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IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FORT SMITH DIVISION  
UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
vs. ) Case No. 5:06M5048-001  
)  
HOLLIS WAYNE FINCHER, ) Ft. Smith, Arkansas  
)  
Defendant. )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BEVERLY STITES-JONES  
UNITED STATES MAGISTRATE  
NOVEMBER 13, 2006

A P P E A R A N C E S

For the Plaintiff: MS. WENDY JOHNSON  
U. S. Attorney Office  
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Ft. Smith, Arkansas 72902

For the Defendant: MR. DAVID DUNAGIN  
Attorney at Law  
523 Garrison Avenue  
Ft. Smith, Arkansas 72901

REPORTED BY:  
RICK L. CONGDON, RMR, FCRR  
P. O. Box 8493  
Fort Smith, Arkansas 72902

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PROCEEDINGS OF NOVEMBER 13, 2006

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THE COURT: We're having a hearing at this time, a  
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.

10

THE COURT: If you'll be sworn at this time,

11

Mr. Vittitow... (Witness sworn.) Proceed.

12

WADE VITTITOW, DULY SWORN, DIRECT EXAMINATION

13

BY MS. JOHNSON:

14

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?

25

A ATF and other law enforcement agencies were familiar with

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1 Mr. Fincher and an organization calling itself the Militia of  
2 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,  
0017

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  
0021

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

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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.

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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.

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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

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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

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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

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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

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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

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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  
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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

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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

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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

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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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C E R T I F I C A T E

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3 State of Arkansas )

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4 County of Sebastian )

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6 I, Rick L. Congdon, a Registered Merit Reporter, and  
7 Official Court Reporter for the United States District Courts,  
8 Western District of Arkansas, do hereby certify that the  
9 foregoing is transcript of proceedings which occurred at the  
10 time and place herein designated, consisting of pages 2 through  
11 47, which was recorded by a court-approved electronic sound  
12 recording means and then transcribed via computer personally by  
13 me, and that this transcript is a true, correct, and complete  
14 transcript of said proceedings as reflected herein to the best  
15 of my ability after listening and transcribing said sound  
16 recording.

17

Signed this 20th day of December, 2006, in the City of Ft.

18 Smith, County of Sebastian, State of Arkansas.

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RICK L. CONGDON, RMR

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