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629-9285

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P.O. Box 3563, Denver, Colorado, 80294, (303)

10358

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3 District of Oklahoma, 210 West Park Avenue, Suite 400,
Oklahoma
4 City, Oklahoma, 73102, appearing for the plaintiff.
5 LARRY MACKEY, BETH WILKINSON, GEOFFREY MEARNES,
JAMIE
6 ORENSTEIN, and AITAN GOELMAN, Special Attorneys to the
U.S.
7 Attorney General, 1961 Stout Street, Suite 1200,
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8 Colorado, 80294, appearing for the plaintiff.
9 MICHAEL TIGAR, RONALD WOODS, and JANE TIGAR,
Attorneys
10 at Law, 1120 Lincoln Street, Suite 1308, Denver,
Colorado,
11 80203, appearing for Defendant Nichols.
12 * * * * *

13

PROCEEDINGS

14

(Reconvened at 1:35 p.m.)

15

THE COURT: Be seated, please.

16

Ready?

17

MR. MACKEY: Yes, your Honor.

18

THE COURT: Okay.

19

(Jury in at 1:35 p.m.)

20

THE COURT: All right. Next, please.

21

Berry.

MR. MACKEY: United States will call Alvin

22

sworn.

THE COURT: Thank you. Please come in and be

23

(Alvin Berry affirmed.)

24

please.

THE COURTROOM DEPUTY: Would you have a seat,

25

and

Would you state your full name for the record

10359

1 spell your last name.

2

THE WITNESS: Alvin Ernest Berry, B-E-R-R-Y.

3

THE COURTROOM DEPUTY: Thank you.

4

MS. WILKINSON: Thank you.

5

DIRECT EXAMINATION

6

BY MS. WILKINSON:

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

8 A. Fine.

9 Q. Could you tell the jury where you live.

10 A. I now live in La Junta, Colorado.

11 Q. How long have you lived in La Junta?

12 A. Approximately about the last 30, 35 days.

13 Q. Did you get a new job?

14 A. New job, yes.

15 Q. Where are you working in La Junta?

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

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

18 A. Store manager.

19 Q. And had you been working for Wal-Mart prior to
moving to

20 the store in La Junta?

21 A. Yes, I had.

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

23 A. I was in Arkansas City, Kansas.

24 Q. And where is Arkansas City, Kansas?

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

10360

Alvin Berry - Direct

1 the border of Oklahoma or right off the Highway 77.

2 Q. Okay. Let me show you Government's Exhibit 1999
that's

3 already in evidence. Do you see that black pen up
there that's

4 in front of you attached to a wire?

5 A. Correct.

6 Q. Could you show the jury on this map, circle where
Arkansas

7 City, Kansas, is.

8 You've got to go down underneath and actually
write on

9 the screen there.

10 There you go. Okay. Is that that little dot
right

11 next door where you made your mark?

12 A. Correct.

13 Q. And can you tell the jury how far it is from
Arkansas City,

14 Kansas, to Herington, Kansas?

15 A. Approximately about 170, 180 miles.

16 Q. How long would it take to drive from Arkansas City
to

17 Herington, assuming you're following the speed limits?

18 A. Approximately about three hours.

19 Q. Now, when did you first start working at the Wal-
Mart in

20 Arkansas City, Kansas?

21 A. I was there in the middle of April.

22 Q. Of what year?

23 A. Of '95.

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

25 A. Correct.

10361

Alvin Berry - Direct

Arkansas 1 Q. What was your job or your title at Wal-Mart in
2 City?

3 A. I was store manager.

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

5 A. Correct.

Arkansas City 6 Q. What's the difference between your store in
7 and your store in La Junta?

8 A. About another 30,000 square feet.

9 Q. A lot more merchandise?

10 A. A lot more merchandise.

Mart, was 11 Q. Now, as the store manager of Arkansas City Wal-

the 12 one of your responsibilities to maintain records for
13 Wal-Mart?

14 A. Yes. That's correct.

15 Q. Did you maintain records of customer receipts?

16 A. Yes.

17 Q. Now, at some point, were you contacted by the FBI

and shown

18 a copy of an Arkansas City Wal-Mart receipt?

19 A. Yes, I was.

20 Q. Let me show you Government's Exhibit 265B that's
already in

21 evidence. Do you recognize that?

22 A. Yes.

23 Q. Could you take your pen that you have up there and
click

24 the side and that'll erase the marks that you made on
there.

25 Now, do you recognize this receipt?

10362

Alvin Berry - Direct

1 A. Yes, I do.

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

3 A. Yes, it is.

4 Q. Okay. Let's start at the top, if we could. Now,
right

5 there, it says "Wal-Mart"; is that right?

6 A. Correct.

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

8 A. Correct.

9 Q. What does that indicate?

10 A. That is the individual store number --

11 Q. Which store --

12 A. -- of the Arkansas City Wal-Mart store.
13 Q. Okay. And the next line says what?
14 A. Arkansas City, Kansas, has the store No. 0978. OP
is the
15 operator. 202. T is terminal. Terminal No. 7. And
16 transaction 07269.
17 Q. When you say "operator," what do you mean?
18 A. That was the actual assigned cashier. Each cashier
has an
19 assigned number.
20 Q. So you can tell from looking at this receipt who
the person
21 was who actually checked the customer out that day?
22 A. That's correct.
23 Q. Okay. And the next number you said indicates which
24 register they used?
25 A. Correct.

10363

Alvin Berry - Direct

1 Q. Is that right? Now, can you read for the jury the
next few
2 entries of what this customer purchased.
3 A. Pennzoil 10W30, Pennzoil 30 weight, Pennzoil 30
weight,
4 Pennzoil 30 weight once again, and an oil filter.
5 Q. There is some writing as you can see on -- around

the oil

filter? 6 filter, but can you tell the jury the price of this oil

7 Can you read those numbers?

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

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

10 A. Yes, it is.

if you 11 Q. Can you look in your file in front of you and see

another copy 12 have a copy of Government Exhibit 265B. That is

13 of the receipt.

14 A. Yes.

oil filter 15 Q. Is it any better? Can you tell the price of the

16 there, or is it still hard to read?

234. It 17 A. It's still hard to read, but it's -- it looks like

18 ends on a four, and the dollar amount is \$2.

that 19 Q. Now, on the next line here, you have a subtotal; is

20 right?

21 A. Correct.

22 Q. Sales tax?

23 A. Correct.

24 Q. The total?

25 A. Correct.

Alvin Berry - Direct

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

2 A. Cash tender.

3 Q. What does that mean?

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

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

8 A. Correct.

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

10 A. Correct.

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

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

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

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

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

19 A. Correct.

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

21 A. It's 5:42:01.

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

23 A. Correct.

24 Q. Now, do you maintain these times and dates at your
local
computer

25 Wal-Mart in Arkansas City or are they maintained by a

10365

Alvin Berry - Direct

1 system?

2 A. They are maintained by a computer system.

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

5 A. Yes, we do.

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

8 A. They are accurate.

9 Q. Okay. Now, let's go back to the full receipt, if
we could.

10 See up at the very top of the receipt that -- at the --
above

11 those initials there, do you see that, the dark corner?

12 A. Correct.

13 Q. Have you looked at the original Government's
Exhibit 265

14 before coming to court today?

15 A. Yes.

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

17 A. Yes, I do.

18 Q. Could you take it out of the plastic sheet, please.

I

19 think, Mr. Berry, you're looking at the copy. Do you
have the

20 original, which is the darkened copy with the sticker
on it?

21 A. 265A?

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

23 A. Yes, it is.

24 Q. And can you tell -- hold that up for the jury,
could you,

25 and show them. What color is the sticker?

10366

Alvin Berry - Direct

1 A. Pink.

2 Q. Is it at the top of the receipt?

3 A. Yes, it is.

4 Q. And have you reviewed that before coming to court
to

5 determine the markings on that sticker?

6 A. Yes.

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

9 A. Yes, I do.

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

12 A. Yes, it does.

13 Q. And would that assist you in explaining to the jury
what

14 the markings are on the sticker on the April 13 Wal-
Mart

15 receipt?

16 A. Yes.

17 MS. WILKINSON: Your Honor, we'd offer
Government's

18 Exhibit 1832 for demonstrative purposes.

19 MR. TIGAR: May I inquire, your Honor?

20 THE COURT: Yes.

21 VOIR DIRE EXAMINATION

22 BY MR. TIGAR:

23 Q. That -- the sticker parts -- hello. My name is
Michael

24 Tigar. I'm one of the lawyers appointed to help Terry
Nichols.

25 Excuse me.

1 A. I thought.

2 Q. The -- that sticker that you have up there, that is
not a

3 record from your store, is it, sir?

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

5 Q. The sticker itself. The -- the little -- the
register

6 receipt we've just talked through with the prosecutor,
that is

7 from your store; correct?

8 A. Correct.

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

10 right?

11 A. Correct.

12 Q. All right. And do you know of your own personal
knowledge

13 what other Wal-Mart that's from?

14 A. From looking at the sticker, it shows that it's
from Store

15 No. 35.

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

17 A. Approximately 180 -- about 180 miles.

18 MR. TIGAR: We object to this, your Honor.

19 his record.

20 THE COURT: I don't understand how the witness
can

21 testify to it.

22 MS. WILKINSON: I believe, your Honor, Wal-
Mart uses
23 these store designator numbers, and he knows the Wal-
Mart
24 policy for putting this sticker on.
25 THE COURT: I haven't heard any of that.

10368

Alvin Berry - Voir Dire

1 MS. WILKINSON: Okay.
2 DIRECT EXAMINATION CONTINUED
3 BY MS. WILKINSON:
4 Q. Mr. Berry, are you familiar with the procedures
that
5 Wal-Mart uses when customers bring merchandise back for
return?
6 A. Yes, I am.
7 Q. And does Wal-Mart permit customers to return
merchandise
8 they purchased at one store -- permit them to return it
to
9 another store?
10 A. Yes, we do.
11 Q. Does it matter which store you go to to return the
12 merchandise?
13 A. Doesn't matter at all.
14 Q. What do you need to return the merchandise?

15 A. All you need is the actual receipt.

16 Q. Now, if a customer comes to your store, any Wal-
Mart store

17 to return the merchandise and they enter the door,
what's the

18 first thing that happens to them?

19 A. There is a people greeter there that has access to
these

20 pink stickers, and they actually put the pink sticker
on the

21 merchandise.

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

23 A. Person.

24 Q. And that person, what do they do?

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

10369

Alvin Berry - Direct

1 holds these pink stickers that has the time and the
dates, the

2 store number, identical to what's here; and they place
that on

3 the merchandise as they enter the store.

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

5 A. Yes, it is.

6 Q. Why would someone -- or why would you as a Wal-Mart

store 7 employee mark a receipt as the customer is entering the

8 for return?

came 9 A. Well, that lets us know that the purchase actually

somewhere 10 through the front of the store and didn't surface

11 from inside the store.

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

13 A. Correct.

comes into 14 Q. And do you use those stickers every time someone

15 a store to make a return or an exchange?

16 A. Yes, we do.

would 17 MS. WILKINSON: Your Honor, based on that, we

18 offer 1832 as a demonstrative exhibit.

19 THE COURT: Yes.

want to be 20 MR. TIGAR: May I inquire further? I don't

21 cranky.

22 THE COURT: Yes. Of course.

23 MR. TIGAR: Thank you.

24 VOIR DIRE EXAMINATION

25 BY MR. TIGAR:

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

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

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

11 A. Yes, right here.

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

13 A. No, it wasn't.

14 Q. And you have no personal knowledge of the
transaction that

15 involved the placing of the initials and the putting on
of the
16 sticker; is that right?

17 A. That's correct.

18 MR. TIGAR: We object, your Honor.

19 THE COURT: Sustained.

20 DIRECT EXAMINATION CONTINUED

21 BY MS. WILKINSON:

Mart

22 Q. Mr. Berry, do you know the store number or the Wal-

23 store number -- store that belongs to Store 35?

24 A. Yes, I do.

25 Q. What store is that?

10371

Alvin Berry - Direct

1 A. It's in Manhattan, Kansas.

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

3 A. North.

in

4 Q. Now, I want to show you an exhibit that's already

you can

5 evidence, Government's Exhibit 1988, on page 15. If

you see

6 look on your computer screen. 1888. Excuse me. Do

7 that?

8 A. Yes.

that

9 Q. And do you see that phone call that's highlighted

on

10 shows a phone call from Mr. Nichols' residence at 4:33

11 April 13?

12 A. Yes.

13 Q. To Quarton on that same date?

14 A. Yes.

generated 15 Q. You told us, I believe, that the receipt that was
is that 16 at your store in Arkansas was generated at 5:42 p.m.;
17 right?

18 A. That's correct.

at 19 Q. If someone were on the phone in Herington, Kansas,
Arkansas 20 4:33 p.m., could they have driven to your Wal-Mart in
21 City and made that purchase at 5:42 p.m.?

22 A. No.

23 Q. Pardon?

24 A. No.

your 25 MS. WILKINSON: Okay. No further questions,

10372

Alvin Berry - Direct

1 Honor.

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

3 MR. TIGAR: One or two.

4 CROSS-EXAMINATION

5 BY MR. TIGAR:

265B. 6 Q. I'd like to put up on here, sir, Government Exhibit

7 That's the copy of the receipt. You recognize that?

8 A. Yes, I do.

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

11 A. Correct.

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

13 A. That's in Bentonville, Arkansas.

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

16 A. No, I don't.

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

19 A. Yes, we do.

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

22 A. That's correct.

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

10373

Alvin Berry - Cross

1 A. Yes, we do.

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

6 A. When you scan it.

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

9 A. That's correct.

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

14 A. That's correct.

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

17 A. That's correct.

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

21 A. Correct.
22 MR. TIGAR: Thank you, very much. I have no
further
23 questions.
24 MS. WILKINSON: No further questions, your
Honor.
25 This witness is excused.

10374

1 THE COURT: Agree to excuse the witness?
2 MR. TIGAR: Yes, your Honor.
3 THE COURT: You may step down. You're
excused.
4 Next, please.
5 MR. MACKEY: United States calls David
Kordyak.
6 (David Kordyak affirmed.)
7 THE COURTROOM DEPUTY: Would you have a seat,
please.
8 Would you state your full name for the record
and
9 spell your last name.
10 THE WITNESS: David J. Kordyak, spelled K-O-R-
D-Y-A-K.
11 THE COURTROOM DEPUTY: Thank you.
12 MS. WILKINSON: We just need a moment, your
Honor, to

13 get these exhibits back and give them to Mr. Kordyak.

14 THE COURT: All right.

15 DIRECT EXAMINATION

16 BY MS. WILKINSON:

17 Q. Mr. Kordyak, where do you live?

18 A. I live at Manhattan, Kansas.

19 Q. How long have you lived in Manhattan, Kansas?

20 A. For four years.

21 Q. Are you married?

22 A. Yes, ma'am.

23 Q. Do you have children?

24 A. Yes, ma'am.

25 Q. And what do you do for work in Manhattan?

10375

David Kordyak – Direct

1 A. I work at Wal-Mart.

2 Q. How long have you worked at Wal-Mart?

3 A. About 3 1/2 years.

4 Q. Where is your store located?

5 A. It's located at 628 Tuttle Creek Boulevard,
Manhattan.

6 Q. Are there any other Wal-Marts in Manhattan, Kansas?

7 A. No, ma'am.

8 Q. What's the closest Wal-Mart to you?

9 A. Junction City.

10 Q. How far is Junction City from the Wal-Mart in
Manhattan,

11 Kansas?

12 A. 30 miles, about.

13 Q. Now, how long have you been there at the Wal-Mart
in

14 Manhattan?

15 A. About 3 1/2 years.

16 Q. What do you do for them there?

17 A. I'm a PI specialist. Sales floor clerk.

18 Q. Do you work in a certain section?

19 A. Yes, ma'am.

20 Q. Which section do you work in?

21 A. I work in the automotive section.

22 Q. Were you working in the automotive section back in
April of

23 1995?

24 A. Yes, ma'am, I was.

25 Q. And based on your work in the automotive section,
are you

10376

David Kordyak - Direct

1 familiar with the oil filters that are sold by Wal-
Mart?

2 A. Yes, ma'am, I am.

sold by 3 Q. And are you familiar with the oil filters that were

4 Wal-Mart back in April of 1995?

5 A. Yes, ma'am, I am.

6 Q. Could we talk for a moment about the return
procedures that

7 you use in Wal-Mart in Manhattan. Is anyone allowed to
return

8 Wal-Mart items to any store?

9 A. Yes, ma'am.

10 Q. Does it matter in which store you purchased the
item?

11 A. No, ma'am, it doesn't.

12 Q. What do you need to return an item to the Manhattan
13 Wal-Mart?

14 A. All you need is the item and the receipt.

15 Q. And if someone comes in the door with an item for a
return,

16 what do you do?

17 A. They are going to come in the door, the door
greeter is

18 going to --excuse me -- is going to greet them. At
that

19 point, he'll put a pink sticker on the -- on the item
or on the

20 receipt.

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

22 entering?

23 A. Yes, ma'am, it does.

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

25 A. My store code is 0035.

10377

David Kordyak – Direct

1 Q. And that indicates the Manhattan Wal-Mart?

2 A. Yes, ma'am, it does.

3 Q. What else would be on that sticker?

4 A. The date.

5 Q. And that would be the date the customer is actually

6 entering the store with the item for return?

7 A. Yes, ma'am.

8 Q. Once the customer receives that sticker on his
receipt, can

9 he come back to your section, the automotive section to
return

10 an item?

11 A. Yes, ma'am, he can.

12 Q. And what would you do when that customer approached
you to

13 return an item?

14 A. At that point, I'll -- I'll ask the customer if
he's got a

15 receipt, if they will show me the receipt. I'll
inspect the

16 item and make sure that the item is the -- that the
item he

17 wants to return is on the receipt by comparing the UPC
codes.

18 At that point, I'll circle the -- the proper UPC code
and item,

19 and I'll put my initials at the top and send them --
and I'll

20 keep the item and send them back up front to the
service desk

21 where they can get their refund.

22 Q. Tell us what a UPC code is.

23 A. The UPC code is the -- is the number on the actual
--

24 actual piece of -- of whatever they are bringing back
like on

25 an oil filter, there's an actual number on that that
identifies

10378

David Kordyak - Direct

1 that specific -- that specific -- specific item in the
system.

2 And it can -- it'll only be for that specific item.

3 Q. Well, if we use the oil filter for an example,
would you

4 have one number for a certain size oil filter?

5 A. Yes, ma'am.

6 Q. And then would you have another UPC number for a
different

7 size oil filter?

8 A. Yes, ma'am, you would.

number, 9 Q. So if you read the receipt and you read the UPC
10 could you tell what item had been returned to you?
11 A. Yes, ma'am.
it, what 12 Q. Now, once you circled that receipt and initialed
13 do you do with the item the customer is trying to
return?
14 A. I will keep the item back there in my area.
15 Q. And what do you do with the receipt?
16 A. I give it back to the customer.
17 Q. You don't give them their cash at that time?
18 A. No, ma'am. I'm not allowed to do refunds back in
my
19 register.
which is 20 Q. Now, let me show you Government's Exhibit 265B,
21 already in evidence. Do you recognize that receipt?
22 A. Yes, ma'am, I do.
23 Q. Do you recognize the handwriting on there?
24 A. Yes, ma'am, I do.
25 Q. What handwriting do you recognize?

10379

David Kordyak – Direct

1 A. The handwriting here at the top.
2 Q. Is that your handwriting?

3 A. Yes, ma'am, it is.

4 Q. Are those supposed to be your initials?

5 A. Yes, ma'am, it is.

6 Q. What are your initials?

7 A. DK.

8 Q. Okay. And do you recognize any other handwriting
on there?

9 A. Yes, ma'am, I do.

10 Q. Could you circle that for us.

11 Now, sir, could you go down to the bottom and
circle

12 the date of this purchase, the original purchase.

13 Is that April 13, 1995?

14 A. Yes, ma'am, it is.

15 Q. Before coming to court today, did you examine this
receipt?

16 A. Yes, ma'am, I did.

17 Q. And did you examine the sticker that's at the top?

18 A. Yes, ma'am, I did.

19 Q. And did you determine that's a record from your
store --

20 your Wal-Mart store in Manhattan, Kansas?

21 A. Yes, ma'am, I did.

22 Q. How did you determine that?

23 A. By looking at the receipt, it shows that it has my
store

24 number on it above the date of the receipt.

yet, 25 Q. All right. Let me show you what's not in evidence

10380

David Kordyak – Direct

1 Government's Exhibit 1832. Do you recognize that?

2 A. Yes, ma'am, I do.

3 Q. And does that show the sticker that you've just
referred to

4 unfolded with all the information present?

5 A. Yes, ma'am, it does.

6 MS. WILKINSON: Your Honor, we'd offer
Government's

7 Exhibit 1832 for demonstrative purposes.

8 MR. TIGAR: No objection, your Honor.

9 THE COURT: All right. It's received for
10 demonstrative purposes and may be so used.

11 BY MS. WILKINSON:

12 Q. Sir, could you click the side of your pen to erase
those

13 marks that you had on there previously.

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

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

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

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

19 A. That indicates the date that the receipt was
brought in
20 through the front doors.
21 Q. Okay. Now, does this indicate with your initials
that you
22 received this item, the oil filter that you circled --
circled
23 for return on April 15, 1995?
24 A. Yes, ma'am, it does.
25 Q. Do you have any recollection as to who it was who
actually

10381

David Kordyak - Direct

1 presented the oil filter to you that day?
2 A. No, ma'am, I do not.
3 Q. Now, let's take a look, if we could zoom back in on
the
4 receipt there. Do you see -- that's the oil filter
that you
5 circled; is that right?
6 A. Yes, ma'am.
7 Q. Could you erase your pen markings again.
8 A. Yes, ma'am.
9 Q. And could you underline the UPC code.
10 And read it into the record for the jury,
please.
11 A. UPC code is 910038089.

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

14 A. Yes, ma'am, I have.

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

17 MR. TIGAR: No objection, your Honor.

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

20 MS. WILKINSON: Thank you.

21 BY MS. WILKINSON:

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

24 A. This is a Fram PH3387A oil filter.

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

10382

David Kordyak - Direct

1 in your Manhattan Wal-Mart in April of 1995?

2 A. Yes, ma'am, I did.

3 Q. Was that oil filter available in other Wal-Marts in
1995?

4 A. Yes, ma'am, it was.

5 Q. Okay. And can you compare the UPC number on the
bottom of

6 Government's Exhibit 2007 with the UPC number on this receipt.

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

8 Q. So would the exhibit you have there, Government's Exhibit

9 2007, be the exact type of oil filter that was returned to you

10 on April 15, 1995?

11 A. Yes, ma'am, it would.

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

13 A. This is a Fram oil filter PH3387A.

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

15 the oil filter?

16 A. PH3387A just -- it demonstrates -- it's the way that Fram

17 shows which vehicle it fits. It characterizes it in that way.

18 Q. Before coming to court today, did you review the -- the

19 Allied Signal -- excuse me -- Allied Signal Fram filter catalog

20 for 1995?

21 A. Yes, ma'am, I did.

22 Q. And did you have that available in April of 1995 in the

23 automotive section?

24 A. Yes, ma'am, I did.

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

10383

David Kordyak - Direct

1 certain vehicles?

2 A. Yes, ma'am, I did.

3 Q. Okay. Let me show you what's already in evidence,
4 Government's Exhibit 267, which is an application for
title by

5 Mr. Timothy McVeigh. Do you see that?

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

7 Honor.

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

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

13 THE COURT: Yes.

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

16 Okay.

17 MS. WILKINSON: We're set, your Honor. We're
going to
18 offer two exhibits. We've done the trade. We're going
to

19 offer 627, and we're going to also offer the Fram
catalog.

20 BY MS. WILKINSON:

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

22 THE COURT: Wait a minute. I thought you said
267.

23 Now you're saying a different number.

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

25 apologize.

10384

David Kordyak - Direct

-- and 1 MR. TIGAR: They will introduce that and the

2 also this Fram catalog, which I don't know if it has a
number

3 yet.

4 MS. WILKINSON: It does.

5 BY MS. WILKINSON:

6 Q. Mr. Kordyak, could you pull out the Fram catalog.
Do you

7 see the Government's exhibit sticker there?

8 A. Yes, ma'am.

9 Q. Is it 2004?

10 A. Yes, ma'am, it is.

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

12 your Honor.

13 MR. TIGAR: No objection, your Honor.

14 THE COURT: They are received.

15 BY MS. WILKINSON:

16 Q. Now, sir, let's take a look at Mr. McVeigh's
certification

17 for title. Have you reviewed this before coming to
court?

18 A. Yes, ma'am, I have.

19 Q. And have you compared it to the Fram catalog that's
in

20 front of you?

21 A. Yes, ma'am, I have.

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

23 J2000?

24 A. Yes, ma'am, it would.

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

10385

David Kordyak – Direct

1 oil filter to see if it would fit other vehicles?

2 A. Yes, ma'am, I have.

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

4 already in evidence.

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

6 highlighted portions?

7 A. Yes, ma'am.

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

9 A. Yes, ma'am.

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

11 A. Yes, ma'am.

12 Q. Now, would the oil filter you have in front of you,
which

13 is a PH3387A -- would that fit an '84 GMC?

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

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

16 truck?

17 A. A PH13 Fram oil filter.

18 Q. Now, did you also determine whether this PH3387A,
the oil

19 filter you have in front of you, would have fit Mr.
McVeigh's

20 Mercury Marquis?

21 A. I determined it would not fit that.

22 Q. So the only one it would fit would be the Pontiac
J2000

23 station wagon; is that right?

24 A. That is correct.

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

10386

David Kordyak – Direct

1 265B. And then look at the enlargement of the sticker
there,

2 Government's Exhibit 1832. Do you see that?

3 A. Yes, ma'am.

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

5 A. Yes, ma'am, it does.

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

7 it?

8 A. Yes, ma'am.

9 Q. Did you indicate anywhere on there what time the
customer

10 returned that to you?

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

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

13 the time?

14 A. No, ma'am.

15 Q. Now, let me show you Government's Exhibit 2000,
which is

16 recovered from Mr. Nichols' house. Do you recognize
that?

17 A. Yes, ma'am.

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

19 A. Yes, ma'am, it is.

20 Q. Okay. And let's take a look, if we could, down
there at

21 the bottom. Do you see that?

22 A. Yes, ma'am, I do.

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

24 A. It was made April 15 of 1995.

25 Q. And what time was this purchase made?

10387

David Kordyak - Direct

1 A. At 2:40 in the afternoon.

2 Q. On April 15?

3 A. Yes, ma'am.

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

5 1995?

6 A. Yes, ma'am, I was.

7 MS. WILKINSON: No further questions, your
Honor.

8 THE COURT: Mr. Tigar?

9 MR. TIGAR: Yes, your Honor.

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

11 THE COURT: Yes.

12 MR. TIGAR: Thanks.

13 CROSS-EXAMINATION

14 BY MR. TIGAR:

15 Q. Hi.

16 A. How are you doing?

17 Q. May I borrow your Fram catalog there?

18 A. Yes, sir.

19 Q. Thank you.

I'm 20 Hello, Mr. Kordyak. My name is Michael Tigar.

this 21 one of the lawyers appointed to help Terry Nichols in

22 case.

counter 23 How long have you worked at the automotive

24 there --

25 A. 3 1/2 years --

10388

David Kordyak - Cross

1 Q. -- at Wal-Mart?

2 A. -- approximately.

3 Q. 3 1/2 years?

4 A. Yeah.

numbering system 5 Q. So you're familiar with how the oil filter

6 works; is that correct?

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

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

9 A. Yes, sir.

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

11 filters.

12 A. Okay.

13 Q. Okay. All right. Now, if I came up to your store
in April

14 of 1995 and said, "Hello, there. I have a -- a GMC
Jimmy

15 pickup with a 6-cylinder 2.8-liter engine," what kind
of oil

16 filter would you sell me?

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

18 Q. Right. So if I asked -- if I came in and said, "I
have a

19 1984 GMC Jimmy pickup truck with a 2.8-liter engine,"
what kind

20 of oil filter would you sell me?

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

22 Q. Yes, sir. It's a -- double-check what kind of car
I'm

23 telling you. It's a 6-cylinder, 2.8-liter.

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

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

David Kordyak – Cross

PH3535 oil

1 A. Okay. A two-wheel-drive, I would say PH3980 or
2 filter.

3 Q. All right. Now, how about a -- let's see. How
about the

4 4-cylinder, 2.0-liter engine, 1984 S15 Jimmy?

5 A. I would sell you a PH8387A, sir.

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

7 A. With a 2.0 --

8 Q. With 2.0-liter?

9 A. With 2.0-liter.

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

11 A. Yes, sir.

list of

12 Q. Now, in your oil filter book there, do you have a
take a

13 the number of different kinds of models of cars that
14 3387A, PH3387A?

15 A. I don't have a number that tells me how many
different

16 vehicles it fits, no.

17 Q. Okay. Well, let's take another one. Suppose --
how about

18 a -- oh, an Isuzu pickup, 1991, 6, 3.1-liter engine.
What kind

19 of oil filter would that take?

20 A. PH3387A, sir.

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

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

10390

David Kordyak - Cross

1 A. You said 1986; correct?
2 Q. Lost my place. Just a minute here.
3 A. I'm sorry.
4 Q. Don't worry -- no. It's -- it's my fault. J
series.
5 1986, yes, sir. The 4-cylinder.
6 A. It would be PH3387A.
7 Q. Same one you have there; right?
8 A. Yes, sir.
9 Q. I'll ask you one more here. How about a Wagoneer
10 6-cylinder, 2.8-liter, 1984 to '86?
11 A. It would be a PH3387A, also.
12 Q. So when you told the prosecutor that the only
vehicle that
13 this filter would fit, what you meant was it was the
only one
14 of the three that the prosecutor mentioned; correct?

15 A. Yes, sir.

16 Q. In fact, the way Fram makes those oil filters is
that they

17 make them and any given model of filter might fit a
whole bunch

18 of cars; right?

19 A. Yes, sir.

20 Q. And with that book that's now in evidence, people
could go

21 through there and look and see all the different
products that

22 that would fit; correct?

23 A. Yes, sir.

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

25 A. Yes, sir.

10391

David Kordyak – Cross

1 Q. But just in our review, we discovered that it fit
an Isuzu

2 product, GMC product, and a Jeep product -- correct --

3 American Motors; right?

4 A. Yes, sir.

5 Q. Three different manufacturers?

6 A. Yes, sir.

7 Q. Okay. Now, it is clear, however, that for the GMC

1984

different 8 pickup with a 6.2-liter diesel engine, that takes a
9 filter; correct?
10 A. Yes, sir, it does.
to 11 Q. And that's because if the customer -- customer has
12 specify when they come in whether their engine in their
vehicle 13 is gasoline or diesel; right?
14 A. Yes, sir.
the oil 15 Q. And that's -- is that because the -- a diesel --
16 filtration system in a diesel has slightly different
17 characteristics than in a gasoline-powered automobile?
18 A. Yes, sir, it does.
and so 19 Q. In fact, you've got to swap out the oil more often
20 on?
21 A. Uh-huh.
22 Q. That's because diesel -- oil in a diesel gets dirty
23 quicker?
24 A. Yes, sir.
Exhibit 25 Q. Now, you looked at this receipt here, Government

10392

David Kordyak - Cross

1 1832, for demonstrative purposes. You see it says

0035.

2 That's your store; right?

3 A. Yes, sir.

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

5 A. Yes, sir.

6 Q. Okay. Now, when I come in your store with a
product that I

7 want to return, I -- I see the greeter in front; right?

8 A. Yes, sir.

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

10 A. Yes, sir.

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

12 A. Yes, sir, it does.

13 Q. And that way, when you have merchandise that you
bring into

14 the store that's previously purchased, you -- you want
to get

15 it labeled so that you're not -- somebody doesn't think
you

16 took it and didn't pay for it; right?

17 A. Yes, sir.

18 Q. Okay. Now, that little gun, how do those labels
get

19 printed? That is -- have you ever worked one of those
little

20 guns?

21 A. Yes, sir.

22 Q. Okay. And -- is it right that the gun is set so

that the

23 double-0 35 is on there; right?

24 A. Yes, sir.

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

10393

David Kordyak - Cross

and 1 A. It's set by a -- it's got a knob that slides back

with the 2 forth, and you can set it and it'll -- it'll come up

you 3 date. You set the month and the date and the year, and

4 push it all the way back and it's set.

5 Q. It's set; right?

6 A. It's set.

store? 7 Q. And have you -- have you been a greeter at your

8 A. No, sir, I haven't.

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

10 A. I have operated the gun, yes.

instructions on 11 Q. Okay. Now, when you operate it, do you get

12 how to check that date?

how to 13 A. You are -- you are taught at time of hire how to --

we 14 operate the -- the gun when you're hired. We have --

15 have -- we have people that teach you how to do this.

16 Q. Teach you how to do it. And this is -- is it like
a

17 little -- the gun that you see people with in the
stores

18 putting prices on things? Is it like that?

19 A. Yes, sir.

20 Q. Little sticker comes out and -- is it the case that
-- that

21 the -- that there's some tape in the gun that's blank
and then

22 every time you push the trigger -- if I could get this
up here.

23 MR. TIGAR: Thank you, Ms. Hasfjord.

24 BY MR. TIGAR:

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

10394

David Kordyak - Cross

1 the 4-15-95?

2 A. Yes, sir.

3 Q. Now, you didn't personally handle the gun that day
and

4 stick the sticker; correct?

5 A. No, sir, I didn't.

6 Q. Okay. So of your own knowledge, you don't know
whether the

7 gun was set for the right time, not set for the right

time, or

8 whatever; right?

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

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

11 A. Yes, sir.

12 Q. I'm not criticizing your employees, but that's just
what

13 the state of records is.

14 Now, you said that when the customer -- when a
person

15 comes in, they -- they bring the -- the item to you;
correct?

16 And they -- whoever -- somebody brought this ticket and
that --

17 and an oil filter that looked like that -- and gave it
to you;

18 correct?

19 A. Yes, sir.

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

21 A. No, sir, I don't.

22 Q. All right. A long time ago?

23 A. Yes, sir.

24 Q. You have a lot of customers; right?

25 A. Yes, sir.

10395

David Kordyak - Cross

1 Q. That's the whole idea of having a store?
2 A. Yes, sir.
3 Q. Okay. Now, the -- when a person does that, you
check to
4 see that the item they're bringing matches the receipt,
and you
5 check to see that it's got a sticker on it; correct?
6 A. Yes, sir.
7 Q. And your practice would be then to take that
sticker off
8 and to stick it onto the -- the receipt; correct? Or
not? You
9 tell me how it works.
10 A. No. Because you don't -- most generally, they are
going to
11 stick -- the door greeter is going to stick it on the
sticker
12 (sic) and on the -- and on the item; and then when we
take it
13 off, we're -- we'll -- when we pull -- when we take it
apart to
14 examine it, to determine whether or not they are the
same, we
15 fold it over, and then we send it back up with them
that way.
16 Q. Okay. So -- let me be clear. There's only one
sticker
17 involved; correct?
18 A. Yes, sir.
19 Q. That's the one you get at the door?
20 A. Yes, sir.

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

22 A. It's attached to the -- to the item which is attached --

23 which the receipt -- well, the receipt which is attached to the

24 item. I'm sorry.

25 Q. So at the front of the store, the person would see the

10396

David Kordyak - Cross

1 greeter, and the greeter would just stick the receipt right

2 onto that filter box with the little sticker; correct?

3 A. Yes, sir.

4 Q. Okay. And then you fold it over?

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

6 Q. Now, once you get this receipt and that you've initialed it

7 and put the sticker on it, that's just like cash; correct?

8 A. Say that one more time, please.

9 Q. Well, if I have this receipt with your initials on it and

10 the sticker --

11 A. Uh-huh.

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

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

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

17 A. Yes.

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

20 A. Yes.

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

23 A. Yes.

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

10397

David Kordyak - Cross

1 A. Yes, sir, they do.

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

5 A. Yes.

I don't 6 MR. TIGAR: Thank you very much, Mr. Kordyak.
7 have any further questions of you. The prosecutor may.

8 THE WITNESS: Thank you.

9 MR. TIGAR: Thank you, your Honor.

10 THE COURT: Do you have any follow-up?

11 MS. WILKINSON: Yes, your Honor.

12 REDIRECT EXAMINATION

13 BY MS. WILKINSON:

14 Q. Sir, you were asked about several different GMC
vehicles on

15 cross-examination. I want to go back to Government's
Exhibit

16 1857, page 2, please.

17 And does that indicate that this is describing
a 1984

18 GMC half-ton diesel?

19 A. Yes, ma'am.

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

21 A. A PH13 Fram oil filter.

22 MS. WILKINSON: Your Honor, we'd offer
Government's

23 Exhibit 2006 for demonstrative purposes.

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

David Kordyak – Redirect

1 THE COURT: All right. Received for that.

2 BY MS. WILKINSON:

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

5 A. Yes, ma'am.

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

8 A. Yes, ma'am.

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

11 A. This one?

12 Q. Yes.

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

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

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

18 Q. Now, let's take a look at Government's Exhibit
2000. Do

19 you see that? This is the receipt from Mr. Nichols'
house.

20 A. Yes, ma'am.

any 21 Q. And can you review that and see if on that there's

22 purchase of an oil filter.

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

24 Q. So according to this Wal-Mart -- Manhattan Wal-Mart

25 receipt, this customer did not purchase a oil filter on

10399

David Kordyak - Redirect

1 April 15, 1995; is that right?

2 A. That's correct.

3 Q. Now, you told us that you worked on April 15, 1995,
back in

4 the automotive section; right?

5 A. Yes, ma'am.

6 Q. And do you know whether you handled the sticker
that's on

7 the top of Government's Exhibit 265B, or whether that
was

8 already on the receipt when you received it from the
customer

9 when you initialed it?

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

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

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

13 Q. But you do know that you received an oil filter on
that

14 day; is that right?

15 A. Yes, ma'am.

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

17 2004?

18 A. Yes, ma'am.

19 MS. WILKINSON: No other questions, your
Honor.

20 THE COURT: Mr. Tigar.

21 RE-CROSS-EXAMINATION

22 BY MR. TIGAR:

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

24 receipt, if I may.

25 So this receipt shows that your customer was
in the

10400

David Kordyak - Recross

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

2 A. Yes, sir.

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

4 A. Yes, sir. It does.

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

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

7 Q. Seven days a week?

8 A. Seven days a week.

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

11 A. Excuse me?

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

14 A. No, sir.

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

18 A. Yes, sir.

19 Q. All right. Including a sheet set?

20 A. Yes, sir.

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

Honor.
23 MS. WILKINSON: This witness is excused, your
24 THE COURT: Agreed to excuse the witness?
25 MR. TIGAR: Yes, your Honor.

1 THE COURT: Excuse?

2 You may step down. You're excused.

3 THE WITNESS: Thank you.

4 THE COURT: Next, please.

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

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

9 (Louis Hupp was recalled to the stand.)

10 DIRECT EXAMINATION

11 BY MS. WILKINSON:

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

14 A. Yes, I was.

15 Q. You testified about fingerprint examinations?

16 A. That is correct.

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

21 A. Yes, I do.

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

23 A. When I arrived in -- in Herington, Kansas, that

afternoon

24 to -- or that morning to process this motel room, I was
25 informed that an individual had been moved either the
night

10402

Louis Hupp - Direct

1 before or that morning from that room so that there had
been

2 somebody else in that room since Mr. McVeigh had left.

3 Q. What date did you arrive?

4 A. The 21st.

5 Q. Okay. And did you know that Mr. McVeigh had
checked out on

6 April 18th, 1995?

7 A. I knew he had checked out. I've come to realize
since then

8 it was the 18th, yes.

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

11 when he was there?

12 A. Not when he was there, no.

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

15 A. Yes, I have.

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

17 notes?

18 A. Yes, I did.

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

21 A. Yes.

22 Q. First, sir, I want to ask you about an exhibit
that's not

23 yet in evidence. It's Government's Exhibit 26. Did
you

24 examine page 47 of that?

25 A. Yes, I did.

10403

Louis Hupp - Direct

1 Q. Did you find any fingerprints?

2 A. Yes.

3 Q. And how many fingerprints did you find?

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

6 Q. Whose prints were they?

7 A. Mr. Terry Nichols.

8 Q. Now, let's turn to Government's Exhibit 265. And
for

9 purposes of exhibiting it to the jury, I'm going to
show them

10 265B. Are you familiar with this exhibit?

11 A. Yes, I am.

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

13 A. Yes, I did.

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

15 of value?

16 A. Yes.

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

18 document?

19 A. There were five latent prints which were suitable
for

20 identification purposes developed on this particular
document.

21 Q. Were you able to identify all five prints?

22 A. Yes, I was.

23 Q. Whose prints were they, Mr. Hupp?

24 A. I identified two of them with the fingerprints of a
Timothy

25 McVeigh, and I identified the remaining three
fingerprints with

10404

Louis Hupp - Direct

1 a fingerprints of Mr. Terry Nichols.

2 Q. Okay. We have a copy of the receipt in front of
us; is

3 that right? Government's Exhibit 265B?

4 A. Yes, I do (sic).

5 Q. And you have 265 up there -- is that right -- or
you looked

6 at 265 when you did your print identification?

7 A. Yes, I did.

8 Q. And did you take photographs of the fingerprints
that you

9 actually found on Government's Exhibit 265?

10 A. Yes.

11 Q. Did you take those fingerprint photos that you took
back at

12 FBI headquarters, and did you assist in designing
several

13 charts that would be able to show this jury where those
14 fingerprints were found on this receipt?

15 A. Yes.

16 Q. All right. Let me show you Government's Exhibit --
hold on

17 one second -- 265C. Do you recognize that?

18 A. Yes, I do.

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

20 A. Yes, ma'am.

21 Q. And would it assist you in explaining to the jury
where you

22 found the fingerprints on the front of the Wal-Mart
receipt?

23 A. Yes.

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

for

25 demonstrative purposes.

10405

Louis Hupp – Direct

1 MR. TIGAR: No objection, your Honor.

2 THE COURT: Received, may be so used.

3 BY MS. WILKINSON:

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

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

8 Q. Is this the front of the receipt?

9 A. Yes, ma'am.

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

12 A. I found two.

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

16 A. Yes, I do.

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

265B? 18 What is on the left-hand side of this Exhibit

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

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

24 A. Yes.

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

10406

Louis Hupp - Direct

1 jury whose fingerprint you found at the top of the Wal-
Mart --

2 front of the top of the Wal-Mart receipt.

3 A. Right on top of the word "Wal-Mart" is a
fingerprint which

4 I identified with Mr. Terry Nichols.

5 Q. And did you find a fingerprint on the top -- I mean
on the

6 bottom of the front of the Wal-Mart receipt?

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

8 MS. WILKINSON: Your Honor, may I approach the
witness

9 with copies that he can mark on?

10 THE COURT: Yes.

11 BY MS. WILKINSON:

12 Q. Mr. Hupp, I've handed you first Government's
Exhibit 265CC.

13 Do you see that?

14 A. Yes.

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

17 A. Yes, it is.

18 Q. And can you mark on that on the right-hand side
where you

19 found -- using the red pen that's in front of you --

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

21 Q. Yes, please. Thanks. Put Mr. Nichols' initials,
TN, on

22 the right side of the exhibit showing where you found
his

23 fingerprint.

24 And can you indicate on the right-hand side
down there

25 on the bottom with TM where you found Mr. McVeigh's
initials.

10407

Louis Hupp - Direct

1 THE COURT: Initials?

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

3 And, your Honor, we'd offer 265CC and would
like to

4 show it on the ELM0.

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

7 MS. WILKINSON: Sure.

8 MR. TIGAR: No objection, your Honor.

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

10 MS. WILKINSON: Thank you.

11 THE COURT: This also is demonstrative; right?

12 MS. WILKINSON: No. It's for substantive
purposes to

13 show where the fingerprints actually were. Mr. Tigar
had no

14 objection to that.

15 THE COURT: Oh, all right.

16 BY MS. WILKINSON:

17 Q. Now, Mr. Hupp, the jury is now looking at what you
marked

18 265CC. And here at the top, are you indicating that's
where

19 Mr. Nichols' fingerprint was on the front of the
receipt?

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

21 Q. And what about down here at the bottom?

22 A. That is Mr. Terry -- Timothy McVeigh's prints --
Timothy

23 McVeigh, and it's right along where the word "sales"

and just

24 below the black line which is depicted as the white
line in the

25 other photograph.

10408

Louis Hupp - Direct

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

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

4 Q. Only one --

5 A. One print of each.

6 Q. -- as to each individual? Now, did you prepare
another

7 chart with the photographs of the fingerprints that you
found

8 on the back of the Wal-Mart receipt?

9 A. Yes, I did.

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

13 A. It's not up yet.

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

15 A. Yes, I do.

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

17 show?

18 A. On the right-hand side is -- again, is a copy of
the back

19 side of the receipt prior to the latent print
examination.

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

21 A. Yes, there are.

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

23 A. These are two copies of the two photographs that I
prepared

24 after the latent prints were developed.

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

10409

Louis Hupp - Direct

1 demonstrative purposes.

2 MR. TIGAR: No objection, your Honor.

3 THE COURT: Received.

4 BY MS. WILKINSON:

5 Q. Now, Mr. Hupp, tell the jury again, since they
couldn't see

6 it when you were describing it for foundational
purposes, what

7 they're seeing on the right side of this exhibit.

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

9 copy of the receipt prior to my processing it for
latent

10 prints.

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

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

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

18 A. Yes.

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

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

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

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

10410

Louis Hupp - Direct

1 Q. How many latent prints did you identify on the back
of the

2 Wal-Mart receipt?

3 A. The three that were developed.

4 Q. How many were Mr. Nichols'?

5 A. Two of them.

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

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

8 sticker.

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

11 A. Yes.

12 Q. And how many of Mr. McVeigh's prints were on the
back of

13 the Wal-Mart receipt?

14 A. Just one.

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

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

17 Q. Could you take out Government's Exhibit 265DD and
do the

18 same thing you did last time, use Mr. Nichols' initials
to mark

19 where you found his two prints on the back. And use

20 Mr. McVeigh's initial to mark where you found his one
print on

21 the back of Government's Exhibit 265.

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

23 Q. Why don't you put a parentheses 2, just so the jury

knows

24 there's two prints.

25 A. Okay.

10411

Louis Hupp - Direct

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

2 MR. TIGAR: No objection, your Honor.

3 THE COURT: Received.

4 BY MS. WILKINSON:

5 Q. Now, let's start at the top of 265DD. And that's
where

6 this sticker is; correct?

7 A. That is correct.

8 Q. This is the back of the receipt?

9 A. That is correct.

10 Q. And where are Mr. Nichols' prints found?

11 A. They are found just to the right of the -- that
little

12 sticker. In that area where I marked.

13 Q. Now, we're going to go down to the other copy of
the

14 same -- back of the receipt and starting here at the
top of the

15 sticker, which is, you told us, the top of the receipt;

16 correct?

17 A. That's correct.

18 Q. On the back, where were Mr. McVeigh's prints found?
19 A. To the lower left-hand corner of that receipt.
20 Q. And that would account for the total of the five
prints
21 that you found on Government's Exhibit 265?
22 A. Yes.
23 Q. Now, were you asked in this case to look at another
24 Wal-Mart receipt?
25 A. Yes, I was.

10412

Louis Hupp - Direct

1 Q. If you'll look at Government's Exhibit 2000.
2 A. Yes.
3 Q. Did you examine that?
4 A. Yes, I did.
5 Q. Did you find any prints on Government's Exhibit
2000?
6 A. There were two latent prints suitable for
identification
7 purposes developed on Government's Exhibit 2000.
8 Q. Okay. Now, were you able to identify either of
those
9 prints on this Wal-Mart receipt, Government's Exhibit
2000?
10 A. I was able to identify one of the prints.
11 Q. Whose print did you identify on Government's

Exhibit 2000?

12 A. I identified that print as a fingerprint of Mr.
Terry

13 Nichols.

14 Q. Do you recall whether it was on the front or the
back of

15 this receipt?

16 A. If I can look at my photographs, I can tell you.

17 Q. Sure.

18 A. It was on the back side.

19 Q. So you found Mr. Nichols' print on the back?

20 A. Yes.

21 Q. Do you recall where the unidentified print was?

22 A. It also was on the back side.

23 Q. Now, when you testified earlier in this case, you
talked

24 about your ability or the FBI's ability to try and
match or

25 identify unidentified -- previously unidentified
prints. Do

10413

Louis Hupp - Direct

1 you recall that?

2 A. Yes.

3 Q. And you discussed, I believe, on direct and

4 cross-examination some computer system you have that
enables

5 you to try and identify fingerprints.

6 A. Yes.

7 Q. Is that right? If you were going to try and
identify this

8 fingerprint on Government's Exhibit 2000 that is
unidentified

9 so far, could you put it into your computer to do some
kind of

10 analysis?

11 A. No.

12 Q. Why not?

13 A. This particular print, although it is of value for
14 identification purposes and can be identified, it is
not what

15 we would call a "classifiable" print. Therefore, it
does not

16 meet the basic criteria for a search in our automated
system.

17 Q. Okay. So are -- have you found that there are
numerous

18 unidentified prints in this case that are not
classifiable?

19 A. Yes.

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

22 A. That is correct.

23 Q. All right. Have you gone back based on my request
and

24 looked at how many unidentified prints you have in

25 Mr. McVeigh's Room 25 in the Dreamland Motel?

10414

Louis Hupp - Direct

1 A. Yes.

2 Q. And how many unidentified latent prints did you
have -- did

3 you find in Room 25?

4 A. There were 21 latent fingerprints, four latent palm
prints

5 and one latent impression.

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

7 classifiable?

8 A. Bearing in mind that we couldn't do the palm prints
or the

9 impression, I found that there was one fingerprint
which would

10 suit -- be suitable for a computer search.

11 Q. Okay. So all the rest of those, you couldn't put
into the

12 computer, no matter what?

13 A. That's correct.

14 Q. Let's talk about the one print you could put into
the

15 computer. Did you have any identifying information
about that

16 print?

17 A. No.

18 Q. Now, when you put a print into your computer for a
search,
19 what type of information do you need?
20 A. I need basically to know if it's a -- what the sex
is, what
21 the race is, I need to know an approximate location, I
need to
22 know if the fingerprint is classifiable, what the class
is, and
23 a location.
24 Q. All right. Well, let's take that fingerprint. You
had
25 none of that information; correct?

10415

Louis Hupp - Direct

1 A. That is correct.
2 Q. Could you, without any of that information, just
put that
3 print into your computer and try and do an
identification?
4 A. No.
5 Q. What would you have to do?
6 A. I would have to generate some sort of information,
false
7 information or guess information, in order to draw down
a
8 database that I could search under.
9 Q. Okay. Well, let's talk about the database you have

to use.

10 First, you said you have to know the sex; is
that

11 right?

12 A. That's correct.

13 Q. So if you wanted to search for this fingerprint in
Room 25,

14 you would have to make up whether the person was male
or

15 female?

16 A. Yes.

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

18 A. Yes.

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

20 A. Yes.

21 Q. All right. So you have to determine whether the
person was

22 what? What were the two races?

23 A. White or black.

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

25 search?

10416

Louis Hupp – Direct

1 A. Yes. We have an age category that we would search
within

2 the boundaries of.

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

4 A. Between the ages of 18 and 62.

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

7 MR. TIGAR: Objection to leading.

8 THE COURT: Sustained.

9 BY MS. WILKINSON:

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

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

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

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

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

19 A. Then they are removed from the database.

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

22 A. Of course, I would do a search by state only; so we
went
23 through state, we went through sex, race, and

approximate age,

24 and fingerprint classification.

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

10417

Louis Hupp - Direct

1 available in the computer?

2 A. 50.

3 Q. So let's take this one print in Room 25. How would
you

4 begin a search to try and identify this print without
any

5 identifying information?

6 A. Well if I wanted to be totally objective on this
and wanted

7 to do the best search possible, I would start out as
either a

8 white male, black male, white female, black female. I
would

9 start at 18 years of age. I would pick a particular
state, and

10 then I would pick this -- this classification I have or
size of

11 it. And I would pick one size and I would bring this
into the

12 database and ask for retrieval.

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

14 A. I would retrieve -- they would come back with

basically 20

are 15 candidates which would meet the criteria or that they

16 matched as being a possibility; not a match, but a mere
17 possibility that it could be the same print.

they were 18 Q. What would happen with those 20 candidates when

19 spit out of the computer?

would 20 A. Then I would sit down with a magnifying glass and I

latent 21 hand-compare the 20 possibilities with -- against the

22 print in question.

male in 23 Q. And what if this person wasn't an 18-year-old white

female in 24 whatever state you chose; they were a 37-year-old

25 Maine? Would you have found their fingerprint?

10418

Louis Hupp - Direct

1 A. No.

to do 2 Q. So to be fair, what type of searches would you have

3 to identify this -- this fingerprint?

out most 4 A. Well, on the particular fingerprint, I would start

size for 5 likely as a white male, 18 years of age, a particular

6 the fingerprint pattern, and one single state. Then
the next
7 search would be I would change one of those categories,
whether
8 it be to female or black male or whatever and I would
continue
9 to do this throughout the --
10 Q. Would you have to change the age each time?
11 A. Yes. Every time.
12 Q. And then once you went through 18 to 62, would you
have to
13 change the state each time?
14 A. Yes.
15 Q. And to search your entire database, would you have
to
16 search all the 50 states, all the ages, all the sexes,
and all
17 the races?
18 A. If I wanted to be totally objective and try to do
the best
19 job possible, yes.
20 Q. And do you know based on your experience and
knowledge of
21 the FBI fingerprint laboratory whether the FBI has ever
been
22 able to identify a fingerprint without any identifying
23 information and putting it into that computer?
24 A. Not if they had no information and just had the
fingerprint
25 in question, no.

10419

Louis Hupp - Direct

1 Q. Now, you were asked, I believe, that -- to make one
other

2 identification in this case. Do you recall that,
Government's

3 Exhibit 1810?

4 A. Yes.

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

6 A. Yes.

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

8 A. That is correct.

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

11 A. Yes, I did.

12 Q. How many?

13 A. One.

14 Q. And the other one was unidentified?

15 A. That is correct.

16 Q. Where was the unidentified print?

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

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

19 A. The identified print was located -- if the bolt
were

20 closed, it was in this area right in here. Right

underneath of

21 the scope area.

22 Q. And whose print did you identify in the bolt of

23 Government's Exhibit 1810?

of 24 A. That was a fingerprint of an individual by the name

25 Roger Moore.

10420

Louis Hupp - Direct

your 1 MS. WILKINSON: We have no further questions,

2 Honor.

3 THE COURT: Mr. Tigar.

4 MR. TIGAR: Excuse me, your Honor.

5 THE COURT: Yes.

6 MR. TIGAR: May I have a moment?

7 May I approach, your Honor?

8 THE COURT: Yes, you may.

9 CROSS-EXAMINATION

10 BY MR. TIGAR:

as 11 Q. Agent Hupp, I'm going to show you what I've marked

coming 12 Defense Exhibit D1567. Are those notes you made before

13 to court?

14 A. Yes.

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

If I

17 MS. WILKINSON: Your -- excuse me, your Honor.

Tigar is

18 could just have a page reference so I know what Mr.

19 referring to.

4.

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

21 BY MR. TIGAR:

22 Q. Is that the notes you made?

23 A. Yes, sir.

rifle

24 Q. And it says that you found two fingerprints on the

25 that's in front of you; correct, sir?

10421

Louis Hupp - Cross

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

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

3 A. I see the name "Terry Nichols."

one?

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

5 A. Nothing.

6 Q. It says "unidentified"; right?

7 A. That's correct.

8 Q. Where is Roger Moore's name you made on those notes

you

9 made before coming to court?

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

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

12 A. Early this morning.

13 Q. Now, you also told us about some fingerprints that
you saw

14 on that Wal-Mart receipt; correct, sir?

15 A. That is correct.

16 Q. And those reports were the subject of a lab report
that you

17 made; is that right, sir?

18 A. Yes.

19 Q. I'm --

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

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

22 THE COURT: All right.

23 MR. TIGAR: It was the shorter of the two Wal-
Mart

24 receipts. That would be Government Exhibit 265B.

25 BY MR. TIGAR:

10422

Louis Hupp - Cross

You told 1 Q. Show you the front of it there, if I may. Yes.

2 us about some fingerprints on this; correct?

3 A. That is correct.

4 Q. Now, I'm going to show you what's been marked as
Defense

5 Exhibit E129, and I ask you if that's a copy of the
report that

6 you prepared that included your fingerprint examination
of that

7 Wal-Mart receipt.

8 A. That is correct.

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

10 MS. WILKINSON: I just --

11 MR. TIGAR: E129.

12 MS. WILKINSON: That doesn't help me. I just
need to

13 take a look at it.

14 MR. TIGAR: Excuse me, your Honor.

15 MS. WILKINSON: No objection.

16 THE COURT: E129 is received.

17 BY MR. TIGAR:

18 Q. And sir, now I'd like to show you what I've marked
as a

19 copy of -- excuse me -- Defense Exhibit 130 and ask you
if

20 those are notes that you prepared in the course of your

21 examination of the fingerprints, including the
fingerprints on

22 the Wal-Mart receipt.

23 A. Yes.

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

25 MS. WILKINSON: No objection, your Honor.

10423

Louis Hupp - Cross

1 THE COURT: E130 is received.

2 BY MR. TIGAR:

3 Q. Now, sir, let's start by taking a look at E129.
Show you

4 the third page here. Now, down here, it says, "The 10
latent

5 fingerprints developed on the following items have been
6 identified as fingerprints of Terry Lynn Nichols," and
then

7 there's a number. And you have three on Q772, Wal-Mart
receipt

8 dated 4-13-95. Do you see that, sir?

9 A. Yes.

10 Q. And those are the three fingerprints that you told
us about

11 today; correct?

12 A. That is correct.

13 Q. And then if we look at the bottom of page 2, we
see, "10

14 latent fingerprints developed on the following items
have been

15 identified as fingerprints of Timothy McVeigh," and
then

16 there's an FBI number; correct?
17 A. That's correct.
18 Q. And then carrying over, we see two on Q772, Wal-
Mart
19 receipt dated 4-13-95; correct?
20 A. Yes.
21 Q. So that's a total of five fingerprints; is that
right?
22 A. Yes.
23 Q. Now, sir, let me get from you -- do you have the
original
24 of 130?
25 I'm going to put up what's been received as
E130, and

10424

Louis Hupp - Cross

1 there we see Q772. See that?
2 A. That's correct.
3 Q. And that's the Wal-Mart receipt; correct?
4 A. That's correct. Yes.
5 Q. Now -- now, at the top, we see the name "Terry Lynn
6 Nichols"; correct?
7 A. Yes.
8 Q. And then over further, we see the name "Timothy
McVeigh";
9 correct?

10 A. Yes.

11 Q. And over on the far -- let's go out. Here's the
line for

12 Q772. And over in the final line, it says you found a
total of

13 five fingerprints. Do you see that?

14 A. Yes, sir.

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

16 A. That is correct.

17 Q. And then over here in the first column, it says --
would

18 you read these numbers for us, please. Those are under
the

19 name "Terry Lynn Nichols," aren't they?

20 A. That's correct.

21 Q. All right. And this is Q772. Just read what that
means

22 there. Four -- it says four; right?

23 A. Yes.

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

25 A. Sure.

10425

Louis Hupp - Cross

1 Q. And then it has 5-20; correct?

2 A. That is correct.

3 Q. Now, the 5-20 is the date; right?

4 A. That is correct.

5 Q. Underneath, are those your initials?

6 A. Yes.

7 Q. And what does the 4 mean?

8 A. That means 4 fingerprints.

9 Q. So it says you identified 4 fingerprints of Terry
Nichols;
10 correct?

11 A. This was a tabulation sheet, but that's what it
says, yes.

12 Q. All right. And then over here, it says you
identified one

13 fingerprint; and we go up here and that's Timothy
McVeigh;
14 correct?

15 A. That is correct.

16 Q. So isn't it a fact that on E130, you said you had
four of
17 Terry Nichols' fingerprints and one Timothy McVeigh
18 fingerprint?

19 A. That's what this clearly indicates.

20 Q. And then when you get around to typing the report,
you say

21 you've got three Terry Nichols fingerprints and two Tim
McVeigh
22 fingerprints; correct?

23 A. That's correct.

24 Q. Well, is one of these two documents a mistake?

25 A. This -- the last document --

10426

Louis Hupp - Cross

1 Q. My question is: Is one of these two documents a
mistake?

2 A. Yes.

3 Q. All right. Whose mistake?

4 A. Mine.

5 Q. When did you make that mistake?

6 A. 5-20.

7 Q. On May the 20th, 1995?

8 A. That is correct.

9 Q. Now, in addition to that, you had an item on this
10 Government Exhibit 129 that was Q770-1; correct?

11 A. That is correct.

12 Q. Two pages of a storage lease agreement dated
9-22-94

13 bearing the signature "Shawn Rivers"?

14 A. Yes.

15 Q. Do you see that?

16 A. Yes.

17 Q. And it says 8; correct?

18 A. That's correct.

19 Q. All right. And those are -- as we've seen before,
that's

20 eight identified to Timothy McVeigh; correct?

21 A. Yes.

22 Q. Here's E130. And do you see 770-1 on there?

23 A. That's correct.

24 Q. Well, how many fingerprints of Timothy McVeigh did
you find

25 on that lease agreement that day?

10427

Louis Hupp - Cross

1 A. That shows six.

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

3 A. Yes.

4 Q. Which of the two documents is in error?

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

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

7 A. Yes.

8 Q. You made the error?

9 A. Yes.

10 Q. You made it on May the 20th?

11 A. Yes.

12 Q. Now, you showed us -- this is 265C. And that has
marked a

13 fingerprint up here of Terry Nichols and one down here
of

14 Timothy McVeigh; correct?

15 A. Yes.

16 Q. And then this is 265D, and it's got one Timothy
McVeigh and

17 two Terry Nichols; correct?

18 A. Yes.

19 Q. All right. Now, when you made up this report,
E130, that

20 was handwritten, did you attribute one of these
fingerprints --

21 MS. WILKINSON: Your Honor, I'm just going to
object

22 to him calling E130 a report. I believe those are
notes and

23 not the report.

24 THE COURT: Do you accept that change?

25 MR. TIGAR: I accept the change.

10428

Louis Hupp - Cross

1 BY MR. TIGAR:

2 Q. Well, let's find out. I'm going to place up here
on the

3 machine E130. You make that in your laboratory;
correct?

4 A. That is correct.

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

6 correct?

7 A. That is correct.

8 Q. And it is designed to help you as you begin to
prepare to

9 report on your findings; correct?

10 A. This is one of the tools, yes.

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

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

13 items as we were going.

14 Q. Well, this tabulation sheet, then, has you
tabulated four

15 Terry Nichols fingerprints and one Timothy McVeigh
fingerprint:

16 Were you attributing one of the five we've looked at on

17 Government Exhibit 265 at C and D to Mr. Nichols that
you later

18 decided was Mr. McVeigh's?

19 A. No, sir.

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

21 A. It was just a mental error, sir.

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

23 A. That is correct.

24 Q. And we can tell that there was a sticker on there
at one

25 time; correct?

Louis Hupp – Cross

1 A. Yes.

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

3 A. That is correct.

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

5 A. I have no -- no reason.

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

7 piece of paper when you got it; right?

8 A. That is correct.

9 Q. And if you laid the piece of paper, including the
sticker,

10 down and took a photograph of it, you'd see something
like I'm

11 putting my finger on here, here, and here; correct?

12 A. That is correct.

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

14 A. That is correct.

15 Q. SWB 93 and then you see it here?

16 A. That's --

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

18 A. That is correct.

19 Q. And you'd agree with me that the sticker shows up
in all

20 three of the boxes but not the fourth; correct?

21 A. That's correct.

22 Q. Well, who made that photograph, sir?

there as 23 A. This was a computer reproduction, sir. I was just
24 an advisor of it when it was reproduced.

identify 25 Q. You don't know how it is on this one where you

10430

Louis Hupp - Cross

1 Mr. McVeigh's fingerprint the sticker came to
disappear? Is

2 that your testimony?

3 A. Well, one -- one of the reasons could very well be
that

4 this sticker is above and to the -- to the right of the
area

5 that's showing. This is a lower half of the -- of the
actual

6 receipt. The sticker was on the extreme top side. And
this,

7 we only cropped an area to show exactly where the
latents were;

8 so most likely, this is off of the area of what was
reproduced

9 for the computer.

10 Q. Do you know that of your personal knowledge, or are
you

11 just guessing, sir?

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

13 photographs.

I'm
was some
made to
fourth
directing our
portion on the
somebody made
other three;

14 Q. I understand it appears in your photographs, sir.
15 asking you are you -- do you know of a fact that there
16 cropping done on the computer before this exhibit was
17 come into court, or are you just guessing?
18 A. No. I was there when the cropping was done.
19 Q. So you saw somebody crop off this part to make this
20 one not match the other three?
21 A. It wasn't meant to not match. We were merely
22 attention to the lower portion on one, the upper
23 other.
24 Q. Whatever was meant, sir, you were there when
25 a decision to crop this off so it didn't match the

10431

Louis Hupp - Cross

1 is that right?
2 A. Yes.
3 MS. WILKINSON: Objection, your Honor.
4 your Honor.
5 THE COURT: Overruled. The answer was yes.

6 BY MR. TIGAR:

7 Q. Now, sir, in our last time you were here, we talked
about

8 fingerprints on paper. Do you remember that?

9 A. Yes, sir.

10 Q. Now, if I take a -- a blot or ream of paper and I
touch it

11 between my thumb and forefinger, thumbs and
forefingers, and

12 put it into the paper tray of a copy machine, will --
that

13 might leave fingerprints; correct?

14 A. It might.

15 Q. All right. And the -- whether it does or not is
dependent

16 on all the factors that we talked about last time;
correct?

17 A. Yes.

18 Q. And now, is it possible for those fingerprint
impressions

19 to survive the copying process?

20 A. I couldn't say with certainty without examining the

21 question -- the one in question, your Honor -- sir.

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

23 A. Excuse me.

24 Q. -- the guy that was imported to help out. The --
but

25 I'll -- I'll tone down my demeanor so we don't get
there again.

Louis Hupp - Cross

1 The -- have you ever examined documents that
have been

2 run through a Xerox machine?

3 A. Yes.

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

5 A. Yes, we have.

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

7 A. It's possible, yes.

8 Q. Now, you were asked by the prosecutor about this
computer

9 system you have for fingerprints. Did you also notice
that the

10 last time we were together, I made an arithmetic error?

11 A. Not --

12 Q. Okay. Well, you said that you could submit 50
prints a

13 day; correct?

14 A. That is correct.

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

16 A. That is correct.

17 Q. And I said -- I did the math and I said 200 days.
Do you

18 remember that?

19 A. Yes, I do remember that.

20 Q. Off by a factor of 10; right?
21 A. Right.
22 Q. In 20 days, if you submitted 50 prints a day -- in
20 days,
23 you could process 1,000; correct?
24 A. Conceivably, yes.
25 Q. Now, the prosecutor then asked you about the
limitations on

10433

Louis Hupp - Cross

1 your system that you have. Do you remember that?
2 A. That is correct.
3 Q. Now, first, you were asked about the Dreamland
Motel. Do
4 you remember that?
5 A. Yes.
6 Q. Now, you went out to the Dreamland Motel and
performed a
7 fingerprint examination, did you not?
8 A. Yes, I did.
9 Q. And you were -- you did so with great thoroughness;
10 correct?
11 A. That is correct.
12 Q. You had found one palm print on the commode seat?
13 A. Yes.
14 Q. Found a -- prints on the lamp base?

15 A. Yes.
16 Q. Found a number of prints in the room; right?
17 A. Yes.
18 Q. Okay. The number that you talked about with the
19 prosecutor?
20 A. Yes.
21 Q. What date was that you found those?
22 A. That was on the 21st.
23 Q. 21st of April?
24 A. Yes.
25 Q. And there had been one guest in the room after Mr.

McVeigh

10434

Louis Hupp – Cross

1 checked out. That was your information?
2 A. I'm only aware of one. There could have been
others. I
3 don't know.
4 Q. All right. You're aware of one?
5 A. Yes.
6 Q. Also, you went over to the Ryder truck rental
place;
7 correct?
8 A. Yes.
9 Q. And did you do your fingerprint examination in

place at the

10 Ryder truck rental place?

11 A. No.

rental 12 Q. In fact, you took the counter of the Ryder truck

13 place and shipped it to Washington, did you not?

14 A. That is correct.

more 15 Q. And that was so that you could do your examination

16 easily; right?

17 A. More thoroughly, yes.

aware of 18 Q. Now, the prosecutor asked you whether you were

than that 19 anybody ever having been in Mr. McVeigh's room other

20 guest that had been there after him; correct?

21 A. Yes.

prints 22 Q. Now, who -- who is responsible for telling you what

23 you should use for comparison purposes?

24 A. No one.

25 Q. Do you make that decision yourself?

10435

Louis Hupp - Cross

1 A. For comparison purposes?

2 Q. Yes.

to the 3 A. I develop the latent prints, and it is up to the --
such 4 investigating officers, whoever they may be, to name
5 people as for comparison purposes.

because 6 Q. And we can see that process on E130, can we not,
7 across the top here are some names?

8 A. That is correct.

Timothy 9 Q. Terry Nichols, Marife Nichols, Nicole Nichols,
Colbern, Jeff 10 McVeigh, Jennifer McVeigh, Michael Fortier, Steve

James 11 Martin, Roger Moore, Kevin Nicholas, James Nichols,
12 Waters, David Paulsen, Edward Paulsen; right?

13 A. Yes.

the 14 Q. Okay. And those are names that are given to you by
15 person in charge; correct?

16 A. Yes.

use of 17 Q. Now, you testified that in order to make maximum
information 18 your computer information system, you need some

19 about who this might be that left the print; correct?

20 A. Yes.

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

22 A. Yes, sir.

23 Q. And do the states have those systems as well as the

FBI?

24 A. Some states do, yes.

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

10436

Louis Hupp - Cross

1 law enforcement in order to use those systems?

2 A. Yes.

3 Q. Now, you may not be aware of these things. I'm
going to

4 ask you if anybody told you them so that I can know
what --

5 what comparisons you were asked to make. Were you
aware that

6 an FBI agent named Scott Crabtree had obtained race and
7 approximate height and approximate age and other
details of a

8 person who had been with the man identifying himself as
"Robert

9 Kling" at the Ryder truck rental place?

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

11 yes.

12 Q. All right.

13 A. If there was such a person.

14 Q. Were you aware that an FBI sketch artist was sent
to the

15 Junction City area at about the time that you were

doing your

16 investigation?

17 A. Yes.

18 Q. You knew that man as Mr. Rozycki?

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

20 sent.

21 Q. The purpose of a sketch artist is to meet with
people who

22 have seen individuals and to make some kind of drawing
that

23 looks like that person; correct?

24 A. Yes.

25 Q. And the sketch artist is interested in knowing the

10437

Louis Hupp – Cross

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

2 A. I would assume, yes.

3 Q. The race of the person?

4 A. Yes.

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

6 A. Yes.

7 Q. The gender of the person?

8 A. Yes.

9 Q. Now, you also note, do you not, sir, that the FBI

had

10 established command posts in different states that were
thought

11 to be relevant to this investigation?

12 A. That is correct.

13 Q. All right. And the names that you have on your
E130 come

14 from different states; correct?

15 A. Various sources, yes.

16 Q. Well, looking on E130, the Terry and Marife and
Nicole

17 Nichols: They all live in Herington, Kansas; correct?

18 A. Yes.

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

20 A. Yes, sir.

21 Q. Jennifer McVeigh lived in New York; correct?

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

23 knowledge.

24 Q. And there are a number of people on here that you
recognize

25 as living in Arizona; correct?

10438

Louis Hupp – Cross

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

2 do. Some of them, I don't.

3 Q. Do you recognize some as coming from Arizona?

4 A. Yes.

5 Q. And do you recognize some others over here as
coming from

6 Michigan? Right?

7 A. Some, yes.

8 Q. All right. So as to some people that you were
interested

9 in, you had information that concerned their gender,
their

10 race, their approximate age, and where they lived;
right?

11 A. Yes.

12 Q. And the investigation was centered in Arizona,
Nevada,

13 Michigan, Kansas, and New York; correct? Among other
places?

14 A. I would assume, yes.

15 Q. In addition to Oklahoma, of course --

16 A. Yes.

17 Q. -- is that right?

18 Now, you told us that in order to use the
computer,

19 you need certain things. And the first thing you need
is a --

20 you say is a classifiable fingerprint; correct?

21 A. That is correct.

22 Q. And a classifiable fingerprint refers to a latent

23 impression that contains sufficient characteristics
that you
24 can code it. Is that -- is that fair to say?
25 A. Well, not exactly.

10439

Louis Hupp - Cross

1 Q. Tell me what it is.
2 A. It's a type of print that would have what we call
"focal
3 points" to which I can determine what type of pattern
it is and
4 the size of it.
5 Q. So -- and when you say "type of pattern," what --
what do
6 you mean? The general category such as whorls, loops,
ridges?
7 What terms do you use?
8 A. Loops, whorls, and arches, yes, sir.
9 Q. And not all latent fingerprints that might be
suitable for
10 comparison are suitable for classification. Is that
your
11 testimony?
12 A. Yes.
13 Q. All right. Now, once you classified a fingerprint,
you --
14 and you want to use the computer to deal with it. You
then

gender, 15 said you -- you want to know other information such as
16 and so on; right?
17 A. Yes.
18 Q. Now, does the absence of gender information make it
longer for 19 impossible to use the computer, or does it just take
extra 20 the computer to march through or to crunch through the
21 comparisons or algorithms that it's required to do?
that, 22 A. It would make it impossible. And if I can explain
down on 23 the computer will only, in this mode -- will only draw
100,000 24 a database of 100,000 candidates. Once it achieves
25 candidates or possibilities, it shuts down.

10440

Louis Hupp - Cross

100,000 1 Q. And you say once it -- so how do you choose the
2 that it's supposed to look at?
3 A. This is based on the gender, the age, the different
factors 4 that we would get into it.
5 Q. All right. Suppose -- so if I put in a classified
say, a 6 fingerprint for a 37-year-old white female and -- or

7 37-year-old Hispanic male from Arizona, is that all the
8 categories you need? How many do we need? We have a
9 classified fingerprint.

10 A. We have a classified fingerprint.

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

13 A. It would -- we would probably, in most instances,
divide
14 it -- we would do a white male and black male to make
sure.

15 Because some departments declare some of them as black
16 individuals, some of them declare them as Hispanics or
whites.

17 Q. Who makes that decision?

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

20 Q. Okay. So if I gave you a 40-year-old -- the
information is

21 I asked you to search for a 40-year-old Hispanic male
from

22 Arizona with a certain classification, how long does it
take
23 to -- for the computer to come back with a result?

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

Louis Hupp – Cross

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

2 A. Yes.

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

4 A. From just one state?

5 Q. Yes, sir.

6 A. I would institute one search.

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

8 A. It would take approximately three weeks.

9 Q. Three weeks?

10 A. Three weeks.

11 Q. Well, you mean from the time you key this
information into

12 the computer, the computer has to hum, cough, do
whatever it

13 does, for three weeks?

14 A. No, sir.

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

16 A. Yes, sir, I have.

17 Q. Okay. When you stand at the computer and enter the
18 information, how long is it before the computer comes
back with

19 this possible eight or ten names?

20 A. Overnight.

21 Q. Basically, the computer takes overnight?

22 A. Yes.

given 23 Q. Now, how many of these things can you do on any
24 night?
25 A. We can do up to 50.

10442

Louis Hupp - Cross

1 Q. You can do 50 a night. Now, you had 1,034
unidentified
2 latent fingerprints; correct?
3 A. Yes.
4 Q. And you can only use latent fingerprints for this
process;
5 is that your testimony?
6 A. Well, no, we've entered an -- we've entered other
prints;
7 but generally, this system, we deal with latent prints.
8 Q. All right. Well, what I'm asking you: Can you do
it with
9 palm prints?
10 A. No.
11 Q. Can you do it with impressions?
12 A. No.
13 Q. So limiting ourselves, you had 1,034 unidentified
14 fingerprints; correct?
15 A. That is correct.
16 Q. And did you ever take a look at how many of them
were

17 classifiable?

18 A. No, I did not.

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

21 A. I was asked just yesterday by the prosecutor to
review my

22 notes on that particular one and to advise the number
of prints

23 that were there and the number that could be searched.

24 Q. So overnight, you could tell us based on how many
-- How

25 many unidentified prints were there at the Dreamland?

10443

Louis Hupp - Cross

1 A. 21 latent fingerprints.

2 Q. 21 latent fingerprints?

3 A. Yes.

4 Q. And you could -- how long did it take you to tell
out of

5 those how many are classifiable?

6 A. To review them, just a few minutes.

7 Q. Okay. And up to that time, when the prosecutor
asked you

8 to do it, had anybody ever asked you to look at your
1,034

9 unidentified fingerprints and determine how many of
them were

10 classifiable?

11 A. No. Excuse me. No.

12 Q. Had anybody ever asked you to then -- to use the
computer

13 to do some checks?

14 A. I think I've testified that sometime, we did
receive a

15 request. And it was later rescinded.

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

17 A. That is correct.

18 Q. And we talked about that last time?

19 A. Yes.

20 Q. Now, in addition to a decision whether or not to
try to

21 figure out who had these unidentified prints, there is
a thing

22 known as latent print intercomparison; correct?

23 A. Yes, there is.

24 Q. Now, did you do latent intercomparison?

25 A. No, I did not.

10444

Louis Hupp - Cross

1 Q. Now, latent print intercomparison works like this,
doesn't

2 it? If I have Location A and there are ten prints,

3 unidentified latent prints there, and I have ten

unidentified

4 prints from Location B, I can look at and see if any of
the

5 unidentified prints from Location A are the same as
those from

6 Location B; is that right?

7 A. Yes, I can.

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

9 right?

10 A. That is correct.

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

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

14 unidentified latent print.

15 Q. Well, if you wonder if the same unidentified person
has

16 visited several different locations, you're able to
find that

17 out using intercomparison of latents; correct?

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

19 Q. In other words, if a -- if you were to look at the
20 unidentified prints at a rental agency, and the
unidentified

21 prints on a piece of paper and the unidentified prints
on a

22 rifle and the unidentified prints in a motel room, you
could

23 tell whether or not the same person had visited each of

those

24 four locations; correct?

25 A. It would be a possibility.

10445

Louis Hupp – Cross

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

2 you, sir?

3 A. No, I was not.

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

5 THE COURT: Yes.

6 BY MR. TIGAR:

7 Q. Now, on direct examination, we talked about a
computer, and

8 I want to make sure we know which one it is. That's --
we

9 were -- you were talking to the prosecutor about the
AFIS

10 computer?

11 A. AFIS. It's been renamed several times. As a
matter of

12 fact, it's now called LEWS, L-E-W-S.

13 Q. Now called what?

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

15 Q. Not named after you?

16 A. No. No. No.

LEWS. 17 Q. But -- but now it's called LEWS. Let's call it
NULF? 18 Okay. You go down to LEWS. Now, is LEWS the same as
NULF? 19 A. NULF is "no latent prints of value."
20 Q. Now, what about National Unidentified Latent File.
21 A. We don't have that anymore.
File 22 Q. You don't have the National Unidentified Latent
23 anymore?
of put 24 A. Not anymore. It's been held back. It's been kind
25 back. The computer system has taken its place.

10446

Louis Hupp - Cross

1 Q. But there is such a thing as a National
Unidentified Latent
2 File; correct?
3 A. Yes, at one time.
4 Q. Are the records of that still available?
5 A. They -- they might be in headquarters.
6 Q. All right. But you didn't look at them in
connection with
7 this case; is that right?
8 A. No, I did not.
9 Q. Okay. And what is -- is LEWS and AFIS the same as
ALSA3?

evolving 10 A. That is correct. That is another one of the
11 names.
12 Q. That's called Automated Latent Search; right?
13 A. Yes.
have 14 MR. TIGAR: Okay. Thank you, your Honor. I
15 nothing further.
16 THE COURT: Any redirect?
17 MS. WILKINSON: Yes, your Honor.
18 Your Honor, it's going to take me about 15
minutes. I
19 don't know if you want to take a break now or --
20 THE COURT: I think we'll take the break now.
21 You may step down, Mr. Hupp.
22 Members of the jury, we'll take our
midafternoon
23 recess at this time, the usual 20 minutes, during which
the
24 usual cautions will apply, of course, avoiding
discussion of
25 the case and keeping open minds.

10447

Louis Hupp - Cross

1 You're excused. 20 minutes.

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

3 THE COURT: All right. Recess.

4 (Recess at 3:16 p.m.)

5 (Reconvened at 3:35 p.m.)

6 THE COURT: Be seated, please.

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

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

9 Mr. Hupp.

10 Ms. Wilkinson.

11 MS. WILKINSON: Thank you, your Honor.

12 REDIRECT EXAMINATION

13 BY MS. WILKINSON:

14 Q. Mr. Hupp, in this case, the Oklahoma City bombing
case,

15 approximately how many fingerprint examinations and
comparisons

16 have you done?

17 A. It would be in the hundreds of thousands.

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

20 A. That is correct.

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

22 you?

23 A. That is correct.

24 Q. But before you report out your findings, you review
your

25 work, don't you?

10448

Louis Hupp - Redirect

1 A. That is correct.

2 MR. TIGAR: Objection, leading, your Honor.

3 THE COURT: Sustained.

4 BY MS. WILKINSON:

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

7 A. Yes.

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

11 A. Yes, I do.

12 Q. And is that part of a report that you issued
regarding

13 Q772, which you said was the Wal-Mart receipt?

14 A. That is correct.

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

17 MR. TIGAR: May I inquire, your Honor?

18 THE COURT: Yes.

VOIR DIRE EXAMINATION

19

20 BY MR. TIGAR:

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

22 A. No, I don't.

23 Q. In addition to three typewritten pages, sir, that
contains

24 two handwritten pages, does it not?

25 A. That is correct, yes.

10449

Louis Hupp - Voir Dire

1 Q. Now -- and one of those handwritten pages is the
same as

2 the handwritten page that I showed you that we marked
in

3 evidence as E130. Correct?

4 A. Yes.

5 Q. Now, when I examined you on cross-examination, you
said

6 that E130 is not your report -- correct -- that is to
say, that

7 fourth page, the handwritten page?

8 A. That fourth page is not a report.

9 Q. When your report goes forward, sir, does it go
forward with

10 that attached to it?

11 A. No, it does not.

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

is it?

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

14 like.

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

16 sir?

17 A. There are -- no, the first two pages -- page 1 and
part of

18 page 2 are typed. There are handwritten notations
after that.

19 MS. WILKINSON: Your Honor, maybe it would
help if I

20 called it the "worksheet" and not the "report." That's
21 probably my mistake.

22 THE COURT: Well, I guess the witness ought to
tell us

23 what it is.

24 BY MR. TIGAR:

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

10450

Louis Hupp - Voir Dire

1 received in evidence as Defense Exhibit E129. I'm
going to ask

2 you is that the same thing as what you're looking at
there?

3 A. No, it is not.

correct? 4 Q. E129 is what you identified as your report;

5 A. That is correct.

have 6 Q. How many pages of E129 are missing from what you

7 before you, Government's Exhibit 2116?

8 A. There are no pages missing in E129.

2116 from 9 Q. That's right. And how many pages are missing in

is now 10 what you testified a moment ago was your report, which

11 in evidence, which is in front of you?

12 A. This again, Government's Exhibit 2116, is a copy of

my 13 worksheet from which I prepared E129. This is what I

made my 14 personal notes on, which enabled me to dictate this

report and 15 send this report to the field.

there are 16 Q. Now, page 1 of E129 is the same as 2116 except

17 some notes on it; correct?

18 A. Well, there is other differences.

that 19 Q. Okay. And there are some handwriting on 2116. Is

20 your handwriting?

21 A. Yes, it is.

Did 22 Q. And this list here is -- has the highlighter on it.

23 you put the highlighter on it?

24 A. No, sir.
25 Q. You don't know who did?

10451

Louis Hupp - Voir Dire

1 A. No, I don't.

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

4 A. That is correct.

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

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

8 Q. What part of it is yours?

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

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

14 A. That is correct.

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

17 A. I prepared parts of it. Parts of it were prepared

at my

18 direction.

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

20 THE COURT: What's the purpose?

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

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

23 MS. WILKINSON: Because Mr. Tigar only offered
one

24 page of that worksheet, your Honor, and the page before
it

25 shows other information relevant to what Mr. Tigar
pointed out

10452

Louis Hupp - Voir Dire

1 on the third page. It would make it complete.
Otherwise

2 they've only seen one page of the worksheet.

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

4 BY MS. WILKINSON:

5 Q. Mr. Hupp --

6 MR. TIGAR: Your Honor, I have no objection to
the

7 Government offering without the highlighting that this
witness

8 did not put on the third page, which is the next-to-
last page,

9 provided it can be established that this witness wrote
it.

10 THE COURT: Go ahead with your additional
foundation.

11 REDIRECT EXAMINATION CONTINUED

12 BY MS. WILKINSON:

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

14 THE COURT: It's 2116.

15 MS. WILKINSON: I'm sorry. 2116.

16 THE WITNESS: This is a copy of a worksheet
that is

17 prepared in the latent fingerprint section for the
purpose of

18 placing personal notes by the individuals who are
working the

19 case.

20 BY MS. WILKINSON:

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

22 A. These -- some of these notes were mine. There were
more

23 than -- there were several individuals who were working
on this

24 case at this point in time. They were all working
under my

25 direction, and everything they put on here I had to
review and

Louis Hupp – Redirect

1 had to acknowledge and agree with. Many instances,
persons put

2 notes on here because they had better handwriting.

3 Q. How many pages is Government's 2116?

4 A. There is five total pages.

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

6 A. Yes, they are.

7 Q. What does that stamp indicate?

8 A. This indicates it was my worksheet, or I had
reviewed the

9 information on it and concurred with the results of
what was

10 placed there.

11 Q. So have you adopted everything that's in
Government's

12 Exhibit 2116?

13 A. Yes, I have.

14 Q. Included in that in the last page: Is that the
page that

15 Mr. Tigar showed you as Government's Exhibit 190?

16 A. Yes.

17 MS. WILKINSON: Your Honor, we'd offer it, and
18 highlighted portions are only to show to the jury.
We'll put

19 in a clean copy for the exhibit. It's just to direct
the

20 jury's attention when I show it on the ELMO.

the 21 MR. TIGAR: I don't understand the offer. Is

22 offer of the whole thing?

23 MS. WILKINSON: Yes.

24 MR. TIGAR: Or just the highlighted portion?

make it 25 MS. WILKINSON: Of the entire five pages to

10454

Louis Hupp – Redirect

1 complete.

his 2 THE COURT: You know, what's important here is

notes. 3 testimony. That's the evidence in the case, not the

On the 4 MS. WILKINSON: I understand that, your Honor.

5 page before --

to 6 THE COURT: Well, I'm sustaining the objection

7 2116.

8 BY MS. WILKINSON:

the 9 Q. Mr. Hupp, did you adopt additional notes regarding

Exhibit 265? 10 fingerprints on the Wal-Mart receipt, Government's

11 A. Yes, I did.

three 12 Q. And in those notes, is it indicated that there were

13 of Mr. Nichols' --

Honor. 14 MR. TIGAR: I object to the leading, your

15 THE COURT: Sustained as to leading.

16 BY MS. WILKINSON:

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

18 A. In those notes it indicated that five fingerprints
had been

19 developed on Q772, which is the Wal-Mart receipt.

20 Q. Government's Exhibit 265?

21 A. 265.

22 Q. Okay.

23 A. And in fact that two fingerprints had been
identified with

24 the fingerprints of Terry Nichols -- or two
fingerprints with

25 Timothy McVeigh and three fingerprints had been
identified with

10455

Louis Hupp - Redirect

1 Terry Nichols.

2 Q. And after you reviewed those notes, did you issue
the

3 report that Mr. Tigar showed you, the other exhibit --

4 Government's Exhibit -- I mean Defense Exhibit 129?

5 A. Yes, I did.

6 Q. In that did you indicate the same results: That on

the

7 Wal-Mart receipt, Q772 --

8 THE COURT: There has been objection to
leading here.

9 And you're going right ahead with leading.

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

11 BY MS. WILKINSON:

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

13 A. Yes, I did.

14 Q. How did you report out those findings?

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

17 fingerprints belonged to Mr. Terry Nichols.

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

20 A. Yes.

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

23 Mr. McVeigh?

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

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

Louis Hupp – Redirect

1 prints might not be an accurate identification on
2 cross-examination.

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

4 BY MS. WILKINSON:

5 Q. What is your conclusion, Mr. Hupp, as to the
identification

6 of fingerprints on Government's Exhibit 265?

7 A. My conclusion is that two of the five fingerprints
belong

8 to Mr. Timothy McVeigh and the remaining three
fingerprints

9 belong to Mr. Terry Nichols beyond a shadow of a doubt.

10 Q. Now, you prepared notes that we've shared with the
defense

11 for your testimony today. Is that right?

12 A. That is correct.

13 Q. And Mr. Tigar showed you one page of those notes
regarding

14 the identification on the gun, Government's Exhibit
1810.

15 A. That is correct.

16 Q. Now, did you prepare or did you have copies of
photographs

17 of fingerprints in that notebook also?

18 A. Yes, I did.

19 MS. WILKINSON: Your Honor, may I approach and
show

20 the witness Government's Exhibit 2115?

21 THE COURT: All right.

22 BY MS. WILKINSON:

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

24 A. Yes, I do.

25 Q. What is that?

10457

Louis Hupp - Redirect

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

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

4 A. Yes, there is.

5 Q. What's the K number?

6 A. The K number is listed at K50.

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

8 A. Yes, it is.

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

10 MR. TIGAR: May I examine, your Honor?

11 THE COURT: Yes.

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

13 THE COURT: Yes.

14 VOIR DIRE EXAMINATION

15 BY MR. TIGAR:

16 Q. 2115 is -- that is a photograph?

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

18 actually.

19 Q. And one photograph includes -- the bottom one is a
20 photograph actually of the scope. Is that right?

21 A. Of a latent print appearing on the scope, yes.

22 Q. And the top: What's that a photograph of?

23 A. That's a photograph of the area of the bolt of
which a

24 latent print was developed.

25 Q. And is it your testimony that these two
fingerprints are of

10458

Louis Hupp - Voir Dire

1 the same individual?

2 A. No.

3 Q. No. So one is one and one is the other. Correct?

4 A. No. One is -- the bottom one remains unidentified,
or the

5 one on the scope has not been identified.

6 Q. So the bottom one is not in evidence yet -- I don't
want a

7 description of it. But the bottom one is an
unidentified

8 print; correct?

9 A. Yes.

10 Q. It's one of your 1,034?

11 A. Yes.

12 Q. And the top is a fingerprint that bears a name. Is
that
13 correct?

14 A. That is a fingerprint of a Roger Moore.

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

17 THE COURT: No, he testified to that.

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

19 THE COURT: All right. 2115 is received.

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

21 THE COURT: Yes.

22 REDIRECT EXAMINATION CONTINUED

23 BY MS. WILKINSON:

24 Q. Mr. Hupp, you told us on direct testimony that you
had

25 identified one of the fingerprints on Government's
Exhibit

10459

Louis Hupp - Redirect

1 1810, the gun; is that right?

2 A. That is correct.

3 Q. And did you take photographs of those fingerprints?

4 A. Yes, I did.

5 Q. At the top here of Government's Exhibit 215 (sic)
this says

6 K50. Tell us again what that indicates.

7 A. K50 is the indication we assigned in the laboratory
or in

8 the latent section to the weapon in question.

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

10 A. Yes.

11 Q. The firearm you were holding earlier?

12 A. Yes.

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

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

15 Moore.

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

17 gun, Government's Exhibit 1810?

18 A. Yes.

19 Q. Now, on cross-examination, you were also asked
about the

20 computer search and the feasibility of doing computer
searches

21 for these unidentified prints. Do you recall that?

22 A. Yes.

23 Q. And you said, I believe, or Mr. Tigar gave you the
example

24 of could you do 50 searches a day. Is that right?

25 A. Yes.

10460

Louis Hupp - Redirect

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

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

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

9 A. For example, I believe he gave an example of a
white male
10 or Hispanic male approximately 40 years old from
Arizona or

11 whatever and approximate age. That would constitute
one
12 search. If I change either of the entrants, whether it
be the
13 state, whether it be the white male or race, sex,
whatever,
14 that constitutes a second search.

15 Q. All right. So if you were making up that
information based

had 16 on something or you were using some information someone
does 17 told you, if the person wasn't -- or was from Arizona,
search? 18 that mean you would find their prints in the computer

19 A. No.

20 Q. Why is that?

21 A. They might not be in the database.

born, or 22 Q. And do you collect prints from where the person is
23 from where they're arrested?

24 A. When they've been arrested.

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

10461

Louis Hupp - Redirect

1 A. That's correct.

2 Q. And their prints could come from Maine?

3 A. That's correct.

unidentified 4 Q. So to do a full search to look for that

have to 5 classifiable latent print, how many states would you
6 search?

honest 7 A. I would have to search all 50 states to give an

8 evaluation of the searches.

to 9 Q. All right. And you already told us you would have
10 search two races?
11 A. That's right.
12 Q. Both genders; correct?
13 A. That's correct.
14 Q. And the size of the pattern? How many searches --
15 different types of searches would you do that?
and it's 16 A. Generally if it's a good classifiable latent print
17 a loop, there would be five searches involved.
18 Q. For each of the race, sex and then age; correct?
19 A. Then there would be five searches based on the size
of the 20 pattern, because we allow for interpretation or
counting areas
21 from the person that may have encoded the latent print
into the 22 database.
23 Q. If we were to multiply those numbers for how many
searches
24 you would need to do for one unidentifiable print, we'd
have
25 two for race?

10462

Louis Hupp - Redirect

1 A. Correct.

2 Q. How many for sex?

3 A. Two.

4 Q. How many for size of pattern?

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

6 Q. How many for states?

7 A. 50.

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

9 A. I believe we come up with 45.

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

11 searches?
12 A. That is correct.

13 Q. And would that take about 900 days?

14 A. Something like that.

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

16 A. That is correct.

17 MS. WILKINSON: No further questions, your
Honor.

18 RE-CROSS-EXAMINATION

19 BY MR. TIGAR:

20 Q. The document you looked at that had the print with
the name

21 Roger Moore beside it --

22 A. Yes.

23 Q. -- when was that picture taken?

24 A. I'd have to review my notes to give you the exact
date, but

25 it was taken -- as soon as it was detected on the
weapon, then

10463

Louis Hupp - Recross

1 it was photographed immediately.

2 Q. Sometime in 1995?

3 A. Sometime in May of 1995.

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

5 A. Yes.

6 Q. And the piece of paper that was in front that I
showed you

7 when we started cross-examination: Did you make that

8 yesterday; is that correct?

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

10 time.

11 Q. Now, the prosecutor asked you about this system.
The -- is

12 it your testimony that each time you want to change
something,

13 you have to start a whole new search?

14 A. I don't have to reencode the latent, but I have to
15 regenerate the data information that I'm requesting
from the

16 computer. This is merely a two-step process.
Initially we put

17 in the information, and we extract individuals from the
18 database that match the criteria based on the age, the
sex, the
19 race, and the time of pattern. Then we would do
another search
20 based on matching minutia with that, so it's a two-step
process
21 to that point.

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

24 A. Yes.

25 Q. And there is a standard classification system that
consists

10464

Louis Hupp - Recross

1 of numbers and letters; correct?

2 A. That is correct.

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

5 A. That is correct.

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

7 A. We get loops, arches, and whorls. We'd have
basically

8 three there. Then there is various --

9 Q. Sir, I'm just asking how many numbers makes that
unique

10 identifier that identifies that fingerprint as unique

to one

11 human individual.

12 A. It would be based as a combination of the type of
pattern

13 and the size of the pattern.

14 Q. Okay. And what's the range of numbers? That is,
it looks

15 like 1201, and then it has some letters in it and so
on. Is

16 that what it looks like?

17 A. Actually if you're doing an arch-type pattern, it
would be

18 an arch or tended arch, so we would have two possible

19 searches --

20 Q. I want to start by asking: Isn't there a number
that

21 identifies each fingerprint as unique to a particular
human

22 being?

23 A. I'm not sure I understand what you're --

24 Q. Do you have something in the file that codes that
25 fingerprint, that gives it a number? For instance,
1210PZ005,

10465

Louis Hupp - Recross

1 whatever?

2 A. Not in my system, no.

it 3 Q. Okay. So your system -- in your system, you code
4 according to characteristics. Right?
5 A. That is correct.
6 Q. And you classify it.
7 A. That is correct.
print. 8 Q. Now, so that's one thing you need to classify the
9 Right?
10 A. That is correct.
number 11 Q. And out of the now 1,034 prints, you have a certain
12 you can classify. Correct?
13 A. That is correct.
14 Q. If you haven't got all of the elements of a
classification,
15 can you still do a search?
16 A. It would only add to it on the end, yes.
You'll 17 Q. You can do a search of a non-classifiable print.
18 just get more possibles out the other end. Correct?
19 A. I would create more searches, yes.
the 20 Q. Let's suppose we just limit ourselves therefore to
21 classifiable prints out of this 1,034. If I gave you
22 parameters and just asked that we have a 30-year-old
white male
23 person and we have six states to search, how many
searches is

24 that?
25 A. That would be rather hard to figure off the top of
my head.

10466

Louis Hupp - Recross

1 If we had white male, that's one search right there.
2 Q. Okay.
3 A. If we had six states, now we've got six searches.
4 Q. Now we're up to 1 times 6 is 6. Correct?
5 A. Now, if we have -- depends on the type of pattern.
If we
6 had a -- say a loop in the left -- if we had a loop
that was
7 approximately 16 counts, that's 16.
8 Q. You use -- for the prosecutor you used five as an
example?
9 A. There is five -- I would spread five on either side
out of
10 that 16.
11 Q. 6 times 5. Now we're at 30; correct?
12 A. What was the age again?
13 Q. 30 years old.
14 A. 30 years old? Then it would be 10 searches there.
15 Q. 10 searches for 30 years old?
16 A. Yes.
17 Q. How do you get to 10 searches for one age?

18 A. I allow five years on either side for variance of
19 description.

20 Q. Okay. So 25 to 35?

21 A. Yes.

22 Q. Good. So now we're up to 300; right?

23 A. Right.

24 Q. And so we've got one gender. That's a male.
Correct?

25 A. That's correct.

10467

Louis Hupp – Recross

1 Q. I've got six states?

2 A. That's correct.

3 Q. I've got five different finger types possible?

4 A. Five different counts, yes.

5 Q. Counts. Counts. All right. I've got counts. And
I've

6 got 10 years on either side. Correct?

7 A. That's correct.

8 Q. That's 300 searches?

9 A. Times 8 for the number of fingers that are in the
database.

10 Q. You didn't tell the prosecutor about the number of
fingers.

11 So that's 2400 searches?

12 A. That's the possibilities, if I have only one finger

and

13 have no information what it is.

14 Q. Now, are you able, when you get a latent
fingerprint, to

15 tell what finger it is?

16 A. Not always.

17 Q. What finger was it that Terry Nichols used to touch
the

18 Wal-Mart receipt?

19 A. The -- one of them was a No. 1 and No. 2.

20 Q. And you wrote the No. 1 and No. 2; correct?

21 A. That is correct.

22 Q. And a characteristic of a good fingerprint for
comparison

23 purposes -- one thing is that you can tell what finger
it is.

24 Correct?

25 A. I can tell once I've identified it; but generally
when I

10468

Louis Hupp - Recross

1 just look at a document, I cannot always be certain
which

2 finger it would be.

3 Q. All right. So -- well, let's -- all right. Let's
allow

4 the maximum number. So that's -- that's 2400. Right?

5 A. Correct.

6 Q. Anything else?

7 A. Well, every time that we change one of the
categories --

8 Q. I understand. I've asked you these categories.
Are there

9 any more categories that we need?

10 A. That would basically be it.

11 Q. Okay. And so that's 2400; correct?

12 A. That is correct.

13 Q. Now, if you used intercomparison of latents -- that
is,

14 suppose you had out of 1,034 prints -- suppose you had
50 that

15 were classifiable. Correct?

16 A. That's fair.

17 Q. And suppose that you then did an intercomparison;
right?

18 A. That's correct.

19 Q. That would further narrow the number in all
probability,

20 would it not?

21 A. That is correct.

22 Q. Now, with these 2400 searches that you have here --
all

23 right -- that would take you -- you can submit 50 a
day; is

24 that right?

25 A. Yes, sir.

10469

Louis Hupp - Recross

the
1 Q. Now, are there a number of different people using
2 system?

3 A. Yes.

using it
4 Q. Is the system maximum that all the people that are
5 from wherever they are, they can only do 50 a day?

6 A. That is correct.

7 Q. Now, states have such systems, don't they?

8 A. Yes, they do.

right?
9 Q. And you've got 55 million prints there at the FBI;

10 A. 35.

11 Q. 35 million?

12 A. 35 million.

13 Q. Oh, this only searches the 35 million criminals?

14 A. That is correct.

15 Q. It doesn't search the 20 million noncriminals?

16 A. That is correct.

systems.
17 Q. Okay. So -- but different states do have these

18 Does Arizona have this system?

have it to
19 A. I'm not familiar with exactly which states would

20 say off the top of my head. I have access to the
information,

21 but --

22 Q. You don't know.

23 A. No.

24 Q. So 2400 -- all right -- you can do 50 a day. Is
that 120

25 days?

10470

Louis Hupp - Recross

1 A. You have the pencil. I would assume that's
correct, yes.

2 Q. Well, I don't really know. Yeah. Something like
that, we

3 can figure it out. But you say it's 2400 individual
searches.

4 Correct?

5 A. That is correct.

6 Q. And if we wanted to narrow, for instance, instead
of six

7 different states, we only wanted to do two different
states --

8 all right -- then we'd be down to 2 times 5 is 10 times
10 --

9 we'd be down to 800. Correct? Something like that?
But we

10 can do the math with the numbers that you've given us.

11 Correct?

12 A. That's correct.

13 Q. Now, if this -- did you have a discussion as to the
-- to

14 the effect that this was impractical to do?

15 A. Yes, I did.

16 Q. Okay.

17 A. At the time that it was requested, I was in the
middle of

18 the cases that would be -- the evidence was coming in.
I had

19 evidence coming in continually. At that point in time
it was

20 not practical to stop everything we were doing, which
would

21 have been required to do intercomparisons or whatever,
to do

22 computer searches at a halfway point or quarter point.
I would

23 have to have redone this over and over again, so that I
had a

24 discussion: Could these be delayed until such time as
all of

25 the current evidence had been examined, everybody had
been

10471

Louis Hupp - Recross

1 compared that they felt was involved, and then we would
resume

2 talks as to the possibility of computer searches?

till you
to you

3 Q. All right. And after you did this delay, to wait
4 all did that, did there come a time when somebody came
5 and said, well, let's don't do it?

at this

6 A. I believe it was more in line with we won't do it
7 time.

history;

8 Q. And we agreed last time you were here that this is
9 certainly one of the biggest cases in the Bureau's
10 correct?

11 A. Certainly.

12 MR. TIGAR: No further questions.

13 REDIRECT EXAMINATION CONTINUED

14 BY MS. WILKINSON:

prints
you not?

15 Q. Mr. Hupp, you found one of or two of Mr. McVeigh's
16 on the Wal-Mart receipt, Government's Exhibit 265, did

17 A. Yes, sir (sic).

Tigar is
have

18 Q. Now, if you had done this computer search that Mr.
19 suggesting on that receipt on April 19, 1995, would you

20 ever identified Timothy McVeigh's prints?

21 A. No, I would have not.

22 Q. Why not?

23 A. Mr. McVeigh was not in the database.

Honor. 24 MS. WILKINSON: No further questions, your

25 MR. TIGAR: No questions, your Honor.

10472

1 THE COURT: All right.

2 MS. WILKINSON: He's excused.

3 THE COURT: Are you sure?

4 MS. WILKINSON: Yes.

5 MR. TIGAR: No, your Honor, he's excused. I
think
6 we've taken care of it.

7 THE COURT: All right. You may step down.
You're
8 excused.

9 THE WITNESS: Thank you, your Honor.

10 THE COURT: Next, please.

11 MR. MACKEY: Yes, Judge. We'll call Ron
Clutter.

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

13 (Lawrence Kingry affirmed.)

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

15 THE WITNESS: Yes, ma'am.

16 THE COURTROOM DEPUTY: Would you state your
full name

17 for the record and spell your last name.

18 THE WITNESS: Lawrence L. Kingry, K-I-N-G-R-Y.

19 THE COURT: I thought we were going to get
20 Mr. Clutter.

21 MR. MACKEY: We did, and the break in
communication is

22 fine, Judge. We'll go ahead and proceed with Mr.
Kingry.

23 THE COURT: All right.

24 MR. ORENSTEIN: Can I just have a moment? I
didn't

25 expect to be up here exactly now, your Honor.

10473

Lawrence Kingry - Direct

1 DIRECT EXAMINATION

2 BY MR. ORENSTEIN:

3 Q. Good afternoon, Mr. Kingry. It is Mr. Kingry;
correct?

4 A. Yes, sir, that is correct.

5 Q. Sorry for the confusion.

6 Where do you live, sir?

7 A. Edmond, Oklahoma.

8 Q. And were you born and raised in Oklahoma?

9 A. No, sir, I was not.

10 Q. Where are you from originally?

11 A. Originally from Wichita, Kansas.

12 Q. What's your education, sir?

13 A. B.A., economics, Wichita State University, some
14 postgraduate work.

15 Q. Do you have a family back in Oklahoma?

16 A. Yes, sir, I do.

17 Q. Married?

18 A. Yes, sir, I am.

19 Q. How many kids do you have?

20 A. I have two children.

21 Q. Now, how are you currently occupied?

22 A. At the present time I'm employed by the State of
Oklahoma.

23 Q. Doing what for them?

24 A. I'm a firearms instructor at the state police
academy.

25 Q. How long have you been so employed?

10474

Lawrence Kingry - Direct

1 A. Approximately a year and five months.

2 Q. So sometime in '96?

3 A. Yes, sir, that's correct.

4 Q. Prior to working for the State of Oklahoma, what
did you

5 do?

6 A. I was employed as a special agent for the United

States

7 Secret Service.

8 Q. And how long were you employed by the Secret
Service?

9 A. Over 20 years.

10 Q. Were you employed by the Secret Service in 1995 --
in April

11 of 1995?

12 A. Yes, sir, I was.

13 Q. And what was your position there?

14 A. Special agent.

15 Q. Where were you assigned when you were working for
the

16 Secret Service?

17 A. The Oklahoma City field office.

18 Q. Now, before we describe that a little more, could
you tell

19 the jury the services provided by the United States
Secret

20 Service.

21 A. Part of my past duties consisted of the protection
of the

22 president and vice president of the United States and
other

23 dignitaries, the detection and suppression of
counterfeit

24 activity, the investigation of stolen and forged
government

25 securities.

Lawrence Kingry - Direct

The
of the
1 Q. Now, you've talked about your own personal duties.
2 duties that you had: Are they shared by other agents
3 Secret Service, protection and criminal enforcement?

4 A. Common duties, yes, sir.

Oklahoma,
5 Q. When you were working for the Secret Service in
6 where specifically were you stationed?

Oklahoma
7 A. At the Murrah Building, 200 N.W. 5th Street in
8 City.

9 Q. What part of the Murrah Building were you in?

10 A. Ninth floor, sir.

the
11 Q. How many people were employed on the ninth floor of
12 Murrah Building in April of 1995?

one
13 A. We had a complement of 12 full-time employees and
14 part-time employee.

Exhibit
15 MR. ORENSTEIN: If I might have Government's
16 952, the floor plan of the ninth floor, which is in
evidence,
17 on the screen, please.

18 BY MR. ORENSTEIN:

19 Q. Do you have that in front of you, Mr. Kingry?
20 A. Yes, sir, I do.
21 Q. Would you use your light and -- you should have a
pen
22 connected by a wire there. Reach under the screen and
right on
23 the surface of the computer screen and show the ladies
and
24 gentlemen of the jury what the layout of the Secret
Service is
25 on the ninth floor and who worked where.

10476

Lawrence Kingry - Direct

1 Why don't you just start just getting off the
elevator
2 and work your way into the office.
3 A. Elevators were here, walk down the hallway through
a set of
4 doors and into the entranceway/reception area of the
Secret
5 Service office.
6 Q. And if you go through touring the office.
7 A. This X, not a very good X, represents the
conference room.
8 This X represents where the special agent in
charge
9 worked, his office.
10 This room here was Linda McKinney's office.

11 And this area right here Kathy Seidl worked.

She was

12 a secretary.

13 ASAC Alan Whicher -- this was his office.

14 Q. Let me interrupt you. What is ASAC?

15 A. Assistant special agent in charge, sir.

16 Q. You can go on with your tour of the office, there.

Maroney

17 A. This office was occupied by Special Agent Mickey

18 and Special Agent Don Newsom.

Gary

19 This office was occupied by myself and Agent

20 Simpson.

Leonard.

21 This office was the office of Agent Don

22 The office of Agent Mahaffey, Gary Mahaffey.

Alan

23 This office here was occupied by Special Agent

24 Dotter and Special Agent Cynthia Campbell-Brown.

25 This was our interview room.

10477

Lawrence Kingry - Direct

1 This was the break room or processing room.

the

2 This represents the office vault, and this was

3 file room.

4 Q. Now, Agent Kingry -- I'm sorry -- Mr. Kingry.

You're no

5 longer an agent. Is that right?

6 A. I'm retired, yes, sir.

7 Q. Let me direct your attention to the morning of
April 19,

8 1995. I think you told us you were still employed by
the

9 Secret Service at that point?

10 A. Yes, sir, that's correct.

11 Q. Did you go to the Murrah Building and go to work
that

12 morning?

13 A. Yes, sir, I did.

14 Q. Can you tell the jury what you did that morning
when you

15 went to work.

16 A. I arrived at approximately 7 a.m. and went to my
office. I

17 was the first one actually to go into the office that
morning;

18 and later Don -- Agent Don Leonard came into my office
and we

19 had a discussion.

20 And at approximately 15 minutes till 9, I left
the

21 office and walked to the courthouse across the street.

22 Q. Now, let me ask you before you went to the
courthouse at a

23 quarter to 9, had you seen anyone else arrive at your
office?

24 A. Yes, sir.
25 Q. Who else was there?

10478

Lawrence Kingry - Direct

Mickey 1 A. Assistant Special Agent Alan Whicher; Special Agent
Agent 2 Maroney; Don Leonard, I've already mentioned; Special
and 3 Cynthia Campbell-Brown; Office Manager Linda McKinney,
4 Secretary Kathy Seidl.

office 5 Q. Were all of those persons present when you left the
6 at a quarter to 9?

7 A. Yes, they were.

as being 8 Q. You mentioned some of the people who worked there
not 9 present. Others who worked for the Secret Service were
10 there that morning?

11 A. No, sir, they were not.

President 12 Q. At that time were you expecting a visit by former
13 Bush to Tulsa?

next 14 A. Former President Bush was going to visit Tulsa the
15 day.

16 Q. And were some of the agents absent in connection

with that?

17 A. That is correct.

18 Q. What was Cynthia Campbell-Brown doing that morning?

19 A. That morning she was preparing for -- she was
preparing to

20 leave for Tulsa for the visit of former President Bush.

21 Q. As part of the protection detail?

22 A. Yes, sir, that is correct.

23 Q. And what was Agent Whicher doing that morning?

24 A. Alan Whicher was working with Special Agent Mickey
Maroney

25 on one of their projects, actually one of Mickey's
projects.

10479

Lawrence Kingry - Direct

1 Q. When you say "project" --

2 A. A case they were both working on.

3 Q. What was Agent Leonard doing that morning?

4 A. Agent Leonard was waiting to see ASAC Whicher in
regards to

5 an investigation and personnel matter.

6 Q. Now, prior to coming to court today -- you've just
told us

7 who was in the office and where they were that morning;

8 correct?

9 A. Yes, sir, that's correct.

10 Q. Before coming to court today, did you affix name
plates to

11 a chart showing the layout of the ninth floor and
showing where

12 your colleagues were that morning when you left?

13 A. Yes, sir, that's correct.

14 Q. And that's --

15 MR. ORENSTEIN: The Government offers that
chart with

16 the name plates, your Honor, as 952I. We will not seek
to

17 display it at this point.

18 MR. TIGAR: Subject to our discussion, your
Honor, no

19 objection.

20 THE COURT: Yes. All right.

21 BY MR. ORENSTEIN:

22 Q. Now, you told us that you left the Murrah Building
at

23 quarter to 9 or thereabouts?

24 A. Approximately 15 till 9, yes, sir.

25 Q. And where were you going?

10480

Lawrence Kingry - Direct

Federal 1 A. I was going to the magistrate's courtroom in the

2 Courthouse.

3 Q. To work on a case?

4 A. Yes, sir.

5 Q. Prior to that morning, had that case been assigned
to

6 someone else?

7 A. Prior to that morning, yes, that case had been
assigned to

8 Agent Don Leonard.

9 Q. But by that morning, it had been reassigned to you?

10 A. Yes, sir.

11 Q. And that's why you left?

12 A. Yes.

13 Q. After you left the Murrah Building that morning,
did you

14 ever see Kathy Seidl alive again?

15 A. No, sir.

16 Q. Did you ever see Linda McKinney alive again?

17 A. No, sir.

18 Q. Did you ever see Special Agent Don Leonard alive
again?

19 A. No, sir, I did not.

20 Q. Did you ever see Alan Whicher alive again?

21 A. No, sir, I did not.

22 Q. Did you ever see Mickey Maroney again alive?

23 A. No, sir.

24 Q. Did you ever see Cynthia Campbell-Brown alive
again?

25 A. No, sir, I did not.

10481

Lawrence Kingry - Direct

1 Q. What happened after you left the building?

2 magistrate's

3 A. After I left the building, I went to the

4 courtroom on the first floor of the Federal Courthouse;

and at

5 9:02 a.m., there was an explosion. And I went out of

the

6 courthouse, looked north to the federal building; and I

could

7 see through the windows of the Murrah Building -- see

blue sky.

8 And I knew that the building had been blown up.

9 Q. Could you actually see the windows there?

10 A. Yes, sir, from the -- from the front door of the

the

11 courthouse, I could see through the building. Part of

12 building was missing.

13 Q. Where did you go?

building

14 A. Then I went around to the northeast corner of the

where our

15 and looked up from the north side of the building to

that the

16 field office would have been, and I saw that -- I saw

17 field office was gone.

MR. ORENSTEIN: May I approach, your Honor?

18 THE COURT: Yes.

19 BY MR. ORENSTEIN:

20 Q. Mr. Kingry, I've placed a photograph in front of
you. It's

21 not in evidence yet. It's been marked as Government's
Exhibit

22 2101.

23 A. Yes, sir.

24 Q. Does that -- do you recognize that?

25 A. Yes, sir, I do.

10482

Lawrence Kingry - Direct

1 Q. Does that show the building after the explosion
from

2 approximately the point where you saw it?

3 A. Approximately, yes, sir.

4 MR. ORENSTEIN: Government offers 2101.

5 MR. TIGAR: I'm sorry, your Honor. May I look
at the

6 photograph?

7 THE COURT: Yes, certainly.

8 MR. TIGAR: Thank you, Agent.

9 THE WITNESS: Yes, sir.

10 MR. TIGAR: No objection, your Honor.

11 THE COURT: 2101 is received, may be shown.

12 BY MR. ORENSTEIN:
13 Q. Now, the jury can see the photograph, Mr. Kingry.
Would
14 you use your light pen once again and show where in
that
15 photograph the offices of the Secret Service were on
April 19,
16 1995?
17 A. They would have been in this area approximately
here. We
18 were on the north side of the building -- on the north
side of
19 the building on the ninth floor, and we -- there were
two
20 offices to the west of us and an office to the east of
us. DEA
21 was to the east of us, and I believe ATF and DEA had
another
22 office to our -- to our immediate west.
23 Q. But your offices, the offices of the Secret
Service, were
24 in that area that you just indicated?
25 A. Yes, sir, in that approximate area.

10483

Lawrence Kingry - Direct

1 Q. Now, after seeing that, did you try going up to
your
2 offices?
3 A. No, sir, I did not.

4 Q. What did you do?

5 A. I knew that our personnel were dead, and I knew
that the

6 rescue people would be arriving, so I attempted to
establish a

7 perimeter around the building to protect the crime
scene and to

8 keep unwanted people out.

9 Q. Is that where your attention was focused that
morning?

10 A. Yes, sir, it was.

11 Q. Did you pay attention to what was going on in terms
of the

12 rescue effort and the other efforts that were going on?

13 A. It was just a vague recollection, yes.

14 Q. Now, before coming to court today, Mr. Kingry, did
you also

15 take a look at a chart, Government's Exhibit 1171,
showing

16 photographs of your colleagues before they died in the
bombing?

17 A. Yes, sir. Yes, sir, I did.

18 Q. And did that chart fairly and accurately depict the
six

19 colleagues of yours as they appeared when they were
alive?

20 A. Yes, sir, they did -- it did.

21 MR. ORENSTEIN: That's Government's Exhibit
1171, your

22 Honor. The Government offers it.

23 THE COURT: Same objection?
24 MR. TIGAR: Pursuant to our discussion, your
Honor, no
25 objection.

10484

Lawrence Kingry - Direct

1 MR. ORENSTEIN: May I ask Agent Tongate to
assist in
2 displaying the cart?

3 THE COURT: Yes. What is it did you say?
1171 is the
4 chart?

5 MR. ORENSTEIN: Yes, your Honor.

6 BY MR. ORENSTEIN:
7 Q. Mr. Kingry, would you please go through the -- each
of the
8 photographs on the chart and tell the ladies and
gentlemen of
9 the jury the name of the person depicted, what that
person did
10 for the Secret Service and how long they had been
working for
11 the Secret Service.

12 A. Cindy Campbell-Brown was a criminal investigator,
1811
13 series, for the U.S. Secret Service. She had been so
employed
14 for approximately one year and stationed in the
Oklahoma City

15 field office.

16
investigator

Special Agent Donald R. Leonard was an

17
United

for the Secret Service, 1811 series, had been with the

18 States Secret Service approximately 24, 23 years.

19
States

Mickey Maroney, special agent for the United

20
with the

Secret Service, investigator, 1811 series, had been

21 service, I'm going to say, 21, 22 years.

22
for the

Linda McKinney. She was the office manager

23
office

field office, had been with the Secret Service as the

24
into the

manager -- or had been working as a secretary and then

25 office manager slot approximately 14 years.

10485

Lawrence Kingry - Direct

1
secretary in

Kathy Seidl had been -- was employed as a

2 our office, had been with us for 10, 12 years.

3
been in

And Assistant Special Agent Alan Whicher had

4
Secret

the office approximately nine months, had been with the

5 Service approximately 14, 15 years.

6 Q. Now, you described -- I'm sorry.

7 A. He was a criminal investigator, also 1811 series.

8 Q. You described some of these folks as 1811 series
criminal

9 investigators. Were all of them special agents for the
Secret
10 Service?

11 A. That is correct. 1811 just designates criminal
12 investigator for the government service.

13 Q. You told us that prior to the bombing you had 12
people
14 assigned full-time to the Secret Service office in
Oklahoma

15 City; is that correct?

16 A. Yes, sir, that's correct.

17 Q. What percentage of those people were killed in the
bombing?

18 A. We lost 50 percent.

19 Q. Do you have an estimate of how many years of
experience of
20 work was lost in the bombing?

21 A. Approximately 85 years, sir.

22 Q. Now, in addition to the loss of those six
employees, did

23 the bombing have any other effect on the ability of the
Secret
24 Service to perform its mission in Oklahoma City?

25 A. Yes, sir, it did.

Lawrence Kingry - Direct

1 Q. Can you describe some of those effects?

2 A. The efficiency of the office decreased to less than
3 50 percent. Our ability to work cases, conduct
investigations,
4 perform protection assignments were lessened a great
deal.

5 Q. Did you lose investigative files?

6 A. Yes, sir. We lost several investigative files,
some that
7 were never returned. Part of our files were returned
to us,
8 but we had two major investigations going on that after
the
9 bombing we could not continue with. All the evidence
was lost.

10 Q. What kinds of investigations were lost?

11 A. Financial fraud. One involved a nursing home or
nursing
12 homes, and another was a financial fraud investigation.

13 Q. In addition to the investigations being performed
by the
14 Oklahoma City office, did the bombing have an effect on
Secret
15 Service in other parts of the country?

16 A. Because the agents that had survived the bombing
were
17 addressing the issues of the families who lost members
in the

assist 18 bombing, other personnel throughout the country came to
and 19 the Oklahoma City field office in pursuit of the duties
in 20 establishing a new field office for the Secret Service
21 Oklahoma City.

place to 22 Q. So part of the work was also just establishing a
23 work from?

24 A. Yes, sir, that's correct.

25 Q. Where was that temporary workplace established?

10487

Lawrence Kingry - Direct

1 A. Temporary office was established that afternoon
2 approximately three to four blocks south of the federal
3 building on Park Avenue, I believe, 200 Park Avenue.

Will 4 Q. But your temporary field office was not over at the
5 Rogers Airport with other Treasury agencies?

6 A. No, sir.

Special 7 Q. Mr. Kingry, on the morning of April 19, 1995, was
United 8 Agent Mickey Maroney a law enforcement officer of the
9 States engaged in the performance of his official
duties?

10 A. Yes, sir, he was.

Leonard a 11 Q. And on that same morning, was Special Agent Don
12 law enforcement officer of the United States engaged in
the 13 performance of his official duties?

14 A. Yes, sir, he was.

Whicher a 15 Q. And on that same morning, was Special Agent Alan
16 law enforcement officer of the United States engaged in
the 17 performance of his official duties?

18 A. Yes, sir, he was.

was 19 Q. And that morning when Agent Cindy Campbell-Brown
20 preparing to go to Tulsa to protect former President
Bush, was 21 she a law enforcement officer of the United States
engaged in 22 the performance of her official duties?

23 A. Yes, sir, she was.

further, 24 MR. ORENSTEIN: Thank you. I have nothing
25 your Honor.

10488

Lawrence Kingry - Direct

1 THE COURT: Mr. Tigar?

2 MR. TIGAR: May I retrieve the photograph,
your Honor?

3 THE COURT: Yes. Sure.

4 MR. TIGAR: Thank you.

5 Thank you, sir.

6 THE WITNESS: You're welcome.

7 CROSS-EXAMINATION

8 BY MR. TIGAR:

9 Q. Agent, my name is Michael Tigar, and I'm one of the
lawyers

10 appointed to help Terry Nichols.

11 A. Yes, sir.

12 Q. You first felt the explosion when you were in the
13 magistrate's court in the courthouse. Is that right?

14 A. Yes, sir, that's correct.

15 Q. Now, was that Magistrate Howland's chambers, or --

16 A. No, sir, that was not.

17 Q. Which magistrate was that?

18 A. I believe it was Bana Blasdel.

19 Q. Now, in the Federal Courthouse, was that closer to
the

20 Robinson Street side? Can you remember which side it
was?

21 A. It was -- I believe it was Courtroom No. 2, which
would

22 have been closer to the Robinson Street side, yes, sir.

23 Q. Now, when you went of out the courthouse there,
which --

24 where did you go? That is, you said you got in
position to see

25 this -- what was in this picture. I'm going to put up
a map of

10489

Lawrence Kingry - Cross

1 downtown. I think it's been received in evidence.

2 Government's 1953?

3 THE COURTROOM DEPUTY: No.

4 MR. TIGAR: No? Well, then I won't.

5 BY MR. TIGAR:

6 Q. I'm sorry, sir.

7 You went out onto Robinson and went up to 5th?

8 A. Yes, sir, the northeast corner of 5th and Robinson.
That

9 would have been between the YMCA and the federal
building.

10 Q. You understand we've seen a lot of pictures of
that. I

11 think we have a picture of it. And this, which is in
evidence,

12 Government's 2101 -- that's the scene that you
confronted.

13 Correct?

14 A. Yes, sir, that's correct.

15 Q. Now, this here down in the corner by my finger --
that's

16 just the edge of that Social Security office that was
the

17 first-floor extension. Is that what that was?
18 A. I'm not sure if that was a Social Security office
or the
19 power station. They had some generators or
transformers in
20 that area, and I don't know whether that was --
21 Q. That's the one-story part that extended out beyond
the nine
22 stories. Is that your recollection?
23 A. That's my recollection, yes.
24 Q. And this here is the column at the edge of the
footprint of
25 the Murrah Building; right?

10490

Lawrence Kingry - Cross

1 A. Yes, sir. That was on the northeast corner.
2 Q. And this devastation here: That's where that
curtain wall,
3 that glass wall used to be; right?
4 A. Yes, sir, that's correct.
5 Q. That side.
6 Now, in this picture, there is some very
thick, black
7 smoke here.
8 A. Yes, sir.
9 Q. Could you see or could you make out what was on
fire?

the
just
cars

10 A. As I recall, it was the tires of the cars parked on
11 north side of the street in that parking lot that was
12 north of the 5th Street.

13 Q. Now, did those -- did the gasoline tanks of those
14 catch fire that you observed?

15 A. I would say that some of them did, yes, sir.

16 Q. Okay. But it was -- and as you -- about how long
17 did you
18 remain in that position, sir, if you remember?

19 A. I really don't know. I really don't remember.

20 Q. But during -- but during the time that you were
21 there,
22 here:
23 this -- this very -- this black smoke that we're seeing

24 That accurately reflects what was happening; is that
25 correct?

26 A. No, sir. I can't say that that was that thick. My
27 attention was directed to our field office, the area
28 where our
29 field office would have been. There was some black
30 smoke, but

31 I can't tell you that it was that thick or it was
32 thicker. I

10491

Lawrence Kingry - Cross

1 don't know.

2 Q. All right. And you attempt -- you then worked to
set up a 3 perimeter. Is that right?

4 A. Yes, sir, that's correct.

5 Q. And waited until the rescue people got there and
set up 6 police lines, and so on. Is that --

7 A. Well, I was trying to help set up police lines,
yes, sir.

8 MR. TIGAR: I see.

9 Thank you very much, sir. I have no further
10 questions.

11 MR. ORENSTEIN: Nothing further. The witness
is 12 excused.

13 THE COURT: Agree to excuse?

14 MR. TIGAR: Yes, of course, your Honor.

15 THE COURT: You are excused. You may step
down.

16 THE WITNESS: Thank you, your Honor.

17 THE COURT: All right.

18 MR. MACKEY: Judge, we'll call Floyd Carter.

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

20 (Floyd Carter, Jr. affirmed.)

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

22 Would you state your full name for the record
and

23 spell your last name.

24 THE WITNESS: Floyd Lawson Carter, Jr. My
last name

25 is spelled C-A-R-T-E-R.

10492

1 THE COURTROOM DEPUTY: Thank you.

2 THE COURT: Mr. Ryan.

3 MR. RYAN: Thank you, your Honor.

4 DIRECT EXAMINATION

5 BY MR. RYAN:

6 Q. Mr. Carter, where do you live?

7 A. I live in Midwest City, Oklahoma, sir.

8 Q. Where were you born and raised?

9 A. In a small town called Heavener, Oklahoma, in
eastern

10 Oklahoma.

11 Q. Is that a small town in Oklahoma City -- in
Oklahoma?

12 A. It's a pretty small place, sir.

13 Q. Where are you employed?

14 A. I'm employed with the Defense Investigative Service
in

15 Midwest City.

16 Q. Are you married?

17 A. Yes, sir, I am.

18 Q. Children?

19 A. I have two adult children and three grandchildren.

-- I

20 Q. Now, after you graduated from Heavener High School

21 assume that's where you went to school.

22 A. Yes, sir, that's where I graduated.

23 Q. What did you do after that time?

and then

24 A. I spent one year in Eastern Oklahoma A & M College

25 enlisted in the U.S. Army.

10493

Floyd Carter - Direct

1 Q. And how long did you spend in the Army?

2 A. I was there 20 years.

3 Q. What did you do after your discharge from the Army?

months

4 A. I worked for a defense contractor for a couple of

Service, the

5 and then was hired with the Defense Investigative

6 organization I'm with now.

7 Q. And when was that approximately?

8 A. That was 1982, in April of 1982.

Service for

9 Q. So you've been with the Defense Investigative

10 how many years?

11 A. 16 years approximately.
12 Q. What is your current position?
13 A. I'm currently the special agent in charge of the
Oklahoma
14 field office.
15 Q. And where is your field office located at this
time?
16 A. It's located in Midwest City now.
17 Q. Would you tell the ladies and gentlemen of the jury
what
18 services the Defense Investigative Service provides.
19 A. Yes, sir. We are what's considered a national
security
20 organization. We provide sort of a broad array of
security
21 services for the Department of Defense, not military
services,
22 and for defense industry. Those services are security
23 training, security assistance as far as controlling and
24 safeguarding classified secret and top secret
documents, and we
25 also do background investigations, where we make
inquiries

10494

Floyd Carter - Direct

1 through interviews or record checks of a person's
suitability
2 for a position of trust with the U.S. Government.

Service 3 Q. Where was the offices of the Defense Investigative
4 located in April of 1995?

Federal 5 A. It was in the -- on the third floor of the Murrah
6 Building.

as 7 Q. Let me show you what has been received in evidence
8 Exhibit 952, third floor, and ask if you can identify
that.

9 A. Yes, sir, I can.

your 10 Q. Now, if you would, there is a light pen there under
11 desk, and place it directly on the screen and show us
how one

Service, 12 would enter the offices of the Defense Investigative
13 who was located there, and where their offices were.

into our 14 A. Okay, sir. We had one entrance only into our --
15 office area. As you come in, this area is an open
area, and

investigative 16 that's where most of the special agents and

seating in 17 technicians would work. They did not have assigned

they 18 that area. There were three or four desks; and since

come in at 19 worked primarily out of their automobile, they would

they 20 various times and gather their mail, drop off work that

21 had.

22 Q. Let me to stop you right there.

23 A. Yes, sir.

24 Q. Why would they work out of their automobile?

25 A. Typically we go to -- most of the work that we did
was the

10495

Floyd Carter - Direct

1 background investigations for security clearances, and
we go to

2 the interviewee's location. We don't bring them
typically to

3 us. So we might have -- most of the people could be
out at

4 Tinker Air Force Base interviewing a military officer,
or they

5 could be down at Boeing interviewing a government
contractor,

6 or they could be off in the neighborhood interviewing
the

7 neighbor of one of the people that we're doing the
background

8 investigation on. So they worked predominantly out of
their

9 vehicles, what we call the "street agents."

10 Q. How many employees worked out of the Oklahoma City
office

11 there on the third floor of the Murrah Building in
April of

12 '95?

13 A. In April of '95, there were 12.

14 Q. And how many of those people were typically out of
the
15 office doing their jobs each day?

16 A. There were typically -- they started their day out
of the
17 office, and they ended their day out of the office; and
they
18 would typically come in once a day to pick up and drop
off
19 material. That would be nine of the employees. The
other
20 three were supervisor, assistant supervisor, and
secretary; and
21 they were typically in the office at that time.

22 Q. All right. Who were the -- who was the secretary
that
23 would be typically in the office?

24 A. Secretary was Jean Johnson, Norma Jean Johnson. We
called
25 her "Jean."

10496

Floyd Carter - Direct

1 Q. Who was the supervisor that would typically be in
the
2 office?

3 A. The supervisor -- the special agent in charge at
that time

4 was Robert Westberry, who went by the name of Bob.

5 Q. And who was the --

6 A. I was the assistant at that time.

7 Q. You were?

8 A. Yes, sir.

9 Q. Now, back to our floor diagram here.

10 A. Okay.

11 Q. You have indicated a central area there in the
middle?

12 A. Yes, sir.

13 Q. Who kept a desk in that location?

14 A. All of the other nine people occupied about four
desks. We

15 had four desks situated like so, and they would just
come in,

16 use that desk as an open area, spread their work out,
do what

17 they needed to do and then leave.

18 Q. All right. And if you would, then, take us through
the

19 remaining offices.

20 A. Yes, sir. This room here was our files room and a
computer

21 room.

22 This room was a -- what we called an interview
room.

23 Occasionally, we would bring the people that we were
conducting

24 the background investigation on for an in-depth

personal

25 interview. It takes about an hour, and we would do
that in

10497

Floyd Carter - Direct

1 this interview room.

2 This room was Bob Westberry's office, the
special

3 agent in charge.

4 Outside his doorway right here along this wall
was

5 Jean Johnson's desk.

6 This room was my office, and this room had
previously

7 been the office of the supervisor who had retired and
we were

8 using it as another interview room.

9 Q. All right. Now, let me direct your attention to
April 19,

10 1995.

11 A. Yes.

12 Q. Now, you've told us you were the assistant
supervisor in

13 charge of the office.

14 A. Yes, sir.

15 Q. Were you in the Murrah Building that morning?

16 A. No, sir. I was on temporary duty in Houston,
Texas.

17 Q. And what were you doing in Houston?

18 A. Our office had been a test office for a
computerized case

19 management system, and I was involved in the testing of
that;

20 so I had gone to Houston to install the computer
program on our

21 Houston office's computers and to teach our Houston
personnel

22 how to use it.

23 Q. At some point during the day of April 19, 1995, did
you

24 learn what had occurred at the Murrah Building?

25 A. Yes, sir.

10498

Floyd Carter - Direct

1 Q. How did you learn that?

2 A. I was standing by the secretary's desk in the
Houston

3 office and the telephone rang. The secretary said,
"It's your

4 son Jeff," my adult son who lives in Oklahoma City.

5 I took the phone from him and he said, "Dad,
they've

6 blown up the building."

7 And at first, I didn't believe him; but told
him, you

8 know, I would check. And I hung the phone up, went

immediately

9 into the supervisor's office in Houston where they had
a

10 television, and it was just starting to come in on
national

11 news at that time.

12 Q. Did you see the telecast at that time?

13 A. Yes, sir.

14 Q. About what time of the day was this?

15 A. I'm not exactly sure, but I would say it's within
30

16 minutes after the explosion.

17 Q. All right. What did you do as a result of
obtaining this

18 information about what occurred to your office space?

19 A. I immediately caught the first plane back to
Oklahoma City.

20 Q. About what time did you arrive?

21 A. I believe it was approximately 2 p.m.

22 Q. And what did you do upon arrival in Oklahoma City?

23 A. I took my vehicle, which was at the airport
parking, and

24 went straight downtown to see the building and the area
myself

25 and see if -- what I could do.

10499

Floyd Carter - Direct

1 Q. What did you do after you got downtown?

2 A. As I was -- as I came up on the -- the streets were
blocked

3 on the east and west side, so I came in from the north
side and

4 went to the federal law enforcement area where they
were

5 setting up an operations center just north of the
building; and

6 then immediately I went to the building itself to view
it, and

7 I saw the building at that time.

8 Q. Let me show you an exhibit that's already been
received

9 into evidence, which is Exhibit 968. Do you see that
on your

10 screen?

11 A. Yes, sir.

12 Q. Now, can you tell us what this exhibit is?

13 A. Pardon me, sir?

14 Q. What is this exhibit?

15 A. This is the Murrah Building.

16 Q. And would you take your light pen and show the
ladies and

17 gentlemen of the jury where your offices were located
prior to

18 this blast.

19 A. Yes, sir. In that area right there.

20 Q. How much of your office space remained following
this

21 explosion?

22 A. There was none. It was gone. There was a ledge
about like

23 so, 6 inches, around the -- the east end of the
building. The

24 rest was just rubble.

25 Q. Thank you.

10500

Floyd Carter - Direct

1 Would you tell us how you spent the remainder
of the

2 day.

3 A. Yes, sir. My -- my supervisor had been attempting
to

4 contact our people because they were out in cars to try
to

5 identify who was -- who was in the building and who was
not at

6 the time. And his assistant was driving from Dallas,
Texas;

7 Irving, Texas, up. We met at my house in Midwest City
and

8 immediately started getting in contact by telephone
with the

9 families and with the people that we knew were not in
the

10 building that had called in. And so we spent the
remainder of

11 that day, most of that evening, either on the telephone
or in

12 person with family members at their house or down at
the --
13 there was a church that had been set up as sort of an
14 operations center by the Red Cross down there.
15 Q. Did you play some role that day in the
identification of
16 the people from your service agency that died?
17 A. That particular day was spent strictly with the --
with the
18 relatives. It was within the next day or so I began to
gather
19 information that the Medical Examiner's office had
requested us
20 gather through the Army criminal investigation people
that were
21 on site to help them do a scientific identification of
the
22 people if and when they were found.
23 Q. All right. How many people from the Defense
Investigative
24 Service died on the morning of April 19?
25 A. Five.

10501

Floyd Carter - Direct

1 MR. RYAN: Your Honor, we have a photographic
chart of
2 the five individuals from this agency that died. It's
Exhibit

3 1076, and we would offer it in evidence at this time.

4 THE COURT: All right. It's the same
position.

5 MR. TIGAR: Subject to our discussion, your
Honor, no
6 objection.

7 THE COURT: Yes. We'll receive 1076, may be
8 displayed.

9 MR. RYAN: Thank you, your Honor.

10 BY MR. RYAN:

11 Q. Mr. Carter, if you would turn to Exhibit 1076. I'd
like

12 for you to identify each of the individuals shown in
this

13 exhibit. Identify them by name and state how long they
had

14 been with your agency and what their position was.

15 A. Yes, sir. Norma Jean Johnson was a secretary. She
had

16 been with our organization approximately six years at
the time

17 of the explosion.

18 Bob Westberry was the special agent in charge.
He had

19 been in the Defense Investigative Service since it was
formed

20 in 1972, but had only been in Oklahoma City for
approximately

21 two years at the time of the explosion. He had
transferred

22 from Miami.

23 Peter DeMaster was a special agent. He had
been in
24 our office -- this is where he was hired on with the
Defense
25 Investigative Service -- since 1982.

10502

Floyd Carter - Direct

1 Larry Turner was a special agent. He hired on
to our
2 office from the Oklahoma Highway Patrol in
approximately 1984.

3 And Harley Cottingham was a special agent. He
had
4 transferred to our office from the Colorado Springs
office and
5 had been in our location approximately two years when
the
6 explosion took place.

7 MR. RYAN: Thank you.

8 Take it down now, if you would, Mr. Tongate.

9 BY MR. RYAN:

10 Q. Would you tell us very briefly what effect the
bombing of
11 the Murrah Building, destruction of your office, had on
the
12 work of the Defense Investigative Service in Oklahoma
City.

13 A. Well, immediately, it ceased. We -- we were unsure
what

missing 14 investigations were in process by those people who were
ones at 15 because they carried anywhere from 50 to 100 different
16 any given time.

begin to 17 The employees were in no position to even
and our 18 think about working. Our organization in Washington
19 regional headquarters in Dallas area brought in
supervisors and
20 agents to resume the work of the Defense Investigative
Service.

21 We relocated to Tinker Air Force Base and with
22 Tinker's help actually had investigations up and
running within
23 approximately 72 hours; but this was all done with
people from
24 outside the Oklahoma City office at the time. Most of
those
25 were told to go home and, you know, we checked with
them daily

10503

Floyd Carter - Direct

1 for a month or so. And it was several weeks before
many came
2 back to work and a couple of months before a couple
came back
3 to work.

4 MR. RYAN: Your Honor, the names of the five
people
5 from this agency who died have been placed on Exhibit
952 and
6 we marked as 952C. We would offer it at this time but
not ask
7 to display it.

8 THE COURT: All right.

9 MR. TIGAR: Subject to our discussion, your
Honor.

10 THE COURT: Yes. Received.

11 MR. RYAN: Thank you. No further questions.

12 THE COURT: Mr. Tigar?

13 CROSS-EXAMINATION

14 BY MR. TIGAR:

15 Q. Good afternoon, Agent.

16 A. Sir.

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

19 A. Yes, sir.

20 Q. You all in DIS also do military contractor fraud
21 investigations, don't you?

22 A. The Defense Criminal Investigative Service does
that, sir.

23 They were an offshoot of us several years. They do
procurement

24 fraud. We don't.

25 Q. So that's been split off?

10504

Floyd Carter – Cross

1 A. Two separate organizations.

couple of

2 Q. Two separate things. I just want to ask you a

afternoon

3 questions. You got there about, what, 3:00 in the

4 downtown?

exactly

5 A. I think it was about 2, sir. I'm not really sure

there

6 what time it was, but I probably landed about 2 and was

7 within 20 minutes.

8 Q. As quick as you could get there?

9 A. Yes, sir.

evidence as

10 Q. Okay. Now, you looked at a picture which is in

see, but

11 Government's Exhibit 968. And it's a little hard to

taken

12 we can look here and see -- looks like this picture is

Right?

13 from across the street, a rooftop of a building.

14 A. Yes, sir. It's looking down.

15 Q. Looking in a downward direction.

approach

16 Now, when you got there, were you able to

17 into this area here where this big piece of concrete

has fallen

18 down?

19 A. No, sir, I wasn't that close.

20 Q. You weren't?

21 A. No, sir.

in the

22 Q. You were able to see a crater; that is, a big hole

23 ground?

was

24 A. I didn't really look for a hole in the ground. I

25 looking for our office. I don't recall.

10505

Floyd Carter – Cross

1 Q. You were looking for your office area; right?

2 A. Yes, sir.

did not

3 Q. And is it fair to say, then, that you -- after you
4 contacted the criminal investigations center there, you

evidence or

5 have any investigative responsibility for gathering
6 interviewing people; is that right?

the

7 A. No, sir. I was primarily involved with assisting
8 families.

9 Q. Right.

10 A. People from our agency. Other people had some

11 investigative --

12 Q. I understand. But your job was to work -- to do
the people

13 work for the people in your operation?

14 A. Yes, sir.

15 MR. TIGAR: Thank you very much, sir. No
further

16 questions.

17 MR. RYAN: No questions, your Honor. He may
be

18 excused.

19 MR. TIGAR: Yes, of course your Honor.

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

21 MR. MACKEY: Try again. Ron Clutter, Judge.

22 THE COURTROOM DEPUTY: Would you raise your
right

23 hand, please.

24 (Ronald Clutter affirmed.)

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

10506

1 Would you state your full name for the record
and

2 spell your last name.

3 THE WITNESS: My name is Ronald Clutter,

4 C-L-U-T-T-E-R.

5 THE COURTROOM DEPUTY: Thank you.

6 THE COURT: Proceed.

7 DIRECT EXAMINATION

8 BY MR. GOELMAN:

9 Q. Good afternoon, Mr. Clutter. Where do you live?

10 A. Kansas City, Missouri.

11 Q. And where do you work?

12 A. KCI Airport.

13 Q. KCI?

14 A. Yes.

15 Q. What does that stand for?

16 A. Kansas City International.

17 Q. What do you do out at KCI?

18 A. I'm maintenance superintendent.

19 Q. How long have you been working at the airport?

20 A. Almost 25 years.

21 Q. What are your responsibilities as KCI's maintenance
22 superintendent?

23 A. I take care of all the heating, air-conditioning,
24 electrical, utilities, gas, lights, water, telephone.

25 Q. Fair to say that in your 25 years at KCI you've
gotten to

Ronald Clutter – Direct

1 know the physical plant at the airport fairly well?

2 A. Yes, sir.

3 Q. And does that include the different structural
columns in

4 each of the terminal buildings?

5 A. Yes, sir.

6 Q. Were you maintenance superintendent at KCI at the
time of
7 the Oklahoma City bombing in April, 1995?

8 A. Yes, sir.

9 Q. And how many terminal buildings did the airport
have at
10 that time?

11 A. We have three terminal buildings.

12 Q. About how many gates were in each terminal?

13 A. Approximately 20 gates.

14 Q. And how were the different terminals labeled?

15 A. A, B and C terminals.

16 Q. I want you to take a look at your screen, and I'm
going to
17 show you what's been marked for identification
Government's

18 Exhibit 2048. Do you recognize what's depicted there?

19 A. Yes, sir. This is a diagram of the lease
agreements for A

20 terminal.

21 Q. Terminal A at KCI?

22 A. Yes, sir.

23 Q. Which level?

24 A. This is the passenger service level.

25 Q. What's located on the passenger service level,
Terminal A?

10508

Ronald Clutter - Direct

1 A. All of our ticket counters, bag claims, bag drops
here that

2 we service the people that use the airport.

3 Q. Are the gates for aircraft also located --

4 A. Yes.

5 Q. -- on that level?

6 A. Your departure gates and arrival gates.

7 Q. Is Government's Exhibit 2048 a fair and accurate
depiction

8 of Terminal A and what it looked like in April of 1995?

9 A. Yes, sir.

10 MR. GOELMAN: We offer Government 2048, your
Honor.

11 MR. TIGAR: No objection, your Honor.

12 THE COURT: Received.

13 BY MR. GOELMAN:

14 Q. Now, Mr. Clutter, what are the different colors on
the

15 outer rim of the terminal building?

16 A. Okay. The different colors on the outer rim are
the
17 different lease areas by each individual airline that
leases
18 from the city of Kansas City, Missouri.

19 Q. Was America West one of the airlines that leased
some space
20 at KCI in April, '95?

21 A. Yes, sir.

22 Q. And can you take your light pen and press it right
to the
23 screen and circle the area where America West had
leased space
24 back in April, '95.

25 That is where the ticket counters for America
West

10509

Ronald Clutter - Direct

1 would have been?

2 A. Yes, sir.

3 Q. And what gates did America West operate back in
April,
4 1995?

5 A. Gates 19 and 20.

6 Q. You mentioned that each terminal had 20 or so
gates. Is
7 that right?

8 A. Yes, sir.

9 Q. Do you know the approximate number of pay phones
that were

10 located in each terminal?

11 A. Approximately 100 pay phones per terminal.

12 Q. Have you seen a record from the phone company
indicating

13 the location and the phone number of one of those pay
phones in

14 April, '95?

15 A. Yes, sir.

16 Q. I want to show you what's already been received in
evidence

17 as Government's Exhibit 520, page 329.

18 Can you just click your pen and move that
circle that

19 you drew on the last exhibit, please.

20 Can you read the phone number that this record
applies

21 to on the top line of the record?

22 A. It's area code 816 -- I believe it's 464-96 -- and
--

23 Q. Let me zoom in on it a little bit closer for you.

Can you

24 read it now?

25 A. Area code (816) 464-9693.

10510

Ronald Clutter - Direct

is a 1 Q. And next to the letters BLA, can you see if there
2 particular location for this phone number?

3 A. Yes. It's Module A, Column 6, Location Gate 19 at
Grid 6.

4 Q. Okay. Mr. Clutter, I'm going to put Government's
Exhibit 5 2048 back up there. In April, 1995, where physically
were the 6 pay phones in Terminal A placed?

7 A. They were located in what we call the X columns.
Those are 8 the even-number columns that are depicted on the
drawing by the 9 numbers or grid lines.

10 Q. And could you please take your light pen again and
place an 11 X by Column or Grid 6.

12 What gate is that directly across from?

13 A. Gate 19.

14 MR. GOELMAN: Your Honor, I'd ask the Court to
read 15 Factual Stipulation 14, which applies to Government's
Exhibit 16 2047.

17 THE COURT: The stipulation is "Government's
Exhibit 18 No. 2047 is a record from the Armstrong Travel Agency
in Las 19 Vegas, Nevada, reflecting dates and times of travel for
Joshua

and 20 Nichols between Las Vegas and Kansas City on April 11
21 April 17, 1995.
22 "America West Airlines Flight No. 134 departed
from 23 Terminal A, Gate 19 at 10:45 p.m. on April 17, 1995."
24 That's agreed?
25 MR. WOODS: Yes, your Honor, that's our
stipulation.

10511

Ronald Clutter - Direct

1 THE COURT: All right.
2 MR. GOELMAN: Thank you, your Honor.
3 I would now move to admit Government's Exhibit
2047.
4 MR. TIGAR: No objection, your Honor.
5 THE COURT: Received. 2047? Oh, yes. That's
what we
6 just read. Sorry.
7 BY MR. GOELMAN:
8 Q. Mr. Clutter, can you take a look at that travel
itinerary
9 there?
10 A. Yes, sir, but I can't read it as it's on the
screen.
11 Q. Can you read that portion of it right there?
12 A. Yes, sir.

13 Q. Does that reflect that Joshua Nichols was a
passenger on

14 America --

15 MR. TIGAR: Your Honor, I object to the
repetition.

16 THE COURT: Yes. We just stipulated to that.

17 MR. GOELMAN: Yes, your Honor.

18 BY MR. GOELMAN:

19 Q. I want to show you what's already been admitted,
20 Government's Exhibit 1888, page 16. Do you know which
pay

21 phones -- which companies operated the pay phones at
KCI back
22 in April of 1995?

23 A. At A terminal it would have been either AT&T or
United

24 Sprint.

25 Q. Do you know if those companies allowed callers with
credit

10512

Ronald Clutter - Direct

--
1 or debit cards to make long distance phone calls from

2 A. Yes.

3 Q. -- those pay telephones?

4 A. Yes, sir, we have credit card telephones.

5 Q. Could you turn to the entries for Monday, April 17,
1995.

6 Do you see that down at the bottom?

7 A. Yes, sir.

8 Q. And can you read the phone call -- the second-to-
last phone

9 call on the page, the number of the pay phone from
which the

10 call was made according to this exhibit?

11 A. Okay. It was made from KCI Airport to the
Dreamland Motel.

12 Q. Can you just read the "from" number, please.

13 A. The "from" number is area code (816) 464-9693.

14 Q. And is that the same number as the record that you
just

15 looked at, Mr. Clutter?

16 A. Yes, sir.

17 Q. Where did that particular call go to?

18 A. To the Dreamland Motel.

19 Q. Okay. Could you look at the very last phone call
on that

20 page. Is that also from the same pay phone?

21 A. Yes, sir.

22 Q. And where did that phone call go to?

23 A. To Padilla, Lan/Leonard -- or Lana/Leonard.

24 Q. According to this exhibit, what time was the call
made to

25 the Dreamland Motel in Junction City?

Ronald Clutter - Direct

1 A. 10:35.

2 Q. How long did it last?

3 A. 52 seconds.

in Las

4 Q. And how long was the call to the Padilla residence

5 Vegas, Nevada?

6 A. It was 3 minutes and 5 seconds.

7 Q. When was that call made?

8 A. At 10:46.

Flight

9 Q. Is that one minute after the scheduled departure of

10 134, sir?

11 A. Yes, sir.

12 MR. GOELMAN: One moment, your Honor.

13 THE COURT: Yes.

14 MR. GOELMAN: I have nothing further.

questions?

15 THE COURT: Mr. Tigar, do you have some

16 CROSS-EXAMINATION

17 BY MR. TIGAR:

one of

18 Q. Hello, Mr. Clutter. My name is Michael Tigar. I'm

19 the lawyers appointed to help out Terry Nichols.

20 You were asked to look at a record -- is that

the

21 correct -- of some telephone calls just a minute ago on

22 screen?

23 A. Yes, sir.

24 Q. Now, that's -- that's not your record, is it?

25 A. No, sir.

10514

Ronald Clutter - Cross

can you 1 Q. Now, you see earlier up on Saturday, the 15th --
2 see that?

3 A. Yes, sir.

number 4 Q. And there is a call from the Dreamland Motel to a
5 that says "Terry Nichols." Right?

6 A. Yes, sir.

7 Q. And the length of that call is zero. Correct?

8 A. Yes, sir.

Dreamland to 9 Q. And then on the 17th, there is a call from the
10 Terry Nichols, and the length of that call is 57
seconds. Do

11 you see that, sir?

12 A. Yes, sir.

Honor. 13 MR. TIGAR: I have nothing further, your

14 MR. GOELMAN: No questions, your Honor.

15 THE COURT: I take it this witness is excused?

16 MR. GOELMAN: Yes, your Honor.

17 THE COURT: Agreed?

18 MR. TIGAR: Yes, your Honor.

19 THE COURT: You're excused, sir.

20 And I think we'll recess at this point rather
than

21 starting another witness.

22 And let me just again reconfirm the schedule
for this

23 week with you so that there is no misunderstanding
here.

24 On Thursday, there is a national holiday.
We'll

25 recess for that day; and then on Friday, we will resume
at 8:45

10515

1 in the morning and run to 1:00 as we have been
regularly on our

2 Fridays, so that will be our schedule. And, of course,

3 tomorrow and Wednesday we'll work full days, according
to our

4 regular schedule.

5 So you're to be excused now until 8:45
tomorrow

6 morning with the same cautions given as they are at all

7 recesses of continuing to keep open minds, avoiding
discussion

8 of the case with all other persons, including other
jurors, and
9 being very careful about anything that you read, see,
and hear
10 to avoid anything that may relate to the case. I guess
one of
11 you at least may want to watch a football game, but I
don't
12 think that relates to the case.

13 So you're excused now till 8:45 tomorrow
morning.

14 (Jury out at 5:00 p.m.)

15 MR. TIGAR: Your Honor, may we approach the
bench?

16 THE COURT: Sure.

17 (At the bench:)

18 (Bench Conference 89B1 is not herein transcribed by
court
19 order. It is transcribed as a separate sealed
transcript.)

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1 (In open court:)

2 THE COURT: All right. We've discussed some
3 scheduling matters and matters for the Court to rule
on, which
4 I'll be doing.

5 We're in recess. 8:45.

6 (Recess at 5:08 p.m.)

7 * * * * *

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18 PLAINTIFF'S EXHIBITS

Withdrawn 19 Exhibit Offered Received Refused Reserved

20 265C 10404 10405

21 265CC 10407 10407

22 265D 10408 10409

23 265DD 10411 10411

24 627 10384 10384

25 952I 10479 10479

10526

1 PLAINTIFF'S EXHIBITS (continued)

Withdrawn 2 Exhibit Offered Received Refused Reserved

3 952C 10503 10503

4	1076	10501	10501		
5	1171	10483	10483		
6	1832	10366			
7	1832	10369		10370	
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14	2101	10482	10482		
15	2115	10457	10458		
16	2116	10448			
17	2116	10453		10454	
18			DEFENDANT'S EXHIBITS		
19	Exhibit	Offered	Received	Refused	Reserved
Withdrawn					
20	E129	10422	10422		
21	E130	10422	10423		
22				* * * * *	
23					
24					
25					

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REPORTERS' CERTIFICATE

transcript from

2 We certify that the foregoing is a correct

Dated

3 the record of proceedings in the above-entitled matter.

4 at Denver, Colorado, this 24th day of November, 1997.

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Paul Zuckerman

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Bonnie

Carpenter

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