

1                               IN THE UNITED STATES DISTRICT COURT  
2   FOR THE DISTRICT OF COLORADO

3 Criminal Action No. 96-CR-68

4 UNITED STATES OF AMERICA,

5               Plaintiff,

6 vs.

7 TERRY LYNN NICHOLS,

8               Defendant.

9 ff

9

10                               REPORTER'S TRANSCRIPT  
  (Trial to Jury: Volume 86)

11

11 ff

12                               Proceedings before the HONORABLE RICHARD P.  
MATSCH,  
13 Judge, United States District Court for the District of  
14 Colorado, commencing at 8:45 a.m., on the 21st day of  
November,  
15 1997, in Courtroom C-204, United States Courthouse,  
Denver,  
16 Colorado.

17

18

19

20

21  
22  
23  
24  
Transcription  
Street,  
629-9285

Proceeding Recorded by Mechanical Stenography,  
Produced via Computer by Paul Zuckerman, 1929 Stout  
P.O. Box 3563, Denver, Colorado, 80294, (303)

10000

1 APPEARANCES  
2 PATRICK RYAN, United States Attorney for the  
Western  
3 District of Oklahoma, 210 West Park Avenue, Suite 400,  
Oklahoma  
4 City, Oklahoma, 73102, appearing for the plaintiff.  
5 LARRY MACKEY, SEAN CONNELLY, BETH WILKINSON,  
GEOFFREY  
6 MEARNS, JAMIE ORENSTEIN, and AITAN GOELMAN, Special  
Attorneys  
7 to the U.S. Attorney General, 1961 Stout Street, Suite  
1200,  
8 Denver, Colorado, 80294, appearing for the plaintiff.  
9 MICHAEL TIGAR, RONALD WOODS, and REID  
NEUREITER,  
10 Attorneys at Law, 1120 Lincoln Street, Suite 1308,  
Denver,  
11 Colorado, 80203, appearing for Defendant Nichols.  
12 \* \* \* \* \*

13

PROCEEDINGS

14

(In open court at 8:45 a.m.)

15

THE COURT: Be seated, please.

16

Good morning.

17

ALL: Good morning.

18

THE COURT: Are you ready to proceed?

19

MR. MACKEY: Yes, your Honor.

20

MR. WOODS: Yes.

21

THE COURT: Okay.

22

(Jury in at 8:45 a.m.)

23

THE COURT: Members of the jury, good morning.

24

JURY: Good morning.

25

testimony

THE COURT: You'll recall we were hearing

10001

now with

1

from Agent Smith when we recessed, and we'll continue

2

his testimony.

3

Agent Smith, you may resume the stand.

4

(Stephen Smith was recalled to the stand.)

5

THE COURT: Mr. Woods, you may resume your

6

questioning.

7

CROSS-EXAMINATION CONTINUED

8 BY MR. WOODS:  
9 Q. Good morning, Agent Smith.  
10 A. Good morning, Mr. Woods.  
11 Q. When we left yesterday at 5:00, we were discussing  
the fact  
12 that you were in front of the Department of Public  
Safety and  
13 you were with Agent Price, Gillispie, and Foley; is  
that  
14 correct?  
15 A. Yes, sir.  
16 Q. And you were concerned about a hostage situation?  
17 A. Yes, sir.  
18 Q. And you were able to communicate -- one of the four  
of you  
19 were able to communicate with Supervisor Chornyak --  
how do you  
20 pronounce his name?  
21 A. Chornyak.  
22 Q. Chornyak, in Kansas City, and he was able to call  
in to the  
23 Department of Public Safety to determine whether or not  
there  
24 was a hostage situation; is that correct?  
25 A. Yes, sir.

10002

Stephen Smith - Cross

that  
about the  
you

1 Q. Now, on direct examination, you told the prosecutor  
2 there was discussion amongst the four of you outside  
3 fact that you had no arrest warrant at that time. Do  
4 recall that?

5 A. Yes, sir.

was being

6 Q. You were aware, were you not, that arrest warrant  
7 sought during that day?

8 A. No, I was not. Not prior to the interview.

Operations  
Herington,

9 Q. You were aware, were you not, that a Special  
10 Group had been dispatched out of Kansas City to  
11 Kansas; is that correct?

12 A. Yes, sir, from Wichita and Kansas City.

13 Q. What was the purpose of the presence of the Special  
14 Operations Group in Herington, Kansas?

15 A. They were to surveil Terry Nichols.

16 Q. Surveil him for how long?

17 A. It was not determined.

warrant

18 Q. Wasn't the instructions "surveil him until arrest  
19 was obtained"?

20 A. I don't know those instructions.

21 Q. You were on the radio, you were communicating with  
22 everybody on the scene, were you not?

23 A. Yes, sir.

24 Q. Your radio pick up any transmission that was  
transmitted by

25 the S.O.G. and all the agents, weren't you?

10003

Stephen Smith - Cross

1 A. Yes, sir.

David

2 Q. All right. You were aware, were you not -- who's

3 Tubbs?

4 A. He's the Special Agent in Charge in Kansas City.

of

5 Q. He was your ultimate superior within that division

6 Kansas, wasn't he?

7 A. Yes, sir.

promoted

8 Q. Okay. And is that the same David Tubbs that got

9 to Atlanta?

10 A. Yes, he worked in --

11 Q. To a larger office; right?

12 A. He is still in Kansas City. He worked on a case in

13 Atlanta.

Jewell

14 Q. And is that the Olympic bombing case, the Richard

15 case that he was in charge of?

16 MR. MACKEY: Objection.

17 THE COURT: Sustained.

18 BY MR. WOODS:

19 Q. So he's back in Kansas City now?

20 A. Yes, sir.

21 Q. The -- were you aware that he dispatched the  
S.W.A.T. team

22 between 12:30 and 1:00 p.m. out of Kansas City to  
Herington,

23 Kansas?

24 A. I was aware that the S.W.A.T. was dispatched to  
Herington.

25 I did not know what time, no, sir.

10004

Stephen Smith - Cross

1 Q. Now, what was the purpose of the S.W.A.T. team  
coming to

2 Herington, Kansas?

3 MR. MACKEY: Objection, Judge.

4 THE COURT: Sustained.

5 BY MR. WOODS:

6 Q. And it's your testimony you had no idea that arrest  
warrant

7 was being sought for Mr. Nichols on that day?

8 A. Not prior to the interview, no, sir.

9 Q. Just all these agents were in Herington for some  
unknown

10 purpose, you don't know what the purpose was; is that  
correct?

11 A. The agents coming to Herington were going to  
surveil Terry

12 Nichols.

13 Q. And you don't know what the purpose of that was?

14 A. No, sir.

15 Q. Now, yesterday -- have you had a chance to review  
your

16 testimony, the transcript of your testimony from  
yesterday?

17 A. No, sir.

18 Q. Yesterday you spoke to the prosecutor on direct  
19 examination, and you said that Mr. Nichols told you he  
believed

20 in the views expressed in The Spotlight; is that  
correct?

21 A. Yes, sir.

22 Q. And that's going to be reflected in your notes;  
correct?

23 A. Yes, sir.

24 Q. Okay. We'll get to those notes in just a minute.

25 And yesterday you told the prosecutor on  
direct -- let

10005

Stephen Smith - Cross

1 me read it to you, when you were talking about what Mr.  
Nichols



2 told you that he did at the DRMO, when Mr. McVeigh  
dropped him

3 off. You recall that exchange of testimony that you  
gave?

4 A. Yes, sir.

5 Q. You stated: "Mr. Nichols got out of the -- got out  
of his

6 pickup truck and looked at items for sale in a building  
and

7 was -- they decided to meet up, to have Timothy McVeigh  
come

8 back at approximately noon that same day. When Timothy  
McVeigh

9 did not show up at noon, Terry Nichols went into  
another

10 building where he had to sign in in order to look at  
items

11 inside that building also."

12 Is that going to be in your notes?

13 A. Yes, sir.

14 Q. All right. We'll get to those notes.

15 "Did he tell you what he did once he signed  
into this

16 building?

17 "Answer: Yes, he signed into this building  
and then

18 looked at the items that were for sale inside and bid  
on some

19 of those items and came outside after approximately an  
hour of

20 looking at those items, and Mr. McVeigh showed up  
shortly after

21 that."

22 That chronology of two buildings is going to  
be in  
23 your notes, that's your testimony?

24 A. Yes, sir.

25 Q. All right. Now, you mentioned that during your  
testimony

10006

Stephen Smith - Cross

1 yesterday on direct that this was the first time  
anybody's ever

2 asked you for a copy of your notes, when Mr. Nichols  
asked you

3 after you read them to him that first break, when the  
two

4 agents came in. Do you recall that testimony, that the  
two

5 agents, Crabtree and Jablonski, came in, and you read  
the notes

6 to Nichols?

7 A. Yes, sir.

8 Q. And you stated to Mr. Mackey, "This is the first  
time

9 anybody's ever asked me for my notes."

10 A. Yes, sir.

11 Q. Okay. Now, in April, '95, you had been an agent  
for --

12 what, '91 did you get out of training academy?

13 A. November of 1991.

14 Q. So you'd been an agent for, what, 3 1/2 years?

15 A. No. Yes, sir, 3 1/2 years.

16 Q. All right. And you told the jury that you've  
worked on

17 numerous, numerous cases, bankruptcy fraud, kidnapping  
-- let's

18 see what type of cases you said you worked on.  
Kidnapping,

19 white-collar crime, bankruptcy fraud, theft of  
government

20 property, bank robberies, fugitives, drug cases,  
numerous,

21 numerous cases; is that your testimony?

22 A. Yes, sir.

23 Q. How many times have you testified in trial in front  
of a

24 jury like this?

25 A. Two or three times.

10007

Stephen Smith - Cross

1 Q. No; how many times, sir?

2 A. I don't recollect specifically. I would assume it  
was two

3 or three times.

4 Q. What case was it that you've testified in a Federal  
Court

5 in front of a jury before? What was the name of the  
defendant?

6 A. David Gottlieb.

7 Q. All right. What was the nature of the offense?

8 A. Bank robbery.

9 Q. And was that your case?

10 A. Yes, sir.

11 Q. All right. What was the second case?

12 A. Another bank robbery trial in Springfield,  
Missouri, in

13 1992, and the defendant was Bubba Cheek or Donny  
Wiggins.

14 Q. And those were two of your cases, you were the case  
agent

15 on those; is that correct?

16 A. I was not the case agent on the second trial down  
in

17 Springfield.

18 Q. So you've had one case where you were the case  
agent that

19 went to trial in front of a jury?

20 A. And then I would change that right here, sir, I'm  
sorry;

21 but David Gottlieb ended up pleading, so we did not  
have a

22 trial. We pled that trial.

23 Q. You just thought that you appeared in trial and  
testified

24 in front of a jury?

25 A. Excuse me, sir, I misspoke.

10008

Stephen Smith – Cross

of a 1 Q. How many times have you actually testified in front

2 jury in a federal trial, sir?

3 A. In a federal trial, it would be one time.

you have 4 Q. All right. Now, you stated to the prosecutor that

that 5 interviewed hundreds and hundreds of individuals; is

6 correct?

7 A. Yes, sir.

personally 8 Q. How many targets of the investigation have you

9 interviewed?

"target" 10 MR. MACKEY: Objection to -- use the term

11 without foundation.

12 BY MR. WOODS:

in the 13 Q. Do you know what a "target" is of an investigation

14 FBI terminology?

15 A. The subject of investigation.

interviewed 16 Q. All right. How many times have you personally

17 the target of an investigation?

18 A. I would estimate 40 to 50 times.

19 Q. 40 to 50 times.

20 A. Yes, sir.

21 Q. And how many of those people got indicted?

22 A. All of them.

23 Q. Okay. What . . . what were the names of five of  
the cases,

24 sir?

25 MR. MACKEY: Objection, Judge.

10009

Stephen Smith - Cross

1 THE COURT: Sustained.

2 BY MR. WOODS:

3 Q. And Mr. Nichols asked you for a copy of the notes;  
is that

4 correct?

5 A. Yes, sir.

6 Q. And there was a copy machine there in the police  
station,

7 wasn't there?

8 A. Mr. Nichols did not ask for a copy of the notes for  
a

9 specific time. He just said if he could get a copy of  
the

10 notes --

11 Q. I didn't ask you that, sir. The question was was  
there a

12 copy machine in the Department of Public Safety?

13 A. I assume so, yes, sir.

14 Q. You know that some articles were copied on that  
machine,

15 don't you, that belonged to Mrs. Nichols?

16 A. Yes, sir.

17 Q. So you knew that there was a copy machine in that  
18 Department of Public Safety, didn't you?

19 A. Yes, sir.

20 Q. Did you copy the notes for Mr. Nichols?

21 A. No, sir.

22 Q. You had no intention of providing copies of his  
(sic) notes

23 to him on that day or the subsequent day, did you?

24 A. He did not condition the request to having --

25 Q. Sir, did you have any intention of giving Mr.  
Nichols a

10010

Stephen Smith - Cross

1 copy of his (sic) notes on that day or the next day?

2 A. A copy of my notes?

3 Q. Yes, sir.

4 A. No.

5 Q. Mr. Nichols told you, didn't he, that he had heard  
on the

6 news -- and that's why he was in the Department of

Public

7 Safety -- he had heard on the news that his name had  
been

8 mentioned as someone wanted in connection with this  
case?

9 A. He had mentioned that he had heard his name and his  
10 brother's name, yes, sir.

11 Q. And he had heard the press conference of the  
Attorney

12 General, Janet Reno, hadn't he?

13 A. Yes, sir.

14 Q. And you're aware that she was stating they were  
going to

15 seek the death penalty for everybody involved in that  
case, are

16 you not?

17 A. I had not seen that press conference, and I was not  
aware

18 of that, no, sir.

19 Q. And yet you thought that was strange that Mr.  
Nichols would

20 want a copy of his notes on that day?

21 MR. MACKEY: Objection.

22 THE COURT: Sustained.

23 BY MR. WOODS:

24 Q. Now, do you recall during the testimony yesterday  
when

25 Mr. Mackey asked you did he tell you something, and you  
would



10011

Stephen Smith – Cross

numerous 1 always answer, "No, he did not"? Do you recall those

2 exchanges?

3 A. Excuse me?

yesterday, 4 Q. Yes. In your direct examination with Mr. Mackey

said, 5 do you recall numerous questions of Mr. Mackey when he

say, "No, 6 "Did Mr. Nichols tell you" something, and you would

7 he did not"?

8 A. Yes, sir.

Mackey 9 Q. All right. Do you recall the exchange where Mr.

made to 10 asked you concerning the phone call that Mr. McVeigh

long he 11 Mr. Nichols, Mr. Mackey asked you, "Did he tell you how

12 had had phone service?"

13 Your answer was, "He did not."

14 Do you recall that?

15 A. Yes, sir.

how 16 Q. Did you ask him during the course of that interview

17 long he'd had phone service?

18 A. No, sir.

19 Q. Mr. Mackey asked you, "Did he tell you how Mr.  
McVeigh had

20 his phone number?

21 "Answer: No, he did not tell us how."

22 Did you ask him that question?

23 A. No.

24 Q. Do you know how "information" works, when you call  
up the

25 phone company and ask for information?

10012

Stephen Smith - Cross

1 A. Yes, sir.

2 Q. You ever done that?

3 A. Yes, sir.

4 Q. Do you recall on the discussion about Mr. Nichols'  
trip to

5 Oklahoma, Mr. Mackey asked you: "Did Mr. Nichols give  
you any

6 reason as to how it was he knew the time of travel from  
his

7 home to Oklahoma City?

8 "Answer: Yes. He said he determined that it  
would

9 take five hours to get from central Kansas down to  
Oklahoma

10 City.

11 "Question: Did he give you a basis for how he  
knew

12 that?

13 "Answer: No, he did not."

14 Did you ask him about that?

15 A. Mr. Nichols said that he had decided that it would  
take  
16 five hours to get down to Oklahoma City.

17 Q. And Mr. Mackey's question was, "Did he give you a  
basis for  
18 how he knew that?"

19 And your answer was, "No, he did not."

20 Did you ask him?

21 A. No, I did not.

22 Q. Concerning the questions about Mr. Nichols telling  
his  
23 family he was going to Omaha, do you recall the  
question where

24 Mr. Mackey asked --

25 MR. MACKEY: Your Honor, I object to the use  
of the

10013

Stephen Smith - Cross

1 transcript in this fashion without further foundation.  
He's

2 simply reading into the record yesterday's proceedings.

3 THE COURT: Objection is overruled.

4 BY MR. WOODS:

Nichols 5 Q. When you advised on direct examination that Mr.  
6 had told his family he went to Omaha -- do you recall  
that 7 testimony?

8 A. Yes, sir.

9 Q. And Mr. Mackey asked you, "And did he give you a  
reason for 10 making that statement to his family?

11 "Answer: No, other than he said he did it  
because 12 Terry -- because Tim McVeigh asked him to do that.

13 "Question: Did he give you any reason as to  
why he 14 didn't simply lie to McVeigh as opposed to his family?

15 "Answer: No, he did not."

16 Did you ask him that question?

17 A. No, I did not.

18 Q. Do you remember the discussion about Mr. Nichols  
telling 19 you, driving around downtown Oklahoma City, and you  
mentioned 20 "that building"?

21 A. Yes, sir.

22 Q. Do you recall the question, "You told the jury that  
23 Mr. Nichols said he had driven by 'that building,' the  
Murrah 24 Building. Did he explain to you how he came to use  
that 25 description?

10014

Stephen Smith – Cross

1 "Answer: Yes. He said that he had driven  
past that  
2 building a couple of times, and it was obvious in the  
context  
3 of the interview that it was the Alfred P. Murrah  
Federal  
4 Building.

5 "Did he tell you why he remembered that  
building in  
6 particular?

7 "Answer: No, he did not."

8 Did you ask him that question?

9 A. No, I did not.

10 Q. "Question: Did he give you any basis for  
explaining why he  
11 even recognized the building in order for him to  
describe it to  
12 you?

13 "Answer: No, he gave no basis."

14 Did you ask that question?

15 A. No, sir.

16 Q. Do you know of many people in the country on Friday  
who  
17 wouldn't recognize that building?

18 MR. MACKEY: Objection.

19 THE COURT: Sustained.

20 BY MR. WOODS:

21 Q. Do you recall the questions about leaving the car,  
22 Mr. McVeigh left the car in Oklahoma City?

23 A. Yes, sir.

24 Q. "Question: You told the jury he expressed to you  
that he  
25 had a feeling that the car was going to be left in  
Oklahoma

10015

Stephen Smith - Cross

1 City; is that right?

2 "Answer: That's correct.

3 "Question: Did he explain what gave him that  
feeling?

4 "Answer: No, he did not."

5 Did you ask him that question?

6 A. No, sir.

7 Q. "Question: Did he give any description of the  
vehicle that  
8 was being left behind in Oklahoma City?

9 "Answer: Mr. Nichols said that the way that  
Timothy  
10 McVeigh talked, he thought it was a larger model and  
that he  
11 was leaving it in Oklahoma City.

would 12 "Question: Did he tell you why he thought or  
13 describe to you that it was a larger model car.

14 "Answer: He did not explain that."

15 Did you ask him that question?

16 A. We asked him that. He said that the way that  
Timothy 17 McVeigh talked, it appeared that it was a larger model.

18 Q. The question was "Did he tell you why he thought  
that?"

19 "Answer: He did not explain that."

20 Was that incorrect; he did explain it?

21 A. No further than what he had said, that Timothy  
McVeigh had 22 told him.

23 Q. Did Mr. --

24 "Question: Did Mr. Nichols explain how he  
knew that

25 information about the vehicles and the cost, given the  
amount

10016

Stephen Smith - Cross

1 of contact as he reported to you between himself and  
2 Mr. McVeigh?"

3 "Answer: No, he did not."

4 Did you ask him that question, sir?

5 A. No, I did not.

6 Q. Now, you recall the questions and answers about Mr.  
McVeigh

7 going from Arizona to New York?

8 A. Yes, sir.

9 Q. That trip?

10 Question was, "Did Mr. Nichols tell you why it  
was

11 that Mr. McVeigh would go to Kansas in order to go to  
New York?

12 "Answer: No, sir, he did not."

13 Did you ask him that question?

14 A. No, sir.

15 Q. "Question: Did Mr. Nichols tell you or mention to  
you at

16 any point in time that he had any reason to believe  
that he had

17 been observed by anyone while driving downtown Oklahoma  
City on

18 Easter Sunday?

19 "Answer: No, he gave no reason."

20 Did you ask him that question?

21 A. No, sir.

22 Q. At that time when you were doing the questioning,  
were you

23 aware of the camera at the Regency Towers?

24 A. No, I was not.

25 Q. Have you since become aware of it?



10017

Stephen Smith – Cross

1 A. Yes, sir.

2 Q. Have you seen the video and the photographs from  
it?

3 A. I've seen the photographs from it, yes, sir.

4 Q. Do you recall the discussion that you had with Mr.  
Mackey  
5 about the trip from Oklahoma City to Junction City  
6 conversation inside the truck?

7 A. Yes, sir.

8 Q. "Question: What was Mr. McVeigh's response,  
according to  
9 Terry Nichols, when he said, 'What are you going to do,  
rob a  
10 bank?'"

11 "Answer: His response, Mr. McVeigh's  
response,  
12 according to Mr. Nichols, was that, 'No, but I've got  
something  
13 in the works.'

14 "Question: Did Mr. Nichols explain to you why  
he  
15 first questioned Mr. McVeigh about robbing a bank in  
response  
16 to something big, why did he come up with that?

17 "Answer: No, he did not."

18 Did you ask him that question, sir?

19 A. No.

20 Q. Now, you recall the discussion you and Mr. Mackey  
had about

21 going to DRMO, being dropped off, and then Mr. McVeigh  
picking

22 him up and taking him back to McDonald's?

23 A. Yes, sir.

24 Q. And Mr. Mackey asked the question: "Did Mr.  
Nichols

25 explain why, after waiting for the pickup, that he was  
prepared

10018

Stephen Smith - Cross

1 to drive out of his way to drop Tim McVeigh off?

2 "Answer: No, he did not."

3 Did you ask him that question, sir?

4 A. No, sir.

5 Q. Do you recall the questions and answers concerning  
20th?

6 Mr. Nichols going to the cable outlet on April the

7 A. Yes, sir.

8 Q. "Question: Did he tell you he had not had any  
cable

9 service prior to April the 20th, '95?

10 "Answer: That's correct.

11 "Question: Did he tell you why on that day he  
chose

12 to request cable service?

13 "Answer: No, he did not."

14 Did you ask him that question, sir?

15 A. No, sir.

16 Q. Now, at the end, you and Mr. Mackey talked about  
this

17 letter and your recognition of the phrases in there,  
"as far as

18 heat, none that I know of," and the phrase "go for it";  
do you

19 recall that?

20 A. Yes, sir.

21 Q. And you stated that Mr. Nichols was asked the  
question but

22 that he gave no response.

23 A. That's correct.

24 Q. And you felt that was significant, those phrases,  
didn't

25 you?

10019

Stephen Smith - Cross

1 A. Yes, sir.

2 Q. Did you put those in your notes anywhere, sir?

3 A. No, sir.

4 Q. Now, being 3 1/2 years out of the academy, you were  
5 somewhat fresh in your mind about what they were  
teaching in

6 the academy, weren't you?

7 A. Yes, sir.

8 Q. And don't they teach you to write down everything  
you can,

9 especially early in an investigation because you don't  
know

10 what's going to be significant and what isn't  
significant?

11 A. That's correct.

12 Q. They teach you to be as thorough as you can and try  
to

13 capture every word, since you're not going to use a  
tape

14 recorder, try to -- teach you to capture every word,  
don't

15 they, sir?

16 A. That's what these notes reflects.

17 Q. Okay. We'll get to those notes. We're going to  
get to

18 notes in just a second.

19 During the course of that interview that  
started

20 shortly after 3:00 p.m. and ended shortly after 12:00  
p.m.

21 (sic), you came upstairs on occasion, didn't you,  
during those

22 lengthy breaks?

23 A. Yes, sir.

24 Q. You stated that there were three breaks for two  
hours each?

25 A. Three breaks totaling two hours.

10020

Stephen Smith – Cross

up and 1 Q. Totaling two hours. And that wasn't just to come

2 drink a Coke, was it?

3 A. No, sir.

present 4 Q. In fact, you were advising your superiors who were

interview, 5 on the scene of what you were learning in that

6 weren't you?

7 A. That's correct.

could go 8 Q. And you were getting feedback from what agents were  
9 learning out in the field, weren't you, so that you

10 back and answer questions -- ask questions?

11 A. That's correct.

in the 12 Q. Who was present upstairs that was superior to you

13 FBI hierarchy?

14 A. In Herington?

15 Q. Yes, sir.

16 A. ASAC Watson, SAC Tubbs.

take 17 Q. So Mr. Tubbs had arrived on the scene to personally

18 charge and supervise this part of the investigation

there in

19 Herington; is that correct?

20 A. Mr. Tubbs showed up that evening. I do not know  
what time

21 he showed up.

22 Q. He was the man in charge for the FBI; is that  
correct?

23 A. He was in charge of the Kansas City division, yes,  
sir.

24 Q. All right. Who else was present?

25 A. Tom Price, Mike Shannahan. I believe those were  
the four

10021

Stephen Smith - Cross

1 individuals that were superior to me, of a supervisory  
2 position.

3 Q. Those were all supervisors, were they not?

4 A. Two supervisors and then Assistant Special Agent in  
Charge

5 and then SAC.

6 Q. Mr. Price was a supervisor?

7 A. Yes, sir.

8 Q. What about Gillispie -- was he a supervisor?

9 A. No, sir.

10 Q. He was just a street agent like you?

11 A. Just a street agent, like me.

12 Q. How many years had he been in?  
13 A. I do not know.  
14 Q. Who else was upstairs that you noticed during the  
course of  
15 that evening?  
16 A. When we would go upstairs, Jack Foley and Dan  
Jablonski  
17 would go downstairs.  
18 Q. No, sir, who was upstairs?  
19 A. Besides those people I mentioned, I don't have a  
20 recollection besides those people.  
21 Q. Did U.S. attorney for the state of Kansas come?  
22 A. Mr. Rathbun showed up at some point during that  
evening,  
23 yes, sir.  
24 Q. All right. And tell the jury what the U.S.  
attorney's  
25 function is and who -- where does he fit in in the  
scheme of

10022

Stephen Smith - Cross

1 directing the FBI?  
2 A. The U.S. attorney is the prosecutor who handles the  
3 investigation or handles the case in court; and Mr.  
Rathbun was  
4 the U.S. attorney for Kansas at that time.  
5 Q. In fact, he is the top federal law enforcement

official in

6 that district, isn't he?

7 A. Yes, sir.

8 Q. He's certainly over Mr. Tubbs, isn't he?

9 A. Yes, sir.

10 Q. So you had a number of supervisors upstairs to seek  
advice

11 from; is that correct?

12 A. Yes, sir.

13 Q. And you were able -- the FBI was able to  
communicate with

14 the SIOC in Washington where even higher officials were

15 available to give direction, were you not?

16 A. Yes, sir.

17 Q. All right. You have those notes back in your  
possession,

18 sir?

19 A. Yes, 1924.

20 Q. Thank you.

21 MR. WOODS: Your Honor, may it please the  
Court, the

22 defense would offer into evidence Government's Exhibit  
1924.

23 MR. MACKEY: Judge, I would object unless  
we're going

24 to offer the typewritten versions and the 302 itself.

25 MR. WOODS: I've compared the typewritten  
versions,



Stephen Smith – Cross

1 and they're not accurate or complete.

2 THE COURT: Well, it seems to me for  
completeness they

3 both should be in if one is going to be in.

4 MR. WOODS: May I be heard at the bench on  
this, or I

5 can argue it here, your Honor.

6 THE COURT: Go ahead and argue it.

7 MR. WOODS: I have looked at the typewritten  
version

8 and compared it with this version here. It is not  
accurate.

9 THE COURT: Well, the witness is the one who  
adopted

10 it. This is the witness's notes. The witness also  
adopted the

11 typewritten version.

12 Is that right?

13 THE WITNESS: Yes, sir.

14 So it's my ruling that one can't come in  
without the

15 other.

16 MR. WOODS: The typewritten notes only, not  
the 302.

17 We object to the 302 which was --

18 THE COURT: I didn't say anything about the  
302.

19  
your Honor.

MR. WOODS: Well, I think he offered both,

20

THE COURT: You said the typewritten version,

21

Mr. Mackey?

22

302.

MR. MACKEY: Yes, I did. That, and also the

23

MR. WOODS: We object to the 302.

24

THE COURT: I don't think the 302 is relevant.

25

MR. WOODS: Thank you.

10024

Stephen Smith - Cross

1

THE COURT: So take your choice, Mr. Woods.

2

in, and

MR. WOODS: Well, we certainly want the notes

3

version of

given the Court's ruling, we'll accept the agent's

4

the typewritten notes.

5

THE COURT: All right. That's 1926; right?

6

MR. WOODS: Yes, your Honor.

7

THE COURT: I'll receive 1924 and 1926.

8

MR. WOODS: Thank you.

9

BY MR. WOODS:

10

so the

Q. Now, Agent Smith, just for clarification purposes

11

the top

jury can follow this, you've got the pages numbered on

12 right; is that correct?

13 A. Yes, sir.

14 Q. Then you've written on the back sometimes. Did you  
use

15 just the front page initially? You'd have front page  
of 1 and

16 then you went to the front page of 2 in a chronological

17 sequence as you were interviewing Mr. Nichols?

18 A. Yes, sir.

19 Q. And then when did you come back and fill out the  
back of

20 page 1?

21 A. If I could take a look at the notes --

22 Q. You don't have a copy there?

23 A. I have a copy in the other room.

24 THE COURT: Well, maybe we have another copy.

25 MR. WOODS: I asked that he be provided a copy  
--

10025

Stephen Smith - Cross

1 THE WITNESS: I'm sorry.

2 MR. WOODS: -- overnight, your Honor.

3 THE COURT: All right. Do you have them there  
now?

4 THE WITNESS: Yes, sir.

5 BY MR. WOODS:

6 Q. The question is, Agent Smith -- you started out on  
page 1,  
7 and then you got a page 2, but there's writing on the  
back of  
8 page 1. Did you -- when you were interviewing Mr.  
Nichols, did  
9 you write on the front page of page 1 and then turn  
over and  
10 write on the back of page 1 and then number the second  
page  
11 page 2, or how did this come about chronologically?

12 A. It looks confusing, and in actuality, it's not.  
What I did  
13 is I took notes on the front of page 1, on the front of  
page 2,  
14 the front of page 3, on the front of page 4 to the  
bottom where  
15 the notation is "about 4:12 p.m., Dan and Scott."

16 Q. Yes, sir.  
17 A. Then I went back to page 1, and we reviewed the  
notes with  
18 Terry Nichols.

19 Q. So the first four pages are what you took before  
Foley  
20 Mr. Jablonski and Mr. Foley -- or Mr. Crabtree and Mr.  
21 (sic) came in; is that correct?

22 A. Correct.  
23 Q. All right.  
24 A. I went back to page 1, and I made additions to  
things that  
25 Terry Nichols had omitted the first time he had the

information

10026

Stephen Smith – Cross

of the 1 he had given us. So those notations are on the margins  
fourth 2 first page, the second page, and the third page and the  
3 page.

4 Q. Just the front part, the margins?

5 A. Yes, sir.

6 Q. All right.

fifth 7 A. And then I went to the fifth page, the front of the  
8 page.

9 Q. When you resumed the interview?

other 10 A. Yes, sir, after we went over the notes and made  
page. I 11 clarifications in the margins. We went to the fifth

12 went and I took notes on the front of the fifth, sixth,  
13 seventh, eighth, ninth, tenth, and eleventh.

14 Q. Yes, sir.

first 10 15 A. And then we took our first break at 6:10. So the  
3:15 or 16 pages -- excuse me, the first 11 pages are notes from  
17 3:18 in the afternoon until 6:10.

18 Q. Just the front of those 11 pages?  
19 A. Just the front of those pages.  
20 Q. All right.  
21 A. We took a break, we resumed the interview at 7:07,  
and then  
22 I went to the front of the document -- the front of the  
notes  
23 at 7:19 as noted on the front page of the notes, and I  
say that  
24 we're going to go over the story. So Scott Crabtree  
and I  
25 telling Terry Nichols that we're going to go over the  
whole

10027

Stephen Smith - Cross

1 thing again at 7:19 p.m. At 7:19 p.m. I change the  
color of my  
2 pen. I was taking all my notes in blue. On the front  
page, I  
3 write "7:19, go over story," and I change to a black  
pen. So  
4 all the notes after 7:19 are in black, and all the  
omissions  
5 and clarifications for things that we had gone over are  
in  
6 black.  
7 So we went on the first page at 7:19, the  
front of the  
8 second page at 7:19, in black; and then I went to the  
closest

the 9 page to continue the note recitation, and that would be

10 back of page 1.

11 Q. That's the closest page to continue it?

-- if 12 A. Yeah. If I'm on the front of page 2 and it's in a

after 13 I'm on the front of page 2, writing notes in black ink

there, on 14 7:19, I'm going to go to the back since it's right

that he 15 the back of page 1, to write the continuation of things

16 was mentioning.

17 Q. Okay.

page 3. 18 A. And then I went to the back of page 2, the back of

19 Q. All right.

20 A. And then we took our second break --

21 Q. All right.

through 22 A. -- at 8:14 to 8:44. We came back in and went back

23 the interview -- I'm still on the back of page 3.

24 Q. Okay.

the back 25 A. Same color, black pen. And in the back of page 4,

10028

Stephen Smith - Cross

then  
10:21 as  
to the

1 of page 5, back of page 6, and the page of page 7; and  
2 bottom of that page is when we took our last break at  
3 noted on the back of page 7. And from there I would go  
4 front of page 12 in black ink after the break.

5 Q. What break was this, the 10:20 break?

went to the  
the  
page at  
break. So  
because I  
were  
back of  
the

6 A. 10:20 to 10:50 -- 10:21 to 10:50. Excuse me, I  
7 front of page 11. If you look at the front of page 11,  
8 last notation is 7:17 p.m. before I go to the first  
9 7:19, and then I catch up again at 10:50 after our  
10 it appears confusing, but it makes perfect sense  
11 changed color pens to show where in the interview we  
12 talking about these things; and then I would go to the  
13 that page because it was relevant to the information on  
14 front of that page.

more?

15 Q. All right. So we can then -- excuse me. You had

16 A. Yes, sir. And then from 10:50 until the end of the  
17 interview, I took notes on pages 11 through 15 in black  
18 ink.

all the

18 And then at the end of the interview, I put numbers on



19 pages in the black ink 'cause that was at the end of  
the  
20 interview, and I just numbered the front of the pages  
as being  
21 1 through 15 as noted in the upper right-hand corner  
that you  
22 were mentioning earlier.

23 Q. And did you number the backs of the pages at all?

24 A. No, not at all.

25 Q. Thank you for that explanation. And let's go  
through these

10029

Stephen Smith - Cross

1 notes, then.

2 Well, let me first, before I get into that.  
When you

3 went inside the office, Mr. Nichols was there with his  
wife,

4 Marife Nichols, and his infant daughter; is that  
correct?

5 A. Yes, sir.

6 Q. And Agent Price was with you, your supervisor?

7 A. He was not my supervisor, but he was a supervisor;  
and he

8 was with me, yes, sir.

9 Q. And who made the search of Mr. and Mrs. Nichols?

10 A. Jack Foley did a pat-down search of Mr. Nichols,  
and Marife

Herington 11 Nichols was searched by a female matron from the  
12 Department of Public Safety.  
13 Q. And you observed that?  
14 A. I observed Jack Foley do a pat-down search of Terry  
15 Nichols, and I was aware that a female matron was  
coming. I  
16 did not observe her doing a pat-down search of his  
wife,  
17 Marife.  
18 Q. Did you observe the search of the child?  
19 A. No, I did not.  
20 Q. Now, during the time that you're downstairs with  
21 Mr. Nichols, where was Mrs. Nichols?  
22 A. She was upstairs, I believe.  
Nichols 23 Q. Did you separate them immediately and take Mr.  
24 downstairs?  
25 A. Mr. Nichols told his wife that he was going to  
speak with

10030

Stephen Smith - Cross

1 the FBI agents, so we followed him downstairs.  
Nichols; is 2 Q. And some FBI agents stayed with Miss -- Mrs.  
3 that correct?  
4 A. Yes, sir.

5 Q. All right. Let's start with your notes, Agent  
Smith. And  
6 I'll try to zoom in here so we can make sure we've got  
the  
7 whole page; and we'll just start at a top, and then  
we'll have  
8 to come up to catch the bottom part.  
9 And if you will, sir, read for the jury --  
just start  
10 at the top and make sure that the picture on the screen  
there  
11 depicts everything so that nobody's missing anything.  
If you  
12 will, read for the jury what that says. This is your  
first  
13 page; is that correct?  
14 A. Yes, sir.  
15 Q. I'll put up a little bit here so that we can see.  
That's  
16 numbered "SS," that's Steve Smith, No. 1; is that  
correct?  
17 A. Yes, sir.  
18 Q. All right. Sir, if you will read for the jury what  
each  
19 line says.  
20 A. All 22 pages?  
21 Q. We're going to start with this page, sir.  
22 A. I'm going to read from the exhibit here. It's the  
same as  
23 on the screen. Is that --

you're 24 Q. It's my understanding that's an exact copy that  
25 looking at.

10031

Stephen Smith - Cross

1 A. Yes, sir. "4-21-95, Herington public safety  
office, 3:15,

2 searched Nichols in office."

3 Q. All right. Go ahead. Next line.

4 A. Do you want me to read them in sequence as to what  
Terry

5 Nichols told us --

6 Q. Yes, sir.

7 A. -- or just read them --

8 Q. I assume these notes are in sequence; is that  
correct?

9 A. They are. That's why I mentioned that. That's why  
I

10 mentioned that the 7:19 is not going to be right after  
3:18, of

11 course.

12 Q. We understand that. You've explained that. The  
next line

13 is "Terry Lynn Nichols."

14 A. Yes, sir.

15 Q. And what's the next line?

16 A. "DOB 4-1-55."

if that 17 Q. And did you check his driver's license to determine  
18 was true?  
19 A. No, sir.  
20 Q. Did you see his driver's license that night?  
21 A. No, sir.  
of 22 Q. Did you see any forms of identification that night  
23 Mr. Nichols?  
24 A. No, sir.  
wallet? 25 Q. Didn't ask for his wallet or anything out of his

10032

Stephen Smith - Cross

1 A. No, sir.  
2 Q. All right. What's the next line?  
it 3 A. "SS," for Social Security, "371-68-4869. Not use  
4 anymore."  
5 Q. And the next line?  
6 A. "Random number on DL because not use SSAN."  
7 Q. And did you check the Social Security number at  
that time?  
8 A. No, sir.  
9 Q. All right. What's the next line?  
that's 10 A. "Present job" -- "present job" is a black ink, so

items." 11 later in the interview -- "buy and sell used military

that 12 Q. When you say "that's later in the interview," just

in the 13 line that says "present job" is the thing that's later

14 interview; is that correct?

15 A. Yes, sir.

front from 16 Q. This other information you're getting right up

17 Mr. Nichols?

18 A. Yes, sir.

19 Q. And what did he say?

shovels, 20 A. "Buy and sell used military items, ammo cans, hand

21 ax, surplus sandbags."

in 22 Q. Okay. Now, what are these crosses or Xs you've got

23 front of each statement?

another 24 A. That would be in regards to answer to a question or

issue as 25 comment that Mr. Nichols made in regards to another

10033

Stephen Smith - Cross

1 opposed to just going --

topics -- 2 Q. That's the way you separate the sentences or the

or 3 is that correct -- so you can tell where a new sentence

4 thought is starting?

5 A. Yes, sir.

6 Q. Okay. So you have a cross there, but nothing's  
next to it.

7 A. That's correct.

8 Q. Okay. What's the next cross?

9 A. "Go to shows."

10 Q. What was that in response to?

11 A. Where he sells his military surplus, he goes to gun  
shows

12 and sells his items.

13 Q. Okay. What's the next statement?

14 A. "No one else at home."

15 Q. What was that in response to?

16 A. We asked him if anyone was still at his house, at  
109 South

17 2nd in Herington.

18 Q. All right. What's the next statement?

19 A. "Left house and heard name on radio news."

20 Q. And the next?

21 A. "Manhattan station, heard name two people from  
Michigan."

22 Q. "Heard name" and what else?

23 A. The --

24 Q. The extra information is what you added later; is  
that

25 correct, sir?

10034

Stephen Smith - Cross

1 A. Yes, sir, when we went over --

2 Q. All right. We'll come back to that.

3 A. Okay.

4 Q. We want to do this in the sequence that you did it.

5 A. Right.

6 Q. Is that the most fair way?

7 A. Right. And that's how it's depicted on 1926, is  
the -- the

8 Exhibit 1926 is chronologically as to how the interview  
went.

9 Q. All right. So the next thing you said was "two  
people from

10 Michigan"?

11 A. Yes, sir.

12 Q. And he's relating what the television news is  
stating; is

13 that correct?

14 A. No. At this time, he's mentioning that a radio  
broadcast

15 from the Manhattan, Kansas station had mentioned that  
two

16 people from Michigan were being sought in connection  
with the

17 Oklahoma City bombing.



18 Q. All right. What's the next statement?  
19 A. "James Nichols, a brother."  
20 Q. And the next?  
21 A. "Terry Lee Nichols."  
22 Q. Is that the two names that he's mentioning from  
Michigan?  
23 A. Yes, sir.  
24 Q. And the next statement that you took from him at  
that time?  
25 A. "In process of being arrested. James is my  
brother."

10035

Stephen Smith - Cross

what -- 1 Q. And did he state that he saw that on the news, or  
2 how does that fit in with your interview at 3:00?  
3 A. He said he was confused a little bit. He said that  
he  
4 didn't know if Timothy McVeigh was in the process of  
being  
5 arrested or if he heard that the two people from  
Michigan were  
6 in the process of being arrested. He did not know. It  
7 was . . . .  
8 Q. What's the next statement you took from him?  
9 A. "Came to PD to see what's what. Do not want  
another Waco."

10 Q. And then you've got a cross with a new thought?  
11 A. Yes, sir.  
12 Q. What does that say?  
13 A. "Stopped at surplus store, need shingles, trade  
tools for  
14 shingles."  
15 Q. And the next?  
16 A. "Got out of car, had a feeling that I was being  
followed,  
17 got back in."  
18 Q. Okay. Now, you've got some circles over here on  
the left  
19 that are in blue. What are those, sir?  
20 A. The circles in blue are things that Terry Nichols  
had  
21 omitted to tell Jack Foley and I and that he told Jack  
Foley,  
22 I, Dan Jablonski, Scott Crabtree during the note  
review.  
23 That's why it's in blue there, and there are just other  
things  
24 in the margin. Some of them are in blue, some of them  
are in  
25 black. The black would be after the 7:19, and the blue  
would

10036

Stephen Smith - Cross

1 be when the four agents were in the room going over the  
notes.

to that, 2 Q. So it's fair, then, in your sequence to come back  
correct? 3 when we get to that chronology at 7:00; is that

4 A. In black, yes, sir.

5 Q. Well, these are in blue.

6 A. Right. That was after 4:12.

7 Q. So we'll come back to those; is that correct?

8 A. Yes, sir.

9 Q. We're trying to do it the way you did it.

10 A. Right. And that is depicted on 1926.

then. 11 Q. Yes, sir. All right. We'll come back to that,

correct? 12 So you went to the top of page 2; is that

13 A. Yes, sir.

up 14 Q. And show you that this is page 2. We've got page 2

15 here; is that correct?

16 A. Yes, sir.

17 Q. Now, what did he next say to you at that time?

The top 18 A. At the bottom of page 1, it says, "Got back in."

corner 19 of page 2 says, "car and headed to PD." The left-hand

20 there.

21 Q. Okay.

car and 22 A. So that "car and headed to PD" is continuation of

23 headed to police department.

24 Q. You're speaking right here?

25 A. Yes, sir.

10037

Stephen Smith - Cross

1 Q. All right. What's the next statement?

2 A. "James Douglas Nichols. Decker. Decker,  
Michigan."

3 Q. What about these statements over here in blue?  
When did  
4 they get added?

5 A. They came at the note recap, note review at 4:12.  
The  
6 information in the upper right-hand corners, not the  
black at  
7 the top -- excuse me -- it ended, but the blue in the  
8 right-hand corner.

9 Q. All right. Did you go across the page as you were  
10 interviewing Mr. Nichols there initially?

11 A. No. I wrote down "car and back to PD," and then  
the next  
12 thing was "James Douglas Nichols," and then "Decker,  
Michigan."

13 Q. And "large two-story frame house." What does that  
refer  
14 to?

15 A. That was something that Terry Nichols had neglected

to

16 mention to us originally, and that was something that  
we added  
17 later on after the 4:12 note review: that James Douglas  
Nichols  
18 had a large, two-story frame house, and that was the  
one that  
19 Timothy McVeigh had stayed with he and his brother for  
a month,  
20 and he estimated anywhere from two to six weeks.

21 Q. What did you next ask Mr. Nichols, then, following  
your  
22 time sequence?

23 A. I asked him who his brother was. That was the crux  
of the  
24 information from the Manhattan station news broadcast  
on page  
25 1.

10038

Stephen Smith - Cross

1 Q. Yes, sir.

2 A. And we asked who his brother was, then he went into  
3 specifics about James Douglas Nichols, Decker,  
Michigan.

4 Stepson -- Terry Nichols' stepson, Josh Nichols.

5 Q. You're saying that Terry Nichols said that Josh  
Nichols was  
6 his stepson?

7 A. That's what he said. That at times his stepson --  
or at 8 times his stepson lived in that farmhouse, also.

9 Q. Okay. Go ahead.

10 A. And then the next statement was "Used to live with  
him in 11 Decker, Michigan."

12 Q. Who was Chase Nichols here that you've got over on  
the 13 right side?

14 A. Chase Nichols was something -- an individual that  
Terry 15 Nichols told us about after the note recap; and he says  
that

16 Chase Nichols was his brother's, James's -- James  
Nichols' son,  
17 Chase Nichols who apparently sometimes lived up at that  
18 farmhouse, also. But that was after the two other  
agents came  
19 in the room.

20 Q. All right. Well, let's stick with what you're  
getting from  
Terry 21 Terry Nichols here initially. Your notes say that  
22 Nichols told you that Josh Nichols was his stepson?

23 A. Yes.

24 Q. All right. What did he say next?

25 A. Used to live with him in Decker, Michigan, about  
two years

10039

Stephen Smith - Cross

died of 1 ago, 3616 North paren. Van Dyke, me, wife, child, child

2 suffocation at house."

3 Q. And next?

4 A. We went into the FD 395 advice-of-rights form.

5 Q. And that's the 3:26 entry; correct?

6 A. 3:26 p.m., yes, sir.

7 Q. So we're still within the first few minutes of the  
8 interview?

9 A. Yes, sir.

10 Q. And how do you reflect that here?

started 11 A. I reflected it that at 3:26 is when Jack Foley

read 12 initiating the advice-of-rights form, and I said that

Terry 13 form -- excuse me -- "read us form out loud," meaning

14 Nichols read the form out loud to us.

15 Q. Yes, sir. And the next entry?

not like 16 A. It says, "interrogation was like the Nazis, I do

17 that word."

18 Q. All right. And the next entry is at 3:43.

19 A. Yes, sir.

delay was 20 Q. Now, you explained yesterday on direct that that

not to 21 because Mr. Nichols was waiting and deciding whether or

22 continue to talk; is that correct?

23 A. Yes, sir.

bottom 24 Q. Wasn't there also delay because one of you in that

because he 25 basement had gone upstairs to find out what to do

10040

Stephen Smith - Cross

1 hadn't signed the form?

2 A. No, sir.

Washington 3 Q. Do you recall whether or not someone contacted

form? 4 to inquire what to do because he wouldn't sign the

5 A. No. No, sir.

6 Q. Are you saying that did not happen?

did not 7 A. You asked me if I knew that. I don't know that. I

8 know that, and I do not know that.

course of 9 Q. You're saying you have not learned that in the

10 this investigation?

11 A. No, sir.

12 Q. Do you know who Howard Shapiro is?

13 A. Yes, sir.



14 Q. Who is he?

15 A. I believe he's chief counsel for the FBI.

16 Q. At that time, he was the top lawyer in the FBI; was  
that  
17 correct?

18 A. That's what I'm assuming, yes, sir.

19 Q. Are you saying that he wasn't contacted during that  
time  
20 period to inquire what to do since Mr. Nichols won't  
sign the  
21 form?

22 MR. MACKEY: Objection.

23 THE COURT: Sustained.

24 BY MR. WOODS:

25 Q. At some point in time, did you receive instructions  
to

10041

Stephen Smith - Cross

1 continue the interview, sir? During that period of  
time, did  
2 someone come down and tell you to continue the  
interview?

3 A. No, sir.

4 Q. Who was present there in that room other than Mr.  
Nichols  
5 and yourself?

6 A. Jack Foley.

7 Q. That whole period of time?

8 A. Yes, sir.

9 Q. And no one left?

10 A. No, sir.

11 Q. And no one came in --

12 A. No, sir.

13 Q. -- and gave you any instructions?

14 A. No, sir.

15 Q. That's your testimony?

16 A. Yes, sir.

17 Q. Okay. So the next entry's at 3:43?

18 A. Yes, sir.

19 Q. And what happens then?

20 A. "Refused to sign the FD 395." That's the advice-  
of-rights

21 form.

22 Q. All right. And what's the next entry?

23 A. "Saw McVeigh Sunday."

24 Q. Now, these entries over here on the right: Are  
they not

25 part of the statements you're getting from him at this  
time,

10042

Stephen Smith - Cross

1 3:43?

2 A. No. The information we got from him after 3:43 was  
that he  
3 had last seen McVeigh in November. And then after the  
4:12,  
4 when the other two agents came in and we did the recap  
or  
5 reviewed the notes, he said that his last contact prior  
to  
6 Sunday was in November or January.

7 Q. Well, let's stick with what he's telling you right  
here.

8 "Saw McVeigh Sunday." What's the next entry?

9 A. "In my eyes, I did not do anything wrong, but I can  
see how  
10 lawyers turn stuff around."

11 Q. All right. What's the next entry?

12 A. "I did not know nothing." The entry in between  
there was  
13 given to us during the note review.

14 Q. So you had skipped a line, and then you come back  
later and  
15 fill in that line, this particular line here?

16 A. Yes, just like I skipped a line after the 3:43  
notation, I  
17 skipped a line between "But I can see how lawyers turn  
stuff  
18 around" to the next statement that he made, "I did not  
know  
19 nothing."

20 Q. And you're saying Mr. Nichols used a double  
negative there?

21 A. Yes, sir.  
22 Q. What's the next entry?  
23 A. "Hesitant BC" for because "lawyers can turn stuff  
around."  
24 Q. Did you ask him what he meant by that?  
25 A. No, sir.

10043

Stephen Smith - Cross

1 Q. What's the next entry?  
2 A. "Heard McVeigh is in custody." "On the news" was  
added at  
3 the note review.  
4 Q. What's the next entry?  
5 A. "Not see any hotel in JC."  
6 Q. And the next?  
7 A. "Do not know if he rented a Ryder truck."  
8 Q. And the next?  
9 A. "Saw in OK City on Sunday."  
10 Q. Is that a continuation of the sentence there?  
11 A. Which sentence?  
12 Q. Well, you've got a cross designating a new subject.  
"Saw  
13 in OK City on Sunday." What's under that?  
14 A. "Picked him up there and my TV. He called me and  
said I've

next 15 got car problems and if you want your TV --" go to the  
up." If 16 page, which is right there. It says, "-- Come pick me  
first 17 you can spot it. It's kind of difficult. But it's the  
previous 18 line right here, which is a continuation of the  
page.

line? 19 Q. So when you got to page 3 here, you started on this

20 A. Yeah, the top line of the page.

later? 21 Q. All right. And all this other stuff is added

22 A. Yes, sir.

23 Q. Okay. So what's the next entry, then, as you were  
24 interviewing him in time sequence?

babies 25 A. "Last November, I dropped TV off with my wife and

10044

Stephen Smith - Cross

1 equals Vegas."

2 Q. Wife and babies?

3 A. Yes, sir.

4 Q. All right. What's the next entry?

5 A. Two months ago --

6 Q. Can you remove that line you've got there.

7 A. Oh, excuse me. Sorry.

8  
mentioned in a

The next entry was: "Two months ago,

9  
pick my TV

letter if you are in the vicinity of Vegas, you can

10 up."

11 Q. Okay. And the next entry?

12  
me.

A. "I came back" home. Or "came back here." Excuse

13 Q. Okay. And the next?

14 A. "Dropped him off at JC McDonald's."

15 Q. "JC" stands for?

16 A. Junction City.

17  
Sunday"?

Q. And you've got a continuation over here of "on

18 A. "On Sunday late at night or early Monday morning."

19 Q. Is that an addition later?

20  
drop-off

A. No, that was actually at the first mention of the

21  
Sunday

at McDonald's -- was he said that he dropped him off on

22  
Monday

night, late at night at a closed McDonald's, or early

23 morning.

24 Q. Okay. And then the next entry?

25 A. "Apparently left car in OK City."

10045

Stephen Smith - Cross

1 Q. What's he referring to there?

Oklahoma 2 A. That McVeigh had apparently left his vehicle in  
3 City.

4 Q. Okay. And the next entry you took from him?

5 A. "He was vague on a lot of things. Lot of small  
talk."

6 Q. Next?

7 A. "Knew him in the Army. It seemed like he was  
different  
8 when he got out."

9 Q. And the next?

10 A. "He seemed nervous. He gets that way sometimes in  
the  
11 past. Did not seem quite that bad in the Army."

12 Q. And the next?

13 A. "Drove down by self, five hours, then five hours  
back with  
14 McVeigh."

15 Q. Then the next?

16 A. "I cannot see why he would do it."

17 Q. The next?

18 A. "He said he was going to get inheritance shortly  
from his  
19 grandfather."

20 Q. Then the next?

21 A. "He would have money to do whatever he wanted."

22 Q. Okay. And were these things on the margins; and  
then this

23 stuff at the bottom: Was that added later?  
margin, 24 A. Yes. The things on the top, the things on the left  
in the 25 the things on the bottom, are all in blue, so that was

10046

Stephen Smith - Cross

1 note recap session after 4:12. Things in black in the  
page are 2 right-hand margin and the bold in the middle of the  
time. 3 after 7:19, when we go over the story for the third

4 Q. Okay. And we'll get to that in that time sequence.  
So you

5 should be on top of page 4 now; is that correct?

6 A. Yes, sir.

7 Q. So just so you're accurate, it's page 4 -- is that  
right -- 8 with your initial on it?

9 A. Yes, sir.

10 Q. And again, you're separating the answers or the  
change of

11 subjects with these crosses on the side?

12 A. Yes, sir.

13 Q. What's the next topic you go into?

14 A. "When I go to gun shows, people say ATF and FBI  
murdered



15 all the people in Waco. Let them say it."

16 Q. The next entry?

17 A. "Hear four or five people at show who say  
government

18 getting out of hand. I feel that way also on  
occasion."

19 Q. Okay. And the next?

20 A. "On trip up from Oklahoma City, it is possible he  
mentioned

21 Waco incident, not recall specifics."

22 Q. Okay. And the next?

23 A. "Said he got a room in JC, McDonald's was closed,  
but the

24 Denny was opened."

25 Q. So he's saying here that McVeigh told him he had a  
room in

10047

Stephen Smith – Cross

1 JC?

2 A. Yes, sir.

3 Q. And that's early in the conversation?

4 A. Yes, sir.

5 Q. Okay. "McDonald's was closed." Now, what's he  
talking

6 about here? Where are you in the time sequence of  
asking

7 Mr. Nichols questions?

8 A. As you can see at the bottom of the page, it's  
before the  
9 4:12, before the two other agents come in. I am asking  
him a  
10 question -- well, I'm sorry. Terry Nichols said that  
Timothy  
11 McVeigh was hungry again, they had stopped at the  
McDonald's  
12 prior to that -- McDonald's off of 77 in Kansas, and he  
said  
13 that McVeigh was hungry again and that the McDonald's  
was  
14 closed, so that he could not eat there, but that Terry  
Nichols  
15 noticed that the Denny's was up the street and that it  
was  
16 open.

17 Q. This is -- these entries here are in relation to  
your  
18 questions to Mr. Nichols regarding picking Mr. McVeigh  
up in  
19 Oklahoma and bringing him back to Junction City.

20 A. Yes, sir.

21 Q. And this entry, "McDonald's was closed": That's  
part of  
22 the response Mr. Nichols was giving you?

23 A. Mr. Nichols, as I mentioned, said that Timothy  
McVeigh was  
24 hungry again and that he wanted to eat but that the  
McDonald's  
25 that he dropped him off at was closed, so he wanted to  
go -- to

10048

Stephen Smith - Cross

1 Terry Nichols says that the Denny's was open up the  
street, but

2 he did not know that Timothy McVeigh had gone there.

3 Q. Let's stay with what you wrote down here.  
McDonald's was

4 closed. And what's the next entry?

5 A. "But the Denny's was open."

6 Q. And the next?

7 A. "I dropped off and said that I would catch him  
later."

8 Q. And the next?

9 A. "He knew someone around JC he could possibly get a  
vehicle

10 and head on his way back home, New York, see relatives  
in New

11 York City."

12 Q. Mr. Nichols related to you that McVeigh told him  
that he

13 knew somebody that he could call, get a vehicle?

14 A. Either call or see in person, because he said he  
could

15 possibly get a vehicle from someone, yes, sir.

16 Q. He knew someone -- is that "'round JC," or what?

17 A. "Around JC," yes, sir.

18 Q. All right. What's the next entry?

worth 19 A. "He said he bought it cheap, did not know if it was  
20 fixing. Traded."  
21 Q. What are you referring to there?  
him that 22 A. Terry Nichols is saying that Timothy McVeigh told  
23 the car that apparently was left in Oklahoma City --  
that he 24 had purchased it cheap and that Timothy McVeigh did not  
know if 25 the car in Oklahoma City was worth fixing.

10049

Stephen Smith - Cross

1 Q. All right. What did he say next?  
or three 2 A. That he -- that Timothy "had traded or bought two  
Cheap 3 vehicles since I saw him last. That was in November.  
4 cars, not having luck with cars."  
5 Q. Okay. And the next entry?  
ballistics, 6 A. "He knows guns a lot better than I do. Knows  
7 bullets, etc."  
8 Q. Okay. And next?  
at it 9 A. "He is more interested in guns than I am. He looks  
money." 10 to when he talks to people. I look at it to make

11 Q. And the next?  
12 A. "Trying to sell my private guns because I may have  
too  
13 many."  
14 Q. Okay. Now, you have the entry at 4:12 p.m. that  
Dan and  
15 Scott -- is that Dan Jablonski and Scott Crabtree?  
16 A. Yes, sir.  
17 Q. And what does that mean; that they have come into  
the  
18 interview?  
19 A. Yes. They have knocked on the door and they came  
into the  
20 interview, and I introduced these two agents to Terry  
Nichols.  
21 Q. Okay. So we've completed four pages, and you've  
related to  
22 us that this is when you went back and read these four  
pages to  
23 Mr. Nichols in the presence of Mr. Jablonski, Crabtree,  
and  
24 Foley; is that correct?  
25 A. Yes.

10050

Stephen Smith - Cross

1 Q. So do we need to go back to the front of page 1  
now?  
2 A. Yes, sir.

made. 3 Q. Now, relate to us on this page where additions are

the note 4 A. The additions that were made after the -- during

circle, 5 review were in the left corner there -- or in the left

6 down halfway through, "Heard about Tim --"

7 Q. Are we speaking of this entry?

8 A. Yes, sir.

break. 9 Q. And tell the jury what was added there at 4:12

then." 10 A. Or shortly thereafter. "Heard about Tim news

11 Q. And was this added?

12 A. "Saw composites, did not look a lot like him, Tim."

added 13 Q. Now, was there anything else on this page that was

of the 14 when you read the notes to Mr. Nichols in the presence

15 four agents?

mean, I 16 A. No. My copy here is not -- is not as dark. I

no 17 think it's been copied a few times. But, no, there's

here. I'm 18 other -- I don't believe there's anything else added

19 having a tough time between the blue and the black.

20 No, sir.

7? 21 Q. Okay. So those other additions came at 7:00, after

22 After 7?

23 A. After 7:19, yes, sir.

24 Q. So do we need to go to the front of page 2, now, to  
see

25 what other additions were made after this 4:12 --

10051

Stephen Smith - Cross

1 A. Yes, sir.

2 Q. -- reading of the notes?

3 A. Yes, sir.

4 Q. Okay. Now, tell the jury, starting at the top,  
what was

5 added.

6 A. In the upper right-hand corner, it says, "Tim  
McVeigh,"

7 parentheses, "about two years ago," end parentheses,  
"stayed

8 with us for a month, anywhere two weeks to six weeks."

9 Q. Okay. And where is he speaking of "stayed with  
us"?

10 A. At the Decker, Michigan -- at 3616 North Van Dyke  
in

11 Decker, Michigan, the farmhouse that James Nichols  
lived in.

12 Q. Is this the addition that you put in, the large  
two-story

13 farmhouse?

14 A. That was the next thing. The next thing I added,  
yes, sir.

15 Q. Okay. What next was added?  
16 A. I believe the next thing that was added right below  
there,  
17 "Sometimes brother's son, Chase Nichols, stayed there,  
also."  
18 Q. And do you know whether or not Chase Nichols is a  
son of  
19 James Nichols and Kelly Langenburg?  
20 A. I do not know.  
21 Q. All right. What else as we go down these lines was  
added  
22 during this time?  
23 A. Okay. The next notation was "Last contact prior to  
Sunday  
24 was in November or January."  
25 Q. So at 4:12, he's telling you -- shortly after 4:12  
in the

10052

Stephen Smith - Cross

1 reading of these notes -- he's telling you his  
recollection was  
2 his last contact was back in November or January?  
3 A. Yes. Because previously he'd said that he had not  
seen him  
4 since November of 1994. Then he said that he was not  
sure if  
5 it was either November of 1994, or January of 1995.  
6 Q. All right. And the next entry addition?



7 A. "Son Joshua, TV."

8 Q. That's one over here?

9 A. Yes, sir.

10 Q. And he's calling him his son here and not stepson;  
correct?

11 A. Yes, sir. It was confusing.

12 Q. To you, or to him?

13 A. To me.

14 Q. Okay. Now, what's the next addition?

15 A. "Call from son that he picked it up two months up  
to time I  
are  
call from  
TV set  
"two  
the time  
right to

16 got it back."

17 Q. Okay. This entry where he says "got call": What  
18 you -- what is that entry explaining?

19 A. That entry explains that Terry Nichols received a  
20 his son Joshua that Timothy McVeigh had picked up the  
21 from Josh and his mother, Lana Padilla; and then I say,  
22 months up to time I got it back." So two months up to  
23 that Terry Nichols got his TV back.

24 Q. Where is that? Are you speaking right here?

25 A. No, sir. "Son Joshua, TV"; and then if you go

10053

Stephen Smith - Cross

he picked 1 the -- right after "TV," it says, "call from son that

2 it up, two months up to time I got it back."

3 Q. Okay. What's the next entry?

dinner." 4 A. "Got call at approximately 3 p.m. after Easter

5 Q. That's the one over here on the margin?

6 A. Yes, sir.

7 Q. Okay. And next?

time to 8 A. "I might not drop it off because I'm pressed for

9 get back East."

10 Q. What did that refer to?

in 11 A. The TV that Timothy McVeigh was bringing to Terry  
12 Nichols -- he did not know if he could bring it to him

the 13 Herington, because he was going to see his relatives on

know if 14 East Coast and he was pressed for time and he did not

15 he could make it up to Herington.

16 Q. This is Mr. McVeigh's statement that Mr. Nichols is  
17 relating to you?

18 A. Yes, sir.

19 Q. What about this circle over here: Was that added?

Assumed call 20 A. Yes, sir, this was added at that time, also.

21 was from OK City. He was coming from out West to visit  
22 relatives East.  
23 Q. All right. Are there any other additions on this  
page of  
24 what Mr. Nichols told you?  
25 A. No, sir.

10054

Stephen Smith - Cross

1 Q. So should we go to the front of page 3, then?  
2 A. Yes, sir.  
3 Q. And again, this is page 3 with your initials on it?  
4 A. Yes, sir.  
5 Q. And tell the jury what was added during this  
rereading  
6 shortly after 4:12.  
7 A. "Gave son TV in Vegas in November."  
8 Q. That's this entry here?  
9 A. Yes, sir.  
10 Q. Okay.  
11 A. "Thought that if I wanted a TV back then, go pick  
up. Send  
12 letter to mailbox in Arizona, Kingman."  
13 Q. Did he say who he was sending the letter to?  
14 A. He said that he sent the letter to Timothy McVeigh  
at a

15 mailbox drop in Kingman, Arizona.

4:34? 16 Q. Okay. And is this next border -- margin entry --

17 A. He went back -- then we went to the top of the page.

18 Q. Okay. Let's go to the top.

Just 19 A. Okay. "On phone, just keep between the two of us.

20 repeat Omaha if your wife asks."

21 Q. His next entry?

is to 22 A. "Seemed private on other calls, my business, no one

23 know his business."

24 Q. Okay. What did he say then?

25 A. "Some private are trivial things."

10055

Stephen Smith - Cross

describing 1 Q. "Some private are trivial things." Is he

2 Mr. McVeigh's request for privacy?

wanted 3 A. He was describing telephone calls that Mr. McVeigh

4 private that were not important; that were very trivial  
5 matters.

trivial? 6 Q. That was Mr. Nichols' description; that they were

7 A. Yes, sir.

8 Q. And what next entry did you make then?

9 A. In the next entry is the 4:34 consent. But I would  
like to  
10 mention that "told him that if he was in area to pick  
it up,"  
11 right above the top of that page, where it says, "Come  
pick me  
12 up," that notation above that, if you go to the top of  
the  
13 page.

14 Q. All right. Where are you speaking of?

15 A. Right here.

16 Q. All right. Read that to the jury.

17 A. "Told him that if he was in area to pick it up."

18 Q. And what are you referring to there?

19 A. That was in relation to the letter that Terry  
Nichols sent  
20 to Timothy McVeigh requesting that if he was in the  
area of Las  
21 Vegas, to pick up the TV set for him.

22 Q. Do you know how close Las Vegas is to Kingman?

23 A. It's approximately 90 miles. 180 miles round trip,  
I  
24 believe.

25 Q. And would you click that pen.

1 Thank you.

2 Okay. What was the next entry?

3 A. 4:34. "Consent to look at house."

4 Q. That's this one here?

5 A. Yes, sir.

6 Q. And that's where Mr. McVeigh -- Mr. Nichols said,  
"Yes, if

7 my wife or I can be present." Is that correct?

8 A. Yes, sir.

9 Q. What's the next entry?

10 A. "Left about 10 minutes after call."

11 Q. That's the border entry?

12 A. Yes, sir. We'll go straight down the left margin.

13 Q. We're still talking about the call on Easter  
Sunday?

14 A. Yes, sir.

15 Q. Okay. What's the next entry?

16 A. "He gave me directions to go downtown, gave me the  
exits."

17 Q. And the next?

18 A. "Go round block couple times and I'll see you."

19 Q. Okay. Is there anything else on this page that you  
added

20 at that time?

21 A. Yes. "Decided it would take approximately five  
hours," at

22 the bottom left there. If you scoot the page up a  
little.

23 Q. That was added at that time after the 4:12  
rereading?

24 A. Yes. Right after he had said that Timothy McVeigh  
told him

25 to go around the block a couple times, "and I'll see  
you."

10057

Stephen Smith - Cross

1 Q. Okay. Is there anything else on this page that was  
added

2 at that time?

3 A. Yes. Then the stuff at the bottom of the page  
where it

4 says possible -- or "possibly Main Street exit, 8th  
Street,

5 circle the block and picked him up, went past that  
building a

6 couple times."

7 Q. Now, in your questioning to Mr. Nichols, did you  
ask him,

8 "Did you go past the Murrah Building?"

9 A. No, I did not.

10 Q. What did you ask him concerning going around  
Oklahoma City?

11 A. We asked him to describe how he picked up Timothy  
McVeigh,

12 and he gave these descriptions.

13 Q. And you never -- the agents never mentioned the  
Murrah

that your 14 Building or the federal building to Mr. Nichols; is  
15 testimony?  
build a 16 A. We asked Mr. Nichols later if Timothy McVeigh could  
17 device to blow up the federal building. We did not ask  
him 18 specifically in this context about the Alfred P. Murrah  
Federal 19 Building.  
20 Q. Is there anything else on this page that you added?  
21 A. Not at that time, sir.  
22 Q. So we need to go to -- well, you didn't add  
anything to the 23 front of page 4; is that correct?  
24 A. No, sir.  
25 Q. So does that then complete the additions that were  
made

10058

Stephen Smith - Cross

1 after the 4:12 rereading?  
2 A. Yes, sir.  
3 Q. Okay. So then we go to page 5?  
4 A. Yes, sir.  
5 Q. Was a break taken at that time?  
6 A. No, sir.  
7 Q. Now, who's present after -- you got four agents



there.

8 Who's present as you resume?

9 A. Dan Jablonski and Scott -- and Jack Foley left the  
10 interview room at approximately 4:53, and Scott  
Crabtree and I

11 continued the interview on page 5 shortly thereafter.  
I do not

12 know specifically in the pages of notes when they left.  
But

13 they did leave and we continued with the interview.

14 Q. So prior to the rereading, it had been you and  
Foley.

15 After you reread the note, it's then you and Crabtree;  
is that

16 correct?

17 A. After they left, yes, sir.

18 Q. So is it accurate, then, to resume at the top of  
page 5?

19 A. Yes, sir.

20 Q. And this is page 5, according to your notes?

21 A. Yes, sir.

22 Q. What was the next entry you made concerning your  
23 questioning?

24 A. "Met at basic training in Georgia, then came up to  
Fort

25 Riley."

Stephen Smith – Cross

1 Q. And this "1988" above there: Was that added later?

2 A. That was added after he had mentioned this. He  
added that  
3 it was in 1988 at basic training.

4 Q. Okay. What's the next entry?

5 A. "Previous wife Vegas, we should be separated and  
maybe you  
6 should go into the Army."

7 Q. And the next?

8 A. "Separated two or three years."

9 Q. And the next?

10 A. She had an office Bay City, Army recruiting station  
there  
11 also, recruited."

12 Q. Okay. And what discussion are you having here with  
13 Mr. Nichols concerning separation and going into the  
Army?

14 A. His wife had suggested to him that maybe they  
should be

15 separated for a couple years and maybe he should go  
into the

16 Army and she had an office in Bay City and in that  
office

17 complex there was an Army recruiting station and that  
he was

18 recruited out of that station, the same office building  
that

19 she was working in.

20 Q. All right. And what does the "fall of '88" refer

to?

21 A. That is the basic training that he and Mr. McVeigh  
had

22 taken in Georgia.

23 Q. Okay. And you've got "fall of '88 reunited." What  
does

24 that mean?

25 A. Oh. Excuse me. He went to basic training,  
apparently

10060

Stephen Smith - Cross

1988, he 1 earlier; and Terry Nichols said that in the fall of

station 2 was reunited with Timothy McVeigh at their first duty

3 at Fort Riley, Kansas.

Army in 4 Q. Do you know whether or not Mr. Nichols entered the

5 May of '88?

6 A. Yes. Yes, sir.

training and 7 Q. So in the fall of '88, he's completed basic

8 he's in Fort Riley. Is that what he's telling you?

9 A. Yeah. And that he's reunited with Timothy McVeigh.

10 Q. What's the next entry?

1989." 11 A. "Almost one year in Army. Got out in May, 1988, or

12 Q. And the next?

take  
13 A. "Honorable discharge. She moved to Bay City. Not  
14 care of Josh, so try to get custody."  
15 Q. And Josh, again, is his son?  
16 A. Yes, sir.  
not it was  
17 Q. Had you cleared that up by then as to whether or  
18 his son or stepson?  
19 A. Yes, sir.  
20 Q. And what did you learn?  
21 A. Mr. Nichols -- I mean I wouldn't be confused if it  
was my  
22 son or my stepson, and he said that it was his stepson  
23 originally, and then he said it was his son. And on  
the third  
24 mention, when he said, "take care of Josh," this was  
meaning  
25 that it was his son at that point.

10061

Stephen Smith - Cross

1 Q. So you're telling the jury that it was his  
confusion as to  
2 whether or not his son or stepson?  
3 A. Yes. I'm not going to write down "stepson" unless  
4 Mr. Nichols said that.  
5 Q. And the next entry?

to stay 6 A. "Tour two weeks in Germany, then sergeant told me  
two weeks 7 behind to drive German officers around and then after  
discharge." 8 decide if I wanted to stay or not. Got honorable

this 9 Q. What did you understand him to tell you regarding  
10 two-week tour in Germany, etc.?

11 A. Mr. Nichols was saying that he was going to go on a  
12 two-week tour in Germany and that his sergeant had told  
him 13 that he was going to have to stay behind and drive  
German 14 officers around the post at Fort Riley and that he  
needed to 15 decide whether he wanted to stay in the Army or not.

And at 16 that point Terry Nichols said that he got out of the  
Army.

17 Q. And he had, what, an honorable discharge?

18 A. Yes, sir. That's what he said: "Got honorable  
discharge."

19 Q. What's the next entry?

20 A. "Make sure you come down 8th Street."

21 Q. We're back on talking about going to Oklahoma City?

22 A. Yes, sir. This is in regards to the conversation  
that 23 McVeigh called Nichols and giving him descriptions on  
getting

24 down to Oklahoma City.

25 Q. Okay. And what next entry did you put?

10062

Stephen Smith - Cross

Drove 1 A. "Make your circles, went south on 8th, possibly.

Went as 2 around block to 15, 30 minutes. All big buildings.

3 far as a car dealer and drove by a post office."

4 Q. Okay. And the next?

statement 5 A. And then he mentioned also in relation to that

the 15 6 there that it could have been a half an hour instead of

not 7 to 30 minutes and then that the route of the blocks was

around 8 always the same, meaning that when he was driving

routes that 9 waiting for McVeigh down in Oklahoma City that the

10 he was taking were not always the same.

11 Q. Okay.

other 12 A. Then he said that he "glimpsed down an alley to

block." 13 street and saw that it was Tim when drove around

14 Q. And the next?

I'm 15 A. "Driving east, saw through alley. Then looked --"

16 sorry. He said "looked," and then I scratched it out

-- "then

17 drove north and back west, picked him up on a two-way  
street."

18 Q. Okay. So is it fair, then, to go to the top of  
page 6?

19 A. Yes, sir.

20 Q. And this is page 6, according to your notes and  
your

21 initial; is that correct?

22 A. Yes, sir.

23 Q. All right. Tell the jury what entry you next made.

24 A. "He was not wet when he got into my car. It was  
raining

25 when in Oklahoma City. It was pouring on way back, on  
freeway

10063

Stephen Smith - Cross

1 back here. He wears black T-shirts all the time. T-  
shirt and

2 jeans normal. T-shirt, no pocket, no V-neck. Go down  
8th

3 Street. Came from Arizona. Going back east to see  
family and

4 bringing TV. Going to meet someone else in Midwest."

5 Q. This entry over here in parentheses: Was that  
added later?

6 A. He mentioned that underneath -- after mentioning  
about the

7 T-shirts that McVeigh wears and he doesn't have any

pockets or

8 V-necks that he also wears combat boots and tennis  
shoes.

9 Q. Okay. And this entry over here on the left: Was  
that

10 added later or at the same time?

11 A. Yes. At the same time, and Terry Nichols was  
saying that

12 he guessed that Timothy McVeigh was wearing tennis  
shoes when

13 he picked him up in Oklahoma City.

14 Q. So he was telling you that he was coming from  
Arizona going

15 where?

16 A. Back East to see family and bringing TV.

17 Q. Okay. And is this the next entry?

18 A. Yes, sir. "He does not want --" it should be  
"people" --

19 "to know what he is doing. This is his nature. So he  
told me

20 to tell wife that you were going to go to Omaha."

21 Q. Okay, and what's the next entry?

22 A. "I told wife that I was going to Omaha to pick up  
Tim with

23 car problems. Then told wife on way to PD today that I  
went

24 down to Oklahoma City instead of Omaha."

25 Q. Okay. And what's this next cross for new entry?



## Stephen Smith - Cross

1 A. "On way back to Herington, Florence, Kansas."

2 Q. What was that Florence, Kansas, put in there about?

3 A. Terry Nichols said that on the way back from  
Oklahoma City,

4 to Herington, Junction City, that he had stopped in  
Florence,

5 Kansas, to buy diesel fuel.

6 Q. And you're aware that he had a diesel pickup truck;  
is that

7 correct?

8 A. Yes, sir. He had told us that he carried  
additional gas

9 cans in the back of his pickup truck in case he needed  
to get

10 diesel.

11 Q. Did he tell you that he had those extra cans so  
that if he

12 saw somewhere that they were selling it cheap that --  
that he

13 would buy extra diesel?

14 A. No, he did not.

15 Q. What next entry do you have here?

16 A. "Tim told me turn here, turn there, which way is  
out, and

17 he directed me out to the interstate."

18 Q. And the next entry?

19 A. "Occasionally carry additional diesel fuel in back  
of

20 truck."

21 Q. And the next?

22 A. "Got gas on way down in Kansas, about at border,

took 77

23 south to border, diesel gas, no tolls going down or

coming

24 back."

25 Q. Did you ask him why he doesn't pay tolls or take

the toll

10065

Stephen Smith - Cross

1 road?

2 A. No, I did not.

3 Q. In Kansas, there's a toll road where you have to  
pay money

4 just to go down an interstate, isn't there?

5 A. Yes, sir.

6 Q. What's the next entry?

7 A. "Station was on right side of road, going down.  
Had snacks

8 and soda inside for sale."

9 Q. Now, is this part right here --

10 A. Then he added that -- that he got on 35, then down  
to OKC.

11 Q. And that's where you can get on the interstate  
without

12 paying the toll?

13 A. Once you get into Oklahoma, yes, sir.

14 Q. And the next entry?

15 A. "Tim had TV sitting on sidewalk. Not see his car.  
Way he

16 talked, it sounded like a larger model."

17 Q. And this on the side?

18 A. "Had a compact Chevy before that," meaning he had a  
compact

19 Chevy before the car that he was leaving in Oklahoma  
City.

20 Q. So do we now go to the top of page 7?

21 A. Yes, sir.

22 Q. And this is page 7, according to your initial and  
your

23 numbering system; is that correct?

24 A. Yes, sir.

25 Q. And tell the jury what entries you made based on  
your

10066

Stephen Smith - Cross

1 interview with Mr. Nichols.

2 A. The first entry on page 7 was, "Got in accident,  
then got

3 another car, then bought my brother's car in 1 -- or  
January of

4 1995."

5 Q. All right. And this circle, is that added later?

6 A. It was added two minutes later, after he had  
mentioned that  
7 "he paid 4-, \$500 for the car from brother James in  
Decker,  
8 Michigan. Then he said bought \$500 after he got it and  
got in  
9 accident." So these are at the same time, but I wanted  
to make  
10 a differentiation there.

11 Q. Okay. And what's the next entry here?

12 A. "He said it was an older Chevy or Pontiac, dark  
blue, small  
13 station wagon with hatch."

14 Q. And the next cross entry?

15 A. "He was up in Michigan when his car got hit" --

16 Q. Excuse me, what's this one right here?

17 A. We had just gone over that, that he paid 4- or \$500  
for a  
18 car from brother James in Decker, Michigan.

19 Q. All right. Now, we've got a cross, but we've got  
some  
20 stuff in the margin. What comes first?

21 A. The cross. "He said that he was up in Michigan  
when his  
22 car got hit and then bought brother's car."

23 Q. Who is he speaking of there?

24 A. Timothy McVeigh.

25 Q. And the next entry?

10067

Stephen Smith - Cross

James's 1 A. "Do not believe that the car that broke down was  
2 former car."  
3 Q. And the next?  
paid for 4 A. "Put same amount of money into James's car that he  
5 it."  
6 Q. Next?  
he got 7 A. "On way back, stopped in town off 77 at McDonald's,  
8 something to eat."  
9 Q. "He" is referring to who?  
10 A. Timothy McVeigh.  
11 Q. And the next entry?  
tired when I 12 A. It's the -- in the margin there, "I get sleepy  
13 drive sometimes, and Tim asked if I remembered that."  
tired"? 14 Q. Let me get that on the screen. "I get sleepy  
asked 15 A. "I get sleepy tired when I drive sometimes, and Tim  
16 if I remembered that."  
17 Q. Remembered what?  
and 18 A. They would have conversations in the car or truck,  
19 Timothy McVeigh would ask a question about a certain

20 conversation they had just had, and Terry Nichols would  
respond  
21 that he didn't remember that conversation. And he  
described  
22 that as being sleepy tired because he drives a lot, he  
gets  
23 that way.  
24 Q. Okay. Okay. So then the next entry is going to be  
this  
25 one?

10068

Stephen Smith - Cross

1 A. "Then stopped at Florence, Kansas, to get diesel  
near 77  
2 and 56. Gas station on southwest side."  
3 Q. Okay. And the next entry?  
4 A. "Went straight up to JC. Got to JC about 1:30  
a.m."  
5 Q. "JC" again is Junction City?  
6 A. Yes, sir.  
7 Q. And what do you have entered right after 1:30 a.m.?  
8 A. "Went in McDonald's, put TV in back."  
9 Q. Okay. What about this right here?  
10 A. This was added a minute later, that he said that he  
knew  
11 somebody there where he could stay and get a car.  
12 Q. And this is Mr. McVeigh was stating to Terry

Nichols he

13 knew somebody there where he could stay and get a car?

14 A. Yes, sir.

15 Q. Okay. And you stated that McDonald's -- well, go  
ahead,

16 pick up where you --

17 A. "McDonald's on Washington was closed. He said to  
drop me

18 off there and he'd call someone. He said he was hungry  
but not

19 open, but Denny's was open."

20 Q. Okay. The next entry?

21 A. "Pulled in between McDonald's and service station."

22 Q. And the next?

23 A. "And then I got back on Washington Street. He was  
walking

24 towards Texaco or Conoco. He was clean-shaven when  
picked him

25 up. He had a little bag, solid green laundry bag, like  
Army

10069

Stephen Smith - Cross

1 laundry bag with drawstrings."

2 Q. Now, these two entries on the side, when were they  
put on?

3 A. They were put on right after that last statement,  
and Terry

4 Nichols said that he got home about 2:00 a.m. on that

Monday

5 morning, and he thought it stopped raining when got  
into

6 Kansas.

7 Q. Now, is it in sequence if we go to top of page 8  
next?

8 A. Yes, sir.

9 Q. And again, this is your initials and page 8?

10 A. Yes, sir.

11 Q. Can you tell the jury what you next wrote down from  
your

12 interview with Mr. Nichols?

13 A. "Threw it on floor when got into truck along with  
TV."

14 Q. And by "it," you put "bag" above "it"?

15 A. Yes. Then he further explained that the "it" he  
was

16 referring to was the green laundry bag that Timothy  
McVeigh

17 had.

18 Q. Okay. What's the next entry?

19 A. "Catch you on the way back. Usually says this when  
we

20 leave each other."

21 Q. Next?

22 A. "He gave me a call on Tuesday morning at  
approximately

23 6:00 a.m., and I'd like to use your pickup a little  
bit."

24 Q. And the next?



25 A. "Fort Riley had sealed-bid auction, Monday,  
Tuesday,

10070

Stephen Smith - Cross

1 Wednesday."

2 Q. Now, what -- how did that come up?

3 A. That came up -- Terry Nichols said that Timothy  
McVeigh

4 called at 6:00 a.m. wanting to borrow his truck, and  
Terry

5 Nichols told him that Fort Riley had a sealed-bid  
auction that

6 Monday, Tuesday, and Wednesday and that he wanted to go  
to that

7 auction. So he was telling Tim McVeigh that "I want to  
go to

8 this auction, and if you're not going to take too long,  
you can

9 borrow my pickup truck."

10 Q. And this is Tuesday, the 18th?

11 A. Yes, sir.

12 Q. And the next cross?

13 A. "Knows couple guys in JC, find a car."

14 Q. What does that mean?

15 A. Terry Nichols tells us that Timothy McVeigh knows a  
couple

16 people in Junction City and he could find a car as  
opposed to

17 borrowing his truck. That was his thought as to why he  
didn't

18 need to let Timothy McVeigh borrow the truck.

19 Q. And the next entry?

20 A. "I was just up when got called. 'Can I use your  
pickup for

21 a little bit? I need to pick up a few things and look  
at a few

22 vehicles.'" "

23 Q. And the next?

24 A. "I said that 'I want to go to an auction today. If  
it is

25 not going to take too long, you can drop me off at  
auction so I

10071

Stephen Smith - Cross

1 can review it, then borrow it.' Then we would be going  
our own

2 way after that."

3 Q. And the next?

4 A. "He said he was not in a real hurry, at home for an  
hour.

5 Left home at 7 a.m."

6 Q. Okay. And the next?

7 A. "Agreed to meet at McDonald's in Junction City at  
7:30

8 a.m."

9 Q. Okay. And next?  
10 A. "Blond hair, not much stubble." I crossed out  
"beard."  
11 "A crew cut always."  
12 Q. And had you asked him for a description of McVeigh?  
13 A. Yes, sir.  
14 Q. And what's the next entry?  
15 A. "Picked him up, drove up to Fort Riley. I got out  
and told  
16 him to be back at noon."  
17 Q. Okay.  
18 A. "McDonald's, back on freeway, K-18 through Ogden,  
then to  
19 post, Fort Riley."  
20 Q. Is this in response to your question of "How did  
you get to  
21 Fort Riley?"  
22 A. Yes, sir, how did they get from the McDonald's in  
Junction  
23 City to the auction.  
24 Q. All right. What's the next entry?  
25 A. "He showed up after 1:00 p.m."

10072

Stephen Smith - Cross

1 Q. Okay.  
2 A. "Went into building and signed in before 1:00 p.m."  
and

3 looked at items inside, then left."

4 Q. All right. And the next entry?

drove  
5 A. "Went outside after bid," and he showed -- "and he  
6 up. Dropped him off at McDonald's, and that was it."

you wrote  
7 Q. Now, is there anyplace in your notes there where  
8 down that he went into two buildings?

had  
9 A. No, not in the notes. Mr. Nichols had said that he  
10 gone into a building and then came out of that building  
at noon

when  
11 because he was supposed to meet Timothy McVeigh; and

into  
12 Timothy McVeigh did not show up, that is when he went

those  
13 another building where he had to sign in and looked at  
14 items to bid on.

15 Q. It's not in your notes, is it, sir?

16 A. No, sir.

area to  
17 Q. You recall him telling that he went to an outdoor  
18 look at items?

19 A. No, sir.

9?  
20 Q. Is it in sequence, then, to go to the top of page

21 A. Yes, sir.

22 Q. And again, this is your initial and page 9?

23 A. Yes, sir.

24 Q. And what's your next entry?

25 A. "Said he was looking at a couple cars, assumed that  
he

10073

Stephen Smith - Cross

1 bought a car. Got out of car and not seen him since."

2 Q. Now, are we -- what topic are you discussing here  
with

3 Mr. Nichols?

4 A. The discussion that they had in the car, in the  
pickup

5 truck going from the DRMO at Fort Riley back to the  
McDonald's

6 in Junction City. And he said that Timothy McVeigh had  
said

7 that he had looked at a couple cars, and Terry Nichols  
said

8 that he assumed that Timothy McVeigh may have even  
bought a

9 car.

10 Q. Okay. And where are you in the notes, then; right  
here?

11 A. Yes. Then he said he got home. "And then I got  
home."

12 Q. What about these entries on the mailbox -- when did  
that

13 come up?

14 A. That came up at the same time also. He did not

give us a

15 time that he had gotten home with the notation on the  
left

16 there. So then he said after he dropped Timothy  
McVeigh off at

17 the McDonald's in Junction City, "I picked up my mail  
in

18 Manhattan, Mail Boxes, Etc. 1228 Westloop, 197." Then  
he said

19 he tries to get his mail twice a week.

20 Q. Then what is the next entry here; right here?

21 A. This entry in the left-hand margin where Terry  
Nichols said

22 that Timothy McVeigh says that he lives light, in  
reference to

23 only having a green duffel bag to have all his  
belongings.

24 Q. All right. So you have an entry here, "wanted to  
live in

25 Manhattan or Junction City"?

10074

Stephen Smith - Cross

1 A. Yes, sir.

2 Q. And what did he say there?

3 A. "But too expensive, multiple listings, looked at  
house, two

4 realtors," not homes. I crossed out "homes." "Saw in  
Junction

5 City. One called in Manhattan, both on 6th, one on

north side,

6 one on south side, closer to Main Street."

7 Q. Is he talking about the realtors that he had seen  
about

8 buying a house?

9 A. Yes, sir, that there were two realtors in Junction  
City.

10 They were -- both had offices on 6th Street. One was  
on the

11 north side and one was on the south side.

12 Q. And what's the next entry here?

13 A. He said that "he'd looked at prices of guns and  
houses and

14 too expensive in Junction City and Manhattan."

15 Q. And next?

16 A. "Looking for owner-financing house."

17 Q. Next?

18 A. "In a listing in Junction City, saw some houses in  
19 Herington."

20 Q. Next?

21 A. "Moved because wanted to sell military surplus and  
get into  
22 more gun shows. Too cold in Michigan for too long."

23 Q. He was giving you his reason for moving to Kansas?

24 A. Yes. And he gave us -- those are two kind of  
conflicting

25 reasons. He said that he moved from Michigan to Las  
Vegas

10075

Stephen Smith - Cross

1 'cause it was too cold in Michigan for too long during  
the  
2 winters and that he moved to Kansas from Las Vegas  
because he  
3 did not -- because he wanted to sell military surplus  
and get  
4 into more gun shows.

5 Q. And the next entry?

6 A. "Lived near Marion, Kansas, for one year, Donahue  
Farms  
7 ranch."

8 Q. And the next?

9 A. "Could not find a job paying good in Vegas. Got to  
10 Manhattan and checked want ads and went to work at  
Donahue  
11 because had new John Deere tractor."

12 Q. The next entry?

13 A. "3616 North Van Dyke, Decker, Michigan, then to  
Vegas, then  
14 to Marion, Kansas. Mother's house, lived there on two  
15 occasions."

16 Q. Now, were you going back over places he had lived;  
is that  
17 your questioning?

18 A. Yes, he -- excuse me. He had said that he had gone  
from



19 the 3616 North Van Dyke, Decker, Michigan address,  
moved to Las  
20 Vegas, and then back -- then moved to Marion, Kansas,  
so he was  
21 detailing his travels, his -- where he'd lived.  
22 Q. And what about this entry in the margin?  
23 A. The entry in the margin is -- says, "Bought farm in  
24 approximately 1975. And he mentioned that after he  
said that  
25 his "mother's house, lived there on two occasions," was  
the

10076

Stephen Smith - Cross

1 3616 North Van Dyke and that they had purchased the  
farm in  
2 approximately 1975.  
3 Q. Okay. Your next entry?  
4 A. "Born in Lapeer, Michigan, and mother still lives  
there."  
5 Q. And the next?  
6 A. "Remodeled it in 70's, two-story farmhouse.  
Brother may  
7 own house now. Lived there from 1991, 1993. Lived  
there from  
8 1975 to 1980. Married first wife, moved into her house  
in  
9 Decker, sold it, bought another, went into service,"  
went back  
10 to -- "went back," and then on the front of the next

page.

11 Q. So we go to top of page 10, then?

12 A. Yes, sir.

13 Q. And this is your initial and page 10?

14 A. Yes, sir.

15 Q. And the "Argyle Road," what is that?

-- after  
16 A. That's in regards to where he moved after he went

address  
17 he was in the service, went back to Argyle Road for

18 after service.

19 Q. All right. What is this next sentence?

20 A. "First wife moved out to Bay City."

21 Q. That's this entry right here?

22 A. This entry right here.

23 Q. "First wife moved out to Bay City"?

24 A. Yes, sir.

25 Q. And the next entry -- if you'll click that off.

10077

Stephen Smith - Cross

1 A. "Let her first ex-husband live in house to take  
care of two

2 children."

3 Q. Next?

4 A. "Fixed house up and was there for approximately one  
year.

neighbor 5 Not more than two years. Sold house plus 80 acres to

6 for \$90,000 in 1990 or 1991."

7 Q. The next entry?

wife came 8 A. "Moved to Las Vegas to be near son. That is when

he was 9 over from Philippines. Met her in the Philippines when

10 on vacation."

11 Q. Next?

November of 12 A. "Went back over there later and married her in

13 1990 or 1991."

14 Q. Next?

Josh quite 15 A. "Lived in Vegas for six months to a year and saw

16 a bit."

17 Q. Next?

week over 18 A. "Have joint custody of Josh. Josh was here for a

19 Easter."

20 Q. Next?

tractor, Tim 21 A. "Worked at Donahue's for six months driving

22 Donahue."

23 Q. Next?

24 A. "Not like working for someone else."

25 Q. And next?

10078

Stephen Smith - Cross

working  
1 A. Then there's a "so" there also. It's "So not like  
2 for someone else."  
3 Q. Yes, sir.  
RR 3,  
4 A. "He provided a house for us 2 miles south of ranch.  
5 Rural Route 3, Box 83, Marion, Kansas."  
6 Q. And next?  
7 A. "Tim came by and said that 'Let's do some gun  
shows. Go it  
8 alone and try to make a business. Ours would be  
better, see  
9 family.' He wanted to do more of guns, handle more  
long guns,  
10 guns to sell. I wanted to buy more Army surplus and  
sell."  
11 Q. Next?  
12 A. "Pick up stuff cheap here and sell at shows  
elsewhere."  
13 Q. Next?  
14 A. Then he said that his wife went back to the  
Philippines  
15 with child after Marion. In the left margin there  
above  
16 your --  
17 Q. And it says what?

Marion." 18 A. "Wife went back to Philippines with child after  
19 Q. Okay. What is this last entry here?  
Arizona 20 A. "Tim and I went to one in Colorado, two or three in  
21 and one in Nevada."  
22 Q. That's going to be --  
23 A. -- page 11.  
here; is 24 Q. This is page 11. And you picked that up right  
25 that correct?

10079

Stephen Smith - Cross

1 A. Yes, sir.  
shows? 2 Q. It's talking about where he and Tim had gone to gun  
3 A. Yes, sir.  
4 Q. These entries above were made later?  
one 5 A. They were -- I just continued that first -- that  
" . . . 6 comment in regards to the gun shows. 'Cause he said,  
7 two or three in Arizona," which would be the first, the  
first 8 line. And then I said "sometime" -- I'm sorry, then I  
wrote 9 down that he said, "Sometimes both would drive to shows  
and

10 sometimes one would drive."

11 Q. Right here, above?

12 A. Yes. That was mentioned after the gun shows that  
they had

13 gone to. He said that sometimes they would both drive  
or

14 sometimes they would just one of them would drive to  
the shows.

15 Q. What is this entry?

16 A. "Two waters." We had supplied him two waters  
during the

17 break, and I just wanted to make sure that that was  
captured.

18 Q. So resuming what your questions and answers are,  
it's right

19 here?

20 A. Yes, sir. "Pooled money, less expenses, and split  
it."

21 Q. And the next?

22 A. "Did not ask for any gas money from him."

23 Q. Next?

24 A. "I pay for everything in cash. I do not have any  
checks,

25 credit cards."

10080

Stephen Smith – Cross

1 Q. Next?

2 A. "Got mail in Marion and Manhattan."

3 Q. Next entry?

4 A. "Stayed at Sunset in Junction City for three weeks  
prior to

5 Herington."

6 Q. Yes, sir.

7 A. "While wife was in Philippines."

8 Q. And then you've got an entry for 6:10 p.m., took a  
break?

9 A. Yes, sir.

10 Q. And an entry stating what?

11 A. He got two pieces of pizza, water, and that we  
asked about

12 the rest room, if he needed to use the rest room.

13 Q. So the break lasted from 6:10 to 7:07?

14 A. Yes, sir.

15 Q. And was that when you went upstairs and briefed the  
other

16 FBI agents what you had learned during the course of  
the

17 interview?

18 A. Yes, sir.

19 Q. And you told them about Mr. Donahue; correct?

20 A. I don't have a recollection that that conversation

21 specifically took place. I do not know what I briefed  
them

22 about. I didn't take notes as to what I briefed them  
about.

23 Q. Did you take your notes upstairs and read to the

24 supervisors what you had learned from Mr. Nichols?  
25 A. Yes, I gave them highlights of what he had said.

10081

Stephen Smith - Cross

1 Q. And did you get additional information at that time  
from  
2 the agents as to other topics to ask him about?

3 A. I believe we did, yes, sir.

4 Q. Okay. And was there a discussion at that time  
about the  
5 status of the arrest warrant that was being sought?

6 A. No, sir.

7 Q. Nobody mentioned to you when you were briefing them  
or you  
8 were being briefed about the status of an arrest  
warrant?

9 A. No, sir.

10 Q. Did anybody mention to you that a lawyer had called  
and  
11 wanted to speak with Mr. Nichols?

12 A. No, sir.

13 Q. What else happened during that 6:10 to 7:07 p.m.  
break?

14 A. Scott Crabtree and I went upstairs, and Jack Foley  
and Dan

15 Jablonski went in the interview room and sat with Terry  
Nichols

16 outside the interview room when Scott Crabtree and I



were

17 upstairs. We talked to other agents. I imagine we had  
a piece

18 of pizza, too. And I got some water.

19 Q. And do you know what information you got at that  
time?

20 A. No, sir.

21 Q. The information you gave was what was in your  
notes; is

22 that correct?

23 A. What was in my notes and what Mr. Nichols had told  
us.

24 Q. Now, do you know whether or not Mr. Jablonski and  
Mr. Foley

25 continued the interview while you were gone?

10082

Stephen Smith - Cross

1 A. I did not know that at that point, no, sir.

2 Q. Did you learn later?

3 A. Yes. I learned that they -- Terry Nichols had  
brought up

4 some discussions during that break.

5 Q. And were notes made of those discussions?

6 A. Not by me, no, sir.

7 Q. No, you weren't there. But did they make notes of  
those

8 discussions?

9 A. Yes, they did.

10 Q. Did they give them to you?

11 A. No, they did not.

pick up 12 Q. So to resume at 7:07, do we stay on this page and  
13 right here, or do we go back somewhere?

14 A. No, we stay there at 7:07 after the break, and I  
say, "Back  
15 in interview with Scott."

16 Q. And that's Mr. Crabtree?

17 A. Yes, sir.

18 Q. All right. 7:14: What is this entry?

19 A. "Again to consent search of house and car with wife  
20 present."

21 Q. How many consent forms did he sign?

22 A. He only signed one consent form.

23 Q. You're just asking him again if he will still agree  
to it?

24 A. Yes. We asked him if he would agree to a consent  
search of

25 his house and his truck with his wife present, because  
Terry

10083

Stephen Smith - Cross

1 Nichols was still being talked to so he could not be  
present;

2 and he agreed that he would give that consent for that

search.

3 Q. If his wife could be present?

4 A. Correct.

5 Q. And she never was present during the search, was she?

6 A. We didn't execute the consent search warrants. We didn't

7 use the consent search warrants.

8 Q. You didn't?

9 A. Did not.

10 Q. She never was present during any search, was she?

11 A. I don't believe so. No, sir.

12 Q. So what's the next entry?

13 A. We did not use the consent searches that Terry Nichols

14 signed for the house. Later we used consent searches that his

15 wife signed.

16 Q. And you didn't use the consent searches that he signed for

17 the house because the U.S. attorneys told you they weren't

18 good, didn't they?

19 A. No, they decided that they were going to actually get a

20 search warrant for the two, for the house and the truck.

21 Q. Did they tell you that because you had offered to have

22 Mr. Nichols present during the search, that those

consents

23 weren't valid?

24 MR. MACKEY: Objection.

25 THE COURT: Sustained.

10084

Stephen Smith – Cross

1 BY MR. WOODS:

2 Q. What's the next entry?

3 A. "Went upstairs and said okay," meaning that I went  
upstairs

4 and told my superiors and other agents that it was okay  
to

5 search the house with Marife Nichols present.

6 Q. So you went up and told your supervisors that?

7 A. Yes, sir.

8 Q. Based on that consent that Mr. Nichols gave, it was  
okay if  
9 his wife was present at the search?

10 A. Yes, because at the 4:34, when he signed the  
consent, he

11 asked prior to that if his wife or himself could be  
present.

12 We said that was possible; and then we were going to  
search

13 that evening, so we wanted to make sure, since Terry  
Nichols

14 was still being interviewed, that it was okay that his  
wife be

15 present during a search. And that's what we went back  
down,

16 asked him. He said, yes. I went back upstairs.

17 Q. Who did you tell that to back upstairs?

18 A. My superior and other agents upstairs.

19 Q. Was the U.S. attorney there at the time?

20 A. I don't believe so, no, sir.

21 Q. So what's the next entry?

22 A. "7:16, back in interview."

23 Q. And the next?

24 A. "7:17, been through Omaha, no P.O. box in Omaha,  
Nebraska."

25 Q. And now here, we pick up at 10:50 in different  
color. So

10085

Stephen Smith - Cross

1 do we need to go back to another page here at 7:17?

2 A. Yeah. At 7:17 we told Terry Nichols that we were  
going to

3 go over the whole story again that he had given us  
during the

4 first four hours of the interview. So we went to page  
1 and

5 made -- made a notation, changing my pen to a different  
color,

6 to black, and made a note at 7:19 to go over the story  
in the

7 left-hand margin of page 1.

8 Q. So we start with page 1, then, again?

9 A. Yes. We go back to page 1, at the top of the  
document --

10 the top of the interview notes, and we go over the  
whole story

11 again.

12 Q. This is your initial and it's page 1?

13 A. Yes.

14 Q. Okay. Now, do you want to point out to the jury  
what

15 entries were made on your notes after 7:19 on page 1.

16 A. Okay. As I mentioned earlier, this is not a dark  
copy

17 'cause it's tough to differentiate the black and the  
blue. But

18 the first entry here, "present job," is what he --  
whoops --

19 is -- the first entry that he mentions after -- when  
we're

20 going over the story, he says that his present job is  
buying,

21 selling.

22 Q. But you'd already gone over that much earlier when  
you put

23 the jobs down about buy and sell surplus?

24 A. Right, I asked him in the first part of the  
interview what

25 he did for a living, and he said that he buys and  
sells. And

10086

Stephen Smith – Cross

1 when we went over the notes, he said that his present  
job was

2 that, so I wrote down "present job."

3 Q. What other additions did you make here after 7:19?

4 A. Right here where it says "my." And then "and  
brother's

5 mentioned in regards to OKC."

6 Q. And is he explaining that he heard his and his  
brother's

7 name mentioned on the news broadcast?

8 A. On the radio news broadcast from the station in  
Manhattan,

9 Kansas, yes.

10 Q. And your next addition?

11 A. Over here.

12 Q. If you scratch that -- omit those marks?

13 A. Oh, yes.

14 Q. If you could erase those marks. So that we can  
move down

15 the page. Just click on the side.

16 Now, can you show the jury what additions were  
made

17 here.

18 A. "At home," and he reemphasized that he -- "on."  
Then he

19 says again, "two people from Michigan."

20 Q. Let's go back to that "at home." What are you  
meaning

21 there?

22 A. That he heard Timothy McVeigh's name on the news;  
then when

23 he got back home, that he watched it on the TV.

24 Q. After hearing it on the radio, he went home,  
watched it on

25 TV; is that what you're saying?

10087

Stephen Smith - Cross

1 A. Yes. He was kind of confused as to whether he  
heard

2 Timothy McVeigh's name mentioned on the radio or at  
home or

3 whether he had seen him and heard him on both. But  
then he did

4 say he did hear his name on the news then at home and  
he heard

5 his name for the first time at home on TV, but he  
believed he

6 had heard Timothy McVeigh's name also on the radio  
broadcast.

7 Q. What is the next addition?

8 A. "Heard about OKC bombing yesterday at cable outlet  
in

9 Herington."

10 Q. Where is that, sir?



11 A. I had just -- right here. Let me click these off.  
12 Right here.  
13 Q. What did he tell you here?  
14 A. "Heard about OK City bombing yesterday at cable  
outlet in  
15 Herington." Then below that, "Got a paper last night  
and got  
16 three different papers, read about it last night,  
Wichita,  
17 Salina."  
18 Q. And what's this entry, "no reception on TV"?  
Wasn't that  
19 added at the same time?  
20 A. That was added after this comment about buying  
three papers  
21 on that night. Then he says that he had no reception  
on TV  
22 till today. At 9:00 a.m., cable.  
23 Q. Did he tell you why he had no reception on his TV?  
24 A. No, he did not.  
25 Q. Didn't mention that the TV didn't have an antenna  
to it?

10088

Stephen Smith - Cross

1 A. No, he didn't.  
2 Q. So the front of page 1, then, complete?  
3 A. No. In the left-hand margin here, these comments  
came

purchased" --

4 next, and I'll read those. "Home to lumberyard,

heard name

5 I'm sorry. "Home to lumberyard, parked there, and

6 and did not go in."

7 Q. And what's he explaining there?

just

8 A. He's explaining the Manhattan radio broadcast. He

he did

9 said that he had heard it on the radio broadcast, but

to us

10 not tell us how he had heard about it. So he explained

not go

11 he was going to lumberyard, stayed in his truck, did

news,

12 into the lumberyard, then came home and watched the TV

13 the news coverage.

of page

14 Q. Okay. If you'll click your pen. Is that the end

15 1, sir?

16 A. Yes, sir.

the

17 Q. Now, do we go to the back of page 1, or do we go to

18 front of page 2?

19 A. The front of page 2.

and

20 Q. Again, this is page 2, according to your initials

21 numbering system?

22 A. Yes, sir.

23 Q. Now, tell the jury what additions you made here.

and 24 A. At the top of the page, he says: "Came into house  
serious. 25 asked her if she heard about it on TV. I said it was

10089

Stephen Smith - Cross

1 She did not believe."

process of 2 He said, "Heard on radio that two people in  
mentioned 3 being arrested." That was at the same time that he

4 that he came into the house. So this left --

5 Q. This entry on the left here?

6 A. Yes, sir.

his wife? 7 Q. Is he talking about a discussion he's having with

radio 8 A. Yes, that he told his wife that he had heard on the

9 that two people were in the process of being arrested.

that the 10 Q. And this comment you have over here about her, is  
11 wife?

12 A. Yes, sir. Marife Nichols.

13 Q. What next did you add to this page?

14 A. Right here, and this is in response to a question.

see it. 15 Q. Excuse me. I'm going to move it so the jury can

16 Then you can mark it. If you'll erase those marks.

17 All right. What did you put down?

18 A. Right, that phrase there, "Not headed out of town.  
Should

19 not find clothing for going out of town."

20 Q. Did you ask him if he was heading out of town while  
you

21 were following him?

22 A. Yes, we asked him that because he was going on  
Highway 56

23 south of town; and right at Surplus City, directly  
south of

24 that business, there's absolutely nothing except the  
highway.

25 So we were kind of curious as to whether he was going  
out of

10090

Stephen Smith - Cross

1 town or why he was down at Surplus City.

2 Q. Is this the same Surplus City that he had explained  
to you

3 he had been to earlier when he first heard his name on  
the

4 radio?

5 A. No, he said he went to the lumberyard, and that  
lumberyard

6 was not the Surplus City.

7 Q. All right. Can you erase that mark.

8 And what did you next add on this page?

9 A. Then I went back to the page -- back of page 1.

10 Q. So front of page 2 is complete?

11 A. Yes, sir.

12 Q. Now, can you read that for the jury -- this is all  
new  
13 addition -- right -- you can just read it verbatim?

14 A. Yes, sir.

15 Q. Okay. Can you read --

16 A. He went on to explain what he had explained on the  
top of  
17 page 2, about going into the house and telling his wife  
that

18 his name had been mentioned in the news. He said that  
"asked  
19 her if she had heard about it. She does not believe  
it.

20 Turned TV to a news station for 15 minutes. Janet Reno  
was on  
21 there discussing investigation. General lingo that  
they always

22 give. It was a press conference. Then heard Tim's  
name on TV  
23 for first time. Said he was picked up for a car  
violation not

24 far from OK scene. Thought and swore I cannot believe  
it was

25 him because he was heading back to see his family and  
he was

## Stephen Smith - Cross

1 back there in OKC. When I heard his name on TV, that  
is when I  
2 figured out why my name was on the radio, because I was  
his  
3 friend. I was feeling shock because heard my name, how  
am I  
4 involved, how am I connected to it. I must not have  
known him  
5 that well for him to do that. Friendship is about the  
same  
6 with him now as five years ago.

7 "We went our separate ways lately because he  
did not  
8 like all my practical joking and joking. Told my wife  
he did  
9 not like all that. I feel upset that I am involved in  
a sense  
10 because of him and knowing that I am not."

11 MR. WOODS: Your Honor, does the Court want to  
take a  
12 break at this time?

13 THE COURT: Keep going.

14 MR. WOODS: Yes, sir.

15 BY MR. WOODS:

16 Q. So that's the back of page 1; is that correct?

17 A. Yes, sir.

18 Q. Did you then resume on the back of page 2? Is that  
the

19 sequence you took these notes?

20 A. Yes, sir, yes, sir.

21 Q. And can you read that to the jury? All of this is  
new  
22 information; is that correct?

23 A. Yes. And the next thing that Terry Nichols said  
was that

24 he feels -- he said: "I feel I cannot trust anyone any  
more  
25 than Tim." He said "except," and then he said he meant  
"than."

10092

Stephen Smith - Cross

1 Q. Can you tell us where you're reading from here?

2 A. Yes. It's right at the top of the page.

3 Q. All right. Right here?

4 A. Right here.

5 Q. Okay. So if you'll just read verbatim.

6 A. "I feel I cannot trust anyone any more than Tim. I  
have  
7 loaned him money in the past. I would be shocked if he  
8 implicated me. Tim takes responsibility for his  
actions. He  
9 lives up to his arrangements. My wife said this  
morning that  
10 Tim lives life on edge. I did say this morning, and it  
was  
11 before heard that Tim had been picked up.

12 "She just got off phone when came in with  
news. She

13 got -- she just got off phone with Raymond,  
California." Then

14 I put a little circumflex there, "and Raymond B, her  
friend,

15 and she was joking around with him about Tim being  
involved.

16 She met him in Philippines."

17 Q. That's Raymond B that she met in the Philippines?

18 A. Yes, sir.

19 Q. Now, you've got a lot of notes in the margin here.  
Can you

20 tell --

21 A. Then we went to the top, and he was explaining that  
he had

22 received a call --

23 Q. Can you erase -- there you go.

24 A. -- from his ex-wife that morning, also, and he said  
"after

25 call from ex-wife this morning, she got mad because I  
told

10093

Stephen Smith - Cross

1 Josh"; semicolon, "wife got upset, want to go home, she  
has

2 friends there, you've got friends like Tim."

3 Q. And this is an explanation of his just conversation



with

4 his wife, Marife?

Nichols

5 A. Yes. That Marife had gotten upset because Terry

mad

6 had talked to his ex-wife that morning and that she was

doesn't

7 because she wants to go home to the Philippines and she

has

8 have any friends in the United States and that Terry

9 friends in the United States like Tim McVeigh.

10 Q. What's this entry here on top?

to the

11 A. He explained after he said this -- all the way down

ex-wife.

12 right margin, he explained that basically Lana was his

Lana, and

13 I did not know the name of the ex-wife yet. He said

told

14 then he said that his ex-wife "called because Joshua

3,000 to

15 Barry," parentheses, "(oldest son) that dad had put

16 Lana for account."

17 Q. All right.

the

18 A. And then he went off on the left margin to explain

for Josh.

19 \$3,000 comment. "Gave her money to put into account

statement

20 Gave her 3,000 cash in person in January. Not get

out."

21 yet. In January said she would copy statement and send

22 Q. All right.

23 A. And the circle there in the middle of that page:  
"He likes

24 to drive fast." He gave that as a -- an example of how  
Timothy

25 McVeigh lives his life on the edge.

10094

Stephen Smith - Cross

2; is 1 Q. And those are all the entries on the back of page  
2 that correct?

3 A. Yes, sir.

4 Q. And then where do we go, to the front of page 3?

5 A. Yes, sir.

6 Q. And this is page 3, according to your initials and  
note.

7 A. Yes, sir.

8 Q. And can you tell the jury what additions you made  
to page

9 3?

10 A. Yes. This addition here. "When he said he would  
tell me

11 things at times that would be in code for me to  
understand

12 equals think about later and able to understand." Then  
he made

13 this notation: Born in 11 -- I'm sorry. "Both in 11  
Bravo,

14 infantry."

15 Q. Is that an explanation of what unit he and McVeigh  
were  
16 assigned to?

17 A. Yes, sir.

18 Q. And the entry you just made over here with these  
marks:  
19 What are you referring to there?

20 A. In regards to the drive from Oklahoma City to  
Junction  
21 City, Terry Nichols said that Tim McVeigh told him  
things that  
22 were in code and that he would -- once he thought about  
them  
23 later, he would be able to understand what Timothy  
McVeigh  
24 meant by some of the things he was saying.

25 Q. And the next entry?

10095

Stephen Smith - Cross

1 Can you erase those marks.

2 A. Right here. "Talking generalities. At times  
seemed hyper  
3 or nervous, been that way other times, too. He was  
over at  
4 Desert Storm, and he seemed nervous afterwards. I did  
not go  
5 to Desert Storm." So all this --

6 Q. Those are remarks Mr. Nichols made about Mr.  
McVeigh?

7 A. Yes. They were remarks about what he and Mr.  
McVeigh had

8 talked about during the conversation from Oklahoma City  
to

9 Junction City; that they had talked generalities and  
that -- we

10 asked him if -- or what Mr. McVeigh's demeanor was on  
the trip

11 up from Oklahoma City to Junction City, and Terry  
Nichols said

12 at times Timothy McVeigh seemed hyper and nervous, and  
then he

13 went on to explain that Timothy McVeigh had been that  
way at

14 other times was mostly like after Desert Storm.

15 Q. Was there anything else on the front of page 3 that  
you've

16 added?

17 A. No, sir.

18 Q. Do you want to erase those remarks.

19 THE COURT: Now I think we'll break, Mr.  
Woods.

20 We're about halfway through the time for today  
--

21 You may step down, Agent Smith.

22 -- and we'll take the break remembering that  
we would

23 expect after we come back from the 20-minute break to  
go

so as I 24 through to 1:00, since this is our schedule on Friday;  
Of 25 say, you may wish to fortify yourself during this time.

10096

all breaks 1 course, please follow the caution regularly given at  
what is 2 of avoiding any discussion about the case or any of  
anything 3 happening in court, and keep open minds and avoid  
4 outside the evidence.

5 You're excused now for 20 minutes.

6 (Jury out at 10:47 a.m.)

7 THE COURT: We'll recess.

8 (Recess at 10:48 a.m.)

9 \* \* \* \* \*

10 INDEX

Page 11 Item

12 WITNESSES

13 Stephen Smith

14 Cross-examination Continued by Mr. Woods  
10001

15 PLAINTIFF'S EXHIBITS

16 Exhibit Offered Received Refused Reserved  
Withdrawn

17 1924 10022 10024

18 1926 10024

19 \* \* \* \* \*

20 REPORTER'S CERTIFICATE

21 I certify that the foregoing is a correct  
transcript from

22 the record of proceedings in the above-entitled matter.  
Dated

23 at Denver, Colorado, this 21st day of November, 1997.

24

25

---

Kara Spitler