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1 APPEARANCES
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4 General, 1961 Stout Street, Suite 1200, Denver,
5 80294, appearing for the plaintiff.
6 MICHAEL E. TIGAR, RONALD G. WOODS, ADAM
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8 Street, Suite 1308, Denver, Colorado, 80203, appearing
9 Defendant Nichols.

10 * * * * *

11 PROCEEDINGS

12 (In open court at 9:00 a.m.)

13 THE COURT: Please be seated.

14 We are convened in 96-CR-68, United States
against
15 Terry Lynn Nichols for the purpose of taking testimony
relevant
16 to the motion to suppress evidence derived from private
17 correspondence July 17.

18 So for the Government, Mr. Mackey.

19 MR. MACKEY: Good morning, your Honor. Larry
Mackey
20 for the Government. With me is Jamie Orenstein, Geof
Mearns
21 and Beth Wilkinson.

22 THE COURT: Mr. Tigar.

23 MR. TIGAR: Good morning, your Honor. Michael
Tigar
24 for Mr. Nichols. Mr. Nichols is present in court; and
with me
25 is Ron Woods, Reid Neureiter, Adam Thurschwell, Jane
Tigar.

3

1 Also at that counsel table, Tia Goodman, who is the
paralegal
2 who has been working on the exhibits.

3 THE COURT: Very well. You're going to call
the
4 witnesses, Mr. Tigar?

5 MR. TIGAR: Yes, your Honor, we are going to
call
6 witnesses. I furnished the Court and the Government
with a
7 list of witnesses. In letters to us over the last
several
8 days, the last of which arrived at 10:12 p.m. last
evening, the
9 Government identified additional agents and clerks,
known as
10 rotors, who had handled Mr. Nichols' mail. We're now
up to 23,
11 although a couple of them, they haven't been able to
reach.
12 And then Mr. McCoy, we're still discussing. We don't
intend to
13 call all of those people, although they are here and
under the
14 rule. We'll start at the top of the list and then
attempt to
15 get the information without having to call all of them.

16 Given the number of people who handled,
distributed
17 and disseminated Mr. Nichols' mail, it's our
anticipation that
18 either we will show some prospect that there was taint
or they
19 will begin a qui tam action for having wasted the
Government's
20 money but to --

21 THE COURT: I don't think this is the
jurisdiction for
22 the qui tam action.

23 MR. TIGAR: Well, I knew your Honor had had a
lot of
24 experience in that regard, and we could get a
transcript; but
25 in any case, we think that the first half of our
anticipated

4

1 goal will be met. We won't have to get to the second.
2 The Government has tendered to us five
exhibits, the
3 introduction of which we have no objection. And those
are
4 charts and summaries of the correspondence, numbered
5 Government's Exhibits 1 through 5. We have no
objection to
6 those being received, but I don't know if the
Government wishes
7 to offer them at this time.

8 MR. ORENSTEIN: Judge, they are for the
Court's
9 convenience. We do offer them.

10 THE COURT: All right. 1 through 5 are
received.

11 MR. TIGAR: In addition to that, your Honor,
we have a
12 number of exhibits, some of which are to be sealed
because they
13 concern discovery matters and others of which will be

in the

14 public record. All or in part. At this time, your
Honor, we
15 note that attached to our motion as a sealed exhibit
were what
16 we have now lettered as Exhibits A, B and C, all of
those to be
17 sealed exhibits. Those are A, the letter from Ms.
Wilkinson
18 about the correspondence; B, 1 through 182, letters to
and from
19 Mr. Nichols, and C, Mr. McVeigh's mail.

20 Would the Court like an additional copy of
that
21 voluminous exhibit or will the one attached to the
motion serve
22 to make the record?

23 THE COURT: I have here before me what was
attached to
24 the motion. These are the same as to which you've now
made
25 reference; right?

5

1 MR. TIGAR: Yes, your Honor.

2 THE COURT: Okay. No, I don't need another
copy.

3 MR. TIGAR: As our Exhibit J, your Honor, we

--

4 THE COURT: I also want to restate, though,
that I
5 have not read these exhibits. I believe I said earlier
that I
6 would not read them in total because I didn't want to
know what
7 was in them. I would only want to know and will only
read them
8 as asked to do so.

9 MR. TIGAR: Yes, your Honor. We understand
that; and
10 as we inquire of the witnesses, we may show particular
cover
11 pages of those letters.

12 THE COURT: All right.

13 MR. TIGAR: The contents, except as they
relate to
14 what the FBI did, will not be in evidence before your
Honor.
15 We'll make sure to flag that.

16 THE COURT: All right.

17 MR. TIGAR: We do have a public exhibit, which
is our
18 Exhibit J. That is a chart, prepared by Ms. Goodman,
of the
19 sender, recipient, exhibit tab numbers, subject and
then some
20 details as to each of those 182 letters. That, your
Honor, is
21 an exhibit that we would offer at this time. It can be
a
22 public exhibit and in that way, the media and the

public would

23 have the kind of information about the sealed material
that the

24 Tenth Circuit has held satisfies the public access
requirements

25 and makes the hearing intelligible to the media.

6

Mr. Tigar 1 MR. ORENSTEIN: Judge, with respect to that,
2 showed me a copy. I don't have one at hand. I don't
know if 3 there's anything in there that -- well, looking through
it, I 4 can see that there is the kind of information here that
appears 5 also in Government's Exhibit 1 and 2. I think we've
both done 6 pretty much the same task. It does contain the names
of people 7 in the mail, some descriptions of what's in the mail.
I think 8 both those would more properly be maintained under seal
to the 9 extent that we are not revealing the contents publicly
of 10 Mr. Nichols' mail.

We want 11 MR. TIGAR: Let me suggest this, your Honor:

12 to satisfy the public access requirements. We offer J

for the

13 moment as a sealed exhibit. Since neither of us has
seen the
14 other's exhibits until just this morning, perhaps we
could, at
15 a recess, deal with problems with sealing.

16 THE COURT: All right. But 1 through 5? Was
that to
17 be -- were those to be sealed?

18 MR. ORENSTEIN: Certainly, 1, 2 -- yes, all
five have
19 information about what is contained in the mail in
summary
20 form, mostly identifying senders and recipients.

21 THE COURT: Well, we'll review them to
determine
22 whether they should be sealed under the criteria
established by
23 the Court's order.

24 MR. TIGAR: At this time then, your Honor --

25 THE COURT: I don't have J.

7

1 MR. TIGAR: At this time, your Honor, offer J
and I'll
2 tender it to the clerk.

3 THE COURT: All right.

4 MR. TIGAR: May I approach?

5 THE COURT: Yes. All right. Well, I'll
receive J and
6 again determine whether it should be sealed or no at a
later
7 point.

8 MR. TIGAR: In addition, your Honor, at this
time, we
9 offer Defendant's E, which is a Bate's stamped version
of the

10 Government production. On August 18, 1997, Mr.
Orenstein sent
11 us a letter and attached to it relevant materials.

Some of
12 these materials in E will remain sealed. Other pages
of it may
13 be revealed in public by being displayed on the
monitor.

-- by
14 Again, we'll have to do that one item at a time. The
we can
15 Bate's stamping the material, which is what we've done,
offer E
16 more easily refer to particular pages; and I'd like to
17 at this time for that purpose.

18 MR. ORENSTEIN: We have no objection to any of
that.

19 We can discuss later, of course, the extent to which
it's
20 sealed.

21 THE COURT: All right. Then E is also
received by
22 agreement.

23
Honor, the

MR. TIGAR: To complete the record, your

24
25
letter to us

Court has before it, as a result of the August 18, 1997
chambers conference on discovery, Mr. Orenstein's

8

ask the
that it
exhibit.

1 about potential witnesses and our response. We would
2 Court to take judicial notice of that. That is to say
3 can be considered part of this record as a sealed

during the
sure that

4 THE COURT: Okay. Does the clerk have that?
5 MR. TIGAR: We don't intend to refer to it
6 course of the day, your Honor. We just want to make
7 it's there.

have it
filed

8 THE COURT: Well, it should be. You may not
9 now, but I have copies of it; and I'm sure those were
10 with the clerk, but we'll double-check.

11 These are letters of August 15 and August 18.

12
13
from the

MR. TIGAR: Yes, your Honor.

In addition to that, we received yesterday

the
also
filings by
seal.

14 Government two letters providing further explanation of
15 names of agents and rotors who had handled the mail and
16 additional corrections and qualifications of earlier
17 the Government. Those, we have numbered or lettered as
18 Exhibits K and L, and we offer them at this time under

the

19 MR. ORENSTEIN: Judge, we have no objection to
20 Court considering them under seal --

21 THE COURT: All right.

the

22 MR. ORENSTEIN: -- and making them a part of
23 record at this hearing.

under seal.

24 THE COURT: All right. They are received

ready to

25 MR. TIGAR: And with that, your Honor, we are

9

1 call Agent White.

Government

2 THE COURT: Anything preliminary from the
3 before we --

what we've

4 MR. ORENSTEIN: No, Judge, just to explain

5 provided to the Court. As I said, Exhibit 1, which we

have

6 provided, is a summary. My anticipation is it's going
to be
7 very much like Defendant's Exhibit J. Tab by tab
through --
8 through the letters, summarizing what each letter is
and who is
9 involved in the review process.

10 Exhibit 2, your Honor may recall that Tab 182
of
11 Mr. Nichols' exhibits has some 250-plus pages of
various types
12 of mailings. They have not been organized in any way,
so we
13 have prepared a chart that explains what each piece of
that is.

14 Exhibit 3 is a chart of the letters contained
in
15 Mr. Nichols' Exhibit C. There are five mailings. And
then
16 there were additional pieces of mail that we produced
to the
17 defense following the filing of their motion. Those
are
18 summarized in Exhibit 4.

19 Finally, Exhibit 5 is a summary of the names
of the
20 senders and recipients of Mr. Nichols' prison mail that
the FBI
21 has collected, and it tracks for the Court which of
those
22 people have ever been interviewed, which of them were

23 interviewed after the FBI started collecting mail and
which of
24 them -- which is none -- were interviewed for the first
time
25 after the FBI started collecting mail.

10

21 So that -- that's Exhibit 5, and that's --
that's all
22 of our exhibits. We have nothing else preliminarily to
provide
23 to the Court.

24 THE COURT: I'm not sure I have -- I've got 1
and I've
25 got 4 and 5. I don't know where 2 and 3 are. There's
3.

26 MR. ORENSTEIN: My -- I can provide additional
copies,
27 your Honor.

28 THE COURT: Okay. I need No. 2.

29 MR. ORENSTEIN: I don't have No. 2. 2 is this
one.
30 I'm sorry, Judge. I don't have a sticker on that one.

31 THE COURT: Okay. Well, I may have it here.
I --
32 I've got such a blizzard of paper all at once that I
may have

33 mislaid it.

34 Okay. So we're ready for Agent White?

15 MR. TIGAR: Yes, your Honor.
16 THE COURT: If you'll come forward to be
sworn,
17 please.
18 (Mark White affirmed.)
19 THE COURTROOM DEPUTY: Would you have a seat,
please.
20 Would you state your full name for the record
and
21 spell your last name.
22 THE WITNESS: Mark D. White, W-H-I-T-E.
23 THE COURTROOM DEPUTY: Thank you.
24 DIRECT EXAMINATION
25 BY MR. TIGAR:

11

Mark White - Direct

Bureau of
1 Q. Mr. White, you are a special agent of the Federal
2 Investigation?
3 A. Yes, I am.
4 Q. How long have you been a special agent?
5 A. A little over nine years.
6 Q. Where did you go to school?
7 A. Eastern Illinois University.
8 Q. When did you -- what did you do right after school?

9 A. I was a police officer.
10 Q. Where?
11 A. In a suburb of Chicago.
12 Q. What duty stations have you had since becoming a
special
13 agent?
Oklahoma 14 A. I worked out of an RA, resident agency, in the
15 City division until April 19. Then I was assigned to
the
16 Oklahoma City bombing investigation.
17 Q. Are you now headquartered or a part of the command
post in
18 Denver or in Oklahoma City?
19 A. In Denver.
20 Q. When did you move from Oklahoma City to Denver?
21 A. I believe it was April 1, 1996.
22 Q. And prior to that time, from April 19, 1995 until
April 1,
23 '96, you were working on this case in Oklahoma City; is
that
24 correct?
25 A. Yes, I was.

12

Mark White - Direct

1 Q. You have filed two affirmations in this case; is
that

2 correct, sir?

3 A. That's correct.

4 Q. You filed an initial one and then a supplemental
5 affirmation; correct?

6 A. That's correct.

7 Q. Sir, I want to be fair to you. Are there errors in
your
8 original and supplemental affirmations?

9 A. Yes, there are.

10 Q. Well, let's begin by please telling the Court what
errors
11 there are in those two affirmations.

12 A. The errors consist of contacts with the letters of
Terry
13 Nichols, letters by agents of the FBI, and the number
of agents
14 that had contact with that. And also, with the rotors
that had
15 contact with it.

16 Q. All right. Let's just tell us what they are.
Would you
17 like to have the affirmation with you --

18 A. A copy of that would be great.

19 Q. -- in front of you, sir? I wonder if the
Government could
20 provide you your affirmation.

21 MR. ORENSTEIN: Certainly.

22 MR. TIGAR: Your Honor, I have not separately
marked

23 these. They are in the record as pleadings.

24 THE COURT: Yes. I have copies before me.

25 BY MR. TIGAR:

13

Mark White - Direct

you 1 Q. With those two affirmations in front of you, will
2 please tell the Court what errors you made.

3 A. In paragraph 5, it states, "In September and
October of 4 1995, agents of the FBI again went to FCI El Reno and
5 reviewed 6 copies of defendant's general prison mail by the prison
7 staff. 8 No copies were made at this time and the FBI conducted
9 no 10 further review of the defendant's prison mail until May
11 1996."

12 That is an error. The review of September and
13 October 14 of 1995 at this time could not be confirmed, and it
15 also 16 appears from further contacts since this affidavit was
17 done 18 that prison mail was reviewed as specified in the
19 supplemental 20 affidavit on December 14, 1996, and that agents
21 reviewed mail 22 prior to May 1996.

14 Q. All right. Give us the next mistake, please.

15 A. In paragraph 7, the agents who initially
participated in

16 the process were Agents Elizalde and Matson. I have
come to

17 learn that Agent Elizalde was assisted by other agents
and that

18 again, in the December 14 review of prison mail, that
two

19 agents assisted Agent Bret Kirby.

20 Q. Now, when you say you've come to learn that, how
did you

21 learn it?

22 A. After the initial affirmation was returned to the
Court, I

23 became aware of the December 14 incident, the December
14

24 review. Based on that, I supplied the supplemental
affirmation

25 and then instructed an agent to contact every single
agent that

14

Mark White - Direct

1 had been through the lead pool at the command post from
the

2 time we started collecting mail until the time we
stopped

3 collecting mail.

4 Q. When you say every single agent who had been
involved in

5 the lead pool --

6 A. Yeah. It's a section of the command post that this
mail --

7 the persons involved in this mail collection and review
would

8 have been in.

9 Q. And what's a lead? Is that a term of art you use?

10 A. No. A lead would -- in this particular case deals
with --

11 it's a review of documents or they are people that are
12 responsible for the review of documents and then
setting forth

13 requests to other divisions to -- to other agents to
conduct

14 interviews or investigation.

15 Q. Are leads things that are given numbers in
connection with

16 an investigation so we'd find Lead No. 12,700 or --

17 A. In this case --

18 Q. -- some other number?

19 A. In this case, they have been, yes.

20 Q. Go ahead. Is that the only corrections you want to
make on

21 paragraph 7, that there are additional agents and there
are

22 some additional reviews?

23 A. The dates of collection are incorrect.

24 Q. And how are they incorrect?

25 A. The person who collected the mail on May 3 was not

Barbara

15

Mark White - Direct

1 Elizalde. The collection on May 10 was not Barbara
Elizalde.

2 Q. Who was it?

3 A. I believe it was Frank Godbold.

4 Q. Any other errors?

5 A. The May 30, 1996 collection, which is described as
the
6 collection of the El Reno mail, is inaccurate.

7 Q. How is it inaccurate?

8 A. It appears that the collection of the El Reno mail
occurred
9 earlier than that date.

10 Q. When did it -- does it appear that it occurred?

11 A. I don't know that. Spring of 1996.

12 Q. And how does it appear that it occurred earlier?

13 A. Because in contacting these agents, agents have
described
14 that they reviewed mail -- El Reno mail prior to May
30.

15 Q. Which agents told you they had reviewed El Reno
mail prior
16 to May 30?

17 A. Well, we have with Bret Kirby, agents -- I believe
it's

12-14, there 18 Steve Denny and Mike Clancy and -- and agents post
Margaret 19 are agents -- and I -- I'm not sure of all the names.
head, I 20 Wagner would be one. And I just -- off the top of my
21 can't recall. They are here today.
about? 22 Q. These are the agents the Government has told us
23 A. Yes.
August the 24 Q. Well, when you made this original affirmation on
could to the 25 8th, 1997, you were trying to be as helpful as you

16

Mark White - Direct

Nichols' 1 Court in understanding what had been done with Mr.
2 mail; isn't that right, sir?
3 A. That's correct.
be that 4 Q. Well, can you explain to the Court how it came to
5 you made so many mistakes?
for 6 A. I relied on a document that was in my possession
and 7 background purposes to conclude the collection of mail
collection, 8 review of mail in September, October of '95 and the

9 review of mail that's charted out on page 4. That
document was

10 incorrect.

11 Q. It's an FBI document?

12 A. Yes.

13 Q. Have you seen the Government's big chart that says
that

14 there were no persons interviewed by the FBI for the
first time

15 after August 1, '95?

16 A. Correct. Yes. I have.

17 Q. Well, given all the mistakes you've identified so
far, how

18 can we be sure that -- that that chart is accurate?

19 A. The original affirmation was based on one document.
My

20 error in collecting that document was -- and putting
this

21 affirmation together was in relying on a sole document.
Since

22 that time, in discovering the errors that existed, I
have taken

23 steps to try and ensure that the information is
correct. The

24 steps include contacting every single agent that went
through,

25 looking at every single piece of mail of Terry Nichols
that we

Mark White – Direct

1 have in our possession, personally checking our
databases and
2 charts to indicate who was interviewed, at what time
they were
3 interviewed. I have looked at those interviews and the
dates
4 of those interviews. In addition, I have requested
that other
5 persons within the command post also do that same type
of
6 review to verify the information.

7 Q. Now, when you say that a document that you relied
on is
8 inaccurate, are you referring -- what document are you
9 referring to?

10 A. I believe it's the March 8 memo EC of Agent Donna
Wech.

11 Q. Do you have in front of you a copy of Defendant's
Exhibit
12 E?

13 A. I have no exhibits in front of me.

14 MR. TIGAR: May the clerk place this in front
of the
15 witness.

16 BY MR. TIGAR:

17 Q. Agent, this is, I represent to you, a letter that
18 Mr. Orenstein sent us and then documents attached to
it. Will

19 you turn to page 73, the Bate's stamped page 73.

20 A. Yes, sir.

21 Q. Is that the inaccurate document that you were
telling us

22 about?

23 A. Yes, sir, it is.

24 Q. And that document was drafted by Special Agent
Donna Wech,

25 W-e-c-h?

18

Mark White - Direct

1 A. Yes, it was.

2 Q. Do you know when that document was drafted?

3 A. The date on it is March 8, 1996.

4 Q. And did you talk to Agent Wech before you made your
5 affirmation of August 8 about this document?

6 A. I talked to her about the contact with the prison
with Mike
7 Hood. I do not recall talking to her specifically
about the

8 September, October 1995 information.

9 Q. Did you talk to Agent Baker, whose name is also on
this
10 document, before you made your affirmation of August 8?

11 A. No, I did not.

12 Q. Now, turning to page 74. That's the second page of
that

13 document; is that correct?

14 A. That's correct.

15 Q. Do you see the second paragraph from the end?

16 A. Yes.

17 Q. That begins, "On 3-11-96," doesn't it?

18 A. That's correct.

19 Q. How is it that Agent Wech was able to describe an
August --
20 or a March 11, 1996 event when she wrote a memorandum
on March
21 the 8th, 1996?

22 A. I cannot explain that.

23 Q. Continuing now with your August 8 affirmation, are
there
24 any other mistakes in that?

25 A. In describing the rotors that were involved in the
process,

19

Mark White - Direct

1 additional rotors have been identified that handled
mails.

2 Q. Now, I want to pause a moment and look at this term
3 "rotor." The term "rotor" originates from the words
"rotary
4 file," doesn't it?

5 A. Correct.

6 Q. And in the old days of the FBI, there would be a

7 rotary-type file located near the squad that was
working on

8 things; correct?

9 A. That's correct.

10 Q. And the rotor was the person that kept that rotary
file of

11 investigative materials the squad was working on;
correct?

12 A. Correct.

13 Q. Now, the rotor would be responsible, also, for
indexing

14 things; is that right?

15 A. She would be responsible for taking the index
markings and

16 putting them into a computer database. It would be the
agent's

17 responsibility who reviewed the mail to actually
determine

18 indexing.

19 Q. Right. Is what you're telling us that an item of
20 evidence -- let's take a letter. The letter would come
in.

21 The responsible agent would determine what in that
letter

22 should be indexed and then would give it to the rotor.
Is that

23 what happens?

24 A. Correct.

25 Q. The rotor would then perform the function of doing
the

Mark White - Direct

1 indexing; right?

2 A. Of putting it into the database, yes.

3 Q. Now, when we say "database," in the old days before

and

4 computers, there were cards with names of individuals,

5 those would be maintained by the rotor; correct?

6 A. Correct.

means

7 Q. In these computer days, putting into the database

by the

8 making a computer entry about an individual identified

9 agent as significant; correct?

10 A. Correct.

files;

11 Q. And that database then becomes part of the FBI's

12 correct?

13 A. Correct.

in other

14 Q. That database can then be accessed by other agents

of access

15 locations, depending on the case and what their level

16 is; correct?

17 A. Normally, yes. In this case, no.

18 Q. So the normal procedure is that the database can be

is that

19 accessed elsewhere. You're telling us in this case no;

20 right?
21 A. That's correct.
22 Q. And we're going to have one of the -- the rotor
that is Lee
23 Anna Babbit is, you know, called as a witness; right?
Today?
24 A. Correct.
25 Q. Now, continuing on, now that we know what a rotor
is, what

21

Mark White - Direct

1 mistakes did you make about the rotors?
2 A. I came to determine that additional rotors were
involved in
3 filing the mail into the subfile.
4 Q. In addition to the ones you identified?
5 A. Correct.
6 Q. All right. Any other mistakes?
7 A. Yesterday, I became aware that one additional lead
had been
8 sent out concerning Timothy McVeigh mail.
9 Q. We're not trying the Timothy McVeigh case, so let
me pass
10 over that one.
11 Any other errors?
12 A. Right now, from this brief review, I don't see any.

13 Q. Are there any errors in your supplemental
affirmation of

14 August 11?

15 A. The fact that -- as I previously described, the two
other

16 agents were with Agent Bret Kirby at the time of the
12-14

17 review.

18 Q. Now, in your affidavits or affirmations, you're
talking

19 about review of mail that was sent to and received by

20 Mr. Nichols at El Reno in Englewood; correct?

21 A. That's correct.

22 Q. Are you aware of any mail that was obtained by the
FBI from

23 any other places in which Mr. Nichols was confined?

24 A. No.

25 Q. Well, now, sir, I'd like to direct your attention
to the

22

Mark White - Direct

1 25th of July, 1995. You were on duty that day?

2 A. I would assume I was.

3 Q. Well, turn, please, to page 100 in Exhibit E.
Bate's

4 stamped page 100.

5 A. Yes, sir.

6 Q. And will you now turn the page to page 101 and tell
us
7 whether that is the attachment page to the grand jury
subpoena
8 at page 100.
9 A. Yes, it is.
10 Q. So on July the 25th, did you receive this grand
jury
11 subpoena?
12 A. Yes, I did.
13 Q. And that grand jury subpoena was directed to Warden
14 Thompson at FCI El Reno; correct?
15 A. Yes, it was.
16 Q. Now, who wrote up that grand jury subpoena?
17 A. It has two references on it. The bottom of the
front page.
18 Q. All right. Who are those people?
19 A. One is -- it's referred to on here Gibbons/FBI.
20 Q. Now, let's stop there for a moment. Henry Gibbons
was the
21 division counsel of the Federal Bureau of Investigation
in July
22 of 1995, wasn't he?
23 A. Yes, he was.
24 Q. And as such, was he responsible for drafting grand
jury
25 subpoenas?

Mark White - Direct

1 A. He would have responsibility in that area, yes.

2 Q. Do you remember ever talking to Mr. Gibbons --

Agent

3 Gibbons -- excuse me -- about the review or obtaining

of the

4 private correspondence of Mr. Nichols?

5 A. Yes.

6 Q. When did you have a conversation with Agent Gibbons

about

7 that?

8 A. It would have been in this July 25 to July 28 time

frame.

9 Q. And do you remember how many conversations you had

with

10 Agent Gibbons in that time frame about this subject?

11 A. Probably just one.

12 Q. Can you tell us, please, the best you can, what he

said and

13 what you said.

14 A. The best I can recall is he provided me the copy of

the

15 subpoena, requested that the subpoena be served, and

then

16 subsequently, the prison mail was reviewed concerning

possible

17 investigative leads that may be available out of that

mail.

18 Q. Well, now you've told us the subject matter of the

19 conversation. Were you face to face with him when he
showed
20 you the subpoena?
21 A. I imagine I was probably in his office.
22 Q. All right. And he told you to go serve it;
correct?
23 A. Correct.
24 Q. What, if anything, did he tell you about what
investigative
25 leads you were supposed to look for?

24

Mark White - Direct

1 A. At this point, I don't recall any specifics when it
comes
2 to -- if he said, I want you to look for this, this, or
this.
3 I don't recall that being part of the conversation.
4 Q. Do you remember him telling you in substance or
words, I
5 want you to go get the mail identified here, I want you
to
6 bring it back, and I want you to do something with it?
7 A. All I recall is the service of the subpoena to re
-- to
8 review the mail, look for anything of investigative
value, and
9 bring those pieces of mail back.
10 Q. Back to where?

11 A. Well, they were -- brought back to fulfill the
subpoena.

12 Q. Do you know if this mail was ever introduced before
the
13 grand jury?

14 A. I'm aware -- I believe that I went to the prison on
15 August 1. I believe that a grand jury return by Wanda
Vincent
16 was made on August 10.

17 Q. What do you mean, "a grand jury return"?

18 A. That's when in this case an IA, investigative
analyst,

19 Wanda Vincent, goes before the grand jury and advises
them

20 either they supplied the documents to them or the
person

21 advises that documents have been obtained and that they
are

22 under review by the Bureau.

23 Q. How do you know that someone named Wanda Vincent
went

24 before a federal grand jury in this case on the 10th of
August,

25 1995, and described Mr. Nichols' private
correspondence?

25

Mark White - Direct

1 A. As part of my review in trying to find the
subpoena, I came

2 across a document that indicated that that had
occurred.

3 Q. Did you furnish that document to Government
counsel?

4 A. I don't recall if I did or didn't.

5 Q. Do you know what Ms. Vincent -- is Ms. Vincent an
agent of

6 the FBI?

7 A. No. She's an investigative analyst.

8 Q. She works for the FBI?

9 A. Yes, she does.

10 Q. Do you know what she told the grand jury?

11 A. I have no idea.

12 Q. Well, we've talked about Mr. Gibbons' name being on
here.

13 There's another name on the front; correct?

14 A. Correct.

15 Q. And who is that?

16 A. Larry Mackey.

17 Q. And Mr. Mackey at that time was a Special Assistant
United

18 States Attorney; is that correct?

19 A. That's what this states, yes.

20 Q. Is -- is that the same Larry Mackey that's seated
in court

21 today?

22 A. Yes, it is.

23 Q. You see him sitting right here at counsel table;
correct?

24 A. Yes.

25 Q. Did you talk to Mr. Mackey about this subpoena?

26

Mark White - Direct

1 A. No, I did not.

subpoena
2 Q. Now, do you know what the purpose of a grand jury
3 is?

grand
4 A. It's to obtain information that's requested by the
5 jury and return it back to them.

to be
6 Q. And you're supposed to get information that's going
7 relevant to something the grand jury is considering;
correct?

8 A. Correct.

jury
9 Q. Now, did you have occasion to serve other grand
10 subpoenas than this one during your work in this case?

11 A. Possibly, but I don't recall any specific instance.

Government
12 Q. Can you remember seeing the names of other
13 subpoenas?
subpoenas?

specific
14 A. I'm sure there were. I just -- I can't recall any

15 subpoena.

16 Q. Well, at any rate, you got the subpoena and you
went out to

17 the prison; correct?

18 A. Yes. That's correct.

19 Q. Did you meet with Warden Thompson?

20 A. Yes, I did.

21 Q. And who else did you meet with?

22 A. When I first arrived at the prison, a prison guard
would

23 have brought me to the warden's office to introduce me
to the

24 warden.

25 Q. Had you called him before going out there?

27

Mark White - Direct

1 A. Yes, I did.

2 Q. Now, did he have the mail ready for you?

3 A. I was not going there that day to review the mail.
I was

4 just going there on the 28th to provide the subpoena to

5 Mr. Thompson and arrange a date where I could come back
and do

6 the review.

7 Q. Was anybody with you?

8 A. I do not recall anyone being with me.

9 Q. You then went back to the prison on the 1st of
August?

10 A. Yes, I did.

11 Q. And you got the letters?

12 A. Yes.

13 Q. Who did you meet with on the 1st of August?

14 A. I believe, again, a guard would have met us,
brought us in.

15 I briefly met with Warden Thompson, along with the
other agents

16 that were with me as just an introduction. We were
then

17 brought by a guard to a room where the copies of prison
-- of

18 letters, mail, were in a file cabinet.

19 Q. Was anybody else present other than you, the
agents, and

20 the guard in that room?

21 A. No.

22 Q. What did you do about the mail in the file cabinet?

23 A. The guard showed us where the mail was. He opened
the

24 drawer of the file cabinet. And the other agents and I
sat

25 down and each took a section of mail and reviewed it.

28

Mark White - Direct

1 Q. What were you looking for?

2 A. We were looking for an investigative avenue, an

3 investigative lead. Specifically, we were looking to
see if

4 there was any mention of possible associates, co-
conspirators.

5 Additionally, I was looking for possible locations to
-- to

6 determine where Mr. McVeigh or Mr. Nichols may have
been in the

7 past, if there was any reference to that; also, the
possibility

8 of some type of notification that would indicate a
threat.

9 Q. Let's take those one at a time. You're looking for
the

10 names of people; is that correct?

11 A. Correct.

12 Q. Now, how did you figure out what kinds of names or
what

13 attributes of names were important to you?

14 A. What I was looking for was information that would
possibly

15 indicate another person involved in this incident.

16 Specifically, what I would have been looking for was a
name

17 that I didn't recognize in the case.

18 Q. Did you find any of those names?

19 A. At that time, I'm sure that there were names that I
didn't

20 recognize; but depending on what was in the body of the
letter,

21 it may or may not have come across as having any

importance.

22 Q. How about locations?

23 A. No locations.

24 Q. When you -- you say in your affirmations that you
were

25 looking for things that were deemed significant;
correct?

29

Mark White - Direct

1 A. Correct.

2 Q. Were names and locations the only things you deemed
3 significant?

4 A. Those, I would say, would be the -- the major
things that

5 we were looking for. Obviously, I'd be open to
anything that

6 would -- I would think would be of investigative
interest.

7 Nothing of investigative interest subsequently was
deemed to be

8 in those letters.

9 Q. I understand that's what you're saying. What did
you do

10 with the letters when you got them back to the office?
Put

11 them in the 1A file?

12 A. I put them in a 1A envelope; correct.

13 Q. And what's a 1A envelope?

14 A. It's an envelope that's used for storing
nonevidentiary

15 documents.

16 Q. Now, in fact, sir, you have a -- a big index of
everything

17 that's in the 1A files; correct?

18 A. Correct.

19 Q. And you know that the 1A's have been -- some of
these have

20 been available or shared with the defense; correct?

21 A. Correct.

22 Q. Now, in the 1A files in this case, there are a
number of

23 different categories; correct?

24 A. Correct.

25 Q. Now, the initial letters that you had, you filed in
the 1A0

30

Mark White - Direct

1 file; correct?

2 A. I put it in a 1A envelope. The rotor makes the
3 determination as to what subfile it goes into.

4 Q. Now -- you're telling us that within the 1A's,
there are

5 different subfiles; correct?

6 A. Correct.

7 Q. And these -- who creates the subfile categories?
8 A. The rotor actually makes the creation, depending on
what
rotor to
9 was evolving in the case. A request may go to the
10 create a subfile.
11 Q. Now, are you aware of where these things eventually
wound
12 up in the 1A0 file, the letters that you got on August
the 1st,
13 1995?
14 A. I'm aware that they were filed under -- I believe
it's 1A,
15 and then at that serial number, 2445.
16 Q. I'm -- I'm holding up a great big notebook. Do you
17 recognize that as about the size of what an -- a
printout of
18 all your 1A entries would be?
19 A. It's quite possible, yes.
20 Q. All right. And in fact, sir, let me show you a
sealed
21 exhibit, which is Defendant's F.
22 MR. ORENSTEIN: Mr. Tigar, may I have a copy?
23 MR. TIGAR: Yes.
24 BY MR. TIGAR:
25 Q. Are those the pages that show where these 1A
envelopes were

Mark White - Direct

at 1 placed in the file? And I'm looking -- ask you to look
2 1A02445 and 1A04724.

3 A. It appears to be, yes.

That's a 4 MR. TIGAR: All right. We offer Exhibit F.
5 sealed exhibit, your Honor.

6 MR. ORENSTEIN: No objection, Judge.

Do I 7 THE COURT: F received, sealed. Do I have it?
8 have a copy of it?

9 THE COURTROOM DEPUTY: No, you do not.

have 10 MR. TIGAR: Excuse me, your Honor. I must
11 misplaced my file folder. Your Honor does not yet have
12 I'm handing one to the clerk right now.

13 THE COURT: Thank you.

14 BY MR. TIGAR:

Exhibit G1. 15 Q. I'd like to show you now what I've marked as

16 Those are the cover pages of the two 1A items, the file
17 numbers
18 of which we've just read out; is that correct?

18 A. That's correct.

of G1. 19 Q. All right. Well, would you turn to the first page

20 MR. TIGAR: Does the Government have an

objection to

21 my displaying this?

22 MR. ORENSTEIN: No, Judge. I'm sorry, your
Honor. We

23 have no objection.

24 THE COURT: All right. So G1 is received and
to be

25 published. Is that it?

32

Mark White - Direct

1 MR. TIGAR: Yes, your Honor. If we may.

2 THE COURT: All right. Go ahead.

3 BY MR. TIGAR:

4 Q. Now, looking at the top of this document, this is
1A2445;

5 correct?

6 A. Correct.

7 Q. And it bears a case number; correct?

8 A. Correct.

9 Q. And that is the case number of this case; correct?

10 A. Correct.

11 Q. Whose handwriting is this?

12 A. The handwriting for the case number is mine.

13 Q. Will you go through the document I've displayed
now. This

14 top part down to the word "references": All that

handwriting

15 on there yours?

16 A. The 1A2445 number is not.

17 Q. Everything else is yours?

18 A. It would appear to be, yes.

19 Q. And what does -- the "OKBOMB" refers to this case;
correct?

20 A. OKBOMB, yes.

21 Q. OKBOMB. Major case No. 117?

22 A. Correct.

23 Q. EID: That refers to something about this case?

24 A. Correct.

25 Q. And what does that mean?

33

Mark White - Direct

1 A. It's a categorization, explosive incendiary device.

2 Q. And what does "00 colon 0," whatever that is --

3 A. C. It's the office of origin, which is Oklahoma
City.

4 That's the location where the case originated from.

5 Q. I'm going to show you the bottom half. Whose
writing is

6 that?

7 A. The top notation is mine. The bottom notation, I
do not

8 know.

No. 12377. 9 Q. Let's try to analyze that bottom notation. Lead
10 Now, leads in this case were assigned numbers; correct?
11 A. Correct.
12 Q. And 12377 could be a lead from this case? You just
don't
13 know; correct?
14 A. Oh, I would believe from the numbering system that
it would
15 be a lead from this case.
16 Q. What does AUSA mean?
17 A. I don't know. I don't know what that notation in
this
18 reference would mean.
19 Q. Well, have you ever seen the initials AUSA used for
20 anything other than "Assistant U.S. Attorney"?
21 A. No.
22 Q. So doesn't that mean to you that this is a lead
that's been
23 generated by or relates to some Assistant United States
24 Attorney?
25 A. No. I've never seen a notation like that. I have
no idea

34

Mark White - Direct

1 what the AUSA would be reference to.

2 Q. And do you recognize that as Ms. Babbit's
handwriting?

3 A. No. I could not say that.

4 Q. You just don't know?

5 A. Yes.

6 Q. In fact, sir, under that 1A number, 2445, there are
letters
7 from Mr. Nichols as well as Mr. McVeigh; isn't that
right?

8 A. That's correct. There's two.

9 MR. TIGAR: At this time, your Honor, we offer
as a
10 sealed exhibit G2, which represent the contents of
those two 1A
11 files.

12 MR. ORENSTEIN: Your Honor, we have no
objection to
13 receiving this as a sealed exhibit.

14 THE COURT: All right. Received under seal.
15 What is the number of it? G2. I have it.
Okay.

16 BY MR. TIGAR:

17 Q. After your initial trip to the prison, did you make
other
18 trips out to El Reno to get some of Mr. Nichols' mail?

19 A. No, I did not.

20 Q. Did you receive more of Mr. Nichols' mail?

21 A. The FBI did, yes.

22 Q. I'm talking about you, Agent White. Did you ever
review

23 any of Mr. Nichols' mail after your review at the
prison on

24 August the 1st, 1995?

25 A. Yes, I have in the past week.

35

Mark White - Direct

1 Q. Between August the 1st, '95, and the past week, you
didn't

2 review any?

3 A. No.

4 Q. Have you discussed Mr. Nichols' mail with other
agents of

5 the FBI between August the 1st, '95, and last week?

6 A. Yes.

7 Q. Okay. When and where was the first such
discussion?

8 A. The only discussions that I can recall would be
when

9 Barbara Elizalde would have been doing the mail review
and it

10 would have been general: "How's the review going?"

11 Q. So Agent -- you're telling us that Agent Elizalde
is the

12 only agent with whom you had conversations about Mr.
Nichols'

13 private correspondence between August the 1st, '95, and
last

14 week; is that right?

15 A. That I can recall, yes.

16 Q. Agent Elizalde had responsibility for doing -- for
17 reviewing the mail; is that right?

18 A. Correct.

19 Q. She also had responsibility for reviewing the tape
20 recordings of Mr. Nichols' telephone conversations,
didn't she?

21 A. She was involved in that project, yes.

22 Q. And did you talk to her about that?

23 A. No.

24 Q. Did she have responsibility for reviewing the video
25 surveillance of Mr. Nichols at the prison?

36

Mark White - Direct

1 A. I'm not aware of review of video surveillance of
2 Mr. Nichols at the prison.

3 Q. Well, let me ask the question: Do you -- do you
know of
4 any FBI review of the video surveillance of Mr. Nichols
at the
5 prison?

6 A. No.

7 Q. I'm just referring specifically to the video camera
that
8 looked into his cell.

9 A. No.

10 Q. Now, in -- how many conversations do you think you
had with

11 Agent Elizalde about Mr. Nichols' correspondence?

12 A. I -- I couldn't say. My -- my conversations would
have

13 been along the lines of passing her while she was
working on it

14 and asking her how things were going.

15 Q. Well, how was it going?

16 A. She was working on the project.

17 Q. What did she tell you about it?

18 A. That nothing of investigative value was coming out
of it.

19 Q. Do you know that she was writing memoranda about
it?

20 A. Yes, I am aware of that.

21 Q. Did you read the memoranda that she was writing?

22 A. Yes, I did.

23 Q. When?

24 A. I would have seen them after she issued them.

25 Q. After what?

37

Mark White - Direct

1 A. After she typed them up, after they were completed.

2 Q. Well, I'm going to ask you, then, to start here at
page 78

3 of Exhibit E. This is a sealed exhibit.

4 A. Yes.

5 Q. And that is a memorandum drafted by Barbara
Elizalde and

6 approved by you; correct?

7 A. Yes.

8 Q. Now, what does it mean, "approved by you"? What
did you do

9 to approve it?

10 A. Reviewed it. For the most part, it's checking it
for

11 errors grammatically and format.

12 MR. TIGAR: Now, does the Government have any
13 objection to my putting on the monitor the bottom
portion of

14 this document so I can ask him about the stamp? I
don't have

15 to put that on, as well.

16 MR. ORENSTEIN: Judge, to that portion, no, we
17 have no
18 objection.

19 THE COURT: All right. Thank you. You may
publish

20 that portion of it.

21 MR. TIGAR: All right.

22 BY MR. TIGAR:

23 Q. I put this on the monitor, sir. And that is a
portion of

the May 30, '96 memo; is that right?

24 A. Correct.

there, 25 Q. Now, will you look at the stamp in the lower corner

38

Mark White - Direct

1 sir.

2 A. Yes.

correct? 3 Q. That says "filed," and then there's some initials;

4 A. Correct.

5 Q. Are those Ms. Babbit's initials?

6 A. From that, I couldn't tell.

7 Q. All right. Well, you see the initials JM?

8 A. That's correct.

9 Q. Who is JM?

10 A. The initials would stand for Jack McCoy.

FBI, isn't 11 Q. And Jack McCoy is, in fact, your superior in the

12 he?

13 A. Yes, he is.

14 Q. He is known as the IIP; is that right?

15 A. Correct.

16 Q. What does IIP stand for?

17 A. Inspector in Place.

18 Q. Now, did he initial those?

19 A. No, he did not.

20 Q. Who wrote Jack McCoy, Inspector in Place's,
initials there?

21 A. The rotor who put the block stamp on it.

22 Q. How do you know that?

23 A. I'm aware that Jack McCoy authorized his initials
being put

24 on these documents.

25 Q. You're telling us that -- what is Jack McCoy's rank
in the

39

Mark White - Direct

1 Federal Bureau of Investigation?

2 A. He's an inspector in place.

3 Q. He's an inspector.

4 A. Right.

5 Q. Now, that's -- my knowledge of this ends with when
Efrem

6 Zimbalist stopped doing it, sir.

7 What is an inspector? Is that pretty high up
in the

8 deal?

9 A. In this case, it would have been similar,
equivalent to an

10 assistant special agent in charge of an office.

11 Q. All right. So he reports to Mr. Defenbaugh; right?

12 A. Correct.

13 Q. And you can't get any higher than that in this FBI
14 organization in this case; correct?

15 A. He is the lead investigator on this case, yes.

16 Q. And it's your testimony that the second-in-command
of the
17 FBI authorized an FBI file clerk to place his initials
on
18 official documents? Is that your testimony?

19 A. Yes.

20 Q. All right. And who told you that?

21 A. In speaking to the rotors involved in this, and I
believe

22 Lee Anna Babbit particularly, I became aware that in --
on
23 these documents, that is what occurred.

24 Q. And when did you become aware of that?

25 A. Over the past week or so.

40

Mark White - Direct

1 Q. Before that, you didn't know; correct?

2 A. No.

3 Q. Now, Mr. -- what were Mr. McCoy's investigative
4 responsibilities as the inspector in place?

5 A. He would be involved in the day-to-day operations
of the

6 investigation.

7 Q. He wanted to make sure that your resources were
efficiently

8 used; correct?

9 A. I would think so.

10 Q. And he was responsible for seeing that you didn't
keep

11 going down blind alleys unnecessarily; correct?

12 A. He would review investigative projects, yes.

13 Q. And he would try to make sure that if an
investigative

14 project wasn't yielding anything, that it was either
reviewed,

15 changed, or perhaps cancelled; correct?

16 A. He could make that decision, yes.

17 Q. You didn't have unlimited manpower, did you?

18 A. No.

19 Q. You wanted to win this case, didn't you?

20 A. We wanted to determine who was responsible for the
April 19

21 bombing.

22 Q. That's right. And you didn't want to waste
resources, did

23 you?

24 A. We wanted to take every investigative avenue that
was

25 available to us.

Mark White - Direct

then the
number?

1 Q. Now, let's -- let's look further here. There's
2 case number written in by hand; correct? The 174A

3 A. Correct.

4 Q. And then there is a "dash 7548"; correct?

5 A. Correct.

6 Q. And what does that mean?

document for

7 A. That would be a -- the serial number for that
8 our file.

letters of

9 Q. Now, you notice the text there. You have ten

10 support and 63 letters from family and friends; right?

11 A. That's correct.

other

12 Q. Well, continuing on to the next page, you have some

13 categories there; correct?

14 A. Correct.

religious

15 Q. Including letters from the media, letters on

letters

16 conversion, and then letters with news clippings and

correct?

17 written by Terry Nichols to friends and family;

18 A. Correct.

19 Q. Who came up with those categories?

--
the
were
expansion of
would

20 A. I believe the categories in a much smaller version
21 excuse me -- started on August 1st, 1995. In reviewing
22 mail, for the most part, it was -- what we were seeing
23 either letters of support or letters of hate. The
24 the categories --
25 Q. Let's stop right there. Letters of support: Those

42

Mark White - Direct

saying,
mail from
one
on

1 be from strangers to the case who would write a letter
2 you know, hang in there, or, I'm with you, or whatever;
3 correct?
4 A. Correct. Correct.
5 Q. Now, did those have any investigative significance?
6 A. No.
7 Q. Now, letters of hate would be the opposite: Hate
8 people, strangers to the case; correct?
9 A. Right.
10 Q. So let's take those two categories and put them to
11 side. Were those the only categories you came up with

12 August 1st?
13 A. I don't know because it was not memorialized. I
don't
14 recall anything else. I remember that pretty much the
mail
15 from that date fit into those two categories.
16 Q. All right. This is that date when you were just
getting
17 what you deemed significant; right?
18 A. Correct.
19 Q. Now, additional categories came later; is that
right?
20 A. Correct.
21 Q. Who made up the additional categories?
22 A. As the review went on, the categories were
developed by
23 the --
24 Q. But you recognize the sentence you just said is in
the
25 passive voice: "As the review went on, categories were

43

Mark White - Direct

1 developed . . ." Who reviewed and who developed?
That's my
2 question.
3 A. All right. Barbara Elizalde was involved in
review, and
4 she would have been responsible for some of the

categories, I'm

5 sure. Anyone who reviewed the mail prior to her may
have

6 provided categories. Anyone who reviewed the mail
after her

7 may have developed categories based on their review of
what

8 they were seeing coming in.

9 Q. Well, you were the person who approved this
memorandum

10 we're looking at, pages 78 and 79; correct?

11 A. Correct.

12 Q. What input or involvement did you have in doing the
13 categories?

14 A. At that point, none.

15 Q. You just saw what there was there and approved it;
correct?

16 A. Correct.

17 Q. Did you think that Agent Elizalde was wasting her
time?

18 A. What I thought at the time was that there was
nothing at

19 that point of investigative value that was being
developed. I

20 had no idea what would happen in the future.

21 Q. Did you look at the correspondence that she was
reviewing?

22 A. No.

23 Q. When the correspondence arrived at the FBI office,
someone

24 had to tell the rotor how to index it; correct?

25 A. Correct.

44

Mark White - Direct

1 Q. Who was that someone?

marks

2 A. According to the letters I've seen, the indexing

3 indicate Barbara Elizalde or Sheila Lawson.

4 Q. Did Mr. McCoy identify any bases for indexing?

5 A. According to the markings on the documents, no.

or Agent

6 Q. How is it that you can tell whether Agent Elizalde

to be

7 Lawson was the person that decided how the things are

8 indexed?

see,

9 A. On the letters, on the cover of the letters, you'll

the

10 usually off on the right-hand side about the middle of

On

11 page -- on the original copy, it would be a red circle.

circle.

12 your copy, obviously, it's black. But there would be a

there's an X,

13 Then there would be a mark inside the circle. If

letter to

14 it indicates do not -- there's nothing inside the

the

15 index. If there's a page number, it would indicate to

16 rotor to go to that page and look for markings of
indexing.

17 Underneath that circle is initialing.

18 Q. All right. I -- I think I have an example of that.
Do you

19 have the letters in front of you?

20 A. No, I do not.

21 MR. TIGAR: May I just hand this to the agent,
your

22 Honor? I'm looking at Volume I of the three-volume set
of

23 materials that was furnished that we -- we filed as
part of our

24 Exhibits A, B, and C.

25 BY MR. TIGAR:

45

Mark White - Direct

1 Q. Now, would you look at tab 38, please.

2 MR. ORENSTEIN: Let me just have a moment to
look at

3 that.

4 THE WITNESS: Yes.

5 MR. ORENSTEIN: Go ahead. I don't have my
copy here.

6 MR. TIGAR: I'm -- I'm loaning Government
Counsel a

7 copy, your Honor.

Honor. 8 MR. ORENSTEIN: We have two of the three, your

9 THE COURT: All right.

10 MR. TIGAR: Two out of three is all right.

11 BY MR. TIGAR:

12 Q. Looking at tab 38, do you see on the right-hand
side a

13 circle with an X and some initials?

14 A. Yes.

15 Q. Now, the copy process might have cut some of that
off, but

16 you're telling us that originally, that was in red; is
that

17 right?

18 A. Correct.

19 Q. And the initials look like BE; correct?

20 A. Correct.

21 Q. That's Barbara Elizalde?

22 A. Correct.

23 Q. And what does the circle with the X mean?

24 A. It means that there's nothing that she found in the
body of

25 the letter that's to be indexed.

46

Mark White - Direct

address 1 Q. All right. And what does the line through the

2 "People to People" mean?
3 A. I believe that's a marking made by the rotor that
would
4 indicate that for her purposes of making the chart,
that shows
5 that this serial YY884 is from "People to People."
She's
6 slashed it to indicate that she put it into the
computer base.
7 Q. All right. Well, what would she put into the
computer
8 base?
9 A. She would put in for the tracking -- for example,
the
10 format would be "letter to" or "letter from." In this
case,
11 "People to People," "to," and then whoever this letter
is to,
12 Terry Nichols.
13 Q. No. I think -- let's take a look at the letter. I
14 understand that it's under seal, but we can talk about
it.
15 It's from Terry Nichols, isn't it?
16 A. Right. It would be to, not from.
17 Q. It's Terry Nichols talking about his deeply held
religious
18 convictions?
19 MR. ORENSTEIN: I object to going into the
subject
20 matter of the mail unless there's a particular
relevance to

21 what is in there.

22 THE COURT: I don't see anything objectionable
to the
23 question.

24 BY MR. TIGAR:

25 Q. That's what the letter is about, isn't it? Look at

47

Mark White - Direct

1 paragraph 2.

2 A. Okay. It's -- it's in reference to a radio program
and his
3 feelings about the radio program and the religious
context of
4 it.

5 Q. Yes. And "People to People" is a radio ministry.
Do you
6 know that?

7 A. I believe it is, yes.

8 Q. Now -- all right. Go ahead. With -- the rotor
indexes
9 this because it'll be from Terry Nichols; correct? And
to
10 "People to People"; correct?

11 A. Right.

12 Q. And where will the rotor put that information?

13 A. Into a computer database.

with
14 Q. All right. And the computer database is connected
15 174A0C-56120; correct?
16 A. Right.
correct? 17 Q. And the subpart of that database will then be YY;
18 A. Correct.
to the 19 Q. And then the next number at the bottom, 884, refers
20 serial number of this particular letter; right?
21 A. Correct.
this case 22 Q. That means that whatever database YY is in the --
correct? 23 number, there's 883 things in there before this one;
24 A. Correct.
correct? 25 Q. Now, the -- at the top, it says FBI 8-16-96;

48

Mark White - Direct

1 A. Correct.
2 Q. Now, how -- do you know whose writing that is?
3 A. No, I do not.
4 Q. That appears to be a date; correct?
5 A. Yes.
correct? 6 Q. The date stamp at the bottom is September 23, '96;

7 A. Correct.

8 Q. And the date at the top of the letter written by
9 Mr. Nichols is October 16, '96; correct?

10 A. Correct.

11 Q. Do you have any explanation for the fact that these
three
12 dates just don't match at all?

13 A. No.

14 Q. The stamp at the bottom reflects that the material
was
15 serialized; correct?

16 A. Yes.

17 Q. That means given a number?

18 A. Correct.

19 Q. And that it was filed; correct?

20 A. Correct.

21 Q. Now, this database that the person puts it in:
Where is
22 that database?

23 A. I'm not sure I understand the question.

24 Q. Let me take it a step at a time, because you're
going to
25 have to help me. In OK -- where was Lee Anna Babbit
when she

1 made the entries in the database?

2 A. I would say that she was in her office area.

3 Q. All right. Where is that? Where was that on this
date?

4 A. That would have been up here in Denver, and it
would have

5 been in an office space within our office.

6 Q. And those are the offices that you have in space
that you

7 share with the prosecutors; correct?

8 A. Correct.

9 Q. Now, when she makes that entry on a computer
keyboard,

10 where do the electronic impulses come to rest to be
stored?

11 A. I can't answer that question.

12 Q. Is this a database just for your office, or is it a
13 database that's a part of the FBI's general files?

14 A. It -- the Automatic Case Support System -- is a
Bureau-wide

15 computer system.

16 Q. So once she enters this information, it becomes
part of a

17 Bureau-wide support system called what?

18 A. ACS. Automatic Case Support.

19 Q. Automatic Case Support. Now, that YY designation,
do you

20 have other things in the Automatic Case Support System
that are

21 A, B, C and other letters of the alphabet?

22 A. Yes.
23 Q. I show you what we have marked as Exhibit H. I ask
you,
24 sir, to take a look at that. I -- that is a facsimile
that was
25 sent to our offices, but if you'll look at pages 2 and
3 --

50

Mark White - Direct

1 well, first, have you ever seen anything like that
before?
2 A. Not in this exact format; but yes, I have seen a
list of
3 subfiles.
4 Q. All right. And is it the case that these different
5 subfiles are in this Automated Support System?
6 A. There is data, yes.
7 Q. There is data that's contained in there; right?
8 A. Right.
9 Q. So if we have an example -- let's take 0, the main
file.
10 The top one.
11 A. Uh-huh.
12 Q. You know that there's a 1A file with a 0 that's the
main
13 file; correct?
14 A. Yes. According to this, yes.

group of 15 Q. And in fact, that's the file into which the first
wound up; 16 letters that you got at the prison on August the 1st
17 correct?

18 A. I believe so, yes.

19 Q. Now, the letters, themselves, aren't scanned into
the 20 Automated Support System; is that right?

21 A. That's correct.

22 Q. But information about them that's been indexed by
the rotor 23 goes into the Automated Support System; correct?

24 A. Correct.

25 Q. Now, looking down this list here, you've got other

51

Mark White - Direct

1 categories that are relevant to issues in the case;
correct? 2

3 A. Correct.

4 Q. And this is a sealed document and this has to do
with how 5

6 you organize your materials, so we're not going to
disclose it 7

8 here. But is it fair to say that some of these
categories are 9

10 pretty important to how you organize your work?

7 A. Correct.

8 Q. I mean, No. 5, that's an important one, isn't it?

9 A. Yes.

10 Q. And then 5 sub 2, that's an important one; correct?

11 A. Yes.

12 Q. And 5 sub 4; right?

13 A. Yes.

14 Q. All right. And then, of course, we look down here
and we

15 see YY, and that's the category into which these things
were

16 going; correct?

17 A. The ones that were placed in 1A envelopes, yes.

18 Q. And if I were to look through the letters in the
volume in

19 front of you, just taking that tab -- you've got that
big

20 volume with all the tabs; right?

21 A. Yes.

22 Q. Let's just start, please, at tab 2. No. Excuse
me. Let's

23 start at tab 1. Tab 1.

24 A. Okay.

25 Q. Just leaf through a few to get an idea. I would
see that

1 tab 1, that letter, was in YY291; correct?

2 A. It's in subfile YY291.

3 Q. Right.

4 A. Not in 1A subfile 291.

5 Q. We'll get to that distinction.

6 A. Okay.

7 Q. But -- and then the 2 is YY292 and so on; right?

8 A. Correct.

9 Q. And that YY corresponds to the YY in your 1A
subfile;

10 correct?

11 A. The YY designates that it's a prison letter.

12 Q. Right.

13 A. But it does not designate that it's in the 1A
subfile.

14 Q. Okay. Let's -- let's take this one thing at a
time. If I

15 want to access your database -- if a person who was
authorized

16 to wanted to access your database and find out what's
in there

17 about these prison letters, that person would go to the
part of

18 your database that relates to the case number and then
YY;

19 correct?

20 A. If you had authorization, yes.

21 Q. All right. If I had authorization. That was my
question.

22 A. Uh-huh.
23 Q. And who has authorization to do that?
24 A. The rotor.
25 Q. The rotor has authorization to do that?

53

Mark White - Direct

1 A. Yes.
2 Q. And that's the only person in the world who can?
3 A. Well, I certainly can't access it. I don't have --
4 Q. Why not?
5 A. I don't have the knowledge of the computer database
to do
6 it.
7 Q. Oh. So now, the -- when Ms. Babbit is sitting in
her work
8 area over there in the space that you share with the
9 prosecutors, let's suppose that Mr. Orenstein came to
her and
10 said, "Ms. Babbit, I want to know what's in the YY part
of that
11 Automated Case Support System." She knows how to find
that;
12 right?
13 A. Yes, she does.
14 Q. Do you think she would honor his request?
15 A. Yes.

were to
out
Whatever
find
the FBI
that
country?

16 Q. All right. Suppose Mr. Mackey did. Suppose he
17 say, "Listen, you know, I sent that grand jury subpoena
18 there way back in '95 to get all these letters.
19 became of that project?" Do you suppose that she could
20 that for him?
21 A. Yes.
22 Q. Would a special agent -- could a special agent of
23 who had the password and the computer knowledge access
24 part of the database at some other location in the
25 A. That's kind of a difficult question in this case.

54

Mark White - Direct

blocked
certain code
Oklahoma City

1 Normally, yes. In this case, the OKBOMB file has been
2 off so that the only access can be made through a
3 which the rotors have. You would have to have an
4 designated --
5 Q. A code?
6 A. -- code, yes.

7 Q. So that if a member of the FBI team, Mr. Mackey,
Associate
8 General Counsel of the FBI, had the code and he was in
the J.
9 Edgar Hoover Building in Washington, D.C., he could get
access
10 to these files by entering his code; is that right?

11 A. I don't know that. I don't know if it needs to be
on site
12 or if it's a code.

13 Q. All right. Are you aware of any instances in which
agents
14 in the field have queried the OKBOMB database?

15 A. I'm sure they have. As far as in the field with us
--

16 Q. No.

17 A. Yes.

18 Q. I mean, are you aware of instances in which agents
assigned
19 to this case --

20 A. Uh-huh.

21 Q. -- have queried the OKBOMB database from places
outside
22 Oklahoma City or Denver?

23 A. I'm aware that people have tried to query the
database and
24 then have had to call us because they could not get in.

25 Q. Are you familiar with a query of the database by a
Special

Mark White - Direct

16th of 1 Agent Brecci, B-R-E-C-I, out of Omaha on the 15th or
2 April, 1996?
3 A. No.
ask 4 Q. So you just don't know -- for example, if I were to
Science 5 you, do you know whether a person in the Behavioral
would 6 Unit of the FBI at Quantico -- do you know whether they
7 be able to access this material in the database?
probably 8 A. That's -- that's a question I think the rotor
that the 9 could answer better than I can. It's my understanding
10 specific information within the database is not
retrievable in
11 that manner.
please now 12 Q. Now, returning to the memorandum -- would you
of 13 look back -- I'm going to ask you to go back to page 78
Elizalde 14 Exhibit E. Do you remember ever talking to Agent
friends? 15 about the significance of letters from family and
16 A. No.
at page 17 Q. I just want to leaf through these matters starting

18 78. Page 78 and 79, that's a memorandum approved by
you;
19 correct?
20 A. Correct.
21 Q. All right. Page 80 and 81 is another memorandum
approved
22 by you; correct?
23 A. Yes.
24 Q. And that's also dated May 30, '96; correct?
25 A. Correct.

56

Mark White - Direct

Agent 1 Q. Do you remember specifically any conversation with
2 Elizalde about that memorandum?
3 A. No.
4 Q. All right. Page 82 and 83, another May 30, '96
memorandum;
5 correct?
6 A. Correct.
7 Q. Now, these three memoranda that we've just looked
at
8 were -- all bear lead control No. 14718; correct?
9 A. Correct.
10 Q. What does that mean?
11 A. That is the lead number that was assigned to

Barbara's

12 obtaining and reviewing the prison mail.

13 Q. Who assigned that lead control number?

14 A. The process at that time was that there would be a
notebook

15 binder and as leads were developed, the numbers would
go in

16 numerical order, and so it would have been a matter of
-- and

17 it could have been Barbara Elizalde who obtained the
number.

18 It could have been myself who assigned the number. It
could

19 have been another agent who assigned the number. It
would just

20 be going to the next number available to assign and --
and the

21 number to be able to track that this was being done.

22 Q. And who would you have to call or contact to find
out

23 what's the next lead control number that's available?

24 A. You would have to contact probably the -- the
reference

25 would be to the person who was involved in the -- in

57

Mark White - Direct

1 coordinating the lead pool area.

2 Q. Now, a little while ago, we looked at the lead
number on

Do you 3 the initial material that you obtained from the prison.

4 remember that?

5 A. Yes.

know how 6 Q. And you didn't write that on there, so you don't

7 that lead number got on there; correct?

8 A. Correct.

9 Q. Now, let's turn to page 84. And 84 and 85, another
10 memorandum from Barbara Elizalde; correct?

11 A. Right.

12 Q. Now, that one is dated June 18; correct?

13 A. Correct.

Elizalde 14 Q. Do you remember having any discussion with Agent

15 about that?

16 A. No.

July 10, 17 Q. The next one is dated -- pages 86 and 87 is dated

18 1996; correct?

19 A. Correct.

20 Q. Do you remember any conversation about that one?

21 A. No.

continues on, 22 Q. All right. Your name as the approving agent

Through 23 does it not? We'll just move through those pages.

24 page 97; correct?

25 A. Yes.

58

Mark White - Direct

1 Q. Well, turn to page 96. That is a -- that was
drafted by

2 Sheila Lawson and approved by you; correct?

3 A. Correct.

4 Q. Now, that's a little different than the other
reviews;

5 correct?

6 A. Correct.

7 Q. Do you know why that document was written?

8 A. It's -- a review -- her review of the prison tapes
-- or

9 the letter. Letters.

10 Q. Right. But it says, "Documentation to support
mention of

11 letters received from legal personnel." First, let me
ask you,

12 what's an EC?

13 A. That's what this document is.

14 Q. Oh, this document is an EC?

15 A. Correct.

16 Q. So an -- is it fair to -- and what does that stand
for?

17 A. Electronic communication.

18 Q. Oh, this document is an electronic communication?
19 A. No. That's what they call it. It's -- it can be
used as a
20 memo, in a memo form. It can be used -- it was -- in
-- when
21 we changed from the old FOIMS system, which was a case
22 management system, into the ACS system, they also
changed
23 forms. This form became a mixture of what used to be
forms. A
24 memo, airtel. It can be used in various formats. In
this
25 case, it's used in a memo format.

59

Mark White - Direct

1 Q. Well, is this memo drafted on a computer?
2 A. I'm sure it's typed on a computer, yes.
3 Q. And how is it stored? In -- can it be accessed
then by
4 others than the author?
5 A. That would depend on whether Sheila Lawson kept the
form on
6 her computer database or whether she typed the form up,
sent it
7 in to the rotor and wiped the database out.
8 Q. But at any rate, these documents are maintained in
your
9 file in some form; correct?

10 A. Yes.

11 Q. I mean, for example, turn to -- in that volume that
we're
12 looking at, to page 51. The top item, 769, is an EC;
correct?

13 A. Correct.

14 Q. So that means that one of these memoranda is stored
at that
15 place; correct?

16 A. It's stored in the sub YY file at 769.

17 Q. All right. Let's go back to '96. Do you remember
talking
18 to anyone about any need for documentation to support
mention
19 of letters received from legal personnel?

20 A. I'm not sure what your question is. I -- I think
what
21 she's trying to say in that first paragraph is that she
22 obtained letters from FCI El Reno. The phraseology is
that she
23 obtained it from legal personnel, which I think is her
24 assumption as to who the people are at El Reno or -- in
this
25 case -- I'm sorry -- Englewood who are supplying the
letters to

60

Mark White - Direct

1 her.

2 Q. Is that how you interpret that?

3 A. That's how I interpret that.

4 Q. Well, then would you look at details.

5 A. Okay.

6 Q. The last paragraph says something about -- the last
two

7 sentences talk about somebody withdrawing from a case;
correct?

8 A. Correct.

9 Q. Well, doesn't that refresh your recollection, sir,
that

10 what you're doing here is trying to document the fact
that you

11 all had been reading letters from people that said that
they

12 were counsel?

13 You have to answer audibly, sir.

14 A. I'm sorry. I'm trying to review the letter.

15 If you would, please, repeat the question.

16 Q. Okay. Isn't it the case that this memorandum is an
attempt

17 to explain how the FBI came to be reading material that
related

18 to legal counsel for Mr. Nichols? Right?

19 A. I would agree that it's -- it's an explanation as
to why a

20 letter from Douglas Bennett was reviewed.

21 Q. And of course, Mr. Bennett, we know, is not
assigned

22 counsel in this case; right?

23 A. That's correct.
24 Q. And indeed, this memorandum, this one in '96, is
the only
25 one of the ones we've looked at that -- that refers, in

61

Mark White - Direct

1 addition to particular mail, to a reel-to-reel tape
recording;

2 right?

3 A. That's correct.

4 Q. Well, why was this document written; do you know?

5 A. I could only make an assumption, speculation from
reading

6 the document.

7 Q. I don't want you to speculate. Do you remember
talking to

8 Ms. Lawson about it?

9 A. No, I have no specific recollection of this.

10 THE COURT: May we interrupt for the recess
here?

11 MR. TIGAR: Yes, your Honor. And right after
the

12 recess, I'll have a couple more questions and we'll be
done.

13 THE COURT: Okay.

14 MR. TIGAR: Thank you, your Honor.

15 THE COURT: We'll recess 20 minutes. I have

it at

16 10:30 now. The clock seems to be off here in this
room. The

17 covenant of habilitation here is not being honored by
the

18 landlord.

19 We'll be in recess.

20 (Recess at 10:30.)

21 (Reconvened at 10:51 a.m.)

22 THE COURT: Be seated, please.

23 Continue, please, Mr. Tigar.

24 MR. TIGAR: Thank you, your Honor.

25 BY MR. TIGAR:

62

Mark White - Direct

1 Q. Agent White, do you know why Agent Elizalde stopped
doing

2 this work and Agent Lawson started?

3 A. Yes. Agent Elizalde went back to her normal duty
station.

4 Q. Which was where?

5 A. I believe it's El Paso.

6 Q. At the time she stopped reading Mr. Nichols' mail,
did she

7 also stop listening to his telephone conversations?

8 A. She would have left the division. She would have
left

9 Denver and gone back to her --

10 Q. You are aware that she listened to his telephone
11 conversations, aren't you?

12 A. I believe that she did, yes.

13 Q. Well, when she stopped one, she stopped the other.
Right?

14 A. Correct.

15 Q. Now, will you turn, please -- I guess you don't
have it. I

16 wonder if I could show you tab 117 of the three-volume
set.

17 That will be in Volume 2.

18 Now, there is a circle at the bottom of that
first

19 page that says "1, 5, 10" and then the initials "BE."
Correct?

20 A. Correct.

21 Q. Now, what do the circled items mean?

22 A. That would have been an indication that on pages 1,
5 and

23 10, there should be markings for indexing.

24 Q. Now, the letter at that tab is only three pages
long.

25 Isn't that right?

63

Mark White - Direct

1 A. The letter itself is three pages long.

page 2 Q. Well, then, where are pages 5 and 10 of the three-

3 letter?

4 A. I can't answer that.

5 Q. BE is Barbara Elizalde; right?

6 A. Yes, it is.

7 Q. All right. We could ask her.

8 If I may retrieve that from you. Thank you.

Exhibit 9 Would you look, please, at Bate's page 23 of

10 E. You notice that all of the items on that page are
11 letters -- that's the type -- except one. Correct?

12 A. Yes.

as a 13 Q. And that one is called an EC, but it is described

14 letter to Nichols from Marife; correct?

15 A. On page 23?

the 16 Q. Yes. Bate's page 23. Bate's page 23. Page 21 of

17 actual --

18 A. I have the Bate's page.

19 Q. You have the Bate's page 23. Do you see EC?

"Letters to." 20 A. Offhand, I don't. I see columns. It says,

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

22 THE COURT: Yes.

23 THE WITNESS: I have 327. Correct.

24 BY MR. TIGAR:

25 Q. Item 327?

64

Mark White - Direct

1 A. Correct.

2 Q. That's EC. Correct?

3 A. Uh-huh.

4 Q. Why is that an EC, which you told us stands for
electronic

5 communication, and the other things are letters?

6 A. I would have to look at serial 327 to see what it
is.

7 Q. Rather than take time to do that now, would a rotor
or

8 other agent be able to answer our question if we were
able to

9 locate that item?

10 A. Probably, yes.

11 Q. Serial 327. All right. I won't take the time to
do it

12 now.

13 Would you please turn to Bate's page 27.

14 Now, some items on that page are listed as

15 "newspaper," one letter off, or "other." Why was the
Bureau

16 collecting the labels off of newspapers, including The
Wall

17 Street Journal, being sent to Mr. Nichols?
18 A. We did not tell the Bureau of Prisons what to
supply us.
19 We did not edit them in what they supplied. What was
requested
20 of them is what the Bureau of Prisons policy would
allow us to
21 have. If they turned over and made a copy of the front
page of
22 The Wall Street Journal, we took it and brought it back
and it
23 ended up into the YY file.
24 Q. Agent, didn't you tell us this morning that you
only got on
25 August 1 of 1995 what you, quote, "deemed significant,"
close

65

Mark White - Direct

1 quote?
2 A. That's correct.
3 Q. Well, are you telling us now that you deemed
significant
4 everything that the Bureau of Prisons gave you?
5 A. No. What I'm saying is that a change occurred
where the
6 Bureau of Prisons -- instead of us going to the prison
and
7 sitting down and reviewing the letters, it's my
understanding

8 what happened was the Bureau of Prisons started just
copying
9 the letters or copying the mail and providing it to us,
in
10 complete packages.

11 Q. Well, the first time you went out you chose only
the things
12 you deemed significant. Correct?

13 A. Correct.

14 Q. That was when Mr. Mackey issued you the grand jury
15 subpoena, and then you got that from Mr. Gibbons and
went and
16 served it. Right?

17 A. Correct.

18 Q. Then you said a change occurred?

19 A. Correct.

20 Q. Well, who made the change? Were you involved in
the
21 change?

22 A. Well, I was involved in the change in the respect
that I
23 implemented the assignment that the prison mail was to
be
24 reviewed. As far as the contacts between the Bureau of
Prisons
25 and the arrangements to obtain the mail, I was not
involved in

Mark White - Direct

1 that as far as policy discussion.

get all

2 Q. All right. Who -- whom had the policy decision to

3 the mail and have the FBI review it?

4 A. I don't know.

5 Q. Who told you about the change?

been a

6 A. I don't have specific recollection. It would have

Gibbons, it

7 supervisor to me, which it could have been Hank

inspectors.

8 could have been Rich Baker, it could have been the

it would

9 Q. So the only people that could have told you about

Defenbaugh;

10 be Mr. Baker, Mr. Gibbons, Mr. McCoy, or Mr.

11 correct?

12 A. That would be correct.

13 Q. Those are people senior to you; correct?

14 A. Correct.

leads

15 Q. Those are people involved in helping to decide what

16 are important in this case; correct?

17 A. Correct.

now to

18 Q. They're the ones that are responsible, referring

19 Mr. Defenbaugh and Mr. McCoy, for shaping the FBI's

20 investigation; correct?

21 A. They're involved in shaping the investigation, yes.
22 Q. And Mr. Defenbaugh meets on a regular basis with
the
23 prosecutors in this case to assure liaison between what
the FBI
24 has found and what the prosecutors are going to present
in
25 court; correct?

67

Mark White - Direct

1 A. That would be part of his responsibilities.
2 MR. TIGAR: Pass the witness.
3 CROSS-EXAMINATION
4 BY MR. ORENSTEIN:
5 Q. Good morning, Agent White.
6 A. Good morning.
7 Q. Let me begin, if I may, with where we started this
morning.
8 You were asked several questions about whether there
were
9 inaccuracies in the affirmations that you submitted to
the
10 Court earlier on in the litigation of this motion;
correct?
11 A. Yes, I was.
12 Q. And there were, in fact, some inaccuracies and
you've
13 explained those today; correct?

14 A. Yes, I have.

15 Q. Let me direct your attention to your initial
affirmation to

16 paragraph 11 and specifically to the end of paragraph
11, which

17 appears on page 6. Now, before I ask about that, the
sentence

18 at the end of that paragraph, how have you come to the
19 conclusion that other parts of this affirmation were
incorrect

20 since you first put this affirmation together and
submitted it

21 to the Court?

22 A. Once I discovered the error, the first error -- and
that

23 was the 12-14-95 collection of mail -- I started from
Square 1

24 again and this time had either under my direction or
personally

25 conducted a -- extensive research concerning who may
have been

68

Mark White - Cross

1 involved in collection of mail, who may have been
involved in

2 review of mail. And this was part of a review I did
which

3 included contacting every single agent that had been at
the

4 command post working in that area from the time we
started
5 collecting mail, and that's from August 1, '95, until
the time
6 we stopped collecting mail in November of '96. Each
one of
7 these agents was asked if they were involved in the
review of
8 mail, if they sent out any leads or a teletype to
another
9 office to conduct an investigation based on a review of
prison
10 mail.

11 On top of that, I personally collected every
single
12 piece of Terry Nichols' mail that we had, compared it
against
13 the tabbed booklets that defense counsel has provided.
I then
14 reviewed every single one of the letters, charting out
who sent
15 the letter or who received the letter, determining how
many
16 people were involved and what their names were.

17 From that, I -- I checked databases to see if
these
18 people had been interviewed and when. I also had the
rotor
19 check that. I also had the person -- another person
involved
20 in database systems check that, and I've had them check
it
21 multiple times.

22 Based on that review of collecting all 302's
or
23 inserts, reports of interview, that were done on the
people
24 that were determined to have sent or received mail from
Terry
25 Nichols, I first looked at were these people
interviewed after

69

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1 8-1-95. If they were interviewed prior to 8-1-95, then
there
2 was no bridge or correlation between the interview and
the
3 collection of mail.

4 If they were interviewed after 8-1-95, I
looked at the
5 specific interviews in an effort to determine what was
the
6 basis for having gone and talked to that person.

7 Q. Now, when you've described -- you mentioned
reviewing, both
8 yourself and others, multiple times a great many
documents; is
9 that correct?

10 A. As far as -- yes. The mail especially.

11 Q. And talking to everybody who could conceivably have
been
12 involved in this process; is that correct?

13 A. That's correct.

14 Q. And after that research -- how much time would you
say you
15 spent over the last week conducting that research?

16 A. I would say it probably averaged 12 to 14 hours a
day.

17 Q. And as a result of that research, you've come up
with some
18 additional information about when mail was collected;
correct?

19 A. Correct.

20 Q. And additional people who were involved in looking
at the
21 mail; correct?

22 A. Correct.

23 Q. And those people are here?

24 A. Correct.

25 Q. Let me direct your attention now to the top of page

6 of

70

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1 your affirmation. The sentence in the carryover
paragraph,
2 paragraph 11, reads, "With the assistance of other
agents under
3 my supervision, I determined that the FBI did not
interview any
4 person as a result of reviewing Nichols' prison mail

and that

5 no other investigative use of any kind has been made of
any of

6 that mail."

7 In the research that you have been doing since
8 submitting this affirmation, have you come across
anything to

9 suggest that that sentence is not correct?

10 A. No, I have not.

11 Q. Now, let me go over some of the areas that Mr.
Tigar

12 specifically asked you about this morning. You were
asked

13 about the database that information was entered into.
Do you

14 recall that?

15 A. Yes, I do.

16 Q. And you referred to it, I believe, as ACS.

17 A. Correct.

18 Q. What information in ACS is available to agents who
are not
19 part of the Oklahoma City bombing case?

20 A. I think that this would have to be clarified with
the

21 rotor, but it's my understanding that the information
would

22 be --

23 MR. TIGAR: Excuse me. Your Honor, object.
Lack of

24 personal knowledge.

25 THE COURT: All right. Sustained.

71

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1 BY MR. ORENSTEIN:

2 Q. If someone either within the Oklahoma City bombing
case or

3 without managed to get access to what was in that
computer

4 system and review the contents of that system that
relate to

5 prison mail in this case, what would they see?

6 A. They would see information concerning who the
letter was

7 from and to, the serial number, that YY number, and I
believe

8 they may see a date.

9 Q. Let me direct your attention to Defendant's Exhibit
E,

10 which is the binder that Mr. Tigar gave you earlier.
And let

11 me direct your attention to the document starting at
page 3.

12 A. Yes.

13 Q. Is that a printout of information, all of the
information

14 that was put into ACS?

15 A. That's the printout of what you would pull up on
the screen

16 if you queried the YY file.

17 Q. Is there anything in that document that sets forth
the
18 contents, as opposed to simply sender or receiver, but
the
19 actual contents of the letters to or from Terry Nichols
in
20 prison?

21 A. There is nothing concerning the text of the
letters.

22 Q. Now, does the FBI in this case also have a database
that
23 contains the contents of 302's, inserts and other
investigative
24 reports?

25 A. Yes, it does.

72

Mark White – Cross

1 Q. And is that the type of database that agents use
from time
2 to time in determining how to pursue their
investigation?

3 A. That is the main database that is used by agents to
4 research information.

5 Q. Has any of the mail received from the Bureau of
Prisons,
6 Mr. Nichols' prison mail, been entered into that
database?

7 A. No, it has not.

with
E,
that

8 Q. Were the memoranda that you were reviewing earlier
9 Mr. Tigar, starting at approximately page 78 of Exhibit
10 Defense Exhibit E: Was that information entered into
11 central investigative database?

12 A. No, it was not.

contents
was

13 Q. Now, to your knowledge, was information about the
14 of Mr. Nichols' prison mail the basis for any lead that
15 sent out in this investigation?

16 A. Mr. Nichols' mail, no.

Nichols'
filing

17 Q. And have you ever discussed the contents of Mr.
18 prison mail with prosecutors in this case prior to the
19 of this motion?

20 A. No.

1995, at

21 Q. Had you read, other than what you saw on August 1,
22 the El Reno facility -- after that, had you read any of
23 Mr. Nichols' prison mail?

24 A. Up until last week, no.

25 Q. Did you -- did you discuss with other agents the

Mark White – Cross

1 possibility that in pursuing their investigation of
this case
2 that they should go back to the prison mail and look at
that
3 for ideas of how to pursue their investigation?

4 A. No.

5 Q. Did any agent who was involved in investigating the
case
6 come to you and suggest that they should look at the
prison
7 mail to decide how to pursue the investigation?

8 A. No.

9 Q. Let me direct your attention to tab 117.

10 MR. ORENSTEIN: Counsel, may I borrow your
copy to
11 provide to the witness? I have one copy here.

12 THE WITNESS: Thank you.

13 BY MR. ORENSTEIN:

14 Q. Do you have that there?

15 A. Yes, I do.

16 Q. Now, Mr. Tigar was asking you a few minutes ago
about the
17 indexing indication at the bottom of that page, the 1,
5, 10.

18 Correct?

19 A. Yes.

20 Q. Have you made any effort to determine -- to
correspond the

21 contents of these binders that were submitted by Mr.
Nichols to
22 the Court to the contents of the FBI's files of prison
mail?
23 A. Would you repeat that.
24 Q. Did you make an effort to figure out, for example,
looking
25 at tab 117 -- And just standing aside for a second,
these

74

Mark White - Cross

1 exhibits were provided by Mr. Nichols; correct?
2 A. Correct.
3 Q. And they were organized by his counsel?
4 A. It's my understanding.
5 Q. And they were not in the order that the prison mail
was
6 maintained in the FBI's files; correct?
7 A. Correct.
8 Q. Did you make any effort to determine, for example,
where
9 Exhibit 117 or tab 117 could be found in the FBI's
files?
10 A. Yes, I did.
11 Q. And did you do that for every piece of mail that's
part of
12 this motion?
13 A. Yes, I did.

14 Q. Let me direct your attention, if I may --

15 MR. ORENSTEIN: Your Honor, may I approach to
hand up
16 these exhibits?

17 THE COURT: Yes.

18 BY MR. ORENSTEIN:

19 Q. Let me direct your attention, if I may, to Exhibit
1. I
20 don't know if the copies you have have the exhibit
stickers on
21 them. The one marked "Prison."

22 A. The chart?

23 Q. Yes.

24 THE COURTROOM DEPUTY: These are marked.

25 THE WITNESS: This is okay.

75

Mark White – Cross

1 Yes.

2 BY MR. ORENSTEIN:

3 Q. Can you explain to the Court what that chart is?

4 A. It's a chart I put together of the review of Mr.
Nichols'
5 mail. It goes in the order of the tabs of Mr. Nichols'
exhibit
6 here. It corresponds the tab number to our YY serial
number.

7 Then it gives information concerning the letter, the
date of
8 the letter or postmark and the sender of the letter,
the
9 recipient of the letter, names mentioned within the
letter and
10 persons involved in reviewing or filing the letter, in
that
11 case being the agent or the rotor.

12 Q. Now, how -- first of all, did you participate in
putting
13 that document together?

14 A. Yes, I did.

15 Q. How did you do that?

16 A. I sat down with Mr. Nichols' tabbed notebooks and
the mail
17 that I had pulled from the sub YY file and went through
every
18 piece of mail.

19 MR. ORENSTEIN: Excuse me for a moment, your
Honor.

20 BY MR. ORENSTEIN:

21 Q. And did you verify that chart for accuracy in terms
of the
22 names that were mentioned in the letter as the sender,
the
23 recipient, the date and the way to correspond the tab
numbers
24 of Mr. Nichols' exhibits to the contents of the FBI's
YY
25 subfile?

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1 A. Yes.

2 Q. Now, when Mr. Tigar asked you about tab 117, he
pointed out

3 that according to the indexing notation, there should
be ten

4 pages in that exhibit. Correct?

5 A. Correct.

6 Q. Let me direct your attention in the chart,
Government's

7 Exhibit 1, to the entries for tabs 114, 116 and 117.
Do you

8 have that?

9 A. Yes.

10 Q. Do they all have the same -- indicate that they are
part of

11 the same YY entry?

12 A. Yes, they do.

13 Q. And just for the record, that's entry 173?

14 A. That's correct, or 773.

15 Q. I'm sorry. 773.

16 Can you explain what that means? In other
words, what

17 would you see if you went to the YY subfile and took
out

18 Document No. 773?

mail. 19 A. It would be a package, a complete package of the

20 Q. And that would include pages that are -- that in
21 Mr. Nichols' exhibit are at tabs 114, 116 and 117?

22 A. That's correct.

there 23 Q. And there are -- the indication on tab 117 is that

24 are three locations for indexing. Is that correct?

25 A. That's correct.

77

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fact the 1 Q. And if you look at those three exhibits, is it in

-- on 2 case that the return address on each of the three tabs

indexing? 3 three separate pages -- have been underlined for

4 A. 114, 116 -- yes, they have.

-- and 5 Q. Let me direct your attention now to -- well, just

Agent 6 that part of it, it appears that this indication by

done; 7 Elizalde does, in fact, refer to the indexing that was

8 correct?

9 A. It does refer to indexing, yes.

together, 10 Q. And with the use of the chart that you helped put

11 Government's Exhibit 1, the Court can determine where
to find

12 that; is that correct?

13 A. That's correct.

14 Q. Now, you were also asked about the entry in
Defendant's

15 Exhibit E at page, I believe it was 27. If I may have
a

16 moment.

17 I'm sorry. Page 23.

18 A. Yes, sir.

19 Q. Now, if you go -- and Mr. Tigar asked you why
something

20 that is described as a letter to Mr. Nichols at the
right-hand

21 side of the page is described under type as an EC.
Correct?

22 A. Uh-huh.

23 Q. If you look at the entry in your chart for tab No.
75 --

24 A. Yes.

25 Q. -- does that indicate that that is the -- that that

78

Mark White - Cross

1 corresponds to YY No. 327?

2 A. Yes, it does.

3 Q. And that's the entry that Mr. Tigar was asking
about

4 before?

5 A. Yes, it does (sic).

6 Q. So if you look at tab 75 in Mr. Nichols' binders --

7 A. Yes.

8 Q. -- what can you tell about whether the extent to
which the

9 entry in the YY file listing is correct?

10 A. It is YY-327. It is dated -- the letter inside is
dated

11 10-20-95. It is a letter to Terry Nichols from Marife.
It is

12 not an EC.

13 Q. So there appears to have been a mistake made in
labeling

14 that an EC, but otherwise the information is correct?

15 A. Yes.

16 Q. And one way to figure out how -- you know, what
happened is

17 to consult the chart that you have put together,
Exhibit 1?

18 A. That's correct.

19 Q. Now, Exhibits -- Exhibit 2, if you have that --
does that

20 refer to tab 182?

21 A. Yes, it does.

22 Q. What is tab 182?

23 A. In these notebooks, tab 182 is just a mixture of a
whole

24 bunch of mail, most of it being mail covers, magazine

with this 25 subscription requests. I believe there is mixed in

79

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1 four letters.

250 pages' 2 Q. And is it fair to say that tab 182 contains over
3 worth of documents?

4 A. I believe it was 272.

pages and 5 Q. And did you examine individually each of those
6 determine which YY file entry it corresponded to?

7 A. Yes, I did.

8 Q. Is that what's summarized in Exhibit 2?

9 A. Yes.

Government's 10 Q. Can you tell the Court what is Exhibit --

Exhibit tab C, 11 Exhibit 3. And that corresponds to Mr. Nichols'

12 which he has described as Mr. McVeigh's mail?

of those 13 A. Yes. It's a chart of what is within the C section

reason 14 notebooks, and what it appears is the mail that for one

15 or another ended up in -- turned over in discovery to

16 Mr. Nichols' counsel.

17 Q. And the first two entries refer to Terry Nichols;

is that

18 correct?

19 A. That's correct.

20 Q. On what basis did you make those entries?

21 A. Review of those specific pieces of mail.

actually

22 Q. And with those pieces of mail, the envelopes had

23 been addressed to Mr. Nichols?

24 A. Yes.

McVeigh;

25 Q. The contents of the letter were addressed to Mr.

80

Mark White – Cross

1 is that correct?

2 A. Yes.

Exhibit 4?

3 Q. And finally, what is -- not finally. What is

it.

4 A. It's a mail cover with the name "Randall Coyne" on

Government's

5 Q. I'm sorry. Not Exhibit 4 within Exhibit 3.

6 Exhibit 4.

of 1997.

7 A. This is the list of mail that was produced in July

was

8 Q. And that was after the filing of this motion, there

Nichols'

9 some additional mail found and turned over to Mr.

10 counsel?

11 A. Yes, there was.

12 Q. Now, with respect to Exhibits 3 and Exhibit --
Exhibits 3

13 and 4, are those the same type of chart as Exhibit 1?

14 A. Yes.

15 Q. Do they tell you the sender, the recipient, the
date,

16 corresponding YY number? Is that correct?

17 A. That's correct.

18 Q. Now, after putting together Exhibits 1 through 4,
had you

19 determined the senders and recipients?

20 A. Yes, I did.

21 Q. Of all of the prison mail that the FBI collected
concerning

22 Mr. Nichols?

23 A. Yes. With the -- with the exception as you will
note on a

24 few places, there may be just an address or may be an
anonymous

25 letter, but those that have specific names listed on
the

81

Mark White - Cross

1 letters.

2 Q. And did you then compile a list of everybody to the

extent

3 identifiable who had sent or received mail from Mr.
Nichols as

4 reflected in the prison mail?

5 A. Yes, I did.

6 Q. Let me direct your attention to Government's
Exhibit 5.

7 Can you describe for the Court what is set forth in
8 Government's Exhibit 5?

9 A. This is a chart that depicts in the left-hand
column the

10 persons who sent or received letters to Terry Nichols
that

11 could be identified from the mailings.

12 The second column is the persons from that
first

13 column that we have interviewed.

14 Q. And is that interviewed at any time?

15 A. At any time.

16 Q. And what is the third column?

17 A. The third column are the persons from the second
column who

18 were interviewed after August 1 of '95.

19 Q. Now, why did you choose August 1, 1995, as a date
of

20 significance?

21 A. Because that is the first date that we obtained the
prison

22 mail.

not in 23 Q. So anyone who appears in the second column who is
that is 24 the third -- for example, the first name in the list --
to the 25 someone who was interviewed but only interviewed prior

82

Mark White - Cross

1 time that the FBI commenced its review of prison mail?
2 A. That's correct.
3 Q. What does the fourth column represent?
4 A. Those are persons interviewed by the FBI for the
first time 5 after 8-1-95.
6 Q. And how many people fall into that category?
7 A. No one.
8 Q. So as a result of obtaining Mr. Nichols' prison
mail, did 9 the FBI learn of the identities of any of the senders
or 10 recipients that it was not already aware of?
11 A. Correct.
12 Q. The answer is no?
13 A. No.
14 Q. Did you do the same sort of review for persons
mentioned in 15 the mail?

of a 16 A. Yes, I did. In most cases that there is mentioning
17 first name and not a full description.
18 Q. To the extent practicable, though, did you conduct
a review 19 of names that were identifiable?
20 A. Yes.
21 Q. And what were the results of that review?
22 A. Of the -- I think there was roughly 102 names, and
some of 23 those may have been just Jane L., something like that,
13 were 24 interviewed by the FBI. Three were interviewed after
8-1-95. 25 Q. And had you gone back to the reports of those
interviews to

83

Mark White - Cross

1 see if there was any indication that anything that
happened in 2 those interviews was based on the contents of Mr.
Nichols' 3 prison mail?
4 A. Yes, I have.
5 Q. And what was the result of that review?
6 A. The review indicated there was no correlation
between the 7 interviews and the prison mail.

8 Q. Now, in conducting this review to determine if
there were
9 any new persons identified to the FBI or interviewed as
a
10 result of Mr. Nichols' prison mail, what documents did
you rely
11 on?

12 A. I relied on the mail itself. I relied on the
interviews,
13 the reports of interview.

14 Q. And have -- and from that, you can reconstruct who
was
15 contacted and when --

16 A. Correct.

17 Q. And whether the dates correspond or are before or
after the
18 review of the prison mail; correct?

19 A. Correct.

20 Q. And are all those documents available to defense
counsel?

21 A. Yes, they are.

22 Q. So I guess in short, if defense counsel wishes to
check
23 your work in determining who has been interviewed as a
result
24 of prison mail or not, they have the -- they have the
ability
25 to do that now; correct?

Mark White – Cross

1 A. Yes, they do.

2 Q. You were asked about indexing; correct? And that's
3 something that would be done by the agent conducting
the
4 review?

5 A. Correct.

6 Q. Did you look to see if any names mentioned in the
contents
7 of Mr. Nichols' prison mail had been indexed?

8 A. Yes, I have.

9 Q. How many letters had that?

10 A. I found one letter with two names in it.

11 Q. And were both of those names known to the FBI prior
to the
12 date of that letter?

13 A. Yes, they were.

14 Q. In fact, had one of them already been interviewed?

15 A. One was interviewed, one never was interviewed.

16 Q. Now, in addition to the two names that you've just
17 mentioned or that you've just referred to that were
indexed

18 within the contents of letters, were there other names
that
19 were indexed because they were senders or receivers?

20 A. Yes.

21 Q. But within the body of a letter?

22 A. Within the actual text of the letter, two names.
23 Q. And have you indicated which two names those are
within
24 your chart, Exhibit 1?
25 A. Let me find the chart.

85

Mark White - Cross

1 The names should be underlined.
2 It would be tab 122-YY-922.
3 Q. And that's the only instance you found where a name
other
4 than the name of a sender or recipient of the mail had
been
5 underlined for indexing?
6 A. Yes.
7 Q. And that's based on a review of the mail?
8 A. Yes.
9 Q. You were asked some questions about your review of
10 Mr. Nichols' prison mail at the El Reno facility?
11 A. Yes.
12 Q. On August 1, 1995. Correct?
13 A. Correct.
14 Q. As a result of that review, how many pieces of Mr.
Nichols'
15 prison mail were collected?
16 A. Two.

17 Q. There was an additional collection of mail on

18 December 14 --

19 A. That's correct.

20 Q. -- 1995?

21 A. That's correct.

22 Q. How many pieces of Mr. Nichols' prison mail were
collected

23 at that time?

24 A. None.

25 Q. And then subsequent to that, there was additional
--

86

Mark White - Cross

1 A. Yes.

2 Q. -- mail collected?

3 A. Yes.

4 Q. So prior to December 14, 1995, only two pieces of

5 Mr. Nichols' prison mail were in the files of the FBI;
is that

6 correct?

7 A. That's correct.

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

9 THE COURT: Yes.

10 BY MR. ORENSTEIN:

11 Q. You were asked about a reference to a Lead No.
12377 with

12 respect to the subpoena.

13 A. Yes.

14 Q. And let me just take a moment to find it.

15 And there was a notation AUSA?

16 A. Correct.

17 Q. First of all, do you know what that lead is?

18 A. It was the execution of the search warrant at the
prison in

19 obtaining the mail on August 1.

20 Q. You mentioned a search warrant?

21 A. I'm sorry. A subpoena. I'm sorry.

22 Q. And the subpoena had on it the name of an AUSA?

23 A. Yes, it did.

24 Q. Do you know of any other reason why in the document

25 Mr. Tigar showed you there would be a reference to an
AUSA?

87

Mark White - Cross

1 A. No. As I stated, I've never seen on a document
before this

2 where someone would put lead number and then that
quotation and

3 then the number. Usually it's just lead number and
then the

4 number.

5 Q. But does that notation of AUSA suggest to you that
you or
6 anyone else discussed the contents of Mr. Nichols'
prison mail
7 with the prosecutors in this case?

8 A. I can't --

9 MR. TIGAR: I object to the question, unless
it calls
10 for his personal knowledge, your Honor. If the
question is
11 does it suggest to him something and his examination
shows --

12 THE COURT: I'm going to overrule the
objection
13 because I think it's appropriate as to -- let him
speculate a
14 bit on that.

15 THE WITNESS: I really -- I can't speculate on
that.
16 I don't know why that notation AUSA is on there.

17 BY MR. ORENSTEIN:

18 Q. Now, that lead, 12377, related to the subpoena to
be served
19 on the El Reno facility; correct?

20 A. Correct.

21 Q. And then when the mail was collected later and was
reviewed
22 by Agents Elizalde and Lawson and they wrote those
memoranda to
23 you, there was a different lead number?

24 A. That's correct.

25 Q. And was that the lead for the review of the mail?

88

Mark White - Cross

the 1 A. That was the lead from Barbara Elizalde's review of
2 mail.

Agent 3 Q. And that task was taken on by Agent Lawson and
4 Elizalde --

5 A. Correct. Yes.

and 6 Q. Now, you were seeing the memos that Agents Elizalde
7 Lawson produced to you; correct?

8 A. Yes.

than a 9 Q. Did those memos contain anything about -- other
letters 10 category who was writing to Mr. Nichols or receiving
11 from him?

12 A. No.

13 Q. Describe the contents of specific letters?

14 A. No.

for 15 MR. TIGAR: Your Honor, the documents speak
16 themselves. They're in evidence.

17 BY MR. ORENSTEIN:

18 Q. Was that the only information you had about the
contents of
19 Mr. Nichols' prison mail aside from those that you had
reviewed
20 personally on August 1, 1995?
21 A. Yes.
22 Q. Did you talk to Agent Defenbaugh, Agent Baker,
Agent McCoy
23 about the contents of Mr. Nichols' prison mail other
than
24 perhaps to discuss what was in those memos?
25 A. No.

89

Mark White - Cross

1 Q. Did you discuss those memos with them?
2 A. I don't recall discussing the memos, no.
3 Q. Did you ever discuss with any of the prosecutors
the
4 contents of those memos?
5 A. No.
6 Q. Or the contents of Mr. Nichols' prison mail?
7 A. No.
8 MR. ORENSTEIN: May I have a moment, your
Honor?
9 THE COURT: Yes.
10 MR. ORENSTEIN: I have nothing further, your
Honor.

11 Thank you.

12 THE COURT: Any follow-up, Mr. Tigar?

13 MR. TIGAR: Yes, your Honor. Thank you.

14 REDIRECT EXAMINATION

15 BY MR. TIGAR:

11 of 16 Q. In making the determination reflected in paragraph

17 your August 8 affirmation, did you speak to Agent Defenbaugh?

18 A. Let me find it.

19 Q. Yes, sir. I'm speaking of the last sentence of your -- of

20 paragraph 11 of your August 8 affirmation.

21 A. Did I discuss the last sentence in paragraph --

22 Q. In making the determination that's reflected in that

23 sentence --

24 A. Yes.

25 Q. -- did you speak to Agent Defenbaugh?

90

Mark White - Redirect

1 A. No, I did not.

2 Q. Did you speak to Agent McCoy?

3 A. No, I did not.

4 Q. Did you speak to Agent Baker?

5 A. No, I did not.

6 Q. Did you speak to Agent Gibbons?

7 A. No, I did not.

8 Q. Did you speak to Mr. Mackey?

9 A. No, I did not.

10 Q. Did you speak to the -- the analyst, Wanda, whose
last name

11 I have forgotten, that you mentioned earlier?

12 A. Wanda Vincent?

13 Q. Yes.

14 A. No.

15 Q. If -- where -- when you first became aware of the
defense

16 motion in this case, did somebody assign you to go look
at

17 these letters?

18 A. When I became aware of the motion, I was asked to
provide

19 information concerning the collection of the mail and
what we

20 had done investigatively with the mail.

21 Q. Where were the letters, then?

22 A. In a file cabinet.

23 Q. Where?

24 A. In our office.

25 Q. Where?

Mark White - Redirect

1 A. In the rotor section.

2 Q. Could you give me a latitude and a longitude, sir?

3 A. They're in our office. I mean --

4 Q. In Denver? They're in Denver, Colorado; right?

5 A. Yes.

6 Q. I'm sorry. I didn't mean -- we're just at cross-
purposes

7 here. They're right here in Denver; correct?

8 A. They're in Denver.

9 Q. And they're on the floors of the building that are
rented

10 by the FBI and the prosecutors; correct?

11 A. Correct.

12 Q. How is it that you produced some and then only
later found

13 some others to produce?

14 A. How that occurred was in my checking the mail that
we had

15 in our file compared to the mail that you had in your
tabs, I

16 found one letter that you did not have.

17 Q. Yes, but there is a 1997 production that you were
asked

18 about, the seven letters. How were those produced?

19 A. I was not involved in producing those seven
letters.

20 Q. Do you know where they were kept?

21 A. They were kept in the file.

22 Q. The same file?

23 A. Same file.

24 Q. Now, that is a file -- who can go in there and open
that
25 file drawer and look at it?

92

Mark White - Redirect

1 A. The rotor.

2 Q. Anybody else?

3 A. I would think that it's an open room that anyone
could go
4 into the file.

5 Q. And does the -- is that section of the file labeled
in some
6 way so that if I want something that's a YY and I'm
authorized
7 to be in that space, I can go in there and look?

8 A. Yes.

9 Q. Does somebody keep a log of who goes into that
file?

10 A. In that particular file, no.

11 Q. So as we sit there today, we just don't know who
has been
12 in there; right?

13 A. That's correct.

14 Q. All right. Now, just to understand this indexing
system,
15 sir, let us suppose that someone named Joyce Wilt were
called
16 as a witness in this case, called by the defense, and
the
17 prosecutor wanted to find out everything the FBI knew
about
18 Joyce Wilt. Would the prosecutor interrogate the
database and
19 find out that there is -- there are index entries on
Joyce
20 Wilt?
21 A. They could.
22 Q. And would one of those index entries contain the
number for
23 this case and then a dash and then the letters YY and
then
24 another dash and some letter that Joyce Wilt wrote?
25 A. Yes.

93

Mark White - Redirect

1 Q. And armed with that information that's in your
computer
2 database, the person could then go to that file room
we're
3 talking about, open the drawer, pull out that letter
from Joyce
4 Wilt and have it available to cross-examine; correct?

5 A. Yes.

6 Q. And that's one of the ways the indexing system
works;

7 correct?

8 A. It's a method for tracking down specific
information, yes.

9 MR. TIGAR: I have nothing further.

10 THE COURT: Mr. Orenstein?

11 RE-CROSS-EXAMINATION

12 BY MR. ORENSTEIN:

13 Q. Just a couple of questions, Agent White: Mr. Tigar
asked

14 you or proposed to you that we don't know who has been
in that

15 file; correct?

16 A. Correct.

17 Q. You mentioned that agents were canvassed?

18 A. Yes.

19 Q. And were they asked whether they had read the
prison mail?

20 A. Yes.

21 Q. Are the ones who have read prison mail here today?

22 A. Yes, they are.

23 Q. Mr. Tigar asked you about whether prosecutors could
look at

24 the files containing prison mail of, for example, Joyce
Wilt.

25 A. Yes.

Mark White - Recross

1 Q. To your knowledge, did that happen?

2 A. I'm not aware of any prosecutors having looked in
the file.

3 Q. What about agents looking for mail of Mrs. Wilt for
that
4 purpose?

5 A. Based on the contact with the agents that were in
house and
6 their statements that they did not read mail, no.

7 Q. And if prosecutors were in the position of having
to
8 cross-examine Mrs. Wilt for one reason or another, are
there
9 other files that they would be looking at such as
302's,
10 interviews, or the like?

11 A. That would be the most likely place to go.

12 MR. ORENSTEIN: I have nothing further, your
Honor.

13 MR. TIGAR: Nothing further.

14 THE COURT: All right. You may step down.

15 THE WITNESS: Thank you.

16 MR. ORENSTEIN: Judge, by agreement with Mr.
Tigar,

17 Mr. White will return to the office. If he is needed,
he will

18 be available later.

19 THE COURT: Is that agreed?

20 MR. TIGAR: Yes, your Honor.

21 THE COURT: All right. You can leave, then,
22 Mr. White.

23 Next witness, Mr. Woods?

24 MR. WOODS: Yes, your Honor. By agreement
with the

25 Government, they wanted Ms. Babbit put on second so she
could

95

1 return; so Lee Anna Babbit is the second witness we
would call.

2 THE COURTROOM DEPUTY: Would you raise your
right

3 hand, please.

4 (Lee Anna Babbit affirmed.)

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

6 Would you state your full name for the record
and

7 spell your last name.

8 THE WITNESS: It's Lee Anna Babbit, B-A-B-B-I-
T.

9 DIRECT EXAMINATION

10 BY MR. WOODS:

11 Q. Good morning, Ms. Babbit. My name is Ron Woods.

I'm one

12 of the lawyers that's been appointed to represent Terry
13 Nichols.

14 How are you employed, ma'am?

15 A. I'm employed with the FBI.

16 Q. How long have you been employed by the FBI?

17 A. About six-and-a-half years.

18 Q. What is your current position?

19 A. I'm the draft cashier.

20 Q. I'm sorry. The what?

21 A. Draft cashier.

22 Q. And where are you assigned with the FBI?

23 A. In Oklahoma City.

24 Q. And have you always been in Oklahoma City with the
FBI?

25 A. Except for when I was here working, yes.

96

Lee Anna Babbit - Direct

1 Q. You started in Oklahoma City?

2 A. Yes.

3 Q. On April 19, 1995, what position did you have
within the

4 Oklahoma City office?

5 A. I was a rotor.

6 Q. And would you briefly tell the Court what a rotor

is?

incoming 7 A. It's basically a file clerk. We would handle all
the 8 mail, block stamp it, match it with a file, give it to
the 9 supervisor for his approval. Then we would see that
10 information was entered into the computer and then
filed in the 11 file.

to work 12 Q. All right. Now, on April 19, did you get assigned
City 13 with the task force that was working on the Oklahoma
14 bombing case?

15 A. Yes, sir, I did.

case, or 16 Q. Were you the rotor maintaining the file on this
files? 17 were there a number of rotors maintaining various

18 A. I was the lead rotor.

19 Q. Yes, ma'am.

20 A. And I had other rotors working with me.

that 21 Q. All right. And that file number was 174-56120; is
22 correct?

23 A. That's correct.

the 24 Q. In the office in Oklahoma City, since that's where
25 crime occurred?

Lee Anna Babbit - Direct

1 A. That's correct.

2 Q. Would you briefly tell the Court how you would
maintain a

3 file from the correspondence that would come in?

4 A. When the mail would come in daily, I would open it.
They

5 would be given to the -- the mail would be given to
agents that

6 were assigned to go through the mail. When I got the
mail

7 back, it would be disseminated into the files that we
had set

8 up, and then I would assign certain subfiles to the
other

9 rotors working with me to help me serialize them and
put them

10 in the file.

11 Q. When the agents would return the correspondence
back to

12 you, did they underline names for indexing?

13 A. Yes, they did.

14 Q. Would you tell the Court briefly what indexing
means and

15 how that's done by the agents?

16 A. The agent usually underlines -- it's usually names,

17 addresses, anything they thought was pertinent and
read; and

the 18 then we would take that information and input it into
19 computer.
under 20 Q. Under the -- and that's -- put it into the computer
21 indices; is that correct?
22 A. Yes. Indexing.
when 23 Q. And what information would you put on the indexing,
and 24 you had a person's name, say Joyce Wilt, and an address
25 that was contained in a particular letter or
correspondence,

98

Lee Anna Babbit - Direct

1 what information would you put under Joyce Wilt's name?
name and 2 A. Whatever was underlined, which would mainly be her
3 her address.
had it? 4 Q. All right. And any identifying information, if you
5 A. Right.
to trace 6 Q. And what would you put next to that name in order
7 it back to the file?
8 A. As far as what?
You have 9 Q. Well, you just don't put the name into the file.

10 to have some way to reference back to something.

11 A. We have the serial number.

12 Q. All right. So you put the file number and then the
serial
13 number; is that correct?

14 A. That's correct.

15 Q. And if it's a subfile, then you have the subfile
number?
16 A. Right.

17 Q. So that somebody seeing that name can then go pick
up the
18 document out of the file that relates to that; is that
correct?
19 A. That's correct.

20 Q. Now, I want to focus your attention on the letters
that
21 were gathered from the prison that have been provided
to the
22 defense. We're going to talk just about Terry Nichols'
letters
23 that he wrote out of the prison and also letters he
received.
24 We have been provided copies of those, and
there are a
25 number of block stamps with the initials LAB on the
indexing,

1 searching, filing and index; and we've been told by the
2 Government that LAB is you, so I want to focus our
discussion
3 on that.

4 A. All right.

5 Q. When was the first time that you obtained any
documents
6 relating to Terry Nichols' mail to file and index?

7 A. Was in July.

8 Q. July of '95?

9 A. July of '96.

10 Q. '96?

11 A. '96.

12 Q. And where were you in July, '96?

13 A. I was here in Denver, working.

14 Q. When did you make the move over here to the task
force in
15 Denver out of Oklahoma City?

16 A. In April of '96.

17 Q. And where did you office?

18 A. I don't know the correct address. It's --

19 Q. Well, I won't get into address, and I think they
want to
20 keep that somewhat confidential.

21 Did you office with all the FBI Task Force
people and
22 the prosecutors?

23 A. Yes, I did.

24 Q. You shared a big office space up there with them?

25 A. Yes, I did.

100

Lee Anna Babbit - Direct

1 Q. Okay. And the first letters you saw were in July,
'96?

2 A. Yes, sir.

3 Q. Okay. And from whom did you receive those
documents?

4 A. The agents that had been assigned to read the
letters.

5 Q. And who were they?

6 A. I think it was Barbara -- I'm not sure of their
last names.

7 Q. If I mention a name, Barbara Elizalde that's been
provided

8 to us, does that refresh your memory?

9 A. Yes.

10 Q. Was she the only person that was reviewing the
letters to

11 your recollection?

12 A. As far as I know.

13 Q. Now, how would you receive the letters from Ms.
Elizalde?

14 Did they come into the office and go through your
possession

15 first and you give them to her, or how did you actually
receive

16 them?

17 A. No. Actually she had the letters first, and then I
18 received them in a box.

19 Q. I'm sorry.

20 A. She got the letters first, and then I received them
in a
21 box.

22 Q. Do you know from where she received them?

23 A. No, I do not.

24 Q. How many letters did you receive in July, '96, from
25 Ms. Elizalde?

101

Lee Anna Babbit - Direct

1 A. I would say several hundred.

2 Q. Several hundred?

3 A. Uh-huh.

4 Q. Is this after she had read and reviewed them?

5 A. Yes, sir.

6 Q. And what did you then do with them, the box full of
several
7 hundred?

8 A. I block stamped them, and one of the other rotors
working
9 with me serialized some of them; and then the rest of
them were

10 serialized and indexed by me.

11 Q. And serialized is just putting a page number;
right?

12 A. Correct.

13 Q. You have a sequential serial numbers in a file?

14 A. Correct.

15 Q. Like the pages of a book?

16 A. Correct.

17 Q. All right. What subfile did the letters go into?

18 A. YY.

19 Q. And did you maintain that subfile?

20 A. Yes, sir.

21 Q. You said that you had other rotors assisting you?

22 A. Yes.

23 Q. Did they assist on subfile YY, or were they on the
other

24 subfiles?

25 A. I had a couple that worked on YY when they were
there.

102

Lee Anna Babbit - Direct

1 Q. Okay. How many people were working under your
supervision

2 just as rotors, assistant rotors?

3 A. At that time, I had one or two a month.

4 Q. All right. Do you recall how many subfiles you had

under

5 that case number?

6 A. Several, probably around 20.

Exhibit

7 MR. WOODS: Your Honor, may I have passed her

8 H?

9 And a copy for the Court.

10 BY MR. WOODS:

Government

11 Q. Ms. Babbit, this has been provided to us by the

main case

12 as an explanation of the subfiles that are under this

13 number that you maintained the file on.

14 A. Yes.

15 Q. And we see that the main file was a subfile 0.

16 A. Yes.

17 Q. Is that correct?

this main

18 Now, where would the 1As be included within

19 file? Are they in a subfile?

20 A. The 1As were all in subfiles.

21 Q. All right. And 1Bs? That's a subfile, also?

different.

22 A. 1Bs are exhibits. They're entirely something

exhibits to the

23 Q. All right. They're not a subfile. They're

24 file. Is that correct?

25 A. They're evidence, yes.

Lee Anna Babbit - Direct

1 Q. And 1Cs?

2 A. 1Cs are anything that was too big to go into 1A.

3 Q. Okay. And the 302's and inserts: They're not put
under

4 any certain subfile. They're just what?

5 A. The 302's were in sub D.

6 Q. Sub D.

7 Agents' notes?

8 A. The 302's were sub D and -- yes.

9 Q. So are we classifying the 302's and inserts and the
agents'

10 notes -- which agents are required to keep their
handwritten

11 notes from their interviews, aren't they?

12 A. Yes.

13 Q. Are all three of those in subfile D, the 302's,
inserts and

14 agents' notes?

15 A. No. Inserts are in sub E.

16 Q. Are sub what?

17 A. E.

18 Q. All right. E is not on here. Is that correct?

19 A. Correct.

20 Q. So 302's and agents' notes are in subfile D?

21 A. Yes.

22 Q. All right. And then your letters are -- prison
letters are

23 YY?

24 A. Yes.

25 Q. Now, I notice that you maintain subfiles on various

104

Lee Anna Babbit - Direct

1 individuals, the two defendants in this case and
several other

2 individuals. Is that correct?

3 A. Yes.

4 Q. But there wasn't a subfile kept on John Doe No. 2?

5 MR. ORENSTEIN: Objection, your Honor,
relevance.

6 THE COURT: Overruled.

7 BY MR. WOODS:

8 Q. There is no John Doe 2 file?

9 A. No, sir.

10 Q. After you would receive the box full of letters and
you

11 blocked stamped all of them and you'd put your initial
for

12 indexing and for filing and serializing -- is that
correct?

13 A. That's correct.

You 14 Q. All right. Where would it go after you did that?
15 actually did the block stamp. Is that correct?
16 A. Yes, sir.
would 17 Q. And then if you completed the serializing, you
18 initial off LAB?
19 A. Right.
initial off 20 Q. And if you completed the indexing, you would
21 LAB; and then when you filed it, you had completed that
by 22 initialing off LAB?
23 A. And it went in the file.
24 Q. Now, when does it go to the supervisor?
25 A. In this case, they went to the agents that were
assigned to

105

Lee Anna Babbit - Direct

1 read the mail.
always the 2 Q. All right. Now, the lower right-hand block is
3 space for the supervisor to sign off on that; is that
correct? 4 A. That's correct.
5 Q. So in the normal procedure of things after you do
all of 6 this, it then goes to the supervisor to sign off, or

does he

7 sign off first and then it comes to you?

8 A. He signs off first and then it comes to me.

9 Q. All right. Now, it's been explained to me that the
10 supervisor wasn't involved in this. This was -- you
initialed
11 for Jack McCoy, the inspector in place.

12 A. Yes. We had so much mail that they didn't go to
the
13 supervisor, they went to the agents, and I was given
his
14 permission to put his initial there.

15 Q. What kind of distinction did we make on what kind
of mail
16 that you would sign to the supervisor that is supposed
to be
17 reading this? Jack McCoy was the inspector in place.
He was
18 pretty much the supervisor, the inspector running the
case in
19 Oklahoma City at that time, wasn't he?

20 A. Yes, sir.

21 Q. What distinction do we make here on when he signs
off as
22 having read something, understands it, and conduct the
23 investigation on it, and when you sign off for his
name?

24 A. All the mail that I received that went in the file
was
25 signed off by me or the rotors working with me.

Lee Anna Babbit - Direct

1 Q. All of the mail that came in, you signed off on?

2 A. In the blocks, yeah, that went in the file.
Anything that

3 was given to the rotors to put in the file.

4 Q. So the inspector in place, Jack McCoy, didn't see
anything?

5 A. I can't say whether he saw it or not.

6 Q. So this idea of having an inspector in place, Jack
McCoy,

7 supervising this and being accountable by signing off
on these

8 matters, we don't know if he saw any of this. Is that
correct?

9 A. Correct.

10 Q. You were making the decision to sign off his name?

11 A. I was given his permission to put his initial
there.

12 Q. Now, after you block stamp it, initial all those
tasks, and

13 then put Jack McCoy's, Inspector in Place's, initial on
it,

14 where does it then go?

15 A. It goes into the file, which goes into a file
cabinet.

16 Q. So the rotor files are no longer there in the FBI.

17 Everything goes -- we've reverted back to using file
cabinets

18 again?

19 A. We have in this case because it's so big.

20 Q. And where were the file cabinets kept?

21 A. They were in the rotor room.

22 Q. And the rotor room is where all the files are?

23 A. Yes.

a file
24 Q. All right. Now, there is a -- when someone checks
the file
25 out, there is a signature sheet so that you know where

107

Lee Anna Babbit - Direct

1 is. If another agent comes to look for the file and
it's gone,
2 you need to know where the file is and who has it,
don't you?

3 A. That's correct.

4 Q. And those are still in use, aren't they?

5 A. Yes.

6 Q. Where is the signature sheet for YY?

7 A. They're just little slips of paper; and once the
file is
8 returned, those are thrown in the trash.

9 Q. So to determine who looked at YY, we would have to
go back
10 and obtain all the little sheets of paper that were
thrown

11 away?
12 A. Yes, sir.
13 Q. Isn't there a log kept for access to a file, who
signs out
14 for the file?
15 A. No, sir.
16 Q. Even for the main file, 174?
17 A. No, sir.
18 Q. There is -- the FBI no longer keeps any record of
who takes
19 a file and takes it to their desk and keeps it for a
month?
20 There is no log of who does that anymore?
21 A. No, sir.
22 Q. So there is just no record of who has been in this
file?
23 A. No, sir.
24 Q. Now, you said that you entered a lot of things into
the
25 computer. Exactly what do you enter into the computer?
And

108

Lee Anna Babbit - Direct

1 let's just confine ourselves to this mail that's been
retrieved
2 from the prison relating to Terry Nichols. What
entries do you

3 make into the computer from that mail you obtained from
4 Ms. Elizalde?

5 A. It would have just been the date of the mail, who
it was
6 from, who it was to.

7 Q. And that's put into the computer?

8 A. Yes, sir.

9 Q. Is it serialized?

10 A. Yes, sir.

11 Q. Put under YY?

12 A. Yes, sir.

13 Q. Now, this automated case system on the Oklahoma
City case:

14 Can agents across the country access that by computer?

15 A. Yes, sir. But this case is restricted.

16 Q. Well, restricted to who? FBI?

17 A. It's restricted to all other divisions except for
Oklahoma
18 City division.

19 Q. So if somebody in Omaha wanted to find out
something about

20 this case and they got on the computer system, they
couldn't

21 find out anything about this case?

22 A. No, sir.

23 Q. Do you recall an example when a special agent in
Omaha by

24 the name of Vince Brecci, B-R-E-C-I -- do you know him?

25 A. No, sir.

109

Lee Anna Babbit - Direct

1 Q. Have you ever heard his name in connection with
this case?

2 A. I don't recall it, no.

3 Q. Okay. Do you recall an instance when somebody in
Iowa --

4 actually, it was Cedar Rapids, Iowa -- contacted the
Omaha FBI

5 office and wanted to know why they had been contacted
by the

6 press because they had given interviews with the FBI
and they

7 wanted to know what's going on in this bombing case?
Mr. Brecci

8 got on the computer, accessed the case, found out the
FBI 302

9 numbers of the person?

10 MR. ORENSTEIN: Judge, I'll object. I don't
see the

11 connection.

12 I'm sorry. I didn't mean to interrupt.

13 MR. WOODS: I'll show the relevance, if I may,
your

14 Honor.

15 THE COURT: All right.

16 MR. WOODS: If I may hand the witness Exhibit
I and

17 one for the Court.

18 MR. ORENSTEIN: May I have one?

19 BY MR. WOODS:

20 Q. Ms. Babbit, if you would look at Exhibit I, and
you'll see

21 in there, there is a fax cover sheet from you to Scott
Jennings

22 in Cedar Rapids, Iowa.

23 A. Yes, sir.

24 Q. Where you're conveying some 302's?

25 A. Yes, sir.

110

Lee Anna Babbit - Direct

1 Q. And if you'll see the 302 in front of that, which
is 302

2 No. 14,866, it gives a background about how you came to
fax

3 this information to Iowa. And if you would, just
quickly scan

4 that. I'd like to ask you the details on that third-
from-

5 the-bottom paragraph.

6 A. Yes, sir.

7 Q. Now, this indicates that a person in Omaha, who you
say you

8 don't have any recollection being connected with the
case -- he

9 can query the database through his computer and
determine -- he

10 can get into subfile D, the agents' notes, and he can
determine

11 what FBI 302 number -- in fact, there were two of them
that

12 relate to interview of this particular person -- and he
can

13 access that information through the subfile D.

14 A. He can get the serial number.

15 Q. And he can get certainly -- he can get the name; is
that

16 correct?

17 A. He can get the name and he can get the serial
number.

18 Q. And that's all over the country, agents can do that
on the

19 database, can't they?

20 A. Yes.

21 Q. And then they call up and request the serial number
be sent

22 to them?

23 A. Yes. But I wouldn't have sent the serial number
without

24 somebody's approval.

25 Q. Now, on this automated case system, there are a lot
of

access
1 people in Washington in the FBI headquarters that have
2 to it -- that have approval to have access to it, isn't
there?

3 A. I'm not aware of that.

4 Q. Are you saying that there is nobody in Washington
in the
5 FBI headquarters that has access to it?

6 A. I'm saying I don't know.

7 Q. All right. As a rotor clerk, are you familiar with
reports
8 that agents write and send to headquarters? You're
familiar
9 with that requirement that headquarters has to receive
all the
10 reports that go to the U.S. Attorney's office and all
the
11 periodic reports, a copy goes to Washington?

12 A. No, sir.

13 Q. You're not familiar with that?

14 A. No.

15 Q. Okay. So you're not aware of any communication
between a
16 field office and Washington headquarters?

17 A. No, sir.

18 Q. Do you know approximately how many of the letters
that you
19 indexed and serialized that were letters to and from
Terry
20 Nichols?

21 A. No, I don't know the exact amount.

22 Q. Would it be over 200?

23 A. Probably.

24 Q. All right. Did you -- can you estimate how many
names you

25 indexed that were obtained from those letters?

112

Lee Anna Babbit - Direct

1 A. No, sir.

2 Q. Can you give us a rough estimate?

3 A. No.

4 Q. Is it more than two?

5 A. Probably.

6 MR. WOODS: Thank you.

7 No further questions, your Honor.

8 THE COURT: Any questions, Mr. Orenstein?

9 MR. ORENSTEIN: Yes, Judge.

10 CROSS-EXAMINATION

11 BY MR. ORENSTEIN:

12 Q. Good morning, Ms. Babbit.

13 A. Good morning.

14 Q. First let me ask you if you -- first of all, were
you

15 reading the mail that you were serializing and filing,
the

16 prison mail?

17 A. No, I was not.

18 Q. Did you have time to be reading everything that
came across

19 your desk?

20 A. No, I did not.

21 Q. Did -- do you recall ever having an agent come to
you and

22 ask you to pull from the files the prison mail subfile?

23 A. No.

24 Q. Did an agent ever come to you and ask, "Where is
prison

25 mail kept?"

113

Lee Anna Babbit - Cross

1 A. No.

2 Q. Did -- to your knowledge, did an agent ever obtain
from the

3 YY subfile Mr. Nichols' prison mail?

4 A. No.

5 Q. Now, you were asked about the computer system and
6 whether -- the extent to which people outside of the
Oklahoma

7 City division would have access to what was in ACS, the

8 computer system. If you were not in -- let me back up
for a

9 second.

10 I believe you may have on the table, or if
not, I'd

11 ask that it be provided, Defendant's Exhibit E.

12 Thank you.

13 And, Ms. Babbit, let me ask you to turn to
page 3 of

14 that exhibit.

15 Do you have that in front of you?

16 A. Yes, I do.

17 Q. Ms. Babbit, does Exhibit E, starting on page 3 --
and

18 that's a several-page document -- does that reflect the
19 information that you and other rotors would have typed
into ACS

20 upon serializing and filing Mr. Nichols' prison mail?

21 A. Yes, it would.

22 Q. And also Mr. McVeigh's prison mail; is that
correct?

23 A. That's correct.

24 Q. If someone outside of the Oklahoma City division
tried to

25 access the ACS computer system where this information
had been

114

Lee Anna Babbit - Cross

1 entered, what would they see?

2 A. They would see Xs.

3 Q. Would they see the name serialized?

4 A. No, sir.

5 Q. They would see a --

6 A. They would see a serial number, a date and who it
was from,

7 like if it was from Oklahoma City or Denver, like that.

8 Q. Okay. Now, when -- in the example you were shown
by

9 Mr. Woods -- I believe it was Exhibit I. Is that
correct?

10 Exhibit I. There was an inquiry made based on
11 someone's entry into ACS and finding some information;
is that

12 correct?

13 A. That's correct.

14 Q. And to find more information about what that entry
referred

15 to, that person had to call into the command post; is
that

16 correct?

17 A. That's correct.

18 Q. And when information was sent out in response to
that

19 inquiry, there was a 302 generated; correct?

20 A. Correct.

21 Q. Do you know if that ever happened with the contents
of the

22 YY subfile containing Mr. Nichols' prison mail?

23 A. No, it did not.
24 Q. Now, you were asked about putting initials on the
block
25 stamps, initials other than your own, Mr. McCoy's.
When --

115

Lee Anna Babbit - Cross

Task
1 before you became employed at the Oklahoma City Bombing
2 Force, where were you employed?
3 A. In the Oklahoma City office.
4 Q. And who was your immediate supervisor there?
5 A. Rich Baker.
6 Q. And did Mr. Baker give you any instructions about
the
7 handling of routine mail as opposed to non-routine
mail?
8 A. No.
9 Q. In terms of putting initials on it?
10 A. Are you talking about regular mail that we got?
11 Q. Yeah.
12 A. No.
13 Q. Did Mr. Baker and Mr. McCoy in this case give you
14 permission because of the volume of all mail coming
across your
15 desk to put their initials on routine matters?
16 A. Yes.

once you 17 Q. And that was so that you could put something --
directly 18 had block stamped it and serialized and so on, put it
19 into the file?

20 A. Yes, sir.

prison 21 Q. And did you do that with respect to Mr. Nichols'
22 mail?

23 A. Yes, sir.

did 24 Q. Were there other things that Mr. McCoy or Mr. Baker
25 see?

116

Lee Anna Babbit - Cross

1 A. Yes, I'm sure they did.

you had 2 Q. But with respect to Mr. Nichols' prison mail, after
directly 3 done your work, serializing and filing, you put it
4 into the file?

5 A. Yes, sir.

aware 6 Q. After you had put Mr. Nichols' prison mail and
7 Mr. McVeigh's prison mail into the files, were you ever
8 of them being pulled out of the files?

9 A. No, sir.

log. 10 Q. Now, you were asked about a charge-out system or a
11 A. Yes, sir.
you 12 Q. Was there a log maintained so that from day to day
13 could see who had been to various files?
14 A. No, sir.
if 15 Q. If a file was taken out, was there a system so that
16 someone else was looking for the same file they could
find it? 17 A. Yes. There were green slips put in the file with
their 18 name on it.
you need 19 Q. And that's basically to say, "I have this file; if
20 it come see me"?
21 A. Correct.
returned? 22 Q. And is there a need for that after the file is
23 A. No, sir.
subfile? 24 Q. Do you ever recall seeing a green slip for the YY
25 A. No, sir.

117

Lee Anna Babbit - Cross

1 Q. Mr. Woods asked you about whether other rotors
assisted you

2 in the filing of prison mail. Is that correct?

3 A. Correct.

4 Q. Do you recall Ms. Torres and Ms. Poole?

5 A. Yes, sir.

6 MR. ORENSTEIN: Your Honor, if I may borrow
from the

7 defense the binder once again.

8 Oh, you have it up there. Tab 96. Thank you.

9 BY MR. ORENSTEIN:

10 Q. If I could ask you to turn to the first page of tab
96, and

11 I know the copy may be a little hard to read there.
That's

12 No. 67 from the YY subfile.

13 A. Yes, sir.

14 Q. Are those your initials there?

15 A. No, sir.

16 Q. I'm sorry. Is that Ms. Torres and Ms. Poole?

17 A. Yes, sir.

18 Q. So when other rotors were involved in this process,
their

19 initials are there instead of yours; is that correct?

20 A. Yes, sir.

21 Q. And all of these, of course, are available to
defense?

22 A. Yes, sir.

23 Q. Now, Mr. Woods asked you, going back to the logs
for a

the YY 24 minute, whether there is any record of who has been in
25 subfile; correct?

118

Lee Anna Babbit - Cross

1 A. Right, sir.

know, 2 Q. And you had testified earlier that as far as you
3 nobody went in there after you put the mail in. Is
that right?

4 A. Correct.

in the 5 Q. And is there -- can you also determine who has been
went 6 subfile by asking the agents who are there if they ever
7 into it?

8 A. You can ask them, yes.

that 9 Q. And if there are reports generated by the review of
10 mail, you could look at those reports; is that correct?

11 A. That's correct.

you still 12 Q. You were asked about Exhibit H. I don't know if
13 have that in front of you, a listing of the subfiles.

14 A. Yes.

15 Q. Did you create that document?

16 A. No, I did not.

would
subfile?
more
on the
anything
it,

17 Q. And to your knowledge, was that a document that
18 automatically be updated every time you updated the YY
19 A. Yes.
20 Q. Were you maintaining control of that document?
21 A. Yes. I had a rough draft that I wrote on as we put
22 volumes in.
23 Q. Now, in addition to your entries that are reflected
24 block stamps which show your initials, did you have
25 further to do with the prison mail in terms of reading

119

Lee Anna Babbit - Cross

1 discussing it with other agents?
2 A. No, sir.
3 Q. After leaving the command post -- I'm sorry, when
4 was it?
5 A. October.
6 Q. After leaving the command post in October of '96,
7 did you
8 have any discussions prior to coming here to Denver for
9 purposes of this hearing --

9 A. No, sir.

10 Q. -- concerning Mr. Nichols' prison mail?

11 A. No, sir.

Honor?

12 MR. ORENSTEIN: If I may have a moment, your

13 THE COURT: Yes.

14 MR. ORENSTEIN: I have nothing further.

Honor.

15 MR. WOODS: Just a couple of follow-up, your

16 THE COURT: All right, Mr. Woods.

17 REDIRECT EXAMINATION

18 BY MR. WOODS:

FBI for

19 Q. Ms. Babbit, you stated that you have worked for the

20 the last six years. Is that correct?

21 A. That's correct.

22 Q. And where did you work prior to that?

23 A. I worked at Southwest Auto & Trust.

24 Q. As what, doing what?

25 A. Checking court documents for abstracts.

120

Lee Anna Babbit - Redirect

1 Q. How long did you work there?

2 A. Four years.

3 Q. And where did you work prior to that?

4 MR. ORENSTEIN: Judge, I object to relevance.

5 THE COURT: Yes. What's the relevance?

6 MR. WOODS: I'll get to the relevance, your
Honor.

7 BY MR. WOODS:

8 Q. You just stated to Mr. Orenstein that you were
delegated

9 the authority by all the supervisors in the office,
Rich Baker

10 and Jack McCoy; that you made the decision what
documents were

11 relevant, what was routine, what was not routine. On
what

12 basis did you make those decisions?

13 A. I didn't make any decisions on what was relevant.

14 Q. Well, let me phrase it: Routine, then. I believe

15 Mr. Orenstein said that you were delegated the
responsibility

16 to look at all the incoming mail and sign the
supervisors'

17 initials on all routine mail.

18 What basis did you make the decision on what
was

19 routine and what was not routine in this case?

20 A. The agents assigned to reading all of the mail
decided if

21 anything was important, and they handled that; so when
it came

22 back to me, it was just ready to go into the file.

23 Q. So anything that came back to you from agents --

24 A. Yes.

25 Q. -- you signed the supervisor's name on?

121

Lee Anna Babbit - Redirect

1 A. Yes.

2 Q. How did it ever get to a supervisor? If it goes to
the
3 agent first, the agent goes through it, indexes it, and
puts
4 their name on it, gives it to you, how does it ever get
to a
5 supervisor?

6 A. The agents that were reading it were responsible
for
7 reporting to the supervisors.

8 Q. They would report to the supervisors. They
wouldn't give
9 them the document, but they would report to the
supervisor?

10 A. I can't say, sir. I don't know what their duties
were.

11 Q. But you took it that anything you got back from an
agent
12 was routine and you would sign the supervisor's name
and file
13 it?

14 MR. ORENSTEIN: Judge, objection. Just to
clarify if

15 we're talking about prison mail or everything in this

case.

16 THE COURT: I understand the question to be
17 everything.

18 MR. WOODS: That's the way she described it
under the
19 questioning by Mr. Orenstein.

20 THE COURT: Do you understand he's asking you
about
21 everything?

22 THE WITNESS: Yes.

23 BY MR. WOODS:

24 Q. And that was your understanding. Anything you got
back
25 from an agent, that meant you would put the
supervisor's name

122

Lee Anna Babbit – Redirect

1 on it and put it in a file.

2 A. Yes, sir.

3 MR. WOODS: I see. Thank you.

4 MR. ORENSTEIN: One question, Judge.

5 THE COURT: All right.

6 MR. ORENSTEIN: May I ask from here?

7 THE COURT: Yes.

8 RECROSS-EXAMINATION

9 BY MR. ORENSTEIN:

file. 10 Q. When you received mail, it was ready to go into the

11 Is that correct?

12 A. That's correct.

second 13 MR. ORENSTEIN: I'm sorry, Judge. There is a

14 question.

15 BY MR. ORENSTEIN:

getting it to 16 Q. If it needed supervisory review prior to you

make 17 put in the file, that was the agent's responsibility to

18 sure that that had happened?

19 A. That's correct.

you. 20 MR. ORENSTEIN: I have nothing further. Thank

21 MR. WOODS: Nothing further, your Honor.

excused? 22 THE COURT: All right. This witness is now

23 Is that the agreement?

agreement. 24 MR. TIGAR: Yes, your Honor, that was our

You're 25 THE COURT: All right. You may step down.

123

1 excused.

point, if

2 I was going to take the noon recess at this

3 that's agreeable.

after

4 MR. TIGAR: We'll call Agent Wech immediately

5 lunch, just to let our adversaries know.

1:30.

6 THE COURT: All right. We'll recess till

7 (Recess at 12:15 p.m.)

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		DEFENDANT'S EXHIBITS			
Withdrawn	Exhibit	Offered	Received	Refused	Reserved
17					
18	E	7	7		
19	F	31	31		
20	G1		31		
21	G2	34	34		
22	J	5	7		
23	K & L	8	8		
24					
25				* * * * *	

125

1 REPORTERS' CERTIFICATE

2 We certify that the foregoing is a correct
transcript from

3 the record of proceedings in the above-entitled matter.

Dated 4 at Denver, Colorado, this 21st day of August, 1997.

5

6

7 Paul Zuckerman

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9 Bonnie

Carpenter

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