

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

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9 REPORTER'S TRANSCRIPT
 10 (VOLUME IV - SUPPRESSION HEARING)

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12 Proceedings before the HONORABLE RICHARD P. MATSCH,
 13 Judge, United States District Court for the District of
 14 Colorado, commencing at 1:30 p.m., on the 27th day of June,
 15 1996, in Courtroom C-204, United States Courthouse, Denver,
 16 Colorado.

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24 Proceeding Recorded by Mechanical Stenography, Transcription
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1 APPEARANCES

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

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

9 STEPHEN JONES, ROBERT NIGH, JR., AMBER McLAUGHLIN, and
10 RANDALL COYNE, Attorneys at Law, Jones, Wyatt & Roberts, 114
11 East Broadway, Suite 100, Post Office Box 472, Enid, Oklahoma,
12 73702-0472, and JERALYN MERRITT, 303 East 17th Avenue, Suite
13 400, Denver, Colorado, 80203, appearing for Defendant McVeigh.

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

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19 PROCEEDINGS

20 (Reconvened at 1:30 p.m.)

21 THE COURT: Be seated, please.

22 I'm advised by the clerk that I created some confusion
23 with my reference to the duplication of Exhibit 32 and B1 by
24 saying that we shouldn't bring 32 in as a duplicate. B1 isn't
25 in, so I guess we need to put one of them in.

424

1 They are the same exhibit; right?

2 MR. TIGAR: Yes, your Honor. We'll yield --

3 THE COURT: We'll put B1 into evidence.

4 MR. TIGAR: B1? All right. I was prepared to concede
5 to the Government on that one point only, but B1 only, yes,
6 your Honor.

7 THE COURT: Since it's your motion and it was offered
8 by you first, we'll put it in as B1.

9 MR. TIGAR: Thank you your Honor.

10 We call Agent Crabtree, your Honor.

11 THE COURT: All right. If you'll come forward to be
12 sworn.

13 COURTROOM DEPUTY: Raise your right hand.

14 (Scott Crabtree was sworn.)

15 THE COURTROOM DEPUTY: Please have a seat.

16 State your full name and spell your last name for the
17 record.

18 THE WITNESS: Scott Crabtree, C-R-A-B-T-R-E-E.

19 DIRECT EXAMINATION

20 BY MR. TIGAR:

21 Q. Mr. Crabtree, you are a special agent of the Federal Bureau
22 of Investigation?

23 A. Yes, sir.

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

25 A. Approximately 13 1/2 years, sir.

425

1 Q. What is your education?

2 A. I have a bachelor of science degree.

3 Q. From?

4 A. William Jewell College.

5 Q. And when was that?

6 A. 1982.

7 Q. Immediately upon getting your bachelor of science degree,
8 did you join the FBI?

10 Q. What did you do during that six months?

11 A. I was considering going to law school that fall, and I got

12 a job with a private corporation; and then the FBI offered me a
13 position later that fall.

14 Q. Have you had any education beyond the bachelor of science
15 degree?

17 Q. You were a special agent on April 21, 1995; correct?

18 A. Correct.

19 Q. And at that time, you were in the RA in Salina, Kansas?

20 A. That is correct.

21 Q. What is an RA?

22 A. Resident agency. It's just a smaller office where there is

24 you'd have typists and a receptionist, things of that nature.

25 Q. How many agents did you have in Salina?

1 A. Myself.

2 Q. How far is Salina from Kansas City?

3 A. Approximately 180 miles.

4 Q. In what direction?

5 A. Kansas City would be east of Salina 180 miles.

6 Q. And you on April 21 went to Herington; is that right?

7 A. That is correct.

8 Q. What time did you show up for work on April 21, or start

9 work, I guess I'd say?

10 A. Early in the morning.

11 Q. Where did you show up for work?

12 A. I was in Junction City, Fort Riley at that time. I wasn't

13 working out of Salina at that time.

14 Q. There was a command post at Fort Riley?

15 A. Correct.

16 Q. What time of day did you first hear the name Terry Nichols?

17 A. 1 or 2 in the morning on that date.

18 Q. 1 or 2 in the morning on?

19 A. The 21st.
20 Q. The 21st. Where were you when you heard the name Terry
21 Nichols?
22 A. I was at the command post.
23 Q. And from whom did you hear it?
24 A. From the Detroit division of the FBI. I got a phone call
25 from Detroit that called me and told me that information.

427

1 Q. Did they tell you where they'd obtained the name Terry
2 Nichols?
3 A. Yes. Through contact with local law enforcement up there.
4 Q. Did they tell you that they'd gone and talked to a
5 Detective Hall in the Sanilac County sheriff's office and
6 received information from him about a confidential informant?
7 A. They didn't go into that much detail, no.
8 Q. What information did you receive about Mr. Nichols, Terry
9 Nichols?
10 A. That he at times stayed or been at an address in Decker,
11 Michigan.
12 Q. Did you receive information that said that he had had
13 anything to do with explosives?
14 A. The information that came regarding that came regarding the
15 farm and James Nichols.
16 Q. And the address of that farm was the same one that had
17 appeared on a Ryder truck rental form; is that correct? Or
18 not?
19 A. No.
20 Q. All right. It had appeared at the Dreamland Motel
21 registration slip?
22 A. That is correct.
23 Q. Had it appeared -- did you know that that Decker, Michigan,

24 address had also appeared in a booking slip in Noble County,
25 Oklahoma, at that time?

428

1 A. That afternoon, sir?
2 Q. Yes. No, that morning. That morning at 1 or 2:00?
3 A. No, sir.
4 Q. When did you first learn about the booking slip use of the
5 Decker address?
6 A. Probably later that day.
7 Q. Do you remember what time?
8 A. Not specifically, sir.
9 Q. Did you learn that a warrant had been issued for the arrest
10 of Timothy McVeigh any time on the 21st?
11 A. Yes.
12 Q. What time?
13 A. Sometime during the evening, during the course of the
14 interview with Mr. Nichols.
15 Q. About -- can you pinpoint the time any more than that?
16 6:00? 7:00? 5:00? What time?
17 A. Probably toward the end, probably toward our last break
18 that we took that evening.
19 Q. Did someone order you to go to Herington, Kansas?
20 A. Yes.
21 Q. What time did you get that order?
22 A. 3:30, 3:45.
23 Q. And what were you told to do when you got to Herington,
24 Kansas? Did the person who ordered you give you an assignment?
25 A. To have an interview with Terry Nichols.

429

1 Q. Did that person tell you that Mr. Nichols was in the
2 Herington police station?
3 A. Yes, I believe so.
4 Q. Now, between 1:00 or 2 in the morning when you first heard
5 Mr. Nichols' name and the time you got the order, what other
6 information did you obtain about Terry Nichols?
7 A. That he resided in Herington.
8 Q. Did you have information that he was an associate of
9 Mr. McVeigh?
10 A. Yes.
11 Q. Did you have information that connected him to explosives
12 other than what you've mentioned about the Decker farm?
13 A. No.
14 Q. Do you have any experience in explosives?
15 A. No, sir, I do not.
16 Q. Did you grow up on a farm?
17 A. No, sir, I did not.
18 Q. Have you ever used fertilizer?
19 A. Yes, sir, I have.
20 Q. What kinds of fertilizer have you used?
21 A. What you can buy at the local store.
22 Q. Like at the K-Mart or the garden store?
23 A. Right.
24 Q. Do you know the difference between different kinds of
25 fertilizer?

430

1 A. Not really. I mean I know I've been told that the best
2 kind to look for a lawn is like 28-3-3 or something like that,
3 but I haven't done any research or anything like that.
4 Q. 28-3-3: That refers to the different chemical composition.

5 A fertilizer has three numbers connected with it. It could be
6 20-10-10, or 30-10-10, or something like that?
7 A. At least in the lawn fertilizer, yes.
8 Q. All right. Did you know anything on the 21st of April,
9 1995, about making bombs with fertilizer and fuel oil?
10 A. I -- from our discussions at the command post, there was
11 discussions of what the bomb in Oklahoma City might have been.
12 I'm sure it was discussed that that was a possibility, yes.
13 Q. All right. But that was the first time you had had those
14 discussions about how those bombs might be constructed and how
15 they might be used?
16 A. That is correct.
17 Q. Okay. Now, did you know at the time you left Junction City
18 that Agent Smith was already on his way?
19 A. I am not -- I believe I knew he was down there already, not
20 on his way, sir.
21 Q. I see. Do you know Agent Smith?
22 A. Yes, sir, I do.
23 Q. Why were you selected to go conduct this interview?
24 A. I had been in and around the command post since the evening
25 of the bombing; and as far as the person that was close, I had

431

1 the most information admitted come through and potential leads
2 and things of that nature. I was that person.
3 Q. Did you talk to Agent Chornyak at any time on the 21st?
4 A. Not that I recall.
5 Q. Did you talk to Agent Price at any time on the 21st?
6 A. Probably. He was in Herington that evening; so when we
7 were out upon breaks and stuff, I'm sure we did at least say
8 hello or something, yes.

9 Q. Was Agent Price one of the supervising special agents on
10 the scene in Herington?

11 A. Yes, he was. He was one of them.

12 Q. Did you know whether or not he was in communication with
13 the command post?

14 A. I would presume he would have been or would have the
15 ability to, yes.

16 Q. Did you have a pager?

17 A. Yes, I had a pager.

18 Q. Did you have a radio in your vehicle?

19 A. Yes.

20 Q. Now, sir, to get right to it, I want to ask you about a
21 meeting that you had at 2:30 in the morning on the 22nd of
22 April, 1995. Do you remember having a meeting at about that
23 time?

24 A. Yes, sir.

25 Q. Where was that?

432

1 A. In the United States Attorney's office in Wichita, Kansas.

2 Q. And present at the meeting were Randal Rathbun, yourself,
3 Agent Smith, and who else?

4 A. Assistant United States Attorney Robin Fowler.

5 Q. The purpose of that meeting was to draft an affidavit, was
6 it not?

7 A. Yes, sir.

8 Q. You became the affiant; correct?

9 A. Yes, sir.

10 Q. Why were you chosen as the affiant?

11 A. I presume for the same reason I was to do the interview;
12 that at that point I had the most information at that locale or
13 in Kansas.

14 Q. That is to say you were a man in a position to have
15 gathered information from several sources; is that right?
16 A. Yes, sir; had the ability to, yes.
17 Q. And you had in fact gathered information from other agents,
18 had you not?
19 A. Yes.
20 Q. You had information from Agent Reightler; correct?
21 A. Yes.
22 Q. What information did you have from Agent Reightler?
23 A. That he had seen some barrels in Mr. Nichols' garage when
24 he had checked there that evening.
25 Q. All right. I want you, sir, if you'd look just to your

433

1 left -- no, wait a minute -- to your right, the top black
2 notebook; and would you look, please, at Exhibits M1 and M2.
3 And would you take your time, sir, and tell us if you recognize
4 those two exhibits.
5 A. Yes. They're the search warrants and the affidavits.
6 MR. TIGAR: We offer M1 and M2, your Honor.
7 MR. MENDELOFF: Can I voir dire the witness on these
8 exhibits, Judge?
9 THE COURT: You may.
10 VOIR DIRE EXAMINATION
11 BY MR. MENDELOFF:
12 Q. Sir, I only ask you to look at M2, please, at the end of
13 the attachment.
14 MR. TIGAR: Excuse me, Counsel. Are you referring to
15 Attachment A? That's on M1.
16 MR. MENDELOFF: I'm referring to M2, the very end.
17 Your Honor, is it appropriate for me to question the

18 witness from here, or do you want me to go to the podium?
19 THE COURT: Probably we can pick you up better if you
20 go to the microphone.
21 BY MR. MENDELOFF:
22 Q. Mr. Crabtree, let me ask you to look at the end of what is
23 marked as M2. Do you see the conclusion of the search warrant
24 signed by the judge and then several other documents?
25 A. Yes.

434

1 Q. There is a criminal complaint; is that right?
2 A. Correct.
3 Q. There is an application for protective order; correct?
4 A. Correct.
5 Q. A protective order?
6 A. Yes.
7 Q. And an affidavit which says Terry Lynn Nichols is a
8 material witness, etc. Do you see that?
9 A. Yes.
10 Q. Now, Agent Crabtree, did you ever see at the time of the
11 execution of this search warrants or the drafting of the search
12 warrants this final document, affidavit, seeking Terry Nichols
13 as a material witness?
14 A. No.
15 Q. Was that part of the submission to the court?
16 A. No.
17 Q. When was the first time you saw that?
18 A. Three or four weeks ago.
19 Q. Let me ask you to turn back one to the protective order.
20 Do you see that?
21 A. Yes.
22 Q. Had you ever seen that before?

23 A. Within the last few weeks.
24 Q. And let me turn back again to the next document before
25 that, application for protective order. Have you seen that --

435

1 have you ever seen that before?

2 A. Three to four weeks ago.

3 Q. Now, these were -- these last three documents I've asked
4 you about: Did you see those, or did you even know of their
5 existence on the evening of the 21st or 22nd?

6 A. No, I did not see them until three or four weeks ago and
7 did not know about their existence.

8 MR. MENDELOFF: Judge, on the strength of that --

9 THE COURT: We seem to have more than just the
10 affidavit, application, and the warrant here.

11 MR. TIGAR: Your Honor, the materials at M2, as
12 reflected by the Bates' stamp numbers on them, were furnished
13 to us as a package in sequential order by the Government. We
14 relied upon paragraph 1 of the affidavit at Bates 257 at M2.
15 This complaint has been attached hereto as Exhibit A in the
16 belief that the complaint -- that reference referred to all of
17 the materials that came in a batch. I'm perfectly content, now
18 that we have the witness, to admit only such portions as are
19 incorporated -- intended to be incorporated by reference by
20 that number and to remove the remaining Bates' stamped
21 materials out of there.

22 THE COURT: Which appear to begin at 269?

23 MR. TIGAR: May I approach? And if the witness and I
24 can do it, it will clear up the witness book right now and
25 we'll be on the same page.

1 MR. MENDELOFF: Judge, we have a certified copy of
2 what was submitted to the court, from the court, which is
3 available and marked as a Government's exhibit, so that would
4 clear it up completely.

5 THE COURT: Which number is it?

6 MR. TIGAR: That appears to be Government's Exhibit
7 19, your Honor.

8 THE COURT: Well, let's show that to the witness, if I
9 may suggest it, and see if that's --

10 MR. TIGAR: I withdraw the offer of M2, your Honor. I
11 offer M1. I tender to the witness what has been offered as
12 Government's Exhibit 19.

13 DIRECT EXAMINATION CONTINUED

14 BY MR. TIGAR:

15 Q. And I ask the witness if that represents a copy so far as
16 he now recalls of what was presented to and signed by Judge
17 Belot on the 22nd of April, 1995.

18 A. Yes, sir.

19 MR. TIGAR: I offer 19.

20 MR. MENDELOFF: I believe it may have already been
21 admitted; but in the exercise of caution, we'll --

22 THE COURT: Well, I'll receive 19 to make sure; but do
23 we need M1, also, then, because --

24 MR. TIGAR: May I approach the witness again, your
25 Honor?

1 THE COURT: I'm confused, then, because I assumed that
2 19 included the warrant.

3 MR. TIGAR: I see now that 19 also includes a page

4 that had been in M1 but not in M2. We withdraw -- we move to
5 withdraw M1, your Honor.

6 THE COURT: All right.

7 MR. MENDELOFF: No objection.

8 THE COURT: So we'll stay with 19. It was previously
9 received. Okay.

10 MR. JONES: Your Honor, I'm sorry to interrupt; but we
11 seem somehow or the other to have lost our second Government
12 exhibit book, and I wonder if Mr. Anderson could be excused to
13 check our office.

14 THE COURT: Yes.

15 MR. JONES: I'm sorry. Volume 1, Nichols' exhibits,
16 Mr. Anderson.

17 BY MR. TIGAR:

18 Q. Agent Crabtree, thank you for helping us out.

19 Now, would you go through what's now in front of you
20 as No. 19 and find a reference to -- look at page 10, what I
21 have numbered as page 10. It's paragraph 19.

22 A. Okay. I have it, sir.

23 Q. All right. Now, you say that agents did go to the property
24 and observe four 55-gallon plastic drums; is that correct, sir?

25 A. Yes, sir.

438

1 Q. Was Agent Reightler one of those agents?

2 A. Yes, sir.

3 Q. And when did you learn from Agent Reightler that he had
4 gone to the property and observed the drums?

5 A. At the break we took at 10:21 p.m. that evening on the
6 21st, sir.

7 Q. Did he tell you how he had observed the drums?

8 A. As far as looking in the window, sir?

9 Q. Yes. What -- I mean did you make any notes of your
10 conversation with Agent Reightler?

11 A. No, sir, I did not.

12 Q. Did he hand you any written material?

13 A. No, sir.

14 Q. Had he already reported, so far as you are aware, to United
15 States Attorney Rathbun about his search?

16 A. I don't know if he did or not, sir.

17 Q. So is your affidavit based on this section about going to
18 the property -- based on anything other than an oral report
19 from Agent Reightler?

20 A. That is correct, sir.

21 Q. It's not based on anything other than that?

22 A. It's just based on that, sir. I'm sorry.

23 Q. Did he tell you that he had gone on the property?

24 A. Yes.

25 Q. And he said he looked in the window; is that correct?

439

1 A. Correct.

2 Q. Now, he said two of the drums had blue plastic lids; is
3 that correct?

4 A. Yes, sir.

5 Q. Now, Agent Reightler is looking through a window and he's
6 telling you that he saw plastic barrels with blue lids; is that
7 correct?

8 A. That's correct, sir.

9 Q. Now, you say that resembled the plastic fragments found
10 during the bomb scene analysis. Where did you get that about
11 the blue plastic fragments?

12 A. From Agent Reightler, sir.

13 Q. Did he tell you where he had gained information about
14 plastic fragments?
15 A. I don't remember discussing that with him, sir.
16 Q. Are plastic barrels a fairly common commodity in Salina,
17 Kansas?
18 A. I don't know, sir. I've got 55-gallon barrels, but they're
19 metal. I don't know about plastic ones, sir.
20 Q. Well, do your neighbors have plastic barrels they put their
21 trash in?
22 A. None that I know of, sir.
23 Q. Do you have a K-Mart in Salina?
24 A. Yes, sir.
25 Q. Do they have blue plastic barrels for sale there?

440

1 A. 55 gallons, sir?
2 Q. I don't know. Any kind.
3 A. Not that I recall seeing, sir, no.
4 Q. All right. You know that is a -- Salina is farm country,
5 isn't it?
6 A. Yes, sir.
7 Q. Plastic barrels of a fairly large size are used by farmers,
8 aren't they, in their fields to spray fertilizer?
9 A. I've never really worked on a farm, sir. I don't know much
10 about farming.
11 Q. Have you driven by the farm country in Salina, Kansas, and
12 seen plastic barrels in use by farmers?
13 A. I can't say that I specifically have, sir. I'm not saying
14 that that doesn't happen. I'm saying I can't say I
15 specifically have.
16 Q. So you just don't know one way or another whether the

17 possession of plastic barrels is normal or sinister or what a
18 farmer would do or what; is that right?
19 A. In and of itself, sir, no, I don't.
20 Q. You say that in addition agents noticed a strong odor of
21 fertilizer near the garage. Is that right?
22 A. Yes, sir.
23 Q. Who told you that there was a strong odor of fertilizer?
24 A. It would have been Agent Reightler, sir.
25 Q. So when you say agents noted, you're relying only on what

441

1 Agent Reightler told you; is that correct?
2 A. Yes, sir.
3 Q. And how did he describe that strong odor of fertilizer, if
4 at all?
5 A. Just that he noticed a very strong smell that smelled like
6 fertilizer, sir.
7 Q. Did you ask him what kind of fertilizer?
8 A. No, sir.
9 Q. Well, did you think that if there was an odor of manure
10 near the garage, that that would have any significance in your
11 investigation?
12 A. I'm not sure I understand your question.
13 Q. Well, there are different kinds of fertilizer, aren't
14 there, sir?
15 A. Yes, sir.
16 Q. You were trying to get a search warrant from a judge;
17 correct?
18 A. Yes.
19 Q. If the fertilizer smelled like manure, that wouldn't be
20 relevant to the application, would it?
21 A. Correct, sir.

22 Q. So what kind of fertilizer would you think would be
23 relevant?
24 A. Kind of fertilizer someone would put on a lawn or
25 something, sir.

442

1 Q. Well, you weren't investigating a lawn case, were you? You
2 were investigating a bomb case?
3 A. Yes, sir.
4 Q. Well, wasn't what you were looking for was something to
5 support probable cause that something connected with a bomb was
6 in the house?
7 A. Yes, sir.
8 Q. Well, how did you think that the statement about fertilizer
9 supported any suspicion that the bomb-making material was in
10 the house?
11 A. Because there are only certain kinds of fertilizer that can
12 be used to make a bomb, sir.
13 Q. What kinds of fertilizer?
14 A. Ammonium nitrate.
15 Q. Did you ask Agent Reightler if what he smelled there
16 smelled like ammonium nitrate?
17 A. No, sir, I didn't.
18 Q. Did he tell you that what was there smelled like ammonium
19 nitrate?
20 A. No, sir.
21 Q. Have you ever smelled ammonium nitrate?
22 A. No, sir.
23 Q. Do you know whether it smells -- or stinks, rather?
24 A. No, sir, I don't.
25 Q. Now, would you look, please, at paragraph 20. You

- 1 interviewed a former co-worker of Nichols.
- 2 A. Yes, sir.
- 3 Q. What agent told you that?
- 4 A. Leslie Earl.
- 5 Q. Who is Leslie Earl?
- 6 A. An agent in Wichita.
- 7 Q. And did that agent interview a former co-worker of
- 8 Mr. Nichols?
- 9 A. Yes, he's the one that conducted the interview, sir.
- 10 Q. And who did he interview?
- 11 A. I believe it was Tim Donahue, sir.
- 12 Q. Paragraph 21: What ATF bomb experts did you contact?
- 13 A. I believe that information would have come from a
- 14 conversation with Special Agent Gibbons when we discussed the
- 15 information that we had.
- 16 Q. All right. Now, when did you talk to Special Agent
- 17 Gibbons?
- 18 A. Sometime during the processes of doing the affidavit, sir,
- 19 I believe.
- 20 Q. Okay. Now, let's look at paragraph 18. Well, there is no
- 21 reference there to a fuel meter, is there?
- 22 A. No, sir, there is not.
- 23 Q. Well, paragraph 21 refers to paragraph 18. But where am I
- 24 going to find something about the fuel meter?
- 25 A. It would be in paragraph 17, sir.

- 1 Q. 17.
- 2 A. 17(e), sir.

3 Q. Now, were you present in the room when Mr. Nichols talked
4 about the fuel meter?

5 MR. MENDELOFF: Objection, Judge. Clarification.
6 Foundation. There is numerous conversations here.

7 MR. TIGAR: All right.

8 BY MR. TIGAR:

9 Q. Did you hear Mr. Nichols talk about a fuel meter?

10 A. Yes.

11 Q. When did you hear him talk about a fuel meter?

12 A. Later in the interview when Steve Smith and I were talking
13 to him.

14 Q. About what time?

15 A. Maybe -- probably after our break at 10:50, sir, I believe.

16 Q. And during your -- was that the only conversation you had
17 with Mr. Nichols concerning a fuel meter?

18 A. Around that time, sir, yes.

19 Q. So that was the only conversation you had about a fuel
20 meter; is that correct?

21 A. That I had with Mr. Nichols, yes, sir.

22 Q. Now, you and Mr. Smith were the only ones in the room at
23 that time; is that right?

24 A. During the interview late in the evening, sir.

25 Q. No, when Mr. Nichols talked about the fuel meter, were you

445

1 and Agent Smith the only other ones in the room?

2 A. At that time, yes.

3 Q. Yes. Were you in the room when Agent Jablonski kicked the
4 chair?

5 A. I don't know that he did, sir. I was not in the room.

6 Q. You never saw him do that?

7 A. No, sir.

8 Q. All right. What did Mr. Nichols tell you about the fuel
9 meter? He told you it didn't work, didn't he?

10 A. He told Agent Jablonski that, sir. He did not tell Agent
11 Smith and I that.

12 Q. Well --

13 A. When we discussed it, we discussed the fact that he had
14 boughten (sic) it and it was for resale, and he also made
15 another comment that he had placed some belongings of
16 Mr. McVeigh next to the fuel meter. That's the sum and
17 substance of the conversation that Steve Smith and I had with
18 Terry Nichols regarding the fuel meter.

19 Q. Have you looked at the 302 of that conversation?

20 A. Of the one that Dan Jablonski had, sir?

21 Q. The one that Mr. Smith had, Mr. Smith's 302.

22 A. Yes, sir.

23 Q. All right. And you -- you had a chance to talk to
24 Mr. Smith, didn't you?

25 A. When we were --

446

1 Q. You talked to Mr. Smith during the course of the evening,
2 didn't you?

3 A. That evening, sir?

4 Q. Yes, sir.

5 A. Yes.

6 Q. All right. And how did -- when you asked Mr. Nichols about
7 the fuel meter, you knew that he had already been asked about
8 it, didn't you?

9 A. I would believe so, yes.

10 Q. And you knew that from Agent Smith; right?

11 A. Well, Agent Smith and I were in the same room at the same

12 time; so I wouldn't have had to ask Agent Smith if Mr. Nichols
13 had mentioned the fuel meter, sir.

14 Q. You're clear as you sit there today, aren't you, sir, that
15 that fuel meter didn't work? You know that, don't you?

16 A. I have heard that, sir.

17 Q. Now, after you heard about a fuel meter, you -- did you
18 call up Agent Gibbons?

19 A. It would have been afterwards, sir, because we wouldn't
20 have talked to him during the interview, yes.

21 Q. Was it Agent Jablonski that first asked about the fuel
22 meter?

23 A. I think Mr. Nichols spoke to Agent Jablonski about it
24 during one of our breaks when Agent Smith and I were out of the
25 room, sir.

447

1 Q. And then Agent Jablonski brought you up to speed about
2 that?

3 A. When we came in from that break, he went over his notes
4 quickly before he left the room; right.

5 Q. When you left police station at 12 -- whatever it was that
6 morning of the 22nd, you knew -- excuse me -- when you left the
7 police station the morning of the 22nd, so far as you knew,
8 that fuel meter didn't work; isn't that right?

9 A. No, sir, I can't say that.

10 Q. All you knew about the fuel meter was what Mr. Nichols had
11 said to the agents; isn't that right?

12 A. That is correct, sir.

13 Q. And he had said it didn't work; right?

14 A. He had told Agent Jablonski that, sir, yes.

15 Q. And you knew that you had a consent to search; right?

16 A. Yes, sir.
17 Q. If you had any questions, insofar as you were concerned you
18 could have sent somebody over there to look; correct?
19 A. I guess so, sir.
20 Q. Now, when did you talk to Agent Gibbons?
21 A. During the process of filling out the affidavit, maybe more
22 than once, sir. I can't recall.
23 Q. All right. I want you to try to remember when and where
24 you had the first conversation with Agent Gibbons on the
25 subject of a fuel meter.

448

1 A. It would have been during the process of filling out the
2 affidavit, sir.
3 Q. Sometime around 3 in the morning?
4 A. Maybe as late as 6 or 7. We worked on it for quite a few
5 hours, sir.
6 Q. But you wanted to get that before a judge pretty quickly;
7 correct?
8 A. We wanted to get it before a judge, yes.
9 Q. And did you know that a judge was standing by to hear you?
10 A. I would suppose that a that United States Attorney Rathbun
11 at the time could have called a judge and gotten a judge any
12 time he wanted one, sir.
13 Q. And he, of course, had been there at the Herington police
14 station from sometime in the evening onwards; correct?
15 A. Yes, he had been in Herington, also, sir.
16 Q. So you had no doubt in your mind that if a United States
17 attorney wanted a judicial officer, he could get one?
18 A. I believe he could call one and get one, yes, sir.
19 Q. Well, now, tell us -- tell us what you remember about
20 calling Mr. Gibbons. You called him and you asked him about a

21 fuel meter. Is that what happened?
22 A. We discussed a number of things in here regarding the
23 affidavit, sir. We went through a number of the different
24 paragraphs.
25 Q. I understand that. I'm asking you now about the fuel

449

1 meter. You called Agent Gibbons. Where did you find him?
2 A. I believe in the command post in Oklahoma City.
3 Q. You talked to him about several things. What did you say
4 about the fuel meter?
5 A. That Mr. Nichols had bought a fuel meter.
6 Q. And what did he say?
7 A. I don't remember if he said anything immediately, sir. I
8 was giving him some information that we had, too.
9 Q. When did you first receive the information that's in
10 paragraph 21?
11 A. After the call with Agent Gibbons, I suppose, sir.
12 Q. Pardon?
13 A. After the call to Agent Gibbons, the initial call, at
14 least, sir.
15 Q. Did he call you back?
16 A. He might have called me back, or I might have called him
17 back on something else, sir. We made -- there is a lot of
18 phone calls going on regarding the information in the affidavit
19 that evening or that morning.
20 Q. Did he tell you that ATF bomb experts told him that the
21 fuel meter referred to could readily be used to obtain the
22 proper blend of ammonium nitrate and diesel fuel? Is that what
23 he told you?
24 A. I believe that's the information that was relayed to me,

25 sir.

450

1 Q. Did Agent Gibbons tell you that information?

2 A. I believe so, sir.

3 Q. And what did Agent Gibbons, who had relayed that
4 information, know about the fuel meter other than what you had
5 told him? Anything?

6 A. What we told him, sir.

7 Q. Did you in drafting -- did you draft Attachment A to the
8 warrant?

9 A. Yeah. It was -- I was part of it drafting it, sir, with
10 the other three individuals that we discussed earlier.

11 Q. In your view, did this warrant call for the seizure of
12 books and magazines dealing with political opinions?

13 A. No, sir.

14 Q. Did it call for the seizure of materials contrary to the
15 philosophy of our government?

16 A. No, sir.

17 Q. Would you look at page 5, please. Paragraph 11.

18 A. Yes, sir.

19 Q. Did you know that the relative of James Nichols was his
20 former wife who had a grudge against him?

21 A. I didn't have that information, sir. If that's in fact
22 true, I did not know that.

23 Q. I'm not asking you to adopt that characterization. Did you
24 know who the relative was?

25 A. No, sir, I did not.

451

1 Q. Did you even know the name of the relative?

2 A. No, sir.

3 Q. When you were working on the warrant affidavit, were Agents
4 Foley and Jablonski present during any of that time?

5 A. No, sir.

6 Q. But Agent Smith was there?

7 A. Yes, sir.

8 Q. Now, sir, you also were the warrant affiant for the search
9 of a storage unit; is that correct?

10 A. Yes, sir.

11 Q. Will you look, please, at Tab N2. And once again, will you
12 look there carefully and make sure we've got all the right
13 pieces of paper.

14 A. Excuse me, sir. It looks like M2 --

15 Q. No, N, as in November.

16 A. I'm sorry, sir.

17 Okay, sir.

18 Q. And in that affidavit, you make the same statement about
19 information provided by ATF bomb experts; is that correct?

20 A. Yes, sir.

21 Q. In that affidavit at paragraph 18 --

22 MR. TIGAR: Excuse me, your Honor. We offer N2 -- N,
23 as in November.

24 THE COURT: Any objection?

25 MR. MENDELOFF: I'm sorry, Judge. No objection.

452

1 THE COURT: N2 is received.

2 BY MR. TIGAR:

3 Q. Now, you notice paragraph 18 in that affidavit is the same
4 as paragraph 18 in what has been received as Government's
5 Exhibit 19; is that correct?

6 A. Yes, sir.

7 Q. And what is the significance, if any, of paragraph 18?

8 A. To set forth that unknown individuals had been seen at

9 Mr. Nichols house the weekend -- prior to the weekend before.

10 Q. And in fact, the description, with the exception of the

11 age, mid 20's, matches the description of Mr. Nichols' son

12 Josh, doesn't it?

13 A. I know that now, sir.

14 MR. MENDELOFF: Objection. Foundation.

15 MR. TIGAR: He's answered. He knows that now.

16 THE WITNESS: Correct, sir. At the time, I didn't

17 know that, sir.

18 BY MR. TIGAR:

19 Q. On the 21st of April, 1995, you were in contact with agents

20 in Las Vegas, Nevada, weren't you?

21 A. Our command post was, sir, yes.

22 Q. And in fact, people in Herington, Kansas, were in contact

23 with Las Vegas, Nevada, weren't they?

24 A. At our command most in Herington, sir?

25 Q. Yes, sir.

453

1 A. I would believe so, yes.

2 Q. You had information that permitted you to ask Mr. Nichols

3 or other agents -- excuse me -- you had information that

4 permitted the agents to ask Mr. Nichols about a letter that was

5 left in Las Vegas, didn't you?

6 A. Yes, sir.

7 Q. You knew that information came from Las Vegas; correct?

8 A. Yes, sir.

9 Q. And you knew, did -- did you know that Mr. Nichols' son

10 Josh and his former wife Lana were in FBI hands that day?

11 A. From a tape, yes, sir.

12 Q. And when did you hear that tape?

13 A. It would have been at the break that we took between 10:21

14 and 10:50 that evening, sir.

15 Q. And that was a tape made by his former wife?

16 A. His ex-wife, yes, sir.

17 Q. Did you play that tape for Mr. Nichols?

18 A. Yes, sir.

19 Q. And why did you play it for him?

20 A. We told him that we had a tape available, if he'd like to

21 hear it; and he said he'd like to hear it, so we played it for

22 him, sir.

23 Q. You told him it was a tape of his former wife and his son?

24 A. Yes, sir.

25 Q. Was he concerned about his former wife and his son?

454

1 A. He didn't say so, sir.

2 Q. He just said he wanted to hear the tape?

3 A. Yes, sir.

4 Q. And that tape had been made by the FBI in Las Vegas?

5 A. I presume it had been made in our office, sir. I don't

6 know that for a fact.

7 Q. Did you know anything about the contents of the tape before

8 you played it?

9 A. Yes, sir.

10 Q. What did you know about it?

11 A. I had heard the tape prior to having it played.

12 Q. Well, would it be fair to say that on the tape, he was

13 being urged to cooperate?

14 MR. MENDELOFF: Judge, objection. If they want to put

15 the tape in, they can put it in. This is a summarization. Or

16 if he wants to hand it to the witness --

17 THE COURT: Well, let's don't bother. I'll overrule

18 it and let him paraphrase his understanding of what he heard.

19 BY MR. TIGAR:

20 Q. Was that your understanding of the tape, sir?

21 A. In the portion where the son speaks, that was basically the

22 message that was brought across, sir, yes.

23 MR. TIGAR: Will your Honor indulge me for a moment,

24 please?

25 THE COURT: Yes.

455

1 BY MR. TIGAR:

2 Q. Agent Crabtree, did -- do you know at what time

3 Mr. Nichols' home was secured?

4 A. As far as when agents were there and moved people away from

5 the houses around that area and that kind of thing, sir?

6 Q. Yes.

7 A. It happened during the interview. I'm not sure exactly

8 what time it happened, sir.

9 Q. You didn't participate in the initial surveillance of

10 Mr. Nichols, did you, sir?

11 A. No, sir, I did not.

12 Q. At any time did you or any agent in your presence tell

13 Mr. Nichols that his house had been secured?

14 A. No, sir.

15 Q. Did you know that his pickup truck had been secured?

16 A. Later in the evening, yes, sir. I saw that it had been

17 brought inside the garage there at the Herington Department of

18 Public Safety.

19 Q. Before you left Herington -- excuse me. Before you left

20 Junction City, did you hear anything about a hostage situation?

21 A. No, sir.

22 Q. Did you hear anything about a potential -- excuse me --

23 potential hostage situation in the Herington police station?

24 A. No, sir.

25 Q. Did any agent during the course of the evening that you

456

1 were there -- during the course of the time you were there tell

2 you about a potential hostage situation in the Herington police

3 station?

4 A. No, sir.

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

6 MR. JONES: I have questions.

7 THE COURT: Mr. Jones.

8 MR. JONES: Thank you, your Honor.

9 CROSS-EXAMINATION

10 BY MR. JONES:

11 Q. Agent Crabtree, I believe that Government's Exhibit 19 has

12 been introduced into evidence while testifying on direct. Do

13 you have that in front of you?

14 A. Yes, sir, it's right here.

15 Q. Would you turn to page 5, please, paragraph 11.

16 A. Yes, sir.

17 Q. Is it your understanding that the person being identified

18 here is Mr. James Nichols' former wife?

19 A. I don't have an understanding of who it was, sir, at that

20 time.

21 Q. All right. Well, if it was her (sic) former wife and the

22 trier of fact decides that it was her former wife, what is your

23 understanding of how a former wife is a relative? I mean

24 what's the purpose of a divorce?

25 MR. MENDELOFF: Judge, objection. Calls for a legal

457

1 conclusion.

2 THE COURT: Sustained.

3 BY MR. JONES:

4 Q. Would you look at paragraph 12. Who told you this that's

5 in paragraph 12? What agent?

6 A. It would have been one of the agents in Herington the

7 evening that we did the interview, sir. Probably -- probably

8 one of the supervisors, but I don't have a specific

9 recollection of that, sir.

10 Q. Do you know who this former co-worker is that's being

11 referenced here?

12 MR. MENDELOFF: Your Honor, objection. My

13 understanding of the 804 question is that the relevant issue is

14 what happened during the interview, not the search warrant.

15 THE COURT: I don't understand your purpose in this

16 questioning.

17 MR. JONES: I was afraid they'd object.

18 I'll withdraw it.

19 THE COURT: All right. Mr. Mendeloff.

20 CROSS-EXAMINATION

21 BY MR. MENDELOFF:

22 Q. Agent Crabtree, when you first arrived at the Herington

23 police station, it was about 4:12 in the afternoon or just

24 before?

25 A. Just before that, yes.

458

1 Q. And you entered the interview with Mr. Nichols at around
2 4:12; is that right?
3 A. That is correct, sir.
4 Q. When you entered the interview, you entered with Special
5 Agent Jablonski; is that right?
6 A. That is correct, sir.
7 Q. Now, can you tell us what was the physical appearance of
8 defendant Nichols when you entered the room?
9 A. Appeared to be calm, relaxed.
10 Q. Was his face flushed in any way?
11 A. No, sir.
12 Q. Was he sweating?
13 A. No, sir.
14 Q. Did he appear ill?
15 A. No, sir.
16 Q. Were you wearing a firearm at the time?
17 A. No, sir, I was not.
18 Q. Do you know whether Agent Jablonski was wearing a firearm?
19 A. I don't believe so.
20 MR. JONES: Your Honor, could the witness please speak
21 up.
22 THE COURT: Yes. Getting a little hard to hear you.
23 THE WITNESS: Yes, sir.
24 THE COURT: Thank you.
25 BY MR. MENDELOFF:

1 Q. Now, as the interview went on, as I understand it, Agent
2 Smith reviewed his notes for you and Agent Jablonski; is that
3 correct?
4 A. That is correct.

5 Q. And during the course of that review, Mr. Nichols made a
6 request?

7 A. Yes, sir.

8 Q. And that request was what?

9 A. If he could have a copy of his notes.

10 Q. Did he indicate -- and the response was? Excuse me.

11 A. Yes.

12 Q. All right. And did he ever specify when he wanted those
13 notes?

14 A. No, sir.

15 Q. Did any agent ever tell Mr. Nichols that he would be
16 permitted to correct or alter the notes in any way?

17 A. No, sir.

18 Q. Did Mr. Nichols ever tell you that he wanted to be able to
19 correct and alter the notes or he wouldn't continue to speak?

20 A. No, sir.

21 Q. In the time you spent with Mr. Nichols thereafter, did he
22 ever ask for -- a copy of the notes again?

23 A. No, sir.

24 Q. A short time later, at about 4:34, I believe, in the
25 afternoon, Mr. Nichols was asked if he would consent to a

460

1 search of his home and he agreed; is that correct?

2 A. That is correct.

3 Q. And then he was shown a search consent form which he
4 signed; is that right?

5 A. That is correct.

6 Q. Now, after he signed that form, did he make any remark
7 about the search of his home?

8 A. Yes.

9 Q. What did he say?

10 A. After the form had been executed, he made a comment to
11 Agent Smith and myself that he was hopeful that anybody that
12 would do a search of his house would be able to distinguish
13 between household items and bomb-making materials.

14 Q. Did he specifically tell you that the reason he had
15 requested his presence or his wife's presence at that search
16 was for that reason?

17 A. No, sir.

18 Q. Now, as I understand the way the interview flowed, Agent
19 Foley and Agent Jablonski left the interview about 4:53?

20 A. Yes, sir.

21 Q. And you and Agent Smith continued to speak with Mr. Nichols
22 until about 6:10; is that right?

23 A. That is correct.

24 Q. From 6:10 until 7:07, there was a break. Is that right?

25 A. Yes.

461

1 Q. And then you went back into the room at 7:07?

2 A. Correct.

3 Q. When you returned to the room, did you receive any
4 information from any of the agents or from Mr. Nichols?

5 A. Yes.

6 Q. What information did you receive?

7 A. Agent Jablonski recounted what Mr. Nichols had talked to
8 him about during that particular break.

9 Q. And during that break -- excuse me. During that recitation
10 of information, did Agent Jablonski afford Mr. Nichols the
11 opportunity to correct or alter any of the things Agent
12 Jablonski was reporting?

13 A. Yes. The notes were read in his presence.

14 Q. Now, when Agent Jablonski was reading those notes to you
15 and Special Agent Smith, did Agent Jablonski report anything
16 about a fuel meter?

17 A. Yes, sir.

18 Q. And had Mr. Nichols mentioned a fuel meter to you or in
19 your presence prior to that time?

20 A. No, sir.

21 Q. Was this the first time you had heard anything about a fuel
22 meter?

23 A. Yes, sir.

24 Q. And it was Agent Jablonski reading off his notes; is that
25 right?

462

1 A. Correct, sir.

2 Q. What did you learn at that time what Mr. Nichols had said
3 about the fuel meter?

4 A. That he had bought the fuel meter, had got it for a price
5 below what it was on sale for.

6 Q. Without getting into details, did he tell you anything
7 about whether the fuel meter -- did Agent Jablonski report
8 whether Mr. Nichols had said whether or not the fuel meter was
9 operable?

10 A. Yes.

11 Q. What did he say?

12 A. He said that he had discovered that the fuel meter didn't
13 work and he had tried to take it apart and fix it and determine
14 the manufacture.

15 Q. Now, at the time that Agent Jablonski told you and Agent
16 Smith that, was Agent Smith taking notes about what Agent
17 Jablonski was saying?

18 A. No, sir.

19 Q. What was the reason for that?

20 A. Because Agent Jablonski had taken notes of that
21 conversation and he was merely reciting off his notes.

22 Q. Had you heard Mr. --

23 MR. TIGAR: I'm sorry, your Honor. I haven't been
24 able to hear. I think I got the last answer, but if the agent
25 could speak up, I'd appreciate it.

463

1 THE COURT: All right.

2 BY MR. MENDELOFF:

3 Q. Agent Crabtree, please speak into the microphone and speak
4 up.

5 A. It's hard to look at you and speak into the microphone.

6 Q. I know it's hard --

7 A. That didn't come off right.

8 Q. I won't hold it against you. Let's just continue.

9 The -- as the -- Agent Jablonski was telling you and
10 Agent Smith what he had heard Mr. Nichols say; is that right?

11 A. Yes, sir.

12 Q. Did Mr. Nichols ever tell you and Agent Smith himself that
13 the fuel meter was inoperable?

14 A. No, sir.

15 Q. And Agent Smith did not take down Agent Jablonski's
16 recitation into his notes; is that correct?

17 A. That is correct.

18 Q. Now, the interviews then continued for the next few hours;
19 is that right?

20 A. Yes, sir.

21 Q. You were in and out of the room?

22 A. Yes, sir.

23 Q. When you were out of the room, what was happening?
24 A. Agent Smith and I were upstairs discussing things with
25 other agents as to materials or information we might have that

464

1 we could use during the latter courses of the interview.
2 Q. Were you receiving information from large number of
3 sources?
4 A. Yes.
5 Q. Later that evening, I believe you -- the interview ended
6 and you drove to Herington -- excuse me -- you drove to
7 Wichita; is that right?
8 A. That is correct.
9 Q. And when you drove to Wichita, you sat down in
10 Mr. Rathbun's office to draft the affidavit; is that right?
11 A. That is correct.
12 Q. Now, in drafting the affidavit, can you explain to Judge
13 Matsch what the procedure was that you and Mr. Smith followed?
14 A. We went through Agent Smith's notes and went through there
15 looking for information that we thought was pertinent or
16 relevant to the affidavit that we were preparing.
17 Q. All right. And did you augment those notes with anything
18 other than what was in the notes?
19 A. If we had specific recollection of something that may not
20 have made the notes, yes.
21 Q. All right. Now, did the notes contain anything regarding
22 the fuel meter?
23 A. Yes, they did.
24 Q. And that was from what portion of the interview?
25 A. The latter portion, sir.

465

1 Q. And that's the portion you referred to when you spoke with

2 Mr. Tigar earlier; is that right?

3 A. That is correct.

4 Q. Did that occur after Agent Jablonski had read the notes?

5 A. Yes, it did.

6 Q. All right. And did the notes -- did the representations in

7 the affidavit track what was in Mr. Smith's notes regarding

8 what Terry Nichols had told you himself?

9 A. Could you ask the question again?

10 Q. Did the contents of the affidavit regarding the fuel meter

11 track what Terry Nichols had told you himself when you and

12 Agent Smith spoke with him about the fuel meter later in the

13 interview?

14 A. Yes, sir, they did.

15 Q. And when you -- when you and Agent Smith spoke with

16 Mr. Nichols about the fuel meter later in the interview, did

17 you discuss at all the operability of the fuel meter?

18 A. No, sir, we did not.

19 Q. When you drafted the affidavit, you drafted it

20 incorporating paragraph 21; isn't that correct?

21 A. Yes, sir.

22 Q. And can you turn to paragraph 21, please.

23 A. Of the --

24 Q. Of the affidavit.

25 A. -- affidavit.

1 Q. And do you see the portion of paragraph 21 relating to this

2 fuel meter or the fuel meter in the Nichols residence or a

3 reference to the fuel meter in the Nichols residence being

4 readily useable to mix an ammonium nitrate bomb?

5 A. Yes, that's paragraph 21.

6 Q. Is that consistent, or inconsistent with Mr. Nichols having

7 told you that the fuel meter was inoperable?

8 A. It's inconsistent. If he says it's broken, it's

9 inconsistent with that.

10 Q. What is the reason that you did not put the inoperability

11 into the affidavit?

12 A. Because I didn't remember it.

13 Q. All right. Now, let me back up to events during the

14 interview. After the first -- the first break was over and you

15 were back in the room, you received this briefing from Agent

16 Jablonski and in Mr. Nichols' presence; is that right?

17 A. Correct.

18 Q. And then you went on with the interview; is that correct?

19 A. That's correct.

20 Q. You continued until what time?

21 A. Till the next break.

22 Q. Which was when?

23 A. Approximately 8:14, I believe.

24 Q. I'm sorry?

25 A. 8:14, I believe.

467

1 Q. You took another break for about a half hour?

2 A. Yes, sir.

3 Q. And then you went into the room again; is that correct?

4 A. That is correct.

5 Q. What time did you go into the room?

6 A. After the 8:14 break?

7 Q. Right.

8 A. Approximately 8:44.

9 Q. Now, when you returned to the room at 8:44, had anything
10 been going on in the room while you were gone?
11 A. Yes, sir.
12 Q. Tell us what that was.
13 A. Mr. Nichols had drawn a sketch of his residence to point
14 out where weapons and ammunition would be located there.
15 Q. Was it a floor plan, in effect?
16 A. Yes, sir.
17 Q. Shortly after you returned, did Agent Jablonski and Agent
18 Foley leave?
19 A. Yes, sir.
20 Q. Now, a few minutes later, was there a knock at the door?
21 A. Yes, sir.
22 Q. And can you tell us what happened?
23 A. Yes. Agents Jablonski, Foley, Gene Thomeczek and
24 Mr. Nichols' wife and daughter came down to the room where we
25 were doing the interview.

468

1 Q. All right. And what happened then?
2 A. They spoke for approximately 5 minutes.
3 Q. All right.
4 A. Those individuals, five people, went back up stairs.
5 Q. When you say "they spoke," who spoke for five minutes?
6 A. I'm sorry. Mr. Nichols' wife and Mr. Nichols.
7 Q. Were the agents standing right next to them when they
8 spoke? Were they permitted to remain separately?
9 A. We were apart from them.
10 Q. You were still in the same room, though, is that right?
11 A. It was a big room with a hallway off to one end of it, yes.
12 Q. And where in there, were Mr. Nichols and his wife speaking?

- 13 A. I'm sorry?
- 14 Q. Where in the room were Mr. Nichols and his wife speaking?
- 15 A. Down the hallway, away from the main part of the room.
- 16 Q. After Mrs. Nichols left -- excuse me. What time did she
- 17 leave?
- 18 A. 8:57, I believe.
- 19 Q. All right. Did the interview then continue?
- 20 A. Yes, it did.
- 21 Q. Until the next break at?
- 22 A. 10:21.
- 23 Q. Then that's the time that you learned about the material
- 24 witness warrant during that break? Is that correct?
- 25 A. Yes, sir.

469

- 1 Q. And then you went back into the room for the final session?
- 2 A. Correct.
- 3 Q. And you were there for the final session from -- from what
- 4 time to what time?
- 5 A. 10:50 p.m. till 12:11 a.m. the next morning.
- 6 Q. Now, throughout the interview that day, did Mr. Nichols
- 7 ever state -- ever state that he wished to remain silent or
- 8 terminate the interview?
- 9 A. No.
- 10 Q. Did he ever make a request for an attorney?
- 11 A. No, he did not.
- 12 Q. Did his demeanor in the interview ever change from the time
- 13 that you first got there, that being calm and collected?
- 14 A. No, it did not.
- 15 Q. Did any agent ever display a weapon in Mr. Nichols'
- 16 presence?
- 17 A. Not while I was present, no.

- 18 Q. Did you or any agent ever threaten Mr. Nichols?
- 19 A. No, sir.
- 20 Q. Did you ever display any photographs to Mr. Nichols?
- 21 A. No, sir.
- 22 Q. Did you or any agent in your presence ever turn the
- 23 television on that was in the basement?
- 24 A. No, sir.
- 25 Q. Did you or any agent in your presence ever falsely tell

470

- 1 Mr. Nichols that Mr. McVeigh was cooperating against him?
- 2 A. No, sir.
- 3 Q. Did Mr. Nichols ever ask during the course of the interview
- 4 whether he should obtain an attorney?
- 5 A. No, sir.
- 6 Q. Did he ever ask whether he was under arrest?
- 7 A. No, sir.
- 8 Q. What was your assessment of Mr. Nichols' intelligence
- 9 having talked to him for those hours that day?
- 10 A. Above average.
- 11 Q. And did you use the tone of voice in the interview that
- 12 you're using here?
- 13 A. Yes, sir.
- 14 Q. Now, that night, you drove down to Wichita and you worked
- 15 on the warrant affidavit; is that correct?
- 16 A. That's correct.
- 17 Q. And who was in the room working the warrant affidavit
- 18 again? Mr. Rathbun, Mr. Smith, Mr. Fowler and yourself?
- 19 A. Correct.
- 20 Q. Now, you had information that you had obtained a consent to
- 21 search the Nichols' home; isn't that right?

22 A. Yes.

23 Q. Do you know the reason that you were obtaining a warrant in
24 addition to that consent?

25 A. We were being prudent.

471

1 Q. Now, let me just ask you in general terms: Paragraph 17 of
2 the warrant affidavit recounts certain statements that
3 Mr. Nichols made; is that right?

4 A. Yes, sir.

5 Q. And in that -- in that section of the warrant affidavit, do
6 you purport to quote Mr. Nichols at any point?

7 A. I believe at one point is all, sir.

8 Q. All right. The rest of the statements are what?

9 A. A summary of things that Mr. Nichols had told us at
10 different points during the interview.

11 Q. All right. Now, let me ask you to direct your attention to
12 one of those paragraphs, subparagraph -- excuse me --
13 subparagraph 17(f).

14 A. Yes, sir.

15 Q. Do you see where the warrant affidavit states that "Nichols
16 told me several times that if we searched his residence," we
17 hoped that -- "he hoped that agents," quote, "would not
18 mistake household items," close quote, "for bomb-making
19 materials"? Do you see that?

20 A. Yes, sir.

21 Q. What is the reason you placed quotation marks around the
22 phrase "would not mistake household items"?

23 A. It seemed like an odd statement at the time, sir.

24 Q. And is there any other reason why you put quotes around
25 that?

1 A. No. It's a direct quote from him, sir.

2 Q. Now, what is the reason you did not place quotation marks
3 around all the other things you're reporting Mr. Nichols'
4 saying in paragraph 17?

5 A. Because the remainder of the items, as I stated, were a
6 summary of things that Mr. Nichols had told us throughout the
7 interview.

8 Q. Let me direct your attention to the next day, around 2:00
9 the afternoon of the 22nd. You were driving -- excuse me. You
10 had that morning gone to court and obtained the warrant
11 affidavit; is that correct?

12 A. Correct.

13 Q. And then where did you go after that?

14 A. We went to Abilene, Kansas.

15 Q. And what were you to do in Abilene, Kansas?

16 A. To bring Mr. Nichols down to Wichita to the Federal
17 Courthouse.

18 Q. All right. And do you know what time you picked him up?

19 A. Approximately 2 p.m. that afternoon.

20 Q. Now, prior to picking up -- excuse me -- prior to picking
21 up Mr. Nichols, did you and Agent Smith -- I'm sorry. Was
22 Agent Smith with you?

23 A. Yes, sir, Agent Smith and I were the ones that went to
24 Abilene.

25 Q. Prior to picking up Mr. Nichols at 2:00 that afternoon, did

1 you and Agent Smith have a brief conversation?

2 A. Yes.

3 Q. Did that conversation relate to how you would handle the
4 trip down to Wichita?
5 A. Yes, it did.
6 Q. Can you tell the Court where that conversation took place?
7 A. It took place in the vehicle on the way to Abilene.
8 Q. Okay. And approximately what time?
9 A. Be 1:30 or so.
10 Q. Other than Agent Smith and yourself, was anyone else in the
11 car?
12 A. No, sir.
13 Q. Can you tell the Court what was said in this conversation?
14 A. Agent Smith and myself agreed that there would be no
15 questioning of Mr. Nichols during the return trip.
16 Q. All right. Would there been any -- would there be any
17 questions asked whatsoever?
18 A. Excuse me?
19 Q. Would there be any questions asked whatsoever?
20 A. No.
21 Q. Now, you picked up Mr. Nichols at 2:00; is that correct?
22 A. That's correct.
23 Q. And then you got in the car. Did you say anything to him?
24 A. Yes. As we got into the vehicle and left the police
25 department or -- I'm sorry -- the sheriff's office, we informed

474

1 him that we were going to Wichita and that once we arrived
2 there, he would get an attorney and then would be -- go before
3 a judge.
4 Q. All right. At that point, did you drive towards Wichita?
5 A. Yes, we did.
6 Q. Was there any conversation?
7 A. Yes. Not initially, but later, yes.

8 Q. Right. How long did you drive before there was any
9 talking?
10 A. 15 minutes, 10 minutes.
11 Q. And who was the next person to speak?
12 A. Mr. Nichols.
13 Q. And did Mr. Nichols mention anything when he spoke about
14 the search -- a search of his home?
15 A. Yes. He asked if we had done the search of his home that
16 he had given us permission for the night before.
17 Q. All right. And what did you respond?
18 A. I told him that -- that we had not; that we were trying to
19 be very careful and were concerned about the safety of anybody
20 that might be going into the house.
21 Q. All right. And did Mr. Nichols make -- offer any
22 information at that point?
23 A. That the only thing in the house that could possibly cause
24 any harm would be loaded weapons.
25 Q. All right. And did you ask him any questions after he said

475

1 this?
2 A. Yes. I asked him if there was any type of a booby trap
3 type device or anything like that that we'd have to worry about
4 entering the house. He advised me that there was two door-type
5 beepers that were to sound when a door was opened, although the
6 one on the back door was not functioning at that time.
7 Q. Did you or Agent Smith ever inform Mr. Nichols that -- of
8 the fact that you had obtained a search warrant for the
9 Nichols' home that morning?
10 A. No.
11 Q. Now, after this brief conversation, was there another break

12 in the discussion?

13 A. Yes.

14 Q. And did Mr. Nichols then offer further information?

15 A. Yes, he did.

16 Q. Without getting into what he offered, did you ask follow-up

17 questions?

18 A. Yes, sir, we did.

19 Q. And did the conversation with Mr. Nichols on the way to

20 Wichita basically continue along those lines as you drove

21 there?

22 A. Yes, sir.

23 Q. In other words, Mr. Nichols raising issues and you and

24 Agent Smith asking follow-up questions?

25 A. Or clarifying questions, yes, sir.

476

1 Q. Or clarifying questions.

2 Did one of those conversations have to do with a

3 storage shed in Herington?

4 A. Yes.

5 Q. And did Mr. Nichols raise the issue of that storage shed in

6 his comments?

7 A. Yes.

8 Q. As you arrived in Wichita, was the conversation ongoing?

9 A. Yes.

10 Q. And was it still ongoing when you drove up to the Federal

11 building?

12 A. Yes.

13 Q. What happened then?

14 A. As we pulled into the parking lot behind the Federal

15 building, the deputy marshals there in Wichita came out to the

16 vehicle and took Mr. Nichols into their office in the

17 courthouse.

18 Q. All right. Was the conversation cut off?

19 A. Yes, sir.

20 Q. What did you and Agent Smith do?

21 A. Locked up the vehicle and then went on into the courthouse
22 ourselves.

23 Q. Where did you go?

24 A. Up into the marshal's office, the administrative office.

25 Q. When you got there, what did you do?

477

1 A. We told one of the marshals or deputy marshals that we were
2 here and that if -- if they wanted to inform Mr. Nichols of
3 that, if he wished to speak to us further, that he could tell
4 us that and we'd be willing to talk to him.

5 Q. Throughout the car ride, did Mr. Nichols ever say that he
6 wanted to remain silent or not talk to you anymore?

7 A. No, sir.

8 Q. After you told that to the marshals, where did you go?

9 A. We stayed in that office until one of the deputies came
10 back and said that we were to go out into the hallway so they
11 could take us into the holding cell where Mr. Nichols was
12 waiting for us.

13 Q. All right. And when you got into the holding cell, did you
14 see anybody?

15 A. Mr. Nichols was there.

16 Q. And when you saw him, did you continue your conversation?

17 A. Yes, sir, we did.

18 Q. Now, directing your attention to mid to late May of last
19 year, did you receive any telephone calls from the Nichols
20 family at about that time?

- 21 A. Yes, sir, I did.
- 22 Q. Okay. Who did you receive phone calls from?
- 23 A. From his sister.
- 24 Q. All right. And did you -- did she ask anything of you?
- 25 A. Yes. Questions about how to get information or things to

478

- 1 Mr. Nichols, who was then at El Reno, I believe.
- 2 Q. And did she tell you why she was calling you?
- 3 A. That she had been told that if she needed to get some
- 4 information or whatever, that she could call me to get it.
- 5 Q. Did she say who told her that? Did she say who told her to
- 6 call you?
- 7 A. Terry Nichols.
- 8 Q. All right. And did you receive another phone call from
- 9 another Nichols family member?
- 10 A. Well, ex-family member. Yes, sir, his ex-wife, sir.
- 11 Q. And when did that occur, roughly?
- 12 A. That would have been later in the month.
- 13 Q. And do you -- who was that? Mrs. Padilla?
- 14 A. Yes, sir.
- 15 Q. What did she say she wanted?
- 16 A. She had some requests regarding Mr. Nichols' house in
- 17 Herington as far as utilities and some things of that nature,
- 18 just basically upkeep on the house while everything was
- 19 pending.
- 20 Q. Did you assist her in any way?
- 21 A. Yes. I called and got a hold --
- 22 Q. Without getting into it, just yes or no.
- 23 A. Yes.
- 24 Q. And did Ms. Padilla indicate why she was calling you?
- 25 A. That she had been told that she could call me if she had

1 questions or something of that nature.

2 Q. Did she tell you who had told her that?

3 A. Mr. Nichols.

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

5 THE COURT: Yes.

6 MR. MENDELOFF: Just a couple more questions, your

7 Honor.

8 THE COURT: All right.

9 BY MR. MENDELOFF:

10 Q. Agent Crabtree, where were you born?

11 A. In Herington, Kansas, sir.

12 Q. Are you familiar with the city?

13 A. Yes.

14 Q. And do you know where Mr. Nichols' home is?

15 A. Yes, sir.

16 Q. Where -- do you know where the Surplus City is on Route 56?

17 A. Yes, I do.

18 Q. South Route 56?

19 A. Yes, sir.

20 Q. Is the route -- is the drive -- sir, if you leave the

21 Nichols home and drive to the Surplus City on Route 56, is that

22 on the way to the Herington police station?

23 A. No, it is not.

24 Q. Why is that?

25 A. The town, as you go south and west out of town, is divided

1 by a creek that runs through the town.

2 Q. All right.

3 A. There is no road connecting that portion of town with the
4 east portion of town where the Herington Department of Public
5 Safety is located.

6 Q. If you go from the Nichols home to the Surplus City on
7 South 56, what is the only way to get back to the police
8 station?

9 A. To basically come back by the residence, back by 2nd
10 Street, and then go to Broadway.

11 Q. To backtrack?

12 A. Backtrack, yes, sir.

13 Q. If you keep going 56, is there a -- down 56, is there a way
14 to get to the police station?

15 A. If you go way out into the country and hit a county road or
16 something, you could probably cut back around and come in from
17 the other side of town.

18 MR. MENDELOFF: Thank you.

19 Nothing further, your Honor.

20 THE COURT: Mr. Tigar.

21 REDIRECT EXAMINATION

22 BY MR. TIGAR:

23 Q. Did anybody tell you when you got to Herington that
24 Mr. Nichols was frightened and nervous?

25 A. No, sir.

481

1 Q. Did Mr. Nichols ask you or did he ask anyone in your
2 presence why he was -- his name was on the radio and
3 television?

4 A. No, sir.

5 Q. Did anyone tell you before you went in the interview room
6 what Mr. Nichols had said about why he came to the police

7 station?

8 A. No, sir. I think the first time I heard that was when we
9 were recounting the notes that Agent Smith had taken of the
10 interview up to that point.

11 Q. And recounted what Mr. Nichols had told him about not
12 wanting another Waco?

13 A. Yes, sir.

14 Q. And you recall that Mr. Nichols had asked why his name was
15 on the radio and television?

16 A. He had heard his name, yes, sir. That's what brought him
17 to the Department of Public Safety, yes, sir.

18 Q. Now, Mr. Nichols told you that he wanted to be present or
19 have his wife present when the house was searched; correct?

20 A. Yes, sir. He asked if it would be possible; and we told
21 him it would be possible, yes, sir.

22 Q. And did you think that was a normal request?

23 A. It didn't seem like an abnormal request, no, sir.

24 Q. And if a group of law enforcement officers are going into
25 your house and didn't have your best interests at heart, would

482

1 you want to be there while they went through it?

2 A. Sure.

3 Q. Why?

4 A. Just to see what was going on.

5 Q. To make sure that they didn't trash the place?

6 A. That would be one concern, yes.

7 Q. To make sure that they didn't make a mistake and maybe
8 plant some evidence?

9 A. That could be another concern, yes, sir.

10 Q. So what Mr. Nichols was raising was legitimate concerns;

11 right?

12 A. He just asked if he or his wife could be present. He

13 didn't really raise any concerns as to why he wanted to do

14 that, sir.

15 Q. I know he didn't. I've heard your testimony. But you

16 understood him to be making what you would call not an abnormal

17 request; correct?

18 A. Correct.

19 Q. Now, at the time you were in Mr. Rathbun's office, you had

20 had Agent Smith's notes with you; correct?

21 A. Yes, sir.

22 Q. And you had Agent Smith; right?

23 A. Yes, sir.

24 Q. And you could compare recollections; correct?

25 A. Yes, sir.

483

1 Q. That fuel meter was pretty important, wasn't it?

2 A. Yes, sir.

3 Q. Because you thought that a fuel meter in operable condition

4 could be used to make the bomb that had killed 168 people,

5 didn't you?

6 A. A fuel meter like that, yes, sir.

7 Q. If it worked; right?

8 A. If it worked at the time, yes, sir.

9 Q. Yes, sir. And your testimony is that you simply forgot

10 what Agent Jablonski had told you?

11 A. Yes, sir, I did.

12 Q. Yet in your affidavit, you put quotations around a portion

13 of Mr. Nichols' statements. Do you remember testifying to that

14 in cross-examination?

15 A. Yes, sir.

16 Q. Now, those quotation marks do not appear in the 302, do
17 they?

18 A. Without looking at the 302, I'm not sure, sir.

19 Q. Would you please look at the 302. Do you have the 302 in
20 front of you, sir? It's A1 in the black notebook. Would you
21 look at page 3, please.

22 Do you see the paragraph about the search warrant at
23 the top of that page?

24 A. Yes, sir.

25 Q. Now, do you see any words about mistaking bomb-making

484

1 materials in quotation marks?

2 A. No, sir.

3 Q. In fact, will you read to us, please, the reference to
4 mistakes about bomb-making materials that appears in the 302?

5 A. "He was hopeful anyone doing the search would be able --"

6 MR. MENDELOFF: Objection. Outside the scope.

7 THE COURT: Well, the scope is varied here, depending
8 on who called the witness.

9 MR. MENDELOFF: I understand, your Honor; but we
10 didn't get into this in cross.

11 MR. TIGAR: The scope is the subject matter, your
12 Honor, first raised on cross.

13 THE COURT: I'll overrule the objection.

14 BY MR. TIGAR:

15 Q. Will you continue reading, please.

16 A. Yes, sir. "He was hopeful anyone doing the search would be
17 able to tell the difference between cleaning solvents and
18 bomb-making materials."

19 Q. Those are not the same words at all that you put in

20 quotation marks in your affidavit, are they?

21 A. No, sir.

22 Q. But you were able to use quotation marks because you had

23 your unaided recollection; correct?

24 A. Yes, sir.

25 Q. The words you put in quotation marks from your unaided

485

1 recollection many hours later did not appear in Agent Smith's

2 notes, either, did they?

3 A. No, sir.

4 Q. You knew when you got to Herington that Janet Reno had

5 called for the death penalty, didn't you?

6 A. I might have, sir, yes. I didn't watch any TV during those

7 days, so --

8 Q. But you knew these were capital offenses you were

9 investigating; correct?

10 A. Yes.

11 Q. Did Mr. Nichols ask you again on the ride, the car ride at

12 the beginning of it to -- if he was going to be able to see

13 your notes? Do you remember that?

14 A. No, sir.

15 Q. You and Agent Smith agreed that you were not going to

16 question him; is that correct?

17 A. That is correct, sir.

18 Q. Now, you initiated a conversation with him about booby

19 traps; correct?

20 A. I asked a question about booby traps in the house, sir,

21 when he had raised the issue of the search, yes, sir.

22 Q. You were concerned about booby traps, weren't you, sir?

23 A. To any agent entering the house, yes, sir, I was.

24 Q. You wanted to preserve the lives of agents, didn't you,

25 sir?

486

1 A. Or anyone entering the house, yes, sir.

2 Q. And you knew that any right-thinking person sharing your

3 concern about booby traps would want to help you on that

4 subject; correct?

5 A. I was hoping if he asked me, he would give me an honest

6 answer, yes.

7 Q. And he did give you an honest answer, didn't he?

8 A. I never went into his house, sir, so I don't know what they

9 found. I don't have no reason to disbelieve that answer.

10 Q. You thought if you asked that question that Mr. Nichols

11 would respond to it because of a concern he shared with you

12 about the safety of agents; correct?

13 MR. MENDELOFF: Objection, your Honor, as to what the

14 agent thought Mr. Nichols was thinking.

15 THE COURT: Sustained.

16 MR. TIGAR: No further questions.

17 THE COURT: Any questions?

18 MR. MENDELOFF: Just is a couple.

19 RECROSS-EXAMINATION

20 BY MR. MENDELOFF:

21 Q. You remember Mr. Tigar's questions about how you would feel

22 if police wanted to search your house?

23 A. Yes.

24 Q. Remember those questions? Remember being asked would you

25 be concerned if the house -- that the house might be wrecked or

487

1 that you would be there to watch what was happening?

2 A. Yes, sir.

3 Q. And you're an honest, upstanding person; isn't that right?

4 A. Yes, sir.

5 Q. Now, if you had just taken part in a plot to blow up a

6 building and kill 168 people, would you also be concerned about

7 what the police might find?

8 A. Certainly.

9 Q. Especially if included in that house was blasting caps and

10 other materials?

11 MR. TIGAR: Your Honor, I object --

12 THE COURT: Yes. These are rhetorical.

13 BY MR. MENDELOFF:

14 Q. Agent Crabtree, you remember Mr. Tigar's questions about

15 the quotation marks in the 302 -- excuse me -- the quotation

16 marks in your affidavit?

17 A. Yes, sir.

18 Q. Excuse me. And do you remember him asking you whether or

19 not the quotation marks appeared in your 302?

20 A. Yes, sir.

21 Q. About that same subject? Is that correct?

22 A. Yes, sir.

23 Q. What do you write first: the affidavit, or the 302?

24 A. The affidavit.

25 Q. How many hours after hearing those words did you write the

488

1 affidavit?

2 A. Within very few.

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

4 MR. TIGAR: He may be excused, your Honor.

5 THE COURT: Agreed to excuse the witness?

6 MR. MENDELOFF: Yes, you were.

7 THE COURT: You may step down, Agent Crabtree. You're

8 excused.

9 Next witness, please.

10 MR. TIGAR: Agent Foley.

11 THE COURT: Okay. Agent Foley. Come forward and be

12 sworn here at the witness box, please.

13 THE COURTROOM DEPUTY: Please raise your right hand.

14 (John F. Foley was sworn.)

15 COURTROOM DEPUTY: Please have a seat.

16 State your full name and spell your last name for the

17 record.

18 THE WITNESS: John F. Foley, F-O-L-E-Y.

19 DIRECT EXAMINATION

20 BY MR. TIGAR:

21 Q. Agent Foley, my name is Michael Tigar. I represent Terry

22 Lynn Nichols. You are a special agent of the FBI; correct?

23 A. Yes, I am.

24 Q. How long have you been?

25 A. 17 years.

489

1 Q. What's your education?

2 A. I have a bachelor's degree from Northwest Missouri State in

3 personnel management, four-year degree.

4 Q. Between the time you got your degree and the time you

5 joined the FBI, did you do anything?

6 A. Yes, I did.

7 Q. What work did you do?

8 A. I was a clerk for the FBI for a while and also an

9 accounting technician. And I also worked for Time,

- 10 Incorporated, as a publisher rep.
- 11 Q. I want to direct your attention to April 21, 1995. You
- 12 were on duty that day; correct?
- 13 A. Yes, I was.
- 14 Q. What time did you come to work?
- 15 A. Around 8:00.
- 16 Q. Where?
- 17 A. In Junction City, Fort Riley.
- 18 Q. At the command post?
- 19 A. Yes.
- 20 Q. Did you get orders to go to Herington?
- 21 A. No, I did not.
- 22 Q. Did you go to Herington?
- 23 A. That day, yes.
- 24 Q. Who told you to go to Herington?
- 25 A. I believe it was Assistant Special Agent Joe Bross.

490

- 1 Q. Now, what time was that that he told you?
- 2 A. Somewhere close to 1:00.
- 3 Q. And did you go to Herington with anybody?
- 4 A. No, I did not.
- 5 Q. Drive your own vehicle?
- 6 A. Yes.
- 7 Q. Did you have a pager?
- 8 A. Yes.
- 9 Q. Did you have a cellular phone?
- 10 A. No.
- 11 Q. Did you have a radio in your car?
- 12 A. Yes.
- 13 Q. What time did you get to Herington?
- 14 A. Close to 2 p.m.

- 15 Q. Where did you go?
- 16 A. I drove around and looked for an address that I had been
- 17 given, 109 South 2nd Street.
- 18 Q. From whom had you got that address?
- 19 A. From Assistant Special Agent Bross.
- 20 Q. Now, there was a command post in Fort Riley; correct?
- 21 A. That is correct.
- 22 Q. There was a command post in Kansas City; correct?
- 23 A. That's correct.
- 24 Q. Was there one in Oklahoma City that you knew of?
- 25 A. I'm sure there was.

491

- 1 Q. What command posts were you in contact with that day?
- 2 A. The Junction City command post.
- 3 Q. Was Agent Price on duty so far as you could observe that
- 4 day?
- 5 A. I found out later in the day that he was.
- 6 Q. Who was in charge? Who did you report to?
- 7 A. That would have been probably ASAC Bross.
- 8 Q. When you got to Herington and drove around looking for that
- 9 address -- correct?
- 10 A. Yes.
- 11 Q. Did you join with other agents in a surveillance?
- 12 A. I -- yes, I did.
- 13 Q. What time did you get to the Herington police station?
- 14 A. About 3:00.
- 15 Q. Who assigned you to do something at the Herington police
- 16 station?
- 17 A. Tom Price, Special Agent Price.
- 18 Q. What did he tell you to do?

19 A. There had been a phone call placed into the -- into the
20 Herington Police Department to make sure that the situation in
21 there was safe. And then three other agents and myself entered
22 the police station.

23 Q. Who placed the phone call?

24 A. I believe it was Supervisor Chornyak.

25 Q. From Kansas City?

492

1 A. I believe so.

2 Q. Now, you participated in the interview of Mr. Nichols at
3 the police station; is that correct, sir?

4 A. Yes, I did.

5 Q. Now, during that interview, were you able to report to your
6 superiors -- supervisors outside the room things that
7 Mr. Nichols was saying?

8 A. Sometimes.

9 Q. During breaks, would you go out and talk to your superiors?

10 A. Yes, I did.

11 Q. All right. When was the first time you can remember going
12 out and talking to your superiors?

13 A. I believe Special Agent Jablonski and myself departed the
14 first time at 4:53.

15 Q. And when you departed -- when you say "departed," you mean
16 you went up some stairs; is that correct?

17 A. That's correct.

18 Q. Went to the first floor?

19 A. That's correct.

20 Q. Who did you speak to?

21 A. I believe it was Assistant Special Agent Watson.

22 Q. And you reported on what was going on in the interview?

23 A. Yes.

24 Q. Is that right?

25 A. Right.

493

1 Q. Could you see Agent Price around there?

2 A. Yes.

3 Q. He was present?

4 A. Yes.

5 Q. Did you see Agent Gillispie around there?

6 A. Yes.

7 Q. Did -- do you think they could see you from where you were

8 standing?

9 A. Yes.

10 Q. Did either Agent Gillispie or Agent Price come over to you

11 when you went to them at -- I'm sorry -- I forgot the time.

12 4 --

13 A. 4:53.

14 Q. -- 4:53 and tell you anything about what they had heard

15 from Oklahoma City?

16 A. No.

17 Q. When is the first time that day you heard about an arrest

18 warrant for Terry Nichols?

19 A. We came out of a break at 10:50 p.m. That was the first

20 time I was told.

21 Q. And who told you?

22 A. Agent Jablonski.

23 Q. Did he say who he had heard it from?

24 A. No.

25 Q. Mr. Nichols signed some consents in the station that day.

494

1 We've heard testimony about that. Did that happen?
2 A. That's correct.
3 Q. He was presented twice with a -- an interrogation advice of
4 rights form; is that correct?
5 A. That's correct.
6 Q. And he refused to sign both of those; is that right?
7 A. That's correct.
8 Q. Now, when he did sign the consent form for the search, he
9 put UC -- "without prejudice, UCC1-207." Do you remember that?
10 A. That's correct.
11 Q. Did that mean anything to you?
12 A. No, it did not.
13 Q. Had you ever seen anybody sign that way before?
14 A. No.
15 Q. Did he explain what that meant?
16 A. No.
17 MR. TIGAR: Pass the witness.
18 THE COURT: Mr. Mackey.
19 MR. MACKEY:
20 CROSS-EXAMINATION
21 BY MR. MACKEY:
22 Q. Agent Foley, approximately what time did you arrive in
23 Herington on the afternoon of April 21?
24 A. 2 p.m.
25 Q. And shortly thereafter, did you see Agent Steve Smith in

495

1 the area?
2 A. Yes, I did.
3 Q. What did the two of you do?
4 A. We drove over to a parking lot. I believe it was a bank,

5 and Steve got in my vehicle.

6 Q. And after that?

7 A. We drove to a position where we could observe the residence
8 of Terry Nichols, and we parked on 2nd Street, just south of
9 his residence.

10 Q. Shortly after being there, did you see movement or activity
11 at the residence?

12 A. Yes. Shortly thereafter, Mr. Nichols and his wife and his
13 daughter got in Terry Nichols' pickup and backed out and drove
14 past us.

15 Q. Would it be fair to summarize that over the next very few
16 minutes, the vehicle went South on 56 and then shortly
17 thereafter, went back to the police department?

18 A. That's correct.

19 Q. And you learned those facts in about that time period?

20 A. That's correct.

21 Q. You were one of four agents that entered the building
22 shortly after 3; is that your testimony?

23 A. Yes.

24 Q. Before going inside, Agent Foley, was there any discussion
25 about what authority, if any, you or the other agents of the

496

1 FBI would have to arrest Terry Nichols?

2 A. Yes. We discussed we had no authority to arrest or detain
3 Terry Nichols; that there was not a warrant.

4 Q. When you went inside, did you find Mr. Nichols and his
5 family?

6 A. Yes.

7 Q. Where were they?

8 A. They were in the officers' room just to the right of the

9 corridor.

10 Q. On the first floor?

11 A. Yes.

12 Q. Describe Mr. Nichols' demeanor at that moment in time on

13 first seeing him?

14 A. He was calm but he was curious.

15 Q. And how did he express his curiosity?

16 A. He had heard his name on the radio in connection with the

17 Oklahoma City bombing and he -- he was curious as to why his

18 name was on the radio.

19 Q. What response, if any, did you give to that question?

20 A. I told him that I wasn't exactly sure why his name had been

21 mentioned on the radio, but we had some questions that we'd

22 like to ask him.

23 And then he said to me, "That's good, because I have

24 some questions for you, too."

25 Q. And after that brief exchange, did you, Agent Smith, and

497

1 Mr. Nichols then go downstairs?

2 A. Yes.

3 Q. Were you and Mr. Smith, then, the two agents that began the

4 interview of Terry Nichols on that afternoon?

5 A. Yes, we were.

6 Q. Were you in charge of taking notes during that interview?

7 A. No, I was not.

8 Q. Who was?

9 A. Agent Smith.

10 Q. And was he, to your knowledge, in charge of keeping times

11 of various events that took place during the evening?

12 A. Yes. He kept a log.

13 Q. Direct your attention, Agent Foley, to previously admitted

14 Government's Exhibit 3-0, 30. You'll find that in the white
15 binder?
16 A. The interview log?
17 Q. Yes, sir. Have you reviewed that before coming to court
18 today?
19 A. Yes.
20 Q. And where it reflects your presence and the activity
21 associated with you, does it do so accurately?
22 A. Yes.
23 Q. Let me direct your attention to the second entry, 3-26 at
24 3:43. There is a log entry concerning the admonition of
25 Miranda rights?

498

1 A. That's correct.
2 Q. And you were present when that happened?
3 A. Yes.
4 Q. Were you the agent that initiated that process?
5 A. Yes, I was.
6 Q. Would you describe to his Honor exactly what happened.
7 A. I had determined after sitting down there with Mr. Nichols
8 that at this time, it may be appropriate to give Terry Nichols
9 his rights; and I based that on the fact that -- on several
10 considerations: (1) we were in a police station; (2) Timothy
11 McVeigh had been arrested or had been considered -- developed
12 as the prime suspect in the case. Terry Nichols had told us
13 that he wasn't just an acquaintance of Mr. McVeigh's but that
14 he was an associate of McVeigh's; and he also advised us
15 already that Mr. McVeigh had lived with him up in a farm in
16 Decker, Michigan. The truck had been -- that had -- was used
17 in the bombing had been rented in close proximity to Herington,

18 Kansas.

19 Q. And the reasons you've stated for the Court are those that
20 went through your mind at that point in time?

21 A. Yes.

22 Q. This was an individual who was not in custody?

23 A. No.

24 Q. And you had -- told that to Mr. Nichols?

25 A. I'm sorry. I didn't understand you.

499

1 Q. You had mentioned that to Mr. Nichols?

2 A. I told him -- in fact, as we -- as we read the form after
3 we -- during the time that we had the form, I told Mr. Nichols
4 that he was free to go at that time; that we had no -- nothing
5 that we could hold him there with; if he wanted to get up and
6 walk out the door at that time, he could.

7 Q. Having made to the decision to Mirandize Mr. Nichols, what
8 procedure did you employ? What did you do first?

9 A. I handed him the form to read, and I advised him that it
10 was a -- my procedure that I always had the individual that I
11 handed the form to read the form out loud.

12 Q. Did he do so?

13 A. Yes, he did.

14 Q. Did he appear to be able to read it fluently?

15 A. Yes.

16 Q. After doing so, was there any conversation about its
17 content?

18 A. Yes, there was. Mr. Nichols didn't want to sign the form;
19 and I told him it was not necessary that he did -- that he sign
20 the form. I said signing the form is not an admission of
21 anything; the main thing we're trying to do is make sure,
22 Terry, that you understand your rights.

23 Q. Did you ask him, do you read -- do you understand your
24 rights?
25 A. Yes, we did.

500

1 Q. How did he respond?
2 A. Responded in the affirmative.
3 Q. Are the time notations borne on Government's Exhibit 31 --
4 if you'd take a moment to see that -- accurate?
5 A. Yes.
6 Q. Thank you. Approximately how long, Agent Foley, did you
7 remain in the interview after the execution -- or excuse me --
8 the session concerning the Miranda form?
9 A. Until 4:53, I think it was when we departed. Agent
10 Jablonski and myself.
11 Q. At any point while you were still there, did two additional
12 FBI agents arrive?
13 A. Yes, they did.
14 Q. Who was that?
15 A. That was Agent Jablonski and Agent Crabtree.
16 Q. Did you introduce those agents to Mr. Nichols?
17 A. Yes, I did.
18 Q. How did you do so?
19 A. There was a knock on the door. I went over and opened the
20 door. They advised me that they wanted to participate in the
21 interview. I brought them in and introduced them to
22 Mr. Nichols, and they showed him their credentials.
23 Q. Before continuing the interview, did Agent Smith review his
24 notes for the benefit of the two newly arrived agents?
25 A. Yes, he did.

1 Q. Describe to the Court how that was done.

2 A. Agent Smith had advised Agents Jablonski and Crabtree that
3 he was going to go through his notes. He also told Mr. Nichols
4 that if Mr. Nichols wanted to make any corrections or additions
5 to the notes as he read them to him that he could do that and
6 to stop Agent Smith at any time that he decided he wanted to
7 make an addition or correction to it.

8 Q. And did Agent Smith fully and in any detailed fashion
9 review the notes in Mr. Nichols' presence?

10 A. Yes, he did.

11 Q. At any point in that review process, did Mr. Nichols object
12 to his summary of those notes?

13 A. No, he did not.

14 Q. To the contrary, did he add additional information?

15 A. I think he added some information, but I don't remember the
16 specifics.

17 Q. In the review of the notes, did you reach the point where
18 Agent Smith briefed the other agents on the previous admonition
19 of Miranda?

20 A. Yes, we did.

21 Q. And tell the Court again how that was handled.

22 A. Agent Smith advised both the agents that Terry Nichols had
23 been given an advice of rights form, had stated he understood
24 it but did not want to sign the form and that we told him that
25 the most important thing that -- was that everyone in the room

1 ensured that Mr. Nichols was -- had been advised of his rights
2 and understood his rights.

3 Q. And did Mr. Nichols again acknowledge the accuracy of that

4 summary?

5 A. Yes, he did.

6 Q. At any point in the review of the notes, did Mr. Nichols

7 make a request for a copy of those same notes?

8 A. Yes, he did.

9 Q. And how did he do so?

10 A. That request was made to Agent Smith, and he replied in the

11 affirmative.

12 Q. When Mr. Nichols made the request, did he condition it as

13 to a time? Did he say, I want the notes and I want them at a

14 time specific?

15 A. No, he did not.

16 Q. Again, later, and before you leave, was a second form

17 presented to Mr. Nichols?

18 A. Yes, it was.

19 Q. And what was that form?

20 A. That was a consent to search form.

21 Q. If you'll review in the black notebook Defendant's B as in

22 boy, No. 1. I'm sorry. In the black notebook, Agent Foley.

23 A. Oh, I'm sorry.

24 Q. Do you recognize that form?

25 A. Yes, I do.

503

1 Q. Does it bear your signature?

2 A. Yes, it does.

3 Q. Is it the consent form you described previously?

4 A. Yes.

5 Q. Would you tell the Court from your firsthand vantage point

6 what process was used in explaining the content of the form and

7 the execution of it?

8 A. After Steve had brought us up to date with his notes, Agent
9 Jablonski asked Mr. Nichols if he would give consent to search
10 his vehicle and his house, and he agreed to. We went forward
11 from there and filled the form out and signed it.
12 Q. And how in your presence did Mr. Nichols become aware of
13 the content of that form?
14 A. I believe Agent Jablonski read it to him.
15 Q. Did Mr. Nichols ask any questions about what he had read --
16 been read?
17 A. Yes, he did. He asked if it would be possible if he or his
18 wife could be present at the time of the search.
19 Q. Excuse me. And that question came before he ultimately
20 signed the form?
21 A. That's correct.
22 Q. How long did you stay in the interview room after the
23 execution of the consent form?
24 A. The consent form was signed at 4:34, I believe, and we --
25 Agent Jablonski and I departed at 4:53.

504

1 Q. And prior to the time that you departed, do you recall
2 Terry Nichols having admitted to the agents that his vehicle
3 and himself had been in Oklahoma City three days before the
4 bombing?
5 A. That's correct.
6 Q. And that would have been an admission prior to the time
7 that his search -- excuse me -- his pickup was ever searched?
8 A. That's correct.
9 Q. Did you later in the evening take on the role of sitting in
10 with Mr. Nichols during breaks?
11 A. Yes, I did.
12 Q. When was the first time?

13 A. That would have been -- the first one would have been at
14 6:10 p.m.

15 Q. What happened during that time?

16 A. During that time, Agent Jablonski and I came downstairs
17 and -- to sit with him on a break. Agents Smith and Crabtree
18 went upstairs. We told Terry Nichols we had some pizza and
19 anything he wanted to drink and if he needed to use the rest
20 room, he could do that.

21 Agent Jablonski went upstairs to get the pizza. As he
22 did so, I engaged in some conversation with Mr. Nichols.

23 Q. And what general subject matter?

24 A. Basically, I asked him what else he did besides trade in
25 Army surplus; and he advised that he -- about two years ago --

505

1 I'm sorry -- he advised that he had sold fertilizer to farmers
2 and it was without provocation from me, kind of described what
3 it was and how he did it.

4 Q. Shortly after that conversation began, did Agent Jablonski
5 return to the room?

6 A. Yes, he did.

7 Q. Were the two of you present when there were later
8 discussions about the fuel meter?

9 A. Yes.

10 Q. And were the content -- excuse me. Was the content of that
11 conversation about the fuel meter later reduced in writing to a
12 302?

13 A. Yes, it was.

14 Q. And you've seen that before coming to court?

15 A. Yes.

16 Q. Does it accurately summarize what was said by Mr. Nichols

17 about that subject matter?

18 A. Yes.

19 Q. During that same break, Agent Foley, did you ask

20 Mr. Nichols' cooperation concerning a potential search of his

21 residence in Herington?

22 A. I'm sorry. Could you repeat that?

23 Q. Did you ask for Mr. Nichols' cooperation in any way

24 concerning a potential search of his residence?

25 A. Yes.

506

1 Q. What did you do?

2 A. I'm sorry. Was that during that first break, or --

3 Q. I'm sorry. I'm referring perhaps to the second break and a

4 diagram.

5 A. In the second break, I sat again with Mr. Nichols; and

6 Agent Jablonski went upstairs to get him some water.

7 Mr. Nichols requested to use the rest room, which I showed him

8 where it was. When he came back, I advised him that the agents

9 who were going to search his house -- for their safety, if it

10 would be possible for him to do a sketch of the interior of his

11 residence.

12 Q. That was a request that you made to Mr. Nichols?

13 A. Yes.

14 Q. How did he respond?

15 A. He responded in the affirmative.

16 Q. What was done?

17 A. I provided him some paper and he went to work.

18 Q. And did you sit there while he drew the diagram of his

19 residence?

20 A. Yes.

21 Q. I direct your attention now, Agent Foley, to Government's

22 Exhibit 33 in the white binder. It would be to your left.

23 Does Exhibit 33 represent the drawing that Mr. Nichols

24 made in your presence that evening?

25 A. Yes, it does.

507

1 Q. Was it dated and signed?

2 A. Yes.

3 Q. Do you find your signature on there?

4 A. Yes.

5 Q. Could you describe for the Court the detail that is

6 depicted on Exhibit 33?

7 A. It's a detailed sketch of the residence and the garage at

8 109 South 2nd Street, which was Terry Nichols' residence.

9 Q. Does it appear to have subparts to the diagram by showing

10 what would be sub-floor level or basement levels below the

11 first floor?

12 A. Yes, it does.

13 Q. Did you ask Mr. Nichols to diagram it in that fashion?

14 A. No.

15 Q. That was his idea?

16 A. That was his idea.

17 Q. Do you find also in the same diagram specific annotations

18 about the location of ammunition and firearms?

19 A. Yes, I do.

20 Q. How are they denoted on that exhibit?

21 A. Guns and ammunition are located with an X on the diagram,

22 and ammunition only is located by an X with a circle around it.

23 Q. Whose idea was that?

24 A. That was his idea.

25 Q. Agent Foley, did you return to the basement in the

1 Herington Police Department shortly after midnight with Agent

2 Jablonski?

3 A. Yes, I did.

4 Q. What was the purpose?

5 A. For another interview.

6 Q. Excuse me?

7 A. Further questioning.

8 Q. And prior to going downstairs, was it that point in time

9 that you came to know that Terry Nichols was named in a

10 material witness warrant?

11 A. Yes, we knew at that time.

12 Q. Describe to the Court what took place when you and Agent

13 Jablonski went downstairs.

14 A. Agent Jablonski and myself had decided that we were going

15 to take somewhat of an aggressive approach to Mr. Nichols and

16 advised him that we didn't believe that what he had told us was

17 completely the truth and that we wanted the truth from him;

18 that we knew that he knew more than he was telling us and we

19 wanted to know the facts and the truth.

20 Q. And in sum and substance, is that what happened?

21 A. Yes.

22 Q. Did you outline to Mr. Nichols the basis for your disbelief

23 of at least portions of his statement to the FBI that evening?

24 A. Yes, we did.

25 Q. At the close of that session, did Mr. Nichols change his

1 story?

2 A. No, he did not.

3 Q. At the close of that discussion, conversation, or
4 confrontation, did you or Agent Jablonski read his Miranda
5 right yet a second time that evening?
6 A. Yes. Agent Jablonski read him his rights again.
7 Q. Turning your attention to Government's Exhibit 34, again in
8 the white binder, identify that, please.
9 A. That's the advice of rights form, and that's the advice of
10 rights form that we gave him at 12:25.
11 Q. Were the contents -- that is, the words that appear on
12 34 -- read out loud to Mr. Nichols at that time?
13 A. Yes, they were, by Agent Jablonski.
14 Q. Does that form denote a time?
15 A. Yes, it does.
16 Q. At the upper right-hand corner, what time appears?
17 A. 12:25 a.m.
18 Q. And in the bottom left-hand corner?
19 A. 12:27 a.m.
20 Q. And the duration being that which it took to provide the
21 rights to Mr. Nichols?
22 A. That's correct.
23 Q. Did you and Agent Jablonski sign the form?
24 A. Yes, we did.
25 Q. Did Mr. Nichols?

510

1 A. No. He refused to sign it.
2 MR. MACKEY: One moment.
3 Nothing else.
4 THE COURT: Were you intending to offer 33? I don't
5 think we have that.
6 MR. MACKEY: As well as 34, your Honor. Thank you.

7 THE COURT: I meant 34. We had 33. Any objection to
8 34?

9 MR. TIGAR: No, your Honor.

10 THE COURT: Received.

11 REDIRECT EXAMINATION

12 BY MR. TIGAR:

13 Q. Mr. Nichols said nothing to you after the second Miranda
14 warnings; correct?

15 MR. JONES: Excuse me, your Honor. I'm sorry. I have
16 some questions I want to ask the witness. That's all right. I
17 can wait. I just didn't want to waive my right.

18 THE COURT: All right.

19 MR. JONES: Go ahead.

20 BY MR. TIGAR:

21 Q. Mr. Nichols said nothing to you after the second Miranda
22 warnings; correct?

23 A. No, he did not.

24 Q. You raised your voice when you talked to him?

25 A. I did not.

511

1 Q. Agent Jablonski raised his voice?

2 A. He raised his voice.

3 Q. Did he kick the chair?

4 A. No.

5 Q. Did the two of you decide you were going to take a
6 confrontational approach?

7 A. I would describe it as an aggressive approach.

8 Q. An aggressive approach. Now, what, if any, was the
9 connection between your deciding to get aggressive and learning
10 that a federal judge had issued a warrant to bring Mr. Nichols
11 to the grand jury?

12 A. It just meant that decision was a last-ditch effort to get
13 Mr. Nichols to tell the truth.
14 Q. So I want -- I want to be fair to you, Agent. When you
15 heard that a federal judge had directed Mr. Nichols taken into
16 custody as a material witness, what did you understand to be
17 the procedure? What was going to happen?
18 A. That Mr. Nichols would be arrested.
19 Q. And did you think he would then be brought forthwith
20 someplace?
21 A. Yes.
22 Q. Had you seen the material witness warrant?
23 A. No.
24 Q. And that provoked you to make this last-ditch effort; is
25 that right?

512

1 A. No. The material witness warrant did not provoke me to
2 make that.
3 Q. Well, what provoked you to make the last-ditch effort, sir?
4 A. The -- we didn't believe he was telling the truth, and we
5 knew that this was a last chance. I mean this was the last
6 time that we would -- we would take -- try to get him to tell
7 the truth.
8 Q. Yeah. It was getting pretty late, wasn't it?
9 A. It was late.
10 Q. Now, when you first met up with Mr. Nichols, you had heard,
11 had you not, sir, that he was an associate of Mr. McVeigh;
12 correct?
13 A. When we first met up with him?
14 Q. Yes.
15 A. No, I wasn't sure of that.

16 Q. Had you heard that information?
17 A. No.
18 Q. You had had a conference with your fellow agents about him
19 being free to go; is that correct?
20 A. Yes.
21 Q. Who had that conference with you?
22 A. Agent Price and Agent Smith.
23 Q. Did Mr. Price tell you on what basis he was giving you the
24 information that Mr. Nichols was free to go?
25 A. No, he did not.

513

1 Q. Did he tell you what to do if Mr. Nichols got up and left
2 the police station?
3 A. No.
4 Q. Did anybody that day tell you that if Mr. Nichols left the
5 police station, he should be followed?
6 A. No.
7 Q. Did Agent Price direct you to try to get Mr. Nichols to
8 sign a waiver of rights form?
9 A. I'm sorry. Could you repeat that?
10 Q. Did Agent Price direct you to try to get Mr. Nichols to
11 sign a waiver of rights form?
12 A. No.
13 Q. How did you become aware that Agent Chornyak had been in a
14 telephone conversation with the police station?
15 A. I believe it was Agent Price that told us that somebody
16 from the command post was making the call, and then we found
17 out it was Agent Chornyak that made the call.
18 Q. When did you find out it was Agent Chornyak?
19 A. I don't recall.
20 Q. Agent Price in that first briefing before you went into the

21 police station let you know that he had been in touch with the
22 command post; correct?
23 A. That's true. That's correct.
24 Q. Now, had you been aware when you went into the police
25 station that Mr. Nichols' name had been mentioned on radio and

514

1 television?
2 A. Yes.
3 Q. Did you know why it had been mentioned?
4 A. No.
5 Q. Did you know -- what had the news reports said about it?
6 A. It was in connection with the Oklahoma City bombing.
7 Q. So when Mr. Nichols asked you why was his name being
8 mentioned on radio and television, you knew that it was in
9 connection with the Oklahoma City bombing; correct?
10 A. That's correct.
11 Q. Did you tell Mr. Nichols, yes, Mr. Nichols, I know why your
12 name is on radio and television; it's in connection with the
13 Oklahoma City bombing?
14 A. No. I just told him that we had questions.
15 Q. When you presented Mr. Nichols with the advice of rights
16 form, you wanted to be sure he understood his rights; correct?
17 A. That's correct.
18 Q. You wanted him to know the relevant facts, didn't you?
19 A. That's correct.
20 Q. You thought he was -- it was important for him to know the
21 relevant facts; right?
22 A. I don't know what you mean by "relevant facts." I wanted
23 him to understand his rights.
24 Q. And that was at 4:53?

25 A. No, that was at 4:26.

515

1 Q. 4:26. You wanted Mr. Nichols to be -- you wanted his --
2 any consents you obtained from him to be free and voluntary;
3 correct?

4 A. That's correct.

5 Q. Now, I want to be sure I have the personnel. When you
6 talked about no authority to arrest, that was Agent Price,
7 yourself, Agent Jablonski and who else?

8 A. No, it wasn't Agent Jablonski.

9 Q. I'm sorry.

10 A. It was Agent Price, Agent Smith, and myself; and I believe
11 Agent Gillispie was present, too, but I'm not positive.

12 Q. Were you aware that Agent Gillispie had been in touch with
13 the command post?

14 A. No.

15 Q. During the evening, did you see Chief Kuhn in the police
16 station?

17 A. Yes, I did.

18 Q. Was he there most of the evening?

19 A. Yes, he was.

20 Q. Did anyone at any time during the evening tell you that the
21 federal public defender from Kansas had called the police
22 station?

23 A. No, I don't believe so.

24 Q. Have you testified in criminal cases in Kansas where
25 defendants are represented by the public defender?

516

1 A. Yes.

2 Q. Do you know who the public defender is?
3 A. For that -- for the state of Kansas?
4 Q. For Kansas, yes.
5 A. No, I don't.
6 MR. TIGAR: Nothing further.
7 THE COURT: Mr. Jones, you have a -- some questions?
8 MR. JONES: I do, your. It might take a moment. I
9 can start or --
10 THE COURT: Well, I'd like to -- I don't know. You
11 say a moment.
12 MR. JONES: It will be longer than a moment, in
13 fairness to the Court.
14 THE COURT: Well, I think we will take a break for the
15 benefit of the reporter now.
16 We're going to take a recess.
17 And you may step down, but please don't discuss your
18 testimony during the recess with anyone.
19 When we conclude for the afternoon, I want to discuss
20 scheduling with counsel and including proceeding on Saturday.
21 We'll be in recess 20 minutes.
22 (Recess at 3:20 p.m.)
23 (Reconvened at 3:39 p.m.)
24 THE COURT: Please be seated. Mr. Jones?
25 MR. JONES: Oh, yes.

517

1 CROSS-EXAMINATION
2 BY MR. JONES:
3 Q. Mr. Foley, how long have you been with the FBI?
4 A. 17 years.
5 Q. What was your first job with the FBI?

6 A. I was a clerk.

7 Q. And how long were you a clerk?

8 A. Approximately 19 months.

9 Q. And from being a clerk, what was your next position?

10 A. I was an accounting technician.

11 Q. I'm sorry?

12 A. Accounting technician. Financial analyst.

13 Q. And when did you become a special agent?

14 A. In May of '79.

15 Q. So on April 21, 1995, you had been a special agent with the

16 Federal Bureau of Investigation for 16 years; is that correct?

17 A. Close enough.

18 Q. And I assume that by being a special agent, you had all of

19 the rights and privileges and duties and responsibilities,

20 education and training that one would expect of someone that

21 had been a special agent for 15 or 16 years?

22 A. That's correct.

23 Q. And in April of 1995, did you have a specialty as a special

24 agent? Was there a particular type of case or criminal offense

25 that you worked?

518

1 A. I was assigned to a violent crime squad in Kansas City.

2 Q. All right. And how long had you been associated with

3 violent crimes?

4 MR. MACKEY: Objection, your Honor. Perhaps the

5 investigation of the same.

6 MR. JONES: I'm sorry. I didn't hear you, Mr. Mackey.

7 THE COURT: I didn't hear the objection, either.

8 MR. MACKEY: I think he means the investigation of

9 violent crimes.

10 BY MR. JONES:

11 Q. Yes. That's correct. Kind of like being a criminal lawyer
12 as opposed to being a criminal defense lawyer. I'm sorry. The
13 investigation of violent crimes, how long had you been
14 associated with that?

15 A. I would say a total of probably ten years.

16 Q. And I take it that there's no dispute between you and me
17 that the explosion of a bomb that would kill many people and do
18 the damage that the Alfred P. Murrah Building bomb did is
19 certainly a violent crime?

20 A. Yes.

21 Q. Had you investigated other bombings?

22 A. No.

23 Q. Okay. Had you been involved in other major cases?

24 A. Yes.

25 Q. And within the FBI, what is a major case?

519

1 A. A major case, I would define as a commitment of numerous
2 special agents and numerous sources assets of the FBI towards
3 that investigation.

4 Q. Might include agents certainly from more than one SAC or
5 more than one resident agent?

6 A. That's probable.

7 Q. Over more than one state?

8 A. That's probable.

9 Q. And involve different command centers, perhaps mobile
10 command centers, and fairly sophisticated communications?

11 MR. MACKEY: I object. I object both to --

12 THE COURT: Where are we going with this?

13 MR. JONES: I'm laying a foundation, your Honor, and
14 I'm almost through; but I just want to establish this agent is

15 familiar with techniques of communication within the FBI which
16 I think are important on the afternoon of April 21 and that he
17 would have the knowledge to answer those questions as opposed
18 to Mr. Smith or Mr. Crabtree, who were with resident agencies
19 and had not had the experience that gentleman had.

20 THE COURT: Maybe you could put it in one question.

21 BY MR. JONES:

22 Q. Well, are you -- well, I'll just go to the heart of it.
23 Can you explain to the Court, please, how, given the commitment
24 of FBI resources in this case beginning with an announcement by
25 the President of the United States, coupled with multiple

520

1 command centers and communications going back and forth, that
2 somehow or the other, there was a six-hour delay before your
3 agents in Herington, Kansas, were informed that there was a
4 warrant for the arrest of Mr. Nichols as a material witness?

5 MR. MACKEY: Your Honor, I object to the form of that
6 question. That's not a question. That's a speech.

7 THE COURT: Overruled. Answer if you can.

8 BY MR. JONES:

9 Q. You may answer the question.

10 A. I can't explain to you why that happened. I can tell you
11 that what you're speaking of as far as setting up command posts
12 and command centers, that we were in the process of doing that.
13 That agents only -- only eight or ten agents out of the Kansas
14 City -- that's excluding the resident agencies -- had departed
15 on the morning of the 20th for Fort Riley and Junction City;
16 and we didn't even arrive until the late afternoon -- I should
17 say about 1 p.m. on the 20th.

18 Q. We're talking about the afternoon of the 21st, which is a
19 lifetime later in this case. 24 hours later, isn't it?

20 A. It's not a lifetime. It's 24 hours, that's correct.
21 Q. Well, in this case, a lot happened in that 24 hours, didn't
22 it?
23 A. You could say that.
24 Q. Now, could it be, Mr. Foley, that the reason for the delay,
25 if there was in fact a delay, is that as long as the agents

521

1 questioning Mr. Nichols didn't have to tell him that there was
2 a warrant for his arrest, then the chances that he would
3 continue to talk were very good?
4 MR. MACKEY: Objection.
5 THE COURT: Overruled.
6 THE WITNESS: I would regard that as your opinion.
7 BY MR. JONES:
8 Q. I'm asking for your opinion, sir, and it is my opinion.
9 A. Okay. Can you restate the question.
10 Q. Yes, sir. Isn't it true that the reason it wasn't
11 communicated to Herington was that you had Terry Nichols in
12 there giving a, quote, voluntary statement but that if he was
13 informed that there was a warrant for his arrest as a material
14 witness and he could no longer give -- no longer leave, there
15 was a good chance he would quit talking to you and ask for a
16 lawyer?
17 A. Well, we had advised him that he could leave.
18 Q. I understand. But once the material warrant -- arrest for
19 material warrant was issued -- excuse me -- warrant for his
20 arrest as a material witness, he couldn't leave, could he?
21 A. Well, we would have arrested him once the warrant was
22 issued, that's correct.
23 Q. Okay. So he couldn't have left; right?

24 A. That's true.

25 Q. But you continued to -- you, the agents that were there --

522

1 he was advised even after the warrant was issued but before you

2 all claim you knew it that he could leave?

3 A. That's correct.

4 Q. Now, in the afternoon of April 21, when you and these other

5 agents are down at the Herington police station, is there any

6 more important criminal investigation going on that afternoon

7 by the FBI?

8 A. Not in that jurisdiction.

9 Q. And in fact, this investigation involved multiple

10 supervisory special agents up to and including the Deputy

11 Attorney General of the United States?

12 A. That's possible.

13 Q. And there were communication telephone lines and

14 information being exchanged back and forth even down to

15 ex-wives talking about what James Nichols might or might not do

16 on his farm?

17 A. That's true.

18 Q. About an ex-co-worker of Tim McVeigh that supposedly

19 recognized him on television?

20 A. That's true.

21 Q. About bottle bombs, or whatever you want to call them,

22 being exploded at the Nichols farm?

23 A. That's true.

24 Q. Along with multiple other leads, including people from

25 Germany that might have some connection?

523

1 A. That's correct.

2 Q. And all of that passed through the teletypes and the
3 communication and between cars and offices without any
4 problems, didn't it?

5 A. I think so.

6 Q. Okay. And in fact, when you knew that Terry Nichols was at
7 the Herington Department of Public Safety and you wanted to
8 talk to him, you didn't have any trouble finding him, did you?
9 That information went immediately?

10 A. Well, we located his residence and had followed him over
11 there.

12 Q. Right. But here you've got a situation down in Oklahoma
13 City where you've got the chief judge of the United States
14 District Court at the FBI command center signing warrants, a
15 federal magistrate judge signing warrants, the deputy chief of
16 the criminal division; and somehow or the other, that
17 information didn't get to Herington for over six hours?

18 A. Well, I wasn't made aware of it until after 10:50.

19 Q. Was anyone else at Herington aware of it, Mr. Foley, and
20 just didn't tell anybody?

21 A. I wouldn't know that.

22 Q. You indicated in response to a question asked of you by the
23 Government that there came a time when you adopted a
24 confrontational -- or rather Agent Jablonski tried a
25 confrontational approach that the agents had not used prior to

524

1 that time?

2 A. I believe we said aggressive approach.

3 Q. The Government's brief says confrontational, doesn't it?

4 A. Yes.

5 Q. Well, confrontational/aggressive. That means that prior to
6 that point, you hadn't been confrontational or aggressive, had
7 you?

8 MR. MACKEY: Your Honor, could I object? This is
9 beyond the scope of any 804 question.

10 THE COURT: Yes,

11 MR. MACKEY: I don't see the connection.

12 THE COURT: It's directly on point with respect to the
13 requirements for 804(b)(3).

14 MR. MACKEY: Thank you, your Honor.

15 BY MR. JONES:

16 Q. You had not been confrontational -- and by "you," I mean
17 the agents in the room. I don't mean to single you out, sir.
18 You all had not been confrontational or aggressive to that
19 point?

20 A. That's correct, and I never was confrontational with
21 Mr. Nichols.

22 Q. I understand. But once you knew at Herington that there
23 was a warrant for his arrest as a material witness and he
24 couldn't leave freely, then you could get confrontational and
25 aggressive because if he said, I'm not going to take any more

525

1 of this, I'm going to leave, he couldn't leave, could he?

2 A. Well, I believe we based that final part of the questioning
3 on the fact that it was going to be the last time we were going
4 to question him, not because the material witness warrant had
5 been issued.

6 Q. Well, why was it the last time you were going to question
7 him? It's already close to midnight. You'd been at it since 2
8 or 3:00.

9 A. I believe he was getting -- he wasn't offering any new

10 information.

11 Q. I see. Well, can we at least agree that this decision to
12 become confrontational and aggressive occurred after those of
13 you at the Herington police station knew that there was a
14 warrant for his arrest as a material witness?

15 A. Yes, it did.

16 Q. All right. Thank you, sir. You have told me that you do
17 not know why there was a six-hour delay between the time the
18 warrant was issued and you were informed in Herington. Do you
19 remember that?

20 A. Yes.

21 Q. Okay. Well, I -- and I appreciate your answer. So I'll
22 ask you sir, do you know any reason which would explain it?

23 A. No.

24 Q. A year later, you don't know a reason for it?

25 A. No.

526

1 Q. Are you curious about the delay?

2 A. No.

3 Q. Would you agree with me that it was fortuitous for your
4 examination of Mr. Nichols that you weren't informed?

5 A. No.

6 Q. Well, let me ask you, sir, do you know why once you were
7 informed you didn't go in and tell him immediately?

8 A. We just made a decision not to.

9 Q. For what reason?

10 A. I can't tell you. I don't -- I don't recall. It wasn't my
11 decision to make.

12 Q. Isn't the -- the reason is, the minute you told him, you
13 ran the risk that he wouldn't talk to you anymore?

14 A. I believe Mr. Nichols wanted to tell us a story that night,
15 which he did.
16 Q. Well, I understand what you believe. My question to you,
17 sir, is that you didn't tell him, did you?
18 A. No.
19 Q. So there had to be a reason why you didn't tell him.
20 A. Not until we arrested him.
21 Q. Okay. I'm just asking you to tell me the reason you waited
22 a couple hours before you told him even once you knew.
23 A. I can't give you a reason.
24 Q. Is that because if you gave me the reason, it would also be
25 the same reason why there was a, quote, delay, close quote, of

527

1 six hours before the FBI agents in Herington were, quote,
2 informed, close quote, there was a warrant?
3 A. I don't believe that's the case.
4 Q. Now, in response to a question asked to you by the
5 Government, you said that you gave Mr. Nichols his Miranda
6 rights because of something concerning Mr. McVeigh?
7 A. Well, that was part of it; correct.
8 Q. What was the other part?
9 A. I believe there was some -- there was five different
10 reasons why. I should say several different reasons. One, we
11 said he was at a police station; that he had -- that the truck
12 had been rented in close proximity, Junction City to Herington;
13 that Mr. Nichols had advised that he knew Mr. McVeigh, he was
14 an associate, not just an acquaintance of his.
15 Q. That's three. Are there any others?
16 A. Well, there were when I said them. I'm sure I can recall
17 them.
18 Q. You've studied the Miranda decision, haven't you?

19 A. I'm aware of the form, what it means.
20 Q. Well, those aren't reasons you give someone the Miranda
21 warnings, are they? Isn't it true that Miranda warnings are
22 given to someone in custody? And if there's anything that we
23 have established, it's that you all kept telling him he wasn't
24 in custody?
25 A. No. But -- that's correct, he was not in custody. But we

528

1 do give them to someone who could possibly be or be a potential
2 suspect.
3 Q. Well, at that point, on a scale of 1 to 100, the
4 possibility that Mr. Nichols was going to be a potential
5 suspect was about 250, wasn't it?
6 A. I can answer your question by saying I gave Mr. Nichols his
7 rights for his benefit as well as ours so that he understood
8 his rights that day.
9 Q. I understand, and I appreciate your candor. It was for his
10 benefit as well as yours, meaning the FBI. What was the
11 benefit to the FBI, sir?
12 A. Well, it would preserve any statements that he made for any
13 court proceedings later on.
14 Q. Exactly. So it was a little insurance?
15 A. You could say that.
16 Q. Was it a little insurance not to tell him about the warrant
17 for his arrest?
18 A. No.
19 Q. Now, the subject has been asked of you, sir, concerning the
20 statement made about Mr. Nichols wanted a copy of the notes,
21 and the representation was made that he would get them but he
22 didn't ask for a specific time and a specific time wasn't

23 promised. Do you recall that?
24 A. That's correct.
25 Q. I'm paraphrasing. If I paraphrase unfairly, you correct

529

1 me.
2 Well, of course, he would get the notes or 302 if he
3 were a defendant under Rule 16, wouldn't he?
4 A. I believe that's correct.
5 Q. Okay. Well, tell me under what other existing rule or
6 regulation of the Federal Bureau of Investigation he would get
7 notes and that that representation could be made to him other
8 than as a defendant in a criminal case?
9 A. I don't believe there are.
10 Q. As a matter of fact, the standard form of the 302 says that
11 that's the property of the FBI and is merely loaned to your
12 agency, isn't it?
13 A. That's correct.
14 Q. Well, sir, when he was told that he would be able to get
15 the notes later, isn't that, sir, a recognition by the agent
16 that told him that that he was a suspect at that time and
17 probably going to be a defendant?
18 A. No --
19 Q. The target of the investigation?
20 A. No, I don't believe so.
21 Q. Well, then tell me, sir, what other rule, regulation or
22 practice would authorize a special agent of the FBI to say to
23 someone that was merely being interviewed that he would get a
24 copy of the notes?
25 A. I can't tell you.

530

1 Q. Because there isn't any, is there?
2 A. I don't believe there is.
3 Q. Sir, this 302 that has been identified was a compilation of
4 the work of, what, four agents? I believe all of you
5 initialled it. Is that correct?
6 A. That's correct.
7 Q. And this is one long, continuous interview stretching over
8 a period of, what, eight, nine hours?
9 A. Yes.
10 Q. And it's very hard to pick and choose, isn't it?
11 A. It can be.
12 Q. Events are developed in sequence, chronologically,
13 geographically, by identity of a person, are they not?
14 A. That's correct.
15 Q. If you take one part of it out and you don't have the rest
16 of it, you can get a false impression from just reading that
17 part, can't you?
18 A. That's possible.
19 MR. JONES: Nothing further. Thank you, sir.
20 THE COURT: Did that generate any questioning from
21 you, Mr. Mackey?
22 MR. MACKEY: Just two, your Honor.
23 THE COURT: Then I'll see if you have some, too,
24 Mr. Tigar.
25 RE-CROSS-EXAMINATION

1 BY MR. MACKEY:
2 Q. Agent Foley, earlier, there were a number of questions
3 being asked of you in quick fashion, and I think you testified

4 that the Miranda was done at 4:26. Would you look at the log
5 and see what time the log reflects that was done.

6 A. The log is number -- I believe it was 3:26. If I made a
7 mistake, I'm sorry. That was 3:26.

8 Q. That's the only purpose for my question. Thank you.

9 Do you recall yourself, Agent Foley, before you went
10 to the Herington Police Department, having heard the name of
11 Terry Nichols on TV or radio?

12 A. No, I don't believe I had.

13 Q. You told the Court that in the course of your presence with
14 Mr. Nichols, you told him that he was free to go.

15 A. That's correct.

16 Q. Do you remember approximately what time it was you made
17 that statement to him?

18 A. It would have been between 3:26 and 3:43.

19 Q. And based upon your own state of information -- not someone
20 else's, but your own -- was that true or false when you told
21 him?

22 A. That was true.

23 MR. MACKEY: Nothing else.

24 THE COURT: Now Mr. Tigar.

25 REDIRECT EXAMINATION

532

1 BY MR. TIGAR:

2 Q. Do you remember saying earlier that you had heard

3 Mr. Nichols' name on radio or TV?

4 A. I may have. I don't believe I heard it that day, though.

5 Q. Mr. Jones asked you about whether you'd heard about leads
6 concerning people from Germany. Do you remember him asking you
7 that?

8 A. Yes.

9 Q. Were you aware on that day of any leads about people from
10 Germany on the 21st?

11 A. No, not on that day.

12 Q. Did you become aware of leads about people from Germany
13 that came into the Fort Riley or Kansas City command post?

14 A. I couldn't tell you how I learned about those leads.

15 Q. You did learn about them at some time in the time frame
16 April 20, 21, 22, '95?

17 A. I don't recall.

18 Q. But you did learn about them?

19 A. Yes.

20 Q. Whose decision was it not to tell Mr. Nichols that the
21 material witness warrant had been issued? You said it wasn't
22 yours?

23 A. No. I have no idea whose it was.

24 Q. You knew it had been issued; right?

25 A. After 10:50.

533

1 Q. Yes. And you didn't tell him; right?

2 A. No, I did not.

3 Q. Did someone tell you not to tell him?

4 A. No.

5 Q. So you made up your own mind not to tell him?

6 A. That's correct.

7 Q. Well, why did you make up your own mind not to tell him?

8 A. Well, after 10:50, the next time we went in was when we
9 intended to arrest him, and I knew we were going to tell him
10 then that we were going to arrest him and that we had a warrant
11 for his arrest.

12 Q. Did you see Mr. Nichols at any time between 10:50 and when

13 you went in to arrest him?
14 A. No.
15 Q. How did you learn the warrant was issued?
16 A. Mr. Jablonski -- or Agent Jablonski told me.
17 MR. TIGAR: Thank you. I have nothing further.
18 THE COURT: Is this witness now excused?
19 MR. TIGAR: Yes, your Honor.
20 THE COURT: All right. Excuse me. You may step down.
21 You're excused.
22 Next, please.
23 MR. TIGAR: Agent Jablonski, your Honor.
24 THE COURT: All right. If you'll come forward to be
25 sworn.

534

1 (Daniel Jablonski was sworn.)
2 COURTROOM DEPUTY: Please be seated. State your full
3 name and spell your last name for the record.
4 THE WITNESS: My name is Daniel Jablonski,
5 J-a-b-l-o-n-s-k-i.
6 DIRECT EXAMINATION
7 BY MR. TIGAR:
8 Q. You're a special agent of the FBI?
9 A. I am.
10 Q. How long have you been?
11 A. Been a special agent for over 21 years.
12 Q. Did you have a job before that?
13 A. I did not. I went directly from college into the FBI.
14 Q. Where did you go to college?
15 A. University of Nebraska.
16 Q. And you have a degree in what, sir?
17 A. Business administration.

18 Q. Did there come a time on the evening of the 21st of April,
19 1995, when you got aggressive with Terry Nichols?
20 A. There was.
21 Q. What time did you get aggressive with Mr. Nichols?
22 A. 12:11. On the 22nd.
23 Q. Did you decide to get aggressive with Mr. Nichols on your
24 own or did somebody tell you to?
25 A. I was advised that I was to go in there and ask the tough

535

1 questions to interview Mr. Nichols and give him the hard
2 questions.
3 Q. Who told you that?
4 A. SAC David Tubbs.
5 Q. Did there come a time on the evening of the 21st of April,
6 1995, when you learned that a warrant had been issued for
7 Mr. Nichols' arrest?
8 A. Yes.
9 Q. When was that?
10 A. It would have been sometime after 10:50 in the evening.
11 Q. Now, after you heard about the warrant -- who told you that
12 the warrant was issued?
13 A. David Tubbs or Randy Rathbun, United States Attorney.
14 Q. When's -- after you heard that a warrant had been issued,
15 when's the next time you saw Mr. Nichols?
16 A. At 12:11 on the 22nd.
17 Q. Did anybody go and tell the agents who were interviewing
18 Mr. Nichols that the warrant was issued?
19 A. No.
20 Q. Did you think it was important that they know it?
21 A. No.

22 Q. What did you think the issuance of the warrant meant, sir?

23 A. There was an arrest warrant based upon a material witness

24 arrest warrant. Nothing more than a warrant was issued. We

25 were not under -- if I have a bank robbery arrest warrant for

536

1 an individual, I'm not under an obligation to arrest them right

2 there and then on the spot.

3 Q. Oh. That's your interpretation of what a material witness

4 warrant is?

5 A. I'm just saying that it made no difference having knowledge

6 that the warrant was issued, made no difference to me to knock

7 on a door to tell them, made no difference to me.

8 Q. Did you see the warrant?

9 A. No, I did not.

10 Q. Have you seen it since then?

11 A. Yes.

12 Q. Do you remember the word "forthwith" being in there?

13 A. I did not read that. I did not -- I just know -- saw a

14 Xerox copy sometime well after the incident.

15 Q. Did you read the Xerox copy?

16 A. Not with much detail, no.

17 Q. So you don't remember the word "forthwith" being in there?

18 A. No, I do not.

19 Q. Had you ever seen a material witness warrant before

20 April 21, 1995?

21 A. No, I had not. No, I did not.

22 Q. So you didn't know what the procedure was on a material

23 witness warrant; is that right?

24 A. As far as I'm concerned, I'm not -- I would like to look at

25 a copy of an actual arrest warrant of any other kind to see if

1 that same word appears on there.

2 Q. I'm asking you, sir, from your recollection on April 21,
3 1995, did you see or -- excuse me. Had you ever seen a
4 material witness warrant?

5 A. No, I had not. No, I did not.

6 Q. When you heard that one had been issued, did you ask
7 Mr. Rathbun, What am I supposed to do?

8 A. That wouldn't be the normal course of events. We were not
9 instructed to do anything additional, and I did not ask Rathbun
10 anything.

11 Q. Did anyone tell you what to do about the warrant?

12 A. No.

13 Q. Did anyone in your presence discuss what was going to be
14 done about the warrant?

15 A. At -- before we went in at 12:11, I was advised that I was
16 to place Mr. Nichols under arrest based on the material witness
17 warrant.

18 Q. And that's the only discussion you had?

19 A. Correct.

20 Q. Did you have a briefing before you went into the Herington
21 police station by other agents of the FBI about what procedures
22 you were to follow?

23 A. No.

24 Q. What time did you get to the Herington police station?

25 A. Approximately 4:00.

1 Q. Where did you come from?

2 A. I came from Fort Riley, Kansas.

3 Q. Who directed you to come to Herington?

4 A. The assistant special agent in charge.

5 Q. Who was that?

6 A. Joseph Bross. B-r-o -- B-r-o-s-s.

7 Q. Had you talked to special Agent Chornyak before?

8 A. No.

9 Q. Before that day?

10 A. No, I did not.

11 Q. Did you know that the Fort Riley command post was in touch

12 with Special Agent Chornyak?

13 A. No, I did not.

14 Q. Did you know that there was a command post in Kansas City?

15 A. No. The command post -- no, I did not. The command post

16 we were operating on -- command post that I knew was a command

17 post was at Fort Riley.

18 Q. Did you have a pager?

19 A. I did.

20 Q. Did you have a radio in your vehicle?

21 A. I did.

22 Q. Before you left Fort Riley, did anyone tell you that a

23 warrant was being sought for Terry Nichols?

24 A. No.

25 Q. Did anyone tell you anything about a warrant for Terry

539

1 Nichols at any time before 10:50 in the evening?

2 A. No.

3 Q. Was Special Agent Price present in the Herington police

4 station when you got there?

5 A. I don't know.

6 Q. Did you see him during the evening?

7 A. No.

8 Q. Did you have a conversation -- did you understand why you
9 were going to Herington?

10 A. I did.

11 Q. Why?

12 A. To interview Terry Nichols.

13 Q. Why were you being chosen for that responsibility as
14 distinct from the agents who were already there?

15 A. I think you'd have to ask the ASAC, but I assume it's based
16 upon my experience.

17 Q. What experience?

18 A. 21 years in the FBI.

19 Q. Did you have knowledge of bomb and bomb -- bomb making?

20 A. No, I did not.

21 Q. Did you know anything about fertilizer bombs?

22 A. No, I did not.

23 Q. Did you grow up on a farm?

24 A. No, I did not.

25 Q. Do you know anything about fertilizer other than as a

540

1 homeowner and your own garden?

2 A. That would be the context I would know fertilizer.

3 Q. Did there come a time that evening when you met

4 Mrs. Nichols?

5 A. Yes.

6 Q. What time?

7 A. That would have been at 8:52, shortly before 8:52.

8 Q. And did you accompany Mrs. Nichols to see Mr. Nichols?

9 A. I did.

10 Q. Did they have a conversation?

11 A. They did.

12 Q. Did you overhear it?

13 A. Parts of it, yes.

14 Q. What did Mr. Nichols say that you overheard?

15 A. I heard him say to Mrs. Nichols that I don't know when I'll

16 be leaving. I have to finish answering questions here. I will

17 call you.

18 Q. Did he give her something?

19 A. He did.

20 Q. What did he give her?

21 A. A telephone credit card.

22 Q. And what did you do about that?

23 A. I followed Mrs. Nichols from the interview room upstairs.

24 I asked Mrs. Nichols if she would allow me to make a Xerox copy

25 of the card.

541

1 Q. And that was a telephone calling card in the name of Terry

2 Nichols?

3 A. It was.

4 Q. Why did you do that?

5 A. Didn't quite -- first of all, I didn't know what it was.

6 And --

7 Q. When she handed it to you, you knew what it was; correct?

8 A. Correct.

9 Q. Said Southwestern Bell on it in big letters?

10 A. The reason I did that was because I had heard enough prior

11 to that to be very suspicious of anything that Mr. Nichols was

12 handing her or getting -- I wanted to learn as much as I could

13 about Mr. Nichols at that point in time.

14 Q. Yes, sir. Once you saw the credit card, you saw it was a

15 Southwestern Bell credit card; correct?

16 A. That's correct.

17 Q. Well, it wasn't a weapon, was it?

18 A. No.

19 Q. Why did you make a Xerox copy of it?

20 A. Well, in the FBI, we conduct many investigations based upon
21 documents and other such things, so it was logical to me, not
22 knowing what it was down the line -- this was an important
23 case, and I felt I should make a copy of it.

24 Q. Well, what -- what did you -- you were going to go get the
25 telephone record, weren't you, or have somebody do it?

542

1 A. No.

2 Q. That wasn't your thought?

3 A. Well, down the line. We were going to do everything
4 possible we could in this investigation. But at the time, not
5 knowing what he was giving her, I felt it was my job to follow
6 up on it.

7 Q. Now, did you get a consent to search either Mr. Nichols or
8 Mrs. Nichols to get the calling card?

9 A. I did not.

10 Q. Now --

11 A. Let me just -- I asked her if it were possible to make a
12 Xerox; and so I guess yes, I did get a consent.

13 Q. Now, you say you -- a decision was made to get aggressive;
14 is that right?

15 A. That is correct.

16 Q. Would confrontational also describe it?

17 A. It would.

18 Q. Have you seen that word used about your decision,
19 confrontational?

20 A. I don't know if I have or not.

21 Q. Well, have you read the Government's brief in this case
22 that uses that word?
23 A. Not with any great detail, I have not, no.
24 Q. I didn't ask you about detail, sir. Have you read the
25 Government's brief in this case?

543

1 A. I have. I do not remember the word "confrontational."
2 Q. Who gave you the Government's brief to read?
3 A. Probably Larry Tongate.
4 Q. And did Mr. Tongate have multiple copies of the
5 Government's brief in the case; do you know?
6 A. I do not know.
7 Q. Did -- when he gave it to you, did he ask you to read it?
8 A. No. I asked him if I could read it.
9 Q. And he said yes?
10 A. He said yes.
11 Q. What was the purpose of reading it?
12 A. To find out what was in there.
13 Q. Well, what was it that you hoped to learn by reading the
14 Government's brief in this matter?
15 A. The response. I knew what happened. I wanted to see how
16 they -- based upon your submission, how the response was back
17 to the --
18 Q. You wanted to know what the theory was that the Government
19 was going to present, didn't you?
20 A. No theory. It's how it happened.
21 Q. All right. You wanted to know what the Government's view
22 of what happened was; right?
23 A. Correct.
24 Q. Tell us what you did when you got aggressive with
25 Mr. Nichols.

- 1 A. I spoke to him somewhat like you're talking to me today.
- 2 And --
- 3 Q. Did I --
- 4 A. In a --
- 5 Q. Did you have any better luck than I'm having, sir?
- 6 A. Not much. But I --
- 7 Q. Tell us what happened then.
- 8 A. Tell us what happened then.
- 9 Q. Yes. When you got aggressive and you got started acting
- 10 like I am, just tell us what -- let's see if it did any good.
- 11 A. Well, there was a change in Mr. Nichols' demeanor, for one.
- 12 Q. Oh. How -- how had he been before? A little tired?
- 13 A. Mr. Nichols was relaxed. He -- my observation of him
- 14 during -- prior to 12:11 was that Mr. Nichols sat back in his
- 15 chair, crossing his legs at times. When I got aggressive,
- 16 confrontational with Mr. Nichols, at one point he put his
- 17 elbows on his knees, he put his hands -- his -- his hands in
- 18 his face, rubbed his forehead, was quite obviously different
- 19 than he was before.
- 20 Q. Did -- what did your aggressiveness consist of? Did you
- 21 raise your voice?
- 22 A. I did.
- 23 Q. Did you accuse him of lying?
- 24 A. I did.
- 25 Q. Did you kick the furniture?

- 1 A. I did not.

2 Q. Did you kick a chair and send it rolling across the room?

3 A. No.

4 Q. Why did you get aggressive?

5 A. Because I felt and we felt that Mr. Nichols was not telling
6 the truth. The information that he had given us up to that
7 point in time did not follow a logical course. There were many
8 things that were volunteered to the point that we recognized
9 that Mr. Nichols wanted to be with us there. He wanted to talk
10 with us, and we just wanted to plain let him know this was a
11 very serious matter, and we wanted him to understand the FBI
12 would follow this lead, leaving no stone unturned and that this
13 was his opportunity to tell the truth what happened.

14 Q. You wanted to make clear to him that he stood some risk of
15 subjecting himself to criminal liability; is that correct?

16 A. If -- that is correct.

17 Q. You -- would you look in the notebook there that's on your
18 right-hand side, sir, at Exhibit Number E1.

19 A. Yes, I will.

20 Q. Thank you, sir.

21 MR. JONES: Your Honor, incidentally, we found our
22 notebook.

23 THE COURT: Good.

24 THE WITNESS: I have it.

25 BY MR. TIGAR:

546

1 Q. Is that your signature at the bottom?

2 A. It is.

3 MR. TIGAR: We offer E1, your Honor.

4 THE COURT: Any objection?

5 MR. MACKEY: What is it, please?

6 THE COURT: Consent form.

7 MR. TIGAR: Yes. Who's in charge? Okay.

8 MR. MACKEY: For the record, Mr. Tigar, a consent form

9 dated April 23, 1995?

10 MR. TIGAR: That's correct.

11 MR. MACKEY: No objection, your Honor.

12 THE COURT: Received.

13 BY MR. TIGAR:

14 Q. Now, sir, would you please turn to F1.

15 A. I have F1.

16 Q. And that's the same form; is that correct?

17 A. Yes, sir.

18 Q. All right. I won't offer it again. Now, were you also

19 present during a search of the Nichols home?

20 A. No, I was not.

21 Q. Do you know about a consent to search other than the

22 consent that you've just identified, a purported consent, a

23 search of the Nichols home?

24 A. I do. I witnessed another consent.

25 Q. And what was the date of that consent, sir?

547

1 A. The date of this consent I'm looking at is 4-23. The date

2 of the other consent was on 4-21-95 obtained from Terry

3 Nichols.

4 MR. TIGAR: I'm sorry, your Honor. I've gotten myself

5 out of order here. Let me just make sure that I know what I'm

6 doing. If your Honor would indulge me for a moment.

7 THE COURT: Yes.

8 MR. TIGAR: I misplaced something.

9 Thank you. Mr. Mackey has cleared that up for me.

10 BY MR. TIGAR:

11 Q. Will you turn, please, in the second of the two books --
12 black books that's in front of you to No. W19.
13 A. I will. This would be a 302 on 4-23 --
14 Q. Yes. Will you turn to the second page, please.
15 A. Okay. I have it.
16 Q. Now, did you have any responsibility for interviewing
17 Mrs. Nichols other than your involvement with this particular
18 consent?
19 A. The reason that I gave this consent was for another --
20 another matter. I returned Mr. Nichols' -- some of
21 Mr. Nichols' property to her just prior to this happening, and
22 that was the reason for me being in there.
23 Q. I see. So other than that involvement, you were not
24 involved in the interviews of Mrs. Nichols that took place over
25 a period of time; is that correct, sir?

548

1 A. That is correct, I was not involved with interviews of
2 Mrs. Nichols.
3 Q. All right.
4 MR. TIGAR: Nothing further, your Honor.
5 THE COURT: Mr. Jones.
6 MR. JONES: Yes, sir.
7 CROSS-EXAMINATION
8 BY MR. JONES:
9 Q. Sir, do you have in front of you the Government's exhibits
10 for this hearing? I believe it's the white book there.
11 A. I do.
12 Q. Would you please turn to Exhibit No. 22.
13 A. I will.
14 Q. That is the affidavit and warrant for the arrest of
15 Mr. Nichols as a material witness, isn't it?

16 A. That is an affidavit of -- it looks like Henry C, Gibbons,
17 special agent, FBI. And the last copy is a warrant for arrest
18 of witness.
19 Q. And does it not say to the United States marshal and any
20 authorized United States officer, You are hereby commanded to
21 arrest Terry Lynn Nichols and bring this witness forthwith
22 before the federal grand jury at Oklahoma City, Oklahoma, for
23 the reason the witness' testimony is material in a criminal
24 proceeding and he has attempted to leave the jurisdiction of
25 the United States and it may become impractical to secure his

549

1 presence by subpoena? Do you see that?
2 A. That's what it reads.
3 Q. Now, during the time that you were there at Herington, what
4 time did you arrive, sir?
5 A. I arrived in Herington at approximately 4 p.m.
6 Q. All right. So that would be about an hour after he got
7 there -- Mr. Nichols got there?
8 A. I believe that is correct, yes.
9 Q. During the time -- were you in the station the entire time?
10 A. I arrived -- can you help me out --
11 Q. Let me clean it up. Once you got inside the Herington
12 Department of Public Safety, did you stay there in that
13 building until after Mr. Nichols was arrested?
14 A. I did.
15 Q. All right. During that period of time from 4:00 in the
16 afternoon until after midnight, were the agents of the Federal
17 Bureau of Investigation in the Herington Department of Public
18 Safety able to communicate with FBI headquarters?
19 A. There were -- I have no direct knowledge -- yes. In fact,

20 yes, that was -- we had telephones there. We could have
21 called, yes.
22 Q. Okay. And you had FBI cars there --
23 A. That is correct.
24 Q. -- with radios?
25 A. With radios.

550

1 Q. And I assume some of the agents had telephones, cellular
2 phones or pagers.
3 A. The SAC's, the ASAC's there did.
4 Q. Was there any kind of mobile communication center set up
5 there?
6 A. I don't know.
7 Q. Could you reach the Kansas City field office of the FBI
8 from Herington?
9 A. Yes, sir. By telephone.
10 Q. Could you reach the command center at Fort Riley?
11 A. By telephone, yes, sir.
12 Q. Could you reach the command center in Oklahoma City?
13 A. By telephone, yes, sir.
14 Q. Were the telephones working?
15 A. To the best of my knowledge, yes.
16 Q. All right. So there wouldn't have been any reason why
17 someone at the command center in Oklahoma City or the command
18 center at Fort Riley or FBI headquarters in Washington or the
19 FBI field office in Kansas City could not reach any of the
20 agents at Herington after 4:30 in the afternoon of April 21?
21 A. That's a logical statement, yes.
22 Q. Now, earlier a witness testified -- and I forgot who it
23 is -- said that there were numerous phone calls into the
24 Herington police station that day. From what you saw, would

25 you agree with that?

551

1 A. I have no idea. I was not near the phones.

2 Q. Do you know that agents were in communication with FBI
3 personnel in areas other than there in the department of public
4 safety in Herington?

5 A. I can't say that I did.

6 Q. There's no reason why they wouldn't have been, in terms of
7 mechanical problems, is there?

8 A. Correct. I can't say that I did. I'm just saying that

9 I -- I was not in that area.

10 Q. And certainly, there were more agents there than there were
11 in the room downstairs interviewing Mr. Nichols?

12 A. That is correct.

13 Q. Now, are you aware that -- that special agents of the
14 Federal Bureau of Investigation told Mr. Nichols that he was
15 free to leave?

16 A. Yes.

17 Q. Several times they told him that?

18 A. I believe once. I arrived at 4:12. And that was said to
19 him prior to that because that was reviewed in my presence.

20 Q. All right. Now, at -- and I don't mean this facetiously.
21 It's important. FBI agents in Herington there work for the
22 same FBI that agents in Oklahoma City at the command center
23 work for, don't they?

24 A. That's correct.

25 Q. Well, could you tell me how you can reconcile the statement

552

1 that Mr. Nichols is free to leave with the statement in this
2 subpoena that he has attempted to leave the jurisdiction of the
3 United States?

4 A. Well, do you have a time as to when this was actually
5 signed?

6 Q. You bet. Approximately 4:30 on the 21st.

7 A. Well, he would have been told that he was free to leave
8 before that time. And that was the only time that he was told
9 that to my knowledge.

10 Q. Okay. So after 4:30, he wasn't free to leave or he was?

11 A. He wasn't told. As far as I'm concerned, he was free to
12 leave.

13 Q. Well, let's leave aside the question of you. From your --
14 your supervisors, you had supervisors there, after 4:30, after
15 this material warrant was signed, was he free to leave?

16 A. According to this warrant, he had an arrest warrant as of
17 whatever time it was signed. What my job would have been to --
18 if he had requested to leave, what I would have done was I
19 would have gone upstairs, discussed it with the United States
20 attorneys, as we do in all of our cases, let him make a
21 judgment as to what the situation called for.

22 Q. Well, and are you supposed to say to Mr. Nichols, You wait
23 right here while I go up upstairs and talk to Mr. Rathbun.
24 You're free to leave but not yet?

25 A. That is probably something I would have done, yes.

553

1 Q. Well, then he wasn't free to leave, was he?

2 A. It would -- if I got the okay upstairs, he would have been
3 free to leave.

4 Q. Wait a minute. He's been told he's free to leave. I
5 wouldn't -- that wasn't -- you're free to leave but we've got

6 to check upstairs if you want to leave?

7 MR. MACKEY: Judge, can I object to this line of
8 questioning?

9 THE COURT: Well, it's argumentative at this point.
10 Sustained.

11 MR. JONES: I'll rephrase.

12 BY MR. JONES:

13 Q. How can you reconcile telling Mr. Nichols he's free to
14 leave when in reality he's only free to leave if, after he
15 exercises that option or tells you he wants to, you have to
16 clear it with someone else upstairs?

17 A. Well, first of all, he did not ask that question, so we're
18 talking hypotheticals here. Second of all, if he in fact
19 expressed an interest to leave, I would have told him I'll be
20 right back, we'll run it by the United States attorney's
21 office. If the United States attorney's office was not present
22 in the building -- and it was not a -- an -- and of course, I
23 didn't know about the warrant. In my mind, he was still free
24 to leave.

25 Q. He was free to leave conditionally, then?

554

1 A. He was free to leave upon the condition -- I would talk to
2 the United States Attorney. In any -- any criminal
3 investigation basically what we do, we don't have any ultimate
4 authority. We investigate cases. We ask questions. United
5 States attorney's office are the prosecutors in the case. They
6 will give us advice as to where we should proceed.

7 Q. Well, don't -- presumably, you got advice or somebody got
8 advice before they told him he was free to leave. Aren't you
9 aware that somebody talked with Henry Shapiro or Howard

10 Shapiro?

11 A. No, I'm not aware of that. I believe that my knowledge,
12 the agent said that based upon the situation of Mr. Nichols
13 showing up voluntarily at the police department.

14 Q. All right. Well, then, are we in agreement he was free to
15 leave if, after you ran it by the U.S. Attorney, he said it was
16 okay?

17 A. Yes.

18 Q. But that -- I got to check with the U.S. Attorney, or my
19 supervisor, was not told Mr. Nichols, was it?

20 A. Repeat that question.

21 Q. But the qualifier I have to check with the U.S. Attorney,
22 with my supervisor, was not told to Mr. Nichols, was it?

23 A. I -- I have to check with the United States Attorney
24 because my supervisor --

25 Q. No. No. The business that you have to check with the U.S.

555

1 Attorney before he can leave, or your supervisor before he can
2 leave, was not told Mr. Nichols, was it?

3 A. He never asked to leave. I mean, there was no --

4 Q. Well, I understand that. And -- but you told him he was
5 free to leave, but in truth he wasn't free to leave unless it
6 was cleared upstairs?

7 MR. MACKEY: Your Honor, I renew the objection.

8 THE COURT: Well, the witness didn't answer the
9 question put. I think the question simply is, was to your
10 knowledge Mr. Nichols told that if he had requested to leave,
11 you would have to check with the United States Attorney.

12 THE WITNESS: No.

13 MR. JONES: Okay. Now -- thank you, your Honor.

14 BY MR. JONES:

15 Q. To go back to the question I asked earlier, can you give me
16 an explanation to reconcile how agents of the Federal Bureau of
17 Investigation represent to Judge Russell that he has attempted
18 to leave the jurisdiction of the United States and therefore it
19 became -- becomes impractical to secure his presence by
20 subpoena and he must be arrested with agents of the FBI almost
21 contemporaneously with that telling Mr. Nichols he is free to
22 leave?

23 MR. MACKEY: Objection, your Honor.

24 THE COURT: Sustained.

25 BY MR. JONES:

556

1 Q. Do you have the warrant for arrest of witness in front of
2 you now?

3 A. Yes, I do.

4 Q. What is -- what is your understanding of the judicial
5 command "forthwith"?

6 A. Within reasonableness.

7 Q. Does it say that?

8 A. No. You asked me for my opinion.

9 Q. And you think that that -- if it read, And bring this
10 witness within a reasonable period of time before the federal
11 grand jury in Oklahoma City, that would be synonymous with
12 "forthwith"?

13 MR. MACKEY: Objection.

14 THE COURT: Overruled.

15 THE WITNESS: Repeat the question.

16 BY MR. JONES:

17 Q. Sure. So therefore, if it read, And bring this witness
18 within a reasonable period of time before the federal grand

19 jury at Oklahoma City, that would be synonymous with
20 "forthwith"?
21 A. Yes. I never had a copy of this in front of me, but yes.
22 That is my opinion of the word "forthwith." Reasonable amount
23 of time as with any arrest warrant.
24 Q. Okay. Would you agree with me that as a special agent of
25 the Federal Bureau of Investigation, regardless of whether you

557

1 knew or not, you have an obligation to be informed about
2 judicial orders in a case that you are investigating?
3 A. And to know what they are about, and we normally do.
4 And -- yes. I'll answer the question yes.
5 Q. Had you known and had a copy of this -- strike that.
6 Had you received a copy of this warrant in front of
7 you, would you have gone immediately then and told Mr. Nichols
8 he was under arrest?
9 A. No.
10 Q. Why not?
11 A. I would have attempted to finish the questioning of
12 Mr. Nichols. I view this much like an arrest warrant for a
13 bank robbery. We have enough probable cause to go out and make
14 an arrest. I have an arrest warrant. I -- if I go up and
15 knock on his door, the first thing I do is not to serve him if
16 the situation deems proper. I will attempt to ask questions of
17 that individual. I may give him the arrest warrant at the
18 middle of the interview, at the end of the interview.
19 Q. But effectively, if you -- to take your example, you've got
20 the arrest warrant in your hip pocket and you go up to a bank
21 robber's door and knock on it, he's in custody -- constructive
22 custody then, isn't he?
23 MR. MACKEY: Object.

24 THE WITNESS: But I read him his rights --

25 THE COURT: Sustained.

558

1 BY MR. JONES:

2 Q. I didn't hear the answer to my question. Was the answer

3 yes?

4 THE COURT: I sustained the objection.

5 MR. JONES: I'm sorry.

6 THE COURT: That's why you didn't.

7 MR. JONES: Well, that's the reason why I wouldn't

8 hear it.

9 BY MR. JONES:

10 Q. I thought -- I believe you did indicate that before your

11 confrontational approach at 12:10 that Mr. Nichols was in a

12 relaxed state -- relaxed mood.

13 A. Yes.

14 Q. And until 12:10, you didn't want to do anything to disturb

15 that relaxed mood, did you?

16 A. Well, I had -- at that point in time, I was not directly

17 involved in the interview process.

18 Q. Well, to your knowledge, did anyone want to disturb his

19 relaxed mood before 12:10?

20 A. You'd have to ask that of Agents Crabtree and Smith. Their

21 approach -- their interview technique was to obtain as much

22 information as -- as Mr. Nichols wanted to offer.

23 Q. Well, you didn't do anything to disturb his relaxed mood,

24 did you, before 12:10?

25 A. No, I did not.

559

1 Q. And as far as you know, you didn't see anybody else do it?

2 A. That is correct.

3 Q. And when you came in at 12:10, he was in a relaxed mood,

4 wasn't he?

5 A. That is correct.

6 Q. Now, you also indicated in response to questions by

7 Mr. Tigar that you formed the opinion that Terry Nichols wanted

8 to be there.

9 A. That is correct.

10 Q. By there, you mean at the Herington police station?

11 A. I don't know if he particularly wanted to be at the

12 Herington police station, but I believe he sure wanted to talk.

13 Q. Okay. What do you mean by that, that he wanted to be

14 there? You didn't say he wanted to talk. You said Terry

15 Nichols wanted to be there. What do you mean by that?

16 A. That's what I meant. He wanted to talk. He wanted to find

17 out as much from us as he could about this situation, I felt,

18 based upon my experience in interviewing lots of people.

19 Q. Okay. Did you think he was lying to you?

20 A. Yes, I did.

21 Q. Okay. Did you think he was making a lot of self-serving

22 statements?

23 A. Definitely.

24 Q. Did you think he was trying to lead you astray?

25 A. Yes, and no.

560

1 Q. Did you think he was trying to point the finger at somebody

2 else?

3 A. He was talking about somebody else but talking about his

4 relationship with that other individual.

5 Q. That's not what I asked you. I asked you if you thought he
6 was pointing the finger at somebody else.

7 A. He was pointing the finger at someone else but involved
8 himself in that process.

9 Q. And was that someone else Tim McVeigh?

10 A. Yes, sir.

11 Q. But the literal answers he gave which you say involved
12 himself were cast in an innocent explanation, weren't they? It
13 was you that inferred they were inculpatory?

14 A. That is correct.

15 MR. JONES: Nothing further.

16 THE COURT: Mr. Mackey.

17 MR. MACKEY: Thank you, your Honor.

18 CROSS-EXAMINATION

19 BY MR. MACKEY:

20 Q. Agent Jablonski, I think you told the Court that prior to
21 April of 1995, you'd had no actual experience with material
22 witness warrants; is that correct?

23 A. That is correct.

24 Q. Return your attention, please, to Government Exhibit 22.

25 A. I have it.

1 Q. Okay. And it reads more precisely, "You are commanded to
2 arrest. . ." Is that in front of you?

3 A. "You are hereby commanded to arrest Terry Lynn Nichols."

4 Q. And then it goes on to say, "and bring this witness
5 forthwith."

6 A. That is correct.

7 Q. There's no command to forthwith arrest on the face of this
8 warrant?

9 A. That is correct.

10 Q. The command is once you have that person in your custody,
11 then with due dispatch you should bring them?

12 MR. TIGAR: I object to having the witness construe a
13 document that he never relied on.

14 THE COURT: I'll sustain the objection. The exhibit
15 speaks for itself, as we sometimes say.

16 MR. MACKEY: Thank you, your Honor.

17 BY MR. MACKEY:

18 Q. On April 23, 1995, you were in the Herington Police
19 Department?

20 A. I was.

21 Q. That would be a Sunday?

22 A. That is correct.

23 Q. And you were there because?

24 A. I was there to continue to assist in the investigation.

25 Q. And did you take into your possession certain personal

562

1 items that had been taken from Terry Nichols early Saturday
2 morning?

3 A. That is correct, I did.

4 Q. What did you do with a portion of those personal items on
5 that Sunday afternoon?

6 A. I returned those to Mrs. Nichols.

7 Q. Did you prepare a written receipt?

8 A. I did.

9 Q. And did you itemize on the receipt those things you were
10 returning?

11 A. I did.

12 Q. And did you date and time that receipt?

13 A. I did.

14 Q. Do you recall from memory the time?
15 A. 1:15 p.m.
16 Q. After returning those materials to Mrs. Nichols, did you
17 have occasion to witness her execution of a consent to search
18 form?
19 A. I did.
20 Q. Where did that take place?
21 A. At the Herington Public Safety building.
22 Q. Was that in one of the rooms there on the first floor?
23 A. Yes, sir.
24 Q. And who was present?
25 A. Gene Thomeczek, special agent, Kansas City FBI.

563

1 Mrs. Nichols. And Nicole Nichols.
2 Q. And did you hear Agent Thomeczek explain to Mrs. Nichols
3 the content of that form?
4 A. I did.
5 Q. Could you describe to the Court what you heard.
6 A. Special Agent Thomeczek read -- read the form to
7 Mrs. Nichols. Then went on to explain that it was her
8 constitutional right to refuse to have the search conducted and
9 basically went into a little bit more detail than I would on
10 such a form.
11 Q. Did he appear to take his time and explain the content of
12 the form to Mrs. Nichols?
13 A. Yes, he did.
14 Q. And did she sign it in your presence?
15 A. Yes, she did.
16 Q. And did she sign it only after Agent Thomeczek had given
17 the detailed explanation of her consent or what the form --

18 A. Yes, that is correct.

19 Q. When she signed the form on Sunday afternoon, Agent

20 Thomeczek -- excuse me -- Agent Jablonski, did she add any

21 notation to her signature?

22 A. Yes, she did.

23 Q. Do you remember what that notation was?

24 A. Yes. She actually wrote, "Without prejudice, UCC 1-207"

25 before she signed the document.

564

1 Q. And did Agent Thomeczek ask Mrs. Nichols anything about

2 that language?

3 A. Yes, he did.

4 Q. Tell the Court what he said.

5 A. He basically asked what's this? What does this mean?

6 And Mrs. Nichols stated that her husband had told --

7 not -- told her not to sign anything unless she put that before

8 her name. And she understood that to be that if she in fact

9 did sign her name, if she so chose, that her signature was not

10 obligatory in those instances.

11 Q. And with that explanation, what, if any, response did Agent

12 Thomeczek make in your presence?

13 A. The response that he made, Is it your intention to give us

14 to search, or not.

15 Q. What did she say?

16 A. She said, Yes, you have my consent to search.

17 Q. Agent Jablonski, in your career, you have interviewed a

18 number of subjects?

19 A. I have.

20 Q. Those who -- against whom criminal charges were later filed

21 and others?

22 A. Yes.

23 Q. In the wealth of that experience, Agent Jablonski, have you
24 found occasions where suspects will tell the truth about one
25 core proposition and then try to put an innocent spin on it?

565

1 A. Yes.

2 Q. Directing your attention to April 21, 1995. Did you hear
3 Terry Nichols say, I was in Oklahoma City on Easter Sunday?

4 A. Yes.

5 Q. Did you believe that portion of his statement that he was
6 in Oklahoma City on Sunday?

7 A. I did.

8 Q. Did you disbelieve his explanation as to why he was there
9 that day?

10 A. As a -- the interview progressed, yes.

11 Q. And you told him so?

12 A. I did.

13 MR. MACKEY: No other questions.

14 THE COURT: Mr. Tigar.

15 REDIRECT EXAMINATION

16 BY MR. TIGAR:

17 Q. Would you look again at the April 23, 1995, consent form,
18 the thing that says "consent to search." Do you have that in
19 front of you, sir?

20 A. Can you help me out? What number is it?

21 Q. It's number F1, I believe.

22 A. I have F1 in front of me.

23 Q. Now, how did Mrs. Nichols get to the police station that
24 day?

25 A. I don't know.

- 1 Q. Do you know where her family pickup truck was that day?
- 2 A. I think it was in the -- the garage of the public safety
3 building.
- 4 Q. And hadn't it been moved out of there already?
- 5 A. I don't know.
- 6 Q. But she didn't have access to it, did she?
- 7 A. Again, I don't really know; but I don't think so.
- 8 Q. And did you think she was living at her house then?
- 9 A. I have no idea. And I'll tell you I assume not, but I did
10 not know where --
- 11 Q. You assumed that she wasn't; right?
- 12 A. Correct.
- 13 Q. Where did you assume she was living?
- 14 A. I didn't know.
- 15 Q. Who did you assume was making arrangements for her to live?
- 16 A. Frankly, without making it sound wrong, it was just not my
17 area. It was not my concern. I was not in charge of the
18 investigation. I had specific things to do. I don't know
19 where she was, where she was staying.
- 20 Q. And did you see her sign "Marife T. Marife" and then cross
21 out the second "Marife" and then write "Nichols"?
- 22 A. Yes, sir. That's what the form states.
- 23 Q. Was anything said about the fact that she had that trouble
24 signing her name?
- 25 A. Not that I can recall, no.

- 1 Q. Did you notice that at the time?
- 2 A. No.
- 3 Q. I'm sorry?

4 A. There was just no conversation about it as she was writing
5 her name.

6 Q. But did you notice it at the time?

7 A. No, I did not.

8 Q. Now, could you help me -- what -- what time was it that
9 Agent Smith went over his notes when in the presence of
10 Mr. Nichols? Did you see that happen?

11 A. I did.

12 Q. What -- what time was that?

13 A. That would have been -- well, any time after 4:12.
14 Anywhere between 4:12 and 4:58.

15 Q. Now, was there another time later on in the evening where
16 people went over what had been said while some of the agents
17 were out of the room?

18 A. You mean --

19 Q. Was there another time later in the evening?

20 A. Can you be more specific on that?

21 Q. Well, at any time later in the evening, did the agents in
22 your presence -- did somebody go over what had happened when
23 some of the agents were out of the room? Do you remember, or
24 not?

25 A. There was -- when Scott Crabtree and Steve Smith were out

568

1 of the room, there was no one went over anything because we
2 didn't have the notes. They would have had them with them.

3 MR. TIGAR: Thank you. Nothing further.

4 THE COURT: I think you had the witness look at F1,
5 but we admitted E1. They are the same. Is that right?

6 MR. TIGAR: I -- they are the same. My apologies.

7 THE COURT: All right.

8 MR. TIGAR: E1 is the document. It's identical.

9 Thank you, your Honor.

10 MR. MACKEY: Want me to question? One.

11 THE COURT: All right.

12 RE CROSS-EXAMINATION

13 BY MR. MACKEY:

14 Q. Agent Jablonski, I'm sorry. What time approximately on

15 Sunday afternoon was the consent form signed?

16 A. 1:15 p.m.

17 Q. That was the receipt.

18 A. Oh, the consent form. I would say 15 minutes after that.

19 MR. MACKEY: Thank you. Oh, excuse me.

20 No other questions, your Honor.

21 THE COURT: All right.

22 MR. TIGAR: He's excused, your Honor.

23 THE COURT: Agreed to excuse this agent? You may step

24 down. You're excused.

25 THE WITNESS: Thank you, sir.

569

1 THE COURT: Next, please.

2 MR. NEUREITER: Your Honor, Mr. Tigar has passed the

3 baton. We would skip over Agent Ritzman at this point and call

4 Agent Reightler; and it may be that if we get all the

5 information we need from Agent Reightler, then we will not be

6 required to call Agent Ritzman.

7 THE COURT: Are you saying that for his benefit or

8 mine or --

9 MR. NEUREITER: It's getting near the end of the day;

10 and depending on how much we do, he might not have to come back

11 tomorrow morning.

12 THE COURT: All right.

13 MR. NEUREITER: And your Honor, I will be referring to
14 a large photograph chart that's there. It's marked as Exhibit
15 65, I believe. In the book, there is not a smaller copy. We
16 had this done up. It's got labels of the streets on it there.
17 And the clerk has said she might be able to bring that closer
18 so you could see it and the witness could see it. It makes it
19 a bit clearer.

20 THE COURT: Would you come forward to be sworn,
21 please.

22 (James Reightler was sworn.)

23 COURTROOM DEPUTY: Please be seated.

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

570

1 THE WITNESS: My name is James Reightler,
2 R-e-i-g-h-t-l-e-r.

3 DIRECT EXAMINATION

4 BY MR. NEUREITER:

5 Q. Hello, Agent Reightler. My name is Reid Neureiter and I
6 represent Terry Nichols.

7 What do you do, Agent Reightler?

8 A. I'm a special agent with the Federal Bureau of
9 Investigation in the Kansas City office.

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

11 A. Just over eight years.

12 Q. What is your educational background?

13 A. I received a bachelor of science degree in biology from
14 Virginia Tech. And I took advanced master's level courses at
15 Virginia Tech and other colleges.

16 Q. You said you were based out of Kansas City. Were you based

17 out of Kansas City on April 21, 1995?

18 A. Yes, sir.

19 Q. You have in your career been asked to secure a home or a

20 crime scene before, have you not?

21 A. Yes, sir.

22 Q. How many times have you been asked to secure a home or a

23 crime scene?

24 A. I've served dozens of search warrants. Exact number, I

25 can't come up with right now.

571

1 Q. And before each service of a search warrant, you always

2 secure the home or the crime scene, wherever you're searching?

3 A. As far as clearing it for -- clearing the premises and

4 securing it in order to search it, yes, sir.

5 Q. Well, actually, that was going to be my next question.

6 What does it mean to secure a home?

7 A. If I -- if I understand your question, the -- clearing or

8 securing the premises in service of a search warrant is to make

9 the scene safe. Make the home safe and allowing other agents

10 to help search the premises.

11 Q. Would it be to prevent people from going into the area who

12 aren't FBI agents? Would that be part of securing a home?

13 A. Yes, sir.

14 Q. Keep people from coming out if they are inside? Nobody

15 goes in or out; right?

16 A. Well, if I'm understanding your question, if you're talking

17 about sealing the premises or actually serving the search

18 warrant, I'm not sure.

19 Q. Securing the premises. And the word comes from a 302 that

20 you wrote with respect to what you did on April 21 and that's

21 why I used that word. Securing a home. If you could describe

22 what that means and what you thought when you wrote that
23 word --
24 A. Yes, sir.
25 Q. -- or what you did on April 21. Just in general terms,

572

1 what does it mean to secure a home?
2 A. In this instance and in -- in describing the idea of
3 securing the premises, it was exactly that. To ensure that
4 the -- the house -- in this case, a house and detached garage
5 and the land it was on was not changed and people did not enter
6 the house until we had -- we had the proper authority to do it.
7 In this case, we had a consent to search.
8 Q. Okay. That's -- that was all I was asking is what it meant
9 to secure a home. By the way, did you prepare for your
10 testimony today?
11 A. I read my 302, yes, sir.
12 Q. Did you meet with any lawyers from the United States prior
13 to testifying?
14 A. Yes, sir.
15 Q. Who did you meet with?
16 A. Mr. Mackey.
17 Q. For how long did you meet?
18 A. We met on a couple of occasions. This week and last week.
19 It's been a matter of -- of a few hours.
20 Q. Okay. Did he show you any documents other than your 302 in
21 preparation for -- for this testimony?
22 A. The -- I've seen the pictures of the crime scene and --
23 that our agents took. I've also looked at -- in -- throughout
24 this investigation, I've looked at other documents, as well.
25 Logs from the other agents that were -- provided surveillance

- 1 on the house.
- 2 Q. Did you look at those logs just prior to this -- to giving
- 3 your testimony here?
- 4 A. No, sir. I have not looked at them today.
- 5 Q. You haven't looked at the surveillance logs?
- 6 A. Not today, no, sir.
- 7 Q. Did you look at the surveillance logs while you were
- 8 preparing with Mr. Mackey?
- 9 A. I've seen them, yes, sir, with Mr. Mackey.
- 10 Q. When -- when was that preparation with Mr. Mackey?
- 11 A. It was earlier this week, I believe. Monday or Tuesday.
- 12 Q. Do you recall the events of April 21, 1995?
- 13 A. Yes, sir.
- 14 Q. You were in Herington, Kansas, were you not?
- 15 A. I started the day in Kansas City and then ended the day in
- 16 Herington, Kansas, yes, sir.
- 17 Q. At what time precisely were you dispatched to Herington,
- 18 Kansas, if you recall?
- 19 A. We -- we left Kansas City at approximately 1 or 1:30 on
- 20 Friday afternoon, the 21st.
- 21 Q. How far is it from Kansas City to Herington?
- 22 A. Well, we -- just to answer you correctly, we drove from
- 23 Kansas City to Fort Riley, Kansas, and then later in the
- 24 afternoon drove to Herington.
- 25 Q. And how long is the drive from Kansas City to Fort Riley?

- 1 A. Approximately two hours.
- 2 Q. How far is it?

3 A. It's approximately a two-hour drive.

4 Q. How far is it? I want to know how fast you were going.

5 A. I -- I can't give you the mileage. I recall that it was

6 about a two-hour drive.

7 Q. Were you going fast?

8 A. Yes, sir.

9 Q. How fast?

10 MR. MACKEY: Objection. Relevancy.

11 THE COURT: What's the relevance of that?

12 MR. NEUREITER: Your Honor, I'm trying to get some

13 sense of how many people were dispatched and what they knew and

14 the speed with which they were arriving in Herington, Kansas,

15 gives some indication of this --

16 THE COURT: This is to go to Fort Riley, I understood

17 the question.

18 MR. NEUREITER: He went there first.

19 THE COURT: Yes.

20 MR. NEUREITER: Okay. I'll move on.

21 THE COURT: Thank you.

22 BY MR. NEUREITER:

23 Q. With how many agents were you traveling on your way to Fort

24 Riley?

25 A. I was alone in my vehicle, but there were about --

575

1 between -- between 10 and 15.

2 Q. And each one had their own vehicle?

3 A. No, sir.

4 Q. Were you traveling in vans?

5 A. I'm sorry?

6 Q. Were you traveling in vans?

7 A. There was a -- one van that I can recall and the rest were
8 four-wheel -- four-door cars and I recall one Suburban that I
9 was driving.

10 Q. So several vehicles with 10 to 15 agents in these multiple
11 vehicles?

12 A. Yes, sir.

13 Q. And they all left at between 1 and 1:30 to go to Fort
14 Riley?

15 A. The group that I was with, yes, sir.

16 Q. Was there another group that left that you know of?

17 A. There were other agents that I saw in Fort Riley and
18 Herington over the course of that day and the next that may
19 have been there earlier or later than me.

20 Q. Was there another group that you know of that left Kansas
21 City soon after you left?

22 A. No, sir.

23 Q. Who dispatched you to Fort Riley on that day on April 21
24 from Kansas City?

25 A. The -- the team leader that I was involved with is Special

576

1 Agent Butch Roll. We were also involved --

2 Q. I'm sorry. His name was?

3 A. Butch Roll.

4 Q. R-o-l-l?

5 A. Yes, sir. The -- there were at least one other Bureau
6 supervisor in that group. And the other supervisors, we met in
7 Fort Riley.

8 Q. So you got to Fort Riley at about 3:30; is that correct?

9 A. Yes, sir.

10 Q. And for how long were you at Fort Riley?

11 A. Half hour, 45 minutes.

12 Q. And how many agents were there at Fort Riley?

13 A. When we arrived, there were approximately -- approximately
14 four other agents that I can recall that were already there.

15 Q. And then what happened at Fort Riley that caused you to go
16 to Herington?

17 A. As we arrived at Fort Riley, we were told that our
18 original -- original need for us to be there was -- was -- was
19 not going to be needed. That was to proceed on to -- to
20 Herington, Kansas in order to contact Mr. Nichols. The radio
21 announcement came from Mr. -- Special Agent Roll advising us
22 that Mr. Nichols had already turned himself in to the Public
23 Safety Building.

24 Q. Let me stop you for a second. Your original orders, you
25 understood when you left Kansas City with 10 to 15 other agents

577

1 to go to Fort Riley was you needed 10 to 15 agents to arrest
2 Mr. Nichols?

3 A. We were advised -- we were instructed to go to Fort Riley
4 and then we were going to get a detailed briefing there and we
5 would -- might be needed to conduct an arrest or a search
6 warrant.

7 Q. You had heard the name Terry Nichols before you left Kansas
8 City?

9 A. Yes, sir.

10 Q. And what did they tell you precisely about Terry Nichols
11 and Kansas City?

12 A. Not much, sir. That it was in connection with the bombing
13 of the Oklahoma City Federal Courthouse.

14 Q. Well, were you supposed to do -- what was your
15 understanding of your orders with respect to Mr. Nichols in

16 Kansas City before you left with the 10 or 15 agents? Did
17 they -- I mean, did they just say Terry Nichols, Kansas -- Fort
18 Riley? Or did they say you're supposed to do something with
19 Mr. Nichols once you get to Fort Riley?

20 A. We were instructed to -- to travel to Fort Riley and there,
21 we'd get further detailed instructions. That we may be needed
22 for a service of a search warrant or an arrest warrant.

23 Q. And that was Mr. Roll --

24 A. Correct.

25 Q. -- who told you that?

578

1 A. I believe so, yes, sir.

2 Q. Okay. So you're in Fort Riley and the orders changed;
3 right?

4 A. Yes, sir.

5 Q. What did they tell you -- they told you that you weren't
6 needed to go and arrest or confront Mr. Nichols; correct?

7 A. Yes, sir.

8 Q. Because he turned himself in; right?

9 A. Correct.

10 Q. And that was at 3:30, about? Right after you got there?

11 A. Yes, sir. That's about the best time I could give you.

12 Q. And what were your next instructions?

13 A. We were at the -- at Fort Riley for a half hour, 45 minutes
14 and then we were told we would be needed to help in
15 investigations and interviews in the Herington, Kansas, area.

16 Q. Okay. And then what did you do?

17 A. We --

18 Q. Let me stop you. Who told you that at Fort Riley?

19 A. The exact person who told us that, I'm not sure, but my --
20 my instructions were coming from S.A. Roll.

21 Q. And had he remained in Kansas City or did he come to Fort
22 Riley with you?
23 A. He was in Fort Riley with us, yes, sir.
24 Q. All right. So you got these new instructions. What did
25 you do then?

579

1 A. We got combined into two vehicles and -- and drove to
2 Herington and went to the Public Safety Building.
3 Q. This is 15 agents, 10 to 15 agents?
4 A. No. At that point, we were -- we would have been about 10.
5 Q. 10 agents. And was this the Suburban and the van?
6 A. No, sir. It was my vehicle, which was a Suburban and
7 Special Agent Roll's car which was a four door Chevrolet
8 Caprice, I believe.
9 Q. So six people with you or five people with you and three
10 with Special Agent Roll?
11 A. I'm not exactly sure how we broke it down.
12 Q. And you went right over to the Herington police station?
13 A. Yes, sir. We drove there.
14 Q. And then what happened when you arrived in the Herington
15 police station? And that time was -- I'm sorry -- when you
16 arrived?
17 A. That would have been between 5 and 5:30.
18 Q. So that's two hours after you got to Fort Riley, you
19 arrived at the Herington police station?
20 A. Approximately, yes.
21 Q. Then what happened when you got to the Herington police
22 station?
23 A. We -- we met with Assistant Special Agent Charles Watson
24 who was already there in the building and received a -- a

25 little bit more information that -- that yes, this was

580

1 involved -- as we had earlier heard involved in the
2 investigation of the Oklahoma City bombing and that agents were
3 talking with Mr. Nichols in that building.

4 Q. Okay. When you arrived with the nine other agents at 5:30
5 at the Herington police station, Agent Watson was there. How
6 many other agents, to your knowledge, were at the Herington
7 police station?

8 A. I can recall only seeing one or two others. I understood
9 that there were other agents somewhere else in the building
10 with Mr. Nichols, but I -- I don't know how many.

11 Q. So you saw one or two others?

12 A. Yes, sir.

13 Q. And you knew that other agents were with Mr. Nichols?

14 A. That's what I was told, yes, sir.

15 Q. So there's ten including you, Watson is 11, two that you
16 saw -- one or two that you saw -- 12, 13 -- a couple others
17 with Mr. Nichols -- 14, 15? Does that sound about right?

18 A. Approximately, yes.

19 Q. And that's at 5:30?

20 A. That's my best estimate, yes, sir.

21 Q. Okay. Then what were you told to do?

22 A. The Special Agent Roll had -- had met with Mr. Watson and
23 told us that he would need two people to -- to be assigned --
24 for one assignment, Special Agent Ritzman and myself
25 volunteered to do that. The other agents were assigned to do

581

1 interviews of neighbors of Mr. Nichols in Herington.

2 Q. Okay. So there came a time then when you were ordered by
3 Special Agent Roll to secure the Nichols residence? Is that
4 what you're talking about, a special assignment?

5 A. Yes, sir.

6 Q. You and Agent Ritzman?

7 A. Yes, sir.

8 Q. And what time did that happen?

9 A. That was within 15, 20 minutes of arriving there.

10 Q. That would have been 5:45 approximately?

11 A. Yes, sir.

12 Q. Okay. And it was Agent Roll that directed you to go out to
13 Mr. Nichols' home and secure it?

14 A. Yes, sir.

15 Q. Were you assisted -- were you instructed that you would be
16 assisted by local law enforcement in securing the Nichols
17 property?

18 A. Yes.

19 Q. Who was tasked from local law enforcement to assist you in
20 maintaining security?

21 A. We were introduced to several reserve officers from the
22 county and from Herington Public Safety office.

23 Q. When you say several, how many agents -- how many local
24 officers are we talking about?

25 A. Eight to ten.

582

1 Q. So they were told that they would be going out with you and
2 Agent Ritzman to the house on South 2nd Street to secure that
3 property?

4 A. Yes, sir.

5 Q. And they were all there in the building, as well?

6 A. I met them outside the building.

7 Q. Okay. So you got the orders inside the building and then
8 you went outside with Agent Ritzman and there were a number of
9 local officers there?

10 A. Yes, sir.

11 Q. Okay. Did you all get in the vans or your Suburban and
12 another vehicle and go out there or did they have their own
13 vehicles?

14 A. They had their own vehicles.

15 Q. So there were ten to twelve people that you knew of that
16 were driving from the Herington police station over to 109
17 South 2nd Street to secure the property?

18 A. Those officers didn't all leave with us. There were
19 already officers at the Nichols residence.

20 Q. So it was already secured to a certain extent at the
21 residence?

22 A. Yes, sir.

23 A. By the time we arrived. There were other officers and
24 agents who had been there for some -- I don't know for how
25 long, but for some time.

583

1 Q. Well, go ahead and look at Government notebook Exhibit 29
2 which is that white notebook to your left.

3 A. Exhibit 29, sir?

4 Q. Yes. That should be a surveillance log.

5 A. Yes, sir.

6 Q. Have you seen that before?

7 A. Yes, sir.

8 Q. Okay. It's a surveillance log of the property at 109 South
9 2nd Street; correct?

10 A. Yes, sir.

11 Q. And you said that there had been officers before you got
12 there; is that right?
13 A. Yes, sir.
14 Q. And in fact, if you look at Bates number page 53, 505, at
15 the top there, it indicates that at 3:20 p.m., special agents
16 Allen Maxwell and Everett F. Barger arrived at the property to
17 secure the premises; is that right?
18 A. Yes, sir.
19 Q. Does that conform with your recollection of the events?
20 A. I was not in Herington. I can't -- I don't have any
21 recollection.
22 Q. When you got to the house around 5:45 or 6:00, were Agents
23 Maxwell and Barger on the scene?
24 A. Yes, sir.
25 Q. You've seen documents like this before, surveillance logs;

584

1 correct?
2 A. Yes, sir.
3 Q. And is it normal practice for the people -- for the agents
4 on the scene who participated in the surveillance to put their
5 initials next to the event that took place after they have read
6 the description of the activity observed?
7 A. Yes, sir.
8 Q. And so when you seen the initials CAM, EFB, JPH, FSH, four
9 initials of FBI agents and their names are down below on that
10 same page where they have signed that -- that indicates they
11 have read the activity observed, namely arriving at South 2nd
12 Street at 3:20 p.m. to secure the premises? That's common
13 practice and they would have done that had they actually
14 observed that activity?

15 A. Yes, sir.
16 Q. By the way, do you see just below that, it says at
17 4:20 p.m., the house at 109 South 2nd Street is surrounded by
18 police security tape, placed there by officers of the Herington
19 Department of Public Safety and by Special Agents Lindsay and
20 C. Allen Maxwell?
21 A. Yes, sir.
22 Q. And you see that David P Lindsay initialled that and EFB --
23 I guess that would be Agent Barger -- initialled that and CAM,
24 Mr. Maxwell initialled that?
25 A. Yes, sir.

585

1 Q. Okay. Was security tape around the house when you arrived?
2 A. Yes, sir.
3 Q. It was around the house. So this 4:20 p.m. security tape
4 being placed there is in conformance with your recollection of
5 events? In other words, you got there at 6:00 and the tape had
6 been up since 4:20?
7 MR. MACKEY: Objection, your Honor.
8 THE COURT: Sustained.
9 BY MR. NEUREITER:
10 Q. But the tape was up when you got there at 6:00?
11 A. Yes, sir.
12 Q. If agents had been securing the premises since 3:20, nobody
13 was allowed onto that property from 3:20 on; is that right?
14 A. Yes.
15 Q. It would have been unlikely that an FBI agent ordered at
16 3:20 to secure a premises would have allowed anybody other than
17 an FBI agent onto the property; correct?
18 A. Yes, sir.
19 Q. And if Mr. Nichols had come back and wanted to go into his

20 house, it would have been highly unlikely that Agents Harder
21 and Hillman -- excuse me -- Barger and Maxwell would have let
22 him on the property; correct?

23 MR. MACKEY: Objection as to what this witness knows
24 another would do.

25 THE COURT: Well, you can rephrase it to what the

586

1 policy of the agency is.

2 BY MR. NEUREITER:

3 Q. If -- is it the policy -- it is the policy, is it not, of
4 the FBI, if agents are ordered to secure a premises, then no
5 one is allowed back on to those premises, even the owner of the
6 property; correct?

7 A. I can't cite specific policy on that. I could tell you
8 what -- what likely have happened if I was there.

9 Q. Well, you got there at 6:00. If Mr. Nichols had come back
10 at 6:10 and said I'd like to go into my house and go and sit on
11 my sofa, would you allow him to do that?

12 A. I would have conferred with other agents who would have
13 more information about the overall investigation.

14 Q. You would not have allowed him to do that; correct?

15 A. No, sir. Not without conferring with other agents.

16 Q. Okay. You notice on that same surveillance log, it says at
17 3:20 -- excuse me -- 10:30 p.m., members of a Kansas City FBI
18 special weapons and tactics team are present at 109 South 2nd
19 Street.

20 A. Yes, sir.

21 Q. Do you remember the S.W.A.T. team being there?

22 A. I remember two members of the S.W.A.T. team being there.

23 Q. Do you remember when they showed up?

24 A. That would have been myself and Special Agent Ritzman.

25 Q. You're a member of the S.W.A.T. team?

587

1 A. Yes, sir.

2 Q. So when 10 to 15 agents left Kansas City, that was a

3 S.W.A.T. team leaving Kansas City?

4 A. Yes, sir.

5 Q. So the S.W.A.T. team left Kansas City at 3:30?

6 A. I'm sorry?

7 Q. The S.W.A.T. team left Kansas City to go to Fort Riley at

8 3:30 on April 21?

9 A. No, sir. They left at 1 or 1:30.

10 Q. I'm sorry. I'm confused with the times. You left Kansas

11 City at 1:30 to go to Fort Riley with the rest of the S.W.A.T.

12 team?

13 A. Yes, sir.

14 Q. Were you in S.W.A.T. attire?

15 A. No, sir.

16 Q. Were you carrying weapons?

17 A. Yes, sir.

18 Q. So when it says members of the S.W.A.T. team are present,

19 it isn't that they arrived at 10:30 p.m.; it just means that at

20 10:30 p.m. when surveillance was discontinued, members were

21 there at the discontinuation of the surveillance; correct?

22 A. Yes, sir.

23 Q. They had arrived much earlier than that?

24 A. Yes, sir.

25 Q. In fact, you had arrived at 6:00; right?

588

1 A. Yes, sir.

2 THE COURT: That doesn't sound like this is going to
3 be done very soon. So I think we'll recess.

4 MR. NEUREITER: Very well, your Honor.

5 THE COURT: You can come back at 9:00 in the morning.

6 THE WITNESS: Yes, sir.

7 THE COURT: And under the rules here, you're not to
8 discuss your testimony with anyone during this time in between.

9 THE WITNESS: Yes, sir.

10 THE COURT: You may step down.

11 We're not in recess. We do want to talk about
12 scheduling. And I'm asking you now because we have to make
13 some logistical arrangements to proceed through Saturday, which
14 is what I propose to do.

15 Mr. Tigar, where are we on the matter about by your
16 estimate?

17 MR. TIGAR: Your Honor, I think that with -- we could
18 conclude the presentation of the witnesses we have designated
19 with one more full day of hearing. Now, I do not know what
20 your Honor's preference is. We had thought that once the
21 hearings were finished, we would like the opportunity for a
22 very brief post-hearing briefing scheduling to put things
23 together and perhaps the submission of proposed findings and
24 conclusions and/or the opportunity for oral argument, depending
25 upon what your Honor wished. But in terms of the witnesses

1 that we have designated, one more full hearing day is what we
2 estimate. I don't --

3 THE COURT: Does that mean a number of these are not
4 going to be called?

5 MR. TIGAR: Your Honor --

6 THE COURT: I mean, the witness list I have here is --
7 looks like another good 20 names.

8 MR. TIGAR: Just from getting signals from my
9 colleagues here, we would expect that at least three or four of
10 those witnesses would be stricken. Based on what's been
11 developed, I doubt, for example, if Mr. Ritzman is here. With
12 respect to the pickup truck search, I think on those issues,
13 three of those witnesses will be going off. We'll have to meet
14 about that. But the one full day is -- is my good faith
15 estimate of that. I will say that we have no objection, of
16 course, to meeting on whatever day your Honor wishes to
17 continue this matter. I don't know how many witnesses the
18 Government wants to call.

19 THE COURT: Well, I'll ask them that, but what about
20 this lawyer that was mentioned yesterday from Washington, the
21 Department of Justice? Are you going to call her?

22 MR. TIGAR: Yes, your Honor.

23 THE COURT: All right. I -- you know --

24 MR. TIGAR: That will be a relatively brief
25 examination, your Honor, although very important. Something --

590

1 I mean, that lawyer is an example of a Ms. Joplin length
2 witness as opposed to an Agent Smith length witness.

3 THE COURT: Well, let me ask the Government as to your
4 intentions as to calling additional witnesses.

5 MR. HARTZLER: So far, I would anticipate we would
6 only call two additional witnesses, your Honor. But if I could
7 ask as a matter of clarification from Mr. Tigar, there, I
8 believe, are 28 witnesses left on this list.

9 THE COURT: I estimated at least 20. I -- yes, I

10 understand.

11 MR. HARTZLER: And we had previously been advised that
12 Mrs. Nichols would take -- well, frankly, we've been told she
13 would take an entire day. So I'm surprised that we can get
14 through all of these, including her, in a single day.

15 THE COURT: Well, are you now prepared to say which
16 witnesses are not going to be called? I don't mean right here
17 in open court, but to communicate that to other counsel?

18 MR. TIGAR: Yes, your Honor. After the -- at the
19 conclusion of today's proceedings, we'll be notifying the
20 Government as to some of the witnesses, as to the witnesses
21 that we now know that we can do without as we have been doing
22 throughout these proceedings.

23 THE COURT: Well, my -- I don't wish to challenge your
24 good faith estimate, but I -- I think we'd better plan to be
25 here on Saturday.

591

1 MR. TIGAR: Very well.

2 THE COURT: And I think it better that we keep right
3 on going than that we break it up and come back next week.

4 MR. JONES: Your Honor, I know we have participated in
5 this hearing more than anticipated and perhaps more than you
6 wanted. But our interest was primarily in Mr. Nichols'
7 statement.

8 THE COURT: I understand.

9 MR. JONES: Searches and other issues don't concern
10 us, I don't believe, unless something inadvertently comes up.

11 THE COURT: Well, the way we'll leave it here is that
12 we'll be prepared to continue on Saturday as -- at 9:00 in the
13 morning, regular day.

14 MR. HARTZLER: For purposes of our scheduling, I
15 understand you to be saying that we will -- we'll continue on
16 Saturday until we finish?

17 THE COURT: Yes.

18 MR. HARTZLER: Very well.

19 THE COURT: Well --

20 MR. JONES: We will not be free to leave, your Honor?

21 THE COURT: When you say "until we finish," that could
22 be a long time. If we don't finish within a reasonable time --
23 I've heard that somewhere here -- we'd be back Monday.

24 MR. HARTZLER: Very well, thank you.

25 THE COURT: All right.

592

1 MR. TIGAR: In addition, your Honor, we are tonight
2 going to go over our exhibit book and identify for the Court
3 for the rest of the hearing which of those exhibits we wish to
4 regard as introduced in evidence for purposes of the hearing
5 and we'll tell the Government that and make that clear on the
6 record.

7 THE COURT: Yes. I -- I think we'll have some
8 subsequent briefing rather than go directly into argument. And
9 we may have argument after the briefing.

10 MR. HARTZLER: Very well.

11 THE COURT: But we will anticipate some post-hearing
12 briefing.

13 MR. JONES: May I ask a question with respect to that,
14 your Honor?

15 THE COURT: Yes.

16 MR. JONES: You had previously indicated that you
17 would give us an opportunity to argue the question of the
18 closed-circuit television.

19 THE COURT: Yes.
20 MR. JONES: Do you still want to do that or do you --
21 THE COURT: Well, I want to set a time for it.
22 MR. JONES: You'd said it would be -- you mean time
23 limit or a time to do it?
24 THE COURT: A time to do it.
25 MR. JONES: You had previously said that it would be

593

1 at the end of this hearing.
2 THE COURT: Yes.
3 MR. JONES: Do you want to consider doing it when we
4 have the post-hearing oral argument on these motions or do you
5 still want to stick with --
6 THE COURT: Well, you know, I can't tell you the
7 answer to that right now. I -- I want to do it as soon as we
8 can do it conveniently because again, I think it would be
9 necessary to have a follow-up if your motion is denied. It
10 isn't your motion. It's the Government's motion to do it and
11 your objection.
12 MR. JONES: Yes.
13 THE COURT: If the ruling is that there's no
14 constitutional impediment, then the methodology has to be
15 discussed and that could involve witnesses and it also could
16 involve a period of preparation. So that including, you know,
17 some things outside the courthouse. So we -- we need to
18 resolve that as soon as we can within a reasonable time.
19 MR. HARTZLER: You know --
20 THE COURT: I think we've got the briefs in. We don't
21 need any more briefing. We may want to discuss it.
22 MR. HARTZLER: I don't mean to appear overly

23 optimistic on this. Should our motion prevail, it may be we
24 could submit reports to the Court on implementation and cut
25 down on the hearing time.

594

1 THE COURT: I'm sorry. I didn't --

2 MR. HARTZLER: We might submit reports or a proposal.

3 THE COURT: Yes.

4 MR. HARTZLER: A fairly technical proposal, if
5 necessary, as opposed to actually hearing live witnesses.

6 THE COURT: Well, yes. That may be true. I don't
7 know. You've put in your motion the conditions that you're
8 suggesting and as I told you -- I think I told you, I did some
9 preliminary inquiry with respect to the videoconferencing
10 capacity of the Federal Judicial Center so that I'd have some
11 general awareness of what transmission through a fiberoptic
12 line is and that kind of thing. But I -- I don't know very
13 much about that. All right.

14 MR. MACKEY: If I might.

15 THE COURT: Yes.

16 MR. MACKEY: Government Exhibit 72 is the typewritten
17 notes of Steve Smith.

18 THE COURT: Yes.

19 MR. MACKEY: This is in the nature of a report to the
20 Court. The parties intend to review that document, make
21 proposals among themselves as to what portions will be redacted
22 and report that back to the Court.

23 THE COURT: Yes. And we'll report that to Mr. Kelley
24 who would have an opportunity to state the position of the
25 organizations he represents.

595

1 All right. 9:00 tomorrow morning.

2 (Recess at at 5:18 p.m.)

3 * * * * *

4 INDEX

5 Item Page

6 WITNESSES

7 Scott Crabtree

8 Direct Examination by Mr. Tigar 424

9 Voir Dire Examination by Mr. Mendeloff 433

10 Direct Examination Continued by Mr. Tigar 436

11 Cross-examination by Mr. Jones 456

12 Cross-examination by Mr. Mendeloff 457

13 Redirect Examination by Mr. Tigar 480

14 Recross-examination by Mr. Mendeloff 486

15 John F. Foley

16 Direct Examination by Mr. Tigar 488

17 Cross-examination by Mr. Mackey 494

18 Redirect Examination by Mr. Tigar 510

19 Cross-examination by Mr. Jones 517

20 Recross-examination by Mr. Mackey 531

21 Redirect Examination by Mr. Tigar 532

22 Daniel Jablonski

23 Direct Examination by Mr. Tigar 534

24 Cross-examination by Mr. Jones 548

25 Cross-examination by Mr. Mackey 560

596

1 Daniel Jablonski (continued)

2 Redirect Examination by Mr. Tigar 565

3 Recross-examination by Mr. Mackey 568

4	James Reightler				
5	Direct Examination by Mr. Neureiter			570	
6	PLAINTIFF'S EXHIBITS				
7	Exhibit	Offered	Received	Refused	Reserved Withdrawn
8	B1		424		
9	19	436	436		
10	34	510	510		
11	DEFENDANTS' EXHIBITS				
12	Exhibit	Offered	Received	Refused	Received Withdrawn
13	E1	546	546		
14	M1	433		437	
15	M2	433		436	
16	N2	451	452		
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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 27th day of June,

5 1996.

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8 Paul Zuckerman

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Bonnie Carpenter