

THE COURTROOM DEPUTY: Thank you.

MS. WILKINSON: Thank you.

DIRECT EXAMINATION

BY MS. WILKINSON:

Q. Good afternoon, Mr. Berry. How are you?

A. Fine.

Q. Could you tell the jury where you live.

A. I now live in La Junta, Colorado.

Q. How long have you lived in La Junta?

A. Approximately about the last 30, 35 days.

Q. Did you get a new job?

A. New job, yes.

Q. Where are you working in La Junta?

A. I work for Wal-Mart Stores, Incorporated.

Q. What is your job there at Wal-Mart?

A. Store manager.

Q. And had you been working for Wal-Mart prior to moving to the store in La Junta?

A. Yes, I had.

Q. Where had you been working prior to your move to La Junta?

A. I was in Arkansas City, Kansas.

Q. And where is Arkansas City, Kansas?

A. Arkansas City, Kansas, is the lower end of Kansas. Splits

Alvin Berry - Direct

the border of Oklahoma or right off the Highway 77.

Q. Okay. Let me show you Government's Exhibit 1999 that's already in evidence. Do you see that black pen up there that's in front of you attached to a wire?

A. Correct.

Q. Could you show the jury on this map, circle where Arkansas City, Kansas, is.

You've got to go down underneath and actually write on the screen there.

There you go. Okay. Is that that little dot right next door where you made your mark?

A. Correct.

Q. And can you tell the jury how far it is from Arkansas City, Kansas, to Herington, Kansas?

A. Approximately about 170, 180 miles.

Q. How long would it take to drive from Arkansas City to Herington, assuming you're following the speed limits?

A. Approximately about three hours.

Q. Now, when did you first start working at the Wal-Mart in Arkansas City, Kansas?

A. I was there in the middle of April.

Q. Of what year?

A. Of '95.

Q. And you stayed there until you moved to La Junta?

A. Correct.

Alvin Berry - Direct

Alvin Berry - Direct

Q. What was your job or your title at Wal-Mart in Arkansas City?

A. I was store manager.

Q. Same thing that you're doing at La Junta?

A. Correct.

Q. What's the difference between your store in Arkansas City and your store in La Junta?

A. About another 30,000 square feet.

Q. A lot more merchandise?

A. A lot more merchandise.

Q. Now, as the store manager of Arkansas City Wal-Mart, was one of your responsibilities to maintain records for the Wal-Mart?

A. Yes. That's correct.

Q. Did you maintain records of customer receipts?

A. Yes.

Q. Now, at some point, were you contacted by the FBI and shown a copy of an Arkansas City Wal-Mart receipt?

A. Yes, I was.

Q. Let me show you Government's Exhibit 265B that's already in evidence. Do you recognize that?

A. Yes.

Q. Could you take your pen that you have up there and click the side and that'll erase the marks that you made on there.

Now, do you recognize this receipt?

Alvin Berry - Direct

A. Yes, I do.

Q. Is it a receipt from your store in Arkansas City?

A. Yes, it is.

Q. Okay. Let's start at the top, if we could. Now, right there, it says "Wal-Mart"; is that right?

A. Correct.

Q. And there's a number there that says "Store 0978"?

A. Correct.

Q. What does that indicate?

A. That is the individual store number --

Q. Which store --

A. -- of the Arkansas City Wal-Mart store.

Q. Okay. And the next line says what?

A. Arkansas City, Kansas, has the store No. 0978. OP is the operator. 202. T is terminal. Terminal No. 7. And transaction 07269.

Q. When you say "operator," what do you mean?

A. That was the actual assigned cashier. Each cashier has an assigned number.

Q. So you can tell from looking at this receipt who the person was who actually checked the customer out that day?

A. That's correct.

Q. Okay. And the next number you said indicates which register they used?

A. Correct.

Alvin Berry - Direct

Q. Is that right? Now, can you read for the jury the next few entries of what this customer purchased.

A. Pennzoil 10W30, Pennzoil 30 weight, Pennzoil 30 weight, Pennzoil 30 weight once again, and an oil filter.

Q. There is some writing as you can see on -- around the oil filter, but can you tell the jury the price of this oil filter? Can you read those numbers?

A. I think it says 234 from what I can see here.

Q. Is it hard to tell where that writing is there?

A. Yes, it is.

Q. Can you look in your file in front of you and see if you have a copy of Government Exhibit 265B. That is another copy of the receipt.

A. Yes.

Q. Is it any better? Can you tell the price of the oil filter there, or is it still hard to read?

A. It's still hard to read, but it's -- it looks like 234. It ends on a four, and the dollar amount is \$2.

Q. Now, on the next line here, you have a subtotal; is that right?

A. Correct.

Q. Sales tax?

A. Correct.

Q. The total?

A. Correct.

Alvin Berry - Direct

Q. And the next line, what does that indicate?

A. Cash tender.

Q. What does that mean?

A. That means that is the dollar amount that was given to the cashier that was typed into the -- the register.

Q. Does that -- since it says "cash," does that mean the customer paid with cash?

A. Correct.

Q. And the "change due" is self-explanatory; is that right?

A. Correct.

Q. Okay. Now, let's focus, if we could, for a moment on the bottom of this receipt. And after "change due," tell the jury what they are seeing down there at the bottom.

A. It has a transaction number, "Always the low price at Wal-Mart," date, time, sale.

Q. Tell us what the date of this receipt is.

A. 04-13-95. That's at 17:42:01.

Q. 4-13-95 would be April 13, 1995; is that right?

A. Correct.

Q. And what does this time indicate, 17:42?

A. It's 5:42:01.

Q. That would be 5:42 p.m. on April 13?

A. Correct.

Q. Now, do you maintain these times and dates at your local Wal-Mart in Arkansas City or are they maintained by a computer

Alvin Berry - Direct

system?

A. They are maintained by a computer system.

Q. And do you rely on these dates and times to keep your records?

A. Yes, we do.

Q. And do you have any reason to believe that these times and dates are not accurate?

A. They are accurate.

Q. Okay. Now, let's go back to the full receipt, if we could. See up at the very top of the receipt that -- at the -- above those initials there, do you see that, the dark corner?

A. Correct.

Q. Have you looked at the original Government's Exhibit 265 before coming to court today?

A. Yes.

Q. Do you have it up there in your folder?

A. Yes, I do.

Q. Could you take it out of the plastic sheet, please. I think, Mr. Berry, you're looking at the copy. Do you have the original, which is the darkened copy with the sticker on it?

A. 265A?

Q. 265, it should be. Is there a sticker at the top of 265?

A. Yes, it is.

Q. And can you tell -- hold that up for the jury, could you, and show them. What color is the sticker?

Alvin Berry - Direct

A. Pink.

Q. Is it at the top of the receipt?

A. Yes, it is.

Q. And have you reviewed that before coming to court to determine the markings on that sticker?

A. Yes.

Q. Let me show you what's not yet in evidence which is Government's Exhibit 1832. Do you recognize that?

A. Yes, I do.

Q. And does that show the sticker unfolded and set out above the receipt?

A. Yes, it does.

Q. And would that assist you in explaining to the jury what the markings are on the sticker on the April 13 Wal-Mart receipt?

A. Yes.

MS. WILKINSON: Your Honor, we'd offer Government's Exhibit 1832 for demonstrative purposes.

MR. TIGAR: May I inquire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. TIGAR:

Q. That -- the sticker parts -- hello. My name is Michael Tigar. I'm one of the lawyers appointed to help Terry Nichols. Excuse me.

Alvin Berry - Voir Dire

A. I thought.

Q. The -- that sticker that you have up there, that is not a record from your store, is it, sir?

A. No, it's not, the sticker itself.

Q. The sticker itself. The -- the little -- the register receipt we've just talked through with the prosecutor, that is from your store; correct?

A. Correct.

Q. But that sticker is -- that's from some other Wal-Mart; right?

A. Correct.

Q. All right. And do you know of your own personal knowledge what other Wal-Mart that's from?

A. From looking at the sticker, it shows that it's from Store No. 35.

Q. Okay. And that -- how far is that from your store?

A. Approximately 180 -- about 180 miles.

MR. TIGAR: We object to this, your Honor. It's not his record.

THE COURT: I don't understand how the witness can testify to it.

MS. WILKINSON: I believe, your Honor, Wal-Mart uses these store designator numbers, and he knows the Wal-Mart policy for putting this sticker on.

THE COURT: I haven't heard any of that.

Alvin Berry - Voir Dire

MS. WILKINSON: Okay.

DIRECT EXAMINATION CONTINUED

BY MS. WILKINSON:

Q. Mr. Berry, are you familiar with the procedures that Wal-Mart uses when customers bring merchandise back for return?

A. Yes, I am.

Q. And does Wal-Mart permit customers to return merchandise they purchased at one store -- permit them to return it to another store?

A. Yes, we do.

Q. Does it matter which store you go to to return the merchandise?

A. Doesn't matter at all.

Q. What do you need to return the merchandise?

A. All you need is the actual receipt.

Q. Now, if a customer comes to your store, any Wal-Mart store to return the merchandise and they enter the door, what's the first thing that happens to them?

A. There is a people greeter there that has access to these pink stickers, and they actually put the pink sticker on the merchandise

merchandise.

Q. And you see -- say a people greeter. Do you mean a person?

A. Person.

Q. And that person, what do they do?

A. They have a little gun, what we call a marking gun that

Alvin Berry - Direct

holds these pink stickers that has the time and the dates, the store number, identical to what's here; and they place that on the merchandise as they enter the store.

Q. And is that Wal-Mart policy to do that for a return?

A. Yes, it is.

Q. Why would someone -- or why would you as a Wal-Mart employee mark a receipt as the customer is entering the store for return?

A. Well, that lets us know that the purchase actually came through the front of the store and didn't surface somewhere from inside the store.

Q. So you know the person had purchased it previously?

A. Correct.

Q. And do you use those stickers every time someone comes into a store to make a return or an exchange?

A. Yes, we do.

MS. WILKINSON: Your Honor, based on that, we would offer 1832 as a demonstrative exhibit.

THE COURT: Yes.

MR. TIGAR: May I inquire further? I don't want to be cranky.

THE COURT: Yes. Of course.

MR. TIGAR: Thank you.

VOIR DIRE EXAMINATION

BY MR. TIGAR:

Alvin Berry - Voir Dire

Q. Sir, the -- the refund procedure also requires the person to go get some initials; isn't that right? In other words, if you're actually going to be eligible to get your money back, in addition to getting a little ticket, you've got to get some initials; correct?

A. That's after they -- or during the process of -- process of the refund.

Q. Okay. And you see on the exhibit that you were shown initially, the copy of your receipt, you saw some circling and some initials; do you remember that?

A. Yes, right here.

Q. That was not done at your store, was it, sir?

A. No, it wasn't.

Q. And you have no personal knowledge of the transaction that involved the placing of the initials and the putting on of the sticker; is that right?

A. That's correct.

MR. TIGAR: We object, your Honor.

THE COURT: Sustained.

DIRECT EXAMINATION CONTINUED

BY MS. WILKINSON:

Q. Mr. Berry, do you know the store number or the Wal-Mart store number -- store that belongs to Store 35?

A. Yes, I do.

Q. What store is that?

Alvin Berry - Direct

A. It's in Manhattan, Kansas.

Q. And is that north or south of you in Arkansas City?

A. North.

Q. Now, I want to show you an exhibit that's already in evidence, Government's Exhibit 1988, on page 15. If you can look on your computer screen. 1888. Excuse me. Do you see that?

A. Yes.

Q. And do you see that phone call that's highlighted that shows a phone call from Mr. Nichols' residence at 4:33 on April 13?

A. Yes.

Q. To Quarton on that same date?

A. Yes.

Q. You told us, I believe, that the receipt that was generated at your store in Arkansas was generated at 5:42 p.m.; is that right?

A. That's correct.

Q. If someone were on the phone in Herington, Kansas, at 4:33 p.m., could they have driven to your Wal-Mart in Arkansas City and made that purchase at 5:42 p.m.?

A. No.

Q. Pardon?

A. No.

MS. WILKINSON: Okay. No further questions, your

Alvin Berry - Direct

Honor.

THE COURT: Mr. Tigar, do you have some questions?

MR. TIGAR: One or two.

CROSS-EXAMINATION

BY MR. TIGAR:

Q. I'd like to put up on here, sir, Government Exhibit 265B. That's the copy of the receipt. You recognize that?

A. Yes, I do.

Q. Now, the 4-13-95 and the 17:42:01, that is set from -- that's set by computers over at Wal-Mart Central, isn't it?

A. Correct.

Q. Okay. And where is Wal-Mart Central?

A. That's in Bentonville, Arkansas.

Q. Okay. And you don't independently verify that, do you, sir?

A. No, I don't.

Q. Okay. But you -- you count on it for record-keeping purposes; correct?

A. Yes, we do.

Q. But the actual time is set by somebody over there in -- in the Arkansas store; correct?

A. That's correct.

Q. All right. Now, this receipt reflects that the customer purchased these various items. Now, do you have a scanner at your checkout positions there at your store?

Alvin Berry - Cross

A. Yes, we do.

Q. So what we're seeing here, these numbers, these are the numbers that the -- the -- that are gotten by the -- I don't know how to say this -- that -- what happens when they blip it, or what do they do there?

A. When you scan it.

Q. Scan it. It makes that beep noise and then -- and then it reads out; is that correct?

A. That's correct.

Q. So -- and the scanner -- so that you can tell, for example, this oil filter, that's absolutely unique to all of the oil filters there; right? I mean, there's only one kind of oil filter that matches that scan code; is that correct?

A. That's correct.

Q. Okay. And similarly, with this oil, like Pennzoil 10W30, has a different scan than the regular Pennzoil 30?

A. That's correct.

Q. So if we were to look at your records, we could determine exactly what product -- the full description of each product that's described here; correct? Using these codes?

A. Correct.

MR. TIGAR: Thank you, very much. I have no further questions.

MS. WILKINSON: No further questions, your Honor. This witness is excused.

THE COURT: Agree to excuse the witness?

MR. TIGAR: Yes, your Honor.

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

MR. MACKEY: United States calls David Kordyak.

(David Kordyak 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 J. Kordyak, spelled K-O-R-D-Y-A-K.

THE COURTROOM DEPUTY: Thank you.

MS. WILKINSON: We just need a moment, your Honor, to get these exhibits back and give them to Mr. Kordyak.

THE COURT: All right.

DIRECT EXAMINATION

BY MS. WILKINSON:

Q. Mr. Kordyak, where do you live?

A. I live at Manhattan, Kansas.

A. I live at Manhattan, Kansas.
Q. How long have you lived in Manhattan, Kansas?
A. For four years.
Q. Are you married?
A. Yes, ma'am.
Q. Do you have children?
A. Yes, ma'am.
Q. And what do you do for work in Manhattan?

David Kordyak - Direct

A. I work at Wal-Mart.
Q. How long have you worked at Wal-Mart?
A. About 3 1/2 years.
Q. Where is your store located?
A. It's located at 628 Tuttle Creek Boulevard, Manhattan.
Q. Are there any other Wal-Marts in Manhattan, Kansas?
A. No, ma'am.
Q. What's the closest Wal-Mart to you?
A. Junction City.
Q. How far is Junction City from the Wal-Mart in Manhattan, Kansas?
A. 30 miles, about.
Q. Now, how long have you been there at the Wal-Mart in Manhattan?
A. About 3 1/2 years.
Q. What do you do for them there?
A. I'm a PI specialist. Sales floor clerk.
Q. Do you work in a certain section?
A. Yes, ma'am.
Q. Which section do you work in?
A. I work in the automotive section.
Q. Were you working in the automotive section back in April of 1995?
A. Yes, ma'am, I was.
Q. And based on your work in the automotive section, are you

David Kordyak - Direct

familiar with the oil filters that are sold by Wal-Mart?
A. Yes, ma'am, I am.
Q. And are you familiar with the oil filters that were sold by Wal-Mart back in April of 1995?
A. Yes, ma'am, I am.
Q. Could we talk for a moment about the return procedures that you use in Wal-Mart in Manhattan. Is anyone allowed to return Wal-Mart items to any store?
A. Yes, ma'am.
Q. Does it matter in which store you purchased the item?
A. No, ma'am, it doesn't.
Q. What do you need to return an item to the Manhattan Wal-Mart?
A. All you need is the item and the receipt.
Q. And if someone comes in the door with an item for a return, what do you do?

----- -- -- -- --
A. They are going to come in the door, the door greeter is going to -- excuse me -- is going to greet them. At that point, he'll put a pink sticker on the -- on the item or on the receipt.

Q. Does that pink sticker indicate which store the customer is entering?

A. Yes, ma'am, it does.

Q. What is the store code for your store, Manhattan?

A. My store code is 0035.

David Kordyak - Direct

Q. And that indicates the Manhattan Wal-Mart?

A. Yes, ma'am, it does.

Q. What else would be on that sticker?

A. The date.

Q. And that would be the date the customer is actually entering the store with the item for return?

A. Yes, ma'am.

Q. Once the customer receives that sticker on his receipt, can he come back to your section, the automotive section to return an item?

A. Yes, ma'am, he can.

Q. And what would you do when that customer approached you to return an item?

A. At that point, I'll -- I'll ask the customer if he's got a receipt, if they will show me the receipt. I'll inspect the item and make sure that the item is the -- that the item he wants to return is on the receipt by comparing the UPC codes. At that point, I'll circle the -- the proper UPC code and item, and I'll put my initials at the top and send them -- and I'll keep the item and send them back up front to the service desk where they can get their refund.

Q. Tell us what a UPC code is.

A. The UPC code is the -- is the number on the actual -- actual piece of -- of whatever they are bringing back like on an oil filter, there's an actual number on that that identifies

David Kordyak - Direct

that specific -- that specific -- specific item in the system. And it can -- it'll only be for that specific item.

Q. Well, if we use the oil filter for an example, would you have one number for a certain size oil filter?

A. Yes, ma'am.

Q. And then would you have another UPC number for a different size oil filter?

A. Yes, ma'am, you would.

Q. So if you read the receipt and you read the UPC number, could you tell what item had been returned to you?

A. Yes, ma'am.

Q. Now, once you circled that receipt and initialed it, what do you do with the item the customer is trying to return?

A. I will keep the item back there in my area.

Q. And what do you do with the receipt?
A. I give it back to the customer.
Q. You don't give them their cash at that time?
A. No, ma'am. I'm not allowed to do refunds back in my register.
Q. Now, let me show you Government's Exhibit 265B, which is already in evidence. Do you recognize that receipt?
A. Yes, ma'am, I do.
Q. Do you recognize the handwriting on there?
A. Yes, ma'am, I do.
Q. What handwriting do you recognize?

David Kordyak - Direct

A. The handwriting here at the top.
Q. Is that your handwriting?
A. Yes, ma'am, it is.
Q. Are those supposed to be your initials?
A. Yes, ma'am, it is.
Q. What are your initials?
A. DK.
Q. Okay. And do you recognize any other handwriting on there?
A. Yes, ma'am, I do.
Q. Could you circle that for us.
Now, sir, could you go down to the bottom and circle the date of this purchase, the original purchase.
Is that April 13, 1995?
A. Yes, ma'am, it is.
Q. Before coming to court today, did you examine this receipt?
A. Yes, ma'am, I did.
Q. And did you examine the sticker that's at the top?
A. Yes, ma'am, I did.
Q. And did you determine that's a record from your store -- your Wal-Mart store in Manhattan, Kansas?
A. Yes, ma'am, I did.
Q. How did you determine that?
A. By looking at the receipt, it shows that it has my store number on it above the date of the receipt.
Q. All right. Let me show you what's not in evidence yet,

David Kordyak - Direct

Government's Exhibit 1832. Do you recognize that?
A. Yes, ma'am, I do.
Q. And does that show the sticker that you've just referred to unfolded with all the information present?
A. Yes, ma'am, it does.
MS. WILKINSON: Your Honor, we'd offer Government's Exhibit 1832 for demonstrative purposes.
MR. TIGAR: No objection, your Honor.
THE COURT: All right. It's received for demonstrative purposes and may be so used.
BY MS. WILKINSON:
Q. Sir, could you click the side of your pen to erase those

marks that you had on there previously.

Now, can you circle the sticker as it's unfolded.

On the top there, we see 0035. What does that indicate?

A. That indicates it's a Wal-Mart Store 35.

Q. And what does 4-15-95 indicate?

A. That indicates the date that the receipt was brought in through the front doors.

Q. Okay. Now, does this indicate with your initials that you received this item, the oil filter that you circled -- circled for return on April 15, 1995?

A. Yes, ma'am, it does.

Q. Do you have any recollection as to who it was who actually

David Kordyak - Direct

presented the oil filter to you that day?

A. No, ma'am, I do not.

Q. Now, let's take a look, if we could zoom back in on the receipt there. Do you see -- that's the oil filter that you circled; is that right?

A. Yes, ma'am.

Q. Could you erase your pen markings again.

A. Yes, ma'am.

Q. And could you underline the UPC code.

And read it into the record for the jury, please.

A. UPC code is 910038089.

Q. And have you reviewed your UPC codes before coming to court today?

A. Yes, ma'am, I have.

MS. WILKINSON: And, your Honor, I'd offer 2007 for demonstrative purposes.

MR. TIGAR: No objection, your Honor.

THE COURT: All right. It's received for that purpose. And you may hand it to the witness.

MS. WILKINSON: Thank you.

BY MS. WILKINSON:

Q. Sir, I'm handing you 2007, Government's exhibit. Can you tell the jury what that is?

A. This is a Fram PH3387A oil filter.

Q. And is there a UP -- did you sell that type of oil filter

David Kordyak - Direct

in your Manhattan Wal-Mart in April of 1995?

A. Yes, ma'am, I did.

Q. Was that oil filter available in other Wal-Mart's in 1995?

A. Yes, ma'am, it was.

Q. Okay. And can you compare the UPC number on the bottom of Government's Exhibit 2007 with the UPC number on this receipt.

A. Yes, ma'am. UPC is 910038089.

Q. So would the exhibit you have there, Government's Exhibit 2007, be the exact type of oil filter that was returned to you

2007, do the exact type of oil filter that was returned to you on April 15, 1995?

A. Yes, ma'am, it would.

Q. Tell the jury what type of oil filter that is.

A. This is a Fram oil filter PH3387A.

Q. And what do all those numbers mean? Is that the size of the oil filter?

A. PH3387A just -- it demonstrates -- it's the way that Fram shows which vehicle it fits. It characterizes it in that way.

Q. Before coming to court today, did you review the -- the Allied Signal -- excuse me -- Allied Signal Fram filter catalog for 1995?

A. Yes, ma'am, I did.

Q. And did you have that available in April of 1995 in the automotive section?

A. Yes, ma'am, I did.

Q. And have you determined whether that oil filter would fit

David Kordyak - Direct
certain vehicles?

A. Yes, ma'am, I did.

Q. Okay. Let me show you what's already in evidence, Government's Exhibit 267, which is an application for title by Mr. Timothy McVeigh. Do you see that?

MS. WILKINSON: I'm sorry. Hold on one second, your Honor.

Your Honor, I thought we offered it through Mr. Manning. But if we didn't, the witness can just refer to it. I don't know if there's any objection.

MR. TIGAR: Well, your Honor, if -- may I confer with counsel?

THE COURT: Yes.

MR. TIGAR: Because -- I don't think there's a problem here.

Okay.

MS. WILKINSON: We're set, your Honor. We're going to offer two exhibits. We've done the trade. We're going to offer 627, and we're going to also offer the Fram catalog.

BY MS. WILKINSON:

Q. Mr. Kordyak, can you pull that out of your --

THE COURT: Wait a minute. I thought you said 267. Now you're saying a different number.

MS. WILKINSON: I am saying 267. Maybe I misspoke. I apologize.

David Kordyak - Direct

MR. TIGAR: They will introduce that and the -- and also this Fram catalog, which I don't know if it has a number yet.

MS. WILKINSON: It does.

BY MS. WILKINSON:

Q. Mr. Kordyak, could you pull out the Fram catalog. Do you see the Government's exhibit sticker there?

A. Yes, ma'am.

Q. Is it 2004?

A. Yes, ma'am, it is.

MS. WILKINSON: We'd offer both of those exhibits, your Honor.

MR. TIGAR: No objection, your Honor.

THE COURT: They are received.

BY MS. WILKINSON:

Q. Now, sir, let's take a look at Mr. McVeigh's certification for title. Have you reviewed this before coming to court?

A. Yes, ma'am, I have.

Q. And have you compared it to the Fram catalog that's in front of you?

A. Yes, ma'am, I have.

Q. And would that oil filter have fit Mr. McVeigh's Pontiac J2000?

A. Yes, ma'am, it would.

Q. Now, have you also compared that oil filter or checked that

David Kordyak - Direct

oil filter to see if it would fit other vehicles?

A. Yes, ma'am, I have.

Q. Let me let you look at Government's Exhibit 1857, which is already in evidence.

See that? I'm going to take you to page 2. See those highlighted portions?

A. Yes, ma'am.

Q. And that says '84 GMC; is that right?

A. Yes, ma'am.

Q. And down at the bottom, it says PH13 Fram oil filter?

A. Yes, ma'am.

Q. Now, would the oil filter you have in front of you, which is a PH3387A -- would that fit an '84 GMC?

A. No, ma'am, it will not.

Q. And what type of oil filter would fit an '84 GMC pickup truck?

A. A PH13 Fram oil filter.

Q. Now, did you also determine whether this PH3387A, the oil filter you have in front of you, would have fit Mr. McVeigh's Mercury Marquis?

A. I determined it would not fit that.

Q. So the only one it would fit would be the Pontiac J2000 station wagon; is that right?

A. That is correct.

Q. Now, let's take a look back at the receipt, if we could,

David Kordyak - Direct

265B. And then look at the enlargement of the sticker there,

Government's Exhibit 1832. Do you see that?

A. Yes, ma'am.

Q. That tells you the day the item is returned; is that right?

A. Yes, ma'am, it does.

Q. And your initials show that you were the one that received it?

A. Yes, ma'am.

Q. Did you indicate anywhere on there what time the customer returned that to you?

A. No, ma'am, I did not.

Q. Okay. And that's not Wal-Mart policy, is it, to write down the time?

A. No, ma'am.

Q. Now, let me show you Government's Exhibit 2000, which is recovered from Mr. Nichols' house. Do you recognize that?

A. Yes, ma'am.

Q. Is that a record from your Manhattan Wal-Mart?

A. Yes, ma'am, it is.

Q. Okay. And let's take a look, if we could, down there at the bottom. Do you see that?

A. Yes, ma'am, I do.

Q. When was this purchase made at Wal-Mart?

A. It was made April 15 of 1995.

Q. And what time was this purchase made?

David Kordyak - Direct

A. At 2:40 in the afternoon.

Q. On April 15?

A. Yes, ma'am.

Q. Sir, were you working at 2:40 on April 18 -- April 15, 1995?

A. Yes, ma'am, I was.

MS. WILKINSON: No further questions, your Honor.

THE COURT: Mr. Tigar?

MR. TIGAR: Yes, your Honor.

May I approach, your Honor, to get the exhibit?

THE COURT: Yes.

MR. TIGAR: Thanks.

CROSS-EXAMINATION

BY MR. TIGAR:

Q. Hi.

A. How are you doing?

Q. May I borrow your Fram catalog there?

A. Yes, sir.

Q. Thank you.

Hello, Mr. Kordyak. My name is Michael Tigar. I'm one of the lawyers appointed to help Terry Nichols in this case.

How long have you worked at the automotive counter there --

A. 3 1/2 years --

David Kordyak - Cross

DAVID KORDYAK - CROSS

Q. -- at Wal-Mart?

A. -- approximately.

Q. 3 1/2 years?

A. Yeah.

Q. So you're familiar with how the oil filter numbering system works; is that correct?

A. Yes, ma'am -- yes, sir. Sorry.

Q. And if -- are you a little nervous?

A. Yes, sir.

Q. Don't worry about it. I'm going to ask you about oil filters.

A. Okay.

Q. Okay. All right. Now, if I came up to your store in April of 1995 and said, "Hello, there. I have a -- a GMC Jimmy pickup with a 6-cylinder 2.8-liter engine," what kind of oil filter would you sell me?

A. I would -- I would refer to the book and look it up.

Q. Right. So if I asked -- if I came in and said, "I have a 1984 GMC Jimmy pickup truck with a 2.8-liter engine," what kind of oil filter would you sell me?

A. You said it was a 6-cylinder; correct?

Q. Yes, sir. It's a -- double-check what kind of car I'm telling you. It's a 6-cylinder, 2.8-liter.

A. Okay. Is it two-wheel-drive or four-wheel-drive, sir?

Q. Let's start with the two-wheel-drive.

David Kordyak - Cross

A. Okay. A two-wheel-drive, I would say PH3980 or PH3535 oil filter.

Q. All right. Now, how about a -- let's see. How about the 4-cylinder, 2.0-liter engine, 1984 S15 Jimmy?

A. I would sell you a PH8387A, sir.

Q. For my 1984 GMC, you'd sell me a PH3387?

A. With a 2.0 --

Q. With 2.0-liter?

A. With 2.0-liter.

Q. That's the one you have in front of you; right?

A. Yes, sir.

Q. Now, in your oil filter book there, do you have a list of the number of different kinds of models of cars that take a 3387A, PH3387A?

A. I don't have a number that tells me how many different vehicles it fits, no.

Q. Okay. Well, let's take another one. Suppose -- how about a -- oh, an Isuzu pickup, 1991, 6, 3.1-liter engine. What kind of oil filter would that take?

A. PH3387A, sir.

Q. The same one you have up there; right?

A. Yes, sir.

Q. So I -- now I get them for the GMC Jimmy. You got an Isuzu. I'm going to try one more here. How about a -- a Jeep Cherokee J series pickup, 1986 model, 4-cylinder, 2.5-liter.

David Kordyak - Cross

A. You said 1986; correct?

Q. Lost my place. Just a minute here.

A. I'm sorry.

Q. Don't worry -- no. It's -- it's my fault. J series. 1986, yes, sir. The 4-cylinder.

A. It would be PH3387A.

Q. Same one you have there; right?

A. Yes, sir.

Q. I'll ask you one more here. How about a Wagoneer 6-cylinder, 2.8-liter, 1984 to '86?

A. It would be a PH3387A, also.

Q. So when you told the prosecutor that the only vehicle that this filter would fit, what you meant was it was the only one of the three that the prosecutor mentioned; correct?

A. Yes, sir.

Q. In fact, the way Fram makes those oil filters is that they make them and any given model of filter might fit a whole bunch of cars; right?

A. Yes, sir.

Q. And with that book that's now in evidence, people could go through there and look and see all the different products that that would fit; correct?

A. Yes, sir.

Q. And they do it the same way you did; right?

A. Yes, sir.

David Kordyak - Cross

Q. But just in our review, we discovered that it fit an Isuzu product, GMC product, and a Jeep product -- correct -- which is American Motors; right?

A. Yes, sir.

Q. Three different manufacturers?

A. Yes, sir.

Q. Okay. Now, it is clear, however, that for the GMC 1984 pickup with a 6.2-liter diesel engine, that takes a different filter; correct?

A. Yes, sir, it does.

Q. And that's because if the customer -- customer has to specify when they come in whether their engine in their vehicle is gasoline or diesel; right?

A. Yes, sir.

Q. And that's -- is that because the -- a diesel -- the oil filtration system in a diesel has slightly different characteristics than in a gasoline-powered automobile?

A. Yes, sir, it does.

Q. In fact, you've got to swap out the oil more often and so on?

A. Uh-huh.

Q. That's because diesel -- oil in a diesel gets dirty quicker?

A. Yes, sir.

Q. Now, you looked at this receipt here, Government Exhibit

David Kordyak - Cross

1832, for demonstrative purposes. You see it says 0035.

That's your store; right?

A. Yes, sir.

Q. And then it says 4-15-95; right?

A. Yes, sir.

Q. Okay. Now, when I come in your store with a product that I want to return, I -- I see the greeter in front; right?

A. Yes, sir.

Q. And the greeter has a little plastic gun; right?

A. Yes, sir.

Q. And the plastic gun spits the little labels; correct?

A. Yes, sir, it does.

Q. And that way, when you have merchandise that you bring into the store that's previously purchased, you -- you want to get

it labeled so that you're not -- somebody doesn't think you took it and didn't pay for it; right?

A. Yes, sir.

Q. Okay. Now, that little gun, how do those labels get printed? That is -- have you ever worked one of those little guns?

A. Yes, sir.

Q. Okay. And -- is it right that the gun is set so that the double-0 35 is on there; right?

A. Yes, sir.

Q. And the -- the date, how is the date set?

David Kordyak - Cross

A. It's set by a -- it's got a knob that slides back and forth, and you can set it and it'll -- it'll come up with the date. You set the month and the date and the year, and you push it all the way back and it's set.

Q. It's set; right?

A. It's set.

Q. And have you -- have you been a greeter at your store?

A. No, sir, I haven't.

Q. Okay. But you've operated the gun; right?

A. I have operated the gun, yes.

Q. Okay. Now, when you operate it, do you get instructions on how to check that date?

A. You are -- you are taught at time of hire how to -- how to operate the -- the gun when you're hired. We have -- we have -- we have people that teach you how to do this.

Q. Teach you how to do it. And this is -- is it like a little -- the gun that you see people with in the stores putting prices on things? Is it like that?

A. Yes, sir.

Q. Little sticker comes out and -- is it the case that -- that the -- that there's some tape in the gun that's blank and then every time you push the trigger -- if I could get this up here.

MR. TIGAR: Thank you, Ms. Hasijord.

BY MR. TIGAR:

Q. Every time you push the trigger, it prints out the 0035 and

David Kordyak - Cross

the 4-15-95?

A. Yes, sir.

Q. Now, you didn't personally handle the gun that day and stick the sticker; correct?

A. No, sir, I didn't.

Q. Okay. So of your own knowledge, you don't know whether the gun was set for the right time, not set for the right time, or whatever; right?

A. It's -- from my own knowledge, no.

Q. Okay. It's supposed to be; right?

A. Yes, sir.

Q. I'm not criticizing your employees, but that's just what the state of records is.

Now, you said that when the customer -- when a person comes in, they -- they bring the -- the item to you; correct? And they -- whoever -- somebody brought this ticket and that -- and an oil filter that looked like that -- and gave it to you; correct?

A. Yes, sir.

Q. And you don't remember who that was?

A. No, sir, I don't.

Q. All right. A long time ago?

A. Yes, sir.

Q. You have a lot of customers; right?

A. Yes, sir.

David Kordyak - Cross

Q. That's the whole idea of having a store?

A. Yes, sir.

Q. Okay. Now, the -- when a person does that, you check to see that the item they're bringing matches the receipt, and you check to see that it's got a sticker on it; correct?

A. Yes, sir.

Q. And your practice would be then to take that sticker off and to stick it onto the -- the receipt; correct? Or not? You tell me how it works.

A. No. Because you don't -- most generally, they are going to stick -- the door greeter is going to stick it on the sticker (sic) and on the -- and on the item; and then when we take it off, we're -- we'll -- when we pull -- when we take it apart to examine it, to determine whether or not they are the same, we fold it over, and then we send it back up with them that way.

Q. Okay. So -- let me be clear. There's only one sticker involved; correct?

A. Yes, sir.

Q. That's the one you get at the door?

A. Yes, sir.

Q. And that sticker is attached to the item or to the receipt?

Q. And that sticker is attached to the item or to the receipt.
A. It's attached to the -- to the item which is attached --
which the receipt -- well, the receipt which is attached to the
item. I'm sorry.
Q. So at the front of the store, the person would see the

David Kordyak - Cross

greeter, and the greeter would just stick the receipt right
onto that filter box with the little sticker; correct?

A. Yes, sir.

Q. Okay. And then you fold it over?

A. And then after we take it off, we'll fold it over, yes.

Q. Now, once you get this receipt and that you've initialed it
and put the sticker on it, that's just like cash; correct?

A. Say that one more time, please.

Q. Well, if I have this receipt with your initials on it and
the sticker --

A. Uh-huh.

Q. -- that's worth \$2.90 to me; right?

A. After -- after you -- well, yes.

Q. All right. In other words, I could -- I could give it to
somebody, they could give it to somebody else, they -- whoever
shows up with that is going to get \$2.90; right?

A. Yes.

Q. So in that sense, it's just like cash; correct? It's as
good as cash?

A. Yes.

Q. All right. That is to say, you can take it into a Wal-Mart
store and they will -- you'll get money for it; right?

A. Yes.

Q. And when you get money for it, they take this receipt;
right?

David Kordyak - Cross

A. Yes, sir, they do.

Q. Okay. So that whoever -- whoever has this, in order to
get
their \$2.90, has to surrender this little thing, the receipt
and sticker we've been talking about; right?

A. Yes.

MR. TIGAR: Thank you very much, Mr. Kordyak. I
don't
have any further questions of you. The prosecutor may.

THE WITNESS: Thank you.

MR. TIGAR: Thank you, your Honor.

THE COURT: Do you have any follow-up?

MS. WILKINSON: Yes, your Honor.

REDIRECT EXAMINATION

BY MS. WILKINSON:

Q. Sir, you were asked about several different GMC vehicles on
cross-examination. I want to go back to Government's Exhibit
1857, page 2, please.

And does that indicate that this is describing a 1984 GMC half-ton diesel?

A. Yes, ma'am.

Q. What type of oil filter does it say it needs?

A. A PH13 Fram oil filter.

MS. WILKINSON: Your Honor, we'd offer Government's Exhibit 2006 for demonstrative purposes.

MR. TIGAR: No objection, your Honor, for demonstrative purposes.

David Kordyak - Redirect

THE COURT: All right. Received for that.

BY MS. WILKINSON:

Q. Is 2006 the type of oil filter that someone would need for an '84 GMC half-ton diesel truck?

A. Yes, ma'am.

Q. And is that the only -- would that oil filter that you've just described fit that GMC truck?

A. Yes, ma'am.

Q. Would 2004, the smaller one in front of you, fit the GMC diesel truck?

A. This one?

Q. Yes.

A. No, ma'am, it will not.

Q. And would you sell a customer that smaller one if they came in and told you that they were looking for a -- an oil filter for an '84 GMC half-ton diesel truck?

A. No, ma'am, I would not.

Q. Now, let's take a look at Government's Exhibit 2000. Do you see that? This is the receipt from Mr. Nichols' house.

A. Yes, ma'am.

Q. And can you review that and see if on that there's any purchase of an oil filter.

A. No, ma'am. I see no purchase of an oil filter on there.

Q. So according to this Wal-Mart -- Manhattan Wal-Mart receipt, this customer did not purchase a oil filter on

David Kordyak - Redirect

April 15, 1995; is that right?

A. That's correct.

Q. Now, you told us that you worked on April 15, 1995, back in the automotive section; right?

A. Yes, ma'am.

Q. And do you know whether you handled the sticker that's on the top of Government's Exhibit 265B, or whether that was already on the receipt when you received it from the customer when you initialed it?

A. I do not know whether I handled that or not.

Q. You don't have any recollection of that?

A. No recollection of it, no, ma'am.

Q. But you do know that you received an oil filter on that day; is that right?

A. Yes, ma'am.

Q. And of the size that is exhibited on Government's Exhibit 2004?

A. Yes, ma'am.

MS. WILKINSON: No other questions, your Honor.

THE COURT: Mr. Tigar.

RE-CROSS-EXAMINATION

BY MR. TIGAR:

Q. I'd like to put up here Government's Exhibit 2000, the receipt, if I may.

So this receipt shows that your customer was in the

David Kordyak - Recross

store on April 15 at 1440. Does that look like what that is?

A. Yes, sir.

Q. And that's a -- that means 2:40 in the afternoon?

A. Yes, sir. It does.

Q. Now, what hours are you all open up there in Manhattan?

A. I am open from 8 to 10, Monday through Sunday.

Q. Seven days a week?

A. Seven days a week.

Q. And you -- your refund process doesn't have a time stamp; correct?

A. Excuse me?

Q. The refund process that we were talking about earlier, there's no time stamp connected with that; right?

A. No, sir.

Q. Okay. And this customer, you notice, you said, did not buy an oil filter. This is a bunch of -- these are household goods; correct?

A. Yes, sir.

Q. All right. Including a sheet set?

A. Yes, sir.

MR. TIGAR: Thank you very much. I have no further questions.

MS. WILKINSON: This witness is excused, your Honor.

THE COURT: Agreed to excuse the witness?

MR. TIGAR: Yes, your Honor.

THE COURT: Excuse?

You may step down. You're excused.

THE WITNESS: Thank you.

THE COURT: Next, please.

MR. MACKEY: Your Honor, at this time we'd re-call our fingerprint expert, Louis Hupp.

THE COURT: All right. Come in, please, under the oath previously taken.

(Louis Hupp was recalled to the stand.)

DIRECT EXAMINATION

BY MS. WILKINSON:

Q. Good afternoon, Mr. Hupp. You were here before, were you not?

A. Yes, I was.

Q. You testified about fingerprint examinations?

A. That is correct.

A. That is correct.

Q. And during your testimony, you mentioned I think base -- in response to Mr. Tigar's question about people being in Mr. McVeigh's room -- do you recall that -- in the Dreamland Hotel?

A. Yes, I do.

Q. And can you explain what you meant by that.

A. When I arrived in -- in Herington, Kansas, that afternoon to -- or that morning to process this motel room, I was informed that an individual had been moved either the night

Louis Hupp - Direct

before or that morning from that room so that there had been somebody else in that room since Mr. McVeigh had left.

Q. What date did you arrive?

A. The 21st.

Q. Okay. And did you know that Mr. McVeigh had checked out on April 18th, 1995?

A. I knew he had checked out. I've come to realize since then it was the 18th, yes.

Q. Do you have any information based on your personal knowledge that there was anyone in Mr. McVeigh's room with him when he was there?

A. Not when he was there, no.

Q. Okay. Now, have you been asked to do additional fingerprint comparisons in this case?

A. Yes, I have.

Q. And like last time, did you bring a notebook with some notes?

A. Yes, I did.

Q. Okay. And are you going to refer to them during your testimony?

A. Yes.

Q. First, sir, I want to ask you about an exhibit that's not yet in evidence. It's Government's Exhibit 26. Did you examine page 47 of that?

A. Yes, I did.

Louis Hupp - Direct

Q. Did you find any fingerprints?

A. Yes.

Q. And how many fingerprints did you find?

A. I found three latent prints which were of value for identification purposes.

Q. Whose prints were they?

A. Mr. Terry Nichols.

Q. Now, let's turn to Government's Exhibit 265. And for purposes of exhibiting it to the jury, I'm going to show them 265B. Are you familiar with this exhibit?

A. Yes, I am.

Q. And did you examine the original Government's Exhibit 265?

A. Yes, I did.

Q. And did you determine whether there were any latent prints

of value?

A. Yes.

Q. How many latent prints of value did you find on this entire document?

A. There were five latent prints which were suitable for identification purposes developed on this particular document.

Q. Were you able to identify all five prints?

A. Yes, I was.

Q. Whose prints were they, Mr. Hupp?

A. I identified two of them with the fingerprints of a Timothy McVeigh, and I identified the remaining three fingerprints with

Louis Hupp - Direct

a fingerprints of Mr. Terry Nichols.

Q. Okay. We have a copy of the receipt in front of us; is that right? Government's Exhibit 265B?

A. Yes, I do (sic).

Q. And you have 265 up there -- is that right -- or you looked at 265 when you did your print identification?

A. Yes, I did.

Q. And did you take photographs of the fingerprints that you actually found on Government's Exhibit 265?

A. Yes.

Q. Did you take those fingerprint photos that you took back at FBI headquarters, and did you assist in designing several charts that would be able to show this jury where those fingerprints were found on this receipt?

A. Yes.

Q. All right. Let me show you Government's Exhibit -- hold on one second -- 265C. Do you recognize that?

A. Yes, I do.

Q. Is that one of the charts that you created?

A. Yes, ma'am.

Q. And would it assist you in explaining to the jury where you found the fingerprints on the front of the Wal-Mart receipt?

A. Yes.

MS. WILKINSON: Your Honor, we'd offer 265C for demonstrative purposes.

Louis Hupp - Direct

MR. TIGAR: No objection, your Honor.

THE COURT: Received, may be so used.

BY MS. WILKINSON:

Q. Mr. Hupp, what's on the right-hand side of this Government's Exhibit 265C?

A. This is a copy of the Wal-Mart receipt that was prepared prior to my examining for the presence of latent prints.

Q. Is this the front of the receipt?

A. Yes, ma'am.

Q. How many fingerprints did you find on the front of the Wal-Mart receipt?

A. I found two.

Q. All right. Now, let's start by orienting ourselves at the top with the sticker on the right. Do you see that partial sticker?

A. Yes, I do.

Q. Can you circle that with your pen, please.

What is on the left-hand side of this Exhibit 265B?

A. This is a copy of the same receipt of which I had photographs taken after I had developed the prints.

Q. Have you oriented it for the jury so it matches up with the front of the receipt that is shown on the right-hand side of this exhibit?

A. Yes.

Q. All right. Let's start at the top here. Can you tell the

Louis Hupp - Direct

jury whose fingerprint you found at the top of the Wal-Mart -- front of the top of the Wal-Mart receipt.

A. Right on top of the word "Wal-Mart" is a fingerprint which I identified with Mr. Terry Nichols.

Q. And did you find a fingerprint on the top -- I mean on the bottom of the front of the Wal-Mart receipt?

A. Yes. And that was a fingerprint of Mr. Timothy McVeigh.

MS. WILKINSON: Your Honor, may I approach the witness with copies that he can mark on?

THE COURT: Yes.

BY MS. WILKINSON:

Q. Mr. Hupp, I've handed you first Government's Exhibit 265CC. Do you see that?

A. Yes.

Q. Is that a copy of what the jury is seeing in front of them right now?

A. Yes, it is.

Q. And can you mark on that on the right-hand side where you found -- using the red pen that's in front of you --

A. Would you like me to remove it from the envelope?

Q. Yes, please. Thanks. Put Mr. Nichols' initials, TN, on the right side of the exhibit showing where you found his fingerprint.

And can you indicate on the right-hand side down there on the bottom with TM where you found Mr. McVeigh's initials.

Louis Hupp - Direct

THE COURT: Initials?

MS. WILKINSON: Fingerprint. Thank you, your Honor.

And, your Honor, we'd offer 265CC and would like to show it on the ELMO.

THE COURT: All right. You want to show it to Mr. Tigar first?

MS. WILKINSON: Sure.

MR. TIGAR: No objection, your Honor.

THE COURT: All right. Received, and you may show it.

MS. WILKINSON: Thank you.

MS. WILKINSON: Thank you.

THE COURT: This also is demonstrative; right?

MS. WILKINSON: No. It's for substantive purposes to show where the fingerprints actually were. Mr. Tigar had no objection to that.

THE COURT: Oh, all right.

BY MS. WILKINSON:

Q. Now, Mr. Hupp, the jury is now looking at what you marked 265CC. And here at the top, are you indicating that's where Mr. Nichols' fingerprint was on the front of the receipt?

A. That is correct, right above the word "Wal-Mart."

Q. And what about down here at the bottom?

A. That is Mr. Terry -- Timothy McVeigh's prints -- Timothy McVeigh, and it's right along where the word "sales" and just below the black line which is depicted as the white line in the other photograph.

Louis Hupp - Direct

Q. I believe you said the word "prints." Did you mean "print," or the plural?

A. There is a print of each individual on the front side.

Q. Only one --

A. One print of each.

Q. -- as to each individual? Now, did you prepare another chart with the photographs of the fingerprints that you found on the back of the Wal-Mart receipt?

A. Yes, I did.

Q. All right. Now, let me show you what's not yet in evidence, which is Government's Exhibit 265D. Do you recognize -- do you recognize that?

A. It's not up yet.

Q. It's not quite up. Now, do you recognize it?

A. Yes, I do.

Q. And on the right-hand side of the exhibit, what does that show?

A. On the right-hand side is -- again, is a copy of the back side of the receipt prior to the latent print examination.

Q. And are there two copies of the back side?

A. Yes, there are.

Q. What's on the left-hand side of this exhibit?

A. These are two copies of the two photographs that I prepared after the latent prints were developed.

MS. WILKINSON: Your Honor, we'd offer 265D for

Louis Hupp - Direct

demonstrative purposes.

MR. TIGAR: No objection, your Honor.

THE COURT: Received.

BY MS. WILKINSON:

Q. Now, Mr. Hupp, tell the jury again, since they couldn't see it when you were describing it for foundational purposes, what they're seeing on the right side of this exhibit.

A. On the right side is actually a photographic copy -- or a

copy of the receipt prior to my processing it for latent prints.

Q. Now, let's orient the jury again. Up at the top, what do you have up there on the right side?

A. Again, it's that -- the sticker at the top, which is -- appeared on the front.

Q. So if you were holding the receipt, you showed us the front with the sticker, you just turn it over and that would be the top again of the receipt where the sticker is --

A. Yes.

Q. -- looking at the back? Okay. And down on the bottom right-hand side, what is that?

A. The bottom right-hand side is -- again, is a copy prior to my processing for latent prints.

Q. What's on the left-hand side of this exhibit?

A. This was a photograph that was prepared after the latent prints were developed on that particular document.

Louis Hupp - Direct

Q. How many latent prints did you identify on the back of the Wal-Mart receipt?

A. The three that were developed.

Q. How many were Mr. Nichols'?

A. Two of them.

Q. Where did you indicate that on this Government exhibit?

A. They were up right next to the little seal or little sticker.

Q. Okay. And is that what these two red marks are on Government's Exhibit 265D at the top left-hand corner?

A. Yes.

Q. And how many of Mr. McVeigh's prints were on the back of the Wal-Mart receipt?

A. Just one.

Q. Where was Mr. McVeigh's print located?

A. It was to the bottom side of the receipt.

Q. Could you take out Government's Exhibit 265DD and do the same thing you did last time, use Mr. Nichols' initials to mark where you found his two prints on the back. And use Mr. McVeigh's initial to mark where you found his one print on the back of Government's Exhibit 265.

A. Would one set of initials be sufficient for both prints?

Q. Why don't you put a parentheses 2, just so the jury knows there's two prints.

A. Okay.

Louis Hupp - Direct

MS. WILKINSON: Your Honor, we'd offer 265DD.

MR. TIGAR: No objection, your Honor.

THE COURT: Received.

BY MS. WILKINSON:

Q. Now, let's start at the top of 265DD. And that's where this sticker is; correct?

A. That is correct.
Q. This is the back of the receipt?
A. That is correct.
Q. And where are Mr. Nichols' prints found?
A. They are found just to the right of the -- that little sticker. In that area where I marked.
Q. Now, we're going to go down to the other copy of the same -- back of the receipt and starting here at the top of the sticker, which is, you told us, the top of the receipt; correct?
A. That's correct.
Q. On the back, where were Mr. McVeigh's prints found?
A. To the lower left-hand corner of that receipt.
Q. And that would account for the total of the five prints that you found on Government's Exhibit 265?
A. Yes.
Q. Now, were you asked in this case to look at another Wal-Mart receipt?
A. Yes, I was.

Louis Hupp - Direct

Q. If you'll look at Government's Exhibit 2000.
A. Yes.
Q. Did you examine that?
A. Yes, I did.
Q. Did you find any prints on Government's Exhibit 2000?
A. There were two latent prints suitable for identification purposes developed on Government's Exhibit 2000.
Q. Okay. Now, were you able to identify either of those prints on this Wal-Mart receipt, Government's Exhibit 2000?
A. I was able to identify one of the prints.
Q. Whose print did you identify on Government's Exhibit 2000?
A. I identified that print as a fingerprint of Mr. Terry Nichols.
Q. Do you recall whether it was on the front or the back of this receipt?
A. If I can look at my photographs, I can tell you.
Q. Sure.
A. It was on the back side.
Q. So you found Mr. Nichols' print on the back?
A. Yes.
Q. Do you recall where the unidentified print was?
A. It also was on the back side.
Q. Now, when you testified earlier in this case, you talked about your ability or the FBI's ability to try and match or identify unidentified -- previously unidentified prints. Do

Louis Hupp - Direct

you recall that?
A. Yes.
Q. And you discussed, I believe, on direct and cross-examination some computer system you have that enables

you to try and identify fingerprints.

A. Yes.

Q. Is that right? If you were going to try and identify this fingerprint on Government's Exhibit 2000 that is unidentified so far, could you put it into your computer to do some kind of analysis?

A. No.

Q. Why not?

A. This particular print, although it is of value for identification purposes and can be identified, it is not what we would call a "classifiable" print. Therefore, it does not meet the basic criteria for a search in our automated system.

Q. Okay. So are -- have you found that there are numerous unidentified prints in this case that are not classifiable?

A. Yes.

Q. And does that mean you could not put them into your computer to search?

A. That is correct.

Q. All right. Have you gone back based on my request and looked at how many unidentified prints you have in Mr. McVeigh's Room 25 in the Dreamland Motel?

Louis Hupp - Direct

A. Yes.

Q. And how many unidentified latent prints did you have -- did you find in Room 25?

A. There were 21 latent fingerprints, four latent palm prints and one latent impression.

Q. Now, out of all those prints, how many of those were classifiable?

A. Bearing in mind that we couldn't do the palm prints or the impression, I found that there was one fingerprint which would suit -- be suitable for a computer search.

Q. Okay. So all the rest of those, you couldn't put into the computer, no matter what?

A. That's correct.

Q. Let's talk about the one print you could put into the computer. Did you have any identifying information about that print?

A. No.

Q. Now, when you put a print into your computer for a search, what type of information do you need?

A. I need basically to know if it's a -- what the sex is, what the race is, I need to know an approximate location, I need to know if the fingerprint is classifiable, what the class is, and a location.

Q. All right. Well, let's take that fingerprint. You had none of that information; correct?

Louis Hupp - Direct

A. That is correct.

Q. Could you, without any of that information, just put that print into your computer and try and do an identification?

PRINT INTO YOUR COMPUTER AND TRY AND DO AN IDENTIFICATION.

A. No.

Q. What would you have to do?

A. I would have to generate some sort of information, false information or guess information, in order to draw down a database that I could search under.

Q. Okay. Well, let's talk about the database you have to use. First, you said you have to know the sex; is that right?

A. That's correct.

Q. So if you wanted to search for this fingerprint in Room 25, you would have to make up whether the person was male or female?

A. Yes.

Q. All right. You had to know the race; is that right?

A. Yes.

Q. And does your computer system have just two races?

A. Yes.

Q. All right. So you have to determine whether the person was what? What were the two races?

A. White or black.

Q. Okay. And do you have age categories in your computer search?

Louis Hupp - Direct

A. Yes. We have an age category that we would search within the boundaries of.

Q. And what are the ages that you can search for?

A. Between the ages of 18 and 62.

Q. So you could not search for anyone younger than 18; is that right?

MR. TIGAR: Objection to leading.

THE COURT: Sustained.

BY MS. WILKINSON:

Q. Could you search for anyone under the age of 18?

A. The only way it would be possible is if they had a prior criminal history and had been judged to be an adult in some court of law.

Q. Okay. Could you search for anyone above the age of 62?

A. Only if they continued to have criminal histories, such as a wanted individual or something of that nature.

Q. What if they had no criminal history or no continuing criminal history after the age of 62?

A. Then they are removed from the database.

Q. What are the other categories that you need to have information for to do this search?

A. Of course, I would do a search by state only; so we went through state, we went through sex, race, and approximate age, and fingerprint classification.

Q. When you search for state, how many states do you have

Louis Hupp - Direct

available in the computer?

A. 50.

Q. So let's take this one print in Room 25. How would you begin a search to try and identify this print without any identifying information?

A. Well if I wanted to be totally objective on this and wanted to do the best search possible, I would start out as either a white male, black male, white female, black female. I would start at 18 years of age. I would pick a particular state, and then I would pick this -- this classification I have or size of it. And I would pick one size and I would bring this into the database and ask for retrieval.

Q. And what would be retrieved based on that one search?

A. I would retrieve -- they would come back with basically 20 candidates which would meet the criteria or that they are matched as being a possibility; not a match, but a mere possibility that it could be the same print.

Q. What would happen with those 20 candidates when they were spit out of the computer?

A. Then I would sit down with a magnifying glass and I would hand-compare the 20 possibilities with -- against the latent print in question.

Q. And what if this person wasn't an 18-year-old white male in whatever state you chose; they were a 37-year-old female in Maine? Would you have found their fingerprint?

Louis Hupp - Direct

A. No.

Q. So to be fair, what type of searches would you have to do to identify this -- this fingerprint?

A. Well, on the particular fingerprint, I would start out most likely as a white male, 18 years of age, a particular size for the fingerprint pattern, and one single state. Then the next search would be I would change one of those categories, whether it be to female or black male or whatever and I would continue to do this throughout the --

Q. Would you have to change the age each time?

A. Yes. Every time.

Q. And then once you went through 18 to 62, would you have to change the state each time?

A. Yes.

Q. And to search your entire database, would you have to search all the 50 states, all the ages, all the sexes, and all the races?

A. If I wanted to be totally objective and try to do the best job possible, yes.

Q. And do you know based on your experience and knowledge of the FBI fingerprint laboratory whether the FBI has ever been able to identify a fingerprint without any identifying information and putting it into that computer?

A. Not if they had no information and just had the fingerprint in question, no.

Louis Hupp - Direct

Q. Now, you were asked, I believe, that -- to make one other identification in this case. Do you recall that, Government's Exhibit 1810?

A. Yes.

Q. Do you recognize this: Government's Exhibit 1810?

A. Yes.

Q. Is that a gun taken from Mr. Nichols' house?

A. That is correct.

Q. Did you identify any latent prints on that gun from Mr. Nichols' house?

A. Yes, I did.

Q. How many?

A. One.

Q. And the other one was unidentified?

A. That is correct.

Q. Where was the unidentified print?

A. The unidentified print was in this area on the scope.

Q. Okay. And where was the identified print located?

A. The identified print was located -- if the bolt were closed, it was in this area right in here. Right underneath of the scope area.

Q. And whose print did you identify in the bolt of Government's Exhibit 1810?

A. That was a fingerprint of an individual by the name of Roger Moore.

Louis Hupp - Direct

MS. WILKINSON: We have no further questions, your Honor.

THE COURT: Mr. Tigar.

MR. TIGAR: Excuse me, your Honor.

THE COURT: Yes.

MR. TIGAR: May I have a moment?

May I approach, your Honor?

THE COURT: Yes, you may.

CROSS-EXAMINATION

BY MR. TIGAR:

Q. Agent Hupp, I'm going to show you what I've marked as Defense Exhibit D1567. Are those notes you made before coming to court?

A. Yes.

Q. And do they describe what you found on the rifle, Government Exhibit 1810?

MS. WILKINSON: Your -- excuse me, your Honor. If I could just have a page reference so I know what Mr. Tigar is referring to.

MR. TIGAR: That are the notes from behind Tab 4.

BY MR. TIGAR:

Q. Is that the notes you made?

A. Yes, sir.

Q. And it says that you found two fingerprints on the rifle that's in front of you; correct, sir?

Louis Hupp - Cross

A. One on the rifle, one on the bolt, yes.

Q. Yes, sir. And whose name is the first one?

A. I see the name "Terry Nichols."

Q. Right. And then what does it say about the second one?

A. Nothing.

Q. It says "unidentified"; right?

A. That's correct.

Q. Where is Roger Moore's name you made on those notes you made before coming to court?

A. These are notes I transcribed, and there is an error.

Q. All right. So when did you make the error, sir?

A. Early this morning.

Q. Now, you also told us about some fingerprints that you saw on that Wal-Mart receipt; correct, sir?

A. That is correct.

Q. And those reports were the subject of a lab report that you made; is that right, sir?

A. Yes.

Q. I'm --

THE COURT: We've two receipts here, don't we?

MR. TIGAR: Yes, your Honor. Let me be clear.

THE COURT: All right.

MR. TIGAR: It was the shorter of the two Wal-Mart receipts. That would be Government Exhibit 265B.

BY MR. TIGAR:

Louis Hupp - Cross

Q. Show you the front of it there, if I may. Yes. You told us about some fingerprints on this; correct?

A. That is correct.

Q. Now, I'm going to show you what's been marked as Defense Exhibit E129, and I ask you if that's a copy of the report that you prepared that included your fingerprint examination of that Wal-Mart receipt.

A. That is correct.

MR. TIGAR: I offer it, your Honor.

MS. WILKINSON: I just --

MR. TIGAR: E129.

MS. WILKINSON: That doesn't help me. I just need to take a look at it.

MR. TIGAR: Excuse me, your Honor.

MS. WILKINSON: No objection.

THE COURT: E129 is received.

BY MR. TIGAR:

Q. And sir, now I'd like to show you what I've marked as a copy of -- excuse me -- Defense Exhibit 130 and ask you if those are notes that you prepared in the course of your examination of the fingerprints, including the fingerprints on the Wal-Mart receipt.

A. Yes.

MR. TIGAR: I offer it, your Honor. E130.

MS. WILKINSON: No objection, your Honor.

Louis Hupp - Cross

THE COURT: E130 is received.

BY MR. TIGAR:

Q. Now, sir, let's start by taking a look at E129. Show you the third page here. Now, down here, it says, "The 10 latent fingerprints developed on the following items have been identified as fingerprints of Terry Lynn Nichols," and then there's a number. And you have three on Q772, Wal-Mart receipt dated 4-13-95. Do you see that, sir?

A. Yes.

Q. And those are the three fingerprints that you told us about today; correct?

A. That is correct.

Q. And then if we look at the bottom of page 2, we see, "10 latent fingerprints developed on the following items have been identified as fingerprints of Timothy McVeigh," and then there's an FBI number; correct?

A. That's correct.

Q. And then carrying over, we see two on Q772, Wal-Mart receipt dated 4-13-95; correct?

A. Yes.

Q. So that's a total of five fingerprints; is that right?

A. Yes.

Q. Now, sir, let me get from you -- do you have the original of 130?

I'm going to put up what's been received as E130, and

Louis Hupp - Cross

there we see Q772. See that?

A. That's correct.

Q. And that's the Wal-Mart receipt; correct?

A. That's correct. Yes.

Q. Now -- now, at the top, we see the name "Terry Lynn Nichols"; correct?

A. Yes.

Q. And then over further, we see the name "Timothy McVeigh"; correct?

A. Yes.

Q. And over on the far -- let's go out. Here's the line for Q772. And over in the final line, it says you found a total of five fingerprints. Do you see that?

A. Yes, sir.

Q. And that's how many you found; five?

A. That is correct.

Q. And then over here in the first column, it says -- would you read these numbers for us, please. Those are under the name "Terry Lynn Nichols," aren't they?

A. That's correct.

Q. All right. And this is Q772. Just read what that means there. Four -- it says four; right?

A. Yes.

Q. And then it has a zero with a slash through it; correct?
A. Sure.

Louis Hupp - Cross

Q. And then it has 5-20; correct?
A. That is correct.
Q. Now, the 5-20 is the date; right?
A. That is correct.
Q. Underneath, are those your initials?
A. Yes.
Q. And what does the 4 mean?
A. That means 4 fingerprints.
Q. So it says you identified 4 fingerprints of Terry Nichols; correct?
A. This was a tabulation sheet, but that's what it says, yes.
Q. All right. And then over here, it says you identified one fingerprint; and we go up here and that's Timothy McVeigh; correct?
A. That is correct.
Q. So isn't it a fact that on E130, you said you had four of Terry Nichols' fingerprints and one Timothy McVeigh fingerprint?
A. That's what this clearly indicates.
Q. And then when you get around to typing the report, you say you've got three Terry Nichols fingerprints and two Tim McVeigh fingerprints; correct?
A. That's correct.
Q. Well, is one of these two documents a mistake?
A. This -- the last document --

Louis Hupp - Cross

Q. My question is: Is one of these two documents a mistake?
A. Yes.
Q. All right. Whose mistake?
A. Mine.
Q. When did you make that mistake?
A. 5-20.
Q. On May the 20th, 1995?
A. That is correct.
Q. Now, in addition to that, you had an item on this Government Exhibit 129 that was Q770-1; correct?
A. That is correct.
Q. Two pages of a storage lease agreement dated 9-22-94 bearing the signature "Shawn Rivers"?
A. Yes.
Q. Do you see that?
A. Yes.
Q. And it says 8; correct?
A. That's correct.
Q. All right. And those are -- as we've seen before, that's eight identified to Timothy McVeigh; correct?
A. Yes.

Q. Now, E130, and the document Q770-1, is that --

Q. Here's E130. And do you see //U-1 on there?

A. That's correct.

Q. Well, how many fingerprints of Timothy McVeigh did you find on that lease agreement that day?

Louis Hupp - Cross

A. That shows six.

Q. All right. So is one of these two documents in error?

A. Yes.

Q. Which of the two documents is in error?

A. The document that is on the screen at this time.

Q. And that is a document you prepared; correct?

A. Yes.

Q. You made the error?

A. Yes.

Q. You made it on May the 20th?

A. Yes.

Q. Now, you showed us -- this is 265C. And that has marked a fingerprint up here of Terry Nichols and one down here of Timothy McVeigh; correct?

A. Yes.

Q. And then this is 265D, and it's got one Timothy McVeigh and two Terry Nichols; correct?

A. Yes.

Q. All right. Now, when you made up this report, E130, that was handwritten, did you attribute one of these fingerprints --

MS. WILKINSON: Your Honor, I'm just going to object to him calling E130 a report. I believe those are notes and not the report.

THE COURT: Do you accept that change?

MR. TIGAR: I accept the change.

Louis Hupp - Cross

BY MR. TIGAR:

Q. Well, let's find out. I'm going to place up here on the machine E130. You make that in your laboratory; correct?

A. That is correct.

Q. And you make it while you're examining the fingerprints; correct?

A. That is correct.

Q. And it is designed to help you as you begin to prepare to report on your findings; correct?

A. This is one of the tools, yes.

Q. And so how -- how do you describe this?

A. This was a tabulation sheet as we were keeping track of the items as we were going.

Q. Well, this tabulation sheet, then, has you tabulated four Terry Nichols fingerprints and one Timothy McVeigh fingerprint: Were you attributing one of the five we've looked at on Government Exhibit 265 at C and D to Mr. Nichols that you later decided was Mr. McVeigh's?

A. No, sir.

Q. Well, how -- how did you come to make the mistake, sir?

Q. Well, how -- how did you come to make the mistake, sir?

A. It was just a mental error, sir.

Q. Well, I have up on the screen here 265D; correct?

A. That is correct.

Q. And we can tell that there was a sticker on there at one time; correct?

Louis Hupp - Cross

A. Yes.

Q. Because we can see it on the top; right?

A. That is correct.

Q. Well, why is it missing on this one, the sticker?

A. I have no -- no reason.

Q. Well, the sticker is -- is stuck to the -- was stuck to the

piece of paper when you got it; right?

A. That is correct.

Q. And if you laid the piece of paper, including the sticker, down and took a photograph of it, you'd see something like I'm putting my finger on here, here, and here; correct?

A. That is correct.

Q. And you have no explanation. You see the SWB here?

A. That is correct.

Q. SWB 93 and then you see it here?

A. That's --

Q. This is a negative and this is a positive; correct?

A. That is correct.

Q. And you'd agree with me that the sticker shows up in all three of the boxes but not the fourth; correct?

A. That's correct.

Q. Well, who made that photograph, sir?

A. This was a computer reproduction, sir. I was just there as an advisor of it when it was reproduced.

Q. You don't know how it is on this one where you identify

Louis Hupp - Cross

Mr. McVeigh's fingerprint the sticker came to disappear? Is that your testimony?

A. Well, one -- one of the reasons could very well be that this sticker is above and to the -- to the right of the area that's showing. This is a lower half of the -- of the actual receipt. The sticker was on the extreme top side. And this, we only cropped an area to show exactly where the latents were; so most likely, this is off of the area of what was reproduced for the computer.

Q. Do you know that of your personal knowledge, or are you just guessing, sir?

A. I know that -- the fact that the sticker appears in both my photographs.

Q. I understand it appears in your photographs, sir. I'm asking you are you -- do you know of a fact that there was some cropping done on the computer before this exhibit was made to come into court, or are you just guessing?

A. No. I was there when the cropping was done.

Q. So you saw somebody crop off this part to make this fourth one not match the other three?

A. It wasn't meant to not match. We were merely directing our attention to the lower portion on one, the upper portion on the other.

Q. Whatever was meant, sir, you were there when somebody made a decision to crop this off so it didn't match the other three;

Louis Hupp - Cross
is that right?

A. Yes.

MS. WILKINSON: Objection, your Honor. Argumentative, your Honor.

THE COURT: Overruled. The answer was yes.

BY MR. TIGAR:

Q. Now, sir, in our last time you were here, we talked about fingerprints on paper. Do you remember that?

A. Yes, sir.

Q. Now, if I take a -- a blot or ream of paper and I touch it between my thumb and forefinger, thumbs and forefingers, and put it into the paper tray of a copy machine, will -- that might leave fingerprints; correct?

A. It might.

Q. All right. And the -- whether it does or not is dependent on all the factors that we talked about last time; correct?

A. Yes.

Q. And now, is it possible for those fingerprint impressions to survive the copying process?

A. I couldn't say with certainty without examining the question -- the one in question, your Honor -- sir.

Q. Not -- he's your Honor. I'm just --

A. Excuse me.

Q. -- the guy that was imported to help out. The -- but I'll -- I'll tone down my demeanor so we don't get there again.

Louis Hupp - Cross

The -- have you ever examined documents that have been run through a Xerox machine?

A. Yes.

Q. All right. Have you got fingerprints off of them?

A. Yes, we have.

Q. Okay. So we know it's possible; correct?

A. It's possible, yes.

Q. Now, you were asked by the prosecutor about this computer system you have for fingerprints. Did you also notice that the last time we were together, I made an arithmetic error?

A. Not --

Q. Okay. Well, you said that you could submit 50 prints a day; correct?

A. That is correct.

Q. And then you had 1,000 unidentified prints; correct?

A. That is correct.
Q. And I said -- I did the math and I said 200 days. Do you remember that?
A. Yes, I do remember that.
Q. Off by a factor of 10; right?
A. Right.
Q. In 20 days, if you submitted 50 prints a day -- in 20 days, you could process 1,000; correct?
A. Conceivably, yes.
Q. Now, the prosecutor then asked you about the limitations on

Louis Hupp - Cross

your system that you have. Do you remember that?

A. That is correct.

Q. Now, first, you were asked about the Dreamland Motel. Do you remember that?

A. Yes.

Q. Now, you went out to the Dreamland Motel and performed a fingerprint examination, did you not?

A. Yes, I did.

Q. And you were -- you did so with great thoroughness; correct?

A. That is correct.

Q. You had found one palm print on the commode seat?

A. Yes.

Q. Found a -- prints on the lamp base?

A. Yes.

Q. Found a number of prints in the room; right?

A. Yes.

Q. Okay. The number that you talked about with the prosecutor?

A. Yes.

Q. What date was that you found those?

A. That was on the 21st.

Q. 21st of April?

A. Yes.

Q. And there had been one guest in the room after Mr. McVeigh

Louis Hupp - Cross

checked out. That was your information?

A. I'm only aware of one. There could have been others. I don't know.

Q. All right. You're aware of one?

A. Yes.

Q. Also, you went over to the Ryder truck rental place; correct?

A. Yes.

Q. And did you do your fingerprint examination in place at the Ryder truck rental place?

A. No.

Q. In fact, you took the counter of the Ryder truck rental place and shipped it to Washington, did you not?

A. That is correct.

A. That is correct.

Q. And that was so that you could do your examination more easily; right?

A. More thoroughly, yes.

Q. Now, the prosecutor asked you whether you were aware of anybody ever having been in Mr. McVeigh's room other than that guest that had been there after him; correct?

A. Yes.

Q. Now, who -- who is responsible for telling you what prints you should use for comparison purposes?

A. No one.

Q. Do you make that decision yourself?

Louis Hupp - Cross

A. For comparison purposes?

Q. Yes.

A. I develop the latent prints, and it is up to the -- to the investigating officers, whoever they may be, to name such people as for comparison purposes.

Q. And we can see that process on E130, can we not, because across the top here are some names?

A. That is correct.

Q. Terry Nichols, Marife Nichols, Nicole Nichols, Timothy McVeigh, Jennifer McVeigh, Michael Fortier, Steve Colbern, Jeff Martin, Roger Moore, Kevin Nicholas, James Nichols, James Waters, David Paulsen, Edward Paulsen; right?

A. Yes.

Q. Okay. And those are names that are given to you by the person in charge; correct?

A. Yes.

Q. Now, you testified that in order to make maximum use of your computer information system, you need some information about who this might be that left the print; correct?

A. Yes.

Q. And what's that system called? It's called AFIS?

A. Yes, sir.

Q. And do the states have those systems as well as the FBI?

A. Some states do, yes.

Q. All right. And does the FBI sometimes cooperate with state

Louis Hupp - Cross

law enforcement in order to use those systems?

A. Yes.

Q. Now, you may not be aware of these things. I'm going to ask you if anybody told you them so that I can know what -- what comparisons you were asked to make. Were you aware that an FBI agent named Scott Crabtree had obtained race and approximate height and approximate age and other details of a person who had been with the man identifying himself as "Robert Kling" at the Ryder truck rental place?

A. I would assume through investigation that he would have, yes.

Q. All right.

A. If there was such a person.

Q. Were you aware that an FBI sketch artist was sent to the Junction City area at about the time that you were doing your investigation?

A. Yes.

Q. You knew that man as Mr. Rozycki?

A. I don't know the name, but I know there was an individual sent.

Q. The purpose of a sketch artist is to meet with people who have seen individuals and to make some kind of drawing that looks like that person; correct?

A. Yes.

Q. And the sketch artist is interested in knowing the

Louis Hupp - Cross

approximate age of the person that the witness saw; correct?

A. I would assume, yes.

Q. The race of the person?

A. Yes.

Q. And the physical details of the person; right?

A. Yes.

Q. The gender of the person?

A. Yes.

Q. Now, you also note, do you not, sir, that the FBI had established command posts in different states that were thought to be relevant to this investigation?

A. That is correct.

Q. All right. And the names that you have on your E130 come from different states; correct?

A. Various sources, yes.

Q. Well, looking on E130, the Terry and Marife and Nicole Nichols: They all live in Herington, Kansas; correct?

A. Yes.

Q. Now, Timothy McVeigh had given various addresses; correct?

A. Yes, sir.

Q. Jennifer McVeigh lived in New York; correct?

A. I assume so. I don't know for certain. I have no personal knowledge.

Q. And there are a number of people on here that you recognize as living in Arizona; correct?

Louis Hupp - Cross

A. Well, I don't really know where they live. Some of them, I do. Some of them, I don't.

Q. Do you recognize some as coming from Arizona?

A. Yes.

Q. And do you recognize some others over here as coming from Michigan? Right?

A. Some, yes.

Q. All right. So as to some people that you were interested in, you had information that concerned their gender, their race, their approximate age, and where they lived; right?

A. Yes.

Q. And the investigation was centered in Arizona, Nevada, Michigan, Kansas, and New York; correct? Among other places?

A. I would assume, yes.

Q. In addition to Oklahoma, of course --

A. Yes.

Q. -- is that right?

Now, you told us that in order to use the computer, you need certain things. And the first thing you need is a -- you say is a classifiable fingerprint; correct?

A. That is correct.

Q. And a classifiable fingerprint refers to a latent impression that contains sufficient characteristics that you can code it. Is that -- is that fair to say?

A. Well, not exactly.

Louis Hupp - Cross

Q. Tell me what it is.

A. It's a type of print that would have what we call "focal points" to which I can determine what type of pattern it is and the size of it.

Q. So -- and when you say "type of pattern," what -- what do you mean? The general category such as whorls, loops, ridges? What terms do you use?

A. Loops, whorls, and arches, yes, sir.

Q. And not all latent fingerprints that might be suitable for comparison are suitable for classification. Is that your testimony?

A. Yes.

Q. All right. Now, once you classified a fingerprint, you -- and you want to use the computer to deal with it. You then said you -- you want to know other information such as gender, and so on; right?

A. Yes.

Q. Now, does the absence of gender information make it impossible to use the computer, or does it just take longer for the computer to march through or to crunch through the extra comparisons or algorithms that it's required to do?

A. It would make it impossible. And if I can explain that, the computer will only, in this mode -- will only draw down on a database of 100,000 candidates. Once it achieves 100,000 candidates or possibilities, it shuts down.

Louis Hupp - Cross

Q. And you say once it -- so how do you choose the 100,000 that it's supposed to look at?

A. This is based on the gender, the age, the different factors that we would get into it.

Q. All right. Suppose -- so if I put in a classified fingerprint for a 37-year-old white female and -- or say, a 37-year-old Hispanic male from Arizona, is that all the categories you need? How many do we need? We have a classified fingerprint

classified fingerprint.

A. We have a classified fingerprint.

Q. We have age, gender, and do you have a Hispanic classification?

A. It would -- we would probably, in most instances, divide it -- we would do a white male and black male to make sure. Because some departments declare some of them as black individuals, some of them declare them as Hispanics or whites.

Q. Who makes that decision?

A. That would be the arresting officer. Whatever is placed on the fingerprint is what is encoded into the system.

Q. Okay. So if I gave you a 40-year-old -- the information is I asked you to search for a 40-year-old Hispanic male from Arizona with a certain classification, how long does it take to -- for the computer to come back with a result?

A. It would take a short period of time in respect if we only do that one search with one finger.

Louis Hupp - Cross

Q. That one search. I put that information in --

A. Yes.

Q. How long does it take the computer to come back?

A. From just one state?

Q. Yes, sir.

A. I would institute one search.

Q. Yes, sir. How long does it take?

A. It would take approximately three weeks.

Q. Three weeks?

A. Three weeks.

Q. Well, you mean from the time you key this information into the computer, the computer has to hum, cough, do whatever it does, for three weeks?

A. No, sir.

Q. Well, I'm -- have you ever done this?

A. Yes, sir, I have.

Q. Okay. When you stand at the computer and enter the information, how long is it before the computer comes back with this possible eight or ten names?

A. Overnight.

Q. Basically, the computer takes overnight?

A. Yes.

Q. Now, how many of these things can you do on any given night?

A. We can do up to 50.

Louis Hupp - Cross

Q. You can do 50 a night. Now, you had 1,034 unidentified latent fingerprints; correct?

A. Yes.

Q. And you can only use latent fingerprints for this process; is that your testimony?

A. Well, no, we've entered an -- we've entered other prints; but generally, this system, we deal with latent prints.

Q. All right. Well, what I'm asking you: Can you do it with palm prints?

A. No.

Q. Can you do it with impressions?

A. No.

Q. So limiting ourselves, you had 1,034 unidentified fingerprints; correct?

A. That is correct.

Q. And did you ever take a look at how many of them were classifiable?

A. No, I did not.

Q. Well, how did you determine that the one out of the Dreamland Motel was classifiable?

A. I was asked just yesterday by the prosecutor to review my notes on that particular one and to advise the number of prints that were there and the number that could be searched.

Q. So overnight, you could tell us based on how many -- How many unidentified prints were there at the Dreamland?

Louis Hupp - Cross

A. 21 latent fingerprints.

Q. 21 latent fingerprints?

A. Yes.

Q. And you could -- how long did it take you to tell out of those how many are classifiable?

A. To review them, just a few minutes.

Q. Okay. And up to that time, when the prosecutor asked you to do it, had anybody ever asked you to look at your 1,034 unidentified fingerprints and determine how many of them were classifiable?

A. No. Excuse me. No.

Q. Had anybody ever asked you to then -- to use the computer to do some checks?

A. I think I've testified that sometime, we did receive a request. And it was later rescinded.

Q. All right. So that was never done; right?

A. That is correct.

Q. And we talked about that last time?

A. Yes.

Q. Now, in addition to a decision whether or not to try to figure out who had these unidentified prints, there is a thing known as latent print intercomparison; correct?

A. Yes, there is.

Q. Now, did you do latent intercomparison?

A. No, I did not.

Louis Hupp - Cross

Q. Now, latent print intercomparison works like this, doesn't it? If I have Location A and there are ten prints, unidentified latent prints there, and I have ten unidentified prints from Location B, I can look at and see if any of the unidentified prints from Location A are the same as those from

Location B; is that right?

A. Yes, I can.

Q. And that is what's called intercomparison of latent prints; right?

A. That is correct.

Q. Intercomparison of latent prints is a valuable law enforcement tool, isn't it?

A. I'm not sure that I follow you, because we still have an unidentified latent print.

Q. Well, if you wonder if the same unidentified person has visited several different locations, you're able to find that out using intercomparison of latents; correct?

A. If we can, in fact, effect identifications, yes.

Q. In other words, if a -- if you were to look at the unidentified prints at a rental agency, and the unidentified prints on a piece of paper and the unidentified prints on a rifle and the unidentified prints in a motel room, you could tell whether or not the same person had visited each of those four locations; correct?

A. It would be a possibility.

Louis Hupp - Cross

Q. Okay. And you were not asked to do that in this case, were you, sir?

A. No, I was not.

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

THE COURT: Yes.

BY MR. TIGAR:

Q. Now, on direct examination, we talked about a computer, and I want to make sure we know which one it is. That's -- we were -- you were talking to the prosecutor about the AFIS computer?

A. AFIS. It's been renamed several times. As a matter of fact, it's now called LEWS, L-E-W-S.

Q. Now called what?

A. LEWS, L-E-W-S. The system has revolved over years.

Q. Not named after you?

A. No. No. No.

Q. But -- but now it's called LEWS. Let's call it LEWS.

Okay. You go down to LEWS. Now, is LEWS the same as NULF?

A. NULF is "no latent prints of value."

Q. Now, what about National Unidentified Latent File. NULF?

A. We don't have that anymore.

Q. You don't have the National Unidentified Latent File anymore?

A. Not anymore. It's been held back. It's been kind of put back. The computer system has taken its place.

Louis Hupp - Cross

Q. But there is such a thing as a National Unidentified Latent File; correct?

A. Yes, at one time.

Q. Are the records of that still available?

A. They -- they might be in headquarters.

Q. All right. But you didn't look at them in connection with this case; is that right?

A. No, I did not.

Q. Okay. And what is -- is LEWS and AFIS the same as ALSA3?

A. That is correct. That is another one of the evolving names.

Q. That's called Automated Latent Search; right?

A. Yes.

MR. TIGAR: Okay. Thank you, your Honor. I have nothing further.

THE COURT: Any redirect?

MS. WILKINSON: Yes, your Honor.

Your Honor, it's going to take me about 15 minutes.

I don't know if you want to take a break now or --

THE COURT: I think we'll take the break now.

You may step down, Mr. Hupp.

Members of the jury, we'll take our midafternoon recess at this time, the usual 20 minutes, during which the usual cautions will apply, of course, avoiding discussion of the case and keeping open minds.

Louis Hupp - Cross

You're excused. 20 minutes.

(Jury out at 3:16 p.m.)

THE COURT: All right. Recess.

(Recess at 3:16 p.m.)

(Reconvened at 3:35 p.m.)

THE COURT: Be seated, please.

(Jury in at 3:36 p.m.)

THE COURT: All right. If you'll resume the stand, Mr. Hupp.

Ms. Wilkinson.

MS. WILKINSON: Thank you, your Honor.

REDIRECT EXAMINATION

BY MS. WILKINSON:

Q. Mr. Hupp, in this case, the Oklahoma City bombing case, approximately how many fingerprint examinations and comparisons have you done?

A. It would be in the hundreds of thousands.

Q. And Mr. Tigar was nice enough to admit to you on cross-examination that he made a math error. Is that right?

A. That is correct.

Q. And you've made a few math errors in this case, haven't you?

A. That is correct.

Q. But before you report out your findings, you review your work, don't you?

Louis Hupp - Redirect

A That is correct

... That is correct.

MR. TIGAR: Objection, leading, your Honor.

THE COURT: Sustained.

BY MS. WILKINSON:

Q. Do other people review your work before you report out your findings?

A. Yes.

Q. Now, you were shown by Mr. Tigar just one page from your report. I think he called it E130. Do you recall that? The chart?

A. Yes, I do.

Q. And is that part of a report that you issued regarding Q772, which you said was the Wal-Mart receipt?

A. That is correct.

MS. WILKINSON: Your Honor, we'd offer the complete report, Government's Exhibit 2116.

MR. TIGAR: May I inquire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. TIGAR:

Q. Do you have 2116 in front of you, sir?

A. No, I don't.

Q. In addition to three typewritten pages, sir, that contains two handwritten pages, does it not?

A. That is correct, yes.

Louis Hupp - Voir Dire

Q. Now -- and one of those handwritten pages is the same as the handwritten page that I showed you that we marked in evidence as E130. Correct?

A. Yes.

Q. Now, when I examined you on cross-examination, you said that E130 is not your report -- correct -- that is to say, that fourth page, the handwritten page?

A. That fourth page is not a report.

Q. When your report goes forward, sir, does it go forward with that attached to it?

A. No, it does not.

Q. So what you have there is in fact not your report, is it?

A. This is a copy of my worksheet. Personal notes, if you like.

Q. Well, the first three pages are typed; is that correct, sir?

A. There are -- no, the first two pages -- page 1 and part of page 2 are typed. There are handwritten notations after that.

MS. WILKINSON: Your Honor, maybe it would help if I called it the "worksheet" and not the "report." That's probably my mistake.

THE COURT: Well, I guess the witness ought to tell us what it is.

BY MR. TIGAR:

Q. All right, sir. I'm going to show you what has been

Louis Hupp - Voir Dire

received in evidence as Defense Exhibit E129. I'm going to ask you is that the same thing as what you're looking at there?

A. No, it is not.

Q. E129 is what you identified as your report; correct?

A. That is correct.

Q. How many pages of E129 are missing from what you have before you, Government's Exhibit 2116?

A. There are no pages missing in E129.

Q. That's right. And how many pages are missing in 2116 from what you testified a moment ago was your report, which is now in evidence, which is in front of you?

A. This again, Government's Exhibit 2116, is a copy of my worksheet from which I prepared E129. This is what I made my personal notes on, which enabled me to dictate this report and send this report to the field.

Q. Now, page 1 of E129 is the same as 2116 except there are some notes on it; correct?

A. Well, there is other differences.

Q. Okay. And there are some handwriting on 2116. Is that your handwriting?

A. Yes, it is.

Q. And this list here is -- has the highlighter on it. Did you put the highlighter on it?

A. No, sir.

Q. You don't know who did?

Louis Hupp - Voir Dire

A. No, I don't.

Q. And this last page also has highlighter on it. Is that correct, sir?

A. That is correct.

Q. Now, this page here, the first one, is -- that's Bates' stamped 00089 -- is that your handwriting?

A. Some of it is, some of it is not.

Q. What part of it is yours?

A. The part here at the top, my initials here; and this was written by another individual because their handwriting was obviously better.

Q. Regardless of that, the part that includes the highlighted material is not your handwriting. Correct, sir?

A. That is correct.

Q. And yet is it -- and it's your testimony, though, that that's your worksheet even though you didn't do it?

A. I prepared parts of it. Parts of it were prepared at my direction.

MR. TIGAR: We object to it, your Honor.

THE COURT: What's the purpose?

MS. WILKINSON: May I ask a few more questions?

THE COURT: What's the purpose of the offer here?

MS. WILKINSON: Because Mr. Tigar only offered one page of that worksheet, your Honor, and the page before it

shows other information relevant to what Mr. Tigar pointed out

Louis Hupp - Voir Dire

on the third page. It would make it complete. Otherwise they've only seen one page of the worksheet.

THE COURT: It's not clear to me what page it is.

BY MS. WILKINSON:

Q. Mr. Hupp --

MR. TIGAR: Your Honor, I have no objection to the Government offering without the highlighting that this witness did not put on the third page, which is the next-to-last page, provided it can be established that this witness wrote it.

THE COURT: Go ahead with your additional foundation.

REDIRECT EXAMINATION CONTINUED

BY MS. WILKINSON:

Q. Government's Exhibit 216, Mr. Hupp. What is that?

THE COURT: It's 2116.

MS. WILKINSON: I'm sorry. 2116.

THE WITNESS: This is a copy of a worksheet that is prepared in the latent fingerprint section for the purpose of placing personal notes by the individuals who are working the case.

BY MS. WILKINSON:

Q. Are those your notes, or have you adopted those notes?

A. These -- some of these notes were mine. There were more than -- there were several individuals who were working on this case at this point in time. They were all working under my direction, and everything they put on here I had to review and

Louis Hupp - Redirect

had to acknowledge and agree with. Many instances, persons put notes on here because they had better handwriting.

Q. How many pages is Government's 2116?

A. There is five total pages.

Q. Are they all stamped with your name down at the bottom?

A. Yes, they are.

Q. What does that stamp indicate?

A. This indicates it was my worksheet, or I had reviewed the information on it and concurred with the results of what was placed there.

Q. So have you adopted everything that's in Government's Exhibit 2116?

A. Yes, I have.

Q. Included in that in the last page: Is that the page that Mr. Tigar showed you as Government's Exhibit 190?

A. Yes.

MS. WILKINSON: Your Honor, we'd offer it, and highlighted portions are only to show to the jury. We'll put in a clean copy for the exhibit. It's just to direct the jury's attention when I show it on the ELMO.

MR. TIGAR: I don't understand the offer. Is the offer of the whole thing?

MS. WILKINSON: Yes

MS. WILKINSON: Yes.

MR. TIGAR: Or just the highlighted portion?

MS. WILKINSON: Of the entire five pages to make it

Louis Hupp - Redirect
complete.

THE COURT: You know, what's important here is his testimony. That's the evidence in the case, not the notes.

MS. WILKINSON: I understand that, your Honor. On the page before --

THE COURT: Well, I'm sustaining the objection to 2116.

BY MS. WILKINSON:

Q. Mr. Hupp, did you adopt additional notes regarding the fingerprints on the Wal-Mart receipt, Government's Exhibit 265?

A. Yes, I did.

Q. And in those notes, is it indicated that there were three of Mr. Nichols' --

MR. TIGAR: I object to the leading, your Honor.

THE COURT: Sustained as to leading.

BY MS. WILKINSON:

Q. Mr. Hupp, what was in those notes?

A. In those notes it indicated that five fingerprints had been developed on Q772, which is the Wal-Mart receipt.

Q. Government's Exhibit 265?

A. 265.

Q. Okay.

A. And in fact that two fingerprints had been identified with the fingerprints of Terry Nichols -- or two fingerprints with Timothy McVeigh and three fingerprints had been identified with

Louis Hupp - Redirect
Terry Nichols.

Q. And after you reviewed those notes, did you issue the report that Mr. Tigar showed you, the other exhibit -- Government's Exhibit -- I mean Defense Exhibit 129?

A. Yes, I did.

Q. In that did you indicate the same results: That on the Wal-Mart receipt, Q772 --

THE COURT: There has been objection to leading here. And you're going right ahead with leading.

MS. WILKINSON: I'm sorry, your Honor.

BY MS. WILKINSON:

Q. Mr. Hupp, did you report out those findings?

A. Yes, I did.

Q. How did you report out those findings?

A. Those findings were set out that in fact two of the fingerprints belonged to Mr. Timothy McVeigh and three of the fingerprints belonged to Mr. Terry Nichols.

Q. Are you aware whether these reports were shared with the defense?

A. Yes.

Q. Is there any doubt in your mind that you identified three of Mr. Nichols' prints on the Wal-Mart receipt and two of Mr. McVeigh?

MR. TIGAR: Object to leading, your Honor.

MS. WILKINSON: Your Honor, I think he suggested those

Louis Hupp - Redirect
prints might not be an accurate identification on cross-examination.

THE COURT: Well, ask him what his conclusion is now.

BY MS. WILKINSON:

Q. What is your conclusion, Mr. Hupp, as to the identification of fingerprints on Government's Exhibit 265?

A. My conclusion is that two of the five fingerprints belong to Mr. Timothy McVeigh and the remaining three fingerprints belong to Mr. Terry Nichols beyond a shadow of a doubt.

Q. Now, you prepared notes that we've shared with the defense for your testimony today. Is that right?

A. That is correct.

Q. And Mr. Tigar showed you one page of those notes regarding the identification on the gun, Government's Exhibit 1810.

A. That is correct.

Q. Now, did you prepare or did you have copies of photographs of fingerprints in that notebook also?

A. Yes, I did.

MS. WILKINSON: Your Honor, may I approach and show the witness Government's Exhibit 2115?

THE COURT: All right.

BY MS. WILKINSON:

Q. Mr. Hupp, do you recognize Government's Exhibit 2115?

A. Yes, I do.

Q. What is that?

Louis Hupp - Redirect

A. This is a photograph of the latent print which was developed on the bolt of the weapon.

Q. Is there a marking on there with a K number?

A. Yes, there is.

Q. What's the K number?

A. The K number is listed at K50.

Q. Is that also known as Government's Exhibit 1810?

A. Yes, it is.

MS. WILKINSON: Your Honor, we'd offer 2115.

MR. TIGAR: May I examine, your Honor?

THE COURT: Yes.

MR. TIGAR: May I look at the exhibit, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. TIGAR:

Q. 2115 is -- that is a photograph?

A. That is a copy of a photograph, yes. Or two photographs, actually.

Q. And one photograph includes -- the bottom one is a photograph actually of the scope. Is that right?
A. Of a latent print appearing on the scope, yes.
Q. And the top: What's that a photograph of?
A. That's a photograph of the area of the bolt of which a latent print was developed.
Q. And is it your testimony that these two fingerprints are of

Louis Hupp - Voir Dire
the same individual?

A. No.
Q. No. So one is one and one is the other. Correct?
A. No. One is -- the bottom one remains unidentified, or the one on the scope has not been identified.
Q. So the bottom one is not in evidence yet -- I don't want a description of it. But the bottom one is an unidentified print; correct?
A. Yes.
Q. It's one of your 1,034?
A. Yes.
Q. And the top is a fingerprint that bears a name. Is that correct?
A. That is a fingerprint of a Roger Moore.

MR. TIGAR: Well, I can't rebag the cat, your Honor.
I have no objection.

THE COURT: No, he testified to that.

MR. TIGAR: I understand. No objection, your Honor.

THE COURT: All right. 2115 is received.

MS. WILKINSON: May I retrieve it, your Honor?

THE COURT: Yes.

REDIRECT EXAMINATION CONTINUED

BY MS. WILKINSON:

Q. Mr. Hupp, you told us on direct testimony that you had identified one of the fingerprints on Government's Exhibit

Louis Hupp - Redirect

1810, the gun; is that right?

A. That is correct.

Q. And did you take photographs of those fingerprints?

A. Yes, I did.

Q. At the top here of Government's Exhibit 215 (sic) this says K50. Tell us again what that indicates.

A. K50 is the indication we assigned in the laboratory or in the latent section to the weapon in question.

Q. And that's Government's Exhibit 1810?

A. Yes.

Q. The firearm you were holding earlier?

A. Yes.

Q. Now, tell us what this fingerprint is up here at the top.

A. That is an impression of the left middle finger of Roger Moore.

Q. And that's the only fingerprint you identified from the

Government's Exhibit 1810?

gun, Government's Exhibit 1810?

A. Yes.

Q. Now, on cross-examination, you were also asked about the computer search and the feasibility of doing computer searches for these unidentified prints. Do you recall that?

A. Yes.

Q. And you said, I believe, or Mr. Tigar gave you the example of could you do 50 searches a day. Is that right?

A. Yes.

Louis Hupp - Redirect

Q. Now, if you were to do 50 searches a day, could you complete identification of 50 different prints in one day, if you had no identifying information?

A. If I had no identifying information, I wouldn't have the 50 prints to compare because nothing would come back.

Q. So when you do, say, 50 searches, what do you mean by 50 searches if you're talking about an unidentified classifiable latent print?

A. For example, I believe he gave an example of a white male or Hispanic male approximately 40 years old from Arizona or whatever and approximate age. That would constitute one search. If I change either of the entrants, whether it be the state, whether it be the white male or race, sex, whatever, that constitutes a second search.

Q. All right. So if you were making up that information based on something or you were using some information someone had told you, if the person wasn't -- or was from Arizona, does that mean you would find their prints in the computer search?

A. No.

Q. Why is that?

A. They might not be in the database.

Q. And do you collect prints from where the person is born, or from where they're arrested?

A. When they've been arrested.

Q. So someone could be from Arizona; is that right?

Louis Hupp - Redirect

A. That's correct.

Q. And their prints could come from Maine?

A. That's correct.

Q. So to do a full search to look for that unidentified classifiable latent print, how many states would you have to search?

A. I would have to search all 50 states to give an honest evaluation of the searches.

Q. All right. And you already told us you would have to search two races?

A. That's right.

Q. Both genders; correct?

A. That's correct.

Q. And the size of the pattern? How many searches -- different types of searches would you do that?

different types of searches would you do that.

A. Generally if it's a good classifiable latent print and it's a loop, there would be five searches involved.

Q. For each of the race, sex and then age; correct?

A. Then there would be five searches based on the size of the pattern, because we allow for interpretation or counting areas from the person that may have encoded the latent print into the database.

Q. If we were to multiply those numbers for how many searches you would need to do for one unidentifiable print, we'd have two for race?

Louis Hupp - Redirect

A. Correct.

Q. How many for sex?

A. Two.

Q. How many for size of pattern?

A. In this instance, I was talking of five.

Q. How many for states?

A. 50.

Q. How many for years or ages 18 through 62?

A. I believe we come up with 45.

Q. And if my math is right, is that about 45,000 different searches?

A. That is correct.

Q. And would that take about 900 days?

A. Something like that.

Q. And that would be for just one print; correct?

A. That is correct.

MS. WILKINSON: No further questions, your Honor.

RE-CROSS-EXAMINATION

BY MR. TIGAR:

Q. The document you looked at that had the print with the name Roger Moore beside it --

A. Yes.

Q. -- when was that picture taken?

A. I'd have to review my notes to give you the exact date, but it was taken -- as soon as it was detected on the weapon, then

Louis Hupp - Recross

it was photographed immediately.

Q. Sometime in 1995?

A. Sometime in May of 1995.

Q. Did you write the name "Roger Moore" on it at that time?

A. Yes.

Q. And the piece of paper that was in front that I showed you when we started cross-examination: Did you make that yesterday; is that correct?

A. That is a mere copy of the photograph that was done at that time.

Q. Now, the prosecutor asked you about this system. The -- is it your testimony that each time you want to change something, you have to start a whole new search?

A. I don't have to reencode the latent, but I have to regenerate the data information that I'm requesting from the computer. This is merely a two-step process. Initially we put in the information, and we extract individuals from the database that match the criteria based on the age, the sex, the race, and the time of pattern. Then we would do another search based on matching minutia with that, so it's a two-step process to that point.

Q. Well, let's start. First we have a fingerprint we classify. Correct?

A. Yes.

Q. And there is a standard classification system that consists

Louis Hupp - Recross

of numbers and letters; correct?

A. That is correct.

Q. And those numbers describe arches, whorls and other characteristics of the human fingerprint. Correct?

A. That is correct.

Q. And how many numbers and letters do we get?

A. We get loops, arches, and whorls. We'd have basically three there. Then there is various --

Q. Sir, I'm just asking how many numbers makes that unique identifier that identifies that fingerprint as unique to one human individual.

A. It would be based as a combination of the type of pattern and the size of the pattern.

Q. Okay. And what's the range of numbers? That is, it looks like 1201, and then it has some letters in it and so on. Is that what it looks like?

A. Actually if you're doing an arch-type pattern, it would be an arch or tended arch, so we would have two possible searches --

Q. I want to start by asking: Isn't there a number that identifies each fingerprint as unique to a particular human being?

A. I'm not sure I understand what you're --

Q. Do you have something in the file that codes that fingerprint, that gives it a number? For instance, 1210PZ005,

Louis Hupp - Recross

whatever?

A. Not in my system, no.

Q. Okay. So your system -- in your system, you code it according to characteristics. Right?

A. That is correct.

Q. And you classify it.

A. That is correct.

Q. Now, so that's one thing you need to classify the print. Right?

A. That is correct.

Q. And out of the now 1,034 prints, you have a certain number

you can classify. Correct?

A. That is correct.

Q. If you haven't got all of the elements of a classification, can you still do a search?

A. It would only add to it on the end, yes.

Q. You can do a search of a non-classifiable print. You'll just get more possibles out the other end. Correct?

A. I would create more searches, yes.

Q. Let's suppose we just limit ourselves therefore to the classifiable prints out of this 1,034. If I gave you parameters and just asked that we have a 30-year-old white male person and we have six states to search, how many searches is that?

A. That would be rather hard to figure off the top of my head.

Louis Hupp - Recross

If we had white male, that's one search right there.

Q. Okay.

A. If we had six states, now we've got six searches.

Q. Now we're up to 1 times 6 is 6. Correct?

A. Now, if we have -- depends on the type of pattern. If we had a -- say a loop in the left -- if we had a loop that was approximately 16 counts, that's 16.

Q. You use -- for the prosecutor you used five as an example?

A. There is five -- I would spread five on either side out of that 16.

Q. 6 times 5. Now we're at 30; correct?

A. What was the age again?

Q. 30 years old.

A. 30 years old? Then it would be 10 searches there.

Q. 10 searches for 30 years old?

A. Yes.

Q. How do you get to 10 searches for one age?

A. I allow five years on either side for variance of description.

Q. Okay. So 25 to 35?

A. Yes.

Q. Good. So now we're up to 300; right?

A. Right.

Q. And so we've got one gender. That's a male. Correct?

A. That's correct.

Louis Hupp - Recross

Q. I've got six states?

A. That's correct.

Q. I've got five different finger types possible?

A. Five different counts, yes.

Q. Counts. Counts. All right. I've got counts. And I've got 10 years on either side. Correct?

A. That's correct.

Q. That's 300 searches?

A. Times 8 for the number of fingers that are in the database.

Q. You didn't tell the prosecutor about the number of fingers

Q. You didn't tell the prosecutor about the number of fingers.
So that's 2400 searches?
A. That's the possibilities, if I have only one finger and
have no information what it is.
Q. Now, are you able, when you get a latent fingerprint, to
tell what finger it is?
A. Not always.
Q. What finger was it that Terry Nichols used to touch the
Wal-Mart receipt?
A. The -- one of them was a No. 1 and No. 2.
Q. And you wrote the No. 1 and No. 2; correct?
A. That is correct.
Q. And a characteristic of a good fingerprint for comparison
purposes -- one thing is that you can tell what finger it is.
Correct?
A. I can tell once I've identified it; but generally when I

Louis Hupp - Recross

just look at a document, I cannot always be certain which
finger it would be.

Q. All right. So -- well, let's -- all right. Let's allow
the maximum number. So that's -- that's 2400. Right?

A. Correct.

Q. Anything else?

A. Well, every time that we change one of the categories --

Q. I understand. I've asked you these categories. Are there
any more categories that we need?

A. That would basically be it.

Q. Okay. And so that's 2400; correct?

A. That is correct.

Q. Now, if you used intercomparison of latents -- that is,
suppose you had out of 1,034 prints -- suppose you had 50 that
were classifiable. Correct?

A. That's fair.

Q. And suppose that you then did an intercomparison; right?

A. That's correct.

Q. That would further narrow the number in all probability,
would it not?

A. That is correct.

Q. Now, with these 2400 searches that you have here -- all
right -- that would take you -- you can submit 50 a day; is
that right?

A. Yes, sir.

Louis Hupp - Recross

Q. Now, are there a number of different people using the
system?

A. Yes.

Q. Is the system maximum that all the people that are using it
from wherever they are, they can only do 50 a day?

A. That is correct.

Q. Now, states have such systems, don't they?

A. Yes, they do.

Q. And you've got 55 million prints there at the FBI; right?
A. 35.
Q. 35 million?
A. 35 million.
Q. Oh, this only searches the 35 million criminals?
A. That is correct.
Q. It doesn't search the 20 million noncriminals?
A. That is correct.
Q. Okay. So -- but different states do have these systems. Does Arizona have this system?
A. I'm not familiar with exactly which states would have it to say off the top of my head. I have access to the information, but --
Q. You don't know.
A. No.
Q. So 2400 -- all right -- you can do 50 a day. Is that 120 days?

Louis Hupp - Recross

A. You have the pencil. I would assume that's correct, yes.
Q. Well, I don't really know. Yeah. Something like that, we can figure it out. But you say it's 2400 individual searches. Correct?
A. That is correct.
Q. And if we wanted to narrow, for instance, instead of six different states, we only wanted to do two different states -- all right -- then we'd be down to 2 times 5 is 10 times 10 -- we'd be down to 800. Correct? Something like that? But we can do the math with the numbers that you've given us. Correct?
A. That's correct.
Q. Now, if this -- did you have a discussion as to the -- to the effect that this was impractical to do?
A. Yes, I did.
Q. Okay.
A. At the time that it was requested, I was in the middle of the cases that would be -- the evidence was coming in. I had evidence coming in continually. At that point in time it was not practical to stop everything we were doing, which would have been required to do intercomparisons or whatever, to do computer searches at a halfway point or quarter point. I would have to have redone this over and over again, so that I had a discussion: Could these be delayed until such time as all of the current evidence had been examined, everybody had been

Louis Hupp - Recross

compared that they felt was involved, and then we would resume talks as to the possibility of computer searches?
Q. All right. And after you did this delay, to wait till you all did that, did there come a time when somebody came to you and said, well, let's don't do it?
A. I believe it was more in line with we won't do it at this

time.

Q. And we agreed last time you were here that this is certainly one of the biggest cases in the Bureau's history; correct?

A. Certainly.

MR. TIGAR: No further questions.

REDIRECT EXAMINATION CONTINUED

BY MS. WILKINSON:

Q. Mr. Hupp, you found one of or two of Mr. McVeigh's prints on the Wal-Mart receipt, Government's Exhibit 265, did you not?

A. Yes, sir (sic).

Q. Now, if you had done this computer search that Mr. Tigar is suggesting on that receipt on April 19, 1995, would you have ever identified Timothy McVeigh's prints?

A. No, I would have not.

Q. Why not?

A. Mr. McVeigh was not in the database.

MS. WILKINSON: No further questions, your Honor.

MR. TIGAR: No questions, your Honor.

THE COURT: All right.

MS. WILKINSON: He's excused.

THE COURT: Are you sure?

MS. WILKINSON: Yes.

MR. TIGAR: No, your Honor, he's excused. I think we've taken care of it.

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

THE WITNESS: Thank you, your Honor.

THE COURT: Next, please.

MR. MACKEY: Yes, Judge. We'll call Ron Clutter.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Lawrence Kingry affirmed.)

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

THE WITNESS: Yes, ma'am.

THE COURTROOM DEPUTY: Would you state your full name for the record and spell your last name.

THE WITNESS: Lawrence L. Kingry, K-I-N-G-R-Y.

THE COURT: I thought we were going to get

Mr. Clutter.

MR. MACKEY: We did, and the break in communication is fine, Judge. We'll go ahead and proceed with Mr. Kingry.

THE COURT: All right.

MR. ORENSTEIN: Can I just have a moment? I didn't expect to be up here exactly now, your Honor.

Lawrence Kingry - Direct

DIRECT EXAMINATION

BY MR. ORENSTEIN:

Q. Good afternoon, Mr. Kingry. It is Mr. Kingry; correct?

A. Yes, sir, that is correct.

Q. Sorry for the confusion.

Where do you live, sir?

A. Edmond, Oklahoma.

Q. And were you born and raised in Oklahoma?

Q. And were you born and raised in Oklahoma?

A. No, sir, I was not.

Q. Where are you from originally?

A. Originally from Wichita, Kansas.

Q. What's your education, sir?

A. B.A., economics, Wichita State University, some postgraduate work.

Q. Do you have a family back in Oklahoma?

A. Yes, sir, I do.

Q. Married?

A. Yes, sir, I am.

Q. How many kids do you have?

A. I have two children.

Q. Now, how are you currently occupied?

A. At the present time I'm employed by the State of Oklahoma.

Q. Doing what for them?

A. I'm a firearms instructor at the state police academy.

Q. How long have you been so employed?

Lawrence Kingry - Direct

A. Approximately a year and five months.

Q. So sometime in '96?

A. Yes, sir, that's correct.

Q. Prior to working for the State of Oklahoma, what did you do?

A. I was employed as a special agent for the United States Secret Service.

Q. And how long were you employed by the Secret Service?

A. Over 20 years.

Q. Were you employed by the Secret Service in 1995 -- in April of 1995?

A. Yes, sir, I was.

Q. And what was your position there?

A. Special agent.

Q. Where were you assigned when you were working for the Secret Service?

A. The Oklahoma City field office.

Q. Now, before we describe that a little more, could you tell the jury the services provided by the United States Secret Service.

A. Part of my past duties consisted of the protection of the president and vice president of the United States and other dignitaries, the detection and suppression of counterfeit activity, the investigation of stolen and forged government securities.

Lawrence Kingry - Direct

Q. Now, you've talked about your own personal duties. The duties that you had: Are they shared by other agents of the Secret Service, protection and criminal enforcement?

A. Common duties, yes, sir.

Q. When you were working for the Secret Service in Oklahoma, where specifically were you stationed?

A. At the Murrah Building, 200 N.W. 5th Street in Oklahoma City.

Q. What part of the Murrah Building were you in?

A. Ninth floor, sir.

Q. How many people were employed on the ninth floor of the Murrah Building in April of 1995?

A. We had a complement of 12 full-time employees and one part-time employee.

MR. ORENSTEIN: If I might have Government's Exhibit 952, the floor plan of the ninth floor, which is in evidence, on the screen, please.

BY MR. ORENSTEIN:

Q. Do you have that in front of you, Mr. Kingry?

A. Yes, sir, I do.

Q. Would you use your light and -- you should have a pen connected by a wire there. Reach under the screen and right on the surface of the computer screen and show the ladies and gentlemen of the jury what the layout of the Secret Service is on the ninth floor and who worked where.

Lawrence Kingry - Direct

Why don't you just start just getting off the elevator and work your way into the office.

A. Elevators were here, walk down the hallway through a set of doors and into the entranceway/reception area of the Secret Service office.

Q. And if you go through touring the office.

A. This X, not a very good X, represents the conference room.

This X represents where the special agent in charge worked, his office.

This room here was Linda McKinney's office.

And this area right here Kathy Seidl worked. She was a secretary.

ASAC Alan Whicher -- this was his office.

Q. Let me interrupt you. What is ASAC?

A. Assistant special agent in charge, sir.

Q. You can go on with your tour of the office, there.

A. This office was occupied by Special Agent Mickey Maroney and Special Agent Don Newsom.

This office was occupied by myself and Agent Gary Simpson.

This office was the office of Agent Don Leonard.

The office of Agent Mahaffey, Gary Mahaffey.

This office here was occupied by Special Agent Alan Dotter and Special Agent Cynthia Campbell-Brown.

This was our interview room.

Lawrence Kingry - Direct

This was the break room or processing room.

This represents the office vault, and this was the file room.

Q. Now, Agent Kingry -- I'm sorry -- Mr. Kingry. You're no longer an agent. Is that right?

A. I'm retired, yes, sir.

Q. Let me direct your attention to the morning of April 19, 1995. I think you told us you were still employed by the Secret Service at that point?

A. Yes, sir, that's correct.

Q. Did you go to the Murrah Building and go to work that morning?

A. Yes, sir, I did.

Q. Can you tell the jury what you did that morning when you went to work.

A. I arrived at approximately 7 a.m. and went to my office. I was the first one actually to go into the office that morning; and later Don -- Agent Don Leonard came into my office and we had a discussion.

And at approximately 15 minutes till 9, I left the office and walked to the courthouse across the street.

Q. Now, let me ask you before you went to the courthouse at a quarter to 9, had you seen anyone else arrive at your office?

A. Yes, sir.

Q. Who else was there?

Lawrence Kingry - Direct

A. Assistant Special Agent Alan Whicher; Special Agent Mickey Maroney; Don Leonard, I've already mentioned; Special Agent Cynthia Campbell-Brown; Office Manager Linda McKinney, and Secretary Kathy Seidl.

Q. Were all of those persons present when you left the office at a quarter to 9?

A. Yes, they were.

Q. You mentioned some of the people who worked there as being present. Others who worked for the Secret Service were not there that morning?

A. No, sir, they were not.

Q. At that time were you expecting a visit by former President Bush to Tulsa?

A. Former President Bush was going to visit Tulsa the next day.

Q. And were some of the agents absent in connection with that?

A. That is correct.

Q. What was Cynthia Campbell-Brown doing that morning?

A. That morning she was preparing for -- she was preparing to leave for Tulsa for the visit of former President Bush.

Q. As part of the protection detail?

A. Yes, sir, that is correct.

Q. And what was Agent Whicher doing that morning?

A. Alan Whicher was working with Special Agent Mickey Maroney on one of their projects, actually one of Mickey's projects.

Lawrence Kingry - Direct

Q. When you say "project" --

A. A case they were both working on.

Q. What was Agent Leonard doing that morning?

A. Agent Leonard was waiting to see ASAC Whicher in regards to an investigation and personnel matter.

Q. Now, prior to coming to court today -- you've just told us who was in the office and where they were that morning; correct?

A. Yes, sir, that's correct.

Q. Before coming to court today, did you affix name plates to a chart showing the layout of the ninth floor and showing where your colleagues were that morning when you left?

A. Yes, sir, that's correct.

Q. And that's --

MR. ORENSTEIN: The Government offers that chart with the name plates, your Honor, as 952I. We will not seek to display it at this point.

MR. TIGAR: Subject to our discussion, your Honor, no objection.

THE COURT: Yes. All right.

BY MR. ORENSTEIN:

Q. Now, you told us that you left the Murrah Building at quarter to 9 or thereabouts?

A. Approximately 15 till 9, yes, sir.

Q. And where were you going?

Lawrence Kingry - Direct

A. I was going to the magistrate's courtroom in the Federal Courthouse.

Q. To work on a case?

A. Yes, sir.

Q. Prior to that morning, had that case been assigned to someone else?

A. Prior to that morning, yes, that case had been assigned to Agent Don Leonard.

Q. But by that morning, it had been reassigned to you?

A. Yes, sir.

Q. And that's why you left?

A. Yes.

Q. After you left the Murrah Building that morning, did you ever see Kathy Seidl alive again?

A. No, sir.

Q. Did you ever see Linda McKinney alive again?

A. No, sir.

Q. Did you ever see Special Agent Don Leonard alive again?

A. No, sir, I did not.

Q. Did you ever see Alan Whicher alive again?

A. No, sir, I did not.

Q. Did you ever see Mickey Maroney again alive?

A. No, sir.

Q. Did you ever see Cynthia Campbell-Brown alive again?

A. No, sir, I did not.

Lawrence Kingry - Direct

Q. What happened after you left the building?

A. After I left the building, I went to the magistrate's courtroom on the first floor of the Federal Courthouse; and at 9:02 a.m., there was an explosion. And I went out of the courthouse, looked north to the federal building; and I could see through the windows of the Murrah Building -- see blue sky. And I knew that the building had been blown up.

Q. Could you actually see the windows there?

A. Yes, sir, from the -- from the front door of the courthouse, I could see through the building. Part of the building was missing.

Q. Where did you go?

A. Then I went around to the northeast corner of the building and looked up from the north side of the building to where our field office would have been, and I saw that -- I saw that the field office was gone.

MR. ORENSTEIN: May I approach, your Honor?

THE COURT: Yes.

BY MR. ORENSTEIN:

Q. Mr. Kingry, I've placed a photograph in front of you. It's not in evidence yet. It's been marked as Government's Exhibit 2101.

A. Yes, sir.

Q. Does that -- do you recognize that?

A. Yes, sir, I do.

Lawrence Kingry - Direct

Q. Does that show the building after the explosion from approximately the point where you saw it?

A. Approximately, yes, sir.

MR. ORENSTEIN: Government offers 2101.

MR. TIGAR: I'm sorry, your Honor. May I look at the photograph?

THE COURT: Yes, certainly.

MR. TIGAR: Thank you, Agent.

THE WITNESS: Yes, sir.

MR. TIGAR: No objection, your Honor.

THE COURT: 2101 is received, may be shown.

BY MR. ORENSTEIN:

Q. Now, the jury can see the photograph, Mr. Kingry. Would you use your light pen once again and show where in that photograph the offices of the Secret Service were on April 19, 1995?

A. They would have been in this area approximately here. We were on the north side of the building -- on the north side of the building on the ninth floor, and we -- there were two offices to the west of us and an office to the east of us. DEA was to the east of us, and I believe ATF and DEA had another office to our -- to our immediate west.

Q. But your offices, the offices of the Secret Service, were in that area that you just indicated?

A. Yes, sir, in that approximate area.

Lawrence Kingry - Direct

Q. Now, after seeing that, did you try going up to your offices?

A. No, sir, I did not.

Q. What did you do?

A. I knew that our personnel were dead, and I knew that the rescue people would be arriving, so I attempted to establish a perimeter around the building to protect the crime scene and to keep unwanted people out.

Q. Is that where your attention was focused that morning?

A. Yes, sir, it was.

Q. Did you pay attention to what was going on in terms of the rescue effort and the other efforts that were going on?

A. It was just a vague recollection, yes.

Q. Now, before coming to court today, Mr. Kingry, did you also take a look at a chart, Government's Exhibit 1171, showing photographs of your colleagues before they died in the bombing?

A. Yes, sir. Yes, sir, I did.

Q. And did that chart fairly and accurately depict the six colleagues of yours as they appeared when they were alive?

A. Yes, sir, they did -- it did.

MR. ORENSTEIN: That's Government's Exhibit 1171, your Honor. The Government offers it.

THE COURT: Same objection?

MR. TIGAR: Pursuant to our discussion, your Honor, no objection.

Lawrence Kingry - Direct

MR. ORENSTEIN: May I ask Agent Tongate to assist in displaying the cart?

THE COURT: Yes. What is it did you say? 1171 is the chart?

MR. ORENSTEIN: Yes, your Honor.

BY MR. ORENSTEIN:

Q. Mr. Kingry, would you please go through the -- each of the photographs on the chart and tell the ladies and gentlemen of the jury the name of the person depicted, what that person did for the Secret Service and how long they had been working for the Secret Service.

A. Cindy Campbell-Brown was a criminal investigator, 1811 series, for the U.S. Secret Service. She had been so employed for approximately one year and stationed in the Oklahoma City field office.

Special Agent Donald R. Leonard was an investigator for the Secret Service, 1811 series, had been with the United States Secret Service approximately 24, 23 years.

Mickey Maroney, special agent for the United States Secret Service, investigator, 1811 series, had been with the service, I'm going to say, 21, 22 years.

Linda McKinney. She was the office manager for the

field office, had been with the Secret Service as the office manager -- or had been working as a secretary and then into the office manager slot approximately 14 years.

Lawrence Kingry - Direct

Kathy Seidl had been -- was employed as a secretary in our office, had been with us for 10, 12 years.

And Assistant Special Agent Alan Whicher had been in the office approximately nine months, had been with the Secret Service approximately 14, 15 years.

Q. Now, you described -- I'm sorry.

A. He was a criminal investigator, also 1811 series.

Q. You described some of these folks as 1811 series criminal investigators. Were all of them special agents for the Secret Service?

A. That is correct. 1811 just designates criminal investigator for the government service.

Q. You told us that prior to the bombing you had 12 people assigned full-time to the Secret Service office in Oklahoma City; is that correct?

A. Yes, sir, that's correct.

Q. What percentage of those people were killed in the bombing?

A. We lost 50 percent.

Q. Do you have an estimate of how many years of experience of work was lost in the bombing?

A. Approximately 85 years, sir.

Q. Now, in addition to the loss of those six employees, did the bombing have any other effect on the ability of the Secret Service to perform its mission in Oklahoma City?

A. Yes, sir, it did.

Lawrence Kingry - Direct

Q. Can you describe some of those effects?

A. The efficiency of the office decreased to less than 50 percent. Our ability to work cases, conduct investigations, perform protection assignments were lessened a great deal.

Q. Did you lose investigative files?

A. Yes, sir. We lost several investigative files, some that were never returned. Part of our files were returned to us, but we had two major investigations going on that after the bombing we could not continue with. All the evidence was lost.

Q. What kinds of investigations were lost?

A. Financial fraud. One involved a nursing home or nursing homes, and another was a financial fraud investigation.

Q. In addition to the investigations being performed by the Oklahoma City office, did the bombing have an effect on Secret Service in other parts of the country?

A. Because the agents that had survived the bombing were addressing the issues of the families who lost members in the bombing, other personnel throughout the country came to assist the Oklahoma City field office in pursuit of the duties and establishing a new field office for the Secret Service in

establishing a new field office for the secret service in Oklahoma City.

Q. So part of the work was also just establishing a place to work from?

A. Yes, sir, that's correct.

Q. Where was that temporary workplace established?

Lawrence Kingry - Direct

A. Temporary office was established that afternoon approximately three to four blocks south of the federal building on Park Avenue, I believe, 200 Park Avenue.

Q. But your temporary field office was not over at the Will Rogers Airport with other Treasury agencies?

A. No, sir.

Q. Mr. Kingry, on the morning of April 19, 1995, was Special Agent Mickey Maroney a law enforcement officer of the United States engaged in the performance of his official duties?

A. Yes, sir, he was.

Q. And on that same morning, was Special Agent Don Leonard a law enforcement officer of the United States engaged in the performance of his official duties?

A. Yes, sir, he was.

Q. And on that same morning, was Special Agent Alan Whicher a law enforcement officer of the United States engaged in the performance of his official duties?

A. Yes, sir, he was.

Q. And that morning when Agent Cindy Campbell-Brown was preparing to go to Tulsa to protect former President Bush, was she a law enforcement officer of the United States engaged in the performance of her official duties?

A. Yes, sir, she was.

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

Lawrence Kingry - Direct

THE COURT: Mr. Tigar?

MR. TIGAR: May I retrieve the photograph, your Honor?

THE COURT: Yes. Sure.

MR. TIGAR: Thank you.

Thank you, sir.

THE WITNESS: You're welcome.

CROSS-EXAMINATION

BY MR. TIGAR:

Q. Agent, my name is Michael Tigar, and I'm one of the lawyers appointed to help Terry Nichols.

A. Yes, sir.

Q. You first felt the explosion when you were in the magistrate's court in the courthouse. Is that right?

A. Yes, sir, that's correct.

Q. Now, was that Magistrate Howland's chambers, or --

A. No, sir, that was not.

Q. Which magistrate was that?

A. I believe it was Bana Blasdel.

Q. Now, in the Federal Courthouse, was that closer to the Robinson Street side? Can you remember which side it was?

A. It was -- I believe it was Courtroom No. 2, which would have been closer to the Robinson Street side, yes, sir.

Q. Now, when you went out the courthouse there, which -- where did you go? That is, you said you got in position to see this -- what was in this picture. I'm going to put up a map of

Lawrence Kingry - Cross

downtown. I think it's been received in evidence. Government's 1953?

THE COURTROOM DEPUTY: No.

MR. TIGAR: No? Well, then I won't.

BY MR. TIGAR:

Q. I'm sorry, sir.

You went out onto Robinson and went up to 5th?

A. Yes, sir, the northeast corner of 5th and Robinson. That would have been between the YMCA and the federal building.

Q. You understand we've seen a lot of pictures of that. I think we have a picture of it. And this, which is in evidence, Government's 2101 -- that's the scene that you confronted. Correct?

A. Yes, sir, that's correct.

Q. Now, this here down in the corner by my finger -- that's just the edge of that Social Security office that was the first-floor extension. Is that what that was?

A. I'm not sure if that was a Social Security office or the power station. They had some generators or transformers in that area, and I don't know whether that was --

Q. That's the one-story part that extended out beyond the nine stories. Is that your recollection?

A. That's my recollection, yes.

Q. And this here is the column at the edge of the footprint of the Murrah Building; right?

Lawrence Kingry - Cross

A. Yes, sir. That was on the northeast corner.

Q. And this devastation here: That's where that curtain wall, that glass wall used to be; right?

A. Yes, sir, that's correct.

Q. That side.

Now, in this picture, there is some very thick, black smoke here.

A. Yes, sir.

Q. Could you see or could you make out what was on fire?

A. As I recall, it was the tires of the cars parked on the north side of the street in that parking lot that was just north of the 5th Street.

Q. Now, did those -- did the gasoline tanks of those cars catch fire that you observed?

A. I would say that some of them did, yes, sir.

Q. Okay. But it was -- and as you -- about how long did you

remain in that position, sir, if you remember?

A. I really don't know. I really don't remember.

Q. But during -- but during the time that you were there, this -- this very -- this black smoke that we're seeing here: That accurately reflects what was happening; is that correct?

A. No, sir. I can't say that that was that thick. My attention was directed to our field office, the area where our field office would have been. There was some black smoke, but I can't tell you that it was that thick or it was thicker. I

Lawrence Kingry - Cross
don't know.

Q. All right. And you attempt -- you then worked to set up a perimeter. Is that right?

A. Yes, sir, that's correct.

Q. And waited until the rescue people got there and set up police lines, and so on. Is that --

A. Well, I was trying to help set up police lines, yes, sir.

MR. TIGAR: I see.

Thank you very much, sir. I have no further questions.

MR. ORENSTEIN: Nothing further. The witness is excused.

THE COURT: Agree to excuse?

MR. TIGAR: Yes, of course, your Honor.

THE COURT: You are excused. You may step down.

THE WITNESS: Thank you, your Honor.

THE COURT: All right.

MR. MACKEY: Judge, we'll call Floyd Carter.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Floyd Carter, Jr. 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: Floyd Lawson Carter, Jr. My last name is spelled C-A-R-T-E-R.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Ryan.

MR. RYAN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. RYAN:

Q. Mr. Carter, where do you live?

A. I live in Midwest City, Oklahoma, sir.

Q. Where were you born and raised?

A. In a small town called Heavener, Oklahoma, in eastern Oklahoma.

Q. Is that a small town in Oklahoma City -- in Oklahoma?

A. It's a pretty small place, sir.

Q. Where are you employed?

A. I'm employed with the Defense Investigative Service in Midwest City.

Q. Are you married?

A. Yes, sir, I am.

Q. Children?

Q. Children?

A. I have two adult children and three grandchildren.

Q. Now, after you graduated from Heavener High School -- I assume that's where you went to school.

A. Yes, sir, that's where I graduated.

Q. What did you do after that time?

A. I spent one year in Eastern Oklahoma A & M College and then enlisted in the U.S. Army.

Floyd Carter - Direct

Q. And how long did you spend in the Army?

A. I was there 20 years.

Q. What did you do after your discharge from the Army?

A. I worked for a defense contractor for a couple of months and then was hired with the Defense Investigative Service, the organization I'm with now.

Q. And when was that approximately?

A. That was 1982, in April of 1982.

Q. So you've been with the Defense Investigative Service for how many years?

A. 16 years approximately.

Q. What is your current position?

A. I'm currently the special agent in charge of the Oklahoma field office.

Q. And where is your field office located at this time?

A. It's located in Midwest City now.

Q. Would you tell the ladies and gentlemen of the jury what services the Defense Investigative Service provides.

A. Yes, sir. We are what's considered a national security organization. We provide sort of a broad array of security services for the Department of Defense, not military services, and for defense industry. Those services are security training, security assistance as far as controlling and safeguarding classified secret and top secret documents, and we also do background investigations, where we make inquiries

Floyd Carter - Direct

through interviews or record checks of a person's suitability for a position of trust with the U.S. Government.

Q. Where was the offices of the Defense Investigative Service located in April of 1995?

A. It was in the -- on the third floor of the Murrah Federal Building.

Q. Let me show you what has been received in evidence as Exhibit 952, third floor, and ask if you can identify that.

A. Yes, sir, I can.

Q. Now, if you would, there is a light pen there under your desk, and place it directly on the screen and show us how one would enter the offices of the Defense Investigative Service, who was located there, and where their offices were.

A. Okay, sir. We had one entrance only into our -- into our office area. As you come in, this area is an open area, and that's where most of the special agents and investigative

that's where most of the special agents and investigative technicians would work. They did not have assigned seating in that area. There were three or four desks; and since they worked primarily out of their automobile, they would come in at various times and gather their mail, drop off work that they had.

Q. Let me to stop you right there.

A. Yes, sir.

Q. Why would they work out of their automobile?

A. Typically we go to -- most of the work that we did was the

Floyd Carter - Direct

background investigations for security clearances, and we go to the interviewee's location. We don't bring them typically to us. So we might have -- most of the people could be out at Tinker Air Force Base interviewing a military officer, or they could be down at Boeing interviewing a government contractor, or they could be off in the neighborhood interviewing the neighbor of one of the people that we're doing the background investigation on. So they worked predominantly out of their vehicles, what we call the "street agents."

Q. How many employees worked out of the Oklahoma City office there on the third floor of the Murrah Building in April of '95?

A. In April of '95, there were 12.

Q. And how many of those people were typically out of the office doing their jobs each day?

A. There were typically -- they started their day out of the office, and they ended their day out of the office; and they would typically come in once a day to pick up and drop off material. That would be nine of the employees. The other three were supervisor, assistant supervisor, and secretary; and they were typically in the office at that time.

Q. All right. Who were the -- who was the secretary that would be typically in the office?

A. Secretary was Jean Johnson, Norma Jean Johnson. We called her "Jean."

Floyd Carter - Direct

Q. Who was the supervisor that would typically be in the office?

A. The supervisor -- the special agent in charge at that time was Robert Westberry, who went by the name of Bob.

Q. And who was the --

A. I was the assistant at that time.

Q. You were?

A. Yes, sir.

Q. Now, back to our floor diagram here.

A. Okay.

Q. You have indicated a central area there in the middle?

A. Yes, sir.

Q. Who kept a desk in that location?

A. All of the other nine people occupied about four desks. We

had four desks situated like so, and they would just come in, use that desk as an open area, spread their work out, do what they needed to do and then leave.

Q. All right. And if you would, then, take us through the remaining offices.

A. Yes, sir. This room here was our files room and a computer room.

This room was a -- what we called an interview room. Occasionally, we would bring the people that we were conducting the background investigation on for an in-depth personal interview. It takes about an hour, and we would do that in

Floyd Carter - Direct
this interview room.

This room was Bob Westberry's office, the special agent in charge.

Outside his doorway right here along this wall was Jean Johnson's desk.

This room was my office, and this room had previously been the office of the supervisor who had retired and we were using it as another interview room.

Q. All right. Now, let me direct your attention to April 19, 1995.

A. Yes.

Q. Now, you've told us you were the assistant supervisor in charge of the office.

A. Yes, sir.

Q. Were you in the Murrah Building that morning?

A. No, sir. I was on temporary duty in Houston, Texas.

Q. And what were you doing in Houston?

A. Our office had been a test office for a computerized case management system, and I was involved in the testing of that; so I had gone to Houston to install the computer program on our Houston office's computers and to teach our Houston personnel how to use it.

Q. At some point during the day of April 19, 1995, did you learn what had occurred at the Murrah Building?

A. Yes, sir.

Floyd Carter - Direct

Q. How did you learn that?

A. I was standing by the secretary's desk in the Houston office and the telephone rang. The secretary said, "It's your son Jeff," my adult son who lives in Oklahoma City.

I took the phone from him and he said, "Dad, they've blown up the building."

And at first, I didn't believe him; but told him, you know, I would check. And I hung the phone up, went immediately into the supervisor's office in Houston where they had a television, and it was just starting to come in on national news at that time.

Q. Did you see the telecast at that time?

A. Yes, sir.

Q. About what time of the day was this?

A. I'm not exactly sure, but I would say it's within 30 minutes after the explosion.

Q. All right. What did you do as a result of obtaining this

information about what occurred to your office space?

A. I immediately caught the first plane back to Oklahoma City.

Q. About what time did you arrive?

A. I believe it was approximately 2 p.m.

Q. And what did you do upon arrival in Oklahoma City?

A. I took my vehicle, which was at the airport parking, and went straight downtown to see the building and the area myself and see if -- what I could do.

Floyd Carter - Direct

Q. What did you do after you got downtown?

A. As I was -- as I came up on the -- the streets were blocked on the east and west side, so I came in from the north side and went to the federal law enforcement area where they were setting up an operations center just north of the building; and then immediately I went to the building itself to view it, and I saw the building at that time.

Q. Let me show you an exhibit that's already been received into evidence, which is Exhibit 968. Do you see that on your screen?

A. Yes, sir.

Q. Now, can you tell us what this exhibit is?

A. Pardon me, sir?

Q. What is this exhibit?

A. This is the Murrah Building.

Q. And would you take your light pen and show the ladies and gentlemen of the jury where your offices were located prior to this blast.

A. Yes, sir. In that area right there.

Q. How much of your office space remained following this explosion?

A. There was none. It was gone. There was a ledge about like so, 6 inches, around the -- the east end of the building. The rest was just rubble.

Q. Thank you.

Floyd Carter - Direct

Would you tell us how you spent the remainder of the day.

A. Yes, sir. My -- my supervisor had been attempting to contact our people because they were out in cars to try to identify who was -- who was in the building and who was not at the time. And his assistant was driving from Dallas, Texas; Irving, Texas, up. We met at my house in Midwest City and immediately started getting in contact by telephone with the families and with the people that we knew were not in the building that had called in. And so we spent the remainder of

building that had called in. And so we spent the remainder of that day, most of that evening, either on the telephone or in person with family members at their house or down at the -- there was a church that had been set up as sort of an operations center by the Red Cross down there.

Q. Did you play some role that day in the identification of the people from your service agency that died?

A. That particular day was spent strictly with the -- with the relatives. It was within the next day or so I began to gather information that the Medical Examiner's office had requested us gather through the Army criminal investigation people that were on site to help them do a scientific identification of the people if and when they were found.

Q. All right. How many people from the Defense Investigative Service died on the morning of April 19?

A. Five.

Floyd Carter - Direct

MR. RYAN: Your Honor, we have a photographic chart of the five individuals from this agency that died. It's Exhibit 1076, and we would offer it in evidence at this time.

THE COURT: All right. It's the same position.

MR. TIGAR: Subject to our discussion, your Honor, no objection.

THE COURT: Yes. We'll receive 1076, may be displayed.

MR. RYAN: Thank you, your Honor.

BY MR. RYAN:

Q. Mr. Carter, if you would turn to Exhibit 1076. I'd like for you to identify each of the individuals shown in this exhibit. Identify them by name and state how long they had been with your agency and what their position was.

A. Yes, sir. Norma Jean Johnson was a secretary. She had been with our organization approximately six years at the time of the explosion.

Bob Westberry was the special agent in charge. He had been in the Defense Investigative Service since it was formed in 1972, but had only been in Oklahoma City for approximately two years at the time of the explosion. He had transferred from Miami.

Peter DeMaster was a special agent. He had been in our office -- this is where he was hired on with the Defense Investigative Service -- since 1982.

Floyd Carter - Direct

Larry Turner was a special agent. He hired on to our office from the Oklahoma Highway Patrol in approximately 1984.

And Harley Cottingham was a special agent. He had transferred to our office from the Colorado Springs office and had been in our location approximately two years when the explosion took place.

MR. RYAN: Thank you.

Take it down now, if you would, Mr. Tongate.

BY MR. RYAN:

Q. Would you tell us very briefly what effect the bombing of the Murrah Building, destruction of your office, had on the work of the Defense Investigative Service in Oklahoma City.

A. Well, immediately, it ceased. We -- we were unsure what investigations were in process by those people who were missing because they carried anywhere from 50 to 100 different ones at any given time.

The employees were in no position to even begin to think about working. Our organization in Washington and our regional headquarters in Dallas area brought in supervisors and agents to resume the work of the Defense Investigative Service.

We relocated to Tinker Air Force Base and with Tinker's help actually had investigations up and running within approximately 72 hours; but this was all done with people from outside the Oklahoma City office at the time. Most of those were told to go home and, you know, we checked with them daily

Floyd Carter - Direct

for a month or so. And it was several weeks before many came back to work and a couple of months before a couple came back to work.

MR. RYAN: Your Honor, the names of the five people from this agency who died have been placed on Exhibit 952 and we marked as 952C. We would offer it at this time but not ask to display it.

THE COURT: All right.

MR. TIGAR: Subject to our discussion, your Honor.

THE COURT: Yes. Received.

MR. RYAN: Thank you. No further questions.

THE COURT: Mr. Tigar?

CROSS-EXAMINATION

BY MR. TIGAR:

Q. Good afternoon, Agent.

A. Sir.

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

A. Yes, sir.

Q. You all in DIS also do military contractor fraud investigations, don't you?

A. The Defense Criminal Investigative Service does that, sir. They were an offshoot of us several years. They do procurement fraud. We don't.

Q. So that's been split off?

Floyd Carter - Cross

A. Two separate organizations.

Q. Two separate things. I just want to ask you a couple of questions. You got there about, what, 3:00 in the afternoon downtown?

A. I think it was about 2, sir. I'm not really sure exactly

what time it was, but I probably landed about 2 and was there within 20 minutes.

Q. As quick as you could get there?

A. Yes, sir.

Q. Okay. Now, you looked at a picture which is in evidence as Government's Exhibit 968. And it's a little hard to see, but we can look here and see -- looks like this picture is taken from across the street, a rooftop of a building. Right?

A. Yes, sir. It's looking down.

Q. Looking in a downward direction.

Now, when you got there, were you able to approach into this area here where this big piece of concrete has fallen down?

A. No, sir, I wasn't that close.

Q. You weren't?

A. No, sir.

Q. You were able to see a crater; that is, a big hole in the ground?

A. I didn't really look for a hole in the ground. I was looking for our office. I don't recall.

Floyd Carter - Cross

Q. You were looking for your office area; right?

A. Yes, sir.

Q. And is it fair to say, then, that you -- after you contacted the criminal investigations center there, you did not have any investigative responsibility for gathering evidence or interviewing people; is that right?

A. No, sir. I was primarily involved with assisting the families.

Q. Right.

A. People from our agency. Other people had some investigative --

Q. I understand. But your job was to work -- to do the people work for the people in your operation?

A. Yes, sir.

MR. TIGAR: Thank you very much, sir. No further questions.

MR. RYAN: No questions, your Honor. He may be excused.

MR. TIGAR: Yes, of course your Honor.

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

MR. MACKEY: Try again. Ron Clutter, Judge.

THE COURTROOM DEPUTY: Would you raise your right hand, please.

(Ronald Clutter affirmed.)

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

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

THE WITNESS: My name is Ronald Clutter,

C-L-U-T-T-E-R.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Proceed.

DIRECT EXAMINATION

BY MR. COFFMAN:

BY MR. GOELLMAN:

- Q. Good afternoon, Mr. Clutter. Where do you live?
- A. Kansas City, Missouri.
- Q. And where do you work?
- A. KCI Airport.
- Q. KCI?
- A. Yes.
- Q. What does that stand for?
- A. Kansas City International.
- Q. What do you do out at KCI?
- A. I'm maintenance superintendent.
- Q. How long have you been working at the airport?
- A. Almost 25 years.
- Q. What are your responsibilities as KCI's maintenance superintendent?
- A. I take care of all the heating, air-conditioning, electrical, utilities, gas, lights, water, telephone.
- Q. Fair to say that in your 25 years at KCI you've gotten to

Ronald Clutter - Direct

- know the physical plant at the airport fairly well?
- A. Yes, sir.
- Q. And does that include the different structural columns in each of the terminal buildings?
- A. Yes, sir.
- Q. Were you maintenance superintendent at KCI at the time of the Oklahoma City bombing in April, 1995?
- A. Yes, sir.
- Q. And how many terminal buildings did the airport have at that time?
- A. We have three terminal buildings.
- Q. About how many gates were in each terminal?
- A. Approximately 20 gates.
- Q. And how were the different terminals labeled?
- A. A, B and C terminals.
- Q. I want you to take a look at your screen, and I'm going to show you what's been marked for identification Government's Exhibit 2048. Do you recognize what's depicted there?
- A. Yes, sir. This is a diagram of the lease agreements for A terminal.
- Q. Terminal A at KCI?
- A. Yes, sir.
- Q. Which level?
- A. This is the passenger service level.
- Q. What's located on the passenger service level, Terminal A?

Ronald Clutter - Direct

- A. All of our ticket counters, bag claims, bag drops here that we service the people that use the airport.
- Q. Are the gates for aircraft also located --
- A. Yes.
- Q. -- on that level?
- A. Your departure gates and arrival gates.

Q. Is Government's Exhibit 2048 a fair and accurate depiction of Terminal A and what it looked like in April of 1995?

A. Yes, sir.

MR. GOELMAN: We offer Government 2048, your Honor.

MR. TIGAR: No objection, your Honor.

THE COURT: Received.

BY MR. GOELMAN:

Q. Now, Mr. Clutter, what are the different colors on the outer rim of the terminal building?

A. Okay. The different colors on the outer rim are the different lease areas by each individual airline that leases from the city of Kansas City, Missouri.

Q. Was America West one of the airlines that leased some space at KCI in April, '95?

A. Yes, sir.

Q. And can you take your light pen and press it right to the screen and circle the area where America West had leased space back in April, '95.

That is where the ticket counters for America West

Ronald Clutter - Direct
would have been?

A. Yes, sir.

Q. And what gates did America West operate back in April, 1995?

A. Gates 19 and 20.

Q. You mentioned that each terminal had 20 or so gates. Is that right?

A. Yes, sir.

Q. Do you know the approximate number of pay phones that were located in each terminal?

A. Approximately 100 pay phones per terminal.

Q. Have you seen a record from the phone company indicating the location and the phone number of one of those pay phones in April, '95?

A. Yes, sir.

Q. I want to show you what's already been received in evidence as Government's Exhibit 520, page 329.

Can you just click your pen and move that circle that you drew on the last exhibit, please.

Can you read the phone number that this record applies to on the top line of the record?

A. It's area code 816 -- I believe it's 464-96 -- and --

Q. Let me zoom in on it a little bit closer for you. Can you read it now?

A. Area code (816) 464-9693.

Ronald Clutter - Direct

Q. And next to the letters BLA, can you see if there is a particular location for this phone number?

A. Yes. It's Module A, Column 6, Location Gate 19 at Grid 6.

Q. Okay. Mr. Clutter, I'm going to put Government's Exhibit

2048 back up there. In April, 1995, where physically were the pay phones in Terminal A placed?

A. They were located in what we call the X columns. Those are the even-number columns that are depicted on the drawing by the numbers or grid lines.

Q. And could you please take your light pen again and place an X by Column or Grid 6.

What gate is that directly across from?

A. Gate 19.

MR. GOELMAN: Your Honor, I'd ask the Court to read Factual Stipulation 14, which applies to Government's Exhibit 2047.

THE COURT: The stipulation is "Government's Exhibit No. 2047 is a record from the Armstrong Travel Agency in Las Vegas, Nevada, reflecting dates and times of travel for Joshua Nichols between Las Vegas and Kansas City on April 11 and April 17, 1995.

"America West Airlines Flight No. 134 departed from Terminal A, Gate 19 at 10:45 p.m. on April 17, 1995."

That's agreed?

MR. WOODS: Yes, your Honor, that's our stipulation.

Ronald Clutter - Direct

THE COURT: All right.

MR. GOELMAN: Thank you, your Honor.

I would now move to admit Government's Exhibit 2047.

MR. TIGAR: No objection, your Honor.

THE COURT: Received. 2047? Oh, yes. That's what

we

just read. Sorry.

BY MR. GOELMAN:

Q. Mr. Clutter, can you take a look at that travel itinerary there?

A. Yes, sir, but I can't read it as it's on the screen.

Q. Can you read that portion of it right there?

A. Yes, sir.

Q. Does that reflect that Joshua Nichols was a passenger on America --

MR. TIGAR: Your Honor, I object to the repetition.

THE COURT: Yes. We just stipulated to that.

MR. GOELMAN: Yes, your Honor.

BY MR. GOELMAN:

Q. I want to show you what's already been admitted, Government's Exhibit 1888, page 16. Do you know which pay phones -- which companies operated the pay phones at KCI back in April of 1995?

A. At A terminal it would have been either AT&T or United Sprint.

Q. Do you know if those companies allowed callers with credit

Ronald Clutter - Direct

or debit cards to make long distance phone calls from --

- ..

A. Yes.
Q. -- those pay telephones?
A. Yes, sir, we have credit card telephones.
Q. Could you turn to the entries for Monday, April 17, 1995.
Do you see that down at the bottom?
A. Yes, sir.
Q. And can you read the phone call -- the second-to-last phone
call on the page, the number of the pay phone from which the
call was made according to this exhibit?
A. Okay. It was made from KCI Airport to the Dreamland Motel.
Q. Can you just read the "from" number, please.
A. The "from" number is area code (816) 464-9693.
Q. And is that the same number as the record that you just
looked at, Mr. Clutter?
A. Yes, sir.
Q. Where did that particular call go to?
A. To the Dreamland Motel.
Q. Okay. Could you look at the very last phone call on that
page. Is that also from the same pay phone?
A. Yes, sir.
Q. And where did that phone call go to?
A. To Padilla, Lan/Leonard -- or Lana/Leonard.
Q. According to this exhibit, what time was the call made to
the Dreamland Motel in Junction City?

Ronald Clutter - Direct

A. 10:35.
Q. How long did it last?
A. 52 seconds.
Q. And how long was the call to the Padilla residence in Las
Vegas, Nevada?
A. It was 3 minutes and 5 seconds.
Q. When was that call made?
A. At 10:46.
Q. Is that one minute after the scheduled departure of Flight
134, sir?
A. Yes, sir.

MR. GOELMAN: One moment, your Honor.

THE COURT: Yes.

MR. GOELMAN: I have nothing further.

THE COURT: Mr. Tigar, do you have some questions?

CROSS-EXAMINATION

BY MR. TIGAR:

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

You were asked to look at a record -- is that
correct -- of some telephone calls just a minute ago on the
screen?

A. Yes, sir.

Q. Now, that's -- that's not your record, is it?

A. No, sir.

Ronald Clutter - Cross

Q. Now, you see earlier up on Saturday, the 15th -- can you see that?

A. Yes, sir.

Q. And there is a call from the Dreamland Motel to a number that says "Terry Nichols." Right?

A. Yes, sir.

Q. And the length of that call is zero. Correct?

A. Yes, sir.

Q. And then on the 17th, there is a call from the Dreamland to Terry Nichols, and the length of that call is 57 seconds. Do you see that, sir?

A. Yes, sir.

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

MR. GOELMAN: No questions, your Honor.

THE COURT: I take it this witness is excused?

MR. GOELMAN: Yes, your Honor.

THE COURT: Agreed?

MR. TIGAR: Yes, your Honor.

THE COURT: You're excused, sir.

And I think we'll recess at this point rather than starting another witness.

And let me just again reconfirm the schedule for this week with you so that there is no misunderstanding here.

On Thursday, there is a national holiday. We'll recess for that day; and then on Friday, we will resume at 8:45 in the morning and run to 1:00 as we have been regularly on our Fridays, so that will be our schedule. And, of course, tomorrow and Wednesday we'll work full days, according to our regular schedule.

So you're to be excused now until 8:45 tomorrow morning with the same cautions given as they are at all recesses of continuing to keep open minds, avoiding discussion of the case with all other persons, including other jurors, and being very careful about anything that you read, see, and hear to avoid anything that may relate to the case. I guess one of you at least may want to watch a football game, but I don't think that relates to the case.

So you're excused now till 8:45 tomorrow morning.

(Jury out at 5:00 p.m.)

MR. TIGAR: Your Honor, may we approach the bench?

THE COURT: Sure.

(At the bench:)

(Bench Conference 89B1 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

(In open court:)

THE COURT: All right. We've discussed some scheduling matters and matters for the Court to rule on, which I'll be doing.

We're in recess. 8:45.

(Recess at 5:08 p.m.)

INDEX

Item

Page

WITNESSES

Alvin Berry

Direct Examination by Ms. Wilkinson

Voir Dire Examination by Mr. Tigar

Direct Examination Continued by Ms. Wilkinson 10368

Voir Dire Examination by Mr. Tigar

Direct Examination Continued by Ms. Wilkinson 10370

Cross-examination by Mr. Tigar

David Kordyak

Direct Examination by Ms. Wilkinson

Cross-examination by Mr. Tigar

Redirect Examination by Ms. Wilkinson

Recross-examination by Mr. Tigar

Louis Hupp

Direct Examination by Ms. Wilkinson

Cross-examination by Mr. Tigar

(Louis Hupp)

Redirect Examination by Ms. Wilkinson

Voir Dire Examination by Mr. Tigar

Redirect Examination Continued by Ms. Wilkinson 10452

Voir Dire Examination by Mr. Tigar

Redirect Examination Continued by Ms. Wilkinson 10458

Recross-examination by Mr. Tigar

Redirect Examination by Ms. Wilkinson

Lawrence Kingry

Direct Examination by Mr. Orenstein

Cross-examination by Mr. Tigar

Floyd Carter Jr.

Direct Examination by Mr. Ryan

Cross-examination by Mr. Tigar

Ronald Clutter

Direct Examination by Mr. Goelman

Cross-examination by Mr. Tigar

PLAINTIFF'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
265C	10404	10405			
265CC	10407	10407			
265D	10408	10409			
265DD	10411	10411			
627	10384	10384			
952I	10479	10479			

PLAINTIFF'S EXHIBITS (continued)

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
952C	10503	10503			
1076	10501	10501			
1171	10483	10483			
1832					
1832	10369				
1832	10380	10380			
2004	10384	10384			
2006	10397	10398			
2007	10381	10381			

2047	10511	10511
2048	10508	10508
2101	10482	10482
2115	10457	10458
2116		
2116	10453	

DEFENDANT'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
E129	10422	10422			
E130	10422	10423			
		* * * * *			

REPORTERS' CERTIFICATE

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated at Denver, Colorado, this 24th day of November, 1997.

Paul Zuckerman

Bonnie Carpenter

"Transcripts may not be reproduced, re-printed or re-transmitted without permission from PubNETics or KWTV."