

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 84)

PROCEEDINGS BEFORE THE HONORABLE RICHARD P. MATSCH,

Judge, United States District Court for the District of
Colorado, commencing at 1:28 p.m., on the 20th day of November,
1997, in Courtroom C-204, United States Courthouse, Denver,
Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription
Produced via Computer by Paul Zuckerman, 1929 Stout Street,
P.O. Box 3563, Denver, Colorado, 80294, (303) 629-9285

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 MEARNS, 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, ADAM THURSCHELL, and
REID NEUREITER, Attorneys at Law, 1120 Lincoln Street, Suite
1308, Denver, Colorado, 80203, appearing for Defendant Nichols.

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PROCEEDINGS

(Reconvened at 1:28 p.m.)

THE COURT: Be seated, please.

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

THE COURT: Mr. Mackey?

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

THE COURTROOM DEPUTY: Raise your right hand, please.

(Gladys Wendt affirmed.)

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

Would you state your full name and spell your last
name for me.

THE WITNESS: I got to catch my breath. I've been
walking so fast.

THE COURTROOM DEPUTY: Okay. Here.

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

address -- you want it?

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

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

THE COURT: Miss Wilkinson.

MS. WILKINSON: Thank you, your Honor.

DIRECT EXAMINATION

BY MS. WILKINSON:

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

A. Doing fine.

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

A. Yeah, I've had a heart attack and I'm diabetic and I've had cancer. I've had my share.

Q. Are you feeling okay today?

A. A little winded.

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

A. Well, I'm a farm wife.

Q. And how old are you?

A. I'm 75.

Q. Are you married?

A. Yes.

Q. How long have you been married?

A. 56 years. Going on 57 in April.

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

Gladys Wendt - Direct
right?

A. Yes.

Q. How long have you lived on a farm?

A. 57.

Q. And where is your farm?

A. White City.

Q. Is that --

A. About 10 miles northeast of Herington.

Q. You know Herington, Kansas?

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

Q. Do you have children?

A. Yes.

Q. Grand --

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

Q. Do you have grandchildren?

A. Pardon?

Q. Do you have grandchildren?

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

Q. Do they all live around you in Kansas?

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

Q. Now, you said you lived on a farm in White City; is that right?

A. Yes.

Gladys Wendt - Direct

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

A. Right.

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

A. Oh, boy. Well, I'll just start out. My grandparents had 11 children, and you know how -- what happens then. The other side had 14. So we're scattered all over the United States.

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

A. Yes.

Q. Some of those cousins and family members?

A. Yes.

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

A. Right. Right.

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

A. Yes, I do. We use it with our farming, and I helped my husband all those years with our harvesting; and I helped him sow wheat, and we used it as a fertilizer in our fertilizer bin. We put the wheat in behind it and the grain drill, sowed it with the wheat.

Q. Now, would you recognize ammonium nitrate fertilizer if you saw it?

A. Yes, I would.

Q. Tell the jury what it looks like.

A. Well, it's like a little white -- you know what sleet looks like. Okay. It looks like sleet, just little pearl pebbles.

Gladys Wendt - Direct

Q. And they're white in color?

A. White in color. Snow white.

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

A. Yes; right.

Q. How do you put it onto your crops?

A. In the dry state. I use it with planting my potatoes. I use a teaspoon with every plant, and you sprinkle around dry, and that's the way you do with your crops. It's all sowed in with a grain drill, and it's just a little here and there. It's not, you know, real thick or heavy.

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

A. It would burn it up.

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

A. Oh, yes. Yeah.

Q. Now, in your 50 years or a little bit more of experience with farming, have you ever ground up those ammonium nitrate pearls --

A. No.

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

A. No, never.

Q. Never once?

A. Never.

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

A. Okay.

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

Gladys Wendt - Direct

A. Yes, I do.

Q. What's her name?

A. Geraldine Hodson.

Q. Has she lived there for a while?

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

Q. Do you know Geraldine's address?

A. 110 South 2nd Street.

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

A. Right.

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

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

Q. Now, what time do you get your hair done -- when did you say you go? I'm sorry.

A. Oh Friday.

Q. On Friday?

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

Q. You go every Friday at 8:30?

A. Every Friday.

Q. What do you do after that?

A. Then I go up to my cousin's place, pick her up. We go up to the drugstore, and we have coffee. That's our day to hoot and holler.

Q. That's your day off from the farm?

Gladys Wendt - Direct

A. You betcha.

Q. You look forward to that with your cousin?

A. Yes, we do. She's more of a sister than a cousin.

Q. Now, did you have an appointment at the beauty parlor on April 21, 1995?

A. Yes, I did.

Q. That Friday?

A. Right.

Q. Did you go at 8:30?

A. Yes.

Q. Do you remember what time you got finished?

A. It was about a quarter till 10, I'd say.

Q. Did you go on to Geraldine's house?

A. Yes.

Q. And do you remember arriving at her house?

A. Yes, I do. She was busy sweeping off the sidewalks.

Q. What did you do?

A. Oh, I drove up, and I was kind of waiting around for her to get through so we could go have coffee; but I got out because she said she was going to have to change her clothes, and so --

Q. Did you park your car right there in front of her house?

A. Right.

Q. Did you notice anything across the street?

A. I sure did.

Q. Tell the jury what you saw.

Gladys Wendt - Direct

A. Well, I saw Nichols -- but I never knew him, and that was the first time I ever saw him.

Q. Why don't you just describe the man that you saw. What did he look like?

A. Oh, medium-size guy, in jeans, and he had a light -- looked like light blue or light gray shirt. He had light hair, medium-size man, and he had a -- oh, I'd say a half-gallon, clear plastic container.

Q. Yes, ma'am.

A. And he was holding it in this arm and reaching in like this and just whoosht like that all over the lawn.

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

A. Broadcasting; when you broadcast seed or grain or anything, that's how you do it. You throw it with your hand and it goes all over.

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

A. Yes, I did.

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

A. Yes, I did (sic).

Q. Could you see what he was tossing?

A. Pardon?

Q. Could you see what he was tossing?

A. Talking?

Q. Tossing.

Gladys Wendt - Direct

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

Q. Was it in those --

A. Snow white in there. And it was little beads like pearls, you know.

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

A. Getting pretty white. I almost told him, "You're putting too much on there; you're going to burn it up."

Q. Did you tell him that?

A. No, I didn't. I thought, Keep your mouth zipped, pay attention. You're just an old woman, so, I didn't tell him anything. I walked to my cousin. We went in the house. She got ready. We come back out, and she says, "Oh, my, he's still spreading fertilizer."

MR. TIGAR: Excuse me, your Honor.

THE COURT: Just a moment.

MR. TIGAR: Object to hearsay.

THE COURT: Sustained.

BY MS. WILKINSON:

Q. Tell us, Mrs. Wendt, what you saw -- when you came out of the house with your cousin, what you saw. What did you see?

A. He was still spreading fertilizer, but I didn't pay that much attention -- I didn't care. If he wanted to burn his yard --

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

THE WITNESS: Okay.

Gladys Wendt - Direct

THE COURT: Don't go beyond the question.

THE WITNESS: I'm sorry.

BY MS. WILKINSON:

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

A. No.

Q. Why not?

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

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

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

Q. Could you see whether these fertilizer pearls that you described were on the side of his yard?

A. Yes.

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

A. Not on the other side, no. I never noticed anything, 'cause there's a cement driveway.

Q. Let me show you some photos, and you can tell the jury what you saw.

A. Okay.

Q. Let me show you Government's Exhibit 1778, No. 1, which is already in evidence. Do you recognize that?

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

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

A. Right.

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

Gladys Wendt - Direct

A. Yes.

Q. All right. Now, right there in the front, do you see that grassy area?

A. Yes; right.

Q. Could you see the grass that day?

A. Sure, just like it is there.

Q. Okay. What was on the grass?

A. Well, pebbles of fertilizer. White.

Q. What did it look like?

A. Well, little beads, you know.

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

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

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

THE COURT: Which number was that you just showed?

MS. WILKINSON: 1778, No. 1.

THE COURT: Thank you.

BY MS. WILKINSON:

Q. Do you recognize that?

A. Yes, I do.

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

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

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

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

A. Yes.

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

Gladys Wendt - Direct
side there?

A. Right.

Q. And what did the yard look like on the side when you saw him doing that?

A. Well, I didn't pay that much attention to it. I know it was just spreading, but I didn't look at it 'cause we was in the car, going to the drugstore for our coffee.

Q. Okay. But are you sure he was tossing the fertilizer on the front and the side of the yard?

A. Yes. Yes.

Q. Now, let me show you an exhibit that's not yet in evidence, Government's Exhibit 58. Just take a look at your screen. The jury can't see this. Do you recognize that?

A. Yes.

Q. Is that the same house?

A. Yes.

Q. Does that also show the street?

A. Yes.

MS. WILKINSON: Your Honor, we'd offer Government's Exhibit 58.

MR. TIGAR: May I inquire, your Honor?

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. TIGAR:

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

Gladys Wendt - Voir Dire
of the lawyers appointed to help Terry Nichols.

A. Sure.

Q. That picture that you're -- that you're looking at there, is that . . . basically the same -- that's the front of that same house that you saw in the picture that I'm putting up on the monitor --

A. Yes, it is.

Q. -- right now?

A. Yes.

Q. Just basically the same, it's only that it shows a slightly different view?

A. Right.

Q. Okay. And from the leaves on the trees in the picture that I'm showing you, does it look like the one you're looking at was taken about the same time? See the leaves on the --

A. Yeah, I saw the leaves there.

Q. Yeah. And did that -- was the tree just beginning to leaf out that day?

A. Yes, because it was in April.

Q. In April.

A. Right. Everything was greening up for spring.

MR. TIGAR: Okay. Thank you.

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

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

Gladys Wendt - Voir Dire

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

THE COURT: All right.

Any objection with that?

MR. TIGAR: No objection.

THE COURT: All right. 58 is received.

DIRECT EXAMINATION CONTINUED

BY MS. WILKINSON:

Q. Mrs. Wendt, do you see this picture, Government's Exhibit 48 -- 58, excuse --

A. Yes, I see it.

Q. Does that show the street?

A. Yes, it does.

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

A. Right.

Q. See right down there in the corner?

A. Right.

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

A. Right across, yes.

Q. And where were you parked?

A. Well, on the side of the street. When I step out, I'm close to the center of the street.

Q. So how far were you, if we're looking at the street, from that yard right there in Government's Exhibit 58, in that

Gladys Wendt - Direct
picture?

A. Probably from here to your desk.

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

A. No.

Q. Do you remember how long it was when you first got out of your -- when you first drove up and then you got out of your car that you were able to look at him?

A. Two or three minutes, I guess. 'Cause I was waiting on her to get the sidewalk swept up.

MR. TIGAR: If your Honor, please, there's no question that she saw Mr. Nichols.

THE WITNESS: No. No question.

THE COURT: Please.

MR. TIGAR: We're conceding the identification, if that's the story --

MS. WILKINSON: Thank you.

That will help, your Honor. Appreciate that.

BY MS. WILKINSON:

Q. Now, Mrs. Wendt, what time did you and your cousin leave, do you think, to go for coffee?
A. Oh, gosh, probably about five till 10.
Q. Was Mr. Nichols still in his yard, when you left?
A. Right.
Q. What was he doing when you last saw him?
A. On the north side of the house, still spreading.

Gladys Wendt - Direct

Q. Spreading the fertilizer prills --
A. Yes, ma'am.
Q. -- pearls?
A. Yes, ma'am.
Q. Now, you're familiar with this street --
A. Yeah.
Q. -- South 2nd Street in Herington, aren't you?
A. Yes.
Q. Are there any farms on this street?
A. Gosh, no.

MS. WILKINSON: We have no other --

THE WITNESS: No.

MS. WILKINSON: -- questions, your Honor.

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

MR. TIGAR: Yes.

CROSS-EXAMINATION

BY MR. TIGAR:

Q. Hello again, Miss Wendt.
A. Yes.
Q. Do you need to take a sip of water before we start?
A. I think it would be better.
Q. All right. I'm going to put back up here again 1778, that picture of the front of the house. Can you see that now?
A. Yes, I can.
Q. Now, at the time that you saw Mr. Nichols out there in the

Gladys Wendt - Cross

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

A. No.

Q. That yellow tape wasn't on there?

A. No, no.

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

A. No. I didn't, no.

Q. Okay.

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

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

A. Yes. Right.

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

right here, correct?

right here; correct?

A. Right.

Q. And you recognize him?

A. Tom -- Larry Tumgate (sic).

Q. Larry Tumgate; right?

A. Yes.

Q. And Mr. Tumgate came over to your cousin's house and talked to you; correct?

A. Right; uh-huh.

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

Gladys Wendt - Cross

to get green around the middle of April; right?

A. Right. Yes.

Q. Now, in the city, do the trees leaf out a little quicker than they do out in the country?

A. Yes, they do.

Q. So that these -- this leafing out that we see here, for whatever reason, it's warmer in the city, or not, that's a little more advanced than it would be out where you live in White City; right?

A. Yes.

Q. Is it your observation that this is about the time that most folks' lawns start to -- start to come on and get green off the winter; right?

A. Right. Yes.

Q. And were you able to see the other folks' lawns along the street there, along, you know, 2nd Street?

A. Yeah. Some have beautiful lawns, some don't take care of them. Yep. You notice them as you drive by.

Q. And as you noticed them, did you notice that this was the time when people's lawns were starting to grow?

A. Right.

Q. And of course here's 1778, No. 2, along the side of Mr. Nichols' house; and did you notice that this row of flowers here -- did you happen to notice that on that day?

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

Gladys Wendt - Cross

Q. But from your experience in living there, what does that row look like there?

A. That's a bunch of tulips.

Q. Looks like tulips?

A. Right.

Q. Is that about the right season for the tulips to be coming up?

A. Right. Right.

Q. Because in your part of the country, they come up before the other things start; is that right?

A. Right. That's right. Right.

Q. And, now, Mr. Nichols out there in the yard, he had, you said, a can that he was using?

A. Well, it was a plastic -- a plastic container. You can buy

ice cream at the Dairy Queen, comes in this type of a container. And it's about a half-gallon size or just a tiny bit larger. And that's what --

Q. And after you've eaten the ice cream out of it, you can use it for other things; right?

A. Right. I do. I put it in my freezer with fruits and everything.

Q. Because in farm country, you can recycle these plastic items and use them over and over again?

A. Yes, you can.

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

Gladys Wendt - Cross

bag?

A. No, I didn't.

Q. No. So this case what he was using, he had a container like you'd get from the Dairy Queen; and you say he was broadcasting the seed? And I'm making a motion with my hands. That's for -- for 56 years, you want to broadcast something, you use that kind of a motion; right?

A. Right.

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

A. That's right.

Q. And that is what you saw him doing?

A. Right.

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

THE COURT: Anything further?

MS. WILKINSON: Yes.

REDIRECT EXAMINATION

BY MS. WILKINSON:

Q. Mrs. Wendt, did you ever see Mr. Nichols leave the front yard and go into his house, or go where you could not see him?

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

Q. Okay.

A. 'Cause we went in the house. When we come back, he was still doing it.

Gladys Wendt - Redirect

Q. Do you know whether he ever refilled that plastic container that you saw him using?

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

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

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

MS. WILKINSON: No further questions, your Honor.

MR. TIGAR: One more.

THE COURT: All right.

RE-CROSS-EXAMINATION

BY MR. TIGAR:

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

A. Oh, boy. It's been too long a time.
Q. All right. I won't tax your patience.
A. But there was a lot of heavy dew that morning. That I can say because the grass sparkled with dew.
Q. Right. And you watch out for that in farm country; right --
A. You betcha.
Q. You got cattle?
A. Yes, we do.
Q. And you can't let them out too much on the grass when it's too wet early in the spring?
A. Well, they could be out there, but -- it wouldn't hurt them, but dew won't hurt a cow.

Gladys Wendt - Recross

Q. All right.
A. No.
Q. All right. But you were watching? You were watching; right?
A. Yeah.
Q. To see what the weather was like. Okay.

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

THE COURT: Is she excused?

MS. WILKINSON: Yes, your Honor.

THE COURT: You may step down. You're excused. Next, please.

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

THE COURT: All right.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Stephen Smith 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: Stephen E. Smith, S-M-I-T-H.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Proceed.

MR. MACKEY: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. MACKEY:

Stephen Smith - Direct

Q. Mr. Smith, who do you work for?
A. Work for the FBI.
Q. And how long have you worked for the FBI?
A. Approximately 6 1/2 years.
Q. On April 21, 1995, did you participate in the interview of the defendant on trial, Terry Lynn Nichols?
A. Yes, sir.
Q. And are you prepared to describe to the jury that interview?
A. Yes, sir.

Q. Let me ask you at this time, Mr. Smith, to tell the jury a little bit about your background. How old are you?

A. 31.

Q. All right. Recent birthday?

A. Yes.

Q. Making a calculation. Are you married?

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

Q. Where do you live?

A. I live in Topeka, Kansas.

Q. And what's your educational background?

A. I graduated from high school in St. Louis in 1984. I went to Quincy College in Quincy, Illinois, from 1984 to 1988, where I played soccer and basketball for a couple years. Graduated with a degree in accounting in 1988.

Q. That was in Quincy College?

Stephen Smith - Direct

A. Quincy College in Quincy, Illinois.

Q. And that sits on the Mississippi?

A. Across from Hannibal, Missouri.

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

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

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

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

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

A. Yes, I wanted to get into law enforcement, and the FBI was it.

Q. When did you make that switch?

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

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

A. Yes, sir.

Stephen Smith - Direct

Q. And how so and for how long?

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

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

A. No, sir.

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

Q. What sort of territory are you responsible for working out of the Topeka, Kansas FBI office?

A. The Topeka, Kansas office has a territory responsibility for 18 counties in northeast Kansas, including the towns of Topeka, Lawrence, Junction City, Fort Riley, Manhattan, Council Grove.

Q. And could you give the jury an overview of the kinds of investigations you have participated in during the past six years?

A. I participated in kidnapping investigation, white-collar-crime investigation, bankruptcy-fraud investigation, theft of the government property, bank robberies, fugitives, drug cases, numerous, numerous cases.

Q. In the course of carrying out those duties, has it fallen to you to interview witnesses or potential witnesses or individuals?

A. Yes, sir.

Stephen Smith - Direct

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

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

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

A. This is the only one.

Q. Let's direct our attention now, Agent Smith, to April of 1995 and specifically to the day of the bombing on April 19. When were you first drawn into the investigation? When did you first receive any assignment?

A. On April 19, in the late afternoon, I came back to Topeka, found out that another agent from Salina, Kansas, had received information about a Ryder dealership in Junction City, Kansas. I went out to the Manhattan airport in order to meet a plane from the FBI. And at that point on the 19th is when we had kind of set up a room in a CID office at Fort Riley in order to start our investigation.

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

A. That's Scott Crabtree from Salina.

Q. Where is Salina in relationship to Topeka?

A. Salina is approximately 85 miles west of Topeka.

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

A. Correct.

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

Stephen Smith - Direct

relative to the bombing investigation?

A. Yes. In the early morning, at approximately 4:00 a.m., I met a sketch artist from the FBI lab and brought him to Junction City and actually to the command post at Fort Riley to meet up with the witnesses from Elliott's Body Shop, Junction City.

Q. On Thursday, April 20, did you spend any time at the command post of the CID?

A. Yes, sir.

Q. And what took place there with regard to briefings of agents like yourself on developments of the investigation?

A. We had received a briefing on the night of the 20th in regards to what had transpired during the investigation in Kansas at that point. We had found out that an individual had registered at the Dreamland Motel by the name of Timothy McVeigh; that he had used an address in Michigan of 3616 North Van Dyke, in Decker, Michigan; and that this individual had been seen with a Ryder truck the days before the bombing.

Q. Now, let's turn our attention, if we can, to Friday, April 21. Did you report for duty that morning at the CID headquarters?

A. Yes, sir. I arrived at the CID office at approximately 7:45 in the morning on the 21st.

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

Stephen Smith - Direct

A. Yes, sir.

Q. And why?

A. I went to Herington, Kansas, in the early afternoon in order to obtain background information on Terry Nichols.

Q. In the course of that morning, had you received the name "Terry Lynn Nichols" and an address in Herington?

A. Yes, sir.

Q. And what was your specific assignment with regard to that name and address, as of that morning?

A. As of that morning, I was tasked to go to Herington, Kansas, and obtain background information on Terry Nichols.

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

A. Yes, sir. I went to -- from Junction City to Herington and arrived shortly before 2:00 p.m. on Friday, the 21st. And I'd been given an address of 901 South 2nd Street in Herington, Kansas, as being Terry's -- Terry Nichols's address. I went by 901 South 2nd Street, and there was no address (sic) for that specific address. And after that, I went to the police department in order to find out any information I possibly could on Terry Nichols.

Q. Agent Smith, were you by yourself, or did you have any other agent accompany you on this trip to Herington?

A. I was by myself.

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

Stephen Smith - Direct

April 21?

A. I had not been to Herington, Kansas, before. Herington, Kansas, is not part of the territory that I had responsibility over.

Q. You told the jury that upon arriving or shortly thereafter, you went to the police station.

Do you know where that is located in the city of Herington?

A. Yes. The police station is at the corner of Broadway and Holly in Herington, Kansas.

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

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

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

Q. And does it depict the location of the police station or the public safety building, I should say, in Herington?

A. Yes, sir.

MR. MACKEY: Your Honor, I'd move to admit Government Exhibit 1934.

MR. WOODS: No objection.

THE COURT: 1934 received.

BY MR. MACKEY:

Q. Agent Smith, we'll start with this particular exhibit, with a long-range view. Can you use the pen and reach down below your desk and circle the location, if you can, of the public safety building?

Stephen Smith - Direct

A. Excuse me.

MR. MACKEY: I'm sorry.

BY MR. MACKEY:

Q. Agent Smith, there's a pen up there with a wire on it. Did you grab the wrong pen?

A. Yes.

Q. My fault, bad instructions. And what is it that you're marking there?

A. That is the Herington Department of Public Safety.

Q. Which direction is the top of this photo?

A. Top of the photo is north.

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

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

Excuse me. It's kind of crooked.

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

A. Excuse me.

Q. Let me ask you, what time did you leave the public safety building this afternoon?

A. Approximately 2:15 p.m.

Q. And where did you go when you left?

A. I left the Department of Public Safety, and I drove by 109 South 2nd Street, because that is the address that the director of the public safety had given me as a current address for Terry Lynn Nichols.

Stephen Smith - Direct

Q. When you drove by 109 South 2nd that Friday afternoon, what did you see?

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

A. There was a blue pickup truck with a white camper shell parked in the driveway that afternoon.

Q. Do you recall approximately what time of the day it was that you first drove by and saw the vehicle you've described?

A. At approximately 2:25 p.m.

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

A. I drove to a bank parking lot at 1st and Day and met up with another FBI agent.

Q. An who was that, by name?

A. Jack Foley.

Q. And how had you first come to know that Agent Foley had arrived in Herington?

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

Q. And approximately what time in the afternoon did that happen?

A. Approximately 2:25.

Q. That is immediately after you had driven past the house?

A. That is correct.

Q. To your knowledge, were there any other FBI agents in Herington, as of that time?

A. No, there were not.

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

Stephen Smith - Direct

A. Agent Foley and I drove and set up a surveillance of Terry Nichols' house south of his house. We were set up on the east side of the street, approximately 70 to 100 yards south of Terry Nichols' house. We were just south of McClaren and 2nd Street, which is this street right south of his house.

Q. And approximately -- again, if you can -- what time did you and Agent Foley set up stationary surveillance?

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

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

A. We were in casual clothes. We did not have any suit or tie on at that time.

Q. And describe Agent Foley's car, the car in which the two of you were seated.

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

Q. At some point shortly after starting your surveillance, did you notice any activity, vehicular activity at the Nichols residence?

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

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

A. Yes. I noticed a man carrying a small child -- the man who later introduced himself to me as Terry Nichols -- carrying a small child, get into the driver's side of the pickup truck,

Stephen Smith - Direct

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

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

Q. Now, at that point in time -- that is, when the vehicle began moving -- to your knowledge, had any other FBI agents arrived in Herington?

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

Q. This is by virtue of radio communication?

A. Yes, sir.

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

A. Yes.

Q. Describe what happened as the truck passed you.

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

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

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

Q. Once it passed your position, did you see where they went?

A. Yes. I saw that the truck had taken a right-hand turn or headed west on Sturgis, the next street south of McClaren.

Stephen Smith - Direct

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

A. Agent Foley turned around the car at McClaren, and we followed and went the same direction that the truck had gone.

Q. Can you estimate or describe at what speed the Nichols pickup truck was moving?

A. The Nichols pickup truck was moving at a very slow rate of speed that I would estimate at approximately 10 miles per hour.

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

A. We followed -- we continued south on 2nd Street, and we also took a right heading west on Sturgis; and when we turned right on Sturgis, we noticed that the pickup truck was taking a left-hand turn on 3rd Street, heading south. We continued on Sturgis; and as we got to the corner of Sturgis and 3rd Street, we noticed that the vehicle was still in the same block of 3rd Street before coming up to Trapp.

Q. Let's go back to the aerial, if you don't mind, Agent Smith, and we'll try it one more time; and if it doesn't work, that's fine. Draw on the aerial, please, the route that you saw the Nichols truck take up to this point in your testimony.

A. The Nichols truck left the house on 2nd Street, went south on 2nd Street, and then west on Sturgis, and then south on 3rd Street.

Q. And what is the east/west street that intersects 3rd Street at the point of your pen?

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

Stephen Smith - Direct

Business 56 as you go out of town.

Q. Did you see which direction Mr. Nichols turned at that intersection of 3rd and Trapp?

A. Yes, sir. We noticed that Mr. Nichols turned right and headed west on Trapp Street, and Jack Foley and I drove down and also turned right heading west on Trapp and noticed that his vehicle, Terry Nichols's vehicle had turned south on 56.

Q. And could you see Mr. Nichols' truck continue south, then, on 56?

A. Yes. Mr. Nichols' truck continued south on 56 and proceeded for approximately a quarter mile to a business and then took a left into a business right here.

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

A. Yes, this is Surplus City.

Q. What happened then?

A. Jack Foley and I proceeded to drive south on -- on Highway 56 and noticed that the driver -- who later was introduced to me as Terry Nichols -- get out of the pickup truck and head towards the door of the Surplus City. Terry Nichols then turned around and headed back towards his pickup truck, and we proceeded further south on 56 to the next business and turned around there.

Q. At that point in time, as you were continuing south on Highway 56, did you see any other FBI vehicles?

Stephen Smith - Direct

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

Q. And which direction was Agent Price headed?

A. Agent Price was heading north on Highway 56.

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

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

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

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

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

A. It's like here. And I would like to make one correction here, sir. Surplus City is down here. I had not gone down far enough. So this is the Surplus City down here. Excuse me.

Q. All right. When you got back to the Surplus City and discovered that the pickup truck was gone, did you receive any radio communications as to where it had been spotted?

A. Yes. Both Jack Foley and I heard on the radio that the car -- the vehicle had turned around and backtracked and gone back north on 56 into Herington and had ended up at the police department.

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

Stephen Smith - Direct

A. We -- we turned around and went north on 56 and headed into the police department, also.

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

A. Yes. We arrived at the police department and noticed Terry Nichols' pickup truck parked directly in front of the police department, and there was no one in the pickup truck at that point.

Q. How many other FBI vehicles did you see at the public safety building when you arrived?

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

MR. MACKEY: All right. We can remove Government Exhibit 1934. Thank you.

BY MR. MACKEY:

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

A. No, sir. We waited outside.

Q. And why did you do so?

A. We wanted to make sure that there was no hostage situation or any type of problems inside.

Q. Were you ultimately satisfied that you could enter the building?

A. Yes, sir. Approximately 10 minutes later.

Q. And when did you first go in?

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

Stephen Smith - Direct

April 21.

Q. And who went in with you?

A. I went in, Jack Foley went in, Mike Gillispie went in, and Tom Price went in. All four of us are agents from the Kansas City division.

Q. Before the group of you, individuals who you've identified, went inside, did you talk among yourselves as to what, if any, authority you would have to arrest Terry Nichols?

A. Yes. We had decided and we had also learned that we had no arrest warrants at all for Terry Nichols at that point and that if he wanted to go, he was free to go at any time that he so chose.

Q. When you entered the police station that afternoon, who did you first encounter?

A. I encountered Director Dale Kuhn, who I had spoken to approximately an hour previous to that, and identified the other three agents with me. And Director Kuhn told me that Terry Nichols and his family were in the officers' room directly inside the police department and Terry Nichols had asked Director Kuhn why his name had been mentioned on the news. Director Kuhn had told Terry Nichols he did not know why his name was mentioned on the news.

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

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

Stephen Smith - Direct

us to Terry Nichols as FBI agents and that we were individuals who could answer his questions.

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

A. Yes, Mr. Nichols addressed us and asked us why his name had been mentioned in the news as being involved in the Oklahoma City bombing, and the other agent told Mr. Nichols we did not know why his name was mentioned in the news but that we had some questions for him. And Terry Nichols then responded, "Good, because I have some questions for you."

Q. Let me show you Government's Exhibit 1937. If you would take the pen, when you get a free hand, and click it.

Recognize what's shown in the photograph that's marked Government Exhibit 1937?

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

MR. MACKEY: Your Honor, I'd move to admit Government Exhibit 1937.

MR. WOODS: No objection.

THE COURT: Received.

BY MR. MACKEY:

Q. And is this the room in which you first met Mr. Nichols on Friday afternoon, the 21st?

A. Yes, sir.

Stephen Smith - Direct

Q. After the initial conversation you've already described, what happened next?

A. We did a pat-down search of Terry Nichols, and then myself and Agent Foley followed Terry Nichols and Director Kuhn down to the basement of the Herington Department of Public Safety.

Q. Prior to that day, had you been inside the facility itself, the public safety building?

A. No, sir, I had not.

Q. Only in the public area?

A. Yes, sir.

Q. Were you familiar with what interview rooms were available inside that building?

A. No, I was not.

Q. Who made the selection, then, of what place it would -- that interview would take place?

A. Director Kuhn decided that it would be best to have the interview conducted down in the basement where it was a large meeting room where there would be less interruptions.

Q. And what time did the interview of Terry Lynn Nichols begin on Friday, April 21?

A. At approximately 3:18 p.m.

Q. And at what time did it end?

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

Q. During that time period, between -- after 3:00 and after midnight, were there any breaks taken during this interview

Stephen Smith - Direct
session?

A. Yes, there were three breaks taken, totaling approximately two hours.

Q. And could you give the jury an overview as to the role you played during the course of that interview?

A. Yes. I took handwritten, contemporaneous notes of the items -- or the things that Mr. Nichols had mentioned during the interview. I'm usually teamed up with one other FBI agent that would do most of the questioning. I also asked questions of Terry Nichols, and it was normally myself and one other agent. But my main focus was to take handwritten notes of the interview.

Q. Agent Smith, take a look inside your folder for Exhibit 1924.

What are those, please.

A. These are the handwritten notes that I took during the interview of Terry Nichols.

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

A. Yes, sir.

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

A. That's correct.

Q. In your presence?

A. Yes, sir.

Stephen Smith - Direct

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

A. There's 22 pages of handwritten notes.

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

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

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

A. Yes, sir. We had these typed up and transcribed into a little more legible --

Q. Take a look at Government Exhibit 1926.

What is that, please.

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

Q. How many pages of typewritten notes are there?

A. 24 pages.

Q. Take a look finally at Government Exhibit 1923.

And identify that for the record.

A. Yes. 1923 is a report of the interview of Terry Nichols. It's commonly referred to as an FD 302; and this is the report

that I prepared based on my handwritten notes and recollection of the interview.

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

Stephen Smith - Direct

other things, did you prepare any other documents?

A. Yes. I prepared an interview log, also, in addition to the 302; and the interview log contained certain times as to what agents were in the room at that particular time, when breaks were taken, when documents were signed.

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

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

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

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

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

A. Yes, sir.

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

MR. WOODS: May I look at --

THE COURT: Yeah, sure.

MR. WOODS: -- that, your Honor?

Thank you.

Thank you.

No objection, your Honor.

Stephen Smith - Direct

THE COURT: 1925, received.

BY MR. MACKEY:

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

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

A. No, I did not.

Q. And why is that?

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

Q. Agent Smith, I want to show the jury photographs of the room in which the interview took place. Could you identify Government's Exhibits 1936 -- excuse me, 1938, '39, and '40.

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

Q. Do they accurately depict the interview room?

A. Yes sir

A. 163, 311.

MR. MACKEY: Your Honor, I'd move to admit these three exhibits, 1938, '39, and '40.

MR. WOODS: No objection.

THE COURT: They are received.

BY MR. MACKEY:

Stephen Smith - Direct

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

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

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

And what's shown in this photograph?

A. This is another part of the downtown -- I'm sorry -- the downstairs room in the Herington Department of Public Safety. And this is where we actually interviewed Terry Nichols. Terry Nichols sat in the orange, two-armed chair. It was closest to the stairwell. I sat in the middle chair, and another agent would sit in the other -- in the black chair.

Q. All right. And Government Exhibit 1940?

A. 1940 is again in the basement of the Herington Department of Public Safety. It's a hallway going back to the rest rooms that were used on the breaks during the interview.

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

A. This leads to the main floor of the Herington Department of Public Safety.

Q. Other than yourself, who initiated the interview of Mr. Nichols that Friday afternoon?

A. Another agent by the name of Jack Foley.

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

Stephen Smith - Direct

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

A. The first questions that we asked Terry Nichols were in regards to his date of birth, which he gave as 4-1, or April 1, 1955, and his Social Security account number, which he gave as 371-68-4869.

Q. What, if anything, did Mr. Nichols tell you about his Social Security number?

A. Terry Nichols told us that he did not use his Social Security number anymore and he was not sure if the number that he had given us was actually his Social Security number. Terry Nichols also said that his Kansas driver's license number was a computer-generated number because he did not use his Social Security number for his driver's license.

Q. At the outset of the interview with you and Agent Foley, did you ask him anything about what he did for a living?

A. Yes. We asked him what he did for a living, and he advised that he sold military surplus items at gun shows that he would

attend. Those items would include hand shovels, axes, surplus sandbags, and the like.

Q. When he went through the list of items that he sold at gun shows when first asked that afternoon, did he mention selling ammonium nitrate?

A. No. Terry Nichols did not mention that he sold ammonium nitrate at gun shows until approximately eight hours later, approximately 11:20 p.m. that night.

Stephen Smith - Direct

Q. During the very first minutes of the interview, Mr. Smith, did Mr. Nichols make any statements to you as to why he had left his home that afternoon?

A. Yes. Terry Nichols said that he had heard on a radio broadcast his name and his brother's name in relation to the Oklahoma City bombing as being involved in the bombing, said he came home and heard that another individual that he believed was Timothy McVeigh had been arrested for the bombing. He advised that he left his house that afternoon because he did not want another Waco.

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

A. No. No, sir.

Q. Again, early in the interview with you and Agent Foley, did Mr. Nichols say anything as to what he'd did -- what he had done after he left the house?

A. Yes. Mr. Nichols had advised us that he had left his house and that he had gone to the Surplus City, gotten out of his truck at the Surplus City, had a feeling that he was being followed, got back into his truck, and had come to the police department.

Q. Again, early in the interview, did Mr. Nichols address any questions to you and Agent Foley?

A. Yes. Terry Nichols asked Agent Foley and myself the same question he had asked us upstairs in regards to why his name

Stephen Smith - Direct

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

Q. Now, when you first met Mr. Nichols upstairs, in the course of that first conversation, did he express a willingness to sit down and answer questions?

A. Yes, sir. He did. In reference to that he said that he had some questions for us and that he would be willing to come downstairs and talk with us.

Q. Early in the interview, did there come a time when you and Agent Foley told Mr. Nichols that he didn't have to talk to you?

A. Yes, sir. Agent Foley Mirandized Terry Nichols within 10 minutes of us going downstairs. And we told him that he was free to go and that he did not have to talk to us.

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

A. Yes. Right prior to us advising him of his rights, he had mentioned that Timothy McVeigh had stayed with him at a -- at his -- at his brother's farm in Decker, Michigan, with an address of 3616 North Van Dyke in Decker, Michigan.

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

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

Stephen Smith - Direct

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

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

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

Terry Nichols read the form out loud to us and stopped after every -- every sentence or paragraph and reviewed what he had just read and then handed us the form back at approximately 3:31 p.m.

Q. And is there a place on the form -- excuse me -- for a person who has read it to sign it and acknowledge having read it?

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

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

A. No. Mr. Nichols did not sign the advice-of-rights form. And he -- the reason he gave for not signing the form was that there was -- the word "interrogation" at the top of the form and that he did not like the word "interrogation" because it reminded him of the Nazis.

Stephen Smith - Direct

Q. At that point in the interview, had anyone used the term "Nazis"?

A. No, sir.

Q. Let me show you, please, if you'll look in your folder, Exhibit 1928.

Can you identify for the record what that document is?

A. Yes. This is the advice-of-rights form that we gave Terry Nichols for him to read, and this is the form that we signed in Terry Nichols' presence that he had read.

MR. MACKEY: Your Honor, I'd move to admit Government Exhibit 1928.

MR. WOODS: No objection.

THE COURT: Received.

THE COURT: Received.

BY MR. MACKEY:

Q. Let's zoom in, if we can, at the very top of this document, 1928. And read into the record, please, the title of that particular form.

A. "Interrogation, Advice of Rights."

Q. And immediately below that?

A. "Your rights."

Q. Now, there's some handwriting below that on the right-hand side of the document. Is that your handwriting?

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

Q. And what time is shown?

Stephen Smith - Direct

A. 3:26 p.m.

Q. And what time is that to represent?

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

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

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

A. "Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in court. You have the right to talk to a lawyer for advice before we ask you any questions and to have a lawyer with you during questioning. If you can't afford a lawyer, one will be appointed for you before any questioning, if you wish. If you decide to answer questions now without a lawyer present, you will still have the right to stop answering anytime. You also have the right to stop answering at any time until you talk to a lawyer."

Q. During the course of that afternoon, did you witness Mr. Nichols read those same words out loud?

A. Yes, sir.

Q. And at the bottom of the form, under the title "Waiver of Rights" -- if we could zoom that up, please. And please, read that into the record.

Stephen Smith - Direct

A. "Waiver of Rights. I have read this statement of my rights, and I understand what my rights are. I'm willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me."

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

A. Yes, there's a blank --

Q. Or a line, I should say?

A. Yes, sir.

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

signature?

A. That's correct.

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

A. That is for Special Agent Jack Foley, and my signature is below that. We were the two agents that had administered the rights of Terry Nichols.

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

A. 3:31 is the time that Terry Nichols handed the form back to us for our signature after he had read the form.

Q. And did you make the handwritten notation that appears then below that entry?

A. Yes. At approximately 3:43, I made the notation that Nichols acknowledged that he understood his constitutional

Stephen Smith - Direct

rights but refused to sign this FD 395 form.

Q. After reading the form to Mr. Nichols and after his review in your presence, did he make any statement to you as to whether in fact he understood his rights?

A. Yes. He advised that he understood his rights and that he wished to talk to the agents -- to myself and Jack Foley but that he just did not want to sign the form.

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

A. We told Terry Nichols that this was not imperative or -- it was not imperative for him to sign the form. We wanted to make sure that he understood his rights that he did not have to speak with us and that he was free to go at that time.

Q. And did ultimately thereafter Mr. Nichols begin making additional statements to you and Agent Foley?

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

Q. What took place between 3:31 when you had finished reading the form through with Mr. Nichols and 3:43, or thereabouts, when the interview resumed?

A. Terry Nichols was deciding whether he wanted to speak with us. And he advised that he understood his rights and that he did wish to speak with us; and at that point, it took approximately 10 to 12 minutes for him to decide that he wanted to continue the interview but he just did not want to sign the form.

Stephen Smith - Direct

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

A. Yes, and he fully said that he did understand his rights and that he did want to speak with us.

Q. How long did you and Agent Foley continue to interview Mr. Nichols; that is, just the two of you?

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

arrived.

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

A. Agents Scott Crabtree and Dan Jablonski.

Q. Before the other two agents arrived and just with yourself and Agent Foley present, did Mr. Nichols make statements to the two of you about when he had last seen Tim McVeigh?

A. Yes. The first question we asked Mr. Terry Nichols after the advice of rights was when he had last seen Tim McVeigh.

Terry Nichols advised that he had last seen Tim McVeigh on Sunday. And he immediately said, "In my eyes, I did not do anything wrong; but I see how lawyers can turn things around." Terry Nichols then said he did not know anything about the bombing before it happened and he was hesitant to talk because of the way lawyers can turn stuff around.

Q. These comments that you have made or described to the jury: Those were from Mr. Nichols?

Stephen Smith - Direct

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

Q. In conjunction to his response to your first question, "When did you last see Tim McVeigh?"

A. That's correct.

Q. Early in that interview with you and Agent Foley, did you ask him if he had any knowledge as to where Tim McVeigh had stayed?

A. Our next question was in regards to where Timothy McVeigh -- if he had seen Timothy McVeigh recently at any motel in Junction City or knew where he was staying. Terry Nichols responded that he did not know; that he had not seen Timothy McVeigh in any motel in Junction City.

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

A. We asked Terry Nichols that question because we had reason to believe that Timothy McVeigh had checked into the Dreamland Motel on the Friday before the bombing, April 14, until the day before the bombing, on April 18.

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

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

Q. And why did you ask that question?

A. We asked that question because we knew that an individual had seen Timothy McVeigh at the Dreamland Motel with a Ryder truck prior to the bombing and we also knew that the bomb truck

Stephen Smith - Direct

had been rented from Elliott's Body Shop, a short distance away in Junction City, from the Dreamland Motel.

Q. And how did Mr. Nichols respond when asked about seeing Mr. McVeigh with a Ryder truck?

A. He said that he had not seen McVeigh -- seen Mr. McVeigh with a Ryder truck.

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

Foley?

A. Yes. The next thing that he told us was that he had seen McVeigh in Oklahoma City on Sunday.

Q. And what other details, if any, did he give you at that point in the interview about having seen Mr. McVeigh in Oklahoma City?

A. He said that he had -- that he had sent a -- I'm sorry. He had gone to Las Vegas the previous November and dropped a TV set off to his wife and his son and that two months prior to the bombing, which would have been February of 1995, he had sent a letter to Timothy McVeigh requesting that if he was in the Las Vegas area, to come and pick that TV set up. He said that he had received a call on Easter Sunday from Timothy McVeigh asking him to come down to Oklahoma City because he was experiencing car problems and that if he didn't come down that he could not pick up his TV set.

Q. Agent Smith, did Mr. Nichols describe that phone call as one he expected, or was a surprise?

Stephen Smith - Direct

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

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

A. Mr. Nichols told us that Mr. McVeigh had told him that he should come down to Oklahoma City and gave him specific directions to possibly come down 8th Street and told us that Mr. McVeigh -- I'm sorry -- Mr. McVeigh told Terry Nichols that he should drive around the downtown area in Oklahoma City and that Mr. McVeigh would find Terry Nichols.

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

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

Q. Did he tell you early in the interview what he did after doing so?

A. Yes. He said he picked up Timothy McVeigh and drove back to Junction City, Kansas.

Q. Where in Junction City?

A. He said he had driven him back and dropped him off at a closed McDonald's in Junction City.

Stephen Smith - Direct

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

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

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

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

A. Yes, he said that Mr. McVeigh said that the car that he bought was cheap and that he did not know if it was worth fixing. And Terry Nichols said that he felt that the car that Timothy McVeigh had in Oklahoma City, he was leaving in Oklahoma City.

Q. And what, if any, statement did he make at that point in the interview about where Mr. McVeigh was staying in Junction City?

A. He said that he did not know where Mr. McVeigh was staying but that he was going to call a friend in Junction City.

Q. Did you and Agent Foley ask Mr. Nichols what it was that he and Mr. McVeigh had talked about during the drive back from Oklahoma City to Junction City?

A. Yes. We asked Mr. Nichols what they had talked about. He said that Mr. McVeigh had been vague on a lot of things and that he could not recall many specifics of the conversation they had from Oklahoma City to Junction City.

Q. Did the word or subject "Waco" come up again early in the

Stephen Smith - Direct

interview with just yourself and Agent Foley present?

A. Yes. Terry Nichols said that when he goes to gun shows, he has people who come by his table who say that the FBI and the ATF murdered all the people in Waco and that he lets them say it. He also said that people come by his table and say that the government is getting out of hand and that sometimes he feels that way, also.

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

A. Yes, sir.

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

A. That's correct.

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

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

Q. Again, early in the interview with just yourself and Agent Foley, did Mr. Nichols make any additional statements about when he had last seen McVeigh prior to picking him up in Oklahoma City on Easter Sunday?

A. Yes. He had said that McVeigh's vehicle in -- that he had felt was left in Oklahoma City was an older model and that he

Stephen Smith - Direct

didn't know if it was worth fixing. In that reference he had mentioned that Timothy McVeigh had purchased two or three vehicles since the last time he had met him, the last time he had seen him. That was in November of 1994.

Q. So early in the interview with yourself and Agent Foley, he represented to you that he had last seen Mr. McVeigh in November of 1994?

A. That's correct.

Q. And that was in connection, again, with what topic or subject matter?

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

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

A. Yes. At approximately 4:12 p.m., Agents Jablonski and Crabtree entered the interview room.

Q. Tell the jury, please, what happened when they arrived.

A. They knocked on the door and came in. I introduced both Agents Crabtree and Jablonski to Terry Nichols, and I took the initiative to tell Terry Nichols what we would do is we would review the notes that we had already talked about with the new agents so the new agents would know what we had previously discussed during the interview.

Q. So before you did so, you told Mr. Nichols of your intent to do so?

A. Yes, sir.

Stephen Smith - Direct

Q. And did Mr. Nichols say anything at that point in time when you told him you would be reading from your notes and briefing the newly arrived agents?

A. Yes. I told Terry Nichols that I would be just reading my notes of things that he had already told us and told him to pay close attention as to what I was reading to make sure that the notes I had taken were accurate and that they had reflected what he had told us already.

Q. And what did he say?

A. He said that he would do that, and then I did read them out loud to the new agents.

Q. Before doing so, at any point in that time, did Mr. Nichols make any request about the notes?

A. Yes. He -- Mr. Nichols asked if he could get a copy of the notes at that point.

Q. Now, of the hundreds of interviews you had conducted to that point in time, had anyone else asked you for copies of your notes of the interview?

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

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

A. I reviewed my notes that we had already gone over, and I just read the notes as they -- as I had taken them; and I told Terry Nichols to stop me at any point and tell me if I had made any inaccurate note-taking or if he wanted to make any additions to the notes that I had -- I had prepared.

Stephen Smith - Direct

Q. And what was Mr. Nichols doing as you read your notes out

loud?

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

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

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

Q. One event that had taken place with just yourself and Agent Foley was the Miranda warnings; is that correct?

A. That's correct.

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

A. Yes, we did. And Agent Jablonski reiterated with Terry Nichols that he wanted to make sure that Terry Nichols understood his rights; that he was free to go; and that he did not have to speak with us at that time.

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

A. Approximately 3:45.

Stephen Smith - Direct

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

A. I'm sorry, sir. Agents Foley and Jablonski came in at 4:12. So we completed the review of the notes at approximately 4:25 p.m.

Q. How long did the four agents remain in the room with Mr. Nichols?

A. The four agents were in the room until approximately 4:53 p.m. So for another half an hour approximately.

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

A. We reviewed the notes, as I mentioned; and then we did discussion about getting some consent searches for Terry Nichols's house and his truck.

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

A. That subject was initiated by Dan Jablonski, an agent who came in at 4:12 in the afternoon. Agent Jablonski brought in the form with him, the consent search form, and initiated the conversation with Terry Nichols.

Agent Jablonski mentioned to Terry Nichols that we would like to get consent searches for his house and his truck; and when he was mentioning this to Terry Nichols, he passed me the form to fill out. And I filled out an address and dated the form and handed it back to Agent Jablonski.

Agent Jablonski then read the form out loud to Terry

Stephen Smith - Direct

STEPHEN SMITH - DIRECT

Nichols, placing it in front of Terry Nichols so he could review it. Agent Jablonski then passed the form to Terry Nichols for his review, and Terry Nichols read it at that time and expressed a willingness to consent to searches of his house and his truck.

Q. And did he represent that consent by signature on the form?

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

Q. Take a look now at Government Exhibit 1929.

What is that, please.

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

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

MR. WOODS: May I take the witness on a short voir dire, your Honor?

THE COURT: Yes, you may.

VOIR DIRE EXAMINATION

BY MR. WOODS:

Q. Agent Smith, my name is Ron Woods. I'm one of the lawyers that was appointed to represent Terry Nichols.

You and I have never met, have we?

A. No, sir.

Stephen Smith - Voir Dire

Q. When you gave the consent form to Terry Nichols to sign concerning the search of his car and house, he asked you, didn't he, if he or his wife could be present at that search?

A. Yes, sir.

Q. And you told him yes?

A. Yes, sir.

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

A. No, sir.

MR. WOODS: I object to the admission of the consent form, your Honor.

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

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

THE COURT: Objection sustained.

MR. MACKEY: All right.

DIRECT EXAMINATION CONTINUED

BY MR. MACKEY:

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

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

Stephen Smith - Direct
materials.

Q. Now, in the course of the interview with Mr. Nichols that followed, after that statement, did he repeat that statement?

A. Yes. A couple hours later, the issue of the consent search came up again; and Terry Nichols advised that he wanted -- he reiterated that he wanted to make sure that the searching agents could tell the difference between innocent items and bomb-building materials.

The issue came up again after our last break, when we asked Terry Nichols about any storage lockers under his control, and he mentioned a storage locker in Council Grove, Kansas, where he had placed his belongings from approximately October of 1994 until March of 1995. He then said that there was nothing in his car or truck that could even be construed as a bomb-building material.

Q. Did Mr. Nichols at any point describe or define "household cleaning solvents"?

A. No, sir.

Q. Just used that term?

A. That's a term he used.

Q. On that afternoon, were you aware of in fact what was inside the Nichols residence on South 2nd Street?

A. No, sir.

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

Stephen Smith - Direct

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

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

A. Yes, it was Agent Crabtree and myself throughout the rest of the interview, from approximately 4:53 p.m. until approximately 12:11 a.m. We took three breaks in between there totaling two hours, so Agents Crabtree and myself were with Terry Nichols for approximately five-and-a-quarter hours that evening.

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

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

Q. Approximately what portion of the statement by Mr. Nichols had taken place before Agent Crabtree arrived?

A. The -- we had been questioning Terry Nichols for less than an hour, and I had taken three pages of notes of things that Terry Nichols had told us; so the majority of the interview was conducted by Agent Jab -- Agent Crabtree and myself.

Q. Agent Smith, during the course of the interview with yourself and Special Agent Crabtree and Mr. Nichols, can you describe your demeanor and manner?

A. My demeanor is like it is today. I would just ask questions in a very conversational tone, and I was very

professional.

Stephen Smith - Direct

Q. How about Agent Crabtree?

A. Agent Crabtree was the same way, he was very conversational and professional. Neither of us were confrontational in any manner.

Q. How about Mr. Nichols' manner and demeanor?

A. Mr. Nichols' manner and demeanor were very calm and deliberate throughout the interview.

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

A. No.

Q. Did he ever complain about any of the questions that were directed to him?

A. No, sir.

Q. About the length of interview?

A. No, sir.

Q. About the manner in which questions were asked?

A. No, sir.

Q. In the course of the interview with yourself and Agent Crabtree, did you ask Mr. Nichols for names and information of associates of Tim McVeigh?

A. Yes, sir.

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

A. Yes, sir.

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

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

Stephen Smith - Direct

this individual was a white male. Gave us no further description of Fort -- Mr. Fortier.

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

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

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

A. Yes. Not initially -- initially he did not give us where Mr. Fortier lived. But later in the interview, he said that Mr. McVeigh would still be in contact with Mr. Fortier and that Mr. Fortier had lived in Arizona.

Q. Now, in the course of the interview with you and Agent Crabtree, did you go back over the statements concerning his trip to Oklahoma City on Easter Sunday?

A. Yes, sir.

Q. Could you tell us what additional details you learned.

A. Yes. Mr. Nichols had mentioned that he had received a call on April 16 and that from -- from Timothy McVeigh who said that

ne had experienced car problems in Oklahoma City and that he needed to go down to Oklahoma City to pick up his TV or Mr. McVeigh would not be able to do that.

Stephen Smith - Direct

He said that Mr. McVeigh had called and said that he was going to visit some relatives on the East Coast and that he would not be able to drop the TV set off, so he would have to come down and pick him up.

Q. Now, in the interview or the portion of the interview with you and Agent Crabtree, did he give a different date as to when he had last seen Mr. McVeigh?

A. Yes. During the note recap with the four agents in the room, he had mentioned that the last time he had seen Mr. McVeigh was either November of 1994 or January of 1995.

Q. With Agent Crabtree, did you discuss again the specifics of the letter that Mr. Nichols had directed to Tim McVeigh?

A. Yes. Mr. Nichols said that the letter that he had sent to Mr. McVeigh two months prior to the bombing, which would have been in February of 1995 -- he said that he had requested that McVeigh pick up a TV set from his ex-wife in Las Vegas, if he happened to be in the area.

Q. And based on what Mr. Nichols told you, was it clear as to what Mr. McVeigh was to do -- or Mr. McVeigh was to do with the

TV if he picked it up?

A. Yes, Mr. McVeigh was to bring the TV set to Terry Nichols.

Q. Did Terry Nichols tell you whether Tim McVeigh ever responded to that letter?

A. Mr. Nichols told us that Mr. McVeigh did not respond to that letter either by return letter, in phone, or in person

Stephen Smith - Direct

because the first contact that he had since that letter was the phone call on Easter Sunday that he was not expecting. He said that there was no contact at all between himself and Mr. McVeigh between the date of the letter in February of 1995 and the phone call that he received on April 16, 1995.

Q. According to Mr. Nichols, when had he last been in Las Vegas?

A. Mr. Nichols had last been in Las Vegas in January of 1995, when he flew back from the Philippines.

Q. And again according to Mr. Nichols, had he seen his ex-wife at that time?

A. Yes, he had seen his ex-wife, Lana Padilla, at that time and had given her money for their son.

Q. Did Mr. Nichols offer any explanation as to why he didn't pick up the TV and transport it back to Kansas with him at that time?

A. No, he did not.

Q. Did Mr. Nichols tell you where he was living at the time he wrote the letter to Tim McVeigh?

A. Yes. I understood from what Mr. Nichols told us that he

... 100. I understood from what Mr. Nichols told us that he was living at the Sunset Motel in Junction City, Kansas.

Q. Did Mr. Nichols tell you why he thought Mr. McVeigh might be willing to bring a TV set from Las Vegas to Junction City, Kansas?

A. No, he did not.

Stephen Smith - Direct

Q. Did Mr. Nichols tell you whether he expected Mr. McVeigh, when he wrote the letter, to be making that trip?

A. He did not expect Mr. McVeigh to be making that trip.

Q. Let's return our attention to the Easter Sunday phone call, if I can, Agent Smith. What, if any, new information did you learn from Mr. Nichols at that point in time with Mr. Crabtree present?

A. In regards to the April 16 phone call, we had also learned that Mr. McVeigh had told Terry Nichols that he needed to come down to Oklahoma City to pick up the TV.

Q. Did Mr. Nichols place the time of that phone call?

A. Yes. He said that the phone call was approximately 3:00 p.m. in the afternoon on Easter Sunday.

Q. And did he mention anything that was going on at the time of the phone call?

A. He said that he and his wife and son and his daughter were just finishing up Easter Sunday dinner when he received the phone call.

Q. According to Mr. Nichols, how long had he been living in the residence at the time of the Easter Sunday phone call?

A. He had been living in the residence since approximately March of 1995, so month or a little over a month.

Q. Did he tell you how long he'd had phone service?

A. He did not.

Q. Did he tell you how Mr. McVeigh had his phone number?

Stephen Smith - Direct

A. No, he did not tell us how.

Q. Did he tell you who picked up the phone when it rang?

A. Not specifically. Because he told us that the only person that talked to Mr. McVeigh was himself.

Q. Did he tell you whether any other person present overheard any portion of the conversation?

A. No, he did not.

Q. Did you ask Mr. Nichols or did he otherwise tell you where it was that Mr. McVeigh was calling from?

A. He said that he assumed that Mr. McVeigh was calling from Oklahoma City.

Q. Let me show you what's been previously admitted into evidence as Exhibit 1888.

And show you phone activity on April 16, 1995.

Do you have that in front of you, Agent Smith?

A. Yes, sir.

Q. And according to that exhibit, was there a phone call to the Nichols residence on Easter Sunday, April 16, in the

afternoon?

A. Yes, sir, there is a call at approximately 3:08 p.m.

Q. And according to that record, where was that call placed from?

A. The Amoco pay phone, Tim's Amoco in Herington, Kansas.

Q. When you were interviewing Mr. Nichols on Friday afternoon, April 21, did you have the information that's reflected in this

Stephen Smith - Direct
exhibit?

A. No, sir.

MR. MACKEY: Your Honor, how long would you like for me to continue?

THE COURT: Anytime that's a good --

MR. MACKEY: This is a good break.

THE COURT: All right. You may step down, Agent Smith. We'll take our afternoon recess.

Members of the jury, we will recess at this time for our usual --

If you'll step down, please.

-- our usual 20-minute break period during which, of course, please follow the cautions given at all earlier recesses: Avoiding discussion of the case, keeping open minds until you hear it all.

So you're excused. 20 minutes.

(Jury out at 2:58 p.m.)

THE COURT: Okay. We'll be in recess.

(Recess at 2:59 p.m.)

(Reconvened at 3:20 p.m.)

THE COURT: Be seated, please.

(Jury in at 3:20 p.m.)

THE COURT: If you'll resume the stand, please.

Mr. Mackey, you may continue.

MR. MACKEY: Thank you, Judge.

Stephen Smith - Direct

BY MR. MACKEY:

Q. Agent Smith, let's go back to the Easter Sunday phone call. What, if any, directions did Mr. McVeigh give to Mr. Nichols in that phone call?

A. Mr. McVeigh told Terry Nichols to drive down to the downtown area of Oklahoma City, giving him specific directions that he should possibly come down 8th Street.

Q. And what was he to do once he got to downtown Oklahoma City?

A. According to Terry Nichols, he was supposed to drive around the downtown area of Oklahoma City and Tim McVeigh would find Terry Nichols.

Q. In this same Easter Sunday phone call, according to Mr. Nichols' statement, what, if anything, did Mr. McVeigh say about what he was to say to his wife?

A. Mr. Nichols told us that Mr. McVeigh told him that he

should tell his wife Omaha, if she asked, and that he was supposed to keep the conversation between them between themselves.

Q. In the conversation on Easter Sunday, did Mr. McVeigh, according to Mr. Nichols, describe the extent of the car problems he had experienced?

A. He -- not specifically. He did not explain the car problems to him other than the fact that Mr. Nichols felt that apparently that Mr. McVeigh was leaving that car in Oklahoma

Stephen Smith - Direct

City and that he would be driving Mr. McVeigh back to Kansas.

Q. Now, according to Mr. Nichols, did the two men talk about any other option by which Mr. Nichols could retrieve his TV set without making a trip to and from Oklahoma City?

A. No.

Q. Did Mr. Nichols tell you why it was that Mr. McVeigh was coming to central Kansas, if he wanted to go to New York?

A. No, he did not tell us why.

Q. Did Mr. McVeigh give any more specifics as to the directions that Mr. Nichols was to follow in finding him in downtown Oklahoma City?

A. Other than telling him to get down to the downtown area, drive around the block a couple times and McVeigh would find Mr. Nichols.

Q. According to his statement to you, did he need to make any notes or written record of the directions that he was to follow?

A. No, he did not tell us that he had made any.

Q. Was there any landmark agreed to as to where it was they were to meet?

A. No. They gave -- according to Terry Nichols, Mr. McVeigh gave Terry Nichols no specific location as to where they should meet.

Q. Now, did Mr. Nichols offer any explanation as to why he'd be willing to drive to Oklahoma City and simply find

Stephen Smith - Direct

Mr. McVeigh on Easter Sunday evening?

A. No.

Q. According to Mr. Nichols, did they at least set a specific time that the two men were to meet?

A. No, they did not set a specific time as to when they would meet, either.

Q. According to Mr. Nichols, did they at least discuss what time he would be leaving the house?

A. No, they did not discuss that, either.

Q. Did Terry Nichols tell you whether he had ever been to Oklahoma City prior to Easter Sunday, 1995?

A. No, he did not admit that he had ever been down in Oklahoma City prior to Easter Sunday of 1995.

Q. Did Mr. Nichols give you any reason as to how it was he knew the time of travel from his home to Oklahoma City?

KNEW THE TIME OF TRAVEL FROM HIS HOME TO OKLAHOMA CITY:

A. Yes. He said he determined that it would take five hours to get from central Kansas down to Oklahoma City.

Q. Did he give you a basis for how he knew that?

A. No, he did not.

Q. You mentioned earlier that in the conversation, Mr. McVeigh had suggested to Mr. Nichols that he tell his wife he was going to Omaha. Do you recall that?

A. Yes, sir. That's correct.

Q. Did Mr. Nichols, according to his statement to you, do what Mr. McVeigh suggested?

Stephen Smith - Direct

A. Yes. Mr. Nichols told us that he lied to his family and his wife and told them that he was going to Omaha to pick up Tim McVeigh.

Q. And did he give you a reason for making that statement to his family?

A. No, other than he said that he did it because Terry -- because Tim McVeigh asked him to do that.

Q. Did he give you any reason as to why he didn't simply lie to McVeigh as opposed to his family?

A. No, he did not.

Q. According to Mr. Nichols, did he ever later -- that is, after Easter Sunday -- ever tell his wife the truth?

A. Yes. Terry Nichols told us that he told his wife that he was actually going to Oklahoma -- that he had actually gone to Oklahoma City instead of Omaha when they were going to the police department on the day of April 21, so he told us that he told the wife the truth five days afterwards, what he told her on the day of April 21, 1995.

Q. That was in the course of the drive that you witnessed as he left his home, went to Surplus City, and then back to the police station?

A. That's correct.

Q. Did Mr. Nichols ever tell you why it was necessary to conceal the true city of destination?

A. No, he did not. And he did not say that that information

Stephen Smith - Direct

came up during the trip from Oklahoma City to Junction City.

Q. And by that, what do you mean?

A. That Terry Nichols and Timothy McVeigh did not discuss why -- why Tim McVeigh -- why Terry Nichols was supposed to tell his wife that he was going to Omaha instead of Oklahoma City.

Q. Did Mr. Nichols offer any explanation as to why Omaha, as opposed to any other city, was the one that he was to tell his wife?

A. No. He did not give any -- give any reason why, but he was never doubtful that Omaha was the city that he was supposed to mention to his wife.

Q. Did he tell you how long he was gone on Easter Sunday?

A. He said he left shortly after 3 p.m. on Easter Sunday and arrived back home in Herington at approximately 2 a.m. the next morning; so he was gone approximately 11 hours.

Q. And according to Mr. Nichols, when in relationship to the phone call did he first leave his residence?

A. He said he left his residence approximately 10 minutes after receiving the phone call.

Q. According to Mr. Nichols, did he drive down alone, or with anyone else?

A. He drove down alone.

Q. Did he tell you whether his son had asked to join him on that trip?

Stephen Smith - Direct

A. No, he did not say that.

Q. Did you ask Mr. Nichols to trace the route of travel from Herington down to Oklahoma City?

A. Yes. He said that he had gone on Highway 77 south from Herington and he got down to the border of Oklahoma, where he entered I-35 into the downtown area of Oklahoma City.

Q. And is that, according to your experience, the fastest way to make that route?

A. From Herington, the best route, the quickest route would be 77 south to the Kansas Turnpike at El Dorado and then getting on I-35 down to Oklahoma City.

Q. Did Mr. Nichols give you any reason as to why he had not taken the turnpike?

A. No, he did not.

Q. If you stay on Highway 77 in Kansas, do you recall the name of the last city before you enter into Oklahoma?

A. Yes. It's Arkansas City.

Q. In the statement on Friday, April 21, did Mr. Nichols describe to you what happened once he got downtown Oklahoma City on Easter Sunday?

A. Yes. He advised that he got down to the heart of downtown Oklahoma City, possibly by taking the 8th Street exit. While he was driving around waiting for McVeigh, he went past the Alfred P. Murrah Federal Building, which he described as "that building." While driving around waiting for McVeigh, he also

Stephen Smith - Direct

went by a parking lot that was empty. Terry Nichols advised that he had driven around the downtown area for approximately 30 minutes before spotting Mr. McVeigh in an alley.

Mr. Nichols stated that he went in the direction that he spotted Mr. McVeigh in and picked Mr. McVeigh up and that Mr. McVeigh was standing in a light rain with Terry Nichols' TV set and a green laundry bag -- McVeigh had a green laundry bag with him at that time, also.

Terry Nichols did not see -- see the vehicle that Tim

McVeigh had in the downtown area of Oklahoma City.

Q. Do you know from visiting Oklahoma City what the exits are closest to the Murrah Building, the downtown exits?

A. Yes. The two downtown exits closest to the Murrah Building are 6th Street and 10th Street.

Q. You told us that according to Mr. Nichols' account that once arriving in Oklahoma City, he drove around waiting for Mr. McVeigh.

A. That's correct.

Q. Did he use that term "waiting," as opposed to "searching" for him?

A. That's correct. And as it turned out, Mr. Nichols spotted Mr. McVeigh and went and picked Mr. McVeigh up and not the other way around.

Q. Did Mr. Nichols tell you if he knew what Mr. McVeigh was doing while he was waiting for him?

Stephen Smith - Direct

A. No, he did not.

Q. You told the jury that Mr. Nichols said he had driven by "that building," the Murrah Building. Did he explain to you how he came to use that description?

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

Q. Did he tell you why he remembered that building in particular?

A. No, he did not.

Q. Did he tell you whether he had ever been downtown in Oklahoma City on 5th Street past the Murrah Building prior to Easter Sunday?

A. No, he did not.

Q. Did he give you any basis for explaining why he even recognized the building in order for him to describe it to you?

A. No, he gave no basis.

Q. While in downtown Oklahoma City, according to Mr. Nichols and your testimony to this jury, he spotted Mr. McVeigh. Is that correct?

A. That's correct. He spotted Mr. McVeigh in an alley -- as Terry Nichols was driving east, he spotted Mr. McVeigh in an alley, drove to the next block and turned north and then back west and picked up Mr. McVeigh.

Q. Did he tell you in which direction he was driving when he

Stephen Smith - Direct

spotted Mr. McVeigh?

A. Yes. He said he was driving in an easterly direction and spotted Mr. McVeigh.

Q. Do you know what direction 5th Street runs as it passes the Murrah Building?

A. 5th Street is a one-way street running east in front of the Murrah Building in Oklahoma City.

Q. Based on the statements to you, what was your understanding

Q. Based on the statements to you, what was your understanding as to the direction that the alley ran?

A. My understanding of the direction of the alley was that it was a north/south-running alley and that it intersected the street that Mr. Nichols was driving on.

Q. Do you know what alley is closest to the Murrah Building that runs in a north/south direction?

A. There is an alley that's closest to the Murrah Building running in a north/south direction which is just east of the YMCA building, and it intersects 5th Street, also.

Q. And again, according to Mr. Nichols' statement, what was Tim McVeigh doing when he spotted him?

A. Tim McVeigh was just standing in a light rain with Terry Nichols' TV set and Tim McVeigh's green laundry bag.

Q. Did you ask Mr. Nichols if he saw the car that Mr. McVeigh told him had broken down?

A. Yes. We asked him if he had seen the car that Mr. McVeigh said had broken down, and Terry Nichols advised that he had not

Stephen Smith - Direct

seen the car but that he understood that it was being left in Oklahoma City.

Q. According to Mr. Nichols, how much time had passed since the phone call at his residence and spotting Mr. McVeigh in downtown Oklahoma City?

A. He said that the phone call was approximately 3:00 and that he left approximately 10 minutes later and that it was a 5-hour drive. So that would make it approximately 8:10; and then he drove down around the downtown area of Oklahoma City for approximately 30 minutes, so it would be anywhere from approximately 8:30 p.m. to approximately 9 p.m.

Q. Did Mr. Nichols mention whether it was light still outside at the time that he spotted McVeigh?

A. Mr. Nichols did not say, but it was dark or it was getting dark at that point.

Q. According to Mr. Nichols, what did Tim McVeigh do with the television set and laundry bag when he stopped to pick him up?

A. He put both of those items in the cab of Terry Nichols' pickup truck.

Q. That is, up front with the driver and the passenger?

A. Right. The driver, the passenger and TV set and a laundry bag were in the front passenger compartment.

Q. Did you ask Mr. Nichols what Tim McVeigh was doing with the car that had broken down in Oklahoma City?

A. Yes. Terry Nichols said that he did not know, he had not

Stephen Smith - Direct

seen the car in Oklahoma City, did not know what Timothy McVeigh was doing with the vehicle. All he knew is that he was picking up his TV set and helping out a friend at the same time.

Q. Are you positive that Mr. Nichols told you he never saw Tim McVeigh's car in downtown Oklahoma City?

A. Yes, I'm positive.

Q. Did Mr. Nichols say there were any other cars whatsoever around or near Mr. McVeigh when he picked him up?

A. He did not say if there were any cars near the place that he picked up Mr. McVeigh.

Q. You told the jury he expressed to you that he had a feeling that the car was going to be left in Oklahoma City. Is that right?

A. That's correct.

Q. Did he explain what gave him that feeling?

A. No, he did not.

Q. What did Mr. Nichols tell you about Tim McVeigh's plans for the car that he was leaving behind in Oklahoma City?

A. He did not know what Tim McVeigh's plans for the car that he was leaving behind, other than it was being left behind.

Q. Did he give any description of the vehicle that was being left behind in Oklahoma City?

A. Mr. Nichols said that the way that Timothy McVeigh talked, he thought that it was a larger model and that he was leaving

Stephen Smith - Direct
it in Oklahoma City.

Q. Did he tell you why he thought or would describe to you that it was a larger-model car?

A. He did not explain that.

Q. At the time of the interview, were you personally aware of the vehicle that Tim McVeigh was arrested -- or in on April 19, 1995?

A. No, I was not.

Q. In the course of the interview, did you learn any more from Mr. Nichols about Tim McVeigh's history with vehicles?

A. Yes. Mr. Nichols said that Terry -- that Tim McVeigh had purchased two or three vehicles since November of 1994 when he had last seen him and that one of those vehicles was a car that he had purchased from Terry Nichols' brother James Nichols.

Q. And did Mr. Nichols tell you anything about how much money Tim McVeigh had put into any of those vehicles?

A. Terry Nichols said that Tim McVeigh had paid 4- or \$500 for the vehicle from James Nichols and that he had also used that same amount of money for repairs to that vehicle.

Q. Did Mr. Nichols explain how he knew that information about the vehicles and the cost, given the amount of contact as he reported to you between himself and Mr. McVeigh?

A. No, he did not.

Q. According to your statement, Agent Smith, Terry Nichols told you he went to Oklahoma City on Easter Sunday to get his

Stephen Smith - Direct

TV. Is that right?

A. That's correct.

Q. And that Mr. McVeigh was en route back East to see relatives?

A. Yes. He said that he was pressed for time to see relatives back on the East Coast and another individual in the Midwest.

Q. And that after picking Mr. McVeigh up, they went back to Kansas. Is that right?

A. That's correct.

Q. Did Mr. Nichols tell you why it was that Mr. McVeigh would go to Kansas in order to go to New York?

A. No, sir, he did not.

Q. Did Mr. Nichols tell you or mention to you at any point in time that he had any reason to believe that he had been observed by anyone while driving downtown Oklahoma City on Easter Sunday?

A. No, he gave no reason.

Q. What did he tell you about the sources of information he had relied upon to learn about the bombing?

A. Terry Nichols had advised that he had listened to the news accounts of the bombing after April 20, 1995.

Q. And from what form or what format did he learn that?

A. Terry Nichols advised that he had received a cable programming on that day, on the 21st of April -- 21st of April, 1995, and he received it at approximately 9 a.m. that morning

Stephen Smith - Direct

and had watched the coverage of the bombing.

Q. In the course of the interview with you and Agent Crabtree, did the two of you talk in further detail with Mr. Nichols about the trip back from Oklahoma City to Junction City?

A. Yes, we did.

Q. And did you learn more information than you had learned first with Agent Foley?

A. Yes, we did. We learned that -- that they had come back from Oklahoma City to Junction City and that Terry Nichols had advised that Tim McVeigh said a few things on the trip back to Junction City.

Q. Did Mr. Nichols describe the route he and Mr. McVeigh took on the way back to Junction City?

A. Yes. He said they took 35 to 77 in Kansas and then drove back to the Junction City area.

Q. And again, what time was it that he told you he arrived in Junction City?

A. He arrived in Junction City -- he told us that he arrived in Junction City at approximately 1:30 a.m. on the next day, on April 17, 1995.

Q. Did he give you additional details about where it was he dropped Mr. McVeigh off and what happened when he did so?

A. Yes. He said that he dropped Mr. McVeigh off at a closed McDonald's at -- on Washington Street in Junction City, Kansas, and that Mr. McVeigh had said that he would call a friend; and

Stephen Smith - Direct

Terry Nichols said as he left, Timothy McVeigh was walking towards a Denny's that was open up the street.

Q. And then after dropping Mr. McVeigh off, where did he go?

A. Terry Nichols went back home and arrived home at Herington at approximately 2 a.m. on Monday morning.

Q. According to his statement to you, what route did he take from Herington to Junction City early that morning?

A. He had taken a route north on Highway 77 to I-70, getting on I-70 and heading east on I-70 to Junction City and exiting on South Washington Street.

Q. Agent Smith, let me show you Government's Exhibit 1999, if you would find that in the folder.

Do you find that?

A. Yes, sir.

Q. And does it show the relative distances between Oklahoma City, Herington, and Junction City?

A. Yes, it does.

MR. MACKEY: Your Honor, I'd move to admit Government's Exhibit 1999.

MR. WOODS: No objection.

THE COURT: Received. May be displayed.

BY MR. MACKEY:

Q. Agent Smith, referring to this exhibit, tell the jury what the distance is according to this map between Oklahoma City and Junction City?

Stephen Smith - Direct

A. It's 282 miles between Oklahoma City and Junction City.

Q. And according to this map, what's the approximate distance between Herington and Junction City?

A. Approximately 25 miles.

Q. Mr. Nichols told you that on Easter Sunday evening he drove up Route 77; is that correct?

A. Yes, sir.

Q. Did he tell you why he drove 25 miles north to Junction City, turned around in coming home as opposed to stopping in Herington?

A. No, he did not.

Q. Did he tell you of any other occasions that Mr. McVeigh had stayed with him?

A. Yes. He had -- he told us that Mr. McVeigh had stayed with him for a month -- anywhere from two to six weeks at a farm in Decker, Michigan, at 3616 North Van Dyke.

Q. Did Mr. Nichols ever tell you that he and Mr. McVeigh had shared a motel room in Junction City earlier that same year of '95?

A. No, he did not tell us that they had stayed in a hotel room in early 1995, and he told us that the only contact that he had with Mr. McVeigh was a letter that he had written him in approximately February of 1995.

Q. Did Mr. Nichols give you any explanation as to where he understood Mr. McVeigh was going when he dropped him off early

Stephen Smith - Direct

that morning and as he saw him walking toward the Denny's?

that morning and as he saw him walking toward the Denny's.

A. He said that Mr. McVeigh had told him that he was going to call a friend and that he could possibly borrow a car from someone in order to get back to the East Coast to visit his relatives.

Q. Did you and Agent Crabtree question Mr. Nichols further about discussion of Waco during the drive from Oklahoma City to Junction City that night?

A. Yes. We asked -- we asked Mr. Nichols if he and Mr. McVeigh had talked about Waco during that drive, and Mr. Nichols said that he -- that it's possible that Mr. McVeigh had mentioned Waco but that he could not recall any specifics.

Q. Did he go on to mention any publication?

A. He also mentioned -- Terry Nichols mentioned that he and Mr. McVeigh had discussed articles in The Spotlight newsletter during that --

Q. Excuse me?

A. During that drive. Excuse me.

Q. And was this information that you were learning for the first time with you and Agent Crabtree present?

A. Yes, sir.

Q. What did he tell you as to where it was that he had come to see these articles in The Spotlight?

A. Mr. Nichols said that he had seen the articles in The Spotlight when he was at gun shows and those newsletters would

Stephen Smith - Direct

come across his table at the gun shows.

Q. Did he describe the articles that he saw in The Spotlight, the publication itself?

A. Yes. He described -- Terry Nichols described the articles as being eye-opening to the alternative view, as opposed to what is presented in the mass media.

Q. And in the interview, did he say whether he in fact endorsed or adopted any alternative theories?

A. He said he believed in the views expressed in The Spotlight newsletter; and he also said that he did not use his Social Security number, he did not believe or pay federal income taxes, and also that he did not -- excuse me -- he did not use his Social Security number.

Q. In the conversation with Mr. Nichols about the drive back to Junction City, did you ask him whether in hindsight anything had been said by Mr. McVeigh that would suggest Mr. McVeigh's involvement in the bombing?

A. Yes. We asked Mr. Nichols if in hindsight Mr. McVeigh had said anything to Terry Nichols during that drive that would make Terry Nichols think that Timothy McVeigh had committed the bombing.

Terry Nichols said yes in response to that question. Terry Nichols then stated that Mr. McVeigh said that Terry Nichols would see something big in the future.

At this point, Terry Nichols said that he was talking

Stephen Smith - Direct

about his business and what he was doing in regards to selling things at Army surplus -- at gun shows and selling Army surplus. At this point Mr. McVeigh said that "you will see something big in the future" and that Terry Nichols then responded that "what are you going to do; rob a bank?"

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

A. His response -- Mr. McVeigh's response according to Mr. Nichols was that "no, but I've got something in the works."

Q. Did Mr. Nichols explain to you why he first questioned Mr. McVeigh about robbing a bank in response to "something big"? Why did he come up with that?

A. No, he did not.

Q. Did Mr. Nichols describe the end of that conversation where the two men were talking about something big happening?

A. Yes. Mr. Nichols said that they got distracted and did not talk about what the meaning of "something big in the future" was, and the next thing that Terry Nichols said that both he and Timothy McVeigh talked about was the Waco tragedy and the anniversary of Waco; that there was possibly going to be a gathering in Washington, D.C., that week in regards to Waco.

Q. Was there any reference to the date of the anniversary of Waco?

A. Yes. Mr. Nichols said that he had told Mr. McVeigh that the anniversary was one or two years ago and Mr. McVeigh

Stephen Smith - Direct

responded that yes, it was two years ago.

Q. In the course of the discussion with Mr. Nichols about the drive back to Junction City, did Mr. Nichols use the term "sleepy tired"?

A. Yes. Mr. Nichols described conversations that he had just had with Mr. McVeigh and said that Mr. McVeigh would ask questions about those conversations and that Mr. Nichols would not remember what they had just talked about; and he described that when he drives sometimes, he gets sleepy tired and forgets things.

Q. Did Mr. Nichols describe Mr. McVeigh's manner or mood or demeanor during drive back to Junction City?

A. He described Mr. McVeigh's demeanor as being hyper or nervous during the drive back from Oklahoma City to Junction City.

Q. Now, according to his statement to you, did he expect to hear from or see Mr. McVeigh again once he dropped him off at the McDonald's?

A. He did not know when he dropped him off at the McDonald's -- they both said to each other that they would catch each other on the way back, so he was not sure when he would be in contact with Mr. McVeigh again.

Q. Did you ask him whether in fact he had heard or saw Mr. McVeigh after he dropped him off?

A. Yes. We asked him the next contact if he had seen

Stephen Smith - Direct

Mr. McVeigh again.

Q. What did you learn?

A. We learned that he had received a phone call at approximately 6 a.m. Terry Nichols told us he received a phone call at approximately 6 a.m. on April 18, Tuesday, from Tim McVeigh, and Tim McVeigh asked Terry Nichols if he could borrow Terry Nichols' pickup truck because he needed to pick up a few things and look at a couple vehicles.

Q. Did Mr. Nichols tell you whether he had had any contact of any nature with Mr. McVeigh between the time he dropped him off at the McDonald's, late Easter Sunday night, and 6 a.m. on Tuesday, April 18?

A. He said he had -- he had had no contact with him during that time.

Q. Did Mr. Nichols tell you what he had done the previous evening; that is, Monday, April 17, 1995?

A. No, he did not.

Q. Did he tell you anything about his son visiting from Las Vegas?

A. He said that his son had visited for a week over Easter.

Q. Did he tell you anything about taking his son to the Kansas City airport on Monday, April 17?

A. No, he did not.

Q. Anything he said about phone calls from the Kansas City airport on that day?

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A. No, he did not.

Q. According to Mr. Nichols, was he up at 6 a.m. on Tuesday, April 18?

A. Yes. He said that he was already up when he received the call from Mr. McVeigh.

Q. And what did he say he was doing at that time?

A. He said he was up and that he was not doing much at that time but that he had just gotten up.

Q. What did Mr. Nichols tell you about the content of that phone call with Mr. McVeigh on Tuesday, April 18?

A. According to Terry Nichols, Timothy McVeigh called at 6 a.m. and asked him if he could borrow his pickup truck for a little while in order to look at a couple vehicles and pick up a few items.

Terry Nichols told Mr. McVeigh that there was a sealed-bid auction at Fort Riley on Monday, Tuesday and Wednesday, which would have been the 16th -- I mean the 17th, 18th and 19th of April, and that he was planning on going to that auction that day and that if Mr. McVeigh wasn't going to take too long, he could borrow the vehicle while Terry Nichols was at the auction.

Q. Did Mr. Nichols tell you where Tim McVeigh was calling from?

A. He did not tell us where Timothy McVeigh was calling from, but he said that he did not know where Mr. McVeigh was staying

but he said that he did not know where Mr. McVeigh was staying.

Stephen Smith - Direct

Q. What other information, if any, did you learn from Mr. Nichols about the auction itself, when and where it would be conducted?

A. Mr. Nichols said that it was a sealed-bid auction that was going to be conducted at Fort Riley, Kansas, and that it was going to be on those three days, Monday, Tuesday and Wednesday, and that he was going there that day.

Q. Did he tell you whether it would require his presence at a specific place and time in order to participate in the sealed-bid auction?

A. No, sir.

Q. In the conversation with Mr. Nichols, did he say anything about Tim McVeigh selling surplus military equipment?

A. Yes. He said that Mr. McVeigh also sold military surplus with him at gun shows.

Q. And did he mention whether he had invited Tim McVeigh to join him at this sealed-bid auction?

A. No, he did not.

Q. In the course of the conversation, according to Mr. Nichols, did the two men make plans to in fact meet and relay the truck?

A. Yes. They made plans to meet at approximately 7:30 at the McDonald's in Junction City that Terry Nichols had dropped Timothy McVeigh off the previous morning.

Q. The same McDonald's?

Stephen Smith - Direct

A. The same McDonald's, yes.

Q. Do you know how many McDonald's there are in Junction City?

A. There are three.

Q. And did Mr. Nichols tell you why it was they picked that spot in order to meet again on Tuesday morning, April 18?

A. No, he did not.

Q. According to his statement to you, did, in fact, Mr. Nichols and Mr. McVeigh get together at that McDonald's?

A. Yes. Mr. Nichols said that Terry -- that Timothy McVeigh had told him that he was not in a big hurry, so they waited around; so Terry Nichols waited at home for approximately an hour and decided to meet Mr. McVeigh at the McDonald's at approximately 7:30 a.m. on that date.

Q. Agent Smith, if you drive from Herington to Junction City, will you pass Geary Lake?

A. Yes, sir.

Q. And approximately where in the distance -- that is; in between those two cities -- does Geary Lake rest?

A. Approximately halfway.

Q. Did Mr. Nichols tell you where exactly at the McDonald's the two men were to meet that morning?

A. No, he did not.

Q. According to his statement to you, did he find Mr. McVeigh

at the McDonald's?

A. Yes. He picked him up at approximately 7:30 in the morning

Stephen Smith - Direct
at the McDonald's.

Q. Was he with anyone?

A. No, he was not.

Q. What did the two men do after they met at the McDonald's according to Mr. Nichols?

A. According to Mr. Nichols, he picked up Timothy McVeigh and they got back on I-70 heading east and got off at K-18, which is a highway; and they went through Ogden, Kansas, and went up to the post at Fort Riley, going that direction.

Q. If you take that route starting at McDonald's and following it the way you've described it, how long does that trip take?

A. Approximately 20 minutes.

Q. Approximately what time, then, would Mr. Nichols have arrived at DRMO on that morning?

A. A little bit before 8 a.m.

Q. Did Mr. Nichols tell you whether he had ever been to an auction at that same facility prior to April 18?

A. No, he had not.

Q. Tell us what Mr. Nichols told you he did once he was dropped off by Mr. McVeigh at the DRMO.

A. Mr. Nichols got out of the -- got out of his pickup truck

and looked at items for sale in a building and was -- they decided to meet up -- to have Timothy McVeigh come back at approximately noon that same day. When Timothy McVeigh did not show up at noon, Terry Nichols went into another building where

Stephen Smith - Direct

he had to sign in in order to look at items inside that building, also.

Q. Did he tell you what he did once he signed into this building?

A. Yes. He signed into this building and then looked at the items that were for sale inside and bid on some of those items and came outside after approximately an hour of looking at those items, and Mr. McVeigh showed up shortly after that.

Q. According to Mr. Nichols' statement, when, exactly, was Tim McVeigh to pick him up?

A. He was supposed to pick him up at 12 noon.

Q. And at noon or thereabouts, what did Mr. Nichols do?

A. Mr. Nichols went outside and Mr. McVeigh was not there, so he went into another building at the DRMO.

Q. Did he tell you how long he waited before going inside the building where he signed in?

A. No, he did not.

Q. Did he specify how long he was inside the building before he eventually was picked up?

A. He said approximately an hour.

Q. Did he specify a time for you when it was that Mr. McVeigh picked him up?

A. No, he did not, but it would be -- he said that it was sometime after 1:00, but he did not say specifically when.

Q. According to his statement to you, when he linked back up

Stephen Smith - Direct

with Mr. McVeigh, where did the two men go?

A. The two men -- Mr. Nichols drove Mr. McVeigh back to the Junction City area and dropped him off at the same McDonald's on South Washington Street.

Q. Did he tell you that he went immediately from the DRMO or Fort Riley back to the same McDonald's?

A. That's correct.

Q. Did he tell you why the same McDonald's again?

A. No, he did not.

Q. Did Mr. Nichols tell you what he did once he dropped Tim McVeigh off?

A. Yes. He said that he dropped Tim McVeigh off at the McDonald's in Junction City and that he, Terry Nichols, went back to the Manhattan area in order to pick up mail at a Mail Boxes Etc. where he had a mailbox.

Q. If you were at Fort Riley and wanted to go to Manhattan, what's the most direct route?

A. Just to continue on either I-70 or go the back route to Manhattan. Junction City is not in between Manhattan and Fort Riley.

Q. According to Mr. Nichols' statements, he went out of his way to drop Tim McVeigh off at the McDonald's before tracing his route to go back to Manhattan?

A. Right. Mr. Nichols drove from the DRMO on post at Fort Riley back to Junction City and then basically had to go back

Stephen Smith - Direct

through Fort Riley to get to Manhattan.

Q. Did Mr. Nichols explain why after waiting for the pickup that he was prepared to drive out of his way to drop Tim McVeigh off?

A. No, he did not.

Q. Again, what errands, according to Mr. Nichols, did he run in Manhattan that afternoon?

A. He said Mr. -- Mr. Nichols said that he had picked up his mail at the Mail Boxes Etc. and then he went back to Herington, Kansas, and ran some more errands in Herington before arriving at home in Herington after 5:00.

Q. According to Mr. Nichols, did he and Tim McVeigh have a conversation when they separated at the McDonald's in the afternoon of Tuesday, April 18?

A. Yes. As they were -- as Timothy McVeigh got out of the pickup truck, he told Terry Nichols that he had a few belongings in his storage shed and told him that if Timothy McVeigh did not pick them up that Terry Nichols should pick

them up for him.

Q. Did Mr. Nichols know what storage shed Tim McVeigh was referring to?

A. Yes, he did.

Q. And how did he describe that to you?

A. He told us that he had gone the next day, on April 20, to pick up the -- Timothy McVeigh's belongings in a storage shed

Stephen Smith - Direct
in Herington, Kansas.

Q. According to Mr. Nichols, when was it that he was to go to the storage shed and clean it out?

A. Mr. McVeigh did not tell him when; just that if he did not do it that Mr. Nichols should do it.

Q. Did Mr. Nichols, in fact, tell you that he went there the day after the bombing, on April 20?

A. Yes. He said he went there on April 20 and cleaned out that storage locker.

Q. Did he detail for you exactly what he took out of the storage locker on April 20?

A. Yes. Terry Nichols said that he took out Timothy McVeigh's sleeping bag, a rucksack, and a rifle from the storage shed.

Q. Did he tell you that was all that he took from the storage shed?

A. Yes. He said that that -- those were the three items that he took and that there was nothing left in the storage shed.

Q. Did he tell you how he was able to get inside the storage locker?

A. Yes. He said there was a combination on the storage locker but that the combination lock was not on the storage locker anymore.

Q. Agent Smith, in the course of the interview from 3 in the afternoon to midnight, approximately how many times do you think you and the other agents asked Mr. Nichols to detail all

Stephen Smith - Direct

of the contacts that he had with Mr. Tim McVeigh during the week prior to the bombing?

A. We asked him numerous times about any contacts that he had with Mr. McVeigh, especially since we wanted to find out any information that he had about contacts that he had with Mr. McVeigh, especially in Oklahoma City prior to the bombing.

Q. And the only information he gave you was Easter Sunday, April 16, and on April 18 at the McDonald's and Fort Riley?

A. That's correct.

Q. Agent Smith, can you tell the jury how you first learned about the bombing.

A. Yes. I was in Riley, Kansas, which is a small town of about 800 people, which is north of Fort Riley. I was up in Riley, Kansas, looking into a case of theft of government property.

At approximately 10 a.m. on that day, I went to use a pay phone in Riley, Kansas, and the pay phone did not work. I

pay phone in Riley, Kansas, and the pay phone did not work. I then went to a Sprint switching station which was nearby, in Riley, and I asked the employee if I could use his phone.

I did not identify myself to him as an FBI agent, and he asked me if I had heard about what had happened in Oklahoma City.

I said I had not.

And this individual said that there had been a bombing in Oklahoma City blowing up the federal building down there and

Stephen Smith - Direct

that it happened approximately an hour ago.

Q. According to Mr. Nichols' statements to you, when did he first learn of the bombing in Oklahoma City?

A. He said that he had first learned about the bombing in Oklahoma City on the next day, on April 20, 1995.

Q. Did he tell you what he was doing or where he was on the day of the bombing?

A. Mr. Nichols told us that he was at home all day during -- on the day of the bombing, just hanging around his house and working at his house.

Q. Did he describe any contacts he had with businesses in Herington during the day of the bombing or on the day of the bombing?

A. No, he did not.

Q. Did Mr. Nichols describe what he did on Friday morning -- excuse me -- Thursday morning, the 20th?

A. Yes. Mr. Nichols said that he had gone to the cable outlet store in Herington to secure cable service for his home and that is where he had first heard about the bombing.

Q. Did he tell you he had not had any cable service prior to April 20, 1995?

A. That's correct.

Q. Did he tell you why on that day he chose to request cable service?

A. No, he did not.

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Q. Did he tell you when it was that cable service was, in fact, installed?

A. He said that cable service was installed at 9 a.m. the next day, April 21, 1995.

Q. When he went in to -- according to his statement -- to see the cable people, was there any argument or discussion about when the installation should be made?

A. No, he did not.

Q. Did not mention that to you.

A. Excuse me.

Q. Did Mr. Nichols tell you what, if anything, he did about acquiring newspapers on April 20, 1995?

A. Yes. Mr. Nichols said that after he had heard about the bombing at the cable outlet store watching a newscast -- he said that he went and purchased three different newspapers that

afternoon and read those newspapers that evening, April 20.

Q. Did he describe by title the newspapers that he purchased?

A. Yes. He said he purchased one, a paper from Wichita and Salina, and he did not specify the third newspaper that he had purchased.

Q. Did Mr. Nichols tell you what, if any, information he learned about the state of the investigation as a result of watching cable on Friday, April 21, or reading newspapers from April 20?

A. Yes. He said that he had heard his name -- had been

Stephen Smith - Direct

mentioned in relation to the bombing and that Timothy McVeigh had probably -- possibly been arrested for the bombing.

Q. Did Mr. Nichols tell you what, if anything, he had learned about suspected source or origin of the bomb truck?

A. No, he did not.

Q. What about the suspected origin or makeup of the bomb itself?

A. No, he did not.

Q. In the course of your interview, did the two of you talk about composites that had been released by the FBI concerning the persons suspected of renting the bomb truck?

A. Yes. Mr. Nichols said that the composites that he had seen did not look a lot like Tim McVeigh.

Q. Which composites were being described?

A. John Doe No. 1 as not looking like Tim McVeigh.

Q. In the course of the interview, Agent Smith, did the two of you talk about when Mr. Nichols had first heard of Tim McVeigh's name in connection with the bombing?

A. Yes. He said he first heard of Tim McVeigh's name being mentioned in regard to the bombing on April 21, 1995.

Q. Did he describe to you his reaction when he first heard Tim McVeigh's name being connected with the bombing?

A. Yes. He said he was shocked to hear Tim McVeigh's name mentioned in relation to the bombing and that he had thought Tim McVeigh was driving back East to see his family and he was

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surprised he had been picked up not far from Oklahoma City the day of the bombing.

Q. Did he say anything at that time about Tim McVeigh's grandfather?

A. Yes. Mr. Nichols said that he could not see why Tim McVeigh had -- why Tim McVeigh would do the bombing because he was supposed to receive an inheritance from his grandfather shortly and he could do whatever he wanted because he would have money.

Q. In the course of the interview, Agent Smith, did Mr. Nichols change or modify his expression to you about suspicion of Mr. McVeigh's involvement in the bombing?

A. Yes. He said that he had suspected Mr. McVeigh's

involvement in the bombing.

Q. Did he describe to you why he suspected Tim McVeigh as being involved in the bombing?

A. Yes. We asked in hindsight if he had -- if during the conversation in the trip from Oklahoma City to Junction City -- if Timothy McVeigh had said anything. And he had mentioned that he said that there was something big in the future, and that was the crux of the issue in regards to what he suspected Timothy McVeigh's involvement.

Q. In the course of the interview, did you or Agent Crabtree talk about possible interviews of Tim McVeigh?

A. Yes. We mentioned to -- we mentioned to Terry Nichols that

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agents in Oklahoma would probably be going to talk to Tim McVeigh, and we asked him what Timothy McVeigh would say about Terry Nichols' involvement in the bombing.

Q. What did he say?

A. Terry Nichols advised that he would be shocked if Timothy McVeigh had implicated him in the bombing.

Q. Did he tell you why?

A. Terry Nichols said that he could -- he trusted Timothy McVeigh more than anyone and that Timothy McVeigh lived up to his arrangements and took responsibility for his actions.

Q. Did Terry Nichols tell you what arrangements Mr. McVeigh made and what responsibilities or actions he would be prepared to take?

A. No, he did not.

Q. In the course of the interview with Mr. Nichols, did you and Agent Crabtree talk about his knowledge of building fertilizer bombs?

A. Yes, we did.

Q. Can you describe what you first learned about the use of ammonium nitrate?

A. Yes. Terry Nichols said that people would come by his table at the gun shows and specifically a farmer had come by his table and told him to mix ammonium nitrate and fuel oil in order to blow up tree stumps.

Mr. Nichols also said that an individual came by his

Stephen Smith - Direct

table and told him to mix ammonium nitrate and fuel oil for rock or quarry work.

Mr. Nichols also said that he had read in books that the ratio for mixtures for bombs go all the way from dry manure to ammonium nitrate and fuel oil.

Q. Did Mr. Nichols tell you whether he and Tim McVeigh shared or discussed literature concerning the making of improvised fertilizer bombs?

A. Yes. Mr. Nichols said that they would read -- that Mr. Nichols would read articles or books or pamphlets about making of a bombs -- making of bombs at gun shows and that he would discuss those books with Timothy McVeigh at the gun shows

would discuss those books with Timothy McVeigh at the gun shows and they would look at the -- look at the different literature and decide, you know, what bomb would make more sense than another bomb, if this mixture for this bomb was logical, if this -- if the mixture for this bomb would make sense and would it actually work.

Q. Did Mr. Nichols tell you why he and Tim McVeigh had those kind of discussions where they shared formulas and discussed its potency?

A. Yes. He said that they were curious about bomb-making.

Q. In the course of the interview, Agent Smith, did Terry Nichols tell you about steps he had taken to dispose of ammonium nitrate?

A. Yes. Mr. Nichols had said that on the morning of April 21,

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he had thrown the rest of his ammonium nitrate on his lawn.

Q. And when in the course of the interview did Mr. Nichols first reveal to you that he had done so?

A. Mr. Nichols advised us at approximately 11:20 p.m. that he had purchased two 50-pound bags of ammonium nitrate from a grain elevator in Manhattan, Kansas; and at that point he said that he had thrown the rest of his ammonium nitrate on his lawn that morning, on April 21.

Q. Did Mr. Nichols tell you why he had waited until almost midnight or after 11 to tell you what he had done with the ammonium nitrate in his home?

A. He did not tell us why he waited to tell us that information.

We asked him why he did not tell us that earlier, and he told us that he did not mention that he had ammonium nitrate or that he had spread the ammonium nitrate on his lawn that morning to us earlier in the interview because it would make him look guilty to a jury.

Q. Did Mr. Nichols express any opinion to you about whether Tim McVeigh knew enough about building fertilizer bombs to destroy a building?

A. Yes. Mr. Nichols said that it's possible that Mr. McVeigh could make a device to blow up a building without his knowledge, without Terry Nichols' knowledge, and that Timothy McVeigh could be capable of doing it.

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Q. And did Terry Nichols compare what Mr. McVeigh knew about building bombs with his own knowledge about building bombs?

A. Yes. He said that Timothy McVeigh knew just as much as he did about bomb-making.

Q. Do you recall, Agent Smith, approximately what time your last break was in the interview?

A. Yes. Our last break in the interview was approximately 10:21 p.m. until 10:50 p.m.

Q. And during that break, did you learn of a tape recording that had been made or provided to you or available to you of

Lana Padilla and Josh Nichols?

A. Yes, the agents and my superiors in Herington had told me that there was a tape that Terry Nichols' son and ex-wife had made for a message to Terry Nichols.

Q. In addition to the tape recording, were you also provided copies of documents that had been provided from Las Vegas FBI?

A. Yes. We were provided with a letter -- with two letters in those documents that had been given to the FBI in Las Vegas by Terry Nichols' ex-wife.

Q. Take a look, please, at Government's Exhibit 1856 through '59 -- or '58, I'm sorry. '56, '57, '58.

Can you identify each of those exhibits for the record?

A. Yes. 1856 is a -- is a document that has "read and do immediately" on the top of it; and we used -- we showed this

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document; the 1857, which is a letter from Terry to Tim, and the 1858 is an emergency and address document, two pages there.

1856 is a two-page document front and back, and 1857 is a two-page document, also.

Q. Did you read each of those documents during the break in the final evening -- or final session of the interview on April 21?

A. Yes, I did.

Q. And after doing so, did any phrase or verbiage from any of those documents stick out in your mind?

A. Yes. In the letter from Terry to Tim, I noticed a notation for "as far as heat, none that I know of," and "go for it," two statements in the letter that kind of jumped out at me.

Q. Did you have those letters with you when you went back to resume your interview of Mr. Nichols that evening?

A. Yes, we did.

Q. Before you displayed those to Mr. Nichols, was the tape recording that you referred to made available to him?

A. Yes. We asked Terry Nichols if he would like to listen to the tape-recorded message from his son and ex-wife, and he said that he would like to listen to that tape-recorded message. So at approximately 11:15 p.m., we played that tape for him.

Q. And after the tape and later in the interview, did you show him the same letters you've identified here?

A. Yes. At approximately 12:03 a.m. we showed him these

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letters and told him to review them, read them, and tell us what they meant.

Q. And did Mr. Nichols do that in your presence?

A. Yes. Mr. Nichols read these documents and then told us -- handed the documents back to us and told us that he had prepared these because he did not have a will and in case he died in the Philippines, this was going to be handling what was

going to happen, if he did die.

Q. Did he tell you why he was concerned about his safety?

A. He said that the Filipinos do not like Americans and that he might get run over by a car or killed when he was in the Philippines.

Q. At that point in the interview, Agent Smith, were you or Mr. Crabtree aware of prior trips or previous trips that Mr. Nichols had made to the Philippines?

A. Yes. Mr. Nichols said that he had been to the Philippines before during that interview, where he met his wife in the Philippines, and that he also had gone back there when she came back to the United States, so he had been there previous occasions.

Q. Did Agent Crabtree ask Mr. Nichols any questions about those previous trips as they related to the preparation of these documents?

A. Yes. Agent Crabtree asked Mr. Nichols if he had prepared these same type of documents every time he had gone back to the

Stephen Smith - Direct
Philippines.

Q. What was his response?

A. Mr. Nichols advised that he had not prepared these documents every time he had gone back to the Philippines and he had only done it this one time.

Q. What happened in the interview after that?

A. We concluded the interview at that point; and after asking him what those -- we asked Terry Nichols what those two phrases meant by -- "as far as heat, none that I know of" and "go for it," what they meant in the letter to Tim; and Terry Nichols just did not respond to those questions.

Q. Did you ask the question?

A. Scott Crabtree asked the question of Terry Nichols if he knew -- what he meant by "go for it" and "as far as heat, none that I know of."

Q. You heard the question?

A. I heard the question, and Terry Nichols just did not respond. He sat there and looked at us for approximately a minute and did not respond to that question.

Q. Shortly after that, what happened?

A. We exited the interview room, and Agent Crab -- Agent Jablonski and Foley entered the interview room.

Q. And at that point in time, were you aware of the issuance of an arrest warrant for Mr. Nichols?

A. Yes. I had found out that there was an arrest warrant, a

Stephen Smith - Direct

material witness arrest warrant, for Mr. Nichols, during the last break from 10:21 to 10:50 and at that point realized that Mr. -- or Agents Jablonski and Foley were going to execute that warrant.

Q. After you left the interview room shortly after midnight on the Saturday morning, April 22, Agent Smith, what did you do?

the Saturday morning, April 22, Agent Smith, what did you do:

A. Agent Crabtree and myself drove down to Wichita, Kansas. We left Herington, Kansas, at approximately 1 a.m. and arrived in Wichita at approximately 2:30 a.m., where we drafted affidavits for search warrants for Terry Nichols' house and car and pickup truck with the U.S. attorney's office down in Wichita.

Q. Did you see Mr. Nichols any time later that same day, Saturday, April 22?

A. Yes. I saw Terry Nichols at the Abilene jail, at the Dickinson County jail in Abilene, Kansas, at approximately 2 p.m. that afternoon on April 22, 1995.

Q. And why were you there?

A. Both Agent Crabtree and I drove from Wichita to Abilene, Kansas, to pick up Terry Nichols in order to drive him from Abilene back to Wichita for his appearance before the federal magistrate, which was his initial appearance.

Q. And again approximately what time did you pick Mr. Nichols up?

A. Approximately 1:58 p.m. is when we picked up Mr. Nichols.

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Q. When you did, did you take possession of any personal property and specifically personal property envelopes of Mr. Nichols?

A. Yes. We took a personal property envelope from the deputies in Abilene, and this personal property had wallet and other personal items in an envelope.

Q. Take a look in your exhibit folder, please, for No. 1852A. Do you recognize that exhibit?

A. Yes. 1852A is the Dickinson County personal property envelope that they prepared for Terry Nichols' personal property.

I received this property on the 22d of April of 1995 at approximately 1:59, and this is what the Dickinson County jailers had prepared for Terry Nichols' property.

Q. Is the time that you picked it up noted in your handwriting?

A. Yes. I noted that I took custody of this property at approximately 1:59 p.m. on April 22, 1995.

Q. Did you recognize your initials there?

A. Yes. I initialed it and dated it and timed this envelope.

Q. And when you picked it up, what contents were inside that property envelope?

A. One watch, a knife, ring, one hanky, one key, one comb, one lipstick, a cold-climate lipstick, one wallet with \$70.82, and one belt.

Stephen Smith - Direct

Q. Did you take that property envelope with you to Wichita?

A. Yes, I did.

Q. Describe to the jury what took place during the drive with Mr. Nichols in the car and you and Agent Crabtree from Abilene

to Wichita on Saturday afternoon.

A. Agent Crabtree and I decided that we were not going to ask any questions of Terry Nichols on April 22, and we drove -- I was driving and we did not ask any questions of Terry Nichols. And after approximately 15 to 20 minutes, Terry Nichols brought up a conversation and asked us if the searching agents had started the search of his house, if we thought we had enough information to convict Timothy McVeigh; and then at that point we talked a little while in the car prior to getting to Wichita.

Q. Could you hear the statements being made by Mr. Nichols during the trip from Abilene to Wichita?

A. Yes, sir.

Q. And what, if anything, did he say about the events of April 18 during the car ride?

A. Mr. McVeigh -- Mr. Nichols had stated that the information that he had given us previously on 4-18 was the same. He said that basically on the 18th that -- excuse me -- that on the 18th of April, 1995, he had gone -- I'm sorry. I just need to settle down.

Q. Let me ask it this way: In sum and substance, was it the

Stephen Smith - Direct

same information that you had learned in the face-to-face interview the previous evening?

A. Yes, sir.

Q. Was that conversation still ongoing when you arrived in Wichita that afternoon?

A. Yes, sir, it was.

Q. Describe what happened when you got there.

A. We arrived in Wichita at approximately 3:26 p.m., and we were met with -- met by deputy U.S. marshals; and they took Terry Nichols at approximately 3:26. We asked Terry Nichols at that point if he would like to speak with us any more; and approximately five minutes later, the deputy U.S. marshal said that Terry Nichols did want to speak with us, so we went and talked with Terry Nichols a little more.

Q. Was that awaiting the hearing that would be later held that afternoon?

A. Yes. That was awaiting the initial appearance that afternoon at approximately 4:45 p.m.

Q. During the course of that discussion there in the marshal's area, did you and Agent Crabtree talk to Mr. Nichols about his use of aliases or names other than his own?

A. Yes. Terry Nichols advised us that he used an alias of Jim Kyle and that he used an alias of Ken Parker in Council Grove and that Timothy McVeigh used an alias of Tim Tuttle and Shawn Rivers in the past.

Stephen Smith - Direct

Q. And what, if anything, did he say about Mr. McVeigh's use of aliases other than the reference to Tuttle and Rivers?

A. Mr. Nichols told us that Mr. McVeigh had told Terry Nichols that he should use aliases and that he wanted Terry Nichols to use aliases.

Q. Did you in that session at the marshal's area ask Mr. Nichols, "Are there any other names you've used other than Jim Kyle and Ken Parker?"

A. We asked him if there were any other aliases that he had used, and he said that he had not used any other aliases.

Q. Did he ever say that he had used the name "Havens"?

A. No, he did not.

Q. Did he ever say he had used the name "Daryl Bridges"?

A. No, he did not.

Q. What time did you leave Wichita that evening?

A. We left Wichita that evening at approximately 5:30 p.m.

Q. And where did you go?

A. We drove back to Herington, Kansas, and arrived at approximately 7 p.m.

Q. And what, if anything, did you take with you when you went back to Herington?

A. I took this envelope, 1852A, from Wichita to Herington and arrived in Herington approximately 7 p.m. and gave this envelope to another agent there by the name of Dan Jablonski.

Q. Take a look at Government's Exhibit 1852B. Recognize what

Stephen Smith - Direct
that is?

A. Yes. 1852B is the wallet and contents that was taken off Terry Nichols. This is Terry Nichols' wallet and contents that were in this personal property bag at 1852A.

Q. What did you do with the wallet and contents of that wallet specifically in Herington?

A. I gave the wallet and the contents and the envelope to Agent Jablonski in Herington.

Q. Did you take some steps then to log it into evidence?

A. Yes. I had logged it into evidence.

Q. Take a look at 1852.

A. On an FD 192 evidence log, and I received it -- excuse me -- 1:59 p.m. in Abilene; and then released custody of the wallet and contents at 7 p.m. to Agent Jablonski in Herington.

Q. Do you recognize any of the handwriting that appears on the green sheet of Government's Exhibit 1852?

A. Yes. It's my handwriting on there as showing that I received it on 4-22 at 1:59 p.m.

Q. Agent Smith, what did you do after turning over the Terry Nichols' property to Agent Jablonski that evening?

A. I drove back to Fort Riley with Agent Crabtree, and then we drove home.

Q. And to your knowledge, by the time you got back to Herington that evening around 7:00, had the search of Mr. Nichols' home begun?

Stephen Smith - Direct

A. Yes. The search of Mr. Nichols' home had begun earlier in the afternoon of April 22.

Q. Where had you and Agent Crabtree been the afternoon and early evening hours of Saturday, April 22?

A. We had -- we had arrived in Abilene in the early afternoon at approximately 2 p.m., and then we arrived in Wichita at approximately 3:30; and we were in Wichita from approximately 3:30 to 5:30 p.m. prior to driving back to Herington.

Q. In the course of those two days, beginning at 3 p.m. on Friday, the 21st, and then continuing till Saturday, tell us how many total hours you spent in interview sessions with Mr. Nichols, if you can.

A. Approximately nine hours. We spent seven hours on April 21 out of nine hours because we had -- had three breaks totaling two hours, and then we spent approximately two hours on the 22d, so a total of nine hours altogether.

Q. In the course of that time period, what questions did Mr. Nichols not answer?

A. Mr. Nichols did not answer the questions that we asked him to explain about the "as far as heat, none that I know of" and the "go for it" in the letters -- in the letter that he had written to Timothy McVeigh.

Q. At any point in time between Friday or Saturday, did Mr. Nichols ever explain what that meant?

A. No, he did not.

Stephen Smith - Direct

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

THE COURT: All right.

Mr. Woods?

MR. WOODS: Yes, your Honor.

CROSS-EXAMINATION

BY MR. WOODS:

Q. Agent Smith, you had a tape recorder there and you didn't use it?

A. I did not have a tape recorder in Herington, no, sir.

Q. How did you play the tape of Lana Padilla and Josh Nichols to Terry Nichols while he was in your custody being questioned?

A. We played the tape on the phone. I called the Washington, D.C. headquarters, and they played the tape for Terry Nichols over the phone. I did not have the tape itself with me.

Q. You called Washington, D.C. headquarters. They had the tape. This is on Friday, April 21?

A. Yes, sir.

Q. And it's coming over the phone. You, what, hand the phone to Terry Nichols?

A. Yes, sir.

Q. Would you agree with me that it sure would be easier for this jury if we had the tape recording of your questions and answers?

MR. MACKEY: Objection to form of the question.

THE COURT: Overruled.

Stephen Smith - Cross

THE WITNESS: Could you repeat the question.

BY MR. WOODS:

Q. Yes, sir. Would you agree with me that it sure would be easier for this jury if we had the tape recording of your questions and answers during that nine-hour period?

A. It would be easier; but with 24 pages of notes that I took contemporaneously as to what Terry Nichols said, it gave us an accurate depiction of what was said during the interview.

Q. Well, you jumped around when you're asking -- answering questions from Mr. Mackey -- you jumped around time periods, didn't you?

A. Yes, sir.

MR. WOODS: Okay. I just need to raise this a little bit, your Honor.

THE COURT: Okay.

BY MR. WOODS:

Q. Now, you joined the FBI in '80 -- what year?

A. In 1991.

Q. '91. And you had graduated from some college and you worked for two years as an accountant?

A. Yes, sir.

Q. Doing auditing work?

A. Yes, sir.

Q. Okay. And you went to the FBI Academy at Quantico?

A. Yes, sir.

Stephen Smith - Cross

Q. And they've increased that now to 17 weeks?

A. Yes, sir.

Q. Do you know what they added that they felt that they needed to add to train the agents from the prior weeks that they used to use?

A. No, I do not know what they added.

Q. And they taught you in this academy that -- do not use tape recorders when you question suspects. Is that correct?

A. They did not teach us that, no, sir.

Q. You just learned that that's FBI policy?

A. It's FBI policy that tape-recorded statements as a general rule are prohibited.

Q. Oh, they're prohibited?

A. Yes, sir.

Q. Have you ever operated or have you ever worked with the FBI in undercover operations?

A. I have not, no, sir.

Q. Do you know that they use them every day and in every office across this United States in tape-recording individuals that they meet and discuss with?

A. Yes. Those are tape recordings --

Q. Those are tape recordings so that they can get the accurate information, are they not, sir?

A. Yes, but they're not interviews of individuals. And those tape recordings of interview statements are as a general rule

Stephen Smith - Cross

prohibited.

Q. They're prohibited by who?

A. We do not do that under -- unless it's under different circumstances. We do not -- we need a certain authority to get --

Q. Are you saying there is some law against you tape-recording the interview of a suspect?

A. No, sir, there is no law.

Q. Do you work with police departments, other than the Topeka Police Department?

A. Yes, sir.

Q. What police departments have you worked with, major police departments like Denver or Oklahoma City or Houston or somewhere?

A. I've worked with the police departments within the 18 counties that I've got responsibility over.

Q. Every major police department in this country utilizes tape recordings to tape-record suspects' interviews, don't they, sir?

A. I do not know that.

Q. Well, since you don't use tape recordings, the FBI then teaches you please take accurate notes, don't they?

A. That's correct.

Q. And because later on you're going to dictate and write up the memorandum of that interview, aren't you?

Stephen Smith - Cross

A. Dictate and write up a report of that interview, yes, sir.

Q. Now, what's the deadline now on dictating your notes from an interview?

A. It's five days, five business days from the time that you actually take the notes to dictate a report.

Q. And that's an FBI policy? They want you to finally get around and dictate and write up a report of that interview, don't they?

A. Yes, sir.

Q. And so they request and instruct that you take accurate notes during the interview because in five days you're going to forget a lot of things that were said, aren't you?

A. No, you're not going to forget what was said during an interview.

Q. You're not going to be doing other investigations or going down to court and doing other things during those five days that might affect your memory of the verbatim conversation that you had with a suspect five days ago?

A. Certainly, you will go and do other things besides, you know, the interview and dictation of your report.

Q. And that's why they want you to make sure that you have very accurate notes. Isn't that correct?

A. That's correct.

Q. And in an order -- in a chronological order the way you

asked the questions and the answers were given. You can't

Stephen Smith - Cross

change those notes, can you? When you start on page 1 and go down and fill out the bottom of page 1, you can't go back and change that order, can you?

A. No, sir.

Q. That's captured. That was done contemporaneously with the questions and answers, wasn't it?

A. That's correct.

Q. And you've got 24 of those pages, don't you?

A. 22 of my handwritten notes, yes, sir.

Q. For the first interview. How many pages did you make of this other interview in the car?

A. If I can look at my notes here.

If my memory serves, I took two pages -- two pages of notes for that interview on the 22d.

Q. Okay. So you've got 22 pages that are made contemporaneously, so that's as close as we can get to a tape recording, isn't it?

A. That's correct, based on those notes and the recollection of what was said during the interview.

Q. Well, the notes should capture what was said, shouldn't they?

A. They do, yes, sir.

Q. Okay. That's your -- that's your representation to this jury that those notes capture what was said in the interview.

A. Among other things; but yes, sir, these capture -- these

Stephen Smith - Cross

notes capture what was said in the interview.

Q. All right. Do you have 1924 there?

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

THE COURT: You may.

MR. WOODS: Thank you.

BY MR. WOODS:

Q. Before we go through these notes, let's cover your surveillance activities. You told the prosecutor that on the morning of the 20th, about 4:00 a.m., you picked up the sketch artist that was flown in from Washington; is that correct?

A. Yes, sir.

Q. Where was that? Manhattan airport?

A. Actually, I picked him up in Junction City. He flew into the airport in Kansas City and was driven by a Kansas highway patrolman to the Junction City area.

Q. Do you remember his name?

A. Yes. Ray Rozycki.

Q. And where did you take him?

A. I took him to the Fort Riley CID office in Fort Riley.

Q. And who did you leave him in the custody of, or who did you introduce him to?

A. I introduced him to Scott Crabtree at that point -- and that witnesses were coming after -- after Mr. Rozycki had

that witnesses were coming after -- after Mr. ROZYCKI had arrived.

Q. Was Mr. Eldon Elliott there yet?

Stephen Smith - Cross

A. He was not there, no, sir.

Q. Was Vicki Beemer there yet?

A. No, sir.

Q. Was Tom Kessinger there yet?

A. No, sir.

Q. Did you understand what the sketch artist was going to do?

A. Yes. I understand that the sketch artist was going to produce composites of individuals believed to have rented a Ryder truck from Elliott's Body Shop in Junction City, Kansas.

Q. And you knew that from the investigation that there were two individuals that had rented a truck on April 17, didn't you?

A. Witnesses at Elliott's had said that there were possibly two people that had rented a vehicle, rented a Ryder truck.

Q. It's now "possibly"?

A. Yes, sir.

Q. All right. And did you see the sketches -- I assume you didn't stay there and watch the sketches being done; is that correct?

A. No, sir.

Q. Okay. Did you later see the sketches that were made?

A. Yes, sir.

Q. Did you understand that those were made by the FBI sketch artists based on his interview with those three individuals?

A. Yes.

Stephen Smith - Cross

Q. Did you help go around and pass these out to witnesses and question them?

A. No, I did not.

Q. Just Terry Nichols; right?

A. That's correct.

Q. You did show the sketches to Terry Nichols, didn't you?

A. No, I did not.

Q. Who did?

A. No agent showed the sketches to Terry Nichols.

Q. Okay. All right. That's 4:00 a.m. that you're doing that. What did you do the rest of the day?

A. After 4:00 a.m., I went back -- I was in the command post at that time and I just helped out with whatever I could do, leads that were coming into the command post at that point.

In the early afternoon, I went back to Elliott's Body Shop in Junction City, Kansas, prior to the fingerprint experts coming from Washington, D.C.

Q. What did you do at Eldon Elliott's prior to the -- the FBI fingerprint experts coming?

A. I secured the office area of the -- of Elliott's Body Shop and waited for the fingerprint analysis -- fingerprint analyst

to come from Washington, D.C.

Q. By "securing," what do you mean?

A. I just stayed in the office area and made sure that, you know, no one touched anything in the office area that the

Stephen Smith - Cross

witnesses said these individuals had been.

Q. Okay. It's a small office, isn't it?

A. Yes, sir.

Q. There is a big counter there?

A. There was a counter, yes.

Q. Tell the jury approximately what size that office is.

A. Best of my recollection, it's an office that's approximately 20-foot-by-20-foot. It's not a very big office.

Q. All right. How much space does the counter occupy?

A. It's a normal counter that's -- it does not occupy very much space. It's probably approximately 5 foot long.

Q. Okay. Now, did you help dismantle that counter and send it to Washington?

A. No, I did not.

Q. You're aware that that happened, aren't you?

A. Yes, sir.

Q. What all was taken out of there and sent to Washington?

A. Besides the counter, I don't know what other items were taken by those individuals.

Q. Okay. So you stayed there and secured it. Did Mr. Hupp eventually come?

A. Yes. Mr. Hupp came at -- I'm pretty sure approximately 5:15 p.m. that day. And he was only there -- him and some other analysts were there for approximately half an hour.

Q. Did they take a lot of fingerprints?

Stephen Smith - Cross

A. I do not know.

Q. Well, you -- when did you leave? If they got there at 5:15, when did you leave?

A. I left after they left and approximately half an hour later.

Q. So what did you observe them do during that half hour?

A. I observed them dismantle the counter and take some fingerprints; but other than that, they didn't do -- that's what they did.

Q. Now, where did you go after your half hour watching them?

A. On April 20, I went back to the command post in Junction City.

Q. All right. And what time did you leave that evening?

A. That evening, I left at approximately 9:00 p.m. after we had a briefing in regards to the investigation to date.

Q. Now, you have these briefings, do you not, so that everybody can be brought up to date on what information has been developed?

A. Yes, sir.

Q. Now, were you aware about the SIOC set up in Washington at that time?

A. Yes, sir.

Q. And tell the jury what an SIOC is.

A. It's the Strategic Investigation Operations Center in Washington, D.C., where individuals are up there and kind of

Stephen Smith - Cross

coordinate and oversee an investigation.

Q. Well, it's not just individuals. It's high-level officials of the FBI and Department of Justice, isn't it?

A. That's correct.

Q. Now, did they have an open phone line with all the major offices that were involved in the investigation?

A. I assume so, yes, sir.

Q. And what -- depending on what you learned in your briefing Thursday night, what major offices were involved as of that time?

A. Oklahoma City, certainly; Kansas City. I knew we were working in New York, in Michigan, and those specific major offices.

Q. Okay. Thursday night, you knew that there was a Michigan lead; is that correct?

A. Yes, sir.

Q. And that was based on the fact that a Mr. McVeigh at Dreamland had left a Michigan address?

A. Yes. Mr. McVeigh had used an address of a farmhouse in Decker, Michigan, that had been associated with Terry Nichols and James Nichols.

Q. And you're aware that the FBI was starting their investigation in Michigan as of Thursday evening; is that correct?

A. Yes.

Stephen Smith - Cross

Q. And at that time, they didn't know anything about Las Vegas. Is that your recollection?

A. That's my recollection, yes, sir.

Q. Now, what did you do the next morning? What time did you rejoin the investigation?

A. I left my home at approximately 7:00 a.m. on the 21st and arrived --

Q. Excuse me. Were you driving back and forth to Topeka during that time?

A. I started work at 7:00 a.m. on the 19th and I went home at 10:00 p.m. on the 20th.

Q. Okay.

A. And then I went back to work at 7 in the morning on the 21st until 10:00 p.m. on the 22d.

Q. All right. So you -- 7:00 a.m. on the 21st, you go back to CID?

A. Yes, sir.

Q. And CID --

Q. And CID -- explain to the jury what that is.

A. CID is the Criminal Investigation Division for the United States Army. They have special agents who work cases for the United States Army on post.

Q. Okay. And the FBI set up their command post in their offices; is that correct?

A. We set up temporary -- temporary -- a temporary command post at the CID office at Fort Riley.

Stephen Smith - Cross

Q. All right. Now, what time was it on Friday, April 21, that you first heard Terry Nichols' name?

A. I first heard Terry Nichols' name at approximately 1:10 p.m., when I got information that -- information from our Las Vegas division that Terry Lynn Nichols had been living or was presently living in Herington, Kansas.

Q. And what instructions did you receive concerning Terry Lynn Nichols?

A. I was told to go down to Herington, Kansas, to get background information for Terry Nichols that afternoon.

Q. And who told you to do that?

A. At that time, it was my superiors at Fort Riley, who at that point was ASAC Watson.

Q. Watson?

A. Yes, sir.

Q. ASAC out of Kansas City?

A. Yes. Assistant Special Agent in Charge.

Q. Right. I understand. Who was John Bross?

A. John -- excuse me.

Q. Bross. B-R-O-S-S?

A. Joe Brothers.

Q. Brothers.

A. Is another Assistant Special Agent in Charge, another ASAC; and it was Mr. Brothers and Mr. Watson who were out at the --

Q. So you have two ASACs in Kansas City?

Stephen Smith - Cross

A. Yes, sir.

Q. And it was Watson giving the orders; is that correct?

A. Watson and Mr. Brothers.

Q. And was it discussed at that time that Terry Nichols was going to be arrested, an arrest warrant was going to be obtained?

A. No, it was not.

Q. Were you in contact with the Kansas City office?

A. Yes, I was.

Q. How did you communicate with the Kansas City office?

A. By my radio in my car. Had I a Bureau radio in the car.

Q. All right. And who was Mr. Chornyak?

A. Mr. Chornyak, Bill Chornyak, as supervisor in the Kansas City office.

Q. Did you discuss matters with him over your radio as you were going down to Herington?

were going down to Herington.

A. No, I did not.

Q. Did you have a discussion with him during that day?

A. No, I did not.

Q. And your information was you didn't know anything about the FBI was going to obtain a material witness warrant for Mr. Nichols?

A. At that point, I did not know that, no, sir.

Q. Okay. They just said go down there and find out something about Terry Nichols?

Stephen Smith - Cross

A. They told me to go down to Herington, Kansas, and find out any background information I could on Terry Nichols, yes, sir.

Q. And you got there at what time?

A. I got there shortly before 2:00 p.m.

Q. Where was Jack Foley coming from?

A. I believe Jack Foley was coming from the Kansas City office itself.

Q. Okay. And all of you all know each other because you operate out of same office, Kansas City; is that correct?

A. That's correct.

Q. Even though you're in Topeka, you go into Kansas City and you know who these people are?

A. Yes, sir.

Q. But you get down to Herington, and you go to the Department of Public Safety, and you speak with Director Kuhn?

A. Director Kuhn and Assistant Chief Barry Thacker.

Q. They're both there?

A. Yes, sir.

Q. And you ask about Terry Nichols?

A. Yes, sir.

Q. And what did they tell you?

A. I asked them if they knew anything about Terry Lynn Nichols who possibly used an alias of Ted Parker. I told them I had an address of 901 South 2nd Street and that I needed to find out any information they had on Terry Nichols.

Stephen Smith - Cross

Q. And you told -- I'm sorry. I don't want to interrupt you. Go ahead.

A. At that point, Mr. Kuhn told me that they had verified that Mr. Nichols' address was 109 South 2nd Street, Herington, and that they had no information for a Ted Parker. I had looked in a phone book in Herington for any listing for Terry Nichols or Ted Parker, and I did not find any listing for either one of those individuals.

Q. And you told them that you were there to conduct a investigation in connection with the Oklahoma City bombing, didn't you?

A. No, I did not. I told them that I was just looking for information on Terry Nichols. I did not specify.

Q. Do you recall testifying in this matter before, Mr. Smith?

A. Yes, sir.

Q. And you recall relating the fact that you told them that you were investigating in connection with the Oklahoma City bombing?

A. I testified that I told them that I had went to the -- when I went to the Herington Department of Public Safety -- that I had -- told Mr. Kuhn and Mr. Thacker that Terry Nichols was a possible associate of Timothy McVeigh, and that's why I was talking -- I was asking about any background information. So in answer to your question, yes, I did testify to that and I just misspoke.

Stephen Smith - Cross

Q. All right. Now, did either of those individuals tell you that they had met Terry Nichols before or they had some information to Terry Nichols' having had his car inspected?

A. They said that he had his car inspected the previous Friday, I believe, and that they did have a current address of 109 South 2nd.

Q. And that's the way they came up with a current address, wasn't it?

A. I don't know. I believe so.

Q. Now, did you have any further conversation with those two individuals?

A. Yes.

Q. At that time?

A. At that time, I told them that I would be back at some point if they had any other further information on Terry Nichols.

Q. Okay. Did you leave a way that they could contact you?

A. No, I did not. I identified myself by name and that I was with the FBI. I did not leave a card, but I told them that I would probably be back.

Q. You had a pager number; right?

A. No, I did not.

Q. You didn't have a pager with you?

A. I'm sorry. I had a pager. I did not have a cellular phone at that point.

Stephen Smith - Cross

Q. So you had a pager that you could have left them a number where they could call you?

A. That's correct.

Q. You didn't do that?

A. No, I did not.

Q. Okay. How long did you stay with them?

A. Approximately 15 minutes.

Q. Okay. And what other information, if any, did you get out of them?

A. No other information other than the address and that Terry Lynn Nichols -- Terry Nichols' name was actually Terry Lynn

Nichols, full name.

Q. What did you do after you left there?

A. I left there, the Department of Public Safety, and drove by Terry Nichols' house at 109 South 2nd Street.

Q. And what did you observe when you drove by?

A. I observed a blue pickup truck with a white camper shell parked in that driveway.

Q. Was it parked heading in or parked heading out?

A. It was parked heading in.

Q. And you drove to a location where?

A. I drove north of the house to a location of a bank near 1st and Day in Herington, Kansas.

Q. You couldn't see the house from that location; is that correct?

Stephen Smith - Cross

A. From that -- no, sir.

Q. Did you go there because a radio transmission with Agent Foley?

A. No, I went there because I saw Mr. Foley's car in that vicinity, so I went there to meet him and at that point actually got into his car.

Q. Now, you told the prosecutor as of that moment it was you and Foley and an FBI airplane circling overhead. Is that right?

A. No, that's not correct. At that point it was just Jack Foley and myself in Jack Foley's car.

Q. What time is this that you get in Jack Foley's car?

A. At approximately 2:20 p.m.

Q. What time did the FBI airplane arrive on the scene?

A. I don't know what time specifically. I heard radio communication just prior to Terry Nichols' leaving the residence that the surveillance plane was up in the air.

Q. "Up in the air"? What does that mean?

A. That it's -- that it is surveilling the area and that there is an agent up there, a pilot agent up there doing some surveillance.

Q. Okay. And did you radio the pilot and explain to him where the address was and what kind of vehicle would be involved in this surveillance?

A. No, I did not.

Stephen Smith - Cross

Q. How did the airplane know where to go and who to look for?

A. The airplane had received a prior communication from someone else and told them the house and vehicle that he would be surveilling.

Q. Who else knew where the house was that was in the FBI on the radio loop?

A. The surveillance squad was approaching Herington at that point, and they relayed to the plane the area and the vehicle that he needed to surveil.

Q. And how did they get the information? From you?

Q. And how did they get the information? From you?

A. I did not communicate with them. Some -- I did not communicate with them and tell them that -- where the vehicle was or what vehicle it was.

Q. Well, you have an S.O.G., which is the FBI word for a surveillance team, coming out of Kansas City. They're coming to Herington and they're telling the airplane where the house and car is. How do they know?

A. They heard word from -- at approximately 2:20, when I met up with Jack Foley, we had advised the individuals that -- where we were and what we were doing.

Q. So you did notify somebody what the true address of the house is and what kind of vehicle will be involved; is that correct?

A. Yes, sir.

Q. Okay. Who did you advise?

Stephen Smith - Cross

A. I don't know. On the radio, I advised anyone in the vicinity; and apparently the surveillance squad picked that up.

Q. Because you're all on the same radio frequency. Is that correct?

A. Yes, sir.

Q. Now, how many people are coming out of Kansas City to be surveillance agents?

A. I don't know how many surveillance agents were coming. Some of them were coming up from Wichita and some were coming from Kansas City.

Q. Okay. Now, what time was the S.W.A.T. team dispatched from Kansas City?

A. I do not what time the S.W.A.T. team was dispatched.

Q. But they came to Kansas City -- to Herington, didn't they?

A. Yes, sir.

Q. You don't know what time they left?

A. Left Kansas City.

Q. Yes, sir.

A. I do not know what time they left Kansas City. I believe they arrived in Herington at 10:30 p.m.

Q. 10:30 p.m.

A. Yes.

Q. Mr. Nichols had already gone to the police station at 3:00 in the afternoon, hadn't he?

A. Yes. He had gone to the police station at approximately

Stephen Smith - Cross

3:00 p.m.

Q. The S.W.A.T. team get deterred, or something?

A. I do not know.

Q. All right. Do you know how many vehicles were involved in the surveillance units?

A. There were approximately seven or eight vehicles that were involved in the surveillance of Terry Nichols.

Q. Did they come to your parking lot and meet with you to come

up with a strategy?

A. No, sir. When I met with Jack Foley, it was Jack Foley and I in Herington at that point. I got into Jack Foley's car and we set up surveillance approximately 2:30.

At approximately 2 -- at approximately quarter to 3
or

2:45, when Terry Nichols left his house, there was just the three of us: Myself, Agent Foley, and the surveillance plane. At that point we knew that there were other surveillance units approaching Herington.

Q. And when they got to Herington, didn't they all meet in one central location to discuss the matter?

A. I believe they did. I was not in that --

Q. Do you know where that was?

A. No, I do not.

Q. That they met?

A. No.

Q. Did you understand that they all got their cars stuck in

Stephen Smith - Cross

the mud when they went to this central location to meet?

A. I do not know that, no, sir.

Q. Eventually, they joined you in the surveillance at some point. Is that correct?

A. Yes, sir.

Q. All right. So you're parked near Mr. Nichols house where you can see him leave at what time?

A. At approximately quarter to 3.

Q. And he's carrying his small daughter?

A. Yes, sir.

Q. And you see his wife come out of the house and get in the passenger's side? Is that correct?

A. Yes, sir.

Q. And you told the jury how you followed him down to Surplus City. And you say now that you saw him get out of the truck, walk toward the door but turn around, come back, and get in the truck and drive away?

A. I observed Mr. Nichols get out of the truck at Surplus City, approach the door, and head back to his truck and at that point, I went further south on Highway 56. I did not see him get back in his truck.

Q. In fact, when you turned around and came back, you went into Surplus City to look for him, didn't you?

A. That's correct.

Q. But through radio communication with the other surveillance

Stephen Smith - Cross

agents, you were able to ascertain that he was at the police station, so you drove to the police station?

A. That's correct.

Q. And you told the jury that you didn't go in right away because you wanted to make sure there wasn't a hostage

situation or a crisis situation?

A. That's correct.

Q. And how was that determined? How did you determine whether or not there was a hostage situation?

A. We wanted to make sure that there wasn't a hostage situation, and we determined that by having someone call in to the Herington Department of Public Safety and determine that for us.

Q. And that was an Agent Chornyak in Kansas City, wasn't it?

A. That's correct. Agent Chornyak called in; and at that point on Friday afternoon, we didn't know -- we actually had more questions than answers, so we didn't know if there was going to be a hostage situation or not.

We knew that there had been a bombing two days prior to that and that the truck that was used in the bombing had been rented a short distance away by a friend of Terry Nichols, but we didn't know anything else. We just wanted to make sure that there weren't any other people killed or hurt; and that's why we were checking on the hostage situation.

Q. You're saying that on Friday, April 21, you knew that the

Stephen Smith - Cross

truck had been rented by McVeigh?

A. I said that I knew that the -- that the truck had been rented by an individual --

Q. As you said, by a friend of Terry Nichols. Who does that mean?

A. We knew at that point that the truck that had been used in the bombing had been rented from Elliott's Body Shop in Junction City, Kansas, a short distance away from Herington by a friend -- by -- possibly by a friend of Timothy -- by a friend of Terry Nichols.

Q. Well, you told the jury that you knew that the truck had been rented by a friend of Terry Nichols. Are you meaning Tim McVeigh?

A. Yes, sir.

Q. You had determined on Friday, April 21, the truck had been rented by Tim McVeigh?

A. We believed at that point that the truck had been rented by Tim McVeigh.

Q. So based on that information, you felt that Terry Nichols, carrying his infant daughter into the police station, had held up and made hostage everybody in the police station?

A. We thought that that was a possibility. Again, we did not know; and the reason that we wanted to check on the hostage situation was because we wanted to make sure that there was no one else killed or hurt.

MR. WOODS: Your Honor, this is a convenient place to break.

THE COURT: It's good, since it's 5:00.

You may step down now, Agent Smith. We'll have you back tomorrow morning.

Members of the jury, I hope we have all of you back tomorrow morning. I'm sure we will; and, of course, during this recess, please follow the cautions given at all earlier

this recess, please follow the cautions given at all earlier recesses. Tomorrow is a short day, you will remember. We, according to our schedule, will start at 8:45, hopefully taking one break and recess at 1. So I'll remind you of that schedule.

And of course, please remember we have a ways to go yet; and therefore, we're going to hear a good deal more than you've heard so far. So keep open minds, do not discuss any aspect of this case with anyone, including fellow jurors, and be very careful about everything you read, see, and hear. Stay away from anything that could influence your decision in this case, knowing what your obligation is.

You're excused now till 8:45 tomorrow morning.

(Jury out at 5:02 p.m.)

THE COURT: We'll be in recess.

(Recess at 5:02 p.m.)

* * * * *

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PLAINTIFF'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
58	9845	9847			
1919	9897				
1925	9876	9877			
1928	9883	9883			
1934	9862	9862			
1937	9872	9872			
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REPORTERS' CERTIFICATE

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated at Denver, Colorado, this 20th day of November, 1997.

Paul Zuckerman

Kara Spitler

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