

Agent Smith, you may resume the stand.

(Stephen Smith was recalled to the stand.)

THE COURT: Mr. Woods, you may resume your questioning.

CROSS-EXAMINATION CONTINUED

BY MR. WOODS:

Q. Good morning, Agent Smith.

A. Good morning, Mr. Woods.

Q. When we left yesterday at 5:00, we were discussing the fact that you were in front of the Department of Public Safety and you were with Agent Price, Gillispie, and Foley; is that correct?

A. Yes, sir.

Q. And you were concerned about a hostage situation?

A. Yes, sir.

Q. And you were able to communicate -- one of the four of you were able to communicate with Supervisor Chornyak -- how do you pronounce his name?

A. Chornyak.

Q. Chornyak, in Kansas City, and he was able to call in to the Department of Public Safety to determine whether or not there was a hostage situation; is that correct?

A. Yes, sir.

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

A. Yes, sir.

Q. You were aware, were you not, that arrest warrant was being sought during that day?

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

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

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

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

A. They were to surveil Terry Nichols.

Q. Surveil him for how long?

A. It was not determined.

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

A. I don't know those instructions.

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

A. Yes, sir.

Q. Your radio pick up any transmission that was transmitted by the S.O.G. and all the agents, weren't you?

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A. Yes, sir.

Q. All right. You were aware, were you not -- who's David Tubbs?

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

Q. He was your ultimate superior within that division of Kansas, wasn't he?

A. Yes, sir.

Q. Okay. And is that the same David Tubbs that got promoted to Atlanta?

A. Yes, he worked in --

Q. To a larger office; right?

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

Q. And is that the Olympic bombing case, the Richard Jewell case that he was in charge of?

MR. MACKEY: Objection.

THE COURT: Sustained.

BY MR. WOODS:

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

A. Yes, sir.

Q. The -- were you aware that he dispatched the S.W.A.T. team between 12:30 and 1:00 p.m. out of Kansas City to Herington, Kansas?

A. I was aware that the S.W.A.T. was dispatched to Herington. I did not know what time, no, sir.

Stephen Smith - Cross

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

MR. MACKEY: Objection, Judge.

THE COURT: Sustained.

BY MR. WOODS:

Q. And it's your testimony you had no idea that arrest warrant was being sought for Mr. Nichols on that day?

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

Q. Just all these agents were in Herington for some unknown purpose, you don't know what the purpose was; is that correct?

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

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

A. No, sir.

Q. Now, yesterday -- have you had a chance to review your testimony, the transcript of your testimony from yesterday?

A. No, sir.

Q. Yesterday you spoke to the prosecutor on direct examination, and you said that Mr. Nichols told you he believed in the views expressed in The Spotlight; is that correct?

A. Yes, sir.

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

A. Yes, sir.

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

And yesterday you told the prosecutor on direct --

let

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me read it to you, when you were talking about what Mr. Nichols told you that he did at the DRMO, when Mr. McVeigh dropped him off. You recall that exchange of testimony that you gave?

A. Yes, sir.

Q. You stated: "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 he had to sign in in order to look at items inside that building also."

Is that going to be in your notes?

A. Yes, sir.

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

"Did he tell you what he did once he signed into this building?

"Answer: 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."

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

A. Yes, sir.

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

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yesterday on direct that this was the first time anybody's ever asked you for a copy of your notes, when Mr. Nichols asked you after you read them to him that first break, when the two agents came in. Do you recall that testimony, that the two agents, Crabtree and Jablonski, came in, and you read the notes to Nichols?

A. Yes, sir.

Q. And you stated to Mr. Mackey, "This is the first time anybody's ever asked me for my notes."

A. Yes, sir.

Q. Okay. Now, in April, '95, you had been an agent for -- what, '91 did you get out of training academy?

A. November of 1991.

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

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

Q. All right. And you told the jury that you've worked on numerous, numerous cases, bankruptcy fraud, kidnapping -- let's see what type of cases you said you worked on. Kidnapping, white-collar crime, bankruptcy fraud, theft of government property, bank robberies, fugitives, drug cases, numerous, numerous cases; is that your testimony?

A. Yes, sir.

Q. How many times have you testified in trial in front of a jury like this?

A. Two or three times.

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Q. No; how many times, sir?

A. I don't recollect specifically. I would assume it was two or three times.

Q. What case was it that you've testified in a Federal Court in front of a jury before? What was the name of the defendant?

A. David Gottlieb.

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

A. Bank robbery.

Q. And was that your case?

A. Yes, sir.

Q. All right. What was the second case?

A. Another bank robbery trial in Springfield, Missouri, in 1992, and the defendant was Bubba Cheek or Donny Wiggins.

Q. And those were two of your cases, you were the case agent on those; is that correct?

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

Q. So you've had one case where you were the case agent that went to trial in front of a jury?

A. And then I would change that right here, sir, I'm sorry; but David Gottlieb ended up pleading, so we did not have a trial. We pled that trial.

Q. You just thought that you appeared in trial and testified in front of a jury?

A. Excuse me, sir, I misspoke.

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Q. How many times have you actually testified in front of a jury in a federal trial, sir?

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

Q. All right. Now, you stated to the prosecutor that you have interviewed hundreds and hundreds of individuals; is that correct?

A. Yes, sir.

Q. How many targets of the investigation have you personally interviewed?

MR. MACKEY: Objection to -- use the term "target" without foundation.

BY MR. WOODS:

Q. Do you know what a "target" is of an investigation in the FBI terminology?

A. The subject of investigation.

Q. All right. How many times have you personally interviewed the target of an investigation?

A. I would estimate 40 to 50 times.

Q. 40 to 50 times.

A. Yes, sir.

Q. And how many of those people got indicted?

A. All of them.

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

sir?

MR. MACKEY: Objection, Judge.

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THE COURT: Sustained.

BY MR. WOODS:

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

A. Yes, sir.

Q. And there was a copy machine there in the police station, wasn't there?

A. Mr. Nichols did not ask for a copy of the notes for a specific time. He just said if he could get a copy of the notes --

Q. I didn't ask you that, sir. The question was was there a copy machine in the Department of Public Safety?

A. I assume so, yes, sir.

Q. You know that some articles were copied on that machine, don't you, that belonged to Mrs. Nichols?

A. Yes, sir.

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

A. Yes, sir.

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

A. No, sir.

Q. You had no intention of providing copies of his (sic) notes to him on that day or the subsequent day, did you?

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

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

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

A. A copy of my notes?

Q. Yes, sir.

A. No.

Q. Mr. Nichols told you, didn't he, that he had heard on the news -- and that's why he was in the Department of Public Safety -- he had heard on the news that his name had been mentioned as someone wanted in connection with this case?

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

Q. And he had heard the press conference of the Attorney General, Janet Reno, hadn't he?

A. Yes, sir.

Q. And you're aware that she was stating they were going to seek the death penalty for everybody involved in that case, are you not?

A. I had not seen that press conference, and I was not aware of that, no, sir.

Q. And yet you thought that was strange that Mr. Nichols would want a copy of his notes on that day?

MR. MACKEY: Objection.

THE COURT: Sustained

THE COURT. Sustained.

BY MR. WOODS:

Q. Now, do you recall during the testimony yesterday when Mr. Mackey asked you did he tell you something, and you would

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

A. Excuse me?

Q. Yes. In your direct examination with Mr. Mackey yesterday, do you recall numerous questions of Mr. Mackey when he said, "Did Mr. Nichols tell you" something, and you would say, "No, he did not"?

A. Yes, sir.

Q. All right. Do you recall the exchange where Mr. Mackey asked you concerning the phone call that Mr. McVeigh made to Mr. Nichols, Mr. Mackey asked you, "Did he tell you how long he had had phone service?"

Your answer was, "He did not."

Do you recall that?

A. Yes, sir.

Q. Did you ask him during the course of that interview how long he'd had phone service?

A. No, sir.

Q. Mr. Mackey asked you, "Did he tell you how Mr. McVeigh had his phone number?"

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

Did you ask him that question?

A. No.

Q. Do you know how "information" works, when you call up the phone company and ask for information?

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A. Yes, sir.

Q. You ever done that?

A. Yes, sir.

Q. Do you recall on the discussion about Mr. Nichols' trip to Oklahoma, Mr. Mackey asked you: "Did Mr. Nichols give you any reason as to how it was he knew the time of travel from his home to Oklahoma City?"

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

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

"Answer: No, he did not."

Did you ask him about that?

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

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

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

Did you ask him?

A. No, I did not.

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

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

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transcript in this fashion without further foundation. He's simply reading into the record yesterday's proceedings.

THE COURT: Objection is overruled.

BY MR. WOODS:

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

A. Yes, sir.

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

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

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

"Answer: No, he did not."

Did you ask him that question?

A. No, I did not.

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

A. Yes, sir.

Q. Do you recall the question, "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?"

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"Answer: 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.

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

"Answer: No, he did not."

Did you ask him that question?

A. No, I did not.

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

"Answer: No, he gave no basis."

Did you ask that question?

A. No, sir.

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

MR. MACKEY: Objection.

THE COURT: Sustained.

BY MR. WOODS:

Q. Do you recall the questions about leaving the car,

Mr. McVeigh left the car in Oklahoma City?

A. Yes, sir.

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

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City; is that right?

"Answer: That's correct.

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

"Answer: No, he did not."

Did you ask him that question?

A. No, sir.

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

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

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

"Answer: He did not explain that."

Did you ask him that question?

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

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

"Answer: He did not explain that."

Was that incorrect; he did explain it?

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

Q. Did Mr. --

"Question: Did Mr. Nichols explain how he knew that information about the vehicles and the cost, given the amount

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

"Answer: No, he did not."

Did you ask him that question, sir?

A. No, I did not.

Q. Now, you recall the questions and answers about Mr. McVeigh going from Arizona to New York?

A. Yes, sir.

Q. That trip?

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

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

Did you ask him that question?

A. No, sir.

Q. "Question: Did Mr. Nichols tell you or mention to you at any point in time that he had any reason to believe that he had

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?

"Answer: No, he gave no reason."

Did you ask him that question?

A. No, sir.

Q. At that time when you were doing the questioning, were you aware of the camera at the Regency Towers?

A. No, I was not.

Q. Have you since become aware of it?

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A. Yes, sir.

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

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

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

A. Yes, sir.

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

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

"Question: 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?

"Answer: No, he did not."

Did you ask him that question, sir?

A. No.

Q. Now, you recall the discussion you and Mr. Mackey had about going to DRMO, being dropped off, and then Mr. McVeigh picking him up and taking him back to McDonald's?

A. Yes, sir.

Q. And Mr. Mackey asked the question: "Did Mr. Nichols explain why, after waiting for the pickup, that he was prepared

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

"Answer: No, he did not."

Did you ask him that question, sir?

A. No, sir.

Q. Do you recall the questions and answers concerning Mr. Nichols going to the cable outlet on April the 20th?

A. Yes, sir.

Q. "Question: Did he tell you he had not had any cable service prior to April the 20th, '95?

"Answer: That's correct.

"Question: Did he tell you why on that day he chose to request cable service?

"Answer: No, he did not."

Did you ask him that question, sir?

A. No, sir.

Q. Now, at the end, you and Mr. Mackey talked about this letter and your recognition of the phrases in there, "as far as heat, none that I know of," and the phrase "go for it"; do you recall that?

A. Yes, sir.

Q. And you stated that Mr. Nichols was asked the question but that he gave no response.

A. That's correct.

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

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A. Yes, sir.

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

A. No, sir.

Q. Now, being 3 1/2 years out of the academy, you were

somewhat fresh in your mind about what they were teaching in the academy, weren't you?

A. Yes, sir.

Q. And don't they teach you to write down everything you can, especially early in an investigation because you don't know what's going to be significant and what isn't significant?

A. That's correct.

Q. They teach you to be as thorough as you can and try to capture every word, since you're not going to use a tape recorder, try to -- teach you to capture every word, don't they, sir?

A. That's what these notes reflects.

Q. Okay. We'll get to those notes. We're going to get to notes in just a second.

During the course of that interview that started shortly after 3:00 p.m. and ended shortly after 12:00 p.m. (sic), you came upstairs on occasion, didn't you, during those lengthy breaks?

A. Yes, sir.

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

A. Three breaks totaling two hours.

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Q. Totaling two hours. And that wasn't just to come up and drink a Coke, was it?

A. No, sir.

Q. In fact, you were advising your superiors who were present on the scene of what you were learning in that interview, weren't you?

A. That's correct.

Q. And you were getting feedback from what agents were learning out in the field, weren't you, so that you could go back and answer questions -- ask questions?

A. That's correct.

Q. Who was present upstairs that was superior to you in the FBI hierarchy?

A. In Herington?

Q. Yes, sir.

A. ASAC Watson, SAC Tubbs.

Q. So Mr. Tubbs had arrived on the scene to personally take charge and supervise this part of the investigation there in Herington; is that correct?

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

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

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

Q. All right. Who else was present?

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

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

Q. Those were all supervisors, were they not?

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

Q. Mr. Price was a supervisor?

A. Yes, sir.

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

A. No, sir.

Q. He was just a street agent like you?

A. Just a street agent, like me.

Q. How many years had he been in?

A. I do not know.

Q. Who else was upstairs that you noticed during the course of that evening?

A. When we would go upstairs, Jack Foley and Dan Jablonski would go downstairs.

Q. No, sir, who was upstairs?

A. Besides those people I mentioned, I don't have a recollection besides those people.

Q. Did U.S. attorney for the state of Kansas come?

A. Mr. Rathbun showed up at some point during that evening, yes, sir.

Q. All right. And tell the jury what the U.S. attorney's function is and who -- where does he fit in in the scheme of

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directing the FBI?

A. The U.S. attorney is the prosecutor who handles the investigation or handles the case in court; and Mr. Rathbun was the U.S. attorney for Kansas at that time.

Q. In fact, he is the top federal law enforcement official in that district, isn't he?

A. Yes, sir.

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

A. Yes, sir.

Q. So you had a number of supervisors upstairs to seek advice from; is that correct?

A. Yes, sir.

Q. And you were able -- the FBI was able to communicate with the SIOC in Washington where even higher officials were available to give direction, were you not?

A. Yes, sir.

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

A. Yes, 1924.

Q. Thank you.

MR. WOODS: Your Honor, may it please the Court, the defense would offer into evidence Government's Exhibit 1924.

MR. MACKEY: Judge, I would object unless we're going to offer the typewritten versions and the 302 itself.

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

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and they're not accurate or complete.

THE COURT: Well, it seems to me for completeness they both should be in if one is going to be in.

MR. WOODS: May I be heard at the bench on this, or I can argue it here, your Honor.

THE COURT: Go ahead and argue it.

MR. WOODS: I have looked at the typewritten version and compared it with this version here. It is not accurate.

THE COURT: Well, the witness is the one who adopted it. This is the witness's notes. The witness also adopted the typewritten version.

Is that right?

THE WITNESS: Yes, sir.

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

MR. WOODS: The typewritten notes only, not the 302. We object to the 302 which was --

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

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

THE COURT: You said the typewritten version, Mr. Mackey?

MR. MACKEY: Yes, I did. That, and also the 302.

MR. WOODS: We object to the 302.

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

MR. WOODS: Thank you.

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

MR. WOODS: Well, we certainly want the notes in, and given the Court's ruling, we'll accept the agent's version of the typewritten notes.

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

THE COURT: All right. Pages 1925, right.

MR. WOODS: Yes, your Honor.

THE COURT: I'll receive 1924 and 1926.

MR. WOODS: Thank you.

BY MR. WOODS:

Q. Now, Agent Smith, just for clarification purposes so the jury can follow this, you've got the pages numbered on the top right; is that correct?

A. Yes, sir.

Q. Then you've written on the back sometimes. Did you use just the front page initially? You'd have front page of 1 and then you went to the front page of 2 in a chronological sequence as you were interviewing Mr. Nichols?

A. Yes, sir.

Q. And then when did you come back and fill out the back of page 1?

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

Q. You don't have a copy there?

A. I have a copy in the other room.

THE COURT: Well, maybe we have another copy.

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

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THE WITNESS: I'm sorry.

MR. WOODS: -- overnight, your Honor.

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

THE WITNESS: Yes, sir.

BY MR. WOODS:

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

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

Q. Yes, sir.

A. Then I went back to page 1, and we reviewed the notes with Terry Nichols.

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

A. Correct.

Q. All right.

A. I went back to page 1, and I made additions to things that Terry Nichols had omitted the first time he had the information

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

Q. Just the front part, the margins?

A. Yes, sir.

Q. All right.

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

Q. When you resumed the interview?

A. Yes, sir, after we went over the notes and made other clarifications in the margins. We went to the fifth page. I went and I took notes on the front of the fifth, sixth, seventh, eighth, ninth, tenth, and eleventh.

Q. Yes, sir.

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

Q. Just the front of those 11 pages?

A. Just the front of those pages.

Q. All right.

A. We took a break, we resumed the interview at 7:07, and then I went to the front of the document -- the front of the notes at 7:19 as noted on the front page of the notes, and I say that we're going to go over the story. So Scott Crabtree and I telling Terry Nichols that we're going to go over the whole

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thing again at 7:19 p.m. At 7:19 p.m. I change the color of my pen. I was taking all my notes in blue. On the front page, I write "7:19, go over story," and I change to a black pen. So all the notes after 7:19 are in black, and all the omissions and clarifications for things that we had gone over are in black.

So we went on the first page at 7:19, the front of the second page at 7:19, in black; and then I went to the closest page to continue the note recitation, and that would be the back of page 1.

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

A. Yeah. If I'm on the front of page 2 and it's in a -- if I'm on the front of page 2, writing notes in black ink after 7:19, I'm going to go to the back since it's right there, on the back of page 1, to write the continuation of things that he was mentioning.

Q. Okay.

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

Q. All right.

A. And then we took our second break --

Q. All right.

A. -- at 8:14 to 8:44. We came back in and went back through the interview -- I'm still on the back of page 3.

Q. Okay.

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

of page 5, back of page 6, and the page of page 7; and then bottom of that page is when we took our last break at 10:21 as noted on the back of page 7. And from there I would go to the front of page 12 in black ink after the break.

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

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

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

A. Yes, sir. And then from 10:50 until the end of the interview, I took notes on pages 11 through 15 in black ink. And then at the end of the interview, I put numbers on all the pages in the black ink 'cause that was at the end of the interview, and I just numbered the front of the pages as being 1 through 15 as noted in the upper right-hand corner that you were mentioning earlier.

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

A. No, not at all.

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

Stephen Smith - Cross

notes, then.

Well, let me first, before I get into that. When you went inside the office, Mr. Nichols was there with his wife, Marife Nichols, and his infant daughter; is that correct?

A. Yes, sir.

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

A. He was not my supervisor, but he was a supervisor; and he was with me, yes, sir.

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

A. Jack Foley did a pat-down search of Mr. Nichols, and Marife Nichols was searched by a female matron from the Herington Department of Public Safety.

Q. And you observed that?

A. I observed Jack Foley do a pat-down search of Terry Nichols, and I was aware that a female matron was coming. I did not observe her doing a pat-down search of his wife, Marife.

Q. Did you observe the search of the child?

A. No, I did not.

Q. Now, during the time that you're downstairs with Mr. Nichols, where was Mrs. Nichols?

A. She was upstairs, I believe.

Q. Did you separate them immediately and take Mr. Nichols downstairs?

A. Mr. Nichols told his wife that he was going to speak with

Stephen Smith - Cross

the FBI agents, so we followed him downstairs.

Q. And some FBI agents stayed with Miss -- Mrs. Nichols; is that correct?

A. Yes, sir.

Q. All right. Let's start with your notes, Agent Smith. And I'll try to zoom in here so we can make sure we've got the whole page; and we'll just start at a top, and then we'll have to come up to catch the bottom part.

And if you will, sir, read for the jury -- just start at the top and make sure that the picture on the screen there depicts everything so that nobody's missing anything. If you will, read for the jury what that says. This is your first page; is that correct?

A. Yes, sir.

Q. I'll put up a little bit here so that we can see. That's numbered "SS," that's Steve Smith, No. 1; is that correct?

A. Yes, sir.

Q. All right. Sir, if you will read for the jury what each line says.

A. All 22 pages?

Q. We're going to start with this page, sir.

A. I'm going to read from the exhibit here. It's the same as on the screen. Is that --

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

Stephen Smith - Cross

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

Q. All right. Go ahead. Next line.

A. Do you want me to read them in sequence as to what Terry Nichols told us --

Q. Yes, sir.

A. -- or just read them --

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

A. They are. That's why I mentioned that. That's why I mentioned that the 7:19 is not going to be right after 3:18, of course.

Q. We understand that. You've explained that. The next line is "Terry Lynn Nichols."

A. Yes, sir.

Q. And what's the next line?

A. "DOB 4-1-55."

Q. And did you check his driver's license to determine if that was true?

A. No, sir.

Q. Did you see his driver's license that night?

A. No, sir.

Q. Did you see any forms of identification that night of Mr. Nichols?

A. No, sir.

Q. Didn't ask for his wallet or anything out of his wallet?

Stephen Smith - Cross

A. No, sir.

Q. All right. What's the next line?

A. "SS," for Social Security, "371-68-4869. Not use it anymore."

Q. And the next line?

A. "Random number on DL because not use SSAN."

Q. And did you check the Social Security number at that time?

A. No, sir.

Q. All right. What's the next line?

A. "Present job" -- "present job" is a black ink, so that's later in the interview -- "buy and sell used military items."

Q. When you say "that's later in the interview," just that line that says "present job" is the thing that's later in the interview; is that correct?

A. Yes, sir.

Q. This other information you're getting right up front from Mr. Nichols?

A. Yes, sir.

Q. And what did he say?

A. "Buy and sell used military items, ammo cans, hand shovels, ax, surplus sandbags."

Q. Okay. Now, what are these crosses or Xs you've got in front of each statement?

A. That would be in regards to answer to a question or another comment that Mr. Nichols made in regards to another issue as

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opposed to just going --

Q. That's the way you separate the sentences or the topics -- is that correct -- so you can tell where a new sentence or thought is starting?

A. Yes, sir.

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

A. That's correct.

Q. Okay. What's the next cross?

A. "Go to shows."

Q. What was that in response to?

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

Q. Okay. What's the next statement?

A. "No one else at home."

Q. What was that in response to?

A. We asked him if anyone was still at his house, at 109 South 2nd in Herington.

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

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

Q. And the next?

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

Q. "Heard name" and what else?

A. The --

Q. The extra information is what you added later; is that correct, sir?

Stephen Smith - Cross

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

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

A. Okay.

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

A. Right.

Q. Is that the most fair way?

A. Right. And that's how it's depicted on 1926, is the -- the Exhibit 1926 is chronologically as to how the interview went.

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

A. Yes, sir.

Q. And he's relating what the television news is stating; is that correct?

A. No. At this time, he's mentioning that a radio broadcast from the Manhattan, Kansas station had mentioned that two people from Michigan were being sought in connection with the Oklahoma City bombing.

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

A. "James Nichols, a brother."

Q. And the next?

A. "Terry Lee Nichols."

Q. Is that the two names that he's mentioning from Michigan?

A. Yes, sir.

Q. And the next statement that you took from him at that time?

A. "In process of being arrested. James is my brother."

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Q. And did he state that he saw that on the news, or what -- how does that fit in with your interview at 3:00?

A. He said he was confused a little bit. He said that he didn't know if Timothy McVeigh was in the process of being arrested or if he heard that the two people from Michigan were in the process of being arrested. He did not know. It was

Q. What's the next statement you took from him?

A. "Came to PD to see what's what. Do not want another Waco."

Q. And then you've got a cross with a new thought?

A. Yes, sir.

Q. What does that say?

A. "Stopped at surplus store, need shingles, trade tools for shingles."

Q. And the next?

A. "Got out of car, had a feeling that I was being followed, got back in."

Q. Okay. Now, you've got some circles over here on the left that are in blue. What are those, sir?

A. The circles in blue are things that Terry Nichols had

omitted to tell Jack Foley and I and that he told Jack Foley, I, Dan Jablonski, Scott Crabtree during the note review. That's why it's in blue there, and there are just other things in the margin. Some of them are in blue, some of them are in black. The black would be after the 7:19, and the blue would

Stephen Smith - Cross

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

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

A. In black, yes, sir.

Q. Well, these are in blue.

A. Right. That was after 4:12.

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

A. Yes, sir.

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

A. Right. And that is depicted on 1926.

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

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

A. Yes, sir.

Q. And show you that this is page 2. We've got page 2 up here; is that correct?

A. Yes, sir.

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

A. At the bottom of page 1, it says, "Got back in." The top of page 2 says, "car and headed to PD." The left-hand corner there.

Q. Okay.

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

Q. You're speaking right here?

A. Yes, sir.

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

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

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

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

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

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

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

A. That was something that Terry Nichols had neglected to mention to us originally, and that was something that we added later on after the 4:12 note review: that James Douglas Nichols had a large, two-story frame house, and that was the one that Timothy McVeigh had stayed with he and his brother for a month.

Timothy, Koverigh had stayed with me and his brother for a month, and he estimated anywhere from two to six weeks.

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

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

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Q. Yes, sir.

A. And we asked who his brother was, then he went into specifics about James Douglas Nichols, Decker, Michigan. Stepson -- Terry Nichols' stepson, Josh Nichols.

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

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

Q. Okay. Go ahead.

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

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

A. Chase Nichols was something -- an individual that Terry Nichols told us about after the note recap; and he says that Chase Nichols was his brother's, James's -- James Nichols' son, Chase Nichols who apparently sometimes lived up at that farmhouse, also. But that was after the two other agents came in the room.

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

A. Yes.

Q. All right. What did he say next?

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

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ago, 3616 North paren. Van Dyke, me, wife, child, child died of suffocation at house."

Q. And next?

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

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

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

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

A. Yes, sir.

Q. And how do you reflect that here?

A. I reflected it that at 3:26 is when Jack Foley started initiating the advice-of-rights form, and I said that read form -- excuse me -- "read us form out loud," meaning Terry Nichols read the form out loud to us.

Q. Yes, sir. And the next entry?

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

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

A. Yes, sir.

Q. Now, you explained yesterday on direct that that delay was because Mr. Nichols was waiting and deciding whether or not to continue to talk; is that correct?

A. Yes, sir.

Q. Wasn't there also delay because one of you in that bottom basement had gone upstairs to find out what to do because he

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hadn't signed the form?

A. No, sir.

Q. Do you recall whether or not someone contacted Washington to inquire what to do because he wouldn't sign the form?

A. No. No, sir.

Q. Are you saying that did not happen?

A. You asked me if I knew that. I don't know that. I did not know that, and I do not know that.

Q. You're saying you have not learned that in the course of this investigation?

A. No, sir.

Q. Do you know who Howard Shapiro is?

A. Yes, sir.

Q. Who is he?

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

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

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

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

MR. MACKEY: Objection.

THE COURT: Sustained.

BY MR. WOODS:

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

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

A. No, sir.

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

A. Jack Foley.

Q. That whole period of time?

A. Yes, sir.

Q. And no one left?

A. No, sir.

Q. And no one came in --

A. No, sir.

Q. -- and gave you any instructions?

A. No, sir.

Q. That's your testimony?

A. Yes, sir.
Q. Okay. So the next entry's at 3:43?
A. Yes, sir.
Q. And what happens then?
A. "Refused to sign the FD 395." That's the advice-of-rights form.
Q. All right. And what's the next entry?
A. "Saw McVeigh Sunday."
Q. Now, these entries over here on the right: Are they not part of the statements you're getting from him at this time,

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3:43?
A. No. The information we got from him after 3:43 was that he had last seen McVeigh in November. And then after the 4:12, when the other two agents came in and we did the recap or reviewed the notes, he said that his last contact prior to Sunday was in November or January.
Q. Well, let's stick with what he's telling you right here. "Saw McVeigh Sunday." What's the next entry?
A. "In my eyes, I did not do anything wrong, but I can see how lawyers turn stuff around."
Q. All right. What's the next entry?
A. "I did not know nothing." The entry in between there was given to us during the note review.
Q. So you had skipped a line, and then you come back later and fill in that line, this particular line here?
A. Yes, just like I skipped a line after the 3:43 notation, I skipped a line between "But I can see how lawyers turn stuff around" to the next statement that he made, "I did not know nothing."
Q. And you're saying Mr. Nichols used a double negative there?
A. Yes, sir.
Q. What's the next entry?
A. "Hesitant BC" for because "lawyers can turn stuff around."
Q. Did you ask him what he meant by that?
A. No, sir.

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

A. PICKED HIM UP THERE AND MY TV. HE CALLED ME AND SAID I VE
got car problems and if you want your TV --" go to the next
page, which is right there. It says, "-- Come pick me up." If
you can spot it. It's kind of difficult. But it's the first
line right here, which is a continuation of the previous page.

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

A. Yeah, the top line of the page.

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

A. Yes, sir.

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

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

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equals Vegas."

Q. Wife and babies?

A. Yes, sir.

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

A. Two months ago --

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

A. Oh, excuse me. Sorry.

The next entry was: "Two months ago, mentioned in a
letter if you are in the vicinity of Vegas, you can pick my TV
up."

Q. Okay. And the next entry?

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

Q. Okay. And the next?

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

Q. "JC" stands for?

A. Junction City.

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

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

Q. Is that an addition later?

A. No, that was actually at the first mention of the drop-off
at McDonald's -- was he said that he dropped him off on Sunday
night, late at night at a closed McDonald's, or early Monday
morning.

Q. Okay. And then the next entry?

A. "Apparently left car in OK City."

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Q. What's he referring to there?

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

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

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

Q. Next?

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

Q. And the next?

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

Q. And the next?

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

Q. Then the next?

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

Q. The next?

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

Q. Then the next?

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

Q. Okay. And were these things on the margins; and then this stuff at the bottom: Was that added later?

A. Yes. The things on the top, the things on the left margin, the things on the bottom, are all in blue, so that was in the

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

Q. Okay. And we'll get to that in that time sequence. So you should be on top of page 4 now; is that correct?

A. Yes, sir.

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

A. Yes, sir.

Q. And again, you're separating the answers or the change of subjects with these crosses on the side?

A. Yes, sir.

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

A. "When I go to gun shows, people say ATF and FBI murdered all the people in Waco. Let them say it."

Q. The next entry?

A. "Hear four or five people at show who say government getting out of hand. I feel that way also on occasion."

Q. Okay. And the next?

A. "On trip up from Oklahoma City, it is possible he mentioned Waco incident, not recall specifics."

Q. Okay. And the next?

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

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

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JC?

A. Yes, sir.

Q. And that's early in the conversation?

A. Yes, sir.

Q. Okay. "McDonald's was closed." Now, what's he talking about here? Where are you in the time sequence of asking Mr. Nichols questions?

A. As you can see at the bottom of the page, it's before the 4:12, before the two other agents come in. I am asking him a question -- well, I'm sorry. Terry Nichols said that Timothy

McVeigh was hungry again, they had stopped at the McDonald's prior to that -- McDonald's off of 77 in Kansas, and he said that McVeigh was hungry again and that the McDonald's was closed, so that he could not eat there, but that Terry Nichols noticed that the Denny's was up the street and that it was open.

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

A. Yes, sir.

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

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

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Terry Nichols says that the Denny's was open up the street, but he did not know that Timothy McVeigh had gone there.

Q. Let's stay with what you wrote down here. McDonald's was closed. And what's the next entry?

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

Q. And the next?

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

Q. And the next?

A. "He knew someone around JC he could possibly get a vehicle and head on his way back home, New York, see relatives in New York City."

Q. Mr. Nichols related to you that McVeigh told him that he knew somebody that he could call, get a vehicle?

A. Either call or see in person, because he said he could possibly get a vehicle from someone, yes, sir.

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

A. "Around JC," yes, sir.

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

A. "He said he bought it cheap, did not know if it was worth fixing. Traded."

Q. What are you referring to there?

A. Terry Nichols is saying that Timothy McVeigh told him that the car that apparently was left in Oklahoma City -- that he had purchased it cheap and that Timothy McVeigh did not know if the car in Oklahoma City was worth fixing.

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Q. All right. What did he say next?

A. That he -- that Timothy "had traded or bought two or three vehicles since I saw him last. That was in November. Cheap cars, not having luck with cars."

Q. Okay. And the next entry?

A. "He knows guns a lot better than I do. Knows ballistics, bullets, etc."

Q. Okay. And next?

Q. Okay. And next?

A. "He is more interested in guns than I am. He looks at it to when he talks to people. I look at it to make money."

Q. And the next?

A. "Trying to sell my private guns because I may have too many."

Q. Okay. Now, you have the entry at 4:12 p.m. that Dan and Scott -- is that Dan Jablonski and Scott Crabtree?

A. Yes, sir.

Q. And what does that mean; that they have come into the interview?

A. Yes. They have knocked on the door and they came into the interview, and I introduced these two agents to Terry Nichols.

Q. Okay. So we've completed four pages, and you've related to us that this is when you went back and read these four pages to Mr. Nichols in the presence of Mr. Jablonski, Crabtree, and Foley; is that correct?

A. Yes.

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Q. So do we need to go back to the front of page 1 now?

A. Yes, sir.

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

A. The additions that were made after the -- during the note review were in the left corner there -- or in the left circle, down halfway through, "Heard about Tim --"

Q. Are we speaking of this entry?

A. Yes, sir.

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

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

Q. And was this added?

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

Q. Now, was there anything else on this page that was added when you read the notes to Mr. Nichols in the presence of the four agents?

A. No. My copy here is not -- is not as dark. I mean, I think it's been copied a few times. But, no, there's no other -- I don't believe there's anything else added here. I'm having a tough time between the blue and the black.

No, sir.

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

A. After 7:19, yes, sir.

Q. So do we need to go to the front of page 2, now, to see what other additions were made after this 4:12 --

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A. Yes, sir.

Q. -- reading of the notes?

A. Yes, sir.

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

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

parenttheses, "about two years ago," end parenttheses, "stayed with us for a month, anywhere two weeks to six weeks."
Q. Okay. And where is he speaking of "stayed with us"?
A. At the Decker, Michigan -- at 3616 North Van Dyke in Decker, Michigan, the farmhouse that James Nichols lived in.
Q. Is this the addition that you put in, the large two-story farmhouse?
A. That was the next thing. The next thing I added, yes, sir.
Q. Okay. What next was added?
A. I believe the next thing that was added right below there, "Sometimes brother's son, Chase Nichols, stayed there, also."
Q. And do you know whether or not Chase Nichols is a son of James Nichols and Kelly Langenburg?
A. I do not know.
Q. All right. What else as we go down these lines was added during this time?
A. Okay. The next notation was "Last contact prior to Sunday was in November or January."
Q. So at 4:12, he's telling you -- shortly after 4:12 in the

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reading of these notes -- he's telling you his recollection was his last contact was back in November or January?
A. Yes. Because previously he'd said that he had not seen him since November of 1994. Then he said that he was not sure if it was either November of 1994, or January of 1995.
Q. All right. And the next entry addition?
A. "Son Joshua, TV."
Q. That's one over here?
A. Yes, sir.
Q. And he's calling him his son here and not stepson; correct?
A. Yes, sir. It was confusing.
Q. To you, or to him?
A. To me.
Q. Okay. Now, what's the next addition?
A. "Call from son that he picked it up two months up to time I got it back."
Q. Okay. This entry where he says "got call": What are you -- what is that entry explaining?
A. That entry explains that Terry Nichols received a call from his son Joshua that Timothy McVeigh had picked up the TV set from Josh and his mother, Lana Padilla; and then I say, "two months up to time I got it back." So two months up to the time that Terry Nichols got his TV back.
Q. Where is that? Are you speaking right here?
A. No, sir. "Son Joshua, TV"; and then if you go right to

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the -- right after "TV," it says, "call from son that he picked it up, two months up to time I got it back."
Q. Okay. What's the next entry?
A. "Got call at approximately 3 p.m. after Easter dinner."

Q. That's the one over here on the margin?
A. Yes, sir.
Q. Okay. And next?
A. "I might not drop it off because I'm pressed for time to get back East."
Q. What did that refer to?
A. The TV that Timothy McVeigh was bringing to Terry Nichols -- he did not know if he could bring it to him in Herington, because he was going to see his relatives on the East Coast and he was pressed for time and he did not know if he could make it up to Herington.
Q. This is Mr. McVeigh's statement that Mr. Nichols is relating to you?
A. Yes, sir.
Q. What about this circle over here: Was that added?
A. Yes, sir, this was added at that time, also. Assumed call was from OK City. He was coming from out West to visit relatives East.
Q. All right. Are there any other additions on this page of what Mr. Nichols told you?
A. No, sir.

Stephen Smith - Cross

Q. So should we go to the front of page 3, then?
A. Yes, sir.
Q. And again, this is page 3 with your initials on it?
A. Yes, sir.
Q. And tell the jury what was added during this rereading shortly after 4:12.
A. "Gave son TV in Vegas in November."
Q. That's this entry here?
A. Yes, sir.
Q. Okay.
A. "Thought that if I wanted a TV back then, go pick up. Send letter to mailbox in Arizona, Kingman."
Q. Did he say who he was sending the letter to?
A. He said that he sent the letter to Timothy McVeigh at a mailbox drop in Kingman, Arizona.
Q. Okay. And is this next border -- margin entry -- 4:34?
A. He went back -- then we went to the top of the page.
Q. Okay. Let's go to the top.
A. Okay. "On phone, just keep between the two of us. Just repeat Omaha if your wife asks."
Q. His next entry?
A. "Seemed private on other calls, my business, no one is to know his business."
Q. Okay. What did he say then?
A. "Some private are trivial things."

Stephen Smith - Cross

Q. "Some private are trivial things." Is he describing Mr. McVeigh's request for privacy?

A. He was describing telephone calls that Mr. McVeigh wanted private that were not important; that were very trivial matters.

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

A. Yes, sir.

Q. And what next entry did you make then?

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

Q. All right. Where are you speaking of?

A. Right here.

Q. All right. Read that to the jury.

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

Q. And what are you referring to there?

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

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

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

Q. And would you click that pen.

Stephen Smith - Cross

Thank you.

Okay. What was the next entry?

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

Q. That's this one here?

A. Yes, sir.

Q. And that's where Mr. McVeigh -- Mr. Nichols said, "Yes, if my wife or I can be present." Is that correct?

A. Yes, sir.

Q. What's the next entry?

A. "Left about 10 minutes after call."

Q. That's the border entry?

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

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

A. Yes, sir.

Q. Okay. What's the next entry?

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

Q. And the next?

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

Q. Okay. Is there anything else on this page that you added at that time?

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

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

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

A. Yes. Right after he had said that Timothy McVeigh told him to go around the block a couple times, "and I'll see you."

Stephen Smith - Cross

Q. Okay. Is there anything else on this page that was added at that time?

A. Yes. Then the stuff at the bottom of the page where it says possible -- or "possibly Main Street exit, 8th Street, circle the block and picked him up, went past that building a couple times."

Q. Now, in your questioning to Mr. Nichols, did you ask him, "Did you go past the Murrah Building?"

A. No, I did not.

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

A. We asked him to describe how he picked up Timothy McVeigh, and he gave these descriptions.

Q. And you never -- the agents never mentioned the Murrah Building or the federal building to Mr. Nichols; is that your testimony?

A. We asked Mr. Nichols later if Timothy McVeigh could build a device to blow up the federal building. We did not ask him specifically in this context about the Alfred P. Murrah Federal Building.

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

A. Not at that time, sir.

Q. So we need to go to -- well, you didn't add anything to the

front of page 4; is that correct?

A. No, sir.

Q. So does that then complete the additions that were made

Stephen Smith - Cross

after the 4:12 rereading?

A. Yes, sir.

Q. Okay. So then we go to page 5?

A. Yes, sir.

Q. Was a break taken at that time?

A. No, sir.

Q. Now, who's present after -- you got four agents there. Who's present as you resume?

A. Dan Jablonski and Scott -- and Jack Foley left the interview room at approximately 4:53, and Scott Crabtree and I continued the interview on page 5 shortly thereafter. I do not know specifically in the pages of notes when they left. But they did leave and we continued with the interview.

Q. So prior to the rereading, it had been you and Foley. After you reread the note, it's then you and Crabtree; is that correct?

A. After they left, yes, sir.

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

A. Yes, sir.

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

A. Yes, sir.

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

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

Stephen Smith - Cross

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

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

Q. Okay. What's the next entry?

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

Q. And the next?

A. "Separated two or three years."

Q. And the next?

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

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

A. His wife had suggested to him that maybe they should be separated for a couple years and maybe he should go into the Army and she had an office in Bay City and in that office complex there was an Army recruiting station and that he was recruited out of that station, the same office building that she was working in.

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

A. That is the basic training that he and Mr. McVeigh had taken in Georgia.

Q. Okay. And you've got "fall of '88 reunited." What does that mean?

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

Stephen Smith - Cross

earlier; and Terry Nichols said that in the fall of 1988, he was reunited with Timothy McVeigh at their first duty station at Fort Riley, Kansas.

Q. Do you know whether or not Mr. Nichols entered the Army in May of '88?

A. Yes. Yes, sir.

Q. So in the fall of '88, he's completed basic training and he's in Fort Riley. Is that what he's telling you?

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

Q. What's the next entry?

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

Q. And the next?

A. "Honorable discharge. She moved to Bay City. Not take care of Josh, so try to get custody."

Q. And Josh, again, is his son?

A. Yes, sir.

Q. Had you cleared that up by then as to whether or not it was

his son or stepson?

A. Yes, sir.

Q. And what did you learn?

A. Mr. Nichols -- I mean I wouldn't be confused if it was my son or my stepson, and he said that it was his stepson originally, and then he said it was his son. And on the third

mention, when he said, "take care of Josh," this was meaning that it was his son at that point.

Stephen Smith - Cross

Q. So you're telling the jury that it was his confusion as to whether or not his son or stepson?

A. Yes. I'm not going to write down "stepson" unless Mr. Nichols said that.

Q. And the next entry?

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

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

A. Mr. Nichols was saying that he was going to go on a two-week tour in Germany and that his sergeant had told him that he was going to have to stay behind and drive German officers around the post at Fort Riley and that he needed to decide whether he wanted to stay in the Army or not. And at that point Terry Nichols said that he got out of the Army.

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

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

Q. What's the next entry?

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

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

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

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

Stephen Smith - Cross

A. "Make your circles, went south on 8th, possibly. Drove around block to 15, 30 minutes. All big buildings. Went as far as a car dealer and drove by a post office."

Q. Okay. And the next?

A. And then he mentioned also in relation to that statement there that it could have been a half an hour instead of the 15 to 30 minutes and then that the route of the blocks was not always the same, meaning that when he was driving around waiting for McVeigh down in Oklahoma City that the routes that he was taking were not always the same.

Q. Okay.

A. Then he said that he "glimpsed down an alley to other street and saw that it was Tim when drove around block."

Q. And the next?

A. "Driving east, saw through alley. Then looked --" I'm sorry. He said "looked," and then I scratched it out -- "then drove north and back west, picked him up on a two-way street."

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

A. Yes, sir.

Q. And this is page 6, according to your notes and your initial; is that correct?

A. Yes, sir.

A. Yes, sir.

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

A. "He was not wet when he got into my car. It was raining when in Oklahoma City. It was pouring on way back, on freeway

Stephen Smith - Cross

back here. He wears black T-shirts all the time. T-shirt and jeans normal. T-shirt, no pocket, no V-neck. Go down 8th Street. Came from Arizona. Going back east to see family and bringing TV. Going to meet someone else in Midwest."

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

A. He mentioned that underneath -- after mentioning about the T-shirts that McVeigh wears and he doesn't have any pockets or V-necks that he also wears combat boots and tennis shoes.

Q. Okay. And this entry over here on the left: Was that added later or at the same time?

A. Yes. At the same time, and Terry Nichols was saying that he guessed that Timothy McVeigh was wearing tennis shoes when he picked him up in Oklahoma City.

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

A. Back East to see family and bringing TV.

Q. Okay. And is this the next entry?

A. Yes, sir. "He does not want --" it should be "people" -- "to know what he is doing. This is his nature. So he told me to tell wife that you were going to go to Omaha."

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

A. "I told wife that I was going to Omaha to pick up Tim with car problems. Then told wife on way to PD today that I went down to Oklahoma City instead of Omaha."

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

Stephen Smith - Cross

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

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

A. Terry Nichols said that on the way back from Oklahoma City, to Herington, Junction City, that he had stopped in Florence, Kansas, to buy diesel fuel.

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

A. Yes, sir. He had told us that he carried additional gas cans in the back of his pickup truck in case he needed to get diesel.

Q. Did he tell you that he had those extra cans so that if he saw somewhere that they were selling it cheap that -- that he would buy extra diesel?

A. No, he did not.

Q. What next entry do you have here?

A. "Tim told me turn here, turn there, which way is out, and he directed me out to the interstate."

Q. And the next entry?

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

Q. And the next?

A. "Got gas on way down in Kansas, about at border, took 77 south to border, diesel gas, no tolls going down or coming back."

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

Stephen Smith - Cross

road?

A. No, I did not.

Q. In Kansas, there's a toll road where you have to pay money just to go down an interstate, isn't there?

A. Yes, sir.

Q. What's the next entry?

A. "Station was on right side of road, going down. Had snacks and soda inside for sale."

Q. Now, is this part right here --

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

Q. And that's where you can get on the interstate without paying the toll?

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

Q. And the next entry?

A. "Tim had TV sitting on sidewalk. Not see his car. Way he talked, it sounded like a larger model."

Q. And this on the side?

A. "Had a compact Chevy before that," meaning he had a compact Chevy before the car that he was leaving in Oklahoma City.

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

A. Yes, sir.

Q. And this is page 7, according to your initial and your numbering system; is that correct?

A. Yes, sir.

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

Stephen Smith - Cross

interview with Mr. Nichols.

A. The first entry on page 7 was, "Got in accident, then got another car, then bought my brother's car in 1 -- or January of 1995."

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

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

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

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

Q. And the next cross entry?

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

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

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

Q. All right. Now, we've got a cross, but we've got some stuff in the margin. What comes first?
A. The cross. "He said that he was up in Michigan when his car got hit and then bought brother's car."
Q. Who is he speaking of there?
A. Timothy McVeigh.
Q. And the next entry?

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A. "Do not believe that the car that broke down was James's former car."
Q. And the next?
A. "Put same amount of money into James's car that he paid for it."
Q. Next?
A. "On way back, stopped in town off 77 at McDonald's, he got something to eat."
Q. "He" is referring to who?
A. Timothy McVeigh.
Q. And the next entry?
A. It's the -- in the margin there, "I get sleepy tired when I drive sometimes, and Tim asked if I remembered that."
Q. Let me get that on the screen. "I get sleepy tired"?
A. "I get sleepy tired when I drive sometimes, and Tim asked if I remembered that."
Q. Remembered what?
A. They would have conversations in the car or truck, and Timothy McVeigh would ask a question about a certain conversation they had just had, and Terry Nichols would respond that he didn't remember that conversation. And he described that as being sleepy tired because he drives a lot, he gets that way.
Q. Okay. Okay. So then the next entry is going to be this one?

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

A. "McDonald's on Washington was closed. He said to drop me off there and he'd call someone. He said he was hungry but not open, but Denny's was open."

Q. Okay. The next entry?

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

Q. And the next?

A. "And then I got back on Washington Street. He was walking towards Texaco or Conoco. He was clean-shaven when picked him up. He had a little bag, solid green laundry bag, like Army

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laundry bag with drawstrings."

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

A. They were put on right after that last statement, and Terry Nichols said that he got home about 2:00 a.m. on that Monday morning, and he thought it stopped raining when got into Kansas.

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

A. Yes, sir.

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

A. Yes, sir.

Q. Can you tell the jury what you next wrote down from your interview with Mr. Nichols?

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

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

A. Yes. Then he further explained that the "it" he was referring to was the green laundry bag that Timothy McVeigh had.

Q. Okay. What's the next entry?

A. "Catch you on the way back. Usually says this when we leave each other."

Q. Next?

A. "He gave me a call on Tuesday morning at approximately 6:00 a.m., and I'd like to use your pickup a little bit."

Q. And the next?

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

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Wednesday."

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

A. That came up -- Terry Nichols said that Timothy McVeigh called at 6:00 a.m. wanting to borrow his truck, and Terry Nichols told him that Fort Riley had a sealed-bid auction that Monday, Tuesday, and Wednesday and that he wanted to go to that auction. So he was telling Tim McVeigh that "I want to go to this auction, and if you're not going to take too long, you can borrow my pickup truck."

Q. And this is Tuesday, the 18th?

A. Yes, sir.

Q. And the next cross?

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

Q. What does that mean?

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

... Terry Nichols could do that Timothy McVeigh knows a couple people in Junction City and he could find a car as opposed to borrowing his truck. That was his thought as to why he didn't need to let Timothy McVeigh borrow the truck.

Q. And the next entry?

A. "I was just up when got called. 'Can I use your pickup for a little bit? I need to pick up a few things and look at a few vehicles.'"

Q. And the next?

A. "I said that 'I want to go to an auction today. If it is not going to take too long, you can drop me off at auction so I

Stephen Smith - Cross

can review it, then borrow it.' Then we would be going our own way after that."

Q. And the next?

A. "He said he was not in a real hurry, at home for an hour. Left home at 7 a.m."

Q. Okay. And the next?

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

Q. Okay. And next?

A. "Blond hair, not much stubble." I crossed out "beard."
"A crew cut always."

Q. And had you asked him for a description of McVeigh?

A. Yes, sir.

Q. And what's the next entry?

A. "Picked him up, drove up to Fort Riley. I got out and told him to be back at noon."

Q. Okay.

A. "McDonald's, back on freeway, K-18 through Ogden, then to post, Fort Riley."

Q. Is this in response to your question of "How did you get to Fort Riley?"

A. Yes, sir, how did they get from the McDonald's in Junction City to the auction.

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

A. "He showed up after 1:00 p.m."

Stephen Smith - Cross

Q. Okay.

A. "Went into building and signed in before 1:00 p.m. and looked at items inside, then left."

Q. All right. And the next entry?

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

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

A. No, not in the notes. Mr. Nichols had said that he had gone into a building and then came out of that building at noon because he was supposed to meet Timothy McVeigh; and when Timothy McVeigh did not show up, that is when he went into another building where he had to sign in and looked at those

items to bid on.

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

A. No, sir.

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

A. No, sir.

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

A. Yes, sir.

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

A. Yes, sir.

Q. And what's your next entry?

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

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

Q. Now, are we -- what topic are you discussing here with Mr. Nichols?

A. The discussion that they had in the car, in the pickup truck going from the DRMO at Fort Riley back to the McDonald's in Junction City. And he said that Timothy McVeigh had said that he had looked at a couple cars, and Terry Nichols said that he assumed that Timothy McVeigh may have even bought a car.

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

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

Q. What about these entries on the mailbox -- when did that come up?

A. That came up at the same time also. He did not give us a time that he had gotten home with the notation on the left there. So then he said after he dropped Timothy McVeigh off at the McDonald's in Junction City, "I picked up my mail in Manhattan, Mail Boxes, Etc. 1228 Westloop, 197." Then he said he tries to get his mail twice a week.

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

A. This entry in the left-hand margin where Terry Nichols said that Timothy McVeigh says that he lives light, in reference to only having a green duffel bag to have all his belongings.

Q. All right. So you have an entry here, "wanted to live in Manhattan or Junction City"?

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A. Yes, sir.

Q. And what did he say there?

A. "But too expensive, multiple listings, looked at house, two realtors," not homes. I crossed out "homes." "Saw in Junction City. One called in Manhattan, both on 6th, one on north side, one on south side, closer to Main Street."

Q. Is he talking about the realtors that he had seen about buying a house?

A. Yes, sir, that there were two realtors in Junction City. They were -- both had offices on 6th Street. One was on the north side and one was on the south side.

Q. And what's the next entry here?

A. He said that "he'd looked at prices of guns and houses and too expensive in Junction City and Manhattan."

Q. And next?

A. "Looking for owner-financing house."

Q. Next?

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

Q. Next?

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

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

A. Yes. And he gave us -- those are two kind of conflicting reasons. He said that he moved from Michigan to Las Vegas

Stephen Smith - Cross

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

Q. And the next entry?

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

Q. And the next?

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

Q. The next entry?

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

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

A. Yes, he -- excuse me. He had said that he had gone from the 3616 North Van Dyke, Decker, Michigan address, moved to Las Vegas, and then back -- then moved to Marion, Kansas, so he was detailing his travels, his -- where he'd lived.

Q. And what about this entry in the margin?

A. The entry in the margin is -- says, "Bought farm in approximately 1975. And he mentioned that after he said that his "mother's house, lived there on two occasions," was the

Stephen Smith - Cross

3616 North Van Dyke and that they had purchased the farm in approximately 1975.

Q. Okay. Your next entry?

A. "Born in Lapeer, Michigan, and mother still lives there."

Q. And the next?

A. "Remodeled it in 70's, two-story farmhouse. Brother may own house now. Lived there from 1991, 1993. Lived there from 1975 to 1980. Married first wife, moved into her house in Decker, sold it, bought another, went into service," went back to -- "went back " and then on the front of the next page

to went back, and then on the front of the next page.

Q. So we go to top of page 10, then?

A. Yes, sir.

Q. And this is your initial and page 10?

A. Yes, sir.

Q. And the "Argyle Road," what is that?

A. That's in regards to where he moved after he went -- after he was in the service, went back to Argyle Road for address after service.

Q. All right. What is this next sentence?

A. "First wife moved out to Bay City."

Q. That's this entry right here?

A. This entry right here.

Q. "First wife moved out to Bay City"?

A. Yes, sir.

Q. And the next entry -- if you'll click that off.

Stephen Smith - Cross

A. "Let her first ex-husband live in house to take care of two children."

Q. Next?

A. "Fixed house up and was there for approximately one year. Not more than two years. Sold house plus 80 acres to neighbor for \$90,000 in 1990 or 1991."

Q. The next entry?

A. "Moved to Las Vegas to be near son. That is when wife came over from Philippines. Met her in the Philippines when he was on vacation."

Q. Next?

A. "Went back over there later and married her in November of 1990 or 1991."

Q. Next?

A. "Lived in Vegas for six months to a year and saw Josh quite a bit."

Q. Next?

A. "Have joint custody of Josh. Josh was here for a week over Easter."

Q. Next?

A. "Worked at Donahue's for six months driving tractor, Tim Donahue."

Q. Next?

A. "Not like working for someone else."

Q. And next?

Stephen Smith - Cross

A. Then there's a "so" there also. It's "So not like working for someone else."

Q. Yes, sir.

A. "He provided a house for us 2 miles south of ranch. RR 3, Rural Route 3, Box 83, Marion, Kansas."

Q. And next?

A. "Tim came by and said that 'Let's do some gun shows. Go it alone and try to make a business. Ours would be better, see

family.' He wanted to do more of guns, handle more long guns, guns to sell. I wanted to buy more Army surplus and sell."

Q. Next?

A. "Pick up stuff cheap here and sell at shows elsewhere."

Q. Next?

A. Then he said that his wife went back to the Philippines with child after Marion. In the left margin there above your --

Q. And it says what?

A. "Wife went back to Philippines with child after Marion."

Q. Okay. What is this last entry here?

A. "Tim and I went to one in Colorado, two or three in Arizona and one in Nevada."

Q. That's going to be --

A. -- page 11.

Q. This is page 11. And you picked that up right here; is that correct?

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A. Yes, sir.

Q. It's talking about where he and Tim had gone to gun shows?

A. Yes, sir.

Q. These entries above were made later?

A. They were -- I just continued that first -- that one comment in regards to the gun shows. 'Cause he said, ". . . two or three in Arizona," which would be the first, the first line. And then I said "sometime" -- I'm sorry, then I wrote down that he said, "Sometimes both would drive to shows and sometimes one would drive."

Q. Right here, above?

A. Yes. That was mentioned after the gun shows that they had gone to. He said that sometimes they would both drive or sometimes they would just one of them would drive to the shows.

Q. What is this entry?

A. "Two waters." We had supplied him two waters during the break, and I just wanted to make sure that that was captured.

Q. So resuming what your questions and answers are, it's right here?

A. Yes, sir. "Pooled money, less expenses, and split it."

Q. And the next?

A. "Did not ask for any gas money from him."

Q. Next?

A. "I pay for everything in cash. I do not have any checks, credit cards."

Stephen Smith - Cross

Q. Next?

A. "Got mail in Marion and Manhattan."

Q. Next entry?

A. "Stayed at Sunset in Junction City for three weeks prior to Herington."

Q. Yes, sir.

A. "While wife was in Philippines."
Q. And then you've got an entry for 6:10 p.m., took a break?
A. Yes, sir.
Q. And an entry stating what?
A. He got two pieces of pizza, water, and that we asked about the rest room, if he needed to use the rest room.
Q. So the break lasted from 6:10 to 7:07?
A. Yes, sir.
Q. And was that when you went upstairs and briefed the other FBI agents what you had learned during the course of the interview?
A. Yes, sir.
Q. And you told them about Mr. Donahue; correct?
A. I don't have a recollection that that conversation specifically took place. I do not know what I briefed them about. I didn't take notes as to what I briefed them about.
Q. Did you take your notes upstairs and read to the supervisors what you had learned from Mr. Nichols?
A. Yes, I gave them highlights of what he had said.

Stephen Smith - Cross

Q. And did you get additional information at that time from the agents as to other topics to ask him about?
A. I believe we did, yes, sir.
Q. Okay. And was there a discussion at that time about the status of the arrest warrant that was being sought?
A. No, sir.
Q. Nobody mentioned to you when you were briefing them or you were being briefed about the status of an arrest warrant?
A. No, sir.
Q. Did anybody mention to you that a lawyer had called and wanted to speak with Mr. Nichols?
A. No, sir.
Q. What else happened during that 6:10 to 7:07 p.m. break?
A. Scott Crabtree and I went upstairs, and Jack Foley and Dan Jablonski went in the interview room and sat with Terry Nichols outside the interview room when Scott Crabtree and I were upstairs. We talked to other agents. I imagine we had a piece of pizza, too. And I got some water.
Q. And do you know what information you got at that time?
A. No, sir.
Q. The information you gave was what was in your notes; is that correct?
A. What was in my notes and what Mr. Nichols had told us.
Q. Now, do you know whether or not Mr. Jablonski and Mr. Foley continued the interview while you were gone?

Stephen Smith - Cross

A. I did not know that at that point, no, sir.
Q. Did you learn later?
A. Yes. I learned that they -- Terry Nichols had brought up some discussions during that break.
Q. And were notes made of those discussions?

Q. And were notes made of those discussions?
A. Not by me, no, sir.
Q. No, you weren't there. But did they make notes of those discussions?
A. Yes, they did.
Q. Did they give them to you?
A. No, they did not.
Q. So to resume at 7:07, do we stay on this page and pick up right here, or do we go back somewhere?
A. No, we stay there at 7:07 after the break, and I say, "Back in interview with Scott."
Q. And that's Mr. Crabtree?
A. Yes, sir.
Q. All right. 7:14: What is this entry?
A. "Again to consent search of house and car with wife present."
Q. How many consent forms did he sign?
A. He only signed one consent form.
Q. You're just asking him again if he will still agree to it?
A. Yes. We asked him if he would agree to a consent search of his house and his truck with his wife present, because Terry

Stephen Smith - Cross

Nichols was still being talked to so he could not be present; and he agreed that he would give that consent for that search.
Q. If his wife could be present?
A. Correct.
Q. And she never was present during the search, was she?
A. We didn't execute the consent search warrants. We didn't use the consent search warrants.
Q. You didn't?
A. Did not.
Q. She never was present during any search, was she?
A. I don't believe so. No, sir.
Q. So what's the next entry?
A. We did not use the consent searches that Terry Nichols signed for the house. Later we used consent searches that his wife signed.
Q. And you didn't use the consent searches that he signed for the house because the U.S. attorneys told you they weren't good, didn't they?
A. No, they decided that they were going to actually get a search warrant for the two, for the house and the truck.
Q. Did they tell you that because you had offered to have Mr. Nichols present during the search, that those consents weren't valid?

MR. MACKEY: Objection.

THE COURT: Sustained.

Stephen Smith - Cross

BY MR. WOODS:

Q. What's the next entry?
A. "Went upstairs and said okay," meaning that I went upstairs

and told my superiors and other agents that it was okay to search the house with Marife Nichols present.

Q. So you went up and told your supervisors that?

A. Yes, sir.

Q. Based on that consent that Mr. Nichols gave, it was okay if his wife was present at the search?

A. Yes, because at the 4:34, when he signed the consent, he asked prior to that if his wife or himself could be present. We said that was possible; and then we were going to search that evening, so we wanted to make sure, since Terry Nichols was still being interviewed, that it was okay that his wife be present during a search. And that's what we went back down, asked him. He said, yes. I went back upstairs.

Q. Who did you tell that to back upstairs?

A. My superior and other agents upstairs.

Q. Was the U.S. attorney there at the time?

A. I don't believe so, no, sir.

Q. So what's the next entry?

A. "7:16, back in interview."

Q. And the next?

A. "7:17, been through Omaha, no P.O. box in Omaha, Nebraska."

Q. And now here, we pick up at 10:50 in different color. So

Stephen Smith - Cross

do we need to go back to another page here at 7:17?

A. Yeah. At 7:17 we told Terry Nichols that we were going to go over the whole story again that he had given us during the first four hours of the interview. So we went to page 1 and made -- made a notation, changing my pen to a different color, to black, and made a note at 7:19 to go over the story in the left-hand margin of page 1.

Q. So we start with page 1, then, again?

A. Yes. We go back to page 1, at the top of the document -- the top of the interview notes, and we go over the whole story again.

Q. This is your initial and it's page 1?

A. Yes.

Q. Okay. Now, do you want to point out to the jury what entries were made on your notes after 7:19 on page 1.

A. Okay. As I mentioned earlier, this is not a dark copy 'cause it's tough to differentiate the black and the blue. But the first entry here, "present job," is what he -- whoops -- is -- the first entry that he mentions after -- when we're going over the story, he says that his present job is buying, selling.

Q. But you'd already gone over that much earlier when you put the jobs down about buy and sell surplus?

A. Right, I asked him in the first part of the interview what he did for a living, and he said that he buys and sells. And

Stephen Smith - Cross

when we went over the notes, he said that his present job was

that, so I wrote down "present job."

Q. What other additions did you make here after 7:19?

A. Right here where it says "my." And then "and brother's mentioned in regards to OKC."

Q. And is he explaining that he heard his and his brother's name mentioned on the news broadcast?

A. On the radio news broadcast from the station in Manhattan, Kansas, yes.

Q. And your next addition?

A. Over here.

Q. If you scratch that -- omit those marks?

A. Oh, yes.

Q. If you could erase those marks. So that we can move down the page. Just click on the side.

Now, can you show the jury what additions were made here.

A. "At home," and he reemphasized that he -- "on." Then he says again, "two people from Michigan."

Q. Let's go back to that "at home." What are you meaning there?

A. That he heard Timothy McVeigh's name on the news; then when he got back home, that he watched it on the TV.

Q. After hearing it on the radio, he went home, watched it on TV; is that what you're saying?

Stephen Smith - Cross

A. Yes. He was kind of confused as to whether he heard Timothy McVeigh's name mentioned on the radio or at home or whether he had seen him and heard him on both. But then he did say he did hear his name on the news then at home and he heard his name for the first time at home on TV, but he believed he had heard Timothy McVeigh's name also on the radio broadcast.

Q. What is the next addition?

A. "Heard about OKC bombing yesterday at cable outlet in Herington."

Q. Where is that, sir?

A. I had just -- right here. Let me click these off.

Right here.

Q. What did he tell you here?

A. "Heard about OK City bombing yesterday at cable outlet in Herington." Then below that, "Got a paper last night and got three different papers, read about it last night, Wichita, Salina."

Q. And what's this entry, "no reception on TV"? Wasn't that added at the same time?

A. That was added after this comment about buying three papers on that night. Then he says that he had no reception on TV till today. At 9:00 a.m., cable.

Q. Did he tell you why he had no reception on his TV?

A. No, he did not.

Q. Didn't mention that the TV didn't have an antenna to it?

Stephen Smith - Cross

A. No, he didn't.

Q. So the front of page 1, then, complete?

A. No. In the left-hand margin here, these comments came next, and I'll read those. "Home to lumberyard, purchased" -- I'm sorry. "Home to lumberyard, parked there, and heard name and did not go in."

Q. And what's he explaining there?

A. He's explaining the Manhattan radio broadcast. He just said that he had heard it on the radio broadcast, but he did not tell us how he had heard about it. So he explained to us he was going to lumberyard, stayed in his truck, did not go into the lumberyard, then came home and watched the TV news, the news coverage.

Q. Okay. If you'll click your pen. Is that the end of page 1, sir?

A. Yes, sir.

Q. Now, do we go to the back of page 1, or do we go to the front of page 2?

A. The front of page 2.

Q. Again, this is page 2, according to your initials and numbering system?

A. Yes, sir.

Q. Now, tell the jury what additions you made here.

A. At the top of the page, he says: "Came into house and asked her if she heard about it on TV. I said it was serious.

Stephen Smith - Cross

She did not believe."

He said, "Heard on radio that two people in process of being arrested." That was at the same time that he mentioned that he came into the house. So this left --

Q. This entry on the left here?

A. Yes, sir.

Q. Is he talking about a discussion he's having with his wife?

A. Yes, that he told his wife that he had heard on the radio that two people were in the process of being arrested.

Q. And this comment you have over here about her, is that the wife?

A. Yes, sir. Marife Nichols.

Q. What next did you add to this page?

A. Right here, and this is in response to a question.

Q. Excuse me. I'm going to move it so the jury can see it. Then you can mark it. If you'll erase those marks.

All right. What did you put down?

A. Right, that phrase there, "Not headed out of town. Should not find clothing for going out of town."

Q. Did you ask him if he was heading out of town while you were following him?

A. Yes, we asked him that because he was going on Highway 56 south of town; and right at Surplus City, directly south of that business, there's absolutely nothing except the highway. So we were kind of curious as to whether he was going out of

Stephen Smith - Cross

town or why he was down at Surplus City.

Q. Is this the same Surplus City that he had explained to you he had been to earlier when he first heard his name on the radio?

A. No, he said he went to the lumberyard, and that lumberyard was not the Surplus City.

Q. All right. Can you erase that mark.

And what did you next add on this page?

A. Then I went back to the page -- back of page 1.

Q. So front of page 2 is complete?

A. Yes, sir.

Q. Now, can you read that for the jury -- this is all new addition -- right -- you can just read it verbatim?

A. Yes, sir.

Q. Okay. Can you read --

A. He went on to explain what he had explained on the top of page 2, about going into the house and telling his wife that his name had been mentioned in the news. He said that "asked her if she had heard about it. She does not believe it. Turned TV to a news station for 15 minutes. Janet Reno was on there discussing investigation. General lingo that they always give. It was a press conference. Then heard Tim's name on TV for first time. Said he was picked up for a car violation not far from OK scene. Thought and swore I cannot believe it was him because he was heading back to see his family and he was

Stephen Smith - Cross

back there in OKC. When I heard his name on TV, that is when I figured out why my name was on the radio, because I was his friend. I was feeling shock because heard my name, how am I involved, how am I connected to it. I must not have known him that well for him to do that. Friendship is about the same with him now as five years ago.

"We went our separate ways lately because he did not like all my practical joking and joking. Told my wife he did not like all that. I feel upset that I am involved in a sense because of him and knowing that I am not."

MR. WOODS: Your Honor, does the Court want to take a break at this time?

THE COURT: Keep going.

MR. WOODS: Yes, sir.

BY MR. WOODS:

Q. So that's the back of page 1; is that correct?

A. Yes, sir.

Q. Did you then resume on the back of page 2? Is that the sequence you took these notes?

A. Yes, sir, yes, sir.

Q. And can you read that to the jury? All of this is new information; is that correct?

A. Yes. And the next thing that Terry Nichols said was that he feels -- he said: "I feel I cannot trust anyone any more

than Tim." He said "except," and then he said he meant "than."

Stephen Smith - Cross

Q. Can you tell us where you're reading from here?

A. Yes. It's right at the top of the page.

Q. All right. Right here?

A. Right here.

Q. Okay. So if you'll just read verbatim.

A. "I feel I cannot trust anyone any more than Tim. I have loaned him money in the past. I would be shocked if he implicated me. Tim takes responsibility for his actions. He lives up to his arrangements. My wife said this morning that Tim lives life on edge. I did say this morning, and it was before heard that Tim had been picked up.

"She just got off phone when came in with news. She got -- she just got off phone with Raymond, California." Then I put a little circumflex there, "and Raymond B, her friend, and she was joking around with him about Tim being involved. She met him in Philippines."

Q. That's Raymond B that she met in the Philippines?

A. Yes, sir.

Q. Now, you've got a lot of notes in the margin here. Can you tell --

A. Then we went to the top, and he was explaining that he had received a call --

Q. Can you erase -- there you go.

A. -- from his ex-wife that morning, also, and he said "after call from ex-wife this morning, she got mad because I told

Stephen Smith - Cross

Josh"; semicolon, "wife got upset, want to go home, she has friends there, you've got friends like Tim."

Q. And this is an explanation of his just conversation with his wife, Marife?

A. Yes. That Marife had gotten upset because Terry Nichols had talked to his ex-wife that morning and that she was mad because she wants to go home to the Philippines and she doesn't have any friends in the United States and that Terry has friends in the United States like Tim McVeigh.

Q. What's this entry here on top?

A. He explained after he said this -- all the way down to the right margin, he explained that basically Lana was his ex-wife. I did not know the name of the ex-wife yet. He said Lana, and then he said that his ex-wife "called because Joshua told Barry," parentheses, "(oldest son) that dad had put 3,000 to Lana for account."

Q. All right.

A. And then he went off on the left margin to explain the \$3,000 comment. "Gave her money to put into account for Josh. Gave her 3,000 cash in person in January. Not get statement yet. In January said she would copy statement and send out."

Q. All right.

A. And the circle there in the middle of that page: "He likes to drive fast." He gave that as a -- an example of how Timothy McVeigh lives his life on the edge.

Stephen Smith - Cross

Q. And those are all the entries on the back of page 2; is that correct?

A. Yes, sir.

Q. And then where do we go, to the front of page 3?

A. Yes, sir.

Q. And this is page 3, according to your initials and note.

A. Yes, sir.

Q. And can you tell the jury what additions you made to page 3?

A. Yes. This addition here. "When he said he would tell me things at times that would be in code for me to understand equals think about later and able to understand." Then he made this notation: Born in 11 -- I'm sorry. "Both in 11 Bravo, infantry."

Q. Is that an explanation of what unit he and McVeigh were assigned to?

A. Yes, sir.

Q. And the entry you just made over here with these marks: What are you referring to there?

A. In regards to the drive from Oklahoma City to Junction City, Terry Nichols said that Tim McVeigh told him things that were in code and that he would -- once he thought about them later, he would be able to understand what Timothy McVeigh meant by some of the things he was saying.

Q. And the next entry?

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Can you erase those marks.

A. Right here. "Talking generalities. At times seemed hyper or nervous, been that way other times, too. He was over at Desert Storm, and he seemed nervous afterwards. I did not go to Desert Storm." So all this --

Q. Those are remarks Mr. Nichols made about Mr. McVeigh?

A. Yes. They were remarks about what he and Mr. McVeigh had talked about during the conversation from Oklahoma City to Junction City; that they had talked generalities and that -- we asked him if -- or what Mr. McVeigh's demeanor was on the trip up from Oklahoma City to Junction City, and Terry Nichols said at times Timothy McVeigh seemed hyper and nervous, and then he went on to explain that Timothy McVeigh had been that way at other times was mostly like after Desert Storm.

Q. Was there anything else on the front of page 3 that you've added?

A. No, sir.

Q. Do you want to erase those remarks.

THE COURT: Now I think we'll break, Mr. Woods.

We're about halfway through the time for today --

You may stop down, Agent Smith.

you may step down, Agent Smith.

-- and we'll take the break remembering that we would expect after we come back from the 20-minute break to go through to 1:00, since this is our schedule on Friday; so as I say, you may wish to fortify yourself during this time. Of course, please follow the caution regularly given at all breaks of avoiding any discussion about the case or any of what is happening in court, and keep open minds and avoid anything outside the evidence.

You're excused now for 20 minutes.

(Jury out at 10:47 a.m.)

THE COURT: We'll recess.

(Recess at 10:48 a.m.)

* * * * *

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PLAINTIFF'S EXHIBITS

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* * * * *

REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated at Denver, Colorado, this 21st day of November, 1997.

Kara Spitler

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