

reading the back of page 2. Is that correct?

A. Yes, sir.

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Q. And the last thing you entered was "he likes to drive fast"; and that was in relation to Tim McVeigh living life on the edge?

A. Yes, sir.

Q. So is it fair, then, to go to the back of page 3 -- was that the order in which you took the notes?

A. Yes, sir.

Q. And you see that this is page 3 according to your initial note. And if you would, just read to the jury what your notes are here, starting at the top.

A. "See guys (3 to 4 per show) at gun shows. FBI, ATF went in there and murdered them and something done about it" -- I mean "and something should be done."

Q. What does that refer to?

A. This is in regards to Terry Nichols' telling us that he sees people at gun shows come by his table and say that the FBI and the ATF murdered all the people in Waco and that these people say that something should be done about it.

Terry Nichols' response to those people is that he would tell them -- "I would say 'possibly.'"

Q. You put that in quotation remarks?

A. Yes. That was in reference to him answering the question that those people at the gun shows that would say that that -- that he said, "I would say 'possibly.'"

Q. Your next entry is?

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A. "Some guys get hyped about that."

And then he went to the top of the page and then down the right margin to further explain some of the things at the gun shows that they would see and said, "Tim would get more hyped seeing a newsletter like Spotlight; Jack McClamb, retired PD out of Phoenix. Bo Gritz ran for president last time; Jack wrote Aid and Abet that I read; right-to-bear-arms messages; most decorated officer in Arizona; follow Constitution; fired twice; got fed up, retired, writes speeches about rights under Constitution."

And then the only thing that I didn't mention there was that "Jack McClamb" above that in the right-hand corner -- Terry Nichols told us that Jack McClamb -- he says "(writes one)" -- if you want to move the paper down a little.

Q. Sure.

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

Q. This way?

A. Yes, sir.

Q. Okay?

A. Right here. This was in reference to Terry Nichols' telling us that Jack McClamb also writes a newsletter.

The next thing we went to was right here at this plus,

where we asked him a question: "Looking back in hindsight, anything he said on way up would make you think he had done

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it?"

Terry Nichols responded, "Yes."

Q. All right. And then what was said?

A. And then at 8:14 --

Q. Was that -- was that it? Just "Yes"? You didn't ask him what "yes" meant?

A. No, then we took a break.

Q. All right?

A. At 8:14, Jack and Dan came back.

Q. That's Jack Foley and Dan Jablonski?

A. Yes, sir. And Jack alone.

Q. What does that mean?

A. That Jack -- that Dan went back outside and Jack was alone in there and then at "8:15 came back out with Scott," meaning that I came back out of the interview at 8:15.

Q. All right.

A. Then Scott and I -- Scott Crabtree and I were back into the interview at 8:44.

Q. So what happened between 8:15 and 8:44?

A. We took a break, a half-an-hour break approximately, and Agents Jack Foley and Dan Jablonski were in the room with Terry Nichols.

Q. And during that break, did you convey to the people upstairs what you had learned?

A. Yes, sir.

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Q. And did you get additional information to ask additional questions?

A. Yes, sir.

Q. And did you learn the status of the arrest warrant at that time?

A. No, sir.

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

A. And at 8:46 -- that's "J and D" -- that would be Jack Foley and Dan Jablonski -- "left," "Explaining house diagram; Jack," for Jack Foley, "back in at 8:48."

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

A. That means that Dan Jablonski was explaining the house diagram to Agents Crabtree and myself because Terry Nichols during that break from 8:14 to 8:44 had produced or had drawn a diagram of his house; and that house diagram Agent Jablonski was showing to us and that Jack Foley must have left the room for 2 minutes and then came back in at 8:48.

Q. Excuse me. Is -- are there interviews going on when you're not there by Mr. Foley and Mr. Jablonski?

A. During that break from 8:14 to 8:44 is when Mr. Nichols drew a diagram of his house. I don't know about an interview during that time. I was not in there.

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

Q. Did anybody give you any notes or an interview.

A. No, sir.

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

A. Yes, sir.

Q. Did you initial it?

A. Yes, sir.

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

THE COURT: Yes.

BY MR. WOODS:

Q. I'm going to show you what's been marked as Defendant's Exhibit D1627, which is a copy. I don't have the original.

You recognize that document?

A. Yes, sir.

Q. Have you seen it before?

A. Yes, sir.

MR. WOODS: Your Honor, we would offer into evidence Defense Exhibit 1627. I assume the Government has the original.

MR. MACKEY: We have no objection to that.

Government's Exhibit 1930 that Agent Smith has there is the original of that same exhibit.

THE COURT: All right. Well, let's take a look at it --

MR. WOODS: Has it been offered into evidence?

THE COURT: No, it hasn't.

1930, do you have?

THE WITNESS: Yes.

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MR. WOODS: We would ask that the original be used, your Honor.

THE COURT: You can approach to make sure it's what you --

MR. WOODS: Thank you.

THE COURT: -- want.

BY MR. WOODS:

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

A. Yes, sir.

MR. WOODS: Then we would offer into evidence the original that the Government had not offered.

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

MR. MACKEY: 1930, your Honor.

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

BY MR. WOODS:

Q. Agent Smith, is this a diagram that Mr. Nichols drew for the agents of his house?

A. Yes, sir.

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

A. Yes, sir.

Q. Did he point out on that diagram the location of the ammunition that's in his house?

A. Yes, sir.

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

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A. I did not do anything with the original that evening. As mentioned in the notes here on that page that we have on the screen, at 8:52, Marife Nichols, Terry Nichols' wife, came into the interview room between 8:52 and 8:57; and this is when Dan Jablonski showed me the diagram, and that's why I timed it at 8:53 as to when I actually signed this document. I did not -- I did not witness this document being prepared, so I did not 1A it or put it evidence -- put it into an envelope myself. This was handled by Dan Jablonski.

Q. Do you know if it was given to the agents the next day that were going to be executing the search warrant?

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

Q. Do you know what happened to it after you last saw it in Jablonski's possession?

A. No, I do not.

I should say Jablonski or Agent Foley -- I do not who had it, but they were both there during that 30-minute break.

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

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

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

A. Yes, sir.

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

A. I should say it was in Jablonski or Foley's possession, yes, sir.

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

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that before we go to the next page of notes?

THE COURT: Yes. Yes.

BY MR. WOODS:

Q. Now, Agent Smith, did you go to Terry Nichols' house on Saturday, the 22d?

A. No, I did not.

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

A. No, I did not.

Q. You're aware that search warrants were executed at this location, weren't you?

A. Yes, sir.

Q. Did you ever go inside the house?

A. No, sir.

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

A. No, I do not.

Q. Mr. Nichols has a legend there about guns and ammo with Xs and Os -- is that correct -- in the upper right-hand corner?

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

Q. Right here?

A. Yes, sir.

Q. And there are locations in the house where he's put the X and the X with the circle?

A. Yes, sir.

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

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that correct?

A. No, I do not.

Q. So back to page 3, our last entry we were talking about was at 8:48 concerning the diagram. Is that correct?

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

Q. All right. Now, what happens next?

A. As I mentioned, at 8:52, Marife, wife, and daughter, Nicole Lynn, came back in to see Terry.

Q. And were you there?

A. Yes, sir.

Q. Did you observe that?

A. Yes, sir.

Q. And what happened?

A. At that point, Jack Foley or Dan Jablonski showed me the diagram of the house. I initialed it at 8:53 in between there. I noticed during that break that they were together, Marife and Terry Nichols; that Terry Nichols had taken out his wallet and given Mrs. Nichols something out of the wallet and then put his wallet back in his pocket. And then at 8:57, Nicole Lynn, the daughter, and Marife left the basement. And then I say Scott and I back to the interview at that point.

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

A. Yes, sir.

Q. Okay. And can you read, then, for the jury what you wrote down about Mr. Nichols' responses at that time?

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A. At that time, we had not gotten back to the important question right before the break regarding the hindsight question, if anything he had said on the way up would make him think that he had done it, meaning the bombing. And he said yes. Then we asked him to explain that; and then Terry Nichols said -- "He said on way from OK City to JC Tim" -- "Tim" as being "he" -- "'You will see something big in the future.' I was talking about what I was doing/going to military shows selling surplus;" quote, "'I'm doing fine, I should get something going here shortly. You will see something big in the future,'" end quote.

Q. Now, who -- who did the quotation marks refer to?

A. The first quotation mark, "You will see something big in the future," is what Timothy McVeigh told Terry Nichols on the drive from Oklahoma City to Junction City.

Q. Yes, sir.

A. The next quotation, "I'm doing fine, I should get something going here shortly. You will see something big in the future," was Timothy McVeigh's comments again; and in between there is what Terry Nichols was saying, he was going to military surplus -- military shows selling surplus. And then Timothy McVeigh responded to that by making this comment again.

And then the next thing was Terry Nichols asking Timothy McVeigh, "What are you going to do, rob a bank?" And Timothy McVeigh responding, "Oh no. I've got something in the

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works."

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

A. Yes, sir.

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

A. Yes, sir.

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

A. That's correct.

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

A. Yes. We asked him specifically if he knew what "in the works" meant because that's what Timothy McVeigh had said that he had done.

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

At that point --

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

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

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

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

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

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

Q. And the next statement?

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

Q. And the next entry?

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

"We would both" --

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

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

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

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the Spotlight and other publications like that were ideas that he believed in.

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

A. No, no.

Q. And your next entry then?

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

Quote "'Gun Show Calendar,'" end quote, "magazine look to go to ones close to home."

"No other operators that I had friendship with and neither does Tim."

"I have bought books on cannons, establish credit books."

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

He mentioned then that he has no credit cards, no checking or savings account, does not pay or believe in federal income taxes.

Q. And the entry over here on the left?

A. "I've read articles that have come across table about bombs, talked with McVeigh, would not work, sounds logical. With talking to different sources or people at table, need a certain fertilizer (it is a nitrogen-based fertilizer) do not think a liquid fertilizer could do it."

Q. And this is in response to your questions to him about explosives?

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

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come across paper (sic) about bombs and that he would discuss them with McVeigh, what would work, if this bomb would work, this bomb would work or if it was logical or not for the mixtures in the books themselves. He said they did that because of their curiosity.

Q. And this was in response to your questions about explosives; is that correct?

A. Yes, sir.

Q. Is that the end of that page?

A. Yes, sir.

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

A. Yes, sir.

Q. And again, this is your initial and your numbering system, page 5. Is that correct?

A. Yes, sir.

Q. And if you would, just start at the top and read for the jury what you put on your paper, your notes.

A. Of what Terry Nichols -- he said, "Do not think a 28 percent nitrogen mixture could lead to an explosion; different analysis. Some people say urea does, some people -- and some people say it does not. Granular solid equals like on lawn. Urea is another form of nitrogen-based bomb; I do not know."

"Ammonium nitrate fertilizer that can be used to make a bomb" -- "Granular." "I imagine you have to put a blasting

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cap on it to explode. Farmer stopped by one of my shows about blowing tree stumps out take ammonium nitrate and diesel fuel and mix. Someone bores a hole underneath and mixed before put it down in hole and then detonate mixture for explosion. Someone" -- excuse me. "Someone came by table and said mix AN and diesel fuel for quarries. I have not made any so I do not know if it stays granular or becomes liquid; there are ratios for mixture in books equal going from dry manure to ammonium nitrate with diesel fuel; I would assume electricity could start it; they have electric blasting caps now."

Q. And what is he relating here to you? Information from books and conversations?

A. Both individuals that come by the table at gun shows that he would talk to and literature that he had read.

Q. And that is the end of that page?

A. Yes, sir.

Q. And in your sequence, do we go to the back of page 6?

A. Yes, sir.

Q. And again, in your numbering system, we have your initial and your page No. 6. Is that correct?

A. Yes, sir.

Q. And can you read for the jury, then, what you wrote down about your conversation with Mr. Nichols?

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

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to bomb. Tim's friends in JC in/out of military. I do not know very well. He's mentioned names in the past equal roomed with guys at barracks; Herbez approximately 1988, with me also in Army. He was in Army for 4-5 years, got out after Desert Storm earlier and went down for training in Special Forces, decided to not go in there, started training with another friend from Desert Storm on a walk/run; did not finish Special Forces training and short time later got out, assume he got a honorable discharge. (He got pissed at a sergeant" -- for his -- I'm sorry. "He got pissed at a sergeant of his before he got out) or Sergeant pissed him off. I nor Tim had any friends in Ordnance when we were in. Mentions this Bob in reference to shows he has been to; Bob is an operator of a booth. If private gun and want to sell, can sell them without license."

Q. Talking about gun show?

A. Yes, sir. What he's saying here is that if you don't have a federal firearms license, you can still sell guns as long as it's a private gun. That was his belief.

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

A. We asked him if he knew anybody -- and he mentioned earlier that he did not know anybody -- he did not have any friends in the gun show business who ran booths or operated a booth or a table at a show. And then he says that Timothy McVeigh has

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

Q. What's the next entry?

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

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

Q. Terry Nichols' brother?

A. Right.

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

A. That's correct. And he mentioned -- he says, "My brother James"; and then he mentioned in the left-hand corner here that his brother is one year older than Timothy -- than Terry Nichols is.

Q. All right.

A. And then he mentioned, "More my friends than his: Kevin Nicholas, Carrol, Michigan. Used to work on my brother's farm."

"(2) Rick Nicholas" -- that's Kevin's father -- "used to work on farm, also; (3) brother's friend that both know but I know better."

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So the ones below that are James Nichols' friends that both Tim McVeigh and Terry Nichols know but that Terry Nichols knows better. And he said, "(a) Phil Moraski, Decker, Michigan; (b) Dean Burden, Snover, Michigan." He says, "He's got two sisters."

Q. When you say "he's got two sisters," who are you referring to here when you write those notes?

A. Dean Burden under No. (b) on the far right.

Q. Isn't it true that you're referring here to Tim McVeigh?

A. I believed he was talking about Dean Burden. But in the context of it, that's correct because he's saying that the mother -- mother is in Florida and the father is in New York state, so he is referring to Timothy McVeigh.

Q. He's got two sisters?

A. Correct. "(Jennie or (Jeanie), and another) gets along better with the younger sister," who is Jennie or Jeanie. "Mother, Florida; father, New York state, living."

Q. Now, does is that describe Tim McVeigh?

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

Q. The relatives of Tim McVeigh?

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

Q. Is that the end of that page?

A. Yes, sir.

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

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A. Yes, sir.

Q. And again, in your initials and numbering system, this is page 7. Is that correct?

A. Yes, sir.

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

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

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

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

Q. All right.

A. Next thing he said was, "He had a house there outside Kingman in another city, Golden Valley. He's a loaner. It's possible that he could make a device to blow up a building without my knowledge. He could be capable of doing it. He knows guns real well equals no sharpshooter; break gun down quickly, down to bare parts; name of lot of different makes and models, round capacity; velocity, different calibers" -- "velocity of bullets," excuse me, "different calibers.

"We talked about bombs; looked at literature together a couple of times at shows and discussed it, would this work, does it make sense, this bomb would make more sense.

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

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of free time and likes to stay busy by reading, etc., about guns, bombs. Did not have proper license on brother's car and went out West and not sure if he changed plates. When I was driving through streets of OK City, I saw one parking lot empty.

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

Q. So these comments on this page are referring to Tim McVeigh as related to you by Terry Nichols?

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

Q. And you have gotten to a time sequence of 10:21 when you take break and you go upstairs. Is that correct?

A. Yes. And we had asked Terry Nichols if he wanted to use the rest room, and he said he did not need to; but he said he would like some water, so we brought some water back down.

Q. And what happened when you went upstairs?

A. That was the last break that we took at 10:21 to 10:50, and we had reiterated or rementioned to the superiors what we had talked to Terry Nichols about and what he said during that -- the course of that interview. And we found out a few more things to ask Terry Nichols during the last session.

Q. And did you find out that you finally had the arrest warrant in hand?

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

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

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A. No, I did not.

Q. Do you know where it had been issued?

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

Q. From the grand jury in Oklahoma City?

A. No. Excuse me. It had been issued by the court in which that -- U.S. District Court in Wichita, Kansas.

Q. Isn't it, in fact, a warrant issued out of Oklahoma City issued by a federal judge?

A. I would have to look at the document to be sure.

Q. Did you look at it that night?

A. Never saw it that night.

Q. Have you seen it since?

A. Yes, I have.

Q. You told the prosecutor on direct examination that it was a material witness warrant. Is that correct?

A. Yes, sir.

Q. And you have seen it since that date; is that correct?

A. Yes, sir.

Q. And you've read it?

A. Yes, sir.

Q. Is it true that on that document that the Government stated Terry Nichols had attempted to flee the jurisdiction of the United States?

A. I believe it said that, yes, sir.

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Q. Did you notice what time it was issued when you read it?

MR. MACKEY: Objection, Judge.

THE COURT: Sustained.

BY MR. WOODS:

Q. So you learned about the warranted at 10:21 or shortly thereafter during the break; is that correct?

A. Yes, sir.

Q. And you related to your superiors -- you went over your notes, gave them the highlights. Is that correct?

A. Yes, sir.

Q. And you got additional information to go back down and ask Mr. Nichols questions. Is that correct?

A. That's correct.

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

A. I don't believe he was there, no, sir. I did not see Mr. Rathbun until the end of the interview when I left at approximately 12:11 a.m.

Q. Did you learn at that time during this break that an attorney had been calling and attempting to talk to the agents and attempting to make his services available to Mr. Nichols?

A. No.

MR. MACKEY: Objection.

THE COURT: Sustained.

BY MR. WOODS:

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

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at 10:20?

A. At approximately 10:50 p.m.

Q. Did you advise Mr. Nichols that there was a warrant for his arrest at that time?

A. No, I did not.

Q. Did you continue to interview him?

A. Yes, sir.

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

A. We go to page 11.

Q. I'm sorry?

A. In the middle of the page.

Q. Okay. Page 11, middle of the page. And this is your initial and your page number. Is that correct?

A. Yes, sir.

Q. And we have here in the middle of the page a notation 10:50.

A. Yes. "10:50 back downstairs."

Q. And that's where the interview picks back up?

A. Yes, sir.

Q. Read to the jury what notes you made of the interview of Mr. Nichols.

A. "Any storage facilities, care, control, or custody.

"1. Had storage in Las Vegas, 11/94 - 12/94 - 1/95 personal items; stored pick up there when went to Philippines.

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"2. One in Herington. I was asked to pick a couple things up from by Tim; at time not think much of it, yesterday picked up"; quote, "'If I don't pick them up pick them up for me,'" end quote; "told me on Tuesday, those items are sleeping bag and ruck" -- "Rucksack in garage is on the next page."

Q. Okay. Let's stay on this page just a moment. Did you ask him questions about do you have any access to storage facilities? Is that -- what was the question you asked?

A. The question we asked Terry Nichols was tell us about any and all storage facilities that he had under his care, custody, or control.

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

A. Yes, sir; that he no longer had. And he told us about a storage locker from 11-94 to January of '95.

Q. And he told you about one in Herington that he was asked to pick up things. Now, who was he asked by?

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

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

A. Yes, sir.

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

A. Yes, sir.

Q. All right. Can you read for the jury, then? You continued about his statement on the prior page of what he picked up. Is

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that correct?

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

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

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

Q. What's the next entry?

A. A "combination nothing left in storage.

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

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

A. Yes. He's saying that the storage locker is across from the Pizza Hut and specifically described it as being the second storage locker up from the south end on the east side. Then he gave the dimensions of the storage locker.

Q. What is this entry on the margin on the left? Does that come in at that time?

A. Yes. We asked him a specific question as noted there, "Are these your items," in regards to the things he picked up from the storage facility.

Terry Nichols said "No."

Then we asked him a question: "What about your fingerprints on any items in the rucksack?"

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

Q. Now, what's the next entry?

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

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

A. "Closed before I moved in."

Q. Closed what?

A. That means that he closed on his house before he moved in. This is not in reference to the storage facility.

Q. Okay. And the next entry?

A. The next thing he said was, "Nothing in house or truck that can be construed as bomb-making material."

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

A. Yes. We asked him specifically about that -- about mutual associates; and he said that the mutual -- the following names that he had mentioned to us were "mutual associates that he is closer to," meaning Tim McVeigh, and some of them are non-soldiers, and then he gave us a list.

"No. 1. Herbez, Burmerdez, Hispanic appearance from Puerto Rico."

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

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male.

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

"4. Smith, white mail.

"5. Bunch, black male.

"6. Spencer, white male friends with one more than the other.

"7. Spencer white male.

"8. FNU LNU," meaning first name unknown, last name unknown, "white male possibly going through Special Forces together, living in "Rolla, Missouri, or Washington, Missouri."

"9. Lived with in Salina who also in Army."

And "10." -- That was the end of that list.

Q. And you switched to a new subject?

A. Yes. "Down at show in Tulsa, guy who had a booth who was selling items related to explosives equals lots of chemicals involved (ammonium nitrate; potassium and something; nitrogen, potassium and phosphorus in fertilizer that farmers use in the fields); can be used for bomb making."

Q. And then we go to the top of page 13?

A. Yes, sir.

Q. And again, this is your numbering system, your initials?

A. Yes.

"I talked to him a bit; asked him specific questions about uses; and he was rude that I should have known these answers; talked to others who said it was no problem in selling

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items."

Q. What items are you referring to here?

A. Items related to explosives and to include ammonium nitrate and other items that the individual at the Tulsa gun show told him that there would be no problems in selling those items.

Q. And the next entry?

A. "11:15 p.m., listen to taped message."

Q. Is this when you had the phone there hooked up to Washington and you allowed Mr. Nichols to hear the message?

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

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

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

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

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

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

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

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

A. It wasn't a conscious -- it was a decision just to play the tape for him if he wanted to hear it. It wasn't a decision whether I was going to transcribe it and show him what they

said or have him listen to the tape.

Q. So the FBI had used a tape that evening; is that correct?

A. The FBI had not used a tape.

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

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

Q. And that was the one that was played for Mr. Nichols?

A. Yes, sir.

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

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

Q. This was the response he made after hearing the tape?

A. Yes. He said that he caught everything except for what his son said at the very end. He had heard what his son said, but

Stephen Smith - Cross

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

Q. And you've heard that tape?

A. Yes, sir.

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

A. Yes, sir.

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

THE COURT: All right.

MR. WOODS: And it is Defense Exhibit 1652.

THE COURT: All right. Any objection?

MR. MACKEY: No, your Honor.

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

(Exhibit D1652 played.)

BY MR. WOODS:

Q. Was that the tape that you heard before it was played to Mr. Nichols?

A. Yeah. I heard that during the break. I was not on the phone when Terry Nichols heard that.

Q. So his response was, "I caught everything except for what my son said"?

A. Yes. And he mentioned that he caught everything except for

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what he said at the very end of the tape.

Q. Now, what was next entry?

A. "I bought 2 (50 pound) bags of ammonium nitrate about 1 month ago from Manhattan Elevator (have receipts in house); because going to sell 1-pound bags for 5 - \$10 instead of the \$35 that Tulsa guy was selling for; read books; sell as fertilizer with sheet that says plant food/nitrogen and explain mixture and uses for plants. Sold at shows every weekend except Easter weekend; if I sell any more at shows they will question me; put it on lawn this morning; did not say earlier because make me look guilty" to a jury. And the notation here is for newspaper. And that was just something he said, but I crossed it out because he said he did not say it earlier in regards to the newspaper. So we crossed that out.

"The plastic containers in the basement, 8-ounce and 24-ounce."

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

A. Yes. He was going to put the ammonium nitrate into plastic containers, 8-ounce and 24-ounce containers that he had in his basement.

Q. And what's the next entry?

A. "800 dollars of laser sights."

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

"Paid cash."

Stephen Smith - Cross

Q. What's this in response to?

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

Q. And was that information you had received during the break that -- why were you asking that question?

A. We asked that question specifically because we had heard during that last break that he had received UPS deliveries at his house recently, and then he explained some of the UPS deliveries.

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

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

Q. The first one was some laser sights?

A. Yes, sir.

Q. And that came from Quarton?

A. Yes, sir.

Q. What was the second one?

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

"\$600 and some odd" for "blow guns from Nebraska from Ballisticorp. Bill another 40."

So in other words, he was saying it was 600-some-odd dollars, he was not sure how much it was and that he was going to be billed in the future for another \$40.

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

Stephen Smith - Cross

connection with your involvement in this investigation?

A. No, I've not.

Q. The laser sights or the blow guns?

A. No, sir.

Q. That is the end of page 13?

A. Yes, sir.

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

A. Yes, sir.

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

A. Yes, sir.

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

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

"Jim Boy Ray, American Indian who was in basic training together." Then he said Jim Boy was the last name.

Quote, "I have no connection with Jim Boy in regards to anything," period, end quote.

"What are drums in garage. Trash and other uses bought in Marion."

"Fuel meter to resell."

"No knowledge of him Jim Boy being involved in OKC bombing? No."

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

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

Stephen Smith - Cross

which was a fuel meter, and he said that he purchased it in order to resell it.

Q. After a lengthy discussion about that fuel meter with one of the agents, there had been a break?

A. Yes. I was not in that conversation.

Q. Have you seen the notes of that interview?

A. I have not seen the notes.

Q. Who conducted that interview?

A. That was during the first break from 6:10 to 7:07, and Dan Jablonski and Jack Foley were in the room during that time so they took the notes of that discussion.

Q. You haven't seen them?

A. No, I have not.

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

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

And I had spelled "Quarton" wrong, so I crossed it out. I put down "Horton, Kansas," for some reason.

"John Kelso equals 'That was -- that was name Tim mentioned,'" end quote. "May have had a house within Salina."

Q. This is referring back to the earlier list you had taken from him about somebody that Tim had lived with in Salina?

A. Yes. What we did is we asked him if he knew a John Kelso, and Terry Nichols said that was the name that Tim had mentioned for an individual that he had possibly lived with in Salina.

Stephen Smith - Cross

Q. John Kelso was a name that you had gotten during the break; is that correct?

A. Yes, sir.

Q. What's the next entry?

A. "Never knew, never met him; came into our company after I left; not recall him being in our basic training."

"Not recall a call from Tim on Saturday morning at 6:30 a.m."

"Michigan Militia equals big; we (Marife, Nicole; approximately on 4/8 and 9) gone for a week left on 4-5-95 and got back on 4-10-95."

Q. Who mentioned Michigan Militia?

A. We asked him about the Michigan Militia or if he was a member or if he knew anything about the Michigan Militia.

Q. Did he say he was a member?

A. He said he was not a member.

Q. And he's then given you what he knows about the Michigan Militia here?

A. Yes. And he goes on to the next page, but he's basically saying that he went to Michigan from 4-5 to 4-10 of '95 and that he had gone to a gun show where he found out that the Michigan Militia members had purchased some of his goods for sale.

Q. So that will be on the next page?

A. Yes, sir.

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Q. And that will be page 15 in your sequence?

A. Yes, sir.

Q. And again, this is your initialing system and your number?

A. Yes, sir.

Q. And if you will read what he said there on page 15.

A. "Went to a gun show, sold 30 cans of MREs" --

Q. That is "cases"?

A. I'm sorry. "30 cases of MREs in 15 minutes to people from Michigan Militia. Never identified themselves; heard that and -- heard that they bought stuff; guys walking around with full BDUs and assumed they were from Michigan Militia. Never went to any meetings; sold 10 cases \$30 right off bat, then \$32 sold; then sold 2 and 3 to 60-year-old ladies."

Q. Now, what does MREs mean to your knowledge?

A. It's -- stands for meals ready to eat. It's an Army ration -- Army ration.

Q. All right. What does BDU mean?

A. Battle dress uniforms.

Q. And then he's relating to you what sales he made at the gun show in Michigan?

A. Yes, sir.

Q. What's the next entry?

A. "I do not know anyone in the Michigan Militia."

Q. And the next?

A. "Left 11-11-94 to Philippines until 1-17-95 (had a visa for

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59 days) and came back a couple days before visa expired. Flew out of Las Vegas; planning on coming back, open-ended round-trip ticket."

Q. What's this thing in the circle?

A. They were there -- I'm sorry. They went there in September, 1994, meaning Marife, Nicole -- Marife Nichols and Nicole Nichols.

Q. There is the Philippines; is that correct?

A. Yes, sir. Because he's describing that he went there and saying that they went there previous to that.

Q. Okay. And then the next entry?

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

Q. Are these the four letters that you've discussed before with Mr. Mackey?

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

Q. Four pages?

A. Yes, sir.

Q. And you received those during the break?

A. Yes, sir. The last break.

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

A. "I wrote it because I did not have a will."

"In case of event of death, this letter was going to

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be sent to Tim in January if I did not return; ex-wife was instructed to mail it to Tim."

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

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

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

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

A. Yes, sir.

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

A. It's not in my notes.

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

A. Yes, sir.

Q. And do you recall Mr. Nichols' telling you that he did have two stepsons from Lana Padilla's earlier marriage, a Troy Osentoski and a Barry Osentoski?

A. Not to my recollection. He did not specify that to us.

Q. Okay. Do you have a notation in there about Barry and

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older brother?

A. Yes, sir.

Q. Do you know who that was?

A. That was a son of Lana's.

Q. Okay. Now, you met with Mr. Nichols the next day, you told us. Is that correct?

A. Yes, sir.

Q. And you drove him from -- what jail was he placed in that evening?

A. The Dickinson County jail in Abilene, Kansas.

Q. You picked him up there at what time?

A. Approximately 1:58 p.m.

Q. And drove him where?

A. To Wichita, Kansas.

Q. And you had a conversation with him during that period of time. Is that correct?

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

Q. You related to the jury yesterday that you and Mr. Crabtree had decided not to talk with Terry Nichols, to speak with him during that trip. Is that correct?

A. That's correct.

Q. Had you been instructed not to do that?

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

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

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

A. We had been with the United States Attorney from the early morning hours, approximately 2:30 in the morning on the 22d, until the noontime, yes, sir.

Q. Yes. And that was for the purpose of getting with the U.S. Attorney to draw up a search warrant; is that correct?

A. Yes, sir.

Q. Were you instructed by the U.S. Attorney that a lawyer had attempted to reach Mr. Nichols?

MR. MACKEY: Objection.

THE COURT: Sustained.

BY MR. WOODS:

Q. And it's your testimony that you just decided on your own not to try to elicit more information from Mr. Nichols?

A. We had gone over his story four times. We figured that was enough times for him to tell us the truth.

Q. And did you take notes, then, of that conversation on that day, that drive, from Abilene jail to Wichita?

A. I was driving, so I could not take any notes during that drive. No, sir. I did not.

Q. Did you take notes immediately thereafter?

A. I took notes when we were in Wichita.

Q. All right. That's during the conversation that you had up there in the jail?

A. Yes, sir.

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Q. And how long did that last?

A. That lasted from approximately 3:31 until approximately 3:54 p.m.

Q. Okay. Before he went into the courtroom and obtained services of counsel; is that correct?

A. Yes, sir.

Q. Do you have those notes with you?

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

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

THE COURT: Yes.

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

Your Honor, may I approach the witness?

THE COURT: Yes.

BY MR. WOODS:

Q. Agent Smith, I'm going to show you what has been handed to me as a -- it's been represented these are your notes of that day. Would you examine those to determine if that's a copy of your notes that day?

A. Yes, sir. This is a copy of my notes for 4-22-95 and Agent Scott Crabtree's notes for that same day.

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

A. Yes, sir.

Q. How many pages are there?

A. Three pages.

This is kind of a --

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Q. Two-and-a-half pages?

A. Yeah, and the first two pages are from a stenographer's notebook, so they're not full 8 1/2-by-11 pages.

MR. WOODS: May I have this marked as our next exhibit.

BY MR. WOODS:

Q. Agent Smith, I'm going to show you what has now been marked as D1655, and it's a total of three pages. Are those the three pages that are your notes?

A. Yes, sir.

Q. Okay. And it's two pages and then just a couple of lines on the third page?

A. And then the third page are the notes about the pickup of Terry Nichols and the property prior to these notes.

Q. So there is actually just two pages of notes reflecting your interview that afternoon. Is that correct?

A. Yes, sir.

Q. And would you look at them, make sure those are accurate that they're your notes.

A. Yes, sir. These are my notes.

Q. Okay. And you've had a chance to review them before today, haven't you?

A. Yes, sir.

MR. WOODS: Your Honor, may it please the Court, we would offer into evidence D1655.

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MR. MACKEY: No objection.

THE COURT: Received, D1655.

MR. WOODS: And may we publish those in a like manner, your Honor?

THE COURT: Yes.

BY MR. WOODS:

Q. Agent Smith, I'm going to start here with the first page, and you've initialed again and numbered again your notes as SS(1). Is that correct?

A. Yes, sir.

Q. Would you read what entries you made on that day. This is April 22, Saturday?

A. Yes, sir.

Q. What time did you start your interview?

A. The first time I take notes, I reference "3:25 at Epic Center, Wichita." And that's slashed out "jail" and crossed the "jail."

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

Q. And what do those entries refer to?

A. Those entries refer to 3:25 is the time that we got to the Epic Center. 3:26 is when those deputy U.S. marshals took custody of Terry Nichols. At 3:30 Terry Nichols came back and we continued talking with Terry Nichols, and these would be the notes from the interview.

Stephen Smith - Cross

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

A. "Terry equals Ken Parker Council Grove, Jim Kyle. Tim equals Shawn Rivers and Tim Tuttle."

Q. Was he giving you aliases that had been used?

A. Yes. He was giving us aliases that he had used and that Timothy McVeigh had used; and we asked him if he had used any other aliases, and those were the only two aliases he mentioned to us.

Q. The next entry?

A. "Parted ways last fall equals way we both lived, did not jive" (sic).

Q. Who he is talking about there?

A. That he and Timothy McVeigh had parted ways last fall.

Q. Next entry?

A. "Told ex-wife, brother that he said he was going to Michigan for gun show."

"Stopped by mother, Florida, talked to dad. Went by brother and talked with him."

Q. All right. Now, what does that relate to?

A. That's in relation to Terry Nichols' going to Michigan, and they stopped by his mother's house who happened to be in Florida, so he did not see her. He talked to his dad and then that he went by his brother James' house and talked with him. This was during the 4-5 -- April 5, 1995 to April 10, 1995 visit to Michigan.

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Q. All right. And the next entry?

A. "James and Tim get along well."

"He farms, never been to JC," Junction City.

Q. Who has never been to JC?

A. He's referring to James Nichols as never being to Junction City.

Q. All right. Next entry?

A. "Terry and brother right-wing group, not a member of anything."

That was in relation -- we asked him a question if he or his brother were a member of the Michigan Militia or any other right-wing groups, and then he said he is not a member of anything.

Q. All right. Next entry?

A. "Would surprise me if James was involved with Michigan Militia."

He did not know if James was involved or not, but he said that it would surprise him if he was.

Q. Okay.

A. And -- you can leave that on there for a second.

Q. I'm sorry.

A. The last notation here is "6479." That's for a telephone extension for the deputy U.S. marshals in Wichita.

Q. So then we go to page 2. Is that correct?

A. Yes, sir.

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Q. And can you read for the jury what notes you took of the interview of Mr. Nichols.

A. "I believe in the Constitution. Tim likes to be careful on the phone. Keep it low key. Bad credit history. Overextended on couple credit cards. I do not like income tax, nor do I pay it.

"3:54," meaning the end of the interview.

And then the last notation there is for \$70.82 at 5:30 p.m., is the money from Terry Nichols' personal property envelope that I handed over to Deputy U.S. Marshal Daryl Ingermanson at 5:30 p.m. in Wichita.

Q. And then there was one other page that you mentioned were in your notes, and will you tell the jury what that was?

A. This is in regards to the pickup of Terry Nichols that afternoon. The upper left-hand corner that's cut off there should say "4-22-95."

It's "1:58 p.m took custody and property of Nichols from Deputy U.S. Marshal Hefron at Dickinson, Abilene. 2 p.m. placed in car and secured. 2:02 p.m. left Abilene."

Q. And drove to Wichita. Is that correct?

A. Yes, sir.

Q. Now, are these the sum total of notes of your interviews with Mr. Nichols?

A. Of my interviews, yes, sir.

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

Stephen Smith - Cross

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

A. No, sir.

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

A. Yes, sir.

Q. And where was that?

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

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

A. Yes, sir.

Q. And what time did you meet with him?

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

Q. Sometime during that day; is that correct?

A. Yes, sir.

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

A. The purpose of meeting with him was in order to make a phone call -- he wanted to call his mother and his wife, and he wanted to actually have an opportunity to talk to them. So I made that available to him.

Q. Okay. In fact, which phone call came first? The one to his wife, Marife Nichols?

A. I don't have a specific recollection right now if he called

Stephen Smith - Cross

his wife or his parents first.

Q. Okay. And you talked with the people on the other end where his wife was in the custody of the FBI. Is that correct?

A. Excuse me?

Q. Before Mr. Nichols made the call to Marife Nichols, you talked with the people on the other end of the phone where Marife Nichols and the FBI was, didn't you?

A. Yes, sir.

Q. And you were aware that they were going to record the conversation, weren't you?

A. Yes, sir.

Q. You brought Mr. Nichols into a room and you dialed the number, didn't you?

A. Yes, sir.

Q. And then you told Mr. Nichols you were going to give him some privacy and you left?

A. Yes, sir.

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

A. Yes, sir.

Q. Now, in the phone call to the mother, you did the same thing: You called Ann Arbor, Michigan, where the mother was; is that -- correct -- where she was in the FBI office?

A. I initially called the home.

Q. Yes, sir.

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

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Yes, sir.

Q. And you were aware that they were going to record that conversation on that end; is that correct?

A. Yes, sir.

Q. And again, you told Mr. Nichols you were going to give him some privacy and you left. Is that correct?

A. Yes, sir.

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

A. No, sir.

Q. So the FBI does have a tape recorder here and there; is that correct?

A. Yes. It's called "consensually monitoring," whoever we get consent from one party to a telephone conversation and they give us consent to record the conversation, yes.

Q. And you know that the FBI records a number of conversations where no consent is given, don't you?

MR. MACKEY: Objection.

THE COURT: Sustained.

MR. WOODS: Thank you, Agent Smith.

No further questions, your Honor.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. MACKEY:

Q. Agent Smith, in the case of the phone conversations on April 26, to your knowledge, was consent obtained from each of

Stephen Smith - Redirect

the parties on the other end?

A. Yes, sir.

Q. Mr. Woods asked you at length about the handwritten notes that you took on April 21, 1995?

A. Yes, sir.

Q. Do you recall those questions? Take a look at Government's Exhibit 1926, please. Do you have that in front of you?

A. Yes, sir.

Q. And could you describe more precisely what Government's Exhibit 1926 is.

A. Government's Exhibit 1926 is a typewritten version of the handwritten notes. This was -- I dictated the handwritten notes in this format.

Q. And is there any particular order of the information that's set forth in typewritten form on Government's Exhibit 1926?

A. Government's Exhibit 1926 is a chronological order as to what Terry Nichols told us that day; so in regards to pages 1, 2, all the way up to page 24, it goes in the order that Mr. Woods and I went over. So it goes in the actual order of the things that Terry Nichols told us.

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

A. That's correct.

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

Stephen Smith - Redirect

changes that might have taken place in information that you and

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

A. That's correct.

Q. Agent Smith, could you describe in more detail exactly the manner that Mr. Nichols used during the course of your interview on Friday? How precisely did he respond when he did so?

A. Mr. Nichols was very deliberate in his comments and responses on questions, and that's why I was able to take contemporaneous notes with pretty much everything he said. I had no problem keeping up with what Mr. Nichols was saying because he was talking in such a deliberate, calm fashion.

Q. On occasion, would he sit there for some period of time before responding at all?

A. Yes. He would do that, and he would also on occasion close his eyes and sit there for a short period of time and then open his eyes and answer our questions.

Q. So as you sit there now and having reviewed those notes in the time that's passed since then, are you confident that you wrote down in accurate fashion the statements Mr. Nichols made?

A. Yes, sir.

Q. Mr. Woods asked you some questions about the delivery of those notes. Do you know that those notes have been provided to counsel for the defendant?

A. Yes, sir, they have.

Stephen Smith - Redirect

Q. All right. And do you know when?

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

Q. More than two years ago?

A. Yes, sir.

Q. Was it clear, Agent Smith, in the course of your interview with Mr. Nichols that you wanted to know from Mr. Nichols everything he knew about Tim McVeigh, the Oklahoma City bombing, and Mr. Nichols' activities around that time period?

A. Yes, sir.

Q. And did you in the course of the interview go over the information he was sharing with you on more than one occasion?

A. Yes, sir.

Q. Did you give Mr. Nichols every opportunity to provide all the details that he was prepared to share with you that day?

A. Yes, sir.

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

A. Yes, sir.

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

A. Yes, sir.

Q. At any point in time did Mr. Nichols stop and say, I'd like to have aid of counsel?

Stephen Smith - Redirect

A. No, he did not.

--- --, --- --- ----
Q. Mr. Woods asked you yesterday some questions about the consent vs. the search warrant. And let me just put it to you this way: Did you personally make the decision as to whether the United States would rely upon the consent signed by Mr. Nichols vs. a search warrant authorized by a federal judge?

A. No, I did not.

Q. Have you personally participated in any of the searches that have been conducted at 109 South 2nd?

A. No, I did not.

Q. Do you have any firsthand knowledge whether on any of those entries Marife Nichols was in fact present?

A. No, I do not.

Q. Return our attention, please, Agent Smith, to Government's Exhibit 1930. It should be the original diagram -- unless I have it. And I do.

Do you have that in front of you now?

A. Yes, sir.

MR. MACKEY: If we could show that to the jury, please, Government's Exhibit 1930.

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

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

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

BY MR. MACKEY:

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

Stephen Smith - Redirect

structure on your exhibit, Agent Smith?

A. Yes, sir.

Q. It's -- what appears to be the structure at the bottom of this document as it sits landscape.

All right. According to the legend on this diagram, if there were guns and ammo, it would be marked by an X. Is that correct?

A. Yes, sir.

Q. You saw that in the legend earlier?

A. Yes, sir.

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

A. Yes, sir.

Q. Does it appear to be underneath the window?

A. Yes, sir.

Q. See those two black lines for --

A. Yes.

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

A. No, sir.

Q. Did Mr. Nichols tell you what he did with Tim McVeigh's rifle when he took it out of the Herington storage shed?

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

Q. Take a look, please, Agent Smith, at Government's Exhibit 1952. 1952B in particular.

Do you have that in front of you?

Stephen Smith - Redirect

A. Yes, sir.

Q. Let me start by asking in the course of the interview, did Mr. Nichols describe the route that he and Mr. McVeigh took back to Junction City on Easter Sunday night?

A. Yes, sir.

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

A. He said that they had gone north on Highway 77, gotten on I-70 and headed east on I-70 until they got off at the South Washington exit in Junction City at the McDonald's.

Q. And does Government's Exhibit 1952B accurately depict from an aerial view the intersection of I-70 and U.S. 77 in the state of Kansas?

A. Yes, sir.

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

MR. WOODS: No objection, your Honor.

THE COURT: Received.

BY MR. MACKEY:

Q. Agent Smith, we're displaying to the jury now Exhibit 1952B. At the bottom of this photograph we see what appears to be the intersection of two highways. Which one is which?

A. This highway here is 77 that connects with Highway 70 here.

Q. And does this photograph capture the location of the Washington Street McDonald's in Junction City, Kansas?

A. Yes, sir, it does.

Stephen Smith - Redirect

Q. Can you circle where that is?

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

Q. All right.

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

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

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

Q. And if you get off 77 onto that frontage road headed towards the McDonald's, do you pass any businesses?

A. Yes. There is a business right here, Elliott's Body Shop, which is the Ryder dealership in Junction City.

Q. Agent Smith, are you also familiar with the location of the Firestone store in downtown Junction City?

A. Yes, sir.

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

A. 278?

Q. Yes. Do you have that in there?

A. No, sir.

Oh, I'm sorry. I do.

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

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

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

Stephen Smith - Redirect

A. Yes. They're about a half a block apart between the J & K

Bus Depot and the Firestone dealership.

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

MR. WOODS: No objection.

THE COURT: Received.

BY MR. MACKEY:

Q. Agent Smith, can you tell the jury in your words what they see in this picture.

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

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

A. Approximately half a block.

Q. Thank you.

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

A. Yes, sir.

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

Stephen Smith - Redirect

1933. Does that chart or that exhibit accurately capture what you observed the route to be that Mr. Nichols took on Friday afternoon, April 21, 1995?

A. Yes, sir.

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

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

THE COURT: Yes?

MR. MACKEY: Sure.

MR. WOODS: No objection to that.

THE COURT: Received.

BY MR. MACKEY:

Q. Mr. Smith, let's show it to the jury, please, and tell them what we're looking at.

A. This No. 1 is the Terry Nichols' former house at 109 South 2nd Street, and the green line depicts the route that he took going south on 2nd Street, taking a right going west on Sturgis and then going back left and south on 3rd Street, then heading in a westerly direction taking a right on Trapp, then going south on 56 highway here up until No. 2, where he got to the Surplus City.

The blue line depicts the route that he took leaving the Surplus City and arriving at the Herington Department of Public Safety by going north on Highway 56, going back east on

Stephen Smith - Redirect

Trapp and then taking a right and heading south on Broadway and arriving at the Herington Department of Public Safety

arriving at the Herington Department of Public Safety.

Q. Now, Mr. Woods went over your notes in relationship to statements made that Mr. Nichols -- Mr. Nichols made to you about that. Do you recall that?

A. Yes, sir.

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

A. Yes, sir.

Q. What did Mr. Nichols tell you as to why he took the green route from his home down to Surplus City?

A. He said he had left his home because he had heard his name and his brother's name in a radio broadcast and that he went to the Surplus City because he needed to trade some tools for shingles.

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

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

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

A. That's correct.

Stephen Smith - Redirect

Q. Mr. Woods reviewed your notes as they captured information you got from Mr. Nichols concerning associates of he and Mr. McVeigh. Do you recall that?

A. Yes, sir.

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

A. Yes, sir.

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

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

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

A. Yes, sir.

Q. Let me return your attention to your testimony about the storage sheds, the questions you directed to Mr. Nichols about that. Do you recall that?

A. Yes, sir.

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

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

Q. How many did he list?

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

Q. Did he at any point in time in statements to you mention that he had a second storage unit in Council Grove, Kansas?

Stephen Smith - Redirect

A. No, he did not.

Q. What information did you learn from Mr. Nichols about the

precise location of the Herington unit?

A. Mr. Nichols advised that the Herington unit was across from the Pizza Hut in Herington and that it was the second storage locker up from the south end on the east side.

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

A. Yes, sir.

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

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

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

A. No, he did not.

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

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

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

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

Q. Mr. Woods reviewed with you statements that Terry Nichols made to you about ammonium nitrate; do you recall that?

A. Yes, sir.

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

Stephen Smith - Redirect

it was that he had withheld that information from you and the other agents earlier?

A. Yes, sir.

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

A. Yes. He said that if he was contacted or apprehended with ammonium nitrate that he would be believed to be -- have been a subject.

Q. And did you or Agent Crabtree respond in any fashion to that answer?

A. Yes. We asked him if he thought that every homeowner and farm owner in America who had ammonium nitrate would be a subject, and Mr. Nichols advised that yes, he did think that.

Q. Did Mr. Nichols mention any records that he might have in his home about the purchase of ammonium nitrate?

A. Yes. He said that he had receipts for the purchase of the two 50-pound bags that he had purchased the month before in March of 1995 from the Manhattan Elevator and that he had those two receipts in his house.

Q. Did he tell you that was the only receipts for ammonium nitrate that would be found in his residence?

A. Yes, he did.

Q. Mr. Nichols in your review with Mr. Woods told you, did he not, that he got cable service hooked up on Friday morning about 9:00?

Stephen Smith - Redirect

A. Yes, sir.

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

that same day?

A. Yes, sir.

Q. Some almost six hours had elapsed between that time of cable service and his departure?

A. Yes, sir.

Q. You know, do you not, Agent Smith, that surveillance camera film was in fact recovered in the course of the investigation in this case from a downtown building in Oklahoma City?

A. Yes, sir.

Q. Do you know whether there was public reports on Friday, April 21, about that piece of evidence?

A. Yes, I do.

Q. In the course of your cross-examination, we reviewed the notes concerning references that Mr. Nichols made to an unnamed friend of Tim McVeigh who might provide transportation. Do you recall those questions?

A. Yes, sir.

Q. Do you recall the statements made by Mr. Nichols to you about that?

A. Yes, sir.

Q. To your knowledge, did Mr. Nichols ever tell you that that friend in fact provided transportation of any kind to Tim McVeigh?

Stephen Smith - Redirect

A. No, he did not.

Q. Did he tell you why that friend would not have a car to loan Mr. McVeigh on Tuesday, April 18?

A. No. He had mentioned that he was curious as to why he couldn't borrow the car from the friend, either, as opposed to using Terry Nichols' pickup truck.

Q. Agent Smith, take a look, please, at Government's Exhibit 1926, specifically page 21.

Mr. Woods went over the list of names that appear there?

A. Yes, sir.

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

A. It's a blank line. And I wrote a line in my notes, also, showing that he did not know Fortier's first name.

Q. That's what he told you?

A. That's what he told us.

Q. At the end of the interview as you described on Friday, you handed Mr. Nichols the letters that you had understood had come from Las Vegas FBI?

A. Yes, sir.

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

A. Yes, sir.

Q. And you asked him, "What does 'Go for it,'" and you asked "As far as heat, none" mean?

Stephen Smith - Redirect

A. Yes, sir.

Q. Mr. Woods asked you where that reference is in your notes as to his response

as to his response.

A. Yes, sir.

Q. Why is there nothing in your notes about Mr. Nichols' response to that question?

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

Q. There was nothing to write down?

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

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

THE COURT: Mr. Woods?

MR. WOODS: Yes, your Honor.

RE-CROSS-EXAMINATION

BY MR. WOODS:

Q. And there is no reference to the question, is there, about "go for it"?

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

Q. And there is no reference to even the mention in the letter, is there, about "go for it" or "no heat"?

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

Q. But you don't make a notation in your notes, do you, sir, anything about the "go for it"?

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

Stephen Smith - Recross

Q. Now, during that nine hours, you had an opportunity to ask Mr. Nichols any question you wanted to, didn't you, sir?

A. That's correct.

Q. And you could have conducted that interview hours longer, if you wanted to, couldn't you?

A. Yes, sir.

Q. In fact, the decision was made to go and arrest Mr. Nichols after that. Your notes reflect that Jablonski and Foley come in at 12 what?

A. 12:11 a.m.

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

A. I leave the interview room.

Q. You left the interview room because a decision had been made to arrest Mr. Nichols?

A. Yes, sir.

Q. But you could have conducted that interview for hours more, if you had any more questions to ask, couldn't you?

A. If Terry Nichols was provided any more information, we would have talked to him for longer, yes, sir.

Q. And you ran out of questions, didn't you, sir?

A. As you can see, I don't really run out of questions for nine hours. I did not run out of questions. Terry Nichols ran out of answers.

Q. Could you have continued your questioning, Mr. Smith?

A. Yes, sir.

Stephen Smith - Recross

Q. Now, you told Mr. Mackey that there were published reports about the camera in Oklahoma City capturing what?

A. I have since learned that there were pictures, surveillance

pictures of -- from the Regency Park Towers in downtown Oklahoma City capturing street traffic.

Q. And the publicity on Friday, April 21, was that there was possibly photos capturing the Ryder truck on April 19, wasn't that correct?

A. That's correct.

Q. There was absolutely no publicity about any photographs of Sunday, April 16, was there?

A. There was no publicity of that; but anyone listening to the news broadcasts would realize that surveillance camera wasn't just set up on the 19th of April, 1995; that it had been up prior to that and after that time.

Q. And that's your interpretation?

A. Yes, sir.

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

A. No, sir.

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

A. Yes, sir.

Q. And it shows Mr. Nichols' truck going around the block some 8 minutes apart; is that correct?

A. Approximately 6 minutes apart, yes, sir.

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

Stephen Smith - Recross

behind him at any time during that video?

A. I didn't see the video. The two photographs I've seen do not show any other vehicles, no, sir.

Q. Were you curious about watching the video to see if the Mercury Marquis was there?

A. Other agents or other investigators watched that video.

Q. Did they find a Mercury Marquis on there?

A. I do not know.

Q. Now, you told Mr. Mackey that you did not personally make the decision about obtaining a search warrant in addition to the consent form. Is that correct?

A. That's correct.

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

A. That's right.

Q. After you told them the situation about the consent form; is that correct?

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

Q. Now, you mentioned to Mr. Mackey on redirect about Mr. Nichols' saying "if I were a subject" and something about the ammonium nitrate. That's not in your notes, is it?

A. Yes, it is.

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

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

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

Stephen Smith - Recross

A. No, sir.

Q. And he explained to you about throwing the ammonium nitrate on the lawn and why he did that, didn't he?

A. Yes, he explained that if he was caught with ammonium nitrate that he would be a subject.

Q. Now, you went over this aerial photo with Mr. Mackey that showed the location of Eldon Elliott's and McDonald's approximately a mile away. Is that correct?

A. That's correct.

Q. Do you have information that Mr. Nichols took Mr. McVeigh to Eldon Elliott's?

A. I do not have that information.

Q. Do you have information that Mr. Nichols was the John Doe NO. 2 in Eldon Elliott's with Mr. McVeigh?

A. I do not have that information.

Q. Do you know why Mr. Mackey asked you about these two locations on this map?

MR. MACKEY: Objection.

THE COURT: Sustained.

BY MR. WOODS:

Q. What information do you have that connects Mr. Nichols to Eldon Elliott's?

MR. MACKEY: Objection.

THE COURT: Sustained.

MR. WOODS: Thank you, Agent Smith.

MR. MACKEY: Nothing further your Honor.

THE COURT: Is he excused?

MR. MACKEY: Yes, your Honor.

MR. WOODS: We would like him on call, your Honor, because there is some confusion about other agents' conducting interviews.

THE COURT: He can be available.

He can return back to his headquarters.

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

THE COURT: You can leave but be available for call back.

Next, please.

MR. MACKEY: Your Honor, may we approach.

THE COURT: Yes.

(At the bench:)

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

(In open court:)

MR. MACKEY: Your Honor, at this time we'd call FBI Agent Scott Crabtree.

THE COURT: All right.

THE COURT: All right.

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

(Scott Crabtree affirmed.)

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

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

THE WITNESS: First initial R., middle name Scott, last name Crabtree, C-R-A-B-T-R-E-E.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Proceed.

MR. GOELMAN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. GOELMAN:

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

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

Q. How old are you?

A. I'm 40.

Q. Where were you born and raised?

A. Herington, Kansas.

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

Scott Crabtree - Direct

Terry Lynn Nichols at the Herington Department of Public Safety?

A. Yes, I did.

Q. Could you briefly describe your educational background for the jury?

A. I've got a bachelor of science degree from William Jewell College with a triple major in business accounting and economics.

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

A. 15 years next month.

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

A. Omaha, Nebraska.

Q. How long did you spend there?

A. Approximately seven months.

Q. What did you do there?

A. Just general initiation type program, getting into the field office environment of the FBI.

Q. Where did you go after leaving Omaha?

A. Midland, Texas.

Q. Where is Midland, Texas?

A. It's approximately halfway between Dallas and El Paso, just on the southern part of the Texas panhandle.

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

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

Scott Crabtree - Direct

four-person office.

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

A. Resident agency.

Q. What is an FBI resident agency?

2. What is an FBI Resident Agency?

A. It is a satellite office or a smaller office out of the individual field divisions that are in each -- basically each state in the United States.

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

A. Approximately five years.

Q. So you left in?

A. '88.

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

A. I had been an acting supervisor; but upon leaving, I was an investigator on another case that was finishing up right before I left.

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

A. Primarily bank fraud investigations, and I also had one public corruption case.

Q. After leaving Midland, Texas, did you go to somewhere a little bit different?

A. Yes, I did.

Q. Where did you go?

A. I went to New York City.

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

Scott Crabtree - Direct

A. A little over three years.

Q. What kind of cases did you work there?

A. I was on the fraud squad. We worked wire fraud, stock fraud, mail fraud, things of that nature.

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

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

Q. What did you do there?

A. I was in the inspection division, and I traveled with the inspection staff performing audits at the different FBI offices around the country.

Q. And did your work for the FBI eventually bring you back home to Kansas?

A. Yes, it did.

Q. Where?

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

Q. So Salina has the same kind of office that the Midland office had?

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

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

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

Q. Where in Kansas is Salina?

A. It is roughly two-thirds of the way from east to west and north/south about halfway down the state.

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

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A. 45 miles or so.

Q. And how far is it from Herington?

A. Probably about 50 miles or so.

Q. What are your responsibilities as the only FBI agent in the

Salina RA?

A. Conduct any investigations within FBI's jurisdiction within the territory of the RA, handle all the liaison and administrative responsibilities of any office that the Bureau has.

Q. And what territory does the RA cover?

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

Q. How many people live in these 17 counties?

A. Approximately 200,000.

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

A. Yes, it is.

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

A. A lot of bank fraud, wire-fraud investigations, fugitives, bank robberies. Basically any type of case that happens within that territory, I've got to handle whatever the matter is there.

Q. And as the only federal law enforcement officer in that territory, do your duties also include relations with local

Scott Crabtree - Direct

police --

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

MR. GOELMAN: Except for very esteemed judges.

THE COURT: He's an FBI agent.

MR. GOELMAN: Yes, sir.

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

BY MR. GOELMAN:

Q. Are there any other --

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

MR. GOELMAN: Yes, your Honor.

BY MR. GOELMAN:

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

A. We had the 16-week basic training course that the -- you go through upon being hired; and then since then, I've had other training in bank-fraud investigations, health-care-fraud investigations, cellular-phone-fraud investigations, forfeiture investigations, things of that nature.

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

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

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

Scott Crabtree - Direct

tape-recording of witness interviews?

A. Yes, they do.

Q. How long has that policy been in effect?

A. Since 1995.

Q. Is it in writing?

A. Yes, it is.

Q. Where is it contained?

A. It's in the legal manual.

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

A. That it -- they can be done on a very selected basis upon the authority of the special agent in charge of the particular division.

Q. Does the policy state whether certain types of cases or certain types of interviews should be recorded, as opposed to any others?

A. No, it doesn't.

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

A. No, it doesn't.

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

A. No, there was not.

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

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

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

A. Yes, he could have.

Q. Did he do so?

A. No, he didn't.

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

A. Yes, I was.

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

A. None.

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

A. No, I have not.

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

A. From Mr. Nichols.

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

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

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Q. And who was there at that time?

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

Q. Did all four of you continue to participate in the

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

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

Q. What was your role, Mr. Crabtree?

A. Basically the lead questioner.

Q. Why were you selected to be the lead questioner?

A. I had probably the most knowledge of the case at that point in the Kansas territory.

Q. Can you describe the defendant's demeanor during the interview on April 21?

A. He seemed very -- very calm, very relaxed.

Q. What would he do when you were asking questions?

A. Listen. We would make eye contact, and he'd listen to what was being said.

Q. And in what manner would he provide his responses to your questions?

A. He would respond the same way. He'd look at us and answer us.

Q. Did Defendant ever do anything unusual between the time that you asked a question and the time that he provided his response?

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A. On a couple of occasions, yes.

Q. What did he do?

A. A couple of occasions, he closed his eyes and thought for an extended period of time before providing us an answer.

Q. Did you say anything to Mr. Nichols about this?

A. Yes, I did.

Q. What did you say?

A. I asked him to discontinue that activity.

Q. And what was his response?

A. After the second time of asking that, he basically quit doing it.

Q. Did you take any notes at all during the interview on April 21, Agent Crabtree?

A. No, I did not.

Q. And how long total did you spend talking to Mr. Nichols on that day?

A. I spent six hours.

Q. Why did the interview take so long?

A. We had a lot of material that we ended up covering, and a number of those matters had to be -- we had to go back and ask questions about them again and go back over them to either get some more detail or discuss information that had come to our attention during breaks.

Q. For those subjects that you went over more than once, Agent Crabtree, did you notice whether or not Mr. Nichols' story

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about them remained the same?

A. A few of them did not.

Q. And have you gone back in preparation for your testimony and reviewed both Agent Smith's typewritten notes, which are

Government's Exhibit 1926, as well as your report of interview?

A. Yes, I have.

Q. And what is the state of your memory with regard to the time when Mr. Nichols said particular things?

A. Good.

Q. Are you prepared to give us the context in which Mr. Nichols made statements to you and Agent Smith?

A. Yes.

Q. Are you also prepared to tell us about what questions precipitated certain responses on Mr. Nichols' part?

A. Yes.

Q. I'd like to begin with what Mr. Nichols told you about his bomb knowledge and experience with ammonium nitrate.

MR. WOODS: Your Honor, I object. Seems cumulative to me if we're going to repeat what we just went through.

THE COURT: Are you?

MR. GOELMAN: No, your Honor. We're going to talk about what the agent said to Mr. Nichols to draw out particular responses.

THE COURT: All right. I didn't understand that was what you asked, however.

Scott Crabtree - Direct

MR. GOELMAN: I'm sorry. If I failed to make it clear, that is the subject of Agent Crabtree's testimony.

THE COURT: Well, I thought you asked what Mr. Nichols said.

MR. GOELMAN: No, your Honor; I just said I'd like to begin with that area.

THE COURT: Well, why don't you just ask questions, instead of explaining what you're doing.

MR. GOELMAN: Yes, your Honor.

BY MR. GOELMAN:

Q. Did you ask Terry Nichols whether he knew how to build a bomb, Agent Crabtree?

A. Yes, I did.

Q. How many times did you ask this question?

A. Three.

Q. And when did you first ask this question?

A. During the first session of the interview that I was involved in.

Q. When you asked Mr. Nichols if he knew how to build a bomb, what did he say?

A. He said he did not.

Q. When was the second time that you asked Mr. Nichols the same question?

A. It would have been during my second interview session with Mr. Nichols.

Scott Crabtree - Direct

Q. Did you also ask Mr. Nichols what he did for a living, Agent Crabtree?

A. Yes, we did.

Q. When was the defendant first asked about this?

A. During the first interview session, during the first interview period.

Q. Were you there in the very beginning of the interview, Agent Crabtree?

A. No, I was not. It started approximately one hour before I arrived.

Q. So how do you know what went on during that process?

A. After I arrived, we reviewed the notes that had been taken up to that point to bring me up to speed as to what had been said.

Q. And when Agent Smith reviewed the notes, did he say anything about Mr. Nichols' employment at that time?

A. Yes, he did.

Q. How did he describe Mr. Nichols' employment?

A. That he sold military surplus.

Q. Did he say which particular items he sold in military surplus?

A. Yes. He listed a number of items.

Q. What were those items?

THE COURT: Well, who is "he" now?

BY MR. GOELMAN:

Scott Crabtree - Direct

Q. Who are we talking about, Agent Crabtree? Are we talking about --

A. Smith recounting Mr. Nichols' statements to him, sir.

Q. What were the items that he listed that Mr. Nichols had indicated that he sold?

A. Ammo cans, shovels, axes, surplus sand bags.

MR. WOODS: I do object because it is cumulative.

THE COURT: Overruled.

MR. WOODS: He just covered that with Mr. Smith.

THE COURT: Objection is overruled.

MR. WOODS: Thank you.

BY MR. GOELMAN:

Q. How many times was Mr. Nichols' gun show practice discussed before you and Agent Smith took a break at approximately 8:15?

A. Three or four.

Q. And before your break at 8:15, did Mr. Nichols have a consistent answer as to whether or not he knew how to build a bomb?

A. Yes, he did.

Q. What was that answer?

A. That he did not.

Q. How long did the break that you two took at 8:15 last?

A. Approximately a half an hour.

Q. And like other breaks you took, did you spend this information (sic) talking to other agents?

Scott Crabtree - Direct

A. Yes, we did.

Q. What stage was the investigation in at that point, Agent Crabtree?

A. It was still very early. We had a lot of information coming in to us there and other offices around the country.

coming in to us there and other offices around the country.

Q. Without going into the specifics of what you were told, did you receive information from another agent that caused you to be skeptical of Mr. Nichols' answer about bomb making knowledge?

MR. WOODS: I object.

THE COURT: Sustained.

BY MR. GOELMAN:

Q. When did you and Agent Smith resume your interview of Mr. Nichols?

A. 8:44.

Q. Sometime after you resumed, did you revisit the subject of Mr. Nichols' bomb-making knowledge?

A. Yes, we did.

Q. What did you say to Mr. Nichols at this time?

A. That we have information to suggest that you have more knowledge than you have given us to this point about your knowledge and we'd like to talk about it and see what you do know.

Q. Did you reveal to Mr. Nichols what your source of information was?

Scott Crabtree - Direct

A. No.

Q. Did Mr. Nichols ask you who your source of information was?

A. No, he did not.

Q. Did Mr. Nichols say that that source was lying?

A. No, he did not.

Q. What did the defendant say when you asked him that question?

A. He said that they had a curious -- he and Mr. McVeigh had a curiosity about whether they could build a bomb.

Q. And whose word is that, "curiosity"?

A. Mr. Nichols.

Q. Did he say whether or not Mr. McVeigh and he had done anything to satisfy that curiosity?

A. Yes, he did.

Q. What did he say?

A. That they had read articles and books and literature that came across tables at gun shows.

THE COURT: Well, we'll break at this point. It's almost 1:00. You may step down.

Members of the jury, we're going to now excuse you for this extended weekend period that we've arranged; and of course, as I always tell you on Friday afternoons, I reemphasize the cautions given. We've gone a long way in this case. You've heard a great deal. You're going to hear more. So please bear with us, keep open minds, wait till you've heard

it all, all the witnesses, all of the arguments, all of the instructions on the law.

And with respect to the law, I want you to understand that your function in this case is going to be to decide what the evidence does or does not show in the case, but it is not

for you to determine legality of any of the conduct or any of that with respect to some of these things you may hear from time to time with respect to the conduct of law enforcement agents and the like. It may be because of all of the television shows that are out there, you know, things that you might have seen or read or heard about the law -- don't speculate about that. You leave the legal rulings to me. You won't hear anything in evidence that isn't lawfully admitted in evidence; so don't concern yourselves with things like whether there was a legitimate search or not a legitimate search. That's my role.

Now, please continue to keep open minds, avoiding discussion of the case among yourselves and all other persons; and do be careful.

You know, even these things that are sometimes on television that are dramatized versions of things, you know -- I just ask you to stay away from that, even though it's not directly related to this case but because it can be confusing, I think, sometimes to hear these or see these police shows and some of the things that are on television now. I think you can

withhold your attention from that kind of thing while you're on the jury, and I ask you to do so.

So you're excused now until 8:45 Monday morning.

(Jury out at 1:02 p.m.)

THE COURT: I've got a couple of rulings to announce.
RULINGS ON PENDING MOTIONS

THE COURT: With respect to a sealed motion to strike certain testimony in the case -- and it's sealed because it relates to things that pertain to discovery -- I just want to ask Government counsel in the response to that, one of the grounds here is discovery and whether there was a compliance with the discovery request. The response says there was and that the only thing provided is the only thing the Government has.

MR. ORENSTEIN: That's correct, your Honor.

THE COURT: All right. Then I'm denying that motion to strike.

With respect to --

MR. TIGAR: Is your Honor also denying the alternative motion to require further proof with respect to the chain?

THE COURT: Yes. I am. I'm denying it in its entirety. There are four grounds, and I'm denying all four.

And on the motion to preclude certain testimony of witnesses yet to be heard, that's denied.

With respect to the witness that we're hearing, you

know, FBI agents are percipient witnesses like everybody else; and they ought to be asked the things that they heard, read, and saw, the things that come in by their senses, not whether something is consistent or inconsistent. And all of this introductory material with respect to their backgrounds, I

think is irrelevant and wastes time.

We ought to get right to what witnesses know or don't know. That's what they should be testifying about.

We'll be in recess till 8:45 Monday morning.

(Recess at 1:04 p.m.)

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PLAINTIFF'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
278	10155	10155			
1930	10104	10104			
1933	10156	10156			
1952B	10153	10153			

DEFENDANT'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
D1627	10103	10103			
D1652	10128	10128			
D1655	10140	10141			

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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.

Paul Zuckerman

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