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10098

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12 \* \* \* \* \*

13 PROCEEDINGS

14 (Reconvened at 11:07 a.m.)

15 THE COURT: Please be seated.

16 (Jury in at 11:08 a.m.)

17 THE COURT: Resume the stand, please, Agent  
Smith.

18 Mr. Woods, you may continue.

19 MR. WOODS: Thank you, your Honor.

20 (Stephen Smith was re-called to the stand.)

21 CROSS-EXAMINATION CONTINUED

22 BY MR. WOODS:

23 Q. Agent Smith, when we took the break, you had just  
completed

24 reading the back of page 2. Is that correct?

25 A. Yes, sir.

10099

Stephen Smith - Cross

1 Q. And the last thing you entered was "he likes to  
drive

2 fast"; and that was in relation to Tim McVeigh living  
life on

3 the edge?

4 A. Yes, sir.

5 Q. So is it fair, then, to go to the back of page 3 --  
was

6 that the order in which you took the notes?

7 A. Yes, sir.

8 Q. And you see that this is page 3 according to your  
initial

9 note. And if you would, just read to the jury what  
your notes

10 are here, starting at the top.

11 A. "See guys (3 to 4 per show) at gun shows. FBI, ATF  
went in

12 there and murdered them and something done about it" --  
I mean

13 "and something should be done."

14 Q. What does that refer to?

15 A. This is in regards to Terry Nichols' telling us  
that he

16 sees people at gun shows come by his table and say that  
the FBI

17 and the ATF murdered all the people in Waco and that  
these

18 people say that something should be done about it.

19 Terry Nichols' response to those people is  
that he

20 would tell them -- "I would say 'possibly.'"

21 Q. You put that in quotation remarks?

22 A. Yes. That was in reference to him answering the  
question

23 that those people at the gun shows that would say that  
that --

24 that he said, "I would say 'possibly.'"

25 Q. Your next entry is?

10100

Stephen Smith - Cross

1 A. "Some guys get hyped about that."

2 And then he went to the top of the page and  
then down

3 the right margin to further explain some of the things  
at the

4 gun shows that they would see and said, "Tim would get  
more

5 hyped seeing a newsletter like Spotlight; Jack McClamb,  
retired

6 PD out of Phoenix. Bo Gritz ran for president last  
time; Jack

7 wrote Aid and Abet that I read; right-to-bear-arms  
messages;

8 most decorated officer in Arizona; follow Constitution;  
fired

9 twice; got fed up, retired, writes speeches about  
rights under

10 Constitution."

11 And then the only thing that I didn't mention  
there

12 was that "Jack McClamb" above that in the right-hand  
corner --

13 Terry Nichols told us that Jack McClamb -- he says  
"(writes

14 one)" -- if you want to move the paper down a little.

15 Q. Sure.

16 A. I'm sorry. Move it down the page -- no. Okay.  
Move it in

17 the other direction.

18 Q. This way?  
19 A. Yes, sir.  
20 Q. Okay?  
21 A. Right here. This was in reference to Terry  
Nichols'  
22 telling us that Jack McClamb also writes a newsletter.  
23 The next thing we went to was right here at  
this plus,  
24 where we asked him a question: "Looking back in  
hindsight,  
25 anything he said on way up would make you think he had  
done

10101

Stephen Smith - Cross

1 it?"  
2 Terry Nichols responded, "Yes."  
3 Q. All right. And then what was said?  
4 A. And then at 8:14 --  
5 Q. Was that -- was that it? Just "Yes"? You didn't  
ask him  
6 what "yes" meant?  
7 A. No, then we took a break.  
8 Q. All right?  
9 A. At 8:14, Jack and Dan came back.  
10 Q. That's Jack Foley and Dan Jablonski?  
11 A. Yes, sir. And Jack alone.

12 Q. What does that mean?  
13 A. That Jack -- that Dan went back outside and Jack  
was alone  
14 in there and then at "8:15 came back out with Scott,"  
meaning  
15 that I came back out of the interview at 8:15.  
16 Q. All right.  
17 A. Then Scott and I -- Scott Crabtree and I were back  
into the  
18 interview at 8:44.  
19 Q. So what happened between 8:15 and 8:44?  
20 A. We took a break, a half-an-hour break  
approximately, and  
21 Agents Jack Foley and Dan Jablonski were in the room  
with Terry  
22 Nichols.  
23 Q. And during that break, did you convey to the people  
24 upstairs what you had learned?  
25 A. Yes, sir.

10102

Stephen Smith - Cross

1 Q. And did you get additional information to ask  
additional  
2 questions?  
3 A. Yes, sir.  
4 Q. And did you learn the status of the arrest warrant  
at that

5 time?

6 A. No, sir.

7 Q. All right. So 8:44, you're resuming the interview?

8 A. And at 8:46 -- that's "J and D" -- that would be  
Jack Foley

9 and Dan Jablonski -- "left," "Explaining house diagram;  
Jack,"

10 for Jack Foley, "back in at 8:48."

11 Q. What is this "explaining house diagram, 8:48, Jack"  
-- "J

12 back in"?

13 A. That means that Dan Jablonski was explaining the  
house

14 diagram to Agents Crabtree and myself because Terry  
Nichols

15 during that break from 8:14 to 8:44 had produced or had  
drawn a

16 diagram of his house; and that house diagram Agent  
Jablonski

17 was showing to us and that Jack Foley must have left  
the room

18 for 2 minutes and then came back in at 8:48.

19 Q. Excuse me. Is -- are there interviews going on  
when you're

20 not there by Mr. Foley and Mr. Jablonski?

21 A. During that break from 8:14 to 8:44 is when Mr.  
Nichols

22 drew a diagram of his house. I don't know about an  
interview

23 during that time. I was not in there.

24 Q. Did anybody give you any notes of an interview?

25 A. No, sir.

10103

Stephen Smith - Cross

1 Q. You did see the diagram of the house, didn't you?

2 A. Yes, sir.

3 Q. Did you initial it?

4 A. Yes, sir.

5 MR. WOODS: May I approach the witness, your  
Honor?

6 THE COURT: Yes.

7 BY MR. WOODS:

8 Q. I'm going to show you what's been marked as  
Defendant's

9 Exhibit D1627, which is a copy. I don't have the  
original.

10 You recognize that document?

11 A. Yes, sir.

12 Q. Have you seen it before?

13 A. Yes, sir.

14 MR. WOODS: Your Honor, we would offer into  
evidence

15 Defense Exhibit 1627. I assume the Government has the  
16 original.

17 MR. MACKEY: We have no objection to that.

18 Government's Exhibit 1930 that Agent Smith has there is

the

19 original of that same exhibit.

look at

20 THE COURT: All right. Well, let's take a

21 it --

22 MR. WOODS: Has it been offered into evidence?

23 THE COURT: No, it hasn't.

24 1930, do you have?

25 THE WITNESS: Yes.

10104

Stephen Smith - Cross

used,

1 MR. WOODS: We would ask that the original be

2 your Honor.

what

3 THE COURT: You can approach to make sure it's

4 you --

5 MR. WOODS: Thank you.

6 THE COURT: -- want.

7 BY MR. WOODS:

copy?

8 Q. Since you initialed it, is the original of that

9 A. Yes, sir.

the

10 MR. WOODS: Then we would offer into evidence

11 original that the Government had not offered.

12 THE COURT: 1940, I think Mr. Mackey said.

13 MR. MACKEY: 1930, your Honor.

14 THE COURT: 1930. I'm sorry. 1930 is  
received.

15 BY MR. WOODS:

16 Q. Agent Smith, is this a diagram that Mr. Nichols  
drew for

17 the agents of his house?

18 A. Yes, sir.

19 Q. And did he point out on that diagram the location  
of his

20 firearms?

21 A. Yes, sir.

22 Q. Did he point out on that diagram the location of  
the

23 ammunition that's in his house?

24 A. Yes, sir.

25 Q. Now, what did you do with this original that  
evening?

10105

Stephen Smith - Cross

1 A. I did not do anything with the original that  
evening. As

2 mentioned in the notes here on that page that we have  
on the

3 screen, at 8:52, Marife Nichols, Terry Nichols' wife,  
came into

4 the interview room between 8:52 and 8:57; and this is

when Dan

5 Jablonski showed me the diagram, and that's why I timed  
it at

6 8:53 as to when I actually signed this document. I did  
not --

7 I did not witness this document being prepared, so I  
did not 1A

8 it or put it evidence -- put it into an envelope  
myself. This

9 was handled by Dan Jablonski.

10 Q. Do you know if it was given to the agents the next  
day that

11 were going to be executing the search warrant?

12 A. I do not know that. I was not in Herington that  
day.

13 Q. Do you know what happened to it after you last saw  
it in

14 Jablonski's possession?

15 A. No, I do not.

16 I should say Jablonski or Agent Foley -- I do  
not who

17 had it, but they were both there during that 30-minute  
break.

18 Q. Well, Jablonski didn't even sign it, did he?

19 A. That's what I'm noticing here, yes, sir.

20 Q. You signed it, Scott Crabtree and John Foley signed  
it?

21 A. Yes, sir.

22 Q. The last you saw of it was in Jablonski's  
possession?

23 A. I should say it was in Jablonski or Foley's

possession,

24 yes, sir.

publish 25 MR. WOODS: Your Honor, may we exhibit that,

10106

Stephen Smith – Cross

1 that before we go to the next page of notes?

2 THE COURT: Yes. Yes.

3 BY MR. WOODS:

house on 4 Q. Now, Agent Smith, did you go to Terry Nichols'

5 Saturday, the 22d?

6 A. No, I did not.

7 Q. Did you go on Sunday, the 23d?

8 A. No, I did not.

this 9 Q. You're aware that search warrants were executed at

10 location, weren't you?

11 A. Yes, sir.

12 Q. Did you ever go inside the house?

13 A. No, sir.

take it; 14 Q. So you don't know how accurate this diagram is, I

15 is that correct?

16 A. No, I do not.

17 Q. Mr. Nichols has a legend there about guns and ammo

with Xs

18 and Os -- is that correct -- in the upper right-hand  
corner?

19 A. Yes, an X and then an X with a circle around it.

20 Q. Right here?

21 A. Yes, sir.

22 Q. And there are locations in the house where he's put  
the X

23 and the X with the circle?

24 A. Yes, sir.

25 Q. And you don't know if that's accurate or not  
accurate; is

10107

Stephen Smith - Cross

1 that correct?

2 A. No, I do not.

3 Q. So back to page 3, our last entry we were talking  
about was

4 at 8:48 concerning the diagram. Is that correct?

5 A. Yes. And this is the back of page 3.

6 Q. All right. Now, what happens next?

7 A. As I mentioned, at 8:52, Marife, wife, and  
daughter, Nicole

8 Lynn, came back in to see Terry.

9 Q. And were you there?

10 A. Yes, sir.

11 Q. Did you observe that?

12 A. Yes, sir.

13 Q. And what happened?

14 A. At that point, Jack Foley or Dan Jablonski showed me the

15 diagram of the house. I initialed it at 8:53 in between there.

16 I noticed during that break that they were together, Marife and

17 Terry Nichols; that Terry Nichols had taken out his wallet and

18 given Mrs. Nichols something out of the wallet and then put his

19 wallet back in his pocket. And then at 8:57, Nicole Lynn, the

20 daughter, and Marife left the basement. And then I say Scott

21 and I back to the interview at that point.

22 Q. What time did you get back into the interview? 8:57?

23 A. Yes, sir.

24 Q. Okay. And can you read, then, for the jury what you wrote

25 down about Mr. Nichols' responses at that time?

10108

Stephen Smith – Cross

1 A. At that time, we had not gotten back to the important

2 question right before the break regarding the hindsight

3 question, if anything he had said on the way up would  
make him  
4 think that he had done it, meaning the bombing. And he  
said  
5 yes. Then we asked him to explain that; and then Terry  
Nichols  
6 said -- "He said on way from OK City to JC Tim" --  
"Tim" as  
7 being "he" -- "'You will see something big in the  
future.' I  
8 was talking about what I was doing/going to military  
shows  
9 selling surplus;" quote, "'I'm doing fine, I should get  
10 something going here shortly. You will see something  
big in  
11 the future,'" end quote.  
12 Q. Now, who -- who did the quotation marks refer to?  
13 A. The first quotation mark, "You will see something  
big in  
14 the future," is what Timothy McVeigh told Terry Nichols  
on the  
15 drive from Oklahoma City to Junction City.  
16 Q. Yes, sir.  
17 A. The next quotation, "I'm doing fine, I should get  
something  
18 going here shortly. You will see something big in the  
future,"  
19 was Timothy McVeigh's comments again; and in between  
there is  
20 what Terry Nichols was saying, he was going to military  
21 surplus -- military shows selling surplus. And then

Timothy

22 McVeigh responded to that by making this comment again.

23 And then the next thing was Terry Nichols  
asking

24 Timothy McVeigh, "What are you going to do, rob a  
bank?" And

25 Timothy McVeigh responding, "Oh no, I've got something  
in the

10109

Stephen Smith - Cross

1 works."

2 Q. That is the completion of the back of page 3?

3 A. Yes, sir.

4 Q. And do we now go to the back of page 4?

5 A. Yes, sir.

6 Q. And again, this is page 4 according to your initial  
and the  
7 numbering system.

8 A. That's correct.

9 Q. And can you then just read for the jury what notes  
you made  
10 on the back of page 4 and in the order that you made  
them.

11 A. Yes. We asked him specifically if he knew what "in  
the

12 works" meant because that's what Timothy McVeigh had  
said that

13 he had done.

quote, 14 And he said that he "Did not ask him what,"  
15 "'in the works' meant; Tim said 'in the works' in the  
past."

16 At that point --

17 Q. Those are the comments in the margin over here? Is  
that  
18 correct?

19 A. Yes, sir. That's what -- we asked him specifically  
if he  
20 knew what "in the works" meant because he had already  
said that  
21 you're going to see something big in the future, and it  
wasn't  
22 to rob a bank.

23 The next thing he said was that it was going  
to be  
24 something that was in the works. We wanted to know  
what that  
25 meant, so we asked him if he had asked him that; and he  
said

10110

Stephen Smith - Cross

1 that he had not asked him that but that Timothy McVeigh  
had  
2 used that line in the past.

3 Q. Can you start at the top? Is that the sequence  
starting at  
4 the top?

Timothy 5 A. Yes. He said that discussion -- in regards to  
discussion 6 McVeigh having something in the works that "That  
else." 7 ended when we got distracted or talked about something

8 Q. And the next statement?

in D.C. 9 A. "He mentioned that there was a gathering or rally  
did not 10 this week in regards to Waco; remembrance or something,  
commented 11 say he was going to be a part of it or going to it; I  
ago." 12 it was a year or two ago; he said yes it was two years

13 Q. And the next entry?

Spotlight 14 A. "Talked about regarding some articles in The  
open 15 newsletter/paper. Spotlight and publications like that  
the mass 16 eyes to alternative reporting vs. what is presented in  
gun show 17 media. Alternative ideas or views; you can go to any  
cannons, 18 and there are tons of books on how to make bombs,  
19 guns, silencers."

20 "We would both" --

21 Q. In this statement about The Spotlight, is there any  
22 notation that Mr. Nichols said that he believed what  
was in The

23 Spotlight?

24 A. No. There is no notations in the notes to that.

25 Mr. Nichols said that he did believe that things that  
were in

10111

Stephen Smith – Cross

1 the Spotlight and other publications like that were  
ideas that

2 he believed in.

3 Q. You didn't reflect that in your notes; is that  
correct?

4 A. No, no.

5 Q. And your next entry then?

6 A. "We would both stay at the table during shows."

7 Quote "'Gun Show Calendar,'" end quote,  
"magazine look

8 to go to ones close to home."

9 "No other operators that I had friendship with  
and

10 neither does Tim."

11 "I have bought books on cannons, establish  
credit

12 books."

13 Quote, "'Curiosity can you do it,'" end quote.

14 He mentioned then that he has no credit cards,  
no

15 checking or savings account, does not pay or believe in  
federal

16 income taxes.

17 Q. And the entry over here on the left?

18 A. "I've read articles that have come across table

about

19 bombs, talked with McVeigh, would not work, sounds

logical.

20 With talking to different sources or people at table,

need a

21 certain fertilizer (it is a nitrogen-based fertilizer)

do not

22 think a liquid fertilizer could do it."

23 Q. And this is in response to your questions to him

about

24 explosives?

25 A. Yes. He had mentioned that he had read articles

that have

10112

Stephen Smith – Cross

1 come across paper (sic) about bombs and that he would

discuss

2 them with McVeigh, what would work, if this bomb would

work,

3 this bomb would work or if it was logical or not for

the

4 mixtures in the books themselves. He said they did

that

5 because of their curiosity.

6 Q. And this was in response to your questions about

7 explosives; is that correct?

8 A. Yes, sir.

9 Q. Is that the end of that page?

10 A. Yes, sir.

11 Q. Now, do we go to the back of page 5 in your  
sequence?

12 A. Yes, sir.

13 Q. And again, this is your initial and your numbering  
system,

14 page 5. Is that correct?

15 A. Yes, sir.

16 Q. And if you would, just start at the top and read  
for the

17 jury what you put on your paper, your notes.

18 A. Of what Terry Nichols -- he said, "Do not think a  
19 28 percent nitrogen mixture could lead to an explosion;  
20 different analysis. Some people say urea does, some  
people --

21 and some people say it does not. Granular solid equals  
like on

22 lawn. Urea is another form of nitrogen-based bomb; I  
do not

23 know."

24 "Ammonium nitrate fertilizer that can be used  
to make

25 a bomb" -- "Granular." "I imagine you have to put a  
blasting

Stephen Smith – Cross

1 cap on it to explode. Farmer stopped by one of my  
shows about  
2 blowing tree stumps out take ammonium nitrate and  
diesel fuel  
3 and mix. Someone bores a hole underneath and mixed  
before put  
4 it down in hole and then detonate mixture for  
explosion.  
5 Someone" -- excuse me. "Someone came by table and said  
mix AN  
6 and diesel fuel for quarries. I have not made any so I  
do not  
7 know if it stays granular or becomes liquid; there are  
ratios  
8 for mixture in books equal going from dry manure to  
ammonium  
9 nitrate with diesel fuel; I would assume electricity  
could  
10 start it; they have electric blasting caps now."  
11 Q. And what is he relating here to you? Information  
from  
12 books and conversations?  
13 A. Both individuals that come by the table at gun  
shows that  
14 he would talk to and literature that he had read.  
15 Q. And that is the end of that page?  
16 A. Yes, sir.  
17 Q. And in your sequence, do we go to the back of page  
6?  
18 A. Yes, sir.

initial 19 Q. And again, in your numbering system, we have your

20 and your page No. 6. Is that correct?

21 A. Yes, sir.

down 22 Q. And can you read for the jury, then, what you wrote

23 about your conversation with Mr. Nichols?

related 24 A. "Can purchase ammonium nitrate fertilizer at grain  
25 elevators in JC. Did not ask me about buying anything

10114

Stephen Smith - Cross

not 1 to bomb. Tim's friends in JC in/out of military. I do

roomed 2 know very well. He's mentioned names in the past equal

me also 3 with guys at barracks; Herbez approximately 1988, with

Desert 4 in Army. He was in Army for 4-5 years, got out after

Forces, 5 Storm earlier and went down for training in Special

another 6 decided to not go in there, started training with

Special 7 friend from Desert Storm on a walk/run; did not finish

got a 8 Forces training and short time later got out, assume he

9 honorable discharge. (He got pissed at a sergeant" --

for

before 10 his -- I'm sorry. "He got pissed at a sergeant of his  
any 11 he got out) or Sergeant pissed him off. I nor Tim had  
in 12 friends in Ordnance when we were in. Mentions this Bob  
of a 13 reference to shows he has been to; Bob is an operator  
without 14 booth. If private gun and want to sell, can sell them  
15 license."

16 Q. Talking about gun show?

17 A. Yes, sir. What he's saying here is that if you  
don't have

18 a federal firearms license, you can still sell guns as  
long as  
19 it's a private gun. That was his belief.

20 Q. What was this mention about Bob? What was that in  
response  
21 to?

22 A. We asked him if he knew anybody -- and he mentioned  
earlier

23 that he did not know anybody -- he did not have any  
friends in

24 the gun show business who ran booths or operated a  
booth or a

25 table at a show. And then he says that Timothy McVeigh  
has

Stephen Smith - Cross

1 mentioned this Bob in reference to shows that he has  
been to  
2 and that Bob is an operator of a booth at these gun  
shows.

3 Q. What's the next entry?

4 A. "I and Tim do not have federal firearms licenses.  
5 Percentage of sales that guns generate at shows equals  
6 15 percent, Terry. Percentage of sales that guns  
generate at  
7 shows equals well over 50 percent, Tim.

8 "Common acquaintances of ours: My brother  
James (one  
9 year older than me)" -- his brother he's mentioning in  
the  
10 left-hand margin.

11 Q. Terry Nichols' brother?

12 A. Right.

13 Q. This is in response to a question when you asked  
who were  
14 the common acquaintances of both you and Tim McVeigh?

15 A. That's correct. And he mentioned -- he says, "My  
brother  
16 James"; and then he mentioned in the left-hand corner  
here that

17 his brother is one year older than Timothy -- than  
Terry

18 Nichols is.

19 Q. All right.

Kevin 20 A. And then he mentioned, "More my friends than his:  
brother's 21 Nicholas, Carrol, Michigan. Used to work on my  
22 farm."  
-- "used 23 "(2) Rick Nicholas" -- that's Kevin's father  
24 to work on farm, also; (3) brother's friend that both  
know but 25 I know better."

10116

Stephen Smith - Cross

1 So the ones below that are James Nichols'  
friends that  
Nichols 2 both Tim McVeigh and Terry Nichols know but that Terry  
3 knows better. And he said, "(a) Phil Moraski, Decker,  
4 Michigan; (b) Dean Burden, Snover, Michigan." He says,  
"He's  
5 got two sisters."  
6 Q. When you say "he's got two sisters," who are you  
referring  
7 to here when you write those notes?  
8 A. Dean Burden under No. (b) on the far right.  
9 Q. Isn't it true that you're referring here to Tim  
McVeigh?  
10 A. I believed he was talking about Dean Burden. But  
in the  
11 context of it, that's correct because he's saying that

the

12 mother -- mother is in Florida and the father is in New  
York

13 state, so he is referring to Timothy McVeigh.

14 Q. He's got two sisters?

15 A. Correct. "(Jennie or (Jeanie), and another) gets  
along

16 better with the younger sister," who is Jennie or  
Jeanie.

17 "Mother, Florida; father, New York state, living."

18 Q. Now, does is that describe Tim McVeigh?

19 A. No, that's describing Tim McVeigh's father,  
parents.

20 Q. The relatives of Tim McVeigh?

21 A. Yes. I had mentioned that that was Dean Burden,  
and that

22 was my mistake.

23 Q. Is that the end of that page?

24 A. Yes, sir.

25 Q. In your sequence, do we go to the back of page 7?

10117

Stephen Smith - Cross

1 A. Yes, sir.

2 Q. And again, in your initials and numbering system,  
this is

3 page 7. Is that correct?

4 A. Yes, sir.

5 Q. And if you could, just read that for the jury.

6 A. "His nature is always on the road, last fall when  
we went  
7 out West that was" -- I'm sorry -- "went out West that  
there  
8 was a week there where stayed in the desert in Kingman,  
Arizona  
9 area."

10 Q. This statement, "His nature": Who is being  
referred to  
11 there?

12 A. Tim McVeigh's "nature is always on the road."

13 Q. All right.

14 A. Next thing he said was, "He had a house there  
outside  
15 Kingman in another city, Golden Valley. He's a loaner.  
It's  
16 possible that he could make a device to blow up a  
building  
17 without my knowledge. He could be capable of doing it.  
He  
18 knows guns real well equals no sharpshooter; break gun  
down  
19 quickly, down to bare parts; name of lot of different  
makes and  
20 models, round capacity; velocity, different calibers"  
--  
21 "velocity of bullets," excuse me, "different calibers.  
22 "We talked about bombs; looked at literature  
together  
23 a couple of times at shows and discussed it, would this

work,

24 does it make sense, this bomb would make more sense.

25 "Knows as much as I do regarding bombs. He's  
got lots

10118

Stephen Smith – Cross

1 of free time and likes to stay busy by reading, etc.,  
about

2 guns, bombs. Did not have proper license on brother's  
car and

3 went out West and not sure if he changed plates. When  
I was

4 driving through streets of OK City, I saw one parking  
lot

5 empty.

6 "10:21 equals Went upstairs. Asked restroom,  
7 declined. Brought water back down."

8 Q. So these comments on this page are referring to Tim  
McVeigh

9 as related to you by Terry Nichols?

10 A. Not all of them, but a majority of them, yes, sir.

11 Q. And you have gotten to a time sequence of 10:21  
when you

12 take break and you go upstairs. Is that correct?

13 A. Yes. And we had asked Terry Nichols if he wanted  
to use

14 the rest room, and he said he did not need to; but he  
said he

15 would like some water, so we brought some water back  
down.

16 Q. And what happened when you went upstairs?

17 A. That was the last break that we took at 10:21 to  
10:50, and

18 we had reiterated or rementioned to the superiors what  
we had

19 talked to Terry Nichols about and what he said during  
that --

20 the course of that interview. And we found out a few  
more

21 things to ask Terry Nichols during the last session.

22 Q. And did you find out that you finally had the  
arrest

23 warrant in hand?

24 A. Yes. I found that out during that last break.

25 Q. And did you find out when it had been issued?

10119

Stephen Smith - Cross

1 A. No, I did not.

2 Q. Do you know where it had been issued?

3 A. Yes. It had been issued from the grand jury in  
Oklahoma

4 City.

5 Q. From the grand jury in Oklahoma City?

6 A. No. Excuse me. It had been issued by the court in  
which

7 that -- U.S. District Court in Wichita, Kansas.

City 8 Q. Isn't it, in fact, a warrant issued out of Oklahoma  
9 issued by a federal judge?  
10 A. I would have to look at the document to be sure.  
11 Q. Did you look at it that night?  
12 A. Never saw it that night.  
13 Q. Have you seen it since?  
14 A. Yes, I have.  
15 Q. You told the prosecutor on direct examination that  
it was a  
16 material witness warrant. Is that correct?  
17 A. Yes, sir.  
18 Q. And you have seen it since that date; is that  
correct?  
19 A. Yes, sir.  
20 Q. And you've read it?  
21 A. Yes, sir.  
22 Q. Is it true that on that document that the  
Government stated  
23 Terry Nichols had attempted to flee the jurisdiction of  
the  
24 United States?  
25 A. I believe it said that, yes, sir.

10120

Stephen Smith – Cross

1 Q. Did you notice what time it was issued when you

read it?

2 MR. MACKEY: Objection, Judge.

3 THE COURT: Sustained.

4 BY MR. WOODS:

5 Q. So you learned about the warranted at 10:21 or  
shortly

6 thereafter during the break; is that correct?

7 A. Yes, sir.

8 Q. And you related to your superiors -- you went over  
your

9 notes, gave them the highlights. Is that correct?

10 A. Yes, sir.

11 Q. And you got additional information to go back down  
and ask

12 Mr. Nichols questions. Is that correct?

13 A. That's correct.

14 Q. Was Mr. Rathbun, the United States attorney,  
upstairs then?

15 A. I don't believe he was there, no, sir. I did not  
see

16 Mr. Rathbun until the end of the interview when I left  
at

17 approximately 12:11 a.m.

18 Q. Did you learn at that time during this break that  
an

19 attorney had been calling and attempting to talk to the  
agents

20 and attempting to make his services available to Mr.  
Nichols?

21 A. No.

22 MR. MACKEY: Objection.

23 THE COURT: Sustained.

24 BY MR. WOODS:

25 Q. What time did you go back to the interview after  
that break

10121

Stephen Smith – Cross

1 at 10:20?

2 A. At approximately 10:50 p.m.

3 Q. Did you advise Mr. Nichols that there was a warrant  
for his

4 arrest at that time?

5 A. No, I did not.

6 Q. Did you continue to interview him?

7 A. Yes, sir.

8 Q. And in your time sequence, do we then go to the  
front of

9 page 8?

10 A. We go to page 11.

11 Q. I'm sorry?

12 A. In the middle of the page.

13 Q. Okay. Page 11, middle of the page. And this is  
your

14 initial and your page number. Is that correct?

15 A. Yes, sir.

notation 16 Q. And we have here in the middle of the page a  
17 10:50.  
18 A. Yes. "10:50 back downstairs."  
19 Q. And that's where the interview picks back up?  
20 A. Yes, sir.  
interview of 21 Q. Read to the jury what notes you made of the  
22 Mr. Nichols.  
23 A. "Any storage facilities, care, control, or custody.  
24 "1. Had storage in Las Vegas, 11/94 - 12/94 -  
1/95  
25 personal items; stored pick up there when went to  
Philippines.

10122

Stephen Smith - Cross

couple 1 "2. One in Herington. I was asked to pick a  
yesterday 2 things up from by Tim; at time not think much of it,  
up for 3 picked up"; quote, "'If I don't pick them up pick them  
sleeping 4 me,'" end quote; "told me on Tuesday, those items are  
page." 5 bag and ruck" -- "Rucksack in garage is on the next  
you ask 6 Q. Okay. Let's stay on this page just a moment. Did  
7 him questions about do you have any access to storage

asked? 8 facilities? Is that -- what was the question you

about any 9 A. The question we asked Terry Nichols was tell us

custody, 10 and all storage facilities that he had under his care,

11 or control.

had? 12 Q. And he told you about the one in Las Vegas that he

about a 13 A. Yes, sir; that he no longer had. And he told us

14 storage locker from 11-94 to January of '95.

asked to 15 Q. And he told you about one in Herington that he was

16 pick up things. Now, who was he asked by?

there. 17 A. He was asked by Tim McVeigh to pick up items in

your 18 Q. Okay. So we then go to top of page 12. Is that

19 sequence?

20 A. Yes, sir.

21 Q. And again, this is your initial on page 12; is that

22 correct?

23 A. Yes, sir.

continued 24 Q. All right. Can you read for the jury, then? You

up. Is 25 about his statement on the prior page of what he picked

## Stephen Smith - Cross

1 that correct?

2 A. Right. And the bottom of page 11 was, "Those items  
are the  
3 sleeping bag and rucksack in garage." And "His rifle  
and box  
4 next to meter now."

5 Q. What does that mean? Is he explaining where the  
items are?

6 A. Yes. He's saying that he's placed the sleeping  
bag, the  
7 rucksack and the rifle in his garage at home.

8 Q. What's the next entry?

9 A. A "combination nothing left in storage.

10 "Across from Pizza Hut 2nd up from south end  
on east  
11 side 5-foot-by-10-foot."

12 Q. And what entry -- what does that mean? Is he  
giving you  
13 the location of where that storage locker is in  
Herington?

14 A. Yes. He's saying that the storage locker is across  
from  
15 the Pizza Hut and specifically described it as being  
the second

16 storage locker up from the south end on the east side.  
Then he  
17 gave the dimensions of the storage locker.

18 Q. What is this entry on the margin on the left? Does  
that

19 come in at that time?  
20 A. Yes. We asked him a specific question as noted  
there, "Are  
21 these your items," in regards to the things he picked  
up from  
22 the storage facility.

23 Terry Nichols said "No."  
24 Then we asked him a question: "What about  
your  
25 fingerprints on any items in the rucksack?"

10124

Stephen Smith - Cross

1 And Terry Nichols' response that "May have  
given some  
2 items to McVeigh in past that are in rucksack."

3 Q. Now, what's the next entry?

4 A. "I had one that I stored my stuff in Council Grove  
5 (furniture) (and guns, ammo in facility) stored there  
last  
6 fall" September -- and then he said -- no, it wasn't  
September;  
7 that it was from "(October to March) (until I got  
house)."

8 Q. What's the next entry here that's crossed?

9 A. "Closed before I moved in."

10 Q. Closed what?

11 A. That means that he closed on his house before he

moved in.

12 This is not in reference to the storage facility.

13 Q. Okay. And the next entry?

14 A. The next thing he said was, "Nothing in house or  
truck that

15 can be construed as bomb-making material."

16 Q. All right. And then you have a cross here. Do you  
change

17 subjects?

18 A. Yes. We asked him specifically about that -- about  
mutual

19 associates; and he said that the mutual -- the  
following names

20 that he had mentioned to us were "mutual associates  
that he is

21 closer to," meaning Tim McVeigh, and some of them are

22 non-soldiers, and then he gave us a list.

23 "No. 1. Herbez, Burmerdez, Hispanic  
appearance from

24 Puerto Rico."

25 "2." Blank line, "Fortier, w/m" standing for  
white

10125

Stephen Smith - Cross

1 male.

2 "3." A line and "Smith, white male."

3 "4. Smith, white mail.

4 "5. Bunch, black male.  
5 "6. Spencer, white male friends with one more  
than  
6 the other.  
7 "7. Spencer white male.  
8 "8. FNU LNU," meaning first name unknown,  
last name  
9 unknown, "white male possibly going through Special  
Forces  
10 together, living in "Rolla, Missouri, or Washington,  
Missouri."  
11 "9. Lived with in Salina who also in Army."  
12 And "10." -- That was the end of that list.  
13 Q. And you switched to a new subject?  
14 A. Yes. "Down at show in Tulsa, guy who had a booth  
who was  
15 selling items related to explosives equals lots of  
chemicals  
16 involved (ammonium nitrate; potassium and something;  
nitrogen,  
17 potassium and phosphorus in fertilizer that farmers use  
in the  
18 fields); can be used for bomb making."  
19 Q. And then we go to the top of page 13?  
20 A. Yes, sir.  
21 Q. And again, this is your numbering system, your  
initials?  
22 A. Yes.  
23 "I talked to him a bit; asked him specific  
questions

these 24 about uses; and he was rude that I should have known  
selling 25 answers; talked to others who said it was no problem in

10126

Stephen Smith - Cross

1 items."  
2 Q. What items are you referring to here?  
3 A. Items related to explosives and to include ammonium  
nitrate 4 and other items that the individual at the Tulsa gun  
show told 5 him that there would be no problems in selling those  
items.

6 Q. And the next entry?  
7 A. "11:15 p.m., listen to taped message."  
8 Q. Is this when you had the phone there hooked up to  
9 Washington and you allowed Mr. Nichols to hear the  
message?

10 A. We didn't have the phone hooked up to Washington,  
but I 11 called Washington and prior to asking -- I asked Terry  
Nichols 12 if he wanted to listen to the message from his son and  
his 13 ex-wife.

14 Q. How did you know to call Washington? What word did  
you 15 get?

16 A. During the last break from 10:21 to 10:50, I was  
told that  
17 there was a taped message; and I actually listened to  
the taped  
18 message during that break from his son and his ex-wife.  
And  
19 they told me once we go back down to the interview to  
ask Terry  
20 Nichols if he wanted to listen to the message and if he  
did, we  
21 would have to do the same thing, call Washington D.C.,  
and have  
22 them play the tape over the phone.

23 Q. And why did you offer to have the tape played  
rather than  
24 just read the statements of Lana Padilla and Josh to  
him?

25 A. I didn't have the statements of Lana Padilla and  
Josh.

10127

Stephen Smith - Cross

1 Q. They were short. You could have just written them  
down,  
2 couldn't you?

3 A. There was only a 30-minute break; and if the tape  
is a  
4 couple minutes, it's going to take a while for me to be  
able to  
5 transcribe it down.

take the 6 Q. But you wanted to play the tape, rather than you  
7 notes; is that correct?

play the 8 A. It wasn't a conscious -- it was a decision just to  
9 tape for him if he wanted to hear it. It wasn't a  
decision 10 whether I was going to transcribe it and show him what  
they 11 said or have him listen to the tape.

correct? 12 Q. So the FBI had used a tape that evening; is that  
13 A. The FBI had not used a tape.

that 14 Q. The FBI had used a tape recording that evening; is  
15 correct?

16 A. Yes. They had made a tape of a conversation.

Nichols? 17 Q. And that was the one that was played for Mr.  
18 A. Yes, sir.

message? 19 Q. What's the next entry then about listen to taped  
20 What do you have then?

said," 21 A. Quote, "I caught everything except for what my son  
22 end quote.

tape? 23 Q. This was the response he made after hearing the  
24 A. Yes. He said that he caught everything except for  
what his 25 son said at the very end. He had heard what his son

said, but

10128

Stephen Smith – Cross

his son 1 he couldn't catch what his son said at the end because  
had been 2 had been crying, so he didn't understand what his son  
3 saying.

4 Q. And you've heard that tape?

5 A. Yes, sir.

6 Q. It's fairly short, isn't it?

7 A. Yes, sir.

at this 8 MR. WOODS: We would offer to play that tape  
to show 9 time. It's a very short recording to put it in context  
10 Mr. Nichols' response here.

11 THE COURT: All right.

12 MR. WOODS: And it is Defense Exhibit 1652.

13 THE COURT: All right. Any objection?

14 MR. MACKEY: No, your Honor.

may be 15 THE COURT: All right. 16 -- D1652 received,  
16 played.

17 (Exhibit D1652 played.)

18 BY MR. WOODS:

19 Q. Was that the tape that you heard before it was  
played to  
20 Mr. Nichols?  
21 A. Yeah. I heard that during the break. I was not on  
the  
22 phone when Terry Nichols heard that.  
23 Q. So his response was, "I caught everything except  
for what  
24 my son said"?  
25 A. Yes. And he mentioned that he caught everything  
except for

10129

Stephen Smith - Cross

1 what he said at the very end of the tape.  
2 Q. Now, what was next entry?  
3 A. "I bought 2 (50 pound) bags of ammonium nitrate  
about 1  
4 month ago from Manhattan Elevator (have receipts in  
house);  
5 because going to sell 1-pound bags for 5 - \$10 instead  
of the  
6 \$35 that Tulsa guy was selling for; read books; sell as  
7 fertilizer with sheet that says plant food/nitrogen and  
explain  
8 mixture and uses for plants. Sold at shows every  
weekend  
9 except Easter weekend; if I sell any more at shows they  
will  
10 question me; put it on lawn this morning; did not say

earlier

11 because make me look guilty" to a jury. And the  
notation here

12 is for newspaper. And that was just something he said,  
but I

13 crossed it out because he said he did not say it  
earlier in

14 regards to the newspaper. So we crossed that out.

15 "The plastic containers in the basement, 8-  
ounce and

16 24-ounce."

17 Q. This was said in relation to the fertilizer that he  
was

18 selling?

19 A. Yes. He was going to put the ammonium nitrate into  
plastic

20 containers, 8-ounce and 24-ounce containers that he had  
in his

21 basement.

22 Q. And what's the next entry?

23 A. "800 dollars of laser sights."

24 "UPS Quarton out of S.A., Texas," San Antonio,  
Texas.

25 "Paid cash."

10130

Stephen Smith - Cross

1 Q. What's this in response to?

2 A. We asked him about any UPS deliveries he had at his

house

3 recently.

4 Q. And was that information you had received during  
the break

5 that -- why were you asking that question?

6 A. We asked that question specifically because we had  
heard

7 during that last break that he had received UPS  
deliveries at

8 his house recently, and then he explained some of the  
UPS

9 deliveries.

10 Q. So he's given you the explanation for the two  
deliveries he

11 had?

12 A. In regards to us asking the question, yes, sir.

13 Q. The first one was some laser sights?

14 A. Yes, sir.

15 Q. And that came from Quarton?

16 A. Yes, sir.

17 Q. What was the second one?

18 A. "Monday or Tuesday, USPS," for United States Postal  
19 Service, "COD package."

20 "\$600 and some odd" for "blow guns from  
Nebraska from

21 Ballisticcorp. Bill another 40."

22 So in other words, he was saying it was 600-  
some-odd

23 dollars, he was not sure how much it was and that he

was going

24 to be billed in the future for another \$40.

25 Q. And have you seen those two items since that time  
in

10131

Stephen Smith – Cross

1 connection with your involvement in this investigation?

2 A. No, I've not.

3 Q. The laser sights or the blow guns?

4 A. No, sir.

5 Q. That is the end of page 13?

6 A. Yes, sir.

7 Q. And in your sequence, do we go then to the top of  
page 14?

8 A. Yes, sir.

9 Q. Again, your initialing system and numbering, this  
is 14?

10 A. Yes, sir.

11 Q. And if you would, just read for the jury what  
entries you

12 put down.

13 A. "Tim would still be in contact with Fortier stayed  
with him

14 in Arizona."

15 "Jim Boy Ray, American Indian who was in basic

16 training together." Then he said Jim Boy was the last  
name.

regards 17 Quote, "I have no connection with Jim Boy in

18 to anything," period, end quote.

uses 19 "What are drums in garage. Trash and other

20 bought in Marion."

21 "Fuel meter to resell."

OKC 22 "No knowledge of him Jim Boy being involved in

23 bombing? No."

24 Q. What was this entry, "Fuel meter to resell"?

garage 25 A. He had mentioned that he also had something in his

10132

Stephen Smith - Cross

it in 1 which was a fuel meter, and he said that he purchased

2 order to resell it.

with one 3 Q. After a lengthy discussion about that fuel meter

4 of the agents, there had been a break?

5 A. Yes. I was not in that conversation.

6 Q. Have you seen the notes of that interview?

7 A. I have not seen the notes.

8 Q. Who conducted that interview?

and Dan 9 A. That was during the first break from 6:10 to 7:07,

time so 10 Jablonski and Jack Foley were in the room during that

11 they took the notes of that discussion.

12 Q. You haven't seen them?

13 A. No, I have not.

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

on 15 A. "How about Tim? I suspect it now. Called Quarton

16 Wednesday."

crossed it 17 And I had spelled "Quarton" wrong, so I

18 out. I put down "Horton, Kansas," for some reason.

Tim 19 "John Kelso equals 'That was -- that was name

Salina." 20 mentioned,'" end quote. "May have had a house within

taken 21 Q. This is referring back to the earlier list you had

Salina? 22 from him about somebody that Tim had lived with in

Kelso, 23 A. Yes. What we did is we asked him if he knew a John

mentioned 24 and Terry Nichols said that was the name that Tim had

Salina. 25 for an individual that he had possibly lived with in

10133

Stephen Smith - Cross

1 Q. John Kelso was a name that you had gotten during  
the break;

2 is that correct?

3 A. Yes, sir.

4 Q. What's the next entry?

5 A. "Never knew, never met him; came into our company  
after I

6 left; not recall him being in our basic training."

7 "Not recall a call from Tim on Saturday  
morning at

8 6:30 a.m."

9 "Michigan Militia equals big; we (Marife,  
Nicole;

10 approximately on 4/8 and 9) gone for a week left on  
4-5-95 and

11 got back on 4-10-95."

12 Q. Who mentioned Michigan Militia?

13 A. We asked him about the Michigan Militia or if he  
was a

14 member or if he knew anything about the Michigan  
Militia.

15 Q. Did he say he was a member?

16 A. He said he was not a member.

17 Q. And he's then given you what he knows about the  
Michigan

18 Militia here?

19 A. Yes. And he goes on to the next page, but he's  
basically

20 saying that he went to Michigan from 4-5 to 4-10 of '95  
and

the 21 that he had gone to a gun show where he found out that  
goods for 22 Michigan Militia members had purchased some of his  
23 sale.  
24 Q. So that will be on the next page?  
25 A. Yes, sir.

10134

Stephen Smith - Cross

1 Q. And that will be page 15 in your sequence?  
2 A. Yes, sir.  
3 Q. And again, this is your initialing system and your  
number?  
4 A. Yes, sir.  
5 Q. And if you will read what he said there on page 15.  
6 A. "Went to a gun show, sold 30 cans of MREs" --  
7 Q. That is "cases"?  
8 A. I'm sorry. "30 cases of MREs in 15 minutes to  
people from  
that  
9 Michigan Militia. Never identified themselves; heard  
10 and -- heard that they bought stuff; guys walking  
around with  
11 full BDUs and assumed they were from Michigan Militia.  
Never  
12 went to any meetings; sold 10 cases \$30 right off bat,  
then \$32  
13 sold; then sold 2 and 3 to 60-year-old ladies."

14 Q. Now, what does MREs mean to your knowledge?  
15 A. It's -- stands for meals ready to eat. It's an  
Army  
16 ration -- Army ration.  
17 Q. All right. What does BDU mean?  
18 A. Battle dress uniforms.  
19 Q. And then he's relating to you what sales he made at  
the gun  
20 show in Michigan?  
21 A. Yes, sir.  
22 Q. What's the next entry?  
23 A. "I do not know anyone in the Michigan Militia."  
24 Q. And the next?  
25 A. "Left 11-11-94 to Philippines until 1-17-95 (had a  
visa for

10135

Stephen Smith - Cross

1 59 days) and came back a couple days before visa  
expired. Flew  
2 out of Las Vegas; planning on coming back, open-ended  
3 round-trip ticket."  
4 Q. What's this thing in the circle?  
5 A. They were there -- I'm sorry. They went there in  
6 September, 1994, meaning Marife, Nicole -- Marife  
Nichols and  
7 Nicole Nichols.

8 Q. There is the Philippines; is that correct?

9 A. Yes, sir. Because he's describing that he went  
there and

10 saying that they went there previous to that.

11 Q. Okay. And then the next entry?

12 A. "12:03 a.m. handed 4 pages of letters, notes."

13 Q. Are these the four letters that you've discussed  
before

14 with Mr. Mackey?

15 A. They're not four letters, but they're four pages of  
16 letters.

17 Q. Four pages?

18 A. Yes, sir.

19 Q. And you received those during the break?

20 A. Yes, sir. The last break.

21 Q. And what are the entries you make relating to the  
22 conversations you have with Mr. Nichols concerning  
those four

23 pages?

24 A. "I wrote it because I did not have a will."  
25 "In case of event of death, this letter was  
going to

10136

Stephen Smith - Cross

1 be sent to Tim in January if I did not return; ex-wife  
was

2 instructed to mail it to Tim."

3 "She (Lana) had separate instructions. Do not  
open  
4 until after 1-28-95. Filipinos not like Americans, run  
over by  
5 a car."

6 "She opened it up beforehand; she said she  
opened it  
7 up shortly after I left because Josh started to cry and  
she  
8 felt a need; some personal effects, letter for Tim."

9 "12:11 a.m. Dan and Jack came in and left,"  
meaning  
10 Agents Crabtree and I left the basement.

11 Q. That's the end of your notes for that evening. Is  
that  
12 correct?

13 A. Yes, sir.

14 Q. And where in here do you put any notation about the  
"go for  
15 it" and the "no heat as far as I know" -- of notations?

16 A. It's not in my notes.

17 Q. Now, when you had the reference in your notes  
concerning  
18 the stepson, was that when you were asking who lived at  
the  
19 farm in Decker?

20 A. Yes, sir.

21 Q. And do you recall Mr. Nichols' telling you that he  
did have

Troy 22 two stepsons from Lana Padilla's earlier marriage, a  
23 Osentoski and a Barry Osentoski?  
us. 24 A. Not to my recollection. He did not specify that to  
and 25 Q. Okay. Do you have a notation in there about Barry

10137

Stephen Smith - Cross

1 older brother?  
2 A. Yes, sir.  
3 Q. Do you know who that was?  
4 A. That was a son of Lana's.  
you told 5 Q. Okay. Now, you met with Mr. Nichols the next day,  
6 us. Is that correct?  
7 A. Yes, sir.  
8 Q. And you drove him from -- what jail was he placed  
in that 9 evening?  
10 A. The Dickinson County jail in Abilene, Kansas.  
11 Q. You picked him up there at what time?  
12 A. Approximately 1:58 p.m.  
13 Q. And drove him where?  
14 A. To Wichita, Kansas.  
15 Q. And you had a conversation with him during that

period of

16 time. Is that correct?

17 A. Terry Nichols initiated that conversation, yes,  
sir.

18 Q. You related to the jury yesterday that you and Mr.  
Crabtree

19 had decided not to talk with Terry Nichols, to speak  
with him

20 during that trip. Is that correct?

21 A. That's correct.

22 Q. Had you been instructed not to do that?

23 A. No, sir. We had been instructed neither one way or  
the

24 other.

25 Q. Had you learned at that time -- well, you had been  
with the

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Stephen Smith - Cross

1 U.S. Attorney all day, hadn't you?

2 A. We had been with the United States Attorney from  
the early

3 morning hours, approximately 2:30 in the morning on the  
22d,

4 until the noontime, yes, sir.

5 Q. Yes. And that was for the purpose of getting with  
the U.S.

6 Attorney to draw up a search warrant; is that correct?

7 A. Yes, sir.

8 Q. Were you instructed by the U.S. Attorney that a  
lawyer had

9 attempted to reach Mr. Nichols?

10 MR. MACKEY: Objection.

11 THE COURT: Sustained.

12 BY MR. WOODS:

13 Q. And it's your testimony that you just decided on  
your own

14 not to try to elicit more information from Mr. Nichols?

15 A. We had gone over his story four times. We figured  
that was

16 enough times for him to tell us the truth.

17 Q. And did you take notes, then, of that conversation  
on that

18 day, that drive, from Abilene jail to Wichita?

19 A. I was driving, so I could not take any notes during  
that

20 drive. No, sir. I did not.

21 Q. Did you take notes immediately thereafter?

22 A. I took notes when we were in Wichita.

23 Q. All right. That's during the conversation that you  
had up

24 there in the jail?

25 A. Yes, sir.

1 Q. And how long did that last?

2 A. That lasted from approximately 3:31 until  
approximately

3 3:54 p.m.

4 Q. Okay. Before he went into the courtroom and  
obtained

5 services of counsel; is that correct?

6 A. Yes, sir.

7 Q. Do you have those notes with you?

8 A. I don't believe they're up here.

9 MR. WOODS: May I have just one moment, your  
Honor --

10 THE COURT: Yes.

11 MR. WOODS: -- for Mr. Mackey to retrieve  
those?

12 Your Honor, may I approach the witness?

13 THE COURT: Yes.

14 BY MR. WOODS:

15 Q. Agent Smith, I'm going to show you what has been  
handed to

16 me as a -- it's been represented these are your notes  
of that

17 day. Would you examine those to determine if that's a  
copy of

18 your notes that day?

19 A. Yes, sir. This is a copy of my notes for 4-22-95  
and Agent

20 Scott Crabtree's notes for that same day.

21 Q. Okay. Can you identify those that are just yours?

22 A. Yes, sir.  
23 Q. How many pages are there?  
24 A. Three pages.  
25 This is kind of a --

10140

Stephen Smith - Cross

1 Q. Two-and-a-half pages?  
2 A. Yeah, and the first two pages are from a  
stenographer's  
3 notebook, so they're not full 8 1/2-by-11 pages.  
4 MR. WOODS: May I have this marked as our next  
5 exhibit.  
6 BY MR. WOODS:  
7 Q. Agent Smith, I'm going to show you what has now  
been marked  
8 as D1655, and it's a total of three pages. Are those  
the three  
9 pages that are your notes?  
10 A. Yes, sir.  
11 Q. Okay. And it's two pages and then just a couple of  
lines  
12 on the third page?  
13 A. And then the third page are the notes about the  
pickup of  
14 Terry Nichols and the property prior to these notes.  
15 Q. So there is actually just two pages of notes  
reflecting

16 your interview that afternoon. Is that correct?

17 A. Yes, sir.

18 Q. And would you look at them, make sure those are  
accurate

19 that they're your notes.

20 A. Yes, sir. These are my notes.

21 Q. Okay. And you've had a chance to review them  
before today,

22 haven't you?

23 A. Yes, sir.

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

25 would offer into evidence D1655.

10141

Stephen Smith – Cross

1 MR. MACKEY: No objection.

2 THE COURT: Received, D1655.

3 MR. WOODS: And may we publish those in a like  
manner,

4 your Honor?

5 THE COURT: Yes.

6 BY MR. WOODS:

7 Q. Agent Smith, I'm going to start here with the first  
page,

8 and you've initialed again and numbered again your  
notes as

9 SS(1). Is that correct?

10 A. Yes, sir.

11 Q. Would you read what entries you made on that day.  
This is

12 April 22, Saturday?

13 A. Yes, sir.

14 Q. What time did you start your interview?

15 A. The first time I take notes, I reference "3:25 at  
Epic

16 Center, Wichita." And that's slashed out "jail" and  
crossed

17 the "jail."

18 "3:26 p.m. Deputy U.S. Marshal Ray Stewart and  
Daryl

19 Ingermanson."

20 Q. And what do those entries refer to?

21 A. Those entries refer to 3:25 is the time that we got  
to the

22 Epic Center. 3:26 is when those deputy U.S. marshals  
took

23 custody of Terry Nichols. At 3:30 Terry Nichols came  
back and

24 we continued talking with Terry Nichols, and these  
would be the

25 notes from the interview.

10142

Stephen Smith - Cross

1 Q. So read to the jury, then, the 3:30 entry.

Tim 2 A. "Terry equals Ken Parker Council Grove, Jim Kyle.  
3 equals Shawn Rivers and Tim Tuttle."  
4 Q. Was he giving you aliases that had been used?  
5 A. Yes. He was giving us aliases that he had used and  
that  
6 Timothy McVeigh had used; and we asked him if he had  
used any  
7 other aliases, and those were the only two aliases he  
mentioned  
8 to us.  
9 Q. The next entry?  
10 A. "Parted ways last fall equals way we both lived,  
did not  
11 jive" (sic).  
12 Q. Who he is talking about there?  
13 A. That he and Timothy McVeigh had parted ways last  
fall.  
14 Q. Next entry?  
15 A. "Told ex-wife, brother that he said he was going to  
16 Michigan for gun show."  
17 "Stopped by mother, Florida, talked to dad.  
Went by  
18 brother and talked with him."  
19 Q. All right. Now, what does that relate to?  
20 A. That's in relation to Terry Nichols' going to  
Michigan, and  
21 they stopped by his mother's house who happened to be  
in

22 Florida, so he did not see her. He talked to his dad  
and then  
23 that he went by his brother James' house and talked  
with him.  
24 This was during the 4-5 -- April 5, 1995 to April 10,  
1995  
25 visit to Michigan.

10143

Stephen Smith - Cross

1 Q. All right. And the next entry?  
2 A. "James and Tim get along well."  
3 "He farms, never been to JC," Junction City.  
4 Q. Who has never been to JC?  
5 A. He's referring to James Nichols as never being to  
Junction  
6 City.  
7 Q. All right. Next entry?  
8 A. "Terry and brother right-wing group, not a member  
of  
9 anything."  
10 That was in relation -- we asked him a  
question if he  
11 or his brother were a member of the Michigan Militia or  
any  
12 other right-wing groups, and then he said he is not a  
member of  
13 anything.  
14 Q. All right. Next entry?

Michigan 15 A. "Would surprise me if James was involved with  
16 Militia."  
17 He did not know if James was involved or not,  
but he 18 said that it would surprise him if he was.  
19 Q. Okay.  
20 A. And -- you can leave that on there for a second.  
21 Q. I'm sorry.  
22 A. The last notation here is "6479." That's for a  
telephone 23 extension for the deputy U.S. marshals in Wichita.  
24 Q. So then we go to page 2. Is that correct?  
25 A. Yes, sir.

10144

Stephen Smith - Cross

of the 1 Q. And can you read for the jury what notes you took  
2 interview of Mr. Nichols.  
3 A. "I believe in the Constitution. Tim likes to be  
careful on 4 the phone. Keep it low key. Bad credit history.  
Overextended 5 on couple credit cards. I do not like income tax, nor  
do I pay 6 it.  
7 "3:54," meaning the end of the interview.

at 8 And then the last notation there is for \$70.82

property 9 5:30 p.m., is the money from Terry Nichols' personal

Daryl 10 envelope that I handed over to Deputy U.S. Marshal

11 Ingermanson at 5:30 p.m. in Wichita.

mentioned were 12 Q. And then there was one other page that you

was? 13 in your notes, and will you tell the jury what that

that 14 A. This is in regards to the pickup of Terry Nichols

there 15 afternoon. The upper left-hand corner that's cut off

16 should say "4-22-95."

Nichols 17 It's "1:58 p.m took custody and property of

2 p.m. 18 from Deputy U.S. Marshal Hefron at Dickinson, Abilene.

19 placed in car and secured. 2:02 p.m. left Abilene."

20 Q. And drove to Wichita. Is that correct?

21 A. Yes, sir.

interviews 22 Q. Now, are these the sum total of notes of your

23 with Mr. Nichols?

24 A. Of my interviews, yes, sir.

Jablonski 25 Q. Yes, sir. And you don't have the notes of Agents

Stephen Smith - Cross

is that 1 and Foley when they interviewed him during the breaks;  
2 correct?

3 A. No, sir.

4 Q. Now, did you have an occasion to meet again with  
5 Mr. Nichols four days later on April 26?

6 A. Yes, sir.

7 Q. And where was that?

Detention 8 A. That was at the Wichita -- the Sedgwick County  
9 Center in Wichita.

time; 10 Q. And that's where Mr. Nichols was being held at that  
11 is that correct?

12 A. Yes, sir.

13 Q. And what time did you meet with him?

I do 14 A. I would have to refresh my memory with those notes.  
15 not have those here.

16 Q. Sometime during that day; is that correct?

17 A. Yes, sir.

18 Q. And what was the purpose of the meeting with him?

make a 19 A. The purpose of meeting with him was in order to  
20 phone call -- he wanted to call his mother and his  
wife, and he

So I 21 wanted to actually have an opportunity to talk to them.  
22 made that available to him.  
one to 23 Q. Okay. In fact, which phone call came first? The  
24 his wife, Marife Nichols?  
he called 25 A. I don't have a specific recollection right now if

10146

Stephen Smith - Cross

1 his wife or his parents first.  
end 2 Q. Okay. And you talked with the people on the other  
correct? 3 where his wife was in the custody of the FBI. Is that  
4 A. Excuse me?  
you 5 Q. Before Mr. Nichols made the call to Marife Nichols,  
where 6 talked with the people on the other end of the phone  
7 Marife Nichols and the FBI was, didn't you?  
8 A. Yes, sir.  
the 9 Q. And you were aware that they were going to record  
10 conversation, weren't you?  
11 A. Yes, sir.  
the 12 Q. You brought Mr. Nichols into a room and you dialed

13 number, didn't you?

14 A. Yes, sir.

15 Q. And then you told Mr. Nichols you were going to  
give him

16 some privacy and you left?

17 A. Yes, sir.

18 Q. But you knew the phone call was being recorded?

19 A. Yes, sir.

20 Q. Now, in the phone call to the mother, you did the  
same

21 thing: You called Ann Arbor, Michigan, where the  
mother was;

22 is that -- correct -- where she was in the FBI office?

23 A. I initially called the home.

24 Q. Yes, sir.

25 A. And they said she was at the FBI, so I called the  
FBI.

10147

Stephen Smith - Cross

1 Yes, sir.

2 Q. And you were aware that they were going to record  
that

3 conversation on that end; is that correct?

4 A. Yes, sir.

5 Q. And again, you told Mr. Nichols you were going to  
give him

6 some privacy and you left. Is that correct?

7 A. Yes, sir.

8 Q. Did you tell him the phone calls were being  
recorded?

9 A. No, sir.

10 Q. So the FBI does have a tape recorder here and  
there; is

11 that correct?

12 A. Yes. It's called "consensually monitoring,"  
whoever we get

13 consent from one party to a telephone conversation and  
they

14 give us consent to record the conversation, yes.

15 Q. And you know that the FBI records a number of  
conversations

16 where no consent is given, don't you?

17 MR. MACKEY: Objection.

18 THE COURT: Sustained.

19 MR. WOODS: Thank you, Agent Smith.

20 No further questions, your Honor.

21 THE COURT: Any redirect?

22 REDIRECT EXAMINATION

23 BY MR. MACKEY:

24 Q. Agent Smith, in the case of the phone conversations  
on

25 April 26, to your knowledge, was consent obtained from  
each of

## Stephen Smith - Redirect

1 the parties on the other end?

2 A. Yes, sir.

3 Q. Mr. Woods asked you at length about the handwritten  
notes

4 that you took on April 21, 1995?

5 A. Yes, sir.

6 Q. Do you recall those questions? Take a look at  
Government's

7 Exhibit 1926, please. Do you have that in front of  
you?

8 A. Yes, sir.

9 Q. And could you describe more precisely what  
Government's

10 Exhibit 1926 is.

11 A. Government's Exhibit 1926 is a typewritten version  
of the

12 handwritten notes. This was -- I dictated the  
handwritten

13 notes in this format.

14 Q. And is there any particular order of the  
information that's

15 set forth in typewritten form on Government's Exhibit  
1926?

16 A. Government's Exhibit 1926 is a chronological order  
as to

17 what Terry Nichols told us that day; so in regards to  
pages 1,

18 2, all the way up to page 24, it goes in the order that

order of 19 Mr. Woods and I went over. So it goes in the actual  
20 the things that Terry Nichols told us.

with aid 21 Q. So you could look at Government's Exhibit 1926 and  
22 of typewritten words track what it was Mr. Nichols said  
and 23 when he said it to you?

24 A. That's correct.

25 Q. And if you use that document, then you could  
identify any

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Stephen Smith - Redirect

you and 1 changes that might have taken place in information that  
2 the other agents learned in the course of that long  
interview?

3 A. That's correct.

4 Q. Agent Smith, could you describe in more detail  
exactly the

5 manner that Mr. Nichols used during the course of your  
6 interview on Friday? How precisely did he respond when  
he did 7 so?

8 A. Mr. Nichols was very deliberate in his comments and  
9 responses on questions, and that's why I was able to  
take  
10 contemporaneous notes with pretty much everything he  
said. I

saying 11 had no problem keeping up with what Mr. Nichols was  
fashion. 12 because he was talking in such a deliberate, calm  
time 13 Q. On occasion, would he sit there for some period of  
14 before responding at all?  
occasion close 15 A. Yes. He would do that, and he would also on  
then open 16 his eyes and sit there for a short period of time and  
17 his eyes and answer our questions.  
notes in 18 Q. So as you sit there now and having reviewed those  
that you 19 the time that's passed since then, are you confident  
Nichols made? 20 wrote down in accurate fashion the statements Mr.  
21 A. Yes, sir.  
delivery of 22 Q. Mr. Woods asked you some questions about the  
provided 23 those notes. Do you know that those notes have been  
24 to counsel for the defendant?  
25 A. Yes, sir, they have.

10150

Stephen Smith – Redirect

1 Q. All right. And do you know when?

in  
to  
2 A. Yes. It was prior to Terry Nichols being indicted  
3 August of 1995, and I believe that they were supplied  
4 Mr. Nichols and his counsel on July 26, 1995.

5 Q. More than two years ago?

6 A. Yes, sir.

7 Q. Was it clear, Agent Smith, in the course of your  
interview

8 with Mr. Nichols that you wanted to know from Mr.  
Nichols

9 everything he knew about Tim McVeigh, the Oklahoma City  
10 bombing, and Mr. Nichols' activities around that time  
period?

11 A. Yes, sir.

12 Q. And did you in the course of the interview go over  
the

13 information he was sharing with you on more than one  
occasion?

14 A. Yes, sir.

15 Q. Did you give Mr. Nichols every opportunity to  
provide all

16 the details that he was prepared to share with you that  
day?

17 A. Yes, sir.

18 Q. You told us earlier yesterday that you Mirandized  
19 Mr. Nichols. You recall that?

20 A. Yes, sir.

21 Q. Do you recall one of the rights being a right to  
counsel, a

22 right to a lawyer?

23 A. Yes, sir.

I'd like 24 Q. At any point in time did Mr. Nichols stop and say,

25 to have aid of counsel?

10151

Stephen Smith – Redirect

1 A. No, he did not.

the 2 Q. Mr. Woods asked you yesterday some questions about

to you 3 consent vs. the search warrant. And let me just put it

whether 4 this way: Did you personally make the decision as to

5 the United States would rely upon the consent signed by  
6 Mr. Nichols vs. a search warrant authorized by a  
federal judge?

7 A. No, I did not.

searches 8 Q. Have you personally participated in any of the

9 that have been conducted at 109 South 2nd?

10 A. No, I did not.

of those 11 Q. Do you have any firsthand knowledge whether on any

12 entries Marife Nichols was in fact present?

13 A. No, I do not.

Government's 14 Q. Return our attention, please, Agent Smith, to

unless I 15 Exhibit 1930. It should be the original diagram --

16 have it. And I do.

17 Do you have that in front of you now?

18 A. Yes, sir.

jury, 19 MR. MACKEY: If we could show that to the

20 please, Government's Exhibit 1930.

is. 21 THE COURTROOM DEPUTY: I don't know where it

22 MR. MACKEY: I'm sorry. I'll need it.

23 Here we go. It's up on the computer.

24 BY MR. MACKEY:

that 25 Q. If we could zoom in on the garage -- Do you see

10152

Stephen Smith - Redirect

1 structure on your exhibit, Agent Smith?

2 A. Yes, sir.

bottom of 3 Q. It's -- what appears to be the structure at the

4 this document as it sits landscape.

diagram, 5 All right. According to the legend on this

X. Is 6 if there were guns and ammo, it would be marked by an

7 that correct?

8 A. Yes, sir.

9 Q. You saw that in the legend earlier?

10 A. Yes, sir.

11 Q. Do you see one X that's marked in the garage?

12 A. Yes, sir.

13 Q. Does it appear to be underneath the window?

14 A. Yes, sir.

15 Q. See those two black lines for --

16 A. Yes.

17 Q. Do you see any Xs over there by the bathroom?

18 A. No, sir.

19 Q. Did Mr. Nichols tell you what he did with Tim  
McVeigh's

20 rifle when he took it out of the Herington storage  
shed?

21 A. Yes. He said he put it on a box in his garage next  
to the

22 fuel meter.

23 Q. Take a look, please, Agent Smith, at Government's  
Exhibit

24 1952. 1952B in particular.

25 Do you have that in front of you?

10153

Stephen Smith - Redirect

1 A. Yes, sir.

2 Q. Let me start by asking in the course of the  
interview, did

3 Mr. Nichols describe the route that he and Mr. McVeigh  
took

4 back to Junction City on Easter Sunday night?

5 A. Yes, sir.

6 Q. And did -- what route again did he tell you?

7 A. He said that they had gone north on Highway 77,  
gotten on

8 I-70 and headed east on I-70 until they got off at the  
South

9 Washington exit in Junction City at the McDonald's.

10 Q. And does Government's Exhibit 1952B accurately  
depict from

11 an aerial view the intersection of I-70 and U.S. 77 in  
the

12 state of Kansas?

13 A. Yes, sir.

14 MR. MACKEY: Your Honor, I'd move to admit  
15 Government's Exhibit 1952B.

16 MR. WOODS: No objection, your Honor.

17 THE COURT: Received.

18 BY MR. MACKEY:

19 Q. Agent Smith, we're displaying to the jury now  
Exhibit

20 1952B. At the bottom of this photograph we see what  
appears to

21 be the intersection of two highways. Which one is  
which?

22 A. This highway here is 77 that connects with Highway

70 here.

23 Q. And does this photograph capture the location of  
the

24 Washington Street McDonald's in Junction City, Kansas?

25 A. Yes, sir, it does.

10154

Stephen Smith - Redirect

1 Q. Can you circle where that is?

2 A. If we can move that down a little bit.

3 Q. All right.

4 A. It's going to be right -- right up here.

5 Q. What is the road that appears to run parallel to  
I-70?

6 A. This is a frontage road that runs from this exit at  
77 all  
7 the way up to the Washington Street exit.

8 Q. And if you get off 77 onto that frontage road  
headed

9 towards the McDonald's, do you pass any businesses?

10 A. Yes. There is a business right here, Elliott's  
Body Shop,

11 which is the Ryder dealership in Junction City.

12 Q. Agent Smith, are you also familiar with the  
location of the

13 Firestone store in downtown Junction City?

14 A. Yes, sir.

15 Q. Would you take a look at Government's Exhibit 278.

16 A. 278?

17 Q. Yes. Do you have that in there?

18 A. No, sir.

19 Oh, I'm sorry. I do.

20 Q. Are you familiar with the relative locations of the  
21 Firestone store and the J & K Bus Depot in Junction  
City?

22 A. Yes. They're both right near 8th Street and  
Jefferson in  
23 Junction City.

24 Q. And are those locations accurately depicted in  
Government's  
25 Exhibit 278?

10155

Stephen Smith – Redirect

1 A. Yes. They're about a half a block apart between  
the J & K  
2 Bus Depot and the Firestone dealership.

3 MR. MACKEY: Your Honor, I move to admit  
Government's  
4 Exhibit 278.

5 MR. WOODS: No objection.

6 THE COURT: Received.

7 BY MR. MACKEY:

8 Q. Agent Smith, can you tell the jury in your words  
what they

9 see in this picture.

10 A. This is the -- this is the intersection of -- near  
the  
11 intersection of 8th Street and Jefferson. This is a  
phone  
12 booth at the J & K Bus Depot in Junction City, Kansas;  
and in  
13 the background, you can see the Firestone -- Firestone  
14 dealership right here. And this is, of course, for the  
15 Greyhound bus depot, the J & K in Junction City.

16 Q. Approximately what distance separates the bus  
station from  
17 the Firestone?

18 A. Approximately half a block.

19 Q. Thank you.

20 Earlier in your testimony you were asked about  
the  
21 route that Mr. Nichols took when he first left his home  
on  
22 Friday afternoon and before arriving at the police  
station. Do  
23 you recall that?

24 A. Yes, sir.

25 Q. Would you take a look, please, at Government's  
Exhibit

10156

Stephen Smith - Redirect

1 1933. Does that chart or that exhibit accurately

capture what

Friday 2 you observed the route to be that Mr. Nichols took on

3 afternoon, April 21, 1995?

4 A. Yes, sir.

5 MR. MACKEY: Your Honor, I'd move to admit  
6 Government's Exhibit 1933.

take 7 MR. WOODS: For demonstrative purposes only, I

8 it.

9 THE COURT: Yes?

10 MR. MACKEY: Sure.

11 MR. WOODS: No objection to that.

12 THE COURT: Received.

13 BY MR. MACKEY:

tell them 14 Q. Mr. Smith, let's show it to the jury, please, and

15 what we're looking at.

109 South 16 A. This No. 1 is the Terry Nichols' former house at

he took 17 2nd Street, and the green line depicts the route that

Sturgis 18 going south on 2nd Street, taking a right going west on

heading 19 and then going back left and south on 3rd Street, then

going 20 in a westerly direction taking a right on Trapp, then

to the 21 south on 56 highway here up until No. 2, where he got

22 Surplus City.

23                   The blue line depicts the route that he took  
leaving

24 the Surplus City and arriving at the Herington  
Department of

25 Public Safety by going north on Highway 56, going back  
east on

10157

Stephen Smith – Redirect

1 Trapp and then taking a right and heading south on  
Broadway and

2 arriving at the Herington Department of Public Safety.

3 Q. Now, Mr. Woods went over your notes in relationship  
to

4 statements made that Mr. Nichols -- Mr. Nichols made to  
you

5 about that. Do you recall that?

6 A. Yes, sir.

7 Q. In fact, I think it's page 1 of Government's  
Exhibit 1926,

8 the typewritten version.

9 A. Yes, sir.

10 Q. What did Mr. Nichols tell you as to why he took the  
green

11 route from his home down to Surplus City?

12 A. He said he had left his home because he had heard  
his name

13 and his brother's name in a radio broadcast and that he

went to

14 the Surplus City because he needed to trade some tools  
for  
15 shingles.

16 Q. And then did he explain to you why he left the  
Surplus City  
17 and went to the police station?

18 A. Yes. He explained to me that he left -- he got out  
of his  
19 pickup truck and head towards the door of the Surplus  
City and  
20 at that point had a feeling that he was being followed,  
so he  
21 got back in his pickup truck and went to the police  
department.

22 Q. Was it clear to you, Agent Smith, in the course of  
the  
23 interview that Terry Nichols did not go to the police  
until  
24 after having the feeling that he was being watched?

25 A. That's correct.

10158

Stephen Smith - Redirect

1 Q. Mr. Woods reviewed your notes as they captured  
information

2 you got from Mr. Nichols concerning associates of he  
and

3 Mr. McVeigh. Do you recall that?

4 A. Yes, sir.

5 Q. Do you remember the name "Kevin Nicholas"?

6 A. Yes, sir.

7 Q. And how did Mr. Nichols describe him to you?

8 A. Kevin Nicholas and Rich Nicholas -- let me get to  
-- they  
9 were both described, Kevin Nicholas and Rick Nicholas,  
as more  
10 Terry Nichols' friends than Timothy McVeigh's friends.

11 Q. Was it clear from the interview that Tim McVeigh  
knew Kevin

12 Nicholas?

13 A. Yes, sir.

14 Q. Let me return your attention to your testimony  
about the  
15 storage sheds, the questions you directed to Mr.  
Nichols about

16 that. Do you recall that?

17 A. Yes, sir.

18 Q. You started with an open-ended question as you  
described?

19 A. Yes, sir. We asked him to describe any and all  
storage  
20 sheds that he had had in his care, custody, and  
control.

21 Q. How many did he list?

22 A. He listed three: one in Las Vegas, one in Council  
Grove,  
23 and one in Herington.

24 Q. Did he at any point in time in statements to you  
mention

Kansas? 25 that he had a second storage unit in Council Grove,

10159

Stephen Smith – Redirect

1 A. No, he did not.

2 Q. What information did you learn from Mr. Nichols  
about the  
3 precise location of the Herington unit?

4 A. Mr. Nichols advised that the Herington unit was  
across from

5 the Pizza Hut in Herington and that it was the second  
storage

6 locker up from the south end on the east side.

7 Q. Did he use the Pizza Hut as a landmark by which you  
could  
8 find the Herington unit that he entered on April 20?

9 A. Yes, sir.

10 Q. According to his statement to you, was there a lock  
on the  
11 door when he went there on April 20?

12 A. Yes. There was a combination lock on the door when  
he went  
13 there on the 20th.

14 Q. Did he tell you how he knew the combination?

15 A. No, he did not.

16 Q. When he left that unit, was the lock still there?

17 A. No. There was no combination lock on the door to

that

18 unit.

19 Q. Do you know whether that unit's lease period had  
expired?

20 A. No. It had not expired. There was a month to go  
on that

21 lease.

22 Q. Mr. Woods reviewed with you statements that Terry  
Nichols

23 made to you about ammonium nitrate; do you recall that?

24 A. Yes, sir.

25 Q. And you told the jury that Mr. Nichols explained to  
you why

10160

Stephen Smith - Redirect

1 it was that he had withheld that information from you  
and the

2 other agents earlier?

3 A. Yes, sir.

4 Q. Did he tell you why he tossed the ammonium nitrate  
to begin

5 with?

6 A. Yes. He said that if he was contacted or  
apprehended with

7 ammonium nitrate that he would be believed to be --  
have been a

8 subject.

9 Q. And did you or Agent Crabtree respond in any

fashion to

10 that answer?

11 A. Yes. We asked him if he thought that every  
homeowner and

12 farm owner in America who had ammonium nitrate would be  
a

13 subject, and Mr. Nichols advised that yes, he did think  
that.

14 Q. Did Mr. Nichols mention any records that he might  
have in

15 his home about the purchase of ammonium nitrate?

16 A. Yes. He said that he had receipts for the purchase  
of the

17 two 50-pound bags that he had purchased the month  
before in

18 March of 1995 from the Manhattan Elevator and that he  
had those

19 two receipts in his house.

20 Q. Did he tell you that was the only receipts for  
ammonium

21 nitrate that would be found in his residence?

22 A. Yes, he did.

23 Q. Mr. Nichols in your review with Mr. Woods told you,  
did he

24 not, that he got cable service hooked up on Friday  
morning

25 about 9:00?

10161

Stephen Smith - Redirect

1 A. Yes, sir.

2 Q. And that he left his home as you observed shortly  
before 3

3 that same day?

4 A. Yes, sir.

5 Q. Some almost six hours had elapsed between that time  
of

6 cable service and his departure?

7 A. Yes, sir.

8 Q. You know, do you not, Agent Smith, that  
surveillance camera

9 film was in fact recovered in the course of the  
investigation

10 in this case from a downtown building in Oklahoma City?

11 A. Yes, sir.

12 Q. Do you know whether there was public reports on  
Friday,

13 April 21, about that piece of evidence?

14 A. Yes, I do.

15 Q. In the course of your cross-examination, we  
reviewed the

16 notes concerning references that Mr. Nichols made to an  
unnamed

17 friend of Tim McVeigh who might provide transportation.  
Do you

18 recall those questions?

19 A. Yes, sir.

20 Q. Do you recall the statements made by Mr. Nichols to  
you

21 about that?

22 A. Yes, sir.

23 Q. To your knowledge, did Mr. Nichols ever tell you  
that that

24 friend in fact provided transportation of any kind to  
Tim

25 McVeigh?

10162

Stephen Smith – Redirect

1 A. No, he did not.

2 Q. Did he tell you why that friend would not have a  
car to

3 loan Mr. McVeigh on Tuesday, April 18?

4 A. No. He had mentioned that he was curious as to why  
he

5 couldn't borrow the car from the friend, either, as  
opposed to

6 using Terry Nichols' pickup truck.

7 Q. Agent Smith, take a look, please, at Government's  
Exhibit

8 1926, specifically page 21.

9 Mr. Woods went over the list of names that  
appear

10 there?

11 A. Yes, sir.

12 Q. Describe what appears in front of the name  
"Fortier."

13 A. It's a blank line. And I wrote a line in my notes,

also,

14 showing that he did not know Fortier's first name.

15 Q. That's what he told you?

16 A. That's what he told us.

17 Q. At the end of the interview as you described on  
Friday, you

18 handed Mr. Nichols the letters that you had understood  
had come

19 from Las Vegas FBI?

20 A. Yes, sir.

21 Q. And you listened to his explanations as to why he  
wrote

22 them?

23 A. Yes, sir.

24 Q. And you asked him, "What does 'Go for it,'" and you  
asked

25 "As far as heat, none" mean?

10163

Stephen Smith - Redirect

1 A. Yes, sir.

2 Q. Mr. Woods asked you where that reference is in your  
notes

3 as to his response.

4 A. Yes, sir.

5 Q. Why is there nothing in your notes about Mr.  
Nichols'

6 response to that question?

7 A. There is no reference in the notes because Mr.  
Nichols did  
8 not respond to the question. He just sat there in the  
chair  
9 for up to a minute and just did not respond to our  
question.

10 Q. There was nothing to write down?

11 A. There was nothing to write down because he said  
nothing.

12 MR. MACKEY: That's all I have, your Honor.

13 THE COURT: Mr. Woods?

14 MR. WOODS: Yes, your Honor.

15 RE-CROSS-EXAMINATION

16 BY MR. WOODS:

17 Q. And there is no reference to the question, is  
there, about

18 "go for it"?

19 A. No, sir. I did not write down questions in my --

20 Q. And there is no reference to even the mention in  
the

21 letter, is there, about "go for it" or "no heat"?

22 A. There is mention that we showed in the letters at  
12:03.

23 Q. But you don't make a notation in your notes, do  
you, sir,

24 anything about the "go for it"?

25 A. No, I didn't make any notation in my notes.

## Stephen Smith – Recross

1 Q. Now, during that nine hours, you had an opportunity  
to ask

2 Mr. Nichols any question you wanted to, didn't you,  
sir?

3 A. That's correct.

4 Q. And you could have conducted that interview hours  
longer,

5 if you wanted to, couldn't you?

6 A. Yes, sir.

7 Q. In fact, the decision was made to go and arrest Mr.  
Nichols

8 after that. Your notes reflect that Jablonski and  
Foley come

9 in at 12 what?

10 A. 12:11 a.m.

11 Q. And you left the scene; is that correct?

12 A. I leave the interview room.

13 Q. You left the interview room because a decision had  
been

14 made to arrest Mr. Nichols?

15 A. Yes, sir.

16 Q. But you could have conducted that interview for  
hours more,

17 if you had any more questions to ask, couldn't you?

18 A. If Terry Nichols was provided any more information,  
we

19 would have talked to him for longer, yes, sir.

20 Q. And you ran out of questions, didn't you, sir?  
21 A. As you can see, I don't really run out of questions  
for  
22 nine hours. I did not run out of questions. Terry  
Nichols ran  
23 out of answers.  
24 Q. Could you have continued your questioning, Mr.  
Smith?  
25 A. Yes, sir.

10165

Stephen Smith – Recross

1 Q. Now, you told Mr. Mackey that there were published  
reports  
2 about the camera in Oklahoma City capturing what?  
3 A. I have since learned that there were pictures,  
surveillance  
4 pictures of -- from the Regency Park Towers in downtown  
5 Oklahoma City capturing street traffic.  
6 Q. And the publicity on Friday, April 21, was that  
there was  
7 possibly photos capturing the Ryder truck on April 19,  
wasn't  
8 that correct?  
9 A. That's correct.  
10 Q. There was absolutely no publicity about any  
photographs of  
11 Sunday, April 16, was there?  
12 A. There was no publicity of that; but anyone

listening to the

13 news broadcasts would realize that surveillance camera  
wasn't

14 just set up on the 19th of April, 1995; that it had  
been up

15 prior to that and after that time.

16 Q. And that's your interpretation?

17 A. Yes, sir.

18 Q. And there was no publicity about that, was there,  
sir?

19 A. No, sir.

20 Q. And you've seen those two photographs; right?

21 A. Yes, sir.

22 Q. And it shows Mr. Nichols' truck going around the  
block some

23 8 minutes apart; is that correct?

24 A. Approximately 6 minutes apart, yes, sir.

25 Q. Do you see any big Mercury Marquis in front of him  
or in

10166

Stephen Smith - Recross

1 behind him at any time during that video?

2 A. I didn't see the video. The two photographs I've  
seen do

3 not show any other vehicles, no, sir.

4 Q. Were you curious about watching the video to see if  
the

5 Mercury Marquis was there?

6 A. Other agents or other investigators watched that  
video.

7 Q. Did they find a Mercury Marquis on there?

8 A. I do not know.

9 Q. Now, you told Mr. Mackey that you did not  
personally make

10 the decision about obtaining a search warrant in  
addition to

11 the consent form. Is that correct?

12 A. That's correct.

13 Q. That was made by the lawyers, wasn't it?

14 A. That's right.

15 Q. After you told them the situation about the consent  
form;

16 is that correct?

17 A. That decision was made after that, yes, sir.

18 Q. Now, you mentioned to Mr. Mackey on redirect about  
19 Mr. Nichols' saying "if I were a subject" and something  
about

20 the ammonium nitrate. That's not in your notes, is it?

21 A. Yes, it is.

22 Q. Refer to that where Mr. Nichols refers to himself  
as a

23 subject?

24 A. Oh, he does not refer to himself as a subject.

25 Q. No, he doesn't, does he?

Stephen Smith – Recross

1 A. No, sir.

2 Q. And he explained to you about throwing the ammonium  
nitrate

3 on the lawn and why he did that, didn't he?

4 A. Yes, he explained that if he was caught with  
ammonium

5 nitrate that he would be a subject.

6 Q. Now, you went over this aerial photo with Mr.  
Mackey that

7 showed the location of Eldon Elliott's and McDonald's

8 approximately a mile away. Is that correct?

9 A. That's correct.

10 Q. Do you have information that Mr. Nichols took Mr.  
McVeigh

11 to Eldon Elliott's?

12 A. I do not have that information.

13 Q. Do you have information that Mr. Nichols was the  
John Doe

14 NO. 2 in Eldon Elliott's with Mr. McVeigh?

15 A. I do not have that information.

16 Q. Do you know why Mr. Mackey asked you about these  
two

17 locations on this map?

18 MR. MACKEY: Objection.

19 THE COURT: Sustained.

20 BY MR. WOODS:

21 Q. What information do you have that connects Mr.  
Nichols to

22 Eldon Elliott's?

23 MR. MACKEY: Objection.

24 THE COURT: Sustained.

25 MR. WOODS: Thank you, Agent Smith.

10168

1 MR. MACKEY: Nothing further your Honor.

2 THE COURT: Is he excused?

3 MR. MACKEY: Yes, your Honor.

4 MR. WOODS: We would like him on call, your  
Honor,

5 because there is some confusion about other agents'  
conducting

6 interviews.

7 THE COURT: He can be available.

8 He can return back to his headquarters.

9 MR. WOODS: He can return to his home, your  
Honor.

10 THE COURT: You can leave but be available for  
call

11 back.

12 Next, please.

13 MR. MACKEY: Your Honor, may we approach.

14 THE COURT: Yes.

15 (At the bench:)

16 (Bench Conference 87B1 is not herein transcribed by  
court  
17 order. It is transcribed as a separate sealed  
transcript.)

18

19

20

21

22

23

24

25

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1 (In open court:)

2 MR. MACKEY: Your Honor, at this time we'd  
call FBI

3 Agent Scott Crabtree.

4 THE COURT: All right.

5 THE COURTROOM DEPUTY: Would you raise your  
right

6 hand, please.

7 (Scott Crabtree affirmed.)

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

and 9 Would you state your full name for the record

10 spell your last name.

Scott, 11 THE WITNESS: First initial R., middle name

12 last name Crabtree, C-R-A-B-T-R-E-E.

13 THE COURTROOM DEPUTY: Thank you.

14 THE COURT: Proceed.

15 MR. GOELMAN: Thank you, your Honor.

16 DIRECT EXAMINATION

17 BY MR. GOELMAN:

18 Q. Mr. Crabtree, what do you do for work?

19 A. I'm a special agent with the Federal Bureau of  
20 Investigation.

21 Q. How old are you?

22 A. I'm 40.

23 Q. Where were you born and raised?

24 A. Herington, Kansas.

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

10173

Scott Crabtree - Direct

Public 1 Terry Lynn Nichols at the Herington Department of

2 Safety?

3 A. Yes, I did.

4 Q. Could you briefly describe your educational  
background for

5 the jury?

6 A. I've got a bachelor of science degree from William  
Jewell

7 College with a triple major in business accounting and  
8 economics.

9 Q. And how long have you been an FBI agent?

10 A. 15 years next month.

11 Q. Where was your first office that you were  
stationed?

12 A. Omaha, Nebraska.

13 Q. How long did you spend there?

14 A. Approximately seven months.

15 Q. What did you do there?

16 A. Just general initiation type program, getting into  
the

17 field office environment of the FBI.

18 Q. Where did you go after leaving Omaha?

19 A. Midland, Texas.

20 Q. Where is Midland, Texas?

21 A. It's approximately halfway between Dallas and El  
Paso, just

22 on the southern part of the Texas panhandle.

23 Q. What kind of office did the FBI have there in  
Midland,

24 Texas?

25 A. At the time I went there, I was to be the fourth  
agent in a

10174

Scott Crabtree - Direct

1 four-person office.

2 Q. Did the type of office have a specific name?

3 A. Resident agency.

4 Q. What is an FBI resident agency?

5 A. It is a satellite office or a smaller office out of  
the

6 individual field divisions that are in each --  
basically each

7 state in the United States.

8 Q. How long did you spend in the RA in Midland, Texas?

9 A. Approximately five years.

10 Q. So you left in?

11 A. '88.

12 Q. And what was your position when you left the  
office?

13 A. I had been an acting supervisor; but upon leaving,  
I was an

14 investigator on another case that was finishing up  
right before

15 I left.

16 Q. What kinds of cases did you work on in your five  
years in

17 Midland?

one 18 A. Primarily bank fraud investigations, and I also had

19 public corruption case.

somewhere a 20 Q. After leaving Midland, Texas, did you go to

21 little bit different?

22 A. Yes, I did.

23 Q. Where did you go?

24 A. I went to New York City.

25 Q. And how long did you spend in New York City?

10175

Scott Crabtree - Direct

1 A. A little over three years.

2 Q. What kind of cases did you work there?

stock 3 A. I was on the fraud squad. We worked wire fraud,

4 fraud, mail fraud, things of that nature.

5 Q. And after leaving New York, where did you go?

6 A. To our headquarters in Washington, D.C.

7 Q. What did you do there?

with the 8 A. I was in the inspection division, and I traveled

offices 9 inspection staff performing audits at the different FBI

10 around the country.

back 11 Q. And did your work for the FBI eventually bring you

12 home to Kansas?

13 A. Yes, it did.

14 Q. Where?

15 A. To the Salina resident agency where I am now.

Midland

16 Q. So Salina has the same kind of office that the

17 office had?

four-

18 A. Yes, but it's a one-person office, as opposed to a

19 person office.

20 Q. You're the only agent in that office?

21 A. I'm the only employee in an office, yes.

22 Q. Where in Kansas is Salina?

west and

23 A. It is roughly two-thirds of the way from east to

24 north/south about halfway down the state.

25 Q. How far is it from Junction City, Kansas?

10176

Scott Crabtree - Direct

1 A. 45 miles or so.

2 Q. And how far is it from Herington?

3 A. Probably about 50 miles or so.

agent in the

4 Q. What are your responsibilities as the only FBI

5 Salina RA?

6 A. Conduct any investigations within FBI's  
jurisdiction within

7 the territory of the RA, handle all the liaison and  
8 administrative responsibilities of any office that the  
Bureau  
9 has.

10 Q. And what territory does the RA cover?

11 A. It has 17 counties, basically the center, north-  
central  
12 region of the state of Kansas.

13 Q. How many people live in these 17 counties?

14 A. Approximately 200,000.

15 Q. And is Herington one of the towns within the Salina  
RA's  
16 jurisdiction?

17 A. Yes, it is.

18 Q. What kind of cases have you worked since you've  
been in the  
19 Salina RA?

20 A. A lot of bank fraud, wire-fraud investigations,  
fugitives,

21 bank robberies. Basically any type of case that  
happens within

22 that territory, I've got to handle whatever the matter  
is  
23 there.

24 Q. And as the only federal law enforcement officer in  
that

25 territory, do your duties also include relations with  
local

Scott Crabtree - Direct

1 police --

2 THE COURT: Did you mean "the only federal law  
3 enforcement officer in that territory"?

4 MR. GOELMAN: Except for very esteemed judges.

5 THE COURT: He's an FBI agent.

6 MR. GOELMAN: Yes, sir.

7 THE COURT: All right. The FBI is not the  
only law  
8 enforcement agency.

9 BY MR. GOELMAN:

10 Q. Are there any other --

11 THE COURT: Well, it's all irrelevant. Let's  
get to  
12 what this case is about.

13 MR. GOELMAN: Yes, your Honor.

14 BY MR. GOELMAN:

15 Q. Could you describe any formal training you've had  
in the  
16 FBI?

17 A. We had the 16-week basic training course that the  
-- you go  
18 through upon being hired; and then since then, I've had  
other  
19 training in bank-fraud investigations, health-care-  
fraud

20 investigations, cellular-phone-fraud investigations,  
forfeiture

21 investigations, things of that nature.

22 Q. Approximately how many witness interviews have you  
23 conducted in your 15 years in the FBI?

24 A. Many thousands. I don't have a number.

25 Q. Do you know if the FBI has a policy with regard to  
the

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Scott Crabtree - Direct

1 tape-recording of witness interviews?

2 A. Yes, they do.

3 Q. How long has that policy been in effect?

4 A. Since 1995.

5 Q. Is it in writing?

6 A. Yes, it is.

7 Q. Where is it contained?

8 A. It's in the legal manual.

9 Q. What is the FBI policy relating to the tape-  
recording of

10 statements?

11 A. That it -- they can be done on a very selected  
basis upon

12 the authority of the special agent in charge of the  
particular

13 division.

cases or  
opposed to

14 Q. Does the policy state whether certain types of  
15 certain types of interviews should be recorded, as  
16 any others?

17 A. No, it doesn't.

interview

18 Q. Does the policy allow you to tape-record an  
19 without first informing the witness?

20 A. No, it doesn't.

on the  
in

21 Q. When you arrived at the Herington police department  
22 afternoon of April 21, was there an SAC, special agent  
23 charge, at the department?

24 A. No, there was not.

25 Q. Did you have any way of communicating with an SAC?

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Scott Crabtree - Direct

at the  
have the

1 A. Yes. The SAC for the Kansas City division was up  
2 command post in Fort Riley at that time, and we would  
3 availability to make telephonic contact with him.

4 Q. And could the SAC have provided his approval for  
5 tape-recording if he had wanted to?

6 A. Yes, he could have.

7 Q. Did he do so?

8 A. No, he didn't.

9 Q. At the time of the interview of Terry Nichols, were  
you  
10 familiar with the FBI policy on tape-recording?

11 A. Yes, I was.

12 Q. And in your 15 years as a special agent, how many  
13 interviews have you been in that you tape-recorded?

14 A. None.

15 Q. When you walked into that interview, Agent  
Crabtree, had  
16 you ever worked an explosive case before?

17 A. No, I have not.

18 Q. So to the extent that your report of interview or  
your  
19 recollections of interview on the 21st reflect any  
knowledge of  
20 different types of fertilizer and their explosive  
properties,  
21 where did this information come from?

22 A. From Mr. Nichols.

23 Q. What time exactly did you join the ongoing  
interview of  
24 Terry Nichols?

25 A. 4:12 p.m. on the 21st.

Scott Crabtree – Direct

1 Q. And who was there at that time?

2 A. Present in the interview with Mr. Nichols, Steve  
Smith, and

3 Jack Foley.

4 Q. Did all four of you continue to participate in the  
5 interview?

6 A. Yes. Dan Jablonski accompanied me. Actually there  
was  
7 five of us at the interview counting Mr. Nichols.

8 Q. What was your role, Mr. Crabtree?

9 A. Basically the lead questioner.

10 Q. Why were you selected to be the lead questioner?

11 A. I had probably the most knowledge of the case at  
that point

12 in the Kansas territory.

13 Q. Can you describe the defendant's demeanor during  
the

14 interview on April 21?

15 A. He seemed very -- very calm, very relaxed.

16 Q. What would he do when you were asking questions?

17 A. Listen. We would make eye contact, and he'd listen  
to what

18 was being said.

19 Q. And in what manner would he provide his responses  
to your

20 questions?

21 A. He would respond the same way. He'd look at us and  
answer

22 us.

time

23 Q. Did Defendant ever do anything unusual between the

his

24 that you asked a question and the time that he provided

25 response?

10181

Scott Crabtree – Direct

1 A. On a couple of occasions, yes.

2 Q. What did he do?

thought for

3 A. A couple of occasions, he closed his eyes and

answer.

4 an extended period of time before providing us an

5 Q. Did you say anything to Mr. Nichols about this?

6 A. Yes, I did.

7 Q. What did you say?

8 A. I asked him to discontinue that activity.

9 Q. And what was his response?

quit

10 A. After the second time of asking that, he basically

11 doing it.

on

12 Q. Did you take any notes at all during the interview

13 April 21, Agent Crabtree?

14 A. No, I did not.

15 Q. And how long total did you spend talking to Mr.  
Nichols on  
16 that day?  
17 A. I spent six hours.  
18 Q. Why did the interview take so long?  
19 A. We had a lot of material that we ended up covering,  
and a  
20 number of those matters had to be -- we had to go back  
and ask  
21 questions about them again and go back over them to  
either get  
22 some more detail or discuss information that had come  
to our  
23 attention during breaks.  
24 Q. For those subjects that you went over more than  
once, Agent  
25 Crabtree, did you notice whether or not Mr. Nichols'  
story

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Scott Crabtree - Direct

1 about them remained the same?  
2 A. A few of them did not.  
3 Q. And have you gone back in preparation for your  
testimony  
4 and reviewed both Agent Smith's typewritten notes,  
which are  
5 Government's Exhibit 1926, as well as your report of  
interview?  
6 A. Yes, I have.

the 7 Q. And what is the state of your memory with regard to

8 time when Mr. Nichols said particular things?

9 A. Good.

10 Q. Are you prepared to give us the context in which

11 Mr. Nichols made statements to you and Agent Smith?

12 A. Yes.

questions 13 Q. Are you also prepared to tell us about what

14 precipitated certain responses on Mr. Nichols' part?

15 A. Yes.

about his 16 Q. I'd like to begin with what Mr. Nichols told you

17 bomb knowledge and experience with ammonium nitrate.

cumulative to 18 MR. WOODS: Your Honor, I object. Seems

19 me if we're going to repeat what we just went through.

20 THE COURT: Are you?

talk 21 MR. GOELMAN: No, your Honor. We're going to

particular 22 about what the agent said to Mr. Nichols to draw out

23 responses.

that was 24 THE COURT: All right. I didn't understand

25 what you asked, however.

Scott Crabtree - Direct

1 MR. GOELMAN: I'm sorry. If I failed to make  
it  
2 clear, that is the subject of Agent Crabtree's  
testimony.

3 THE COURT: Well, I thought you asked what Mr.  
Nichols  
4 said.

5 MR. GOELMAN: No, your Honor; I just said I'd  
like to  
6 begin with that area.

7 THE COURT: Well, why don't you just ask  
questions,  
8 instead of explaining what you're doing.

9 MR. GOELMAN: Yes, your Honor.

10 BY MR. GOELMAN:

11 Q. Did you ask Terry Nichols whether he knew how to  
build a  
12 bomb, Agent Crabtree?

13 A. Yes, I did.

14 Q. How many times did you ask this question?

15 A. Three.

16 Q. And when did you first ask this question?

17 A. During the first session of the interview that I  
was  
18 involved in.

19 Q. When you asked Mr. Nichols if he knew how to build  
a bomb,  
20 what did he say?

21 A. He said he did not.  
22 Q. When was the second time that you asked Mr. Nichols  
the  
23 same question?  
24 A. It would have been during my second interview  
session with  
25 Mr. Nichols.

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Scott Crabtree - Direct

1 Q. Did you also ask Mr. Nichols what he did for a  
living,  
2 Agent Crabtree?  
3 A. Yes, we did.  
4 Q. When was the defendant first asked about this?  
5 A. During the first interview session, during the  
first  
6 interview period.  
7 Q. Were you there in the very beginning of the  
interview,  
8 Agent Crabtree?  
9 A. No, I was not. It started approximately one hour  
before I  
10 arrived.  
11 Q. So how do you know what went on during that  
process?  
12 A. After I arrived, we reviewed the notes that had  
been taken

13 up to that point to bring me up to speed as to what had  
been

14 said.

15 Q. And when Agent Smith reviewed the notes, did he say  
16 anything about Mr. Nichols' employment at that time?

17 A. Yes, he did.

18 Q. How did he describe Mr. Nichols' employment?

19 A. That he sold military surplus.

20 Q. Did he say which particular items he sold in  
military

21 surplus?

22 A. Yes. He listed a number of items.

23 Q. What were those items?

24 THE COURT: Well, who is "he" now?

25 BY MR. GOELMAN:

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Scott Crabtree - Direct

1 Q. Who are we talking about, Agent Crabtree? Are we  
talking

2 about --

3 A. Smith recounting Mr. Nichols' statements to him,  
sir.

4 Q. What were the items that he listed that Mr. Nichols  
had

5 indicated that he sold?

6 A. Ammo cans, shovels, axes, surplus sand bags.

7 MR. WOODS: I do object because it is  
cumulative.

8 THE COURT: Overruled.

9 MR. WOODS: He just covered that with Mr.  
Smith.

10 THE COURT: Objection is overruled.

11 MR. WOODS: Thank you.

12 BY MR. GOELMAN:

13 Q. How many times was Mr. Nichols' gun show practice  
discussed

14 before you and Agent Smith took a break at  
approximately 8:15?

15 A. Three or four.

16 Q. And before your break at 8:15, did Mr. Nichols have  
a

17 consistent answer as to whether or not he knew how to  
build a

18 bomb?

19 A. Yes, he did.

20 Q. What was that answer?

21 A. That he did not.

22 Q. How long did the break that you two took at 8:15  
last?

23 A. Approximately a half an hour.

24 Q. And like other breaks you took, did you spend this  
25 information (sic) talking to other agents?

Scott Crabtree – Direct

1 A. Yes, we did.

Agent 2 Q. What stage was the investigation in at that point,  
3 Crabtree?

information 4 A. It was still very early. We had a lot of  
5 coming in to us there and other offices around the  
country.

told, did 6 Q. Without going into the specifics of what you were  
7 you to 7 you receive information from another agent that caused  
8 be skeptical of Mr. Nichols' answer about bomb making  
9 knowledge?

10 MR. WOODS: I object.

11 THE COURT: Sustained.

12 BY MR. GOELMAN:

of 13 Q. When did you and Agent Smith resume your interview  
14 Mr. Nichols?

15 A. 8:44.

subject of 16 Q. Sometime after you resumed, did you revisit the  
17 Mr. Nichols' bomb-making knowledge?

18 A. Yes, we did.

19 Q. What did you say to Mr. Nichols at this time?

more 20 A. That we have information to suggest that you have

your  
you do

21 knowledge than you have given us to this point about  
22 knowledge and we'd like to talk about it and see what  
23 know.  
24 Q. Did you reveal to Mr. Nichols what your source of  
25 information was?

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Scott Crabtree - Direct

1 A. No.  
2 Q. Did Mr. Nichols ask you who your source of  
information was?  
3 A. No, he did not.  
4 Q. Did Mr. Nichols say that that source was lying?  
5 A. No, he did not.  
6 Q. What did the defendant say when you asked him that  
7 question?  
8 A. He said that they had a curious -- he and Mr.  
McVeigh had a  
9 curiosity about whether they could build a bomb.  
10 Q. And whose word is that, "curiosity"?  
11 A. Mr. Nichols.  
12 Q. Did he say whether or not Mr. McVeigh and he had  
done  
13 anything to satisfy that curiosity?  
14 A. Yes, he did.

15 Q. What did he say?

16 A. That they had read articles and books and  
literature that

17 came across tables at gun shows.

18 THE COURT: Well, we'll break at this point.  
It's

19 almost 1:00. You may step down.

20 Members of the jury, we're going to now excuse  
you for

21 this extended weekend period that we've arranged; and  
of

22 course, as I always tell you on Friday afternoons, I

23 reemphasize the cautions given. We've gone a long way  
in this

24 case. You've heard a great deal. You're going to hear  
more.

25 So please bear with us, keep open minds, wait till  
you've heard

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1 it all, all the witnesses, all of the arguments, all of  
the

2 instructions on the law.

3 And with respect to the law, I want you to  
understand

4 that your function in this case is going to be to  
decide what

5 the evidence does or does not show in the case, but it  
is not

any of 6 for you to determine legality of any of the conduct or  
from 7 that with respect to some of these things you may hear  
enforcement 8 time to time with respect to the conduct of law  
television 9 agents and the like. It may because of all of the  
might have 10 shows that are out there, you know, things that you  
about 11 seen or read or heard about the law -- don't speculate  
hear 12 that. You leave the legal rulings to me. You won't  
evidence; 13 anything in evidence that isn't lawfully admitted in  
there was 14 so don't concern yourselves with things like whether  
my 15 a legitimate search or not a legitimate search. That's  
avoiding 16 role.  
17 Now, please continue to keep open minds,  
persons; 18 discussion of the case among yourselves and all other  
19 and do be careful.  
on 20 You know, even these things that are sometimes  
know -- 21 television that are dramatized versions of things, you  
not 22 I just ask you to stay away from that, even though it's  
23 directly related to this case but because it can be

confusing,

24 I think, sometimes to hear these or see these police  
shows and

25 some of the things that are on television now. I think  
you can

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1 withhold your attention from that kind of thing while  
you're on

2 the jury, and I ask you to do so.

3 So you're excused now until 8:45 Monday  
morning.

4 (Jury out at 1:02 p.m.)

5 THE COURT: I've got a couple of rulings to  
announce.

6 RULINGS ON PENDING MOTIONS

7 THE COURT: With respect to a sealed motion to  
strike

8 certain testimony in the case -- and it's sealed  
because it

9 relates to things that pertain to discovery -- I just  
want to

10 ask Government counsel in the response to that, one of  
the

11 grounds here is discovery and whether there was a  
compliance

12 with the discovery request. The response says there  
was and

13 that the only thing provided is the only thing the  
Government

14 has.

15 MR. ORENSTEIN: That's correct, your Honor.

16 THE COURT: All right. Then I'm denying that  
motion  
17 to strike.

18 With respect to --

19 MR. TIGAR: Is your Honor also denying the  
alternative  
20 motion to require further proof with respect to the  
chain?

21 THE COURT: Yes. I am. I'm denying it in its  
22 entirety. There are four grounds, and I'm denying all  
four.

23 And on the motion to preclude certain  
testimony of  
24 witnesses yet to be heard, that's denied.

25 With respect to the witness that we're  
hearing, you

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1 know, FBI agents are percipient witnesses like  
everybody else;

2 and they ought to be asked the things that they heard,  
read,

3 and saw, the things that come in by their senses, not  
whether

4 something is consistent or inconsistent. And all of  
this

5 introductory material with respect to their  
backgrounds, I

6 think is irrelevant and wastes time.

7 We ought to get right to what witnesses know  
or don't

8 know. That's what they should be testifying about.

9 We'll be in recess till 8:45 Monday morning.

10 (Recess at 1:04 p.m.)

11 \* \* \* \* \*

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11 PLAINTIFF'S EXHIBITS

Withdrawn 12 Exhibit Offered Received Refused Reserved

13 278 10155 10155

14 1930 10104 10104

15 1933 10156 10156

16 1952B 10153 10153

17 DEFENDANT'S EXHIBITS

Withdrawn 18 Exhibit Offered Received Refused Reserved

19 D1627 10103 10103

20 D1652 10128 10128

21 D1655 10140 10141

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1 REPORTER'S CERTIFICATE

2 transcript from

I certify that the foregoing is a correct

Dated

3 the record of proceedings in the above-entitled matter.

4 at Denver, Colorado, this 21st day of November, 1997.

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Paul Zuckerman

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