VONDRAK: 5.11, Your Honor, on page 86 in my copy.

21 THE COURT: Well, I'm looking at this mere association
22 thing, and 5.11 says, "A defendant's presence at the scene of a
23 crime and knowledge a crime is being committed is not alone
24 sufficient." And it says the defense association is not
25 sufficient for further participation.

1 I never had anybody ask me about that, but I don't know
2 where in the world that came from. I have given it a million
3 times, I know that. I don't think this is really harmful in
4 this case either because the issue is did they come to an
5 agreement, not did they discuss whether they were going to

6 MR. VOYLES: Right.

7 THE COURT: So I think I'm going to leave the one I
8 got in there. I think it's going to be satisfactory.

9 Thank you, Mr. Kreider.

10 What else you got there, Mr. Vondrak?

11 MR. VONDRAK: The instruction on page 32.

12 THE COURT: Thirty-two.

13 MR. VONDRAK: Is really an instruction --

14 THE COURT: Yes, do we really need that one? There's
15 not a question of whether there's one or two or three
16 conspiracies, is there?

17 MR. VONDRAK: That's my point, Your Honor, that I
18 don't think there's any evidence of another conspiracy.

19 THE COURT: I don't think there is either. It's
20 either this one or there isn't one.

21 Is that right, Jim?

22 MR. VOYLES: Yes.

23 THE COURT: So let's take out page thirty-two. What
24 else you have?

25 MR. VOYLES: Yes, I agree, Your Honor.

1 THE COURT: That's when we have three or four old guys
2 saying they have their own conspiracy going on and they weren't
3 in with this one.

4 MR. VOYLES: That was Nuckols and the others had their
5 own.

6 THE COURT: Yeah, me and Chris we had ours. No, I
7 don't think so. That's not working in this case.

8 (Laughter.)

9 MR. VONDRAK: Next, Your Honor, on page 37.

10 THE COURT: Thirty-seven.

11 MR. VONDRAK: There's no evidence of approval,
12 corporate approval in this case.

13 THE COURT: All right. We don't have to give them if
14 you're argument is the corporation hadn't approved, we don't
15 need that, do we, Mr. Voyles or Mr. Lockwood?

16 MR. VOYLES: No.

17 MR. LOCKWOOD: I would agree.

18 MR. VONDRAK: Your Honor, this is not a point, but I
19 just have to raise this. Last night in going over these
20 instructions one of my colleagues said that it took three of us
21 a half hour to read the instruction, but it is a pattern
22 instruction. So.

23 THE COURT: Yes, I know.

24 (An off-the-record discussion was held.)

25 MR. VONDRAK: Your Honor, we did not call -- the next

1 comment is on page 39.

2 THE COURT: Okay.

3 MR. VONDRAK: And we wound up not calling Dan Butler
4 or Philip Haehl.

5 THE COURT: That's true. So let's strike Philip
6 Haehl. And, do you see and Dan Butler? Okay. Butler. Only
7 one Butler at the top.

8 MR. VONDRAK: Only one Butler at the top.

9 THE COURT: One Phil Haehl.

10 MR. VOYLES: No, two Phil Haehls at the bottom. Well,
11 there's three.

12 THE COURT: There is.

13 MR. VOYLES: Yes.

14 THE COURT: Okay.

15 MR. LOCKWOOD: One is in the first line, then there's
16 another one in --

17 MR. VOYLES: Fourth line and sixth line.

18 THE COURT: Got three from the second paragraph. All
19 right.

20 MR. VONDRAK: And then the "theirs" should be changed
21 to "his".

22 THE COURT: Which is in which line?

23 MR. VONDRAK: In the second paragraph, the fourth
24 line.

25 THE COURT: And his company.

1 MR. VONDRAK: Yes.

2 THE COURT: And then entering this agreement shall be
3 along with Richard Haehl...well, that's the same.

4 MR. VONDRAK: Okay. Yeah, okay. That's fine.

5 THE COURT: So there's only one, singular, that's
6 necessary.

7 MR. VONDRAK: And then --

8 THE COURT: Richard Haehl, employee of Shelby, not
9 employees.

10 MR. VONDRAK: And then on the very end of the second
11 line from the bottom, "You may give his testimony such weight
12 as you feel it deserves."

13 THE COURT: Okay. All right.

14 MR. VONDRAK: Your Honor, on page 40 this case only
15 involves --

16 THE COURT: So, okay. So let's take out what it
17 doesn't involve.

18 MR. VONDRAK: It doesn't involve (1), falsifies,
19 conceals or covers up.

20 MR. VOYLES: Right.

21 MR. VONDRAK: And it doesn't involve (3) makes or uses
22 any false writing.

23 THE COURT: All right. Two it is.

24 MR. LOCKWOOD: No objection.

25 MR. VONDRAK: Your Honor, on page 43.

1 THE COURT: Forty-three.

2 MR. VONDRAK: I believe that Indiana State Police
3 should be taken out of this instruction.

4 THE COURT: I agree. We did have an Indiana State
5 Police woman here, didn't we?

6 MR. VONDRAK: Yes.

7 THE COURT: Okay. We don't need that. Thank you very
8 much.

9 MR. VONDRAK: Then finally, Your Honor, on page 49 I
10 don't think that there's any facts that relate to this
11 instruction.

12 THE COURT: Okay. Take that out.
13 You don't have any objection to that, do you?

14 MR. VOYLES: No.

15 MR. LOCKWOOD: No.

16 THE COURT: I didn't think so. All right.

17 MR. VONDRAK: That is all, Your Honor.

18 THE COURT: Do you have any you want to add?

19 MR. VONDRAK: No, Your Honor.

20 THE COURT: Excellent.

21 And so Mr. Voyles, Mr. Lockwood. I refrained, you will
22 note -- off the record.

23 (An off-the-record discussion was held.)

24 MR. VOYLES: I have got one.

25 THE COURT: Does that mean, excuse me, Your Honor, I

1 have an objection I would like to make?

2 MR. VOYLES: No, no.

3 THE COURT: What you got?

4 MR. VOYLES: Your Honor, on page 6.

5 THE COURT: Six. Okay.

6 MR. VOYLES: I assume we're kind of in a little
7 conflict obviously because we have two defendants who didn't
8 testify.

9 THE COURT: Yes.

10 MR. VOYLES: One defendant did testify who would want
11 that instruction, but I want to propose a discotomy because you
12 have the other part.

13 THE COURT: All right.

14 MR. VOYLES: That instruction.

15 THE COURT: Let's be more specific. So let's have
16 your suggestion. This one says --

17 MR. VOYLES: You heard from the Defendant Allyn
18 Beaver. His testimony should be judged in the same way you
19 judge the testimony of other witnesses.

20 THE COURT: That should be a separate instruction.

21 MR. VOYLES: Yes.

22 MR. LOCKWOOD: Yes, sir.

23 MR. VOYLES: Then you have got the other instructions
24 in the back that I saw.

25 THE COURT: Yes. And it should be by the one in the

1 back.

2 MR. VOYLES: Yes.

3 MR. LOCKWOOD: I would think so.

4 MR. VOYLES: That says you don't have to testify.

5 THE COURT: You can handle that, can't you.

6 MR. KREIDER: Which Beaver testified?

7 THE COURT: Allyn.

8 MR. VOYLES: That's kind of what I saw.

9 THE COURT: I think that's a good suggestion.

10 MR. VONDRAK: No objection.

11 MR. VOYLES: Judge, on behalf of the MA-RI-AL
12 Corporation I have no other objections to the instructions.

13 MR. LOCKWOOD: On behalf of Chris Beaver and Rick
14 Beaver we have no objection to the instructions as modified and
15 amended.

16 THE COURT: All right. Gentlemen, I appreciate that
17 you took the time last night to go over these and take care of
18 it. So we're in business, yes.

19 (Adjourned in chambers at 4:45 P.M.)

20 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
21 FROM THE RECORD OF THE PROCEEDINGS IN THE ABOVE
22 MATTER.

22

23

GLEN L. CUNNINGHAM
OFFICIAL COURT REPORTER

DATE

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PATRICIA CLINE
OFFICIAL COURT REPORTER

DATE

=