

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO
3 Criminal Action No. 96-CR-68
4 UNITED STATES OF AMERICA,
5 Plaintiff,
6 vs.
7 TERRY LYNN NICHOLS,
8 Defendant.

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10 REPORTER'S TRANSCRIPT
(Trial to Jury: Volume 116)

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12 Proceedings before the HONORABLE RICHARD P.
13 MATSCH,
14 Judge, United States District Court for the District of
15 Colorado, commencing at 1:40 p.m., on the 9th day of
16 December,
17 Denver,
18 1997, in Courtroom C-204, United States Courthouse,
19 Colorado.

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Transcription
Street,
629-9285

Proceeding Recorded by Mechanical Stenography,
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APPEARANCES

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10

PROCEEDINGS

11

(Reconvened at 1:40 p.m.)

12

THE COURT: Be seated, please.

13

Ready to proceed?

14 MR. TIGAR: Yes, your Honor.

15 (Jury in at 1:40 p.m.)

16 THE COURT: Members of the jury, we again took
a few
17 extra minutes. I hope you understand the need for
doing that.

18 We're ready then with our next witness.

19 MR. TIGAR: Call Steven Gradert.

20 THE COURT: Thank you.

21 THE COURTROOM DEPUTY: Would you raise your
right
22 hand, please.

23 (Steven Gradert affirmed.)

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

25 Would you state your full name for the record
and

13476

1 spell your last name.

2 THE WITNESS: Steven Kent Gradert, G-R-A-D-E-
R-T.

3 THE COURTROOM DEPUTY: Thank you.

4 THE WITNESS: Thank you.

5 DIRECT EXAMINATION

6 BY MR. TIGAR:

7 Q. Mr. Gradert, what do you do for a living?
8 A. I'm a defense lawyer for the federal public
defenders
9 system in Wichita, Kansas.
10 Q. On April 22, 1995, did you get a new client?
11 A. I did.
12 Q. What was his name?
13 A. Terry Nichols.
14 Q. Do you recognize him here in court today?
15 A. I'm look -- oh, there's Terry right there. Yes, I
do.
16 Q. About what time did you meet him?
17 A. Well, I think I actually met him at about 2:30 or
3:00 in
18 the afternoon on a Saturday.
19 Q. And where was that?
20 A. In the United States marshal's office in Wichita.
21 Q. Now, I'm not going to ask you any conversations
that you
22 had with him, but did you have an opportunity during
that
23 afternoon to observe his -- his demeanor, how he
looked?
24 A. Yes, I did.
25 Q. And during how much of a period of time did you
have that

Steven Gradert – Direct

1 opportunity?

minutes 2 A. I would say we probably only had about 30 to 40

his 3 before we actually went into the courtroom to observe

4 demeanor, but I did have an opportunity to observe it.

5 Q. And how would you describe it?

and 6 A. Well, he was obviously a little scared and shaken

bit 7 appeared to be pretty nervous. I think he was a little

and my 8 frightened by the fact that he was talking to my chief

had 9 employer, David Phillips, who is also an attorney, and

least 10 never met us before. Probably a little distrustful at

nervous. 11 initially of us. But he appeared to be shaken,

hear him 12 Q. And when you went into court, did he -- did you

or 13 make a statement to the court as to his state of mind

14 feelings?

bit at 15 A. Yes. I did. I believe he was confused a little

talk with 16 that time. We hadn't had a very long opportunity to

hearing 17 him about what the basis -- basic procedures of that

18 were before we were actually summoned to go to the

courtroom,

19 and Terry was -- was pretty confused about what was
going on.

20 In fact, he made some inquiry to the judge himself at
that

21 time.

22 Q. And did he say -- did you hear him say to the judge
"It's

23 all a jumble in my brain right now"?

24 A. Yes, I remember.

25 MR. TIGAR: Thank you very much. Nothing
further.

13478

1 MR. MACKEY: No questions.

2 THE COURT: All right. You may step down.

3 I take it he's excused.

4 MR. TIGAR: Yes, your Honor.

5 THE COURT: All right. You're excused.

6 MR. TIGAR: Call Edward Killam.

7 THE COURT: All right.

8 Mr. Killam, if you'll resume the stand once
again

9 under the oath earlier taken.

10 (Edward Killam was re-called.)

11 DIRECT EXAMINATION

12 BY MR. TIGAR:

13 Q. Good afternoon, Mr. Killam.

14 A. Good afternoon, sir.

15 Q. I want to take you back, sir, to Mr. Nichols' house
in

16 Herington, Kansas, and searches that you conducted
there after

17 the FBI had released the house.

18 Can you first let me ask you, do you -- do you
have

19 with you today some little notes on which you listed
the dates

20 and things to refresh your recollection?

21 A. Yes, I have them.

22 Q. All right. We'd like to -- I want to make clear
that --

23 MS. WILKINSON: Your Honor, I wasn't provided
with

24 copies of those notes.

25 MR. TIGAR: He has those.

13479

Edward Killam - Direct

1 BY MR. TIGAR:

2 Q. Sir, obviously, we'd like -- we would like you to
testify

3 from your own recollection. If you need to refer to
one of

4 those to find a date or an exhibit number to refresh

your

5 recollection, just let us know you're doing so.

6 A. Will do.

of the

7 Q. Now, on what date did you conduct your first search

8 house?

9 A. We first arrived at the house on August 7, 1995.

that you

10 Q. And will you describe for the jury the procedure

11 used to conduct a search of the house?

ourselves

12 A. Certainly. When we arrived at the house, we let

the

13 in with the key, and then we did a walk-through of all

storage

14 rooms, all parts of the house, the back garage and back

we

15 area. And then after walking through the entire house,

would

16 returned to the front and began one room at a time. We

sides,

17 enter the room, photograph it from all corners and all

would

18 and then draw a sketch of the floor plan, and then we

we'd then

19 search that room. And after that room was completed,

And after

20 move to another room and so forth through the house.

the

21 the house was finished, we did the basement underneath

storage

22 house and then from there to the outside garage and

23 areas.

24 THE COURT: Mr. Tigar, it may be helpful to
know who
25 was with him.

13480

Edward Killam - Direct

1 MR. TIGAR: Yes, your Honor.

2 Excuse me. I was just checking to see if I
had an
3 exhibit.

4 BY MR. TIGAR:

5 Q. Who was with you on that first trip on the 7th to
9th of
6 August?

7 A. One of the other appointed investigators, H. C.
Bodley.

8 Q. Sir, I'm going to show you first, did you find in
the house
9 some things that appeared to be military surplus?

10 A. Yes, I did.

11 Q. Did you photograph those items?

12 A. Either I did or H. C. Bodley did.

13 Q. I'm going to show you now just for yourself what's
been
14 marked as Defense Exhibit 1600 and ask you if you
recognize
15 that.

16 A. Yes, I do.
17 Q. Is that a picture that was taken in that search in
August?
18 A. Yes, it was.
19 Q. Do you know when it was taken?
20 A. It would be on one of the three days we were first
there.
21 It would have been on August 7th, 8th, or 9th of 1995.
22 Q. And does that fairly and accurately represent what
you saw?
23 A. Except that we opened the lids for clarity of the
24 photograph. They were closed when we arrived.
25 MR. TIGAR: This is D1600, your Honor. We
offer it.

13481

Edward Killam - Direct

1 MS. WILKINSON: Your Honor, I'd just ask that
one
2 other question be asked. I don't need to do voir dire
myself.
3 Whether any items were moved from around that area; in
other
4 words, whether boxes or anything or anything else on
top --
5 THE COURT: If you will elicit that.
6 MR. TIGAR: Surely.
7 BY MR. TIGAR:

answer? 8 Q. Mr. Killam, you've heard the question. What's the

the 9 A. The answer was it may well have been that way. For

then we 10 items, we did overall scenes of each room and area, and

11 photographed individually specific items. To do the

12 photography of specific items, we may well have either

13 them into better light conditions or may have removed

14 that were on top or around them.

15 Q. Did you move them out of the room in which they

16 A. I don't believe we ever did that.

17 MR. TIGAR: We offer D1600.

18 MS. WILKINSON: No objection.

19 THE COURT: Received.

20 MR. TIGAR: Okay. Show that, please.

21 Thank you, Ms. Hasfjord.

22 BY MR. TIGAR:

23 Q. I'll zoom in here. What are we looking at here?

24 all, where are we in the house?

25 A. We're in the garage which is out behind the house.

It is

13482

Edward Killam - Direct

1 detached from the main house.

2 Q. And what are we looking at?

3 A. We're looking at -- there are -- actually, three
cases

4 there with handles. The -- the two that are open
contain saws.

5 The case that's down below contains one-man saws, and
the case

6 on top that's open contains two-man saws; and those
have a

7 label inside which identify them as infantry
entrenching sets.

8 Q. And where is that label that says the infantry
entrenching

9 sets?

10 A. You see the open lid. There is a label affixed to
the

11 middle of each lid, inside of each lid. And that's
where they

12 are labeled.

13 Q. Thank you, sir. I'm going to show you, please,
what's been

14 marked for identification as Defendant's Exhibit D1601
and ask

15 you, was -- are those items that you found on your --
in your

16 search of August the 7th to the 9th?

17 A. Yes, they are.

18 Q. And did you move those items?

19 A. Not before the photograph was taken.

take 20 Q. Did you have to move anything out of the way to

21 pictures of those items?

22 A. No. That's the way they were standing.

23 MR. TIGAR: All right. Offer D1601.

24 MS. WILKINSON: No objection.

25 THE COURT: Received.

13483

Edward Killam - Direct

1 BY MR. TIGAR:

2 Q. Are we still in the garage here?

3 A. Yes, we are.

4 Q. And what are we looking at?

5 A. Well, we're looking at several things all stacked
together.

6 There are some shovel handles in the back. There are
some pick

7 or mattock handles, and then there are stacks which
contain a

8 single mattock handle in which there are mattock heads
stacked

9 on about a dozen per stack.

10 Q. Excuse me. Showing you now what's been marked as
D1602 for

11 identification. Is this a picture that you took during
your

12 search?

13 A. It's a picture that was taken, yes.

14 Q. Yes. And does that fairly and accurately represent
the
15 scene there in the garage?

16 A. Yes, it does.

17 Q. Were these items moved before being photographed?

18 A. No. That's how we found them.

19 Q. And did you have to move anything out of the way in
order
20 to get at them?

21 A. No, sir.

22 MR. TIGAR: Offer D1602.

23 MS. WILKINSON: No objection.

24 THE COURT: Received.

25 BY MR. TIGAR:

13484

Edward Killam - Direct

1 Q. Now, what are these items?

2 A. These are spades or shovels.

3 Q. And did you find -- you found those in the garage;
is that
4 right?

5 A. Yes, we did.

6 Q. Did they have any labels on them?

7 A. A few of them did, but not all of them. The
majority did

8 not.

the 9 Q. And what -- of the ones that had labels, what did
10 labels say?

on the 11 A. The one that I remember had an identification label
or 12 blade portion which identified it as military surplus
13 military identification item.

14 Q. If I can show you now, sir, what I have marked for
15 identification as Defendant's 1 -- D1603. Is that
another view 16 or another angle view of the same material?

17 A. Yes, it is. It's just looking a little bit further
to the 18 side.

19 MR. TIGAR: Okay. Offer D1603.

20 MS. WILKINSON: No objection.

21 THE COURT: Received.

22 BY MR. TIGAR:

23 Q. These are just more of the shovels; correct?

there: 24 A. Yes. There's actually three different types in

with 25 There are spades with wooden handles, there are spades

shovel 1 plastic handles, and then there are a lot of just

2 handles themselves without heads.

count? 3 Q. Okay. And how many plastic-handled ones did you

4 A. Here, I'll need to refer to my notes. I counted 39
5 plastic-handled shovels.

6 Q. And how many wood-handled ones?

7 A. 110.

identification 8 Q. Showing you now, sir, what I've marked for

was taken 9 as D1630. Do you recognize that as a photograph that

10 during your search?

11 A. Yes, I do.

that 12 Q. And does it fairly and accurately reflect the scene

13 you saw then?

14 A. Yes, it does.

15 Q. Did you have to move anything to take that picture?

16 A. No. That's just the way we found it.

17 MR. TIGAR: All right. We offer D1630.

18 MS. WILKINSON: No objection.

19 THE COURT: Received.

20 BY MR. TIGAR:

21 Q. Now, did you tell the jury what this is?

complete 22 A. Yes. It is -- you're actually seeing a full,

of a 23 weapons rack in the center. And then there's a corner
-- 24 second one on the right-hand side. And then down below
this is 25 Q. When you say "in the center," you mean where it --

13486

Edward Killam - Direct

1 1, 3, 5 -- some numbers along. Is that a weapons rack?
2 A. That's part of it, and then the metal framework
goes up and 3 around it.
4 Q. All right. And then on the right-hand side over
here where 5 my pen is pointing is another one?
6 A. That's the corner of a second one; correct.
7 Q. And what kind of weapons racks are these?
8 A. I'm not sure. But they are -- they are full, long
arm, so 9 either rifles or light machine guns, something like
that.
10 Q. Did they have labels on them?
11 A. No, it did not, other than the numbers that it has
there.
12 Q. And what are these items that are folded up here?
13 A. Those are sandbags.
14 Q. And did the sandbags have any label on them?

15 A. No, they did not.
16 Q. What color are the sandbags?
17 A. They are sort of an olive-drab green. They are
like a
18 plastic fabric like a vinyl fabric.
19 Q. A military color?
20 A. Yes, sir.
21 Q. Showing you now for identification -- what's been
marked as
22 D1631 for identification. Is this something that you
saw in
23 your search?
24 A. Yes, it is.
25 Q. And did you have to open the box in order to get at
it?

13487

Edward Killam - Direct

1 A. Yes, I did.
2 Q. Other than that, did you move it?
3 A. No, it's in the same room it was in.
4 Q. All right. And where was that?
5 A. This was also in the garage. It's the box you saw
in the
6 previous photograph, but with the lid closed.
7 THE COURT: All right. Offer D1631.
8 MS. WILKINSON: No objection.

9 THE COURT: Received.

10 BY MR. TIGAR:

11 Q. Now, I'm going to put back up D1630 and point to
this box.

12 Is that -- is that the box you're referring to?

13 A. Yes, it is.

14 Q. All right. And D1630, you've just opened the box;
is that

15 correct?

16 A. That's correct.

17 Q. And what is all this writing on the -- this label
here?

18 A. That's the military identification plaque or sign.

19 Identifies the contents.

20 Q. All right. And does it identify the contents as
what we

21 see here; that is, axes?

22 A. No. It identifies it as a Pioneer set, but it does
contain

23 axes.

24 Q. Pioneer set?

25 A. Pioneer set.

13488

Edward Killam - Direct

1 Q. And is that -- does the writing indicate that this
is some

2 military hardware?

3 A. Yes, it does.

4 Q. Okay. Showing you now what's been marked for
5 identification as D1632. Where did you take that
picture?

6 A. That is in the other part of the detached building.
The

7 building behind the home is a side-by-side building.
Garage is

8 on one side, and there's a storage area or storeroom on
the

9 other side. It's the same building.

10 Q. Now, the jury has seen pictures of barrels that
were found

11 in Mr. Nichols' storage shed. Were the barrels still
there

12 when you got there?

13 A. No, they were not.

14 Q. But you've seen pictures of them; correct?

15 A. Yes, I have.

16 Q. And based on looking at those pictures, is this
material in

17 the same part of the storage shed where the barrels
were or a

18 different part?

19 A. It's a -- it's the same storage shed, but a
different part.

20 Q. Is this -- is one part of the storage shed a garage
and the

21 other a -- not a garage?

22 A. It's not how I would describe it. I would describe

it as a

23 garage and a storage shed which are joined at their
back walls.

24 Q. Is this the storage-shed part where you took these?

25 A. Yes, it is.

13489

Edward Killam - Direct

1 Q. Did you have to move anything in order to take the
picture?

2 A. No, we did not.

3 MR. TIGAR: We offer D1632.

4 MS. WILKINSON: Your Honor, I just have a few
5 questions. I can do it from here, if that's okay.

6 THE COURT: You can do it from there, yes.

7 VOIR DIRE EXAMINATION

8 BY MS. WILKINSON:

9 Q. Mr. Killam, you were there when this photograph was
taken?

10 A. Yes, I was.

11 Q. Are these the only ammo cans that you saw in Mr.
Nichols'
12 house?

13 A. No, they are not.

14 Q. Where were the other ammo cans located?

15 A. There were some in a portion of the basement of the
home.

Most of 16 There was some in the main floor on the storage room.
been 17 them were located in the storage area. There may have
18 others in the garage, as well.

red 19 Q. In which location did you see ammo cans that had a
20 cigar box on top of them?

21 A. In this portion of the storage area.

22 Q. The one that's supposedly depicted in this picture?

23 A. In the same storage shed, yes.

24 MR. TIGAR: Your Honor, may we approach?

25 THE COURT: Yes.

13490

Edward Killam - Voir Dire

1 (At the bench:)

by court 2 (Bench Conference 116B1 is not herein transcribed
transcript.) 3 order. It is transcribed as a separate sealed
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13495

Edward Killam - Voir Dire

1 (In open court:)

2 MS. WILKINSON: Your Honor, to make it easier,
perhaps

3 we could admit and --

4 THE COURT: Yes. You can inquire further.

5 MS. WILKINSON: We'll use it on cross-
examination.

6 Fine.

7 MR. TIGAR: We offer D1632, your Honor.

8 THE COURT: It's received.

9 MR. TIGAR: Thank you, Ms. Hasfjord.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. TIGAR:

12 Q. These are ammo cans; correct, sir?

13 A. Yes, they are.

14 Q. And how many -- now, are these military-type ammo
cans?

15 A. Yes, they are.

16 Q. Now, did you open them up?

17 A. Some of them.

18 Q. All right. Did they have stuff in them?

19 A. No. All the ones I opened were empty.

20 Q. About how many of these empty ammo cans did you
find in

21 Mr. Nichols' house?

22 A. Well, there are two different sizes. And I'll have
to

23 refer to my notes. I found of the .50 caliber cans
which are

24 the slightly larger ones, there were at least 431. I
counted.

25 And of the smaller, narrower ones, there were 318 at
least.

13496

Edward Killam - Direct

M9 on
it is.

1 Q. And the larger ones, we can see the cal 50 linked
2 here if we -- if we had better eyes than I do. There

3 Is that right?

4 A. Yes. That's correct.

5 Q. And those are the large ones?

6 A. Those are the large ones.

7 Q. These ones over in the corner are the small ones?

8 A. Correct. They are known as 7.62 or .30-caliber
cans.

9 Q. Now, when you were here before, you said that you'd
been to

10 100 gun shows; right?

11 A. Yes.

12 Q. Are ammo cans a popular item at gun shows?

13 A. Yes. Very common.

14 Q. And is military surplus a popular item at gun
shows?

15 A. Yes, it is.

16 Q. Showing you now -- whoops. I'm sorry -- what's
been marked

17 for identification as D1633. Is that a picture you
took?

18 A. Yes. It was a picture that was taken during those
days.

19 Q. Where was that picture taken?

20 A. We are now -- I believe we're back in the garage
area.

21 Q. All right. And did you have to move anything to
take this
22 picture?

23 A. No.

24 MR. TIGAR: We offer D1633, your Honor.

25 MS. WILKINSON: No objection.

13497

Edward Killam - Direct

1 THE COURT: Received.

2 BY MR. TIGAR:

3 Q. Here, we have -- it says "nails"; correct?

4 A. Correct.

5 Q. Were these nails?

6 A. Yes, they were. Big -- big nails.

7 Q. And about what quantity of big nails did you find
here?

8 A. Of those boxes you're looking at, I counted 45
boxes of
9 them.

10 Q. Now, there's another box here that says "wet
weather suits,
11 used," and then there's something else written on the
top which

12 would be upside down. What did you find in that box?

13 A. Those are olive-drab rain suits or like ponchos and

pants,

14 rain suits, two-piece.

15 Q. Military-type?

16 A. Yes. Olive-drab-military type.

found in 17 Q. Okay. Do you remember about how many of those you
18 there?

19 A. Dozens and dozens. Maybe hundreds.

marked 20 Q. Now, sir, I'm placing up on the monitor what we've
during your 21 as D1830. And -- is that a picture that was taken
22 search?

23 A. Yes, it was.

24 Q. Where was that taken?

25 A. That is in one of the basement areas of the home.

13498

Edward Killam - Direct

1 Q. Does it fairly and accurately reflect what you saw?

set 2 A. Yes. But it's been opened, and the items have been
3 upright to make them easily seen.

before you 4 Q. And other than that, did you make any changes
5 took your picture?

6 A. No, sir.

7 MR. TIGAR: We offer D1830.

8 MS. WILKINSON: No objection.

9 THE COURT: Received.

10 BY MR. TIGAR:

11 Q. What are we looking at here, sir?

12 A. We're looking at a cardboard box containing M-1
carbine
13 magazines.

14 Q. Now, do these M-1 carbine magazines have shells in
them?

15 A. No, they do not. They are empty.

16 Q. Is there any labeling on them to indicate what they
are,
17 where they came from?

18 A. No. Except that the M-1 carbine was a military-
issue
19 weapon in the Second World War.

20 Q. And are M-1 carbines and accessories sold at gun
shows, in
21 your experience?

22 A. Yes, they are.

23 Q. All right. Showing you now, sir, what we've marked
as

24 D1831. Where was that taken, sir?

25 A. This was also taken in the same area of the
basement of the

1 home.

2 Q. And did you move any of these items before you took
your
3 photograph?

4 A. Yes. Once again, the things were opened up to make
them
5 more clearly visible.

6 Q. Other than that, did you move them?

7 A. No, we did not.

8 MR. TIGAR: We offer D1831.

9 MS. WILKINSON: No objection.

10 THE COURT: Received.

11 BY MR. TIGAR:

12 Q. What are we looking at here, sir?

13 A. Well, there are several things. If we start from
the
14 center foreground and in the very background, there
are, once
15 again, some of the smaller ammunition cans, the 7.62
cans; and
16 then working left to right, there's a cardboard box
which
17 contains M-16 rifle magazines and then --

18 Q. The cardboard box, is that this here?

19 A. That's right. What you're pointing at.

20 Q. All right. Yes.

21 A. Those are M-16 30-round magazines, and there's
another

contains 22 cardboard box in the center of the photograph which
And then 23 two more ammo boxes and a rain poncho in its package.
has been 24 on the right of the photograph is a paper sack which
25 rolled back to show more M-16 magazines.

13500

Edward Killam - Direct

have 1 Q. And these are the magazines here, again. Did they

2 bullets in them?

3 A. No. They were empty.

paraphernalia sold 4 Q. Okay. Again, are M-16's and associated

5 at gun shows?

6 A. M-16's are not. Paraphernalia and magazines are.

7 Q. I'd like to show you now what's been marked for
8 identification as D1832. Where was that taken?

9 A. That was also taken in the basement of the home.

order to 10 Q. And did you have to move or change anything in

11 take your picture?

the 12 A. Yes. Once again, I unrolled the container to see

13 contents.

14 Q. Other than that, did you make any changes?

15 A. No, sir.

16 MR. TIGAR: We offer D1832.

17 MS. WILKINSON: No objection.

18 THE COURT: Received.

19 BY MR. TIGAR:

20 Q. Will you tell the jury what are we looking at here?

21 A. We're looking at a cardboard box inside of which or
on top

22 of which was a laundry bag which then contained U.S.
military

23 M-16 magazine pouches, ammunition pouches marked for
sale.

24 Q. And when you say "marked for sale," what are you
referring

25 to? These blue stickers?

13501

Edward Killam - Direct

1 A. Yes. Like some of the previous magazines, they had
price

2 stickers on them.

3 Q. And what is the sale price marked on these price
stickers

4 for these items?

5 A. \$3 each.

6 Q. Now, is this the sort of gear you'd find at gun
shows?

7 A. Yes, you would.

8 Q. Showing you now what I've marked as D1833 for
9 identification. Where was this taken?

10 A. Now we're back in the garage behind the home.

11 Q. All right. And did you open up this box?

12 A. Yes, sir, I did.

13 Q. Other than that, did you make any changes before
you took
14 your picture?

15 A. Yes. There were items on top of this crate which
were
16 removed to open it.

17 MR. TIGAR: We offer D1833.

18 MS. WILKINSON: No objection.

19 THE COURT: Received.

20 BY MR. TIGAR:

21 Q. Now, does this crate have any -- well, you can see
22 lettering on it. What does it say; do you know?

23 A. No, I don't. It has all sorts of markings,
numbers,
24 stenciled on it in various places.

25 Q. Okay. And what did you find in the crate?

13502

Edward Killam - Direct

1 A. It was all full of more of those olive-drab fabric
2 sandbags.

3 Q. Did you find any labels on those?

4 A. Not on the sandbags, no.

5 Q. Okay. Showing you now what we've marked as D1834
for
6 identification. Where are we now?

7 A. We're still in the garage. We're just a little bit
--
8 we're right next to that big crate we just looked at.

9 Q. Okay. And have you closed the crate?

10 A. Yes.

11 Q. Okay. And there's a box next to the crate. Did
you open
12 that to take your picture?

13 A. Yes, I did.

14 Q. Did you make any other changes other than opening
the box?

15 A. No. Once again, there may have been items stored
on top
16 that were removed to open it.

17 MR. TIGAR: We offer D1834.

18 MS. WILKINSON: No objection.

19 THE COURT: Received.

20 BY MR. TIGAR:

21 Q. What are we looking at here, sir? I'm going to
focus in on
22 this box.

23 A. We're looking at two separate stacks of things. In
the

24 foreground is a cardboard box full of cloth fabric
sandbags,
25 and in the back, we see once again that other stack of
fabric

13503

Edward Killam – Direct

1 sandbags.

2 Q. Showing you now what's been marked as D1835 for
3 identification. Where are we now?

4 A. Now we're again in the storage room next to the
garage,

5 adjacent to it.

6 Q. All right. And did you move anything in order to
take this

7 picture?

8 A. Yes, I did.

9 Q. What did you have to move?

10 A. A cigar box.

11 Q. Okay. And other than that, did you make any
changes?

12 A. I don't believe so.

13 MR. TIGAR: Okay. We offer D1835.

14 MS. WILKINSON: No objection.

15 THE COURT: Received.

16 BY MR. TIGAR:

17 Q. What are we looking at here?

18 A. Again, we're looking at stacks of ammo cans. I
believe all
19 the ones visible are the larger .50-caliber size.
20 Q. And finally, showing you what's been marked as
D1836, where
21 was this picture taken?
22 A. Now we're in the basement of the home once again.
23 Q. And did you have to move anything to take this
picture?
24 A. Yes. There was things on top, and I also opened
them up so
25 you could see more clearly what the tags were inside.

13504

Edward Killam - Direct

1 MR. TIGAR: We offer D1836.
2 MS. WILKINSON: No objection, your Honor.
3 THE COURT: Received.
4 BY MR. TIGAR:
5 Q. Now, when you looked at this -- what's in the box?
6 A. The box is full of plastic like grocery sacks, and
then
7 inside each of the grocery sacks are military rain
ponchos
8 again and rain suits, tops and bottoms.
9 Q. Okay. And what does it say? "WW bottoms"?
10 A. Right.
11 Q. "\$4"?

12 A. Yes. Wet-wear bottoms, \$4.

13 Q. Wet-wear bottoms, \$4?

14 A. Abbreviation for wet-wear like the box we saw
previously.

15 Q. Now, there's a word that starts with M there that's
16 obscured. What was that word?

17 A. I believe it was "medium," the size.

18 Q. And up here, we can see most of the word -- word --
19 whoops -- right there. What was that? "Small"?

20 A. "Small." Right. They were grouped by sizes.

21 Q. And other than having to move an item so that you
could see

22 them, this is what you saw as you looked at that box;
correct?

23 A. Yes, it is.

24 MR. TIGAR: May I approach, your Honor?

25 THE COURT: Yes.

13505

Edward Killam - Direct

1 BY MR. TIGAR:

2 Q. Could you take the bag there, the smaller of the
bags, and

3 read off the exhibit number, please, sir.

4 A. May I open it up? I believe it's inside.

5 Q. Yes. It should be on the box there, sir. On the
side.

6 A. It's D979.

7 Q. And where was D979 recovered, sir?

8 A. It was recovered from the main floor storeroom of
the
9 Nichols' home.

10 Q. Okay. And how can you identify that as what was
recovered
11 there?

12 A. I was there when it was found and recovered.

13 Q. Is it in the same condition as when you found it?

14 A. Yes, it is, except for the evidence sticker.

15 Q. All right. And what's the label --

16 MR. TIGAR: Well, we offer it, your Honor.

17 MS. WILKINSON: No objection.

18 THE COURT: D979, was it?

19 BY MR. TIGAR:

20 Q. Could you read the exhibit number again, sir.

21 A. Yes. The box is labeled D979B, as in boy.

22 THE COURT: B.

23 BY MR. TIGAR:

24 Q. And is there something inside that has a separate
exhibit
25 number?

1 A. It's the same Exhibit No. D979 letter A.

2 Q. And was that in the box when you found it?

3 A. Yes, it was.

4 MR. TIGAR: We offer D979A.

5 MS. WILKINSON: No objection.

6 THE COURT: All right. So both A and B are
received.

7 BY MR. TIGAR:

8 Q. What is it?

9 A. It's a Model 100 water magnet made by Saftron or
Softron.

10 Q. All right, sir. If you could put that back in its
11 envelope.

12 Looking at the item next to you, you see two
items in

13 that envelope next to you, sir. And could you please
read the

14 exhibit numbers on those.

15 A. The exhibit item is D, as in David, 794A and D794B.

16 Q. Where were these found, sir?

17 A. These were also found in a cabinet in the storeroom
of

18 Mr. Nichols' home, main floor.

19 MR. TIGAR: We offer them, your Honor.

20 MS. WILKINSON: No objection.

21 THE COURT: Received --

22 BY MR. TIGAR:

23 Q. What are these?

24 THE COURT: Excuse me. They are received.

25 MR. TIGAR: I'm sorry. I apologize, your
Honor.

13507

Edward Killam - Direct

1 BY THE COURT:

2 Q. Thank you. Go ahead.

3 A. These are two large Softron water magnets.

4 MR. TIGAR: May I have a moment, your Honor?

5 THE COURT: Yes.

6 MR. TIGAR: Thank you very much, Mr. Killam.

7 Pass the witness.

8 THE COURT: Ms. Wilkinson.

9 MS. WILKINSON: Just a few.

10 CROSS-EXAMINATION

11 BY MS. WILKINSON:

12 Q. Good afternoon again, Mr. Killam.

13 A. Good afternoon.

14 Q. When you went into the house with Mr. Bodley, you
were very

15 careful to look at everything that was there; correct?

16 A. Yes, we were.

17 Q. And you were the first people to inspect it since
the FBI

18 had left it.

19 A. I presume that to be so.

20 Q. That's your understanding; correct?

21 A. Yes, it is.

22 Q. And is that why you went in and took pictures of
each room?

23 A. Yes, it is.

24 Q. We could call those entry photos; is that right?

25 A. Yes, you could.

13508

Edward Killam - Cross

1 Q. And that was to determine what was in place when
you

2 entered the house; correct?

3 A. That's correct.

4 Q. Now, you showed us -- or Mr. Tigar showed us
Defense

5 Exhibit 1632 of some ammo cans that were in the storage
area of

6 the garage; is that right?

7 A. Yes.

8 Q. Now, does this depict just one portion of the area
where

9 ammo cans were stored?

10 A. Yes, it is.

11 Q. And that's why we don't see the cigar box in this
picture?

12 A. That's correct.

13 Q. Now, you also showed us Defense 1835 here. And if
we were

14 to look closely, could we see the cigar box in this
picture?

15 A. No. You would see it in that picture.

16 Q. It's been removed from this picture?

17 A. Yes, I removed it.

18 Q. But you did see it in place?

19 A. Yes, I did.

20 Q. Let me show you Government's Exhibit 1776A. Do you
21 recognize that?

22 A. Yes, I do.

23 Q. Let me see if I can zoom out a little bit first.
Is this

24 how that area looked when you entered Mr. Nichols' home
in

25 August?

13509

Edward Killam - Cross

1 A. Or very close to it, yes.

2 Q. And this cigar box?

3 A. Yes.

4 Q. Red-and-white?

5 A. Yes.

6 Q. Can you read what that says?

7 A. Yes. William Penn.

Nichols'
8 Q. This was there in place when you entered Mr.
9 house?

10 A. Yes, it was.

your
11 MS. WILKINSON: We have no further questions,
12 Honor.

13 THE COURT: Anything further?

14 MR. TIGAR: No, nothing further.

15 THE COURT: Mr. Killam, you may step down.

16 THE WITNESS: Thank you.

17 MR. TIGAR: May I have a moment, your Honor?

18 THE COURT: Yes. Certainly.

like to
19 MR. TIGAR: At this time, your Honor, we would
discussed at
20 offer the testimony of Deborah Brown in the manner
agreed on
21 the bench. Counsel and I have conferred, and we have
22 the transcript.

testified at
23 THE COURT: All right. So this witness
of this
24 an earlier time, and we're going to take the testimony
we have a
25 witness by reading it to you. And to assist in that,

13510

1 reader, do we?

2 MR. TIGAR: Yes, your Honor.

3 THE COURT: If you will come up and take the
witness

4 stand. We try to make this as easy to understand as
possible,

5 and for that reason --

6 MR. TIGAR: This is not Deborah Brown.

7 THE COURT: Yes. We're going to have some
role

8 playing as it were, of Deborah Brown as the witness so
that you

9 can clearly distinguish between the questions and the
answers.

10 And of course, counsel will take care of the
questioning from

11 the prosecution and the defense by reading the
transcript. And

12 here again, while you do not have the opportunity to
see this

13 person testify, to the extent possible, you will
consider her

14 testimony as that of any other witness, those appearing
live,

15 in much the same manner as I told you with the video
deposition

16 that we had, the video transcript, you'll recall. We
took a

17 witness in that fashion. So we do the same thing here

because

18 this person is unable to be here at court.

the

19 MR. TIGAR: May I inquire of Ms. Goodman where

20 exhibit is? May we just take a moment --

It's in

21 MS. GOODMAN: In my briefcase. I'm sorry.

22 the plastic envelope.

you'd

23 THE COURT: You can step down and get it if

24 like.

25 MR. TIGAR: Thank you, your Honor.

13511

1 THE COURT: You got it. Okay.

follows:)

2 (The testimony of Deborah Brown was read as

3 DIRECT EXAMINATION

4 BY MR. TIGAR:

spell

5 Q. Would you state your full name for the record and

6 your last name.

7 A. Deborah Brown, B-R-O-W-N.

live,

8 Q. First of all, would you tell us where you currently

9 in what city?

10 A. In Seattle, Washington.

11 Q. How long have you lived in Seattle?
12 A. October will be two years.
13 Q. Before you lived in Seattle, did you live in
Kingman,
14 Arizona?
15 A. Yes.
16 Q. Was it when you were in -- what grade were you in
when you
17 moved to Kingman?
18 A. I was in the sixth grade.
19 Q. In the sixth grade?
20 A. Yes.
21 Q. Did you essentially grow up in Kingman?
22 A. Yes.
23 Q. And attended school there through high school?
24 A. Yes.
25 Q. When you were in school there, did you come to know
Michael

13512

Deborah Brown - Direct

1 Fortier?
2 A. Yes.
3 Q. What time -- or how old were you approximately when
you met
4 Mr. Fortier?

5 A. It was when I was in the sixth grade. I'm not sure
what
6 that would be. Probably 12. I'm not --
7 Q. Did you continue to know Mr. Fortier through the
time that
8 you were in school?
9 A. Yes.
10 Q. Eventually after high school -- let me go back for
a
11 second. Did you know Lori Fortier during that period
of time
12 at all?
13 A. No.
14 Q. Now, after high school, did there come a time when
you
15 opened a business in Kingman?
16 A. Yes.
17 Q. What was the name of the business?
18 A. The Beach Club.
19 Q. Would you describe for us what kind of business the
Beach
20 Club was?
21 A. It was a tanning salon. We sold some swimsuits and
a few
22 things along that line.
23 Q. Let me show only you, if I may, what's been marked
for
24 identification as P139. Do you recognize what's
depicted in
25 that photograph?

13513

Deborah Brown - Direct

1 A. Yes.

2 Q. And is that a picture of the Beach Club tanning
salon,
3 itself?

4 A. Yes, it is.

5 Q. Is that how it appeared in the fall of 1994?

6 A. Yes.

7 MR. TIGAR: Your Honor, we would offer this
for
8 demonstrative purposes only.

9 THE COURT: All right. Any objection to that?

10 MR. MEARNS: No. Mr. Tigar, is this -- you've
11 re-marked it as D1871.

12 MR. TIGAR: Yes. It is -- let's just offer
D1871,
13 your Honor, the black-and-white copy, for evidence but
use the
14 color copy, if I may, for demonstrative purposes.

15 MR. MEARNS: No objection, your Honor.

16 THE COURT: All right. We'll do it.

17 MR. TIGAR: Put it up on the screen.

18 BY MR. TIGAR:

19 Q. Is that how it appeared during the fall of 1994?

20 A. Yes.

21 Q. Okay. Now, there's a business that appears to be
to the

22 left in the photograph. What is that business?

23 A. That used to be a Christian bookstore. Sold
novelty

24 things, then the mail room next to it.

25 Q. Ms. Brown, did there come a time when you met Lori
Fortier?

13514

Deborah Brown - Direct

1 A. Yes.

2 Q. Approximately when was that?

3 A. It was approximately April of 1993.

4 Q. Was that in connection with the Beach Club tanning
salon?

5 A. Yes.

6 Q. What happened in reference to Ms. Lor -- Ms.
Fortier and

7 the Beach Club?

8 A. She was referred by a friend of the family, a
relative of

9 my boyfriend, to come down and see if we might need
anyone

10 because she had been looking for a job for a while and
she

11 recommended her to me, said she was a good person.

12 Q. Did you hire her as a result of that?

13 A. Yes.

14 Q. When approximately was it that you hired Ms.
Fortier?

15 A. Approximately May of '93, maybe late April.

16 Q. How long did Ms. Fortier continue to work for you
there at

17 the Beach Club?

18 A. Through August of '94.

19 Q. While she was working for you there at the Beach
Club, did

20 you become familiar with Tim McVeigh?

21 A. Yes.

22 Q. How did that come about?

23 A. He was coming -- he was moving back to town, and
Lori

24 brought him in to introduce him to me when he came
back.

25 Q. How did she introduce him?

13515

Deborah Brown - Direct

1 A. "This is a good friend of ours, Tim McVeigh. He's
going to

2 be the best man at our wedding."

3 Q. After that, did you see Mr. McVeigh on occasion?

4 A. Yes.

5 Q. How often?

sometimes 6 A. It varied. Sometimes I'd see him once a week,
7 more often.

vicinity? 8 Q. Did he pick his mail up anywhere there in the

9 A. Yes.

10 Q. Where was that?

11 A. At the mail room.

Fortier 12 Q. Did there come a time during the period that Miss

Michael 13 worked for you that you became aware that she and

14 Fortier were involved in drug use?

15 A. Yes.

using 16 Q. So that we're clear about this, were you yourself

17 methamphetamine during that period of time?

18 A. Yes, I was.

19 Q. Did Michael Fortier participate in the use of
20 methamphetamine --

21 A. Yes.

22 Q. -- during that same period of time?

23 A. Yes.

24 Q. How would that come about?

25 A. I wouldn't --

Deborah Brown – Direct

it 1 Q. In other words, how did you know that, or where did

2 occur?

also 3 A. It occurred at my business, the Beach Club. It

much 4 occurred at a tanning convention in Las Vegas. Pretty

5 just whenever all three of us were together.

Lori 6 Q. Did you obtain any methamphetamine from Michael or

7 Fortier?

8 A. Yes.

well, 9 Q. How much methamphetamine would you obtain from --

from? 10 first of all, which one of them would you obtain it

11 A. Both.

12 Q. And how much would you obtain at a time?

13 A. 1 gram.

14 Q. Was it a gift from them, or did you pay for it?

15 A. I paid for it.

16 Q. How much did you pay for 1 gram of methamphetamine?

when they 17 A. It ranged on -- between 80 and \$100 depending on

needed to get 18 were trying to get rid of it and how quickly they

19 rid of it.

gram of 20 Q. Approximately how many occasions did you purchase a

21 methamphetamine from Michael and Lori Fortier?

22 A. Approximately between five and ten times.

23 Q. You said that you left the Kingman area, I think,
sometime

24 in the fall of 1994?

25 A. We were having a house built during the time that
Lori was

13517

Deborah Brown - Direct

1 trying to purchase the Beach Club in Las Vegas --

2 MR. TIGAR: Excuse me. Excuse me.

3 I'm sorry. I slipped into the cross-
examination part,

4 your Honor, and I've stolen Mr. Mearns' lines.

5 THE COURT: Mr. Mearns.

6 CROSS-EXAMINATION

7 BY MR. MEARNS:

8 Q. You said you left the Kingman area, I think,
sometime in

9 the fall of 1994.

10 A. We were having a house built, during the time that
Lori was

11 trying to purchase the Beach Club, in Las Vegas. My
boyfriend

12 and I were planning to move there. We actually moved
into our

13 home in October of '94.

14 Q. So you moved in the fall of '94?

15 A. Yeah.

16 Q. Did you attend the Fortiers' wedding?

17 A. Yes.

18 Q. You understand, of course, that you are now under
oath?

19 A. Yes.

20 Q. And because you're under oath, you understand your
21 obligation to tell the truth?

22 A. Yes.

23 Q. And it's for that reason that you have freely
admitted your

24 drug use; is that right?

25 A. Yes.

13518

Deborah Brown – Cross

1 Q. And you wouldn't lie about your drug use when you
came in

2 here and testified, is that not true?

3 A. That's true.

4 Q. But I take it it's not something you're
particularly proud

5 of?

6 A. No.

7 Q. It's because you've been called into the courtroom
and

8 you've been placed under oath?

9 A. It's because --

10 Q. And it's because you've been asked about it?

11 A. It's because I feel I've been called here to tell
the truth

12 and for both sides, fairness.

13 Q. Right. I'm just talking about it's not information
you

14 would volunteer around the community and certainly not
to law

15 enforcement officers if you're stopped for a traffic
stop?

16 A. That's fair. I haven't been stopped before.

17 Q. Now, this methamphetamine -- and I don't mean to
suggest

18 I'm in any way condoning its use, but it's not an
19 hallucinogenic drug; is that not true?

20 A. For myself, it wasn't. I can't speak for other
people.

21 Q. Okay. It kind of makes you -- it makes your system
--

22 A. It gave me more energy.

23 Q. It increases your energy?

24 A. Makes you a little -- well, yeah.

25 Q. Makes you a little wired?

1 A. Yes.

2 Q. Wouldn't cause you to lie about things?

3 A. It could.

4 Q. Didn't cause you to lose any memory, did it?

5 A. No.

6 Q. And the fact that you've used drugs hasn't
influenced your

7 testimony here today, has it?

8 A. No.

9 MR. MEARNS: That's the end of the transcript,
your

10 Honor.

11 MR. TIGAR: That's all, your Honor.

12 THE COURT: That is the --

13 MR. TIGAR: That is the end, your Honor.

14 THE COURT: Thank you. You may step down.

15 Once again, members of the jury, you accept
this

16 testimony as part of the evidence in the case.

17 MR. NEUREITER: Your Honor, at this time, we'd
like to

18 play two video depositions that were taken.

19 THE COURT: Very well. Here again, members of
the

20 jury, just as was true before, for reasons that are of
no

21 concern to us, these witnesses have not -- are not
available to

22 come here and testify; and so we're doing the best we
can with
23 respect to some of these people and taking their
testimony by
24 other means. Now, in this situation, we have videos of
the
25 testimony so you do get to see the witness on the video
screen.

13520

1 MR. NEUREITER: Yes, your Honor. This first
videotape
2 will be a deposition of Roberta Kramer taken on
November the
3 8th, 1997. I did the questioning on direct and Mr.
Goelman did
4 the questioning on cross-examination. For the Court's
5 convenience, I do have a transcript, if you'd like to
follow
6 along. The video itself has had all objections edited
out, and
7 counsel have agreed to withdraw certain objections, and
we've
8 conceded certain objections with respect to other
things.

9 THE COURT: All right.

10 MR. NEUREITER: Would your Honor like a copy
to follow
11 along?

12 THE COURT: I can follow with the jury.

13 MR. NEUREITER: Very well. And just for
14 clarification, your Honor, with respect to this first
15 deposition, there were no -- there was one exhibit that
was
16 offered and without objection to the -- by the
Government, and
17 then she held up the -- the --

18 THE COURT: Exhibit.

19 MR. NEUREITER: She held up the exhibit and
20 demonstrated on the camera, so there's no need to stop
it and
21 play it on the ELM0.

22 THE COURT: Okay.

23 (Videotape deposition of Roberta Kramer played.)

24 MR. NEUREITER: It appears we have a volume
problem.
25 There is sound on the video -- we listened to it over
lunch --

13521

1 but not on this machine. Hopefully, it'll work.

2 THE COURT: Okay.

3 MR. NEUREITER: I'll try the other videotape
and see
4 if that makes a difference. This will be of Etta Mae
Hartke,
5 also on the same date.

6 (Videotape deposition of Etta Mae Hartke played.)

7 MR. NEUREITER: We're going to start with
Roberta
8 Kramer.

9 (Videotape deposition of Roberta Kramer played.)

10 THE COURT: Nobody spilled any water there,
did they?

11 MR. TIGAR: May the record reflect I'm 3 yards
away,
12 your Honor.

13 THE COURT: The other one was working.

14 MR. NEUREITER: It was.

15 THE COURT: Would it make a difference in the
16 presentation as to which order we took them in? Maybe
we could
17 do that witness and then figure this out during the
recess.

18 MR. NEUREITER: Absolutely, your Honor. We'll
take
19 your Honor's suggestion.

20 This one, there are some exhibits; and there
are two
21 options, I guess. We could play the whole thing and
then I
22 could just display them at the end of it so there's no
stopping
23 and starting.

24 THE COURT: I think that's better.

25 MR. NEUREITER: Okay.

13522

1 (Videotape deposition of Etta Mae Hartke played.)

2 MR. NEUREITER: Your Honor, a juror appears to
have a
3 concern.

4 JUROR: I just have to stand. I can't see.

5 (Videotape deposition of Etta Mae Hartke played.)

6 THE COURT: All right. Do you have these
exhibits
7 now?

8 MR. NEUREITER: Yes, your Honor.

9 THE COURT: And there's no objection to any of
them,
10 is there?

11 MR. GOELMAN: No, your Honor.

12 THE COURT: They are all received, so you may
display
13 them and briefly identify them.

14 MR. NEUREITER: All right. Switch to the
ELMO.

15 This is -- the first one would be D1604.

16 Do I have to press a button?

17 THE COURTROOM DEPUTY: No.

18 MR. NEUREITER: This would be D1604, what --
and,
19 Counsel, feel free to correct me if I'm wrong, but I

think my

20 understanding, what she identified as her house. It
would be

21 107 South 2nd Street.

22 The next exhibit, D1605, was used twice during
the

23 deposition. This, she identified as Mr. Nichols' home;
and

24 later, she was asked to point out what she described as
the

25 wind vent that is located on the top of the home.

13523

1 The next exhibit is D653. I'll zoom in. This
was the

2 view from across the street with -- she identified in
the

3 middle of the picture Mr. Nichols' home. And to the
right, the

4 white, large automobile, she identified as her
automobile.

5 The next exhibit, D1625, was identified as the
Nichols

6 family as she met them in March of 1995. Mr. Nichols,
Marife

7 Nichols and Nicole. That was D1625.

8 And the last exhibit, D652, was the ladder
that she

9 identified Mr. Nichols as having borrowed the afternoon
of the

10 bombing.

11 And, your Honor, to complete the record, we
have the
12 videotape we have designated as D1873, and I'll place
that in
13 this container. And the certified, unedited transcript
is
14 designated D1873A, and we would submit that just to
make it
15 part of the record.

16 THE COURT: Yes.

17 MR. NEUREITER: And if we could have the
break, we
18 might be able to work out a technical problem.

19 MR. TIGAR: And in the meantime, your Honor,
we have a
20 little TV-VCR of the old-fashioned kind upstairs, and
we'll
21 bring it downstairs if that's all right with the Court.

22 THE COURT: If necessary. Well, we'll take
our
23 afternoon recess, members of the jury, and see if we
can get
24 some technical adjustments made here so that, one way
or the
25 other, the other witness's videotape deposition will be
played.

1 And of course, once again, I must caution you about
continuing
2 to avoid discussion about any of the witnesses or any
of the
3 trial proceeding, waiting until the case has been given
to you
4 for decision and also, of course, avoiding anything
outside of
5 the evidence.

6 You're excused now for 20 minutes.

7 (Jury out at 2:55 p.m.)

8 MR. TIGAR: May we approach, your Honor?

9 THE COURT: Yes.

10 (At the bench:)

11 (Bench Conference 116B2 is not herein transcribed
by court
12 order. It is transcribed as a separate sealed
transcript.)

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13530

1 (In open court:)

2 THE COURT: All right. Recess. 20 minutes.

3 (Recess at 2:59 p.m.)

4 (Reconvened at 3:20 p.m.)

5 THE COURT: Be seated, please.

6 The field expedient.

7 MR. TIGAR: Yes. Your Honor, we on this side
of the
8 courtroom waive our right to see the video that we've
already
9 seen so we don't have to move --

10 THE COURT: And the public is going to waive
its right
11 to see it, too, because there is no way --

12 MR. TIGAR: Mr. Kelley is not here, your
Honor.

13 MR. NEUREITER: Your Honor, we have managed to
put the
14 courtroom microphone up close.

15 THE COURT: I see that.

16 MR. NEUREITER: So that people will be able to

hear

17 it.

18
briefly though

THE COURT: I want to talk with counsel

19 about scheduling.

20 (At the bench:)

21
by court

(Bench Conference 116B3 is not herein transcribed

22 order. It is transcribed as a separate sealed
transcript.)

23

24

25

13534

1 (In open court:)

2 THE COURT: Okay.

3 (Jury in at 3:23 p.m.)

4
Once

THE COURT: All right, members of the jury.

5
adopt

again, we took a little longer, but this time we had to

6
to me

an expedient here because for reasons certainly unknown

7
-- this

and I think unknown to anybody here, that video -- that

8
modern

particular videotape does not seem to work on our

version 9 machinery here, so we're going back to a more primitive
the 10 of videotapes. Only you will be able to see this on
of 11 television set that's in front of you; but here again,
in the 12 course, you will consider the testimony of this witness
in this 13 same fashion as all other witnesses who have testified
14 trial.

will be 15 MR. NEUREITER: Thank you, your Honor. This
November, 16 the deposition of Roberta Kramer done on the 8th of
17 1997. I did the questioning and Mr. Goelman did the
18 cross-examination.

19 THE COURT: Thank you.

20 (Video deposition of Roberta Kramer played.)

21 THE COURT: Turn it down a little.

22 (Video deposition of Roberta Kramer played.)

would 23 MR. NEUREITER: For the record, your Honor, we
24 offer the videotape, D1874, and the unedited, certified
25 transcript of that deposition as D1874A.

1 THE COURT: All right. That will be a part of
the
2 record; and of course, members of the jury, what we're
talking
3 about here is to make the complete record; but you will
recall
4 this testimony just as you will the testimony of the
people who
5 appeared live. We don't, you know, give you the actual
6 videotape as a part of the exhibits in the case,
because that's
7 a part of considering the testimony in the same manner
as the
8 witnesses who come in here and testify on the stand.

9 MR. NEUREITER: And with respect to the
exhibits that
10 were referred to in the deposition --

11 THE COURT: They're already in, aren't they?

12 MR. NEUREITER: Actually, the first one was
not shown
13 on the videotape, so we would not offer that at that
time. She
14 just looked at it and described where she lived.

15 The second one is already in, and so nothing
more
16 needs to be done.

17 THE COURT: The picture of the lake area.

18 MR. NEUREITER: That's correct, your Honor.

19 THE COURT: We'll move the television.

20 MR. NEUREITER: If I could retrieve the
videotape,

21 your Honor.
22 THE COURT: Sure.
23 Let me just give you this note.
24 Call your next witness, please.
25 MR. TIGAR: Call Dale Kuhn, your Honor.

13536

right 1 THE COURTROOM DEPUTY: Would you raise your
2 hand, please.
3 (Dale Kuhn affirmed.)
please. 4 THE COURTROOM DEPUTY: Would you have a seat,
5 Would you state your full name for the record
and 6 spell your last name.
7 THE WITNESS: Dale Alan Kuhn, K-U-H-N.
8 THE COURTROOM DEPUTY: Thank you.
9 THE COURT: Mr. Tigar.
10 DIRECT EXAMINATION
11 BY MR. TIGAR:
12 Q. Good afternoon, Chief Kuhn.
13 Will you tell the jury, please, where you're
from. 14 A. I'm from Wellington, Kansas, at the present time.

live? 15 Q. And going back to April of 1995, where did you

16 A. I lived in Herington, Kansas.

airport? 17 Q. And did you just have a rough ride in from the

18 A. It's not too rough, but it's snowing.

19 Q. Going back --

the 20 THE COURT: Just a moment. I want to reassure

21 jury it's not a blizzard out there.

22 Okay. Please go ahead.

23 MR. TIGAR: Thank you.

24 BY MR. TIGAR:

here, 25 Q. Well, just take it easy. We appreciate your being

13537

Dale Kuhn - Direct

1 sir.

2 A. Okay.

sir? 3 Q. Back there in April of 1995, what was your job,

Kansas. 4 A. I was the public safety director at Herington,

you 5 Q. Now, we've already heard from Chief Thacker. Could

6 tell the jury what your side of the public safety

7 responsibility was in Herington back in April of 1995.

fire
all law
all

8 A. I was the chief law enforcement officer, the chief
9 officer, and chief of a 911 service. I was chief of
10 enforcement in the city, building codes, fire codes,
11 ordinances.

enforcement and
law

12 Q. And what had been your experience in law
13 public safety prior to your taking on the job of chief
14 enforcement officer of Herington?

to the
post,
investigations
and

15 A. I had -- Investigation through my career goes back
16 Wichita Fire Department as battalion chief. I had
17 investigations in fire investigations. I left that
18 worked for the state fire marshal, did some
19 there; and mainly my expertise was in the fire field
20 communications and the building codes.

21 Q. Do you know Terry Nichols?

22 A. Yes, sir.

23 Q. Do you see him here in court?

24 A. Yes, sir.

25 Q. Right over there?

Dale Kuhn – Direct

1 A. Yes, sir.

Terry 2 Q. When is the first time you can ever remember seeing
3 Nichols?

4 A. The day in April.

5 Q. That is the Friday, the 21st of April?

6 A. Yes, sir.

7 Q. Let's back up a bit. Had somebody come down to
your
8 Department of Public Safety in the afternoon to inquire
about
9 somebody named Terry Nichols?

10 A. Yes, sir.

11 Q. Did they talk to you?

12 A. Yes, sir.

13 Q. Was that Agent Stephen Smith of the FBI?

14 A. Agent Smith. I'm not positive about the first
name.
15 Q. Were you and Deputy Chief Thacker able to help him
at that
16 time?

17 A. I believe we did, yes.

18 Q. And he left the station; correct?

19 A. Yes, sir.

Nichols 20 Q. Now, do you remember about what time of day Mr.
21 arrived?

22 A. Approximately 3:00, best of my knowledge.

23 Q. And when -- where did you first see him in the
Herington

24 police station?

25 A. At the front door.

13539

Dale Kuhn - Direct

1 MR. TIGAR: I wonder if I might beg Counsel's
2 indulgence to borrow an exhibit.

3 MR. MACKEY: Sure.

4 BY MR. TIGAR:

5 Q. Showing you, sir, what's been received in evidence
as the

6 Government's exhibit -- I'm sorry.

7 MR. TIGAR: All right. It's on. Thank you.

8 BY MR. TIGAR:

9 Q. Government's Exhibit 1935. Can you point out where
it was

10 that you first saw Mr. Nichols.

11 A. It's the lobby --

12 Q. There is a pen there attached to a wire.

13 A. Okay.

14 Q. You can reach right underneath the glass and write
directly

15 on the screen, if you would, sir.

16 A. Right here at this entrance.

17 Q. And was anybody with him?
18 A. Yes.
19 Q. Who was with him?
20 A. A female and a child.
21 Q. Did you later come to know who those folks were?
22 A. Yes, I did.
23 Q. Who were they?
24 A. It was his wife, Marife -- Marife, and his
daughter; and
25 I'm not -- I don't recollect the name right now.

13540

Dale Kuhn - Direct

say to
1 Q. Now, what did -- what, if anything, did Mr. Nichols
2 you when he first approached you?
3 A. He wanted to know why his name was on TV.
TV, or
4 Q. And did he say that -- did he say both radio and
5 just TV?
6 A. He said, "Why is my name on radio and TV?"
was?
7 Q. And at that time, had he told you what his name
8 A. No, he didn't. He told me later.
9 Q. All right. Did you -- so did you ask him his name?
10 A. Yes, sir, I did.

11 Q. And he gave you his name, Terry Nichols; correct?

12 A. Right.

13 Q. Now, did he -- did you tell him that you were able
to
14 answer his questions?

15 A. No, I wasn't able to answer his questions and told
him I
16 couldn't.

17 Q. Now, did he ask you why his name was being
mentioned in the

18 media, more than once?

19 A. Yes, sir.

20 Q. And can you give us an estimate of about how many
times he

21 asked you, "Well, why is my name on the radio and
television?"

22 A. I -- I suppose three to five times, maybe more.
I'm

23 really -- I don't know. I really -- it seemed like
quite a few

24 times, so I'd say somewhere in the area of three to
five times.

25 Q. Now, did you invite him and his daughter -- Mr.
Nichols and

13541

Dale Kuhn - Direct

1 his wife and daughter into your office?

2 A. Yes, I did.

3 Q. Now, looking again, sir, at what's been received as
4 Government's 1935, can you point out with the pen which
office
5 you invited them into?

6 A. I invited him in through this door right there, in
through
7 this door here, into this officers' room.

8 Q. And Chief Thacker -- Deputy Chief Thacker has
described
9 that offices, room. That's a break room and sort of a
utility
10 room that you all have there?

11 A. It serves many purposes, yes.

12 Q. How would you describe Mr. Nichols' emotional
state? How
13 did he seem to you, sir?

14 A. He seemed frightened, scared.

15 Q. Now, did you ask him if he had any weapons?

16 A. Yes, sir, I did.

17 Q. When did you ask him if he had weapons?

18 A. About the time we walked through the first door
there.

19 Q. What did he tell you?

20 A. He said no, he didn't.

21 Q. Was he telling the truth?

22 A. From my -- yes. Later on, it proved that he had no
weapons
23 on him.

24 Q. Did you conduct some kind of a search to see if he

had any

25 weapons?

13542

Dale Kuhn - Direct

1 A. Not at that time. I had him take his jacket off
and turn

2 around and had his wife turn around and the child turn
around.

3 Q. And what did he do with his jacket, if you
remember?

4 A. I believe he laid it on the counter or a piece of
furniture

5 that's in this room.

6 Q. Just took off his jacket and laid it down and
turned around

7 for you?

8 A. Best of my knowledge, yes.

9 Q. Now, what steps did you take, then, sir, to be able
to get

10 somebody in there who could answer Mr. Nichols'
questions?

11 A. I talked to Chief Thacker to go out and see if he
could

12 find Agent Smith.

13 Q. And you saw him leave the station and go out and
try to do

14 that; is that right?

15 A. Didn't see him leave the station. I said that to
him. I

16 make an assumption that's where he went.
17 Q. He left?
18 A. Yes.
19 Q. Okay. He's already been here today.
20 A. Yeah.
21 Q. Did you eventually get a call from an FBI agent?
22 A. Yes, I did.
23 Q. Which one was that?
24 A. Best of my knowledge, I thought it was Agent Smith.
25 Q. Now, what did he say to you?

13543

Dale Kuhn - Direct

1 A. He asked, "Is everything all right?"
2 Q. How did Agent Smith seem to you as he talked?
3 A. Very calm.
4 Q. Did you assure him -- well, what did you say to him
when he
5 asked if everything is all right?
6 A. I said yes; that I have somebody here that needs
some
7 questions answered, or something to that effect; and it
dawned
8 on me what he was asking me when he asked me about is
9 everything all right.
10 And I said, "Yes, everything is okay."

11 Q. Well, what did you understand from his tone of
voice and
12 questions that you were being asked to respond to?
13 A. Probably if he had weapons.
14 Q. And what did you tell him?
15 A. That -- I don't believe we discussed weapons at
all. I
16 told him everything was all right; that it was okay for
him to
17 come in.
18 Q. And were you able to convince Agent Smith that
everything
19 was okay?
20 A. I assumed so. He came in.
21 Q. And what did you -- did you tell Mr. Nichols that
the FBI
22 was coming?
23 A. I don't believe I told him that, no.
24 Q. Now, did you tell Mr. Nichols that he and his wife
could
25 leave at any time?

13544

Dale Kuhn - Direct

1 A. Yes, sir.
2 Q. When did you tell them that they could leave at any
time?
3 A. Shortly after they came into that room.

4 Q. What did Mr. Nichols say when you said that?

his
5 A. He didn't want to leave. He wanted some answers to
6 questions.

7 Q. Did he ever tell you that he was afraid to leave?

8 A. No, he never told me that.

9 Q. Sir, I'm going to ask you: Do you remember
appearing at a
10 prior proceeding here?

11 A. Yes, sir.

12 Q. Do you remember being asked: "Did he ever tell you
he was
13 afraid to leave," and answering, "Yes, sir, he did"?

14 A. Well, I don't recall him telling me he was afraid
to leave.
15 I recall him telling me he was afraid of the FBI.

16 Q. Okay. And did he say why he was afraid of the FBI?

17 A. No, he did not.

18 Q. Now, at -- when the agents came in, did -- how many
agents
19 were there?

20 A. Three to -- two to four.

21 Q. And did the agents ask you whether Mr. Nichols had
been
22 frisked or searched?

23 A. He asked -- they asked me if he had been searched.

24 Q. And you told them no?

25 A. No. I told them that they -- that he had not been

searched

13545

Dale Kuhn - Direct

1 by a pat-down. Yes.

2 Q. Okay. And did you see them search him?

3 A. Yes.

4 Q. And did someone search Mrs. Nichols?

5 A. Yes.

6 Q. Who did that?

7 A. One of our dispatchers, Leslie Starwalt.

8 Q. Now, Leslie Starwalt -- could you describe what her

9 responsibility was in the police station?

10 A. She was a 911 dispatcher, dispatched for any
emergency

11 calls and handled administrative calls that come in.

12 Q. Would we refer to her as "Officer Starwalt" or
"Dispatcher

13 Starwalt"?

14 A. Dispatcher Starwalt. She --

15 Q. And did -- I'm sorry.

16 A. She also served as a jail matron sometimes.

17 Q. Now, Dispatcher Starwalt: Was she on duty from
that time,

18 about 3:00 in the afternoon, until after midnight?

19 A. Yes.

20 Q. She stayed all that time?

21 A. Yes, sir. I believe she did.

22 Q. Now, did you stay in the police station all through
that
23 time until about 12:30?

24 A. Not all the time. I was out a couple times. I had
25 other -- some duties I had to perform outside the
station.

13546

Dale Kuhn - Direct

1 Q. Did a number of FBI agents and other law
2 enforcement-related people eventually come to your
station
3 during the course of the evening?

4 A. Yes.

5 Q. About how many was the most of that number that you
can
6 remember being in there at any one time during that
evening
7 until shortly after midnight?

8 A. Eight, 10, 15, somewhere in that area. I'm sorry
--

9 Q. Do you recall saying about 25 on a prior occasion,
as a
10 maximum?

11 A. That would be a max, if there was that many.

12 Q. Would it be fair -- they came and went? Is that
correct?

13 There were different numbers at different times?

14 A. Yes.

15 Q. Okay. Now, did someone search Nicole Nichols?

16 A. Yes.

17 Q. Who was that?

18 A. Excuse me. Is Nicole the daughter?

19 Q. Nicole is the daughter. Marife is Mrs. Nichols.
You had

20 that right. And Matron -- or Dispatcher Starwalt
patted her

21 down; correct?

22 A. Right.

23 Q. And then did someone search Nicole?

24 A. Yes. I did.

25 Q. How did you conduct that search?

13547

Dale Kuhn - Direct

1 A. Did a pat-down around her and ran my finger around
the top
2 of her diaper.

3 Q. And you didn't find any weapons?

4 A. No, sir.

5 Q. Okay. Now, did you then look for a place where Mr.
Nichols

6 could be interviewed?

7 A. Yes.

8 Q. What -- just describe to the jury what you did to
find a

9 place that would be convenient for everybody to meet so
that

10 they all could talk.

11 A. Okay. I had a couple of the FBI agents with me,
and we

12 just went around the station on the first level to a
couple

13 offices that are at the very back in a hallway at the
very back

14 of where we was at. We checked that out for size,
whether we

15 could all -- they could all set (sic) in there. I took
them

16 out -- I believe took them out to where -- the
apparatus floor,

17 where the fire engines are kept. Perhaps they wanted
to be out

18 there.

19 We have a full-sized basement down there, went
20 downstairs, showed them. The open area we have is a
school

21 area where the firefighters have school. There is a
couple

22 desks down there, chairs. We have two evidence rooms
locked

23 up. We didn't go in there. Showed them where the rest
room

24 was at downstairs. Their decision was to use the
downstairs.

Counsel 25

MR. TIGAR: I wonder if I could borrow from

13548

Dale Kuhn - Direct

1 Government's 1936.

2 Thank you.

3 BY MR. TIGAR:

4 Q. This has already been introduced in evidence. Just
to get
Is that
5 our bearings here, this is Government's Exhibit 1936.
6 a schematic of your basement?

7 A. Yes, sir.

8 Q. And can you indicate there the area where the fire
9 department had their training that had the desks and
chairs?

10 A. There is a desk over here, and then there is a desk
and
11 computer here.

12 The chairs are all folded up over in the
corner over
13 here, so there is nothing out in this room, just this
desk here
14 and a desk over here and maybe some other weight-
lifting
15 equipment over there. And actually, the area is open.
There
16 is no chairs and tables sitting out.

17 Q. Now, did Mr. Nichols then accompany the agents
downstairs
18 into the basement?
19 A. Yes.
20 Q. Now, do you remember which agents went down there
with him
21 right at the first?
22 A. Not -- I don't remember their names. I can't
remember now.
23 I barely could then. I really don't remember. I
believe there
24 was two agents. I'm sure that I've testified before
what their
25 names were. I'm sorry. I don't remember their names.

13549

Dale Kuhn - Direct

1 Q. A long time ago, and you've done a lot of cases
since then.
2 Do you remember an Agent Price?
3 A. I believe that was one of them, yes.
4 Q. And do you -- do you remember introducing Agent
Price to
5 Mr. Nichols?
6 A. Yes, sir.
7 Q. And do you remember making the comment: "I think
this man
8 could give you some answers to your questions"?
9 A. I probably did say that, yes. I don't remember.

Price 10 Q. Okay. Do you remember what, if anything, Agent

11 responded to those questions?

I 12 A. I believe he asked, "Would you like to talk to me?"

13 believe that was all that I can recall that he might
have said,

14 and I'm not positive about that.

15 Q. And once you saw Mr. Nichols and the agents go into
that

16 basement area, were you ever down in the basement area
again

17 throughout the course of that evening?

18 A. Yes, sir.

19 Q. How many times were you down there during the
course of

20 that evening?

21 A. Best of my -- I believe maybe twice, but I'm not
positive.

22 Just maybe once.

23 Q. And what was the reason for going down there?

24 A. I took a message down from -- like a telephone
message for

25 one of the agents that was downstairs.

13550

Dale Kuhn - Direct

1 Q. Okay. And can you tell us how did that come to be?

2 What -- do you remember about when that was?

3 A. No, sir.

4 Q. And do you remember which agent it was that the
message had

5 come for?

6 A. No, sir, I can't.

7 Q. And do you remember who asked you to take the
message down?

8 A. I believe Leslie said that there was a phone
message and

9 give me the -- whatever. They was supposed to call
somebody or

10 something like that.

11 Q. Now, can you just give us an idea of how was the
operation

12 set up upstairs during the course of that evening? Who
was in

13 charge, and how were you running it to be of maximum
assistance

14 to the federal agents that were on your department
premises

15 there?

16 A. I was upstairs floating in that main hallway up
there, and

17 we'd take care of and relay law enforcement orders to
Chief

18 Thacker and would relay any fire orders I needed to a
-- I had

19 an assistant chief that was not there but was outside
there and

20 a news relay in. And I was basically in that hallway.

Herington 21 Q. Were you present when Mr. Nichols left the
22 Department of Public Safety?
23 A. Yes, sir.
24 Q. About what time was that, sir?
25 A. After 12.

13551

Dale Kuhn - Direct

the 1 Q. Were you present when Mrs. Nichols and Nicole left
2 Department of Public Safety?

her 3 A. I'm sure I was present, sir; but I don't remember
4 leaving.

just 5 Q. So you have no recollection of who she left with or
6 when it was?

moment? 7 A. I didn't know she had left until she wasn't there.
8 MR. TIGAR: Will your Honor indulge me for a

9 THE COURT: Yes.

10 MR. TIGAR: Thank you very much, Chief.

11 No further questions.

12 THE COURT: Mr. Mackey?

13 MR. MACKEY: Yes, your Honor.

14 CROSS-EXAMINATION

15 BY MR. MACKEY:

16 Q. Mr. Kuhn, tell me again what your current title is.

17 A. I'm the Sumner County E911 coordinator in Sumner
County,

18 Kansas.

19 Q. And is that principally firefighting protection and
public

20 service of that --

21 A. No, sir. It's a 911 phone service, meaning you
dial 911.

22 It has to go somewhere, so all my employees are
dispatchers who

23 we dispatch for 41 different public safety agencies in
Sumner

24 County.

25 Q. So it's emergency calls of any nature.

13552

Dale Kuhn - Cross

1 A. Yes, sir.

2 Q. When was it again that you left Herington?

3 A. October of last year, '96.

4 Q. I take it you didn't get a chance to look at the
transcript

5 from your previous testimony.

6 A. No, sir. I don't have a copy, so I didn't see it.
No.

7 Q. I won't quiz you with too many exacts, but I'll
focus our

8 attention on Friday, April 21, 1995.

9 A. Okay.

10 Q. On that particular day, you had met an FBI agent
before you

11 ever met Terry Nichols; correct?

12 A. Yes.

13 Q. Mr. -- Agent Smith, then, first and then later that
same

14 afternoon Mr. Nichols?

15 A. Yes.

16 Q. Do you have any idea based on conversation with Mr.
Nichols

17 where he had been immediately before he arrived at your
police

18 station?

19 A. No, sir, I don't.

20 Q. You don't know when he left his home or what route
he took

21 to get to your police station?

22 A. No, sir.

23 Q. All you know is he and his family came in?

24 A. Yes.

25 Q. Did he tell you before he began the interview with
the

13553

Dale Kuhn - Cross

1 agents that in the course of getting to your police
station he

2 had the feeling, the suspicion, that he was being
followed by

3 FBI agents?

4 A. No, sir, he didn't.

5 Q. In the course of the brief time that you had with
him in

6 the manner you've described, on more than one occasion,
you

7 felt the need, perhaps, to advise him that he was free
to go?

8 A. Yes, I did.

9 Q. And was that, Mr. Kuhn, a concern on your part that
10 Mr. Nichols be made aware that there was no authority,
no

11 requirement that he stay in your police station?

12 A. Absolutely.

13 Q. It was your concern that he be entirely informed
that he

14 was free to go?

15 A. Yes, sir.

16 Q. And despite you telling him on more than one
occasion, you

17 satisfied yourself it was his choice to stay?

18 A. Yes, sir, it was.

19 Q. Let me show you what's not yet in evidence, Mr.
Kuhn,

20 Government's Exhibit 2144. Take a look at the screen
down

of the 21 below you. That is a photograph that depicts the start
22 stairwell as it leads down to the basement area you've
23 described?

24 A. Yes, sir, it is.

25 MR. MACKEY: Your Honor, I'd move to admit
2144.

13554

Dale Kuhn - Cross

1 MR. TIGAR: No objection, your Honor.

2 THE COURT: It is received, may be shown.

3 BY MR. MACKEY:

4 Q. Mr. Kuhn, tell the jury what they're looking at,
please.

5 A. The picture -- the person taking the picture is
standing

6 out in the hallway that I alluded to that we came
through a

7 door prior to turning into the officers' door. There
is a

8 hallway out here. They're standing there.

9 This is our break area, or was the break area
for the

10 Herington public safety area. Over here is a microwave
--

11 sorry -- over here is a microwave, and there is a
refrigerator,

12 and this is a sink, and we keep coffee.

13 This door goes out to what I said apparatus
floor

14 where they keep fire engines and this and that.

15 This stairway goes five steps on down. It
turns again

16 and goes on down into the basement, a full basement.

17 Q. You've used this particular door that's depicted in
the

18 middle of that picture?

19 A. Have I used it?

20 Q. Yes.

21 A. Yes, sir.

22 Q. And you know you can get outside into the garage
area from

23 that door?

24 A. Yes.

25 Q. During the course of that time, Friday evening and
into the

13555

Dale Kuhn - Cross

1 evening, did you find that there were a number of
agents using

2 that door to come and go through various entryways in
your

3 building?

4 A. Yes, sir.

5 Q. Mr. Kuhn, you knew on Friday afternoon, 1995, that
you

6 would not be personally interviewing Mr. Nichols to ask
him

7 questions about the Oklahoma City bombing; correct?

8 A. Yes, sir.

9 Q. You understood that would fall to the
responsibility of FBI

10 agents?

11 A. Yes, sir.

12 Q. And you did what you could to assist in relaying,
handing

13 off, if you will, the situation to them?

14 A. Yes, sir.

15 Q. At any point in time, Mr. Kuhn, in doing so, did
you see

16 FBI agents do anything in your judgment in an
unprofessional

17 manner in their treatment of Mr. Nichols?

18 A. Absolutely not.

19 Q. Upstairs when there was the first encounter and
then later

20 in the evening as you were downstairs, did you see
anything

21 that would dispose you to say something different?

22 A. No, sir.

23 Q. On each and every occasion that you saw Mr. Nichols
in the

24 company of FBI agents, was it your assessment that he
was calm

25 and collected?

13556

Dale Kuhn - Cross

1 A. Yes, sir.

2 Q. Now, Friday afternoon, 1995, in Herington: By that
moment

3 in time, you knew, did you not, that the bomb truck
that had

4 blown up in Oklahoma City had been rented just north of
you in

5 Junction City; correct?

6 A. Yes, sir.

7 Q. And you knew, did you not, Mr. Kuhn, that Mr. Tim
McVeigh

8 had been arrested north of Oklahoma City and tied to
the

9 bombing that same day; correct?

10 A. I might have known it then. I'm not -- I'm not
going to

11 say I'm positive that I knew that at that time.

12 Q. When you described for the jury, Mr. Kuhn, that
Terry

13 Nichols in your opinion appeared frightened -- and
that's your

14 assessment. Correct?

15 A. Yes, sir.

16 Q. Do you have any idea why he appeared --

17 A. At that time, do I have an idea?

18 Q. Yes.

19 A. No, I really don't know why he was scared or
anything at

20 that time.

21 MR. MACKEY: Thanks, Mr. Kuhn.

22 REDIRECT EXAMINATION

23 BY MR. TIGAR:

24 Q. Very briefly, Chief.

25 Among the people that were there that night,
did you

13557

Dale Kuhn - Redirect

1 meet a man named "Randal Rathbun"?

2 A. Yes, sir.

3 Q. And about when did he arrive did you observe?

4 A. 8:00. I don't know. I'm sorry.

5 Q. Do you remember what his title was?

6 A. U.S. Attorney.

7 Q. And did you ever see him go in and out of that
basement

8 area?

9 A. No, sir, I didn't.

10 Q. Now, when Mr. Nichols first came in, did you ask
him for

11 identification?

12 A. Yes, sir.

13 Q. What did he give you by way of identification, if
anything?

14 A. His driver's license.

15 Q. Did you keep it, or did you give it back to him?

16 A. Sir, I don't -- I don't remember giving it back to
him.

17 The only thing I can remember is that in the positions
we were,

18 I was setting at a desk, he was setting at this same
desk in

19 the corner, and the only thing I know is I laid it down
on the

20 corner. I can't tell you whether I gave it back or
not.

21 Q. Do you remember him pulling it out of his wallet
and giving

22 it to you?

23 A. Yes, sir.

24 Q. You were asked about the behavior of FBI agents
towards

25 Mr. Nichols. How many minutes did you spend in the
basement

13558

Dale Kuhn - Redirect

1 watching the FBI's interaction with Mr. Nichols?

2 A. 4 or 5 minutes, maybe -- 2 or 3, somewhere in that
area.

3 Q. During the time that you were in the basement, did
you hear

4 them ask him any questions?

5 A. No.

6 Q. And did you hear him say anything to them?

7 A. No.

8 Q. So did you ever hear -- I'm sorry. Go ahead.

9 A. He was -- he was asked what kind of pizza he
wanted, and we

10 told him -- he told us what kind of pizza.

11 Q. Did you ask him what kind of pizza?

12 A. No, but I think I was standing down the stairway
where I

13 could hear the response back from him.

14 Q. So the only conversation you heard was a
conversation about

15 dinner; correct?

16 A. Yes, sir.

17 Q. You didn't hear any other question?

18 A. No, sir.

19 Q. All right. And you said that you had known a
number of

20 things about the investigation. Had you received that

21 information from television and radio about the arrest
of

22 Timothy McVeigh and the events that you described on
23 cross-examination?

24 A. I'm not sure I knew about McVeigh. I don't think
that's

25 what I've said. We were aware of a bombing in Oklahoma
City.

13559

Dale Kuhn - Redirect

-- at
believe
been
that
Thank
Yes.
excused.

1 We were aware of Junction City being involved. And I
2 that particular time at 3:00 in the afternoon, I don't
3 I knew much more than that.
4 Q. Did there -- did you know that any warrants had
5 issued?
6 A. No, sir, I don't (sic).
7 Q. Did you come to know at any time during the evening
8 any warrants had been issued?
9 MR. MACKEY: Objection. Calls for hearsay.
10 THE COURT: Sustained.
11 MR. TIGAR: Thank you. No further questions.
12 you very much, Chief.
13 THE COURT: Do you have some follow-up?
14 MR. MACKEY: No, sir.
15 THE COURT: I take it he's now excused.
16 MR. TIGAR: He may be excused, your Honor.
17 THE COURT: Agreed?
18 All right. You may step down. You're

with 19 MR. TIGAR: If I may have a moment to confer
20 opposing counsel.

21 THE COURT: Yes.

22 MR. TIGAR: With the consent of opposing
counsel, we'd 23 like to publish a stipulation we've reached.

24 THE COURT: Very well.

25 MR. TIGAR: "On April 21, 1995, shortly before

13560

Judge 1 4:25 p.m. Central Time, Chief United States District
Lynn 2 David Russell issued a warrant for the arrest of Terry
Oklahoma 3 Nichols as a material witness in connection with the
Oklahoma 4 City bombing investigation. The warrant was issued in
Henry 5 City based on an affidavit signed by FBI Special Agent
was 6 Gibbons. FBI Supervisory Special Agent Chornyak, who
7 overseeing the investigation in Kansas City, learned at
p.m., he 8 4:25 p.m. that the warrant was signed; and at 4:28
that 9 called FBI Special Agent Price in Herington to tell him

10 the warrant had been issued.

copy of 11 "Agent Chornyak received his first facsimile
sent a 12 the warrant from Oklahoma City at 4:45 p.m., and he
after 13 facsimile copy to Agent Price in Herington shortly
14 5 p.m."

15 THE COURT: Those facts are agreed?

16 MR. MACKEY: They are, your Honor.

17 THE COURT: All right. Thank you.

members of 18 We're going to recess a bit early today,
19 the jury, not all that early, but early. I'm sure you
we don't 20 understand that, as I have said several times before,
Some of 21 have witnesses just lined up out here in the hall.
know. We 22 these people have to make travel arrangements, as you
town, and 23 have most of our witnesses coming here from out of
some of 24 they come in with different means of transportation,
some 25 which are by the airlines; and despite somewhat -- what

13561

1 claim, there are times when airlines' schedules are

affected by

2 the weather.

because

3 And so what we're going to do is recess early

and

4 our next witnesses are not here and ready to proceed,

a matter

5 that's nobody's fault. You shouldn't think that it is

6 of faulty scheduling.

conferring

7 And of course, we are also -- I've been

running

8 with counsel all along as to our progress, and we are

tomorrow, I

9 ahead of schedule. And I'll be able to tell you

that we

10 think, just exactly what our schedule is going to be so

the time

11 won't be keeping you in uncertainty. I think that by

you what

12 that we're ready to recess tomorrow I'll be able to tell

13 to expect.

little

14 Also, it is probably of benefit to you to go a

icy out

15 earlier today. It has been snowing. I'm told it isn't

falls;

16 there yet, but it could get that way as the temperature

17 so we, of course, want you to have safe trips to your

18 respective residences.

not only

19 So we have more to go. You will hear more,

20 with respect to additional witnesses and their
testimony and
21 additional exhibits, but of course as I have told you
22 repeatedly, there are other parts of the trial besides
the
23 taking of the evidence, being the arguments and the
24 instructions.

25 So until such time as I tell you, "Now is the
time to

13562

1 deliberate in the case," you have to follow these
cautions and
2 keep open minds. And I know that it's human nature
when you
3 hear that we're getting closer to wonder, "Well, what
do I make
4 of all of this?" Please don't do that. It would be a
5 violation of your oath actually to do that, because you
are
6 obligated under the law to not begin deliberations
until you've
7 heard all of the evidence. The arguments and the
instruction
8 and those things are all vital and integral part or
parts of
9 the trial.

10 So I'm sure you will cooperate with us in that
regard,

11 keeping open minds, avoiding discussion of the case
with other
12 jurors and with all other persons and being especially
careful,
13 as I'm sure you have been, of anything in any
newspapers,
14 magazines, radio, television, or publications of any
kind, to
15 stay away from anything that might relate to the issues
to be
16 decided.

17 You're excused now till 8:45 tomorrow morning.
18 (Jury out at 4:24 p.m.)

19 THE COURT: Okay. We'll be in recess.
20 (Recess at 4:25 p.m.)

21 * * * * *

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24
25

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21 DEFENDANT'S EXHIBITS

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11 * * * * *

12 REPORTERS' CERTIFICATE

13 We certify that the foregoing is a correct
transcript from

14 the record of proceedings in the above-entitled matter.
Dated

15 at Denver, Colorado, this 9th day of December, 1997.

16

17

Paul Zuckerman

18

19

Bonnie

Carpenter

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23

24

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