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REPORTER'S TRANSCRIPT  
(VOLUME I - SUPPRESSION HEARING)

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12 Proceedings before the HONORABLE RICHARD P.  
MATSCH,  
13 Judge, United States District Court for the District of  
14 Colorado, 2

APPEARANCES

2 PATRICK M. RYAN, United States Attorney for  
the  
3 District of Oklahoma, appearing for the plaintiff.

4 JOSEPH H. HARTZLER, SEAN CONNELLY, LARRY A.  
MACKEY,  
5 BETH WILKINSON, SCOTT MENDELOFF, and VICKI BEHENNA,  
Special  
6 Attorneys to the U.S. Attorney General, 210 West Park  
Avenue,  
7 Suite 400, Oklahoma City, Oklahoma, 73102, appearing  
for the  
8 plaintiff.

9 STEPHEN JONES, ROBERT NIGH, JR., AMBER  
McLAUGHLIN,  
10 RANDALL COYNE, and MANDY WELCH, Attorneys at Law,  
Jones, Wyatt  
11 & Roberts, 114 East Broadway, Suite 100, Post Office  
Box 472,  
12 Enid, Oklahoma, 73702-0472, and JERALYN MERRITT, 303

East 17th

13 Avenue, Suite 400, Denver, Colorado, 80203, appearing  
for  
14 Defendant McVeigh.

15 MICHAEL E. TIGAR, RONALD G. WOODS, ADAM  
THURSCHELL,  
16 and REID NEUREITER, Attorneys at Law, 1120 Lincoln  
Street,  
17 Suite 1308, Denver, Colorado, 80203, appearing for  
Defendant  
18 Nichols.

19 \* \* \* \* \*

20 PROCEEDINGS

21 THE COURT: Please be seated.

22 We are convened in 96-CR-68, United States  
against

23 Timothy James McVeigh and Terry Lynn Nichols for  
hearing on  
24 motions for suppression filed by the defendants. We'll  
begin  
25 as usual with the entry of appearances.

3

Hartzler 1 MR. HARTZLER: Good morning, your Honor. Joe  
Sean 2 for the United States. With me at counsel table is  
Beth 3 Connelly, Scott Mendeloff, Patrick Ryan, Vicki Behenna,

4 Wilkinson and Larry Mackey.

5 THE COURT: Good morning.

6 MR. MENDELOFF: Good morning, your Honor.

7 MR. JONES: Good morning, your Honor. May it  
please

8 the Court, Stephen Jones for the defendant Mr. McVeigh,  
who is

9 present in person; Mr. Randy Coyne, Mr. Rob Nigh, Ms.  
Jeralyn

10 Merritt and Ms. Amber McLaughlin and Mandy Welch. And  
the

11 Court will recall that we were authorized to employ  
three law

12 students. They are Michael Grote, a law student at the

13 University of Missouri; Alicia Carpenter, a law student  
senior

14 at the University of Missouri, and Anne Bradley, a law  
student

15 at Georgetown University in Washington, D.C.

16 THE COURT: Mr. Tigar.

17 MR. TIGAR: Good morning, your Honor. Michael  
Tigar

18 for Terry Lynn Nichols, who is here in court. With us  
at

19 counsel table is Ron Woods, Reid Neureiter, Adam  
Thurschwell

20 and our investigator, H.C. Bodley.

21 Mr. Bodley, pursuant to agreement with the  
Government,

22 is exempted from the rule on witnesses, although he may  
be a

23 witness. He is our agent at the table.

24           The good-looking people are law students and  
25           paralegals, but I won't take the court's time by  
telling you

4

1 all I know about them.

2           THE COURT: They probably appreciate that.

3           A couple of preliminary matters in connection  
with our

4 hearing here -- or prehearing hearing. Toward the  
conclusion

5 of it, Mr. Jones, you asked me to recognize on the  
record that

6 you were submitting in connection with the motion to  
suppress

7 search warrants that were signed by Chief Judge Russell  
and

8 Magistrate Judge Howland on the issue of neutral and  
9 disinterested judicial officers the material that was  
submitted

10 in Oklahoma City on the motions to recuse, and I have  
now

11 reviewed that material.

12           You also since the hearing submitted a  
supplement, and

13 that's been received. After review of that material, I  
have

14 not altered my view.

15 MR. JONES: I'm disappointed to hear that,  
your Honor.

16 I'm not surprised.

17 THE COURT: Yes. All right. So the record  
will

18 reflect that that's a part of your submission and has  
been

19 reviewed by the Court.

20 Now, with respect to Rule 615, Mr. Tigar, you  
alluded

21 to it; and I take it the Government is in agreement  
with

22 Mr. Tigar's statement concerning the presentation of  
the

23 investigator, who may also be a witness.

24 MR. HARTZLER: Yes, your Honor.

25 THE COURT: I think it is appropriate to  
invoke Rule

5

1 615 now in connection with this hearing; but also, it  
will be

2 in effect continuously. My view of Rule 615 is that no  
witness

3 should be present during any of the proceedings; and by  
that, I

4 mean unless it's been recognized and agreed to, no  
witness who

5 may appear in any pretrial hearings, hearings on  
motions,  
6 trial, or any sentencing hearing.

7 And I say after reviewing some of the material  
that  
8 was submitted in connection with this matter of  
reserved  
9 seating and also in the matter of the issue that is yet  
to be  
10 heard on video transmission by closed circuit to the  
Western  
11 District of Oklahoma, after reviewing cases dealing  
with  
12 violations of Rule 615, wherein the courts have said --  
13 appellate courts -- that it depends upon whether the  
testimony  
14 of the witness has been influenced or affected by  
hearing any  
15 part of the trial. It's a very difficult issue  
factually.

16 And to avoid that, it seems to me that the  
best rule  
17 is a prophylactic rule in advance that simply says no  
witnesses  
18 are going to hear any part of the trial or pretrial  
19 proceedings; so that's my ruling.

20 MR. HARTZLER: Your Honor --

21 THE COURT: Unless somebody wishes to be heard  
on it.  
22 Obviously, you have a due process right to be heard on  
it; but  
23 it seems to me to be the appropriate order.

24 Yes, Mr. Hartzler.

25 MR. HARTZLER: There are some victims in the  
courtroom

6

1 today, and I suspect that there may well be victims  
throughout

2 some of the other proceedings as well as a portion of  
the

3 trial. Clearly, we would not allow any victims that  
would be

4 factual witnesses at trial or at a hearing to be  
present for

5 testimony of any others; but we're hoping that you  
might

6 consider allowing victims in the courtroom to hear  
pretrial and

7 even the guilt phase testimony, because it really would  
not

8 affect their testimony.

9 THE COURT: Well, how can I say that? And how  
can you

10 say that?

11 MR. HARTZLER: I say that on the basis that  
their

12 testimony is going to be limited to the impact on their  
lives

13 of the violation.

14 THE COURT: And what they hear as evidence at

the

15 trial would not affect that? As a matter of fact,  
persons have

16 been identified publicly as being affected by even  
seeing the

17 defendants in court. That's why I say I don't think  
it's

18 possible to isolate and determine that presence in the

19 courtroom of a witness does not affect that witness'  
testimony.

20 MR. HARTZLER: Your Honor, they're going to be

21 testifying as to a very narrow area, the effect on  
their lives.

22 I don't believe that appearance in the courtroom or  
hearing

23 other testimony is going to influence what has happened  
to them

24 and how they might testify. I'm suggesting, for  
example, at

25 the suppression hearing, they're going to hear today --

7

1 presumably in the next few days -- various activity  
that was

2 conducted in Herington, Kansas, by federal agents. I  
find it

3 difficult to believe that the victims are going to be  
affected

4 in what they would testify to at a penalty phase by  
what

5 federal agents did in Herington, Kansas.

6 THE COURT: Well, I'll hear from the  
defendants.

7 Maybe there is no dispute.

8 MR. TIGAR: We've been conferring at counsel  
table,

9 your Honor, because the Court's ruling puts us in a --  
in a

10 difficult position as well. Mr. Nichols' mother and  
sister are

11 here today, for example, and there is a possibility  
that at

12 some time in the future, they would be witnesses in the  
case;

13 however, after conferring with Mr. Nichols and amongst

14 ourselves, we believe that the Court's ruling as  
announced at

15 the beginning is the correct ruling and even though it  
will

16 result in Mrs. Nichols and Mrs. McDonald being  
excluded, that

17 it is the right way. And the reason is, we have said  
in our

18 papers, that in a penalty hearing, the rules of  
evidence are,

19 in a sense, suspended. Your Honor makes a decision as  
between

20 probative value and prejudice. The testimony is, as  
the

21 Supreme Court has recognized, designed in some measure  
to be

22 emotional because it is to evoke from the jurors a

reasoned

23 moral response.

24 With specific reference to what Mr. Hartzler  
said this

25 morning, there will be testimony today about what Mr.  
Nichols

8

1 said, how he appeared, what experiences he claimed to  
have.

2 There is a real dispute here amongst or between the  
sides about

3 what Mr. Nichols said to Agent Smith, what his demeanor  
was

4 when he went to the police station, and so on. And all  
of

5 these things form part of the sensorium or matrix or  
mosaic of

6 facts that have to do with this case.

7 We're talking, after all, about events that  
took place

8 within a very short time after the bombing itself and  
so in

9 order to avoid the risks to which your Honor referred,  
we

10 believe that your Honor's ruling with respect to Rule  
615 is

11 correct.

12 THE COURT: Mr. Jones, do you wish to be  
heard?

with 13 MR. JONES: May it please the Court, we concur  
I know 14 the Court's announcement and with Mr. Tigar's analysis.  
and it's 15 that it is a difficult issue. It's an emotional issue  
McVeigh 16 not one easily understood. We have instructed Mr. Bill  
anticipate 17 and Mrs. Frasier, Mr. McVeigh's parents, who we  
18 would be witnesses at perhaps some part of this  
proceeding not  
ruling; that 19 to attend the trial in anticipation of the Court's  
with 20 is, not to attend these pretrial hearings. The same  
might be a 21 respect to Jennifer, his sister, who we understand  
22 Government witness.

before the 23 But I think the Court is correct and it's  
press an 24 Court in pleadings that victims have announced to the  
and 25 adverse impact upon them by being present in the court

9

birthday 1 seeing our client, commenting on the fact that on his  
2 or Christmas that he received a new shirt, commenting

on his

3       demeanor and the impact that it had on them; and I  
think that

4       matter is properly before the Court. And I don't know  
how the

5       Court could resolve the issue as to the impact upon  
them

6       without again conducting a trial within a trial.

7                   And I believe that the Court's rule and  
announcement

8       is the correct one, and we have no objection to it.

9                   THE COURT: Mr. Hartzler, do you wish to be  
heard

10       further on the matter?

11                   MR. HARTZLER: Well, I don't hear the defense  
to be

12       speaking as to a particular effect on the testimony.  
Clearly,

13       the proceedings will affect the victims. They follow  
them very

14       closely in the newspaper and television and the radio;  
so there

15       is no doubt that the way the defendants appear in court  
as

16       reported publicly may have some effect on them. But  
that

17       doesn't mean that it's going to affect their testimony,  
nor

18       would their presence in the courtroom indicate that  
they're

19       going to be affected in the way they testify. Penalty  
phase,

20 as we have discussed before, won't involve wholesale  
hearsay  
21 because we expect to comply, to a large extent, with  
the rules  
22 of evidence. But they are suspended.

23 And I think that the witnesses that we call  
who have  
24 been affected by the crime can be adequately cross-  
examined, if  
25 there is any suggestion. In fact, we would even allow  
voir

10

1 dire, suggest voir dire if there is any concern that  
someone  
2 who is in the courtroom to hear testimony in a previous  
3 proceeding has been influenced in what they're going to  
testify  
4 to before the jury.

5 I don't hear the defendants to say that there  
is any  
6 kind of specific effect that we can discern because  
they're in  
7 the courtroom as opposed to simply knowing or learning  
about  
8 proceedings.

9 THE COURT: I will invoke the rule as  
announced.

10 MR. HARTZLER: All right. Could we have a  
moment,

11 then, because we're going to have to make some  
difficult  
12 decisions as to excluding people that are present today  
if we  
13 anticipate that they will be --

14 THE COURT: Well, they're already present,  
whoever is  
15 present now. Unless there is objection from the  
defendants,  
16 I'll permit them to be present this morning; and then  
this  
17 afternoon is a different matter.

18 MR. TIGAR: No objection to that, your Honor,  
because  
19 we would also have to talk to Mrs. McDonald and Mrs.  
Wilt, and  
20 I think it would be much smoother to go as your Honor  
21 suggested.

22 THE COURT: Mr. Jones?

23 MR. JONES: No objection.

24 THE COURT: All right. So you can do that at  
the noon  
25 recess.

11

1 MR. HARTZLER: I appreciate that.  
2 We also have a number of government agents.  
Our two

3 case agents are in the front row, Larry Tongate and Jon  
4 Hersley. They will also be witnesses not at only at  
this  
5 proceeding but at the trial proceeding.

6 THE COURT: You're going to ask for them to be  
your  
7 case witnesses throughout?

8 MR. HARTZLER: Correct.

9 THE COURT: Any objection to that?

10 MR. TIGAR: If they're going to identify those  
two as  
11 the ones throughout, given the number of hearings, it's  
12 possible that they could have all their witnesses.

13 THE COURT: Well, yes.

14 MR. TIGAR: But I understood they were going  
to only  
15 have one, your Honor; but if two is -- Mr. Hartzler is  
16 signalling to me two, I think. We have no objection to  
two,  
17 provided we would also be allowed two investigators at  
our  
18 table.

19 THE COURT: Mr. Jones?

20 MR. JONES: I concur with Mr. Tigar.

21 THE COURT: All right. And I'm in agreement  
with this  
22 agreement.

23 MR. HARTZLER: Very well.

24                    There are other government agents in the  
courtroom. I

25                    wonder if you would extend the rule. If defense does  
not

12

1                    object. So we can evaluate whether they would be  
witnesses at  
2                    later proceedings.

3                    THE COURT: I have no problem with that.

4                    Is that agreeable to the defense?

5                    MR. JONES: I'm sorry. I don't understand  
what you're

6                    asking.

7                    THE COURT: There are some other agents  
present who

8                    may later be witnesses?

9                    MR. HARTZLER: Correct.

10                    THE COURT: In this hearing?

11                    MR. HARTZLER: No.

12                    THE COURT: At a later time. And as we have  
discussed

13                    with respect to those others who may be present, we'll  
wait

14                    until noon to decide whether they should be excluded  
this

15                    afternoon.

16                    I don't know if you -- can you tell us who

they are?

17 MR. HARTZLER: I see that Jim Norman and Lou  
Michalko  
18 and Danny Defenbaugh are in the courtroom. I believe  
those are  
19 the only three that might potentially be witnesses at  
trial.

20 They certainly will not be witnesses at the  
hearing as  
21 anticipated by the Government.

22 I don't see Mr. Defenbaugh.

23 THE COURT: There are a lot of people here.

24 MR. HARTZLER: Yes, I see Mr. Defenbaugh and  
Mr. %  
25 McCoy and Linda Vernon is also here, but I don't know  
that we

13

1 would anticipate they would be witnesses at trial or at  
any of  
2 the other proceedings in this case.

3 MR. TIGAR: We have no objection provided that  
the  
4 agents who are here don't horseshed the agents who are  
going to  
5 be testifying.

6 THE COURT: Well, of course, part of the rule  
--

7 MR. JONES: I concur with the horseshedding

argument

8 of Mr. Tigar.

9 THE COURT: That may be an Oklahoma term.

10 MR. TIGAR: Your Honor, it was coined by  
Washington

11 Irving. It has to do with delivery stable behind the  
12 courthouse in Westchester County in the 19th Century.

13 MR. JONES: I'd like to invoke the rule of  
Washington

14 Irving.

15 THE COURT: All right. Now, we also on this  
matter of

16 seating have had several proposals filed, and I think  
maybe we

17 could resolve that quickly here, hopefully.

18 It's suggested that the Court permit and  
still, of

19 course, within Rule 615 to have each of the defendants  
have a

20 certain number of seats made available for persons for  
the

21 defendants and that the Government have that same  
number added

22 together, five or six, so the Government ten or twelve,  
and

23 then it's up to you as to who those people are; but we  
need to

24 have you give some -- give their names so that we can  
keep a

25 record of that and then we could have the clerk provide  
some

1 sort of identifying symbol with symbols like pi for the  
2 Government and delta 1, delta 2 for the defendants on a  
little  
3 slip so that they can get through security. And that's  
4 agreeable to me. And I can make it six for each of the  
5 defendants and twelve for the Government; and it's up  
to you as  
6 to who they are. But we need to keep track of who they  
are.

7 MR. JONES: I assume -- I said in my moving  
papers  
8 that if we didn't use our six or any portion of them,  
we would  
9 make them available to the Government for use of  
victims or  
10 their families so long as 615 is honored.

11 THE COURT: All right. Is that agreeable, Mr.  
Tigar?

12 MR. TIGAR: Yes, your Honor. We thought --  
may I  
13 speak from here?

14 THE COURT: Yes.

15 MR. TIGAR: We thought that was an acceptable  
way to  
16 resolve the dilemma that had been posed by the  
Government in  
17 its moving papers. We certainly agree.

18 THE COURT: I think it is a workable solution  
to a 19 difficult problem, given the restricted seating that's  
20 available here.

21 All right. We'll proceed according to that.  
And 22 there have been some motions filed by those identified  
as media 23 representatives with respect to sealing and the like.  
I see

24 Mr. Kelley is here.

25 What I -- you know, this is an open hearing,

15

1 Mr. Kelley. I intend to proceed in that fashion as I  
indicated 2 previously. If anybody seeks to submit anything under  
seal or 3 in camera, there will be an opportunity for a hearing  
before 4 that's done. But I do not want to take the time now to  
go back 5 to everything that was submitted in advance of this  
hearing and 6 review it for determination of whether any portion  
should be 7 sealed or unsealed. I consider those papers to be  
preparatory 8 and that the adjudicative process is what is taking

place or I

9 hope to have take place now here in the courtroom.

10 So will you be available throughout the  
hearing?

11 MR. KELLEY: I will. I guess I would ask if  
your

12 Honor would -- it would be acceptable for me to be at  
my office

13 ready to be here on short notice as oppose --

14 THE COURT: Well, how short is short?

15 MR. KELLEY: Ten minutes except that I have a  
16 settlement conference Magistrate Judge Abram at 1:30  
which

17 should go for an hour.

18 THE COURT: So you would be there at that  
time?

19 MR. KELLEY: Yes.

20 THE COURT: All right. Well, I don't know  
whether any

21 such motions are going to be made; but we'll try to  
reach you

22 if they are.

23 MR. KELLEY: Without being part of the delay  
problem,

24 I'd have two quick requests. I understand that your  
Honor

25 doesn't want to deal with everything that we've raised  
in

Court 1 advance; but I would request, first of all, that the  
going to 2 unseal the Nichols search warrant affidavits which are  
here in 3 be one of the basic subjects of everything that happens  
4 the next few days.

5 THE COURT: I expect they'll be exhibits  
during this 6 hearing, so they would be presented as exhibits in the  
hearing.

7 MR. KELLEY: Well, our request would be that  
that 8 happen early --

9 THE COURT: Well, I'm denying that request.

10 MR. KELLEY: The other thing we would make a  
plea for, 11 your Honor, is that exhibits, as they are introduced,  
be made 12 available as quickly as possible to the media. Those  
documents 13 are essential for them to understand what's going on  
here and I 14 think, in turn, for the public to understand.

15 THE COURT: Well, if counsel in the case have  
copies 16 and wish to provide them to you, they may do so. As  
far as our 17 taking the time to make copies, you can get them  
tomorrow

18 morning.

19 MR. KELLEY: Thank you, your Honor.

20 THE COURT: We're not going to have our  
personnel

21 running in and out of the courtroom making copies of  
exhibits.

22 I'm interested in proceeding with this matter --

23 MR. KELLEY: I understand.

24 THE COURT: -- without such delays.

25 MR. KELLEY: The request to the parties is  
made.

17

1 Thank you.

2 THE COURT: Yes. That's up to them.

3 Now, we at the prehearing hearing discussed  
the order

4 of proceeding here. Most of the evidence, as I  
understand it

5 from our previous discussions, is going to be offered  
in

6 connection with Mr. Nichols' motions; but there are  
some

7 matters yet with respect to Mr. McVeigh. I don't know  
if

8 counsel have discussed this beforehand.

9 MR. JONES: It's our anticipation that Mr.  
Nigh and

10 Ms. Merritt will handle the motions with respect to  
11 Mr. McVeigh.

12 THE COURT: But have you talked about whether  
we're  
13 going forward with those -- Mr. McVeigh's motions  
first?

14 MR. CONNELLY: Yes, we have.

15 THE COURT: You're in agreement with that?

16 MR. NIGH: Yes, your Honor. I spoke to Mr.  
Connelly  
17 yesterday about that; and because the Court dealt  
fairly  
18 extensively with Mr. McVeigh's motions at the  
prehearing  
19 conference, we thought that it made sense to go ahead  
and  
20 finish those motions at the outset.

21 There are three remaining issues that Mr.  
McVeigh has  
22 raised in reference to searches. Two of them do not  
need  
23 evidence, and that is the search of Mr. McVeigh's  
person, which

24 I understand is essentially a moot question because the  
25 Government will not try to introduce evidence as a  
result of

18

1 those searches.

the 2 THE COURT: Yes. That's my understanding from  
3 papers filed.

4 MR. CONNELLY: That's correct, your Honor.

5 THE COURT: All right.

6 MR. NIGH: Secondly is our argument that the  
first  
7 search of Mr. McVeigh's car exceeded the scope of the  
warrant.

8 There is no need for evidence --

9 THE COURT: That's right.

10 MR. NIGH: -- in reference to that question.  
I

11 believe that the Government will acknowledge that  
everything in  
12 his car was taken during the execution of that first  
warrant.

13 THE COURT: Well -- well, was it taken at that  
time,  
14 or --

15 MR. CONNELLY: The car was fully searched and  
16 inventoried the night of the 21st, and that is made  
apparent by  
17 records that are not in dispute; so I think it would be  
decided  
18 on the face of the warrant.

19 THE COURT: And that's all submitted in the  
record  
20 that exists.

21 MR. CONNELLY: That is the return on the

warrant as

22 well; so it can be decided on the face of the warrant  
returned.

23 THE COURT: All right.

24 MR. NIGH: Then the final issue, your Honor --

25 THE COURT: I'll hold ruling on that until I  
go back

19

1 and look at that. I've got so many papers here that I  
can't

2 immediately recall everything.

3 MR. NIGH: Certainly, your Honor.

4 The final search issue as to Mr. McVeigh, your  
Honor,

5 is the warrantless seizure and subsequent search of his

6 clothing and personal effects that were taken from the  
Noble

7 County jail. That question does demand evidence; and  
it is our

8 position that it is Government's burden to prove an  
exception

9 to the warrant requirement.

10 Finally, your Honor, just in terms of Mr.  
McVeigh's

11 presentation, the reference to Mr. Nichols' statements  
during

12 the time that evidence is presented concerning the

13 circumstances surrounding those statements, it would be  
14 appropriate for us to ask questions to Mr. McVeigh's  
behalf  
15 simply as to the question whether the statements were  
perceived  
16 by Mr. Nichols to be against his penal interest in  
reference to  
17 the Government's motion in limine.

18 THE COURT: All right. Well, first of all,  
Mr. Tigar,  
19 are you in agreement with taking the remainder of Mr.  
McVeigh's  
20 motions first?

21 MR. TIGAR: Oh, yes, your Honor. And I will  
-- we  
22 have some preliminary matters when we start such as the  
23 stipulation about Chief Judge Russell's statements; and  
I'll  
24 reserve all of that until it's our turn, if that's the  
Court's  
25 wish.

20

1 THE COURT: All right. I think that's fine.  
I said,  
2 you know, I wanted to proceed chronologically, but I  
was  
3 talking about Mr. Nichols' motions when I said that  
when we

4 were here before; so Mr. Connelly, you're going to  
proceed.

5 MR. HARTZLER: May we have just one moment?

6 THE COURT: Yes, of course.

7 MR. CONNELLY: May I proceed, your Honor?

8 THE COURT: Yes.

9 MR. CONNELLY: Your Honor, before calling our  
first

10 witness, we do have three Government's exhibits  
relevant to

11 this issue that have been stipulated, and they are  
listed as

12 McVeigh Exhibit 1 -- Government's Exhibit MCV1, and  
that is an

13 inventory of items that the FBI seized pursuant to

14 Mr. McVeigh's arrest on April 21 at 4:30 p.m.

15 THE COURT: How have you designated it?

16 MR. CONNELLY: That would be Government's  
Exhibit

17 McVeigh 1, MCV1, to distinguish it from the -- it  
should be the

18 first exhibit in the exhibit book, and I think --

19 THE COURT: Just give me a moment, please.

20 MR. CONNELLY: All right.

21 THE COURT: Oh. I've got the wrong list.  
Sorry.

22 I have it now. It's simply marked here No. 1.

23 MR. CONNELLY: With reference to the McVeigh  
hearing.

24 We're going to start again on the Nichols hearing with

a new

25 No. 1.

21

1 THE COURT: I see. Well, physically what does  
the

2 exhibit label look like just, so the record is clear?

3 MR. CONNELLY: It's a yellow tag, or maybe a  
copy tag

4 on the upper right-hand corner, Government's Exhibit MC  
capital

5 V1.

6 THE COURT: Right.

7 MR. CONNELLY: And that, as I said, is an  
inventory of

8 items seized on April 21, transferred from the custody  
of the

9 Noble County Sheriff's Department to the FBI.

10 THE COURT: And that's a stipulated exhibit,  
11 Mr. Connelly.

12 MR. CONNELLY: That is stipulated; and that  
actually

13 is part, I believe, of a defense Exhibit 1, but that is  
a

14 stipulated exhibit.

15 Stipulated Exhibit No. 2, Government's Exhibit  
MCV2,

16 is a search warrant issued by Magistrate Judge Howland

on

17 April 21 at 3:55 p.m., the Western District of  
Oklahoma, under

18 Case No. 95-96H. It's an official court record and  
again

19 stipulated as to its admissibility for this hearing.

20 Government's Exhibit MCV3 is a criminal  
complaint,

21 again signed by Magistrate Judge Howland on April 21,  
untimed,

22 under Case No. M-95-98H. And again that's a stipulated  
exhibit

23 for purposes of this hearing.

24 THE COURT: All right. You do agree with that  
-- with

25 those -- admission of those exhibits, Mr. Nigh?

22

1 MR. NIGH: We do, your Honor. We reserve the  
right to

2 argue the relevance.

3 THE COURT: Well, of course. But they're  
received in

4 evidence.

5 MR. NIGH: Yes, your Honor.

6 THE COURT: All right. Proceed.

7 MR. CONNELLY: As the first witness, the  
United States

8 would call Noble County Sheriff Jerry R. Cook.

9 THE COURT: All right. If you'll come  
forward,  
10 please, to be sworn.

11 (Jerry R. Cook was sworn.)

12 THE COURTROOM DEPUTY: Please state your full  
name for  
13 the record and spell your last name.

14 THE WITNESS: Jerry R. Cook, C-0-0-K.

15 THE COURT: Please be seated.

16 Proceed, Mr. Connelly.

17 DIRECT EXAMINATION

18 BY MR. CONNELLY:

19 Q. Good morning, Mr. Cook.

20 A. Good morning.

21 Q. Can you tell the Court your current position,  
please.

22 A. I'm the sheriff of Noble County in Perry, Oklahoma.

23 Q. And where is Noble County in relation to Oklahoma  
City?

24 A. It's 60 to 65 miles north of Oklahoma City.

25 Q. And can you briefly describe for the Court your  
background

23

1 in law enforcement?

1969 as  
undersheriff  
there

2 A. I have 27 years in law enforcement. It started in  
3 a state trooper in Oklahoma. In '82 I became the  
4 in Noble County. In '88 I was elected sheriff and been  
5 presently.

Noble

6 Q. And what are your present duties as the sheriff of  
7 County?

matters,

8 A. Maintain a county jail and investigate criminal  
9 serve arrest warrants and serve civil papers.

10 Q. Where are the sheriff's offices?

11 A. It's on the first floor of the courthouse.

floors

12 Q. And describe the courthouse in Perry and how many  
13 are on the courthouse.

14 A. Three main floors. The fourth floor is the jail.

15 Q. And your office is on the first floor?

16 A. Yes.

position as

17 Q. How many employees do you supervise in your  
18 sheriff?

19 A. I have 10 paid employees and 16 reserve deputies.

review

20 Q. And in preparing for your testimony today, did you  
21 official records kept on file by the Noble County  
sheriff's  
22 office?

23 A. Yes, sir.

24 Q. Sheriff Cook, I'd like to turn your attention, if I  
could,  
25 to April 21, 1995, two days after the Oklahoma City  
bombing.

24

federal 1 Do you recall on that day receiving any calls from  
2 agents?

3 A. I do.

of 4 Q. Did the agents inquire about a particular prisoner  
5 yours?

6 A. Yes, sir.

7 Q. What was that prisoner's name?

8 A. Timothy McVeigh.

9 Q. When had Mr. McVeigh first come into your custody?

10 A. On the -- April 19.

County jail, 11 Q. Pursuant to your normal practice in the Noble

April 19 12 did you also seize Mr. McVeigh's personal property on

13 when he was transferred into your custody?

14 A. Yes, sir.

you 15 Q. Can you recall on April 21 approximately what time

16 first heard from federal agents inquiring about Mr.  
McVeigh?

17 A. It was around 10:00.

18 Q. Did federal agents arrive later that morning in  
Noble

19 County?

20 A. Yes, sir.

21 Q. Was it -- do you recall about what time they  
arrived?

22 A. It was around noon.

23 Q. Was it your understanding from early on that the  
federal

24 agents planned on arresting Mr. McVeigh that day?

25 A. Yes, sir.

25

1 Q. Did the agents also indicate their intent to take  
property

2 that you had taken when you booked Mr. McVeigh into  
Noble

3 County?

4 A. Yes.

5 Q. When the agents first arrived, did they immediately  
arrest

6 and take the property of Mr. McVeigh?

7 A. No.

8 Q. Did anyone ever express to you the reasons why the

federal

9 agents did not immediately?

10 MS. MERRITT: Your Honor, I'm going to object.  
It's

11 leading.

12 THE COURT: All right. Please avoid leading.

13 BY MR. CONNELLY:

14 Q. Did anyone ever express to you why federal agents  
did not

15 seize the property and make the arrest immediately upon  
their

16 arrival?

17 A. The warrant --

18 MS. MERRITT: Your Honor, I'm going to object  
again

19 because this is hearsay.

20 THE COURT: Overruled.

21 Go ahead. Answer.

22 THE WITNESS: The warrant hadn't been prepared  
yet.

23 BY MR. CONNELLY:

24 Q. Let me ask you, if you would, Sheriff Cook, to take  
a look

25 at Government's Exhibit McVeigh No. 1. It should be in  
the

or -- 1 briefing book. I can either hand a copy of the exhibit

2 THE COURT: Go ahead. I'll catch up.

3 MR. CONNELLY: Okay.

4 BY MR. CONNELLY:

5 Q. Have you had a chance, Sheriff Cook, to review that  
6 document?

7 A. Yes, sir.

8 Q. Do you recognize it?

9 A. Yes.

10 Q. Was this document prepared by an employee acting  
under your

11 direction?

12 A. Yes, sir.

13 Q. Who prepared the document?

14 A. Debbie Thompson.

15 Q. And who is Debbie Thompson?

16 A. She's my secretary.

17 Q. Did Ms. Thompson prepare this document pursuant to  
official

18 responsibilities as your secretary?

19 A. Yes.

20 Q. Was a copy of the document retained in your files?

21 A. Yes.

22 Q. Do you recognize the items listed in that  
inventory?

23 A. Yes, sir.

24 Q. And without going item by item, can you briefly  
describe to  
25 the Court exactly generally what those items are?

27

1 A. They're items taken from Mr. McVeigh on the day of  
his  
2 arrest, items that was issued to him while he was in  
Noble  
3 County jail and written material that was filled out  
while he  
4 was there.

5 Q. Did your office turn those items over to the FBI on  
6 April 21?

7 A. Yes, sir.

8 Q. Can you determine from the inventory what time they  
were  
9 turned over to the FBI?

10 A. At 4:30 p.m. on the 21st of April.

11 Q. The document also says on the top, Prepared at  
1317, or can  
12 you read at the top what it says exactly about 1317?

13 A. Released on 4-21-95 at 1517 hours.

14 Q. And is it your understanding they were actually  
turned over  
15 to the FBI at 1517?

16 A. No. He signed for it at 4:30.

17 Q. Do you recall whether Mr. McVeigh was federally  
arrested

18 around that same time?

19 A. Yes, sir.

20 Q. What time did Mr. McVeigh actually leave the Noble  
County

21 building?

22 A. It was around 6 p.m.

23 Q. Let me ask you just generally, does the Noble  
County

24 sheriff's office frequently transfer custody of  
prisoners to

25 other jurisdictions?

28

1 A. Yes, sir.

2 Q. And is it your usual practice in those cases to  
transfer

3 the prisoner's property as well?

4 A. Yes.

5 Q. Is it usual or unusual at the time you transfer a  
prisoner

6 as well as his property for the other jurisdiction to  
present

7 you with a search warrant?

8 A. Unusual.

9 Q. Can you ever recall a case in which you got a  
search

10 warrant for property transferred?

11 A. No, sir.

12 MR. CONNELLY: I have no further questions,

your

13 Honor.

14 THE COURT: All right.

15 CROSS-EXAMINATION

16 BY MS. MERRITT:

17 Q. Good morning, Sheriff Cook.

18 A. Good morning.

19 Q. I'm going to take you back first to the procedures

for

20 Noble County that occur when a prisoner is brought in.

Can you

21 please tell me what the procedure was in April of 1995

for the

22 handling of prisoner's clothing?

23 A. When the subject is brought into a booking office,

a

24 book-in card is filled out giving their name, date of

birth and

25 information, general information, and then what  
property they

29

1 have on their person -- that is listed on a property --  
in a

street 2 property book; and then they are taken out of their

3 clothes and put in a jumpsuit that we provide.

4 Q. And isn't it true that in April of 1995 the  
procedure for

5 removing clothes was that you would hand the inmate a  
brown

6 paper bag and the clothes would go in there?

7 A. Yes, ma'am.

8 MR. CONNELLY: Your Honor, objection. As I  
understand

9 the purpose of this hearing, it's not a chain of  
custody. The

10 question is whether federal agents properly took over  
property

11 on April 21, the transfer of property was pursuant to a  
valid

12 exception to the warrant requirement or a warrant  
itself; and

13 the procedures that the Noble County jail followed on  
April 19

14 I don't think are a proper subject of inquiry.

15 THE COURT: What's the purpose of this line of  
16 inquiry?

17 MS. MERRITT: The purpose, your Honor, is that  
in its

18 pleadings the Government has asserted that among the  
exceptions

19 to the search warrant requirement it would seek to rely  
upon

20 today include inventory search and booking procedures;  
and in

21 order for that to be raised as a defense or as an  
exception to  
22 the warrant requirement, I think we are entitled to go  
into  
23 what these standard procedures are to see if they were  
followed  
24 in this case.

25 MR. CONNELLY: If I could just briefly be  
heard on

30

1 that.

2 The challenge to the motion to suppress does  
not raise  
3 anything that happened on the 19th. The sole issue is  
what  
4 happened on the 21st, the transfer of custody, not the  
initial  
5 taking into custody. In fact, we were in agreement the  
6 original arrest was valid, there was no challenge to  
it, there  
7 was no challenge to what happened on April 19. The  
sole  
8 challenge goes to the authority of the Federal  
Government to  
9 take over the property on April 21; so we continue to  
assert a  
10 relevancy objection.

11 THE COURT: Overruled.

12 MS. MERRITT: Should I repeat the question?  
13 THE COURT: Yes. Do you remember the  
question?  
14 THE WITNESS: No, sir.  
15 THE COURT: You were asked about a brown bag,  
I think,  
16 but go ahead and do it again.  
17 BY MS. MERRITT:  
18 Q. In April of 1995, wasn't the procedure that was  
being  
19 utilized for the maintaining of prisoners' clothing  
that you  
20 would give the prisoner a brown paper bag to put his  
clothes  
21 in?  
22 A. That's right.  
23 Q. And after the clothes went into the brown paper  
bag, they  
24 were left in the property room; is that correct?  
25 A. That's correct.

31

1 Q. And you or another employee at the jail would write  
the  
2 prisoner's name on the bag; is that correct?  
3 A. That's correct.  
4 Q. And this property room was not locked; is that

correct?

5 A. Correct.

6 Q. And the bags of property were basically kept with  
each

7 other in that room; is that correct?

8 MR. CONNELLY: Your Honor, can I have a  
continuing

9 objection on relevancy?

10 THE COURT: Yes. The objection is overruled;  
but it

11 continues.

12 Go ahead, Ms. Merritt.

13 BY MS. MERRITT:

14 Q. Okay. Now, you don't have any special procedures,  
care or

15 maintenance with respect to personal property because  
it's not

16 considered evidence; isn't that true?

17 A. Personal property?

18 Q. And clothing?

19 A. And clothing, no.

20 Q. That is -- do you have any care or special  
procedures with

21 respect to clothing?

22 A. No. We just bag them.

23 Q. And you don't have any written guidelines for the  
handling

24 or maintaining of clothing or small items of personal  
property,

25 do you?

32

1 A. Small valuables are locked up.

2 Q. Okay. Are there written guidelines on that?

3 A. I don't believe so.

4 Q. And now it's your understanding that Mr. McVeigh  
was

5 arrested on April 19 by Oklahoma State Trooper Hanger.  
Is that  
6 correct?

7 A. Yes, ma'am.

8 Q. And Trooper Hanger brought Mr. McVeigh to the Noble  
County  
9 jail; is that correct?

10 A. Yes.

11 Q. And is it your understanding that Jailer Marsha  
Moritz is

12 the individual who booked Mr. McVeigh and itemized his  
personal  
13 property?

14 A. Yes.

15 Q. And is it your understanding that Mr. McVeigh's  
clothing

16 was switched in the property room and his clothing was  
put in a

17 brown paper bag?

18 A. Yes.

19 Q. And is it your understanding that the brown paper  
bag with

20 the clothing remained there until it was released to  
the FBI on

21 April 21?

22 A. Yes.

23 Q. Now, there were some other items of property that  
were

24 recovered by Trooper Hanger that he delivered to you;  
is that

25 correct -- on April 19?

33

1 A. Yes.

2 Q. And you put those items in the evidence vault; is  
that

3 correct?

4 A. Yes.

5 Q. And isn't it true that they stayed in the evidence  
vault

6 until April 21 around 10:30 a.m. when you received a  
telephone

7 call from the FBI stating that they would like you to  
keep a

8 federal hold on Mr. McVeigh?

9 A. Yes.

10 Q. And at that time, you moved those items to a file

cabinet

11 in your office?

12 A. I did.

brought 13 Q. Now, on April 19, 1995, when Mr. McVeigh was first

that the 14 to the Noble County jail, you had no reason to think

any 15 clothes or small personal effects of Mr. McVeigh had

16 evidentiary value, did you?

17 A. No.

when you 18 Q. And did that belief continue until April 21, 1995,

19 received a call or a fax around 10:30 a.m.?

20 A. Yes.

or fax 21 Q. Can you tell me which agency you received that call

22 from?

identified 23 A. It was a public service by a gentleman that

24 himself (sic) as an ATF agent.

on a 25 Q. And were you told that they wanted Mr. McVeigh held

34

1 federal warrant, on a federal hold?

2 A. Federal hold, yes.

Oklahoma 3 Q. Did they mention at this time anything about the  
4 City bombing?  
5 A. Yes.

the 6 Q. And it was around noon, I think you testified, that  
7 agents began to arrive at the Noble County jail?  
8 A. Yes.

arrived 9 Q. And was there approximately six to nine agents that  
10 at the jail around noon?  
11 A. Yes.

got 12 Q. Did they kind of take over the jail when they first  
13 there?  
14 A. No. They were in the sheriff's office. They never  
went to 15 the jail at that time.

16 Q. Did they kind of take over the sheriff's office?  
17 A. No.

18 Q. Did they make a lot of phone calls?  
19 A. Yes.

McVeigh? 20 Q. Did they ask to see records associated with Mr.  
21 A. Yes.

effects? 22 Q. Did they ask to take his clothing and personal  
23 A. Not when they first arrived.  
24 Q. What is your recollection of the first time they

asked to

25 take his personal effects?

35

1 A. It was that afternoon.

2 Q. Do you recall a time?

3 A. No.

you, do

4 Q. Well, you have Government's Exhibit 1 in front of

5 you not?

6 A. Yes.

at the

7 Q. Okay. Can you take a look at that exhibit and look

that the

8 top few lines of that exhibit? Does it not indicate

FBI for

9 items were released on that sheet were released to the

10 laboratory testing?

11 A. Yes.

April 21,

12 Q. Does it not indicate that they were released on

13 1995, at 1517 hours?

14 A. Yes.

typed

15 Q. And isn't it true that those notations -- those

jail?

16 notations was made by an employee of the Noble County

17 A. Yes.

18 Q. And is it your understanding that the person who  
typed

19 those notations was Ms. Debbie Thompson?

20 A. Yes.

21 Q. And you previously identified Ms. Thompson as your  
22 secretary?

23 A. Yes.

24 Q. Isn't it also true that Ms. Thompson was a jailer  
for five

25 years or a deputy?

36

1 A. Yes.

2 Q. And did you have any role in authorizing her or any  
other

3 sheriff or jailer at the jail on April 21 to collect  
4 Mr. McVeigh's property?

5 A. She collected it from the jail floor.

6 Q. Well, based upon the fact that her typed notations  
show

7 that she released the property to the FBI at 3:17,  
wouldn't you

8 say that your request to her was before 3:17?

9 A. Yes.

10 Q. Do you recall the specific agent who took  
possession of the

11 property?

12 A. I don't recall.

13 Q. Do you recall if he was a bald-haired man with a  
beard?

14 A. There was a lot of people. I don't remember.

15 Q. When you saw Mr. McVeigh's possessions on April 21  
as they

16 were leaving with the FBI, were they in plastic bags?

17 A. Yes.

18 Q. And they were not put in plastic bags by anyone  
from the

19 Noble Sheriff's Department, were they?

20 A. I don't know.

21 Q. Well, do you have plastic bags at the Noble County  
22 Sheriff's Department to put property in that looks like  
the

23 ones that left with the FBI?

24 A. Yes.

25 Q. Now, at 4:00, agents removed Mr. McVeigh from his  
cell for

37

1 a short period of time; is that true?

2 A. Yes.

3 Q. And then they returned him to the cell; right?

4 A. Yes.

received 5 Q. Do you recall the time that the arrest warrant was

6 at the Noble County jail?

7 A. No.

8 Q. Do you recall that it was not before 4:30 p.m.?

9 A. It was before then.

10 Q. You believe it was before 4:30?

11 A. Yes.

12 Q. And what do you base that on?

13 A. I took, I think, three FBI agents up to the fourth  
floor

14 around 4:15, 4:20, somewhere in there, and they  
arrested

15 Mr. McVeigh at around 4:25.

16 Q. 4:25?

17 A. Yes, ma'am.

18 Q. Are you sure that isn't 4:35?

19 A. Approximately, you know. I'm not positive.

20 Q. Did it take them until 6:00 to leave with Mr.  
McVeigh?

21 A. Yes.

22 Q. Now, you hadn't been shown a search warrant for the  
23 personal effects or clothing of Mr. McVeigh on April 21  
-- were

24 you?

25 A. No, ma'am.

1 Q. Were the state charges against Mr. McVeigh for  
which he had  
2 been initially arrested on April 19 dismissed at the  
time he  
3 was released into federal custody?

4 A. Yes.

5 Q. So at the time he left the Noble County jail with  
the FBI,  
6 the only charges pending against him, if any, were  
going to be  
7 federal charges?

8 A. Yes.

9 Q. And is it true that since April of 1995 when Mr.  
McVeigh  
10 was arrested, your procedures for maintaining personal  
property  
11 have been changed?

12 A. Yes.

13 Q. And you now put items in wire baskets inside so  
they're  
14 more clearly identified?

15 A. Yes.

16 Q. You did not consider that Mr. McVeigh's clothing  
was  
17 evidence when you seized it on April 19; correct?

18 MR. CONNELLY: Objection, your Honor. I think  
this --

19 THE COURT: That's already been asked and  
answered.

20 MS. MERRITT: Okay.

21 BY MS. MERRITT:

22 Q. Do you recall whether the federal agents looked at  
23 Mr. McVeigh's clothing before 4:30?

24 A. I don't know.

25 Q. That would be outside your personal knowledge?

39

1 A. Yes.

2 MS. MERRITT: Your Honor, I believe that's all  
the  
3 questions I have.

4 THE COURT: All right.

5 Mr. Connelly, do you have any follow-up?

6 MR. CONNELLY: Just briefly, your Honor.

7 THE COURT: All right.

8 REDIRECT EXAMINATION

9 BY MR. CONNELLY:

10 Q. Sheriff Cook, I believe your testimony was from  
review of

11 Exhibit 1 that you instructed Ms. Thompson to begin  
preparing

12 that before 3:17 because that's the first time noted on  
that

13 document. Is that correct?

14 A. Yes.

Hupp of  
15 Q. What time does that document indicate that Agent

for  
16 the FBI first received or indicated that the FBI signed

17 that document, the inventory?

18 A. At 4:30 p.m.

19 MR. CONNELLY: Nothing further, your Honor.

Are we  
20 THE COURT: Is the witness now to be excused?

21 agreed on that?

excused.  
22 MS. MERRITT: Yes. The witness may be

him?  
23 THE COURT: Mr. Connelly, are you excusing

24 MR. CONNELLY: We do, your Honor.

You're  
25 THE COURT: Sheriff, you may step down.

40

1 excused.

2 THE WITNESS: Thank you, sir.

3 THE COURT: Next, please.

Floyd  
4 MR. CONNELLY: We would call FBI Special Agent

5 Zimms.

stand. 6 THE COURT: Please come forward to the witness

hand. 7 THE COURTROOM DEPUTY: Please raise your right

8 (Floyd M. Zimms was sworn.)

name for 9 THE COURTROOM DEPUTY: Please state your full  
10 the record and spell your last name.

11 THE WITNESS: Floyd M. Zimms, Z-I-M-M-S.

12 DIRECT EXAMINATION

13 BY MR. CONNELLY:

of the 14 Q. Good morning, Mr. Zimms. Are you a special agent

15 FBI?

16 A. Yes, sir, I am.

17 Q. When did you first go to work for the FBI?

18 A. 1965.

19 Q. When did you first become a special agent?

20 A. 1970.

career? 21 Q. What FBI offices have you been assigned in your

22 A. Minneapolis, Chicago and Oklahoma City.

April 19, 23 Q. Were you assigned to the Oklahoma City office on

24 1995?

25 A. Yes, I was.

bombing

1 Q. And have you been assigned to the Oklahoma City  
2 investigation since April 19, 1995?  
3 A. Yes, I have.

County

4 Q. On April 21, 1995, two days after the Oklahoma City  
5 bombing, did you and other agents travel to the Noble  
6 sheriff's office and jail?  
7 A. Yes, we did.

8 Q. What was the reason for going there that day?  
9 A. To arrest Timothy McVeigh.

facility?

10 Q. What time did you arrive at the Noble County  
11 A. Approximately noon.

12 Q. Did you immediately arrest Mr. McVeigh?  
13 A. No, sir.

14 Q. Why not?  
15 A. Did not have the authority of a warrant.

16 Q. Did you later learn that a warrant was issued?  
17 A. Yes, I did.

warrant?

18 Q. Did you arrest Mr. McVeigh after learning of a  
19 A. Yes, I did.

20 Q. What time did you arrest Mr. McVeigh?  
21 A. Approximately 4:35, 4:30, in that area.

22 MR. CONNELLY: I have no further questions.

Merritt. 23 THE COURT: Any cross-examination? Ms.

24 CROSS-EXAMINATION

25 BY MS. MERRITT:

42

any of 1 Q. Mr. Zimms, do you have any knowledge as to whether  
prior to 2 the agents with you examined Mr. McVeigh's clothing  
3 4:30 p.m. when you arrested him -- 4:35?

4 A. Not prior to 4:30, I don't, no.

5 Q. You don't have any knowledge?

6 A. No, sir -- no, ma'am.

7 MS. MERRITT: That's all, your Honor.

8 MR. TIGAR: Your Honor.

9 THE COURT: Yes, Mr. Tigar.

questions 10 MR. TIGAR: May I ask Agent Zimms a couple  
11 on the timing issue?

motion? 12 THE COURT: Is it going to relate to your

13 MR. TIGAR: Yes, it relates to our motion.

14 THE COURT: All right.

15 CROSS-EXAMINATION

16 BY MR. TIGAR:

17 Q. Good morning, Agent. I'm Michael Tigar. I  
represent  
18 Mr. Nichols.  
19 What time did you leave Oklahoma City that  
morning of  
20 the 21st?  
21 A. I'm not sure. It was late morning.  
22 Q. After -- something after 10:00?  
23 A. I believe it would have been after 10, yes.  
24 Q. Did you drive to Perry, Oklahoma?  
25 A. No, sir.

43

1 Q. Flew?  
2 A. Yes, sir.  
3 Q. In an FBI plane?  
4 A. FBI helicopter.  
5 Q. Did -- who directed you to go to Perry, Oklahoma?  
6 A. My superiors at where we were in Oklahoma City.  
7 Q. Was that Mr. Gibbons?  
8 A. No, sir.  
9 MR. TIGAR: No further questions.  
10 THE COURT: Do you have anything further?  
11 MR. CONNELLY: We have nothing further. May  
this

12 witness be excused?  
13 THE COURT: Any objection to excusing the  
witness?  
14 MS. MERRITT: No, your Honor.  
15 THE COURT: All right. You may step down.  
You're  
16 excused.  
17 Next.  
18 MR. CONNELLY: We have no further evidence.  
We would  
19 simply rely on that and the three stipulated exhibits.  
20 THE COURT: All right.  
21 Ms. Merritt, do you have any witnesses?  
22 MS. MERRITT: Yes, we do, your Honor. We  
would first  
23 call Oklahoma State Trooper Charles Hanger.  
24 MR. CONNELLY: Your Honor, can we have a  
proffer of  
25 relevancy of Trooper Hanger?

44

1 THE COURT: All right.  
2 MS. MERRITT: Your Honor, we were going to  
call  
3 Trooper Hanger because he is the individual who  
arrested  
4 Mr. McVeigh on April 19. He is the individual who was

present

gave 5 and instructed Mr. McVeigh to take off his clothing and  
can 6 him the brown paper bag to put the clothing into. He  
the time 7 describe the clothing that Mr. McVeigh was wearing at  
arrived at the 8 of his arrest. He can describe the time that he  
gave to 9 jail with him. He can talk about the property that he  
10 Sheriff Cook to hold.

custody, 11 THE COURT: Well, that sounds like chain of  
12 which is not in issue.

is how 13 MS. MERRITT: Well, what is in issue, though,  
County jail 14 the clothing and personal effects came into Noble  
15 and how they were released out to the FBI.

this was 16 THE COURT: How does that relate to whether  
warrant 17 done in a routine manner and whether there was a  
18 needed?

did it. 19 MS. MERRITT: Well, because he is the one who  
and 20 Sheriff Cook stated that they had no written guidelines  
or for 21 they had no procedures for handling personal property  
22 handling clothing and --

23 THE COURT: Well, that's not disputed, is it?

24 MR. CONNELLY: Right.

25 THE COURT: I see no purpose for that  
testimony.

45

1 MS. MERRITT: Then, your Honor, we would call  
Marsha  
2 Moritz, who is a jailer at the Noble County jail.

3 MR. CONNELLY: Your Honor, again, if I could  
be heard.

4 Ms. Moritz' testimony and knowledge is limited to April  
19.

5 She did the intake. She was not on duty until later on  
on the

6 21st. We would object to any testimony about intake  
procedures

7 on the 21st -- on the 19th when the 21st outtake is  
really

8 what's at issue.

9 MS. MERRITT: Again, your Honor, I would say  
that the

10 intake is at issue as well and that she would testify  
that the

11 clothing remained in the property room from the time it  
was

12 booked in on the 19th till the 21st when it was  
released to the

13 FBI.

14 THE COURT: Well, again, that's chain of  
custody and

15 that's not in issue here and I don't know if it ever  
will be.

16 Depends on whether any of these items will ever be  
offered in

17 evidence.

18 MS. MERRITT: The next witness we would call  
would be

19 Deborah Thompson; and Deborah Thompson, we would call  
for an

20 offer of proof if the Government is going to ask --

21 THE COURT: I know who she is from the  
testimony

22 already heard and I don't see any objection to that; so

23 Deborah -- Deborah Thompson? Is that --

24 If you'll please come forward to the witness  
stand.

25 THE COURTROOM DEPUTY: Please raise your right  
hand.

46

1 (Deborah J. Thompson was sworn.)

2 THE COURTROOM DEPUTY: Please state your full  
name for

3 the record and spell your full name.

4 THE WITNESS: Deborah June Thompson, D-E-B-O-  
R-A-H,

5 J-U-N-E, T-H-O-M-P-S-O-N.

6 DIRECT EXAMINATION

7 BY MS. MERRITT:

8 Q. Good morning, Ms. Thompson. My name is Jeralyn  
Merritt.

9 I'm one of the attorneys for Timothy McVeigh. Can you  
tell me

10 how you're employed?

11 A. Noble County sheriff's office as a secretary,  
matron.

12 Q. Have you also been a jailer there for five years?

13 A. Yes.

14 Q. And are you familiar with the booking and arrest  
procedures

15 including the handling of personal property and  
evidence and

16 clothing?

17 A. Yes.

18 Q. Your office is on the first floor or the second  
floor in

19 the Noble County courthouse?

20 A. First floor.

21 Q. And is the jail on the second floor?

22 A. No, fourth.

23 Q. The fourth floor?

24 A. Uh-huh.

25 Q. On April 21, 1995, do you recall the FBI arriving  
at the

1 Noble County jail?

2 A. Yes, I do, uh-huh.

3 Q. Do you recall going up to the jail and gathering

4 Mr. McVeigh's clothing and personal property?

5 A. Yes, ma'am.

6 Q. At whose request did you do that?

7 A. At my boss, Jerry Cook.

8 THE COURT: We're having trouble hearing you,

9 Ms. Thompson.

10 THE WITNESS: I'm sorry.

11 THE COURT: Well, it isn't your fault  
necessarily. If

12 you'd just speak into the microphone, that will help  
us. Thank

13 you.

14 BY MS. MERRITT:

15 Q. You said it was at the request of your boss,  
Sheriff Jerry

16 Cook?

17 A. Yes, ma'am.

18 Q. Do you recall the time on April 21 he made that  
request of

19 you?

20 A. It was later on in the afternoon, after lunch.

been? 21 Q. Do you recall how long after lunch it would have

22 A. Around 2, somewhere in that area.

23 Q. Do you recall specifically what he told you?

his 24 A. He just asked me to go upstairs and gather up all

25 personal belongings.

48

FBI? 1 Q. Did he tell that you the purpose of gathering the  
2 belongings was so that they could be released to the

3 A. Yes.

requested 4 Q. And is it your understanding that the FBI had

5 these items?

6 A. Yes.

paperwork 7 Q. Were you also instructed to gather bedding and

8 and other items such as that?

9 A. Yes.

10 Q. And did you, in fact, go up and get those items?

11 A. Yes, I did.

were 12 Q. Did you make a handwritten list at the time you

take? 13 gathering the property of what you were putting in to

14 A. Yes, ma'am, I did.  
15 Q. And you later came downstairs with the items? Is  
that  
16 correct?  
17 A. Yes, I did.  
18 Q. Did you give the items to an FBI agent?  
19 A. Yes, I took them into Jerry's office.  
20 Q. And who was in Jerry's office when you took them  
in?  
21 A. Agents and Jerry.  
22 Q. Did you leave the items in that office?  
23 A. Yes, I did.  
24 Q. And what did you do?  
25 A. I made up an inventory and then one of the agents  
and

49

1 myself, Hupp, Lou Hupp --  
2 Q. Agent Hupp?  
3 A. Right. We went over the items and the inventory  
list.  
4 Q. Do you recall the time you typed the inventory?  
5 A. It was around 3, a little after.  
6 Q. And at the time you typed the inventory, you had  
already  
7 left the clothing in Sheriff Cook's office with FBI  
agents

8 there?

9 A. Yes.

Agent

10 Q. And it was after you left the clothing there that

Is

11 Hupp then came over to your desk where you were typing?

12 that correct?

13 A. No.

14 Q. Okay. How did --

answering

15 A. I had typed up -- well, during that time, I was

awhile to

16 phones and taking care of other business, so it took

as soon

17 type up the inventory that I had handwritten out. And

and we

18 as that was finished, then I took it into Agent Hupp

19 both went over the inventory.

20 Q. Okay. So tell me where you typed the inventory.

21 A. At my desk up front.

the room

22 Q. And that's not -- that is not in the same room as

23 where the clothing was with the FBI agents; correct?

24 A. Right.

the

25 Q. And after you finished typing the list, you brought

and the 1 list back into Sheriff Cook's office where Agent Hupp  
2 clothing were?

3 A. Yes.

items 4 Q. And then you and Agent Hupp proceeded to review the  
5 that were on your typed list; is that correct?

6 A. Yes.

your 7 Q. And do -- and then at some point, Agent Hupp signed  
8 list for the items?

9 A. Yes.

list, or 10 Q. And was that at about 4:30 p.m. that he signed the  
11 was it another time?

12 A. It was around then, yes, ma'am.

time; is 13 Q. And Mr. McVeigh had not yet been arrested at that  
14 that correct -- by the FBI, or do you have any  
knowledge of

15 that?

mass 16 A. To be honest, I really can't remember. It was just  
17 confusion in there, a lot of people.

further 18 MS. MERRITT: I don't believe I have any  
19 questions.

20 THE COURT: Any cross-examination?

21 MR. CONNELLY: No questions, your Honor.  
22 THE COURT: All right. You may be excused, I  
take it.  
23 MS. MERRITT: Yes.  
24 THE COURT: You may step down. You're  
excused.  
25 Any other witnesses for the defendant?

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1 MS. MERRITT: Just a moment, your Honor.  
2 THE COURT: Yes.  
3 MS. MERRITT: Your Honor, we would call FBI  
Agent  
4 Hupp.  
5 THE COURT: All right. Do we have Agent Hupp?  
6 MR. CONNELLY: I don't believe he's an Agent,  
your  
7 Honor.  
8 THE COURT: Well, Mr. Hupp.  
9 Please come forward, Mr. Hupp.  
10 THE COURTROOM DEPUTY: Please raise your right  
hand.  
11 (Louis Hupp was sworn.)  
12 THE COURTROOM DEPUTY: Please have a seat.  
13 Please state your full name and spell your  
last name  
14 for the record.

15 THE COURT: We're just moving the mic to pick  
16 witnesses up a little better.

17 Go ahead and answer.

last

18 THE WITNESS: My name is Louis Gale Hupp. The  
19 name is spelled H-U-P-P.

20 THE COURT: All right.

21 DIRECT EXAMINATION

22 BY MS. MERRITT:

attorney for

23 Q. Mr. Hupp, my name is Jeralyn Merritt. I'm an  
24 Timothy McVeigh. Are you employed with the FBI?

25 A. Yes, ma'am.

52

fingerprint

1 Q. And are you employed with the FBI as a latent  
2 examiner?

3 A. That is correct.

have

4 Q. Directing your attention to April 21, 1995, did you  
5 occasion to be at the Noble County jail?

6 A. Yes, ma'am.

7 Q. Do you recall what time you arrived at the jail?

8 A. Somewhere between 3:30 and 4:00 in the afternoon.

9 Q. Do you recall having a conversation with Ms. Debbie  
10 Thompson, who I believe then was called Ms. Debbie  
Rojas,  
11 concerning clothing belonging to Mr. McVeigh and other  
items of  
12 personal property the FBI had requested Noble County to  
turn  
13 over to the FBI?

14 A. Yes, ma'am.

15 Q. Do you recall what time that conversation took  
place?

16 A. Somewhere in the neighborhood of 4:30 in the  
afternoon.

17 Q. Mr. Hupp, if you will look in front of you, I  
believe there

18 is a document that has been identified as Government's  
Exhibit

19 1.

20 A. Yes, ma'am.

21 Q. You've seen Government's Exhibit 1 before; is that  
correct?

22 A. Yes, I have.

23 Q. In fact, your signature appears on the bottom of  
24 Government's Exhibit 1? Is that correct?

25 A. Yes, along with other notations.

53

1 Q. And looking at the top of Government's Exhibit 1,

it

3 -- 2 indicates, does it not, that the items were released at

3 1717 hours, which is 3:17 p.m.?

4 A. That is what it states, but I was not in Perry  
County at

5 that time or in Noble County at that time.

6 Q. Can you tell me how it is you're so certain as to  
exactly

7 the time you arrived at Noble County?

8 A. Well, I know that I left -- the approximate time  
that I

9 left up in Kansas and we flew down. Once I arrived in  
the

10 jail, I was there for a specific purpose and it was a  
very

11 short period of time until I was able to achieve that  
purpose

12 and move on.

13 Q. But you don't know the exact time you arrived;  
correct?

14 A. No. Somewhere between 3:30 and 4:00.

15 Q. Do you recall where you were when Ms. Thompson  
brought the

16 clothing and personal effects of Mr. McVeigh to you?

17 A. We were in an office on the first floor.

18 Q. And were you in that office with Sheriff Cook of  
the Noble

19 County jail?

20 A. Yes, I believe he was there. There was a number of  
people

21 there.

22 Q. And it is not your recollection that Ms. Cook  
brought --

23 Ms. Thompson brought that property in there at  
approximately

24 3:17 p.m.?

25 A. She very well could have brought it in there. I  
wasn't

54

1 there at that time so I'm not sure what time of day it  
came in.

2 Q. Are you saying you weren't in the room at the time  
the

3 property was first brought in?

4 A. No, ma'am. Not that I'm aware of. I took  
possession of it

5 at 4:30. I became aware of -- just a few minutes  
before that

6 that it was in fact in the room.

7 Q. You were aware of it just a few minutes before  
4:30? Is

8 that your testimony?

9 A. Yes.

10 Q. Do you recall reviewing the typed list in front of  
you on

11 Government's Exhibit 1 with Ms. Thompson item by item  
to make

was 12 sure that everything that was listed on this inventory

13 being turned over to you?

14 A. That is correct.

minutes? 15 Q. And you're saying that that only took a very few

say. 16 A. It wasn't long at all. Less than 10 minutes, I'd

FBI 17 Q. Do you have any knowledge as to whether any of the

the time 18 agents had viewed or examined this property prior to

19 that you arrived?

20 A. No, ma'am.

no 21 Q. No, you have knowledge they didn't, or no, you have

22 knowledge?

23 A. I have no knowledge whatsoever.

that 24 Q. And again, on Exhibit No. 1 at the top it indicates

testing? 25 the items were released to the FBI for laboratory

55

1 A. That is correct.

2 MS. MERRITT: I have no further questions.

3 THE COURT: Any cross-examination?

4 MR. CONNELLY: Just a few, your Honor.

5 THE COURT: All right.

6 CROSS-EXAMINATION

7 BY MR. CONNELLY:

8 Q. Mr. Hupp, where did you come from before you got to  
Noble  
9 County on April 21?

10 A. I was in Junction City, Kansas.

11 Q. And did you perform activities that day in Junction  
City in  
12 reference to this case?

13 A. Yes, I did.

14 Q. And what time did you leave Junction City, Kansas?

15 A. Well, I left Junction City somewhere between --  
16 approximately 1 or 1:30. It could have been a little  
after  
17 that because I know that I finished up one location at  
11:00  
18 and we went back and gathered up some evidence; and  
then we  
19 proceeded to the airport. I would imagine that took an  
hour  
20 and a half to two hours and then we were some time at  
the  
21 airport before we took off.

22 Q. Where did you fly from the airport? To where in  
Oklahoma?

23 A. We flew from Manhattan, Kansas, to the airport in  
Perry, in  
24 Noble County.

25 Q. And how did you get over to the Noble County  
facility?

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1 A. I called the sheriff's office and asked for some  
2 transportation that was provided.

3 Q. And when you got to the Noble County facility, how  
long

4 were you there before you were told to inventory or  
look at  
5 property for seizure?

6 A. I would say somewhere between about 30 to 45  
minutes,  
7 something like that.

8 Q. Were you there for the purpose of picking up the  
property?

9 A. No, sir.

10 Q. Why were you there?

11 A. I was there to fingerprint and palm print Mr.  
McVeigh.

12 Q. And why did you go through the property?

13 A. I was requested by a supervisor to take possession  
of the

14 items and for transportation back to Washington, D.C.;

15 before transporting them, I wanted to assure myself  
that

16 everything that was on the list was in fact in the box.

17 Q. And did you go through item by item?

18 A. Yes, I did.

19 Q. Were you wearing -- were you wearing anything at  
the time

20 you did this?

21 A. I was wearing a pair of cotton gloves for  
protection

22 against contamination and the like.

23 Q. And how closely did you examine each of the items?

24 A. Merely opened the packages that they were in and  
examined

25 to see what was in it without trying to disturb it very  
much or

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1 remove it. Then I would check the list and find  
something that

2 corresponded with it and make a small check to the left  
of the

3 number indicating that I had seen that item. Then it  
was

4 returned in its packaging back into the box.

5 Q. Was it kept in the original packaging or put in  
some new

6 packaging?

7 A. No, it was kept in the original packaging that --  
when I

8 opened the box and examined the items, the same  
packagings was

9 used to transport it to D.C.

10 Q. Did you compare the items against the list that the  
11 secretary of the Noble County jail had prepared  
earlier?

12 A. Yes, I did.

13 Q. And did you make any additional items?

14 A. Yes, sir. There were a few items that appeared in  
the box  
15 that did not actually appear on the typewritten list.  
Some of  
16 them, I was informed that it -- probably were jail  
property. I  
17 made a notation on them so that I would have an exact  
listing  
18 of what was in the box and what was being transported.  
And  
19 also, there was one item that I signed that was not in  
the box  
20 and I made a notation to that effect.

21 Q. After going through that process for five or ten  
minutes,  
22 did you then sign the form?

23 A. Yes, I did.

24 Q. Can you look at that form and see where your  
signature is?

25 A. Yes.

1 Q. And did you time this -- the signature?

2 A. Yes, I did.

3 Q. And how did you know what time it was?

4 A. By looking at a clock. I think there was a clock  
on the  
5 wall or my wristwatch, but I distinctly remember  
looking at a  
6 clock to note the time that I did take possession of  
the items.

7 Q. And after you signed that, what did you do with  
that  
8 inventory list?

9 A. A copy was prepared for myself, the original was  
maintained  
10 in the jail. I placed the copy of the inventory list  
into the  
11 box and then sealed it with tape.

12 Q. What did you do with the box at that point?

13 A. At that point, it never left my sight. It was in  
my  
14 possession throughout that day there and until such  
time as we  
15 returned to the airport.

16 Q. What did you do from 4:30 on? Did you leave right  
away at  
17 that time?

18 A. No, sir. At approximately 4:45 or thereabouts, I  
was  
19 escorted to the upstairs in the jail cell for the  
purpose of

20 printing Mr. McVeigh.

21 Q. And at the time you printed him, where was the box?

22 A. It was in the area where we was at. It was close  
by. It  
23 was never out of my sight.

24 Q. What time did the box physically leave the Noble  
County  
25 building?

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1 A. It was sometime after -- after 5. I would say  
about 5:30,

2 something like that. After everybody had been  
transported and

3 everybody had left, then we were escorted back to the  
first

4 floor, picked up our coat and other personal gear and  
then we

5 were afforded transportation back to the airport there  
in Perry

6 for the purpose of returning to D.C.

7 Q. Did you remove the box from the building before or  
after

8 Mr. McVeigh had been taken out of the building?

9 A. After he had left.

10 Q. And what did you do with the box at that point?

11 A. At that point I hand-carried the box back to the  
Perry

12 airport and at that time I placed it on board on a  
plane for  
13 transportation back to D.C.

14 MR. CONNELLY: I have no further questions.

15 THE COURT: Ms. Merritt.

16 REDIRECT EXAMINATION

17 BY MS. MERRITT:

18 Q. Mr. Hupp, you testified that you were requested by  
someone

19 else -- I assume another FBI agent -- to take the  
property when

20 you got to the jail?

21 A. That is correct.

22 Q. Can you tell me what time you were requested to  
take the

23 property?

24 A. Within a minute or two of when we sat down to do  
inventory.

25 Q. When you received the request?

60

1 A. That's when I received it. I was told to take  
possession

2 of this inventory and return it to D.C and immediately  
started

3 the inventory.

4 Q. So you had no knowledge of this request prior to  
the time

5 you arrived in the Noble County jail?

6 A. No, ma'am.

Can

7 Q. You said that the property was already in packages.

8 you describe the packages?

time they

9 A. To the best of my recollection at this point in

10 were in paper bags or the like, brown paper.

11 Q. Do you recall seeing any plastic bags?

I can't

12 A. There may very well have been some plastic bags but

13 be certain without going back and examining the actual

14 packaging.

whether

15 Q. Were you able to tell who had wrapped the packages,

or

16 or not it was a law enforcement agency such as the FBI

17 someone else?

18 A. I was merely examining the contents and not who had

19 gathered the evidence.

20 MS. MERRITT: I have nothing further.

21 THE COURT: Are you going to excuse him?

22 MS. MERRITT: Yes.

23 THE COURT: Do you agree.

24 MR. CONNELLY: Yes, your Honor.

You're

25 THE COURT: Mr. Hupp, you may step down.

1 excused.

2 THE WITNESS: Can I return to D.C., sir?

3 THE COURT: You may.

4 Any other witnesses?

5 MS. MERRITT: No, your Honor.

6 Trooper THE COURT: May we -- I don't know whether

7 Hangar or is it Marsha Moritz you had -- are they going  
to be

8 Trooper witnesses, Mr. Tigar, in connection with your motion?

9 Hanger and Ms. Moritz?

10 MR. TIGAR: No, your Honor.

11 -- THE COURT: Does the Government have any more

12 all the MR. CONNELLY: We'd ask they all be excused,

13 witnesses that were here in connection with the McVeigh  
14 hearing.

15 were the THE COURT: May we excuse the witnesses who

16 subject of your proffer and weren't witnesses?

17 MS. MERRITT: Yes.

18 that THE COURT: All right. You can advise them

19 they're excused.

20 Have we any other evidence on the motion?

21 MS. MERRITT: I have no further evidence on  
this  
22 motion.

23 THE COURT: The Government?

24 MR. CONNELLY: I think all the factual  
evidence is  
25 there.

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1 THE COURT: All right. Well, I don't want to  
take the  
2 time to argue it now. I'd rather proceed with taking  
3 additional evidence.

4 MS. MERRITT: Okay. Your Honor, it's our  
position  
5 that since the burden is on the Government that they  
need to  
6 justify this search; however, we do have argument at  
some point  
7 on the motion.

8 THE COURT: Well, then there is also written  
argument  
9 in the record.

10 MR. CONNELLY: We would urge like all the  
other  
11 searches that the argument is adequately addressed in  
the

in 12 briefs but however the Court wishes to proceed, we're  
13 agreement.

14 THE COURT: Well, I don't want witnesses to  
sit around 15 while we argue about the law. I think the record is  
in. If we 16 need oral argument, we can do it. I'd rather proceed  
with the 17 Nichols motion so that we can utilize the -- best  
utilize the 18 time and get the witnesses on and out.

19 Mr. Tigar, I think you said you had some  
preliminary 20 statement and perhaps some stipulations.

21 MR. TIGAR: Yes, your Honor. We have a  
stipulation 22 reached between the Government and counsel for Mr.  
Nichols with 23 respect to the testimony of Chief Judge David Russell.  
It 24 consists of 11 agreed paragraphs, a 12th paragraph as  
to which 25 it is agreed that that's what Chief Judge Russell said  
but

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1 there is a dispute as to relevancy.

2 THE COURT: Yes.

3 MR. TIGAR: I'll tender, if I may, the  
original to  
4 your Honor's clerk with a copy to -- the Government has  
a copy.

5 THE COURT: All right.

6 MR. TIGAR: The exhibits for this portion of  
the  
7 hearing, your Honor, are contained in three notebooks.  
Two of  
8 those notebooks have been prepared by the Nichols team  
and they  
9 are exhibits carrying the letter designations A through  
W and  
10 within each category, there is an A1, A2 and so on.

11 A copy of those exhibits is at the witness  
chair.

12 Your Honor has a copy and all counsel have one.

13 The Government has prepared a witness book or  
an  
14 exhibit book with their exhibits and copies are at the  
witness  
15 chair, at your Honor's bench and at counsel table.

16 Some of these exhibits consist of materials  
that are  
17 under seal. It is our thought that as we refer to them  
in  
18 interrogating the witnesses, we will indicate their  
sealed  
19 status and then if at that time the Court wants to  
change the  
20 sealed status to put them in the public record, the  
Court can

21 do so.

22 THE COURT: Yes. I anticipated that would be  
the  
23 procedure and that's why I asked Mr. Kelley to be  
available in  
24 case there is a dispute.

25 MR. TIGAR: And your Honor, we have received  
just this

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1 morning the Government's latest pretrial brief on the  
pretrial  
2 suppression issues, which follows up the previous  
the  
3 brief on the suppression issue, which follows in turn  
position  
4 previous pretrial brief. It is now the Government's  
Nichols'  
5 that it wishes to litigate the validity of Mrs.  
6 consents, so that represents a change of position.

7 We're prepared to begin. We call FBI Agent  
Chornyak.

8 THE COURT: All right.

9 MR. HARTZLER: It's not our position that we  
wish  
10 to --

11 THE COURT: I understand. You're responding  
to my

12 ruling.

13 MR. HARTZLER: Yes. Thank you.

14 THE COURT: In my ruling, I interpreted it  
that way.

15 MR. TIGAR: I understand. I should have said  
intend,

16 your Honor.

17 THE COURT: Well, they recognize the reality  
of the

18 ruling and that therefore they're going to be  
confronted with

19 these witnesses. That's the way I read it.

20 MR. TIGAR: I should not have confused  
intention and

21 desire, your Honor.

22 THE COURT: All right.

23 THE MARSHAL: He's in the building. They have  
to go

24 get him.

25 THE COURT: Have you provided a list of  
witnesses?

65

1 MR. TIGAR: Yes, your Honor, I provided a list  
and I

2 wrote Mr. Hartzler and said that Agent Chornyak would  
be the

3 first witness.

4                   The relevant exhibit, your Honor, is W60. And  
that is

5                   in the second book, your Honor.

6                   THE COURT: Thank you.

7                   MR. TIGAR: If I may approach the witness  
chair while

8                   we're waiting . . .

9                   THE COURT: Please.

10                  MR. TIGAR: I'm told that the agent will be  
here

11                  momentarily, your Honor.

12                  THE COURT: All right.

13                  MR. TIGAR: That may be a reference to  
geologic time.

14                  MR. RYAN: Excuse me, your Honor. While we're  
waiting

15                  for the agent, may I ask the Court's permission to make  
an

16                  announcement for the purposes of the victims who are  
here --

17                  THE COURT: Yes.

18                  MR. RYAN: -- at this proceeding? The  
announcement

19                  would simply be to ask them to remain outside the  
courtroom

20                  following this hearing and I will meet with them at  
that time

21                  and direct them to another location where we can  
discuss the

22                  matter of their attendance at hearings and their trial

23                  testimony.

Ryan. I 24 THE COURT: All right. Yes. Thank you, Mr.  
those 25 hope that all affected heard it. The request was that

66

to meet 1 who are here as victims would -- where do you want them  
2 you?

the 3 MR. RYAN: If they would meet me right outside  
I'll 4 courtroom following this hearing, your Honor, and then  
5 talk with them and we'll go to another location.

with 6 THE COURT: Fine. So if you'll wait and meet  
my 7 Mr. Ryan so that he can discuss with you the effect of  
8 ruling concerning witnesses.

Agent 9 MR. TIGAR: Your Honor, I'm informed that  
book as 10 Chornyak's notes are also in the Government's exhibit  
have 11 Exhibit 28. The advantage of that version is that they  
pages of 12 typed a small number at the bottom of each one of the  
13 his notes, and so I will --

14 THE COURT: Use it?

15 MR. TIGAR: I'll use that one so that we can

16 THE COURT: All right. Let's get Exhibit 28.

17 MR. TIGAR: 28.

18 THE COURT: If you'll come forward and be  
sworn,  
19 please.

20 THE COURTROOM DEPUTY: Please raise your right  
hand.

21 (William Chornyak was sworn.)

22 THE COURTROOM DEPUTY: Please be seated.

23 Please state your full name and spell your  
last name  
24 for the record.

25 THE WITNESS: My name is William Chornyak.  
The last

67

1 name is spelled C-H-O-R-N-Y-A-K.

2 DIRECT EXAMINATION

3 BY MR. TIGAR:

4 Q. Agent Chornyak, my name is Michael Tigar. I  
represent

5 Mr. Terry Nichols. You're a special agent of the FBI?

6 A. Yes, sir.

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

to  
State  
8 A. Well, I've been with the FBI for 14 1/2 years; and  
9 answer your question, 8 1/2 years as an agent with the  
10 Department, so approximately 22 years.

11 Q. And what is your education?

12 A. I have an associate's degree in police science and  
13 administration, a B.S. degree in law enforcement and  
14 corrections and a bachelor's degree in administration  
of  
15 justice.

16 Q. As of April 19, 1995, what was your duty station?

17 A. Kansas City.

18 Q. Were you in the FBI office in Kansas City?

19 A. Yes, sir.

you  
20 Q. Directing your attention to April 21, what time did  
21 start work that day?

22 A. Approximately 6:45, 7:00 in the morning.

23 Q. I see that you're looking at your notes which are  
24 Government's Exhibit 28?

25 A. Yes.

68

1 Q. Please feel free at any time during our  
conversation to

2 look at those notes, if necessary; and I'll be asking  
you some  
3 questions about them.  
4 A. Okay.  
5 Q. Where did you start work?  
6 A. At the Kansas City office.  
7 Q. Did you thereafter go to Herington, Kansas?  
8 A. No, sir, I did not.  
9 Q. Where did you work during the day of April 21?  
10 A. Within the Kansas City office at our command post,  
which is  
11 the conference room on the third floor in the Kansas  
City  
12 office.  
13 Q. And were you in telephone contact with FBI agents  
in  
14 Oklahoma City?  
15 A. Yes.  
16 Q. During that day?  
17 A. Yes, sir.  
18 Q. Were you in telephone contact with Agent Gibbons,  
Henry  
19 Gibbons?  
20 A. No, sir. I don't know Henry Gibbons.  
21 Q. What FBI agents in Oklahoma City were you in  
contact with  
22 by telephone from Kansas City?  
23 A. Rich Baker, who was the case agent in Kansas City.

24 Q. Were you in telephone contact with FBI agents in  
Las Vegas  
25 during that day of April 21?

69

1 A. Yes, sir, I was.

2 Q. And what agent or agents were you in contact with  
in Las  
3 Vegas?

4 A. Hank Hawkins.

5 Q. You knew that Mr. Hawkins had encountered Lana  
Padilla and  
6 Josh Nichols, did you not?

7 A. Through various sources, I may have, yes.

8 Q. You knew that this agent, you say Hawkins, was  
getting  
9 information from people he was interviewing in Las  
Vegas;  
10 correct?

11 A. Yes.

12 Q. Were you also in telephone contact during that day  
with FBI  
13 agents in Michigan?

14 A. Yes.

15 Q. Were those agents in Sanilac County, Michigan?

16 A. Sir, I have no idea where they were. I was in  
contact with

17 the assistant agent in charge, who was John Bell; and  
he was my  
18 contact that was feeding me the information. I had no  
direct  
19 contact with anyone else other than Agent Bell.

20 Q. Let's begin with Agent Bell. What was the first  
time on  
21 that day of April 21 that you spoke to Agent Bell?

22 A. If I may look at these notes.

23 THE COURT: Yes, you may.

24 BY MR. TIGAR:

25 Q. Please do.

70

1 A. I think for the most part, although the notes don't  
Agent  
2 indicate specifically, that I was -- I was talking with  
license  
3 Bell, there was some indication of a Michigan driver's  
4 in which I got that information from him and that would  
have  
5 been sometime -- my best guess would be in the  
afternoon of the  
6 21st.

7 Q. Now, is it your testimony that the first time you  
talked to  
8 any FBI agent in Michigan was the afternoon of the  
21st?

9 A. Well, no, sir, not exactly. What transpired on  
that day is

10 that our special operations or our command center,  
SIOC, which

11 is the Strategic Information Operations Center at FBI  
12 headquarters, wanted to set up what we call an open  
line

13 between Oklahoma City, Kansas City, FBI headquarters  
and

14 Detroit. That initially was started sometime around 12  
noon or

15 so. We had problems in doing that because if one  
office hangs

16 up, the whole line just stops.

17 The -- the background on the open line is that  
if I

18 wanted to talk to Oklahoma City, I would say Kansas  
City to

19 Oklahoma City and they would acknowledge in return; but  
20 somewhere, one of the operators kept hanging up. If  
you hang

21 up, the whole line goes dead.

22 So to answer your question was I in contact  
with

23 Detroit back and forth sometime between 12 noon and for  
two or

24 three hours, yes, I was.

25 Q. No, my question, sir, was when is the first time on  
the

1 21st that you spoke to an FBI agent or other Government  
2 employee in Detroit or elsewhere in Michigan?

3 A. About 11:30 in the morning.

4 Q. When was the decision made to set up a command post  
or SIOC

5 in Kansas City?

6 A. Probably on the evening of the 20th.

7 Q. Who made that decision?

8 A. The Special Agent in charge, Mr. Tubbs.

9 Q. Mr.?

10 A. Tubbs. David Tubbs.

11 Q. How do you spell that?

12 A. T-U-B-B-S.

13 Q. When were you informed of that decision?

14 A. I was informed of that decision when it was made  
and that

15 would have been approximately 3 p.m. in the afternoon  
of the

16 20th.

17 Q. Do you know the name Kelly Langenburg?

18 A. It's not familiar to me, no, sir.

19 Q. At any time on the 21st, did any FBI agent tell you  
that

20 they had interviewed a relative of James and Terry  
Nichols?

21 A. What was the date again, sir?

22 Q. April 21, Friday.

23 A. I don't know who Langenburg is.

24 Q. My question is at any time on the 21st, did anyone  
tell you  
Terry  
25 that the FBI had interviewed a relative of James and

72

1 Nichols?

2 A. I was informed that an ex-wife was interviewed on  
that  
3 date.

4 Q. Who told you that?

5 A. Who the identity of that -- or the name of the ex-  
wife, I  
6 do not know.

7 Hank Hawkins told me that, sir.

8 Q. Well, Hank Hawkins in Las Vegas?

9 A. Yes.

10 Q. Whose ex-wife did he say he was interviewing?

11 A. That would be Mr. Nichols'.

12 Q. Which Mr. Nichols?

13 A. Terry Nichols.

14 Q. Did anyone tell you on the 21st that James Nichols'  
ex-wife  
15 had been interviewed?

16 A. No, sir, I don't believe so.

17 Q. Did you become aware at any time on the 21st that  
an FBI

18 party had surrounded James Nichols' farm and was  
preparing to

19 search it?

20 A. Yes.

21 Q. What time did you become -- did you first become  
aware that

22 the FBI was headed for James Nichols' farm?

23 A. When I watched it on CNN.

24 Q. What time was that?

25 A. I'm not sure, sir.

73

1 Q. Was CNN playing in your SIOC?

2 A. Yes. In the command post. Yes, sir.

3 Q. Now let's go to your notes, please. The first page  
of

4 Government's Exhibit 28 says 4-21, 3:10 p.m. Is that  
the first

5 page of notes you made that day?

6 A. No, sir, it's not. And if you'll let me explain,  
I'll do

7 so.

8 Q. Please.

9 A. As the senior supervisor in the command post, I was

tasked

10 with handling numerous calls as well as the  
administration of

11 and the flowing of other investigations within the  
office.

12 They were calls coming in pertaining to leads that were  
given

13 to us from private citizens, police officers, etc.,  
which I

14 would write a note, officer so-and-so from whatever  
barracks

15 and then I would hand that to a street agent and ask  
him to

16 follow through with any lead information or go out and  
conduct

17 an appropriate interview for any additional leads that  
were

18 predicated upon the information coming in.

19 I would consider these notes a log that I  
initially

20 started on that date.

21 Q. You were the man in charge of the SIOC?

22 A. Yes.

23 Q. Well, let's start here at 3:10 p.m.: Chief Dale  
Kuhn from

24 Herington: He's the chief of police there; correct?

25 A. Yes, sir.

I can't

1 Q. And then the next note reads Terry something -- and

2 read it. Would you read the next one for us, please.

3 A. Terry Nichols.

in

4 Q. Oh, you've written Nichols in handwriting and then

5 printing; correct?

6 A. Correct.

correct?

7 Q. Then you wrote "turn self in" and an asterisk;

8 A. Yes, sir.

9 Q. And then underneath, "Steve Smith"; correct?

10 A. Yes.

11 Q. Did Steve Smith give you this information?

12 A. No, sir, he did not.

13 Q. Where did you get the information?

I

14 A. This information, what was transpiring at the time,

agent on

15 received a telephone call from Tom Price, who was an

surveillance

16 our SOG, our Special Operations Group, which is a

17 group of trained agents and principally all they do is

18 surveillance work.

19 Q. Where was he?

20 A. He was in Herington, Kansas.

p.m.?

21 Q. How many agents were in Herington, Kansas, by 3:10

22 A. I have no idea, sir.

23 Q. More than 12?

24 A. That's even hard for me to say. I have no idea. I  
could

25 speculate and say more than 12 but I wasn't there. I  
don't

75

1 know.

2 Q. You were -- were you in charge of those agents in  
3 Herington?

4 A. No, sir, I was not.

5 Q. Was an FBI aircraft in the air as of 3:10 p.m.?

6 A. Yes.

7 Q. Was there more than one FBI aircraft in the air  
that you

8 knew of as of 3:10 p.m. relating to what was going on  
in

9 Herington?

10 A. I know that there was one.

11 Q. Do you know how many FBI vehicles were on their way  
to

12 Herington?

13 A. No, sir, I do not.

14 Q. Do you know whether the area CID was on its way to  
15 Herington at 3:10 p.m.?

16 A. No, sir. And -- well, it wouldn't be appropriate  
for me to  
17 make an opinion, but the Army would have no  
jurisdiction.

18 Q. So it would be unusual in your opinion if the area  
CID were  
19 to have participated in the operations in Herington?

20 MR. HARTZLER: I object, your Honor.

21 THE COURT: Sustained.

22 BY MR. TIGAR:

23 Q. All right. You got a call from Mr. Price; is that  
correct?

24 A. Yes, sir.

25 Q. And he told you that Mr. Nichols had turned himself  
in?

76

1 A. No. He did not. He said that Mr. Nichols and his  
family  
2 walked into the public safety building or the police  
department  
3 and asked me if I could make a telephone call to the  
chief of  
4 police in Herington.

5 Q. Mr. Price asked you to make the phone call?

6 A. Yes, sir.

7 Q. Did you make a telephone call?

8 A. Yes, sir, I did.

9 Q. What did you learn?

10 A. I talked to Chief Kuhn and the first thing I asked  
him -- I

11 identified who I was. I told him that I was a  
supervisory

12 special agent with the FBI in Kansas City and that an  
13 individual and his family had just walked into the  
police

14 department that we had been surveilling. I asked him  
if he was

15 in any type of a crisis situation, a hostage situation,  
or if

16 there was any danger. And he said no, he is not.

17 Q. Did you have any evidence that led you to believe  
there

18 might be a hostage or crisis situation going on there?

19 A. No, sir.

20 Q. All right. Now, what's -- the next note here is  
Steve

21 Smith; correct?

22 A. Yes.

23 Q. He's an FBI agent; right?

24 A. Yes.

25 Q. Why did you write that note?

77

1 A. I think that I wrote that note principally because

Steve

earlier 2 Smith may have been at the police department sometime

mentioned 3 that day and had talked to Chief Kuhn and Chief Kuhn

the 4 that I can recall talking to a Steve Smith. And that's

5 reason for the note, Steve Smith.

Herington 6 Q. Do you know if there was an FBI S.W.A.T. team in

7 at that time?

Herington. 8 A. I know that an FBI S.W.A.T. team was en route to

whether or 9 I did not know -- again, because I wasn't there --

10 not they had in fact arrived there yet.

11 Q. How did that FBI S.W.A.T. team get to Herington?

12 A. By vehicle.

13 Q. Land based or air based?

14 A. Land based.

S.W.A.T. 15 Q. What time did the S.W.A.T. team -- where did the

16 team come from? Kansas City?

17 A. Yes.

18 Q. What time did it leave Kansas City?

19 A. About 12:30, 1:00.

Herington? 20 Q. Did you instruct the S.W.A.T. team to go to

21 A. No, sir, I did not.

22 Q. Who instructed them to go?

23 A. The special agent in charge, Mr. Tubbs.

24 Q. And where was he at the time you gave that order?

25 A. He was probably on his pager or on a cell phone  
when that

78

1 occurred.

2 Q. Do you know physically where he was located?

3 A. I believe he had a meeting and he was out of the  
office.

4 He may have -- I know he came back into the office  
around 1,

5 1:15 p.m.

6 Q. So he was in Kansas City when he gave that order?

7 A. Yes, sir.

8 Q. Do you know upon what basis a S.W.A.T. team was  
dispatched

9 to Herington?

10 A. No, sir, I do not.

11 Q. All right. Let's look at your next note. "Marion  
&

12 Manhattan, people in from Germany," it looks like it  
says.

13 A. Yes.

14 Q. Do you know what that means?

15 A. Yes, sir. I received a call from our SIOC in

Washington,

16 D.C. and the SIOC informed that we should take a look  
at  
17 several people that were in from Germany on some type  
of a trip  
18 that were going to Marion and Manhattan.

19 Q. Take a look at them as potential suspects?

20 A. Well, as potential suspects, yes, or people we  
should look

21 at as -- you know, to identify being foreigners coming  
into the  
22 area.

23 Q. Let's look at your next note: OK City Rick Baker  
24 advised -- and then I'm sorry, I can't read the last  
line on  
25 page 1. Could you help me, please?

79

1 A. Yes. It says OK City, Rich Baker advised of turn  
in

2 3:37 p.m. What I did is made a telephone call to the  
-- to

3 Rich Baker, the agent in Oklahoma City and advised him  
that

4 Terry Nichols turned himself in at 3:37 p.m.

5 Q. And what did he say, if anything?

6 A. He said okay, thank you.

7 Q. Did he say that he was in the process of preparing

a

8 warrant or that a warrant would be prepared?

9 A. No, sir.

10 Q. All right. Your next note on page 2: Price 4-21,  
11 3:41 p.m. Would you read those notes for us and tell  
us what

12 that means.

13 A. This is a telephone call between myself and Tom  
Price in

14 Herington on the 21st at 3:41 p.m.

15 Q. Let me interrupt you, sir. Was this on a land line  
16 telephone, a cellular, or do you know?

17 A. At this time, it was on a land line phone.

18 Q. Did you have cellular phones in the field from  
which agents

19 could call you?

20 A. Yes, sir.

21 Q. Did Agent Price have a cellular?

22 A. Yes, sir.

23 Q. Did Agent Smith have a cellular?

24 A. I don't know that.

25 Q. Do you know whether Agent Smith had a pager?

80

1 A. I'm assuming that he did because all of the agents  
in the

2 Kansas City office had pagers.

3 Q. So if you wanted to get in touch with an agent that  
day to  
4 tell him something, you knew how to do that; correct?

5 A. Yes, sir.

6 Q. All right. Please go ahead.

7 A. In that conversation that I had with Tom Price, he  
advised  
8 me that he had spoken just briefly with Terry Nichols  
and that  
9 he was willing to talk to the FBI. He was not willing  
to sign  
10 anything.

11 And I asked him, okay, fine, I will pass that  
on to  
12 the SAC and the ASAC, who were en route to Herington.

13 And Tom said if you need to get a hold of me  
or the  
14 other agent that was with him, Mike Gillispie, I could  
reach  
15 him on the telephone numbers (913) 258-2226, 2227 and  
258-3020.

16 Q. So Mr. Price told you that he had spoken with Mr.  
Nichols?

17 A. Yes.

18 Q. And he -- Mr. Price -- told you that Mr. Nichols  
said he  
19 wouldn't sign anything; is that right?

20 A. Yes, that's correct.

21 Q. And then Mr. Price told you that Mr. Nichols said

he was

22 willing to talk?

23 A. Yes.

24 Q. All right. And then after the word talk, there is  
a little

25 squiggle on there. What does the squiggle mean, if  
anything?

81

1 A. That's an "and." What he said was if you want to  
get ahold

2 of me, you can talk to me or Mike Gillispie.

3 Q. I see. And that's Agent Price saying he personally  
had had

4 this conversation; right?

5 A. Yes.

6 Q. Now, the next -- now, we've got some phone numbers  
there

7 and then it says will talk refuse -- would you read  
down to the

8 line there and tell us what that reflects?

9 MR. HARTZLER: I beg your pardon, your Honor.  
Let's

10 let the agent read his own handwriting rather than Mr.  
Tigar

11 just put into the record what he believes.

12 THE COURT: Well, feel free to correct if it's  
read

13 wrong.

14 BY MR. TIGAR:

15 Q. Yes, please do. You're testifying; and if I ride  
over you,

16 don't let me do it.

17 A. Let me explain this, then.

18 At approximately 3:50, what I have there is a  
little

19 arrow that points up. The SAC requested -- I had a  
brief

20 conversation with the SAC on a cell phone.

21 Q. Now, the SAC is the special agent in charge?

22 A. Yes.

23 Q. That's Tubbs?

24 A. Yes.

25 Q. Please go ahead.

82

1 A. He's en route to Herington. He requested that I  
get ahold

2 of John O'Neil, who is an agent in Washington, D.C. in  
the

3 SIOC. Now, as I was making these notes, instead of  
Agent

4 O'Neil, I got ahold of or was referred to -- and that's  
what

5 this says -- will talk -- when it has up above R-E-F-E-  
R, that

6 means referred to.

R? 7 Q. I see. So "will talk," comma, and that's R-E-F-E-

8 A. Right.

letter? 9 Q. And then after the R, though, there is another

10 A. D. I'm writing quick.

11 Q. Okay.

on. 12 A. You have to understand, a lot of things are going

13 Q. So that's R-E-F-E-R-D but it means referred?

referred to 14 A. Right. Instead of talking to Agent O'Neil, I'm

15 Howard Shapiro.

16 Q. Who is Howard Shapiro?

in 17 A. He is the legal counsel representative for the FBI

18 Washington.

isn't he? 19 Q. He is the top lawyer in the FBI in Washington,

20 A. Yes, that's correct.

U.S. 21 Q. Louie Freeh pulled him out from being an Assistant

22 Attorney and made him the top lawyer; isn't that right?

23 MR. HARTZLER: I object, your Honor.

24 THE WITNESS: I don't know.

25 THE COURT: Just a moment. The objection is

1 sustained.

2 BY MR. TIGAR:

3 Q. Excuse me. He was appointed by Director Freeh. Is  
that

4 correct?

5 A. Yes.

6 Q. Will you interpret the rest of your notes, please.

7 A. Okay. In talking with Mr. Shapiro, I advised him  
of what

8 Tom Price had told me, that Mr. Nichols was willing to  
talk.

9 We were willing to give him -- and I have scratched out  
-- his

10 rights. I told him that from the appearances, there is  
no

11 attorney there. He didn't ask for an attorney in what  
Tom

12 Price had told me, but he is not willing to sign  
anything. And

13 on the next page --

14 Q. Before you go on, at any time on the 21st of April,  
did you

15 become aware that the federal defender for the District  
of

16 Kansas had called the police station in Herington and  
asked

17 whether Mr. Nichols needed counsel?

18 A. No, sir, I'm not aware of that at all.

19 Q. Do you know who the public defender for the  
District of  
20 Kansas is?  
21 A. No, sir, I do not.  
22 Q. Does the name David Phillips mean anything to you?  
23 A. No, sir, it does not.  
24 Q. So you talked to Mr. Shapiro in this conversation  
that's  
25 reflected here. Did Mr. Shapiro tell you what to do?

84

1 A. Yes, sir, he did.  
2 Q. Can we turn to page 3 now?  
3 A. Okay.  
4 Q. All right.  
5 A. Mr. Shapiro told me at approximately 3:50 p.m. on  
that date  
6 to get Mr. Nichols to orally agree to talking to the  
FBI. He  
7 also stated or told me that you have to keep in mind  
that  
8 Mr. Nichols is not in custody and that he is free to  
go.  
9 He also said you should document that  
information in  
10 an FD 302, which is a report, an agent's report,  
whoever is

11 talking to Mr. Nichols.

12 Q. All right. Now, let's -- so Mr. Shapiro said get  
him to

13 orally agree?

14 A. Yes, sir.

15 Q. And Mr. Nichols -- excuse me -- Mr. Shapiro wanted  
that --

16 wanted documentation of an oral agreement by Mr.  
Nichols;

17 correct?

18 A. Well, he wanted documentation that Mr. Nichols was  
19 volunteering information to the FBI.

20 Q. Now, did he also direct you to tell Mr. Nichols he  
was not

21 in custody?

22 A. He didn't tell me to do that. He told me to relay  
that to

23 the agents in Herington.

24 Q. All right. Now, in fact, was Mr. Nichols free to  
get out

25 of that police station, get in his pickup truck and go  
back to

85

1 his house?

2 A. Yes, sir.

3 Q. And go in the door and sit on his sofa at 3:50  
p.m.?

4 A. Yes, sir.

3:50 p.m. 5 Q. And how do you know that Mr. Nichols was free at  
6 to walk out of the police station, get in his pickup  
truck,  
7 drive back to his house, go in his front door and sit  
on his  
8 sofa?

9 A. Well, sir, I don't know that because I wasn't in  
Herington.

10 Q. Well, you just told me that you thought he was and  
I want  
11 to know what basis you have for the answer you just  
gave me.

12 A. Well, Mr. Shapiro's instructions were that he is  
not in  
13 custody. He also said if Mr. Nichols does leave on his  
own  
14 that we should -- and my notes indicate that -- follow  
15 Mr. Nichols until a material witness warrant is ready  
but keep  
16 him under surveillance; but he's free to go.

17 Q. So at 3:50, you have the word "document"; is that  
correct?

18 And that means documents the things above; correct?

19 A. Yes.

20 Q. Then follow till material warrant is ready; all  
right?

21 A. Yes.

22 Q. And then you say "keep," and what does keep mean?

23 A. That means if he does leave, keep him under  
surveillance.

24 Q. What's the next word?

25 A. You cannot arrest him.

86

1 Q. Cannot arrest him?

2 A. Yes.

3 MR. HARTZLER: Just so the record is clear,  
your

4 Honor, I believe he didn't answer the question. The  
next word

5 is -- I believe is "cannot."

6 BY MR. TIGAR:

7 Q. Yes. The next word is "cannot," and what does that  
mean?

8 A. That means for the most part, we cannot arrest Mr.  
Nichols.

9 He's --

10 Q. And that's what Mr. Shapiro told you; correct?

11 A. Yes.

12 Q. Now, let's turn the page. Will you read the things  
down to

13 the double set of lines there. Tell us, please, about  
what

14 time they were written and what they mean.

15 A. On April 21 at approximately 4 p.m., I received a  
call from

16 an unidentified agent in our SIOC, and as I mentioned  
17 previously, what FBI headquarters or SIOC was  
attempting to do  
18 was keep an open line available to all the offices and  
with  
19 that open line, they would advise, or the assistant  
director I  
20 have here, Bear Bryant -- his correct name is Robert  
Bryant --  
21 he's the assistant director of our intelligence  
division -- he  
22 would telephonically contact me when the material  
witness  
23 warrant was ready and signed before the judge.  
24 Q. So you knew that a material witness warrant was  
being  
25 prepared; correct?

87

1 A. Well, not up until around 4 p.m., no. At 4 p.m.,  
yes.

2 Q. Well, you knew it at 3:50 p.m., didn't you, sir?

3 A. Yes. With Mr. Shapiro.

4 Q. Yes. And that's the first time you knew it?

5 A. Yes, sir.

6 Q. Now, what was the purpose, as you understood it, of  
letting  
7 you know when the material witness warrant was ready?

8 A. Well, again, Mr. Nichols was free to go and we  
couldn't  
9 hold Mr. Nichols until the warrant was ready. And my  
function  
10 as the coordinator was to ensure that the appropriate  
people  
11 got that warrant when it was signed.  
12 And as such, when it was ready was to fax it  
to the  
13 agents in Herington as well as the people in -- at Fort  
Riley.  
14 Q. What people at Fort Riley?  
15 A. Well, we had another assistant agent, Joe Bross, in  
Fort  
16 Riley at a separate command post.  
17 Q. And what was the purpose -- what would be the  
purpose of  
18 letting her have the warrant?  
19 A. Him.  
20 Q. Him. I'm sorry.  
21 A. So that he has it for his records, since -- you  
have to  
22 understand that most of the agents went out to set up a  
primary  
23 command post out at Fort Riley because most of the  
activity was  
24 going on in and around that area vs. Kansas City. It  
was more  
25 prudent to set up a mini office or transfer a good 75  
percent

2 1/2 majority at Fort  
1 of the office out to Fort Riley which is approximately  
2 hours away from Kansas City. It's closer to where the  
3 of the investigation was being undertaken.

4 Q. I see. And how many agents did you have out there  
5 Riley?

6 A. Best estimate -- at that time?

7 Q. Yes. On the 21st.

8 A. I would say anywhere between maybe 10 to 20.

9 Q. And how many in your command post at Kansas City?

10 A. Somewhere in the vicinity of 8 to 15.

11 Q. All right. Let's turn to page 5, please.

12 Is it fair to say that page 5 down to the last  
line --

13 excuse me.

14 Withdrawn.

15 Is it fair to say that page 5 relates to  
information

16 relayed to you by Agent Hank Hawkins from Las Vegas at  
about

17 4:05?

18 A. Yes, sir.

19 Q. Now, I'm going to ask you to turn to page 6.

20 Tell us what's on that page and what that  
means.

21 A. Approximately 4:25 on April 21, I received a  
telephone call  
22 from the assistant director, Mr. Bryant; and he advised  
me that  
23 the warrant for Mr. Nichols was signed; that we can  
interview  
24 him and arrest him if he so desires, and that the  
warrant would  
25 be faxed to Kansas City.

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1 Q. Okay. So 4:25, Bryant relays and would you read  
that --  
2 what's that say? Interview and arrest? Is that what  
that  
3 first line means?

4 A. Yes.

5 Q. Warrant signed; and then what is -- what -- is that  
I-F or  
6 C-F?

7 A. It's F. I-F.

8 Q. And then it says faxing warrant to Kansas -- to KC?

9 A. Yes.

10 Q. Now, at 4:28, you relayed to supervising Special  
Agent

11 Price; correct?

12 A. Yes.

13 Q. And you obtained the fax number for the police  
department;

14 correct?

15 A. Yes. I called -- with one of the other numbers on  
the

16 previous pages, I called Tom Price, advised him that  
the

17 warrant had been signed and that I needed a fax number  
at his

18 location so that when I get the warrant, I can fax it  
to him at

19 that location.

20 Q. Now, your next note, would you read that aloud,  
please.

21 A. Yes. It says "admitted taking McVeigh down there."

22 Q. All right. Who said the words that led you to  
write that?

23 A. With my conversation with Tom Price, he was having  
periodic

24 contact with the interviewing agents that were  
interviewing

25 Mr. Nichols; and Tom -- I asked him how is it going  
with the

90

1 interview and Tom said I just spoke briefly with one of  
the

2 agents and he didn't identify who; and he said that Mr.  
Nichols

means to 3 admitted taking McVeigh down there; and "down there"

4 Oklahoma City.

taking 5 Q. So Mr. Price told you that Mr. Nichols admitted

6 Mr. McVeigh to Oklahoma City?

7 A. Yes. And if I may add, he didn't say when.

when you 8 Q. All right. Now, did there come a time thereafter

9 got the faxed warrant?

10 A. Yes.

the 11 Q. Okay. Let's turn to page 7; and will you interpret

12 notes there, please.

Rich 13 A. At approximately 4:40 p.m., I received a call from

yes, what 14 Baker, who is the agent in Oklahoma City; and he said

signed so 15 we will do is fax you a copy of the warrant that was

people; and 16 that you may be able to fax it to the appropriate

waiting for 17 he said I'm also faxing you a photo spread and I'm

to you. 18 some additional background; and I will also fax that up

19 The last line there essentially says that he's  
20 advising me of the warrant.

and what 21 Q. Now, let's turn to page 8. Tell us what's there

22 it reflects.

23 A. At approximately 4:50 p.m. on the 21st, I telephonically

24 contacted the other ASAC, Joseph Bross at Fort Riley, and asked

25 him for a fax so that I could fax him what I received from Rich

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1 Baker as well as headquarters, which was a map and the warrant.

2 Q. What did you need a map for?

3 A. Well, the map was the -- an area of I believe Oklahoma City

4 that Rich Baker had of the surrounding area where the bombing

5 occurred.

6 Q. And then the next note is 4-21, 4:53 p.m. and I can't read

7 that.

8 A. All right. At 4:53 p.m., the first name is Lipka,

9 L-I-P-K-A. He is a supervisory special agent at FBI

10 headquarters and he telephonically contacted me and told me

11 that he would be also faxing a copy of the warrant.

12 Q. Now, by FBI headquarters, you mean in Washington, D.C.?

13 A. Yes, sir.

14 Q. All right. The seat of government?

15 A. Yes.

16 Q. It used to be called that, didn't it, in the  
Bureau?

17 A. You can interpret that however you want to  
interpret it.

18 Q. What does the next note say?

19 A. At approximately 4:45, I received a facsimile from  
Rich

20 Baker in Oklahoma City of the warrant.

21 Q. All right. Now, would you look at, please, the  
exhibit

22 book, the black exhibit book?

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

24 THE COURT: Yes.

25 MR. HARTZLER: If I assist, if he turns back  
two

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1 exhibits, it's Government's Exhibit 26.

2 MR. TIGAR: This is very important.

3 MR. HARTZLER: Okay.

4 BY MR. TIGAR:

5 Q. I'm going to show you now, sir -- ask you to look  
at what

6 is tabbed in the Nichols exhibit book as W62 and ask  
you to

7 look through those papers and tell us, please, whether  
that is  
8 a cover letter from the Government and some copies of  
documents  
9 that were faxed to you at your command post in Kansas  
City.

10 A. The last three pages is what I received.

11 Q. And the last of those pages: Will you just read  
the

12 caption, please, on it.

13 A. United States District Court, Western District of  
Oklahoma.

14 Q. And it has a case name. And what is the case name?

15 A. United States of America vs. Terry Lynn Nichols.

16 Q. Okay. And there is a case number. What is that?  
97-H?

17 A. Yes.

18 Q. And it says warrant for arrest and the words of  
material

19 witness are written in in handwriting; correct?

20 A. Yes, that's correct.

21 Q. And that's what you received at 4:45 p.m. on April  
21 by

22 your fax machine; correct?

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

24 Q. Now -- all right. Let's return to your notes.  
What did

25 you do with it when you got it?

1 A. If you go to page 9 --

2 Q. Yes, sir.

3 A. On the 21st, made copies of the warrant and letters  
and

4 faxed to Tom Price and Joe Bross. I gave them a call

5 beforehand to let them know it was coming and at  
approximately

6 5:05 p.m., both of those faxes went out.

7 Q. Now, when did you first tell Agent Price, Special  
Agent

8 Price, that a material witness warrant was being  
prepared?

9 A. At approximately 4:28 p.m. on the 21st.

10 Q. When you got the warrant, W62, did you -- did you  
read the

11 text of the warrant?

12 A. Yes, sir, I did.

13 Q. Did you have any information that Mr. Nichols had  
attempted

14 to leave the jurisdiction of the United States?

15 A. No, sir, I did not.

16 Q. Did you call anybody and note that you didn't have  
any such

17 evidence?

18 A. No, sir, I did not.

19 Q. At any time during the day on the 21st, did you  
speak to

20 Randall Rathbun?

21 A. I don't recall so.

22 Q. You know Mr. Rathbun; correct?

23 A. Yes, sir, I do.

24 Q. Were you aware that he was in the police station in

25 Herington, Kansas?

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1 A. No, sir, I do not.

2 Q. On the 21st, you didn't know that?

3 A. No, I did not.

4 Q. And you know latent fingerprint expert Hupp;  
correct? Do

5 you know him?

6 A. I know of the name Hoff as being associated with  
the latent

7 fingerprint section, but there are numerous people at  
FBI

8 headquarters by the name of Hoff.

9 Q. H-U-P-P, Hupp?

10 A. No.

11 Q. Did you have any contact with him at all by  
telephone or

12 otherwise on the 21st of April?

13 A. No, sir, I did not.

14 MR. TIGAR: Will your Honor indulge me for a

moment?

15 THE COURT: About how much more do you have of  
this

16 witness?

17 MR. TIGAR: If I may have ten seconds, your  
Honor --

18 THE COURT: You may.

19 MR. TIGAR: -- I'll be able to answer that.

20 THE COURT: Okay.

21 MR. TIGAR: My associates are asking me and I  
accept

22 their suggestion. May we take our break now, your  
Honor? I

23 don't think I have any more, but I would like to review  
my

24 notes.

25 THE COURT: That was the purpose of my  
question.

95

1 MR. TIGAR: Thank you, your Honor.

2 THE COURT: We'll take the lunch break. I  
know that

3 you have some things to do during this time, but I  
wonder if we

4 can resume at 1:30.

5 MR. HARTZLER: Fine.

6 MR. TIGAR: Your Honor, may the witness be

admonished?

7  
operating as

8  
rules so

THE COURT: Yes. And of course, we're  
you can understand under sequestration of witnesses  
you may not discuss your testimony with anyone else.

10 THE WITNESS: Yes.

11 THE COURT: All right. 1:30. Recess.

12 (Recess at 12:04 a.m.)

13 \* \* \* \* \*

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10 PLAINTIFF'S EXHIBITS

Withdrawn

11 Exhibit Offered Received Refused Reserved

12 MCV1 - 3 22

13 \* \* \* \* \*

14 REPORTER'S CERTIFICATE

15 I certify that the foregoing is a correct transcript from

Dated

16 the record of proceedings in the above-entitled matter.

17 at Denver, Colorado, this 26th day of June, 1996.

18

Zuckerman

20

21

22

23

24

25

Paul A.