

## **Son pleaded on tape for Nichols to cooperate with FBI Message played in court during defense questioning of agent who interviewed client**

Dallas Morning News, The (TX)

November 22, 1997 | G. Robert Hillman, Arnold Hamilton | Page: 17A | Section:  
NEWS

DENVER - Terry Nichols' son pleaded with his father to cooperate with the FBI in a taped message played Friday in the second Oklahoma City bombing trial.

"Hi, dad, I love you," Josh Nichols said, weeping. "The FBI is being nice and protecting us from the media. Cooperate as best you can. " The dramatic message, audiotaped just hours before Mr. Nichols' arrest, was played for the first time Friday by defense attorneys scrutinizing every detail of the FBI's initial nine-hour interview with their client.

Defense attorneys have contended that the FBI rushed to judgment in the case and misled Mr. Nichols during the interview by withholding an offer of legal counsel and failing to alert him that a warrant was being prepared for his arrest. They noted that he had voluntarily come to the police station and answered questions for nine hours.

Meanwhile Friday, prosecutors sought to emphasize inconsistencies in Mr. Nichols' statements as he met with authorities in his hometown of Herington, Kan., two days after the April 19, 1995, bombing.

They pointed out that he changed his story about whether he knew how to build a bomb. And they also noted that, later in questioning, Mr. Nichols sat silently when they asked about a letter he had written to co-defendant Timothy McVeigh with the message: "Go for it. . . . As for heat, none that I know. " "I did not run out of questions," FBI Agent Stephen Smith told the jury Friday. "Terry Nichols ran out of answers. " The message from Josh Nichols, and from Mr. Nichols' former wife, Lana Padilla, was taped by the FBI in Las Vegas and played to Mr. Nichols over the telephone as he was interviewed by federal agents in Herington on April 21, 1995. He was arrested just after midnight.

Mr. McVeigh already was in custody in Perry, Okla., and Mr. Nichols had gone to the Herington police station because he heard his name mentioned in news reports on the bombing, along with that of his old Army buddy, Mr. McVeigh.

FBI agents began interviewing Mr. Nichols shortly after 3 p.m. and played the tape shortly after 11 p.m. The interview ended shortly after midnight.

"We're doing OK and hope that you're doing OK," Ms. Padilla said in the taped message. "The FBI is trying to protect us the best they can. Josh is very safe and he's concerned about you. " Ms. Padilla also urged him to "help us understand

what's going on" and stressed that "it's really necessary that sooner or later everybody know your family had nothing to do with this. " As Josh Nichols spoke on the tape, his father's face turned red in the courtroom Friday. He appeared to fight back tears, but he did not sob as he did Wednesday when his former wife talked about their son.

"I can't go back to school because of the publicity," Josh Nichols said on the tape.

He said his grandmother "loves you and believes in you. We love you, dad. Bye. " The tape was played Friday as defense attorney Ronald Woods reviewed, line by line, 22 pages of handwritten notes made by Agent Smith. The tedious cross-examination appeared to leave some jurors struggling to pay attention.

Even Agent Smith allowed at the start that his way of taking notes might be difficult to understand.

"It appears confusing," he testified, "but it makes perfect sense. " He went on to explain then that he had often switched pens during the interview, going back and forth from black and blue ink, to indicate when Mr. Nichols said one thing or the other.

Throughout his confrontational cross-examination, Mr. Woods, a former FBI agent and U.S. attorney in Houston, sought to portray Agent Smith as young and inexperienced.

Repeatedly, Mr. Woods demanded to know whether Agent Smith had asked this question, or that follow-up. And repeatedly, Agent Smith said no. At one point, lead prosecutor Larry Mackey objected. But U.S. District Judge Richard Matsch overruled him, and Mr. Woods continued.

When he finished, Mr. Mackey returned to the lectern to again point out some of the inconsistencies in Mr. Nichols' statements.

Although telephone records show Mr. McVeigh and Mr. Nichols were in frequent contact in the year before the bombing, Agent Smith said Mr. Nichols told agents the two had gone their separate ways.

"The way we both lived did not jive," Agent Smith quoted Mr. Nichols as saying.

Agent Smith also testified that Mr. Nichols did not tell agents about all his storage sheds, which prosecutors charge were used to store the ingredients of the truck bomb that was built largely with fertilizer and racing fuel.

And he said Mr. Nichols told the agents that they would find only one receipt in his home for two 50-pound bags of ammonium nitrate fertilizer he had purchased. Instead, agents who searched his home found a receipt for much more fertilizer - and the receipt bore Mr. McVeigh's fingerprints.

Moreover, Agent Smith said, it wasn't until late in the interview that Mr. Nichols mentioned he had spread fertilizer on his lawn before driving to the police station.

The agent said Mr. Nichols told him that he had gotten rid of the ammonium nitrate in case he were "contacted or apprehended" about the bombing because he feared his possession of the fertilizer would be misunderstood.

Mr. Woods, the defense attorney, continued Friday to hammer away at the FBI's policy against tape-recording interviews. And he asked Agent Smith about the decision he and Agent Scott Crabtree made not to question Mr. Nichols further when they drove him to Wichita, Kan., for his arraignment the day after the initial interview.

Saying they had "gone over his story four times" already, Agent Smith said, "We figured that was enough time for him to tell us the truth." At the end of court Friday, Judge Matsch rebuked lawyers in the case for wasting time with lengthy background questions.

"We ought to get right to what witnesses know or don't know," he said after excusing the jury for the day.

The judge had become angered earlier when prosecutor Aitan Goelman asked Agent Crabtree about his everyday duties as a federal agent in Salina, Kan.

"Well, it's all irrelevant," the judge thundered. "Let's get to what this case is about." Friday was the end of the eighth week of Mr. Nichols' trial.

The first five weeks were devoted to jury selection and the last three to the government's case.

Prosecutors say they could rest their case by the end of next week, and the defense is expected to take as many as two weeks to present its case.

Mr. McVeigh's trial ran 11 weeks, with the prosecution taking 18 days and the defense 31/2 days. He was convicted on June 2 and condemned to death 11 days later. Mr. Nichols is facing the same charges. But since he was not in Oklahoma at the time of the bombing, prosecutors have set about to prove he carried out other major elements of the plot.

If Mr. Nichols is also found guilty, the same jury hearing this case will return to consider whether he should live or die.

Caption: PHOTO(S): Josh Nichols . . . told his father, "I can't go back to school because of the publicity." CHART(S): Trial Highlights.