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PROCEEDINGS OF NOVEMBER 13, 2006

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THE COURT: We're having a hearing at this time, a
5 detention hearing in United States versus Hollis Wayne Fincher.
6 David Dunagin is here representing Mr. Fincher, and Wendy
7 Johnson is here representing the United States. Would the
8 United States announce its witness or witnesses, please?

9

MS. JOHNSON: Yes, Agent Wade Vittitow.

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THE COURT: If you'll be sworn at this time,
11 Mr. Vittitow... (Witness sworn.) Proceed.

12

WADE VITTITOW, DULY SWORN, DIRECT EXAMINATION

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BY MS. JOHNSON:

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Q Please state your name and how you're employed.

15

A Wade Vittitow, V as in Victor, I T T I T O W. I'm a
16 Special Agent with the Bureau of Alcohol, Tobacco and Firearms
17 and Explosives.

18

Q For how long have you been with ATF?

19

A Since 1998.

20

Q Are you familiar with the case that we're here today on
21 involving Hollis Wayne Fincher?

22

A I am.

23

Q And can you tell the Court briefly how you became involved
24 in this investigation?

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A ATF and other law enforcement agencies were familiar with

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Mr. Fincher and an organization calling itself the Militia of

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Washington County for quite a few years. In the spring of this

3 year one of the local newspapers in Northwest Arkansas ran an
4 article regarding Mr. Fincher and its militia members. In that
5 article was kind of the first time I had had a third party
6 confirmation or testimony, for that matter, that this group
7 possessed unregistered machine guns.

8 Q As a result of that, did you begin an open investigation on
9 this group?

10 A We did. We started looking closer at the group, liasoning
11 with other law enforcement partners in trying to find out more
12 information about the group and these claims made in the paper,
13 and it just so happened at about that point in time or a period
14 there later we were able to develop a confidential informant who
15 was able to interact with the group and begin providing us some
16 intelligence.

17 Q And as a result of that intelligence, what did you learn?

18 A Essentially that members of this group were in possession
19 of homemade and unregistered machine guns and that Mr. Fincher
20 was one of the responsible parties for assembling these firearms
21 and providing them to the militia members.

22 Q This confidential informant, did he attend regular
23 meetings?

24 A He did. The group holds meetings that they advertised as
25 being open to the public every Friday evening. He began

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1 attending those meetings on a regular basis and did so
2 throughout the summer.

3 Q Based on what this informant both witnessed and saw and
4 heard from this militia group, were you able to obtain search
5 warrants for several individuals and locations involving this

6 group?

7 A I was.

8 Q And when did that take place?

9 A We obtained those warrants on November 2nd. We executed
10 those warrants on November 8th, Wednesday of last week.

11 Q Now, with regard to today's hearing with respect to Hollis
12 Wayne Fincher, was there a search warrant issued on his
13 residence?

14 A There was.

15 Q And were you a part of that search warrant team?

16 A I was.

17 Q In fact, you were the affiant on all the search warrants?

18 A That's correct.

19 Q Can you tell the Court briefly what the results was as a
20 result of this search warrant?

21 A We seized from Mr. Fincher's home approximately 16 National
22 Firearms Act firearms and that would include machine guns, a
23 sawed-off shotgun, a short-barrelled rifle, and a suspected
24 silencer.

25 Q And he is in court today on one count of possession of such
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1 weapons?

2 A He has been -- we complained him for possessing a Browning
3 Model 1919 .308 caliber machine gun.

4 Q And were these weapons located throughout the residence?

5 A There were several located in what I refer to as the master
6 bedroom. The majority were located in a gun cabinet there in
7 the home.

8 Q Now, I want to turn specifically to Mr. Fincher, and, first

9 off, are you aware of any criminal history on the part of
10 Mr. Fincher?

11 A I am not.

12 Q And are you aware of does he have family ties to the
13 community.

14 A I'm certain that he does. I believe Mr. Fincher has
15 probably lived in that area his entire life. I don't have a lot
16 of specific information regarding his family, but I know that
17 through our investigation we just observed a lot of Finchers in
18 the very close proximity to his home.

19 Q And what about his -- any employment history?

20 A I know -- I believe he's retired, had been employed as a
21 machinist. I don't know how long ago that was.

22 Q I want to address and ask you, Agent, do you feel
23 Mr. Fincher is a potential flight risk?

24 A I do.

25 Q And can you explain your reasonings to the Court?

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1 A If you ask me do I think he will necessarily flee to
2 Canada, I don't believe that's necessarily the case. But in our
3 investigation, Mr. Fincher lives in a fairly remote location.
4 It's approximately one mile off of the road. It's difficult to
5 access. It's just difficult to surveil. There are statements
6 Mr. Fincher has made indicating that, well, for one, he doesn't
7 believe in the validity of any of these proceedings. He doesn't
8 believe that the federal government has any jurisdiction over
9 him or his property or the militia or their property or the
10 enforcement of these firearms laws.

11 Q Let me stop you right there, because I believe I'm going to

12 be asking about several statements. Were these statements made
13 to you in an interview?

14 A No. These were, these are statements made in an undercover
15 meeting with our informant that were recorded and then reviewed
16 by myself following the meeting.

17 Q So these were recorded conversations that the confidential
18 informant was a part of at the militia meeting?

19 A Correct.

20 Q And you have reviewed all of them?

21 A Yes, I have.

22 Q And are you familiar with --

23 MR. DUNAGIN: Your Honor, I have a problem with trying
24 to use what apparently are free speech issues under the First
25 Amendment as justification for keeping somebody incarcerated.

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1 THE COURT: Your objection is noted and I'm going to
2 overrule that, sir. Thank you.

3 Q Now, with regard to these meetings, did you ever find
4 evidence that Mr. Fincher has any other contacts with other
5 militia groups in other parts of the state and country?

6 A Yes. We know that he is associated with individuals
7 claiming to be members of the Militia of Madison County. We
8 know that he's interacted and met with individuals stating that
9 they desire to start a militia in Carroll County. We know that
10 he has spoken at least on the phone to an individual in Montana
11 who is the subject of an ATF/FBI investigation, so we know that
12 he's interacted with other groups that have a similar belief
13 system, for lack of a better word.

14 Q Does Mr. Fincher or at least the militia group that he's

15 been party to have a website?

16 A They do.

17 Q And is there an article on that web about a rural-type
18 setting?

19 A Yeah. A lot of my position on this comes from little
20 pieces that we've known through our investigation. Now, the
21 website they maintained, they post different articles that
22 they -- I don't know where they necessarily obtained these
23 articles, but they will post them on their website. I can only,
24 you know, assume that it's because they found it of interest or
25 they believe people that would visit their website would find it
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1 of interest, and one of the articles was referring to a fugitive
2 in upstate New York who had shot and killed a trooper and then
3 spent a great deal of time alluding authorities, and kind of the
4 caption of that was is that rural locations offer excellent
5 hiding spots.

6 Q Now, let's move on with the next question, Agent. Do you
7 feel like there is some concern that Mr. Fincher would be in a
8 position to obstruct justice or intimidate various witnesses in
9 this case, if he were to be released on bond?

10 A I do. Again, he doesn't believe, based on his words, that
11 any of this is legitimate. Of course, I've revealed the fact
12 that we've had an informant which I would not have done so if I
13 didn't feel strongly at this juncture if some of these things
14 weren't a real concern, but evidence of kind of his belief
15 system, he authored a document called The Silver Bullet. And in
16 that is the statement, "therefore, any federal judge, federal
17 prosecutor or federal agents involved in an attempt to disarm

18 the Militia of Washington County, Arkansas, by the issuing of
19 warrants or the execution of any orders for the aforesaid
20 purpose shall be guilty of conspiracy to levy war against the
21 people, the flag, and the State of Arkansas, and shall be
22 subject to arrest on a charge of treason against same."
23 Mr. Fincher has spoken numerous times about his powers to make
24 arrest including that of U.S. Congressmen, including that of
25 United States judges. He's viewed this as a levy, a levy of war
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1 in his words, and my concern is that there are no rules that
2 could be placed on him that he would think are valid rules or
3 that he would have to oblige.

4 Q Again, you've quoted from The Silver Bullet?

5 A Uh-huh.

6 Q Is that authored by Mr. Fincher?

7 A It is.

8 Q Now --

9 THE COURT: And this is a -- is this a -- what is The
10 Silver Bullet?

11 A In essence The Silver Bullet is Mr. Fincher's rebuttal to
12 the National Firearms Act of 1934 which is the original basis
13 for the regulation of machine guns.

14 Q And do you have a copy of the entire Silver Bullet
15 document?

16 A I do.

17 MS. JOHNSON: We'll mark that, Your Honor.

18 MR. DUNAGIN: No objection.

19 THE COURT: All right. Thank you, sir. That will be
20 received as No. 1.

21 Q Thank you, Your Honor. Now, other factors at this
22 detention hearing I want to briefly ask you about, Agent, the
23 circumstances of this offense charged, you've already gone into
24 basically what has happened with the investigation and the
25 search warrants. The weight of the evidence: Again, how many
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1 guns were at the residence of Mr. Fincher?

2 A I believe there was approximately 16 National Firearms Act
3 weapons, probably 13 machine guns, a sawed-off shotgun, a short-
4 barreled rifle and a firearm with a suspected silencer attached.

5 Q I want to ask, Agent, do you feel like Mr. Fincher, if he
6 were released on bond, would pose a danger to the community?

7 A I do.

8 Q And can you briefly explain to the Court why you feel that
9 way?

10 A From my very initial introduction of the informant to this
11 group, you know, we listened -- in reviewing those tapes, we
12 heard a lot of anti-government speech or rhetoric which is of no
13 interest to us whatsoever, but one of the first things that kind
14 of concerned me in a group like this is, you know, what their
15 attitudes are, and in the first meeting there's an individual
16 there by the name of Anthony Keith, and in talking about the
17 court systems, Mr. Keith put forward not just once but twice
18 that his answer to the frustration of the court system is for
19 judges to be woken up at two or three o'clock in the morning
20 with pistols shoved in their mouth and their children tied up in
21 front of them. Now, Mr. Fincher is not responsible for that
22 statement, but his response to that statement being uttered in a
23 meeting presided over by him was not to caution the gentleman

24 that that's not the kind of speech they want to engage in;
25 those aren't the type of activities that they want to support or
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1 be associated with. His response was "be careful what you're
2 saying because this building may be bugged." No other comment
3 was made on what I think is a pretty horrendous statement.

4 Q Did he make, Mr. Fincher, make any direct comments about
5 his willingness to come into court?

6 A He has. In one meeting he stated that he would rather be
7 dragged kicking and screaming into court as opposed to walking
8 in willingly. Again, I understand that freedom of speech and
9 you try to be very careful in what we documented and were
10 focused on gathering the evidence of federal firearms
11 violations, but to be a part of the militia was their discussion
12 about what they refer to as call-ups and that would be an event
13 that the militia would act as a militia and rally and respond
14 to. Now, on the website and some of the other documents there
15 is a lot of benevolent claims or the type thing that a militia
16 would become involved in and respond to, but throughout the
17 summer, I mean, without fail, consistently what was held up is
18 the type of events that the militia would have to respond to
19 would be one term frequently used was "a Waco-type situation"
20 which is in my opinion the lawful attempt to execute a federal
21 search warrant by federal agents. And then at times it was more
22 specific than that in terms of the militia would have to respond
23 to an attempt to serve a search warrant on the militia
24 headquarters building or inferences made to one of the member's
25 homes. In that context, Mr. Fincher discussed what he foresaw

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1 the militia's actions being, and on numerous occasions what he
2 described was the militia surrounding the federal agents, and
3 sometime that was specifically referred to as ATF agents
4 encircling them or surrounding them, utilizing these Browning
5 machine guns and militia members that had been trained and armed
6 with 50 caliber rifles manufactured by Mr. Fincher give verbal
7 warning that their warrant was not valid. If that failed to
8 make the federal authorities leave, fire a warning shot across
9 their bow, and if that failed to make the federal agents leave,
10 the third would be to open fire until they wave the white flag,
11 and in his general discussions, one of the -- one of the things
12 he put forth was the need to have the hospital declared a
13 no-fire zone so that the "enemy," and he frequently used to
14 refer -- used the term "enemy," but he would often interchange
15 "enemy" with "agents," that the enemy could take their wounded
16 to the hospital, and then, of course, the militia could as well.

17 Q Now, that being said, the search warrants have already been
18 issued. Do you feel that that same concern still exists?

19 A I do. Now, we worked very hard in coming up with a plan
20 and a means of executing these warrants to make them as safe as
21 at all possible in these circumstances and we were effective in
22 doing that. Mr. Fincher was unaware that we were coming. The
23 other militia members that we executed search warrants on were
24 unaware of our activities, and we were fortunate and lucky in
25 that Mr. Fincher was taken into custody without being harmed.

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1 None of our personnel were being harmed. My fear is is that if
2 released on bond, at the point in time when he no longer wants
3 to participate in what he thinks are unlawful proceedings,

4 that's going to have to be resolved, and it isn't going to be
5 the same circumstances the next time. Mr. Fincher will be on
6 guard. He certainly -- we only took the firearms prohibited by
7 law. He still has plenty of guns in his possession, including
8 that 50 caliber rifle and, again, going back to the original, he
9 lives in a remote location. It's difficult to approach. It's
10 difficult to surveil, and we would be left with agents on the
11 ground having to approach on foot Mr. Fincher's residence, going
12 up against firearms that there really was no protection against.

13 Q When you say "no protection against," are you referring to
14 the 50 caliber firearms?

15 A I am.

16 Q And there was a 50 caliber weapon there on the premises?

17 A Yes.

18 Q And it remains there?

19 A It does.

20 MS. JOHNSON: Your Honor, that's all the questions I
21 have at this time. I'll pass the witness.

22 THE COURT: Thank you.

23 CROSS EXAMINATION

24 BY MR. DUNAGIN:

25 Q Agent Vittitow, you recognize the members of Mr. Fincher's
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1 family are here in the courtroom?

2 A I recognized his wife.

3 Q When you talk about a newspaper article, I want you to
4 label, ask that this be labeled No. 1, Defendant's No. 1. I'd
5 like you to take a look at that. I publish that. I downloaded
6 that from the Morning News in Northwest Arkansas. It showed it

7 was published March 18th, 2006. Is this the article you were
8 talking about?

9 A I believe it is.

10 Q Okay. Going to page three of that document, do you see
11 where it says that Chief Deputy J. Cantrell of Washington County
12 Sheriff's Office said he and the current Sheriff, Kenny Helder,
13 were aware of this militia and the weapons that it owned, and
14 that they had met with these people before?

15 A I'm aware that that occurred or --

16 Q Are you aware that that occurred?

17 A I'm aware that Sheriff Helder went out there and met with
18 the militia members, I believe, I believe at the militia's
19 request. Sheriff Helder takes exception with the
20 characterization of this visit in this, in this article.

21 Q Okay.

22 A And --

23 Q It doesn't say that, though, does it?

24 A Well, you just asked me if I was --

25 MR. DUNAGIN: Your Honor, I want to move to introduce
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1 this Exhibit.

2 THE COURT: Any objection?

3 MS. JOHNSON: I have no objection to the offering of
4 the Exhibit, Your Honor.

5 THE COURT: Received as Defense Exhibit No. 1.

6 BY MR. DUNAGIN:

7 Q But it would be safe to say then that there are law
8 enforcement agencies in Northwest Arkansas that knew that these
9 people were out there?

10 A Yes.

11 Q Okay. And apparently may have known that they had fully
12 automatic weapons?

13 A Yes, they may have.

14 Q Now, I believe Miss Johnson asked you -- there's been
15 nothing that I've seen -- have you seen anything to show that
16 actually engaged in any kind of criminal activity other than
17 what you've alleged such as attempting to overthrow the U.S.
18 Government, committing robberies, committing violent acts,
19 things like that?

20 A I'm not aware of crimes such as that being committed.

21 Q Did you run an NCIC check on Mr. Fincher?

22 A I did.

23 Q And did you find any kind of a weapon?

24 A No. I do not believe he has any criminal history.

25 Q Okay. Are you aware that they were also on TV within the
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1 last year or so?

2 A I'm not aware of that.

3 Q Okay. You've looked at their website?

4 A I have.

5 Q Okay. And it references the Constitution of the United
6 States, correct?

7 A Correct.

8 Q And it references the Arkansas Constitution?

9 A Correct.

10 Q I believe it talks about the Dick, D I C K, Act of 1903.
11 Do you remember seeing that at all?

12 A No, nor am I familiar with the Dick Act so --

13 MR. DUNAGIN: Well, Your Honor, I would offer
14 additional research. That is apparently the law that's set the
15 current National Guard into effect. Okay.

16 THE COURT: What law is that?

17 MR. DUNAGIN: It is called the Dick Act of 1903. It
18 was named after Senator Dick.

19 THE COURT: And what is the relevance of that here?

20 MR. DUNAGIN: It outlines that the standing army of
21 the military of this country is comprised of three parts; one,
22 the standing army.

23 THE COURT: Uh-huh.

24 MR. DUNAGIN: Two, the state militias which were
25 organized which became the National Guard under that act, and,
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1 three, the unorganized militia.

2 THE COURT: That's a 1983?

3 MR. DUNAGIN: 1903.

4 THE COURT: Oh, that sounds right, 1903. Okay.

5 MR. DUNAGIN: And I will tell you I can't find where
6 it's ever been repealed.

7 THE COURT: Okay.

8 MR. DUNAGIN: And it was discussed in a U.S. Supreme
9 Court case in the last 10 years or so, and at the appropriate
10 time I'm sure we will be arguing over that.

11 THE COURT: Okay. Let's continue.

12 BY MR. DUNAGIN:

13 Q Going back, Agent Vittitow, then, they have not hidden
14 their beliefs, have they?

15 A No, they have not.

16 Q Okay. They are out there exercising their First Amendment
17 rights saying this is what we believe?

18 A Correct.

19 Q Now, you talked about the Waco event. Isn't it safe to say
20 there are people out there who don't believe that Waco was
21 handled very well?

22 A I'm certain of that.

23 Q Okay. They are no longer talking about the -- I believe
24 it's Koresh --

25 A Uh-huh.

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1 Q -- where a number of children were -- died in the fire?

2 A Correct.

3 Q Now, have you seen the report that the probation officer
4 prepared?

5 A I have not.

6 Q It makes mention in there that their website has a listing
7 of a number of sites on their website such as the M16 A1, A2,
8 A3, you know, the pistols and things like that. Did you look at
9 those?

10 A I know there was a lot of links on the website and there
11 are links to like training, you know, different training
12 manuals.

13 Q That's where I'm going. Weren't those basically U.S.
14 military publications that are available anywhere?

15 A I do not know.

16 Q Okay. You've gone to gun shows, right?

17 A I have.

18 Q You've seen that kind of stuff for sale, right?

19 A Correct.

20 Q Okay. The website details, does it not, why they believe
21 they have a constitutional right to have these weapons? I'm not
22 getting into whether it's right or not, but it does set out what
23 their belief is?

24 A It does.

25 Q Okay. You said that in all these meetings every Friday and
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1 they were open to the public?

2 A Correct.

3 Q And you are saying you feel he's a flight risk because of
4 the fact that he lives out in the boondocks and you all would
5 not be in a position to usually surveil or approach the
6 property?

7 A I believe he's a flight risk because throughout an entire
8 summer of him presiding over these meetings, he's continually
9 expressed his belief that the federal government is a corrupt
10 federal government; that it is not even a true government; it is
11 some type of crime syndicate took over our government following
12 this Silver War, but it's nothing but a counterfeiting scheme
13 and it doesn't hold anything that our federal government says to
14 having authority over him.

15 Q And those are glowing First Amendment protected speech?

16 A Absolutely.

17 Q Okay. And aren't you aware that we had a similar trial
18 here in '88, a seditious conspiracy trial over the same five
19 arguments?

20 MS. JOHNSON: Objection, Your Honor, irrelevant to
21 whether he is a flight risk in this case to the '88 seditious

22 trial.

23 THE COURT: Let's move on to another area, please.

24 BY MR. DUNAGIN:

25 Q You talked about The Silver Bullet and I believe you label
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1 it as being a rebuttal to the National Firearms Act of 1934.

2 A I believe that's how he characterizes it.

3 Q All right. I haven't read it. Have you read it?

4 A Yes.

5 Q Does he give cites to case law and constitutions why he
6 feels that the National Firearms Act is wrong?

7 A For argument sake, I'm going to say that he does. I could
8 not follow all of the logic of The Silver Bullet.

9 Q Okay. Isn't it true there are legal scholars, there are
10 constitutional scholars, and I'm not going to claim to be one --

11 THE COURT: Excuse me. Do you have that Silver Bullet
12 there? I'd like to see that. Thank you. I'm sorry.

13 MR. DUNAGIN: Yes, ma'am.

14 Q That there are discussions of -- by constitutional scholars
15 about the validity of the National Firearms Act of 1934, that
16 there are discussions about it?

17 A I'm not privy to any of them. I don't know the specifics
18 of them. I know that it's in that U.S. Code book and as of
19 today possession of unregistered machine guns is against the
20 law.

21 Q Okay. You talk about you saw things on the website that
22 you are saying are reasons that you believe he should be held.
23 Who is the webmaster?

24 A Richard Craig Culver.

25 Q So how do you know that -- how can you say they absolutely
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1 are Mr. Fincher's beliefs? Just because they are on a website?

2 A No. And then you'd have to specifically which belief
3 you're referring to, I mean, if it's, if we're --

4 Q If it's advocated in here, that's why --

5 A Well, if referring to The Silver Bullet document which is
6 on the website --

7 Q Sure.

8 A -- in our investigation, we gathered evidence that
9 Mr. Fincher claims to be the author of that document.

10 Q I'm not going to dispute that.

11 A Now, in terms of -- the one other -- the ring to the
12 article concerning the fugitive in upstate New York, I do not
13 know what Mr. Fincher's personal belief is to that article being
14 posted on the website without --

15 Q Was that seriously taken from another website like Gun Med
16 or something like that?

17 A Yeah, like I said, I believe something that they had seen
18 somewhere else and then linked to their website.

19 Q All right.

20 A But -- and I want to make this clear. This case isn't
21 about a militia and it's not about whether I believe it's
22 legitimate or illegitimate to have a militia. And it's about
23 the possession of illegal --

24 Q It's about the firearms that we've covered?

25 A That's right. Now --

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1 Q Would it not be safe to say, sir, and I'll not try to put

2 words in your mouth too much anyway, they view it differently?

3 A Without a doubt.

4 Q And would it be safe to say they feel they're exercising a
5 constitutional right? I'm not saying that they are right, but
6 would you say that they believe they are?

7 A Yes.

8 THE COURT: And I want to get into this. When does a
9 constitutional right give way? In other words, everyone has a
10 right to have an opinion, but in your opinion why does this
11 group go over -- why has this particular defendant, Mr. Fincher,
12 aside from his expressing his First Amendment rights, what has
13 he, what has he done that you believe makes him a general danger
14 just opposed to here's my opinion? Why is he a danger? I have
15 read this part, "Any federal judge, federal agent who issues a
16 warrant or who executes is guilty of conspiracy to levy war
17 against the people and is subject to arrest on a charge of
18 treason against same." I mean is that free speech or is that
19 overreaching, something beyond free speech?

20 A I believe that it is probably -- that it is free speech,
21 but I also believe that speech can be taken into consideration
22 when trying to evaluate how Mr. Fincher will respond to these
23 proceedings and whether he will respond in accordance to your
24 instructions. Now, any single statement on its own is probably
25 not that significant. And I would not have an issue -- I

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1 certainly don't believe that everybody should see things from
2 ATF's point of view. I certainly don't expect everybody to
3 agree with what everything that we do or like us for our -- for
4 whatever reason. What concerns me is a man that is

5 continuous -- continues and continues to fantasize or engage in
6 talk about essentially killing federal agents.

7 Q How do you know that wasn't just a way of trying to bring
8 members in?

9 A Well, the only people present at these meetings for the
10 most part, the only new member was -- you know, there were very
11 few new members. These are the same gentlemen that have been
12 together probably since its inception.

13 Q Okay. And so we are not talking very many individuals?

14 A No, we are not.

15 Q Okay. You commented about the fact that they have contacts
16 and links to other groups. Again, it meant theoretical
17 protected constitutional free speech.

18 A It is.

19 Q Do you have anything to show that those other groups are
20 actually criminal organizations?

21 A Well, we have evidence that Mr. Fincher has provided at
22 least some members of those groups with their firearms, with
23 their prohibited firearms.

24 Q You haven't charged them with that today?

25 A I have not.

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1 Q Okay.

2 THE COURT: Let me ask you this. I'm asking this. In
3 your opinion, is this Silver Bullet, is it just rhetoric and
4 fantasy, or do you believe that Mr. Fincher and the other
5 members of that intend to do as they say, that they do intend to
6 arrest you for treason or they do intend to hurt or kill federal
7 agents? In other words, they said it and generally we say, "ah,

8 if you say it, you must mean it." I mean I'm just asking for
9 your thoughts on this.

10 MR. DUNAGIN: Your Honor, I would ask the basis to his
11 thoughts if he answers yes.

12 THE COURT: Okay. Thank you.

13 A Your Honor, we struggle with the question just as you do.

14 THE COURT: Right.

15 A And I'm merely trying to give my best opinion or express as
16 best I can my concerns for the law enforcement community in
17 general and for Mr. Fincher as well. If he has a valid argument
18 in The Silver Bullet, I want him to make it. What I don't want
19 is these proceedings to continue. If they don't proceed in a
20 way that he's happy with or likes and decides to take some other
21 form of action and we try to figure out what that action might
22 be, I can only -- I can't -- I'm not inside Mr. Fincher's head.
23 I can only rely on the statements that he's made. Now, more
24 specific to your question, I believe that -- is Mr. Fincher
25 capable of this violence and would he engage in this violence?

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1 I believe he believes this and would, but from a practical
2 standpoint realizes they don't have the number of participants
3 to be successful in it, if that answers your question.

4 THE COURT: Continue --

5 Q Thank you.

6 THE COURT: -- follow up. Can we have one there for
7 him? If not, let's --

8 Q Okay.

9 THE COURT: All right. Thank you.

10 Q Agent Vittitow, their website says that they have sent

11 letters to the governor and other law enforcement agencies, I
12 believe including BATF in the past. Do you know whether this is
13 true or not --

14 A That is true.

15 Q -- about what their belief was and what they did?

16 A Yes, and I've read several of those, several of those
17 documents, and, again, they are a little difficult to follow at
18 times as well and there's a lot of --

19 Q I've not seen these. When were these --

20 A I believe 2002.

21 Q So would it be safe to say then that these things that you
22 are concerned about today have been expressed as far back as
23 2002 and maybe even earlier?

24 A Well, in terms of their position as to the possession of
25 machine guns by militia. Yes, that's true -- and that probably
0026

1 is addressed in some of those 2002 mailings, but in terms of the
2 language I've testified to, no, we did not become aware of it
3 until this summer.

4 Q Excuse me a minute, please.

5 THE COURT: Yes.

6 Q Agent Vittitow, you talk about in your affidavit that
7 there's a model 1919 Browning machine gun, which I'm assuming is
8 a standard 30 caliber machine gun developed during World War I?

9 A Yes.

10 Q It's for sale all over the internet, correct?

11 A Correct.

12 Q And they are sold without, I believe, generally, the right
13 side plate.

14 A That's correct.

15 Q There were a bunch of machine guns that were made and
16 legally registered back in the eighties and nineties, were
17 there?

18 A Well, in 1986 essentially there was a law passed that
19 beyond that -- the date, the enactment of that law made machine
20 guns to be registered, manufactured and sold to the public and
21 essentially registered with the government. And there's an
22 amnesty period associated with that, so I'm --

23 THE COURT: Stop here just a minute. Let's take a
24 break and let you kind of work through this.

25 (Off the record at this time.)

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1 MR. DUNAGIN: Thank you, Your Honor.

2 THE COURT: Thank you.

3 MR. DUNAGIN: If I may resume?

4 THE COURT: You may.

5 Q Agent Vittitow, I believe you we're talking about the M1919
6 Browning. That would be a crude sort of machine gun, correct,
7 generally these were two or three manufacturers (undecipherable)
8 to the military?

9 A I don't know.

10 Q Okay. I believe I had asked you that there were parts kits
11 for all sorts of different weapons available thru magazines like
12 Shotgun News, gun parts for sale on the internet, correct?

13 A That's correct.

14 Q Okay. And you had talked about prior to 1986 apparently
15 there was a mechanism where people could build and register
16 machine guns?

17 A No. Prior to 1986 there were machine guns being built and
18 registered by the manufacturer and then sold to the public.

19 Q Okay.

20 A And I believe, I believe the Gun Control Act of 1968
21 clarified some earlier questions such as that and basically said
22 that that has to occur by the manufacturer, not by an
23 individual.

24 Q But a manufacturer could be an individual?

25 A Yes; that's right.

0028

1 Q That's the thing, specifically an individual by the name of
2 John Norrel out of Little Rock? Are you familiar with him?

3 A No.

4 Q Okay. If I were to tell you that he built a number of
5 machine guns and was a class two manufacturer, you wouldn't
6 dispute that?

7 A Huh-uh.

8 Q All right. So when you are saying a manufacturer, you mean
9 somebody that has a class two --

10 A A person licensed to manufacture firearms.

11 Q Well, that could be somebody even operating out of their
12 house, if they have an appropriate machine shop?

13 A I would assume so.

14 Q Okay. Did these manufacturers sell these side plates? Did
15 some of them manufacture these right side plates for these light
16 Browning machine guns and sell these on the open market?

17 A I do not know the answer to that.

18 Q Okay. Can you tell me when this particular weapon was
19 manufactured?

20 A I cannot.

21 Q Okay.

22 A But I can tell you that Mr. Fincher does not have any
23 National Firearms Act firearms registered to him.

24 Q Okay. And as you and I mentioned, you're --

25 THE COURT: Say that again.

0029

1 A We conducted a check of numerous individuals -- for a
2 person to legally own one of these firearms, that firearm has to
3 be registered in the National Firearms --

4 THE COURT: On what firearm?

5 A On a machine gun.

6 THE COURT: Right.

7 A It would have to be registered to --

8 THE COURT: You couldn't own one legally at all?

9 MR. DUNAGIN: Oh, yes, ma'am.

10 THE COURT: If it's registered?

11 A Correct.

12 THE COURT: Okay. I've got you. All right. Thank
13 you. Go ahead.

14 Q Where I think we were going is you checked the registry and
15 you don't find where he has anything registered?

16 A Correct.

17 Q Okay. And as I mentioned, there seems to be a dispute
18 among some groups whether you can and you cannot register.
19 You're just taking the position that the law says you have to
20 register; if you don't, you're in violation of law. Would that
21 be a fair statement?

22 A My position is that at this current date and time to

23 legally purchase a machine gun, you must purchase a machine gun
24 that has already been registered in that record, and that there
25 is no means of manufacturing a -- let's use the term home made
0030

1 machine gun and making that gun legal.

2 THE COURT: All right. Now, tell me again what
3 changed in 1987?

4 A Well, in 1986, there was essentially a law passed that said
5 manufacturers or individuals from this date forward cannot
6 manufacture a machine gun and register it with the National
7 Transfer Record. So from 1986 on as an individual to go into a
8 gun store and purchase a machine gun or purchase one from a
9 individual like Mr. Dunagin, it has to be a machine gun that was
10 registered legally prior to 1986.

11 THE COURT: I understand.

12 A And then that gun is -- the chain hasn't been broken -- can
13 legally be transferred to me.

14 Q Upon paying the proper taxes?

15 A Correct.

16 Q Which are not cheap, correct?

17 A I think they are \$200.

18 Q But, sir, is it safe to say that there is some discussion
19 about whether or not. I know what you're saying. You believe
20 it is. But I've seen on some of the gun boards on the Internet
21 and things where some people still believe that an individual
22 can make and then can go in and try to register. Are you aware
23 of that argument?

24 MS. JOHNSON: Your Honor, I'm going to object at this
25 point. The line of questioning as to the validity of the act, I

0031

1 would just ask that it be --

2 THE COURT: I'm going to go ahead and allow this
3 question. Thank you. Overruled.

4 A Repeat your question one more time for me.

5 Q Are you aware that apparently there are discussions about
6 whether or not a person still can manufacture and register a
7 weapon only for himself; that he can't sell it; he can't give it
8 away; he can't even leave it to his kids?

9 THE COURT: Are you aware of any argument that someone
10 today, despite this act, that there's some sort of legal
11 argument that it can be done if you keep it yourself? Have you
12 ever heard of that?

13 A No. I will concede I'm sure there are plenty of people
14 that are not happy that you can't do so, but I'm not aware of
15 any ongoing argument --

16 THE COURT: Or legal authority?

17 A -- legal authority that says you can do it, because you
18 can't. And I don't think it's a matter of case-by-case and
19 making your argument to ATF and ATF saying, "well, okay, yes,
20 this time, but no the next time." Like I say, I'm certain that
21 there are plenty of people that are not happy about the fact
22 that they can't do so, but there is no vehicle to do that.

23 Q Okay. Going back, you said Mr. Fincher obviously has ties
24 to the community. You acknowledged his wife is here. He owns
25 this 120 acres of land up there. You said there are other

0032

1 Finchers in the area. Okay? Is that correct?

2 A That's correct.

3 Q No criminal history? Law enforcement was aware of him for
4 a number of years? Correct? They knew he was out there, not
5 necessarily knew that he had machine guns?

6 A Yes; that is correct.

7 Q Okay. And was aware of his philosophy. And I believe you
8 said even BATF has had these letters probably since 2002, is
9 that correct?

10 A That's correct.

11 Q Now, I'm assuming, they didn't go to you?

12 A No.

13 Q Okay. When did you first become aware of them?

14 A I came to Fort Smith in the Summer of 2002. And as the
15 agent here was leaving some month after that I probably became
16 to some degree familiar with the militia in Washington County.

17 Q So they have been kind of on the radar screen?

18 A Correct.

19 Q Okay. And it sounds to me like your concern is that you
20 feel that because of his statements, that he won't come to court
21 and you're concerned because of the fact that he's out in the
22 boondocks and basically you feel individuals who might have to
23 go in there would be at risk because of the fact that it's a
24 place where you can't do surveillance and things like that.

25 What if he agreed to voluntarily transfer this 50 caliber rifle
0033

1 to somebody until he's done with court? Would that allay some
2 of your fears?

3 A No.

4 Q What can be done to allay your fears?

5 A To be detained.

6 Q Other than that?

7 A There are none.

8 MR. DUNAGIN: Okay. Just a moment please, Your Honor.

9 THE COURT: Yes.

10 MR. DUNAGIN: I have no further questions of this
11 agent at this time, Your Honor.

12 THE COURT: Thank you. You may step down, sir. Oh,
13 Excuse me. I'll bet you -- I apologize. You need to conduct
14 redirect and I'm sure you will.

15 MS. JOHNSON: Just a couple, Your Honor.

16 THE COURT: Absolutely, and I apologize for that.

17 MS. JOHNSON: Thank you, Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. JOHNSON:

20 Q Just briefly, Agent, with regard to the Defendant's Exhibit
21 1, the newspaper article.

22 A Uh-huh.

23 Q You began to speak and I think that maybe that you guys got
24 off on something else, but you had some knowledge of this with
25 respect to Sheriff Helder's take on the characterization. Could
0034

1 you please --

2 A Sheriff Helder does not like the characterization that was
3 made of his visit to the militia headquarters. Sheriff Helder
4 did consider these individuals a concern. One of the members of
5 the militia that has been a regular attendee at meetings came to
6 the Sheriff's Department and in essence told the Sheriff, "when
7 the shooting starts, I hope you are on the right side of
8 things." I think that's when the conversation came to a pretty

9 quick conclusion. So he was concerned about their propensity
10 for violence and what might bring about those violent acts.

11 Q And just to be clear, the speech, the statements that
12 you've attributed to Mr. Fincher, those statements were not
13 known back in 2002, were they?

14 A No. They have only become known since our investigation
15 late spring or early summer of this year.

16 Q And those -- would some of those statements result in these
17 warrants being issued, the information gained, pardon me, from
18 that monitoring?

19 A Correct.

20 Q I just want to be clear that that was not known prior to
21 this past year, this past summer?

22 A Correct.

23 MS. JOHNSON: That's all, Your Honor. Thank you.

24 RE CROSS EXAMINATION

25 BY MR. DUNAGIN:

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1 Q Sir, how do you know that those statements weren't made in
2 the past?

3 A I don't know and would assume that they probably have been
4 made in the past.

5 MR. DUNAGIN: That's all. Thank you, Your Honor.

6 THE COURT: You may step down. Do you have other
7 witnesses?

8 MS. JOHNSON: No, Your Honor. That's all for the
9 Government.

10 THE COURT: And, Mr. Dunagin, what is -- what we going
11 to do on your side?

12 MR. DUNAGIN: Your Honor, I'm not going to present any
13 evidence. I have the report by the probation officer.

14 THE COURT: Well, let me tell you where we are so that
15 you'll know.

16 MR. DUNAGIN: Sure.

17 THE COURT: I'm going to go through where we are right
18 now and if you want to respond in some way, you can. We have a
19 60-year-old man with no criminal history. He had regular
20 employment until a back injury. His wife has regular
21 employment. He's lived in Northwest Arkansas his entire life.
22 He has family ties in the area. So there's nothing about all of
23 these factors that would warrant him being detained. What we
24 have is here we have the fact that he had the unregistered
25 firearms and the fact that at least according to Agent Vittitow

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1 this individual does not recognize the authority of this court,
2 of this nation; that he believes that the agents should be
3 harmed, and that the Court should be arrested for what we've
4 done, so what we have is we have what appears, when you look at
5 him, a citizen without blemish as far as going through -- except
6 for and you can't say that, well, Your Honor, this is, you know,
7 he's doing free speech. I mean when you are saying, you know,
8 we are going to arrest the judges and they don't have authority,
9 I mean after a while, it's like, you know, are you for real or
10 are you just talking? If you're for real, you're scaring me and
11 you're going to come after us, or were you just talking, so I
12 mean I'm going tell you up front like I do all the time. I
13 mean, these are the concerns I want to talk about. I know we've
14 got someone over here without a past or anything, but we have

15 some things contained in this that cause me, just as they did
16 Agent Vittitow, it charges -- it causes me concern. So what I
17 want to know is what can this side say to me to say, Judge,
18 there's really no concern or, number two, here's what we could
19 do about your concerns to maybe help you out. So that's what
20 I'm interested in.

21 MR. DUNAGIN: All right. Your Honor, my client is
22 willing to surrender his weapons or allow somebody else to hold
23 them including a governmental agency at this point, because I
24 can understand the fear. Now, I will candidly admit. You know,
25 I don't know if he can get his hands on others or not. I will
0037

1 assume he can, not based on him personally, but just the
2 activities that the people in this office have -- we have dealt
3 with before.

4 THE COURT: Right.

5 MR. DUNAGIN: We've seen others who can easily go out
6 there and get their hands on it.

7 THE COURT: Right.

8 MR. DUNAGIN: All I can do is state that I don't see
9 that he is a flight risk. I don't see that he will harm you.
10 When you look at the website, they do talk about the U.S.
11 Constitution, and it appears that they want to have a
12 constitutional argument --

13 THE COURT: That's okay.

14 MR. DUNAGIN: -- which that is what we are for.

15 THE COURT: I'm worried about these other parts. It
16 goes beyond argument into putting hands on people. That's the
17 part that scares me. It's the part where we're going from talk

18 to action. And that's, as you know, the concern that we have.

19 MR. DUNAGIN: Yes, ma'am, but there is actually no
20 evidence that it is beyond talk. And if you want him to report
21 to the probation officer everyday, we are agreeable to do that
22 until we actually have some concrete proof that --

23 THE COURT: Right.

24 MR. DUNAGIN: -- it is beyond speech.

25 THE COURT: But that's -- now, let me tell you that

0038

1 part. You know, he heads-up this organization and they say that
2 if you do any, if you execute any warrants, then you're guilty
3 of the conspiracy. I think that's what he's thinking right now
4 of the agents and this court. You're guilty, all of you, of
5 conspiracy to levy warrant. I guess everybody in that militia
6 group thinks that, and you are subject to our arrest, you know,
7 I mean, in other words, it's on that page. That's what he
8 thinks. You know, I'm for letting him get out on bail, take the
9 guns, and try to put him someplace, you know, quit writing
10 things in The Silver Bullet awhile. Let's settle this thing in
11 court, but, you know, I have, I have a fear and I don't -- I
12 can't believe it's unreasonable, a fear that a lot of things
13 have been said. I mean do they intend to follow through on
14 them? They said they were. They said if you do this, we'll do
15 that. All right. They went in and they seized. Now, what are
16 they going to do? They said they were going to do something
17 about it. Until -- and if -- and unless he stands up there and
18 says, no, we are not and I promise you or something, I mean he's
19 said he would and what else am I supposed to believe? That's
20 where I am. I need some assurance and I tell you what I'd like

21 to do.

22 MR. DUNAGIN: May we have a short recess?

23 THE COURT: Let's take a recess, see what we can do.

24 Let me talk to the probation officer.

25 (Off the record at this time.)

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1 THE COURT: Yes, Mr. Dunagin, did you have anything?

2 I sort of told you my concerns.

3 MR. DUNAGIN: Yes, sir. My client is willing to tell
4 the Court he's agreeable to come to court. He's agreeable to
5 let all of his weapons be placed in custody of law enforcement.
6 He says that basically "it's in court; let's fight it in court."

7 THE COURT: Right.

8 MR. DUNAGIN: That's it.

9 THE COURT: Here -- here is my concern. You have
10 these documents and you have meetings where you talk about we're
11 waging a war. And so far it's been all talk. Now, the Feds
12 have gone in. They have taken the guns. And there's -- there
13 is -- there has -- there is in here and then at the meetings
14 some language and this is what happens sometimes, you talk and
15 you talk and then you insight and then something happens. I
16 mean nothing has happened yet, but now sort of the war has begun
17 and so I think what you are saying is, "Judge, they want to do
18 the war in court; they don't want to do the war through shooting
19 each other." But my concern is I just don't -- I just don't
20 know if I feel reasonably certain that that's the way this is
21 going to turn out. I mean what can I do to help myself feel
22 reasonably certain that -- and this is what I want -- that
23 Mr. Fincher won't go home and he and his buddies will talk about

24 how unfair this all is and they will want to take some
25 retribution, as they have talked about doing? I mean what can
0040

1 make me reasonably sure that I can go home, put my head on my
2 pillow, and I would not have let somebody out and then something
3 horrible happens with some loss of lives?

4 MR. DUNAGIN: I'm not sure I can say anything to
5 alleviate that fear. As the U.S. Attorney and Agent Vittitow
6 and I were talking, my greatest fear has been drug people, not
7 something like this in the past. I've been threatened. We've
8 all been threatened.

9 THE COURT: Right.

10 MR. DUNAGIN: But all I can tell you is that, you
11 know, Mr. Fincher is willing to go see the probation officer
12 every day. We would be willing to see our electronic
13 monitoring. He said he would surrender his weapons. More than
14 that, I'm not sure what I can do --

15 THE COURT: I know what you are saying. I mean, you
16 are offering everything you can offer.

17 MR. DUNAGIN: Yes, ma'am. And in talking with him,
18 he's like, you know, the military aspect, what we talk about,
19 it's over. We are now into the law, and this is how we want to
20 fight it, by coming to court. When I talked to his wife
21 Thursday and told her I'd been appointed, the first question was
22 "are you a constitutional lawyer to fight this in court?" You
23 know, I don't know what arguments to make, but I don't know what
24 else to do.

25 THE COURT: Well, you've made, you've made all you

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1 can, I think.

2 MR. DUNAGIN: I would ask that you consider those
3 things, ma'am.

4 THE COURT: I want to hear a little bit more and I'm
5 just -- you don't have to do it through testimony, but how
6 remote is this, is the location that he's now living?

7 MS. JOHNSON: Your Honor, I can -- we will offer Agent
8 Vittitow again, but we have pictures. I think basically --

9 THE COURT: Well, let's let just Mr. Vittitow just
10 tell me from where he's sitting, just tell me how remote is it?

11 A It's -- there's a highway that runs southeast of
12 Fayetteville and then off of that, off of that road which is
13 Black Oak Road --

14 THE COURT: Right.

15 A -- Mr. Fincher's driveway is I would say it is a mile long.
16 And it's not that the road conditions are that relevant, but
17 it's barely a road. You are not going to proceed up that road
18 doing more than a few miles an hour. It's just rocky, rough
19 terrain. And once up there, that's it. There is no other --
20 it's a beautiful piece of property, but it's a hundred acres of
21 hill top and there's essentially no other place to acc -- no
22 other way of accessing that property by vehicle, and any way of
23 accessing it by foot would essentially be about a mile, mile
24 walk on foot. We've looked at that property in terms of how
25 else could we access it other than coming up this main drive,

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1 and there was none. It was either go in by foot or risk coming
2 up that main driveway.

3 THE COURT: Okay. Does Mr. Fincher have any place he

4 can live besides there where somebody could be a third party
5 custodian?

6 (Off the record briefly.)

7 MR. DUNAGIN: Your Honor, just a minute. One thing I
8 would like to point out. It's my understanding Mr. Fincher
9 inherited this from his father who had inherited it from his
10 grandfather, and I don't want the Court to think that he went
11 out there and purchased this with the intent of it being any
12 kind of a compound.

13 THE COURT: I knew that. I'm well aware that this is
14 family property.

15 MR. DUNAGIN: Just a moment, please. (Off the record
16 briefly.) Your Honor, his -- each of his daughters and their
17 husbands have agreed that he can stay with them, if need be.

18 THE COURT: Where do they live?

19 MR. DUNAGIN: I would ask, Connie, where do you live?

20 UNIDENTIFIED SPEAKER: I live in Elkins or --
21 (undecipherable) Elkins.

22 MR. DUNAGIN: Elkins? In town?

23 UNIDENTIFIED SPEAKER: It's not in town, but it's
24 right on the main county road. It's -- we're right on the road,
25 so...

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1 MR. DUNAGIN: And, you, ma'am?

2 UNIDENTIFIED SPEAKER: Farmington.

3 MR. DUNAGIN: In Farmington? You live in town? Does
4 that answer the Court's question?

5 THE COURT: Yes, it does. All right. This is what
6 the law provides. I have to decide are there any conditions,

7 any that I can set that will reasonably assure that the person
8 will show up for trial and that the safety of the persons in the
9 community will be protected. I think that I would be satisfied
10 if I could remove Mr. Fincher from where he's been into another
11 place. So what I'm going to do is I'm going to have him live
12 with these two daughters or two sons.

13 MR. DUNAGIN: Daughters.

14 THE COURT: Okay. Then you'll need to decide which
15 daughter. It sounds like either Elkins or Farmington. That's
16 both close to Fayetteville. Now, these are my conditions.
17 There will be no possession, that, first of all, the guns of
18 Mr. Fincher's at the house will be secured with somebody else,
19 not the two daughters and their husbands, but somebody else, so
20 those will be secured until this trial is over. And that
21 Mr. Fincher won't possess any guns or where he stays there won't
22 be any guns. It's just a better way to do it. You might say,
23 well, we live out. We need to protect ourselves. During this
24 time until trial is had, no guns. Mr. Fincher and his wife are
25 going to post a deed to their property to the Court. What that

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1 means is if there's any violation of probation, if there's any
2 problem with another witness, if there's anything that you do
3 that the Court said don't do, you're promising me if I don't do
4 what you say, I will give up the dearest thing I have probably
5 next to my family and that is this property. The reason that I
6 think we can go on a bond is I think we can hold something over
7 Mr. Fincher's head that's near and dear to him, this family
8 property for several generations. And I would like to have a
9 telephone set up so that, so that there can be electronic

10 monitoring. I don't -- I'm going to leave it up to the
11 Probation Office how you want to handle that as far as his
12 electronic monitoring. I'm not saying he can't go anyplace, but
13 I want you to have some restrictions on his comings and goings.
14 I would -- now, this is -- when I get through with this you must
15 say, Judge, I won't take this deal. I would rather be in jail.
16 That's fine with me, but there can be no more, until the end of
17 this, no more with you participating in militia meetings. In
18 other words, just I want you to remove yourself from involvement
19 in the militia organization just until the trial is over. No
20 contact with potential witnesses and that would include any
21 alleged confidential sources. No contact whatsoever or no
22 contact by anyone else that you asked them to make contact. Can
23 the Government think of anything else? There will be regular
24 pre-trial supervision. Yes.

25 MS. JOHNSON: Your Honor, we would offer a request
0045

1 that Mr. Fincher not be allowed to go to the militia
2 headquarters at all during this time.

3 THE COURT: Yes. Yes. By that, by no more militia
4 meetings or that, just there has to be complete removal from
5 that and the headquarters right now. As you say, you're trying
6 to go through court and do this. Now, I need to know of the
7 two -- of the two daughters and the husbands, do you all four
8 work?

9 UNIDENTIFIED SPEAKER: Yeah.

10 THE COURT: Everybody works? Could I have the hours
11 starting over here with you, ma'am, your hours of working?

12 UNIDENTIFIED SPEAKER: I work from 7:00 to 3:00.

13 THE COURT: 7:00 to 3:00. What about you?

14 UNIDENTIFIED SPEAKER: 8:00 to 5:00.

15 THE COURT: Over here?

16 UNIDENTIFIED SPEAKER: I'm a 24-hour on-call
17 caregiver.

18 THE COURT: Okay.

19 UNIDENTIFIED SPEAKER: 8:00 to 5:00.

20 THE COURT: Okay. I'm going to prefer going with this
21 first couple, only because I think they are going to have more
22 regular hours. Can you be there shortly after 3:00 each day, do
23 you think? Can you be there until shortly before 8:00 each day?
24 Can you be at your house until shortly before 8:00? Can you
25 make at least that -- I'm going to make you the third party

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1 custodians. Would you promise me that if you see anything that
2 you think is wrong, and this is a big responsibility, but that
3 you will report it to the Court? I'm putting my trust in you as
4 the custodians to do that.

5 UNIDENTIFIED SPEAKER: Yes.

6 THE COURT: Anything else we can think of?

7 MS. JOHNSON: No, Your Honor.

8 THE COURT: Is there anything on your side that you
9 think could be clarified or do you think is too harsh?

10 MR. DUNAGIN: I'm assuming that I will be allowed to
11 interview witnesses. You said nobody could talk to witnesses.

12 THE COURT: Yes, other than counsel. Thank you, sir.

13 MR. DUNAGIN: No, thank you.

14 THE COURT: Okay. All right. Now, this is what we
15 are going to have to do. Before he goes free, we're going to

16 have to have a bond, which you two, what are your names?

17 UNIDENTIFIED SPEAKER: Kenneth and Connie Fields.

18 THE COURT: Kenneth and Connie. What's the last name?

19 UNIDENTIFIED SPEAKER: Fields, F I E L D S. Kenneth
20 and Connie Fields. You would sign the bond as a third party
21 custodian. We would have the -- we would have the deed or some
22 ownership of this property on the record. Other than that, I
23 think, I think that we are all right. Okay. Anything further?

24 MS. JOHNSON: Your Honor, would the electronic
25 monitoring be --

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1 THE COURT: And we need the electronic monitoring.
2 You do have a telephone obviously? Okay. We'll get that
3 started. So what I'm saying is it's going to take a little bit
4 to get this in place. You know, we can't do it, you know, in an
5 hour. It's going to take a little bit to get all of this in
6 place, but we will work toward that. Oh, yes, I tell you what
7 I'd like to do. I meant to do this. The bond amount, I'm going
8 to make the bond on this \$250,000 secured by ownership -- a deed
9 of ownership or other indicia of ownership to the property, the
10 120 acres located in Black Oak, Arkansas. Anything further to
11 come before the Court?

12 MS. JOHNSON: No, Your Honor.

13 THE COURT: All right. Thank you.

14 (End of proceedings.)

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I, Rick L. Congdon, a Registered Merit Reporter, and
Official Court Reporter for the United States District Courts,
Western District of Arkansas, do hereby certify that the
foregoing is transcript of proceedings which occurred at the
time and place herein designated, consisting of pages 2 through
47, which was recorded by a court-approved electronic sound
recording means and then transcribed via computer personally by
me, and that this transcript is a true, correct, and complete
transcript of said proceedings as reflected herein to the best
of my ability after listening and transcribing said sound
recording.

Signed this 20th day of December, 2006, in the City of Ft.
Smith, County of Sebastian, State of Arkansas.

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RICK L. CONGDON, RMR

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OFFICIAL COURT REPORTER

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U. S. DISTRICT COURTS

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WESTERN DISTRICT OF ARKANSAS