

Lawyers in Oklahoma Bombing Seek to Suppress Testimony

By JO THOMAS | New York Times | January 13th, 1997

DENVER, Jan. 10— Lawyers for the defendants in the Oklahoma City bombing case sought this week to suppress the testimony of nine prosecution witnesses, some of whom appear to be central to the Government's case. Several witnesses were identified for the first time.

The witnesses' identities were disclosed in court papers filed by lawyers for the two defendants, Timothy J. McVeigh and Terry L. Nichols, who are to be tried separately, starting with Mr. McVeigh on March 31.

One of the new witnesses is Fred Skrdla, who was working at a gasoline station in Billings, Okla., about 80 miles north of Oklahoma City, on April 19, 1995, the day a Ryder truck carrying a giant bomb made of fertilizer and fuel oil exploded in front of the Federal Building at 9:02 A.M. and killed 168 people.

Sometime between 1 A.M. and 3 A.M., Mr. Skrdla told agents for the Federal Bureau of Investigation, a man driving a very large Ryder truck stopped and bought gasoline, for which he paid cash. Mr. Skrdla recalled that he was busy and did not notice whether the driver was alone or with others. But when the composite drawings of the two bombing suspects were released, he said he recognized one as the man who had stopped to buy gasoline.

A short time later, Mr. Skrdla said, when he saw television news coverage of Mr. McVeigh being led out of the Noble County Courthouse in Perry, Okla., he was certain the man he had seen was Mr. McVeigh.

Another witness identified for the first time, William Dunlap, had taken his wife to work in Oklahoma City on the day of the bombing. Shortly after 8:42 A.M., he said, he drove past the Federal Building, where he noticed a Ryder truck parked in front.

According to F.B.I. reports disclosed by defense lawyers, Mr. Dunlap saw a white man get out of the Ryder truck and walk to the rear of it. Mr. Dunlap recalled that the man wore jeans, was in his mid to late 20's, had "clean-cut" hair, a medium complexion, had a slight build and stood 5 feet 8 inches or 5 feet 9 inches. Mr. McVeigh is 6 feet 2 inches. On April 24, Mr. Dunlap told bureau agents that the person looked like Mr. McVeigh, but that he was not certain of the identification.

Stephen Jones, the lawyer for Mr. McVeigh, contends that the wide news coverage of the crime and the arrests, especially the television coverage of Mr. McVeigh in handcuffs on April 21, tainted the ability of these two witnesses and several other to make reliable identifications.

To bolster his contention that television news coverage influenced identifications, Mr. Jones cited the testimony of several witnesses, among them David Ferris, a Junction City, Kan., taxi driver, who was interviewed several times by the F.B.I. about a passenger on April 17, 1995, two days before the bombing.

In the early interviews, he did not identify any of them as looking like Mr. McVeigh. On May 9, 1995, the agents questioned him again about his passengers on April 17. They asked Mr. Ferris if he had taken anyone to the McDonald's restaurant on South Washington Boulevard that day, and he said no.

The agents' notes of this interview say that Mr. Ferris became extremely emotional during the questioning, said he did not feel well, and, with tears streaming down his cheeks, said he had "never picked up McVeigh."

The next day, however, Mr. Ferris told bureau agents that he had, in fact, taken a fare to McDonald's between 3:30

P.M. and 4 P.M. on April 17. He described the passenger as a young white man with a military-style haircut and demeanor, wearing Levi's and a white shirt. Mr. Ferris told the agents that he had seen Mr. McVeigh's picture on television and was "scared and panicked" after realizing who he was.

Two of the witnesses being challenged, Eldon Elliott, and Tom Kessenger, are central to the Government's case because they identified Mr. McVeigh as the man who rented the Ryder truck that prosecutors say carried the bomb. Their descriptions were also used to prepare composite drawings of two men Federal agents sought in the bombing.

Mr. Elliott is the owner of Elliott's Body Shop, the Junction City rental outlet where a man who called himself Robert Kling put down a deposit on the truck on April 15 and returned two days later to pick it up.

Federal agents first interviewed Mr. Elliott on April 19 and again on April 20, when he and Vicki Beemer, who handled the paperwork in the rental, went to Fort Riley to assist in the preparation of the composite drawings.

But Mr. Elliott was not asked to identify Mr. Kling until June 8, 1995, when he picked Mr. McVeigh from among photographs in Oklahoma City. At that point, Mr. Jones contends, Mr. McVeigh's face was so familiar "monks living on the mountainside in Tibet could have made the same identification."

Mr. Kessenger also gave descriptions used to create the two composite drawings. He was asked on April 30, 1995, to identify Mr. Kling from a group of photographs and selected Mr. McVeigh.

Michael E. Tigar, the lawyer for Mr. Nichols, is seeking to suppress identifications made by at least one unnamed witness at the Mid-Kansas Cooperative in McPherson, Kan., where two men bought ammonium nitrate fertilizer on Sept. 30 and Oct. 18, 1994. The Government has linked that purchase to the bomb that destroyed the Federal Building.