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1 APPEARANCES  
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Western  
3 District of Oklahoma, 210 West Park Avenue, Suite 400,  
Oklahoma  
4 City, Oklahoma, 73102, appearing for the plaintiff.  
5 LARRY MACKEY, BETH WILKINSON, GEOFFREY MEARNES,  
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6 ORENSTEIN, and AITAN GOELMAN, Special Attorneys to the  
U.S.  
7 Attorney General, 1961 Stout Street, Suite 1200,  
Denver,  
8 Colorado, 80294, appearing for the plaintiff.  
9 MICHAEL TIGAR, RONALD WOODS, ADAM THURSCHELL,  
and  
10 REID NEUREITER, Attorneys at Law, 1120 Lincoln Street,  
Suite  
11 1308, Denver, Colorado, 80203, appearing for Defendant  
Nichols.

12 \* \* \* \* \*

13 PROCEEDINGS

14 (Reconvened at 1:28 p.m.)

15 THE COURT: Be seated, please.

16 (Jury in at 1:28 p.m.)

17 THE COURT: Mr. Mackey?

18 MR. MACKEY: Your Honor, we'll call Mrs.  
Gladys Wendt.

19 THE COURTROOM DEPUTY: Raise your right hand,  
please.

20 (Gladys Wendt affirmed.)

21 THE COURTROOM DEPUTY: Would you have a seat,  
please.

22 Would you state your full name and spell your  
last

23 name for me.

24 THE WITNESS: I got to catch my breath. I've  
been

25 walking so fast.

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1 THE COURTROOM DEPUTY: Okay. Here.

2 THE WITNESS: My name is Gladys E. Wendt. And  
my

3 address -- you want it?

4 THE COURTROOM DEPUTY: No, just spell your  
last name.

5 THE WITNESS: W-E-N-D-T.

6 THE COURT: Miss Wilkinson.

7 MS. WILKINSON: Thank you, your Honor.

8 DIRECT EXAMINATION

9 BY MS. WILKINSON:

10 Q. Mrs. Wendt, you doing okay? Doing okay?

11 A. Doing fine.

12 Q. Have you had some health problems in the past?

13 A. Yeah, I've had a heart attack and I'm diabetic and  
I've had

14 cancer. I've had my share.

15 Q. Are you feeling okay today?

16 A. A little winded.

17 Q. Are you ready to tell the jury a little bit about  
yourself?

18 A. Well, I'm a farm wife.

19 Q. And how old are you?

20 A. I'm 75.

21 Q. Are you married?

22 A. Yes.

23 Q. How long have you been married?

24 A. 56 years. Going on 57 in April.

25 Q. And you said you and your husband live on a farm;  
is that

Gladys Wendt – Direct

1 right?

2 A. Yes.

3 Q. How long have you lived on a farm?

4 A. 57.

5 Q. And where is your farm?

6 A. White City.

7 Q. Is that --

8 A. About 10 miles northeast of Herington.

9 Q. You know Herington, Kansas?

10 A. Oh, yes. Lived there all my life.

11 Q. Do you have children?

12 A. Yes.

13 Q. Grand --

14 A. I had three, but I have one left. The other two  
died with

15 cancer.

16 Q. Do you have grandchildren?

17 A. Pardon?

18 Q. Do you have grandchildren?

19 A. I have eight grandchildren and four great-  
grandchildren.

20 Q. Do they all live around you in Kansas?

21 A. Well, no. Minnesota, and the rest of them live  
around

22 Kansas.

23 Q. Now, you said you lived on a farm in White City; is

that

24 right?

25 A. Yes.

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Gladys Wendt - Direct

1 Q. And you know Herington because you grew up in that  
area; is

2 that right?

3 A. Right.

4 Q. And do you have any relatives who live in  
Herington?

5 A. Oh, boy. Well, I'll just start out. My  
grandparents had

6 11 children, and you know how -- what happens then.  
The other

7 side had 14. So we're scattered all over the United  
States.

8 Q. And do some of those relatives live in Herington?

9 A. Yes.

10 Q. Some of those cousins and family members?

11 A. Yes.

12 Q. Now, you've lived on the farm for 57 years; is that  
right?

13 A. Right. Right.

14 Q. Do you know a little bit about ammonium nitrate  
fertilizer?

15 A. Yes, I do. We use it with our farming, and I  
helped my

16 husband all those years with our harvesting; and I  
helped him

17 sow wheat, and we used it as a fertilizer in our  
fertilizer

18 bin. We put the wheat in behind it and the grain  
drill, sowed

19 it with the wheat.

20 Q. Now, would you recognize ammonium nitrate  
fertilizer if you

21 saw it?

22 A. Yes, I would.

23 Q. Tell the jury what it looks like.

24 A. Well, it's like a little white -- you know what  
sleet looks

25 like. Okay. It looks like sleet, just little pearl  
pebbles.

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Gladys Wendt - Direct

1 Q. And they're white in color?

2 A. White in color. Snow white.

3 Q. You said you put it on your crops sometimes; is  
that right?

4 A. Yes; right.

5 Q. How do you put it onto your crops?

6 A. In the dry state. I use it with planting my  
potatoes. I

7 use a teaspoon with every plant, and you sprinkle  
around dry,

sowed in 8 and that's the way you do with your crops. It's all  
there. 9 with a grain drill, and it's just a little here and

10 It's not, you know, real thick or heavy.

heavy? 11 Q. Why is that? Why don't you want to put it on too

12 A. It would burn it up.

13 Q. And you've seen that happen before, I take it?

14 A. Oh, yes. Yeah.

experience 15 Q. Now, in your 50 years or a little bit more of

nitrate 16 with farming, have you ever ground up those ammonium

17 pearls --

18 A. No.

19 Q. -- before you applied it to your crops?

20 A. No, never.

21 Q. Never once?

22 A. Never.

could. 23 Q. Now, let's go back to Herington, Kansas, if we

24 A. Okay.

Herington? 25 Q. Do you have a cousin who lives in town in

1 A. Yes, I do.

2 Q. What's her name?

3 A. Geraldine Hodson.

4 Q. Has she lived there for a while?

5 A. She's living there yet. She lives right across the  
street

6 from Nichols.

7 Q. Do you know Geraldine's address?

8 A. 110 South 2nd Street.

9 Q. And Mr. Nichols is across there at 109; is that  
right?

10 A. Right.

11 Q. Do you go see your cousin Geraldine Hodson on  
occasion?

12 A. Every Friday. We get our hair done, and then we go  
to

13 coffee.

14 Q. Now, what time do you get your hair done -- when  
did you

15 say you go? I'm sorry.

16 A. Oh Friday.

17 Q. On Friday?

18 A. I go at 8:30 in the morning.

19 Q. You go every Friday at 8:30?

20 A. Every Friday.

21 Q. What do you do after that?

22 A. Then I go up to my cousin's place, pick her up. We  
go up

to hoot 23 to the drugstore, and we have coffee. That's our day  
24 and holler.  
25 Q. That's your day off from the farm?

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Gladys Wendt - Direct

1 A. You betcha.  
2 Q. You look forward to that with your cousin?  
3 A. Yes, we do. She's more of a sister than a cousin.  
parlor on 4 Q. Now, did you have an appointment at the beauty  
5 April 21, 1995?  
6 A. Yes, I did.  
7 Q. That Friday?  
8 A. Right.  
9 Q. Did you go at 8:30?  
10 A. Yes.  
11 Q. Do you remember what time you got finished?  
12 A. It was about a quarter till 10, I'd say.  
13 Q. Did you go on to Geraldine's house?  
14 A. Yes.  
15 Q. And do you remember arriving at her house?  
16 A. Yes, I do. She was busy sweeping off the  
sidewalks.  
17 Q. What did you do?

18 A. Oh, I drove up, and I was kind of waiting around  
for her to  
19 get through so we could go have coffee; but I got out  
because  
20 she said she was going to have to change her clothes,  
and so --  
21 Q. Did you park your car right there in front of her  
house?  
22 A. Right.  
23 Q. Did you notice anything across the street?  
24 A. I sure did.  
25 Q. Tell the jury what you saw.

9841

Gladys Wendt - Direct

1 A. Well, I saw Nichols -- but I never knew him, and  
that was  
2 the first time I ever saw him.  
3 Q. Why don't you just describe the man that you saw.  
What did  
4 he look like?  
5 A. Oh, medium-size guy, in jeans, and he had a light  
-- looked  
6 like light blue or light gray shirt. He had light  
hair,  
7 medium-size man, and he had a -- oh, I'd say a half-  
gallon,  
8 clear plastic container.  
9 Q. Yes, ma'am.

10 A. And he was holding it in this arm and reaching in  
like this

11 and just whoosht like that all over the lawn.

12 Q. When you say "whoosht," what are you saying, he's  
tossing

13 it?

14 A. Broadcasting; when you broadcast seed or grain or  
anything,

15 that's how you do it. You throw it with your hand and  
it goes

16 all over.

17 Q. Did you see him doing that when you drove up?

18 A. Yes, I did.

19 Q. Was he still doing that when you got out of the  
car?

20 A. Yes, I did (sic).

21 Q. Could you see what he was tossing?

22 A. Pardon?

23 Q. Could you see what he was tossing?

24 A. Talking?

25 Q. Tossing.

9842

Gladys Wendt - Direct

1 A. Oh, yes, yes, it was clear. It was the fertilizer.

2 Q. Was it in those --

3 A. Snow white in there. And it was little beads like

pearls,

4 you know.

5 Q. Did you notice how his yard looked when he was  
doing that?

6 A. Getting pretty white. I almost told him, "You're  
putting

7 too much on there; you're going to burn it up."

8 Q. Did you tell him that?

9 A. No, I didn't. I thought, Keep your mouth zipped,  
pay

10 attention. You're just an old woman, so, I didn't tell  
him

11 anything. I walked to my cousin. We went in the  
house. She

12 got ready. We come back out, and she says, "Oh, my,  
he's still

13 spreading fertilizer."

14 MR. TIGAR: Excuse me, your Honor.

15 THE COURT: Just a moment.

16 MR. TIGAR: Object to hearsay.

17 THE COURT: Sustained.

18 BY MS. WILKINSON:

19 Q. Tell us, Mrs. Wendt, what you saw -- when you came  
out of

20 the house with your cousin, what you saw. What did you  
see?

21 A. He was still spreading fertilizer, but I didn't pay  
that

22 much attention -- I didn't care. If he wanted to burn  
his

23 yard --

24 THE COURT: Please, please, just answer the  
question.

25 THE WITNESS: Okay.

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Gladys Wendt - Direct

1 THE COURT: Don't go beyond the question.

2 THE WITNESS: I'm sorry.

3 BY MS. WILKINSON:

4 Q. Mrs. Wendt, did you catch his eye at any time?

5 A. No.

6 Q. Why not?

7 A. He was busy, and so were we. We were going up to  
have

8 coffee.

9 Q. Did you notice if he went to the side of his yard?

10 A. Yes, he went to the side and down back.

11 Q. Could you see whether these fertilizer pearls that  
you

12 described were on the side of his yard?

13 A. Yes.

14 Q. Were they on both the front and the side?

15 A. Not on the other side, no. I never noticed  
anything,

16 'cause there's a cement driveway.

17 Q. Let me show you some photos, and you can tell the

jury what

18 you saw.

19 A. Okay.

20 Q. Let me show you Government's Exhibit 1778, No. 1,  
which is

21 already in evidence. Do you recognize that?

22 A. Yes, I do. That's his house.

23 Q. Is that the house across from your cousin's?

24 A. Right.

25 Q. Is that the yard where you saw the man?

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Gladys Wendt - Direct

1 A. Yes.

2 Q. All right. Now, right there in the front, do you  
see that

3 grassy area?

4 A. Yes; right.

5 Q. Could you see the grass that day?

6 A. Sure, just like it is there.

7 Q. Okay. What was on the grass?

8 A. Well, pebbles of fertilizer. White.

9 Q. What did it look like?

10 A. Well, little beads, you know.

11 Q. Was it -- was it on there heavy, or was it real  
thin?

12 A. Well, it was getting to look like snow and sleet  
mixture,

13 yes.

14 Q. Now, let me show you Government's Exhibit 1778, No.  
3.

15 THE COURT: Which number was that you just  
showed?

16 MS. WILKINSON: 1778, No. 1.

17 THE COURT: Thank you.

18 BY MS. WILKINSON:

19 Q. Do you recognize that?

20 A. Yes, I do.

21 Q. Is that one side of the house across the street?

22 A. That's the north side of the house.

23 Q. Do you see the yard there on the side?

24 A. Yes.

25 Q. Did you see that gentleman tossing ammonium nitrate  
on the

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Gladys Wendt - Direct

1 side there?

2 A. Right.

3 Q. And what did the yard look like on the side when  
you saw

4 him doing that?

5 A. Well, I didn't pay that much attention to it. I  
know it

was in 6 was just spreading, but I didn't look at it 'cause we

7 the car, going to the drugstore for our coffee.

fertilizer on 8 Q. Okay. But are you sure he was tossing the

9 the front and the side of the yard?

10 A. Yes. Yes.

evidence, 11 Q. Now, let me show you an exhibit that's not yet in

screen. The 12 Government's Exhibit 58. Just take a look at your

13 jury can't see this. Do you recognize that?

14 A. Yes.

15 Q. Is that the same house?

16 A. Yes.

17 Q. Does that also show the street?

18 A. Yes.

Government's 19 MS. WILKINSON: Your Honor, we'd offer

20 Exhibit 58.

21 MR. TIGAR: May I inquire, your Honor?

22 THE COURT: You may.

23 VOIR DIRE EXAMINATION

24 BY MR. TIGAR:

I'm one 25 Q. Good afternoon, ma'am. My name is Michael Tigar.

## Gladys Wendt - Voir Dire

1 of the lawyers appointed to help Terry Nichols.

2 A. Sure.

3 Q. That picture that you're -- that you're looking at  
there,

4 is that . . . basically the same -- that's the front of  
that

5 same house that you saw in the picture that I'm putting  
up on

6 the monitor --

7 A. Yes, it is.

8 Q. -- right now?

9 A. Yes.

10 Q. Just basically the same, it's only that it shows a  
slightly

11 different view?

12 A. Right.

13 Q. Okay. And from the leaves on the trees in the  
picture that

14 I'm showing you, does it look like the one you're  
looking at

15 was taken about the same time? See the leaves on the  
--

16 A. Yeah, I saw the leaves there.

17 Q. Yeah. And did that -- was the tree just beginning  
to leaf

18 out that day?

19 A. Yes, because it was in April.

20 Q. In April.

21 A. Right. Everything was greening up for spring.

22 MR. TIGAR: Okay. Thank you.

23 Your Honor, it appears to be virtually the  
same  
24 picture.

25 THE COURT: Well, is there some purpose in  
this?

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Gladys Wendt - Voir Dire

1 MS. WILKINSON: Yes, your Honor; it has the  
roadway,  
2 the street, part of the street, so Mrs. Wendt can use  
to  
3 describe where she was parked.

4 THE COURT: All right.

5 Any objection with that?

6 MR. TIGAR: No objection.

7 THE COURT: All right. 58 is received.

8 DIRECT EXAMINATION CONTINUED

9 BY MS. WILKINSON:

10 Q. Mrs. Wendt, do you see this picture, Government's  
Exhibit

11 48 -- 58, excuse --

12 A. Yes, I see it.

13 Q. Does that show the street?

14 A. Yes, it does.

15 Q. And see where that sticker is that says "58"?

16 A. Right.

17 Q. See right down there in the corner?

18 A. Right.

19 Q. Is Geraldine's house right across from there?

20 A. Right across, yes.

21 Q. And where were you parked?

I'm 22 A. Well, on the side of the street. When I step out,

23 close to the center of the street.

24 Q. So how far were you, if we're looking at the  
street, from

25 that yard right there in Government's Exhibit 58, in  
that

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Gladys Wendt - Direct

1 picture?

2 A. Probably from here to your desk.

3 Q. Did you have any problem seeing that man that day?

4 A. No.

5 Q. Do you remember how long it was when you first got  
out of

6 your -- when you first drove up and then you got out of  
your

7 car that you were able to look at him?

8 A. Two or three minutes, I guess. 'Cause I was  
waiting on her

9 to get the sidewalk swept up.

10 MR. TIGAR: If your Honor, please, there's no  
question

11 that she saw Mr. Nichols.

12 THE WITNESS: No. No question.

13 THE COURT: Please.

14 MR. TIGAR: We're conceding the  
identification, if

15 that's the story --

16 MS. WILKINSON: Thank you.

17 That will help, your Honor. Appreciate that.

18 BY MS. WILKINSON:

19 Q. Now, Mrs. Wendt, what time did you and your cousin  
leave,

20 do you think, to go for coffee?

21 A. Oh, gosh, probably about five till 10.

22 Q. Was Mr. Nichols still in his yard, when you left?

23 A. Right.

24 Q. What was he doing when you last saw him?

25 A. On the north side of the house, still spreading.

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Gladys Wendt - Direct

1 Q. Spreading the fertilizer prills --

2 A. Yes, ma'am.

3 Q. -- pearls?

4 A. Yes, ma'am.

5 Q. Now, you're familiar with this street --

6 A. Yeah.

7 Q. -- South 2nd Street in Herington, aren't you?

8 A. Yes.

9 Q. Are there any farms on this street?

10 A. Gosh, no.

11 MS. WILKINSON: We have no other --

12 THE WITNESS: No.

13 MS. WILKINSON: -- questions, your Honor.

14 THE COURT: Mr. Tigar, do you have some  
questions?

15 MR. TIGAR: Yes.

16 CROSS-EXAMINATION

17 BY MR. TIGAR:

18 Q. Hello again, Miss Wendt.

19 A. Yes.

20 Q. Do you need to take a sip of water before we start?

21 A. I think it would be better.

22 Q. All right. I'm going to put back up here again  
1778, that

23 picture of the front of the house. Can you see that  
now?

24 A. Yes, I can.

25 Q. Now, at the time that you saw Mr. Nichols out there  
in the

Gladys Wendt - Cross

1 front yard, there was no police tape there, was there?

2 A. No.

3 Q. That yellow tape wasn't on there?

4 A. No, no.

5 Q. When you and your cousin come back later on in the  
6 afternoon, did you see the various police agencies  
arrive and

7 so on?

8 A. No. I didn't, no.

9 Q. Okay.

10 A. 'Cause I didn't come back till that evening. When  
I come  
11 back, I couldn't get through. The street was blocked.

12 Q. When you come back, there was that police tape and  
there  
13 was all kind of cars and officers and everything;  
right?

14 A. Yes. Right.

15 Q. And then later on in the evening, you met this  
gentleman

16 right here; correct?

17 A. Right.

18 Q. And you recognize him?

19 A. Tom -- Larry Tumgate (sic).

20 Q. Larry Tumgate; right?

21 A. Yes.

22 Q. And Mr. Tumgate came over to your cousin's house  
and talked

23 to you; correct?

24 A. Right; uh-huh.

25 Q. Now, you told me a little earlier that things are  
starting

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Gladys Wendt - Cross

1 to get green around the middle of April; right?

2 A. Right. Yes.

3 Q. Now, in the city, do the trees leaf out a little  
quicker

4 than they do out in the country?

5 A. Yes, they do.

6 Q. So that these -- this leafing out that we see here,  
for

7 whatever reason, it's warmer in the city, or not,  
that's a

8 little more advanced than it would be out where you  
live in

9 White City; right?

10 A. Yes.

11 Q. Is it your observation that this is about the time  
that

12 most folks' lawns start to -- start to come on and get

green

13 off the winter; right?

14 A. Right. Yes.

15 Q. And were you able to see the other folks' lawns  
along the

16 street there, along, you know, 2nd Street?

17 A. Yeah. Some have beautiful lawns, some don't take  
care of

18 them. Yep. You notice them as you drive by.

19 Q. And as you noticed them, did you notice that this  
was the

20 time when people's lawns were starting to grow?

21 A. Right.

22 Q. And of course here's 1778, No. 2, along the side of  
23 Mr. Nichols' house; and did you notice that this row of  
flowers

24 here -- did you happen to notice that on that day?

25 A. I didn't look at that, no. I don't remember seeing  
them.

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Gladys Wendt - Cross

1 Q. But from your experience in living there, what does  
that

2 row look like there?

3 A. That's a bunch of tulips.

4 Q. Looks like tulips?

5 A. Right.

6 Q. Is that about the right season for the tulips to be  
coming  
7 up?  
8 A. Right. Right.

9 Q. Because in your part of the country, they come up  
before  
10 the other things start; is that right?  
11 A. Right. That's right. Right.

12 Q. And, now, Mr. Nichols out there in the yard, he  
had, you  
13 said, a can that he was using?  
14 A. Well, it was a plastic -- a plastic container. You  
can buy  
15 ice cream at the Dairy Queen, comes in this type of a  
16 container. And it's about a half-gallon size or just a  
tiny  
17 bit larger. And that's what --

18 Q. And after you've eaten the ice cream out of it, you  
can use  
19 it for other things; right?  
20 A. Right. I do. I put it in my freezer with fruits  
and  
21 everything.

22 Q. Because in farm country, you can recycle these  
plastic  
23 items and use them over and over again?  
24 A. Yes, you can.

25 Q. You didn't happen to see a bag, did you, like a  
fertilizer

## Gladys Wendt - Cross

1 bag?

2 A. No, I didn't.

3 Q. No. So this case what he was using, he had a  
container

4 like you'd get from the Dairy Queen; and you say he was

5 broadcasting the seed? And I'm making a motion with my  
hands.

6 That's for -- for 56 years, you want to broadcast  
something,

7 you use that kind of a motion; right?

8 A. Right.

9 Q. Because you get a nice, even pattern as you're  
throwing it

10 out?

11 A. That's right.

12 Q. And that is what you saw him doing?

13 A. Right.

14 MR. TIGAR: Thank you very much. I have no  
further

15 questions.

16 THE COURT: Anything further?

17 MS. WILKINSON: Yes.

18 REDIRECT EXAMINATION

19 BY MS. WILKINSON:

front 20 Q. Mrs. Wendt, did you ever see Mr. Nichols leave the

21 yard and go into his house, or go where you could not  
see him?

22 A. No, I didn't see him leave or come.

23 Q. Okay.

24 A. 'Cause we went in the house. When we come back, he  
was

25 still doing it.

9854

Gladys Wendt - Redirect

1 Q. Do you know whether he ever refilled that plastic  
container

2 that you saw him using?

3 A. I didn't see him refill it, no.

4 Q. So you don't know whether he refilled it or not?

5 A. Well, he pretty near had to, because that was a big  
yard.

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

7 MR. TIGAR: One more.

8 THE COURT: All right.

9 RECROSS-EXAMINATION

10 BY MR. TIGAR:

11 Q. Ma'am, do you remember if it had rained real hard  
that

12 week?

13 A. Oh, boy. It's been too long a time.

14 Q. All right. I won't tax your patience.

15 A. But there was a lot of heavy dew that morning.  
That I can

16 say because the grass sparkled with dew.

17 Q. Right. And you watch out for that in farm country;

18 right --

19 A. You betcha.

20 Q. You got cattle?

21 A. Yes, we do.

22 Q. And you can't let them out too much on the grass  
when it's

23 too wet early in the spring?

24 A. Well, they could be out there, but -- it wouldn't  
hurt

25 them, but dew won't hurt a cow.

9855

Gladys Wendt - Recross

1 Q. All right.

2 A. No.

3 Q. All right. But you were watching? You were  
watching;

4 right?

5 A. Yeah.

6 Q. To see what the weather was like. Okay.

7 MR. TIGAR: Thank you very much. No further

8 questions.

9 THE COURT: Is she excused?

10 MS. WILKINSON: Yes, your Honor.

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

12 Next, please.

13 MR. MACKEY: We'll call FBI Agent Steve Smith.

14 THE COURT: All right.

15 THE COURTROOM DEPUTY: Raise your right hand,  
please.

16 (Stephen Smith affirmed.)

17 THE COURTROOM DEPUTY: Would you have a seat,  
please.

18 Would you state your full name for the record  
and

19 spell your last name.

20 THE WITNESS: Stephen E. Smith, S-M-I-T-H.

21 THE COURTROOM DEPUTY: Thank you.

22 THE COURT: Proceed.

23 MR. MACKEY: Thank you, your Honor.

24 DIRECT EXAMINATION

25 BY MR. MACKEY:

9856

Stephen Smith - Direct

1 Q. Mr. Smith, who do you work for?

2 A. Work for the FBI.

3 Q. And how long have you worked for the FBI?

4 A. Approximately 6 1/2 years.

5 Q. On April 21, 1995, did you participate in the  
interview of

6 the defendant on trial, Terry Lynn Nichols?

7 A. Yes, sir.

8 Q. And are you prepared to describe to the jury that  
9 interview?

10 A. Yes, sir.

11 Q. Let me ask you at this time, Mr. Smith, to tell the  
jury a

12 little bit about your background. How old are you?

13 A. 31.

14 Q. All right. Recent birthday?

15 A. Yes.

16 Q. Making a calculation. Are you married?

17 A. Yes, sir. I'm married, and I have a small child.

18 Q. Where do you live?

19 A. I live in Topeka, Kansas.

20 Q. And what's your educational background?

21 A. I graduated from high school in St. Louis in 1984.  
I went

22 to Quincy College in Quincy, Illinois, from 1984 to  
1988, where

23 I played soccer and basketball for a couple years.  
Graduated

24 with a degree in accounting in 1988.

25 Q. That was in Quincy College?

9857

Stephen Smith - Direct

1 A. Quincy College in Quincy, Illinois.

2 Q. And that sits on the Mississippi?

3 A. Across from Hannibal, Missouri.

4 Q. With your accounting degree, upon graduation in  
1988, what  
5 did you do?

6 A. I started working for an accounting firm by the  
name of  
7 Arthur Andersen in St. Louis from 1988 to 1991.

8 Q. And what kinds of jobs or assignments did you have  
as an  
9 accountant for Arthur Andersen?

10 A. I worked in the audit department at Arthur Andersen  
and  
11 worked at various -- various companies doing audits on  
site for  
12 manufacturing companies, for travel companies, for oil  
I was  
13 concerns, financial institutions. When I left in 1991,  
14 in charge of audit personnel.

15 Q. And something happened to encourage you to leave  
the  
16 private sector, go to work for the FBI?

17 A. Yes, I wanted to get into law enforcement, and the

FBI was

18 it.

19 Q. When did you make that switch?

20 A. I came to the FBI in May of 1991, after working for  
21 approximately 2 1/2 years at Arthur Andersen.

22 Q. And as part of your entry training with the FBI,  
were you  
23 trained with regard to your responsibilities as a  
special  
24 agent?

25 A. Yes, sir.

9858

Stephen Smith - Direct

1 Q. And how so and for how long?

2 A. I was -- we had training up at Quantico, Virginia,  
for  
3 approximately 17 weeks prior to being sent to the  
field, and  
4 that's when I came to Topeka, Kansas, was after the  
training in  
5 Quantico.

6 Q. Have you been stationed or assigned to any other  
FBI office  
7 other than Topeka since joining the FBI in 1991?

8 A. No, sir.

9 Q. What sort of territory are you responsible for  
working out

10 of the Topeka, Kansas FBI office?

11 A. The Topeka, Kansas office has a territory  
responsibility

12 for 18 counties in northeast Kansas, including the  
towns of

13 Topeka, Lawrence, Junction City, Fort Riley, Manhattan,  
Council

14 Grove.

15 Q. And could you give the jury an overview of the  
kinds of

16 investigations you have participated in during the past  
six

17 years?

18 A. I participated in kidnapping investigation, white-  
collar-

19 crime investigation, bankruptcy-fraud investigation,  
theft of

20 the government property, bank robberies, fugitives,  
drug cases,

21 numerous, numerous cases.

22 Q. In the course of carrying out those duties, has it  
fallen

23 to you to interview witnesses or potential witnesses or

24 individuals?

25 A. Yes, sir.

9859

Stephen Smith - Direct

1 Q. And how many occasions, if you could estimate?

of 2 A. Hundreds of interviews -- I've completed hundreds  
3 interviews with witnesses.

4 Q. In your six years, how many bombing investigations  
have you 5 been a part of?

6 A. This is the only one.

7 Q. Let's direct our attention now, Agent Smith, to  
April of 8 1995 and specifically to the day of the bombing on  
April 19.

9 When were you first drawn into the investigation? When  
did you 10 first receive any assignment?

11 A. On April 19, in the late afternoon, I came back to  
Topeka, 12 found out that another agent from Salina, Kansas, had  
received 13 information about a Ryder dealership in Junction City,  
Kansas.

14 I went out to the Manhattan airport in order to meet a  
plane 15 from the FBI. And at that point on the 19th is when we  
had 16 kind of set up a room in a CID office at Fort Riley in  
order to 17 start our investigation.

18 Q. Who was the agent that you were referring to that  
first 19 responded to Elliott's?

20 A. That's Scott Crabtree from Salina.

21 Q. Where is Salina in relationship to Topeka?

22 A. Salina is approximately 85 miles west of Topeka.

23 Q. Is Junction City sort of somewhere in the middle?

24 A. Correct.

25 Q. Can you tell us what you did, then, on Thursday,  
April 20,

9860

Stephen Smith – Direct

1 relative to the bombing investigation?

2 A. Yes. In the early morning, at approximately 4:00  
a.m., I

3 met a sketch artist from the FBI lab and brought him to  
4 Junction City and actually to the command post at Fort  
Riley to

5 meet up with the witnesses from Elliott's Body Shop,  
Junction

6 City.

7 Q. On Thursday, April 20, did you spend any time at  
the

8 command post of the CID?

9 A. Yes, sir.

10 Q. And what took place there with regard to briefings  
of

11 agents like yourself on developments of the  
investigation?

12 A. We had received a briefing on the night of the 20th  
in

13 regards to what had transpired during the investigation

in

14 Kansas at that point. We had found out that an  
individual had

15 registered at the Dreamland Motel by the name of  
Timothy

16 McVeigh; that he had used an address in Michigan of  
3616 North

17 Van Dyke, in Decker, Michigan; and that this individual  
had

18 been seen with a Ryder truck the days before the  
bombing.

19 Q. Now, let's turn our attention, if we can, to  
Friday,

20 April 21. Did you report for duty that morning at the  
CID

21 headquarters?

22 A. Yes, sir. I arrived at the CID office at  
approximately

23 7:45 in the morning on the 21st.

24 Q. And in the course of that day, did you have  
occasion to go

25 to Herington, Kansas?

9861

Stephen Smith - Direct

1 A. Yes, sir.

2 Q. And why?

3 A. I went to Herington, Kansas, in the early afternoon  
in

4 order to obtain background information on Terry

Nichols.

5 Q. In the course of that morning, had you received the  
name

6 "Terry Lynn Nichols" and an address in Herington?

7 A. Yes, sir.

8 Q. And what was your specific assignment with regard  
to that

9 name and address, as of that morning?

10 A. As of that morning, I was tasked to go to  
Herington,

11 Kansas, and obtain background information on Terry  
Nichols.

12 Q. Did you do so? Did you make the drive from  
Junction City

13 to Herington?

14 A. Yes, sir. I went to -- from Junction City to  
Herington and

15 arrived shortly before 2:00 p.m. on Friday, the 21st.  
And I'd

16 been given an address of 901 South 2nd Street in  
Herington,

17 Kansas, as being Terry's -- Terry Nichols's address. I  
went by

18 901 South 2nd Street, and there was no address (sic)  
for that

19 specific address. And after that, I went to the police

20 department in order to find out any information I  
possibly

21 could on Terry Nichols.

22 Q. Agent Smith, were you by yourself, or did you have  
any

23 other agent accompany you on this trip to Herington?

24 A. I was by myself.

25 Q. Had you been to Herington, Kansas, before the  
afternoon of

9862

Stephen Smith - Direct

1 April 21?

2 A. I had not been to Herington, Kansas, before.  
Herington,

3 Kansas, is not part of the territory that I had  
responsibility

4 over.

5 Q. You told the jury that upon arriving or shortly  
thereafter,

6 you went to the police station.

7 Do you know where that is located in the city  
of

8 Herington?

9 A. Yes. The police station is at the corner of  
Broadway and

10 Holly in Herington, Kansas.

11 Q. Take a look, Agent Smith, for Government Exhibit  
1934.

12 Tell us, please, if you know what that is.

13 A. Yes, this is an aerial view of Herington, Kansas.

14 Q. And does it depict the location of the police  
station or

15 the public safety building, I should say, in Herington?

16 A. Yes, sir.

17 MR. MACKEY: Your Honor, I'd move to admit  
Government

18 Exhibit 1934.

19 MR. WOODS: No objection.

20 THE COURT: 1934 received.

21 BY MR. MACKEY:

22 Q. Agent Smith, we'll start with this particular  
exhibit, with

23 a long-range view. Can you use the pen and reach down  
below

24 your desk and circle the location, if you can, of the  
public

25 safety building?

9863

Stephen Smith - Direct

1 A. Excuse me.

2 MR. MACKEY: I'm sorry.

3 BY MR. MACKEY:

4 Q. Agent Smith, there's a pen up there with a wire on  
it. Did

5 you grab the wrong pen?

6 A. Yes.

7 Q. My fault, bad instructions. And what is it that  
you're

8 marking there?

9 A. That is the Herington Department of Public Safety.

10 Q. Which direction is the top of this photo?

11 A. Top of the photo is north.

12 Q. And can you, from this photo, locate South 2nd  
Street?

13 A. Yes, sir. South 2nd Street is this street right  
here.

14 Excuse me. It's kind of crooked.

15 Q. I apologize, Agent Smith, it may not be calibrated  
16 precisely. That's okay for purposes right now.

17 A. Excuse me.

18 Q. Let me ask you, what time did you leave the public  
safety

19 building this afternoon?

20 A. Approximately 2:15 p.m.

21 Q. And where did you go when you left?

22 A. I left the Department of Public Safety, and I drove  
by 109

23 South 2nd Street, because that is the address that the  
director

24 of the public safety had given me as a current address  
for

25 Terry Lynn Nichols.

9864

Stephen Smith – Direct

1 Q. When you drove by 109 South 2nd that Friday  
afternoon, what

2 did you see?

shell 3 A. There was a blue pickup truck with a white camper

4 parked in the driveway that afternoon.

5 Q. Do you recall approximately what time of the day it

was 6 that you first drove by and saw the vehicle you've

described? 7 A. At approximately 2:25 p.m.

8 Q. After doing so, what did you do next, Agent Smith?

9 A. I drove to a bank parking lot at 1st and Day and

met up 10 with another FBI agent.

11 Q. An who was that, by name?

12 A. Jack Foley.

13 Q. And how had you first come to know that Agent Foley

had 14 arrived in Herington?

15 A. I noticed him on 1st Street, and we met up at the

bank at 16 1st and Day.

17 Q. And approximately what time in the afternoon did

that 18 happen?

19 A. Approximately 2:25.

20 Q. That is immediately after you had driven past the

house? 21 A. That is correct.

22 Q. To your knowledge, were there any other FBI agents

in

23 Herington, as of that time?

24 A. No, there were not.

25 Q. Tell us, then, what you and Agent Foley did.

9865

Stephen Smith - Direct

of Terry 1 A. Agent Foley and I drove and set up a surveillance

the east 2 Nichols' house south of his house. We were set up on

of 3 side of the street, approximately 70 to 100 yards south

and 2nd 4 Terry Nichols' house. We were just south of McClaren

5 Street, which is this street right south of his house.

did you 6 Q. And approximately -- again, if you can -- what time

7 and Agent Foley set up stationary surveillance?

8 A. At approximately 2:30 p.m. that afternoon.

on that 9 Q. Do you recall how you and Agent Foley were dressed

10 day?

suit or tie 11 A. We were in casual clothes. We did not have any

12 on at that time.

the two of 13 Q. And describe Agent Foley's car, the car in which

14 you were seated.

Cutlass 15 A. Jack Foley -- Agent Foley had a four-door, green

16 Supreme.

17 Q. At some point shortly after starting your  
surveillance, did

Nichols 18 you notice any activity, vehicular activity at the

19 residence?

20 A. Yes. I saw a pickup truck leave the residence at  
21 approximately quarter to 3.

22 Q. Could you tell the jury what happened when that  
started?

23 A. Yes. I noticed a man carrying a small child -- the  
man who

24 later introduced himself to me as Terry Nichols --  
carrying a

25 small child, get into the driver's side of the pickup  
truck,

9866

Stephen Smith - Direct

1 and a young woman get into the passenger's side of the  
pickup

2 truck. They left the driveway and headed south on 2nd  
Street

3 in our direction.

4 Q. Now, at that point in time -- that is, when the  
vehicle

5 began moving -- to your knowledge, had any other FBI  
agents

6 arrived in Herington?

Foley and 7 A. The agents in Herington at that time were Jack  
an FBI 8 myself, and we were in Jack Foley's car; and there was  
also. 9 airplane, surveillance airplane, that was in the area  
10 And I knew that there were more agents that were  
coming.

11 Q. This is by virtue of radio communication?

12 A. Yes, sir.

13 Q. Now, after -- well, let me ask you: Did the pickup  
truck 14 drive past you and Mr. Foley?

15 A. Yes.

16 Q. Describe what happened as the truck passed you.

17 A. The truck passed us and took a right-hand turn  
heading west 18 on Sturgis, the next street south of McClaren.

19 Q. Now, as the truck passed you, did you make eye  
contact with 20 the driver or the passenger?

21 A. As the truck passed us, I averted my eyes and did  
not make 22 eye contact with the driver or the passenger.

23 Q. Once it passed your position, did you see where  
they went? 24 A. Yes. I saw that the truck had taken a right-hand  
turn or 25 headed west on Sturgis, the next street south of  
McClaren.

9867

Stephen Smith - Direct

1 Q. And what did you and Agent Foley do in response?

2 A. Agent Foley turned around the car at McClaren, and  
we

3 followed and went the same direction that the truck had  
gone.

4 Q. Can you estimate or describe at what speed the  
Nichols

5 pickup truck was moving?

6 A. The Nichols pickup truck was moving at a very slow  
rate of

7 speed that I would estimate at approximately 10 miles  
per hour.

8 Q. And what happened next, as you began to follow it?

9 A. We followed -- we continued south on 2nd Street,  
and we

10 also took a right heading west on Sturgis; and when we  
turned

11 right on Sturgis, we noticed that the pickup truck was  
taking a

12 left-hand turn on 3rd Street, heading south. We  
continued on

13 Sturgis; and as we got to the corner of Sturgis and 3rd  
Street,

14 we noticed that the vehicle was still in the same block  
of 3rd

15 Street before coming up to Trapp.

16 Q. Let's go back to the aerial, if you don't mind,

Agent

17 doesn't work,

18 that you

19 testimony.

20 went south

21 on 3rd

22

23 3rd Street

Smith, and we'll try it one more time; and if it

that's fine. Draw on the aerial, please, the route

saw the Nichols truck take up to this point in your

A. The Nichols truck left the house on 2nd Street,

on 2nd Street, and then west on Sturgis, and then south

Street.

Q. And what is the east/west street that intersects

at the point of your pen?

A. That is Trapp in Herington. And then it turns into

9868

Stephen Smith - Direct

1 Business 56 as you go out of town.

2 that

Q. Did you see which direction Mr. Nichols turned at

3 intersection of 3rd and Trapp?

4 and

A. Yes, sir. We noticed that Mr. Nichols turned right

5 down

headed west on Trapp Street, and Jack Foley and I drove

6 that

and also turned right heading west on Trapp and noticed

7 his vehicle, Terry Nichols's vehicle had turned south

on 56.

8 Q. And could you see Mr. Nichols' truck continue  
south, then,

9 on 56?

10 A. Yes. Mr. Nichols' truck continued south on 56 and  
11 proceeded for approximately a quarter mile to a  
business and

12 then took a left into a business right here.

13 Q. Do you know the name of the business that the truck  
pulled

14 into?

15 A. Yes, this is Surplus City.

16 Q. What happened then?

17 A. Jack Foley and I proceeded to drive south on -- on  
Highway

18 56 and noticed that the driver -- who later was  
introduced to

19 me as Terry Nichols -- get out of the pickup truck and  
head

20 towards the door of the Surplus City. Terry Nichols  
then

21 turned around and headed back towards his pickup truck,  
and we

22 proceeded further south on 56 to the next business and  
turned

23 around there.

24 Q. At that point in time, as you were continuing south  
on

25 Highway 56, did you see any other FBI vehicles?

Stephen Smith - Direct

1 A. Yes. As we were heading south on 56, I noticed a  
vehicle  
2 that was driven by Tom Price, who was a surveillance  
squad  
3 supervisor.

4 Q. And which direction was Agent Price headed?

5 A. Agent Price was heading north on Highway 56.

6 Q. Did you turn around and head back up north 56?

7 A. Yes. I -- we turned around at the next business  
and headed  
8 north on 56.

9 Q. And where was the pickup when you got back to  
Surplus City?

10 A. When we got back to Surplus City, the pickup truck  
was no  
11 longer there.

12 Q. Agent Smith, again circle for members of the jury  
where the  
13 police station is on this aerial and leave that mark on  
your  
14 screen for a moment.

15 A. It's like here. And I would like to make one  
correction

16 here, sir. Surplus City is down here. I had not gone  
down far

17 enough. So this is the Surplus City down here. Excuse  
me.

18 Q. All right. When you got back to the Surplus City

and

19 discovered that the pickup truck was gone, did you  
receive any

20 radio communications as to where it had been spotted?

21 A. Yes. Both Jack Foley and I heard on the radio that  
the

22 car -- the vehicle had turned around and backtracked  
and gone

23 back north on 56 into Herington and had ended up at the  
police

24 department.

25 Q. And what did you do when you learned that?

9870

Stephen Smith - Direct

1 A. We -- we turned around and went north on 56 and  
headed into

2 the police department, also.

3 Q. When you got there, did you see the Nichols pickup  
truck?

4 A. Yes. We arrived at the police department and  
noticed Terry

5 Nichols' pickup truck parked directly in front of the  
police

6 department, and there was no one in the pickup truck at  
that

7 point.

8 Q. How many other FBI vehicles did you see at the  
public

9 safety building when you arrived?

at the 10 A. There were approximately three other FBI vehicles  
11 police department when we arrived.

Government 12 MR. MACKEY: All right. We can remove

13 Exhibit 1934. Thank you.

14 BY MR. MACKEY:

15 Q. Agent Smith, when you arrived at the public safety  
16 building, did you go inside immediately?

17 A. No, sir. We waited outside.

18 Q. And why did you do so?

situation 19 A. We wanted to make sure that there was no hostage

20 or any type of problems inside.

the 21 Q. Were you ultimately satisfied that you could enter

22 building?

23 A. Yes, sir. Approximately 10 minutes later.

24 Q. And when did you first go in?

afternoon of 25 A. We went in at approximately 3:10 p.m. on the

9871

Stephen Smith - Direct

1 April 21.

2 Q. And who went in with you?

3 A. I went in, Jack Foley went in, Mike Gillispie went

in, and

4 Tom Price went in. All four of us are agents from the  
Kansas

5 City division.

6 Q. Before the group of you, individuals who you've  
identified,

7 went inside, did you talk among yourselves as to what,  
if any,

8 authority you would have to arrest Terry Nichols?

9 A. Yes. We had decided and we had also learned that  
we had no

10 arrest warrants at all for Terry Nichols at that point  
and that

11 if he wanted to go, he was free to go at any time that  
he so

12 chose.

13 Q. When you entered the police station that afternoon,  
who did

14 you first encounter?

15 A. I encountered Director Dale Kuhn, who I had spoken  
to

16 approximately an hour previous to that, and identified  
the

17 other three agents with me. And Director Kuhn told me  
that

18 Terry Nichols and his family were in the officers' room  
19 directly inside the police department and Terry Nichols  
had

20 asked Director Kuhn why his name had been mentioned on  
the

21 news. Director Kuhn had told Terry Nichols he did not  
know why

22 his name was mentioned on the news.

23 Q. And shortly thereafter, with that background, did  
you go  
24 into the waiting room where Mr. Nichols and his family  
were?

25 A. Yes, Director Kuhn brought us into the room and  
introduced

9872

Stephen Smith - Direct

1 us to Terry Nichols as FBI agents and that we were  
individuals

2 who could answer his questions.

3 Q. Do you recall the first exchange -- that is,  
4 conversation -- between either yourself and other FBI  
agents  
5 and Mr. Nichols when you entered the officers' room?

6 A. Yes, Mr. Nichols addressed us and asked us why his  
name had  
7 been mentioned in the news as being involved in the  
Oklahoma

8 City bombing, and the other agent told Mr. Nichols we  
did not

9 know why his name was mentioned in the news but that we  
had

10 some questions for him. And Terry Nichols then  
responded,

11 "Good, because I have some questions for you."

12 Q. Let me show you Government's Exhibit 1937. If you  
would

13 take the pen, when you get a free hand, and click it.

14 Recognize what's shown in the photograph  
that's marked

15 Government Exhibit 1937?

16 A. Yes, this is the officers' room that we were first  
17 introduced to Terry Nichols on the afternoon of April  
21.

18 MR. MACKEY: Your Honor, I'd move to admit  
Government

19 Exhibit 1937.

20 MR. WOODS: No objection.

21 THE COURT: Received.

22 BY MR. MACKEY:

23 Q. And is this the room in which you first met Mr.  
Nichols on

24 Friday afternoon, the 21st?

25 A. Yes, sir.

9873

Stephen Smith - Direct

1 Q. After the initial conversation you've already  
described,

2 what happened next?

3 A. We did a pat-down search of Terry Nichols, and then  
myself

4 and Agent Foley followed Terry Nichols and Director  
Kuhn down

5 to the basement of the Herington Department of Public

Safety.

itself, 6 Q. Prior to that day, had you been inside the facility

7 the public safety building?

8 A. No, sir, I had not.

9 Q. Only in the public area?

10 A. Yes, sir.

available 11 Q. Were you familiar with what interview rooms were

12 inside that building?

13 A. No, I was not.

would -- 14 Q. Who made the selection, then, of what place it

15 that interview would take place?

the 16 A. Director Kuhn decided that it would be best to have

large 17 interview conducted down in the basement where it was a

18 meeting room where there would be less interruptions.

Nichols begin 19 Q. And what time did the interview of Terry Lynn

20 on Friday, April 21?

21 A. At approximately 3:18 p.m.

22 Q. And at what time did it end?

morning. 23 A. Shortly after midnight that night, the next

after 24 Q. During that time period, between -- after 3:00 and

interview 25 midnight, were there any breaks taken during this

Stephen Smith - Direct

1 session?

2 A. Yes, there were three breaks taken, totaling  
approximately

3 two hours.

4 Q. And could you give the jury an overview as to the  
role you

5 played during the course of that interview?

6 A. Yes. I took handwritten, contemporaneous notes of  
the

7 items -- or the things that Mr. Nichols had mentioned  
during

8 the interview. I'm usually teamed up with one other  
FBI agent

9 that would do most of the questioning. I also asked  
questions

10 of Terry Nichols, and it was normally myself and one  
other

11 agent. But my main focus was to take handwritten notes  
of the

12 interview.

13 Q. Agent Smith, take a look inside your folder for  
Exhibit

14 1924.

15 What are those, please.

16 A. These are the handwritten notes that I took during  
the

17 interview of Terry Nichols.

3:18 in 18 Q. Were those the notes that you made, beginning at  
19 the afternoon until shortly after midnight on that day?

20 A. Yes, sir.

of 21 Q. And do they contain notes that you made at the time  
22 statements made by Mr. Nichols?

23 A. That's correct.

24 Q. In your presence?

25 A. Yes, sir.

9875

Stephen Smith - Direct

a part 1 Q. How many total pages of handwritten notes are made  
2 of Exhibit 1924?

3 A. There's 22 pages of handwritten notes.

do you 4 Q. Agent Smith, I mean no insult by this question, but  
5 have good handwriting?

that 6 A. I do not have good handwriting, and I've been told  
7 it's very illegible.

notes 8 Q. At my request, did you have those same handwritten  
9 typed up?

10 A. Yes, sir. We had these typed up and transcribed

into a

11 little more legible --

12 Q. Take a look at Government Exhibit 1926.

13 What is that, please.

14 A. Government Exhibit 1926 is the typewritten version  
of the  
15 handwritten notes.

16 Q. How many pages of typewritten notes are there?

17 A. 24 pages.

18 Q. Take a look finally at Government Exhibit 1923.

19 And identify that for the record.

20 A. Yes. 1923 is a report of the interview of Terry  
Nichols.

21 It's commonly referred to as an FD 302; and this is the  
report  
22 that I prepared based on my handwritten notes and  
recollection  
23 of the interview.

24 Q. Now, in addition to the notes that you took at the  
time and  
25 the 302 report you prepared later, based on those notes  
and

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Stephen Smith - Direct

1 other things, did you prepare any other documents?

2 A. Yes. I prepared an interview log, also, in  
addition to the

to what 3 302; and the interview log contained certain times as  
breaks 4 agents were in the room at that particular time, when  
5 were taken, when documents were signed.

the 6 Q. Take a look at Government Exhibit 1925. And for  
7 record, what is that?

my notes 8 A. 1925 is the interview log that I prepared based on  
9 and recollection of the interview.

10 Q. And generally speaking, what kind of information is  
11 intended to be captured on the interview log?

finish an 12 A. The time that you start an interview, when you  
documents are 13 interview, when breaks are taken, when certain  
room and 14 signed. It captures when certain agents are in the  
15 when agents leave the room.

became a part 16 Q. Agent Smith, did you prepare the entries that  
17 of Government Exhibit 1925?

18 A. Yes, sir.

19 MR. MACKEY: Your Honor, I'd move to admit  
1925.

20 MR. WOODS: May I look at --

21 THE COURT: Yeah, sure.

22 MR. WOODS: -- that, your Honor?

23 Thank you.

24 Thank you.

25 No objection, your Honor.

9877

Stephen Smith - Direct

1 THE COURT: 1925, received.

2 BY MR. MACKEY:

3 Q. Agent Smith, I'm going to have some questions for  
you about  
4 statements made during the interview. If you want to  
just  
5 leave your notes and 302 up there handy, please do so,  
so you  
6 can reach them.

7 During the course of the interview of Mr.  
Nichols on  
8 Friday afternoon, did you tape-record anything that was  
said?

9 A. No, I did not.

10 Q. And why is that?

11 A. It is not my practice to tape-record statements,  
and the  
12 FBI policy on tape-recording statements is that they  
are, as a  
13 general rule -- statements are not tape-recorded.

14 Q. Agent Smith, I want to show the jury photographs of  
the  
15 room in which the interview took place. Could you  
identify

'40. 16 Government's Exhibits 1936 -- excuse me, 1938, '39, and

17 A. 1938, 1939, and 1940 are all photographs of the  
basement 18 area where we conducted the interview.

19 Q. Do they accurately depict the interview room?

20 A. Yes, sir.

21 MR. MACKEY: Your Honor, I'd move to admit  
these three

22 exhibits, 1938, '39, and '40.

23 MR. WOODS: No objection.

24 THE COURT: They are received.

25 BY MR. MACKEY:

9878

Stephen Smith - Direct

1 Q. Agent Smith, we'll begin with 1938. Will you  
describe with 2 your own words what we're looking at.

3 A. Yes. This is in the basement of the Herington  
Department 4 of Public Safety, and this is the open meeting area  
where the 5 interview was conducted.

6 Q. Let's take a look, please, at 1939.

7 And what's shown in this photograph?

8 A. This is another part of the downtown -- I'm sorry  
-- the

9 downstairs room in the Herington Department of Public  
Safety.

10 And this is where we actually interviewed Terry  
Nichols. Terry

11 Nichols sat in the orange, two-armed chair. It was  
closest to

12 the stairwell. I sat in the middle chair, and another  
agent

13 would sit in the other -- in the black chair.

14 Q. All right. And Government Exhibit 1940?

15 A. 1940 is again in the basement of the Herington  
Department

16 of Public Safety. It's a hallway going back to the  
rest rooms

17 that were used on the breaks during the interview.

18 Q. And the stairwell to the far left in this  
photograph leads

19 to where?

20 A. This leads to the main floor of the Herington  
Department of

21 Public Safety.

22 Q. Other than yourself, who initiated the interview of

23 Mr. Nichols that Friday afternoon?

24 A. Another agent by the name of Jack Foley.

25 Q. And can you begin to tell us now what you and Agent  
Foley

1 learned from Mr. Nichols at the outset of the  
interview?

2 A. The first questions that we asked Terry Nichols  
were in

3 regards to his date of birth, which he gave as 4-1, or  
April 1,

4 1955, and his Social Security account number, which he  
gave as

5 371-68-4869.

6 Q. What, if anything, did Mr. Nichols tell you about  
his

7 Social Security number?

8 A. Terry Nichols told us that he did not use his  
Social

9 Security number anymore and he was not sure if the  
number that

10 he had given us was actually his Social Security  
number. Terry

11 Nichols also said that his Kansas driver's license  
number was a

12 computer-generated number because he did not use his  
Social

13 Security number for his driver's license.

14 Q. At the outset of the interview with you and Agent  
Foley,

15 did you ask him anything about what he did for a  
living?

16 A. Yes. We asked him what he did for a living, and he  
advised

17 that he sold military surplus items at gun shows that  
he would

18 attend. Those items would include hand shovels, axes,

surplus

19 sandbags, and the like.

20 Q. When he went through the list of items that he sold  
at gun

21 shows when first asked that afternoon, did he mention  
selling

22 ammonium nitrate?

23 A. No. Terry Nichols did not mention that he sold  
ammonium

24 nitrate at gun shows until approximately eight hours  
later,

25 approximately 11:20 p.m. that night.

9880

Stephen Smith - Direct

1 Q. During the very first minutes of the interview, Mr.  
Smith,

2 did Mr. Nichols make any statements to you as to why he  
had

3 left his home that afternoon?

4 A. Yes. Terry Nichols said that he had heard on a  
radio

5 broadcast his name and his brother's name in relation  
to the

6 Oklahoma City bombing as being involved in the bombing,  
said he

7 came home and heard that another individual that he  
believed

8 was Timothy McVeigh had been arrested for the bombing.  
He

he did 9 advised that he left his house that afternoon because  
10 not want another Waco.

anybody 11 Q. At that point in the interview, Agent Smith, had  
12 else used the word "Waco"?

13 A. No. No, sir.

Foley, did 14 Q. Again, early in the interview with you and Agent

had 15 Mr. Nichols say anything as to what he'd did -- what he  
16 done after he left the house?

his house 17 A. Yes. Mr. Nichols had advised us that he had left

his 18 and that he had gone to the Surplus City, gotten out of

being 19 truck at the Surplus City, had a feeling that he was

police 20 followed, got back into his truck, and had come to the

21 department.

address any 22 Q. Again, early in the interview, did Mr. Nichols

23 questions to you and Agent Foley?

the same 24 A. Yes. Terry Nichols asked Agent Foley and myself

name 25 question he had asked us upstairs in regards to why his

Stephen Smith - Direct

1 had been mentioned in the news as being involved in the  
2 Oklahoma City bombing and that he could not understand  
why his  
3 name had been -- had been mentioned as being involved.

4 Q. Now, when you first met Mr. Nichols upstairs, in  
the course

5 of that first conversation, did he express a  
willingness to sit

6 down and answer questions?

7 A. Yes, sir. He did. In reference to that he said  
that he

8 had some questions for us and that he would be willing  
to come

9 downstairs and talk with us.

10 Q. Early in the interview, did there come a time when  
you and

11 Agent Foley told Mr. Nichols that he didn't have to  
talk to

12 you?

13 A. Yes, sir. Agent Foley Mirandized Terry Nichols  
within 10

14 minutes of us going downstairs. And we told him that  
he was

15 free to go and that he did not have to talk to us.

16 Q. Do you recall what statement Mr. Nichols had made  
17 immediately before the decision was made to advise him  
of his

18 rights?

19 A. Yes. Right prior to us advising him of his rights,  
he had

20 mentioned that Timothy McVeigh had stayed with him at a  
-- at  
21 his -- at his brother's farm in Decker, Michigan, with  
an  
22 address of 3616 North Van Dyke in Decker, Michigan.

23 Q. Did you recognize the Decker address that Mr.  
Nichols gave  
24 you?

25 A. I recognized the address that Terry Nichols had  
given us as

9882

Stephen Smith - Direct

1 being the same address that Timothy McVeigh had used to  
2 register at the Dreamland Motel on the Friday before  
the  
3 bombing.

4 Q. Would you describe to the jury how the Miranda  
warnings  
5 were administered to Mr. Nichols?

6 A. Yes. The Miranda warnings were administered to Mr.  
Nichols  
7 orally and in writing. At approximately 3:26, Jack  
Foley, the  
8 other agent, gave the form, the FD 395 advice-of-rights  
form,  
9 to Terry Nichols and told Terry Nichols to read the  
form out  
10 loud to us.

11 Terry Nichols read the form out loud to us and  
stopped

12 after every -- every sentence or paragraph and reviewed  
what he

13 had just read and then handed us the form back at  
approximately

14 3:31 p.m.

15 Q. And is there a place on the form -- excuse me --  
for a

16 person who has read it to sign it and acknowledge  
having read

17 it?

18 A. Yes, there's a place on that form for that  
acknowledgment.

19 Q. Did Mr. Nichols sign the form that you read to him  
that

20 afternoon?

21 A. No. Mr. Nichols did not sign the advice-of-rights  
form.

22 And he -- the reason he gave for not signing the form  
was that

23 there was -- the word "interrogation" at the top of the  
form

24 and that he did not like the word "interrogation"  
because it

25 reminded him of the Nazis.

9883

Stephen Smith - Direct

1 Q. At that point in the interview, had anyone used the  
term

2 "Nazis"?

3 A. No, sir.

4 Q. Let me show you, please, if you'll look in your  
folder,

5 Exhibit 1928.

6 Can you identify for the record what that  
document is?

7 A. Yes. This is the advice-of-rights form that we  
gave Terry

8 Nichols for him to read, and this is the form that we  
signed in

9 Terry Nichols' presence that he had read.

10 MR. MACKEY: Your Honor, I'd move to admit  
Government

11 Exhibit 1928.

12 MR. WOODS: No objection.

13 THE COURT: Received.

14 BY MR. MACKEY:

15 Q. Let's zoom in, if we can, at the very top of this  
document,

16 1928. And read into the record, please, the title of  
that

17 particular form.

18 A. "Interrogation, Advice of Rights."

19 Q. And immediately below that?

20 A. "Your rights."

21 Q. Now, there's some handwriting below that on the  
right-hand

22 side of the document. Is that your handwriting?

23 A. This handwriting is Jack Foley's handwriting,  
showing the  
24 place, date, and time of the administration of the  
rights form.

25 Q. And what time is shown?

9884

Stephen Smith - Direct

1 A. 3:26 p.m.

2 Q. And what time is that to represent?

3 A. That represents the time that we started the  
advice-  
4 of-rights form, and that's when we gave the form to  
Terry  
5 Nichols for him to read out loud.

6 Q. All right. If we can zoom in on the portion  
containing the  
7 rights themselves.

8 Mr. Smith, would you read into the record the  
rights  
9 that were advised to Mr. Nichols on that Friday  
afternoon.

10 A. "Before we ask you any questions, you must  
understand your  
11 rights. You have the right to remain silent. Anything  
you say  
12 can be used against you in court. You have the right  
to talk  
13 to a lawyer for advice before we ask you any questions  
and to

14 have a lawyer with you during questioning. If you  
can't afford  
15 a lawyer, one will be appointed for you before any  
questioning,  
16 if you wish. If you decide to answer questions now  
without a  
17 lawyer present, you will still have the right to stop  
answering  
18 anytime. You also have the right to stop answering at  
any time  
19 until you talk to a lawyer."

20 Q. During the course of that afternoon, did you  
witness

21 Mr. Nichols read those same words out loud?

22 A. Yes, sir.

23 Q. And at the bottom of the form, under the title  
"Waiver of

24 Rights" -- if we could zoom that up, please. And  
please, read

25 that into the record.

9885

Stephen Smith - Direct

1 A. "Waiver of Rights. I have read this statement of  
my

2 rights, and I understand what my rights are. I'm  
willing to

3 make a statement and answer questions. I do not want a  
lawyer

4 at this time. I understand and know what I am doing.

No

5 promises or threats have been made to me and no  
pressure or

6 coercion of any kind has been used against me."

7 Q. And there's a blank for the signature?

8 A. Yes, there's a blank --

9 Q. Or a line, I should say?

10 A. Yes, sir.

11 Q. And on this form, Exhibit 1928, there's -- there is  
no

12 signature?

13 A. That's correct.

14 Q. To the left, tell us what signatures appear there  
and why.

15 A. That is for Special Agent Jack Foley, and my  
signature is

16 below that. We were the two agents that had  
administered the

17 rights of Terry Nichols.

18 Q. And the time that's reflected at the bottom of this  
form is

19 what?

20 A. 3:31 is the time that Terry Nichols handed the form  
back to

21 us for our signature after he had read the form.

22 Q. And did you make the handwritten notation that  
appears then

23 below that entry?

24 A. Yes. At approximately 3:43, I made the notation  
that

25 Nichols acknowledged that he understood his  
constitutional

9886

Stephen Smith - Direct

1 rights but refused to sign this FD 395 form.

2 Q. After reading the form to Mr. Nichols and after his  
review

3 in your presence, did he make any statement to you as  
to

4 whether in fact he understood his rights?

5 A. Yes. He advised that he understood his rights and  
that he

6 wished to talk to the agents -- to myself and Jack  
Foley but

7 that he just did not want to sign the form.

8 Q. And how did you and Agent Foley handle that  
situation?

9 A. We told Terry Nichols that this was not imperative  
or -- it

10 was not imperative for him to sign the form. We wanted  
to make

11 sure that he understood his rights that he did not have  
to

12 speak with us and that he was free to go at that time.

13 Q. And did ultimately thereafter Mr. Nichols begin  
making

14 additional statements to you and Agent Foley?

15 A. Yes. At approximately 3:43, we started the  
interview

16 again.

reading 17 Q. What took place between 3:31 when you had finished

thereabouts, 18 the form through with Mr. Nichols and 3:43, or

19 when the interview resumed?

20 A. Terry Nichols was deciding whether he wanted to  
speak with

21 us. And he advised that he understood his rights and  
that he

22 did wish to speak with us; and at that point, it took  
23 approximately 10 to 12 minutes for him to decide that  
he wanted

24 to continue the interview but he just did not want to  
sign the

25 form.

9887

Stephen Smith - Direct

1 Q. And ultimately, at 3:43, were you satisfied that he  
2 understood his rights and was prepared and willing to  
make  
3 additional statements?

4 A. Yes, and he fully said that he did understand his  
rights

5 and that he did want to speak with us.

6 Q. How long did you and Agent Foley continue to  
interview

7 Mr. Nichols; that is, just the two of you?

next half 8 A. We interviewed Mr. Nichols for approximately the  
agents 9 an hour, from 3:43 p.m. until 4:12 p.m. before other  
10 arrived.

4? 11 Q. By names, what other agents arrived shortly after

12 A. Agents Scott Crabtree and Dan Jablonski.

yourself 13 Q. Before the other two agents arrived and just with

statements to the 14 and Agent Foley present, did Mr. Nichols make

15 two of you about when he had last seen Tim McVeigh?

after 16 A. Yes. The first question we asked Mr. Terry Nichols

McVeigh. 17 the advice of rights was when he had last seen Tim

Tim 18 Terry Nichols advised that he had last seen

eyes, I did 19 McVeigh on Sunday. And he immediately said, "In my

things 20 not do anything wrong; but I see how lawyers can turn

anything 21 around." Terry Nichols then said he did not know

hesitant to 22 about the bombing before it happened and he was

23 talk because of the way lawyers can turn stuff around.

the jury: 24 Q. These comments that you have made or described to

25 Those were from Mr. Nichols?

9888

Stephen Smith - Direct

1 A. Yes, those are comments that Mr. Nichols made.

2 Q. In conjunction to his response to your first  
question,

3 "When did you last see Tim McVeigh?"

4 A. That's correct.

5 Q. Early in that interview with you and Agent Foley,  
did you

6 ask him if he had any knowledge as to where Tim McVeigh  
had

7 stayed?

8 A. Our next question was in regards to where Timothy  
9 McVeigh -- if he had seen Timothy McVeigh recently at  
any motel

10 in Junction City or knew where he was staying. Terry  
Nichols

11 responded that he did not know; that he had not seen  
Timothy

12 McVeigh in any motel in Junction City.

13 Q. Agent Smith, why did you ask Terry Nichols that  
question?

14 A. We asked Terry Nichols that question because we had  
reason

15 to believe that Timothy McVeigh had checked into the  
Dreamland

16 Motel on the Friday before the bombing, April 14, until  
the day

17 before the bombing, on April 18.

18 Q. Do you recall what subject matter you next asked  
19 Mr. Nichols about?

20 A. We asked Mr. Nichols if he knew anything about  
Timothy  
21 McVeigh having a Ryder truck.

22 Q. And why did you ask that question?

23 A. We asked that question because we knew that an  
individual

24 had seen Timothy McVeigh at the Dreamland Motel with a  
Ryder

25 truck prior to the bombing and we also knew that the  
bomb truck

9889

Stephen Smith - Direct

1 had been rented from Elliott's Body Shop, a short  
distance away

2 in Junction City, from the Dreamland Motel.

3 Q. And how did Mr. Nichols respond when asked about  
seeing

4 Mr. McVeigh with a Ryder truck?

5 A. He said that he had not seen McVeigh -- seen Mr.  
McVeigh

6 with a Ryder truck.

7 Q. Do you recall what Mr. Nichols next told you and  
Agent

8 Foley?

9 A. Yes. The next thing that he told us was that he  
had seen

10 McVeigh in Oklahoma City on Sunday.

11 Q. And what other details, if any, did he give you at  
that

12 point in the interview about having seen Mr. McVeigh in  
13 Oklahoma City?

14 A. He said that he had -- that he had sent a -- I'm  
sorry. He

15 had gone to Las Vegas the previous November and dropped  
a TV

16 set off to his wife and his son and that two months  
prior to

17 the bombing, which would have been February of 1995, he  
had

18 sent a letter to Timothy McVeigh requesting that if he  
was in

19 the Las Vegas area, to come and pick that TV set up.  
He said

20 that he had received a call on Easter Sunday from  
Timothy

21 McVeigh asking him to come down to Oklahoma City  
because he was

22 experiencing car problems and that if he didn't come  
down that

23 he could not pick up his TV set.

24 Q. Agent Smith, did Mr. Nichols describe that phone  
call as

25 one he expected, or was a surprise?

9890

Stephen Smith - Direct

call  
the  
call he  
a call

1 A. No, he said that he had not expected that phone  
2 because he had had no contact with Tim McVeigh except  
3 letter that he had sent him in February of 1995, so the  
4 received on April 16, Sunday, Easter Sunday of 1995 was  
5 that he was not expecting from Tim McVeigh.

about

6 Q. What else did Mr. Nichols tell you and Agent Foley  
7 the content of the phone call on Easter Sunday?

that he

8 A. Mr. Nichols told us that Mr. McVeigh had told him  
9 should come down to Oklahoma City and gave him specific  
10 directions to possibly come down 8th Street and told us  
that

Nichols that

11 Mr. McVeigh -- I'm sorry -- Mr. McVeigh told Terry  
12 he should drive around the downtown area in Oklahoma  
City and  
13 that Mr. McVeigh would find Terry Nichols.

Foley,

14 Q. Early in the interview with just yourself and Agent  
15 did Mr. Nichols tell you what he did after he got that  
phone  
16 call?

picked

17 A. Yes. He told us he went down to Oklahoma City and  
18 up Timothy McVeigh and his TV.

19 Q. Did he tell you early in the interview what he did

after

20 doing so?

drove back 21 A. Yes. He said he picked up Timothy McVeigh and

22 to Junction City, Kansas.

23 Q. Where in Junction City?

at a 24 A. He said he had driven him back and dropped him off

25 closed McDonald's in Junction City.

9891

Stephen Smith - Direct

Easter 1 Q. Do you recall what time of day or night it was that  
2 Mr. Nichols told you had dropped Mr. McVeigh off on  
3 Sunday?

or early 4 A. He said that it was late at night on Easter Sunday  
5 the next morning.

any 6 Q. Again, early in the interview, did Mr. Nichols make  
7 statements about Mr. McVeigh's car?

that he 8 A. Yes, he said that Mr. McVeigh said that the car  
9 bought was cheap and that he did not know if it was

car that 10 fixing. And Terry Nichols said that he felt that the

11 Timothy McVeigh had in Oklahoma City, he was leaving in

12 Oklahoma City.

13 Q. And what, if any, statement did he make at that  
point in  
14 Junction the interview about where Mr. McVeigh was staying in  
15 City?  
16 A. He said that he did not know where Mr. McVeigh was  
staying  
17 City. but that he was going to call a friend in Junction  
18 Q. Did you and Agent Foley ask Mr. Nichols what it was  
that he  
19 and Mr. McVeigh had talked about during the drive back  
from  
20 Oklahoma City to Junction City?  
21 A. Yes. We asked Mr. Nichols what they had talked  
about. He  
22 and said that Mr. McVeigh had been vague on a lot of things  
23 that he could not recall many specifics of the  
conversation  
24 they had from Oklahoma City to Junction City.  
25 Q. Did the word or subject "Waco" come up again early  
in the

9892

Stephen Smith - Direct

1 interview with just yourself and Agent Foley present?  
2 A. Yes. Terry Nichols said that when he goes to gun  
shows, he

and the 3 has people who come by his table who say that the FBI  
them say 4 ATF murdered all the people in Waco and that he lets  
that 5 it. He also said that people come by his table and say  
sometimes he 6 the government is getting out of hand and that  
7 feels that way, also.

words that 8 Q. The comment that "I let them say that": Is that  
9 Nichols told you and Agent Foley?

10 A. Yes, sir.

federal law 11 Q. And that was in reference to complaints about  
12 enforcement responsibility for events at Waco?

13 A. That's correct.

did you or 14 Q. When Mr. Nichols made these comments about Waco,  
15 Agent Foley ask any follow-up questions?

McVeigh had 16 A. Yes. We asked Terry Nichols if he and Timothy  
Junction 17 discussed Waco on the trip up from Oklahoma City to  
McVeigh 18 City. Terry Nichols stated that it's possible that  
19 mentioned Waco but that he could not recall any  
specifics.

and Agent 20 Q. Again, early in the interview with just yourself  
21 Foley, did Mr. Nichols make any additional statements

about

in 22 when he had last seen McVeigh prior to picking him up

23 Oklahoma City on Easter Sunday?

he had 24 A. Yes. He had said that McVeigh's vehicle in -- that

that he 25 felt was left in Oklahoma City was an older model and

9893

Stephen Smith - Direct

he had 1 didn't know if it was worth fixing. In that reference

three 2 mentioned that Timothy McVeigh had purchased two or

time he 3 vehicles since the last time he had met him, the last

4 had seen him. That was in November of 1994.

Foley, he 5 Q. So early in the interview with yourself and Agent

6 represented to you that he had last seen Mr. McVeigh in  
7 November of 1994?

8 A. That's correct.

or 9 Q. And that was in connection, again, with what topic

10 subject matter?

11 A. In topic of him -- Timothy McVeigh's vehicles.

other 12 Q. At that point in the interview, were you joined by

13 agents?  
14 A. Yes. At approximately 4:12 p.m., Agents Jablonski  
and  
15 Crabtree entered the interview room.  
16 Q. Tell the jury, please, what happened when they  
arrived.  
17 A. They knocked on the door and came in. I introduced  
both  
18 Agents Crabtree and Jablonski to Terry Nichols, and I  
took the  
19 initiative to tell Terry Nichols what we would do is we  
would  
20 review the notes that we had already talked about with  
the new  
21 agents so the new agents would know what we had  
previously  
22 discussed during the interview.  
23 Q. So before you did so, you told Mr. Nichols of your  
intent  
24 to do so?  
25 A. Yes, sir.

9894

Stephen Smith - Direct

1 Q. And did Mr. Nichols say anything at that point in  
time when  
2 you told him you would be reading from your notes and  
briefing  
3 the newly arrived agents?  
4 A. Yes. I told Terry Nichols that I would be just

reading my

5 notes of things that he had already told us and told  
him to pay

6 close attention as to what I was reading to make sure  
that the

7 notes I had taken were accurate and that they had  
reflected

8 what he had told us already.

9 Q. And what did he say?

10 A. He said that he would do that, and then I did read  
them out

11 loud to the new agents.

12 Q. Before doing so, at any point in that time, did Mr.  
Nichols

13 make any request about the notes?

14 A. Yes. He -- Mr. Nichols asked if he could get a  
copy of the

15 notes at that point.

16 Q. Now, of the hundreds of interviews you had  
conducted to

17 that point in time, had anyone else asked you for  
copies of

18 your notes of the interview?

19 A. No. No one has ever asked for copies of my notes.

20 Q. Describe what you did with the newly arrived  
agents.

21 A. I reviewed my notes that we had already gone over,  
and I

22 just read the notes as they -- as I had taken them; and  
I told

23 Terry Nichols to stop me at any point and tell me if I

had made

24 any inaccurate note-taking or if he wanted to make any  
25 additions to the notes that I had -- I had prepared.

9895

Stephen Smith - Direct

notes out 1 Q. And what was Mr. Nichols doing as you read your  
2 loud?

reading my 3 A. Mr. Nichols was paying close attention as I was  
4 notes and stopped me and added things for information  
that he 5 had previously omitted during the interview.

point in 6 Q. At any point in the review of your notes to that  
7 the interview, did he tell you you had written  
something down 8 wrong as to what he had said?

down 9 A. No. He said that I had -- everything I had written  
10 was correct. He had just made additional comments to  
things 11 that he had omitted, but anything that I had written  
down was 12 accurate and he had -- he said there was nothing in  
there that 13 was not accurate.

and Agent 14 Q. One event that had taken place with just yourself

15 Foley was the Miranda warnings; is that correct?

16 A. That's correct.

17 Q. Did you go over that again with Mr. Nichols and the  
two new  
18 agents?

19 A. Yes, we did. And Agent Jablonski reiterated with  
Terry

20 Nichols that he wanted to make sure that Terry Nichols  
21 understood his rights; that he was free to go; and that  
he did  
22 not have to speak with us at that time.

23 Q. Approximately what time was it, then, that you had  
finished  
24 the review of the notes to that point in time in the  
interview?

25 A. Approximately 3:45.

9896

Stephen Smith - Direct

1 Q. And what time was it that you completed the review  
of the  
2 notes?

3 A. I'm sorry, sir. Agents Foley and Jablonski came in  
at  
4 4:12. So we completed the review of the notes at  
approximately

5 4:25 p.m.

6 Q. How long did the four agents remain in the room  
with

7 Mr. Nichols?

8 A. The four agents were in the room until  
approximately

9 4:53 p.m. So for another half an hour approximately.

10 Q. Could you describe to the jury what happened during  
the  
11 time that there were four FBI agents present?

12 A. We reviewed the notes, as I mentioned; and then we  
did

13 discussion about getting some consent searches for  
Terry

14 Nichols's house and his truck.

15 Q. And who initiated that subject, if you recall?

16 A. That subject was initiated by Dan Jablonski, an  
agent who

17 came in at 4:12 in the afternoon. Agent Jablonski  
brought in

18 the form with him, the consent search form, and  
initiated the

19 conversation with Terry Nichols.

20 Agent Jablonski mentioned to Terry Nichols  
that we

21 would like to get consent searches for his house and  
his truck;

22 and when he was mentioning this to Terry Nichols, he  
passed me

23 the form to fill out. And I filled out an address and  
dated

24 the form and handed it back to Agent Jablonski.

25 Agent Jablonski then read the form out loud to  
Terry

9897

Stephen Smith - Direct

could  
Terry  
that time  
his house

1 Nichols, placing it in front of Terry Nichols so he  
2 review it. Agent Jablonski then passed the form to  
3 Nichols for his review, and Terry Nichols read it at  
4 and expressed a willingness to consent to searches of  
5 and his truck.

the form?

6 Q. And did he represent that consent by signature on

approximately

7 A. Yes. Terry Nichols signed the form at  
8 4:34 p.m., acknowledging that he wanted -- that he  
9 would allow  
10 us to have consent to search his house and his truck.

11 Q. Take a look now at Government Exhibit 1929.

12 What is that, please.

out a  
was

13 A. This is the consent-to-search form that I filled  
14 portion of, Dan Jablonski filled out a portion of, and  
15 signed by Terry Nichols in our presence.

Exhibit

16 MR. MACKEY: Your Honor, I'd move to admit  
17 1929.

17 MR. WOODS: May I take the witness on a short  
voir

18 dire, your Honor?

19 THE COURT: Yes, you may.

20 VOIR DIRE EXAMINATION

21 BY MR. WOODS:

22 Q. Agent Smith, my name is Ron Woods. I'm one of the  
lawyers

23 that was appointed to represent Terry Nichols.

24 You and I have never met, have we?

25 A. No, sir.

9898

Stephen Smith – Voir Dire

1 Q. When you gave the consent form to Terry Nichols to  
sign

2 concerning the search of his car and house, he asked  
you,

3 didn't he, if he or his wife could be present at that  
search?

4 A. Yes, sir.

5 Q. And you told him yes?

6 A. Yes, sir.

7 Q. You didn't allow him to be present, did you?

8 A. No, sir.

9 MR. WOODS: I object to the admission of the  
consent

10 form, your Honor.

11 THE COURT: What's the purpose of the offer?

12 MR. MACKEY: To document an event during the  
course of  
13 the interview.

14 THE COURT: Objection sustained.

15 MR. MACKEY: All right.

16 DIRECT EXAMINATION CONTINUED

17 BY MR. MACKEY:

18 Q. After the consent form was reviewed and executed by  
19 Mr. Nichols, Agent Smith, did the subject matter of the  
actual  
20 entry into the home come up?

21 A. Yes. We asked Terry Nichols if there would be any  
bomb-  
22 making or bomb-building materials in his house, and he  
said no.  
23 Terry Nichols advised that he wanted to make sure that  
the  
24 searching agents who were conducting the search could  
tell the  
25 difference between cleaning solvents and bomb-building

9899

Stephen Smith - Direct

1 materials.

2 Q. Now, in the course of the interview with Mr.  
Nichols that

3 followed, after that statement, did he repeat that

statement?

4 A. Yes. A couple hours later, the issue of the  
consent search

5 came up again; and Terry Nichols advised that he wanted  
-- he

6 reiterated that he wanted to make sure that the  
searching

7 agents could tell the difference between innocent items  
and

8 bomb-building materials.

9 The issue came up again after our last break,  
when we

10 asked Terry Nichols about any storage lockers under his

11 control, and he mentioned a storage locker in Council  
Grove,

12 Kansas, where he had placed his belongings from  
approximately

13 October of 1994 until March of 1995. He then said that  
there

14 was nothing in his car or truck that could even be  
construed as

15 a bomb-building material.

16 Q. Did Mr. Nichols at any point describe or define  
"household

17 cleaning solvents"?

18 A. No, sir.

19 Q. Just used that term?

20 A. That's a term he used.

21 Q. On that afternoon, were you aware of in fact what  
was

22 inside the Nichols residence on South 2nd Street?

23 A. No, sir.

the  
24 Q. At what point did Agents Foley and Jablonski leave  
25 interview?

9900

Stephen Smith - Direct

1 A. They left the interview at approximately 4:53 p.m.

and Agent  
2 Q. And after that point, was it just yourself, then,  
3 Crabtree?

the rest  
4 A. Yes, it was Agent Crabtree and myself throughout  
5 of the interview, from approximately 4:53 p.m. until  
6 approximately 12:11 a.m. We took three breaks in  
between there

with  
7 totaling two hours, so Agents Crabtree and myself were  
8 Terry Nichols for approximately five-and-a-quarter  
hours that  
9 evening.

10 Q. And what was the role that Agent Crabtree took on?

the  
11 A. Agent Crabtree asked most of the questions during  
12 interview, and I kept up with my contemporaneous notes  
of  
13 statements that Terry Nichols had given us.

Nichols  
14 Q. Approximately what portion of the statement by Mr.

15 had taken place before Agent Crabtree arrived?  
16 A. The -- we had been questioning Terry Nichols for  
less than  
17 an hour, and I had taken three pages of notes of things  
that  
18 Terry Nichols had told us; so the majority of the  
interview was  
19 conducted by Agent Jab -- Agent Crabtree and myself.  
20 Q. Agent Smith, during the course of the interview  
with  
21 yourself and Special Agent Crabtree and Mr. Nichols,  
can you  
22 describe your demeanor and manner?  
23 A. My demeanor is like it is today. I would just ask  
24 questions in a very conversational tone, and I was very  
25 professional.

9901

Stephen Smith - Direct

1 Q. How about Agent Crabtree?  
2 A. Agent Crabtree was the same way, he was very  
conversational  
3 and professional. Neither of us were confrontational  
in any  
4 manner.  
5 Q. How about Mr. Nichols' manner and demeanor?  
6 A. Mr. Nichols' manner and demeanor were very calm and  
7 deliberate throughout the interview.

8 Q. Did he ever show any outward signs of stress?

9 A. No.

10 Q. Did he ever complain about any of the questions  
that were

11 directed to him?

12 A. No, sir.

13 Q. About the length of interview?

14 A. No, sir.

15 Q. About the manner in which questions were asked?

16 A. No, sir.

17 Q. In the course of the interview with yourself and  
Agent

18 Crabtree, did you ask Mr. Nichols for names and  
information of

19 associates of Tim McVeigh?

20 A. Yes, sir.

21 Q. And did the name "Fortier" come up?

22 A. Yes, sir.

23 Q. Describe what you learned from Mr. Nichols about  
the name

24 "Fortier."

25 A. Mr. Nichols gave us the last name of "Fortier" and  
that

9902

Stephen Smith - Direct

1 this individual was a white male. Gave us no further

2 description of Fort -- Mr. Fortier.

3 Q. What information did you ask Mr. Nichols of or  
about that  
4 person?

5 A. We asked Mr. Nichols about any information -- all  
the  
6 individuals he was giving information on, we wanted to  
know  
7 anything about that individual that -- their first  
name, their  
8 last name, how to contact them, how either one of them  
knew  
9 these individuals, where they lived.

10 Q. And the only information Mr. Nichols gave you was  
the last  
11 name "Fortier" and the state of Arizona?

12 A. Yes. Not initially -- initially he did not give us  
where  
13 Mr. Fortier lived. But later in the interview, he said  
that  
14 Mr. McVeigh would still be in contact with Mr. Fortier  
and that  
15 Mr. Fortier had lived in Arizona.

16 Q. Now, in the course of the interview with you and  
Agent  
17 Crabtree, did you go back over the statements  
concerning his  
18 trip to Oklahoma City on Easter Sunday?

19 A. Yes, sir.

20 Q. Could you tell us what additional details you  
learned.

21 A. Yes. Mr. Nichols had mentioned that he had  
received a call  
22 on April 16 and that from -- from Timothy McVeigh who  
said that  
23 he had experienced car problems in Oklahoma City and  
that he  
24 needed to go down to Oklahoma City to pick up his TV or  
25 Mr. McVeigh would not be able to do that.

9903

Stephen Smith - Direct

1 He said that Mr. McVeigh had called and said  
that he  
2 was going to visit some relatives on the East Coast and  
that he  
3 would not be able to drop the TV set off, so he would  
have to  
4 come down and pick him up.

5 Q. Now, in the interview or the portion of the  
interview with  
6 you and Agent Crabtree, did he give a different date as  
to when  
7 he had last seen Mr. McVeigh?

8 A. Yes. During the note recap with the four agents in  
the  
9 room, he had mentioned that the last time he had seen  
10 Mr. McVeigh was either November of 1994 or January of  
1995.

11 Q. With Agent Crabtree, did you discuss again the  
specifics of

12 the letter that Mr. Nichols had directed to Tim  
McVeigh?  
13 A. Yes. Mr. Nichols said that the letter that he had  
sent to  
14 Mr. McVeigh two months prior to the bombing, which  
would have  
15 been in February of 1995 -- he said that he had  
requested that  
16 McVeigh pick up a TV set from his ex-wife in Las Vegas,  
if he  
17 happened to be in the area.

18 Q. And based on what Mr. Nichols told you, was it  
clear as to  
19 what Mr. McVeigh was to do -- or Mr. McVeigh was to do  
with the  
20 TV if he picked it up?

21 A. Yes, Mr. McVeigh was to bring the TV set to Terry  
Nichols.

22 Q. Did Terry Nichols tell you whether Tim McVeigh ever  
23 responded to that letter?

24 A. Mr. Nichols told us that Mr. McVeigh did not  
respond to  
25 that letter either by return letter, in phone, or in  
person

9904

Stephen Smith - Direct

1 because the first contact that he had since that letter  
was the  
2 phone call on Easter Sunday that he was not expecting.

He said

3 that there was no contact at all between himself and  
4 Mr. McVeigh between the date of the letter in February  
5 and the phone call that he received on April 16, 1995.

of 1995

6 Q. According to Mr. Nichols, when had he last been in  
7 Vegas?

Las

8 A. Mr. Nichols had last been in Las Vegas in January  
9 when he flew back from the Philippines.

of 1995,

10 Q. And again according to Mr. Nichols, had he seen his  
11 ex-wife at that time?

ex-wife

12 A. Yes, he had seen his ex-wife, Lana Padilla, at that  
13 and had given her money for their son.

time

14 Q. Did Mr. Nichols offer any explanation as to why he  
15 pick up the TV and transport it back to Kansas with him  
16 time?

didn't

17 A. No, he did not.

at that

18 Q. Did Mr. Nichols tell you where he was living at the  
19 wrote the letter to Tim McVeigh?

time he

20 A. Yes. I understood from what Mr. Nichols told us  
21 was living at the Sunset Motel in Junction City,  
22 Kansas.

that he

Kansas.

might  
City,  
22 Q. Did Mr. Nichols tell you why he thought Mr. McVeigh  
23 be willing to bring a TV set from Las Vegas to Junction  
24 Kansas?  
25 A. No, he did not.

9905

Stephen Smith - Direct

McVeigh,  
1 Q. Did Mr. Nichols tell you whether he expected Mr.  
2 when he wrote the letter, to be making that trip?

3 A. He did not expect Mr. McVeigh to be making that  
trip.

4 Q. Let's return our attention to the Easter Sunday  
phone call,

5 if I can, Agent Smith. What, if any, new information  
did you

6 learn from Mr. Nichols at that point in time with Mr.  
Crabtree  
7 present?

8 A. In regards to the April 16 phone call, we had also  
learned  
9 that Mr. McVeigh had told Terry Nichols that he needed  
to come

10 down to Oklahoma City to pick up the TV.

11 Q. Did Mr. Nichols place the time of that phone call?

12 A. Yes. He said that the phone call was approximately  
13 3:00 p.m. in the afternoon on Easter Sunday.

14 Q. And did he mention anything that was going on at  
the time

15 of the phone call?

16 A. He said that he and his wife and son and his  
daughter were

17 just finishing up Easter Sunday dinner when he received  
the

18 phone call.

19 Q. According to Mr. Nichols, how long had he been  
living in

20 the residence at the time of the Easter Sunday phone  
call?

21 A. He had been living in the residence since  
approximately

22 March of 1995, so month or a little over a month.

23 Q. Did he tell you how long he'd had phone service?

24 A. He did not.

25 Q. Did he tell you how Mr. McVeigh had his phone  
number?

9906

Stephen Smith - Direct

1 A. No, he did not tell us how.

2 Q. Did he tell you who picked up the phone when it  
rang?

3 A. Not specifically. Because he told us that the only  
person

4 that talked to Mr. McVeigh was himself.

5 Q. Did he tell you whether any other person present  
overheard

6 any portion of the conversation?

7 A. No, he did not.

8 Q. Did you ask Mr. Nichols or did he otherwise tell  
you where

9 it was that Mr. McVeigh was calling from?

10 A. He said that he assumed that Mr. McVeigh was  
calling from

11 Oklahoma City.

12 Q. Let me show you what's been previously admitted  
into

13 evidence as Exhibit 1888.

14 And show you phone activity on April 16, 1995.

15 Do you have that in front of you, Agent Smith?

16 A. Yes, sir.

17 Q. And according to that exhibit, was there a phone  
call to

18 the Nichols residence on Easter Sunday, April 16, in  
the

19 afternoon?

20 A. Yes, sir, there is a call at approximately 3:08  
p.m.

21 Q. And according to that record, where was that call  
placed

22 from?

23 A. The Amoco pay phone, Tim's Amoco in Herington,  
Kansas.

24 Q. When you were interviewing Mr. Nichols on Friday  
afternoon,

25 April 21, did you have the information that's reflected  
in this

Stephen Smith - Direct

1 exhibit?

2 A. No, sir.

3 MR. MACKEY: Your Honor, how long would you  
like for  
4 me to continue?

5 THE COURT: Anytime that's a good --

6 MR. MACKEY: This is a good break.

7 THE COURT: All right. You may step down,  
Agent  
8 Smith. We'll take our afternoon recess.

9 Members of the jury, we will recess at this  
time for  
10 our usual --

11 If you'll step down, please.

12 -- our usual 20-minute break period during  
which, of  
13 course, please follow the cautions given at all earlier  
14 recesses: Avoiding discussion of the case, keeping  
open minds  
15 until you hear it all.

16 So you're excused. 20 minutes.

17 (Jury out at 2:58 p.m.)

18 THE COURT: Okay. We'll be in recess.

19 (Recess at 2:59 p.m.)

20 (Reconvened at 3:20 p.m.)

21 THE COURT: Be seated, please.

22 (Jury in at 3:20 p.m.)

23 THE COURT: If you'll resume the stand,  
please.

24 Mr. Mackey, you may continue.

25 MR. MACKEY: Thank you, Judge.

9908

Stephen Smith - Direct

1 BY MR. MACKEY:

2 Q. Agent Smith, let's go back to the Easter Sunday  
phone call.

3 What, if any, directions did Mr. McVeigh give to Mr.  
Nichols in

4 that phone call?

5 A. Mr. McVeigh told Terry Nichols to drive down to the  
6 downtown area of Oklahoma City, giving him specific  
directions

7 that he should possibly come down 8th Street.

8 Q. And what was he to do once he got to downtown  
Oklahoma

9 City?

10 A. According to Terry Nichols, he was supposed to  
drive around

11 the downtown area of Oklahoma City and Tim McVeigh  
would find

12 Terry Nichols.

13 Q. In this same Easter Sunday phone call, according to  
14 Mr. Nichols' statement, what, if anything, did Mr.  
McVeigh say  
15 about what he was to say to his wife?

16 A. Mr. Nichols told us that Mr. McVeigh told him that  
he  
17 should tell his wife Omaha, if she asked, and that he  
was  
18 supposed to keep the conversation between them between  
19 themselves.

20 Q. In the conversation on Easter Sunday, did Mr.  
McVeigh,  
21 according to Mr. Nichols, describe the extent of the  
car  
22 problems he had experienced?

23 A. He -- not specifically. He did not explain the car  
24 problems to him other than the fact that Mr. Nichols  
felt that  
25 apparently that Mr. McVeigh was leaving that car in  
Oklahoma

9909

Stephen Smith - Direct

1 City and that he would be driving Mr. McVeigh back to  
Kansas.

2 Q. Now, according to Mr. Nichols, did the two men talk  
about  
3 any other option by which Mr. Nichols could retrieve  
his TV set

4 without making a trip to and from Oklahoma City?

5 A. No.

6 Q. Did Mr. Nichols tell you why it was that Mr.  
McVeigh was

7 coming to central Kansas, if he wanted to go to New  
York?

8 A. No, he did not tell us why.

9 Q. Did Mr. McVeigh give any more specifics as to the  
10 directions that Mr. Nichols was to follow in finding  
him in

11 downtown Oklahoma City?

12 A. Other than telling him to get down to the downtown  
area,

13 drive around the block a couple times and McVeigh would  
find

14 Mr. Nichols.

15 Q. According to his statement to you, did he need to  
make any

16 notes or written record of the directions that he was  
to

17 follow?

18 A. No, he did not tell us that he had made any.

19 Q. Was there any landmark agreed to as to where it was  
they

20 were to meet?

21 A. No. They gave -- according to Terry Nichols, Mr.  
McVeigh

22 gave Terry Nichols no specific location as to where  
they should

23 meet.

24 Q. Now, did Mr. Nichols offer any explanation as to  
why he'd  
25 be willing to drive to Oklahoma City and simply find

9910

Stephen Smith - Direct

1 Mr. McVeigh on Easter Sunday evening?

2 A. No.

3 Q. According to Mr. Nichols, did they at least set a  
specific  
4 time that the two men were to meet?

5 A. No, they did not set a specific time as to when  
they would  
6 meet, either.

7 Q. According to Mr. Nichols, did they at least discuss  
what  
8 time he would be leaving the house?

9 A. No, they did not discuss that, either.

10 Q. Did Terry Nichols tell you whether he had ever been  
to  
11 Oklahoma City prior to Easter Sunday, 1995?

12 A. No, he did not admit that he had ever been down in  
Oklahoma  
13 City prior to Easter Sunday of 1995.

14 Q. Did Mr. Nichols give you any reason as to how it  
was he  
15 knew the time of travel from his home to Oklahoma City?

16 A. Yes. He said he determined that it would take five  
hours

17 to get from central Kansas down to Oklahoma City.

18 Q. Did he give you a basis for how he knew that?

19 A. No, he did not.

20 Q. You mentioned earlier that in the conversation, Mr.  
McVeigh

21 had suggested to Mr. Nichols that he tell his wife he  
was going

22 to Omaha. Do you recall that?

23 A. Yes, sir. That's correct.

24 Q. Did Mr. Nichols, according to his statement to you,  
do what

25 Mr. McVeigh suggested?

9911

Stephen Smith - Direct

1 A. Yes. Mr. Nichols told us that he lied to his  
family and

2 his wife and told them that he was going to Omaha to  
pick up

3 Tim McVeigh.

4 Q. And did he give you a reason for making that  
statement to

5 his family?

6 A. No, other than he said that he did it because Terry  
--

7 because Tim McVeigh asked him to do that.

8 Q. Did he give you any reason as to why he didn't  
simply lie

9 to McVeigh as opposed to his family?

10 A. No, he did not.

11 Q. According to Mr. Nichols, did he ever later -- that  
is,

12 after Easter Sunday -- ever tell his wife the truth?

13 A. Yes. Terry Nichols told us that he told his wife  
that he

14 was actually going to Oklahoma -- that he had actually  
gone to

15 Oklahoma City instead of Omaha when they were going to  
the

16 police department on the day of April 21, so he told us  
that he

17 told the wife the truth five days afterwards, what he  
told her

18 on the day of April 21, 1995.

19 Q. That was in the course of the drive that you  
witnessed as

20 he left his home, went to Surplus City, and then back  
to the

21 police station?

22 A. That's correct.

23 Q. Did Mr. Nichols ever tell you why it was necessary  
to

24 conceal the true city of destination?

25 A. No, he did not. And he did not say that that  
information

City. 1 came up during the trip from Oklahoma City to Junction

2 Q. And by that, what do you mean?

3 A. That Terry Nichols and Timothy McVeigh did not  
discuss

4 why -- why Tim McVeigh -- why Terry Nichols was  
supposed to

5 tell his wife that he was going to Omaha instead of  
Oklahoma

6 City.

7 Q. Did Mr. Nichols offer any explanation as to why  
Omaha, as

8 opposed to any other city, was the one that he was to  
tell his

9 wife?

10 A. No. He did not give any -- give any reason why,  
but he was

11 never doubtful that Omaha was the city that he was  
supposed to

12 mention to his wife.

13 Q. Did he tell you how long he was gone on Easter  
Sunday?

14 A. He said he left shortly after 3 p.m. on Easter  
Sunday and

15 arrived back home in Herington at approximately 2 a.m.  
the next

16 morning; so he was gone approximately 11 hours.

17 Q. And according to Mr. Nichols, when in relationship  
to the

18 phone call did he first leave his residence?

19 A. He said he left his residence approximately 10

minutes

20 after receiving the phone call.

21 Q. According to Mr. Nichols, did he drive down alone,  
or with

22 anyone else?

23 A. He drove down alone.

24 Q. Did he tell you whether his son had asked to join  
him on

25 that trip?

9913

Stephen Smith - Direct

1 A. No, he did not say that.

2 Q. Did you ask Mr. Nichols to trace the route of  
travel from

3 Herington down to Oklahoma City?

4 A. Yes. He said that he had gone on Highway 77 south  
from

5 Herington and he got down to the border of Oklahoma,  
where he

6 entered I-35 into the downtown area of Oklahoma City.

7 Q. And is that, according to your experience, the  
fastest way

8 to make that route?

9 A. From Herington, the best route, the quickest route  
would be

10 77 south to the Kansas Turnpike at El Dorado and then  
getting

11 on I-35 down to Oklahoma City.

had not 12 Q. Did Mr. Nichols give you any reason as to why he

13 taken the turnpike?

14 A. No, he did not.

the name 15 Q. If you stay on Highway 77 in Kansas, do you recall

16 of the last city before you enter into Oklahoma?

17 A. Yes. It's Arkansas City.

Nichols 18 Q. In the statement on Friday, April 21, did Mr.

Oklahoma 19 describe to you what happened once he got downtown

20 City on Easter Sunday?

downtown 21 A. Yes. He advised that he got down to the heart of

While 22 Oklahoma City, possibly by taking the 8th Street exit.

the 23 he was driving around waiting for McVeigh, he went past

as "that 24 Alfred P. Murrah Federal Building, which he described

he also 25 building." While driving around waiting for McVeigh,

9914

Stephen Smith - Direct

advised 1 went by a parking lot that was empty. Terry Nichols

approximately 2 that he had driven around the downtown area for

3 30 minutes before spotting Mr. McVeigh in an alley.

4 direction that

Mr. Nichols stated that he went in the

5 he spotted Mr. McVeigh in and picked Mr. McVeigh up and  
6 that

7 Mr. McVeigh was standing in a light rain with Terry  
8 Nichols' TV

9 set and a green laundry bag -- McVeigh had a green  
10 laundry bag

11 with him at that time, also.

12 Terry Nichols did not see -- see the vehicle  
13 that Tim

14 McVeigh had in the downtown area of Oklahoma City.

15 Q. Do you know from visiting Oklahoma City what the  
16 exits are

17 closest to the Murrah Building, the downtown exits?

18 A. Yes. The two downtown exits closest to the Murrah  
19 Building

20 are 6th Street and 10th Street.

21 Q. You told us that according to Mr. Nichols' account  
22 that

23 once arriving in Oklahoma City, he drove around waiting  
24 for

25 Mr. McVeigh.

26 A. That's correct.

27 Q. Did he use that term "waiting," as opposed to  
28 "searching"

29 for him?

30 A. That's correct. And as it turned out, Mr. Nichols  
31 spotted

the 22 Mr. McVeigh and went and picked Mr. McVeigh up and not  
23 other way around.  
24 Q. Did Mr. Nichols tell you if he knew what Mr.  
McVeigh was  
25 doing while he was waiting for him?

9915

Stephen Smith - Direct

1 A. No, he did not.  
2 Q. You told the jury that Mr. Nichols said he had  
driven by  
3 "that building," the Murrah Building. Did he explain  
to you  
4 how he came to use that description?  
5 A. Yes. He said that he had driven past "that  
building" a  
6 couple of times, and it was obvious in the context of  
the  
7 interview that it was the Alfred P. Murrah Federal  
Building.  
8 Q. Did he tell you why he remembered that building in  
9 particular?  
10 A. No, he did not.  
11 Q. Did he tell you whether he had ever been downtown  
in  
12 Oklahoma City on 5th Street past the Murrah Building  
prior to  
13 Easter Sunday?

14 A. No, he did not.

15 Q. Did he give you any basis for explaining why he  
even  
to you?  
16 recognized the building in order for him to describe it

17 A. No, he gave no basis.

18 Q. While in downtown Oklahoma City, according to Mr.  
Nichols  
19 and your testimony to this jury, he spotted Mr.  
McVeigh. Is  
20 that correct?

21 A. That's correct. He spotted Mr. McVeigh in an alley  
-- as  
22 Terry Nichols was driving east, he spotted Mr. McVeigh  
in an  
23 alley, drove to the next block and turned north and  
then back

24 west and picked up Mr. McVeigh.

25 Q. Did he tell you in which direction he was driving  
when he

9916

Stephen Smith - Direct

1 spotted Mr. McVeigh?

2 A. Yes. He said he was driving in an easterly  
direction and

3 spotted Mr. McVeigh.

4 Q. Do you know what direction 5th Street runs as it  
passes the

5 Murrah Building?

6 A. 5th Street is a one-way street running east in  
front of the

7 Murrah Building in Oklahoma City.

8 Q. Based on the statements to you, what was your  
understanding

9 as to the direction that the alley ran?

10 A. My understanding of the direction of the alley was  
that it

11 was a north/south-running alley and that it intersected  
the

12 street that Mr. Nichols was driving on.

13 Q. Do you know what alley is closest to the Murrah  
Building

14 that runs in a north/south direction?

15 A. There is an alley that's closest to the Murrah  
Building

16 running in a north/south direction which is just east  
of the

17 YMCA building, and it intersects 5th Street, also.

18 Q. And again, according to Mr. Nichols' statement,  
what was

19 Tim McVeigh doing when he spotted him?

20 A. Tim McVeigh was just standing in a light rain with  
Terry

21 Nichols' TV set and Tim McVeigh's green laundry bag.

22 Q. Did you ask Mr. Nichols if he saw the car that Mr.  
McVeigh

23 told him had broken down?

24 A. Yes. We asked him if he had seen the car that Mr.  
McVeigh

had not 25 said had broken down, and Terry Nichols advised that he

9917

Stephen Smith - Direct

left in 1 seen the car but that he understood that it was being  
2 Oklahoma City.

since 3 Q. According to Mr. Nichols, how much time had passed  
4 the phone call at his residence and spotting Mr.  
McVeigh in 5 downtown Oklahoma City?

and that 6 A. He said that the phone call was approximately 3:00  
7 he left approximately 10 minutes later and that it was  
a 5-hour 8 drive. So that would make it approximately 8:10; and  
then he 9 drove down around the downtown area of Oklahoma City  
for 10 approximately 30 minutes, so it would be anywhere from  
11 approximately 8:30 p.m. to approximately 9 p.m.

outside 12 Q. Did Mr. Nichols mention whether it was light still  
13 at the time that he spotted McVeigh?

getting 14 A. Mr. Nichols did not say, but it was dark or it was  
15 dark at that point.

16 Q. According to Mr. Nichols, what did Tim McVeigh do

with the

17 television set and laundry bag when he stopped to pick  
him up?

18 A. He put both of those items in the cab of Terry  
Nichols'

19 pickup truck.

20 Q. That is, up front with the driver and the  
passenger?

21 A. Right. The driver, the passenger and TV set and a  
laundry

22 bag were in the front passenger compartment.

23 Q. Did you ask Mr. Nichols what Tim McVeigh was doing  
with the

24 car that had broken down in Oklahoma City?

25 A. Yes. Terry Nichols said that he did not know, he  
had not

9918

Stephen Smith - Direct

1 seen the car in Oklahoma City, did not know what  
Timothy

2 McVeigh was doing with the vehicle. All he knew is  
that he was

3 picking up his TV set and helping out a friend at the  
same

4 time.

5 Q. Are you positive that Mr. Nichols told you he never  
saw Tim

6 McVeigh's car in downtown Oklahoma City?

7 A. Yes, I'm positive.

8 Q. Did Mr. Nichols say there were any other cars  
whatsoever

9 around or near Mr. McVeigh when he picked him up?

10 A. He did not say if there were any cars near the  
place that

11 he picked up Mr. McVeigh.

12 Q. You told the jury he expressed to you that he had a  
feeling

13 that the car was going to be left in Oklahoma City. Is  
that

14 right?

15 A. That's correct.

16 Q. Did he explain what gave him that feeling?

17 A. No, he did not.

18 Q. What did Mr. Nichols tell you about Tim McVeigh's  
plans for

19 the car that he was leaving behind in Oklahoma City?

20 A. He did not know what Tim McVeigh's plans for the  
car that

21 he was leaving behind, other than it was being left  
behind.

22 Q. Did he give any description of the vehicle that was  
being

23 left behind in Oklahoma City?

24 A. Mr. Nichols said that the way that Timothy McVeigh  
talked,

25 he thought that it was a larger model and that he was  
leaving

Stephen Smith - Direct

1 it in Oklahoma City.

2 Q. Did he tell you why he thought or would describe to  
you

3 that it was a larger-model car?

4 A. He did not explain that.

5 Q. At the time of the interview, were you personally  
aware of

6 the vehicle that Tim McVeigh was arrested -- or in on  
April 19,

7 1995?

8 A. No, I was not.

9 Q. In the course of the interview, did you learn any  
more from

10 Mr. Nichols about Tim McVeigh's history with vehicles?

11 A. Yes. Mr. Nichols said that Terry -- that Tim  
McVeigh had

12 purchased two or three vehicles since November of 1994  
when he

13 had last seen him and that one of those vehicles was a  
car that

14 he had purchased from Terry Nichols' brother James  
Nichols.

15 Q. And did Mr. Nichols tell you anything about how  
much money

16 Tim McVeigh had put into any of those vehicles?

17 A. Terry Nichols said that Tim McVeigh had paid 4- or  
\$500 for

18 the vehicle from James Nichols and that he had also  
used that

19 same amount of money for repairs to that vehicle.

20 Q. Did Mr. Nichols explain how he knew that  
information about

21 the vehicles and the cost, given the amount of contact  
as he

22 reported to you between himself and Mr. McVeigh?

23 A. No, he did not.

24 Q. According to your statement, Agent Smith, Terry  
Nichols

25 told you he went to Oklahoma City on Easter Sunday to  
get his

9920

Stephen Smith - Direct

1 TV. Is that right?

2 A. That's correct.

3 Q. And that Mr. McVeigh was en route back East to see  
4 relatives?

5 A. Yes. He said that he was pressed for time to see  
relatives

6 back on the East Coast and another individual in the  
Midwest.

7 Q. And that after picking Mr. McVeigh up, they went  
back to

8 Kansas. Is that right?

9 A. That's correct.

10 Q. Did Mr. Nichols tell you why it was that Mr.  
McVeigh would

11 go to Kansas in order to go to New York?  
12 A. No, sir, he did not.  
13 Q. Did Mr. Nichols tell you or mention to you at any  
point in  
14 time that he had any reason to believe that he had been  
on  
15 observed by anyone while driving downtown Oklahoma City  
16 Easter Sunday?  
17 A. No, he gave no reason.  
18 Q. What did he tell you about the sources of  
information he  
19 had relied upon to learn about the bombing?  
20 A. Terry Nichols had advised that he had listened to  
the news  
21 accounts of the bombing after April 20, 1995.  
22 Q. And from what form or what format did he learn  
that?  
23 A. Terry Nichols advised that he had received a cable  
24 programming on that day, on the 21st of April -- 21st  
of April,  
25 1995, and he received it at approximately 9 a.m. that  
morning

9921

Stephen Smith - Direct

1 and had watched the coverage of the bombing.  
2 Q. In the course of the interview with you and Agent  
Crabtree,  
3 did the two of you talk in further detail with Mr.

Nichols

City? 4 about the trip back from Oklahoma City to Junction

5 A. Yes, we did.

learned 6 Q. And did you learn more information than you had

7 first with Agent Foley?

back 8 A. Yes, we did. We learned that -- that they had come

Nichols had 9 from Oklahoma City to Junction City and that Terry

back to 10 advised that Tim McVeigh said a few things on the trip

11 Junction City.

McVeigh took 12 Q. Did Mr. Nichols describe the route he and Mr.

13 on the way back to Junction City?

drove 14 A. Yes. He said they took 35 to 77 in Kansas and then

15 back to the Junction City area.

arrived in 16 Q. And again, what time was it that he told you he

17 Junction City?

arrived 18 A. He arrived in Junction City -- he told us that he

day, on 19 in Junction City at approximately 1:30 a.m. on the next

20 April 17, 1995.

was he 21 Q. Did he give you additional details about where it

22 dropped Mr. McVeigh off and what happened when he did

so?

23 A. Yes. He said that he dropped Mr. McVeigh off at a  
closed

24 McDonald's at -- on Washington Street in Junction City,  
Kansas,

25 and that Mr. McVeigh had said that he would call a  
friend; and

9922

Stephen Smith - Direct

1 Terry Nichols said as he left, Timothy McVeigh was  
walking

2 towards a Denny's that was open up the street.

3 Q. And then after dropping Mr. McVeigh off, where did  
he go?

4 A. Terry Nichols went back home and arrived home at  
Herington

5 at approximately 2 a.m. on Monday morning.

6 Q. According to his statement to you, what route did  
he take

7 from Herington to Junction City early that morning?

8 A. He had taken a route north on Highway 77 to I-70,  
getting

9 on I-70 and heading east on I-70 to Junction City and  
exiting

10 on South Washington Street.

11 Q. Agent Smith, let me show you Government's Exhibit  
1999, if

12 you would find that in the folder.

13 Do you find that?

14 A. Yes, sir.

Oklahoma 15 Q. And does it show the relative distances between  
16 City, Herington, and Junction City?

17 A. Yes, it does.

18 MR. MACKEY: Your Honor, I'd move to admit  
19 Government's Exhibit 1999.

20 MR. WOODS: No objection.

21 THE COURT: Received. May be displayed.

22 BY MR. MACKEY:

jury what 23 Q. Agent Smith, referring to this exhibit, tell the  
City and 24 the distance is according to this map between Oklahoma  
25 Junction City?

9923

Stephen Smith - Direct

City. 1 A. It's 282 miles between Oklahoma City and Junction

distance 2 Q. And according to this map, what's the approximate  
3 between Herington and Junction City?

4 A. Approximately 25 miles.

he drove 5 Q. Mr. Nichols told you that on Easter Sunday evening  
6 up Route 77; is that correct?

7 A. Yes, sir.

8 Q. Did he tell you why he drove 25 miles north to  
Junction  
9 City, turned around in coming home as opposed to  
stopping in  
10 Herington?

11 A. No, he did not.

12 Q. Did he tell you of any other occasions that Mr.  
McVeigh had  
13 stayed with him?

14 A. Yes. He had -- he told us that Mr. McVeigh had  
stayed with  
15 him for a month -- anywhere from two to six weeks at a  
farm in  
16 Decker, Michigan, at 3616 North Van Dyke.

17 Q. Did Mr. Nichols ever tell you that he and Mr.  
McVeigh had  
18 shared a motel room in Junction City earlier that same  
year of  
19 '95?

20 A. No, he did not tell us that they had stayed in a  
hotel room  
21 in early 1995, and he told us that the only contact  
that he had  
22 with Mr. McVeigh was a letter that he had written him  
in  
23 approximately February of 1995.

24 Q. Did Mr. Nichols give you any explanation as to  
where he  
25 understood Mr. McVeigh was going when he dropped him  
off early

Stephen Smith - Direct

Denny's? 1 that morning and as he saw him walking toward the  
going to 2 A. He said that Mr. McVeigh had told him that he was  
from 3 call a friend and that he could possibly borrow a car  
his 4 someone in order to get back to the East Coast to visit  
5 relatives.  
further 6 Q. Did you and Agent Crabtree question Mr. Nichols  
City to 7 about discussion of Waco during the drive from Oklahoma  
8 Junction City that night?  
and 9 A. Yes. We asked -- we asked Mr. Nichols if he and  
10 Mr. McVeigh had talked about Waco during that drive,  
McVeigh 11 Mr. Nichols said that he -- that it's possible that Mr.  
12 had mentioned Waco but that he could not recall any  
specifics.  
13 Q. Did he go on to mention any publication?  
he and 14 A. He also mentioned -- Terry Nichols mentioned that  
15 Mr. McVeigh had discussed articles in The Spotlight  
newsletter  
16 during that --

17 Q. Excuse me?

18 A. During that drive. Excuse me.

19 Q. And was this information that you were learning for  
the  
20 first time with you and Agent Crabtree present?

21 A. Yes, sir.

22 Q. What did he tell you as to where it was that he had  
come to  
23 see these articles in The Spotlight?

24 A. Mr. Nichols said that he had seen the articles in  
The  
25 Spotlight when he was at gun shows and those  
newsletters would

9925

Stephen Smith - Direct

1 come across his table at the gun shows.

2 Q. Did he describe the articles that he saw in The  
Spotlight,  
3 the publication itself?

4 A. Yes. He described -- Terry Nichols described the  
articles  
5 as being eye-opening to the alternative view, as  
opposed to  
6 what is presented in the mass media.

7 Q. And in the interview, did he say whether he in fact  
8 endorsed or adopted any alternative theories?

9 A. He said he believed in the views expressed in The  
Spotlight

Social 10 newsletter; and he also said that he did not use his  
income 11 Security number, he did not believe or pay federal  
not use 12 taxes, and also that he did not -- excuse me -- he did  
13 his Social Security number.

14 Q. In the conversation with Mr. Nichols about the  
drive back 15 to Junction City, did you ask him whether in hindsight  
anything 16 had been said by Mr. McVeigh that would suggest Mr.  
McVeigh's 17 involvement in the bombing?

18 A. Yes. We asked Mr. Nichols if in hindsight Mr.  
McVeigh had 19 said anything to Terry Nichols during that drive that  
would 20 make Terry Nichols think that Timothy McVeigh had  
committed the 21 bombing.

22 Terry Nichols said yes in response to that  
question.

23 Terry Nichols then stated that Mr. McVeigh said that  
Terry 24 Nichols would see something big in the future.

25 At this point, Terry Nichols said that he was  
talking

Stephen Smith – Direct

1 about his business and what he was doing in regards to  
selling  
2 things at Army surplus -- at gun shows and selling Army  
3 surplus. At this point Mr. McVeigh said that "you will  
see  
4 something big in the future" and that Terry Nichols  
then  
5 responded that "what are you going to do; rob a bank?"  
6 Q. What was Mr. McVeigh's response, according to Terry  
7 Nichols, when he said, "What are you going to do; rob a  
bank?"  
8 A. His response -- Mr. McVeigh's response according to  
9 Mr. Nichols was that "no, but I've got something in the  
works."  
10 Q. Did Mr. Nichols explain to you why he first  
questioned  
11 Mr. McVeigh about robbing a bank in response to  
"something  
12 big"? Why did he come up with that?  
13 A. No, he did not.  
14 Q. Did Mr. Nichols describe the end of that  
conversation where  
15 the two men were talking about something big happening?  
16 A. Yes. Mr. Nichols said that they got distracted and  
did not  
17 talk about what the meaning of "something big in the  
future"  
18 was, and the next thing that Terry Nichols said that  
both he  
19 and Timothy McVeigh talked about was the Waco tragedy

and the

20 anniversary of Waco; that there was possibly going to  
be a

21 gathering in Washington, D.C., that week in regards to  
Waco.

22 Q. Was there any reference to the date of the  
anniversary of

23 Waco?

24 A. Yes. Mr. Nichols said that he had told Mr. McVeigh  
that

25 the anniversary was one or two years ago and Mr.  
McVeigh

9927

Stephen Smith - Direct

1 responded that yes, it was two years ago.

2 Q. In the course of the discussion with Mr. Nichols  
about the

3 drive back to Junction City, did Mr. Nichols use the  
term

4 "sleepy tired"?

5 A. Yes. Mr. Nichols described conversations that he  
had just

6 had with Mr. McVeigh and said that Mr. McVeigh would  
ask

7 questions about those conversations and that Mr.  
Nichols would

8 not remember what they had just talked about; and he  
described

9 that when he drives sometimes, he gets sleepy tired and  
forgets

10 things.

mood or 11 Q. Did Mr. Nichols describe Mr. McVeigh's manner or  
12 demeanor during drive back to Junction City?

or 13 A. He described Mr. McVeigh's demeanor as being hyper  
14 nervous during the drive back from Oklahoma City to  
Junction 15 City.

16 Q. Now, according to his statement to you, did he  
expect to 17 hear from or see Mr. McVeigh again once he dropped him  
off at 18 the McDonald's?

19 A. He did not know when he dropped him off at the  
would 20 McDonald's -- they both said to each other that they  
21 catch each other on the way back, so he was not sure  
when he 22 would be in contact with Mr. McVeigh again.

23 Q. Did you ask him whether in fact he had heard or saw  
24 Mr. McVeigh after he dropped him off?

25 A. Yes. We asked him the next contact if he had seen

9928

Stephen Smith - Direct

1 Mr. McVeigh again.

2 Q. What did you learn?

3 A. We learned that he had received a phone call at  
4 approximately 6 a.m. Terry Nichols told us he received  
a phone  
5 call at approximately 6 a.m. on April 18, Tuesday, from  
Tim  
6 McVeigh, and Tim McVeigh asked Terry Nichols if he  
could borrow  
7 Terry Nichols' pickup truck because he needed to pick  
up a few  
8 things and look at a couple vehicles.

9 Q. Did Mr. Nichols tell you whether he had had any  
contact of  
10 any nature with Mr. McVeigh between the time he dropped  
him off  
11 at the McDonald's, late Easter Sunday night, and 6 a.m.  
on  
12 Tuesday, April 18?

13 A. He said he had -- he had had no contact with him  
during  
14 that time.

15 Q. Did Mr. Nichols tell you what he had done the  
previous  
16 evening; that is, Monday, April 17, 1995?

17 A. No, he did not.

18 Q. Did he tell you anything about his son visiting  
from Las  
19 Vegas?

20 A. He said that his son had visited for a week over  
Easter.

21 Q. Did he tell you anything about taking his son to  
the Kansas

22 City airport on Monday, April 17?

23 A. No, he did not.

City  
24 Q. Anything he said about phone calls from the Kansas  
25 airport on that day?

9929

Stephen Smith - Direct

1 A. No, he did not.

Tuesday,  
2 Q. According to Mr. Nichols, was he up at 6 a.m. on  
3 April 18?

received the  
4 A. Yes. He said that he was already up when he  
5 call from Mr. McVeigh.

6 Q. And what did he say he was doing at that time?

that  
7 A. He said he was up and that he was not doing much at  
8 time but that he had just gotten up.

that  
9 Q. What did Mr. Nichols tell you about the content of  
10 phone call with Mr. McVeigh on Tuesday, April 18?

at  
11 A. According to Terry Nichols, Timothy McVeigh called  
12 6 a.m. and asked him if he could borrow his pickup  
truck for a  
13 little while in order to look at a couple vehicles and  
pick up

14 a few items.

a  
15 Terry Nichols told Mr. McVeigh that there was  
16 sealed-bid auction at Fort Riley on Monday, Tuesday and  
17 Wednesday, which would have been the 16th -- I mean the  
17th,  
18 18th and 19th of April, and that he was planning on  
going to  
19 that auction that day and that if Mr. McVeigh wasn't  
going to  
20 take too long, he could borrow the vehicle while Terry  
Nichols  
21 was at the auction.

22 Q. Did Mr. Nichols tell you where Tim McVeigh was  
calling  
23 from?

24 A. He did not tell us where Timothy McVeigh was  
calling from,  
25 but he said that he did not know where Mr. McVeigh was  
staying.

9930

Stephen Smith - Direct

1 Q. What other information, if any, did you learn from  
2 Mr. Nichols about the auction itself, when and where it  
would  
3 be conducted?

4 A. Mr. Nichols said that it was a sealed-bid auction  
that was  
5 going to be conducted at Fort Riley, Kansas, and that

it was

6 going to be on those three days, Monday, Tuesday and  
Wednesday,

7 and that he was going there that day.

8 Q. Did he tell you whether it would require his  
presence at a

9 specific place and time in order to participate in the  
10 sealed-bid auction?

11 A. No, sir.

12 Q. In the conversation with Mr. Nichols, did he say  
anything

13 about Tim McVeigh selling surplus military equipment?

14 A. Yes. He said that Mr. McVeigh also sold military  
surplus

15 with him at gun shows.

16 Q. And did he mention whether he had invited Tim  
McVeigh to

17 join him at this sealed-bid auction?

18 A. No, he did not.

19 Q. In the course of the conversation, according to  
20 Mr. Nichols, did the two men make plans to in fact meet  
and

21 relay the truck?

22 A. Yes. They made plans to meet at approximately 7:30  
at the

23 McDonald's in Junction City that Terry Nichols had  
dropped

24 Timothy McVeigh off the previous morning.

25 Q. The same McDonald's?

9931

Stephen Smith - Direct

1 A. The same McDonald's, yes.

2 Q. Do you know how many McDonald's there are in  
Junction City?

3 A. There are three.

4 Q. And did Mr. Nichols tell you why it was they picked  
that

5 spot in order to meet again on Tuesday morning, April  
18?

6 A. No, he did not.

7 Q. According to his statement to you, did, in fact,  
8 Mr. Nichols and Mr. McVeigh get together at that  
McDonald's?

9 A. Yes. Mr. Nichols said that Terry -- that Timothy  
McVeigh

10 had told him that he was not in a big hurry, so they  
waited

11 around; so Terry Nichols waited at home for  
approximately an

12 hour and decided to meet Mr. McVeigh at the McDonald's  
at

13 approximately 7:30 a.m. on that date.

14 Q. Agent Smith, if you drive from Herington to  
Junction City,

15 will you pass Geary Lake?

16 A. Yes, sir.

17 Q. And approximately where in the distance -- that is;  
in

18 between those two cities -- does Geary Lake rest?

19 A. Approximately halfway.

20 Q. Did Mr. Nichols tell you where exactly at the  
McDonald's  
21 the two men were to meet that morning?

22 A. No, he did not.

23 Q. According to his statement to you, did he find Mr.  
McVeigh  
24 at the McDonald's?

25 A. Yes. He picked him up at approximately 7:30 in the  
morning

9932

Stephen Smith - Direct

1 at the McDonald's.

2 Q. Was he with anyone?

3 A. No, he was not.

4 Q. What did the two men do after they met at the  
McDonald's  
5 according to Mr. Nichols?

6 A. According to Mr. Nichols, he picked up Timothy  
McVeigh and

7 they got back on I-70 heading east and got off at K-18,  
which

8 is a highway; and they went through Ogden, Kansas, and  
went up

9 to the post at Fort Riley, going that direction.

10 Q. If you take that route starting at McDonald's and

following

11 it the way you've described it, how long does that trip  
take?

12 A. Approximately 20 minutes.

13 Q. Approximately what time, then, would Mr. Nichols  
have

14 arrived at DRMO on that morning?

15 A. A little bit before 8 a.m.

16 Q. Did Mr. Nichols tell you whether he had ever been  
to an

17 auction at that same facility prior to April 18?

18 A. No, he had not.

19 Q. Tell us what Mr. Nichols told you he did once he  
was

20 dropped off by Mr. McVeigh at the DRMO.

21 A. Mr. Nichols got out of the -- got out of his pickup  
truck

22 and looked at items for sale in a building and was --  
they

23 decided to meet up -- to have Timothy McVeigh come back  
at

24 approximately noon that same day. When Timothy McVeigh  
did not

25 show up at noon, Terry Nichols went into another  
building where

9933

Stephen Smith - Direct

1 he had to sign in in order to look at items inside that

2 building, also.

3 Q. Did he tell you what he did once he signed into  
this

4 building?

5 A. Yes. He signed into this building and then looked  
at the

6 items that were for sale inside and bid on some of  
those items

7 and came outside after approximately an hour of looking  
at

8 those items, and Mr. McVeigh showed up shortly after  
that.

9 Q. According to Mr. Nichols' statement, when, exactly,  
was Tim

10 McVeigh to pick him up?

11 A. He was supposed to pick him up at 12 noon.

12 Q. And at noon or thereabouts, what did Mr. Nichols  
do?

13 A. Mr. Nichols went outside and Mr. McVeigh was not  
there, so

14 he went into another building at the DRMO.

15 Q. Did he tell you how long he waited before going  
inside the

16 building where he signed in?

17 A. No, he did not.

18 Q. Did he specify how long he was inside the building  
before

19 he eventually was picked up?

20 A. He said approximately an hour.

21 Q. Did he specify a time for you when it was that Mr.  
McVeigh

22 picked him up?  
23 A. No, he did not, but it would be -- he said that it  
was  
24 sometime after 1:00, but he did not say specifically  
when.  
25 Q. According to his statement to you, when he linked  
back up

9934

Stephen Smith - Direct

1 with Mr. McVeigh, where did the two men go?  
2 A. The two men -- Mr. Nichols drove Mr. McVeigh back  
to the  
3 Junction City area and dropped him off at the same  
McDonald's  
4 on South Washington Street.  
5 Q. Did he tell you that he went immediately from the  
DRMO or  
6 Fort Riley back to the same McDonald's?  
7 A. That's correct.  
8 Q. Did he tell you why the same McDonald's again?  
9 A. No, he did not.  
10 Q. Did Mr. Nichols tell you what he did once he  
dropped Tim  
11 McVeigh off?  
12 A. Yes. He said that he dropped Tim McVeigh off at  
the  
13 McDonald's in Junction City and that he, Terry Nichols,  
went

a Mail 14 back to the Manhattan area in order to pick up mail at

15 Boxes Etcff where he had a mailbox.

Manhattan, 16 Q. If you were at Fort Riley and wanted to go to

17 what's the most direct route?

route to 18 A. Just to continue on either I-70 or go the back

and Fort 19 Manhattan. Junction City is not in between Manhattan

20 Riley.

of his 21 Q. According to Mr. Nichols' statements, he went out

tracing 22 way to drop Tim McVeigh off at the McDonald's before

23 his route to go back to Manhattan?

Fort 24 A. Right. Mr. Nichols drove from the DRMO on post at

go back 25 Riley back to Junction City and then basically had to

9935

Stephen Smith - Direct

1 through Fort Riley to get to Manhattan.

pickup 2 Q. Did Mr. Nichols explain why after waiting for the

Tim 3 that he was prepared to drive out of his way to drop

4 McVeigh off?

5 A. No, he did not.  
6 Q. Again, what errands, according to Mr. Nichols, did  
he run  
7 in Manhattan that afternoon?

8 A. He said Mr. -- Mr. Nichols said that he had picked  
up his  
9 mail at the Mail Boxes Etcff and then he went back to  
10 Herington, Kansas, and ran some more errands in  
Herington  
11 before arriving at home in Herington after 5:00.

12 Q. According to Mr. Nichols, did he and Tim McVeigh  
have a  
13 conversation when they separated at the McDonald's in  
the  
14 afternoon of Tuesday, April 18?

15 A. Yes. As they were -- as Timothy McVeigh got out of  
the  
16 pickup truck, he told Terry Nichols that he had a few  
17 belongings in his storage shed and told him that if  
Timothy  
18 McVeigh did not pick them up that Terry Nichols should  
pick  
19 them up for him.

20 Q. Did Mr. Nichols know what storage shed Tim McVeigh  
was  
21 referring to?

22 A. Yes, he did.

23 Q. And how did he describe that to you?

24 A. He told us that he had gone the next day, on April  
20, to

25 pick up the -- Timothy McVeigh's belongings in a  
storage shed

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Stephen Smith - Direct

1 in Herington, Kansas.

2 Q. According to Mr. Nichols, when was it that he was  
to go to

3 the storage shed and clean it out?

4 A. Mr. McVeigh did not tell him when; just that if he  
did not

5 do it that Mr. Nichols should do it.

6 Q. Did Mr. Nichols, in fact, tell you that he went  
there the

7 day after the bombing, on April 20?

8 A. Yes. He said he went there on April 20 and cleaned  
out

9 that storage locker.

10 Q. Did he detail for you exactly what he took out of  
the

11 storage locker on April 20?

12 A. Yes. Terry Nichols said that he took out Timothy  
McVeigh's

13 sleeping bag, a rucksack, and a rifle from the storage  
shed.

14 Q. Did he tell you that was all that he took from the  
storage

15 shed?

16 A. Yes. He said that that -- those were the three  
items that

shed. 17 he took and that there was nothing left in the storage

storage 18 Q. Did he tell you how he was able to get inside the

19 locker?

storage locker 20 A. Yes. He said there was a combination on the

locker 21 but that the combination lock was not on the storage

22 anymore.

in the 23 Q. Agent Smith, in the course of the interview from 3

you 24 afternoon to midnight, approximately how many times do

detail all 25 think you and the other agents asked Mr. Nichols to

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Stephen Smith - Direct

the 1 of the contacts that he had with Mr. Tim McVeigh during

2 week prior to the bombing?

he had 3 A. We asked him numerous times about any contacts that

out any 4 with Mr. McVeigh, especially since we wanted to find

5 information that he had about contacts that he had with

bombing. 6 Mr. McVeigh, especially in Oklahoma City prior to the

7 Q. And the only information he gave you was Easter

Sunday,

Riley? 8 April 16, and on April 18 at the McDonald's and Fort

9 A. That's correct.

learned 10 Q. Agent Smith, can you tell the jury how you first

11 about the bombing.

of 12 A. Yes. I was in Riley, Kansas, which is a small town

up in 13 about 800 people, which is north of Fort Riley. I was

government 14 Riley, Kansas, looking into a case of theft of

15 property.

to use a 16 At approximately 10 a.m. on that day, I went

work. I 17 pay phone in Riley, Kansas, and the pay phone did not

nearby, in 18 then went to a Sprint switching station which was

phone. 19 Riley, and I asked the employee if I could use his

agent, and 20 I did not identify myself to him as an FBI

Oklahoma 21 he asked me if I had heard about what had happened in

22 City.

23 I said I had not.

bombing 24 And this individual said that there had been a

there and 25 in Oklahoma City blowing up the federal building down

9938

Stephen Smith - Direct

1 that it happened approximately an hour ago.

2 Q. According to Mr. Nichols' statements to you, when  
did he

3 first learn of the bombing in Oklahoma City?

4 A. He said that he had first learned about the bombing  
in

5 Oklahoma City on the next day, on April 20, 1995.

6 Q. Did he tell you what he was doing or where he was  
on the

7 day of the bombing?

8 A. Mr. Nichols told us that he was at home all day  
during --

9 on the day of the bombing, just hanging around his  
house and

10 working at his house.

11 Q. Did he describe any contacts he had with businesses  
in

12 Herington during the day of the bombing or on the day  
of the

13 bombing?

14 A. No, he did not.

15 Q. Did Mr. Nichols describe what he did on Friday  
morning --

16 excuse me -- Thursday morning, the 20th?

17 A. Yes. Mr. Nichols said that he had gone to the  
cable outlet

and 18 store in Herington to secure cable service for his home

19 that is where he had first heard about the bombing.

prior to 20 Q. Did he tell you he had not had any cable service

21 April 20, 1995?

22 A. That's correct.

cable 23 Q. Did he tell you why on that day he chose to request

24 service?

25 A. No, he did not.

9939

Stephen Smith - Direct

in 1 Q. Did he tell you when it was that cable service was,

2 fact, installed?

the next 3 A. He said that cable service was installed at 9 a.m.

4 day, April 21, 1995.

to see 5 Q. When he went in to -- according to his statement --

about 6 the cable people, was there any argument or discussion

7 when the installation should be made?

8 A. No, he did not.

9 Q. Did not mention that to you.

10 A. Excuse me.

about 11 Q. Did Mr. Nichols tell you what, if anything, he did

12 acquiring newspapers on April 20, 1995?

13 A. Yes. Mr. Nichols said that after he had heard  
about the

14 bombing at the cable outlet store watching a newscast  
-- he

15 said that he went and purchased three different  
newspapers that

16 afternoon and read those newspapers that evening, April  
20.

17 Q. Did he describe by title the newspapers that he  
purchased?

18 A. Yes. He said he purchased one, a paper from  
Wichita and

19 Salina, and he did not specify the third newspaper that  
he had

20 purchased.

21 Q. Did Mr. Nichols tell you what, if any, information  
he

22 learned about the state of the investigation as a  
result of

23 watching cable on Friday, April 21, or reading  
newspapers from

24 April 20?

25 A. Yes. He said that he had heard his name -- had  
been

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Stephen Smith - Direct

McVeigh 1 mentioned in relation to the bombing and that Timothy  
2 had probably -- possibly been arrested for the bombing.

learned 3 Q. Did Mr. Nichols tell you what, if anything, he had  
4 about suspected source or origin of the bomb truck?

5 A. No, he did not.

bomb 6 Q. What about the suspected origin or makeup of the  
7 itself?

8 A. No, he did not.

talk 9 Q. In the course of your interview, did the two of you

concerning 10 about composites that had been released by the FBI

11 the persons suspected of renting the bomb truck?

had seen 12 A. Yes. Mr. Nichols said that the composites that he  
13 did not look a lot like Tim McVeigh.

14 Q. Which composites were being described?

15 A. John Doe No. 1 as not looking like Tim McVeigh.

the two of 16 Q. In the course of the interview, Agent Smith, did

17 you talk about when Mr. Nichols had first heard of Tim  
18 McVeigh's name in connection with the bombing?

being 19 A. Yes. He said he first heard of Tim McVeigh's name

20 mentioned in regard to the bombing on April 21, 1995.

heard Tim 21 Q. Did he describe to you his reaction when he first

22 McVeigh's name being connected with the bombing?  
23 A. Yes. He said he was shocked to hear Tim McVeigh's  
name  
24 mentioned in relation to the bombing and that he had  
thought  
25 Tim McVeigh was driving back East to see his family and  
he was

9941

Stephen Smith - Direct

1 surprised he had been picked up not far from Oklahoma  
City the  
2 day of the bombing.

3 Q. Did he say anything at that time about Tim  
McVeigh's  
4 grandfather?

5 A. Yes. Mr. Nichols said that he could not see why  
Tim  
6 McVeigh had -- why Tim McVeigh would do the bombing  
because he

7 was supposed to receive an inheritance from his  
grandfather  
8 shortly and he could do whatever he wanted because he  
would  
9 have money.

10 Q. In the course of the interview, Agent Smith, did  
11 Mr. Nichols change or modify his expression to you  
about  
12 suspicion of Mr. McVeigh's involvement in the bombing?

13 A. Yes. He said that he had suspected Mr. McVeigh's  
14 involvement in the bombing.

15 Q. Did he describe to you why he suspected Tim McVeigh  
as  
16 being involved in the bombing?

17 A. Yes. We asked in hindsight if he had -- if during  
the  
18 conversation in the trip from Oklahoma City to Junction  
City --

19 if Timothy McVeigh had said anything. And he had  
mentioned  
20 that he said that there was something big in the  
future, and

21 that was the crux of the issue in regards to what he  
suspected  
22 Timothy McVeigh's involvement.

23 Q. In the course of the interview, did you or Agent  
Crabtree  
24 talk about possible interviews of Tim McVeigh?

25 A. Yes. We mentioned to -- we mentioned to Terry  
Nichols that

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Stephen Smith - Direct

1 agents in Oklahoma would probably be going to talk to  
Tim  
2 McVeigh, and we asked him what Timothy McVeigh would  
say about  
3 Terry Nichols' involvement in the bombing.

4 Q. What did he say?

Timothy 5 A. Terry Nichols advised that he would be shocked if  
6 McVeigh had implicated him in the bombing.

7 Q. Did he tell you why?

Timothy 8 A. Terry Nichols said that he could -- he trusted  
9 McVeigh more than anyone and that Timothy McVeigh lived  
up to  
10 his arrangements and took responsibility for his  
actions.

McVeigh 11 Q. Did Terry Nichols tell you what arrangements Mr.  
12 made and what responsibilities or actions he would be  
prepared  
13 to take?

14 A. No, he did not.

15 Q. In the course of the interview with Mr. Nichols,  
did you  
16 and Agent Crabtree talk about his knowledge of building  
17 fertilizer bombs?

18 A. Yes, we did.

19 Q. Can you describe what you first learned about the  
use of  
20 ammonium nitrate?

21 A. Yes. Terry Nichols said that people would come by  
his  
22 table at the gun shows and specifically a farmer had  
come by  
23 his table and told him to mix ammonium nitrate and fuel  
oil in

24 order to blow up tree stumps.

25 Mr. Nichols also said that an individual came  
by his

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Stephen Smith - Direct

1 table and told him to mix ammonium nitrate and fuel oil  
for  
2 rock or quarry work.

3 Mr. Nichols also said that he had read in  
books that  
4 the ratio for mixtures for bombs go all the way from  
dry manure  
5 to ammonium nitrate and fuel oil.

6 Q. Did Mr. Nichols tell you whether he and Tim McVeigh  
shared  
7 or discussed literature concerning the making of  
improvised  
8 fertilizer bombs?

9 A. Yes. Mr. Nichols said that they would read -- that  
10 Mr. Nichols would read articles or books or pamphlets  
about  
11 making of a bombs -- making of bombs at gun shows and  
that he  
12 would discuss those books with Timothy McVeigh at the  
gun shows  
13 and they would look at the -- look at the different  
literature  
14 and decide, you know, what bomb would make more sense  
than

15 another bomb, if this mixture for this bomb was  
logical, if  
16 this -- if the mixture for this bomb would make sense  
and would  
17 it actually work.

18 Q. Did Mr. Nichols tell you why he and Tim McVeigh had  
those  
19 kind of discussions where they shared formulas and  
discussed  
20 its potency?

21 A. Yes. He said that they were curious about bomb-  
making.

22 Q. In the course of the interview, Agent Smith, did  
Terry  
23 Nichols tell you about steps he had taken to dispose of  
24 ammonium nitrate?

25 A. Yes. Mr. Nichols had said that on the morning of  
April 21,

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Stephen Smith - Direct

1 he had thrown the rest of his ammonium nitrate on his  
lawn.

2 Q. And when in the course of the interview did Mr.  
Nichols  
3 first reveal to you that he had done so?

4 A. Mr. Nichols advised us at approximately 11:20 p.m.  
that he  
5 had purchased two 50-pound bags of ammonium nitrate  
from a

6 grain elevator in Manhattan, Kansas; and at that point  
he said  
7 that he had thrown the rest of his ammonium nitrate on  
his lawn  
8 that morning, on April 21.

9 Q. Did Mr. Nichols tell you why he had waited until  
almost  
10 midnight or after 11 to tell you what he had done with  
the  
11 ammonium nitrate in his home?

12 A. He did not tell us why he waited to tell us that  
13 information.

14 We asked him why he did not tell us that  
earlier, and  
15 he told us that he did not mention that he had ammonium  
nitrate  
16 or that he had spread the ammonium nitrate on his lawn  
that  
17 morning to us earlier in the interview because it would  
make  
18 him look guilty to a jury.

19 Q. Did Mr. Nichols express any opinion to you about  
whether  
20 Tim McVeigh knew enough about building fertilizer bombs  
to  
21 destroy a building?

22 A. Yes. Mr. Nichols said that it's possible that Mr.  
McVeigh  
23 could make a device to blow up a building without his  
24 knowledge, without Terry Nichols' knowledge, and that  
Timothy

25 McVeigh could be capable of doing it.

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Stephen Smith – Direct

1 Q. And did Terry Nichols compare what Mr. McVeigh knew  
about

2 building bombs with his own knowledge about building  
bombs?

3 A. Yes. He said that Timothy McVeigh knew just as  
much as he

4 did about bomb-making.

5 Q. Do you recall, Agent Smith, approximately what time  
your

6 last break was in the interview?

7 A. Yes. Our last break in the interview was  
approximately

8 10:21 p.m. until 10:50 p.m.

9 Q. And during that break, did you learn of a tape  
recording

10 that had been made or provided to you or available to  
you of

11 Lana Padilla and Josh Nichols?

12 A. Yes, the agents and my superiors in Herington had  
told me

13 that there was a tape that Terry Nichols' son and ex-  
wife had

14 made for a message to Terry Nichols.

15 Q. In addition to the tape recording, were you also  
provided

16 copies of documents that had been provided from Las

Vegas FBI?

17 A. Yes. We were provided with a letter -- with two  
letters in  
18 those documents that had been given to the FBI in Las  
Vegas by  
19 Terry Nichols' ex-wife.

20 Q. Take a look, please, at Government's Exhibit 1856  
through  
21 '59 -- or '58, I'm sorry. '56, '57, '58.

22 Can you identify each of those exhibits for  
the  
23 record?

24 A. Yes. 1856 is a -- is a document that has "read and  
do  
25 immediately" on the top of it; and we used -- we showed  
this

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Stephen Smith - Direct

1 document; the 1857, which is a letter from Terry to  
Tim, and

2 the 1858 is an emergency and address document, two  
pages there.

3 1856 is a two-page document front and back,  
and 1857

4 is a two-page document, also.

5 Q. Did you read each of those documents during the  
break in

6 the final evening -- or final session of the interview  
on

7 April 21?

8 A. Yes, I did.

9 Q. And after doing so, did any phrase or verbiage from  
any of  
10 those documents stick out in your mind?

11 A. Yes. In the letter from Terry to Tim, I noticed a  
notation  
12 for "as far as heat, none that I know of," and "go for  
it," two  
13 statements in the letter that kind of jumped out at me.

14 Q. Did you have those letters with you when you went  
back to  
15 resume your interview of Mr. Nichols that evening?

16 A. Yes, we did.

17 Q. Before you displayed those to Mr. Nichols, was the  
tape  
18 recording that you referred to made available to him?

19 A. Yes. We asked Terry Nichols if he would like to  
listen to  
20 the tape-recorded message from his son and ex-wife, and  
he said

21 that he would like to listen to that tape-recorded  
message. So

22 at approximately 11:15 p.m., we played that tape for  
him.

23 Q. And after the tape and later in the interview, did  
you show  
24 him the same letters you've identified here?

25 A. Yes. At approximately 12:03 a.m. we showed him  
these

Stephen Smith - Direct

1 letters and told him to review them, read them, and  
tell us 2 what they meant.

3 Q. And did Mr. Nichols do that in your presence?

4 A. Yes. Mr. Nichols read these documents and then  
told us --

5 handed the documents back to us and told us that he had  
6 prepared these because he did not have a will and in  
case he 7 died in the Philippines, this was going to be handling  
what was 8 going to happen, if he did die.

9 Q. Did he tell you why he was concerned about his  
safety?

10 A. He said that the Filipinos do not like Americans  
and that 11 he might get run over by a car or killed when he was in  
the 12 Philippines.

13 Q. At that point in the interview, Agent Smith, were  
you or 14 Mr. Crabtree aware of prior trips or previous trips  
that 15 Mr. Nichols had made to the Philippines?

16 A. Yes. Mr. Nichols said that he had been to the  
Philippines 17 before during that interview, where he met his wife in  
the

18 Philippines, and that he also had gone back there when  
she came  
19 back to the United States, so he had been there  
previous  
20 occasions.

21 Q. Did Agent Crabtree ask Mr. Nichols any questions  
about  
22 those previous trips as they related to the preparation  
of  
23 these documents?

24 A. Yes. Agent Crabtree asked Mr. Nichols if he had  
prepared  
25 these same type of documents every time he had gone  
back to the

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Stephen Smith - Direct

1 Philippines.

2 Q. What was his response?

3 A. Mr. Nichols advised that he had not prepared these  
4 documents every time he had gone back to the  
Philippines and he  
5 had only done it this one time.

6 Q. What happened in the interview after that?

7 A. We concluded the interview at that point; and after  
asking  
8 him what those -- we asked Terry Nichols what those two  
phrases  
9 meant by -- "as far as heat, none that I know of" and

"go for

Nichols 10 it," what they meant in the letter to Tim; and Terry

11 just did not respond to those questions.

12 Q. Did you ask the question?

13 A. Scott Crabtree asked the question of Terry Nichols  
if he

14 knew -- what he meant by "go for it" and "as far as  
heat, none

15 that I know of."

16 Q. You heard the question?

17 A. I heard the question, and Terry Nichols just did  
not

18 respond. He sat there and looked at us for  
approximately a

19 minute and did not respond to that question.

20 Q. Shortly after that, what happened?

21 A. We exited the interview room, and Agent Crab --  
Agent

22 Jablonski and Foley entered the interview room.

23 Q. And at that point in time, were you aware of the  
issuance

24 of an arrest warrant for Mr. Nichols?

25 A. Yes. I had found out that there was an arrest  
warrant, a

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Stephen Smith - Direct

1 material witness arrest warrant, for Mr. Nichols,

during the

2 last break from 10:21 to 10:50 and at that point  
realized that

3 Mr. -- or Agents Jablonski and Foley were going to  
execute that

4 warrant.

5 Q. After you left the interview room shortly after  
midnight on

6 the Saturday morning, April 22, Agent Smith, what did  
you do?

7 A. Agent Crabtree and myself drove down to Wichita,  
Kansas.

8 We left Herington, Kansas, at approximately 1 a.m. and  
arrived

9 in Wichita at approximately 2:30 a.m., where we drafted  
10 affidavits for search warrants for Terry Nichols' house  
and car

11 and pickup truck with the U.S. attorney's office down  
in

12 Wichita.

13 Q. Did you see Mr. Nichols any time later that same  
day,

14 Saturday, April 22?

15 A. Yes. I saw Terry Nichols at the Abilene jail, at  
the

16 Dickinson County jail in Abilene, Kansas, at  
approximately

17 2 p.m. that afternoon on April 22, 1995.

18 Q. And why were you there?

19 A. Both Agent Crabtree and I drove from Wichita to  
Abilene,

from 20 Kansas, to pick up Terry Nichols in order to drive him  
federal 21 Abilene back to Wichita for his appearance before the  
22 magistrate, which was his initial appearance.  
Nichols 23 Q. And again approximately what time did you pick Mr.  
24 up?  
Nichols. 25 A. Approximately 1:58 p.m. is when we picked up Mr.

9950

Stephen Smith - Direct

personal 1 Q. When you did, did you take possession of any  
of 2 property and specifically personal property envelopes  
3 Mr. Nichols?  
4 A. Yes. We took a personal property envelope from the  
wallet and 5 deputies in Abilene, and this personal property had  
6 other personal items in an envelope.  
1852A. 7 Q. Take a look in your exhibit folder, please, for No.  
8 Do you recognize that exhibit?  
9 A. Yes. 1852A is the Dickinson County personal  
property 10 envelope that they prepared for Terry Nichols' personal  
11 property.

12 I received this property on the 22d of April  
of 1995  
13 at approximately 1:59, and this is what the Dickinson  
County  
14 jailers had prepared for Terry Nichols' property.

15 Q. Is the time that you picked it up noted in your  
16 handwriting?

17 A. Yes. I noted that I took custody of this property  
at  
18 approximately 1:59 p.m. on April 22, 1995.

19 Q. Did you recognize your initials there?

20 A. Yes. I initialed it and dated it and timed this  
envelope.

21 Q. And when you picked it up, what contents were  
inside that  
22 property envelope?

23 A. One watch, a knife, ring, one hanky, one key, one  
comb, one  
24 lipstick, a cold-climate lipstick, one wallet with  
\$70.82, and  
25 one belt.

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Stephen Smith - Direct

1 Q. Did you take that property envelope with you to  
Wichita?

2 A. Yes, I did.

3 Q. Describe to the jury what took place during the  
drive with

Abilene 4 Mr. Nichols in the car and you and Agent Crabtree from  
5 to Wichita on Saturday afternoon.

6 A. Agent Crabtree and I decided that we were not going  
to ask 7 any questions of Terry Nichols on April 22, and we  
drove -- I 8 was driving and we did not ask any questions of Terry  
Nichols. 9 And after approximately 15 to 20 minutes, Terry Nichols  
brought 10 up a conversation and asked us if the searching agents  
had 11 started the search of his house, if we thought we had  
enough 12 information to convict Timothy McVeigh; and then at  
that point 13 we talked a little while in the car prior to getting to  
14 Wichita.

15 Q. Could you hear the statements being made by Mr.  
Nichols 16 during the trip from Abilene to Wichita?

17 A. Yes, sir.

18 Q. And what, if anything, did he say about the events  
of 19 April 18 during the car ride?

20 A. Mr. McVeigh -- Mr. Nichols had stated that the  
information 21 that he had given us previously on 4-18 was the same.  
He said 22 that basically on the 18th that -- excuse me -- that on  
the

need to 23 18th of April, 1995, he had gone -- I'm sorry. I just

24 settle down.

it the 25 Q. Let me ask it this way: In sum and substance, was

9952

Stephen Smith - Direct

face 1 same information that you had learned in the face-to-

2 interview the previous evening?

3 A. Yes, sir.

arrived in 4 Q. Was that conversation still ongoing when you

5 Wichita that afternoon?

6 A. Yes, sir, it was.

7 Q. Describe what happened when you got there.

and we 8 A. We arrived in Wichita at approximately 3:26 p.m.,

took 9 were met with -- met by deputy U.S. marshals; and they

Nichols at 10 Terry Nichols at approximately 3:26. We asked Terry

and 11 that point if he would like to speak with us any more;

marshal said 12 approximately five minutes later, the deputy U.S.

went and 13 that Terry Nichols did want to speak with us, so we

14 talked with Terry Nichols a little more.

held that 15 Q. Was that awaiting the hearing that would be later  
16 afternoon?

17 A. Yes. That was awaiting the initial appearance that  
18 afternoon at approximately 4:45 p.m.

marshal's 19 Q. During the course of that discussion there in the  
about his 20 area, did you and Agent Crabtree talk to Mr. Nichols  
21 use of aliases or names other than his own?

alias of Jim 22 A. Yes. Terry Nichols advised us that he used an

Grove 23 Kyle and that he used an alias of Ken Parker in Council

and Shawn 24 and that Timothy McVeigh used an alias of Tim Tuttle

25 Rivers in the past.

9953

Stephen Smith - Direct

McVeigh's use 1 Q. And what, if anything, did he say about Mr.

Rivers? 2 of aliases other than the reference to Tuttle and

Nichols 3 A. Mr. Nichols told us that Mr. McVeigh had told Terry

Nichols to 4 that he should use aliases and that he wanted Terry

5 use aliases.

6 Q. Did you in that session at the marshal's area ask  
7 Mr. Nichols, "Are there any other names you've used  
other than  
8 Jim Kyle and Ken Parker?"

9 A. We asked him if there were any other aliases that  
he had  
10 used, and he said that he had not used any other  
aliases.

11 Q. Did he ever say that he had used the name "Havens"?

12 A. No, he did not.

13 Q. Did he ever say he had used the name "Daryl  
Bridges"?

14 A. No, he did not.

15 Q. What time did you leave Wichita that evening?

16 A. We left Wichita that evening at approximately 5:30  
p.m.

17 Q. And where did you go?

18 A. We drove back to Herington, Kansas, and arrived at  
19 approximately 7 p.m.

20 Q. And what, if anything, did you take with you when  
you went

21 back to Herington?

22 A. I took this envelope, 1852A, from Wichita to  
Herington and

23 arrived in Herington approximately 7 p.m. and gave this

24 envelope to another agent there by the name of Dan  
Jablonski.

25 Q. Take a look at Government's Exhibit 1852B.  
Recognize what

Stephen Smith - Direct

1 that is?

2 A. Yes. 1852B is the wallet and contents that was  
taken off

3 Terry Nichols. This is Terry Nichols' wallet and  
contents that

4 were in this personal property bag at 1852A.

5 Q. What did you do with the wallet and contents of  
that wallet

6 specifically in Herington?

7 A. I gave the wallet and the contents and the envelope  
to

8 Agent Jablonski in Herington.

9 Q. Did you take some steps then to log it into  
evidence?

10 A. Yes. I had logged it into evidence.

11 Q. Take a look at 1852.

12 A. On an FD 192 evidence log, and I received it --  
excuse

13 me -- 1:59 p.m. in Abilene; and then released custody  
of the

14 wallet and contents at 7 p.m. to Agent Jablonski in  
Herington.

15 Q. Do you recognize any of the handwriting that  
appears on the

16 green sheet of Government's Exhibit 1852?

17 A. Yes. It's my handwriting on there as showing that  
I

18 received it on 4-22 at 1:59 p.m.

Terry 19 Q. Agent Smith, what did you do after turning over the  
20 Nichols' property to Agent Jablonski that evening?

then we 21 A. I drove back to Fort Riley with Agent Crabtree, and  
22 drove home.

23 Q. And to your knowledge, by the time you got back to  
24 Herington that evening around 7:00, had the search of  
25 Mr. Nichols' home begun?

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Stephen Smith - Direct

earlier in 1 A. Yes. The search of Mr. Nichols' home had begun  
2 the afternoon of April 22.

and 3 Q. Where had you and Agent Crabtree been the afternoon  
4 early evening hours of Saturday, April 22?

afternoon 5 A. We had -- we had arrived in Abilene in the early

at 6 at approximately 2 p.m., and then we arrived in Wichita

approximately 7 approximately 3:30; and we were in Wichita from

8 3:30 to 5:30 p.m. prior to driving back to Herington.

p.m. on 9 Q. In the course of those two days, beginning at 3

tell us 10 Friday, the 21st, and then continuing till Saturday,  
with 11 how many total hours you spent in interview sessions  
12 Mr. Nichols, if you can.  
April 21 13 A. Approximately nine hours. We spent seven hours on  
totaling 14 out of nine hours because we had -- had three breaks  
the 15 two hours, and then we spent approximately two hours on  
16 22d, so a total of nine hours altogether.  
did 17 Q. In the course of that time period, what questions  
18 Mr. Nichols not answer?  
asked him 19 A. Mr. Nichols did not answer the questions that we  
of" and 20 to explain about the "as far as heat, none that I know  
had 21 the "go for it" in the letters -- in the letter that he  
22 written to Timothy McVeigh.  
did 23 Q. At any point in time between Friday or Saturday,  
24 Mr. Nichols ever explain what that meant?  
25 A. No, he did not.

9956

Stephen Smith - Direct

1 MR. MACKEY: That's all I have, your Honor.

2 THE COURT: All right.

3 Mr. Woods?

4 MR. WOODS: Yes, your Honor.

5 CROSS-EXAMINATION

6 BY MR. WOODS:

7 Q. Agent Smith, you had a tape recorder there and you  
didn't  
8 use it?

9 A. I did not have a tape recorder in Herington, no,  
sir.

10 Q. How did you play the tape of Lana Padilla and Josh  
Nichols  
11 to Terry Nichols while he was in your custody being  
questioned?

12 A. We played the tape on the phone. I called the  
Washington,  
13 D.C. headquarters, and they played the tape for Terry  
Nichols  
14 over the phone. I did not have the tape itself with  
me.

15 Q. You called Washington, D.C. headquarters. They had  
the  
16 tape. This is on Friday, April 21?

17 A. Yes, sir.

18 Q. And it's coming over the phone. You, what, hand  
the phone  
19 to Terry Nichols?

20 A. Yes, sir.

21 Q. Would you agree with me that it sure would be  
easier for

22 this jury if we had the tape recording of your  
questions and

23 answers?

24 MR. MACKEY: Objection to form of the  
question.

25 THE COURT: Overruled.

9957

Stephen Smith – Cross

1 THE WITNESS: Could you repeat the question.

2 BY MR. WOODS:

3 Q. Yes, sir. Would you agree with me that it sure  
would be

4 easier for this jury if we had the tape recording of  
your

5 questions and answers during that nine-hour period?

6 A. It would be easier; but with 24 pages of notes that  
I took

7 contemporaneously as to what Terry Nichols said, it  
gave us an

8 accurate depiction of what was said during the  
interview.

9 Q. Well, you jumped around when you're asking --  
answering

10 questions from Mr. Mackey -- you jumped around time  
periods,

11 didn't you?

12 A. Yes, sir.

13 MR. WOODS: Okay. I just need to raise this a

little

14 bit, your Honor.

15 THE COURT: Okay.

16 BY MR. WOODS:

17 Q. Now, you joined the FBI in '80 -- what year?

18 A. In 1991.

19 Q. '91. And you had graduated from some college and  
you

20 worked for two years as an accountant?

21 A. Yes, sir.

22 Q. Doing auditing work?

23 A. Yes, sir.

24 Q. Okay. And you went to the FBI Academy at Quantico?

25 A. Yes, sir.

9958

Stephen Smith - Cross

1 Q. And they've increased that now to 17 weeks?

2 A. Yes, sir.

3 Q. Do you know what they added that they felt that  
they needed

4 to add to train the agents from the prior weeks that  
they used

5 to use?

6 A. No, I do not know what they added.

7 Q. And they taught you in this academy that -- do not  
use tape

8 recorders when you question suspects. Is that correct?

9 A. They did not teach us that, no, sir.

10 Q. You just learned that that's FBI policy?

11 A. It's FBI policy that tape-recorded statements as a  
general  
12 rule are prohibited.

13 Q. Oh, they're prohibited?

14 A. Yes, sir.

15 Q. Have you ever operated or have you ever worked with  
the FBI  
16 in undercover operations?

17 A. I have not, no, sir.

18 Q. Do you know that they use them every day and in  
every  
19 office across this United States in tape-recording  
individuals

20 that they meet and discuss with?

21 A. Yes. Those are tape recordings --

22 Q. Those are tape recordings so that they can get the  
accurate  
23 information, are they not, sir?

24 A. Yes, but they're not interviews of individuals.  
And those

25 tape recordings of interview statements are as a  
general rule

1 prohibited.

2 Q. They're prohibited by who?

3 A. We do not do that under -- unless it's under  
different  
authority to  
4 circumstances. We do not -- we need a certain  
5 get --

6 Q. Are you saying there is some law against you tape-  
recording  
7 the interview of a suspect?

8 A. No, sir, there is no law.

9 Q. Do you work with police departments, other than the  
Topeka  
10 Police Department?

11 A. Yes, sir.

12 Q. What police departments have you worked with, major  
police  
13 departments like Denver or Oklahoma City or Houston or  
14 somewhere?

15 A. I've worked with the police departments within the  
18  
16 counties that I've got responsibility over.

17 Q. Every major police department in this country  
utilizes tape  
18 recordings to tape-record suspects' interviews, don't  
they,  
19 sir?

20 A. I do not know that.

21 Q. Well, since you don't use tape recordings, the FBI

then

22 teaches you please take accurate notes, don't they?

23 A. That's correct.

24 Q. And because later on you're going to dictate and  
write up

25 the memorandum of that interview, aren't you?

9960

Stephen Smith – Cross

1 A. Dictate and write up a report of that interview,  
yes, sir.

2 Q. Now, what's the deadline now on dictating your  
notes from

3 an interview?

4 A. It's five days, five business days from the time  
that you

5 actually take the notes to dictate a report.

6 Q. And that's an FBI policy? They want you to finally  
get

7 around and dictate and write up a report of that  
interview,

8 don't they?

9 A. Yes, sir.

10 Q. And so they request and instruct that you take  
accurate

11 notes during the interview because in five days you're  
going to

12 forget a lot of things that were said, aren't you?

13 A. No, you're not going to forget what was said during

an

14 interview.

15 Q. You're not going to be doing other investigations  
or going

16 down to court and doing other things during those five  
days

17 that might affect your memory of the verbatim  
conversation that

18 you had with a suspect five days ago?

19 A. Certainly, you will go and do other things besides,  
you

20 know, the interview and dictation of your report.

21 Q. And that's why they want you to make sure that you  
have

22 very accurate notes. Isn't that correct?

23 A. That's correct.

24 Q. And in an order -- in a chronological order the way  
you

25 asked the questions and the answers were given. You  
can't

9961

Stephen Smith - Cross

1 change those notes, can you? When you start on page 1  
and go

2 down and fill out the bottom of page 1, you can't go  
back and

3 change that order, can you?

4 A. No, sir.

with the 5 Q. That's captured. That was done contemporaneously  
6 questions and answers, wasn't it?

7 A. That's correct.

8 Q. And you've got 24 of those pages, don't you?

9 A. 22 of my handwritten notes, yes, sir.

make of 10 Q. For the first interview. How many pages did you  
11 this other interview in the car?

12 A. If I can look at my notes here.

pages of 13 If my memory serves, I took two pages -- two  
14 notes for that interview on the 22d.

a tape 15 Q. Okay. So you've got 22 pages that are made  
16 contemporaneously, so that's as close as we can get to  
17 recording, isn't it?

recollection 18 A. That's correct, based on those notes and the  
19 of what was said during the interview.

shouldn't 20 Q. Well, the notes should capture what was said,  
21 they?

22 A. They do, yes, sir.

this 23 Q. Okay. That's your -- that's your representation to  
24 jury that those notes capture what was said in the  
interview.

these 25 A. Among other things; but yes, sir, these capture --

Stephen Smith – Cross

1 notes capture what was said in the interview.

2 Q. All right. Do you have 1924 there?

Honor? 3 MR. WOODS: May I approach the witness, your

4 THE COURT: You may.

5 MR. WOODS: Thank you.

6 BY MR. WOODS:

7 Q. Before we go through these notes, let's cover your  
8 surveillance activities. You told the prosecutor that

on the

9 morning of the 20th, about 4:00 a.m., you picked up the  
sketch

10 artist that was flown in from Washington; is that  
correct?

11 A. Yes, sir.

12 Q. Where was that? Manhattan airport?

13 A. Actually, I picked him up in Junction City. He  
flew into

14 the airport in Kansas City and was driven by a Kansas  
highway

15 patrolman to the Junction City area.

16 Q. Do you remember his name?

17 A. Yes. Ray Rozycki.

18 Q. And where did you take him?

Riley. 19 A. I took him to the Fort Riley CID office in Fort  
did you 20 Q. And who did you leave him in the custody of, or who  
21 introduce him to?  
and 22 A. I introduced him to Scott Crabtree at that point --  
had 23 that witnesses were coming after -- after Mr. Rozycki  
24 arrived.  
25 Q. Was Mr. Eldon Elliott there yet?

9963

Stephen Smith - Cross

1 A. He was not there, no, sir.  
2 Q. Was Vicki Beemer there yet?  
3 A. No, sir.  
4 Q. Was Tom Kessinger there yet?  
5 A. No, sir.  
to do? 6 Q. Did you understand what the sketch artist was going  
to 7 A. Yes. I understand that the sketch artist was going  
rented a 8 produce composites of individuals believed to have  
Kansas. 9 Ryder truck from Elliott's Body Shop in Junction City,  
were 10 Q. And you knew that from the investigation that there

11 two individuals that had rented a truck on April 17,  
didn't

12 you?

13 A. Witnesses at Elliott's had said that there were  
possibly

14 two people that had rented a vehicle, rented a Ryder  
truck.

15 Q. It's now "possibly"?

16 A. Yes, sir.

17 Q. All right. And did you see the sketches -- I  
assume you

18 didn't stay there and watch the sketches being done; is  
that

19 correct?

20 A. No, sir.

21 Q. Okay. Did you later see the sketches that were  
made?

22 A. Yes, sir.

23 Q. Did you understand that those were made by the FBI  
sketch

24 artists based on his interview with those three  
individuals?

25 A. Yes.

9964

Stephen Smith - Cross

1 Q. Did you help go around and pass these out to  
witnesses and

2 question them?

3 A. No, I did not.

4 Q. Just Terry Nichols; right?

5 A. That's correct.

6 Q. You did show the sketches to Terry Nichols, didn't  
you?

7 A. No, I did not.

8 Q. Who did?

9 A. No agent showed the sketches to Terry Nichols.

10 Q. Okay. All right. That's 4:00 a.m. that you're  
doing that.

11 What did you do the rest of the day?

12 A. After 4:00 a.m., I went back -- I was in the  
command post

13 at that time and I just helped out with whatever I  
could do,

14 leads that were coming into the command post at that  
point.

15 In the early afternoon, I went back to  
Elliott's Body

16 Shop in Junction City, Kansas, prior to the fingerprint  
experts

17 coming from Washington, D.C.

18 Q. What did you do at Eldon Elliott's prior to the --  
the FBI

19 fingerprint experts coming?

20 A. I secured the office area of the -- of Elliott's  
Body Shop

21 and waited for the fingerprint analysis -- fingerprint  
analyst

22 to come from Washington, D.C.

23 Q. By "securing," what do you mean?  
24 A. I just stayed in the office area and made sure  
that, you  
25 know, no one touched anything in the office area that  
the

9965

Stephen Smith - Cross

1 witnesses said these individuals had been.  
2 Q. Okay. It's a small office, isn't it?  
3 A. Yes, sir.  
4 Q. There is a big counter there?  
5 A. There was a counter, yes.  
6 Q. Tell the jury approximately what size that office  
is.  
7 A. Best of my recollection, it's an office that's  
8 approximately 20-foot-by-20-foot. It's not a very big  
office.  
9 Q. All right. How much space does the counter occupy?  
10 A. It's a normal counter that's -- it does not occupy  
very  
11 much space. It's probably approximately 5 foot long.  
12 Q. Okay. Now, did you help dismantle that counter and  
send it  
13 to Washington?  
14 A. No, I did not.  
15 Q. You're aware that that happened, aren't you?  
16 A. Yes, sir.

17 Q. What all was taken out of there and sent to  
Washington?  
18 A. Besides the counter, I don't know what other items  
were  
19 taken by those individuals.  
20 Q. Okay. So you stayed there and secured it. Did Mr.  
Hupp  
21 eventually come?  
22 A. Yes. Mr. Hupp came at -- I'm pretty sure  
approximately  
23 5:15 p.m. that day. And he was only there -- him and  
some  
24 other analysts were there for approximately half an  
hour.  
25 Q. Did they take a lot of fingerprints?

9966

Stephen Smith - Cross

1 A. I do not know.  
2 Q. Well, you -- when did you leave? If they got there  
at  
3 5:15, when did you leave?  
4 A. I left after they left and approximately half an  
hour  
5 later.  
6 Q. So what did you observe them do during that half  
hour?  
7 A. I observed them dismantle the counter and take some  
8 fingerprints; but other than that, they didn't do --

that's

9 what they did.

10 Q. Now, where did you go after your half hour watching  
them?

11 A. On April 20, I went back to the command post in  
Junction

12 City.

13 Q. All right. And what time did you leave that  
evening?

14 A. That evening, I left at approximately 9:00 p.m.  
after we

15 had a briefing in regards to the investigation to date.

16 Q. Now, you have these briefings, do you not, so that  
17 everybody can be brought up to date on what information  
has

18 been developed?

19 A. Yes, sir.

20 Q. Now, were you aware about the SIOC set up in  
Washington at

21 that time?

22 A. Yes, sir.

23 Q. And tell the jury what an SIOC is.

24 A. It's the Strategic Investigation Operations Center  
in

25 Washington, D.C., where individuals are up there and  
kind of

9967

Stephen Smith – Cross

1 coordinate and oversee an investigation.

officials 2 Q. Well, it's not just individuals. It's high-level

3 of the FBI and Department of Justice, isn't it?

4 A. That's correct.

major 5 Q. Now, did they have an open phone line with all the

6 offices that were involved in the investigation?

7 A. I assume so, yes, sir.

briefing 8 Q. And what -- depending on what you learned in your

9 Thursday night, what major offices were involved as of

that 10 time?

11 A. Oklahoma City, certainly; Kansas City. I knew we

were 12 working in New York, in Michigan, and those specific

major 13 offices.

Michigan 14 Q. Okay. Thursday night, you knew that there was a

15 lead; is that correct?

16 A. Yes, sir.

17 Q. And that was based on the fact that a Mr. McVeigh

at 18 Dreamland had left a Michigan address?

19 A. Yes. Mr. McVeigh had used an address of a

farmhouse in 20 Decker, Michigan, that had been associated with Terry

Nichols

21 and James Nichols.

22 Q. And you're aware that the FBI was starting their  
23 investigation in Michigan as of Thursday evening; is  
that  
24 correct?

25 A. Yes.

9968

Stephen Smith - Cross

1 Q. And at that time, they didn't know anything about  
Las  
2 Vegas. Is that your recollection?

3 A. That's my recollection, yes, sir.

4 Q. Now, what did you do the next morning? What time  
did you  
5 rejoin the investigation?

6 A. I left my home at approximately 7:00 a.m. on the  
21st and  
7 arrived --

8 Q. Excuse me. Were you driving back and forth to  
Topeka  
9 during that time?

10 A. I started work at 7:00 a.m. on the 19th and I went  
home at  
11 10:00 p.m. on the 20th.

12 Q. Okay.

13 A. And then I went back to work at 7 in the morning on  
the

14 21st until 10:00 p.m. on the 22d.  
15 Q. All right. So you -- 7:00 a.m. on the 21st, you go  
back to  
16 CID?  
17 A. Yes, sir.  
18 Q. And CID -- explain to the jury what that is.  
19 A. CID is the Criminal Investigation Division for the  
United  
20 States Army. They have special agents who work cases  
for the  
21 United States Army on post.  
22 Q. Okay. And the FBI set up their command post in  
their  
23 offices; is that correct?  
24 A. We set up temporary -- temporary -- a temporary  
command  
25 post at the CID office at Fort Riley.

9969

Stephen Smith - Cross

21, that 1 Q. All right. Now, what time was it on Friday, April  
2 you first heard Terry Nichols' name?  
3 A. I first heard Terry Nichols' name at approximately  
4 1:10 p.m., when I got information that -- information  
from our  
5 Las Vegas division that Terry Lynn Nichols had been  
living or

6 was presently living in Herington, Kansas.

7 Q. And what instructions did you receive concerning  
Terry Lynn

8 Nichols?

9 A. I was told to go down to Herington, Kansas, to get  
10 background information for Terry Nichols that  
afternoon.

11 Q. And who told you to do that?

12 A. At that time, it was my superiors at Fort Riley,  
who at

13 that point was ASAC Watson.

14 Q. Watson?

15 A. Yes, sir.

16 Q. ASAC out of Kansas City?

17 A. Yes. Assistant Special Agent in Charge.

18 Q. Right. I understand. Who was John Bross?

19 A. John -- excuse me.

20 Q. Bross. B-R-O-S-S?

21 A. Joe Brothers.

22 Q. Brothers.

23 A. Is another Assistant Special Agent in Charge,  
another ASAC;

24 and it was Mr. Brothers and Mr. Watson who were out at  
the --

25 Q. So you have two ASACs in Kansas City?

Stephen Smith – Cross

1 A. Yes, sir.

2 Q. And it was Watson giving the orders; is that  
correct?

3 A. Watson and Mr. Brothers.

4 Q. And was it discussed at that time that Terry  
Nichols was

5 going to be arrested, an arrest warrant was going to be  
6 obtained?

7 A. No, it was not.

8 Q. Were you in contact with the Kansas City office?

9 A. Yes, I was.

10 Q. How did you communicate with the Kansas City  
office?

11 A. By my radio in my car. Had I a Bureau radio in the  
car.

12 Q. All right. And who was Mr. Chornyak?

13 A. Mr. Chornyak, Bill Chornyak, as supervisor in the  
Kansas

14 City office.

15 Q. Did you discuss matters with him over your radio as  
you

16 were going down to Herington?

17 A. No, I did not.

18 Q. Did you have a discussion with him during that day?

19 A. No, I did not.

20 Q. And your information was you didn't know anything  
about the

21 FBI was going to obtain a material witness warrant for

22 Mr. Nichols?

23 A. At that point, I did not know that, no, sir.

24 Q. Okay. They just said go down there and find out  
something

25 about Terry Nichols?

9971

Stephen Smith – Cross

1 A. They told me to go down to Herington, Kansas, and  
find out  
2 any background information I could on Terry Nichols,  
yes, sir.

3 Q. And you got there at what time?

4 A. I got there shortly before 2:00 p.m.

5 Q. Where was Jack Foley coming from?

6 A. I believe Jack Foley was coming from the Kansas  
City office  
7 itself.

8 Q. Okay. And all of you all know each other because  
you  
9 operate out of same office, Kansas City; is that  
correct?

10 A. That's correct.

11 Q. Even though you're in Topeka, you go into Kansas  
City and  
12 you know who these people are?

13 A. Yes, sir.

14 Q. But you get down to Herington, and you go to the

Department

15 of Public Safety, and you speak with Director Kuhn?

16 A. Director Kuhn and Assistant Chief Barry Thacker.

17 Q. They're both there?

18 A. Yes, sir.

19 Q. And you ask about Terry Nichols?

20 A. Yes, sir.

21 Q. And what did they tell you?

22 A. I asked them if they knew anything about Terry Lynn  
Nichols

23 who possibly used an alias of Ted Parker. I told them  
I had an

24 address of 901 South 2nd Street and that I needed to  
find out

25 any information they had on Terry Nichols.

9972

Stephen Smith – Cross

1 Q. And you told -- I'm sorry. I don't want to  
interrupt you.

2 Go ahead.

3 A. At that point, Mr. Kuhn told me that they had  
verified that

4 Mr. Nichols' address was 109 South 2nd Street,  
Herington, and

5 that they had no information for a Ted Parker. I had  
looked in

6 a phone book in Herington for any listing for Terry  
Nichols or

one of 7 Ted Parker, and I did not find any listing for either  
8 those individuals.

9 Q. And you told them that you were there to conduct a  
bombing, 10 investigation in connection with the Oklahoma City  
11 didn't you?

12 A. No, I did not. I told them that I was just looking  
for 13 information on Terry Nichols. I did not specify.

14 Q. Do you recall testifying in this matter before, Mr.  
Smith?

15 A. Yes, sir.

16 Q. And you recall relating the fact that you told them  
that 17 you were investigating in connection with the Oklahoma  
City 18 bombing?

19 A. I testified that I told them that I had went to the  
-- when 20 I went to the Herington Department of Public Safety --  
that I 21 had -- told Mr. Kuhn and Mr. Thacker that Terry Nichols  
was a 22 possible associate of Timothy McVeigh, and that's why I  
was 23 talking -- I was asking about any background  
information. So

24 in answer to your question, yes, I did testify to that  
and I 25 just misspoke.

9973

Stephen Smith - Cross

1 Q. All right. Now, did either of those individuals  
tell you

2 that they had met Terry Nichols before or they had some  
3 information to Terry Nichols' having had his car  
inspected?

4 A. They said that he had his car inspected the  
previous

5 Friday, I believe, and that they did have a current  
address of

6 109 South 2nd.

7 Q. And that's the way they came up with a current  
address,

8 wasn't it?

9 A. I don't know. I believe so.

10 Q. Now, did you have any further conversation with  
those two

11 individuals?

12 A. Yes.

13 Q. At that time?

14 A. At that time, I told them that I would be back at  
some

15 point if they had any other further information on  
Terry

16 Nichols.

17 Q. Okay. Did you leave a way that they could contact  
you?

18 A. No, I did not. I identified myself by name and  
that I was  
19 with the FBI. I did not leave a card, but I told them  
that I  
20 would probably be back.  
21 Q. You had a pager number; right?  
22 A. No, I did not.  
23 Q. You didn't have a pager with you?  
24 A. I'm sorry. I had a pager. I did not have a  
cellular phone  
25 at that point.

9974

Stephen Smith – Cross

1 Q. So you had a pager that you could have left them a  
number  
2 where they could call you?  
3 A. That's correct.  
4 Q. You didn't do that?  
5 A. No, I did not.  
6 Q. Okay. How long did you stay with them?  
7 A. Approximately 15 minutes.  
8 Q. Okay. And what other information, if any, did you  
get out  
9 of them?  
10 A. No other information other than the address and  
that Terry

Lynn  
drove by  
shell  
near 1st  
that

11 Lynn Nichols -- Terry Nichols' name was actually Terry  
12 Nichols, full name.  
13 Q. What did you do after you left there?  
14 A. I left there, the Department of Public Safety, and  
15 Terry Nichols' house at 109 South 2nd Street.  
16 Q. And what did you observe when you drove by?  
17 A. I observed a blue pickup truck with a white camper  
18 parked in that driveway.  
19 Q. Was it parked heading in or parked heading out?  
20 A. It was parked heading in.  
21 Q. And you drove to a location where?  
22 A. I drove north of the house to a location of a bank  
23 and Day in Herington, Kansas.  
24 Q. You couldn't see the house from that location; is  
25 correct?

9975

Stephen Smith - Cross

Agent

1 A. From that -- no, sir.  
2 Q. Did you go there because a radio transmission with  
3 Foley?  
4 A. No, I went there because I saw Mr. Foley's car in

that

5 vicinity, so I went there to meet him and at that point

6 actually got into his car.

was you

7 Q. Now, you told the prosecutor as of that moment it

that

8 and Foley and an FBI airplane circling overhead. Is

9 right?

Jack

10 A. No, that's not correct. At that point it was just

11 Foley and myself in Jack Foley's car.

12 Q. What time is this that you get in Jack Foley's car?

13 A. At approximately 2:20 p.m.

14 Q. What time did the FBI airplane arrive on the scene?

air.

15 A. I don't know what time specifically. I heard radio

16 communication just prior to Terry Nichols' leaving the

17 residence that the surveillance plane was up in the

18 Q. "Up in the air"? What does that mean?

that there

19 A. That it's -- that it is surveilling the area and

20 is an agent up there, a pilot agent up there doing some

21 surveillance.

him where

22 Q. Okay. And did you radio the pilot and explain to

involved in

23 the address was and what kind of vehicle would be

24 this surveillance?

25 A. No, I did not.

9976

Stephen Smith - Cross

1 Q. How did the airplane know where to go and who to  
look for?

2 A. The airplane had received a prior communication  
from  
3 someone else and told them the house and vehicle that  
he would  
4 be surveilling.

5 Q. Who else knew where the house was that was in the  
FBI on  
6 the radio loop?

7 A. The surveillance squad was approaching Herington at  
that  
8 point, and they relayed to the plane the area and the  
vehicle  
9 that he needed to surveil.

10 Q. And how did they get the information? From you?

11 A. I did not communicate with them. Some -- I did not  
12 communicate with them and tell them that -- where the  
vehicle  
13 was or what vehicle it was.

14 Q. Well, you have an S.O.G., which is the FBI word for  
a  
15 surveillance team, coming out of Kansas City. They're  
coming  
16 to Herington and they're telling the airplane where the  
house

17 and car is. How do they know?  
18 A. They heard word from -- at approximately 2:20, when  
I met  
--  
19 up with Jack Foley, we had advised the individuals that  
20 where we were and what we were doing.  
21 Q. So you did notify somebody what the true address of  
the  
22 house is and what kind of vehicle will be involved; is  
that  
23 correct?  
24 A. Yes, sir.  
25 Q. Okay. Who did you advise?

9977

Stephen Smith - Cross

1 A. I don't know. On the radio, I advised anyone in  
the  
2 vicinity; and apparently the surveillance squad picked  
that up.  
3 Q. Because you're all on the same radio frequency. Is  
that  
4 correct?  
5 A. Yes, sir.  
6 Q. Now, how many people are coming out of Kansas City  
to be  
7 surveillance agents?  
8 A. I don't know how many surveillance agents were  
coming.

9 Some of them were coming up from Wichita and some were  
coming

10 from Kansas City.

11 Q. Okay. Now, what time was the S.W.A.T. team  
dispatched from

12 Kansas City?

13 A. I do not what time the S.W.A.T. team was  
dispatched.

14 Q. But they came to Kansas City -- to Herington,  
didn't they?

15 A. Yes, sir.

16 Q. You don't know what time they left?

17 A. Left Kansas City.

18 Q. Yes, sir.

19 A. I do not know what time they left Kansas City. I  
believe

20 they arrived in Herington at 10:30 p.m.

21 Q. 10:30 p.m.

22 A. Yes.

23 Q. Mr. Nichols had already gone to the police station  
at 3:00

24 in the afternoon, hadn't he?

25 A. Yes. He had gone to the police station at  
approximately

9978

Stephen Smith - Cross

1 3:00 p.m.

2 Q. The S.W.A.T. team get deterred, or something?

3 A. I do not know.

4 Q. All right. Do you know how many vehicles were  
involved in  
5 the surveillance units?

6 A. There were approximately seven or eight vehicles  
that were  
7 involved in the surveillance of Terry Nichols.

8 Q. Did they come to your parking lot and meet with you  
to come  
9 up with a strategy?

10 A. No, sir. When I met with Jack Foley, it was Jack  
Foley and

11 I in Herington at that point. I got into Jack Foley's  
car and  
12 we set up surveillance approximately 2:30.

13 At approximately 2 -- at approximately quarter  
to 3 or

14 2:45, when Terry Nichols left his house, there was just  
the

15 three of us: Myself, Agent Foley, and the surveillance  
plane.

16 At that point we knew that there were other  
surveillance units

17 approaching Herington.

18 Q. And when they got to Herington, didn't they all  
meet in one

19 central location to discuss the matter?

20 A. I believe they did. I was not in that --

21 Q. Do you know where that was?

22 A. No, I do not.

23 Q. That they met?

24 A. No.

25 Q. Did you understand that they all got their cars  
stuck in

9979

Stephen Smith - Cross

1 the mud when they went to this central location to  
meet?

2 A. I do not know that, no, sir.

3 Q. Eventually, they joined you in the surveillance at  
some

4 point. Is that correct?

5 A. Yes, sir.

6 Q. All right. So you're parked near Mr. Nichols house  
where

7 you can see him leave at what time?

8 A. At approximately quarter to 3.

9 Q. And he's carrying his small daughter?

10 A. Yes, sir.

11 Q. And you see his wife come out of the house and get  
in the

12 passenger's side? Is that correct?

13 A. Yes, sir.

14 Q. And you told the jury how you followed him down to  
Surplus

15 City. And you say now that you saw him get out of the

truck,

16 walk toward the door but turn around, come back, and  
get in the

17 truck and drive away?

18 A. I observed Mr. Nichols get out of the truck at  
Surplus

19 City, approach the door, and head back to his truck and  
at that

20 point, I went further south on Highway 56. I did not  
see him

21 get back in his truck.

22 Q. In fact, when you turned around and came back, you  
went

23 into Surplus City to look for him, didn't you?

24 A. That's correct.

25 Q. But through radio communication with the other  
surveillance

9980

Stephen Smith – Cross

1 agents, you were able to ascertain that he was at the  
police

2 station, so you drove to the police station?

3 A. That's correct.

4 Q. And you told the jury that you didn't go in right  
away

5 because you wanted to make sure there wasn't a hostage

6 situation or a crisis situation?

7 A. That's correct.

whether 8 Q. And how was that determined? How did you determine

9 or not there was a hostage situation?

10 A. We wanted to make sure that there wasn't a hostage  
11 call in to situation, and we determined that by having someone  
12 that the Herington Department of Public Safety and determine  
13 for us.

14 Q. And that was an Agent Chornyak in Kansas City,  
wasn't it?

15 A. That's correct. Agent Chornyak called in; and at  
that point on Friday afternoon, we didn't know -- we  
16 actually had more questions than answers, so we didn't know if there  
17 was going to be a hostage situation or not.  
18

19 We knew that there had been a bombing two days  
prior to that and that the truck that was used in the bombing  
20 had been rented a short distance away by a friend of Terry  
Nichols,  
21 but we didn't know anything else. We just wanted to  
22 make sure that there weren't any other people killed or hurt; and  
23 that's why we were checking on the hostage situation.  
24

25 Q. You're saying that on Friday, April 21, you knew  
that the

9981

Stephen Smith - Cross

1 truck had been rented by McVeigh?

2 A. I said that I knew that the -- that the truck had  
been

3 rented by an individual --

4 Q. As you said, by a friend of Terry Nichols. Who  
does that

5 mean?

6 A. We knew at that point that the truck that had been  
used in

7 the bombing had been rented from Elliott's Body Shop in

8 Junction City, Kansas, a short distance away from  
Herington by

9 a friend -- by -- possibly by a friend of Timothy -- by  
a

10 friend of Terry Nichols.

11 Q. Well, you told the jury that you knew that the  
truck had

12 been rented by a friend of Terry Nichols. Are you  
meaning Tim

13 McVeigh?

14 A. Yes, sir.

15 Q. You had determined on Friday, April 21, the truck  
had been

16 rented by Tim McVeigh?

17 A. We believed at that point that the truck had been  
rented by

18 Tim McVeigh.

Nichols,  
19 Q. So based on that information, you felt that Terry  
20 carrying his infant daughter into the police station,  
had held  
21 up and made hostage everybody in the police station?

22 A. We thought that that was a possibility. Again, we  
did not  
23 know; and the reason that we wanted to check on the  
hostage  
24 situation was because we wanted to make sure that there  
was no  
25 one else killed or hurt.

9982

place to  
1 MR. WOODS: Your Honor, this is a convenient  
2 break.

3 THE COURT: It's good, since it's 5:00.  
4 You may step down now, Agent Smith. We'll  
have you  
5 back tomorrow morning.

6 Members of the jury, I hope we have all of you  
back  
7 tomorrow morning. I'm sure we will; and, of course,  
during  
8 this recess, please follow the cautions given at all  
earlier  
9 recesses. Tomorrow is a short day, you will remember.

We,

10 according to our schedule, will start at 8:45,  
hopefully taking

11 one break and recess at 1. So I'll remind you of that  
12 schedule.

13 And of course, please remember we have a ways  
to go

14 yet; and therefore, we're going to hear a good deal  
more than

15 you've heard so far. So keep open minds, do not  
discuss any

16 aspect of this case with anyone, including fellow  
jurors, and

17 be very careful about everything you read, see, and  
hear. Stay

18 away from anything that could influence your decision  
in this

19 case, knowing what your obligation is.

20 You're excused now till 8:45 tomorrow morning.

21 (Jury out at 5:02 p.m.)

22 THE COURT: We'll be in recess.

23 (Recess at 5:02 p.m.)

24 \* \* \* \* \*

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Page	2	Item			
	3	WITNESSES			
	4	Gladys Wendt			
9835	5	Direct Examination by Ms. Wilkinson			
9845	6	Voir Dire Examination by Mr. Tigar			
9847	7	Direct Examination Continued by Ms. Wilkinson			
9849	8	Cross-examination by Mr. Tigar			
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9854	10	Recross-examination by Mr. Tigar			
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9855	12	Direct Examination by Mr. Mackey			
9897	13	Voir Dire Examination by Mr. Woods			
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	16		PLAINTIFF'S EXHIBITS		
Withdrawn	17	Exhibit	Offered	Received	Refused Reserved
	18	58	9845	9847	
	19	1919	9897		9898
	20	1925	9876	9877	

21	1928	9883	9883
22	1934	9862	9862
23	1937	9872	9872
24	1938-1940	9877	9877
25	1999	9922	9922

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1 REPORTERS' CERTIFICATE

2 We certify that the foregoing is a correct  
transcript from

3 the record of proceedings in the above-entitled matter.  
Dated

4 at Denver, Colorado, this 20th day of November, 1997.

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Paul Zuckerman

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Kara Spitler

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