

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF COLORADO
 3 Criminal Action No. 96-CR-68
 4 UNITED STATES OF AMERICA,
 5 Plaintiff,
 6 vs.
 7 TERRY LYNN NICHOLS,
 8 Defendant.

ff

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 10 REPORTER'S TRANSCRIPT
 (Hearing on Motions - Volume II)

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12 Proceedings before the HONORABLE RICHARD P.
 MATSCH,
 13 Judge, United States District Court for the District of
 14 Colorado, commencing at 1:30 p.m., on the 21st day of
 August,
 15 1997, in Courtroom C-204, United States Courthouse,
 Denver,
 16 Colorado.

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Transcription
Street,
629-9285

Proceeding Recorded by Mechanical Stenography,
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APPEARANCES

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LARRY A. MACKEY, GEOFFREY S. MEARNNS, and JAMIE

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General, 1961

ORENSTEIN, Special Attorneys to the U.S. Attorney

4

appearing

Stout Street, Suite 1200, Denver, Colorado, 80294,

5

for the plaintiff.

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TIGAR,

MICHAEL E. TIGAR, RONALD G. WOODS, and JANE

7

Denver,

Attorneys at Law, 1120 Lincoln Street, Suite 1308,

8

Colorado, 80203, appearing for Defendant Nichols.

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* * * * *

10

PROCEEDINGS

11

(Reconvened at 1:30 p.m.)

12

THE COURT: Please be seated.

13

Next, Mr. Tigar.

14 MR. TIGAR: We call Special Agent Wech.

15 THE COURT: Thank you.

16 (Donna Wech affirmed.)

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

18 Would you state your full name for the record
and

19 spell your last name.

20 THE WITNESS: It's Donna L. Wech, W-E-C-H.

21 THE COURTROOM DEPUTY: Thank you.

22 MR. TIGAR: May Agent Wech please have
Defendant's

23 Exhibit E.

24 DIRECT EXAMINATION

25 BY MR. TIGAR:

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Donna Wech - Direct

1 Q. Good afternoon, Agent Wech.

2 A. Good afternoon.

3 Q. My name is Michael Tigar. I'm one of the lawyers
appointed

4 to represent Terry Nichols.

5 A. Yes, sir.

6 Q. You are a special agent of the FBI?

7 A. Yes, sir.

8 Q. How long have you been a special agent?

9 A. Nine years.

10 Q. What is your formal education?

11 A. I have a bachelor's degree in education, and I have
a juris
12 doctor degree in law.

13 Q. Where did you receive your juris doctor?

14 A. Mississippi College School of Law.

15 Q. Is that in Jackson?

16 A. Yes, sir.

17 Q. And when did you graduate from that school in
Jackson?

18 A. May of 1988.

19 Q. Was Luther Munford teaching there then?

20 A. Yes, sir, he was.

21 Q. All right. Well, now we know you're well
qualified.

22 When did you join the FBI?

23 A. I was a -- I went into the Bureau in June of 1988.

24 Q. And what duty assignments have you had?

25 A. I was assigned in Indianapolis for the first four
years in

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Donna Wech - Direct

1 which I worked white-collar crime, basically, but was
tasked to

2 do many different violations, and then I was sent to

the

3 Houston Division where I am presently assigned; and
I've worked

4 the Violent Crimes Squad and now I'm on the Joint Drug
5 Intelligence Task Force.

6 Q. In Indianapolis, did you work with Linda Pence?

7 A. No, sir.

8 Q. All right. Directing your attention to March of
1996, what

9 were your duties?

10 A. I was assigned to the OKBOMB Task Force in Oklahoma
City.

11 Q. Were you in Oklahoma City living there or were you
12 commuting from Houston?

13 A. I was assigned there for a 30-day temporary duty
14 assignment.

15 Q. Who made that assignment?

16 A. My SAC, Special Agent in Charge Mike Wilson.

17 Q. Who did you report to in Oklahoma City?

18 A. I reported to the Task Force. Richard Baker was
there.

19 Danny Defenbaugh was there. Jack McCoy was there.

20 Q. I'd like you to take a look at the Exhibit E that's
in

21 front of you, please, and turn it to page 73. That's
the

22 Bates' stamped page at the bottom in the right-hand
corner.

23 Do you -- do you recognize that?

24 A. Yes, sir, I do.

the file 25 Q. Now, that's the only memorandum that I can find in

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Donna Wech - Direct

1 about this mail surveillance that has your name on it.

2 A. Yes, sir.

3 Q. Is that fair?

4 A. Yes, sir.

also? 5 Q. All right. And that's the only one you know of,

6 A. That I'm aware of, yes, sir.

7 Q. How did you come to write this?

8 A. I was --

write it; 9 Q. That assumes something not established. You did

10 correct?

11 A. Yes, sir, it has my name.

12 Q. How did you come to write it?

to do 13 A. I was tasked by the Inspector in Place, Jack McCoy,

14 research on the authorization to review the mail.

quantity of 15 Q. Did he tell you that the FBI had obtained a

received and 16 mail to and from Terry Lynn Nichols that had been

17 sent from the El Reno facility?

18 A. I was at Oklahoma City, sir, so mail -- I guess I'm
-- I

19 don't understand your question specifically.

20 Q. Did he tell you that the FBI had a bunch of Mr.
Nichols'

21 mail that they hadn't looked at yet?

22 A. No, sir. He didn't tell me that.

23 Q. What did you understand was the situation that --
about the

24 FBI's receipt of or collection of mail that had been
sent to

25 and from Mr. Nichols at El Reno?

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Donna Wech - Direct

1 A. I knew that there was a group of mail that was
reviewed

2 before I got to the task force, and Mr. McCoy asked me
to

3 specifically document the authorization that we have
authority

4 to review the mail.

5 Q. Did you talk to him about why he wanted to have
authority

6 to review the mail?

7 A. No, sir.

8 Q. Did he talk to you about what investigative leads
or

9 avenues that he hoped to get from having the mail
reviewed?

10 A. No, sir.

11 Q. Did you in your own mind understand what
investigative

12 leads or avenues were to be pursued from reviewing the
mail?

13 A. My main objective was to document how we had the
14 authorization. I didn't get into and I did not review
any of

15 the mail.

16 Q. Let's take a look at this document then. In
addition to

17 Mr. McCoy -- oh, Mr. McCoy was the Inspector in Place;
correct?

18 A. Yes, sir. Yes, sir.

19 Q. And second-in-command to Mr. Defenbaugh; right?

20 A. Yes, sir.

21 Q. Did he tell you that he was worried about whether
or not

22 there was authorization to look at this mail?

23 A. No, sir.

24 Q. Well, did he give you the assignment orally or was
it a

25 memorandum?

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Donna Wech - Direct

1 A. He gave it to me orally, and then I documented it

through

2 the EC that I wrote.

3 Q. What did he tell you?

4 A. He told me to contact Mike Hood with the general
counsel

5 for the Bureau of Prisons and get the information
relating to

6 the authorization to review the mail.

7 Q. Well, let's -- first, did you put a lead control
number on

8 here?

9 A. Yes, sir.

10 Q. All right. And where did you get the lead control
number?

11 A. From a book that was maintained in the task force.

12 Q. Now, is that lead control number for the lead
connected to

13 getting the mail or is that the lead connected with
your doing

14 the memo?

15 A. It's a lead connected to the memo.

16 Q. Now, your synopsis says, "Information regarding
17 authorization to review letters received by Timothy
McVeigh and

18 Terry Nichols." Did you understand that all the FBI
was

19 getting were letters that Mr. Nichols and Mr. McVeigh
had

20 received?

21 A. I don't understand.

22 Q. Did you understand that the FBI was also getting
letters
23 they had sent?
24 A. No, sir. I did not understand it. I understood
that there
25 was a pile of mail that was going into the prison.
That was

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Donna Wech - Direct

1 the mail that the FBI was going to look at or did look
at.

2 Q. Now, looking down at this paragraph that begins,
"On
3 March 8, 1996, Mike Hood was recontacted and advised,"
etc., he

4 gave you that citation?

5 A. Yes, sir, he did.

6 Q. Did you look up that citation?

7 A. No, sir. I didn't have an opportunity to go to a
law

8 library and look it up.

9 Q. Now, then the next paragraph says, "A review of the
letters
10 sent to McVeigh and Nichols was conducted in September,
October

11 '95." Do you see that?

12 A. Yes, sir.

13 Q. That carries on over to the next paragraph. How

did you

14 know what categories the letters had been placed in?

15 A. Because I had received a tally sheet with this
project that

16 listed the various categories in which these letters
were

17 placed into.

18 Q. I'm sorry?

19 A. I received a tally sheet with hash marks on it, and
I

20 incorporated that data into my EC.

21 Q. Who had done the tally sheet?

22 A. I don't know, sir.

23 Q. Was that tally sheet a 1A --

24 A. No.

25 Q. -- document?

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Donna Wech - Direct

1 A. No, sir.

2 Q. Where was the tally sheet kept when you weren't
looking at

3 it?

4 A. I had been given it to me by Jack McCoy, and once
we --

5 policy with the Bureau is the only thing that goes into
1A are

6 original interview notes of 302's. If I have notes of

my

7 working, I've documented it into this EC. And we don't
keep

8 that.

9 Q. So Mr. McCoy gave you a tally sheet that had been
based on

10 a review of the mail; correct?

11 A. Yes, sir.

12 Q. And the tally sheet had these categories, threat/
harassment

13 letters, letters of support, letters from family,
letters from

14 media; correct?

15 A. Yes, sir.

16 Q. And he didn't tell you who had done the tally
sheet?

17 A. No, sir.

18 Q. Did you later find out who had done the tally
sheet?

19 A. I just know agents did a tally sheet. I don't know
which

20 agents did that.

21 Q. Now, you completed this memo on March 8, 1996;
correct?

22 A. Yes, sir.

23 Q. Looking at page -- Bates' page 74, the next-to-the-
last

24 paragraph recites an event that took place on March 11,
1996.

25 How were you able to do that?

Donna Wech - Direct

1 A. Can you repeat that question.

2 Q. Well, how were you able, in a memorandum that you
finished

3 on March the 8th, to describe an event that didn't take
place

4 until March the 11th?

5 A. Well, sir, I started it on the 9th when I started
6 documenting that I talked to Mike Woods, and then on
March

7 11th, I talked to Kathy Morrison and incorporated that
into the

8 EC.

9 Q. What did you understand was going to happen as a
result of

10 your writing this memorandum?

11 A. I don't understand what you're asking of me, sir.

12 Q. Well, did you -- did your memorandum conclude that
the FBI

13 had authority to look at and open and read letters
received by

14 Mr. Terry Nichols at the Federal Correctional
Institution?

15 A. Yes, sir. It was my understanding we had
authorization to

16 do that.

17 Q. All right. And was it your conclusion that the FBI
had

Nichols 18 authority to open and read and review letters that Mr.
19 had sent from the Federal Correctional Institution?
20 A. No, sir. I don't think my EC says that. It said
letters
21 received at the prison. It doesn't say anything about
sent.
22 Q. And you weren't asked to look at that issue of
letters that
23 were sent; right?
24 A. No, sir.
25 Q. And you didn't?

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Donna Wech - Direct

1 A. No, sir.
2 MR. TIGAR: I have nothing further, your
Honor.
3 Excuse me, your Honor. I --
4 Pardon me, Mr. Mearns.
5 BY MR. TIGAR:
6 Q. Looking at the last paragraph on page 73, who told
you that
7 a review of the letters sent to McVeigh and Nichols was
8 conducted in September, October 1995?
9 A. I don't recall exactly who told me. I remember
asking the
10 case agents, and they gave me a time frame of in the

fall; and

11 I took it -- they said early fall and I took it to mean
12 September, October.

13 Q. And which agent was that?

14 A. I don't recall which agent specifically. It could
have

15 been Mark White. It could have been Kathleen Kuker.
It could

16 have been Jim Norman. I don't know which specific
agent I

17 asked.

18 Q. Has somebody come to you afterwards and -- and
questioned

19 this sentence, whether or not a review was actually
conducted

20 during that time?

21 A. I was under the understanding there was a review
done in

22 the early fall.

23 Q. Are you under a different understanding now?

24 A. No, sir.

25 MR. TIGAR: Nothing further, your Honor.

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Donna Wech - Direct

1 THE COURT: Mr. Mearns.

2 CROSS-EXAMINATION

3 BY MR. MEARNS:

were 4 Q. Agent Wech, in connection with the project that you

5 assigned, was it your responsibility to do an
independent legal

6 analysis of the issue of whether or not the FBI had the
7 authorization to review Mr. Nichols' mail?

8 A. No, sir, it wasn't.

9 Q. Characterize then, if you would for the Court,
again what

10 was your specific assignment.

11 A. Jack McCoy tasked me to contact Mike Hood with the
general

12 counselor -- counsel and get details regarding what
13 authorization the FBI had to review the mail out at the
prison.

14 Q. Other than contacting Mr. Hood, did you conduct any
15 independent legal research into the issue -- into that
issue?

16 A. No, sir.

17 Q. In connection with your project and your
preparation of

18 this memo or this EC, did you actually review any of
the mail?

19 A. No, sir, I did not.

20 Q. Did you speak to any other agent or any other
person who

21 was employed by the FBI who indicated to you that he or
she had

22 reviewed the mail?

23 A. No, sir.

with this 24 Q. Have you ever discussed with anyone in connection
Nichols' 25 project the substance or the contents of Mr. Mc -- Mr.

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Donna Wech - Cross

1 mail?

2 A. No, sir.

3 Q. Did you generate any leads -- that is,
investigative

4 leads -- based upon the project that you were assigned?

5 A. No, sir, I did not.

6 Q. To your knowledge, were any leads generated based
upon the
7 project that you were assigned to conduct?

8 A. Not that I'm aware of, no.

9 Q. In connection with the -- you indicated in your
testimony
10 in response to questions from Mr. Tigar that you had
been given

11 some tally sheets; is that correct?

12 A. Yes, sir.

13 Q. Okay. What did you do with the tally sheets when
you were
14 finished reviewing those tally sheets?

15 A. I had taken the tally sheet with the EC that I had
16 completed and given it back to Jack McCoy for him to

review and

17 approve.

18 Q. And it was given back to Mr. McCoy with this
document, with

19 the memo that you had prepared?

20 A. Yes.

21 Q. Were all of the -- was all of the information that
was

22 contained on the tally sheets that you were given and
the tally

23 sheets that you returned to Agent McCoy -- was all of
that

24 information then incorporated into your EC?

25 A. Yes, it was.

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Donna Wech - Cross

1 Q. That is by all of the information, the information
2 consisted exclusively of the categorization of the
mail?

3 A. Right. It just had on the E -- on the tally sheet,
it just

4 had hash marks with the numbers relating to the
categories and

5 the letters.

6 Q. Did you see any document that indicated the
substance of

7 the letters?

8 A. No, sir.

9 Q. That even summarized the contents of the letters?

10 A. No, sir.

11 Q. Did any of the information that you reviewed even
indicate

12 who the sender of the correspondence was?

13 A. No, sir.

14 MR. MEARNS: I have no further questions,
Judge.

15 THE COURT: Mr. Tigar.

16 MR. TIGAR: Just one, your Honor.

17 REDIRECT EXAMINATION

18 BY MR. TIGAR:

19 Q. During your time in Oklahoma City, you did do
investigative

20 work, didn't you?

21 A. Yes, sir, I did.

22 Q. In fact, you wrote twenty-eight 302's reflecting
listening

23 to telephone conversations; correct?

24 A. Yes, sir.

25 MR. TIGAR: Nothing further, your Honor.

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Donna Wech - Redirect

1 MR. MEARNS: One question, Judge.

2 THE COURT: All right.

3 MR. MEARNS: May I ask it from here?

4 RE-CROSS-EXAMINATION

5 BY MR. MEARNS:

6 Q. Any of the 302's that you prepared in connection
with this

7 case relate in any way to this project of -- relating
to

8 Mr. Nichols' mail?

9 A. No, sir, it did not.

10 MR. MEARNS: Thank you, your Honor.

11 THE COURT: All right. May she be excused?
May the

12 witness be excused?

13 MR. TIGAR: I'm sorry, your Honor.

14 THE COURT: You have a question.

15 REDIRECT EXAMINATION

16 BY MR. TIGAR:

17 Q. The telephone calls you were listening to, they
were

18 Mr. Nichols' telephone calls; right?

19 A. Yes, sir.

20 MR. TIGAR: All right.

21 THE WITNESS: Out at the prison.

22 BY MR. TIGAR:

23 Q. Yes. At the prison?

24 A. At the prison, yes, sir.

25 MR. TIGAR: Yes, your Honor. I'm sorry. She
may be

Donna Wech - Redirect

1 excused.

2 THE COURT: Agreed?

3 MR. MEARNS: Yes, your Honor.

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

5 MR. TIGAR: Barbara Elizalde.

6 (Barbara Elizalde affirmed.)

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

8 Would you state your full name for the record
and

9 spell your last name.

10 THE WITNESS: Barbara Elizalde, E-L-I-Z-A-L-D-
E.

11 MR. TIGAR: May she have -- that exhibit, yes.
Thank

12 you.

13 DIRECT EXAMINATION

14 BY MR. TIGAR:

15 Q. Agent Elizalde, you are a special agent of the FBI?

16 A. Yes, I am.

17 Q. And how long have you been a special agent of the
FBI?

18 A. Approximately a year and ten months.

19 Q. What is your formal education?
20 A. I have a bachelor of science in medical technology.
21 Q. From?
22 A. The University in El Paso.
23 Q. University of Texas at El Paso?
24 A. Yes. Uh-huh.
25 Q. Where President Natalicio is the president?

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Barbara Elizalde - Direct

1 A. That's correct.
2 Q. Now we know you're well qualified.
3 Where was your first duty station?
4 A. El Paso, Texas.
5 Q. Did there come a time when you were assigned as a
part of
6 the OKBOMB Task Force?
7 A. Yes.
8 Q. When was that?
9 A. That was in mid-April of '96.
10 Q. And what were your duties?
11 A. I was actually first here as a duty agent. My
duties
12 included escort duty, security. We had a mail project,
a
13 review. What else? Summarize 302's. Among -- various
other

14 duties.

15 Q. Now, you say "here." Your assignment, although it
was to
16 the OKBOMB Task Force, began right here in Denver;
correct?

17 A. That is correct.

18 Q. Now, you mentioned a mail project. Is that the one
that
19 brings us here today?

20 A. That is correct.

21 Q. You reviewed a lot of letters; correct?

22 A. Yes, I did.

23 Q. Now, had somebody else already reviewed some
letters when
24 you started reviewing them?

25 A. That's possible.

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Barbara Elizalde - Direct

1 Q. The letters that you reviewed were placed in a file
known
2 as the YY file; correct?

3 A. That is correct.

4 Q. Did you notice as you were using these -- the YY
file that
5 there were other letters in there other than the ones
that you
6 had examined?

7 A. I had no knowledge of that, no.

8 Q. Who supervised your work?

9 A. Direct supervision came from a Special Agent Pamela
Matson.

10 Q. Did Special Agent White also supervise you?

11 A. Yes, he did.

12 Q. In fact, he was the one who approved your ECs;
correct?

13 A. That is correct.

14 Q. Now, the memos that you did as a result of your
review of

15 correspondence were called ECs; is that right?

16 A. That is correct.

17 Q. That stands for electronic communication?

18 A. Yes.

19 Q. But in fact, they were pieces of paper, not
electronic; is

20 that right?

21 A. Correct.

22 Q. Were they also filed in electronic form, these ECs
that you

23 did?

24 A. They are filed in the computer, yes.

25 Q. And how does one get access to them if -- for
example --

1 well, let's start -- would you turn to page 78, please,
of the

2 Exhibit E that you have there in front of you.

3 Now, if someone wanted to retrieve this
document and

4 print out a copy, they could do that out of the
computer;

5 correct?

6 A. Just anybody working on the OKBOMB case.

7 Q. Oh, yes. I'm sure I couldn't; right?

8 A. Correct.

9 Q. All right. We hope I couldn't. But anybody
working on the

10 case would be able to; right?

11 A. I believe so.

12 Q. All right. And is there a search function that is
--

13 suppose I -- I wanted to interrogate your database and
I wanted

14 to know all documents that contained the words "Terry
Nichols"

15 and the words "religious conversion." All right.
Could I

16 interrogate your database and find that out?

17 A. I believe so.

18 Q. Because your -- your database, like all other
ASCII-based

19 databases, has a word search function; correct?

20 A. Correct.

with
21 Q. And all of us that use word processors are familiar
22 that, at least in some form; right?
23 A. Correct.
24 Q. Now, taking a look at this page 78, is that the
first EC
25 that you remember doing in connection with this mail
project?

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Barbara Elizalde - Direct

1 You can take your time and flip through the following
pages.

2 I represent to you that what you have in front
of you

3 are the documents produced to us by the Government.
And so far

4 as I am aware, the ECs that you did start at page 78
and go

5 through page -- make sure I -- 91.

6 A. Page 78 would be the first EC I generated.

7 Q. Well, the lead number on there, 14718, did -- how
did you

8 know what number to put on there?

9 A. We have a log sheet where we keep the lead control
numbers,

10 and we just get the next one, basically.

11 Q. Did you pick the lead number off the log sheet or
did

12 somebody tell you, okay, the next one up is 14718?
13 A. Actually, I just got the next one off it, so it was
me. I
14 did that.
15 Q. So you started the project; correct?
16 A. It was assigned to me.
17 Q. All right. Now -- all right. Who assigned it to
you?
18 A. Pamela Matson.
19 Q. Did you ever talk to IIP McCoy about the project?
20 A. No. I don't believe I did.
21 Q. All right. And were you aware that there was an
earlier
22 lead number connected with review of the mail?
23 A. No, I was not.
24 Q. What did Agent Matson tell you about what you were
supposed
25 to do?

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Barbara Elizalde - Direct

1 A. Basically, review the mail and categorize it and if
there's
2 anything important or of value, then I would let her
know,
3 basically.
4 Q. Now, she said review the mail and categorize it.
Did she

5 tell you what categories to put it in?

6 A. There was an EC -- prior EC that I followed.

7 Q. And which prior EC was that?

8 A. I don't remember which prior EC it --

9 Q. Who was the author of the prior EC?

10 A. I do not recall.

11 Q. Was that EC created by somebody who had reviewed
12 Mr. Nichols' and Mr. McVeigh's mail?

13 A. I believe so, yes.

14 Q. Did that EC reflect matters related to religious
15 conversion?

16 A. I don't remember the exact categories, but I just
know I
17 followed a pony EC.

18 Q. Did you add any categories yourself?

19 A. I might have, yes. If they didn't fall within
categories,
20 I would have to add another category.

21 Q. Do you remember where the category "religious
conversion"
22 came from?

23 A. It was probably a prior EC, but I do not recall.

24 Q. When Agent Matson talked to you about looking for
things
25 that are important, what did you say about that?

Barbara Elizalde - Direct

1 A. What did I say or what did she say about it?

2 Q. What did she say about it?

3 A. Basically, saying if anybody else was maybe
involved, John

4 Doe, looking for John Doe No. 2 or whatever, anything
that's of
5 value.

6 Q. And had you done some research on the case so that
you'd be
7 able to tell what was important and what was not?

8 A. When I first got there, I kind of reviewed some of
the
9 letters and memos that were produced.

10 Q. Do you remember the date of that earlier EC that
you
11 consulted?

12 A. No, I do not.

13 Q. Have you ever seen it since that first day?

14 A. I might have, yes. If it was the one, uh-huh.

15 Q. When's the last time you remember seeing it?

16 A. That would be -- I guess it was yesterday.

17 Q. Do you understand that it is in the group of
documents
18 produced by the Government to the defense?

19 A. Yes.

20 Q. Well, would you look through Exhibit E and find it
for me.

is the 21 I'm told by Government counsel that the EC in question
22 Wech memo.
23 A. Yes, on --
if that 24 Q. Would you please look at page 73 and 74 and tell us
25 is the EC to which you referred.

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Barbara Elizalde - Direct

1 A. Yes. This looks like the EC.
2 Q. That was the one that Ms. Matson gave you; correct?
3 A. I believe so.
there the 4 Q. Okay. Well, would you tell us, please, where on
5 categories appear.
there. 6 A. On page 2, they have a couple of categories on
7 MR. ORENSTEIN: Your Honor, may I have a
moment to 8 confer with counsel?
9 THE COURT: You may.
10 MR. TIGAR: Your Honor, I am --
11 BY MR. TIGAR:
12 Q. I am informed, Agent Elizalde, I am at a
disadvantage and I
are on 13 have done you a disservice. The categories in question

14 page 74, but they are underneath that black stuff there
where
15 somebody blacked out the material. And the Government
counsel
16 has just shown me the redacted portions, and we can
substitute
17 that part. Perhaps we could just --

18 May I just publish that portion so that we
don't --

19 MR. ORENSTEIN: We have no objection to
publishing it
20 to the witness, Judge. Just by way of explanation, we
redacted
21 out references to Mr. McVeigh's mail in the production
to
22 Mr. Nichols' counsel as we had done when we initially
turned
23 over the mail in response to their request back in
December.

24 THE COURT: All right. Thank you for the
explanation.

25 MR. TIGAR: May I show this to the witness?

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Barbara Elizalde - Direct

1 BY MR. TIGAR:

2 Q. Do you see that paragraph?

3 A. Yes, I do.

4 Q. And those are the categories; right? And that's
where that

three 5 religious conversion one comes from. It's right two or

6 lines from the bottom there; right?

7 A. That is correct.

back to 8 Q. All right. We could -- well, you could give it

Thank 9 Government counsel. I don't think we need it further.

10 you, very much.

correct? 11 So with that guidance, you started reading;

12 A. Correct.

category was 13 Q. Did you think that the religious conversion

14 a -- a significant one?

15 A. Not necessarily.

judgment as 16 Q. As a special agent of the FBI, did you make a

17 to whether that sort of material had any investigative

18 significance?

basically. 19 A. That wasn't -- all I did was categorize them,

that 20 If it fell in that category, then I would put it in

21 category.

22 Q. How about letters from family and friends? Did you

23 evaluate the significance of any of those?

24 A. I reviewed them and categorized them. Uh-huh.

her that 25 Q. Did you ever talk to Special Agent Matson to tell

Barbara Elizalde - Direct

bring to 1 you had found something in the letters you wanted to
2 her attention?
3 A. I do not recall doing that, no.
that's 4 Q. Well, let's take a look at the first memo here
sent to 5 May 30, 1996, at page 78. You reviewed the letters
6 Terry Nichols; correct?
7 A. Correct.
to 8 Q. And then there are letters written by Terry Nichols
9 friends and family; correct?
10 A. Correct.
that 11 Q. Did Ms. Matson tell you -- or Agent Matson tell you
as well 12 you were going to be reviewing letters from Mr. Nichols
13 as to him?
all the 14 A. She didn't specifically say that. I just reviewed
15 mail that came in.
on? 16 Q. Was there a big pile of it waiting for you to work
17 A. Yes, there was.

18 Q. How many were there there?
19 A. I don't recall the total.
20 Q. Now, do you see the stamp down there in the corner
of page
21 78?
22 A. Yes, I do.
23 Q. Was that stamp put on there after you finished with
this
24 memorandum?
25 A. That is correct.

151

Barbara Elizalde - Direct

1 Q. I wonder if we could place -- can we put the three
volumes
2 in front of her and then I can ask her about the
particular
3 letters.
4 Will you take a look, please, at tab 38 in
that first
5 volume.
6 Now, when you first got that letter, was there
a file
7 stamp at the bottom of it?
8 A. No, there wasn't.
9 Q. When was that file stamp put on there, if you know?
10 A. That would be placed on there after I turned it in
-- after

11 I reviewed them, turned them in to the rotor after
indexing.

12 Q. Now, the rotor you turned them into was Lee Anna
Babbit;

13 correct?

14 A. More likely, it was Lee Anna Babbit, yes.

15 Q. You know that by looking at the initials LAB;
correct?

16 A. Correct.

17 Q. Now, over on the left-hand side is an X and then
the

18 initials BE. Did you put the X on there?

19 A. Yes, I did.

20 Q. And those are your initials, Barbara Elizalde?

21 A. That is correct.

22 Q. Now, what was the function of the X?

23 A. That would mean that there are no names to be
indexed or

24 addresses or telephone numbers.

25 Q. Excuse me. There are no names to be indexed?

152

Barbara Elizalde - Direct

1 A. Correct.

2 Q. Or what?

3 A. Or telephone numbers or addresses to be indexed.

4 Q. Now, if you had items that you wanted to index --
you

5 wanted indexed, you would make -- you'd put something
different

6 in the X; correct?

7 A. Correct.

8 Q. But nonetheless, you categorized this item; right?

9 A. Correct.

10 Q. So when we look at the stamp we see "serialized,"
that's

11 initialed LAB; correct?

12 A. Correct.

13 Q. That means that Ms. Babbit chose the number 884;
right?

14 A. Correct.

15 Q. And presumably, she put YY on there; is that right?

16 A. Yes.

17 Q. And then filed and then her index -- her initials;
correct?

18 A. Correct.

19 Q. But there's no writing -- no initials for
"indexed"; right?

20 A. Correct.

21 Q. And would you turn, please, to tab 34. Now, is
that a

22 document that you reviewed?

23 A. Yes, it is.

24 Q. And did you find anything to index on there?

25 A. A name and address was indexed on this one.

Barbara Elizalde – Direct

1 Q. I'm sorry. The name and address?

2 A. Correct.

3 Q. And how do we know that?

4 A. It's underlined.

5 Q. Oh. Okay. So that in addition to an X, where we
see
--
6 something underlined, we know that you've signaled that
7 singled that out; correct?

8 A. Correct. X would be no indexing, and underlining
would be
9 there is indexing.

10 Q. And sometimes you would also put a circle with page
11 numbers; correct?

12 A. Correct.

13 Q. Now, the line through the address shows that your
rotor,
14 Ms. Babbit, had complied with your request to index
that;
15 right?

16 A. If that is her marking, yes.

17 Q. Okay. And we also see her initials under -- next
to
18 "indexed"; right?

19 A. Correct.

20 Q. Okay. Now, what does it mean to index something?
What was
21 she going to do with it?
22 A. Basically, put the name and address in the computer
system.
23 Q. Well, who -- who would be -- who would get it out
then?
24 A. I don't know who had access to it -- who would have
access
25 to it.

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Barbara Elizalde - Direct

1 Q. Well, suppose that -- do you know the name Bob
Papovich?
2 A. I remember reading it.
3 Q. You do by now?
4 A. Yes.
5 Q. He writes a lot, doesn't he?
6 A. I -- I -- yes, I do.
7 Q. And Mr. Nichols writes to him; correct?
8 A. I believe so. I don't remember.
9 Q. You know him to be a friend of James Nichols;
right?
10 A. I believe so.
11 Q. Now, if Mr. Papovich were to be called as a witness
in this
12 case and someone were to say, "How could I find out
everything

13 that we know about Bob Papovich and his association
with Terry

14 Nichols," how would the indexing that Ms. Babbit did at
your

15 direction help them find that out?

16 A. All that would appear would be the name and
address.

17 Nothing else. Not the content of the letter.

18 Q. Well, I understand that part. But let's start with
that.

19 Say a prosecutor is planning to cross-examine Mr.
Papovich or

20 is thinking about calling him as a witness. He knows
the name

21 Papovich or she knows the name Papovich. They put the
name

22 Papovich into the FBI computer; right? And out would
come

23 174A-0C56120-YY-279; correct?

24 A. That is correct.

25 Q. And with that information, who -- that computer
screen

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Barbara Elizalde - Direct

1 would tell the person that accessed it that in this
case

2 number -- which is the case we're on right now; right?

3 A. Correct.

has 4 Q. -- that there's a YY file and that Serial No. 279
5 something to do with Mr. Papovich; right?
6 A. That is correct.

with 7 Q. Well, what else would it tell us about this thing
8 Mr. Papovich?
9 A. Nothing else.

letter 10 Q. Would it tell -- it would tell us that he sent a
11 to -- or excuse me. That Mr. Nichols sent a letter to
him on a 12 certain date; correct?
13 A. It could mean that his name was mentioned or that
he sent a 14 letter.

stamp page 15 Q. Well, would you take a look, please, at Bates'
16 20. And you see entry No. 279, letter to Papovich from
17 Nichols; correct?
18 A. This is No. 20?

sorry. I've 19 Q. Yeah. Bates' stamp page 20 in Exhibit E. I'm
20 shifted exhibits on you. Yes. That's the book. 20.
21 So we find out that there was a letter to
22 Mr. Papovich -- or to Papovich from Nichols; correct?
23 A. Correct.

to get 24 Q. And now, who would be able to access the computer

been 25 the information that Mr. Nichols and Mr. Papovich had

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Barbara Elizalde - Direct

1 corresponding with each other?

2 A. I believe whoever was working on the case would
have access

3 to that information.

4 Q. Now, are you familiar with the concept of
personality

5 profiling?

6 A. No, I am not.

7 Q. Have you been the case agent on a major criminal
case since

8 you became a special agent?

9 A. No, I have not.

10 Q. In addition to reviewing this mail and categorizing
it as

11 you've described, did you have any discussions with
other

12 agents about the investigative use of what you were
doing?

13 A. No, I did not.

14 Q. It wasn't part of your responsibility to determine
what use

15 would be made of this material; is that right?

16 A. That is correct.

17 Q. That would be somebody else's job?

18 A. Correct.

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

20 THE COURT: Yes.

21 BY MR. TIGAR:

22 Q. Looking at the volumes you have in front of you,
would you

23 look, please, in the third of the volumes at tab No.
131.

24 Now, there, you've underlined the name of a
reporter

25 at the Dallas Morning News; right?

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Barbara Elizalde - Direct

1 A. That is correct.

2 Q. And what was the purpose of choosing that to be
indexed?

3 A. Actually, this one has an X, and it shouldn't have
been

4 indexed.

5 Q. I see. But you had underlined it; right?

6 A. Yes, I guess so. I did underline it, but I put an
X and it

7 shouldn't be indexed.

8 Q. Well, if I understand you correctly, there were two
kinds

9 of entries that you would make; right? One was to whom
it was

10 sent and from whom; correct? The letter? Each letter?
11 A. Right.
12 Q. And those -- the "to" and the "from" are in that
computer
13 printout, a portion of which we looked at just a moment
ago;
14 correct?
15 A. Not all "to" and "froms" have been indexed.
16 Q. But in general, it was your practice to -- to -- to
put the
17 "to" and "from" in the -- the database; is that
correct?
18 A. In -- in general, I believe.
19 Q. And the second kind of indexing you would do was by
20 particular names that you would underline for the rotor
to put
21 into the indices; correct?
22 A. Correct.
23 Q. And those were things that reflect the contents of
the
24 letter, some mention of that person; right?
25 A. It would be a name, yes.

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Barbara Elizalde - Direct

1 Q. All right. Now, the third thing you did was to
categorize
2 the letters according to media, family, friends,
religious

3 conversion and so on; right?

4 A. That is correct.

5 Q. Now, the categorization, religious conversion or
whatever,
6 how would that be reflected other than on your EC?

7 A. That's the only way it would be reflected, on the
EC.

8 Q. Would you mark a religious conversion letter in any
way
9 that would permit us to identify it?

10 A. No.

11 Q. Did you ever wonder what you were doing all this
for?

12 A. No. Not really. I was told to do that.

13 Q. How many hours did you spend doing it?

14 A. Hours.

15 Q. Pardon?

16 A. Hours.

17 Q. Well, I know hours. But how many?

18 A. I don't know. I don't recall how many hours. Many
hours.

19 Q. Well, you wrote on the 30th of May, 1996 -- you
wrote a

20 memorandum relating to 10, plus 63, plus 1, plus 2,
plus 2,

21 plus 12 letters; correct? That's pages 78 and 79.

22 A. Correct.

23 Q. Now, those were letters received -- dated July 1995
to

24 March 1996; correct?

25 A. Correct.

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Barbara Elizalde - Direct

also 1 Q. We see that on page 2. Then that same day, you

2 reviewed letters received on 5-10-96; correct? That's

3 reflected on page 81.

4 A. That's when I actually wrote the EC.

EC? 5 Q. Oh, on 5-10. Is that when you actually wrote the

that's when 6 A. No. That's when -- like on this one, on 5-10,

7 I received the -- the letters.

mean when 8 Q. All right. When it says, "Received on 5-10," you

9 you received it?

10 A. Right.

on the 11 Q. All right. And then also, then again on the 5th --

letters, 12 30th of May, you reviewed some more of Terry Nichols'

them; 13 and those were received on 5-30-96 and you categorized

14 correct?

15 A. Correct.

16 Q. How many hours did that take you?

17 A. I don't recall.
18 Q. Well, on the 8th -- on the 18th of June, 1996, you
wrote
19 another EC. That's pages 84 and 85. And you reviewed
some
20 more letters; correct?
21 A. Correct.
22 Q. Now, who gave you the letters?
23 A. Sometimes I would pick them up at the Bureau of
Prisons.
24 Sometimes Pamela Matson would give them to me or
whoever went
25 to the prison.

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Barbara Elizalde - Direct

1 Q. Did you ever talk to Mark White about what you were
doing?
2 A. He knew what I was doing. He --
3 Q. I understand he knew what you were doing, but did
you talk
4 to him about what you were doing?
5 A. I don't remember talking to him about it.
6 Q. Now, you say sometimes you went to the Bureau of
Prisons.
7 When you went to the Bureau of Prisons, would they just
give
8 you a batch of letters, or would you have to ask for
particular

9 things you wanted?

10 A. No. They would have them copied and they would
give them

11 to us.

12 Q. Who gave them to you?

13 A. Somebody from the Bureau of Prisons. From -- one
of the

14 officers.

15 Q. Mr. May?

16 A. One of the officers there.

17 Q. Mr. May?

18 A. I don't remember the names.

19 Q. And how would you know you were supposed to go out
to the

20 Bureau of Prisons?

21 A. Because I was told to go out to the Bureau of
Prisons.

22 Q. Who told you?

23 A. Pamela Matson.

24 Q. Well, did you ever -- Ms. Matson, in addition to
being your

25 supervisor on this project, was an agent with whom you
were in

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Barbara Elizalde - Direct

1 daily contact; right?

2 A. That is correct.

3 Q. Did you ever ask her, "Agent Matson, what are we
doing this

4 for?"

5 A. Not really. I was told to do it, and I did it.

6 Q. Did you ever ask her what purpose it had?

7 A. No, I did not.

8 Q. Did you ever -- did you ask any question that --
about the

9 purpose at all, whether in those words or not?

10 A. No, I did not.

11 Q. Did you form a conclusion in your own mind about
what the

12 purpose was?

13 A. I don't remember that I did, no.

14 Q. Did you have any idea how this related to your
training and

15 experience as a special agent of the FBI?

16 MR. MEARNS: Objection, your Honor.
Relevance.

17 THE COURT: Sustained.

18 BY MR. TIGAR:

19 Q. On the 7th of August, 1996, you reviewed some more
letters;

20 is that correct?

21 A. That is correct.

22 Q. When were you finished with this project as far as
your

23 work on it was concerned?

was in 24 A. When I -- when I left the assignment here, which
25 mid-October.

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Barbara Elizalde - Direct

back and 1 Q. Now, has anybody asked you since that time to go
leads to 2 look at those letters with the idea of finding out any
3 be investigated?

4 A. No.

that 5 Q. You -- you don't know what became of your work; is
6 right?

7 A. That is correct.

decisions 8 Q. You're not in a position to make those sorts of
9 in your -- because you're now back in El Paso; right?

10 A. That is correct.

moment. 11 MR. TIGAR: Your Honor, indulge me for a

12 THE COURT: Yes.

13 BY MR. TIGAR:

engaged in 14 Q. Now, in addition to the letters, you were also
correct? 15 listening to prison telephone conversation tapes;

16 A. Correct.

17 Q. And you would write 302's about that; right?

18 A. Correct.

19 Q. Now, you state that one reason that you were
looking at

20 these letters was to look for John Doe No. 2 leads; is
that

21 right?

22 A. That is correct.

23 Q. Who told you that you were doing that?

24 A. Pamela Matson, as far as I remember.

25 Q. Now, there is no John Doe No. 2 category, is there?

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Barbara Elizalde - Direct

1 A. No, there isn't.

2 Q. Are there any other items or types of information
other

3 than the John Doe No. 2 that you were told about that
aren't

4 reflected in a category?

5 A. Basically, just anything of importance that I felt
was

6 important.

7 MR. TIGAR: Pass the witness, your Honor.

8 THE COURT: Do you have questions?

9 CROSS-EXAMINATION

10 BY MR. MEARNS:

11 Q. Agent Elizalde, how long were you assigned on this
12 temporary detail to the OKBOMB investigation?

13 A. Six months.

14 Q. And was this the only project, the prison mail
review
15 project, that you participated in during your six
months?

16 A. No. There were other projects.

17 Q. Relatively speaking, about how much of your time
did you
18 spend on the prison mail review?

19 A. Not much time. I mean -- but I did spend some time
on it.

20 Q. Mr. Tigar asked you a question of whether or not
you ever
21 told Agent Matson that you had found something
significant

22 during your review of Terry Nichols' prison mail. Do
you
23 recall that question?

24 A. Not stated that way, no.

25 Q. In substance, did you ever tell Agent Matson that
you had

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Barbara Elizalde - Cross

1 found anything significant in the prison mail?

2 A. No, I did not.

review 3 Q. Did you ever find anything significant during your

4 of Terry Nichols' prison mail?

5 A. No, I did not.

mail -- 6 Q. When you had completed your review of -- of the

7 that is, Mr. Nichols' mail -- what did you do with the

8 documents, with the letters that you were reviewing?

9 A. I basically took them to the file room.

would 10 Q. That is, you put them in the area where the rotor

11 then take care of them?

12 A. That is correct, uh-huh.

copies that 13 Q. Did you ever remove any of the mail, any of the

14 you were reviewing?

15 A. No, I did not.

you 16 Q. Did you ever make duplicate copies of the mail that

17 were reviewing?

18 A. No, I did not.

prison 19 Q. So all of the documents -- that is, all of the

one of the 20 correspondence you reviewed, you, in turn, handed to

21 rotors?

22 A. That is correct.

in their 23 Q. You either handed it to them personally, or put it

24 box to be serialized and indexed; is that correct?

25 A. Correct.

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Barbara Elizalde - Cross

you send 1 Q. Based upon your review of Mr. Nichols' mail, did

2 out any leads?

3 A. No, I did not.

based 4 Q. To your knowledge, did anyone else send out a lead

5 upon your review of Mr. Nichols' prison mail?

6 A. Not that I know of.

detail -- 7 Q. Are you aware of any leads during your six-month

based 8 are you aware of any leads being sent out by any agent

9 upon anyone's review of Terry Nichols' prison mail?

10 A. I'm not aware of any.

the 11 Q. Did you ever discuss the substance, the contents of

12 mail in any fashion with any other agent?

13 A. No, I did not.

in any 14 Q. Did you ever discuss the contents or the substance

15 fashion with any prosecutor?

16 A. No, I did not.

17 Q. Were you ever either called or approached by
another agent
18 and asked for your assistance in formulating questions
in
19 connection with an interview based upon your knowledge
from the
20 review of Mr. Nichols' prison mail?

21 A. No, I was not.

22 Q. Did you ever offer or provide such assistance to
anyone
23 else?

24 A. No, I did not.

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

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Barbara Elizalde - Cross

1 MR. TIGAR: Nothing further, your Honor.

2 THE COURT: May she be excused, then?

3 MR. TIGAR: Yes, your Honor.

4 MR. MEARNS: Yes, your Honor.

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

6 MR. TIGAR: Agent Matson.

7 (Pamela Matson affirmed.)

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

9 Would you state your full name for the record
and

10 spell your last name.

11 THE WITNESS: Pamela A. Matson, M-a-t-s-o-n.

12 DIRECT EXAMINATION

13 BY MR. WOODS:

I'm one
14 Q. Good afternoon, Ms. Matson. My name is Ron Woods.

Nichols.
15 of the lawyers that was appointed to represent Terry

16 You are employed with the FBI; is that correct?

17 A. Yes, sir.

18 Q. You're a special agent?

19 A. Yes.

20 Q. How long have you been employed with the FBI?

21 A. Approximately eight-and-a-half years.

background
22 Q. All right. What is your educational and work

23 that qualified you to join the FBI?

24 A. I have a four-year degree in liberal arts. I have

25 completed the FBI academy at Quantico.

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Pamela Matson - Direct

1 Q. So you entered the FBI right out of college?

2 A. No, sir, I did not. I'm sorry.

3 Q. What was your work experience prior to that?

4 A. I was an officer in the Army for four-and-a-half

years

5 active duty and then three in the reserves.

6 Q. So did you enter the FBI right after the Army?

7 A. No, sir. One more job in between. Three years, I
worked

8 in the insurance industry.

9 Q. Okay. Where were you assigned in April of '95?

10 A. To Oklahoma City.

11 Q. All right. And in -- on April 19, '95, did you
join the

12 Task Force?

13 A. No, I was not on the Task Force initially.

14 Q. When did you first get assigned to the Task Force?

15 A. July 20, 1995, I believe.

16 Q. All right. Did you make the move over to Denver in
April

17 of '96?

18 A. Yes, I did.

19 Q. All right. What has been your role in the case?

20 A. My role has changed a little bit from the time I
started on

21 the case. Initially, I was a lead agent assigned to
the lead

22 section on the Task Force. By the time I moved to
Denver, I

23 was partially assisting Special Agent White in
supervising some

24 of the agents on -- in the lead section. Now I'm the

25 coordinator of the lead section.

Pamela Matson - Direct

1 Q. All right. During the time you worked with Agent
White,
2 did you have supervision over those personnel that were
3 reviewing the prison mail of Terry Nichols and Tim
McVeigh?
4 A. Yes, sir. Technically, I'm not a supervisor; but I
did
5 assist other agents and also give assignments in the
section.
6 Q. All right. Although you're not entitled
supervisor, did
7 you supervise someone such as Barbara Elizalde when she
was
8 reviewing the mail?
9 A. Yes, sir.
10 Q. Did you give her the assignment and tell her what
to do?
11 A. Yes, I did.
12 Q. And did she report back to you?
13 A. Normally, her reports went to Special -- Supervisor
White.
14 Mr. White. But sometimes I reviewed her work before it
went to
15 Mr. White.
16 Q. All right. Did she ever talk to you about the
substance of

17 the mail she was reviewing?
18 A. I cannot recall any specific instances when she
discussed
19 it with me, but she may have.
20 Q. What do you understand the substance of the mail to
have
21 been during that period?
22 A. I -- I know of no leads that were set forth,
nothing of
23 investigative value that we gained from reviewing the
mail.
24 Q. Did you review her memos that were sent up?
25 A. I may have. I don't have a specific recollection
of

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Pamela Matson - Direct

1 reviewing any of her --
2 Q. What was your assignment to her when you told her
to start
3 reviewing the mail?
4 A. I told her to review the mail for anything of
investigative
5 value, and I might also have said for co-conspirators;
but I
6 can't recall anything else specifically.
7 Q. And where did the mail come from?
8 A. The mail that we reviewed from FCI Englewood, I can
answer

9 to. We picked it up normally.

10 Q. All right. Well, let's go back to El Reno. When
was the
11 first time you have any experience with the mail being
in the
12 FBI's possession from El Reno?

13 A. I had no direct dealings with the prison mail while
we were
14 in Oklahoma with FCI El Reno.

15 Q. All right. When did you first become acquainted
with or
16 see the mail from El -- from FCI Englewood in Denver,
then?
17 A. Sometime shortly after the Task Force moved to
Denver in
18 April of '96.

19 Q. And when you assigned Barbara Elizalde to start
reviewing
20 it, part of the package of the mail that she was to
review was
21 the El Reno mail, was it not?

22 A. That's my understanding.

23 Q. How did that come into the FBI's possession?

24 A. I at this point -- at this point, I don't know
exactly how
25 that came into the FBI's possession.

1 Q. It was both incoming mail and outgoing mail, mail
that
2 Terry Nichols wrote himself to his family and friends;
right?
3 A. I never reviewed the contents of that letter.
4 Q. You never looked at a single page?
5 A. Sir, I never looked at any of it.
6 Q. And when you assigned these agents to review it and
they
7 would report back to you, you never learned that it was
his
8 mail to family and friends?
9 A. I don't recall any -- any specific questions to me
about
10 Mr. Nichols' mail.
11 Q. I'm not saying questions to you. I assume that
when you
12 assign people to do some tasks, they report back to you
that
13 they've done the task and some substance of the task.
14 A. Well, I knew that the mail could have included Mr.
Nichols'
15 mail; but to my knowledge, I don't know if it ever did.
16 Q. Who assigned you the task that you then delegated?
17 A. Anything that I -- any work projects that I had
were
18 assigned by Mr. White.
19 Q. Did Rich Baker ever assign you tasks concerning the
prison
20 mail?

21 A. Not -- I don't recall anything specifically, no.

22 Q. Or Jack McCoy?

23 A. Not that I can recall.

24 Q. So you worked under the direct supervision of Mark
White?

25 A. Yes, sir.

171

Pamela Matson - Direct

1 Q. Now, was he a supervisor, at that time entitled a
2 supervisor?

3 A. He was not when we were in Oklahoma, but a -- and
he was

4 not when we initially got to Denver; but later on, he
was
5 promoted to a supervisor.

6 Q. All right. But he was your immediate supervisor?

7 A. Yes.

8 Q. And -- but you didn't report back to him on this
task about

9 reviewing the mail; is that correct?

10 A. No. Because he had been involved with the mail in
11 Oklahoma. Once we got to Denver, although I may have
answered

12 some questions, I did not -- they did not -- the agents
didn't

13 report to me on their investigation.

14 Q. They reported directly to him because he had

familiarity

15 with it, having been involved in it in Oklahoma City,
reviewing

16 the mail?

17 A. That's correct.

18 Q. All right. Do you know when he started reviewing
the mail

19 in Oklahoma City?

20 A. Just by virtue of -- of our preparation in the last
week or

21 so, I know that -- I think it started August of '95.

22 Q. All right. Did you also assign the leads on
reviewing the

23 phone conversations of Terry Nichols to the same
individuals

24 who were reviewing the mail?

25 A. I don't know what you mean by "leads."

172

Pamela Matson - Direct

1 Q. Well, did you assign Barbara Elizalde to review all
of

2 Terry Nichols' phone conversations?

3 A. She was one of the people who was assigned to the
phone

4 conversations.

5 Q. And she also had the task of reviewing all of his
mail?

6 A. She had the assignment of reviewing the mail before

she had

7 the phone conversations assignment.

8 Q. But she was there for six months; and during that
time, the

9 tasks overlapped, did they not?

10 A. Yes, they did.

11 Q. Would you say that's a fairly effective way to get
to know

12 someone, when you review all their telephone
conversations and

13 all their mail?

14 MR. ORENSTEIN: Objection, Judge.

15 THE COURT: Sustained.

16 BY MR. WOODS:

17 Q. Was that a point that you took into consideration
when you

18 assigned her not only to review the mail but also to
review the

19 phone conversations of which he was a party?

20 A. No, it's not.

21 Q. It's just happenstance that she was assigned to do
both?

22 A. There aren't that many agents in the lead section,
so it's

23 quite likely a lot of tasks overlap in the agents in
the lead

24 section.

25 Q. How many agents were in the lead section?

Pamela Matson - Direct

1 A. It varied from time to time.

2 Q. Well, you had people from all the nation being
brought in,

3 working on 30-, 60-, six-month tours, didn't you?

4 A. We did have people from all over the country, yes,
sir.

5 Q. Well, it was just happenstance that the lady doing
the mail

6 review was the one who was doing the phone review,
also?

7 MR. ORENSTEIN: Objection, judge.

8 THE COURT: Sustained.

9 BY MR. WOODS:

10 Q. The memos of the reviewers, Ms. Elizalde and
others, were

11 broken down into categories; is that correct?

12 A. Yes, sir.

13 Q. Did you -- when you advised them to start reviewing
the

14 mail, did you advise them to break it down into
categories?

15 A. I did not give instructions on how to review the
mail other

16 than general instructions. There were -- Mark White
actually

17 gave the initial instructions.

18 Q. What instructions did you give that you can recall?

19
investigative

A. I only told her to review it for anything of

20 value to the Oklahoma City bombing case.

to

21 Q. Were you present when Mark White advised them what

22 review the mail for?

23 A. No, I was not.

the review

24 Q. Have you seen the memos that were generated upon

25 of the mail?

174

Pamela Matson - Direct

don't

1 A. I have probably reviewed some of them. I have -- I

preparing

2 have a specific recall of them. And since we've been

3 for this, I have seen some of them.

conversion?

4 Q. Who came up with the category of religious

5 A. I don't know.

reviewed

6 Q. And you recall the other categories since you've

7 the memos now?

recollection.

8 A. I could speculate. I don't have any specific

have any

9 Q. Well, we don't want your speculation. You don't

10 recollection of what the categories were?

11 A. Generally, I can recall; but I don't know
specifically what

12 those might -- might be.

13 Q. And once the mail was reviewed, where did it go?

14 A. Into a subfile. At least the mail that was
reviewed in

15 Denver.

16 Q. And that included the FCI El Reno mail because it
was all

17 brought over here to El -- to Denver to be reviewed,
wasn't it?

18 A. I don't know the answer to that.

19 Q. Well, you know --

20 A. The mail that I was involved in went into sub --
into a

21 subfile, but I don't know where any mail that I was not

22 involved in went.

23 Q. Well, you know -- you're aware that the El Reno
mail was

24 reviewed here in Denver by Ms. Elizalde?

25 A. I'm aware of that because of the preparation for
this

175

Pamela Matson - Direct

1 hearing.

2 Q. After you assigned her the task of reviewing it,
you

3 didn't -- No. 1, you didn't know what she was

reviewing; and

4 No. 2, after it was over, you didn't know what she had

5 reviewed?

6 A. I -- I knew what -- I knew that we brought some
mail from

7 Oklahoma, and I know that she was assigned to review
it. And I

8 knew the general contents.

9 Q. All right.

10 A. What could have been in the content of those
letters, that

11 mail.

12 Q. And that mail has ended up in a file in the office.
You

13 office with the prosecutors and the FBI here in the
Task Force;

14 is that correct?

15 A. That's correct.

16 Q. And that mail is all categorized and in the YY
file, sub YY

17 file?

18 A. I can't say that it's all in the YY file.

19 Q. Well, it should be, though, shouldn't it, if the
FBI

20 followed its procedures, if -- upon review, it should
all be in

21 the sub YY file?

22 A. To my knowledge, there's no set procedure as to
where we're

23 supposed to put the mail.

was 24 Q. Okay. So everything we've heard about the way this
25 categorized and filed, we can't rely on that?

176

Pamela Matson - Direct

1 A. I'm not saying that.
2 Q. Well, where do you think the mail goes?
3 A. The mail -- some of the mail initially went into
1A, what
4 we call 1A envelopes; and then later, all the mail
started
5 going into the subfile.

6 Q. And the subfile is the sub YY file?
7 A. The YY, yes, sir.
8 Q. And that's available to anybody in the Task Force,
is it
9 not?

10 A. No. Because it's in the locked cabinet. Not
everybody has
11 access to that.

12 Q. Okay. Who has the key to the cabinet?
13 A. Usually, the rotor clerk, whoever that may be at
any given
14 time.

15 Q. So the rotor clerk, since this is a locked file
cabinet,
16 would then keep some record of somebody that's getting

into a

17 locked file cabinet?

18 A. I don't know what the rotors' procedures are.

19 Q. But it's now your testimony that the access to the
sub YY

20 file is so limited because it's locked?

21 A. It's limited to the extent that it is locked and
the rotor

22 maintains the keys.

23 Q. Okay. And if the prosecutor wants to look at it,
he's got

24 to go through the rotor clerk, is your testimony, to
get the

25 key?

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Pamela Matson - Direct

1 A. That's my -- that's my understanding. I'm not
saying

2 that's concrete, but that's my understanding of how it
works.

3 Q. And have you looked at the sub YY file?

4 A. I've never looked at the sub YY file.

5 Q. Even though you were the one assigning the task to
review

6 it?

7 A. I have no reason to review the sub YY file.

8 Q. That's why you delegated it to somebody else;
right?

9 A. I delegated it because I didn't have time to do it.

10 MR. WOODS: All right. Thank you.

11 I pass the witness, your Honor.

12 CROSS-EXAMINATION

13 BY MR. ORENSTEIN:

14 Q. Good afternoon, Agent Matson.

15 A. Hello.

16 Q. You mentioned a couple of times in response to Mr.
Woods'

17 questions some information that you know solely as a
result of

18 your preparation for this hearing today; is that
correct?

19 A. That's correct.

20 Q. And were you assisting Agent White in preparing for
that --

21 for this hearing?

22 A. Yes.

23 Q. As part of that assistance to Agent White, did you
take it

24 upon yourself, upon Agent White's direction, to contact
all of

25 the agents who had worked in the lead area who would
have been

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Pamela Matson - Cross

1 involved in the mail review, if they were at all?

2 A. Yes, I did.

lead area
3 Q. Did you contact all of them who had been in the
4 between August of 1995 and November of 1996?

5 A. Yes, I did.

one way
6 Q. Were there some who recalled having been involved
7 or another in the collection or review of prison mail?

8 A. Yes, there were some.

9 Q. Are all of them here?

10 A. Yes, they are.

they had
11 Q. Did all of the others say that they were sure that
12 not had any review of Mr. Nichols' prison mail?

13 A. Yes, they did.

the
14 Q. Now, Mr. Woods was asking you some questions about
15 review of audiotapes as well as prison mail?

16 A. Yes.

17 Q. Did you conduct any review of audiotapes?

18 A. I reviewed a lot of audiotapes.

19 Q. Did you conduct any review of prison mail?

20 A. No, I did not.

21 Q. Did Agent Wech conduct any review of prison tapes?

22 A. Yes, she did.

23 Q. Did she conduct any review of prison mail?

24 A. Not to my knowledge.

of prison 25 Q. How about Agent Godbold: Did he conduct a review

179

Pamela Matson - Cross

1 tapes?

2 A. Yes, he did.

to your 3 Q. Did Agent Godbold conduct a review of prison mail,

4 knowledge?

5 A. Not to my knowledge.

necessarily 6 Q. So there was no design to have the same person

7 doing both tasks; is that correct?

8 A. No, there was not.

any of 9 Q. And I believe you told Mr. Woods that you never saw

prior to 10 the original -- or copies of Mr. Nichols' prison mail

11 preparing for this review?

12 A. That's correct.

13 Q. Did you discuss with anyone else the contents of
14 Mr. Nichols' prison mail?

15 A. I don't recall ever having done that.

knew to 16 Q. Did you send out any leads based on what either you

17 be in Mr. Nichols' prison mail or what someone else had

18 reported to you was in Mr. Nichols' prison mail?

19 A. No, I did not.

20 Q. To your knowledge, did anyone else send out any
leads on

21 that basis?

22 A. No, they did not.

23 Q. Are you aware of any leads being sent out as a
result of

24 the FBI's review of Mr. Nichols' prison mail?

25 A. No, I'm not.

180

Pamela Matson – Cross

1 Q. Did any agent ever come to you, asking your
assistance in

2 developing strategies for questioning a witness or
potential

3 witness based on the fact that the FBI had had
available

4 Mr. Nichols' prison mail?

5 A. No, sir.

6 Q. Did you ever go to another agent and suggest that
that

7 might be a valuable way to prepare for an interview?

8 A. No, I did not.

9 Q. You occasionally went yourself to the prison in
connection

10 with your duties of reviewing the audiotapes; correct?

11 A. Yes, I did.

12 Q. Occasionally, when you went to the prison to do
that, did
Elizalde
13 you pick up the mail that was to be reviewed by Agent
14 or others?

15 A. Yes, I did, on numerous occasions.

16 Q. While you were being questioned on direct by Mr.
Woods, you
17 recalled the fact that occasionally -- you can't
recall
18 specifically that Agent Elizalde did this, but,
occasionally,
19 an agent might come to you during the review process
with a
20 question.

21 A. Yes.

22 Q. And would it happen from time to time that you
might go to
23 an agent if you saw something in a report about the
review of
24 prison mail that you had a question about?

25 A. I don't recall having done that.

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Pamela Matson - Cross

1 Q. Did you review Agent Lawson's reports?

2 A. I don't specifically recall reviewing any of her
reports.

3 Possibly her first one, but I don't have specific
recollection

4 of that.

5 Q. It's possible you did; you just don't recall?

6 A. It's possible I did.

7 Q. Other than discussing the general progress of the
project

8 of reviewing prison mail with Agents Elizalde, Lawson,
and to

9 the extent you did with Agent White, did you discuss
that

10 project with anyone else?

11 A. No, I did not.

12 Q. Do you know of anyplace other than the 1A files
that you

13 mentioned and the YY subfile where prison mail for Mr.
Nichols

14 is being maintained?

15 A. No, I do not.

16 Q. Do you have any reason to believe that it is being
17 maintained anywhere else?

18 A. No, I do not.

19 MR. ORENSTEIN: If I may have a moment, your
Honor.

20 THE COURT: Yes.

21 MR. ORENSTEIN: I have nothing further. Thank
you.

22 MR. WOODS: No further questions. Your Honor.

23 THE COURT: Excusing the witness, then, I
trust.

24 MR. WOODS: Yes.

25 MR. ORENSTEIN: Yes, your Honor.

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Pamela Matson – Cross

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

2 Next, please.

3 MR. TIGAR: Agent Lawson.

4 (Sheila Lawson affirmed.)

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

6 Would you state your full name for the record
and

7 spell your last name.

8 THE WITNESS: Sheila J. Lawson, L-A-W-S-O-N.

9 THE COURTROOM DEPUTY: Thank you.

10 DIRECT EXAMINATION

11 BY MR. TIGAR:

12 Q. Agent Lawson, my name is Michael Tigar. I'm one of
the

13 lawyers for Terry Nichols.

14 Could you find, please, on the desk in front
of you a

15 bound volume that's -- that has Defendant Exhibit E on
the

16 front of it. Do you see that?

17 A. Yes.

18 Q. And would you please turn to page 92. You'll see
some
19 stamped page numbers on the right-hand side of the
bottom of
20 each page.

21 Now, does the EC there at page 92 reflect the
first
22 review that you did of Terry Nichols' mail?

23 A. Yes, it does.

24 Q. Who assigned you to review Terry Nichols' mail?

25 A. Special Agent Pam Matson.

183

Sheila Lawson - Direct

1 Q. Did she tell you what you were supposed to do with
it?

2 A. Yes.

3 Q. What did she tell you?

4 A. She told me to review the mail and then construct
your
5 pony -- electronic communication, such as a pony, which
was
6 also a part of the project that she pointed out to me,
and
7 categorize what I had reviewed.

8 Q. Now, did you say pony?

9 A. Right. That's what we call a -- an example of --
of a

10 document. So I looked at ones that had been done
previously

11 and structured mine similar to that one.

12 Q. So you were to look at ECs that had been done by
another

13 agent and then make yours the same; is that right?

14 A. Yes.

15 Q. Now, was the pony one that had been done by Agent
Elizalde?

16 A. Yes.

17 Q. Did you talk to Agent Elizalde about what work she
had

18 done?

19 A. No.

20 Q. What did -- did Ms. Matson -- did Agent Matson tell
you

21 anything about the reason you were doing this
assignment?

22 A. No, she didn't.

23 Q. How long have you been a special agent, by the way?

24 A. One year and two months.

25 Q. Where did you get your education?

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Sheila Lawson - Direct

Park,
1 A. I graduated at Columbia Union College in Tacoma

2 Maryland.

the FBI 3 Q. And after you graduated, did you go directly into

4 or did you have other work before that?

5 A. I had other work. I have nine years of military
6 experience, and I worked in a civilian laboratory as
well.

7 Q. How long were you involved in reviewing Mr.
Nichols' mail?

8 A. The periods that's documented in my electronic
9 communication here.

10 Q. All right.

11 A. I'd have to look at it to tell you exactly.

12 Q. Well, the mail that you reviewed on the --
reflected in

13 your EC of the 17th of October, 1996, where did you get
that

14 mail?

15 A. I received it from Special Agent Matson.

16 Q. Do you see the handwriting at the bottom of that
page? Did

17 you write that, "Correspondence maintained in sub YY,"
etc.?

18 A. No, I didn't write that.

19 Q. Do you see the date stamp at the bottom? Did you
make any

20 of the markings on that date stamp?

21 A. No, I didn't.

22 Q. Do you see the initials JM on that date stamp?

23 A. Yes, I see them.

24 Q. Do you know who that is?

25 A. No.

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Sheila Lawson - Direct

mail with 1 Q. Did you ever discuss your work in reviewing the
2 anyone other than Agent Matson?

3 A. No, I didn't.

have any 4 Q. Did you ever get any feedback from Mark White or
5 discussion with him about it?

6 A. No.

you know 7 Q. He's marked on here as having approved the EC. Do
8 what form his approval took?

leave it 9 A. After I completed the EC, I would leave it with --
took, no. 10 in his office. I don't know what form his approval

your 11 Q. So basically -- you don't know what was done with
12 work; is that right?

13 A. Exactly.

review your 14 Q. Nobody ever came back to you and asked you to

that 15 work or advise them on how to do something with it; is

16 correct?
17 A. No one ever did that, no.
18 Q. Would you look, please, at page 94 in that document
that's
19 in front of you. There, you have a category, letters
from
20 legal personnel—not assigned counsel. Do you see that?
21 A. Yes.
22 Q. That is not a category that was on the pony, was
it?
23 A. No. A pony was just for me to use as an example.
It
24 wasn't cut in stone that those were the categories I
had to
25 use.

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Sheila Lawson – Direct

1 Q. What caused you to use that category, letters from
legal
2 personnel?
3 A. Because the letter was from an attorney. That's
why I
4 categorized it as a letter from legal personnel.
5 Q. Now, when you read that letter that looked like it
was from
6 an attorney, did that cause you some concern?
7 A. It did not.
8 Q. Did you think it was unusual that you would be

reading a

9 letter that was written to Mr. Nichols from someone
identifying

10 themselves as a lawyer?

11 A. I didn't think it was unusual, no.

12 Q. Well, will you look, please, at page 96. In the
synopsis

13 there -- you wrote that; correct?

14 A. Yes.

15 Q. In the synopsis, you say documentation to support
mention
16 of letters received from legal personnel--not assigned
counsel.

17 Why did you need documentation to support the mention?

18 A. I received instructions from Special Agent Matson
to draft

19 this document. That's why I did it.

20 Q. What did she tell you?

21 A. She told me to structure an EC which would state
that the

22 legal personnel was not counsel for Terry Nichols.

23 Q. Did she tell you why you needed to do that?

24 A. So there wouldn't be any confusion. I believe
that's what

25 she said.

1 Q. What could there be confusion about?

2 A. Possibly confusion -- I don't know. Really, I
don't know.

3 But just to state that he wasn't counsel for Terry
Nichols.

4 Q. Well, in your original memorandum, letters from
legal
5 personnel, you say not assigned counsel. You'd already
said
6 that on the 19th of November. Why did you need to
write
7 something else?

8 A. I did it because I was told to do it.

9 Q. Did Agent Matson tell you what was supposed to be
in there?

10 A. No. She simply stated that I should draft the EC
to state
11 that he wasn't personnel -- legal personnel for Terry
Nichols.

12 Q. Okay.

13 A. She didn't go into much detail.

14 Q. All right. Well, under details -- you have a
section
15 called "Details"; correct?

16 A. Correct.

17 Q. In your last sentence there, you say, "It should be
noted
18 that Bennett is not one of the assigned counsel or
staff for
19 Nichols"; right?

20 A. Right.

21 Q. Then your next paragraph, you say that -- you
describe a
22 reel-to-reel tape recording of a collect call made from
23 Mr. Nichols to Mr. Papovich; right? Where did you get
that
24 information?
25 A. According to an electronic communication, I
received it

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Sheila Lawson - Direct

1 from reading a 302.
2 Q. In addition, there's a reference to a duplicated
copy of
3 the call being 1B3678. My question to you is where did
you get
4 the information to put in this paragraph? What
physically did
5 you do to go get that information?
6 A. I can't recall.
7 Q. Did Agent Matson tell you to go look for the reel-
to-reel
8 tape recording?
9 A. I don't recall her telling me to do that.
10 Q. Do you remember listening to a reel-to-reel tape
recording?
11 A. No, I don't.
12 Q. Well, let's analyze this document. Here is a
letter from

13 Douglas Bennett to Mr. Nichols; correct?
14 A. Correct.
15 Q. That's what it's talking about. Now, that -- you
reviewed
16 that letter; correct?
17 A. Correct.
18 Q. And you -- when you reviewed that letter, did you
give any
19 directions with respect to what was to be done to index
it?
20 A. With that particular letter?
21 Q. Yes.
22 A. No. I wasn't given any instructions for that
particular
23 letter.
24 Q. Did you -- when you reviewed that particular
letter, did
25 you make any markings on it, telling the rotor to index

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Sheila Lawson - Direct

1 anything from it?
2 A. I can't remember. I'd have to see it.
3 Q. When you reviewed that particular letter, did you
make a
4 notation in the file that it was from Douglas Bennett
to
5 Mr. Nichols?

6 A. In which file?

7 Q. In the 1A file that's maintained on the computer.

8 A. Well, when I index, I usually am underlining names,
9 addresses, things like that. I can't recall what I did
with
10 that particular letter.

11 Q. It's up to the rotor, then, to go ahead and perform
the
12 tasks that you've identified for the rotor by your
underlining;
13 is that right?

14 A. That's right.

15 Q. Now, once the rotor indexes this letter from
Douglas
16 Bennett, if someone wants to find out more about
Douglas
17 Bennett, such as finding out about this reel-to-reel
call, what
18 do they do?

19 A. Look in the database, I assume.

20 Q. Well, looking at this document on page 96, doesn't
that
21 show that somebody took a letter from Terry Nichols --
to Terry
22 Nichols from Douglas Bennett and correlated that with a
23 telephone call made on July 10, 196 -- '96 that shows
that
24 Mr. Papovich has a cousin whose first name is Doug who
is an
25 attorney and that the copy of that call can be found at

a

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Sheila Lawson - Direct

1 certain 1B location? Doesn't it show that -- that that
2 correlation took place?

3 A. I'm not sure.

4 Q. Do you know who Douglas Bennett is?

5 A. I don't know who he is.

6 Q. From reviewing the letter that's referred to here,
did you

7 gain any understanding of what Douglas Bennett's
philosophy is?

8 MR. ORENSTEIN: Objection to relevance, Judge.

9 THE COURT: Overruled.

10 THE WITNESS: No, I didn't gain any knowledge
of what

11 his philosophy is.

12 BY MR. TIGAR:

13 Q. Did you know at the time you wrote the
documentation

14 memorandum, page 96 and 97, that the FBI had
interviewed

15 Douglas Bennett?

16 A. No, I didn't.

17 MR. TIGAR: May the witness be shown Exhibit
D,

18 please.

19 MR. ORENSTEIN: We don't have D.

20 MR. TIGAR: I'm sorry. Now you do.

21 BY MR. TIGAR:

22 Q. Would you look, please, at tab D5.

Douglas
right?
23 Now, this is a letter to Mr. Nichols from
24 Bennett, but it's dated October 23, 1996; is that

25 A. Yes. That's the date.

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Sheila Lawson - Direct

about
1 Q. Now, is that the same letter that you're talking
2 here? Or is that a different one?

3 A. It's the same letter.

that we
it
4 Q. It's the same letter. So that -- now, the copy
5 have here doesn't have any stamps or other markings on
6 indicating what you directed be done; is that right?

7 A. That's right.

to tell
8 Q. Now, can you recall whether you made any markings
9 the rotor what to do with this letter?

didn't make
10 A. I can't recall if this is the exact letter. I

11 any markings on it.

to it
you
12 Q. Well, it may be that our copy machine did something
13 or it was copied wrong so that we don't have that. But
14 don't recall making any; is that right?

15 A. I don't recall, no.

16 MR. TIGAR: Pass the witness, your Honor.

17 THE COURT: Any questions?

18 MR. ORENSTEIN: Yes, sir.

19 THE COURT: All right.

20 CROSS-EXAMINATION

21 BY MR. ORENSTEIN:

22 Q. Good afternoon, Agent Lawson.

inquire of
copy of
23 MR. TIGAR: Excuse me, your Honor. May I
24 counsel through the Court whether the Government has a
25 D5 that does have the stamps on it?

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Sheila Lawson - Cross

for one
1 MR. ORENSTEIN: I would think so. I will look

2 when I have -- at a break.

3 THE COURT: All right.

4 MR. TIGAR: Thank you.

5 MR. ORENSTEIN: Just for the Court's

understanding, I

6 think sometimes the stamp was on the back of the
letter, so

7 that would explain it.

8 THE COURT: Yes. All right.

9 BY MR. ORENSTEIN:

10 Q. Agent Lawson, to your knowledge, was Mr. Bennett
one of

11 Terry Nichols' assigned lawyers?

12 A. To my knowledge, he was not.

13 Q. And so when there was an indication in a memo that
you

14 wrote to Agent White that among the mail you received
was a

15 letter from an attorney, but who was not assigned
counsel, you

16 were then directed to write up some clarification of
that;

17 correct?

18 A. Correct.

19 Q. Now, Agent Lawson, did you send out any leads based
on your

20 review of Mr. Nichols' prison mail?

21 A. No, I didn't.

22 Q. To your knowledge, did anyone else send out any
leads based

23 on the review of Mr. Nichols' prison mail?

24 A. No.

25 Q. Did any agent ever come to you, seeking your
assistance or

Sheila Lawson – Cross

Agent -- 1 guidance based on your knowledge of having reviewed
2 Mr. Nichols' prison mail?
3 A. No.
guidance 4 Q. And did you ever offer any such assistance or
5 unsolicited to another agent?
6 A. No, I didn't.
Nichols' 7 Q. Did you ever talk to any prosecutors about Mr.
8 prison mail?
9 A. No.
than 10 Q. And did you generate any paperwork, reports, other
11 what we've seen today, regarding your review of Mr.
Nichols' 12 prison mail?
13 A. No, I didn't.
review 14 Q. Once you received the prison mail that you were to
15 and you had completed your review, did you then pass it
on to 16 the file room or the rotors?
17 A. Yes.
18 Q. Did you keep any for yourself?

19 A. No.

20 Q. Did you make any additional copies?

21 A. No.

22 MR. ORENSTEIN: Your Honor, I have nothing
further.

23 Thank you.

24 MR. TIGAR: No further questions, your Honor.

25 THE COURT: Excusing the witness then?

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1 MR. TIGAR: Yes, your Honor.

2 MR. ORENSTEIN: Agreed.

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

4 Next please.

5 MR. TIGAR: Agent Kirby.

6 (Bret Kirby affirmed.)

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

8 Would you state your full name for the record
and

9 spell your last name.

10 THE WITNESS: Bret R. Kirby, K-I-R-B-Y.

11 THE COURTROOM DEPUTY: Thank you.

12 DIRECT EXAMINATION

13 BY MR. TIGAR:

14 Q. You are a special agent of the FBI, sir?

15 A. Yes, sir, that's correct.

16 Q. Excuse me. My name is Michael Tigar. I'm one of
the
17 lawyers for Terry Nichols.

18 A. Yes, sir.

19 MR. TIGAR: May the witness be shown Exhibit
G2,
20 please.

21 BY MR. TIGAR:

22 Q. Mr. -- or Agent Kirby, what was your first contact
with the
23 review of Mr. Nichols' mail from the correctional
facilities
24 there at El Reno and Englewood?

25 A. I didn't have any review of Mr. Nichols' mail in
Englewood.

195

Bret Kirby - Direct

1 Q. All right. So -- I was asking a broad question to
set the
2 stage. The only connection you had with the mail issue
was
3 with El Reno; is that right?

4 A. Yes, sir. That's correct.

5 Q. When was your first contact with El Reno on the
prison mail

6 issue for Mr. McVeigh and Mr. Nichols?

7 A. In August of 1995.

8 Q. Did you go out there and retrieve the mail pursuant
to the
9 grand jury subpoena?

10 A. We did not retrieve mail. We reviewed mail at the
prison.

11 Q. I see. And that was mail that you were reviewing
along
12 with Agent White and others; is that correct?

13 A. Yes, sir. That's correct.

14 Q. Now, were you making decisions at that time as to
what mail
15 you wanted copies of?

16 A. Yes, sir, we were.

17 Q. By what authority were you there?

18 A. We were there with a federal grand jury subpoena.

19 Q. And have you seen -- you saw the grand jury
subpoena?

20 A. Yes, sir, I did.

21 Q. Mr. Mackey's name was on that?

22 A. I cannot recall at this time if Mr. Mackey's name
was on it
23 or not.

24 Q. Were you in charge of that Task Force?

25 A. No, I wasn't.

Bret Kirby - Direct

1 Q. Who was?

2 A. Mr. White was.

3 Q. Did you have any conversation with Agent Gibbons
about your

4 duties out there on the 1st of August?

5 A. Not that I recall.

6 Q. Did you have any conversation with Mr. Mackey about
what

7 your duties were to be?

8 A. Not that I recall.

9 Q. Did you get copies of the letters out there?

10 A. Did I personally get copies?

11 Q. Did anyone connected with the FBI get copies?

12 A. I believe some of the individuals got copies of
some of the

13 letters out there, but not all of the letters.

14 Q. Do you know whether any of those letters were then
15 presented to the grand jury whose subpoena had been the
16 authority for obtaining them?

17 A. I do not know, no, sir.

18 Q. Looking at G2, which is in front of you, sir, would
you

19 look at the top page there. And we've been told that
all the

20 writing down to "letter to Tim McVeigh," the
handwriting is

that? 21 Agent White's. Do you know who wrote what's just below

22 "Lead number, AUSA, 12377"?

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

there in 24 Q. All right. There's a tab in that exhibit. Is

25 your copy a big tab there?

197

Bret Kirby - Direct

1 A. Yes, sir.

your 2 Q. Would you look behind the tab, please. Is that

3 writing?

4 A. Yes, sir, it is.

5 Q. And when did you write that?

6 A. December the 14th of 1995.

strike 7 Q. Now, what was -- now, by December the 14th, 1995 --

8 that. Excuse me.

and 9 What was your authority for going out there

10 getting these letters at that time?

possible lead 11 A. We were continuing to review the letters for

12 information out of the letters.

13 Q. So it was under that same grand jury subpoena?

14 A. It was my understanding that there was an agreement

between

15 the Department of Justice and the Bureau of Prisons
whereby we

16 had authority to review those letters.

17 Q. Where did you get that understanding?

18 A. From Agent White.

19 Q. What did he tell you about it?

20 A. That we were to continue to review the mail at the
prison.

21 Q. He said "continue to review"?

22 A. Yes, sir.

23 Q. And what were you to look for?

24 A. We were looking for any information that might be
of lead

25 value concerning co-conspirators. Individuals that may
have

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Bret Kirby – Direct

1 helped in the bombing or that may identify further
information

2 that could be of value of leads with the case.

3 Q. So you were interested in from whom the letters
came and to

4 whom they were sent; right?

5 A. Yes, sir.

6 Q. And you were interested in the names that were
mentioned;

7 is that correct?

8 A. Yes, sir.

9 Q. Now, when you say a lead, one of the ways you use a
lead is

10 as a way to go out and interview people; correct?

11 A. Yes, sir. That could be.

12 Q. And that's one way that FBI agents help with an
13 investigation is to get leads; right? To go out and
interview

14 people?

15 A. Yes, sir.

16 Q. FBI agents also make reports or assemble
information that

17 helps prosecutors; correct?

18 A. That's correct.

19 Q. One of the things FBI agents do is assemble
information

20 that helps prosecutors examine and cross-examine
witnesses;

21 correct?

22 A. Yes, sir.

23 Q. And for example, an FBI agent can assemble
information

24 about the backgrounds, associations, and activities of
an

25 individual that might be a defense witness and that
information

Bret Kirby – Direct

can use 1 will be in the file and the prosecutor will have it and
2 it to cross-examine; correct?

that 3 A. I don't have a personal experience with that, but
4 could be, yes.

experience with 5 Q. Well, how about -- have you had a personal
6 evidence that you've gone out and obtained being useful
to a 7 prosecutor in doing the direct examination of a witness
called 8 by the Government?
9 A. Yes.

death 10 Q. Of course, you haven't had any experience in a
11 penalty case, have you?

useful to 12 A. No, I haven't.
13 Q. So you wouldn't know what information would be
14 prosecutors in a -- excuse me. You were about to say
15 something?

have had 16 A. Yes, sir. Let me reanswer that question. Yes, I
17 experience with death penalty cases.

18 Q. A federal death penalty case?

19 A. Yes, sir.

20 Q. And in that case, was there a penalty phase?

21 A. There eventually was a penalty phase, yes, sir.

22 Q. And were you involved in assisting the prosecutors
in
23 cross-examining the witnesses?

24 MR. ORENSTEIN: Objection, Judge.

25 THE COURT: Sustained.

200

Bret Kirby - Direct

1 BY MR. TIGAR:

2 Q. All right. What did you do with the letters after
you
3 looked at them?

4 A. After we looked at the letters, we returned them to
the
5 file.

6 Q. What file?

7 A. The file that the -- in a file cabinet where the
prison had
8 them in the SIS office.

9 Q. Now, your FBI Form 340, FD-340 that is on tab -- in
the tab
10 of G2 indicates that you took some things away at some
point;
11 correct?

12 A. Yes. That's correct.

13 Q. Was that later? When did you actually physically
get the

14 letters that are attached to this FD-340?

14. 15 A. For the one that I did, we did those on December

16 Q. And did you take them back to the FBI office?

17 A. We took copies of these back to the FBI office,
yes.

18 Q. And those copies were placed in a 1A file; correct?

19 A. That is correct.

20 Q. Now, are you familiar with how the letters that
were later
FBI? 21 obtained from the prison officials were filed at the

22 A. No, sir, I'm not.

23 Q. So -- and do you know whether they were given a
different
24 subfile designation?

25 A. I do not know.

201

Bret Kirby - Direct

1 Q. Were you responsible for assigning the 1A
designator to the
2 evidence that you had obtained?

3 A. No, I wasn't.

4 Q. You notice the top is the universal case file
number. Then
5 there's the markings 1A4724?

6 A. Yes, sir.

7 Q. Did you put that on there?

8 A. No, I didn't.

9 Q. Okay. So that would have been done by a clerk or
someone
10 who logged in the evidence and serialized it; is that
correct?

11 A. That's correct.

12 Q. And then out of that would be generated an -- an
index
13 entry so that anybody who wanted to know what this
particular
14 1A was could find out; is that right?

15 A. That would be correct.

16 Q. Other than what you just told us, have you had any
other
17 involvement with this prison mail?

18 A. No, sir.

19 Q. All right. Nobody ever came to ask you to go read
it again
20 or generate any leads?

21 A. None to my recollection, no, sir.

22 Q. You did your job and you saw that it was put in the
file;
23 right?

24 A. That's correct.

25 Q. By the same token, you don't know to this day
whether

Bret Kirby - Direct

1 anybody else has gone back and looked at the evidence
that you 2 collected; is that right?

3 A. I don't know at this point, no, sir.

4 MR. TIGAR: All right. Pass the witness.

5 CROSS-EXAMINATION

6 BY MR. ORENSTEIN:

7 Q. Mr. Tigar just asked you if you know whether anyone
has 8 gone back to look at the mail that you collected;
correct?

9 A. Yes, sir.

10 Q. Do you have any reason to think that anybody did?

11 A. No, I don't.

12 Q. Mr. Tigar was asking you about the 1A cover sheet
that you 13 filled out and mentioned that it refers to some items
from the 14 jail.

15 A. Yes, sir.

16 Q. What were the items that you collected from the
jail that 17 day? This is December 14.

18 A. Letters which had been sent to Timothy McVeigh.

19 Q. Was there any mail for Mr. Nichols or to Mr.
Nichols that 20 was collected that day?

21 A. No, sir.
22 Q. Do you yourself recall reading Mr. Nichols' prison
mail?
23 A. No, I don't.
24 Q. Of the mail that you reviewed on the two times that
you
25 went to El Reno to review mail, would it be fair to say
there

203

Bret Kirby - Cross

1 was a lot more of Mr. McVeigh's mail?
2 A. Yes.
3 Q. Now, you mentioned upon direct examination that
when you
4 went in December of 1995 to El Reno, it was to continue
the
5 review of the prison mail?
6 A. Yes, sir.
7 Q. The continuation, was that of the trip that you had
made in
8 August?
9 A. We had further mail to review. We reviewed all the
mail in
10 August that was there in August. And when we went back
out in
11 December, we reviewed mail which had been received
since the
12 last review.

13 Q. And that last review had been in August; correct?

14 A. Yes, sir.

15 Q. You didn't take anything away from the prison that
was then

16 missing from the prison? You only made copies; is that

17 correct?

18 A. That's correct.

19 Q. Did you generate any leads based on your review of
the --

20 of Mr. Nichols' prison mail?

21 A. No, sir.

22 Q. To your knowledge, did anybody else generate any
leads

23 based on the review of Mr. Nichols' prison mail?

24 A. Not to my knowledge.

25 Q. Has any agent ever come to you asking for any
guidance or

204

Bret Kirby - Cross

1 assistance in how to pursue an investigation or an
interview

2 based on your review of the prison mail?

3 A. No, sir. Not to my recollection.

4 Q. Aside from the 1A that we saw with your handwriting
on it,

5 did you generate any paperwork based on your review of
the

6 prison mail of Mr. Nichols?

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

the

8 Q. The mail that you made copies of and took back from

9 prison, did all that go into the 1A?

10 A. Yes, sir.

11 Q. Did any of it go anywhere else?

12 A. No.

13 Q. Did you keep any copies for yourself?

14 A. No, I didn't.

Thank

15 MR. ORENSTEIN: I have nothing further, Judge.

16 you.

17 THE COURT: Very briefly.

18 REDIRECT EXAMINATION

19 BY MR. TIGAR:

those

20 Q. Agent, you might be able to help us shorten these

21 proceedings. Agent Michael Beaver, was he with you on

22 trips out to the prison?

the trip

23 A. He was with me on the trip in August, but not on

24 in December.

anything

25 Q. All right. Now, to your knowledge, did he ever do

Bret Kirby – Redirect

1 about this mail other than go with you on the August
trip?

2 A. No, sir.

3 Q. Okay. How about Agent Clancy?

4 A. He went with me in December.

5 Q. Okay. Now, to your knowledge, did he ever have
anything to

6 do with prison mail other than to go with you in
December?

7 A. To my knowledge, none, sir.

8 Q. All right. How about Agent Denny, Stephen Denny?

9 A. In December, he went with me. And again, to my
knowledge,

10 none, sir.

11 Q. He didn't go in August; is that right?

12 A. That's correct, sir.

13 Q. All right. How about Agent Russell Gregory?

14 A. He would have gone in August, sir.

15 Q. And Agent Gregory Lacombe?

16 A. He went in August, sir.

17 Q. Why did you need so many people in August?

18 A. I can't answer that question. I didn't make the
decision

19 of the people to go.

20 Q. You were all pretty busy when you were out there
reading

21 the mail?

22 A. We were pretty busy all the time.

23 Q. Well, that day, were you busy?

24 A. Yes, sir.

25 Q. And were you all involved in identifying what you
thought

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Bret Kirby - Redirect

1 was significant that day?

2 A. Yes, sir. We were.

3 Q. And was then -- were the -- was the ultimate
decision as to

4 what to take away left with Agent White as head of the
detail?

5 A. Yes, sir, that's correct.

6 Q. You would make suggestions to him and he would be
the one

7 to say yea or nay?

8 A. That's correct, sir.

9 Q. All right. Let's continue on. How about Agent
Marcus

10 Williams? Was --

11 A. He was there in August.

12 Q. He was there in August. Not in December?

13 A. That's correct, sir.

14 Q. To your knowledge, did he have anything to do with
the mail

15 other than to go with you in August?

16 A. None whatsoever.

17 Q. All right. Special Agent Frank Godbold?

18 A. I can't answer anything about Agent Godbold.

19 Q. Don't know anything about him.

20 Agent Haman, H-A-M-A-N?

21 A. No information on him.

22 Q. Special Agent Margaret Wagner?

23 A. I don't know, sir.

24 Q. All right. Now I'm going to read some names and
ask you if

25 you recognize any of them. Andre Ashley?

207

Bret Kirby - Redirect

1 A. Don't recognize that.

2 Q. Kim Grossman?

3 A. Don't know.

4 Q. Marianne Poole?

5 A. Don't know.

6 Q. Kelly Schultz?

7 A. No, sir.

8 Q. Teresa Torres?

9 A. No, sir.

10 Q. Are you now assigned to Denver in the OKBOMB Task
Force?

11 A. No, sir, I'm not.

12 Q. You are still in Oklahoma City?

13 A. No, sir. I'm an agent out of the Baltimore
division.

14 Q. You're now in Baltimore?

15 A. Yes, sir.

16 Q. So do you have any day-to-day responsibility in
connection

17 with the OKBOMB investigation?

18 A. No, sir.

19 Q. When's the last time that you had any such day-to-
day

20 responsibility?

21 A. January 30, 1996.

22 MR. TIGAR: Thank you, very much, Agent.

23 THE WITNESS: Yes, sir.

24 MR. ORENSTEIN: Nothing further, Judge.

25 THE COURT: You're going to excuse him?

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And based 1 MR. TIGAR: Yes, we excuse him, your Honor.

is not 2 on that, if I assume the Government knows the facts and

Beaver, 3 going to contradict him, we would not call Agents

4 Clancy, Denny, Gregory, Lacombe, and Williams.

us. I

5 MR. ORENSTEIN: Your Honor, that's fine with

would

6 can report to the Court that I believe all of those

prison

7 testify if called that they did not review Mr. Nichols'

about

8 mail or send out any leads or consult with other agents

9 the contents of Mr. Nichols' prison mail.

witness?

10 THE COURT: Didn't review the mail with this

and

11 MR. ORENSTEIN: No. Some of them were there

12 reviewed only Mr. McVeigh's prison mail.

13 THE COURT: I see.

is a

14 MR. TIGAR: I think, your Honor, what we have

15 picture of how it was collected.

16 THE COURT: Yes.

of these

17 MR. TIGAR: And we can now go on and get some

take the

18 other witnesses out of the way very quickly and then

have

19 next -- take the next step with the witnesses who would

that

20 had some responsibility for what to do with it. So in

21 case, we'd call Agent Godbold as our next witness.

22 THE COURT: You may step down.

23 MR. TIGAR: This witness may step down. I'm

sorry,

24 your Honor. I thought that would shorten it if I could
get

25 through this.

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agents, 1 THE COURT: Yes. You're discussing these

2 Beaver, Clancy, Denny, Gregory, Lacombe, and Williams?

3 MR. TIGAR: That's correct.

4 THE COURT: Perhaps we can take the recess
now, they

5 can be notified they are being excused, and they don't
have to

6 wait around.

7 MR. TIGAR: Yes, your Honor. In the recess,
we could

8 talk to Government counsel and maybe we could figure
out if

9 there's some other person who might come in and do the
same

10 thing Agent Kirby did with respect to some of these
other

11 folks.

12 THE COURT: We'll take 20 minutes.

13 MR. TIGAR: Thank you, your Honor.

14 (Recess at 3:15 p.m.)

15 (Reconvened at 3:37 p.m.)

16 THE COURT: Be seated, please.

17 Mr. Tigar?

18 MR. TIGAR: Your Honor, during the recess, we
have
19 agreed with the Government to excuse Special Agent
Frank
20 Godbold on the understanding that his sole role was to
collect
21 some mail. He didn't read any.

22 MR. ORENSTEIN: That's correct, and he also
sent out
23 no leads.

24 THE COURT: Thank you.

25 MR. TIGAR: And thus -- and we're also going
to excuse

210

1 all of the rotors except for Kelly Schultz, who we will
call.
2 The others had the same role that Ms. Babbit described
in
3 filing, indexing, stamping, and so on.

4 MR. ORENSTEIN: That's correct, Judge; to a
much
5 lesser extent, but they didn't do anything that Ms.
Babbit did
6 not.

7 THE COURT: All right.

8 MR. TIGAR: That leaves us with Special Agent
Haman,
9 Special Agent Wagner, and then agents Baker and
Defenbaugh.

10 THE COURT: And Kelly Schultz.

11 MR. TIGAR: Yes. And Kelly Schultz. Excuse
me, your

12 Honor.

13 THE COURT: Okay.

14 THE COURTROOM DEPUTY: Would you raise your
right

15 hand.

16 (William Haman affirmed.)

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

18 Would you state your name for the record and
spell

19 your last name.

20 THE WITNESS: William C. Haman, H-A-M-A-N.

21 THE COURTROOM DEPUTY: Thank you.

22 DIRECT EXAMINATION

23 BY MR. TIGAR:

24 Q. Agent Haman, my name is Michael Tigar. I'm one of
the

25 lawyers for Terry Lynn Nichols.

1 You're a special agent of the FBI?

2 A. Yes, sir.

3 Q. How long have you been?

4 A. Almost nine years.

5 Q. What's your formal education?

6 A. I went to undergraduate and graduated from law
school in

7 1988.

8 Q. Where did you go to law school?

9 A. Louisiana State University.

10 Q. Baton Rouge?

11 A. Yes, sir.

12 Q. I'm not unrelated to their mascot, Mike, the Tiger.
You

13 knew that?

14 A. Now, I do.

15 Q. Did you go directly into the FBI out of law school?

16 A. Yes, sir, I did.

17 Q. And when did you get assigned to the OKBOMB case?

18 A. I first went there in -- March 23, 1996.

19 Q. Did you report to Denver or to Oklahoma City?

20 A. That would have been to Oklahoma City.

21 Q. Did you make the move to Denver with the rest of
the group?

22 A. No, sir.

23 Q. How long have you worked under -- did you work on
the

24 OKBOMB case?

of 25 A. Five weeks, I believe it was. It was till the end

212

William Haman - Direct

1 April, right whenever the move was taking place.

some 2 Q. As a part of your responsibilities, did you review

3 mail sent to or from Terry Nichols at El Reno?

4 A. Yes, sir, I believe I did.

5 Q. Did you make any memoranda of your review?

6 A. No, sir.

7 Q. Who told you to review?

have 8 A. I don't recall specifically, but I believe it would

of the 9 been Mark White or Kathleen Kuker. They were in charge

10 lead agents at the time.

11 Q. I'm sorry. The name Kathleen?

12 A. Kuker, I believe was her last name.

13 Q. And how do you spell that, sir?

14 A. I'm not certain.

15 Q. How many pieces of mail did you review?

16 A. Of which person?

17 Q. Well, all we're looking at is Mr. Nichols' mail.

18 A. Probably less than 20 pieces of his.
19 Q. And what were you told to do with it, the mail?
20 A. There was specific -- there was a piece of paper
with
count it
determine
21 categories that you were told to review that mail,
22 into that category, if you could categorize it, and
23 if there was anything of value for the investigation or
24 prosecution.
25 Q. Who gave you the piece of paper?

213

William Haman - Direct

was just
devised
it and
mail that
and
1 A. The piece of paper was there next to the mail. It
2 sitting there on the table.
3 Q. Do you know who had written that piece of paper,
4 the categories on it?
5 A. No, sir, I do not.
6 Q. What did you do with the mail once you'd reviewed
7 categorized it?
8 A. Would have been placed in a box separate from the
9 had not been reviewed.
10 Q. Did you make markings on it for the rotor to index

11 serialize?
12 A. Yes. On the mail?
13 Q. Yes, on the mail.
14 A. No, sir.
15 Q. Did you mark any names or addresses or other
distinguishing
16 information?
17 A. No, sir.
18 Q. What was your understanding as to what was to
happen with
19 the mail after you put it in that box?
20 A. I had no idea what was going to happen to it.
21 Q. Did you have any conversations with anybody about
what you
22 had found in the mail?
23 A. No, sir, I did not.
24 Q. All you did was get a stack of letters, look at
them, put
25 them in categories, put them in a box. Is that right?

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William Haman - Direct

1 A. That's correct.
2 Q. Did anybody ever come back to you afterwards and
say, Did
3 you see anything important about the mail?
4 A. No, sir.

for this
in
5 Q. Has anybody up till the time you began to prepare
6 hearing ever come to you and asked you about your work
7 sorting and categorizing the mail?

8 A. No, sir.

your
9 Q. So far as you're concerned, that was the limit of
10 responsibility. Is that correct?

11 A. As far as that was concerned, yes, sir.

or other
correct?
12 Q. Just to be sure, you didn't make any 302's or ECs
13 memoranda or writing about your review. Is that

14 A. Yes, sir.

15 MR. TIGAR: Nothing further, your Honor.

16 MR. MEARNS: Very briefly, your Honor.

17 THE COURT: All right.

18 CROSS-EXAMINATION

19 BY MR. MEARNS:

you send
20 Q. Agent Haman, based on your review of the mail, did
21 out any leads?

22 A. No.

review
23 Q. To your knowledge, did any other agent or any other
24 employee of the FBI send out any leads based upon your
25 of Mr. Nichols' mail?

William Haman - Cross

1 A. No.

2 MR. MEARNS: Thank you, your Honor.

3 THE COURT: All right. I take it he's
excused.

4 MR. TIGAR: He is excused, your Honor.

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

6 THE WITNESS: Thank you.

7 THE COURT: Next, please.

8 MR. TIGAR: Special Agent Wagner.

9 THE COURTROOM DEPUTY: Raise your right hand,
please.

10 (Margaret Wagner affirmed.)

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

12 Would you state your full name for the record
and

13 spell your last name.

14 THE WITNESS: Margaret Ann Wagner, W-A-G-N-E-
R.

15 THE COURTROOM DEPUTY: Thank you.

16 DIRECT EXAMINATION

17 BY MR. TIGAR:

18 Q. Special Agent Wagner, my name is Michael Wagner and
I'm one

19 of the lawyers for Terry Nichols.

20 How long have you been a special agent?

21 A. Ten years, sir.

22 Q. What is your formal education?

23 A. I have a bachelor's degree, major in accounting.

24 Q. And before becoming a special agent, did you have
some

25 other work?

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Margaret Wagner – Direct

1 A. Yes, sir. I worked in the banking industry as an
auditor.

2 Q. For how long?

3 A. About five years.

4 Q. And then did you join the FBI?

5 A. Yes, sir.

6 Q. As a special agent?

7 A. Yes, sir.

8 Q. This is a hearing about the review of Terry
Nichols' mail

9 that he sent out of where he was being held and that he
10 received there. What did you have to do with that?

11 A. Well, for a short while, when I first got here to
Denver

12 last spring, I was responsible for reviewing some of
the mail.

13 Q. Who gave you that assignment?
14 A. I'm not specifically positive, but it may have been
Pam
15 Matson.
16 Q. You arrived here in Denver when?
17 A. I believe it was April of last year, 1996, early
April.
18 Q. When were you given the assignment to look at the
mail?
19 A. I believe that was within the first week that I
arrived
20 here. It was for a couple of days, a week at the most.
21 Q. And were you working in the lead pool?
22 A. I was, sir, yes.
23 Q. Who was in charge of the lead pool?
24 A. Pam Matson.
25 Q. Is that what makes you think that is probably the
one that

217

Margaret Wagner - Direct

1 gave you the assignment?
2 A. Yes, sir.
3 Q. Well, whoever gave you the assignment, what did
that person
4 tell you to do?
5 A. What I was to do was to go through -- there was a
box of

6 mail that had been received by both Mr. Nichols and Mr.
McVeigh
7 at the prison, and I was tasked with going through that
mail
8 and reading it and then putting it into some general
categories
9 that had been established and then also just reviewing
the mail
10 to see if there was any evidence whatsoever of possibly
11 co-conspirators.

12 Q. You said mail received by Mr. McVeigh and Mr.
Nichols. Did
13 the mail you reviewed include mail that Mr. Nichols had
sent to
14 anyone?

15 A. No. No, it was just mail that was addressed to
them at the
16 prison.

17 Q. And exactly what date did you arrive and start work
at the
18 Denver headquarters?

19 A. I'm sorry, sir. I don't know the exact date. I
would say
20 it was the first week of April, 1996.

21 Q. In any case, it was after the middle of March; is
that
22 right?

23 A. Yes.

24 Q. Now, was there a piece of paper on which these
categories
25 appeared?

Margaret Wagner – Direct

1 A. Yes, sir.

2 Q. Who had written that piece of paper, if you know?

3 A. I don't know.

4 Q. What were the categories?

5 A. I think there were probably eight or nine
categories. I

6 don't remember them all. As I recall, there was a
category for

7 letters from friends and possibly family. I think
there was a

8 category for letters from religious groups possibly.

9 Q. Was that a religious conversion category? Do you
remember

10 those words?

11 A. I'm sorry. I don't specifically recall.

12 Q. All right. Go ahead. Was media a category?

13 A. I believe so. It may have been.

14 Q. Letters of support? Was that a category?

15 A. Possibly.

16 Q. Tell me others that you remember right now. I know
it's a

17 long time ago, but please do your best.

18 A. The ones that you've mentioned and ones that I have

19 mentioned are the -- as specific as I can recall right

now.

20 Q. And you remember there were eight or nine such
categories;

21 correct?

22 A. Roughly.

23 Q. And after you sorted the mail into those
categories, what

24 did you do with it?

25 A. With the mail? Put it back in the box; and I'm not
exactly

219

Margaret Wagner – Direct

1 sure who I gave it to, but if it was Pam Matson that
assigned

2 me the job, I may have given it back to her. I don't
recall

3 exactly.

4 Q. Did Ms. Matson tell you to make markings on the
letters

5 underlining names or addresses?

6 A. No, sir. I didn't do that.

7 Q. Did she tell you to make any markings on the
letters to

8 identify the sender and the recipient?

9 A. No, sir.

10 To my recollection, I made no markings on the
letters.

11 The only markings I made were tick marks that put the

letters

12 in the various categories that had been established.

13 Q. Did you write any memoranda of any kind about what
you had

14 done?

15 A. The only documentation that I recall doing was very
rough,

16 just making tick marks by the categories. Other than
that, I

17 didn't do any other documentation.

18 Q. And the tick marks that you made: Were they on a
sheet of

19 paper that had the categories and then you would count
the

20 number of letters that were in each category?

21 A. I didn't necessarily count them. I just put the
tick marks

22 beside the categories. That's all I did.

23 Q. If I'm understanding you, you had a piece of paper
with the

24 categories; and then alongside each category, you
marked -- put

25 a tick mark each time a letter fell into that category.

220

Margaret Wagner - Direct

1 Is that right?

2 A. Yes, sir. Yes, sir.

3 Q. And that's the only documentation?

4 A. That I recall, yes, sir.

5 Q. Did you have any conversation with Ms. Matson about
6 anything you had found in the letters?

7 A. No, sir.

8 Q. Did you have any conversation with anyone about
what you
9 had found in the letters?

10 A. No, sir.

11 Q. Since you did that job, has anybody come to you and
asked
12 you about what you saw in the letters?

13 A. No.

14 Q. So you weren't involved in anything, if anything at
all
15 happened, to do with any investigative use that might
have been
16 made of it. Is that right?

17 A. That's right.

18 Q. You just wouldn't know anything about that;
correct?

19 A. That's correct.

20 MR. TIGAR: No further questions, your Honor.

21 MR. ORENSTEIN: Very briefly, your Honor.

22 THE COURT: All right.

23 CROSS-EXAMINATION

24 BY MR. ORENSTEIN:

25 Q. Good afternoon, Agent Wagner.

Margaret Wagner – Cross

1 A. Good afternoon.

2 Q. Did you review all of the mail that was in the box
that you

3 had available to you?

4 A. I'm not sure if I got through all of it when it was
5 reassigned to someone else. I can't recall.

6 Q. So you know that it was later reassigned to someone
else?

7 A. Yes, sir.

8 Q. While you were involved with the project, did you
prepare
9 any memoranda, generate any paperwork describing the
contents

10 of the mail other than the tick marks?

11 A. No, sir.

12 Q. Did you send out any leads?

13 A. No, sir.

14 Q. To your knowledge, were any leads sent out as a
result of

15 the review of Mr. Nichols' prison mail?

16 A. As a result of my work?

17 Q. Or of anyone's review of Mr. Nichols' prison mail?

18 A. Not to my knowledge.

19 MR. ORENSTEIN: I have nothing further, your
Honor.

20 Thank you.

21 MR. TIGAR: Thank you, your Honor. She may be
22 excused, please.

23 Rotor Schultz, please.

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

25 THE COURTROOM DEPUTY: Would you raise your
right

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Margaret Wagner – Cross

1 hand, please.

2 (Kelly Schultz affirmed.)

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

4 Would you state your full name for the record
and

5 spell your last name.

6 THE WITNESS: Kelly Lynn Schultz, S-C-H-U-L-T-
Z.

7 THE COURTROOM DEPUTY: Thank you.

8 DIRECT EXAMINATION

9 BY MR. TIGAR:

10 Q. Good afternoon, Ms. Schultz.

11 A. Hello.

12 Q. My name is Michael Tigar. I'm one of the lawyers
for Terry

13 Nichols.

14 You work at the FBI?

15 A. Yes, I do.

16 Q. How long have you worked at the FBI?

17 A. Almost ten years.

18 Q. Are you a part of the OKBOMB group today?

19 A. Yes, I am.

20 Q. When did you first get assigned to work with the
OKBOMB

21 group?

22 A. I worked -- I did six-week temporary duty
assignments, one

23 time in April of '96 and one time in October of '96.

24 Q. Is that the sole contact you had with the group?

25 A. Yes.

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Kelly Schultz - Direct

1 Q. And other than those two temporary duty
assignments, what

2 do you do at the FBI?

3 A. I work in the Milwaukee office and I'm an IA,
investigative

4 analyst.

5 Q. Now, on one of the tours that you had here in
Denver, did

6 you have something to do with Mr. Nichols' mail?

7 A. Yes.

8 Q. Were you a rotor?

9 A. Yes.

10 Q. Now, a rotor is the file clerk who takes care of
making

11 sure that things are properly filed after they've been
reviewed

12 by the agent. Is that right?

13 A. Yes.

14 Q. Well, I think in front of you you'll find a volume
that has

15 38 numbered tabs in it. Can you look for that, please.
And

16 would you turn to tab No. 36.

17 Do you see a file stamp in the lower right
corner

18 there?

19 A. Yes.

20 Q. Did you put that on there?

21 A. Yes, I did.

22 Q. Did you put it on after that item of mail had been
reviewed

23 by someone?

24 A. Yes, I did.

25 Q. That had been reviewed by Sheila Lawson?

1 A. I don't know who checked it or reviewed it.
2 Q. Did you have any conversation with the agent who
reviewed
3 the letter?
4 A. No.
5 Q. Going through that data stamp, we see 174A-
OC-56120.
6 That's the case number; correct?
7 A. Yes, it is.
8 Q. And that's on the stamp as you stamped it; correct?
9 A. No. It's a separate stamp by itself.
10 Q. It's a separate stamp from the square stamp?
11 A. Yes.
12 Q. Then we see YY-1016. You put that on there;
correct?
13 A. Yes.
14 Q. How did you know to put YY on there?
15 A. Because I knew that was the subfile assigned for
the
16 letters.
17 Q. That's the subfiling of the 1As?
18 A. Not 1As, no. Just the letters.
19 Q. I see. That's a subfile created for letters.
20 Who had told you that?
21 A. The rotor clerk when I first came in April. I was
trained
22 by a rotor clerk, Lee Anna Babbit; and there was a list
that we

23 went by.

24 Q. And that -- and the list was a list of the various
subfiles

25 that were being maintained; is that correct?

225

Kelly Schultz - Direct

1 A. Yes.

2 Q. And so -- and that list of subfiles included
various

3 investigative subjects; is that right?

4 A. Yes.

5 Q. During the time that you were there on temporary
6 assignment, you were responsible for filing things in
more than

7 one of those categories; correct?

8 A. Yes.

9 Q. And this was just another one of the investigative
10 categories that had been set up; is that right?

11 A. Yes.

12 Q. Now, in the corner of that stamp are the initials
JM. Who
13 put those there?

14 A. I did.

15 Q. Now, how did you know to put the initials JM?

16 A. That's what I was told when I was trained when I
got there

17 the first time.

18 Q. By Ms. Babbit?

19 A. Yes.

20 Q. Who is JM?

21 A. I believe that's Jack McCoy.

22 Q. And what did putting the initials JM signify?

23 A. That would be the supervisor's initials.

24 Q. Did -- but what would tell you that you should put
those

25 initials there? What had to happen in order for you to
be able

226

Kelly Schultz - Direct

1 to put them there?

2 A. It had gone through the supervisor. He had
reviewed it and

3 it would come to me to be filed.

4 Q. So if you picked it up and -- how would you know
that it

5 had gone through the supervisor?

6 A. That's what I was told the procedure was in the
office;

7 that it went through the supervisor and it would come
to us to

8 be filed.

9 Q. And where did you physically get this object to put
the

deck? 10 stamp on it? Was it in a box, an in box near your

that I 11 A. Yes, it would be in with all the rest of the mail

12 would be handling, this document.

out of 13 Q. So you would pick this out; and when you picked it

Papovich 14 the box, what you would see basically is Bob and Sandy

15 here on the envelope which are underlined; correct?

16 A. Yes.

their 17 Q. And when you got it, was there that line through

18 names?

19 A. No. It would be -- they were underlined.

20 Q. They're just underlined?

21 A. Right.

And how 22 Q. And then you would see these pages of the letter.

23 would you know what to do with it, then?

when we get 24 A. Well, part of the procedure of being a rotor is

things are 25 the document, we would -- it's called indexing, when

227

Kelly Schultz - Direct

put the 1 underlined; and we would index it into our computer,

2 name on it.

3 Q. So you would know if it was underlined, someone
wanted that

4 index; correct?

5 A. Yes.

6 Q. Who was that that wanted it indexed?

7 A. I don't know.

8 Q. Somebody in the chain of command?

9 A. Right.

10 Q. I'm sorry?

11 A. It would be either the agent or the supervisor.

12 Q. When you say index it into the computer, you mean
you'd put

13 Bob and Sandy Papovich's name into the computer; right?

14 A. Right.

15 Q. Would you go to a file in the Papovich's name or
would you

16 call their name out of the computer and add that to an
existing

17 file, or would you just put it in there?

18 A. It would be -- it would depend. I would put it to
the sub

19 YY and put it up to the computer. If it had been
indexed

20 before, I would see that and add the serial number. If
it

21 hadn't, I would add that at that time.

22 Q. So that if there had been other YY materials in
there that

it to 23 carried the name Bob and Sandy Papovich, you would add
24 that; right?
25 A. Right.

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Kelly Schultz – Direct

Papovich 1 Q. If there had been references to Bob and Sandy
2 somewhere else in the system, would that pop up on your
3 computer?

4 A. No, because I was just entering it into sub YY.

just 5 Q. Just YY. Now, how did you know that this was a YY
a list? 6 sitting there in the in box? Is that because there was

7 If it said prison mail, it was supposed to go into YY?

8 A. Yes.

have a 9 Q. If it had been about some other subject, you would
10 list of the subjects and their subfiles; right?

11 A. Yes.

12 Q. So you would index it.

1016; 13 Now, "serialize" just means you put the No.

14 right?

15 A. Yes.

cabinet? 16 Q. "Filed" means you actually put it into a file
17 A. Yes.
18 Q. Now, was that a locked file cabinet?
19 A. Yes. The main volumes would be kept in an open one
during
20 the day while a rotor clerk was there. If I was not --
I went
21 to lunch or was going to be gone for the day, it would
be
22 locked. But otherwise, it was open during the day.
23 Q. And who had the key?
24 A. The rotor clerk.
25 Q. Lee Anna Babbit?

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Kelly Schultz - Direct

It was 1 A. It was on her desk. It was the desk we were using.
2 kept there.
3 Q. I see. Is this an open area, where -- for
instance, if
4 Mr. Hartzler wanted to look in that file cabinet, could
he come
5 and get the key and use it, look in the file cabinet?
6 A. I don't know who that is, but --
7 Q. He'll be distressed to know that. If Mr. Mackey --
do you
8 know who that is?

9 A. Yes.

10 Q. If he wanted to go look at the file, could he just
come in

11 and get the key and go open the file and look?

12 A. He probably wouldn't know where it is. There is
only a few

13 people that know where it is, so they'd ask me to do it
for

14 them.

15 Q. Well, assuming that he had help, he could do it;
right?

16 A. Yes, he could.

17 Q. That is, by virtue of his position, he could go in
there;

18 right?

19 A. Yes.

20 Q. All right. And was there a system for charging out
the

21 files, if somebody wanted to take the file away with
them?

22 A. Yes. I believe usually we wouldn't let them take
the

23 real -- the original files with them. If they wanted
something

24 to keep, I would make a copy for them. If they just
wanted to

25 look at it, they could take it to their desk and then
return it

Kelly Schultz – Direct

1 later.

to keep

2 Q. How would you keep track of the fact that -- I hate

get it

3 using Mr. Mackey -- had that at his desk so you could

4 back if you wanted it?

5 A. We have charge-out sheets that we would sign.

knew to be

6 Q. Now, if somebody came in, a prosecutor, who you

YY file,

7 someone who said I want a copy of such and such in the

8 would you just go make them a copy and give it to them?

9 A. Yes.

thing

10 Q. Now, what record would you have of what particular

11 you had made a copy of for them?

actually

12 A. I wouldn't keep a record of that; just if they

13 took a file.

wanted a

14 Q. I see. Only if they took a file. If they just

of it.

15 copy of it to take away with them, there is no record

16 Right?

17 A. No, I believe not.

18 MR. TIGAR: Pass the witness.

19 CROSS-EXAMINATION

20 BY MR. ORENSTEIN:

21 Q. Good afternoon, Ms. Schultz.

22 Did you ever, to your knowledge, make any
copies of

23 Mr. Nichols' prison mail?

24 A. No.

25 Q. If Mr. Mackey did come to you or did want to find
the

231

Kelly Schultz – Cross

1 contents of the YY subfile, you told Mr. Tigar that
he'd need

2 some help getting that. Who would he go to for that
help?

3 You?

4 A. Yes.

5 Q. Did he ever do that?

6 A. No.

7 Q. To your knowledge, did anyone else connected with
the case

8 come to you for assistance in finding the prison mail?

9 A. No.

10 Q. Did you ever receive any requests to make copies of
the

11 prison mail?

12 A. No.

13 Q. And did you ever make copies of the prison mail?

14 A. No.

15 Q. Did you ever see any charge-out slips for the
prison mail?

16 A. No.

17 MR. ORENSTEIN: I have nothing further, your
Honor.

18 Thank you.

19 MR. TIGAR: Thank you very much, your Honor.

20 She may be excused.

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

22 MR. WOODS: We call Mr. Baker.

23 THE COURTROOM DEPUTY: Pardon?

24 MR. WOODS: Mr. Baker, Agent Baker.

25 THE COURTROOM DEPUTY: Thank you.

232

1 Would you raise your right hand, please.

2 (Richard Baker affirmed.)

3 THE COURTROOM DEPUTY: Would you state your
full name

4 for the record and spell your last name.

5 THE WITNESS: Richard R. Baker, B-A-K-E-R.

6 DIRECT EXAMINATION

7 BY MR. WOODS:

8 Q. Good afternoon, Mr. Baker. My name is Ron Woods.

I'm one

9 of the lawyers representing Terry Lynn Nichols.

10 You're a special agent with the FBI. Is that
correct?

11 A. Yes, I am.

12 Q. How long have you been with the FBI?

13 A. 19 years.

14 Q. What is your educational and work background that
qualified
15 you to become an FBI agent?

16 A. I graduated from Wichita State University, and I
was a
17 police officer seven years before then -- I came in.

18 Q. What is your current position?

19 A. Supervisory special agent, Oklahoma City.

20 Q. Where?

21 A. Oklahoma City.

22 Q. How long have you been assigned to Oklahoma City?

23 A. Seven years.

24 Q. In April of '95, were you a supervisor?

25 A. Yes, I was.

233

Richard Baker - Direct

1 Q. What squad were you a supervisor of prior to the
bomb?

2 A. I was on the Squad 4, which had the terrorism and

working 3 counter-intelligence squads, plus six resident agencies

4 criminal matters.

Bomb 5 Q. And then on April 19, '95, you were assigned to the

6 Task Force; is that correct?

7 A. Yes, sir.

issuing the 8 Q. As I recall on April 21, you were involved in

warrant. You 9 warrant for Terry Nichols, the material witness

Oklahoma 10 were part of a communication between Kansas City and

with 11 and Herington. You were on the phone during that time

12 Washington; is that correct?

Washington. 13 A. I was on the phone with Kansas City, not with

14 I believe that was probably handled by others.

that 15 Q. Well, it's a side issue, but your name came up at

16 time.

'96 with 17 Did you make the move over here in April of

18 the Task Force?

19 A. You mean to Denver?

20 Q. Yes, sir.

21 A. No, sir, I stayed in Oklahoma City.

22 Q. And you haven't been over here?

23 A. I have come up on occasion to assist in certain
elements.

24 Q. All right. But you've never come over and
physically

25 officed -- been part of this Task Force here in Denver
except

234

Richard Baker - Direct

1 just on a temporary basis?

2 A. That's correct.

3 Q. All right. As you're aware, we're focusing in on
-- today

4 on the copying and dissemination and examination of
Terry Lynn

5 Nichols' prison mail. And if you would, in front of
you there

6 is an exhibit, Exhibit E, which is in a plastic folder.

7 A. Yes.

8 Q. And if you would turn to Bates' stamp page No. 73.

9 Have you seen this memo before, Mr. Baker?

10 A. Yes, I have.

11 Q. Have you reviewed it recently?

12 A. Yesterday.

13 Q. Okay. Thanks.

14 Now, what was -- this memo was approved by you
as

15 written by Donna Wech. What was your role vis-ö-vis
Donna Wech

16 and Inspector in Place Jack McCoy who this memo is
directed to

17 the attention of?

18 A. Jack McCoy was the inspector in place, which was
the second

19 person in command at the command post. I was the
operations

20 supervisor, which would be below that, that position.

21 Donna Wech was on, I believe -- in the lead
pool and

22 would have been working under the direction of Mark
White.

23 Q. Now, did you assign her the task of drafting this
memo?

24 A. I did not.

25 Q. Why is it approved by you?

235

Richard Baker - Direct

1 A. The way the system is set up and the form is set
up, it has

2 to be approved by; and normally, they put the
supervisor's name

3 there.

4 Q. You were supervising the lead squad?

5 A. Mark White was supervising their activities. I had
several

6 entities in the squad area which I had team leaders
for. Mark

7 White was a team leader for that, and it was his
responsibility

8 to supervise that.

9 Q. All right. But in the hierarchy of things, it goes
to you

10 for your approval prior to going to the inspector in
place,

11 Jack McCoy?

12 A. On occasion. Sometimes it would go straight to the
13 inspector.

14 Q. Why did this one come to you?

15 A. I have no recollection that it did come to me.

16 Q. So the review of it yesterday was the first time
you

17 reviewed it?

18 A. Yes. Well, to the best of my recollection,
yesterday is

19 the first time I saw this, this memo.

20 Q. Do you have any recollection of Ms. Wech being
assigned the

21 task to document the approval to look at that mail?

22 A. Those instructions would have come from Mark White.
I did

23 not give specific assignments to the lead pool. I went
through

24 Mark White.

25 Q. Well, did you assign Mark White to assign somebody
to

Richard Baker - Direct

mail of 1 verify and document this approval to look at the prison
2 Terry Nichols?
directly. 3 A. I have no specific recollection of doing that
4 Q. Did you know who Mike Hood was?
5 A. No. Not at the time.
the 6 Q. Did Mark White ever report to you the results of
7 examination of the prison mail?
different 8 A. What we had was weekly conferences in which the
9 projects would be discussed during there and the
progress on 10 those projects. I have very little recollection about
the 11 prison mail in itself.
12 Q. What is your recollection, little though it be?
13 A. I do recall when it was being discussed as to
whether or 14 not to proceed with that and --
15 Q. What period are we talking about? When was that
discussion 16 involving whether or not we should proceed with it?
17 A. I believe it was in the fall of '95, but I don't
have a 18 specific date.
19 Q. Evidently, the decision was made to proceed with it

because

20 it proceeded on until November, '96. Do you recall any
results

21 being reported to you in these weekly staff meetings
when you

22 discussed the status of various projects ongoing?

23 A. I believe the endeavors at the prison to my
knowledge were

24 all negative.

25 Q. And was that reported to you by Mark White?

237

Richard Baker - Direct

1 A. I remember having that knowledge. I'm assuming it
came out

2 of the weekly conferences.

3 Q. When you say the endeavors at the prison, what are
you

4 speaking of?

5 A. Well, the letters.

6 Q. Well, you're aware that the letters were picked up
at the

7 prison and brought into the office for careful
examination and

8 evaluation, are you not?

9 A. I believe I was aware of that, yes.

10 Q. And they were kept in the office in the sub YY
file?

11 A. I don't know which subfile they were placed in.

12 Q. I'm sorry?

13 A. I can't remember which subfile they were placed in.

14 Q. Are you still a supervisor working on this case at
all?

15 A. I still have responsibilities for the investigation
we're

16 doing in the Oklahoma City division, yes.

17 Q. So you're keeping current with it, I take it?

18 A. As best I can. Not as current as I was when I was
assigned

19 full-time.

20 Q. And is it your testimony, then, the only
recollection you

21 have of someone below you reporting up the results of
the

22 review is that it's unproductive? Was that your term?

23 A. Well, there was nothing of investigative value,
yes.

24 Q. Who made the decision to keep it in the FBI files?

25 A. I do not know that.

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Richard Baker - Direct

1 Q. And when you say investigative value, you mean
solely to

2 set out a lead to go interview somebody; is that
correct?

3 A. Yes, to follow up investigation. Yes.

4 Q. But the mail itself has value to look at and
determine who

5 Terry Nichols is, doesn't it?

6 A. I think the purpose of that was to determine if
there were

7 any other potential suspects and possibly determine if
there

8 was any other evidence. I don't think we were looking
at it

9 from determining who he was.

10 Q. Well, do you know? Your recollection is -- you
seem to be

11 fairly vague on what your recollection is of what
people

12 reported to you; but do you know if that was one of the
reasons

13 for keeping it and analyzing it, is to learn who Terry
Nichols

14 was?

15 A. I've never heard that discussed.

16 Q. Based on your review of this memo on page 73, which
17 apparently only took place yesterday, was it -- is it
your now

18 opinion that you had legal authority to review the mail
that

19 was incoming to Mr. Nichols?

20 A. When those matters were discussed in the beginning,
the

21 division counsel was there; and it was my understanding
any --

22 all those questions were answered before any attempt
was made

23 to review the mail.

24 Q. Why was this memo written, then, on March 8 of '96
25 concerning the legal authority to review the mail?

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1 MR. ORENSTEIN: Objection, Judge. Agent Baker
said he

2 wasn't involved in that process.

3 THE COURT: Apparently the witness has no
knowledge to

4 answer that.

5 THE WITNESS: That's correct.

6 BY MR. WOODS:

7 Q. You just informed us that it's your understanding
that the

8 legal counsel, Mr. Gibbons -- is that who you're
speaking of?

9 A. Yes.

10 Q. -- had informed you that it was legal. Is that
correct?

11 A. I don't know that he informed me personally. I
know that

12 that process -- when they were discussing it, he was
involved

13 in that and that's his position, to ensure that those
matters

14 are taken care of.

to 15 Q. And it was legal to review both the incoming mail
16 Mr. Nichols and the outgoing mail that Mr. Nichols
personally 17 wrote, himself?

18 MR. ORENSTEIN: Objection, Judge. It's beyond
the 19 scope of this hearing, as I understood --

20 THE COURT: Overruled.

21 BY MR. WOODS:

22 Q. Is that what Mr. Gibbons told you?

23 A. I'm sorry. Could you repeat the question.

24 Q. Yes, sir. Did Mr. Gibbons, the legal counsel for
the

and 25 Oklahoma division, inform you that it was legal to copy

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Richard Baker - Direct

but also 1 review both Mr. Nichols' incoming mail into the prison
2 his outgoing mail, that mail that he personally wrote
to his 3 family and friends?

4 A. I don't recall discussing that with Mr. Gibbons.

5 Q. Do you recall anything about the contents of any of
the 6 letters?

7 A. I never reviewed any letters.

8 Q. And nobody discussed the content with you?

9 A. No, other than that there was no lead value in
them.

10 MR. WOODS: Thank you, Mr. Baker.

11 MR. ORENSTEIN: No questions, Judge. Thank
you.

12 THE COURT: I take it he's excused.

13 You may step down. You're excused.

14 THE WITNESS: Thank you, sir.

15 MR. WOODS: Your Honor, excuse me one second.
I do

16 have just one question.

17 THE COURT: Oh, all right.

18 MR. WOODS: I apologize.

19 BY MR. WOODS:

20 Q. Mr. Baker, was Mr. McCoy present at these meetings
that

21 were just discussed where the results were reported up
at the

22 staff meetings, results of the prison review?

23 A. We had staff meetings every week. To say that he
was there

24 at every one would not be correct. He was absent at
some, I

25 was absent at some. And to say that he was
specifically there

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1 on -- for a certain time, I can't do that.

Agent 2 Q. Do you recall whether or not he was there when

3 Gibbons informed you of the legality of this search?

4 A. I do not recall Mr. Gibbons' informing me of that.

5 Q. Do you know whether or not Mr. McCoy was the one
that

6 assigned Donna Wech to do this memo?

7 A. I do not know.

8 MR. WOODS: Thank you, your Honor. I
appreciate the

9 Court's patience.

10 MR. ORENSTEIN: Still no questions, Judge.

11 THE COURT: Now you're excused.

12 MR. WOODS: And our last witness is Agent
Defenbaugh.

13 THE COURT: Okay.

14 THE COURTROOM DEPUTY: Would you raise your
right

15 hand, please.

16 (Danny Defenbaugh affirmed.)

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

18 Would you state your full name for the record
and

19 spell your last name.

20 THE WITNESS: Danny A. Defenbaugh,

21 D-E-F-E-N-B-A-U-G-H.

22 THE COURTROOM DEPUTY: Thank you.

23 DIRECT EXAMINATION

24 BY MR. WOODS:

25 Q. Mr. Defenbaugh, my name is Ron Woods. I'm one of
the

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1 lawyers representing Terry Nichols.

2 You and I met many years ago; is that correct?

3 A. Yes, sir, that's correct.

4 Q. You're an inspector in charge of this whole case,
this

5 Oklahoma City bombing case; is that correct?

6 A. Yes, sir.

7 Q. And when were you appointed to be the inspector in
charge?

8 A. May 1, 1995.

9 Q. Where were you assigned in April of '95?

10 A. I was under transfer as the assistant special agent
in

11 charge of our Mobile office in Alabama to a promotion
to a

12 full -- one of the five full inspectors at our
headquarters in

13 Washington, D.C.

14 Q. How long have you been with the FBI, Mr.
Defenbaugh?

15 A. Over 28 years.

16 Q. All right. What was your educational and work
experience

17 prior to the FBI?

18 A. High school.

19 Q. Well, you're a special agent. What educational
20 achievements did you obtain to qualify yourself for a
special

21 agent?

22 A. I have a bachelor of science degree in
administration of

23 justice from American University in Washington, D.C. I
also

24 have a master's of forensic science from George
Washington

25 University in Washington, D.C.

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Danny Defenbaugh – Direct

1 Q. And as a matter of fact, you were in the laboratory
for a

2 number of years; is that correct?

3 A. On two different occasions, yes, sir, that's
correct.

4 Q. Total of how many years?

5 A. A little over 13.

6 Q. And at one time, were you the bomb or the
explosives expert

7 in the laboratory, one of them?

8 A. I was one of the explosives and hazardous devices
9 specialists in the Explosives Unit of the FBI
Laboratory, yes,
10 sir.

11 Q. Is that -- did you have the position before Dave
Williams
12 as to the principal bomb technician or bomb person
within the
13 laboratory?

14 MR. ORENSTEIN: Object. Relevance, Judge.

15 THE COURT: Is that related to this matter?

16 MR. WOODS: Your Honor, it is, in that it's
bringing
17 out his experience as the inspector in charge of the
case, but
18 I'll move on --

19 THE COURT: All right.

20 MR. WOODS: -- beyond it.

21 BY MR. WOODS:

22 Q. In May, '95, you became the inspector in charge of
the
23 case; is that correct?

24 A. Yes, sir, that's correct.

25 Q. How many FBI personnel were under your supervision?

1 A. At one time, as many as, I believe, 253.

2 Q. Did there come a time when there was an assignment
to go to

3 the prison and obtain the prison mail of both
Defendants Terry

4 Lynn Nichols and Tim McVeigh?

5 A. Yes, sir, there was.

6 Q. And you were aware of that at the time?

7 A. Yes, sir, I was.

8 Q. And had -- what do you recall the initial decision
on

9 obtaining the prison mail, when that occurred and who
made it?

10 A. It would have been in the summer of 1995. The
decision was

11 actually -- the end result of the decision was actually
made

12 through our FBI headquarters and Department of Justice

13 personnel.

14 Q. And what action was taken once the decision was
made? How

15 did you obtain --

16 A. I believe a subpoena was issued for both
defendants' mails.

17 Q. And do you know whether or not that subpoena called
for the

18 incoming and outgoing mail of both defendants?

19 A. I'm sorry. At this time, I do not recall. I did
not

20 review the subpoena before this testimony.

21 Q. At any rate, the mail was collected in the summer
of '95 to
22 your knowledge. Is that correct?
23 A. I believe it began right around that time.
24 Q. And for what period of time did that mail or was
that mail
25 collected and analyzed until that project ended?

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1 A. With regard to the collection, it ceased at the
same time
2 of the court order to cease the review of the telephone
calls.
3 The actual review, it was only cursory until
the time
4 after we arrived here in Denver, which was post-April 8
of
5 1996.
6 Q. All right. So it's your testimony that the review
of the
7 mail was cursory until you got to Denver. You brought
the mail
8 with you from El Reno. You got to Denver in April,
'96, and
9 then how did the review change?
10 A. If I may, I don't believe that the mail was ever
brought.
11 We had photocopies that was given to us by the prison
system.

the FBI 12 Q. Well, you're correct. The copies of the mail that
brought 13 obtained from the prison. I'll state it that way. You
at 14 with you to Denver all of the mail that you had copied
15 El Reno; is that correct?

16 A. Yes, sir.

17 Q. And prior to that time, prior to arriving in
Denver, it had 18 been just a cursory review of it. Is that your
testimony?

19 A. Yes, sir; preliminary review to determine whether
or not 20 there was anything that would be substantive or needed
to be 21 handled immediately.

22 Q. When you say it was a cursory review, how -- what
was done?

23 How did you know it was a cursory review?

24 A. I received routine memoranda from -- there were
25 communications advising or categorizing the different
types of

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Danny Defenbaugh - Direct

from 1 mail that was being received; and from what I could see
not wait 2 that, it was nothing that would be probative or could

3 till later as far as a priority or investigative
priority.

4 Q. In fact, what they were doing is just making a
tally sheet

5 of various categories. Is that your recollection?

6 A. Primarily, yes, that is my recollection.

7 Q. So you received those memos and those tally sheets?

8 A. Probably not the original but copies, I imagine,
yes.

9 Q. Okay. Now, a decision was made after coming to
Denver that

10 we need to review that mail much more closely and
assign some

11 agents to analyze, sit down and read it and analyze it.
Is

12 that correct?

13 A. A number of our investigative priorities had been

14 completed, and we went on to next stages, yes, sir.

15 Q. And who made that decision to put agents on going
back and

16 reviewing it, underlining the names to index and
serializing it

17 and doing all the things you do to documents that you
feel are

18 significant?

19 A. The final decision, of course, would have been
mine.

20 Q. All right. So you made the decision that we need
to have

21 agents do this; is that correct?

agents or 22 A. I don't recall if I made the decision of being

23 analysts or both.

was begun 24 Q. At any rate, agents were brought in and a review

25 of the mail. Is that your recollection?

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1 A. Yes, sir.

2 Q. And do you know when that was done?

after -- 3 A. Exact time, no, sir, I don't recall. Sometime

4 after April 8.

5 Q. Yes, sir.

6 A. 1996.

you -- 7 Q. Inspector Defenbaugh, if you would look in front of

cover, and 8 there is an Exhibit E that's enclosed in a plastic

9 that is -- it's got a blue sticker Exhibit E on it?

10 A. Yes, sir.

I'll ask 11 Q. If you would turn to Bates' stamp page 73. And

12 you if you have seen that memo before today.

13 A. Yes, sir.

in March 14 Q. Did you see it at or about the time it was written

15 of '96?

16 A. Not to my recollection, no, sir. I saw it
yesterday.

17 Q. Yesterday for the first time?

18 A. Yes, sir.

19 Q. Do you recall back in that period right before you
moved to

20 Denver that there was a concern or at least an
assignment was

21 made to document the legality of reviewing the mail?

22 A. I'm sorry. I do not recall.

23 Q. All right. In any event, in April, after you got
here,

24 agents began reviewing the mail and analyzing it. What
type of

25 reports did you receive as to the results of that
assignment?

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Danny Defenbaugh – Direct

1 A. No reports that I recall at all with the exception
of

2 probably oral reports, weekly report that we would have
in our

3 weekly meetings on every Friday morning. If there was
anything

4 of substance, it would be reported at that meeting.

5 Q. And this is the weekly meeting of the agents, or
the agents

6 and the prosecutors?

7 A. Neither. It's the FBI -- it's the OKBOM Task Force
staff
8 normally other than the prosecutors with the exception
of one
9 prosecutor would normally sit in to -- to hear the
review. But
10 it would be primarily the supervisors, coordinators, or
team
11 leaders.

12 Q. And Mark White would be one of those attending?

13 A. Yes, sir.

14 Q. And what results did he pass on to you -- was it
his
15 responsibility for this mail review? I may be making
an

16 assumption here that's not true. Who -- amongst those
17 supervisors, who was the most directly responsible for
that
18 mail review?

19 A. Most directly responsible would have been Mark
White, yes,
20 sir.

21 Q. All right. Now, what did he report to you during
this time

22 from April, '96, until -- actually you said that it
stopped in

23 November, '96, the day of Judge Matsch's order
rescinding the

24 order to listen to the tapes. That is the day you say
it

25 stopped?

Danny Defenbaugh - Direct

1 A. If that was the time, yes, sir.

2 Q. That was the -- November 1 was the day of the
order, but

3 then you said we completed our review into January of
'97; is

4 that correct?

5 A. We completed review of the mails that we had, yes,
sir.

6 Q. That mail that was on hand?

7 A. Yes, sir.

8 Q. You didn't go out and obtain the recent copies?

9 A. That is correct.

10 Q. After November 1, '96?

11 A. Yes, sir, that is correct.

12 Q. So during that period from April, '96, to January,
'97,

13 what did Mark White report to you as to the sum and the
14 substance and what was coming out of these letters?

15 A. To the best of my memory, the only thing that I
recall that

16 came out of any of the mails from the prison system was
on one

17 occasion there was a letter that indicated the person
-- and I

18 believe it was a female -- was planning on assisting or

wanted

19 to come to help break Timothy McVeigh out of prison;
and to the

20 best of my knowledge, that is the only letter that was
ever

21 brought to my attention as far as any type of
substance.

22 Q. Okay. And during these meetings that you would
have -- You

23 know who Josh Nichols is, don't you?

24 A. Yes, sir.

25 Q. You know that he's likely to be a witness in this
trial,

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Danny Defenbaugh - Direct

1 don't you?

2 A. No, sir, I don't know that right now.

3 Q. You know who Marife Nichols is, don't you?

4 A. Yes, sir.

5 Q. You know she's likely to be a witness in this
trial?

6 A. Yes, sir.

7 Q. Do you know who James Nichols is?

8 A. Yes, sir.

9 Q. You know who Bob Papovich is?

10 A. Yes, sir.

11 Q. Are you aware that there are numerous letters to

and from

12 Terry Nichols from each of those individuals?

13 A. In reviewing the computer printout sheet of
yesterday of

14 those, at least the "to" and "from," yes, sir, I'm
aware of

15 that.

16 Q. Looking at this same exhibit in front of you,
Exhibit

17 No. E, if you would, starting on page 78, there are a
number of

18 memos written by the agents who examined and analyzed
the

19 letters, and they're all addressed to IIC, OKBOMB. I
take it

20 that IIC is inspector in charge, OKBOM, which is you,

21 Mr. Defenbaugh?

22 A. Yes, sir, that is correct.

23 Q. Is it going to be your testimony you never saw any
of

24 these?

25 A. No, sir, I never did say I didn't see any of these.

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Danny Defenbaugh - Direct

1 Q. Okay. Well, let's start with the one on page 78.
Did you

2 receive or review that memo at or about May 30, '96?

3 A. Probably a copy of it, yes, sir.

4 Q. What did you understand this category to mean,
letters on
5 religious conversion?

6 A. I'm not so sure if I can answer that. I took it
actually
7 as a number of probably individuals' writing to them as
far as
8 offering their thoughts as far as religious beliefs.

9 Q. Well, the letter has everything blocked out about
Tim
10 McVeigh. The Government is now concerned about privacy
Terry
11 interests, but it does have the categories relating to
from
12 Nichols. And we have letters of support, 10; letters
13 family and friends, 63; letters from the media, 1;
letters on
14 religious conversion, 2; letters with news clippings,
2;
15 letters written by Terry Nichols to friends and family,
12.

16 Your understanding on letters on religious
conversion

17 were, again -- I didn't understand what that was.

18 A. I'm just offering to you what my thoughts were. I
don't
19 believe that I ever asked. In reading the memo, they
had no
20 investigative substance, so I'm sure I just perused it
and
21 threw it in the trash.

22 Q. Throw it in the trash?

23 A. My copy.

24 Letters on religious conversion, I can only
assume

25 that it would be somebody writing them about their
religious

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Danny Defenbaugh – Direct

1 beliefs.

2 Q. And you never asked what that meant?

3 A. No, sir, I did not.

4 Q. In fact, you kept getting memos for the rest of the
year

5 from May, '96, all the way to November, '96, that had
that

6 category in it. If you'll just keep turning the pages,
on page

7 80, did you get that memo, also?

8 A. I probably did, yes, sir.

9 Q. And again, letters on religious conversion are 1?

10 A. Yes, sir.

11 Q. Letters written by Terry Nichols to friends and
family?

12 Again on page 82, did you receive that memo?

13 A. I probably did, yes, sir. Or a copy of it.

14 Q. Page 84: Did you receive and review that memo?

15 A. I probably did, yes, sir.

religious 16 Q. Page 86, addressed to you. This one doesn't have
17 conversion on it. Did you receive and review that one?
18 A. Yes, sir, I probably did.
19 Q. And page 88: Did you receive and review that one?
20 A. I probably did, yes, sir.
21 Q. And page 90: Did you receive and review that memo?
22 A. I probably did, yes, sir.
23 Q. Letters on religious conversion, letters written by
24 Nichols, 4.
25 Page 91: Did you receive and review that
memo?

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Danny Defenbaugh - Direct

1 A. I probably did, yes, sir.
2 Q. Letters on religious conversion, 1; letters written
by 3 Nichols to friends, 1.
4 Page 92: Did you receive and review that
memo?
5 A. I probably did, yes, sir.
6 Q. And page 94: Did you receive and review that memo?
7 A. I probably did, yes, sir.
8 Q. Now, this one for some reason is addressed to
Oklahoma City
9 rather than Inspector in Charge, OKBOM. But when it's

10 addressed to Oklahoma City, does that mean you?
11 A. It would still go into the file, yes, sir.
12 Q. Yes, sir. Then it looks like the last one that's
been
13 given to us by the Government was November 19, '96, on
page 96.
14 And this one had to do with trying to explain a letter
written
15 by a lawyer to Terry Nichols. Do you remember reading
--
16 reviewing that memo?
17 A. I believe I did, yes, sir.
18 Q. Now, after reviewing these memos, none of this
caused you
19 any interest to go and look at the letters?
20 A. No, sir, with exception of the one that was brought
to my
21 attention. I saw no investigative merit to any of
that.
22 Q. Well, investigative merit meaning there is some
lead we can
23 assign out to have somebody go interview. Is that what
you
24 mean?
25 A. Either that, or if it led or indicated anything of

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Danny Defenbaugh - Direct

1 substance to the guilt or innocence of the defendants

or

2 identifying a second -- or excuse me, another
individual

3 involved.

4 Q. Now, Mr. Defenbaugh, you office here in Denver with
the

5 prosecutors, don't you?

6 A. Yes, sir. We're co-located.

7 Q. And you have a big conference room, circular table
inside a

8 conference room?

9 A. Yes, sir. That's correct.

10 Q. And inside the doughnut you've got these three or
four

11 monitors facing out. Is that correct?

12 MR. ORENSTEIN: Judge, I'll object to
relevance.

13 MR. WOODS: I'm getting to the relevance, your
Honor.

14 THE COURT: All right.

15 BY MR. WOODS:

16 Q. Is that correct?

17 A. Yes, sir.

18 Q. And you have these meetings where you discuss order
of

19 proof, don't you?

20 A. There are meetings of order of proof that are held
there,

21 yes, sir.

the FBI 22 Q. And in those meetings, you are -- you basically are
flows 23 to these prosecutors. All the information the FBI has
24 through you, doesn't it?
25 A. Yes, sir.

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Danny Defenbaugh - Direct

proof, 1 Q. And when they sit and they practice their order of
going to put 2 what evidence they're going to put on, how they're
turn to 3 it on, how they're going to face objections, they often
this case, 4 you and you often give input as to your knowledge of
5 don't you?

6 A. Myself or some of the individuals on my staff, yes,
sir.

in this 7 Q. And the knowledge of Terry Nichols is all important
8 case right now, isn't it?

9 A. Yes, sir.

Behavioral 10 Q. Are you familiar with the -- used to be the
then sort 11 Science Unit, then became Investigative Support Unit,
think 12 of melded into this multi thing there in Quantico. I

Violent 13 it's called the National Center for the Analysis of
14 Crime. Are you familiar with that unit within the FBI?
15 A. Generally, yes, sir, I am.
16 Q. Were you ever assigned to that unit?
17 A. No, sir, never.
the late 18 Q. Was ever -- was that unit when it started back in
19 70's, Behavioral Science Unit -- was that ever in the
lab or 20 was it a separate -- was it in the lab division?
21 A. To the best of my knowledge, it's always been
assigned to 22 the Training Division at the academy at Quantico,
Virginia. 23 Q. Do you know John Douglas?
24 A. I've met him on occasion, yes, sir.
25 Q. Do you know who he is?

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Danny Defenbaugh - Direct

1 A. Yes, sir.
2 Q. You know that he's retired and written a book about
all of 3 his experiences in creating that unit and the type of
work they 4 did?
5 A. I've heard that. I've never read the book.

6 Q. Would you agree with his statement that one of the
7 functions of his division: "We will try to formulate a
8 strategy to help the prosecutor bring out the
defendant's true
9 personality during the trial"?

10 MR. ORENSTEIN: Object, Judge. Relevance.

11 THE COURT: What's the objection?

12 MR. ORENSTEIN: Relevance.

13 THE COURT: Overruled.

14 BY MR. WOODS:

15 Q. Were you aware that was one of the functions that
his unit
16 was set up for and what they have done over the history
since
17 the late 70's?

18 A. I'm not totally aware of that. I've utilized their
19 services investigatively -- we have before, yes, sir.

20 Q. Yes, sir. And you're aware of how down in Atlanta
in '81
21 when they had all the killings of the young Afro-
Americans,
22 when Wayne Williams was arrested -- how he was brought
in to
23 consult with and advise the prosecutors on how to
handle the
24 cross-examination of all the defense witnesses,
including Wayne
25 Williams?

Danny Defenbaugh – Direct

1 A. I wasn't involved with that case. I can't answer
that from
2 my own knowledge. I'm sorry.

3 Q. Would you disagree with his statement that one of
the most
4 valid things he can do is to analyze the journals and
the
5 letters of the defendant in attempting to help the
prosecutors
6 understand the defendant and cross-examine the
defendant?

7 A. I don't know if I would agree or disagree, because
the way
8 that I've utilized those services have been totally
9 investigative.

10 Q. You have utilized that section -- that unit before,
haven't
11 you?

12 A. Yes, sir, on a number of occasions.

13 Q. And it's still possible now that we're getting
close to
14 trial to utilize that section, that unit, in helping
these
15 prosecutors prepare not only to cross-examine Terry
Nichols but
16 also all the letters to and from Josh Nichols, all the
letters
17 to and from Marife Nichols. You're aware that that
unit is

18 available and the first thing they look at is the
letters and

19 the journals of the defendant?

20 A. I'm aware of that unit is available. I don't know
how they

21 would start, with what technique, as far as that
assistance is

22 concerned.

23 Q. Inspector Defenbaugh, is it fair to say that this
is the

24 largest case the FBI has ever had?

25 A. This has been the most intensive investigation the
FBI has

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Danny Defenbaugh - Direct

1 ever conducted, yes, sir.

2 Q. In fact, there are approximately twenty-eight
thousand

3 302's and inserts, aren't there, of interviews of
individuals?

4 A. Interviews or investigative documents relating to
various

5 records checks, etc.

6 Q. Now, the individuals number approximately 27,000,
don't

7 they, that you all have interviewed?

8 A. I believe that's correct.

9 Q. And that's about the largest case you've ever done,

isn't

10 it?

11 A. It's without question the largest case I've ever
done and I

12 believe the largest case the Bureau has ever done, yes,
sir.

13 Q. Are you telling us that in this most major case the
FBI

14 has, you're not going to utilize the services of the
Behavioral

15 Science Unit, whatever the name of it is?

16 A. I didn't say that we didn't utilize their services
17 investigatively.

18 Q. I'm sorry. What?

19 A. I did not say that we did not utilize their
services

20 investigatively.

21 Q. So you have utilized them in this case?

22 A. Yes, sir.

23 Q. And those letters are sitting right there in your
sub YY

24 file for them to utilize, aren't they?

25 A. They are. I do not know whether or not they've
been

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Danny Defenbaugh – Direct

1 utilized. In fact, I do not believe so. I believe
they came

2 out before we started receiving the letters.

3 Q. So they've even been here at the command post?

4 A. No, sir. In Oklahoma City.

5 Q. They've not been to Denver?

6 A. No, sir. Not to my knowledge. No, sir.

7 Q. And when they came to Oklahoma City, you had the El
Reno --

8 copies of the El Reno letters sitting there in the
Oklahoma

9 City office, didn't you?

10 A. I don't know. I don't believe so.

11 Q. When did they come to Oklahoma?

12 A. I believe they came in early June.

13 Q. Okay. Is that their one and only trip?

14 A. Yes, sir.

15 Q. You're certainly not representing to us that you're
not

16 going to use them the rest of this case in the trial of
17 Mr. Nichols, are you?

18 A. I have not been approached by the prosecutors to
utilize or

19 request their services.

20 Q. Well, you're the head agent. You don't take
direction from

21 the prosecutors solely. You make decisions on the case
22 yourself?

23 A. Investigatively, yes, sir. As far as the
prosecution is

24 concerned, I'm there to service them.

25 Q. Well, investigatively, knowing everything you can
about

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Danny Defenbaugh - Direct

1 Josh Nichols, Marife Nichols, Terry Nichols, Bob
Papovich, and

2 James Nichols is very, very important to you, is it
not?

3 A. I'm sorry. I don't really understand your
question.

4 Q. Is it important to you as an investigator to know
5 everything you can about, No. 1, the defendant on
trial, Terry

6 Nichols, but also his son, Josh Nichols, where you have
all of

7 his letters in your files; his wife, Marife Nichols,
you have

8 all the letters to and from her in your file; James
Nichols,

9 his brother -- you've got all the letters to and from
him; Bob

10 Papovich, one of his close friends -- you've got all
the

11 letters to and from him? That's important to you as an
12 investigator on this case to know as much as you can
about the

13 defendant and his closest family and friends, isn't it?

14 A. I believe all the dialogue and interviews were

primarily

15 completed with the individuals you named prior to us
ever

16 receiving any of the prison mail letters.

17 Q. Oh, I understand that your position is 302's were
done, but

18 the letters themselves are a lot more valuable than the
302's,

19 aren't they?

20 A. I don't know. I've never read any of the letters.

21 MR. WOODS: May I have one moment?

22 THE COURT: Yes.

23 BY MR. WOODS:

24 Q. Inspector Defenbaugh, you had stated earlier that
the

25 decision to start getting the mail from the prison was
made in

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Danny Defenbaugh - Direct

1 the district of -- or excuse me -- in D.C.,
headquarters,

2 Department of Justice, in the FBI. Who in the
Department of

3 Justice made the decision and okayed that decision?

4 A. The final decision, I'm not 100 percent positive.

5 Q. Well, who are you aware of that participated in the
6 decision?

7 A. I had dialogue with Donna Bucella, who was present
out here
8 at the beginning of the investigation.

9 Q. Was she of a rank to make a decision to get the
mail?

10 A. I believe that she would have been of the rank to
have
11 dialogue with Bureau of Prisons personnel, yes, sir, at
12 headquarters.

13 Q. Do you understand what her position is in the
department?

14 A. Not entirely. I know she's primarily over
administration
15 at this time, anyway.

16 Q. Okay. Who within the FBI headquarters made the
decision to
17 do it?

18 A. My dialogue would have been with Assistant Director
Robert
19 Bryant and/or Director Louie Freeh.

20 Q. And who within the Department of Justice made the
decision
21 to stop reviewing the mail?

22 A. I did.

23 Q. You solely?

24 A. No, sir. It was in conjunction with and agreement
with --
25 dialogue with Chief Prosecutor Hartzler and Larry
Mackey.

Danny Defenbaugh - Direct

1 Q. You didn't consult with Donna Bucella on this one?

2 A. No, sir.

3 Q. Or Louie Freeh -- Director Freeh, rather?

4 A. No, sir, I did not.

5 Q. Just the three of you made the decision?

6 A. To the best of my recollection, it was a collective
7 decision with the order that -- and with no
investigative merit

8 that we've had so far that there would not be any
reason to

9 continue with the mail reviews.

10 Q. Of course, the order only had to do with getting
the taped

11 phone conversations of Terry Nichols that the FBI had
been

12 getting for two years, a year and a half.

13 A. Yes, sir, that's correct.

14 Q. How did you interpret that to mean you were to stop
the

15 mail?

16 A. I think that we were looking both at good faith and
looking

17 at investigative merit, which there was none.

18 Q. Well, good faith. I mean you were ordered to stop
by the

19 judge on the phone conversations. What do you mean by
good

20 faith to stop the mail? If you had legal authority,
what do
21 you mean by good faith?
22 A. We were receiving nothing of merit from the mail.
23 Q. So really you stopped it because you had made the
24 determination that you weren't getting what you wanted
out of
25 it; right?

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Danny Defenbaugh – Direct

1 A. Not what I wanted. There was no investigative
merit there.

2 The path was a dead end. It ceased. It wasn't a
positive or a
3 negative.

4 MR. WOODS: Thank you. No further questions,
your
5 Honor.

6 MR. ORENSTEIN: No questions, your Honor.
Thank you.

7 THE COURT: All right. Is this witness
excused?

8 MR. WOODS: He can be excused, your Honor.
Thank you.

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

10 THE WITNESS: Thank you.

11 MR. TIGAR: Your Honor, we have a fairly

complete

12 picture now of what was done with this, and we'd be
prepared to
13 argue it. There was one piece missing, and that is Mr.
McCoy,
14 the inspector in place, whose name appears as part of
this
15 authorization. I understand he's on vacation this
week, and
16 we'd said we didn't want to interrupt his vacation.

17 I wonder whether the Government can make a
18 representation about his availability, and then your
Honor
19 could make a decision about whether you want to close
the
20 record without him or go to argument or have us brief
further
21 or refine the relief we're seeking.

22 MR. ORENSTEIN: Judge, I got a hold of Agent
McCoy
23 last night. We had been trying for a couple of days.
He is on
24 vacation. I can represent that his testimony would be
much
25 like Agents Baker and Defenbaugh: They were not
directly

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1 involved in reviewing any prison mail. He was, of
course,

not see 2 aware of the project, as was Mr. Defenbaugh, but did
would 3 any mail, did not set out any leads, and I guess in sum
4 add nothing to what we've heard already from the other
organization of the 5 witnesses about Agent White in terms of the
6 Task Force.

7 THE COURT: The only additional thing, I
suppose, is 8 according to the paper that we have seen, he's the one
who 9 assigned the agent who testified here to document the
legality 10 of the matter.

11 MR. TIGAR: Yes. We understand that Agent
Wech was 12 the one that did that. In addition to that --

13 THE COURT: She said -- she said he directed
her to.

14 MR. TIGAR: Yes. And then his initials appear
all 15 over everything but signed by the rotor clerks. It may
be that 16 we could close the hearing, subject to reopen, if we
could 17 agree to take Agent McCoy's deposition when he gets
back just 18 to see if there is anything. If there is, we bring it
to your 19 Honor's attention. If not, we'd be done with it.

20 THE COURT: Well, where is he? Can he be
reached by

21 telephone?

22 MR. ORENSTEIN: He can, I believe -- I believe
he can

23 be reached by telephone. I have a pager number where I
can try

24 to reach him.

25 THE COURT: I just, you know -- would you be
willing

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1 to interview him by phone?

2 MR. TIGAR: Yes, your Honor.

3 Go ahead.

4 I spoke ahead of my more experienced
colleague.

5 MR. WOODS: My question was is the Court
wanting to do

6 that with the Court on the phone, also?

7 THE COURT: No.

8 MR. WOODS: Never mind.

9 THE COURT: No, I don't want to be -- I don't
do

10 things by the telephones. It's too modern for me.

11 No, I was just asking, I guess, whether an
interview

12 would satisfy you.

13 MR. TIGAR: Yes, it would, your Honor.
14 THE COURT: So perhaps you can arrange to get
both
15 sides on the phone and discuss this with him, perhaps
do that
16 between now and 9:00 tomorrow.
17 MR. ORENSTEIN: I'll try. I honestly don't
recall
18 what Agent McCoy told me about where he would be today.
I will
19 try and reach him tonight, and certainly by tomorrow we
should
20 be able to accomplish it.
21 MR. TIGAR: Our preference would be to do it
early
22 tomorrow morning rather than try to do it this evening.
23 THE COURT: That's fine.
24 MR. TIGAR: Your Honor, with this evidence, we
are
25 prepared to make a presentation to the Court about what
we

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1 think is the proper remedy at this point. It's clear
that this
2 material has been assembled; that it's waiting there;
that it's
3 available. And I won't make my argument now, but we
would

4 refine our request for relief based on what we've
heard; and

5 we'd like the opportunity to present argument to the
Court.

6 Would the Court wish us to rewrite our prayer for
relief in

7 light of the hearing?

8 THE COURT: No. No. It can be done orally,
and I

9 suggest we get on with it tomorrow. I've already
rescheduled

10 things that I had in the morning to the afternoon, so
we can

11 meet in the morning.

12 MR. TIGAR: Well, then that is our request,
your

13 Honor; that we reassemble at 9:00 tomorrow morning at
which

14 time we'll be prepared to present argument. As to the

15 arguments, I assume we'd go top and bottom on that.

16 THE COURT: Yes, and obviously what I'd be
most

17 interested in is what the Government -- and I'd expect
the

18 Government to be prepared to advise me what they intend
to do

19 with it in the future. We have a pretty clear picture
of what

20 has happened in the past, but a part of the concern
here

21 obviously through the questioning that counsel has made
of

22 these witnesses is what are you going to do with it
now.

23 MR. TIGAR: Yes, sir.

24 MR. MACKEY: Judge, to that end, one idea
occurred to

25 me in the course of the day; and I want to explore it
with

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1 counsel and we'll report to the Court about it in the
morning.

2 THE COURT: Perhaps maybe we should make it
10:00 so

3 that you have time to talk to Agent McCoy, if that's
possible,

4 and also have the direct discussion between counsel.

5 MR. TIGAR: Yes, your Honor. If a proposal is
going

6 to be made about this, I would suggest we meet here
with

7 Government counsel at 9 and Mr. Nichols could be
available and

8 in the courthouse, because we obviously couldn't accept
any

9 proposal from the Government without that.

10 THE COURT: I understand. That's why I'm
suggesting

11 that it be 10, so that you have an opportunity to do
these

12 things before you meet with me.
13 MR. TIGAR: Yes, your Honor. May we use the
Court's 14 conference room for that purpose?
15 THE COURT: Yes.
16 We'll then recess until 10:00 tomorrow morning
in this 17 matter.
18 (Recess at 4:57 p.m.)
19 * * * * *
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12 * * * * *

13 REPORTERS' CERTIFICATE

14 We certify that the foregoing is a correct
transcript from

Dated 15 the record of proceedings in the above-entitled matter.

16 at Denver, Colorado, this 21st day of August, 1997.

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Carpenter

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Paul Zuckerman

Bonnie