

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERRY LYNN NICHOLS,

Defendant.

REPORTER'S TRANSCRIPT

(Trial to Jury: Volume 67)

PROCEEDINGS BEFORE THE HONORABLE RICHARD P. MATSCH,

Judge, United States District Court for the District of Colorado, commencing at 8:45 a.m., on the 7th day of November, 1997, in Courtroom C-204, United States Courthouse, Denver, Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription  
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APPEARANCES

PATRICK RYAN, United States Attorney for the Western District of Oklahoma, 210 West Park Avenue, Suite 400, Oklahoma City, Oklahoma, 73102, appearing for the plaintiff.

LARRY MACKEY, BETH WILKINSON, GEOFFREY MEARNES, JAMIE ORENSTEIN, and AITAN GOELMAN, Special Attorneys to the U.S. Attorney General, 1961 Stout Street, Suite 1200, Denver, Colorado, 80294, appearing for the plaintiff.

MICHAEL TIGAR, RONALD WOODS, and JANE TIGAR, Attorneys at Law, 1120 Lincoln Street, Suite 1308, Denver, Colorado, 80203, appearing for Defendant Nichols.

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PROCEEDINGS

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

THE COURT: Be seated, please.

Good morning.

ALL: Good morning, your Honor.

THE COURT: Ready to proceed?

MR. MACKEY: Yes, your Honor.

THE COURT: Okay.

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

THE COURT: Members of the jury, good morning.

JURY: Good morning.

THE COURT: You recall we were hearing testimony from FBI Agent Jasnowski when we recessed. We'll resume her testimony now.

Please resume the stand under your oath.

(Mary Jasnowski was recalled to the stand.)

THE COURT: Mr. Mearns, you may proceed.

MR. MEARNS: Thank you, your Honor.

DIRECT EXAMINATION CONTINUED

BY MR. MEARNS:

Q. Agent Jasnowski, when we recessed yesterday afternoon, you had just finished showing us the diagram of the house and the garage/storage-room structure in the back; right?

A. That's correct.

Q. You also said that before you went in to diagram the interior of the house, you directed someone to take photographs of the exterior of the property; is that correct?

A. Yes, that's correct.

Q. And were you present when those photographs were being taken?

A. Yes, I was.

Q. What I'd like you to do is look into your folder for Government Exhibit 1778.

A. Yes.

Q. Do you recognize that?

A. Yes, I do.

Q. What are those?

A. These are the photographs taken that evening of the

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exterior of the premises at 109 South 2nd Street.

Q. And how many photographs are in that group exhibit?

A. There are 12.

Q. And do those photographs fairly and accurately depict what the outside of the house and the garage looked like on April 22?

A. Yes, they do.

MR. MEARNS: Your Honor, we would offer the group exhibit, Government Exhibit 1778.

MR. TIGAR: Your Honor, we have no objection. I don't

want to interfere with counsel's thing. He's got a lot of photographs that were taken. I've looked at the witness list. We consent to all of them. If he just wants to read the numbers, he can publish them.

THE COURT: All right. Let's do that. That will save

time. This first group is 1778; is that right?

MR. MEARNS: Yes.

THE COURT: Consisting of 12 photographs.

MR. MEARNS: That's correct.

THE COURT: All right. They're received.

MR. MEARNS: We would offer 1767, which is a group exhibit of nine photographs.

MR. TIGAR: No objection.

THE COURT: Those are received.

MR. MEARNS: 1770, which is a group exhibit of six

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photographs.

MR. TIGAR: No objection.

THE COURT: 1770, that's received.

MR. MEARNS: 1771, which is a group exhibit of eight photographs.

MR. TIGAR: No objection.

THE COURT: Received.

MR. TIGAR: May I remain seated --

THE COURT: Yes, you may.

MR. TIGAR: -- while I'm saying this so I may look at the list?

MR. MEARNS: 1772, which is a group exhibit of 13 photographs.

MR. TIGAR: No objection.

THE COURT: Received.

MR. MEARNS: 1769, which is a group exhibit of ten photographs.

MR. TIGAR: No objection.

THE COURT: Received.

MR. MEARNS: 1773, which is a group exhibit of 15 photographs.

MR. TIGAR: No objection.

THE COURT: They are received.

MR. MEARNS: 1774, which is a group exhibit consisting of . . .

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MR. TIGAR: 11.

MR. MEARNS: 11 photographs, thank you.

MR. TIGAR: No objection.

THE COURT: All right. Received.

MR. MEARNS: 1775, which is a group exhibit consisting of 13 photographs.

MR. TIGAR: No objection.

THE COURT: They are received.

MR. MEARNS: 1776, which is a group exhibit of six photographs.

MR. TIGAR: No objection.

THE COURT: They're received.

MR. MEARNS: 1777, which is a group exhibit of seven photographs.

MR. TIGAR: No objection.

THE COURT: They are received. All right.

MR. MEARNS: With that, your Honor, what we would like to do is just publish some of the photographs from each of those groups.

THE COURT: All right.

BY MR. MEARNS:

O. Beginning with 1778. Photograph No. 1.

2. Beginning with 178, photograph no. 1.

A. Yes.

Q. Describe for us what we see in that photograph, please.

A. This is a view of the front entrance of the residence at

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109 South 2nd Street. There's the front.

Q. And in the foreground, we see a yellow tape or a ribbon. What is that?

A. It's a police barrier to keep people who are not authorized to be on the premises away.

Q. And was that barrier or tape there when you arrived on April 22?

A. Yes, it was.

Q. Photograph No. 2, please. What is this, Agent Jasnowski?

A. This is the side view from the driveway. This is the door that we entered through.

Q. That is the door on the left with the awning over the top?

A. Yes.

Q. You did not go in and out of the front door off of the porch that evening?

A. We did, but our main entryway was through the door off of the driveway.

Q. Photograph No. 4, please. What is this?

A. I'm sorry. This is an entrance to the garage. This is the storage room here, entrance.

Q. And which direction are we looking at it, coming from the house, or coming from behind the property?

A. This is coming from the house, heading towards the west.

Q. And that is a door that enters into the storage room?

A. Yes. Of the garage.

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Q. Photograph No. 6, please. What is that?

A. This is the rear of the garage. You can see the auto garage door. This is looking at it from the alleyway.

Q. And is that the way in which you could get a car or a pickup truck, a vehicle into the garage is from the rear?

A. That's correct.

Q. Photograph No. 8, please. What is that?

A. These are some garbage cans that were located to the west of the garage near the alleyway.

Q. And when you say "the west," that's towards the back of the house?

A. That's correct.

Q. Behind the garage?

A. Yes.

Q. Photograph No. 12, please. What is --

A. These are -- I'm sorry.

Q. What is that?

A. These are the front steps, the front door is right here.

Q. And when you arrived on April 22, did you see anything on those steps?

A. Yes, there were small, white prills on those steps.  
Q. When you entered the house, what was the first room that you photographed and sketched from the interior?  
A. The first room that we photographed was the living room, from the interior.

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MR. MEARNS: And I'd like to proceed with 1767, Photograph No. 1, please.

BY MR. MEARNS:

Q. What is that?

A. This is the living room looking towards the front door.

Q. That's the front door that's off of the porch?

A. Right.

Q. Photograph No. 2, please.

A. This is standing towards the area of the front door looking towards the area where the driveway would be.

Q. So the front door would be -- the front of the house would be to your left?

A. Yes, the front of the house is here.

Q. And Photograph No. 5, please. What is that?

A. This is a dining area within the living room, looking back towards the direction of the kitchen, towards the west of the house.

Q. Was that the condition of that area of the house when you entered on April 22?

A. Yes, it is.

Q. What was the next room that was sketched and photographed?

A. We did the master bedroom, or Bedroom 1 as we described it.

MR. MEARNS: And if we could then have Exhibit 1770, Photograph No. 1, please.

BY MR. MEARNS:

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Q. What is that?

A. This is looking in from the living room into the master bedroom.

Q. What is to your right there?

A. To the right would be the front door.

Q. So now your back is towards the driveway?

A. Right.

Q. And Photograph No. 2, please. What is that?

A. Again this is from the doorway -- from the living room looking into the master bedroom. It's a dresser there.

Q. What was the next room that was photographed?

A. The next room that was photographed was the second bedroom, the guest bedroom.

MR. MEARNS: If we could have Exhibit 1771, Photograph No. 1, please.

BY MR. MEARNS:

Q. What is that?

A. This is again looking from the living room into the second bedroom.

Q. Where is the -- reorient us, if you can, where the second bedroom in relation to the first bedroom?

A. It's just immediately to the west to the first bedroom. Adjacent, next to it.

Q. And that's towards the back of the house?

A. Yes.

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Q. And Photograph No. 2, please.

A. This is the bed in the second bedroom.

Q. And was that the condition of the room when you entered on April 22?

A. Yes.

Q. What was the next room that you photographed?

A. There was laundry room leading off of the second bedroom.

MR. MEARNS: 1772, please. Photograph No. 1.

THE WITNESS: Yes.

BY MR. MEARNS:

Q. What do we see in that photograph?

A. This is looking into the laundry-room area from the second bedroom.

Q. Photograph No. 2, please. What is that?

A. This is a curio cabinet that was located in the laundry room, looking into -- towards the bathroom.

Q. And is this laundry room -- is now towards the back of the house behind the second bedroom?

A. Yes, it is.

Q. And if you continue back, that's when you get into the bathroom on the first floor?

A. That is correct.

Q. What was the next room that was photographed?

A. The bathroom.

Q. And then did you proceed to photograph the kitchen?

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A. Yes, I did.

MR. MEARNS: If I could have 1769, Photograph No. 1, please.

BY MR. MEARNS:

Q. What is that?

A. This is the kitchen looking from the laundry room.

Q. Photograph No. 2, please.

A. This is a cabinet area within the kitchen. It's towards the rear door. Looking at it from the area of, say, the refrigerator.

Q. Photograph No. 6, please. What is that?

A. This is the sink. It's against the wall. Bathroom is directly behind the sink area.

Q. And Photograph No. 8, please.

A. Again, this is the kitchen. The refrigerator is to the

A. Again, this is the kitchen. The refrigerator is to the left, and to the left of there is the door leading out to the storage area and to the driveway.

Q. Were those cabinets open when you arrived on April -- when you entered the house on April 22?

A. No, they were not.

Q. Who opened those cabinets for this photograph?

A. The photographer.

Q. There's food on the counter there, on the stove and on the counter. Was that food there when you entered on April 22?

A. Yes, it was.

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Q. What was the next room that you photographed?

A. We went into the storage or pantry closet off of the kitchen, leading towards the driveway.

MR. MEARNs: If I could have 1773, Photograph No. 1, please.

BY MR. MEARNs:

Q. What is that?

A. This is the pantry, storage area. There's shelving and there you can see the stairway leading down to the driveway.

Q. That is just where you put that little X there?

A. Yes.

Q. Is this the first room that you enter when you come in off that second door off of the driveway?

A. Yes.

Q. Photograph No. 8, please. What is that?

A. These are some ammunition boxes, ammo boxes that we were -- that are in that storage room. The kitchen is back this way.

Q. And Photograph No. 12, please. What is that?

A. These are some boxes with papers and other things that were located within that storage room.

Q. And then you went down into the basement storage area?

A. No, then we went into the furnace/basement area.

MR. MEARNs: If we could have Exhibit 1775, please.

THE WITNESS: Right.

BY MR. MEARNs:

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Q. What is --

A. This is the door off of the laundry room leading down into the furnace area.

Q. And I can't see the exhibit. Is that Photograph No. 2?

A. That's No. 1.

Q. Could we have Photograph No. 2, please. What is that?

A. These are the stairs leading down into the furnace area.

Q. And then did you proceed into the basement storage area to photograph?

A. Yes, we did.

MR. MEARNs: Could I have 1774, Photo No. 1, please.

THE WITNESS: These are the stairs leading down into the basement storage.

BY MR. MEARNS:

Q. What was located in that basement storage area?

A. There were all kinds of things that were in the basement storage area.

Q. What happened after this initial entry phase; that is, photographing and sketching? What did you do after this phase of the search was complete?

A. Well, once the chemical analyses were completed, we decided to have the search team enter; and I made the assignments as to who would start at what area, and the search began.

Q. And approximately what time did that search begin?

A. Approximately 7:00 p.m., I called everyone in.

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Q. And about how many agents were in the house actually searching the house?

A. Approximately 15.

Q. What did you do during that phase of the search?

A. During that phase, I basically made the assignments, assisted people in setting up, made sure that they had adequate supplies to use, answered any questions that arose.

Q. At any time during the execution of the search warrant, did you actually take custody of evidence?

A. Yes, I did.

Q. Explain that process, please.

A. When we seize evidence, the seizing agent will take that item and package it; and in packaging it, they will list the file number, the date, the item number. There's a system that we set up, and they would put their initials on it. And then I would accept custody from them, as the custodian of the evidence, and I would cross initial that evidence.

Q. By "cross initial," you mean you'd put your initials on it as well?

A. Yes.

Q. What happened with the evidence as it began to accumulate during the search?

A. Well, when it got to be a hindrance to our search, we would take it and -- take it outside and put it in an Army vehicle that had been provided to us for transport of the evidence.

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Q. Was that vehicle being guarded by anybody?

A. Yes, there were FBI personnel outside plus there were -- actually, the people who were driving it were two Army -- Army personnel who were also there.

Q. Approximately how long did it take to complete the search of Mr. Nichols' house?

A. The house itself, I believe it was finished approximately 1 a.m.

Q. At some point during the search of the house, did you participate in photographing and sketching of the structures, the garage, and the storage in the back?



A. Yes.

Q. About when did you do that?

A. I would say between 8 and 9.

Q. Did anyone assist you in that?

A. Well, the photographer was Eugene -- or Andrew Grindstaff, and he was assisted by Sonya Hernandez, who served as his log keeper, and I made the sketch while we did that.

MR. MEARNS: And, your Honor, we would offer, pursuant to the same procedure if it's acceptable to counsel, the photographs of those two structures, which there's a group exhibit of 1776 and 1777. 1776 consists of six photographs, 1777 consists of seven.

MR. TIGAR: I thought 1776 was in.

MR. MEARNS: I may have listed them before.

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THE COURT: Yes, 1776 and 1777 were received by agreement.

MR. TIGAR: Well, then, we still consent. Thank you, your Honor.

MR. MEARNS: Could I have 1776, Photograph No. 1, please.

BY MR. MEARNS:

Q. What do we see in this photograph?

A. This is the entrance into the storage room of the garage, from the house.

Q. So you're standing outside that storage area?

A. That's correct.

Q. And Photograph No. 2, please. What is that?

A. This is inside that storage room, and that's against -- these are ammunition boxes that are against the wall, the west wall of that storage unit.

Q. And Photograph No. 6, please.

A. This is a --

Q. What is that?

A. This is a Michigan license plate that was found in that room on a crate there.

Q. Orient us to the photograph. Is it resting on the crate, or is it nailed to the crate?

A. Oh, no, it's resting on it. This is a side picture.

Actually it should be turned for it to be the actual way it

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was.

Q. And could you just for the record read what the license plate is?

A. It's Michigan, it's WX1460.

Q. On the witness stand, you have what is in evidence as Government Exhibit 83A and -- Government Exhibit 86.

A. 83 and 86?

Q. Yes. I'm sorry, 83, not 83A. 83.

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A. Yes.

Q. Those are motel registration cards. Do you see that?

A. Yes, I see that.

Q. Beginning with 83, could you read the name that's listed there and the license plate, the vehicle license plate.

A. It says, "Name: Terry Havens." "Car License: WX1640."  
"State: Michigan."

Q. And then with Exhibit 86, please.

A. "Name: Joe Havens." "License: WY" -- or "WX1640."  
"State: Michigan."

Q. Did you then proceed to photograph the garage?

A. Yes.

MR. MEARNS: And if we could have 1777, Photograph

No. 1.

BY MR. MEARNS:

Q. Would you tell us what's in that photograph, please.

A. This is the door from the storage area looking into the

Mary Jasnowski - Direct

auto part of the garage.

Q. And Photograph No. 4, please. What is that?

A. This is a crate that was located on the south wall of that auto garage.

Q. And what was found on top of that crate?

A. Well, that's a fuel meter on top of the crate. And there's other tools there as well.

Q. And Photograph No. 5, please.

A. That's the bathroom that was in the auto garage on the north wall.

Q. About how long did it take to photograph the garage and the storage area?

A. Approximately 20 to 30 minutes.

Q. After that process was completed, did you go back to the house to continue to assist in the search of the house?

A. Yes, I did.

Q. After that search was complete, did you assign agents to assist you in actually searching this garage and storage area?

A. Yes, I did.

Q. And did you also supervise this search?

A. Yes, I did.

Q. About what time was the entire search of both the house and the garage -- what time was that completed?

A. Approximately 4 a.m.

Q. What did you do then?

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A. Well, I instructed the photographer to make exit photographs of the premises. When that was completed, I dismissed my team. I went and made -- to the Herington Public Safety Building, leaving agents still in control of the premises, where I made copies of the search warrant and our inventory, which I brought back to the residence to leave for Mr. and Mrs. Nichols.

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Q. Let me ask you a couple of questions about that. You said you instructed someone to take exit photos?  
A. Yes, I did.  
Q. Was that Mr. Grindstaff?  
A. Yes, I did.  
Q. Were you present when those exit photos were taken?  
A. Yes, I was.  
Q. What was the purpose of taking those exit photos?  
A. Well, it's pretty standard procedure. We would do that to indicate the condition of the premises as we found it. They could be compared with our entry photographs, in case someone filed a claim to say that something was taken or broken or whatever.  
Q. And you said that, then, you made copies of inventories?  
A. Yes, I did.  
Q. What are those inventories? What do they reflect?  
A. The inventories reflect all the items we seized pursuant to the warrant.

Mary Jasnowski - Direct

Q. And where did you take those inventories?  
A. I took them to the Herington Public Safety Building. It was the nearest place that had a copying machine so I could leave a copy for the Nichols.  
Q. Did you go back and leave a copy in the residence?  
A. Yes, I did.  
Q. What did you do with the actual evidence that had been accumulated and placed in the truck?  
A. The evidence that -- we had loaded everything up onto the truck. It was driven -- an FBI agent accompanied the military people who were driving the vehicle to the Herington police station, and I observed it enter within the fire truck entrance of the police station as I was doing my copying. So I saw it there.  
Q. Did there come a time after April -- well, I guess we're talking about 4:00 in the morning on April 23; right?  
A. That's right.  
Q. Did there come a time either later that same day or the day after when you with someone else photocopied all of the documents and papers that were taken from Mr. Nichols' residence?  
A. Yes.  
Q. Tell us about that, please.  
A. Well, we were asked to photocopy any documentary evidence we had discovered for lead purposes, and I assigned one of the

Mary Jasnowski - Direct

agents to segregate from each item those items of documents; and later that day, when we had returned to the Fort Riley command post, that agent and I transported those documents over to the headquarters at Fort Riley, and we photocopied those items.

Q. Who was the agent that assisted you?

A. G. William Nellis.

Q. Did you photocopy every piece of paper and document that came from the house on April 22 and April 23?

A. With some exceptions.

Q. What were those exceptions?

A. There were -- with some of the coins that we recovered, there was a receipt, and I made the decision not to photocopy that because I did not want to tamper -- not tamper with it, but to contaminate it or something with fingerprints.

MR. MEARNS: I have no further questions, your Honor.

THE COURT: All right. Mr. Tigar.

CROSS-EXAMINATION

BY MR. TIGAR:

Q. Hello again, Agent -- Jas-now-ski?

A. Yes, that's correct.

Q. Am I pronouncing it correctly?

A. Yes.

Q. Thank you. This is cross-examination. When you were at Notre Dame law school, did you take a course from Professor

Mary Jasnowski - Cross  
Seckinger?

A. Yes, I did.

Q. So you know what cross-examination is?

A. Yes, I do.

Q. Well, I want to start by asking you some questions about how you all got there to the house, what you did before. Had you -- were you aware that an S-I-O-C had been set up?

A. A SIOC?

Q. Yes.

A. There was one -- I was aware that there was one at our headquarters, yes.

Q. Yes, at FBI headquarters.

A. Yes.

Q. Now, when you got to Herington, were you in contact with the SIOC?

A. Yes, I was.

Q. What does SIOC stand for?

A. I'm not exactly certain, special investigation operations, something like that.

Q. Something like that?

A. Yes.

Q. Did you talk to the personnel of the government who were at the SIOC in Washington?

A. Some of them, yes, I did.

Q. Did you talk to Mr. Shapiro?

Mary Jasnowski - Cross

A. No, I did not.

Q. Did you talk to lawyers that were there?

A. No, I did not.  
Q. You were talking to other agents; right?  
A. Right. People at the laboratory division.  
Q. Okay. When you got to Herington -- I'm trying to trace your movements. First you went to the Fort Riley command post; is that right?  
A. Yes.  
Q. And then you were told to go to Herington?  
A. The next day, yes.  
Q. The next day. And that day you had a briefing as to what you were to do; correct?  
A. That's correct.  
Q. Who conducted the briefing?  
A. Assistant Special Agent in Charge Dale Watson.  
Q. And did you participate in briefing the agents who were there?  
A. I briefed my team. I didn't brief the rest of the agents, no.  
Q. When you say "your team" as distinct from the rest of the agents, was your team the one that was going to search Mr. Nichols' house?  
A. Yes, that's correct.  
Q. Now, there was a time when you were asked to do some

Mary Jasnowski - Cross  
plaster casts; correct?

A. That's correct.  
Q. But that was called off; correct?  
A. That's correct.  
Q. When were you asked to do the plaster casts?  
A. Upon arriving at Herington, approximately noon or one.  
Q. On the 22d?  
A. Yes.  
Q. And that was a Saturday?  
A. Yes.  
Q. Now, what was the weather like on the 22d?  
A. It was cloudy and cold and windy.  
Q. Had it been raining?  
A. At that time I don't believe it had been. It didn't begin to rain until later.  
Q. And when did it start to rain?  
A. I would say about 3:00 the following morning.  
Q. At 3 -- by 3:00 the following morning, do you know whether or not Agent Bodziak had arrived?  
A. Yes, I was told that he had.  
Q. Had he taken his casts by the time it started raining?  
A. I believe he had.  
Q. But you're not sure, but you believe that?  
A. I didn't witness him do that, no.  
Q. I understand. Had it rained -- from what you could see on

Mary Jasnowski - Cross  
the ground around. had it rained the day before?

the ground around, had it rained the day before.

A. It's possible. I couldn't tell.

Q. Now, this briefing you had before you went in the house, did that briefing include consideration of the safety of the searching personnel?

A. Yes, it did.

Q. Because this was a bomb investigation?

A. Correct; that's correct.

Q. And you would be concerned to know whether or not there were things in the house that might injure your people.

A. That's right.

Q. Did you have a report from the agent -- from anyone -- about a conversation that they had had with Mr. Nichols on the subject of the safety of the searching agents?

A. I don't recall. Whether they communicated what Mr. Nichols said. Or -- information was given. I didn't know what the source of that information was.

Q. Okay. Did you -- well, without getting into too much detail about this, were you told that somebody had said that there just weren't any booby traps or things like that in the house?

A. I don't recall someone saying that, no.

Q. Now, you've mentioned that you had a warrant; correct?

A. Yes.

Q. And that warrant had been obtained by Agent Scott Crabtree?

Mary Jasnowski - Cross

A. Yes.

Q. And had been signed by a judge; right?

A. A magistrate, yes.

Q. Were you aware that Mr. Nichols had been in the Herington police station the day before?

A. I believe I knew he was there because his vehicle was still there.

Q. And were you aware that Mr. Nichols had been asked to stay with the government as a material witness?

A. I wasn't aware of that at the time.

Q. Okay. You knew he wasn't at home?

A. Yes, I knew he wasn't at home.

Q. Now, you mentioned towards the end of your direct examination that it is your practice when a search is finished to have an inventory of what is taken that is left for the household?

A. That is correct.

Q. Now, there was no one at home during your search, was there?

A. No, there was not.

Q. Do you know where Mrs. Nichols was?

A. At the time I wasn't sure where she was, no.

Q. You just knew she wasn't at home?

A. Right.

Q. Your information was that no one would be at the Nichols

Mary Jasnowski - Cross

home.

A. That's correct.

Q. Now, in addition to wanting to know about the safety of the searching agents, you were -- you knew that one of the things you'd be looking for were guns and ammunition; correct?

A. Yes.

Q. You knew that -- did you know -- was it your information that Mr. Nichols was in the business of selling guns and ammunition?

A. No, I didn't know that.

Q. By the way, the ammunition cans that we saw so many pictures of, they didn't have any ammunition in them, did they?

A. In those specific pictures they didn't, but I believe there were ammo cans with --

Q. There were some ammo cans. I'm talking about the big stacks of ammo cans.

A. In the outside --

Q. In the outside shed.

A. No, there was no ammo in those cans.

Q. Those are military surplus ammo cans; correct?

A. If you say so. They look like ammo cans to me.

Q. Ammo cans. And you also saw picks there?

A. I'm sorry?

Q. Did you see picks, you know --

A. Yes.

Mary Jasnowski - Cross

Q. Picks. You saw shovels?

A. Yes.

Q. A lot of picks.

A. Yes.

Q. A lot of shovels.

A. Yes.

Q. A lot of saws.

A. Yes.

Q. Did you see nails?

A. Yes.

Q. A lot of nails, okay. Did you have a -- did someone show you a sketch plan of the house --

A. No.

Q. -- before you went in?

A. No, they did not.

Q. Have you, between that time and today, seen a sketch plan of the house prepared by Mr. Nichols?

A. I -- yes, I have. Well, not by him. I've seen the one that was prepared by . . . I'm not even certain who prepared it. I've seen another sketch other than the one that I've prepared -- or my team prepared.

Q. I'd like to show you what I have marked as Defendant's Exhibit 1627.

MR. TIGAR: May I approach, or perhaps Mrs. Hasfjord.

THE COURT: Yes.

Mary Jasnowski - Cross

MR. TIGAR: All right. I'm permitted to.

BY MR. TIGAR:

Q. Ask you if you have ever seen that before?

A. No, I have not.

Q. All right. So is it your testimony that no one told you prior to the time you went to Mr. Nichols' house that Mr. Nichols had made a sketch of his house?

A. I don't recall them telling me that, no.

Q. Did anyone tell you that Mr. Nichols had marked where his guns and ammunition were in his house?

A. No.

Q. And when I say "no one," I mean that nobody on the search team said, Well, we're going to go look for these guns and Mr. Nichols told us where they are?

A. I believe upon entry, one of the ATF agents who had been in the protective sweep made a mention that they had seen a gun in the house, but that's the only mention of guns that I recall.

Q. That's the only mention. So you've never seen this document?

A. No, I have not.

Q. Did -- were you told that -- on the 21st that Mr. Nichols had signed a consent to search his house?

A. I believe I had heard that.

Q. So you knew -- and there is a standard FBI form, is there not --

Mary Jasnowski - Cross

A. Yes, there is.

Q. -- for a consent to search? Had you seen that document that evening?

A. No, I did not.

Q. Prior to entering the house?

A. No.

Q. Have you seen it since then?

A. No, I have not.

Q. So it wouldn't do me any good to show one to you, would it?

A. No, it wouldn't.

Q. Okay. Now, the 22d when you went in there was not the last time that the FBI was in the house, was it?

A. No, it's not.

Q. In fact -- well, you went in again -- did you participate in later searches of the house?

A. Yes, I did.

Q. Okay. And to your knowledge, when was the last time that the FBI was in there, in the house?

A. Well, from my team, the last time someone was in there was, I believe, the 24th, but I know that the Kansas City division went in again. I'm not certain when.

Q. They went in on a number of other occasions?

A. I don't know how many.

Q. Do you know an Agent Earl?



Q. DO YOU KNOW AN AGENT ELLI?

A. I've heard the name.

Mary Jasnowski - Cross

Q. When you went into the house, you had a team of people; correct?

A. Yes, I did.

Q. And that would -- if I can just read off the names here, you had Steven Burmeister; correct?

A. Yes.

Q. Ronald Kelly?

A. Yes.

Q. Were you at any time with any evidence recovery people at the Geary Lake state fishing park?

A. No, we were not.

Q. Okay. All right. You had Andrew Grindstaff with you; correct?

A. Yes.

Q. The photographer.

Mr. Hupp?

A. Yes.

Q. From Washington. Yes?

A. Yes.

Q. Agent Williams?

A. Yes.

Q. Agent Nellis?

A. Yes.

Q. Agent Tucker?

A. Yes.

Mary Jasnowski - Cross

Q. Agent Thomas?

A. Yes. Well, she's not an agent.

Q. I'm sorry. Photographer Thomas?

A. Yes.

Q. Evidence Control Technician Hernandez?

A. Yes.

Q. Agent Tongate?

A. Yes.

Q. And that's the gentleman right here?

A. Yes, it is.

Q. Agent Meredith?

A. Yes.

Q. Agent West?

A. Yes.

Q. Agent Scott?

A. Yes?

Q. Agent Hillman?

A. Hillman, yes.

Q. Photographer Sandrige.

A. Yes.

Q. And yourself; correct?

A. Yes.

- Q. Plus you had people from ATF; correct?  
A. Yes, Mr. DeNardi.  
Q. And you had someone from CID, Army CID?

Mary Jasnowski - Cross

- A. They were not in the search. He was on the premises.  
Q. That was Mr. Sonz-Agero?  
A. Yes.  
Q. And then you had some other Army personnel?  
A. Right. And Mr. Hillman didn't participate in the search, either. He was just on the premises.  
Q. And you were in charge?  
A. Yes.  
Q. Now, in order to take your evidence to FBI Laboratory, you had to have a conveyance; correct?  
A. That's correct.  
Q. Or to wherever were you were going to take it?  
A. Yes.  
Q. And that was provided by the Army?  
A. Yes, it was.  
Q. Now, before you started your search, did you inspect the Army vehicle that had been brought?  
A. I looked at it, but I didn't inspect it in any way.  
Q. Uh-huh. Had it been power-washed, swabbed down, or cleaned?  
A. I wasn't aware of it, if it had been.  
Q. All right. So you have no knowledge of that?  
A. No.  
Q. Now, you mentioned in direct examination that you and the other agents wore some kind of protective clothing; right?

Mary Jasnowski - Cross

- A. Yes.  
Q. Now, is that locally called bunny suits?  
A. People have called it that, yes.  
Q. People have -- all right. And that's designed to protect the evidence; correct?  
A. Right.  
Q. It's called that because it makes you look like Peter Rabbit or something like that?  
A. True, yes, it does.  
Q. All right. Now, when you got in the house, you also put gloves on; correct?  
A. Oh, absolutely, yes.  
Q. And these gloves were standard-issue evidence-recovery gloves; right?  
A. Well, they're just rubber gloves.  
Q. Rubber gloves. Lined with talc?  
A. Some of them were; some of them weren't.  
Q. Did you make any distinction in the work you were doing as to which agents were to receive gloves lined with talc and which agents were?

A. No, I did not.

Q. Okay. Do you know what talc is made of?

A. No, I don't.

Q. In your search, were you directed to look for papers that concerned someone named Parker?

Mary Jasnowski - Cross

A. I don't recall that name.

Q. Were you directed to look for someone named Kyle?

A. I don't recall that name.

Q. When you say you don't recall that name, did anyone tell you that Mr. Nichols said that he had rented storage sheds in the names of Parker and Kyle during the time that he had been interviewed by the police officers or by the FBI agents at the Herington station there?

A. No, I hadn't been told that.

Q. Okay. I want to review, if I can, some of the pictures that you looked at here.

It says on.

This is 1767, No. 6?

A. Yes.

Q. If we could look here. And if we zoom in, we see a box from Kinko's; correct?

A. Yes.

Q. And what is in the box?

A. Business cards, is what it says on the outside.

Q. And is there one of those business cards pasted on the end?

A. Yes, it is.

Q. And whose name is there in big letters?

A. Terry Nichols.

Q. Okay. And next to that is a bag that also appears to be from Kinko's; correct?

Mary Jasnowski - Cross

A. To the right or to the left?

Q. To the left, it says -- and you can just see the O apostrophe S, and so on?

A. I can't see it.

Q. Let's zoom out a little more there.

A. Oh, I see it.

Q. Can you see that?

A. Yes. Yes.

Q. And you recognize that as some part of Kinko's logo?

A. Yes.

Q. And that you say was in the dining room; is that correct?

A. Yes.

Q. Did this appear to you to be just somebody's business papers?

A. Yes.

Q. Spread out there on the table?

A. Yes.

Q. Now, during the time that you were in the dining room, did you

Q. Now, during the time that you were in the house, did you seize a book called Hunter?

A. I don't believe we did.

Q. And in fact, when you were being shown pictures, you were shown a picture that included a Quaker State box; correct?

A. Yes.

Q. Do you remember that picture?

A. Yes.

Mary Jasnowski - Cross

Q. That would be 1773, No. 12.

I don't happen to have it here, but we all remember it. It's the Quaker State box; right?

Could you just hold that up for the jury. They've seen it with another witness, and just to remind everybody what it is.

A. No. 12 isn't here. I have 11 --

Q. Well, maybe I've got the wrong note here. Then I'll apologize to you for that.

THE COURT: Mr. Mearns, can you help us as to which that is.

MR. MEARNS: We could switch to the computer and put it on.

MR. TIGAR: Oh, you could? Thank you. I would appreciate that.

Here it is.

BY MR. TIGAR:

Q. I thought it was No. 12.

A. Yes, now I see it.

Q. Now we see it on the screen.

A. Yes.

Q. Do you remember seeing that box on the 22d?

A. I don't remember on the 22d seeing it, but now I see it, yes.

Q. But at any rate, you didn't take -- you didn't get any book

Mary Jasnowski - Cross

called Hunter at any time during your search, did you?

A. No.

Q. And/or -- were you aware, if you saw that box on the 22d, even what was in there?

A. I -- no, I wasn't aware.

MR. TIGAR: Thank you very much.

BY MR. TIGAR:

Q. Now, when you looked through the house, did you see books?

A. I don't recall if there were books -- you mean hardbacks, paperbacks? There were some.

Q. Well, in fact, in your evidence recovery process, you seized some books, didn't you?

A. I believe so, yes.

Q. Now, did other people than yourself also keep parts of the evidence recovery log?

A. Yes. I only kept the log to one area. Most of the logs

A. Yes. I only kept one log in one area. None of the logs were kept by the agents who were actually doing the searching in those rooms.

Q. Now, did you review the logs at a later time?

A. Yes, I did.

Q. So at least at that time you were familiar with what was in there; right?

A. Right.

Q. And there were -- you seized a number of videotapes; correct?

Mary Jasnowski - Cross

A. Yes.

Q. One agent reported seizing something that that agent called antigovernment literature; right?

A. Yes.

Q. You remember that?

A. Yes, I remember seeing that.

Q. And that was radical stuff; right?

A. Yes.

Q. Did you read it?

A. No. I glanced at it when I photocopied it, but I didn't read it.

Q. You also seized a book called Homeopathic Primer; correct?

A. It's possible.

Q. Yes. And what was Homeopathic Primer about?

A. Medicine, using natural methods, I would imagine. I'm not certain.

Q. Did you seize a book called Cancer Home Reborn?

A. It's possible.

Q. Okay.

A. It wasn't specifically listed, I don't think. Was it?

Q. If I showed you, would that --

A. Yes, it would.

MR. TIGAR: May I approach, your Honor?

THE COURT: Yes.

BY MR. TIGAR:

Mary Jasnowski - Cross

Q. I show you what is marked as page 4 of four of a portion of the evidence log kept by Agent Williams, and I ask you if that refreshes your recollection.

A. Yes, it does.

Q. Pardon me?

A. Yes, it does.

Q. You've seized a book called Cancer Home Reborn?

A. Yes.

Q. Now, in directing your agents at your briefing, did you tell them which books should be seized and which should not?

A. Well, yes. Generally, yes, it was mentioned.

Q. And what general criteria did you give them about what books should be seized and which should not?

A. Well, we looked at -- I think it's paragraph 6 of the attachment. It basically referred to any writings that would lead us to associates or whatever that would relate to the bombing.

Q. And as you were looking through the house, did you notice that there were a number of books on different subjects in the house?

A. I didn't notice that, no.

Q. All right. So that if I were to -- well . . . Would it refresh your recollection if I mentioned the name Main Line Farming for Century 21?

A. No it wouldn't.

Mary Jasnowski - Cross

Q. Would it refresh your recollection if I said Gridlock in Government?

A. I don't remember. I don't specifically recall those books.

Q. Okay. So that it really -- and I don't want to prolong this. It wouldn't do me any good to read through all these book titles and ask you if that refreshes your recollection.

A. Right, it would not.

Q. Because you just don't remember?

A. I don't recall.

Q. All right. Did you have a conversation with any of the agents about why they had -- on what basis they had seized this Cancer Home Reborn and the other book?

A. No, I never talked to them about that. During the evening when we were doing the search, they would ask me if -- on occasion they would ask me if it was something that the warrant permitted; but generally, they had their discretion as to what they wanted to seize.

Q. They could seize whatever they wanted?

A. Well, within the confines of what the warrant said.

Q. I understand. And I'm not trying to suggest otherwise.

A. Right.

Q. The people that were doing the seizing were experienced agents of the FBI; correct?

A. Yes, they were.

Q. Now, you mentioned that before you all went into the house

Mary Jasnowski - Cross

and began your process, that Agent Burmeister and some others were in there; correct?

A. Well, they entered prior to our entry, yes.

Q. Okay. And did they take air samples? Did you observe them doing that?

A. I did not observe what they were doing, no.

Q. Okay. And did you observe them taking soil samples, scrapings?

A. Soil samples, within the house? I didn't --

Q. No, there wouldn't be soil samples within the house; but, you know, on people's shoes and tires and -- you know what I'm

talking about. That is to say, when you go into a -- well, let me not get ahead of myself.

When you go in to make a search, in your experience, do forensic laboratory people take scrapings from the bottoms of shoes and other places where dirt or soil might have adhered?

A. I've never observed it, no. You mean of their own clothing; is that what you're asking me?

Q. No, no, no. I'm asking about in your experience as an FBI agent, do you know that forensic technicians of the Bureau at a crime scene take dirt samples from the shoes of a -- that are found at a search scene in order to compare them with soil samples that are taken from outside, some other place?

A. I would imagine that's so, yes.

Mary Jasnowski - Cross

Q. Okay. And have you read about that?

A. Well, not extensively, no. Generally, yes.

Q. I'm just asking you -- and I'm not trying to test you on this. Did you observe anybody doing that?

A. No, I did not.

Q. Okay. Did you observe people dusting for fingerprints?

A. I don't believe so, no.

Oh, well, I did not observe that, no.

Q. Okay. Now, I'm not saying it wasn't done; you didn't observe it, if it happened?

A. Right, I did not observe it.

Q. Now, let me put up here 1767, No. 2, if I may.

A. Yes.

Q. That television set was in the corner; correct?

A. Yes, it was.

Q. Now, and it has -- it has a VCR attached to it; correct?

A. Yes, it does.

Q. It does not have an antenna, does it?

A. I guess not.

Q. Did you observe whether or not there was cable service laid on in the house?

A. I did not pay attention to that.

Q. Did you seize the television set on that day?

A. No. Not on that day.

Q. You're aware that it was later seized by the FBI; is that

Mary Jasnowski - Cross

correct?

A. Yes. Yes.

Q. Now, in some of these pictures that you showed us, there were a number of -- there were cardboard boxes -- correct -- especially in that second bedroom?

A. Yes.

Q. And did those -- did you look inside those?

A. I did not, but I know that people --

Q. Agents did?

A. Yes.

A. Yes.

Q. Did it appear to you that there were things in it that looked like somebody had moved into the house recently?

A. Yes, it did.

Q. Okay. Now, you mentioned also in direct examination that as you approached the house, you saw some prill-like things; correct?

A. Right.

Q. Now, had anybody told you that Mr. Nichols had said the night before when he was being -- said that he did have ammonium nitrate fertilizer in a small amount that he had put on his lawn?

A. I don't know when I heard that, but I became aware of that at some time. I don't know whether it was then or later.

Q. During your search, did you seize some plastic bottles in the quart-type size, pint or quart-type size?

Mary Jasnowski - Cross

A. Yes, we did.

Q. And are those plastic bottles such as you might see at a supermarket where you're buying bulk products or --

A. Yes.

Q. -- things like that?

A. Yes. They looked professionally packaged.

Q. Okay. And did you see any plastic -- small plastic bottles with labels on them that said that it was fertilizer or plant food?

A. Yes.

Q. Okay. Small ones about like yea; correct?

A. Yes.

Q. Now, did you open up any of those bottles to see what was inside?

A. Not at that time, no.

Q. Later on, you did?

A. I did not, no.

Q. But you're aware that somebody did?

A. Yes.

Q. And did you know when you went into the house whether or not Mr. Nichols had said the evening before when he was with the FBI agent: "Look, I grind up ammonium nitrate in small amounts, and I put labels on it and I sell it"?

A. I did not receive that information.

Q. You did not receive that information?

Mary Jasnowski - Cross

A. No.

Q. Before you went into the house, did you ever talk to Agent Foley?

A. No.

Q. Did you ever talk to Agent Jablonski?

A. I don't recall talking to him before I went into the house.

Q. And did you ever, to your knowledge, talk to any of the agents who had spoken with Mr. Nichols the night before?



A. I don't recall them telling me that they had, no.  
Q. Okay. You might have, but --  
A. Yes.  
Q. -- certainly that wasn't something that they shared with you?  
A. That's correct.  
Q. Now, out there in that shed, you saw some 55-gallon drums; correct?  
A. That's correct.  
Q. Now, when you saw them, how many 55-gallon drums were there?  
A. There were four.  
Q. Did they have labels on them?  
A. Yes, they did.  
Q. And what did the labels say?  
A. I believe they said --  
Q. If you remember?

Mary Jasnowski - Cross

A. -- Ster-Bac.  
Q. Ster-Bak, S-T-E-R dash B-A-K?  
A. B-A-C, I think.  
Q. B-A-C? Whatever it was.  
A. Yes.  
Q. What is Ster-Bac, if you --  
A. I have no idea. I imagine it's a company name or a trade name.  
Q. Did the barrels contain Ster-Bac?  
A. I don't know. What is Ster-Bac? No, they did not --  
Q. Well, would it refresh your recollection if I said that Ster-Bac is something used to clean dairy barns?  
A. Well, definitely they did not contain Ster-Bac.  
Q. Okay. For whatever purpose they were, they were -- did they have -- being used for storage?  
A. Yes, they were.  
Q. Okay. And you found -- what color were they?  
A. They were white with the blue rims.  
Q. Okay.

MR. TIGAR: Now, I believe 1770A is in evidence. Am I correct?

THE COURTROOM DEPUTY: Yes.

THE COURT: 1777A?

MR. TIGAR: 1770A.

THE COURTROOM DEPUTY: No.

Mary Jasnowski - Cross

MR. TIGAR: I hope my notes are not -- not in error.  
BY MR. TIGAR:  
Q. Now, you mentioned that out in the shed there, you saw a -- you were shown a picture of something; and you identified it as a fuel meter; is that correct?

A. That's correct.  
Q. Do you know a fuel meter is?  
A. It measures fuel.  
Q. And who brought that to you?  
A. Who brought that to me?  
Q. Yes.  
A. No one brought it to me. I saw it in there.  
Q. I understand. But at sometime, the FBI took whatever that was into custody; correct?  
A. Yes, we did. In fact, I was there when we took it.  
Q. When was that?  
A. The next day.  
Q. The next day. And what agent brought it to you?  
A. No agent brought it to me. I assisted in the retrieval of it.  
Q. You assisted in the retrieval.  
A. Right.  
Q. Now, that fuel meter was in pieces, wasn't it?  
A. Yes.  
Q. And when you said on direct examination that there was a

Mary Jasnowski - Cross

fuel meter there, you didn't mean to suggest that it was an operable fuel meter, did you?

A. Well, I don't know whether -- no, if it's in pieces, obviously not.

Q. Right. And have you later conducted investigation to determine whether that thing even worked or not?

A. I don't even know. I imagine, yes.

Q. That the investigation was conducted?

A. I have no idea.

Q. Okay. But you don't know whether one was conducted or what the results of it were; is that correct?

A. That's correct. That's correct.

Q. And from -- based on your knowledge and experience -- Were you raised on a farm?

A. No, I wasn't. Small farming town but not a farm.

Q. Okay. So you've never used a fuel meter, have you?

A. No, I haven't.

Q. Except whatever they had when we get our gas --

A. Exactly.

Q. -- at the station.

Now, you said that after all of this material was assembled that it was put in the Army truck; correct?

A. That's correct.

Q. And the Army truck was driven by a soldier with an FBI agent escort?

Mary Jasnowski - Cross

A. Two soldiers, FBI agent escort.

Q. In the truck?

A. Yes.

Q. Cause only one was doing the driving?

Q. 'Cause only one was doing the driving?  
A. Right. Yes.  
Q. 'Cause it's just a regular truck; right?  
A. Right.  
Q. Okay. And it went up to Fort Riley?  
A. No; it went to the Herington Police Department.  
Q. First it went there; and after that, what happened to it?  
A. It was taken to Fort Riley.  
Q. Okay. And after it was taken -- after it left the Herington police station, did you ever see the truck again?  
A. Yes, I did.  
Q. All right. And where was that?  
A. It was at the Fort Riley, at the command post area.  
Q. Did you participate in unloading the truck?  
A. I was there when they unloaded it. When it was unloaded.  
Q. And what happened to the material that was collected?  
A. It was placed into a storage area behind the military police headquarters at Fort Riley.  
Q. Is that the last time you saw the evidence --  
A. No.  
Q. -- before coming to court today?  
A. Oh, no. I've seen it numerous times since then.

Mary Jasnowski - Cross

Q. You've reviewed it many times since then?  
A. Yes.  
Q. So you're aware that some of evidence was sent to the FBI Laboratory?  
A. Yes. I was present when this evidence that was sent to the laboratory was loaded into the plane and sent to the laboratory.  
Q. Oh, I see. So there came a time when evidence was loaded into a aircraft?  
A. Yes.  
Q. Was that C-130?  
A. No, I don't believe so. It was a smaller Bureau aircraft.  
Q. What happened to Mr. Nichols' truck?  
A. I really don't know. The last time I saw it, it was at the command post at Fort Riley.  
Q. So you don't know how that truck was taken to the laboratory to be analyzed, or if it was?  
A. No, I don't.  
Q. When you were doing your briefing there on the 22d --  
A. On -- yes, okay.  
Q. On the 22d. Do I have the date right?  
A. I think so, yes.  
Q. Okay. We're talking about the Saturday; correct?  
A. Yes. Yes.  
Q. 'Cause you only had one briefing?

Mary Jasnowski - Cross

A. Right.  
O. And that was the one before you went into the house?

A. Yes.

Q. Now, when you were doing the briefing, was your objective to do as thorough a search within the terms of the warrant as you possibly could?

A. Oh, yes.

Q. And you had, as you've described, a number of agents to do that; correct?

A. Yes. That's correct.

MR. TIGAR: And . . . I forgot the last question I was going to ask. It really must not have been very important, then.

I thank you very much.

THE COURT: Mr. Mearns, do you have any follow-up?

MR. MEARNS: Very briefly, your Honor.

May I have just a moment?

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. MEARNS:

Q. Agent Jasnowski, as a lawyer for the FBI, you know that in order for the FBI or for any other law enforcement person to enter and search somebody's residence, they need legal authority to do that, correct?

A. That's correct.

Mary Jasnowski - Redirect

Q. And you understand that that legal authority can either be by consent or by a warrant signed by a magistrate or a judge; right?

A. That's correct.

Q. And in this instance, the FBI and the law enforcement agents decided to rely on the authority of a judge, as opposed to consent?

A. That's correct.

Q. Why was that?

A. I'm not exactly certain why they decided. I mean, we had consent, but they got a warrant as well.

Q. Were you present when Agent Earl found and seized the Hunter?

A. No, I was not.

Q. You indicated that it was possibly raining on April 21st or April 22d before you arrived.

A. It's possible.

Q. Was it humid and damp that day?

A. It was humid, yes.

Q. Yet when you arrived on April 22, there were still those little white prills on the steps?

A. They were under the awning part of the porch, so, yes.

Q. You were asked questions by Mr. Tigar about the barrels that you found in the garage?

A. Yes.

Mary Jasnowski - Redirect

Q. They didn't contain any liquid or fluid; is that correct?

A. No, they did not.

Q. What did you find inside the barrels?

A. I found all sorts of bolts, nuts, keys.

Q. What kind of keys?

A. I found some safe deposit keys.

MR. MEARNS: No further questions, your Honor.

THE COURT: Mr. Tigar.

MR. TIGAR: No, nothing further.

Thank you very much, Agent Jasnowski.

THE COURT: Is this witness excused?

MR. MEARNS: She will return later.

THE COURT: She will return.

You may step down now.

Next witness.

MR. MACKEY: We'll call Allen Radtke.

THE COURT: Mr. Radtke.

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

(Allen Radtke affirmed.)

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

Would you state your full name for the record and spell your last name.

THE WITNESS: Allen E. "Bud" Radtke. R-A-D-T-K-E.

THE COURTROOM DEPUTY: Thank you.

Mary Jasnowski - Redirect

THE COURT: Mr. Ryan.

MR. RYAN: Thank you.

DIRECT EXAMINATION

BY MR. RYAN:

Q. Your nickname is "Bud"?

A. Yes.

Q. Where do you live?

A. Marion, Kansas.

Q. You live on a farm?

A. I'm out in the country, yes.

Q. Are you married?

A. Yes.

Q. Children?

A. Three.

Q. And where did you grow up, Mr. Radtke?

A. North Dakota.

Q. And what do you for a living?

A. I'm a driller and a blaster for Martin Marietta quarry.

Q. And what is a drill and blaster?

A. I drill holes in the rock and load explosive to break the rock down to be crushed into road stone and concrete stone.

Q. Now, do you do this in a quarry?

A. Yes.

Q. Would you tell us what a quarry is?

A. It's an area where we uncover the rock. It's down below

Allen Radtke - Direct

the earth surface, the dirt; and we just strip off the dirt and have a formation of rock anywhere from nine to 20 feet deep.

The location of the one I'm at right now is just north

of Marion; and it's basically -- I just drill holes in the rock with a drilling machine and put the explosives in and break it up with the explosives to be crushed down.

Q. Do you -- have you worked at quarries for a long time?

A. 14 years.

Q. And how long have you been a driller/blaster?

A. Going on 12.

Q. Now, how many people work there at the quarry?

A. Nine in our crew.

Q. I'm going to show you a map that's already in evidence as Exhibit 2045 and ask you to find the or locate the quarry for us. You've got a pen there on the desk. If you set it on top of the screen, it will make a mark.

A. On top here?

Q. No, underneath that top. Right on the screen.

A. Location of the quarry?

Q. Yes.

A. Right here.

Well, that's not right. In that -- it's a little farther south than that.

Q. All right. About how far is it from Marion?

A. Just about 2 miles.

Allen Radtke - Direct

Q. And do you know where the Donahue Ranch is, the Hay Hook Ranch?

A. In that general area there.

Q. About how far is Donahue Ranch from the quarry?

A. About 15 miles.

Q. Now, I would like to show you another exhibit which we've marked as Exhibit 117 for identification purposes, ask you if you can identify this.

A. That's an aerial photo of the quarry.

Q. Is it an accurate photograph of the quarry you work at in Marion?

A. Yes.

MR. RYAN: Your Honor, we would offer Exhibit 117.

MR. TIGAR: No objection, your Honor.

THE COURT: 117 is received.

MR. TIGAR: And similarly, no objection to any of the photographs of that scene, the whole quarry scene, whatever that series is.

THE COURT: All right, if you could read those in, we'll put them in.

MR. RYAN: I will, your Honor, and Mr. Tigar can advise us if he objects as we go along.

THE COURT: Yes

THE COURT: 103.  
MR. RYAN: 117, 119.  
MR. TIGAR: No objection.

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MR. RYAN: 118.  
MR. TIGAR: No objection.  
MR. RYAN: 120.  
MR. TIGAR: No objection.  
MR. RYAN: 121.  
MR. TIGAR: No objection.  
MR. RYAN: 128.  
MR. TIGAR: No objection.  
MR. RYAN: 122.  
MR. TIGAR: No objection.  
MR. RYAN: 131.  
MR. TIGAR: No objection.  
MR. RYAN: 123.  
MR. TIGAR: No objection.  
MR. RYAN: 124.  
MR. TIGAR: No objection.  
MR. RYAN: 130 -- excuse me, 141.  
MR. TIGAR: I need to voir dire on that, your Honor.  
THE COURT: We'll hold up on that, then, until we get

to it.

MR. RYAN: All right, your Honor.  
135.  
MR. TIGAR: No objection.  
MR. RYAN: 1 -- I'm not sure, frankly, your Honor,  
whether I've said 134 or not.

Allen Radtke - Direct

THE COURT: No, you didn't.  
MR. TIGAR: Did not. No objection.  
MR. RYAN: 159. That is actually for identification  
purposes only, not to be displayed to the jury with this  
witness.  
MR. TIGAR: Right, your Honor. I understand. There  
will be a later witness that will have that one. We'll deal it  
with then.  
THE COURT: Then you can ask about it.  
MR. RYAN: 122.  
MR. TIGAR: That's in.  
MR. RYAN: 133.  
MR. TIGAR: No objection.  
MR. RYAN: 132.  
MR. TIGAR: No objection.  
MR. RYAN: 126.  
MR. TIGAR: No objection.  
MR. RYAN: 1840.  
MR. TIGAR: I need to voir dire on that briefly, your  
Honor.  
THE COURT: All right. We'll hold up on that.

MR. RYAN: All right.

THE COURT: So received without objection is 117,  
118,  
119, 120, 121, 122, 123, 124, 126, 128, 131, 132, 133, 134,  
135.

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MR. TIGAR: Yes, your Honor.

THE COURT: All right.

MR. RYAN: Thank you, your Honor.

BY MR. RYAN:

Q. All right. Mr. Radtke, the jury can now see the exhibit there and it's in front of your desk. Would you tell us what we're looking at in Exhibit 117.

A. It's mostly the stockpile area and our office and scale house, magazine storage.

Q. And what are we looking at on this closeup?

A. Stockpile area and our scale house, stockpile area out here.

Q. The house we see to the left is the --

A. Scale house and office area.

Q. When you say "stockpile," what are you talking about?

A. The crushed rock.

Q. This is rock that you've already pulled out of the ground, it's been crushed and it's stacked up?

A. Yes.

Q. That's what we're looking at here?

A. Right, these piles here.

Q. What else do we see in this photograph?

A. It's a lot like the first one. It's the scale house --

Q. I'm sorry. This is the same photograph. I just had moved it closer on you there.

Allen Radtke - Direct

A. Yeah.

Q. This is still Exhibit 117.

A. All right. It's, like I said, the scale house --

Q. Let me direct your attention here a little bit. You're here today because you had a theft at your quarry in late September, early October of 1994. Is that correct?

A. Yes.

Q. All right. Now, you stored these explosives in magazines; is that correct?

A. Yes.

Q. Okay. Now, can you show us where the magazines are?

A. Our cap and powder magazines --

Q. Does that help?

A. Yes. That's cap magazine and the powder magazine -- is right there.

Q. Would you circle the cap magazine, please, first.

A. That's it right there.

Q. And then the powder magazine is the big one behind it?



A. Yes.

Q. And what do you keep in the cap magazine?

A. The blasting caps.

Q. And when you say "blasting caps," what are you speaking of?

A. The electric and non-electric caps that we use in the blasting of the rock at the quarry.

Q. What about the powder magazine: What do you keep there?

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A. It's Tovex -- is the name we use it, is what it's called; and it comes in stick form, 2-by-16, 3-by-16-inch. It's a blasting material.

Q. It's an explosive?

A. Explosive.

Q. And so you keep the Tovex in the powder magazine and the blasting caps in the cap magazine?

A. Yes.

Q. And what other blasting agents do you have at the quarry?

A. The ANFO or ammonium nitrate/fuel oil mixture, fertilizer. It's kept in the trailer, separate magazine.

Q. Can you see that trailer in Exhibit 117?

A. Yes.

Q. And could you circle that for us?

A. Yes.

Q. Now, the ANFO that you keep there on the quarry: Describe how it's kept and how -- how you receive it and how it's kept.

A. It's brought to us in a van-type trailer, semitrailer. It's in 50-pound bags.

Q. Now, the jury's heard a lot about ammonium nitrate; but this bag of fertilizer is more than just ammonium nitrate; is that true?

A. Yes. It's mixed with fuel oil and ready to use in our -- in our blasting at the site.

Q. And you keep these pre -- these premixed bags in the

Allen Radtke - Direct

trailer?

A. Yes.

Q. All right. Now, if you were going to be out at the quarry and you were going to break some stone loose in the quarry, would you describe for the jury what you would go -- how you would go about that, how you would use those explosives to accomplish that.

A. Well, you put -- I use a blasting cap in, a stick per hole; and so many feet up is where I put the ANFO on top of it, and I load several of them like that. And that's about -- that's about the basics of it.

Q. Then you ignite it somehow?

A. With the electric blasting machine. Electronic blasting machine.

Q. All right. Now, do you maintain a security system there in the quarry, or did you back in September of 1994?

A. Magazines are locked to AMSHEE requirements

A. Magazines are locked to AMSNEL requirements.

Q. What about the quarry? Is it locked?

A. Yes.

Q. Let me show you what's been admitted as Exhibit 119 and have you describe for us what you're looking at.

A. That's the entrance gates to the quarry.

Q. And are these secured somehow?

A. With a padlock.

Q. And what hours are they secured?

Allen Radtke - Direct

A. Between 5 and 6:00 -- 5:00 in the evening till 6:00 in the morning, 6:30, thereabouts.

Q. And is there another way to get into the quarry that avoids having to go through this locked gate?

A. There is another entrance. We call it the back, the back door, more or less. It's just a trail across the pasture.

Q. And is it possible for someone to come onto the quarry at night, to steal explosives without having to go through this gate?

THE COURT: You're speaking of a time reference here?

MR. RYAN: I'm sorry, your Honor.

BY MR. RYAN:

Q. Of course in September of 1994?

A. Yes, it would be possible.

Q. Let me show you what's been marked as Exhibit 118. It's been admitted as Exhibit 118. And help us get oriented here just a bit with the quarry. Can we see the magazines?

A. No, not in the -- no, not on this picture.

Q. How about the ANFO trailer?

A. No.

Q. Can we see the quarry itself?

A. Yes.

Q. Would you circle the quarry.

Now, where is the front gate in relationship to where the quarry is?

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A. It's not in this picture.

Q. Where off the picture would it be, what direction?

Why don't you try that one again.

It's over there in the top left-hand corner --

A. Yes.

Q. Okay. If someone were familiar with the Marion area, how would they be able to get onto the quarry without passing through the locked gate?

A. There is a county road that leads up to a gate and just a trail, near the old building site, farmstead, across the creek, and another -- just a trail up along the property line.

Q. All right. Now, back in September, 1994, did there develop a problem there at the quarry that stopped operations?

A. Yes. We had a machine break down. I think it was on -- probably on Wednesday, noon, Wednesday afternoon.

Q. Do you know what day of the month that was?  
A. 28th of September.  
Q. And what exactly happened with the machine?  
A. A bearing went out.  
Q. What did that do to the operation of the quarry?  
A. We had to quit crushing for several days, waiting on parts.  
Q. And when you couldn't crush, are you using the explosives in the magazines and the ANFO trailer?  
A. No.  
Q. Can you tell us when during that week, last week of

Allen Radtke - Direct

September -- when the last time it was that you went to the explosives lockers or magazines, the cap or the powder magazines?

A. Probably Wednesday evening, late Wednesday afternoon.

Q. On the 28th of September?

A. On the 28th.

Q. And when was the next time that you went to either of those magazines or the ANFO trailer?

A. It would have been the following Monday.

Q. Which would have been October 3?

A. Yes.

Q. Now, tell us what you did on October 3 in relationship to these magazines and trailer.

A. I was told just before noon that they would have the plant ready for operation later in the afternoon, go ahead and load up a shot. I went to the ANFO trailer to get ANFO and went on to the cap magazine, went to unlock the door, and there was no padlock there. I went over to the powder magazine then and looked around into where the locks are, and there was no locks there. And I went and told my plant manager about it at that time.

Q. All right. Let's show the jury what we're talking about when we're using those terms, "powder magazine" and "cap magazine." Tell us what we're looking at here in Exhibit 121.

A. That's the magazine where the powder was kept.

Allen Radtke - Direct

Q. And Exhibit 123?

A. That's the cap magazine.

Q. Okay. Now, when you went over to these magazines and you noticed that the locks were missing, what did you do?

A. I went and informed my plant manager that we had been broken into.

Q. Had you entered the magazines prior to getting the plant manager?

A. No.

Q. All right. Then what happened after you went and got the plant manager?

A. We went up and quickly took a look at things and called the local sheriff to come out and investigate.

Q. Then what happened next?

A. Then we got their inventory sheets out and started opening magazines up and seeing what was missing.

Q. Did there come a time that morning when you went to the magazine and you had your plant manager with you to inspect the fact that the lock was not on the magazine?

A. Yes.

Q. And which one did you go to first, if you recall?

A. The cap magazine.

Q. And is this Exhibit 123 right here in front of us?

A. Yes.

Q. Now, where is the lock -- where would the lock be that

Allen Radtke - Direct

secures this magazine?

A. Inside that little square box.

Q. You just can't see it because it's up underneath that?

A. Yes. You reach in from the bottom side to get to the lock.

Q. Let me see if we can find a photograph that perhaps demonstrates this. Exhibit 128. If you can orient the jury on where we're looking in this photograph.

A. Yes. The padlock -- that's the bottom side of that square box, which is -- that is what's mounted on the side of the door that we were just looking at.

Q. And the padlock is what we can see hanging down?

A. Right. Yes.

Q. So this bottom face of the padlock is facing the ground?

A. Yes.

Q. All right. Let's go back, then, to our exhibit.

Now, before entering the cap magazine, did you notice anything on the ground?

A. There were some metal shavings around -- right below where the padlocks are.

Q. Did you notice that prior to going into or opening the door of the magazine?

A. Yes.

Q. Now, when you opened the door of the magazine, who was present? Just you and the manager?

A. Plant manager and myself, yeah.

Allen Radtke - Direct

Q. What did you see?

A. A lot of missing caps. Several boxes missing out of the magazine.

Q. Let me show you Exhibit 124. And describe for us what we're looking at here in this photograph.

A. These are boxes that the electric caps are stored in.

Q. And you said you kept -- let's just keep with the electric caps for a moment. Could you tell by the way that the boxes were arranged in the magazine whether there had been anyone in there --

A. Yes.

Q. And did you notice anything else in the magazine?

Q. -- since you were last there on the prior wednesday?

A. Yes.

Q. And tell us about that.

A. This is -- there were several boxes, larger cardboard-type boxes that I would store these smaller boxes in, and they were missing. And there was one large box basically in that area that had a non-electric-type cap in it, and they were -- the whole box was gone.

Q. How many boxes -- sticking with the electric ones for a moment -- how many of the electric blasting caps were stolen, if you know?

A. I don't remember the exact number.

Q. Can you approximate it for us?

A. Like 12, 1400.

Allen Radtke - Direct

Q. And how about the non-electric: How many of those had been stolen?

A. Probably around 75.

Q. Now, what do you call the non-electric blasting caps that are used there at the quarry and that were stolen?

A. There the cap is basically the same as the electric except instead of having wires coming out it for the electricity to set it off, it's just a hollow tube with a powder -- glycerine-type powder inside of it that's set off by a primer, a different type of machine.

Q. Does it have a name, a brand name?

A. Primadet.

Q. And is there a certain foot length that you purchase there at the quarry that were stolen in this time frame that we're speaking of?

A. 60 footers. They were 60-foot long.

Q. And they come in different sizes, but the quarry purchases 60 feet?

A. Yes.

Q. Do they come with varying time delays?

A. Yes, they do.

Q. And what time delay did you have there at the quarry that were stolen?

A. Those are No. 8's.

Q. Now, after you went to the cap machine, did you say you

Allen Radtke - Direct

went over to the powder machine next? I mean the powder magazine next?

A. Yes.

Q. Let me ask you if you can tell us what this photograph represents.

A. It's the inside of the powder magazine.

Q. Is that a photograph of the way the magazine looked on the morning that you and the manager opened the door on October 3?

A. Yes.

Q. And can you tell us: Was there anything that caught your

Q. And can you tell us, was there anything else caught your attention when you opened the door?

A. The open box.

THE COURT: This is 122 --

MR. RYAN: Yes, your Honor.

THE COURT: -- that you're showing?

BY MR. RYAN:

Q. And why was the fact that the box was opened of importance to you?

A. 'Cause I didn't leave it that way the last time I was in there.

Q. Could you tell whether any of these -- what do you call the -- what we're looking at inside the box.

A. That is a 3-by-16 Tovex stick.

Q. Could you tell whether any of these -- did you have other sizes besides 3-by-16?

Allen Radtke - Direct

A. Yes. We had 2-by-16 in there.

Q. Could you tell whether or not any of these Tovex sausage explosives had been stolen?

A. Yes.

Q. And how many had been stolen?

A. Six cases of them.

Q. And about how many of these 2-by-16 sausages are in a case?

A. 25.

Q. So it would be roughly -- if my math is accurate -- about 150 of these sausages had been taken?

A. Yes.

Q. All right. Now, after you looked at the cap magazine and the powder magazine, did you go anywhere else on the quarry to inspect to see if anything else had been taken?

A. No.

Q. Did -- at any time that day did you go inspect the ANFO trailer?

A. No.

Q. How about on the following day, on May the -- excuse me, on October the 4th?

A. Yes.

Q. And tell us about your inspection of the ANFO trailer.

A. It was discovered that the back doors -- which there was two sets of doors on that trailer.

MR. TIGAR: Excuse me, your Honor. It was discovered.

Allen Radtke - Direct

I'm sure the witness has personal knowledge. I would like it to be established before he answers.

BY MR. RYAN:

Q. Mr. Radtke, did you make this inspection, yourself?

A. No, I did not.

Q. The ANFO trailer?

A. No.

Q. Did you inspect the ANFO trailer at any time on October 3 or October 4 to see if it had been broken into?  
A. No.  
Q. Did you at some point in time find a lock that had been on one of the trailers on the premises of the quarry?  
A. Yes.  
Q. And when did you find the lock?  
A. On the 4th of October.  
Q. And where did you find that lock?  
A. It was on the back doors of the trailer.  
Q. And did you personally observe that?  
A. I wasn't the one that actually found it. I was called when it was found unlocked.  
Q. Okay. And who found it unlocked?  
A. Members of another crew that were moving into the location.  
Q. All right. And then they -- when they found that the lock was on the ground, they -- or unlocked, they came and got you?  
A. Yes.

Allen Radtke - Direct

Q. And then tell us what you saw when you went there and observed the ANFO trailer.  
A. The lock was in the open position, just hanging on the doors. I looked at the bottom side of it, saw that it had been drilled. I opened the doors. Nothing had been tampered with or removed from that particular magazine.  
Q. Now, you say it had been drilled. What do you mean by that?  
A. Like someone had taken an electric drill and a drill bit and drilled into the lock mechanism.  
Q. Do you have an electric power source there at the trailer?  
A. No.  
Q. And so how would they have used an electric drill to drill out the lock?  
A. Portable generator, battery-operated.  
Q. A battery-operated --  
A. -- drill.  
Q. -- drill?  
A. Yes.  
Q. Now, did you talk to Sheriff Davies from the Marion County sheriff's office on October 3 or 4?  
A. Yes.  
Q. And did you cooperate with the law enforcement authorities at that time?  
A. Yes.

Allen Radtke - Direct

Q. And what did you -- did you provide them the lock that you've just described for us?  
A. Yes, I did.

MR. RYAN: May I have just a moment, your Honor?

THE COURT: Yes.

MR. RYAN: Your Honor, could I have Agent Tongate approach the witness with some demonstrative exhibits that were admitted?

THE COURT: Did you say have admitted? Are these?

MR. RYAN: They are admitted, your Honor. Let's make sure there is no confusion here.

THE COURT: All right.

MR. RYAN: These are Exhibits 134, which is the box for blasting caps.

MR. TIGAR: Yes.

MR. RYAN: Exhibit 132, which is a box for Tovex.

MR. TIGAR: I'm sorry, your Honor. That's the --

MR. RYAN: 133, excuse me.

MR. TIGAR: Yeah, 133 is a box.

MR. RYAN: Yes, both of those not objected.

MR. TIGAR: Right.

THE COURT: Yes, you may have those taken to the witness.

BY MR. RYAN:

Q. Now, if you would, Mr. Radtke, would you take Exhibit No.

Allen Radtke - Direct

133, which is the large brown box there, take it out of the cellophane, plastic bag.

THE COURT: The agent can come and help him.

MR. RYAN: Yeah.

BY MR. RYAN:

Q. Now, Mr. Radtke, would you --

MR. RYAN: Mr. Tongate, if the Court doesn't mind, would you stay there?

THE COURT: That's fine.

BY MR. RYAN:

Q. Would you explain to the jury what we're looking at there with Exhibit 134 (sic).

A. This is a box top off from the 3-by-16 stick, powder sticks that we keep on the site. It's explosive.

Q. Now, this is for the 3-by-16 size; is that correct?

A. Yes.

Q. Now, is the box that carries the 2-by-16 sausages, is it of the identical box, coloration and markings?

A. Yes, it is.

Q. All right. Now, is there any indication on that box that it contains an explosive material?

A. The orange diamond.

Q. Would you hold that up so the jury can see it and point it out to them?

A. The orange diamond on the side. It's marked "explosives,

Allen Radtke - Direct

1.1D."

Q. Thank you. If you'll just hand that to Agent Tongate.

Now, if you take the -- there's a small white box there we've marked as Exhibit 134. And could you -- hold it up



HERE WE VE MARKED AS EXHIBIT 124. AND COULD YOU HOLD IT UP  
SO THE JURY CAN SEE IT AND TELL THEM WHAT THAT IS.

A. THAT'S THE CAP BOX WHERE THE ELECTRIC CAPS ARE KEPT IN.

Q. AND DOES IT IDENTIFY WHAT'S INSIDE THE BOX ON THE SIDE?

A. IT GIVES THE DELAY, DATE CODE, AND THE LENGTHS; AND  
"ELECTRONIC DETONATORS" IS ALSO ON THE END.

Q. NOW, THE EXPLOSIVES THAT WERE STOLEN AT THE QUARRY SOMETIME  
BETWEEN SEPTEMBER 28 AND OCTOBER 3, WERE THEY TAKEN IN BOXES

THAT ARE SIMILAR, IF NOT IDENTICAL, TO THE BOXES THAT YOU'VE  
SHOWN THE JURY?

A. YES, THEY WERE.

MR. RYAN: NOW, IF YOU WOULD, AGENT TONGATE, WOULD  
YOU

HAND MR. RADTKE EXHIBIT 126.

BY MR. RYAN:

Q. NOW, WOULD YOU HOLD THAT UP SO THE JURY CAN SEE IT, AND  
TELL US WHAT THAT IS.

A. IT'S THE PADLOCK THAT WE DISCOVERED ON THE TRAILER.

Q. NOW, WOULD YOU TURN THE PADLOCK IN A MANNER THE JURY CAN  
SEE IT AND DESCRIBE WHAT YOU WERE TALKING ABOUT WHEN YOU SAID  
IT HAD BEEN DRILLED OUT.

A. IN THE LOCK MECHANISM, IN THE CENTER, THERE'S A SMALLER  
HOLE THAT'S BEEN DRILLED THROUGH IT.

Allen Radtke - Direct

Q. NOW, DID YOU NOTE THE -- CAN YOU NOTE FOR US THE SERIAL  
NUMBER ON THAT LOCK?

A. YES.

Q. WHAT IS THAT NUMBER?

A. 10N354.

Q. NOW, SOMETIME WITHIN THE LAST COUPLE OF MONTHS, WERE YOU  
LOOKING THROUGH YOUR KEY RING AND NOTICED A KEY THAT YOU DIDN'T  
REALIZE YOU HAD?

A. YES.

Q. AND DID YOU HAVE A KEY THAT CORRESPONDED TO THAT IDENTICAL  
SERIAL NUMBER OF THAT LOCK?

A. YES.

Q. AND WHAT CONCLUSION DID YOU DRAW FROM THAT?

A. THAT I HAD A KEY FOR THE LOCK -- THE MISSING LOCK -- THE  
LOCK THAT WE HAD FOUND, THE ONLY LOCK WE HAD FOUND ON --

Q. AND DID YOU TURN THAT OVER TO THE FBI?

A. YES.

Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS EXHIBIT 1840. I'M  
GOING TO HAVE AGENT TONGATE HAND YOU WHAT'S BEEN MARKED AS  
EXHIBIT 126 (SIC) AND ASK YOU IF YOU CAN IDENTIFY THAT EXHIBIT.

A. YES.

Q. AND WHAT IS THAT EXHIBIT?

A. IT'S A KEY THAT MATCHES THE LOCK.

Q. AND HOW DO YOU KNOW THAT'S --

THE COURT: EXCUSE ME, YOU SAID 126. I THOUGHT WE

Allen Radtke - Direct

already did that.

MR. RYAN: Excuse me. 1840, the key.

THE COURT: It's 1840 you're looking at?

THE WITNESS: Yes.

THE COURT: All right. Thanks.

BY MR. RYAN:

Q. And how do you know that that is the key that goes to the lock?

A. It has a matching number on it and my initials.

Q. When did you initial the key?

A. A month and a half ago, I guess it was, something like that.

Q. At the time you turned it over to the FBI?

A. Yes.

MR. RYAN: Your Honor, we would move for the admission of Exhibit 1840.

MR. TIGAR: That's the one I wanted to ask a question about.

THE COURT: All right.

VOIR DIRE EXAMINATION

BY MR. TIGAR:

Q. Good morning, Mr. Radtke.

A. Good morning.

Q. I'm Michael Tigar. I'm one of the lawyers appointed to help Terry Nichols.

Allen Radtke - Voir Dire

You said you found -- you noticed you had that key a couple of months ago; is that right?

A. Yes.

Q. And when you do your job out there at the quarry, you have a whole ring of keys; is that correct?

A. I do.

Q. And are these Master -- these are Master brand padlocks you were using at that time; correct?

A. Yes.

Q. And does -- is the issuance of those keys restricted to particular people?

A. Yes.

Q. And how are they restricted?

A. Just those that have a blasting permit.

Q. I see. And that would include you because it's your job to put the stuff down the hole and make the shot; right?

A. Right.

Q. Okay. So -- and that serial number, the key that you have there -- could I take a look at that, please.

THE COURT: You may approach, yes.

MR. TIGAR: Thank you.

I see. Okay. Thank you, sir.

BY MR. TIGAR:

Q. And that says "Master Lock Company" on it; right?

A. Right.

Allen Radtke - Voir Dire

Q. Could you see that on there?

A. Yes.

Q. So that's the key that's issued by the same company that made the lock; right?

A. Right.

Q. That is not a key made at some local hardware store or something like that; correct?

A. No.

MR. TIGAR: Oh. Thank you very much. We have no problem with that. We agree it should be admitted.

THE COURT: 1840 is received.

MR. RYAN: Your Honor, I'd like to verify that Exhibit 126 had been admitted.

MR. TIGAR: Our records show that it is, your Honor, with our consent.

THE COURT: Yes, we're all in agreement on that.

MR. RYAN: All right. Thank you.

Finally, I would ask for the admission of Exhibit 132 for demonstrative purposes only, and Mr. --

THE COURT: It's been agreed to.

MR. RYAN: That had been agreed to?

THE COURT: Yes.

MR. TIGAR: Yes.

MR. RYAN: Would you please hand that to Mr. Radtke.

DIRECT EXAMINATION CONTINUED

Allen Radtke - Direct

BY MR. RYAN:

Q. Mr. Radtke, would you hold that up to where the jury can see it and explain to them what you're showing them.

A. This is a 2-by-16 Tovex stick, or I call it powder, that we use in the blasting at the quarry.

THE COURT: I think it has been agreed this is inert.

MR. RYAN: It is, your Honor. I guess I should have mentioned that. I apologize to all.

THE WITNESS: It's perfectly harmless.

MR. RYAN: It's an inert explosive.

BY MR. RYAN:

Q. Now, if you would, Mr. Radtke, show us, if you can, how the blasting cap is attached to this explosive.

A. I just simply make a little hole or a small cut in the tube and just insert the cap inside of it and put a half hitch around it so that as you're going down the hole, it won't slip, the cap won't pull out and lose the stick down the hole.

Q. Tell us again -- I think you explained it earlier, but it might be more helpful now that we have the explosive. Once you have the blasting cap attached to this Tovex sausage, what do you do with it in your drilling business, the blasting business?

A. This goes down the hole with the cap attached to, and then

I pour ANFO fertilizer on top of it and put rock cuttings on top of that to seal the hole, to hold the explosion down

Allen Radtke - Direct  
inside.

Q. Now, let me finally show you . . .

MR. RYAN: I'm sorry, your Honor.

No. 141.

BY MR. RYAN:

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

THE COURT: This hasn't been received yet.

THE COURTROOM DEPUTY: Yes, it has.

MR. RYAN: 141.

THE COURTROOM DEPUTY: 141.

THE COURT: It has not been received.

BY MR. RYAN:

Q. I would just like for you to look at Exhibit 141 and ask you if you can identify what's contained in that exhibit.

A. Yes, I can.

Q. And is the prime -- is the item shown in that exhibit identical to the items stolen from your quarry sometime between September 28 and October 3, 1994?

A. Yes, it is.

MR. RYAN: The next exhibit is not in evidence, either, Exhibit 159.

BY MR. RYAN:

Q. Again, are the items that are in Exhibit 159 that were also in Exhibit 141 of the same brand name, length, and time delay as what was stolen from your quarry between September 28 and

Allen Radtke - Direct  
October 3?

A. Yes, they are.

Q. Let's return to Exhibit 141 for a moment.

MR. RYAN: And I would ask the Court's permission to display this to the jury for demonstrative purposes only.

THE COURT: Is there any objection to that?

MR. TIGAR: May I voir dire?

THE COURT: Yes, you mentioned you wanted to.

MR. TIGAR: Yes.

VOIR DIRE EXAMINATION

BY MR. TIGAR:

Q. Hello again, Mr. Radtke.

This that you're looking at is a commercial product; is that correct?

A. No.

Q. Oh, it's not a commercial -- when you say not a commercial product, it's something that you buy from a company that makes it; correct?

A. Yes, that --

Q. That's what I mean.

A. Okay.

Q. That is to say, it's manufactured by a company, and that

company sells it to your corporation; correct?

A. Yes.

Q. And you've been a blaster for a long time?

Allen Radtke - Voir Dire

A. Going on 12 years.

Q. Yes, sir. And when was this product first introduced?

A. I have no knowledge of that.

Q. Okay. How long have you been using it?

A. Roughly two, maybe three years.

Q. Okay. And your use of it is exclusively in the quarry; is that correct?

A. Yes.

Q. All right. But do you recognize the length that's listed on here?

A. I do.

Q. Okay. And the number -- there's a No. 8 on there?

A. Yes.

Q. And you recognize that also; correct?

A. Yes, I do.

Q. And what is that called, the delay?

A. That's the delay on it, yes.

Q. And that's how you identify it, yes?

A. And the name on it, Primadet.

Q. Primadet, okay.

MR. TIGAR: I have no objection for demonstrative purposes, your Honor. I'll hold the rest of my questions.

THE COURT: 141 is received for demonstrative purposes.

MR. RYAN: Thank you, your Honor.

Allen Radtke - Direct

DIRECT EXAMINATION CONTINUED

BY MR. RYAN:

Q. Mr. Radtke, I'd like for -- I think you've already looked at this very carefully, but can you tell us whether the Primadet displayed in Exhibit 141 is identical in terms of its size, its length, and its time delay and its color as the Primadet that was stolen from your quarry between September 28 and October 3, 1994?

A. Yes, it is.

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

THE COURT: All right. Mr. Tigar.

Will you be wanting these exhibits that the agent has up here?

MR. TIGAR: No, your Honor, I will not -- except for the Master padlock. If Agent Tongate will oblige us by leaving the padlock up there, I would appreciate it.

THE COURT: Okay.

MR. TIGAR: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. TIGAR:

Q. Good morning again, sir. This is my last chance. This is my last one.

You all operate -- is that Martin Marietta that operates that quarry?

A. Yes, it is.

Allen Radtke - Cross

Q. And Martin Marietta does not own the land, do they?

A. No.

Q. They lease that from a landowner?

A. Yes.

Q. And that's a Mr. Hett?

A. Yes.

Q. Have you ever met Mr. Hett?

A. Yes, I have.

Q. And is that a standard situation for -- that is, you have a -- Martin Marietta has a lease with Mr. Hett?

A. Yes.

Q. And they pay him so much a ton?

A. I'm not sure about the dollars.

Q. You're not familiar with that operation?

A. No.

Q. Okay. Now, you mentioned that the -- there's a gate at the front; is that correct?

A. Yes, there is.

Q. And that gate is locked?

A. Yes.

Q. And kept locked except in the evening hours; right?

A. Right.

Q. Now, you also drew a line on a picture showing a track or trail back through there; correct?

A. Yes, I did.

Allen Radtke - Cross

Q. Now, in September of 1994, do you know whether or not the entire quarry area was fenced off from the rest of Mr. Hett's land?

A. No.

Q. You don't know, or it wasn't?

A. It was not fenced.

Q. It was not. Do you know of any provision in your lease with Mr. Hett that has to do with fencing?

A. No, I don't.

Q. Now, your job is to -- you're a blaster; is that correct?

A. Yes.

Q. Now, are there other blasters that work at that quarry site, or did in 1994?

A. No.

Q. And in addition to that, you mention someone who is the plant manager; correct?

A. Yes.

Q. How many employees are there total?

A. In that crew --

Q. Or were there --

A. With the plant manager and that crew, there's ten people.

Q. Now, you talked here today about three different kinds of things, as I understand it. One is the blasting cap; is that correct?

A. Yes.

Allen Radtke - Cross

Q. Now, Primadet is not a blasting cap, is it?

A. It's a blasting cap, yes.

Q. Well, but it is a -- it's -- we saw those pictures. There's a lot of orange cord there; right?

A. Right.

Q. Now, that orange cord is not a blasting cap, is it?

A. No, it's a silver -- it's the long, silver piece towards the center of that coil.

Q. Okay. So that Primadet contains a blasting cap; correct?

A. Correct.

Q. And the purpose of the long cord there is to get the charge to the cap; correct?

A. Right.

Q. Right?

A. Right.

Q. And how do you -- once you ignite the piece that's 60 feet away from the cap, how long is it before whatever's happening hits -- gets to the cap?

A. 200 milliseconds.

Q. Okay. So that's quicker than you and I can jump; right?

A. Lot quicker.

Q. Okay. So in order to make sure that it doesn't happen any quicker than you want, what do you do?

A. That's why the time delay is in that.

Q. I see.

Allen Radtke - Cross

A. It's set -- it's manufactured that way.

Q. I see. So there is a delay there; right?

A. Right.

Q. Now, is another feature of Primadet that that orange tubing is waterproof?

A. Right.

Q. And thus it can be used in situations where there might be some water that the fire has to travel through before it gets to the cap?

A. Right.

Q. Now, the second kind of thing you talked about -- oh, you also talked about blasting caps, electric and non-electric.

That's -- they're different from the Primadet; right?

A. The Primadet is a non-electric cap.

Q. Okay. Okay. So that's what you're talking about when you talk about the non-electric caps; right?

A. Right.

.. ..

Q. And you also said you had some electric caps that went missing; right?

A. Yes.

Q. And the next thing you talked about is that Tovex; correct?

A. Correct.

Q. Now, Tovex is a brand name; correct?

A. Yes, it is.

Q. You buy that from somebody and it comes in and it's all

Allen Radtke - Cross  
receipted for; correct?

A. Yes.

Q. Now, the third thing you talked about was the ANFO; correct?

A. Yes.

Q. Now, the ANFO trailer that you said had the lock drilled on it, that you did not discover until the 4th of October; right?

A. Right.

Q. And that was -- that was the Tuesday?

A. Yes.

Q. Now, how is that ANFO stored in the trailer?

A. It's just stacked in -- it's in 50-pound bags that are stacked one on top of the other.

Q. Now, that is not fertilizer; correct?

A. It is fertilizer with fuel oil mix.

Q. But already mixed?

A. Already --

Q. That is, that's not something you would buy at a farm-supply store; correct?

A. Correct.

Q. That is something that is packaged in 50-pound bags, premixed ammonium nitrate and fuel oil for people that want to make blasts; correct?

A. Correct.

Q. Okay. And is that manufactured by another -- again a

Allen Radtke - Cross  
company that makes it and then delivers it to your corporation on your orders?

A. Yes.

Q. Now, you said that the -- there was no ANFO -- ammonium nitrate/fuel oil -- mixture missing from your company; correct?

A. Correct.

Q. Now, this theft was investigated, wasn't it, sir?

A. Yes.

Q. And it was first investigated by Sheriff Davies?

A. Yes.

Q. Did you speak to him on the 3d of October?

A. Yes.

Q. Did you speak to him again on the 4th of October?

A. Yes.

Q. When you spoke to him on the 3d of October, did he take



some evidence into his custody?

A. He took a box top.

Q. Okay.

A. From the Tovex.

Q. All right. Is that all you can remember him taking?

A. Yes. Well . . .

Q. I'm not trying to have a memory contest. Did he take some metal shavings?

A. Yes, he took some metal shavings.

Q. Okay. And those are the metal shavings that were found

Allen Radtke - Cross

where?

A. Around the cap magazine and the powder magazine.

Q. Okay. The cap magazine. Now, the cap magazine and the powder magazine are -- those are those little sheds that we saw pictures of; right?

A. Yes.

Q. Those appear to be on skids?

A. They are.

Q. Is that right?

A. They are.

Q. Why are they on skids?

A. So they can be moved and -- you can drag them around or they got lifting rings to be lifted up by a loader to be lifted and moved to another site.

Q. And since you've been working there, have you had occasion to move those things around the quarry on different occasions?

A. In -- yes, we have.

Q. And of course every time you move them, according to the regulations you operate under, do you have to build some kind of berms around so that if something happens, that the fire gets contained?

A. Yes.

Q. And thus the pictures that we saw, that have those -- looks like gray rock berms up behind them, you know those things, those are what's required for safety purposes; correct?

Allen Radtke - Cross

A. Yes, they are.

Q. And how high do those berms have to be?

A. It depends on the height of the building.

Q. Okay.

A. They have to come up to the eave of the buildings.

Q. All right. And by the eave, is that the roof peak or where the -- when you say the eave?

A. The bottom edge of the roof.

Q. This is a sloped roof like I'm illustrating, it has to come up to the bottom edge of the roof; right?

A. Yes.

Q. And to your knowledge, your company, throughout all the years you've worked there, you obey those safety regulations,

and you build those berms; right?

A. Yes.

Q. Now, in addition, then, let's go back to our discussion with -- your discussion with Sheriff Davies there on the 3d. He took a Tovex box top, he took some metal shavings; correct?

A. Correct.

Q. And can you remember him taking anything else?

A. No, I can't.

Q. All right. Now, the pictures that you showed us earlier that you identified, were those taken by Sheriff Davies that day or by someone else?

A. I don't remember who took the pictures.

Allen Radtke - Cross

Q. Okay. But they do, of course, fairly and accurately -- they accurately represent what you saw; right?

A. Yes.

Q. Now, again the next time you saw Sheriff Davies was on the 4th; correct?

A. Yes.

Q. And he came out and looked at that drilled lock?

A. Yes.

Q. And that's the drilled lock you have in front of you?

A. Yes.

Q. Now, in addition to the drilled lock, did he take any metal shavings that day?

A. No.

Q. When you got to the ANFO trailer, somebody told you about it and you went there, did you see any metal shavings on the ground?

A. Maybe just a few little pieces, but there wasn't nothing there to really speak of. I don't recall anything --

Q. You don't recall anything major, because of course if someone drilled it, the shavings would be pretty small; right?

A. Yes, yes.

Q. But my question is did you see anybody take those metal shavings and, you know, scoop them up and do anything with them?

A. I don't recall any.

Allen Radtke - Cross

Q. Okay. Now -- excuse me.

In addition to that, did -- were you -- did you ever have an investigator on the scene from the Bureau of Tobacco, Alcohol, and Firearms?

A. Later on that afternoon or the next day, there might have been someone out there.

Q. Okay.

A. Exact day, I don't remember.

Q. Now, you're familiar with these regulations; right?

A. Yes.

Q. And did you understand back then that if you have a loss like this that there's some requirement that you notify the

like this, that there's some requirement that you notify the ATF, which is the agency of government that has the jurisdiction over this?

A. Right.

Q. Okay. And do you remember talking to anyone from the ATF?

A. On the telephone.

Q. Just on the telephone?

A. Yes.

Q. When was that, sir?

A. The afternoon of the 3d.

Q. Okay. And you don't remember -- do you remember seeing them out there, any people that were identified to you as ATF folks?

A. No.

Allen Radtke - Cross

Q. Now, Sheriff Davies, did he ever come back, then, to talk to you after the 3d and the 4th?

A. I don't recall him, no. He may have -- I don't remember him, no.

Q. Okay. Well, it's been a while ago. I'm not trying to, again, get in a contest with you. Well, there did come a time when the FBI came out; correct?

A. Correct.

Q. And they showed you a picture of a blue pickup truck?

A. Yes.

Q. And did they tell you whose pickup truck that was?

A. They asked me if I'd ever seen the truck. I said no.

Q. Yeah. And what did you say when they asked you if you'd ever seen the truck?

A. I'd never seen the truck.

Q. You'd never seen that truck.

A. No.

Q. And you see Terry Nichols sitting over there; right?

A. Yes.

Q. You ever see him before in your life?

A. No.

Q. And in fact, the FBI showed you a picture of Mr. Nichols, didn't they?

A. Yes.

Q. And they asked you if you'd ever seen him before, and you

Allen Radtke - Cross

said no?

A. That's correct.

Q. Now, in fact, before they showed you the picture, had you seen his picture in the paper?

A. No.

Q. You had not?

A. No.

Q. Now, the . . . if -- back in 1994, if I were to call you up on the phone and say, Mr. Radtke, I see you've got a quarry over there and it's -- it's -- how many acres does that quarry

cover?

A. In the 350, 380 acres, something like that.

Q. If I were to call you up back there in 1994 and say, Mr. Radtke, from time to time I hear some noises over there on your quarry; would you tell me where your powder magazine is? If I called you up, you wouldn't tell me, would you?

A. No.

Q. And because that's not something that somebody needs to know, is it?

A. That's correct.

Q. Okay. Now, in your discussion with Sheriff Davies, Sheriff Davies -- almost forgot his name there -- did you have a talk with him about the people that you thought might have done this?

A. I don't recall anything right now. I may have; but I

Allen Radtke - Cross

can't -- I can't answer that yes or no.

Q. Okay. Were you interested in giving him investigative leads as much as you could?

A. As much as I could, yes.

Q. Understand. Now, were you present when the plant manager was talking to Sheriff Davies?

A. I don't recall -- I don't recall that right now, either.

Q. All right. No problem. He'll be here.

Did you have some employees of the quarry that had been disciplined in some way shortly before this episode happened?

A. Yes, there was one.

Q. And who -- and without the name, what was that person's position?

A. Lead man.

Q. He was a lead man. Now, what does a lead man do?

A. Second in command, you might say.

Q. Second in command to the plant manager?

A. Yes. Yes.

Q. Had that employee been demoted and transferred?

A. That particular employee I just described had been dismissed from the company.

Q. He had been fired.

A. Right.

Q. Okay.

Allen Radtke - Cross

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

THE COURT: Yes.

BY MR. TIGAR:

Q. Was it hunting season?

A. At the time of the theft?

Q. September 30, yeah. September 30, it was doves, wasn't it?

A. I believe so, yes.

Q. Does Mr. Hett let people on his land to hunt doves?

A. Not on the dove season, no.

Q. Not on the dove season. He does have hunters over there, doesn't he?

A. Yes.

Q. And in fact -- well, have you ever hunted across Mr. Hett's land?

A. No.

Q. Okay. But are you familiar with the fact that he does let people through there on his part for various seasons; right?

A. Yes.

Q. And could you just help me out -- Are you a hunter?

A. Not really.

Q. Okay. Well, can you help me out by letting me know what the seasons were during that period of time? It was doves during the September period?

A. Dove season was the only bird season that would have been open at that time.

Allen Radtke - Cross

Q. Okay. Then is there another -- is there a deer season?

A. Well, the bow season is going on at that time. And prairie chicken season would have been open the following weekend.

Q. Okay.

A. And then the quail and pheasant season, the following weekend after that.

Q. Okay. During the years that you've been working there, did you ever hear of people obviously engaged in hunting over on the adjacent land?

A. At times.

Q. Like the boom of a shotgun and the pellets scattering on tin roofs -- been anything like that?

A. No, they're usually far enough away from us, and vice versa.

Q. But you can hear the firearms?

A. No.

Q. You can't?

A. Not over the noise of the crushing plant, you don't hear nothing but that.

MR. TIGAR: I understand, sir. Thank you very much. I have nothing else.

THE COURT: Mr. Ryan, do you have anything else?

MR. RYAN: Just a couple, your Honor.

REDIRECT EXAMINATION

BY MR. RYAN:

Allen Radtke - Redirect

Q. Despite the precautions you make in building up the limestone around the magazines, somebody or somebodies found a way to get in that quarry between September 28 and October 3; is that right?

A. Yes.

MR. TIGAR: Object to leading, your Honor.

THE COURT: 7-11

THE COURT: Well --

MR. TIGAR: It's done.

THE COURT: Yeah, it's done.

BY MR. RYAN:

Q. Was that a fair statement?

A. Yes.

Q. There's might be a little confusion on this ANFO trailer I would like to clear up. Was there more than one way to get into the ANFO trailer?

A. Yes, there was.

Q. And the way that you tried initially after the weekend, was that doorway -- was the lock secure on it, or how would you describe it?

A. On the side door of the trailer, the one I always use, normally always use, it -- the lock -- there was nothing wrong with the lock. And I very seldom ever went to the rear door.

Q. So did you go to that ANFO trailer and use it on the 3d?

A. Yes, I did. On the side door.

Q. The side door?

Allen Radtke - Redirect

A. Yes.

Q. And the lock was there, you put your key in, and everything worked as it should?

A. Right.

Q. And when was the first time that you had been around on the back side where this other door was?

A. I hadn't -- I never went to that until the 4th of October.

Q. And that's when you discovered the back door was -- had the lock that had been drilled?

A. Yes.

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

MR. TIGAR: I'm sorry, your Honor. That just raised another one.

THE COURT: All right.

REXCROSS-EXAMINATION

BY MR. TIGAR:

Q. Mr. Radtke, I just want to make sure: There was nothing missing from the ANFO trailer; right?

A. Right.

Q. Okay. And you took real careful inventory and you're sure of that?

A. Yes.

MR. TIGAR: Okay, thank you very much.

THE COURT: Now may the witness be excused?

MR. RYAN: Yes, your Honor.

THE COURT: Are we in agreement?

MR. TIGAR: Yes, your Honor.

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

We'll take our recess at this time, members of the jury. We'll be taking a 20-minute recess.

I remind you we'll be going till 1:00, so you may during this recess want to use -- I think we provided some snack material and that sort of thing. Just fortify yourselves for the next couple of hours after the recess. since we'll go

for the next couple of hours after the recess, since we'll go forward with the testimony.

And of course, please, during this, as all other recesses, avoid discussion of the case or anything about it among yourselves and with all other persons and continue to recognize the need to withhold any opinions in your own minds until you've heard it all. So you're now excused, 20 minutes.

(Jury out at 10:44 a.m.)

THE COURT: We'll be in recess.

(Recess at 10:45 a.m.)

\* \* \* \* \*

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\* \* \* \* \*

REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated at Denver, Colorado, this 7th day of November, 1997.

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Kara Spitler

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