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22 PROCEEDINGS

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

24 THE COURT: Please be seated. Good morning.

25 MR. HARTZLER: Good morning.

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1 MR. TIGAR: Good morning.

2 MR. JONES: Good morning.

3 THE COURT: Appearances are the same?

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

5 MR. TIGAR: Yes, your Honor.

6 MR. JONES: That's correct, your Honor.

7 THE COURT: All right. Mr. Neureiter, you were
8 examining our witness and you continue under the oath, of
9 course, that you took with us yesterday.

10 THE WITNESS: Yes, sir.

11 THE COURT: You may proceed.

12 DIRECT EXAMINATION CONTINUED

13 BY MR. NEUREITER:

14 Q. Good morning, Agent.

15 A. Good morning.

16 Q. Yesterday, you said you were part of the S.W.A.T. team;
17 correct?

18 A. Yes, sir.

19 Q. I asked you if you were in battle attire and you said no.

20 A. That's correct.

21 Q. You did have your S.W.A.T. gear with you; isn't that right?

22 A. We had our S.W.A.T. gear with us when we arrived in Fort
23 Riley.

24 Q. In Fort Riley. Did you take that S.W.A.T. gear with you to
25 Herington?

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1 A. I would have had some of my equipment -- my personal
2 equipment because I had my vehicle. Most of our special
3 equipment is contained in one vehicle we left in Fort Riley.

4 Q. I see. But you had your own personal equipment with you
5 when you went to Herington?

6 A. Yes, sir.

7 Q. And S.W.A.T. stands for?

8 A. Special Weapons and Tactics.

10 went to Herington?

11 A. No. The weapons would have been secured at Fort Riley,

12 other than my sidearm.
13 Q. All right. I'd like you to look at some of the photographs
14 that have been brought to court, Exhibits W66 and 67 in the
15 second black notebook. Those would be defense exhibits. Just

17 I'll represent to you that those are photographs that
18 have been provided to us by the Government, aerial photographs
19 of the area around 109 South 2nd Street. Does that area look
20 familiar to you in either of the two photographs?

21 A. Yes, sir. Both.

22 Q. And could you point out for the Court on either 66 or 67
24 house?

25 A. On 66, it's the middle house on the block. The picture

1 would be from the rear of the house.

2 Q. And that -- it's the house, then, just to clarify, that has
3 what appears to be the garage and shed closest to the home,
4 correct, of the houses along that lot?

5 A. Yes, sir.

6 THE COURT: Are these stipulated exhibits? Is there
7 any objection to these exhibits?

8 MR. MACKEY: None at all, your Honor.

9 THE COURT: All right.

10 MR. NIGH: No objection.

11 THE COURT: W66 and W67?

12 MR. NEUREITER: Yes, your Honor.

13 THE COURT: Received.

14 BY MR. NEUREITER:

15 Q. And there are -- why don't we just look at 67 for a second,
16 Agent. You see two houses on either side of the Nichols home;
17 correct?

18 A. Yes, sir.

19 Q. And those two houses are physically similar to the Nichols
20 home, again with the exception of the Nichols home having the
21 shed or the garage closer to the home; correct?

22 A. Yes, sir.

23 Q. They look just about the same from the outside; right?

24 A. They are white structures, yes, sir, very similar.

25 Q. Okay. Now, if you could turn to the white book. I

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1 apologize for flipping through these different exhibits, but
2 the white book. Exhibits 9, 10 and 11. Now we're down out of
3 the airplane and we're ground level. If you could describe
4 sequentially what the views of 9, 10 and 11 are and whether you
5 recognize those views.

6 A. No. 9 is a view from the street of the Nichols residence,
7 109 South 2nd. And I do recognize that.

8 Q. That's taken from across South 2nd Street; correct?

9 A. Yes, sir.

10 Q. Okay. Exhibit 10?

11 A. That would be of the same residence. This would be taken
12 from the field behind the Nichols residence.

13 Q. And that is the shed or the garage that you see the lower
14 structure in front of the house from this view; is that
15 correct?

16 A. Yes, sir.

17 Q. And Exhibit 11?

18 A. 11 is also from the back or the west side of the Nichols
19 residence and to the south, looking at the -- at the shed and
20 garage to the left and then the house on the right.

21 Q. All right. And just to clarify, the shed is to the left
22 there, and there are a series of windows there on the wall of

23 the shed?

24 A. Yes, sir.

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2 A. Yes, sir. There was a wire fence between the -- the person

3 taking this picture and the windows.

4 Q. All right. Let's go back to April 21, 1995. You arrived
5 at the Nichols home at what time?

6 A. Between 5:30 and 6.

7 Q. And from the outside of the house, using these photographs

9 10, 11 -- there is nothing that distinguished that house from

10 any of the other houses visually along that street; correct?

11 A. The numbers on the front porch.

12 Q. That distinguished it. There was nothing -- well, let's

13 put it this way, you didn't see a fire coming out of the home;

14 correct?

15 A. No, sir, I did not.

16 Q. You didn't see anybody firing a gun from the outside --

17 from the outside of the home, you didn't see anybody inside the

18 home firing a gun, did you?

19 MR. MACKEY: Objection. Relevancy.

20 THE COURT: I don't understand this question.

21 MR. NEUREITER: Your Honor, the Government has put

22 forward the theory that Agent Reightler was permitted to walk

23 onto the premises because of exigent circumstances.

24 THE COURT: Well, all right. But let's get to

25 something. These questions are -- you don't have any basis for

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1 asking that somebody was firing a gun, do you?

2 MR. NEUREITER: No, your Honor.

3 THE COURT: You're wasting time then. Get to it.

4 MR. NEUREITER: Very well, your Honor.

5 BY MR. NEUREITER:

6 Q. This was just a small house in the middle of a small town

7 in Kansas; correct?

8 A. Yes, sir.

9 Q. And from the time you arrived on the scene at 6:00, you

10 knew that nobody had entered the property from 3:20 when

11 surveillance was set up around the home or when security was

12 first set up around the home; correct?

13 A. I was told that no one had gone into the residence, yes.

14 Q. All right. And from 6:00 -- 5:30, 6:00, when you arrived

15 at the property, to about 8:30 p.m., nothing else had happened

16 within the home to raise any suspicions in your mind that

17 something was happening inside the home; correct?

18 A. Not that I was aware of.

19 Q. By the way, looking at those photographs, Exhibits 9, 10

20 and 11, do you see small digital numbers in the lower

21 right-hand corner? On Exhibit 9, it reads 21-1654?

22 A. Yes, sir.

23 Q. And in Exhibit 10, it reads 21-1700?

24 A. Yes, sir.

25 Q. And in Exhibit 11, it reads 21-1703?

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1 A. Yes, sir.

2 Q. Those numbers indicate the date and the time that the

3 photographs were taken, isn't that correct?

4 MR. MACKEY: Your Honor, excuse me. I'd object to any

5 further questions about the content of the pictures until they

6 are in evidence.

7 THE COURT: They ought to be in evidence.
8 MR. MACKEY: I'd stipulate to their admission.
9 MR. NEUREITER: I'm merely inquiring about the
10 significance of the numbers.
11 THE COURT: You're dealing with the content of the
12 exhibit. Are you going to offer the exhibits?
13 MR. NEUREITER: Yes, your Honor.
14 THE COURT: Then do so.
15 MR. NEUREITER: I offer 9, 10 and 11, your Honor.
16 MR. MACKEY: No objection.
17 THE COURT: All right. They are received.
18 BY MR. NEUREITER:
19 Q. Those represent the date and time; right?
20 A. I believe so, yes, sir.
21 Q. Is there anything missing from those photographs that
22 springs to mind as you look at them now?
23 A. I wasn't there at the time indicated on the -- on the film,
24 so I couldn't comment on what's missing.
25 Q. Okay. Look back at the surveillance log, which is

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1 Government Exhibit 29 in the white book, please. Do you see
2 the entry on page 3, 4:20 p.m.?
3 A. Yes, sir.
4 Q. Remember yesterday we reviewed that three FBI agents, as is
5 the policy if the FBI reviewed this activity observed there,
6 security tape is placed there by officers and Special Agents
7 Lindsley and Maxwell, and they signed off on that, that that
8 occurred at 4:20 p.m.?
9 A. That's what it indicates, yes, sir.
10 Q. And then if you look back at the photographs, Government

11 Exhibit 9, 10 and 11, the times there were 4:54, 1700 and --
12 excuse me -- 5:00 in the afternoon and then 5:03 in the
13 afternoon?
14 A. That's what's indicated, yes, sir.
15 Q. And is there any security tape around the house in those
16 photographs?
17 A. No, sir.
18 Q. So -- please look at Government Exhibit 12 and 13, please.
19 A. Yes, sir.
20 Q. Are those schematics of the property -- is Government
21 Exhibit 12 a schematic of the house and the shed with a scale?
22 A. Yes, sir.
23 Q. And is Government Exhibit 13 an enlarged schematic of the
24 garage and the south shed?
25 A. Yes.

608

1 Q. And do those truly and accurately reflect your recollection
2 of the dimensions of the home and the positioning of the fence
3 and the shed when you were there on April 21, 1995?
4 A. The outside dimensions, I would say yes. I was never
5 inside the house.
6 Q. You did look inside the garage, though, at one point,
7 didn't you?
8 A. Yes, sir.
9 Q. Okay. These do truly and accurately reflect your
10 recollection of the outside of the house and the garage?
11 A. Yes.
12 MR. NEUREITER: I would offer Government Exhibit 12
13 and 13 at this time, your Honor.
14 MR. MACKEY: No objection.
15 THE COURT: They are received.

16 BY MR. NEUREITER:

17 Q. And from the scale on Exhibit 13, it shows that that fence
18 is approximately five feet from the shed; is that correct? The
19 one that's protecting the windows?

20 A. That's what it appears, yes, sir.

21 Q. All right. You eventually entered onto the Nichols
22 property; is that correct?

23 A. Yes, sir.

24 Q. And you went onto the Nichols property for the first time
25 at about 8:30 p.m.?

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1 A. No, sir. It would have been before sundown. It would have
2 been about 6 or 6:30.

3 Q. You went onto the property around 6 or 6:30 that evening?

4 A. Yes, sir.

5 Q. Shortly after you arrived then; is that right?

6 A. Yes, sir.

7 Q. And at the time you went onto the property, you knew that
8 there had been nonstop surveillance and security on the house
9 since 3:20 p.m.; is that correct?

10 A. I wasn't sure of the time. I knew agents had been there
11 for quite some time before I arrived.

12 Q. And the evidence log, Exhibit 29, says that at 3 -- on page
13 2 of 3, says that at 3:20 p.m., Agents Maxwell and Barger
14 arrived to secure the premises; isn't that right?

15 A. Yes, sir.

16 Q. So that would indicate that at the time you went on the
17 property, between -- you said 6:30 that evening, that it was --
18 about three hours had transpired when nothing had happened and
19 nobody had gone onto the property; correct?

20 A. As far as I knew, yes, sir.

21 Q. And you decided to go onto the property and look around

22 because no other law enforcement officers had gone onto the

23 property; correct?

24 A. At that time, I was going onto the property to look around.

25 I was moving from the front of the house to the rear of the

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1 house to contact the other officers and to acquaint myself with

2 the -- with the property. I had never been there before, and I

3 was going to be responsible for securing that throughout the

4 night.

5 Q. So you went onto the property to look around to become

6 familiar with this house that you were going to be securing; is

7 that correct?

8 A. Yes, sir.

9 Q. Did there come a time when you decided to start looking

10 into the windows of the home and the garage?

11 A. Yes, sir.

12 Q. And what time was that?

13 A. The first time I looked into the house -- into the window

14 of the garage or shed area was after dark. I would estimate

15 8:30.

16 Q. 8:30 p.m.?

17 A. Yes, sir.

18 Q. That's two hours after you'd initially entered onto the

19 property; is that right?

20 A. Yes, sir.

21 Q. And had anything transpired in the two hours between when

22 you first entered onto the property and 8:30 p.m. when you

23 started to look through the windows of the garage on the

24 property, itself?

25 A. The sun had gone down.

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1 Q. Nothing else, though?

2 A. No, sir.

3 Q. All right. And the sun had gone down on all the houses

4 around; right?

5 A. Yes, sir.

6 Q. Okay. So it wasn't specific just to that house that the

7 sun had gone down; correct?

8 A. No, sir.

9 Q. You started to look in the windows; correct?

10 A. I looked in one window, yes, sir.

11 Q. You only looked in one window?

12 A. Yes, sir.

13 Q. You didn't try and look into the windows of the house

14 itself?

15 A. I looked at the windows. They were -- all had window

16 coverings over them.

17 Q. Did you have a flashlight with you when you looked into the

18 window of the garage?

19 A. Yes, sir, I did.

20 Q. Did you shine the flashlight into the window of the garage?

21 A. Yes, sir.

22 Q. By the way, you didn't believe you were going onto the

23 property to look into the windows pursuant to a consent signed

24 by Marife Nichols, did you?

25 A. I had been told that the property owners had given us

612

1 consent to search the residence.

2 Q. The property owners?

3 A. Yes, sir.

4 Q. You specifically recall that it was a plural, not a

5 singular?

6 A. No. I can't recall specifically. I was told that we had

7 consent to search the residence.

8 Q. In -- what words precisely were you told?

9 A. That we had a signed consent to -- I'm not sure if it was

10 signed. We had consent from the -- the people at the residence

11 that we were -- could search it.

12 Q. And what time were you told that?

13 A. I -- exact time, I can't give you, but when we went to the

14 residence at approximately 6 p.m., I believe that we had

15 consent then.

16 Q. Okay. You believe that -- who told you -- where were you

17 when you were told that you had consent? Were you back at

18 Herington or were you back at the Herington Department of

19 Public Safety or were you on the property?

20 A. I believe that we were at the Herington Public Safety

21 Office.

22 Q. And who was it who told you that you had consent to search

23 the property?

24 A. It would either have been our Assistant Special Agent in

25 Charge Watson or Special Agent Roll.

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1 Q. But you decided to go onto the property because no other

2 law enforcement officers had entered the residence or the

3 detached garage; correct?

4 A. I -- I walked down the sidewalk and crossed the property to

5 contact agents in the back the first time.

6 Q. You looked into the windows of the garage because no other
7 law enforcement officers had been into the residence or the
8 garage; correct?

9 A. Yes, sir.

10 Q. And because you believed you had consent; right?

11 A. And I was concerned about a threat inside the garage.

12 Q. But there was nothing specifically about the garage, no
13 movement, no sound, nothing specifically about the garage that
14 raised any alarm in your mind that had developed between the
15 time you arrived on the property at 3:20 and the time you
16 looked in the window; correct?

17 A. Correct.

18 Q. You saw something inside the garage; correct?

19 A. Yes, sir.

20 Q. Where were you standing? And I will refer you now to the
21 schematics, either Government Exhibit 12 or 13, whichever one
22 you find more useful, in pointing out where you were. Where
23 were you standing when you looked inside the garage? And you
24 might want to tell us in your answer which window you looked
25 through.

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1 A. I was standing on the sidewalk. If you would look at the
2 Exhibit 13, the schematic of the garage and shed, there's a
3 sidewalk between the fence and the south shed, and I was
4 standing on that sidewalk. And it was -- it would have been
5 the second window from the -- from the end with the garbage
6 can.

7 Q. Was there a particular reason why you picked that window?

8 A. Yes, sir.

9 Q. There was a rip in the window shade; right?

10 A. Yes, sir.

11 Q. And all the other windows had the window shades down and it
12 was difficult to see inside; correct?

13 A. Yes, sir.

14 Q. Does it look like the person who owned that property wanted
15 to protect the privacy of the things inside? Correct?

16 MR. MACKEY: Objection.

17 THE COURT: Sustained.

18 BY MR. NEUREITER:

19 Q. What did you see when you looked inside?

20 A. I -- I noticed some hardware and tools that you might
21 typically expect to find in a garage. I also noticed some
22 white plastic barrels; a large number of ammunition cans,
23 military style; and a couple fuel cans.

24 Q. Those would be just gasoline cans; right?

25 A. Yes, sir.

615

1 Q. Like anybody would have gas for their mower in the garage;
2 right?

3 A. Yes, sir.

4 Q. You then went back and had a meeting with a number of other
5 agents; correct?

6 A. Later that evening, yes, sir.

7 Q. And you told them about seeing what you'd seen, and they
8 told you some things; correct?

9 A. Not -- I did not bring that topic up at that time, no, sir.

10 Q. You didn't bring up the topic of -- poorly phrased
11 question.

12 You went back and had meetings with other agents;
13 correct?

14 A. Yes, sir.

15 Q. What did you learn in those meetings with other agents?

16 A. That we would -- we were going to be seeking a search
17 warrant for the property and that more information was being
18 developed as we -- as we all hoped at the Oklahoma City bombing
19 site.

20 Q. Did you tell them what you'd seen inside the garage?

21 A. Not then.

22 Q. When did you tell other agents what you'd seen inside the
23 garage?

24 A. During that briefing, sir, one -- the questions that the
25 special agent in charge, Mr. Tubbs, asked was if any of us were

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1 going to be participating in the search the next day and I was
2 assigned to be there. He advised us that the bomb technicians
3 at the bombing site had informed him that the bomb had likely
4 been contained in white plastic containers with blue lids and
5 that we should keep our eyes open for those during the search
6 the next day and if they were observed during the search, to
7 let them know immediately.

8 Q. And you then explained that you had seen precisely such
9 barrels; correct?

10 A. No, sir.

11 Q. You did not. When did you tell someone what you had seen
12 inside the garage?

13 A. I -- I thought that I had seen something like that in the
14 garage and questioned myself if -- if I looked closely enough
15 at that -- to determine if it was a threat, if there were wires
16 coming from it or some kind of timing device. I went back
17 to -- to ensure that it was not an obvious bomb or device in
18 the garage.

19 Q. And you went back to the same position where you'd been
20 before?
21 A. Yes, sir.
22 Q. And you went back and read some things on the side of the
23 barrels; is that correct?
24 A. Yes, sir.
25 Q. And you smelled something that time; correct?

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1 A. I smelled an odor throughout that day.
2 Q. You smelled an odor throughout that day?
3 A. Yes, sir.
4 Q. Do you remember writing a 302 of your experiences on
5 April 21?
6 A. Yes, sir.
7 Q. Why don't you look at Exhibit B2.
8 A. B2?
9 Q. Yes.
10 A. Is that the -- black book or white book?
11 Q. That is in the first black book.
12 A. Yes, sir.
13 Q. And is this the 302 that you wrote four days or three days
14 after April 21, 1995?
15 A. Yes, sir.
16 Q. And on the second page at the bottom of that first
17 paragraph, you write, While standing near the garage, S. A.
18 Reightler also noticed a strong ammonia-type odor?
19 A. Yes, sir.
20 Q. All right. You hadn't -- and that sentence comes after
21 your description of arriving on the property and -- arriving at
22 the property, going into the garage, onto the property the
23 first time to look into the garage, going and having your

24 meeting and then returning to the property a second time;
25 correct?

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1 A. Yes, sir.

2 Q. All right. And everything else in this flows in a
3 chronological order; correct?

4 A. Yes, sir.

5 Q. So you didn't put that you'd smelled the odor around the
6 paragraphs that described your first arriving at the property
7 and first going into the garage; correct?

8 A. Correct.

9 Q. That comes afterwards; right?

10 A. Correct.

11 Q. So from reading this, it would suggest that you smelled the
12 odor the second time that you went on the property; correct?

13 MR. MACKEY: Objection. The document speaks for
14 itself.

15 THE COURT: Sustained.

16 BY MR. NEUREITER:

17 Q. Then what did you do after -- after you -- you read what
18 was on the barrels, you went back and reported to someone;
19 isn't that right?

20 A. Yes, sir.

21 Q. And that person told you to go and report to Mr. Rathbun,
22 isn't that correct?

23 A. Yes, sir.

24 Q. He was the United States Attorney for Kansas; correct?

25 A. Correct.

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1 Q. And Mr. Rathbun -- what did you tell Mr. Rathbun?
2 A. I gave him the -- the story of what had -- had eventually
3 appeared in this 302 of my activities throughout that afternoon
4 and what I had observed.
5 Q. And did you tell him why you had initially gone onto the
6 property to look into the window of the garage?
7 A. Yes, sir.
8 Q. Did he ask you about that?
9 A. I don't recall if he asked me, but I remember telling him
10 this is what I did and why I did it.
11 Q. You know that white barrels are used in dairies all over
12 Kansas; isn't that correct?
13 MR. MACKEY: Objection. Lack of foundation.
14 THE COURT: Ask him do you know.
15 BY MR. NEUREITER:
16 Q. Do you know that white barrels are used in dairies all over
17 Kansas?
18 A. I'm not real familiar with the dairy business, sir.
19 MR. NEUREITER: Thank you, your Honor.
20 BY MR. NEUREITER:
21 Q. Do you know now that white barrels are sold in dairies
22 around Kansas?
23 A. I know that barrels from -- other agents who have been
24 investigating this have contacted dairies with barrels
25 throughout Kansas, yes, sir.

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1 Q. And have you learned from speaking with those other agents
2 that those barrels are used in -- as cleaning solvents in
3 dairies?
4 A. Yes, sir.

5 Q. And you have learned in speaking with those other agents
6 that those barrels are then frequently sent to recycling
7 centers and are resold and distributed throughout Kansas;
8 correct?

9 A. Yes, sir.

10 MR. NEUREITER: Your Honor, we would offer three 302's
11 which are not on the exhibit list that will be marked at W80,
12 W81 and W82. And I have copies for the Court and counsel.

13 MR. MACKEY: Judge, if I could have a moment to read
14 them and --

15 THE COURT: Yes, of course. Are these from this agent
16 or --

17 MR. NEUREITER: No, your Honor, but they confirm what
18 this agent just testified to.

19 THE COURT: I don't think this goes to the witness;
20 right?

21 MR. NEUREITER: No. Just to your Honor and the clerk.
22 If I could have --

23 THE COURT: Instead of calling witnesses to prove what
24 you've just been talking about, you're suggesting that we use
25 these 302's?

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1 MR. NEUREITER: Yes, your Honor. They were provided
2 to us by the Government.

3 THE COURT: Any problem with that?

4 MR. MACKEY: My concern is it's obviously not relevant
5 to the state of information known to this agent.

6 THE COURT: Well, I understand that.

7 MR. MACKEY: With that noted, we have no objection.

8 THE COURT: All right. I'll receive W80, W81, and

9 W82.

10 MR. NEUREITER: Yes, your Honor. If I could have just
11 a moment.

12 THE COURT: All right.

13 MR. NEUREITER: Pass the witness.

14 THE COURT: All right. Mr. Mackey, do you have any
15 questions?

16 MR. MACKEY: I do, your Honor.

17 CROSS-EXAMINATION

18 BY MR. MACKEY:

19 Q. Agent Reightler tell the Court again, please, when you
20 first started working for the FBI.

21 A. I began working for the FBI in April of 1988.

22 Q. That was not your first line of employment, was it?

23 A. No, sir.

24 Q. What was it?

25 A. Following graduation from college, I was -- I worked as a

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1 conditioning coach for the Old Dominion University in Norfolk,
2 Virginia, and a YMCA director in Norfolk and Chesapeake,
3 Virginia.

4 Q. Tell the Court a little bit about the nature of your case
5 work since joining the FBI in 1988.

6 A. I've primarily been assigned to drug investigations and
7 violent crime investigations.

8 Q. And in that role, is it your responsibility to gather
9 information concerning possible violations of federal law --

10 A. Yes, sir.

11 Q. -- in those matters?

12 So you are principally a full-time investigator of
13 federal crime?

14 A. Yes, sir.

15 Q. Among your other duties, have you been assigned to the

16 S.W.A.T. team?

17 A. Yes, sir.

18 Q. When was the first time?

19 A. In 1992.

20 Q. All right. And you were a member of the S.W.A.T. team then

21 in April of 1995?

22 A. Yes, sir.

23 Q. Could you acquaint the Court, Agent Reightler, a little bit

24 about the responsibilities of a S.W.A.T. team member.

25 A. Your Honor, the primary role of the S.W.A.T. team member in

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1 the FBI is as an investigator. That's their primary job. The

2 S.W.A.T. team responsibilities are collateral or extra duties.

3 We train one to two days a month in the -- in the extra

4 activities, firearms and tactics that we use. The -- it is not

5 a full-time job. It is called out on specific assignments. I

6 typically -- high-risk arrests or service of search warrants in

7 high-risk situations.

8 Q. So it would be fair to say it's a collection of agents with

9 specialized training for special circumstances?

10 A. Yes, sir.

11 Q. And those circumstances would be crimes that involved

12 violence?

13 A. Yes, sir.

14 Q. Threat of violence; is that correct?

15 A. Yes, sir.

16 Q. And on April 21, 1995, you were investigating, were you

17 not, with other FBI agents the bombing -- the violent bombing

18 of the Murrah Building; correct?
19 A. Yes, sir.
20 Q. As a S.W.A.T. team, you were dispatched from Kansas City
21 and drove to Fort Riley?
22 A. Yes, sir.
23 Q. Did you leave Fort Riley as a S.W.A.T. team?
24 A. We were assigned as investigators to go to Herington.
25 Q. So your role had resumed to your full-time job of gathering

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1 facts to support --
2 MR. NEUREITER: Object to leading, your Honor.
3 THE COURT: Sustained.
4 BY MR. MACKEY:
5 Q. The several members of the S.W.A.T. team, how did they make
6 their way from Fort Riley to Herington?
7 A. We combined into two vehicles and drove to the Herington
8 Public Safety Building.
9 Q. So you carpooled with your vehicle and the sedan that you
10 described earlier?
11 A. Yes, sir.
12 Q. When you got to the police station in Herington, you met
13 with other representatives from the FBI?
14 A. Yes, sir.
15 Q. And it was at that time that you learned of your new
16 assignment to secure the premises --
17 MR. NEUREITER: Object to leading, your Honor.
18 THE COURT: Well, he's sort of reviewing past
19 testimony, and I'm not sure we need to do that, either.
20 MR. MACKEY: I'll be more direct, your Honor.
21 THE COURT: Thank you.
22 BY MR. MACKEY:

23 Q. At that time, Agent Reightler, could you describe what your
24 understanding was about the consent that had been obtained with
25 regard to that residence?

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1 A. We were -- met -- we met with uniformed officers from
2 Herington and the county and were briefed by Assistant Special
3 Agent in Charge Watson. And included in that briefing was
4 the -- the idea that our assignment was going to be to secure
5 the premises throughout the -- the evening and nighttime hours.
6 There were agents on scene already securing it. That we had
7 consent to search the premises but were not going to. And the
8 primary reason there was because of fear that there may have
9 been some other explosive device; also, that it was getting
10 near dark and that we would not be able to do an adequate and
11 proper and safe job.

12 Q. Did you at that time have firsthand knowledge as to which,
13 if either, of the property owners had executed consent at that
14 moment?

15 A. No, sir.

16 Q. Your understanding was someone had?

17 A. Yes, sir.

18 Q. And with that understanding, you then went to the
19 residence?

20 A. Yes, sir.

21 Q. And tell the Court what you first did when you got there.

22 A. Upon arriving at the Herington residence of Mr. Nichols, we
23 contacted uniformed officers who were on scene and -- and were
24 advised that there were agents in the back side of the
25 building. There was tape -- police line tape going up around

1 the house or already in place, barricades going up at the end
2 of each -- each end of the block of the Nichols residence. And
3 there were several uniformed officers as well as media and
4 neighbors around.

5 Q. Agent Reightler, Mr. Neureiter asked you several questions
6 about the entry in the log, Government Exhibit 289.

7 A. Yes, sir.

8 Q. Do you remember the reference to 4:20?

9 A. Yes, sir.

10 Q. Do you know whether that's the time that marked the
11 beginning of the process of putting up the security tape?

12 A. No, sir. They were -- the tape was up when I arrived.

13 Q. By 5:30?

14 A. Yes, sir.

15 Q. You have no firsthand knowledge as to what problems may
16 have been encountered beginning at 4:20 with securing tape and
17 that sort of thing?

18 A. No, sir.

19 Q. Incidentally, Agent Reightler, your college degree is in
20 biology?

21 A. Yes, sir.

22 Q. And based on that experience, were you familiar with the
23 smells of ammonia compounds?

24 A. Yes, sir.

25 Q. And had you, prior to April 21, 1995, attended the VA lab

1 school?

2 A. Yes, sir.

3 Q. And between those two experiences, were you acquainted with

4 the smell of ammonia?

5 A. Yes, sir.

6 Q. Did you recognize that smell on any occasion that you were
7 on the premises at 109 South 2nd?

8 A. Yes, sir.

9 Q. Describe it.

10 A. On walking from the front of the property to the rear, I
11 noticed a smell of an ammonia-type odor. The place that I can
12 recall it being the strongest was in between the house and the
13 shed. Why that -- that just was my observation. The -- I
14 noted that comment or I made a comment concerning that odor to
15 other agents.

16 Q. And in the course of the evening, did you speak to other
17 agents who were interviewing neighbors in that same area?

18 A. Yes, sir.

19 Q. And what information did you learn from them about
20 activities concerning fertilizer at the 109 property?

21 A. One comment that was made more than once by the agents who
22 had interviewed neighbors was that for the past couple of days,
23 Mr. Nichols had been seen out in his yard, hand spreading what
24 they had thought to be fertilizer.

25 Q. And so that information was also known to you when you made

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1 your report to the U.S. Attorney later that evening?

2 A. Yes, sir.

3 Q. Was the yard at 109 South 2nd one that you would evaluate
4 to be well maintained or manicured?

5 A. No, sir.

6 Q. Describe it.

7 A. The -- well, one of the comments that the neighbors had

8 made was Mr. Nichols spent a lot of time working in his yard.

9 There were several flowers, I believe tulips, planted in -- in

10 edgings and landscaping. The lawn itself was -- had very

11 little grass, primarily weeds and dirt.

12 Q. Focussing your attention then on the two occasions

13 bracketed, I think you said, between 8:30 and 9:30 when you

14 looked inside the second window being closest to the east side

15 of the house -- am I right?

16 A. Yes, sir.

17 Q. And tell the Court again what you saw inside the south

18 shed.

19 A. There were -- again, there were some hardware or tools-type

20 items that you would commonly expect to find in that area, but

21 also, the four plastic barrels, the fuel cans and numerous

22 ammunition -- military-style ammunition cans.

23 Q. Agent Reightler, can I ask you to look at Government

24 Exhibit 17.

25 A. Yes, sir.

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1 Q. Does the content of Government Exhibit 17 fairly and

2 accurately represent at least a portion of what you would see

3 from your vantage point as you described?

4 A. Yes, sir.

5 Q. What is depicted in the center of Government Exhibit 17?

6 A. Several 7.62-millimeter ammunition cans.

7 MR. MACKEY: Your Honor, we would move to admit

8 Government Exhibit 17.

9 MR. NEUREITER: Your Honor, there is an objection.

10 This photograph, Government Exhibit 17, was clearly taken

11 inside of the home by --

12 THE COURT: More foundation will be needed, I guess.

13 BY MR. MACKEY:

14 Q. Agent Reightler, the next day, on Saturday April 22, did
15 you have occasion to be at the doorway of the south shed?

16 A. Yes, sir.

17 Q. Is that the same structure that you described earlier?

18 A. Yes, sir.

19 Q. All right. And were you able from that vantage point to
20 see from inside or -- excuse me -- at that vantage point what
21 was inside?

22 A. Yes, sir.

23 Q. And how did that observation compare with what you'd seen
24 the night before from outside the window?

25 A. It was a different angle, but it -- as far as the contents

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1 that I made note of it, it was the same.

2 MR. MACKEY: I would a move to admit --

3 THE COURT: It's your testimony, is it, that the
4 photograph, Exhibit 17, shows fairly and accurately what you
5 saw?

6 THE WITNESS: Yes, sir.

7 MR. NEUREITER: Well, your Honor, I would object to
8 the extent it's being offered to show what he saw from the
9 outside with his flashlight when it was night. To show that
10 these were the objects which were eventually found, that's
11 fine, but not to --

12 THE COURT: Well, that's what we're talking about, I
13 assume. Right?

14 MR. MACKEY: Yes, your Honor.

15 THE COURT: 17 is received.

16 BY MR. MACKEY:

17 Q. Agent Reightler, when you saw stacks and stacks of
18 ammunition cans inside the south shed, did you know then
19 whether they contained anything?
20 A. No, sir.
21 Q. And if they were loaded with live ammunition, would they
22 represent a danger --
23 A. Yes, sir.
24 Q. -- in your judgment? Direct your attention, Agent
25 Reightler, to Government Exhibit 16. And if I ask you the same

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1 series of questions concerning your opportunity to observe
2 what's depicted in Government Exhibit 16, as I did with 17,
3 would your answers be the same?
4 A. Yes, sir.
5 Q. Does the -- do the items in Exhibit 16 fairly and
6 accurately represent what you saw both from outside the shed on
7 April 21 and the next day on April 22?
8 A. Yes, sir.
9 MR. MACKEY: Move to admit Government Exhibit 16.
10 THE COURT: Again, recognizing that it is a different
11 perspective from what he saw through a window. All right. Any
12 objection with that limitation?
13 MR. NEUREITER: No. With that limitation, your Honor,
14 there is no objection.
15 THE COURT: 16 is received.
16 BY MR. MACKEY:
17 Q. Tell the Court what is depicted in Exhibit 16.
18 A. That is four -- what appears to be four white plastic
19 barrels with blue lids.
20 Q. And from your vantage point outside the garage, were you
21 able to ascertain any writing that appears on those same

22 barrels?

23 A. Yes, sir.

24 Q. Did you make note of that and record that later in your

25 302?

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1 A. Yes, sir, I did.

2 Q. Finally, Agent Reightler, you told the Court that you were

3 in a position to make that observation from outside the garage

4 because there was an opening in one of the windows?

5 A. Yes, sir.

6 Q. Describe that opening.

7 A. The second window from the east end of the garage had a

8 vinyl or plastic blind like some of the other windows appeared

9 to have, except that window, the blind was torn and there

10 was -- the upper panes were uncovered.

11 Q. So of the series of windows along -- that were part of the

12 south shed, there was one and only one that had any opening?

13 A. Yes, sir.

14 Q. And of that window, only the top pane was open?

15 A. Yes, sir.

16 Q. And that was by virtue of a window covering that was torn?

17 A. Yes, sir.

18 Q. With the same questions asked earlier, did you have an

19 opportunity to see that torn window shade in a photograph?

20 A. Yes, sir.

21 Q. And is that depicted in Government Exhibit 18?

22 A. Yes, sir, I believe that is.

23 Q. And does that fairly and accurately represent the condition

24 of the window through which you made your observations on April

25 21?

1 A. Yes, sir.

2 MR. MACKEY: I would move to admit Government Exhibit

3 18.

4 MR. NEUREITER: There is an objection, here, your

5 Honor.

6 THE COURT: There's more in the photo than the window

7 shade. Is that it?

8 MR. NEUREITER: Yes, your Honor. I can't tell --

9 MR. MACKEY: We'll offer it for the limited purposes

10 of showing the condition of the window in the upper left-hand

11 corner, your Honor.

12 MR. NEUREITER: Your Honor, the -- this is clearly a

13 photograph taken of the license plate and --

14 THE COURT: It isn't offered for that, as Counsel has

15 just said.

16 MR. NEUREITER: Again, your Honor, there would be no

17 objection with the --

18 THE COURT: Limited to what it shows regarding the

19 window shade in the upper left corner.

20 MR. NEUREITER: And I would also like it noted for the

21 record that this was taken from the inside, not from the

22 outside where Agent Reightler would have been standing.

23 THE COURT: That's true.

24 MR. MACKEY: We so stipulate.

25 THE COURT: All right. With those limitations, 18

1 received.

2 BY MR. MACKEY:

3 Q. Agent Reightler, for you to be in the position that you
4 were to look inside the south shed, did you have to climb over
5 a fence?

6 A. No, sir.

7 Q. Did you have to move anything?

8 A. No, sir.

9 Q. All right. Could you simply walk down a sidewalk, concrete
10 sidewalk that abutted the building?

11 A. Yes, sir.

12 Q. Agent Reightler, prior to coming to court, did you review
13 paragraph 19 in the search warrant application?

14 A. Yes, sir, I did.

15 Q. And did it accurately summarize the report you gave to the
16 U.S. Attorney that evening?

17 A. Yes, sir, it did.

18 MR. MACKEY: One moment, your Honor.

19 Nothing further.

20 THE COURT: Any follow-up questions?

21 MR. NEUREITER: Just a couple of questions, your
22 Honor.

23 THE COURT: All right.

24 REDIRECT EXAMINATION

25 BY MR. NEUREITER:

1 Q. Agent Reightler, when you went to the Herington Department
2 of Public Safety, did anybody tell you that Mr. Nichols was a
3 dealer in military surplus?

4 A. No, sir. I don't recall that.

5 Q. Did you learn from the agents that Mr. Nichols had told the
6 interviewing agents that he had bought the ammo cans and other

7 surplus items at a Fort Riley auction and had placed them in
8 his garage?

9 A. I remember hearing that information. As far as the date
10 and time, I have no idea, sir.

11 Q. So it's possible that when you saw those ammo cans on that
12 day, you had already been told that he had bought those at a
13 Fort Riley military auction?

14 A. That's possible, sir.

15 MR. NEUREITER: One moment.

16 We're through, your Honor.

17 THE COURT: All right.

18 MR. MACKEY: I'm all finished.

19 THE COURT: Excusing the witness?

20 MR. NEUREITER: We are, your Honor.

21 THE COURT: You may step down. You're excused now.

22 Next witness, please.

23 MR. THURSCHWELL: Call Special Agent Thomas Price.

24 THE COURT: All right. Thomas Price. If you'll
25 please come forward to be sworn.

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1 (Thomas Price was sworn.)

2 THE COURTROOM DEPUTY: Please be seated.

3 Please state your full name and spell your last name
4 for the record.

5 THE WITNESS: Thomas A. Price, P-r-i-c-e.

6 DIRECT EXAMINATION

7 BY MR. THURSCHWELL:

8 Q. Good morning, Agent Price. My name Adam Thurschwell, and I
9 represent Terry Nichols.

10 A. Good morning.

11 Q. Agent Price, what's your current position with the FBI?

12 A. I'm a supervisory special agent of the surveillance squad.
13 Q. And what is your office assignment?
14 A. Kansas City.
15 Q. Okay. What is your educational background?
16 A. I have a four-year business administration degree.
17 Q. Okay. On April 21, 1995, were you then assigned to the
18 Kansas City office?
19 A. Yes, I was.
20 Q. And were you then a supervisory special agent?
21 A. Yes, I was.
22 Q. Okay. By the way, how many years as a special agent --
23 sorry. How many years have you been a supervisory special
24 agent?
25 A. Approximately eight years.

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1 Q. Eight years?
2 A. Yes.
3 Q. And how many years as a special agent total?
4 A. Almost 21 years.
5 Q. Okay. Now, let me -- I want to take you back to April 21,
6 1995. When did you -- did you report for work that morning to
7 the Kansas City office?
8 A. No, I did not.
9 Q. Okay. What office did you -- or where did you report for
10 work?
11 A. I was in the Wichita area at the time.
12 Q. Okay. And what office did you report to?
13 A. I didn't report to any office that day.
14 Q. All right. When were you first contacted about a work
15 assignment on the morning of the 21st?

16 A. At approximately 12:30 on the morning of the 21st.
17 Q. Okay. So that would be in the a.m., the early morning
18 hours?
19 A. Actually, 12:30 in the afternoon.
20 Q. 12:30 in the afternoon?
21 A. Yes.
22 Q. Okay. Where were you precisely at that time?
23 A. In Wichita, Kansas.
24 Q. Okay. And why were you there?
25 A. I was there on another assignment.

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1 Q. An assignment unrelated to the Oklahoma City bombing case?
2 A. No.
3 Q. Okay. What assignment were you -- what were you
4 investigating at that point?
5 MR. MENDELOFF: Objection, your Honor. Relevance.
6 THE COURT: It was in connection with this bombing
7 case? Is this your question?
8 MR. THURSCHELL: I think he answered it was in
9 connection with the bombing.
10 THE COURT: Yes. Is that your answer?
11 THE WITNESS: Yes.
12 THE COURT: And then he asked specifically --
13 MR. MENDELOFF: Yes, your Honor. The reason I'm
14 posing a relevance objection, I believe his testimony has to do
15 with the affairs in Herington, Kansas; and if he's
16 investigating some other aspect of the case, it's not relevant
17 to this proceeding.
18 THE COURT: Well, I don't know whether it's relevant
19 or not. I guess it depends upon the answer. Do you know the
20 answer?

21 MR. MENDELOFF: I do.

22 THE COURT: And is there some reason to protect the
23 information?

24 MR. MENDELOFF: Well, Judge, it is completely separate
25 and apart. If your Honor wants to hear the initial portion,

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1 your Honor can determine for yourself whether or not you think
2 it's relevant, but --

3 MR. THURSCHWELL: Your Honor, it's difficult to know.
4 Maybe we could ask in general terms.

5 BY MR. THURSCHWELL:

6 Q. What was the nature of your assignment in the Wichita area?

7 A. I had completed a surveillance assignment in the Wichita
8 area the day before.

9 Q. Okay. You are -- your specialty is in surveillance; is
10 that correct?

11 A. Yes. At this point.

12 Q. "At this point," meaning April 21, 1995?

13 A. That's correct.

14 Q. Okay. Are you no longer in surveillance?

15 A. No. I am in surveillance at this point.

16 Q. Okay. Now, what -- when you got the call, was it -- how
17 did you receive word of your new assignment at 12:30 on that
18 day? By radio?

19 A. No. By -- I had contacted our Kansas City command post and
20 talked to them.

21 Q. Okay. You had a cell phone, did you not?

22 A. Yes, I did.

23 Q. Okay. Is that what you used?

24 A. No, I did not.

25 Q. What -- okay. You used a land line phone?

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1 A. Yes.

2 Q. All right. Now, who did you speak to in Kansas City?

3 A. I initially spoke to ASAC Dale Watson in Kansas City.

4 Q. And who else did you speak to?

5 A. I thereafter spoke to supervisory special agent Mike Pulice

6 in Junction City.

7 Q. Okay. And that -- thereafter, is in -- different phone

8 call, then?

9 A. Yes. I initially talked to ASAC Watson. He told me to

10 call.

11 Q. Okay. What did he -- what exactly did he tell you?

12 A. That I was to take my squad and proceed to Herington,

13 Kansas.

14 Q. Okay. Anything else?

15 A. And we were to -- Mr. Watson or Mr. Pulice.

16 Q. Mr. Watson?

17 A. No. Mr. Watson told me to -- to do that, but he told me to

18 call Mr. Pulice in Junction City first.

19 Q. Okay. Who was -- who was on your squad at that point?

20 A. How many people, or the names?

21 Q. Both.

22 A. At that time, there were nine people including myself there

23 from my squad.

24 Q. And your entire squad was instructed to proceed to

25 Herington, Kansas?

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1 A. That's correct.

2 Q. Okay. Were you in -- all in separate vehicles?
3 A. All of us but one.
4 Q. Okay. Who was the one?
5 A. We had an airplane in that -- an individual had an -- took
6 an airplane.
7 Q. Okay. Now, would those nine people be individuals named
8 in -- turning to the white notebook on your left -- Government
9 Exhibit 29, which is the surveillance log for that day?
10 A. Those people -- all of those in there are on my squad, plus
11 there are some others that aren't on my squad.
12 Q. Plus -- but was there anyone on your squad whose name is
13 not mentioned in this list?
14 A. No. I believe everyone on my squad is on that list.
15 Q. Okay. You then called -- I'm sorry. ASAC Pulice?
16 A. No. Supervisory Special Agent Pulice.
17 Q. Okay.
18 A. Michael Pulice.
19 Q. And he was in the Junction City command post?
20 A. Yes.
21 Q. All right. What did he tell you?
22 A. He told me to proceed to Herington, Kansas, and to
23 establish a discreet surveillance on the residence of Terry
24 Nichols.
25 Q. Okay. Now, did he give you a reason for that assignment?

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1 A. Yes.
2 Q. And what was that reason?
3 A. The reason was that he had been determined to be an
4 associate of Timothy McVeigh's, who --
5 Q. Now, did -- did he say anything else in that conversation

6 about the reason for surveilling him?

7 A. No. At that time we were to conduct a discreet
8 surveillance and await other instructions.

9 Q. So were you -- you weren't told that there -- they expected
10 to arrest Mr. Nichols at some point that day?

11 A. No. I was not told at that point, no.

12 Q. You were not told at that time. So all they told you --
13 okay. Strike that.

14 All right. Now, what did you do then? Did you
15 proceed directly to Herington, Kansas?

16 A. Yes, we did.

17 Q. Okay. Where did you go in Herington, Kansas?

18 A. We initially stopped about two miles south of town in
19 Herington, Kansas.

20 Q. And what did you do at that point?

21 A. We asked one of the agents -- there were some agents
22 already in Herington from -- that had come down from Junction
23 City. We asked one of the agents to come out and brief us
24 outside of town as to what --

25 Q. Sorry. Go ahead. Who was that agent?

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1 A. Mike Gillispie.

2 Q. Mike Gillispie. Okay.

3 A. Yes.

4 Q. What did Mr. Gillispie tell you?

5 A. Mr. Gillispie never arrived to our location.

6 Q. Okay. What happened next then?

7 A. Well --

8 Q. You were waiting for Mr. Gillispie to arrive?

9 A. Yes. And Mr. Nichols came out of his house and started to
10 leave, so Mr. Gillispie had to turn around at that point.

11 Q. Okay. So Agent Gillispie was conducting surveillance,
12 direct visual surveillance of the house at that point?
13 A. I don't believe so.
14 Q. All right. Who was conducting surveillance of the house,
15 if you know?
16 A. Agent Foley and Smith, I believe, were conducting
17 surveillance of the house at that time.
18 Q. All right. And where was Agent Gillispie?
19 A. Agent Gillispie, I don't know his exact whereabouts in
20 Herington, where he was. He was not conducting surveillance of
21 the house.
22 Q. How did you receive word that Mr. Nichols had left his
23 home?
24 A. It was broadcast over the radio.
25 Q. Okay. Who -- who broadcast it?

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1 A. I believe it was either Agent Foley or Smith.
2 Q. Okay. And about what time would this be?
3 A. About 2:40 p.m.
4 Q. All right. About -- what did you do then?
5 A. We proceeded to head into town. My ground units and our
6 airplane had already been dispatched to meet with Agents Foley
7 and Smith and set up an aerial surveillance on Mr. Nichols'
8 house.
9 Q. Okay. When you say "we," you're -- did your entire squad
10 go together?
11 A. We were on a mud road. It had rained quite a bit that day,
12 and so some of the vehicles had trouble getting back on to the
13 highway, so we were somewhat spread out; but yes, we were
14 traveling together.

15 Q. You were all headed for the same location?

16 A. Yes.

17 Q. And what was that location?

18 A. Well, the location was just to get into Herington at that
19 point and listen to our airplane give instructions as to where
20 Mr. Nichols had headed.

21 Q. Okay. Now -- so what did you hear over the radio as you
22 were traveling towards Herington?

23 A. What was broadcast was the different directions Mr. Nichols
24 was driving.

25 Q. Okay. Now, there -- did there come a point in time where

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1 you learned that he had driven his truck to the Department of
2 Public Safety in Herington?

3 A. Yes, I did hear that.

4 Q. Okay. Where were you at that point?

5 A. At that point in time, I was in -- just in the neighborhood
6 in Herington away from the surveillance site.

7 Q. Okay. And was your squad with you at that point?

8 A. No.

9 Q. What -- had they been dispatched elsewhere?

10 A. They were in various points of the City of Herington.

11 Q. Okay.

12 A. Some of them would have actually followed Mr. Nichols to
13 the public safety building.

14 Q. Okay. Why were you not -- why were you in a separate
15 location from your squad?

16 A. Because I had decided to move into a different location to
17 meet with Mr. Gillispie and -- and get a briefing on what new
18 information he may have that I did not have.

19 Q. Okay. Now, did you -- did you, in fact, get together with

20 Mr. Gillispie?
21 A. Yes, I did.
22 Q. And what did he tell you?
23 A. He at that time -- Mr. Nichols had arrived at the Public
24 Safety Building, and we had no -- we were in -- we had no
25 conversation about anything at that point about an update of

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1 information.
2 Q. There was -- he didn't give you any update. Did he
3 mention -- he didn't mention any information he had learned
4 about the intention to seek an arrest warrant?
5 A. No.
6 Q. Not -- you hesitated. Not at that point?
7 A. That -- that wouldn't -- he wouldn't have been in a
8 position to have that information, I don't think.
9 Q. Okay. Now, where -- where did you -- where exactly did you
10 meet with Agent Gillispie?
11 A. I met with him -- it would have been north and east of the
12 Public Safety Building, of Trapp Street, which there's a water
13 tower in the city, if you're at all familiar with it. It was
14 right by the water tower.
15 Q. About how far away is that?
16 A. From?
17 Q. From -- excuse me. From the Department of Public Safety.
18 A. Probably about four or five blocks.
19 Q. Okay. Nearby. Now -- and this would be in the 3:00 time
20 period?
21 A. Actually, probably about 10 to 3.
22 Q. 10 to -- 10 of 3?
23 A. Yes.

24 Q. All right. What did you do after you met with Agent

25 Gillispie?

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1 A. Well --

2 Q. I'm sorry. Strike that.

3 Before I -- who else was -- who else was with you at

4 the time?

5 A. Just Agent Gillispie and I.

6 Q. Okay. And what did you do next?

7 A. I contacted our Kansas City command post.

8 Q. All right. Who did you speak to there?

9 A. I spoke to Agent Bob Merideth.

10 Q. All right. What did he tell you?

11 A. I told Mr. Merideth about the situation, that -- that Terry

12 Nichols had arrived at the Herington Public Safety Building.

13 Q. Did you -- what were your -- did you say that he had turned

14 himself in to the Department of Public Safety?

15 A. No, I did not.

16 Q. You said he had arrived there. Okay. What did he tell

17 you?

18 A. I asked him for further instructions as to what our -- our

19 role was at that time and asked him to ask one of the -- one of

20 our superiors what we should -- what course of action we should

21 take.

22 Q. And -- and what did he tell you the instructions were?

23 A. He had told us our instructions were -- first of all, he

24 told us that Mr. Nichols might be wired with explosives and to

25 be cautious. Based on that statement, I asked him to have

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1 someone call into the Herington Police Department and ensure
2 that there was no hostage situation inside.

3 Q. Okay. Now, that -- I'll come back to that phone call in a
4 moment that you made. But did he tell you anything else? Any
5 further instructions about what to do?

6 A. Yes. He told us that we were to go into the Herington
7 Police Department and interview Terry Nichols, if he would
8 agree to an interview, and that if he didn't agree to an
9 interview, that we were to continue our surveillance.

10 Q. Okay. So he told you that at that point, you were -- you
11 were not authorized to arrest Mr. Nichols; is that correct?

12 A. That's correct.

13 Q. Okay. And that, therefore, he was free to leave if he
14 wanted to?

15 A. That's correct.

16 Q. But you were to try to interview him if he would be willing
17 to be interviewed?

18 A. That's correct.

19 Q. And the reason that you weren't authorized -- did he tell
20 you that the reason you weren't authorized was that there was
21 no arrest warrant yet obtained?

22 A. He didn't say yet. He said there was no arrest warrant for
23 Mr. Nichols.

24 Q. Okay. So he used the word that -- he used the words in
25 substance there's no arrest warrant for Mr. Nichols?

1 A. That's correct.

2 Q. Okay. Now, that would be -- what time would that
3 conversation have occurred?

4 A. Sometime between 2:50 and the time I arrived at the

5 building around 3:10.

6 Q. Okay. Thank you. You mentioned that you made a phone call
7 to ascertain whether there was any danger inside the Department
8 of Public Safety; correct?

9 A. I asked the command post in Kansas City to make that phone
10 call.

11 Q. Okay. You -- in fact, you spoke to Agent Chornyak; is that
12 right?

13 A. I believe I spoke to Agent Merideth. I think they were in
14 the same room at that time.

15 Q. All right. You testified that you asked him to make
16 certain that there was no hostage situation occurring inside of
17 the --

18 A. That's correct.

19 Q. -- police station. Thank you. Okay. Now, you entered --
20 you actually did enter the Department of Public Safety around
21 3:10; is that correct?

22 A. Yes, sir.

23 Q. Okay. Prior to that, did you -- did you meet with Agents
24 Gillispie, Foley, and Smith?

25 A. Yes, I did.

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1 Q. All right. Was there anyone else at the meeting?

2 A. No.

3 Q. Okay. And what -- what transpired at the meeting? What
4 was the discussion there?

5 A. Well, I was -- I had -- Agent Gillispie had been with me
6 during my entire conversations with Kansas City and now had
7 gotten into my vehicle, so he was aware of the situation. I
8 instructed Agent Smith and Foley just exactly what the command
9 post had told me.

10 Q. Okay. Exact -- so you -- you told them, in other words,
11 that -- that they were to attempt to interview Mr. Nichols if
12 he was willing?
13 A. That's correct.
14 Q. And that he was -- if he wanted to leave that they should
15 follow him, keep him under surveillance, but allow him to go?
16 A. If he wanted to leave, they should allow him to go. They
17 were not on the surveillance team so they would probably not
18 been part of the surveillance.
19 Q. And the reason they were not authorized to stop him or
20 arrest him at that point, was that there was no arrest warrant?
21 A. That's correct.
22 Q. Now, you -- so you -- you entered the station at 3:10.
23 How -- were you there for the entire day on the 21st?
24 A. Yes.
25 Q. Okay. You were physically present in the station or

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1 nearby?
2 A. From 3:10 on, yes.
3 Q. What time did you leave?
4 A. I believe it was after 1:30.
5 Q. 1:30 in the morning of April 22?
6 A. Yes.
7 Q. Okay. All right. Now, you entered the station. Tell me
8 what occurs then.
9 A. In the station, was met by Chief Kuhn, who I had not met at
10 that point in time. And was introduced to Chief Kuhn.
11 Q. Okay. And what did he tell you?
12 A. He told us that Mr. Nichols was there and had some
13 questions for us.

14 Q. All right. Now, were you introduced to Mr. Nichols?
15 A. Yes.
16 Q. All right. You -- you -- what did you -- what did you say
17 to him and what did he say to you?
18 A. I displayed my credentials to him and his wife and told him
19 who I was and the rest of the people with me were with the FBI
20 and asked him if he would be willing to answer some questions.
21 Q. Okay. And what did he say?
22 A. He stated that he would.
23 Q. All right. Now, did you tell him that he was free to leave
24 at that point?
25 A. No, I did not.

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1 Q. Okay. Did anyone tell you that he was free to leave in
2 your presence?
3 A. They wouldn't tell him that.
4 Q. Yeah.
5 A. Not to my knowledge, no.
6 Q. All right. Did you -- did you learn subsequently that
7 anyone had told him that he was free to leave if he wished to?
8 THE COURT: I'm confused about your question. Maybe
9 the witness is. Are you talking about at this initial
10 conversation?
11 MR. THURSCHELL: Sorry, your Honor.
12 BY MR. THURSCHELL:
13 Q. That's correct. The timing I'm asking about, did you
14 subsequently learn at any point that someone else had informed
15 him that he was free to go prior to your initial conversation
16 with him.
17 A. No. I don't recall that.
18 Q. Okay. All right. So now then eventually -- who --

19 eventually, he agreed to be interviewed. Who -- which agents
20 interviewed him initially?
21 A. Agent Smith and Foley.
22 Q. All right. And -- well, prior to that, he was searched;
23 correct?
24 A. There was a patdown search done, yes.
25 Q. Did you do that search?

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1 A. No, I did not.
2 Q. Was it done in your presence?
3 A. Yes.
4 Q. Okay. His wife was searched, also?
5 A. That's correct.
6 Q. Was that done in your presence?
7 A. Yes.
8 Q. Was that done in Mr. Nichols' presence?
9 A. Yes.
10 Q. All right. And his young daughter was searched; is that
11 correct?
12 A. That's correct.
13 Q. All right. And was that done in your presence?
14 A. Yes.
15 Q. And was it done in Mr. Nichols' presence?
16 A. Yes.
17 Q. All right. Now, immediately thereafter, as I understand,
18 he's taken into the basement by some of the agents for the
19 interview; is that correct?
20 A. By Agents Foley and Smith, yes.
21 Q. Okay. And where did you go after that?
22 A. I stayed in the room with Mrs. Nichols.

23 Q. Okay. Did you have a conversation with Mrs. Nichols?

24 A. Yes, I did.

25 Q. And what was that conversation?

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1 A. I was awaiting the arrival of agents to interview

2 Mrs. Nichols and I -- I asked Mrs. Nichols if she knew the

3 whereabouts of James Nichols.

4 Q. Okay. And did she give you an answer?

5 A. Yes, she gave me an answer.

6 Q. She told you his address; correct?

7 A. Yes. In Decker, Michigan.

8 Q. Okay. And it was an accurate address; is that correct?

9 A. I -- I think so. I don't know.

10 Q. Okay. Now, where did you go after your exchange with

11 Mrs. Nichols?

12 A. After my exchange with her, I went and established a room

13 for myself in the back eastern part of the Herington police

14 department.

15 Q. Okay. Would you turn to Government Exhibit 3. That's in

16 the white notebook. That's 3 in the white tab.

17 A. That's the book I have.

18 Q. And this is a -- do you recognize this as the floor plan of

19 the Herington Public Safety Building, first floor?

20 A. Yes, I do.

21 MR. THURSCHELL: All right. I think it's been -- I

22 think it's been entered already.

23 THE COURT: Yes.

24 BY MR. THURSCHELL:

25 Q. Okay. Which -- as -- as indicated on this diagram, which

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1 room did you set up your post in?
2 A. In the interrogation in the Kansas Highway Patrol office.
3 Q. Okay. Was there a phone in that room?
4 A. I believe there was, yes.
5 Q. Was there a fax machine?
6 A. No.
7 Q. All right. Did anyone accompany you there -- did any --
8 strike that.
9 Did anyone else set up a posting there as their
10 position for the remainder of the day?
11 A. Yes.
12 Q. Who was that?
13 A. Agent Gillispie.
14 Q. Okay. Now, during -- were you -- did you -- strike that.
15 During this initial phase of the interview -- by which
16 I mean the period prior to the arrival of Agents Crabtree and
17 Jablonski -- were you kept apprised of what was being said by
18 Mr. Nichols in the interview room?
19 A. No.
20 Q. Agents -- Agent Smith never told you what Mr. Nichols was
21 saying or doing there?
22 A. I never saw the agents during that time period.
23 Q. Okay. So there was -- did you -- you never -- did you --
24 did there come a time when you learned that Mr. Nichols had
25 refused to sign a waiver of rights form?

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1 A. Yes.
2 Q. How did you come to learn that?
3 A. Agent Gillispie advised me.

4 Q. Okay. To your knowledge, had Agent Gillispie spoken to one
5 of -- either Agent Smith or Foley?

6 A. Agent Gillispie had spoken to one of them. I don't know
7 which one.

8 Q. Okay. Now, what did Agent Gillispie tell you?

9 A. He told me that Mr. Nichols did not wish to sign a consent
10 form. However, would agree to an interview.

11 Q. Okay. And why did he tell you that?

12 A. Because it had been told to him.

13 Q. All right. Was he concerned that -- about the legality of
14 the statement under those circumstances?

15 A. I don't think so.

16 Q. All right. You called the command post at Kansas City and
17 reported that information, did you not?

18 A. Yes, I did.

19 Q. All right. And why did you -- why did you call that
20 information in?

21 A. To pass that on to the command post to keep them updated on
22 any information I had at that time.

23 Q. You did not -- you were not concerned at that point about
24 the legality of the statement, given that he had not signed the
25 form?

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1 A. Not if he had agreed to an interview, no.

2 Q. Okay. Did -- who did you speak to -- I'm sorry. Strike
3 that.

4 You spoke to Agent Chornyak at the command post?

5 A. Yes.

6 Q. Okay. And you told him that he had agreed to speak but had
7 refused to sign the form; is that correct?

8 A. That's correct.

9 Q. All right. What did Agent Chornyak say?
10 A. I don't recall that he said anything other than take any
11 information.
12 Q. Did he tell you he would get back to you with any -- with
13 legal advice?
14 A. I don't recall that.
15 Q. Okay. Did you -- have you spoken to any Government
16 officials offsite prior to that phone call with Agent Chornyak
17 while in the -- this station -- while you were in the station?
18 A. I would have spoken to the rest of my squad that was
19 outside the -- the department just to provide them with
20 instructions. That would probably have been it.
21 Q. Okay. Now, let's go back to them. Where were they in this
22 time frame? 3:10 to 3:15?
23 A. 3:10 to 3:15.
24 Q. Yeah. I'm sorry. Or up to the point where the --
25 Mr. Nichols has agreed to the interview and gone downstairs

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1 with the agents. Where were your squad?
2 A. I believe they were partially outside the Herington Public
3 Safety Building in the parking lot and also, some had been
4 dispatched over to Terry Nichols' house.
5 Q. Okay. And -- and what were your instructions to them
6 after -- you said you spoke to them prior to your conversation
7 with Mr. Chornyak. What were your instructions to them?
8 A. Just to maintain a -- a surveillance on those two -- those
9 two locations.
10 Q. Okay. The two locations being the Herington -- the 109
11 South 2nd Street home location?
12 A. Yes.

13 Q. And the pickup truck parked outside the station?

14 A. That's correct.

15 Q. Okay. Did you tell them to secure those locations?

16 A. I told them to maintain a visual observation on them and

17 not let people into those -- have access to those, yes.

18 Q. Okay. Now, Agents Jablonski and Crabtree arrive around

19 4:00 that afternoon; is that correct?

20 A. I don't recall the exact time they arrived. I did not see

21 them when they arrived.

22 Q. You did not see them. Did you speak to them --

23 A. No.

24 Q. -- when they arrived?

25 You had no conversation with them at all?

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1 A. No.

2 Q. All right. I -- who -- were other agents arriving at the

3 police station after your arrival? By "arriving," I mean

4 coming physically into the police station.

5 A. Were there other agents?

6 Q. Yes.

7 A. Around that time, I don't think so.

8 Q. Okay. Were there -- did other agents arrive around the

9 time that Agents Crabtree and Jablonski arrived, to your

10 knowledge?

11 A. I don't believe so.

12 Q. You didn't see any other agents in the station apart from

13 yourself, Agent Gillispie, Agent Smith and Agent Foley?

14 A. Oh, yes. Two other agents were -- were interviewing

15 Marife.

16 Q. Okay. Agents Thomeczek and Dobson?

17 A. No.

18 Q. Who were the agents?

19 A. Agents Thomeczek and Army CID Agent White.

20 Q. Oh, excuse me. Okay. All right. Now, did there come a

21 time when you received a phone call from Mr. Chornyak informing

22 you that a material witness arrest warrant had been issued for

23 Terry Lynn Nichols?

24 A. Yes.

25 Q. All right. And that would -- what time did that occur?

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1 A. I believe it was within 20 minutes of -- of a fax arriving

2 in that -- of that warrant. So I would say somewhere 20

3 minutes before 5:00.

4 Q. Okay.

5 A. 4:40, somewhere in that period.

6 Q. All right. Now, was -- was -- was Agent Gillispie in the

7 room with you when you received that phone call?

8 A. I don't -- I don't know.

9 Q. Okay. Did you -- did you inform anyone else in the station

10 that a material witness arrest warrant had been issued for

11 Terry Lynn Nichols after receiving that initial phone call?

12 A. The next time I spoke to Agent Gillispie, I would have

13 informed him. I don't know if he was in the room at that time

14 or not.

15 Q. Okay. Did you tell anyone else?

16 A. No.

17 Q. All right. Now, you didn't see Agents Foley and Jablonski

18 emerge from the interview around 10 of 5:00?

19 A. No, I did not.

20 Q. Okay. What -- what was your assignment at that point?

21 What were you doing in the command post there?

22 A. Basically tied up on the telephone for quite a lengthy
23 period of time when I first got there.
24 Q. Okay. And who were you speaking to?
25 A. Oklahoma City, Junction City, Kansas City, Washington.

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1 Q. All right. You were in direct telephonic contact with FBI
2 headquarters in Washington?
3 A. Yes.
4 Q. Okay. Kansas City command post?
5 A. Yes.
6 Q. Oklahoma City command post?
7 A. Yes.
8 Q. Fort Riley command post?
9 A. Yes. And also SA Tubbs and ASAC Watson on their cell
10 phone.
11 Q. Okay. Thank you. Now, at 5:00, you've said you received a
12 fax of the material witness warrant; is that correct?
13 A. Yeah, at approximately 5:00.
14 Q. Okay. Thank you. Would you take a look first at
15 Government Exhibit 26. White notebook. White tab. Can I ask
16 you to look at the second page of that exhibit.
17 A. Okay.
18 Q. Well, let me ask you a preliminary. Did you read the
19 warrant when it was faxed to you?
20 A. I would have read it at some point after it was faxed to
21 me.
22 Q. Okay. Do you recall how long after it was faxed to you
23 that you read it?
24 A. No. I was not receiving the faxes so as they were brought
25 in to me. When I had a free moment, I would have read it. So

1 it would have been somewhere shortly after it was received, I'm
2 sure.

3 Q. Okay. Now, take a look at Exhibit 26. And if it will fit
4 on your desk, please open the brown -- the black notebook to
5 your right to Nichols Exhibit W42.

6 THE COURT: I'm sorry. What was the W reference?

7 MR. THURSCHWELL: W42.

8 THE COURT: Thank you.

9 MR. THURSCHWELL: Which I believe has been entered in
10 evidence already.

11 THE COURT: Is that right?

12 THE COURTROOM DEPUTY: I do not have it.

13 THE COURT: I don't show that as being in.

14 MR. THURSCHWELL: I'm sorry.

15 MR. TIGAR: Go to W54.

16 BY MR. THURSCHWELL:

17 Q. Agent Price, turn to W54 instead.

18 MR. THURSCHWELL: I apologize. And I believe that one
19 has been entered.

20 THE COURT: Do you have that in?

21 THE COURTROOM DEPUTY: No, I do not.

22 BY MR. THURSCHWELL:

23 Q. Do you see those two exhibits?

24 A. Yes.

25 Q. Now, you will note that they are both warrants for the

1 arrest of Terry Lynn Nichols as a material witness; is that
2 correct?

3 A. That's correct.

4 Q. Do you recall -- but they are -- they are slightly
5 different in -- in two respects. The caption is different,
6 United States of America versus Terry Lynn Nichols, in
7 Government Exhibit 26?

8 A. Yes.

9 Q. And United States of America versus Timothy James McVeigh
10 in Nichols W54. And then the Government 26 "of material
11 witness" is handwritten in. Do you see that?

12 A. Yes.

13 Q. Do you recall which -- well, do you recognize either of
14 these as the material witness arrest warrant that you received
15 on April 21 around 5:00?

16 A. I recognized it -- Exhibit 26 Has what appears to be the
17 same coding on the side as the copy I received.

18 Q. Okay. Thank you.

19 THE COURT: Perhaps there's some oversight here. I
20 don't show W54 as actually received in evidence. We've been --

21 MR. THURSCHELL: I'm sorry, your Honor. I would
22 offer Nichols Exhibit W54 in evidence.

23 MR. MENDELOFF: No objection.

24 THE COURT: It's received now.

25 MR. THURSCHELL: Thank you, your Honor.

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1 BY MR. THURSCHELL:

2 Q. Okay. Agent Price, you -- you -- you read the warrant and
3 it states, does it not, that you are hereby commanded to arrest
4 Terry Lynn Nichols and bring this witness forthwith before the
5 federal grand jury at Oklahoma City, Oklahoma, for the reason
6 that the witness' testimony is material. Is that what it says
7 there?

8 A. In part, yes.

9 Q. Okay. Now, you didn't arrest Terry Lynn Nichols, did you?

10 A. No, I did not.

11 Q. All right. You didn't bring him before the -- a grand

12 jury, did you?

13 A. No, I did not.

14 Q. All right. You didn't tell -- did you tell anyone to

15 arrest Terry Lynn Nichols?

16 A. No, I did not.

17 Q. Okay. Did you show this warrant to anyone?

18 A. At what point in time?

19 Q. Well, Agent, you tell me. Beginning after your receipt of

20 the fax, who did you show this warrant to?

21 A. At some point in time, upon the arrival of SAC Tubbs and

22 Watson, I would have shown either one of those two that

23 warrant.

24 Q. Okay.

25 A. And advised them of it.

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1 Q. About what time did they arrive, if you recall?

2 A. I believe it was between 4:45 and 5:00.

3 Q. So they would have arrived right about the time the warrant

4 arrived?

5 A. That's correct.

6 Q. So you would have shown it to them immediately upon its

7 receipt?

8 A. Immediately upon their availability and my availability.

9 Q. All right. Shortly after 5:00? Fair to say?

10 A. It could have been an hour after 5:00. It depended on if

11 they were in a closed-door meeting or if I was on the phone or

12 whatever; but yes, sometime within an hour after 5, I would

13 say.

14 Q. Well, Agent, didn't you think it was worth interrupting a

15 meeting to inform them that you had received a faxed version of

16 the arrest warrant for the man you had downstairs?

17 A. It was an important issue, yes.

18 Q. But not important enough to interrupt a meeting?

19 A. Like I said, I'm not sure I read the warrant at 5:00 myself

20 if I was tied up on the phone or whatever. Some of the phone

21 calls were quite lengthy. Yes. I would have wanted to inform

22 them at the earliest possible moment, yes.

23 Q. So it was important enough to interrupt a meeting?

24 A. It was important enough to let them know as soon as it was

25 feasibly possible, yes.

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1 Q. All right. Who else -- after that, did you show the

2 warrant to anyone else?

3 A. I don't recall showing it to anyone else, no.

4 Q. You didn't show it to Agent Gillispie?

5 A. It was there. Agent Gillispie was in and out of that room.

6 It would have been there if he wanted to look at it.

7 Q. To your knowledge, was he aware of the fact that the

8 warrant had been faxed?

9 A. Well, I had already told Agent Gillispie that I had

10 received a phone call from Supervisor Chornyak that the warrant

11 had been issued.

12 Q. All right. And he was -- was he aware that the warrant was

13 being faxed to the Department of Public Safety?

14 A. I believe he would have been aware, yes.

15 Q. All right. Now, did you -- so you did not inform Agents

16 Smith or Crabtree or Jablonski or Foley about the existence of

17 this warrant?

18 A. No, I did not.

19 Q. All right. You didn't inform Terry Lynn Nichols of the
20 existence of this warrant; is that correct?

21 A. No, I did not.

22 Q. All right. Why not?

23 A. No. 1, I wasn't going to interrupt the interview to advise
24 the agents of that and, No. 2, upon the arrival of ASAC Watson
25 and SAC Tubbs, they took over the investigative part of the

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1 case at that time.

2 Q. So I -- in your view, it was not your job to execute that
3 warrant; is that correct?

4 A. No. That's not my answer.

5 Q. All right. Then I -- I guess I don't understand the
6 significance of the -- of your answer. I'm sorry.

7 MR. MENDELOFF: Judge, objection. Is that a question?

8 THE COURT: Yes. That's not an appropriate question.

9 MR. THURSCHWELL: My apologies, your Honor. I
10 withdraw it.

11 BY MR. THURSCHWELL:

12 Q. Why wouldn't you interrupt the interview of Terry Lynn
13 Nichols to inform him that an arrest warrant had been issued
14 for him, commanding you to bring him before the grand jury in
15 Oklahoma City?

16 A. Because I didn't believe it was necessary at that time.

17 Q. Let's take another look at the warrant, Agent Price.

18 A. Okay.

19 Q. Does not this warrant state that you shall bring this
20 witness forthwith before the federal grand jury at Oklahoma

21 City?
22 A. Yes, it does.
23 Q. All right. Doesn't "forthwith" mean to you as soon as
24 feasibly possible?
25 A. It means as soon as reasonably possible, yes.

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1 Q. Okay. And -- and in -- your understanding of
2 reasonableness, it was reasonable to allow the agents to
3 continue questioning Terry Lynn Nichols without informing him
4 of the existence of this arrest warrant, that that -- that was
5 a reasonable basis for not bringing him forthwith to the grand
6 jury?

7 A. Could you repeat that? I'm confused.

8 Q. Sure. Is it your understanding of what constitutes a
9 reasonable time period to bring someone forthwith before a
10 judicial body, that factored into that reasonableness is your
11 need to continue questioning the individual without -- without
12 his knowledge of the fact that an arrest warrant has been
13 issued?

14 MR. MENDELOFF: Objection, your Honor. Vague.

15 THE COURT: Yes. Sustained.

16 BY MR. THURSCHWELL:

17 Q. All right. Didn't you think it would be important to
18 Mr. Nichols to know that he had -- that an arrest warrant had
19 been issued?

20 MR. MENDELOFF: Objection, your Honor, relevance.

21 THE COURT: Overruled.

22 THE WITNESS: Did I think it was important to
23 Mr. Nichols?

24 BY MR. THURSCHWELL:

25 Q. Didn't you think it would be important to him to know that

1 an arrest warrant had been issued for him?

2 A. At some point in time, yes, he would have needed to know
3 that.

4 Q. Didn't you think it would be important to him to know that
5 at the time that he was speaking to federal agents?

6 A. I was aware that Mr. Nichols was voluntarily speaking to
7 federal agents, so no, I didn't think it was necessary to
8 advise him of this warrant.

9 Q. You didn't think it would make any difference to him at
10 all, the fact previously unknown to him that he was now subject
11 to arrest?

12 A. I can't answer for Mr. Nichols.

13 Q. Agent Price, had you executed this warrant after receiving
14 it, you would have had to read Mr. Nichols his rights; correct?

15 A. I didn't execute this warrant so --

16 Q. Agent Price, I'm asking you based on your knowledge and
17 experience as a special agent of the FBI. Upon executing this
18 arrest warrant, you would have had to read Mr. Nichols his
19 Miranda rights; is that correct?

20 A. Yes, I would have. Yes.

21 Q. And in fact, at that point, he might well have decided he
22 wished to remain -- exercise those rights and wish to remain
23 silent?

24 MR. MENDELOFF: Objection, your Honor. Calls for
25 speculation.

1 THE COURT: Sustained.

2 BY MR. THURSCHELL:

3 Q. Now, you testified that you told -- you informed SAC Tubbs
4 and ASAC Watson of the existence of this warrant?

5 A. That's correct.

6 Q. Okay. To your knowledge, did they inform any of the agents
7 who were interviewing Mr. Nichols?

8 A. I don't have any knowledge of that, no.

9 Q. All right. To your knowledge, did anyone -- was anyone
10 else in the station at the -- at any point in time aware of the
11 existence of the search -- the arrest warrant?

12 A. I don't know that, no.

13 Q. You don't know of anyone else for sure who was aware
14 that -- an arrest warrant had been issued for Mr. Nichols?

15 A. Agent Gillispie.

16 Q. Agent Gillispie. ASAC Watson, SAC Tubbs?

17 A. Yes.

18 Q. And no one else that you're aware of?

19 A. No one that I'm aware of, no.

20 Q. All right. Let me turn, Agent Price, to this search of
21 Mr. Nichols' truck that was performed around 8:15.

22 THE COURT: Since we're going to a new subject, I
23 think we'll recess at this point.

24 MR. THURSCHELL: Very well, I ask that the witness be
25 admonished.

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1 THE COURT: Yes, please, just a moment.

2 MR. HARTZLER: Thank you.

3 THE COURT: You understand that under the order that
4 governs testimony and sequestration of witnesses, you're not to
5 discuss your testimony with anyone during this break.

6 THE WITNESS: Yes, sir.

7 THE COURT: Now, Mr. Hartzler.

8 MR. HARTZLER: I apologize, your Honor, for
9 interrupting. The exhibits that were offered to us by handing
10 them to Mr. Mackey were already admitted into evidence. I
11 wonder if we could just withhold that until we have had an
12 opportunity to read them more thoroughly. I'm concerned
13 about --

14 THE COURT: About the dairy practices.

15 MR. HARTZLER: I'm concerned about putting discovery
16 materials putting into the record --

17 THE COURT: You may review it, yes. My understanding
18 of the offer again was it's in substitution for calling
19 witnesses to establish the facts that are in these 302's. But
20 you may review them, surely.

21 MR. HARTZLER: All right.

22 THE COURT: If there's some problem with them, you'll
23 tell me at the -- incoming after the recess.

24 MR. HARTZLER: Thank you.

25 MR. TIGAR: If Your Honor please, we have prepared now

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1 a concordance of the exhibits prepared by the Nichols team and
2 the Government's exhibits with a mark as to which are in and
3 which are scheduled to be offered. During the recess, I'll
4 share that with counsel, but I wanted to let your Honor know
5 that we're hoping by that means to avoid this confusion because
6 there are many, many exhibits that are in both sets of exhibit
7 books. And we'll have that prepared for your Honor.

8 THE COURT: Good. All right. 20 minutes.

9 (Recess at 10:24 a.m.)

10 (Reconvened at 10:43 a.m.)

11 THE COURT: Please be seated.

12 MR. THURSCHELL: May I proceed?

13 THE COURT: Yes, Mr. Thurschwell, proceed.

14 BY MR. THURSCHELL:

15 Q. Before we get to the search, Agent Price, I'd like to ask

16 you a couple of follow-up questions. Did you hear Terry

17 Nichols ask why his name was on radio and television at the

18 time that you initially encountered him?

19 A. I don't recall that one way or the other, no.

20 Q. Now, SAC Tubbs and ASAC Watson were the two -- is it the

21 case that SAC Tubbs and ASAC Watson were the two highest

22 ranking officials present in the Department of Public Safety on

23 that day?

24 A. That's correct.

25 Q. And SAC Tubbs was directing the investigation from that

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1 command post?

2 A. Yes.

3 Q. Now, did anyone instruct you not to tell Mr. Nichols or

4 agents about the existence of the material arrest warrant?

5 A. Not that I recall, no.

6 Q. Okay. You don't -- are you certain that no one did, or you

7 simply are not sure?

8 A. No one instructed me to do that.

9 Q. Now, did -- at any time during the day of April 21, did

10 anyone tell you that a defense attorney was trying to reach

11 Terry Nichols?

12 A. Yes.

13 Q. Who told you that?

14 A. I believe it was Chief Kuhn.

15 Q. Now, what -- and what exactly did he tell you?

16 A. He told me that a defense attorney had called in or was on
17 the phone and if Terry Nichols desired counsel, that he would
18 represent him.
19 Q. Okay. What -- what did you then do with that information?
20 A. I told Director Kuhn that if he took that individual's name
21 and phone number, if Mr. Nichols asked for counsel, we would
22 provide him with his phone number.
23 Q. Okay. Did you tell anyone -- did you tell the agents
24 interviewing Mr. Nichols that someone had called in, a defense
25 lawyer had called in asking to represent Mr. Nichols?

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1 A. No, I did not.
2 Q. Did you tell anyone else?
3 A. I would have probably told Agent Gillispie if he was there
4 at that time.
5 Q. Did you tell SAC Tubbs?
6 A. I don't know if SAC Tubbs was there at the time this call
7 came in or not, the one call I recall.
8 Q. You don't recall telling anyone -- telling this fact to
9 anyone apart from Chief Kuhn to write it down?
10 A. That's correct.
11 Q. Now, let's turn to the search. Around 8:15 that evening,
12 you did a brief cursory search of Mr. Nichols' truck?
13 A. That's correct.
14 Q. All right. Now -- and the truck at that time was located
15 in the garage adjacent to the Department of Public Safety?
16 A. That's correct.
17 Q. Prior to that, Mr. Nichols' truck had been parked in the
18 parking lot next -- outdoor parking lot next to the station
19 house?

20 A. That's correct.
21 Q. All right. And would you please take a look at Nichols'
22 Exhibit W57?
23 A. In the white book?
24 Q. In the black book.
25 A. Okay.

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1 Q. All right. Now, do you recognize that?
2 A. I believe that's Mr. Nichols' pickup truck, yes.
3 Q. That's a fair and accurate depiction of Mr. Nichols' truck
4 parked outside of the Department of Public Safety on the
5 afternoon of April 21?
6 A. It appears to be, yes.
7 Q. Okay. This --
8 MR. THURSCHELL: We would offer Exhibit W57.
9 MR. MENDELOFF: No objection, your Honor.
10 THE COURT: Received.
11 BY MR. THURSCHELL:
12 Q. Take a look -- take a look at the numbers in the lower
13 right-hand corner of that exhibit, Agent.
14 A. Okay.
15 Q. Do those numbers mean 21 is the date, April 21, and 1648,
16 the time at which the photograph was taken?
17 A. I'm not familiar with this type of camera, so I don't want
18 to be speculating on that.
19 Q. Okay. Now, so before you -- before you searched this
20 truck, it had been moved into the garage; correct?
21 A. I'm sorry?
22 Q. Before you searched the truck, someone had moved it into
23 the garage area?
24 A. That's correct.

25 Q. And immediately prior to your search of the truck, an Army

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1 bomb squad had checked it for explosives; is that correct?

2 A. Yes.

3 Q. All right. They used sniffer dogs?

4 A. A sniffer dog, yes.

5 Q. And they had concluded that there were no explosives

6 present; correct?

7 A. That's correct.

8 Q. All right. Now, you retrieved a car seat and a diaper bag

9 from the truck?

10 A. Yes, I did.

11 Q. And these -- what was your authority for this search?

12 A. Signed consent, search warrants from both Terry Nichols and

13 Marife.

14 Q. You said search warrants. Did you mean --

15 A. Signed consents to search.

16 Q. Now, did you see these consents?

17 A. No, I didn't. I don't believe I did.

18 Q. You didn't. Who told you that there were signed consents

19 for the search of the truck?

20 A. I don't recall. It would have been someone in Mr. Watson,

21 Mr. Tubbs' office.

22 Q. Did anyone tell you that with regard to Mr. Nichols --

23 Mr. Nichols' consent, he had conditioned that on the presence

24 of himself or his wife?

25 A. No, they did not.

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1 Q. All right. Now, had Marife Nichols asked for these items
2 to be retrieved?
3 A. That was my understanding, yes.
4 Q. Who told you that?
5 A. Sheila Dobson.
6 Q. Had Sheila Dobson tried to get these items out of the truck
7 previously?
8 A. Not to my knowledge.
9 Q. Now, and was Ms. -- Mrs. Nichols' request for these
10 items -- that was not the consent that you were relying upon?
11 A. No, it was not.
12 Q. All right. Now, this was a cursory search of the truck;
13 correct?
14 A. That's correct.
15 Q. And it was cursory because you know that the evidence
16 recovery team would be doing a thorough search of the truck on
17 the following day?
18 A. That's correct.
19 Q. All right. And by a thorough search, you knew that the
20 evidence recovery team would be looking for fiber samples, for
21 example?
22 A. I don't know that.
23 Q. Okay. Chemical traces?
24 A. I don't know if the evidence recovery team is equipped to
25 do that or not.

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1 Q. Okay. They would be taking -- checking the truck for
2 secret compartments, taking apart the interior of the truck,
3 looking for evidence?
4 A. They have specialized training which I'm not aware of; so I
5 don't know exactly what they would be doing.

6 Q. You're not familiar -- but you did understand at the time
7 you conducted your cursory search that a thorough search would
8 be conducted on the following day?

9 A. That's correct.

10 Q. So you knew that that truck was not going anywhere that
11 night?

12 A. Yes.

13 Q. Now, who entered the truck to conduct this cursory search?

14 A. I'm sorry. Who entered?

15 Q. Who entered the truck to conduct this search?

16 A. It would be myself, Agent Gillispie, and Agent Jim Harter.

17 Q. And you spent about 15 minutes searching?

18 A. Yes.

19 Q. So this was a fairly extensive cursory search?

20 A. I don't think so.

21 Q. All right. I won't argue with you, Agent.

22 What did you find there?

23 A. Other than the address book of -- that was laying on the
24 seat, we found some gunnysacks in the truck and a box of nails
25 in the back end of the truck.

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1 Q. And the gunnysacks were empty?

2 A. That's correct.

3 Q. And the box of nails was just that, a box of nails?

4 A. We didn't open it to see what it was, but that's what I
5 assume it is.

6 Q. Now, when you noticed the address book, was it -- it was
7 lying on the passenger seat?

8 A. That's correct.

9 Q. And was it open or closed?

10 A. It was closed.

11 Q. Okay. Did you look through it?

12 A. Yes, I did.

13 Q. And you paged through it page by page?

14 A. No.

15 Q. Did you go straight to the Ms?

16 A. Yes, I did.

17 Q. You were looking for an address for Timothy McVeigh?

18 A. I was looking to see if the name Timothy McVeigh was in

19 there.

20 Q. And what you found was an address for Timothy McVeigh's

21 dad; correct?

22 A. I believe so, yes.

23 Q. Now, you subsequently seized the address book in a -- the

24 next day; is that correct?

25 A. That's correct.

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1 Q. And you knew that the address book was there because of

2 your search on the prior day?

3 A. That's correct.

4 Q. Now, subsequent -- you subsequently found out that this

5 address book belonged to Marife Nichols; is that correct?

6 A. At some point in time, yes, I believe I did find that out.

7 Q. Okay. After you completed your search on April 21, did you

8 return to the station house?

9 A. Yes, I did.

10 Q. Did you then or at any subsequent time see United States

11 Attorney Rathbun in the station?

12 A. I would have seen him in the station if I was out in the

13 hall and he happened to be out in the hall, yes.

14 Q. Did you speak to him?

15 A. I don't believe so, other than to say hi, no.
16 Q. So you didn't tell him about the existence of the material
17 witness arrest warrant?
18 A. At the point of time that ASAC Watson and SAC Tubbs
19 arrived, those decisions were in their hands at that point. I
20 became pretty much a phone answerer and personnel requisition
21 person.
22 Q. Did you see SAC Tubbs or ASAC Watson speaking to United
23 States Attorney Rathbun at any time that evening?
24 A. I don't recall seeing them.
25 Q. You don't recall seeing them together?

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1 A. I don't recall seeing them, no.
2 MR. THURSCHELL: One moment, your Honor.
3 THE COURT: Yes.
4 MR. THURSCHELL: Pass the witness.
5 THE COURT: All right. Mr. Mendeloff.
6 CROSS-EXAMINATION
7 BY MR. MENDELOFF:
8 Q. Agent Price, just let me ask you -- let me take you back to
9 the portion of your testimony which related to the
10 surveillance; and I believe you testified that when you left
11 Wichita, you left with your surveillance squad and an airplane;
12 is that correct?
13 A. That's correct.
14 Q. Can you just describe for the Court what this airplane
15 looked like?
16 A. It was a small, four-seat airplane that you see a lot of
17 them.
18 Q. Two propellers, or a jet?

19 A. No. One propeller.
20 Q. One propeller. And you said you left Wichita with nine
21 surveillance agents; is that right?
22 A. Including the plane, yes, and myself.
23 Q. Is that standard for your surveillance agents?
24 A. Yes.
25 Q. What is the reason for that large number of agents to be

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1 used in a surveillance?
2 A. To conduct a discreet surveillance, you need to rotate cars
3 periodically so that the individual you're surveilling does not
4 notice the same car twice.
5 Q. When you say discreet surveillance, what do you mean?
6 A. I mean when we're conducting the surveillance, we don't
7 want the individual we're following to know we're following
8 them.
9 Q. Was the intention, then, to allow Terry Nichols to know you
10 were there, or to not allow Terry Nichols to know you were
11 there?
12 A. The intention was to not allow him.
13 Q. I believe you testified that you got to Herington, you were
14 on a road outside town, you called Agent Gillispie, and he was
15 going to come to meet you, and then you got the radio call that
16 Mr. Nichols was moving; is that correct?
17 A. That's correct.
18 Q. And it was at that point in time that you and the
19 surveillance unit scattered somewhat, I believe you testified,
20 drove into town; is that right?
21 A. Yes, that's correct.
22 Q. And you drove on what road?
23 A. Business Highway 56, we came into town on.

24 Q. As you're driving up 56, where were you in the line of
25 cars?

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1 A. I was in the front of the line.

2 Q. Did you have occasion to see anybody that you were looking
3 for on 56?

4 A. Yes. I passed Terry Nichols.

5 Q. Where was that?

6 A. Just north of Surplus City.

7 Q. When you passed him, what did you observe?

8 A. Mr. Nichols waved at me.

9 Q. What happened then?

10 A. Thereafter, he turned into Surplus City.

11 Q. What did you do?

12 A. I pulled into a lot a few buildings up from Surplus City.

13 Q. When you did, did any other agents pull into that lot as
14 well?

15 A. Yes, Agent Gillispie came into that lot.

16 Q. Now, as of the time that you were driving on 56 and you
17 passed Mr. Nichols, was the entire surveillance squad behind
18 you also on that road?

19 A. Yes, they would have been somewhere on that road behind me.

20 Q. All right. Had there been radio communications about
21 Mr. Nichols' whereabouts?

22 A. Yes, there were.

23 Q. How did that affect your surveillance location?

24 A. Once the plane called out that Mr. Nichols had taken the
25 bend on Highway 56 or Business 56, the rest of the units

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1 scattered into different businesses or places where they could

2 so that they did not also pass Mr. Nichols.

3 Q. Now, I think we left the progression of events when you

4 pulled into the lot and Mr. Nichols had pulled into the Surplus

5 City lot; is that right?

6 A. Yes.

7 Q. And did any other agent pull into the lot? I'm not sure I

8 asked you that.

9 A. Into the lot I was in?

10 Q. Yes.

11 A. Yes, Agent Gillispie came into that lot.

12 Q. What do you observe at Surplus City at that point in time?

13 A. I observe Mr. Nichols get out of his truck to start toward

14 the front of Surplus City.

15 Q. After that, did you see what he was doing?

16 A. My view was obstructed at that point.

17 Q. Did you receive a radio communication?

18 A. Yes, I could hear on the radio.

19 Q. What was the radio communication?

20 A. The radio communication was that he walked up to the door

21 and came back to the truck and started to pull back out of the

22 lot.

23 Q. Did you do anything at that point?

24 A. I took off from the lot I was in so that he would not pass

25 me a second time, if he came my direction.

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1 Q. Where did you go?

2 A. I went past Broadway up into the neighborhood I've

3 described earlier as by the water tower.

4 MR. MENDELOFF: Your Honor, may I approach the

5 witness? I want to identify the water tower on the large
6 photo.

7 THE COURT: All right.

8 BY MR. MENDELOFF:

9 Q. For the record, I show you what has been marked
10 Government's Exhibit 2.

11 MR. MENDELOFF: Which I believe has been admitted,
12 your Honor.

13 THE COURT: I don't have it as in.

14 MR. MENDELOFF: Then, your Honor, we would offer
15 Government's Exhibit 2.

16 THE COURT: Is there objection to 2?

17 MR. THURSCHELL: No objection, your Honor.

18 THE COURT: All right. It's received.

19 BY MR. MENDELOFF:

20 Q. Will you please look at Government's Exhibit 2 and see if
21 you can identify for the Court where it is that the water tower
22 is located.

23 A. It's in this area right in here, but I don't see the water
24 tower on this map. It must be just barely -- I'm sorry. Here
25 it is right here. It's about -- appears to be about three

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1 blocks north of the Herington Public Safety Building and on the
2 back side of it.

3 Q. Thank you.

4 Now, Mr. Price, it was at the water tower that you had
5 the conversations you did with Special Agent Gillispie?

6 A. Yes.

7 Q. And with the command post; is that correct?

8 A. That's correct.

9 Q. And while you were at the water tower, did you hear what
10 had happened with respect to Mr. Nichols?

11 A. Yes, I did.

12 Q. What was that?

13 A. That he had entered the Herington Public Safety Building.

14 Q. And the conversations that you had with the command post
15 were the ones that Mr. -- that you went over with

16 Mr. Thurschwell; is that correct?

17 A. Yes.

18 Q. Now, after you received -- had those conversations, I
19 believe you indicated as part of those conversations that you
20 had asked for somebody to call in to the Herington Department
21 of Public Safety building to make sure there wasn't a problem
22 there.

23 A. That's correct.

24 Q. Did you ever receive a call back indicating that the coast
25 was clear?

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1 A. Yes.

2 Q. When was that?

3 A. Just prior to us going in. It would have been between 3
4 and 3:10.

5 Q. After you had your communications with the command post at
6 the water tower, did you and Agent Gillispie proceed anywhere?

7 A. To the Herington Department of Public Safety.

8 Q. And once there, you received the communication that the
9 coast was clear inside the building; is that correct?

10 A. That's correct.

11 Q. It was in the parking lot that you had the conversation
12 that you recounted with Agent Foley and Agent Smith about what
13 was to happen inside the building?

14 A. That's correct.

15 MR. THURSCHELL: Your Honor, I'm going to object to
16 the leading. I think many of these questions have been asked
17 and answered.

18 MR. MENDELOFF: The only reason I'm doing this is to
19 place it in chronological sequence.

20 THE COURT: I know, but we're repeating things he's
21 already testified about.

22 MR. MENDELOFF: I will see to it that I don't, your
23 Honor.

24 THE COURT: Thank you.

25 BY MR. MENDELOFF:

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1 Q. After you went into the Herington Department of Public
2 Safety building and met Mr. Nichols, did you happen -- you then
3 testified that you patted Mr. Nichols down; is that correct?

4 A. Agent Foley patted Mr. Nichols down.

5 Q. Prior to that, did you ask Mr. Nichols any questions about
6 patting him down?

7 A. Yes. I asked him for his safety and our safety if he would
8 agree to a pat down of himself and his wife. He replied yes,
9 he would.

10 Q. After the pat-down search, did you leave the room?

11 A. Yes, I did.

12 Q. Where did you go?

13 A. I went with Mr. Kuhn to look for a suitable room to conduct
14 an interview in.

15 Q. Moments later, did you return to the officers' room?

16 A. Yes, I did.

17 Q. And at that time, did you ask Mr. Nichols any questions

18 about that interview?

19 A. I asked Mr. Nichols if he would be willing to accompany

20 Agent Smith and Foley to the basement interview room to be

21 interviewed; and he replied yes, he would.

22 Q. At that point, what happened?

23 A. At that point, they took him to that interview room -- or

24 he followed them with the Chief Kuhn to the interview room.

25 Q. As of that point in time, how many agents were in the

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1 building?

2 A. At that point in time, there were four FBI agents in the

3 building.

4 Q. At that point, did you ask any agent to do anything?

5 A. Yes, I did.

6 Q. What did you ask?

7 A. I asked Agent Gillispie to go outside and get two agents

8 who had come down from the Junction City command post to come

9 inside and interview Mrs. Nichols.

10 Q. And after you left, did he return at some point?

11 A. Yes, he did.

12 Q. And did any other agents return with him?

13 A. Yes. He brought two agents with him.

14 Q. And who were they?

15 A. Agent Thomeczek and area CID Agent White.

16 Q. Was it -- Prior to this time, did you have any kind of

17 communication with Mrs. Nichols?

18 A. Yes.

19 Q. And that's the questions you asked her --

20 A. That's correct.

21 Q. -- which you've recounted already.

22 Now, I believe you testified on direct examination

23 that you had a conversation with Agent Chornyak in the command
24 center in Kansas City; is that right?
25 A. In Kansas City, yes.

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1 Q. And I don't think the record includes the time of that
2 conversation, the original conversation in which he told -- you
3 told him that Mr. Nichols didn't want to sign the waiver of
4 right form.

5 A. I believe it was approximately between 3:45 and 3:50 p.m.

6 Q. Just so we're clear, when you were informed that
7 Mr. Nichols didn't want to sign a form, what form was it that
8 he didn't want to sign?

9 A. A form called Interrogation, Advice of Rights form.

10 Q. Now, after the conversation with Special Agent Chornyak,
11 did you have a conversation with Special Agent Tubbs?

12 A. Yes, I did.

13 Q. And where were you when you had this conversation?

14 A. I would have been in the rear interview room, which I've
15 already pointed out in the Herington Public Safety Building.

16 Q. Do you know where he was?

17 A. He was en route to Herington with ASAC Watson in his
18 automobile.

19 Q. Did he -- did you receive any instructions from him at that
20 time?

21 A. Yes, I did.

22 Q. What were they?

23 A. That we were to interview Mr. Nichols and if he decided he
24 wanted to leave the interview, that we were to reinstitute a
25 very close surveillance on him.

1 Q. Were you to permit him to leave?

2 A. We were to permit him to leave and reinstitute

3 surveillance, yes.

4 Q. Now, where did Special Agent Tubbs say he was at that

5 point?

6 A. At that point, Special Agent Tubbs was somewhere between

7 Topeka, Kansas, and Junction City, Kansas.

8 Q. All right. As of that point in time, had anyone mentioned

9 a material witness warrant to you?

10 A. No.

11 Q. At approximately 4:00, I believe you testified that Agents

12 Crabtree and Jablonski arrived but you did not notice that at

13 the time. Can you explain why?

14 A. Because I was in this room with the door shut taking these

15 phone calls and making these phone calls.

16 Q. Did there come a time when you first learned that a

17 material witness warrant was going to be sought?

18 A. Yes.

19 Q. And when did that occur?

20 A. My best recollection is approximately just prior to 4:30.

21 Q. And who informed you of that?

22 A. Special Agent Tubbs.

23 Q. What did he tell you?

24 A. He told me that he had contacted -- I believe the Oklahoma

25 City division and that they were going to attempt to obtain a

1 material witness warrant.

2 Q. Within moments of that call, did you have another

3 conversation with Special Agent Chornyak?

4 A. Yes, I did.

5 Q. What did he inform you?

6 A. He informed me that a material witness warrant had, in
7 fact, been issued.

8 Q. Did he tell you he would send it to you?

9 A. Yes, he said he would fax it to me.

10 Q. And is that the fax you received about 5:00?

11 A. That's correct.

12 Q. Now, after Special Agent Tubbs arrived, who took over
13 supervision of the facility as far as the FBI was concerned?

14 A. Special Agent Tubbs.

15 Q. And you were in the back room?

16 A. That's correct.

17 Q. And what were you doing in the back room?

18 A. Generally answering phone calls, making phone calls, and
19 handling manpower requisitions or whatever else ASAC Watson or
20 Special Agent Tubbs wanted me to do.

21 Q. As the evening wore on, what was the intensity of the phone
22 calls?

23 A. The phones were constantly busy. It got to a point where I
24 brought my cell phone in from my car just so we had an open
25 line if we needed one.

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1 Q. Were you receiving messages from somebody?

2 A. I'm sorry.

3 Q. You were receiving messages from somebody in addition to
4 the calls going right into that room?

5 A. Well, we received -- the calls were generally being handled
6 by the switchboard at the police department, and they would
7 switch them back to us, and they'd also bring faxes back to us.

8 Q. At some point in the early evening, did you have a
9 discussion with your superiors about Mr. Nichols' truck and
10 people who had gathered outside?

11 A. Yes.

12 Q. What was that?

13 A. That there were a lot of people outside around the building
14 and that also the press was pretty much around the building.

15 Q. Who informed you of that?

16 A. I saw some of it on my own and other agents.

17 Q. Approximately what time was that?

18 A. I would say about 6:30 to 7:00.

19 Q. And around that same time, did you receive any instructions
20 from Special Agent Tubbs or ASAC Watson?

21 A. ASAC Watson, yes, advised that we -- as soon as the bomb --
22 or advised us to have the bomb squad check the truck; and as
23 soon as they checked it, we were to bring it inside the
24 building.

25 Q. What did you do to carry out these instructions?

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1 A. I contacted -- initially I contacted the Junction City
2 command post and asked them to put the bomb squad on alert so
3 that they could come down and check the truck.

4 Q. And did a bomb squad eventually arrive?

5 A. Yes, it did.

6 Q. Approximately what time?

7 A. I believe they arrived somewhere around 7:30.

8 Q. Now, prior to the arrival of the bomb squad, did you
9 receive any further instructions from ASAC Watson or Special
10 Agent Tubbs?

11 A. Yes. ASAC Watson advised that after the truck was
12 searched, it was -- or was searched for bombs, it was to be

13 brought inside and also a cursory search done on it at that
14 point in time.
15 Q. And around this same time, did Ms. Dobson inform you of
16 anything?
17 A. Yes. She advised me that she needed the car seat and the
18 diaper bag from the vehicle.
19 Q. Now, at about 7:50, did anybody arrive to check over the
20 truck?
21 A. At approximately 7:50, the bomb squad did in fact do a
22 search of the truck.
23 Q. Did you observe this?
24 A. Yes.
25 Q. How many members of the bomb squad were there?

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1 A. I believe there were four.
2 Q. Other than those four men, did you see any other men in
3 military fatigues in Herington that evening?
4 A. No, I did not.
5 Q. And when did this bomb unit complete its work?
6 A. Just prior to 8:10, I believe.
7 Q. After the cursory search was completed -- excuse me. What
8 time was the cursory search completed?
9 A. It was completed at 8:30.
10 Q. After the search was completed, what were your tasks for
11 the rest of that evening?
12 A. Pretty much to answer phones, make phone calls and
13 requisition people, handle whatever problems were given to me
14 by ASAC Watson and SAC Tubbs.
15 MR. MENDELOFF: One moment, please, your Honor.
16 THE COURT: Yes.

17 MR. MENDELOFF: Nothing further, your Honor.
18 THE COURT: Mr. Jones, do you have some?
19 MR. JONES: I have a very few, your Honor, just on a
20 matter that we're interested in.
21 THE COURT: All right.
22 CROSS-EXAMINATION
23 BY MR. JONES:
24 Q. Mr. Price, what time did Mr. Tubbs arrive there?
25 A. I believe it was around 5 p.m.

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1 Q. Until Mr. Tubbs arrived, were you the agent with authority
2 and responsibility?
3 A. Yes.
4 Q. Is it your recollection that Mr. Tubbs arrived after you
5 were told that a material witness arrest warrant would be
6 sought for Mr. Nichols?
7 A. Mr. Tubbs was the one that advised me of that.
8 Q. All right. Was he there when he advised you of that?
9 A. No. He was in his car.
10 Q. All right. So he hadn't arrived?
11 A. No.
12 Q. Had he arrived when you were told that the arrest warrant
13 had been issued?
14 A. I don't believe he had arrived yet, no.
15 Q. So if your memory is correct, at the time that you learned
16 that the arrest warrant had been issued, you were the senior
17 agent on the scene in terms of responsibility and authority?
18 A. That's correct.
19 Q. So it would have been your responsibility and authority to
20 decide whom to inform, if anyone, that the warrant had been
21 issued?

22 A. That's correct.

23 Q. Who did you tell?

24 A. Agent Gillispie.

25 Q. All right. And when did you tell him?

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1 A. Sometime shortly after I received the call. Again, he was
2 in and out of the room; so when I saw him, I would have told
3 him.

4 Q. Now, was Agent -- did you tell anyone else?

5 A. No. There was no one else to tell.

6 Q. What do you mean by that?

7 A. There was no other bodies that weren't tied up in
8 interviews at that time.

9 Q. All right. You could have told the people doing the
10 interview. You decided not to.

11 A. I could have interrupted the interview and told them, yes.

12 Q. Yes. Now, at the time that they were having this interview
13 that you did not interrupt, Mr. Nichols had given his consent
14 to interview.

15 A. That's correct.

16 Q. That's your position?

17 A. Yes.

18 Q. At the time that Mr. Nichols gave his consent to the
19 interview, no warrant for his arrest had been issued.

20 A. That's correct.

21 Q. The interview was continuing based upon Mr. Nichols'
22 consent.

23 A. That's my understanding, yes.

24 Q. During the course of the interview, the warrant for his
25 arrest was issued.

1 A. That's correct.

2 Q. But he was not told that there had been a change in
3 circumstances which affected his liberty to leave until later
4 that evening; is that correct?

5 MR. MENDELOFF: Your Honor, objection. I think we've
6 covered this several times.

7 THE COURT: Yes, we've been over this, Mr. Jones.

8 MR. JONES: I understand we have, your Honor; but this
9 is the agent that had the responsibility to make the decision.

10 THE COURT: Well, I know; but we know that there was
11 no interruption, no one was told.

12 MR. JONES: All right.

13 BY MR. JONES:

14 Q. Did anyone advise you or tell you that you should not
15 inform Mr. Nichols that the arrest warrant had been issued?

16 MR. MENDELOFF: Objection. Asked and answered.

17 THE COURT: Overruled.

18 THE WITNESS: No.

19 BY MR. JONES:

20 Q. Did you have an understanding, based upon your experience
21 has an FBI agent, that you should not inform Mr. Nichols that
22 the warrant had been issued?

23 A. I didn't have an understanding that I should not. I had
24 the understanding that I was not required to.

25 Q. And what is the basis for the understanding you were not

1 required to?

2 A. That the interview ongoing was a consensual interview and

3 that Mr. Nichols had been advised of his rights.

4 Q. And that understanding you have persists even though there

5 had been a change in his status?

6 A. There had not been a change in his status unless he decided

7 to terminate the interview.

8 Q. Or leave?

9 A. Or leave. Yes.

10 Q. Assuming for sake of argument that you knew that the arrest

11 warrant had been issued at 5:00 -- would you please turn to

12 Government's Exhibit 30.

13 A. Which book?

14 Q. I'm sorry. The white book.

15 Do you believe this chronology is correct?

16 A. I was not in that interview. I don't know the chronology.

17 Q. As the agents interviewing Mr. Nichols would leave the

18 interview room, would they brief you on what Mr. Nichols had

19 said or not said?

20 A. No.

21 Q. The Herington Department of Public Safety is a very small

22 building, is it not?

23 A. Yes, it is.

24 Q. After 5 p.m., when was the next time that Mr. Nichols was

25 advised of his rights under the Miranda decision?

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

2 Q. When did Mr. Phillips call, or when did you learn

3 Mr. Phillips had called?

4 A. I don't recall the time.

5 Q. You have no recollection of it?

6 A. I'm not positive who Mr. Phillips is.

7 Q. Well, I'm sorry. The public defender that called.

8 A. Oh, no. I have no recollection of when he called.

9 Q. Is it your understanding that Mr. Phillips didn't call

10 until after 5 p.m.?

11 A. I don't know what time he called.

12 MR. JONES: I believe that's all. Thank you, your

13 Honor.

14 THE COURT: Do we have anything further?

15 MR. THURSCHELL: Nothing further, your Honor. The

16 witness is excused.

17 MR. MENDELOFF: Nothing further.

18 THE COURT: You may step down. You're now excused.

19 THE WITNESS: Thank you.

20 THE COURT: Next, please.

21 MR. WOODS: Marife Nichols.

22 MR. THURSCHELL: Your Honor, can I, before we call

23 Mrs. Nichols? By stipulation with the Government, we are not

24 going to call Agents Michael R. Gillispie or James P. Harter;

25 and in lieu of their testimony, I believe I have the

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1 Government's agreement that I will introduce Nichols' Exhibit

2 W21. The stipulation, as I understand it, being that if called

3 to testify, Agent Gillispie would testify to the facts stated

4 in the first 302 included in Nichols' Exhibit W21 and Agent

5 Harter would testify to the facts stated in the second 302

6 included in W21.

7 THE COURT: Is that the agreement?

8 MR. MENDELOFF: Yes, your Honor.

9 THE COURT: All right. Now proceed. Mrs. Nichols?

10 MR. WOODS: Your Honor, may it please the Court, Ron

11 Woods for Terry Nichols.

12 The next witness is the wife of Terry Nichols, Marife
13 Nichols. She's represented by counsel. And as soon as she
14 comes in with her counsel, I would like to address the Court to
15 cover an evidentiary issue.

16 THE COURT: All right.

17 MR. HARTZLER: May I fill the vacuum --

18 THE COURT: Well, on Exhibits W80, 81 and 82?

19 MR. HARTZLER: As I should have predicted, Mr. Mackey
20 is correct. We have no objection.

21 THE COURT: All right. Then they are again received
22 or reaffirmed received.

23 Come forward to be sworn, please.

24 THE COURTROOM DEPUTY: Please stand and raise your
25 right hand.

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1 (Marife Torres Nichols was sworn.)

2 THE COURTROOM DEPUTY: Please be seated.

3 Please state your name and spell your full name for
4 the record.

5 THE WITNESS: Marife Torres Nichols, M-A-R-I-F-E;
6 Torres, T-O-R-R-E-S; Nichols, N-I-C-H-O-L-S.

7 THE COURT: Now, Mr. Woods, you indicate we have
8 counsel present.

9 MR. WOODS: Yes, your Honor. May it please the Court,
10 Maureen Cain is present, who represents Ms. Nichols.

11 THE COURT: Good morning, Ms. Cain.

12 MS. CAIN: Good morning, your Honor.

13 MR. WOODS: The issue I wanted to address with the
14 Court: Mr. Nichols has not waived the marital privilege.
15 Today with Mrs. Nichols on the witness stand, I will only cover

16 the incidents that occurred at the Herington police station
17 from 3:00 on the afternoon of April 21 going forward for the 37
18 days that she was in custody.

19 Now, Mrs. Cain has represented to me that she is aware
20 of the adverse spousal privilege and that they have made the
21 decision that they will allow Ms. Nichols to testify as to
22 these events today; and Ms. Cain can address that issue.

23 THE COURT: All right.

24 MS. CAIN: If it please the Court, Maureen Cain.

25 It's my understanding that the questions of my clients

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1 today will address interaction with various government agents
2 from April 21 on until her release and her return to California
3 and subsequent to the Philippines. It will not address any
4 marital communications nor any actions by her husband. It will
5 specifically be her interactions with third parties, and it is
6 on that basis that she is testifying today.

7 THE COURT: All right.

8 MR. WOODS: Your Honor, may it please the Court, I
9 would like to have for the record that, for the Court's
10 determination on her voluntary consent, we will go into a
11 little bit about her background in the Philippines to give the
12 Court an understanding in order to let the Court make that
13 decision.

14 THE COURT: Well, if you avoid the communications that
15 are covered by the privilege, we will make sure the
16 cross-examination is within the scope of the direct.

17 MR. WOODS: Thank you, your Honor.

18 MR. MACKEY: Your Honor, if I might address that
19 matter just very briefly.

20 THE COURT: Yes.

21 MR. MACKEY: With regard to the question of marital
22 privilege, two things went on April 21; that is, an interview
23 of -- by (sic) Mrs. Nichols and an interview of Mr. Nichols. I
24 think the law is well established that if each of those spouses
25 waived the privilege as to the same subject matter, then

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1 it's -- and there are matters like that.

2 THE COURT: If conversation is in the presentation of
3 other persons, then it's not within the scope of the privilege.

4 MR. MACKEY: Thank you, your Honor.

5 THE COURT: Yes. All right.

6 MR. WOODS: Thank you, your Honor.

7 THE COURT: You may proceed.

8 MR. WOODS: Thank you, your Honor.

9 DIRECT EXAMINATION

10 BY MR. WOODS:

11 Q. Mrs. Nichols, are you married to Terry Lynn Nichols?

12 A. Yes.

13 Q. When did you marry Mr. Nichols?

14 A. November 20, 1990.

15 Q. All right. How old are you right now?

16 A. 23.

17 Q. What's your date of birth?

18 A. June 11, 1973.

19 Q. Where were you born?

20 A. Philippines.

21 Q. What city?

22 A. Pilar Camotes Cebu.

23 Q. Until the summer of 1991, did you always live in the

24 Philippines?

25 A. Yes.

705

1 Q. Did you graduate from high school in the Philippines?

2 A. Yes.

3 Q. Did you have a job in the Philippines? Did you work

4 anywhere up until the summer of '91?

5 A. No.

6 Q. When did you graduate from high school, Mrs. Nichols?

7 A. March of 1989, 1990.

8 Q. All right. Did you speak English in your home with your

9 family?

10 A. No.

11 Q. Where did you learn English?

12 A. In school.

13 Q. What does your family consist of? How many brothers and

14 sisters, and your two parents?

15 A. I have four brothers and one sister.

16 Q. And would you briefly describe for the Court the rooms in

17 which your family live.

18 A. Oh, we have a very small house. I mean not really a house,

19 very small place to live.

20 Q. How many rooms is it, Mrs. Nichols?

21 A. Two.

22 Q. And how many people live there?

23 A. About seven, eight.

24 Q. Are you presently living there with your children?

25 A. Yes.

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1 Q. How many children do you and Mr. Nichols have?

2 A. Two.

3 Q. And what are their names and ages?

4 A. Nicole Lynn Nichols is two years old and a half and

5 Christian is six months.

6 Q. Back to the two rooms that you and your family live in, do

7 you have running water in those rooms?

8 A. No.

9 Q. Is there a bathroom in this house?

10 A. No, outside, about 25 meters away from the house.

11 Q. How many families share that bathroom?

12 A. Three or four families.

13 Q. All right. Are there other rooms around where your two

14 rooms are where other families live?

15 A. Yes.

16 Q. What does your father do, Ms. Nichols?

17 A. He is a policeman in Cebu City, Philippines.

18 Q. What's his rank?

19 A. Corporal.

20 Q. All right. And was your grandfather likewise a policeman?

21 A. Yes. He's a major, a retired major.

22 Q. Did you grow up believing that you had -- believing that

23 you had to follow authority?

24 A. Yes.

25 Q. Had you ever had any dealings with the police or with the

707

1 NBI? And if you would, would you explain to the Court what the

2 NBI is?

3 A. I think the NBI is the National Bureau of Investigation in

4 Philippines.

5 Q. All right. And is there a Philippine Army?

6 A. I think there is. I'm not sure.

7 Q. Excuse me. Prior to April of '95, had you ever had any

8 dealings with the police or the NBI or the Philippine Army?

9 A. Pardon?

10 Q. By "dealings," I mean had you ever been questioned by the

11 NBI or the Army when you were in the Philippines?

12 A. Before I met Terry?

13 Q. Yes.

14 A. No.

15 Q. And in April of '95, when you lived in the United States,

16 had you ever been questioned by the FBI or the United States

17 Army when you were in the United States?

18 A. No.

19 Q. Had you ever been questioned by the police?

20 A. No.

21 Q. Were you familiar with the American laws or the American

22 police system?

23 A. Not at all.

24 Q. Or the United States Constitution?

25 A. No.

708

1 Q. On your particular two rooms that you live in, Ms. Nichols,

2 is it possible to lock those doors where no one can get in? Do

3 you have a door like this exit door over here that could be

4 shut and locked and keep anyone out of your house?

5 A. No.

6 Q. If the NBI or the Philippine Army or the police wanted to

7 come into your house and they asked you to come into your

8 house, what would your answer have been?

9 A. Well, we normally let them in if, you know, they're being

10 nice.

11 Q. And has that occasion -- has that happened to you in the
12 past?
13 A. Yes. When the FBI and the NBI wants to question me over
14 there, they went to Philippines.
15 Q. I understand it's happening all the time now; but I'm
16 talking about prior to April, '95, had you ever been approached
17 by the Philippine Army or the NBI --
18 A. No.
19 Q. -- who wanted to get into your house?
20 A. No.
21 Q. Had they done that at that time, what would have your
22 answer have been?
23 A. I have no idea.
24 Q. Okay. I want to start now, Ms. Nichols, with April 21 of
25 last year. That's the day that you went to the Herington

709

1 police station with your husband Terry and your daughter
2 Nicole.
3 A. Okay.
4 Q. If you would inform the Court exactly how old Nicole was at
5 that time in April of '95.
6 A. She's less than two years old.
7 Q. She was born in August of '93?
8 A. Yes.
9 Q. So she was not two years old.
10 A. No.
11 Q. Were you breast feeding Nicole at that time?
12 A. Yes.
13 Q. Do you recall approximately what time you got to the police
14 station?

15 A. Might be around 1 to 2:00, afternoon.

16 Q. And who was with you?

17 A. Terry and Nicole.

18 Q. Now, I don't want to ask anything that Terry said; but if

19 you would describe for the Court just what he looked like and

20 his demeanor at that time as you went to the police station?

21 A. Well, he was scared, he was pale and just anxious to know

22 what's going on, why he's -- his name is on the news.

23 Q. When he arrived at the police station, what happened first?

24 Who did you see and who did you talk to?

25 A. The policeman in the Herington -- I forget his name.

710

1 Q. All right. It was one of the local police officers and not

2 the FBI or the United States Army?

3 A. Yes. That's correct.

4 Q. And what did -- what conversation did you have with the

5 local police officers?

6 A. I didn't have conversation with them. Terry did.

7 Q. All right. What did you hear at that time?

8 A. Terry said that I'm supposed to be armed and dangerous;

9 would you like to search me?

10 And the policeman came no, sir. You came over here

11 with your decision, I guess -- not decision but sort of like

12 that; so we -- we feel that you're okay.

13 Q. And did you then wait a few minutes before other people

14 arrived?

15 A. Yes.

16 Q. Approximately how many minutes?

17 A. About 25 minutes, I guess.

18 Q. How many people arrived at that time, Mrs. Nichols?

19 A. There was a lot of them. I didn't count them.

20 Q. Let's start with the people who talked to you. Do you
21 remember how many people talked to you when all of these people
22 arrived?
23 A. There was one agent that talked to me first and then he
24 went out. About four.
25 Q. By "about four," what do you mean by that? 4:00, or four

711

1 agents?
2 A. No, about four agents that talked to me. One is Mr. Tom
3 White. He works with the Army.
4 Q. And he's with the United States Army?
5 A. Yes.
6 Q. Did he stay with you for the next six hours?
7 A. Yes.
8 Q. Approximately how long did the interview with you last when
9 you were there in the police station?
10 A. I think for the whole afternoon, because I never know it
11 was already nighttime when we get out.
12 Q. Were there any windows in this room that you were kept in?
13 A. No.
14 Q. If the interview started sometime after 3, do you know
15 approximately what time you left the police station?
16 A. Might be 8 or 9:00 at night. I'm not sure.
17 Q. You were not wearing a watch?
18 A. I forgot if I did.
19 Q. All right. Was there a clock in this room with no windows
20 that you were in?
21 A. No.
22 Q. All right. You were interviewed then the whole evening by
23 the United States Army. Who else was with you?

24 A. Mr. Thomeczek and Ms. Sheila Dobson.

25 Q. Was Mrs. Dobson there the whole time, or did she come late?

712

1 A. She just come in about 45 minutes until we get there.

2 Q. For the last 45 minutes of the multihour interview, she was
3 there?

4 A. Uh-huh.

5 Q. And who did Mr. Thomeczek work for?

6 A. I have no idea. I didn't ask him.

7 Q. Did they show you any identification?

8 A. Yeah. All of them showed their identification card and
9 badge.

10 Q. You recalled earlier that Mr. White worked for the United
11 States Army. Do you recall who Mr. Thomeczek worked for?

12 A. Oh, I'm sorry. Yeah, he's an FBI.

13 Q. Okay. And what about Mrs. Dobson?

14 A. She's an FBI, too.

15 Q. Had you ever met an FBI agent before?

16 A. No, not in my whole life.

17 Q. Did you know who they were in general? I mean what role
18 they played in the American police system?

19 A. No, I have no idea.

20 Q. All right. Did they begin to ask questions of you,

21 Ms. Nichols?

22 A. Yes.

23 Q. Did any of these people that were questioning you advise

24 you that night that you had a right not to repeat confidential

25 communications between you and your husband?

713

1 A. No.

2 Q. Did anybody advise you that you had a right to talk with a
3 lawyer if you wanted to?

4 A. I don't remember. I don't think so.

5 Q. Okay. Did they ever tell you that you were a suspect or
6 that you were going to be arrested?

7 A. No.

8 Q. Do you recall whether or not during that evening that they
9 told you that Terry was going to be arrested?

10 A. No.

11 Q. During the interview, who conducted most of the questions,
12 Mr. Thomeczek with the FBI, or Mr. White of the United States
13 Army?

14 A. Both of them.

15 Q. Okay. And were the questions concerning your husband,
16 Terry Nichols?

17 A. Yes. And to Mr. Tim McVeigh, too.

18 Q. Did there come a time during that interview where you
19 requested to be allowed to breast-feed your child?

20 A. Yes.

21 Q. And were you allowed to leave the room to do that?

22 A. Yeah. They said that and just prefer to stay in the same
23 room.

24 Q. And was there a time when you had a conversation with
25 Mr. White of the United States Army?

1 A. Yes.

2 Q. And did Mr. White of the United States Army relate to you
3 that he was married to a lady from Korea?

4 A. Yes.

5 Q. Did the two of you then discuss the cultural differences
6 between Asia and the United States?

7 A. That's right.

8 Q. What did Mr. White tell you about cultural differences and
9 anything relating to the laws of the country?

10 A. Well, we did not talk about laws. We just merely talk
11 about the food that we -- me and his wife would prefer, the
12 religion and our sort of like pastime.

13 Q. Did he discuss with you the changes that you have had to
14 make coming from Asia to the United States?

15 A. Yes. Most of the women that came from Asia and from other
16 countries, they always feel homesick, which same as me.

17 Q. Did he relate to you anything about what you need to do
18 with the police officials while you were being interviewed?

19 A. Yes. He told me that I have to tell the truth so that it
20 will show that I have nothing to hide. That way, Mr. Thomeczek
21 would not repeat his question again and again.

22 Q. Were you complaining that you were answering the same
23 questions over and over?

24 A. No. I'm not complaining. It's just there is a lot of
25 question that they ask me and I just don't know what to answer

715

1 anymore.

2 Q. And had -- in your opinion, had you been telling the truth
3 the whole evening?

4 A. Yes.

5 Q. Did there come a time when you requested some diapers for
6 your child?

7 A. Uh-huh. That's the time that Sheila Dobson come in.

8 Q. And by that time, Ms. Dobson was there?

9 A. Yes.

10 Q. All right. And were diapers retrieved from your car?
11 A. No. I asked if I can come out, I can go out and get the
12 diapers, but they -- they told me that I can't because there is
13 a lot of media outside and I have no idea about that.
14 Q. Okay. Were diapers brought to you?
15 A. No -- well, Sheila Dobson went to the grocery store and
16 bought diapers.
17 Q. Did any time that evening -- did anybody bring in the baby
18 seat or the diapers from the car?
19 A. I don't remember, no.
20 Q. Do you recall seeing that baby seat inside the room where
21 you were?
22 A. No.
23 Q. Do you recall seeing the diapers inside the room where you
24 were that came from your truck?
25 A. No.

716

1 Q. How do you know that Ms. Dobson had to go to the grocery
2 store to buy the diapers?
3 A. She told me that she went to the grocery store.
4 Q. Was she -- excuse me. I'm sorry. I'm interrupting you.
5 A. She is not allowed to come in -- in the truck because they
6 need to have a bomb squad in the truck before she opened it.
7 Q. So even Ms. Dobson was not allowed to go inside the truck?
8 A. Yes, that's correct.
9 Q. And you never saw a baby seat or diapers brought from that
10 truck in to you; is that correct?
11 A. That's correct.
12 Q. Now, before you left, did you request that you be allowed
13 to return home?

14 A. Yes.

15 Q. And what did the -- who was with you then as you were

16 nearing leaving? Were there three people with you?

17 A. I don't remember. There was a lot of agents there.

18 Q. Was Mr. White of the United States Army still there?

19 A. No. I think Mr. Thomeczek was still there and Sheila

20 Dobson.

21 Q. Did Mr. White go with you to Abilene to the motel? Was he

22 in the car?

23 A. Yes.

24 Q. All right. Did you request that you be allowed to go down

25 and speak to your husband?

717

1 A. Yes.

2 Q. Had he been separated from you right away as soon as all of

3 the agents came to the building? Did they separate the two of

4 you?

5 A. Yes.

6 Q. Were you allowed to talk to him during any of these six

7 hours that you were being questioned?

8 A. No.

9 Q. Did you request then that you be allowed to go talk to

10 Mr. Nichols?

11 A. Yes.

12 Q. Had the agents told you that he wasn't going home with you?

13 A. Yeah. They told me that.

14 Q. All right. Did they tell you that you were going to be

15 taken to some city?

16 MR. MACKEY: Objection. Leading.

17 THE COURT: Sustained as to leading.

18 MR. WOODS: Yes.

19 BY MR. WOODS:
20 Q. You mentioned earlier that the agents said that you
21 couldn't go to your house. Is that correct?
22 A. Yes. That's correct.
23 Q. What did the agents tell you in relation to where you were
24 going?
25 A. They told me that they were going to take me to Junction

718

1 City.
2 Q. All right. When you went down to speak to Mr. Nichols, was
3 it downstairs?
4 A. Yeah, in the basement.
5 Q. And were there other agents in that room?
6 A. There was a lot of agents there.
7 Q. Okay. Without going into the discussion you had with
8 Mr. Nichols, were you given anything by Mr. Nichols?
9 A. Pardon?
10 Q. Did Mr. Nichols give you any object at that time?
11 A. Yes. He gave me his telephone card.
12 Q. All right. And did you then leave with Nicole, start to
13 leave the building?
14 A. Yes.
15 Q. Did an agent ask to review and take possession of the
16 telephone card?
17 A. Yes. They had to take Xerox copy out of it.
18 Q. Did he ask you for a consent to search; that is, that you
19 had a right to have papers on your person --
20 MR. MACKEY: Judge, I'd like to interpose an objection
21 as to the leading nature and lack of time. I've lost track of
22 time and place.

23 MR. WOODS: It's as they're leaving the building and
24 the agent said they'll need the card from her.
25 THE COURT: Well, please don't testify.

719

1 MR. WOODS: Yes, your Honor.
2 THE COURT: Let's ask her what the agents said.
3 BY MR. WOODS:
4 Q. Did the agent request a consent to search to obtain that
5 card from you?
6 MR. MACKEY: Same objection.
7 THE WITNESS: No.
8 THE COURT: You're putting it in legal terms.
9 MR. WOODS: I apologize, your Honor.
10 BY MR. WOODS:
11 Q. What did the agent say to you when he requested the card?
12 A. Can we have a copy of this card?
13 Q. And what did you say?
14 A. I said okay.
15 Q. All right. Did you feel that had you a choice one way or
16 the other?
17 A. No.
18 Q. Where were you taken then? The agents told you they were
19 taking you to --
20 A. Junction City.
21 Q. Because you couldn't go home. Where were you taken?
22 A. To the Abilene.
23 Q. Is that Abilene, Kansas?
24 A. Yeah.
25 Q. And to a hotel, motel, or house, or what?

720

1 A. Hotel, Best Western Inn.

2 Q. Ms. Nichols, if you would, pull the microphone toward you
3 or lean forward so everyone can hear. Whatever is comfortable
4 for you.

5 Who went with you to this motel?

6 A. Ms. Sheila Dobson and Mr. Thomeczek, and I think there was
7 one girl that I forgot her name. She works with Mr. Tom White.

8 Q. With the United States Army?

9 A. Yes.

10 Q. Does the name Dawn Grey refresh your memory?

11 A. That might be. I forget.

12 Q. All right. Now, was that your choice to go to Abilene,
13 Kansas?

14 A. No.

15 Q. What was your choice? Where did you want to go?

16 A. I want to go home, my house.

17 Q. All right. Let me back up just one minute to the Herington
18 police station when the officers advised you that Terry wasn't
19 going with you that night. Did they tell you during that
20 evening as to whether or not he was under arrest?

21 A. To my understanding, no.

22 Q. Did they explain to you why he wasn't going home with you?

23 A. Because he is a material witness.

24 Q. Okay. And you -- when did they tell you that?

25 A. When we were -- when they question me at the police

721

1 station, before we leave.

2 Q. So they told you he wasn't going him with you because he
3 was a material witness?

4 A. Uh-huh. And that the U.S. marshal would want to take
5 custody with him, for him -- I don't know how to say it.

6 Q. That the U.S. marshal wanted to take custody of him?

7 A. Uh-huh.

8 Q. And you left the police station. If the log reflected that
9 you talked with Mr. Nichols at 9:00, did you leave the police
10 station right after you talked with Mr. Nichols?

11 A. Yes.

12 Q. And Abilene, Kansas, in the motel -- this was Friday night
13 that you got there? Do you remember approximately what time
14 you got there?

15 A. I have no idea because I already fall asleep in the van
16 with Sheila Dobson.

17 Q. Did you have any clothes with you or any baby items?

18 A. No. Only diapers and baby wipes.

19 Q. In the car, the pickup itself, did you have a diaper bag
20 where you had baby items and bottles and stuff like that?

21 A. Yes.

22 Q. Did the agents ever give that to you from the car?

23 A. On that night, no.

24 Q. That night?

25 A. No.

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1 Q. Did they give it to you the next morning?

2 A. I don't remember.

3 Q. All right. On Saturday, which would be April 22, were you
4 in the motel the whole time?

5 A. Yeah. I think we went to buy some clothes and we went to
6 Pizza Hut.

7 Q. But you requested some clothes because you didn't have
8 anything?

9 A. Yes.

10 Q. What else happened on Saturday, the 22nd?

11 A. I think we mainly stayed in the hotel after we eat.

12 Q. Were you questioned by the agents again concerning --

13 A. Yes, they questioned me concerning about when we left the

14 house in Herington what is Terry's reaction and why did we

15 pull --

16 Q. Let me interrupt just one second, Ms. Nichols. I don't

17 want to get into the substance of the questions at this time;

18 but were you questioned by the agents?

19 A. Yes.

20 Q. Now, let me go back to the -- April 21. I did omit one

21 thing. Before you left the police station, did the agents ask

22 you to sign a consent form to search your house and car?

23 A. They did, and I said that you have to get the permission

24 from Terry, because it's his house.

25 Q. What did they say?

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1 A. We're going to get that, and we need yours, too.

2 Q. If you would, in the black book that's in front of you,

3 look at Tab No. W14. The black books, the ones on the right.

4 Ms. Nichols, the black books.

5 A. Oh, I'm sorry. I got confused. Here.

6 Q. Do you see the two exhibits that are at W14?

7 A. Yes.

8 MR. WOODS: Your Honor, may it please the Court, we

9 would offer into evidence the two consent forms signed that are

10 Exhibits W14 in the defense exhibits.

11 MR. MACKEY: I'd like to hear some foundation from

12 this witness as to circumstances surrounding execution.

13 MR. WOODS: I'll lay some foundation as to these are
14 the ones she signed.
15 THE COURT: All right.
16 BY MR. WOODS:
17 Q. Ms. Nichols, is your signature on both of the documents at
18 W14?
19 A. Yes.
20 Q. Have you seen those documents before?
21 A. Yes.
22 Q. Are those the documents that you signed that evening?
23 A. Yes.
24 MR. WOODS: Your Honor, may it please the Court, we
25 would offer the two items under W14 into evidence.

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1 MR. MACKEY: No objection. There is some confusion,
2 Judge. There are two consent forms that bear the same exhibit
3 number. Maybe we could make a better record as to exactly
4 which one is which.
5 THE COURT: Well, let's make one of them W14A.
6 MR. WOODS: Yes, your Honor. We'll make the consent
7 for the house as 14A and the consent for the automobile as 14B.
8 THE COURT: All right.
9 BY MR. WOODS:
10 Q. Ms. Nichols, approximately what time in relation to the
11 time you left the station did they present these two documents
12 to you?
13 A. I think they present these documents when Sheila Dobson
14 come in.
15 Q. So it was approximately 45 minutes before you left?
16 A. Yes.
17 Q. Was it just -- right at the time that Ms. Dobson came in,

18 or was it after she came in and got to know you?
19 A. After she came in.
20 Q. Had she talked to you for a while before these documents
21 were presented to you?
22 A. Yes.
23 MR. MACKEY: Excuse me.
24 THE COURT: Let's avoid the leading.
25 MR. WOODS: Yes, your Honor.

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1 BY MR. WOODS:
2 Q. Then can you make an estimation how many minutes it was
3 before you left, then, at the time you signed these documents?
4 A. I don't know. I can't figure it out right now.
5 Q. All right. And did the agents explain to you that you had
6 a choice one way or the other on signing these?
7 MR. MACKEY: Judge, I object.
8 THE COURT: Why don't you please just ask her what
9 happened, what was said.
10 MR. WOODS: Thank you.
11 BY MR. WOODS:
12 Q. What did the agents say to you when they handed you these
13 two documents?
14 A. That they're asking my consent if I will allow them to
15 search my house. And I said well, you need to get that from
16 Terry, because it's his house and that I need to read all of
17 it, if I do understand all of it. And I did ask Ms. Dobson
18 about -- about this words here of my rights to refuse to
19 consent to such search or by authorize. And I don't mainly
20 understand about it.
21 Ms. Sheila Dobson explained it to me that you have

22 rights to refuse it.

23 And I said, well, what happen if I will refuse?

24 And Mr. Thomeczek told me that they're just going to

25 have to get search warrant in court, which will take a little

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1 more time, but they will.

2 Q. And what did you say after he told you it would take more

3 time?

4 A. I said okay, I want to cooperate, hoping that they would,

5 you know, allow me to leave after that.

6 Q. You signed it because you hoped they would allow you to

7 leave?

8 A. Yes. I was cooperating mainly because I want them to know

9 that I have nothing to hide and that I thought that this was

10 right. I never know that, you know, I could refuse it, really.

11 Q. Would you look at your signature on those two documents?

12 A. Yes.

13 Q. On one of them, did you sign your first name twice?

14 A. Yes.

15 Q. Why did you do that, Ms. Nichols?

16 MR. MACKEY: Judge, I object. We need to figure out

17 which exhibit we're having the witness refer to.

18 THE COURT: Let's get them marked now so that we know

19 what we're dealing with. Do you want to mark 14A as the house,

20 did you say? 14A for the house, 14B for the truck.

21 BY MR. WOODS:

22 Q. Ms. Nichols, if I may back up one question, what did

23 Mr. Thomeczek say to you when you expressed some lack of

24 understanding?

25 A. He told me that eventually, we will get a search warrant in

1 the court and that will take us time, but we will, if you don't
2 sign it.

3 Q. Now, were you informed at a later time -- if you would look
4 at the second page of 14A and 14B. Both of them have written
5 across there "no consent search done on this date"?

6 A. Yes.

7 Q. Were you informed by the agents that they did not conduct a
8 search pursuant to these?

9 MR. MACKEY: Objection, your Honor.

10 THE WITNESS: I don't remember.

11 THE COURT: Sustained as to leading.

12 MR. MACKEY: Excuse me. I have another objection.
13 There is a statement in the record about two signatures on one
14 of these exhibits, and there is no clarification. I'm looking
15 at 14A and 14B. I can't find it.

16 THE COURT: There isn't any statement on the record.
17 There is a question that was never answered.

18 MR. MACKEY: All right.

19 THE COURT: I assume --

20 MR. WOODS: I'm withdrawing that question, your Honor.

21 THE COURT: All right. I think we had a question that
22 you're going to rephrase.

23 MR. WOODS: Yes, your Honor.

24 THE COURT: All right.

25 BY MR. WOODS:

1 Q. Concerning the searches that you had given consents to, did
2 the agents ever tell you anything about those two consents you

3 had given?

4 A. No.

5 MR. MACKEY: Objection, Judge. Lack of foundation.

6 Are we talking about the same two consents on April 21?

7 THE COURT: You're asking about 14A and 14B?

8 MR. WOODS: Yes, your Honor. The only two consents
9 that she's given as of this date on April 21.

10 THE COURT: Well, I think the record needs to be clear
11 what we're talking about; and you're talking about 14 -- W14A
12 and W14B.

13 MR. WOODS: Yes, your Honor.

14 THE COURT: All right.

15 Do you understand?

16 THE WITNESS: Yes, sir.

17 BY MR. WOODS:

18 Q. Did the agents either the following day of April 22 or any
19 day later inform you what they had done pursuant to those
20 consents?

21 A. No.

22 Q. Now, going to Saturday, on the 22nd, you said that you
23 bought clothes and were fed?

24 A. Yes.

25 Q. And that the agents continued to question you?

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1 A. Yes.

2 Q. Now, the next day, Sunday, April 23, where were you at that
3 time? What city?

4 A. Sunday, I am still at Abilene.

5 Q. Did you stay in Abilene that whole day, or did you go
6 somewhere?

7 A. I don't remember.

8 Q. Was there an occasion where you happened to go to the
9 Herington residence on April 23?

10 MR. MACKEY: Objection, Judge.

11 MR. WOODS: May it please --

12 THE COURT: He's just suggesting the possibility. I
13 don't see that as an objectionable question.

14 MR. WOODS: I apologize to the Court. There has to be
15 some leading --

16 THE COURT: I just recognized that.

17 MR. WOODS: I see.

18 THE COURT: Do it.

19 BY MR. WOODS:

20 Q. Was there an occasion when you went to your home on
21 April 23?

22 A. I don't remember. I think we went another day, Monday.

23 Q. If you would, then, look at Tab E1.

24 A. Is it still in this --

25 Q. Still the same -- no -- yes, same book, in the front of the

730

1 book under E1.

2 THE COURT: The clerk will help you there.

3 BY MR. WOODS:

4 Q. If you would look at that document, is your signature on
5 that document, Mrs. Nichols?

6 A. Yes.

7 Q. And is there a date next to your signature?

8 A. Yes.

9 Q. And what is the document entitled at the top?

10 A. It says a consent to search my residence in Herington,
11 Kansas, and a vehicle, the truck that we have.

12 Q. All right. And the 23rd is two days after you had gone to
13 the police station on Friday; is that correct?
14 A. Yes.
15 Q. So this is Sunday. Does that refresh your memory as to
16 whether or not you went to your house on that day?
17 A. Yes, I think we went to our house.
18 Q. Okay. Do you recall approximately what time you went to
19 the house?
20 A. I can't remember.
21 Q. Did the agents tell you what the purpose was going to be
22 for you to go to the house on Sunday?
23 A. Yes. I need to pick up my stuff and that -- so I can get a
24 ticket and go back to Philippines.
25 Q. By your stuff, what do you mean?

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1 A. All of my things that I needed, like clothing and for
2 Nicole's toys and anything that I could find in the house that
3 I need.
4 Q. And so you wanted to go back to the house to pick that up
5 on Sunday?
6 A. Yes.
7 Q. When did they present to you the consent to search form,
8 which is E1?
9 A. I forgot.
10 Q. All right.
11 MR. WOODS: Your Honor, may it please the Court,
12 before we continue with this, he would like to offer E1 into
13 evidence.
14 THE COURT: I have it as already received.
15 MR. WOODS: All right. Thank you.
16 BY MR. WOODS:

17 Q. Ms. Nichols, if you would look at your signature on this
18 document, which is the one that has your signature twice --

19 A. Yes.

20 Q. Why did you put your first name twice there?

21 A. I have no idea.

22 Q. What, if anything, did the agents tell you in relation to
23 this form that they gave you to sign?

24 A. Pardon?

25 Q. You signed this form on April 23. Do you recall the

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1 conversation that you had with the agents when they gave it to
2 you?

3 MR. MACKEY: Your Honor, if I might ask for
4 identification of persons, what agents.

5 THE COURT: Yes. We should find out who she's talking
6 about.

7 BY MR. WOODS:

8 Q. Yes. On Sunday, April 23, when you went back to your
9 house, what agents went with you?

10 A. Mr. Thomeczek and Sheila Dobson, and there was another
11 agent that I forgot his name. We pick him up in Herington.

12 Q. And was that just three agents and that's all?

13 A. Yes.

14 Q. Was it one of those three who gave you this form to sign?

15 A. Yes, Mr. Thomeczek.

16 Q. All right. And what explanation did he give you concerning
17 this form?

18 A. That they need to search the house and that they need to
19 search the truck, too.

20 Q. And what did you say when they explained that to you?

21 A. Well, I said that I will sign it, even though I don't
22 exactly understand what it is.
23 Q. Did you feel that you had a choice in not signing it?
24 A. No.
25 Q. Was this in connection with you getting into your house to

733

1 get your personal items?
2 A. Where they went to our house.
3 Q. I'm sorry?
4 A. And then they give me this and I tell them.
5 Q. Did they give this to you at the house as you were inside
6 the house?
7 A. No. Inside hotel room at somewhere in Fort Riley, Kansas.
8 Q. This was before you went to the house?
9 A. Yes.
10 Q. And you had already requested to go to the house to pick up
11 your personal items?
12 A. Uh-huh.
13 Q. So you went to the house, then, that day?
14 A. Yes.
15 Q. What happened when you went inside the house?
16 A. Well, Mr. Thomeczek told me that we only have about half an
17 hour or 45 minutes to be in this house because we need to get
18 out so quick before the media will find out.
19 Q. So what did you do, then, inside the house while you were
20 there?
21 A. I pick up my clothes and Mr. Thomeczek help me and both of
22 them would not give me out of their sight. Like Ms. Sheila
23 Dobson would stay with me all the time in the room.
24 Q. And did you pack up some of your items?
25 A. Yes.

1 Q. Did you pick up anything else at the house that you noticed

2 there?

3 A. Yeah. I pick up Terry's -- what do you call that? Stock

4 certificate.

5 Q. Where was that?

6 A. Nearby the dining table or kitchen table, what you call it.

7 Q. Was there a document in there that had been left by the

8 Government?

9 A. No.

10 Q. Do you recall whether or not you were given an inventory of

11 the search that had been conducted the prior day?

12 A. No.

13 Q. What else did you pick up in the house?

14 A. I'm sorry. After we left the house, Mr. Thomeczek gave me

15 the inventory.

16 Q. Oh, okay. Do you know where he obtained that inventory?

17 A. I don't know.

18 Q. Did he relate to you where he had gotten the inventory?

19 A. I don't remember.

20 Q. While you were in the house, did you see the agents do

21 anything?

22 A. No.

23 Q. Did they ever explain to you that they were there to

24 conduct a search?

25 A. No. I know one of the policemen helped Sheila Dobson try

1 to find the receipt that we had when we rented some movies.

2 Q. Was there anything else that was searched for, to your
3 knowledge?

4 A. No.

5 Q. Did the agents tell you to observe them while they
6 conducted the search for the receipt?

7 A. No.

8 Q. Now, when you left there and Mr. Thomeczek gave you the
9 return -- that's a list of items -- did you read the list of
10 items?

11 A. Yes.

12 Q. And what did you notice on this return?

13 A. I noticed that they haven't found my money that I put under
14 the bed, and I did try to ask Mr. Thomeczek if I can get it
15 myself; and he said no, we can't do that.

16 Q. How did you notice that they hadn't found that?

17 A. Because it's not in the inventory list.

18 Q. Did Mr. Thomeczek know which money you were talking about?

19 A. No.

20 Q. Had you mentioned this money to him before?

21 A. Yes.

22 Q. When?

23 A. Before we left, at the police station.

24 Q. What did you tell him about the money when you were in the
25 police station?

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1 A. That I have money under the box spring of the bed. Can I
2 have the money and the gold coins? There was gold coins there,
3 too, that Terry have given to me; and he said well, we're
4 probably going to give you the money but not the gold coins.

5 Q. He told you this at the police station?

6 A. Yes.

7 Q. And what conversation did you have with him then in the car
8 after you had reviewed the log?

9 A. I told Mr. Thomeczek that they haven't found my money and
10 it's not in the inventory, the other list. Can I have it? Can
11 we turn around and get it? And he said no, we cannot do that.

12 Q. What did he next say to you in relation to this money?

13 A. Well, he told me that they have to go put it -- I mean give
14 it to somebody; that they will have a test, like a laboratory
15 test. I'm sorry. And that they have to get some evidence
16 there if Tim McVeigh has fingerprints on that money.

17 And I told them no, I don't think Tim has fingerprints
18 on that.

19 Q. Let's back up just one minute, if you would.

20 MR. WOODS: Your Honor, this is going to be awhile.
21 Whenever the Court wants to take a break. I can keep going.

22 THE COURT: If this is a good place, let's do it.

23 MR. WOODS: Thank you.

24 THE COURT: We'll break till 1:30.

25 During this time, you should not talk about your

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1 testimony with anyone else, except you can consult with your
2 lawyer, Ms. Cain, if you wish.

3 All right. Recess, 1:30.

4 (Recess at 12:05 p.m.)

5 * * * * *

6 INDEX

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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 28th day of June,
5 1996.

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Paul Zuckerman

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Bonnie Carpenter

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