

(In open court at 8:45 a.m.)

THE COURT: Be seated, please. Good morning.

Mr. Tigar?

MR. TIGAR: We have marked the transcripts of the CD-ROM portions that were played yesterday with exhibit numbers and would like some opportunity to read those into the record at some point. If your Honor would like to do it at the end of the court day --

THE COURT: Yes.

MR. TIGAR: -- so we don't waste jury time

MR. TIGAR. SO WE DON'T WASTE JURY TIME.

THE COURT: Right. Bring in the jury.

(Jury in at 8:47 a.m.)

THE COURT: Members of the jury, good morning. Once again, a bit difficult to get around this morning, and we appreciate your being on time.

Also, it's my understanding from a report from Mr. Manspeaker that none of you has any conflict or prior commitment that would affect our proceeding on the Friday after Thanksgiving, so we will do so and hold court that day. As I understand it, one of you would like to do it on a regular Friday schedule. Maybe we can deal with that closer to the time when we see just where we are on the case at that point. But we will anticipate at least the Friday schedule of 8:45 or 8:30 till 1.

All right. You will recall that Mr. Hupp was testifying when we recessed yesterday. We'll resume with his testimony now.

If you'll resume the stand under your oath.

(Louis Hupp was recalled to the stand.)

THE COURT: Mr. Mearns, you were inquiring.

MR. MEARNS: Thank you, your Honor.

And Mr. Tigar and I have agreed to mark Mr. Hupp's notebook as Government Exhibit 2102.

THE COURT: 2102.

MR. TIGAR: Yes, your Honor. That is agreed.

THE COURT: All right. And you're going to put it in evidence. Is that also --

MR. MEARNS: I believe Mr. Tigar offered it. We have no objection.

MR. TIGAR: Yes, your Honor. We would because it does contain these additional materials.

THE COURT: All right. 2102 is received.

DIRECT EXAMINATION CONTINUED

BY MR. MEARNS:

Q. Good morning, Mr. Hupp.

A. Good morning.

Q. When we recessed yesterday afternoon, I was asking you some questions about Government Exhibit 158, and you identified for us shortly before we broke the 13 pages on which you found Mr. Nichols' latent fingerprint. Do you recall that?

A. Yes.

Q. Okay. I think you also said that you in fact developed 14 latent fingerprints. Is that true?

A. That is correct.

Q. What -- and were you able to identify that 14th fingerprint?

A. No.

Q. And what page was that on?

A. That was on page 54.

Q. In attempting to identify that fingerprint, did you compare it with the exemplars provided by Mr. McVeigh?

A. Yes, I did.

Louis Hupp - Direct

Q. And were you able to make an identification?

A. No.

Q. Did you compare it with the exemplar provided by Michael Fortier?

A. Yes.

Q. And were you able to make an identification?

A. No.

Q. During the course of your examination of Government Exhibit 158, the book, did you examine every page in that book?

A. Yes.

Q. And did you attempt to develop latent fingerprints on every single page?

A. Yes.

Q. I'd like you now, if you would, to turn to what has been admitted into evidence as Government Exhibit 1701. Did you examine this document?

A. Yes, I did.

Q. And did you develop any latent fingerprints on this document?

A. Yes.

Q. How many did you develop?

A. There were eight latent fingerprints which were of value for identification purposes developed on this particular document.

Q. And did you identify any of those eight?

Louis Hupp - Direct

A. Yes, I did.

Q. How many did you identify?

A. I identified two latent fingerprints with the fingerprints of Mr. Terry Nichols. I identified three fingerprints with the fingerprints of Mr. Timothy McVeigh. And I identified one fingerprint as a fingerprint of Marife Nichols.

Q. And the other two fingerprints, you were unable to identify?

A. Yes.

Q. Turning then to Government Exhibit 484, which has been admitted into evidence. Did you examine this document?

A. Yes, I did.

Q. And were you able to develop any latent fingerprints on this document?

A. Yes, I was.

Q. How many?

A. Three latent fingerprints of value for identification purposes.

Q. And did you identify any of those?

A. Yes, I did.

Q. Who did you identify?

A. I identified all three fingerprints with Mr. Terry Nichols.

Q. Turning now to Government Exhibit 495, which is in evidence. Did you examine this document?

A. Yes, I did.

Louis Hupp - Direct

Q. Did you develop any fingerprints on it?

A. There was one fingerprint of value for identification purposes developed on this item.

Q. On Exhibit 495, there's one or two?

A. Excuse me. I -- on 495, there were two. You're correct.

Q. Were you able to identify any of those two -- either of those two?

A. Yes, I was.

Q. Who did you identify?

A. Both fingerprints were identified with Mr. Terry Nichols.

Q. Turning then to Government Exhibit 498, which is in evidence, which is another \$100 money order. Did you examine this document?

A. Yes, I did.

Q. Did you develop any latent fingerprints on this document?

A. One latent fingerprint which was suitable for identification purposes.

Q. Did you identify that latent fingerprint?

A. Yes, I did.

Q. Who did you identify?

A. There again identified with the fingerprint of Terry Nichols.

Q. Turning to Government Exhibit 57 -- 572, which has only been marked for identification. It's not in evidence. Did you -- did you examine that document?

Louis Hupp - Direct

A. Yes, I did.

Q. And did you develop any fingerprints in that document?

A. Yes, I did.

Q. How many did you develop?

A. I developed 20 latent fingerprints and two latent palm prints which were suitable for identification purposes.

Q. Did you identify any of those fingerprints or palm prints?

A. Yes, I did.

Q. How many did you identify?

A. I identified 18 latent fingerprints and one palm print with Terry Nichols. And I identified two latent fingerprints as being fingerprints of Marife Nichols.

Q. You said a moment ago that you developed two palm prints and you identify one palm prints as Terry Nichols?

A. That is correct.

Q. Were you able to identify the other palm print?

A. No, I was not.

Q. And were the fingerprints and palm prints that you just spoke about -- were those spread out throughout that document?

A. Yes.

Q. Turning to Government Exhibit 250, 250, which is in evidence. Did you develop any latent fingerprints in this document?

A. Yes, I did.

Q. How many did you develop?

Q. How many did you develop?

Louis Hupp - Direct

A. I identified -- developed 11 latent fingerprints and four latent palm prints which were of value for identification purposes.

Q. And did you identify any of those fingerprints or palm prints?

A. Yes, I did.

Q. How many did you identify?

A. I identified seven latent fingerprints as belonging to Terry Nichols, and I identified four fingerprints and three latent palm prints as belonging to Marife Nichols.

Q. You stated a moment ago that you developed four, but only identified three?

A. That is correct.

Q. So there was one palm print that was not -- you were not able to identify?

A. Yes.

Q. Turning to Government Exhibit 113, which is in evidence. Do you recognize this document?

A. Yes, I do.

Q. And what is it?

A. This is a -- it's a rental agreement for the Boots U-Store-It agreement for Unit 37, which was located in Council Grove.

Q. Did you develop any latent fingerprints on this document?

A. Yes, I did.

Louis Hupp - Direct

Q. How many did you develop?

A. Two.

Q. And did you identify those two?

A. Yes, I did.

Q. Whose did you identify the fingerprints to be?

A. Both fingerprints were identified with Terry Nichols' fingerprints.

Q. Turning to Government Exhibit 88, which is in evidence. Do you recognize this document?

A. Yes, I do.

Q. What is this?

A. This -- again is a storage agreement for Herington, Kansas, dated 9-22-94, and it was in the name of Shawn Rivers.

Q. Did you examine this document?

A. Yes, I did.

Q. Did you develop any fingerprints on this document?

A. Yes.

Q. How many did you develop?

A. There were nine latent fingerprints which were suitable for identification purposes on this document.

Q. How many of those nine did you identify?

A. Eight.

Q. And whose did you identify those fingerprints -- those

eight fingerprints to be?

A. All eight fingerprints belonged to Timothy McVeigh.

Louis Hupp - Direct

Q. And there was one unidentified fingerprint?

A. That is correct.

Q. Turning to Government Exhibit 1717, which is in evidence.

Did you examine this telephone/address book?

A. Yes, I did.

Q. Did you develop any latent fingerprints in this address book?

A. Yes, I did.

Q. How many did you develop?

A. 38 latent fingerprints and 10 latent palm prints which were of value for identification purposes.

Q. And how many did you identify?

A. I identified 31 latent fingerprints and eight latent palm prints as belonging to Terry Nichols. And I identified seven latent fingerprints and two latent palm prints as belonging to Marife Nichols.

Q. And were those -- all of those fingerprints and palm prints spread throughout this telephone/address book?

A. Yes.

Q. Turning to Government Exhibit 1716, which is in evidence.

Did you examine this notebook?

A. Yes, I did.

Q. And did you develop any latent fingerprints in this notebook?

A. Yes.

Louis Hupp - Direct

Q. How many did you develop?

A. I developed 12 latent fingerprints which were of value for identification purposes.

Q. Were you able to identify any of those 12?

A. Yes. I identified all 12.

Q. Whose did you identify them to be?

A. I identified three of the latent fingerprints as belonging to Terry Nichols, and I identified nine of the fingerprints to belong to Marife Nichols.

Q. Let me show you what has been marked for identification, which is not yet in evidence, Government Exhibit 142. Did you examine this document?

A. Yes, I did.

Q. And did you develop any latent fingerprints on this document?

A. Yes.

Q. How many did you develop?

A. Two latent fingerprints which were of value for identification purposes.

Q. Did you identify either of those two?

A. I identified one of the two.

Q. Who did you identify it to be?

A. One of the fingerprints belonged to Terry Nichols.

Q. And the -- the remainder was unidentified?

A. That is correct.

MR. MEARNS: I have no further questions, your Honor.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. TIGAR:

Q. Hello again, Mr. Hupp.

A. Good morning.

Q. You've told us about some fingerprints that you could not identify; correct?

A. Yes, sir.

Q. And when you say that a fingerprint is one you could not identify, you're referring to a latent fingerprint of value that you could not compare to the known fingerprints of a person; correct?

A. Well, one that I could not identify with the known prints that were supplied to me, yes.

Q. Now, when you say the known prints that were supplied to you, who supplied you with the known prints?

A. The various offices within the FBI submitted names, mainly out of Oklahoma City and Kansas City.

Q. So your job is to compare fingerprints that you develop, latent fingerprints, with those that are given to you by the people who are directing the examination; is that right?

A. Or the investigation, yes, sir.

Q. Now, in addition to the known prints that are supplied by the people directing the investigation, does the FBI maintain a

Louis Hupp - Cross

file of the fingerprints of people?

A. Yes, we do.

Q. How many people's fingerprints do you have in your file?

A. Right now, our criminal database is somewhere in the neighborhood of about 35 million.

Q. Now, that doesn't mean that you have 35 million criminals on file then, does it, sir?

A. 35 million would be our database of criminal files, yes.

Q. But the -- that doesn't mean -- a lot of the people whose fingerprints are in there are not considered to be criminals; is that right?

A. Well, there are additional files in addition to the 35 million, yes, sir.

Q. Okay. Oh, well, then, total, all the 35 million that you have there in the criminal part, how many fingerprints do you have?

A. In the criminal would be 35 million. Overall would be somewhere in the neighborhood of about 55 million.

Q. So the FBI has on file the fingerprints of 55 million Americans; correct?

A. Or about that, yes, sir.

Q. Now, in addition to having on file 55 million fingerprints -- let me ask, are those 55 million fingerprints

available for comparison if somebody wanted to do it?

A. That's correct, yes.

Louis Hupp - Cross

Q. Have you developed a computer program that would permit you to make a start on identifying fingerprints so you didn't have to start with the manual looking from one to the other?

A. Yes, we do.

Q. And did you use that computer program in this case?

A. No, we did not.

Q. Would you tell the jury, please, what the computer program would permit you to do with these unknown or unidentified fingerprints.

A. It would enable us to take certain latent prints which meet certain criteria and we could encode those and search those against the database of 35 million people.

Q. Now, the -- you say that meets certain criteria. Are those criteria the points-of-comparison criteria that you discussed with the jury yesterday?

A. No. It's much more than that.

Q. What are the criteria?

A. Well, the criteria -- we would have to have a basic description of the individual involved. We would in most instances need to know which finger position it would be. By that, I mean would it be the right index, left index, or thumb; and it must be a print which is classifiable. So it's pretty much along the lines of an inked fingerprint.

Q. I see. When you say "classifiable," do you refer to a certain number of points of comparison?

Louis Hupp - Cross

A. No, sir.

Q. Now, you told us yesterday that you have never -- you would not identify a print with less than seven points, you said?

A. As of this point in time, I never have.

Q. Now, in fact, the FBI prefers to have 12 points; is that right?

A. No, sir.

Q. Well, when less than 12 points are used in making an identification, it must be discussed with the specialist unit chief and receive approval before being reported as an identification; is that correct?

A. That is merely an administrative rule. However, we're not required to have a 12-point in order to effect an identification.

Q. My question, sir, is do you -- do you have a -- a practice that if you use less than 12 points, you have to discuss it with the specialist unit chief?

A. Yes, it's an administrative rule, yes.

Q. And do you follow your administrative rules when you're doing a job?

A. Yes, I do.

Q. Now, in addition to fingerprints that you did not identify

Q. Now, in addition to fingerprints that you did not identify in this case, did you find finger smudges that were not suitable for identification at all?

A. Certainly.

Louis Hupp - Cross

Q. Now, do you remember looking at Government Exhibit 62, the co-op receipt?

A. Yes.

Q. If you could -- and that was a case in which you found two latent fingerprints; correct?

A. That is suitable for identification purposes, yes, sir.

Q. Right. And you made notes about that -- and if I can put up what has been -- a page of what's been offered in evidence as Government's Exhibit 2012? Is that correct?

MR. MEARNS: 2102.

MR. TIGAR: 2102. Excuse me. 2102.

BY MR. TIGAR:

Q. This is a page from that 2102; is that correct?

A. That is correct, yes.

Q. And these are notes that you made in preparation for your testimony; is that right?

A. That is correct, yes.

Q. And looking at this Exhibit No. 62, you simply describe it by its number; correct?

A. That is correct.

Q. Then you say Mid-Kansas Co-op receipt, No. 95504. That -- that further describes the exhibit; right?

A. That is correct.

Q. The date. Then it says Q641?

A. Yes.

Louis Hupp - Cross

Q. And the Q number is one that's assigned in your laboratory; correct?

A. That is correct.

Q. Now, then you say two latent fingerprints developed; right?

A. That is correct.

Q. Two latent fingerprints identified as fingerprints of Timothy McVeigh and no latents remained unidentified; right?

A. That is correct.

Q. Now, when you say "a latent," you are referring to something that is of value for identification purposes; correct?

A. Yes.

Q. I'm going to place up here another page, and my copy is not as good as yours, but could you follow along on your copy of the actual receipt. You've got a photo of it up there, don't you, sir?

A. I have the same thing you have, yes.

Q. Okay. Now, what I have is a copy, so it may not be as good. But for our purposes -- and when the jury sees this, they'll see a red mark where I'm describing here; correct?

A. Yes.

Q. This --

A. Well, actually, I have the same thing that you have. I have a copy just like yours.

Q. Oh, you've got a copy, also?

Louis Hupp - Cross

A. That's correct.

Q. But in the original exhibit, it'll be red and it'll say, "No. 2, Timothy McVeigh"; correct?

A. That is correct.

Q. Because that's your practice in the laboratory is to make the red mark and then write in the name of who you identified it as; right?

A. Yes.

Q. Now, is it -- isn't it the case that these prints of value that you developed were on the back side of the receipt, the side without any writing or printing?

A. Yes, sir.

Q. And the marks that we see here, the circular mark, makes it appear that something at sometime has been wrapped or held in that piece of paper; is that correct?

A. Yes, sir.

Q. And did -- was it any part of your investigation to determine what it was that was wrapped or held in that?

A. Actually, when I received it in the lab -- or when it was received in the lab, the items that were in there were -- were wrapped -- still wrapped in the item itself.

Q. Oh, so you know of your own personal knowledge they were coins; right?

A. Yes. Yes.

Q. And did it -- was it a situation in which somebody had put

Louis Hupp - Cross

the coins on the printed side and then folded it over and over again to make a package around the coins?

A. Yes.

Q. And how many coins were there?

A. Two.

Q. Were they about the size of 50-cent pieces?

A. Yes. Yes.

Q. So that that's the mark that we're seeing here; correct?

A. Yes.

Q. And you say that you got two prints of value. One is this one that I'm -- whoops. I'm not yet because I -- that I'm pointing to right here; correct?

A. Yes, sir.

Q. And then the other one is right here where my other finger is; correct?

A. That is correct.

Q. Now, those are the same finger of the hand of Mr. McVeigh; right?

A. Yes.

Q. And did it -- is this finding here consistent with that print having been put on there in the process of making the first or second fold over the coins?

A. I would have no idea.

Q. Well, you unfolded the coins; correct?

A. Yes.

Louis Hupp - Cross

Q. And if we could use -- and this is -- these -- are these the holes in the top of the receipt?

A. Yes, sir.

Q. So we see the receipt completely unfolded here, and this is down on the side; right?

A. Yes.

Q. Now, when you first got this item -- all right -- it looked like a little package in which something had been folded up; correct?

A. Yes.

Q. About the size of the 1-1/2-by-1-1/2 piece of paper I'm holding up?

A. Something similar to that, as memory serves me.

Q. Okay. Now -- when you got it, would this fingerprint over here have been visible if somehow, latent fingerprints were apparent?

A. I don't remember anything being visible. It didn't come up until such time as it was processed.

Q. I understand. But what I want you to do, sir, is let's imagine, if you would, that if we touched this document -- if Mr. McVeigh touched it, that it would leave a mark. Suppose he had ink on his fingers at the time he touched it. Okay? Would you do that with me? All right. Now, if he had done that and left a mark, would that mark have been visible to you at the time that you saw the package in the laboratory?

Louis Hupp - Cross

A. I couldn't say with any certainty, sir.

Q. You don't -- you don't know as you sit there today which -- which side it was on?

A. I don't know which -- as to how the package was wrapped, which was under and which was in. That, I don't remember.

Q. All right. Well, let's take it a step further. This thumbprint that I'm pointing to here would have been visible; correct?

A. It's possible. There again, I don't remember exactly how the package was wrapped, so it would be speculation on my part.

Q. Let's see if we can take it a step further, sir. Do you see this mark here that does not have a circle on it? See right there in the middle?

A. In the center, yes.

Q. In the center. Now, that is not a latent fingerprint of value, is it?

A. No, it is not.

A. NO, IT IS NOT.

Q. Mr. McVeigh is one of the higher primates; correct?

A. Yes, he is.

Q. And that means he has an opposed thumb? Right? That is, his thumb and his finger come together like I'm showing you; correct?

A. That's correct.

Q. Are these two marks consistent with Mr. McVeigh having handled this document or this piece of paper closed up with the

Louis Hupp - Cross

nonprinted side showing with his thumb and his finger? Is it consistent with that?

A. Sir, I couldn't say that.

Q. Is this smudge consistent with a thumb?

A. I would read that to be a smudge, and I wouldn't speculate whether it was a thumb or another finger. I just don't know.

Q. Is it consistent -- is what you see here consistent with somebody holding this like this? That's my question.

A. I just -- I just don't know.

Q. Now, you say that you don't remember how the package was wrapped when it got to your laboratory; is that right?

A. That's correct.

Q. Did you make any notes as to how the package was wrapped in your laboratory?

A. No.

Q. Is it ever of significance to you to be able to reconstruct for a jury where the fingerprints are on an item of evidence that arrives in your laboratory?

A. We place them on the paper. That was of the interest at that point in time. At this time when this was received, we really had no idea what this was.

Q. My question, sir, is is it ever of significance to you in your work as a fingerprint examiner with decades of experience to know where the fingerprints are on an item that's submitted to the laboratory?

Louis Hupp - Cross

A. In this instance, I know they are on the reverse side.

Other than that --

THE COURT: Please answer the question.

THE WITNESS: Yes, it could be.

BY MR. TIGAR:

Q. For example, sir, if a firearm is submitted to you, it's important to know whether the fingerprints you find on it are consistent with someone having grabbed the barrel or holding onto the -- the butt end?

A. Yes.

Q. Now, sir, you told us that you also looked at a Primadet sleeve. Do you recall that?

A. Yes, I do.

Q. And with respect to the Primadet sleeve, you said that you identified only one fingerprint and that was Mr. Nichols'. Do

you recall that?

A. Yes, sir.

Q. Now, do you have your Primadet sleeve photograph there in front of you?

A. Yes, I do.

Q. Let me place up this portion of 2102 that reflects the Primadet sleeve. And what we see here that's marked, that's the area where you say Mr. Nichols' fingerprint is; correct?

A. Yes.

Q. And would you look very carefully, please, down here in the

Louis Hupp - Cross

right. I'm going to zoom in on this, and it's not -- and I recognize it's not the best copy in the world, but would you look on your copy the place where I'm pointing?

A. Yes.

Q. All right. And do you see ridge detail there?

A. Yes, I do.

Q. And is that ridge detail consistent with that having been handled by a human being?

A. It would be ridge detail of some sort, yes, sir.

Q. Now, did you make an effort to identify what portion of the human hand is reflected by that ridge detail?

A. It was examined and determined to be of no value for identification purposes and was not compared any further.

Q. Now, when you say "it was examined," did you examine it?

A. Yes.

Q. And looking at it now, can you see -- can you see the ridges over by the word "adequate"?

A. Yes.

Q. Okay. And when you examined the original, what did you examine it with? DFO?

A. This was developed by ninhydrin, but it had been processed with DFO, yes.

Q. All right. Now, the DFO processing is nondestructive; correct?

A. No. It will destruct.

Louis Hupp - Cross

Q. Well, is it -- it doesn't destroy the latents?

A. No. No. No.

Q. That's what I meant. Doesn't destroy the latents, and the DFO is just a chemical that you put on. DFO is an abbreviation for some name; correct?

A. That is correct.

Q. And then by using a fluorescent-type light, it shows up, what, yellowish?

A. Yellowish green, yes.

Q. Now, the ninhydrin is actually a chemical that you have to spray on or soak; correct?

A. That's correct.

Q. And do you use alcohol or water for this particular

examination?

A. This particular examination, acetone was the --

Q. As --

A. -- was the agent.

Q. Dissolved in acetone. But you determined that there was nothing of value there; correct?

A. That is correct.

Q. Now, you told us that you made an examination of all of the pages of the book Hunter; is that right?

A. Yes.

Q. And you found how many fingerprints?

A. 14.

Louis Hupp - Cross

Q. 14. Now, if -- you also examined a book that is -- that is not in evidence, but you examined a book called Armed and Dangerous; correct?

A. Yes, I did.

Q. And for -- just to give us an idea, how many fingerprints did you develop out of the book Armed and Dangerous, latents, of value?

A. I don't recall.

MR. TIGAR: May I approach, your Honor?

THE COURT: Yes.

BY MR. TIGAR:

Q. I'm going to show you now some notes and ask you, is that your handwriting, sir?

A. That is handwriting of somebody in my section, yes.

Q. And have you -- did you review that?

A. Yes, I did.

Q. All right. Does looking at this refresh -- refresh your recollection as to how many latent prints of value were developed in the book Armed and Dangerous?

A. Yes, it does.

Q. How many is that?

A. 149 latent fingerprints and four latent palm prints.

Q. Now, during the course of your examination, did you have an occasion to look at an article entitled, "Whatever Happened to Liberty Day"?

Louis Hupp - Cross

A. Yes, I did.

Q. And is that Government Exhibit 1717?

A. No.

Q. I'm sorry. Is that Government 1703? We can shorten this. Let me just show you this and see if it refreshes your recollection, sir. I couldn't find my copy for the moment.

A. Okay.

Q. Does that refresh your recollection?

A. Yes.

Q. Now, when you examined this article, did you know where it had come from?

A. No, I don't know. I was here when the book was brought in.

A. No, not precisely. I may have known the location as to the field office, but other than that, no.

Q. So you didn't know whose home it was in; correct?

A. No.

Q. Now, do you recall that you developed one fingerprint of Timothy McVeigh on this exhibit?

A. I really don't recall on that particular document.

Q. All right. So you don't recall how many, if any, unidentified fingerprints there were on that?

A. No, I just don't recall, sir.

Q. Now, do you recall earlier today talking about a lease in the name of Shawn Rivers?

A. Yes.

Q. And that, you did develop some fingerprints of Mr. McVeigh;

Louis Hupp - Cross

is that correct?

A. Yes.

Q. In addition to the fingerprints of Mr. McVeigh, you also said that there were -- there was one fingerprint not identified; correct?

A. That is correct, yes.

Q. And why is it that you did not take steps beyond the names that were submitted to you to try to identify that fingerprint?

A. I was not requested to do so at that time.

Q. Well, were you ever requested to do it?

A. No. Well, let me correct that. Initially, we were asked to do it, and then it was put off until a later time, and then it was determined at a later time it was not necessary.

Q. Let me take that one step at a time. There came a time when you were furnished with certain names of people whose fingerprints you were supposed to look for; correct?

A. That is correct.

Q. And those names included Mr. Nichols, Mr. McVeigh, Mr. Fortier, Mrs. Nichols, and some other people; correct?

A. Yes.

Q. And you were doing these manual visual -- you were doing comparisons manually of those fingerprints; correct?

A. That is correct, yes.

Q. You were not using your computer?

A. That is correct.

Louis Hupp - Cross

Q. Now, the list of people whose fingerprints you were to compare changed from time to time; is that correct?

A. Yes, it did.

Q. And those changes were made by your superiors telling you whose fingerprints you should try to find; correct?

A. That is correct.

Q. Now, then you say that you talked about using a more complete list; correct?

A. No. We were -- at one time, there was some discussion as to do computer searches. and it was decided that it would be

to do computer searches, and it was decided that it would be best to do those at a later time.

Q. All right. Now, when was this discussion as to whether or not you ought to do computer searches?

A. It was early on. I don't remember the exact date. It was early on in the investigation.

Q. Did you participate in those discussions?

A. Yes, I did.

Q. Did you preside over those discussions?

A. No, I did not.

Q. Who was in charge of determining whether or not computer searches would be used to try to identify these unidentified fingerprints?

A. The request was made by the command post in Oklahoma City. Discussions were made as to the feasibility of it through my department, and it was determined that it was better to put it

Louis Hupp - Cross

off and do it at a later time.

Q. All right. And when was the determination made that it was better to put it off and do it at a later time?

A. There again, it was early in the investigation. Probably somewhere in August or so of 1995.

Q. Now, I'm going to show you, sir, what I've marked as Defendant's Exhibit E61 and ask you if that is a document from your laboratory.

A. Yes, it is.

Q. And when was that created, sir?

A. The notes on here are June 20, 1996.

MR. TIGAR: All right. We offer it, your Honor.

MR. MEARNS: May I have just one moment, please?

THE COURT: Yes.

MR. TIGAR: E61.

MR. MEARNS: No objection.

THE COURT: E61 received.

BY MR. TIGAR:

Q. Now, is that your handwriting?

A. Yes, it is.

Q. And do you write on there that -- well, let me put up page 2. You say that "Pertinent latent prints being furnished are being held in abeyance per discussion in October 1995 between . . ." and then there's some Government acronyms there. Tell us what this means, this note here.

Louis Hupp - Cross

A. This means that I had -- I had had discussions with the investigating officers in the command post in Oklahoma City as to the feasibility of doing computer searches and it was determined at that time that it best be put off until a later time.

Q. Now, did there come a time when the feasibility of computer searches was discussed again?

A. Yes, it did (sic).

Q. Now, these computer searches, they are not -- are they real, real expensive?

A. They are very time-consuming. Very expensive in the long run, yes.

Q. And when was it that the idea of doing these computer searches came up again?

A. It would be very late in the investigation. Towards the end of it when most of the evidence had been completed. Discussions were again brought up about the feasibility of doing computer searches, and it was decided by the command post here in Denver that those searches would not be necessary.

Q. Now, when was it decided that they would not be necessary?

A. I don't remember the exact date. It was towards the very end of the investigation as far as when I was receiving evidence.

Q. All right. Now, at the time that decision was made, you had a large number of unidentified latents; correct?

Louis Hupp - Cross

A. That is correct.

Q. The Dreamland Motel in Junction City had been fingerprinted, had it not?

A. Yes, it had.

Q. And everything in the Dreamland Motel -- that is, the Bible, the bed, the wall, the lamp, anything that somebody might have touched -- had been subjected to examination by field examiners; correct?

A. That is correct.

Q. In addition to that, sir, the Great Western Hotel or Motel had been searched; correct?

A. That is correct.

Q. The Ryder truck agency had been searched?

A. Yes, sir.

Q. A yellow Mercury Marquis had been searched; correct?

A. Yes.

Q. An Easy Go convenience store had been searched; correct?

A. Yes.

Q. And in each of these locations, there were unidentified latent prints that would be suitable for comparison if a comparison had been ordered; correct?

A. I don't remember if all of them were suitable, but I'm sure there were some in each -- some of the locations, yes.

Q. Well, sir, isn't it a fact that by July the 9th, 1996, you had 1,034 unidentified fingers, 87 unidentified palms and 17

Louis Hupp - Cross

unidentified impressions?

A. That could be correct. It would be -- sounds familiar.

Q. Pardon me?

A. That sounds close. I don't know the exact totals right off the top of my head, sir.

Q. All right. Now, so that we understand, a fingerprint is

the print of a finger; correct?

A. Yes.

Q. A palm print is the print of a palm?

A. Yes.

Q. What's an impression?

A. An impression is a -- an area that we could not determine whether it is, in fact, part of a fingerprint or part of a palm print.

Q. Now, is it the case that impressions are most often the -- they might be a fingerprint or they might be these ridged areas that are just under the fingers that when they touch something can sometimes look like a finger?

A. They could be any portion of the palm. There's several areas of which -- certainly, those would come into play, but there are other areas, also.

Q. So -- and it could also be, although less likely, this -- what would be called the heel of the hand; right?

A. That is correct, yes.

Q. So if these numbers are approximately right, you had more

Louis Hupp - Cross

than 1,000 unidentified prints from these areas that I've mentioned; correct?

A. Those and other areas, also. That's not just limited to those, yes.

Q. I understand.

A. Yes.

Q. But each of the areas in which you have these unidentified prints were ones in which the investigators had determined that there were -- that these were worth searching? That is, investigators had been there and done the examination; right?

A. Yes.

Q. Now, among the prints you had for comparison in addition to the ones we mentioned, by the way, were Roger Moore and Karen Anderson; correct?

A. Yes, it was.

Q. Sir, if a computer search had been ordered, what would be the objective of doing the computer search?

A. It would be to identify any additional latent prints.

Q. And what would be the purpose of that?

A. It would just be to identify any unidentified latent prints.

Q. Right. For example, sir, if -- let us take, for example, the Dreamland Motel. You know where that is; right?

A. Yes, sir.

Q. It's in Junction City, Kansas?

Louis Hupp - Cross

A. Yes.

Q. And you're aware from the investigation that there was some evidence that Mr. McVeigh stayed there; correct?

A. Yes.

Q. Were you aware of any evidence in your investigation that

Q. Were you aware of any evidence in your investigation that someone else had been in Mr. McVeigh's room?

A. Yes.

Q. The investigators had told you that; right?

A. Yes.

Q. And is it the case that the -- that if there was somebody else along with Mr. McVeigh in his room, that that person has never been identified, to your knowledge?

A. To my knowledge, yes.

Q. How many latent -- unidentified latent prints did you have from Room 25 of the Dreamland Motel?

A. There again, I don't recall.

Q. Was it more than a dozen?

A. I have no real recollection, sir. It would be speculation.

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

THE COURT: Yes.

BY MR. TIGAR:

Q. Sir -- sir, I'm going to show you, just to refresh your recollection, a stack of photographs; and I'll ask you to look at those and -- just leaf through them. E104, I'm showing you -- if that refreshes your recollection as to the

Louis Hupp - Cross

approximate number of unidentified latent prints that were obtained by the FBI from Room 25 of the Dreamland Motel.

A. Yes, sir.

Q. All right. And with your recollection thus refreshed, sir, would you tell the jury about how many unidentified latent prints there were in Room 25 of the Dreamland Motel?

A. It will take a minute, but I'll count them. About -- approximately 21 latent fingerprints, four latent palm prints and one latent impression.

Q. Now, who decided not to use -- well, first of all, you only compared those against the names that had been given you; correct?

A. Yes, sir.

Q. Who decided not to make a computer search to see if there would be a match within the some 35 million cards or fingerprint sets that you had on file?

A. That decision was made by the investigators in the command post.

Q. So you -- you didn't have any role in that; is that correct?

A. No, sir.

Q. I'm going to show you now what I've marked as Defense Exhibit E126; and I ask you, sir, if that is a report -- I'll take back 104, if I may. Thank you, sir. If that is a report from your laboratory.

Louis Hupp - Cross

A. Yes, it is.

Q. And what's the approximate date of that, sir?

A. The notes were initiated about 4-28 or 4-29-95.

MR. TIGAR: And we offer it.

MR. MEARNS: May I have a moment, your Honor?

THE COURT: Yes.

MR. MEARNS: No objection, your Honor.

THE COURT: E126 received.

BY MR. TIGAR:

Q. Now, this document -- let me put it up here. This is a -- the format of a -- a lab report; is that correct?

A. It's a format of our handwritten notes.

Q. Okay. And the -- it indicates who copies are to be sent to; correct?

A. That is correct, yes.

Q. It says two copies are to go to SIOC, Room 5045, attention Dave Williams; right?

A. That is correct.

Q. Was Mr. Williams, David Williams, involved in making the decision as to whose names would be used to compare the latents?

A. Mr. David Williams, in this instance, was the supervisor in headquarters who was coordinating the examination from the headquarters point. If he was in on the decision as to who was to be compared, I don't know. That would have been between

Louis Hupp - Cross

Mr. Williams and the command post here in Denver or in Oklahoma City.

Q. From whom did you receive the direction as to which individuals you should compare with?

A. The command post in either Oklahoma City, the Kansas City office, or subsequently the command post here in Denver.

Q. You didn't -- those weren't routed to you through Mr. Williams at this time?

A. No.

Q. Now, this particular report relates to this Easy Go convenience store in Newkirk, Oklahoma; right?

A. Yes.

Q. Now, do you know what the purpose was of -- of having taken the latent fingerprints in -- from that convenience store in Newkirk, Oklahoma?

A. No, sir.

Q. Now, you found that the latent prints did not match those of Timothy McVeigh, Terry Nichols, James Nichols, Michael Fortier, Jeffrey Martin, and Steve Colbern; correct?

A. That is correct.

Q. And it says, "There are no palm prints here for Colbern." What does that mean?

A. That means that we did a review of our file and found no palm prints on file which would belong to Mr. Colbern.

Q. I see. But you did have his fingerprints; correct?

Louis Hupp - Cross

A. That is correct, yes.

Q. And then it says, "No automated searches are being conducted at this time pending comparisons of all suspects in this case"; correct?

A. That is correct, yes.

Q. Now, was it your understanding that Mr. Colbern was a suspect in the case?

A. Not necessarily. He had just been named for comparison purposes.

Q. Okay. And again, you don't know why that was done; correct?

A. That is correct, yes.

Q. Now, you say that -- here -- is this your lab report, by the way? Did you create this originally?

A. The lab report, no. This was created by another examiner who was assisting me in the examinations.

Q. But you were working side by side; correct?

A. Yes, sir.

Q. And that was Mr. Shiflett?

A. Yes, sir.

Q. All right. And that's why his name is on the front here; correct?

A. That's exactly.

Q. But for purposes of testimony and preparation in this case, you are thoroughly familiar with all of the files and

Louis Hupp - Cross

fingerprint work done in this case?

A. That is correct, yes, sir.

Q. So that when it says here that "No automated searches are being conducted at this time pending comparisons of all suspects," what that -- did somebody say to you that it was the FBI's intention, after you got through the existing pool of suspects, to go out and do some more comparisons?

A. No. This was -- this was more or less a standard paragraph which we used, and it was brought up and it's placed in a report. We have a simple code for it. It is placed on all reports like this to clearly state that we're waiting for either -- elimination of prints or something to be compared.

Q. All right. But it is your testimony, sir, that there came a time when somebody said don't compare anybody else's fingerprints with these more than 1,000 unknown latents we have; right?

A. That is correct, yes.

Q. And when that direction was given, compared -- the naming of individuals -- of particular individuals to make comparisons with stopped; correct?

A. Well, we still had a list of people to compare, but it was determined that computer searches would not be necessary.

MR. TIGAR: All right. I have nothing further, your Honor.

THE COURT: Any redirect?

Louis Hupp - Cross

Louis Hupp - Cross

MR. MEARNS: Very brief, your Honor.

REDIRECT EXAMINATION

BY MR. MEARNS:

Q. Mr. Hupp, how many -- how many different people were in the group that you compared latent fingerprints that you developed?

A. It varied. It went from -- off and on, 16 to as high as 21, but I think the final group was about 20 -- or 17 people that we ultimately compared.

Q. And with respect to these thousand or so unidentified latent fingerprints -- tell us the process that it takes to do a computer comparison for just one unidentified latent fingerprint; that is, when you compare it against the 30- to 50-some-odd million that you have.

A. The process would be initially, I would submit the latent prints with proper documentation as to the description, the possible location, which can only be limited to state. I would list any possible fingers that I felt it might be and the possible classification it would be. Then I would -- and any descriptors that I might have. I would submit that. It would be encoded into the computer, and they would ask the computer to generate a tape of people who meet -- or who fit the descriptive data, the fingerprint pattern, the finger, as well as the descriptive data. That would be removed from the computer and a separate tape would be copied. Then we would go in and encode the latent and mark the points of identity or the

Louis Hupp - Redirect

points of comparison. We would again ask the computer to go back and recompare with that and then list us a set of suspects. Then these would be sent to our technical files, and they would have to be pulled and we pulled the top 20 candidates. That was just a general cutoff rule. And then we would sit and manually compare those prints at that time.

Q. So how long does that process take for one fingerprint?

A. For one fingerprint, generally it would take three to four days.

Q. And with respect to unidentified fingerprints that were in public places that Mr. Tigar asked you about, like hotel rooms or convenience stores, are you able to tell when a fingerprint is left in a location like that?

A. No, sir.

Q. Is it possible for a latent fingerprint to remain in a location like that for months, if not years?

A. Yes.

MR. MEARNS: No further questions, your Honor.

MR. TIGAR: Briefly, your Honor.

THE COURT: Mr. Tigar.

RE-CROSS-EXAMINATION

BY MR. TIGAR:

Q. When you say that this takes three or four days, are -- this computer search, are you able to do several simultaneously?

Louis Hupp - Recross

A. We have a cutoff. I believe at the time there was a cutoff number that could be submitted per night, and so there was a cutoff. And I think it was -- could have been somewhere as high as 50 separate sheets could have went in per night.

Q. So -- so 50 a night times three or four days, that's 200 days -- right -- to do 1,000?

A. Something like that, yes.

Q. Is this the biggest case in the FBI's history?

A. It would be one of the biggest.

Q. And you know that a lot's at stake; right?

A. Yes.

Q. Are you telling us that it just cost too much to do a computer search that you had the capability to do?

MR. MEARNES: Objection.

THE COURT: Sustained. He didn't make the decision.

BY MR. TIGAR:

Q. I understand. Did anyone tell you that it cost too much?

MR. MEARNES: Objection.

THE COURT: Sustained.

BY MR. TIGAR:

Q. Do you know on what basis the decision was made not to make the computer search, of your own knowledge, sir?

MR. MEARNES: Objection.

THE COURT: Do you?

THE WITNESS: No. No.

Louis Hupp - Recross

BY MR. TIGAR:

Q. Is this kind of computer search something that I could do on the Internet?

A. No, sir.

Q. I'd have to be in the FBI headquarters to be able to do it; correct?

A. That is correct, yes.

MR. TIGAR: Nothing further, your Honor.

MR. MEARNES: We intend to re-call Mr. Hupp.

THE COURT: All right. You may step down, and I'm sure you'll be advised when you're back.

THE WITNESS: Thank you.

THE COURT: Next, please.

MR. MACKEY: Yes, your Honor. We call David Darlak.

THE COURT: You'll be sworn, please, by the clerk.

(David Darlak affirmed.)

THE COURTROOM DEPUTY: Would you have a seat, please. Would you state your full name for the record and spell your last name.

THE WITNESS: David Allen Darlak, D-a-r-l-a-k.

THE COURTROOM DEPUTY: Thank you.

THE COURT: All right, Mr. Mearns.

MR. MEARNES: Thank you.

DIRECT EXAMINATION

BY MR. MEARNES:

David Darlak - Direct

Q. Mr. Darlak, how old are you?

A. 29 years old.

Q. Where do you live right now?

A. Niagara Falls, New York.

Q. How long have you lived in Niagara Falls?

A. I've lived in that area pretty much my whole life except when I was in the military.

Q. Where do you work right now?

A. I own a sign shop in Wheatfield, New York.

Q. Where is Wheatfield in relation to Niagara Falls?

A. It's a suburb of Niagara Falls.

Q. Describe what kind of a business that is, your sign shop.

A. I pretty much make any kind of sign. Small kinds of signs that -- that are out there.

Q. And how long have you been in the business of making signs?

A. Since I graduated high school.

Q. How long have you owned your own -- your own sign shop?

A. About a year and a half.

Q. Prior to when you owned your own sign shop, where did you work?

A. I worked at a company called Rosewood Signs in Tonawanda, New York, a company called NAS Quick Sign in Buffalo, New York, and then I was in the military.

Q. Tell us when you worked at Rosewood Signs.

A. From '86 to '88 and from '92 until '95.

David Darlak - Direct

Q. And you also said you worked at a store called NAS Quick Sign?

A. Correct.

Q. When did you work there?

A. End of '96 -- end of '95 to beginning of '96.

Q. And then from there, that's when you started your own shop?

A. Yes.

Q. You indicated a moment ago that you were also in the military at one point?

A. Yes, I was.

Q. What branch of the service?

A. The Army.

Q. And when were you in the Army?

A. From the end of '88 until April '92.

Q. Where did you go to high school?

A. Star Point Central.

Q. Where is that school located?

A. Lockport, New York.

Q. Where is Lockport in relation to Niagara Falls?

A. It's about 10, 15 minutes away.

Q. When did you graduate from high school?

A. 1986.

Q. When you were in high school, did you know a man named Tim

McVeigh?

A. Yes, I did.

David Darlak - Direct

Q. When did you meet Mr. McVeigh?

A. In -- when I just started going to high school in ninth grade.

Q. And while you were in high school with Mr. McVeigh, did you and he become friends?

A. Yes, we did.

Q. Approximately when did you become friends with Mr. McVeigh?

A. Approximately 1985.

Q. Did Mr. McVeigh graduate the same year -- in 1986 -- with you?

A. Yes, he did.

Q. Graduated from the same high school?

A. Yes, he did.

Q. And then in 1986, you began first began working at Rosewood Signs?

A. Yes.

Q. How often did you see Mr. McVeigh during that period of time?

A. Once a week on average, maybe a couple times a month.

Q. Do you have any brothers or sisters?

A. Yes, I do.

Q. How many brothers do you have?

A. Three brothers.

Q. And what are their names?

A. Michael, Eugene, and Christopher.

David Darlak - Direct

Q. During this period of time in 1986 to 1988, did Mr. McVeigh get to know your family?

A. Yes, he did.

Q. And did he get to know your brothers?

A. Yes, he did.

Q. Does your brother Michael have any involvement in car racing?

A. He used to, yes.

Q. When you say "he used to," what do you mean?

A. He -- right now, he's not doing it, but he used to for a long time.

Q. Approximately when was he involved in car racing?

A. Probably from '80 to '90.

Q. What kind of a -- what kind of car racing was your brother involved in?

A. It was called dirt modified. He was -- a couple of his friends had a car and they used to work on it.

Q. In 1988, did you enter into any kind of a business deal with Mr. McVeigh?

A. Yes, I did.

Q. Describe that for us.

A. We purchased some land in -- south of us in the southern

A. We purchased some land in South of us in the Southern tier of New York.

Q. And how much did you pay, the total? How much was the total purchase price?

David Darlak - Direct

A. Around \$7,000.

Q. When did you enlist in the Army?

A. November '88.

Q. And what was Mr. McVeigh doing at that time?

A. He was in the military at the time.

Q. So you -- the two of you were in the military at the same time.

A. Yes.

Q. Did you maintain any contact with him while the two of you were in the military?

A. Yes, I did.

Q. How did you remain in contact with Mr. McVeigh?

A. Letters.

Q. And how long did you serve in the military?

A. From '88 until '92.

Q. What did you do when you were released from the military in '92?

A. I moved back into my parents' house.

Q. And where was that?

A. That was in Wheatfield, New York.

Q. Do you know where Mr. McVeigh was living at that time in '92?

A. Yes, I do. He was living with his father in Pendleton, New York.

Q. Where is Pendleton in relation to Wheatfield?

David Darlak - Direct

A. It's bordering. Bordering county.

Q. Did you ever see Mr. McVeigh at this time?

A. Yes, I did.

Q. When did you -- how often did you see Mr. McVeigh at that time in 1992?

A. Couple times a month.

Q. And did you remain friends, resume your friendship?

A. Yes.

Q. When was the last time that you -- that you saw Mr. McVeigh in terms of when -- after you were released from the military?

A. Somewhere in the fall of '92.

Q. After the last time you saw him in the fall of '92, did you ever receive a telephone call from him?

A. Yes, I did.

Q. When was that?

A. Sometime in the fall of '94.

Q. Did you receive one call or more than one call in the fall of '94?

A. More than one call.

Q. Where -- where did you receive the first call?

A. At my place of employment, Rosewood Signs.
Q. And do you recall what the telephone number of Rosewood Signs was in the fall of 1994?
A. Yes, I do. It was (716) 692-1435.
Q. When was the last time that you had seen or spoken to

David Darlak - Direct

Mr. McVeigh prior to receiving that call?
A. Fall of '92.
Q. What did Mr. McVeigh say?
A. We just talked about what we were doing at the time, and then he had asked me if I had known where he could get some racing fuel.
Q. What did you say when he asked you that question?
A. I said I had no idea.
Q. Did you ask him any questions?
A. I asked him what he wanted it for, and he told me he was at work and he had to go.
Q. How long was this conversation with Mr. McVeigh?
A. A few minutes.
Q. During that conversation, did you tell him that if he wanted to speak to you again, he should call you where you were living?
A. Yes.
Q. Did you give him the phone number where you were living at that time?
A. Yes, I did.
Q. Where were you living at that time?
A. At my sister's house.
Q. What is your -- was your sister married?
A. Yes.
Q. And what is her married name?

David Darlak - Direct

A. Silvernail.
Q. And do you recall what your -- what the home phone number was at that time?
A. Yes, I do.
Q. What was the home phone number at that time?
A. (716) 692-5002.
Q. When you received that call from Mr. McVeigh, did you ever know him to be involved in car racing?
A. No, I did not.
Q. Had you ever known him at that point to ever be interested in purchasing car-racing fuel?
A. No, I did not.
Q. Did you ever get another phone call from Mr. McVeigh after that?
A. Yes.
Q. When was that?
A. A few days later at my sister's house.
Q. Tell us about that.

A. It was a message.
Q. Message on an answering machine?
A. Yes.
Q. Did you listen to that message?
A. Yes.
Q. What was the message?
A. He said, "Forget about the racing fuel."

David Darlak - Direct

Q. And did you have -- ever have any further conversation with him about that subject again?

A. No, I did not.

MR. MEARNS: Your Honor, at this time, I'd like to show -- have the witness look at what has been received as Government Exhibit 1888. Specifically page 4 and page 5.

THE COURT: All right. This is part of another exhibit?

MR. MEARNS: Yes. This is page 4 of Government Exhibit 1888.

BY MR. MEARNS:

Q. And if we could focus down in at the last entry on the bottom of the page there. Over in the far right-hand column, Mr. Darlak, do you recognize the telephone number there?

A. Yes, I do.

Q. And is that the telephone number of Rosewood Signs in the fall of 1994?

A. Yes, it was.

Q. Do you see just to the left of it -- left of it, it indicates Terry Nichols?

A. Yes.

Q. Did you know a Terry Nichols in the fall of '94?

A. No.

Q. Now, if we could turn to the next page on page 5. If we could focus on the second entry from the top. Is that also

David Darlak - Direct

again the telephone number for Rosewood Signs?

A. Yes.

Q. Finally, if we could focus at the bottom of that same page, page 5. Is that Franklin Silvernail -- is that your sister's husband's name?

A. Yes.

Q. And was that the telephone number at that residence in the fall of 1994?

A. Yes, it was.

MR. MEARNS: No further questions, your Honor.

THE COURT: 1888 is a demonstrative exhibit that's a part of the larger Exhibit 553?

MR. MEARNS: 553.

THE COURT: Mr. Woods.

MR. WOODS: Yes, your Honor.

CROSS-EXAMINATION

BY MR. WOODS.

BI MR. WOODS:

Q. Good morning, Mr. Darlak.

A. Good morning.

Q. My name is Ron Woods. I'm one of the lawyers appointed by the Court in Oklahoma City to help out Terry Nichols in this case.

You and I have never met personally; is that correct?

A. That's correct.

Q. We had a telephone conversation two nights ago; is that

David Darlak - Cross

correct?

A. Yes.

Q. And you called and asked if we could ask all the questions of you so you don't have to come back; is that correct?

A. Yes.

Q. Okay. You've been here a number of times to meet with the prosecutors, have you not?

A. Yes.

Q. How many times have you met with the prosecutors concerning your testimony in this case?

A. In this case right here?

Q. Well, concerning this investigation. How many times have you met with the prosecutors to go over your testimony?

A. This year, I came to Denver -- this will be my fifth time. Twice for testifying in the last case and then this one. Two other times just to talk about it.

Q. Okay. Did you make trips before this year of '97?

A. Not with the prosecution. I was being interviewed by the FBI numerous times.

Q. Was it here in Denver or --

A. No. At -- at --

Q. At your place?

A. Yes.

Q. Okay. Now, you do not know Terry Nichols; is that correct?

A. No, I don't.

David Darlak - Cross

Q. You've never seen him?

A. No.

Q. But you do know Timothy McVeigh?

A. Yes.

Q. You all were friends in high school and maintained that friendship up until '92; is that correct?

A. Correct.

Q. Now, in '92, when Mr. McVeigh returned to New York -- he got out of the Army when; do you recall?

A. I believe it was '91. The end of '91.

Q. Okay. December 31 of '91 sound accurate to you as to when he was discharged?

A. That sounds reasonable, yes.

Q. And then you saw him during the year '92; is that correct?

A. Correct.

Q. Had he changed from what you had noticed about Mr. McVeigh before he went in the Army?

A. Yes.

Q. In what way?

A. He was different. He was more militant.

Q. All right. During '92, did he give you a book to read?

A. Yes, he did.

Q. What book was that?

A. Turner Diaries.

Q. Did you read it?

David Darlak - Cross

A. No, I did not.

Q. What happened to the book?

A. It sat around my house for a couple months, and then he asked me for it back.

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

A. He said he had somebody else he would like to give it to.

Q. Now, the two of you bought some property about 50 miles south of where you were in New York back in '88; is that correct?

A. Correct.

Q. And you paid 7,000 for it?

A. Somewhere around there, yeah.

Q. Did you all share the purchase price, making the payments?

A. Yes.

Q. 50-50?

A. Yes.

Q. Okay. And then when did you sell it?

A. '92. Somewhere in '92. Beginning of '92.

Q. All right. And how much did you sell it for?

A. Somewhere around \$9,000.

Q. Okay. Do you recall who you sold it to?

A. No, I don't.

Q. Okay. Just somebody that -- you put it on the market and somebody bought it?

A. Realtors sold it. I never met them.

David Darlak - Cross

Q. Okay. And did you get your share of the sales proceeds?

A. Yes.

Q. Now, during the course of the investigation, when the FBI was talking to you, did they show you all the documents concerning the sale -- the purchase and the sale of the property?

A. I had the documents. They asked me to get them from the --

Q. Okay.

A. -- lawyer, yes.

Q. Now, what about the documents concerning a refund of the property tax? Did you have those?

A. No. They showed me that sometime -- I think it was the beginning of this year.

Q. Okay. Had you seen those before?
A. No, I had not.
Q. Do you know why the FBI was showing those to you? Did they tell you?
A. Yes. I found out after they showed it to me.
Q. What did they tell you?
A. Well, there was a signature on the back that was my name, but I didn't sign it.
Q. Okay. On the back of what?
A. This cancelled check.
Q. And was this check a refund of the property tax?
A. A portion of it, I believe, yes.

David Darlak - Cross

Q. All right. Was there more than one check?
A. I think there was two.
Q. Okay. And both checks had an indication that you, David Darlak, had signed the check to endorse it?
A. Yes. It was my signature -- it was a signature, but it was not mine.
Q. And you told the FBI that that was not your signature?
A. Correct.
Q. Did you recognize the handwriting?
A. Yes, I did.
Q. And whose handwriting was it?
A. It was Tim's.
Q. Okay. Did the FBI show you records as to what happened to the checks? Were they deposited, cashed or what?
A. They didn't show me that.
Q. Okay. Did you ever receive any of the proceeds from that -- those two checks?
A. No, I didn't. But Tim dealt with the taxes; so if there was any money that was owed, it was -- he kept track of that. So I didn't really concern with it.
Q. Okay. But it wasn't your signature on the back; is that correct?
A. No, it was not.
Q. Okay. Now, what did you use the property for when you bought it in '88?

David Darlak - Cross

A. Originally, we just bought it just for something to do, and then we went down there a handful of times before we went in the military, shooting guns and just kind of walking around and stuff.
Q. Was there ever a time when there was discussion about building a bomb shelter on it?
A. Tim wanted to put one on there, yes.
Q. Did he say why?
A. Not really. Just that he -- that's what he wanted to do.
Q. Well, what did you understand why a bomb shelter was to be built or wanted to be built there?

A. In case there ever came a need for it, Tim felt he had to have one.

Q. What was going to be the need of a bomb shelter in New York, western New York?

A. Getting bombed on.

Q. By whom?

A. By anybody, I would assume.

Q. Was there ever a discussion as to who the suspected enemy would be?

A. Not really.

Q. Now, you say that Mr. McVeigh changed when he came back from the military in '92 when you kept up your association with him.

A. Yes.

David Darlak - Cross

Q. And you say he became more militant. Can you expand on that a little bit.

A. I guess his views were just more concentrated on -- on his fears, I guess.

Q. Fears of what?

A. Of things that could happen to the American society that he didn't like.

Q. Okay. Was he more to the right, or more to the left, or how would you explain his political beliefs at that time?

A. I don't know what you mean by left or right, but he was not --

Q. Conservative, or radical left?

A. Radical.

Q. Okay. So a radical conservative?

A. Radical radical.

Q. Okay. Now, did there come a time that you broke off your friendship and relationship with him?

A. Yes.

Q. And when was that?

A. '92. He just disappeared. Never heard from him again. Well, until he called me a couple years later.

Q. Was there anything that happened before he left where you began to sort of disassociate with him?

A. He was just caught up in his own thing and I was in mine, and we were just kind of seeing less and less of each other

David Darlak - Cross

until one day I heard he was just gone.

Q. You didn't share the same beliefs; is that correct?

A. Correct.

Q. During the year of '92 when you were in contact with him, did you go to any gun shows with Mr. McVeigh?

A. Yes, I did.

Q. And where were the gun shows held?

A. I went to one in Hamburg, New York.

Q. And would you tell the jury where Hamburg is.

A. Hamburg is probably about 20. 30 miles south of where we

A. Hamburg is probably, about 20, or 30 miles south of where we live.

Q. And you lived in Pendleton and Lockport, in that area, Wheat Ridge (sic)?

A. Yes.

Q. And those are also suburbs of --

A. Buffalo.

Q. Buffalo. Okay. How big is Hamburg?

A. I would have to say probably a town of like 50,000 or so, maybe.

Q. Okay. And approximately when did you go to the gun show in '92? Do you have a recollection?

A. I have -- I don't know.

Q. Okay. Was Mr. McVeigh registered at the gun show and had a booth there?

A. Yes, he did.

David Darlak - Cross

Q. And were you there just to accompany him, or did you have a booth, also?

A. No, I was there to help him watch his table.

Q. Okay. What was he selling at his table?

A. Military paraphernalia, just like gear, whether it was sleeping bags, anything that you could find in a -- military duffel bag.

Q. All right. Did he have any weapons for sale?

A. No.

Q. All right. Was there a time on the property that you bought that Mr. McVeigh set off any explosives?

A. He had set off some simulators. They are little plastic devices used to -- in the military to simulate.

Q. Simulate what? Explosives?

A. Explosives.

Q. As part of your training?

A. Yes.

Q. Okay. And can you give the jury an idea of how big an explosion that might --

A. They were just like whistles and pops and lights and stuff. There were no explosives.

Q. Now, at the gun show, did you see other people selling Army surplus?

A. Yes.

Q. And did you see people selling weapons?

David Darlak - Cross

A. Yes.

Q. And can you give the jury just an idea of what type of items you saw at the gun show in '92 that were available for sale?

A. Oh, anything from hunting up to military paraphernalia.

Q. Okay. Did you see any literature for sale?

A. Yes.

Q. And can you describe for the jury what type of literature

you saw available at the gun show?

A. Not really. I didn't really look into it. I just know there was some there.

Q. You didn't go around reading each one?

A. As a matter of fact, Tim had some military manuals for sale, too.

Q. Military manuals?

A. Yeah.

Q. Do you recall what the subjects were?

A. No.

Q. Okay. When I say "literature," I'm not just limiting it to military manuals. Did you see other types of literature?

A. Nothing that I could remember, but there was -- there was definitely literature for sale there.

Q. Can you give an idea about how many booths were set up at the one gun show you went to?

A. It was pretty big. I would have to say probably somewhere

David Darlak - Cross

around 50 to 75 booths.

Q. Okay. Is that the only gun show that you went to with Mr. McVeigh?

A. That year, yes. Before we went in the military, we went to a couple smaller ones.

Q. Okay. Now, the prosecutors showed you a document that's in evidence relating to the first phone call you received from Mr. McVeigh. I'm going to put that back up on the ELMO here. And if you would, refer to the bottom of that page. It was on a Wednesday, September the 28th. And Rosewood Signs was where you were working; is that correct?

A. Correct.

Q. And that call was made during the workday? Of course, you were at work; is that correct?

A. Yeah.

Q. And this record shows that it was made at 1:51 in the afternoon, Central Daylight Time. Are you aware that Kansas is in the Central Daylight Time?

A. Yes.

Q. You were at work; is that correct?

A. Yes.

Q. And you -- the call reflects it came from the Nichols' house on Wednesday, September the 28th; but you don't know who Terry Nichols is; is that correct?

A. No, I don't know him.

David Darlak - Cross

Q. And Mr. McVeigh told you that he was at work?

A. Yes. He told me he was at work in Arizona.

Q. All right. So that obviously was an incorrect statement --

A. Correct.

Q. -- based on these records?

A. Correct.

Q. Okay. But it is during the workday when people that have an 8-to-5 job are at work; is that correct?
A. I'm sorry. I didn't understand.
Q. It is during the workday?
A. Yeah. Yeah.
Q. All right. Thank you. And I want to show the other record. Silvernail is your twin sister; that's her married name?
A. Correct. Correct.
Q. And this is on Saturday, approximately 4:44; is that correct?
A. Yes.
Q. Okay. Now, you'll notice several calls right before that. Do you know Michael Fortier?
A. No, I do not. I know him now from the newspaper, but I didn't know him then.
Q. Okay. Did Mr. McVeigh tell you where he worked in Arizona?
A. A True Value hardware store, or something like that.
Q. All right. And you see the first call on that day is to a

David Darlak - Cross

True Value hardware store?

A. Yes. I see that.
Q. And then the second call is to Michael Fortier?
A. Yes.
Q. And the third call is to Brooklyn Delicatessen. Did you ever meet a Greg Pfaff through Mr. McVeigh at the gun shows?
A. No.
Q. Do you know a Greg Pfaff?
A. No, I do not.
Q. And it's spelled P-F-A-F-F.
A. No.
Q. Okay. And then the Franklin Silvernail was the phone number where you were living with your married sister?
A. Correct.
Q. And you testified to the jury you received a message there definitely from Mr. McVeigh on a telephone answering machine?
A. Correct.
Q. And he said, "Disregard the request for racing fuel"?
A. Correct.

MR. WOODS: Okay. Thank you very much for answering the questions.

THE COURT: Anything further of this witness?

MR. MEARNS: No questions.

THE COURT: He's now excused?

MR. MEARNS: Yes, your Honor.

MR. WOODS: Yes, your Honor.

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

Next, please.

MR. MACKEY: Your Honor, I've consulted with defense counsel. We'd like to call Joanne Thomas one final time.

THE COURT: All right. All right. Ms. Thomas. If you'll please come in and again resume the stand under the earlier taken oath.

THE WITNESS. Okay.

THE WITNESS. O'Ray.

THE COURT: Mr. Orenstein.

MR. ORENSTEIN: Thank you, Judge.

(Joanne Thomas was recalled to the stand.)

DIRECT EXAMINATION

BY MR. ORENSTEIN:

Q. Ms. Thomas, we've got to stop meeting like this.

A. Yes.

Q. You've previously told us about some things that you recovered at Mr. Nichols' home on a search pursuant to a search warrant that was executed April 22d to 23d, 1995 in Herington, Kansas; is that correct?

A. That's correct.

Q. Following your work in that search, did you also participate in executing a search warrant later on April 23d at a storage shed, Unit No. 2 in Herington, Kansas?

A. Yes, I did.

Joanne Thomas - Direct

Q. And did -- As a result of participating in that search, did you go inside that storage locker, Unit No. 2, and look at it and see what was inside?

A. I was there when they opened it.

Q. And was there anything inside?

A. No. It was empty.

Q. Now, did you notice anything about the appearance of that storage unit when you saw inside of it?

A. Yes. My duty that day was to maintain the photo log of the photographer, and so I was writing down what we observed when they opened it. There were rings on the floor. There was a stain on the floor. The unit had particle board walls and exposed beams.

Q. And have you since looked at a photograph showing that condition of the inside of the storage shed?

A. Yes, I have.

MR. ORENSTEIN: If I could ask Agent Tongate to assist, there's a large photograph against the wall. If I may have it displayed to the witness.

THE COURT: Yes.

BY MR. ORENSTEIN:

Q. Ms. Thomas, with Agent Tongate's assistance, I'm showing you Exhibit 2054, which is a large photograph. Do you recognize it?

A. Yes, I do.

Joanne Thomas - Direct

Q. And what is it?

A. It's a -- interior shot of the storage shed.

Q. And does it fairly and accurately depict the way that storage shed looked when you saw it on April 23d, 1995?

A. Yes, it does.

Q. Including those stains and those rings and the particle board that you described?

A. Yes, sir.

MR. ORENSTEIN: We offer Exhibit 2054, your Honor.

MR. TIGAR: No objection, your Honor.

THE COURT: Received. May be shown now.

BY MR. ORENSTEIN:

Q. With Agent Tongate's assistance, can you just point out -- Agent Tongate, if you could stand back so Ms. Thomas could point.

Perhaps you could stand up. Just describe the rings that you were describing before.

A. I'm talking about the rings here and partial ring there and there. And then this is the stain that was on the floor in the back of the unit.

MR. ORENSTEIN: For the jury's convenience, your Honor, may I have Agent Tongate just walk the photo in front of the jury box?

THE COURT: Yes.

MR. ORENSTEIN: Thank you, your Honor. I have nothing

Joanne Thomas - Direct

further of Ms. Thomas on direct.

THE COURT: Mr. Tigar.

CROSS-EXAMINATION

BY MR. TIGAR:

Q. Hello again.

A. Hi.

Q. The search warrant that you had for the storage shed: That described a shed that had been rented in the name of Shawn Rivers; is that correct?

A. I didn't see the search warrant, sir.

Q. You did not?

A. No.

Q. Okay. Did you know whether or not the storage unit had been rented in the name of Shawn Rivers?

A. No, I did not.

Q. And then next question is did you know who Shawn Rivers was?

A. No, I did not.

Q. Okay. Now, were you the -- how many agents did you have out there looking in when you opened the door?

A. There were numerous agents. I can't tell you exact number.

Q. Have -- was Agent Bodziak there?

A. The name does not sound familiar to me.

Q. He's the tire-track man. Does that refresh your recollection?

Joanne Thomas - Cross

A. I don't believe I ever met the gentleman.

Q. Okay. And had tire-track photographs and impressions been taken at that time before you went in?

A. Yes.

Q. And how did you know that that had been done before you went in?

A. I was in that storage shed the day before, and we did mark not in the storage shed but outside -- we did mark the tire treads and we did take soil samples. And we quit because they said somebody was coming from headquarters to do the plaster casts.

Q. But when you did those the day before, did you mark them off with the stakes, and so on, so that nobody was going to trample on them?

A. That's right.

Q. When you went in the shed -- that picture that we saw: Are there rings on the floor there?

A. Appear to be rings on the floor.

Q. Now, as you look at those, do those appear to be rust rings?

A. Well, actually, they were kind of black, like something had been shifted on it.

Q. Now --

A. Maybe a little rust.

Q. All right. Now, did the rings look like rings that would

Joanne Thomas - Cross

be left by leaving a metal barrel that has a lip around it -- in there?

A. At least the rings were -- appeared to be made by metal.

Q. All right. And they looked different from the rings you would expect to have been left by plastic barrels; is that correct, or do you know?

A. I don't know.

Q. You don't know. Did you make sure to secure the scene so that residue tests could be performed on it?

A. That was not my function. All I did was take the photograph log.

Q. Did you -- did you observe the other agents who were in charge, taking care to make sure that whatever residues were there could be preserved and collected, if necessary?

A. Yes.

Q. Were they wearing booties?

A. I don't recall.

Q. Were they wearing gloves?

A. I don't recall.

Q. Were they wearing, you know, those -- those white suits, the cover-up suits that -- that are sometimes worn at crime scenes?

A. Yes, I'm aware of those.

Q. Right. And you saw -- did you see Mr. Burmeister and his crew wearing those at Mr. Nichols' house earlier?

Joanne Thomas - Cross

A. Yes.

Q. All right. Were any agents wearing those white suits?

A. Not to my recollection.

A. NOT TO MY RECOLLECTION.

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

MR. ORENSTEIN: Nothing further, your Honor. The witness is excused.

THE COURT: Agreed to excuse her?

MR. TIGAR: Yes, your Honor.

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

THE WITNESS: Thank you.

THE COURT: Next, please.

MR. MACKEY: We would call Kantall Patel.

THE COURT: Come in, please.

(Kantall Patel affirmed.)

THE COURTROOM DEPUTY: Have a seat, please. Would you give us your full name and spell your last name.

THE WITNESS: Kantall Patel. Last name is Patel, P-A-T-E-L.

THE COURTROOM DEPUTY: Thank you.

THE COURT: If you'll keep your voice up just a little, it'll help us to hear you.

Mr. Mearns.

DIRECT EXAMINATION

BY MR. MEARNS:

Q. Mr. Patel, where do you live?

Kantall Patel - Direct

A. Pauls Valley.

Q. You have to speak loudly so everyone can hear you.

A. Pauls Valley, Oklahoma.

Q. How long have you lived in Pauls Valley, Oklahoma?

A. 15 years.

Q. And where were you born?

A. In India.

Q. And when did you come to the United States?

A. 1977, January 1.

Q. Where do you work?

A. Amish Inn Motel.

Q. Again, keep your voice up, please.

A. Amish Inn Motel.

Q. Where is the Amish Inn Motel?

A. In Pauls Valley.

Q. And what is your position there?

A. Manager.

Q. How long have you been the manager at that motel?

A. Last 15 years.

Q. I want you to look inside that folder that you have in front of you. And you'll find in a plastic case -- you'll find a document that's been marked as Government Exhibit 142 for identification. You'll see the number there on the back.

Is that No. 142?

A. Uh-huh.

Kantall Patel - Direct

Q. Turn it over to the front. Do you recognize that?

A. Yes, sir.

Q. And what is that?

A. A registration card.

Q. Is that a registration card from your motel?

A. Yes, sir.

Q. And how do you recognize it?

A. It's in my handwriting.

Q. And did you keep that -- did you maintain that record? The business records?

A. Yes, sir.

Q. In the business records of your motel?

A. Yes, sir.

MR. MEARNS: Your Honor, we would offer Government Exhibit 142.

MR. WOODS: No objection.

THE COURT: Received. 142.

MR. MEARNS: With the Court's permission, I'd like to publish.

THE COURT: Yes.

BY MR. MEARNS:

Q. And Mr. Patel, you see in the lower right-hand corner that the date is October 20, 1994. Did you write that?

A. Yes, sir.

Q. And did you check the box where it says, "days occupied"

Kantall Patel - Direct
and there's a "Thursday" checked there?

A. Yes, sir.

Q. And up in the upper right-hand corner, it says, "Room 107." Did you write that entry?

A. Yes, sir.

Q. With respect to the other information, the name and address, the name Joe Kyle and the address that's written there and the signature: Who wrote that?

A. The customer wrote it down.

Q. And was this a registration card that you registered this guest at the motel?

A. Yes, sir.

Q. And did you observe the customer fill out the information and write it?

A. Yes, sir.

MR. MEARNS: Your Honor, at this time, there's a stipulation with respect to the name and address and the signature that it is the handwriting of Mr. Terry Nichols.

MR. WOODS: Yes, your Honor. That is our stipulation.

THE COURT: All right. We accept that agreement as fact.

BY MR. MEARNS:

Q. In the middle there, Mr. Patel, it says the number in the party -- the number of guests. Do you see that there?

A. Yes, sir.

Kantall Patel - Direct

Q. And it says No. 1 -- it says "1"?

A. Yes, sir.

Q. Is that your handwriting there?

A. No.

Q. Whose handwriting is that?

A. It is the customer.

Q. Does the number of guests affect the rate that you charge?

A. One person.

Q. But if it -- if it's two guests, does the rate -- does the room rate go up?

A. Yes, sir.

Q. Is it possible for a guest to come in and register and get more people in the room than they register on the card?

A. Yes, sir.

Q. Have you ever had a problem with that?

A. Yes.

Q. Where is Pauls Valley in relation to Oklahoma City, Oklahoma?

A. South of Oklahoma City. 60 miles.

Q. And where is Pauls Valley in relation to Dallas, Texas?

A. It would be south of Pauls Valley.

Q. Prior to coming to court today, have you looked at a large map of some of those locations?

A. Yes, sir.

MR. MEARNs: With the Court's permission, may Agent

Kantall Patel - Direct

Tongate display Government Exhibit 2049?

THE COURT: All right.

BY MR. MEARNs:

Q. Mr. Patel, if you would look at that. Do you recognize that thing -- that large chart that the agent is holding?

A. Yes, sir.

Q. And is that an accurate map of the locations that are depicted there?

A. Yes, sir.

MR. MEARNs: Your Honor, we would offer 2049.

MR. WOODs: No objection, your Honor.

THE COURT: All right. 2049 is received, may be displayed.

MR. MEARNs: Thank you, your Honor.

BY MR. MEARNs:

Q. Okay. Mr. Patel, if you could turn towards the map and do you -- can you point out where Pauls Valley is.

A. Yes. Right here.

Q. And can you point out where Oklahoma City is on the map?

A. Right here.

Q. And if you'd show us where Dallas, Texas is.

A. Right here.

Q. Is there an interstate highway that runs near the Amish Inn?

A. I-35.

Kantall Patel - Direct

Q. And is that the interstate highway that connects Oklahoma City to Dallas, Texas?

A. Yes, sir.

Q. About how far away is your motel from that interstate highway?

A. About a half a mile.

MR. MEARNS: No further questions, your Honor.

THE COURT: Mr. Woods?

MR. WOODS: Yes, your Honor.

CROSS-EXAMINATION

BY MR. WOODS:

Q. Mr. Patel, do you recall when the person came in to your motel to sign the registration card?

A. Yes, sir.

Q. What time was it?

A. Well, I don't remember the time.

Q. Was it in the morning, afternoon?

A. I have no guess.

Q. Pardon me?

A. Probably afternoon.

Q. Okay. And were they heading north, or heading south? And when I say "they," was the person who registered heading north or heading south?

A. I don't know that.

Q. And do you recall who the person was at all?

Kantall Patel - Cross

A. What?

Q. Do you recall who the person was that signed?

A. Yeah.

Q. Who?

A. I don't know how to read it. I could tell by name.

Q. Pardon me?

A. I don't know how to read.

Q. Okay. You're the record custodian. That's your record; is that correct?

A. Yes, sir.

MR. WOODS: Okay. Thank you. No further questions.

MR. MEARNS: May I -- just one other question.

THE COURT: Yes.

MR. MEARNS: May I just display page 8 of Government Exhibit 1888.

REDIRECT EXAMINATION

BY MR. MEARNS:

Q. If you would look on the -- on the computer screen that you have in front of you, the entry down there at the bottom. Is that your telephone number at the motel, (405) 238-7545?

A. Yes, sir.

MR. MEARNS: Thank you, your Honor.

THE COURT: Any questions?

MR. WOODS: No, your Honor.

MR. WOODS: Yes, your Honor.

THE COURT: All right. I take it Mr. Patel may be excused.

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

THE COURT: Agreed?

MR. TIGAR: Yes, your Honor.

MR. WOODS: Yes, your Honor.

THE COURT: You may step down. You're now excused. Next, please.

MR. MACKEY: Your Honor, we would call Florence Rogers.

(Florence Rogers affirmed.)

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

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

THE WITNESS: Florence E. Rogers. R-o-g-e-r-s.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. MEARNS:

Q. Where do you live, Ms. Rogers?

A. I live in southwest Oklahoma City.

Q. How long have you lived in Oklahoma City?

A. Probably 40 years.

Q. And are you working, or are you retired?

A. I retired the first day of July this year.

Q. July 1 of 1997?

A. '97.

Florence Rogers - Direct

Q. Where did you work before you retired?

A. I worked at Federal Employees Credit Union.

Q. How long had you worked at that Federal Employees Credit Union?

A. 26 years.

Q. And what was your title or position when you retired?

A. Chief executive officer.

Q. How long had you been chief executive officer?

A. 26 years.

Q. How long had the credit union been in operation when you retired?

A. About 35 years.

Q. Would you tell us what is the Federal Employees Credit

Union.

A. It's a nonprofit financial institution owned by the members that offers financial services such as checking accounts, savings accounts, credit cards, loans, IRA accounts.

Q. So it's a private organization; it's not a federal agency?

A. No. It's not a federal agency.

Q. And how many members of the credit union did it have in July of 1997 when you retired?

A. We had 15,700 members.

Q. What kind of services did the credit union provide to its members?

A. Loans, all -- mortgage loans, auto loans, checking

Florence Rogers - Direct

accounts, savings. About anything that -- that a financial institution would offer.

Q. How many people did the credit union employ in Oklahoma City when you retired in July?

A. I think we had about 43 employees when I retired.

Q. In April of 1995, how many employees did the credit union have?

A. We had 33.

Q. In April of 1995, where was the credit union office located?

A. We were on the third floor of the Alfred P. Murrah Federal Building.

Q. Downtown Oklahoma City?

A. Yes.

Q. I want to direct your attention now to Wednesday, April 19, 1995. Were you working that day?

A. Yes, I was.

Q. What time did you get to work that day?

A. Around 8:00.

Q. What did you do after you got to work that morning?

A. I began getting prepared for a meeting that I had planned to -- excuse me -- have with my staff, seven of my staff members. I had scheduled a meeting a couple weeks ahead of that day. We were going to be doing assignments on some items that the state banking department had requested for their audit

Florence Rogers - Direct

that was to begin the next week.

Q. What time was the meeting supposed to begin?

A. We were going to start just as soon after 8 as we could arrange to get everybody together.

Q. And what time did the meeting start that morning?

A. It was about 8:35 before we actually began the meeting.

Q. Where were you planning to hold the meeting that morning?

A. We were going to hold it in the board -- in our boardroom on the north side of the Murrah Building.

Q. And when you say "the north side," that's the side with the windows?

A. Yes.

Q. Where -- where, in fact, did you hold the meeting?

A. We ended up holding it in my office on the south side of the Murrah Building due to a printer that wasn't working that morning. I couldn't print out the agenda. So I told one of the vice presidents just to get everybody together in my office and we would hold it there.

Q. I'd like you to look at what has been introduced in evidence as Government Exhibit 952, the third floor. And that's the floor there where the credit union was located in April of '95?

A. Yes, it is.

Q. And could you just draw a big circle around the space that the credit union occupied then.

Florence Rogers - Direct

A. Yes. We occupied the -- the green area.

Q. Okay. Now, if you would click your pen and show us where the boardroom was that you had intended to have the meeting.

A. We had intended to have it here.

Q. Okay. If you would put an X where your office was located, where you, in fact, held the meeting.

A. Here. That's -- that's where my desk was. Right there. So that's the room where we held the meeting.

Q. About how large was the room?

A. It was about 15 by 20.

Q. And how many employees attended the meeting that morning?

A. There were seven and myself, and then my secretary was adjacent in her office.

Q. That's that smaller room located just to the north side of --

A. Yes. Uh-huh. Here.

Q. Tell us the names of the other people who were present at the meeting.

A. Claudette Meek, Kathy Finley, Vicky -- Victoria Texter, Jamie Genzer, Sonja Stroud (sic), Jill Randolph, Valerie Koelsch.

Q. So those were the seven people that were in the meeting with you?

A. Yes.

Q. Tell us what happened shortly after 9:00.

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A. I had just turned around from reading a -- the next agenda item that we were going to cover from my computer screen on the credenza that was behind my desk, and I kind of leaned back; and one of the ladies present began to talk. And suddenly, I was thrown from my chair on to the floor in kind of a tornado-like rush. And all the -- the building literally blew up before my eyes, taking all the staff members that were in the room with me down below with six floors from above on top of them.

Q. What did you see when you looked out back where your office was?

A. There was just space. I could not see -- there was no floor left. My desk had disappeared. I could see through the building and see the sky.

Q. Were any of the women that were in the meeting with you still in the room with you?

A. No. They all disappeared.

Q. What about the window behind you? Behind your desk? I'm sorry. Behind your credenza.

A. That had been blown out.

Q. What did you do next?

A. I knocked the dust and debris off of myself and began

A. I knocked the dust and debris off of myself and began yelling out the window that was no longer there. There weren't any rescue units at the site at that time, although I could hear them on the way. And I began yelling. And it wasn't long

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before a couple of the GSA employees appeared in the stairwell window outside my office. The building took on a U shape at that point. And they asked me if I thought I could climb out on the ledge outside the window. And I told them I thought I could. And I did that. And by raising my body forward as -- as far as I could and reaching up, they were able to reach my wrists and pull me up into the stairwell window, walk me down the stairs and out on to the plaza on the south side of the building.

Q. What time did you leave the area around the Murrah Building that morning?

A. I walked the streets trying to find my staff members for quite a while. I ended up on a bus and I rode around on the bus for a good 45 minutes or an hour; and then when it stopped, I got off. I didn't feel like I needed immediate medical attention. So it was -- it was noon, and I was still in the area.

Q. So when did you leave the area? You left the area around noon?

A. Yes. I was finally able to find a phone that would work to call my family and let them know that I was alive.

Q. And then your son came and picked you up?

A. Yes, he did.

Q. Prior to noon, did you ever go into the front of the Murrah Building?

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A. No, I didn't.

Q. Were the seven women who were with you in that meeting -- were they killed in the explosion?

A. Yes, they were.

Q. In addition to those seven women, were any other employees of the credit union killed in the explosion?

A. Yes. I lost 18 staff members.

Q. 18 total?

A. Yes.

MR. MEARNS: With the Court's permission, Agent Tongate, I'd like to display Government Exhibit 1092.

THE COURT: All right.

MR. MEARNS: Your Honor, Government Exhibit 1092 consists of two separate charts.

THE COURT: All right. I take it this is being received pursuant to your earlier understanding.

MR. TIGAR: Yes, your Honor.

THE COURT: All right.

BY MR. MEARNS:

Q. Ms. Rogers, beginning in the upper left-hand corner, I'd like you just to identify the women who are pictured on that chart and tell us their positions with the credit union and how long they had been employed.

A. Kimberly Ruth Burgess was my administrative assistant, and she had worked for me for a year and a half.

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Katherine Finley was my vice president of operations of 21 years.

Jamie Lee Genzer was a management trainee who had been with us for two-and-a-half years.

Linda Coleen Housley was a loan officer, and she had been with us a year and a half.

Robin Ann Huff was a loan officer, and she had been with me for six years.

Christi Yolanda Jenkins was a teller, and she had been with me for ten years.

Valerie Jo Koelsch was my marketing director who worked for me for ten-and-a-half years.

Catherine Mary Leinen was my collection officer who had worked for me for twelve years.

Tresia Jo Mathes-Horton was a teller who had worked for me for seven months.

MR. MEARNS: Agent Tongate, if you would show the second chart.

BY MR. MEARNS:

Q. And if you would again, just starting in the upper left, identify these nine women. Tell us their positions and how long they were employed by the credit union.

A. Claudette Meek was my vice president in the lending department, and she had worked for me for 13 years.

Frankie Ann Merrell was a teller who had worked for me

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for three-and-a-half years.

Jill Diane Randolph was my CPA and accountant, who had worked for me a year and a half.

Claudine Ritter was one of my collection officers and had worked for me for eight years.

Christine Nicole Rosas was a loan receptionist and had worked for me for eight days.

Sonja Lynn Sanders was my head cashier who had worked for me for five years.

Karen Denise Shepherd was a loan officer who had worked for me six years.

Victoria Jeanette Texter was in charge of our VISA department, and she had worked for me 13 years.

Virginia Mae Thompson was a receptionist, also; and she had worked for me for four months.

MR. MEARNS: Thank you, Agent Tongate.

BY MR. MEARNS:

Q. Ms. Rogers, prior to coming to court this morning, did you put the names of those 18 women on a floor plan, the third-floor floor plan of the Murrah Building, indicating where their work stations were?

A. Yes, sir.

MR. MEARNS: Your Honor, we don't intend to display it at this point, but we would offer 952C.

MR. TIGAR: Subject to our earlier discussion, your

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Honor.

THE COURT: Yes. It's received.

BY MR. MEARNS:

Q. Did the credit union ever resume operations in the Murrah Building?

A. No.

Q. Where did the credit union resume operations?

A. We opened up 48 hours after the bombing in a teller training facility that was loaned to us by Tinker Federal Credit Union, about 8 miles from downtown Oklahoma City.

Q. How many of the employees who were working for you prior to April 19, 1995, continued to work for you after that explosion?

A. Initially, there was only about seven of us that were able to start with our rebuilding efforts.

Q. That is seven of the original 33?

A. Yes.

Q. How were you able to resume operation with those limited number of employees?

A. It was difficult. We had a lot of volunteers, some of them from even out of state that were on the same computer system we were on; and they flew those young people in to help us. And -- and as I said, we resumed business in 48 hours.

Q. When did you resume normal operations of the credit union?

A. We were at the temporary location for 42 days. And then we moved into leased space where the offices are still located in

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Bethany, Oklahoma.

MR. MEARNS: I have no further questions, your Honor.

THE COURT: Mr. Tigar.

CROSS-EXAMINATION

BY MR. TIGAR:

Q. Good morning, Ms. Rogers.

A. Good morning, Mr. Tigar.

Q. My name is Michael Tigar. I'm one of the lawyers appointed to help out Terry Nichols.

I wanted to ask you first, if I may, a few questions

about the credit union --

A. Okay.

Q. -- and then about some of the things that you saw that day when you were riding around during those morning hours.

First, credit unions can exist or be set up by any affinity group; is that right? Any related group of people?

A. Yes, that have a common bond.

Q. Right. And how long have you worked in the credit union industry?

A. 35 years.

Q. 35 years. Have you always been with a federal-employee-type credit union, or were you with some others?

A. I was with a Capitol Credit Union for several years as a vice president, and then I was hired as the CEO at Federal Employees in 1971.

Florence Rogers - Cross

Q. Now, are you familiar with the fact that there are also credit unions for farmers' organizations and community organizations, as well as for people who are associated because they all work for the same person?

A. Yes. I know a lot of credit union people across the country.

Q. And you've been to conventions where all these folks meet together and talk about their common problems; right?

A. Yes.

Q. Seen people from all walks of life all over the country --

A. Absolutely, yes.

Q. -- correct? I mean, farmers, ranchers, federal employees, people who are members of other organizations, union members, and so on; right?

A. Yes.

Q. Now, to turn to what you were seeing that day, you said that you got on a -- on a bus; is that right? And where -- where did you -- where did the bus route take you that day --

A. They were --

Q. -- if you remember.

A. Vaguely. They were -- people were -- had scattered from the building in kind of all different directions. And this bus was a kind of a -- a medical bus, and they were going around different street corners, several blocks around the Murrah Building site, seeing -- seeing if they could find injured

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people that perhaps needed to go to a hospital. So it was a medical bus of some kind.

Q. And -- and as you rode around the downtown area, there was just dirt and debris and shattered glass everywhere; right?

A. Absolutely.

Q. And did that have to be cleared off, some of it, in order for the rescue people to get through? Did you observe that?

A. I have no idea. I did not observe that.

Q. Okay. But you just -- you just saw that it was -- that

Q. Okay. But you just -- you just saw that it was -- that
this scene was not just confined to the Murrah Building;
correct?

A. No. It wasn't.

Q. But there was -- and that the area that you rode around,
you could -- you could see signs that this had been a -- a very
large event, indeed; is that right?

A. Yes. A lot of chaos going on everywhere. Buildings being
evacuated. Injured running, pretty rampant.

Q. Did you -- after you left that day and -- and your family
knew that you were all right and went home, when's the next
time that you went back to that Murrah Building area?

A. It was almost two weeks later, I met one of the U.S.
marshals and my son down there to go underneath the building in
the parking garage where my car had remained during that time.

Q. So --

A. It was almost two weeks later.

MR. TIGAR: Not till two weeks later.

Thank you for answering my questions. I really
appreciate it.

I have nothing further, your Honor.

THE COURT: Anything else?

MR. MEARNES: No questions. She may be excused.

THE COURT: All right. Agreeing to excuse her, I
take
it?

MR. TIGAR: Yes, your Honor.

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

We'll take our midsession break, here. Not just
midmorning. It's midsession today, since we're going to 1:00.
And so remember that, of course. And if you wish to fortify
yourselves a bit with some snack or fruit or whatever during
this time, of course, you may do so. So -- and of course, you
will follow the cautions regularly given at all recesses: open
minds and closed mouths concerning the case.

And you're excused now. 20 minutes.

(Jury out at 10:41 a.m.)

THE COURT: Okay. 11:02.

(Recess at 10:42 a.m.)

* * * * *

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REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated at Denver, Colorado, this 14th day of November, 1997.

Bonnie Carpenter

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