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1 APPEARANCES
2 JOSEPH H. HARTZLER, SEAN CONNELLY, LARRY A.
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3 BETH WILKINSON, SCOTT MENDELOFF, and VICKI BEHENNA,
Special
4 Attorneys to the U.S. Attorney General, 210 West Park
Avenue,
5 Suite 400, Oklahoma City, Oklahoma, 73102, appearing
for the
6 plaintiff.
7 STEPHEN JONES, ROBERT NIGH, JR., AMBER
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8 RANDALL COYNE, and MANDY WELCH, Attorneys at Law,
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9 & Roberts, 114 East Broadway, Suite 100, Post Office
Box 472,
10 Enid, Oklahoma, 73702-0472, and JERALYN MERRITT, 303
East 17th
11 Avenue, Suite 400, Denver, Colorado, 80203, appearing
for

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

17 * * * * *

18 PROCEEDINGS

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

20 THE COURT: Be seated, please.

21 Good morning. We have the same appearances?

22 MR. HARTZLER: Mr. Ryan had a personal matter
so he
23 had to leave us, but otherwise, we're the same.

24 THE COURT: All right. With respect to
counsel for
25 Mr. McVeigh, the same?

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1 MR. JONES: Yes, your Honor.

2 THE COURT: Mr. Nichols?

3 MR. TIGAR: Counsel is present and Mr. Nichols
is
4 here.

5 THE COURT: All right. Mr. Neureiter.

6 MR. NEUREITER: May it please the Court, we
would call

7 Mary Jasnowski.

8 THE COURT: All right. Come forward to be
sworn,

9 please.

10 (Mary Y. Jasnowski was sworn.)

11 COURTROOM DEPUTY: Please state your full name
for the

12 record and spell your last name.

13 THE WITNESS: My name is Mary, middle initial
Y.,

14 Jasnowski, J-a-s-n-o-w-s-k-i.

15 DIRECT EXAMINATION

16 BY MR. NEUREITER:

17 Q. Good morning, Ms. Jasnowski.

18 A. Good morning.

19 Q. My name is Reid Neureiter. I represent Terry
Nichols. You

20 are a supervisory special agent for the FBI?

21 A. That is correct.

22 Q. And you're part of the evidence recovery team; is
that

23 right?

24 A. Yes, that's correct.

25 Q. Do you recall the date April 21, 1995?

1 A. Yes, I do.

2 Q. Where were you on that date?

3 A. On April 21, I was in Omaha, Nebraska.

4 Q. Did there come a time when you went to Herington,
Kansas?

5 A. Yes, later that afternoon, I drove to Herington,
Kansas.

6 Q. And you drove there because you knew there would be
a

7 search warrant executed on the 22nd; is that correct?

8 A. I'm sorry. I didn't drive to Herington. I drove
to

9 Fort Riley, Kansas.

10 Q. And was -- did there come a time when you
eventually drove

11 to Herington, Kansas?

12 A. Yes, I did.

13 Q. And when was that?

14 A. That was in the following day.

15 Q. The 22nd?

16 A. The 22nd.

17 Q. And you drove to Herington, Kansas, on the 22nd
because you

18 knew there would be a search warrant executed on that
date;

19 correct?

20 A. Yes.

21 Q. Had you seen a copy of the search warrant?

22 A. On the 21st?

23 Q. On the 22nd, you were executing that search
warrant, were

24 you not?

25 A. Yes.

903

1 Q. You were part of the team that went into the house
at

2 109 South 2nd Street; correct?

3 A. Yes, I was.

4 Q. And what was your role there?

5 A. I was the team leader for the search.

6 Q. Had you seen a copy of the search warrant?

7 A. Oh, yes.

8 Q. Had you read it?

9 A. Yes, sir.

10 Q. Had you read -- well, let me refer you to
Government

11 Exhibit 19, please. That's in the white book.

12 A. Right. Yes, I have it.

13 Q. Is that a copy of the search warrant?

14 A. Yes, it is.

says 15 Q. And do you see on the second page at the top it

16 Attachment A?

17 A. Yes, I see that.

that 18 Q. And at the bottom, it says -- if you could read

19 sentence for me, please.

20 A. Item No. 9?

21 Q. Yes, please.

then 22 A. Four 55-gallon plastic drums (approximate size) and
23 contents, fertilizer, fuel meters and diesel fuel. And

24 there are initials after that.

25 Q. All right. And if you could turn to page 9 of that

904

1 affidavit that's attached to the search warrant.

2 A. I'm there.

3 Q. And subparagraph E, if you could read that, please.

garage. 4 A. Nichols also said that he had a fuel meter in his

purposes. 5 He stated that he had purchased this item for resale

operability of 6 Q. It has nothing in that paragraph about the

7 the fuel meter, does it?

8 A. No, it does it not.

9 Q. If you could turn to paragraph 21 of that warrant
--
10 affidavit, excuse me.
11 A. I'm there.
12 Q. Could you read paragraph 21, please.
13 A. According to information provided by ATF bomb
experts, the
14 fuel meter referred to in paragraph 18 above could
readily be
15 used to obtain the proper blend of ammonium nitrate and
diesel
16 fuel.
17 Q. Were you aware at the time you conducted the search
on the
18 22nd that Mr. Nichols had told the agents with whom he
had had
19 an interview that the fuel meter was inoperable, in
pieces, and
20 had broken gears?
21 A. I don't believe I was informed of that at that
time.
22 Q. You were looking for a fuel meter on the 22nd when
you went
23 into the house; correct?
24 A. That is correct.
25 Q. No fuel meter was seized on the 22nd; correct?

1 A. That is right.

2 Q. If you could turn to Exhibit W68 in the second
black book.

3 Please.

4 A. Okay. All right.

5 Q. Do you recognize this photograph?

6 A. Yes, I do.

7 Q. Is this a photograph that was taken during that
April 22

8 search?

9 A. Yes, it is.

10 Q. And does the photograph depict metal pieces on top
of a

11 wooden crate?

12 A. Yes, it does.

13 MR. NEUREITER: Your Honor, we would offer
W68.

14 MS. WILKINSON: No objection, your Honor.

15 THE COURT: It's received.

16 BY MR. NEUREITER:

17 Q. That's the fuel meter, is it not?

18 A. Yes, it is.

19 Q. But it wasn't seized on the 22nd; correct?

20 A. That's correct.

21 Q. You returned to the Herington house on the 23rd of
April;

22 is that right?

23 A. That's right.

24 Q. Why did you return on the 23rd?

25 A. Well, we discovered the morning of the 23rd after
we

906

meter 1 completed the search warrant that we'd left the fuel
items 2 behind, plus we had information that there were other
3 that might have had evidentiary value that we needed to
4 retrieve, as well.

5 Q. All right. And you returned there pursuant to a
consent 6 allegedly granted by Marife Nichols; is that right?

7 A. That's correct.

8 Q. You did not return there pursuant to a consent
granted by 9 Terry Nichols; correct?

10 A. That's correct.

11 Q. It was not your understanding at the time that you
were 12 returning there pursuant to some conditional consent
that

13 Mr. Nichols had granted --

14 A. That's right.

15 Q. -- correct?

16 MR. NEUREITER: Your Honor, I would ask if I
may
17 approach to pull forward the table, the cart that is
located
18 just to the other side of the witness. Or have the
clerk do
19 it.

20 THE COURT: The clerk will do it.

21 MR. NEUREITER: If I could ask if the clerk
could put
22 it within arm's reach of the witness.

23 THE COURT: Okay.

24 BY MR. NEUREITER:

25 Q. Ms. Jasnowski, you were the senior FBI agent during
that

907

1 second -- the search on the 23rd; correct?

2 A. That's correct.

3 Q. And you prepared the evidence recovery log for that
search
4 on the 2nd; correct?

5 A. I prepared some of the logs. The logs were created
by
6 whoever did the search in whatever area they were
searching.

7 Q. Okay. If you could turn to Exhibit E2 in the first
black

8 book. That's a defense exhibit.

9 A. E2.

10 Q. Yes. Do you see that document?

11 A. Yes, I do.

12 Q. Does it say "evidence recovery log" at the top?

13 A. Yes, it does.

14 Q. With the words "consent search" in big black
letters?

15 A. Right.

16 Q. And is your name next to the words "preparer/
assistants"?

17 A. Yes.

18 MR. NEUREITER: Your Honor, we would offer E2
if it's

19 not already in evidence.

20 MS. WILKINSON: No objection.

21 THE COURT: It's not in. All right. E2 is
received.

22 BY MR. NEUREITER:

23 Q. So you prepared this page of the log at least?

24 A. Yes, I did.

25 Q. In the upper right-hand corner, there's a box with
the word

908

1 "personnel"?

2 A. Yes.

3 Q. And that lists a number of names?

4 A. Yes, it does.

5 Q. And then on the log, itself, there are a number of
columns
6 that read item, description, where found, recovered by,
photo,
7 marking, packaging method and miscellaneous comments.
I would
8 like to know what "marking" means. It says direct,
indirect.
9 And then you put a D and I next to each item. What
does that
10 mean?

11 A. When we recover an item of evidence, in order to
keep track
12 of what it is, it's given a number, the date that it
was
13 collected, the file number of the case and who
recovered it.
14 And to do that, we mark it. We either mark it directly
on the
15 item itself, or we mark it indirectly like on the bag
that
16 contains it or with a tag.

17 Q. And packaging method, what does that mean?

18 A. If we need to package up an item, whether we put it
in a
19 box or in plastic or what means we use to package it if
it
20 needs package.

in which 21 Q. So that is not then an indication of the condition

22 the item was found?

23 A. No.

it 24 Q. In other words, if it says "box" next to something,

25 wasn't found in a box? You put it in a box afterwards?

909

1 A. That's correct.

the 2 Q. By the way, on the 22nd when you were searching for

important to 3 fuel meter, you thought the fuel meter was pretty

4 the case; correct?

5 A. That is correct.

6 Q. But the FBI left it; right?

7 A. That's right.

there, 8 Q. Item No. 2, could you read the entire line across

9 please.

found, 10 A. Certainly. Fuel meter, S.N. Number 123909; where

marking, 11 garage, north room; recovered by G. T.; photo, no;

12 indirect, I, packaging method, box.

fuel 13 Q. And I think you might have misread there. It says

14 meter, S. No. not S.N. Number; correct?

15 A. That's right.

16 Q. All right. G. T., what does that mean?

17 A. G. T. stands for the initials for Gene Thomeczek.

18 Q. So Mr. Thomeczek was the one who recovered it;
correct?

19 A. That's correct.

20 Q. And then he would bring it to you because you were
the log

21 preparer?

22 A. Right.

23 Q. Where were you sitting in the house when you were
preparing

24 the log? How does that work?

25 A. Actually, we were in the garage at the time that we
did

910

1 this search, and I was -- it was a small room, and I
was

2 standing in the center of the room. So basically, they
were

3 all around me.

4 Q. Did you see the fuel meter when Mr. Thomeczek went
to pick

5 it up and bring it to you?

6 A. Yes, I did.

7 Q. And did Mr. Thomeczek have a box that he was then
putting
8 the fuel meter in and that's indicated under packaging
method?
9 A. That's correct.
10 Q. Is the box at the bottom, the second shelf there --
is that
11 the box that Mr. Thomeczek put the fuel meter in?
12 A. Yes, it is.
13 Q. So that box was brought to the house by the FBI?
14 A. Yes.
15 Q. And that box wasn't in Mr. --
16 A. No, it was not.
17 Q. -- Nichols' possession?
18 And on the first shelf there, is that the fuel
meter,
19 itself?
20 A. Yes, it is.
21 Q. And there are a number of pieces there, aren't
there?
22 A. Yes.
23 Q. Could you count the number of pieces, please.
24 A. Well, there are three large pieces and then a bag
25 containing a number of smaller --

1 Q. A number --

2 A. -- pieces.

3 MR. NEUREITER: I've been informed by the
Government
4 that she may be able to pick up the bag without opening
it and
5 examine the contents of the bag through the bag. If
she could
6 do that at this time.

7 THE COURT: Sure. If you could do that
conveniently.
8 If you want to stand up, you can --

9 THE WITNESS: I've got it. You want me to
count them?

10 BY MR. NEUREITER:

11 Q. If you could just confirm that there were a number
of gears
12 in that bag?

13 A. Yes, I see them.

14 Q. Do you notice that some of the gears are missing
teeth?

15 A. Well, unless I really examined it, I can't tell
that they
16 are missing teeth or whether that's the way it's made.

17 MR. NEUREITER: Your Honor, at this time, we
would
18 offer the fuel meter itself as well as the box that the
FBI put
19 it in.

20 THE COURT: What's the reason?

evidence -- 21 MR. NEUREITER: To offer the fuel meter at

22 THE COURT: Yes.

a sense 23 MR. NEUREITER: -- so that your Honor can get

and it 24 that the FBI knew there were missing gears and pieces

25 was in many pieces and disassembled at the time.

912

1 THE COURT: Well, won't -- doesn't the
photograph show

2 that very thing?

3 MR. NEUREITER: Not the photograph that was
entered,

4 your Honor.

5 THE COURT: I don't want to get involved with
a chain
6 of custody with respect to the fuel meter if it's going
to be

7 offered in evidence at trial when it isn't necessary
for this

8 suppression hearing. What am I going to do? Open it
up and

9 look at the parts?

10 MR. NEUREITER: Very well, your Honor.

11 BY MR. NEUREITER:

12 Q. Did you notice at the time that Mr. Thomeczek

brought you

teeth? 13 the fuel meter that there were many gears with missing

14 A. I didn't notice that.

15 Q. It was disassembled, was it not?

is built 16 A. I really don't know enough about how a fuel meter

17 to say it was disassembled.

order to 18 Q. Does that fuel meter look like it's in working

19 you?

20 A. I have no idea.

21 Q. You have no idea, do you?

22 A. I have no idea.

to your 23 Q. And there are no pumps attached to that fuel meter,

24 knowledge?

know. 25 A. I don't know what a pump would look like. I don't

913

1 Q. Do you know what a hose looks like?

2 A. Like -- a garden hose?

3 Q. Yes.

4 A. Yes, I do know.

there? 5 Q. There are no hoses attached to that fuel meter, are

6 A. Not attached to it now, no.

warrants

7 Q. And there were subsequent warrants -- search

there not?

8 issued after the discovery of this fuel meter, were

9 A. I believe there were.

Honor.

10 MR. NEUREITER: No further questions, your

questions?

11 THE COURT: Ms. Wilkinson, do you have some

12 MS. WILKINSON: Yes, your Honor.

13 THE COURT: Please.

14 CROSS-EXAMINATION

15 BY MS. WILKINSON:

the

16 Q. Agent Jasnowski, how many years have you spent with

17 FBI?

18 A. 18.

you a

19 Q. And what type of special skills do you have? Are

20 lawyer?

21 A. I'm an attorney. I speak Russian and Polish.

22 Q. Where did you go to law school?

23 A. The University of Notre Dame.

24 Q. And what is your current assignment with the FBI?

division.

25 A. I'm the chief division counsel for the Omaha

the team 1 Q. Were you the chief division counsel when you were

2 leader on this search on April 22, 1995?

3 A. Yes, I was.

leader, 4 Q. And as a part of your responsibility as the team

5 have you received training on evidence recovery?

6 A. Yes, I have.

7 Q. What type of training have you received?

collection, 8 A. I've received training in basic evidence

investigations, 9 recovery of latent fingerprints, death scene

investigations, that 10 blood spatter investigations, post-blast

11 sort of thing.

with 12 Q. During that training, have you ever become familiar

13 fuel meters?

14 A. No, I have not.

agricultural 15 Q. Do you have any special expertise in the

16 business?

17 A. No, I do not.

search 18 Q. Going to April 22 when you participated in the

19 warrant and the search of the Nichols residence, were

you in on

20 the initial search with the evidence recovery team?

21 A. Yes, I was.

22 Q. What did you first do when you entered the home?

23 A. When we first entered the home, the small number of
us put

24 on protective clothing and booties and gloves and
assisted the

25 people from our laboratory division to do their tests
for

915

1 evidence -- explosives residue.

2 Q. What was the purpose of the protective gear?

3 A. So that we wouldn't disturb any residue that might
be

4 there.

5 Q. During that initial search, were photographs taken?

6 A. Yes, they were.

7 Q. What type of photographs?

8 A. It was basically a survey of the premises.

9 Q. What is the purpose of survey -- for the survey
10 photographs?

11 A. Well, the survey is basically to get a layout and
to ensure

12 that this is the state of the premises when we arrive,
and we

13 also take exit photos to show that it hasn't really
changed in

14 any way.

15 Q. During that initial survey, did someone photograph
the fuel

16 meter in place?

17 A. Yes, they did.

18 Q. Did you see the fuel meter at that time?

19 A. Yes, I did.

20 Q. Did you take any notice of whether the fuel meter
was in

21 working order?

22 A. No, I didn't.

23 Q. Would you have any reason to believe that it was
not in

24 working order?

25 A. No.

916

1 Q. Turning to April 23, at approximately 3 p.m., did
you go

2 back to the Nichols residence?

3 A. Yes, I did.

4 Q. Is it at that time when you and your team members
recovered

5 the fuel meter?

6 A. That's correct.

7 Q. After you recovered the fuel meter and logged it
into your

8 evidence recovery log, what did you do with it?

9 A. Well, we packed it up with the other evidence,
removed it

10 to our vehicle and took it back to the Herington Public
Safety

11 Building.

12 Q. What did you do with the evidence once you returned
to the

13 Herington Department of Public Safety?

14 A. We photographed it, and then we placed it with the
other

15 evidence.

16 Q. Did you photograph the fuel meter?

17 A. Yes, we did.

18 Q. And did you keep or did one member of your team
keep a copy

19 or keep a log of the photographs that you were taking
at that

20 time?

21 A. Yes, they did.

22 Q. Could you turn to Government's Exhibit 73 in the
23 Government's white notebook, please.

24 A. Certainly.

25 Q. Could you turn to the second page.

1 A. Mine stops at 72.

2 COURTRROOM DEPUTY: That new packet. It's in
that

3 packet.

4 MR. NEUREITER: Your Honor, we do not have a
copy of

5 73.

6 THE COURT: Any of you --

7 MR. NIGH: Neither do we, your Honor. Thank
you.

8 THE COURT: You do now. All right.

9 BY MS. WILKINSON:

10 Q. Agent Jasnowski, could you review Government's
Exhibit 73

11 and tell the Court whether you recognize it.

12 A. Yes, I do.

13 Q. What is it?

14 A. It's the photo log of that photo shoot.

15 MS. WILKINSON: Your Honor, the Government
offers

16 Government Exhibit 73.

17 MR. NEUREITER: No objection, your Honor.

18 THE COURT: 73 is received.

19 BY MS. WILKINSON:

20 Q. Agent Jasnowski, please turn to the second page.

21 A. I'm there.

22 Q. Do you see a -- a description of Photograph No. 2?
23 A. Yes, I do.
24 Q. Could you read that, please?
25 A. Fuel meter pump and accessories.

918

1 Q. At the time that photograph was taken, did you
believe that
2 the parts that were with the fuel meter were the
accessories?

3 A. Yes, I did.

4 Q. Did you and your team members ever discuss the
operability
5 of the fuel meter at that time?

6 A. No, we did not.

7 Q. What did you do with the fuel meter and the
accessories

8 after you took the photograph at the Herington
Department of

9 Public Safety on April 23?

10 A. We put them back in the box and placed them with
the other
11 evidence.

12 Q. What did you do with that evidence?

13 A. That evidence was placed in a truck with all the
evidence

14 and later removed to our command post at Fort Riley.

Riley? 15 Q. When was it taken to the command post at Fort
around 16 A. I believe we left the Herington Police Department
truck 17 5:00, and that's when -- not long thereafter when the
18 arrived.

19 Q. That was on the evening of April 23?

20 A. 23, yes.

evidence 21 Q. And where did the evidence or how long did the
22 stay at Fort Riley after that?

23 A. Approximately a day.

24 Q. What happened to it then?

Kansas, 25 A. It was loaded into an FBI aircraft at Manhattan,

919

1 and flown to our laboratory.

2 Q. On April 24, the day that the evidence remained at
3 Fort Riley, who had access to that evidence?

4 A. Only members of my team.

examine the 5 Q. Were your team members ever asked by anyone to
6 fuel meter and determine its operability?

7 A. No, they were not.

8 Q. Are you aware if anyone at that time reviewed or
examined

9 the fuel meter and determined its operability?

10 A. No one did.

11 MS. WILKINSON: No further questions, your
Honor.

12 THE COURT: Any follow-up, Mr. Neureiter?

13 MR. NEUREITER: Yes, your Honor.

14 RECROSS-EXAMINATION

15 BY MR. NEUREITER:

16 Q. If you could turn to Exhibit W72 in the second
black book,

17 please.

18 A. Yes, I see that.

19 Q. Do you see the gears down in the lower left-hand
corner?

20 A. Yes, I do.

21 Q. Does this fairly and accurately represent what you
found

22 when you saw the fuel meter that day on the 23rd?

23 A. It looks to be the same.

24 Q. All right.

25 MR. NEUREITER: We would offer W72, your
Honor.

920

1 MS. WILKINSON: No objection, your Honor.

2 THE COURT: Received.

3 BY MR. NEUREITER:

4 Q. And do you see that those gears are missing teeth?

5 A. Again, you say they are missing teeth. It could be
just a
6 groove. I don't know. I'd have to look at it close --
more
7 closely.

8 Q. Well, the pieces are right there.

9 A. Do you want me to open them up?

10 Q. I do not want you to open them up.

11 A. I can't tell from the plastic. I mean, I'd like to
be able
12 to see in order to make a better judgment whether it's
missing
13 or not.

14 MR. NEUREITER: Your Honor, we would like to
establish
15 for the record that the -- that the gears are missing
teeth;
16 and if the Government will stipulate to that, we would
accept
17 that.

18 THE COURT: Ms. Wilkinson?

19 MS. WILKINSON: Your Honor, I'm going to
object
20 because I think the issue is whether she knew at the
time
21 whether it's operable, and she's already testified she
didn't.

learned 22 Whether after the fact he could ask her whether she
23 later whether the fuel meter was operable -- but I
think her 24 observations -- she's already testified to her
observations.

25 THE COURT: Well, I think they are entitled to
have

921

1 the fact that it was not operable established. Are you
in 2 agreement that it was not at that time operable?

3 MS. WILKINSON: Yes, your Honor.

4 THE COURT: All right.

5 MR. NEUREITER: We accept --

6 THE COURT: We don't have to get into the
details of

7 how many teeth or all that. It was not operable, and
that's

8 stipulated.

9 MR. NEUREITER: Very well, your Honor.

10 BY MR. NEUREITER:

11 Q. Did anybody from your evidence recovery team ever
tell the

12 ATF expert who was being informed about the fuel meter
and

13 questioned about its potential uses of the condition in

which

14 it was recovered?

15 A. I'm certain no one from my evidence team did.

16 Q. Because it was put right in the truck after you got
it --

17 took it back to Herington and it was put in the truck
18 eventually; correct?

19 A. I believe so, yes.

20 Q. So if there were ATF statements in subsequent
search

21 warrants referring to the fuel meter and its use to
make ANFO

22 bombs, then that ATF agent was never informed by you
about the

23 fuel meter's condition; correct?

24 A. That's correct.

25 MR. NEUREITER: No further questions.

922

1 THE COURT: Anything else?

2 RECROSS-EXAMINATION

3 BY MS. WILKINSON:

4 Q. Agent Jasnowski, could you explain to the Court why
you

5 didn't take the fuel meter on April 22 when the court
had

6 authorized you to do so?

7 A. It was inadvertently left behind. And we had every
8 intention of taking it, but -- for some reason, it
wasn't
9 taken.

10 Q. How long were you in that search on April 22?

11 A. We entered the house at approximately 4:30 and left
12 approximately 4:30 or 5:00 the next morning.

13 MS. WILKINSON: Thank you.

14 THE COURT: All right. I take it she may be
excused.

15 MR. NEUREITER: Yes, your Honor.

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

17 And with respect to this physical -- these
parts, I
18 take it they came from the Government this morning?

19 MS. WILKINSON: They did, your Honor. We'll
take them
20 back and put them back in the evidence room.

21 THE COURT: All right. Thank you.

22 So next witness.

23 MR. THURSCHELL: Call Agent William R. Seck.

24 THE COURT: Please come forward to be sworn.

25 (William R. Seck was sworn.)

1 COURTROOM DEPUTY: Please be seated.

2 THE WITNESS: Thank you.

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

5 THE WITNESS: Full name is William R. Seck, S-
e-c-k.

6 DIRECT EXAMINATION

7 BY MR. THURSCHELL:

8 Q. Good morning, Agent Seck.

9 Agent Seck, did you prepare several search
warrant
10 applications in connection with the Oklahoma City
bombing case?

11 A. Yes, sir.

12 Q. Okay. Would you please look at Government Exhibit
76,
13 which I believe is in the pile of loose exhibits just
to the
14 left of the book that you're looking at now.

15 A. The first one on top, 74? Was that the number?

16 Q. 76.

17 A. 76. Okay.

18 Q. Would you --

19 A. Okay.

20 Q. Would you turn to the third page of that exhibit.

21 A. Okay.

22 Q. And that is your signature in the lower right

corner, is it

23 not?

24 A. That's correct.

25 Q. Okay. And this is an application for a search
warrant

924

1 executed by you on April 28, 1995?

2 A. That's correct. I was the affiant for the search
warrant.

3 Q. Okay. And this warrant seeks a warrant -- this
application

4 seeks a warrant for the Nichols residence at 109 South
2nd

5 Street; correct?

6 A. That is correct.

7 MR. THURSCHELL: Okay. Your Honor, we would
offer

8 Government Exhibit 76.

9 MR. CONNELLY: No objection.

10 THE COURT: Received.

11 MR. JONES: Judge, just a moment, your Honor.

12 THE COURT: All right.

13 MR. JONES: May I ask if this is a document
that's

14 previously and presently unsealed?

15 MR. CONNELLY: I believe at the outset, Mr.

Tigar

16 indicated that we were -- without objection, we would
unseal
17 all the warrants for this proceeding. The ones that
were
18 challenged from Kansas.

19 MR. JONES: Well, I don't speak for Mr. Tigar,
nor
20 does he speak for me. I have an objection to this
going into
21 the public record, your Honor -- at least certain
portions of
22 it -- if it's -- if it has previously to this hearing
been
23 sealed. Now, if before this hearing, it was unsealed,
that's
24 different.

25 THE COURT: Well, this was under the
jurisdiction of

925

1 the District of Kansas, and I don't know what order was
entered

2 over there. I --

3 MR. CONNELLY: Before this hearing --

4 THE COURT: I'm generally aware that there
were some

5 motions made by media -- of people to unseal in other
6 districts. I don't know what disposition --

in 7 MR. CONNELLY: They have not been challenged
and the 8 Kansas, and it was under seal before this proceeding
9 issue --

District of 10 THE COURT: It has been under seal in the
11 Kansas?

12 MR. CONNELLY: It has been.

13 THE COURT: To this time?

14 MR. CONNELLY: Without challenge.

have a 15 MR. JONES: Your Honor, I -- does the Court
16 copy --

17 THE COURT: I do.

paragraphs 18 MR. JONES: Okay. I object to unsealing
19 14B, C --

20 THE COURT: Just a moment. Let me catch up.

bottom of 21 MR. JONES: I'm sorry. It's begins at the
22 page 7, your Honor, of the application.

right. I 23 THE COURT: Well, there are several -- all
24 have 7 of Mr. Seck's affidavit.

25 MR. JONES: Yes, sir. Thank you.

1 THE COURT: Paragraph 14.

2 MR. JONES: Yes, sir. And I believe many of
these
3 affidavits, although they are signed perhaps by
different
4 agents, the format is basically the same. But in this
5 particular one, it's paragraph 14B, 14C, 22.

6 And the basis of my objection is other than
the
7 reasons previously stated in papers before the Court
with
8 respect to sealing documents, is that the material in
14B and C
9 is not necessary for the determination of the facts of
this
10 hearing. And the same is true with paragraph 22. And
the
11 release of this material in format here would
substantially
12 prejudice the rights of Mr. -- unfairly and
substantially
13 prejudice the rights of Mr. McVeigh. And it's not
necessary
14 that it be released in order to determine the issue in
this
15 hearing with which we are occupied today.

16 THE COURT: Well, tell me, Mr. Thurschwell, is
-- what
17 is the position of Mr. Nichols respecting this
affidavit? Is

18 it contended that it doesn't show probable cause?

19 MR. THURSCHELL: Judge, what we will
demonstrate is

20 that the affidavit is based, in part, on statements
that were

21 material misstatements of fact deliberately or
recklessly made.

22 That is our sole purpose for this -- for entering this
exhibit.

23 And the -- the particular statements are not the ones
that are

24 referred to by Mr. Jones, so we have no objection to a
redacted

25 version of this exhibit going in evidence.

927

1 THE COURT: Well, are you making a Franks
challenge to

2 this?

3 MR. THURSCHELL: That is correct, your Honor.

4 THE COURT: A Franks vs. Delaware challenge?

5 MR. THURSCHELL: That is correct.

6 THE COURT: Which requires, of course,
consideration

7 of the other portions of the affidavit for a
determination of

8 its sufficiency.

9 MR. THURSCHELL: Judge, we also are making --

I

on the 10 should add, we're making a fruits -- objecting to this
11 basis that it's the product of the fruits of an illegal
12 detention so --

principal 13 THE COURT: That's what I thought was the
14 purpose, but --

this 15 MR. THURSCHELL: Well, the purpose for -- of
Honor. 16 examination is to establish the Franks problem, your

a 17 THE COURT: Well, I think 22, Mr. Jones, is in
18 different -- is a different issue from 14 --

19 MR. JONES: Yes.

relate to 20 THE COURT: -- B and C. 14B and C really
which 21 the statements which are part of the material with
also, of 22 suppression has been sought by Mr. Nichols. It is

Government and 23 course, subject to the motion in limine by the

McVeigh in any 24 your opposition to its admissibility against Mr.

with 25 trial. That's where we are on -- but I don't see that

1 respect to 22.

unseal
our
there
2 MR. JONES: I agree if the Court were going to
3 22, then we would ask certain other documents which, in
4 judgment, directly contradict that be unsealed, because
5 would be no reason to seal those and let 22 out.

6 THE COURT: Yes.

22 is
C.
7 MR. JONES: But I do agree with the Court that
8 in a different position on the issues here than 14B and

9 THE COURT: Yes. All right.

10 Mr. Connelly?

11 MR. CONNELLY: Your Honor, the paragraph 14
12 allegations and the substantially similar are -- almost
13 identical statements have been unsealed pursuant to
Exhibit 19
14 which is in and in -- unsealed in this Court. The
exact same
15 statements that were made in the first search warrant
of April
16 22, which is in as a full exhibit and is a public
document. So
17 I think that the exact same statements that were made
in that
18 document -- I think it would be at this point
artificial to
19 keep them sealed in this document. And I'd like to
also be

Court 20 heard on paragraph 22 as well; but, clearly, as the

21 recognized --

I'm not -- 22 THE COURT: Well, 22, I'm going to unseal.

23 I'm --

24 MR. JONES: You said you're going to unseal?

25 THE COURT: I am, yes.

929

1 MR. JONES: You're going to unseal 22?

2 THE COURT: Paragraph 22, yes.

3 MR. JONES: All right.

the 4 THE COURT: Because I think it is necessary to

5 understanding of the issues to be resolved here.

that 6 MR. CONNELLY: For the record, your Honor,

preliminary 7 information was also testified to at Mr. McVeigh's

heretofore in the 8 hearing, so it is not information that is not

9 public record.

I 10 MR. JONES: Maybe I misunderstood the Court.

here 11 thought you said 14B and C were necessary for the issue

12 and 22 was not.

13 THE COURT: No. No. I simply was talking
about the
14 difference in the interests affected by the unsealing.
And I'm
15 saying that the statements themselves, looking only at
this
16 exhibit in 14B and C, are affected because they may
ultimately
17 not be admissible. It is possible that 22 is not going
to be
18 admissible as well, but for different reasons.

19 MR. JONES: All right. Well, I don't want to
take up
20 this hearing, but I assure the Court that this is a
very
21 important matter for us, because as soon as this is
unsealed,
22 certain individuals in the courtroom will read it and
it will
23 receive wide public dissemination.

24 THE COURT: Well, it's -- Mr. Connelly says
it's
25 already in the public domain.

930

1 MR. JONES: Well, it is; but the -- what
happens in
2 this situation -- and again, I think those matters are
before

3 the Court in another fashion -- is that it gets
repeated as

4 though it's never been in the public domain.

5 There was a recent example of that in this
very city

6 eight or nine days ago, in which a matter was given
front page

7 coverage that had long since been in the public record,
but it

8 was presented as something new.

9 And this particular one is damaging to us; and
I would

10 simply say -- and then I'll sit down -- that I would
ask the

11 Court at this time to grant the motion -- when I say at
this

12 time, I mean I'm asking for it at this time. I know
the Court

13 will want to study it -- to grant the motion that has
been

14 filed by Dr. Frederic Whitehurst's attorney to unseal
all of

15 the material that we submitted under seal in support of
the

16 Franks hearing, because it is unfair to the defendant
to have

17 paragraph 22 in the public domain without having also
in the

18 public domain that which directly contradicts it and
impeaches

19 it, which also comes from the same agency that reported
22.

Nichols 20 THE COURT: Well, what's the position of Mr.
21 here?

22 MR. THURSCHELL: Judge, we have -- we believe
the
23 document should be in the public domain. We don't
object to
24 the redaction of the 14B and C referred to by Mr.
Jones; but
25 otherwise, we believe it should be in the public
record.

931

1 THE COURT: Well, what about Mr. Connelly
saying that
2 it's already in Exhibit 19? The same material?

3 MR. THURSCHELL: Well, your Honor, our view
is --

4 THE COURT: Mr. Kelley, sit down, please.
5 Yes.

6 MR. THURSCHELL: I think that's right, your
Honor;
7 and that's why we introduced it en toto initially. I
think it
8 is in the public domain. We do not object to the
redaction,
9 but we are not asking for it.

10 THE COURT: Well, I'm not going to take all of
the

And 11 witness time to deal with this. We'll come back to it.
12 you'll be able to be heard then, Mr. Kelley. We'll
proceed 13 with it under seal now; but use it as an exhibit for
this 14 examination, and then we'll come back to the issue
later in the 15 day, hopefully.

16 MR. THURSCHELL: Okay.

17 THE COURT: Proceed.

18 MR. THURSCHELL: Your Honor, may I just
clarify? Can

19 I -- I can refer to the content of the exhibit in --

20 THE COURT: Yes.

21 MR. THURSCHELL: -- in this interrogation of
the 22 witness?

23 THE COURT: As I understand it, you do not
have 24 specific questions about these paragraphs that are at
issue.

25 MR. THURSCHELL: I have one specific question
about

932

1 one specific paragraph, your Honor. That is -- that is
all.

2 THE COURT: Yes. All right.

3 BY MR. THURSCHELL:

4 Q. Agent Seck, would you -- in preparing the
affidavit, did

5 you rely on an affidavit of probable cause prepared by
Agent

6 Scott Crabtree on April 22, 1995?

7 A. That's correct.

8 Q. Okay. And turning to page 9, paragraph 14E of your
9 affidavit, Exhibit 76, did you in making this statement
-- the

10 statements in that paragraph -- did you rely solely on
the

11 statements in the Crabtree affidavit of April 22?

12 A. That's correct.

13 Q. Okay. You did no further investigation with
respect to

14 that -- those allegations?

15 A. That's correct, I relied on Agent Crabtree's
affidavit.

16 Q. You did not visually -- visually observe the fuel
meter

17 yourself?

18 A. No, I did not.

19 Q. And you did not look at the photographs of the fuel
meter?

20 A. I did not.

21 Q. Okay. Agent Seck, please turn to Government
Exhibit 77.

22 A. I have it here.

the 23 Q. Page 3 of that exhibit. Is that your signature in
24 lower right?
25 A. That's correct.

933

warrant for 1 Q. Okay. And this is an application for a search
29, 2 a suite 201 of the Comfort Inn executed by you on April
3 1995?

4 A. That's correct.

would 5 MR. THURSCHWELL: All right. Now, Judge, we
the prior 6 offer Government Exhibit 77 for the same purposes as
7 exhibit.

same 8 THE COURT: Does that repeat some of these
9 things?

It has 10 MR. THURSCHWELL: Yes, it does, your Honor.
11 the verbatim allegations of the earlier one.

12 MR. JONES: Same motion then, your Honor.

13 THE COURT: All right.

14 MR. CONNELLY: No objection.

again 15 THE COURT: Well, we'll receive the Exhibit 77

16 and review it for unsealing later.

17 BY MR. THURSCHELL:

18 Q. Agent Seck, you again relied on the affidavit of
Agent
your
19 Scott Crabtree prepared on April 22, 1995, in preparing
20 affidavit, did you not?

21 A. Not solely on his affidavit. It was part of it,
yes.

22 That's correct.

23 Q. Okay. Would you turn to page 9 of this exhibit.
Look at
24 paragraph 14E at the top of the page.

25 A. Did you say 14E?

934

1 Q. That's correct.

2 A. Okay.

3 Q. Do you see in making that -- the allegations of
that
4 paragraph -- did you rely solely on the Crabtree
affidavit?

5 A. That's correct.

6 Q. Okay. And turning to Government Exhibit 78, page 3
of that
7 exhibit, that is your signature in the lower right?

8 A. That's correct.

No. 563 at 9 Q. And this is a search warrant application for Bin

10 the Sedgwick County adult detention facility?

11 A. Yes, sir.

Exhibit 12 MR. THURSCHWELL: Okay. Judge, we would offer

13 78.

14 THE COURT: Is it again the same?

allegations, 15 MR. THURSCHWELL: It is the identical

16 your Honor.

17 MR. CONNELLY: No objection.

18 MR. JONES: Same objection, your Honor.

problem. 19 THE COURT: All right. 78 is received. Same

20 BY MR. THURSCHWELL:

affidavit of 21 Q. Agent Seck, you again relied on the Crabtree

not? 22 April 22, 1995, in preparing this affidavit, did you

supplied 23 A. That was part of it. I also relied on information

it. 24 by the FBI as another factor; but yes, that was part of

in 25 Q. Okay. Turning to page 9 of the affidavit contained

1 Exhibit 78, calling your attention to paragraph 14E,
the -- the
2 allegations there in that paragraph: Did you rely
solely on
3 the Crabtree affidavit in making those allegations?

4 A. That's correct.

5 MR. THURSCHWELL: Okay. Thank you, Agent
Seck.

6 Nothing further, your Honor.

7 THE COURT: Mr. Connelly, do you have any
questions?

8 MR. CONNELLY: Very briefly, your Honor.

9 CROSS-EXAMINATION

10 BY MR. CONNELLY:

11 Q. Good morning, agent Seck.

12 A. Good morning.

13 Q. Just briefly, do you have a college degree?

14 A. Yes, sir.

15 Q. And from where is that?

16 A. University of Missouri at Kansas City.

17 Q. What year did you graduate?

18 A. '76.

19 Q. And when did you first become an FBI special agent?

20 A. In 1976.

21 Q. And just briefly, what offices have you worked in
in the

22 FBI during your career?

23 A. Las Vegas -- Las Vegas, Nevada; New York City;
Garden City,
24 Kansas, and I'm presently stationed at Wichita, Kansas.
25 Q. And on April 28, 1995, were you also stationed in
Wichita,

936

1 Kansas?
2 A. That's correct.
3 Q. I refer you, please, to Government Exhibit 76. Is
that the
4 search warrant for the Nichols home that you prepared?
5 A. Yes.
6 Q. And I believe in testifying on direct examination,
you
7 indicated you relied on Scott Crabtree's April 22,
1995,
8 affidavit for the search of the same home?
9 A. That is correct.
10 Q. Were you aware at the time you prepared the April
29 --
11 April 28 affidavit and warrant of any consent searches
that had
12 occurred during (sic) the Nichols house from April 22
through
13 April 28 when you did that?
14 A. No.
15 Q. Does your affidavit include any information of any

evidence

16 that was seen or seized during any consent searches
from April

17 22 to April 28?

18 A. Could you repeat the question, please.

19 Q. Yes. And reviewing your affidavit, if you need to,
in that

20 affidavit, does that include any information of items
that may

21 have been seen or seized during any consent searches
after the

22 April 22 to 23 warranted search pursuant to Scott
Crabtree's

23 affidavit and before your April 28 warrant affidavit?

24 A. There's only one reference in the affidavit about a
consent

25 search and some barrels being observed in Nichols'
garage.

937

1 Q. Well, let me ask you again. The specific question
would be

2 any consent searches between April 22 and April 28 of
the

3 Nichols home.

4 A. No.

5 Q. Was your decision to prepare and submit and seek
the search

6 warrant affected by anything you had heard of anything

seen

7 or -- or seized during consent searches from April 22
through

8 April 28?

9 A. No, sir.

10 MR. CONNELLY: No further questions.

11 THE COURT: Any follow-up, Mr. Thurschwell?

12 MR. THURSCHWELL: No follow-up, your Honor.

13 THE COURT: You may step down. You may be
excused, I

14 take it. Next witness.

15 MR. THURSCHWELL: Call agent Randal A.
Wolverton.

16 THE COURT: Please come forward to be sworn.

17 (Randal Wolverton was sworn.)

18 COURTROOM DEPUTY: Please be seated.

19 Please state your full name and spell your
last name

20 for the record.

21 THE WITNESS: Randal A. Wolverton, W-o-l-v-e-
r-t-o-n.

22 DIRECT EXAMINATION

23 BY MR. THURSCHWELL:

24 Q. Good morning, Agent Wolverton.

25 A. Good morning.

for
bombing

1 Q. Agent Wolverton, you prepared several applications
2 search warrant in connection with the Oklahoma City
3 investigation, did you not?

4 A. Yes, sir.

79,
desk

5 Q. Okay. Would you please turn to Government Exhibit
6 which is in the stack of papers just to the left of the
7 there. Turning to the last page --

have a

8 MR. CONNELLY: Excuse me. Could you let him
9 chance to find it?

moment,

10 MR. THURSCHELL: Oh, sure. Excuse me one
11 your Honor.

12 BY MR. THURSCHELL:

exhibit,

13 Q. Agent Wolverton, turning to the third page of that
14 do you see your -- is that your signature in the lower
15 right-hand portion?

16 A. Yes, sir.

warrant for

17 Q. Okay. And this is an application for a search
18 the Nichols family residence at 109 South 2nd Street in
19 Herington?
20 A. Correct.

21 MR. THURSCHELL: Your Honor, we would offer
22 Government Exhibit 79. And I believe it may raise many
of the
23 same issues raised by --

24 THE COURT: Do you know which paragraphs?

25 MR. THURSCHELL: Your Honor, I -- it's in

939

1 paragraph -- the statement issues are in paragraph 17
of this
2 affidavit which begin on page 7. Paragraphs -- I think
the
3 paragraphs referred to by Mr. Jones would be B and -- B
and C.

4 THE COURT: 17B and C or --

5 MR. THURSCHELL: That's correct.

6 THE COURT: About the same as 14B and C in the
7 previous?

8 MR. THURSCHELL: That is correct.

9 THE COURT: And what is the -- the parallel to
22 if
10 there is one?

11 MR. THURSCHELL: I will check, your Honor.

12 MR. CONNELLY: I don't believe it's in this
affidavit,
13 your Honor.

14 THE COURT: Thank you, Mr. Connelly.

15 MR. THURSCHELL: Thank you.

16 BY MR. THURSCHELL:

17 Q. Agent Seck --

18 THE COURT: Just a moment. For the record --

19 MR. CONNELLY: No objection.

20 THE COURT: -- the Government has no objection
to the
21 exhibit.

22 MR. JONES: Same objection.

23 THE COURT: Mr. Jones has the same objection
to the
24 paragraphs in paragraph 17 sub B and C so the exhibit
is
25 received. Unsealing it will be resolved later on
today.

940

1 MR. THURSCHELL: Thank you.

2 BY MR. THURSCHELL:

3 Q. Agent Wolverton, in preparing this affidavit, did
you rely
4 on the affidavit of agent Scott Crabtree prepared on
April 22,
5 1995?

6 A. Yes, sir.

7 Q. Okay. Would you please turn to page 8 of the
affidavit,

8 referring you to paragraph 17E.

9 A. 17 --

10 Q. E. At the bottom of the page. E as in --

11 A. E. Okay. Yes, sir.

12 Q. Is that -- in making the allegation in this
affidavit, did

13 you rely solely on the allegations of the Crabtree
affidavit of

14 April 22?

15 A. I believe so, yes, sir.

16 Q. You did no further investigation regarding the fuel
meter?

17 A. Correct.

18 Q. You did not visually observe it?

19 A. That's correct.

20 Q. Okay. And you did not inspect any photographs of
it?

21 A. That's correct.

22 Q. Okay. Thank you, Agent. Turning to Government
Exhibit 81

23 in the same pile. Would you please look at page 14,
what's

24 marked as page 14 towards the end of that exhibit.

25 A. Yes, sir.

1 Q. Is that your signature?

2 A. Yes, sir, it is.

3 Q. And this is an application for -- an affidavit made
in
2, 1995,
4 connection with a search warrant to be executed on May
5 of the Nichols truck?

6 A. It describes the truck, but -- that's correct, it
was
7 Mr. Nichols' truck.

8 Q. Okay. Thank you, sir. Now, in preparing this
affidavit,
9 did you rely, in part, on the Crabtree affidavit of
April 22?

10 A. Yes, sir.

11 Q. Okay. And turning to page 8 of this affidavit,
referring
12 you -- in
13 making this allegation, did you rely solely on the
allegations
14 of the Crabtree affidavit?

15 A. Yes, sir.

16 Q. Okay. You did no further investigation?

17 A. That's correct.

18 MR. THURSCHELL: Pass the witness.

19 THE COURT: Are you going to offer this one?

20 MR. THURSCHELL: I'm sorry, your Honor. We
would
21 offer Government Exhibit 81.

22 paragraphs

THE COURT: And it appears to have the same

23 objects

so the Government agrees to its admission. Mr. Jones

24 to those subparagraphs. We'll consider it later.

25 MR. JONES: Yes, sir.

942

witness,

1 THE COURT: Do you have any questions of the

2 Mr. Connelly?

3 MR. CONNELLY: Very briefly, your Honor.

4 CROSS-EXAMINATION

5 BY MR. CONNELLY:

6 Q. Good morning, Agent Wolverton.

7 A. Good morning.

8 Q. Do you have any college degrees?

9 A. Yes, I do.

10 them?

Q. And where and from where and when did you receive

11 sciences

A. In 1975, I received a Bachelor's Degree in social

12 Illinois. In

from George Williams College in Downers Grove,

13 William

1980, I received a Bachelor's Degree in accounting from

14 Jewell College in Liberty, Missouri.

15 Q. What was your first position in law enforcement?

16 A. I was a police officer.

17 Q. Where?

18 A. In North Kansas City, Missouri.

19 Q. And for what years?

20 A. From 1977 to 1981.

21 Q. When did you first join the FBI as a special agent?

22 A. January of 1981.

23 Q. And in April and May of 1985 -- 1995, to what
office or

24 agency were you assigned?

25 A. I was assigned to the Kansas City division,
specifically to

943

1 the Wichita, Kansas, resident agency.

2 Q. I'd like to refer you to if you would, to
Government

3 Exhibit 79.

4 A. Okay.

5 Q. Is that the first warrant you sought for permission
to

6 enter Mr. Nichols' residence?

7 A. Yes, it is.

8 Q. And what date did you seek that on?

9 A. May 2, 1995.

10 Q. Were you aware at the time you sought that warrant
that
11 there had been two prior warranted searches of Mr.
Nichols'
12 residence?
13 A. Yes.

14 Q. And did you review the affidavit prepared by Agent
Crabtree
15 for the first April 21, 23, warranted search of the
warrant?
16 A. Yes, sir.

17 Q. Were you also aware that there had been a second
warranted
18 search, an affidavit of Agent Seck prepared on April 28
for
19 that residence?
20 A. Yes.

21 Q. What was the purpose, Agent Wolverton, for you
seeking this
22 third warrant for a search of Mr. Nichols' residence?
23 A. Specifically, we wanted to seize drills and drill
bits and
24 correspondence that had been previously seen in the
residence.
25 Q. Okay. I'd like you to refer, if you would, to
paragraph 22

1 of that affidavit.

2 A. Yes, sir.

3 Q. Does that paragraph describe your investigation
into any
4 particular burglary?

5 A. Yes, it does.

6 Q. And what were you investigating or what does that
paragraph
7 describe?

8 A. That paragraph describes a burglary that occurred
sometime
9 between September 28, 1994 and October 3, 1994, from
the Martin
10 Marietta Corporation -- or Martin Marietta Company in
Marion,
11 Kansas.

12 MR. THURSCHELL: Your Honor, I'm going to
object.
13 I'm not -- I'm uncertain of the relevance of this line
of
14 questioning to this particular hearing.

15 MR. CONNELLY: Your Honor, we're -- I
understand we
16 have the initial burden of showing that there was no
taint from
17 any prior consent searches and we are showing the basis
upon
18 which the affiant learned the information set forth in
the
19 affidavit.

20 THE COURT: The objection is overruled.

21 BY MR. CONNELLY:

22 Q. Does that paragraph describe a theft involving any
23 non-electric blasting caps?

24 A. Yes, sir, it does.

25 Q. And where did the FBI obtain that information?

945

1 A. From the Marion County sheriffs office.

2 Q. I'd like to refer you to paragraph 25 of the
affidavit,
3 please.

4 A. Yes, sir.

5 Q. Does that affidavit describe the results of any
prior
6 search?

7 A. Yes, it does. It describes the results from the
search
8 occurring on April 22, 1995.

9 Q. And what was that search?

10 A. That was on Mr. Nichols' residence in Herington,
Kansas.

11 Q. What was found during that search?

12 A. Among the items found were five No. 8 Primadet
13 non-electrical blasting caps; a receipt for mid-Kansas
14 Cooperative Association from McPherson, Kansas, for

forty

15 50-pound bags of 34-0-0 ammonium nitrate fertilizer in
the name

16 of Mike Havens.

17 Q. Okay. That's enough for now. Referring you to
paragraph

18 27 of that affidavit.

19 A. Yes, sir.

20 Q. Does that describe anything that was seen during a
prior

21 warranted search?

22 A. Yes, it describes what was seen during a warranted
search

23 occurring on April 29, 1995, at the residence of Terry
Nichols

24 in Herington, Kansas.

25 Q. Well, apart from the April 22 to 23rd warranted
search and

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1 the April 29 warranted search, does your affidavit
mention

2 anything that may have been seen or taken during any
other

3 search after April 22, 1995?

4 A. No, sir.

5 Q. Was your decision to seek that warrant affected by
anything

other 6 that may have been seen or observed during any search

7 than the two you've described after April 22, 1995?

8 A. No, sir, it was not.

9 MR. CONNELLY: I have no further questions.

10 THE COURT: Follow-up, Mr. Thurschwell?

11 MR. THURSCHWELL: Yes, briefly, your Honor.

12 REDIRECT EXAMINATION

13 BY MR. THURSCHWELL:

79 in 14 Q. Agent Wolverton, with respect to Government Exhibit

what was 15 your affidavit, you thought it was important to review

allegations in 16 taken from prior searches before you made the

17 your affidavit, did you not?

18 A. Yes, sir.

other 19 Q. In fact, Mr. Connelly referred you to some of the

prior 20 items that were taken and things that were seen in

21 searches, did he not?

22 A. Correct.

regarding the 23 Q. Okay. But you did no further investigation

24 fuel meter, did you?

25 A. That's correct.

1 MR. THURSCHELL: Nothing further, your Honor.

2 MR. CONNELLY: Nothing, your Honor.

3 THE COURT: All right. Excuse -- I take it
you're
4 excusing him, so you may step down.

5 MR. THURSCHELL: You're excused.

6 THE COURT: You're excused. Next please.

7 MR. TIGAR: Call H. C. Bodley, your Honor.

8 THE COURT: All right.

9 (Harold Bodley was sworn.)

10 COURTROOM DEPUTY: Please be seated.

11 Please state your full name and spell your
last name
12 for the record.

13 THE WITNESS: Harold C. Bodley, B-o-d-l-e-y.

14 DIRECT EXAMINATION

15 BY MR. TIGAR:

16 Q. Mr. Bodley, you are an investigator appointed by
the Court
17 to assist the Nichols team; is that right, sir?

18 A. Correct.

19 Q. You've been introduced to the Court when you
testified at
20 the venue hearing; is that right?

21 A. That's true.

22 Q. Sir, within the past week, at my direction, did a
member of
23 your staff go out and buy a bag of ammonium nitrate
fertilizer?

24 A. Yes, he did.

25 Q. In what form was that fertilizer?

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1 A. It's a prilled fertilizer, 50-pound bag.

2 Q. And is that 34-0-0 ammonium nitrate?

3 A. I believe so.

4 Q. Where is that bag now?

5 MR. MACKEY: Judge, may I interpose an
objection? I

6 have no idea how this possibly could be relevant. We'd
like a

7 proffer from Mr. Tigar, please.

8 THE COURT: All right. Will you state your
purpose,

9 Mr. Tigar.

10 MR. TIGAR: Yes, your Honor. Ammonium nitrate
doesn't

11 have an odor wet or dry. And that's what I'm going to
12 establish with this witness.

13 THE COURT: All right. Proceed.

14 BY MR. TIGAR:

15 Q. Are you -- are you -- is your smelling equipment

normal and

16 adequate so far as you're aware, sir?

17 A. I believe so.

18 Q. All right.

19 THE COURT: I suppose the pertinent question
is about
20 mine.

21 MR. TIGAR: Well -- your Honor, we had thought
of
22 bringing the ammonium nitrate fertilizer through the
security
23 device at the courthouse but thought better of it. If
--

24 BY MR. TIGAR:

25 Q. Is that -- is that bag open in the office?

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1 A. Yes, it is.

2 Q. Have you smelled it?

3 A. Yes, I have.

4 Q. When you -- and when you walk into the office,
after it's

5 been there since last Tuesday, do you notice any odor?

6 A. No.

7 Q. When you stand three feet away, do you notice any
odor?

8 A. No.

9 Q. When you stand a foot away, do you notice any odor?

10 A. No.

11 Q. When you stick your nose right down inside the bag
so that

12 your nose is touching it, can you notice an odor?

13 A. Yes.

14 Q. And how would you describe that, please, for the
Court.

15 A. It's a -- it's musty. I -- reminded me of a
greenhouse.

16 Q. But when you stepped back a foot, can you smell it?

17 A. No.

18 Q. Did you put some of that ammonium nitrate prill
fertilizer

19 in water?

20 A. Yes, I did.

21 Q. Does it smell?

22 A. No.

23 MR. TIGAR: Pass the witness.

24 THE COURT: Mr. Mackey.

25 CROSS-EXAMINATION

950

1 BY MR. MACKEY:

2 Q. Mr. Bodley, have you cleaned your windows at home?

3 A. I'm sorry?

4 Q. Have you ever cleaned your windows at home?

5 A. Yes.

6 Q. With any cleaning solvent with ammonia compound?

7 A. Certainly.

8 Q. Do you smell it?

9 A. Oh, yes.

10 Q. All right. Did you recognize any degree of
similarity

11 between that smell and your experiment with the
ammonium

12 nitrate bag?

13 A. No.

14 Q. Do you have a degree in biology?

15 A. No, sir.

16 Q. Did you ever attend the D.A. lab?

17 A. No.

18 Q. Did you interview witnesses, neighbors around 109
South 2nd

19 Street in Herington, Kansas?

20 A. Yes, I did.

21 Q. Did they tell you that they saw Terry Nichols
spreading

22 something like fertilizer on his yard?

23 A. Yes.

24 Q. Have you been on the property?

25 A. Yes, I have.

1 Q. When most recent in time?

2 A. Well, I want to say perhaps last April. I'm not
quite sure

3 of that. But in that time period.

4 Q. That is April 1996?

5 A. Yes.

6 Q. So you have no idea within a year of what the
conditions

7 were on April 21, 1995, at that residence; correct?

8 A. I'm not clear in your question, sir. You're asking
if I

9 had been there the last time I was there.

10 Q. Let me ask it again. When was the first time after
11 April 21, 1995, that you were at that residence?

12 A. I see. It was in August of '95.

13 Q. Many months had passed since April 21, 1995?

14 A. Yes.

15 Q. Conditions presumably had changed?

16 A. I can't say if it was.

17 Q. Mr. Bodily, have you reviewed in the course of your
work on

18 behalf of the defense team various recovery logs that
list

19 items discovered in the course of a search --

20 A. Yes.

21 Q. -- of that premises on that date, April 21?

22 A. Yes, I have.

23 Q. And based on that review, you knew that ammonia
nitrate was

24 found on the front porch; correct?

25 A. I believe I saw a -- an entry for white prills,
white

952

1 something.

2 Q. And you know based on that review that containers
labeled

3 ammonia nitrate explosive were found in that same
residence on

4 that day; correct?

5 MR. TIGAR: I object to that, your Honor. I'd
like to

6 know the factual basis for that question.

7 MR. MACKEY: I have another question, judge.

8 MR. TIGAR: All right.

9 THE COURT: Well, ask the other one first.

10 MR. MACKEY: All right.

11 BY MR. MACKEY:

12 Q. In the course of your representation of Mr.
Nichols, have

13 you examined the evidence?

14 A. I have examined some evidence.

15 Q. Did you attempt the same experiment you described
here with

16 the physical evidence removed from that residence?

17 A. No.

18 MR. MACKEY: No other questions.

19 THE COURT: Mr. Tigar.

20 MR. TIGAR: No questions, your Honor.

21 THE COURT: You may step down.

22 I made mention of my own capabilities in
smelling

23 because I have over time, years ago, utilized
fertilizers in

24 farm country. I don't have a present recollection of
the smell

25 of them except for those that were byproducts of the
animals.

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1 MR. TIGAR: Yes, your Honor.

2 THE COURT: But chemical -- chemically
manufactured, I

3 don't recall and I'm not about to go out and do my own

4 experimentation. So I will rely on the evidence here.
I do

5 also not recall the percentage components of
fertilizers that I

6 have personally applied in the past.

7 MR. TIGAR: In the transcript of the preliminary

8 hearing, your Honor, there's a discussion at pages 33 and 34 of

9 the various components when I had the FBI agent under
10 cross-examination so it is in the record of the case.
But for

11 what that's worth --

12 THE COURT: Yes. Well, I have some recollection of a

13 nitrogen component and phosphorus, I think.

14 MR. TIGAR: Nitro -- yes. Nitrogen, phosphorus and

15 potash, your Honor, are the three, but -- that I recall.

16 THE COURT: Well -- I just want to make full
17 disclosure here that my personal experience is not so recent

18 that it would have any influence on my determination if there

19 is an issue of fact about what odor there might be from
20 ammonium nitrate fertilizer.

21 MR. TIGAR: If your Honor please, at this time, we

22 rest subject to the following with respect to this hearing: I

23 spoke with Mr. Connelly. Many of the exhibits that we sought

24 to introduce are the result of the discovery process and there

because 25 may very well be unsigned pages or -- or pages missing

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1 that happens. It is our proposal -- and I believe the
2 Government concurs -- that counsel will meet after
today's 3 hearing and on Monday, present to your Honor a list of
all of 4 the exhibits that we wish to regard as introduced in
evidence.

5 Attached to that list will be any substitute pages that
may, as 6 a result of our looking at each other's papers, become
7 necessary.

8 And it's our feeling that with that combined
list, 9 we'll agree on everything because we pretty much have.

If 10 there are any disagreements, those will be noted
without 11 argument for the Court to resolve at that time.

12 I think that's the best way to make sure that
we have 13 a complete record. With respect to --

14 THE COURT: Will some of those involve the
unsealing 15 of something previously sealed?

16 MR. TIGAR: Yes, your Honor. However, the

issues

17 there will be the same as the issues that are live for
your

18 Honor to resolve on these last affidavits.

19 The reason that we have taken the position
that the

20 search warrant affidavit should be unsealed is twofold.
First,

21 because of the preference of public access. But
second,

22 because the very things to which Mr. Jones, in our
view, has

23 quite legitimate objection are either challenged by us
as being

24 false and so the record is clear that they are, or they

25 represent matters already in the public record
beginning with

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1 the preliminary hearing at which the Gibbons affidavit
was

2 testified to by another agent on direct examination by

3 Mr. Merrick Garland. So from that day forward, it
seemed to us

4 that those things in the affidavits particularly had
been in

5 the -- in the public record.

6 THE COURT: All right. Well, are you in
agreement

7 with this procedure for the Government --

8 MR. MACKEY: Yes, your Honor.

9 THE COURT: -- Mr. Mackey?

10 MR. MACKEY: We would be happy to do that.

11 THE COURT: All right.

12 MR. TIGAR: And, Your Honor, it had also been
our

13 proposal -- I guess the Government has witnesses too --
that

14 when the hearing is closed today that a time be set --
and

15 the Government and Mr. Nichols had talked -- Mr. Jones
wasn't

16 here yet this morning -- on two weeks from yesterday,
we would

17 present simultaneously proposed findings and
conclusions to

18 your Honor and be ready to argue immediately thereafter
or in a

19 day or two.

20 THE COURT: All right. Good. I think --

21 MR. TIGAR: Subject to that, we rest.

22 MR. HARTZLER: Do I understand this will be
submitted

23 by stipulation of the parties to the clerk's office,
not in

24 open Court? The exhibit list? We would not all be

25 reconvening?

Submitted 1 THE COURT: Well, that's right. Yes.
2 directly to the clerk.
3 MR. TIGAR: Yes.
4 MR. HARTZLER: Very well.
5 MR. TIGAR: Yes. And we would look forward to
the
6 clerk's help. I know the clerk has been keeping very
careful
7 record of matters.
8 THE COURT: Yes. Now, you have witnesses for
the
9 Government, I believe.
10 MR. MACKEY: Yes, your Honor.
11 THE COURT: Do you want to proceed directly to
them
12 or --
13 MR. HARTZLER: Could we take our morning break
now?
14 THE COURT: Yes, we may. Yes. We'll take 20
minutes.
15 (Recess at 10:02 a.m.)
16 (Reconvened at 10:23 a.m.)
17 THE COURT: Be seated, please.
18 Mr. Mackey.
19 MR. MACKEY: Your Honor, with the Court's
permission,

would 20 we would like to call four witnesses, each of whom I
by the 21 judge will be fairly brief. We'll try to get it done
I've 22 noon hour. I'm not sure about that, but in the order
23 described to counsel.

as long 24 THE COURT: All right. Thank you. We'll go
25 as it takes, obviously.

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calls 1 MS. WILKINSON: Your Honor, the Government
2 Deputy Marshal Daryl Ingermanson.

3 THE COURT: Come forward and be sworn, please.

hand. 4 THE COURTROOM DEPUTY: Please raise your right

5 (Daryl Ingermanson was sworn.)

6 THE COURTROOM DEPUTY: Please be seated.

last name 7 Please state your full name and spell your

8 for the record.

9 THE WITNESS: Daryl Ingermanson,
10 I-N-G-E-R-M-A-N-S-O-N.

11 DIRECT EXAMINATION

12 BY MS. WILKINSON:

13 Q. What is your occupation, sir?

14 A. Deputy United States Marshal.

15 Q. Where are you currently assigned?

16 A. Wichita, Kansas.

17 Q. How long have you been a deputy marshal?

18 A. Since February of 1987.

19 Q. What are your duties and responsibilities as a
deputy

20 marshal?

21 A. As a deputy marshal, we carry out courts' orders,
we serve

22 warrants, process prisoners and make sure prisoners
appear in

23 court.

24 Q. Does the marshal service process all prisoners who
come

25 into federal custody?

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1 A. Yes, we do.

2 Q. And what does processing entail?

3 A. Our processing entails taking a personal history of
the

4 people coming in, which would be their name, dates of
birth,

5 any other names they've used, associates, family
members, etc.

6 Q. Deputy Ingermanson, where were you assigned in
April of 7 1995?
8 A. Wichita, Kansas.
9 Q. Where were you on the morning of April 22, 1995?
10 A. I was at home.
11 Q. Did you receive a call from one of your
supervisors?
12 A. Yes, I received a call from my supervisor, advised
that
13 they were going to be moving Terry Nichols from the
Dickinson
14 County jail to Wichita for an initial appearance.
15 Q. Were you given any specific instructions by your
supervisor
16 during that telephone conversation?
17 A. Upon arrival or when he called me, he told us that
we
18 needed to be into the office at approximately 2:30
because they
19 were going to be moving Mr. Nichols down from Dickinson
County.
20 Q. Did you go to the office?
21 A. Yes. I showed up at the office between 2 and 2:30.
At
22 that time, the supervisor instructed me to set up
security for
23 the courthouse and for the arrival of Mr. Nichols.
24 Q. What time did Mr. Nichols arrive at the courthouse?
25 A. Approximately 3:20, 3:25.

1 Q. Where were you when he arrived?

2 A. I was in the parking lot behind the courthouse
where the

3 government vehicles park.

4 Q. What happened when he arrived?

5 A. Upon Mr. Nichols' arrival, the FBI agents pulled in
in

6 their car. He got out of the car. Mr. -- Deputy
Stuart and

7 myself escorted him into the back door of the
courthouse and up

8 into the cell block on the second floor.

9 Q. Is the cell block part of your office in the
courthouse?

10 A. Yes, it is.

11 Q. What does the cell block look like?

12 A. Cell block is a large room. It has three holding
cells, a

13 processing area. In the open area in the back, it's
got a

14 large conference -- not really -- it's a smaller --
fold-out

15 table, one of the large fold-out tables.

16 Q. What did you do with Mr. Nichols once you brought
him into

17 the cell block?

in waist 18 A. When we got Mr. Nichols in the cell block, he was
19 chains and handcuffs, and restraints were removed from
20 Mr. Nichols.

the 21 Q. What did you do with Mr. Nichols after you removed
22 restraints?

cells 23 A. I believe he was just placed in one of the holding
block, went 24 temporarily for a few minutes. I exited the cell
25 out to my desk.

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The FBI 1 Q. Did you speak with any federal agents at that time?
2 A. Upon going out to my desk, the agents that the --
had made 3 agents that had brought, had transported Mr. Nichols,
with 4 the statement that Mr. Nichols may still want to speak
5 him.

6 Q. Did you respond to that comment?
7 A. I just acknowledged as okay and went back to the
cell block 8 and started to process Mr. Nichols.

9 Q. Did you remove Mr. Nichols from the cell block?
10 A. Yes.

11 Q. Where did you do the personal history?
12 A. In the area where we do the fingerprinting.
13 Q. Who was with you?
14 A. Deputy Stuart was in the back in the cell block.
15 Q. Deputy Ingermanson, you say you took a personal
history.
16 How do you take a personal history from a prisoner?
17 A. We have a form, a standard form that the marshal
service
18 uses. You assign a marshal service number to the
individual,
19 and you just start asking the questions off of the
form, the
20 name, date of birth, etc.
21 Q. Do you use the same personal history form for every
federal
22 prisoner?
23 A. Yes.
24 Q. Could you please turn to Government's notebook.
That's the
25 white notebook in front of you. And turn to
Government's

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1 Exhibit 36, please.
2 Do you recognize Government's Exhibit 36?
3 A. Yes. This is the personal history, which I took

from

4 Mr. Nichols.

5 Q. How do you recognize it?

6 A. It's my handwriting and also has my signature at
the end of

7 it.

8 MS. WILKINSON: Your Honor, Government offers
Exhibit

9 36.

10 MR. TIGAR: No objection.

11 THE COURT: Received, 36.

12 BY MS. WILKINSON:

13 Q. Deputy Ingermanson, could you explain to the Court
what

14 happened when you began to take the personal history
from

15 Nichols?

16 A. As I started to take the personal history from Mr.
Nichols,

17 Mr. Nichols advised me that he still needed -- that he
wished

18 to speak with the agents before he went to court. At
that

19 time, I asked Mr. Nichols -- I said if he wanted to
speak with

20 the agents, I would be more than happy to go get the
agents and

21 bring them back.

22 Q. Did he respond?

23 A. He acknowledged that he wished to speak to them.

24 Q. What did you do?

25 A. At time -- at that time, I remained with Mr.
Nichols and

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1 continued to take the personal history, and Deputy
Stuart went

2 out and got the agents and brought them back into the
cell

3 block.

4 Q. Were those Agents Scott Crabtree and Steve Smith?

5 A. Yes.

6 Q. What happened when those agents were brought into
the cell

7 block?

8 A. They were locked in the cell block with Mr.
Nichols; and

9 Deputy Stuart and myself departed the cell block, and I
spoke

10 with him.

11 Q. Do you know how long Agents Crabtree and Smith
remained in

12 the cell block with Mr. Nichols?

13 A. Approximately 30 minutes.

14 Q. Could you hear any of their conversation?

15 A. No.

16 Q. What happened after that 30-minute time period?

17 A. There -- approximately 4:00, which would have been
-- the
Nichols,
18 defense attorneys for -- that were appointed for Mr.
19 would have been Steve Gradert and Dan Phillips, arrived
in our
20 office and asked if they could or told us they wished
to speak
21 to Mr. Nichols prior to the court hearing.

22 Q. Did that occur?

23 A. Yes, it did. At that time we went back in the cell
block
24 and advised the agents that the defense attorneys were
here to
25 speak with Mr. Nichols. Mr. Nichols was placed in the

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1 interview room, and the defense attorneys spoke to him.

2 Q. After the defense attorneys spoke with Mr. Nichols,
was he

3 taken to the courtroom for his initial appearance?

4 A. Yes, he was.

5 Q. After his initial appearance was completed, did you
6 continue to take the personal history information from
7 Mr. Nichols?

8 A. Yes, I did.

9 Q. Could you turn to Government's Exhibit 32, to page

2,

10 please.

11 A. Government's Exhibit 32?

12 Q. Government's Exhibit 36. Excuse me. I'm sorry. I
13 misspoke.

14 At the top, it says aliases. Do you see that?

15 A. Yes, I do.

16 Q. When you were taking this personal history
information from

17 Mr. Nichols, what did you say to him to elicit this
18 information?

19 A. I asked Mr. Nichols if he's ever used any other
names.

20 Q. How did he respond?

21 A. He give me the name Joe Rivers and Ted Parker.

22 Q. After you completed this personal history
information, did

23 you also take photographs of Mr. Nichols and
fingerprints?

24 A. Yes, I did.

25 MS. WILKINSON: One moment, your Honor.

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1 THE COURT: Yes.

2 MS. WILKINSON: That's all, your Honor.

3 THE COURT: All right. Mr. Tigar?

4 CROSS-EXAMINATION

5 BY MR. TIGAR:

6 Q. Marshal, my name is Michael Tigar. I represent
7 Mr. Nichols.

8 How far is it from the Dickinson County jail
to
9 Wichita?

10 A. It's approximately, I believe, 90 miles. 90, maybe
just a
11 little over.

12 Q. And what time did you arrive at work? About 2:30?

13 A. Yes, sir.

14 Q. When Mr. Nichols arrived, how many vehicles were
there?

15 A. I don't recall for sure. I know the one vehicle
that

16 Mr. Nichols was in. I'm not sure if there was --

17 Q. There were other vehicles, weren't there? There
was a
18 little mini caravan, wasn't there?

19 A. As I stated, I'm not -- I can't testify positive --

20 Q. You don't know how many more? Was there more than
one?

21 A. More --

22 MS. WILKINSON: Objection, your Honor.

23 THE COURT: Sustained.

24 BY MR. TIGAR:

25 Q. Was there more than one?

1 objection to.

THE COURT: That's what I sustained the

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

3 BY MR. TIGAR:

4 Q. Mr. Nichols was in leg chains and wrist chains?

5 A. No, sir, he was in a waist chain and handcuffs.

6 Q. Was he in a flack jacket?

7 A. Not at that time, no.

8 Q. When was he put in a flack jacket?

We did

9 A. When we exited the courthouse after the hearing.

10 that because -- for his safety.

on the

11 Q. Did you know that Mr. Nichols had been interrogated

12 night before for nine hours?

13 A. No, I did not.

14 Q. Do you know that -- how long he had had to sleep?

15 A. No, I did not.

16 Q. Did you know that four agents had interrogated him?

17 A. No, I did not.

18 Q. Did you know that agents had confronted him?

19 A. No, I did not.

20 Q. Did you know that agent had become aggressive to

him?

21 A. No, I did not.

22 Q. Did you know that a lawyer had called the station
where he

23 was held the night before?

24 A. No, I did not.

25 Q. Do you believe it's the obligation when a prisoner
is in

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1 your custody to let the prisoner know when the lawyer
is

2 present?

3 A. I did that, sir.

4 Q. Yes, I know. You thought that was your obligation;
right?

5 A. I always do that every time an attorney comes in
and wishes

6 to speak with their client.

7 Q. If an attorney calls in, in an effort to reach a
client, do

8 you try to put the attorney in touch with him?

9 MS. WILKINSON: Objection, your Honor.

10 THE COURT: Sustained.

11 MR. TIGAR: Your Honor, may I be heard?

12 THE COURT: Yes, but I'm drawing a distinction
between

and the 13 the regulations of the United States Marshal's Service
14 persons in their custody and an FBI agent under the
15 circumstances relevant to the case.

I'm -- 16 MR. TIGAR: Yes. However, your Honor, what
17 this witness is being proffered in an effort to support
the 18 assertion that Mr. Nichols' statements to the agents
were 19 voluntary; yet the witness was completely unaware, so
far as 20 the record now appears, of all of the facts that would
permit 21 someone to make such an observation. And I thought
that I 22 would go through that list in an effort to show that he
was not 23 aware of those facts at that time. If your Honor
doesn't 24 believe it's relevant, of course, then --

here, 25 THE COURT: I'm only dealing with one question

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the 1 and the question with which I thought I was dealing was
2 question about what he thought was proper with respect
to 3 acknowledging and advising of the presence of an

attorney.

4 MR. TIGAR: Thank you, your Honor.

5 BY MR. TIGAR:

6 Q. Was Mr. Nichols dressed in civilian clothes, or
jail

7 clothes?

8 A. He was dressed in civilian clothes.

9 Q. Did you know how long he had been wearing those
clothes?

10 A. No, I did not.

11 Q. Have you ever been in the Dickinson County Jail?

12 A. Yes, I have.

13 Q. On some -- if there is a spectrum from Motel 6 to
Ritz

14 Carlton, is it on that spectrum, or below it?

15 A. Jails -- I can't relate jails to hotels.

16 Q. Different purpose; correct?

17 A. Yes, sir.

18 Q. Different levels of comfort; correct?

19 A. Yes, sir.

20 Q. You knew that Mr. Nichols had spent the night not
in his

21 own bed; correct?

22 A. Yes, I did.

23 Q. Did you know that he had been separated from his
wife?

24 A. I assumed that if he was in jail that he was
separate from

25 his wife.

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1 Q. Did you know that he had a little baby daughter?

2 A. No, I did not.

3 Q. Did you know this was a death penalty case?

4 MS. WILKINSON: Objection, your Honor.

5 THE COURT: Yes. You know, we could go on a
long time
6 with what he didn't know. Objection sustained.

7 MR. TIGAR: I'm finding that out.

8 BY MR. TIGAR:

9 Q. Were you in court with Mr. Nichols?

10 A. Yes, I was.

11 Q. And did you hear him say, It's all a jumble in my
brain
12 right now?

13 A. I don't recall that statement.

14 Q. Did you hear his lawyer say, I think he's probably
a little
15 bit confused and a little bit shaken right now?

16 A. Yes, I do believe I remember Steve Gradert saying
that.

17 Q. Is this the first time you had ever booked a
material
18 witness?

19 A. No. I booked many material witnesses when I was in
20 San Diego.

21 Q. How long had you served in San Diego?

22 A. A year.

23 Q. Could you look at page 2, please, of Exhibit 36.

24 A. Yes.

25 Q. You asked Mr. Nichols the question, Have you ever
been

969

1 known by any other names; is that right?

2 A. Yes, sir.

3 Q. You didn't say, Do you have aliases?

4 A. No, sir. I don't use the -- I've gotten away from
using

5 the word "aliases" because there is many people that we
will

6 book in when you say aliases, they're totally unaware
what

7 you're talking about.

8 Q. They don't like the connotation?

9 A. And so I've just made it a habit when I take that
statement

10 there, I just ask them if they've ever used any other
names.

11 Q. So that the fact that the word "aliases" appears on
this

12 form is a -- we should disregard that if we're
understanding

13 this information?

14 A. No, sir.

15 Q. You have the word "restraints" under remark: Is
that the

16 reference to the chains you spoke of earlier?

17 A. Yes.

18 Q. And all the information on the sheet that doesn't
have any

19 printing on that begins Leslie N. -- I guess that's the
fourth

20 page. Is that information Mr. Nichols provided to you?

21 A. Yes, everything on this sheet is what Mr. Nichols
provided

22 to me.

23 Q. Do you know of your own knowledge what time Mr.
Phillips

24 and Mr. Gradert arrived at the station?

25 A. Approximately 4:00.

970

1 Q. Did you know that they were on their way?

2 A. No, I did not.

3 Q. Is it the usual practice in the District of Kansas
for the

4 public defender to represent material witnesses at
first

5 appearance?

court,

6 A. Normally under -- unless they're notified by the

7 it's not a set standard, no.

public

8 Q. Are you aware of any statutory basis for providing

appearance?

9 defender counsel to material witnesses at first

10 MS. WILKINSON: Objection, your Honor.

legal

11 THE COURT: Yes. Are you asking him for a

12 opinion here?

how he

13 MR. TIGAR: No, your Honor. I'm asking him

14 runs his jail.

statutes.

15 THE COURT: But you asked him about the

16 MR. TIGAR: Yes, your Honor.

17 THE COURT: I'll sustain the objection to that

18 question.

19 BY MR. TIGAR:

20 Q. You knew Mr. Phillips and Mr. Gradert, did you not?

21 A. Yes, sir, I do.

22 Q. And you knew they were on their way; correct?

23 A. No, I did not know they were on their way.

24 Q. Did you know that counsel was on their way?

25 A. I figured he would have counsel, yes.

1 Q. Because he was going to court; correct?

2 A. Yes.

3 MR. TIGAR: No further questions.

4 THE COURT: Any follow-up?

5 MS. WILKINSON: Just a few, your Honor.

6 THE COURT: All right.

7 REDIRECT EXAMINATION

8 BY MS. WILKINSON:

9 Q. Deputy Ingermanson, you had a chance to observe
10 personal Mr. Nichols' demeanor while you were taking the
11 history information, did you not?

12 A. Yes.

13 Q. How did Mr. Nichols appear to you when you were
14 speaking with him?

15 A. He was very reserved.

16 Q. Did he have any problem understanding your
17 questions?

18 MR. TIGAR: I object to that, your Honor.

19 THE COURT: Yes. On the form in which you've
20 asked it, the objection is sustained.

20 BY MS. WILKINSON:

Deputy 21 Q. Did Mr. Nichols answer all of your questions,

22 Ingermanson?

23 A. Yes, he did, the one that I asked him.

that you 24 Q. And did the answers correlate with the questions

25 asked?

972

1 A. Yes.

confused 2 Q. Did he appear to present the information in a

3 manner?

4 A. No.

5 MS. WILKINSON: No further questions.

6 RECROSS-EXAMINATION

7 BY MR. TIGAR:

Who told 8 Q. Deputy, would you look at page 1 of Exhibit 36.

April, 9 you that Mr. Nichols had been arrested on the 21st of

10 1995?

usually 11 A. That portion there as far as the arrest goes, I

was 12 fill that in because we know -- we know when the person

13 arrested, also who the agency was.

14 THE COURT: You missed the question, though, I
think.

15 Who told you?

16 THE WITNESS: Nobody told me. I filled that
in, yes.

17 BY MR. TIGAR:

18 Q. On what basis did you make a decision to write
"4-21-95"?

19 A. Because that was when he was brought into the
office here.

20 Q. He was brought into the office 4-22?

21 A. On the 22nd. I heard it on the news, and also we
was

22 informed that he had been held over because our
officers -- the

23 other marshals had been up at the jail all night.

24 Q. Well, so as between what you heard on the news and
what the

25 other marshals told you, can you tell the Court how you
got the

973

1 information to write 4-21-95?

2 A. As I explained to you before, I was informed that
he was

3 detained in the Dickinson County jail overnight, which
means

4 that he was in custody up there, which -- the custody
date here

5 is for -- usually used for our jail billing as to what
we pay
6 the jails.

7 Q. And that's the best you can recall as to what the
basis of
8 that is?

9 A. Yes.

10 MR. TIGAR: No further questions.

11 THE COURT: Excusing the witness?

12 MS. WILKINSON: Yes, your Honor.

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

14 Next witness.

15 MR. MACKEY: Your Honor, with the Court's
permission,
16 we'd like to recall Daniel Jablonski very briefly.

17 THE COURT: All right.

18 Mr. Jablonski, if you'll come forward under
the oath
19 previously taken in this hearing and resume the stand.

20 THE WITNESS: Yes, sir.

21 (Daniel Jablonski was recalled to the stand.)

22 DIRECT EXAMINATION

23 BY MR. MACKEY:

24 Q. Would you state your name, please.

25 A. Daniel Jablonski.

1 Q. Are you the same Daniel Jablonski that testified
previously 2 in this proceeding?

3 A. I am.

4 Q. Would you direct your attention, please, Agent
Jablonski, 5 to April 21, 1995, and your testimony concerning the
interview 6 conducted at Herington Police Department.

7 A. I do recall that interview.

8 Q. With that in mind, more specifically, then, to a
break that 9 took place beginning at 6:10 p.m.

10 A. A break did take place at 6:10 p.m.

11 Q. Did you sit in with Mr. Nichols and Agent Foley at
that 12 time?

13 A. I did.

14 Q. And as a general matter, could you tell the Court
what, if 15 any, statements were made by Terry Nichols during that
break?

16 A. Yes. I had just brought (sic) back pizza and
some water;
17 and when I brought them and gave them to Mr. Nichols,
he was
18 talking about his prior employment, or his present
employment

19 and then his prior employment.

20 He spoke that he currently was involved in the
21 selling -- buying and selling of military surplus. He
then
22 volunteered that he had at one point in time delivered
23 fertilizer to farmers. And he described -- said he had
been
24 doing that and how he had done it, how he used an old
fire
25 truck. He told us that he had a metal container that
fit in a

975

1 14-foot truck. He got into some fiberglass containers
and the
2 colors. He volunteered some information about a fuel
meter.

3 Q. And with regard to the fuel meter, what details did
4 Mr. Nichols reveal?

5 A. Mr. Nichols brought up just out of the blue -- he
says that
6 he had purchased a fuel meter at about two weeks prior.
He was
7 very proud of the fact that -- well, at that point in
time, I
8 asked him, What is a fuel meter, because I did not
know.

9 And he stated that it was a -- a device that
would

through 10 measure the number of gallons of fluid that were run
fact that 11 it. And he then stated that he was very proud of the
under the 12 he had obtained or purchased this fuel meter for well
and he 13 asking price. He said that the asking price was \$147
of that. 14 had bargained them down to \$65, and he was very proud

meter? 15 Q. Did he tell you why he had purchased the fuel

intentions of 16 A. He said that he had purchased it with the
17 reselling it.

18 Q. And after purchasing it, what had he done with it?

ask him 19 A. He discovered that it wasn't working, and I did not

took it 20 how he discovered that. He just went on to say that he

discovered 21 apart; he attempted to learn what was wrong with it;

gears; and 22 that it had bad teeth, which he further described as

manufacturer to 23 as an attempt to fix it, that he had called the

presently 24 get some information on it but that he said it was

25 dissembled (sic) in his garage.

Crabtree 1 Q. At the conclusion of the break, did you see Scott
2 and Stephen Smith, both special agents for the FBI?

3 A. I did.

4 Q. Did you relay to either or both of those gentlemen
the sum
5 and substance of what Mr. Nichols had told you about
the fuel
6 meter and previous employment?

7 A. I did in the presence of Mr. Nichols. They came
into the
8 room, and I reviewed my notes. Foley and I were there,
9 Mr. Nichols was there, Crabtree and Smith were there;
and I
10 reviewed my notes in some detail.

11 Q. Did you, Agent Jablonski, recount the facts you've
12 testified here in court in a 302 or memorandum of
interview?

13 A. I did.

14 Q. Including the fact that you relayed that same
information
15 to Agents Smith and Crabtree?

16 A. Yes, I did. That is true.

17 MR. MACKEY: I have no other questions.

18 CROSS-EXAMINATION

19 BY MR. TIGAR:

20 Q. Where was the pizza?

21 A. The pizza was upstairs in the little kitchen area

of the

22 Herington Public Safety Building.

23 Q. On your way to get the pizza and water, which
agents did

24 you see?

25 A. None in particular.

977

1 Q. Did you see Agent Gillispie?

2 A. No.

3 Q. Did you know where Agent Price was?

4 A. No.

5 Q. Did you see Agent Tubbs?

6 A. Probably not at that point in time. I just ran up
the

7 stairs. This is just right at the top of the stairs.
There is

8 a little kitchen area, and there are boxes of pizza
there.

9 Q. Agent Tubbs was in charge, wasn't he?

10 A. He's a special agent in charge of the Kansas City
office,

11 right.

12 Q. Was he in charge of the operations there at that
time, at

13 6:10 p.m.?

14 A. I would say so, yes.

Nichols 15 Q. Were you and the other agents interrogating Mr.

16 keeping him apprised of what was going on?

17 A. Repeat that question, please.

Nichols 18 Q. Were you and the other agents interrogating Mr.

19 keeping Mr. Tubbs apprised of what was going on?

Throughout the 20 A. At that -- at that point in time, we did --

recall 21 evening at that point in time, I did not -- I do not

22 talking to him.

were 23 Q. Well, he was available to tell you things and you

24 available to tell him things; correct?

appeared and 25 A. I would say sometime later in the evening, he

978

1 stayed near the top of the stairs, that area there.

p.m.; 2 Q. I didn't ask you that. He was in charge at 6:10

3 correct?

truth. He 4 A. I don't know when he got there, to tell you the

there at 5 wasn't there when I arrived. I don't know if he was

6 6:10 p.m.

Price was 7 Q. Well, before he got there to be in charge, Agent
8 in charge; right?

9 A. Not in my mind. I was sent there with a specific
purpose,
10 and Agent Price is not my supervisor; and I had no
knowledge
11 that Price -- what involvement Price had to do with
this.

12 Q. Who was in charge of telling you what to do at the
police
13 station?

14 MR. MACKEY: Judge, can I object? This is
beyond the
15 narrow scope of the direct.

16 THE COURT: Yes. You know, we've already
heard
17 from -- on his testimony. The objection is sustained.

18 MR. TIGAR: No further questions.

19 MR. MACKEY: Just one final question.

20 THE COURT: Yes.

21 REDIRECT EXAMINATION

22 BY MR. MACKEY:

23 Q. Agent Jablonski, when you relayed the information
to Agents
24 Smith and Crabtree, did you notice whether they wrote
down
25 notes of what you were tell them?

for sure 1 A. I -- I will suspect they did, but I can't tell you
2 whether they did or not.

3 Q. Did the responsibility of writing or documenting
you? 4 Mr. Nichols' statement about the fuel meter fall to

5 A. Yes.

6 Q. And you did so?

7 A. I did so.

8 MR. MACKEY: No other questions.

9 THE COURT: Mr. Tigar, anything else?

10 MR. TIGAR: No, your Honor.

11 THE COURT: All right. You may step down. I
guess 12 you're excused again.

13 THE WITNESS: Thank you.

14 THE COURT: Next, please.

15 MR. MACKEY: Your Honor, the United States
would call 16 Agent Sheila Dobson.

17 THE COURT: All right.

18 THE COURTROOM DEPUTY: Please raise your right
hand.

19 (Sheila Dobson was sworn.)

20 THE COURTROOM DEPUTY: Please be seated.

21 Please state your full name and spell your
last name
22 for the record.

23 THE WITNESS: Sheila A. Dobson, D-O-B-O-S-N.

24 DIRECT EXAMINATION

25 BY MR. MACKEY:

980

1 Q. And how are you employed?

2 A. I'm a special agent with the Federal Bureau of
3 Investigation.

4 Q. How long have you worked for the FBI?

5 A. Approximately five and a half years.

6 Q. Did you begin working for them in roughly January
of 1991?

7 A. Yes.

8 Q. And since that assignment, where have you worked?
What
9 locations?

10 A. Kansas City, Missouri.

11 Q. And what sort of responsibilities have you been
assigned in
12 your case load?

13 A. I've been assigned to work white-collar-crime
cases. I was

14 assigned to special operations group and since August
of last

15 year to the reactive violent crime squad.

16 Q. Before joining the FBI, what employment did you
have?

17 A. I was in the United States Navy.

18 Q. For how long?

19 A. Four years.

20 Q. And upon your discharge, what was your rank?

21 A. Petty officer second glass, E5.

22 Q. What's your educational background?

23 A. I have a bachelor of science degree from Utica
College of

24 Syracuse University.

25 Q. In what field?

981

1 A. Public relations.

21, 2 Q. Agent Dobson, let me direct your attention to April

3 1995, and ask if you had occasion to be at the
Herington Police

4 Department?

5 A. Yes.

6 Q. And did you witness the execution of two consent
forms by

7 Mrs. Marife Nichols?

8 A. Yes.

9 Q. Do you recall the time?

10 A. It was sometime between 5 and 6 p.m.

11 Q. After the forms were signed, what did you do, Agent
Dobson?

12 A. I accompanied Agent Crabtree to a real estate
office to get

13 some paperwork on the house that Terry Nichols
purchased.

14 Q. That would entail a trip downtown to Herington and
back to

15 the police station?

16 A. Yes.

17 Q. Did you make yet a second trip?

18 A. Yes. At approximately 20 to 7, I purchased some
diapers

19 for Mrs. Nichols' child.

20 Q. And from where?

21 A. The IGA in Herington.

22 Q. And both of those events took place, your testimony
is,

23 after Mrs. Nichols had signed the consent form?

24 A. Yes.

25 Q. Let me turn your attention now, Agent Dobson, to
Sunday,

982

1 April 23, and ask if you had occasion to return to the

2 Herington Police Department.

3 A. Yes.

4 Q. And with whom?

5 A. Agent Thomeczek, Mrs. Nichols, and her child.

6 Q. Do you recall approximately what time you arrived?

7 A. Probably some time between 12:30 and 1:00.

8 Q. And did the three of you go inside the Herington
Police
9 Department?

10 A. Yes.

11 Q. What happened or what did you see happen with
regard to

12 Mrs. Nichols?

13 A. Mrs. Nichols was with Agent Jablonski and Thomeczek
in an
14 office. I stayed out in the hall with Mrs. Nichols'
child, and

15 I could see that Agent Jablonski was returning Terry
Nichols'
16 personal effects to her.

17 Q. And after that was done, what happened?

18 A. I understand that immediately after, then the
consents were
19 signed by her.

20 Q. That would be a consent to search form executed
that day,

21 April 23?

22 A. Yes.

23 Q. Sometime early afternoon?

24 A. Yes.

25 Q. After that time, did you and Mrs. Nichols and Agent

983

1 Thomeczek and others go to 109 South 2nd Street?

2 A. Yes.

3 Q. Before doing so, did you have any conversation with

4 Mrs. Nichols about what would happen when you got to
the

5 property?

6 A. Yes. Well, we were still inside the Herington
police

7 station. We explained to her that other agent would be

8 accompanying us to the house to get some items pursuant
to her

9 consent.

10 Q. Did you explain to her that there would be FBI
agents

11 removing evidence or items of evidence from her
property that

12 afternoon?

13 A. Yes.

14 THE COURT: Agent Dobson, you can be back a
little

15 from the microphone. We're sort of catching your
breathing.

16 THE WITNESS: Sorry.

17 BY MR. MACKEY:

18 Q. You're that rare witness that actually got in the
19 microphone.

20 Agent Dobson, describe for the Court what
happened
21 when you arrived at the residence.

22 A. When we got to the residence, the agents that were
in
23 charge of the search went immediately back to the
garage area
24 of the house. Agent Thomeczek and myself, Mrs. Nichols
and the
25 child went in through the front door of the house. And

984

1 Mrs. Nichols immediately after commenting on the
condition of
2 the house -- she commented that it was in good shape
and that
3 it wasn't pulled apart.

4 She went about looking for a bag to put some
clothes
5 in; and she went through the two bedrooms of the house,
getting
6 clothes and other things for Nicole.

7 Q. This is activity that you observed?

8 A. Yes.

9 Q. What else did you see?

10 A. I personally, in addition to seeing what Mrs.
Nichols was

11 doing, looked for a receipt that Mrs. Nichols had
specifically

12 alluded to or stated that exists during her interview
on

13 April 21, a video rental receipt.

14 Q. Did you find that?

15 A. Yes.

16 Q. And was that in the confines of the residence, the
house

17 itself?

18 A. Yes.

19 Q. At any point that afternoon, did Mrs. Nichols leave
the

20 main floor of the residence, the main floor of 109
South 2nd?

21 A. Yes. When she was through collecting the items of
clothing

22 and other things that she wanted, she walked back into
kitchen

23 area of the house. She went briefly down into the
basement.

24 There, we just had some conversation about whether or
not she

25 wanted anything from downstairs. Then she came back up
the

1 stairs, went out the side door, back to the garage
area, and

2 stepped inside the door and then spent about a minute
there and

3 left.

4 Q. This is all in your company, or you're in a
position to

5 observe her doing so?

6 A. Yes.

7 Q. Incidentally, while she was momentarily inside the
garage,

8 did she have any conversation with anybody else in
there?

9 A. No.

10 Q. Did you see anyone else in there?

11 A. Yes. I saw other agents. The agents that we met
at the

12 Herington police station in the garage.

13 Q. Did you recognize at least one of those agents to
be Mary

14 Jasnowski?

15 A. Yes.

16 Q. Do you know whether Mary Jasnowski or any of the
other

17 agents noticed you and Mrs. Nichols standing there?

18 A. I don't know.

19 Q. During the time that Mrs. Nichols was in her home
on

20 April 23, was she on the phone at all?

21 A. Yes. My recollection is that she received one
phone call

22 and made another.

23 Q. Agent Dobson, among your duties between April 21
and

24 May 19, did it include being one of the two principal
contact

25 persons for Mrs. Nichols with the FBI?

986

1 A. Yes.

2 Q. And did that assignment begin on Friday night,
April 21?

3 A. Yes.

4 Q. And were you in the company of Mrs. Nichols that
evening

5 when she resided in Abilene?

6 A. Yes.

7 Q. And how long did she stay there?

8 A. Two nights, 21st and 22nd.

9 Q. And what were the next -- excuse me. Let me ask
you: Did

10 you stay in the same hotel then?

11 A. Same hotel, different rooms.

12 Q. Over the next 15 days, Agent Dobson, were you in
the same

13 hotel as Mrs. Nichols?

14 A. No.

15 Q. Was Gene Thomeczek?

16 A. No.

17 Q. During that time period between April 21 and May
19, could

Nichols
18 you describe to the Court the phone access that Mrs.

19 had.

20 A. She had unlimited phone access. When we checked
out of a

21 hotel, we paid her bills and really didn't inquire as
to who

22 she was calling or who she talked to.

23 Q. During this time period in the weeks following the
bombing

24 in Oklahoma City, were you busy?

25 A. Yes.

987

1 Q. And how many hours a day were you working?

2 A. We were working at least 12-hour days, 7 days a
week.

3 Q. And that would have been true through this period
of

4 April 21 into the late -- middle to late May?

5 A. Yes.

6 Q. During that time, what kind of assignments did you
receive?

7 A. I received various leads to cover and interviewed
people;

8 and in addition to that, some of those leads included
questions

9 of Marife Nichols.

10 Q. What percentage, if you can estimate, of your time,
your

11 investigative time, did you devote to any contact with

12 Mrs. Nichols during that roughly 30-day period?

13 A. After the first week, it really slowed down.
Probably the

14 first week, about 40 to 50 percent; and after that, I'd
say

15 probably 15 to 20.

16 Q. And did there come times when you did not see Mrs.
Nichols

17 for days?

18 A. Yes.

19 Q. What time range would pass?

20 A. Three days, approximately, could go by without us
seeing

21 her, just contacting her on the phone.

22 Q. Agent Dobson, let me ask you: Do you ever recall
in the

23 presence of Mrs. Nichols in tearful manner her opining
that

24 someone in the FBI desired her not to go home to the

25 Philippines?

1 A. No.

2 Q. At any time in your presence with Mrs. Nichols, did
you

3 hear her ask for assistance of counsel?

4 A. No.

5 MR. MACKEY: I have no other questions.

6 THE COURT: Mr. Woods?

7 MR. WOODS: That you, your Honor.

8 CROSS-EXAMINATION

9 BY MR. WOODS:

10 Q. Ms. Dobson, my name is Ron Woods. I represent
Terry

11 Nichols.

12 What time did you first arrive at the
Herington police

13 station on the 21st day of April?

14 A. Approximately 5:30 p.m.

15 Q. Who was present interviewing Ms. Nichols at that
time?

16 A. Agent Thomeczek and Agent White.

17 Q. Agent White is with the Army?

18 A. Yes.

19 Q. Was he in fatigues?

20 A. No.

21 Q. How was he dressed?
22 A. In a suit.
23 Q. What is the size, approximately, of Marife Nichols?
24 A. I understand -- well, she's about 5-foot, I guess,
25 100 pounds.

989

1 Q. And did she have her child there with her?
2 A. Yes.
3 Q. During the course of that evening, did she ask for
the
4 diaper bag from the car, from the pickup?
5 A. Yes.
6 Q. Was that retrieved for her?
7 A. Sometime later that evening, it was. I guess
around 8:15.
8 Q. Did she ask that you go get the diapers out of the
truck?
9 A. At one point, she asked if I could do that.
10 Q. And you went down to try to do that, didn't you?
11 A. No. I understood at the time that the truck had
been
12 secured and I couldn't do that.
13 Q. Did you tell Ms. Nichols that you -- they wouldn't
allow in
14 the truck?

15 A. Yes.

16 Q. What time was that?

17 A. Sometime before 6:30.

18 Q. Do you recall whether or not the baby seat and the
diaper
19 bag were removed from the truck?

20 A. Both items were removed at about 8:15.

21 Q. And was that based on the consent to search signed
by
22 Marife Nichols?

23 A. Yes.

24 Q. You signed that consent, didn't you?

25 A. I witnessed it, yes.

990

1 Q. And didn't you or Agent Thomeczek write on the
return of
2 that that no search was executed pursuant to that
consent?

3 A. Agent Thomeczek may have filled out such a form.

4 Q. Well, let's look at it.

5 If you would, Ms. Dobson, would you look at
W14 in the
6 black book.

7 Behind W14, there are two consent forms
signed, both

is for 8 of which you witnessed. One is for the truck and one
labeled 9 the car -- one of them is labeled A and one of them is
10 B?
11 A. Yes.
12 Q. Which one is for the truck?
13 A. B.
the top 14 Q. And on the second page of that, who wrote across
15 "no consent search was done on this day"?
wrote it. 16 A. It's signed by Agent Thomeczek, so I assume he
17 Q. But it's your view that the search to take the baby
seat
18 and the diaper bag from the truck was based on that
consent
19 that she signed?
20 A. Basically, the consent allows us to go into the
truck. And
21 since it was her request that we remove those items and
we had
22 need for the baby seat, we felt free to do that.
23 Q. Did you bring the baby seat into the room in which
she was
24 being interviewed?
25 A. I don't believe so. It was probably kept into the
garage

the 1 and then put into the van where she was transported to
2 hotel.

After 3 Q. On the 22nd, did you take her to buy some clothes?

22nd, 4 you put her in the hotel in Abilene on the 21st, on the
5 was there a trip to buy clothes?

6 A. Yes.

out of 7 Q. Why did you not return to the house to get clothes
8 the house?

the 9 A. We understood that the agents were still conducting
10 search of the residence.

11 Q. Did Ms. Nichols want to go to her house?

in at 12 A. We explained to her that it wouldn't be good to get
clothes. 13 that time and that we'd take her to the store to buy

a bomb 14 Q. Did you mention to her that there was a -- possibly
15 in the house?

16 A. No.

the 17 Q. Did she respond to you that if there was a bomb in
18 house, it had been placed there by the FBI?

19 A. No.

20 Q. For what reason did you explain to her other than
that they

21 were going to conduct a search on the 22nd -- what
other reason

22 could she not return to her own house?

23 A. That the house was secured pending conclusion of a
search.

24 Q. Okay. So then you took her over there on Sunday,
the 23rd;

25 is that correct?

992

1 A. Yes.

2 Q. And the search had been concluded, had it not?

3 A. Yes, but for the additional items we needed to
take.

4 Q. That you needed to take. When you were there on
the 23rd,

5 you allowed only a few minutes for Ms. Nichols to pack
her

6 goods; is that correct?

7 A. Yes.

8 Q. What was the reason why there was a time limit on
her to be

9 in there to pack up items she was going to need while
she was

10 in your custody?

11 A. Because we felt that the media would, upon having
knowledge

her 12 that she was in the house -- would soon gather and that

13 identity would be made known.

you and 14 Q. Who were the agents that went with you other than

15 Thomeczek and Ms. Nichols?

Omaha 16 A. Agent Jasnowski, Agent Williams, another agent from

17 ERT and a support photographer, Melinda Preston.

18 Q. Were you all in the same vehicle?

19 A. No.

20 Q. Did you go together in two separate vehicles to the
21 residence?

22 A. Actually, we were in three separate vehicles.

23 Q. Did you go in three separate vehicles to the
residence?

24 A. Yes.

were two 25 Q. And could Ms. Nichols readily observe that there

993

1 other vehicles that were going with you into the house?

us to 2 A. She had seen the agents that were going to go with

3 the house.

4 Q. Did she see them at the house?

We all 5 A. She -- yeah. I mean at some point, she saw them.
6 exited the vehicles pretty much simultaneously. They
7 immediately went back to the garage.

8 Q. On what basis were those agents conducting a
search? What 9 authority did they have?

10 A. We had gotten Marife's consent on the 23rd.

11 Q. Oh, okay. So this search on the 23rd in the garage
was not 12 based Mr. Nichols' consent, but on -- now you're saying
that 13 it's on Mrs. Nichols' consent for the 23rd; is that
correct?

14 MR. MACKEY: Your Honor, I object.

15 Mischaracterization of the testimony. She's never said
it was 16 based on Terry Nichols' consent.

17 THE COURT: Yes. Let's rephrase the question.
She 18 may not know about it.

19 BY MR. WOODS:

20 Q. It's your understanding that those agents were
there 21 conducting a search pursuant to Marife Nichols'
consent?

22 A. Yes.

23 Q. And when did she give that consent?

24 A. Approximately 1:15 on the 23rd.

25 Q. And that was at the police station?

1 A. Yes.

2 Q. And so those agents were all there at the police
station

3 waiting to go conduct the search. All they needed was
Marife
4 Nichols to sign the consent?

5 A. Yes.

6 Q. Had you talked with them and arranged for them to
be there
7 when you brought Marife Nichols over to get her
husband's

8 personal goods?

9 A. I personally had not.

10 Q. Did Mr. Thomeczek in your presence?

11 A. No.

12 Q. How did those agents know to be there, the evidence
13 recovery team -- how did those agents know to be in the
14 Herington police station when you brought Marife
Nichols over?

15 A. It had been arranged at another level.

16 Q. It had been arranged. After you then got her
consent, was
17 this the third consent form she had signed?

18 A. Yes.

19 Q. Did you allow her to observe the agents in
conducting the

20 search?

21 A. There was a point where she walked back to the
garage and

22 saw them conducting the search.

23 Q. But she only had a few minutes in which to pack her
goods;

24 is that correct?

25 A. Not a few minutes. I mean, she was in there about
35

995

1 minutes.

2 Q. Didn't you prescribe a 45-minute time limit on her
presence

3 in the house?

4 A. No, I don't recall.

5 Q. What prescription of time do you recall?

6 A. I don't remember a time constraint. Just the
advice that

7 it be done as expeditiously as possible for the reasons
I

8 mentioned earlier.

9 Q. Who picked up the inventory list of items seized on
the

10 22nd that was left there in the house?

11 A. Mrs. Nichols.

12 Q. And did she read that sometime that afternoon?

13 A. Yes.

14 Q. Was that in your presence?

15 A. No. It's my understanding she read it -- she did
glance at

16 it in the house. I saw that, but I think she read it
in more

17 dept in Agent Thomeczek's vehicle on the drive back.

18 Q. So you weren't with them when they left?

19 A. No.

20 Q. Was there any explanation given to Ms. Nichols that
the

21 searches would be over after this one was conducted?

22 A. No.

23 Q. Was there any explanation given that we're going to
need to

24 keep getting consents from you?

25 A. No.

996

1 Q. How many consents were obtained from Ms. Nichols to
search

2 her house?

3 A. It's my understanding there were 12 or 13.

4 Q. Over what period of time?

5 A. Between April 21 and May 19.

she
two weeks
her
the
getting,
that
of
it and
statement it
couldn't go

6 Q. Was there an explanation given to Mrs. Nichols that
7 would be able to return to her house in approximately
8 after the search?
9 A. A lot of that depended on the public interest and
10 opinion of whether or not she could return.
11 Q. Well, her request always was to return, wasn't it?
12 A. No.
13 Q. What was her request?
14 A. My particular recollection was after she went into
15 house on the 23rd and saw the media attention she was
16 she didn't want to go back.
17 Q. So she never from that point -- she never requested
18 you allow her to return home?
19 A. No. Not in a realistic fashion. I think she kind
20 wished that could be the case, but she also understood
21 it really wasn't a possibility.
22 Q. Not in a realistic fashion, but she did request?
23 A. She didn't request. She said basically the
24 was I wish I could.
25 Q. And you took that to mean she understood she

she 1 back there? It was just sort of a passing fancy that

2 wanted to go back home?

3 A. Right.

cities 4 Q. Did she request to be moved to eight different

5 during that 37-day period that she was in your custody?

6 A. No.

money. 7 Q. Did she -- let's talk about the request to get the

back and 8 Were you there when she signed the consent form to go

9 get her money?

10 A. Yes.

at 11 Q. Now, on the 21st, when you were interviewing there

and its 12 Herington police station, she told you about that money

13 location, didn't she?

so I 14 A. I wasn't there for the majority of the interview,

15 don't recall her making that statement.

on, on the 16 Q. Well, how much of the interview were you present

17 21st?

18 A. Very little, actually. I was there for some of the
19 background information that Agent Thomeczek got from
her
20 primarily, and then I left. I was there for the
consents and
21 then I left to go to the real estate office.

22 Q. Do you recall telling Ms. Nichols during that
limited time
23 you were there that you knew everything about her? You
knew
24 her immigration status, you knew the outlay of her
house
25 because you had talked with Georgia Rucker at the real
estate

998

1 agent? Do you recall those conversations?

2 A. We didn't have any such conversations.

3 Q. Was your first question to Ms. Nichols when you met
her,
4 what's your license number?

5 A. No.

6 Q. Do you recall her telling you that she would have
to look
7 at it?

8 A. No. I didn't ask her because I knew what it was.

9 Q. Do you recall telling her you knew what her license
number

10 was, where her house was, what time she left her house
and

11 where she went and what the outlay of her house is
because you

12 had talked to the real estate agent?

13 A. I never told her that.

14 MR. MACKEY: Objection -- withdrawn.

15 BY MR. WOODS:

16 Q. Now, on the 23rd, you were present when she
requested that

17 Mr. Thomeczek obtain her \$5,000 from underneath the
bed? Was

18 it between the -- the mattress and the box springs?

19 A. I didn't participate in that search, but my
understanding

20 was that it was in the box spring.

21 Q. In a camera bag; is that correct?

22 A. I don't remember that detail.

23 Q. \$5,000 plus some gold and silver coins?

24 A. Yes.

25 Q. Okay. Were you present when she requested that

999

1 Mr. Thomeczek give that to her?

2 A. Yes.

3 Q. On the 23rd?

4 A. Yes.

5 Q. And were you present every day thereafter when she
kept

6 requesting that that money be returned to her?

7 A. Well, she didn't request every day and I don't know
whether

8 or not I was present every time she brought it up, but
I was on

9 several occasions.

10 Q. In fact, Ms. Nichols had no funds with which to
travel, did

11 she?

12 A. No. I understand she just had a couple hundred
dollars.

13 Q. And who paid for the clothes that Saturday?

14 A. I recall that I did.

15 Q. Do you recall submitting a receipt or voucher to
the

16 Government to get reimbursed?

17 A. No, I did not.

18 Q. Is it possible that she paid for it with her own
money?

19 A. That's possible.

20 Q. Ms. Nichols has a lot of pride, doesn't she?

21 A. Yes.

22 Q. She didn't like other people paying for her way,
did she?

23 A. I wouldn't -- she never made such a statement.

24 Q. Mrs. Nichols could not drive, could she?

25 A. No.

1000

had it 1 Q. She had no automobile because it had been seized,

2 not?

3 A. Mr. Nichols' vehicle had been seized.

wasn't it? 4 Q. And that was flown in an airplane to Quantico,

5 A. That, I don't know.

child, no 6 Q. So she was left in a motel with a 20-month-old

7 money, no ability to move; is that correct?

We 8 A. We made sure that she had everything she needed.

keep 9 responded to her requests as best we could and tried to

10 her as comfortable as possible.

request, 11 Q. So after two days, was she the one that made the

12 gee, I'd like to now go to a motel over in Fort Riley?

13 A. No.

like to 14 Q. Was she the one who made the request that she would

15 go to a motel in Junction City?

16 A. No.

other eight 17 Q. Was she the one who made a request for all the

18 cities that you moved her to?

19 A. No.

20 Q. You allowed her to make phone calls; is that
correct?

21 A. Yes. She had free access to the phone.

22 Q. Did you instruct her never to leave the phone
number where

23 you could receive a return call?

24 A. Basically, that was advice to her that if she
wanted her

25 whereabouts to remain anonymous that she shouldn't do
that.

1001

1 Q. Did you tell her not to leave a phone number?

2 A. No.

3 Q. Did Ms. Nichols continue to request ability to go
-- to

4 return to her home?

5 A. No.

6 Q. Did you allow her to return to the home on May 8?

7 A. Yes.

8 Q. What was the purpose of that visit to the home?

9 A. We -- we felt that it could be the last time she
was in the

10 house before she went back to the Philippines and if
there was

11 anything else she wanted, she had an opportunity to
take them

12 at that time.

13 Q. Had you been working on getting her to the
Philippines?

14 A. We had been making efforts to expedite the return
of her

15 money as best we could.

16 Q. In fact, there came a time when you became so
frustrated

17 with the lack of the return of the money that you
started

18 complaining to Agent Thomeczek, didn't you?

19 A. No.

20 Q. Do you recall a time when in your presence and
Marife

21 Nichols' presence that Agent Thomeczek made a phone
call to his

22 superior, complaining that he had two women that he
couldn't

23 control; that they were complaining too much about the
money

24 not being returned?

25 A. No.

1002

1 Q. Do you recall Mrs. Nichols late in the -- your --
you left

2 pretty much on the 19th; is that correct?

3 A. Yes.

4 Q. Do you recall telling her late in that term that
you

5 believed the Government was not going to return the
money

6 because they wanted to keep her?

7 A. No.

8 Q. Now, on the 8th when you were in the house, you
told her

9 this is the last chance you're going to get to see your
house?

10 A. We said this could be the last chance.

11 Q. Did you ask to pick up the blender that Mr. Nichols
used in

12 marketing his ammonium nitrate prill?

13 A. Yes.

14 Q. Did you also jokingly say, What else can we get?

15 A. No. No.

16 Q. Did you mention picking up the stove and the
refrigerator?

17 A. No.

18 Q. Where did you go after the 8th?

19 A. We went to Oklahoma City.

20 Q. And you met with the lawyers that were handling the
case;

21 is that correct?

22 A. Yes -- Agent Thomeczek and I met with them that
night and

23 Marife met with them the next day.

24 Q. Now, during those many days up until May 8 and 9,
you had

25 asked Ms. Nichols to compile a chronology as to her
whereabouts

1003

1 during the month of April, had you not?

2 A. No. I didn't specifically ask her to do that.

3 Q. Well, you had been asking her questions about her
knowledge

4 about the case over and over during those days, hadn't
you?

5 A. No, not over and over. I mean I did one interview
of her,

6 then a subsequent one based on the first. She had been
asked

7 some questions on the 21st.

8 Q. So after the 21st, you never questioned her about
the

9 details of the case again?

10 A. My interview of her was May 1. I did another one
on May 7.

11 After that, anything she wanted to add was pretty much

12 initiated by her after the 7th of May.

13 Q. Do you recall asking her -- you've seen the steno
pad where

14 she kept the chronology of April of her whereabouts and
her

15 husband's whereabouts?

16 A. Yes.

17 Q. In fact, that was presented to the prosecutors on
the 8th,

18 wasn't it?

19 A. Presented?

20 Q. It was given to the lawyers at that time, wasn't
it?

21 A. I don't believe so.

22 Q. Well, you were there, weren't you, on the 17th,
when she

23 came back and Jerome Holmes handed it to her and said
here is

24 this chronology back? Weren't you there?

25 A. No, I was not there.

1004

1 Q. Well, if Ms. Nichols was articulate and had her
good recall

2 of dates, times and places during that meeting with the

3 lawyers, it was because you had asked her to make this

4 chronology and recall every place she was during April,
wasn't

5 it?

6 MR. MACKEY: Objection.

7 THE WITNESS: No.

8 MR. MACKEY: Objection.

9 THE COURT: Sustained.

10 BY MR. WOODS:

11 Q. Did she have that to refer to when she was being
asked
12 questions?

13 A. She had a booklet that she referred to.

14 Q. So her articulation as to dates, times and places
is
15 something that had been compiled over a period of time,
was it
16 not?

17 A. I don't know if she did it in one sitting or over
time. I
18 don't know when she did it.

19 Q. Did you ever advise Ms. Nichols during the many
days that
20 you were in her presence that she had a right not to
repeat the
21 confidential communications between herself and her
husband?

22 A. I don't understand the question.

23 Q. Since you don't understand the question, I take it
you

24 never advised her of any of her rights?

25 A. We advised her of her rights.

1 Q. Which ones?

2 A. The right not -- the right to refuse consent, the
right to

3 an attorney, the right -- all those.

4 Q. I'm sorry. I'm a little unclear. The right to
refuse a

5 search and a right to an attorney. When did you advise
her she

6 had a right to an attorney?

7 A. We advised her she had the right to talk to an
attorney

8 prior to each consent she signed.

9 Q. So each time you presented a consent to her, you
told her

10 she had a right to consult with an attorney before she
signed

11 that consent?

12 A. Yes.

13 Q. Where was she going to obtain an attorney?

14 MR. MACKEY: Objection.

15 THE COURT: Sustained.

16 BY MR. WOODS:

17 Q. Did she have any money to obtain an attorney?

18 MR. MACKEY: Objection. Asked and answered.

19 THE COURT: Overruled.

20 BY MR. WOODS:

21 Q. Did she have any money to obtain an attorney?

22 A. My understanding --

23 MR. MACKEY: Objection.

24 THE COURT: Did she have any money?

25 MR. MACKEY: Excuse me. To obtain an
attorney.

1006

1 THE COURT: Overruled.

2 BY MR. WOODS:

3 Q. You may answer the question.

4 A. Like I stated earlier, my understanding was that
she had a

5 couple hundred dollars.

6 Q. And the Government had \$5,000 of hers; is that
correct?

7 A. Right.

8 Q. Do you know when that money was eventually returned
to her?

9 A. I believe late May.

10 Q. Do you recall that it was the same day that she met
with a

11 lawyer for Mr. Nichols?

12 A. I wasn't there when the money was returned to her.

13 Q. Now, on that day where you're meeting with the
Government

14 prosecutors, who were the prosecutors present?

15 A. Jerome Holmes, Arlene Joplin and Donna Bucella.

16 Q. Did any of those lawyers advise her that she did
not have
17 to repeat confidential communications between herself
and her
18 husband?

19 THE COURT: In this witness' presence?

20 MR. WOODS: Yes, your Honor. This witness --
excuse
21 me. I'll bring that up.

22 BY MR. WOODS:

23 Q. Ms. Thomas -- Ms. Dobson, you were present during
the
24 meeting in the U.S. Attorney's office while Marife
Nichols was
25 there with her 20-month-old child being interviewed by
the

1007

1 three lawyers, were you not?

2 A. Yes.

3 Q. During any of that period of time, did any of those
lawyers
4 advise her that she had the right not to repeat
confidential
5 communications between her and her husband?

6 A. I don't recall that.

7 Q. Did any -- what was her purpose in being at this
meeting?

8 A. My understanding was it was for them to evaluate
whether or
9 not they wanted to use her in the grand jury.

10 Q. Had she been served with a grand jury subpoena to
that
11 point?

12 A. Not by us. Not by Agent Thomeczek or myself.

13 Q. Well, do you know whether or not she was there
pursuant to
14 a subpoena?

15 A. Yes. My understanding was she was.

16 Q. Did you ever see the subpoena?

17 A. No.

18 Q. What instructions did you have in bringing her to
that
19 office?

20 A. For her to meet with the attorneys.

21 Q. And that was pursuant to a subpoena that had been
issued?

22 A. Yes.

23 MR. WOODS: Your Honor, we would make a
request -- and

24 it doesn't have to be produced today, but we've never
been

25 provided the subpoena that they're mentioning here; and
I'm not

1 asking for it right now, but I would request that it be
2 produced.

3 BY MR. WOODS:

4 Q. Ms. Dobson, during that meeting, did any of those
three
adverse
grand jury
5 lawyers tell Ms. Nichols that she had a privilege, an
6 spousal privilege where she could refuse to go into
7 and testify against her husband?

8 MR. MACKEY: Asked and answered.

9 MR. WOODS: No, it hasn't been.

10 THE COURT: Overruled.

11 THE WITNESS: I don't recall that topic.

12 BY MR. WOODS:

13 Q. And during that meeting, did you advise her of her
right to
14 an attorney?

15 A. I personally did not.

16 Q. You just advised of her right to attorneys when you
were
17 getting the consent forms?

18 A. That's the only time the subject came up.

19 Q. Do you recall her becoming a little confused in
that
needed a
here?
20 multihour meeting and stating that her -- perhaps she
21 lawyer because she may be being taken advantage of

22 A. No.

Nichols 23 Q. Now, you left that meeting, did you not, with Ms.
24 and her child?

25 A. Yes.

1009

1 Q. How many hours did that meeting last?

2 A. Approximately four and a half to five hours.

3 Q. And the lawyers asked many questions about her --
to her;
4 is that correct?

5 A. Yes.

6 Q. Who was in charge of that meeting?

7 A. Arlene Joplin was pretty much leading it.

8 Q. When you left that meeting, was Marife Nichols
served with
9 a grand jury subpoena to come back on May 16?

10 A. I believe she was the following day.

11 Q. By who?

12 A. Agent Thomeczek.

13 Q. And what happened between that day, if that's May 9
-- What
14 happened between that day and May 17? How many cities
did you
15 take Marife Nichols to then?

meeting 16 A. We stopped in Wichita on the way back north for a
17 with the Phillipine embassy, which fell through and was
18 rescheduled for the following week. Then we went on to
the 19 Overland Park, Kansas, where she stayed in a hotel for
20 weekend.

because 21 Q. And the reason you went back to Kansas City was
it? 22 that's where you and Mr. Thomeczek were from, wasn't

23 A. That was one reason; and also, that we work in that
area if 24 division and would be available to cover leads in that
25 they needed us.

1010

her to 1 Q. And you stayed in that division until you returned
2 Oklahoma City on the 17th?

3 A. No. We left the Kansas City area on May 14.

4 Q. All right. Where did you take her then?

5 A. Back to Wichita.

6 Q. And from there, where did you go?

7 A. To Oklahoma City.

8 Q. On what day?

9 A. We got there on May 17.

City on
10 Q. And what was the purpose of her being in Oklahoma

11 May 17?

her
12 A. I understand that she was there pending return of

13 money.

the
14 Q. Oh, she was going to get her money back in a day on

15 17th?

I
16 A. No, not that day. There was still some discussion,

17 guess, of if attorneys wanted to question her further.

on her
18 Q. Well, you had a grand jury subpoena that was served

19 for May 16. Why did you not take her back on the 16th?

been made
20 A. I understand that at that point, the decision had

21 not to use her in the grand jury.

what
22 Q. All right. So you brought her back the 17th for

23 purpose?

return of
24 A. To keep her in the Oklahoma City division pending

25 her money.

1011

1 Q. All right. Didn't you take her to the U.S.

Attorney's

2 office on May 17?

3 A. Yes.

4 Q. And for what purpose?

5 A. This is -- she needed to sign a form that she would
agree

6 to return if she was needed.

7 Q. Were you present when she was told she wasn't going
into

8 the grand jury?

9 A. No.

10 Q. Did someone explain to you why she wasn't going to
the

11 grand jury?

12 A. Not in great detail, no.

13 Q. What detail did they say to you?

14 MR. MACKEY: Objection, relevancy.

15 THE COURT: Overruled.

16 THE WITNESS: In general terms that they just
decided

17 it was best they don't put her on the grand jury.

18 BY MR. WOODS:

19 Q. Had you determined in interviews and presence with
her that

20 there was anything she was saying that was untrue?

21 A. No.

22 Q. And you were continuing to cover leads on the case
and

23 investigate the case; is that correct?

24 A. Yes.

25 Q. And you were being kept up with the progress and
details of

1012

1 the investigation, were you not?

2 A. Yes.

3 Q. So then I take it your activity with Ms. Nichols
then ends

4 shortly thereafter and she's passed on to yet another
group of

5 FBI agents?

6 A. Another agent met us on the 19th.

7 Q. Who was that?

8 A. Agent Houston.

9 Q. And did she take over the custody of Marife at that
time?

10 MR. MACKEY: Objection to the term "custody."

11 THE COURT: Yes. Rephrase it.

12 MR. WOODS: Your Honor, I've searched for a
word to

13 describe it and I -- I'm having a difficult time.

14 THE COURT: How about assigned companion?

15 MR. WOODS: I'll take that. That's a good
one.

16 BY MR. WOODS:

Nichols 17 Q. Was Ms. Houston then the assigned companion to Ms.

18 from that point forward?

agent 19 A. That, I don't know. I understand there was another

20 that was assigned to work her.

Nichols? 21 Q. Now, did you sign the Mother's Day card to Ms.

22 A. No.

23 Q. You didn't sign that?

24 A. No.

to 25 Q. Do you recall the Mother's Day card that was sent

1013

1 Ms. Nichols?

her. 2 A. I only recall seeing it after it had been opened by

3 Q. And that Mother's Day that year was May 14 or so?

4 A. Yes.

5 Q. But you were present when it was opened?

6 A. No.

7 Q. She showed it to you after she opened it?

8 A. I saw it laying on a table.

the other 9 Q. Well, if the name Sheila is signed to it, who was

Nichols? 10 Sheila that helped in being a personal assignee to Ms.

11 A. There was no other Sheila.

12 Q. Somebody just signed your name?

13 A. Yes.

14 Q. Who was that?

15 A. I understand it was Agent Montanino.

her 16 Q. Had you had any discussion with Ms. Nichols about

that 17 belief that the Government workers are the bad guys in

18 case?

19 A. No.

says, 20 Q. What is this Mother's Day card referring to when it

bad guys 21 Please don't believe that government workers are the

22 no matter what anybody tells you?

23 MR. MACKEY: Objection, Judge.

24 THE COURT: Sustained.

25 BY MR. WOODS:

1014

1 Q. You read the card; is that correct?

2 A. Yes.

3 Q. Did you understand what it meant?

4 A. No.

5 Q. Did you ever ask Ms. Montanino?

6 A. No.

7 Q. When you were there at the house on the 23rd with

8 Ms. Nichols, did she receive a phone call?

9 A. Yes.

10 Q. Who answered the phone?

11 A. She did.

12 Q. Do you recall an agent answering the phone when it
rang?

13 A. No.

14 Q. Do you recall her getting a phone call from Robert
Nichols,

15 the father of Terry Nichols?

16 A. Not on that day.

17 Q. What date did that occur?

18 A. I don't remember the exact date. I believe it was
within

19 the first two weeks.

20 Q. Well, she was only in the house on the 23rd and
then May 8?

21 A. The phone call she received from Robert Nichols was
not

22 while she was in the house.

23 Q. Oh, that was received where?

24 A. Either at the Econolodge or the Comfort Inn.

25 Q. And who answered the phone?

1 A. I don't recall.

2 Q. Was it you?

3 A. No.

4 Q. Was it another agent?

5 A. I don't recall whether it was the agent that was
with me or

6 Marife Nichols.

7 Q. Do you recall the difficulty of Mr. Nichols being
able to

8 talk with Marife because the agent wouldn't let her
talk with

9 him?

10 A. No.

11 Q. What day was it that Ms. Nichols discovered that
she was

12 pregnant?

13 A. It was in the first week.

14 Q. And how did she discover that?

15 A. She had used a pregnancy test to determine that.

16 Q. Is that something you went out and bought for her?

17 A. Yes.

18 Q. So on the date she signed the consent on the 21st
and 23rd,

19 she was pregnant; is that correct?

20 A. I imagine so.

21 Q. Was she having morning sickness at that time?

22 A. No.

23 MR. WOODS: Thank you, your Honor. That's all
the
24 questions I have.

25 THE COURT: Any follow-up, Mr. Mackey?

1016

1 MR. MACKEY: Yes.

2 REDIRECT EXAMINATION

3 BY MR. MACKEY:

4 Q. Agent Dobson, returning your attention to Sunday,
April 23,

5 you described it was your understanding that Mrs.
Nichols

6 executed a consent form early afternoon before going to
the

7 residence; is that correct?

8 A. Yes.

9 Q. If Mrs. Nichols had declined to sign the form, what
would
10 have happened?

11 A. If she had declined to sign the form we would have
had the

12 burden -- us being the Government -- to show the need
to go

13 back into the house.

you meet 14 Q. And where would you carry that burden? How would
15 that burden?
16 A. A judge would have to approve of it.
17 Q. The ERT team -- is that the evidence recovery team?
18 A. Yes.
of that 19 Q. They had just completed in the early morning hours
20 same day the conclusion of that search; correct?
21 A. Yes.
22 Q. So it's quite reasonable that a few hours later,
they would
23 still be in Herington, Kansas; correct?
24 A. Yes.
25 Q. While you were in the house, Agent Dobson, did you
at any

1017

in any 1 point in time restrict how long Mrs. Nichols could be
2 one room or any one place?
3 A. No.
4 Q. Did you at any time restrict what she could do?
5 A. No.
6 Q. Or with whom she could speak?
7 A. No.

8 Q. Do you recall whether the searching team in the
garage left

9 at or about the same time that you and Agent Thomeczek
and

10 Mrs. Nichols did?

11 A. Yes.

12 Q. Mr. Woods represented that there were two occasions
that

13 Mrs. Nichols was in the residence after April 21. Do
you know

14 the third?

15 A. The third would be May 7.

16 Q. Tell his Honor about that.

17 A. It was a Sunday and Mrs. Nichols had requested that
she

18 would like to retrieve some family photos and maybe
some

19 additional toys for Nicole and I drove her down there
to the

20 house.

21 Q. Would it be fair to say, Agent Dobson, that over
the time

22 of your relationship with Mrs. Nichols that she grew to
like

23 you and trust you?

24 A. She seemed to.

25 Q. And that was exhibited at least on one occasion
when the

1 two of you talked about her newly discovered pregnancy?

2 A. Yes.

3 Q. And the two of you discovered in that conversation
that you

4 share a religious faith?

5 A. Yes.

6 Q. And the two of you talked about that very personal
topic?

7 A. Yes.

8 Q. On May 19, 1995, were you in Oklahoma City?

9 A. Yes.

10 Q. And was that the last time you saw Marife Nichols?

11 A. Yes.

12 Q. After you left her company on that day, what did
you do?

13 A. Well, before we left, she requested that we stop by
the

14 house. We talked to her earlier about taking a box
that was

15 marked "Jason's toys" with her. She didn't want to but
16 apparently changed her mind and requested that we get
those

17 items and send them to her in the Philippines; in
addition to

18 clean out the refrigerator.

19 Q. And you knew Jason was a child that she had lost in
1993 or

20 thereabouts?

21 A. Yes.

22 Q. And that was troubling for her to decide whether to
return

23 possessions of his to her possession; correct?

24 A. Yes.

25 Q. And on May 19, she made the decision that she'd
like those

1019

1 back?

2 A. Yes.

3 Q. And asked your assistance in mailing those toys to
the

4 Philippines?

5 A. Yes.

6 Q. If you drive from Oklahoma City to Kansas City,
your home,

7 do you go through Herington?

8 A. No.

9 Q. It's out of the way, it not?

10 A. Yes.

11 Q. Did you go out of your way to do that on May 19 for
12 Mrs. Nichols?

13 A. Yes.

14 Q. And to clean out her refrigerator?

15 A. Yes.

16 THE COURT: Mr. Woods?

17 MR. WOODS: Just a few, your Honor.

18 RE-CROSS-EXAMINATION

19 BY MR. WOODS:

20 Q. Ms. Dobson, you got another consent form signed by
her on

21 May 19 when you removed the toys from the house;
correct?

22 A. Yes.

23 Q. You didn't get a consent form on May 7, though, is
that

24 correct, when you took her to the house?

25 A. Right.

1020

1 Q. What's the distinction here?

2 A. Basically, we were going into the house for items
that she

3 wanted to go in for and I was -- I didn't look for
anything to

4 take. I just waited for her to get the things she
wanted and

5 we left.

6 Q. Okay.

7 A. It was initiated by her.

could
without
in; is

8 Q. The house was in such a situation, then, that she
9 return to live in it, since you're going in and out
10 consent forms. She could have been left there to live
11 that correct?

this

12 A. But for the public interest that still surrounded
13 house.

when you

14 Q. Were there a lot of news reporters there on May 7
15 took her there?

16 A. We were only in there about ten minutes.

you have
didn't you?

17 Q. In fact, every time you went there, you told her
18 only a few minutes to look around and get things,

19 A. No.

20 MR. WOODS: Thank you. No further questions.

21 MR. MACKEY: None, your Honor. Thank you.

22 THE COURT: I take it she's excused, then?

23 MR. MACKEY: Yes.

excused.

24 THE COURT: You may step down. You're

25 Ms. Wilkinson?

calls
witness,
1 MS. WILKINSON: Your Honor, the Government
2 Special Agent Larry Tongate. This will be our final
3 your Honor.

4 THE COURT: Please come forward and be sworn.

5 THE COURTROOM DEPUTY: Please raise your right
hand.

6 (Larry Tongate was sworn.)

7 THE COURTROOM DEPUTY: Please be seated.

8 Please state your full name and spell your
last name
9 for the record.

10 THE WITNESS: Larry G. Tongate, T-O-N-G-A-T-E.

11 DIRECT EXAMINATION

12 BY MS. WILKINSON:

13 Q. Are you a special agent with the FBI?

14 A. Yes, I am.

15 Q. How long have you been an agent with the FBI?

16 A. A little over 23 years.

17 Q. Where are you currently assigned, Agent Tongate?

18 A. Kansas City, Missouri.

19 Q. Where were you assigned back in April, 1995?

20 A. Kansas City, Missouri.

21 Q. Are you also one of the case agents for United
States vs.

22 Timothy McVeigh and Terry Nichols?

23 A. Yes, I am.

the
24 Q. What are your duties and responsibilities as one of
25 case agents?

1022

1 A. Well, it's to help prepare the evidence, help the
2 prosecutors gather in a presentable form all the
evidence that
3 we have collected over the time period and get it ready
to
4 present to the Court.

5 Q. As part of your duties as case agent, did you also
become
6 familiar with the evidence and review items seized?

7 A. Yes, I do.

8 Q. Turning your attention to April 21, 1995, were you
asked to
9 participate in the investigation of the Oklahoma City
bombing?

10 A. Yes.

11 Q. Where were you on April 21?

12 A. I was in Kansas City, Missouri, in the FBI office.

13 Q. Did there come a time when you were directed to
report to
14 Herington, Kansas?

15 A. Initially, it was to Fort Riley, Kansas; but yes,

16 eventually, to Herington.

17 Q. And during your time in Herington and the
surrounding area

18 on April 21, did you become familiar with what other
agents

19 were doing during the investigation?

20 A. Yes.

21 Q. And in addition to that, have you become familiar
with what

22 occurred on that date by reviewing the surveillance
logs that

23 were kept on April 21, 1995?

24 A. Yes.

25 Q. In your review of the surveillance logs, have you

1023

1 determined when it is indicated in that log that police
tape

2 was placed around the residence of Terry Nichols?

3 A. The surveillance log indicates at 4:20 p.m.

4 Q. As case agent, have you determined whether that
information

5 is accurate?

6 A. I have. I've checked into it and found that to be
7 inaccurate. I contacted the agents who were there
present

8 putting up the tape and they indicated to me that there
were

9 problems when they began putting up the tape. That
they needed

10 barricades and the tape did not actually get placed
around the

11 residence until approximately an hour later.

12 Q. Did you continue to participate in the
investigation on

13 April 22?

14 A. Yes.

15 Q. Were you one of the agents who entered Terry
Nichols'

16 residence pursuant to the search warrant on the
afternoon of

17 April 22?

18 A. Yes.

19 Q. What rooms did you search during that search on
April 22,

20 Agent Tongate?

21 A. Several rooms. I was in the area between the
dining room

22 and living room. I also searched two of the bedrooms,
the

23 basement downstairs, and I was in a portion of the
garage.

24 Q. During that time period, did you see men's clothing
in the

25 house?

1 A. Yes, I did.

2 Q. Could you turn to the Government's notebook and
turn to
3 Government's Exhibit 44, please.

4 Do you recognize that photograph?

5 A. Yes.

6 Q. What is the photograph of, Agent Tongate?

7 A. It's of a large duffel bag. That is how I recall
seeing it
8 the night of the 22nd.

9 Q. Do you know when this photograph was taken?

10 A. Yes. During the search on April 22 into the
morning hours
11 of April 23.

12 MS. WILKINSON: Your Honor, the Government
offers
13 Exhibit 44.

14 MR. TIGAR: No objection.

15 THE COURT: 44 received.

16 BY MS. WILKINSON:

17 Q. Agent Tongate, was the duffel bag pictured in
Government's
18 Exhibit 44 taken during the search on April 22?

19 A. I don't believe the bag was, but I believe the
contents of
20 the bag, which I understand to be a sleeping bag, was
taken.

21 Q. Could you now --

22 A. Excuse me. Was not taken on that night.
23 Q. Could you now turn to Government's Exhibit 45.
24 THE COURT: Yes.
25 BY MS. WILKINSON:

1025

1 Q. Do you recognize that photograph?

2 A. Yes.

3 Q. What is depicted in Government's Exhibit 45?

4 A. It's an area underneath the stairs of going down to
the
5 basement where there are various boxes and including a
box
6 containing a Makita drill.

7 MS. WILKINSON: Government offers Exhibit 45,
your
8 Honor.

9 MR. TIGAR: No objection, your Honor.

10 THE COURT: 45 received.

11 BY MS. WILKINSON:

12 Q. You mentioned a Makita drill. Could you describe
for the
13 Court how you know that that blue box contains the
Makita
14 drill?

15 A. Yeah. I was along with other agents conducting the

search

16 down in the basement -- I had found some items previous
to
found, I 17 this; and the agent that was searching that area had
18 believe, a weapon and then was going through these
boxes.
19 There was discussion about the drill, and there was
advice
20 given by one of the lab people there that it may not
21 necessarily be used for bomb-making in itself; so it
was not
22 seized.

23 Q. In preparation for the search on April 22, did you
review
24 the search warrant, the affidavit, and the attachment?
25 A. Yes, I did.

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19. Did 1 Q. That's noted in the record as Government's Exhibit
2 you review that before coming to court today?
3 A. Yes, I have.
4 Q. And is it your understanding that the attachment
that
5 listed the items that the agents were permitted to
seize on
6 April 22 included drills?

7 A. That's correct.

8 Q. Please turn to Government's Exhibit 46. Do you
recognize

9 Government's Exhibit 46?

10 A. Yes.

11 Q. What is it?

12 A. It is a photograph of a closet in the upstairs
storage area

13 of 109 South 2nd.

14 Q. Are you looking at Government's Exhibit 46?

15 A. Yes.

16 MS. WILKINSON: Your Honor, could I have a
moment,

17 please.

18 THE COURT: Yes.

19 THE WITNESS: I'm sorry. There is three
photos with

20 46 and my first one is that closet.

21 BY MS. WILKINSON:

22 Q. Okay. Go ahead.

23 MS. WILKINSON: Your Honor, just for the
record, there

24 are three photographs contained in this exhibit and
they're all

25 marked Government's Exhibit 46. Perhaps we should mark
them A,

1 B and C beginning with the first one Agent Tongate
mentions.

2 THE COURT: Yes.

3 BY MS. WILKINSON:

4 Q. Beginning with 46A, could you repeat what's in this
5 photograph?

6 A. Yes. It's of a closet area with what appear to be
gun
7 cases and camera cases depicted in the picture.

8 Q. What is the next photograph that you see in that
exhibit?

9 A. It is a couple of ammo cans, some blankets, boots
and what
10 appears to be a weapon wrapped up in some sort of
cloth.

11 MS. WILKINSON: Your Honor, we'll refer to
that as
12 Government's Exhibit 46B.

13 THE COURT: Thank you.

14 MR. TIGAR: Your Honor, rather than take on
the voir
15 dire, may I ask from here, is 46A the one with the
Hershey's
16 chocolate box?

17 THE WITNESS: Yes.

18 THE COURT: Thank you.

19 MR. TIGAR: And B will be the one with the
boots?

20 MS. WILKINSON: Yes.

21 MR. TIGAR: And that leaves C. Thank you,
your Honor.

22 BY MS. WILKINSON:

23 Q. Agent Tongate, now referring to Government's
Exhibit 46C,

24 what's depicted in that photograph?

25 A. It's of the bedroom. I believe it was the second
bedroom

1028

1 listed in the inventory. It shows -- it depicts a bed
with
2 clothing on the bed and a bedspread or a comforter on
top of
3 the bed.

4 Q. Do you know whether these photographs were taken on
5 April 22, during the court authorized search?

6 A. Yes, I do.

7 MS. WILKINSON: The Government offers
Government's

8 Exhibits 46A through C.

9 MR. JONES: Your Honor, I don't understand the
10 relevancy of these exhibits to the issue before the
Court; and

11 unless the relevance is explained, I respectfully ask
the Court

12 to not admit them. I object.

13 THE COURT: I don't know what standing you
have to
14 object on these exhibits.

15 MR. JONES: Well, your Honor, my lawyer
advises me
16 that rather than answer your question, I should
withdraw it.

17 THE COURT: Good advice.

18 Mr. Tigar.

19 MR. JONES: He said I might not be free to
leave,
20 otherwise.

21 MR. TIGAR: I have no objection to 46.

22 THE COURT: They are received.

23 BY MS. WILKINSON:

24 Q. Agent Tongate, you have reviewed the evidence logs
that
25 were maintained on April 22, have you not?

1029

1 A. Yes.

2 Q. And have you reviewed an entry listed as W10, which
is on
3 the evidence recovery log?

4 A. Yes.

5 Q. Which indicates that an item was taken marked
HE66MM

6 antitank rocket M72A3. Do you recall that?

7 A. That's correct.

8 Q. Was that item found in the storage room of Mr.
Nichols'

9 residence?

10 A. Yes.

11 Q. Have you reviewed that log entry, the description
that I

12 just read to you?

13 A. I have.

14 Q. Have you looked and compared it to the actual item
that was

15 seized?

16 A. I did.

17 Q. What did you find?

18 A. It matched. It's the same.

19 Q. Is there a description, in fact, on the tube that
was

20 seized?

21 A. Yes.

22 Q. Have you later learned that that tube by itself is
not a

23 rocket?

24 A. Yes.

25 Q. What have you learned?

portion 1 A. That it is simply the casing or shell. The rocket
2 is not active. It has been fired previously.

3 Q. Please turn to Government's Exhibit 64. In
preparation for
4 this hearing, have you reviewed the telephone records
of Marife
5 Nichols that were compiled by the Government?

6 A. Yes.

7 Q. From April 21 through May 19?

8 A. Yes.

9 Q. Is Government's Exhibit 64 a fair and accurate
10 summary of
11 those telephone calls?

12 A. I believe it is.

13 MS. WILKINSON: Your Honor, the Government
offers
14 Exhibit 64 into evidence.

15 MR. TIGAR: Your Honor, I'd have to take the
witness
16 on the voir dire with respect to this document before I
17 could --

18 THE COURT: Go ahead. Go ahead.

19 MS. WILKINSON: Your Honor, could I just
correct the
20 record for one moment?

21 THE COURT: Yes.

the 22 MS. WILKINSON: I believe I stated May 19, and
23 record should be through May 30.
24 BY MS. WILKINSON:
25 Q. Is that right, Agent Tongate?

1031

1 A. Yes.

2 THE COURT: Thank you.

3 VOIR DIRE EXAMINATION

4 BY MR. TIGAR:

many 5 Q. Now, Agent, looking at Exhibit 64, there are -- how
6 pages are there here?

7 A. I have to --

8 Q. A couple dozen?

a dozen 9 A. I don't think there is quite that many, but between
10 and thereabouts.

What's 11 Q. Look at the first page, the one with the sticker.
12 the significance of the calls from Circus Circus, Las
Vegas?

listed 13 A. I don't know that there is any significance. It's
14 on there and it was in the records.

15 Q. All right. Now, is that -- were those calls made
by Marife

16 Nichols? Was she in Las Vegas on that day?

17 A. No.

18 Q. So half of page 1 is wrong?

19 A. No, I'm -- I believe it was to Circus Circus.

20 Q. I see. From 702 -- wait a minute. It says
telephone call

21 made from 702. That's the Las Vegas area code, isn't
it?

22 A. I'm sorry. You're right.

23 Q. So half of page 1 is wrong?

24 A. One line is incorrect. The one in the blocks is
the times

25 from the credit card listing and the hotel.

1032

1 Q. Agent, what it shows is that somebody at the Circus
Circus

2 Las Vegas casino called the residence of Terry Nichols
on

3 4-21-95; right? Is that correct?

4 A. I believe that's correct, yes.

5 Q. So that can't be a phone call made by Marife
Nichols, can

6 it?

7 A. No, it's not.

8 Q. So half of page 1 is wrong, isn't it?

9 A. Well, it's not half, but that --

10 Q. That entry is wrong?

11 A. That's correct.

12 Q. All right. Now, let's go to the second page. The
second

13 page shows that the calls were made from the Best
Western Hotel

14 in Abilene, Kansas; correct?

15 A. That's correct.

16 Q. Now, so far as you say those are calls made by
Marife

17 Nichols, what's meant is those are calls charged to a
certain

18 room at the motel; correct?

19 A. That's correct.

20 Q. And you're aware that on the 21st of April at 11:08
p.m.,

21 which is the first call there, Mrs. Nichols was already
with

22 her designated accompanists from the FBI; correct?

23 A. Actually, I don't believe that that call is from
the Best

24 Western. I think that was from the residence.

25 Q. At 11:08 p.m. on the 21st, you say that a call from
the

1 residence was made?

2 A. I'm sorry. I may be in error there.

3 Q. Well, do you know one way or another?

4 A. I don't have the documents here from the phone
records. If

5 I had those, I could tell you if it was the 21st or the
22nd.

6 Q. All right. Well, are you telling us that there is
a call

7 that Mrs. Nichols made from her residence to the
Philippines on

8 the 21st or 22nd?

9 A. I'm not sure without reviewing those phone records.

10 Q. So she could have made a call?

11 A. Yes.

12 Q. All right. You've been listening to the testimony,
haven't

13 you?

14 A. Yes.

15 Q. Well, are you aware that up to now, according to
this

16 record, she wasn't in her house until the 23rd?

17 A. From the --

18 Q. Beginning -- that is from the time she left her
house at

19 about 2:40 on the 21st, she didn't get back there till
the

20 23rd; is that correct?

21 A. Yes.

22 Q. Is that your understanding?

23 A. Yes.

24 Q. So then how could it be possible that she'd be
making a
25 telephone call from her house at 11:08 p.m. on the
21st?

1034

1 A. Well, she could on the 21st. It's the 22nd she
would not
2 have been able to.

3 Q. Right. But on the 21st, the time says 11:08 p.m.,
Agent?

4 A. That's correct.

5 Q. So she couldn't have made that call from her house?

6 A. That's correct.

7 Q. Well --

8 MR. TIGAR: If your Honor please, I've only
gotten one
9 and a half pages in. I don't want to take the Court's
time.

10 It's clear they don't know what they're talking about.

11 THE COURT: It seems to be compiled from other
records

12 and there is some confusion about --

13 MS. WILKINSON: I think I could clarify with
just a

14 few questions to Agent Tongate.

15 MR. TIGAR: I have no objection to a procedure
to be

16 set up after the hearing to get together with the
Government

17 agents to go over these exhibits and do it. We could
do it and

18 not take the court's time. I'm sure there is a
explanation for

19 this and we could work it out. I just object to it
right now.

20 MS. WILKINSON: I'd like to clarify the
record. It

21 would only take a few questions with Agent Tongate.

22 THE COURT: Go ahead and see if you can.

23 DIRECT EXAMINATION CONTINUED

24 BY MS. WILKINSON:

25 Q. Agent Tongate, just so we're clear, you're turning
to the

1035

1 second page of this documents -- correct -- which has a
page

2 number No. 1 on the bottom; is that right?

3 A. Yes.

4 Q. Looking up in the top right-hand corner, does it
indicate

5 where the telephone calls were made from?

6 A. Yes.

7 Q. And does it indicate what -- who subscribes to that
number?

8 A. Best Western Motel -- Hotel in Abilene, Kansas.

9 Q. Is that telling you that these calls were not made
from the
10 residence but made from Best Western Motel?

11 A. That's correct.

12 Q. Turning to the date of the call that Mr. Tigar just
asked

13 you about, April 21, 1995, does this record indicate
that that

14 call came from the Best Western, used a credit card and
was

15 charged to Ms. Nichols' room?

16 A. That's correct. It's a credit card charge, charged
to the

17 residence, not from the residence.

18 MS. WILKINSON: Your Honor, based on that, the
19 Government would offer Exhibit 64 and state for the
record that

20 Counsel has had these records for some time.

21 THE COURT: Well, I'm going to ask you to
check them

22 again. This is really a summary of other records;
right?

23 MS. WILKINSON: Yes, it is, your Honor.

24 THE COURT: So it isn't based on this witness'
direct

25 information anyway; so I'll ask you to get together and
agree

are 1 on the summary of the appropriate company records that
2 involved.

3 MS. WILKINSON: Could we proceed to introduce
4 testimony about the summary of how many calls were made
on 5 this, your Honor, subject to the entrance of the
exhibit?

6 THE COURT: You can put that on the exhibit.
That's 7 just a matter of totaling the number.

8 MS. WILKINSON: Fine.

9 THE COURT: All right.

10 BY MS. WILKINSON:

11 Q. Agent Tongate, could you turn to Government's
Exhibit 37.

12 A. Yes.

13 Q. During this investigation, have you become familiar
with 14 the educational records for Mr. Nichols?

15 A. Yes, I have.

16 Q. Have you reviewed them?

17 A. Yes.

18 Q. Do you recognize Government's Exhibit 37?

19 A. Yes, I do.

20 Q. What is it?

21 A. This is transcript of Terry Nichols' attendance at
the
22 Lapeer Public Schools, his high school record.

23 MS. WILKINSON: Your Honor, the Government
offers

24 Exhibit 37.

25 MR. TIGAR: No objection, your Honor, and no
objection

1037

1 with respect to 38, 39, 40, 41 and 42.

2 MS. WILKINSON: Thank you. I would offer all
of those
3 exhibits, then.

4 THE COURT: All right. So it's 37 through 42
5 inclusive?

6 MS. WILKINSON: Yes, sir.

7 THE COURT: Received.

8 BY MS. WILKINSON:

9 Q. Agent Tongate, beginning with Government's Exhibit
37, does
10 this record indicate when and if Mr. Nichols graduated
from
11 high school?

12 A. Indicates he graduated in 1973. He finished tied

for 152nd

13 out of --

14 MR. TIGAR: Objection, your Honor. The
document

15 speaks for itself.

16 THE COURT: Yes.

17 BY MS. WILKINSON:

18 Q. Turning to Government's Exhibit 38, does it
indicate that

19 Mr. Nichols attended college?

20 MR. TIGAR: Same objection, your Honor.

21 THE COURT: Aren't these all going to speak
for

22 themselves? He doesn't have any independent knowledge
from

23 him, does he?

24 MS. WILKINSON: There are portions in the
remaining

25 exhibit that are really the portions we want to point
out for

1038

1 the Court to support the argument that Mr. Nichols had
prior

2 knowledge and contact of the court system and of his
rights.

3 THE COURT: You may do that in the proposed
findings.

4 MS. WILKINSON: Okay. No further questions.

5 THE COURT: All right. Mr. Tigar, do you have
any
6 questions?

7 MR. TIGAR: Yes, your Honor, very briefly.

8 CROSS-EXAMINATION

9 BY MR. TIGAR:

10 Q. Agent Tongate, we've met.

11 A. Yes.

12 Q. Now, there wasn't any police tape until about 5:20;
is that
13 correct?

14 A. Approximately an hour.

15 Q. But there were plenty of peace officers on the
scene; is
16 that correct?

17 A. There were agents and officers around the house.

18 Q. It was secure?

19 A. Yes.

20 Q. And it was secure starting when?

21 A. I believe the log indicated at 3:20 p.m. that there
were
22 agents at the location.

23 Q. And that 3:20 p.m. entry, you've satisfied yourself
is
24 accurate; correct?

25 A. Yes.

look at 1 Q. Now, with respect to these photographs, will you
that 2 No. 46C, the bedspread. You're aware, are you not,
were later 3 certain items that were left in the house by the FBI
between 4 turned over to Government agents under an arrangement
5 Mr. Nichols' counsel and the Government.
6 A. I believe that's correct.
exhibit 7 Q. And would you turn, please, in the first defense
8 book to Tab E3.
9 A. E3?
10 Q. Yes.
11 A. Yes.
12 Q. Do you see the first item on E3 -- oh, do you
recognize the 13 first two pages -- do you recognize E3 as being a
letter signed 14 by Mr. Hartzler?
15 A. Yes, I do.
16 Q. Do you recognize his signature?
17 A. Yes.
white 18 Q. Now, the first item listed on E3 is a black and

19 checkered bedspread; is that correct?

20 A. Yes, it is.

21 MS. WILKINSON: Objection, your Honor. The
document
22 is not in evidence.

23 MR. TIGAR: I understand, your Honor. I'm
laying a
24 foundation for it.

25 THE COURT: All right.

1040

1 BY MR. TIGAR:

2 Q. Can you tell me if Item 1 on E3 is the same as what
is
3 depicted in 46C?

4 A. It's not black and white.

5 Q. It's your testimony that that's not the same
bedspread?

6 A. Not from the description.

7 Q. All right. Will you look, please, at the
photographs in

8 46, A, B and C. And tell me if there is anything in
those

9 photographs that is the same as what is listed in the
letter

10 E3?

11 A. Well, there are -- the description is similar to
what I see

couldn't 12 in the photograph. Without opening the case up, I

13 tell you what was in it.

14 Q. It is similar?

15 A. Yes.

16 Q. Is that what you're saying? All right.

17 MR. TIGAR: We offer E3.

18 MS. WILKINSON: No objection, your Honor.

19 THE COURT: All right. E3 is received.

20 BY MR. TIGAR:

21 Q. Now, E3 refers to some photographs, doesn't it?

22 A. Yes.

taken? 23 Q. And what date does it say those photographs were

24 A. It says April 23.

25 Q. Now, you also -- would you turn, please, now to

1041

there? 1 Government's Exhibit 45. Do you see the blue box

2 A. Yes.

3 Q. Now, you first saw that blue box on April 22,
didn't you,

4 sir?

5 A. That's correct.

6 Q. When you saw it on April 22, did you take it from
the
7 location that is indicated on this photograph?
8 A. I don't believe so, no.
9 Q. Did anybody else take it from that location?
10 A. I don't know.
11 Q. You told us on direct examination it's a Makita
drill;
12 correct?
13 A. Yes.
14 Q. How can you tell it's a Makita drill from looking
at it in
15 the position that it's depicted in the picture?
16 A. I didn't say I looked at it in that position. I
believe I
17 stated that it was open and I saw the Makita drill.
18 Q. So when you first encountered this object on the
22nd, you
19 saw that it was a Makita drill; is that right?
20 A. Yes.
21 Q. And did you make a note of the brand name at that
time?
22 A. No.
23 Q. Did you move -- well, what was -- what was the
position of
24 the object when you first saw it?
25 A. Like that.

1 Q. Who moved it?

2 A. I believe Agent Nellis was in that area and
actually opened

3 it up. There was a discussion of several tool items,
and I

4 believe the Makita drill was part of that and that's
what I

5 recall.

6 Q. Now, had you read the Attachment A to the search
warrant

7 before you started the search?

8 A. Yes.

9 Q. And that commanded you to search things that were
covered

10 by the attachment; correct?

11 A. Yes.

12 Q. And you made a judgment call at the scene that that
wasn't

13 called for; is that correct?

14 A. We didn't take it that day.

15 Q. I understand you didn't take it that day. Now, my
question

16 goes to why. You made a judgment call that it wasn't
called

17 for; correct?

18 A. On acting in an abundance of caution to what was
proper to

19 take from that search warrant based on a discussion

with one of

20 the lab personnel who didn't feel that it could be
utilized

21 itself in making a bomb, we didn't take it.

22 Q. You made a judgment call -- did you or did you not
make a

23 judgment call that it wasn't called for by the warrant?
That's

24 my question. Yes or no?

25 A. Not called for by the warrant but that we shouldn't
take

1043

1 it.

2 Q. Now, that antitank rocket holder -- have you ever
seen

3 those before?

4 A. Yes.

5 Q. You had seen those before the 22nd?

6 A. Yes.

7 Q. You can buy them for \$79 at the gun shows?

8 A. I don't know that.

9 Q. Well, you're smiling as you say it. They're not
harmful,

10 are they?

11 A. The what? The rocket?

12 Q. The holders.

13 A. The tube is not.

14 Q. Right. Well, can -- do you know who told Randal
Rathbun,
15 the United States Attorney, that Mr. Nichols had an
antitank
16 rocket so that he could tell a Federal District judge
that he
17 had an antitank rocket?

18 A. I do not.

19 Q. You wouldn't make that mistake, would you?

20 A. I think what was read was from the description of
the
21 tube --

22 Q. It was a mistake?

23 A. No, the description was accurate.

24 Q. To say that Mr. Nichols had an antitank rocket,
that wasn't
25 accurate, was it?

1044

1 A. It was not functional or loaded.

2 Q. I'm not asking you if it was functional or loaded.
Was it
3 accurate to say that Mr. Nichols had an antitank
rocket?
4 A. He had parts of one.

5 THE COURT: Oh, come on. The answer to that

is

6 obvious, isn't it?

7 THE WITNESS: It did not fire. It could not
fire.

8 THE COURT: I'll find that it's inaccurate.

9 MR. TIGAR: Thank you, your Honor. No further
10 questions.

11 REDIRECT EXAMINATION

12 BY MS. WILKINSON:

13 Q. Agent Tongate, Mr. Tigar had you looking at Defense
Exhibit

14 E3, which was a letter from Mr. Hartzler --

15 A. Yes.

16 Q. -- providing photographs to Mr. Tigar. The
photographs

17 that you just introduced, Government's Exhibit 46A, B
and C:

18 Were these the same photographs that were accompanying
that

19 letter to Mr. Tigar?

20 A. I believe they were. There may be an exception on
the one

21 comforter from the description.

22 Q. Would you look at that description again, please.
Would

23 you read it?

24 A. A black and white checkered bedspread with a floral
pattern

25 and an additional design.

a floral 1 Q. Does the bedspread on Government's Exhibit 46 have
2 pattern?

3 A. Yes, it does. It's the black and white I don't
see.

4 Q. Agent Tongate, in preparation for this hearing, did
you and
5 other agents retrieve the letter that Mr. Hartzler sent
with
6 the photographs?

7 A. Yes.

8 Q. And were these the photographs that were attached
to the
9 letter?

10 A. It's my understanding they were.

11 Q. Turning to Government's -- to the Makita drill that
12 Mr. Tigar asked you about --

13 A. Yes.

14 Q. -- he asked you why you didn't seize it on April
22; do you
15 recall that?

16 A. Yes.

17 Q. It was later seized pursuant to a search warrant in
this
18 case, was it not?

19 A. Yes, it was.

20 Q. And was it seized because you later learned through
further

21 investigation that there had been a robbery of
explosives at

22 Martin Marietta and that the padlocks had been drilled?

23 A. Yes.

24 THE COURT: Just a moment, please.

25 MR. TIGAR: Objection to leading.

1046

1 THE COURT: Sustained. Stricken.

2 BY MS. WILKINSON:

3 Q. What was the basis for seizing the Makita drill?

4 A. On May 3?

5 Q. Yes.

6 A. Investigation had determined that there has been a
break-in

7 at the Martin Marietta in October of 1994. There were
numerous

8 explosives stolen from that Martin Marietta quarry.
From

9 investigation with the local sheriff and personnel of
Martin

10 Marietta, the FBI determined that locks had been
drilled. A

11 portion of those locks were seized as evidence by
Marion County

12 and turned over to the FBI.

13 MS. WILKINSON: Thank you.

14 THE COURT: Anything further of this witness?

15 MR. TIGAR: No, your Honor.

16 MS. WILKINSON: No, your Honor. The witness
is --

17 THE COURT: You may step down.

18 Any other witnesses for the Government?

19 MR. MACKEY: None, your Honor. Thank you.

20 THE COURT: Are you going to call any
additional

21 witnesses?

22 MR. TIGAR: No, your Honor.

23 MR. JONES: Your Honor --

24 THE COURT: Yes.

25 MR. JONES: There is a couple of outstanding
matters

1047

1 concerning the hearing and evidence, exhibits. Do you
want me

2 to address them now?

3 THE COURT: No. We'll come back after lunch
and

4 address several things.

5 One is scheduling with respect to this matter.

And as

6 I'm looking at my calendar, I'd like to have it -- the
proposed
7 findings or briefs or whatever you're agreeing to file
be filed
8 so that we can have a hearing on July 15; so obviously,
I'd
9 like to have them by July 12. It would be better if I
had them
10 on July 11, but I realize that's short. I'll ask that
they be
11 in by noon Mountain Time -- Mountain Daylight Time on
the 12th
12 of July and that we will hear arguments on the 15th of
July at
13 9.

14 I also suggest that we argue at that time the
15 Government's motion in limine with respect to
admissibility of
16 the statements under Rule 804(b)(3). And in that
regard, I'm
17 sure you would discover this in your preparation; but
since
18 briefing has already been filed on that, you can in the
19 submissions by July 12 include any additional matters
on that.
20 Some of it can be, I know, based on what has occurred
in these
21 four days, three and a half days.

22 Also, there are some -- you may have some
additional
23 law. There is a discussion of not that rule but the

circuit, 24 confrontation clause in a recent opinion from this
against 25 Tenth Circuit in Case No. 94-2217, Ralph Rodney Ernest

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case, 1 the Attorney General of New Mexico. It's a habeas

2 June 26 opinion, discusses the Sixth Amendment
requirement for

3 indicia of trustworthiness. As I say, it's not a
holding; it's

4 simply a discussion of the principle.

5 Now, when we come back, we have some other
things as

6 well, including this matter of the unsealing with
respect to

7 exhibits that are here, certain others, perhaps.

8 Do counsel now have the things that Mr. Kelley
filed

9 here about unsealing?

10 MR. TIGAR: Yes, your Honor, I do.

11 THE COURT: The Government?

12 MR. HARTZLER: Yes.

13 THE COURT: Well, I'll try to take those up.

14 Do you have them, Mr. Jones?

15 MR. JONES: I believe they're in our office,
your

16 Honor.

17 THE COURT: We'll try to take those up.

18 Also, I think that we should be talking about
oral

19 argument on the television -- the Government's motion
regarding

20 television -- closed circuit or whatever it is --
controlled

21 conditions television transmission to the Western
District of

22 Oklahoma and the oppositions to that. I'd like to deal
with

23 that on the 15th, also, oral argument on that day.

24 MR. JONES: Will that be after the argument on

25 these --

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1 THE COURT: Yes. Yes. And the argument, as
I've

2 already indicated -- I think we should do it in stages.

3 The first issue is the constitutionality of the statute
and as

4 applied here in this case, and then whether we have
further

5 proceedings depends upon that outcome. But we need to
keep

6 some things moving here, and I understand that -- I'm a
little

7 concerned about the tight schedule -- well, actually,
it isn't
8 so tight if we have this July 15. The severance
motions are
9 due August --

10 MR. NIGH: July 29.

11 MR. JONES: Your Honor, the Circuit has
ordered
12 counsel and perhaps the court to respond to --

13 THE COURT: An invitation is all I got.

14 MR. JONES: They were being cautious. I think
we
15 received something more than a invitation --

16 THE COURT: Yes.

17 MR. JONES: -- to Mr. Kelley's filing.

18 THE COURT: That's a mandamus filing you're
talking
19 about?

20 MR. JONES: Yes.

21 THE COURT: And I don't intend to respond. I
intend
22 to stand on what I've already written on the subject;
so given
23 these things, I think maybe we'll take a little time
and come
24 back at 2:00.

25 We'll be in recess till 2.

1 (Recess at 12:20 p.m.)

2 * * * * *

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16 PLAINTIFF'S EXHIBITS

Withdrawn

17 Exhibit Offered Received Refused Reserved

18 36 961 961

19 37 - 42 1036 1037

20 44 1024 1024

21 45 1025 1025

22 46A - 46C 1028 1028

23 64 1030

24 64 1035

25 73 917 917

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1 PLAINTIFF'S EXHIBITS (continued)

2 Exhibit Offered Received Refused Reserved

Withdrawn

3	76	924	924
4	77	933	933
5	78	934	934
6	79	938	939
7	81	941	941

8 DEFENDANT'S EXHIBITS

9	Exhibit	Offered	Received	Refused	Reserved
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Withdrawn

10	E2	907	907		
11	E3	1040	1040		
12	W68	905	905		
13	W72	919	920		

14	Fuel meter				
15	and box	911			

16 * * * * *

17 REPORTERS' CERTIFICATE

18 We certify that the foregoing is a correct transcript

19 from the record of proceedings in the above-entitled matter.

20 Dated at Denver, Colorado, this 29th day of June,

21 1996.

22

23

24

Paul Zuckerman

Carpenter

Bonnie

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