

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERRY LYNN NICHOLS,

Defendant.

REPORTER'S TRANSCRIPT

(Trial to Jury: Volume 116)

PROCEEDINGS

Proceedings before the HONORABLE RICHARD P. MATSCH,
Judge, United States District Court for the District of
Colorado, commencing at 1:40 p.m., on the 9th day of December,
1997, in Courtroom C-204, United States Courthouse, Denver,
Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription
Produced via Computer by Paul Zuckerman, 1929 Stout Street,
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APPEARANCES

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MEARNS, JAMIE ORENSTEIN, and AITAN GOELMAN, Special Attorneys
to the U.S. Attorney General, 1961 Stout Street, Suite 1200,
Denver, Colorado, 80294, appearing for the plaintiff.

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Colorado, 80203, appearing for Defendant Nichols.

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PROCEEDINGS

(Reconvened at 1:40 p.m.)

THE COURT: Be seated, please.

Ready to proceed?

MR. TIGAR: Yes, your Honor.

(Jury in at 1:40 p.m.)

THE COURT: Members of the jury, we again took a few
extra minutes. I hope you understand the need for doing that.

We're ready then with our next witness.

MR. TIGAR: Call Steven Gradert.

THE COURT: Thank you.

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

(Steven Gradert 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: Steven Kent Gradert, G-R-A-D-E-R-T.

THE COURTROOM DEPUTY: Thank you.

THE WITNESS: Thank you.

DIRECT EXAMINATION

BY MR. TIGAR:

Q. Mr. Gradert, what do you do for a living?

A. I'm a defense lawyer for the federal public defenders system in Wichita, Kansas.

Q. On April 22, 1995, did you get a new client?

A. I did.

Q. What was his name?

A. Terry Nichols.

Q. Do you recognize him here in court today?

A. I'm look -- oh, there's Terry right there. Yes, I do.

Q. About what time did you meet him?

A. Well, I think I actually met him at about 2:30 or 3:00 in the afternoon on a Saturday.

Q. And where was that?

A. In the United States marshal's office in Wichita.

Q. Now, I'm not going to ask you any conversations that you had with him, but did you have an opportunity during that afternoon to observe his -- his demeanor, how he looked?

A. Yes, I did.

Q. And during how much of a period of time did you have that

Steven Gradert - Direct
opportunity?

A. I would say we probably only had about 30 to 40 minutes before we actually went into the courtroom to observe his demeanor, but I did have an opportunity to observe it.

Q. And how would you describe it?

A. Well, he was obviously a little scared and shaken and appeared to be pretty nervous. I think he was a little bit frightened by the fact that he was talking to my chief and my employer, David Phillips, who is also an attorney, and had never met us before. Probably a little distrustful at least initially of us. But he appeared to be shaken, nervous.

Q. And when you went into court, did he -- did you hear him make a statement to the court as to his state of mind or feelings?

A. Yes. I did. I believe he was confused a little bit at that time. We hadn't had a very long opportunity to talk with him about what the basis -- basic procedures of that hearing were before we were actually summoned to go to the courtroom, and Terry was -- was pretty confused about what was going on. In fact, he made some inquiry to the judge himself at that time.

Q. And did he say -- did you hear him say to the judge "It's all a jumble in my brain right now"?

A. Yes, I remember.

MR. TIGAR: Thank you very much. Nothing further.

MR. MACKEY: No questions.

THE COURT: All right. You may step down.
I take it he's excused.

MR. TIGAR: Yes, your Honor.

THE COURT: All right. You may step down.

THE COURT: All right. You're excused.

MR. TIGAR: Call Edward Killam.

THE COURT: All right.

Mr. Killam, if you'll resume the stand once again under the oath earlier taken.

(Edward Killam was re-called.)

DIRECT EXAMINATION

BY MR. TIGAR:

Q. Good afternoon, Mr. Killam.

A. Good afternoon, sir.

Q. I want to take you back, sir, to Mr. Nichols' house in Herington, Kansas, and searches that you conducted there after the FBI had released the house.

Can you first let me ask you, do you -- do you have with you today some little notes on which you listed the dates and things to refresh your recollection?

A. Yes, I have them.

Q. All right. We'd like to -- I want to make clear that --

MS. WILKINSON: Your Honor, I wasn't provided with copies of those notes.

MR. TIGAR: He has those.

Edward Killam - Direct

BY MR. TIGAR:

Q. Sir, obviously, we'd like -- we would like you to testify from your own recollection. If you need to refer to one of those to find a date or an exhibit number to refresh your recollection, just let us know you're doing so.

A. Will do.

Q. Now, on what date did you conduct your first search of the house?

A. We first arrived at the house on August 7, 1995.

Q. And will you describe for the jury the procedure that you used to conduct a search of the house?

A. Certainly. When we arrived at the house, we let ourselves in with the key, and then we did a walk-through of all the rooms, all parts of the house, the back garage and back storage area. And then after walking through the entire house, we returned to the front and began one room at a time. We would enter the room, photograph it from all corners and all sides, and then draw a sketch of the floor plan, and then we would search that room. And after that room was completed, we'd then move to another room and so forth through the house. And after the house was finished, we did the basement underneath the house and then from there to the outside garage and storage areas.

THE COURT: Mr. Tigar, it may be helpful to know who was with him.

Edward Killam - Direct

MR. TIGAR: Yes, your Honor.

Excuse me. I was just checking to see if I had an

excuse me. I was just checking to see if I had an exhibit.

BY MR. TIGAR:

Q. Who was with you on that first trip on the 7th to 9th of August?

A. One of the other appointed investigators, H. C. Bodley.

Q. Sir, I'm going to show you first, did you find in the house some things that appeared to be military surplus?

A. Yes, I did.

Q. Did you photograph those items?

A. Either I did or H. C. Bodley did.

Q. I'm going to show you now just for yourself what's been marked as Defense Exhibit 1600 and ask you if you recognize that.

A. Yes, I do.

Q. Is that a picture that was taken in that search in August?

A. Yes, it was.

Q. Do you know when it was taken?

A. It would be on one of the three days we were first there. It would have been on August 7th, 8th, or 9th of 1995.

Q. And does that fairly and accurately represent what you saw?

A. Except that we opened the lids for clarity of the photograph. They were closed when we arrived.

MR. TIGAR: This is D1600, your Honor. We offer it.

Edward Killam - Direct

MS. WILKINSON: Your Honor, I'd just ask that one other question be asked. I don't need to do voir dire myself. Whether any items were moved from around that area; in other words, whether boxes or anything or anything else on top --

THE COURT: If you will elicit that.

MR. TIGAR: Surely.

BY MR. TIGAR:

Q. Mr. Killam, you've heard the question. What's the answer?

A. The answer was it may well have been that way. For the items, we did overall scenes of each room and area, and then we photographed individually specific items. To do the photography of specific items, we may well have either moved them into better light conditions or may have removed things that were on top or around them.

Q. Did you move them out of the room in which they were found?

A. I don't believe we ever did that.

MR. TIGAR: We offer D1600.

MS. WILKINSON: No objection.

THE COURT: Received.

MR. TIGAR: Okay. Show that, please.

Thank you, Ms. Hasfjord.

BY MR. TIGAR:

Q. I'll zoom in here. What are we looking at here? First of all, where are we in the house?

A. We're in the garage which is out behind the house. It is

Edward Killam - Direct

detached from the main house.

Q. And what are we looking at?

A. We're looking at -- there are -- actually, three cases there with handles. The -- the two that are open contain saws. The case that's down below contains one-man saws, and the case on top that's open contains two-man saws; and those have a label inside which identify them as infantry entrenching sets.

Q. And where is that label that says the infantry entrenching sets?

A. You see the open lid. There is a label affixed to the middle of each lid, inside of each lid. And that's where they are labeled.

Q. Thank you, sir. I'm going to show you, please, what's been marked for identification as Defendant's Exhibit D1601 and ask you, was -- are those items that you found on your -- in your search of August the 7th to the 9th?

A. Yes, they are.

Q. And did you move those items?

A. Not before the photograph was taken.

Q. Did you have to move anything out of the way to take pictures of those items?

A. No. That's the way they were standing.

MR. TIGAR: All right. Offer D1601.

MS. WILKINSON: No objection.

THE COURT: Received.

Edward Killam - Direct

BY MR. TIGAR:

Q. Are we still in the garage here?

A. Yes, we are.

Q. And what are we looking at?

A. Well, we're looking at several things all stacked together. There are some shovel handles in the back. There are some pick or mattock handles, and then there are stacks which contain a single mattock handle in which there are mattock heads stacked on about a dozen per stack.

Q. Excuse me. Showing you now what's been marked as D1602 for identification. Is this a picture that you took during your search?

A. It's a picture that was taken, yes.

Q. Yes. And does that fairly and accurately represent the scene there in the garage?

A. Yes, it does.

Q. Were these items moved before being photographed?

A. No. That's how we found them.

Q. And did you have to move anything out of the way in order to get at them?

A. No, sir.

MR. TIGAR: Offer D1602.

MS. WILKINSON: No objection.

THE COURT: Received.

BY MR. TIGAR:

Edward Killam - Direct

Q. Now, what are these items?

A. These are spades or shovels.

Q. And did you find -- you found those in the garage; is that right?

A. Yes, we did.

Q. Did they have any labels on them?

A. A few of them did, but not all of them. The majority did not.

Q. And what -- of the ones that had labels, what did the labels say?

A. The one that I remember had an identification label on the blade portion which identified it as military surplus or military identification item.

Q. If I can show you now, sir, what I have marked for identification as Defendant's 1 -- D1603. Is that another view or another angle view of the same material?

A. Yes, it is. It's just looking a little bit further to the side.

MR. TIGAR: Okay. Offer D1603.

MS. WILKINSON: No objection.

THE COURT: Received.

BY MR. TIGAR:

Q. These are just more of the shovels; correct?

A. Yes. There's actually three different types in there: There are spades with wooden handles, there are spades with

Edward Killam - Direct

plastic handles, and then there are a lot of just shovel handles themselves without heads.

Q. Okay. And how many plastic-handled ones did you count?

A. Here, I'll need to refer to my notes. I counted 39 plastic-handled shovels.

Q. And how many wood-handled ones?

A. 110.

Q. Showing you now, sir, what I've marked for identification as D1630. Do you recognize that as a photograph that was taken during your search?

A. Yes, I do.

Q. And does it fairly and accurately reflect the scene that you saw then?

A. Yes, it does.

Q. Did you have to move anything to take that picture?

A. No. That's just the way we found it.

MR. TIGAR: All right. We offer D1630.

MS. WILKINSON: No objection.

THE COURT: Received.

BY MR. TIGAR:

Q. Now, did you tell the jury what this is?

A. Yes. It is -- you're actually seeing a full, complete weapons rack in the center. And then there's a corner of a second one on the right-hand side. And then down below --

Q. When you say "in the center," you mean where it -- this is

Edward Killam - Direct

1, 3, 5 -- some numbers along. Is that a weapons rack?

A. That's part of it, and then the metal framework goes up and around it.

Q. All right. And then on the right-hand side over here where my pen is pointing is another one?

A. That's the corner of a second one; correct.

Q. And what kind of weapons racks are these?

A. I'm not sure. But they are -- they are full, long arm, so either rifles or light machine guns, something like that.

Q. Did they have labels on them?

A. No, it did not, other than the numbers that it has there.

Q. And what are these items that are folded up here?

A. Those are sandbags.

Q. And did the sandbags have any label on them?

A. No, they did not.

Q. What color are the sandbags?

A. They are sort of an olive-drab green. They are like a plastic fabric like a vinyl fabric.

Q. A military color?

A. Yes, sir.

Q. Showing you now for identification -- what's been marked as D1631 for identification. Is this something that you saw in your search?

A. Yes, it is.

Q. And did you have to open the box in order to get at it?

Edward Killam - Direct

A. Yes, I did.

Q. Other than that, did you move it?

A. No, it's in the same room it was in.

Q. All right. And where was that?

A. This was also in the garage. It's the box you saw in the previous photograph, but with the lid closed.

THE COURT: All right. Offer D1631.

MS. WILKINSON: No objection.

THE COURT: Received.

BY MR. TIGAR:

Q. Now, I'm going to put back up D1630 and point to this box. Is that -- is that the box you're referring to?

A. Yes, it is.

Q. All right. And D1630, you've just opened the box; is that correct?

A. That's correct.

Q. And what is all this writing on the -- this label here?

A. That's the military identification plaque or sign. Identifies the contents.

Q. All right. And does it identify the contents as what we see here; that is, axes?

A. No. It identifies it as a Pioneer set, but it does contain axes.

Q. Pioneer set?

A. Pioneer set.

Edward Killam - Direct

Q. And is that -- does the writing indicate that this is some military hardware?

A. Yes, it does.

Q. Okay. Showing you now what's been marked for identification as D1632. Where did you take that picture?

A. That is in the other part of the detached building. The building behind the home is a side-by-side building. Garage is on one side, and there's a storage area or storeroom on the other side. It's the same building.

Q. Now, the jury has seen pictures of barrels that were found in Mr. Nichols' storage shed. Were the barrels still there when you got there?

A. No, they were not.

Q. But you've seen pictures of them; correct?

A. Yes, I have.

Q. And based on looking at those pictures, is this material in the same part of the storage shed where the barrels were or a different part?

A. It's a -- it's the same storage shed, but a different part.

Q. Is this -- is one part of the storage shed a garage and the other a -- not a garage?

A. It's not how I would describe it. I would describe it as a garage and a storage shed which are joined at their back walls.

Q. Is this the storage-shed part where you took these?

A. Yes, it is.

Edward Killam - Direct

Q. Did you have to move anything in order to take the picture?

A. No, we did not.

MR. TIGAR: We offer D1632.

MS. WILKINSON: Your Honor, I just have a few questions. I can do it from here, if that's okay.

THE COURT: You can do it from there, yes.

VOIR DIRE EXAMINATION

BY MS. WILKINSON:

Q. Mr. Killam, you were there when this photograph was taken?

A. Yes, I was.

Q. Are these the only ammo cans that you saw in Mr. Nichols' house?

A. No, they are not.

Q. Where were the other ammo cans located?

A. There were some in a portion of the basement of the home. There was some in the main floor on the storage room. Most of them were located in the storage area. There may have been others in the garage, as well.

Q. In which location did you see ammo cans that had a red cigar box on top of them?

A. In this portion of the storage area.

Q. The one that's supposedly depicted in this picture?

A. In the same storage shed, yes.

MR. TIGAR: Your Honor, may we approach?

THE COURT: Yes.

Edward Killam - Voir Dire

(At the bench:)

(Bench Conference 116B1 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

Edward Killam - Voir Dire

(In open court:)

MS. WILKINSON: Your Honor, to make it easier, perhaps we could admit and --

THE COURT: Yes. You can inquire further.

MS. WILKINSON: We'll use it on cross-examination.

Fine.

MR. TIGAR: We offer D1632, your Honor.

THE COURT: It's received.

MR. TIGAR: Thank you, Ms. Hasfjord.

DIRECT EXAMINATION CONTINUED

BY MR. TIGAR:

Q. These are ammo cans; correct, sir?

A. Yes, they are.

Q. And how many -- now, are these military-type ammo cans?

A. Yes, they are.

Q. Now, did you open them up?

A. Some of them.

Q. All right. Did they have stuff in them?

A. No. All the ones I opened were empty.

Q. About how many of these empty ammo cans did you find in

Mr. Nicholas' house?

MR. NICHOLS' HOUSE?

A. Well, there are two different sizes. And I'll have to refer to my notes. I found of the .50 caliber cans which are the slightly larger ones, there were at least 431. I counted. And of the smaller, narrower ones, there were 318 at least.

Edward Killam - Direct

Q. And the larger ones, we can see the cal 50 linked M9 on here if we -- if we had better eyes than I do. There it is. Is that right?

A. Yes. That's correct.

Q. And those are the large ones?

A. Those are the large ones.

Q. These ones over in the corner are the small ones?

A. Correct. They are known as 7.62 or .30-caliber cans.

Q. Now, when you were here before, you said that you'd been to 100 gun shows; right?

A. Yes.

Q. Are ammo cans a popular item at gun shows?

A. Yes. Very common.

Q. And is military surplus a popular item at gun shows?

A. Yes, it is.

Q. Showing you now -- whoops. I'm sorry -- what's been marked for identification as D1633. Is that a picture you took?

A. Yes. It was a picture that was taken during those days.

Q. Where was that picture taken?

A. We are now -- I believe we're back in the garage area.

Q. All right. And did you have to move anything to take this picture?

A. No.

MR. TIGAR: We offer D1633, your Honor.

MS. WILKINSON: No objection.

Edward Killam - Direct

THE COURT: Received.

BY MR. TIGAR:

Q. Here, we have -- it says "nails"; correct?

A. Correct.

Q. Were these nails?

A. Yes, they were. Big -- big nails.

Q. And about what quantity of big nails did you find here?

A. Of those boxes you're looking at, I counted 45 boxes of them.

Q. Now, there's another box here that says "wet weather suits, used," and then there's something else written on the top which would be upside down. What did you find in that box?

A. Those are olive-drab rain suits or like ponchos and pants, rain suits, two-piece.

Q. Military-type?

A. Yes. Olive-drab-military type.

Q. Okay. Do you remember about how many of those you found in there?

A. Dozens and dozens. Maybe hundreds.

Q. Now, sir, I'm placing up on the monitor what we've marked as D1830. And -- is that a picture that was taken during your search?

A. Yes, it was.

Q. Where was that taken?

A. That is in one of the basement areas of the home.

Edward Killam - Direct

Q. Does it fairly and accurately reflect what you saw?

A. Yes. But it's been opened, and the items have been set upright to make them easily seen.

Q. And other than that, did you make any changes before you took your picture?

A. No, sir.

MR. TIGAR: We offer D1830.

MS. WILKINSON: No objection.

THE COURT: Received.

BY MR. TIGAR:

Q. What are we looking at here, sir?

A. We're looking at a cardboard box containing M-1 carbine magazines.

Q. Now, do these M-1 carbine magazines have shells in them?

A. No, they do not. They are empty.

Q. Is there any labeling on them to indicate what they are, where they came from?

A. No. Except that the M-1 carbine was a military-issue weapon in the Second World War.

Q. And are M-1 carbines and accessories sold at gun shows, in your experience?

A. Yes, they are.

Q. All right. Showing you now, sir, what we've marked as D1831. Where was that taken, sir?

A. This was also taken in the same area of the basement of the

Edward Killam - Direct
home.

Q. And did you move any of these items before you took your photograph?

A. Yes. Once again, the things were opened up to make them more clearly visible.

Q. Other than that, did you move them?

A. No, we did not.

MR. TIGAR: We offer D1831.

MS. WILKINSON: No objection.

THE COURT: Received.

BY MR. TIGAR:

Q. What are we looking at here, sir?

A. Well, there are several things. If we start from the center foreground and in the very background, there are, once again, some of the smaller ammunition cans, the 7.62 cans; and then working left to right, there's a cardboard box which contains M-16 rifle magazines and then --

Q. The cardboard box, is that this here?

A. That's right. What you're pointing at.

Q. All right. Yes.

A. Those are M-16 30-round magazines, and there's another cardboard box in the center of the photograph which contains two more ammo boxes and a rain poncho in its package. And then on the right of the photograph is a paper sack which has been rolled back to show more M-16 magazines.

Edward Killam - Direct

Q. And these are the magazines here, again. Did they have bullets in them?

A. No. They were empty.

Q. Okay. Again, are M-16's and associated paraphernalia sold at gun shows?

A. M-16's are not. Paraphernalia and magazines are.

Q. I'd like to show you now what's been marked for identification as D1832. Where was that taken?

A. That was also taken in the basement of the home.

Q. And did you have to move or change anything in order to take your picture?

A. Yes. Once again, I unrolled the container to see the contents.

Q. Other than that, did you make any changes?

A. No, sir.

MR. TIGAR: We offer D1832.

MS. WILKINSON: No objection.

THE COURT: Received.

BY MR. TIGAR:

Q. Will you tell the jury what are we looking at here?

A. We're looking at a cardboard box inside of which or on top of which was a laundry bag which then contained U.S. military M-16 magazine pouches, ammunition pouches marked for sale.

Q. And when you say "marked for sale," what are you referring to? These blue stickers?

Edward Killam - Direct

A. Yes. Like some of the previous magazines, they had price stickers on them.

Q. And what is the sale price marked on these price stickers for these items?

A. \$3 each.

Q. Now, is this the sort of gear you'd find at gun shows?

A. Yes, you would.

Q. Showing you now what I've marked as D1833 for identification. Where was this taken?

A. Now we're back in the garage behind the home.

Q. All right. And did you open up this box?

A. Yes, sir, I did.

Q. Other than that, did you make any changes before you took your picture?

A. Yes. There were items on top of this crate which were

removed to open it.

MR. TIGAR: We offer D1833.

MS. WILKINSON: No objection.

THE COURT: Received.

BY MR. TIGAR:

Q. Now, does this crate have any -- well, you can see lettering on it. What does it say; do you know?

A. No, I don't. It has all sorts of markings, numbers, stenciled on it in various places.

Q. Okay. And what did you find in the crate?

Edward Killam - Direct

A. It was all full of more of those olive-drab fabric sandbags.

Q. Did you find any labels on those?

A. Not on the sandbags, no.

Q. Okay. Showing you now what we've marked as D1834 for identification. Where are we now?

A. We're still in the garage. We're just a little bit -- we're right next to that big crate we just looked at.

Q. Okay. And have you closed the crate?

A. Yes.

Q. Okay. And there's a box next to the crate. Did you open that to take your picture?

A. Yes, I did.

Q. Did you make any other changes other than opening the box?

A. No. Once again, there may have been items stored on top that were removed to open it.

MR. TIGAR: We offer D1834.

MS. WILKINSON: No objection.

THE COURT: Received.

BY MR. TIGAR:

Q. What are we looking at here, sir? I'm going to focus in on this box.

A. We're looking at two separate stacks of things. In the foreground is a cardboard box full of cloth fabric sandbags, and in the back, we see once again that other stack of fabric

Edward Killam - Direct

sandbags.

Q. Showing you now what's been marked as D1835 for identification. Where are we now?

A. Now we're again in the storage room next to the garage, adjacent to it.

Q. All right. And did you move anything in order to take this picture?

A. Yes, I did.

Q. What did you have to move?

A. A cigar box.

Q. Okay. And other than that, did you make any changes?

A. I don't believe so.

MR. TIGAR: Okay. We offer D1835.

MS. WILKINSON: No objection.

MS. WILKINSON: NO OBJECTION.

THE COURT: Received.

BY MR. TIGAR:

Q. What are we looking at here?

A. Again, we're looking at stacks of ammo cans. I believe all the ones visible are the larger .50-caliber size.

Q. And finally, showing you what's been marked as D1836, where was this picture taken?

A. Now we're in the basement of the home once again.

Q. And did you have to move anything to take this picture?

A. Yes. There was things on top, and I also opened them up so you could see more clearly what the tags were inside.

Edward Killam - Direct

MR. TIGAR: We offer D1836.

MS. WILKINSON: No objection, your Honor.

THE COURT: Received.

BY MR. TIGAR:

Q. Now, when you looked at this -- what's in the box?

A. The box is full of plastic like grocery sacks, and then inside each of the grocery sacks are military rain ponchos again and rain suits, tops and bottoms.

Q. Okay. And what does it say? "WW bottoms"?

A. Right.

Q. "\$4"?

A. Yes. Wet-wear bottoms, \$4.

Q. Wet-wear bottoms, \$4?

A. Abbreviation for wet-wear like the box we saw previously.

Q. Now, there's a word that starts with M there that's obscured. What was that word?

A. I believe it was "medium," the size.

Q. And up here, we can see most of the word -- word -- whoops -- right there. What was that? "Small"?

A. "Small." Right. They were grouped by sizes.

Q. And other than having to move an item so that you could see them, this is what you saw as you looked at that box; correct?

A. Yes, it is.

MR. TIGAR: May I approach, your Honor?

THE COURT: Yes.

Edward Killam - Direct

BY MR. TIGAR:

Q. Could you take the bag there, the smaller of the bags, and read off the exhibit number, please, sir.

A. May I open it up? I believe it's inside.

Q. Yes. It should be on the box there, sir. On the side.

A. It's D979.

Q. And where was D979 recovered, sir?

A. It was recovered from the main floor storeroom of the Nichols' home.

Q. Okay. And how can you identify that as what was recovered there?

A. I was there when it was found and recovered.
Q. Is it in the same condition as when you found it?
A. Yes, it is, except for the evidence sticker.
Q. All right. And what's the label --
MR. TIGAR: Well, we offer it, your Honor.
MS. WILKINSON: No objection.
THE COURT: D979, was it?

BY MR. TIGAR:

Q. Could you read the exhibit number again, sir.
A. Yes. The box is labeled D979B, as in boy.
THE COURT: B.

BY MR. TIGAR:

Q. And is there something inside that has a separate exhibit number?

Edward Killam - Direct

A. It's the same Exhibit No. D979 letter A.
Q. And was that in the box when you found it?
A. Yes, it was.
MR. TIGAR: We offer D979A.
MS. WILKINSON: No objection.
THE COURT: All right. So both A and B are received.

BY MR. TIGAR:

Q. What is it?
A. It's a Model 100 water magnet made by Saftron or Softron.
Q. All right, sir. If you could put that back in its envelope.

Looking at the item next to you, you see two items in that envelope next to you, sir. And could you please read the exhibit numbers on those.

A. The exhibit item is D, as in David, 794A and D794B.
Q. Where were these found, sir?
A. These were also found in a cabinet in the storeroom of Mr. Nichols' home, main floor.
MR. TIGAR: We offer them, your Honor.
MS. WILKINSON: No objection.
THE COURT: Received --

BY MR. TIGAR:

Q. What are these?
THE COURT: Excuse me. They are received.
MR. TIGAR: I'm sorry. I apologize, your Honor.

Edward Killam - Direct

BY THE COURT:

Q. Thank you. Go ahead.
A. These are two large Softron water magnets.
MR. TIGAR: May I have a moment, your Honor?
THE COURT: Yes.
MR. TIGAR: Thank you very much, Mr. Killam.
Pass the witness.
THE COURT: Ms. Wilkinson.
MS. WILKINSON: Just a few.

CROSS-EXAMINATION

BY MS. WILKINSON:

Q. Good afternoon again, Mr. Killam.

A. Good afternoon.

Q. When you went into the house with Mr. Bodley, you were very careful to look at everything that was there; correct?

A. Yes, we were.

Q. And you were the first people to inspect it since the FBI had left it.

A. I presume that to be so.

Q. That's your understanding; correct?

A. Yes, it is.

Q. And is that why you went in and took pictures of each room?

A. Yes, it is.

Q. We could call those entry photos; is that right?

A. Yes, you could.

Edward Killam - Cross

Q. And that was to determine what was in place when you entered the house; correct?

A. That's correct.

Q. Now, you showed us -- or Mr. Tigar showed us Defense Exhibit 1632 of some ammo cans that were in the storage area of the garage; is that right?

A. Yes.

Q. Now, does this depict just one portion of the area where ammo cans were stored?

A. Yes, it is.

Q. And that's why we don't see the cigar box in this picture?

A. That's correct.

Q. Now, you also showed us Defense 1835 here. And if we were to look closely, could we see the cigar box in this picture?

A. No. You would see it in that picture.

Q. It's been removed from this picture?

A. Yes, I removed it.

Q. But you did see it in place?

A. Yes, I did.

Q. Let me show you Government's Exhibit 1776A. Do you recognize that?

A. Yes, I do.

Q. Let me see if I can zoom out a little bit first. Is this how that area looked when you entered Mr. Nichols' home in August?

Edward Killam - Cross

A. Or very close to it, yes.

Q. And this cigar box?

A. Yes.

Q. Red-and-white?

A. Yes.

Q. Can you read what that says?

A. Yes. William Penn.

Q. This was there in place when you entered Mr. Nichols'

Q. This was there in place when you entered Mr. Nichols house?

A. Yes, it was.

MS. WILKINSON: We have no further questions, your Honor.

THE COURT: Anything further?

MR. TIGAR: No, nothing further.

THE COURT: Mr. Killam, you may step down.

THE WITNESS: Thank you.

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

THE COURT: Yes. Certainly.

MR. TIGAR: At this time, your Honor, we would like to offer the testimony of Deborah Brown in the manner discussed at the bench. Counsel and I have conferred, and we have agreed on the transcript.

THE COURT: All right. So this witness testified at an earlier time, and we're going to take the testimony of this witness by reading it to you. And to assist in that, we have a reader, do we?

MR. TIGAR: Yes, your Honor.

THE COURT: If you will come up and take the witness stand. We try to make this as easy to understand as possible, and for that reason --

MR. TIGAR: This is not Deborah Brown.

THE COURT: Yes. We're going to have some role playing as it were, of Deborah Brown as the witness so that you can clearly distinguish between the questions and the answers. And of course, counsel will take care of the questioning from the prosecution and the defense by reading the transcript. And here again, while you do not have the opportunity to see this person testify, to the extent possible, you will consider her testimony as that of any other witness, those appearing live, in much the same manner as I told you with the video deposition that we had, the video transcript, you'll recall. We took a witness in that fashion. So we do the same thing here because this person is unable to be here at court.

MR. TIGAR: May I inquire of Ms. Goodman where the exhibit is? May we just take a moment --

MS. GOODMAN: In my briefcase. I'm sorry. It's in the plastic envelope.

THE COURT: You can step down and get it if you'd like.

MR. TIGAR: Thank you, your Honor.

THE COURT: You got it. Okay.

(The testimony of Deborah Brown was read as follows:)

DIRECT EXAMINATION

BY MR. TIGAR:

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

A. Deborah Brown, B-R-O-W-N.

Q. First of all, would you tell us where you currently live, in what city?

A. In Seattle, Washington.

Q. How long have you lived in Seattle?

A. October will be two years.

Q. Before you lived in Seattle, did you live in Kingman,

-
Arizona?

A. Yes.

Q. Was it when you were in -- what grade were you in when you moved to Kingman?

A. I was in the sixth grade.

Q. In the sixth grade?

A. Yes.

Q. Did you essentially grow up in Kingman?

A. Yes.

Q. And attended school there through high school?

A. Yes.

Q. When you were in school there, did you come to know Michael

Deborah Brown - Direct

Fortier?

A. Yes.

Q. What time -- or how old were you approximately when you met Mr. Fortier?

A. It was when I was in the sixth grade. I'm not sure what that would be. Probably 12. I'm not --

Q. Did you continue to know Mr. Fortier through the time that you were in school?

A. Yes.

Q. Eventually after high school -- let me go back for a second. Did you know Lori Fortier during that period of time at all?

A. No.

Q. Now, after high school, did there come a time when you opened a business in Kingman?

A. Yes.

Q. What was the name of the business?

A. The Beach Club.

Q. Would you describe for us what kind of business the Beach Club was?

A. It was a tanning salon. We sold some swimsuits and a few things along that line.

Q. Let me show only you, if I may, what's been marked for identification as P139. Do you recognize what's depicted in that photograph?

Deborah Brown - Direct

A. Yes.

Q. And is that a picture of the Beach Club tanning salon, itself?

A. Yes, it is.

Q. Is that how it appeared in the fall of 1994?

A. Yes.

MR. TIGAR: Your Honor, we would offer this for demonstrative purposes only.

THE COURT: All right. Any objection to that?

MR. MEARNS: No. Mr. Tigar, is this -- you've re-marked it as D1871.

MR. TIGAR: Yes. It is -- let's just offer D1871, your Honor, the black-and-white copy, for evidence but use the color copy, if I may, for demonstrative purposes.

MR. MEARNS: No objection, your Honor.

THE COURT: All right. We'll do it.

MR. TIGAR: Put it up on the screen.

BY MR. TIGAR:

Q. Is that how it appeared during the fall of 1994?

A. Yes.

Q. Okay. Now, there's a business that appears to be to the left in the photograph. What is that business?

A. That used to be a Christian bookstore. Sold novelty things, then the mail room next to it.

Q. Ms. Brown, did there come a time when you met Lori Fortier?

Deborah Brown - Direct

A. Yes.

Q. Approximately when was that?

A. It was approximately April of 1993.

Q. Was that in connection with the Beach Club tanning salon?

A. Yes.

Q. What happened in reference to Ms. Lor -- Ms. Fortier and the Beach Club?

A. She was referred by a friend of the family, a relative of my boyfriend, to come down and see if we might need anyone because she had been looking for a job for a while and she recommended her to me, said she was a good person.

Q. Did you hire her as a result of that?

A. Yes.

Q. When approximately was it that you hired Ms. Fortier?

A. Approximately May of '93, maybe late April.

Q. How long did Ms. Fortier continue to work for you there at the Beach Club?

A. Through August of '94.

Q. While she was working for you there at the Beach Club, did you become familiar with Tim McVeigh?

A. Yes.

Q. How did that come about?

A. He was coming -- he was moving back to town, and Lori brought him in to introduce him to me when he came back.

Q. How did she introduce him?

Deborah Brown - Direct

A. "This is a good friend of ours, Tim McVeigh. He's going to be the best man at our wedding."

Q. After that, did you see Mr. McVeigh on occasion?

A. Yes.

Q. How often?

A. It varied. Sometimes I'd see him once a week, sometimes more often.

Q. Did he pick his mail up anywhere there in the vicinity?

A. Yes.

Q. What was that?

Q. Where was that?

A. At the mail room.

Q. Did there come a time during the period that Miss Fortier worked for you that you became aware that she and Michael Fortier were involved in drug use?

A. Yes.

Q. So that we're clear about this, were you yourself using methamphetamine during that period of time?

A. Yes, I was.

Q. Did Michael Fortier participate in the use of methamphetamine --

A. Yes.

Q. -- during that same period of time?

A. Yes.

Q. How would that come about?

A. I wouldn't --

Deborah Brown - Direct

Q. In other words, how did you know that, or where did it occur?

A. It occurred at my business, the Beach Club. It also occurred at a tanning convention in Las Vegas. Pretty much just whenever all three of us were together.

Q. Did you obtain any methamphetamine from Michael or Lori Fortier?

A. Yes.

Q. How much methamphetamine would you obtain from -- well, first of all, which one of them would you obtain it from?

A. Both.

Q. And how much would you obtain at a time?

A. 1 gram.

Q. Was it a gift from them, or did you pay for it?

A. I paid for it.

Q. How much did you pay for 1 gram of methamphetamine?

A. It ranged on -- between 80 and \$100 depending on when they were trying to get rid of it and how quickly they needed to get rid of it.

Q. Approximately how many occasions did you purchase a gram of methamphetamine from Michael and Lori Fortier?

A. Approximately between five and ten times.

Q. You said that you left the Kingman area, I think, sometime in the fall of 1994?

A. We were having a house built during the time that Lori was

Deborah Brown - Direct

trying to purchase the Beach Club in Las Vegas --

MR. TIGAR: Excuse me. Excuse me.

I'm sorry. I slipped into the cross-examination part, your Honor, and I've stolen Mr. Mearns' lines.

THE COURT: Mr. Mearns.

CROSS-EXAMINATION

BY MR. MEARNIS:

DEBORAH BROWN - CROSS

Q. You said you left the Kingman area, I think, sometime in the fall of 1994.

A. We were having a house built, during the time that Lori was trying to purchase the Beach Club, in Las Vegas. My boyfriend and I were planning to move there. We actually moved into our home in October of '94.

Q. So you moved in the fall of '94?

A. Yeah.

Q. Did you attend the Fortiers' wedding?

A. Yes.

Q. You understand, of course, that you are now under oath?

A. Yes.

Q. And because you're under oath, you understand your obligation to tell the truth?

A. Yes.

Q. And it's for that reason that you have freely admitted your drug use; is that right?

A. Yes.

Deborah Brown - Cross

Q. And you wouldn't lie about your drug use when you came in here and testified, is that not true?

A. That's true.

Q. But I take it it's not something you're particularly proud of?

A. No.

Q. It's because you've been called into the courtroom and you've been placed under oath?

A. It's because --

Q. And it's because you've been asked about it?

A. It's because I feel I've been called here to tell the truth and for both sides, fairness.

Q. Right. I'm just talking about it's not information you would volunteer around the community and certainly not to law enforcement officers if you're stopped for a traffic stop?

A. That's fair. I haven't been stopped before.

Q. Now, this methamphetamine -- and I don't mean to suggest I'm in any way condoning its use, but it's not an hallucinogenic drug; is that not true?

A. For myself, it wasn't. I can't speak for other people.

Q. Okay. It kind of makes you -- it makes your system --

A. It gave me more energy.

Q. It increases your energy?

A. Makes you a little -- well, yeah.

Q. Makes you a little wired?

Deborah Brown - Cross

A. Yes.

Q. Wouldn't cause you to lie about things?

A. It could.

Q. Didn't cause you to lose any memory, did it?

A. No.

Q. And the fact that you've used drugs hasn't influenced your testimony here today, has it?

A. No.

MR. MEARNS: That's the end of the transcript, your Honor.

MR. TIGAR: That's all, your Honor.

THE COURT: That is the --

MR. TIGAR: That is the end, your Honor.

THE COURT: Thank you. You may step down.

Once again, members of the jury, you accept this testimony as part of the evidence in the case.

MR. NEUREITER: Your Honor, at this time, we'd like to play two video depositions that were taken.

THE COURT: Very well. Here again, members of the jury, just as was true before, for reasons that are of no concern to us, these witnesses have not -- are not available to come here and testify; and so we're doing the best we can with respect to some of these people and taking their testimony by other means. Now, in this situation, we have videos of the testimony so you do get to see the witness on the video screen.

MR. NEUREITER: Yes, your Honor. This first videotape will be a deposition of Roberta Kramer taken on November the 8th, 1997. I did the questioning on direct and Mr. Goelman did the questioning on cross-examination. For the Court's convenience, I do have a transcript, if you'd like to follow along. The video itself has had all objections edited out, and counsel have agreed to withdraw certain objections, and we've conceded certain objections with respect to other things.

THE COURT: All right.

MR. NEUREITER: Would your Honor like a copy to follow along?

THE COURT: I can follow with the jury.

MR. NEUREITER: Very well. And just for clarification, your Honor, with respect to this first deposition, there were no -- there was one exhibit that was offered and without objection to the -- by the Government, and then she held up the -- the --

THE COURT: Exhibit.

MR. NEUREITER: She held up the exhibit and demonstrated on the camera, so there's no need to stop it and play it on the ELMO.

THE COURT: Okay.

(Videotape deposition of Roberta Kramer played.)

MR. NEUREITER: It appears we have a volume problem. There is sound on the video -- we listened to it over lunch -- but not on this machine. Hopefully, it'll work.

THE COURT: Okay.

MR. NEUREITER: I'll try the other videotape and see if that makes a difference. This will be of Etta Mae Hartke, also on the same date.

(Videotape deposition of Etta Mae Hartke played.)

MR. NEUREITER: We're going to start with Roberta Kramer.

(Videotape deposition of Roberta Kramer played.)

THE COURT: Nobody spilled any water there, did they?

MR. TIGAR: May the record reflect I'm 3 yards away, your Honor.

THE COURT: The other one was working.

MR. NEUREITER: It was.

THE COURT: Would it make a difference in the presentation as to which order we took them in? Maybe we could do that witness and then figure this out during the recess.

MR. NEUREITER: Absolutely, your Honor. We'll take your Honor's suggestion.

This one, there are some exhibits; and there are two options, I guess. We could play the whole thing and then I could just display them at the end of it so there's no stopping and starting.

THE COURT: I think that's better.

MR. NEUREITER: Okay.

(Videotape deposition of Etta Mae Hartke played.)

MR. NEUREITER: Your Honor, a juror appears to have a concern.

JUROR: I just have to stand. I can't see.

(Videotape deposition of Etta Mae Hartke played.)

THE COURT: All right. Do you have these exhibits now?

MR. NEUREITER: Yes, your Honor.

THE COURT: And there's no objection to any of them, is there?

MR. GOELMAN: No, your Honor.

THE COURT: They are all received, so you may display them and briefly identify them.

MR. NEUREITER: All right. Switch to the ELMO.

This is -- the first one would be D1604.

Do I have to press a button?

THE COURTROOM DEPUTY: No.

MR. NEUREITER: This would be D1604, what -- and, Counsel, feel free to correct me if I'm wrong, but I think my understanding, what she identified as her house. It would be 107 South 2nd Street.

The next exhibit, D1605, was used twice during the deposition. This, she identified as Mr. Nichols' home; and later, she was asked to point out what she described as the wind vent that is located on the top of the home.

The next exhibit is D653. I'll zoom in. This was the view from across the street with -- she identified in the middle of the picture Mr. Nichols' home. And to the right, the white, large automobile, she identified as her automobile.

The next exhibit, D1625, was identified as the Nichols family as she met them in March of 1995. Mr. Nichols, Marife Nichols and Nicole. That was D1625.

And the last exhibit, D652, was the ladder that she identified Mr. Nichols as having borrowed the afternoon of the bombing.

And, your Honor, to complete the record, we have the videotape we have designated as D1873, and I'll place that in this container. And the certified, unedited transcript is designated D1873A, and we would submit that just to make it part of the record.

THE COURT: Yes

THE COURT: Yes.

MR. NEUREITER: And if we could have the break, we might be able to work out a technical problem.

MR. TIGAR: And in the meantime, your Honor, we have a little TV-VCR of the old-fashioned kind upstairs, and we'll bring it downstairs if that's all right with the Court.

THE COURT: If necessary. Well, we'll take our afternoon recess, members of the jury, and see if we can get some technical adjustments made here so that, one way or the other, the other witness's videotape deposition will be played. And of course, once again, I must caution you about continuing to avoid discussion about any of the witnesses or any of the trial proceeding, waiting until the case has been given to you for decision and also, of course, avoiding anything outside of the evidence.

You're excused now for 20 minutes.

(Jury out at 2:55 p.m.)

MR. TIGAR: May we approach, your Honor?

THE COURT: Yes.

(At the bench:)

(Bench Conference 116B2 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

(In open court:)

THE COURT: All right. Recess. 20 minutes.

(Recess at 2:59 p.m.)

(Reconvened at 3:20 p.m.)

THE COURT: Be seated, please.

The field expedient.

MR. TIGAR: Yes. Your Honor, we on this side of the courtroom waive our right to see the video that we've already seen so we don't have to move --

THE COURT: And the public is going to waive its right to see it, too, because there is no way --

MR. TIGAR: Mr. Kelley is not here, your Honor.

MR. NEUREITER: Your Honor, we have managed to put the courtroom microphone up close.

THE COURT: I see that.

MR. NEUREITER: So that people will be able to hear it.

THE COURT: I want to talk with counsel briefly though

about scheduling.

(At the bench:)

(Bench Conference 116B3 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

(In open court:)

THE COURT: Okay.

(Jury in at 3:23 p.m.)

THE COURT: All right, members of the jury. Once again, we took a little longer, but this time we had to adopt an expedient here because for reasons certainly unknown to me and I think unknown to anybody here, that video -- that -- this particular videotape does not seem to work on our modern machinery here, so we're going back to a more primitive version of videotapes. Only you will be able to see this on the television set that's in front of you; but here again, of course, you will consider the testimony of this witness in the same fashion as all other witnesses who have testified in this trial.

MR. NEUREITER: Thank you, your Honor. This will be the deposition of Roberta Kramer done on the 8th of November, 1997. I did the questioning and Mr. Goelman did the cross-examination.

THE COURT: Thank you.

(Video deposition of Roberta Kramer played.)

THE COURT: Turn it down a little.

(Video deposition of Roberta Kramer played.)

MR. NEUREITER: For the record, your Honor, we would offer the videotape, D1874, and the unedited, certified transcript of that deposition as D1874A.

THE COURT: All right. That will be a part of the record; and of course, members of the jury, what we're talking about here is to make the complete record; but you will recall this testimony just as you will the testimony of the people who appeared live. We don't, you know, give you the actual videotape as a part of the exhibits in the case, because that's a part of considering the testimony in the same manner as the witnesses who come in here and testify on the stand.

MR. NEUREITER: And with respect to the exhibits that were referred to in the deposition --

THE COURT: They're already in, aren't they?

MR. NEUREITER: Actually, the first one was not shown on the videotape, so we would not offer that at that time. She just looked at it and described where she lived.

The second one is already in, and so nothing more needs to be done.

THE COURT: The picture of the lake area.

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

THE COURT: We'll move the television.

MR. NEUREITER: If I could retrieve the videotape, your Honor.

THE COURT: Sure.

Let me just give you this note.

Call your next witness, please.

MR. TIGAR: Call Dale Kuhn, your Honor.

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

(Dale Kuhn 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: Dale Alan Kuhn, K-U-H-N.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Tigar.

DIRECT EXAMINATION

BY MR. TIGAR:

Q. Good afternoon, Chief Kuhn.

Will you tell the jury, please, where you're from.

A. I'm from Wellington, Kansas, at the present time.

Q. And going back to April of 1995, where did you live?

A. I lived in Herington, Kansas.

Q. And did you just have a rough ride in from the airport?

A. It's not too rough, but it's snowing.

Q. Going back --

THE COURT: Just a moment. I want to reassure the jury it's not a blizzard out there.

Okay. Please go ahead.

MR. TIGAR: Thank you.

BY MR. TIGAR:

Q. Well, just take it easy. We appreciate your being here,

Dale Kuhn - Direct
sir.

A. Okay.

Q. Back there in April of 1995, what was your job, sir?

A. I was the public safety director at Herington, Kansas.

Q. Now, we've already heard from Chief Thacker. Could you tell the jury what your side of the public safety responsibility was in Herington back in April of 1995.

A. I was the chief law enforcement officer, the chief fire officer, and chief of a 911 service. I was chief of all law enforcement in the city, building codes, fire codes, all ordinances.

Q. And what had been your experience in law enforcement and public safety prior to your taking on the job of chief law enforcement officer of Herington?

A. I had -- Investigation through my career goes back to the Wichita Fire Department as battalion chief. I had investigations in fire investigations. I left that post, worked for the state fire marshal, did some investigations there; and mainly my expertise was in the fire field and communications and the building codes.

Q. Do you know Terry Nichols?

A. Yes, sir.

Q. Do you see him here in court?

A. Yes, sir.

Q. Right over there?

Dale Kuhn - Direct

A. Yes, sir.

Q. When is the first time you can ever remember seeing Terry Nichols?

A. The day in April.

Q. That is the Friday, the 21st of April?

A. Yes, sir.

Q. Let's back up a bit. Had somebody come down to your Department of Public Safety in the afternoon to inquire about somebody named Terry Nichols?

A. Yes, sir.

Q. Did they talk to you?

A. Yes, sir.

Q. Was that Agent Stephen Smith of the FBI?

A. Agent Smith. I'm not positive about the first name.

Q. Were you and Deputy Chief Thacker able to help him at that time?

A. I believe we did, yes.

Q. And he left the station; correct?

A. Yes, sir.

Q. Now, do you remember about what time of day Mr. Nichols arrived?

A. Approximately 3:00, best of my knowledge.

Q. And when -- where did you first see him in the Herington police station?

A. At the front door.

Dale Kuhn - Direct

MR. TIGAR: I wonder if I might beg Counsel's indulgence to borrow an exhibit.

MR. MACKEY: Sure.

BY MR. TIGAR:

Q. Showing you, sir, what's been received in evidence as the Government's exhibit -- I'm sorry.

MR. TIGAR: All right. It's on. Thank you.

BY MR. TIGAR:

Q. Government's Exhibit 1935. Can you point out where it was that you first saw Mr. Nichols.

A. It's the lobby --

Q. There is a pen there attached to a wire.

A. Okay.

Q. You can reach right underneath the glass and write directly on the screen, if you would, sir.

A. Right here at this entrance.

Q. And was anybody with him?

A. Yes.

Q. Who was with him?

A. A female and a child.

Q. Did you later come to know who those folks were?

A. Yes, I did.

Q. Who were they?

A. It was his wife, Marife -- Marife, and his daughter; and I'm not -- I don't recollect the name right now.

Dale Kuhn - Direct

Q. Now, what did -- what, if anything, did Mr. Nichols say to you when he first approached you?

A. He wanted to know why his name was on TV.

Q. And did he say that -- did he say both radio and TV, or just TV?

A. He said, "Why is my name on radio and TV?"

Q. And at that time, had he told you what his name was?

A. No, he didn't. He told me later.

Q. All right. Did you -- so did you ask him his name?

A. Yes, sir, I did.

Q. And he gave you his name, Terry Nichols; correct?

A. Right.

Q. Now, did he -- did you tell him that you were able to answer his questions?

A. No, I wasn't able to answer his questions and told him I couldn't.

Q. Now, did he ask you why his name was being mentioned in the media, more than once?

A. Yes, sir.

Q. And can you give us an estimate of about how many times he asked you, "Well, why is my name on the radio and television?"

A. I -- I suppose three to five times, maybe more. I'm really -- I don't know. I really -- it seemed like quite a few times, so I'd say somewhere in the area of three to five times.

Q. Now, did you invite him and his daughter -- Mr. Nichols and

Dale Kuhn - Direct

his wife and daughter into your office?

A. Yes, I did.

Q. Now, looking again, sir, at what's been received as Government's 1935, can you point out with the pen which office you invited them into?

A. I invited him in through this door right there, in through this door here, into this officers' room.

Q. And Chief Thacker -- Deputy Chief Thacker has described that offices, room. That's a break room and sort of a utility room that you all have there?

A. It serves many purposes, yes.

Q. How would you describe Mr. Nichols' emotional state? How did he seem to you, sir?

A. He seemed frightened, scared.

Q. Now, did you ask him if he had any weapons?

A. Yes, sir, I did.

Q. When did you ask him if he had weapons?

A. About the time we walked through the first door there.

Q. What did he tell you?

A. He said no, he didn't.

Q. Was he telling the truth?

A. From my -- yes. Later on, it proved that he had no weapons

on him.

Q. Did you conduct some kind of a search to see if he had any weapons?

Dale Kuhn - Direct

A. Not at that time. I had him take his jacket off and turn around and had his wife turn around and the child turn around.

Q. And what did he do with his jacket, if you remember?

A. I believe he laid it on the counter or a piece of furniture that's in this room.

Q. Just took off his jacket and laid it down and turned around for you?

A. Best of my knowledge, yes.

Q. Now, what steps did you take, then, sir, to be able to get somebody in there who could answer Mr. Nichols' questions?

A. I talked to Chief Thacker to go out and see if he could find Agent Smith.

Q. And you saw him leave the station and go out and try to do that; is that right?

A. Didn't see him leave the station. I said that to him. I make an assumption that's where he went.

Q. He left?

A. Yes.

Q. Okay. He's already been here today.

A. Yeah.

Q. Did you eventually get a call from an FBI agent?

A. Yes, I did.

Q. Which one was that?

A. Best of my knowledge, I thought it was Agent Smith.

Q. Now, what did he say to you?

Dale Kuhn - Direct

A. He asked, "Is everything all right?"

Q. How did Agent Smith seem to you as he talked?

A. Very calm.

Q. Did you assure him -- well, what did you say to him when he asked if everything is all right?

A. I said yes; that I have somebody here that needs some questions answered, or something to that effect; and it dawned on me what he was asking me when he asked me about is everything all right.

And I said, "Yes, everything is okay."

Q. Well, what did you understand from his tone of voice and questions that you were being asked to respond to?

A. Probably if he had weapons.

Q. And what did you tell him?

A. That -- I don't believe we discussed weapons at all. I told him everything was all right; that it was okay for him to come in.

Q. And were you able to convince Agent Smith that everything was okay?

A. I assumed so. He came in.

Q. And what did you -- did you tell Mr. Nichols that the FBI was coming?

A. I don't believe I told him that, no.

Q. Now, did you tell Mr. Nichols that he and his wife could leave at any time?

Dale Kuhn - Direct

A. Yes, sir.

Q. When did you tell them that they could leave at any time?

A. Shortly after they came into that room.

Q. What did Mr. Nichols say when you said that?

A. He didn't want to leave. He wanted some answers to his questions.

Q. Did he ever tell you that he was afraid to leave?

A. No, he never told me that.

Q. Sir, I'm going to ask you: Do you remember appearing at a prior proceeding here?

A. Yes, sir.

Q. Do you remember being asked: "Did he ever tell you he was afraid to leave," and answering, "Yes, sir, he did"?

A. Well, I don't recall him telling me he was afraid to leave. I recall him telling me he was afraid of the FBI.

Q. Okay. And did he say why he was afraid of the FBI?

A. No, he did not.

Q. Now, at -- when the agents came in, did -- how many agents were there?

A. Three to -- two to four.

Q. And did the agents ask you whether Mr. Nichols had been frisked or searched?

A. He asked -- they asked me if he had been searched.

Q. And you told them no?

A. No. I told them that they -- that he had not been searched

Dale Kuhn - Direct

by a pat-down. Yes.

Q. Okay. And did you see them search him?

A. Yes.

Q. And did someone search Mrs. Nichols?

A. Yes.

Q. Who did that?

A. One of our dispatchers, Leslie Starwalt.

Q. Now, Leslie Starwalt -- could you describe what her responsibility was in the police station?

A. She was a 911 dispatcher, dispatched for any emergency calls and handled administrative calls that come in.

Q. Would we refer to her as "Officer Starwalt" or "Dispatcher Starwalt"?

A. Dispatcher Starwalt. She --

Q. And did -- I'm sorry.

A. She also served as a jail matron sometimes.

Q. Now, Dispatcher Starwalt: Was she on duty from that time, about 3:00 in the afternoon, until after midnight?

A. Yes.

44. 103.

Q. She stayed all that time?

A. Yes, sir. I believe she did.

Q. Now, did you stay in the police station all through that time until about 12:30?

A. Not all the time. I was out a couple times. I had other -- some duties I had to perform outside the station.

Dale Kuhn - Direct

Q. Did a number of FBI agents and other law enforcement-related people eventually come to your station during the course of the evening?

A. Yes.

Q. About how many was the most of that number that you can remember being in there at any one time during that evening until shortly after midnight?

A. Eight, 10, 15, somewhere in that area. I'm sorry --

Q. Do you recall saying about 25 on a prior occasion, as a maximum?

A. That would be a max, if there was that many.

Q. Would it be fair -- they came and went? Is that correct? There were different numbers at different times?

A. Yes.

Q. Okay. Now, did someone search Nicole Nichols?

A. Yes.

Q. Who was that?

A. Excuse me. Is Nicole the daughter?

Q. Nicole is the daughter. Marife is Mrs. Nichols. You had that right. And Matron -- or Dispatcher Starwalt patted her down; correct?

A. Right.

Q. And then did someone search Nicole?

A. Yes. I did.

Q. How did you conduct that search?

Dale Kuhn - Direct

A. Did a pat-down around her and ran my finger around the top of her diaper.

Q. And you didn't find any weapons?

A. No, sir.

Q. Okay. Now, did you then look for a place where Mr. Nichols could be interviewed?

A. Yes.

Q. What -- just describe to the jury what you did to find a place that would be convenient for everybody to meet so that they all could talk.

A. Okay. I had a couple of the FBI agents with me, and we just went around the station on the first level to a couple offices that are at the very back in a hallway at the very back of where we was at. We checked that out for size, whether we could all -- they could all set (sic) in there. I took them out -- I believe took them out to where -- the apparatus floor, where the fire engines are kept. Perhaps they wanted to be out

there.

We have a full-sized basement down there, went downstairs, showed them. The open area we have is a school area where the firefighters have school. There is a couple desks down there, chairs. We have two evidence rooms locked up. We didn't go in there. Showed them where the rest room was at downstairs. Their decision was to use the downstairs.

MR. TIGAR: I wonder if I could borrow from Counsel

Dale Kuhn - Direct
Government's 1936.

Thank you.

BY MR. TIGAR:

Q. This has already been introduced in evidence. Just to get our bearings here, this is Government's Exhibit 1936. Is that a schematic of your basement?

A. Yes, sir.

Q. And can you indicate there the area where the fire department had their training that had the desks and chairs?

A. There is a desk over here, and then there is a desk and computer here.

The chairs are all folded up over in the corner over here, so there is nothing out in this room, just this desk here and a desk over here and maybe some other weight-lifting equipment over there. And actually, the area is open. There is no chairs and tables sitting out.

Q. Now, did Mr. Nichols then accompany the agents downstairs into the basement?

A. Yes.

Q. Now, do you remember which agents went down there with him right at the first?

A. Not -- I don't remember their names. I can't remember now. I barely could then. I really don't remember. I believe there was two agents. I'm sure that I've testified before what their names were. I'm sorry. I don't remember their names.

Dale Kuhn - Direct

Q. A long time ago, and you've done a lot of cases since then.

Do you remember an Agent Price?

A. I believe that was one of them, yes.

Q. And do you -- do you remember introducing Agent Price to Mr. Nichols?

A. Yes, sir.

Q. And do you remember making the comment: "I think this man could give you some answers to your questions"?

A. I probably did say that, yes. I don't remember.

Q. Okay. Do you remember what, if anything, Agent Price responded to those questions?

A. I believe he asked, "Would you like to talk to me?" I believe that was all that I can recall that he might have said, and I'm not positive about that.

Q. And once you saw Mr. Nichols and the agents go into that

basement area, were you ever down in the basement area again throughout the course of that evening?

A. Yes, sir.

Q. How many times were you down there during the course of that evening?

A. Best of my -- I believe maybe twice, but I'm not positive. Just maybe once.

Q. And what was the reason for going down there?

A. I took a message down from -- like a telephone message for one of the agents that was downstairs.

Dale Kuhn - Direct

Q. Okay. And can you tell us how did that come to be?

What -- do you remember about when that was?

A. No, sir.

Q. And do you remember which agent it was that the message had come for?

A. No, sir, I can't.

Q. And do you remember who asked you to take the message down?

A. I believe Leslie said that there was a phone message and give me the -- whatever. They was supposed to call somebody or something like that.

Q. Now, can you just give us an idea of how was the operation set up upstairs during the course of that evening? Who was in charge, and how were you running it to be of maximum assistance to the federal agents that were on your department premises there?

A. I was upstairs floating in that main hallway up there, and we'd take care of and relay law enforcement orders to Chief Thacker and would relay any fire orders I needed to a -- I had an assistant chief that was not there but was outside there and a news relay in. And I was basically in that hallway.

Q. Were you present when Mr. Nichols left the Herington Department of Public Safety?

A. Yes, sir.

Q. About what time was that, sir?

A. After 12.

Dale Kuhn - Direct

Q. Were you present when Mrs. Nichols and Nicole left the Department of Public Safety?

A. I'm sure I was present, sir; but I don't remember her leaving.

Q. So you have no recollection of who she left with or just when it was?

A. I didn't know she had left until she wasn't there.

MR. TIGAR: Will your Honor indulge me for a moment?

THE COURT: Yes.

MR. TIGAR: Thank you very much, Chief.

No further questions.

THE COURT: Mr. Mackey?

MR. MACKEY: Yes, your Honor.

CROSS-EXAMINATION

BY MR. MACKEY:

Q. Mr. Kuhn, tell me again what your current title is.

A. I'm the Sumner County E911 coordinator in Sumner County, Kansas.

Q. And is that principally firefighting protection and public service of that --

A. No, sir. It's a 911 phone service, meaning you dial 911. It has to go somewhere, so all my employees are dispatchers who we dispatch for 41 different public safety agencies in Sumner County.

Q. So it's emergency calls of any nature.

Dale Kuhn - Cross

A. Yes, sir.

Q. When was it again that you left Herington?

A. October of last year, '96.

Q. I take it you didn't get a chance to look at the transcript from your previous testimony.

A. No, sir. I don't have a copy, so I didn't see it. No.

Q. I won't quiz you with too many exacts, but I'll focus our attention on Friday, April 21, 1995.

A. Okay.

Q. On that particular day, you had met an FBI agent before you ever met Terry Nichols; correct?

A. Yes.

Q. Mr. -- Agent Smith, then, first and then later that same afternoon Mr. Nichols?

A. Yes.

Q. Do you have any idea based on conversation with Mr. Nichols where he had been immediately before he arrived at your police station?

A. No, sir, I don't.

Q. You don't know when he left his home or what route he took to get to your police station?

A. No, sir.

Q. All you know is he and his family came in?

A. Yes.

Q. Did he tell you before he began the interview with the

Dale Kuhn - Cross

agents that in the course of getting to your police station he had the feeling, the suspicion, that he was being followed by FBI agents?

A. No, sir, he didn't.

Q. In the course of the brief time that you had with him in the manner you've described, on more than one occasion, you felt the need, perhaps, to advise him that he was free to go?

A. Yes, I did.

Q. And was that, Mr. Kuhn, a concern on your part that Mr. Nichols be made aware that there was no authority, no requirement that he stay in your police station?

A. Absolutely.

Q. It was your concern that he be entirely informed that he was free to go?

A. Yes, sir.

Q. And despite you telling him on more than one occasion, you satisfied yourself it was his choice to stay?

A. Yes, sir, it was.

Q. Let me show you what's not yet in evidence, Mr. Kuhn, Government's Exhibit 2144. Take a look at the screen down below you. That is a photograph that depicts the start of the stairwell as it leads down to the basement area you've described?

A. Yes, sir, it is.

MR. MACKEY: Your Honor, I'd move to admit 2144.

Dale Kuhn - Cross

MR. TIGAR: No objection, your Honor.

THE COURT: It is received, may be shown.

BY MR. MACKEY:

Q. Mr. Kuhn, tell the jury what they're looking at, please.

A. The picture -- the person taking the picture is standing out in the hallway that I alluded to that we came through a door prior to turning into the officers' door. There is a hallway out here. They're standing there.

This is our break area, or was the break area for the Herington public safety area. Over here is a microwave -- sorry -- over here is a microwave, and there is a refrigerator, and this is a sink, and we keep coffee.

This door goes out to what I said apparatus floor where they keep fire engines and this and that.

This stairway goes five steps on down. It turns again

and goes on down into the basement, a full basement.

Q. You've used this particular door that's depicted in the middle of that picture?

A. Have I used it?

Q. Yes.

A. Yes, sir.

Q. And you know you can get outside into the garage area from that door?

A. Yes.

Q. During the course of that time, Friday evening and into the

Dale Kuhn - Cross

evening, did you find that there were a number of agents using that door to come and go through various entryways in your building?

A. Yes, sir.

Q. Mr. Kuhn, you knew on Friday afternoon, 1995, that you would not be personally interviewing Mr. Nichols to ask him questions about the Oklahoma City bombing; correct?

A. Yes, sir.

Q. You understood that would fall to the responsibility of FBI agents?

A. Yes, sir.

Q. And you did what you could to assist in relaying, handing off, if you will, the situation to them?

A. Yes, sir.

Q. At any point in time, Mr. Kuhn, in doing so, did you see FBI agents do anything in your judgment in an unprofessional manner in their treatment of Mr. Nichols?

A. Absolutely not.

Q. Upstairs when there was the first encounter and then later in the evening as you were downstairs, did you see anything that would dispose you to say something different?

A. No, sir.

Q. On each and every occasion that you saw Mr. Nichols in the company of FBI agents, was it your assessment that he was calm and collected?

Dale Kuhn - Cross

A. Yes, sir.

Q. Now, Friday afternoon, 1995, in Herington: By that moment in time, you knew, did you not, that the bomb truck that had blown up in Oklahoma City had been rented just north of you in Junction City; correct?

A. Yes, sir.

Q. And you knew, did you not, Mr. Kuhn, that Mr. Tim McVeigh had been arrested north of Oklahoma City and tied to the bombing that same day; correct?

A. I might have known it then. I'm not -- I'm not going to say I'm positive that I knew that at that time.

Q. When you described for the jury, Mr. Kuhn, that Terry Nichols in your opinion appeared frightened -- and that's your assessment. Correct?

A. Yes, sir.

Q. Do you have any idea why he appeared --

A. At that time, do I have an idea?

Q. Yes.

A. No, I really don't know why he was scared or anything at that time.

MR. MACKEY: Thanks, Mr. Kuhn.

REDIRECT EXAMINATION

BY MR. TIGAR:

Q. Very briefly, Chief.

Among the people that were there that night, did you

Dale Kuhn - Redirect

meet a man named "Randal Rathbun"?

A. Yes, sir.

Q. And about when did he arrive did you observe?

A. 8:00. I don't know. I'm sorry.

Q. Do you remember what his title was?

A. U.S. Attorney.

Q. And did you observe any other individuals at that time?

Q. And did you ever see him go in and out of that basement area?

A. No, sir, I didn't.

Q. Now, when Mr. Nichols first came in, did you ask him for identification?

A. Yes, sir.

Q. What did he give you by way of identification, if anything?

A. His driver's license.

Q. Did you keep it, or did you give it back to him?

A. Sir, I don't -- I don't remember giving it back to him.

The only thing I can remember is that in the positions we were, I was setting at a desk, he was setting at this same desk in the corner, and the only thing I know is I laid it down on the corner. I can't tell you whether I gave it back or not.

Q. Do you remember him pulling it out of his wallet and giving it to you?

A. Yes, sir.

Q. You were asked about the behavior of FBI agents towards Mr. Nichols. How many minutes did you spend in the basement

Dale Kuhn - Redirect

watching the FBI's interaction with Mr. Nichols?

A. 4 or 5 minutes, maybe -- 2 or 3, somewhere in that area.

Q. During the time that you were in the basement, did you hear them ask him any questions?

A. No.

Q. And did you hear him say anything to them?

A. No.

Q. So did you ever hear -- I'm sorry. Go ahead.

A. He was -- he was asked what kind of pizza he wanted, and we told him -- he told us what kind of pizza.

Q. Did you ask him what kind of pizza?

A. No, but I think I was standing down the stairway where I could hear the response back from him.

Q. So the only conversation you heard was a conversation about dinner; correct?

A. Yes, sir.

Q. You didn't hear any other question?

A. No, sir.

Q. All right. And you said that you had known a number of things about the investigation. Had you received that information from television and radio about the arrest of Timothy McVeigh and the events that you described on cross-examination?

A. I'm not sure I knew about McVeigh. I don't think that's what I've said. We were aware of a bombing in Oklahoma City.

Dale Kuhn - Redirect

We were aware of Junction City being involved. And I -- at that particular time at 3:00 in the afternoon, I don't believe I knew much more than that.

Q. Did there -- did you know that any warrants had been issued?

100000.

A. No, sir, I don't (sic).

Q. Did you come to know at any time during the evening that any warrants had been issued?

MR. MACKEY: Objection. Calls for hearsay.

THE COURT: Sustained.

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

THE COURT: Do you have some follow-up?

MR. MACKEY: No, sir.

THE COURT: I take it he's now excused.

MR. TIGAR: He may be excused, your Honor. Yes.

THE COURT: Agreed?

All right. You may step down. You're excused.

MR. TIGAR: If I may have a moment to confer with opposing counsel.

THE COURT: Yes.

MR. TIGAR: With the consent of opposing counsel, we'd like to publish a stipulation we've reached.

THE COURT: Very well.

MR. TIGAR: "On April 21, 1995, shortly before 4:25 p.m. Central Time, Chief United States District Judge David Russell issued a warrant for the arrest of Terry Lynn Nichols as a material witness in connection with the Oklahoma City bombing investigation. The warrant was issued in Oklahoma City based on an affidavit signed by FBI Special Agent Henry Gibbons. FBI Supervisory Special Agent Chornyak, who was overseeing the investigation in Kansas City, learned at 4:25 p.m. that the warrant was signed; and at 4:28 p.m., he called FBI Special Agent Price in Herington to tell him that the warrant had been issued.

"Agent Chornyak received his first facsimile copy of the warrant from Oklahoma City at 4:45 p.m., and he sent a facsimile copy to Agent Price in Herington shortly after 5 p.m."

THE COURT: Those facts are agreed?

MR. MACKEY: They are, your Honor.

THE COURT: All right. Thank you.

We're going to recess a bit early today, members of the jury, not all that early, but early. I'm sure you understand that, as I have said several times before, we don't have witnesses just lined up out here in the hall. Some of these people have to make travel arrangements, as you know. We have most of our witnesses coming here from out of town, and they come in with different means of transportation, some of which are by the airlines; and despite somewhat -- what some claim, there are times when airlines' schedules are affected by the weather.

And so what we're going to do is recess early because our next witnesses are not here and ready to proceed, and that's nobody's fault. You shouldn't think that it is a matter of faulty scheduling.

And of course, we are also -- I've been conferring with counsel all along as to our progress, and we are running ahead of schedule. And I'll be able to tell you tomorrow, I think, just exactly what our schedule is going to be so that we

won't be keeping you in uncertainty. I think that by the time that we're ready to recess tomorrow I'll be able to tell you what to expect.

Also, it is probably of benefit to you to go a little earlier today. It has been snowing. I'm told it isn't icy out there yet, but it could get that way as the temperature falls; so we, of course, want you to have safe trips to your respective residences.

So we have more to go. You will hear more, not only with respect to additional witnesses and their testimony and additional exhibits, but of course as I have told you repeatedly, there are other parts of the trial besides the taking of the evidence, being the arguments and the instructions.

So until such time as I tell you, "Now is the time to

deliberate in the case," you have to follow these cautions and keep open minds. And I know that it's human nature when you hear that we're getting closer to wonder, "Well, what do I make of all of this?" Please don't do that. It would be a violation of your oath actually to do that, because you are obligated under the law to not begin deliberations until you've heard all of the evidence. The arguments and the instruction and those things are all vital and integral part or parts of the trial.

So I'm sure you will cooperate with us in that regard, keeping open minds, avoiding discussion of the case with other jurors and with all other persons and being especially careful, as I'm sure you have been, of anything in any newspapers, magazines, radio, television, or publications of any kind, to stay away from anything that might relate to the issues to be decided.

You're excused now till 8:45 tomorrow morning.

(Jury out at 4:24 p.m.)

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

(Recess at 4:25 p.m.)

* * * * *

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REPORTERS' CERTIFICATE

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated at Denver, Colorado, this 9th day of December, 1997.

Paul Zuckerman

Bonnie Carpenter

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