

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

Case No. M-95-98-H

TIMOTHY JAMES McVEIGH,)

Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

HAD ON APRIL 27, 1995

PRELIMINARY HEARING

MAGISTRATE RONALD HOWLAND, PRESIDING

A P P E A R A N C E S

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1 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT
2 ON APRIL 19, 1995 WITH ALL PARTIES PRESENT:)

3 THE COURT: The Court would like to advise
4 you that there is a little bird family that is in this area.
5 We have had the best minds in the institution to check it out,
6 but they are chirping. And they have advised us to leave them
7 alone, and that's what we are going to do. You will hear a
8 little noise so don't worry about it.

9 I would like to introduce you to my staff that is here:
10 My clerk is Bill French seated to my left; law clerks Dale
11 Kelly and Lynn Burch seated to my right.

12 Also present to my left over there behind that bench is
13 pre-trial services officer Marcy Gray. Court reporters Lynn
14 Hilton and Charyse Crawford are to my right.

15 I would like Counsel who are present to introduce
16 themselves, beginning with the Counsel for the United States.

17 MR. GARLAND: Your Honor, my name is Merrick Garland.
18 I am an Associate Deputy Attorney General.

19 MS. JOPLIN: Arlene Joplin, Western District of
20 Oklahoma, AUSA.

21 THE COURT: And Counsel for the defendant?

22 MR. COYLE: Judge, I am John W. Coyle, and I represent
23 the accused, and I would ask the Court if the handcuffs could
24 be removed during this hearing.

25 THE COURT: I am sorry?

1 MR. COYLE: If his handcuffs could be removed during
2 the hearing.

3 THE COURT: I have told the marshal's office that is a
4 matter within their discretion at this time.

5 MR. COYLE: Would the Court inquire of the marshals if
6 they could remove them? There are about forty guards, seems
7 like, in the room, if we could have them removed for the
8 hearing.

9 THE COURT: If the marshals indicated that he should
10 be cuffed, he should stay cuffed. That will be it.

11 Anything else?

12 MS. OTTO: Susan Otto, Federal Public Defender. I am
13 also here to represent Mr. McVeigh. Also with me at counsel
14 table, Mr. Kevin McNally. Mr. McNally is here in his capacity
15 as attorney for the Death Penalty Resource Counsel Center which
16 is under the auspices of the United States Courts.

17 THE COURT: Anyone else? I believe also present,
18 entering an appearance early this morning, Paul Looney and J.
19 Brent Liedtke from Houston, possibly privately-retained counsel
20 for the Defendant.

21 I appreciate very much the arrangements that have been
22 made for this room to serve as a courtroom. The Court has
23 found that under circumstances, unusual circumstances, that
24 existed in the federal courtroom in downtown Oklahoma City, the
25 federal courthouse, the reconstruction and other clean-up

1 operations that are going on there, as well as the security and
2 safety of all persons concerned, that we should conduct this
3 hearing in this room.

4 In that regard I wanted to especially thank Warden R. G.
5 Thompson and his staff, as well as United States Marshal Pat
6 Wilkerson.

7 At this time I am going to ask that counsel confer after
8 the Court makes a statement and a record regarding what has
9 transpired basically since he initially appeared last Friday,
10 and especially with regard to defense counsel.

11 As the defendant knows, at the time of the initial
12 appearance last Friday at Tinker Air Force Base, that Mr. Coyle
13 and Ms. Otto were appointed as counsel to represent the
14 Defendant, both highly qualified and skilled attorneys.

15 I was not aware that there was any problem in connection
16 with their representation until Monday, when motions were filed
17 indicating that counsel desired to withdraw.

18 After carefully considering those motions, the Court
19 entered an order which temporarily, at least, overruled those
20 motions counsel then would -- Ms. Otto and Mr. Coyle would
21 continue to represent the Defendant, and they are serving in
22 that capacity here today.

23 They are very fine professional lawyers and I perceive no
24 problem with their representation of the Defendant in
25 connection with these proceedings, although they -- one or more

1 of them may be granted permission to withdraw.

2 The Court's appointment of counsel is made under statutory
3 provisions that provides that two counsel, two attorneys, shall
4 be appointed for any person that may be charged with a death
5 penalty offense, and those attorneys are required to have
6 certain skills and certain experience. And I wanted the record
7 to show that since that hearing, and since I learned that a
8 motion had been filed by the initial attorneys the Court had
9 appointed, that the Federal Public Defender's Office, under the
10 statute, has been conducting a nationwide search, in effect, to
11 determine what counsel might be available to replace Mr. Coyle
12 and Ms. Otto, if that is actually necessary.

13 Circumstances may have changed and this situation is
14 developing as we continue the hearing today. So we had that
15 survey conducted and we had some recommendations of very fine
16 attorneys that might replace those initial attorneys if that is
17 necessary.

18 And I am telling, making this statement because it's
19 necessary for the Court to exercise oversight in connection
20 with the Counsel who represent a person who is indigent.

21 The Court understands the Defendant is indigent. I made
22 that initial appointment on that basis, and in contrast to
23 that, privately-retained Counsel may appear, assuming that
24 either the Defendant, or if the Defendant is indigent, friends
25 or relatives of the Defendant, may be able to employ counsel,

1 and that situation has occurred just in the last, really in the
2 last few hours.

3 I wasn't aware until yesterday afternoon sometime that
4 Mr. Looney or Mr. Liedtke might be interested in entering an
5 appearance and represent the Defendant in this case. And all
6 this other has been going on at the same time.

7 We have been doing a survey to determine what substitute
8 Counsel might be appointed by the Court, and later then learned
9 that Mr. Looney and Mr. Liedtke might represent the Defendant
10 also.

11 I think the attorneys have conferred some about this. I
12 would like, if it's necessary, to have a further conference
13 before we proceed with this hearing, between the attorneys,
14 both privately-retained counsel and court-appointed counsel, to
15 determine who should appropriately represent the Defendant in
16 connection with this proceeding.

17 Obviously, this requires some conferencing with the
18 Defendant and answering of any of his questions that he might
19 have. I wanted the record to show what has happened since the
20 Counsel was appointed because I didn't have much opportunity to
21 explain that on Friday evening when we had the hearing at
22 Tinker. Does anyone want to address that issue at this time?

23 MR. LOONEY: Yes.

24 THE COURT: Yes, sir, Mr. Looney.

25 MR. LOONEY: Your Honor, if I may be heard on that

1 issue. I believe it's in the best interest of the Defendant to
2 go forward with the team at the table.

3 THE COURT: All right, sir.

4 MR. LOONEY: At this time. The conferences have been
5 had and that is the desire of the Defendant, and in my opinion
6 in the best interest of the Defendant.

7 THE COURT: Anyone else want to speak to that issue?
8 If not, then we will not take the recess and we will proceed
9 with the hearing.

10 Is there any statements that need to be made before we
11 proceed with the evidence in this case?

12 MR. GARLAND: Your Honor, if the Defendant could state
13 on the record that he is satisfied with going forward with
14 Counsel for this hearing.

15 THE COURT: I will ask if the defendant has any
16 questions about the matters of the counsel, any additional
17 questions that need to be asked; and certainly I will try to
18 ask those.

19 MR. COYLE: He will stand moot, Judge.

20 THE COURT: If there are no further questions, I will
21 proceed on preliminary hearing and combined detention hearing
22 in case No. CR-95-98, United States of America versus Timothy
23 James McVeigh.

24 MS. OTTO: Your Honor, if I may?

25 THE COURT: Yes, Ms. Otto.

1 MS. OTTO: I received the Court's order denying our
2 request for transfer of this case yesterday.

3 THE COURT: I am sorry, the what?

4 MS. OTTO: I am sorry. Perhaps if I can step to the
5 center it would be easier and I could get over the bird noise.

6 THE COURT: The birds are chirping away.

7 MS. OTTO: I might have to chirp a little more loudly
8 than they do.

9 Your Honor, I received a copy of the Court's order
10 yesterday denying our request for appointment of substitute
11 counsel, and in the same order our motion to transfer this case
12 was denied, and based on --

13 THE COURT: Would you hand me the Court's order?

14 MS. OTTO: Based on the Court's order and findings the
15 Court made at that time.

16 THE COURT: Do you have a copy of it?

17 MR. COYLE: I have got it.

18 MS. OTTO: There we go, thank you.

19 THE COURT: I believe that is it.

20 MS. OTTO: I believe that it is appropriate as a
21 preliminary matter to reurge our motion to transfer at this
22 time. The substance of our motion to transfer went hand and
23 glove with our request to have alternate counsel appointed to
24 represent Mr. McVeigh. And our conflicts that arise,
25 Mr. Coyle's and mine, in this case are inextricably involved

1 with our motion to transfer.

2 This is a very unusual case and the government has relied
3 essentially in its response on the Harrelson and Shagra cases
4 which, of course, arose out of the assassination of Judge Woods
5 down in Texas. And that is a primary authority on which the
6 government relies in support of its argument that transfer is
7 not warranted at this time.

8 The government's response, and I believe also the Court's
9 order, does not address certain aspects of our motion, and
10 that's why I wanted to touch on this point again at this time.

11 Your Honor, the essence of our motion to transfer, the
12 essence of our motions to have alternate counsel appointed, is
13 simply that this case has been so extraordinary, and has such
14 extreme magnitude that it impossible for any of us who were in
15 downtown Oklahoma City on the morning of April 19th to proceed
16 in this case.

17 Judge Woods, for example, was shot at his home while he was
18 on his way to work. There have been other attacks, the World
19 Trade Center bombing, for example, and certain other events
20 that occurred that certainly are equally traumatic events.

21 But I have found no case in the history of this country
22 that is of such magnitude as the one we are involved in right
23 now.

24 And certainly as lawyers one of the things Mr. Coyle and I
25 have considered during our representation of Mr. McVeigh is not

1 the actual provision of counsel in an appropriate and effective
2 and zealous manner that is required by the Constitution,
3 required by the cases effectuating the Constitution, but also
4 the appearance of impropriety that might arise.

5 It is really that appearance of impropriety that prompted
6 us to file our request for appointment of the substitute
7 counsel and our request to transfer at this juncture.

8 Now, certainly the judge who presided in Judge Woods' case,
9 the case involving the assassination of Judge Woods was an
10 honorary Pall bearer and was a jurist who was well acquainted
11 with Judge Woods. The Fifth Circuit found no flaw in that, but
12 that is a far cry from a judge who is acquainted with a victim
13 to a judge who actually witnessed the events as they occurred.

14 This record may be reviewed at some later time by people far
15 removed from the events, both physically and temporally, and I
16 think it is absolutely essential for the effective
17 representation of Mr. McVeigh to have a clear record of exactly
18 what it is we are talking about.

19 Now, the events of April 19th were obviously cataclysmic
20 beyond definition. The A.P. Murrah Building, which is located
21 directly across from the federal courthouse in Oklahoma City,
22 was virtually destroyed, demolished, right on the spot, by a
23 very powerful explosion.

24 The results of that explosion caused windows, doors, and
25 other items within the federal courthouse building to be blown

1 to pieces.

2 The judges' chambers on the north side of the federal
3 courthouse building were shattered where the windows blew in,
4 doors blew in, and people in the building were injured during
5 that explosion.

6 On the first floor, jurors who were deliberating were
7 physically injured. And one of the judges, the judge who was
8 presiding over that trial, was out on the street assisting her
9 jurors into ambulances.

10 Judge Argo, who is on the first floor at the northeast
11 corner of the federal courthouse, was probably spared from
12 certain death by the fact his windows on the ground floor are
13 bulletproof glass. They appear to be sand-blasted.

14 In my building, my office windows on the north floor were
15 completely destroyed. Fortunately, I wasn't sitting at my desk
16 at the time. Fortunately for all of my staff, none of us were
17 injured.

18 We evacuated the building as everyone else did. One of my
19 lawyers was missing. She was in court. And I spent probably
20 five to ten minutes running up and down the street in front of
21 the federal courthouse trying to find my lawyer who was lost.
22 Once I located her, one of my other lawyers informed me that
23 his child was supposed to be at the YMCA Day Care Center, and
24 he couldn't find his child. We spent the next 45 minutes
25 trying to locate his child.

1 I am aware that you, Judge Howland, were also present
2 during the events and that you witnessed what went on.

3 I think the record should also reflect that I am personally
4 acquainted on a professional basis with the following people:
5 Cynthia Lynn Campbell Brown, a special agent with the Secret
6 Service. She was over in our offices discussing a case with
7 our investigator shortly before she left to get married.

8 Aaron Coverdale and Elijah Coverdale, ages 5 and 2 are the
9 children of one of our former clients.

10 Steve Curry, who worked for General Services Administration
11 as an inspector, assisted us in the renovation of our offices.

12 Christi Jenkins, is an employee at the Federal Employees
13 Credit Union where I had two accounts, and I have done business
14 with her on many, many occasions.

15 Donald Ray Leonard, special agent with the Secret Service,
16 I am personally acquainted with him in a professional capacity.

17 Michael Loundenslager, a planner/estimator for General
18 Services Administration, also assisted us with our renovation
19 in our building.

20 Mickey Bryant Maroney is a Secret Service agent with whom I
21 have handled maybe twenty cases in the past few years.

22 Kenneth Glenn McCullough, special agent with the Drug
23 Enforcement Administration, with a very important case pending
24 with us in our office.

25 Paul Ice, who is listed -- all of those people are dead.

1 Paul Ice, a senior special agent with the Customs Service. I
2 am also well-acquainted with him as a result of his
3 professional capacity and mine. He is listed as missing, and
4 this morning's casualty list, it's my understanding that they
5 have recovered his body, and he is dead.

6 Tresia Worton, another Federal Employees' Credit Union
7 worker is still missing. I am unaware of her status.

8 I am personally acquainted with every one of these people.
9 I have been down to the federal courthouse, starting now on my
10 11th year. I know these people. I have done business with
11 these people, and although certainly we don't work in the same
12 agency, we have had a cordial, working relationship that places
13 me in the position of knowing on a first-name, by-sight basis,
14 victims of these events.

15 I do not believe this is a case that falls within the
16 ambiance of Harrelson and Shagra. This is a case of
17 extraordinary proportions. Mr. Coyle was personally acquainted
18 with an attorney who has also been killed as a result of this
19 bombing incident.

20 I was certainly present during most of the events in the
21 early morning of April 19th, and at one point in the afternoon
22 I could no longer find my investigator because a man with whom
23 he had been associated with for a number of years, who is on
24 special assignment with the Drug Enforcement Administration,
25 was unaccounted for, and my investigator was down at the

1 building looking for him.

2 When I couldn't find my investigator after two hours, I
3 went back down to the scene and went looking for him.
4 Fortunately I found my investigator, and his friend was also
5 unharmed during these events.

6 This is not an instance where publicity has been limited.
7 I respectfully disagree with the Court's characterization that
8 the principal portion of the publicity has been about the
9 factual circumstances surrounding the bombing and the attempted
10 recovery of victims and potential survivors.

11 I don't have all the papers nationwide. Certainly I have
12 been contacted by virtually every print media and video media
13 person or seems like I have been, requesting information about
14 this case. But I do have the last seven editions, I don't have
15 the Sunday edition of The Daily Oklahoman, and I would like to
16 place these of record as well.

17 THE COURT: Do you want to use those at this time?

18 MS. OTTO: I do, Your Honor.

19 THE COURT: Do you have them numbered?

20 MS. OTTO: Yes, I do. Exhibit No. 1 -- Defendant's
21 Exhibit No. 1, is Thursday, April 20, 1995, the banner headline
22 is "Morning of Terror, City Struggles With Shock of Deadly
23 Bombing."

24 The very next day, Friday, April 21st, this would be
25 Defendant's Exhibit No. 2. "FBI Seeks Two in Terrorist Blast,"

1 and this is the first day we have a composite photograph of the
2 men who are identified by the FBI as suspects.

3 The third came Saturday, April 22nd, is Defendant's Exhibit
4 No. 3, "Bomb Suspect Charged," and a large picture of Mr.
5 McVeigh and the escort of -- well, I can recognize one FBI
6 agent right off the bat, and appears to be several others and
7 several sheriff's deputies, Defendant's Exhibit No. 3.

8 Defendant's Exhibit No. 4 is the Monday April 24th,
9 newspaper, "A Time to Grieve." It's the banner headline. This
10 is photograph of the memorial services with President Clinton
11 and Governor Keating. But below the fold, we have "Search
12 Continues For Second Suspect. Man Questioned In The
13 Investigation Of This Case Figures Prominently" on the first
14 page of the paper.

15 Defendant's Exhibit No. 5, "FBI Combs Through Leads In
16 Bombing Case" and the coverage generally continues with the FBI
17 ongoing investigation of this case and contains some
18 information about additional suspects who have been
19 identified.

20 On Wednesday, April 26th, Defendant's Exhibit No. 6, we
21 have the lead which is "Chemical Test Point to McVeigh." And I
22 guess it would be the lead story: "FBI theorizes John Doe 2 May
23 Be Dead." We have specific information about Mr. McVeigh,
24 specific information about this case, specific information
25 about incriminating evidence that the FBI is alleging links

1 Mr. McVeigh to these incidents.

2 THE COURT: Is that 6?

3 MS. OTTO: Yes, this is Exhibit No. 6, correct.

4 Defendant's Exhibit No. 7 is today's newspaper and it contains
5 banner headline: "Friend puts McVeigh in City on Easter. Bomb
6 Suspect Talked About Something Big."

7 This is an article that primarily reports the events in
8 Terry Nichols' court hearing had in Wichita yesterday. Again,
9 it is all information directly concerning Mr. McVeigh.

10 We do not have, and as I am sure the Court has reviewed the
11 cases that have been cited, publicity cases do generally turn
12 on the degree of saturation of the media, the length of time
13 that has elapsed since the events, and the court proceedings,
14 and the nature of the communications that have been conveyed in
15 the courts.

16 Now, certainly I will agree with the Court's
17 characterization that a great deal of the media focus was
18 initially on rescue efforts, the suffering of the victims and
19 the victims' families, and the heroic efforts of all parties in
20 attempting to find survivors as quickly as possible. But it
21 would be very disingenuous to behave as if the identification
22 of Mr. McVeigh as a suspect has been some minor sideline in
23 these stories. It has been the story.

24 Mr. McVeigh has been the story since he was moved from
25 Perry, Oklahoma; and certainly since his apprehension, the

1 papers and video media have been saturated with stories about
2 him, about the militia, about his family, about other groups
3 all tending to lead or lend some larger conspiracy or larger
4 connection, which is the tendency of all of these facts, that
5 are being presented as fact in various media.

6 Your Honor, it would be very difficult, I think even under
7 the best of circumstances, if we all were from some place else
8 and, well, all been dropped here in the middle of Oklahoma City
9 to conduct these proceedings, to be unaware of what has been
10 going on in Oklahoma for the last week or week and a day. It
11 would be very, very difficult to find anyone in America who
12 doesn't know something, at least, about this.

13 But to say that the publicity is not a factor, to say that
14 publicity is not a factor right at this point, just simply is
15 untenable. That is a tenable position to take and tenable
16 position to maintain.

17 Further compounding that is the fact that we don't really
18 have to rely on all of this media coverage. We don't have to
19 rely on the video pictures and on television and Connie Chung
20 standing there with a bombed-out building in the background.
21 We know what it looks like because we were all there and we all
22 saw it. We heard it. We smelled it. We lived through it. We
23 are percipient witnesses. Every one of us is a percipient
24 witness to this event. And Mr. McVeigh has the right to have
25 his case heard even at this initial proceeding. This is not

1 some sideline, some procedural sideline.

2 This is an essential part of this criminal case, and
3 Mr. McVeigh is entitled under the Federal Rules of Criminal
4 Procedure and under the Constitution to have his case heard
5 from the very first instance by neutral and detached people who
6 were not themselves percipient witnesses.

7 The government says, "You can't cite any cases. You can't
8 cite any cases." You are darned right I can't cite any cases
9 because this hasn't happened before.

10 You must not let the fact that this is a unique situation
11 in which there is no case precedent cripple us to the obvious
12 and indisputable facts. We are not people who come to this
13 with perhaps some notion of what went on. Because we are
14 percipient witnesses, we have our own very personal idea of
15 what happened because we saw it, and we were there. That is
16 why Mr. Coyle and I filed the motion to transfer at this time,
17 so that this preliminary hearing could be conducted in another
18 venue, in front of another magistrate, in front of another
19 judge, one who wasn't run out of the courthouse by this blast,
20 and Mr. McVeigh to be represented by lawyers who do not
21 personally know victims involved in this, to be represented by
22 a lawyer whose office wasn't largely destroyed by this blast,
23 and to be heard in a truly neutral and detached forum.

24 I urge the Court to reconsider its position with regard to
25 the motion to transfer. This is not an instance where

1 Mr. Coyle and I are saying we want to be released because we
2 were upset.

3 We want to be released because we believe it is
4 Constitutionally required. Right from the very beginning,
5 Mr. McVeigh is entitled to have this case considered by someone
6 other than the persons who lived through these events.

7 It's the thrust of our motion. It wasn't really addressed
8 by the government in its response, and I certainly wanted to
9 clarify those points in the Court's order where I felt the
10 Court might have been lacking some additional information. I
11 strongly urge the Court to reconsider all of these matters.

12 THE COURT: Any objections to Defendant's Exhibit Nos.
13 1 through 6?

14 MR. GARLAND: No, Your Honor.

15 THE COURT: The same are admitted without objection.

16 Does the United States have any response to the Defendant's
17 counsel's statement?

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1 MR. GARLAND: Yes, Your Honor, with respect to the
2 Motion to Transfer, as the Government's papers show, the rule
3 is only for transfer from the district for trial.

4 As Charles Allen Wright wrote in his seminal book,
5 Federal Practice and Procedure, the District Court is not
6 authorized by this rule to transfer proceedings before the
7 return of the Indictment.

8 No case, no Court has ever made such a transfer that
9 has ever been recorded. Part of the reason may well be that
10 because, although Mr. McVeigh may wish to transfer, there are
11 others who are still being sought. Those people have the
12 Constitutional right to a trial in the state where the crimes
13 have been committed, by the jury in the state and in the
14 district where the crimes were committed. Without their waiver
15 it would make it impossible for the grand jury to proceed
16 against those individuals. For that reason, then, we believe
17 the Court's decision against transfer at this time is correct.

18 However, Your Honor, in light of the attorney's
19 statement, I have to once again ask the Court on the record to
20 ask the Defendant whether or not he objects to continuing with
21 this hearing with his current lawyers.

22 I am concerned, Your Honor, that at some later time
23 he will say that he did not consent; that she has made
24 statements today that some day would be used to suggest later
25 that the hearing went along without his consent. He does not

1 have any right to not make a statement with respect to whether
2 he consents to going forward at this time. At the least Your
3 Honor ought to advise the Defendant that if he does not object,
4 his objection will be taken as consent to continuing with these
5 attorneys for whatever purposes for today.

6 THE COURT: The Court has carefully considered the
7 statements of counsel here today and oral statements which
8 supplement the motion which they previously filed. The Court,
9 as I tried to indicate in my statement earlier about the
10 relationship between the retained counsel and appointed
11 counsel, the Court has to exercise oversight in connection with
12 that. The Court has no question that the present counsel who
13 are appearing for the Defendant will serve very professionally
14 and respectfully and competently.

15 The Court's order stated that their Motion to
16 Withdraw was overruled without prejudice, so that matter can be
17 reconsidered. Other than that, in connection with the evidence
18 which has been introduced, the Court believes the order
19 satisfactorily resolved those issues. I tried to be as
20 specific as I could in connection with the order in the limited
21 amount of time that we have all had to work on all of this, and
22 I believe the order is sufficiently dispositive to deal with
23 those issues. The record has been made, as far as I'm
24 concerned, on those points. The order that I previously
25 entered is sustained and will continue in effect.

1 If there is nothing further, I will consider evidence
2 on the probable cause issue.

3 MR. GARLAND: Your Honor, I still think we need to
4 know whether the Defendant consents to going forward with these
5 attorneys at this time.

6 THE COURT: Well, it is basically the Court's
7 responsibility to, as I said, exercise oversight in connection
8 with the appointment of counsel. As compared to an entry of
9 appearance by a privately-retained attorney, the Court has
10 little or no discretion in connection with that matter. You
11 heard the positions of the attorneys who are present and the
12 Court has exercised its judgment and oversight, which I think
13 I'm required to do in connection with 3005. Ms. Otto and
14 Mr. Coyle meet every qualification. The Court believes that
15 they are professional-enough attorneys that they will
16 competently represent the Defendant throughout this proceeding,
17 which we all agree is narrowly focused. The only issue at this
18 time is probable cause. We are not going to determine whether
19 the Defendant is guilty or innocent; simply probable cause and
20 reasonable basis.

21 MR. GARLAND: May I state for the record that I have
22 heard no objection to the Defendant proceeding with these
23 counsel.

24 THE COURT: Basically it is the Court's decision.
25 The Court believes that the representation will be both

1 professional and competent.

2 MR. GARLAND: The United States would call Special
3 Agent Jon Hersley.

4 THE COURT: Mr. Hersley, step forward, face the
5 Clerk, raise your right hand and be sworn.

6 DIRECT EXAMINATION

7 BY MR. GARLAND:

8 Q. State your full name and spell your last name.

9 A. Jon Hersley, H-E-R-S-L-E-Y.

10 Q. What is your occupation?

11 A. I'm an FBI agent.

12 Q. How long have you been an FBI agent?

13 A. About 20 years.

14 Q. Where were you assigned?

15 A. To the Oklahoma City office of the FBI.

16 Q. Have you had responsibilities in connection with the
17 investigation of the explosion of the Murrah Building?

18 A. Yes.

19 Q. In the course of that investigation, have you spoken with
20 other investigating agents and experts?

21 A. Yes, I have.

22 Q. Tell us what happened on April 19, 1995 at the Murrah
23 Building.

24 A. A bomb exploded at that building, severely damaging the
25 building and causing numerous deaths and injuries.

1 Q. Approximately what time did the explosion occur?

2 A. Approximately 9:03 a.m.

3 Q. Approximately how many people were killed, as far as you
4 know at this time?

5 A. Approximately 100. I believe it is 101 as of now.

6 Q. What categories are the people who were killed?

7 A. That includes numerous Federal employees; I believe there
8 were 15 children that were killed at this point whose bodies
9 have been found, and there were also several Federal law
10 enforcement officers that were killed in the bombing.

11 Q. Are there any people still missing?

12 A. Yes.

13 Q. How many?

14 A. Between 100 and 150 is what I have heard.

15 Q. Do you know how many people were injured, approximately?

16 A. Approximately 400.

17 Q. What is the Murrah Building used for?

18 A. It houses numerous Federal agencies, Federal employees
19 that work there.

20 Q. Is it used by agencies of the United States?

21 A. Yes, it is.

22 Q. Would you describe some of those agencies?

23 A. The U.S. Drug Enforcement Administration, the Bureau of
24 Alcohol, Tobacco and Firearms, the U.S. Secret Service,
25 Department of Housing and Urban Development, the Social

1 Security Administration, and numerous other Federal agencies.

2 Q. Have you consulted with explosive experts of the FBI?

3 A. Yes.

4 Q. What caused the explosion of the Murrah Building?

5 A. A bomb.

6 Q. Have the experts informed you as to where the bomb was
7 located at the time it went off?

8 A. Yes.

9 Q. Please describe that to the Court.

10 A. It was located inside a Ryder Truck that was parked in
11 front of the Murrah Building on the north side.

12 Q. How did the experts know that?

13 A. Due to the uniqueness of the blast damage that was
14 suffered on certain components of the truck, they are able to
15 tell that it was actually located inside that truck.

16 Q. Has an effort been made to trace that Ryder Truck to the
17 point of which it was rented?

18 A. Yes.

19 Q. What methods are used to trace that truck?

20 A. There was a portion of the vehicle identification number
21 that was located and we were able to trace from that portion
22 the full vehicle identification number and then take that on to
23 determine who actually had the vehicle.

24 Q. In addition to the vehicle identification number, or VIN
25 number, was there another part of the truck that permitted

1 tracing?

2 A. Yes.

3 Q. What was that?

4 A. The license plate.

5 Q. I have marked what will be called Government's Exhibit 1
6 for identification and I am showing it to defense counsel.

7 Do you recognize Government's Exhibit 1?

8 A. Yes, I do.

9 Q. What is Government's Exhibit 1?

10 A. This is the Florida license plate that was on the Ryder
11 Truck.

12 MR. GARLAND: Your Honor, the Government moves
13 Exhibit 1 into evidence.

14 THE COURT: Any objection?

15 MR. COYLE: No objection.

16 THE COURT: The same will be admitted.

17 Q. You said that by using the vehicle identification number
18 and the license plate, that you were able to trace the truck to
19 a rental location; is that correct?

20 A. Yes.

21 Q. What was the result of that tracing?

22 A. The Elliott's Body Shop in Junction City, Kansas.

23 Q. Was the rental agent at that location interviewed?

24 A. Yes.

25 Q. Did he advise as to when that truck was rented?

1 A. Yes.

2 Q. When was that?

3 A. The truck was rented on April 17th of this year.

4 Q. By how many people?

5 A. One person filled out the rental agreement; there was
6 another individual with that person when they picked it up.

7 Q. What did the individual who filled out the rental
8 agreement provide on the rental agreement?

9 A. Provided his name.

10 Q. Did he provide any other identifying information?

11 A. Yes, I believe a Social Security account number, as well
12 as a driver's license and also his address.

13 Q. Was an effort made to trace the Social Security number or
14 driver's license and address?

15 A. Yes.

16 Q. What was the result of that tracing?

17 A. They were both his numbers.

18 Q. Did the rental agent assist in the creation of a composite
19 drawing of the individual who rented the truck?

20 A. Yes.

21 MR. GARLAND: Your Honor, I have what has been marked
22 as Government's Exhibit 2 for identification.

23 (Government's counsel displays Exhibit 2 to counsel.)

24 Q. Do you recognize Government's Exhibit 2?

25 A. Yes, I do.

1 Q. What is Government's Exhibit 2?

2 A. This is the composite drawing that was prepared.

3 Q. It was prepared with the information provided by who?

4 A. By the employee at the Elliott's Body Shop.

5 Q. Did he advise the FBI as to whether that composite drawing
6 was a fair and accurate representation of the person that
7 rented the truck?

8 A. Yes, he said it was.

9 MR. GARLAND: I offer Government's Exhibit 2 into
10 evidence.

11 MR. COYLE: No objection.

12 THE COURT: Exhibit No. 2 is admitted with no
13 objection.

14 MR. GARLAND: I ask the Court to take its own notice
15 as to its resemblance to the Defendant.

16 Q. (By Mr. Garland) Mr. Hersley, is there also a hotel named
17 the Dreamland Hotel in Junction City, Kansas?

18 A. Yes.

19 Q. Had interviewing been done at that hotel?

20 A. Yes.

21 Q. What did people at the hotel advise the agents?

22 A. That an individual had checked into the hotel on April
23 14th of this year.

24 Q. How long did he stay?

25 A. Until April 18th.

1 Q. Was any connection made between the individual and the
2 representation in Exhibit 2?

3 A. Yes.

4 Q. What was that connection?

5 A. The individual at the hotel advised that the individual
6 that had stayed at the Dreamland Hotel between April 14th and
7 April 18th of this year strongly resembled the composite
8 picture.

9 Q. What name did he register under at the hotel?

10 A. Tim McVeigh.

11 Q. Did he provide an address?

12 A. Yes.

13 Q. What was that address?

14 A. 3616 North Van Dyke in Decker, Michigan.

15 Q. Was he seen driving any automobile at the time?

16 A. Yes.

17 Q. What kind of automobile?

18 A. A yellow Mercury.

19 Q. What room did he register in at the hotel?

20 A. Room 25.

21 Q. Were the employees at the Dreamland -- were any employees
22 at the Dreamland shown a photo spread which included a picture
23 of Mr. McVeigh?

24 A. Yes.

25 Q. What was the result of that photo identification?

1 A. The employee positively identified the picture depicting
2 Timothy McVeigh as being the person that stayed at the room on
3 that occasion.

4 Q. What was that room?

5 A. Room 25.

6 Q. Was an analysis made of telephone calls from the Dreamland
7 Motel during that period?

8 A. Yes.

9 Q. Was there a call on April 15th --

10 A. Yes.

11 Q. -- from Room 25?

12 A. Yes, there was.

13 Q. Is that the same room that Mr. McVeigh was registered in?

14 A. That's correct.

15 Q. Where was that call made to?

16 A. To a local restaurant in Junction City.

17 Q. Have you examined the receipt of the restaurant for that
18 date?

19 A. Yes.

20 Q. What does it show?

21 A. It shows that the order was placed by an individual using
22 the name "Kling."

23 Q. Is "Kling" the same name as on the Ryder Truck form?

24 A. Yes.

25 Q. Did it show what room number the order came from?

1 A. Yes, Room 25.

2 Q. Was a photo spread shown to the delivery man?

3 A. Yes.

4 Q. Was he able to identify Mr. McVeigh?

5 A. No.

6 Q. On April 17th, that was the day that the Ryder Truck was
7 rented; is that correct?

8 A. That's correct.

9 Q. Did any Dreamland employee see Mr. McVeigh?

10 A. Yes.

11 Q. In what connection did they see him?

12 A. They saw him arrive at the Dreamland Motel driving the
13 Ryder Truck.

14 Q. On April 18, the following day, did any employee of the
15 Dreamland Motel see Mr. McVeigh?

16 A. Yes.

17 Q. How did they see him then?

18 A. At approximately 4 a.m., Mr. McVeigh was observed in the
19 Ryder Truck.

20 Q. Later in the day did they again see Mr. McVeigh in the
21 Ryder Truck?

22 A. No.

23 Q. Now, in Paragraph 6 of the Affidavit that was attached to
24 the Complaint in this case there is a discussion of three
25 witnesses who identified a person in Exhibit 2, the composite,

1 as having been in the vicinity of the Murrah Building on the
2 morning of the explosion; is that correct?

3 A. Yes, it is.

4 Q. Have those people been able to confirm that they saw the
5 Defendant, Tim McVeigh?

6 A. No.

7 Q. On April 19th, is that the date of the bomb?

8 A. Yes.

9 Q. Was Mr. McVeigh arrested on that day?

10 A. Yes, he was.

11 Q. Would you explain that, please.

12 A. At approximately 10:30 a.m., Mr. McVeigh was arrested by
13 an Oklahoma Highway Patrol Trooper at a location near Perry,
14 Oklahoma.

15 Q. The reason for the stop?

16 A. Mr. McVeigh's yellow Mercury did not have a license plate
17 on it at that time and he was stopped for that reason.

18 Q. About what time was the stop?

19 A. Approximately 10:30 a.m.

20 Q. About how long after the blast was that?

21 A. Approximately one-and-a-half hours.

22 Q. Where was the stop?

23 A. Near Perry, Oklahoma.

24 Q. Approximately how long of a drive is it from the Murrah
25 Building to Perry, Oklahoma?

1 A. Less than an hour-and-a-half.

2 Q. I want to show you what has been marked as Government's
3 Exhibit 3 for identification.

4 (Government's counsel displays Exhibit 3 to counsel.)

5 Q. (By Mr. Garland) Do you recognize Government's Exhibit 3?

6 A. Yes, I do.

7 Q. What is Government's Exhibit 3?

8 A. It is a Michigan driver's license in the name of Timothy
9 James McVeigh.

10 Q. Where was it obtained?

11 A. From Mr. McVeigh.

12 Q. At the time of the arrest?

13 A. Yes.

14 Q. Does it show an address?

15 A. Yes.

16 Q. What is that?

17 A. 3616 North Van Dyke Road, Decker, Michigan.

18 Q. Is that the same street and town as the entry on the
19 Dreamland Motel register?

20 A. Yes, it is.

21 Q. When Mr. McVeigh was stopped, was anything found on his
22 person?

23 A. Yes.

24 Q. What was that?

25 A. He had a Glock .45 semi-automatic in a shoulder holster,

1 with two magazines.

2 Q. Was the Glock loaded?

3 A. Yes.

4 Q. What kind of bullets did it contain?

5 A. Black talon.

6 Q. Is there a street name for the black talon bullet?

7 A. Yes..

8 Q. What is that name?

9 A. It is referred to as a "cop-killer bullet."

10 Q. Was Mr. McVeigh's clothing tested?

11 A. Yes.

12 Q. What was the results of the test?

13 A. It tested positive for traces of PETN.

14 Q. What is PETN?

15 A. Penta erythratol tetral nitrate.

16 Q. What is penta erythratol tetral nitrate?

17 A. It is an explosive that is commonly used in detonating
18 cord.

19 MR. GARLAND: The Government has no further
20 questions.

21 I would like to move into evidence Government's
22 Exhibit 3.

23 MR. COYLE: No objection to the introduction of
24 Government's Exhibit 3.

25 THE COURT: Admitted without objection.

1 MR. GARLAND: Thank you.

2 THE COURT: Cross-examine.

3 MR. COYLE: Thank you.

4 CROSS-EXAMINATION

5 BY MR. COYLE:

6 Q. Good afternoon, Agent Hersley.

7 A. Good afternoon.

8 Q. Would you tell me, please, sir, if prior to the time that
9 you came to court to testify today if you reviewed any papers
10 or documents to refresh your recollection in preparing your
11 testimony here before the Court?

12 A. No.

13 Q. So you haven't read any official documents in connection
14 with this case to prepare for your testimony?

15 A. Not to prepare for my testimony, I have not.

16 Q. Did you discuss any of the documents or anything other
17 than the exhibits that have been introduced into evidence in
18 court today with any of the Assistant United States Attorneys
19 involved in the case prior to your testimony?

20 A. I don't believe so.

21 Q. Can you tell me, please, sir, the agents that you have
22 spoken with to obtain the information that you have testified
23 to in a hearsay fashion before the Court today?

24 A. Primarily Rick Hahn.

25 Q. Rick?

1 A. Rick Hahn --

2 Q. Okay.

3 A. -- from the FBI; numerous agents during the course of the
4 investigation, as it is ongoing. I also spoke with another
5 individual that is a bomb tech for the FBI.

6 Q. What is his name?

7 A. I spoke with an individual from the Medical Examiner's
8 office. I spoke with agents in Junction City, Kansas and other
9 agents throughout the Country.

10 Q. Now, can you tell us, please, sir, what your role has been
11 in the investigation?

12 A. Yes, I have been assisting in the investigation in regard
13 to Mr. McVeigh. I have also been participating in the ongoing
14 investigation in an attempt to further identify and locate
15 other individuals who may have been involved in the bombing on
16 April 19th, 1995.

17 Q. In your assistance in the investigation, what has been
18 your primary role? Have you been a keeper of evidence, a maker
19 of calls, what has been your primary role?

20 A. I have done both of those things, as well as numerous
21 other things. If you refer to a keeping of the original
22 evidence, I have not been involved in actually handling the
23 original evidence. I have been involved in tracking and
24 keeping up with copies of that evidence insofar as
25 further-leading investigation material is concerned. Also in

1 coordinating the efforts of other FBI offices in the ongoing
2 investigation in an attempt to identify the additional people
3 that were involved in the bombing that tried to prohibit anyone
4 else from getting injured or killed.

5 Q. So am I correct that you more or less have been involved
6 in all phases of the investigation --

7 A. Pretty much so.

8 Q. -- to date?

9 A. Pretty much.

10 Q. Is that the way it is with all of the special agents of
11 the FBI on this investigation, they have handled all different
12 aspects? They call agents -- every agent is calling agents all
13 over the Country, tagging in evidence and looking at it and
14 making sure that all of this is kept track of; is that right?

15 A. No, that's not really an accurate depiction of what is
16 taking place. The agents have been given certain assignments
17 and certain responsibilities and they have been going about
18 carrying them out.

19 Q. Tell us, please, sir, so that I can specify what it is you
20 have been involved in, could you tell us, please, what, for
21 instance, your activities were on the day of Wednesday, April
22 19th? What was your specific assignment on that date? I
23 assume you had something specific.

24 A. On April 19th, as most of the FBI agents in Oklahoma City
25 were sent down to the vicinity of the Murrah Building after the

1 bomb blast, I was charged with staying in the office to help
2 communicate the activities of everyone concerned on that date.
3 As it has evolved, I have been responsible primarily for
4 keeping up with the activities of Mr. McVeigh.

5 Q. Are you talking about on the 19th?

6 A. No.

7 Q. I believe that was my question, just on the 19th.

8 Now, is that what you did on the 19th? You were on the
9 phone and you never left the office?

10 A. Primarily, yes.

11 Q. Now it is my understanding on the 19th at some point the
12 offices of the FBI were evacuated here in Oklahoma City; is
13 that correct?

14 A. Evacuated, except for certain personnel.

15 Q. You were one of those who stayed behind, sir?

16 A. Yes.

17 Q. Now, can you tell us, please, sir, what your primary
18 responsibility and assignment was on April 20th, that would be
19 Thursday?

20 A. Pretty much the same as it was on the 19th.

21 Q. So once again you were there at the offices of the FBI?

22 A. Yes.

23 Q. Was your job there -- that's the offices at 50 Penn Place,
24 not this Command Post we have heard of, right?

25 A. It is at 50 Penn Place, yes.

1 Q. Your obligations on the 20th were placing calls to other
2 places in the Country?

3 A. Yes.

4 Q. Would that be based upon evidence that people would bring
5 you or tell you about that had been found in the field or tell
6 us how that worked on the 20th?

7 A. We would get information about evidence that had been
8 found in various locations that would require that we send out
9 and conduct additional investigation both here in Oklahoma City
10 and other locations throughout the Country. So I would be
11 responsible for help overseeing the continued investigation in
12 that regard to help identify other individuals who may have
13 been involved.

14 Q. On the 21st, on Friday?

15 A. The same thing on Friday and the same thing on Saturday.

16 Q. So essentially am I correct, sir, that all of your duties
17 from the date of the 19th through the 21st were in the offices
18 of the FBI at 50 Penn Place in Oklahoma City?

19 A. Pretty much so, yes.

20 Q. Now beginning on Sunday, can you tell us, please, what
21 your duties were?

22 A. I believe that's the day that I started reporting over to
23 the -- Sunday or Monday I started reporting over to the Command
24 Post that was set up and was then responsible for the
25 investigation as it pertained to Mr. McVeigh.

1 Q. So am I correct, then, that you have been the agent in
2 charge, then, of the investigation as it pertains to the
3 accused, Timothy McVeigh?

4 A. I have been responsible for keeping up with the
5 investigation regarding Mr. McVeigh, that's correct.

6 Q. Explain to us what "keeping up" means?

7 A. There is a number of leads that have been -- are being
8 carried out in the continuing investigation. I keep track of
9 that investigation. I keep track of certain evidence that has
10 been found -- although not the actual, physical custody of that
11 evidence; I want to clarify that. I am provided with copies of
12 documents and other records that are -- have been located. We
13 are cataloging those documents, keeping up with the
14 investigation that is going on in other offices of the FBI,
15 including talking to agents that are conducting investigations
16 in those offices regarding what they have been able to
17 determine and future investigation to be conducted.

18 Q. Now, is this material all logged into a computer, then?

19 A. Portions of it.

20 MR. GARLAND: Objection, Your Honor. We are well
21 beyond the scope of a probable cause hearing. The
22 determination of the way in which the FBI goes about the
23 investigation is not a proper subject for discovery.

24 THE COURT: Overruled.

25 You may answer the question.

1 MR. COYLE: I asked if he has been logging these
2 matters, these clues, this evidence that he has looked at,
3 these kinds of things that he has testified to.

4 THE COURT: I don't believe he answered the
5 question. Did he answer that question?

6 MR. COYLE: No, it was objected to.

7 THE COURT: I overruled it.

8 Do you want him to answer the question?

9 THE WITNESS: Could you repeat the question?

10 MR. COYLE: I knew he would ask me that.

11 Q. (By Mr. Coyle) In the course of your investigation and
12 during the time particularly that you moved to the Command
13 Post -- and I will get back to the other place -- but since you
14 have been at the Command Post -- that's what it is called. You
15 understand what I'm talking about by "Command Post"?

16 A. Yes, I do.

17 Q. Since you have been at that particular location, as you
18 get leads, as you get copies of evidence, photocopies or
19 photographs of evidence, have you then taken those and logged
20 them into a computer?

21 A. No, I don't do that. Some of the documents and the
22 results of the interviews are being logged into a computer.
23 That is being done by other personnel at that location and
24 other locations.

25 Q. So your job is to just take a look and keep track of all

1 of the evidence and then you assign other FBI agents out to do
2 other tasks or to make calls?

3 A. There are other agents that are assigned to the same types
4 of duties that I am there in regard to other potential
5 individuals that were involved in the bombing. I also
6 coordinate with those individuals insofar as information that
7 is received regarding Mr. McVeigh, in an effort to identify
8 some of the other subjects that were involved in the bombing
9 here in Oklahoma City.

10 That's our primary focus right now is to try to determine
11 the identity and the location of the other subjects so that we
12 can prohibit another bomb from going off.

13 Q. You told us in your direct examination by Mr. Garland that
14 you had consulted with explosive experts; is that correct?

15 A. Yes.

16 Q. Can you tell me who those were?

17 A. Rick Hahn, and I believe the other individuals -- one of
18 the other individuals is Bill Jockney.

19 Q. Who is Rick Hahn?

20 A. He is an FBI bomb expert that has been qualified to
21 testify in cases and has testified on numerous occasions in
22 cases across the Country.

23 Q. Can you tell me where your conversations with Mr. Hahn --
24 Agent -- is it Agent Hahn --

25 A. Yes.

1 Q. -- or is he a technician?

2 A. No, he is an agent.

3 Q. Where your conversations with Agent Hahn took place?

4 A. Primarily at the Command Post.

5 Q. Were other persons present during those conversations?

6 A. During some of the conversations.

7 Q. Can you tell me when those took place?

8 A. Over the last couple of days.

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1 Q. Did he show you anything to demonstrate any of the opinions
2 that he gave you concerning the explosion that you told the
3 magistrate judge about today?

4 A. Yeah.

5 Q. And can you tell us, please, what it was he showed you and
6 that you used to understand the way that the device was
7 detonated or the things that you testified to, particularly
8 first, let me start that it was located in a Ryder Truck. What
9 did he show you physically that would assist us in indicating
10 the truthfulness of that?

11 A. A picture of the axle from the Ryder Truck was located
12 approximately one block away from the bomb blast site.

13 Q. A picture of the axle?

14 A. A picture of the axle and the undercarriage portion that
15 showed how the axle had been twisted and the hubs on either
16 side had been blown off.

17 Q. Okay, so the axle was attached to the undercarriage a block
18 away?

19 A. No, the axle was by itself about a block away.

20 Q. Let's talk about the axle. Could you tell us, please,
21 were you advised by agents who were in the field there or
22 the persons who found it? Who found it; do you know?

23 A. I don't know who found it first. Mr. Hahn is the person
24 I had conversations with about it.

25 Q. Okay, he showed you pictures of the axle.

1 A. Yes.

2 Q. Do you know where the axle was found at all, not who found
3 it, but where it was found?

4 A. Yes.

5 Q. Can you tell us where it was found?

6 A. In front of the Regency Tower Apartments.

7 Q. Which is about a block west of the Murrah Building,
8 correct, sir?

9 A. Roughly.

10 Q. Do you know if it was on the north or south side of the
11 street or where it was located?

12 A. I believe it was on the north side of the Fifth Street.

13 Q. Had it hit a car?

14 A. Yes.

15 Q. Can you tell me what happened to the occupants of the car?

16 A. I am not familiar with that.

17 Q. They didn't say anything about that?

18 A. I didn't speak with them.

19 Q. Well, I understand that. Did any of the agents tell you
20 what happened?

21 A. No.

22 Q. To the car in which it hit?

23 A. I saw the picture of the car after the axle had hit it, but
24 the occupants of the car were not visible in the picture.

25 Q. So, did Agent Hahn, when he showed you the picture

1 of the axle, did he also show you a picture of the car that it
2 hit?

3 A. It was the same picture.

4 Q. It was all in one big picture?

5 A. It was all in the same picture.

6 Q. Showed the axle. Which portion of the car did it hit?

7 A. I didn't focus my attention right on the exact spot. It
8 was -- I believe in the front and possible on the side, but I
9 didn't focus on that -- I don't really know for sure.

10 Q. What was it that he told you about the axle that
11 identified it as something that, I believe you testified to,
12 that showed that it had been involved in an explosion?

13 A. Because of the unique blast damage that it had suffered.
14 It's made of very heavy metal, and it had twisted each side or
15 end of the axle in different directions and the hubs had both
16 been blown off of the axle.

17 Q. Okay, so the fact that it was twisted and the fact that the
18 hubs were blown off of it?

19 A. Yes, and I believe the housing was cracked as well.

20 Q. And the axle housing cracked?

21 A. Yes.

22 Q. Any other reasons that Agent Hahn gave you why that this
23 had been the vehicle that had -- I believe you told us through
24 the uniqueness of the blast damaged, it housed the bomb?

25 A. Yes.

1 Q. Anything else?

2 A. Yes.

3 Q. All right.

4 A. They were able to recover the bumper that had been on the
5 rear portion of the truck.

6 Q. Okay, now who is "they", do you know?

7 A. They individuals at the bomb site. I don't know
8 specifically who recovered it. I had conversations with
9 Mr. Hahn about it.

10 Q. Did you see a picture of it at the location which it was
11 found?

12 A. No.

13 Q. Do you know? Were you told the location in which it was
14 found?

15 A. No, I was not.

16 Q. All right, would you go ahead, please, well, what was it
17 about the bumper?

18 A. Yes, the Florida license plate that we talked about
19 previously.

20 MR. COYLE: May I?

21 THE COURT: Sure.

22 BY MR. COYLE:

23 Q. Are you talking --

24 MR. COYLE: Your Honor, may I approach the witness?

25 THE COURT: Yes.

1 Q. (By Mr. Coyle) Let me hand you Government's Exhibit No. 1
2 and ask you if that is the exhibit that you were talking about?

3 A. Yes, it is. This license plate was attached to the bumper
4 that was collected in the vicinity of the bomb site. It has
5 the Florida license plate that we were able to tracked back to
6 that particular Ryder Truck. The reason that they know that it
7 was on the vehicle that was actually the truck bomb was because
8 there was some unique blast damage done to the inside of the
9 bumper that could have only, in their estimation or in their
10 opinion, been done by the bomb actually being in that very
11 vehicle.

12 Q. Did he show you a picture then? Did Agent Hahn show you a
13 picture of the inside of the bumper and demonstrate for you or
14 show to you how that damage occurred?

15 A. He did not show me any pictures, I don't believe, of the
16 bumper.

17 Q. He just discussed that with you?

18 A. Yeah.

19 Q. Okay, so anything else, other than the things you have told
20 me and also the bumper?

21 A. Yes, the side rail on the box portion of the trailer, the
22 little side rails that support it, the damages that those
23 suffered were also indicative that the bomb was contained in
24 that vehicle.

25 Q. How did he tell you those were indicative that the bomb was

1 contained in that vehicle?

2 A. The fact I believe that at least one of those, maybe both,
3 had been sheared, or the actual damage that those themselves
4 suffered, was indicative of the fact that the bomb was inside
5 that particular vehicle because the side rails go down each
6 side.

7 Q. How were they sheared or how did something happen to them
8 that would indicate to Agent Hahn that was involved in that
9 way, in that fashion, the bomb was in the truck?

10 A. I didn't discuss the matter with Agent Hahn, the manner in
11 which they were sheared or blown apart.

12 Q. Did you see photographs of that part of the truck?

13 A. No.

14 Q. How did Agent Hahn tell that he identified those parts as
15 being part of the truck which was attached to the tag or the --
16 or that bore the tag that has been introduced as Government
17 Exhibit No. 1?

18 A. He did not tell me anything further other than he could
19 tell from the uniqueness of the blast damage that they were
20 also on the Ryder Truck.

21 Q. Now, at the time that the bumper was found, there were
22 things you saw about the bumper, was the tag that we have seen
23 and I have shown you again as Government Exhibit No. 1 -- and
24 you know what we are talking about, the tag?

25 A. Yes.

1 Q. Was it attached to the bumper?

2 A. Yes, I believe so.

3 Q. Was it attached to the bumper at the time that it was
4 found?

5 A. I believe so.

6 Q. Now, can you tell us how you determined or how Agent Hahn
7 determined that the sides of the truck that he indicated were
8 on the truck where the bomb came out were the sides of the same
9 truck that was attached to Government Exhibit No. 1, to the
10 tag, of the bumper?

11 A. No, Agent Hahn, as I testified, he told me that he could
12 tell from the uniqueness of the blast damages that those were
13 actually on the truck that contained the bomb.

14 Q. Okay, so am I correct that the only parts that have been
15 recovered by the FBI that are considered to be part of the
16 truck are the axle that you found on Fifth Street, correct,
17 sir?

18 A. That's not the only part that was found, sir. Many, many
19 components of the truck were found. I am not familiar with all
20 of those.

21 Q. Let me make sure we are familiar with the ones or I have
22 covered all the ones with which you are familiar.

23 A. Okay.

24 Q. That's the axle on Fifth Street; am I correct, sir?

25 A. Yes, sir.

1 Q. Was there a serial number or what we know as VIN number,
2 Vehicle Identification Number?

3 A. A portion of the vehicle identification number was
4 contained on the axle which allows us to trace that number to
5 the actual vehicle identification number and ultimately to the
6 axle of the truck.

7 Q. Can you tell me, please, sir, how much of the VIN number
8 was present on the axle that was found there on Fifth Street?

9 A. I believe it's approximately six numerals and maybe one or
10 two letters.

11 Q. And that was one of the photographs that you were shown by
12 Agent Hahn?

13 A. Yes.

14 Q. And then you saw the tag, license tag, Government Exhibit
15 No. 1, that was attached to the bumper. You told us about
16 that. You don't know where it was found, but somewhere?

17 A. Which question are you asking me?

18 Q. Well, I am going over -- what I am trying to do and maybe I
19 am not doing it very artfully. I will try to improve. First
20 of all, we have covered the axle. Now, let's move to the tag
21 that you told us about. These are items that Agent Hahn told
22 you that he used in the basis of forming his opinion, correct?

23 A. Part of which he used, yes.

24 Q. All right, the tag that was also attached to the bumper,
25 correct?

1 A. Yes, that is correct.

2 Q. And the sides or some sides he has identified these as
3 sides to that Ryder Truck?

4 A. They are the side rails that support the box portion of the
5 trailer, I think.

6 Q. Did he tell you where those had been found?

7 A. No, he did not.

8 Q. Did you see a picture of them?

9 A. No, I did not.

10 Q. And when this conversation took place that -- okay --
11 strike that. Were there any other items that he showed you
12 that formed his opinion that were part of the truck?

13 A. Based on where the truck was located, he also talked with
14 me about the trailer that was left after the bomb blast in the
15 location of that crater.

16 Q. Was this all in one conversation with Agent Hahn prior to
17 coming here to court?

18 A. No.

19 Q. Did you talk to him in the last couple days?

20 A. No.

21 Q. All right. Excuse me, I need a drink of water. Would you
22 like some water, Agent?

23 A. No, thank you.

24 Q. And the conversation about the axle, where did that take
25 place?

1 A. At the Command Post.

2 Q. And the conversation about the tag and the bumper?

3 A. Also at the Command Post.

4 Q. And the side rails?

5 A. Same location.

6 Q. And were these all in one conversation or were these three
7 different conversations?

8 A. Two or three different conversations.

9 Q. Did you take notes during these conversations with them?

10 A. No.

11 Q. When did he tell you about the crater left by the blast?

12 A. We talked about that this morning.

13 Q. Did he show you any photographs?

14 A. Just the photograph of the overall blast location, and it
15 depicts -- you can see where the crater is. It doesn't show it
16 in great detail.

17 Q. But he did show you a picture?

18 A. Yes.

19 Q. Did you go over the picture with him, was my question to
20 you?

21 A. Yes.

22 Q. Well, I haven't seen it. I believe Ms. Otto asked Agent
23 Ricks to view the scene. Were you aware that she asked to be
24 able to look at it to prepare for this hearing?

25 A. No.

1 Q. So how large is this crater?

2 A. I believe it's 12 feet deep and 30 feet wide,
3 approximately.

4 Q. Tell us, please, sir, what was indicated by Agent Hahn that
5 would tell us that that was the site of the blast vehicle?

6 A. The bomb with the high explosives, as this one would be,
7 the vehicle would be located right where the crater was --
8 would have been located there.

9 Q. Anything to indicate that the explosion came from this
10 Ryder Truck that you talked about by the size of the crater?

11 A. No.

12 Q. Have the side rails been identified, to your knowledge, as
13 being part of the Ryder Truck?

14 A. I believe so. I am not exactly sure of that. As I
15 testified, I am not responsible for keeping or tracking that
16 original evidence.

17 Q. Well, I understand you are not involved in the original
18 evidence. You are getting the evidence and you are testifying
19 here today. You testified due to the uniqueness of the blast
20 damage, you testified under oath, that that is the truck,
21 correct?

22 A. I am testifying regarding the bombing as to the information
23 that was provided to me by Mr. Hahn -- Agent Hahn of the FBI
24 regarding the actual blast and why he was able to determine
25 that the bomb was contained in the truck.

1 Q. You don't have any reason to think that there is anything
2 he could hold from you or he wouldn't tell you something, do
3 you?

4 A. No, I do not.

5 Q. Now, any other reason that Agent Hahn told you that he
6 thought the bomb was located in the truck that we have
7 identified as a Ryder Truck or you told us was identified as a
8 Ryder Truck?

9 A. No.

10 Q. In your investigations in this case, have you seen any
11 other items or parts of a vehicle that you have been advised
12 are part of the Ryder Truck in question in the case?

13 A. No, I don't believe so.

14 Q. So you are not aware of any other parts of what -- and you
15 know what I am talking about, the Ryder Truck; are you not?

16 A. Yes.

17 Q. Any other parts of the Ryder Truck that have been found by
18 anyone in law enforcement to your knowledge that have been
19 identified and located?

20 A. Other parts of the truck I believe have been located. I am
21 not specifically aware of them or where they may have been.

22 Q. Is that part of the investigation that you are not involved
23 in there?

24 A. Yeah.

25 Q. I believe you answered this for me, but how do you know

1 that the Ryder Truck is connected with the crater that was in
2 front of the building?

3 A. Based upon my conversations with Agent Hahn, he advised me
4 that the Ryder -- the truck that the bomb was contained in
5 would have been where the crater was after the blast, and then
6 based on the testimony that I have provided regarding how we
7 were able to determine that the Ryder Truck was actually the
8 unit that contained the bomb.

9 Q. Did Agent Hahn tell you that there was anything about any
10 of the parts of the Ryder Truck that were found, the
11 configuration, the fact that they were twisted or mangled or
12 anything that happened to any of the parts of the Ryder Truck,
13 that would have indicated somehow they would have been in that
14 crater or blown out of it or anything of that fashion?

15 A. No, he didn't talk about that.

16 Q. So the reason that you think the Ryder Truck was the one
17 involved in the crater was because of the axle, the tag with
18 the bumper and the side rails that you told me about earlier?

19 A. That's why we believe the Ryder Truck -- that's why Agent
20 Hahn's opinion is that the Ryder Truck was the actual unit that
21 contained the bomb.

22 Q. Now you told us in connection with this same conversation,
23 you talked to Rick Hahn, Agent Rick Hahn was one of the
24 explosive experts that you consulted with. Can you tell us the
25 name, please, sir, of the other explosives expert with whom you

1 consulted?

2 A. I believe his name is Bill Jonkey.

3 Q. You are not sure of his name?

4 A. I am sure that is.

5 Q. Can you spell his name for the court reporter?

6 A. No, I can't.

7 Q. Where did you meet this fellow?

8 A. At the FBI Command Post.

9 Q. At the FBI Command Post, where it's located, or at the FBI
10 at 50 Penn Place?

11 A. At the FBI Command Post.

12 Q. And can you tell us, please, sir, when you had discussions
13 with Bill Jonkey or Jockey, how about Bill Doe, sometime? When
14 was it?

15 A. Those conversations were today.

16 Q. Was that in preparation for your testimony here, sir?

17 A. Yes, sir.

18 Q. Did you review any photographs or look at anything else in
19 connections with the testimony that you came to give here?

20 A. In regard to my conversation with Mr. Jonkey?

21 Q. Yes, sir.

22 A. No.

23 Q. And can you tell us what it was that he looked at in
24 connection with that or he showed you or discussed with you out
25 of his expertise?

1 A. We discussed the axle that had been found that belonged to
2 the Ryder Truck, the bumper that has been blown from the Ryder
3 Truck, and that's pretty much it.

4 Q. So you discussed the axle and the bumper with him?

5 A. Yes.

6 Q. And was it just conversation there in the office or how was
7 he identified to you as being someone with expertise in
8 explosives?

9 A. I sought him out. We have individuals called in to perform
10 those and --

11 Q. How did you seek him out?

12 A. Went over and talked to him.

13 Q. I understand, but how did you know him to be an expert?

14 You don't know his name. Who identified him to you as someone
15 who had expertise in explosive devices or bombs?

16 A. Rick Hahn identified him in that nature, and also he is in
17 the area where the bomb experts are located down there.

18 Q. Oh, I see. They have they own room?

19 A. It's not their own room.

20 Q. Area?

21 A. They are part of the command post.

22 Q. So other than Rick Hahn and Bill Doe, who are the other
23 bomb people involved there at the Command Post?

24 A. There is another individual down there by the name of Dave,
25 I am not able to recall his last name at the current time, and

1 there are some other individuals there that I am not aware of
2 their identity.

3 Q. When you had your conversations that you talked about that
4 you had with Agent Hahn particularly, and also the man Bill
5 Jonkey or Bill Doe that we have identified, were any of these
6 other -- "Dave, question mark," and the other persons present
7 during those conversations that you had with them?

8 A. No.

9 THE COURT: Mr. Coyle, I am sorry to interrupt. If
10 it's possible, I would like to give the court reporters a brief
11 recess.

12 MR. COYLE: Sure.

13 THE COURT: Would you mind?

14 MR. COYLE: No.

15 THE COURT: I would ask the agents to remove the
16 Defendant, and we will all remain seated.

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1 (AFTER THE RECESS, THE FOLLOWING PROCEEDINGS WERE HELD IN
2 OPEN COURT.

3 THE COURT: Let the record show that all parties are
4 present and the Defendant is present.

5 MR. COYLE: May I have just a minute?

6 THE COURT: Sure. Let the record show that counsel
7 are present. The Defendant is present in person, and you may
8 proceed with cross-examination.

9 Q. (By Mr. Coyle) Agent Hersley, do you have any indication or
10 have you been advised that any individuals saw the Ryder Truck
11 explode?

12 A. Primarily the information that I have is that people saw
13 the Ryder Truck shortly before the explosion. I don't know of
14 anybody by name myself that actually saw the explosion and
15 lived through it.

16 Q. Okay, so --

17 A. There are people inside the building that made it through
18 obviously and would have seen the explosion or parts of it.

19 Q. Well, I don't think my question to you is theoretical. Are
20 you aware of a witness that you know their name and might be
21 available and alive to testify in court -- that's a better
22 question -- that saw the Ryder Truck explode.

23 A. Not that I can recall right now.

24 Q. That would be someone pretty important and you're privy to
25 that kind of information, correct?

1 A. Yes.

2 Q. Now, is there any pictorial or visual recording of the
3 vehicle parked over the crater, the site that you say is the
4 site of the explosion?

5 A. I don't believe there is a picture actually where that
6 crater is. There are other pictures of the Ryder Truck on that
7 street.

8 Q. And where is the Ryder Truck located at the time of the
9 pictures?

10 A. Heading east on Fifth Street towards that location.

11 Q. It's shown heading east?

12 A. Yes.

13 Q. And can you see the tag on the pictures?

14 A. No.

15 Q. So you say there is film available that shows the -- a
16 Ryder Truck in an easterly direction, that is traveling in an
17 easterly direction on Fifth Street?

18 A. Yes.

19 Q. Is it past the street that we know as Harvey?

20 A. I am not -- I have not studied that film in detail. It's
21 in that general vicinity right in there. It may be the video
22 that I saw. I believe it is just before -- well, I am not
23 sure. I better not say that.

24 Q. Well, Harvey Street --

25 A. I don't know.

1 Q. Harvey Street is the street that is immediately west of the
2 Murrah Building?

3 A. That is correct.

4 Q. Are the photographs that you saw or, is it still photo or
5 film?

6 A. What I saw was the still photos.

7 Q. Is it a still photo that has been removed from a film?

8 A. Yes.

9 Q. Were those still photos that you saw, do those appear to
10 you to be east of the street that we know as Harvey?

11 A. I was not focusing on that picture to determine whether or
12 not -- whether it was east or west of Harvey. It was in that
13 general location. I can say that.

14 Q. So it was a close-up more of the truck than its location?

15 A. It wasn't a close-up photo, it was taken from a camera off
16 one of the buildings in the vicinity.

17 Q. Did you make a determination of what building it came off
18 of?

19 A. No, I did not myself.

20 Q. Okay, did anyone?

21 A. I believe one of the other agents was able to determine
22 that it came from one -- one of the films came from the Regency
23 Tower Apartments.

24 Q. Can you tell in the photograph who is driving the truck?

25 A. No.

1 Q. And is the truck parked or is it moving?

2 A. As I mentioned, I saw the still photographs of the picture,
3 or the footage was frozen at this time when a still photograph
4 was made, but I believe the truck, due to the continuation of
5 the still photographs, that the truck was moving in an easterly
6 direction.

7 Q. That is also a one-way street there from west to east, am I
8 correct, sir?

9 A. That is correct.

10 Q. What was the size of the truck that you saw in the
11 photographs?

12 A. I could not tell, myself, exactly what the size was from
13 the photograph that I saw, but I would estimate it from what I
14 saw to be approximately 20 feet.

15 Q. Was there a time indicated on the picture of the film that
16 you saw?

17 A. Yeah.

18 Q. Okay, can you tell us, please, sir, what that time was?

19 A. It was in the proximity of 9:00 a.m. As I mentioned, I did
20 not study the photographs in great detail, and I don't know the
21 exact time on the photographs, but it was in the proximity of
22 9:00 a.m.

23 Q. Can you tell us when you viewed those photographs, please,
24 sir?

25 A. I believe within the last two to three days.

1 Q. I believe you told me earlier that the license tag is not
2 visible on the photographs; is that correct, sir?

3 A. Not visible on the photographs that I have seen, that is
4 correct.

5 Q. Are you aware of any other photographs in which the license
6 tag might be visible?

7 A. No, except for the recovery, and I am not aware of that
8 being on the bumper. I would presume there are photographs
9 taken there.

10 Q. Well, I understand that it has been photographed by the FBI
11 and the way that we see it --

12 MR. COYLE: May I approach?

13 THE COURT: Yes.

14 (COUNSEL SHOWS WITNESS GOVERNMENT EXHIBIT NO. 1).

15 A. Yes.

16 Q. (By Mr. Coyle) -- as we see it as Government Exhibit No.

17 1. But aside from Government Exhibit No. 1, are you aware of
18 any other photographs, aside from those photographs taken of it
19 by the FBI subsequent to its retrieval after the time of the
20 explosion, are you aware of any photographs of a license tag
21 prior to the time of the explosion in front of the Murrah
22 Building?

23 A. No.

24 Q. Are you aware of any photographs that were taken at any
25 time prior to the explosion at the Murrah Building of the

1
2 accused Timothy McVeigh in or about the truck that you have
3 described as a Ryder rental?

4 A. No.

5 Q. And I include in that, so we don't have a semantical
6 difficulty of any sort -- any sort of photographs, film
7 footage, surveillance cameras, any other film of any type that
8 you are aware of, Agent, that shows the accused Timothy McVeigh
9 anywhere in the vicinity of the Murrah Building on April 19,
10 1995 at or before 9:00 a.m.

11 A. No.

12 Q. 9:03 a.m. -- at or before 9:03 a.m.

13 A. That is correct.

14 Q. "No" is your answer?

15 A. Yes.

16 Q. I believe you told us in a previous answer that there is no
17 visual or pictorial record of the vehicle parked over the bomb
18 -- over the site where you say it exploded in front of the
19 Murrah Building?

20 A. Not that I have seen. I have not viewed all of the film of
21 that location on that morning, so I can't speak to that
22 entirely, but I have not seen it.

23 Q. Have you been advised that that photograph exists? Have
24 you been told about that in your capacity as an agent working
25 there at the command post?

1 A. No.

2 Q. That would be something as an agent working on the case,
3 and particularly you told us at the outset that your
4 responsibilities were in regard to Mr. McVeigh; am I correct?

5 A. Yes, and his activities.

6 Q. And that would be something -- the movement of the Ryder
7 Truck and its location is something particularly important to
8 which the government would be concerned in regard to
9 Mr. McVeigh; am I correct?

10 A. Yes, you are correct, as there are many other things that
11 the government is concerned about and different agents are
12 assigned different responsibilities, as this is a fast-moving
13 investigation possibly involving more subjects that may have
14 been involved in the bombing. So other agents have been
15 assigned responsibilities in regard to any films or pictures
16 that may be retrieved for viewing purposes.

17 Q. Well, how did you see the ones that you have testified
18 about here earlier? Did you happen to see them laying on a
19 desk and look at them, or did someone bring them to your
20 attention? How did you see those?

21 A. One of the agents that have been tasked with those
22 responsibilities showed me those photographs.

23 Q. Now, I assume -- who are those agents that are tasked with
24 the responsibility of reviewing photographs and film footage?

25 MR. GARLAND: Objection, Your Honor, this is now

1 purely speculative.

2 THE COURT: Overruled.

3 A. (By Mr. Coyle) The agent that showed me the photographs was
4 Walt Lamar.

5 Q. Is he a local agent here?

6 A. Yes, he is.

7 Q. Is he known to you as a photographic expert?

8 A. No, he is not. He is not known to me as that.

9 Q. And is he the one that you inquired of as to whether or not
10 there were any photographs of the accused, Mr. Timothy McVeigh,
11 in possession of the government, at or about the Ryder Truck?
12 You asked him that question I assume; did you not?

13 A. I did not inquire of Agent Lamar about these photographs.
14 He brought it to my attention because there is a possibility of
15 a particular car being involved in one of those photographs
16 that he was showing me. We are continuing investigation to try
17 to determine the actual identity of that car.

18 Q. What did that car look like in the photograph?

19 MR. GARLAND: Objection, Your Honor, we are going in
20 the area of discovery now.

21 THE COURT: Sustained.

22 Q. (By Mr. Coyle) In the photograph concerning the other
23 vehicle or anything in any of the surveillance photographs that
24 you have seen-- exclude the Ryder Truck, not only around the
25 Ryder Truck -- have you seen Mr. McVeigh in any of the other

1 photographs, period, in or about the area of the Murrah
2 Building?

3 A. No.

4 Q. Now, you told us that there were witnesses that saw the
5 vehicle at or near the scene of the explosion. I am talking
6 about the Ryder Truck, that saw the Ryder Truck; do you recall
7 testifying to that earlier?

8 A. There are witnesses that have advised that they saw the
9 Ryder Truck in the vicinity of the Murrah Building on that
10 morning, yes.

11 Q. And have those witnesses viewed Mr. McVeigh?

12 A. Have they viewed him?

13 Q. Yes, in sort of a photo lineup or live lineup. Any of
14 those witnesses who say they saw the Ryder Truck?

15 A. Yes. Well, to say they saw the Ryder Truck, I don't believe
16 that those individuals have been involved in a lineup.

17 Q. Okay, how many individuals are you aware of Agent Hersley,
18 that saw the Ryder Truck at the scene of the explosion?

19 A. At the actual scene as opposed to in the vicinity?

20 Q. At the actual place, the site of the explosion.

21 MR. GARLAND: Objection, Your Honor, again goes to
22 discovery of other witnesses in the matter. It doesn't go
23 to the probable cause.

24 THE COURT: Overruled.

25 A. One or two.

1 Q. (By Mr. Coyle) You are not sure?

2 A. I know of one. There are other agents that have been
3 interviewing potential witnesses that may have sighted
4 the Ryder Truck in that vicinity. There are other, still
5 other agents that have interviewed people who saw the Ryder
6 Truck in the vicinity of the Murrah Building on that morning.

7 Q. So you know of one witness who says they saw the truck at
8 the location where you have told the Court you have been
9 advised that it exploded; am I correct?

10 A. Yes.

11 Q. Did you interview that person?

12 A. No, he was interviewed by another agent.

13 Q. Do you know the location of that other person at the time
14 that he viewed the truck and the location that you have
15 described for us?

16 A. Yes.

17 Q. Can you tell us, please?

18 A. He was driving his vehicle east on Fifth Street and passed
19 right along beside the vehicle.

20 Q. How long or how much time passed between the time that the
21 witness told you that he saw the Ryder Truck and the explosion?

22 A. Maybe a minute or two.

23 Q. How far was his vehicle -- had the witness's vehicle
24 travelled?

25 A. When the bomb went off, the witness indicated that he was

1 between Robinson and Broadway on Fifth Street.

2 Q. Has he been shown, to your knowledge, a photo lineup of
3 the accused, Timothy McVeigh?

4 A. He has not been shown a photo lineup.

5 Q. Has the FBI prepared a photo lineup that includes the
6 picture of Timothy McVeigh?

7 A. Yes.

8 Q. Have you viewed that --

9 A. Yes.

10 Q. -- photo lineup?

11 A. Yes, I have.

12 Q. Does the witness that you have told us saw the truck in
13 that position has that witness viewed Mr. McVeigh in a live
14 lineup?

15 A. No.

16 Q. Can you tell us why not?

17 A. Yes.

18 Q. Okay.

19 A. We are in the process of getting the lineup shown to
20 different individuals, as well as trying to correlate all
21 of the other investigation with the other offices in an effort
22 to try to identify the other subjects that were involved in
23 the bombing. That is a priority of ours in order to try to,
24 if other people are involved, get them identified and take them
25 into custody to try to prohibit another bomb going off in

1 another area or other citizens being injured or killed.

2 Q. Well, eyewitness testimony, you would agree with me, fades
3 during the passage of the time; does it not?

4 A. To some extent.

5 Q. It's extremely important, if you want to identify somebody,
6 that you show them the picture as soon as you can, don't you?

7 A. As soon as reasonably possible, yes.

8 Q. And a person who said he saw the Ryder Truck there has
9 never been shown an photographs of the accused in any way?

10 A. He was shown a composite that was drawn up, the composite
11 that we have testified about, and he identified that
12 composite as strongly identifying the individual that he saw
13 at the scene.

14 MR. COYLE: May I approach the witness, Your Honor?

15 THE COURT: Yes.

16 Q. (By Mr. Coyle) Are we talking about Government Exhibit No.
17 2?

18 A. Yes.

19 Q. The composite photograph?

20 A. Yes.

21 Q. He was shown that photograph?

22 A. Yes.

23 Q. I am sorry. That drawing?

24 A. This composite.

25 Q. That's the witness that you have been telling us about

1 that was driving by there?

2 A. Yes.

3 Q. And he said that to you. What were the words that he used;
4 do you remember?

5 A. I wasn't there.

6 Q. So you don't know if he used "strongly resembled" or
7 exactly what he said?

8 A. The agent that talked to him said that he "strongly
9 resembled," whether that was actually the words of the witness,
10 I was not present.

11 Q. Where did -- and as I understand, you are involved, your
12 involvement has been in the investigation of Timothy McVeigh.
13 Where did this witness, the first witness you have told us
14 about, say that he saw the composite, or a person that strongly
15 resembled the person in the composite, in relation to the Ryder
16 Truck?

17 A. He was walking from the south side of Fifth Street, by
18 where the truck was parked, in a northerly direction
19 across Fifth Street.

20

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1 Q. So he was walking directly across Fifth Street?

2 A. He was walking away from the truck, the area where the
3 truck was located.

4 Q. Well, he was walking -- I'm not trying to be confusing --
5 if he is walking north, he is walking across Fifth Street. Am
6 I correct?

7 A. That's what I testified.

8 Q. Is that what the witness has told the agent that he saw,
9 what has been identified there as John Doe No. 1, I think, is
10 that what it says on Government's Exhibit 2? Am I correct, is
11 that Government's Exhibit 2?

12 A. Yes, it is.

13 Q. On Government's Exhibit 2, he saw him walk across the
14 street, across Fifth Street?

15 A. Yes.

16 Q. Did he walk in front of the vehicle or behind the vehicle
17 of the witness?

18 MR. GARLAND: Objection, Your Honor, as we are not
19 relying on identification at the time of the bombing for
20 probable cause. This is purely for discovery. We have an
21 ongoing investigation. We need to protect our witnesses for
22 the purpose of determining what happened. We are not relying
23 on this witness for the purpose of probable cause. All we are
24 doing here is discovery.

25 MR. COYLE: May I respond? I have two responses.

1 First of all, he testified to it in direct examination, which I
2 think makes it an appropriate subject to cross.

3 Secondly, it was also in the Affidavit that bears
4 Your Honor's initials. I think that is very important that
5 the Court has already considered that matter for purposes of
6 probable cause. I think as to the weight of the evidence, the
7 Court can consider the agent's answers and how these particular
8 witnesses that they have set forth in their Affidavit, how they
9 had an opportunity to observe and to see the things that are
10 set forth in the Affidavit. That's the reason for my
11 questions.

12 THE COURT: Is that the matter stated in the
13 Affidavit at the bottom of page 2, top of page 3?

14 MR. COYLE: Yes, sir.

15 THE COURT: Objection overruled.

16 Q. (By Mr. Coyle) Where did the witness see him in relation
17 to the vehicle that he was driving, the witness was driving?

18 MR. GARLAND: I'm sorry to interrupt. I want to
19 clarify. He did not testify about this on direct. The only
20 statement on direct was that the paragraph he is referring to
21 in the Affidavit we are not relying on for probable cause.
22 That's paragraph 6. Those witnesses did not identify
23 Mr. McVeigh, so those are not part of what we would ask the
24 Court to look at for probable cause. There was no testimony
25 and I asked no question about the witness that Mr. Coyle is

1 presently asking questions about.

2 THE COURT: Nonetheless it is part of the overall
3 probable cause in the case.

4 Q. (By Mr. Coyle) Do you understand my question, Agent
5 Hersley?

6 A. Yes.

7 Q. Where was the witness in relation to the person that they
8 described?

9 A. The witness was walking away from the location where the
10 truck was parked, walking across the street, across Fifth
11 Street, to the north.

12 Q. I thought the witness was in a car.

13 A. I'm sorry, he identified the individual pictured in the
14 composite as walking away from the area where the truck was
15 parked, across Fifth Street.

16 Q. Was the person that strongly resembled the person in the
17 composite, was he in front or behind of the car that the
18 witness was driving?

19 A. He was in front of it.

20 Q. How far in front of it?

21 A. He had to slow down, as the individual he identified in
22 the composite was crossing the street, to keep from hitting
23 him.

24 Q. What was the individual wearing who was crossing the
25 street?

1 A. I don't recall the individual that was shown the composite
2 that we are speaking about describing the clothing. He may
3 have. As I stated, I was not present during that interview.

4 Q. That would be something pretty important to determine,
5 wouldn't it?

6 A. Yes.

7 Q. Now, did the witness that you have described for me, did
8 he see the person that strongly resembles the composite, did he
9 see that before or after it was released to the news media?

10 A. He saw the composite before he saw anything on television
11 or in the news media. He later saw Mr. McVeigh on television.

12 Q. Did you or another agent of the FBI show him Mr. McVeigh
13 on television?

14 A. No.

15 Q. Did he then identify Mr. McVeigh from television?

16 A. Yes. Once he saw Mr. McVeigh on television, he said that
17 he was certain that was the individual that was crossing the
18 street in front of him that day, that morning.

19 Q. When did he see Mr. McVeigh on television?

20 A. Shortly after -- shortly after he had identified the
21 composite. Not the same day; I believe it was a day or two
22 later.

23 Q. When was he shown the composite?

24 A. I don't know the exact date. There have been numerous
25 interviews conducted in that regard. I have not -- I cannot

1 tell you each day that each one of them was done on.

2 Q. So there have been numerous interviews conducted of this
3 particular witness?

4 A. No, there are numerous witnesses -- potential witnesses
5 and witnesses that have been interviewed.

6 Q. Now, is this witness that you have been describing for me
7 is he one of the witnesses who is described in the Affidavit
8 signed by Agent Gibbons?

9 A. No.

10 Q. You are familiar with that Affidavit that is signed by
11 Agent Gibbons, are you not?

12 A. Yes.

13 Q. Were you involved in the preparation of the Affidavit of
14 Probable Cause that was signed by Agent Gibbons?

15 A. No.

16 Q. Did this witness call you and tell you that he had seen
17 Mr. McVeigh on television or did he call and advise another
18 agent who told you?

19 A. He advised another agent. He advised the agent that had
20 spoken with him the first time.

21 Q. Who was that, sir?

22 A. John Hippard.

23 Q. Is he a local agent?

24 A. Yes, he is.

25 Q. I assume you reviewed prior to your testimony here,

1 because you went over part of it, the Affidavit of Probable
2 Cause that was filed in this case, correct?

3 A. I have read it, yes.

4 Q. It talks about the interview of three witnesses who were
5 near the scene of the explosion at the A.P. Murrah Federal
6 Building prior to the detonation.

7 Where was -- they talk about the three witnesses were
8 shown a copy of the composite drawing. Were they all shown it
9 at the same time, to your knowledge? Or were they in separate
10 areas or all together when they were shown the photograph?

11 A. I was not present during any of those on-site interviews.
12 I don't know the exact manner in which any of those interviews
13 were actually conducted, so I'm not able to answer that.

14 Q. Can you tell me, please, the witnesses advised they
15 observed a person at approximately 8:40. Were these persons
16 together, these three witnesses?

17 A. I don't know if they were together or not. You mean did
18 they know each other? Were they traveling together or --

19 Q. Well, no. If they were in the same general vicinity or
20 same general area or if they were -- maybe they were all just
21 brought together as witnesses?

22 A. I don't know about those three witnesses, where they were
23 interviewed, exactly where they were interviewed at that
24 location. I did not speak with that agent about those
25 interviews.

1 Q. Do you know where they were purportedly standing at the
2 time that they made the observations that were sworn to in the
3 Affidavit?

4 A. I believe that they were either at or in the Murrah
5 Building at the time of the alleged sighting. I don't know the
6 location where they were interviewed.

7 Q. Well, I have gone from this interview location. We have
8 determined that you don't know where they were interviewed.

9 Have you ever seen or talked to any of these three
10 witnesses?

11 A. No.

12 Q. Have you seen reports or talked to the agents who talked
13 to them?

14 A. No, I have not.

15 Q. Do you know where the witnesses, these witnesses -- the
16 three witnesses in paragraph 6 located at the bottom of page 2
17 and the top of page 3 of the Affidavit of Probable Cause filed
18 in this case last Friday -- do you know where those witnesses
19 were physically located at the time they told agents of the FBI
20 that they saw someone resembling a composite drawing of
21 un-sub one?

22 A. They were either at the Murrah Building or inside of it,
23 but I do not know the exact location where they were.

24 Q. You didn't make that determination?

25 A. No.

1 Q. You didn't ask anyone?

2 A. No.

3 Q. Were they in the building at the time of the explosion?

4 A. I doubt it.

5 Q. Do you know where they were at the time of the explosion?

6 A. No, I do not.

7 Q. Didn't make that determination, either?

8 A. No.

9 Q. And you are kind of one of the agents in charge of
10 evidence against Timothy McVeigh?

11 A. Yes.

12 Q. It says here they again observed un-sub one, that is this
13 photograph here that is Government's Exhibit 2; is that
14 correct?

15 A. Right.

16 Q. I'm sorry, the composite, at approximately 8:55 when they
17 departed, correct?

18 A. That's the time --

19 Q. The time --

20 A. Could you repeat your question? I'm not sure of what you
21 are asking.

22 Q. Could I approach the witness?

23 THE COURT: Yes.

24 Q. (By Mr. Coyle) What I'm doing is reading here from page 3
25 where they say they again observed un-sub one still in front of

1 the Fifth Road entrance of the building where they departed
2 minutes before the explosion.

3 A. Okay.

4 Q. Am I correct, sir, that they left -- they told agents of
5 the FBI that they left and departed the scene of the explosion
6 approximately eight minutes prior to the time that the bomb
7 detonated?

8 A. That's correct.

9 Q. Describe for us what it was that these witnesses told
10 agents of the FBI that occurred at approximately 8:40 a.m. on
11 April 19th when they saw the person in Government's Exhibit 2
12 in front of the -- or somewhere when they entered the
13 building. Do you know what he was allegedly doing?

14 A. No, I'm not familiar with the content of that interview,
15 with the exception that the sighting, the alleged sighting
16 occurred in or around the Murrah Federal Building that morning.

17 Q. And that they didn't see anything after 8:55, you are
18 aware of that?

19 A. Yes.

20 Q. Do you know whether or not this is a family or whether or
21 not they are okay or where they are located? Do you know
22 anything about them?

23 A. I don't know if they are a family. I do know that they
24 are still alive.

25 Q. How do you know?

1 A. From the conversations with Agent Hippard.

2 Q. You did check to find out that much?

3 A. Yes, I spoke with Agent Hippard after these three people
4 had again been in contact with the FBI.

5 Q. Have these three people viewed Mr. McVeigh in a line-up?

6 A. No.

7 Q. Have any of these three people viewed a photographic
8 line-up of Mr. McVeigh?

9 A. No.

10 Q. So they haven't been shown a photo line-up and they didn't
11 see him in the live line-up conducted Saturday, correct?

12 A. That's correct.

13 Q. Can you tell us why not?

14 A. Yes, these three individuals had called back in after
15 viewing Mr. McVeigh on television and were not able to identify
16 him as being at the building.

17 Q. So this information that you testified earlier about these
18 three witnesses in terms of probable cause should be
19 disregarded by the Judge, then, shouldn't it?

20 MR. GARLAND: Objection, Your Honor, his testimony
21 was that these witnesses were unable to confirm. It should not
22 be disregarded. The purpose of that testimony --

23 THE COURT: The Court will make its own decision
24 about it. Go ahead.

25 Q. Any other witnesses, other than the ones that you said

1 that saw the man that closely resembled someone in the
2 composite crossing Fifth Street in a northerly direction prior
3 to the explosion, any other witnesses that saw someone that
4 resembled the person described in the composite identified in
5 this hearing as Government's Exhibit 2 other than the witness
6 you told us about and the three witnesses who are identified in
7 paragraph 6 of Agent Gibbons' Affidavit of Probable Cause?

8 A. Yes.

9 Q. Can you tell us about those? How many of them are there,
10 please, sir?

11 A. There's at least several witnesses that have identified
12 Mr. McVeigh as closely resembling the composite photograph and
13 seeing him in the vicinity of the Murrah Building on that
14 morning.

15 Q. Can we go to several witness number one. Tell me where
16 that witness viewed the person who you say closely resembles
17 Mr. McVeigh?

18 A. Yes.

19 Q. Okay. Where was witness one?

20 A. Witness one observed the individual that she identifies as
21 strongly resembling Mr. McVeigh and identified in the
22 composite, saw Mr. McVeigh at the Federal Building
23 approximately one week before the bombing and possibly again on
24 the 17th and 18th of April.

25 MR. GARLAND: Your Honor, I really would like to once

1 again object to continuing discovery with respect to additional
2 witnesses. We have an ongoing investigation. The ability to
3 conduct that investigation is hampered by this. We are not
4 relying upon identification at the time of the bombing. It is
5 not relevant to our probable cause determination.

6 THE COURT: Overruled. Go ahead.

7 Q. (By Mr. Coyle) Witness one, sir, this lady that you have
8 told us about, said she identified him from the composite?

9 A. She identified him from the composite and she identified
10 him from a photo line-up.

11 Q. Was she shown Mr. McVeigh in a live line-up?

12 A. Yes. Excuse me, I believe it is in the live line-up
13 rather than the photo spread. She picked him out of the live
14 line-up.

15 Q. Am I correct, sir, that this witness does not place
16 Mr. McVeigh at the Murrah Building on the 19th day of April,
17 1995?

18 A. Yes, that's correct.

19 Q. Witness two, please, sir?

20 A. Witness two identified the composite as being identical to
21 Mr. McVeigh; saw this individual leave the scene of the bomb
22 blast shortly before the bomb went off.

23 Q. How long before the bomb went off, do you know, Agent?

24 A. Very shortly before.

25 Q. What does "very shortly" mean?

1 A. In fact the individual saw the 19 -- saw the Mercury, the
2 yellow Mercury, speeding away from the location, obviously in
3 an effort to avoid the bomb blast.

4 Q. Where did this witness see the yellow Mercury speeding
5 away?

6 A. Over in the direction -- in the parking lot, in an area
7 where the witness I had previously testified about said that
8 the individual he identified as Mr. McVeigh was walking in a
9 northerly direction towards.

10 Q. Where is that parking lot, sir?

11 A. Over on the north side of Fifth Street, close to the
12 Journal Record Building.

13 Q. It is on the north side of Fifth Street near the Journal
14 Record Building?

15 A. Yes.

16 Q. Is it that parking lot that we have seen in photographs
17 where there are a lot of cars that were set on fire, I believe,
18 were they not?

19 A. Yes.

20 Q. This witness, this particular witness, is it a male or
21 female, sir?

22 A. Male.

23 Q. This particular male witness has indicated that he saw the
24 -- a yellow Mercury speeding away?

25 A. Yes.

1 Q. Did this particular witness indicate to agents of the FBI
2 how many persons were in the speeding yellow Mercury?

3 A. Two.

4 Q. Did this witness also identify the person that we know as
5 number two, un-sub two at the scene?

6 MR. GARLAND: Objection. Un-sub two is not before
7 the Court.

8 THE COURT: The question was, did he identify un-sub
9 two?

10 MR. COYLE: Yes. The fact that everybody knows who
11 that is. You understand who that is, do you not?

12 THE COURT: The question, he objected to it. The
13 Court sustains that objection.

14 MR. COYLE: Yes, sir.

15 Q. Now, I think you told me that this particular -- do you
16 know where this witness was located at the time that the
17 witness made the observations that you have testified to?

18 A. Right there in that area of the Journal Record Building.

19 Q. The witness was inside the Journal Record Building?

20 A. I don't know if he was inside it or if he was standing
21 outside of it. I believe he had observed it -- the yellow
22 Mercury, and the individual resembling the composite drawing in
23 the yellow Mercury before, at approximately 8:30 to 8:45, and
24 then he went inside the building and came back out. That's
25 when he observed the yellow Mercury with the two individuals in

1 it speeding away from the bomb site location.

2 Q. Now, did this particular witness, you told us that he saw
3 this composite photograph, did this particular witness view the
4 photographic line-up that has been prepared by agents of the
5 FBI?

6 A. I don't know if that individual has viewed the line-up or
7 not. As I testified, that portion of the investigation is
8 still ongoing. I don't know exactly who has viewed it and who
9 hasn't at this point. We have been working long hours and that
10 is an ongoing process. I don't know exactly who has seen the
11 photo line-up. As of yesterday, this individual had not seen
12 the photo line-up.

13 Q. Had this individual viewed Mr. McVeigh in the live
14 line-up?

15 A. No.

16 Q. Did this witness see Mr. McVeigh, did they -- the persons
17 that were listed or that they say were located in this yellow
18 Mercury, did this witness see those persons anywhere other than
19 on Fifth Street as they went east? Did they turn on Robinson
20 or what did they do then?

21 A. The individual that the witness identified as resembling
22 the composite number one, of un-sub number one, he observed
23 that individual seated in the yellow Mercury when he was
24 outside the building the first time. Then he went back inside
25 the building. It was not until when he came back out the

1 second time that he saw the yellow Mercury speeding away from
2 the location.

3 Q. I assume speeding away on Fifth Street; is that correct?

4 A. Well, I think it is actually the alley area that would be
5 immediately north of Fifth Street.

6 Q. Immediately north of Fifth Street is a parking lot there.

7 Are you talking about the --

8 A. The north side of that parking lot.

9 Q. So the alley between the Journal Record Building and the
10 parking lot? I'm sorry to interrupt you, I didn't mean to.

11 Are you talking about that area, that alley?

12 A. I'm talking about the area on the north side of the
13 parking lot that we have been speaking about.

14 Q. That's where you are telling the Court that the yellow
15 Mercury was speeding through that particular alley?

16 A. Yes.

17 Q. Was it going east or west?

18 A. I believe east.

19 Q. Witness number three -- you said you had several -- number
20 three.

21 A. There was another witness that advised that before --
22 approximately 20 minutes before the bomb went off, that this
23 witness observed the Ryder Truck heading south on Robinson,
24 being driven by an individual that resembles the individual
25 pictured in the composite of un-sub one.

1 Q. Was this a male or female?

2 A. Female.

3 Q. Was this female in a vehicle at the time that she observed
4 this Ryder Truck?

5 A. Yes.

6 Q. Was she heading in the same direction?

7 A. The Ryder Truck was heading towards her.

8 Q. So am I correct, Agent Hersley, that she said she observed
9 the Ryder Truck proceeding south on Robinson Street?

10 A. Yes.

11 Q. At that time it was being driven by, you have told us,
12 someone who resembles Government's Exhibit 2, correct?

13 A. Correct.

14 Q. Did you interview this particular witness?

15 A. No, I did not interview any of the witnesses.

16 Q. I'm sorry.

17 So in the interview of this witness you say she saw the
18 truck coming toward her?

19 A. Yes.

20 Q. She was in the vehicle, then, proceeding in a northerly
21 direction?

22 A. No, she was -- she was a meter maid that was at the
23 vicinity of Robinson and Park Avenue. The Ryder Truck was
24 approaching her. It was going at a very low rate of speed.
25 She thought the person in the Ryder Truck was going to stop and

1 ask her some questions.

2 Q. Was there -- go ahead.

3 A. However, as it approached that intersection, the driver
4 turned west on Park Avenue and continued on and at that point
5 the meter maid was behind the truck.

6 Q. Did she get a look at the license tag on that particular
7 Ryder Truck?

8 A. I don't believe so.

9 Q. Did she view Mr. McVeigh or did she view the line-up that
10 was conducted at the Oklahoma County detention facility on
11 Saturday?

12 A. No.

13 Q. Has she looked at an FBI composite of photographs?

14 A. Yes. She looked at this composite and advised that this
15 individual closely resembles the individual that she saw in the
16 truck.

17 Q. Well, did you show her -- did you all put together some
18 photographs, photographic line-up?

19 A. Photo spread, yes.

20 Q. Photo spread. In the photo spread that was prepared by
21 the FBI, I assume they have been using the same one to show
22 everybody, have they not? The same photo spread; they haven't
23 been changing the pictures?

24 A. No, it is the same, the same line-up.

25 Q. In the photo spread, was this witness shown -- this female

1 meter maid, was she shown the photo spread?

2 A. Not as of yesterday.

3 Q. When -- what time of day did she say that she saw this
4 Ryder Truck with someone possibly resembling the composite?

5 A. Approximately 8:40 a.m.

6 Q. How many occupants were there in the vehicle, does she
7 recall?

8 A. I believe she just spoke of the one individual that was
9 driving the vehicle.

10 Q. Was she asked if there were two?

11 A. I'm not aware of that.

12 Q. Any other witnesses?

13 A. Yes.

14 Q. Can you tell me, please, sir?

15 A. Yes, there was another individual that observed the Ryder
16 Truck on Harvey. I believe it was on Harvey or Hudson, also
17 not too long before the actual bomb.

18 Q. Was this a male or a female, sir?

19 A. I believe a male. There may have been two individuals at
20 that location. I know there was at least one male that
21 observed the Ryder Truck and the occupants of the Ryder Truck.
22 That person also advised that the individual in the truck
23 closely resembled the individual depicted in composite one.

24 Q. Did you tell me he saw occupants of a Ryder Truck and
25 there were more than one?

1 MR. GARLAND: Objection. The only person on trial at
2 this hearing is Mr. McVeigh. It doesn't matter whether there
3 were two or a hundred people in that truck as long as there was
4 somebody representing Mr. McVeigh there. It is discovery and
5 totally outside the scope of this hearing.

6 MR. COYLE: May I respond? I think it is important
7 to see if we distinguish it as the same truck or not. I think
8 it is very important to the credibility of the witnesses and
9 credibility of the evidence and what they saw as to whether or
10 not the next person saw three or five or six or --

11 THE COURT: Objection overruled. Go ahead.

12 A. This witness advised that there were two individuals in
13 the truck. The individual resembling Mr. McVeigh was the
14 driver.

15 Q. You said you thought this was either on Harvey or Hudson.
16 What direction was the vehicle -- were you told the vehicle was
17 traveling?

18 A. The vehicle was not traveling at that point. It had
19 pulled into a business location there and asked for directions
20 to Fifth and Harvey.

21 Q. What was the name of that business?

22 A. I don't recall the name of it.

23 Q. You say this was a male witness?

24 A. Yes.

25 Q. Has this witness viewed Mr. McVeigh in a photo spread?

1 A. Not yet.

2 Q. How about the line-up?

3 A. I'm not certain of the line-up.

4 Q. You are not certain if this was one of the witnesses in
5 the line-up?

6 A. Yes, I'm not certain if this witness attended the line-up.

7 Q. Did not -- there were four different FBI agents at the
8 line-up, that brought witnesses in to the line-up. Were you
9 aware of that?

10 A. No.

11 Q. You mean none of these agents told you anything about the
12 line-up that occurred on Saturday, and this is Thursday, the
13 27th of April?

14 A. That wasn't your question.

15 Q. Well, that's my next one. None of the agents told you?

16 A. I knew there was a line-up and I knew that individual
17 witnesses at that line-up had identified Mr. McVeigh. I didn't
18 know that each individual witness was brought in separately by
19 a particular FBI agent. That was your question.

20 Q. The first witnesses who came to the line-up, were you
21 advised that they did not identify Mr. McVeigh and could not
22 pick him out?

23 A. I know that there were four witnesses at the line-up and I
24 know that one witness identified Mr. McVeigh; one witness
25 picked out two individuals pictured in the line-up and said

1 that the individual they saw was one of those two pictures.
2 One of those two pictures was Mr. McVeigh. And two other
3 witnesses were unable to identify Mr. McVeigh from the line-up
4 at that time.

5 Now, one of the witnesses later informed the FBI agent
6 that he did not want to identify Mr. McVeigh because
7 Mr. McVeigh was looking right at him, but that was the
8 individual.

9 Q. The business on either Harvey or Hudson that you say the
10 occupants, that they saw two people in the Ryder Truck and they
11 asked for directions, who was the person who did the talking
12 and asking for the directions according to the witness?

13 A. Mr. McVeigh, the driver of the vehicle.

14 Q. Anything else that Mr. McVeigh has alleged to have asked
15 this witness at the business on Harvey or Hudson?

16 A. To my recollection, or what I was told by the agents was
17 that it was for directions to Fifth and Harvey. There may have
18 been something else asked, but I don't recall at this time.

19 Q. The next one, the next witness that you say who saw the
20 person that closely resembles the person in the composite
21 drawing?

22 A. On the day of the bombing?

23 Q. Well, was this on the day of the bombing or some other
24 day?

25 A. No, these ones that we have been talking about, the last

1 several were on the day of the bombing. There are other
2 witnesses that have identified Mr. McVeigh on the day before
3 the bombing.

4 Q. Where was he on the day before the bombing?

5 MR. GARLAND: Objection, this is wholly outside the
6 scope of probable cause.

7 THE COURT: Sustained.

8 MR. COYLE: I will withdraw that.

9 Q. (By Mr. Coyle) So the female that you say, that you told
10 me about before that saw him at 8:40, that was on the day of
11 the bombing. These are all the day of the bombing.

12 The guy who saw him on Harvey at the business that you say
13 talked to him?

14 A. The day of the bombing, shortly before the bombing.

15 Q. Approximately what time, can you tell me?

16 A. Between 8:30 and 9.

17 Q. In your review of the surveillance photos, did you find
18 any surveillance photos of that parking lot across the street
19 from the Murrah Building?

20 A. Yes.

21 Q. Okay.

22 A. You characterized that as my review of the photographs. I
23 was shown those particular photographs by Agent Lamar.

24 Q. Have you been shown a photograph of that particular
25 parking lot, sir, across the street from the Murrah Building

1 that includes the speeding Mercury in the photograph?

2 A. We don't know for sure yet. Those photographs are not
3 real clear. They are taken from a pretty good distance away.
4 There appears to be a light-colored car in the very vicinity
5 where this witness testifies -- or provides the information was
6 speeding away from. We are not able to determine yet if that
7 is in fact the yellow Mercury.

8 Q. Can you clearly tell in the photographs that you have seen
9 or have you been advised that you can clearly tell in the film
10 the time of the explosion?

11 A. I'm not sure I understand your question.

12 Q. Well, I don't know how to -- can you tell in the film or
13 the photographs when the explosion occurs?

14 A. The film that I viewed was before the explosion. I did
15 not view the entire film. The pictures that were shown to me
16 were before the explosion.

17 Q. The pictures that you saw of that particular parking
18 lot -- now I'm talking about the parking lot across the street
19 from the Murrah Building --

20 A. Right.

21 Q. -- in a northerly direction, that parking lot, there is
22 film of that parking lot prior to the time of the explosion?

23 A. Yes.

24 Q. Correct?

25 A. Yes.

1 Q. Is it time-stamped so that you can tell a particular time
2 of day on the 19th of April that that camera is viewing,
3 scanning that parking lot?

4 A. Yes.

5 Q. Can you tell me where that particular camera was located?

6 A. I believe that particular camera was located on the
7 apartment building there that we have been speaking of.

8 Q. So those were some more pictures from the Regency?

9 A. Yes, those are the pictures from the Regency.

10 Q. So the camera from the Regency -- is this the camera at
11 the very top of the Regency Tower?

12 A. I don't know the exact location of the camera, but it kind
13 of scans that whole area there, is what has been represented to
14 me. It scans in front of the Tower building and also over
15 towards the parking lot.

16 Q. Any other witnesses who saw Mr. McVeigh, or someone
17 resembling him or resembling the composite photograph on April
18 19th at or about the location of the Murrah Building?

19 A. There were other witnesses that were being talked to
20 yesterday that we had just learned the identity of that advised
21 that they had seen an individual that they believed resembled
22 the composite. Those individuals -- arrangements were being
23 made to talk to them as well, but I'm not aware of the results
24 of those interviews.

25 Q. Well, if they saw them yesterday, they have seen a lot

1 more than the composite, haven't they?

2 A. I haven't spoken with those individuals. I don't believe
3 they have been interviewed by any agents, so I can't really
4 address that; what they have seen and what they haven't.

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1 Q. So you don't know that they have seen the picture of Mr.
2 McVeigh on every cover of every newspaper, magazine, and
3 television set in America, do you?

4 A. I don't know what they have seen.

5 Q. Is that something that the FBI has been very careful in
6 asking them, going over with them?

7 A. Yes.

8 Q. And you have discussed that with the agents, and the
9 importance and significance of the suggestiveness of the fact
10 that his picture has been broadcast like that throughout our
11 land; have you not?

12 A. I have not been the one to discuss that, but I know that is
13 being discussed. I have spoken with a couple of the other
14 agents about that, but another agent has been assigned to
15 oversee that portion of the investigation.

16 Q. Who is that agent?

17 A. It would fall under the purview of Rich Baker.

18 Q. Who are the two agents you discussed it with?

19 A. Two agents that are in here on a temporary basis from San
20 Antonio assisting us in the investigation, John Oza, and the
21 second agent's name is Mike. I don't recall his last name at
22 the current time.

23 Q. Now, other witnesses, sir, that you may have seen -- I am
24 sorry, that you may have interviewed or heard of interviews in
25 connection with this?

1 MR. GARLAND: Objection, Your Honor, that is a
2 complete fishing expedition and has nothing to do with probable
3 cause.

4 MR. COYLE: Well, that was a bad question. I was
5 looking over and wanting a drink of water and asking a
6 question.

7 THE COURT: Objection sustained and Counsel will
8 rephrase the question.

9 MR. COYLE: I will get a drink and I will rephrase.

10 Q. (By Mr. Coyle) This would be number five. The witnesses you
11 have told us about that identified a person who closely
12 resembled the composite or that was at or about a Ryder Truck
13 or at or about the A.P. Murrah Building that saw Mr. McVeigh or
14 someone who resembled him April 19, 1995 prior to the hour of
15 9:03 a.m. -- any other persons fit that description that you
16 previously described to me in these proceedings?

17 A. Not that I recall now.

18 Q. Now, the persons who viewed Mr. McVeigh in the lineup, the
19 first one was a young black man. Can you tell me who did not
20 fit Mr. McVeigh, is that the man that you now recanted that
21 previous unidentification and has now told the agents that he
22 in fact did identify him?

23 A. I am not aware of each person who participated, each
24 witness that participated in the lineup by name. I am aware --

25 Q. I didn't ask his name.

1 A. You recall asking about a particular witness and what he
2 identified and what he didn't identify, and I am not able to
3 tell which witness you are referring to by your description of
4 him. I am not aware of the names of those witnesses and
5 exactly what each one of them had seen. I am aware of what
6 the overall results were of the four witnesses.

7 Q. But of the particular witnesses in the lineup, you have not
8 been given information as to what those witnesses said they saw
9 or where they saw the person accused in this case?

10 A. Yes, I have been given that information along with numerous
11 other reports as part of the continuing investigation and --

12 Q. Okay, but particularly important to you as the agent in
13 charge of the investigation of Mr. McVeigh are persons who
14 identify him, that's particularly important, isn't it?

15 A. It will be, yes.

16 Q. So tell us of the persons in the lineup, can you tell us
17 anything about where they saw him, reportedly?

18 A. Yes, at the federal building.

19 Q. All right, can you tell me what any of the male witnesses
20 said where they saw him?

21 A. At the federal building.

22 Q. When?

23 A. Yes, on those dates leading up to the 19th; 17th and 18th
24 of April, I believe.

25 Q. Are you familiar with a business by the name of Johnnie's?

1 A. There's a hamburger store, I guess they are called
2 Johnnie's.

3 Q. You are not familiar with any Johnnie's that has any
4 connection to this case?

5 A. No.

6 Q. Are you aware of what -- let me ask it this way. Are you
7 aware of what the four witnesses who reviewed Mr. McVeigh in
8 the lineup, what the substance is of what they saw or told you
9 they saw that has connection with this case?

10 A. As I mentioned, I did not interview any of these people
11 myself so they did not tell me anything directly.

12 Q. I think you told us you haven't interviewed any of the
13 people I have asked you about so far, correct?

14 A. That is correct.

15 Q. Okay.

16 A. They saw Mr. McVeigh, an individual resembling composite
17 one, at the federal building on particular days.

18 Q. They all saw him at the same time?

19 A. No.

20 Q. Can you tell me what one of the witnesses saw in
21 particular?

22 A. Of those four witnesses that you are talking about that
23 were shown, the lineup party in the lineup, the information
24 that I have is that they saw Mr. McVeigh or an individual
25 resembling the composite at the federal building on the 17th

1 and 18th of April.

2 Q. Okay, so the four witnesses who saw Mr. McVeigh at the --
3 so the lineup that was conducted, none of those four witnesses
4 saw Mr. McVeigh at or about the location of the Murrah Building
5 on the date of April 19, 1995?

6 A. They may have, Mr. Coyle. I am not familiar with what each
7 one of them saw and the particular date that they saw it on. I
8 am aware of the witnesses that I have testified about when
9 they saw the individual resembling the composite and/or Mr.
10 McVeigh shortly before the bombing occurred on April 19th.

11 Q. Maybe I have got myself to a semantical trap here and I
12 want to make sure I ask this question artfully. We have
13 established a number of witnesses who you say saw someone at
14 various locations about Oklahoma City in or about the Ryder
15 Truck and so forth. Some of those witnesses that you have
16 described to me earlier also and in the lineup; is that
17 correct, sir?

18 A. Yes.

19 Q. Or also viewed the lineup. I am sorry. They didn't appear
20 in it.

21 A. Yes.

22 Q. And particularly that's one lady that you told me was
23 number one, and we talked about as number one, she saw the
24 composite and she saw him at the federal building about a week
25 before, was your testimony; do you remember that one?

1 A. Yes.

2 Q. And is that a black lady to your knowledge.

3 MR. GARLAND: Objection, Your Honor, we are talking
4 about a witness who saw -- a witness before the date of the
5 bombing, and indication of the color of the witness is not
6 relevant or even of the witness's identification relevant to
7 probable cause.

8 THE COURT: This is a person observed before.

9 MR. COYLE: One he testified to at the time of the
10 lineup. What I am trying to do -- I will strike that question.
11 That's a good objection. I will go on.

12 THE COURT: Objection is sustained.

13 Q. (By Mr. Coyle) She was at the lineup. The next one you
14 told me about, a male saw him at the scene, you say, shortly
15 before and saw the yellow Mercury speeding away. Did that man
16 view the lineup?

17 A. No.

18 Q. You told me about a female that observed a Ryder south on
19 Robinson, this young lady I believe was the meter maid, and she
20 viewed the lineup?

21 A. Not as of yesterday.

22 Q. Well, it happened on Saturday night, so if she didn't see
23 it on Saturday night, she can't see it at any other time unless
24 there is another lineup; am I correct?

25 A. Yeah, the lineup.

1 Q. Yeah.

2 A. The witnesses that you are referring to did not participate
3 in the lineup. The witnesses that you are referring to now are
4 not the ones that participated in the lineup. You are getting
5 those confused with the witnesses that did.

6 Q. If I ask you if they were in a lineup, what does that mean
7 to you?

8 A. You have been referring to a particular lineup.

9 Q. What does a "lineup" mean to you?

10 THE COURT: Counsel, let the witness answer the
11 question. Please go ahead.

12 BY MR. COYLE:

13 A. A lineup to me means when you have the actual person
14 present, you don't have pictures. I refer to it, if you have
15 pictures, as a photo spread.

16 Q. Okay, well, that's been my questions to you. Were you
17 confused by that? What the difference between a lineup and a
18 photo spread?

19 A. No, I think you have been confused about it, though.

20 Q. I think so that we can draw a distinction here, I am
21 talking about the line up.

22 A. All right.

23 Q. Okay, did any of the agents of the FBI tell you anything
24 about -- I am talking about those eight people standing there,
25 right? You know what I am talking about?

1 A. The lineup.

2 Q. The eight people. Did any agents of the FBI tell you
3 anything that those witnesses saw? Did they make you aware of
4 what they say they saw at or about the Murrah Building or about
5 Tim McVeigh or anything about this case?

6 A. Yes.

7 Q. Okay, can you tell us what that is, please, as
8 to each witness individually.

9 A. One of the witnesses was able to positively identify
10 Mr. McVeigh.

11 Q. From where?

12 A. From being at the Murrah Building, at the federal building.

13 Q. When?

14 A. I don't know the exact date. I believe that was on the
15 13th and then possibly again on 17th and the 18th of April.

16 Q. Oh, she saw him there on several different occasions?

17 A. Yes.

18 Q. And that's the female witness; is that correct?

19 MR. GARLAND: Objection, it's not clear that witness
20 saw him before the bombing and therefore it's irrelevant to
21 this hearing.

22 THE COURT: Is that correct?

23 MR. COYLE: I don't know. She may have seen him at
24 other times. I think it's very important as to the credibility
25 as to all of these. They didn't pick him out of the lineup, and

1 that he seems to me important.

2 THE COURT: Objection sustained.

3 Q. (By Mr. Coyle) As to number two, as to the other witness?

4 A. There was another witness that picked out two individuals
5 and said that Mr. McVeigh, the individual that they saw most
6 closely resembled those two individuals and Mr. McVeigh was one
7 of those two individuals.

8 Q. Do you know where that individual said they saw the person
9 that resembled Mr. McVeigh?

10 A. I believe at the federal building also.

11 Q. Do you know when?

12 A. I am not sure of the date.

13 Q. Do you know when?

14 A. No, I am not sure.

15 Q. They didn't tell you. The agents didn't tell you when they
16 said they may have seen or this witness may have seen Mr.
17 McVeigh?

18 A. No.

19 Q. And number three?

20 A. It was either on the 19th or the days leading up to that.
21 I mean we are talking about that time period in there. We are
22 not talking about a lot of time before that. So it's in that
23 time period. I do know that. I don't know the exact dates,
24 though.

25 Q. Well, some of them you told me about you knew they were on

1 the date of the 19th, and that's particularly critical those
2 hours before nine o'clock on the 19th; you will agree with me
3 on that, won't you?

4 A. Yes, we are not talking about individuals who have
5 participated in a lineup.

6 Q. Okay, number 3 in the lineup, four people. We have covered
7 two?

8 A. There was another individual that I was told that was not
9 able to or did not pick Mr. McVeigh out of the lineup, but
10 later told the agent that he did recognize Mr. McVeigh, but did
11 not want to identify him because Mr. McVeigh was looking right
12 at him.

13 Q. And that individual, where did he see Mr. McVeigh?

14 A. Again, I believe that all of these witnesses, the four that
15 participated in the lineup observed Mr. McVeigh either at or in
16 the federal building.

17 Q. When?

18 A. I am not sure.

19 Q. When on number three -- the one that say changed his
20 observations after the lineup?

21 A. I don't know the exact date.

22 Q. Do you know the time?

23 A. No, I don't.

24 Q. Do you know where this particular person was at the time
25 that he later told the agent that he saw the accused?

1 A. I believe it was shortly after the lineup had occurred.

2 Q. Now, this particular witness, do you know where he was at
3 the Murrah Building, where the witness was at the Murrah
4 Building on whatever day you don't know that he says that he
5 possibly saw Timothy McVeigh?

6 A. Well, no, I don't know.

7 Q. That wasn't important to you?

8 A. It's important to me. It's very important in time. It's
9 not absolutely necessary for this hearing. There are other
10 things.

11 Q. I don't think that is up to you. Isn't that up to the
12 Judge, Agent?

13 A. What's important in the hearing?

14 Q. Isn't that up to the, Judge?

15 A. Did you not ask me the question?

16 THE COURT: Ask the question.

17 Q. (By Mr. Coyle) I asked you a simple question; don't you
18 know?

19 THE COURT: Mr. Coyle, don't argue with the witness.
20 Ask the question.

21 Q. (By Mr. Coyle) Don't you know where this witness was?
22 Someone who claims he looks at Mr. McVeigh in a lineup and
23 doesn't pick him out and tells an agent later that he saw him,
24 and you are telling us here in court that you don't know where
25 this witness saw him?

1 A. That is correct.

2 Q. All right, the next one in the lineup.

3 A. The last one in the lineup did not pick out Mr. McVeigh.
4 They advised that they had seen an individual resembling
5 Composite One at the federal building.

6 Q. Is that the Murrah Federal Building?

7 A. Yes.

8 Q. On the 19th?

9 A. I don't know the date, and the date either on the 19th or
10 the days leading up to that date.

11 Q. Well, I thought Mr. McVeigh was at the Dreamland Motel?

12 A. He was.

13 Q. In Kansas?

14 A. He was.

15 Q. Okay.

16 A. On some of those days and some of those times.

17 Q. Have the agents of the FBI asked these witnesses at the
18 Dreamland Motel? Have they told them about the testimony of
19 the people or the statements that the people made to the FBI
20 that he was in Oklahoma City when other witnesses say he was
21 somewhere in Kansas, and Michigan, and other places across the
22 country?

23 MR. GARLAND: Objection, there has been no testimony
24 to that fact.

25 THE COURT: Sustained as to the phrase. Rephrase the

1 question.

2 Q. (By Mr. Coyle) The last person in the lineup, did that
3 person -- do you know where that person was at or about the
4 federal building at the time they purportedly saw Mr. McVeigh
5 in the days leading up to explosion?

6 A. No, I do not.

7 Q. Did you ask --

8 A. No, I not.

9 Q. Okay, now, it talks about employees of the Dreamland Motel
10 in Junction City, Kansas. I am on paragraph 8, now of the
11 affidavit. You've reviewed Agent Gibbons' affidavit of
12 probable cause; have you not?

13 A. Yes.

14 Q. It says employees of the Dreamland Motel in Junction City,
15 Kansas advised FBI agents that an individual resembling
16 Composite Number One ,that is, Government No. 2 there, had been
17 a guest at the motel from April 14th through 18th. Do you know
18 how many employees were interviewed?

19 A. At least three.

20 Q. Do you know the outcome of those interviews?

21 A. No, only the outcome of one interview in particular where
22 the manager of the Dreamland Motel was interviewed.

23 Q. Has the manager been shown the composite the photo spread
24 or was she at the lineup?

25 A. The manager has been shown the photo spread.

1 Q. Was the manager shown the photo spread prior to the time
2 that the affidavit was prepared in this case?

3 A. No.

4 Q. But since that time the manager has been shown the photo
5 spread?

6 A. Yes.

7 Q. Did she identify Timothy McVeigh as being a guest in that
8 motel on the dates April 14th through 18th?

9 A. Yes.

10 Q. Have handwriting comparisons been performed on any
11 documents that he's signed?

12 A. I don't believe yet. That's still ongoing.

13 Q. Has an analysis been prepared to your knowledge on any
14 other forensic evidence at the motel?

15 A. No, I don't believe so. That is still part of the ongoing
16 investigation.

17 Q. Well, you mean you haven't been to the motel and gathered
18 it or you are going to gather it and you are going to look at
19 something?

20 A. It has been gathered from the motel and been sent back to
21 the FBI Laboratory in Washington, D.C.

22 Q. Can you tell me what was gathered at the motel?

23 MR. GARLAND: Objection, Your Honor, once again this
24 is discovery. It is unrelated to the probable cause hearing.

25 THE COURT: How does this relate to probable cause?

1 MR. COYLE: Sir?

2 THE COURT: How does this relate?

3 MR. COYLE: It goes to whether he was at the Dreamland
4 Motel in Junction City, Kansas, and what the evidence is they
5 have to substantiate that. What I have had -- what I asked him
6 is what evidence has been sent to the lab for comparison.
7 That's all I need to know in that regard.

8 THE COURT: Objection will be overruled go ahead and
9 answer.

10 A. (By Mr. Coyle) That investigation is being conducted in
11 Junction City, Kansas and the evidence I believe is being sent
12 or has been sent directly to the FBI Laboratory in Washington,
13 D.C., and I am not aware of the contents of all the information
14 or items that may have been taken from that location.

15 Q. Do they tell you, any of them, what they might have taken
16 or anything they found that they wanted tested?

17 A. I know that the registration card in Tim McVeigh's name was
18 at that location. They obtained that and that has also been
19 forwarded.

20 Q. Anything else that you know of?

21 A. No, I don't know the contents of what was sent back.

22 Q. Let me ask you about the Elliott's Body Shop in Junction
23 City, Kansas. Are you familiar, sir, with any of the
24 interviews that have been conducted with anyone employed at the
25 Elliott's Body Shop?

1 A. Yeah.

2 Q. Was it a male or female?

3 A. There has been --

4 MR. GARLAND: Your Honor, I object to the sex of the
5 people. It is not relevant to probable cause.

6 THE COURT: Overruled.

7 A. (By Mr. Coyle) There was one female and two males
8 interviewed that I know of at that location.

9 Q. Did the female identify Timothy McVeigh?

10 A. The female advised that participated in the composite that
11 was drawn of the individual that rented the Ryder Truck on
12 April 17th.

13 Q. I think my question to you was did the female witness
14 identify Timothy McVeigh?

15 A. The female witness was not shown a photo spread nor did she
16 participate in a lineup. She did advise that the composite
17 that was drawn up closely resembles the individual that rented
18 the truck.

19 Q. Have you been made aware, sir, that whether or not she has
20 called agents of the FBI or just the local police or anybody
21 and said I have seen his picture in the paper or on television
22 or somewhere and that's him. That's the guy that rented the
23 truck too. Have you heard any such statements?

24 A. No, I have not.

25 Q. Has anyone from the FBI talked to anyone that saw the

1 person who rented the truck to your knowledge?

2 A. I don't know, not to my knowledge.

3 Q. You are the guy that would know. You are working on the
4 investigation of Timothy McVeigh.

5 MR. GARLAND: Objection, Your Honor is that a
6 statement or question?

7 THE COURT: That will be stricken from the record go
8 ahead.

9 Q. (By Mr. Coyle) Has the witness there at the Ryder Truck
10 Rental there in Kansas, specifically the Elliott's Body Shop in
11 Junction City, Kansas -- did they see Mr. Timothy McVeigh or
12 someone that resembled the composite?

13 A. Yes.

14 Q. The first male, did they see the composite or did they
15 assist in its preparation?

16 A. Both.

17 Q. What was that particular person's involvement with Mr. --
18 or with the person in the composite in the rental of the
19 truck?

20 A. When the person that rented the truck was in the Elliott's
21 Body Shop on the 17th, this person was also in the body shop
22 and in a position to observe that individual that was renting
23 the truck.

24 Q. So this is not an employee of the body shop, but it's
25 another patron or someone who was in there visiting?

1 A. This is another employee of the shop.

2 Q. Okay, and that person was in a position to look at the man
3 that rented the truck?

4 A. Yes.

5 Q. And was this male involved in the rental of the truck,
6 involved in the specific conversations with a person who rented
7 the truck?

8 A. No.

9 Q. Did this person overhear conversations to your knowledge
10 with the person that rented the truck?

11 A. Yes, I believe so.

12 Q. Was the truck rented by a male or a female?

13 A. By a male.

14 Q. Is that the male that you are telling me about now?

15 A. Yes, that he used the name Bob Kling.

16 Q. Okay, that was a bad question, thank you. Was the person
17 who was employed by Elliott's Body Shop in Junction City,
18 Kansas that rented the truck to the person who -- who is shown
19 in the composite as Government Exhibit No. 2 was that person
20 the employee of the body shop a male or a female?

21 A. A male.

22 Q. And that person, one who did the renting, is that the male
23 that you have been telling me about -- that you've just told me
24 about?

25 A. I am not sure of the question that you said I have been

1 telling you about.

2 Q. Okay, let me make it clear. You told me there were three
3 people there at the body shop in Junction City, Kansas, right?

4 A. Three employees.

5 Q. Three employees. We have been over one, that female. Did
6 the female employee of Elliott's Body Shop in Junction City,
7 Kansas rent the truck to the person in Government Exhibit No.
8 2?

9 A. Yeah.

10 Q. Was that the person who filled out the paperwork?

11 A. Yes.

12 Q. Was that the female employee?

13 A. Yes.

14 Q. And the next male you told me about-- then you told me
15 about a male who overheard some conversation; do you know what
16 conversation that male overheard?

17 A. Overheard the conversations as the rental was taking place
18 that person was seated in that same area where the actual
19 rental was taking place.

20 Q. What did that employee tell agents of the FBI that he
21 overheard?

22 A. I am not aware of what he said he overheard. I am aware
23 that he said he was able to see the individual and that the
24 individual was the -- that the composite that was drawn was a
25 fair and representative likeness of that individual.

1 Q. Do you know what the individual who -- who supposedly
2 rented the truck, the one in the composite, do you know what he
3 was wearing -- what he was said to have been wearing that day?

4 A. No, I do not.

5 Q. Okay, do you know what the female said that the person who
6 rented the truck, not the one employed there, the one in the
7 composite was wearing on that date?

8 Now, the third witness that you have described for us, the
9 male there at Elliott's Body Shop, employee in Junction City,
10 Kansas, did this person participate in the preparation of the
11 composite?

12 A. Yes, to some extent?

13 Q. Now, how did this -- were you there when they did the
14 composite?

15 A. No.

16 Q. What was this person's participation in the composite?

17 A. To provide description of information regarding individual
18 that he had observed renting the Ryder Truck and the two
19 provided information that the composite fairly represented the
20 individual that rented the truck.

21 Q. Can you tell me what his involvement was in the rental of
22 the truck?

23 A. I believe he was just there. He is the owner of the
24 business, I believe.

25 Q. Do you know where he was in location to the person in the

1 composite at the time of the rental of the truck?

2 A. Not exactly, but I believe he was in close vicinity. I
3 know that this individual asked to use the phone in there.
4 This male that we are talking about now is the one that said
5 that he could.

6 Q. Okay, has this man been shown a photo lineup?

7 A. No.

8 Q. -- I mean a photo spread. Has this man viewed Mr. McVeigh
9 in a lineup?

10 A. No.

11 Q. Has he called anybody -- anyone of the males, the owner or
12 the other fellow there that was employed, has either one of
13 those called the FBI and said we have seen this man on
14 television, we have seen him in any of a thousand newspapers
15 across the country and that's the man we rented the truck to?

16 A. No, not to my knowledge.

17 Q. Don't you think you would know that?

18 A. I don't know. There are also others conducting
19 investigation very rapidly. If that had happened several days
20 ago, the answer would be likely yes. If it happened within the
21 last day or two, I don't know.

22 Q. You really don't think they would let you know?

23 A. I think they will let me know. They will eventually let me
24 know

25 MR. COYLE: Judge, could we take a short break?

1 THE COURT: How much longer do you anticipate?

2 MR. COYLE: I don't think too much longer. I will
3 gather my thoughts and try to conclude.

4 THE COURT: We will take a recess at this time and the
5 marshals may remove the Defendant.

6 (AFTER THE RECESS, THE FOLLOWING PROCEEDINGS WERE HELD IN
7 OPEN COURT:)

8 THE COURT: Let the record show that counsel are
9 present and the Defendant is present. We are on
10 cross-examination. You may proceed.

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1 Q. It says, Agent Hersley, in the Affidavit prepared by Agent
2 Gibbons in connection with this case that on April 20th, the
3 rental agent was recontacted and assisted in the creation of
4 composite drawings. It says "the rental agent." Does that
5 mean all of the agents, all of the rental agents, all three of
6 the people you told us about?

7 A. My understanding is the individual that was in a position
8 to watch the individual that was renting the truck on that day
9 assisted primarily in compiling the composite. And the other
10 individuals, the other two employees, also assisted to some
11 extent.

12 Q. It says in the paragraph of the Affidavit by Agent Gibbons
13 that a fair and accurate depiction of the individuals who
14 rented the truck; is that correct?

15 A. There were two composites drawn, one of each individual
16 that was in there that day.

17 Q. The other composite, did he do the renting of the truck?

18 A. No.

19 Q. So the person -- you have been advised that the person who
20 is identified in Government's Exhibit 2 is the person who gave
21 the identification and rented the truck?

22 A. Yes.

23 Q. What is your understanding of what the other individual
24 did during the time that the individual in Government's Exhibit
25 2 was renting the truck?

1 A. I believe he is the one that brought the individual
2 pictured in composite one to the rental location and was there
3 while the individual pictured in composite one was getting the
4 paperwork completed and actually renting the truck.

5 Q. Have you been made aware of what he was doing at the time
6 that he rented the truck?

7 A. I believe he was just standing in the office there.

8 Q. Was he standing close and assisting in the rental? Did he
9 give money, did he do anything active that you have been
10 advised during that time?

11 A. I don't believe so, no.

12 Q. Now, you have testified here in court earlier about some
13 calls made from Room 25. Is Room 25 the one that was rented by
14 the person that has been identified in composite one?

15 A. Room 25 was rented by Mr. McVeigh.

16 Q. It was rented by a Mr. Tim McVeigh, correct?

17 A. Yes.

18 Q. At the Dreamland Motel?

19 A. That's correct.

20 Q. You said that certain calls were made from that room?

21 A. Yes.

22 Q. You said something about a call to a restaurant or can you
23 explain that to me? I didn't understand that.

24 A. Yes, there was a call from Room 25 to a local restaurant
25 in Junction City. The caller placed an order for food to go

1 and gave the Room 25 and the phone number at the Dreamland
2 Hotel and used the name Kling.

3 Q. Was that an order to go or a delivery?

4 A. Delivery order, excuse me.

5 Q. Delivery order?

6 A. Yes.

7 Q. In other words, he called the place. Was it a pizza
8 restaurant?

9 A. No, it was a Chinese food restaurant.

10 Q. Was the Chinese food then delivered to Room 25 of the
11 Dreamland Motel?

12 A. Yes.

13 Q. That was on April 15, which would have been Saturday, I
14 believe, right?

15 A. That's correct.

16 Q. Was that food delivered?

17 A. Yes.

18 Q. I believe you told us that that person -- I believe you
19 told us on direct, these are some of my notes, I'm not sure if
20 I asked you this -- after being shown a photo spread that
21 contained the accused in this case, the young man who brought
22 the Chinese food was unable to identify the accused?

23 A. That's correct.

24 Q. Any other telephone calls that were made from this room
25 that there is a record of?

1 MR. GARLAND: Objection, Your Honor. This is again
2 purely discovery and unrelated to probable cause.

3 THE COURT: Overruled.

4 Q. Any other telephone calls?

5 A. Yes.

6 Q. Okay. Can you tell me where those were made to, sir?

7 A. Yes, they were made to Terry Nichols.

8 Q. Where was Terry Nichols at the time the calls were made?

9 Where were the calls made to, someplace in Michigan?

10 MR. GARLAND: Your Honor --

11 MR. COYLE: I'm sorry, I interrupted you.

12 MR. GARLAND: I'm sorry. Well, we are both sorry.

13 The location to which the calls were made is again

14 unrelated to probable cause. The discovery of this would

15 interfere with the rest of the investigation.

16 THE COURT: As to the location, the objection is

17 sustained.

18 Q. (By Mr. Coyle) Terry Nichols, anyone else, sir?

19 A. Those are the ones that I recall.

20 Q. Were the calls to Terry Nichols?

21 A. To Terry Nichols' residence in Herington.

22 Q. Any other calls that you recall that were made from Room

23 25 at the Dreamland Motel from the dates of April 14th through

24 18th, '95?

25 A. Not that I recall now. Those are the ones that I recall.

1 Q. Were the calls charged to the room?

2 MR. GARLAND: Objection, Your Honor. Once again
3 whoever it was charged to is not relevant to probable cause.
4 These are leads being pursued in an ongoing investigation.

5 MR. COYLE: There is no way that us knowing whether
6 they were charged to the room or not is going to jeopardize any
7 ongoing investigation.

8 THE COURT: Overruled.

9 Q. (By Mr. Coyle) Were they charged to the room or were they
10 put on a telephone credit card or how were those billed, Agent
11 Hersley?

12 A. The call to the Chinese food restaurant was a local call.
13 The other calls were the -- to a credit card, debit card.

14 Q. Who --

15 A. Through the debit card. A credit card, debit card was
16 used to make those calls.

17 Q. It was a debit card?

18 A. Yes.

19 Q. As opposed to a credit card?

20 A. I believe so, yes.

21 Q. You understand the distinction of what we are talking
22 about?

23 A. Yes.

24 Q. Do you know whose debit card it was? Have you been
25 advised?

1 A. It is in the name of Bridges, I believe.

2 Q. Have you found the person Bridges who is the owner of the
3 debit card?

4 MR. GARLAND: Objection, Your Honor.

5 THE COURT: Sustained.

6 Q. Now is there a list of all calls made, whether or not they
7 were local calls there in the Ft. Riley-Junction City area or
8 they were long distance calls? Do you have a record of all of
9 those calls?

10 A. From the Dreamland Hotel?

11 Q. Yes?

12 A. Yes.

13 Q. Is there a call among those to Elliott's Body Shop in
14 Junction City?

15 A. No.

16 Q. How many employees of the Dreamland Motel in Junction
17 City, Kansas have been interviewed that you are aware of?

18 A. Three.

19 Q. Are they all males or all females?

20 A. I'm aware of the identity of the manager, who is a
21 female. I believe that at least one of the other individuals
22 that was interviewed is also female. I'm not aware of the
23 identity of the third person.

24 Q. Has the manager female identified Mr. McVeigh?

25 A. Yes.

1 Q. Has she identified Mr. McVeigh from what you say is the
2 composite or a photo spread or a live line-up or just from TV
3 and newspapers and radio?

4 A. She positively identified Mr. McVeigh through the photo
5 spread.

6 Q. When was she shown that photo spread?

7 A. Within the last two days.

8 Q. After the time that his picture has been broadcast all
9 over America?

10 A. Yes.

11 Q. The other female there at the Dreamland Motel, how did she
12 identify Mr. McVeigh, if she did?

13 A. From the composite.

14 Q. Has she been shown a photo spread?

15 A. No.

16 Q. When was she shown the composite?

17 A. Several days ago. She was shown the composite and she
18 identified the composite as very strongly resembling the
19 individual that was staying in Room 25, Mr. McVeigh.

20 Q. Do all of these people use the word "very strongly
21 resembling" or do they use other words to describe that, don't
22 they?

23 A. The employees at the Dreamland, that is the way they
24 described it.

25 Q. So the composite to the second female employee was shown

1 after the photos were available several days ago?

2 A. There is not a second composite of a female employee.

3 Q. I'm sorry, okay. The second employee, was that a female
4 or a male?

5 A. Female.

6 Q. The first one we talked about is the manager. She was
7 shown the photo spread after Mr. McVeigh's photograph has been
8 published around the world, correct?

9 A. Correct.

10 Q. Then there is a second employee there, male or female?

11 A. Female.

12 Q. Now the female employee, not the manager, what sort of
13 composite photo spread or line-up of what has she been shown?

14 A. The composite.

15 Q. Only the composite?

16 A. Yes.

17 Q. That was several days ago?

18 A. Yes.

19 Q. Can you tell me the reason or the strategy behind not
20 showing her the photo spread?

21 MR. GARLAND: Objection to the characterization.

22 THE COURT: Sustained.

23 Q. Do you know why she was not shown the photo spread?

24 Because it was available at that time, am I correct?

25 A. No, I do not know.

1 Q. The manager, is she the one that rented the room to the
2 person who identified himself as Tim McVeigh and checked in as
3 Tim McVeigh; is that correct?

4 A. Yes.

5 Q. Is she the person who is alleged to have rented the room?

6 A. Yes, she rented the room to Mr. McVeigh.

7 Q. To a Mr. Tim McVeigh, correct?

8 A. Yes.

9 Q. The other female employee, can you tell me her
10 involvement?

11 A. "Her involvement," I'm not sure what you mean by your
12 question.

13 Q. Well, okay. The second female employee, who is not the
14 manager of the Dreamland Motel, what has she told or in what
15 manner has she observed the person she identified from a
16 composite as number one in Government's Exhibit 2 in these
17 proceedings, what she saw him do during the time that he was a
18 guest of that motel?

19 A. She just saw him at the hotel. On one particular occasion
20 she was going to go into the room, thinking that Mr. McVeigh
21 had left the hotel. When she started to open the door,
22 Mr. McVeigh did so and she observed him on that occasion.

23 Q. He opened the door for her --

24 A. Yes.

25 Q. -- as she came to the door. Did she knock on the door?

1 A. I don't know. I believe she thought he was gone. She was
2 going to clean the room. She was a maid.

3 Q. Now, was there -- did she see him on any other occasions
4 that you are aware of?

5 A. I'm not aware of how many occasions that she actually
6 observed him at the hotel.

7 Q. You told us, I believe earlier, that there were three and
8 there is also a male?

9 A. No, I didn't say -- I said that I didn't know the identity
10 of the third one.

11 Q. You don't know the sex or the identity of the third one,
12 but that's another witness from the Dreamland, am I correct?

13 A. Right.

14 Q. Is that an employee of the Dreamland?

15 A. I believe so, yes.

16 Q. Tell me, please, sir, how that person at the Dreamland,
17 who was employed by the Dreamland, observed the person who
18 identified himself as Tim McVeigh?

19 A. This person, to my knowledge, observed the individual who
20 identified himself as Mr. McVeigh at the Dreamland Hotel. I
21 don't know whether that was in the office or whether that was
22 out in the area where the rooms are.

23 Q. Now, you told us that persons -- a person at the Dreamland
24 Motel saw Mr. McVeigh, or saw someone who resembled the
25 photograph -- or I'm sorry, the composite, which is

1 Government's Exhibit 2 in this case, arrive at Dreamland in a.
2 Ryder Truck?

3 A. No. My testimony was that that person observed
4 Mr. McVeigh arrive at the motel in the truck. That person has
5 positively identified Mr. McVeigh from the photo spread.

6 Q. From the photo spread.

7 Is that one of these employees?

8 A. That's the person that rented the room to Mr. McVeigh.

9 Q. Who is the female manager, am I correct, sir?

10 A. Yes.

11 Q. When did she allegedly see Mr. McVeigh arrive at the
12 Dreamland Motel in a Ryder Truck?

13 A. On April 17th of this year.

14 Q. What time?

15 A. Sometime in the afternoon to early evening hours. Late
16 afternoon to early evening.

17 Q. Was there anyone else in the truck with him --

18 A. No.

19 Q. -- at the time she saw him?

20 A. No.

21 Q. Now, you say that someone also saw Mr. McVeigh at 4 a.m.
22 in a Ryder Truck, correct?

23 A. Yes. The manager said that she observed Mr. McVeigh in
24 the same Ryder Truck at 4 a.m. that next morning.

25 Q. You mean he was driving in it on the 18th at 4 a.m. in the

1 morning?

2 A. No, he was sitting in the truck with the light on in the
3 passenger compartment, seated in the driver's seat. She said
4 he appeared to be studying something, possibly looking at a
5 map.

6 Q. She saw a map?

7 A. No. She said possibly. He was looking at something. He
8 had the light on inside the passenger compartment inside the
9 Ryder Truck.

10 Q. How long did she see him?

11 A. She just looked out the window and noticed he was in
12 there.

13 Q. Was she sure that it was Mr. McVeigh?

14 A. Yes.

15 Q. Did she get the tag of that truck?

16 A. No.

17 Q. What time did the truck leave the motel?

18 A. She didn't say exactly. She doesn't know exactly when it
19 left. She looked out the window again around 5 o'clock and it
20 was gone.

21 Q. At 5 a.m. in the morning?

22 A. Yes.

23 Q. When did Mr. McVeigh check out?

24 A. She did not see him again after that.

25 Q. Well, is that 5 a.m. on the 17th?

1 A. No, I think you are getting confused on that. I think it
2 is --

3 Q. I don't know. I didn't ask.

4 A. My testimony was it was on the 18th.

5 Q. 18th?

6 A. Yes.

7 Q. Okay. We want to be accurate on these things, don't we?

8 MR. GARLAND: Objection.

9 THE COURT: Sustained.

10 Q. (By Mr. Coyle) So is it your testimony from any the
11 employees of the Dreamland that Mr. McVeigh -- from interviews
12 of all of them, that Mr. McVeigh did not actually physically
13 check out of the Dreamland Motel?

14 A. I believe that's correct. He paid for the room in advance
15 for four days; argued with the manager about the rate and paid
16 the entire bill up front. He then just left sometime between
17 four and five on the morning of the 18th.

18 Q. Are you aware of any evidence of the whereabouts of the
19 Ryder Truck between that time that you told us on the 18th at
20 five o'clock in the morning, 0500 -- so we won't be confused --
21 and the time that you say persons saw it in the downtown area
22 of Oklahoma City on the 19th?

23 MR. GARLAND: Objection. Discovery; not probable
24 cause.

25 MR. COYLE: This goes directly to everything in the

1 Affidavit between --

2 THE COURT: Overruled.

3 MR. COYLE: -- that time.

4 A. No.

5 Q. You told me something about the pistol that Mr. McVeigh
6 was alleged to have had on his person at the time that he was
7 placed under arrest by a trooper of the Oklahoma Highway
8 Patrol. You said something about a certain kind of a bullet.
9 What kind of bullet was that?

10 A. It is referred to in the law enforcement circles as a
11 cop-killer bullet.

12 Q. Well, he didn't kill the cop that walked up to the car,
13 did he?

14 A. No.

15 Q. In fact, isn't it your information, Agent Hersley, that he
16 told the cop that walked up to the car, instead of killing him
17 with a cop-killer bullet, he said, "I have a gun?"

18 A. That was after the officer had already observed it.

19 Q. Oh.

20 So is it your testimony, then, that the highway patrolman
21 drew-down on this young man, then? He saw the gun and
22 drew-down on him at that point?

23 MR. GARLAND: Objection. We are talking about
24 something occurring after the bombing.

25 THE COURT: I sustain the objection.

1 MR. COYLE: We have the highway patrolman here, so
2 we'll -- I was just trying to save some time with that.

3 Q. (By Mr. Coyle) In fact, part of your testimony about this
4 cop-killer bullet business, is there any evidence that
5 Mr. McVeigh killed a cop on that day? Is there any evidence of
6 that?

7 A. Yes.

8 Q. That he is a cop killer?

9 A. Yes.

10 Q. What is that?

11 A. The evidence points toward the fact that he blew up
12 several Federal law enforcement officers in the Federal
13 Building that morning.

14 Q. With this Glock .45?

15 A. No, with a massive bomb.

16 Q. With these cop-killer bullets, is what I'm asking. With
17 the cop-killer bullets?

18 A. What is your question?

19 Q. With the cop-killer bullets? Any evidence that he had
20 shot anybody with the cop-killer bullets?

21 A. No.

22 Q. Is there any evidence that Mr. McVeigh -- that this young
23 man had ever been arrested at anytime in his life prior to the
24 time he was arrested by the Highway Patrol in Oklahoma?

25 A. No.

1 Q. Have you heard of any statements that have been made by
2 the accused in this case to any agents in law enforcement?

3 A. No, I don't believe so.

4 Q. So he hasn't made any statements to anyone in law
5 enforcement in connection with any of the events in this case?

6 A. He provided some descriptive background to law enforcement
7 at the time he was arrested, but no further information, I
8 don't believe.

9 Q. Tell me about the descriptive background that you tell us
10 that he provided.

11 MR. GARLAND: Objection. This is long after the
12 bombing at this point. It has nothing to do with probable
13 cause here.

14 THE COURT: It might have something to do --

15 MR. COYLE: It is a statement of the accused.

16 THE COURT: Overruled.

17 A. Just information regarding his name and date of birth and
18 physical description.

19 Q. He gave them his name?

20 A. He also, I believe, made some statements to the officer
21 that stopped him in regard to the Glock .45.

22 Q. What did he say about the Glock .45?

23 A. I believe he recited the serial number of it to the
24 officer.

25 Q. Now, the vehicle that we have heard described as the

1 yellow Mercury, are you familiar with that vehicle?

2 A. Yes.

3 Q. You know which one we are talking about, the one that
4 Mr. McVeigh was allegedly in?

5 A. He was arrested in that vehicle.

6 Q. You saw him arrested in that vehicle?

7 A. No.

8 Q. Okay. Where was that vehicle located when the FBI secured
9 that vehicle?

10 A. Up close to Perry, Oklahoma.

11 Q. When was it that the FBI got the vehicle? Had it been
12 towed in and impounded?

13 MR. GARLAND: Objection, this is purely discovery.
14 It has nothing to do with probable cause.

15 THE COURT: Yes.

16 MR. COYLE: Okay.

17 Q. That's the car that he was arrested in, am I correct?

18 A. Yes.

19 Q. At the time of his arrest, do you know whether or not that
20 car was towed by the Highway Patrol to a secure location or
21 whether or not it was left on the side of the road?

22 MR. GARLAND: Objection, this is discovery.

23 MR. COYLE: That's right in the middle of the stuff
24 that he testified to when they were picked up.

25 MR. GARLAND: He didn't testify about anything --

1 THE COURT: Go ahead to the next question, Counsel.

2 Q. (By Mr. Coyle) Agent Hersley, tell us about any evidence
3 in the possession of the FBI that Timothy McVeigh actually
4 detonated the bomb that exploded in front of the Murrah
5 Building, that he detonated the bomb?

6 A. The results of the test that came back from the FBI
7 laboratory that Mr. McVeigh's shirt had residue of PTEN on it
8 indicates that Mr. McVeigh was likely in the vicinity of the
9 Ryder Truck at the time the time fuse, or similar type object
10 to ignite the blast, was activated.

11 Q. Tell me what PETN (sic), what did you say that was?

12 A. It is an explosive that is used in -- commonly used in
13 detonating cord.

14 Q. Where was it found on his shirt?

15 A. I'm not sure of the exact area of his shirt.

16 Q. I think you -- didn't you say that word before? I mean,
17 it was a series. I couldn't write that fast. The chemical
18 name for this PTND (sic)?

19 A. It is penta erythrite tetral nitrate.

20 Q. When you say it is commonly found in detonating cord?

21 A. Yes.

22 Q. Have you determined other uses for it?

23 A. No, I have not.

24 Q. Have you asked?

25 A. Aside from that it is very commonly found in detonating

1 cord, I have not asked that, no.

2 MR. COYLE: May I have a moment with my colleagues?

3 THE COURT: Yes.

4 (Whereupon, an off-the-record discussion was had between
5 Defense counsel and the Defendant. Thereafter:)

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1 Q. Can you tell us, Agent Hersley, if the FBI or anyone else
2 in law enforcement is aware of any statements of other persons
3 that implicate the accused Timothy McVeigh on the bombing of
4 the federal building?

5 MR. GARLAND: Objection, Your Honor, only after
6 indictment, they would be entitled to that kind of information.
7 Under the Jencks Act, they would not be entitled to such
8 information until the witnesses testified at trial. This is
9 purely and only discovery that is barred by the Federal Rules
10 of Criminal Procedure.

11 THE COURT: Sustained.

12 Q. (By Mr. Coyle) Who did you talk to about the PTND?

13 A. Rick Hahn.

14 Q. Rick Hahn was the guy on that too?

15 A. Yes.

16 Q. When did Rick Hahn tell you that?

17 A. Within the last two to three days. I also spoke with Jim
18 Norman another agent in our office about that.

19 Q. What is Jim Norman's specialty?

20 A. Bombing matters.

21 Q. He is another one of these bomb guys?

22 A. He is a bombs explosives guy.

23 Q. Was he making up the test on the shirt that was allegedly
24 worn by Mr. McVeigh?

25 A. Did Agent Norman do it?

1 Q. Yes.

2 A. No, that was done by our laboratory back in Washington.

3 MR. COYLE: I believe that's all. Thank you, sir.

4 THE COURT: Anything further of this witness?

5 MR. GARLAND: No further questions.

6 THE COURT: Any other further evidence on behalf of
7 the United States?

8 MR. GARLAND: No.

9 THE COURT: The United States rest?

10 MR. GARLAND: Yes, Your Honor.

11 THE COURT: Any others on behalf of the Defendant?

12 MR. COYLE: May I have a moment, Judge?

13 THE COURT: Yes.

14 MR. COYLE: Your Honor, the accused would call the
15 trooper of the highway patrol identified as Charles Hanger. We
16 would ask, I believe he is here. He has a subpoena duces
17 tecum.

18 MR. GARLAND: Your Honor, the government moved to
19 quash that. I would like to have a moment to argue.

20 THE COURT: Very well.

21 MR. GARLAND: The government has filed a copy of its
22 motion to quash with the Court and has delivered copies to the
23 defense attorney. The only purpose of preliminary hearing --

24 THE COURT: Excuse me, I don't believe I have your
25 motion.

1 MR. GARLAND: I don't have a copy.

2 THE COURT: Here is a copy.

3 MR. GARLAND: Your Honor, actually I would encourage
4 the Court to take another brief break in order to read the
5 paper.

6 THE COURT: Go ahead make your statement and I will
7 read as you go on.

8 MR. GARLAND: The purpose of the preliminary hearing
9 and only purpose under the Tenth Circuit Rule under the Robbins
10 Case is to determine probable cause.

11 Discovery is emphatically not a purpose. Other evidence
12 which might be relevant for suppression is not the purpose of
13 this hearing. They, therefore, cannot subpoena a witness,
14 particularly, a government witness which is who this trooper is
15 unless they can show that that witness has evidence that would
16 negate the existence of probable cause. You see the citation
17 of the Second Circuit, Cirtina.

18 Following that citation are two district court cases, one
19 in Tennessee and one in Eastern District of Pennsylvania
20 affirmed by the Third Circuit which rejected attempts by
21 Defendant to call a government witness in its case in chief in
22 a preliminary examination.

23 Even in the most liberal of all circuits, which happens to
24 be the circuit from which I come, the D.C. Circuit, that court
25 has held unless the Defendant is able to make a plausible

1 showing that the witness would contribute significantly to the
2 accuracy of the probable cause determination, they may not call
3 him.

4 This witness did not see the bombing. He did not see
5 anything other than the arrest. He cannot contribute to the
6 question of probable cause in a way that would assist the
7 Defendant. For that reason, the only purpose for bringing him
8 here is to obtain discovery of that witness, and we urge that
9 he not be permitted to testify at this hearing.

10 THE COURT: Defendant?

11 MS. OTTO: Your Honor, if I may, I believe -- may I
12 stand here?

13 THE COURT: If you would like to stand there, that's
14 fine.

15 MS. OTTO: I believe I was the attorney who prepared
16 the subpoena application request and submitted it to the Court,
17 so it's most proper for me to respond to this.

18 As the Court is aware, Rule 5.1 of the Federal Rules Of
19 Criminal Procedure 5.1A expressly provides the Defendant may
20 cross-examine adverse witnesses and may introduce evidence.
21 Under the subpoena power of the Court, that is defined in rule
22 17, Mr. McVeigh as an indigent Defendant may ask the Court to
23 cause a subpoena to be issued for a witness. That is exactly
24 what we have done.

25 The fact that the government wants to characterize a

1 particular person as a quote unquote government witness, does
2 not place him outside the purview of the Court's subpoena
3 power.

4 As I understand the government's contention during this
5 preliminary hearing, they are alleging that Mr. McVeigh
6 detonated a bomb that exploded in front of the A.P. Murrah
7 Building at approximately 9:03 in the morning. I think the
8 circumstances surrounding the arrest of Mr. McVeigh on
9 Interstate 35 just outside Perry, Oklahoma is highly relevant
10 to the issue of probable cause.

11 Mr. McVeigh's demeanor at the time, the government has
12 introduced evidence attempting to establish that Mr. McVeigh
13 had a loaded firearm on his person at the time of his arrest,
14 his interaction with the police officer, his general
15 presentation of himself, his reaction to the stop and the
16 arrest, and the circumstances surrounding the arrest are highly
17 relevant to the issue of whether or not Mr. McVeigh was the
18 person who detonated the bomb.

19 I have not heard any hearsay evidence or any direct
20 evidence from any government witness establishing that there is
21 proof of a witness that says Mr. McVeigh detonated the bomb.
22 The only thing I heard was -- and I was listening fairly
23 closely for this -- was a laboratory test that indicated the
24 presence of some substance on his shirt and from that we are
25 deducing that he was in contact I guess with det cord.

1 Again, we have no witnesses. None of these various
2 witnesses, identified and unidentified, by the government have
3 established that they saw Mr. McVeigh detonate the bomb.
4 That's all there is to it.

5 They allegedly saw him in the area, and we can argue about
6 the eyewitness identification during allocution, but there is
7 no direct evidence of this.

8 I think the evidence about the circumstances surrounding
9 the arrest is highly material. Certainly the government in
10 every case that I have ever had with them always makes a great
11 deal about the nervousness of a suspect who is stopped, his
12 general demeanor, his or her actions during the arrest, that's
13 always intrinsic in the government's case.

14 There are lots of people that look guilty and get the
15 stopped. I think it's very important that we hear what Trooper
16 Hanger has to say about this traffic stop and about Mr.
17 McVeigh's interaction with him at the time.

18 It is very close in time to the event in downtown Oklahoma
19 City. It isn't something where he stopped three days later.
20 This is an hour and some minutes after the explosion in
21 downtown Oklahoma City. It's part and parcel of it, relevant
22 to the issue of probable cause, and that's why we asked the
23 Court to issue the subpoena in the first place.

24 THE COURT: Would it be the Court's understanding that
25 the trooper's testimony would essentially follow what is stated

1 in paragraph 13?

2 MS. OTTO: Paragraph 13 of the affidavit?

3 THE COURT: I am sorry of the affidavit.

4 MS. OTTO: Well, that is certainly part of it.

5 THE COURT: What additional evidence?

6 MS. OTTO: The demeanor of Mr. McVeigh. Agent Hersley
7 testified that it's his understanding that Mr. McVeigh talks
8 about the weapon only after the trooper sees it. That's not in
9 paragraph 13. There is some additional information that is
10 contained in paragraph 13, and I don't think this witness is
11 going to take all that long anyway.

12 THE COURT: Does the government disagree with anything
13 stated in paragraph 13?

14 MR. GARLAND: Your Honor, I don't think that the
15 demeanor of the witness is relevant to the negation of probable
16 cause, that is, even if a witness's demeanor were perfectly
17 normal in every other way it wouldn't make any difference to
18 the probable cause determination.

19 THE COURT: Do you disagree with Agent Hersley?

20 MR. GARLAND: With what's in 13?

21 THE COURT: Do you disagree with Agent Hersley's
22 testimony about the witness at the time -- the Defendant.

23 MR. GARLAND: No, I certainly do not disagree.

24 THE COURT: Do you disagree with statements made in
25 paragraph 13 of the affidavit and part of complaint?

1 MR. GARLAND: No, Your Honor, I do not.

2 MS. OTTO: This is the arrest that starts the whole
3 chain of events that causes Mr. McVeigh to be present in the
4 courtroom. I assumed it was relevant because they put it
5 paragraph 13 of the affidavit.

6 THE COURT: I don't believe there is any dispute about
7 that. Why do we need a witness?

8 MS. OTTO: There are facts outside 13.

9 THE COURT: What other facts is he going to testify?

10 MS. OTTO: There is nothing about Mr. McVeigh's
11 demeanor.

12 THE COURT: We have the agent's testimony there --
13 Agent Hersley.

14 MS. OTTO: I do dispute it. I am sorry I do dispute
15 Agent Hersley.

16 THE COURT: What do you dispute about Agent Hersley's
17 testimony?

18 MS. OTTO: That Mr. McVeigh doesn't have a
19 conversation with Trooper Hanger about the circumstances of the
20 firearm.

21 THE COURT: Your evidence is going to be that the
22 trooper will testify something contrary to what Agent Hersley
23 said about the weapon?

24 MS. OTTO: He is going to testify in amplification and
25 it may indeed contradict. I haven't had an opportunity to talk

1 to Trooper Hanger to have an interview with him prior to this
2 although I did read his interview with the newspaper.

3 THE COURT: I don't think we have much dispute as far
4 as the Court is concerned it is very peripheral concerns
5 relating to the arrest and maybe some testified that has some
6 bearing on the demeanor of the witness that will might be
7 relevant, but it's a periphery of probable cause I believe.
8 However, you desire to call Trooper Hanger, you may call him.

9 MS. OTTO: Thank you.

10 MR. COYLE: We do desire to call him.

11 THE COURT: Much of this evidence has been stipulated,
12 and perhaps this testimony can be abbreviated.

13 MS. OTTO: Yes, Your Honor.

14 MR. COYLE: It's not going to be very windy. I am
15 tired. We would call Trooper Hanger.

16 MR. GARLAND: I am sorry to interrupt. With respect
17 to the documents which they have also subpoenaed, I would also
18 like to be heard as to why they should not be --

19 THE COURT: Are we going to introduce some documents?

20 MR. COYLE: I don't know. We have subpoenaed along with
21 the trooper. We issued subpoena duces tecum to get all of the
22 documents relative to the arrest whether or not they are
23 consistent with the affidavit of probable cause and his
24 testimony, I think is important. I assume that he prepared it
25 somewhat immediately after the events and all those things are

1 important and I think we are entitled to them.

2 THE COURT: You are entitled to them eventually. The
3 question is whether or not now.

4 MR. COYLE: We would like to be able to review them
5 prior to the time that we put the trooper on the stand or look
6 at them concurrent with the time we put him on.

7 I don't seek to delay. I seek to see what it is that the
8 trooper has to say particularly about the demeanor and so forth
9 of this young man. That's what I wanted to go through. Not
10 all --

11 THE COURT: I am going to allow him to testify about
12 the demeanor. I think the other matters are going to be
13 developed later in this case and wouldn't be critical for
14 probable cause concerning. But I am allowing you to do it to
15 try to permit you to get in all the evidence that might have
16 any bearing upon probable cause.

17 MR. COYLE: Yes, sir.

18 THE COURT: Testimony about demeanor is what I
19 understand you are concerned about.

20 MR. COYLE: That's the main thing we are concerned
21 with and I will assure you I will keep it at that.

22 THE COURT: Put the trooper on about demeanor and go
23 on.

24 MR. COYLE: Very well.

25 CHARLES HANGER,

1 having been first duly sworn to tell the truth, the whole
2 truth, and nothing but the truth, testified as follows:

3 DIRECT EXAMINATION

4 MR. COYLE: If I may have just a moment, judge, I am
5 getting organized.

6 BY MR. COYLE:

7 Q. Good afternoon, sir?

8 A. Good afternoon.

9 Q. Would you tell the Court your name, please, sir?

10 A. Charles J. Hanger.

11 Q. How are you employed, sir?

12 A. I am a state trooper with the Oklahoma Highway Patrol.

13 Q. How long have you been with the Highway Patrol?

14 A. Since September, 1976.

15 Q. And is it correct, sir, that you were served with a
16 subpoena duces tecum in a criminal case in this matter to bring
17 with you certain items relative to the arrest of Timothy
18 McVeigh?

19 A. Yes, I was.

20 Q. And did you bring those items?

21 A. Yes, I did.

22 Q. Your Honor, may I approach the witness and retrieve the
23 items?

24 THE COURT: Unless there is some objection?

25 MR. GARLAND: Yes, if we are going to produce

1 documents, I want to heard on this. I believe this I expressly
2 barred by 18 United States Code Section 3500. The Jencks Act
3 bars the subpoena to be used for this purpose until after the
4 witness testifies at trial for the adverse party.

5 MR. COYLE: The Jencks Act? He is my witness.

6 MR. GARLAND: That's right.

7 MR. COYLE: He is my witness. You can discover it
8 after he testifies at trial. He is my witness.

9 THE COURT: If you would like to identify the
10 documents I will let you do that. I think introduction of the
11 document will be discovery.

12 MR. COYLE: If the Court please, you issued an order
13 asking him to bring the documents for us under those
14 circumstances.

15 THE COURT: I sustained your motion ex parte motion.

16 MR. COYLE: For us to review them. I can't know what
17 they are until I look at them.

18 THE COURT: I said they can't be introduced in
19 evidence I said they would brought to the courtroom.

20 MR. COYLE: Could I see the documents?

21 THE COURT: I am telling you at this time to identify
22 the documents, that I believe the documents themselves the
23 discovery. If you would like to identify them -- Trooper, what
24 documents did you bring with you?

25 A. I have a --

1 THE COURT: Describe them in the general.

2 A. Probable cause affidavit, confiscated property report, copy
3 of the summons that I issued, and some jail booking
4 information.

5 THE COURT: Is that all?

6 THE WITNESS: I believe that's all, sir.

7 Q. (By Mr. Coyle) Anything else? Can I see that now?

8 THE COURT: No, it's discovery.

9 THE WITNESS: Sir, I do have one more.

10 THE COURT: I am sorry. Go ahead.

11 THE WITNESS: Videotape.

12 THE COURT: What is that have?

13 THE WITNESS: This is a videotape of the car that I
14 stopped there is no audio on this.

15 THE COURT: Video that is in your vehicle?

16 THE WITNESS: Mounted video.

17 MR. COYLE: May I inquire?

18 THE COURT: Yes, sir.

19 Q. (By Mr. Coyle) Is this the dash-mounted video that you say
20 that you have with you today when you brought in response to
21 the subpoena, did that record the arrest of the accused in this
22 case, Mr. Timothy McVeigh?

23 A. It did not.

24 Q. Can you tell us why you brought it then?

25 A. Listed on that sheet as evidence.

1 Q. So you don't have a video of the Mercury in this case or
2 Mr. McVeigh or any of your activities relative to the stop that
3 you have told us you performed upon the 19th of April?

4 A. You asked if I had a video of the actual arrest.

5 Q. Of any of the part of your interaction with Mr. McVeigh on
6 April 19th?

7 A. It depicts the vehicle. It shows me moving about the
8 vehicle. It does not show the arrest nor does it have any
9 video of Mr. McVeigh.

10 Q. All right, can you tell us on the date, sir of April 19,
11 1995 at about 10:30 a.m. if you came in contact with a person
12 by the name of Timothy McVeigh?

13 A. Yes, it was somewhat before that.

14 Q. All right, can you tell us where you first encountered Mr.
15 McVeigh?

16 A. A little over a mile south of the state highway 15 at
17 Billings exit on Interstate 35 northbound lane.

18 Q. What was the reason for this particular vehicle to catch
19 your attention?

20 A. It was not displaying a tag.

21 Q. And after you saw it, did you fall in behind it? Where
22 were you parked at the time you observed the vehicle?

23 A. I was traveling north in the left lane. He was in the
24 right lane.

25 Q. He was traveling in a north direction?

1 A. Yes.

2 Q. And you passed that vehicle?

3 A. Yes.

4 Q. What kind of vehicle was that, sir?

5 A. It was a yellow 1977 Mercury Marquis with a primer spot on
6 the left rear quarter panel.

7 Q. Did you then pull that vehicle over?

8 A. Yes, sir.

9 Q. As you approached the vehicle, what was the driver of the
10 vehicle doing?

11 A. Sitting in it and the door open.

12 Q. Did he get out of the vehicle?

13 A. Yes.

14 Q. And what did he do upon getting out of the vehicle?

15 A. He approached me.

16 Q. Do you see that man in the courtroom today?

17 A. Yes.

18 Q. Would you point him out to the judge, please?

19 A. The young man with the white t-shirt, khaki pants, and blue
20 tennis shoes with short dark hair.

21 Q. That young man that you see seated there today, he
22 approached you?

23 A. Yes.

24 Q. And did he say anything to you at that time?

25 A. I believe I made the first statement.

1 Q. What did you say to him? What did you say to him?

2 A. I said I stopped you because you don't have a tag.

3 Q. What was his response?

4 A. He said he had recently purchased the automobile and
5 didn't have a tag.

6 Q. What did you tell him at that point?

7 A. I said could you produce me a bill of sale.

8 Q. And tell us what he did?

9 A. He said I don't have a bill of sale, the person I bought it
10 from was still filling it out.

11 Q. What did you ask him to do then?

12 A. I said how long does it take to fill out a bill of sale.

13 Q. And he replied to you?

14 A. I don't have one with me.

15 Q. What was the next thing you said to him?

16 A. I asked him for his driver's license.

17 Q. Did he retrieve that for you?

18 A. He did.

19 Q. Was the driver's license that he handed you --

20 MR. COYLE: Your Honor, may I approach?

21 THE COURT: Sure.

22 BY MR. COYLE:

23 Q. Let me hand you please, Trooper Hanger what's been
24 identified, sir, these proceedings previously as Government
25 Exhibit No. 3 and ask you is that the driver's license that you

1 were handed that day?

2 A. Yes, it appears to be the same.

3 Q. What's the name on that, sir?

4 A. Timothy James McVeigh.

5 Q. And after you saw that driver's license, what did you then
6 do after he handed you the driver's license?

7 A. I looked at it.

8 Q. Okay.

9 A. By this time I had noticed a bulge in the left side of his
10 jacket up under the left edge under his arm. I looked at the
11 license, looked at him, and I said would you slowly move your
12 jacket back so I can look underneath it.

13 Q. At that time he told you there was a gun underneath there?

14 A. Close to the time as he was easing back, he said I have a
15 gun.

16 Q. Okay, he never made any sort of offensive moves toward you
17 did he or any sort of aggressive moves toward you?

18 A. No, sir.

19 Q. At any time did he?

20 A. No, sir.

21 Q. Was he polite with you?

22 A. Yes, sir.

23 Q. Was he cooperative you in retrieval of license and removal
24 of his jacket, every action this young man took during the
25 course of that stop?

1 A. Yes, sir.

2 Q. Had you been made aware of the bombing in Oklahoma City at
3 the time of your stop of this vehicle?

4 A. Yes, I had.

5 Q. Now, did he then remove the pistol?

6 A. No, I grabbed a hold of the jacket and the pistol.

7 Q. So you took it away from him and had you drawn your weapon
8 at that time?

9 A. Not at that immediate moment.

10 Q. When did you draw your weapon?

11 A. I grabbed the jacket and the pistol and instructed him to
12 put his hands up and as we walked toward the back of the car,
13 his car, I drew my pistol.

14 Q. Did he cooperate in the what you told him to do walk to the
15 back of the car?

16 A. Yes, sir.

17 Q. Did he at any time make any aggressive moves toward you
18 during that period of time?

19 A. No, sir.

20 Q. And then what did you have him do?

21 A. Had him put his hands on the trunk.

22 Q. Did he cooperate with you?

23 A. Yes, sir.

24 Q. Did you then handcuff him?

25 A. I removed the pistol first, then I removed a pouch that

1 contained an extra clip which he told me he had from the same
2 area where the pistol was on a belt. Then he told me that he
3 had a knife. I removed it through all these items on the
4 shoulder of the road way then I handcuffed him.

5 Q. During all that was he cooperative?

6 A. Yes, sir.

7 Q. He did that he didn't try to struggle or resist or anything
8 else, did he?

9 A. No, sir.

10 Q. Did you transport -- did you place him in your car?

11 A. Yes.

12 Q. And then what did you do after he was placed in your car?

13 A. I seatbelted him in and left him there while I was running
14 some checks via my cellular phone.

15 Q. Did you run those checks?

16 A. Yes.

17 Q. And how did his license -- did his license turn up as
18 valid.

19 MR. GARLAND: Objection, Your Honor, I thought we were
20 going to with demeanor. He has wholly testified on that
21 subject.

22 THE COURT: I thought that's what we were doing.

23 MR. COYLE: Okay, that's good.

24 BY MR. COYLE:

25 Q. Then did he get in the car -- got in your car, right?

- 1 A. I had already put him in my car.
- 2 Q. Okay did you have any conversation with this young man that
- 3 you have identified that day?
- 4 A. Yes.
- 5 Q. What was your conversation after you put him in the car?
- 6 A. We had talked about where he purchased the car.
- 7 Q. What did he tell you?
- 8 A. In Junction City, Kansas.
- 9 Q. Did he tell you from whom?
- 10 A. He said it was from a Firestone dealer.
- 11 Q. Anything else he told you?
- 12 A. He told me the salesman's name.
- 13 Q. What was the salesman's name?
- 14 A. Tom.
- 15 Q. What else did he tell you?
- 16 A. I had also mentioned that he had a tag from a car that he
- 17 had traded in when he bought this car, but he chose not to put
- 18 it on there because it didn't belong there.
- 19 Q. Okay, anything else?
- 20 A. Not that I can think of.
- 21 Q. Did -- he didn't tell you anything else during the whole
- 22 time that you had him in custody?
- 23 A. Right after I had handcuffed him and we were standing at
- 24 the trunk of his car.
- 25 Q. Yes, sir?

1 A. I asked him why was he carrying a weapon. He said he felt
2 like he had the right to carry am weapon for his own protection.

3 Q. Anything else he said to you at that point?

4 A. No, sir.

5 Q. If he wanted to up until the time that you noticed the
6 bulge out or about his arm, he was cordial and polite with you;
7 was he not?

8 A. Yes.

9 Q. And he in fact had a number of opportunities to pull that
10 weapon from its location at or about his shoulder; did he not
11 when you were approaching his vehicle?

12 A. Yes.

13 Q. As a result of this stop, did you connect him with the
14 bombing in anyway at the time you stopped him?

15 A. Not at all.

16 Q. After you talked to him about where he had possibly
17 purchased the car or where he had purchased the car at Junction
18 City, did you have any other conversations with him?

19 A. Yes, and I am not sure just when it took place, you know
20 but we talked about where he was coming from.

21 Q. Where did he tell you?

22 A. He said from Arkansas, said he was in the process of moving
23 there, had taken a load of belongings to there and was going
24 back to get more of his belongings.

25 Q. Anything else he told you?

1 MR. GARLAND: Your Honor, what we are trying to do
2 here is discover statements.

3 MR. COYLE: This is statement of the accused.

4 MR. GARLAND: It is statement of the accused, but he
5 is not entitled to it at this hearing.

6 MR. COYLE: Goes to demeanor, what he was doing.

7 THE COURT: Overruled.

8 BY MR. COYLE:

9 Q. What else did he tell you?

10 A. You are talking about statements that he volunteered to me?

11 Q. Yes, sir, statements that he made. You-all talked I guess
12 all the way to the jail -- wait a minute. How far were you
13 from the jail?

14 A. I am guessing 18 to 20 miles, maybe not quite that far.

15 Q. Took you 15 to 20 minutes to get there, am I correct?

16 A. Yes.

17 Q. During that time you visit with him?

18 A. Yes.

19 Q. And he was still polite to you, wasn't he?

20 A. Yes.

21 Q. Did he appear scared or nervous at that point?

22 A. No.

23 Q. And tell us, please what else he said?

24 A. While I was on the cellular phone talking to my dispatcher
25 I was trying to determine where the car might be registered

1 at. Couldn't find anything in Kansas. I had made a suggestion
2 the car might be registered in Missouri because I had seen some
3 type of safety sticker on the windshield. And he heard me
4 talking on the phone to my dispatcher. He said that is an
5 Arkansas safety sticker, so I told the dispatcher run the check
6 in Arkansas and they did.

7 Q. And did it come back?

8 A. Came back to some individual in Arkansas with expired
9 registration.

10 Q. What else -- what other conversation?

11 A. I didn't take any notes. It was just friendly chit chat.
12 I had read him his Miranda warning. He said he understood. I
13 asked him if he would talk with me. He said yes, depending on
14 what you want to ask. I said would you visit with me just like
15 we were visiting earlier while we are standing outside. He
16 said yes. Some of those statements I have already told you
17 followed that.

18 Q. Did you read him his Miranda Warning?

19 A. Yes.

20 Q. Did you read it from a card?

21 A. Yes, I did.

22 Q. Was he under the influence of anything in your opinion?

23 MR. GARLAND: Your Honor, objection all goes to the
24 question of possible suppression. Has nothing to do with
25 probable cause.

1 MR. COYLE: Sure goes to his demeanor.

2 MR. GARLAND: The rule expressly states the evidence
3 is not relevant at this hearing.

4 THE COURT: Sustained.

5 BY MR. COYLE:

6 Q. Any other conversation that you recall all the way to the
7 Noble County Jail?

8
9 A. I had told him how dangerous it was to carry a weapon like
10 that that a furtive move, wrong move could result in some
11 officer mistakenly shooting him.

12 Q. Anything else that he told you. What did he say in
13 response though that statement?

14 A. I think he said something like that's possible.

15 Q. Anything else he said?

16 A. No, it was just chit chat. I don't remember. It was
17 nothing that meant anything to me at the time. It was just
18 might have said a few things on the way down there. I didn't
19 take any notes and I can't expressly tell you what that was.

20 Q. Do you keep a tape-recorder with you?

21 A. No, I do not.

22 Q. Did you search Mr. McVeigh's car?

23 A. Yes, I did.

24 MR. GARLAND: Objection, Your Honor. I thought this
25 was going -- objection, Your Honor I thought this was going to

1 be only about the demeanor of the witness.

2 THE COURT: Sustained.

3 MR. COYLE: I believe that's all. Thank you, sir.

4 THE COURT: Any questions.

5 MR. GARLAND: No.

6 THE COURT: You maybe excused. May we open the
7 documents that have been heretofore sealed with regard to this?

8 MR. COYLE: I would ask.

9 MS. OTTO: Are the documents we are talking about are
10 applications for the subpoena and issuance of the subpoena?

11 THE COURT: I just wanted to know.

12 MS. OTTO: I don't see any particular problem with
13 that.

14 THE COURT: They will be unsealed then. Anything
15 further?

16 MS. OTTO: No, Your Honor, nothing further.

17 THE COURT: All the evidence in on behalf of the
18 Defendant?

19 MS. OTTO: Yes, Your Honor.

20 THE COURT: Counsel care to make any statements
21 regarding probable cause or the detention issue.

22 MR. GARLAND: I would like to be heard on detention.
23 Do you want to make a ruling on probable cause or do you want
24 to do them both at the same time?

25 THE COURT: Same time.

1 MR. GARLAND: Your Honor, we will rest on entry of the
2 evidence with respect to the probable cause.

3 With respect to the detention, Your Honor I would ask that
4 he be detained pending the trial. 18 U.S.C. Section 3142E
5 finds that the Court-- states that the Court must order
6 detention if it finds no conditions were reasonably assure the
7 appearance of any person as required and the safety of any
8 other person in the community.

9 First, Your Honor, we believe that the presumption that no
10 condition can assure these -- both the appearance and safety
11 apply here. The statute provides that if there is probable
12 cause to believe that the Defendant has violated 18 U.S.C.
13 924C that presumption applies.

14 You have heard evidence, Your Honor, more than sufficient
15 to establish that during and relation to a crime of violence
16 the Defendant used and carried a destructive device that is a
17 bomb. Therefore, the presumption applies and should be
18 detained. Even without the presumption, we would make the
19 following arguments, Your Honor: With respect to appearance,
20 this Defendant has no fixed residence or community ties. He
21 has lived in multiple states over the last small period of
22 time.

23 He gave a South Dakota address at the Ryder Truck rental.
24 He had a Michigan license and a Michigan address at the time of
25 his arrest investigation has shown he has resided in both New

1 York and Arizona during this same time. That goes to the
2 question of whether he has community ties. It's one of the
3 factors listed. In addition, Your Honor, as everyone knows he
4 faces the possibility of the death penalty in this case and
5 enormous incentive to flee. The government represents no
6 condition would prevent a person in that situation from
7 fleeing.

8 Finally, Your Honor with respect to the safety of the
9 community, the statute directs us to look at the nature of the
10 offense and could not imagine a more heinous offense than
11 this.

12 The Defendant has shown a willingness to kill innocent
13 children, law enforcement officers, and ordinary people going
14 about their ordinary lives. No series of the conditions could
15 reasonably assure his appearance or the safety of other persons
16 in the community. For that reason, he should be detained.

17 MR. COYLE: We will waive argument.

18 THE COURT: All evidence is in. All arguments have
19 been submitted by counsel. This is before the Court on
20 decision of issue of probable cause and the government for
21 detention. The Defendant is charged with the statute that is
22 set out in Section 844 Title 18 specifically paragraph F
23 principal elements of that statute are malicious damage by an
24 explosive to a federal -- to federal property and if death
25 results to any person then the penalties provisions are also

1 included in that statute.

2 The Court finds that all elements of that statute are
3 satisfied by probable cause evidence that has been introduced
4 in the case. The Court also finds that an indelible train of
5 evidence -- trail of evidence that starts in Junction City and
6 ends up at the front door of the Murrah Building.

7 The Defendant has been identified in person at both
8 locations both Junction City and also in Oklahoma City by
9 several witnesses, also vehicles that the specific Ryder Truck
10 and also the Mercury were identified at both locations.

11 I will not detail all of the evidence because I think the
12 evidence is highly credible as introduced by the United States
13 and that the Court believes and finds there is ample and
14 sufficient probable cause to hold the Defendant for further
15 proceedings in District Court.

16 He has been identified both in person and also through the
17 elements of this offense. The Court has no idea of what
18 further prosecution or how that will take place that is in
19 discretion of the United States Attorney's Office.

20 The detention issue I think is taken care of the severity
21 of the offense and the Court makes a finding ample clear and
22 convincing evidence based upon the nature of the offense and
23 what I think is highly credible probable cause evidence to
24 detain the Defendant pending further proceedings, and I believe
25 that evidence is clear and convincing and I believe he should

1 be detained for both risk of flight and serious dangerous to
2 the community.

3 At this time I want to express my appreciation to defense
4 counsel who have performed with great skill and professionalism
5 at the Court's direction representing the Defendant in these
6 proceedings.

7 I would like to ask if the Defendant desires to proceed
8 with appointed counsel or if the Court's receive a financial
9 affidavit which he should complete and I will ask counsel to
10 confer with him about that so that its accurate and I would ask
11 if he could do that at this time before we leave this
12 proceeding.

13 MS. OTTO: Yes, Your Honor, we can assist him in
14 that. He would have to be unhandcuffed to assist us in the
15 preparation of that.

16 Also before we leave today I would like to request that the
17 Court consider a matter that we take very seriously. We have
18 heard a great deal of testimony today about various witnesses,
19 some of whom place Mr. McVeigh in Oklahoma City on various
20 dates. Some of these witnesses claim to have seen Mr. McVeigh
21 on the date in question, and many of these witnesses have not
22 been shown at this point either a photo spread or a live
23 lineup.

24 Ms. Joplin contacted Mr. Coyle and I late last week, I
25 think, it would have been Saturday. Leslie Maye was actually

1 person who contacted Mr. Coyle initially about the live lineup
2 that was conducted Saturday night at the Oklahoma County Jail.
3 Mr. Coyle and I were present. We were present during the
4 composition of the lineup although we were not allowed to
5 participate in it.

6 We were also present in the room when the witnesses were
7 brought into participate in the live lineup and we certainly
8 agree with Ms. Joplin's assessment that was was an appropriate
9 procedure. One of the great concerns in any case that release
10 in part on eyewitness identification is a part of eyewitness
11 identification taint.

12 And I certainly believe there is a high degree of
13 probability in this case that any eyewitness or alleged
14 eyewitness who is brought forward by the government will in all
15 likelihood have witnessed Mr. McVeigh in essentially a repeated
16 every half hour for a couple days show up on CNN and the local
17 stations in the company of Federal Bureau of Investigation,
18 United States Marshals, and local deputies. He is the man in
19 orange surrounded by all of the other gentleman, and we are
20 very concerned that because of the intense and pervasive
21 publicity in this case that there is a very high degree of
22 probability of all of the alleged eyewitnesses at this point
23 have been tainted.

24 We were therefore going to request that an order be entered
25 directing the government to conduct only live lineups with

1 these witnesses and that we be present at any and all live line
2 ups. In the event the Court declines to enter such an order
3 and allows the government to proceed with FBI photo spread,
4 identification, again we ask to be present during any photo
5 spread display that might be conducted by the government.

6 I think it is absolutely critical as long as we are Mr.
7 McVeigh's attorneys and I make this request on behalf of any
8 counsel who would succeed us as Mr. McVeigh's representatives
9 in this case, it is absolutely essential to the preparation of
10 an effective defense that we be allowed to see and hear from
11 the witnesses own mouth what he or she says about this
12 identification.

13 I understand Agent Hersley was not present at the live
14 lineup. I was. And the eyewitness identification of those two
15 people who sort of identified Mr. McVeigh in the lineup was
16 equivocal at best.

17 Without Counsel being present during any attempted
18 identification of Mr. McVeigh, Counsel will lose that
19 opportunity forever. We simply cannot rely on any government
20 agent or government lawyer, however, well intentioned to listen
21 with a degree of critical discernment that any criminal defense
22 lawyer would.

23 I understand the government -- I understand the government
24 is actively pursuing this case and that they want to see
25 justice be done, and I think this is a request that is entirely

1 consistent with seeing that justice is done.

2 THE COURT: I would prefer your oral request matter of
3 record and I prefer that you submit a written motion and brief.

4 MR. COYLE: Yes, Your Honor, could we ask the government
5 to refrain from conducting any lineups until I am able to do
6 that? We would also like for it to be recorded a video record
7 to be made so that the jury in the future could judge for
8 themselves.

9 THE COURT: You want to agree to that?

10 MR. GARLAND: No, Your Honor, in the most strenuous
11 way. With respect to live lineups, of course, we will allow
12 them to be present. We allowed them to be present at the last
13 one we have notified. I have never heard of a court making the
14 order which they just cited, and I would be surprised if we
15 ever see one. We will drastically put behind this
16 investigation if you prevent us from doing photo spreads until
17 such time they were able to put together --

18 MS. OTTO: If the government is concerned about
19 delaying this investigation, I suggest we could cure that
20 problem by simply asking the government to record any
21 conversations that they have with the eyewitnesses. I do know
22 that the FBI is in possession of tape-recorders because they
23 tape-recorded one of my clients.

24 I understand it is not their usual course of business, but
25 in light of the severity of this case and the possible

1 punishment that Mr. McVeigh faces if he is convicted, I think
2 it's a small consession for the government to make to record
3 any conversations that they have during the course of a photo
4 spread lineup. It seems a very modest request under the
5 circumstances.

6 THE COURT: My basic responsibility at this point I
7 think are over in this case. However, for whatever authority I
8 may have in connection with this. I prefer that you submit a
9 written motion.

10 MS. OTTO: Your Honor, Your Honor, you are the only
11 judicial officer with jurisdiction at this point and I am very
12 serious about this request.

13 THE COURT: I just prefer, Ms. Otto, that it be a
14 written motion.

15 MS. OTTO: I certainly will prepare that and I hope to
16 have it submitted tomorrow. I would hope that the government
17 would at least record any conversations with witnesses in the
18 meantime.

19 MR. GARLAND: Your Honor, we will not. We will only
20 do what the law requires and what the law requires with respect
21 to lineups we will provide them with information. We will not
22 record conversation with prospective witnesses. I want to make
23 that very clear. I do not believe they will find a single case
24 in which that has been ordered. I don't believe that is within
25 the authority of this Court to order.

1 THE COURT: I have some divergent opinions. I think I
2 would rather have a motion.

3 MS. OTTO: I understand, Your Honor. I doubt the
4 government will find a single case that says its outside
5 your authority.

6 THE COURT: Anything further at this time?

7 MS. OTTO: Nothing further upon behalf of the
8 Defendant.

9 THE COURT: May I ask that this affidavit be completed
10 and since if the Defendant has any questions and perhaps that
11 can be taken care of so I can -- I understand he desires at
12 this point to proceed with appointed Counsel, so I would like
13 to have that affidavit on file.

14 THE COURT: Hearing is recessed and everyone can be
15 excused.

16 (THE PRELIMINARY HEARING WAS CONCLUDED AND THE COURT WAS IN
17 RECESS.)

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A TRUE AND CORRECT TRANSCRIPT

CERTIFIED: Charyse C. Crawford
Charyse C. Crawford, CSR, RPR
United States Court Reporter
Western District of Oklahoma

A TRUE AND CORRECT TRANSCRIPT

CERTIFIED: Lynn Hilton
Lynn Hilton, CSR, RPR
United States Court Reporter
Western District of Oklahoma