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3 District of Oklahoma, appearing for the plaintiff.

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18 Nichols.

19 \* \* \* \* \*

20 PROCEEDINGS

21 (Reconvened at 1:30.)

22 THE COURT: Please be seated. All right. The witness  
23 has resumed the stand. You may continue.

24 MR. TIGAR: Thank you, your Honor.

25 DIRECT EXAMINATION CONTINUED

1 BY MR. TIGAR:

2 Q. Agent Chornyak, would you please look at the Government  
3 exhibit book at tab 26. That's the white notebook there. The  
4 white notebook. Do you recognize that, sir, as a better copy  
5 of the faxed warrant about which I was interrogating you before  
6 the lunch break?

7 A. Yes, sir.

8 Q. And that copy has the full fax time line on it on the  
9 right-hand side, does it not?

10 A. Yes, sir, it does.

11 Q. And that time line shows Saving Time of 4:45 p.m. from the  
12 FBI office in Oklahoma City; correct?

13 A. Yes, sir.

14 Q. You have no way of knowing whether the FBI's fax machine in  
15 Oklahoma City has the right time programed into it, do you?

16 A. No, sir, I do not. But that time coincides with what I had  
17 in my log.

18 Q. Exactly, sir. It coincides with the time that is at  
19 page -- pages 7 and 8 of your notes. Indeed, at the bottom of  
20 page 8 of your notes, the time 4:45 is there; correct?

21 A. Yes, sir.

22 Q. All right. Can you tell me what time Agent Price left the  
23 Kansas City area for Herington on the 21st of April?

24 A. I have no idea, sir.

25 Q. Now, would you turn, please, to page 4 of your notes.

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1 That's at tab 28 of the Government's notebook. And you see the  
2 material at the top of the page before the two double lines  
3 that are there; right?

4 A. Yes, sir.

5 Q. Now, does that mean that after the material witness warrant  
6 is ready, Mr. Nichols was to be brought before a judge?

7 A. I don't know, sir. All -- all my notes indicate that for  
8 the most part, the material witness warrant was going to be  
9 presented before the judge to be signed.

10 MR. TIGAR: I have nothing further, your Honor.

11 THE COURT: All right, sir. Do you have questions?

12 MR. HARTZLER: No questions, your Honor.

13 THE COURT: Is the witness to be excused then,  
14 Mr. Tigar?

15 MR. TIGAR: Yes, your Honor. With our thanks. And we  
16 call Agent Gibbons.

17 THE COURT: You may step down. You're excused. Are  
18 we going to put Exhibit 28 into evidence since it's been read  
19 into evidence and you agree to that?

20 MR. TIGAR: Yes, your Honor, we would agree that  
21 Exhibits W -- excuse me -- Government Exhibits 26 and 28 should  
22 be in evidence. And we have no objection to their being made  
23 evidence in the public record.

24 THE COURT: Yes. 28, 26 are received. If you'll come  
25 forward to be sworn.

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1 THE COURTROOM DEPUTY: Stand by the witness box.

2 (Henry C. Gibbons was sworn.)

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

5 THE WITNESS: My name is Henry C. Gibbons,  
6 G-i-b-b-o-n-s.

7 DIRECT EXAMINATION

8 BY MR. TIGAR:

9 Q. Mr. Gibbons, you are a supervising special agent of the  
10 FBI; is that correct, sir?

11 A. No, sir. I'm the division counsel for the FBI in Oklahoma  
12 City. I'm not a supervisor.

13 Q. I'm sorry. How long have you had that title, division  
14 counsel?

15 A. Probably in the last couple years, that title has come  
16 about. Previously, it was referred to as the principal legal  
17 advisor or legal advisor prior to that time.

18 Q. You're a lawyer?

19 A. That's correct.

20 Q. How long have you been a lawyer?

21 A. Since 1969.

22 Q. Where did you go to law school?

23 A. Kent Law School in Chicago.

24 Q. You are -- you had that position on the -- that you've

25 referred to on the 21st of April; is that right?

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1 A. That's correct.

2 Q. And you know Chief Judge Russell of the Western District?

3 A. Yes.

4 Q. You know Magistrate Judge Howland?

5 A. Yes, I do.

6 Q. You know Assistant United States Attorney Arlene Joplin;

7 correct?

8 A. Yes, I do.

9 Q. Do you know Howard Shapiro?

10 A. Yes, I do.

11 Q. And April 21, he was the senior legal officer of the FBI;

12 is that correct, sir?

13 A. Yes. His title was chief counsel for the FBI.

14 Q. And you know John O'Neil, also, correct? Or do you?

15 A. I don't believe I do. If I -- you know, maybe if I see

16 him, I might. The name doesn't ring a bell with me right now.

17 Q. Do you know someone named Randal Rathbun?

18 A. Yes. I just was introduced to him.

19 Q. And on April 21, 1996, did you have any conversations with  
20 Mr. Randal Rathbun?  
21 A. I know I had a conversation with him. I don't know if it  
22 was on that date.  
23 Q. Well, approximately when was the conversation?  
24 A. It would have been, you know, around that time.  
25 Q. Where was he and where were you, if you remember?

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1 A. I would have been in Oklahoma City, and he probably would  
2 have been either at the U.S. Attorney's Office in Wichita or  
3 probably at the command post in Kansas City or Junction City.  
4 Someplace like that. I don't recall.  
5 Q. Do you know whether Randal Rathbun was present in  
6 Herington, Kansas, on April 21, 1996?  
7 A. I have no idea.  
8 Q. He was the United States Attorney for the District of  
9 Kansas on April 21, 1996, was he not?  
10 A. You know, I -- I believe so.  
11 MR. RYAN: I believe it was 1995, your Honor.  
12 MR. TIGAR: 1995. Excuse me. 1995. I stand  
13 corrected. 1995.  
14 A. Yeah. I probably know that now. I don't know if I knew  
15 that at the time.  
16 BY MR. TIGAR:  
17 Q. Do you know Agent Chornyak?  
18 A. I just met him.  
19 Q. Did you speak to him by telephone on the 21st of April,  
20 1995?  
21 A. I don't recall if I did.  
22 Q. Did you speak to a Special Agent Price on the 21st?  
23 A. I have no recollection of that.

24 Q. Did you speak to Agents Smith, Jablonski, Foley or Crabtree  
25 on the 21st?

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1 A. On the 21st?  
2 Q. Yes.  
3 A. I don't believe so.  
4 Q. What time did you show up for work on the 21st, sir?  
5 A. My recollection -- recollection, it's about -- between 7  
6 and 8 that morning.  
7 Q. And you were working at the command post, were you not?  
8 A. On the 21st, yes --  
9 Q. That command post --  
10 A. In Oklahoma City. Command post in Oklahoma City.  
11 Q. Yes, sir.  
12 A. Not at the FBI office, the one that was downtown.  
13 Q. This is a -- and at that command post, there were other  
14 agents who were working with you; is that correct?  
15 A. That's correct.  
16 Q. You are a special agent, are you not?  
17 A. That's correct.  
18 Q. What time did Ms. Joplin arrive at the command post?  
19 A. I have no recollection. It would be that morning, it would  
20 be my recollection.  
21 Q. Now, during that day, sir, you were preparing a series of  
22 affidavits to issue warrants; is that correct?  
23 A. That's correct.  
24 Q. And in these applications, you were, in most cases, the  
25 affiant, were you not?

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1 A. That's correct.

2 Q. Were you receiving information from Michigan to help you  
3 prepare your affidavits?

4 A. We were receiving information from Michigan, but I believe  
5 my recollection is it was via Washington, D.C.; that the flow  
6 of information was from Michigan to our headquarters and then  
7 from the headquarters to Oklahoma City. That's my  
8 recollection.

9 Q. Were you receiving information from Las Vegas?

10 A. I believe so. Probable -- yeah. I'd say yes, we were  
11 receiving information.

12 Q. I want you, sir, to turn to that black notebook which will  
13 be on your right there. And look at the tab W52.

14 A. I have it.

15 Q. Now, that's the search warrant in number 95-95-H, correct?

16 A. That's correct.

17 Q. And that was signed by Chief Judge Russell; is that  
18 correct?

19 A. That's correct.

20 Q. Did you see him sign it?

21 A. Yes, I did.

22 Q. You presented that affidavit to him and asked him to sign  
23 it; correct, sir?

24 A. That's correct.

25 Q. What time had Chief Judge Russell arrived at your command

1 post?

2 A. My recollection is he arrived there probably in the noon,  
3 1:00 time frame.

4 Q. You had called him at his home, had you not?

5 A. That's correct.

6 Q. You know him; correct?

7 A. That's correct.

8 Q. He calls you Hank?

9 A. That's correct.

10 Q. What do you call him?

11 A. Judge Russell.

12 Q. And you're -- so Judge Russell agreed to come  
to the Bureau

13 command post; correct?

14 A. That's correct.

15 Q. Now, what time did United States Magistrate Judge Howland

16 arrive there?

17 A. I think he arrived a little after Judge Russell is my

18 recollection.

19 Q. Were there any other judicial officers that, in  
your view,

20 were empowered to sign warrants that were present at the

21 command post?

22 A. None that I was aware of.

23 Q. How many assistant United States attorneys were in the

24 command post, if you recall?

25 A. There was several.

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1 Q. Joplin?

2 A. Yes.

3 Q. Holmes?

4 A. Yes.

5 Q. Anybody else?

6 A. I think --

7 Q. Behenna?

8 A. Ms. Behenna was there. I want to think there was a couple  
9 others that might have been doing xeroxing, that type of thing.  
10 Q. You had secretarial help there to get things typed?  
11 A. Yes. There was two or three paralegal-secretary  
12 individuals.  
13 Q. And were you equipped to notify FBI agents working on this  
14 case, wherever they might be, if there was a development that  
15 you wanted to tell them about?  
16 A. It was -- on the 21st, we had telephones that were up and  
17 down, up and down. It was still a -- kind of a chaotic  
18 situation in trying to establish full communications. They  
20 the day -- that day progressed and the days after, the  
21 communications generally got better; but there was telephonic  
22 communication ability and fax ability on that day.  
23 Q. And your agents had vehicles -- automobiles to use;  
24 correct?  
25 A. That's correct.

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1 Q. They had aircraft to use; correct?  
3 Q. They had helicopters; right?  
4 A. I believe so, yes.  
5 Q. And they had fixed-wing aircraft should they choose to use  
6 it; correct?  
7 A. That's correct.  
8 Q. Now, let's look at tab 53. That's 95-96; correct?  
10 Q. And that is a search warrant for clothing signed by Judge  
11 Howland; right?  
12 A. That's correct.  
13 Q. Now, was there any pattern to why Judge Russell would sign  
14 certain warrants and why Judge Howland would sign others?  
15 A. No. My recollection was that the first one was typed and I

16 think Judge Russell was there, and I think Judge Howland was  
17 gone for a period of time, and we typed Judge Russell's name on  
18 the signature page -- on the last page of the warrant. On the  
19 95-H -- you see it's United States District Judge. If you look  
20 on page 9 of your 95 -- my affidavit at 95-95-H.  
21 Q. Uh-huh. Now --  
22 A. And so -- well, we -- Judge -- I think Judge Howland did  
23 come back prior to Judge Russell signing this. And then when  
24 the next one came up, he advised Judge Howland to take the next  
25 warrant and if I -- I think if you look at the back of that,

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1 you'll see that we scratched out "district judge" and -- or he  
2 does. He scratches out "district" and writes "magistrate  
3 judge."  
4 Q. Now, would you take a look, please, at tab W54.  
5 A. W54?  
6 Q. Yeah. Same notebook, just one more tab.  
7 A. Okay.  
8 Q. Now, did you see Judge Russell sign the original of this  
9 document?  
10 A. Yes, I did.  
11 Q. When did he sign it?  
12 A. He signed that -- thinking about that, I would say it was  
13 probably in that 4:25, 4:30 time frame on the 21st.  
14 Q. All right. And that's the one captioned United States  
15 versus Timothy James McVeigh; is that correct?  
16 A. W54? I believe so. That's correct. The material witness  
17 warrant for -- for Terry Lynn Nichols.  
18 Q. It says "warrant for arrest of witness." Now, sir, would  
19 you take the Government's white book, please, and look at W --

20 excuse me, not W. Look at Exhibit 26.  
21 A. It's a fax sheet?  
22 Q. Yes, sir. Government's Exhibit 26 in evidence. Would you  
23 turn to the second page.  
24 A. Okay.  
25 Q. What time did you -- did you see Judge Russell sign the

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1 original of that document?  
2 A. Yes, I did.  
3 Q. And what time did he sign that document?  
4 A. That would probably be at the 4:25, 4:30 signing. That's  
5 when -- that's when I --  
6 Q. What's the case number on Government 26, sir?  
7 A. The -- 95-97-H.  
8 Q. And what's the case number on the warrant at W54?  
9 A. 95-97-H.  
10 Q. How come there are two warrants?  
11 A. Both for the same man with the same case number with a  
12 different caption. I think I can explain that.  
13 Q. Please do.  
14 A. One, I wasn't that familiar with the material witness  
15 process. The previous day, on the 20th -- the evening of the  
16 20th, we had issued a material witness warrant for an  
17 individual named Ahmed. That was the first time I had ever  
18 been involved in one of those.  
19 Q. Let me ask you, Mr. Ahmed or Ahmed, is this a Jordanian  
20 gentleman? Is he the fellow that's suing you now?  
21 A. That's probably correct. Yeah. I don't know -- I think  
22 he's suing the United States. I don't think he's suing me.  
23 Q. Well, I mean suing you all now; is that right?  
24 A. Suing you all.

25 Q. He's suing the United States of America?

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1 A. I believe so. I don't know that there's an actual lawsuit

2 yet. It might be just an administrative claim.

3 Q. All right. Go ahead.

4 A. That was the first time I was involved in that. And we did

5 the -- an affidavit and we did the warrant. And that

6 particular warrant, we had United States of America versus

7 Mr. Ahmed in the title, much like we have Terry Lynn Nichols in

8 the title on this one. When I switched my attention to doing

9 the material witness warrant for Terry Lynn Nichols on the

10 21st, I switched secretaries -- or paralegals. One was doing

11 the search warrant affidavits for both the automobile and the

12 clothing, and I switched to another --

13 Q. "The automobile and clothing," you mean Mr. McVeigh's

14 automobile and clothing?

15 A. That's correct. And I switched to a different individual.

16 And I said, Pull up yesterday's material witness affidavit and

17 warrant. We'll use that as a go-by. And that's what we pulled

18 up, and I believe that we just followed suit and put the --

19 Mr. Nichols' name in the title and then -- then one of the

20 attorneys caught the distinction when you issue a warrant for a

21 witness versus issuing a warrant for somebody that's a subject.

22 Q. And what is the distinction?

23 A. One is a witness and one is a subject. One is a person

24 you're seeking to detain for purposes of future testimony.

25 Q. All right. A material witness is a person as to whom the

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1 agents are ordered to bring that person forthwith before a

2 grand jury; correct?

3 A. That's correct.

4 Q. And a warrant for the arrest of a defendant is to put

5 someone in custody to begin the Federal Rule of Criminal

6 procedure, complaint hearing process; is that correct?

7 A. That's correct.

8 Q. Well, I now understand that distinction. But didn't you

9 tell us a few minutes ago that these two warrants that are

10 different in the same case number were signed minutes apart?

11 A. That's correct.

12 Q. All right. Which one was signed first?

13 A. I believe the one in the Government's exhibit, because that

14 was the mistaken one. And the corrected one would have been --

15 Q. The one, the Government's Exhibit -- the Government Exhibit

16 26 was signed, you say, about 4:30?

17 A. That's correct.

18 Q. All right. Now, when was the one in W54 signed?

19 A. Probably sometime after that. When the mistake was noted.

20 Q. Didn't you --

21 A. I believe it would have been -- my recollection was fairly

22 quick. It was fairly -- within a few minutes.

23 Q. Didn't you tell us just a few minutes ago it was in that

24 same 4:30 time frame?

25 A. That's correct. You --

1 Q. Can you please tell us why you would have sent the wrong

2 warrant by fax to the FBI in Kansas City, which is what the fax

3 time line on Exhibit 26 says.

4 A. A mistake. I didn't send it. I mean, it was a mistake.

5 Things were moving -- let me say this: Things were moving

6 very, very, very rapidly; and I can imagine that this would  
7 easily occur. And -- because people were attempting to get --  
8 as you said, get the communications out as rapidly as possible  
9 at that particular moment in time. So I can see it was -- it  
10 was sent out. The person that sent it out probably didn't  
11 realize it was a mistake and there was a mistake on this thing.  
12 And when we caught it, we changed it.

13 Q. Sir, you don't know who sent it out; is that right?

14 A. No.

15 Q. And thus, you don't know of your own knowledge when it was  
16 sent out, do you?

17 A. That's correct. My personal knowledge, no.

18 Q. And you don't remember now, do you, who it was that caught  
19 the mistake?

20 A. That's correct. I believe it was one of the attorneys.

21 Other attorneys, excuse me.

22 Q. And was that mistake then brought to your attention?

23 A. I recall, yeah, it was brought to the judge's attention and  
24 it was corrected.

25 Q. Now, who brought it to the judge's attention?

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1 A. I don't recall.

2 Q. You notice on Government 26 that someone has written in the  
3 words "of material witness" under the words "warrant for  
4 arrest"; is that right?

5 A. That's correct.

6 Q. Judge Russell wrote those, didn't he?

7 A. That appears to be his handwriting, yes.

8 Q. Did you watch him write the words?

9 A. I was there when he signed it, so I would have to say yes.

10 But I really don't have -- now that I -- I wouldn't have had an  
11 independent recollection of that.

12 Q. In that room there that day, who was responsible for making  
13 sure that the requirements of the law were respected insofar as  
14 citizens were going to be taken up off the streets?

15 A. We had set up a system that between -- there was a lot of  
16 information coming in, as you can imagine, during that -- that  
17 day. And the FBI set up a -- has a system where they have an  
18 operations center as a -- a safety valve or a --

19 Q. Is that an SIOC?

20 A. That's correct.

21 Q. That's in Washington?

22 A. That's in Washington.

23 Q. All right. Go ahead.

24 A. And what we attempt to do is run as much of the  
25 information, affidavits, warrants, through them to ensure that

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1 we're acting in a correct, lawful manner; that the information  
2 and documents that we're requesting or any legal documents  
3 we're requesting are done properly. That's -- that's the  
4 system that is set up for emergency-type situations where  
5 there's chaotic type of investigations that are taking place.

6 Q. Mr. Shapiro was the man that was ultimately in charge from  
7 the standpoint of legal advice; is that right?

8 A. For the FBI.

9 Q. After this warrant -- whichever one it was, the first  
10 one -- was issued, what did you do with it?

11 A. I don't recall that I did anything with it at that time.

12 Q. Was Mr. Baker present there?

13 A. Mr. Baker, yeah, he was at the command post, that's  
14 correct.

15 Q. And who is he?  
16 A. He's a supervisor in our FBI office in Oklahoma City.  
17 Q. Was he in telephonic contact with Agent Chornyak in Kansas  
18 City?  
19 A. I have no idea.  
20 Q. Did you talk to him about what should happen with this  
21 warrant once it was obtained?  
22 A. No. Not that I recall.  
23 Q. Did you feel you had any responsibility to see that the  
24 command of Judge Russell contained in this warrant was carried  
25 out?

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1 A. Personally?  
2 Q. Yes, sir.  
3 A. No. At that point, I -- I was moving -- basically what I  
4 was doing, I was moving on to the next document.  
5 Q. All right. What evidence did you have that Mr. Nichols had  
6 attempted to leave the jurisdiction of the United States?  
7 A. None.  
8 Q. Is it your belief, sir, that anyone who is associated with  
9 someone who is suspected of committing a terrible crime is  
10 someone who can't be counted on to obey a subpoena? Do you  
11 believe that?  
12 A. Do I believe that somebody that's an associate of somebody  
13 that's committed a terrible crime --  
14 Q. I'll ask it again, sir.  
15 MR. HARTZLER: May I object on the grounds --  
16 hypothetical.

17 THE COURT: That's sustained.  
18 MR. TIGAR: If your Honor please, may I be heard?  
19 THE COURT: Yes.  
20 MR. TIGAR: It has to do with page 4 of W54, your  
21 Honor.  
22 MR. HARTZLER: May I ask what paragraph?  
23 THE COURT: Well, I'm looking at page 4. I don't  
24 see --  
25 MR. TIGAR: It's the last page of Mr. Gibbons'

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1 affidavit.  
2 THE COURT: All right.  
3 MR. TIGAR: I'm sorry. It was page 5, your Honor. I  
4 miscounted the pages. The last page.  
5 THE COURT: It's page numbered 4 in what I have.  
6 MR. TIGAR: Yes. It's numbered page 4, your Honor,  
7 but it is the fifth sheet of paper, and it's the last paragraph  
8 of the affidavit.  
9 THE COURT: Well, I suggest you rephrase the question,  
10 then, and put it in the terms of that document.  
11 MR. TIGAR: Yes, your Honor.  
12 BY MR. TIGAR:  
13 Q. Do you believe that association with a person involved in a  
14 heinous crime is an indication that testimony cannot be secured  
15 through issuance of a subpoena?  
16 A. It would be one factor. By itself, probably not.  
17 Q. Did you have any document in your possession at the time  
18 you wrote this affidavit that Mr. Nichols had renounced his  
19 United States citizenship?  
20 A. Did I have a document?

21 Q. Yes, sir.

22 A. No.

23 Q. You had some information from Sanilac, Michigan, didn't

24 you, sir? Sanilac County, Michigan?

25 A. I'm not familiar with that county.

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1 Q. You had information from the FBI in Michigan? Isn't that

2 where you got that renunciation?

3 A. No.

4 Q. Did you get it from Washington, D.C.?

5 A. When you're saying -- the information probably did come to

6 me from Washington, D.C., yes.

7 Q. So had you -- did you have any knowledge as to the source

8 of any information that Mr. Nichols had renounced his

9 citizenship?

10 MR. HARTZLER: Object to relevance, your Honor.

11 THE COURT: Overruled.

12 A. SIOC, yes, I did.

13 BY MR. TIGAR:

14 Q. All right. Who was the source?

15 A. Who was the source?

16 Q. Yes.

17 A. Lana Padilla.

18 Q. And where did you get that information? From the agents in

19 Las Vegas?

20 A. That's correct.

21 Q. You knew that Mrs. Padilla was Mr. Nichols' former wife; is

22 that right?

23 A. I believe I knew that at that time.

24 Q. They had been divorced; correct?

25 A. That's correct.

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1 Q. What time did you first begin to prepare the certificate --

2 excuse me -- the material witness warrant in 95-97?

3 A. My personal participation, I believe, started a little

4 after 4. In the 4, 4:30 time frame, I believe. I was -- prior

5 to that, I was working on the search warrants.

6 Q. You say your personal participation. From what you know,

7 when were efforts first made to obtain a material witness

8 warrant for Mr. Nichols?

9 A. I can't answer that because I was pretty focused on the

10 search warrants most of that early afternoon.

11 Q. Well --

12 A. Very focused, in fact.

13 Q. Who asked you to prepare the material witness warrant?

14 A. I believe one of the attorneys indicated that -- that we

15 needed to do a material witness warrant, and that would have

16 been somewhere probably around the 4:00 time frame. Right

17 after I did the -- that's my recollection, right about that

18 time.

19 Q. And that -- by "attorneys," you mean one of the assistant

20 United States attorneys that was present?

21 A. Either that or there was a -- could have been one of the

22 departmental attorneys who were present, too.

23 Q. And did they give you some information to use in developing

24 the affidavit in support?

25 A. That's correct.

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1 Q. And what kind of information did they give you?  
2 A. They had some notes, I think, that they had written down  
3 and probably in conversations with Washington, the department  
4 and/or SIOC, I believe.  
5 Q. So your affidavit was based on affidavits that you had  
6 prepared before; is that correct? In part?  
7 A. This affidavit?  
8 Q. Yes, sir.  
9 A. That's correct.  
10 Q. In other words, some of the paragraphs from your earlier  
11 affidavits, you simply replicated here; correct?  
12 A. And/or added to them. They are not quite replications from  
13 the Timothy McVeigh affidavits that afternoon.  
14 Q. And then you used the information that this assistant  
15 United States attorney gave you; is that correct?  
16 A. That's correct.  
17 Q. Any other sources?  
18 A. Could -- could -- I probably -- there would also have been  
19 probably phone calls to SIOC during the course of -- but that's  
20 speculation on my part. I believe I have a recollection of  
21 that. During the course of writing it and maybe after drafting  
22 it, read-it-type thing.  
23 Q. Do you have any idea what time a decision was first made to  
24 obtain some means to take Terry Nichols into custody?  
25 A. No. I know -- when I started to take part in that process,

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1 which was a little after 4, 4:00.  
2 Q. But when you started to take part in it, that decision had  
3 already been made; right?  
4 A. I believe so.

5 MR. HARTZLER: Object, your Honor. I object.

6 THE COURT: Well, yes, he can't testify to when the  
7 decision had been made if he doesn't know. Sustained.

8 MR. TIGAR: I'm sorry. May I ask him based on his  
9 personal knowledge?

10 BY MR. TIGAR:

11 Q. You were told to get a warrant to get Terry Nichols; right?

12 A. That's correct. I was told to do, you know -- prepare an  
13 affidavit for a material witness warrant what -- that was  
14 around 4:00.

15 Q. You understood that to mean a decision has been made to try  
16 to get the warrant; correct?

17 A. That's correct.

18 Q. All right. During that day, approximately how many  
19 warrants were issued during the time you were on duty?

20 A. You're speaking both search and arrest?

21 Q. Yes.

22 A. In Oklahoma?

23 Q. Yes, sir.

24 A. I believe it was six. Three search warrants, two material  
25 witness warrants and one complaint for a -- was filed.

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1 Q. At the time you presented this warrant affidavit to Chief  
2 Judge Russell, did you know that Mr. Nichols was in the  
3 Herington, Kansas, police station?

4 A. I have no recollection of that.

5 Q. Did you ever become aware during that day that Mr. Nichols  
6 had gone to the Herington, Kansas, police station?

7 A. Yes.

8 Q. When did you become aware of that?

9 A. It probably would have been about that time that -- 4, 4:30  
10 time frame, but that's -- I remember -- I remember clearly  
11 later in the evening, but probably, you know --  
12 Q. Did you tell Judge Russell that Mr. Nichols had gone to the  
13 Herington police station?  
14 A. I have no recollection of telling him that.  
15 Q. What happens to warrants after they are signed by Judge  
16 Russell? Does a copy go into the case file?  
17 A. Normally, it's -- that's the -- we would take a copy of --  
18 normally, it goes to the marshal service, I believe. The  
19 original.  
20 Q. The original goes to the marshal service?  
21 A. That's correct.  
22 Q. Does a copy go in the case file?  
23 A. Sometimes. I don't think there's any hard and fast rule as  
24 far as putting it in there. We generally like the agents to  
25 put a copy of court documents that they are involved with or

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1 that are issued in their case in our case files.  
2 Q. By "case file," I mean the magistrate's file 95-97. Do you  
3 know if a copy of the warrant would go in that file?  
4 A. I -- that would be up to the magistrate and the courthouse,  
5 but I would -- I would think so.  
6 Q. After this warrant was -- withdrawn. Excuse me.  
7 What is -- when someone called to your attention the  
8 fact that the exhibit warrant at Government 26 had the Terry  
9 Nichols caption on it, what was wrong with that, so far as you  
10 were concerned?  
11 A. What was wrong with that?  
12 Q. Yes.  
13 A. It wasn't the United States of America versus Mr. Nichols.

14 It would have been United States of America versus Timothy  
15 McVeigh at that point.  
16 Q. And to you, as the senior FBI lawyer on the scene there in  
17 Oklahoma City, what difference did that make?  
18 A. Well, I -- at the time that I dictated it, it didn't have  
19 any meaning for me; because like I said, this was probably  
20 the -- the second material witness warrant I'd ever been  
21 involved with, and the normal type of situation where an agent  
22 would issue an affidavit for a warrant, that person's name goes  
23 in the title. So I -- I believe that -- you know, I probably  
24 even said put that in there, not thinking in terms of the  
25 difference at the time.

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1 Q. But I'm asking you at the time that you decided to change  
2 it and get another warrant, what was your conclusion, as a  
3 lawyer, as to why you needed to do that?  
4 A. I think -- I'm not the one who caught that mistake. But  
5 once it was brought to my attention and I -- and -- and we  
6 brought it to the judge's attention, we realized -- or -- the  
7 difference in the two situations.  
8 Q. Did Judge Russell say anything about that?  
9 A. I have no recollection of his statements. He probably did,  
10 but I don't have any recollection.  
11 Q. Did you make a presentation to Judge Russell, telling him  
12 that you wanted him to sign another warrant for the same person  
13 to come to the same place in the same case number?  
14 A. I have no recollection of presenting a statement of facts  
15 like you just said to Judge Russell.  
16 Q. Who presented the second warrant to Judge Russell?  
17 A. I don't know.

18 Q. Were you present when he signed the second --  
19 A. We would -- I mean, it was -- it's not like you have this  
20 huge amphitheater. I mean, we're all around a couple tables  
21 there all within five or ten feet of each other at that time  
22 so -- I mean, so I was there, sure. Whether or not somebody --  
23 one of the other attorneys presented that to him, that's  
24 probably what occurred. Probably we had a steno type it, but  
25 this is just -- I'm just trying to create the situation. I was

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1 there.

2 Q. As you sit here today, sir, do you remember anything about  
3 what you said or anybody said to Judge Russell about needing to  
4 get another warrant for Terry Nichols and what Judge Russell  
5 said in response? Can you remember anything about that?

6 A. My recollection is that we noted the mistake and we said we  
7 have to correct the warrant because it should be titled as  
8 United States versus Timothy James McVeigh, versus the other  
9 one. Not that we needed another warrant. I don't think that  
10 term was used. It was more or less of a -- the communication I  
11 recall was like a clerical mistake type of communication, that  
12 we made a mistake in the title.

13 Q. Did Judge Russell say anything when he hand wrote the words  
14 "of material witness" on the first warrant?

15 A. I don't recall.

16 Q. Was there any conversation about his writing the words "of  
17 material witness"?

18 A. I don't recall. I don't believe we would have. If he'd  
19 have wrote it in there, I wouldn't have said anything.

20 Q. Did someone ask him to write it in there?

21 A. I don't -- I don't recall. I think he did it on his own.

22 Q. Did he say anything as to why he was changing the face of

23 the warrant in that manner?  
24 A. I don't recall. We just wanted to make clear it was a  
25 material witness warrant, I imagine. I don't recall -- I

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1 recall him looking at this. I can -- I can picture him writing  
2 it, but I don't recall any conversation about it.  
3 Q. Is it fair to say, sir, that it was important to you, to  
4 the assistant United States attorneys and to Chief Judge  
5 Russell to understand the distinction between a warrant for the  
6 arrest and a material witness warrant?  
7 A. I think it was an important distinction, yes.

8 MR. TIGAR: Pass the witness.

9 THE COURT: Any questions, Mr. Hartzler?

10 CROSS-EXAMINATION

11 BY MR. HARTZLER:

12 Q. Agent Gibbons, would it be fair to characterize April 21,  
13 1995, as the busiest day of your life?

14 A. Absolutely.

15 Q. You had worked the previous day until late into the  
16 evening, had you not?

17 A. Until about 2 or 3 in the morning.

18 Q. And on that previous day, you obtained a couple of  
19 warrants, one of which you've already referred to, which was  
20 the warrant for the arrest of a witness, Abraham Ahmed,  
21 A-h-m-e-d; is that right?

22 A. That's correct.

23 Q. You said -- I don't know the term of art or the phrase that  
24 you used, but you said that you, in effect, used that warrant  
25 as the pony for the material witness warrant for Terry Lynn

1 Nichols?

2 A. That's correct.

3 Q. Mr. Tigar asked you about a couple of mistakes, one of  
4 which appears in the caption. You indicated that, of course,  
5 the mistake first occurred in the Ahmed warrant and was  
6 repeated in the Nichols warrant, at least the first draft of  
7 it -- Nichols warrant that the judge signed; is that right?

8 A. That's correct.

9 Q. I shouldn't have said draft. The first warrant that he  
10 signed.

11 A. That's correct.

12 Q. The Ahmed warrant, by the way, you reviewed recently, have  
13 you not?

14 A. Yes, I have.

15 Q. And the language, the charging language or the command on  
16 the Ahmed warrant is -- reads identical to the commanding  
17 language on the Nichols warrant; is that right?

18 A. That's correct.

19 Q. Do you know why that is?

20 A. Once again, we pulled up the Ahmed warrant and affidavit as  
21 the starting point for putting together the material witness  
22 warrant for Mr. Nichols. And my recollection is that we -- I  
23 told the stenographer/secretary to change the name from Ahmed  
24 to Mr. Nichols in the charging language.

25 MR. TIGAR: Your Honor, if there's an exhibit being

1 referred to, may it be in evidence?

2 MR. HARTZLER: Certainly. I would like you -- to show  
3 the witness Government Exhibit 71, and I'll hand your Honor and

4 defense counsel copies, which they, of course, already have.

5 MR. TIGAR: No objection.

6 THE COURT: You're going to offer 71?

7 MR. HARTZLER: Yes.

8 THE COURT: All right. There's no objection, so it's  
9 received. Do you have it?

10 THE WITNESS: Thank you.

11 BY MR. HARTZLER:

12 Q. Agent Gibbons, could you turn to the third page of that  
13 exhibit, the first page of your affidavit.

14 A. I have it.

15 Q. And reading both the first and the second numbered  
16 paragraph, paragraph No. 1 and paragraph No. 2, paragraph No. 1  
17 indicates that the following information has been received by  
18 the Federal Bureau of Investigation on April 19 to 20, 1995; is  
19 that right?

20 A. That's correct.

21 Q. And indeed, when you prepared that affidavit and signed it  
22 on April 20, that information was correct; is that right?

23 A. That's correct.

24 Q. Did these two paragraphs become incorporated verbatim in  
25 your affidavit for the material witness warrant for Terry Lynn

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1 Nichols?

2 A. Yes, they did.

3 Q. And when they became incorporated verbatim without changes,  
4 were they then correct?

5 A. No.

6 Q. Why were they not correct?

7 A. We had received the information from April 19 through the

8 21st on the -- the Terry Lynn Nichols material witness warrant.

9 Q. Indeed, on the Terry Lynn Nichols material witness warrant,  
10 your affidavit discloses information about a magistrate -- I'm  
11 referring you now -- go back to defense Exhibit W54. Do you  
12 have that in front of you?

13 A. Yes, I do.

14 Q. Paragraph 7 refers to a search warrant that was issued by a  
15 magistrate -- the U.S. magistrate in the Eastern District of  
16 Michigan?

17 A. You -- you're speaking of paragraph 4?

18 Q. Right. It's paragraph 4. I misspoke, sir.

19 A. That's correct. It starts at the last -- starts at the  
20 last of page 1 of the affidavit with the word "a" and continues  
21 on to "Magistrate in the Eastern District of Michigan has  
22 issued a search warrant for the Nichols farm for evidence  
23 instrumentalities related to the April 19, 1995, bombing of the  
24 Alfred P. Murrah Federal Building.

25 Q. Could you turn now to the Government exhibit books and find

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1 Government Exhibit 27? And just read for the Court the time  
2 that that search warrant from Michigan was issued or signed.

3 A. 3:27 p.m. That would be Detroit.

4 Q. And the date.

5 A. April 21, 1995.

6 Q. And that, of course, is the search warrant that you're  
7 referencing in paragraph 4 of your affidavit for the material  
8 witness warrant for Terry Lynn Nichols?

9 A. That's correct.

10 Q. You said that both Judge Russell and Magistrate Howland  
11 were at the command center in Oklahoma City on April 21; is  
12 that right?

13 A. That's correct.

14 Q. Was the courthouse in Oklahoma City, the Federal Courthouse  
15 in Oklahoma City open that day?

16 A. No, it wasn't.

17 Q. It's right across the street from the Murrah Federal  
18 Building?

19 A. That's correct.

20 Q. Mr. Tigar asked you if you were equipped to talk to  
21 agents -- I think he said "anywhere." Can you -- well, let me  
22 ask you: As I understand the system, SIOC, S-I-O-C, is the  
23 central command post at FBI headquarters in Washington, D.C.

24 A. That's correct.

25 Q. And that's essentially the communications hub and command

1 post with which SIOC will communicate or were set up throughout  
2 the country, one in Detroit, one in Kansas City and one in  
3 Oklahoma City; is that right?

4 A. That's correct.

5 Q. And the communications flowed in large part from SIOC to  
6 the various command centers and then from the command centers  
7 to the various agents in those areas?

8 A. That's correct.

9 Q. So Mr. Tigar, I think, asked you some questions about  
10 contact with agents in Herington, Kansas; and you said you had  
11 no recollection of talking directly with any agents in Kansas.  
12 That was because there was -- Kansas City command post served  
13 as the gateway --

14 MR. TIGAR: Object to leading, your Honor.

15 THE COURT: Sustained.

16 BY MR. HARTZLER:

17 Q. What was -- what was the means of your communication or the  
18 Oklahoma City command center's communication with agents in  
19 Herington, Kansas?

20 A. If they wanted to call, I suppose they could have called;  
21 but, normally, the -- the situation would be you'd go through  
22 their command center for lead so there could be lead control of  
23 whatever particular request was being made. One of the -- the  
24 factors that's taken into consideration in major investigations  
25 is the attempt to control information and to ensure that things

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1 are followed up on. So usually, the -- the normal course of  
2 communication is from a command post to a command post and then  
3 that command post would assign leads and track the Leads.

4 Q. You testified that there were six warrants that you  
5 obtained on April 21; correct?

6 A. That's correct.

7 MR. HARTZLER: And your Honor, unless there's an  
8 objection, I would simply like to move into evidence the six  
9 warrants which I believe are now identified as Government  
10 Exhibits 19, 20, 21, 22, 23, 24 and 25.

11 THE COURT: 19 through 25? That's what you just said  
12 I think.

13 MR. HARTZLER: Correct.

14 MR. TIGAR: If your Honor please, beginning with  
15 Number 19, that is a warrant for the Herington residence.  
16 Heretofore, the affidavit in support has, I believe, been  
17 sealed.

18 MR. HARTZLER: Let me make it simpler. Could we just  
19 move into evidence the cover sheet, the warrants, themselves?  
20 I merely want to ask him about the numbering of them.

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

22 think we can simplify this.

23 THE COURT: Yes, you may.

24 MR. TIGAR: If your Honor please, we have no objection

25 to the seal being removed from those materials at this time.

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1 We have challenged the veracity of the affidavits and if the --

2 the media can't figure out that there's a fight about what's

3 said in there, then the First Amendment means nothing.

4 THE COURT: I think it's clear that there are many

5 matters in dispute; the accuracy of the affidavits among them.

6 So we'll move into evidence 19 through 25 and the previous

7 sealing is revoked.

8 MR. HARTZLER: I believe Mr. Tigar is correct that 19

9 is a warrant that was obtained in Kansas, not pursuant to the

10 affidavit.

11 THE COURT: Yeah. So you have seven instead of six.

12 MR. HARTZLER: So I'm really referring Agent Gibbons

13 to the last six as 20 through 26.

14 THE COURT: 25.

15 MR. HARTZLER: 20 through 25.

16 BY MR. HARTZLER:

17 Q. You're familiar with those warrants and have recently

18 reviewed them, have you not?

19 A. Yes, I have.

20 Q. Can you explain to the Court how the numbers were placed on

21 there and what the procedure was for numbering those warrants?

22 A. Yes. Judge -- US Magistrate Judge Howland maintained the

23 numbering system for the documents that day in the command post

24 and upon the execution of each one of the warrants, he would

25 give a number to that particular warrant request.

1 Q. So the numbers and the warrants would also reflect the  
2 chronology in which they were obtained?

3 A. That's correct.

4 MR. HARTZLER: Just one moment, your Honor.

5 THE COURT: Yes.

6 MR. HARTZLER: Nothing further. Thank you.

7 THE COURT: Any follow-up, here?

8 MR. TIGAR: Yes, your Honor.

9 RE-DIRECT EXAMINATION

10 BY MR. TIGAR:

11 Q. The Michigan warrant was issued at 3:27 Michigan time;  
12 correct?

13 A. That's correct.

14 Q. That's 2:27 Oklahoma City time; correct?

15 A. That's correct.

16 Q. So that shows that the FBI was in a position to obtain  
17 information as to what was happening as of, say, 2:30 in the  
18 afternoon; right?

19 A. When you say the FBI --

20 Q. Somebody in the FBI had relayed to you that that Michigan  
21 warrant had been obtained; correct?

22 A. In the form of this affidavit, that's correct.

23 Q. Did anyone in the FBI tell you that the Michigan source  
24 that you referred to in your affidavit had said Terry Nichols  
25 had a driver's license?

1 A. Did anybody tell me the name of the source?

2 Q. No. Well, did anybody tell you the name of the source?

3 A. On that day?

4 Q. Yes.

5 A. No.

6 Q. Did anybody tell you the sources reported that Mr. Nichols  
7 had a driver's license?

8 A. I don't believe so, no.

9 Q. Did anybody tell you that the FBI agents were already in  
10 Herington, Kansas, and they knew where Mr. Nichols was at the  
11 very moment that you were working on the warrant affidavit?

12 A. I might have received that information, but I don't -- I'm  
13 a little confused on the timing of my receipt of that  
14 information. I'm clear later. I believe I knew it about the  
15 time 4:00.

16 Q. Agent, I really want you to think about this. You did have  
17 information from Michigan that -- that we know originated at  
18 2:27 p.m. Oklahoma time. I want you to think hard as to  
19 whether before you went to Chief Judge Russell and put in front  
20 of him a piece of paper that said Terry Nichols has attempted  
21 to leave the United States that you had had any communication  
22 from the FBI that was present in Herington, Kansas, and had  
23 been since early afternoon.

24 A. I -- I believe that that information was communicated to  
25 the command center in Oklahoma City about that time. About

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1 that 4:00 time frame. That's what -- I believe I knew that at  
2 that time.

3 Q. Did you know that a S.W.A.T. team had started out from  
4 Kansas City shortly after noon on that day for Herington,  
5 Kansas?

6 A. No.

7 Q. On Government 71, you typed in on the front of it the  
8 information that Mr. Ahmed had attempted to leave the  
9 jurisdiction of the United States; correct?

10 A. Oh, I see. 71.

11 Q. It's on the front page there.

12 A. Yes.

13 Q. And your affidavit verified that, indeed, he had not only  
14 attempted to, but he had gone to London; correct?

15 A. That's correct.

16 MR. TIGAR: Nothing further, your Honor.

17 MR. HARTZLER: Just one point of clarification.

18 THE COURT: All right.

19 RE CROSS-EXAMINATION

20 BY MR. HARTZLER:

21 Q. Agent Gibbons, you did not know of the Michigan warrant  
22 upon its issuance, did you?

23 A. No.

24 Q. And were you obtaining information directly from Michigan?

25 A. No. It was coming from SIOC.

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1 Q. SIOC would get the information from Michigan however they  
2 would get --

3 MR. TIGAR: Your Honor, excuse me. I object to the  
4 leading.

5 THE COURT: All right. Rephrase it.

6 BY MR. HARTZLER:

7 Q. Explain how the information got to you.

8 A. I heard -- the information for the material witness warrant  
9 concerning Michigan came from our operations center in  
10 Washington.

11 Q. And do you have any recollection of when you learned about

12 the Michigan warrant?

13 A. Probably at the time that we -- I was doing the search --

14 the affidavit for the material witness warrant, when I wrote

15 it.

16 Q. And you indicated that it was -- 2:27 was the time of

17 issuance and you obtained that information after 4:00? Is that

18 right?

19 A. 2:27 our time -- Oklahoma time.

20 Q. Right.

21 A. That's correct. After 4:00.

22 Q. So you didn't know of the issuance of that search warrant

23 for more than an hour and a half?

24 A. No.

25 MR. HARTZLER: Nothing further.

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1 MR. TIGAR: One more, your Honor.

2 THE COURT: All right.

3 MR. TIGAR: Really, one more.

4 FURTHER REDIRECT EXAMINATION

5 BY MR. TIGAR:

6 Q. Agent, isn't it a fact that there was an open line that

7 connected Michigan, Kansas City, SIOC and Oklahoma City on the

8 21st of April?

9 A. Not all day, no.

10 Q. I didn't ask you all day, sir. I asked you isn't it a

11 fact --

12 A. When you say "open line," that's open. I mean, there was

13 probably communications --

14 Q. Sir, please --

15 A. -- as far as a conference call, maybe.

16 Q. Isn't it a fact that during a large part of the day on the  
17 21st of April, 1996, including the -- excuse me.  
18 Isn't it true that for a large part of the day on  
19 April 21, 1995, including the afternoon thereof, there was an  
20 open line connecting Detroit, SIOC, Kansas City, and Oklahoma  
21 City command post?  
22 A. Not that I recall.  
23 MR. TIGAR: Thank you.  
24 THE COURT: Is Agent Gibbons now excused?  
25 MR. TIGAR: Yes, your Honor.

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1 THE COURT: Is that agreed?  
2 MR. HARTZLER: Thank you.  
3 THE COURT: You may step down. You're excused.  
4 THE WITNESS: Thank you, your Honor.  
5 THE COURT: Next witness, please.  
6 MR. TIGAR: Arlene Joplin.  
7 THE COURT: All right. Come forward to be sworn,  
8 please.  
9 (Arlene J. Joplin was sworn.)  
10 THE COURTROOM DEPUTY: Please be seated. Please state  
11 your full name for the record and spell your last name.  
12 THE WITNESS: My name is Arlene Joan Joplin.  
13 J-o-p-l-i-n.  
14 DIRECT EXAMINATION  
15 BY MR. TIGAR:  
16 Q. Good afternoon, Ms. Joplin.  
17 A. Good afternoon.  
18 Q. You are an assistant United States attorney in the Western  
19 District of Oklahoma; is that correct?  
20 A. I am. I am.

21 Q. And you were doing that work in April of 1995; correct?

22 A. I was.

23 Q. Do you have any or did you then have any special

24 responsibilities beyond being just as assistant US Attorney in

25 the office as of April 1995?

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1 A. At that time, I was the deputy criminal chief in the

2 office.

3 Q. Now, I'm going to ask you some questions about April 21,

4 1995. What time did you show up for work on that day?

5 A. Around -- I was coming in to the command center every

6 morning around 6. So while I have -- I imagine around 6:00 in

7 the morning.

8 Q. Had you been up pretty late working the night before?

9 A. Until after midnight.

10 Q. When you got there to the command center, were there other

11 assistant United States attorneys who were also working? I

12 don't want to know what time they all show up for work. Some

13 time in the morning, were you joined by other assistant United

14 States attorneys?

15 A. Absolutely.

16 Q. And that would be Mr. Holmes and Ms. Behenna?

17 A. I'm certain they were there, yes.

18 Q. And were there others?

19 A. Yes. Jim Reynolds from the criminal division was there.

20 John Lancaster, who was a line assistant at the criminal

21 division in the Department of Justice was there. Donna Bucella

22 from EOUSA of the Department of Justice was there.

23 Q. I'm going to have to ask you to back up on the -- on the

24 initials there. Donna Bucella from EOUSA?

25 A. From the executive office of the United States Attorneys

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1 for the Department of Justice.

2 Q. All right. And that's -- is she -- is that -- that's a --

3 like there's an assistant attorney general who runs the

4 executive office; is that right? Or how does that work?

5 A. Yes. Yes. She -- I believe she is the principal assistant

6 who runs that office. I mean, she was the deputy principal

7 assistant, I believe.

8 Q. All right. So is that a position that requires Senate

9 confirmation, hers?

10 A. No. I don't know.

11 Q. Now, in addition to the Government lawyers of whom you've

12 spoken, there were some FBI agents there; correct?

13 A. Certainly.

14 Q. And one of those was Henry Gibbons; is that right?

15 A. Yes. Agent Gibbons came in some time that morning. I

16 don't remember when he arrived.

17 Q. Agent Gibbons, in addition to being a special agent, is

18 a -- has a legal officer title; is that correct?

19 A. He does.

20 Q. Do you work with him or did you at that time work with him

21 closely on cases?

22 A. From time to time, yes.

23 Q. Now, Mr. Baker was also there?

24 A. I believe Rich Baker was there, yes.

25 Q. Was -- did -- did you know anything about what kinds of

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1 communications had been set up between the FBI and Washington,

2 D.C. and the various FBI command posts around the country?

3 A. I was learning through observation. At that time, I still  
4 knew very little about how the communications were operating  
5 around the country.

6 Q. Were you -- who was in charge of figuring out what warrants  
7 to arrest and search would be issued on April 21, '95?

8 A. The decisions about what warrants would actually issue and  
9 be executed were all made in Washington. It was my  
10 understanding at the time that it was a joint arrangement  
11 between highly placed officials of the Department of Justice in  
12 the Attorney General's office and SIOC at the FBI.

13 Q. And at SIOC in the FBI was Mr. Shapiro; correct?

14 A. Indeed.

15 Q. Did you talk to Mr. Shapiro during the course of April 21?

16 A. I never had a conversation with him that day, no.

17 Q. Did there come a time when the name Terry Nichols was  
18 mentioned in the discussions being held in your command post?

19 A. Yes. I can't tell you when I first heard the name Terry  
20 Nichols.

21 Q. Was it on April 20?

22 A. I believe on Thursday April 20 that -- yes, that I was  
23 aware of the name of Terry Nichols and -- and his brother,  
24 James Nichols.

25 Q. Do you remember how you became aware of the names Terry and

1 James Nichols on April 20, 1995?

2 A. My memory is that during one of the briefings, it became  
3 clear -- and this may have been later into the afternoon or  
4 even into the evening Thursday. I don't remember. I -- I  
5 believe the connection was that people at the Dreamland Motel

6 had been interviewed and there was a -- the connection between  
7 Bob Kling and Tim McVeigh had been made through the  
8 registration at the Dreamland Motel. And I believe that Tim  
9 McVeigh's license, driver's license or some identification that  
10 he used had a Michigan address that was the James Nichols farm.  
11 I think that's the first time I heard those names.

12 Q. And now, I've been asking you about Terry Nichols. Is it  
13 your recollection that the FBI then in Michigan contacted  
14 someone who was able to provide information about Terry Nichols  
15 and James Nichols and the Nichols farm?

16 A. Yes. I believe that to be true.

17 Q. And is it your recollection that that someone was a  
18 confidential informant?

19 A. No. That's not my recollection.

20 Q. Coming on into the 21st of April, 1995, did there come a  
21 time when it was -- someone said, in substance, let's get a  
22 warrant and arrest Terry Nichols?

23 A. To me?

24 Q. Well, in your presence. Let me first set the scene. The  
25 room you're all in was a pretty small space for a lot of people

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1 working, wasn't it?

2 A. There were four rooms in the command center. I think the  
3 room that you're thinking about is the room that the -- the SAC  
4 room where the special agents from around the country were  
5 sitting. And indeed, that was a small room for a lot of  
6 people, as they all were.

7 Q. Well, do you remember that there was a time when someone  
8 said in your presence or you became aware that there was going  
9 to be a warrant to arrest Terry Nichols?

10 A. Yes.

11 Q. And about when was that?

12 A. It was late in the afternoon as the warrant was being  
13 prepared and was almost completed.

14 Q. That's the time you first became aware of it; is that  
15 right?

16 A. Yes. Yes.

17 Q. Who, to your recollection, was preparing the paperwork to  
18 get the warrant?

19 A. Who was working on it at the command center there was Jim  
20 Reynolds, but I believe with the -- the assistance of -- of  
21 SIOC in -- in Washington.

22 Q. Who presented -- once the paperwork was done, did you  
23 present the Terry Nichols arrest warrant to Chief Judge  
24 Russell?

25 A. I did.

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1 Q. And did he sign it?

2 A. Yes, he did.

3 Q. Will you please look at the white notebook that is there,  
4 at Exhibit Number 26. That's been received in evidence and the  
5 first page is a fax cover sheet, fax time line and then the  
6 second page is a third generation photocopy. Were you present  
7 when Chief Judge Russell signed the original of that document?

8 A. Yes, I was.

9 Q. And who wrote the words of "material witness" on that  
10 document?

11 A. I -- I don't know that.

12 Q. Did Chief -- do you remember what Chief -- what, if  
13 anything, Chief Judge Russell said about this document before  
14 he signed it or as he was signing it or in that time frame?

15 A. Not at the time he signed this, no.

16 Q. Did you have a conversation with Chief Judge Russell about  
17 it after he signed it?

18 A. I -- I had a conversation with Chief Judge Russell some  
19 time after he signed it because the caption is in error.

20 Q. Would you take a look, please, at the black notebook which  
21 is on your other -- other side over there and look at W54.

22 A. I have it.

23 Q. Now, that was also signed by Chief Judge Russell; is that  
24 correct?

25 A. Yes, it was.

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1 Q. Now, did you watch him sign it?

2 A. Yes, I did.

3 Q. When did he sign it?

4 A. I can't tell you a time. A number of warrants were being  
5 signed during the same period of time. I can't tell you a time  
6 in the afternoon. I know it was signed subsequent to the one  
7 with the incorrect caption.

8 Q. Do you remember what was said when the W54 was presented to  
9 Chief Judge Russell?

10 A. I had learned late in the afternoon that -- that a material  
11 witness warrant should not have the name of the witness clearly  
12 in the caption and I believe that I -- somebody -- and it may  
13 have been somebody else. It may have been Jim Reynolds, but  
14 somebody had discovered the incorrect caption on -- on this  
15 first warrant. I asked Judge Reyn -- Judge Russell what we  
16 would need to do to make a correction.

17 Q. Now, about how long after the signing of the first warrant  
18 did you have this discussion or learn this information from  
19 Mr. Reynolds?

20 A. I don't know that I did learn it from Mr. Reynolds. There  
21 came a time when I became aware that the caption on the first  
22 Terry Nichols material witness warrant was incorrect. And I  
23 may have learned that from -- from Jim Reynolds.  
24 Q. All right. So did you cause this new piece of paper that's  
25 at W54 to be made up at that time?

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1 A. Yes, I think I did.  
2 Q. And did you present that to Chief Judge Russell with the  
3 same affidavit from Mr. Gibbons --  
4 A. Yes.  
5 Q. -- that had accompanied the earlier submission that Chief  
6 Judge Russell signed?  
7 A. Yes.  
8 Q. Do you have any idea at all that can help us know how long  
9 after the first warrant was signed that this one was signed?  
10 A. I -- I really don't.  
11 Q. Was it an hour? Can you even give us a minimum time or a  
12 maximum time?  
13 A. My best memory would be that -- simply because I have no  
14 memory of calling Judge Russell or going to his home, my best  
15 memory would be that it -- it would have taken place while he  
16 was still at the command center, signing a number of other  
17 warrants that -- that were to be issued that day. So that it  
18 would have been within several hours. I'm not entirely  
19 comfortable with that memory.  
20 Q. Did anyone, to your knowledge, make any effort to determine  
21 that the facts recited in this second warrant were as true as  
22 they were when the matter had first been presented to Chief  
23 Judge Russell?

24 A. Do you mean in the affidavit?

25 Q. Yes.

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1 A. Are you asking did anybody ascertain whether or not  
2 circumstances had changed from the time the first affidavit had  
3 been presented?

4 Q. That's a good first question. Yes.

5 A. I don't think so.

6 Q. As you were reviewing the first warrant, the one that was  
7 in error, did you happen to notice the language "he has  
8 attempted to leave the jurisdiction of the United States"?

9 A. I didn't.

10 Q. So that language on the first warrant didn't trouble you?

11 A. I didn't catch it. I didn't catch it.

12 Q. Had you participated in the preparation of the warrant with  
13 respect to Mr. Ahmed the night before?

14 A. I did not participate in the -- its preparation, but I read  
15 it and presented it to the -- the judge. The magistrate judge,  
16 I believe.

17 Q. And on that warrant, the recitation of attempt to leave the  
18 United States was typed in, wasn't it?

19 A. Yes.

20 Q. And was based upon averments in an affidavit that the man  
21 had gone to London; correct?

22 A. Exactly.

23 Q. Do you happen to remember what time Chief Judge Russell  
24 left the command post that day?

25 A. I don't.

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1 Q. I'd like to change subjects.

2 A. Well, let me --

3 Q. Excuse me.

4 A. I think I can put that within a period of time. This was  
5 the 21st, which means that Terry Nichols was to be -- to have  
6 an initial appearance that night. That started -- I'm sorry.  
7 I said Terry Nichols, but, obviously, I mean Tim McVeigh.  
8 Judge Russell had left the command center, I believe, before it  
9 even got dark as we began to prepare for -- for the initial  
10 appearance and -- and to travel to Tinker Air Force Base.

11 Q. Now, when you say before it got dark, this is Daylight  
12 Savings Time; right?

13 A. Yes.

14 Q. And it was April 21; correct?

15 A. Yes.

16 Q. All right. If I were a better lawyer, I'd have an almanac  
17 now and we could do this.

18 A. As would I.

19 Q. I'm trying -- now I'd like to change subjects because we  
20 want to complete your testimony in one session. When is the  
21 first time you met Mrs. Marife Nichols?

22 A. The first time I met her was either Monday, May 8, or  
23 Tuesday, May 9 of 1995.

24 Q. And on whichever of those days was the first, did you have  
25 a meeting at which you, Agent Thomeczek, Jerome Holmes, Donna

1 Bucella and Agents Dobson and Hawkins were present?

2 A. That -- the meeting that you referred to took place  
3 definitely on the 9th. I believe that -- that there may have  
4 been a meeting the evening of the 8th in addition.

5 Q. Do you remember at that meeting on the 9th where all these  
6 people I have named were present that Mrs. Nichols said in  
7 words or substance, I think I better have a lawyer and Agent  
8 Thomeczek said in words or substance, Ah, you don't need a  
9 lawyer?

10 A. Absolutely not. I assure you that had she said that and  
11 had he so responded, that that would stick in my memory.

12 Q. A grand jury subpoena was issued for Mrs. Nichols; is that  
13 correct?

14 A. Yes.

15 Q. When was that?

16 A. I -- I -- there was a grand jury subpoena issued for her  
17 appearance on the 9th. I don't know when that grand jury  
18 subpoena was issued for that appearance. Probably within  
19 the -- the preceding week.

20 Q. Did you interview Mrs. Nichols in an effort to prepare for  
21 her grand jury appearance?

22 A. I did.

23 Q. What was the -- when was the subpoena returnable?

24 A. On the 9th.

25 Q. Did she go before the grand jury?

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1 A. She did not.

2 Q. Did you tell her that the Government felt she was telling  
3 the truth in words or substance?

4 A. I have no memory of saying that. I don't believe I said  
5 that.

6 Q. Did you ever tell Mrs. Nichols in words or substance that  
7 because the Government felt she was telling the truth, she  
8 didn't need to go before the grand jury?

9 A. I don't believe I said that, no.

10 Q. Did you make the decision that she was not going to appear  
11 before the grand jury?

12 A. No, I did not.

13 Q. Who made that decision?

14 MR. HARTZLER: I object, your Honor. I don't know how  
15 the Government decision making is relevant to their motion to  
16 suppress evidence of the searches of Terry Nichols' home.

17 MR. TIGAR: The question is withdrawn.

18 THE COURT: Withdrawn. All right.

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

20 THE COURT: Yes.

21 BY MR. TIGAR:

22 Q. You were aware that Mrs. Nichols was the wife of Terry Lynn  
23 Nichols; is that correct?

24 A. I was.

25 Q. Did you or anyone in your presence advise her of the

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1 spousal privilege?

2 A. No.

3 Q. You know what the spousal privilege is, do you not?

4 A. I do, indeed.

5 Q. Now, would it refresh your recollection if I suggested the  
6 subpoena -- grand jury subpoena you handed her was returnable  
7 on the 16th of May?

8 A. Yes. But I -- I believe that to be a second grand jury  
9 subpoena.

10 Q. Would you tell us how many there were and when they were  
11 returnable.

12 A. I believe there were two. One returnable on the 9th. She  
13 was served with a second grand jury subpoena returnable -- I

14 would have thought on the 17th, but some time during that  
15 session.

16 Q. And once again, because I want to give you this  
17 opportunity, did you have a conversation with Mrs. Nichols on  
18 May 16 or 17 about why she was not going to be put before the  
19 grand jury?

20 A. I'm sure that I talked to her some about the procedure and  
21 why she was not going to be put before the grand jury.

22 Q. And you deny making the statement to the effect because the  
23 Government feels you're telling the truth, you need not go  
24 before the grand jury; is that correct?

25 A. I don't believe I said that. I'll tell you why. I -- I

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1 believe that she should at least for a limited purpose be put  
2 before the grand jury. I don't think that I would have made  
3 that statement to her.

4 Q. But in fact, a decision was made and she did not?

5 A. It was.

6 MR. TIGAR: Okay. Your Honor, the grand jury subpoena  
7 returnable the 16th is W75. We move it into --

8 MR. HARTZLER: No objection.

9 THE COURT: W75 is received.

10 MR. TIGAR: Pass the witness.

11 MR. HARTZLER: I'm sorry.

12 MS. MERRITT: 74.

13 MR. HARTZLER: I thought they were going to introduce  
14 both of them. Which do you have?

15 MR. WOODS: We don't have both.

16 MR. TIGAR: I'm sorry, Counsel. Through the Court to  
17 counsel, I only have one, your Honor. It is W74. I stand  
18 corrected. And I move its admission at this time.

19 THE COURT: Do you agree to that one?  
20 MR. HARTZLER: I need to just look at which one that  
21 is.  
22 THE COURT: All right.  
23 MR. WOODS: I would represent that we've never been  
24 given another subpoena other than the one that we have.  
25 MR. HARTZLER: Well, she may not have been served with

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1 two subpoenas.  
2 THE COURT: Let's just stay with the exhibit that's  
3 offered, W74. Is there any objection?  
4 MR. HARTZLER: No objection.  
5 THE COURT: Received.  
6 MR. TIGAR: Pass the witness.  
7 THE COURT: Any questions?  
8 MR. HARTZLER: I do, your Honor.  
9 CROSS-EXAMINATION  
10 BY MR. HARTZLER:  
11 Q. Ms. Joplin, you referred to a conversation you had with  
12 Chief Judge Russell after the first warrant for Terry Nichols  
13 was signed by him --  
14 A. Yes.  
15 Q. -- do you recall? Could you relate to the Court what your  
16 conversation was with Chief Judge Russell regarding the mistake  
17 or the error in the caption of the case?  
18 A. I remember only the -- the gist of the conversation. I  
19 remember that I felt apologetic since we -- we had had the  
20 judge over and he had made -- he had -- he was there to sign --  
21 he had done so much work there. I believe that I asked him  
22 what he would like us to do to fix this and whether or not I

23 should do a motion to amend or a motion to strike or -- or what  
24 his pleasure would be about correcting the error.  
25 Q. And what did he say?

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1 A. I think he said if it hasn't gone out, shred it and present  
2 it again.

3 Q. Do you recall obtaining a warrant for the arrest of the  
4 witness, James Nichols, on that same day?

5 A. I know that I did present that to the judge. I have no  
6 memory of doing it.

7 Q. Could you refer to Government Exhibit 24 in the white  
8 notebook and look at the final page, which is the warrant.

9 A. Yes. I have it.

10 Q. Do you see that the case number for that warrant is  
11 95-99-H?

12 A. Yes, it is.

13 Q. Whereas the warrant for Terry Lynn Nichols was 95-97-H?

14 A. Yes.

15 Q. Do you recall if the same error was made in the warrant for  
16 James Nichols?

17 A. I don't believe so.

18 Q. And do you recall how long after obtaining the warrant for  
19 Terry Nichols you obtained a warrant for James Nichols?

20 A. Very soon after. All of this was done in a -- a finite  
21 period of time. Within several hours.

22 Q. So is it your belief that the error was found prior to  
23 obtaining the warrant for arrest of James Nichols?

24 MR. TIGAR: I'm sorry, your Honor. I object to  
25 leading.

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1 THE COURT: Rephrase.

2 BY MR. HARTZLER:

3 Q. Do you know whether the error was discovered before the  
4 warrant for arrest of James Nichols was prepared?

5 A. I assume that to be true from -- from these documents, yes.

6 MR. TIGAR: I object to the assumption, your Honor.

7 THE COURT: I think you're asked for your  
8 recollection.

9 THE WITNESS: I have no clear recollection of exactly  
10 when it happened.

11 THE COURT: All right.

12 BY MR. HARTZLER:

13 Q. Do you remember the final warrant that was obtained on that  
14 day?

15 A. I don't remember which of the warrants was the final  
16 warrant.

17 Q. Could you turn to Government Exhibit 25.

18 A. Yes, I have it.

19 Q. You see that the caption for that case is number 95-100?

20 A. Yes.

21 MR. HARTZLER: Your Honor, would you accept my  
22 representation that that's the last number of case numbers for  
23 that day?

24 THE COURT: These numbers are the magistrate's --

25 MR. HARTZLER: Correct.

1 THE COURT: -- record?

2 MR. HARTZLER: Right.

3 THE COURT: All right. Yes. I'll accept that if

4 counsel will.

5 MR. TIGAR: No, your Honor. I'm sorry. I don't --

6 THE COURT: You can't?

7 MR. TIGAR: I think the presumption of regularity

8 isn't evidenced.

9 MR. HARTZLER: I'm just asking whether or not this is

10 the last number so we can get some kind of --

11 THE COURT: Well, I don't -- what's the source of --

12 that you make the representation from there? There is some

13 confusion.

14 MR. HARTZLER: Agent Gibbons -- Agent Gibbons

15 certainly said there were six warrants and we've already

16 identified the six warrants. The last number we have is

17 95-100. The previous -- I think it begins with 95 for that

18 day, Government Exhibit --

19 THE COURT: Well, that's why I asked what was in the

20 magistrate's records and that would be controlling is the last

21 number in the records; not what the agent testified to.

22 BY MR. HARTZLER:

23 Q. Ms. Joplin, do you recall how many warrants were obtained

24 that day?

25 A. I believe there were six warrants obtained that day. I

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1 think I could name them.

2 Q. Why don't you try to name them.

3 A. Well, certainly, there was --

4 Q. Pardon me for interrupting. Could you name them in the

5 order they were obtained as best you recall.

6 A. I cannot do that. I cannot do it. It was almost

7 simultaneous. I mean, we -- they were being typed and worked

8 on and -- and the -- the magistrate was there and Judge Russell

9 was there. I -- I can't tell you except by looking at the  
10 numbers in what order they were signed.

11 Q. Go ahead and tell us the six that you recall.

12 A. There was the complaint for Timothy McVeigh. In addition,  
13 there was the search warrant for McVeigh's car which had been  
14 left on the road in -- near Perry, Oklahoma. There was a  
15 search warrant for Timothy Nichols' clothes and personal  
16 effects.

17 Q. You said Timothy Nichols.

18 A. I'm sorry. Timothy McVeigh. Thank you. There was a  
19 search warrant for McVeigh's clothes and personal effects.  
20 There was a search warrant for McVeigh's person, fingernail  
21 scrapings, I believe, and things of that sort. In addition,  
22 there was the material witness warrant for Terry Nichols and  
23 the material witness warrant for James Nichols. That's six.

24 Q. And I believe from your testimony, you recall that the  
25 material witness warrant for Terry Nichols was obtained before

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1 the material witness warrant for James Nichols; is that right?

2 A. I believe that's true, yes.

3 Q. Do you recall -- well, let me refer you, first of all, to  
4 Government Exhibit 25 and if you'll look to the second to the  
5 last page, which bears the time that it was signed.

6 A. Yes. I -- I see the time that -- that Magistrate Howland  
7 signed it written here.

8 Q. 5:55 p.m. on the 21st?

9 A. That's right.

10 Q. And do you recall if both the material witness warrants  
11 were obtained before that time?

12 A. Yes. I -- I believe so, yes.

13 Q. And do you recall whether the material witness warrants for  
14 James and Terry Nichols were obtained after the search warrants  
15 for McVeigh's automobile and his clothing?

16 A. I believe that to be true because the -- the search for the  
17 automobile had by far the greatest priority.

18 MR. HARTZLER: Could I have one moment, your Honor?

19 THE COURT: Yes.

20 MR. HARTZLER: Nothing further, thank you.

21 THE COURT: Mr. Tigar.

22 REDIRECT EXAMINATION

23 BY MR. TIGAR:

24 Q. After Chief Judge Russell said if it hasn't been sent out,  
25 shred it and do it over, what did you do?

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1 A. I -- I hope -- I don't know what I did.

2 Q. Did you shred it?

3 A. I don't recall. I would not have done that personally.

4 And --

5 Q. Why not?

6 A. Because at the time, my attention was -- was taken up  
7 with -- with so many other duties that it's something that I  
8 would have handed to a secretary or an assistant to do for me.

9 Q. Did any question arise in your mind about the propriety of  
10 shredding a document that had been signed by a United States  
11 district judge, directing a citizen to be taken off the street?

12 MR. HARTZLER: I object, your Honor. This is not --

13 THE COURT: Sustained.

14 BY MR. TIGAR:

15 Q. Did you make inquiry to see whether or not the original  
16 warrant had been sent out?

17 A. Yes. I -- I believe I did do that.

18 Q. And what did you find out?  
19 A. I believed that it had not been sent out.  
20 Q. Is it the practice of the United States District Court  
21 magistrate to take copies of the warrants that are issued and  
22 put them in the jacket, the magistrate's jacket?  
23 A. I'm not sure I know what you mean by "the magistrate's  
24 jacket."  
25 Q. If I go to the United States Magistrate Judge Howland's

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1 office and pull the jacket in 95-97, the file, should I find in  
2 there the warrant?  
3 A. Magistrate Howland had -- let me try to answer your  
4 question this way: I don't know the answer to that question.  
5 Magistrate Howland has a numbering system that he adheres to  
6 meticulously where he begins with a number and as each warrant  
7 is issued, he writes it in his book. In addition, he takes  
8 affidavits and -- and the warrants attached to them and keeps  
9 them in his office. His procedure is -- is a little different  
10 from other magistrates in the courthouse in how he handles  
11 them, I believe.  
12 Q. So if a person went to the United States District Court's  
13 office and asked to see the file in 95-97-H, those warrants  
14 should be in there; is that right?  
15 A. Yes. Unless -- unless they were sealed, yes.  
16 MR. TIGAR: Nothing further.  
17 MR. HARTZLER: No further questions.  
18 THE COURT: Is the witness excused?  
19 MR. TIGAR: Yes, your Honor.  
20 THE COURT: You may step down. You're excused. I  
21 think we'll take our mid-afternoon recess at this time, which

22 will be 20 minutes.

23 (Recess at 2:58 p.m.)

24

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1 (Reconvened at 3:15 p.m.)

2 THE COURT: Be seated, please.

3 Next witness.

4 MR. TIGAR: Roland Leeds, please. Mr. Leeds is one of  
5 our investigators, your Honor. We have previously furnished to  
6 the Government a copy of the report of the trip that he's going  
7 to be testifying about, and I have today furnished to the  
8 Government a redacted copy of the same report dealing only with  
9 the matters that are the subject of his direct examination  
10 pursuant to Federal Rule of Criminal Procedure 12(i) and 26.2.

11 THE COURT: All right.

12 MR. HARTZLER: Your Honor, I'm sorry to fill the  
13 silence here, but I've reviewed the report and I'm not sure I  
14 capture the relevance of this. I wonder if we might have a  
15 proffer.

16 THE COURT: Would you tell us what he's being called  
17 for.

18 MR. TIGAR: Investigator Leeds will testify that he  
19 contacted Detective Hall of the Sanilac County Sheriff's  
20 Department and learned that on April 20, 1995, at 11:30 p.m.,  
21 Detective Hall was contacted at home by FBI Agent Bill Severs  
22 or Servers from Detroit. Hall put the agent in touch with a  
23 confidential informant based on an investigation that he, Hall,  
24 had conducted in the fall of 1994. That confidential informant  
25 was someone that the bureau wanted to talk to, and they asked

1 that informant be available at 5:30 the next morning.

2 In fact, the informant became available to them at  
3 8:30 or 9, and that informant provided information concerning  
4 Mr. Terry Nichols and Mr. James Nichols.

5 On the basis of that, the witness is sitting here,  
6 your Honor. Shall I continue the proffer?

7 THE COURT: Well. It's slightly leading, but the  
8 proffer was asked for. Let's go ahead and if there is  
9 objection to the testimony, there will be.

10 Swear the witness.

11 We'll just go ahead and you make your inquiry.

12 MR. TIGAR: All right.

13 (Roland Leeds was sworn.)

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

16 THE WITNESS: Roland Leeds, L-E-E-D-S.

17 DIRECT EXAMINATION

18 BY MR. TIGAR:

19 Q. Mr. Leads, you're an investigator appointed by the Court to  
20 assist in the defense of Mr. Nichols; is that right?

21 A. That's correct.

22 Q. What is your investigation and law enforcement experience?

23 A. Started in 1981, 15 years of investigative and law  
24 enforcement experience.

25 Q. Directing your attention, sir, to the 23rd of May, 1996,

1 did you conduct an interview with Detectives Hall and Cowley of  
2 the Sanilac County Sheriff's Department?

3 A. Yes, sir, I did.

4 Q. And did Detective Hall inform you of a contact that he had  
5 had by the FBI on April 20, 1995?

6 A. Yes, sir, he did.

7 Q. When did he say the FBI had contacted him on April 20,  
8 1995?

9 A. He had contacted him at Detective Hall's residence at  
10 approximately 11:30 p.m.

11 Q. Did Detective Hall furnish information to the FBI about  
12 James Nichols?

13 A. Yes, he did.

14 Q. What did that information relate to in a general way?

15 A. It related to a previous investigation that Detective Hall  
16 had conducted at the Nichols farm.

17 Q. Did that investigation concern alleged explosives?

18 A. Yes, sir, it did.

19 Q. Did Detective Hall tell the FBI who had given him the  
20 information on the basis of which he did his investigation?

21 A. Yes, he did.

22 Q. Did Detective Hall tell you who his informant was?

23 A. He told me the originating source but he did not tell me  
24 who the female was involved, what her name was.

25 Q. He told you that his -- that the source was a female?

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1 A. Well, he told me that the originating individual was an  
2 adolescent by the name of Chase and that he had received  
3 information from a female; otherwise, Chase had given this  
4 information to a female, who was unidentified, that she  
5 provided Detective Hall with that information regarding the  
6 bomb-making activity.

7 Q. Did the FBI ask to -- Detective Hall to help them get in

8 touch with this female informant?  
9 A. Yes, they did.  
10 Q. Did the FBI try to schedule an interview early the morning  
11 of April 21?  
12 A. Yes, they did.  
13 Q. And was Detective Hall able to arrange the interview when  
14 the FBI wanted it?  
15 A. Yes, sir, they did.  
16 Q. When did the FBI, according to Detective Hall, interview  
17 this informant?  
18 A. Approximately at 9 a.m. on 4-21-95.  
19 Q. And that is 9 a.m. Michigan time?  
20 A. That's correct.  
21 Q. So that's eastern time?  
22 A. Yes.  
23 Q. As a result -- excuse me. Did Detective Hall go with the  
24 agents to talk to the informant?  
25 A. He logistically set up the meeting for the agents.

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1 Q. Did he talk to the FBI just after they talked to the  
2 informant?  
3 A. Yes, he did. He assisted them.  
4 Q. And what did the FBI agents tell him, if anything, about  
5 the information that they had received?  
6 A. Well, they had -- could you repeat that question, please.  
7 Q. Sure. What did the FBI agents tell Detective Hall, if  
8 anything, about what they were going to do with the information  
9 they'd received?  
10 A. Okay. When he originally spoke with the FBI agents from  
11 Detroit, the FBI agent said that this is the best information

12 that we've received so far and we're going to run with it.

13 Q. Did Detective Hall thereafter help the FBI search James  
14 Nichols' farm?

15 A. He was present during the search, yes.

16 Q. What was the timing of the FBI's efforts directed towards  
17 James Nichols' farm so far as Detective Hall observed those  
18 efforts?

19 A. The timing was that he assisted the FBI originally in  
20 driving out to James Nichols' farm to get a physical  
21 description of the farm itself for the search warrant and then  
22 he returned to the scene and stood by while the agents waited  
23 for the search warrant, which was subsequently initiated.

24 Q. Did the FBI agents, as Detective Hall reported it, set up a  
25 perimeter around James Nichols' farm?

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1 A. Yes, they did.

2 Q. About what time did he say to the FBI set up a perimeter  
3 around James Nichols' farm?

4 A. My impression is around noon.

5 MR. HARTZLER: I object to his impression, your Honor.

6 THE COURT: Yes. What he told you is the question.

7 THE WITNESS: Well, the -- he had told me that they  
8 had converged 150 to 200 agents by noon in the Decker,  
9 Michigan, area.

10 BY MR. TIGAR:

11 Q. And that was his statement?

12 A. Yes.

13 Q. All right. Did you later return to the office and look  
14 through the 302's that were furnished to the defense by the  
15 Government?

16 A. Yes, I did.

17 Q. And were you able to determine the identity of the  
18 informant that the FBI had interviewed?  
19 A. Yes, sir.  
20 Q. And who was that?  
21 A. Kelly Langenburg.  
22 Q. And what, if any, relationship does she have to the Nichols  
23 family?  
24 A. She is the ex-wife of James Nichols.  
25 Q. And does she have a son?

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1 A. Yes, she does.  
2 Q. What's the son's name?  
3 A. His name is Chase.  
4 MR. TIGAR: Pass the witness.  
5 THE COURT: Any questions?  
6 MR. HARTZLER: No questions.  
7 THE COURT: All right. You may step down.  
8 Next, please.  
9 MR. TIGAR: Call Deputy Chief Thacker.  
10 Has the Government received Mr. Killam's and  
11 Mr. Bodley's report of the interview with Agents Kuhn and  
12 Thacker.  
13 MR. HARTZLER: We have, your Honor.  
14 MR. TIGAR: Would you like an additional copy for your  
15 use in court today?  
16 THE COURT: Do come forward to be sworn, please.  
17 (Barry W. Thacker was sworn.)  
18 THE COURTROOM DEPUTY: State your full name for the  
19 record and spell your last name.  
20 THE WITNESS: My name is Barry W. Thacker,

21 T-H-A-C-K-E-R.

22 DIRECT EXAMINATION

23 BY MR. TIGAR:

24 Q. Mr. Thacker, I'm going to ask, sir, that you keep your

25 voice up so that at least everybody within this confined area

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1 here can hear you, sir.

2 What do you do for work?

3 A. I'm the assistant chief of police for the city of Herington

4 in Dickinson County, Kansas.

5 Q. How long have you been the assistant chief?

6 A. I've been employed there as assistant chief for probably

7 eight years as a police officer for about 24.

8 Q. Now, who is the chief?

9 A. Mr. Dale Kuhn.

10 Q. You all call that the Department of Public Safety, do you

11 not?

12 A. Yes, sir.

13 Q. And your background is in law enforcement; is that correct?

14 A. Yes, sir.

15 Q. And Chief Kuhn's background is more on the firefighting

16 side of public safety; is that right?

17 A. Yes, sir.

18 Q. Now, do you know Terry Nichols?

19 A. Yes, sir.

20 Q. And do you see him in court?

21 A. Yes, sir.

22 Q. When did you first meet Mr. Nichols?

23 A. I first met Mr. Terry Nichols on April 21, 1995.

24 Q. Was that the first time he had ever been down to your

25 Department of Public Safety?

1 A. No, sir, it was not.

2 Q. When did he first come down there --

3 A. He was --

4 Q. -- that you know of?

5 A. One week earlier, on April 14, 1995.

6 Q. And was that to register his truck and get his --

7 MR. MENDELOFF: Objection, your Honor. Leading. This  
8 man is not a federal agent.

9 THE COURT: All right. Avoid the leading.

10 BY MR. TIGAR:

11 Q. What was he doing down there on the 14th?

12 A. He came to our station to have a VIN check done on his  
13 vehicle so he could have it registered in the State of Kansas.

14 Q. Did he pay you money?

15 A. Yes, he did.

16 Q. Did he get his plates?

17 A. Well, I don't know if he got his plates. We did the check  
18 and give him the paperwork so he could do that.

19 Q. And who was the officer with whom he dealt then?

20 A. Officer Del Linsley.

21 Q. And at that time, was a regular routine check run on  
22 Mr. Nichols?

23 A. On the vehicle VIN, yes.

24 Q. And you found it was clean?

25 A. Yes.

1 MR. MENDELOFF: Objection, your Honor. Leading.

2 BY MR. TIGAR:

3 Q. Excuse me. Did you find it was clean?

4 A. Yes.

5 Q. You say the next time you met him was April 21?

6 A. That was when I met Mr. Nichols, yes.

7 Q. What time of day was that?

8 A. Approximately 2:50 in the afternoon.

9 Q. Tell us -- tell us what happened. Was he with somebody?

10 A. When I first viewed Mr. Nichols on that afternoon, he was  
11 exiting a vehicle and approaching the station. He was with his  
12 wife and his daughter.

13 Q. Had you heard his name any time before that time you saw  
14 him get out of his car?

15 A. Yes, sir.

16 Q. How had you heard his name?

17 A. A short time before that, there was an agent from the FBI  
18 in our office making an inquiry if I knew the name of Terry  
19 Nichols.

20 Q. Do you remember that agent's name?

21 A. I believe it was Agent Smith.

22 Q. What did Agent Smith ask you?

23 MR. MENDELOFF: Objection, your Honor. Foundation.  
24 Foundation, please, Judge, for the conversation with Agent  
25 Smith.

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1 THE COURT: Well, he's there and he's engaging in the  
2 conversation. I don't understand the objection.

3 MR. MENDELOFF: We don't have a time, your Honor, when  
4 Agent Smith had been in there before.

5 THE COURT: The objection is overruled.

6 What did he tell you?

7 BY MR. TIGAR:

8 Q. What did Agent Smith say to you, sir?

9 A. Agent Smith, when I approached him, identified himself as  
10 being an FBI agent, and he told me he was making an inquiry  
11 into -- of a couple names and seeing if I would recognize or if  
12 I knew those persons.

13 Q. Do you remember what names he asked you about?

14 A. The one that I knew was Terry Nichols.

15 Q. Do you remember the others?

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

17 Q. Were you able to help Agent Smith?

18 A. Yes, we were.

19 Q. How were you able to help him?

20 A. We called the city office and located an address through  
21 our water and light system.

22 Q. And what was that address?

23 A. 109 South 2nd Street in Herington, Kansas.

24 Q. Did Agent Smith have some other address for a Terry  
25 Nichols?

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1 A. Not to my knowledge.

2 Q. Would it refresh your recollection if I suggest he had a  
3 9th Street address; that he had the numbers reversed?

4 A. Not to my knowledge, sir.

5 Q. All right. Now, about how long after Agent Smith left your  
6 police station did you see Mr. Nichols?

7 A. This would be approximately 50 minutes, somewhere  
8 thereabouts.

9 Q. You say 15 minutes?

10 A. 50.

11 Q. 50. 5-0.

12 A. Right. He left sometime before 2:30. I don't recall just

13 exactly when.

14 Q. Now, who was with Mr. Nichols when he got out of his truck?

15 A. Mr. Nichols was accompanied by a small child, which was his

16 daughter, and his wife.

17 Q. Was he carrying the baby?

18 A. Yes, he was.

19 Q. They came in the police station?

20 A. Yes, he did.

21 Q. Who did they talk to first?

22 A. He approached the door. I opened the door. He stepped

23 inside. I said, Hi, what can I do for you? And then he spoke

24 to me.

25 Q. Now, other than your conversation with Agent Smith, had you

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1 ever heard of Terry Nichols before that meeting?

2 A. Only on review of officers' paperwork from the VIN. I've

3 never heard his name other than that.

4 Q. You hadn't heard any media coverage or anything like that

5 about Terry Nichols or somebody looking for him?

6 A. Not to my knowledge.

7 Q. All right. I want to back up a little bit, sir. After

8 Agent Smith came to see you and ask you about Terry Nichols,

9 did you leave the station for a while?

10 A. I left, yes.

11 Q. Where did you go?

12 A. I went to see if I could locate Agent Smith.

13 Q. And why were you looking for Agent Smith?

14 A. I was going to inform him that we found the paperwork

15 involving the VIN check that was done on Mr. Nichols' vehicle.

16 Q. Did you have any other purpose in going out after Agent  
17 Smith left the station?  
18 A. Yes, sir. It was almost shift time and change time, and I  
19 was going to pick up my relief officer.  
20 Q. Was that Officer Linsley?  
21 A. Yes, it was.  
22 Q. Del Linsley?  
23 A. Yes.  
24 Q. Tell the Court, please, what you saw when you drove off  
25 there to try to find Agent Smith and to go get your

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1 replacement.  
2 A. I drove to the uptown area and checked with -- drove by the  
3 utility companies, the post office, back by the city office  
4 looking for Mr. Smith's vehicle; and I didn't find it.  
5 Q. Did you see some other vehicles?  
6 A. I seen lots of vehicles uptown.  
7 Q. The record doesn't reflect it, but you are smiling. Would  
8 you tell the Court what those lots of vehicles appeared to you  
9 as a law enforcement officer to be?  
10 A. In the uptown area?  
11 Q. Yes, sir.  
12 A. They were just residences, normal business, everyday.  
13 Q. Well, did you see some vehicles parked near the Nichols  
14 residence?  
15 A. Yes, sir, I did.  
16 Q. And did you reach, as a law enforcement officer, a  
17 conclusion about what those vehicles were doing?  
18 A. They were just a strange vehicle that I didn't know who  
19 they were.

20 Q. Was it obvious to you as a law enforcement officer what  
21 those vehicles were doing? Did you reach a conclusion as to  
22 what you thought they were there for?

23 A. I thought they were probably FBI.

24 Q. Now, as you returned to the police station, did you see  
25 Mr. Nichols' truck?

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1 A. Yes, I did.

2 Q. All right. Now, let's go back to that time and the lobby  
3 of the police station there. Mr. Nichols came in, and what did  
4 he say to you?

5 A. He informed me who he was. He stated, My name is Terry  
6 Nichols. I just seen my name on television, and I would like  
7 to talk to someone about that.

8 Q. Now, what did you tell him?

9 A. I told him that I would try to find someone to talk to him.

10 Q. How did Mr. Nichols appear to you?

11 A. Concerned, nervous.

12 Q. Did he appear frightened?

13 A. No, sir, I couldn't say that.

14 Q. Did he describe what his concerns were?

15 A. No, sir.

16 Q. Did Chief Kuhn come out and talk to Mr. Nichols in your  
17 presence?

18 A. Yes, sir.

19 Q. What conversation did they have?

20 A. When we approached to where Mr. Kuhn was standing, he told  
21 Mr. Kuhn that he was Terry Nichols and he wished to talk to  
22 someone, he just seen his name on radio and television.

23 Q. Did you take steps to try to find out -- find someone that  
24 Mr. Nichols could talk to about why his name was being

25 mentioned on television?

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1 A. Yes, sir, I attempted to.

2 Q. What steps did you take?

3 A. I went into the dispatch area and was attempting to locate  
4 some numbers. I was in hope to call the Kansas City office of  
5 the FBI and to notify them that I had a subject there saying he  
6 was Mr. Nichols.

7 Q. I'm sorry. I didn't hear.

8 A. I had a subject there that was stating he was Mr. Nichols.

9 Q. And were you able to contact the FBI?

10 A. No, sir, I did not.

11 Q. Do you know what other efforts were made to contact the FBI  
12 other than the ones you made?

13 A. I didn't make any other effort than trying to locate a  
14 phone number as then the dispatcher was probably doing the same  
15 thing.

16 Q. Did you participate in interviewing Mr. Nichols?

17 A. No, sir, I didn't interview Mr. Nichols.

18 Q. Did there come a time when the FBI agents arrived at your  
19 police station?

20 A. Yes, sir.

21 Q. And what happened then?

22 A. Agents arrived in the foyer, stepped into the hallway.  
23 They identified themselves to me. I told them that I had a  
24 subject there who said his name was Terry Nichols and he would  
25 like to talk to someone; and I directed them into the officers'

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1 room where Mr. Nichols, his wife and his daughter were.

2 Q. Were you present at any of the searches of the Nichols  
3 residence?

4 A. No, sir.

5 Q. What time did you leave the police station that day?

6 A. I left several times during the evening hours.

7 Q. And any of those times that you left, did you go past the  
8 Nichols house?

9 A. Yes.

10 Q. What was the first time that day that you went past the  
11 Nichols house after Terry Nichols got to the police station, if  
12 you remember?

13 A. I don't recall an exact time. It would have probably been  
14 in the area of early evening. It was -- I don't recall what  
15 time it would have been.

16 Q. Were there a lot of folks there?

17 A. There were. That's why I went there.

18 Q. And what kinds of folks were they?

19 A. What I viewed was news media, and there were one or two  
20 agents that was there at the residence.

21 Q. Were there bureau vehicles, FBI vehicles, cars?

22 A. I don't recall. There was -- the vehicle there that they  
23 were using, but I don't recall seeing any others.

24 MR. TIGAR: Will your Honor indulge me for a moment?

25 THE COURT: Yes.

1 BY MR. TIGAR:

2 Q. When you registered Mr. Nichols' vehicle, you also ran a  
3 driver's license check, didn't you -- the department did?

4 A. Yes, sir.

5 Q. There were no warrants, right?

6 A. On the driver's license, no, sir.

7 Q. Now, did you ever in the succeeding days go to the house on  
8 2nd Street for any purpose that you can recall?

9 A. No, sir.

10 Q. All right.

11 MR. TIGAR: Pass the witness.

12 THE COURT: Mr. Mendeloff.

13 CROSS-EXAMINATION

14 BY MR. MENDELOFF:

15 Q. Mr. Thacker, let me just take you back for a minute to the  
16 time when Agent Smith first got to the police station that day.  
17 I believe you testified that Agent Smith -- you were part of a  
18 conversation in which Agent Smith asked you about Mr. Nichols  
19 and you had told us what had happened. Can you start from the  
20 beginning? How did you get into that part of the conversation?  
21 What was happening?

22 A. Agent Smith identified himself, and he briefly told me that  
23 he was doing some follow-up or some investigations for the  
24 Oklahoma bombing.

25 Q. Now, did you join a conversation in progress or did you

180

1 start at the beginning?

2 A. I joined in the initial or the exchange between him and  
3 Mr. Kuhn.

4 Q. He and Mr. Kuhn had been talking first and then you joined?

5 A. Yes, sir.

6 Q. He introduced himself and said he was working on the  
7 Oklahoma City bombing?

8 A. Yes, sir.

9 Q. And he, I think you testified earlier, asked if there were

10 about -- several names, and the only one you can remember is

11 Terry Nichols; is that correct?

12 A. That's correct.

13 Q. Now, did he tell you why he needed the information on

14 Mr. Nichols?

15 A. He stated he was doing investigations in connection with

16 the bombing in Oklahoma.

17 Q. And did he say what he wanted with Mr. Nichols, what he

18 wanted to do?

19 A. Just to talk or to interview.

20 Q. And then you obtained the -- you and the chief obtained the

21 address for the Nichols home, and then Agent Smith left; is

22 that correct?

23 A. That's correct.

24 Q. Prior to leaving, did Agent Smith ever tell you that the

25 FBI wanted to arrest Terry Nichols?

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1 A. No, he did not.

2 Q. Did he tell you that -- to detain Terry Nichols if he

3 appeared at the station?

4 A. No, he did not.

5 Q. And this was roughly what time that he left?

6 A. This was approximately -- I would say 2:20.

7 Q. All right. And then I believe you testified that you did a

8 check on the VIN or a check on Mr. Nichols and you found that

9 he had been in the station for a VIN check the week before.

10 A. That's correct.

11 Q. And then you left the station to try to find Agent Smith?

12 A. Yes.

13 Q. When you drove past the Nichols home, I believe you

14 testified you saw some vehicles that seemed out of place.

- 15 A. Yes.
- 16 Q. And you thought they might have been surveillance vehicles?
- 17 A. Yes.
- 18 Q. Did you know for sure whether they were?
- 19 A. No.
- 20 Q. How many vehicles did you see?
- 21 A. Two.
- 22 Q. Then you returned to -- picked up Officer Linsley and
- 23 returned to the station; is that right?
- 24 A. Yes.
- 25 Q. When you returned to the station, you were pulling in when

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- 1 you saw somebody driving down the street?
- 2 A. That's correct.
- 3 Q. Who was that? What did you see?
- 4 A. I observed a blue, 1984 GMC pickup that was blue in color
- 5 that had a white topper on that was coming southbound to the
- 6 area of the police station.
- 7 Q. Had you seen that pickup before?
- 8 A. Yes, sir.
- 9 Q. When?
- 10 A. When I drove past 109 South 2nd, Mr. Nichols' residence.
- 11 Q. And that was how many minutes prior?
- 12 A. Approximately 10.
- 13 Q. All right. You went into the police station, and minutes
- 14 later or moments later you saw Mr. Nichols and his family
- 15 walking into the police station; is that right?
- 16 A. That's correct.
- 17 Q. And when -- I believe you testified that when he got in the
- 18 police station, Mr. Nichols identified himself, said he just

19 saw his name on television and wanted to talk to somebody about  
20 that; is that right?  
21 A. That's correct.  
22 Q. He then went forward in the foyer and he talked to Officer  
23 Kuhn as well, Chief Kuhn?  
24 A. That's true.  
25 Q. And the officer with Chief Kuhn was very similar; is that

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1 right?  
2 A. That's correct.  
3 Q. What happened next?  
4 A. At that point, we asked him if he would step inside, and he  
5 entered the doorway to the office areas.  
6 Q. All right. Where did he go next?  
7 A. We asked if he -- it was more of a gesture if he would  
8 enter the officers' room, which was on the right side of the  
9 doorway. He and his wife and his daughter did so.  
10 Q. Did you or Officer Kuhn demand that Mr. Nichols do  
11 anything?  
12 A. No, sir.  
13 Q. Now, once Mr. Nichols was in the officers' room, what  
14 happened?  
15 A. When he was in the officers' room, we got some  
16 identification from him to run some checks.  
17 Q. All right. And before that, did Chief Kuhn ask Mr. Nichols  
18 any questions?  
19 A. Yes, he did.  
20 Q. What did he ask?  
21 A. He asked if he had any weapons on him.  
22 Q. What was Mr. Nichols' response?  
23 A. No.

24 Q. What happened then?

25 A. Mr. Nichols raised his jacket, turned around, took his

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1 jacket off, and then he sat down in a chair.

2 MR. MENDELOFF: All right. Your Honor, may I  
3 approach? There is a diagram behind the witness I'd like to  
4 show, your Honor.

5 THE COURT: All right.

6 MR. MENDELOFF: Or, Judge, I think we have a copy in  
7 the book, and it's in your Honor's book.

8 THE COURT: Well, let's use that.

9 BY MR. MENDELOFF:

10 Q. Let me direct your attention to Government's Exhibit 3 in  
11 the white book.

12 A. What page?

13 Q. Government's Exhibit 3 in the white book.

14 THE COURT: There is a tab there that identifies where  
15 to look for it.

16 BY MR. MENDELOFF:

17 Q. Identify for the Judge which room on that diagram was the  
18 room in which Mr. Nichols and his family were when he picked  
19 his arms up and turned around.

20 A. The room where Mr. Nichols was seated is what was called  
21 the officers' room, and it's just to the right of the lobby.

22 Q. It's just -- how many feet outside the front door is that?

23 A. How many feet?

24 Q. How many feet roughly from the lobby entrance?

25 A. Approximately 3 to 5. It's not very far.

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1 Q. All right. After Mr. Nichols picked his arms up and turned  
2 around, what happened?

3 A. At that point, Chief Kuhn was getting some information,  
4 name, date of birth, identifiers, from Terry Nichols.

5 Q. All right. And did you remain in the room?

6 A. I left the room at that time and went into the dispatch,  
7 was looking for a telephone number to call the FBI.

8 Q. And it was at that time that the check was done on his  
9 driver's license and a warrant check; is that right?

10 A. That's correct. The dispatcher did that.

11 Q. Now, moments later did you walk down the hall?

12 A. Yes, I did.

13 Q. And have a conversation with Chief Kuhn?

14 A. Yes, I did.

15 Q. And what did Chief Kuhn tell you or ask you?

16 A. Chief Kuhn asked me if I was -- would want to go back out  
17 and see if I could locate Agent Smith and have him come to the  
18 station.

19 Q. All right. At that point, what did you say?

20 A. I told him I would do so.

21 Q. And what did you do next?

22 A. At that point, I stepped inside the officers' room where  
23 Mr. Nichols and his wife and his daughter were, and I reminded  
24 him that he was not under arrest and he was free to go at any  
25 time.

1 Q. What was Mr. Nichols' response when you told him that he  
2 was not under arrest and that he was free to go at any time?

3 A. There was no response.

4 Q. Did you ever actually leave the building to look for the

5 agent?

6 A. Did I actually leave the building? No, sir.

7 Q. What happened?

8 A. At this time, the phone rang and it was for Mr. Kuhn, and

9 he answered it in the officers' room.

10 Q. And did you overhear this conversation?

11 A. Briefly, the comments -- a few comments at the end of the

12 conversation.

13 Q. And after the conversation, did Chief Kuhn say anything to

14 you in the presence of Mr. Nichols?

15 A. Yes, he did.

16 Q. What did he say?

17 A. He said that that was Agent Smith, and he stated that he

18 would be right in.

19 Q. Did Terry Nichols in any way object to Chief Kuhn's

20 notification that Agent Smith was coming into the police

21 station?

22 A. No, sir.

23 Q. What happened next?

24 A. At this time, I stepped into the hallway, and there was

25 people come to the door in the foyer.

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1 Q. How many?

2 A. There was four.

3 Q. And what did they do when they entered?

4 A. They entered the door and identified themselves as being

5 FBI agents.

6 Q. All right. And then what happened?

7 A. I stepped back to the officer room doorway, and I advised

8 them that I had Terry Nichols in the room and he wished to talk

9 to someone about his name being on television and that he was  
10 not under arrest.

11 Q. All right. How many -- how many agents, if any, entered  
12 the officers' room at that time?

13 A. Two.

14 Q. And in the officers' room at that point were whom?

15 A. At that point, there was the two officers. There was Terry  
16 Nichols, his wife, and his daughter.

17 Q. Did you observe what happened in the officers' room at that  
18 point?

19 A. No, sir.

20 Q. All right. Now, what happened then?

21 A. At this point, I left the officers' room and was in the  
22 hallway. I met or observed Chief Kuhn and two agents going  
23 down the hallway looking at the size and the location of our  
24 offices.

25 Q. So they had left the officers' room and walked out in the

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1 hallway?

2 A. Yes, sir. They returned back, and the comment was made  
3 that the rooms were too small.

4 Q. Who made that comment?

5 A. I believe it was one of the agents.

6 Q. Okay.

7 A. At that point, the basement area, the meeting room, was  
8 mentioned as a possible place.

9 Q. Who mentioned that?

10 A. I believe I did.

11 Q. All right. And what -- outside of the garage, what is the  
12 largest -- the largest room in the Herington Department of  
13 Public Safety?

14 A. It would be the meeting room in the basement.  
15 Q. And did that serve any other capacity in addition to a  
16 meeting room?  
17 A. We do training, we do interviews, we do a little bit of  
18 everything in there.  
19 Q. At that point, did Chief Thacker (sic) go anywhere?  
20 A. Did Chief Kuhn?  
21 Q. I'm sorry. I just promoted you. I'm sorry.  
22 A. Thank you.  
23 Q. Did Chief Kuhn go anywhere?  
24 A. Yes, he did.  
25 Q. Where did he go?

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1 A. He and two agents went down the steps and went to the  
2 basement area to check it and see if it was suitable.  
3 Q. How long were they gone?  
4 A. Just a minute or two.  
5 Q. What happened when they returned?  
6 A. They returned upstairs; and then shortly after, they  
7 escorted Mr. Nichols down the steps.  
8 Q. Now, was Mr. Nichols handcuffed as he walked downstairs  
9 with the agents?  
10 A. No, sir, he was not.  
11 Q. Did he appear to be in detention in any way?  
12 A. No, sir, he was not.  
13 Q. Did he indicate while he walked down the stairs that he was  
14 accompanying the agents in something other than his free will?  
15 A. No, sir.  
16 Q. Did you ever hear any agent place Terry Nichols under  
17 arrest?

18 A. No, sir.  
19 Q. Now, after Terry Nichols went down into the basement, did  
20 you have occasion to enter the basement at any point?  
21 A. Once.  
22 Q. When did that happen?  
23 A. It was a while after they were in the basement. One of the  
24 officers asked if we could squelch the radio system that was in  
25 the basement as it was causing quite a bit of noise at that

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1 time.  
2 Q. And did you go down into the basement?  
3 A. Yes, sir, I did.  
4 Q. What did you see in the basement?  
5 A. When I went down the steps, entered into the meeting room,  
6 I observed Terry Nichols and the agents setting on chairs.  
7 Q. All right. How many agents did you see in the basement at  
8 this time?  
9 A. Two that I recall.  
10 Q. Now, did you see Terry Nichols when you went into the  
11 basement?  
12 A. Yes, sir.  
13 Q. What was his emotional appearance?  
14 A. He was --  
15 MR. TIGAR: Object, your Honor.  
16 MR. MENDELOFF: May I withdraw and rephrase, your  
17 Honor?  
18 THE COURT: Yes.  
19 BY MR. MENDELOFF:  
20 Q. What was -- did he have any evident emotional state?  
21 A. No.  
22 Q. Was he sweating from what you could see?

23 A. No.

24 Q. Did he appear upset or sick?

25 A. No.

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1 Q. How long were you in the basement?

2 A. Just maybe 2 minutes.

3 Q. As of the time that Terry Nichols descended into the  
4 basement with the agents, how many total agents were in the  
5 Herington Department of Public Safety?

6 A. Four.

7 Q. Did you ever see a S.W.A.T. team in the Herington  
8 Department of Public Safety that day?

9 A. No, sir, I did not.

10 Q. In fact, did you ever see a S.W.A.T. team outside of the  
11 Herington Department of Public Safety that day?

12 A. No, sir, I did not.

13 Q. Now, during the time that the agents were in the police  
14 department, did any of them display their weapons?

15 A. No, sir.

16 Q. In fact, could you see whether any of the agents were even  
17 carrying any weapons?

18 A. No, sir.

19 Q. Did you ever hear any agent threaten Terry Nichols or his  
20 wife?

21 A. No, sir.

22 Q. Now, throughout the evening, I believe you testified that  
23 you were in and out of the building?

24 A. That's correct.

25 Q. And your tasks that evening were what?

1 A. I left the building on one occasion to go to Mr. Nichols'  
2 residence. I went over and placed barricade tape around the  
3 residence to keep the media and onlookers from trespassing on  
4 the property.

5 Q. All right. And other than that, did you leave the  
6 Herington Department of Public Safety for an extended period  
7 for some other task?

8 A. I went out, also taped the parking lot to kind of restrict  
9 the parking, and then later I went and evacuated some houses so  
10 that they could do a visual search for bombs on Mr. Nichols'  
11 truck.

12 Q. All right. Let's take this slowly. Where was Mr. Nichols'  
13 truck?

14 A. It was parked in front of the police station.

15 Q. And there was some concern about a bomb being in the truck?

16 A. Possibly, yes.

17 Q. All right. And what were you asked to do?

18 A. I was asked to clear the area, at least a block --  
19 one-block area around the side of the vehicle just for  
20 precaution to make sure there wasn't something that occurred.

21 Q. So to do this, what did you do?

22 A. I went -- I left the station. I went to the north. I went  
23 door to door for both sides of the street in that block  
24 approximately 8 houses and asked the residents if they would  
25 leave the area for a short time while the search was made.

1 Q. Search of what?

2 A. Of Terry Nichols' truck.

3 Q. For what?

4 A. For booby traps or a bomb.

5 Q. Now, approximately what time did you return to the

6 Herington Department of Public Safety that evening?

7 A. Approximately 9:00.

8 Q. When you returned, did you look into the officers' room?

9 A. Yes, sir.

10 Q. Did you see Mrs. Nichols sitting in the officers' room?

11 A. No. She was gone.

12 Q. Did you ever see her again?

13 A. No.

14 MR. MENDELOFF: One moment, please, your Honor.

15 THE COURT: Yes.

16 MR. MENDELOFF: Nothing further, your Honor. Thank

17 you.

18 THE COURT: Mr. Tigar?

19 REDIRECT EXAMINATION

20 BY MR. TIGAR:

21 Q. Deputy Chief Thacker, you met with Mr. Mendeloff before you

22 came here today?

23 A. Yes, sir, I did.

24 Q. Did he go over your proposed testimony with you?

25 A. He discussed what I have testified, yes.

1 Q. Did he have a copy of testimony you had given before with

2 him when he went over your proposed testimony with you?

3 A. That, sir, I don't know.

4 Q. Had you appeared as a witness before the grand jury?

5 A. No, sir.

6 Q. Have you appeared as a witness in this case in any

7 proceeding before today?

8 A. No, sir.

9 Q. Directing your attention, then, to the barricade tape that  
10 you said that was placed around the Nichols' residence, do you  
11 remember at about what time that tape was placed?

12 A. I would -- well, it would only be a guess, but I was  
13 thinking it was somewhere around, like, 6:00 in the evening.

14 Q. Did anyone direct you to place that tape there, or did you  
15 do that on your own?

16 A. We were notified that there was starting to be a lot of  
17 media in the area, and at that point concern was brought up  
18 that they would probably be on the property, which we didn't  
19 want to allow.

20 Q. Who notified you of that?

21 A. I'm not sure other than it was directed to me by Chief Kuhn  
22 that we had had some calls. Now, it could have been agents or  
23 it could have been neighbors or a combination of.

24 Q. Now, with respect to the truck, who directed you to clear  
25 the area for the truck? The FBI?

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1 A. I was told by Mr. Kuhn that we were requested by the FBI to  
2 clear a one-block area.

3 Q. When you went out to clear the one-block area, did you see  
4 federal agents?

5 A. Outside of the building?

6 Q. Yes, sir.

7 A. No, sir.

8 Q. Did you see Army personnel?

9 A. No, sir.

10 Q. Did you ever see Army personnel during any of your duties  
11 that evening?

12 A. Yes, sir.

- 13 Q. And what time was that?
- 14 A. That would have been approximately 8:00.
- 15 Q. What were they doing?
- 16 A. I seen someone in a bomb protective gear walk around the
- 17 vehicle. This was one of the people from Fort Riley.
- 18 Q. Did they have a bomb dog with them?
- 19 A. I didn't see a dog.
- 20 Q. What did you understand to be their function there?
- 21 A. My understanding was just to clear the vehicle for possible
- 22 explosives, booby trap or something of that sort.
- 23 Q. Did you meet a man named Randal Rathbun that day?
- 24 A. Randy Rathbun?
- 25 Q. Yes.

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- 1 A. Yes.
- 2 Q. What time did he arrive?
- 3 A. It was later in the evening.
- 4 Q. Do you remember about what time?
- 5 A. No, sir, not for sure.
- 6 Q. Do you have a fax machine at the police station?
- 7 A. Yes, we do.
- 8 Q. Was it working that day?
- 9 A. Yes.
- 10 Q. Was Agent -- excuse me. Was Dispatcher Leslie Starwalt on
- 11 duty answering the telephones?
- 12 A. Yes, sir, she was.
- 13 Q. Did she relay messages to the FBI agents that you observed?
- 14 A. Yes, sir, she did.
- 15 Q. And did you give her any instructions in that regard?
- 16 A. I don't recall.

17 Q. So far as you were concerned, if someone from outside that  
18 police station of yours connected with the Federal Government  
19 wanted to get in contact with the agents who were interrogating  
20 Mr. Nichols, you had the resources to get that done, didn't  
21 you?

22 A. We would have notified whomever we were asked to notify, if  
23 they were there, yes.

24 Q. And you would have done that -- you were equipped to do  
25 that whether the request came by telephone or by fax; is that

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1 right?

2 A. We would have passed it on to the agent in charge and let  
3 him make the determination; but yes.

4 MR. TIGAR: No further questions.

5 MR. MENDELOFF: Just one, Judge.

6 THE COURT: All right, Mr. Mendeloff.

7 RE-CROSS-EXAMINATION

8 BY MR. MENDELOFF:

9 Q. Mr. Thacker, you said you saw Army bomb personnel. How  
10 many people did you see from the Army?

11 A. Two.

12 MR. MENDELOFF: Thank you. Nothing further, Judge.

13 THE COURT: May the witness now leave?

14 MR. TIGAR: I'm sorry, your Honor. I was making a  
15 note for Mr. Nichols.

16 Yes, he may be excused.

17 THE COURT: You may leave. You're excused.

18 Next, please.

19 MR. TIGAR: Chief Kuhn.

20 THE COURT: All right. Come forward and be sworn,  
21 please.

22 THE COURTROOM DEPUTY: Please raise your right hand.  
23 (Dale A. Kuhn was sworn.)  
24 THE COURTROOM DEPUTY: Have a seat.  
25 Please state your full name and spell your last name

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1 for the record.  
2 THE WITNESS: My name is Dale Allen Kuhn. I spell my  
3 last name K-U-H-N.  
4 DIRECT EXAMINATION  
5 BY MR. TIGAR:  
6 Q. Mr. Kuhn, what do you do for work?  
7 A. I'm a public safety director in the city of Herington,  
8 Kansas.  
9 Q. How long have you been the public safety director?  
10 A. A little over five years now.  
11 Q. So you had that job on April 21, 1995; is that right?  
12 A. Yes, sir, I did.  
13 Q. Do you know Terry Lynn Nichols?  
14 A. Yes, sir.  
15 Q. Do you see him in court? Right over there.  
16 A. I see him now.  
17 Q. Okay. When is the first time you ever met Mr. Nichols?  
18 A. April 21 of 1995.  
19 Q. What time of day?  
20 A. About 3:00 in the afternoon.  
21 Q. Well, tell us what happened when you first met him.  
22 A. He was -- he came into the public safety building in  
23 through a front door and asked -- started asking a question of  
24 why his name was on radio and TV.  
25 Q. Is that the first time you had heard his name?

1 A. No, sir.

2 Q. In a day?

3 A. No, sir.

4 Q. When had you heard his name that day before he came in the  
5 station?

6 A. About 2:30 in the afternoon.

7 Q. Was that when Agent Smith came in?

8 A. Yes, sir.

9 Q. All right. Well, I won't ask you to repeat what other  
10 witnesses have done.

11 Mr. Nichols said that he had heard his name on  
12 television; right?

13 A. No, sir. He said radio and TV.

14 Q. Radio and TV. And what did you say to him?

15 A. At that time, he hadn't told me what his name was. I asked  
16 him to tell me his name. He told me his name, Terry Nichols.  
17 I asked him what his middle name was. He advised me Lynn. I  
18 then asked him to spell his name to me.

19 Q. And then what did you do, sir?

20 A. I didn't do anything at that time. He reaffirmed -- he  
21 just re-questioned me again as to why is my name on radio and  
22 TV.

23 I at that time told him that I didn't have any answers  
24 for his questions and that perhaps I could find somebody that  
25 would get him some answers.

1 Q. Did you escort him and his daughter and wife into your  
2 office?

3 A. Not escort. I invited them in, if they wanted to come in  
4 and sit down, yes.

5 Q. Did you ask Mr. Nichols whether he had a gun?

6 A. When he had come into the front office, yes, I did. I  
7 asked if he had weapons.

8 Q. What did he say?

9 A. He said no.

10 Q. Was he telling the truth?

11 A. As to my estimation, yes, he was, sir.

12 Q. Did you ask him to take off his jacket?

13 A. I asked him to lift his jacket and to turn around so that I  
14 could visibly see that he didn't have any weapons. He more  
15 than obligated -- I mean obliged me by taking his jacket off on  
16 his own and laying it on a file cabinet.

17 Q. Now, how did -- did Mr. Nichols appear to be upset, or can  
18 you describe his emotional state?

19 A. He seemed to be nervous and frightened, or that would be my  
20 estimation or my calculation on his -- he was nervous and  
21 frightened.

22 Q. Did he ask you why his name was being mentioned in the  
23 media, once, twice? How many times did he ask you?

24 A. Sir, I don't know exactly how many times. Quite a few  
25 times.

1 Q. Over and over, would you say?

2 A. Not over and over, not each time that he talked, but many,  
3 many times throughout the course of while I was with him.

4 Q. And did you take steps to try to get someone who could  
5 answer his question?

6 A. Yes, sir, I did.

7 Q. What steps did you take?

8 A. I had talked to my assistant police chief, Barry Thacker,  
9 and asked him to go out into the streets of Herington and see  
10 if he could find Agent Smith for me.

11 Q. Now, how many people live in Herington?

12 A. About 2600.

13 Q. So it's not too big a town, is it?

14 A. No, sir, it's not.

15 Q. What other steps did you take to try to get someone who  
16 could answer Mr. Nichols' question?

17 A. That's the only step that I took, sir.

18 Q. Did you try -- well, did you direct that other steps be  
19 taken? Did you try to contact the FBI by phone?

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

21 Q. Did you direct that that be done?

22 A. I don't believe I did, no, sir.

23 Q. Did you eventually get a telephone call from an FBI agent?

24 A. Yes, sir.

25 Q. And what agent was that?

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1 A. I believe it was Agent Smith.

2 Q. And what did Agent Smith say to you, if you can recall?

3 A. He asked me if everything was all right.

4 Q. Did he ask you if you had a hostage situation?

5 A. No, sir, he didn't say hostage situation. He asked me was  
6 everything all right inside. I said yes, it was.

7 Q. How many FBI agents did you observe in Herington between  
8 the time you spoke to Agent Smith on the phone and the end of  
9 the day that day?

10 A. And the end of the day?

11 Q. Yes.

12 A. Sir, I don't know if I can give you an answer on how many I  
13 seen. 25 maybe. And I'm not so sure all of them were FBI  
14 agents.  
15 Q. Did you see Army personnel?  
16 A. Yes, sir.  
17 Q. Did you see a dog-sniffing team?  
18 A. No, sir, I didn't see it.  
19 Q. Did you see anybody dressed in S.W.A.T.-team-type gear?  
20 A. No, sir, I didn't.  
21 Q. Did you ever have a conversation with the FBI about what  
22 the reaction was to your telephone call that prompted Agent  
23 Smith to call you?  
24 A. Sir, I don't know as I understand your question.  
25 Q. All right. Did you later learn that the FBI had surrounded

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1 your police station?  
2 A. I didn't hear that from an FBI, no. I heard people tell  
3 me -- people had said they thought it was.  
4 Q. In the course of your investigation as a peace officer, did  
5 you later learn that the FBI had surrounded your police  
6 station?  
7 A. I didn't really learn that they had surrounded. I heard  
8 that they were outside. That's the only thing I really heard  
9 for a fact.  
10 Q. So you're saying that you didn't later learn they had  
11 surrounded your police department?  
12 A. I don't believe that I learned that they surrounded the  
13 police department, no.  
14 Q. Did you learn that they had an aircraft overhead?  
15 A. Somebody told me that there was an aircraft overhead. I

16 didn't know whose it was.

17 Q. Did you learn in your investigation that the FBI thought  
18 that there was a hostage situation?

19 A. Yes, I did.

20 Q. Did you think Agent Smith was acting very funny on the  
21 phone when he talked to you?

22 A. I didn't quite understand why he was asking the question he  
23 did. It took me a few seconds to understand.

24 Q. Well, when you did understand it, what did you think he was  
25 asking you?

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1 A. I'm sure he was wondering about what had happened after  
2 Mr. Nichols had come in the front door and if -- I suppose if  
3 there was a situation where he might not want to come in on.

4 Q. Well, were you able to convince him everything was okay?

5 A. Yes, sir, I did.

6 Q. Now, did you tell Mr. Nichols before you had this  
7 conversation with Agent Smith that he and his wife could leave  
8 at any time?

9 A. Yes, I did.

10 Q. And what did Mr. Nichols say when you said that?

11 A. Well, it was said several times, sir.

12 Q. Did he ever tell you he was afraid to leave?

13 A. Yes, sir, he did.

14 Q. How many times did he tell you he was afraid to leave?

15 A. Once.

16 Q. Did he tell you why he was afraid to leave?

17 A. No, sir, he didn't.

18 Q. Did there come a time when Agent Smith arrived at the  
19 police department?

20 A. Yes, sir.

21 Q. Did he ask you if Mr. Nichols had been frisked?

22 A. No, sir, he didn't. Another agent asked me that.

23 Q. Was Mr. Nichols then searched?

24 A. Yes, he was.

25 Q. Who searched him?

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1 A. Two FBI agents were in the room. I didn't visibly see the  
2 search. I believe they did search him though.

3 Q. Was Mrs. Nichols searched?

4 A. Yes, sir.

5 Q. Who searched Mrs. Nichols?

6 A. An employee of the Herington public safety department,  
7 Leslie Starwalt.

8 Q. Did you search Nicole Nichols?

9 A. Yes, sir.

10 Q. And how old is Nicole?

11 A. I believe she's 2 years old.

12 Q. What did you do to search Nicole?

13 A. I patted her head, patted her shoulders and run the tip of  
14 my finger around her diaper.

15 Q. Was she armed?

16 A. No, sir.

17 Q. Now, did there come a time when the agents -- by the way,  
18 did there come a time when a S.W.A.T. team came to your police  
19 station?

20 A. No, sir.

21 Q. Do you recall telling -- do you recall being interviewed by  
22 Mr. Killam and Mr. Bodley?

23 A. Yes, sir, I do.

24 Q. Do you recall telling them that a S.W.A.T. team came to

25 your police station?

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1 A. No, sir, I don't recall.

2 Q. Did you arrange for the interview room? Is that correct?

3 A. Yes, sir.

4 Q. The interview of Mr. Nichols?

5 Now, during that evening, you held a press conference;

6 is that correct?

7 A. Yes, sir.

8 Q. And what did you tell the press?

9 A. Well, sir, if I can back up just a second. I held several,

10 many press conferences, give a small release, several different

11 times and then held one press conference at about 12:30 or

12 approximately 12:30 in the evening, sometime around there.

13 12:30 or 1. I'm sorry. I don't know the time.

14 Q. Do you remember during that day having any telephone

15 conversation with an Agent Chornyak in Kansas City?

16 A. No, sir.

17 Q. Did you at any time during that day talk to Agent Price?

18 A. Yes, sir.

19 Q. And when did you first meet Agent Price?

20 A. The agents, they come into the station about 3:15 or so.

21 He was one --

22 Q. What were the names of the agents who came into the station

23 at 3:15?

24 A. I'm sorry, sir. I didn't understand the question.

25 Q. I'm sorry.

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1 A. I didn't hear you.

2 Q. Well, I didn't ask a very good question.

3 What time did you meet Agent Price?

4 A. I suppose about 3:15, 3:30, somewhere in that area, sir.

5 Q. Was he one of the four agents who came into the police  
6 station?

7 A. Yes, sir.

8 Q. Did you participate in any of the questioning of  
9 Mr. Nichols?

10 A. No, sir.

11 Q. Now, did there come a time during the -- that evening when  
12 a warrant arrived on your fax machine?

13 A. Sir, I don't know that for a fact.

14 Q. Do you know from any source whether or not a warrant ever  
15 arrived on the fax machine?

16 A. I heard one person talking to another person or agents to  
17 agents that there was a warrant there.

18 Q. At what time did you hear that conversation?

19 A. Seems like somewhere around 8:30. I'm not real positive,  
20 sir.

21 Q. Was that the first discussion you had had with anybody  
22 about a warrant?

23 A. Sir, I didn't have any discussions about warrants.

24 Q. I'm sorry. Was that the first thing you heard that day  
25 about a warrant?

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1 A. Yes, sir.

2 Q. Did you have a conversation with Mrs. Nichols about whether  
3 she should return to her house?

4 A. Are you talking about April 21, sir?

5 Q. April 21 or at any time.

6 A. I didn't have -- I didn't have a conversation with her.

7 There was some discussion in that manner going on. I suppose

8 it was a conversation. I made some comments to her, yes, on

9 April 23.

10 Q. On April 23?

11 A. Yes, sir.

12 Q. All right. As best you can remember, what time was that on

13 April 23?

14 A. 3:30, 3:15, somewhere in that area.

15 Q. As best you can remember, what did she say and what did you

16 say?

17 A. I'm not so sure that she said a lot; that I actually was

18 having a discussion with another agent. And my words were

19 directed at the agent, and Marife was right there and actually

20 heard the words.

21 Q. All right. And what did you -- what comments did you make

22 to her?

23 A. That I thought it wouldn't be a good idea for her to be

24 living in her house for the next couple weeks at that time.

25 Q. Is that all you can remember of the conversation?

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1 A. I think I also included that I wouldn't be able to provide

2 her security and I thought that she'd have -- there would be

3 lots of media around and that she'd be bothered quite a bit by

4 onlookers and so on and so forth.

5 Q. So she first said she wanted to come back to the house, and

6 you advised her not to; correct?

7 A. Well, sir, that's not quite like it was. She was making a

8 decision on whether to leave or to stay there.

9 Q. Then you -- you went to her house with you (sic); correct?

10 You went to her house with her; is that right?

11 A. Yes, sir.

12 Q. Did she call her aunt in California from the house?

13 A. Yes, sir.

14 Q. And that conversation --

15 A. Sir, I'm sorry. I don't know if she called her aunt. She

16 called somebody, and I think it was her aunt that she called.

17 Q. And that conversation was in a language you don't speak; is

18 that correct?

19 A. That's true.

20 Q. And then there was another telephone conversation; correct?

21 A. Yes, sir.

22 Q. That was somebody calling in; right?

23 A. Yes, sir.

24 Q. And Mrs. Nichols spoke to them; right?

25 A. Yes, sir.

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1 Q. Then she spoke to the FBI agents; correct?

2 A. On the phone?

3 Q. No. After she had finished the phone conversation, she

4 talked to the FBI agents who were there; correct?

5 A. Yes, sir.

6 THE COURT: I'm sorry. I'm confused about what date

7 we're talking about.

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

9 BY MR. TIGAR:

10 Q. This is April 23; correct?

11 A. Yes, sir.

12 THE COURT: Thank you.

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

14 BY MR. TIGAR:

15 Q. Did -- what did Mrs. Nichols say to the FBI agents?  
16 A. I really don't know. I wasn't involved in the  
17 conversation. I really can't remember.  
18 Q. Would it refresh your recollection if I suggested that she  
19 said to them that her aunt was trying to get some money so that  
20 she could go to California?  
21 A. I think that that was some of the conversation, yes.  
22 Q. And did you also learn that her aunt was employed in  
23 California and could give Mrs. Nichols a place to stay?  
24 A. I don't remember that, sir.  
25 Q. Do you remember Mrs. Nichols saying that her aunt didn't

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1 have the money to send to get Mrs. Nichols a plane ticket?  
2 A. No, sir, I don't know -- I don't remember that at all.  
3 MR. TIGAR: Will your Honor indulge me?  
4 THE COURT: Yes.  
5 BY MR. TIGAR:  
6 Q. Do you remember what agents you overheard talking about a  
7 warrant around 8:30 p.m. on the 21st?  
8 A. No, I don't.  
9 Q. And what did the FBI tell you was the purpose of  
10 Mrs. Nichols' going to the house on the 23rd?  
11 A. They were going over to get some of her stuff, meaning  
12 personal belongings, so that she can leave town.  
13 Q. So -- and that was what the agents said was the reason that  
14 she was along for the trip, was to identify the things that  
15 were supposed to be taken for her so she could leave town?  
16 A. Yes, sir.  
17 MR. TIGAR: All right. Pass the witness.  
18 THE COURT: Mr. Mendeloff.  
19 CROSS-EXAMINATION

20 BY MR. MENDELOFF:

21 Q. Director Kuhn, let me just take you back to the point at  
22 which Mr. Nichols has entered the police station. That was  
23 approximately what time?

24 A. 2:45, 3:00.

25 Q. All right. And you met with him in the foyer of the police

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1 station and you had the conversation that you related to

2 Mr. Tigar; is that correct -- and the Court?

3 A. Yes, sir.

4 Q. And then you let him into the police station or offered  
5 him --

6 A. I invited him in if he wanted to come in and sit down and  
7 wait till we could find somebody that could answer his  
8 questions.

9 Q. Just so the record is clear, what room did you go into?

10 A. It's what we call our officers' room.

11 Q. Right. Is that your office or is that a separate office?

12 A. It's a separate office. It's an office we use for police  
13 work that -- in essence, the police officers, the regular beat  
14 officer, duty officer, whatever you want to call it -- they use  
15 that as their office; but it's also anybody can use it. But  
16 it's not -- it's not my office, no.

17 Q. You have a separate office in the police station?

18 A. Yes, sir, I do.

19 Q. And that's apart from the office in the front; is that  
20 right?

21 A. Oh, yes, sir.

22 Q. Was Mr. Nichols or Mrs. Nichols ever in your office that  
23 evening, your personal office in the back of the police

24 station?

25 A. Not that I'm aware of.

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1 Q. All right. Now, I believe when you testified that you  
2 asked Mr. Nichols if he had any weapons, he said he didn't. He  
3 offered to turn around and show that he didn't have any; is  
4 that right?

5 A. I asked him to turn around so I could see.

6 Q. All right. And he did?

7 A. I asked him to raise his coat -- raise his coat up and turn  
8 around so I could see there wasn't any weapons. He went ahead  
9 and took his coat off, offered to take his coat off and did  
10 take it off.

11 Q. Were you wearing a weapon at the time?

12 A. No, sir.

13 Q. And after your visual search, Mr. Nichols again asked a  
14 question of you?

15 A. Yes, he did. Yes.

16 Q. What did he say?

17 A. Why his name was on radio and TV.

18 Q. And what was your response?

19 A. I said, I don't have any answers; and I asked him at that  
20 time not to ask me any questions because I didn't have any  
21 answers.

22 Q. All right. At that point, did you make a request of  
23 Mr. Nichols?

24 A. I asked for his driver's license.

25 Q. All right. And when you got his driver's license, what did

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1 you do?

2 A. I turned it over to the employee, Leslie Starwalt.

3 Q. For what purpose?

4 A. To run a driver's license check and NCIC once and a triple

5 I.

6 Q. What's a triple I, for the record?

7 A. Gives you criminal history of a person, if they have prior

8 criminal history and maybe even current cases on -- that aren't

9 completed yet.

10 Q. All right. At some point, did you get information back on

11 those checks?

12 A. Yes, sir. Yes, I did.

13 Q. What information did you get?

14 A. It revealed he had no driver's license history; in other

15 words, meaning no tickets or anything. He had no wants or

16 warrants on the NCIC or he had no criminal history.

17 Q. And did you receive the driver's license back from the

18 person?

19 A. Yes, sir, I did.

20 Q. After you did this check, did you say anything to

21 Mr. Nichols?

22 A. Yes, I did.

23 Q. What did you say?

24 A. I told him he wasn't under arrest and he and his family

25 were free to leave.

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1 Q. Did you say anything else about being able to answer any of  
2 his questions?

3 A. No. I couldn't. I told him I can't answer any of his  
4 questions.

5 Q. Did you offer to help him in any way?

6 A. No, not -- other than to say I'll try to get, you know,

7 somebody in here to answer his question.

8 Q. Now, were there any other times that day in which you or

9 any member of your staff in your presence told Terry Nichols he

10 was not under arrest and free to leave?

11 A. Yes. Right after he had come into the office --

12 Q. Just were there any other times?

13 A. Yes.

14 Q. How many more times after this first time?

15 A. At least two other times.

16 Q. All right. Now, after you received -- at some point, did

17 you receive the information back in connection with the wants

18 and warrants check?

19 A. Yes.

20 Q. And when you received that information back, what did it

21 show?

22 A. It showed he had no -- no wants or warrants.

23 Q. And when you found that out, what did you say to

24 Mr. Nichols?

25 A. I made the comment that there wasn't any wants or warrants

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1 and that he was not under -- he was not under arrest; that he

2 was free to leave at any time; and basically I told him I

3 didn't have any answers to any of his questions.

4 Q. All right. And --

5 A. And I asked him not to ask me any -- I'm sorry.

6 Q. Go ahead.

7 A. I asked him prior to that, but I asked him again at that

8 time not to ask me any questions.

9 Q. Was this the point where Mr. Nichols said he didn't want to

10 leave?  
11 A. Yes.  
12 Q. And this was the second time that you or somebody -- some  
13 member of your staff told Mr. Nichols he was free to leave and  
14 not under arrest; is that right?  
15 A. Yes.  
16 Q. Now, did you indicate that you were going to help him in  
17 some way reach out for anybody for him?  
18 A. Other than I was just going to try to get somebody to help  
19 him.  
20 Q. Did he object to that in any way?  
21 A. No, sir.  
22 Q. Now, at roughly this point did you have a conversation with  
23 Assistant Police Chief Thacker?  
24 A. Yes.  
25 Q. And where did that conversation take place?

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1 A. I had left the office and went over to Barry Thacker's  
2 doorway which is right in the office next to the officers'  
3 room.  
4 Q. Now, when you left the office, who was in the officers'  
5 room when you left?  
6 A. Terry Nichols, Mrs. Nichols, and their daughter, Nicole.  
7 Q. Was anybody else in the room with them when you left?  
8 A. No, sir.  
9 Q. Was the door opened or closed?  
10 A. Open.  
11 Q. Did you leave anybody to guard the room?  
12 A. No, sir.  
13 Q. When you got to Police Chief Thacker's courtroom -- excuse

14 me -- Deputy Police Chief Thacker's room, did you talk to him?

15 A. Yes.

16 Q. What did you tell him?

17 A. I asked him to try to go find Agent Smith for us.

18 Q. Okay. What did he say?

19 A. He said he would; that he would go.

20 Q. I'm sorry. What happened next?

21 A. He said he would go try to find him.

22 Q. What happened next?

23 A. I walked back into the room. Barry walked out of his

24 office, stopped by that room and again reminded -- stuck his

25 head in and told Mr. Nichols that he was not under arrest and

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1 he was free to leave at any time.

2 Q. Is that the third time it was mentioned?

3 A. Yes, it is.

4 Q. Very shortly after Officer Thacker told Mr. Nichols for now

5 the third time that he was not under arrest and free to leave,

6 did a telephone call come into the police station?

7 A. Yes, sir.

8 Q. And who was on the call -- who was on the phone?

9 A. Agent Smith.

10 Q. Where did you take the call?

11 A. Where did I take the call?

12 Q. Yes.

13 A. Right in that room.

14 Q. In which room?

15 A. In the officers' room.

16 Q. And who was present in the room when you took the call?

17 A. Terry Nichols, Mrs. Nichols and Nicole.

18 Q. All right. And what -- tell us what happened on the

19 telephone call.  
20 A. Basically, I got the call saying who it was and that  
21 wondered if everything was all right inside. I said yeah, that  
22 everything was okay; that I had somebody in here that would  
23 like -- I would like somebody in here who had some questions  
24 they needed answers to.  
25 Q. I'm sorry. You said to the agent that you would like

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1 somebody in there?  
2 A. I would like somebody to come in because I had a man in  
3 here that had questions that needed answering.  
4 Q. And you said that right in front of Mr. Nichols?  
5 A. Yes, I did.  
6 Q. At that point, what did the agent say?  
7 A. Said we'll be right in.  
8 Q. After you hung up the telephone, did you go anywhere or did  
9 you remain in the officers' room?  
10 A. Remained in the officers' room.  
11 Q. What happened next?  
12 A. I was notified by -- I'm sorry. I don't know, either -- I  
13 think I was notified by Leslie Starwalt that there were some  
14 agents in the foyer. I went outside and I met Agent Smith  
15 again and Agent Price. At that time I told them that I had  
16 somebody in here I think that they needed to talk to who walked  
17 into the room. I introduced Agent Price to Mr. Nichols.  
18 Q. Was there any other agents that but Agents Smith and Price?  
19 A. There was, yes.  
20 Q. Did you recognize who they were at that time?  
21 A. No, sir.  
22 Q. So you walked into the room with Agent Price; is that

- 23 right?
- 24 A. Yes.
- 25 Q. Were there any other agents with Agent Price at that time

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- 1 in the room?
- 2 A. Not -- I don't believe, not in the room.
- 3 Q. So it was just you, Agent Price and Mr. and Mrs. Nichols
- 4 and their daughter?
- 5 A. Yes.
- 6 Q. What did you do?
- 7 A. I introduced Mr. Price to Mr. Nichols and made the comment
- 8 I think that this man can give you some answers to your
- 9 questions.
- 10 Q. All right. And did Mr. Nichols say anything at that point?
- 11 A. Yes, he did.
- 12 Q. What did he say?
- 13 A. He said why is my name on radio and TV?
- 14 Q. Who did he direct that question to?
- 15 A. Mr. Price.
- 16 Q. And did Mr. Price respond?
- 17 A. He did. I'm not certain of his exact words.
- 18 Q. All right. What happened next?
- 19 A. He asked -- Agent Price asked me if I had done a pat-down
- 20 frisk of the family and I said no, I had not. I had done a
- 21 visual.
- 22 Q. Did the agent direct any questions to Mr. Keen and --
- 23 excuse me -- to Mr. Nichols?
- 24 A. After I told him that, he asked Mr. Nichols if he could pat
- 25 him down and his family.

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1 Q. And did Mr. Nichols voice any objection?  
2 A. No, he did not.  
3 Q. At that point, did the agent ask you if you could help in  
4 any way?  
5 A. Yes. He asked if I could provide a matron.  
6 Q. All right. Did you?  
7 A. Yes, I did.  
8 Q. And who was that?  
9 A. Leslie Starwalt.  
10 Q. Did she come in and assist?  
11 A. Yes, she did.  
12 Q. How?  
13 A. She come in to frisk and pat down --  
14 MR. TIGAR: Asked and answered, your Honor.  
15 THE COURT: Overruled.  
16 THE WITNESS: -- pat down Mrs. Nichols. I assisted  
17 her in getting started by having her go through her hair; and  
18 that's as far as I seen.  
19 BY MR. MENDELOFF:  
20 Q. All right. Now, how long did these searches take?  
21 A. Maybe -- maybe a minute, minute and a half, maybe.  
22 Q. After the searches, did the agents ask for your assistance  
23 in any way?  
24 A. Yes.  
25 Q. How?

1 A. They asked if we had someplace that they could -- could  
2 talk at that would be private.  
3 Q. That who could talk?

4 A. That the agent and Mr. Nichols.

5 Q. All right. How did you assist?

6 A. I said well, if you want to come with me and follow me,

7 I'll take you around and you can see what I've got.

8 Q. It's at that point that you went first to the offices in

9 the back of the building and then down into the basement, left

10 the basement and then came back up stairs; is that right?

11 A. Yes, sir.

12 Q. Now, just so we're clear, what is the quality of lighting

13 in the basement building?

14 A. It's real good. It's a classroom.

15 Q. And temperature control?

16 A. It has temperature control. It's air-conditioned, heated.

17 Q. Air flow?

18 A. Yes.

19 Q. Well ventilated?

20 A. Yes.

21 Q. From the time -- you and the agent came back upstairs and

22 went back to the officers' room; is that right?

23 A. Yes, sir.

24 Q. What happened then?

25 A. Basically comments were made between that Agent Price and

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1 the other agents that we were going to go downstairs and so two

2 agents, Mr. Nichols and myself went downstairs.

3 Q. All right. Now, at that point, when you got downstairs,

4 did you do anything to assist the two agents and Mr. Nichols?

5 A. Arranged chairs for them to sit in.

6 Q. All right. And approximately what time was this?

7 A. 3:30.

8 Q. And did you leave at that point?

9 A. I arranged the chairs and told them where the bathrooms  
10 were at and that if they needed any -- if they needed anything,  
11 coffee or something to drink or something like that, to let us  
12 know. Yes, then I left and went upstairs.

13 Q. Now, at the time that you went downstairs with the agents  
14 and Mr. Nichols, what was the total number of FBI agents in the  
15 Herington Department of Public Safety building?

16 A. Four.

17 Q. From the time that you saw Terry Nichols go down into the  
18 basement until the time that he left at the end of the evening,  
19 did you ever see him come upstairs?

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

21 Q. And you're familiar with your own police station, right?

22 A. Yes, sir.

23 Q. Is it possible to observe what would be happening outside  
24 the building from the basement?

25 A. No, sir.

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1 Q. When the agents and Terry Nichols and yourself walked  
2 downstairs, was Mr. Nichols handcuffed?

3 A. No, sir.

4 Q. Did he appear to be in detention in any way?

5 A. No, sir, he was not.

6 Q. Did you ever hear an agent place Mr. Nichols under arrest?

7 A. No, sir.

8 Q. After you left Terry Nichols and the agents in the  
9 basement, was there ever a time that you returned to the  
10 basement briefly?

11 A. Yes, sir.

12 Q. And when did that occur approximately?

13 A. Maybe an hour and a half later, two hours. I'm sorry.  
14 Somewhere in that area.  
15 Q. And what was the purpose for entering the basement?  
16 A. Just to bring a message back down to one of the agents  
17 downstairs.  
18 Q. All right. As you approached the doorway, was it opened or  
19 closed?  
20 A. It was closed.  
21 Q. And did you hear any voices coming from inside the room as  
22 you approached the doorway?  
23 A. No, sir.  
24 Q. Quiet; is that right?  
25 A. Yes, sir.

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1 Q. And when you got into the basement the second time, the  
2 first time being when you just dropped them off -- or third  
3 time, what did you see?  
4 A. The three agents -- I mean the two agents and Mr. Nichols  
5 were sitting in chairs and they -- you know, I knocked on the  
6 door and announced myself and went in and they were just  
7 sitting in the chairs. Nothing was going on.  
8 Q. When you -- could you see Mr. Nichols?  
9 A. Yes.  
10 Q. And did he have any evident emotional condition of any  
11 kind?  
12 A. No, not at all.  
13 Q. Seem upset?  
14 A. Not like he had when he came in.  
15 Q. That's what my next question was. In relation to the  
16 emotional state he had when he came into the building, was he  
17 more or less upset at that point from what you could see?

18 A. He appeared less upset at that time.

19 Q. Let me direct your attention to the next day, Saturday,

20 May 22. To your knowledge, was the federal investigation still

21 ongoing in your city?

22 A. Yes.

23 Q. And to your knowledge, what was happening that day?

24 A. Search warrants were being executed.

25 Q. All right. And where were they being executed? Do you

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1 know one of the places they were being executed?

2 A. One of them was at 109 South 2nd.

3 Q. Did you do anything to assist in the execution of that

4 warrant?

5 A. Establish security.

6 Q. What form of security?

7 A. The night before, we had actually done some security work

8 on it. We had informed people in the area to -- that we would

9 like them out of their houses by 8:00 the next morning.

10 Q. People around the Nichols home?

11 A. Yes.

12 Q. So you evacuated people from what kind of a radius?

13 A. About a block around.

14 Q. All right. What was the reason you evacuated people from

15 the Nichols home?

16 A. We were told that there was possibly explosives.

17 Q. All right. How long were the people out of their home that

18 day? Do you know?

19 A. No, sir, I don't know.

20 Q. Now, Mr. Tigar asked you a series of questions regarding

21 Sunday, May 23. Do you recall those questions?

22 A. Yes, sir.

23 Q. And did you personally assist the Federal Government that  
24 day?

25 A. Yes, sir.

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1 Q. All right. Now, starting from the beginning, what -- how  
2 did it come about that you ended up assisting the fed -- the  
3 FBI that day?

4 A. The agents had stopped by and asked if we would -- if I had  
5 somebody that could go over there and help them to actually be  
6 security for the news media, to keep the news media away.

7 Q. And where were they going?

8 A. 109 South 2nd.

9 Q. Did you assist -- did you accompany them?

10 A. Yeah. I drove my car. They were in another car.

11 Q. And what time of day was this?

12 A. 3, 3:30 in the afternoon.

13 Q. Now, did you -- when you arrived at the Nichols home, what  
14 did you do?

15 A. We went in the house and I stood at the door.

16 Q. All right.

17 A. Inside the house at the door.

18 Q. What happened after that?

19 A. I'm sorry. I don't know --

20 Q. What did you observe happening inside the house?

21 A. Mrs. Nichols was -- had got a suitcase and starting to get  
22 things to pack things and this and that.

23 Q. All right. What were the agents doing?

24 A. They appeared to be looking for something.

25 Q. All right. And at some point during the course of -- I'm

1 sorry. Were the agents making this search in the presence of

2 Mrs. Nichols?

3 A. Yes.

4 Q. Did -- at some point did Mrs. Nichols assist the agents in

5 any way?

6 A. Yes, she did.

7 Q. Can you tell us what happened.

8 A. There was some -- they were doing some search on a -- a

9 kitchen table or a dining room table, I guess it would be and

10 she stopped by and, you know, I'm not positive. The

11 conversation wasn't directed at me but there was a comment made

12 as if it was here or something to that effect and then when she

13 was in using the phone, which is located right inside what I

14 would call the kitchen area, she -- evidently, there was

15 something that was being looked at at that area and she said, I

16 don't -- well, I thought maybe if it wasn't there, it was over

17 here, or something to that effect. So she was looking for

18 something. I have no idea what it was.

19 Q. Throughout the time that you were in the presence of

20 Mrs. Nichols with the agents that day, did you ever see the

21 agents restrain her activities in any way?

22 A. No, sir. They assisted her.

23 Q. Did Marife Nichols ever indicate that she was doing

24 anything that was contrary to her own will?

25 A. No, sir.

1 Q. Did she ever ask the agents' permission to do anything?

2 A. No, sir.

3 MR. MENDELOFF: One moment, please, your Honor.

4 THE COURT: Yes.

5 BY MR. MENDELOFF:

6 Q. Director Kuhn, could I ask you to look in the book in front  
7 of you, the white book, for certain series of exhibits,  
8 Exhibits 2, 3, 4 -- 1, 3, 4, 5, 6, 7, and 8. Can you get  
9 those, please.

10 A. Yes, sir.

11 Q. And with respect to photos 3, 4, 5, 6, 7 and 8, do you  
12 recognize those photos?

13 A. Yes, sir.

14 Q. What are they?

15 A. It's a diagram, a floor plan for the Herington Public  
16 Safety Building.

17 Q. And the other photos, various pictures of your building?  
18 Is that right?

19 A. Right. The No. 4 is the basement to the Herington Public  
20 Safety Building.

21 35 is the officers' room that we were talking about.

22 6 is the downstairs area at -- from the door as you  
23 enter it.

24 7 is the downstairs area as I assembled chairs for the  
25 talk that went on.

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1 Q. And with respect to 7, does that fairly and accurately  
2 depict the way the chairs were set up that evening?

3 A. Pretty close.

4 Q. All right. And 8?

5 A. Yes, sir. That's looking down the foyer towards the -- the  
6 bathroom facility, the restroom facility and some radio  
7 equipment that's into that hallway.

8 Q. Also a picture of the basement?

9 A. Yes, the basement.

10 Q. Do all those pictures fairly and accurately reflect the way

11 your building looked on the weekend of April 21, the 23rd -- to

12 23rd, 1995?

13 A. You're asking me did it look like this April 21, 22 and 23?

14 Q. Roughly, in terms of the setup. I know -- well --

15 A. In terms of the floor plan, but the pictures, no --

16 Q. How are they different?

17 A. The basement became a -- there was two or three tables in

18 the basement and some chairs.

19 Q. And that happened what day?

20 A. The 22nd.

21 Q. All right. Let's talk about the 21st. Do those pictures

22 fairly and accurately reflect the way your building looked the

23 21st?

24 A. Yes, sir.

25 MR. MENDELOFF: Judge, we move the admission of 3

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1 through 8.

2 MR. TIGAR: No objection.

3 THE COURT: They are received.

4 BY MR. MENDELOFF:

5 Q. Just for the record, what is the reason that the downstairs

6 changed in appearance on the 22nd?

7 A. The -- the federal agents had asked if we had a place to

8 meet in town and I -- I volunteered the basement; that they

9 could meet there and use it.

10 Q. And they used it on the 22nd and the 23rd?

11 A. And the 23rd, yes.

12 MR. MENDELOFF: Thank you. Nothing further, your  
13 Honor.

14 MR. JONES: Your Honor, although this is Mr. Nichols'  
15 motion, there is an impact on this motion on the defendant  
16 Mr. McVeigh. And I have seven or eight, nine questions I'd  
17 like to ask the witness, if I may.

18 THE COURT: All right.

19 MR. JONES: I think it would probably be best to do it  
20 now before the redirect.

21 THE COURT: All right. Go ahead.

22 CROSS-EXAMINATION

23 BY MR. JONES:

24 Q. Director Kuhn, you knew that the Alfred P. Murrah Building  
25 in Oklahoma City had been bombed and destroyed and 168 people

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1 or some number close to that had been killed, did you not?

2 A. Yes, sir.

3 Q. And that was a matter of interest to you as a law  
4 enforcement officer, wasn't it, sir?

5 A. Yes, sir.

6 Q. And the members of your staff at the Herington Department  
7 of Public Safety likewise, so far as you knew, were aware of  
8 what had occurred in Oklahoma City?

9 A. Well, I assume they might have known. I don't know for  
10 sure.

11 Q. Did you have a television set on in the police station  
12 tuned to CNN who are one of the networks following what had  
13 occurred?

14 A. Sir, the TV is supposed to be on The Weather Channel, so it  
15 could have been on CNN at times, yes.

16 Q. Well, I understand it's supposed to be on The Weather

17 Channel but you're willing to concede that on that day, it  
18 might have been on CNN?  
19 A. Well, where the TV is at, I don't control it all the time.  
20 I'm sure there was probably times it was on CNN.  
21 Q. All right, sir. And that television set was located where?  
22 A. It's -- we have two TV's, one that's on all the time. The  
23 one that is on all the time is in the dispatch booth.  
24 Q. And the other one?  
25 A. Is located in Assistant Chief Thacker's office.

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1 Q. I notice in these photographs that have been admitted and  
2 marked into evidence now that there appears to be a television  
3 set in that basement room where the conference was going on and  
4 the interview with Mr. Nichols; is that right?  
5 A. Yes, sir. I made a mistake. There is three TVs.  
6 Q. Was that television set on?  
7 A. Not when I was down there, no, sir.  
8 Q. All right. So you never saw it on?  
9 A. No, sir.  
10 Q. Now, the television set that was in the dispatcher's  
11 office, was that on when Mr. Nichols came in?  
12 A. Again, sir, that TV is supposed to be on 24 hours a day.  
13 I'll make an assumption it was, yes.  
14 Q. From where Mr. Nichols and Ms. Nichols were standing there  
15 in the outer foyer, could a person standing there have heard  
16 the television set in the dispatcher's office?  
17 A. I don't know as they could have heard it.  
18 Q. All right. Now, at the time that Mr. Terry Nichols and his  
19 wife and child entered the Herington Department of Public  
20 Safety, did you know then or had you heard that there might be

21 a connection possibly between Junction City, Kansas, and the  
22 bombing in Oklahoma City?  
23 A. I think I knew -- ask me again. I knew that there was a  
24 connection between Junction City or at least there were agents  
25 working in Junction City.

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1 Q. How did you know that?

2 A. I think that in the -- sometime in the morning, maybe at  
3 noon, I was home at noon, I possibly knew it at that time. I'm  
4 not sure how I knew it, sir.

5 Q. So you don't know whether you might have heard it on the  
6 car radio or on the television set or police scanner or some  
7 way?

8 A. Right.

9 Q. Okay. Now, at the time that Mr. Nichols and his family  
10 came in to the Herington Department of Public Safety, were you  
11 aware or had you heard that there was a possible connection  
12 between Decker, Michigan, and a James Nichols and the Oklahoma  
13 City bombing?

14 A. No, sir, I hadn't.

15 Q. Okay. You have indicated that -- either you or your  
16 assistant that there is a change in shift. Let me first ask  
17 you: In April of 1995, how many full-time employees were there  
18 in the Herington Department of Public Safety?

19 A. Total for full-time employees?

20 Q. Yes, sir.

21 A. 12, I believe, sir. I'd have to count them again.

22 Q. All right. And I take it it was a 24-hour shift? In other  
23 words, you were on duty or somebody was on duty 24 hours a day  
24 in Herington?

25 A. Yes, sir.

1 Q. And the Department of Public Safety building was open 24  
2 hours a day?

3 A. Yes, sir.

4 Q. And manned?

5 A. Yes, sir.

6 Q. And your shift on April 21 was what ordinarily? What would  
7 it have been?

8 A. Sir, I don't work a shift.

9 Q. Okay. So you work when needed?

10 A. I must be needed all the time. I work any time that it  
11 goes on, sir.

12 Q. Well, I'm sure that's true. Thank you.

13 So ordinarily, would you be there 8 to 5?

14 A. I'm -- to be honest, sir, I don't have regular hours. I  
15 normally come in at 7 and if anything is regular, I come in at  
16 7. That's the only thing regular about anything I do.

17 Q. Now, when Mr. Terry Nichols came in, you knew at that time  
18 that the FBI had some interest in him.

19 A. Yes, sir.

20 Q. Did you know that the interest that the FBI had in  
21 Mr. Terry Nichols related possibly to the Oklahoma City  
22 bombing?

23 A. I don't believe that they told me that, no, sir.

24 Q. Well, I didn't -- did you know it any other way?

25 A. Sir, I'm a law enforcement officer. I suppose that I

1 assumed some things.

2 Q. What do you think you assumed?

3 A. That there was probably some connection. They needed the  
4 questions for some reason.

5 Q. With respect to Oklahoma City?

6 A. I wouldn't know that. I wouldn't know why -- what -- I  
7 wouldn't know what their questions were. I have no idea.

8 Q. I'm just asking about your thought processes. You've told  
9 me that no one told you that. Did you think they wanted to  
10 question him about Oklahoma City?

11 MR. MENDELOFF: Judge, I'm sorry. I have to impose a  
12 relevancy objection.

13 THE COURT: Sustained.

14 BY MR. JONES:

15 Q. You have told the Court that you told Mr. Nichols, I  
16 believe, three times he could leave.

17 A. Well, as far as I know, sir, I think I told the Court there  
18 was twice that I told him that he could leave and once was told  
19 by my assistant chief.

20 Q. All right. Now, correct me if I'm wrong, but as I  
21 understand it, Mr. Terry Nichols is in there, he's come in and  
22 you have described him as appearing frightened. And what else  
23 did you describe him as?

24 A. Nervous.

25 Q. He's come into your station in the middle of the afternoon,

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1 he appears frightened and nervous and you know that the FBI  
2 wishes to question him and you know or believe by that time  
3 that there is a possible connection between Junction City and  
4 the Oklahoma City bombing and Junction City is approximately  
5 30 miles north. Am I correct so far?

6 A. I have all that knowledge, yes.

7 Q. Right. And he comes in and after he comes in, he asks you  
8 why is his name being heard on television and radio.  
9 A. Radio and TV is what he said.  
10 Q. Radio and TV. Incidentally, had you heard his name on  
11 radio and TV?  
12 A. Not till after Mr. Smith -- Agent Smith came in.  
13 Q. All right. And with all that knowledge, you tell him twice  
14 he's free to leave?  
15 A. Yes, sir.  
16 Q. When he came in the station, were you wearing a sidearm?  
17 A. No, sir.  
18 Q. Did you put one on at some point?  
19 A. Not while I was with Mr. Nichols, no. Sometime later that  
20 evening, sir.  
21 Q. All right. How soon after Mr. Nichols came in the station  
22 were you or someone in your command able to reach Mr. Smith or  
23 someone at the FBI and tell them Mr. Nichols was there?  
24 A. 15, 20 minutes.  
25 Q. All right. And did you continue to stay at the Herington

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1 Department of Public Safety or engage in official duties the  
2 rest of that day because of the interviews with Mr. Nichols?  
3 A. Yes, sir.  
4 Q. In response to a question that -- and I don't believe -- I  
5 can't remember whether it was Mr. Mendeloff that asked you or  
6 Mr. Tigar, but a question was asked of you about Special Agent  
7 Price; and you responded that you were not certain of his exact  
8 words, or something to that effect. Do you remember that?  
9 A. Well, I think I might have said that a couple of times,  
10 but --

11 Q. If you don't remember Special Agent Price's exact words,  
12 what do you remember as the substance of what he said to  
13 Mr. Nichols?  
14 A. When they first met, sir?  
15 Q. Yes, sir. As I recall, you said here's a man that might be  
16 able to answer your questions. Mr. Nichols asked him why am I  
17 hearing my name on radio and television or something to that  
18 substance; and you said Mr. Price answered him but you didn't  
19 recall his exact words. My question is what do you recall that  
20 he said?  
21 A. Other than he -- his next thing that he said to him was  
22 basically, he really -- I don't know that he said anything at  
23 that time. He -- he looked at me to want to know if there had  
24 been a frisk done or a patdown and frisk done yet.  
25 Q. So --

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1 A. And then in the course of that, he said something to the  
2 effect like let's find someplace we can talk or do you want to  
3 talk to us or something to that effect.  
4 Q. So he didn't really directly answer Mr. Nichols' question?  
5 MR. MENDELOFF: Your Honor, I'm curious as to what  
6 relevance this has as to Mr. McVeigh.  
7 THE COURT: I understand the relevance. The objection  
8 is overruled.  
9 BY MR. JONES:  
10 Q. So did he answer Mr. Nichols' question or not?  
11 A. His question as to --  
12 Q. Why is my name being mentioned on radio and television?  
13 A. Not that I heard, no.  
14 Q. I believe Mr. Mendeloff asked you how many agents were in  
15 the building and maybe your answer was intended to include all

16 evening because I heard you say four. Were there ever more  
17 than four in the building?  
18 A. Are you talking about that evening, sir?  
19 Q. Yes, sir.  
20 A. Yes, there was.  
21 Q. How many were there maximum at any one time?  
22 A. Maximum at any one time, at the high point, perhaps 25  
23 agents as opposed to federal agents. I have no idea.  
24 Q. 25 people that you presume were law enforcement officers  
25 but they weren't with the Herington Department of Public

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1 Safety?  
2 A. Yes, sir.  
3 Q. All right. That's 25 in the building?  
4 A. That would be -- I mean, that's a high side. I can  
5 probably mentally pick out and count them out to you about how  
6 many there was because I remember where they were at pretty  
7 well all evening.  
8 Q. Well, I'm not asking that. I'm just asking you, you said  
9 the high side, 25 in the building.  
10 A. Right. At one time.  
11 Q. So while Mr. Nichols and perhaps two agents were downstairs  
12 talking, as the evening wore on, there were more agents in the  
13 building?  
14 A. Yes.  
15 Q. In other rooms?  
16 A. Yes.  
17 Q. Did any of them have anything other than sidearms?  
18 A. No, sir.  
19 Q. Okay. Were they armed?

- 20 A. I don't believe all of them were, no, sir.
- 21 Q. Were they talking? Were they being quiet?
- 22 A. They were talking to each other and on the phone.
- 23 Q. All right. Now, did you go outside at any time?
- 24 A. Yes, sir, I did.
- 25 Q. And when I say "at any time," I mean after Mr. Nichols

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- 1 entered the building.
- 2 A. Yes, sir.
- 3 Q. Were you able to observe whether there were any law  
4 enforcement automobiles around your building?
- 5 A. Sir, when I went outside, no, I wouldn't have been able to  
6 observe that.
- 7 Q. All right. So you couldn't tell whether any of them parked  
8 or anything like that?
- 9 A. I don't know if they were law enforcement officers.
- 10 Q. How many cars are usually outside of the Herington  
11 Department of Public Safety at 7 o'clock on a night?
- 12 A. On a regular night?
- 13 Q. Yes, sir.
- 14 A. Three, four.
- 15 Q. How many did you see out there that night?
- 16 A. The public was there. There was a whole bunch.
- 17 Q. The public was there?
- 18 A. Later in the evening.
- 19 Q. Were people standing around outside?
- 20 A. Yes, sir.
- 21 Q. Were the news media outside?
- 22 A. Yes, sir.
- 23 Q. Did you ever hear Mr. Nichols say he didn't want another  
24 Waco?

25 A. No, sir.

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1 Q. Did you ever hear any planes fly over that night?

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

3 MR. JONES: All right. I'm sorry, your Honor. I

4 asked a few more than nine or ten.

5 THE COURT: Yes. So the record is clear, I've

6 permitted that questioning because of the motion of the

7 Government in limine 804(b)(3) to save calling this man back

8 again.

9 MR. MENDELOFF: Thank you, your Honor.

10 THE COURT: So that's the basis for my ruling.

11 MR. MENDELOFF: Thank you, Judge.

12 THE COURT: Mr. Tigar.

13 REDIRECT EXAMINATION

14 BY MR. TIGAR:

15 Q. Director Kuhn, you met with Mr. Mendeloff before coming

16 here today?

17 A. Met him today?

18 Q. No. Did you meet with him at any time before coming here

19 today?

20 A. Yes, I did.

21 Q. About how long did you spend with him?

22 A. Ten hours. I don't know, sir.

23 Q. Ten hours? Did he have copies of papers that he showed to

24 you? Did he show you a report that had been prepared of an

25 interview that Mr. Killam and Mr. Bodley had done with you?

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1 A. He -- he showed me something -- I didn't get to read it.  
2 He just said I've got a report here or something to that  
3 effect.  
4 Q. And he made you understand it was from Mr. Killam and  
5 Mr. Bodley?  
6 A. I'm not so sure that he made me understand who it was.  
7 Just the defense investigators, I think is all he said.  
8 Q. And -- but you did get a look at it?  
9 A. Yes -- no, I didn't get a look at the whole report, sir.  
10 Q. Did you get a look at any part of it?  
11 A. Maybe a few words.  
12 Q. Now, you said that an hour and a half after you introduced  
13 Agent Price to Mr. Nichols, you carried a message to Mr. -- to  
14 the agents. You remember saying that?  
15 A. Yes, sir.  
16 Q. What was that message?  
17 A. It was a phone message that one of them was wanted on the  
18 phone.  
19 Q. And about what time was that phone message?  
20 A. I don't -- I couldn't begin to give and you a time now or  
21 an hour and a half later, sir.  
22 Q. Between 3 --  
23 A. 4:30, 5:00.  
24 Q. 4:30, 5:00. And which agent was wanted on the phone?  
25 A. I don't know, sir.

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1 Q. Was it one of the agents that was in with Mr. Nichols that  
2 was wanted on the phone?  
3 A. I really don't even know that, sir.  
4 Q. Do you know -- you don't remember the name of the agent  
5 that was wanted?

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

7 Q. Where did the message come from?

8 A. I don't know that, sir.

9 Q. Did Ms. Starwalt give you the message?

10 A. I believe so, yes, sir.

11 Q. What was her responsibility that night?

12 A. She was a dispatcher.

13 Q. Was she supposed to answer telephone calls and make sure

14 that important messages got to people who wanted them?

15 A. Yes, sir.

16 Q. Was she supposed to answer the telephone and make sure that

17 important messages got to people who needed them?

18 A. Yes, sir.

19 Q. Do you know the name David Phillips?

20 A. No, sir.

21 Q. Did Dispatcher Starwalt ever tell you that night that a

22 David Phillips had called the station?

23 A. She might have, sir. I just don't remember.

24 Q. Did she tell you a lawyer had called the station looking

25 for Terry Nichols?

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1 A. Yes, sir.

2 Q. What time did she tell you that that lawyer called --

3 A. Excuse me, sir. I don't know. She said a lawyer called.

4 Q. Well, what do you remember her saying?

5 A. Something about legal.

6 Q. Well, about what time did she tell you something about

7 legal?

8 A. Sir, I can't remember.

9 Q. What did she tell you about legal?

10 A. Somebody, defense -- a defense attorney was trying to get a  
11 hold of him. I don't know what it all was about.

12 Q. And did you relay that message to anyone else?

13 A. I'm not so sure that that message was given to me, sir.

14 Q. All right. Well, can you -- thinking back, tell us  
15 everything you remember about her relaying that message, to  
16 whom it was relayed, who you talked to about it, whatever comes  
17 to mind.

18 A. Sir, I don't remember anything about relaying that message  
19 in particular.

20 Q. Was Dispatcher Starwalt speaking to FBI agents as well as  
21 to you?

22 A. I believe she did, yes.

23 Q. In other words, you didn't tell her don't talk to anybody  
24 except Herington police officers; correct?

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

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1 Q. So she was free in her judgment, if a message came in that  
2 the FBI needed to know, she could pass it on directly to them;  
3 right?

4 A. With parameters on it, yes, meaning she couldn't interrupt  
5 people.

6 Q. Right. But she -- did you observe her giving messages to  
7 the FBI during the evening?

8 A. I'm sure I did.

9 Q. Who was at the fax machine? Were faxes coming in?

10 A. Yes, sir.

11 Q. And who was in charge, if anybody, of taking the faxes off  
12 the machine and giving them to the intended recipients?

13 A. Well, I don't know if there was anybody in charge. I think  
14 she probably did it most of the time.

15 Q. Were faxes coming in for the federal personnel that were on  
16 the scene?

17 A. Sir, I never took a fax off. I don't know what they were.

18 Q. Now, where was Agent Price between the hours of 3:30 and 5,  
19 if you recall?

20 A. No, sir, I don't recall.

21 Q. After you introduced him to Mr. Nichols, did Mr. Price go  
22 downstairs with Mr. Nichols?

23 A. I thought he did, sir, yes; but I -- I really don't know.

24 I only can remember one agent that might have went downstairs.

25 Q. And when is the next time you remember seeing Agent Price?

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1 A. I'm not so sure I seen Agent Price the rest of the evening,  
2 or at least I can't remember, sir.

3 Q. Did you tell any FBI agents or have any -- excuse me. Did  
4 you have any conversations with FBI agents about what  
5 Dispatcher Starwalt had told you about something legal?

6 MR. MENDELOFF: Objection, your Honor. Asked and  
7 answered.

8 THE COURT: Well, I think he's probing for  
9 recollection. Is that right?

10 MR. TIGAR: Yes, your Honor.

11 THE COURT: Yes. You may answer.

12 THE WITNESS: Sure, I'm not so sure I understand.

13 BY MR. TIGAR:

14 Q. Remember your telling me about Dispatcher Starwalt telling  
15 you about a call from a defense attorney or something legal?

16 Remember that? Did you have any conversations with FBI agents  
17 about that exchange with Dispatcher Starwalt?

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

19 MR. TIGAR: No further questions.  
20 THE COURT: Anything else?  
21 MR. MENDELOFF: No, your Honor.  
22 THE COURT: I take it he may be excused.  
23 MR. TIGAR: He may, your Honor.  
24 THE COURT: You may step down and you can leave.  
25 Well, we're about at 5:00.

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1 MR. TIGAR: Your Honor, our next witness would be out  
2 of order. We would call Mr. Killam and I have about six  
3 minutes of direct examination.  
4 THE COURT: Well, let's do it. Get one more person  
5 who can leave.  
6 MR. TIGAR: Mr. Killam would like to leave, your  
7 Honor, but -- he's staying.  
8 THE COURT: I want to let people know they're free to  
9 leave.  
10 MR. TIGAR: Yes, your Honor.  
11 (Edward Killam was sworn.)  
12 THE COURTROOM DEPUTY: Have a seat.  
13 Please state your full name and spell your last name  
14 for the record.  
15 THE WITNESS: My name is Edward Killam, spelled  
16 K-I-L-L-A-M.  
17 DIRECT EXAMINATION  
18 BY MR. TIGAR:  
19 Q. Mr. Killam, you're a defense investigator appointed by the  
20 Court?  
21 A. Yes, sir.  
22 Q. You have law enforcement experience?  
23 A. Yes, I do.

24 Q. What is it?

25 A. I started in law enforcement in 1971. It's about 25 years'

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1 experience.

2 Q. Are you the author of published works?

3 A. Yes, I am.

4 Q. And would you tell us a couple of those.

5 A. My master's thesis was the detection of human remains. It

6 was in -- turned into a book which was published in 1990 and

7 I'm the author of about 30, 35 forensic articles.

8 Q. Did you interview Director Kuhn and Assistant Director

9 Thacker in connection with your duties in this case?

10 A. Yes, sir, I did.

11 Q. About when was that interview?

12 MR. HARTZLER: May I interrupt your Honor? I'm sorry.

13 I'm not objecting. This is not my witness. I need a point of

14 clarification. I think Mr. Killam was in the courtroom and I'm

15 looking for clarification as to our understanding on Rule 615.

16 THE COURT: I thought we had an agreement on him and

17 another witness.

18 MR. HARTZLER: I may not have heard that. Very well.

19 THE COURT: Am I incorrect in my recollection?

20 MR. TIGAR: Not at all, your Honor. I think the

21 record will reflect I said Marshal Bodley and Mr. Killam.

22 MR. HARTZLER: I apologize for the interruption.

23 THE COURT: Accepted.

24 BY MR. TIGAR:

25 Q. When you interviewed Director Kuhn, did he describe his

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1 conversation with FBI Agent Smith?

2 A. Yes, he did.

3 Q. And what did he tell you about his telephone call with

4 Agent Smith?

5 A. Which conversation with Agent Smith? There were several  
6 they had during the day.

7 Q. What did he tell you about his telephone call when Agent  
8 Smith called in to inquire about what was going on in the  
9 police station?

10 A. He told me that -- may I back up just a bit?

11 Q. Yes, please. Put it in context.

12 A. Set the stage as Mr. Kuhn told me.

13 Q. Uh-huh.

14 A. Mr. Nichols was in the police department, had been there  
15 for some period of time and they had been trying to get in  
16 touch with the FBI. They didn't have any radio frequencies.  
17 They had no telephone numbers. He had asked Barry Thacker to  
18 try to locate Agent Smith, and they were frustrated because  
19 they knew that the FBI was in town, yet they had no direct  
20 communication.

21 So eventually, then, the phone call from Agent Smith  
22 came in and it was apparently almost a miscommunication that  
23 Mr. Kuhn was wanting the FBI agents to come in and the FBI  
24 agent, Agent Smith, seemed reticent to do so and kept asking  
25 him questions such as, you know, is everything okay and what's

1 going on in there and so forth; so there appeared to be a  
2 miscommunication or some sort of confusion about what was  
3 happening.

4 Q. Did Director Kuhn say that he later investigated to

5 determine the source of this confusion?

6 A. I wouldn't say "investigation" is the correct word, but he

7 did inquire and later piece together what the situation was.

8 In retrospect, he understood what had happened.

9 Q. And what conclusions did he tell you he had reached?

10 A. That the FBI thought there was a hostage situation inside

11 and that Mr. Nichols had brought his family in there and had

12 somehow taken hostages or had barricaded himself inside.

13 Q. Did he say he had learned anything about the FBI

14 surrounding the police station?

15 A. Yes. He understood later that that's what had happened and

16 that's why there was delay while the FBI deployed by the police

17 station.

18 Q. Did Director Kuhn describe the agents who began to come

19 into the department?

20 A. Yes.

21 Q. Did he use the term when he spoke to you S.W.A.T. team?

22 A. He did, but --

23 Q. Would you tell us the connection in which he used the word

24 S.W.A.T. people in your interview with him?

25 A. There were four agents that came in initially. After he

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1 had the telephone conversation with Mr. Agent Smith, then he

2 was able to convince Agent Smith that it was safe for them to

3 come inside. Four agents came in first, including Agent Smith.

4 At that point, he introduced him to Mr. Nichols and

5 there was the search and they toured the building and decided

6 on a place to do the interview.

7 After that was all done and Mr. Kuhn left that group,

8 then as he described it, lots more agents began to arrive and

9 were coming in the building. Some were in plain clothes, like  
10 blue jeans and jackets; some were in suits and he also said  
11 specifically that there was a S.W.A.T. team.

12 MR. TIGAR: Thank you. Nothing further.

13 THE COURT: Questions?

14 MR. MENDELOFF: Just a few, Judge.

15 THE COURT: All right.

16 CROSS-EXAMINATION

17 BY MR. MENDELOFF:

18 Q. Mr. Killam, after you completed your interview with  
19 Mr. Kuhn -- excuse me -- Chief Kuhn and Deputy Chief Thacker,  
20 did you produce a report?

21 A. Yes, I did.

22 Q. And did you ever take that report back to Chief Kuhn and  
23 Deputy Chief Thacker?

24 A. No, I did not.

25 Q. Did you ever get them to adopt the things that were in your

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1 report in any way?

2 A. No, I did not.

3 Q. Did you give them a chance to review the report for  
4 accuracy?

5 A. No, I did not.

6 Q. Did you give them a chance -- make any distinctions about  
7 things that you might have gotten wrong?

8 A. No, I did not.

9 Q. And sir, you testified that Director Kuhn and Mr. Thacker  
10 said that they were frustrated because they couldn't get a hold  
11 of the FBI?

12 A. Yes, sir.

13 Q. Does that word appear in your report, "frustrated"?

14 A. I don't recall whether it does or does not; but I can  
15 elaborate a little bit more.

16 Q. I'm not asking you to elaborate. I'm just asking you  
17 whether you used the word "frustrated" in your report?

18 A. Without reviewing my report, I can't remember.

19 Q. Would you take my word that you don't?

20 A. Yes, sir.

21 Q. Do you have the report, Mr. Tigar?

22 MR. TIGAR: I'm tendering this copy. It is the  
23 redacted one but it contains all relevant matters. It does  
24 have my markings on it, your Honor.

25 THE COURT: All right.

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1 Hand it to the clerk. She'll hand it to the witness.

2 MR. MENDELOFF: Thank you, your Honor.

3 For the record, I'm going to ask the witness to look  
4 at page 8 of the report.

5 THE COURT: Thank you.

6 Please look at the report and read it to yourself.

7 THE WITNESS: Yes, sir.

8 BY MR. MENDELOFF:

9 Q. Mr. Killam, I'm asking you to focus your attention on the  
10 center paragraph on that page, which I believe has the relevant  
11 passage.

12 A. I've read the page and that paragraph.

13 Q. Do you report in your report that the -- either of the  
14 officers used the word "frustrated"?

15 A. No, I don't use that word in that paragraph.

16 MR. MENDELOFF: Thank you.

17 Nothing further, Judge.

18 MR. TIGAR: Nothing further, your Honor.

19 THE COURT: You may step down. If you'll take the  
20 report with you and give it to Mr. Tigar, that will save us.

21 MR. TIGAR: Your Honor, our next proposed witness was  
22 Mr. Rathbun, who was the former United States Attorney for the  
23 district. I understand he's now a political candidate and I  
24 don't know how long your Honor wants to go tonight. I've got  
25 25 or 30 minutes with him. I don't know what cross there would

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1 be. We would be willing to stay if that would help him get  
2 back to campaign for Congress or whatever he wants to do.

3 MR. MENDELOFF: No objection, your Honor. Subject to  
4 what the Court wishes.

5 THE COURT: All right. Without asking his political  
6 party, we'll allow him to do that.

7 MR. TIGAR: Call Mr. Rathbun.

8 MR. JONES: Are we still free to leave, your Honor?

9 THE COURT: Yes. You are.

10 Please come forward and be sworn.

11 (Randal Rathbun was sworn.)

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

14 THE WITNESS: Randal K. -- middle initial K., Rathbun,  
15 R-A-T-H-B-U-N.

16 DIRECT EXAMINATION

17 BY MR. TIGAR:

18 Q. Mr. Rathbun, what do you do for work?

19 A. Right now, I'm employed part time at my old law firm of  
20 Depew & Gillen and also am a candidate for Congress in the  
21 Fourth District in Kansas.

22 Q. And where is Depew & Gillen?

23 A. It's in Wichita.

24 Q. Is that where you live?

25 A. Yes, sir.

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1 Q. Now, on April 21, 1995, you were the United States Attorney

2 for the District of Kansas; is that right?

3 A. That's correct.

4 Q. And where did you office most of the time?

5 A. Most of the time in Wichita, although we have three offices

6 and spent some time in the Topeka and Kansas City office as

7 well.

8 Q. How long have you been a lawyer?

9 A. Since August of '78.

10 Q. Where did you go to law school?

11 A. Washburn, in Topeka.

12 Q. Before becoming United States Attorney, did you have any

13 other law enforcement experience?

14 A. No, sir.

15 Q. Had you ever tried criminal cases?

16 A. Probably about 20 to 25.

17 Q. So you had some criminal experience?

18 A. Yes. But that was defending, however, not prosecuting.

19 Q. Now, who is Jim Florie?

20 A. Jim Florie at the time was -- I believe he was the office

21 supervisor in our Topeka office.

22 Q. Jim Florie was an assistant United States attorney on

23 April 21, 1995?

24 A. That's correct, in our Topeka office.

25 Q. And he was a fairly senior assistant U.S. Attorney?

- 1 A. Yes.
- 2 Q. Was he a career person?
- 3 A. Yes.
- 4 Q. Who is David Phillips?
- 5 A. David Phillips is a public defender that's stationed in the
- 6 Kansas City office.
- 7 Q. And now you know -- you knew that as of April 21, 1995,
- 8 David Phillips was the public defender for Kansas; correct?
- 9 A. Yes, I did.
- 10 Q. Had you met him?
- 11 A. Oh, yes.
- 12 Q. You knew him; right?
- 13 A. Yes, I did.
- 14 Q. He was in a sense your opposite number for a lot of your
- 15 criminal docket; right?
- 16 A. He was in the Kansas City office but I knew him and talked
- 17 with him, yes.
- 18 Q. Talked to him on a regular basis?
- 19 A. Not a regular basis but every couple months.
- 20 Q. And you knew Jim Florie; knew who he was, too; correct?
- 21 A. Yes.
- 22 Q. Now, directing your attention to April 21, 1995, did there
- 23 come a time when you went to Herington, Kansas?
- 24 A. Yes.
- 25 Q. When did you start out from Herington, Kansas -- for

- 1 Herington, Kansas? Excuse me.
- 2 A. Well, actually -- when did we start from Topeka or do you
- 3 want to --

4 Q. Give me your itinerary, then we'll be out of here quicker  
5 if the Judge will take the narrative.

6 A. Well, I left Robin Fowler who is an assistant U.S. Attorney  
7 and I left Topeka approximately, oh, I'd say between 4 and  
8 4:30; went to Fort Riley, were there for a while and then we  
9 left for Herington, I would say sometime around, oh, 7:30,  
10 7:45, something in that time range.

11 Q. Where did you start your workday on the 21st?

12 A. I think I probably started -- I'm trying to remember. I  
13 think I started either in Wichita or I may have spent the prior  
14 day in Kansas City. I don't recall now. But I spent the day  
15 in the Topeka office.

16 Q. Were you working on the Oklahoma City bombing case?

17 A. No.

18 Q. When is the first time on the 21st that you began doing  
19 anything connected with the Oklahoma City bombing case?

20 A. The first thing that I did was received a phone call from  
21 the deputy Attorney General, Jamie Gorelick. That was sometime  
22 between 3 and 4, probably around 3:30.

23 Q. What did she say to you?

24 A. She said we may need a search warrant. Let me back up.  
25 She said first something to the effect of there may be a

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1 connection in Kansas in the Oklahoma City bombing case. We may  
2 need a search warrant. Will you please contact a judge and  
3 make certain that a judge is available this weekend.

4 Q. Did you contact a judge to make sure a judge was available  
5 that weekend?

6 A. I called down to Wichita, talked to -- tried to talk to the  
7 magistrate. She was either on the bench or not available; so

8 then I started up the chain from our junior judges and  
9 talked -- at the time, Judge Belot was available, talked to  
10 Judge Belot, ascertained that he would be in town all weekend  
11 and told him that at some point either on Saturday or Sunday,  
12 we may come to him with a search warrant.

13 Q. So what time was that conversation?

14 A. Oh, probably between 3:30 and 4:30, in that range. Around  
15 4:00, maybe.

16 Q. Is it fair to say that by 4:30, you knew that a United  
17 States district judge would be available to you at any time  
18 from 4:30 on through the weekend?

19 A. I knew that -- I knew that I had his home number and I  
20 could call him.

21 Q. When is the first time on the 21st that you heard the name  
22 Terry Nichols?

23 A. Probably in a conversation with the special agent in  
24 charge, David Tubbs of the FBI.

25 Q. About when was that?

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1 A. Sometime -- I would say between 4 and 4:30. That's an  
2 estimation on my part.

3 Q. When you talked to Ms. Gorelick, did she tell you what they  
4 might want to search or any details about it?

5 A. No. She recommended that I call the SAC, Mr. Tubbs, to  
6 find out details and I did that. I called his office and I  
7 think they gave me his mobile number and my recollection is I  
8 called him maybe in his car. I'm not sure.

9 Q. Now, what, if anything, did Mr. Tubbs tell you about  
10 Mr. Nichols?

11 A. He mentioned the fact that a man by the name of McVeigh had  
12 been -- I'm sorry. I'll more specifically answer your question

13 here.

14 He gave me a little background and then said that --  
15 that Mr. Nichols had gone to the Herington police station and  
16 then at that point, he recommended that I go to Fort Riley,  
17 which is at the -- where they were basically going to have our  
18 communications center for the investigation.

19 Q. And you went to Fort Riley?

20 A. Went to Fort Riley.

21 Q. Did he tell you anything other than that Mr. Nichols had  
22 come to the Herington police station? Did he say anything else  
23 to you?

24 A. Yes, he told me about Mr. McVeigh and gave me a little  
25 background on him and indicated that he had been arrested in

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1 Oklahoma several days prior to that and that was really about  
2 it.

3 Q. When is the next time after that conversation that you  
4 heard Terry Nichols' name that day?

5 A. When I got to Fort Riley, to the communications center. At  
6 that time, I was briefed by the -- one of the ASACs, Joe Bross,  
7 who told me basically some very sketchy details about what they  
8 knew at that time and that would probably be, oh, I don't know,  
9 between maybe 5:30 and 6, in that time vicinity.

10 Q. Did he tell you that there had been a warrant issued for  
11 the arrest of Terry Nichols?

12 A. No.

13 Q. Did you come to learn on the 21st of April at any time that  
14 a warrant had been issued for Terry Nichols?

15 A. Yes.

16 Q. What time was that?

17 A. Probably about 10:30.  
18 Q. Where were you when you heard that?  
19 A. Herington police station.  
20 Q. Who told you?  
21 A. I can't be certain. I remember that I saw it, actually saw  
22 the warrant. It had been faxed there; and I've tried to  
23 remember and I -- I can't tell you who told me -- who first  
24 gave me the warrant or told me about it.  
25 MR. TIGAR: Excuse me.

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1 BY MR. TIGAR:  
2 Q. I want you to take a look, sir, if you will, at the  
3 notebook, the white notebook and turn to tab 26 and look at the  
4 second page. Is that the warrant you saw at 10:30 at night?  
5 A. I believe it is.  
6 Q. All right. Would you take the other notebook and look at  
7 tab W54.  
8 A. Okay.  
9 Q. Or is that the warrant you saw that night?  
10 A. I can't tell you which one. I -- I'm not certain that I  
11 saw -- I'm not certain that I saw the affidavit that evening.  
12 It may have been -- it may have been 26. I'm just not certain.  
13 Q. I'm not asking you about the affidavit. You see that there  
14 are two warrants there, one -- and they're both for somebody  
15 named Terry Lynn Nichols, they're both arrest warrants. I just  
16 wonder if you can remember which one of those two you saw.  
17 A. The reason I make that distinction is 54 has the warrant  
18 with it and 26 doesn't, and so that's why --  
19 THE COURT: You mean the affidavit?  
20 THE WITNESS: Yes. Yes. The affidavit with it.  
21 BY MR. TIGAR:

22 Q. But you don't recall which of those two cover sheets --

23 warrant sheets you saw?

24 A. No, I don't.

25 Q. What was your job at the Herington police station?

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1 A. To talk to the agents and prepare or start the process for

2 preparing search warrant.

3 Q. Did you give the agents any legal advice about the

4 interrogation of Mr. Nichols?

5 A. No.

6 Q. Did they ask you for any advice about the interrogation of

7 Mr. Nichols?

8 A. No.

9 Q. Did anybody mention a warrant for the arrest of

10 Mr. Nichols? Anybody?

11 A. Yes.

12 Q. Prior to 10:30 that night?

13 A. No.

14 Q. Between the time you got the call from Jamie Gorelick until

15 10:30 at night, you spoke to Agent Tubbs; right?

16 A. Yes.

17 Q. Agent Price?

18 A. Joe Bross, the ASAC.

19 Q. Joe Bross. Did you speak to an Agent Price in Herington?

20 A. I have to -- I have to tell you, I didn't know a lot of the

21 agents. A lot of them were from Kansas City and the Missouri

22 side. I didn't know a lot of them. I could have.

23 Q. Did you speak to an Agent Chornyak by phone?

24 A. Yes.

25 Q. You did?

- 1 A. Now, I -- I know Bill and I think he was there that night.
- 2 I don't know that I spoke with him by phone, though.
- 3 Q. Bill Chornyak -- you think he was at the Herington police
- 4 station?
- 5 A. I'm not certain.
- 6 Q. But you're pretty sure you talked to him that day?
- 7 A. I can't swear to that.
- 8 Q. What's your best recollection?
- 9 A. I remember talking to Bill, but I can't pin it to that day.
- 10 Q. Did you talk to Agent Smith?
- 11 A. Steve Smith?
- 12 Q. Yes.
- 13 A. Yes.
- 14 Q. Agent Jablonski?
- 15 A. Yes.
- 16 Q. Agent Thomeczek?
- 17 A. Yes, I believe so. I'm not sure about that now.
- 18 Q. Did you talk to Agent Reightler?
- 19 A. Yes.
- 20 Q. All right. When is the first time you talked to Agent
- 21 Reightler?
- 22 A. Probably about some time between 9 and 9:30, something like
- 23 that.
- 24 Q. What time did you arrive at the Herington police station?
- 25 A. About 8:45, in that vicinity.

- 1 Q. Now, before you got to the police station, did you take a
- 2 tour of Herington and look at what was happening?

3 A. No. I -- the only tour that I took of Herington was I  
4 wasn't sure where the police station was, so I drove around a  
5 little bit trying to find the police station, but that wasn't  
6 on purpose.

7 Q. Were you driving yourself?

8 A. I think -- I'm trying to remember whether AUSA Fowler had  
9 his vehicle. I think I was by myself and I think Robin had --  
10 Fowler had his vehicle right behind me.

11 Q. When you got to the Herington Department of Public Safety,  
12 were there quite a few people there?

13 A. There were probably -- let me think: The chief, assistant  
14 chief, a dispatcher, another -- I think another officer with  
15 the P.D., probably at least six to eight agents.

16 Q. In the station?

17 A. In the station, right.

18 Q. Did you see a -- Mr. Nichols' pickup truck when you got  
19 there?

20 A. Yes.

21 Q. Were there agents standing around that?

22 A. No. There was -- I came in the back door through that  
23 garage area and his pickup was there and there was an agent  
24 there guarding it.

25 Q. Oh, the pickup was in the garage?

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1 A. Yes.

2 Q. Did you observe any Army personnel?

3 A. No.

4 Q. Now, when Agent Reightler contacted you, what did he say?

5 A. He said that he had looked through a window in the garage  
6 and saw four plastic barrels and that -- and that that plastic

7 with those barrels was similar to the plastic on the barrels  
8 that may have been involved in the -- in the bombing.  
9 Q. Now, this -- when -- this conversation was about what time?  
10 A. Between 9 and 9:30.  
11 Q. 9 and 9:30. Did you contact Agent Reightler or did he  
12 contact you?  
13 A. No, he contacted me.  
14 Q. Was this an in-person conversation by or phone?  
15 A. It was in person.  
16 Q. And who initiated the conversation?  
17 A. He did. He -- I was there in the station and he just  
18 walked up to me and told me.  
19 Q. And how did he say he had learned about these barrels?  
20 A. Looked through windows in a garage, I believe.  
21 Q. Did he tell you why he had chosen to look through the  
22 windows?  
23 A. I don't know if he told me or I learned later on that a  
24 consent was given; but I don't know if I actually asked him at  
25 that time.

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1 Q. I'm asking you to remember what he told you.  
2 A. Yeah, and I -- I guess what I'm telling you is I'm not sure  
3 whether he told me or I later on learned that.  
4 Q. And -- but you can't remember if he told you about a  
5 consent?  
6 A. Right.  
7 Q. Did he tell you at the -- that it -- it stunk out there at  
8 the Nichols place?  
9 A. I'm not sure it was Agent Reightler that told me that. At  
10 some point, someone told me that they had a strong smell of  
11 fertilizer out there.

12 Q. Well, that was -- that's in a Crabtree affidavit a couple  
13 of days later, sir. I'm asking you --  
14 A. I was told that evening by an agent that there was a  
15 strong --  
16 Q. Some agent told you that there was a smell of fertilizer at  
17 the house?  
18 A. Yes.  
19 Q. All right. And did they say what kind of fertilizer?  
20 A. No.  
21 Q. Well, did you grow up on a farm, sir?  
22 A. Yes.  
23 Q. You know there is all kinds of fertilizer?  
24 A. Absolutely.  
25 Q. And so they didn't say ammonia; they just said fertilizer?

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1 A. Right.  
2 Q. Did Agent Reightler tell you how he had gotten in a  
3 position to look through the window and see those barrels?  
4 A. If he did, I can't recall.  
5 Q. Would that have been of concern to you?  
6 A. I would imagine that, you know, back to your question of  
7 consent, that's one thing obviously you're always, you know,  
8 concerned about. I would imagine that --  
9 Q. I'm not asking you to imagine, sir. I'm asking for your  
10 recollection. Please --  
11 A. I can't tell you what my -- I can tell you that I certainly  
12 would be concerned about whether the search was appropriate or  
13 not. I can't tell you what I asked him about consent.  
14 Q. Did the word curtilage spring to your mind that evening?  
15 A. As a lawyer, that occasionally springs to our mind.

16 Q. I'm asking you if it sprang that evening?  
17 A. I can't recall, to be honest with you.  
18 Q. Does the word curtilage have some significance to you as  
19 you're evaluating the appropriateness of a search?  
20 A. Yes.  
21 Q. Because that's a protected area; correct?  
22 A. Right.  
23 Q. Having said that, did you ask Agent Reightler or any of the  
24 other agents about whether they had trespassed on the Nichols  
25 property?

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1 A. As I've indicated earlier, I can't remember whether I asked  
2 him about consent. I'm sure that I did, but I can't swear to  
3 that right now.  
4 Q. Okay. So -- now, is there -- other than that conversation  
5 with Agent Reightler, did you have any conversation with  
6 anybody that night or that day other than the one about the  
7 material witness warrant about a warrant for Terry Nichols or  
8 his house or anything else?  
9 A. That was -- and I don't know who I had that conversation  
10 with, but I know that it was -- I put roughly about 10:30  
11 because that he is -- it seemed to me like -- I mean I know  
12 that the interview ended about 12:30 and it just -- in my mind,  
13 it seems like I knew it about an hour and a half or two hours  
14 before the interview was over.  
15 Q. And did you advise the agents to do anything with this  
16 warrant that you saw?  
17 A. No.  
18 Q. Did they tell you that they were going to do anything with  
19 it?  
20 A. No.

21 Q. Did you read it?

22 A. Yes.

23 Q. Did it say to bring Mr. Nichols forthwith someplace?

24 A. I'd have to go back and review it to be honest with you.

25 Q. Would you look at it, please.

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1 A. Yes.

2 Yes, it indicates that he's to be brought forthwith

3 before the grand jury in Oklahoma City.

4 Q. Now, did -- did you do anything to see that he got brought

5 forthwith?

6 A. I didn't, but he was arrested that evening.

7 Q. You didn't do anything?

8 A. No.

9 Q. All right. Now, sir, I want to change and direct your

10 attention to the 26th of April.

11 A. Okay.

12 Q. You were contacted by Agent Smith on that day; correct?

13 Relating to a telephone conversation between Mrs. Nichols and

14 Mr. Nichols?

15 A. I don't recall.

16 Q. Would you take a look, please, at W27.

17 MR. TIGAR: That's a sealed exhibit, your Honor, and

18 I'm asking the witness just to look at it for purposes of

19 refreshing his recollection.

20 THE COURT: All right.

21 BY MR. TIGAR:

22 Q. Will you look at that, please, sir, and take as much time

23 as you need and tell us if that refreshes your recollection.

24 A. All right. Thanks. Okay.

25 Q. Does that refresh your recollection that you were called on

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1 April 26, 1995, at approximately 12:35 by Agent Smith about  
2 recording the conversation between Mr. Nichols mama and  
3 Mr. Nichols?

4 MR. MENDELOFF: Objection, your Honor. That  
5 mischaracterizes the exhibit.

6 MR. TIGAR: I don't characterize the exhibit, your  
7 Honor.

8 THE COURT: He's asking him for his recollection.

9 MR. TIGAR: Pardon me, your Honor.

10 THE WITNESS: It doesn't say anything about that.  
11 It's asked --

12 THE COURT: Well, don't say what it says. The  
13 question is after looking at that, do you have the recollection  
14 that's asked of you.

15 THE WITNESS: No. That's not my recollection.

16 BY MR. TIGAR:

17 Q. Do you have a recollection you were called by Agent Smith?

18 A. Yes.

19 Q. All right. Did he tell you that there was going to be a  
20 telephone conversation between Mr. Nichols and his mama?

21 A. Actually, no. That's not how it happened.

22 Q. All right. Tell me how it happened.

23 A. Steve Gradert, who was counsel for Mr. Nichols, had every  
24 day since the 22nd, I think including -- excluding Sunday but  
25 probably Monday and virtually every day had asked if I could

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1 try and put together a telephone call so that Mr. Nichols could

2 call his wife or his mother or both.

3 And he -- he asked me virtually every day to work on  
4 that and we eventually were able to get it done on the 26th.

5 Q. So he called you on the 22nd and said can Mr. Nichols talk  
6 to his mother and his wife? Is that right?

7 A. Actually, he talked to me in person on the 22nd at the  
8 hearing and then we're in the same -- we're in the same  
9 building, so I either saw him or talked to him over the phone  
10 virtually daily and that was always his -- I mean --

11 Q. His request?

12 A. Right.

13 Q. So it didn't get done on the 22nd?

14 A. No, sir, it didn't.

15 Q. Did it get done on the 23rd? Did he call his mama on the  
16 23rd?

17 A. No, sir.

18 Q. Did he call his wife on the 23rd?

19 A. No.

20 Q. How about the 24th? Did he call his mama or his wife?

21 A. No.

22 Q. How about the 25th? Did he call his mother?

23 A. No.

24 Q. Nor his wife; right? So now we're on the 26th and he's  
25 going to talk to his wife and his mother; correct?

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1 A. Yes.

2 Q. Do you know as you sit here today whether or not those  
3 conversations were recorded?

4 A. I do now.

5 Q. Did you know then?

6 A. No.

7 Q. Did Agent Smith tell you that Mr. Nichols' conversations  
8 that you had been trying to set up for four days with his  
9 mother and his wife were going to be tape-recorded?

10 A. No.

11 Q. All right. What did he tell you?

12 A. He said that -- that they needed my consent because,  
13 apparently, he was supposed to have a -- 24-hour watch and they  
14 needed instructions from me for the marshals to actually be out  
15 of the room while he's talking on the telephone and I thought  
16 that was reasonable and so I said yes, do it.

17 Q. Did Agent Smith tell you why he wanted to have the marshals  
18 out of the room when Mr. Nichols had a conversation with his  
19 wife and his mother?

20 A. I don't know that that was Agent Smith's request. I just  
21 knew -- I frankly had thought that it had come from Gradert, he  
22 wanted some privacy. I don't know who requested it. I just  
23 asked Smith to get it done to get a telephone call because  
24 Gradert had been on me to get it done and I thought it needed  
25 to get done; and so, you know, I don't know who wanted -- who

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1 asked that it -- that it happen, but I thought it wasn't  
2 unreasonable.

3 Q. You assumed that this -- the purpose of taking people out  
4 of the room was to give Mr. Nichols some privacy; correct?

5 A. I assumed that's what Gradert had asked for, yes.

6 Q. Now I'm going to ask you what is the basis for the  
7 assumption you had that Mr. Nichols wanted some privacy when he  
8 talked to his mother and his wife.

9 A. Just normal human nature; you want privacy when you talk  
10 like that.

11 Q. When is the first time you learned that the telephone calls  
12 were recorded?  
13 A. I'm not sure, but I know last week I learned. And I may  
14 have known --  
15 Q. Who told you?  
16 A. In prep for this hearing.  
17 Q. Who prepped you?  
18 A. Scott Mendeloff.  
19 Q. How long?  
20 A. Probably a couple hours.  
21 Q. Did he tell you what conversations the FBI had had with  
22 Terry Nichols' mother before they put her on the phone?  
23 A. No.  
24 Q. Did they tell you what conversations they had had with his  
25 wife before they put her on the phone?

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1 A. No.  
2 Q. Who told you there was an antitank rocket in Terry Nichols'  
3 house?  
4 A. The return on the search warrant.  
5 Q. You just read the return. Did you check that out with an  
6 agent?  
7 A. No.  
8 Q. Before you said it in court?  
9 A. No, I just read -- I just read what's on the return.  
10 MR. TIGAR: Will your Honor indulge me for a moment?  
11 THE COURT: Yes.  
12 BY MR. TIGAR:  
13 Q. In addition to talking to Agent Smith on the 26th, did you  
14 also talk to the agents where Mrs. Wilt, Joyce Wilt, Terry's

15 mother was located? Did you have any conversation with them?

16 A. I don't know who that is or I don't know where she was

17 located.

18 Q. You never had any conversations -- did you have any

19 conversations with any FBI agents other than Agent Smith about

20 the proposed telephone calls between Mr. Nichols and his mother

21 and Mr. Nichols and his wife?

22 A. Not that I can recall.

23 MR. TIGAR: Pass the witness.

24 THE COURT: Mr. Mendeloff.

25 MR. MENDELOFF: Very briefly, Judge.

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1 THE COURT: All right.

2 MR. MENDELOFF: Your Honor, I have an exhibit I need

3 to hand up to the witness that's not in the book.

4 THE COURT: All right. Hand it to the clerk.

5 MR. MENDELOFF: Mr. Tigar.

6 MR. TIGAR: I'm sorry.

7 Oh. All right.

8 CROSS-EXAMINATION

9 BY MR. MENDELOFF:

10 Q. Mr. Rathbun, after the affairs of that evening, the 21st,

11 did you handle any court appearances in this case?

12 A. Yes, I did.

13 Q. And what court appearances did you handle?

14 A. Did the initial appearance on the 22nd and then the Rule 40

15 and the detention hearing on the 26th.

16 Q. Let me ask you to look at the exhibit you have in your

17 hands, Government's Exhibit 35. Is that -- what is that?

18 A. It's a transcript, a combined transcript, I believe, of the

19 two hearings.

20 Let me leaf through it here and make sure.  
21 Yeah, it's a combined transcript from the two  
22 hearings.  
23 Q. Does that indicate it's a certified copy of the transcript?  
24 A. It indicates it's an original transcript. I don't see  
25 where it's certified but I'm sure it is.

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1 I'll check on the back.  
2 MR. MENDELOFF: Move the admission of Government's  
3 Exhibit 35, Judge.  
4 THE WITNESS: Yes, it is.  
5 THE COURT: Is there objection to 35?  
6 MR. TIGAR: Other than relevance, your Honor.  
7 THE COURT: What's the purpose of the offer?  
8 MR. MENDELOFF: The purpose of the offer, Judge, is  
9 that in the transcript, Mr. Nichols' counsel -- Mr. Nichols and  
10 his counsel make several representations which are relevant to  
11 this proceeding regarding the affairs that occurred -- took  
12 place in the Herington Public Safety Building that evening.  
13 THE COURT: So you're offering the transcript from  
14 what Mr. Tigar says?  
15 MR. MENDELOFF: No. I'm sorry. Not Mr. Tigar, Judge.  
16 Mr. Nichols' prior counsel, the state counsel, Mr. Gradert and  
17 Mr. Nichols at the two proceedings.  
18 MR. TIGAR: If we could have a page and line, your  
19 Honor, I could be in a position to take a position.  
20 THE COURT: All right. Do we have the reference?  
21 MR. MENDELOFF: I don't have it offhand, your Honor.  
22 I could get it very easily.  
23 THE COURT: All right. You can approach and get the

24 transcript so we can move on here.

25 MR. MENDELOFF: Do you have a copy, Mr. Tigar?

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1 MR. TIGAR: I have a copy.

2 MR. MENDELOFF: One of the pages is page 7, lines 17  
3 and 18.

4 MR. TIGAR: Will, your Honor -- I find myself in the  
5 position of a lawyer confronted with a big deposition. The  
6 document speaks for itself. The witness' testimony is  
7 secondary evidence. If the Government will identify pages and  
8 lines, I'll -- I'll cross-designate.

9 I object to testimony from the witness because it's  
10 secondary evidence.

11 MR. MENDELOFF: Your Honor, I intend to --

12 THE COURT: Are you going to ask this witness about  
13 anything contained in that transcript?

14 MR. MENDELOFF: No, your Honor, only because he was  
15 counsel at the hearing, I was offering it through him. Other  
16 than that, I'm not going to ask him any questions.

17 THE COURT: So we can take it up first thing in the  
18 morning. Then there is an opportunity for you to discuss with  
19 Mr. Tigar the relevant portions.

20 MR. MENDELOFF: Very well, Judge.

21 We have nothing -- I'm sorry, Judge. Nothing further.

22 MR. TIGAR: Mr. Rathbun may resume his First Amendment  
23 protected activities so far as we're concerned, your Honor.

24 THE COURT: All right. You're excused. You may step  
25 down.

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1 Remember the courts in your campaign.

2 THE WITNESS: I will, your Honor. I promise.

3 THE COURT: All right. We'll recess until 9:00  
4 tomorrow morning.

5 MR. HARTZLER: Could I raise two scheduling issues?

6 THE COURT: Yes.

7 MR. HARTZLER: I'm sorry. There are eight witnesses  
8 on Mr. Nichols' list that now have appeared. There are 30 more  
9 still listed. I hope your Honor appreciates that we've tried  
10 to accommodate their schedule, although we were a little slow  
11 on Mr. Chornyak, but I was pleased to see that the Deputy  
12 Attorney General is not listed but the Deputy Director of the  
13 Executive Office of U.S. Attorneys is listed fairly deep into  
14 the list. That's Donna Bucella at the top of the second page  
15 of the witness list. I represent to your Honor as an officer  
16 of the Court that she was present at the same meetings that  
17 Arlene Joplin was present for. Of course, it's not customary  
18 for the attorneys for the Government to be called when agents  
19 are present. The agents that were present were also present at  
20 that meeting and they're listed on the list and I'm asking your  
21 Honor if you would excuse yet another attorney for the  
22 Government to be called by the defense when there are so many  
23 other witnesses available and, indeed, anything that she could  
24 be asked could have been and I presume was asked of Ms. Joplin.

25 THE COURT: Well, I'll put your request to Mr. Tigar.

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1 Mr. Tigar?

2 MR. TIGAR: Your Honor, we believe --

3 THE COURT: Is there a need for this witness?

4 MR. TIGAR: Yes, your Honor, there is a need for this

5 witness. She was present at that meeting where Mrs. Nichols  
6 asked for a lawyer, where Agent Thomeczek made that comment.  
7 Ms. Joplin's recollection is well, if that had happened, I  
8 think I would have remembered it. This is going to be a hotly  
9 contested matter here.

10 We're willing to work with the Government to  
11 accommodate Ms. Bucella's schedule, but I don't think anyone  
12 can doubt the relevance of this.

13 MR. HARTZLER: I can doubt the relevance. The  
14 meetings took place in May -- May 9 was the first meeting.  
15 We're talking about searches that all preceded.

16 THE COURT: Have her here.

17 MR. HARTZLER: Thank you.

18 THE COURT: Court is in recess, 9:00.

19 (Recess at 5:40 p.m.)

20 \* \* \* \* \*

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1 REPORTERS' CERTIFICATE

2 We certify that the foregoing is a correct transcript  
3 from the record of proceedings in the above-entitled matter.

4 Dated at Denver, Colorado, this 26th day of June,  
5 1996.

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\_\_\_\_\_  
Paul Zuckerman

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Bonnie Carpenter

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